



GUIDANCE TO COLLECTION AGENCIES OPERATING IN IDAHO

To: Licensees Operating in Idaho under the Idaho Collection Agency Act
From: Michael Larsen, Consumer Finance Bureau Chief
Date: July 29, 2014
Re: Guidance to Collection Agency Licensees Regarding a Recent Idaho Supreme Court Decision Impacting Idaho Collection Activities

On March 19, 2014, the Idaho Supreme Court published a decision that impacts the way collection agencies are required to operate in Idaho under the provisions of the Idaho Collection Agency Act (Act). To assist collection agencies in complying with the Act, the Department is providing this Guidance to its licensees. The case, *Medical Recovery Services, LLC v. Strawn*, 156 Idaho 153, 321 P.3d 703 (2014), is briefly summarized below.

Medical Recovery Services, LLC v. Strawn, 156 Idaho 153, 321 P.3d 703 (2014)

Debtors in Idaho received medical services from a medical service provider. At the time the services were provided the debtors signed a Patient Sign-In Form, which included the following provision:

I agree to pay my account in full at the time of services unless before services are performed Community Care agrees to other payment arrangements. I understand that Community Care will submit insurance benefits for payment only as a courtesy for me. I agree to pay 18% interest on the outstanding balance on my account with interest to commence 60 days after services even if payment from my insurance company is pending. I also agree to pay an additional service charge of 50 cents per month on my account. If Community Care assigns my account to a collection agency for collection [sic] all reasonable cost and attorney's fees incurred to collect on my account. I agree that a \$20.00 collection fee shall be added to my account as a reasonable cost if Community Care assigns my account to a collection agency. I agree to pay as a reasonable attorney's fee \$350 or 35% of the principal and interest on my account balance, whichever is greater, if my account is assigned to a collection agency and suit is filed to recover payment on my account.

The debtors did not make payment and their account was assigned to a collection agency. The collection agency ultimately filed suit to recover payment from the debtors and also sought \$350 in attorney fees. The collection agency's theory was that the \$350 in attorney fees was

recoverable under Idaho Code § 26-2229A(4) as part of the “principal obligation” owed by the debtors based on the above contractual provision. The trial court judge granted the collection agency a default judgment but disallowed the \$350 in attorney fees, substituting a lesser amount. The collection agency appealed, and on appeal the Idaho Supreme Court upheld the lower court. The Court looked at the plain language of Idaho Code § 26-2229A, a provision in the Act that prohibits a collection agency from collecting “. . . any interest or other charges, fees, or expenses, incidental to the principal obligation unless such interest or incidental fees, charges, or expenses . . .” met one of five enumerated exceptions. The Court reasoned that the “principal obligation” was limited to the amount that the debtors owed the creditor for the medical services provided, and did not include the contractual attorney fees specified in the Patient Sign-In Form.

The Court holding is very specific. In *Strawn*, the Court stated:

Neither “fees” nor “principal obligation” is defined in the ICAA. See I.C. § 26–2222. The district court found that the “principal obligation” is the money Respondents owe Community Care for the services it provided, and that attorney fees “are subordinate to the debt” and thus, “ ‘incidental to the principal obligation’ for purposes of Idaho Code § 26–2229A(4).” We find no fault with the district court’s holding.

When collecting against Idaho debtors, collection agencies are limited to collecting amounts that equate to the “principal obligation,” and may only collect fees or charges incidental to the “principal obligation” if collection of those fees or charges is authorized because of the application of one or more of the five exceptions enumerated in Idaho Code § 26-2229A(4), which states:

- (4) No collection agency licensee, or collection agency required to be licensed under this act, or agent of such collection agency shall collect or attempt to collect any interest or other charges, fees, or expenses incidental to the principal obligation unless such interest or incidental fees, charges, or expenses:
 - (a) Are expressly authorized by statute;
 - (b) Are allowed by court ruling against the debtor;
 - (c) Have been judicially determined;
 - (d) Are provided for in a written form agreement, signed by both the debtor and the licensee, and which has the prior approval of the director with respect to the terms of the agreement and amounts of the fees, interest, charges and expenses; or
 - (e) Reasonably relate to the actual cost associated with processing a demand draft or other form of electronic payment on behalf of a debtor for a debt payment, provided that the debtor has preauthorized the method of payment and has been notified in advance that such payment may be made by reasonable alternative means that will not result in additional charges, fees or expenses to the debtor.

Department Interpretation of Strawn

It is the Department's interpretation that the *Strawn* case stands for the proposition that unless one or more of the exceptions enumerated in Idaho Code § 26-2229A(4) are met, collection agencies may not collect, or attempt to collect, from Idaho debtors anything incidental to the "principal obligation." Further, in the *Strawn* case, the Court upheld the lower court's finding that the "principal obligation" was limited to the money the debtors owed the medical service provider for the services it provided, and that attorney fees "are subordinate to the debt" and thus, "incidental to the principal obligation" for purposes of Idaho Code § 26-2229A(4). In addition to attorney fees, it is the Department's position that the Court's reasoning in *Strawn* applies equally to other types of fees or charges, however labeled, that are subordinate to the debt and thus, "incidental to the principal obligation" for purposes of Idaho Code § 26-2229A(4).

It is the Department's interpretation, by virtue of the wording of Idaho Code § 26-2229A(4) and the Court's reasoning in the *Strawn* case, that the principal obligation cannot include interest or other charges, fees, or expenses, however labeled, and collection agencies operating in Idaho must not collect, or attempt to collect, the same unless one or more of the exceptions enumerated in Idaho Code § 26-2229A(4) apply. Collection agencies operating in Idaho are advised to consult with legal counsel before claiming application of any of the exceptions listed at Idaho Code § 26-2229A(4). Collection Agencies are also advised to review the Department's [Policy Statement 2007-6](#) (attached), that addresses the application of Idaho Code § 26-2229A(4)(d) to settlement of collection lawsuits.

During its compliance examinations, the Department will apply the Court's reasoning in the *Strawn* case by reviewing the character and nature of debts that collection agencies are collecting, or attempting to collect, from Idaho debtors. In light of the *Strawn* case, collection agencies, including debt buyers, collecting from Idaho debtors must be able to substantiate to the Department the legal basis underlying attempts to collect fees or charges, however labeled, that are subordinate to the debt and thus, "incidental to the principal obligation." The Department will apply the Court's definition of "principal obligation" in *Strawn* as being what the debtor owed to the creditor for the product(s) or service(s) provided. Another way to calculate the "principal obligation" would be to calculate what the cash price would have been had the debt been paid immediately by the debtor.

Conclusion

To ensure against any misunderstanding, the Department interprets the *Strawn* case as establishing that the term “principal obligation,” as used in Idaho Code § 26-2229A(4), **never** includes “any interest or other charges, fees, or expenses” however labeled, and therefore, such charges are always “incidental” to the principal obligation. Consequently, to comply with the Act, it is the Department’s position that no collection agency, including debt buyers, operating in Idaho, may lawfully collect, or attempt to collect, “any interest or other charges, fees, or expenses,” no matter how labeled, against an Idaho debtor that are incidental to the debtor’s principal obligation, without first qualifying to do so by application of one or more of the exceptions set forth in Idaho Code § 26-2229A(4).

The Department will apply the Court’s definition of “principal obligation” in *Strawn* as being what the debtor owed to the creditor **for the product(s) or service(s) provided**. All charges and fees, however labeled, that are subordinate to the debt, even when included in the creditor’s written contract with the debtor including, but not limited to, attorney fees, collection fees, or service charges, will be deemed incidental to the “principal obligation” for purposes of applying the provisions in Idaho Code § 26–2229A(4).

The foregoing outlines the standards the Department will utilize in applying Idaho Code § 26-2229A(4) in its compliance examinations.

To review Frequently Asked Questions (FAQs) related to this Guidance click [HERE](#).

