on the owner's manual before he was injured." In order to prevail on an express warranty claim under Louisiana law, "someone injured by using a product must adduce evidence that he or she had read or was aware of the express warranty and was induced to use the product because of it."

DECEPTIVE TRADE PRACTICES ACT SUIT BASED ON MISREPRESENTATIONS DURING FORECLOSURE PROCEEDING NOT TIME-BARRED

Lozano v. Ocwen Fed. Bank, 489 F.3d 636 (5th Cir. 2007).

FACTS: On April 15, 1980, the Lozanos executed a promissory note for $76,500 payable to University Savings over a thirty year term at 12% interest for the purchase of a home. The Lozanos also executed a deed of trust granting University Savings a lien on their homestead. The Lozanos submitted two cancelled checks totaling $23,000 in payments to University Savings that were never credited to the balance owed on the note.

From 1989 to 1997, the note and deed of trust changed hands several times. Ocwen Federal Bank purchased the note and deed of trust in 1997. The Lozanos filed for bankruptcy in 1996, 1998, and 2000. During these bankruptcies, the Lozanos entered into two forbearance agreements with Ocwen where they acknowledged default on the note and agreed to modify the note's terms if Ocwen would promise not to foreclose at that time. In 2002, the Lozanos defaulted on the note and Ocwen foreclosed on the property.

The Lozanos brought suit seeking declaratory relief and damages based on the payments that were never credited and on Ocwen's alleged violations of notice and verification requirements. The Lozanos also sought damages based on alleged violation of the Deceptive Trade Practices Act ("DTPA"). Specifically the Lozanos argued that Ocwen violated section 17.46(b)(12) which prohibits false, misleading or deceptive acts or practices including "representations that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law." Tex. Bus. & Com. Code § 17.46(b)(12). Both parties filed cross motions for summary judgment. The district court granted Ocwen's motion. The Lozanos appealed.

HOLDING: Affirmed in part, reversed in part.

REASONING: The court dismissed the DTPA claim on the basis that it was barred by the statute of limitations. The statute of limitations was the only ground the district court relied upon to dismiss. However, when the Lozanos filed the lawsuit, including the DTPA claim, it was three months after the foreclosure. The Lozanos DTPA claim is based on Ocwen's alleged misrepresentations during the foreclosure proceedings in March 2003. As the Lozanos filed suit in May 2003, the suit was filed within the two-year statute of limitations applicable to a DTPA claim. Thus, the district court erred in dismissing the DTPA claim on statute of limitations grounds and the suit was remanded.

INSURANCE

WHEN A POLICY'S NAMED BENEFICIARY MERGES WITH ANOTHER ENTITY AND THE OTHER ENTITY IS THE SURVIVING COMPANY, THE POLICY PROCEEDS ARE PAYABLE TO THE SURVIVING COMPANY

Allen v. United of Omaha Life Ins. Co., ____S.W.3d____ (Tex. App.—Ft. Worth 2007).

FACTS: Judy Allen was married to Marvin Fred Allen, C.E.O. of CreditWatch Services, L.P. and the president of Stoneleigh Financial Services L.L.C., CreditWatch's general partner. A "key man" life insurance policy was taken out on Mr. Allen with CreditWatch Services, L.P. as the policy's sole beneficiary; the policy was issued by United of Omaha Life Insurance Company. Mr. Allen signed the policy in his capacity as president of Stoneleigh and the policy's applicant and owner, as well as in his individual capacity as the proposed insured.

In June 2002, CreditWatch Services, L.P. merged with CreditWatch Services, Ltd. According to the merger agreement, the surviving entity would be CreditWatch Services, Ltd. After the merger, CreditWatch Services, Ltd. changed its name to CreditWatch Services LLC. The life insurance policy on Mr. Allen was never changed to list CreditWatch Services LLC as the beneficiary.

In December of 2002, Mr. Allen died of natural causes and United issued a check in the amount of $1 million to CreditWatch Services, which was deposited into the company's account. Mrs. Allen sued United and some of its employees and the attorney for CreditWatch Services LLC and some of its employees. Mr. Allen's two sons later joined the suit. The issue was: if a policy's named beneficiary merged with another entity, and the other entity was the surviving company, are the proceeds payable to the surviving company. The trial court granted summary judgment in favor of United. Allen and sons appealed. The appellants alleged among other things the trial court erred in granting summary judgment in favor of United because the insurance proceeds should have been paid to Mr. Allen's estate after CreditWatch Services, L.P. merged with CreditWatch Services, Ltd.

HOLDING: Affirmed.

REASONING: The court held that under the express terms of the agreement, as well as under relevant Texas and Ohio statutes, all of CreditWatch Services, L.P.'s rights and interests automatically vested in CreditWatch Services, Ltd. without the need for further act or deed. Citing Texas and Ohio merger statutes, all rights and obligations of the merging entity continue to exist in the surviving entity. Based on section 1701.82(A)(3) of the Ohio Revised Code Annotated and Article 6132a-1, section 2.11(g)(2) of the Texas Revised Civil Statutes Annotated, the court held while CreditWatch Services, L.P.'s separate existence ceased at the time of the merger with CreditWatch Services, Ltd., all of its rights and obligations lived on in CreditWatch Services, Ltd. Accordingly, the court affirmed the trial court's ruling and permitted Omaha to

All rights and obligations of the merging entity continue to exist in the surviving entity.

pay the insurance proceeds to CreditWatch Services, Ltd. instead of Mr. Allen's estate.

IN CLASS ACTION SUIT BROUGHT BY ATTORNEY GENERAL A CLASS REPRESENTATIVE DOES NOT HAVE TO BE DESIGNATED

Farmers Group, Inc. v. Lubin, 222 S.W.3d 417 (Tex. 2007).

FACTS: The Texas Attorney General ("AG") sued various Farmers entities alleging inadequate disclosure and discrimination in its homeowner's ratings practices. They reached an agreement in which Farmers signed a class action settlement requiring Farmers to reduce its base premiums, adopt uniform discounts, offer refunds to nonrenewing policyholders, discontinue certain tying practices, and pay the State of Texas $2 million in attorney's fees and costs. When the AG and Farmers applied for class certification and settlement approval, five policyholders intervened and objected. The intervenors filed an interlocutory appeal when the district court granted certification and preliminarily approved settlement of the class action. The Third Court of Appeals reversed, holding the AG could not bring a class action under the Texas Insurance Code ("Code") without naming individual class members as representatives. The AG and Farmers filed petitions for review.
HOLDING: Reversed and remanded.
REASONING: The Code provides that if "a member of the insurance buying public has been damaged" by unlawful practices, the Texas Department of Insurance ("Department") "may request the attorney general to bring a class action." First, the language of the Code appears to authorize the AG to file suit in its own right, rather than merely acting as counsel for private citizens who want to do so. Second, the Code authorizes the Department, not the individual consumer, to file the suit. Requiring consent of individual consumers as class representatives would fundamentally change who the statute authorizes to request such a filing. Third, requiring the AG to recruit individual representatives would be impractical and would restrict the "broad discretionary power" the AG needs to carry out its constitutional duties. As long as the four prerequisites for class actions apply to the damage claims asserted by the AG, the AG is allowed to bring a class action suit without the need for individual class representatives. The Supreme Court of Texas reversed the court of appeals' judgment and remanded to that court to consider the intervenors' other point of error that it did not reach.

THE MADE WHOLE DOCTRINE MUST YIELD TO CONTRACTUAL SUBROGATION

Fortis Benefits v. Cantu, ___ S.W.3d ___, 50 Tex. Sup. Ct. J. 965 (2007).

FACTS: Vanessa Cantu suffered severe injuries in a car wreck. She sued the driver of the vehicle, his employer, the vehicle seller, and the vehicle manufacturer. Cantu settled with the defendants before trial for $1.445 million. Fortis Benefits intervened and asserted contractual subrogation and the right to recoup from Cantu's tort recovery for the amount of medical benefits it had already paid under the insurance policy. At a pretrial conference, Fortis agreed to look to Cantu during the post-verdict phase to resolve the subrogation and reimbursement claims. After the settlement, Fortis and Cantu disagreed as to what portion of the settlement should go to Fortis. Cantu argued that the "made whole" doctrine precluded Fortis's contractual claims of subrogation and reimbursement. The trial court granted summary judgment in favor of Cantu and a divided court of appeals affirmed.
HOLDING: Reversed and remanded.
REASONING: In *Ortiz v. Great Southern Fire & Cas. Ins. Co.*, 597 S.W.2d 342 (Tex. 1980), the Supreme Court of Texas recognized that an insurer is not entitled to subrogation if "the insured's loss is in excess of the amounts recovered from the insurer and the third party causing the loss." One of the justifications for equitable subrogation is that the insured should not receive double recovery first from the insurance company and then from the third party. However, equity cuts the other way if the insured's total recovery is less than his or her total losses. *Ortiz* would govern in this case if Fortis was asserting a claim for equitable subrogation. However, the policy between Cantu and Fortis contained contractual rights of recovery.

Ortiz did not discuss how the "made whole" doctrine applies to the issue of contractual subrogation. Although equitable and contractual subrogation rest upon common principles, contract rights generally arise from contract language; they do not derive their validity from principles of equity but rather directly from the parties' agreement. The policy declares the parties' rights and obligations. Contractual subrogation clauses express the parties' intent that reimbursement should be controlled by agreed contract terms rather than external rules imposed by the courts. In *Sereboff v. Mid Atlantic Med. Servs., Inc.*, 126 S.Ct. 1869 (2006), the Supreme Court refused to apply the "made whole" doctrine as an equitable defense for the Sereboffs' because Mid Atlantic's subrogation claims arose by written agreement.

Contract rights generally arise from contract language; they do not derive their validity from principles of equity but rather directly from the parties' agreement.

The policy between Fortis and Cantu does not state that Cantu must first be "made whole" for Fortis to recover. "The contract's specific language controls Fortis's right to subrogation, and the equitable defense of the 'made whole' doctrine must give way." Thus, the equitable "made whole" doctrine is "inapplicable when the parties' agreed contract provides a clear and specific right of subrogation."

PROMPT PAYMENT OF INSURER UNDER UM/UIM PROVISION PRECLUDED AWARD OF ATTORNEY'S FEES

Mid-Century Ins. Co. of Texas v. Daniel, 223 S.W.3d 586 (Tex. App.—Amarillo 2007).

FACTS: On April 23, 1999, Carole Daniel was injured in an automobile accident with another car driven by Melvin Bray. On April 20, 2001, Daniel filed suit against Bray and joined Mid-Century Insurance Company as a defendant. The claim against

Mid-Century was severed and abated on April 20, 2002. Daniel amended her petition against Mid-Century alleging claims under Articles 21.21 and 21.55 of the Texas Insurance Code. After a non-jury trial, the trial court apportioned negligence at 80% for Bray and 20% for Daniel. The trial court awarded Daniel damages for $94,453.55 reduced by 20% to $75,562.55. After deducting $25,000 paid by State Farm, Mid-Century paid $50,562.55 out of the underinsured motorist policy limits contained in Daniel's policy and Daniel accepted payment.

Mid-Century then filed a motion for summary judgment on the extra-contractual action and the trial court granted the motion as to Daniel's 21.21 claims but denied Mid-Century's no-evidence motion as to the Article 21.55 claims. Mid-Century filed a second motion for summary judgment on the Article 21.55 claims and Daniel filed a cross-motion for summary judgment. The trial court denied Mid-Century's second motion for summary judgment, granted the Daniel's cross-motion, and awarded damages and attorney's fees.

HOLDING: Reversed.

REASONING: In *Brainard v. Trinity Universal Ins. Co.*, 50 Tex. Sup. Ct. J. 271 (2006), the Texas Supreme Court observed that the uninsured motorist contract is unique because "benefits are conditioned upon the insured's legal entitlement to receive damages from a third party." In *Brainard*, as Trinity's obligation to pay benefits did not arise until liability and damages were determined, the Texas Supreme Court held the award of attorney's fees was erroneous. Only if timely payment is not made can an insurance carrier be forced to pay attorney's fees and additional interest. Mid-Century's payment of $50,562.55 within two days of the judgment precludes the award of attorney's fees under article 21.55, sections 4 and 6, or section 38.001(3) of the Texas Civil Practice and Remedies Code. In light of *Brainard*, the trial court erred in awarding Daniel attorney's fees.

COLLECTIVE SETTLEMENT DEMAND WAS WITHIN STOWERS LIMITS

Yorkshire Ins. Co., Ltd. v. Seger, ___ S.W.3d ____ (Tex. App.—Amarillo 2007).

FACTS: Randall Jay Seger did drilling work for two related companies, Diatom Drilling Co., L.P., and Employer's Contractor Services, Inc. ("ECS"). On July 13, 1992, while employed by ECS but providing services to Diatom, Seger was killed when a Diatom rig collapsed. Diatom was insured by a comprehensive general liability ("CGL") insurance policy at the time of the accident. Diatom notified the subscribing insurers ("the CGL insurers"), including Yorkshire and Ocean Marine.

In June of 1993, Seger's parents, filed suit against Diatom, its partners, and ECS alleging negligence and gross negligence. The CGL insurers were not specifically notified of the suit at the time it was filed. The suit stalled and in 1998 Diatom demanded that the CGL insurers provide a defense to the Segers' suit. The CGL insurers refused to provide a defense, contending that Randall's death was not a covered occurrence and that Diatom failed to provide timely notice of suit. After the CGL insurers refused to provide Diatom a defense, the Segers offered to settle their suit against Diatom three separate times, for $500,000, $368,190 and then $250,000. Each offer to settle was refused.

The case went to trial and at the close of the case, the trial court entered judgment against Diatom and awarded the Segers $15,000,000, plus pre- and post-judgment interest. Following the entry of judgment in the underlying suit, Gillman, the general partner of Diatom, contacted the CGL insurers to inquire what they intended to do about the judgment. When the CGL insurers did not respond, Gillman assigned Diatom's rights against the CGL insurers to the Segers. The assignment reserved Diatom's right to recover its attorney's fees incurred in defense of the underlying suit, but otherwise assigned all of Diatom's rights against the CGL insurers to the Segers. Following the assignment, the Segers filed suit against the CGL insurers seeking damages based on their wrongful refusal to defend Diatom and negligent failure to settle the Segers' claim when demand was made within policy limits. Prior to trial on the *Stowers* action, all remaining solvent CGL insurers, except Yorkshire and Ocean Marine, settled with the Segers and were dismissed from the suit.

As the *Stowers* litigation against Yorkshire and Ocean Marine moved toward trial, both the Segers and Yorkshire and Ocean Marine filed multiple motions for summary judgment. The trial court denied all of Yorkshire and Ocean Marine's motions, and granted the Segers' motion for partial summary judgment on the issues of "coverage, demand within limits, fully adversarial relationship, and trial." The only remaining issues at the *Stowers* trial were the determination of Yorkshire and Ocean Marine's negligence, causation, and damages. During the trial, the court directed the verdict as to damages based on the judgment the Segers obtained against Diatom in the underlying suit. The issues of negligence and causation were submitted to a jury which returned a verdict in favor of the Segers.

HOLDING: Affirmed.

REASONING: The court had to decide whether the Segers' collective settlement demand for $250,000 was sufficient to meet the "demand within policy limits" element of a *Stowers* action or whether the Segers were required to make separate demands upon each of the CGL insurers within each insurer's proportionate share of the policy's limits. A *Stowers* action is based on an insurer's negligent failure to settle a claim. To prove a *Stowers* claim "the insured must establish that (1) the claim is within the scope of coverage, (2) a demand was made that was within policy limits, and (3) the demand was such that an ordinary prudent insurer would have accepted it, considering the likelihood and degree of the insured's potential exposure to an excess judgment." It is the claimant in the underlying suit that determines whether the second element of a *Stowers* claim can be met by the insured.

The court believed that a claimant should be entitled to rely on the specific provisions of an insurance policy in making a settlement demand within the coverage of the policy. That it is the policy that dictates whether a settlement demand is within policy limits is bolstered by the Texas Supreme Court's indication that a settlement demand that proposes to release the insured for "the policy limits," in lieu of a demand for a sum certain, is sufficient to satisfy the "demand within limits" element of a *Stowers* action. Further, when a claimant makes such a demand and it is rejected by the insurer, proof that a settlement demand within the policy limits was rejected by the insurer is all that is necessary to satisfy the "demand within limits" element of a *Stowers* claim. Thus, the court concluded that the Segers' collective settlement demand of $250,000, which fell within the $500,000 limit stated in the

policy, was sufficient to satisfy the second element of a *Stowers* action against Yorkshire and Ocean Marine. Based on the undisputed, the court affirmed the trial court's grant of summary judgment in favor of the Segers on this issue.

5TH CIRCUIT REJECTS KATRINA VICTIMS' INSURANCE SUIT

In re Katrina Canal Breaches Consol. Litig., ___ F. 3d ____ (5th Cir. 2007).

FACTS: On August 29, 2005, Hurricane Katrina struck parts of Mississippi and Louisiana. During Hurricane Katrina, levees along three major canals ruptured in New Orleans. The rupture permitted water from the flood canals to enter the city causing damage to homes. Many individuals filed suit against their insurance companies after the companies would not pay their claims. The insurance companies rejected the claims because the policies did not cover damages caused by floods or water damage.

The Fifth Circuit consolidated four plaintiffs' actions into one. The plaintiffs in the *Vanderbrook* action filed suit against their various insurers. All of their policies contained flood exclusions which excluded water damage from "flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether driven or not by wind." The State Farm policy also included "lead-in" language stating that coverage would not be provided regardless of causes relating to the event, whether or not the event was sudden or gradual, or whether it arose from natural or external forces. The insurers filed motions for judgment on the pleadings. The district court granted only State Farm's motion, finding that the "lead-in" clause disposed of any ambiguity and clearly excluded coverage for all floods. In denying the other insurance companies' motions, the district court found that the term "flood" in the policies was ambiguous. In so concluding, the district court held that the other insurance companies' policies covered water damage caused by a ruptured levee where the rupture was due to inadequate design, construction, or maintenance. The court decided that if the plaintiffs could prove their allegations, they could prevail.

The plaintiff in the *Xavier* action, Xavier University, filed a motion for partial summary judgment claiming that damage was caused by the collapse of the levees stemming from man-made causes, and that that damage would be covered by the policy. The court denied the motion in part and granted it in part, determining that water damage resulting from a failed levee would be covered under the insurance policies. The partial-motion for summary judgment was denied on the issue of whether the damage was caused by the levee collapse because there was a material question of fact as to whether that was the actual cause.

The plaintiffs in the *Chehardy* action claimed that their all-risk policies with their various insurers covered their losses. They acknowledged that their policies included flood exclusion clauses, but asserted that they should not be permitted to disallow their claims as it would defeat the purpose of the all-risk policy. The *Chehardy* plaintiffs also brought claims for breach of contract, breach of the implied covenant of good faith and fair dealing and insurance bad faith. Each of the insurers filed 12(b)(6) motions to dismiss for failure to state a claim. The court denied these motions for all insurers, except State Farm, for the same reasons in the *Vanderbrook* action.

The plaintiff in the *Humphreys* action, filed suit against her insurer Encompass Indemnity Company, alleging that her damage was caused by the breached levees. Plaintiff's homeowner's policy covered direct physical loss to real and personal property, subject to a water-damage exclusion, and included stipulated coverage for damages caused by a hurricane. The action was removed to federal court. The plaintiff settled with the insurer and dropped all claims except those under the flood/water rising damage. Plaintiff adopted the argument of the previous three actions concerning the ambiguity of the flood exclusion. The district court granted summary judgment with regard to the arguments made under the *Vanderbrook* action and denied that the policy covered the damages caused by the rising waters under the hurricane deductible portion of the policy.

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

REASONING: The Fifth Circuit Court of Appeals reviewed the actions of the district court *de novo*. On review, the court applied state substantive law.

State law provides that insurance policies are contracts and should be given their general prevailing meaning in interpretation. Where an ambiguity exists regarding a provision, the ambiguity is to be resolved by considering the entire policy and not just the provision in question. If the ambiguity cannot be resolved in this manner, it should be interpreted in favor of the insured. However, the ambiguous provision should not be constrained in an unreasonable manner.

Louisiana law states that insurance policies are contracts and should be construed using the general rules of interpretation of contracts.

In relation to the all-risk policies, the court noted that, absent a conflict with statutory provisions or public policy, insurers may limit their liability under all-risk policies and impose and enforce reasonable conditions upon the policy obligations they contractually assume.

The plaintiffs urged the court to find the term "flood" ambiguous as it is used in their insurance policies and to construe their policies in favor of coverage. The insurers, however, claimed that the policies unambiguously exclude coverage for the inundation of water resulting from the breached levees. The fact that an exclusion could have been worded more explicitly does not necessarily make it ambiguous. Further, if the scope of an exclusion is not readily apparent, that exclusion is not immediately construed in favor of coverage. The court rejected plaintiffs' argument that the term "flood" is ambiguous merely because it is not defined. In reaching that conclusion, the court considered the different definitions of the term "flood" as defined by several sources, noting that just because more than one definition exists does not make the term ambiguous.

The court analyzed other courts' jurisprudence as to what constituted an exclusion under a flood provision. In a Colorado Supreme Court case, *Kane v. Royal Ins. Co.*, 768 P.2d 678 (Colo. 1989), the court rejected an argument that the insured's all-risk policy, which included a flood exclusion, covered flood damage caused by a breaking dam. The court relied on dictionary

definitions as well as Appleman's Insurance Law and Practice treatise in deciding that the term was unambiguous in light of its generally accepted meaning and in the context of the facts of the case. The court here adopted the same view.

Further, it was noted that a levee is a flood-control structure and its very purpose is to prevent flooding. The plaintiffs' argument that the only reasonable interpretation of the term refers to an inundation of water with natural causes was rejected by the court. Further, the court rejected the plaintiffs attempt to use the reasoning from a line of broken water main cases. First, the water main cases differ because, unlike a canal, a water main is not a body of water or watercourse. Many dictionaries define "flood" as an overthrow or inundation of a body of water or watercourse. Second, the amount of water generally released from a broken water main is not comparable to the inundation of water caused by the broken New Orleans levees. Last, a levee is a flood-control structure and its very purpose is to prevent flooding. Even a properly designed and constructed levee could result in flooding somewhere downstream which would be considered an unnatural cause. Floodwaters do not cease being floodwaters because an unnatural component, such as a levee, is injected into its path. The court failed to recognize a distinction between natural and unnatural causes of flooding because such a distinction would lead to absurd results in this context.

The amount of water generally released from a broken water main is not comparable to the inundation of water caused by the broken New Orleans levees.

Efficient proximate cause doctrine is applied where a loss is caused by a combination of a covered risk and an excluded risk. The loss is covered if the risk was the efficient proximate cause of the loss. Anti-concurrent causation clauses are the insurers attempt to contract around the operation of the efficient proximate cause rule. The Fifth Circuit agreed with the district court's determination that it did not need to address efficient proximate cause because there were not two separate causes of the plaintiffs' damage, as required by the rule.

The plaintiffs finally argued that the expectations of the reasonable homeowner would be that damage resulting from man-made floods would be covered. As the court found the policies to be unambiguous, that argument also failed. The court concluded that even if the they determined that there was negligence in designing the levees, a flood provision would still cover against damages caused by the water.

DEBT COLLECTION

LETTER DOES NOT VIOLATE FAIR DEBT COLLECTION PRACTICES ACT

Barnes v. Advanced Call Center Techs., LLC, 493 F.3d 838 (7th Cir. 2007).

FACTS: Plaintiffs filed suit against Advanced Call Center Technologies ("ACCT"), a debt collection agency that was collecting past due credit card payments from plaintiffs on behalf of a bank. Plaintiffs argued that the dunning letters ACCT sent to the plaintiffs violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1601 *et seq*. The dunning letters listed the past-due amount as the "Current Amount Due" and did not include the total amount due on the account. Plaintiffs argued that these letters violated the FDCPA, in part because they did not list "the amount of the debt," which the Plaintiffs interpreted to be the total amount due on the account, as required by the FDCPA. A federal magistrate judge granted ACCT's motion for summary judgment. Plaintiffs appealed.

HOLDING: Affirmed.

REASONING: Reviewing the grant of summary judgment *de novo*, the court found that the dunning letter did not violate the FDCPA. The court found that the plaintiffs had misinterpreted the holding of a previous decision to mean that the entire credit card balance is the "amount of the debt" under §809 and, therefore, *necessary* for compliance. The court found that requiring letters to include the total amount due on the account but not the past-due amount would be contrary to the purpose of the FDCPA. The court rejected the argument that a consumer might be confused by the current amount due posted on the bill and believe that it is the total amount of debt owed. The court stated that it was unreasonable to believe that even an unsophisticated consumer would believe that they could relieve all their debt by paying the current balance due.

ATTORNEYS' FEES IN "WASTEFUL" DEBT COLLECTION SUIT MAY BE REDUCED

French v. Corp. Receivables, Inc., 489 F.3d 402 (1st Cir. 2007).

FACTS: David and Tammy French sued Corporate Receivables, Inc. and its employee for violation of the Fair Debt Collection Practices Act ("FDCPA") and Mass. Gen. Laws ch. 93A. Both the FDCPA and ch. 93A entitle plaintiffs who successfully recover statutory or actual damages to an award of reasonable attorney fees and expenses. Corporate Receivables made two offers of judgment, one for $2,500 and another for $3,900, which the plaintiffs rejected.

The FDCPA claim was tried before a jury and the plaintiffs received a verdict for $1,000 in statutory damages. The trial court awarded David French $1,000 and Tammy French $25 for the defendants violation of ch. 93A. The plaintiffs moved for an award of attorney's fees and expenses totaling $22,719.33. The defendants opposed this motion, as the second offer of judgment was more than the plaintiffs had been awarded. The trial court ordered a substantial reduction in the fee request to $ 2,500 because the Frenches obtained only "de minimis" success at trial. The plaintiffs appealed this order arguing that because David French obtained statutory damages for the FDCPA and ch. 93A claims, reduction was inappropriate.