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**Welcome to the Official Newsletter of the
Coalition of American Court Collectors**



“The focus of court collections is not about money or revenue, but it is about compliance with the orders of the court. If you focus on compliance, revenue will take care of itself.” - Don McKinley

Expectations

By Jim Lehman, Co-CEO, CoACC

One of the more memorable positions I held back in day was as the finance person for a large manufactured home dealership. My main responsibility was to coordinate the financing process from credit application to loan closing for customers purchasing manufactured homes. On one occasion I found myself out at one of the company’s five sales centers which just happened to be in the midst of a major sales slump. The slump had gotten so bad the owner had sent in his top salesperson to help turn things around and to set an example for the other sales staff.

When I arrived, Kenny, the superstar salesperson, had a young couple in his office and most of the sales staff loitering just outside of the door trying to learn from the master. It was clear from the conversation these would be first time buyers with very little credit and modest income. No worries. Kenny put them at ease and guided them skillfully through the process showing them

pictures of models and options. At one-point peering out a window from the office, Kenny noticed a late model Cadillac pull onto the lot. A very well-dressed man and woman exited the car and marched right over to the most expensive model home on the lot. The Cadillac couple instantly drew the attention of loitering sales staff who almost simultaneously rushed toward the door, but before any could touch the knob Kenny stopped them. He politely excused himself from the young couple and selected one of the staffers to continue helping them while he proceeded toward the model where the well-dressed Cadillac couple browsed.

As soon as Kenny existed the building you could hear the staff grumbling. “There he goes, one said, picking off the plumbs as usual. I could be the top salesperson too if I got all the plumb deals.” There seemed to be a consensus among the group as they spread out each returning to their desk to past time reading newspapers or books or surfing the net. As they did, they hardly notice the faded out, beat up old pickup truck that pulled onto the lot. When the old truck sputtered to a stop an elderly man in very soiled overalls and a baseball cap as beat up as the truck emerged. As the old man began to browse the lot, I noticed none of the sales staff made a move. It was as if the old man was invisible. Finally, I spoke up and alerted them that a customer was on the lot. The room was silent. Then snickering one said, “yeah that’s a waste of time, but hey if you want you can go help him.” I wasn’t a salesperson, but I didn’t feel comfortable just letting the old guy wander the lot, so I got up and headed out. I clearly remember the snickering and the last words from the sales staff, “hey good luck, but don’t expect much.”

When I caught up to the old man he had gone through just about every model on the lot. The old man didn’t speak very much English, but I knew enough Spanish to understand that he was not looking to buy a manufactured home that day. He was actually looking to buy three homes that day to put on land he’d just purchased for his family. The old man pointed out the units he wanted and as I motioned him toward the office he quickly went back to his truck and retrieved a large paper bag. There were more snickers when we entered the office and I offered the old man a seat. Before I could begin any paperwork, the old man handed me the paper bag. It was then that I realized that this would be a cash transaction. The snickering suddenly stopped, and the office became deafly quiet.

Another time and place while managing the Criminal Courts Collection Department in Dallas I heard a gentle knocking on my office door. A staff member entered with one of those looks that lets you know you have a problem. There was an elderly lady in the lobby of our office who insisted on seeing the manager and only the manager. I swallow hard and walked out to greet this lady. I was really stunned and moved by her appearance. She looked to be at least ninety years old. Her snow-white hair was pulled back tight in a bun and on her dark, wrinkled face was what I will call a pair of Benjamin Franklin type spectacles. She had on a long well-worn dark green overcoat with white therapeutic stockings and black orthopedic shoes. She was doubled-over and walked with a limp using tripod cane. Clearly it could not have been easy for her to come to the office. When I came out she eye-balled me up and down with an expression that I immediately interpreted has anger. “Are you the manager?” she barked in a voice stronger than you would expect based on her tiny physical presence. I acknowledged I was and lead her into my office expecting the worse.

Once we were both seated, she slowly with shaking hands retrieved from her pocketbook a folded check. “This, she said, is the final installment on my grandson’s fine. I wanted to bring it in personally.” I started to speak but she waived me quiet. “This, she said, is much more than a final payment. This is the first thing that boy has ever finished. I could not be prouder,” she said with tears welling up. “You know that boy is even taking classes now. Yawl done that, she said, because yawl are the first somebodies down here that actually expected him to take care of his business. I just thought you should know.”

Another time and place, I stood in a large municipal courtroom as an observer, packed with people having matters before the court. Most of those matters dealt with traffic citations and this large group of people only represented a fraction of those invited to appear this particular day. They came from literally all walks of life. The bailiff snapped everyone to attention commanding us to rise as the judge entered the courtroom. After moving a few files around from the mountains on his bench he motioned for us all to sit down. He then signed a stack of papers handed to him by his clerk, took a swallow from a large coffee mug and then peered down from his bench over reading glasses at the group assembled. In robotic like fashion he then went through and described in detail what this morning in court would entail and what the group could expect. At the end his tone softened, and he scanned the room very solemnly and said, “most of you will owe this court money when we conclude these proceedings. Don’t worry about the money, we know your situation and don’t expect you to perform any miracles here today.” The guy on my right who was dressed in some sort of work uniform frowned. He looked at me and the guy next to me and displayed a pocket full of cash. “S!#t, he said in a bitter tone, that MF don’t know me,” clearly offended. The guy on my left wore a very expensive pair of Air Jordan sneakers, what appeared to be a new NFL jersey with the price tags still on, a pair of freshly starched designer jeans, and a pretty expensive looking gold chain around his neck. He smiled broadly in response to those comments and said, “hey I’m cool with that...wasn’t expecting it but I don’t mind taking my money back home.”

Another time and place, I cracked open a fortune cookie one day while at lunch at one of my favorite Chinese restaurants and read the following which I think is worth repeating here, “***He who expects little will rarely be disappointed***”.



The Coalition of American Court Collectors Hosted
3rd Annual National Conference on American Court Collections
“Conscientious Collections – A New Day for Compliance”

I could not be more excited about the near future ahead for court collections. And, today is a new day. A new time. The 2018 National Conference on American Court Collections held in Las Vegas explored several timely informational sessions and topics. Such as:

Informational sessions and topics will include:

- Implied Bias...and You
- The Power of Conscientious Collections and Compliance
- Fairness, Openness, and Impartiality in the Eyes of Justice
- State legislation, and Federal regulation updates impacting courts
- Driver License Suspensions and California AB 103
- Nashville/Davidson County Compliance Program – A look one year later
- Positive and impactful messaging. ‘Rebranding your Message or Program”
- Developing Effective Strategies for Improving the Court Collections Process
- Budget and Revenue Impacts and what you can do about it
- Panel discussion on Court Collections
- Technology use and its impact on collections
- Compliance: It is collecting with Motivation, Passion, and another Four-Letter word...
- Plus, So Much More...

What did attendees say about the conference? Comments included:

It was a powerful three days!

The presenters kept me involved and interested.

It was reassuring to be surrounded by such a diverse group of people and recognize that we share many of the same issues. It was great learning about new techniques to manage our court collections and keep us thinking outside the box. Overall, the format was great and the subjects were relevant. We definitely look forward to continued participation.

All presenters were very good - love to hear about what other states are doing in their collections processes and how they work!

The speakers were awesome!

Speakers representing other courts that describes the issues and techniques they are using in collections very helpful.

Topics were current and enjoyed hearing the various cities and their court compliance efforts.

This conference was an important and worthwhile experience. The accommodations were great and I appreciated my time there. Thank you!

I really enjoyed the video clips and the theme of incorporating compassion and empathy in our work.

Amazing conference!

Leah Huff - the conference keynote presenter who discussed a timely subject of Implicit Bias and you! She is a national expert regarding the Harvard Study. Her presentation was powerful and provided a lot of internal reflection. Leah encouraged us to take part in the Harvard study ourselves. See what the results may mean to you. Each day our focus is the become a better person. Please visit: <https://implicit.harvard.edu/implicit/> for additional information or take the numerous tests available.

Presenter David Orton provided a powerful look at continuing work they are doing at the Las Vegas Municipal Court. Thank you to John Williams, David Orton, and the Las Vegas Municipal Court for continuing to impact compliance efforts and never accept the status quo. Please see the attached PDF to this newsletter for a summary from David. The Coalition appreciates David strong commitment and dedication to the Las Vegas community and in his public service.

If not already a member, there is still time. You can become a member of the Coalition today through December 2019. But we need to hear from you and get your membership form and payment by April 30, 2018. For information or benefits in being a member please visit us at: www.ncoacc.com/membership. Membership has its privileges. Stay up to date on the most current information on court compliance and collections, engaging topics, and cutting-edge programs and technology nationwide!

Legislative Impacts, Federal Regulations, and Media Articles

*Note: This will be a reoccurring article in the quarterly newsletter to keep our members fully informed on changes and updates on what is happening at a national level. This is not legal consulting or advice but informational only. For legal questions or how something may impact your jurisdiction please consult your attorney or law department.

Update on CFPB from Don McKinley. As we know the CFPB had appealed an October 2016 ruling finding the set-up of the CFPB unconstitutional. The appeal “en banc” began on May 24, 2017. The U.S. Court of Appeals in the District of Columbia reversed the lower court decision finding the CFPB set up with one director as constitutional. Further it reinforced removal of the director for cause defined as inefficiency, neglect of duty, or malfeasance in office (not at will). We expect this ruling to be appealed to the U.S. Supreme Court but may be moot if Congress changes the current set-up to a 3/2 committee versus single director leadership. Senate Bill (S. 105) “Consumer Financial Protection Board Act of 2017” In short:

- ⦿ Staggered terms would be provided to the new CFPB board versus a single director;

- ⦿ Removal by the President for “inefficiency, neglect of duty, or malfeasance in office”;
- ⦿ No member may be reappointed to a second consecutive term if 60-month term filled;
- ⦿ Not more than three members of the Board may be from any one political party 3/2;
- ⦿ Recent Executive Action signed to begin process of a full review of Dodd-Frank act;
- ⦿ Hold on/buckle in...More information will be coming. Case set to begin late Fall November 2017 the first briefs are to be filed.



CFPB: ‘Cop on the Beat’²

A change in the top position at the CFPB has a greater impact than a similar change at the FDIC or the OCC. This is because a sitting CFPB Director can only be removed by the President for cause, which gives that incumbent an unparalleled degree of independence in his or her decision-making. Former Director Cordray often referred to himself as a “cop on the beat,” but many would contend that he was additionally lawmaker, judge, and jury. The constitutionality of the CFPB’s unique agency structure has been the subject of lawsuits, most notably *PHH Corp. v. Consumer Fin. Prot. Bureau*.³

In his initial press conference, on November 27, 2017, acting CFPB Director Mick Mulvaney outlined his basic plan for leading the agency as follows:

The rumors that I’m going to set the place on fire, or blow it up, or lock the doors are completely false. I’m a member of the executive branch of government and we intend to execute the laws of the United States, including the provisions of Dodd-Frank that govern the CFPB. That said, the way we go about it, the way we interpret it, the way we enforce it, will be dramatically different. . .⁴

During the week of January 14, the CFPB took four significant actions. First, on January 16, the CFPB announced its intent to undertake a new rulemaking for the purpose of reconsidering its controversial new rule titled “Payday, Vehicle Title, and Certain High-Cost Installment Loans” (the Payday Loan rule). Second, on January 18, acting Director Mulvaney announced that the CFPB would be requesting no funding from the Federal Reserve Board for the first quarter of 2018. The reason given for this decision was that the CFPB already has adequate funds because former Director Cordray had held sizeable funds in reserve, which the new leadership considers unnecessary. This action was seen by many as an indication that the CFPB plans to scale back on its activities. Third, the same day, the CFPB announced its decision to drop a pending lawsuit in Kansas against a group of payday lenders associated with American Indian tribes. Finally, also on January 18, the CFPB announced plans to solicit public input regarding the agency’s enforcement, supervision, rulemaking, market monitoring, and education activities, including its use of civil investigative demands (CIDs) through Requests for Information to be published in the *Federal Register*. According to the CFPB’s press release, the goal of these requests will be to “ensure the Bureau is fulfilling its proper and appropriate functions to best protect consumers.”

Although some may see the above actions as the first steps toward dismantling of the CFPB, the statutory mandate that drives and determines the CFPB’s activities serves as a break on such efforts. That mandate includes the following:

1. ensure that consumers have timely and understandable information to make responsible decisions about financial transactions
2. protect consumers from unfair, deceptive, and abusive acts or practices, and from discrimination
3. reduce outdated, unnecessary, or overly burdensome regulations
4. promote fair competition by enforcing the federal consumer financial laws consistently, and
5. advance markets for consumer financial products and services that operate transparently and efficiently to facilitate access and innovation.⁵

More specifically, the Dodd-Frank Act (Dodd-Frank) gives the CFPB supervision and enforcement authority over a vast array of consumer financial products and services, including deposit taking, mortgages, credit cards and other extensions of credit, loan servicing, check guaranteeing, collection of consumer report data, debt collection, real estate settlement, money transmitting, and financial data processing. In addition, Dodd-Frank transferred to the CFPB from other federal agencies rule-making authority for 14 of the most important federal consumer protection laws and attendant regulations.¹ In light of these broad responsibilities, absent new federal legislation fundamentally restructuring the CFPB,² acting Director Mulvaney's statements about not seeking to dismantle the agency merely acknowledged reality; *i.e.*, the CFPB will continue to be staffed appropriately and provided with sufficient financial resources to meet its statutory obligations.

Although acting Director Mulvaney cannot completely remake the CFPB, he can institute significant changes in emphasis and execution. Those changes have already begun. As one of his initial acts, acting Director Mulvaney revised the agency's mission statement to provide as follows:

The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by regularly identifying and addressing outdated, unnecessary, or unduly burdensome regulations, by making rules more effective, by consistently enforcing federal consumer financial law, and by empowering consumers to take more control over their economic lives.

In comparison, below is the prior mission statement:

The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives.

Last, the CFPB's sole attempt to define UDAAPs in a formal regulation to date consists of a proposed rule governing debt-collections (*i.e.*, revised Regulation F), which has been pending since its November 6, 2013 publication as an advance notice of proposed rule-making (ANPR). In the ANPR, the CFPB suggested holding first-party creditors to essentially the same legal standards under UDAAP as what applies to third-party collectors under the Fair Debt Collections Practices Act (FDCPA). However, in its 2016 decision in *Henson v. Santander Consumer USA Inc.*,³ the U.S. Supreme Court held that Congress did not intend for the FDCPA to apply to first-party collectors whose primary business does not involve debt collection.⁴ Given this decision, it is unlikely that the CFPB would seek to impose requirements on first-party collectors through an interpretation of UDAAP that go beyond what Congress intended under a law that specifically addresses debt collection. Therefore, we consider it unlikely that the CFPB would finalize a debt collection rule without making significant changes from what was proposed in 2013.¹⁰

Revised Enforcement Policy

Nothing has drawn more criticism to the CFPB than the exercise of its UDAAP enforcement authority, including its practice of deeming acts or practices "abusive" in the absence of concrete standards. Beginning with what quickly became a succession of consent orders issued against credit card issuers in connection with sales of credit card add-on products,¹¹ the CFPB has been accused of creating new "rules" through unchallenged settlements, which it then seeks to impose against other supervised entities. This strategy has had a profound impact on the financial services industry. For example, the CFPB's massive 2015 lawsuit against more than a dozen debt collectors, payment processors and related entities that allegedly failed to stop fraudulent collection tactics,¹² along with collections-related lawsuits and enforcement actions, had the effect of substantially curtailing debt sales.

Conclusion

In her March 2011 testimony to the House Financial Services Committee, then Special Advisor to the Secretary of the Treasury Elizabeth Warren promised that the CFPB would “choose a better way” of seeking to accomplish its goals.²² The path selected by former Director Cordray centered on highly aggressive enforcement actions and infrequent—albeit drastic—rulemakings. As noted above, this “tough cop” strategy met with fierce industry criticism and spawned multiple legal challenges. The new leadership at the CFPB has an opportunity to chart a very different new course. Without question, the agency’s new approach will be friendlier to providers of consumer financial products and services. Consistent with acting Director Mulvaney’s verbal assurances, we trust that they will also be focused on achieving the CFPB’s statutory responsibilities to both: (i) ensure consumers have timely and understandable information to make responsible decisions about financial transactions; and (ii) protect consumers from unfair, deceptive, and abusive acts or practices, and from discrimination. Regardless of what changes are made, however, we are confident that the CFPB will continue to be staffed appropriately and provided with sufficient financial resources.

+ State of California becomes the first state in the nation to forbid courts from driver license suspensions for failure to pay court costs, fees and fines. Currently, there are 39 states in the U.S. which allow suspension of driver licenses for the failure to pay court costs, fees, and fines. California passed bill AB 103 last Summer and signed into law by Gov. Brown.

**The Closing Word:
“Now is Our Time - Wait, What Time is It?
And, What Does Love have to do with it?”
Don McKinley, Co-CEO**

Coalition of American Court Collectors

Time, time, time, see what’s become of me...

While I looked around for my possibilities....

Can you name that tune? Simon and Garfunkel first posed the question in the opening line of “A Hazy Shade of Winter” in October 1966. Not to date myself, I remember the 1987 Bangles version better but the question originally asked over 50 years ago still holds true...Time, time, time, see what’s become of me. While I look around for my possibilities. Time is a powerful force in our lives. Some would say it is a driving force. We even get compensated for our time in our professions. The first mechanized pendulum clock was invented in 1657 and in some ways with that we have become a slave to time. Take a moment to think about your relationship to time. What comes to mind?

We have all heard the following phrases at one time or another, “We don’t have the time or resources” (especially at work) or “Take your time.” I will add, “Time waits for nobody, Time marches on, and Time heals all wounds.”

Time is the thing we utilize or a construct in which we accomplish tasks throughout our day or to set future action into place. Time is a commodity. And, yet, the one in whom we live and move and have our being is eternal beyond time. We live in this tension in time and between time. Our current lifestyle is one of instant gratification, and/or split-second information and decision making.

After all, “Time is money”, right? I even suggest time is a revelatory measure by which we can evaluate our trajectory and progress. What does your progress look like?

Time, time, time, see what’s become of me...While I looked around for my possibilities...

Courts and Compliance and Collections programs, “Now is our Time.” But, what time is it? The time is now and we have many possibilities. We can decide to make a difference, to assist others, to reevaluate or review our collections program efforts. Or, we could decide or convince ourselves that there is nothing we can do. Because we may think we don’t have the necessary resources or we don’t have the time. The Ferguson impact is still rippling through state legislatures as we know politics is typically reactive in nature. However, good compliance and collection programs are pro-active. Continuing to look and ask the question, “what else can we do better.”

I could not be more excited about the near future ahead for court collections. And, today is a new day. A new time. It is a time for “The emergence of conscientious collections – A new day for compliance.”

Since on a music thing let me add, “What’s Love Got to do with it” recorded by Tina Turner off her 1984 album Private Dancer. [If you have never heard the song or if it has been a while, it is worth a listen! It was Tina Turner’s only #1 hit in the United States.] What’s Love got to do, got to do with it? What’s love but a second-hand emotion...Further the song refrains...What’s Love got to do, got to do with it? What’s love but a sweet old-fashioned notion. What’s Love got to do, got to do with it? Who needs a heart, when a heart can be broken. It is key to not only love what you do but more importantly, love the person that you serve. If you develop a trusting, caring relationship with the court customer in your compliance process, you will find your compliance rate will increase. Actually, in many cases, the court customer will not want to disappoint you! You may be the only person who cares about them and takes an active interest in them, not as a criminal case, but as a real person (who made a bad decision or several). So, what does love have to do with it? Everything. LOVE has everything to do with it.

There is training that can be done to show you how to incorporate this critical step in your process and one that should not be ignored.

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Full disclosure Don McKinley is also the owner and founder of N3CS, LLC. For additional information on N3CS please visit: www.n3cs.com

