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**U.S. Supreme Court Gives Debt Collectors
Arrow in Quiver Against FDCPA Suits**

February 27, 2013

On February 26, 2013, the United States Supreme Court handed defendants in federal Fair Debt Collection Practices Act ("FDCPA") cases a new form of leverage to defend against collections practices claims brought under that statute.

The FDCPA, 15 U.S.C. 1692 *et seq.*, is intended to provide civil remedies for debtors who are being unduly harassed by creditors attempting to collect on accounts owed. But, as outlined in an editorial in the *Denver Post* recently, the FDCPA has a tendency to be used for the benefit of plaintiff lawyers and to the detriment of the debtors it was intended to protect. (Article at http://www.denverpost.com/search/ci_17488098.)

In *Marx v. General Revenue Corp.*, 568 US ____ (2013), the Supreme Court upheld a Colorado district court's order allowing an award of costs to the prevailing defendant in a FDCPA claim. The suit, brought by the attorney detailed in the *Denver Post* article, claimed that Marx had been harassed by Sallie Mae's collection arm in its attempts to recoup payment on her defaulted student loans. After a bench trial resulted in a defense verdict, Senior Judge Richard P. Matsch awarded the collection agency its litigation costs.

Marx objected to the cost award, arguing that the FDCPA provision saying that a defendant can be awarded costs if the court determines that the suit was brought in "bad faith and for the purpose of harassment" was the exclusive basis by which costs can be awarded to a defendant in FDCPA cases. Because Judge Matsch hadn't made such a finding, Marx argued that any award of costs on a simple defense verdict was error.

In a rare victory for the defense bar on FDCPA claims, a 7-2 Supreme Court sided with Judge Matsch. In the majority opinion, Justice Thomas found that the FDCPA did not override judicial discretion in awarding costs to prevailing parties, and that both the FDCPA itself and F.R.C.P. 54(d)(1) provide adequate bases for a discretionary award of costs to a prevailing defendant regardless of any separate finding as to whether or not the suit originally had any merit.

As anyone who has defended an FDCPA suit knows, leverage for defendants is hard to come by under a statutory scheme that is weighted heavily toward plaintiff attorney fee awards. The *Marx* case now puts potential plaintiffs on notice that, should their case be tried to a defense verdict, they will likely be exposed to a significant cost award.