Court Ruling Impact – Debt Collection Settlements Are Dead; Long Live Litigation

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The recent case (http://www.insidearm.com/daily/debt-buying-topics/debt-buying/appeals-decision-supports-cfpb-ftc-view-on-out-of-statute-debt-collection/) of *McMahon v. LVNV Funding* et al, 2014 U.S. App. LEXIS 4592 (7th Cir., 2014) held that a letter from a non-attorney debt collector on a time barred debt was false, deceptive and misleading because it used the word "settlement." "Settlement," the court reasoned, implied a threat of litigation, even though the letter made did not contain an express threat.

Although the issue of resolving disputes dates to the caveman, I think we have come a long way from clubbing our adversaries. Thinking back to my law school days, I recall my professors telling me "litigation involved getting prepared for the settlement conference." I cannot recall a court room I've appeared in where a judge does not ask "where are we with settlement?" or "what are we doing to settle the case?"

Before *McMahon*, a debt collector's use of statements like "seizure," "fines," "costs," "penalty," "suit," or "legal action" were clear signs of threatened litigation. Now mere silence along with a desire to resolve a legitimately owed debt has become actionable under the Fair Debt Collection Practices Act (FDCPA).

The Seventh Circuit Court of Appeals, by adopting **the joint *amicus* brief** (http://www.insidearm.com/daily/collection-laws-regulations/collection-laws-and-regulations/cfpb-joins-ftc-in-amicus-brief-on-debt-collection-case/) filed by the Federal Trade Commission and Consumer Financial Protection Bureau in *McMahon*, has set a terrible precedent. *McMahon* not only discourages settlement, it makes an offer to settle a defaulted debt the equivalent of a threat of litigation.

Discouraging settlement of disputes goes against the basic principles of a civilized society. **A great man once said** (http://www.abrahamlincolnonline.org/lincoln/speeches/lawlect.htm), "Discourage litigation.

Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser — in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man." *Abraham Lincoln, July 1, 1850.*

The conclusion to be made here is — why bother? Why bother working with consumers to assist them along the better path of stabilized credit and financial security? Why make any effort to settle before litigation when a court deems it the same as threatening litigation? Instead, just sue.

This post originally appeared on the ***Consumer Financial Services Blog (http://consumerfsblog.com/)****, run by ARM defense firm Maurice & Needleman.*