

Memorandum

On How the Credit Card Debt Collection Racket Works

(1). Banks make consumer loans on unilateral installment contracts of adhesion such as are credit card member agreements.

(2). As the superior party in a unilateral contract cannot sue for breach of contract, the banks file insurance claims on non-performing accounts and collect insurance on the account. Although the bank still was an actionable damage in pursuing a theory of “on an open account,” the matter would require: (a). subrogation to the insurer, and (b). proof via authenticated evidence and testimony of every single transaction to show a deficit; so, banks charge-off and sell evidence of debt to attorneys in the **illicit business** of “debt buying” for a typical six cents on the dollar.

(3). Since installment contracts, such as are **credit card contracts, are not negotiable instruments and cannot be sold** for value under holder-in-due-course theories of law, what ever debt had inured is **extinguished** along with the contract itself when sold.

(4). Attorneys in the illicit business of debt buying then use trickery, deceit, and harassment has tools to **extort** sums from persons no longer subject to lawful prosecution or liable for the extinguished debt.

Recipient is noticed: the above scenario is a blatant violation of 18 U.S.C. §§ 1341 & 1962 often, whether unwittingly or wittingly, requiring the complicity of state court judges, who due to their duty to make inquiry, reasonable under the circumstances, gain complicity in violation of 18 U.S.C. § 371.

Memorandum in support of the conclusion that **debt buying is a substantial nationwide scam** organized to serve the incredible glut of surplus lawyers.

Attorney General Erases \$3.5 million from Debt Purchaser's Portfolio August 19, 2005

Attorney General (West Virginia) Darrell McGraw announced today that his office has entered into a settlement agreement with Midland Credit Management, Inc. (“Midland”) of San Diego, California resulting in the cancellation of more than \$3.5 million in credit card debt allegedly owed by approximately 3,500 West Virginia consumers. **Midland had previously purchased the charged-off accounts for collection from Cross Country Bank of Wilmington, Delaware.**

Attorney General McGraw's office began investigating Midland in 2004 after receiving complaints from West Virginia consumers who had been sued or contacted by Midland to collect debts originally owed to Cross Country Bank. Cross Country Bank is a credit card bank that markets high interest credit cards to consumers with bad credit histories. McGraw's office settled its lawsuit against Cross County Bank on June 21, 2005.

McGraw's office questioned the propriety of collecting the accounts based upon the same concerns that led to his lawsuit against Cross Country Bank. As a result of these concerns, the Attorney General requested that Midland close all of the accounts with a zero balance and notify credit bureaus to delete all references to the account from consumers' credit records.

Midland agreed to do so in the settlement McGraw's office announced today.

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Attorney General McGraw stated, "I commend Midland for promptly doing the right thing after we brought our concerns about these accounts to its attention. As a result of our agreement with Midland, approximately 3,536 West Virginia consumers have been relieved of all further obligations to pay \$3,548,539.80 in credit card debt. Because the accounts have also been deleted from credit records, consumers will no longer be denied access to new credit as a result of these accounts."

Source: Attorney General Press Release

Suit alleges credit-card companies colluded . WSJ

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NEW YORK, Sept 1 (Reuters) .A lawsuit filed in New York federal court alleges eight leading credit card companies violated U.S. antitrust laws by colluding to promote arbitration of customer disputes, the Wall Street Journal reported on Thursday.

It said the complaint alleges Bank of America Corp. (BAC.N: [Quote](#), [Profile](#), [Research](#)) .Capital One Financial Corp. (COF.N: [Quote](#), [Profile](#), [Research](#)) Corp., J.P. Morgan Chase & Co (JPM.N: [Quote](#), [Profile](#), [Research](#)) .Morgan Stanley's (MWD.N: [Quote](#), [Profile](#), [Research](#)) Discover unit, Citigroup Inc. (C.N: [Quote](#), [Profile](#), [Research](#)) .MBNA Corp. (KRB.N: [Quote](#), [Profile](#), [Research](#)) .Provident Financial Corp. (PVN.N: [Quote](#), [Profile](#), [Research](#)) and Britain's HSBC Holdings plc (HSBA.L: [Quote](#), [Profile](#), [Research](#)) "combined, conspired and agreed to implement and/or maintain mandatory arbitration."

Many of the largest U.S. credit-card companies require customers to sign away their ability to take disputes to court and instead settle disagreements in arbitration, the newspaper said. Now that practice itself is under attack in court.

The suit was filed on behalf of seven plaintiffs who live in California, Pennsylvania, New York, **Illinois** and New Jersey.

Some of the banks named allegedly convened a group in 1999 called the "Arbitration Coalition" or "Arbitration Group," the complaint says, according to the Journal.

The suit, which was filed last month and is seeking class-action status, claims that bank representatives spoke or met at least 20 times from 1999 to 2003 to share experiences from arbitration as well as advise each other on how to set up arbitration agreements with consumers that would withstand challenges in court.

In general, it is illegal under federal antitrust law for competitors in any industry to secretly collude to restrict trade or commerce, the Journal said.

A spokeswoman for Capital One said in a statement to the newspaper that the company does not comment on pending litigation. But she added that its "arbitration clause allows either party involved in a dispute to have the case considered by an impartial arbitrator to determine a final and binding resolution to the problem."

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There was no immediate comment from any of the other banks named in the suit. The firms named in the case have yet to respond to the substance of the allegations in court, the newspaper said.

Challenges for Collecting Purchased Debt

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All of us know it is more difficult to collect purchased debt than originated debt by using the traditional legal collection approach. The difficulties from a lawyer's perspective lie mainly in problems of proof. A creditor that originates debt has access to the documentation that courts require attorneys to introduce as evidence in order to obtain a judgment. Many debt purchasers either do not have access to the source documents or can only obtain those documents at great cost. How then can debt purchasers utilize the court system to collect debts that are legally due and valid? Ken Gelhaus reports that in New York the problems of collecting on purchased debt have increased greatly in the last year. At one time in New York, court clerks entered a default judgment on claims for "sums certain" without running the papers past a judge for review and signature. In recent months, however, clerks are refusing to do so and requiring that a judge's order granting default judgment be obtained.

In one of his recent cases, Ken reports that he applied for a default judgment using the affidavit of an officer of the purchasing plaintiff. The affidavit, although able to reference the date of the purchase of the debt and the balance purchased, was deficient in that it did not include any actual business records of the originating creditor. The court found that the affidavit of the debt purchaser was insufficient and conclusory. The court suggested the debt purchaser furnish a copy of the assignment or contract assigning the claims, along with a copy of any statement or record clearly demonstrating the calculation and the amount of the claim. If monthly statements were furnished to the defendant, copies of the most recently sent statements should be annexed. Reliable and factual information concerning the claim is required.

Even if we as attorneys include such items, they are business records of the originating creditor, not the purchasing plaintiff. At least in New York these business records would have no probative value, because no one at the purchasing plaintiff has "personal knowledge" of the creation, maintenance, issuance, and tracking of the statements. In the eyes of the court, such affidavits are hearsay and therefore not admissible.

A purchasing plaintiff is unable to swear to the authenticity of the originating or source documents of a credit transaction because they do not have personal knowledge of the events which transpired at that period of time in the life of the credit agreement. The original cardholder agreement, any correspondence, and monthly statements issued by the original credit grantor are not admissible as the purchasing plaintiff's business records, as the purchasing plaintiff has no personal knowledge of how those records were created or maintained.