DREHER TOMKIES LLP ALERT

FOR CLIENTS AND FRIENDS OF DREHER TOMKIES LLP

February 27, 2018

SIXTH CIRCUIT CONCLUDES "NO INJURY, NO STANDING" IN FDCPA CASE, CITING *SPOKEO*

The U.S. Court of Appeals for the Sixth Circuit dismissed a debtors' case for lack of standing because the debtors failed to show that they suffered any harm from an attorney's omission of a disclosure required under the federal Fair Debt Collection Practices Act ("FDCPA"). *Hagy v. Demers & Adams*, No. 17-3696 (6th Cir. Feb. 16, 2018).

This case arose from a foreclose on a mortgage loan. In 2010, the attorney for the mortgage servicer sent a letter to the debtors' attorney to confirm that he received an executed Warranty Deed in Lieu of Foreclosure and that the mortgage servicer would not attempt to collect any deficiency balance that may be due after the sale of the collateral. Thereafter, the mortgage servicer began calling the debtors in error to collect the deficiency balance. The debtors sued. Among other claims, the debtors alleged that the attorney violated the FDCPA by failing to disclose that the confirmation letter was a communication from a debt collector (*i.e.*, the attorney did not give a so-called "mini-*Miranda*" notice).

The Sixth Circuit focused on whether the debtors have standing to have a federal court address their claims. The court's opinion discusses at length the relationship between injuries and damages created by Congress in federal statutes and the injury or harm necessary to establish standing in federal court under Article III of the U.S. Constitution. Although Congress has leeway to define and create injuries, the Sixth Circuit interpreted the U.S. Supreme Court's much-discussed decision in *Spokeo, Inc. v. Robins* to mean that Congress cannot erase Article III's standing requirement. The Sixth Circuit noted that nowhere in the FDCPA or its legislative history did Congress explain why the absence of a "mini-*Miranda*" warning always creates an Article III injury to enable a federal court to address such disputes *per se* and to award plaintiffs statutory damages under the FDCPA.

In evaluating whether the debtors established standing in this case, the Sixth Circuit focused on the injury or damage caused by omitting a "mini-*Miranda*" notice from the confirmation letter. The court found no evidence of injury or damage beyond a bare procedural violation of the FDCPA. In fact, the confirmation letter helped the debtors because it gave the debtors a "peace of mind" at the time it was sent and the debtors later used the letter to stop the mortgage servicer's efforts to collect the deficiency balance.

By dismissing the debtor's case on standing grounds, the Sixth Circuit avoided discussion of the merits of the case, including whether a letter to a debtor's attorney constitutes a "communication to a consumer" for purposes of the FDCPA's "mini-*Miranda*" notice requirement. As the court noted, there is plenty to debate about the merits of the case and the Sixth Circuit has yet to take a position on whether the "mini-*Miranda*" notice applies to communications with a debtor's attorney.❑

✧ *Mike Tomkies and Susan Manship Seaman*

Darrell L. Dreher
ddreher@dltlaw.com

Elizabeth L. Anstaett
eanstaett@dltlaw.com

Emily C. Cellier
ecellier@dltlaw.com

Susan L. Ostrander
sostrander@dltlaw.com

2750 HUNTINGTON CENTER
41 S. HIGH STREET
COLUMBUS, OHIO 43215
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600
WWW.DLTLAW.COM

Michael C. Tomkies
mtomkies@dltlaw.com

Susan M. Seaman
sseaman@dltlaw.com

Lindsay P. Valentine
lvalentine@dltlaw.com

Judith M. Scheiderer
jscheiderer@dltlaw.com

Robin R. De Leo
robin@deher-la.com