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Debtors in court -- suing collectors

By CHRIS SERRES, Star Tribune

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Using legal tactics pioneered by a Minneapolis attorney, debtors are striking back. Using legal tactics pioneered by a Minneapolis attorney, debtors are striking back.

Minneapolis attorney Pete Barry points expectantly at the video screen, drawing the attention of the 16 attorneys in the hotel conference room who've come to learn his trade secrets.

On the screen, a debt collector with spiky hair is squirming, his eyes darting back and forth as Barry barages him with questions.

"You see!" Barry yells triumphantly. "He's lying. Collectors often lie. If it's between me and him in front of a jury, I'll win every day."

Hounded by collection firms that buy unpaid debts and relentlessly pursue debtors through court judgments, many of Barry's clients have turned to him for relief from what they contend is nothing short of harassment.

Yet the legal movement Barry helped create -- by training hundreds of lawyers at grueling, 30-hour boot camps that cost \$2,500 per head -- has begun to look more and more like the collections industry he despises.

Federal lawsuits by debtors against collectors have soared sevenfold over the past decade, in a mirror

image of the huge jump in collections judgments that Barry and others accuse debt collectors of churning out mill-style without regard to accuracy.

And while collectors usually win judgments when they go to court, debtors are finding success when they fight back.

Debtors win so easily, in fact, that about a third of those who sue do it again, according to WebRecon, a Michigan firm that tracks the litigation.

High-volume consumer law firms are churning out lawsuits as efficiently as the collectors they battle. Many of these suits are cookie-cutter complaints that are skimpy on details -- just like many collection actions clogging the nation's court systems.

Some debtors, armed with scripts and recorders given to them by attorneys, have goaded collectors into making abusive comments that violate the federal Fair Debt Collection Practices Act, or FDCPA. At least 80 people have sued creditors more than 10 times under the law. On message boards and blogs, debtors brag of gaming a system that is oth-



Pete Barry, a Minneapolis attorney, has flown all over the country conducting boot camps for lawyers, teaching them how to sue debt collectors under the federal Fair Debt Collection Practices Act



Steve Rosso



Bob Dunham

erwise stacked in favor of lenders.

Troy Scheffler of Coon Rapids has sued debt collectors nine times in federal court, more than any other Minnesotan. While his debts continue to grow and his credit is ruined, the lawsuits stopped most of the phone calls and "put food on the table," he says without apology.

The industry considers many of the lawsuits frivolous.

"We have a growing culture of evasion in this country," said Steve Rosso, a St. Paul collections attorney. "More and more people are saying, 'Look, why are you bothering me about this petty little debt when those guys on Wall Street are getting off scot free.'"

The clear winners are the growing ranks of consumer attorneys who have turned FDCPA litigation, once an ignored area of law, into big business. Collection firms often settle rather than risk trial. Even when debtors win, their attorneys often walk away with most of the money and the debts remain.

"Are consumers better off than they were two or three years ago because of all this litigation?" asked Charity Olson, a Michigan attorney who defends collectors against such lawsuits. "Sadly, I don't think they are. But there are a lot of attorneys who are a lot better off."

Accidental crusader

Barry, 45, became an anti-collections crusader almost by chance.

He worked for years in various jobs, including door-to-door newspaper sales and security investigations for Target, before going back to college and, eventually, William Mitchell College of Law in St. Paul.

A month after he became a lawyer in 1997, a young woman came to Barry concerned over \$15 in bounced checks she'd written. Sobbing, she told him a male debt collector called her daily and threatened to sue unless she brought \$376 in cash to a bowling alley parking lot in Blaine.

"She was terrified," he said.

Barry sent the collector a letter accusing him of extortion. The calls stopped.

He quickly came to appreciate the FDCPA as a little-understood protection for consumers. The 1977 law bars

collectors from using obscenities or making threats, such as telling someone they will be thrown in jail. It sets fines of up to \$1,000 per lawsuit and requires offending collectors to reimburse debtors' attorneys fees. And because it focuses on collectors' practices, rather than creditors, the lawsuits can't be derailed by clauses in credit agreements requiring binding arbitration.

Barry became one of the first attorneys in the nation to make a living exclusively suing debt collectors. He did so just as consumer debt levels began to mushroom. Between 1997 and 2009, outstanding credit-card debt soared from \$515 billion to \$969 billion. By 1999, Barry was already winning five-figure settlements in FDCPA cases.

One day in 2001, Barry got a call from two San Diego attorneys who wanted to know how to build a practice around suing collectors. Barry jumped on a plane and spent the next five days in a Sheraton hotel there, explaining the nuances of the law over salads and Diet Cokes.

Soon, Barry began getting calls from attorneys everywhere. Would he do a tutorial for them, too? His boot camp was born, helping create an army of FDCPA attorneys. Just two lawyers made a living filing suits under the federal law 20 years ago. Now, there are more than 400.

In his boot camps, Barry plays recordings from tense question-and-answer sessions known as depositions. This includes one from a 2005 case that Barry won by prodding a collector into admitting that he swore over the phone.

"Why did you call my client a low-life piece of shit?" Barry asked the collector, according to the transcript.

"In about 10 seconds you're going to have that answer, Mr. Barry," the man replied.

"I'd like the answer now, please," Barry said.

"Well, you have to get it when I give it. ..." the collector said.

"I'm asking you, and I'm going to ask you again, the question is, why did you call my client a low-life piece of shit?" Barry said.

"Because in my opinion, a person who doesn't pay his bills ... is a person who in my opinion is a low-life piece

of shit," the man replied.

The collector lost. Barry and his client were awarded \$275,000 in a legal settlement. That's just one of more than 2,000 such cases he has pressed in the past decade. Barry declined to disclose his income, but he works on a contingency basis, meaning he doesn't collect attorneys' fees unless he wins.

Barry once weighed 345 pounds but shed 140 of them over an 18-month period, embracing a diet with the same unrelenting intensity he brings to litigation. Shedding the weight helped Barry endure his own boot camps, where he stands from 8 a.m. to 8 p.m., pausing only occasionally to sip Snapple or to play an expletive-filled phone recording of a collector.

Barry sees the boot camps as playing a vital role in keeping the collections industry in check. At a recent camp in Minneapolis, he poked fun of collectors who thought they were above the law -- until they got sued.

"The bear goes to the dump and nothing happens," he says, staggering around the room like a bear. "Suddenly, boom, he takes one right in the heart. One bear drops his corn cob and the other one drops his half-sandwich and they're saying, 'Something is wrong here.' It takes awhile for the bears to figure out that they may get shot if they go to the dump."

Debtor lawsuit mills

For all his success, Barry may no longer be the attorney most hated by the collections industry.

That distinction has passed to a handful of high-volume law firms that generate thousands of FDCPA cases a year.

The most prolific is a Los Angeles law firm run by Adam Krohn, a Barry boot camp graduate and founding partner of Krohn & Moss Ltd. Three years ago, Krohn's firm specialized in suing car dealers and manufacturers under state "lemon laws" that protect car buyers against defective vehicles. When auto sales tanked, Krohn turned his attention to FDCPA litigation.

He sent notices to many of his 40,000 past clients, announcing that his firm had begun suing debt collectors. Today, his firm files 15 percent of all FDCPA lawsuits in U.S. courts, according to WebRecon.

"I wish I could tell you a great story about how my

mother was driven to madness by a debt collector," Krohn said with a laugh. "But I can't. I love what I do, and I don't mind calling it a business."

Ten law firms accounted for 40 percent of the 9,290 cases filed nationwide in federal courts against collection firms in 2009, according to WebRecon.

The suits often allege that a collector has called repeatedly, and let the phone ring, to harass a debtor. Many collectors complain that this is unfair, that debtors often don't pick up, leaving them little choice but to call again. Other lawsuits allege that collectors used obscene or abusive language.

Telephone answering machines have become a rich source of lawsuits. In 2006, a federal court ruled that collectors must identify themselves when leaving messages on machines. However, by doing so, collectors can be sued under the FDCPA, which bars them from communicating debts to a third party. But if collectors call repeatedly, and don't leave messages, they can be sued for harassment.

"It's a huge Catch-22," said Chris Morris, a Minneapolis lawyer who defends collectors in FDCPA cases.

In May, a judge in Florida criticized Krohn & Moss in two cases for filing boilerplate allegations, and persisting with its claims after it became clear they were unsubstantiated.

Consumer advocates have long accused the collection industry of employing the same tactics, mass-producing lawsuits without verifying that debts even exist. Last month, the Federal Trade Commission declared the debt collection system "broken" and called on states to require collectors to include more information in lawsuits.

When debtors sue, collectors often settle quickly. In Minnesota, about 40 percent of all FDCPA lawsuits over the past decade were resolved within 90 days, a Star Tribune analysis of federal court data found.

Robert Dunham, president of Receivables Management Solutions in West St. Paul, said his firm recently paid \$5,000 to settle a case involving an Alabama woman who said she was harassed. Dunham said he had a tape proving she wasn't, but he didn't like his chances at trial.

"You've got a black Southern woman without any money suing some Yankee collector," he said. "Who do you think an Alabama jury is going to side with? These attorneys know we're a soft target."

Out for 'revenge'

Steve Katz, a tax accountant from Tucson, Ariz. , likes to refer to himself as a "credit terrorist."

In 2005, Katz founded an Internet message board called Debtboards.com that contains thousands of postings on how to sue and hide from debt collectors. The message board's "Wall of Shame" keeps a running tally of how much Debtboards.com members have won in legal victories. At latest count, it is nearly \$800,000.

Asked why he started the message board, Katz answers simply, "Revenge." In the 1990s, he incurred \$100,000 in medical bills after being hospitalized with stomach cancer. Even though he couldn't work, Katz said collectors kept calling him. Katz said he sued about a dozen of his creditors, winning \$36,000 in damages.

"This is my way of getting back at the people who made my life a living hell," he said.

Katz caters to a new breed of embittered debtors who, not satisfied with just filing lawsuits, actively seek to deceive the collections industry.

They include people like Ryan Swanberg, who wrote a book about his experience titled, "Lawsuit: How I Turned the Tables on Telemarketers & Debt Collectors." In the book, Swanberg recounts how he goaded collectors into making abusive comments so he could sue them for money. Swanberg has sued collectors six times in federal court in Minnesota.

"On occasion, I sobbed as the collector thought I was completely vulnerable and an easy target for such threats and abuse," he wrote. Swanberg also described stringing collectors along and inciting them to anger.

Swanberg once claimed to have made about \$100,000 a year suing collectors. "Not bad for a person who sits at home and answers the phone," he wrote.

One of Swanberg's attorneys was Tommy Lyons Jr. of Vadnais Heights. Once the most prolific filer of FD CPA lawsuits in Minnesota, Lyons' streak ended when he didn't mention during a 2007 settlement negotiation that the man he represented had died. The Minnesota Supreme Court recently suspended Lyons from practicing law for professional misconduct. He can seek reinstatement in a year.

Lyons said he withheld information about the death to

get a better deal for his client's widow and two children. "I let my heart get in the way of my ethics," he said.

Rosso, the St. Paul attorney, said antagonism toward collectors is the worst he's seen since he began collections work three decades ago. He said it's not uncommon for debtors to yell obscenities and hang up.

"Their anger is misguided," he said. "The collector is just the messenger. ... We're minnows. The whales are in the financial services industry."

In the face of debtor lawsuits, some large collection firms have decided it's safer to skip the risky phone calls and immediately seek judgments in state courts for an unpaid debt. In Minnesota, debt collectors filed 70,100 such cases last year, up 64 percent since 2004.

"There is a rush to the courts on both sides," said Olson, the Michigan collections attorney.

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Ex-collector, deep in debt, knew how to fight back

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Troy Scheffler of Coon Rapids used his inside knowledge to sue and get collectors off his back.

Three years ago, Troy Scheffler decided to shell out \$60 for a digital voice recorder.

That investment has won him about \$20,000.

Scheffler, a 34-year-old from Coon Rapids, used the device to record the bill collectors who were calling him 30 to 40 times a day. Those who said something abusive, he slapped with lawsuits and used the recordings as evidence.

In nine cases, collection firms paid Scheffler settlements to avoid trials -- money that he used to buy food and pay his mortgage.

"It was probably the least-strenuous money I ever made," he said.

A former collector, Scheffler knew the law, and says he used to work with people who routinely ignored it to intimidate debtors. "With some collectors, it's just part of their DNA," he said.

Even so, Scheffler said he was surprised when collectors used illegal tactics on him. One left a voice message claiming to be an FBI agent. "I've had collectors call me a loser, a deadbeat, a liar," he said. "One guy even told me, 'Don't drop the soap when you go to jail.'"

In just two years, he became the most litigious debtor in the state. He is one of 1,439 people who have sued collection agencies in Minnesota federal courts over the past decade under a 1977 federal law that outlaws abusive conduct, according to WebRecon, a Michigan firm that tracks the litigation.



Troy Scheffler has won settlements in nine lawsuits against bill collectors, using recorded phone calls as evidence of abusive tactics.

The lawsuits haven't cured his debt problem. Scheffler now owes more in credit card debt -- about \$80,000 -- than he did when he began his lawsuit spree.

Collection firms often gave him a choice: Settle for a few thousand dollars in cash, or a reduction in the debt. Scheffler always took the cash, even when the payout was less than the debt reduction.

"It was more important to put food on the table," he said. "Besides, if I can walk away with \$2,000 in my pocket for an hour's work, then why not?"

Along the way, most of the phone calls stopped.

Scheffler filed so many lawsuits that collectors now scrub his name from their call lists to avoid tangling with him. He confirmed this by contacting one of his old friends at a collections firm, who found his name on a "do-not-call" list of repeat litigants.

He still gets the occasional collector phone call, but it's not like it was two years ago.

"Finally, I can live in peace," he said.