

Session 1
Eye on the Prize: Leaping Litigation & Constitutional Hurdles

Tuesday, July 13, 2021
12:10pm – 1:10pm CT

The panel aims to coach servicers and attorneys to stay safely in their lanes while successfully clearing the forthcoming hurdles from state legislatures, state and federal judiciaries, newly misinformed debtors, and potential foreclosure and bankruptcy contests as the starting gun marks the reopening of the industry. Panelists will discuss topics including recent cases in the 7th Circuit interpreting the Fair Debt Collection Practices Act; the broadening scope of judicial power in interpreting COVID-related regulations in Indiana; expected litigation trends due to incoming legislative changes in Virginia; and servicer tactics for avoiding CARES Act-related litigation.

- Incoming Legislation in Virginia
 - House Bill 2175
 - New requirements regarding Notice
 - <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0091>
 - Changes to notice requirements (Va. Code § 55.1-321 (A), (E), and (F))
 - <https://law.lis.virginia.gov/vacode/title55.1/chapter3/section55.1-321>
 - Affidavit required at sale (Va. Code § 55.1-320 (10))
 - <https://law.lis.virginia.gov/vacode/title55.1/chapter3/section55.1-320>
 - Lost Note Notices (Va. Code § 55.1-321 (B), (E), and (F))
 - Possible litigation concerns
 - Challenges from the current owner/borrower
 - Challenges from subordinate lienholders
 - Other challenges
- A compendium of recent caselaw on the issue of *standing* from the 7th Circuit
 - *Larkin v. Fin. Sys. of Green Bay*, 2020 U.S. App. LEXIS 39058, (7th Cir.)
 - Actual harm must be alleged. No detrimental action
 - *Brunett v. Convergent Outsourcing, Inc.*, 2020 U.S. App. LEXIS 39270, (7th Cir.)
 - Confusion alone is not an injury.
 - *Gunn v. Thrasher, Buschmann & Voelkel, P.C.*, 2020 U.S. App. LEXIS 39267, (7th Cir.)
 - Annoyance and intimidation are not injuries. Few people litigate for fun.
 - *Bazile v. Fin. Sys. of Green Bay, Inc.*, 2020 U.S. App. LEXIS 39433, (7th Cir.)
 - Letter's failure to mention interest accrual, where debt collector argued that no interest had or would accrue, couldn't be an injury if accurate.
 - *Spuhler v. State Collection Serv.*, 2020 U.S. App. LEXIS 39434, (7th Cir.)
 - The exclusion of accruing interest must have detrimentally affected the debtors' handling of their debts in order for the case to proceed.
 - *Nettles v. Midland Funding LLC*, 2020 U.S. App. LEXIS 40012, (7th Cir.)
 - Receipt of a noncompliant letter fails to suffice.

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- *Pennell v. Global Trust Mgmt. LLC*, 2021 U.S. App. LEXIS 7126 (7th Cir.)
 - Assignee debt collector's letter was sent directly to a debtor who was represented by counsel, but stress and confusion do not suffice to give standing
- *Smith v. GC Servs. L.P.* 986 F.3d 708 (7th Cir.)
 - Debtor "has not tried to explain *how* a need to use a writing deterred her from disputing a debt (she does not claim to be illiterate) or *what good* a dispute would have done her."
- A Servicer's Perspective: How to prepare for challenges to foreclosures moving forward
 - Controls to ensure that all clients have received the protection provided under the Cares Act
 - State specific requirements in addition to Cares Act
 - CFPB Moratoriums and Changes to Reg X
 - Attestations and supporting documentation
- A Resurgence of Sovereign Citizens (and similar fraudulent financial schemes)
 - Why will there be an increase?
 - Litigation Implications
 - Lawsuits
 - Wacky Correspondence
- Indiana Supreme Court's Emergency Orders—Constitutional Considerations
 - Summary of Administrative Rule 17 Orders Regarding Interest
 - Court's treatment of GSEs' Petition Requesting Clarification and Confirmation Regarding Administrative Rule 17 Emergency Relief Orders' Scope of Interest Curtailment
 - Separation of Powers Argument
 - Application of Due Process Clause of the 14th Amendment to the U.S. Constitution and Due Course of Law Clause of the Indiana Constitution
 - Preemption Under National Banking Act, Home Owners' Loan Act of 1933, and Deregulation and Monetary Control Act of 1980
 - Courts' Intent—Memorandum from Office of Judicial Administration
 - Litigation strategies

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