

# ILLINOIS CREDITORS BAR ASSOCIATION

MARCH 2000

## FROM THE PRESIDENT'S DESK

Dear Members,

As my term comes to a close, I would like to thank all of you for helping this organization grow into a successful resource for attorneys across the state.

I look forward to handing over the Presidency to a new slate of officers and a board which, I am sure, will be very enthusiastic about broadening the resources available to ICBA members.

Following is slate for the 2000/2001 ICBA Board:

President:	Rob Becker
Executive Vice President:	Louis Freedman
Secretary:	Scott Michael Alexander
Treasurer:	William Hunter
VP - Education:	Steven Fink
VP - Legislation:	Bob Markoff
VP - Technology:	Barry Neil Lowe
VP - Membership:	Kenneth Wake (downstate)
VP - Membership:	Jeff Albert (Cook County)
At Large:	Jamie Ackermann Lori Blitstein Eric Ferleger Cindy Johnson James Kaplan Ira Leibsker Michael Polk Larry Taliana Teresa Vamos
Past President:	Michael Matek

Sincerely,

Michael S. Matek

## Membership News and Benefits

### Welcome New Members

The Illinois Creditors Creditors Bar Association would like to extend a warm welcome to the following new members:

- Roland N. Litterst of Peoria, IL
- Paul M. Bach of Des Plaines, IL
- Ronda Rolds of Champaign, IL
- Steven Adatto of Chicago, IL

We look forward to providing you with valuable information and welcome any comments or suggestions and article submissions for the newsletter.

### Mark Your Calendars

The annual general meeting for the Illinois Creditors Bar Association is scheduled for Friday, March 10th at 3:30 PM. The meeting will take place at The Standard Club at 320 South Plymouth Court in Chicago immediately following the Creditors' Rights Symposium. (If you would like more information about the Creditors' Rights Symposium, please contact 800-252-8062.)

### Upcoming Conferences

The National Association of Retail Collection Attorneys (NARCA) will have their national meeting at the Hyatt Embarcadero Hotel in San Francisco June 8 - 11. They expect the collection supervisors for more than 40 major lenders to be in attendance.

For more information contact NARCA at 800-633-6069 or ICBA member Ira Leibsker at 312-704-9335.

For Membership Information, Please Contact (847) 255-7920.

## CREDITOR'S RIGHTS SYMPOSIUM

The Creditor's Rights Symposium, co-sponsored by the Illinois Creditor's Bar Association, will take place Friday, March 10 from 8:30 AM - 3:30 PM. (The ICBA Annual General Meeting will follow immediately after.)

The agenda is as follows:

- **Moderator:** Robert G. Markoff of *Baker, Miller, Markoff & Krasny, LLC, Chicago*
- 8:45 - 9:05 AM – **Fraudulent Conveyances**, Michael S. Matek, *Cavenagh & Matek, P.C., Chicago*
- 9:05 - 9:25 AM – **Piercing the Corporate Veil**, Hal R. Morris, *Arnstein & Lehr, Chicago*
- 9:25 - 9:35 AM – **Statute of Limitations**, Michael R. Polk, *Walinski & Trunkett, P.C., Chicago*
- 9:35 - 9:45 AM – **Who May Sue and How to Name Assignment of Claims**, Kenneth R. Wake, *Blatt, Hasenmiller, Leibsker & Moore, Normal*
- 9:45 - 9:55 AM – **Whom to Sue and How to Name Partners, Partnerships, and Unincorporated Associations**, Harold Stotland, *Teller, Levit & Silvertrust, P.C., Chicago*
- 9:55 - 10:15 AM – **Break**
- 10:15 - 10:30 AM – **Evictions and Distress for Rent – Representing Condominium Associations** – Sandra T. Kahn, *Marshall N. Dickler, Ltd., Arlington Heights*
- 10:30 - 10:45 AM – **Recovering Personal Property – Replevin, Detinue, Attachments and UCC Sales**, *Attorney at Law, Chicago*
- 10:45 - 11 AM – **Foreclosures**, Steven B. Bashaw, *McBride, Baker & Coles, Oakbrook Terrace*
- 11 - 11:15 AM – **Sheriff Levies – Real and Personal**, Raymond J. Ostler, *Gomberg, Sharfman, Gold & Ostler, P.C. Chicago*
- 11:15 - 11:25 AM – **Medical Liens**, Lawrence O. Taliana, *Taliana, Rubin & Buckley, Edwardsville*
- 11:25 - 11:35 AM – **Bad Checks/Payday Loans**, David J. Axelrod, *David J. Axelrod & Associates, Edwardsville*
- 11:35 - 11:45 AM – **Subrogation**, E. Jacob McClosky, *Simon, McClosky & Scovell, Ltd., Chicago*
- 11:45 - Noon – **Collecting from a Defendant Who has Filed Bankruptcy**, Cindy M. Johnson, Attorney at Law, Chicago
- Noon - 1:15 PM – **Lunch Break (Lunch included with fee)**
- 1:15 - 1:25 PM – **Wage Deduction and Citation to Discover Assets Update**, Robert G. Markoff, *Baker, Miller, Markoff & Krasny*
- 1:25 - 1:45 PM – **Fair Credit Reporting Act – Pitfalls for Attorneys and Creditors**, Aurthur S. Gold, *Law Offices of Gold & Rosenfeld, PLLC, Chicago*
- 1:45 - 2:05 PM – **Ethics – Retainer Agreements, Client Trust Accounts, Court Costs**, Steven J. Fink, *Steven J. Fink & Associates, Chicago*
- 2:05 - 2:20 PM – **Break**
- 2:20 - 2:40 PM – **Actions Under the Fair Debt Collection Practices Act**, *Catherine Elliott-Dunne, Law Office of Catherine Elliott-Dunne, Chicago*
- 2:40 - 3 PM – **Defenses to Fair Debt Collection Practices Act Claims**, Alan I. Ehrenberg and Scott C. Frost, both of Ehrenberg & Frost, P.C., Chicago
- 3 - 3:30 PM – **Open Forum, Discussion of issues and questions of interest/concern to the audience. Get solutions to the problems you face.**
- 3:30 - 5 PM – **Illinois Creditors' Bar Association – Open meeting**

## Cases of Note

### A FOLLOW-UP ON MOSBY V. CORPORATE RECEIVABLES

In the December/January issue of the newsletter, the case of Marshall-Mosby V. Corporate Receivables was discussed for two reasons. This was a 7th Circuit case affirming a dismissal of a class action lawsuit. One of the issues discussed in the newsletter was the issue of whether the Court may enter Judgment pursuant to Fed. Rule Civ. Pro. 12(b)(6) - basically a Motion for Judgment on the Pleadings. The Court's conclusion was that disposition of a case in this manner would be proper if a reading of the letter showed that it was not confusing to the unsophisticated debtor.

Subsequent to the publication of the newsletter, a second panel of the 7th Circuit revisited the issue in the case of Margaret Walker v. National Recovery, Inc. This time the Court said that it is a matter of fact for the fact finder to determine whether a letter would be confusing to the unsophisticated consumer. Therefore, disposition under 12(b)(6) was found to have been improper by the trial Judge in Walker.

Steven Swofford, the Hinshaw, Culbertson attorney handling the Walker case has told the newsletter that the Court has granted a motion by the Plaintiff in Mosby for a rehearing en banc. He has advised that on February 22, 2000, the Court modified its opinion to bring it in line with Walker and the Court's opinion in the case Johnson v. Revenue Management Corp., 169 F.3d 1C57 (7th Cir. 1999).

The Johnson opinion was written by Judge Easterbrook and was a decision rendered in two separate cases filed on the issue of confusion by the unsophisticated Debtor. Judge Easterbrook's opinion states that the issue of confusion is always a matter of fact and, therefore, cannot be subject to disposition on a motion brought under 12 (b) (6). [The opinion points out that the proper name for the issue is "confusion", even though it is usually referred to by names such as "over-shadowing."]

The opinion goes on to discuss the evidence which may be necessary to resolve issues of confusion. Judge Easterbrook compares the issue of confusion under the

FDCPA with that of confusion in a trademark case and in Johnson intimates that a plaintiff may be required to commission a survey of consumers in order to prove that a letter might be confusing to the unsophisticated consumer. The concurring opinion argues that in the usual situation where a letter at issue involves a small consumer debt, that this type of expensive evidence would tend to render FDCPA suits too expensive to maintain, in most cases.

This current line of cases and their untangling by the 7th Circuit is important because most alleged FDCPA violations involve demand letters and the issue of confusion. The Court's apparent emphasis (as opposed to requirement) on survey evidence in order to prove confusion could stem the number of cases filed on that issue. It remains to be seen if the whole matter goes up to the Supreme Court. The newsletter editors will attempt to keep our readers informed.

#### MIDLAND STATES LIFE INSURANCE COMPANY V. HAMIDEH

Ladies/Gentlemen:

A recent Appellate Court decision in the First District has held that Illinois Lottery winners may not assign their lottery proceeds as security or collateral for a loan. This ruling is pursuant to Illinois Statutes which invalidate all assignments of the Lottery prizes. However, this holding may be misconstrued as suggesting that creditors can not attach lottery prizes for payments of debt.

The case states that one may attach lottery proceeds by obtaining a valid court order and issuing appropriate enforcement. However, a declaratory judgment to determine an assignment to be valid is not considered to be an appropriate court order. If you represent a loan company that wishes to enforce such a transaction, you must first obtain a judgment based upon a default in the terms of the Note. Then you may proceed with appropriate Citation or Garnishment.

The Midland matter was actually a case to determine priority of liens. Midland claimed that its judgment lien should really relate back to the date of its original assignment rather than the date upon which that Citation was served upon the Illinois Department of Lottery. If this were to be the case, their lien would

supercede prior judgment liens previously lodged with the Illinois Department of Lottery. The Appellate Court ruled that their lien did not relate back and, therefore, it will probably be held to be in 3rd position in obtaining lottery proceeds.

In the interest of disclosure, I do some work for Midland States Life Insurance Company but have not participated in the reported case in any way.

Please feel free to contact me if you would like to discuss the matter further.

Very truly yours,

Robert G. Markoff

### Article of Interest

#### A CHANGE IN THE LAW REGARDING REPOSSESSION NOTICES

Members who collect deficiencies after repossession on automobile purchase contracts are familiar with the 21 day notice documents required under 92 Ill. Adm. Code Sec. 1010.160: Notice of Sale, Notice of Intent to Sell and the Affidavit of Defense. As of a year ago, the form of the documents has changed.

The important change is that the Notice of Sale and Notice of Intent to Sell have been combined in a single document called a Notice of Redemption. It appears that the requirement that the notice be sent by certified mail has been eliminated. Further, that section of the Code had required that the Notice of Intent to Sell and the Affidavit of Defense be on forms provided by the Secretary of State. It now appears that the forms may be generated by the sender as long as certain information is contained in the form.

Practitioners should read the cited section and consult with their clients who repossess vehicles to determine that they are in compliance with the new requirements. The Secretary of State's office, repossession division, is very helpful and can be reached at (217) 782-2924.

Attention Members: We have yet to receive dues from all of our members. If you haven't sent your annual dues of \$100 please send it to: ICBA, P.O. Box 449, Arlington Heights, IL 60006

Do we have your e-mail address? Send it to [sierra847@aol.com](mailto:sierra847@aol.com)!

## ICBA MINUTES OF MEETING

January 18, 2000

### Board Members Present:

Michael R. Polk, Cindy M. Johnson, Steven Fink, James Kaplan, Michael Matek, Robert Becker, Kenneth Wake, Robert Markoff, Scott Alexander

### Other Persons Present

Leigh-Ann Thompson

#### **Item No. 1: New Business**

Annual meeting progress - next year's slate

The annual meeting is scheduled for March 10, 2000 after the IICLE Seminar.

The new slate of board members for next year is as follows:

- **President:** Rob Becker
- **Executive Vice President:** Louis Freedman
- **Secretary:** Scott Alexander
- **Treasurer:** William Hunter
- **Vice President of Education:** Steve Fink
- **Vice President of Legislation:** Bob Markoff
- **Vice President of Technology:** Barry Lowe
- **Vice President of Membership (downstate):** Kenny Wake
- **Vice President of Membership (Cook County):** Jeff Albert

#### • **Members at Large:**

Jamie Ackermann  
Lori Blitstein  
Eric Ferleger  
Cindy M. Johnson  
James Kaplan  
Ira Leibsker  
Michael Polk  
Teresa Vamos

- **Past President:** Michael Matek

The list of new board members should be put in the newsletter.

#### **Item No. 2: Minutes at the last meeting were summarized. Treasurer's Report was summarized.**

Both Treasurer's Report and Minutes of last meeting were approved.

#### **Item No. 3: Membership**

Report on membership numbers and rate of renewal.

Leigh-Ann Thompson reported that there are three new members. The board decided to start announcing the new members names in the newsletter.

Report on telephonic membership. Board determined that we will try, first, to have a board meeting by telephone to see how it works. If that works, then we will have an open telephonic membership meeting.

Determined that the subject of a telephonic membership meeting, therefore, would be tabled, at this time.

#### **Item No. 4: Education**

Report on progress of next newsletter.

Leigh-Ann Thompson reports that the newsletter would be ready to go out by the end of this week. Cindy Johnson added that she would not be able to have the meeting minutes to Leigh-Ann Thompson until Monday. Therefore, the newsletter will be going out after the minutes are provided to Leigh-Ann.

Anticipated seminar schedule.

Discussion was had regarding collar-county and downstate judges speak at some seminars. Our new President, who will be installed as President on March 10, 2000, will look into this and perhaps start setting these types of seminars. Also, a discussion was had regarding having a downstate "social" event to try to get the downstate attorneys to put faces with names and get to know each other. This will also be explored in the future.

Steve Fink will speak with Judge Lopez-Cepero regarding speaking in May at an ICBA luncheon. There are some issues that we believe that he still wants to address to the creditor's bar.

The committee is still interested in having a bankruptcy seminar. Have determined that Cindy Johnson will speak with Judge Wedoff regarding a lunch seminar in either April or June. We would like to suggest to him that perhaps he speak about the new law and how it will affect creditors. Also discussed that we should not "hold" him to any topic but should just emphasize that we want any seminar that he gives to be from a creditor's point of view.

The Association is still interested in sponsoring something at the NARCA meeting in Chicago in October. Further discussions will be discussed at future meetings as to what we might sponsor.

#### **Anticipated newsletter schedule:**

Leigh-Ann Thompson and Steve Fink discussed the fact that they are expecting to send out the

next two newsletters in April and June of 2000.

#### **Item No. 5: Legislative**

Progress report on pending issues: revivals - legislative response.

Bob Markoff sent proposed legislation to Senator Silverstein and Senator Schoenberg. He has not had a response. In addition, it was suggested that Bob Markoff send this to Senator Lange who is on the Senate Rules Committee.

#### **Additional legislative proposals:**

Eventually the Association should discuss the issue of trying to have some legislation passed regarding assignments of judgments and other claims. The issue should be addressed in legislation as who can sue and in whose name to sue as well as other assignment issues.

#### **Item No. 6: Technological**

ICBA Web site

Barry Lowe was not present at the meeting, and so no update was had on the web site.

Progress and feedback on listserv

Michael Matek has heard some comments that two many documents are going back and forth and that people are getting too many e-mails. Discussed the fact that mostly it has not been too many except for one or two days. People are still learning to use the listserv and are improperly sending comments to all members when they mean only to apply to one individual.

The consensus was had that once people learn the value of the listserv and learn how to appropriately reply privately or use the listserv, it should be valuable. No changes to be made at this point.

The Association is going to put a note on the listserv that the minutes of the meeting are on the web site so that people can be referred to them.

#### **Item No. 7: Liaison Report**

No liaison reports were made.

#### **Item No. 8: Member Benefits Special Committee Report**

No report was made.

#### **Item No. 9: Next Meeting.**

The next meeting for the Executive Committee is tentatively set for March 28, 2000. The next President will make any adjustments to the meeting date or meeting place as necessary. Meeting was adjourned.

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Illinois Creditors Bar Association

PO Box 449

Arlington Heights, IL 60006