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DEBT COLLECTION SAFE HARBOR MAY NOT BE SO SAFE

Debt collectors recently received clarification on the contents of the collection letters they send on behalf of creditors: The "safe harbor" language set forth by the Seventh Circuit Court of Appeals to avoid liability under the Fair Debt Collection Practices Act is not meant to be copied and pasted into collection letters in every situation. Earlier this month, the Seventh Circuit concluded debt collectors cannot refer to late charges in collection letters sent to consumers if the creditor is prohibited from collecting late charges—even if a debt collector is quoting the safe harbor language that typically precludes FDCPA liability. Rather, debt collectors must ensure the safe harbor language is tailored to the circumstances.

The optional safe harbor language used in Wisconsin, Illinois, and Indiana includes an explanation of variable debts—that "[b]ecause of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater" than the amount listed as owed in the collection letter. This safe harbor language may allow debt collectors to avoid liability under the FDCPA because it provides a template for explaining the variable nature of some debts. In the recent case of *Boucher v. Finance System of Green Bay, Inc*., the Seventh Circuit held that this safe harbor precludes liability for inaccurately stating the amount of a variable debt regardless of which FDCPA provision that liability is based upon. But for it to be a truly safe harbor, the debt collector must be sure that the language accurately describes the nature of the debt. In *Boucher*, the debt collector used the safe harbor language as quoted above, even though no late charges or other charges could be added to the debt. The Seventh Circuit held this violated the FDCPA because the average unsophisticated consumer would believe late charges could be added and would thus be misled about the amount or character of the debt.

For more information on debt collection laws, contact Christa Wittenberg at 414-276-5000 or christa.wittenberg@wilaw.com