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Federal Court Applies Nevada's Interest Statute in FDCPA Case

Debt collectors are often at the mercy of their client's customer contracts when collecting a debt. We often encourage debt collectors to work with their clients to fashion consumer contracts that avoid or minimize FDCPA risk in the event of collection.

Collecting interest is one of those pitfalls. Contracts often have specific written terms establishing an interest rate on unpaid debt. When the contract does not have a specified rate of interest, state statutes can fill the void, but create heightened FDCPA risk.

The Urbina Decision and NRS 99.040

Nevada's catch-all interest statute—NRS 99.040—is the subject of a recent FDCPA case in a District of Nevada case, *Urbina v. National Business Factors, Inc. of Nev.*, Civ. No. 3:17-cv-00385. The underlying debt arose from \$614.52 in unpaid medical services. With no established contract rate of interest, the debt collector (NBF) sought to collect interest pursuant to NRS 99.040, a rule generally providing for the recovery of interest at the prime rate plus 2 percent when "there is no express contract in writing fixing a different rate of interest" Urbina sued, arguing that NBF unlawfully charged interest under NRS 99.040, and therefore violated various provisions of the FDCPA.

On summary judgment, U.S. Magistrate Judge William G. Cobb concluded that the collection of interest was authorized under NRS 99.040(3) as a "book account." Treating the unpaid medical debt as a "book account," the court concluded that the proper date to commence the charging of interest was "when the debt is liquidated, which occurs when the creditor permits no additional charges and the debt is not otherwise subject to dispute as to amount and a single liability remains."

In this particular case, Urbina's debt became "settled" when her service provider sent a "Final Notice" for payment prior to assigning the debt to NBF for collection. As a result, Judge Cobb concluded that it was appropriate for NBF to charge interest under NRS 99.040(1)(b).

Even with that authority, NBF admitted it had calculated interest from the wrong date. Yet it was able to survive FDCPA liability under the "bona fide error" defense contained in 15 U.S.C. § 1692k(c). Here, NBF had a procedure in place where it sent to its client an exemplar of its computer-generated demand letter, allowing the client to inform it of any error. The client did not reply, effectively preventing NBF from correcting its error. On that basis, NBF obtained summary judgment.

Penny Wise, Pound Foolish

So many FDCPA cases arise from the collection of small debts. The Urbina case goes a step further, as it involved the interpretation of a 158-year-old statute to settle a discrepancy of only \$16.16 in interest. No doubt the attorney's fees and costs incurred in defending this case have exceeded that amount a thousandfold or more, and an appeal promises to only increase that multiple. In these cases, consider your cost/benefit analysis when collecting interest under a statute. Better yet, work with your clients to locate potential FDCPA pitfalls before they wind up in court.

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This document is intended to provide you with general information regarding Urbina v. National Factors, Inc. of Nevada and FDCPA risk for debt collectors. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.