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JANUARY 2021

EDITOR'S NOTE: THE NEW YEAR

Victoria Prussen Spears

DEALING WITH BONDHOLDERS IN TROUBLED TIMES

Daryl B. Robertson, W. Lake Taylor, Jr., William H. McBride, and Nic O'Brien

**FINANCING YOUR WAY OUT OF A PANDEMIC: HOW TWO AIRPORT COMPANIES
RESTRUCTURED THEIR DEBT TO WITHSTAND AN ECONOMIC CRISIS**

John R. Ablan and Douglas A. Doetsch

**DEED IN A BOX: AN ADVANTAGEOUS LOAN WORKOUT METHOD
IN THE TIME OF THE COVID-19 PANDEMIC**

Rebecca Eschen

**THE PROTECTING EMPLOYEES AND RETIREES IN BUSINESS
BANKRUPTCIES ACT OF 2020: A SIGN OF THE TIMES**

Shmuel Vasser and Eric Hilmo

**SECOND CIRCUIT RULES THAT PROVISIONS IN LEHMAN CDOS SETTING PAYMENT
PRIORITIES ARE PROTECTED BY SAFE HARBOR**

Carmine D. Boccuzzi Jr., Lisa M. Schweitzer, Sean A. O'Neal, Emily J. Balter,
and Brandon M. Hammer

**THIRD CIRCUIT DECISION PROVIDES NEW GUIDANCE ON THE UNFAIR DISCRIMINATION
STANDARD OF CRAMDOWN AND THE ENFORCEMENT OF SUBORDINATION
AGREEMENTS WHEN CONFIRMING CRAMDOWN PLANS**

Ronit J. Berkovich and Theodore S. Heckel

ELEVENTH CIRCUIT DEEPENS SPLIT ON STANDING IN FDCPA CASES

Jessica E. Salisbury-Copper, Scott A. King, and Joe Barton

**COAL ACT PREMIUMS ARE NONDISCHARGEABLE TAXES
RATHER THAN DISCHARGEABLE CLAIMS**

Shmuel Vasser and Casey Norman

**HOUSTON BANKRUPTCY COURT DETERMINES THAT A MAKE-WHOLE CLAIM IS NOT
DISALLOWED BY THE BANKRUPTCY CODE AND THE SOLVENT DEBTOR EXCEPTION
STILL EXISTS UNDER THE BANKRUPTCY CODE**

Jim Prince, Luke A. Weedon, and Fareed Kaisani

THE ADVANTAGES OF "DIRECT DEBT" SECURITIZATION STRUCTURES

Jim Cotins and Matt Lyons



LexisNexis

Pratt's Journal of Bankruptcy Law

VOLUME 17

NUMBER 1

January 2021

Editor's Note: The New Year

Victoria Prussen Spears

1

Dealing with Bondholders in Troubled Times

Daryl B. Robertson, W. Lake Taylor, Jr., William H. McBride,
and Nic O'Brien

4

**Financing Your Way Out of a Pandemic: How Two Airport Companies
Restructured Their Debt to Withstand an Economic Crisis**

John R. Ablan and Douglas A. Doetsch

10

**Deed in a Box: An Advantageous Loan Workout Method in the Time of the
COVID-19 Pandemic**

Rebecca Eschen

14

**The Protecting Employees and Retirees in Business Bankruptcies Act of 2020:
A Sign of the Times**

Shmuel Vasser and Eric Hilmo

18

**Second Circuit Rules That Provisions in Lehman CDOs Setting Payment
Priorities Are Protected by Safe Harbor**

Carmine D. Bocuzzi Jr., Lisa M. Schweitzer, Sean A. O'Neal, Emily J. Balter,
and Brandon M. Hammer

23

**Third Circuit Decision Provides New Guidance on the Unfair Discrimination
Standard of Cramdown and the Enforcement of Subordination Agreements When
Confirming Cramdown Plans**

Ronit J. Berkovich and Theodore S. Heckel

30

Eleventh Circuit Deepens Split on Standing in FDCPA Cases

Jessica E. Salisbury-Copper, Scott A. King, and Joe Barton

36

**Coal Act Premiums Are Nondischargeable Taxes Rather Than Dischargeable
Claims**

Shmuel Vasser and Casey Norman

39

Houston Bankruptcy Court Determines That a Make-Whole Claim Is Not Disallowed by the Bankruptcy Code and the Solvent Debtor Exception Still Exists Under the Bankruptcy Code

Jim Prince, Luke A. Weedon, and Fareed Kaisani

42

The Advantages of “Direct Debt” Securitization Structures

Jim Cotins and Matt Lyons

47

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Library of Congress Card Number: 80-68780

ISBN: 978-0-7698-7846-1 (print)

ISBN: 978-0-7698-7988-8 (eBook)

ISSN: 1931-6992

Cite this publication as:

[author name], [*article title*], [vol. no.] PRATT'S JOURNAL OF BANKRUPTCY LAW [page number] ([year])

Example: Patrick E. Mears, *The Winds of Change Intensify over Europe: Recent European Union Actions Firmly Embrace the "Rescue and Recovery" Culture for Business Recovery*, 10 PRATT'S JOURNAL OF BANKRUPTCY LAW 349 (2014)

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POSTMASTER: Send address changes to *Pratt's Journal of Bankruptcy Law*, LexisNexis Matthew Bender, 230 Park Ave. 7th Floor, New York NY 10169.

Eleventh Circuit Deepens Split on Standing in FDCPA Cases

*By Jessica E. Salisbury-Copper, Scott A. King, and Joe Barton**

In Trichell v. Midland Credit Management, the U.S. Court of Appeals for the Eleventh Circuit held that plaintiffs lacked standing under the Fair Debt Collection Practices Act because they had not been personally misled by the defendant's representation. The authors of this article discuss the decision and the deepening circuit split on the issue.

The U.S. Court of Appeals for the Eleventh Circuit dismissed the plaintiffs' claims under the Fair Debt Collection Practices Act ("FDCPA") in *Trichell v. Midland Credit Management*, holding that they lacked standing because they had not been personally misled by the defendant's representation. The court found that dismissal was required even if the misrepresentations would have misled the "least sophisticated consumer," because to have standing to sue in federal court, plaintiffs themselves must have suffered tangible or intangible injuries.

The case deepens an existing circuit split on standing in FDCPA litigation, underscores the necessity for FDCPA defendants to aggressively challenge standing issues, and increases the potential for FDCPA claims to be filed in state court where, depending on the jurisdiction, standing may not be an issue.

BACKGROUND

The FDCPA allows consumers to sue debt collectors who use "false, deceptive, or misleading representation[s]" to collect a debt. When evaluating an FDCPA claim on the merits, most courts use an objective standard that asks whether the hypothetical "least sophisticated consumer" or, in some jurisdictions, "unsophisticated consumer" would have been misled.

Defendant Midland Credit Management sent collection letters to two debtors, John Trichell and Keith Cooper, offering debt-repayment plans even though the expiration of the statutes of limitations meant that Midland could

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not legally enforce those debts. The letters contained a disclaimer indicating that the age of the debts meant that Midland would not sue.

Trichell and Cooper sued Midland for violating the FDCPA, claiming the collection letters were misleading. Neither plaintiff alleged that they themselves were misled, contending instead that the letters were misleading as a matter of law under the least sophisticated consumer standard.

The district court considered the FDCPA claims on the merits and dismissed them for failure to state a claim. Neither considered whether Trichell or Cooper had Article III standing to bring their FDCPA claims.

TRICHELL DECISION

The Eleventh Circuit held that the plaintiffs lacked standing because they did not allege the collection letters caused them any tangible injury such as the payment of money or wasting of time.

The court applied *Spokeo's* two-part analytical framework for determining whether an alleged intangible injury is sufficiently concrete to demonstrate standing.

First, the court found that “the common law furnishes no analog to the FDCPA claims asserted here.”

Second, it found that Congress’s concerns in creating the FDCPA (e.g., a potential increase in bankruptcies, job loss, marital instability or invasion of individual liberty) were not implicated by the plaintiffs’ receipt of a misleading communication “that fails to mislead.”

The court held that the plaintiffs failed to allege that the collection letters posed a risk of harm to them (as opposed to someone else) and that the risk the letters may have posed to them had dissipated. In doing so, the court differentiated the plaintiffs’ personal, subjective injuries from the potential injury to other least sophisticated consumers:

[W]hat matters is whether the plaintiff has suffered a concrete injury, not whether other parties have; . . . With no plausible allegation that *they* were ever misled, Trichell and Cooper cannot show standing based on such a risk to others; . . . [T]he likely reaction of “unsophisticated consumer[s]” may inform a merits determination whether a communication is misleading, but it cannot allow “those who have not been injured to vindicate the rights of parties who have.”

The court also rejected the plaintiffs’ contention that the FDCPA provides a right to receive truthful communications from debt collectors, which by itself gave them standing, reasoning that absent any allegation of “concrete down-

stream consequences” from their receipt of the collection letters, the plaintiffs were left to complain only about receiving information that had no impact on them. The court deemed such allegations insufficient because “an asserted informational injury that causes no adverse effects cannot satisfy Article III.”

The court vacated the district courts’ judgments and remanded the cases with instructions to dismiss for lack of Article III standing.

DISSENT AND CIRCUIT SPLIT

As noted in Judge Martin’s dissenting opinion, the *Trichell* decision deepened an existing circuit split on how to evaluate standing. The Eleventh Circuit agreed with the U.S. Courts of Appeals for the D.C. and Seventh Circuits (and arguably went further by dismissing at the pleadings stage) in concluding that a plaintiff must personally have an injury, even when the elements of the cause of action turn on whether a least sophisticated consumer would have been misled.

In contrast, cases from the U.S. Courts of Appeals for the Second and Sixth Circuits have held that standing may be demonstrated based on increased risk of harm to consumers generally, without showing that the plaintiffs themselves were placed at greater risk. The Eleventh Circuit concluded that the D.C. and Seventh Circuits’ precedent was “more faithful to Article III.”

CONCLUSION

The Eleventh Circuit’s decision in *Trichell* and recent cases from the D.C. and Seventh Circuits underscore the necessity for a defendant to challenge whether the plaintiff can allege and demonstrate a personal, subjective and concrete injury, and whether a hypothetical least sophisticated consumer would also be misled. Without demonstrating a personal injury, the plaintiff may not be able to open the courthouse door.

But even if the door is opened, without demonstrating that the least sophisticated consumer would have been misled, the plaintiff may not be able to prevail on the merits. As a result, an FDCPA defendant must be vigilant in challenging a plaintiff’s standing while also building the case that no hypothetical least sophisticated consumers were put at risk of injury.