



September 27, 2012

## BANKRUPTCY

### Vicarious Liability Under the Fair Debt Collections Practices Act: A Concern for Lenders?



Suppose a bank hires a law firm to assist with the bank's attempts to collect a debt, the law firm hires a repossession agent, and the repossession company violates the federal Fair Debt Collection Practices

Act ("FDCPA" or the "Act"). The borrower threatens suit against the repossession company, the law firm, and the bank. What is the scope of liability? Which parties will be subject to a claim under the Act? The common perception seems to be that all three parties may be liable for the violation—that the principals are subject to FDCPA claims arising from actions taken by their agents. Debtors often attempt to use the FDCPA defensively in such situations, and most lenders put processes in place to attempt to avoid FDCPA claims. The common view is, however, generally mistaken. Under the FDCPA, principals actually have multiple layers of protection from vicarious liability for their agents' acts.

Click [here](#) to read the full article. For more information, please contact [Meredith L. Minkus](mailto:Mereditlh.L.Minkus@burr.com) at (407) 540-6649 or [mminkus@burr.com](mailto:mminkus@burr.com).

## LITIGATION

### Dodd-Frank Newsletter September 2012 Edition



Please click [here](#) to read the September 2012 edition of the Dodd-Frank Newsletter - an update of recent case law, news, and developments related to The Dodd-Frank Wall Street Reform and Consumer

## Headlines

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## News Briefs

### CFPB Proposes New Rule for Stay-at-Home Parent Credit Cards

Help is on the way for stay-at-home parents being denied credit cards because they don't have income of their own. The Consumer Financial Protection Bureau will propose a rule within the next few months that will make it easier for applicants without personal income to qualify for credit cards, the agency's director Richard Cordray said at a congressional hearing.

(Source: CNNMoney.com, 2012-09-24)

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### Fewer Credit Card Complaints Than Expected, CFPB Director Reports

The U.S. Consumer Financial Protection Bureau hasn't fielded as many complaints about credit cards as it anticipated when it began operating last year, its director said. "We have fewer complaints about credit cards than I would have expected," Richard Cordray, the CFPB's director, said at a hearing of the Senate Banking Committee, where he presented the bureau's semi-annual report to Congress.

(Source: Bloomberg Businessweek, 2012-09-13)

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### Treasury Recommends Standard Chartered Money Transfer Settlement

Lawyers within the Treasury Department have recommended a preliminary settlement with Standard Chartered, clearing the path for the British bank to pay a penalty to state and federal prosecutors and to move beyond claims that it flouted laws governing international money transfers. The lawyers approved a potential prepayment amount, a crucial step to a final agreement, though it will be much smaller than the \$340 million the bank had to pay to New York State's top banking regulator in a related case, according to three officials with direct knowledge of the settlement talks.

(Source: The New York Times, 2012-09-12)

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### U.S. Should Reject Basel III Unless Changed, FDIC Director Says

The United States should reject Basel III bank capital standards if the international panel that drafted them does not make dramatic changes to the rules, a director at the U.S. Federal Deposit Insurance Corp said.

(Source: Reuters, 2012-09-14)

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### CFPB to Launch Supervision of Big Three Credit Bureaus

For the first time, a federal agency will see the inner workings of the three national credit-reporting agencies whose files determine who receives a loan and how much they will pay for credit. The Consumer Financial Protection Bureau will begin on Sept. 30 its supervision of Experian, Equifax and TransUnion, the agencies that maintain

Protection Act ("Dodd-Frank Act").

For more information, please contact the editors: [David Elliott](mailto:deliott@burr.com) at (205) 458-5324 or [deliott@burr.com](mailto:deliott@burr.com), [Rachel Cash](mailto:rcash@burr.com) at (205) 458-5483 or [rcash@burr.com](mailto:rcash@burr.com) and [Kristen Peters](mailto:kpeters@burr.com) at (205) 458-5169 or [kpeters@burr.com](mailto:kpeters@burr.com).

### TCPA ADDENDUM BLOG

We have launched the TCPA Addendum Blog to share timely information about the Telephone Consumer Protection Act, [47 U.S.C. § 227](#) ("TCPA"), a federal statute that was enacted to address concerns relating to telemarketing/solicitation practices. The initial posts on this blog deal with general background information relating to the TCPA, subsequent posts will provide summaries of recent cases, regulations and other topics affecting TCPA litigation.

Please click [here](#) to access our blog.

If at any time while reading the blog, you find yourself with questions regarding TCPA regulation, please contact [Joshua H. Threadcraft](mailto:jthreadcraft@burr.com) at (205) 458-5132 or [jthreadcraft@burr.com](mailto:jthreadcraft@burr.com).

### SPEAKING ENGAGEMENTS Liability for Dismissals



Burr & Forman partners [Alan Leeth](#) and [Frank Springfield](#) will be speaking at the National Association of Retail Collection Attorneys (NARCA) Fall 2012 Collection Conference held October 17-20, 2012. Their presentation will focus on FDCPA claims that arise out of the dismissal of debt collection lawsuits. Burr & Forman is a sponsor of the conference. For more information, please visit [www.narca.org](http://www.narca.org).

### What Every Real Estate Lawyer Needs to Know



Burr & Forman attorneys [Carol Stewart](#) and [Jay Haithcock](#) will present at a CLE Alabama live seminar entitled, "What Every Real Estate Lawyer Needs to Know" held at The University of Alabama School of Law in

credit information on more than 200 million Americans.

(Source: The Columbus Dispatch, 2012-09-09)

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### Major Banks Consider Whether to Get into California Carbon Market

Major banks are weighing whether to wade into the California carbon market, which experts believe could grow into a \$40 billion a year market by 2020, but one that is also loaded with risk and uncertainty. Following the successful test of the state's auction platform, the reality is starting to settle in: California carbon trading has overcome legal and political challenges to position itself a mere 10 weeks away from its first official CO2 permit sale.

(Source: Reuters, 2012-09-07)

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### Prosecutors, Debt Collectors Team to Collect Money

The letters are sent by the thousands to people across the country who have written bad checks, threatening them with jail if they do not pay up. They bear the seal and signature of the local district attorney's office, but there is a catch: the letters are from debt-collection companies, which the prosecutors allow to use their letterhead.

(Source: The New York Times, 2012-09-15)

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### FDIC Urges Banks to Consider Unbanked as Customers

The Federal Deposit Insurance Corp. has a simple message for banks about poorer Americans: They could be good customers, and their numbers are growing. U.S. households without bank accounts grew by 821,000 from 2009 to 2011, pushing the so-called unbanked population to 8.2 percent of the nation's total, according to the FDIC's National Survey of Unbanked and Underbanked Households.

(Source: Bloomberg Businessweek, 2012-09-13)

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### Ice Cream Shop Owner Faces Scrutiny for Opening Bank Alternative

Pennsylvania banking officials want to put the freeze on the owner of an ice-cream parlor who opened a community-bank alternative that pays interest in the form of gift cards for ice cream, waffles and coffee. Ethan Clay opened Whalebone Café Bank seven months ago in his shop, Oh Yeah!, a year and a half after he was hit with \$1,600 in overdraft fees from a local bank where his account was overdrawn by a series of checks.

(Source: The Wall Street Journal, 2012-09-13)

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### BURR & FORMAN BLOGS SUCCEEDING IN SUCCESSION

We have launched this blog to help closely-held and family-owned business owners keep up with news, statutory changes, legal opinions and practical tips involving all areas of business succession planning. Please click [here](#) to access our blog.

If you have a question about something on the blog, or have a business succession planning issue, please contact any of Burr & Forman's [Business Succession Planning Team Members](#).

### ENVIRONMENTAL LAW MATTERS

We have launched this blog to help our clients keep up with news, statutory changes, legal opinions and practical tips involving all areas of environmental law. We hope that our clients, and other interested parties, will find this blog informative and entertaining and will make it a regular part of their reading. Please click [here](#) to access our blog.

If you have a question about something on the blog or have an environmental legal issue, feel free to contact any of Burr & Forman's [Environmental Team Members](#).

### NON-COMPETE & TRADE SECRETS

The [Non-Compete & Trade Secrets Group](#) comprises litigation and transactional attorneys throughout the Firm's Southeastern footprint. We stay up-to-the-minute on news and developments relating to non-compete and trade secrets law, and apprise our clients and the public of such through our blog. Click [here](#) to access our blog.

If you have a question about something on the blog, or have a non-compete legal issue, please contact any of Burr & Forman's [Non-Compete & Trade Secrets Team Members](#).

Tuscaloosa, Alabama on October 19, 2012. The title of Carol's presentation is "Condominium Issues" and the title of Jay's presentation is "Tax Sales and Redemptions." For more information about the seminar, please click [here](#).

### The New Suitability Rule, Three Months Later



Burr & Forman partner [Tom Potter](#) will co-present with Ken Bell, Vice President, Audit, [Cetera Financial Group](#) on FINRA's new Suitability Rule 2111 at the National Society of Compliance Professionals (NSCP) National Membership Meeting. The Meeting will be held October 22-24, 2012 in Washington, D.C. Click [here](#) for more information about the Meeting.

### RESULTS MATTER RADIO

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"WIT" – WOMEN IN TECHNOLOGY  
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### FIRM NEWS

#### Burr & Forman Continues Growth in Orlando with Addition of Ty Roofner



[Ty G. Roofner](#) has joined the firm's Orlando office as counsel. Roofner is a corporate attorney, who counsels clients on business transactions, including mergers, acquisitions and corporate financing. He was previously with Greenberg Traurig in Orlando. Roofner's addition is part of Burr & Forman's strategic expansion in Central Florida.

Ty can be reached at (407) 540-6672 or [troofner@burr.com](mailto:troofner@burr.com).

#### Burr & Forman Expands Client Services with 12 New Associates

Burr & Forman LLP continues its growth with the addition of 12 new associates, all recent law school graduates. Click [here](#) to view the list of the firm's 2012 associates.

#### 86 Burr & Forman Attorneys Selected Among *Best Lawyers in America*

Burr & Forman LLP is pleased to announce the inclusion of 86 of its attorneys among *The Best Lawyers in America* for 2013. Since the previous edition, 12 new Burr & Forman attorneys have been recognized by the publication, which is available at [www.bestlawyers.com](http://www.bestlawyers.com).

Click [here](#) to view the complete list of Burr & Forman attorneys selected for inclusion.

#### Six Burr & Forman Attorneys Selected as 2013 Lawyers of the Year by *Best Lawyers in America*

Burr & Forman LLP is pleased to announce that six partners have been named 2013 "Lawyers of the Year" by *The Best Lawyers in America*: [Lawrence R. Ahern III](#) - Litigation Bankruptcy; [W. Davidson Broemel](#) - Insurance Law; [John F. DeBuys, Jr.](#) - Land Use & Zoning Law; [John C. Morrow](#) - Transportation Law; [Marion A. Quina, Jr.](#) - Admiralty & Maritime Law and [H. William Wasden](#) - Labor Law Management.

The complete list of 2013 "Lawyers of the Year" is available at [www.bestlawyers.com](http://www.bestlawyers.com)



Burr & Forman LLP is a century old, full-service law firm with a forward-thinking approach to providing legal solutions. We have nearly 250 attorneys and offices in Alabama, Florida, Georgia, Mississippi and Tennessee. Burr & Forman offers a wide range of business and litigation services to diverse clients with local, national, and international interests.

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