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Volume 3, Issue 7

Welcome!

Welcome to the seventh issue of *All Consuming* for 2022.

We are pleased to announce that Joshua L. Jarrell has joined Spilman as a Member in our Morgantown, West Virginia office. He is the leader of our Public & Project Finance Group. He has extensive experience in corporate law, real estate law, title insurance, and economic development, in addition to public and project finance work.

At Spilman, we are dedicated to providing the services needed to address all of your legal issues. The addition of Josh helps us attain an elevated level of service for our clients. Please join us in welcoming him to the firm!

Thanks for reading.

Angela L. Beblo, Co-editor of *All Consuming*

Nicholas P. Mooney II, Co-editor of *All Consuming*

Bruce M. Jacobs, Chair, Spilman Consumer Finance Litigation Practice Group

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Student Loans

A New Student Loan Company is Now Taking Over the Accounts of Public Servants Seeking Debt Cancellation

"This also comes as borrowers have 4 months left to apply for extended student-loan relief."

Why this is important: Over the past several months, numerous student loan servicers have announced that they will cease servicing at the end of 2022, including loans serviced by FedLoan. Student loans serviced by FedLoan will be transferred to MOHELA between July and December 2022. These changes will affect those borrowers who have signed up for the Public Service Loan Forgiveness (PSLF) program. According to a recent article, there are three main items that borrowers enrolled in PSLF need to know about the transfer. First, all borrowers will receive notice of a transfer at least 15 days before any transfer occurs. Second, anyone qualifying for loan forgiveness between July and December will not have their loan transferred as the discharge will occur. Third, all applications for PSLF completed after May 1, 2022, will be processed by MOHELA and not FedLoan. **"There's a lot of uncertainty surrounding what's in store for student-loan borrowers in the coming months, but with millions of account transfers, potential student-loan relief, and resumption of payments," borrowers who will have their loans transferred should remain vigilant about the terms of their account and its PSLF status in order to immediately discuss any issues with the new servicer.** --- Angela L. Beblo

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Student Loan Forgiveness Scams are on the Rise, CFPB Warns

"*In some cases, borrowers said they were swindled out of hundreds or thousands of dollars.*"

Why this is important: As student loan servicing and student loan forgiveness continue to be the focus of headline news stories, the area has also seen a rise in scams. According to the Consumer Financial Protection Bureau (CFPB), "it has seen a rise in complaints from student loan borrowers about scammers promising debt forgiveness or forbearance extensions. In some cases, borrowers said they were swindled out of hundreds or thousands of dollars." While there are numerous authorized programs for relief from student loans, a recent article identified five red flags when it comes to student loan forgiveness scams. The first red flag is a company charging an upfront fee. The second red flag is the use of sales-style tactics that pressure a borrower to make a quick decision. The third red flag is urging a borrower "to cut off communications with [their] student loan servicer." The fourth red flag is a company that claims to be affiliated with the loan servicer for a borrower's loan. The fifth red flag is a company that asks for personal information like a "Federal Student Aid (FSA) ID and password, Social Security number or banking information." The article notes, however, that borrowers should also be aware of the difference between repayment scams and student loan *refinancing*, which is a "legitimate debt repayment method." **Anyone that has been contacted by a scammer should report the company to the Federal Trade Commission and contact their real student loan servicer.** --- Angela L. Beblo

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Medical Debt

Medical Bills Can Shatter Lives. North Carolina May Act to 'De-Weaponize' That Debt.

"The debt problem in North Carolina is among the most acute in the nation, according to credit bureau data analyzed by the nonprofit Urban Institute."

Why this is important: The axiom to "First do no harm" is actually nowhere to be found in the Hippocratic Oath, and the millions of consumers in the United States who carry medical debt would agree. Medical debt continues to be a leading factor in the decision to file for bankruptcy protection. Proponents of two bills proposed in the North Carolina legislature go so far as to say that medical debt has become "weaponized" and is wreaking havoc on the lives and well-being of patients. House Bill 149 is a Medicaid expansion measure that has gained bipartisan support after new efficiencies were introduced into the state's underlying programs. The bill mirrors other measures previously passed in other states around the country in the years since the Affordable Care Act passed.

The second bill, House Bill 1039, is the proposed bill the industry is watching very closely. Titled the "Medical Debt De-Weaponization Act.-AB," the bill is very explicit that it is a "consumer protection statute" aimed at efforts to "reduce burdensome medical debt and to protect patients in their dealings with medical creditors, medical debt buyers, and medical debt collectors. . . ." Proposed protections include requiring providers to offer free or reduced-cost services at various household income thresholds, provisions for payment plans with payment caps, annual out-of-pocket expense caps, delayed reporting to credit bureaus, liability protections for non-patient family members, and enforcement mechanisms for consumers. The bill stops short of blocking the sale of medical debt to collectors, which was a provision applied in Maryland's legislation. **If both bills pass during this legislative session, North Carolina will be poised to jump to being one of the highest-ranked states for medical debt consumer protections.** --- Brian H. Richardson

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FTC

Federal Trade Commission Returns More Than $970,000 To Consumers Harmed by Deceptive Payday Lending Operation

"*The FTC sued the payday loan enterprise and its owners in 2020, alleging that the defendants deceptively marketed their payday loans when they told borrowers that the loans would be repaid after a fixed number of payments.*"

Why this is important: In West Virginia, where our firm is headquartered, regulators believe that payday lending violates state consumer protection statutes, and as a result, there is no real payday lending industry here. A couple blocks over the border, in Kentucky, one starts seeing payday lending storefronts, and West Virginians sometimes make their way there to obtain payday loans. The same may be said about other states bordering West Virginia. Regardless, the same amount of payday lending, and resulting litigation, that is seen in other states isn't happening here. This article reports on an FTC lawsuit against three payday lending companies that allegedly, among other things, represented to borrowers that the loans would be repaid in full after a certain number of payments. However, those payments were being applied to finance charges only, and the defendants were continuing to withdraw money from borrowers' bank accounts to make loan payments. In addition to the $970,000 in relief to borrowers, the FTC obtained the defendants' agreement to be permanently banned from the debt collection industry and to deem nearly all outstanding loans as paid in full. **At bottom, the FTC's lawsuit isn't based on facts unique to the payday lending space, but rather it's about garden variety fraud, which isn't permitted regardless of your state.** --- Nicholas P. Mooney II

Payment Systems

High Demand for Digital Payments, 1.4 Billion People May Use Biometrics Payments by 2025

"*BNPL is popular among millennials and Gen Z according to a new study.*"

Why this is important: Readers of *All Consuming* and Spilman's technology law newsletter *Decoded* will remember that we've reported on the rise of digital payments. This trend was already proliferating, due in large part to millennials who've grown up in a digital-first world, and skyrocketed when the COVID-19 pandemic forced people to rethink how they shop and conduct business while limiting their contact with others, all in the name of staying healthy. VISA's recent Back-to-Business Surveys are fascinating reading. They show, among other things, that brand loyalty and store loyalty quickly lose out to merchants that provide customers digital and contactless payments. There's no end in sight for the growing popularity of digital payments, whether they are sought out to secure health or just for convenience. This article reports on a recent study on continued rise of digital payments, especially in Asia, where as many as 93 percent of consumers are using them. The article also reports on the next generation of digital payments: biometrics. Although the use of biometrics brings with it a concern over securing data, the article discusses the extent to which consumers in Asia are interested in paying by fingerprint scan, facial recognition, voice recognition, or retina scan. The article also includes non-fungible tokens (NFTs) and their place in the realm of cashless payments. Add to the article's points the fact that China has been testing a digital version of the yuan, the U.S. is working on a Digital Dollar Project, nearly 100 other countries are trying to create their own Central Bank Digital Currencies, and the fact that cryptocurrencies (though they've taken a hit this year) are still around and can be used as a payment method. **The prediction that "the end of cash has never been more near" may turn out to be right.** --- Nicholas P. Mooney II

Credit Reporting

CFPB Report Highlights Experiences of Military Families with Medical Billing, Credit Reporting, and Debt Collection

"Servicemembers and veterans report problems with coercive credit reporting and false medical bill collections."

Why this is important: Every year, the Consumer Financial Protection Bureau (CFPB) releases a report about the top financial concerns of military members, both past and present, as well as families. The report is based upon complaints that are submitted to the CFPB. In 2021, the CFPB received more than 42,000 complaints from servicemembers. The top complaints include inaccurate bills, aggressive medical debt collection tactics, and failure to correct credit reporting errors. Indeed, more than 60 percent of the complaints "were about credit reporting and debt collection." Credit reporting is particularly concerning to military members because "negative items on a credit report can jeopardize a military career." **The CFPB provided recommendations for companies to address the concerns of the military community. Both companies and military families should familiarize themselves with the guidance.** --- Angela L. Beblo

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CFPB Affirms Ability for States to Police Credit Reporting Markets

"The Fair Credit Reporting Act does not stop states from enacting laws to tackle credit reporting problems related to medical debt, tenant screening, and other consumer risks."

Why this is important: The CFPB under a Biden administration was predicted to be more active, and the appointment of Director Rohit Chopra fits with that prediction. The CFPB now has issued an interpretive rule clarifying that the federal Fair Credit Reporting Act has only limited preemptive effect, and states are by and large free to enact and enforce their own fair credit reporting laws. The rule results from the Office of the New Jersey Attorney General notifying the CFPB that an argument was being made in litigation that the FCRA preempted the New Jersey consumer protection statute. **The CFPB's interpretive rule explained that state laws only are preempted if they conflict with the FCRA or fall within certain categories of preemption that are set forth in the statute. The CFPB is a regulator to watch, but businesses can't forget about the authority of state regulators.** This is a significant point businesses and their counsel need to remember. --- Nicholas P. Mooney II

U.S. House of Representatives and U.S. Senate Committee Meetings

We have included a listing of pertinent U.S. House and Senate Committee meetings for your reference.

These are events scheduled at press time for the month of July 2022.

U.S. House Committee on Financial Services

- July 19: Oversight of the SEC's Division of Enforcement
- July 19: Thoughts and Prayers Are Not Enough: How Mass Shootings Harm Communities, Local Economies, and Economic Growth
- July 20: Housing in America: Oversight of the Federal Housing Finance Agency
- July 27: Hybrid Markup - Various Measures

U.S. House Committee on Small Business

- July 14: A Review and Assessment of the SBA HUBZone Program
- July 19: The SBA Office of International Trade and the STEP Program as Key Tools for Recovery and Expansion

U.S. Senate Committee on Banking, Housing, and Urban Affairs

- July 14: Advancing National Security and Foreign Policy Through Export Controls: Oversight of the Bureau of Industry and Security

U.S. Senate Committee on Finance

- No July events are scheduled at this time.

U.S. Senate Committee on Small Business & Entrepreneurship

- No July events are scheduled at this time.

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