

## The Third Circuit Overturns a 30-Year Decision Retroactively and No Longer Requires that All Consumer Collection Disputes be "In Writing"

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On March 30, 2020, the Third Circuit Court of Appeals issued a precedential en banc decision in *Riccio v. Sentry Credit, Inc.*, No. 18-1463, which is a long-awaited win for the ARM industry! The Third Circuit affirmed the District Court's decision in favor of the collection agency. The court held that Section 1692g(a)(3) of the Fair Debt Collection Practices Act ("FDCPA") permits consumers to orally dispute a debt and overruled its previous decision requiring that all disputes must be in writing. The court also held that its decision should apply retroactively, thereby resolving a split with the other Circuits.

In *Riccio*, the plaintiff claimed that Sentry's initial collection letter, which provided multiple options for a consumer to contact Sentry, would somehow mislead the consumer into thinking that the debt could be disputed orally as the Third Circuit required that all disputes be in writing. The validation notice in *Riccio* tracked the language of Section 1692g.

Section 1692g(a) states that the validation notice in an initial letter must include:

- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with name and address of the original creditor, if different from the current creditor.

Despite the fact that Section 1692g(a)(3) does not specify whether a dispute must be oral or in writing, the Third Circuit previously held in *Graziano v. Harrison*, 950 F.2d 107 (3d Cir. 1991), that all disputes must be in writing. All of the other Circuit Courts of Appeal have found to the contrary.

This puts an end to thousands of lawsuits by predatory plaintiffs' attorneys targeting agencies' collection letters.

KD's Consumer Financial Services Practice Group will continue to alert you to important decisions impacting the ARM industry. Please contact us if you have any questions about your collection letters.