RECENT DEVELOPMENTS

DECEPTIVE TRADE PRACTICES AND WARRANTY

COMMON-LAW DEFENSE CANNOT BE RAISED TO DEFEAT A CLAIM UNDER THE DTPA OR THE INSURANCE CODE

Wyly v. Integrity Ins. Solutions, ____ S.W.3d ____ (Tex. App. –Houston [14th Dist.] 2016).
http://cases.justia.com/texas/fourteenth-court-of-appeals/2016-14-15-00042-cv.pdf?ts=1476807046

FACTS: Appellant, Benson Scott Wyly, contacted Garner Geisler, an agent for Appellee, Integrity Insurance, to obtain insurance on an aircraft Wyly was transporting. Wyly detailed the extent of the coverage he was seeking by expressing to Geisler the need for a comprehensive policy to protect from all foreseeable loss to the aircraft from loading through unloading. Geisler then contacted a third party, US Risk, who obtained a policy from Essex insurance. Geisler relayed to Wyly that he had secured a policy with the requested full coverage. Wyly relied on Geisler's description of coverage and arranged for the plane to be shipped. Upon arrival it was discovered that the fuselage of the plane had been damaged during transit by a tie strap that secured the plane to the trailer. Wyly filed a claim under the policy. Essex denied coverage on the basis that the policy contained an express exclusion for "the improper packing, preparation for shipment or loading by you or the shipper." This led Wyly to discover that the policy was not as comprehensive as Geisler had expressed to him. Wyly then filed suit against Integrity alleging deceptive trade practices under the DTPA and violations of the Texas Insurance Code.

The trial court granted Integrity's motion for summary judgment, based partially on Integrity's assertion that Wyly had a duty to read the policy and failed to satisfy that duty by relying solely on Geisler's description. Wyly appealed.

HOLDING: Reversed and Remanded.

REASONING: Wyly argued that "failure to read" was a common-law defense that could not be raised to defeat a claim under the DTPA or the Insurance Code. The court agreed and relied on multiple precedents to reach its decision. The first case the court looks to is *Smith v. Baldwin*, 611 S.W.2d 611, 616 (Tex. 1980), wherein the Texas Supreme Court stated that "A primary purpose of the enactment of the DTPA was to provide consumers a cause of action for deceptive trade practices without the burden of proof and numerous defenses encountered in a common law fraud or breach of warranty suit." The court also cited *Frank B. Hall & Co. v. Beach, Inc.*, 733 S.W.2d 251 (Tex. App. –Corpus Christi 1987) wherein the court held that the inability to raise a common law defense under the DTPA was equally applicable to Insurance Code claims and "any contributory negligence attributable to the insured could not defeat recovery on its Insurance Code claims."

"A primary purpose of the enactment of the DTPA was to provide consumers a cause of action for deceptive trade practices without the burden of proof and numerous defenses encountered in a common law fraud or breach of warranty suit."

Integrity denied raising a common law defense and contended that the rule that an insured is charged with knowledge of the contents of his policy (the "deemed to know" rule) is not an affirmative defense. The court, however, rejected this argument stating that it saw no distinction between "failure to read" and "deemed to know" and would, therefore, apply the rule despite Integrity's attempt to characterize its defense as one not arising under common law.

DEBT COLLECTION

LAW FIRM AND SUBSTITUTE TRUSTEES WERE "DEBT COLLECTORS" SUBJECT TO THE FDCPA'S REGULATIONS

McCray v. Federal Home Loan Mortgage Corp., ____ F.3d ____ (4th Cir. 2016).
http://caselaw.findlaw.com/us-4th-circuit/1750721.html

FACTS: Plaintiff Renee McCray ("McCray") defaulted on a mortgage that was held by Freddie Mac and was serviced by Wells Fargo. Following the default, Wells Fargo retained the White Firm to pursue foreclosure. The White Firm sent McCray a letter stating the firm had been instructed to initiate foreclosure proceedings on her mortgage. The letter concluded with the statements: "This is an attempt to collect a debt. This is a communication from a debt collector. Any information obtained will be used for that purpose." A few days after they sent this initial letter, the White Firm sent McCray a more detailed notice of intent to foreclose. Several members of the White Firm were substituted as trustees ("Substitute Trustees") on the deed of trust to facilitate foreclosure. The Substitute Trustees commenced the foreclosure proceeding in state court, McCray brought suit alleging, among other things, that the White Firm and the Substitute Trustees violated the FDCPA. The White Firm filed a motion to dismiss for failure to state a claim.

The district court granted the White Firm's motion to dismiss. It reasoned McCray had failed to sufficiently allege The White Firm was a "debt collector" under the FDCPA because the letters that the firm sent to McCray did not expressly demand payment and other specific information about the debt. McCray appealed.

HOLDING: Reversed and remanded.

REASONING: The White Firm and the Substitute Trustees argued McCray's complaint failed to establish their status as debt collectors because she failed to plead any facts indicating they had made demands for payment, or communicated deadlines and penalties for McCray's failure to make payment. The court rejected Defendants' argument because the FDCPA's definition of debt collector does not include any requirement that a debt collector be engaged in an activity by which it makes a "demand for payment." The court stated in order to be actionable under the FDCPA, a debt collector needs only have used a prohibited practice in connection with the collection of any debt or in an attempt to collect any debt. The court noted that debt remained a debt even after foreclosure proceedings commenced and Defendants' actions surrounding the foreclosure proceeding were attempts to collect that debt.

Finally, the court reasoned if they were to accept the Defendants' argument, it would create an enormous loophole in the Act. The loophole would immunize any debt from coverage if that debt happened to be secured by a real property interest and foreclosure proceedings were used to collect the debt. The court saw no reason to make an exception to the Act when the debt collector uses foreclosure instead of other methods.

FORECLOSURE TRUSTEE IS NOT A DEBT COLLECTOR UNDER THE FDCPA

Vien-Phuong Thi Ho v. ReconTrust Co., ___ F.3d ___ (9th Circuit 2016).
https://cdn.ca9.uscourts.gov/datastore/opinions/2016/10/19/10-56884.pdf

FACTS: Plaintiff, Vien-Phuong Thi Ho ("Ho"), financed a home in Long Beach, California, using a loan from Countrywide Bank secured by a deed of trust in the property. Defendant, ReconTrust, was a third party trustee who was an agent of both Ho and Countrywide Bank and charged with selling the property if Ho defaulted. Ho missed payments on her loan and ReconTrust, first, sent her a notice of default, which informed her of an amount owed of $20,000. After Ho failed to respond to the notice with payment, ReconTrust sent Ho a notice of sale.

Subsequently, Ho filed the present suit against ReconTrust alleging, in part, that ReconTrust violated the FDCPA when it sent her the notice to default and notice of sale that misrepresented the amount of debt she owed. The district disagreed with Ho and granted ReconTrust's motion to dismiss Ho's FDCPA claims. Ho appealed.

HOLDING: Affirmed in part, vacated in part

REASONING: Ho argued that both the notice of default and notice to vacate were attempts to collect a debt and, therefore, ReconTrust was a "debt collector" for the purposes of the FDCPA. The court disagreed. The court used statutory interpretation to illustrate that ReconTrust does not fall into the category of a "debt collector" as anticipated by the FDCPA. The court noted that the statue has a broad, general definition of a "debt collector" and a supplemental more narrow one, contained in 15 U.S.C.S. §1692a. The general definition applies to entities that regularly collect or attempt to collect, indirectly or directly, debts owed or due or asserted to be owed or due to another. The statute, however, later expressly identifies entities whose principal business purpose is the enforcement of security interests. The court found that these specifically acknowledged entities enforcing a security interests were already covered under the general definition of "debt collector" and, therefore, the statute must be interpreted to intend that there are certain entities whose principal business purpose is the enforcement of security interests that are not deemed to be "debt collectors."

Ho further argued that the actions of ReconTrust rose to the level of debt collection activities and subjected ReconTrust to the FDCPA. Specifically, Ho offered evidence that she reasonably believed that both of the notices were sent to demand her to pay Countrywide Bank because the threat of foreclosure accompanied both notices. Again, the court disagreed. The court argued that giving a notice of sale, which is required by California Civil Code, does not rise to the level of debt collection activity as anticipated by the FDCPA. The court held that a security enforcement entity does not become a debt collector if their sole role in debt collection process is the enforcement of a security interest, and it is commonplace for a forecloser to communicate with the consumer via notices during the foreclosure process. Further, the court rationalized that the notices did not request payment from Ho, rather, they only informed Ho of her default status and oncoming proceedings. This created an incentive to pay the debt owed but did not turn the notices into debt collection activities.

ReconTrust argued that if third party trustees were labeled "debt collectors" under the FDCPA it would frustrate, if not prohibit, them from complying with their obligations under the California Civil Code. The court agreed and found that "debt collector" is an ambiguous term, and an ambiguous federal statute should not yield an interpretation that would be in conflict with a state's foreclosure laws.

> **"Debt collector" is an ambiguous term, and an ambiguous federal statute should not yield an interpretation that would be in conflict with a state's foreclosure laws.**

It is important to note that the court does not create a blanket rule that a trustee could never rise to the level of a "debt collector" under the FDCPA. The court held that the requirements under the California Civil Code did not constitute debt collection activities. However, the court seems to infer that there could be circumstances in which a trustee, or the functional equivalent, could be considered a "debt collector" under the FDCPA by following requirements set out in a State's law dependent on what that State's law call for.

COURT FINDS MULTIPLE CALLS TO PERSON NOT THE CONSUMER DID NOT VIOLATE FAIR DEBT COLLECTION PRACTICES ACT

Kuntz v. Rodenburg LLP, ____ F.3d ____ (8th Cir. 2016).
http://law.justia.com/cases/federal/appellate-courts/ca8/15-2777/15-2777-2016-09-22.html

FACTS: Appellant, Kuntz, alleged that Rodenburg LLP, unlawfully called him numerous times to obtain his daughter's contact information and that the number of calls constituted unlawful harassment. Rodenburg attempted to contact Kuntz multiple times to collect the credit card debt of Kuntz's daughter before he spoke to a representative in charge of collecting the debt. Following the conversation with Kuntz, Rodenburg called twice more. Kuntz brought suit, alleging that the calls violated the Fair Debt

Collection Practices Act ("FDCPA").

The district court granted Rodenburg's motion for summary judgment because the court determined that the unanswered phone calls were not considered "communications". The answered calls were also deemed incomplete communications under the FDCPA. Kuntz appealed.

HOLDING: Affirmed.

REASONING: Kuntz argued during appeal that the calls were considered harassment under §1692d(5) of the FDCPA and that his claim should have survived summary judgment because that determination was a matter of fact. The court rejected that argument. It found Rodenburg's calls were in regard to any information he had acquired concerning his daughter, or if he was willing to provide correct or complete information.

The court noted that Kuntz failed to argue the merits of harassment and only asserted that one phone call can be harassing. The circuit court conceded that this issue was indeed fact intensive depending on factors such as: volume, frequency, pattern, and substance of the phone calls. However, because the court found no reasonable jury could find the requisite level of harassment from the facts of the case, summary judgment should be affirmed.

PARKING LOT TICKET IS DEBT FOR PURPOSES OF FDCPA

Franklin v. Parking Revenue Recovery Servs., Inc., 832 F.3d 741 (7th Cir. 2016). http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2016/D08-10/C:14-3774:J:Sykes:aut:T:fnOp:N:1808788:S:0

FACTS: Plaintiffs Carmen Franklin and Jennifer Chism parked their cars in a public parking lot operated by CPS Chicago Parking, LLC ("CPS"). When Franklin and Chism failed to pay their parking fees, Defendant Parking Revenue Recovery Services, Inc. ("Parking Revenue") sent collection letters to Franklin and Chism on behalf of CPS for the parking fees and nonpayment penalties.

Parking in a public lot that is subject to a parking fee is a "transaction."

Franklin and Chism filed a class action against Park Revenue alleging that the collection letters violated the FDCPA. The district court granted summary judgment for Parking Revenue, holding that the FDCPA did not apply because the unpaid parking obligations were not "debts" within the meaning of the FDCPA. Franklin and Chism appealed.

HOLDING: Reversed.

REASONING: The circuit court disagreed with the district court and held that the FDCPA applies to the unpaid parking obligations because the obligations were "debts" within the meaning of the FDCPA.

"Debts" within the meaning of the FDCPA are obligations "arising out of" consumer "transactions." Obligations arise out of transactions when those obligations are created by the contracts that give legal force to the transactions. The court held that parking in a public lot that is subject to a parking fee is a "transaction." Also, a contract was formed when CPS offered a parking spot to the public subject to a parking fee and Franklin and Chism accepted the offer by parking in the CPS's lot. Therefore, parking fee payment obligations arising from parking in the lot were "debts" within the meaning of the FDCPA.

FILING PROOF OF CLAIM IN BANKRUPTCY ON A STALE DEBT DOES NOT VIOLATE FDCPA

Owens v. LVNV Funding, LLC, 832 F.3d 726 (7th Cir. 2016). http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2016/D08-10/C:15-2044:J:Flaum:aut:T:fnOp:N:1808685:S:0

FACTS: Plaintiff-debtor filed for bankruptcy, represented by an attorney. During the bankruptcy proceeding, Defendant-debt collector filed a proof of claim for a stale debt. The proof of claim accurately noted the origin of the debt, the date of the last payment on the debt, and the date of the last transaction. Plaintiff objected to the claim, realizing the debt was time-barred. As a result, the proof of claim was disallowed and discharged.

After the discharge, Plaintiff filed a separate suit against Defendant, alleging filing a proof of claim on a stale debt was in violation of the FDCPA because the filing such a claim constituted a misleading and deceptive means of collecting a debt. The district court granted Defendant's motion to dismiss. Plaintiff appealed.

HOLDING: Affirmed.

REASONING: Plaintiff argued that filing a proof of claim on a stale debt violated the FDCPA's prohibition against false, deceptive, misleading, unfair, and unconscionable debt collection practices because the claim was: (1) misleading the Plaintiff about the legal status of the debt; and (2) deceptive as the Plaintiff and his attorney could have failed to object to the claim, allowing the Defendant to collect on an unenforceable obligation.

The court rejected both of Plaintiff's arguments. First, the court held that a proof of claim on a stale debt was not inherently misleading because the claim did not purport to be anything other than a claim subject to dispute in the bankruptcy case. The Bankruptcy Code extensively defined the term "claim" as a right to payment and did not intend to include only legally enforceable obligations. A stale debt is still a debt even if the creditor cannot file a collection suit because there can be other avenues of collection. Filing a proof of claim on the stale debt, therefore, is not misleading.

In addition, the proof of claim was not deceptive because the claim contained accurate and complete information about the status of the debts. Plaintiff was represented by an attorney who was familiar with the statutes of limitations for different types of debt. Under the reasonable competent lawyer standard, Plaintiff's attorney would have had no trouble evaluating whether the debt was timely. In sum, Plaintiff failed to present any evidence that Defendant engaged in deceptive, misleading, unfair, or otherwise abusive conduct prohibited by the FDCPA.

MISLEADING VALIDATION NOTICE IN A DEBT COLLECTION COMPLAINT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

PLEADINGS OR FILINGS IN COURT CAN BE SUBJECT TO THE FDCPA

Marquez v. Weinstein, Pinson & Riley, P.S., 836 F.3d 808, (7th Cir. 2016).
https://scholar.google.com/scholar_case?case=3046187119030165159&hl=en&as_sdt=6&as_vis=1&oi=scholarr

FACTS: Defendant NCO in conjunction its attorneys attempted to collect on student loan debts allegedly owed by the Plaintiffs. The Plaintiffs stated that in attempting to collect on those debts Defendants violated the FDCPA. However, NCO contended the court did not need to address that FDCPA challenge at all because 15 U.S.C. §1692e does not regulate the content of state court proceedings.

The district court rejected this argument and ruled against NCO.

HOLDING: Reversed and remanded.

REASONING: NCO argued the court did not need to address the FDCPA claim because pleadings or filings in court cannot be subjected to the FDCPA as 15 U.S.C.§1692e does not regulate the content of state court pleadings. NCO based their argument on the Supreme Court's decision in *Heintz v. Jenkins*, 514 U.S. 291, 115 S. Ct. 1489 (1995) that the FDCPA was inapplicable to lawyers due to an implied exemption in 15 U.S.C. §1692e for debt-collecting of activities of lawyers that consist of litigating, and the fact that the post-1995 version of 15 U.S.C.§ 1692e(11) excludes formal legal pleadings.

The Seventh Circuit rejected both of the arguments that NCO put forth citing the prior body of case law as well as principals of statutory interpretation. The court held that, contrary to the claim of NCO, the FDCPA applies to attorneys who regularly engage in consumer-debt-collection activity, even when that activity consists of litigation.

The second argument put forth by NCO was rebutted by the Seventh Circuit, noting that while Congress may have exempted legal pleadings from 15 U.S.C. §1692e(11), it did not exempt them from the statute as a whole. The Seventh Circuit employed the statutory interpretation rule against surplusage to interpret that the aforementioned exemption should be applied to 15 U.S.C. §1692(e)11 rather than the statute as whole. If the statute were interpreted differently, the stated purpose of the FDCPA, "to eliminate abusive debt collection practices, to ensure that those debt collectors who abstain from such practices are not competitively disadvantaged, and to promote consistent state action to protect consumers" would be undermined.

UNLAWFUL CHARGE FOR INTEREST UPON INTEREST VIOLATES FAIR DEBT COLLECTION PRACTICES ACT

Haney v. Portfolio Recovery Assocs., ____ F.3d ____ (8th Cir. 2016).
http://media.ca8.uscourts.gov/opndir/16/09/151932P.pdf

FACTS: Portfolio Recovery Associates, L.L.C. ("PRA") bought and was assigned charged-off credit card debts that had been incurred by Daniel Haney and owed to GE Money Bank, F.S.B., and HSBC Bank Nevada, N.A./Orchard Bank. PRA's legal counsel Gamache & Myers, P.C. ("Gamache") sent Haney three collection letters demanding Haney to pay the charged-off debt along with statutory prejudgment interest calculated from before and after PRA acquired the debts. Haney filed suit against PRA and Gamache, asserting that they violated the FDCPA by attempting to collect statutory prejudgment interest on the interest portion of the charged-off accounts.

The court found the communication plainly deceptive and misleading to an unsophisticated consumer as a matter of law.

PRA and Gamache jointly moved for dismissal pursuant to Fed. R. Civ. P. 12(c), and the district court granted the motion. Haney appealed.

HOLDING: Affirmed in part, reversed in part and remanded.

REASONING: Haney argued that PRA and Gamache's attempt to collect statutory prejudgment interest on the interest portion of the charge-off balances violates Missouri restrictions on the collection of compound interest.

The court ruled that Missouri law permits parties to contract, in writing, for the payment of interest upon interest. However, the interest at issue is statutory, not contractual. Also, PRA and Gamache failed to cite statutory authority permitting a creditor or assignee to collect compound interest by assessing statutory prejudgment interest on the portion of a liquidated sum comprising already accrued contractual interest. Therefore, Haney stated a claim that should have survived a motion for judgment on the pleading.

ATTEMPTING TO COLLECT TIME-BARRED DEBT CAN VIOLATE FAIR DEBT COLLECTION PRACTICES ACT, EVEN IF IT DOES NOT THREATEN LITIGATION

Daugherty v. Convergent Outsourcing, Inc., 836 F.3d 507 (5th Cir. 2016).
http://www.ca5.uscourts.gov/opinions%5Cpub%5C15/15-20392.0.pdf

FACTS: Plaintiff, Daugherty, defaulted on a debt which Defendants, Convergent Outsourcing, Inc. and LVNV Funding, L.L.C., sought to collect. The statute of limitations for collecting the debt had expired, but Defendants sent Plaintiff a letter to attempt to collect the debt. The letter offered a discounted settlement offer, but did not mention the time-bar or litigation. Plaintiff filed suit alleging violations of the FDCPA. Plaintiff claimed that the Defendants, as debt collectors, used false, deceptive, or misleading representations or means in connection with the collection of the debt, and that Defendants used unfair or unconscionable means to attempt to collect that debt- in violation of 15 U.S.C. § 1692e and 15 U.S.C. § 1692f. Defendants moved to dismiss the suit.

The district court granted Defendants' motion. The court found that the FDCPA allows a debt collector to seek voluntary repayment of a time-barred debt so long as they do

not initiate or threaten legal action in connection with the debt collection efforts. Plaintiff appealed.
HOLDING: Reversed and remanded.
REASONING: Plaintiff argued that the letter was unfair and unconscionable, as well as false, deceptive and misleading because it did not disclose that the debt was statutorily unenforceable. Plaintiff also emphasized that settling the debt through a partial payment would trigger tax liability and would revive the entire debt. The court accepted that argument and explained that to determine if a collection letter violates § 1692e or § 1692f a court must view the letter from the perspective of an unsophisticated or least sophisticated consumer.

The FDCPA applies to attorneys who regularly engage in consumer-debt-collection activity, even when that activity consists of litigation.

The court further explained that the FDCPA must be construed broadly and in favor of the consumer. Citing case law, the Fifth Circuit held that a collection letter can be deceptive or misleading enough to violate the FDCPA when it does not mention litigation but offers to settle a time-barred debt without acknowledging that the debt is judicially unenforceable and without mentioning the possible pitfalls of partial payment.

FAIR DEBT COLLECTION PRACTICES ACT VENUE PROVISION DOES NOT APPLY TO GARNISHMENT ACTION

Ray v. McCullough Payne & Haan, LLC, 838 F.3d 1107 (11th Cir. 2016). https://casetext.com/case/ray-v-mccullough-payne-haan-llc

FACTS: After successfully obtaining a judgment against consumer-debtor and plaintiff Bryson Ray ("Ray"), judgment-creditor and defendant McCullough Payne & Haan, LLC ("McCullough firm") initiated a garnishment proceeding against Ray's bank to collect on the judgment. However, Ray filed a suit against the McCullough firm alleging its garnishment proceedings violated the FDCPA provision stipulating "[a]ny debt collector who brings any legal action on a debt against any consumer shall ... bring such action only in the judicial district or similar legal entity—(A) in which such consumer signed the contract sued upon; or (B) in which such consumer resides at the commencement of the action." Ray filed suit in the United States District Court for the Northern District of Georgia, which dismissed Ray's action. Ray appealed.
HOLDING: Affirmed.
REASONING: The court looked to state law to determine that garnishment proceedings initiated after original legal actions arising under the FDCPA are not subject to the FDCPA provisions governing venue. Specifically, the court noted the Georgia state law provision requiring post-judgment garnishment proceedings involve the creditor and garnishee rather than the debtor. Ray argued that the court's construction of the FDCPA should not be informed by the meaning of state law but rather strictly by federal law. However, the court rejected Ray's argument by looking to Supreme Court precedent, which held that, absent a federal rule stating otherwise, the courts may look to state law when interpreting a federal statute. The court found further support for its holding by looking to the Federal Trade Commission's interpretation of the FDCPA, which stated that "[i]f a judgment has been obtained from a forum that satisfies the requirements of [the FDCPA], a debt collector may bring suit to enforce it in another jurisdiction." The court found that its interpretation and similar interpretations from other circuits supported the FDCPA's purpose of preventing debt collectors from filing suits against consumers in distant and inconvenient forums.

COURT AWARDS $84,000 TO COLLECTOR'S ATTORNEY IN A FAIR DEBT COLLECTIONS PRACTICES SUIT

Blowers v. Lerner, ____ F. Supp. 3d ____ (E.D. Va. 2016). https://casetext.com/case/blowers-v-lerner

FACTS: In a previous case, Debt collectors ("Defendants") sued Blowers after he failed to pay debt he owed them. Mr. Francis, allegedly on behalf of Blowers, filed the instant case asserting violations of the FDCPA for not properly serving Blowers. Defendants sent settlement offers to Mr. Francis, but Mr. Francis declined every offer. It came to light that Mr. Francis had denied the offer without consulting with his client. Mr. Francis claimed the offer was not within the parameters preset by Blowers.

The case ended when Blowers testified that he had no contact with Mr. Francis throughout the case, had suffered no harm that would justify litigation, did not want the relief sought, and had no interest in pursuing the case. Blowers settled the underlying case. Pursuant to 28 U.S.C. § 1927, Defendants moved for sanctions against Mr. Francis. The magistrate judge recommended that Mr. Francis pay reasonable attorney's fees to Defendants. Francis objected.
HOLDING: Adopted Report and Recommendation.
REASONING: The court reviewed the record and found no error in the judge's factual findings or legal conclusions in the Report and Recommendation. The court found the judge correctly applied the standards under 28 U.S.C. § 1927 to conclude that Francis' conduct was sufficient to warrant sanctions and award attorney's fees and costs.

The responsibility to convey the existence and terms of settlement offers to clients is one of an attorney's most important duties. This is not simply a matter of legal ethics, but a duty which a lawyer owes to his adversaries, the court and his clients. Mr. Francis' failure to convey the settlement offer demonstrated reckless indifference to the law and did not satisfy his obligations to Blowers, Defendants or the court. By not speaking with Blowers about the settlement offer, Francis caused the Defendants to spend unreasonable attorney's fees. The court broke down the hourly rates of the attorneys and compared it with affidavits and previous cases. The award of attorney's fees and costs totaling $84,752.00 was reasonable.