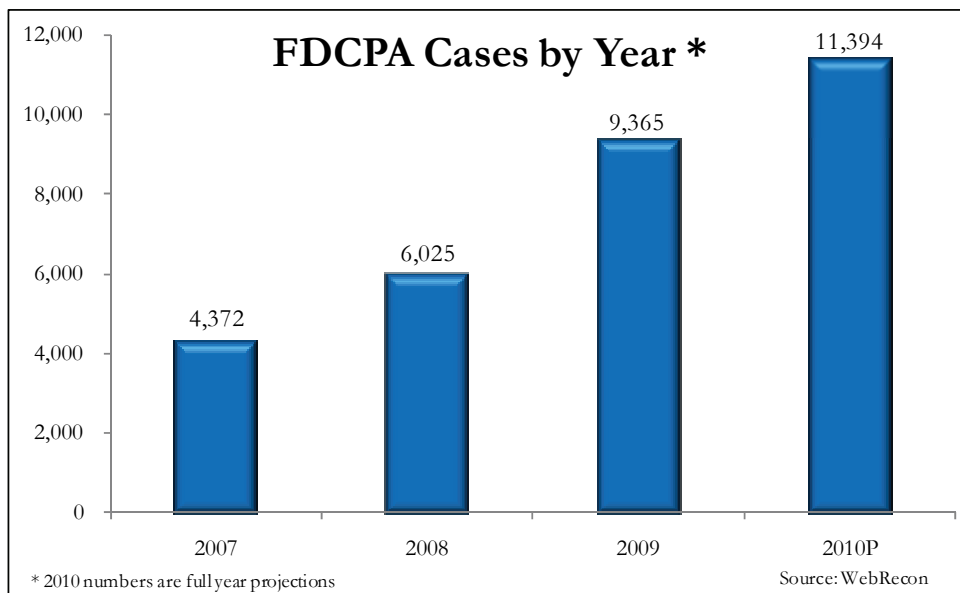


Managing to Minimize Legal Issues

Regulatory and compliance issues abound in the ARM industry. With an increase in FDCPA lawsuits and frequent news stories about “debt collectors harassing grandma,” regardless of their validity, it is more important than ever to be vigilant about compliance in your ARM firm. As a consequence of this environment, priorities at many credit issuers have changed to the point where their number one criteria for selecting an ARM firm is no longer fee rates or net back, but rather, it is compliance. They want to do business with ARM firms that will keep their name out of the news. Mitigating headline risk has become paramount, as issuers don’t want to draw the slightest attention from regulators or legislators, even if it means not collecting every last dime.

We recently spoke with Manny Newburger, partner at Barron, Newburger & Sinsley, PLLC, an Austin, TX-based law firm with significant experience defending ARM firms in such matters. We wanted to get his opinion regarding ways that ARM firms can navigate the turbulent waters of the current regulatory environment. He had three key points:



1) "Corporate Legends" - Every company has things it believes are fundamental to its operational or corporate culture. These often begin with words like "We always" or "We never". An example of this would be, "We review all affidavits before signing them." Like most legends, they start with a kernel of truth, but can become less and less true over time. It is important to examine these corporate legends regularly to see if they are still true. Not having a regular review process can be a recipe for disaster, and can lead to litigation or other problems. Of course, the natural tendency is for processes to shift over time, so it’s important to regularly assess compliance systems and operational processes, in order to make sure they are performing as they should be.

2) "Situational vs. Operational" - If your firm is faced with a lawsuit, it’s important to determine whether the problem in that particular case is situational (e.g. a one-time clerical error, a rogue employee), or operational (e.g. an outdated training program, failure to adequately monitor collection calls). Generally, situational issues are circumstance-specific, while operational issues result from an ongoing process or pattern

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Contact Us at 301-576-4000

Brian Greenberg

Managing Director

bgreenberg@greenberg-advisors.com

Shaun Tiwari

Associate

stiwari@greenberg-advisors.com

Greenberg Advisors, LLC is among the most experienced advisors to owners, executives, and investors in the Accounts Receivable Management (ARM) industry worldwide. With nearly 15 years of experience dedicated to the ARM sector, the firm’s staff has completed over 65 M&A and strategic advisory transactions in ARM, including recent transactions with Pinnacle Financial Group, Universal Fidelity, TRAKAmerica, and NARS, among others. The firm’s advisory services focus on M&A, capital raising and valuation, as well as operational advice to assist clients in resolving critical operational challenges to enhance the value of their business.

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Managing to Minimize Legal Issues (cont.)

of conduct that needs to be corrected, otherwise the lawsuit is likely to be the first of many (or a precursor to a class action). The first question to ask upon news of a lawsuit should be, quite simply, "Is this a result of something situational or operational?" Based on the answer, proper next steps should be taken. Compliance is an ongoing process that requires continual assessment; it is not a one-time thing. This requires vigilance, an honest assessment of the situation, and clear recognition that extra precautions today can make a big difference in the future in terms of lawsuits, as well as new business and company growth.

3) "Recognizing key business interests" – The core business for ARM firms is collecting money, not defending court cases. That is one significant reason why you might want to settle a case rather than fight it. However, sometimes you are forced to fight in order to avoid more litigation in the future and even more expenses. After all, "if you feed the bears, more bears will come." Therefore in all instances, it's paramount to do a cost-benefit analysis of the situation. We recognize that you can litigate some cases down to a zero award to the plaintiff, however that could (and often will) be more expensive than settling the case. In the end, you should not rely on shortcuts or heuristics in your decision process. Every case should be assessed based on its own specific facts and circumstances.

According to WebRecon, there are projected to be over 11,000 FDCPA lawsuits in 2010 (see the chart on the previous page), a 161% increase from the amount in 2007, clearly showing how the litigation and regulatory environment has changed for ARM firms. Furthermore, this figure doesn't even include state filings (i.e. it includes federal filings, only). In this environment, it is more important than ever to take a proactive, process-oriented approach to compliance in order to safeguard your ARM firm's future. Mr. Newburger believes that in a general sense, the three items mentioned above are the main problems he sees, and they are universal in that they apply to creditors, ARM firms, debt buyers, and collection law firms alike. The firms that invest into process improvement and properly prepare themselves for the current regulatory environment will minimize expenses and distractions from their core business, grow their market share, and ultimately prosper, while firms that don't, will face increasing challenges in the future.

Let us help achieve your plans for 2011. If you're interested in learning about our strategic planning and other services, such as Pre-M&A Advisory, Company Valuation, Capital Raising, Operational or Strategic Advisory, or Selling or Buying an ARM firm, please contact us.

Note: This article is not, and should not be construed or relied upon as, legal advice. Please consult an attorney specializing in such matters for legal counsel.

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Managing Director

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