



# COLLECTION LITIGATION

## FROM START TO FINISH!

CLLA Annual Convention  
May 20, 2022, 8:15 am – 9:15 am

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# Today's Summary

In this seminar, we will cover a cursory, discussion of Collection Litigation, from Claim Placement, Pre-Suit Analysis, and Litigation Strategy.

Our focus is not on state-specific rules, but general strategies applicable to the new practitioner, and solid reminders for the veteran litigator.

And Why Tim & Pat are unique (and awesome)!

# *Disclaimer*

*This information is not intended to be legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case.*

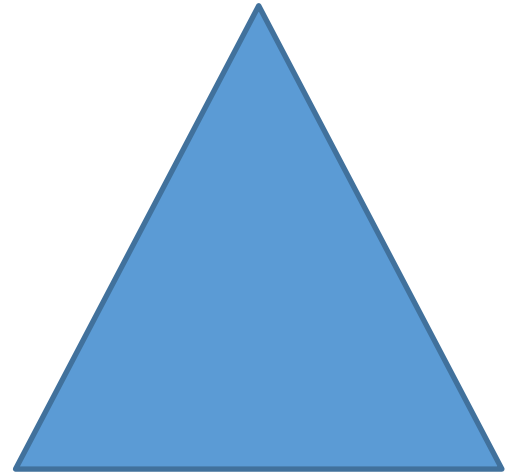
*Every effort has been made to assure this information is up-to-date. It is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the advice of your own legal counsel.*

*Any opinions expressed are the opinions of the speaker(s) and not this organization.*

# Claim Placement

# Forwarders and Receivers

- What is the Triadic System?
- What makes a Forwarder and a Receiver?
- What is the Law List's Role?



# Set the Reporting Ground Rules. Now.

- Frequency
  - Case By Case?
  - Daily, Weekly, Monthly?
  - Benchmarks?
- Method
  - FTP or Portal?
  - Excel?
  - Emails?



# The Facts at Placement

- Who is the Creditor? Contact Person?
- What is the Creditor's Expectations?
  - Level of Involvement
  - Level of Sophistication
  - Who is the contact? CFO? General Counsel?  
Mom & Pop?

# Pre-Suit Analysis



# Commercial Debtor Investigation

- Was the transaction for a person or business?
- Is there a personal guarantee?
- Is it a sole proprietorship?
- Corporate Name
- Business Name and DBAs
- Tax ID / FEIN
- Are they still operating? “Use The Google”
- Bankruptcy
- Aliases or Successors

# ***SIDEBAR!***

*Unlocking Which Locksmith:  
Alias theory and successor-in-interest theory*



<https://cdn.careeronestop.org/OccVids/OccupationVideos/49-9094.00.jpg>

# Consumer Debtor Investigation

- Right Party Confirmation
- SSN and DOB
- Representation by Counsel
- Prior Cease and Desist
- Bankruptcies
- Military Service
- Dead or Alive?

# SIDEBAR!

*Why Scoring Matters and  
where I don't shop, offends Judges*



# Statute of Limitations

- When will the SOL run?
- UCC or State Law?
  - What is the applicable state?

# Fees

- Monetary Investment
  - Court Costs
  - Suit Fee
  - Counterclaim
- Non-Contingent Fees?



# Litigation Strategy

# So, about that Non-Con...

- VENUE?!?!?!?



# Venue Selection Clause

- “This agreement shall be construed in accordance with the Laws of the State of [STATE], and the parties agree that any litigation shall be brought solely and exclusively in the Courts of the State of [STATE], in the United States of America.”

# Venue for Consumer

- FDCPA, 15 U.S.C. § 1692i
  - Where the consumer resides at the time of the initiation of the legal action; or
  - Where the consumer signed the contract that created the obligation upon which the legal action is based.

# Venue For Property

- Real Property
- Chattel
- Minimum Contacts

# Venue for Commercial

- Do you sue in the jurisdiction where the debtor is?
- Or sue pursuant to the venue clause and/or home state and then domesticate where the debtor is?

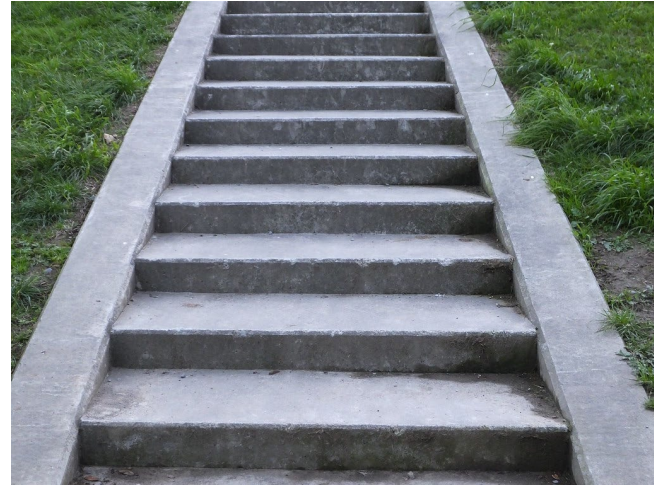
# Venue Issues and Problems

- Business Decision on Costs
- Wasting Time
- Witnesses Convenience
- Adversary Inconvenience
- Obtaining Jurisdiction



# Steps of the Suit

- Initial Filing Complaint
- Service of Process
- Answer (assuming no default)



# Facts of the Complaint

- Change of Ownership
- Cause of Action
- Damages
  - Interest
  - Service Charges
  - Late Penalties
  - Attorney/Collection Fees
- Return of Goods

# Typical Disputes

- Lack of Means
- Dispute to Value
- Dispute to Charges
- Identity Theft
- Forgery
- Who Are You?



<https://2.bp.blogspot.com/-Av7qs9jR0Kc/T9-4IUjEV-I/AAAAAAAAACJ0/2GRhezI-wmY/w1200-h630-p-k-no-nu/Bullying+orange+&+blue.jpg>



# Typical Counterclaims

- Violation of Something or Other
- Harassment
- Services had to be remedied
- Malpractice or Negligence
- Whatever is in the Ad Damnum Clause

# SIDEBAR!

## *Arguing in the Alternative*

- “Barbie was never in the hospital.”
- “If Barbie was in the hospital, she never consented to any treatment.”
- “If there are any signed consents to treatment, they are forged documents.”
- “If the consents were signed and were not forged, then the services were never rendered.”
- “If the services were rendered, they were rendered in a negligent manner.”
- “If they were not rendered in a negligent manner, the charges were over inflated.”
- “If they were not over inflated, the charges were improperly coded in medical records.”
- “If they were properly coded, the amount of the charges were incorrect.”
- “If the bill was correct, it was sent to an improper address.”
- “If it was sent to the proper address, Barbie never got the bill.”

# Discovery

- Obtaining Documents
- Will you need a witness?
- Does the communication method change?

# The Finish Line?

- Motion?
- Trial?
- Judgment?
- Appeal?

# Judgment Enforcement

That's a tale for another day!

# Questions?

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