Credit & Collection Education Forum
P.O. Box 613, Scarsdale, NY 10583
(914) 582-0285 – 7 days a week

Greetings, November 8, 2016

Founded in 2013, CCEF continues to rapidly grow and become an indispensable educational tool to its 275+ member companies (over 1000 individuals). To help members meet their client's expectation, CCEF provides real time information and analyses from an attorney that is not available elsewhere. Members use CCEF to show their clients they are staying abreast of the daily legal developments. Ask our members how this product has helped them and also to receive free case updates for a week. ***Most members pay around $400 or less to join***. Check out our website at www.ccefgroup.com.

CCEF is different and more valuable because:

1. **You can ask an industry leader tough questions in private: Test CCEF's answers against the list serve replies.**
2. **Looking for cases on a topic – Just ask**
3. **CCEF covers multiple topics that help your business, and not just one area of the law**
4. **CCEF shows your clients & the CFPB that your company is meeting the CFPB goals and staying current on the new developments in the law on a real time basis proactively.**

CCEF provides regular cases updates & analyses on both commercial and consumer topics, plus a lot more.

FDPCA	E-Commerce Law & Litigation over emails	Post-Dated checks
FCRA&FACTA	Student Loans Issues Bankruptcy	Internet Defamation
TCPA	Weekly training on FDCPA Initial Demand Letter issues	Leases & Vicarious Liability
CFPB & UDAAP	Insurance Subrogation issues & Does the FDCPA apply	Digital Contracts
Regulation E	UCC Article 2A Leases, Admissible Evidence & Business Records	Settlement Agreements & Releases
ECOA	Commercially Reasonable Sale issues	Accord & Satisfaction
CARD (Act)	Check 21 Act/ACH, Electronic Funds Transfer Act	Medical Necessities
Auto Deficiency	Commercial Bankruptcy Issues/Preferences – Ordinary Course	Usury

CCEF PROVIDES VALUE:

1. **Because CCEF markets your company to other businesses from multiple trade groups; not just within one group. CCEF has helped several members obtain or develop new business.** CCEF regularly notifies members and makes introductions for new business opportunities. *CCEF monitor's several list serves and trade groups. CCEF is regularly approached by CCEF Creditor members looking for referrals and introductions.* Keep your one main trade association and save $$ and use CCEF to find new business!

2. **Because CCEF provides substantially more educational content and CLE training for a fraction of the price**. We are sensitive to our member's budgets and how we can help. We are continuing to expand our coverage to both consumer topics and additional commercial topics based on feedback from our members. CCEF also has a member discount program with Fed Ex, and other companies which can help pay for your membership. Also refer a member and receive 10% discount on your renewal. Refer 5 new members and receive a year free.

3. **When CCEF members walk into CLE/education courses at conferences, they feel like experts** because they have already learned the material months ago from CCEF. So while you are listening and taking notes on dated material, my members are: a) doing office work; b) networking to develop new business; c) impressing their clients with their knowledge of the law; and d) reading new updates with the actual backup documents, that you will not see for some time from other sources if you ever see them at all.

4. **CCEF has reduced lawsuits on the #1 letters. Learn how to improve letters before you are sued.** In the August CCEF bulletin, we reported 10+ lawsuits against non-members who thought their letters were compliant, but were still sued on old and new theories. Four months later, non-members are still getting sued on these same theories. CCEF warns and reminds members to avoid these traps. For an additional fee, the letter program provides 30+ templates for different situations, plus a 30+ page user guide that walks you through the letter field by field, sentence by sentence. Over 75 companies have taken advantage of the program which includes free access to CCEF's 2-hour *interactive #1 Initial Demand Letter* course that is taught 2-3 times a year telephonically.

If your letters aren't correct, expect to write a check!

CCEF was created with compliance in mind to help you bypass minefields, and not complain about them.

CCEF is an education resource from the co-author of the recognized treatise: *The Complete Guide to Credit and Collection Law*. Jay has an established record for both improving compliance benchmarks and defending compliance failures in a cost-effective manner. CCEF also provides:

- A FDCPA Letter Program with over 30 templates and a 30+ page *User Guide* that explains why or why not to use certain language. Extensive case law is cited in the *User Guide*,
- Access to a library of over 10,000 court decisions on hundreds of topics *to save time researching issues.*
- 20+ page bi-monthly education bulletin that discusses new court decisions and statutes, including state specific issues. The education bulletin also has a challenge question(s), as well as tips to help improve your business practices;
- 30+ page Trial witness memorandum with witness scripts to help you authenticate electronic evidence;
- Purchasing Program that provides discounts from FedEx, UPS, Staples, Office Depot to name a few;
- A library of 30+ sample procedures, policies, and guidelines; FCRA dispute forms to send to your clients;
- Sample Release(s) to protect you from later suits (ie: many bad court decisions would have been avoided.);
- Regularly-updated, online, self-grading / multiple-choice tests on multiple topics addressing real life scenarios on the following topics: FDCPA (two versions, collections agent and legal assistant), SCRA, TCPA, UDAAP, Bankruptcy and HIPAA tests for employees, plus more tests to come;
- Discounted industry-specific CLE (FDCPA-Initial Demand Letter, TCPA, Settlement Letters & 1099, Bona Fide Error and other seminars (such as skip tracing and marketing);
- A detailed database of Plaintiff consumer attorney's fee awards from relevant cases to fight unconscionable fee requests with real verifiable data as to what courts actually award plaintiffs;
- A safe place to ask an industry leading instructor tough questions.

Yours Truly,

Jay Winston, President CCEF

Endorsements by Current Members / Trade Groups - See page 3 for more endorsements

- "**Jay Winston and CCEF are my favorite source of "breaking" case law, and his frequent emails on both good and bad decisions keep me posted on legal trends in California and the nation. I have and will continue to recommend CCEF to my friends and "friendly competitors."** ***– Brian Winn, Winn Law Group, APC***

- **"Jay Winston is a dynamic and knowledgeable speaker when he spoke to the Kansas Creditor Attorney Association's CLE on February 15, 2016. He gave an extensive, exhaustive, and comprehensive overview of the #1 Demand Letters and Bona-Fide Errors Defense courses. KCAA is immensely grateful for Jay's enlightening presentation and superior *knowledge of FDCPA. "*- Robert Choromanski, *A*ttorney Pendleton & Sutton, LLC and Vice President of Kansas Credit Attorney Association (KCAA).**

- **"Thank you for presenting at our meeting on Friday. Based on feedback from the attendees, your presentation was a highlight of the day (May 15, 2015)."** ***- Ohio Creditor's Attorneys Association on Jay Winston's Interactive Initial Demand Letter Course.***

- **Davis and I agree that we are actually getting more out of CCEF than we thought we would! -** ***Winn Davis Brown, Jr. (30 days after joining)***

- **The daily e-mails with case updates alone are worth the cost of the membership."** ***– Joe Shur, Relin, Goldstein & Crane, LLP***

- **…You do an incredible thing with your newsletters. The fact is that many of our customers treat your newsletter as a secret weapon that enables them to stay ahead of the curve. It is truly an amazing thing that you are able to condense decisions into such succinct terms that all of my team can understand and process without the proper legal education. It's easy to communicate "the new rules" with the team, but when they are able to understand why the new rules were put in place, it enables our organization to take a further step forward and prepare ourselves for issues that have not yet developed. We see what's coming because you explain so well what's happening right now. -** ***Justin Savage, Founder & CEO of EveryBill.***

- **"I just wanted to say that Jay Winston through his CCEF Group does an excellent job of reviewing all relevant FDCPA and TCPA cases and summarizing their main points. His letter review and other consulting services are also valuable. If you want to be kept comprehensively informed about important new case law there is no substitute for his services. The price of membership is quite reasonable."** ***– Keith H. Rothman, ESQ., Rubin & Rothman, LLC.***

- **"The playbook for 2015 collection practice changes daily. CCEF keeps the professional in the game with daily national case reports and other professional member benefits. CCCEF is not selling Snake Oil, but real educational services from an industry leading attorney. I would recommend this product for the collection practitioner to help them to grow the business, and not simply add to non-productive overhead." –** ***Richard Roosen, Roosen, Varchetti & Olivier PLLC.***

- "**Jay is very thorough and has an amazing knowledge of collection laws. I highly recommend him for letter reviews." -Dan G. Young, Jenkins, Wagnon & Young, P.C. 2/5/16**

Additional Endorsements by Current Members

- **"I want to thank Jay Winston … who gave us the tools to re-write and send compliant letters and made himself available for questions by phone and email. He was more than I could ask for in terms of clear guidance. If anyone requires compliance advice, I highly recommend his services. I would call him literally an FDCPA "guru". The small membership fee to join his CCEF is well worth it." (12/14/2015 ACA Map list) – New member 12/2015.**

- **"My office has found the information provided to be very helpful. Frankly, I do not have the time to do all of the research that is provided. The regular updates and warnings have helped us with our clients and with our own internal handling of matters. I recommend the service to any attorney that handles consumer claims or has or represents collection attorneys or collectors." –** ***Stephen Elggren, Elggren & Peterson, P.C.***

- **"It is worthwhile to have this as an additional resource. We endeavor to stay ahead of the next trend and this will further enable our success…This is valuable." –** ***Todd E. Houslanger, Houslanger & Associates, PLLC.***

- **"I just got a case dismissed in Florida because I read your email about an identical case that had just been dismissed. Your email was incredibly timely and was enormously helpful. Thank you!" -** ***Susan Johnston, Enthusiastic Member/Subscriber***

- **"I appreciate CCEF's daily case law updates and succinct synopsis. Very helpful and easy to digest. CCEF's library of cases that are available upon request have helped me make better business decisions. Our membership investment has been money well spent! Membership is an excellent value." –** ***Lydia Fippin, Nelson & Kennard.***

- **"Excellent." -** ***Lawrence Rolfe, Rolfe & Lobello, P.A.***

- **"I met Jay at NARCA in DC and signed up with him to help with my letters. He is constantly updating me with cases and insights to avoid potential problems. He is an invaluable source of legal research and process improvement for small and mid-size ARM firms." -** ***David Kennedy, Bifulco, Bifulco and Associates, P.C.***

- **"I enthusiastically support Jay Winston and the work that the CCEF is doing. He has vast knowledge and an incredible command of what is going on in the industry and the challenges that we face in our practices. As a solo creditor's attorney, I greatly appreciate his genuine desire to educate and the ongoing support and peace of mind that CCEF provides. His letter review program is an absolute must! Jay Winston and CCEF provide a tangible and practical go to resource that any collection firm will find well worth the investment. I can only imagine the amount of time and money I have saved from membership in CCEF." -** ***E. Hope Greenberg, Law Office of E. Hope Greenberg.***

- **"I am very happy with my membership in CCEF. They have done a wonderful job keeping its members up to date on current FDCPA cases and Consumer Financial Protection Bureau bulletins, laws and regulations. It is a great resource for anyone involved in creditor's rights. The regular updates of important consumer laws and cases save our firm a lot of time and money." -** ***Kyle Cooper, Greene & Cooper, LLP.***

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UTAH

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AllianceOne Inc.
National Service Bureau, Inc.

NEW MEMBER/RENEWAL: CCEF Application and Agreement –Good up to 12/31/2016 Questions: info@ccefgroup.com
For detailed membership terms and conditions please visit.
Date of application: _________________, 2016
Name: _____________________________ Position title: _____________________________ Attorney (Y/N) _________
For Vendors and Agencies Only: Email of Attorney______________________________ □**In-house Counsel** □**Outside Counsel**
Legal name of company: ____ States Practice in ___________________
Mailing address: ____Website Address: __________________________
Physical address: (if different) ____ Work Phone: (_____) ______________
City, State, Zip: ____ Cell Phone: (______) ______________
Email (used for login) ________________________ Additional emails up to 3: ____
Your privacy is important to us. At a minimum, we will include in our directory your name, title, and firm or company's name and state. We encourage our members to share additional contact information. Check the boxes next to the additional information that you consent to publish in CCEF's directory: □ **Mailing address** □ **Phone number** □ **Email.**

Check enclosed in the amount of $__________. Make check for total amount to **Carol Processing Inc. d/b/a CCEF**. Checks must be drawn on a U.S. bank. Mail application with check to: **Carol Processing, Inc. d/b/a CCEF at P.O. BOX 613 Scarsdale, NY 10583**or **Fax to (914) 725-2257.**

Please note that CCEF has the right to reject any application for any reason whatsoever, including but not limited to the decision of management that your firm or company will not contribute to the reputation of CCEF. CCEF will inform you of its decision to accept or reject your application within 30 days of receipt of application or payment whichever is later. Membership is not transferable and dues are not refundable. Membership can be cancelled by CCEF only at its sole discretion and a pro-rated refund will be provided. I understand that Carol Processing Inc. d/b/a CCEF is not an exempt organization nor is it otherwise qualified under 26 U.S.C. 501(c). Carol Processing Inc. d/b/a CCEF makes no representation whatsoever as to the deductibility or characterization of membership dues or any additional contribution for tax or business expense purposes.

By signing, I expressly affirm that I have read and agree to the Terms of Membership which can be found online at http://www.ccefgroup.com/terms
Signature: _______________________________ Date: ____/_____/2016

CREDIT CARD INFORMATION (NON CALIFORNIA APPLICANTS ONLY)
FAX 914 725 2257 or MAIL ONLY - DO NOT EMAIL

Credit Card Type: □ **Visa (Preferred)** □ **MasterCard (Preferred)**
Clearly Print Name as it Appears on Credit Card: ____
Clearly Print Credit Card Account #:____
EXPIRATION DATE _____/______ Daytime Phone #: (________) ________-________
3 or 4 Digit Card Security Code: _________ Visa/MasterCard: check the back of card, you should see either the entire 16-digit credit card number or just the last four digits followed by a 3-digit code. This 3-digitcode is the Security Code. For American Express the 4-digit number is on the front on the card on the right-hand side.
Credit Card Billing Street Address: ____Suite/Apt#: ____________
State/Province: _______________ Zip/Postal Code: ___________________ Country if not U.S: ______________
$____________ Membership (___ # of years)
$ ____________ Course (Description) __________________
$____________ FDCPA TEST (Member __ Non-Member __)
Number of Tests/Type: ________________________________
$____________ Access to sample #1 letter/1692g & user guide for membership term [Federal Law only]
$____________ Other
$____________ TOTAL Payment Amount
Cardholder Signature: ______________________________ Today's Date: _____/______/ 2016

By signing above, I expressly authorize Carol Processing Inc. d/b/a CCEF to charge my credit card for the above amount and understand the amount is non-refundable. I expressly intend and agree that the commercial transaction occurred in New York State and that New York law applies to the transaction.
For office use only:

□ Accepted □ Rejected

MEMBERSHIP INFORMATION 12 Month Membership Fee (Not calendar year) **(Prices valid through 12/31/2016)**

Creditor/Creditor Law Firm /Collection Agency/Debt Buyer

□ $150 Creditor, Non-attorney (Individual Membership)
□ $275: Creditor, In-house counsel - Individual Membership (Special Approval at CCEF sole discretion.)
□ $300: Creditor Law Firm Solo Attorney and 3 support staff or less
□ $400: Creditor Law Firm 1-2 Attorneys and support staff (employee/ independent contractors) up to 9 total
□ $500: Creditor Law Firm Attorneys and total staff 10-75 employees/independent contractors up to 75 total
□ $500: General/Large Law Firm w/ small collection group (over 50 attorneys & staff, but small group that handles collection matters (3 attorneys or less and less than 7 support staff) (Special Approval at CCEF sole discretion.)
□ $750: Creditor Law Firm (Over 75 employees & attorneys)
□ $1,000 Defense Law Firm (Has access to additional benefits) (Special Approval at CCEF sole discretion.) (Over $1500 value)
* Periodic Advertising in CCEF Education Bulletin, Letter Program included, additional case updates & 1 free test per category per year.
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5	**<u>Mortgages:</u>** Addressing debtor affirmative defenses (ex: Show me note, chain of title, etc.)	Y/N
6	**<u>Vendor Compliance issues</u>**	Y/N
7	**<u>Lawsuits Filed:</u>** Lawsuits in Federal District Courts – List of lawsuits filed and selected cases analyzed to show what theories plaintiffs are pursing against debt collectors.	Y/N
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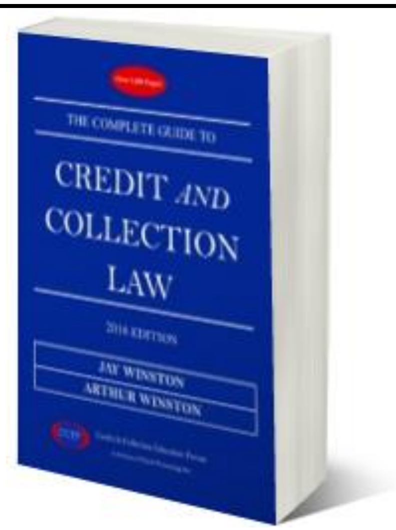
By Jay Winston & Arthur Winston

The Guide is a great gift for your clients!

When chief financial officers, attorneys, and owners of large, medium, and small businesses focus on debt collection—both consumer and business debts—their overall concern can be generally summarized in two short sentences: "Can I do it legally?" and "Where do I find the answer?" Carol Processing's ***The Complete Guide to Credit and Collection Law, 2016 Edition*** (**ISBN: 978-0-9976841-0-0)** is a comprehensive effort to answer these questions. Updated almost yearly since 1996 and packed with useful tips and tools, this thorough 2,500-page guide is recognized as the industry's most comprehensive reference manual. **The *Complete Guide to Credit and Collection Law, 2016 Edition*** can help you raise collection rates, reduce costs, and achieve compliance with the ever-changing law.

About the Author

Jay Winston is the president of the Credit and Collection Education Forum (CCEF). Jay Winston is also the president of Winston & Winston, P.C. and has practiced in New York, New Jersey, and Connecticut for over 20 years. Jay has earned a reputation as a tenacious negotiator and litigator while zealously representing his clients. Jay is recognized as an industry leader by his peers for his knowledge, passion and ingenuity. Jay was a Certified Instructor of the ACA International. Jay's business background combined with his litigation skills offer a unique combination for his clients. He has written for several publications under the by-line *WorthReading* and regularly speaks at industry conferences on credit and collection issues (commercial, bankruptcy and retail issues). He currently writes and produces a bi-monthly Education Bulletin for the Credit & Collection Education Forum on current industry topics, as well as producing user guides on multiple topics including: how to offer electronic evidence witness preparation and how to draft a compliance FDCPA consumer demand letters. While the firm still handles large complex commercial litigation matters and the enforcement of high value judgments, the practice concentrates on representing financial institutions, law firms, agencies, debt buyers and creditors in defense, compliance and consulting matters.



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The Complete Guide to Credit and Collection Law 2016 Edition

By Jay Winston and Arthur Winston

Introduction, Highlights and Preface: About the Guide

Introduction

Every attorney at some time will be approached to collect a debt against a business or a consumer. Everyone, attorney or non-attorney will be involved in a contractual dispute. At the other end of the spectrum, many law firms treat credit and collection law as an area of expertise. Both must maintain access to the current developments in this area of the law, for both are or may be subject to the FDCPA.

When this guide was first published in 1996 by Prentice Hall Direct, it was a little over 600 pages. It has been updated regularly ever since, and today, is over 2,500 pages with over 1,000 case citations and practice tips, having sold more than 40,000 copies. We are pleased to announce that this version, is published by the Credit & Collection Education Forum, a division of Carol Processing Inc., and has over 200 pages of new content, and over 100 new footnotes of citations and new appendices. As part of the update, the authors had clerks investigate whether the appendices and/or statutes were current. This last appendix check was performed in May 2016.

Each edition is different as new material, statutes, and content is added, while out-of-date material is removed. In some cases, content or statutes were removed due to space limitations set forth by the printing company of the publisher of a specific edition. Therefore, keep your old editions. This material may not be in a later edition.

The Author's primary goal is to present a broad overview of the laws that affect the credit and collection effort, with more emphasis on the collection effort. Several chapters are exclusively devoted to the collection of debts from businesses. Most of the federal laws deal with consumer debtors. We have included over 1,000 case citations, citing mostly to the state appellate and federal cases.

Also, between this edition and the last editions we had law clerks check to see if cases cited were still good law and whether more current case citations could be located. Many citations were added and others were updated with more recent case cites. However, it is possible that some case citations are no longer good law due to more recent cases being published after our review.

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As explained in the *Note,* the law is fluid and continuously changing and different people may have different interpretations of a factual situation, a law or a court decision, etc. It is impossible for this book or any book to be the most current rendition of the law as it is only updated once a year or longer, while hundreds of cases are issued daily, only a portion of which are reported. (***See*** **Note).**

Highlights & Some examples of what's new!

The following is a summary of some of the many highlights of the chapters:

- **TCPA:** Chapter 21, entitled *"Telephone Consumer Protection Act," has been entirely rewritten, updated, and expanded to address the FCC Ruling issued in 2015.* A copy of the TCPA statute and the *2015 FCC ruling a*re included in the appendix. The chapter also highlights the key points of the 2015 FCC ruling for medical and non-medical matters.
- **E-Commerce Law and Regulation E:** Chapter 17 was updated to address compliance issues with a 2015 CFPB compliance bulletin entitled: *Requirements for Consumer Authorizations for Preauthorized Electronic Fund Transfers.* The CFPB bulletin is included in the appendix. A new section on the enforceability of online agreements, clauses within the agreements will be discussed. Litigation over whether an agreement was created by emails (intentionally or inadvertently) will be discussed. Two new sections on Cloud Computing have been added.
- **What to Do When You Are Served:** Chapter 14 was updated with a new section entitled: *Right to Sue and Standing.* The new section discusses the May 2016 Supreme Court decision of *Spokeo v Robins,* plus other strategies to end a plaintiff's case early.
- **Strip downs of totally unsecured mortgages:** Chapter 10 discusses the recent U.S. Supreme Court decisions of *Bank of America, N.A. v. Toledo-Cardona and Bank of America, N.A. v. Caulkett.*
- **Fixtures and Trade Fixtures:** Chapter 11 has a new section that explains the differences between fixtures and "trade fixtures." Lien search issues with respect to "trade fixtures" are also discussed**.**

- **Out of State Assets:** Chapter 4 discusses how to seize out of state assets as well as the pro-creditor decisions of *JPMorgan Chase Bank, N.A. v. Motorola, Inc.*, 47 A.D.3d 293 (N. Y. App. Div. 1st Dep't 2007); *Estate of Heiser v. Islamic Republic of Iran*, 807 F. Supp. 2d 9 (D.D.C. 2011).
- **Copyright Law and Debt Collection:** A new section in Chapter 11 discusses how to approach and respond to debtors who claim that their personal individual names are copyright protected and then request substantial damages for copyright infringement.
- **Repossession:** Chapter 12: Louisiana unique statute(s) regarding repossession and replevin have been added to the appendix.
- **ECOA:** Chapter 18 discusses liability issues of commercial lenders who request spousal guarantees. Best practices, documentation retention and process issues are discussed. Also discussed is *Hawkins v. Community Bank of Raymore,* 136 S. Ct. 1072 (U.S. 2016).
- **FCRA/FACTA, FDCPA & TILA:** Chapters 13, 15 & 16 have been updated with new cases and issues. Chapter 15 has a new section on best practices to determine whether a party is represented by counsel. (The use of window envelopes is discussed.) Chapter 15 also discusses the recent Supreme Court decision on unaccepted offers of judgments.
- **Settlement**: Some suggestions and tips when negotiating a settlement with a debtor are included in Chapter 1. This chapter was updated to discuss how Long Arm Jurisdiction has been changed by the U.S. Supreme Court case *Daimler AG v. Bauman*, 134 S. Ct. 746 (U.S. 2014). A new section *Filing Suits without Proof* has been added plus a section on *Contempt and Sanctions.*
- **Letters and Telephone Calls**: Chapter 2 is devoted to suggestions on the preparation of letters and the preparation of scripts for telephone calls. *Chapter 2 must be read in conjunction with Chapter 15 covering the FDCPA, Chapter 20 concerning the CFPA, and Chapter 21 concerning the TCPA.*
- **Lender's Liability**: Pre-negotiation agreements are the instrument of choice before lenders make advances, grant loans, or refinance. The sharp decrease in litigation on this topic proves the agreements are effective. Chapter 4 discusses this in detail.
- **Creditor Liability:** Can a corporation be liable for debts of its owners? Chapter 4 discusses piercing of the corporate veil, reverse piercing of the corporate veil, and alter ego theories, as well as other theories.
- **Proof of Claims in Bankruptcy**: Additional information is provided for when the layman is filing his own proof of claim in bankruptcy with emphasis on some of the dangers and when the non-lawyer should retain an attorney. The risks of filing time barred proof of claims is also discussed in Chapter 6. (Refer to the Appendix for updated proof of claim forms)
- **Bankruptcy Law**: The advantages of a 363 sale in bankruptcy under a Chapter 11 Plan, a cram down, proofs of claim and purchasing debts of debtor in bankruptcy are discussed in Chapter 6. *Chapter 6 has had a major rewrite with over 15 pages of new content.*
- **SCRA (Service Members Civil Relief Act):** Chapter 9 discusses the legal issues and limitations regarding creditors plus some recent settlements. The CFPB, DOJ as well as other state and Federal agencies have taken an aggressive position on protecting members in the military.
- **Preferences:** A review of the options available to creditors of bankrupt debtors, debtors or businesses, and how to deal with preferences is included in Chapter 6.
- **Bankruptcy Jurisdiction:** The Supreme Court has deprived the bankruptcy court of jurisdiction of certain claims, which must be referred to the district court, and also rendered a decision resolving the conflict of a credit bid and deciding that a secured creditor has a right to a credit bid in any 363 sale. Chapter 6 has an in-depth look.
- **Checks and Negotiable Instruments**: Chapter 8 answers questions about unsigned checks, stale checks, stop payments, and the differences, if any, between certified and cashier's checks.
- **Forbearance Agreement**: The more frequent use of this type of an agreement has been primarily caused by the number of foreclosures as well as the number of delinquent credit cards and other debts. A short checklist of some essentials is provided in Chapter 10 as well as a few suggestions.
- **Credit Rating:** How to improve your Credit Rating at the Better Business Bureau is discussed in Chapter 15.
- **Telephone Calls:** We have taken an in-depth look at the number of telephone calls necessary to constitute a violation of the Fair Debt Collection Practices Act together with many citations in Chapter 15 and the impact of the TCPA in Chapter 21.
- **Wrong Debtor:** If a call or letter contacts the wrong debtor, is the debt collector liable? This question is discussed in Chapter 15.
- **CFPA/CFPB:** Chapter 20, entitled "Consumer Financial Protection Act (CFPA)," discusses the Consumer Financial Protection Bureau (CFPB), a new powerful agency. New procedures for obtaining information and enforcing the rules and regulations were instituted. One early issued decision enables the agency to require production of documents covered by the attorney-client privilege, during an investigation. Payday lending has come under the scrutiny of the Consumer Financial Protection Bureau, which is also discussed in Chapter 20.
- **Law Firms and Collection Agencies:** Chapter 7 has new material discussing how debt collection companies can manipulate their reports to provide the appearance of a higher liquidation rate or that the file is progressing when it is not.

Preface: About the Book

The following are brief descriptions of the chapters together with some highlights:

- ***An Explanation of Legal Terminology in a Collection Case*:** *Chapter 1* provides an insight into the operation of the office of a collection firm. Legal terminology is defined so the non-attorney understands the language of the attorney. An explanation of the progress of the suit and the options open to the client are presented. The design of this chapter is to enable the non-attorney to communicate more effectively with the attorney during litigation and, at the same time, meticulously and carefully comply with the laws. *Chapter 1 contains an in-depth look at settlement negotiations and the contents of a settlement agreement, which incorporates a payout over time as well as a discussion of a general and mutual release.* Guidelines for testimony at a deposition and guidelines for testimony at a trial should provide some help to the individual subpoenaed as a witness. An updated analysis is provided of the treatment by the courts of claims for damages for emotional distress. Although no one likes to admit that a document has been misplaced, lost, or destroyed, the admissibility of evidence to replace lost or destroyed documents during a trial is addressed. An explanation of the various types of judgment, including the out of state and foreign judgment, is provided. Some of the means to enforce the judgment is provided. The time restrictions for starting suit is covered.

- ***Letters and Telephone Calls***: *Chapter 2* reviews the preparation of letters and contacting the business and the consumer by telephone. The chapter covers the distinction between consumer and business debts and the interplay between collection letters and telephone calls. The four necessary steps to a successful phone call are outlined, and ten frequent excuses used by businesses and consumers are listed with the proper responses to said excuses. *Chapter 2 is subject to the restrictions and requirements set forth in Chapter 15 and Chapter 21.* ***The three chapters must be read together.***
- ***Legal Concepts of Business and Legal Remedies for Business Creditors***: *Chapters 3 and 4* address business concepts and business remedies. We have added material on secondary liens, mezzanine financing, and inter-creditor agreements. The problems and the use of letters of credit are extensive, including the "red clause" and the criteria for discrepancies. The Appendices to Chapter 3 and 4 include examples of the law with regard to Article 2 of the Uniform Commercial Code as adopted in California, Letters of Credit as adopted by Illinois, Statute of Frauds as adopted by California, Documents of Title from the Uniform Commercial Code: Article 7 as adopted by New York, the Uniform Fraudulent Transfer Act, Seller's Remedy on Discovery of Buyer's Insolvency, Assignment for the Benefit of Creditors, the Garage Keeper's Lien, the Mechanic's Lien law, and Foreclosing on a mezzanine Loan under UCC Article 9. An interesting portion is devoted to the preparation of the credit application and how the credit application should be used in the collection effort. Another device to hold officers and directors liable is the de facto merger where the business ceases to operate and reappears as a new business. The problems encountered in the sale of a debtor's assets, and the procedures involved are addressed. *The proper approach to piercing the corporate veil is offered with criteria for supporting a suit against officers and directors of an insolvent corporation.*
- ***Legal Issues of Consumers***: *Chapter 5:* The use of mandatory arbitration increased substantially to satisfy the desire of lenders to avoid class actions. The Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association appear in the Appendices. *Manifest Disregard of the Law is no longer available to vacate or modify an arbitration award.* Divorces, deceased parties, jointly held property, relationships of husbands, wives and children, social security, and welfare recipients are all discussed. The ability to garnish members of the military service, and the enforcement of gambling debts are also addressed, as is the use of IRS form 1099C. Chapter 15 should be read in conjunction with Chapter 5 to learn about other issues on 1099's.
- ***Bankruptcy*** *Chapter 6:* The chapter is written from the perspective of the creditor. The Appendices contain some of the sections of the Code that deal with automatic stays, discharge, stay of action, and reaffirmation agreements. An old theory regarding insolvent businesses is analyzed that permits a creditor to prosecute a claim against officers, directors, principal shareholders and, in some instances, the lender. The new rights of creditors to reclaim property or receive an administrative claim may surprise some. Proof of claim 101 assists the creditor who wishes to file a proof of claim with a step-by-step instruction on the proper way to prepare and to file a proof of claim. An in-depth treatment of strategy in preference litigation is included, and the right to pierce the corporate veil in bankruptcy is covered. The 363 sale used by many purchasers of assets carries risks and benefits. Both are addressed.
- ***Law Firms and Collection Agencies***: *Chapter 7:* A timely article, *Pursuing U.S. Claims Against Foreign Debtors*, appears in the Appendices. Chapter 7 deals primarily with selecting, working with, and monitoring outside attorneys or collection agencies, and includes *taping and monitoring telephone calls* and what to expect from international collection efforts throughout the world. We have provided a state survey of laws that affect attorneys engaged in a collection practice. The recent U.S. Supreme Court case, which expanded *Bell v. Twombly,* and the *Wal-Mart* case are discussed.
- ***Checks, Notes, and Guarantees***: *Chapter 8:* The legal consequences of checks, notes, and guarantees are discussed, including certified checks, stale checks, unsigned checks, post-dated checks, stop payment checks, and bad check charges. The distinction between negotiable instruments and checks is explained. A three-page small print guarantee offered by financial institutions is carefully considered. Regulation E is now an Appendix. A form for using a bank account as collateral for a loan provided by the American Bar Association is set forth in the Appendix as well as a form for a Deposit Account Control Agreement.
- ***Privacy***: *Chapter 9:* This chapter deals primarily with the Gramm-Leach-Bliley Act. Several Appendices are presented to furnish information concerning the contents of the notices and sample clauses, all provided by the Federal Trade Commission. The essentials from a collection point of view of the Health Insurance Portability and Accountability Act are offered. The issue of privacy, harassment, malicious prosecution, and abuse of process are addressed.
- ***Secured Lending: Real Estate—Mortgages and Secured Lending: Personal Property***: *Chapters 10 and 11* deal with secured lending, with Chapter 10 dealing with real estate and mortgages and Chapter 11 dealing with personal property. *An extensive analysis of judicial foreclosure, non-judicial foreclosure, and deed in lieu of foreclosure are offered, together with the Real Estate Settlement Procedure Act in the Appendices* in Chapter 10. Foreclosures on sub-prime and high cost mortgages are addressed.
- ***Repossession of Property***: *Chapter 12* undertakes to explain the legal difficulties in repossessing personal property, principally vehicles. A commercially reasonable sale and peaceful repossession are clarified. Cure notices, mailing requirements, breach of

peace, and liability of lenders and lessors for a breach of peace are reviewed.

- ***Fair Credit Reporting Act***: *Chapter 13:* A summary of the various ways that consumers may alert the credit reporting agencies if they have been a victim of, or suspect that they have been a victim of, identity theft is included. In the Appendix, we have included a copy of the Fair Credit Reporting Act. The chapter covers the permissible purposes of a consumer report. The obligations of the furnisher of information to a credit reporting agency and the necessary restrictions placed on credit reporting agencies when they receive credit information are covered.
- ***What to Do When You Are Served:*** *Chapter 14:* A summons and complaint is mailed to your business by the Secretary of State. What do you do? Hopefully, we have answered most of the questions that cross the mind of the defendant. The right to sue and standing is also covered.
- ***Fair Debt Collection Practices Act***: *Chapter 15* is devoted to the Fair Debt Collection Practices Act. The Act with the commentary is included in the Appendix. Harassment, service charges, window envelopes, and validation of the debt are some of the many topics covered. An in-depth look at class actions is contributed. Liability of officers of creditors and creditors is reviewed together with improving your credit rating at the Better Business Bureau. The chapter also offers some creative and unique approaches to defending an FDCPA lawsuit, verification, unfair practices, overshadowing, imputed knowledge, pro se plaintiffs, attorneys' fees, deceptive and misleading conduct, 7th Circuit's safe harbor letter, the proper amount of the debt, and current cases including the recent case requiring the creditor to investigate whether the agency is violating the law—a catch-22 situation—are discussed. Another recent decision may change the script for training debt collectors (who work the telephone calls), requiring identification of the debt collector.
- ***Truth in Lending Regulation Z***: *Chapter 16* deals with the Truth in Lending Act and Regulation Z which are included in the Appendix. The initial disclosures, the disclosure of fees, and the recent Supreme Court decision on the right to rescission are addressed in Chapter 16 as well as the "yield spread premium." The Fair Credit Billing Act describes the rights of debtors in the billing process.
- ***E-Commerce Technology***: *Chapter 17* is devoted to the three electronic laws: The Electronic Signature in Global and National Commerce Act (E-Sign), a federal law that has been adopted, the Uniform Electronic Transaction Act, and the Uniform Computer Information Transaction Act, which has not received a favorable response in the legislatures of the states. The chapter also covers the use of e-mail in litigation and collections as well as The National Automated Clearinghouse Network (NACHA), which is making significant progress in the electronic transfer of funds. The E-Sign Act and the Uniform Electronic Transaction Act are included in the Appendices.
- ***Equal Credit Opportunity Act***: *Chapter 18:* We have provided Regulation B of the Equal Credit Opportunity Act in the Appendix. Discrimination, adverse action, and the credit application are addressed. The circumstances under which the lender can obtain the guarantee of the wife for her husband's business loan are covered.
- ***Skiptracing***: *Chapter 19* deals with locating a debtor who has disappeared, and also addresses legal issues when skip tracing on the internet.
- ***Consumer Financial Protection Act:*** *Chapter 20:* The Act is part of the Dodd Frank Financial Protection Act and became effective July 21, 2011. The provisions of the Act have been estimated to cover over 70,000 operating businesses. The only important rule promulgated so far is that the CFPB will have the right to require attorneys in any investigation to provide documents, whether or not they subject to the attorney-client privilege. Your author has not seen the final rule but can oral conversations be far behind?
- ***Telephone Consumer Protection Act:*** *Chapter 21*: A summary of the coverage and the type of telephone calls that are exempt are covered. Some recent decisions are discussed. A violation is a penalty, which may affect the coverage by the insurance policy.

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Book Reviews for the *Complete Guide*

Cited by the 9th Circuit in *Blanco v. Holder,* 572 F.3rd 780 (9th Cir 2009) as a recognized treatise.

"The Complete Guide to Credit and Collection Law is a must-have for any practitioner's office. Whether you specialize in credit practices and consumer law or need a great research tool for the occasional billing, collection, consumer rights issue, this book will provide you with solid, specific, and current information. As the former General Counsel and CEO of ACA International, The Association of Credit and Collection Professionals, and the current Chief Compliance Officer for a leading industry software company, I rely on this resource for even the most complex legal and compliance issues." (2015)

Rozanne M. Andersen Esq. (*former General Counsel and CEO of ACA international*) 2016 Edition

"For attorneys engaged in any aspect of collection law, this guide is a must-read and more importantly should be treated as a comprehensive reference to the ever-expanding law in all areas of collections."

Honorable Roger M. Whelan (*ABI Journal*), 2000 Second Edition

"A must read for credit guarantors, attorneys and collection firms, this book is sure to become one of the most popular references in your business library."

ACA International, 2004 Edition

"…this practical and well organized reference manual is a good general resource and research starting point for attorneys and others in the credit and collection industry."

Amber N. Dina (*The Advocate*), 2010-2011 Edition

"One of the most beneficial aspects of the book is the "Credit and Collection Tips" placed throughout each chapter. Based on their decades of experience in the field, the authors insert practical tips that serve as a best practices guide. Removing the complexities of the legalese, the authors synthesize the law into practical advice.

Ryan J. Dattilo (*ABI Journal*) 2010- 2011 Edition

"The book not only sets forth the basic guidelines to follow to establish and maintain a successful collection practice, it fine tunes many standard procedures to provide greater success"

David C. Schattenstein (*Commercial Law League of America*), 2004 Edition

"Throughout this rather large volume, the chapters are written in a clear, concise style that is easily understandable for both non-lawyers and novices to a collection practice. Nevertheless, experienced lawyers will benefit from the authors' collected wisdom and their cut-to-the-chase approach that stresses practicality and problem solving."

James J. Ferrelli (*Lawyer's Bookshelf*), 2006-2007 Edition

"It's commentary is restricted to the issues a creditor will run up against rather than trying to explain the entire scope of bankruptcy law. This makes for easier, more practical reading."

***Credit Today*, 2004 Edition**

"ACA is proud to have the book *Complete Guide to Credit and Collection Law 2nd Edition*, by Arthur Winston and Jay Winston in our educational resources. This is a book that is sure to please credit grantors, attorneys, and collectors. This second edition volume is top-notch tool that provides comprehensive coverage of all aspects of credit and collection law. The expert advice, tips and techniques to help credit managers improve their collection efforts and steer clear of costly litigation will make this one of the most used books in your business library."

Jerry T. Myers (*Consumer Trends*), 2002 Supplement to Second Edition

"This is a must read for anyone in the credit and collection area—for credit and collection managers, owners, collection agencies, attorneys, comptrollers, treasurers, debt buyers, banks credit unions, universities and any business that extends credit to individuals or businesses. An excellent desk reference with a compilation of the actual statutes and decisions that impact the day to day operations—an invaluable tool."

Richard Roosen, (*Roosen, Varchetti & Oliver, PLLC)* 2016 Edition

"The Complete Guide to Credit and Collection Law is an invaluable and a must-have for every Collection/Recovery department. I have always used the book as a reference guide for daily decision making and being in compliance with regulatory requirements. Jay Winston is an industry leader on Credit and Collection matters. I highly recommend maintaining this book in your library as it will make you better prepared in handling credit and collection issues."

Conrad Wee Tom (former Vice President/Collections Manager of SunTrust Bank) 2016 Edition

"The Complete Guide to Credit and Collection Law is a must-have for any practitioner's office. Whether you specialize in credit practices and consumer law or need a great research tool for the occasional billing, collection, consumer rights issue, this book will provide you with solid, specific, and current information. As the former General Counsel and CEO of ACA International, The Association of Credit and Collection Professionals, and the current Chief Compliance Officer for a leading industry software company, I rely on this resource for even the most complex legal and compliance issues." (2015)

-Rozanne M. Andersen Esq. ***(former General Counsel and CEO of ACA international)***

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"The collection, legal, bankruptcy, and credit litigation material included in this book is priceless and practical for any person in the collections field. This book is written so any collection or financial business person can easily navigate through and understand the concepts and guidelines the writers set forth within this book. Jay is a very hands on attorney who has great knowledge of collection laws and legal processes. He is versed in many areas of collections, laws, litigation, and regulation. Jay and Arthur's book is well written and easy to follow. I have personally worked with Jay and Arthur for well over twenty years and have learned a great deal from them and their successful business. They stay on top of consumer and debt related matters and readily share their opinion and guidance. This book is a must have for any credit union, bank, or collection business. In my opinion, it is the "go to" reference guide for most collection, debt, legal, and regulation matter. Jay and Arthur are very passionate about their work, and it shows through their writing within this book! A must have for any financial person responsible for collection and working out debt."

-Rose L. Ruggiero, ***Assistant Vice President, Jeanne D'Arc Credit Union***

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-Richard Roosen, ***Roosen, Varchetti & Olivier, PLLC***

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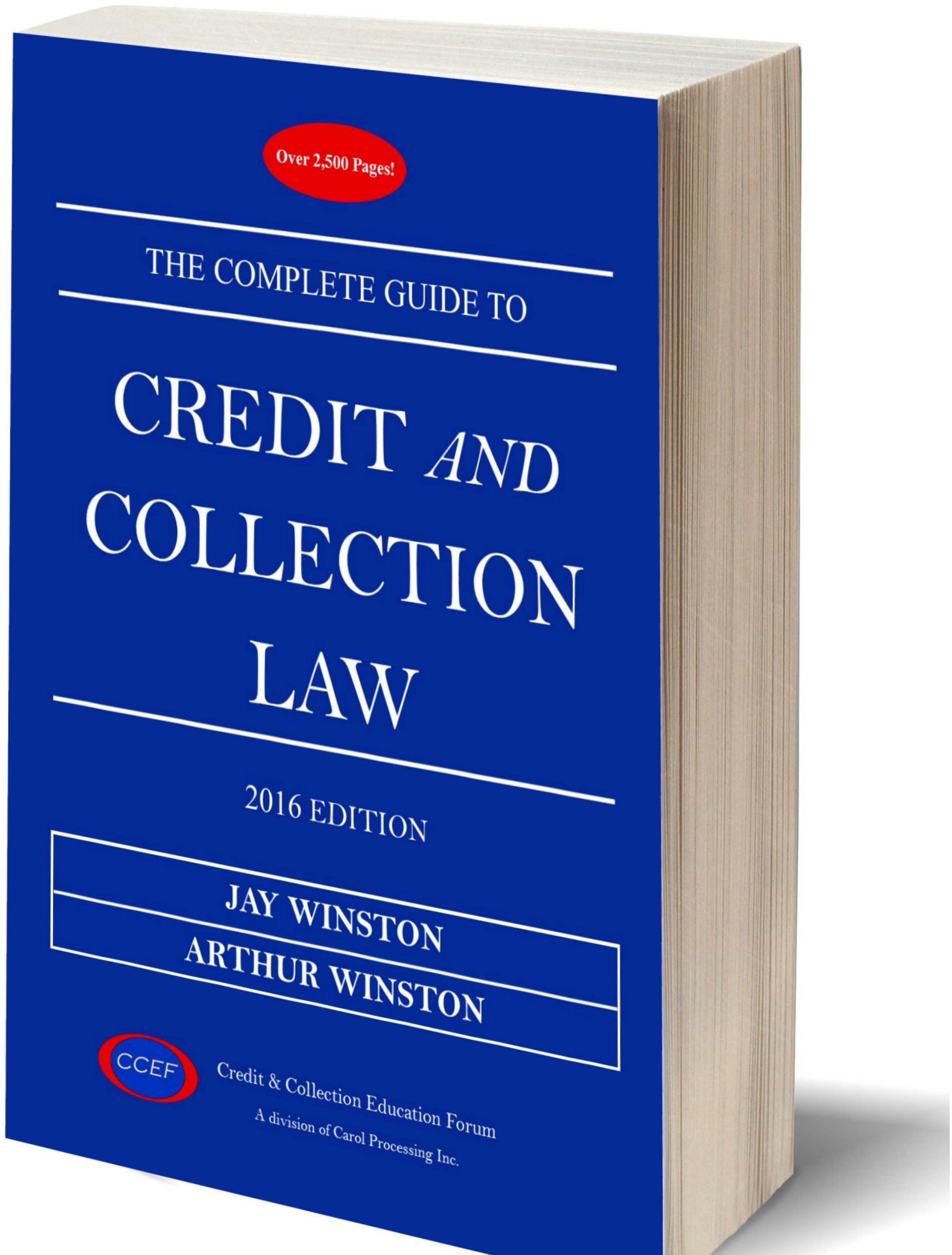
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