

Seventh Circuit Finds Use of Words “Time Sensitive” on Envelope Containing a Debt Collection Letter Violates the Fair Debt Collection Practices Act

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The 7th Circuit Court of Appeals in *Preston v. Midland Credit Mgmt., Inc.*, 2020 WL 290451 (7th Cir. Jan. 21, 2020) has issued a ruling which holds that using the words “TIME SENSITIVE DOCUMENT” on the envelope containing a collection letter violated the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692–1692p.

Plaintiff brought a class action alleging that use of the language violated § 1692f (8) of the FDCPA which prohibits use of unfair or unconscionable means to collect a debt, including “[u]sing any language or symbol, other than the debt collector’s address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.”

The District Court had dismissed the suit based upon the earlier 7th Circuit opinion in *Evory v. RJM Acquisitions Funding L.L.C.*, 505 F.3d 769, 776 (7th Cir. 2007) finding that the language was benign and did not create privacy concerns or expose plaintiff to embarrassment. The Circuit reversed finding that 1692f(8) prohibits any writing on an envelope violates the prohibition on using language or symbol on an envelope containing a debt collection letter, but they affirmed the dismissal of claims concerning the language used as not violating Section 1692e.

The 7th Circuit deviated from the Fifth and Eighth Circuits on use of benign phrases on an envelope. The 7th Circuit distinguished the use of postal markings (priority mail or overnight mail) and addresses of debtor. The circuit cited the Pennsylvania District Court opinion in *Palmer v Credit Collection Servs., Inc.*, 160 F.Supp. 3d 819 (E.D. Pa. 2015) requiring strict adherence to the “bright-line” rule with respect to markings on envelopes sent to debtors.

Regarding the use of the phrase “time-sensitive” and the settlement offer language within the letter, the Circuit found that the language used by the creditor accurately and appropriately used the safe-harbor language in the Circuit’s earlier opinion in *Evory* – namely that “[w]e are not obligated to renew this offer.” Use of that “safe harbor” language “would inform the unsophisticated consumer “that there [wa]s a renewal possibility but that it [wa]s not assured.” *Id.*

The cautionary tale here is to not put any markings on the envelope other than postal descriptions (priority mail, overnight mail, certified mail) and to make sure that language in a letter conveying settlement options makes it clear that if an offer is extended and not timely accepted the creditor is not obligated to renew the offer.

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