# Banking and Finance Law Daily Wrap Up,TOP STORY—7th Cir.: Proper court for collection suit determined by township, not county,(Jul. 7, 2014)

By Richard A. Roth, J.D.

When deciding where to file a collection suit against a consumer, a debt collector must base its choice on the smallest geographical area that is used to determine venue in the relevant court system, the U.S. Court of Appeals for the Seventh Circuit has decided. The decision by the court, sitting *en banc*, reversed not only a decision by a three-judge panel but also an 18-year-old Seventh Circuit precedent that had allowed debt collectors suing in counties with multiple small claims courts a much broader choice of which court to use (*Suesz v. Med-1Solutions, LLC*, July 2, 2014, Hamilton and Posner, Circuit Judges).

One of the abuses the Fair Debt Collection Practices was intended to remedy was forum shopping by debt collectors, the court said. To do so, the act generally requires a debt collector to sue a consumer "only in the judicial district or similar entity" where the consumer signed the contract on which the suit is based or where the consumer lives when the suit is filed (15 U.S.C. §1692i). The question facing the court was what constitutes a "judicial district or similar legal entity."

**County court system.** The problem arose from Indiana's use of township small claims courts in Marion County, a large county with essentially the same boundaries as Indianapolis.

According to the appellate court, Marion County has nine townships, each with its own small claims court. The judges are elected by township residents, and the courts are funded and staffed by the townships. Indiana law ultimately fixes venue for a small claims suit based on the township, not based on the county, the court said.

**Collection suit.** The debt collector sued the consumer in an effort to collect a medical bill incurred at a Marion County hospital. The hospital was located in Lawrence Township, but the debt collector chose to sue the consumer in Pike Township. The suit resulted in a judgment against the consumer, who said he lived in an entirely different county.

The consumer struck back, suing the debt collector for having filed in the wrong judicial district in violation of the FDCPA. The federal district court dismissed the consumer's suit in reliance on *Newsom v. Friedman*, 76 F.3d 813 (7th Cir. 1996), and a three-judge panel of the Seventh Circuit affirmed (*Banking and Finance Law Daily*, Nov. 4, 2013).

Ten of the Seventh Circuit's 14 judges reheard the appeal and reversed the dismissal, explicitly overruling *Newsom* in the process. *Newsom* had been based on "details of court administration,"

the majority opinion said, while the new test of what constitutes a judicial district will be based on state venue rules.

**What is a judicial district?** "[T]erms that seem plain and easy to apply in some situations can become ambiguous in other situations," the majority opinion observed. The FDCPA does not define "judicial district," and even in state law there is no general definition. The term is "inherently flexible," the majority said. The dictionary definitions relied on in *Newsom* were said not to be helpful.

*Newsom* had looked at the court system in Cook County, Illinois, and decided that the six municipal department districts did not constitute separate judicial districts. Instead, all of Cook County—the location of Chicago—was a single judicial district under the FDCPA. That permitted a debt collector to file a suit in any of the municipal districts, which would facilitate the forum shopping the FDCPA was intended to stop, the majority pointed out.

Applying a venue-based approach allows the FDCPA restriction to adapt to any state's judicial structure, the majority opinion said. It also would better comply with the FDCPA's goal of protecting consumers against forum shopping.

**Retroactivity.** The court then faced a separate issue—whether it was appropriate to apply the new definition of judicial district to a debt collector that had relied on the old definition. The majority opinion said that it did have the authority to make its ruling prospective in effect, but that it would not do so.

The Supreme Court has said that in a civil suit it can make a ruling prospective only in order to avoid injustice or hardship to persons who justifiably relied on previous interpretations. However, the appellate court declined to do so for two reasons. First, the court said, relying on prior law alone is not enough to merit making a new definition prospective only. Second, a decision by one circuit court of appeals "does not create the degree of certainty" that would justify reliance so strong that retroactive application of a new definition would be unjust.

The decision was not unanimous. One judge concurred with the majority opinion, while two others dissented.

**Concurring opinion.** Judge Sykes agreed with the result, including the decision to overrule *Newsom*, but would have applied somewhat different reasoning. He expressed a concern that the majority could essentially be telling states how they were required to organize their court systems, which is beyond a federal court's power.

According to the concurring opinion, it was important not to interpret the FDCPA as requiring debt collectors to sue in a local, nonrecord court system if state law permitted them to sue in a court of record.

**Dissenting opinions.** Judges Kanne and Flaum, who authored the three-judge panel opinion that was rejected by the majority, dissented from the court's decision.

According to Judge Flaum, the new rule might be good policy but "it is clearly not compelled—nor even suggested—by the statutory text. Since the term "judicial district" was not defined by the FDCPA, it should be defined in accordance with the intent of the jurisdiction that created the courts in question. Indiana intended the township courts in Marion County to be subdivisions of a single judicial district, he said. A state could establish judicial districts based on factors other than venue, he noted.

***Stare decisis*.** Judge Kanne began by objecting to overturning *Newsom* without a compelling reason to do so. "I cannot find any remotely valid justification for overruling *Newsom* in the entirety of the majority's opinion," he wrote.

**Misinterpretation.** Even if one disregarded the great deference that is to be given to precedents, the majority opinion was wrong, Kanne continued. It "disregarded the established canons of statutory construction" and could not be "usefully or consistently applied" to court systems, he argued.

"Judicial district or similar legal entity" is not ambiguous, according to Kanne. It is unambiguous, leaving no need to inquire into policy concerns or statutory intent. Black's Law Dictionary, relied upon by the court in *Newsom*, provided a common understanding of the term that applied to the Marion County court system, he argued.

Moreover, according to Kanne, the majority's rule "leads to bizarre and inconsistent results irreconcilable with the statutory text *and* the intent behind it" (italics in the opinion). He asserted that under the rule of the majority opinion, many federal judicial districts would not qualify as "judicial districts" under the FDCPA, while many divisions of those districts would be. The majority's rule would create inconsistent results within the same judicial system, he also claimed.

Kanne concluded by saying that his greatest concern is that the majority's rule was no rule at all because state courts and legislatures are free to change their venue rules at any time, in whatever manner they wish.

The case is No. 13-1821.