



By David Lee Wells

# LAW 4 BIKERS



## Sue the Debt Collector and Win Beware the Zombie Debt

### The Debtor counter-sues the collection agency and obtains a \$500,000 verdict

The debt collector made 90 calls to the consumer on the debt, which had been paid in full 6 years before. The debtor could not get the collector to stop calling and she had a nervous breakdown, \$400,000 of the damages suffered by the debtor were for negligent infliction of emotional distress, medical bills, psychiatrist bills, etc.

Yes! Ordinary hard working people have Rights; collectors have no rights to treat you like a dog. Just because the Big banks and the Big credit card divisions received billions of \$\$ from the government they have no right to harass you or your spouse or family. Harassment is an evil that inflicts harm on citizens who are doing their best to work through these troubled times. Banks are not helping when they in-

crease the interest on your credit card from 5 or 6% to 15-19% or 29% and that was even when you had a job and were never late with a payment. Now your wife got sick or you lost your job and you are doing your best to keep your head above water, then they are on you, the phone calls begin!! A consumer like you has legal enforceable rights, The Fair Debt Collection Act is a federal law that limits the acts of bad collectors (blood suckers) and prohibits them from certain acts. You can sue for \$1,000 strict liability, attorney's fees and other damages.

Here is a partial list of things they cannot do:

1. Claim that they are an attorney or law firm when they are not or that documents are legal papers, from Court, when they are not.
2. Harassing phone calls.
3. Calling a third party (family member).
4. Making false threats such as;

- a. Criminal prosecution "I am going to have you thrown in jail for the bad check you gave us" threatening criminal prosecution is itself a criminal act and is a felony in many states.
- b. Threatening to sue when they have no intent to go to court (no one sues for small debts the lawyers cost too much).
5. Failure to disclose the name of the debtor they work for – debt collectors usually are not an employee of the original creditor but work for a collection agency.
6. Disclosing the name of the debtor to a third party.
7. Telling a third party you owe them money. In Missouri you can sue for punitive damages.
8. Attempt to collect stale debt (zombie debt) when the statute of limitations (time in which the creditor must sue) has passed.
9. The debt has been discharged (zombie debt)

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- because the debtor went through Bankruptcy.
10. The debt has been paid in full (zombie debt).
  11. Failure to identify themselves as debt collectors and failure to inform the creditor all statements made can be used against the debtor (little Miranda warning).

A couple other Federal statutes provide you with protection, The Telephone Communications Protection Act (47 USC 80.227) regulates automatic phone dealings and pre-recorded messages. They may not:

1. Leave automatic messages for someone who does owe the debt
2. Call a non-debtor on their cell phone (automatic or not) for which charges apply

The statute provides \$1 500 per phone call 20 calls @ \$1500 x 20 = \$30,000. Do not put your cell phone # on credit applications.

### Electronic Fund Transfers Act 15 USC sec 1693

A debt collector cannot get oral authority for automatic withdrawals from your account the bank withdrawal must be in writing, signed by you.

Congress has recently passed a Credit Card Protection statute to give consumers more rights as to increases in interest rates, etc.

Your consumer debt probably is not owned by your original creditor but has been sold many times. These debts are sold in bulk for pennies on the dollar. If the original creditor can't collect the debt with a few phone calls. The debt collector has to inform you, who (they claim) own the debt, and they have to prove the debt is a valid debt of yours and how much is owed; a debt must be evidenced by a written document (credit application, promissory note, contract, etc.).

Think back, 20 years ago you signed an applica-

### \$1.9 Million – I was just standing there when this truck fell on me.

A St. Louis motorcyclist was traveling on I-44 and his bike broke down. He pulled over to the side of the interstate, got off his bike and was looking at it, when he noticed a dump truck and trailer coming speeding down the off ramp. The back wheel of the trailer ran over the curb and the trailer tipped over. The biker was crushed by the trailer and was in the hospital for 42 days with \$460,000 in medical bills. The case settled for \$1.9 Million.

tion for a credit card! Do you still have a copy of the application? How many credit card applications have been signed by American consumers in the last 20 years? Did the bank store each one of those applications and if they did, how do they find it among the billions that are in the miles of shelves in that phantom warehouse. Well BUB, I don't think they stored the application. So they sold your debt, but did not provide the written contract, debt application or promissory note that you signed (promise to pay). All they gave the buyer of your debt was an electronic document, (spread sheet); they probably didn't even make an electronic copy of the loan documents. So you get served, don't give up, the Plaintiff has to provide the Court with proof of an authentic debt. Your lawyer makes the necessary "objections" as why the collector can't prove up the debt. The Objection (magic words) must be specific and made at the appropriate time and is in a particular manner. In court the lawyer must say the "magic words" and then have to identify the objection with the proper rule or statute.

If you go to Court by yourself the Judge will have 10 or 50 cases on the docket. He will ask you, "Do you owe the debt?" or "Why don't you go out in the

hall and see if you can work it out without a trial?" (the Judge cannot physically have a trial on 10 or 50 cases each day). If you talk in the hall your legal defenses; I don't owe the debt or they violated the laws, are not heard. Also you will not have filed the proper written paper (pleadings) and counter claims to raise all of your legal defenses. You may not know this, but Courthouses are scary places, intimidating places and very aggressive places, even lawyers don't feel comfortable there. Only about 10% of lawyers in the United States actually go to Court (litigation lawyer) the other 90% (transactional lawyer) stays in their office and avoids the courtroom. Lawyers that handle plaintiff's consumer debts cases are rarer yet.

In fighting a debt if you can prove the debt collector acted improperly under the Fair Debt Collection Act you are entitled to your attorney's fees and \$1,000 trial damages and actual damages for emotional distress and other injuries. What do you do?

1. Keep all paper you receive from a debt collector.
2. Keep a log of all contacts with debt collectors, who, what, when, etc.
3. You only have 1 year to sue the debt collector from the time of the violation of the Fair Debt Collection Act.

Times are tough, protect yourself.  
Support Our Troops.

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