

Debt Collectors Must Prove FDCPA Exception For Communications With Third Parties

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Under the Fair Debt Collection Practices Act ("FDCPA"), a debt collector can be liable to a debtor for contacting third parties in pursuit of debt unless the communication falls under a statutory exception. One exception permits communication with a third party for the purpose of acquiring location information about a debtor but, even then, prohibits more than one such contact unless the debt collector reasonably believes that an earlier response from the third party is erroneous or incomplete and that such person subsequently obtained correct or complete location information.

In cases alleging illegal third-party contact, until recently, it was not clear whether the debt collector had to prove that allegedly improper third-party communication fell within the FDCPA exception or whether the debtor was required to prove that the exception does not apply. This issue was addressed in the Third Circuit opinion in *Evankavitch v. Green Tree Servicing, LLC*, No. 14-1114, 2015 WL 4174441 (3d Cir. Aug. 6, 2015). In *Evankavitch*, the Court noted the "longstanding convention that a party seeking shelter in an exception ... has the burden to prove it," and held that the debt collector was required to prove that any alleged third party communications were only for purposes of obtaining location information about the debtor, and therefore within the exception to the FDCPA's general prohibition on communications with third parties.

As a consequence of the *Evankavitch* ruling, before contacting third parties, debt collectors should document the fact that they are contacting a third party solely to obtain location information about a debtor. Moreover, where a third party is contacted more than once, the debt collector should document any facts supporting a reasonable belief that the third-party's earlier response was erroneous or incomplete and that the third party now has correct or complete location information about the debtor. Absent such documentation, it may be difficult for the debt collector to produce the evidence necessary to avail itself of the statutory exception allowing third-party communications.

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