



Pennsylvania Creditors Bar Association

THE LATEST NEWS AND UPDATES REGARDING CREDIT AND COLLECTION
AND THE FINANCIAL SERVICES INDUSTRIES



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WELCOME / A MESSAGE FROM THE PRESIDENT

Well, the end of the Summer is upon us and last I wrote to you the debt industry was unpacking the United States Supreme Court decision in *Seila Law LLC v. Consumer Financial Protection Bureau*. The CFPB has shown that it will not remain quiet. After a spate of lawsuits focused on the mortgage servicing industry, the CFPB recently filed suit against Encore Capital and its subsidiaries, Midland Funding, LLC and Midland Credit Management. While that lawsuit unfolds, all eyes remain on the CFPB in anticipation of the Final Debt Collection Rule that the CFPB intends to publish in October.

With so much happening in the industry, now more than ever is an important time to remain a member of the Pennsylvania Creditors' Bar Association. Membership renewals recently went out, so please remember to renew your membership.

Finally, on the horizon is the PACBA annual conference. Due to COVID-19, we have moved the conference to a virtual setting and are finalizing the CLE information. Although we will not be able to gather in person, the conference promises to maintain the high level of educational content you've come to expect from PACBA. I hope you all can make it.

As always, thank you for your membership and please reach out if there is anything you would like to see PACBA doing.

*Brit J. Suttell, Barron & Newburger, P.C.
PACBA President*



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BUSINESS INTERRUPTION CLAIMS IN THE TIME OF COVID-19

BY: JASON G. WEHRLE, ESO
MINTZER SAROWITZ ZERIS LEDVA & MEYERS, LLP

Throughout the country a myriad of lawsuits have been filed by businesses against their insurers seeking business interruption coverage in connection with shutdowns caused by the COVID-19 pandemic. While the suits involve different parties and venues, one common thread is the lawsuits generally involve the question of whether COVID-19 and related government shutdown orders constitute a "direct physical loss" which triggers insurance coverage. Perhaps not surprisingly, insurance companies have taken an aggressive approach in denying these claims. Until recently, insurance companies had been finding success in having these claims dismissed by the Courts at an early stage. That is until the Western District of Missouri rejected an insurer's motion to dismiss on these grounds.

In *Studio 417, Inc., et al. v. The Cincinnati Insurance Company*, Case No. 6:20-cv-03127-SRB (W.D. Mo.), a group of hair salons and restaurants filed suit for declaratory judgment, wherein they allege the COVID-19 pandemic is a covered loss, obligating the insurer to provide coverage. The policies at issue provide coverage for a "Covered Cause of Loss," which the court defined as "accidental [direct] physical loss or accidental [direct] physical damage." Order at 2 (emphasis and brackets in original). Importantly, the policies include no definition for "physical loss" or "physical damage." Even more importantly, the policies do not contain virus or pandemic exclusions.

The Court in *Studio 417, Inc.* entered an order finding that the Plaintiffs had stated a valid claim for direct physical loss. The Court opined that the Plaintiff's allegation that the virus was a physical substance, which deprived Plaintiffs of their property by making it unsafe and unusable constituted a valid "direct physical loss." The Court also analyzed the policies' civil authority coverage grant. This grant provides coverage for business income loss resulting from action by a civil authority that prohibits access to the covered location. The court found that a ban and/or limitation on indoor dining at these establishments could potentially hinder access to the property to a degree sufficient to trigger the civil authority coverage. While the *Studio 417, Inc.* case is only at the motion to dismiss stage, this early ruling may provide a road map for subsequent claimants to follow.

Obviously, the strength of any insurance coverage claim rests with the particular language contained in the policy. Most carriers use different language and exclusions. Some of these differences can be very subtle. Nonetheless, if you have suffered a business loss due to COVID-19 and subsequent government prohibitions, you should speak with your insurance broker and review your policy to determine whether you have a colorable claim.



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COLLECTING MUNICIPAL CLAIMS & TAXES IN PENNSYLVANIA

BY: DAVID R. GORDON
LAW OFFICES OF DAVID R. GORDON

In Pennsylvania, the General Assembly has empowered political subdivisions of the commonwealth to levy, assess, and collect certain specific types of taxes, subject to maximum rate limitations for general revenue purposes thereby creating a system of local taxation separate, distinct and apart from the federal and state tax systems. The Local Tax Enabling Act (“LTEA”), sometimes referred to as “Act 511,” was originally enacted in 1965 and is the current statutory authority conferring upon all Pennsylvania municipalities, except Philadelphia, the right to impose non-realty taxes at their discretion. Specifically, the municipalities so empowered are cities of the second class, second class A, and third class; boroughs, towns and townships of the first class; townships of the second class; and school districts of the first, second, third and fourth class, and independent school districts.

In addition to filing civil suit to collect delinquent per capita, occupation assessment, local services and earned income taxes from a taxpayer, a tax collector may also institute wage attachment proceedings but without the need of first obtaining a judgment. In order to utilize this remedy, the collector must send notice to the taxpayer by registered or certified mail, at least fifteen (15) days beforehand, of his intention to make demand for payment of delinquent taxes upon his employer; thereafter, the tax collector must send a written demand and notice to the taxpayer's employer, which contains the amount of tax due, the name of the delinquent taxpayer or their spouse, and certification from the tax collector that said information is indeed true and correct. Upon receipt of this notice, the employer must deduct a sum enough to pay the tax debt from the delinquent employee-taxpayer's wages within sixty days; during any pay period, no more than ten percent (10%) of the taxpayer's salary or wages may be deducted.

Under the Municipal Claims and Tax Liens Act (“MCTLA”), municipalities can file suit to collect unpaid utility fees such as for garbage or sewer services provided to property owners. In addition, they may also utilize the in rem remedy of filing a municipal lien against the owner's property provided that the debtor incurred the delinquency while owning the property and remains the owner at the time the lien is filed. The MCTLA mandates that the lien be filed by the end of the third year after which the service fee is due and payable; however, under Pennsylvania case law, municipalities may file liens beyond the three year limit though they may run the risk of losing their priority status. After filing the lien, they can, thereafter, execute upon it by selling the property at issue. Unfortunately, unlike LTEA taxes, they currently cannot garnish the wages of the property owner to collect unpaid municipal claims, a remedy worth reviewing and perhaps enacting through future legislative changes.

The collection of LTEA taxes by appointed or elected tax collectors is not governed by the Fair Debt Collection Practices Act (“FDCPA”) or the Pennsylvania Fair Credit Extension Uniformity Act (“FCEUA”). However, delinquent LTEA taxes and municipal claims are currently subject to the requirements of those collection statutes if collected by third-party debt collectors or attorneys. There is currently proposed legislation (SB 1138) that would amend the FCEUA to exclude municipalities as creditors that is well worth supporting.

Editor's Note: PACBA wrote a letter in support of the legislation.



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NEW MDJ FILING REQUIREMENTS NOW IN EFFECT IN PA

BY: ALAN R. MEGE, ESO. LAW
OFFICES OF ALAN MEGE

We are all used to providing a Non-Military Affidavit as part of the judgment package sent to the Court of Common Pleas pursuant to the SCRA (and sometimes local rule of court). As the SCRA does specify that the Affidavit must be provided before any court may enter a default judgment, some Magisterial District Courts have also required the Affidavit as well.

Unfortunately, there was no uniformity as to which District Courts required the Affidavit, or when they were required (at time of filing, no later than the default judgment date, etc.). The matter was brought to the attention of AOPC Legal and we now have a new Rule. Effective September 1, 2020 Pa.R.C.P.M.D.J. No 304(d) for Civil matters and 503(d) for Landlord-Tenant matters requires the filing of the Affidavit, on the provided AOPC form accessible at:

<http://www.pacourts.us/assets/files/setting-901/file-9940.pdf> at the time of filing of the Complaint.

Rules 304D and 503D were amended to require a plaintiff to attach an affidavit to the complaint setting forth facts that the defendant is in military service, that the defendant is not in the service, or that the plaintiff is unable to determine whether or not the defendant is in the service. Rules 515 and 516 are amended to parallel existing references to stays pursuant to federal and state law in Rules 403 and 410. Finally, statutory references in Rules 209, 403, 410, and 515 were updated and stylistic changes were made throughout the Rules.



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PACBA ANNUAL MEETING

This year, we are going virtual!

October 9, 2020
9:00 am - 3:05 pm*

\$75 Members | \$100 Non-Members
(normally \$125 and \$200 when in person)

Not a member? [JOIN HERE](#) and Save!
Use Promo Code NEWMEMBER

[CLICK HERE TO REGISTER](#)

Register by October 5, 2020

5 CLE Credits including 1 Ethics Credit available

CLE credit is administered and provided by the Philadelphia Bar Association.

*Visit the PACBA website for updates on the final schedule and presenter information (<https://pacbar.org/Education>).

Questions? Please contact our Association Manager, Tricia Fusilero, at the PACBA office.

PACBA@CorpEvent.com or call 312-540-9300



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INTERESTED IN GETTING MORE INVOLVED?

If you are looking to grow your professional network, we invite you to get involved in PACBA. Opportunities include running for the board, participating in committee work, contributing to the newsletter or presenting at the Annual Meeting.

Please contact Association Manager, Tricia Fusilero, to learn more.
PACBA@CorpEvent.com or call 312-540-9300