



## Elizabeth M. Shaffer

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Known for her responsiveness to clients and her ability to resolve cases early with her writing skills, Libby focuses her practice on defending clients against allegations relating to the Fair Debt Collection Practices Act, Fair Credit Reporting Act, the Electronic Fund Transfer Act, Regulation E, and related state consumer protection laws. She works with some of the nation's largest debt buyers, debt collectors, and collection counsel throughout the country defending and resolving class actions in federal and state consumer protection matters. For more than a decade, Libby has served as national coordinating counsel for one of the nation's largest debt buyers, working with the general counsel to develop and implement the defense of cases throughout the country.

She has also developed a substantial practice representing several of the country's largest prepaid debit card issuers and program managers. Libby has successfully resolved and prevailed in hundreds of arbitrations alleging violations of the Electronic Fund Transfer Act and Regulation E pertaining to alleged unauthorized transactions, improper holds, system outages, and delays in the posting of ACH transactions to prepaid debit cards. She also successfully negotiated a reduced fee schedule with the American Arbitration Association for certain consumer arbitrations. Libby has defended several companies against Mass Arbitrations, some involving hundreds of claimants, and others involving thousands of claimants.

Additionally, Libby handles insurance coverage and insurance extra-contractual litigation. She recently prevailed on behalf of an insurer in a complex, multi-million dollar property loss case relating to alleged defective construction of a retail shopping center.

No matter who the client, she takes the time to understand each business. She works closely with a client's general counsel to put him or her in the best light in front of the client's executive team. The partnership with a company's general counsel allows Libby to advise as to the business implications that may result from chosen legal strategies. Her ingratiating personality also enables her to work effectively with opposing counsel to achieve the optimum result for her clients.

For several years, Libby has spoken across the country on issues pertaining to the defense and settlement of mass arbitrations and strategies to litigate mass arbitrations in various forums. Most notably, she spoke at both

the 2023 and 2025 MassArbCon in Laguna Niguel, California, and the 2022 ACA International Fall Forum in Chicago, Illinois

She is also known for her work as President of the Boards for the American Cancer Society, the WAVE Foundation at the Newport Aquarium, and the Ohio Women's Bar Foundation.

## **Services**

- Litigation
- Antitrust & Trade Regulation
- Insurance Industry
- Banking & Financial Services

## **Education**

- University of Cincinnati College of Law (J.D., 2003)
  - Order of the Coif
  - University of Cincinnati Law Review, articles editor
  - Gustavus Henry Wald Memorial Prize for Contracts
  - Charles A. Corry Prize for Corporate Law
  - Lawrence Maxwell Memorial Advocacy Prize
- Centre College (B.A., 2000)
  - Harold Gale Jr. Memorial Philosophy Prize

## **Bar Admissions**

- Ohio
- Kentucky

## **Court Admissions**

- U.S. Court of Appeals for the Sixth Circuit
- U.S. District Court for the Southern District of Ohio
- U.S. District Court for the Northern District of Ohio
- U.S. District Court for the Western District of Kentucky
- U.S. District Court for the Eastern District of Kentucky
- U.S. District Court for the Western District of Michigan
- U.S. District Court for the Eastern District of Michigan
- U.S. District Court for the District of Colorado

## **Affiliations/Memberships**

- American Cancer Society,
  - Advisory Board of Directors, Greater Cincinnati chair
  - Road to Recovery - East Side coordinator
- WAVE Foundation, Board of Directors chair
- Ohio Women's Bar Foundation
  - Board of Directors
  - Leadership Institute trustee
- Wills for Heroes, volunteer (2004 - 2008)
- Sycamore Township, Board of Zoning Appeals (2006 - 2007)
- Ohio Women's Bar Association Leadership Institute, Annual Meeting Committee
- Association of Credit & Collection Professionals (ACA International)
- Cincinnati Bar Association
- Ohio State Bar Association
- Kentucky Bar Association
- ResearchHERS Ambassador, 2019
- insideARM, Legal Advisory Board member
- Innovative Payments Association member

## Distinctions

- Rising Star from YWCA Academy of Career Women of Achievement (2013)

## Experience

### **Dismissal of Claims Alleging Violation of the Fair Debt Collection Practice Act**

*Unifund CCR Partners v. Harrell, Kentucky, Nelson Circuit Court, Case No. 12-CI-00661 (June 21, 2013)*

On June 21, 2013, the Nelson Circuit Court in Kentucky dismissed a counterclaim filed by a consumer alleging that Unifund violated the Fair Debt Collection Practices because Unifund requested statutory prejudgment interest in a state court collection suit. In *Unifund CCR Partners v. Harrell, Kentucky, Nelson Circuit Court, Case No. 12-CI-00661 (June 21, 2013)* Unifund filed a collection suit seeking to collect on a past due credit card account which had been charged off by the original creditor. In the state court complaint, Unifund sought 8 percent statutory prejudgment interest under KRS § 360.010 from the date the original creditor charged off the past due credit card debt. Ms. Harrell alleged that Unifund's mere request for such interest violated the FDCPA because the original creditor waived its

right to collect any interest when it charged off the account.

Upon Unifund's Motion to Dismiss filed by FDCPA defense counsel Joseph Tucker and Elizabeth Shaffer of Dinsmore, the Court disagreed with Ms. Harrell's assertions. To the contrary, the Court clearly held that merely because the original creditor may have waived the right to collect contract interest when it charged off credit card debt, did not waive Unifund's right, as an assignee, to request that the state court award it 8 percent statutory prejudgment interest from the date of charge off.

The Court thus found that " Unifund's claim for prejudgment interest does not violate the FDCPA" and dismissed Ms. Harrell's counterclaim with prejudice.

### **Dismissal of Claims Related to Collection of Debt under the FDCPA**

*Stratton v. Portfolio Recovery Associates, LLC, 2013 U.S. Dist. LEXIS 167636 (W.D. Ky. November 26, 2013)*

On November 26, 2013, the Federal District Court for the Western District of Kentucky dismissed a consumer's claims for ostensible violations of the Fair Debt Collection Practices arising out of a request for statutory prejudgment interest in a state court collection suit. In *Stratton v. Portfolio Recovery Associates, LLC, 2013 U.S. Dist. LEXIS 167636 (W.D. Ky. November 26, 2013)*, Ms. Stratton alleged that Portfolio Recovery Associates ("PRA") allegedly violated the Fair Debt Collection Practices Act (the "FDCPA") by seeking in a separate state court collection suit statutory prejudgment interest under KRS § 360.010 from the date the original creditor charged off the past due credit card debt. Ms. Stratton alleged that PRA violated the FDCPA because the original creditor waived its right to collect any interest when it charged off the account.

Upon PRA's Motion to Dismiss filed by FDCPA defense counsel Joseph Tucker and Elizabeth Shaffer of Dinsmore, the Court disagreed with Ms. Stratton's assertions. The federal Court clearly held that PRA's request in the state court collection suit for 8 percent statutory prejudgment interest did not violate any provisions of the FDCPA. The Court held that even if the original creditor waived its right to collect contract interest when it charged off Ms. Stratton's credit card debt, PRA still had the right to request that the state court award it 8 percent statutory prejudgment interest from the date of charge off. The Court relied on well established Kentucky law holding that , "[t]he legal rate of interest is eight percent (8 percent) per annum,' which runs as a matter of right on a liquidated demand" and the law of assignment establishing that PRA stepped into the shoes of the original creditor upon acquisition of Ms. Stratton's debt.

While concluding that PRA's request for statutory prejudgment interest from the date that Ms. Stratton's account was charged-off was not improper under Kentucky law, the Federal Court went even further and held that "even assuming the request [for statutory prejudgment interest] violated Kentucky law," such a request would not amount to an FDCPA violation. Applying the "least sophisticated consumer standard," the Court concluded that "the mere request for 8 percent statutory interest under Kentucky law does not constitute a violation of [§ 1692e(2)(A) of] the FDCPA ... As PRA

points out, ... its request to the state court [was aspirational and] did not amount to a false representation ...”

The Court further held that the request for prejudgment interest in the state court collection case did not violate 1692e(5) which prohibits a “threat to take any action that cannot legally be taken.” The Court held simply that the act of filing the state court complaint was not a “threat” within the meaning of § 1692e(5).

Finally, the Court held that PRA's mere request in its valid state court debt collection action was not an “unfair or unconscionable” act under § 1692f for the FDCPA because the “state court collection action was a lawful vehicle for PRA to recover the debt Ms. Stratton owes.”

### **Allegations Brought by a Consumer of Violations of The FDCPA**

We represented a debt collector against claims of violation of the Fair Debt Collection Practices Act (“FDCPA”). The consumer argued that the debt collector violated the FDCPA by suing on a time-barred debt. In particular, the consumer argued that a borrowing statute should be applied under the terms of a credit card agreement, such that a shorter statute of limitations than that of the forum state barred claims to collect a debt. The Portage County Court of Common Pleas dismissed the complaint in its entirety.

### **Allegations of Bad Faith in Denial of Fire Loss Claim**

We represented a national insurance company against claims of breach of contract and bad faith. Plaintiffs alleged breach of contract and bad faith relating denial of a claim for fire loss. The Northern District of Ohio granted summary judgment to our client on the grounds that the insureds made intentional misrepresentations relating to their financial condition and the loss of multiple items in the fire in the course of the insurer’s investigation. The district court concluded that “because defendant was investigating plaintiffs’ possible role in an incendiary fire, their financial status bore materially on their potential motive in setting the fire. Likewise, the plaintiffs’ numerous contradictory statements about property lost or destroyed in the fire are material, as they bore materially on the amount defendant would pay out if it honored the policy.”

### **Allegations of Breach of Contract and Bad Faith in a Fire Loss Claim**

We represented a national insurance company against claims of breach of contract and bad faith. Plaintiff alleged breach of contract and bad faith relating denial of a claim for fire loss. The Northern District of Ohio granted summary judgment to our client on the grounds that the insured made intentional misrepresentations relating to his financial condition and the loss of multiple items in the fire in the course of the insurer’s investigation. The district court concluded that the insured’s “misrepresentations were numerous and ever changing and material to [the insurer’s] investigation of this intentional fire.”

### **Anonymous Plaintiffs / Claimants v. Insurance Company**

We serve as regional counsel to an insurance carrier by providing coverage opinions and advising the carrier as to appropriate and consistent claims handling for multiple property and casualty claims, including wind, fire, vandalism, water damage, hail and similar perils. We have consistently prevailed in motions for summary judgment on issues of coverage and alleged bad faith.

### **Anonymous Plaintiffs v. Debt Purchaser**

We serve as national coordinating counsel for Debt Purchaser in the appropriate handling of consumer debt collection and the defense of FDCPA and related litigation, including class action litigation. We manage local counsel and coordinate all aspects of litigation.

### **Charles Tinsley Stewart v. Abso, Inc., et al., Case No. 3:08CV-272 (W.D. Ky.)**

Successfully defended Abso in an action brought by a consumer alleging claims for violation of the Fair Credit Reporting Act ("FCRA"), wrongful interference with a business expectation, and defamation. The district court granted Abso's motion for summary judgment on all claims. The district court's decision granting Abso's motion for summary judgment is available at 2010 U.S. Dist. LEXIS 101865.

### **Claims of Violations of the Fair Credit Reporting Act by Debt Purchaser**

We represented a debt purchaser against claims of violation of the Fair Credit Reporting Act ("FCRA") and Fair Debt Collection Practices Act ("FDCPA"). The consumer argued that the debt purchaser violated the FCRA by failing to reasonably investigate the notices of dispute that it received from credit reporting agencies. The district court granted summary judgment to the debt purchaser and held that "no reasonable factfinder could determine that Defendant's investigation was unreasonable. Further, no reasonable factfinder could determine that Defendant furnished the CRAs with inaccurate information given the absence of evidence showing that Plaintiff was not liable on the Account." The consumer further argued that the debt purchaser violated the FDCPA by "reporting to the CRAs that Plaintiff owed a debt that she did not and that the underlying debt was more recent than it was in connection with an attempt to collect a consumer debt under a credit card." The district court granted summary judgment to the debt purchaser and held that the allegation that the debt sought to be collected is not owed, standing alone, cannot form a basis for a "false and misleading practices" claim under the FDCPA. Moreover, Plaintiff's own expert admitted that the debt purchaser accurately reported the "date opened" and the "FCRA compliance/date of first delinquency" at all times. The district court also awarded reasonable attorney's fees to the debt purchaser on the FDCPA claim and held that that the debt purchaser established that the FDCPA claim was "brought in bad faith and for purposes of harassment."

### **Debtor v. Debt Collector**

Represented debt collector in class action by debtor alleging violation of the Ohio Consumer Sales Practices Act ("OCSPA") for alleged failure to state consideration paid for the debt in an assignment document. The Richland County Court of Common Pleas granting the debt collector's motion for judgment on the pleadings and dismissed the OCSPA claim. The court held that the debtor failed to cite to an Ohio case that was sufficiently similar to put the debt collector on notice that its alleged conduct violated the OCSPA; thus, the debtor failed to state a class claim for violation of the OCSPA. The Court further held that any amendment of the complaint to cite to cite additional authority would be futile because the proposed additional authority came from a federal court and was not a decision from a court of "this state."

### **In re Asbestos Insurance Bad Faith Cases**

The plaintiffs sought to represent a class in a number of cases consolidated pursuant to the West Virginia Mass Litigation Panel rules. They contended that asbestos personal injury claims had been unfairly investigated and settled by numerous insurers in violation of that state's Unfair Trade Practices Act. In discovery defendants presented evidence that many of the claims were of questionable validity, and defendants' experts on the class certification issue testified that individual facts surrounding those issues predominated over facts pertinent to the alleged class. Plaintiffs agreed to settle shortly before the class certification hearing.

## **Insured v. National Insurance Company**

Represented a national insurance company in coverage and bad faith matter. Plaintiff had purchased comprehensive coverage but not collision coverage. Plaintiff was involved in a car accident, alleging that a bird struck his vehicle, which caused him to collide with a culvert. The Campbell Circuit Court (Kentucky) held that our client was entitled to summary judgment on the coverage claim because there was no "direct" damage to his vehicle caused by the bird strike. The court further held that our client was entitled to summary judgment on the bad faith claim because there was no coverage under the terms of the policy.

## **Insured v. National Insurance Company**

Represented a national insurance company against claims of bad faith, breach of contract and negligence. Plaintiff's home suffered wind damage and water loss in October 2007, but the plaintiff failed to file suit against her insurer until March 2009. The Southern District of Ohio held that the plaintiff's claims for coverage and negligence were barred by the policy's one-year suit limitations provision, and the insurer had not waived the limitations period. The U.S. Court of Appeals for the Sixth Circuit affirmed summary judgment for our client.

## **Insured v. National Insurance Company**

Represented a national insurance company against claims of breach of contract and bad faith. The plaintiff, an owner of a barbershop, purchased two identical business insurance policies prior to a robbery, which plaintiff claimed resulted in damage to property, loss of income and loss of inventory. The Northern District of Ohio granted summary judgment to our client on all claims, holding that the plaintiff failed to cooperate during the insurer's investigation of his loss.

## **Insured v. National Insurance Company**

Represented a national insurance company against claims of breach of contract and bad faith. Plaintiff was the owner of apartment complex, which suffered a roof collapse, causing exterior and interior damage, as well as multiple uninhabitable living units. Both plaintiff and defendant hired roof inspectors to determine cause of collapse, although interpretations of reports were disputed by both sides. Our client eventually paid out for a new roof and repair of interior damages; however, plaintiff alleged that our client did not fully pay out for loss of income as dictated on policy. The Northern District of Ohio granted summary judgment to our client on grounds that our client was reasonably justified in withholding payment throughout the course of its investigation.

## **Jerome Byrd v. ProVest, LLC, et al., United States District Court, S.D. Ohio, Western Division (Case No. 1:09-cv-076)**

Successfully defended ProVest in a putative class action against claims for violation of the Fair Debt Collection Practices Act ("FDCPA"). The district court granted ProVest's motion for summary judgment on all claims, (1) holding the plaintiffs' claims were time-barred, (2) ProVest is not subject to the FDCPA because it is not a "debt collector", and (3) even if ProVest was subject to the FDCPA, the posted notice did not violate the FDCPA. The district court's decision granting ProVest's motion for summary judgment is available at 2010 U.S. Dist. LEXIS 20636.

## **Prime Contractor v. Owner and Project Engineer**

Obtained multi-million dollar settlement for Prime Contractor in large, complex action against Owner and Project Engineer for delay, interference, breach of contract, and related claims. The case involved significant electronic and paper discovery, extensive deposition practice, extensive motion practice, multiple experts, complex case management methods, and varied methods of alternative dispute resolution.

**Tornnace v. CBC Innovis, S.D. Ohio (Case No. 1:08-cv-403)**

Successfully defended CBC Innovis in an action by a consumer for alleged violation of the Fair Credit Reporting Act ("FCRA"). The district court granted CBC Innovis' motion to dismiss, holding it was not liable as a matter of law for the alleged inaccurate credit reports. The district court concluded that under the FCRA, CBC Innovis was a "reseller" of information, and not a "consumer reporting agency," and hence was not liable for the inaccuracies allegedly contained in Plaintiff's credit reports. The district court also concluded that the complaint failed to state a claim against CBC Innovis because it did not allege that it failed to use reasonable procedures to ensure the accuracy of the information it reports. The district court's decision is available at 2009 U.S. Dist. LEXIS 24936.