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Washington State AG Sues Debt Buyers for Operating Without a License

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On September 21, 2018, the Attorney General for the State of Washington filed a lawsuit (see complaint) against several companies engaged in purchasing charged-off consumer debts, for operating as "collection agencies" without a license, in violation of the Washington Collection Agency Act (WCAA). The lawsuit names EGP Investments, LLC, JPRD Investments, LLC, and The Collection Group LLC (the Debt Buyers) as defendants, along with Fair Resolutions, Inc. (FRI) – a licensed collection agency hired to collect debts on their behalf – and Brian Fair (Fair) of Wenatchee, Washington, who formed and owns/controls each company. While all of the named entities are currently licensed "collection agencies" under Washington law, the lawsuit relates to conduct between May 2004 and September 2009, when the Debt Buyers allegedly filed thousands of collection complaints against Washington consumers without a license. The lawsuit charges FRI and Fair with aiding and abetting the Debt Buyers' alleged violation of the WCAA.

Notably, the Debt Buyers (like many of their peers operating in Washington State) obtained licenses prior to October 1, 2013, when the WCAA was amended to clarify that it applied to debt buyers, "whether [they] collect[] the claims [themselves] or hire[] a third party for collection or an attorney for litigation in order to collect such claims." Prior to the amendment, and as relevant here, the WCAA defined a "collection agency" to include entities "*directly or indirectly engaged in soliciting claims for collection*, or collecting or attempting to collect claims owed or due or asserted to be owed or due another." (emphasis added). Thus, prior to the amendment, many "passive debt buyers" operated under the presumption that the WCAA did not require them to be licensed – an interpretation adopted by the Washington Collection Agency Board, which regulates collection agencies within the state.

However, Washington's Supreme Court rejected this interpretation in 2014, after the Eastern District of Washington certified the issue during a lawsuit brought by a consumer against a large national debt buyer (see opinion). Like the Debt Buyers, the defendant in that case became licensed immediately before the 2013 amendment took effect, prior to which it allegedly violated the WCAA by operating without a license – notwithstanding the fact that it hired licensed collection agencies and/or attorneys to actively pursue collection. While the Washington Supreme Court acknowledged that the pre-amendment definition was "ambiguous," it found "the most reasonable interpretation [to be] that debt buyers fall within it when they solicit claims for collection[,]" regardless of whether they "outsource[d] the collection [or the filing of collection lawsuits]." The court noted that the amendment supported this interpretation, as it served to clarify (rather than change) the statute. Following the

Supreme Court's holding, the defendant raised a good faith defense, and argued that it should not be held liable for violating the WCAA where the statute was ambiguous, and it acted in good faith reliance on the state regulator's interpretation of the statute. The District Court rejected this argument, however, finding that the legislature's decision to define the violation as a "per se" unfair practice meant the defendant was liable, even if it acted in good faith.

The Washington AG's lawsuit highlights the risk created by ambiguous laws and regulations, along with the need for a company to stay current on and consult with legal counsel about potentially applicable laws and regulations – at the federal, state, and local level – in any market in which the company does business. This is particularly true for laws and regulations pertaining to consumer protection, which (like the WCAA) often allow for enforcement through either private litigation or government enforcement actions.

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