

# Financial Services & Title Insurance Update: Week Ending March 1, 2019

March 02, 2019

## Financial Services Update

- **FDCPA:** no liability for a debt collector that provides the name of the hospital, the account number, patient name, date of service, and amount of debt, but who fails to include the word "creditor" in a dunning letter - [Encarnacion v. Financial Corp. of Am.](#), No. 2:17-cv-566-FtM-38AUM (M.D. Fla. Feb. 26, 2019) (because debt collector is the agent of the creditor, "there is no argument to be had that the least sophisticated consumer would think his creditor was anyone other than the hospital listed.") (citations omitted)
- **TCPA / Standing:** standing for TCPA claim can be established merely by noticing an unwanted call or text - [Shuckett v. DialAmerica Mktg., Inc.](#), No. 17-CV-2073-LAB (S.D. Cal. Feb. 22, 2019) ("There is no meaningful difference between an unanswered phone call and a text message. Neither requires an outlay of time or energy, but both 'disturb the solitude of their recipients.' The invasion of privacy caused by unwanted telemarketing calls is not diminished simply because a plaintiff chooses.") (internal citations omitted).
- **FDCPA / Removal:** filing an FDCPA counterclaim does not provide a basis for removal of a lawsuit from state to federal court, as removal is only permitted "if the action could have been brought in federal court in the first instance[ ]" - [Credit Consulting Servs., Inc. v. Scott](#), No. 19-cv-00332-WHO (N.D. Cal. Feb. 25, 2019) (remanding action to state court)
- **FDCPA / Interest Collection:** collection of interest allowable in underlying agreement does not violate the FDCPA - [Sivongxay v. Medcah, Inc.](#), No. 17-17400 (D. Haw. Feb. 26, 2019) (affirming summary judgment in favor of collection agency)

- **TCPA / ATDS:** programs that dial from a database of existing numbers that require human interaction to initiate such calls are not subject to the TCPA - [Duran v. La Boom Disco, Inc.](#), No. 17-cv-6331 (E.D.N.Y. Feb. 25, 2019) (finding systems culling from a database of numbers "do not qualify as autodialers because they are not capable of dialing numbers without human intervention")

## Title Insurance Update

- **Regulation:** statutory regulation prohibiting giving anything of value for title insurance business is unambiguous and need not refer to a quid pro quo as to any specific act of doing business, but ban on the collection of fees by in-house closers that independent closers may collect lacked rational basis - [New York State Land Title Assoc., Inc. v. New York State Dept. of Financial Servs.](#), No. 7491 (N.Y. Jan. 15, 2019) (affirming in part and reversing in part order annulling N.Y.'s non-quid-pro-quo inducement regulation)
- **Duty to Defend:** pursuant to 8 corners rule, where otherwise covered claim is on the face of the complaint within the scope of the bankruptcy exception for fraudulent conveyances, there is no duty to defend - [Banner Bank v. First American Title Ins. Co.](#), Nos. 17-4098, 17-4112, 18-4035, & 18-4037 (10th Cir. Feb. 26, 2019) (reversing and remanding summary judgment)
- **Duty to Indemnify:** where the complaint shows there is no duty to defend, there cannot be any duty to indemnify thereafter created by a settlement agreement - [Banner Bank v. First American Title Ins. Co.](#), Nos. 17-4098, 17-4112, 18-4035, & 18-4037 (10th Cir. Feb. 26, 2019) (reversing and remanding summary judgment)
- **Duty of Good Faith and Fair Dealing:** where insurer fairly evaluates claim and there is no duty to defend or indemnify, there can be no breach of the insurer's duty of good faith and fair dealing - [Banner Bank v. First Am. Title Ins. Co.](#), Nos. 17-4098, 17-4112, 18-4035, & 18-4037 (10th Cir. Feb. 26, 2019) (reversing and remanding summary judgment)
- **Post Policy Exclusion:** tax deed sale of servient estate was not post-policy event that extinguished insured's access easement on the servient estate and thus servient owner's blocking insured's access was not excluded from coverage - [Buroker v. Phillips](#), No. 2017-08206 (N.Y. Sup. Ct. Feb. 27, 2019) (decision and order reversing summary judgment)

## Related Practices

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