

Back to Basics, Continued—To Settle or Not—That is the Question

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Consumer finance companies too often are faced with what looks to be a Hobson's Choice.*

Consider the instance when a small mistake is made in a consumer transaction—often a clerical error—when a law or regulation may have been broken but there is no substantive harm to the consumer resulting therefrom. The company often turns to its lawyer for some lawyerly advice: “Do we fight with the consumer, or do we accede to the demands?”

Nothing makes a lawyer more uncomfortable than having to explain to the client that the decision as to “fight or flight” is really an economic one. The elements of the decision really are two: One, how much is it likely to cost to refuse the customer's demand? Sometimes, this includes forgiveness of the debt, but often the cost is greater. And, this factor always includes the finance company's lawyer's fee. Recall too that the consumer finance laws often award attorney's fees to the consumer in addition to damages for violation.

Second, how likely is it that conceding the issue is going to invite copy-cat claims? This factor is often the more difficult factor to evaluate.

The advent of mandatory, pre-dispute arbitration has somewhat ameliorated the cost of the choice. But, not always, as there is a real cost to arbitration just as there is to litigation.

If a claim is critical to the company—a bet the company claim—there may be no real choice but to aggressively defend the claim. But, after evaluating the claim both in terms of cost and likelihood of repetition, settlement appears to be the more minimal cost option, often the better part of valor is to admit the mistake, pay for it, and move on to more profitable endeavors.

Please note: This is the ninety-fourth blog in a series of Back-to-Basics blogs, in which relevant and resourceful information can be easily accessed by clicking [here](#).

*A Hobson's choice is a so-called free choice in which only one thing is really and truly offered. Because a person may refuse to accept what is offered, the two options are taking it or taking nothing. In other words, one may “take it or leave it,” but in the end, there really is only one choice that makes any sense! Kudos to the 16th Century Englishman Thomas Hobson for articulating the principle.

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