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## UNTANGLING COMPLIANCE ISSUES IN CREDIT REPORTING, DEBT COLLECTION, AND BANKRUPTCY

*Compliance with the FCRA and FDCPA can be challenging in ordinary situations, but becomes far more complex and entangled when the debtor files for bankruptcy protection. The author discusses these complexities, focusing on fair credit reporting and the effect of a bankruptcy filing, reporting a discharged debt, and limitations on credit reporting liability. He then turns to fair debt collection from a bankrupt debtor and the wide split in the courts over whether (or the extent to which) the Bankruptcy Code displaces the FDCPA.*

By Justin A. Kesselman \*

The Fair Credit Reporting Act (“FCRA”)<sup>1</sup> and Fair Debt Collection Practices Act (“FDCPA”)<sup>2</sup> impose a myriad of requirements on businesses engaged in the collection of debts from consumers. Generally speaking, the FCRA requires credit bureaus (or “consumer reporting agencies”), as well as creditors, debt collectors, and other furnishers of consumer credit data (collectively, “furnishers”), to report consumer credit information accurately, completely, and in a non-misleading manner. Similarly, the FDCPA bars debt collectors in particular from using abusive, unfair, or deceptive practices when collecting debts. Even in ordinary circumstances, mastering compliance with these and the various other federal and state consumer protection schemes is no easy task. This is particularly true for institutions transacting with consumers across the country, as judicial

interpretations of these statutes often vary by jurisdiction. When a consumer files a bankruptcy petition, however, the task of untangling the compliance knot intensifies by an order of magnitude.

Although bankruptcy is historically rooted in creditors’ rights, it has grown into perhaps the ultimate form of consumer protection. Once a consumer enters the protection of bankruptcy and the automatic stay, the rights and obligations of creditors are modified and are likely to be modified further as the consumer reaches various milestones in his or her case (whether dismissal, confirmation of a plan, or a discharge of debts). Should a creditor, consumer reporting agency, or debt collector fail to account for these modifications, the debtor may have claims not only under the FCRA or FDCPA, but also for contempt of the discharge injunction, breach of

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<sup>1</sup> 15 U.S.C. § 1681 et seq.

<sup>2</sup> 15 U.S.C. § 1692 et seq.

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