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Amendments to New York Law May Reduce the Number of Information Subpoenas

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Governor Andrew Cuomo has signed legislation imposing greater obligations on creditors and their agents who serve information subpoenas, and providing potential penalties if they serve information subpoenas without having a reasonable belief that the recipient of the subpoena has information about the judgment debtor. This legislation may reduce the volume of information subpoenas that financial institutions receive.

The new legislation gives the New York Attorney General the authority to impose a $50 civil money penalty per subpoena on a creditor or its agent that violates the law and also gives financial institutions a right to sue a creditor or its agent for $10 for each violating subpoena.

New York's Civil Practice Law and Rules were amended in 2007 to require creditors and their agents serving information subpoenas to have a reasonable belief that the party receiving the subpoena has information about the debtor that will assist the creditor in collecting the judgment. The 2007 amendments were intended to eliminate the practice of judgment creditors sending "blanket" information subpoenas, with hundreds or thousands of names, with no reasonable basis to believe that a particular institution had an account of the debtor.

Unfortunately, the 2007 amendment did not have the desired effect of significantly eliminating these "blanket" information subpoenas. Some creditors and their agents would simply include the required certification that they had a reasonable belief that the party receiving the subpoena has relevant information, when in fact the creditor had no such reasonable belief.

The new legislation, which takes effect on September 2, 2011, now provides remedies against creditors and their agents who violate the "reasonable belief" requirement. If a creditor or its agent sends more than 50 information subpoenas per month, they must keep complete records concerning all such information subpoenas they send for five years. Contemporaneous records must be kept that specify the grounds for the creditor or agent's reasonable belief, which must be certified and accompany each information subpoena, that the party receiving the subpoena has information about the debtor that will assist the creditor in collecting the judgment. Failure to maintain such records will subject the creditor or agent to a civil penalty of up to $50 per subpoena, up to a maximum of $5,000, in an action by the New York Attorney General.

In addition, a party served with more than 50 information subpoenas per month by a creditor or its agent will now have the right to sue that creditor or agent for noncompliance with the "reasonable belief" and recordkeeping requirements. Accordingly, if a financial institution is served with more than 50 information subpoenas per month by a creditor or its agent, and the institution can show (a) that the required "reasonable belief' certification was not made, or (b) that the required records for such information subpoena were not maintained, or (c) that the specific grounds for the "reasonable belief" certification were not reasonable, the institution can recover $10 for each such subpoena, as well as court costs and attorneys' fees.

The amendments are effective on September 2, 2011. If you have any questions regarding the amendments, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com.

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