

## **What You Should Know About Debt Collection Lawsuits**

"There is a popular impression, for which there is a good deal to be said, that a man who is his own lawyer has a fool for his client." [1911 *British Weekly* 21 Dec. 386]

### **You have just been sued. What can you do?**

- You can stick your head in the sand and ignore the lawsuit. (Very bad move.)
- You can do research on the web and use that advice to handle your debt collection lawsuit by yourself. (Bad move. Ask me to send you some cases where some very capable people tried this tactic and lost *big*.)
- You can assert that you're a 'sovereign' and are exempt from suit and Court jurisdiction. (Bad move. The U.S. Supreme Court did away with that argument years ago.)
- You can call the people who are suing you and try to cut a deal. (Bad move.)
- You can consult with an attorney first - generally for free - before you do something you'll be sorry for later. (Good move.)
- You can hire an attorney to represent you. (Smart move. Really, really smart move.)

### **So, I've just been sued. what exactly does that mean and what should I do?**

- It means that someone has decided not to try to settle with you or work things out with a payment plan.
- It means that someone has decided to turn this matter over to the court so that they can try to get a money judgment against you and perhaps put a lien on your house, or garnish your wages, or seize your bank account.

Debt collection attorneys do this by filing a debt collection lawsuit in court.

**Note:** Don't be fooled if there isn't a 'case' or 'cause' number on upper right of the summons and complaint you're served with. It's perfectly legal in Washington to serve a summons and complaint upon a Defendant and file the case more than 20 days later...in some cases, months later.

In fact, this is something debt collection attorneys routinely do. If you don't respond in 20 days, they'll simply file the complaint, motion and order of default all in one shot. You **MUST** respond if you are served with a summons and complaint...or a default judgment will be next.

### **What Is A "Debt Collection Lawsuit"?**

A debt collection lawsuit is a formal proceeding in a court of law by a creditor (such as VISA, MasterCard, Discover, Amex) or its assignee (usually a collection agency or a third party debt buyer) to force someone like you to pay money that you may or may not owe.

The debt collector's complaint can be brought by stating such claims as 'breach of contract', for 'monies due and owing', for 'unjust enrichment', for 'account stated' or under an assortment of other 'legal theories', not all of which are applicable or even valid. What theory a complaint is filed under will often have a significant bearing on exactly what the collector has to prove.

***If you do nothing, bad things can happen:***

- You lose your right to make them prove their case in front of a judge.
- You lose your right to tell your side of the story.
- You lose your right to challenge the amount they claim you owe.
- You lose your potential right to claim improper service of process.
- You lose your right to object to excessive interest, attorney's fees, costs and penalties that they might be trying to unlawfully assess against you.

**That's pretty bad, but if that's the worst of it...**

Well, it can get a lot worse. If they get what's called a "default judgment," the debt collector's attorney's next moves will likely be to:

- Serve you again after obtaining the default judgment to appear for a 'supplemental proceedings' hearing at which you will have to divulge to the creditor's attorney and Court where you work and what non-exempt assets you have. Ignore that summons and the Court will likely issue a bench warrant for failure to appear, resulting in your eventual arrest. You do not want to be pulled over for a traffic infraction and get hauled off to jail due to issuance of a bench warrant.
- Garnish your wages up to 25% of the non-exempt net wage amount. A continuing lien on earnings is valid for 60 days. If the judgment isn't satisfied in those 60 days, the creditor attorney files another garnishment application and adds a few hundred more dollars to your judgment for incurring the costs of filing an additional garnishment order.
- Seize the money in your bank account without your prior knowledge as well as and in addition to ANY bank account where your name or social security number is listed on that account. The levying attorney has to mail you the garnishment application on the same day it goes to your bank or employer, so by the time you know of the intent to garnish, your bank account has already been frozen and your employer has to hold 25% of your net wages.
- Have the sheriff or other local law enforcement seize your non-exempt car, truck or van or other asset(s) and sell it at public auction.
- Record a lien against the deed to your home, sit back and let the judgment accrue interest at 12% or more per year. When and if you go to sell your home, surprise! You'll have to pay out any monetary gains from the sale to satisfy the judgment, because you can't transfer 'clouded title' to a new buyer...the lender and title company won't permit it.

**Note:** In Washington, a judgment is valid for ten years and is renewable for a second ten year period. A recorded judgment will also lower your credit score (FICO) making it harder to get credit on favorable terms (or at all) in the future and increase your insurance costs. Were you aware that a bad FICO score can increase your home & auto insurance premiums?

**So What Do I Do To Stop Them From Getting A Default Judgment?**

You have to file a formal written response to the debt collector's claim with the Court. In a debt collection lawsuit, if you don't file a formal written response with the Court, it's like admitting that you owe everything they sued you for. By not responding to the lawsuit, the court will

assume that you have no defense and will sign a judgment against you for the full amount you are being sued for.

### **But I Don't Want To Go To Court.**

That's understandable. Nobody wants to go to court, at least not when they're the defendants in a lawsuit. In most cases, you won't have to go to Court to file your appearance and answer to the complaint.

### **Do I Have To Go To Court?**

Not initially. If you closely read the document that the process server handed to you, you will note that it is NOT a *subpoena* to appear in court. It is what is called a "*summons*" requiring you to 'appear' in writing and answer the charges brought against you in the complaint accompanying the summons. A civil summons advises you that you have been sued and orders you to file a written response (or answer) under penalty of default (not under penalty of imprisonment).

### **So All I Have To Do Is File A Written Response?**

That's all you have to do to tell your side of the story to the Court. You do not have to personally go before a judge. You can and must put your response in writing first. When you respond in writing by filing your appearance and answer with the Court within 20 days of being served, the debt collector will then have to go to Court and prove his case against you. Sometimes they don't have the necessary records they'll need to prove their case against you.

Debt collectors and bottom feeder third-party debt scavengers go for the quick hits, the easy pickings from low hanging fruit - default judgments - where more than 90% of collections suits end up because no response is timely filed. When you stand up to them and fight back, they sometimes run away.

Just be aware that debt collectors generally know civil procedure in litigation inside and out. Where defendants have tried to defend these lawsuits by themselves, I've read countless results in which the defendant's lack of civil procedure knowledge did them in. Thus, it's not just about your defense on the merits - one wrong move in ignorance of proper civil procedure and any valid defense you may have once had can be waived and no longer available to you.

### **I Don't Want To Go To Court; I Just Want To Settle And Get This Over With.**

That's completely understandable. Litigation is expensive, and a fair settlement is almost always better than having to go to trial. The problem is that you probably won't get a fair settlement unless the people suing you believe that you're willing to stand up for your rights and not pay them a penny more than they can legally prove that you owe. If the party suing you has gone about doing something unlawful in their collection attempts or in drafting and serving the complaint, you may also have 'offsetting counterclaims' to reduce the amount of that alleged debt - especially valuable if the debt sued upon is one that you in fact end up owing.

Don't get intimidated and stick your head in the sand. Don't think, 'well, I owe the debt anyway, so...'. You don't *know* that you own the debt. They may not *know* either and thus may not be able to *prove* that you owe the debt. You're just assuming that the debt collector has all the information they need to win - but the fact is, you really don't *know* until you start challenging the Plaintiff's allegations in the complaint. And that happens by appearing and filing an answer.

Consider that if the people who are suing you really wanted to work with you, why did they turn over your case to an attorney and the courts? You're not up against an irritating, rude collection

agency anymore; you're up against a debt collection lawyer who makes his or her living by taking money out of the pockets of people like you.

### **What Harm Could It Be To Call Them And Try To Work Out A Payment Plan?**

Well, for starters, they may record your phone call, and like they say on the cop shows, anything you say can and will be used against you. They also...

- Might try to get you to admit that you owe the entire debt, even if you only owe a part of it.
- May try to get an admission of liability that may be used to 're-age' a debt whose collection period has expired under the applicable statute of limitations.
- May try to get your home, mobile or work phone number(s) on their caller ID.
- Might try to make you tell them the name of your employer and how much you make.

Calling them might also cause them to fast-track your court case. How? For starters, they can pull your credit file, see that you're paying some of your other bills timely and assume you have money to pay the debt sued upon. Debt collectors and creditors also use predictive modeling software that calculates the likelihood of recovering against you. You have *no idea* how sophisticated some debt collection tools are, but *they* know if you have money and assets.

*The bottom line is that it's all about the bucks.*

This isn't 'black helicopters' espionage stuff, *Judge Judy* or *Court TV*. The debt collectors who are suing you mean business, and they're out to take whatever you've got. The debt collection industry is now a multi-billion dollar business, and debt collection lawsuits are growing in number quickly. The majority of civil cases now being filed in courts nationwide are debt collection cases. New 'bottom feeders' start up debt collection firms every day because it's so profitable - due to the ease of obtaining default judgments against people *just like you*.

Debt collectors and debt collection attorneys will outright lie, distort the facts and manipulate you with seemingly innocent half-truths. They may lie in court when citing cases and statutes to twist the case facts their way. Old debts that may have already been paid can be recycled and re-sold to other debt buyers. Debt collection attorneys will often assume that you are but a lamb for the wolf's dining pleasure. The simple unpleasant truth is that banking, finance and debt collection lobbyists have much more money to persuade Congress to enact favorable laws for them than do you, I or all of the consumer advocate lobbyists put together - which is a good start to understanding why the 'deck' is stacked against you if you do not fight these kinds of lawsuits.

Sure, you may be a great *street*-fighter, but in court, when you're up against their lawyer, it's like being up against a professional boxer - you might get lucky, but it's even more likely you'll be outmatched and will end up losing the case *and* paying the original debt sued upon *plus* the padded attorney fees and court costs. That's just digging a deeper financial hole for yourself.

### **What Can A Lawyer Do For Me That I Can't Do On My Own?**

Remember the quote: "A man who is his own lawyer has a fool for a client."

- You're better off having a consumer advocate in your corner - someone to stand up for you that knows the law, has the experience fighting these people and isn't afraid of taking on collections attorneys or going to Court.

- You're better off hiring someone to negotiate for you and try to work out a reasonable payment plan, one that won't leave you unable to pay your mortgage or your car note or your other bills.
- You really do need someone to file a proper written response for you in court so they can't take a default judgment against you.
- You also need someone to subpoena their records and make them prove their case – someone that knows how to communicate your position clearly and let them know that they're in trouble if they don't have everything the law demands to prove their case.
- You wouldn't perform surgery upon yourself; that's what physicians are for. Don't fall victim to thinking you can play attorney if you really don't know how to.
- *You need someone to help you get this all behind you so that you can get on with the rest of your life.*
- You need an attorney. A good one, experienced at defending against these suits. One who knows exactly how deceptive, unfair and downright rotten the debt collection game is.

### **But An Attorney Is Too Expensive!**

Don't 'awfulize' or make assumptions about your case without knowing all of the facts. Not every attorney will charge you an insane amount up front. Some attorneys will consult with you for a half hour or so to review your case for free and suggest what you might be able to do next. Some will allow monthly payments over the course of the case. The simple fact is that the sooner you contact an attorney after being served with a summons and complaint, the less expensive your case will be to defend overall.

Do your research and find an attorney you can communicate with...one you're comfortable with and one that you've checked out by asking other attorneys what *they* think. When your attorney gives you a cost proposal and plan of attack after your consultation, analyze it from a cost-benefit perspective. Is what you'll get for what you're paying worth it?

Besides, if you think that an attorney is expensive, *not* hiring an attorney may be even more expensive in the long run.

### **So I Might Actually Save Money By Hiring An Attorney.**

That's a very real possibility. After your consultation, you'll have the attorney's opinion (*not legal advice*) as to what defending your case will likely entail - and then you can do the cost-benefit analysis. Ask how the attorney will bill his or her time; what's the hourly rate? What other fees or costs will there likely be? Is there a written fee agreement explaining the likely costs, client and attorney responsibilities clearly? ?

Remember, if you don't formally appear, answer and defend against the charges, the debt collector will get that default judgment...and then it may be too late.

It's not only about saving money. Hiring an attorney to fight these kinds of lawsuits means peace of mind knowing that a professional is handling the matter for you.

Don't continue to lose sleep or live stressed out over this kind of stuff. Get an attorney. A good one. One that has enough experience to know how to properly analyze your case, knows when and how to fight, knows when and how to settle and is experienced in dealing with the deceitful debt collection and litigation game.