

## COLLECTIONS

Carl I. Pascoli, Jr.

*Revised for Statutory*

*Compliance as of May 2008*

*by:*

*James B Atkins*

*Atkins Law Offices, LC*

*Buffalo WV 25033*

This article should be used to as a vehicle to initiate collections proceedings, starting from a collection demand letter comparing with the Fair Debt Collection Practices Act (FDCPA), to the release of judgment. Accordingly, the practitioner should refer to these forms as a starting point in the collection of debts on the behalf of their creditor clients. This article should not be used as a sole guide to establish a collection practice, but should be utilized as a reference to forms when initiating proceedings against a debtor.

Focus of this article is to insure that the practitioner is in compliance with the Fair Debt Collection Practices Act as it relates to the proper wording of a demand letter. After submitting a demand letter to the debtor, then litigation is a proper course of action if the attorney deems that assets are available in order to collect upon any judgment obtained in court. The following is an outline of the forms enclosed with this article. As a caveat, the collection attorney should always refer to the FDCPA, 15 U.S.C. Section 1692-1692(o) before initiating debt collection practices against the debtor as well as refer to the West Virginia Consumer Credit and Protection Act, Chapter 46(A) of the West Virginia Code. Please refer to the following outline:

- A. Demand Letter (See Appendix A)
- B. Payment Plan and Promissory Note (See Appendix B)
- C. Collections Suit
  - 1. Circuit Court
    - 2. Suit on Account Stated (See Appendix C)
    - b. Suit on Written Contract (See Appendix D)
  - 2. Magistrate Court Suit (See Appendix E)
- D. Motion for Default Judgment
  - 1. Magistrate Court (See Appendix F)

2. Circuit Court (See Appendix G)
- E. Motion for Judgment on the Pleadings (See Appendix B)
- F. Executions
  1. Personal Property
    - a. Wage Attachment (Suggests Execution) (See Appendix J)
    - b. Suggestion; Execution on Bank Accounts (See Appendix J)
- G. Request for Abstract (See Appendix K)
- H. Order of Dismissal (See Appendix L)
- I. Order of Satisfaction and Dismissal (See Appendix M)
- J. Release of Judgment (See Appendix N)
- K. Further Commentary of FDOPA and Heintz, et al., v. Jenkins (See copy of decision).

DATE-

DNA1 -  
DNA2 -  
DNA3 -  
DC-, DS-, DZ-

RE: Outstanding Account/Invoice for CNAML -

Dear DITILE - DIN -:

Please be advised that this firm has been retained by CNAML - to collect a debt due and owing by you. According to our records, you owe the following amount:

ACCOUNT NO. PRINCIPAL INTEREST ATTORNEY FEES TOTAL OWED

Cmo/L1 - PRCHG/L1 - INCHG/L1 -	ATCHG/L1 -	TCCHG/L17 -
Cmo/L2 - PRCHG/L2 - INCHG/L2 -	ATCHG/L2 -	TCCHG/L27 -
Cmo/L3 - PRCHG/L3 - INCHG/L3 -	ATCHG/L3 -	TCCHG/L37 -
Cmo/L4 - PRCHG/L4 - INCHG/L4 -	ATCHG/L4 -	TCCHG/L47 -
Cmo/L5 - PRCHG/L5 - INCHG/L5 -	ATCHG/L5 -	TCCHG/L57 -
Cmo/L6 - PRCHG/L6 - INCHG/L6 -	ATCHG/L6 -	TCCHG/L67 -
Cmo/L7 - PRCHG/L7 - INCHG/L7 -	ATCHG/L7 -	TCCHG/L77 -
Cmo/L8 - PRCHG/L8 - INCHG/L8 -	ATCHG/L8 -	TCCHG/L87 -
Cmo/L9 - PRCHG/L9 - INCHG/L9 -	ATCHG/L9 -	TCCHG/L97 -
Cmo/L10 - PRCHG/L10 - INCHG/L10 -	ATCHG/L10 -	TCCHG/L107 -
Cmo/L11 - PRCHG/L11 - INCHG/L11 -	ATCHG/L11 -	TCCHG/L117 -
Cmo/L12 - PRCHG/L12 - INCHG/L12 -	ATCHG/L12 -	TCCHG/L127 -
Cmo/L13 - PRCHG/L13 - INCHG/L13 -	ATCHG/L13 -	TCCHG/L137 -
Cmo/L14 - PRCHG/L14 - INCHG/L14 -	ATCHG/L14 -	TCCHG/L147 -
Cmo/L15 - PRCHG/L15 - INCHG/L15 -	ATCHG/L15 -	TCCHG/L157 -
Cmo/L16 - PRCHG/L16 - INCHG/L16 -	ATCHG/L16 -	TCCHG/L167 -
TOTAL -		TCCHG/L17 -

Unless notice is received within thirty (30) days from your receipt of this letter that you dispute the validity of the debt, or any portion thereof, the debt will be assumed valid. If you dispute the debt, upon written request within thirty (30) days from your receipt of this letter, verification of the debt will be mailed to you. Further, upon written request within thirty (30) days after receipt of this letter, you will be mailed the name and address of the original creditor, if different from the present creditor.

This letter is an attempt to collect a debt, and any information obtained will be used for that purpose. You should note that in the event suit is filed and the creditor is successful in its recovery against you, you may be liable not only for the initial debt, but also interest from the date the debt was due, until paid, plus court costs. I would like to give you the opportunity to resolve this matter, and in that regard, request that you contact the undersigned to make arrangements for payment in full in order to avoid potential legal action. All communications and correspondence relating to this account must be directed to this office.

Our File No. FILE - CODE -

by: RATTN -

PROMISSORY NOTE

Appendix B

Principal Amount Due and Owning: SNEAMT -  
Interest Amount Due and Owning: SNEAMT -  
Attorney Fees Due and Owning: SACTAFNET -  
Court Costs Due and Owning: SNEAMT -  
Interest Rate of Note: INTRATE - %  
Civil Action Number, if applicable: CASE -  
Judgment Date, if applicable: IDAT -

THIS NOTE entered into this \_\_\_ day of \_\_\_, 199\_\_\_, by and between CNAMEL, hereinafter called party of the first part, and DNAMEL, hereinafter called party of the second part.

WITNESSETH

1. That the party of the first part hereby enters into a Promissory Note with the party of the second part wherein the party of the second part shall pay SNEAMT - each and every month, with the first payment beginning on PPDUEDATE -, and continuing every month thereafter until such time as the total principal, attorney fees (if any), court costs (if any), and interest, including interest currently due, and as accruing (if any), is paid in full (The third payment, if at payment under this Note, on such date, shall be the amount of SNEAMT -).

2. The cross consideration of this Note is:

a. If no legal action has been commenced (defined as the filing of a civil lawsuit), that no legal action shall be taken if the terms of this Note are met by the party of the second part.

b. If legal action has been commenced, the party of the first part shall abstract and record that certain judgment entered in the above-specified civil action by the CTL - COL -, in the amount therein specified, representing monies due and owing, plus court costs, and interest at the rate of Ten percent (10%) per annum until paid in full, and any attorney fees assessed therein, but shall not execute on same except as permitted by the terms of this Note.

3. The party of the second part agrees to pay all payments at the Law Offices of

4. It is further understood that upon default of any of the conditions herein expressed, and in particular upon the failure of any single payment to be timely made, the total debt shall immediately become due and demandable and the owner and holder hereof may at once exercise its power to pursue all legal means to collect said outstanding indebtedness.

WITNESS the following signatures and seals.

CNAML -  
BY

By: RATTYN -

DNAML -

STATE OF WEST VIRGINIA,

COUNTY OF BERKELEY, to-wit:

The foregoing and attached instrument, a Promissory Note, was acknowledged before me this \_\_\_\_ day of \_\_\_\_, 19\_\_, by RATTYN - on behalf of \_\_\_\_ attorney for CNAML -.

Notary Public

My Commission expires:

STATE OF \_\_\_\_

COUNTY OF \_\_\_\_ to-wit:

The foregoing and attached instrument, a Promissory Note, was acknowledged before me this \_\_\_\_ day of \_\_\_\_, 19\_\_, by DNAML -.

Notary Public

My Commission expires:

Our File No. FILE - CODE -

PLAINTIFF: CNAM -

DEFENDANT: DNAM -

DEFENDANT: CDNAM -

CASE NUMBER:

APPENDIX C

II. TYPE OF CASE:

TORTS	OTHER CIVIL	
Asbestos	Adoption	Appeal from Magistrate Court
Professional	Contract	Petition for Modification of Magistrate Sentence
Personal Injury	Real Property	Miscellaneous Civil
Product Liability	Mental Health	Other
Other Tort	Appeal of Administrative Agency	

III. JURY DEMAND: Yes No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR):

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? YES NO  
IF YES, PLEASE SPECIFY:

Wheelchair accessible hearing room and other facilities  
Interpreter or other auxiliary aid for the hearing impaired  
Reader or other auxiliary aid for the visually impaired  
Spokesperson or other auxiliary aid for the speech impaired  
Other:

Attorney

Name: RATTYN -

Firm:

Representing:

Plaintiff Defendant

Cross-Complainant

Cross-Defendant

Dated:

Telephone:

Signature

CIVIL CASE INFORMATION STATEMENT  
CIVIL CASES

In the Circuit Court, COL., West Virginia

SUMMONS

CT - CO - , WEST VIRGINIA

I. CASE STYLE:

Plaintiff(s)

Case # \_\_\_\_\_

Judge \_\_\_\_\_

CNAM -

c/o ENA1 -

ENA2 -

ENA3 -

PC -, FS - FZ -

V.

Defendant

Days to

Answer Type of Service

ID01 - ID67 -

~NA1 -  
DNA2 -  
DNA3 -  
DC -, ADDRICO -  
DS - DZ -

Civil Action No. \_\_\_\_\_

CNAM -  
Mailing Address:

ENA1 -

ENA2 -

ENA3 -

PC -, FS - FZ -

Plaintiff

V.

} SUMMONS

DNA1 -  
DNA2 -  
DNA3 -

DC -, DS - DZ -

Defendant

To the above-named Defendant:

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required to serve upon RAITTN -, plaintiff's attorney whose address is

, an answer including any related counterclaim you may have to the complaint filed against you in the above styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within ID02 - days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above style civil action.

Dated \_\_\_\_\_

Clerk of Court \_\_\_\_\_

Original and \_\_\_\_\_ copies of complaint furnished herewith.

IN THE CT - CO -, WEST VIRGINIA

CNAM - ,  
PLAINTIFF,

V. CIVIL ACTION NO. CASE -

DNAM - ,  
DEFENDANT.

COMPLAINT

Comes now the Plaintiff, CNAM - , by and through its attorney, RAITYN - and  
and respectfully complaining states:

1. The Defendant is indebted to the Plaintiff in the amount of \$NPAMT/LT - for medical services and supplies provided to the Defendant, as appears more fully as Exhibit A attached hereto and incorporated herein by reference.

WHEREFORE, the Plaintiff, CNAM - , prays that the Defendant be cited to appear and to answer this Complaint, and that judgment be rendered in favor of the Plaintiff, and against the Defendant, DNAM - , in the amount of \$NPAMT/LT - plus pre-judgment and post-judgment statutory interest at the rate of ten percent (10%) per annum from the date of service for each such account for services rendered, until satisfied, plus the costs of this action on Plaintiff's behalf expended, and any other such relief as this Court deems reasonable and just.

CNAM -  
BY COUNSEL

by  
RAITYN -

IN THE CT - CO -, WEST VIRGINIA

CNAM - ,  
PLAINTIFF,

V. CIVIL ACTION NO CASE -

DNAM - , AND  
CDNAM -  
DEFENDANTS.

COMPLAINT

Comes now the Plaintiff, CNAM - , by and through its attorney, RAITYN - and  
and respectfully complaining states:

1. The Defendants entered into a contract with the Plaintiff on KDATC - , a copy of which is attached hereto, marked Exhibit A, and incorporated herein by reference.

2. The Defendants have breached said contract, and, as a result thereof, the Plaintiff has suffered damages in the amount of \$PRBAL - .

3. The Defendants are indebted jointly and severally to the Plaintiff in the amount of \$PRBAL - , plus pre-judgment contractual interest at the rate of INTRATE - per centum per annum.

Wherefore, Plaintiff prays that Defendants be cited to appear and to answer this Complaint, and that judgment be rendered in favor of the Plaintiff, CNAM - , and against the Defendants, DNAM - and CDNAM - , jointly and severally, in the amount of \$PRBAL - , plus pre-judgment interest at the contractual rate of INTRATE - per centum per annum from the date of LCHGC - until the date of the judgment herein, and post-judgment interest at the statutory rate of INTRATE - per centum per annum from the date of the herein judgment until satisfied, plus the costs of this action on Plaintiff's behalf expended, including the statutory

APPENDIX E  
IN THE MAGISTRATE COURT OF CO. COUNTY, WEST VIRGINIA

docketing fee of Seventy Dollars (\$70.00), and any other such relief as this Court deems reasonable and just.

(\$145.00)  
5/08  
CNAM -  
BY COUNSEL

By: RAITTN

Our File No. FILE - /CODE -

Change \$ 70  
to \$ 145

Name, Address & Phone Number of Plaintiff:

Case No. \_\_\_\_\_

V.

Name, Address & Phone Number of Defendant(s)

DNM1 -  
DNM2 -  
DNM3 -  
DC - , DS -  
DZ -

CIVIL COMPLAINT

RAITTN, on behalf of the plaintiff acting in the capacity of attorney at law, alleges the following as true and accurate: The Defendant heretofore named is indebted to the Plaintiff on revolving charge account, said account being stated, in the amount of \$145.00 - and requests the following relief from the court: Judgment against the Defendant in favor of the Plaintiff, in the principal sum of \$145.00 - and statutory prejudgment interest at the rate of 10 per centum per annum thereafter until satisfied, plus the costs of this action on Plaintiff's behalf expended.

At \_\_\_\_\_

Date \_\_\_\_\_

NOTICE: Any party in a civil action seeking over \$20.00 or possession of real estate has the right to elect that the case be tried by a jury. You must give written notice to the magistrate court within 20 days from when the first timely answer to the complaint is made or 5 days from when service of the summons and complaint is made for individual injury and death actions. If you do not notify the magistrate court within the appropriate time period, you give up your right to a jury trial. The jury fee will be assessed against the losing party if the case is tried by a jury of may be presented between the parties if the case is settled before trial.

OPTIONAL NOTICE OF ELECTION:

As plaintiff in the above action, I wish to have a jury trial.

Signature \_\_\_\_\_

Date \_\_\_\_\_

NOTICE: Any person involved in court proceedings who has a disability and needs special accommodation would inform the court sufficiently in advance so that arrangements can be made if possible.

WV. Code §20-2-1, §20-2-401 Mag. C. Ch. Rule 2, 6A

WHITE-Person  
GREEN-Defendant  
YELLOW-File  
PINK-Plaintiff

IN THE CT - CO -, WEST VIRGINIA

DATE -

CTCL - Clerk  
CTL - COL -  
CNA3 -  
CRC -, CTS - CTZ -

RE: CNAAL - v. DNAML -  
Civil Action No. CASE -

Dear CTCL -:

Our office has not received a copy of any answer or responsive pleading in the above-captioned matter, and therefore presumes that none has been filed. In that regard, please find enclosed a Default Judgment Affidavit prepared by our office to be filed in the above matter, as well as a proposed Order. Please request that a Magistrate enter judgment on behalf of CNAAL -. In addition, please mail an attached copy of the Order to my attention at the above address.

Please note that the fee computed in this matter may have requested pre-judgment interest. Sections 56-6-17 and 56-6-31 of the W. Va. Code requires that pre-judgment interest be awarded, as a matter of law. See, *Grove v. Myers*, 302 S.E. 2d 636 (W. Va. 1989), and *Board of Education v. Zander, Martin & Miltzard, Inc.*, 390 S.E.2d 796 (W. Va. 1990). Further, pre-judgment interest and the principal are to be aggregated in the award of judgment. Sections 56-6-17 and 56-6-39 of the W. Va. Code. Our Motion for Default calculates the pre-judgment interest as of the date of the Motion, and aggregates same with the principal for purposes of providing your office a sum certain for the judgment amount. The proposed Order is for this aggregate sum. We are moving for judgment for the entire sum.

Thank you very much for your assistance. In the event that you have any questions regarding this matter, please do not hesitate to contact me. I remain,

Very truly yours,

by: RAITYN -

Enclosure  
Our File No. FILE - CODE -

CNAM -,

Plaintiff,

v.

DNAML -, and  
CDNAM -

Defendants.

MOTION FOR DEFAULT JUDGMENT

Comes now the Plaintiff, CNAAL -, by and through its attorney, RAITYN - and moves this Honorable Court to grant a Default Judgment pursuant to Rule 55 of the West Virginia Rules of Civil Procedure.

CNAM -  
By Counsel

By \_\_\_\_\_  
RAITYN -



IN THE CT ~ CO ~, WEST VIRGINIA

CNAM ~,

Plaintiff,

v.

CIVIL ACTION NO. CASE ~

DNAM ~, and  
CDNAM ~

Defendants,

**AFFIDAVIT FOR DEFAULT JUDGMENT**  
(PLAINTIFF'S ATTORNEY)

STATE OF WEST VIRGINIA  
COUNTY OF \_\_\_\_\_ to-wit:

RAITTN ~, being duly sworn says that:

1. He is the attorney for the Plaintiff in the above styled action;
2. He has either searched the files in the above styled cause, or telephoned or otherwise contacted the Office of the Clerk of this Honorable Court to inquire as to service of process of the above-styled action.
3. The Summons and Complaint were duly served on DNAM ~, the defendant in the above-styled cause, on the \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_ (title), authorized to make

such service who served the same:

\_\_\_\_\_ (a) by delivering to him personally a copy of the summons and the complaint together; or

\_\_\_\_\_ (b) by delivering a copy of the summons and of the complaint together at his usual place of abode to a member of his family above the age of sixteen (16) years and giving to such person information of the purport of the Summons and Complaint, the Defendant not being found; or

\_\_\_\_\_ (c) by delivering a copy of the summons and of the complaint together by registered or certified mail, return receipt requested and delivery restricted to the addressee, either accepted by the Defendant or Defendant's agent, or delivery

refused, personal or substituted service being unable to be effected after use of due diligence; or

\_\_\_\_\_ (d) by delivering a copy of the summons and of the complaint together by first class mail, postage prepaid, to the Defendant, together with two copies of a notice and acknowledgment of receipt, which acknowledgment of receipt has been executed by the Defendant under oath or by affirmation, and returned to the Clerk of this Court, the registered or certified mail being unclaimed, or otherwise not accepted or refused by the Defendant; or

\_\_\_\_\_ (e) by delivery to the Secretary of State pursuant to statute.

4. Under the provisions of said Summons and the appropriate Rules of Civil Procedure, the Defendant was required to serve upon counsel for Plaintiff an Answer or other pleading within \_\_\_\_\_ days of said service, and more than such number of days have elapsed since the date on which the Defendant was served with the Summons and Complaint, excluding the day of service;

5. No Answer or notice of appearance has been served upon counsel for Plaintiff, or filed in said action, and the Defendant has wholly failed to appear, plead, or otherwise defend in this action, and the time for answering has expired;

6. Upon information received, and to the best of his knowledge, the Defendant, DNAM ~, is not now nor was he at the time of the institution of this action, in the Military Service of the United States of America, nor is he an incompetent, incarcerated convict, nor infant, nor was he under any of the above set forth disabilities at the institution of this action;

7. The Plaintiff's claim against the Defendant in this action is for a sum certain or for a sum which can by computation be made certain, which sum he believes is \$INTRI ~, with post-judgment interest, and which he believes the Plaintiff is entitled to recover, together with SACTAFNET ~, as attorney fees, and costs.

8. He executes this Affidavit in accordance with Rule 55 of the R.C.P. for the purpose of enabling the Plaintiff herein to obtain a default judgment against the Defendant herein for the Defendant's failure to answer or otherwise appear or defend as to Plaintiff's Complaint.

\_\_\_\_\_  
Attorney for Plaintiff

Taken, sworn to, and subscribed before me, a Notary Public in and for \_\_\_\_\_  
County, West Virginia, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_  
\_\_\_\_\_

IN THE CT ~ CO ~, WEST VIRGINIA

CNAM ~,

Plaintiff,

v.

CIVIL ACTION NO. CASE ~

DNAM ~, and

CDNAM ~

Defendants.

**AFFIDAVIT FOR DEFAULT JUDGMENT**  
(PLAINTIFF)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_, to-wit:

The undersigned, being duly sworn, deposes and says as follows:

1. That he is the Plaintiff, or the duly authorized agent or representative of the Plaintiff, in the above-titled action and has personal knowledge of the facts set for in this affidavit or is familiar with the books, records, and accounts of the Plaintiff; That the Defendant herein has failed to appear, plead, or otherwise defend as to Plaintiff's Complaint, and the Defendant has failed to serve upon the Plaintiff a copy of any Answer or any other defense or pleading as to Plaintiff's Complaint;
3. \_\_\_\_\_ (a) That such bonds, notes or other evidence of debt have been assessed for taxation for each and every tax year on the first day of which Plaintiff was the owner of same, not exceeding five years prior to that in which the action, suit or proceeding was instituted and not in any event, for any period beginning earlier than the first day of January, 1953, or \_\_\_\_\_ (b) That such bonds, notes, or other evidence of debt constituted a part of the capital employed in the business of such plaintiff or claimant and were assessed or taxed as such, or otherwise assessed or taxed as prescribed by law, or \_\_\_\_\_ (c) That such bonds, notes or other evidence of debt sued upon are not taxable under the law in the hands of the Plaintiff or claimant, or are otherwise exempt from taxation.

IN THE CL~ CO~, WEST VIRGINIA

CNAML~

Plaintiff,

V.

CIVIL ACTION NO. CASE~

DNAM~ and

CDNAM~

Defendants.

FINAL JUDGMENT ORDER

This \_\_\_ day of \_\_\_, 19\_\_\_, upon the Motion of the Plaintiff, CNAML~, by and through counsel, RAITTYN~ and \_\_\_ for entry of

a Default Judgment in the above-captioned matter, upon the affidavits on behalf of the Plaintiff in support of said motion, and setting forth all requirements thereof, pursuant to Rule 55(b)(2) of the West Virginia Rules of Civil Procedure, this Court holds as follows:

The record in the instant matter indicates that the Complaint in the above-captioned matter was filed in this Court, and that a Summons and Complaint were duly served upon the Defendants, DNAML~ and CDNAML~. No answer or other defense or pleading has been filed by said Defendants, and the Defendants have failed to appear, to plead or otherwise defend in this action, in the time permitted by law. It further appears to the Court that the Defendants are not infants, incompetent persons, incarcerated convicts or members of the Armed Forces of the United States, and neither party requesting a jury and the Plaintiff expressly waiving a jury, the Court holds as follows. The Plaintiff has requested judgment for a principal sum owed, plus pre-judgment interest, and other relief. Pre-judgment interest must be awarded, if requested, as a matter of law. *Grove v. Myers*, 382 S.E. 2d 536 (W.Va. 1990); *Zando, Martin & Milledge, Inc.*, 390 S.E. 2d 796 (W.Va. 1990). Further, amounts of pre-judgment interest must be segregated with the principal, and judgment entered for the aggregate. W.Va. Code Sections 56-6-27 & 56-6-29. The affidavit of the Plaintiff has calculated, as a sum certain, the pre-judgment interest.

Wherefore, it is hereby ADJUDGED and ORDERED that the Plaintiff's Motion for Default Judgment be and hereby is GRANTED. Further, it is ADJUDGED and ORDERED

that the Plaintiff, CNAML~, do recover of and from the Defendants, DNAML~, and CDNAML~, jointly and severally, sum of \$NTP1~ with post-judgment interest at the rate of ten percent (10%) per annum from the date of judgment until paid, plus attorney fees of \$ACTAFNET~, and the costs of the Plaintiff on its behalf expended.

Further, the Clerk is directed to release any surety bond that may have been posted by the Plaintiff, if any, and to return same to Plaintiff's counsel at the address of record. The Clerk shall further enter the foregoing as of the day and date first hereinabove written, and is further directed to retire this action from the docket and place the same among those actions having previously ended.

CIRCUIT COURT JUDGE

Prepared by:

RAITTYN~

Our File No. FILE~CODE~

IN THE CT - CO -, WEST VIRGINIA

CNAML - ,

Plaintiff,

V.

CIVIL ACTION NO. CASE -

DNAM - ,

Defendant.

**MOTION FOR JUDGMENT ON THE PLEADINGS**

Comes now the Plaintiff, CNAML - , by and through its attorney, RATTYN - and

and moves this Honorable Court to enter judgment upon the pleadings, on the following grounds:

1. The Defendant, DNAML - , has filed a civil answer in the above-captioned matter, confessing judgment in the amount of \$1007 - , plus pre-judgment and post-judgment statutory interest at the rate of Ten percentum (10%) per annum from LCHG - until satisfied, plus the costs of this action on Plaintiff's behalf expended.

2. The Plaintiff accepts the confession of judgment of the Defendant in the amount so confessed, and requests that this Court enter judgment in favor of the Plaintiff, CNAML - , and against the Defendant, DNAML - , in the amount of \$1007 - , plus pre-judgment and post-judgment statutory interest at the rate of Ten percentum (10%) per annum from LCHG - until satisfied, plus the costs of this action on Plaintiff's behalf expended.

CNAML -  
BY COUNSEL

By: \_\_\_\_\_  
RATTYN -

IN THE CT - CO -, WEST VIRGINIA

CNAM - ,

Plaintiff,

V.

CIVIL ACTION NO. CASE -

DNAM - ,

Defendant.

**CIVIL ANSWER**

This \_\_\_\_ day of \_\_\_\_\_, 19\_\_ , I, DNAML - , the Defendant in the above-captioned matter, hereby Answer the civil complaint filed by CNAML - , and as my answer, confess judgment in favor of the Plaintiff, CNAML - , in the amount of \$1007 - , plus pre-judgment and post-judgment statutory interest at the rate of Ten percentum per annum from LCHG - , until satisfied, plus the costs of this action on Plaintiff's behalf expended.

DNAM -

STATE OF \_\_\_\_\_,

COUNTY OF \_\_\_\_\_, to-wit:

Taken, sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_ , by  
DNAML - .

Notary Public \_\_\_\_\_

My commission expires: \_\_\_\_\_

Appendix I  
IN THE MAGISTRATE COURT OF \_\_\_\_\_ COUNTY, WEST VIRGINIA

Case No. \_\_\_\_\_

Address \_\_\_\_\_

v. \_\_\_\_\_

Defendant \_\_\_\_\_

Judgment Debtor's Social Security No. \_\_\_\_\_

Address \_\_\_\_\_

Judgment Debtor's Date of Birth \_\_\_\_\_

AFFIDAVIT FOR SUGGESTIVE EXECUTION

The judgment creditor, \_\_\_\_\_ being duly sworn, states that in the above case on \_\_\_\_\_ he or she was awarded a money judgment against \_\_\_\_\_ with interest from the date of judgment at the rate of \_\_\_\_\_ percent per year, plus \$ \_\_\_\_\_ in costs.

The current unpaid balance of the judgment, with any partial payments applied to reduce accrued interest, then to reduce the judgment principal, is:

Unpaid Principal	\$ _____
Unpaid Interest	_____
Unpaid Costs	_____
Costs of this Execution (if costs awarded in judgment)	_____
TOTAL	\$ _____

The judgment creditor further states the belief that the judgment debtor is employed by the employer identified below and the weekly disposable income or wages of the judgment debtor exceeds or will exceed 30 times the federal minimum hourly wage.

Employer: \_\_\_\_\_  
Employer address: \_\_\_\_\_

Signature of Judgment Creditor \_\_\_\_\_

My commission expires on: \_\_\_\_\_ day of \_\_\_\_\_  
Signature of Mayor/Magistrate Court Clerk \_\_\_\_\_

W.Va. Code §§ 38-5A-2 & 3, § 38-5B-2

SCA-14666 / 598

(For Circuit Court)

Refile to: Appendix I

AFFIDAVIT FOR SUGGESTIVE EXECUTION

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA TO-WIT:

\_\_\_\_\_ being by me first duly sworn, deposes and says that \_\_\_\_\_ secured a judgment against \_\_\_\_\_ whose address is \_\_\_\_\_ for the sum of \$ \_\_\_\_\_

and cost amounting to \$ \_\_\_\_\_ in the Circuit Court of Kanawha County, West Virginia, on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

And the undersigned further states upon oath, that the defendant, \_\_\_\_\_ is now employed by \_\_\_\_\_ at \_\_\_\_\_ and that he believes that the weekly disposable earnings in excess of thirty times the federal minimum hourly wage in effect at the time the earnings were payable are now, or will hereafter, within one year from this date, become due to the judgment debtor.

X \_\_\_\_\_

Cathy S. Gatson  
Clerk of the Circuit Court

DATE: \_\_\_\_\_

IN THE MAGISTRATE COURT OF \_\_\_\_\_ COUNTY, WEST VIRGINIA

APPENDIX J

CASE NAME: \_\_\_\_\_

Name & Address of Judgment Debtor Subject to This Suggestion: \_\_\_\_\_

Case No. \_\_\_\_\_

Judgment Debtor's Social Security No. \_\_\_\_\_

Judgment Debtor's Date of Birth \_\_\_\_\_

— fold here —

— fold here —

SUGGESTION OF PERSONAL PROPERTY

[Other than Salary and Wages]

On \_\_\_\_\_, 19\_\_\_\_, a judgment was awarded to \_\_\_\_\_ as judgment creditor, in the amount of \$ \_\_\_\_\_, with interest from the date of judgment at the rate of \_\_\_\_\_ percent per year, plus \$ \_\_\_\_\_ in costs. A writ of execution has previously issued against the judgment debtor and has not been satisfied. The current unpaid balance of the judgment is:

Unpaid Principal	\$ _____
Unpaid Interest	_____
Unpaid Costs	_____
Costs of this Suggestion	_____
<b>TOTAL</b>	<b>\$ _____</b>

The judgment creditor suggests that the following person, corporation or other entity:

Name of person, corporation or other entity (suggestor): \_\_\_\_\_

Address: \_\_\_\_\_

is indebted or liable to the judgment debtor, or is in possession of property belonging to the judgment debtor, which is subject to the judgment creditor's previously issued writ of execution. This property consists of the following: \_\_\_\_\_

Date \_\_\_\_\_

Signature of Judgment Creditor \_\_\_\_\_

W.Va. Code §§ 38-5-10, 38-4-7

Wills - Return  
Covers - Signatures  
Values - \$50

DATE-

CTCL~, Clerk  
CTL~ COL~  
CNA3~  
CTC~, CTS~ CTZ~

RE: CNAAL~ v. DNAML~  
CIVIL Action No. CASE~

Dear CTCL-:

Please find enclosed a Suggestion to be filed against the above-named debtors' bank account. Also enclosed is a Writ of Execution, which, pursuant to Section 38-5-10 of the West Virginia Code, is necessary to create the Execution Lien for service of the Suggestion. We desire immediate execution on the Suggestion; therefore, please perform an office execution on the Writ.

Enclosed is a check to cover your fees in this matter. If you have any questions regarding this matter, please do not hesitate to contact me. I remain,

Very truly yours,

by: RAATTN~

Enclosures  
One Fee No. FILE~C0028~

WRIT OF EXECUTION

CIRCUIT COURT OF CO., WEST VIRGINIA

Plaintiff

v.

DNAM-  
DA1-  
DA2-  
DC-, DS-, DZ-  
Defendant

Civil Action No.: CASE-  
Execution No.: \_\_\_\_\_

In The Name Of The State Of West Virginia:  
TO THE SHERIFF OF CO.,

Pursuant to judgment taken in this action on JDA1-.

We command you that of the goods and chattels of DNAM- in your bailiwick, you cause to be made the sum of \$CARGAL- which DNAM- recovered against DNAM- whereas DNAM- convicted, as appears to us of record; and make your return thereof on the \_\_\_\_ day of \_\_\_\_\_.

Dated: DATE-  
Attorney: RATTYN-  
Address: \_\_\_\_\_

CLERK OF COURT

Phone: \_\_\_\_\_  
By: \_\_\_\_\_  
DEPUTY CLERK

File No.: \_\_\_\_\_

NOTICE TO JUDGMENT DEBTOR: If all of your property has been levied upon and sold, and if you wish to object to the sale, you must do so promptly by filing an affidavit of exemption with the clerk. An affidavit must be filed with the clerk. You may wish to consult an attorney. This notice is given to you in accordance with the provisions of the Code of West Virginia, Title 48, Chapter 2, Section 1-4.

This writ is the writ of execution and serving to the Plaintiff, including judgment creditor, judgment, and court costs, expended to obtain. It does not include the Sheriff's commission for property upon which levy is to be made, or the commission to dependent on the value of the property seized.

Property to be seized: ID12- ID13-

Appendix J

SUGGESTION

(Circuit Ct)

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_ COUNTY, WEST VIRGINIA  
WHEREAS, in a civil action in which judgment was recovered \_\_\_\_\_

on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_\_  
County, West Virginia,

against \_\_\_\_\_

for \$ \_\_\_\_\_ with legal interest thereon from the \_\_\_\_\_ day of \_\_\_\_\_

which judgment a writ of Fieri Facias has issued, and is now in the hands of the Sheriff of \_\_\_\_\_ County, unpaid and unsatisfied, the Plaintiff, by attorney, suggests that there is a liability, by reason of the lien of said writ upon \_\_\_\_\_

of said County, who is not the judgment debtor. The Clerk is therefore required to issue a summons upon said suggestion.

P. O.

STATE OF WEST VIRGINIA

To the Sheriff of \_\_\_\_\_ County,

In the name of the State of West Virginia, we command you to summon \_\_\_\_\_

if \_\_\_\_\_ be found in your bailiwick, to serve upon \_\_\_\_\_

Plaintiff's Attorney, whose address is \_\_\_\_\_

an answer, in writing under oath, to the above suggestion within 20 days after service of this summons.

NOTICE TO JUDGMENT DEBTOR:  
You may be entitled to exemptions from levy under Federal or State law. Should this levy or attachment be made, you may wish to consult an attorney promptly upon the receipt of a summons or contact the undersigned clerk.

Defendant: \_\_\_\_\_

Revised by: 4/7/81

CLERK OF COURT

APPENDIX K

Appendix K  
IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

Case No. \_\_\_\_\_

Plaintiff \_\_\_\_\_

Address \_\_\_\_\_

v. \_\_\_\_\_

Defendant \_\_\_\_\_

Judgment Debtor's Social Security No. \_\_\_\_\_

Address \_\_\_\_\_

Judgment Debtor's Date of Birth \_\_\_\_\_

ABSTRACT OF JUDGMENT

Please find enclosed our check for \$1.00 made payable to the County Clerk, along with an abstract of judgment in the aforementioned case. Please have this filed in the County Clerk's office. Thank you very much for your assistance.

Dear \_\_\_\_\_

If you have any questions, please feel free to contact me. I remain,

Very truly yours,

by: RATTYN~

Enclosures  
Our File No. FILE~/CODE~

On \_\_\_\_\_, in the above case, (check the appropriate box)

☐ the court granted judgment in favor of \_\_\_\_\_

against \_\_\_\_\_

☐ \_\_\_\_\_ became delinquent in paying court-imposed

assessments in the following amounts:

Money award or assessment \$ \_\_\_\_\_ plus Court costs: \$ \_\_\_\_\_

plus interest at the rate of \_\_\_\_\_ percent per year, running from the date of judgment on any unpaid balance.

I certify that the above is a true abstract of the judgment order entered in the above case.

Date of Abstract \_\_\_\_\_ Clerk: \_\_\_\_\_ Signature \_\_\_\_\_



APPENDIX L

IN THE CT ~ CO ~, WEST VIRGINIA

CNAM ~, PLAINTIFF,

V. CIVIL ACTION NO. CASE ~  
DNAM ~, DEFENDANT,

ORDER OF DISMISSAL

This \_\_\_\_ day of \_\_\_\_, 19 \_\_\_\_, came the Plaintiff, CNAM ~, by and through its counsel, RATTYN ~ and \_\_\_\_ and moved this Court for an Order of Dismissal on the grounds that the Defendant in the above-styled action has filed Bankruptcy and further has been granted a discharge by the United States Bankruptcy Court; And that the debt which is the subject matter of the instant case has been discharged in bankruptcy, and cannot be collected, or the subject of a complaint;

It is hereby ORDERED and ADJUDGED that the above matter shall be Dismissed. The Clerk is directed to enter the foregoing as of the day and date first hereinabove written, and to retire this matter from the docket and place the same among those causes of action previously ended.

Submitted by: \_\_\_\_\_

Judge \_\_\_\_\_

By \_\_\_\_\_  
RATTYN ~

APPENDIX M

IN THE CT ~ CO ~, WEST VIRGINIA

CNAM ~, PLAINTIFF,

V. CIVIL ACTION NO. CASE ~  
DNAM ~, DEFENDANT.

ORDER OF SATISFACTION  
AND DISMISSAL

This \_\_\_\_ day of \_\_\_\_, 19 \_\_\_\_, came the Plaintiff hereto by counsel, RATTYN ~ and \_\_\_\_ and having advised the Court that all matters in controversy herein between the parties have been settled and satisfied;

And upon motion of the plaintiff hereto, it is hereby ADJUDGED and ORDERED that the Clerk shall retire this case from the docket and place it among those causes of action ended. The Clerk shall enter the foregoing as of the day and date first hereinabove written.

Prepared By: \_\_\_\_\_

JUDGE \_\_\_\_\_

By \_\_\_\_\_  
RATTYN ~

APPENDIX N  
RELEASE OF JUDGMENT

The Judgment Creditor, CNAAL ~ hereby releases a judgment in favor of said judgment creditor against DVAAL ~ in the amount of \$1AMT ~ plus interest, attorney fees, and costs, as may be awarded therein, rendered on JDAT ~ by the CTL ~ COL ~.

Dated \_\_\_\_\_

CNAAL ~

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

to-wit: \_\_\_\_\_

Acknowledged before the subscriber by \_\_\_\_\_, who signed the writing above for CNAAL ~, this \_\_\_\_\_ of \_\_\_\_\_, 19 \_\_\_\_.

My Commission expires: \_\_\_\_\_

Notary Public \_\_\_\_\_

If Judgment has been recorded:

Judgment Lien Book BOOK ~ Page PAGE ~

Office of the Clerk of the County Commission of COL ~, CTS ~

This document prepared by RATTIN ~ of the law firm of \_\_\_\_\_

**Further Commentary of FDICPA and Related, et al., v. Jenkins**

(A) The Fair Debt Collection Practices Act of 1978 (the Act or FDICPA), 15 USC #1692-1692(o), was passed by the United States Congress regarding debt collection practices of debt collectors. Those parties which are regulated by the FDICPA includes third party collection agencies, creditors who collect their own accounts using a different name or who collect for another person, repossession companies, and more importantly, attorneys regularly collecting consumer debts. The Act itself applies only to debts which arise out of a consumer transaction.

On July 9, 1986, the limited attorney exemption in the Fair Debt Collection Practices Act (FDICPA) was eliminated. Subsequently, any attorney who regularly collects consumer debts are covered under all provisions of the FDICPA. As you will see later, the FDICPA covers the attorney on pre-suit and legal collections.

Essentially, when an attorney is hired to collect on a consumer debt for his or her client, they are asked to send a collection letter to the debtor for payment of the debt. This letter must be in compliance with the FDICPA. Accordingly, the language utilized in such a letter is critical for its compliance under the Fair Debt Collection Practices Act. A copy of a sample letter in compliance with the FDICPA has been included in these materials. Any letter sent to a debtor for collection of a debt, must include the following:

- (1) The amount of the debt;
- (2) The name of the creditor to whom the debt is owed;
- (3) A statement that unless the consumer, within 30 days after receipt of the notice, disputes the validity of the debt, or any other portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) A statement that if the consumer notifies the debt collector in writing within the 30 day period from receipt of a demand letter that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification of judgment will be mailed to the consumer by the debt collector;

(3) A statement that upon the consumer's written request within a thirty day period from the receipt of the demand letter, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

Moreover, any written demand letter must contain the following statement known as the "Miranda Warning" in the collection law industry: "This letter is an attempt to collect a debt and any information obtained will be used for that purpose."

In addition to insuring that an attorney's collection letter is in compliance of the FDCPA, it is also critical that the collection attorney chooses the right forum when filing a lawsuit and when seeking judgment against a debtor. When an attorney brings a legal action to collect on a debt against a consumer, a lawsuit must be filed in the judicial district or similar entity where the consumer signed the contract, or where the consumer resides at the commencement of the lawsuit. Also, if an action is commenced to enforce an interest in real property securing the consumer's obligation, the lawsuit must be filed only in the judicial district where such real property is located. See, 15 USC 1692(f). It is very important that collection attorneys are aware of the venue requirements under the FDCPA. Failure to comply with the venue requirements under the FDCPA will expose the attorney for civil liability under 15 USC 1692(k).

Under 15 U.S.C. 1692(k)(1), the act establishes a cause of action for damages sustained by any person as a result of a collector failing to comply with any provision of the Act. Though the term actual damages is not defined in the FDCPA, Congress has deferred to the Courts to apply actual damages to individual cases. Usually, actual damages will include pecuniary, and physical injuries such as heart attacks, and other physical ailments. Also, Courts have uniformly allowed damages for allegations of emotional distress as a part of the actual damages under the Act. In addition to the actual damages, the Act provides for Courts to award any person affected by non-compliance statutory damages of up to \$1000.00. 15 USC 1692(k)(2)(A). Also, as a caveat to attorney's practicing collections law, any Plaintiff successful in litigating a FDCPA claim, is entitled to awards of costs and reasonable attorney's fees. 15 USC 1692(k)(3).

As a further caveat to attorneys practicing collections law, it is imperative to read the landmark case of, *Heintz, et al v. Jenkins*, (cite as: 1995 WL 224607 (US Ill.), decided April 18, 1995 by the U.S. Supreme Court. The court ruled that collection attorneys engaged in litigation activities when collecting a debt are covered by the Act. In 1986, Congress eliminated

the exemption of attorneys from the Act. However, when Congress repealed the exemption, it did not create a narrower, litigation-related, exemption to fill the void. Nonetheless, courts have been reluctant to apply the Act to litigation activities of a collection attorney until the recent ruling in *Heintz*. Therefore, the convention legal wisdom adhered to the theory that once a lawyer initiates a lawsuit, the FDCPA no longer applies. Regrettably, for the collection attorney, all collection activities, legal and not-legal alike come under the auspices of the Act.

Conventional

TPO:

Conventional

GEORGE W. HEINTZ ET AL., PETITIONERS V.  
DARLENE JENKINS  
CERTIORARI FROM THE UNITED STATES COURT  
OF APPEALS FOR THE SEVENTH CIRCUIT

115 S.Ct. 1489  
131 L.Ed.2d 395  
63 U.S.L.W. 4296  
No. 94-367.

Argued February 21, 1995  
Decided April 18, 1995

Petitioner Heintz is a lawyer representing a bank that sued respondent Jenkins to recover the balance due on her defaulted car loan. After a letter from Heintz listed the amount Jenkins owed as including the cost of insurance bought by the bank when she reneged on her promise to insure the car, Jenkins brought this suit against Heintz and his law firm under the Fair Debt Collection Practices Act, which forbids "debt collector[s]" to make false or misleading representations and to engage in "various abusive and unfair practices." The District Court dismissed the suit, holding that the Act does not apply to lawyers engaging in litigation. The Court of Appeals disagreed and reversed.

Held: The Act must be read to apply to lawyers engaged in consumer debt-collection litigation for two rather strong reasons. First, a lawyer who regularly tries to obtain payment of consumer debts through legal proceedings meets the Act's definition of "debt collector"; one who "regularly collects or attempts to collect, directly or indirectly, (consumer) debts owed . . . another," 16 U.S.C. 1692a(6). Second, although an earlier version of that definition expressly excluded "any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client," Congress repealed this exemption in 1989 without creating a narrower, litigation-related, exemption to fill the void. Heintz's arguments for nonetheless inferring the latter type of exemption (1) that many of the Act's requirements, if applied directly to litigation activities, will create harshly anomalous results that Congress could not have intended; (2) that a protestant statement by one of the 1989 repeal's sponsors demonstrates that, despite the removal of the earlier blanket exemption, the Act still does not apply to lawyers' litigating activities; and (3) that a nonbinding "Commentary" by the Federal Trade Commission's staff establishes that attorneys engaged in sending dunning letters and other traditional debt-collection activities are covered by the Act, while those whose practice is limited to legal activities are not are unconvincing. Pp. 3-8. 36 F.3d 533, affirmed.

BREYER, J., delivered the opinion for a unanimous Court.

JUSTICE BREYER delivered the opinion of the Court.

The issue before us is whether the term "debt collector" in the Fair Debt Collection Practices Act, 91 Stat. 574, 15 U.S.C. 1692-1692o (1986 ed. and Supp. V), applies to a lawyer who "regularly," through litigation, tries to collect consumer debts. The Court of Appeals for the Seventh Circuit held that it does. We agree with the Seventh Circuit and we affirm its judgment.

The Fair Debt Collection Practices Act prohibits "debt collector[s]" from making false or misleading representations and from engaging in various abusive and unfair practices. The Act says, for example, that a "debt collector" may not use violence, obscenity, or repeated annoying phone calls, 16 U.S.C. 1692d; may not falsely represent "the character, amount, or legal status of any debt," 1692e(2)(A); and may not use various "unfair or unconscionable means to collect or attempt to collect" a consumer debt, 1692f. Among other things, the Act sets out rules that a debt collector must follow for "acquiring location information" about the debtor, 1692g; communicating about the debtor (and the debt) with third parties, 1692g(b); and bringing "illegal actions," 1692i. The Act imposes upon "debt collector[s]" who violate its provisions (specifically described) "[c]ivil liability" to those whom they, e.g., harass, mislead, or treat unfairly. 1692k. The Act also authorizes the Federal Trade Commission to enforce its provisions. 1692l(a). The Act's definition of the term "debt collector" includes a person "who regularly collects or attempts to collect, directly or indirectly, debts owed [to] . . . another." 1692a(6). And, it limits "debt" to consumer debt, i.e., debts "arising out of . . . transaction[s]" that "are primarily for personal, family, or household purposes," as 1692a(5).

The plaintiff in this case, Darlene Jenkins, borrowed money from the Gainer Bank in order to buy a car. She defaulted on her loan. The bank's law firm then sued Jenkins in state court to recover the balance due. As part of an effort to settle the suit, a lawyer with that law firm, George Heintz, wrote to Jenkins's lawyer. His letter, in listing the amount she owed under the loan agreement, included \$4,173 owed for insurance, bought by the bank because she had not kept the car insured as she had promised to do.

Jenkins then brought this Fair Debt Collection Practices Act suit against Heintz and his firm. She claimed that Heintz's letter violated the Act's prohibitions against trying to collect an amount not "authorized by the agreement creating the debt," as 1692a(1), and against making a "false representation of . . . the . . . amount . . . of any debt," as 1692a(2)(A). The loan agreement, she conceded, required her to keep the car insured "against loss or damage" and permitted the bank to buy such insurance to protect the car should she fail to do so. App. to Pet. for Cert. 17. But, she said, the \$4,137 substitute policy was not the kind of policy the loan agreement had in mind, for it insured the bank not only against "loss or damage" but also against her failure to repay the bank's car loan. Hence, Heintz's "representation" about the "amount" of her "debt" was "false"; amounted to an effort to collect an "amount" not "authorized" by the loan agreement; and thus violated the Act.

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the District Court dismissed Jenkins's Fair Debt Collection lawsuit for failure to state a claim. The court held the Act does not apply to lawyers engaging in litigation. However, the Court of Appeals for the Seventh Circuit reversed the District Court's judgment, interpreting the Act to apply to

litigating lawyers. *Jenkins v. Heintz*, 25 F.3d 536 (1994). The Seventh Circuit's view in this respect conflicts with that of the Sixth Circuit. See *Green v. Hocking*, 9 F.3d 18 (1993) (per curiam). We granted certiorari to resolve this conflict. 513 U.S. \_\_\_\_ (1994). And, as we have said, we conclude that the Seventh Circuit is correct. The Act does apply to lawyers engaged in litigation.

There are two rather strong reasons for believing that the Act applies to the litigating activities of lawyers. First, the Act defines the "debt collector[s]" to whom it applies as including those who "regularly collect[] or attempt[] to collect, directly or indirectly, [consumer] debts owed or due or asserted to be owed or due another," as 1692a(6). In ordinary English, a lawyer who regularly tries to obtain payment of consumer debts through legal proceedings is a lawyer who regularly "attempts" to "collect" those consumer debts. See, e.g., Black's Law Dictionary 263 (8th ed. 1980) ("To collect a debt or claim is to obtain payment or liquidation of it, either by personal solicitation or legal proceedings").

Second, in 1977, Congress enacted an earlier version of this statute, which contained an express exemption for lawyers. That exemption said that the term "debt collector" did not include "any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client." Pub. L. 95-109, § 803(6)(F), 91 Stat. 874, 876. In 1986, however, Congress repealed this exemption in its entirety, Pub. L. 99-361, 100 Stat. 768, without creating a narrower, litigation-related, exemption to fill the void. Without more, then, one would think that Congress intended that lawyers be subject to the Act whenever they meet the general "debt collector" definition.

Heintz argues that we should nonetheless read the statute as containing an implied exemption for those debt-collecting activities of

lawyers that consist of litigating (including, he assumes, settlement efforts). He relies primarily on three arguments.

First, Heintz argues that many of the Act's requirements, if applied directly to litigating activities, will create harmfully anomalous results that Congress simply could not have intended. We address this argument in light of the fact that, when Congress first wrote the Act's substantive provisions, it had for the most part exempted litigating attorneys from the Act's coverage; that, when Congress later repealed the attorney exemption, it did not revisit the wording of these substantive provisions; and that, for these reasons, some awkwardness is understandable. Particularly when read in this light, we find Heintz's argument unconvincing.

Many of Heintz's "anomalies" are not particularly anomalous. For example, the Sixth Circuit pointed to ss 1692d(5), which forbids a "debt collector" to make any "threat to take action that cannot legally be taken." The court reasoned that, were the Act to apply to litigating activities, this provision automatically would make liable any litigating lawyer who brought, and then lost, a claim against a debtor. Green, *supra*, at 21. But, the Act says explicitly that a "debt collector" may not be held liable if he "shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." ss 1692d(c). Thus, even if we were to assume that the suggested reading of ss 1692d(6) is correct, we would not find the result so absurd as to warrant implying an exemption for litigating lawyers. In any event, the assumption would seem unnecessary, for we do not see how the fact that a lawsuit turns out ultimately to be unsuccessful could, by itself, make the bringing of it an "action that cannot legally be taken."

The remaining significant "anomalies" similarly depend for their persuasive force upon readings that courts seem unlikely to endorse. For example, Heintz's strongest "anomaly" argument focuses upon the Act's provisions governing "[c]ommunication in connection with debt collection." ss 1692c. One of those provisions requires a "debt collector" not to "communicate further" with a consumer who "notifies" the "debt collector" that he or she "refuses to pay" or wishes the debt collector to "cease further communication." ss 1692c(c). In light of this provision, asks Heintz, how can an attorney file a lawsuit against (and thereby communicate with) a nonconsenting consumer or file a motion for summary judgment against that consumer?

We agree with Heintz that it would be odd if the Act empowered a debt-owing consumer to stop the "communications" inherent in an ordinary lawsuit and thereby cause an ordinary debt-collecting lawsuit to grind to a halt. But, it is not necessary to read 1692c(c) in that way if only because that provision has exceptions that permit communications "to notify the consumer that the debt collector or creditor may invoke" or "intends to invoke" a "specified remedy" (of a kind "ordinarily invoked by [the] debt collector or creditor"), ss 1692c(c)(2), (3). Courts can read these exceptions, plausibly, to imply that they authorize the actual invocation of the remedy that the collector "intends to invoke." The language permits such a reading, for an ordinary court-related document does, in fact, "notify" its recipient that the creditor may "invoke" a judicial remedy. Moreover, the interpretation is consistent with the statute's apparent objective of preserving creditors' judicial remedies. We need not authoritatively interpret the Act's conduct-regulating provisions now, however. Rather, we rest our conclusions upon the fact that it is easier to

read as 1692(c) as containing some such additional, implicit, exception then to believe that Congress intended, silently and implicitly, to create a far broader exception, for all litigating attorneys, from the Act itself.

Second, Heintz points to a statement of Congressman Frank Annunzio, one of the sponsors of the 1983 amendment that removed from the Act the language creating a blanket exemption for lawyers. Representative Annunzio stated that, despite the exemption's removal, the Act still would not apply to lawyers' litigating activities. Representative Annunzio said that the Act

"regulates debt collection, not the practice of law. Congress repealed the attorney exemption to the act, not because of attorneys' conduct in the courtroom, but because of their conduct in the backroom. Only collection activities, not legal activities, are covered by the act. . . . The act applies to attorneys when they are collecting debts, not when they are performing tasks of a legal nature. . . . The act only regulates the conduct of debt collectors, it does not prevent creditors, through their attorneys, from pursuing any legal remedies available to them." 182 Cong. Rec. 30842 (1986).

This statement, however, does not persuade us.

For one thing, the plain language of the Act itself says nothing about retaining the exemption in respect to litigation. The line the statement seeks to draw between "legal" activities and "debt collection" activities was not necessarily apparent to those who debated the legislation, for litigating, at first blush, seems simply one way of collecting a debt. For another thing, when Congress considered the Act, other Congressmen expressed fear that repeal would limit lawyers' "ability to contact third parties in order to facilitate settlements" and "could very easily interfere with a client's right to pursue judicial remedies." H. R. Rep. No. 99-405, p. 11 (1985) (dissenting

views of Rep. Hiler). They proposed alternative language designed to keep litigation activities outside the Act's scope, but that language was not enacted. *Ibid.* Further, Congressman Annunzio made his statement not during the legislative process, but after the statute became law. It therefore is not a statement upon which other legislators might have relied in voting for or against the Act, but it simply represents the views of one informed person on an issue about which others may (or may not) have thought differently.

Finally, Heintz points to a "Commentary" on the Act by the Federal Trade Commission's staff. It says:

"Attorneys or law firms that engage in traditional debt collection activities (sending dunning letters, making collection calls to consumers) are covered by the [Act], but those whose practice is limited to legal activities are not covered." Federal Trade Commission's Statement of General Policy or Interpretation Staff Commentary on the Fair Debt Collection Practices Act, 58 Fed. Reg. 50097, 50100 (1993) (emphasis added; footnote omitted).

We cannot give conclusive weight to this statement. The Commentary of which this statement is a part says that it "is not binding on the Commission or the public." *Id.*, at 50101. More importantly, we find nothing either in the Act or elsewhere indicating that Congress intended to authorize the FTC to create this exception from the Act's coverage of an exception that, for the reasons we have set forth above, falls outside the range of reasonable interpretations of the Act's express language. See, e.g., *Brown v. Gardner*, 513 U.S. \_\_\_\_ (1994) (slip op., at 6-8); see also *Fox v. Clitcorp Credit Servs., Inc.*, 16 F.2d 1507, 1513 (CA9 1994) (FTC staff's

statement conflicts with Act's plain language and is therefore not entitled to deference); *Scott v. Jones*, 964 F.2d 314, 317 (CA4 1992) (same).

For these reasons, we agree with the Seventh Circuit that the Act applies to attorneys who "regularly" engage in consumer-debt-collection activity, even when that activity consists of litigation. Its judgment is therefore

Affirmed.

#### ENDNOTES

1 W. Va. Code §§ 32-1-101 *et seq.* (West Virginia Uniform Securities Act).

2 W. Va. Code §§ 11-12-1 *et seq.* (Business Registration Tax), §§ 11-23-1 to -28 (Business Franchise Tax) and §§ 11-24-1 to -42 (Corporation Net Income Tax). For other tax provisions which might affect the West Virginia corporation, *see* Chapters 11 and 11A of the West Virginia Code.

3 W. Va. Code §§ 46-1-101 *et seq.* (Uniform Commercial Code).

4 W. Va. Code §§ 24-1-1 *et seq.* (Public Service Commission).

5 W. Va. Code §§ 24A-1-1 *et seq.* (Motor Carriers of Passengers and Property for Hire).

6 West Virginia statutes govern many aspects of labor and labor relations, including unfair labor practices (W. Va. Code § 21-1A-4); employee safety and welfare (W. Va. Code §§ 21-3-1 *et seq.*); hours of labor (W. Va. Code §§ 21-4-1 *et seq.*); wages (W. Va. Code §§ 21-5-1 *et seq.*); and minimum wage and maximum hours (W. Va. Code §§ 21-5C-1 *et seq.*).

7 W. Va. Code §§ 23-1-1 *et seq.* (Workers' Compensation).

8 W. Va. Code §§ 21A-1-1 *et seq.* (Unemployment Compensation).

9 W. Va. Code §§ 31A-1-1 *et seq.* (Banks and Banking).

10 Numerous state statutes and state agencies regulate, control and monitor various environmental aspects of the operations of West Virginia corporations: Air Pollution Control (W. Va. Code §§ 22-5-1 *et seq.*); Natural Resources (W. Va. Code §§ 20-1-1 *et seq.*); Water Pollution Control Act (W. Va. Code §§ 22-11-1 *et seq.*); Transportation of Oils (W. Va. Code §§ 22-8-1 *et seq.*); and Public Service Commission (W. Va. Code §§ 24-1-1 *et seq.*).

11 In addition, numerous state statutes control and monitor activities of corporations engaged in certain enterprises, such as insurance (W. Va. Code §§ 33-1-1 *et seq.*) and mineral production (W. Va. Code §§ 22-4-1 *et seq.*).

12 I.R.C. §§ 1 to 9722.

13 Securities Act of 1933 (15 U.S.C. §§ 77a to 77m); Securities Exchange Act of 1934 (15 U.S.C. §§ 78a to 78k); Public Utility Holding Company Act of 1935 (15 U.S.C. §§ 79 to 79e-6); Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa to 77bbb); Investment Company Act of 1940 (15 U.S.C. §§ 80a-1 to 80a-64); and Securities Investor Protection Act of 1970 (15 U.S.C. §§ 78aaa to 78hhh).



Numerous federal statutes under Title 29 of the United States Code regulate labor and labor relations. *E.g.* Labor Management Relations Act, 1947 (29 U.S.C. §§ 141 to 197); Norris-La Guardia Act (29 U.S.C. §§ 101 to 115); Fair Labor Standards Act of 1938 (29 U.S.C. §§ 201 to 219); and National Labor Relations Act (29 U.S.C. §§ 151 to 168).

11 U.S.C. §§ 101 to 1174.

*E.g.*, Sherman Antitrust Act (15 U.S.C. §§ 1 to 7); Clayton Act (15 U.S.C. §§ 12 to 27, 44 and 29 U.S.C. §§ 52, 53); Federal Trade Commission Act (15 U.S.C. §§ 41 to 58); Robinson-Patman Act (15 U.S.C. §§ 13 to 13b, 21a); Miller-Tydings Act of 1937; Celler-Kefauver Act (15 U.S.C. §§ 18, 21); and Hart-Scott-Rodino Antitrust Improvements Act of 1976, Title 15, United States Code.

1975 W. Va. Acts Ch. 118.

1976 W. Va. Acts Ch. 26; 1979 W. Va. Acts Ch. 21; 1984 W. Va. Acts Ch. 41.

For a more thorough discussion of limited liability companies, see *infra* Part VIII of this Section.

*See generally* W. Va. Code § 31B-3-303.

*See generally* Uniform Limited Partnership Act, W. Va. Code §§ 47-9-1 *et seq.* for laws specifically governing limited partnerships.

*See generally* Uniform Partnership Act, W. Va. Code §§ 47B-1-1 *et seq.* for laws specifically governing partnerships.

*But see* *infra* n. 25 and accompanying text.

W. Va. Code § 47B-3-6(a).

W. Va. Code § 31-1-8.

*See generally* W. Va. Code § 47B-8-1 and W. Va. Code §§ 47-9-44 to 45.

W. Va. Code § 31B-2-302(a)(5). Limited liability companies may be either "team" (meaning they have a specified term of existence) (W. Va. Code § 31B-1-101(19)), or at will (W. Va. Code § 31B-1-101(2)).

For example, such provisions might cause a partnership or limited liability company to be treated as an association taxable as a corporation.

Certain "personal service corporations" are not eligible for graduated rates and their income is taxed at a flat rate of 35 percent. I.R.C. § 11(b)(2).

I.R.C. § 11(b).

*Id.*

I.R.C. § 55. The alternative minimum tax is beyond the scope of this discussion.

I.R.C. § 1.

I.R.C. § 151(d).

I.R.C. § 68.

I.R.C. § 67.

I.R.C. § 1(b).

I.R.C. § 1(b)(2).

I.R.C. § 1211(b).

I.R.C. § 702.

I.R.C. §§ 1361 to 1379. The S corporation rules, unlike the partnership rules, place significant restrictions on the types of shareholders an S corporation may have. For example, an S corporation cannot have more than seventy-five shareholders and shareholders generally must be either individuals who are U.S. citizens, certain types of permissible trusts, or tax-exempt, charitable organizations. I.R.C. § 1361. Additionally, S corporations generally can have only one class of stock. *Id.* There is currently a proposal before Congress to impose an immediate tax on built-in-gains upon a conversion from a C corporation to an S corporation for tax years after December 31, 1999 for Corporations with assets in excess of \$5 million. For many corporations, this immediate tax on conversion could be prohibitively expensive. Existing C corporations should carefully follow this legislation prior to electing S status.

S corporations which have a prior C corporation history may be subject to a corporate level tax. I.R.C. §§ 1374 and 1375.

If the shareholder is a corporation, the impact of the two tier tax may be ameliorated by the dividends received deduction. *See generally* I.R.C. §§ 241-247.

I.R.C. § 702. Note, however, that large publicly traded partnerships may be subject to an entity level tax. *See generally* I.R.C. § 7704.

I.R.C. § 531.

I.R.C. §§ 401 to 409.

W. Va. Code §§ 11-21-1 *et seq.*

48 W. Va. Code §§ 11-24-1 to -24.  
 49 W. Va. Code §§ 11-23-1 *et seq.*  
 50 W. Va. Code § 31-1-80.  
 51 15 U.S.C. §§ 77a to 77aa.  
 52 15 U.S.C. §§ 77c and 77d.  
 53 15 U.S.C. § 77d.  
 54 17 C.F.R. § 230.506.  
 55 17 C.F.R. § 230.504 and 17 C.F.R. § 230.505.  
 56 W. Va. Code § 31-1-1(e).  
 57 *Id.*  
 58 W. Va. Code § 31-1-12(b).  
 59 W. Va. Code § 31-1-27(a)(3).  
 60 W. Va. Code § 31-1-8.  
 61 W. Va. Code §§ 31-1-27(b)(4), -90.  
 62 W. Va. Code § 31-1-27(b)(5).  
 63 W. Va. Code § 31-1-17.  
 64 W. Va. Code § 31-1-21.  
 65 W. Va. Code § 31-1-18(d).  
 66 W. Va. Code § 31-1-20.  
 67 *Id.*  
 68 W. Va. Code § 31-1-99(b).  
 69 *But see* W. Va. Code § 31-1-9 which permits a corporation to indemnify officers,  
 70 directors and employees under certain circumstances.  
 71 *See* W. Va. Code § 31-1-85.  
 W. Va. Code §§ 31-1-27(b), -78.

72 *Id.*  
 73 W. Va. Code § 31-1-26.  
 74 W. Va. Code § 31-1-27(a)(4).  
 75 W. Va. Code § 31-1-56(b)(4).  
 76  
 77 The 1976 Amendments to the Act amended W. Va. Code § 31-1-27 to add the  
 following language: "(5) The number of directors constituting the initial board of  
 directors and the names and addresses of the persons who are to serve as directors".  
 In addition, § 31-1-30 of the Act was amended in 1976 to require that after the  
 issuance of the certificate of incorporation "an organizational meeting of the board  
 of directors named in the articles of incorporation shall be held." Notwithstanding  
 the language in § 31-1-21 of the Act which seems to make the naming of directors  
 in the articles permissive, it appears that the West Virginia Legislature intended to  
 make the naming of directors in the articles mandatory by the 1976 Amendments and  
 the language which remains in § 31-1-21 is merely a legislative oversight.  
 78 W. Va. Code § 31-1-21.  
 79 W. Va. Code § 31-1-28.  
 80 *Id.*  
 81 W. Va. Code § 31-1-30.  
 82 *Id.*  
 83 W. Va. Code § 31-1-17.  
 84 *Id.*  
 85 *Id.*  
 86 *E.g.* W. Va. Code §§ 31-1-24, -25.  
 87 W. Va. Code § 31-1-104.  
 88 *Id.*  
 89 W. Va. Code § 31-1-81.  
 90 W. Va. Code § 31-1-80.

91 W. Va. Code § 31-1-81.  
 92 W. Va. Code § 31-1-82.  
 93 *Id.*  
 94 I.R.C. § 351. For an example of circumstances potentially triggering gain  
 recognition, see I.R.C. § 357 (26 U.S.C. § 357) (assumption of corporate liabilities  
 in excess of basis of property contributed or for tax avoidance purposes may trigger  
 gain recognition).  
 95 I.R.C. § 1244.  
 96 W. Va. Code § 11-12-3.  
 97 I.R.C. § 248.  
 98 I.R.C. § 709(b).  
 99 W. Va. Code § 31-1-73.  
 100 *Id.*  
 101 W. Va. Code § 31-1-18.  
 102 W. Va. Code § 31-1-73.  
 103 *Id.*  
 104 W. Va. Code § 31-1-21.  
 105 W. Va. Code § 31-1-21.  
 106 W. Va. Code § 31-1-95.  
 107 W. Va. Code § 31-1-21.  
 108 W. Va. Code § 31-1-93.  
 109 W. Va. Code § 31-1-22.  
 110 W. Va. Code § 31-1-24.  
 111 *Id.*  
 112 *Id.*  
 113 W. Va. Code § 31-1-23.

114 W. Va. Code § 31-1-95.  
 115 W. Va. Code § 31-1-98.  
 116 W. Va. Code § 31-1-99.  
 117 W. Va. Code § 31-1-101.  
 118 W. Va. Code § 31-1-104.  
 119 W. Va. Code § 31-1-102.  
 120 *Id.*  
 121 W. Va. Code § 31-1-9.  
 122 *Id.*  
 123 W. Va. Code § 55-7C-3.  
 124 I.R.C. §§ 354, 368. Other tax-free corporate acquisitions, known as reorganizations,  
 are available: (1) "B organizations," acquisition of controlling interest in "target  
 corporation's stock in return solely for stock of the acquiring corporation; (2) "C  
 reorganizations," acquisition of substantially all the target corporation's assets in  
 return for stock of the acquiring corporation (and up to 20% taxable boot); and (3)  
 "triangular mergers," using subsidiaries of the acquiring corporation to merge into  
 the target using stock of the acquiring parent corporation. See generally I.R.C. § 368.  
 125 I.R.C. § 356.  
 126 Rev. Proc. 99-3, 1999-1 I.R.B. 71.  
 127 W. Va. Code § 31-1-34.  
 128 *Id.*  
 129 W. Va. Code § 31-1-117.  
 130 *Id.*  
 131 *Id.*  
 132 *Id.* See also W. Va. Code § 31-1-108 for class voting on amendments.  
 133 W. Va. Code §§ 31-1-122, -123.  
 134 W. Va. Code § 31-1-119.

I.R.C. § 332. I.R.C. § 332 is generally applicable when the corporate parent owns at least 80 percent of the total voting power and 80 percent of the total value of the stock of the subsidiary. I.R.C. § 332 does not apply to insolvent corporations.

W. Va. Code § 31-1-117.

W. Va. Code § 31-1-119.

W. Va. Code § 31-1-118.

W. Va. Code § 31-1-36.

W. Va. Code § 31-1-118.

W. Va. Code § 31-1-119.

W. Va. Code § 31-1-36.

W. Va. Code § 31-1-37.

W. Va. Code § 31-1-38.

W. Va. Code § 31-1-58.

*Id.*

*Id.*

W. Va. Code §§ 31-1-40, -127.

W. Va. Code § 31-1-125.

W. Va. Code § 31-1-126.

W. Va. Code § 31-1-127.

I.R.C. § 6043.

W. Va. Code § 31-1-129.

W. Va. Code §§ 31-1-39, -40.

W. Va. Code § 31-1-40.

*Id.*

W. Va. Code § 31-1-124.

W. Va. Code § 31-1-134.

*Id.*

*Id.*

W. Va. Code § 31-1-49.

W. Va. Code § 31-1-53.

W. Va. Code § 31-1-54; *see also* W. Va. Code §§ 11-12-78, -81.

W. Va. Code § 31-1-54.

W. Va. Code § 11-12-82.

W. Va. Code § 31-1-57.

W. Va. Code § 31-1-59.

W. Va. Code § 31-1-58.

W. Va. Code § 31-1-60.

*Id.*

W. Va. Code §§ 31-1A-1 to -69 (repealed 1990).

*See, e.g.,* Carter G. Bishop and Daniel S. Kleinberger, *Limited Liability Companies*, Table 2.2, Warren Gorham and Lamont (Supp. 1998).

Treas. Reg. § 301.7701-3; Treas. Reg. § 301.7701-3T.

W. Va. Code §§ 31B-1-101 to -13-1306.

*See, e.g.,* Treas. Reg. § 301.7701-3; Treas. Reg. § 301.7701-3T.

W. Va. Code §§ 31B-1301 to 13-1306.

W. Va. Code § 31B-1-103(b). *See infra* part C; *see also* commentary accompanying Section 103 of the Uniform Limited Liability Act approved by the National Conference of Commissioners on Uniform State Laws in 1995.

For example, unlike the Uniform LLC Act, the 1992 Act required unanimous consent to either transfer a membership interest in an LLC or to continue an LLC in the event of certain dissolution events such as the death, incompetency or bankruptcy of a member. W. Va. Code §§ 31-1A-34, -35.

W. Va. Code § 31B-2-201.

W. Va. Code § 31B-1-112. Unless its articles of organization provide otherwise, an LLC has the same powers as an individual to do all things necessary or convenient to carry on business or affairs, including the specific powers set forth in the Uniform LLC Act. *Id.*

W. Va. Code § 31B-2-202(a). This rule is the same for professional limited liability companies. W. Va. Code § 31B-13-1302. This is a significant change from the 1992 LLC Act which required at least two members for LLCs formed prior to July 1, 1996. W. Va. Code § 31-1A-7 (repealed 1996).

W. Va. Code § 31B-2-206. Under the 1992 LLC Act, two copies of articles of organization were to be filed with the Secretary of State. W. Va. Code § 31-1A-9 (repealed 1996). While the Uniform LLC Act does not appear to specify the number of copies of the articles which must be filed with the Secretary of State, the West Virginia Secretary of State requires duplicate originals to be filed.

For items that were to be contained in articles of organization filed before July 1, 1996, see W. Va. Code § 31-1A-8 (repealed 1996).

The LLCs name must contain the words "limited liability company," "limited company," or the abbreviation "L.L.C.," "LLC," or "LC." "Limited" may be abbreviated as "Ltd." and "company" may be abbreviated as "Co." W. Va. Code § 31B-1-105. Under the 1992 LLC Act, abbreviations for the term "limited liability" company could not be used. W. Va. Code § 31-1A-5 (repealed 1996).

West Virginia LLCs can be "term" or "at-will" LLCs. A term LLC means an LLC in which its members have agreed to remain members until the expiration of a term specified in the articles of organization. W. Va. Code § 31B-1-101(19). An at-will LLC means an LLC other than a term LLC. W. Va. Code § 31B-1-101(2). Unlike many states, e.g., Delaware, Virginia, or Kentucky, West Virginia law does not make express provision for LLCs to have perpetual duration. This probably occurred because at the time the Uniform LLC Act was adopted, Congress had not adopted the check-the-box regulations, potentially making the tax status of LLCs with perpetual life unclear. Del. Code Ann. tit. 6, § 18-801.

W. Va. Code § 31B-2-203.

*Id.*

W. Va. Code § 31B-1-101(13).

See commentary accompanying Section 103 of the Uniform Limited Liability Company Act (1995) approved by the National Conference of Commissioners on Uniform State Laws in 1995.

W. Va. Code § 31B-2-203(c).

W. Va. Code § 31B-4-404(a).

*Id.*

W. Va. Code §§ 31B-2-203(a)(6), 4-404(b).

See, e.g., W. Va. Code §§ 31B-4-404(c), 8-801(b).

W. Va. Code § 31B-4-404(b).

W. Va. Code § 31-1-89.

W. Va. Code § 31B-3-301.

W. Va. Code § 31B-3-303.

W. Va. Code § 31B-1-101(6).

W. Va. Code § 31B-5-502.

W. Va. Code § 31B-5-503(d). The rights of a transferee who does not become a member are more fully detailed in W. Va. Code § 31B-5-503(d). Additionally, the Uniform LLC Act, unlike the 1992 LLC Act, contains specific provisions dealing with creditor rights. Generally speaking, they provide that a court may enter a charging order against the distributional interest of a judgment debtor to satisfy the judgment. W. Va. Code § 31B-5-504. Importantly, the LLC may redeem the charged interest if such a right is contained in its operating agreement. *Id.* Both existing and newly formed LLCs may want to provide such a right.

W. Va. Code § 31B-5-503(a).

See W. Va. Code §§ 47-9-1 to -63.

W. Va. Code §§ 47B-1-1 to -11-5. See S.B. 325, 72nd Leg., Reg. Sess., 1996 West Virginia (enacted).

For an excellent discussion of the dissociation and dissolution provisions as they relate to general partnerships, see Donald J. Weidner and John W. Larson, *The Revised Uniform Partnership Act: The Reporters' Overview*, 49 Bus. Law. 1, 3-16 (1993).

W. Va. Code § 31B-6-603(b). A dissociated member or the LLC may file a statement of dissociation in the Secretary of State's office stating the name of the LLC and that the member is dissociated from it. W. Va. Code § 31B-7-704.

W. Va. Code § 31B-6-601.

208 W. Va. Code § 31B-6-603.  
 209 See generally W. Va. Code § 31B-8-801(b).  
 210 *Id.* Moreover, even after dissolution, but before the LLC's business is wound up, the  
 211 members (including the dissociating member whose dissociation caused the  
 212 dissolution) may unanimously waive the right to have the LLC's business wound up,  
 213 in which case, generally speaking, the LLC resumes its business as if dissolution had  
 214 not occurred. W. Va. Code § 31B-8-802(b).  
 215 W. Va. Code § 31B-6-603, -7-701. The Uniform LLC Act devotes a considerable  
 216 discussion as to how fair value is determined. Members may want to examine this  
 217 definition to determine if it is consistent with their expectations or if they wish to  
 218 vary this provision.  
 219 W. Va. Code § 31B-6-603(a)(2).  
 220 W. Va. Code § 31B-6-602(c). See W. Va. Code § 31B-6-602(b) (defining wrongful  
 221 dissociation).  
 222 W. Va. Code § 31B-2-211.  
 223 W. Va. Code § 31B-8-809.  
 224 See Treas. Reg. § 301.7701-3.  
 225 *Id.*  
 226 Treas. Reg. §§ 301.7701-3, -301.7701-3T(a).  
 227 *Id.*  
 228 I.R.C. § 702.  
 229 I.R.C. §§ 11, 301, 311.  
 230 Treas. Reg. § 301.7701-3.  
 231 W. Va. Code § 47-9-19.  
 232 I.R.C. § 1620.  
 233 I.R.C. § 1361(b)(1), (c)(6).  
 234 Under prior law an S corporation could not own more than 79% of another  
 235 corporation without threatening its subchapter S status.  
 236 I.R.C. § 1361(b)(3).

238 *Id.*  
 239 I.R.C. § 1361(b)(1)(D).  
 240 I.R.C. § 731.  
 241 *Id.*  
 242 I.R.C. § 311.  
 243 W. Va. Code §§ 31B-11-1101 to -1104.  
 244 W. Va. Code § 31B-13-1306.  
 245 W. Va. Code § 31B-13-1305.  
 246 W. Va. Code §§ 31B-13-1302, -1305.  
 247 W. Va. Code § 31B-9-902.  
 248 See, e.g., P.L.R. 9415005 (Jan. 10, 1994); Rev. Rul. 95-37, 1995-17 I.R.B. 10.  
 249 See W. Va. Code §§ 31B-9-901 to -903, -907. The Uniform LLC Act also contains  
 250 specific provisions dealing with mergers. See W. Va. Code § 31B-9-904 to -907.  
 251 W. Va. Code § 31B-9-903.  
 252 *Id.*  
 253 W. Va. Code § 31B-9-902.  
 254 Rev. Rul. 95-37, 1995-17 I.R.B. 10; Rev. Rul. 84-52, 1984-1 C.B. 157.  
 255 Rev. Rul. 99-5, 1999-6 I.R.B. 8.  
 256 *Id.*; see also I.R.C. § 721. Note that contribution to an LLC which qualifies as an  
 257 "investment company" will not be tax-free. I.R.C. § 721(b) and Treas. Reg. § 1.351-  
 1(c).  
 258 I.R.C. § 708.  
 259 W. Va. Code §§ 31B-12-1204, -1205.