

# The Miami Herald

## Payback? Consumer lawsuits against bill collectors skyrocket

By Tony Pugh / McClatchy Newspapers

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WASHINGTON — Shawn Traylor of Stamford, Conn., still doesn't know what the debt was for or how much it was.

He did know it wasn't his, and he knew he wasn't going to pay it.

So when bill collectors started calling four to five times a day in March, Traylor, a 39-year-old finance officer, sent them a letter asking them to verify that the unknown debt was his.

When he got no reply, he sent another letter, this time by certified mail, asking that they stop calling his home since they never verified that he was the delinquent account holder.

Instead, Traylor said, the collection agency called the next day. "And the day after that, and the day after that and the day after that," he recalled.

Sergei Lemberg, Traylor's attorney, said the continued calls after Traylor asked in writing that they stop were a violation of the Fair Debt Collection Practices Act. The law bars debt collectors from using abusive, unfair and deceptive tactics to force consumers to pay.

Since the recession hit in 2007, federal lawsuits filed under the Fair Debt Collection Practices Act have

more than doubled, while complaints about problem collectors have skyrocketed.

In addition to Traylor's lawsuit, which is in settlement negotiations, Lemberg's firm has filed about 1,500 such lawsuits in the past three years. He said the economic downturn has created a nightmare for cash-strapped borrowers and lenders now saddled with delinquent accounts.

"I think debt collectors have become more aggressive by necessity because folks just have less money. And how do you collect more from people who have less money? You have to become more aggressive," Lemberg reasoned.

As a result, consumers feel cornered. "And consumers are more likely to think legal when they're being cornered," Lemberg said.

The numbers suggest he's right. In 2007, nearly 4,400 federal lawsuits were filed for alleged violations of the law, according to WebRecon, a website that tracks the filings for the collections industry.

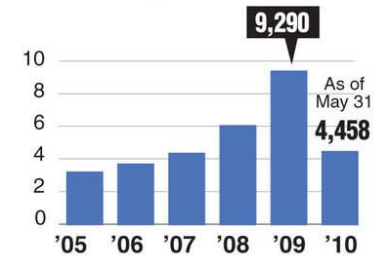
As the recession deepened, the number rose to 6,000 in 2008 and then to nearly 9,300 in 2009. This year, filings are on pace to reach nearly

### Consumers fight debt collectors

The recession has fueled a surge of consumer lawsuits against aggressive debt collectors as lenders try to collect on millions of delinquent accounts.

#### Consumers fight back

Federal consumer lawsuits filed under the Fair Debt Collection Practices Act, in thousands



• 119,549 complaints about debt collectors filed with the Federal Trade Commission in 2009

#### Credit card debts a loss

Credit card debts that creditors have declared as a loss, or charged off, in billions



	'07	'08	'09
Delinquency rate	4.25	5.03	6.53
Charge off rate	4.00	5.52	9.23

Source: WebRecon LLC, Card Hub Education Center, Federal Trade Commission  
Graphic: Judy Treible © 2010 MCT

12,000, said Jack Gordon, the president of WebRecon.

Unlike Lemberg, Gordon doesn't think the filing frenzy is rooted in the recession. He said the spike in lawsuits began years before the economy tanked. The greater culprit, he asserts, is the Internet.

"You can't type the name of a collection agency into a search engine without getting bombarded by (advertisements) from consumer attorneys begging you to call them before you pay a penny to a collection agency," said Gordon, a former debt collector who left the business over frustration with frivolous lawsuits.

Generally, debt collectors can't contact you at inconvenient places or times, such as at work or between 9 p.m. and 8 a.m. — unless you okay it. The law also prohibits bill collectors from threatening violence, using profane language, or using the phone to annoy someone. Collectors also can't lie or misrepresent themselves or the amount a consumer owes.

The law requires that collectors, within five days of first contacting a consumer, send a written "validation notice" that gives the name of the creditor, the amount owed and what to do if you dispute the debt.

Gordon said "gray areas" of the law make it hard for collectors to follow the guidelines and do their job. For instance, the law requires debt collectors to identify themselves in messages left for consumers. But it also prevents them from telling others about a person's debt.

"So if you get a (phone) message from a collection agency, you can claim they disclosed the debt to a third party because your buddy heard the message," Gordon said.

Websites such as Debtorboards.com and DebtorsFoxhole.com, also tell consumers the ins and outs of filing lawsuits to block overzealous collectors.

"People find their way to a website like that and then they're suddenly greeted by a community of people who tell them: 'You don't have to take that, you can sue. Here's how you do it.' They provide the instruction, the legal advice and the moral support," Gordon said.

Costs are an even bigger driver in the lawsuit surge. In most cases, it's cheaper for collection agencies to settle rather than fight a case, Gordon said. A collection

agency can spend \$10,000 to \$15,000 to defend itself in a lawsuit. If the consumer wins, the agency will likely have to pay their opponent's legal fees as well.

"Now you're looking at \$30,000 to \$40,000 just for choosing to fight the case and not having won it outright," Gordon said.

Violations of the collection law can provide up to \$1,000 in statutory damages and can include additional "actual damages" for mental, physical and emotional suffering. Plaintiff's legal fees are often awarded as well.

A borrower's actual debt isn't automatically erased with a victorious lawsuit. How the debt is resolved, however, can become part of the settlement negotiations.

Nonetheless, collections company tactics can be aggressive.

Philadelphia attorney Brent Vullings said: "Our concern is not with the underlying debt. Our concern is how they go about trying to get it and that's exactly what the (law) is in place to assist consumers with."

It wasn't until 2008, when millions of people lost jobs and were unable to pay their bills that problems with bill collectors really took off. Awash in red ink, credit card issuers declared as losses, or "charged off," \$53.5 billion in uncollectible accounts in 2008 and nearly \$81 billion in 2009, according to CardHub.com.

As collection agencies hired more people to handle the bad accounts, complaints about bill collectors exploded.

Debt collectors didn't crack the Federal Trade Commission's top 20 list of consumer complaints in 2007. In 2008 and 2009, however, they logged more than 224,000 FTC complaints — second only to identity theft.

Vullings said that many complaints stem from mistaken identity, in which a collector wrongly thinks the actual debtor is on the phone.

"I've had collection agents tell people, 'I know it's you, 'don't lie to me,' 'stop skating the issue.' I get that all the time," Vullings said. "So you can just imagine what's being said and done to a person who actually has the underlying account."