

COLLECTION ADVISOR

USING TECHNOLOGY TO EMPOWER COLLECTIONS

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SHOULD KNOW

PERFORMANCE NO LONGER
THE LONE KEY TO SUCCESS

PREPARING FOR EXAMINATION
- CHECKLIST

COLLECTION ADVISOR'S
2015 BUYER'S GUIDE

Joann Needleman

COLLECTIONS VOICE ON CFPB

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Law Firm Agency Spotlight

Protecting Business from Protracted Litigation

BY JOSHUA FLUEGEL

By the time an account has reached the law firm talk has clearly run its course; and it is time for the final action in the account's lifetime. It is at this point when costs are great so a law firm must be graceful in its efforts to resolve the account as quickly as possible. Such a law firm is Bernstein-Burkley, P.C. which is featured in this issue's Law Firm Spotlight.

Collection Advisor talks with Bernstein-Burkley's co-managing partner, Robert S. Bernstein, Esq. about how they operate in today's collection environment.

We also discuss how he came to be involved in law before he could even drive as well as the pitfalls every debt collection law firm must avoid.



Robert S. Bernstein

When and how did Bernstein-Burkley open its doors?

We trace our roots to 1965 when my father, Joe Bernstein, graduated from law school after being the first "old guy" in Pittsburgh to go back to law school. He was 33! Dad was in the floor tile and paint business and gravitated to a commercial and business practice. Pretty quickly, business associates recognized his ability to help them collect their delinquencies. He understood business and he understood law. I began working with him in 1968 while still in high school and have been there ever since, while attending college and law school at night. Twelve years ago, I had the good sense to hire a bright young lawyer named Kirk Burkley who very quickly showed himself to be among the sharpest and most well-rounded lawyers I have ever seen. Within a few years,

it was clear Kirk was going to be a driving force in the future of the firm. Kirk has helped us recruit and hire several high quality young lawyers to lead us on into the future. Notably, Shawn McClure has become the partner in charge of our collection practice.

How did you decide on pursuing the legal profession and the collection area of law?

At 14, I was tired of working through Pittsburgh winters at the neighborhood gas station. Those were the days before self-service. My father had been out of school just a couple of years, but was already growing his practice. I asked if there was something I could do in the office after school and on the weekends. I was appointed as the "go-fer" and began to help him organize for a volume collection practice. I guess I just had a knack for organization and systems.

In what other areas does Bernstein-Burkley practice?

In addition to the collection practice, we have a significant Bankruptcy & Restructuring group. This group works with the collection group to form the Creditors' Rights practice in the firm. We represent unsecured creditors, creditors' committee, lenders, trustee and plan administrators and others in the bankruptcy process. Our other main area of practice is real Oil & Gas and Real Estate. There, our lawyers help clients understand their legal rights and position with respect to the development and production of Marcellus shale, Utica shale and other shale gases. Bernstein-Burkley, P.C. also handles real estate transactions for clients,



Co-Managing partners Robert S. Bernstein and Kirk B. Burkley.

including those that arise from property assessments, asset purchase and due diligence for homeowners and corporations.

What are the most dangerous pitfalls in legal collections and skip tracing and how do you avoid them?

By far the most dangerous business pitfall with respect to legal collections is getting involved in protracted litigation. In any collection matter, litigation results in additional time and expense to all parties involved. While contested litigation is not going to be avoided, and often produces the best results, protracted litigation is a time and money drain for all involved. Protracted litigation can be caused by any number of factors: a creditor that is unwilling to fully participate, a crowded or slow court docket, or creditors' counsel who does not know how to drive the litigation forward. We make sure we have exhausted all pre-suit efforts and have thoroughly evaluated the collectability of a claim before recommending that our clients move forward with filing a lawsuit. Additionally, we try to make our clients

“By far the most dangerous business pitfall with respect to legal collections is getting involved in protracted litigation.”

- Robert S. Bernstein

fully aware of the time commitment necessary from them in order to make the litigation successful. Our experienced creditors' rights attorneys give much thought on where to file and how to move the case before it is even started.

The greatest skip tracing pitfall we see is a complete reliance upon skip tracing reports. While many great services today offer skip tracing reports for a fee, clients often look at these reports and take them as gospel. Clients rely entirely on the report results. Skip tracing is an art form; we find the best results are obtained by combining different paid reports with past experiences with the debtor. Public information is free and is also very useful when combined with paid skip tracing reports and the client's notes. At the end of the day, we also realize the information in such reports is often a couple months behind. There is value in letting a file sit for a couple months, assuming no statute of limitation issues, and revisiting skip tracing efforts at a later date.

How has the CFPB affected how Bernstein-Burkley operates and what has been done to successfully adapt?

The greatest impact we are seeing with the CFPB is with respect to the reporting and recording requirements from our clients; particularly, our bank clients. Creditor grantors are concerned with facing audits from the CFPB, and have begun to take steps to extend internal compliance measures to their outside vendors such as collection agencies and law firms. One newer reporting requirement we have encountered is logging consumer complaints on a monthly basis to our clients. Clients want to have a formal record of a consumer debtor calling to complain about the debt or the collection efforts. This is a result of the CFPB's bulletins stating that such credit grantors will now be held responsible for the actions of their vendors. Clients are preparing for CFPB

audits, and collection agencies and law firms should do the same. An easy way for a creditor grantor to show compliance is to regularly audit their vendors.

It wasn't hard for us to adapt as a firm because our ability to provide timely and detailed reporting is something we have always taken great pride in. We have long recognized there is a very important client service component to legal collections. While collecting dollars always makes our clients happy, it is the ability to provide detailed and timely reporting that makes our clients' lives easier.

How does technology assist you in processing legal cases for collections?

Some of that is obvious. We can receive and send accounts and reports in electronic form, saving time and paper. We have access to many more record sources in much less time than we ever did before. We can track and organize our accounts, work queues efficiently and have them better managed with the tools that we have.

What challenges do you see for collection law firms in the future?

We've always had the stigma of being the "bad guys" who try to make people pay. Of course, we prefer the view that we assist creditors in convincing their customers to pay their legitimate debts. That issue won't go away. The collection of accounts receivable or personal credit accounts has become much more difficult in the wake of the most recent recession and the mortgage foreclosure crisis of recent years. Because of the breadth of the delinquency and the sheer numbers of people involved, there was political pressure to shield consumers from the need to pay, or at least the legal impact of non-payment. It has become accepted (or even expected) creditors will not pursue recovery, at least in the consumer world. Further, the uncertainties of the CFPB process and those shifting sands put collection firms, even smaller collection firms, under pressure.

What should collection agencies be doing to prepare for the 2015 collection year in terms of litigation to collect debt?

This is really hard to answer. I suppose we should prepare for all of the regulatory

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Bernstein with his family, friends and the Bernstein-Burkley staff at the Bike MS event.

"One newer reporting requirement we have encountered is logging consumer complaints on a monthly basis to our clients."

- Robert S. Bernstein

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process to hit the law firm (either directly or through pressure on clients) and put their practices under even more pressure. It should be enough for collection firms to beef up their compliance procedures and audit preparation, which should result in making sure all statutes, regulations and best practices are followed. Doing the right thing, according to all of the known rules, should be enough. But with rules changing, it makes it harder to adjust quickly and accurately to those changes.

What advice would you offer an attorney looking to open a practice in the collection industry?

It's not your father's collections world! In a world where many people incur credit expecting not to repay, the volumes may be greater, but the recoveries are reduced.

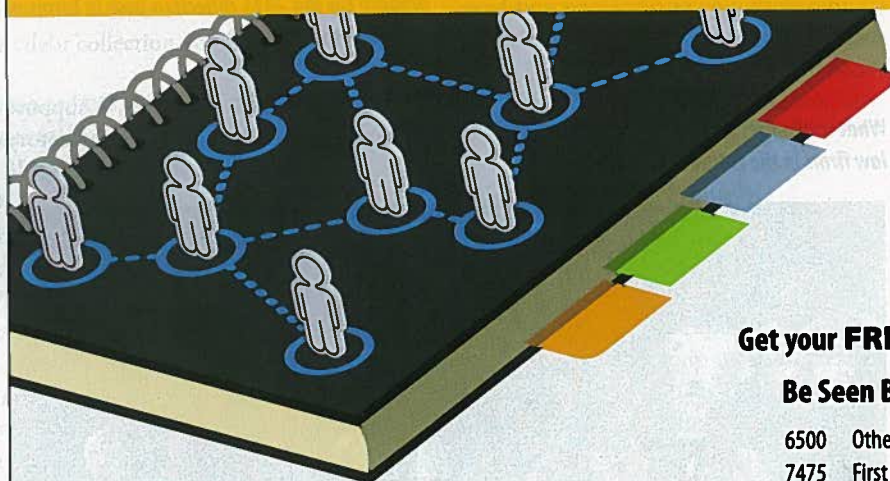
When there are tectonic shifts in the credit world (like the mortgage crisis or the CFPB creation), it is hard to price your services on a contingent fee. I tend to believe you either have to be big enough to withstand the shifts or small enough that they have less impact. Probably, in the end, it is a combination of creating a quality and ethical collection practice, joined with other types of law that can sustain the lawyer during times of change.

What do you like to do in your free time?

I enjoy helping organizations grow. I am currently on four boards of not for profit organizations. My wife, Ellie, has had Multiple Sclerosis for almost 40 years and we have both served on the Board of the MS Society, where I previously served as Chair. I am Vice-Chair of the board of

a low income housing organization in town, along with being on my condo association board. And I am honored to be serving as President-Elect (to be President in May 2015) of the Commercial Law League of America. Founded in 1985, the CLLA is the leader in providing expertise, insight and results to and for attorneys, credit grantors and their partners in the credit and business communities. I also serve as an unofficial counsel and business advisor to my son, who is building an indoor rock climbing gym in Pittsburgh. I helped my daughter grow into the holder of a PhD. She is about to become an Assistant Professor and embark on her college teaching career. Finally, I will admit that Ellie and I regularly binge-watch some great TV series like "Friday Night Lights," "The Blacklist" and "Weeds," just to name a few. ☺

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- 7475 First party creditors who need collection services
- 3221 Hospitals & Clinics who need help with self-pay accounts
- 1800 Bank decision makers
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- 891 Law Firms active in collections
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