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## THIRD CIRCUIT FINDS THAT CONSUMERS ARE NOT REQUIRED TO DISPUTE A DEBT'S VALIDITY IN WRITING; ENDS GRAZIANO PRECEDENT

The U.S. Court of Appeals for the Third Circuit has ended a circuit split affecting validation notices. In *Riccio v. Sentry Credit, Inc.*, the Third Circuit concluded that Section 1692g(a)(3) of the federal Fair Debt Collection Practices Act ("FDCPA") does not require a consumer to dispute the validity of a debt "in writing" within 30 days after receipt of a validation notice. No. 18-1463, 2020 WL 1527072 (3d Cir. Mar. 30, 2020). Accordingly, validation notices that state a consumer's statutory rights using the word-for-word language in Section 1692g(a)(3) do not violate the FDCPA in the Third Circuit.

The *Riccio* decision overturns *Graziano v. Harrison*, a 1991 precedential Third Circuit decision, which read "in writing" into Section 1692g(a)(3) and, as result, required validation notices sent to consumers in the Third Circuit to state that unless the consumer disputes the validity of the debt or a portion thereof *in writing* within 30 days after receipt of the notice, the debt will be assumed valid. Debtors like Ms. Riccio have filed cases alleging that debt collectors violated the FDCPA when their validation notices provided a debtor with multiple options to contact a collector to dispute the debt's validity including via telephone. Based on *Graziano*, debtors in the Third Circuit have argued that validation notices should state that debtors may only submit a validation dispute in writing – a rule that makes it harder for debtors to invoke protections under the FDCPA.

The Third Circuit supported its *Riccio* decision with a plain language review of Section 1692g(a)(3) and the FDCPA in its entirety. The Third Circuit noted that FDCPA provisions other than the validation notice requirement discuss debt disputes without specifying a method of communication. The Third Circuit viewed the other FDCPA provisions as evidence that Congress intentionally omitted "in writing" from Section 1692g(a)(3). The Third Circuit summarized what it believed to be Congress's "non-absurd" intent to permit oral disputes of a debt's validity under Section 1692g(a)(3), but require a debtor to dispute a debt in writing to cease a collector's collection efforts and require immediate verification of debt under Section 1692g(b).

Seven circuit courts have adopted the same position as the

Third Circuit in *Riccio* and three of those circuit courts have expressly rejected the Third Circuit's prior *Graziano* decision. The *Riccio* opinion states that "by expressing our view today, we put an end to a circuit split and restore national uniformity to the meaning of Section 1692g."

The *Riccio* holding (and overturning of *Graziano*) applies prospectively and retroactively to all cases still open on direct review and to all events regardless of whether the events predated or postdated the ruling. In a footnote, the Third Circuit addressed the liability of debt collectors who have already sent *Graziano*-compliant letters to debtors. The Third Circuit said that it did not intend to suggest that debt collectors should be liable for failing to foresee a change in the law and advised district courts to exercise appropriate discretion with respect to these debt collectors.

The Third Circuit ruling is a welcome decision that simplifies the regulatory landscape for debt collectors. The trend has been to make it easier for consumers to dispute debts or request information, the opposite of the situation created by the *Graziano* decision.

In its proposed debt collection rule, the Consumer Financial Protection Bureau has proposed to interpret Section 1692g(b)'s "in writing" requirement to permit consumers to submit debt disputes and original creditor requests to a debt collector using a medium of electronic communication that a debt collector accepts from consumers, such as email or a website portal. ☐

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