

# **How Bankruptcy Interacts with Other Areas of Consumer Law**

# Handouts to come

Collection communications log

Emotional distress checklist

Telephone collector script

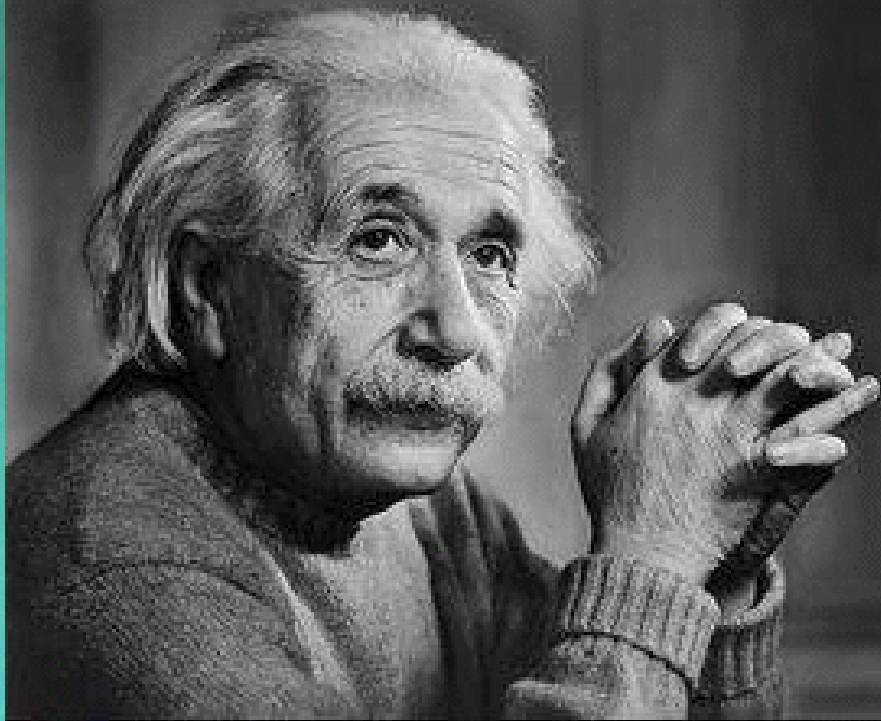
FDCPA checklist

Preliminary Message



If you can't explain it **simply**, you don't understand it well enough.

– Albert Einstein



# Bankruptcy in 30 Seconds

- 1. Automatic stay
- 2. Modify and/or cure debts
- 3. Discharge



# The Injunction Sandwich

Automatic stay:  
Injunction at the beginning of the case. Stops everything except ongoing criminal prosecution and collection of child support. Even stops the IRS.

- Discharge:
- Injunction at conclusion of case which permanently stops any type of collection activity, with some exceptions.



# Property of the Estate

- 11 USC 541; 11 USC 1306
- Includes the obvious
- Includes inheritance up to 180 days post-petition
- Also includes contingent & unliquidated
- Personal injury claims
- Consumer claims



# Misc. BK Concepts

- Acceptance or Rejection of lease or executory contract: Debtor can terminate a lease or a contract.
- Lien Avoidance: Debtor can avoid (remove) judgment liens or non-PMSI liens.
- Lien Stripping: Removal of junior liens with no practical value.



# Types of Consumer Cases

- Automobile sales & leases
- Debt collection
- Repossession
- Consumer credit
- Mortgage issues
- Landlord/tenant



# Consumer cases, Alphabet Soup

- FDICPA
- FCRA
- TILA
- RESPA
- HOEPA
- ECOA

# Advantages of suing under federal consumer protection statutes

- Many have strict liability
- Most have statutory damages
- Most allow statutory attorney fees
- Act as private attorney general



# Litigation in Bankruptcy Court

- Federal Rules of Bankruptcy Procedure
- More streamlined
- No filing fee for debtors
- Technically, jury trials could be allowed, but don't go there
- Article I vs. Article III

# Must disclose COA as asset in BK

- Judicial Estoppel; defense counsel is on the lookout.
- Or trustee might take it.
- Ask your clients if in BK, or considering it
- Contractual provision requires them to tell you if they do, and to disclose COA to BK atty



# Things that don't work

- Stern v. Marshall
- Rooker-Feldman doctrine
- Walls v. Wells Fargo
- FCRA (in BK)

# FCRA

- All debts are discharged, and any new reports must reflect that, but
- After BK no automatic duty to furnish updated data or issue new report (absent dispute).
- Difference between CRA's and furnishers
- Credit reporting as debt collection
- Before or instead of BK?
- Not for dabblers!



# FDCPA Claim: 4 Pieces

- Consumer
- Consumer debt
- Debt collector
- Violation

# When do FDCPA claims arise?

- Before BK (why is debtor seeking protection?)
- During BK (also a stay violation)
- After BK (also discharge violation)



# Spotting FDCPA claims in BK

- Client's documents
- Client's experiences (friends and family)
- Proof of Claim
- Post-BK

# Spotting TILA claims in BK

- Pre-BK papers
- Proof of claim
- Not as common any more, but will return



# Mortgage Issues

- New FRBP 3002.1
- Proof of claim
- RESPA: lots of need





