

FILED
SEP 24 2007

CLERK OF SUPREME COURT
STATE OF WASHINGTON

Nos. 80357-9, 80366-8

SUPREME COURT
OF THE STATE OF WASHINGTON

RAJVIR PANAG, on behalf of herself and all others similarly situated,

Respondent,

v.

FARMERS INSURANCE COMPANY, a domestic insurance company,
and CREDIT CONTROL SERVICES, INC. d/b/a Credit Collection
Services,

Petitioners.

MICHAEL STEPHENS, on behalf of himself and all others similarly
situated,

Respondent

v.

OMNI INSURANCE COMPANY, a foreign insurance company,

Defendant/Appellant,

and

CREDIT CONTROL SERVICES, INC. d/b/a Credit Collection Services,

Petitioner.

**AMICUS CURIAE MEMORANDUM
OF ACA INTERNATIONAL**

John Woodring, WSBA #6781
2120 State Avenue NE #201
Olympia, WA 98506-6514
(360) 754-7667

Attorneys for ACA International

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BY RONALD R. CARPENTER

I. IDENTITY OF AMICUS CURIAE

ACA International (ACA) is a non-profit international trade organization of credit and collection professionals that provides a variety of accounts receivable management services to over one million credit grantors. Headquartered in Minneapolis, Minnesota, ACA serves members in the United States, Canada and fifty-five other countries worldwide. ACA was founded in 1939 and represents more than 5,500 third-party collection agencies, attorneys, credit grantors, debt buyers and vendor affiliates. ACA members include sole proprietorships, partnerships, and corporations of sizes ranging from small businesses with a few employees to firms with thousands of employees. ACA members employ in excess of 100,000 workers nationally. ACA's mission is to help members serve their communities and meet the challenges created by changing markets through leadership, direction, education and service.

The ACA is an industry leader in educating its members on appropriate collection techniques under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, as well as compliance with state-based regulation concerning the collection of debts. Education is a main priority of the ACA. Through high-quality educational opportunities, ACA members do achieve a high degree of compliance with federal, state and local laws. ACA has a staff of more than seventy-five employees and

provides ongoing support to all ACA members particularly with regard to complying with credit and collection laws such as the laws at issue before the Washington Supreme Court in this appeal.

Panag v. Farmers Ins. Co. of America, and *Stephens v. Omni Ins. Co.*, 138 Wn. App. 151, 159 P.3d 10 (2007) are contrary to settled law (and ACA's educational efforts) regarding collections in Washington..

II. ISSUES PRESENTED FOR REVIEW

ACA acknowledges the statement of issues set forth in the Credit Control Services (CCS) and Farmers petitions for review.

III. STATEMENT OF THE CASE

ACA acknowledges the statement of the case in the CCS and Farmers petitions for review, as well as the recitation of the facts in the Court of Appeals opinion.

IV. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

ACA believes review should be accepted in this case for the reasons articulated in the CCS and Farmers petitions for review. The Court of Appeals decisions are contrary to decisions of other divisions of the Court of Appeals. RAP 13.4(b)(2). Although the Court of Appeals decisions in *Panag* and *Stephens* ostensibly relate to subrogation, they have profound implications for those ACA members in Washington who collect debts in accordance with strict federal and state regulations

applicable to debt collection. ACA members in Washington have long relied on the adversarial relationship exemption to the Washington Consumer Protection Act, RCW 19.86 (CPA), as described in cases like *Green v. Holm*, 28 Wn. App. 135, 622 P.2d 869 (1981) and *Marsh v. General Adjustment Bureau, Inc.*, 22 Wn. App. 933, 592 P.2d 676 (1979) in collecting debts. The Court of Appeals decisions at issue here cannot be squared with *Green* and *Marsh*.

Neither can the Court of Appeals decision be squared with the settled law on collection of subrogated claims by public agencies. The Department of Labor and Industries and the Department of Social and Health Services, for example, each have the authority to claim a subrogated interest in a beneficiary's interest in recovery from a third-party tortfeasor. *See, e.g.*, RCW 74.09.180-.185 (DSHS subrogated to rights of recipients of medical payments); RCW 74.20A.030 (same re: rights of child receiving public assistance); RCW 51.24.030, .050, .060 (DOLI has lien against third-party tortfeasor and may obtain beneficiary's cause of action by operation of law). The Court of Appeals decisions will inhibit those public agencies from demanding payment of a "debt" for public benefits advanced by the agency from a tortfeasor.

Additionally, the Court of Appeals decisions here involve an issue of substantial public importance that this Court must resolve.

RAP 13.4(b)(4). The Court of Appeals, in effect, concludes that absent a court adjudication of a debt, no one engaging in collection efforts may indicate to a debtor that a “debt” is owed without facing a CPA claim. This does not square with the real world of collecting debts.

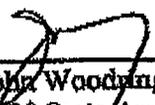
In sending collection letters, collectors make their best effort to calculate the sum due and owing. Collectors are subject to state law, RCW 19.16.250, and federal law, 15 U. S. C. § 1692 et seq., requiring them to comply with fair collection practices. Under state law, “claims” are defined. RCW 19.16.100(5),(12). Nothing in either state or federal law requires collectors to await formal adjudication of the debt before stating to the debtor that a debt is due and owing, and attempting to resolve the debt without adjudication.¹ RCW 19.16.250 precludes seeking excessive fees and costs from the debtor.

V. CONCLUSION

These cases involve a conflict among divisions of the Court of Appeals, RAP 13.4(b)(2), and an issue of substantial public interest that should be determined by the Washington Supreme Court. RAP 13.4(b)(4). The Court should grant review and reverse the Court of Appeals decisions.

¹ To the contrary, “[o]ne purpose of the [federal] Act is to avoid forc[ing] honest debt collectors seeking a peaceful resolution of the debt to file suit in order to resolve the debt—something that is clearly at odds with the language and purpose of the [federal Act].” *Guerrero v. RJM Acquisitions LLC*, No. 05-15121, Slip Op. at 10350 (9th Cir., Aug. 23, 2007) (internal quotations and citations omitted).

RESPECTFULLY SUBMITTED this 24th day of August, 2007.



John Woodring, WSBA #6781
2120 State Avenue NE #201
Olympia, WA 98506-6514
(360) 754-7667

Attorneys for ACA International

FILED AS ATTACHMENT
TO E-MAIL

DECLARATION OF SERVICE

Dava Z. Bowzer states:

I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of 21 years, I am not a party to this action, and I am competent to be a witness herein.

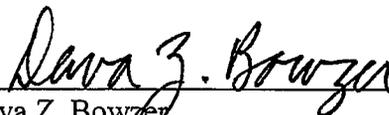
On this 24th day of August, 2007, I caused to be filed via electronic filing with the Supreme Court of the State of Washington the foregoing AMICUS CURIAE MEMORANDUM OF ACA INTERNATIONAL. I also served copies of said document on the following parties as indicated below:

Parties Served	Manner of Service
<i>Counsel for Panag & Stephens:</i> Matthew J. Ide Ide Law Offices 801 Second Avenue, Suite 1502 Seattle, WA 98104-1500	<input checked="" type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Overnight Courier <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail
<i>Counsel for Panag & Stephens:</i> Murray T. S. Lewis Lewis Law Firm 2400 E. Roy Street Seattle, WA 98112	<input checked="" type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Overnight Courier <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail
<i>Counsel for Omni:</i> Jerret E. Sale Bullivant Houser Bailey PC 1601 Fifth Avenue, Suite 2300 Seattle, WA 98101-1618	<input checked="" type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Overnight Courier <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail

Parties Served	Manner of Service
<i>Counsel for Farmers:</i> Stevan David Phillips Margarita Latsinova Stoel Rives LLP 600 University Street, Suite 3600 Seattle, WA 98101	<input checked="" type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Overnight Courier <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail
<i>Counsel for Credit Control Svcs.:</i> John A. Granger Melissa O'Loughlin White Cozen O'Connor 1201 Third Avenue, Suite 5200 Seattle, WA 98101	<input checked="" type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Overnight Courier <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail
<i>Counsel for Credit Control Svcs.:</i> Philip A. Talmadge Talmadge Law Group, PLLC 18010 Southcenter Parkway Tukwila, WA 98188-4630	<input checked="" type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Overnight Courier <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, this 24th day of August, 2007.



 Dava Z. Bowzer