Seek and yea shall find…

Attorney's oath

I do solemnly swear that I will support, protect and defend the Constitution of the United States; ***that I will do no falsehood, or consent that any be done in court and if I know of any I will give knowledge thereof of the judges of he court, or some one of them, that it may be reformed; I will not wittingly, willingly or knowingly promote, sue, or procure to be sued, any false or unlawful suit, or give aid or consent to the same;*** *I will delay no person for lucre or malice, but will act in the office of attorney according to my best learning and discretion, with all good fidelity as well to the court as to my client, so help me God.*

How the debt buying 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.

This court 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.

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

Thu Sep 1, 2005 02:37 AM ET

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) , Providian 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 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."

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.

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Challenges for Collecting Purchased Debt

James M. McNeile

Cohen McNeile Pappas & Shuttleworth P.C., Leawood, Kansas

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 manly 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 on 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.

How then can the purchasing plaintiff's counsel obtain a judgment for their client in the face of a court's refusal to grant judgment on a legitimate debt purchased by a third-party? The obvious answer is to obtain the affidavit of the originating creditor and annex the documents of the originating creditor to their affidavit. The originating creditor would have actual and personal knowledge of the events which led to the creation of the debt, as well as the events which lead to the sale of the debt. A second alternative would be to attempt to obtain a *novation* of the original credit agreement, which might be accomplished by either obtaining a signed statement from the debtor agreeing to pay the balance owed. Alternatively, if the debtor refuses to sign such a statement, the purchaser could send monthly statements which, if not objected to by the debtor, might be introduced by way of the purchasing plaintiff's affidavit, indicating that no objection had been made to the statements of account. Therefore, the debtors are estopped from denying the existence of the balance.

Absent a willingness by debt sellers to sign a business records affidavit as to the origination and sale of the account, or a *novation* by the purchasing plaintiff of the original debt, lawyers will be increasingly hard pressed to obtain judgments for legitimate debts purchased by

debt buyers. If purchasing plaintiffs wish to continue to be able to use the court system to enforce their purchased debt, it is going to be increasingly necessary for documentation to be readily available for their counsel and the courts.

Notice: The NARCA Newsletter is a publication of the Association of Retail Collection Attorneys with headquarters at 1620 I Street, NW Ste 615, in Washington, D.C. 20006 -- Telephone 800-633-6069 or 202-861-0706. **An appearance of an advertiser in this publication does not constitute an endorsement**.

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ILLINOIS CREDITOR S BAR ASSOCIATION BOARD MEETING MINUTES

APRIL 22, 2002

1.) Approval of minutes of prior meeting. Subsequent meetings are set for 5/20 and 6/17

2.) Approval of Treasurers Report

$1980 has been collected in additional membership fees. These checks have been forwarded on to William Hunter (as of 4/21/02). Treasurers report is approved.

3.) Committees

A. Membership See list for names of those who have not paid their dues.

We probably need to send out another statement to these members. It seems like a lot of fairly solid people are on the list, and it may be that these people do not realize its due now. We then need to see what is going on with these people, and at the next meeting let s set up a cutoff date.

Leigh Ann should put out a general call to remind members on the listserve. Mention in this that a statement is going out, that people need to watch for it, that they should advise us of new address. Also be sure to put on the envelopes address correction requested.

B. Education

We currently have one article from Scott Alexander for the next newsletter. Does anyone have any additional information to include?

Scott Alexander has another one or two in the hopper.

Steve Fink will try to set up a seminar for doing a discussion of claims buying. Ira and Eric to discuss. We need to set up a date for this, probably in September. Not a brownbag, a longer seminar.

C. Legislation

We are working hard on Senate Bill 39 (Revival of Judgment) and it should go out with the committee conference report. **We have support from Lang and Silverstein**. **No opposition**, and it should, we hope, get passed in May.

Homestead changes are in Rules committee, we hope it stays bottled up there. We are not aware of anyone trying to push it, but we are watching it.

D. Technological: Average 300 hits a month on Website. Try to get to website and tell us what happened. SMA to send note again.

Barry Lowe to talk to Lexis about giving ICBA some sort of group deal

E. Membership. Eric Ferleger to look into finding out what would be involved in reprinting the brochure.

4.) Old business

Everything we do we should send to the Law Bulletin. **They have a column on page 3 of the paper which will print anything we send them.** They want content. Also Chicago Bar Association and Illinois State Bar News, which will also publish everything.

Consensus of opinion is that Leigh Ann should use her judgment to use the most cost effective printer

5. New business

Leigh-Ann Thompson is requesting a list of the new board members so she can distribute a press release to the appropriate newspapers and include the list in the annual directory. Here is that list, all have been added to ICBA Board Listserve. Leigh-ann, use the listserve list when sending out board mailings.

Larry Taliana President, Cindy M. Johnson : Exec. VP-SMA secretary, Bill Hunter: Treasurer, Technology: Barry Lowe, Steve Fink: Education, Membership: Eric Ferleger, Legislation: Robert Markoff, At Large: Fred Blitt, Ira Leibsker, Michael Polk, Michael Matek, Lou Freedman, Laurie Blitztein, Bruce Menkes, Ken Wake, Rob Becker, Lori Blitstein

The next board meeting is scheduled for Monday, May 20. Subsequent is June 17. Minutes of the ICBA meeting of March 3, 2002

1. Our annual meeting was preceded by an exciting series of presentations and discussions between our members, and Lynn Esp, Dan Konicek, and Bruce Menkes, on topics relating to human relations and Fair debt. The excellent presentations were accompanied by dynamic discussion with our members and guests. We all enjoyed the excellent lunch, and we thank Steve Fink for having organized this successful affair.

2. Subsequently we had our meeting, in which we discussed extending the time for presentation and approval of the next board of directors and officers. The presentation will be made by e-mail to the board in approximately 10 days and then presented at our next meeting in April.

3. We heard a moving farewell from our present President Lou Freedman, and comments from our incoming president Larry Taliana. Mr. Taliana suggested that we do a seminar on office procedures and office software. Discussion ensued.

4. We decided to schedule our next two meetings for April 22, and May 20. Having previously agreed to try to have a social event in connection with our meetings every three months, it was agreed to have a get together on May 20, and Fred Blitt agreed to organize the party.

F.Y.I.: The ICBA is the Illinois Creditors Bar Association

(Ed. note: Since attorneys are barred from profiting from any litigation in which they are the legal representative, # 5 (below) is of great interest.)

MINUTES OF THE 10/21/02 MEETING OF THE ICBA BOARD

1. Minutes read and approved.

2. Treasurer's report: No changes from August, Figures for website maintenance discussed. Bill Hunter received bill from Leigh Anne, and this was discussed. Treasurer will take care of paying these bills, as we have now a healthy balance. A written report was distributed and the treasurer's report as a while was unanimously accepted.

3. General discussion was had regarding executive director and the services required of the position. We need bills to go out to members for dues.

4. Newsletter. We need to double check on Newsletter status, and the newsletter should have a note about past due membership dues, specifically, that after 1/31/03, past due members risk being cut off from the list serve and newsletters. There should put a case note on Dickerson case, with an active link to the

case. There are at least five articles in the hopper, which could go in the newsletter.

5. We are suggesting a 1/20/03-projected date for the debt-buying seminar, and for our monthly meeting. The date is a Monday.

6. Tech: we are getting a discount of a significant amount because we are using a new server, which is also faster. We are looking for an offer from Lexis, but they are now negotiating with the Illinois State Bar Assn. Offer would be about 123/month for the Illinois Library. General discussion on competing benefits of Westlaw.

We need a new president's letter on the website. There needs to be a general revamp of the website content.

7. Bylaws: continue discussion to next meeting of changes to by laws.

8. Health Insurance: general discussion. Cindy Johnson has picked up some possible agencies and will start a discussion with them. Some discussion of MSA (Medical Savings Accounts) was had.

9. Northern District is going to allow electronic filing in January for bankruptcy. It might set up a situation where you may not have written notice yet while the bankruptcy is going, although good faith ignorance would probably be a defense to stay violations. Proofs of claims could also be filed electronically. In Southern District, the tryout district, they bar paper filings for major filers. You can walk the filings in and they will put it on electronically, but won't accept mailings or fed ex, etc.

10. Legislative-- Congratulations to Mr. Markoff on success of revival bill -- which should be prominently mentioned in the newsletter. We should put out an email regarding supporting our representatives who helped us out on the Revival legislation.

Next meetings: 11/18 and 12/16, and 1/ 21/03, with a possible social after the February meeting. 10 people attended this evening's social at Coogan's, and a good time was had by all.

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Attorney General Sues Jacksonville Agency for FDCPA Violations

Florida Attorney General Charlie Crist filed a suit this week against Ellis Crosby & Associates, a Jacksonville, Fla.-based collections agency and its owner over allegations they repeatedly threatened consumers and imposed illegal fees for owed debts.

The agency and its owner are charged with victimizing more than 120 consumers through multiple violations of the federal Fair Debt Collection Practices Act and Florida's Consumer Collections Practices Act.

The investigation was initiated when the Attorney General's Economic Crimes Division received numerous complaints about the collections agency from the Better Business Bureau. The complaints alleged that the company was using aggressive and illegal tactics to collect on its accounts, including posing as law enforcement officers or attorneys, threatening arrest by military police and collecting illegal fees greater than the original amount owed. Several complaints even alleged that individuals with the company represented themselves as lawyers with the Attorney General's Office.

"Few words could adequately describe the appalling nature of the tactics used against these citizens," said Crist. "People facing the pressure of paying a debt should not also endure fabricated threats and intimidation. The predatory nature of these actions demands our immediate attention, and the victims deserve immediate relief from these attacks."

According to the Attorney General's Office, further investigations revealed that Crosby, 27, of Ponte Vedra, specifically trained and instructed his employees to use the malicious tactics. Among the victims was Anna Massey of Jacksonville, who was contacted by an employee of Ellis Crosby claiming to have a videotape of her husband cashing a bad check. The company told Mrs. Massey that the police were on their way to her home to arrest her husband Billy. Although Mr. Massey tried to explain to the company that he was not the individual with the debt, the company continued to harass him and his wife, demanding personal identification information and immediate payment of the debt. The intimidation tactics stopped only when Mr. Massey threatened to contact authorities.

The Florida-based company also targeted victims in other states, the Attorney General's Office said. Chris Williams of Ohio was contacted by the company regarding a payday loan of $200, demanding immediate payment of $989.42. The company threatened arrest if the payment was not received, informing Ms. Williams - who was eight months pregnant at the time - that she should know "they don't give very good prenatal care in jail," according to the complaint.

To date, the Attorney General's Office said it has received more than 120 complaints about the company, and more complaints continue to come in on a regular basis. Because the company is continuing its improper practices, the Attorney General's Office said it is seeking an expedited hearing to impose an immediate temporary injunction to halt the unlawful activity.

The ACA International's Ethics and Professional Responsibility Committee suspended Ellis Crosby & Associates' membership earlier this month after an investigation into the agency's collections practices.
2005-08-26

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O.S. (Oklahoma Statutes) Title 21, Chapter 19, § 554, "Attorney Buying Evidence of Debt-Misleading Court. Every attorney who either directly or indirectly buys or is interested in buying any evidence of debt or thing in action with intent to bring suit thereon is guilty of a misdemeanor. Any attorney who in any proceeding before any court of a justice of the peace or police judge or other inferior court in which he appears as attorney, willfully misstates any proposition or seeks to mislead the court in any matter of law is guilty of a misdemeanor and on any trial therefore the state shall only be held to prove to the court that the cause was pending, that the defendant appeared as an attorney in the action, and showing what the legal statement was, wherein it is not the law. If the defense be that the act was not willful the burden shall be on the defendant to prove that he did not know that there was error in his statement of law."

Any person guilty of falsely preparing any book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced as genuine upon any trial, proceeding or inquiry whatever, authorized by law, SHALL BE GUILTY OF A FELONY. Oklahoma Statutes Title 21. Crimes and Punishments, Chapter 13, Section 453.

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In *1989* Stephen P. Magee concluded that the optimum number of lawyers in our society was 60 percent fewer than those then practicing. He presented his findings to the White House and again in his book, *Black Hole, Tariffs and Endogenous Policy Theory*. This economist estimated that every additional lawyer over the number reduced our gross domestic product by about $2.5 million. (Ed. note: "Goggle it.")

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Subj: **FTC Wins $10 Million Judgment Against Fraudulent Debt Collectors**

For Release: July 28, 2005

FTC Wins $10 Million Judgment Against Fraudulent Debt Collectors

Defendants Permanently Barred from Debt-Collection Activities

The Federal Trade Commission has won a $10.2 million judgment against a debt- collection operation, National Check Control, and its principals – the estimated amount of consumer injury they caused. The

amount represents the largest judgment in FTC history for violations of the Fair Debt Collection Practices Act (FDCPA). In addition, a federal district court judge has permanently banned the defendants from engaging in debt collection in the future.

In a complaint filed in May 2003, the FTC alleged that the defendants violated the FDCPA by harassing and threatening consumers with claims that they owed money for checks returned for insufficient funds. The defendants made repeated phone calls, sent threatening letters, and falsely threatened that consumers could face civil or criminal charges if they did not pay the debts. The FTC alleged that, in many cases, the consumers did not owe the money, or owed far less than the defendants claimed. At that time, the court entered a temporary restraining order freezing the defendants' assets.

In addition to the ban on debt-collection activities and the $10,204,445 judgment, the court has banned the defendants from violating the FDCPA in the future, including harassing consumers with repeated phone calls, obscene language, or threats of legal action; misrepresenting the amount a consumer owes; failing to notify consumers of their right to dispute the debt; and misrepresenting that the person contacting the consumer is a lawyer. The defendants are further barred from selling or transferring any consumer accounts. In order to satisfy the monetary judgment, the court ordered the defendants to turn over all of their assets. It is not yet clear how much money actually will be available for redress.

The final order for judgment and permanent injunction was entered in the U.S. District Court for the District of New Jersey on July 15, 2005.

The FTC received substantial assistance in pursuing this matter from Postal Inspectors from the North Jersey/Caribbean Division; the U.S. Attorney's Office for the District of New Jersey; and the New Jersey Department of Law and Public Safety. In addition, the FTC would like to thank the following states for their invaluable assistance in investigating this matter and bringing the complaint: Colorado, Idaho, Maine, Minnesota, North Dakota, Washington, and West Virginia.

Copies of the final order are available from the FTC's Web site at http://www.ftc.gov and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint in English or Spanish (bilingual counselors are available to take complaints), or to get free information on any of 150 consumer topics, call toll-free, 1-877-FTC-HELP (1-877-382-4357), or use the complaint form at http://www.ftc.gov . The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

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(FTC File No. X030068)
(Civil Action No. 03-2115 (JWB))

http://www.ftc.gov/opa/2005/07/nationalcheck.htm