



# Midwest Commercial Law

*Spencer Fane Britt & Browne LLP*

[Ninth Circuit denies class certification to a putative class of retail customers who rented tools from Home Depot, finding each member would have to demonstrate they were exposed to misleading information during the transaction](#)

The Ninth Circuit recently denied class certification to a putative class of individuals who rented tools from Home Depot stores in California. In *Berger, et al v. The Home Depot, Inc.*, No. 11-55592, February 3, 2014, the named plaintiff alleged that Home Depot automatically imposed a ten percent surcharge for a damage waiver on tool rentals in its California stores and failed to inform its customers that the surcharge was optional and could be declined. The plaintiff alleged various causes of action against Home Depot, including a claim for unfair competition.

[The Bankruptcy Code v. the Fair Debt Collection Practices Act: Who Wins?](#)

The case of *Simon v. FIA Card, Services, N.A.*, recently decided by the Third Circuit, demonstrates the potential for conflicts between the Bankruptcy Code and the Fair Debt Collection Practices Act (“FDCPA”) and emphasizes that banks should approach bankruptcy debtors with caution.

[Responding to Data Breaches: What Should a Federal Law Look Like?](#) Nearly

every state has its own statute on responding to data breaches, and each of them imposes different obligations and penalties. So, if you do business nationwide and you are the victim of a data breach, the laws of 47 jurisdictions are there to add insult to injury. That’s why it is so pleasing to see that federal legislators are looking at imposing a federal law on point. What should such a bill include?

[Third-Party Claims under the Fair Debt Collection Practices Act](#)

A recent decision from the Seventh Circuit reminds creditors, including banks, that the provisions of the Fair Debt Collection Practices Act (the “FDCPA”) may apply to parties other than the debtor. In the case of *Todd v. Collecto, Inc.*, a man brought claims under the FDCPA against a debt collection company that contacted him with respect to a debt owed by the man’s mother.

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A Month in Review summarizes our most recent blog postings. We encourage you to subscribe to our [Midwest Commercial Law Blog](#) for the most up to the minute observations, tips and litigation news.

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[FCC Seeks Comment on a Controversial Rule and on a Petition Filed by Spencer Fane Britt & Browne](#)

The Federal Communications Commission (“FCC”) has solicited public comment on its rule that requires certain opt-out language on faxes for which the recipients have agreed to receive. If the language is not included, the fax sender is subject to statutory damages. Seizing on this rule, class action lawsuits have proliferated. In these lawsuits, plaintiffs are seeking statutory damages—millions of dollars in damages—for engaging in consensual communications.

[What To Do When Litigation Happens - Part I](#)

Doug Weems discusses what to do when litigation happens. Although litigation risks can be minimized, litigation is a fact of life in the United States. Here are some suggested steps to take if you or your company is sued.

[What To Do When Litigation Happens - Part II](#)

Doug Weems reminds employers although litigation risks can be minimized, litigation is a fact of life in the United States.

[Manufacturer's Corner: Forming the Contract](#)

In the introduction to this column, we discussed in very broad terms *how* two people can form a contract for the sale of goods: one person offers to buy or sell, and the other accepts the offer. Simple!

But that isn't the way business usually happens, and when it does, things go wrong. Consider this far more common scenario: your customer issues you a purchase order, you issue an invoice, you deliver product, you receive payment. If everything goes smoothly, it really can be (and often is) this easy.

Say there *is* a problem though. You have an issue with your supplier and can't get the product out to your customer as you quickly as you thought. Or your customer isn't paying when you expected. Now we need to know what the terms of the contract are, and that can be tricky.



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