



Pennsylvania Creditors Bar Association

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



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by Brit J. Suttell

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ANNUAL SEMINAR INFORMATION

With summer winding down, PACBA is just kicking our annual conference preparation into high gear! This year's conference will again be at The Desmond Hotel in Malvern, Pennsylvania. It is scheduled for October 12, 2018, for a full day of CLE and networking! Matt Urban has another fantastic line-up of speakers, so please make sure you take a look at his article outlining the conference agenda.

Also, in this issue, Robin Cole, Associate Executive Director of the National Creditors Bar Association, contributes an article highlighting the benefits of joining the NCBA. I will admit to being biased since I'm the co-chair of the NCBA Membership committee, but the educational benefits and networking opportunities are hard to beat. If you have any questions about joining the NCBA please reach out on our list-serv or e-mail me directly, I'd be happy to talk with you!

I look forward to seeing everyone at The Desmond in about a month! And don't forget to renew your memberships!



Pennsylvania Creditors Bar Association



Why You Should Join the National Creditors Bar Association

Submitted by Robin Cole
Associate Executive Director
National Creditors Bar Association

The [National Creditors Bar Association \(NCBA\)](#) is a bar association dedicated to serving law firms engaged in the practice of creditors rights law. Originally founded in 1993 as the National Association of Retail Collection Attorneys (NARCA), our membership grew and we quickly became the premier association for the creditors rights attorney. In 2015, we recognized that the changes in our economy and in our member firms' practice areas, meant that our association needed to change too. We broadened our membership base to include firms practicing in foreclosure, bankruptcy, student loans, replevin, to name a few, and we expanded our educational offerings and networking opportunities. See what our attorney members say about their membership with [NCBA](#).

Currently, our membership is comprised of over 500 law firms and individual members, totaling approximately 2000 attorneys, in the areas of creditors rights law, defense and in-house counsel. Members practice in over 20 different practice areas in the 50 states, Canada, Puerto Rico and the U.K. Our attorney members are committed to being professional, responsible and ethical.

Why go it alone when you can have the National Creditors Bar Association working for you? Our goal is to help our attorney members succeed in their practice and profession. Join now and sample the educational offerings that are focused on creditors rights law issues, network with colleagues from across the country, have your voice heard by joining the fight to get H.R. 5082 passed, connect with fellow members in your state, promote yourself and your firm through speaking and writing opportunities, develop your practice through connecting with clients and fellow members at two annual conferences, and take advantage of all the benefits and services that being a member of the premier creditors rights bar association offers. To find out more, visit our website at www.creditorsbar.org, call the NCBA National Office at 202-861-0706 or email membership@creditorsbar.org.



Pennsylvania Creditors Bar Association

THIRD CIRCUIT HOLDS THAT HIGHWAY TOLL DEBT DOES NOT FALL UNDER THE FDCPA

**Louis J. Manetti, Jr., David M. Schultz, and Carlos Ortiz
Hinshaw & Culbertson, LLP (Chicago, Illinois)**

The Third Circuit recently determined in a case of first impression that highway toll debt does not fall under the Fair Debt Collection Practices Act (“FDCPA”). In *St. Pierre v. Retrieval-Masters Creditors Bureau, Inc.*, the plaintiff incurred over \$1,200 on his E-ZPass account by driving on New Jersey’s toll roads. The debt collector sent him a letter to collect the amount, and the plaintiff sued, arguing that the envelope in which the letter was sent provided information not allowed under the FDCPA. The debt collector successfully dismissed the lawsuit, and the plaintiff appealed.

On appeal, the Third Circuit stated that the case turned on whether the highway toll debt was “debt” as defined by the FDCPA—that is, whether it was for personal, family, or household purposes. The Court noted that its prior decisions analyzing “debt” under the FDCPA determined that property and per capita taxes did not qualify as debt, but that voluntary water and sewer services did. The Court preliminarily determined that the toll debt was not converted to consumer debt merely because it was incurred through the plaintiff’s E-ZPass contract, reasoning that it is the source of the debt, not a subsequent method of collection, that determined its character. It further reasoned that the even if part of the total debt could be characterized as consumer debt—a \$1 membership fee, for instance—that “de minimis obligation” would not convert the total debt into FDCPA debt. The Court concluded that the first two prongs of whether debt falls under the FDCPA were satisfied because the debt arose from a transaction, and the debt was the subject of that transaction.

The Court held, however, that the third required prong for consumer debt was not present. It reasoned that the highway toll debt was not incurred for personal, family, or household purposes because the toll amounts serve the public benefit of the construction and maintenance of highways. In this respect, the debt was more like a tax than personal water and sewer services: the money is collected for a general public purpose, and, like other taxes, paying more does not entitle the payor to “better” roads. Any personal benefit is secondary. Notably, the Court rejected the plaintiff’s argument that the debt fell under the FDCPA because his subjective purpose in incurring the debt was personal. It held that this approach confused subjective intent with “whether, objectively, the subject of the transaction” was for personal purposes, and the ultimately public benefit and purpose of highway tolls meant that the debt was not “primarily” for personal purposes. Thus, it concluded that the highway toll debt did not fall under the FDCPA, and affirmed the dismissal of the plaintiff’s case.



Pennsylvania Creditors Bar Association

TWENTY (20) YEAR STATUTE OF LIMITATIONS FOR DOCUMENTS SIGNED UNDER SEAL SURVIVES IN PA

**Kenneth S. Shapiro, Esq.
Shapiro Law Office, PC**

Historically, instruments signed “under seal” in Pennsylvania enjoyed a 20 year statute of limitations for legal enforcement versus the existing 4 year statute of limitations ordinarily designated for enforcement of notes or contracts. An instrument under seal is a written agreement marked with the words “seal” next to the signature line or containing the designation “under seal”. See 42 Pa.C.S. §5529(b). As mentioned in our previous PACBA newsletter, Subsection (b)(2) of §5529(b) contained a sunset provision that the 20-year statute of limitations to commence actions on instruments under seal would expire on June 27, 2018.

HB 1979 repealed the sunset provision at the 11th hour. That bill was signed in by the Senate on June 20, 2018, with signature by Governor Wolf on June 25th. As a result, the statute of limitation applicable to documents under seal will remain at 20 years unless changed by future legislation.

Why Membership in the Pennsylvania Creditors Bar Association is Beneficial:

- Access to member-only listserv: an internet discussion group
- Receive quarterly Newsletter to stay abreast of industry trends
- Seminars on relevant, practical topics
- Attorney to attorney networking opportunities

[Click for Membership Registration](#)



Pennsylvania Creditors Bar Association



Friday, October 12, 2018
8:30am - 4:00pm
The Desmond Hotel
Malvern, Pennsylvania

The Pennsylvania Creditors Bar Association is pleased to announce the scheduling of the 2018 Seminar and Annual Meeting. This year's meeting will take place on Friday, October 12, 2018 from 8:30 am - 4:00 pm at the Desmond Hotel in Malvern, Pennsylvania. On behalf of the board of directors, I would like to invite all members as well as prospective members to join us for our annual day long seminar. The seminar presents a great opportunity to not only listen to a great line-up of experts discuss topics that impact us all, but also serves as a fantastic opportunity to meet and network with creditor rights attorneys from all across Pennsylvania. As an added bonus we again anticipate the program being approved for continuing legal education credits, including ethics credit.

Interested individuals can see our outstanding list of speakers and can register for the conference by visiting our website (<http://pacbar.org/education>). Please register early to ensure that you reserve your spot at the conference. Please do not hesitate to contact us at PACBA@CorpEvent.com or call 312-540-9300 with questions.

We look forward to seeing you at the Desmond in October for this great event.

Matt D. Urban
Attorney
Education Committee Chairperson

**Register
HERE**