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ADVISORY OPINION

Insurance Subrogation Claims

The Administrator of the Colorado Collection Agency Board has become aware of collection agencies that collect insurance subrogation claims. The question has arisen whether insurance subrogation claims constitute "debt" under the Colorado Fair Debt Collection Practices Act, §§ 12-14-101, et seq., C.R.S. 2003 (Act), and thus whether agencies that collect such claims need to be licensed and otherwise comply with the Act. The Administrator concludes, consistent with prior interpretations, that insurance subrogation claims are "debt" within the meaning of Act § 12-14-103(6)(a). Accordingly, agencies that collect or attempt to collect these debts need to be licensed under and otherwise comply with the Act.[1]

The typical insurance subrogation claims arises from an automobile accident or other loss caused by a tortfeasor, or wrongdoer. The insured has a claim for damages against the tortfeasor. Pursuant to its policy with the insured, the insurance company pays its insured some or all of these damages. The insurance company then seeks to collect from the tortfeasor reimbursement for the monies it paid its insured. Another scenario occurs where the insurance company demands reimbursement from its insured for monies the insured may receive from third parties. At times, the insurance company will assign these claims to a collection agency for collection. The question is whether these claims are "debt" within the meaning of Act § 12-14-103(6)(a).

Act § 12-14-103(6)(a) defines "debt" to mean

[1] This Advisory Opinion is issued pursuant to the authority granted the Administrator under Act § 12-14-113(5).

> any obligation or alleged obligation of a consumer to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment.

Although the Act does not define either "obligation" or "transaction", they both are broad terms. "Obligation" commonly means a legal liability or indebtedness that may arise out of contract or tort. See, e.g., Webster's Third New Int'l Dictionary 1556 (1993); Black's Law Dictionary 968-969 (5th ed. 1979).

Similarly, "transaction" commonly is defined as:

> Something which has taken place, whereby a cause of action has arisen. It must therefore consist of an act or agreement, or several acts or agreements having some connection with each other, in which more than one person is concerned, and by which the legal relations of such persons between themselves are altered. It is a broader term than "contract".

Black's, supra, at 1341 (emphasis added); accord, Ballantine's Law Dictionary 1292 (3rd ed. 1969). It also commonly means:

> A group of facts so connected together as to be referred to by a single legal name; as, a crime, a contract, a wrong. . . . The term transaction is a broader one than contract.

3 Bouvier's Law Dictionary 3307 (3rd rev. 1914)(emphasis added).

Using these or similar definitions, the Administrator previously has interpreted the term "debt" broadly to include such things as (1) tax liabilities, see Colo. Admin. Opinion Letter (Adm'r Colo. Collection Agency Bd. May 11, 1988); (2) child support obligations, see Colo. Admin. Opinion Letter (Adm'r Colo. Collection Agency Bd. July 9, 1993); accord, Supportkids, Inc. v. Udis, Case No. 03CV5492 (Denver Dist. Ct. Jan. 6, 2004)(order dismissing complaint seeking declaratory judgment that "child support" collection was not debt collection and granting Administrator's motion for preliminary injunction against unlicensed collection agency); and (3) civil penalties under a civil shoplifting statute, see Colo. Admin. Opinion Letter (Adm'r Colo. Collection Agency Bd. Aug. 30, 1994).

Here, the tortfeasor's obligation to pay the subrogation claim arises from a "transaction", namely, the tort out of which the subrogation claim arose. This tort is an act that altered the legal relationship between the insured and the insurance company, on one hand, and the tortfeasor on the other. Alternatively, the transaction may be considered the insured's insurance purchase, i.e., a contract-based transaction, see Hamilton v. United Healthcare, Inc., 310 F.3d 385, 392 (5th Cir. 2002)(insurance company's subrogation claim against its insured arose out of contractual, insurance purchase transaction). Either way, the obligation or alleged obligation to pay the subrogation claim is a "debt" under the Act.

The Administrator acknowledges that there exists contrary authority under the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, et seq. (2000)(FDCPA). See Hawthorne v. Mac Adjustment, Inc., 140 F.3d 1367 (11th Cir. 1998)(subrogation claim not "debt" under FDCPA); Federal Trade Commission (FTC) Staff Letter to Lawrence A. Dunn (Aug. 17, 1992)(same); FTC Staff Letter to Andrew R. Sebok (May 22, 1987)(same).

However, the FDCPA's definition of "debt" is significantly different from the Act's. The FDCPA defines "debt" as

> any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgement.

FDCPA § 1692a(5)(emphasis added to show differences).

Based on this definition, the Hawthorne court stated that "at a minimum, a 'transaction' under the FDCPA must involve some kind of business dealing or other consensual obligation" and that a "transaction" refers "to consensual or contractual arrangements". 140 F.3d at 1371. The court further reasoned that an obligation arising from a tort does not involve the purchase or use of goods or services. Id. Accordingly, it held that because a tortfeasor's obligation to pay damages arising out of an accident does not arise out of any consensual or business dealing, it did not "constitute a 'transaction' under the FDCPA." Id.; see Sebok Letter, supra ("a tort claim does

not involve a transaction in which the tortfeasor incurs an obligation to pay money in return for money, property, insurance or services”).[2]

Unlike the FDCPA, there is nothing in the Act’s definition of “debt” that requires that the “transaction” involve a contractual or consensual arrangement or the purchase or use of goods or services. Rather, the ordinary meaning of “transaction” is much broader and consistently has been used by the Administrator in its broadest sense. See p. 2, supra. Further, giving the terms “transaction” and “debt” their plain, common-sense meanings “serves to regulate a larger area of collection activity, thereby providing Colorado consumers with more protection than the [FDCPA]”, 1993 Colo. Admin. Opinion Letter, supra; and serves the salutary purposes of promoting predictability, fairness, equality, and uniformity, in that all collection agencies, regardless of the nature of the debt or the underlying transaction giving rise to the debt, will (a) not have to guess whether their debts are “debts” covered by the Act, (b) instead know they must comply with the Act, and (c) operate on the same “playing field”.

Thus, it is the Administrator’s opinion that subrogation claims are “debts” within the meaning of the Act. Accordingly, agencies that collect or attempt to collect subrogation claims from consumers must comply with all of the Act’s provisions.

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[2] Significantly, in Hamilton the 5th Circuit disagreed with Hawthorne, holding the collection of a subrogation claim was subject to the FDCPA. 310 F.3d at 391-392.