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CREDIT CARD DEFENSE

I defend against credit card lawsuits in New Jersey State. I zealously fight the “terminator like” collection agencies and their debt collection lawyers. In most of my cases, I am able to reach a reasonable settlement. In the majority of my credit card cases I am able to settle these claims for 50% of the disputed debt.

What was once almost unheard of has now become common practice: individuals being sued over credit card debt. Increasingly, credit card companies and third-party debt collectors are filing lawsuits against New Jersey-ites in the New Jersey Special Civil Part Court at a record pace. In many cases, it is not worth filing for bankruptcy if you only have a few outstanding credit card debts. A debtor should not consider filing for bankruptcy merely because he is being sued by a credit card company.

In the world of debt collection debt collectors and debt buyers are vigorously pursuing, collecting, and filing lawsuits on old credit debt at a record pace. Typically, these collection agencies and their lawyers make most of their money by buying old and charged off credit accounts for only pennies on the dollar. Thereafter, these debt buyers then file collection lawsuits. These debt buyers make mountains of cash off many poor New Jersey-ites who “don’t have a pot to xxx in.”

Credit card collection lawsuits are last ditch efforts by the credit card company or debt collectors to finally get the debtor to pay their debt. Some lawsuits are filed by original creditors, and some are filed by debt buyers who purchase the debt at a discount. Some original creditors might include the bank that extended credit, for example Citibank or Chase, or a retailer, such as Macy’s or a furniture store. Thereafter, third party collectors often file lawsuits against debtors over old credit card debt. They purchase this debt from the original creditor or from previous debt collectors as holders of the account.

The value of the credit card debt decreases over time as its “collect-ability” declines over time. However, the dollar amount of consumer debt in default will continue to grow because of interest and penalties, its value drops. Debt collectors often purchase a portfolio of old credit card accounts at a discount, for much less than the amount of the initial debt. Since they purchase the debt at a discount, they can still make a profit even if the debtor pays less than the full amount of the debt.

As collection lawsuits over debt become more common, you should keep in mind you may still have valid defenses to the suit. An experienced attorney may be able to find defenses you did not know existed. Even if you have already been sued in the Special Civil Part for a credit card lawsuit, there is good news. Your creditor or the debt buyer still must prove that these old debts are valid and are substantiated. In my experience, the credit card collection agencies and their lawyers often have a very difficult time to produce all of the necessary documentation to validate their debt in court. Therefore, in any disputed credit card lawsuit, I always request discovery, and demand that the credit card companies substantiate their debt. I also make them prove that the annual percentage rates that were charged are legal under New Jersey law that you were properly notified of

the interest rates and any increases, and that the interest rate increases were implemented in accordance with your original card holder's agreement.

Therefore, if you need the assistance of an experienced and affordable credit card defense lawyer, or if you simply need to hold off your creditors, buy some time and stop the harassing calls, or if you want to try and defeat a claim for money against you by a credit card company or a collection agency, then contact the New Jersey Credit Card Defense Center. You should take advantage of my firm's extensive experience in obtaining substantial discounts and debt reductions for credit card defense clients.

We Can Also Reduce Wage Garnishments

Are you drowning in debt? Are aggressive debt collectors calling you day and night? Are you on the verge of a nervous breakdown. Welcome to life in the Garden State! If this sounds like your life, then you are not alone and you have plenty of company believe me. New Jersey-ites are constantly blasted with inflated credit card, outrageous mortgage bills, high car payments, insurance payments, telephone bills, etc. The unfortunate reality is that millions of New Jersey-ites must resort to using credit cards just to survive. Therefore, many people from all walks of life quickly rack up massive credit debt even though they have no means of ever paying these bills back. Moreover, the day to day pressure of living with outrageous credit card often stresses out average New Jersey-ites to the max. You don't have to live this way any longer. Theodore Sliwinski, Esq. can assist you at court and try to reduce the amount of any wage garnishment.

Providing answers to your credit card debt questions

The law office of Theodore Sliwinski, Esq. offers information on your credit card and debt collection situation. Please read below for straightforward answers to your questions about:

- Debt Collection Basics (Page 3)
- Your Rights Under the Fair Debt Collection Practices Act (Page 6)
- Recognizing Debt Collection Abuse (Page 8)
- The Basics of Defending Creditor Lawsuits (Page 11)
- Common Defenses to Creditor Lawsuits (Page 15)
- Negotiating a Settlement Agreement in Court (Page 18)
- Vacating a Default Judgment (Page 21)
- Frozen Bank Accounts (Page 24)
- Wage Garnishments (Page 28)
- Junk Debt Alert (Page 30)
- More Credit Card and Collection Information (Page 32)

Debt Collection Basics

What is a creditor?

A creditor is a person or company who gives you something of value such as goods, services, or money in exchange for your promise to pay them back at a later date. A creditor can be a credit card company, a bank, a hospital, your local dentist, or any person or company to whom you owe a debt.

What is a secured debt or loan?

A debt or loan is “secured” if it is backed by some type of personal property that has value. This thing of value, also called “collateral.” If you don’t pay the debt, then your creditor will take the collateral as payment. The most common types of secured debts are mortgages and car loans. Some stores make secured loans for household appliances like refrigerators and washing machines. A secured credit card is backed by a savings account or other collateral; the credit limit is based on the value of the collateral.

What is an unsecured debt or loan?

A debt or loan is “unsecured” if it is backed by your promise to pay at a later date, without savings or collateral as a guarantee. Credit card and medical debts are unsecured.

How do I prioritize which debts to pay first?

The decision as to which debts to pay first is a personal decision that is different for many people. However, in general, providing the daily necessities for yourself and your family is the most important, and unsecured debts, like credit card bills, is usually the lowest priority. Therefore, you should make at least the minimum payment if you can, but you should not risk your health or housing to pay a credit card bill. I always advise my client to pay their mortgage first and then their car loan. If any money is left over, then pay off any medical bills, and then the credit card debt.

If I owe money to a creditor, what can the creditor do to me?

If the debt is unsecured, the creditor can:

- Stop doing business with you
- Report your debt to a credit reporting agency
- File a lawsuit to collect the debt
- If the debt is secured, the creditor can sometimes seize the collateral without a court order. However, a creditor must have a court order to take back your home.

Will my creditor send my debt to an outside collection agency?

If you have an outstanding debt, and if you stop making payments, then your creditor will almost always turn the debt over to a collection agency.

How long does it take for my creditor to send my debt to a collection agency?

There is no clear rule on this question. Generally your medical creditors such as doctors, dentists, and hospitals are very quick to turn debts over to collection agencies. Credit card companies, which have collection departments of their own, may keep the debt for a longer period of time.

Is there anything I can do to prevent my creditor from sending my debt to a collection agency?

Yes. Contact your creditor as soon as you know that you are facing financial difficulties and will not be able to make payments. Explain that you have to pay your rent or mortgage, utilities, and certain other bills first, and that you do not have enough money to pay the creditor now, but you will pay when you can. Be polite and honest but firm, and make clear that you will not pay a collection agency either. If all goes well, your creditor will conclude that you will pay when you can, and so it need not go to the expense of hiring a collection agency. This strategy works best for those who have suffered a temporary financial setback such as a job loss, divorce, or temporary illness, but expect to be back on their feet shortly.

Can my creditor sell my debt to another company?

Yes. Buying and selling debts is legal, and it is big business. In fact, these days it is more likely than not that your creditor will eventually sell your debt to a company that specializes in buying and collecting old debts. These companies are called debt buyers.

Can a collection agency or debt buyer report the debt to a credit reporting agency?

Yes. However, like any creditor, the collection agency or debt buyer has a legal duty to report your debt accurately.

Will my creditor actually sue me?

It is hard to say. Most creditors frequently threaten lawsuits, but those threats are not always carried out. Creditors are less likely to file a lawsuit against you if:

- You make voluntary payments, even if those payments are small
- You dispute the debt and threaten to raise a reasonable defense
- Your debt is less than \$1000
- The creditor does not have a history of suing people

On the other hand, not all creditors are rational, and some will sue even over small amounts of money.

Can my creditor sue me after I have made a payment agreement?

Unless you have a specific agreement with the creditor providing that it will not do so, your creditor can still sue you even if you have made a payment agreement, and are current in your payments. The agreement can be in writing, or it can be oral. However, for your own protection, you should never make oral agreements with creditors unless you are recording your conversations. Recording your own telephone conversations is

perfectly legal in New Jersey. Moreover, you do not have to tell the creditor that you are recording the call.

What should I do if the creditor sues?

You should always respond to the lawsuit and file an answer! It is never a good idea to simply blow off a credit card lawsuit. If you at least file an answer, you can try to negotiate a settlement with the creditor. Meanwhile, if you ignore the credit card collection suit, then a judgment will automatically be entered against you.

What is a statute of limitations?

A statute of limitations is a time limit for filing a lawsuit, or how long after an event someone is allowed to sue you. In New Jersey the statute of limitations to file a lawsuit on a credit card debt is six years.

What is the statute of limitations to file a debt collection lawsuit?

In New Jersey, the statute of limitations for filing a debt collection lawsuit is six years, counting from the date of default. The date of default is roughly 30 days after you last made a payment. In other words, if you last made a payment on your credit card in December 2000, you can be sued for that debt until approximately January 2007. However, if the creditor obtains a judgment against you within the six-year period, the statute of limitations to collect on the judgment is 20 years.

Can a debt collector contact me about a debt that is past the statute of limitations?

Yes. It is perfectly legal for a debt collector to contact you about an old debt that is past the statute of limitations. Furthermore, if you make a payment on that debt, you will reset the statute of limitations, and the creditor will have another six years in which to sue you.

Can a creditor sue me for a debt that is past the statute of limitations?

Yes. It is legal for a creditor to sue you for an old debt that is past the statute of limitations. It is especially important that you appear in court if the statute of limitations on your debt has expired. If you answer the lawsuit, appear in court, and assert the statute of limitations as a defense, the court will dismiss the case. If you fail to appear in court, then the judge will rule against you, and you will end up liable for the judgment amount, even though you could easily have gotten the case dismissed. Unless you can get it canceled, or vacated, then the creditor will then have twenty years to collect on the judgment.

Can I go to jail if I do not pay my debts?

Of course not! There are no debtor's prisons in the United States. If you owe money to your credit card company, it is not a crime. There is no massive credit card jail in Delaware. As a side note, most of the credit card companies headquarters are located in Delaware.

Your Rights Under the Fair Debt Collection Practices Act

What is the Fair Debt Collection Practices Act (FDCPA)?

The FDCPA is a federal law that protects consumers from unfair or abusive debt collection practices. It gives you the right to dispute the debt. It controls how and when a debt collector may contact you and what the debt collector can say to you. And it gives you the right to force debt collectors to leave you alone. These issues are explored in more detail on the pages that follow.

What kinds of debts are covered by the FDCPA?

The FDCPA applies to debts that were obtained primarily for personal, family, or household purposes. Most consumer debts such as personal credit cards, student loans, and medical debts are covered by the FDCPA.

What kinds of debts are not covered?

Business debts are not covered by the FDCPA.

Which debt collectors must comply with the FDCPA?

The FDCPA applies to any person or company that regularly collects the debts of another. Employees of debt collection and debt buyer agencies must comply with the FDCPA. Law firms and lawyers also must comply with the FDCPA, if they regularly engage in debt collection activities. Practically speaking, almost all debt collectors are covered by the FDCPA.

Which debt collectors are not required to comply with the FDCPA?

Creditors do not have to comply with the FDCPA if they are trying to collect their own debts. For example, an in-house collections department at a credit card company or hospital would not be covered by the FDCPA. Also, third-party debt collectors who do not regularly collect debts owed to another do not have to comply with the FDCPA.

Is there a way to protect myself from debt collection harassment, if the FDCPA does not apply?

Yes. Various state laws protect consumers from debt collection harassment. These laws may apply even if the FDCPA does not. You should not have to suffer from debt collection harassment!

How can I recognize when a debt collector violates the FDCPA?

Debt collectors violate the FDCPA when they make harassing, threatening, or misleading statements in order to coerce or trick you into making payments on a debt.

What steps should I take to fight back against debt collection harassment?

Step one: Keep a log of the debt collectors' phone calls. Place a pen and paper by the phone, and each time a debt collector calls, gets their name, telephone number, employer, and take some brief notes on what they said. Write down the date and time also. Keeping

a log helps you keep track of how many people are calling you, and how often. A log provides a good record of collection abuse.

Step Two: Record the calls. Debt collectors might lie about what they said to you during a telephone call, or you might not remember it well after some time has passed. With a recording, you have proof of exactly what was said. In New Jersey, it is legal to record your own telephone calls; you do not need to advise the debt collector that you are recording the call. Make sure to record every call and to turn on the recorder at the beginning of the conversation. You never know when the debt collector will say something improper, so you need to be ready at all times!

Step Three: If necessary file a complaint with the NJ Division of Consumer Affairs.

Step Four: Talk to an attorney who regularly handles debt collection issues for consumers and understand consumer rights.

Your Rights Under the FDCPA: Recognizing Debt Collection Abuse

How may a debt collector contact me?

A debt collector may contact you in person, or by mail, telephone, telegram, or fax. A debt collector may not contact you by postcard. These days, most debt collection contacts occur by telephone. When the debt collector first contacts you, you have important rights to notice of the debt and to dispute the debt.

When may a debt collector call me?

A debt collector may telephone you at times that are not inconvenient. Usually, this means that a debt collector may call between 8:00 a.m. and 9 p.m. However, if you have special circumstances (for example, you work at night and sleep during the day) those hours may be different.

How often can a debt collector call me?

That depends. Under the FDCPA, a debt collector may not call any person repeatedly or continuously with the intent to annoy, abuse, or harass them. In the real world though the debt collectors primary goal is to harass you until you pay. It is very difficult to determine whether and when a debt collector has crossed this line. According to the Federal Trade Commission, a debt collector may almost certainly call you more than once, but six calls per day are probably too many.

Can a debt collector call me at work?

Not if the debt collector has reason to believe that your employer does not allow you to receive such calls. Many people's employers do not allow them to take personal phone calls. The debt collector's favorite trick is to call you at work. This dirty tactic amps up the pressure, and these calls are made to embarrass you. Essentially the debt collectors try to force you to pay by using these coercive tactics. When you sign up for your credit card, you also list your work number on the credit card application. The only way to stop most debt collectors from calling you at work is to file for bankruptcy. Once you file for bankruptcy then the automatic stay kicks in. You also could send the debt collector a cease and desist letter that requests the debt collector to stop calling you at work. However, most debt collectors will rip up the letter, throw it in the garbage, and then call you twice as much at work. The debt collectors will know that the calls to your workplace bother you. Thus, most debt collectors will increase the calls to your workplace.

Can a debt collector call my employer, friends or family?

Yes, under certain limited circumstances. A debt collector may contact any person for the purpose of correcting or confirming your contact information. However, the debt collector may not identify himself as a debt collector or tell the person that you owe a debt. Moreover, a debt collector may not call the person more than once.

Can a debt collector contact me if I am represented by an attorney?

No. The FDCPA provides that as long as the debt collector knows that you are represented by an attorney, the debt collector cannot contact you directly.

What kinds of comments or communications can debt collectors say to me?

One of the debt collector's favorite tricks is to make you feel guilty about owing money. They can ask you to make a payment agreement, and they can encourage you to borrow money from another source in order to pay them. It is their job to pressure you into paying them first. Debt collectors use many different strategies to accomplish these objectives. It is your job to stay strong: Don't agree to pay a debt collector if you need to pay other, more important debts first, and learn to recognize when the debt collector has crossed the line and violated the FDCPA.

The following type of communications violate the provisions of the FDCPA:

- Threatening to have you arrested or jailed
- Threatening to take your SSI or other protected income
- Threatening to take your household furniture
- Threatening to cause physical injury to you or your property
- Threatening to send false information about you to the credit reporting agencies
- Using obscene or profane language
- False and/or misleading statements violate the FDCPA
- Misrepresenting the character, amount, or legal status of the debt
- Making empty threats to scare you
- Pretending to work for a credit reporting agency
- Pretending to work for a government agency
- Falsely claiming to be an attorney or to work with attorneys
- Calling you with the intent to harass you
- Calling you and insulting you with insults such as calling you a dead beat
- Soliciting postdated checks with the intent to threaten to expose you to criminal charges, or soliciting postdated checks and then threatening to deposit them early
- Contacting you by postcard, or contacting you in any way that would disclose to a third party that they are debt collectors

How can I make a debt collector stop contacting me?

You should write a letter to the debt collector and advise him that you refuse to pay the debt or that you want the debt collector to stop contacting you. This type of letter is called a "cease and desist letter." This letter should always be sent by certified mail, return receipt requested. Moreover, you should keep a copy of this letter and the certified mail receipts for your records if there is any further litigation.

What should I do if a debt collector refuses to stop contacting me?

You should write a cease letter to the debt collector. Many people waste a lot of time talking to debt collectors on the phone, and trying to convince them to stop calling. This

approach is almost never successful. The FDCPA provides that debt collectors don't have to stop contacting you unless you send them a letter.

If you have already sent a cease letter, but the debt collector ignored it, then you can file a lawsuit and ask the court to order the debt collectors to stop contacting you. If you are contemplating filing a lawsuit, then you will need to prove two legal prongs: (1) the debt collector received your cease letter; and (2) the debt collector continued to contact you even after receiving the letter. If you kept a copy of your letter, and if it was sent by certified mail, then you will have proof to establish that there was a violation of the FDCPA. Additionally, you may consider recording your telephone calls. At the very least, you should keep a log of debt collection contacts.

Is it legal to record my conversations with debt collectors?

In New Jersey it is perfectly legal to record your own conversations with your debt collectors. Moreover, you are not legally required to advise the debt collector that you are recording the call.

Should I record my conversations with debt collectors?

If you receive never-ending calls from debt collectors, then you should seriously consider recording your calls. If you record your calls, then you will have proof of what was said between you and the debt collector. If you make a payment agreement with the debt collector and the debt collector fails to live up to its end of the bargain, then you can use the recording to enforce the agreement. If the debt collector violates your legal rights under the FDCPA, then you can use the recording as evidence for a complaint or lawsuit. Moreover, you can use this evidence as the basis for a counterclaim if the debt files a collection lawsuit against you. If the credit card company sues you, then you can file a counterclaim based on a violation of the FDCPA. If you have valid proof that you have a solid counterclaim, then in all likelihood you can negotiate a very favorable settlement with the credit card company.

How do I record my conversations with debt collectors?

You can purchase a recording device at a home electronics store, such as Radio Shack or a similar store. These devices are inexpensive and cost around \$30 for a basic model and are easy to use. If you tell the clerk the make and model of your telephone, then the clerk can recommend the appropriate device.

The Basics of Defending Creditor Lawsuits

This set of FAQ'S provides general information for New Jersey-ites who are facing debt collection lawsuits in the New Jersey City Special Civil Part Courts.

Can a creditor sue me if I owe a debt?

Yes. In fact, these days it is quite common for creditors to file lawsuits to collect debts. In New Jersey, the credit card company usually files their lawsuit in the county where you live. Moreover, most credit card lawsuits are filed in the Special Civil Part Courts. This is basically an enhanced small claims court. The filing fees are more reasonable and the amount of damages can't exceed \$15,000. Moreover, most cases are completed in 6 months in the Special Civil Part. Meanwhile, if a case is filed in the Law Division, Civil Part, then a standard collection case can last from one to three years.

What is a debt buyer?

A debt buyer is a company that specializes in buying and collecting old debts. If you fail to repay a debt, your creditor might sell it to a debt buyer. The debt buyer will then try to collect the debt from you. This practice is perfectly legal and it is big business. Consumer debts are often bought and sold more several times. The older that consumer debt is then it is less valuable. This type of debt is also referred to as "Zombie debt." Some of the biggest debt buyers in New Jersey are Arrow Financial and New Century Financial.

Can a debt buyer sue me if I owe a debt?

Yes. If your creditor has sold your debt to a debt buyer, then the debt buyer can sue you to collect the debt. This practice is perfectly legal and it is big business.

What is a plaintiff?

A plaintiff is the party who files the lawsuit. If a creditor or debt buyer files a lawsuit against you, then the creditor or debt buyers are the plaintiff.

What is a defendant?

A defendant is the party who is sued by the plaintiff. If a creditor or debt buyer files a lawsuit against you, then you are the defendant.

What is a summons?

A summons is your official notification that you have been sued. It tells you how and where to appear in order to defend the case. In the New Jersey Special Civil Part Court, a debtor has 35 days to answer a complaint.

What is a complaint?

A complaint is a legal document that explains why you have been sued. It contains the facts and the legal claims that are the basis for the lawsuit. In debt collection cases, the complaint is often very short and it provides very little information.

What is an answer?

An answer is an official written response to a complaint. In your answer, you should write all the defenses that you want to raise in the case.

What is a counterclaim?

A counterclaim is a claim that you have against the plaintiff. The plaintiff may owe you money, or the plaintiff may have violated your rights or caused you some other kind of harm for which you want to recover money damages. You always have the right to file a counterclaim against the plaintiff along with your answer.

What should I do if I receive a summons and complaint?

You should never simply rip it up or place it in your bottom drawer and ignore it. Lawsuits never just mysteriously disappear. If you blow off a credit card lawsuit, then your legal problems will just get progressively worse. You should always respond to a summons and complaint and at least file an answer. If you file an answer to the complaint, then you will at least have an opportunity to discuss a settlement with the debt collector at court. Meanwhile, if you simply ignore the complaint, then you will lose automatically and a judgment will be entered against you.

Is there a time limit for filing an answer?

Yes, if you were served with the summons and complaint in person, then you must file your answer within 35 days.

What if the time for filing my answer has already expired?

You should try to file an answer anyway. As long as no judgment has been entered against you, then most courts will usually accept a late filed answer.

What should I write in my answer?

Your answer should contain all the defenses that you want to raise in your case. You may want to raise that the plaintiff did not properly credit you with all of your payments. You may allege that the interest rates and late fees are illegal and usurious. You may want to raise the defense that the complaint must be dismissed because it was filed too late, and past the statute of limitations.

What will happen to me if I blow off the summons and complaint?

If you blow off the summons and complaint, then the plaintiff will almost certainly request that the court to enter a judgment against you. This type of judgment is called a "default judgment." A default judgment usually awards the plaintiff everything that it asked for in the complaint, plus interest and court costs. The judgment will appear on your credit report, and it can stay there for up to twenty years if it is not paid off. The judgment also gives the plaintiff the right to try to collect money from you by freezing your bank account or by garnishing your wages. You can avoid a default judgment by filing an answer and by appearing in court.

What happens after I file an answer?

After you file an answer, the court will notify you of your first court date. You will get a card in the mail that advise you as to your court date and where it will be held. Your first court date could be anywhere from 2 month to 3 months after you file your answer. It is very important that you attend this court date. If you fail to attend the court date, then the court will enter a default judgment against you.

What is the burden of proof?

The burden of proof is the responsibility to provide evidence in support of a legal claim.

Who has the burden of proof in a debt collection case?

The plaintiff who is the credit card company or debt buyer always has the burden of proof in any type of debt collection case. This essentially means that the plaintiff has to provide evidence to prove to the court that (1) the plaintiff has the right to sue you; (2) the debt is yours; and (3) you owe the exact amount of money that the plaintiff claims you owe. You do not have to prove that you do not owe the money. Instead, the plaintiff has to prove that you owe the money to the credit card company.

What kind of evidence does the plaintiff need to present in order to meet its burden of proof?

If you admit that the plaintiff's allegations are correct, then the plaintiff can rely on your admission to win the case. However, if you challenge the plaintiff's right to sue you, the existence of the debt, or the amount of the debt, then the plaintiff must provide the following evidence to the court:

- Proof that the plaintiff has the right to sue you

In the case of a debt buyer, the debt buyer must prove that it owns your debt by showing the court the contract of sale. This contract is called an assignment. The assignment must mention your debt specifically. If your debt has been bought and sold multiple times, the debt buyer must present a chain of assignments that goes all the way back to your original creditor.

- Proof that the debt is yours

Usually, this means an original contract with your signature.

- Proof that the amount demanded in the lawsuit is correct

Usually, this means a complete set of bills or account statements. In the case of a credit card, the plaintiff also has to prove that each and every charge on the card was authorized.

All of this proof must come in a specific format, or else it is considered hearsay, and it not admissible in court. If the plaintiff fails to satisfy its burden of proof by producing any admissible evidence of your debt, then the court must dismiss the case.

How can the burden of proof help me get a better outcome in my case?

The plaintiff has to present substantial of evidence in order to satisfy its burden of proof. This evidence is often difficult or expensive for the plaintiff to gather and produce. If

your credit card debt is old, or if it has been bought and sold multiple times, then the evidence of your debt may not even exist at all. It is almost always much easier and cheaper for the credit card company to negotiate a reasonable settlement with you, rather than to come up with all the evidence needed to meet the burden of proof. That is why the credit card company will nearly always want you to agree to a settlement.

If you believe you do not owe the debt, then you should never agree to a settlement. Insist on your defenses and put the plaintiff to its proof. If you have a solid defense, then you have a good chance of winning the case.

If you would like to negotiate a settlement, use your knowledge of the burden of proof to make sure you get a settlement that works for you.

If you cannot afford to make a settlement agreement, or if your income is exempt from debt collection, you should put the plaintiff to its proof. There is a good chance that the plaintiff will be unable to meet its burden, and the case will eventually be dismissed.

Common Defenses to Creditor Lawsuits

This set of FAR'S provides general information for New Jersey-ites who are facing debt collection lawsuits in the New Jersey City civil courts.

How can I defend myself from a credit card lawsuit?

Debt collectors are filing collection lawsuits like there is no tomorrow. A lawsuit is often the final effort in the creditor's attempt to try to collect a debt. However, by the time the credit card company or other creditor files the lawsuit, it may actually be too late to legally collect the debt, if it is properly defended. In many cases with the assistance of an attorney a credit card lawsuit can be defended, negotiated, or even won outright for the defendant. Before you start feeling sorry for the credit card company, remember, they are the same corporation that charged you an interest rate of 20% to 30% of interest. These rates are almost "mob like."

Once a credit card lawsuit is filed, then the debt collector's major goal is to obtain a default judgment. A default judgment is the result of a lawsuit if the defendant fails to answer the lawsuit answer. Default judgments are very important for the collectors because it means they do not have to prove you owe the money, how much you owe, and most importantly the agent for the credit card company does not have to come to court. Basically, the credit card company wins automatically if they obtain a default judgment.

Once a default judgment is entered, then all of your potential defenses to the lawsuit are lost. Moreover, the credit card company no longer has to prove and validate their debt or that you indeed owe the money. Therefore, it is critically important for a debtor to always at least file an answer to a credit card lawsuit.

The most common is the statute of limitations, statute of frauds, waiver, estoppels, improper plaintiff, improper defendant, invalid debt transfer, violation of bankruptcy discharge, and violation of the Fair Debt Collection Practices Act. The last one is not really a defense, but it can work like one. Of course, most ordinary New Jersey-ites have a difficult time to determine which if any of the defenses are available in their case. Therefore, if you are sued then you really should consult with an experienced consumer rights lawyer about your case.

Can you defend a credit card lawsuit when you may owe the money?

The answer is yes. Whether you owe the money or not, the plaintiff still has the legal obligation to prove their case, and to also prove that you owe the money. Sometimes, folks "think" they may owe the money but can't really remember when it has been a long time since the debt went into default. The original credit card debt may have been transferred many times to many different debt collectors. This kind of debt is known as a "zombie" debt. Sometimes the holder has started the lawsuit after the statute of limitations has long since passed. The statute of limitations is the period of time that a creditor can file a lawsuit against you. If the lawsuit was filed after the time runs out, then the defendant can file an application to dismiss the case.

What is a legitimate defense against a credit card lawsuit?

Generally, a defense is a reason why the plaintiff should not win its case. In a credit card collection lawsuit, a defense is a reason why (1) the plaintiff failed to prove its case; or (2) you do not owe the money. If one of your defenses is successful, then the plaintiff will lose their case.

What are not legitimate defenses?

- The reason that you fell behind on your credit card bills
- The reason that you cannot pay the credit card debt today
- The fact that the creditor or debt collector refused to make reasonable payment arrangements in the past
- A statement that you want to settle the case or make a payment agreement

Do most defendants have meritorious defenses to creditor lawsuits?

Yes. One or more of the common defenses discussed below probably apply to your case. Each of the defenses discussed below if it applies to your case is a reason why the plaintiff should lose their case.

What is the best way to present my defenses to the court?

To alert the court to your defenses, you should list them briefly in your answer.

Defense 1: Improper Service (no personal jurisdiction)

The defense of improper service applies if you never received the summons and complaint at all. Under New Jersey law, the Clerk for the Special Civil Part mails the summons complaint to the defendant by certified mail. There is no legal requirement that a defendant must be personally served with a summons and complaint in a Special Civil Part collection case. As a result of these rather lax personal service rules, there is a tremendous amount of default judgments that are entered in the Special Civil Part. Therefore, improper service often can be a strong ground to defend against a credit card lawsuit.

The most common examples of incorrect service are sending the summons to an old address where you no longer live. Improper service is a defense that is usually raised in a motion to vacate a default judgment. In New Jersey this defense is rarely used to defend against a “run of the mill” credit card collection case. However, there are hundreds of thousands of credit card default judgments entered each year in the Special Civil Part Courts. Therefore, this defense can assist many debtors to undo a default judgment for a credit card debt.

Defense 2: Statute of Limitations

A statute of limitations is a time limit that a creditor has to file a lawsuit against you. It runs from approximately the last time you made a payment. In New Jersey, the statute of limitations on a credit card debt is six years. If it has been more than six years since you paid your credit card debt, then the statute of limitations on that debt has expired. The statute of limitations is an absolute defense. Thus, the Special Civil Part must dismiss a

credit card collection case if the debt is at least six years old and no recent payments have been made. Any payment, no matter how small, can reset the statute of limitations. To be safe, never make a payment if you want to assert the statute of limitations as a defense.

Defense 3: You Were Only an Authorized User

This defense may apply if you are being sued for a card that you shared with someone else. The defense hinges on the difference between a co-signer and an authorized user. If another person gave you permission to use his or her card, and you never agreed to be responsible for paying for that card, you were an authorized user. As an authorized user, you cannot be held responsible for that credit card debt. However, if you signed a credit card agreement in which you agreed to be jointly responsible with someone else for a credit card, you are a cosigner, and this defense does not apply to you. As a co-signer, you can be held responsible for the debt, even if none of the charges were yours.

Defense 4: Payment

If you have paid all or a part of the debt, and you believe you have not been credited for the payment, you can raise the defense of payment.

Defense 5: Dispute the Amount of the Debt

If you believe that the amount of the debt is incorrect, then you have the right to dispute it. It is important to emphasize that the credit card company has the burden to prove that you owe the amount for which you have been sued. The credit card company must also prove that the principal, interest, collection costs, and attorneys fees are all correct, agreed to in your contract, and lawfully charged. You always have the right to insist that the plaintiff come up with your original contract, account statements, and even purchase receipts, to prove the amount of the debt.

Defense 6: No Business Relationship with the Plaintiff (lack of standing)

This is a defense that applies when the plaintiff is a debt buyer, not your original creditor. Because you never signed a contract directly with the debt buyer, you have the right to challenge the debt buyer's right to sue you. In the law this concept is also known as standing. The plaintiff will not be able to prevail unless it can prove to the court that it owns your debt. To do this, the debt buyer will have to produce a contract of sale also known as an assignment. The assignment also must specifically refer to your debt specifically. If the debt buyer bought your debt from another debt buyer, it has to provide a chain of assignments going all the way back to the original creditor. If the debt buyer cannot or will not provide these documents, the court must dismiss the case.

Defense 7: Bankruptcy

If you previously declared bankruptcy, and the debt for which you are being sued was discharged as part of that bankruptcy proceeding, you do not owe it anymore. Bankruptcy is an absolute defense to any debt collection lawsuit.

Negotiating a Settlement Agreement in Court

This set of FAR'S offers information and advice for people who have been sued in the New Jersey Special Civil Part Courts and want to negotiate a settlement agreement in court with the plaintiff's attorney.

What is a settlement agreement?

A settlement agreement is an agreement between you and the credit card company that resolves the court case without a trial or a judgment. In most cases, the settlement agreement will include a payment plan.

Is it always a good idea to negotiate a settlement agreement?

Yes. It is always strongly advisable to reach a reasonable settlement with the credit card companies. Most of the defenses that are raised in a credit card case are designed to enable a debtor to reach the best settlement possible. However, if you have a defense based on the statute of limitations, then you should not settle your case. If you have a statute of limitations defense then you have a "winner," and most likely you will be able to get your case dismissed. Moreover, as part of any settlement, the credit card company should agree that they will report the disputed debt as a paid settlement on your credit report. Most credit card companies are only interested in getting your money, and they will not correct your credit report once the case is over. Many credit card companies will still advise the credit bureaus that your disputed credit card debt is delinquent. Therefore, you should incorporate a clause into any settlement agreement that the debt will be reported as settled to the three credit bureaus.

When should I consider a settlement agreement?

You should always strongly consider settling all credit card lawsuits. In my almost two decades of practice, I have come to the realization that most judges are inclined to grant the credit card companies judgments and debt collector's judgments. The following factors may further convince you to enter into a settlement agreement:

- You believe you owe some or all of the credit card debt
- The credit card debt is fairly recent
- You can afford to make reasonable payments on the settlement
- You might also consider settlement if you cannot take time off from work to attend the court dates

When should I not consider negotiating a settlement agreement?

You probably should not consider negotiating a settlement agreement if:

- You can't afford to make payments on any settlement agreement.
- The debt is so old that the statute of limitations has expired or is about to expire.
- You are the victim of identity theft, or you don't owe the debt for some other reason.
- If your income is exempt from debt collection because it comes from a protected source, such as Social Security, Public Assistance, the Veterans Administration,

- child support, or a pension, you probably should not consider a settlement agreement unless you are sure that you can afford to make payments.
- It makes more sense for you to file for a bankruptcy.

Can I negotiate a settlement outside of court, so that I do not have to appear?

You can certainly try. However, you should be aware that when you call the office of the plaintiff's attorney, you will most often talk to a debt collector and not an attorney. People often find that these debt collectors are very rude and unreasonable. However, the attorneys that you will meet in court are usually polite and have much greater flexibility to work with you. Most attorneys want to reach an agreement with you because they know that they might not be able to obtain adequate proof of the debt, which they need to win the case against you. Most people find that they can obtain a much better deal by going to court than they can by negotiating over the telephone.

Moreover, you should remember that every time a case is pending in court, there is a serious risk that the court will enter a default judgment against you if you fail to appear. You can't trust the plaintiff's attorney to do the right thing and inform the court that the case has been settled. The only way to make sure that no judgment is entered against you is to file an answer and appear in court on your court date.

If you do decide to negotiate an agreement over the telephone, then make sure to get the agreement in writing. If you cannot get an agreement in writing, you have no choice but to appear in court to protect your interests.

How should I prepare to negotiate a settlement agreement?

Think carefully about what you can afford to pay. If you can't afford to pay anything at all, then you should not enter into a settlement agreement. For most people, paying for necessities like rent and food is much more important than paying for credit card debts.

If I can afford to make payments, how do I get the best deal?

You should decide how much you can afford to pay, and then offer less. That way, you'll have some room to bargain. Be firm, and never agree to pay more than you can afford. If you can afford it, offer a lump sum. Most creditors will often agree to give you a substantial discount in exchange for a larger payment.

What should I look for in a settlement agreement?

There are a few legal issues that must be addressed and incorporated into every credit card settlement agreement to make sure your rights are fully protected. These issues are as follows:

- The creditor should reduce the overall amount of the debt
- The creditor should give you a monthly payment that is affordable over the long term
- The creditor should waive interest, fees, and court costs
- The agreement should provide that no judgment will be entered against you (unless you fail to make payments)

- The agreement should provide that when you finish making payments as agreed, the case will be discontinued

The settlement agreement should provide that if you miss a payment, then the creditor will give you written notice and an opportunity to send in a late payment. This is called “notice and an opportunity to cure.” You should try to get at least 10 days to send in your late payment.

What should I watch out for in a settlement agreement?

- Do not sign an agreement that says that you consent to a judgment
- Do not give the attorney your bank account information or allow the attorney to take automatic deductions from your checking account

Most debt settlement agreements provide that if you miss a payment, the plaintiff can enter a judgment against you for the full amount plus interest, court costs, and legal fees. Therefore, take care to ensure that you will be able to make the monthly payments and complete your part of the agreement. Do not set yourself up for failure by making an unaffordable agreement. The notice and opportunity to cure, discussed above, is also important for your protection.

If the plaintiff’s attorney gives me a settlement agreement on a preprinted form, can I make changes to it?

Yes. The forms that are provided to you at the court or by the plaintiff’s lawyer can always be modified. Sometimes these preprinted forms contain unfair provisions that can harm you. Therefore, you can and should make changes to the preprinted form if necessary to protect yourself. If you do not understand what is written on the form, you should ask for a meeting with the court clerk.

Vacating a Default Judgment

What is a judgment?

A judgment is the court's written final decision in the case. If the judgment is against you, it will specify how much money you owe to the plaintiff or to the credit card company.

What is a judgment creditor?

A judgment creditor is a creditor or debt buyer that has obtained a judgment against a defendant.

What is a default judgment?

When a defendant fails to appear in court or defaults. Thereafter, the court will issue a default judgment against the defendant. A judgment issued under those circumstances is commonly known as a default judgment. The court usually awards the plaintiff the amount demanded in the complaint, plus interest and court costs.

Can I reopen a default judgment?

Yes. Under certain circumstances, it is possible to vacate or to re-open a default judgment. However, it is a real pain in the xxx to try to reopen up a default judgment. The court has a special procedure for determining whether to vacate a default judgment. This legal procedure is called filing a motion to vacate a default judgment.

What are the criteria for vacating a default judgment?

There are two main reasons that a court will vacate a default judgment: (1) excusable neglect; and (2) lack of personal jurisdiction. These reasons are explained below:

- **Excusable Neglect**

Excusable neglect is the most common reason for vacating a default judgment. It has two parts: (1) a reasonable excuse for missing the original court date; and (2) a meritorious defense or a good defense. There is a time limit for moving to vacate a judgment because of excusable default, and it one year from the date you were served with a copy of the judgment. If you were never served with a copy of the judgment, then your one-year clock has not started.

Some common examples of a reasonable excuse are as follows: The most common example of a reasonable excuse is that you did not receive a summons that advised you that you were sued. Other reasonable excuses are that at the time you received the summons you were out of town, ill, incarcerated, unable to take time off from work, or that you could not answer the summons for some other good reason. You would also have a reasonable excuse if, in response to the summons, you telephoned the attorneys for the plaintiff and they told you not to bother going to court.

Sometimes people do not respond to the summons because they do not understand what it is. This is not normally considered to be a reasonable excuse. However, some judges will accept it.

- **Lack of Personal Jurisdiction (improper service)**

The court can also vacate a default judgment if you were not properly served with a summons. In Special Civil Part cases, the clerk sends out a copy of the complaint via certified mail to the defendants. Quite often, there is a mix up in the mail, or the defendant may have moved. Many default judgments are vacated on the grounds that the defendant never received the original summons and complaint.

How can I vacate a default judgment?

First, find out which county court issued the judgment. Thereafter, you will have to file a motion to vacate the default judgment. A copy of this motion must also be served on the lawyer for the credit card company.

What should I write on the motion to vacate the default?

In the motion to vacate the default judgment you need to explain why the court should vacate the judgment. In other words, you have to establish either excusable neglect, or lack of jurisdiction, or both. I recommend that you always include in your motion to vacate default; (a) the reason why you did not appear in court; and (2) a meritorious defense.

Should I write anything else on my motion to vacate the default?

If you have a frozen bank account that contains exempt funds, if your wages are being garnished, or if there is some other emergency situation requiring that your judgment be vacated more quickly than usual, you should include this information in your motion.

What happens after I file the motion to vacate the default?

The court will also give you a return date to come back to court. This date is known as your return date. The return date is normally 30 days after you file your motion.

What happens at the return date?

At the return date, you will most likely find yourself sitting in a courtroom with a number of other people who are in the same position as you. The court clerk will call out your name, and you should answer clearly. The attorney for the plaintiff may call out your name as well. The plaintiff's attorney might consent to your order to show cause or ask whether you want to make a settlement agreement. No matter what the plaintiff's attorney says to you, it is important that you focus on making sure that the default judgment is vacated. If the plaintiff's attorney does not consent to vacating the judgment, then you should ask to go before the judge. When you are before the judge, you must focus on the arguments you made on the motion form. Simply keep repeating (1) your good reason for failing to appear in court; and (2) your defense in the case. As long as you have a reasonable excuse and a meritorious defense, then the judge should grant your motion to vacate the default judgment against you.

What if I have a frozen bank account or wage garnishment?

Once the default judgment is vacated, then the plaintiff must release your bank account and cancel the wage garnishment. This is included in the court's order vacating the judgment.

If the judgment is vacated, does that mean the case is over?

Probably not. In most cases, even though the judgment is vacated, you still have to defend the case. That means you have to file an answer and attend at least one additional court date.

Frozen Bank Accounts

IMPORTANT NOTE: The information on this page applies to bank accounts that have been frozen because of private debts like credit cards, medical bills, and bank loans. If you have child support debt, or if you owe money to the government for taxes or a student loan, different rules apply.

How does a judgment creditor levy an execution against a bank account or property owned by a judgment debtor?

Under a levy and execution, the bank accounts or property of the debtor is taken and either delivered to the judgment creditor, or sold so that the proceeds of sale can be delivered to the judgment creditor. In New Jersey the person who is authorized by law to do the taking of the judgment debtor's property is a Court Officer or County Sheriff, and the authority of the Court Officer or County Sheriff to take such property is set forth in a writ of execution. If the judgment was issued by the County Special Civil Part Court, upon request of the judgment creditor, then the Clerk of the Court will normally prepare a Writ of Execution and issue it to a Court Officer. The judgment creditor must advise the Court Officer what property is to be subjected to levy by the Writ of Execution. If the judgment was issued by the Superior Court, the judgment creditor or its attorney is normally responsible for preparing the Writ of Execution and sending it to the County Sheriff. The Sheriff must be given instructions about what property is to be subjected to a levy of the Writ of Execution. Property that is usually subjected to a levy of a Writ of Execution includes the following:

- Money in a bank account
- Personal property owned by the judgment debtor that is in the judgment debtor's possession
- Personal property owned by the judgment debtor that is in the possession of a third party
- A vehicle or vessel owned by the judgment debtor
- The judgment debtor's interest in personal property of a decedent's estate
- Accounts receivable, commercial paper, instruments and negotiable documents of title owned by the judgment debtor
- Real property that is owned by the judgment debtor. Real property, that is, land and the buildings and things that are attached to the land, may be subjected to a levy of a Writ of Execution. However, the law in New Jersey requires that, before any Writ of Execution is levied on a debtor's real property, all personal property of the judgment debtor must first be exhausted

What is a frozen bank account?

A frozen bank account is a bank account that you cannot access because a creditor has placed a restraint on it. When your bank account is frozen, you can deposit money into your account, but you can't withdraw any of your money.

Why is my bank account frozen?

A frozen bank account is a sure sign that a creditor or debt collector has obtained a court judgment against you (or your joint account holder, if you have a joint bank account). A

creditor or debt collector cannot freeze your bank account unless it has obtained a judgment. Judgment creditors freeze people's bank accounts as a way of pressuring people to make payments.

Why does my frozen bank account have a very large negative balance?

A judgment creditor typically puts a hold on your bank account for twice the amount of the judgment against you. This hold shows up on your bank account as a negative balance. You do not actually owe all of this money to the judgment creditor. Rather, the amount you owe is the amount of the judgment.

Does my bank have to give me notice before freezing my account?

No. Unfortunately, the law provides that when the bank receives a restraining notice, it must freeze your account immediately, before notifying you. That is why most people discover that their account is frozen when they try to use their ATM cards and they suddenly do not work.

Does a judgment creditor have to give me notice before freezing my account?

A judgment creditor does not have to give you specific notice before freezing your bank account. However, a creditor or debt collector is required to notify you (1) that it has filed a lawsuit against you; and (2) that it has obtained a judgment against you. If your first notice of the court case is a frozen bank account, you have not received proper notice under the law.

How do I unfreeze my bank account?

The best way to unfreeze your bank account is to erase the judgment against you. This is called vacating the judgment. Once the judgment is vacated, your account will be released automatically. A creditor or debt collector has no right to freeze your account without a judgment. This motion should be filed immediately. Once your bank account is frozen, you will soon receive another motion called a "Notice of Motion to Request a Turnover." Basically, the creditor will request that the court turn over the money in your bank account to the credit card company.

Can I still negotiate a settlement to get my bank account released without going to court?

If your bank account contains exempt benefits such as Social Security, you do not need to negotiate a settlement in order to lift the lien. If your bank account contains recent wages or nonexempt funds, it is probably in your best interest to go to court. Most of my clients find that they can negotiate a much better deal in court than they can outside of court. For this reason, I strongly recommend that you go to court and vacate the default judgment, if at all possible. There are many good reasons to try to vacate the judgment. In New Jersey State, unpaid judgments are collectible for up to 20 years. Having an unpaid judgment exposes you to repeated efforts to freeze your bank account and/or garnish your wages. Judgments also appear on your credit report, where they affect your ability to get loans, employment, and housing. In most cases, you need to have the judgment vacated in

order to clear it from your credit report. Therefore, for your own protection, you are almost always better off getting the judgment vacated instead of settling outside of court.

What if my frozen bank account contains only funds that are exempt from debt collection, like Social Security?

If all the funds in your bank account are exempt from debt collection, then a judgment creditor has no right to hold onto the account, and it must release it immediately, even if it has a judgment against you. To obtain release of your account, you need to call the judgment creditor's attorney. You can get the attorney's contact information from your bank. Thereafter, you must notify the attorney that all the funds in your bank account are exempt from debt collection and demand an immediate release of your account. The attorney may ask you to fax or mail proof of your exempt income. You can send up to three months of bank statements as proof. Please be aware that the judgment creditor's attorney may delay and make excuses to avoid releasing your exempt funds. If you have any trouble at all, you should follow our instructions to vacate the default judgment. In general, even when you have exempt funds, you are better off vacating the judgment if at all possible.

What if my frozen bank account contains some funds that are exempt and some funds that are not exempt?

This situation is also known as having commingled funds. In this scenario, your exempt funds are still exempt from collection, even though they are mixed with other, nonexempt funds. However, even though your funds are still exempt, it is often difficult to persuade a debt collector to release your account. Rather than argue with the debt collector on the phone, I advise you to go to court and vacate the default judgment as soon as possible in order to obtain the fastest release of your account.

Can a judgment creditor actually take money from my bank account?

Yes. A creditor or debt collector can hire a New Jersey constable to levy funds from your account.

How long will a judgment creditor wait before seizing my funds?

There is no set time limit. Some judgment creditors try to seize funds right away, and others never actually take funds at all. Most judgment creditors will wait at least a few weeks before attempting to levy your bank account.

If a debt collector levies my bank account, can I get my money back?

Yes. You should go to court and try to vacate the default judgment. As part of this process, you can ask the court to order the creditor or debt collector to return your funds.

What if I have a joint bank account?

The first step is to determine why the joint bank account is frozen. Usually, there is a judgment against one, but not both, joint account holders. Telephone the attorney for the judgment creditor and ask for information about the case, including the court, the index number, and the name of the defendant(s).

If there is a judgment against you, you can obtain release of the account by following the steps to vacate the default judgment. If the account contains only exempt income (for example, your mother's pension or your child's SSI), you should also telephone the attorney to obtain release of the exempt funds, as described above.

If your account is frozen because of a judgment against someone else, it is best for the other person to vacate the default judgment, if at all possible. If this proves to be impossible, you also have the right to file court papers to obtain release of your account.

If you can prove that you added the other person to your account for convenience only, your entire account will be released. You must prove that you did not intend to give the joint account holder the right to own half of the money in the account. You can show that the joint account is for your convenience only by demonstrating that you are the only person who used the account, that the other person did not have an ATM card or withdrawal privileges, or by providing other information that tends to show that the account actually belongs to you alone. You can also ask your bank to write a letter stating that the joint account was for purposes of convenience only.

If you cannot prove that the joint account is for convenience only, then you can recover half of the money that is in the account. The judgment creditor cannot have more than half the money in the account unless it proves that the money belongs to the other person, and not to you. This is because the law presumes that half the money in the account belongs to you and half belongs to the other person.

Wage Garnishments

What is a wage garnishment?

A wage garnishment occurs when a court or the government orders your employer to set aside some of your earnings to pay a debt.

How does a judgment creditor obtain a wage garnishment against a judgment debtor?

Under a wage garnishment, the employer of the judgment debtor becomes legally obligated to withhold a portion of the judgment debtor's earnings and wages that are earned—subject to limits imposed by both State and Federal Laws—and then to pay those monies over to the Court Officer or County Sheriff who, in turn, will then pay those monies over to the judgment creditor. The employer is entitled to keep a small amount of the proceeds of the garnishment for bookkeeping costs. Only one wage garnishment at a time may be deducted from a judgment debtor's wages and earnings. If a judgment debtor has several judgment creditors, the first judgment creditor to levy a wage garnishment against the judgment debtor's employer will be paid first. Judgment creditors that levy wage garnishment orders subsequently must wait until the first wage garnishment is satisfied in full before any monies will be deducted on account of their wage garnishment. If an employer, who has been served with a wage garnishment order, fails to comply with the garnishment order and to make appropriate deductions of the judgment debtor's wages, then that employer may be held responsible by the judgment creditor for monies that should have been withheld from the judgment debtor's paycheck.

How much of my wages can be garnished for a private debt?

The amount of your wages that can be garnished for a private debt varies according to your income. Private debts include credit cards, medical bills, bank loans, and private student loans. Private debts do not include child support, taxes, or government student loans. Basically, a creditor is only entitled to garnish 10% of your paycheck.

Can a creditor garnish my Social Security or other benefits to pay a private debt?

No. Social Security and other benefits are completely exempt from debt collection and cannot be garnished to pay a private debt.

What should I do if my wages are already being garnished?

Even if your wages are already being garnished to pay a private debt, then you may have the legal right to vacate the judgment and stop the garnishment, especially if you were never properly notified of the lawsuit. If the judgment is vacated, not only will the garnishment stop, but the court can order the creditor to return to you all the money that it took to pay the debt. Additionally, you may want to consider filing for bankruptcy. If you file bankruptcy, then the wage garnishment must immediately stop and you will be able to keep your entire paycheck.

Can I be garnished for two debts at the same time?

Yes, but only 10% of your paycheck can be garnished. Therefore, if a debtor has multiple garnishments then the first creditor takes the maximum amount possible. Thereafter, the second creditor must wait until you finish paying the first creditor. Only then can the second creditor garnish your wages.

Can my employer fire me because of a wage garnishment?

Your employer cannot fire you if you are garnished. However, in the real world many employers get very aggravated if they have to deal with the additional paperwork to effectuate the garnishment. Moreover, it can be very embarrassing to deal with a garnishment at the work place.

Junk Debt Alert

What is “Junk Debt” and how can it affect me?

Junk debt is a multibillion dollar industry that involves charged-off credit debt. Each year billions of dollars of old credit card debt are sold to large investors. The older the credit card debt is, then the cheaper it is sold. These debt buyers purchase this old credit card debt in the hope of eventually turning a lucrative profit. Most debt buyers make big bucks on their deals or they would not be in the business. Thereafter, the junk debt buyer is permitted to collect upon or sue for the entire value of the debt, not just what they paid for it. Junk debt buyers purchase large portfolios of delinquent or charged-off accounts from credit card companies. These companies are referred to in the industry as “bad debt buyers,” “zombie debt collectors,” “debt buyers” or “bottom-feeders.” Debt buyers fall under the rubric of Fair Debt Collection Practices Act, 15 U.S.C. 1692, definition of a “collection agency” and are subject to all penalties therein. As the visibility and profitability of this rapidly expanding new industry has grown, junk debt buyers range in size from small private businesses up to multimillion dollar, publicly traded Wall Street companies.

Credit card debt accounts for nearly 70% percent of the accounts sold to junk debt buyers, followed by auto loans, telecommunications debt and retail accounts. If the junk debt buyer is unsuccessful in collection upon the debt after systematically harassing you with letters and telephone calls, they will often resort to the filing of a lawsuit against you. Based upon Mr. Sliwinski’s legal experience in this industry, he believes that almost 85% percent of the lawsuits being filed in the New Jersey Special Civil Part Courts are completely defective and totally defensible! Unfortunately, the bottom-feeders win the 80%-90% percent of the time because people do not bother to show up to court or are simply not aware of their legal rights. Once a judgment is entered against you, then your wages and bank accounts are subject to being seized or garnished.

What type of legal defenses can I raise against junk debt collectors?

Junk debt buyers often resort to having their minions constantly call and write letters in an effort to collect on their sometimes time-barred debt. These telephone calls and letters from debt collectors can be both annoying and embarrassing. According to Federal law, you can put a stop to this form of harassment with a letter from a qualified consumer attorney. In fact, a junk debt buyer who contacts you after receiving such a letter may be subject to \$1,000 dollars in penalties per violation and is forced to pay for your reasonable attorney’s fees.

Junk debt buyers generally buy alleged debts for pennies on the dollar, and then attempt to find ways to collect on the debt. Often this consumer debt is time-barred. This simply means that the statute of limitations on it has expired, and the old credit card debt no longer legally needs to be repaid. The buyer then attempts to convince or force the debtor to pay a small portion of the debt. If the debtor does so, they have reaffirmed the debt and started the statute of limitations over again. It is very important that consumers be aware of their rights and the laws that protect them as an alarmingly large number of these debt buyers are barely operating within the law.

Some typical unacceptable practices by junk debt buyers include pursuing debts that are not actually owned by the consumer in question; harassment or verbal abuse; multiple listings of the same debt; and, as stated previously, attempting to collect a debt that has passed its statute of limitations. Frequently in these situations, the junk debt buyer will use the practice of re-aging an account which basically means that they report it as more recent than it really is. In addition to a statute of limitations defense, many consumers will also have additional legal defenses, such as the failure of the debt buyer to comply with what is known in the law as a condition precedent. This means that if the person suing you failed to follow a certain procedure or perform a particular act, a competent lawyer can have your entire lawsuit dismissed.

Finally, many debt collectors, especially the junk debt buyers, may have difficulty proving the details regarding an old credit card debt. In New Jersey, every plaintiff in a civil case has the legal burden to prove their case by a preponderance of the evidence. This legal concept is known as the burden of proof. Junk debtbuyers are often unable to satisfy this burden of proof due to a lack of paperwork, the fact that the debt was previously paid off, or an unrelated act, such as identity theft.

Most important, never blow off a debt collection lawsuit even if you do not recognize the party suing you. If you do not defend against the lawsuit, then you will lose plain and simple. Always consult an attorney for legal advice as to how to reach a fair settlement to the lawsuit, or to assess whether bankruptcy may be a viable option.

What kind of defense is common in debt collection cases?

The most common is the statute of limitations, statute of frauds, waiver, estoppels, improper plaintiff, improper defendant, invalid debt transfer, violation of bankruptcy discharge, and violation of the Fair Debt Collection Practices Act. The last one is not really a defense, but it works like one. Of course, most non-lawyers would have some difficulty determining which if any of the defenses are available in a particular case. If you are sued then you really should consult with an experienced debtor's rights lawyer about your case.

Additional FAQs

I thought that my credit card debt was charged off. Can the junk debt collectors still sue me for this charged off credit card debt?

Do not be fooled, debt collection attorneys can still sue you on old credit card debt even if you mistakenly believed that it was charged off by a bank or credit card company. Merely because the credit card company has charged off your debt does not mean that you won't be eventually sued. After all, you still owe the money. The banks and credit card companies will eventually sell the debt, and you will get sued for the entire amount of the bill, plus interest, court costs and attorneys' fees. To generate money, the credit card companies often sell their debt off to debt buyers. These debt collectors will hound you to pay this debt, and most will eventually sue you. Therefore, if you have recently been recently sued by a company you do not recognize, do not simply blow off this lawsuit. It is probably a debt buyer who is looking to seize your bank account or garnish your salary.

I have received endless collection letters from junk debt collectors. Should I hold their feet to the fire and request that they validate their debts?

Yes, because requesting a validation accomplishes two very important objectives. First, it buys you some time. Under the FDCPA, all collection activity must cease until the attorney puts that verification in the mail to you. The verification is usually a simple statement signed by the creditor, and it will not take the collection attorney long to obtain it or mail it, but it does "stay" collection activities, including lawsuits, until answered. Secondly, it sends a signal to the collection attorney that you are not going to be a rollover debtor. Furthermore, he knows you will be active in the defense of the lawsuit.

It is important to emphasize that in the vast majority of credit card collection cases, the plaintiff simply obtains a default judgment, and receives no response from the debtor. A default judgment is the major goal for any collection case. A debtor who does not answer collection lawsuit makes it far too easy for the collection attorneys.

However, if you make validation request, then you send a very strong message to the collection attorney that you aren't going to give up. He might actually have to go to court himself, and you may force him to prove the debt. By filing the validation request, you actually stay the collection proceedings. Thus, if a collection attorney can't move forward against you in a collection suit, then the chance of you having a default judgment entered you is greatly reduced.

I am now being sued for some ancient credit card debt. What is my best course of action?

The statute of limitations may help you in this legal scenario. In New Jersey the statute of limitations to sue on credit card debt is six years from the day of default. It is important to emphasize that just because the statute of limitations has expired on an old credit card debt does not mean that you are totally immune from receiving a lawsuit. Instead, if you are eventually sued, then the statute of limitations can be used to defend against the lawsuit. Moreover, the statute of limitations is a complete defense. This means that if you are correct in presenting this defense the lawsuit will be dismissed against you forever.

Please note that judgments last for 20 years. Therefore, a judgment creditor can make wage ex applications and bank levy application on your property for 20 years. Moreover, a judgment creditor can make an application to renew the judgment for another 20 years. Finally, a judgment also constitutes a lien on your home