



PROTECTING THE INTEGRITY OF IDAHO FINANCIAL MARKETS SINCE 1905

**Idaho Department of Finance  
Guidance Statement  
2020-09-CFB**

**REGARDING THE IMPACT ON COLLECTION ACTIVITIES RELATIVE TO  
*MEDICAL RECOVERY SERVICES, LLC V. STRAWN*, 156 IDAHO 153, 321 P.3D 703 (2014)**

**Issue Date: July 1, 2020 (Replaces Guidance Issued July 29, 2014)**

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**I. Background**

On March 19, 2014, the Idaho Supreme Court published a decision that impacted 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 provides 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 (Community Care). At the time the services were provided the debtors signed a Patient Sign-In Form, which included the following provision as quoted by the Court:

*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*

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*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.

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:

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*(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.*

## **II. Department Interpretation of the Act in Consideration 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).

By virtue of the wording of Idaho Code § 26-2229A(4), and the Court's reasoning in the *Strawn* case, the principal obligation cannot include interest or other charges, fees, or expenses, however labeled, and

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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 Guidance Statement 2020-08-CFB, that addresses the application of Idaho Code § 26-2229A(4)(d) to settlement of collection lawsuits.

In its supervision of collection agencies, 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.

**III. Summary**

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

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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).

**Contact** - You may direct comments or requests for additional information regarding this Guidance Statement to:

Bureau Chief, Consumer Finance Bureau  
Idaho Department of Finance  
P.O. Box 83720  
Boise, Idaho 83720-0031

Telephone: 1-(208)-332-8000  
Facsimile: 1-(208)-332-8099  
Email: [finance@finance.idaho.gov](mailto:finance@finance.idaho.gov)

#### **Frequently Asked Questions and Responses:**

**Question:** As a collection agency we receive accounts for collection from landlords and property managers for debts based on rental or lease agreements. In addition to periodic rental/lease payments, these agreements commonly include payment obligations by renters or lessors for damages that they may cause to the premises beyond normal wear and tear. Are these contractual payment obligations part of the “principal obligation” or incidental to the “principal obligation” for purposes of applying Idaho Code § 26-2229A(4)?

**Answer:** For the purpose of conducting compliance examinations of licensees under the Idaho Collection Agency Act, the Department’s view is that a payment obligation for damages to the premises under a rental/lease agreement is a separate “principal obligation” that collection agencies can collect on behalf of creditors. Rather than being subordinate to a rental/lease payment obligation, an agreement to pay for damages in a rental or lease agreement is dependent upon the happening of a future event unrelated to the nonpayment of rent. Therefore, it is the Department’s position that a payment obligation for damages that arises under a rental/lease agreement stands alone as a separate and distinct “principal obligation.”

**Question:** As a collection agency we receive accounts for collection that include both principal and interest pursuant to underlying payment agreements between debtors and creditors. For purposes of

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applying Idaho Code § 26-2229A(4), are collection agencies authorized to collect interest payment obligations from debtors?

**Answer:** For the purposes of conducting compliance examinations of licensees under the Idaho Collection Agency Act, the Department’s view is that debtors and creditors are expressly authorized by statute to contract for the payment of finance charges, including interest, on terms as agreed to by the parties (Idaho Code § 28-42-201). Consequently, it is the Department’s position that payment obligations for finance charges, when based upon debtors’ agreements, may be collected by collection agencies pursuant to Idaho Code § 26-2229A(4)(a) as being “expressly authorized by statute.”

**Question:** As a collection agency, should we have the underlying agreement in hand before attempting to collect?

**Answer:** Yes. The Department will apply the Court’s reasoning in *Strawn* by reviewing the character and nature of debts that collection agencies are collecting, or attempting to collect, from Idaho debtors. In light of *Strawn*, collection agencies collecting from Idaho debtors must be able to substantiate to the Department the legal basis underlying attempts to collect all amounts, including fees or charges, however labeled, that are subordinate to the debt and thus, “incidental to the principal obligation.” Collection agencies must either have the relevant underlying agreement in hand, or have it readily accessible for requests for substantiation by debtors and/or the Department.

**Question:** Does the *Strawn* case apply to debt buyers operating in Idaho?

**Answer:** Yes. *Strawn* applies to all persons or entities required to be licensed under the Idaho Collection Agency Act.

**Question:** As a collection agency we receive accounts from banks/credit unions that include overdraft fees as well as the actual amount of the overdraft. Can we collect the overdraft fees?

**Answer:** For the purpose of conducting compliance examinations of licensees under the Idaho Collection Agency Act, the Department views an overdraft fee as a finance charge for a loan/extension of credit. As such, overdraft fees may be collected by collection agencies on behalf of their bank/credit union clients, as authorized by Idaho Code § 26-2229A(4)(a) when such finance charges/overdraft fees are based on an agreement between the contracting parties within the meaning of Idaho Code § 28-42-201.

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**Question:** As a debt buyer we characterize the charge-off account balance at time of purchase to be the “principal obligation” for purposes of collection under Idaho Code § 26-2229A(4). Does the *Strawn* case impact our characterization on this?

**Answer:** No. The characterization described in the above question was incorrect before the *Strawn* decision – and it remains incorrect after the *Strawn* decision.

**Question:** Are debt buyers expected to itemize every fee and charge all the way back to the original bill? As some accounts may be five or seven years past due, it is practically impossible to identify every discrete fee that led to the charged-off balance.

**Answer:** Neither the Act nor the Court’s interpretation of the Act includes an allowance for incidental charges applied to an account prior to the account’s balance being charged-off.

**Question:** As a collection agency we receive accounts where the outstanding balances assigned for collection include government taxes or fees (e.g. accounts for telephone services, utilities, or for monies owed to a government agency or instrumentality). Are such taxes and fees considered a part of the “principal obligation” and therefore collectable by a collection agency under the provisions of Idaho Code § 26-2229A(4)?

**Answer:** Yes. For the purposes of conducting compliance examinations of licensees under the Idaho Collection Agency Act, the Department’s view is that taxes and governmental fees incurred at the time a good or service is provided, or at the time that a good or service is contracted to be provided, represent a portion of the “principal obligation” for purposes of collection under Idaho Code § 26-2229A(4). Additionally, where such fees are incidental to a future occurrence, such as a statutory penalty imposed for non-payment as may be the case in an account owed to a taxing authority, the Department would view the inclusion of a statutory fee or penalty as meeting the exception found at Idaho Code § 26-2229A(4)(a).

**Question:** As a collection agency we sometimes receive accounts for collection that consist of debts owed to a “public agency” as that term is defined at Idaho Code § 67-2327. Does the *Strawn* decision stand for the proposition that we cannot attempt to collect reasonable collection fees that have been included in the account by the public agency under the provisions of Idaho Code § 67-2358(1)(b)?

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**Answer:** No. For the purposes of conducting compliance examinations of licensees under the Idaho Collection Agency Act, the Department’s view is that that reasonable collection fees imposed, in compliance with the provisions of Idaho Code § 67-2358, by a “public agency,” as that term is defined at Idaho Code § 67-2327, may be collected by collection agencies pursuant to Idaho Code 26-2229A(4)(a) as being “expressly authorized by statute.”

**Question:** As a collection agency we sometimes receive accounts for collection from clients that include late payment fees. For purposes of applying Idaho Code § 26-2229A(4), can late payment fees be wrapped into the “principal obligation” for purposes of collection under the provisions of the Idaho Collection Agency Act?

**Answer:** No. It is the Department’s interpretation that *Strawn* stands for the proposition that unless one or more of the exceptions enumerated in Idaho Code § 26–2229A(4) are met, individuals and entities subject to the provisions of the Idaho Collection Agency Act may not collect, or attempt to collect, from Idaho debtors anything incidental to the “principal obligation.” In *Strawn*, the Court upheld a finding that the term “principal obligation” was limited in meaning to money owed for services provided, and that attorney fees were “subordinate to the debt” and thus, “incidental to the principal obligation.” For purposes of applying Idaho Code § 26–2229A(4), it is the Department’s position that the Court’s reasoning in *Strawn* applies equally to “late payment fees” and other types of fees or charges, however labeled, that are subordinate to the debt and thus, “incidental to the principal obligation.”

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