

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COLLECTING CONSUMER DEBTS:
THE CHALLENGES OF CHANGE

Thursday, October 11, 2007
9:00 a.m. to 4:00 p.m.

United States Federal Trade Commission
Conference Center
600 New Jersey Avenue, N.W.
Washington, D.C.

Matter No. P074805

Reported and transcribed by: Susanne Bergling, RMR-CLR

1	TABLE OF CONTENTS	
2		
3	Welcoming Remarks	
4	Lydia B. Parnes, Director	
5	Bureau of Competition.....	3
6		
7	Locating the Correct Consumer and	
8	Determining the Correct Amount Owed	
9	Thomas E. Kane, Moderator.....	9
10		
11	Credit Reporting and Debt Collections:	
12	Key Concerns	
13	Rebecca E. Kuehn, Moderator.....	84
14		
15	Debt Collection Litigation:	
16	Current Issues	
17	James Reilly Dolan, Moderator.....	145
18		
19	Pivotal Issues and Proposed Solutions:	
20	Next Steps	
21	Peggy L. Twohig, Moderator.....	204
22		
23	Closing Remarks	
24	Peggy L. Twohig, Associate Director	
25	Division of Financial Practices.....	254

1 P R O C E E D I N G S

2 - - - - -

3 INTRODUCTION AND WELCOMING REMARKS

4 MR. KANE: Okay, good morning, folks, and
5 welcome back to the Federal Trade Commission's two-day
6 workshop. For those of you who weren't here yesterday,
7 I'm still Tom Kane. I'm an attorney in the Division of
8 Financial Practices, and like yesterday, I have a few
9 administrative items that I want to pass on before I
10 introduce today's official welcomer.

11 Thanks, first of all, for getting back to your
12 seats promptly yesterday so we could stay on schedule.
13 That really helped. I also want to ask again that you
14 turn off any sound on any sort of electronic devices.
15 We had a few beeps and bells yesterday, so we would
16 appreciate that. And the final item is that if you've
17 run out of audience question cards, please find them at
18 the front desk, because we welcome your questions.

19 And now that we've gotten that out of the way,
20 I'm happy to introduce the Director of FTC's Bureau of
21 Consumer Protection, Lydia Parnes.

22 (Applause.)

23 MS. PARNES: Thank you, Tom, and good morning to
24 everyone. Thank you all so much for coming back for day
25 two.

1 I'm very pleased to be here to welcome you and
2 to thank you for all of your contributions to the
3 discussions that we're having regarding current issues
4 and problems in the debt collection industry. I'd like
5 to thank our distinguished speakers, our panelists, and
6 all of the attendees who participated in the workshop.
7 We have much to cover today, so I'll be brief.

8 At the FTC, we believe in the marketplace. You
9 all know that. We also believe in the marketplace of
10 ideas. We recognize that the intensity with which
11 arguments are presented at our workshops is a reflection
12 of the passion that participants feel for the ideas
13 being debated, and a candid and robust exchange of
14 arguments advances the development of public policy at
15 the FTC. Playwright Oscar Wilde once said, "I dislike
16 arguments of any kind. They are always tense and vulgar
17 and often are convincing." So, in this spirit, on with
18 the debate.

19 Yesterday, we examined trends in consumer debt
20 and developments in the debt collection business. We
21 also heard the concerns of consumers, collectors, and
22 creditors about the current state of legal and
23 regulatory restrictions on debt collection. Consumer
24 advocates describe debt collection practices that they
25 believe raise particular concerns: Collectors who

1 repeatedly seek to collect from the wrong consumer; fail
2 to provide proper verification of a consumer's debt;
3 report false information to credit bureaus; and use
4 illegal litigation tactics to collect debts.

5 Debt collectors, creditors, and debt buyers
6 described industry best practices to respond to these
7 concerns, such as adhering to local and state licensing
8 requirements, developing quality assurance programs to
9 ensure that shared consumer information is accurate, and
10 establishing a code of conduct for collection employees.

11 The debt collection industry also proposed some
12 legal and regulatory changes that they believe would
13 eliminate confusion about specific provisions of the
14 Fair Debt Collection Practices Act. For example, an
15 industry representative suggested modifying the FDCPA to
16 make it clear that collectors may leave telephone
17 messages that contain information about the collection
18 agency.

19 Today, each of our panels will address specific
20 concerns from both the consumer and collection industry
21 perspectives. Our first panel will delve into the
22 technological difficulties involving skiptracing,
23 determining the correct amount of and the flow of
24 information from creditors to debt collectors and debt
25 purchasers. In many key respects, the FDCPA implicates

1 information, how good it is and how the information
2 flows.

3 We need a better understanding of how creditors
4 and debt collectors identify and locate consumers and
5 what information creditors convey to debt collectors and
6 debt buyers. This understanding will help the FTC
7 evaluate what it can do to help prevent collectors from
8 attempting to collect from the wrong consumers, failing
9 to provide proper verification of accounts, and
10 attempting to collect more than consumers owe.

11 The second panel will examine the intersection
12 of debt collection and credit reporting. The issues to
13 be discussed include how creditors and debt collectors
14 use the credit reporting systems, how these uses may
15 injure consumers, and what should be done to respond to
16 any such harm. This panel will also consider whether
17 the information creditors and other furnishers provide
18 to credit reporting agencies are accurate and whether
19 the agencies are conducting adequate investigations when
20 consumers dispute negative credit history information.
21 Then, we'll let you eat.

22 After lunch, we'll consider debt collection
23 litigation. This panel will address concerns about
24 abuses of the legal process, use of so-called default
25 mills and mandatory arbitration. Using the legal

1 process to collect on debts raises important consumer
2 protection issues. Federal benefits payments, such as
3 Social Security, generally are exempt under federal law
4 from garnishment orders. Our distinguished colleague,
5 Steven Fritts of the FDIC, will discuss federal banking
6 agency initiatives that encourage depository
7 institutions to try to prevent such funds from being
8 garnished, where to mitigate the consumer harm from any
9 such garnishment.

10 In addition, we anticipate a lively discussion
11 concerning debt collectors taking action to collect
12 time-barred debts, as well as the merits of arbitration
13 as an alternative forum for disputes. The panel
14 discussion will enable the FTC to get a richer
15 appreciation of current debt collection litigation
16 issues and elicit possible solutions.

17 Finally, during our last session, we will
18 identify the main debt collection problems identified
19 during the workshop and discuss the merits of possible
20 solutions to these problems. We hope that this session
21 will identify common ground among participants as well
22 as the key points to take away from the arguments
23 advanced and debated in this two-day marketplace of
24 ideas.

25 So, that's what we have got planned for you.

1 It's really a very rich day, and I hope that you'll all
2 take advantage of the discussion that goes on.

3 Before I close, I would like to thank the team
4 in the Bureau of Consumer Protection who worked long
5 hours to put this very excellent, thought-provoking
6 workshop together. The people who deserve special
7 mention are Tom Kane, who's introduced me and who's been
8 our master of ceremonies -- (applause); Katie
9 Harrington-McBride -- Katie, stand up. Karen Hickey,
10 Seth Coburn, Tom Pahl -- I see you, Tom. And I'd also
11 like to thank, scattered around here, the BCP honors
12 paralegals who help with this and every other workshop
13 that we put on, and they have done a fabulous job.
14 Thanks to all of the FTC staff, and thank all of you for
15 attending.

16 (Applause.)

17 MR. KANE: Thank you, Lydia.

18
19
20
21
22
23
24
25

1 LOCATING THE CORRECT CONSUMER
2 AND DETERMINING THE CORRECT AMOUNT OWED

3 MR. KANE: Our next session is called, "Locating
4 the Correct Consumer and Determining the Correct Amount
5 Owed" and is going to be run by Tom Kane, a young
6 Commission attorney, and so I'll ask Tom and his panel
7 to come up. I've very carefully placed everybody's -- I
8 moved all the tags around -- no.

9 We were going to have Sonya Smith-Valentine, but
10 unfortunately, she was unable to make it, a bit of a
11 health issue, but I think she's doing fine. So, Lauren
12 Saunders has very generously agreed to step in. Sonya
13 is an attorney in private practice, a consumer advocate
14 attorney, and Lauren Saunders, as those of you who met
15 her yesterday know, is a managing attorney of National
16 Consumer Law Center's D.C. office. So, she will add a
17 great deal to the discussion.

18 The session today focuses on two different
19 topics, skiptracing and debt verification, both of which
20 were touched on yesterday. Now, because collector
21 contacts with the wrong consumer and the failure to
22 provide sufficient verification have been subjects of
23 many complaints and because they are complex issues, we
24 decided to include them in one of these targeted
25 sessions in the second day of the workshop. The other

1 two targeted sessions will address credit reporting
2 issues and collection litigation issues.

3 First, I'd like to introduce the panelists who
4 will share their insights on skiptracing verification.
5 First we have Mike Lamb who's Vice President and Chief
6 Counsel of Lexis-Nexis Risk Information and Analytics
7 Group, Incorporated. It's a very large skiptracing
8 company, and he will be our skiptracing expert on the
9 panel.

10 We have Jim Sheeran, who's General Counsel of
11 Tidewater Finance Company, which purchases retail and
12 auto loans and mortgage loans.

13 Tom Haag is President and CEO of State
14 Collection Service, Incorporated, which is a contingency
15 collection agency.

16 Robin Pruitt is Senior Vice President and
17 General Counsel of Encore Capital Group, which is a
18 large debt-buying company.

19 And Gina Calabrese is a -- I might be
20 mispronouncing that --

21 MS. CALABRESE: That's correct.

22 MR. KANE: -- going back to my Sicilian roots --
23 Associate Director for Elder Law Clinic at St. John
24 University's School of Law.

25 MS. CALABRESE: And a clinical law professor.

1 MR. KANE: And a clinical law professor there.
2 So, now that you've met our panel, we'll get started.
3 We will start with skiptracing and then move on to debt
4 verification.

5 So, Mike Lamb, you're our expert on skiptracing,
6 and I'm hoping you'll set the stage for us. Talk a
7 little bit about how skiptracing worked in the past, how
8 it works today, and then how it might be working in the
9 near future.

10 MR. LAMB: Great. Thank you, Tom, and thank you
11 to the FTC for giving us the opportunity to be part of
12 this workshop, which we think is a very important record
13 being created for decisions on how to improve how the
14 industry operates and, frankly, how the credit system
15 operates.

16 Now, I should clarify one thing. Lexis-Nexis is
17 not a skiptracing company. We provide skiptracing
18 technology and services to the industry. So, we provide
19 the data and the services and the solutions that
20 collections firms and first-party collections use to
21 identify and locate the debtor, and so from that
22 background, we have, I think, a perspective on certainly
23 how our customers use our services today and where we
24 think they are going to be headed in the future.

25 But I think to invoke Tom, I'll start with the

1 spirit of skiptracing past --

2 MR. KANE: Thanks.

3 MR. LAMB: -- and talk a little bit about where
4 everything started, and I think that just sets the stage
5 even though everyone in the room has a good handle on
6 it, but it really shows you the difference in where we
7 are today.

8 Historically, 20 years ago, somebody who needed
9 to locate a debtor had the credit file and a telephone,
10 and that credit file might have name, address, some
11 references. The address or phone number would be in
12 there. They're probably out of date or you wouldn't be
13 skiptracing. You might call the references. You might
14 try to find neighbors. You had to often go physically
15 to the location to ask around. Debtors in a small town,
16 you might even call the local Post Office and see if
17 they knew where someone had gone.

18 A more advanced firm would have telephone
19 directory books from many cities. It might even have
20 some paper-reverse directories where you could locate
21 phone numbers for neighbors. But that was the nuts and
22 bolts of how it worked. And obviously there was a lot
23 of difficulties, and I think those difficulties would be
24 enormous today, because our society is so much more
25 mobile and transient.

1 You know, the challenges today of locating John
2 Brown from New York City who's moved, and you don't know
3 where. Did John Brown move to Chicago, Miami, rural
4 Arkansas? Those are the challenges the industry faces,
5 and they need to do that very cost effectively, you
6 know, and that challenge, luckily, has been met by a
7 combination in the industry and in support services like
8 those that we offer, a combination of technology and
9 data.

10 Today -- and this is -- I'm not here to promote
11 our services, but I'll talk about how ours work as an
12 example, because that's what I know well. Today, we
13 offer an interface to somebody who's involved in
14 skiptracing where they can very readily, on their PC, if
15 they're going to search for an individual consumer, if
16 they enter the name, the Social Security number ideally,
17 because that really is a key link that differentiates
18 one individual from someone else with a similar name,
19 and they'll tell us what data they want back on the
20 consumer.

21 Often, it's just best address, best telephone
22 number, and we'll search our databases, and I'll touch a
23 little bit on how that works, and we'll just provide
24 that very simple, straightforward data. If they
25 actually want to replicate a more detailed, traditional

1 skiptracing, where they are going to look at contacts
2 and look at background, they will enter the same data,
3 but we can provide a more detailed report on the
4 individual, which would include best address, best
5 telephone, but also would include the history of
6 addresses that individual has had; would include
7 associates, people who lived at those same addresses in
8 the same time frames, and we do the linking, and these
9 are people that you might want to contact to try to
10 locate the debtor; will include known relatives.

11 A lot of this is factual, a lot of this is
12 analytics, where you're making a surmise. We can't
13 guarantee that somebody's a relative, but it's somebody
14 for a skiptracer to contact. And the very same kind of
15 data and analytics are used, in our case, by law
16 enforcement to locate people who they're trying to find.
17 It's no different. It's accurate location technology
18 and data.

19 As we look at how they use this in the flow of
20 their business in skiptracing, again, often, the
21 skiptracer is entering an individual's name and number
22 and looking at what's of interest to them based on what
23 they see in the file, but also, often, much of it's very
24 high scale. We process what are called batch requests
25 where we'll receive thousands of inquiries in a single

1 batch, and we'll process it back, and maybe we'll just
2 update 10,000 names and Socials with our view of current
3 address and current telephone number, you know, and that
4 allows the contacts, whether they're by letter or actual
5 telephone contacts, to occur.

6 Obviously, accuracy is important to our
7 customers, important to consumer advocates. We do our
8 analytics to try to make sure our data is as accurate as
9 possible. It is part science and part art. You know,
10 you're providing information to be used as part of a
11 location investigative process. It's not something like
12 a credit report where somebody made or did not make a
13 payment. It's more these are information trails to
14 pursue if you're skiptracing. And that was true back in
15 the days of paper, and it's true electronically, also.

16 Just to touch briefly on what's behind that
17 interface, because I think that's important to
18 understanding how electronic skiptracing works, we
19 collect data primarily from public record sources, real
20 estate records, court records, marriage records, death
21 records, and from both public and nonpublic sources,
22 telephone numbers, Social Security numbers, and the
23 like, and we link that in our database with an
24 identifier, so that then when a search is done, we can
25 pull all the data that we've associated very quickly,

1 using our super-computer, and make it available in
2 whatever format is requested to the skiptracer. It's
3 efficient, it's fast, and, you know, it's part of what
4 makes this business as efficient and as productive as it
5 is today.

6 Now, I'll sort of pause there in my history and
7 overview and just touch on a policy issue that we see
8 pending, and that is in our service, in the background,
9 it's very critical that we use Social Security numbers
10 as one of those linking devices, to link John Brown in
11 Chicago to John Brown who just showed up in Arkansas.
12 The debt collection industry, they usually have a Social
13 Security number. They'll submit it to us. We've done
14 our linking using it with what we have.

15 There's recent legislation actually enacted in
16 Minnesota and several bills pending in Congress today
17 that would restrict the use of Social Security numbers
18 for these purposes, and we think that that would be a
19 very anti-consumer legislation, just to touch on that.
20 If we cannot use Social Security numbers, both
21 internally, behind the scenes, for what we do, and to
22 actually give it to the collections industry, our data
23 would be less accurate. There would be more wrong party
24 contacts.

25 And we're going to receive Social Security

1 numbers anyway, because all the pending legislation
2 allows them to be given to us for law enforcement
3 purposes. We'll just have our hands tied, because if
4 this bill were enacted as it's currently sitting, and
5 there are a couple of different bills in the House, in
6 using it to serve the collections industry, and we're
7 optimistic that those bills will be changed, and we're
8 also optimistic the Minnesota law will be changed before
9 it goes into effect I think next summer, but if it
10 doesn't, then there are issues about whether or not we
11 can either receive Social Security numbers to use, to
12 serve this industry, or whether we can give them to our
13 customers in the industry.

14 Now, to touch on sort of where we see
15 skiptracing going in the future, today, often our
16 service is either transactional or batch service, but
17 it's very distinct. The debt collection agency takes
18 it, and they enter it into their system. In the future,
19 we see even more technology within the agency, with
20 their work flow software, and our data will
21 automatically populate, just as the data they receive
22 from the creditors automatically populates to make it
23 even more efficient, so you will have the phone number
24 from the credit file right next to our best phone number
25 contact, and it will be an automatic contact process.

1 In addition to that sort of operational change,
2 there's been a lot of discussion about emails and cell
3 phones and the like, and we do think that those, if
4 there are changes in the law, could become, you know,
5 the type of data that we provide, but I think today, the
6 issues with emails and the difficulty of do you give the
7 mini-Miranda in email versus having, you know, somebody
8 other than the debtor see the email are exactly the same
9 as what we've discussed a few times with respect to
10 voicemails, and I don't think that those will be readily
11 used, you know, as a source of contact, even though it's
12 a very consumer friendly source of contact, and until
13 there's some clarification on the risk to the industry.

14 And then one last thing, we hope that debt
15 skiptracing doesn't change as it evolves where there's
16 enough risk and enough litigation that services like
17 ours are used only to get the address to send a few
18 letters and then you proceed to litigation. The
19 interaction over the telephone is obviously the most
20 productive in terms of actually collecting debts, and
21 we're hoping that the threat of litigation and the
22 uncertainty there doesn't lead to enough cost in the
23 industry that they go straight to letters followed by
24 litigation, because that's in no one's interest.

25 MR. KANE: All right, thank you very much.

1 I have a few follow-up questions on that. I
2 think you said something like you use analytics and you
3 might have the right person. What's the likelihood that
4 you have the right person when somebody sends you --
5 somebody says, you know, here are ten names. What's the
6 likelihood that you're identifying the ten correct
7 people?

8 MR. LAMB: If they give us ten names with a
9 Social Security number and we have those names in our
10 database -- and we probably do, I think we have about 20
11 percent more names in our database than the credit
12 bureaus have, because there are a number of people who
13 are not in the credit bureau world. They're -- you
14 know, they're so-called thin file names. Highly likely
15 that we will have the right person, but then you list,
16 what data are you receiving from us? We'll give fairly
17 competently address and telephone number, but we'll have
18 other possible telephone numbers, and they're not always
19 correct. You know, they are a possible lead. It
20 depends on the source. And we'll present them as such,
21 you know, this is a possible telephone number.

22 MR. KANE: Good, thanks.

23 I guess I should step back and say, why do we
24 need skiptracing in the first place or why -- are we
25 finding that more and more consumers are trying to avoid

1 detection or is it because they're moving, they're just
2 harder to find, even though they're not intentionally
3 trying to avoid detection? What's your sense?

4 MR. LAMB: Skiptracing, it really is in several
5 categories or buckets. There are those people who have
6 just moved, and maybe they didn't give a forwarding
7 mail. They're not trying to avoid their debt. They
8 just moved. People are very transient. Not everyone
9 pays their bills. Not everyone gives a forwarding. And
10 if they're located, they'll probably pay that bill.
11 That's why you need skiptracing.

12 There are others who might be moving to try to
13 get a fresh start. Psychologically, you know, they're
14 obviously in some type of straits if they're in a
15 skiptracing collection situation, but then if they are
16 located and they actually have a dialogue with the
17 collections agency, they can work out a plan to pay that
18 bill.

19 Somebody who's actually being skiptraced because
20 it was a fraudulent transaction, they're not going to
21 pay probably under any circumstances, and they are very
22 hard to find, because they are going to try to stay off
23 the radar, and if you do find them, frankly, it probably
24 will not be a productive phone call.

25 MR. KANE: And you have a -- what about the --

1 what about, you know, the telephone call skiptracing, is
2 there still a need for that, or is it -- these
3 electronic databases, are they sufficient to find
4 anybody?

5 MR. LAMB: Oh, I think very much there's a need
6 for that. The electronic databases will give you what
7 seems to be based on records, credit headers from the
8 credit bureaus, other records, maybe signing up for
9 various services, where your data goes into the public
10 domain, you give contact information, but often, the
11 electronic records and the ability to contact a relative
12 or a neighbor in a very controlled way, as our
13 skiptracers do, can actually identify somebody who may
14 have moved so recently, and many of these people have
15 moved recently or they wouldn't be in a skiptracing
16 situation, where they may not have shown up in the
17 electronic databases yet. So, there's still very much a
18 need to be able to make telephone contacts, not just to
19 the debtor, obviously, in doing collections, but to
20 others.

21 MR. KANE: I guess I read one commenter, one
22 organization that submitted a comment, said that there
23 are many more debt collectors using skiptracing in the
24 past two years than in previous years. Is that your --
25 is that what you've seen? Do you have a sense of that?

1 MR. LAMB: Well, I think they've always done
2 skiptracing. The question is --

3 MR. KANE: Do they need it for a larger
4 percentage of the accounts they try to collect or --

5 MR. LAMB: I think that it may be -- and I will
6 turn to some of the others on the panel, but what we see
7 is that it is a more mobile, transient society, and then
8 the subset of people who are subject to skiptracing,
9 high likelihood that they have moved in the past 12
10 months, you know, perhaps 30 to 40 percent likelihood at
11 least; otherwise there wouldn't be a skiptracing
12 activity to locate them. So, you do need to do
13 skiptracing and have the dialogue about the debt
14 repayment.

15 In terms of using electronic services like us,
16 there are still a number of agencies, they tend to be
17 the very small agencies, who do the electronic version
18 of the old paper files. They look around on the
19 internet for white pages directories and the like. But
20 we find that our service, many, many of our customers
21 are the small agencies, as well as the largest agencies
22 who are in this room, you know, a debt collection agency
23 with five or ten people might be using our services, and
24 so they tend to -- the targeted electronic skiptracing
25 is used sort of at all levels of the industry today.

1 MR. KANE: And your company and probably some
2 others also have some other products where they've run
3 lists of names through bankruptcy filings and things
4 like that. What are some other products that are out
5 there, yours or other companies'?

6 MR. LAMB: Sure. Well, what's important sort of
7 is to put things into the large categories or buckets.
8 Our Accurint product, which is used for skiptracing, is
9 subject to Gramm Leach Bliley, because some of our data
10 is GLBA data, and tight security. We also have an array
11 of FCRA services, such as our Banko product, where we
12 notify creditors if somebody's filed for bankruptcy, you
13 know, it's an alert product, as well as --

14 MR. KANE: Alert product, you mean it beeps the
15 company when somebody files bankruptcy, or how does it
16 work?

17 MR. LAMB: Basically they'll submit names or
18 Socials to us. We'll alert them when there's a filing.
19 So, it's more than a beep, but it describes the filing,
20 and that way they can, you know, comply with the
21 bankruptcy stay and the like.

22 MR. KANE: So, if they send you a portfolio of
23 10,000 credit card accounts, for example, you will run
24 it through Banko --

25 MR. LAMB: Either run it through or maintain it

1 for a subsequent filer, too, depends on the nature of
2 the product, but that's our FCRA-governed product,
3 because there you are really in the are you granting
4 credit or not, are you no longer going to grant credit,
5 and that's under the FCRA.

6 MR. KANE: So, Tom Haag, in your contingency
7 collection agency, what kind of skiptracing do you all
8 do? Do you use large electronic suppliers like this
9 or --

10 MR. HAAG: Yeah, I think the first comment I
11 should make is that Michael talked way back 20 years
12 ago, and I'm about 40 years in the industry, so believe
13 it or not, Michael, 40 years ago, we did skiptracing as
14 well.

15 We actually use Michael's service along with
16 some others. We have a program we've developed called a
17 waterfall, and the waterfall actually takes a group of
18 debtors and puts them through a search of the database
19 that Michael represents.

20 I think you asked the question, is there a lot
21 of bad information or do you have a lot of partial or
22 whatever? My observation is that if they're not sure,
23 if they don't have whatever the point value is in terms
24 of common information, they're not going to give us a
25 hit. They're not going to give us that information.

1 So, the information we get is generally pretty darn
2 accurate.

3 What they do send us, however, is maybe half of
4 the names back saying we have no current information.
5 If that's the case, we roll that to a second database,
6 just somebody else that does -- a competitor of
7 Lexis-Nexis, for example, and they will check that
8 database, and of those five, maybe we'll find one or two
9 more in that, and actually roll to as many as three
10 databases to find the information.

11 The reason it's done that way today is because
12 these services are available, and 20 years ago, these
13 services simply weren't available. There was no other
14 way to do it other than to pick up the phone and call.

15 Now, just kind of to respond, what happens when
16 we get that information, are we confident that the
17 information is good, do we just forge ahead or what do
18 we do? Really, what we do is we put those files that
19 come back from one of those databases in a special
20 either status code or disposition code, and the people
21 that work that file, the people that will make the phone
22 calls on those particular files, know that this data
23 came from a database, and so if the first words out of
24 the consumer's mouth when you call them is, "I don't
25 know anything about this, I never heard about this, I've

1 never lived there, I've never done this," or whatever,
2 that's a huge red flag, and we go to plan B, which is to
3 try to verify the information. Where did this go wrong?
4 If it did go wrong, what should be the next step? So,
5 really, there's a lot of care that's taken in that
6 process from the original request to get updated
7 consumer information to actually correcting that
8 information or communicating with the consumer and
9 making a collection.

10 MR. KANE: Mike, in general, in your industry,
11 does it cost pennies per credit card account or other
12 kind of account to send it through a system? Does the
13 cost vary upon what level, or is it a matter of dollars
14 per account?

15 MR. LAMB: It varies based on what kind of data
16 you're looking for, but typically, in high volume,
17 you're paying per inquiry, and it's under dollars, not
18 over dollars, but we also -- you know, we have an array
19 of pricing where -- price per search, price per person
20 doing the search, on a subscription basis, for basic
21 information, with incremental pricing for additional
22 features sometimes.

23 MR. KANE: So, how much could it cost for -- and
24 just in general, again, could it cost \$10 to find a
25 consumer?

1 MR. LAMB: Typically less.

2 MR. KANE: Less, okay.

3 Okay, Tom, and I'm sorry, once you receive the
4 information, one electronic service is able to provide
5 roughly 50 percent of the names or --

6 MR. HAAG: Oh, that's just -- I pulled that
7 right out of the air.

8 MR. KANE: Okay, but then you go to another and
9 you go to another electronic database --

10 MR. HAAG: If we get no hit -- what we consider
11 a hit is updated information, new phone, new address,
12 you know, those are the two critical pieces of
13 information we're looking for generally. If they don't
14 have that information, we will then put that -- roll
15 that to a second database that probably has different
16 sources for information than Michael's organization, and
17 we may get, again, just a small percentage of hit, maybe
18 only one or two out of ten, but we -- you know, we do
19 work through a number of different databases and
20 ultimately find, you know, a significant percentage of
21 people.

22 MR. KANE: And do you send all your accounts, as
23 soon as you -- as soon as a portfolio is assigned from a
24 creditor for you to collect, do you send the whole
25 portfolio through a company like Mike's?

1 MR. HAAG: No, no.

2 MR. KANE: Or do you try to contact consumers,
3 and when you can't reach them, then you send it through?
4 Is that correct?

5 MR. HAAG: Right. The majority of the files we
6 receive have an address and phone number attached. So,
7 these are only files lacking information, lacking a
8 phone number, lacking an address, or, you know, for
9 example, you send the initial notice to the consumer,
10 that notice is returned. You have no way of
11 communicating with them. That will roll into that
12 batch, and that will go generally right to a skiptracing
13 database.

14 The other question that was asked, are there
15 more of these than there used to be, and I guess my
16 comment on that is that that's -- I don't know that
17 there's any real upswing or anything like that, but what
18 we do see is, among other things, the Post Office is
19 real particular about how you address your mail.

20 I don't know how closely you all watch the mail
21 that comes back in your various organizations, but, you
22 know, depending on the Post Office, you'll have a good
23 address with no apartment number, and the mail will be
24 returned. You'll have a good address, including an
25 apartment number, and a wrong zip code, and that mail is

1 returned.

2 There is a tremendous amount of incorrect
3 information in that respect that actually causes
4 accounts to become skip accounts, if you will,
5 inadvertent skips. The people didn't give them the
6 wrong zip code, but somebody keyed the wrong zip code
7 early on, and that's the reason for that.

8 MR. KANE: And then when you get -- after these
9 accounts, they come back to you or they didn't have a
10 good address to begin with or they come back to you
11 because there's -- you know, it says the consumer has
12 moved or something, then you run it through electronic
13 databases?

14 MR. HAAG: Yep.

15 MR. KANE: What do your people do with that
16 information?

17 MR. HAAG: They get that. That -- when it comes
18 back to us, it's put in a disposition or a status code
19 all by itself. It's a group of business, a group of
20 accounts, that have to be -- that we know the
21 information -- the current information we had received
22 from a skiptracing source or resource, and so they have
23 that knowledge when they pick up the phone and call the
24 consumer. They know that this is -- they believe the
25 information to be correct, but they're sensitive to the

1 fact that a consumer may say, "Oh, I've never gotten a
2 bill," which they may have never gotten, because the
3 address may have been incorrect from day one, but
4 they're sensitive to that.

5 So that if somebody calls -- if we place a call
6 to somebody and they give us that information, if they
7 tell us they don't know anything about it or whatever,
8 we're on that track. We understand that, and we'll ask
9 pointed questions, specific questions, to try to
10 determine whether or not our information is, in fact,
11 correct or, in fact, incorrect.

12 Now, you know, again, I'm not here to sell
13 Michael's product, but if he gives me a lot of bad
14 information, I'm his former customer. I'm not his
15 current customer. You know, I want good information,
16 and, you know, most of these databases are very clean
17 information, very good information.

18 MR. KANE: And if they can provide the
19 information, if they say this is -- if they can provide
20 it, then it's usually reliable, but if they can't
21 provide it, then they make that clear to you?

22 MR. HAAG: That's right.

23 MR. KANE: Okay.

24 MR. HAAG: That's exactly right.

25 MR. KANE: And what are some of the other kinds

1 of companies? What kinds of information do those other
2 companies use after you've gone through Michael's
3 database?

4 MR. HAAG: I don't -- frankly, I don't know what
5 Michael uses. That's a -- I think it's pretty much
6 trade secret amongst them, where their resources are or
7 what they -- how they acquire the information, but --

8 MR. KANE: So, when you go to another company,
9 as far as you know, they're basically -- it's very
10 similar to Mike's. They just might have slightly
11 different data.

12 MR. HAAG: Right. That's right.

13 MR. KANE: It's not like it's an entirely
14 different kind of --

15 MR. HAAG: It is different data, and it --

16 MR. KANE: But it is not an entirely different
17 kind -- it's not, oh, this is a separate database of
18 just, I don't know, state transactions or something like
19 that, state liens.

20 MR. HAAG: Right.

21 MR. KANE: Okay, okay, good. Well, thanks.

22 Jim, how do you guys do skiptracing?

23 MR. SHEERAN: Well, we do it at several levels.
24 At the first level, the collectors have sources
25 available to them in which -- and the first thing that

1 they always try to do is to do it the least expensive
2 way, so their first recourse is to the free services
3 that are available on the internet.

4 MR. KANE: I'm sorry, I should point out, you're
5 the creditor. So, you actually -- you have the
6 accounts, so you have a lot of information, very --
7 fresher information than sometimes that Tom has or Robin
8 has.

9 MR. SHEERAN: That's correct. We've usually
10 been in contact with the customer right along, and when
11 we can't get in touch with somebody, it's generally
12 because they've moved. It goes through all different
13 levels, and there are any number of people who will try
14 to avoid us, but in terms of -- when I say any number,
15 it's also a very small percentage of our entire
16 portfolio, so -- and it particularly occurs with
17 automobiles, because automobiles are highly
18 transportable, and they can be moved quickly from one
19 end of the country to the other, and people often take
20 them with them, with the liens on them and without
21 paying for them, of course, so we're skiptracing and
22 trying to find the auto, and it takes a while sometimes.

23 MR. KANE: So, do you use outside sources?

24 MR. SHEERAN: We do use outside sources.

25 MR. KANE: Do you use electronic databases and

1 that sort of thing?

2 MR. SHEERAN: Yes, we do.

3 MR. KANE: Okay. And then once you get the
4 information, like Tom, you folks -- do you have separate
5 people who do -- who take this new skiptrace information
6 or this recently acquired information and make those
7 calls?

8 MR. SHEERAN: Once it gets past 90 days, then --
9 and it's an automobile, then it gets turned over to
10 someone whose specialty is skiptracing.

11 MR. KANE: Okay. And is that person the person
12 who contacts the electronic database companies?

13 MR. SHEERAN: Yes.

14 MR. KANE: And so do they have -- I should ask
15 this: Do they have all this information on their screen
16 at their desk or do they have to send the information
17 out to an electronic database and get it back? In your
18 experience, and then I'll ask Mike.

19 MR. SHEERAN: They get the information on their
20 screen by going to that electronic database.

21 MR. KANE: Okay. On the internet? Is it like
22 an internet interface?

23 MR. LAMB: It's a secure internet interface
24 where -- they will use it on a transactional basis in
25 this case, where they'll search for Mike Lamb with my

1 Social, if they were looking for me, and it will come up
2 with data, and they can choose what data that they
3 attain. Do they just want telephone numbers? Do they
4 want past addresses? It depends on the nature of the
5 skiptracing activity.

6 MR. KANE: But for the cost, they would want
7 everything, right?

8 MR. LAMB: No, because time is a big cost.
9 Often, a whole array of data might be available for the
10 set price. It's just what's most useful to them.

11 MR. KANE: Okay.

12 MR. LAMB: There's very few features that are
13 actually premium features.

14 MR. KANE: Okay. What are the premium features?

15 MR. LAMB: Sometimes additional phone numbers.

16 MR. KANE: Okay, all right.

17 MR. SHEERAN: You don't always need, Tom, all of
18 their past addresses for the last 20 years. You need
19 that sort of information, though, when it comes to
20 determining who's the correct person, and so there's
21 certainly a link here between what we're talking about
22 and identifying the correct person.

23 MR. KANE: Sure, sure. So, if you have the past
24 five addresses, what would the skiptracer do? It gets
25 to another conversation, what we're going to talk about

1 later, but is that one of the factors you use when a
2 consumer says, "I don't remember this debt"? Something
3 like that?

4 MR. SHEERAN: It certainly is, because if five
5 years ago they bought something and they put down a
6 particular address on their application and it shows up
7 in going back five years that they lived at that
8 address, then it's much more likely to be the correct
9 person.

10 MR. KANE: Um-hum, that makes sense.

11 Robin, how do you all do your skiptracing, from
12 beginning to -- as soon as you get a portfolio, what are
13 the steps you take?

14 MS. PRUITT: Let me start by saying debt buyers
15 start with the best information that a creditor has.
16 So, the information that we get in a portfolio of debt
17 is given to us under the terms of a contract where the
18 seller will represent and warrant that the information
19 in the file that we're receiving is, to the best of
20 their knowledge -- and what I'm speaking here of, Tom,
21 is industry practice -- is to the best of their
22 knowledge the best information that they have on the
23 consumer and the debt at the time that the file is
24 transmitted to us.

25 And as I think has become clear, though, a

1 number of people -- a number -- a fair amount of that
2 data won't be correct. The address and phone and
3 contact information will be outdated. So, we as an
4 industry are doing our very best to locate a debtor who,
5 for whatever reason, did not inform the creditor when he
6 moved, and to do that, we rely on the accuracy of data.

7 What we have -- what we want to do is connect
8 the right person and his Social Security number with the
9 right address and phone number so that we can contact
10 them about the right debt, because the properly
11 identified consumer does owe the debt, and that is all
12 that we're trying to do.

13 So, as a result, that highlights the importance
14 of our access to personal identifiers such as Social
15 Security numbers. It also is imperative that companies
16 like Michael's company have accurate data sources. We
17 rely on the professionals in the data accumulation
18 business to provide us with that accurate data to fill
19 in those gaps.

20 So, large debt buyers these days, I think it's
21 fair to say that a department of human skiptracers in
22 large debt buyers today is a thing of the past. So,
23 with small debt buyers, they may still be doing some
24 manual skiptracing, but as one of the key speakers
25 yesterday mentioned, debt collection today is a volume

1 business and a national business.

2 So, by and large, we're using the batch request
3 process that Michael referred to in seeking to append
4 the or update the correct contact information on the
5 accounts where it is apparent that we don't have that,
6 or if we learn when we call an account and it becomes
7 clear that we're not talking to the right consumer, then
8 that would go into a file that we would seek to refresh.

9 By the way, let me mention that before any
10 collection action is taken, it is customary -- probably
11 beyond customary -- to send the file out to be scrubbed
12 for bankrupt and deceased accounts. The last thing we
13 want to do is attempt to contact a consumer who has died
14 or to violate the bankruptcy stay by contacting a
15 consumer who has filed bankruptcy.

16 MR. KANE: I'm sorry, Robin, so I think Mike's
17 company has those products.

18 MS. PRUITT: Yes.

19 MR. KANE: So, when you send -- you will send a
20 whole portfolio through Mike's company or one of his --
21 one of the others --

22 MS. PRUITT: To be scrubbed for --

23 MR. KANE: To be scrubbed, okay.

24 MS. PRUITT: Actually, very often the creditor
25 would do this as well, but the creditor does not want to

1 be selling bankrupt and deceased accounts either.

2 MR. KANE: So, the seller has sent the entire
3 portfolio through Banko and also -- or some equivalent
4 database, and they've also sent it through a deceased
5 persons database. Is that right?

6 MS. PRUITT: Well, I can't speak for exactly
7 what creditors have done, but it's my understanding that
8 it would be common for creditors to try not to sell
9 those. Among other things, those accounts would be
10 classified as unqualified accounts under a standard
11 portfolio purchase agreement, which means that even if
12 we receive them, we've got the right to just turn around
13 and send them back to the creditor and be reimbursed for
14 the purchase price. They don't want to be selling those
15 accounts; we don't want to be buying those accounts.

16 MR. KANE: Do you ever see -- are there ever
17 sales of portfolios where there isn't that agreement in
18 it, where the buyer is automatically permitted to kick
19 it back? Do you ever see contracts like that?

20 MS. PRUITT: Ever, yes. In other words,
21 portfolios where there is no right to return accounts?

22 MR. KANE: Yes. That's a better way to say it.

23 MS. PRUITT: It can happen, but I would say it's
24 not the customary practice.

25 MR. KANE: And so when you get -- you've sent a

1 portfolio, 10,000 names, through Mike's company or
2 another company, what do you get back from them?

3 MS. PRUITT: We will get updated information.
4 If -- well, it's very much as Mike specified. It
5 depends on what we ask for, because there are different
6 levels, as he said. There are different levels of match
7 that we can require. So, it's going to --

8 MR. KANE: But don't you want the best match
9 possible?

10 MS. PRUITT: We want the -- oh, absolutely, we
11 want the best match possible, but given the example of a
12 few minutes ago, we may not want or need 10 or 20 years
13 of past address information. We pay for all of the --
14 as Tom said -- all of hits, which means all of the
15 information that is responsive to the request that we
16 make. So, two things: We only want to ask for what we
17 need, and it -- I mean, it wouldn't serve the purpose to
18 have every piece of information.

19 MR. KANE: Wouldn't that be the same thing every
20 time? Wouldn't the level of detail be the same every
21 time? How would it vary based upon a portfolio, you
22 know, in beginning of March, how would that be different
23 than the end of March?

24 MS. PRUITT: If I have a good phone number, I am
25 not going to be requesting all phone numbers or all data

1 necessary. If what I need is an updated address, then
2 we would request updated address information. So -- and
3 it's going to depend on -- this can, as you can tell,
4 get pretty complex pretty fast. It will depend on the
5 type of asset that one is collecting, but to be clear,
6 we're always seeking the most accurate and up-to-date
7 information that we can get.

8 MR. KANE: But -- so, I'm sorry, you get a
9 portfolio, let's shrink it down to 100 files. You're a
10 very large company and your portfolios are much larger.
11 Do you break them out before you send them to an
12 electronic database and say for these, we only need
13 phone numbers; for these, we only need a new address;
14 for these, we -- how do you -- or can they -- how do
15 you -- how do you tell the database what to give you?

16 MS. PRUITT: You know, that's a level of
17 granularity that I couldn't answer and certainly
18 couldn't answer on behalf of all debt buyers today.
19 There are -- suffice it to say there are ways for a
20 requester of information to convey a specific request to
21 a data provider, and they have different products that
22 respond to different levels of need.

23 So, once again, you know, we're seeking -- we
24 depend on accuracy of their information. We don't have
25 visibility to where they get their data. So, as an

1 industry, we have to depend on them having continued
2 access to accurate data and robust data sources, and as
3 Tom said, also, it's customary for debt buyers to use a
4 variety of vendors to get the best information.

5 So, again, as Tom said, you may send it through
6 one vendor, and then if there are still holes in the
7 data, you may send it to another vendor. Because the
8 vendors have different sources of information, you can
9 get different results. We're going to be focused on
10 using the data sources or the sources of data to give us
11 the most accurate information, and as Tom said, if it
12 proves to be otherwise, we would be former customers
13 very quickly.

14 MR. KANE: Let me ask, when you ask for an
15 address, for instance, on an account, are you given
16 several potential accounts and you then call all three
17 of them? If they give you three, do you call all three
18 of them or do you send letters to all three of them?
19 How does that work?

20 MS. PRUITT: Not all at once. So, as I believe
21 Michael said, there's going to be a -- call it a best
22 address. The same thing could happen, sometimes there
23 may be a variety -- multiple addresses or phone numbers
24 that we get in the information that we get from the
25 creditor, and so you can send to what is believed to be

1 the best address, and if that mail is returned, then you
2 might proceed with the different addresses and different
3 contact information. And different -- again, different
4 debt buyers will do it differently.

5 MR. KANE: And let me just ask one question. Do
6 all portfolios sold have Social Security numbers, and if
7 not, what's the percentage that have them or don't have
8 them? That's the first question from the audience.
9 They're piling up.

10 Mike, do you have a sense of that? When you --
11 well, I guess --

12 MR. LAMB: I don't have a sense of what's sold.
13 We do have inquiries where there's no Social Security
14 number associated with it, where it's name and address,
15 and we will run our search and come back with what we
16 believe to be the individual, including Social Security
17 number that we have in our database for that individual.

18 Or sometimes there are miskeyed or transposed
19 numbers, and we can do data hygiene automatically to say
20 this is -- this appears to be transposed, here's what we
21 believe is the correct Social, if they give us the wrong
22 Social and two numbers are switched, for example.

23 MR. KANE: Okay. Robin, what's your sense of
24 how often -- what percentage of accounts in portfolios
25 have no Social Security number? I'm sorry, Robin.

1 MS. PRUITT: It's going to vary. Let me say
2 that a portfolio is certainly far more useful and of
3 more value to the debt buyer to have a higher proportion
4 of Social Security numbers. It would be rare for a
5 large debt buyer to have much, if any, interest in a
6 portfolio of debt that did not have a high proportion of
7 Social Security numbers.

8 MR. KANE: So, 98 percent is common or 80
9 percent is common?

10 MS. PRUITT: It's going to vary, Tom.
11 Ninety-eight percent would be -- we would be delighted.

12 MR. KANE: Okay. Let me see, Mike, where does
13 Lexis-Nexis obtain its data?

14 MR. LAMB: It's a massive undertaking, and it's
15 not done just for the collections industry. I don't
16 know if that would be cost-effective. We collect our
17 data, and we serve law enforcement, both federal and
18 state. We use the same data for identity authentication
19 services, for anti-money laundering, and for debt
20 collection. Because of the efficiency of using the data
21 for the multiple purposes, we can afford to collect it
22 primarily from public records.

23 We collect almost every property record that is
24 filed in any county in the United States. We collect a
25 nationwide -- if you're obtaining those property records

1 through some of the very common internet websites, for
2 example, if you're a real estate buff, they probably
3 obtained that real estate record from us, and we use
4 those same real estate records as part of our
5 skiptracing analysis and analytics to serve the
6 collections industry.

7 We also collect it from nonpublic sources. We
8 get credit header data, which includes name, address,
9 and telephone number. Often, the credit bureaus don't
10 update that data, and so they get hits from multiple
11 sources. So, there may be a lag before they update it,
12 but when they do, that's a fairly reliable or very
13 reliable source. So, that's the array of sources, and
14 we're constantly looking for new sources of information.

15 MR. KANE: Actually -- this question is
16 actually -- some people have asked panelists to move
17 closer to the microphones. I'd like you to handle that,
18 Tom. Sorry, didn't mean to point you out.

19 Let me see. Is there any process for the debt
20 collector or consumer to inform the database provider
21 about information provided that didn't turn out to be a
22 useful lead? We'll come back to that later.

23 Let me see. You know, I am confident that
24 skiptracers often locate the correct consumer, that is,
25 the one who truly owes the debt, but many consumers tell

1 us they've been contacted by debt collectors about debts
2 they don't owe, and sometimes the consumer's confused.
3 They don't know -- they haven't figured out that it's
4 actually a ten-year-old account or five-year-old account
5 or they don't remember, but sometimes it's just the
6 wrong consumer.

7 So, Lauren, do you have a sense of how big this
8 problem is? It's unfair to put her on the spot, because
9 Sonya was going to be able to talk about this. Do you
10 have a sense of how big?

11 MS. LAUREN SAUNDERS: Well, obviously, everybody
12 wants numbers and nobody has numbers. All I can tell
13 you is from our experience, if you talk to any consumer
14 attorney around the country -- and everybody has these
15 stories. Everybody has stories that the client was the
16 victim of identity theft or was just the wrong person,
17 and, you know, there's just enough of it, we hear enough
18 of it from enough people from enough locations to think
19 that it's a real problem.

20 Is it a massive percentage of, you know, the
21 debts being collected out there? Probably not, but
22 especially, you know, as we're collecting older debts,
23 you know, it's becoming a bigger problem, and the
24 information age I think makes it worse, because there's
25 more information out there that can make it look like

1 you've got a match when you don't.

2 Sonya Smith-Valentine, who was supposed to be
3 here this morning, you know, coined the term "zombie
4 debt," debt that never dies even when you show that it's
5 not you, because she was seeing enough of that in her
6 practice to get concerned about it, and she started
7 talking to the local media about publicizing the
8 problem, not because of, you know, one client, but a
9 number. So, we just hear a lot of these stories, and,
10 you know, it does seem to be an increasing problem.

11 MR. KANE: And Sonya also talked about in our
12 planning calls the fact that sometimes the information
13 is not -- the wrong information that's put on a
14 consumer's credit report, it, of course, can damage
15 their ability to get credit, and it can damage their
16 ability to get a security clearance. So, it's important
17 to all of us that collectors find the right consumer.

18 MS. LAUREN SAUNDERS: Right, and let me just
19 mention -- then I'll pass it on to Gina -- about credit
20 reports, I wasn't expecting to be up here this morning,
21 so I didn't refresh myself, but a couple months ago, you
22 know, Congress had a hearing about credit reporting, and
23 there was substantial testimony about a large volume of
24 mixed files in the credit reporting agencies, because
25 they use partial matches to decide whether this debt

1 goes with this consumer.

2 They may match the last name and just four
3 digits of the Social Security number. You know, with
4 the population that we have today, that's often wrong,
5 and there's a lot of, you know, combined files that the
6 CRAs have. I don't know to what extent the CRA files
7 factor in your all analysis of whether this is the right
8 person, but, you know, it may be Gonzales with an S or
9 Gonzales with a Z, and there seems to be a lot of
10 disregarding of red flag information. The wrong middle
11 initial, that should tell you it's not the right person,
12 and yet the collection efforts often continue even after
13 the collector is told this isn't me.

14 MS. CALABRESE: And my conversations with New
15 York legal services advocates are consistent with
16 Lauren's, that while the mistakes don't seem to be a
17 huge part of our caseloads, they are a regular part of
18 our case loads, even if they are a small part, but the
19 concern there is that when there is a mistake, it takes
20 an extraordinary effort to get that mistake corrected.
21 So, what needs to be in place for the skiptracers and
22 the debt buyers and the collectors are better and more
23 efficient processes for correcting errors when it's
24 brought to their attention.

25 I don't think any consumer is able to get that

1 kind of error corrected without getting an attorney,
2 because most people who come to us for help -- and we
3 see -- we're a legal services clinic at a law school.
4 We're a teaching clinic. So, we take even fewer cases
5 than legal services does. The people who come to us
6 have usually tried to get information corrected on their
7 own.

8 And let me add one other thing, Mike, St. John's
9 University School of Law loves Lexis. The customer
10 service reps are great, you give us nice little
11 presents, pens and notes and little packet versions of
12 the Constitution, but it took us between four to six
13 months to get a judgment that had been satisfied
14 expunged from Lexis' records, and you can imagine how
15 surprised the student interns were, because every
16 dealing they had had with Lexis in the past has been
17 great, and our client had satisfied a judgment.

18 It took quite an effort to make sure the
19 satisfaction was filed, because the collection attorney
20 didn't file it correctly. That took about half a year
21 to straighten out. Once it was filed, we brought it to
22 the attention of Lexis. They said that their vendor
23 probably had not picked up the satisfaction yet and that
24 it would take some time to look into the matter. The
25 next semester started, and the judgment was still on

1 there, even after we had faxed the satisfaction to Lexis
2 with proof that it was filed in the court.

3 So, that's just one example of the effort it can
4 take to get even these few errors corrected, because the
5 consequences to the consumer are quite serious when
6 they're not corrected, like Lauren talked about, errors
7 on the credit reports and so forth.

8 MS. LAUREN SAUNDERS: Just one personal anecdote
9 to add. We have had our current phone number for about
10 four years, and I think the woman who had it before
11 passed away at some point, presumably before we got her
12 phone number. We regularly get calls, you know, for
13 this woman, and, you know, it's either the same
14 collector calling again and again or she's got some huge
15 number of debts or something in between, but, you know,
16 her reports are not being scrubbed for deceased person.

17 So, I think she was a local, I think she lived
18 in the area forever, her family is still in the area.
19 So, it's not like, you know, the death records are off
20 in Guam somewhere.

21 MR. LAMB: Just to touch on the corrections
22 issue, and it's an important one, the various array of
23 services that we offer, such as Banko, that are FCRA
24 services, where the data might be used to grant credit,
25 to determine whether or not somebody gets a job or gets

1 housing, those we have a very detailed FCRA-compliant
2 corrections process. The Accurint database is largely
3 public records driven or comes from other identified
4 sources, and there, the data is used to find somebody,
5 whether it's by law enforcement or by a skiptracer, and
6 if a consumer wants to come to us and say that's not my
7 phone number, none of those are mine, and none of those
8 are my addresses, it's only going to make them hard to
9 find, and the person who might want to do that is a
10 person who doesn't want to be found by a skiptracer or
11 by law enforcement.

12 What we do is we have a team that works closely
13 with consumers to point them back to our data sources.
14 Our job is to reflect what's in the county records or to
15 reflect if we received it from a credit header data.
16 We'll send them back to the source, the credit header
17 data, so it can be corrected at the source. That, in
18 the end, prevents fraud where somebody wants to just
19 pull themselves out of the database and not be found,
20 and at the same time, gives them a tool, a vehicle, when
21 they say, "Well, where did you ever get that for me?"
22 We will point them back to the source, the original
23 source.

24 MR. KANE: That actually moves me into the next
25 topic we want to cover --

1 MS. PRUITT: Tom, if I could address the initial
2 question which you asked Lauren, which is how prevalent
3 is the problem of contacting the wrong consumer, I do
4 recognize that virtually all of the issues on this topic
5 that Lauren and Gina hear about are going to be
6 problems; however, as an industry, we contact -- we --
7 not billions of individual consumers, but there are
8 billions of calls and letters sent by this industry
9 every year, and, again, we're doing everything we can to
10 contact the right consumer about the right debt.

11 All of the millions of people who are contacted
12 and have successful resolution of their situation aren't
13 contacting Lauren and Gina. So, I recognize there are
14 issues, even one is a problem, and, you know, we're
15 doing our best to correct that, but there are -- I'd
16 hate for the few examples to obliterate the massive
17 success on a large scale that we are able to achieve.

18 MR. KANE: Thanks, yeah, and I agree with you.
19 I think it's likely that for the most part, companies
20 and electronic databases are finding the right person.
21 I'm just -- you know, I don't have any evidence of that,
22 but that sounds reasonable to me. But for every
23 consumer, every time a collector is given the wrong
24 information, that's a substantial problem, and it really
25 becomes a problem when the collector ignores the

1 consumer's statements that they truly don't owe the
2 debt.

3 There's another problem that we need to address,
4 and that is when a consumer truly owes the debt and says
5 they don't or the consumer doesn't remember whether they
6 owe the debt, so how often -- Tom, how often do you
7 think -- how often does it happen that a consumer says
8 they don't owe the debt when, in fact, they do? And how
9 often does it happen where the consumer says I don't owe
10 the debt when, in fact, they just can't remember or
11 they're confused?

12 MR. HAAG: I don't have any hard numbers on
13 that. My experience tells me that we occasionally get a
14 consumer that will deny any knowledge of a debt when, in
15 fact, it's clearly their debt, but in those cases, we
16 normally have sufficient information to conclude that it
17 is their debt, and if we believe firmly, we will refer
18 it back to the creditor or to an attorney for
19 litigation. So, that's a rare -- truly a rare
20 situation.

21 MR. KANE: A rare situation when the consumer
22 says I don't owe the debt when, in fact, they do and you
23 have to go to litigation?

24 MR. HAAG: Yes, that's right, yeah. Let me
25 answer the second half of your question --

1 MR. KANE: Sure.

2 MR. HAAG: -- which, if I don't forget what it
3 was now --

4 MR. KANE: Sure, I asked you two questions.

5 MR. HAAG: -- how many people don't actually
6 remember the debt? Interesting, I forget the question.

7 MR. KANE: I did, too, if that's any help.

8 MR. HAAG: But that is -- frankly, that may be
9 less unusual than the people that are trying to avoid
10 payment, and I mention that because it is not unusual
11 for creditors to have some kind of a small problem in
12 their statement process where the actual bill of
13 particulars doesn't get to the consumer. They never get
14 the statement. So, they don't pay the bill.

15 My own personal experience is I had a bill for
16 some hospital tests in January, and only last week I got
17 the initial bill saying my insurance company rejected
18 the bill. So, that's like nine months from the date of
19 service to that, and I had never, ever gotten anything
20 else. Now, if they didn't have my correct address, it
21 might have been two or three years before I got the
22 bill. So, it's really not unusual.

23 It's also -- I don't want to make this
24 necessarily about health care, but, you know, if you
25 have a health care bill, when you go in the hospital,

1 you don't get a single bill; you get a physician bill,
2 you get hospital charges, you get the -- you know, the
3 charge for lab work, and so forth, and these all come
4 generally from different sources. So, people will
5 assume, for example, that when they get the hospital
6 bill, they've paid everything that's owing, when, of
7 course, if they get the hospital bill, that's only one
8 element of what they're actually owing.

9 So, the fact that people don't think they owe a
10 bill or don't recall a bill or something like that,
11 they've never seen the doctor that did the lab test, so
12 they don't recognize that doctor's name at all, because
13 that was done somewhere off site. So, that's a, I would
14 say, a more frequent kind of a situation.

15 MR. KANE: Tom, what are your collectors trained
16 to do if a consumer says it's not me? Your folks and,
17 you know, from your experience --

18 MR. HAAG: Yeah, typically, they would -- they
19 would verify the consumer's name, including middle
20 initial, and whether there's a junior and senior
21 involved, something like that; confirm current address
22 and previous address. We would have some basic
23 information on the nature of the service. Maybe it's a
24 utility bill, for example. Did you live at this address
25 during this period of time, and so on and so forth.

1 Those would be the questions, and generally two or three
2 questions into that routine, you'd have a pretty clear
3 understanding that either you have the right person or
4 you have the wrong person.

5 And, you know, if we're not 100 percent
6 satisfied that the information that we have is accurate
7 or complete, we will terminate the call. We'll probably
8 indicate to the person that we'll do some additional
9 research, in which case we go back to the credit grantor
10 and explain to the credit grantor what we have heard and
11 ask them if they could provide any additional detail.

12 MR. KANE: Do you ask about Social Security
13 number, last four of the Social? Do your folks ask
14 about that?

15 MR. HAAG: Well, you know, I haven't even
16 mentioned the Social Security number, but let me just
17 say this about Socials, that in my judgment, the Social
18 is probably the single best identifier -- clearly the
19 best identifier known to man, so to speak, and when we
20 have that information, that makes it much, much easier
21 for us to determine factually who that consumer is or
22 whether or not we have the right consumer. When that
23 number doesn't match, equally as important, when that
24 number doesn't match, we clearly understand we don't
25 have the right person.

1 MR. KANE: When you say it doesn't match, do
2 your collectors ask, are these your last four digits, or
3 do they say tell me your last four digits?

4 MR. HAAG: They may ask that. Well, one way or
5 the other, they may ask that question, yeah.

6 MR. KANE: But a consumer is not as likely to
7 give their last four digits. Isn't that right? I would
8 be very reluctant.

9 MR. HAAG: I think it's fair to say they're not
10 as hesitant to give the last four digits of their Social
11 Security number. We also frequently have date of birth,
12 for example, and, you know, date of birth is a less
13 sensitive issue than Social Security number, but I think
14 consumers, when they have a problem with giving any
15 Social Security number information, it's really driven
16 by the stories they read of people that had identity
17 theft.

18 And, you know, I'm not aware of any of those
19 situations that identity theft occurred because the
20 information was provided from a credit grantor to the
21 contingent fee debt collector. That's simply not a -- I
22 mean, we have a lot of sensitive information in close
23 care and custody, and, you know, we simply don't -- you
24 know, we control very closely any and all of that
25 information.

1 MR. KANE: Jim, and then Robin, how do you --
2 what do you ask? If a consumer says it's not me, what
3 are your collectors trained to say?

4 MR. SHEERAN: Our collectors are trained to
5 determine the accuracy of the information that -- or to
6 verify the accuracy of the information that we have, and
7 it goes through starting with the name and the spelling,
8 the date of birth, address, prior addresses, and the
9 last four of the Social Security number, and our
10 collectors verify last four of the Social Security
11 number in ways that are up to them, either offer the
12 last four or they ask for the last four, and if they
13 verify -- if they match, of course, then there's
14 verification.

15 The more difficult problem comes about when
16 someone has been the victim of identity theft, and that
17 gets much more complicated then.

18 MR. KANE: Thanks.

19 Robin, what do your collectors do?

20 MS. PRUITT: Similarly, our collectors will try
21 and establish the correctness of our information and
22 provide additional information about the debt. So, for
23 instance, we are a debt buyer. We are not the original
24 creditor. So, it may simply be an issue that the
25 consumer doesn't recognize our name. So, you know, a

1 debt buyer faces that challenge, which can be easily
2 overcome. We can talk about this, this is your XYZ Bank
3 credit card, do you remember that, and so forth.

4 If that is not sufficient, then my company and
5 other debt buyers have specific departments where the
6 individuals are specially trained for dealing with
7 disputes and things of that nature, and they can ask
8 further questions, and if need be, seek additional
9 backup information from the creditors on the account.

10 MR. KANE: All right, thank you all very much.

11 I want to move on now to debt verification, and
12 as we know, Section 809 of the FDCPA requires that if a
13 consumer disputes a debt in writing within 30 days of
14 receiving a validation notice, which some panelists
15 yesterday were calling the G-notice, the debt collector
16 must cease collection efforts until it has sent a
17 consumer verification of the debt.

18 Now, two federal circuit courts have held that
19 the threshold for what a debt collector has to provide
20 under the FDCPA, as it's written now, that the threshold
21 of what they have to provide to a consumer who's
22 disputed is quite low, but what I'd like to talk about
23 now is something we talked about to some extent
24 yesterday, is not the level of documentation that the
25 FDCPA currently requires, but basically, what

1 documentation or media would permit collectors to
2 adequately address most consumer disputes, how to get
3 that documentation into collectors' hands, and then when
4 that should happen.

5 So, Jim, let me start out with you from the
6 creditor side. What sort of documentation do your
7 in-house collectors have available to respond to a
8 consumer's dispute?

9 MR. SHEERAN: In almost every instance, we will
10 have the original contract available.

11 MR. KANE: Okay. So, if the consumer says, you
12 know, if they have any questions about the amounts, if
13 they -- you have the signed contract.

14 MR. SHEERAN: We have the signed contract.
15 We'll have a payment history, and we will have -- with
16 the notes that we've collected along the way, which give
17 us the prior contacts and prior addresses and prior
18 phone numbers for this particular individual.

19 MR. KANE: Okay. So, do you convey that same
20 information to your contingency collection agencies?

21 MR. SHEERAN: When we refer something out to an
22 attorney -- we do not send it to collection agencies,
23 but when we send something out to an attorney for
24 collection, they get either a copy of or the original
25 contract, and they get the information that we have that

1 has permitted us to ascertain that the person we are
2 asking them to collect from is the person that owes the
3 debt.

4 MR. KANE: And then do you -- I can't remember,
5 do you sell portfolios to debt --

6 MR. SHEERAN: We do not.

7 MR. KANE: You do not, okay.

8 Tom, what sort of documentation do contingency
9 collectors generally get from companies that hire them,
10 creditors that hire them?

11 MR. HAAG: Tom, if I can back us up for a second
12 and just say since we're talking about validation --

13 MR. KANE: Sure.

14 MR. HAAG: -- there was a fair amount of
15 discussion yesterday amongst the groups about the
16 validation, the minimal requirements, I think as it was
17 cited or something like that, that really all that's
18 required of the debt collector is to provide the balance
19 and the date of service and a statement that verified
20 the information. That's really not what happens today.

21 I mean, what really happens, when somebody
22 requests -- when somebody denies the debt, you know, we
23 have to remember, we're bill collectors. The goal here
24 is to collect the money, and so if somebody says, "I
25 don't think I owe that," if I simply send them a

1 statement that says, "Well, you owe this amount and it
2 was done on this date," I'm probably not going to
3 satisfy them.

4 So that really the first effort that we would
5 make -- and I think I'm speaking for the industry now --
6 is to find out what the nature of the confusion, what
7 the nature of that dispute is, and what -- you know, is
8 the issue I don't owe that much? Is there a balance
9 question? I don't remember the service. I paid the
10 bill. Whatever it happens to be, whatever that request
11 is, typically validation to the industry is provide
12 documentation of the transaction, which is either a
13 statement of services rendered or perhaps a copy of the
14 contract, as Jim mentioned, specific information.

15 And we do that not because the law requires us
16 to do it. We do it because it makes good sense if you
17 want to collect the money to satisfy the consumer that
18 they owe the debt. That's the whole basis of this.

19 Now, let me go one step further.

20 MR. KANE: But we've heard some stories from
21 consumers who say "I didn't get anything" or "they
22 ignored me."

23 MR. HAAG: Yeah, and you know what, every
24 consumer that -- every debt we receive, we send the
25 initial required validation notice, and we still have a

1 percentage of people that say they didn't receive it.
2 Well, we don't argue about that. What's the point of
3 arguing? If they didn't receive it, they didn't receive
4 it. We have a follow-up notice, we'll send them another
5 notice, but if they didn't receive it, I think the law
6 provides us five days after the initial communication.
7 So, we're talking to the consumer, and on the heels of
8 that, after we complete that, we'll send out a second
9 validation notice or the second initial notice.

10 The point is, you know, we don't -- we really
11 don't much care what the reason the consumer is asking
12 for the information for. What we want to do is we want
13 to get them the best information, do our best to satisfy
14 their request, because that generally will lead to
15 payment, and payment is what it's all about. We're
16 trying to collect the money. I mean -- and, you know,
17 I'm with you. I've heard stories, I've read stories,
18 about a very different method of doing business, but
19 that to me is, frankly, really foreign, and --

20 MR. KANE: So, what sorts of documentation do
21 you generally get from your creditors?

22 MR. HAAG: We get -- it depends on the nature of
23 the debt, but we will get -- in many cases, we'll get a
24 copy of the bill of particulars or statement of services
25 when we receive the initial listing. Most of this

1 information comes electronically. We can -- they send
2 us the account detail, we can actually recreate the
3 account detail and create an image file and attach that
4 file to the collection account, so that when we're
5 talking to the consumer, in many cases, we have the data
6 right in front of us, which I think is -- you know,
7 that's a big plus from our point of view. So, you know,
8 we seldom get limited information, but from time to
9 time, we get limited information.

10 MR. KANE: Robin, what sorts of information do
11 debt buyers generally receive?

12 MS. PRUITT: It is going to vary depending on
13 the type of underlying debt and the issuer. As became
14 clear on the panel yesterday, issuers vary in whether
15 they provide full documentation at the time of sale.
16 That's wonderful when it happens. It certainly is not
17 the end of the story, though. It is industry practice
18 to negotiate in the purchase contract the right to
19 receive from the creditor, upon request, as needed to
20 satisfy disputes and validation requests and for the
21 legal process, account documentation for a particular
22 amount of accounts in the portfolio and/or for a
23 particular period of time, and --

24 MR. KANE: I'm sorry, when would you obtain
25 that? That comes with the portfolio?

1 MS. PRUITT: It is available -- and, again, this
2 is going to depend on negotiations between the debt
3 buyer and the creditor, and it can happen in various
4 ways. Again, sometimes you will get all the
5 documentation at the time of purchase; however, I would
6 say it's more common that we get a contractual right to
7 make a request for documents on an as-needed basis from
8 the creditor.

9 And I will say, as a reminder, actually, a very
10 small percentage of all accounts end up with a dispute.
11 I can't give you a hard percentage, but it's not the
12 majority of the cases, and it is our experience that,
13 generally speaking, we are able to obtain the documents
14 that are necessary to resolve disputes arising in the
15 validation context or are needed for the legal process.

16 Now, what those documents are is going to vary,
17 again, depending on the length of time that has passed
18 since the account charged off, say, may be a statement;
19 it may be the -- it can be a very full file with the
20 original contract, depending on the type of debt.

21 MR. KANE: What's your sense of what happens on
22 the second sale or the third sale of the portfolio? Is
23 there still the same amount of data traveling, the same
24 media?

25 MS. PRUITT: Again, it would be industry

1 practice to negotiate for the right to go back up the
2 chain and get the data.

3 MR. KANE: Yeah. I mean, how much of a problem
4 is that in a debt-buying scenario? Are creditors
5 reluctant to provide the media to the third debt buyer
6 down the line?

7 MS. PRUITT: Generally speaking, it's hard to --
8 actually, it's hard to speak generally about this, but
9 the creditors, if they still have the data, and there is
10 going to be some data that simply becomes unavailable
11 through the passage of time, but the creditor still has
12 a relationship with the entity that first purchased from
13 them, and the general practice is that -- like if we
14 purchased from purchaser A, who purchased from the
15 creditor, then we would arrange to go to purchaser A,
16 who would have an obligation to us to make the request
17 from the creditor, because that's where the relationship
18 originally was.

19 MR. KANE: And would the media go literally
20 through -- would it go through purchaser A, they would
21 hold it for a little -- for a short time, and then they
22 would pass it on to you?

23 MS. PRUITT: In that circumstance, there would
24 be no reason for them to hold it for a certain time.

25 MR. KANE: Okay. But would it be conveyed

1 electronically to purchaser A and they would just hit
2 "forward" and send it to your company?

3 MS. PRUITT: Again, that is going depend on the
4 nature of the "documentation" and the relationship
5 between the parties.

6 MR. KANE: But that can happen?

7 MS. PRUITT: That can happen, yes.

8 MR. KANE: Okay. Lauren, you yesterday created
9 a list of sort of the documentation that would be
10 necessary in most situations for verifying a debt, when
11 a consumer disputes a debt. You listed some things like
12 original creditor, the chain of title if it's been
13 sold -- correct me if any of these are wrong -- any
14 defenses to the debt that the consumer has raised,
15 whether the debt has been discharged in bankruptcy, any
16 allegations that the consumer (sic) violated the FDCPA
17 in collecting the debt. Can you think of any more that
18 I've missed or I couldn't write fast enough?

19 MS. LAUREN SAUNDERS: And for people who
20 couldn't write it down fast enough yesterday, this is on
21 pages 27 and 28 of our comments on the FTC's web site.
22 What we said is that before, you know, any collection
23 activity can begin, you know, the law ought to mandate
24 that you have a certain amount of information. You
25 know, maybe in the best case scenario, it's happening

1 right now, and in a lot of cases, it's not.

2 You know, we have heard talk of the billions of
3 contacts and billions of debts being collected. Well,
4 0.1 percent of a billion is a million, and so even if
5 it's a tiny fraction of a problem, it's still a pretty
6 massive problem. So, the, you know, basic information
7 before a collection activity should begin that we
8 mentioned were, you know, the proof of indebtedness by
9 the consumer, you know, signed contract; the date that
10 the debt was incurred and the date of the last payment;
11 the identity of the original creditor as known to the
12 consumer; the amount of the debt principal and an
13 itemization of all interest fees or charges added to it
14 by the original creditor and all subsequent holders; and
15 the chain of title if the debt has been sold. That's
16 sort of, you know, the core minimum before you ought to
17 even be allowed to collect on a debt. And I think, you
18 know, any debt collector who is here would want to have
19 that information. It is obviously going to make it
20 easier to resolve real disputes.

21 Then, you know, before a debt can be sold or
22 assigned, you know, the subsequent information that the
23 collector, you know, comes into possession of needs to
24 be passed on. Any defenses to the debt and all related
25 communications; any validation requests or responses or

1 lack thereof; whether any settlement has been reached
2 concerning the debt; whether the debt is beyond the
3 statute of limitations; whether the consumer's been
4 represented by an attorney and the attorney's contact
5 information; whether the consumer has informed the
6 collector that a time or place is inconvenient for
7 communication; whether the debt has been discharged or
8 listed in bankruptcy; any illness or disability claimed
9 by the consumer or known to the collector; and any known
10 or claimed violation of the FDCPA.

11 And, you know, the frustration we see is that
12 even when, you know, the consumer or the consumer's
13 attorney communicates with the collector and raises a
14 bunch of problems, maybe in the end it's just not worth
15 it to that collector. I mean, we hear it's a volume
16 business, and, you know, if there's significant
17 questions about this debt, they're not going to bother,
18 but instead of, you know, that being the end of the
19 matter, it just gets passed on without this information
20 being passed on, and it's not going to happen on a
21 routine basis, you know, unless the law requires it.

22 MR. KANE: So --

23 MR. HAAG: Tom, if I could --

24 MR. KANE: Yes, Tom?

25 MR. HAAG: -- just make a comment, validation --

1 I served on a task force for ACA, the Ethics Review Task
2 Force. The challenge of that task force was to take a
3 look at the existing Code of Ethics, understanding
4 current industry practices, and updating those
5 practices. Beyond that, we actually spoke with a number
6 of regulators and credit grantors, other agencies, and
7 determined that actually the primary concern, the thing
8 that tended to begin the bad relationship between the
9 consumer and the creditor or the consumer and the
10 agency, was a failure to validate the debt.

11 The law does require a minimum amount of
12 validation; that is -- we've discussed that. So, it was
13 the task force's challenge to convince the industry, the
14 ACA members, that we should go beyond what the FDCPA
15 requires us to do, because we felt that was the single
16 best thing we could do to minimize complaints. Hence,
17 we changed the Code of Ethics and as it relates
18 specifically to debt validation, and I think you're
19 familiar with the new code, and if you'll allow me to,
20 I'll read about a paragraph of what that new code is --

21 MR. KANE: Sure, sure.

22 MR. HAAG: -- so that we get I think a better
23 sense for where the industry is on the issue of
24 validation.

25 This is -- I'm reading in part from Rule 2, 3:

1 "If the member is a debt collector as defined in Section
2 803-6 of the FDCPA, upon receipt of a written request
3 for verification of a debt from a consumer, suspend all
4 collection activities on the account, provide
5 verification of the debt. If such member does not or is
6 unable to provide verification of the debt in response
7 to the consumer's written request for verification, the
8 member will cease all collection efforts, direct or
9 request removal of the item from the consumer's credit
10 report or report the item as disputed to the appropriate
11 credit reporting agency," and that I think addresses
12 some of the concerns here.

13 "When closing and returning the account, notify
14 the credit grantor, client, or owner of legal title of
15 the debt that the activity in the account was terminated
16 due to the inability to provide verification of the
17 debt," and then finally, "If requested by the consumer
18 in writing, notify the consumer that collection efforts
19 have been terminated by the member."

20 That was subject to the Federal Trade Commission
21 providing a formal advisory opinion that that would be
22 an acceptable practice, which I am pleased to understand
23 has just occurred.

24 MR. KANE: Yes.

25 MR. HAAG: So that we're talking, to some

1 extent, about what used to happen, and the industry's
2 sensitive to that. The industry has done its best to be
3 one step ahead of the Federal Trade Commission and the
4 consumer bar.

5 MR. KANE: That's great. Thank you, Tom.

6 MS. LAUREN SAUNDERS: Could I respond just
7 quickly?

8 MR. KANE: Sure.

9 MS. LAUREN SAUNDERS: First of all, one caveat
10 in everything that you read just now was a written
11 validation request by the consumer. I mean, we've heard
12 so much, you know, yesterday about, you know, the
13 importance of oral communications and reaching the
14 consumer on the phone, and that's the point of when they
15 say, "It's not my debt, the amount's wrong, they didn't
16 credit my payment," whatever, and, you know, putting the
17 onus on the consumer to have to jump through another
18 hurdle before it gets dealt with properly is just not
19 appropriate, and one of the changes we've asked for is
20 an oral dispute ought to be sufficient.

21 MR. HAAG: Let me kind of respond to that, if I
22 can. You remember what I said about determining the
23 right person and so on and so forth early on? I said
24 validation didn't -- wasn't -- that the minimal
25 requirements of validation weren't really an issue for

1 the industry, because the industry's in business to
2 collect money, and the way you're going to collect from
3 somebody that doesn't believe they owe is to show them
4 that they owe the debt.

5 So, you know, I can't speak for the industry. I
6 can tell you that my company, when they receive that
7 kind of a phone call from somebody, we follow the same
8 practice that we would follow if it was within the
9 30-day validation period, and in keeping with saying
10 that, if we receive that request for validation and it's
11 40 days, it doesn't make any difference to us. We don't
12 care. We will provide the validation, because that is
13 the shortest way to collect the money. That's the whole
14 deal.

15 MR. KANE: Tom, I'm pleased to hear that your
16 company does that. We've certainly heard plenty of
17 stories of debt collectors, some debt buyers, some not,
18 not providing documentation or just not having it. So,
19 why don't they have it?

20 Robin, why don't debt buyers have the list of
21 documents that Lauren just ran through?

22 MS. PRUITT: Well, I guess the simple reason is,
23 as we said, most of the time, it isn't needed, and we
24 find that they're available when we do need it. In
25 other words, we didn't need to have them on hand. We

1 are debt collectors, we're not warehouses, and it would
2 impose a burden and a cost unnecessarily on the system,
3 in our view -- and I believe creditors would share this
4 view -- if, you know, massive amounts of documentation
5 were -- if it was a prerequisite to taking any activity
6 to have to have a whole bunch of documentation that is
7 rarely called for transferred all the way through the
8 system.

9 I've got a couple of other things I want to
10 mention about that. First, a clarification of something
11 Lauren said. I referred to billions of contacts, a
12 billion or more contacts made by the industry every
13 year, not billions of debts, and there are multiple
14 contacts per debt. So, I just want to clarify that.

15 Regarding the importance of having the consumer
16 specify their dispute in writing, let me just say, you
17 know, fundamentally, we believe this is a system -- the
18 system that is set up under the regulatory environment
19 today works most of the time, but in order for it to
20 work, all of the touch points in the system need to take
21 responsibility for their part of it, and if a consumer
22 has a legitimate dispute, I do think that it is in their
23 interests to express it clearly, and consumers, their
24 expression of their disputes is not always clear.

25 So, for instance, what would you do under

1 today's regulatory environment when the consumer says,
2 "Cease and desist all collection efforts on this debt
3 and send me the full file of documentation"?

4 MR. KANE: Actually, I can't get into that now,
5 because I need to talk about -- if I could, let me ask
6 you about --

7 MS. PRUITT: Well, Tom, just to finish --

8 MS. CALABRESE: Tom, I'd like to get a few words
9 in on this topic as well.

10 MR. KANE: Yes.

11 MS. PRUITT: -- we can't address the dispute
12 unless the dispute is clearly stated. So, when a
13 consumer says "I paid that debt," they may well have
14 made a payment on another account with the same
15 creditor. We can flesh that out if the dispute is
16 clearly rendered, and it is very, very helpful to have
17 that in writing. So, I think that that is a point that
18 is actually in the consumer's best interest.

19 MR. KANE: Great. Gina, yes, thanks.

20 MS. CALABRESE: Well, one of the issues is that
21 a lot of consumers, particularly our population, the
22 elderly, are just not very articulate and are not as
23 articulate as the professionals who are working in this
24 industry in terms of disputing their debts. They do the
25 best they can.

1 You know, it was mentioned yesterday that the
2 elderly being one of the growing populations affected by
3 debt collection, and I know that two people from
4 National Consumer Law Center, Dan Lunin and Elizabeth
5 Grimrach (phonetic), wrote an article about the growing
6 debt among elderly consumers, and it's not the baby
7 boomers. It actually is the parents of the baby
8 boomers, people who lived through the Depression and who
9 have been conservative in their use of credit over the
10 years, who just, at least with our claims, they just
11 can't make ends meet on their limited Social Security
12 income, all of which is exempt.

13 Most of our clients with debt problems, and
14 about 20 percent of our calls concerning debt problems,
15 are subsisting on less than a thousand dollars a month.
16 It seems that collectors don't give up on trying to
17 collect from them even though they know all of their
18 money is exempt and even after we get involved.

19 In terms of the validation, I would like to -- I
20 mean, even though it seems like the industry is looking
21 toward making changes, one of the glaring examples where
22 we had concerns, a woman in her seventies who bought
23 some goods from a door-to-door salesman in 1990, made a
24 deposit, never got the goods, assumed she had just been
25 scammed, and then seven years later, got her first

1 dunning notice. Between 1997 and 2003, she got four
2 dunning notices from -- I think the first was a
3 third-party collector and the last three were debt
4 buyers. She had come to us by that point.

5 At that point, we wrote letters disputing the
6 debt, requesting verification, never got the
7 verification, thought the matter was over, and a year or
8 two years later, another dunning letter would come from
9 a new collector, and the third collector actually
10 offered her a credit card to use to pay off the debt.
11 Each time the dunning notice came, there was a different
12 amount claimed to be due, so there's one validation
13 issue. We don't know the basis for the changes in the
14 amounts.

15 It took a lawsuit to finally stop the action,
16 and our theory in the federal lawsuit was that the
17 continued sale of disputed debts where no validation was
18 provided was a continuing collection activity. So, we
19 believe even under the current system, there is a
20 theory, although there are no cases on point, but we
21 agree to follow the changes that NCLC has recommended.

22 Just last year, to show that this is still going
23 on, just last year, our interns called regarding
24 verification of a debt for an elderly man and was told
25 by the collector, "Oh, we don't have anything like that.

1 If you send us a cease and desist letter, we'll just
2 sell the debt to another debt buyer." So, these are the
3 real stories we are hearing from the field, no matter --
4 I know there's a lot of industry denial, but this is
5 what we are seeing.

6 Even when we go to court, and I know that
7 there's going to be another panel on the court process,
8 I've been to court with collection attorneys who have
9 nothing more than a printout with them, an internal
10 computer printout with the name of the debtor and the
11 amount owed. They don't have any underlying documents,
12 which is why when these cases are being challenged --
13 and very few of them are just because of resources --
14 oftentimes the debt buyer is unable to meet their burden
15 of proof to even make the case, you know, go on past
16 discovery or past summary judgment.

17 Only recently have I actually gotten original
18 documents, and that is from a case that's currently in
19 litigation. I was able to finally get some of the
20 recent credit card -- some of the credit card
21 statements, which do show that the person purchased
22 about \$700 worth of goods, and about \$2,300 of the bill
23 was late fees and default rates of interest and all
24 sorts of penalties.

25 MR. KANE: Yeah, that is -- the amount -- the

1 breakdown is a big problem in verification.

2 Let me ask about something that was raised
3 yesterday, and it was -- we heard something about
4 lock-out agreements, which I frankly had never heard
5 about it, where the --

6 MS. PRUITT: I have been in this industry for a
7 long time, and I have never heard of a lock-out
8 agreement.

9 MS. LAUREN SAUNDERS: I mean, we have, and on
10 more than one occasion, and whether it's a formal
11 lock-out agreement or just, you know, there isn't the
12 back and forth that, you know, that you seem to have --

13 MR. KANE: I'm sorry, I should -- one of us
14 should say what the -- if somebody doesn't remember or
15 they weren't here yesterday. What was the lock-out
16 agreement again? Can you explain, Lauren?

17 MS. LAUREN SAUNDERS: It's when a creditor, when
18 they sell their portfolio, have an arrangement that
19 you're not allowed to come back to us for any further
20 documentation, validation.

21 MS. PRUITT: I just want to make it clear that
22 that does not represent industry practice, standard
23 industry practice.

24 MR. KANE: I'm glad to hear that.

25 MS. LAUREN SAUNDERS: And whether it's a formal

1 term of the contract or just the way it operates in
2 practice, we just see it over and over again, and, I
3 mean, everybody seems to agree that this information can
4 be useful and it can help you in your collection
5 efforts. If it, you know, is mandated, it can become
6 standardized, it can become cheaper, and in this day and
7 age, nobody has to have, you know, reams and reams of
8 warehouse space, you know, you could all have it on
9 computer. You know, as long as you have it available,
10 we're not saying you have to have it sitting there, you
11 know, printed out on your desk.

12 But it's simple in this day and age to develop
13 systems, make them standardized, you know, have industry
14 come up with ways of doing it, and I think you just
15 solve a whole host of problems that we all see, even if
16 it may not -- the problems we see may not be the best
17 practices, you know, that we've been hearing about.
18 It's rampant. The problem is just -- it's probably the
19 biggest single frustration, I mean more so than, you
20 know, the wrong person, is just the inability to
21 validate and, you know, and the dispute over what is a
22 real validation.

23 MR. KANE: Now, why isn't more media going with
24 the account? Why aren't all the things on Lauren's list
25 being conveyed? Is it cost? Is it privacy concerns?

1 What are the reasons?

2 MS. PRUITT: Actually, I thought we had already
3 covered that, but it is that it doesn't seem to be
4 necessary. It would seem to be an additional cost and
5 logistical burden imposed on a system that seems to work
6 without physically conveying all that documentation that
7 has gone on. Again, we --

8 MR. KANE: Could you somehow get it in hand as
9 soon as a consumer disputes? I mean, maybe it doesn't
10 have to -- could you -- there are times when this
11 information is necessary.

12 MS. PRUITT: There are certainly times, and
13 there are times clearly when there is a time lag for us
14 to get it, and that may actually create some of the
15 confusion in consumers' minds. So, if you make a
16 request, and due to system conversion issues when banks
17 have acquired other banks or for whatever the reason, or
18 simply age and the documents are in a warehouse, for
19 whatever reason, if it does take time for us to get that
20 information, while we have had to cease all collection
21 activities. So, we can't go back to a consumer and say,
22 "We've made the request, but it's taking time," and the
23 consumer may feel that we're ignoring their need and the
24 like.

25 MS. LAUREN SAUNDERS: Well, I mean, that's --

1 MR. KANE: That's not most of the consumers I'm
2 hearing from.

3 MS. PRUITT: And if I could add, that is clearly
4 the case -- again, I don't want to minimize the problem.
5 When a problem occurs, it's a bad problem, and we want
6 to do everything we can to stop that from happening, but
7 at the end of the day, I think proper contact with the
8 right consumer is a cleaner answer. All the
9 documentation in the world isn't going to help it if
10 we're talking to the wrong person. The wrong person is
11 not going to pay the debt.

12 And if you've got the right person, generally
13 speaking, outside of the very confusing health care
14 context that Tom mentioned where there were service
15 providers that you had no idea existed because labs are
16 separate and so forth, generally speaking, the consumer
17 knows the debt that you're talking about when you get
18 the right consumer on the phone.

19 MR. KANE: I agree with you, that's often the
20 case.

21 Let me ask you one last question, and that's to
22 Lauren or Gina. When should debt buyers, collectors,
23 have this media in hand?

24 MS. LAUREN SAUNDERS: I mean, you know, I think
25 we have identified the core that they ought to have or

1 have available when they collect a debt, and, you know,
2 they can maybe have an arrangement to get it from the
3 creditor, but it's a business decision. That's clearly
4 what we're hearing, is if you don't have the information
5 available when you need it, well, then stop your
6 collection efforts until you have it. If that's too
7 expensive, to have, you know, immediately accessible,
8 well, then it's a trade-off, but there's a core of
9 information you need to have and have access to before
10 you can collect a debt, and before you walk into court,
11 you better have it all in your briefcase.

12 I'm sorry, I mean, I just -- the idea that you
13 can go to court to litigate a matter without having your
14 evidence there with you is just shocking to me as a
15 lawyer.

16 MR. KANE: Robin, if you will respond briefly,
17 and then we'll cut it off.

18 MS. PRUITT: Yeah, there's a separate litigation
19 panel this afternoon that I'm sure can amply speak to
20 this, but I do want to point out that, you know,
21 business records are admissible in court, and we have
22 business records, and the creditor has business records,
23 and debt buyers acquire this debt under contracts
24 where -- you know, that are subject to -- or in
25 transactions where we have undergone due diligence

1 reviews of information, substantial due diligence
2 reviews, I might add, and where the creditors are
3 representing and warranting -- you know, they're
4 standing behind the information that we receive.

5 And so I just think that it is highly inaccurate
6 to state that we have "no information" or nothing
7 short -- nothing more than a simple list of amounts due
8 on which we're relying when we collect this debt.

9 MR. KANE: Okay. On that note, thank you all,
10 panelists, very much.

11 (Applause.)

12 MR. KANE: We will break until 11:00. See you
13 back here then. Thanks.

14 (A brief recess was taken.)

15

16

17

18

19

20

21

22

23

24

25

1 CREDIT REPORTING AND DEBT COLLECTION:

2 KEY CONCERNS

3 MR. KANE: Welcome back.

4 Today's second session will address the
5 interaction between debt collectors and the credit
6 reporting system, concerns this interaction raises, and
7 possible responses to these concerns. The moderator is
8 Becky Kuehn, an Assistant Director in the FTC's Division
9 of Privacy and Identity Protection, which that's the FTC
10 office charged with primary enforcement of the Fair
11 Credit Reporting Act. So, that's why we roped her in to
12 run this panel.

13 Thank you very much, Becky.

14 MS. KUEHN: Thank you, Tom. Good morning.
15 We've turned the mikes up. So, hopefully that will
16 address some of the problems people were having hearing.

17 I would like to give just a second for each of
18 our panelists to introduce themselves to you. We have a
19 great panel here this morning, and I think we are going
20 to have a lively discussion. Because of the number of
21 topics and the amount of discussion we anticipate and
22 the amount of questions that we anticipate -- we will
23 remind the audience if you do have questions to write
24 them on cards and hand them up -- we are going to
25 dispense with anything like an opening statement, but we

1 will allow everyone to introduce themselves.

2 So, first, April.

3 MS. BRESLAW: Good morning. It seems like the
4 mike is working here. My name is April Breslaw. I'm
5 the Acting Associate Director for Compliance Policy in
6 the FDIC Division of Supervision and Consumer
7 Protection, which is a mouthful, but we, as you may
8 know, the FDIC supervises about 5000 state-chartered
9 banks, and so in my office, we deal with consumer
10 protection policy on a wide range of issues, including
11 FCRA and Fair Debt Collection, as sometimes applies to
12 banks, though not always, and other consumer statutes.

13 MR. ELLMAN: Good morning. I'm Eric Ellman with
14 the Consumer Data Industry Association, CDIA. We are a
15 trade association that represents the consumer reporting
16 industry as well as debt collectors.

17 MR. LYNGKLIP: Good morning. My name is Ian
18 Lyngklip. I'm a consumer attorney. I am also the
19 co-chair of NACA, the National Association of Consumer
20 Advocates.

21 MR. REDMOND: Good morning. My name is Don
22 Redmond. I'm Corporate Counsel with Portfolio Recovery
23 Associates, which is primarily a debt buyer.

24 MR. TORMEY: Good morning. I am Mike Tormey. I
25 am from Advantage Network Systems, Co-Chairman. I'm a

1 contingency debt collection agency and the only attorney
2 in front of you.

3 MS. KUEHN: Well, that gives you a special mark.

4 I wanted to start first with an issue that's
5 come up, was mentioned on the last panel, and it came up
6 all during the course of the discussions yesterday, and
7 that's the issue of disputed accounts, and I heard
8 references yesterday during the discussions,
9 particularly from the consumer bar, that after consumers
10 are raising issues, that the accounts aren't being
11 reported as disputed.

12 So, I thought I would first address one issue
13 that came up probably in one of the last panels
14 yesterday, which is an apparent confusion on what it
15 means to have an account be disputed. So, I'd like to
16 first start with April, from FDIC, to talk about sort of
17 maybe the statutory framework for when an account is
18 considered disputed under the Fair Credit Reporting Act.

19 MS. BRESLAW: Sure. Well, as probably many of
20 you know, under FCRA, furnishers are required to report
21 accurate information to credit bureaus, and I guess our
22 perspective would be that if there's a dispute, that
23 there's a question about whether the information is
24 accurate, so we would mark it by that.

25 MS. KUEHN: Are there any difficulties from the

1 debt buyer and contingency collector, to the extent you
2 have got aging credit reporting, on determining when it
3 is that a consumer's dispute relates to the accuracy --
4 I believe the statute refers to completeness as well,
5 though that may be a little less relevant -- of an item,
6 either Don or Mike.

7 MR. TORMEY: I'll start with it.

8 One thing you have to keep in mind, even if it's
9 not a written dispute, when a consumer notifies the
10 agency that the debt is in dispute, we cease reporting
11 it, because we can no longer verify the accuracy or the
12 completeness of that data, and that can be done verbally
13 or in writing.

14 MS. KUEHN: But are there any questions, I
15 guess, or ways of determining when it is a consumer has
16 actually disputed it? One question we've heard on the
17 last panel was, you know, is a request for verification
18 under the FDCPA sufficient to raise essentially a
19 dispute about accuracy or completeness? And have you
20 guys looked at that issue and how do your companies
21 address that?

22 MR. TORMEY: Again, I'll respond first, then
23 perhaps Don can add to it.

24 In our own operation, our position is is that
25 when a request for verification comes out, we cease

1 reporting it until the 30 days has passed and we've
2 responded to the consumer.

3 MR. REDMOND: I'd just like to answer your first
4 question, which is I don't think it's confusing when
5 somebody disputes a debt. I've rarely seen an occasion
6 where there are interpretation problems over whether
7 something's disputed or not. It's also just been my
8 experience that when people dispute debts, they're
9 generally, you know, vehement about it, so I don't think
10 there are a lot of occasions when you can't recognize a
11 dispute.

12 MS. KUEHN: Ian, from the consumer perspective?

13 MR. LYNGKLIP: Well, I think -- there's two
14 circumstances that I think that you need to be able to
15 address. One is when you're getting direct
16 communications as a collector from the consumer, and the
17 second is when it's coming in over the ACDV system. The
18 problems that we see, first and foremost, are that the
19 debt collectors are not acknowledging or taking
20 appropriate action to mark the debts as disputed when
21 those disputes come in over the ACDB system.

22 In other words, when the consumer is challenging
23 the item not his or hers, challenging the balance,
24 challenging whether they owe it at all, and the bureaus,
25 in turn, forward that on to the debt collectors, the

1 debt collectors are not returning those ACDBs with a
2 dispute code. That is as clear a dispute, a written
3 dispute, as clear as any other that the debt collectors
4 would receive directly from the consumer. That's a
5 problem that we see, and that is on an industry-wide
6 basis, that we do not see those dispute codes coming
7 back, and that is one which should be well included
8 within the definition of "dispute" for purposes of the
9 FDCPA.

10 When the dispute is coming in directly to the
11 debt collector, any time that the consumer is noting
12 that they don't owe the money or owe the amount that's
13 being sought, that's enough to put them on notice, and
14 that dispute code has got to be thrown under E-8.

15 MS. KUEHN: Now, about the point that Ian
16 raises, about whether there's a difference in when you
17 note something as disputed, either through coming
18 through what we call the re-investigation system, where
19 it's referred from the consumer reporting agency to the
20 debt collector, versus a dispute that's raised directly
21 from the consumer with the debt collector, are there any
22 differences, as Ian has noted, at least from his
23 experience with his consumers, from your perspective,
24 Don or Mike, in whether you note something as disputed
25 or what industry practice is in that regard?

1 MR. REDMOND: I am going to give you my personal
2 opinion, and that is a dispute is a dispute. It doesn't
3 matter to me what avenue it comes through.

4 MR. TORMEY: Well, I agree, and I think as the
5 earlier panel talked, the more we want to have a
6 communication with the consumer, the better we are. The
7 last thing you want to do is to minimize the amount of
8 information that's provided. So, whether it comes
9 through ACDB or directly from the consumer, we will
10 treat a dispute as a dispute.

11 MS. KUEHN: Ian's observation leads us to a
12 follow-up question which relates to the re-investigation
13 process itself and handling of disputes that are routed
14 through the consumer reporting agency process. Some of
15 the comments that have been filed in advance of this
16 conference have raised issues with what kind of
17 information that debt collectors and debt buyers,
18 contingency collectors, may be able to get in responding
19 to consumers' disputes that they have filed through the
20 consumer reporting agency, and this is a theme I think
21 we've heard yesterday, and it's continued through this
22 morning, about the adequacy of information from the
23 credit perspective, the creditor perspective, that
24 should be available to debt collectors, contingency
25 collectors, who are performing re-investigations.

1 And I wonder whether, Don or Mike, you have any
2 observations about your ability to conduct the
3 investigations after receiving disputes from the
4 consumer reporting agencies.

5 MR. REDMOND: Well, I mean, obviously
6 information is key, and, you know, we got into this when
7 we had the conference call, and everybody has raised
8 that issue. The debt buyers who have sat up here have
9 raised that issue; the consumer attorneys who sue people
10 for a living, like Ian, have sat up here and raised that
11 issue. I think one thing everybody agrees on is that
12 the best information we have or can have is key to the
13 process. You will get no disagreement from me on that.

14 MR. TORMEY: Within our own experience and our
15 own practice, when we receive a dispute and the company
16 whom we are representing does not have adequate
17 information to support that dispute, we close and return
18 the debt. We will not continue to pursue it.

19 MS. KUEHN: That sounds similar to what the
20 prior panel was talking about with ACA's Code of Ethics,
21 which is if they can't get adequate verification of the
22 debt, that they notify the creditor and cease collection
23 on the debt. You also take the step of ceasing to
24 report on the debt, or how does that relate to your
25 reporting efforts?

1 MR. TORMEY: If I may, the one thing you have to
2 remember, that under Fair Credit Reporting is that if we
3 can no longer verify a debt, we are prohibited from
4 reporting it. So, we close it. We notify the credit
5 reporting agencies that the information is no longer
6 valid, and they delete that from the file.

7 MS. KUEHN: Ian, you look like you want to make
8 an observation.

9 MR. LYNGKLIP: I do, and I guess -- I think I
10 understand what the practice is that you folks are
11 engaging in, and it sounds to me like if you don't have
12 those documents, you're returning it, and that seems
13 like the appropriate thing to do. I think that may be
14 going a step beyond what you may be required, but I
15 am -- what we see on an industry-wide basis, the
16 prevailing trend is that debt buyers and contingent
17 collection agencies do not treat the verification
18 process as one which is meeting the requirements of the
19 current case law.

20 Under the current case law, verification means
21 you've got to check original documents, and we do not
22 see any attempts to -- I shouldn't say that. We see few
23 and far between attempts to check original documents as
24 part of that verification process either when it's
25 coming in as a G-dispute or whether it's coming in as a

1 Fair Credit Reporting Act dispute over the E-OSCAR
2 system, and the position we have gotten consistently,
3 time and time again is, "We don't have to have these
4 documents on hand, we have got a balance, we have
5 records, internal records, emails or data logs, showing
6 that this money is owed."

7 That's not enough under the case law, and the
8 inquiry really has to focus on, what do we mean by
9 verification? I think the case law is pretty clear.
10 That's not enough.

11 MS. KUEHN: I think that that actually raises an
12 issue that came up yesterday as well, which is the
13 difference between the verification requirements under
14 the FDCPA and the way they have been interpreted and
15 what kind of information you need to verify a debt
16 versus the courts that have looked at the
17 re-investigation process and what it means to properly
18 investigate a debt.

19 Ian, you have a fair amount of litigation
20 experience. What's been your experience with the
21 difference in the way the courts have looked at those
22 issues?

23 MR. LYNGLIP: Well, I think that on the
24 G-notice side, on the verification of debts on the G
25 side, the standard has been far below what we would see

1 under the Fair Credit Reporting Act. You see the Fourth
2 Circuit case in Chaudrey (phonetic), and in some
3 circumstances, the courts are willing -- and I think the
4 Ninth Circuit has now sided with them, I think that
5 issue is pretty well put to rest -- that in some
6 circumstances, you can rely on the creditor and what
7 they're telling you, but to take that as a blanket rule,
8 that you can do that in every circumstance, that's not
9 right.

10 You've got to respond to the actual information
11 that you've got in front of you. If there's a consumer
12 who is sending you statements or is giving you specific
13 information, detailed information, about account
14 histories that you don't have available, I don't think
15 that just relying on the creditor's documents that
16 they've conveyed to you at the time of assignment is
17 going to be enough.

18 Now, under the Fair Credit Reporting Act, we
19 have a much different standard, and that standard
20 pervades throughout everything that happens under that
21 Act, and that is that we're striving for reasonable
22 procedures to assure maximum possible accuracy, a much
23 higher standard than we're dealing with. So, I think
24 that what's interesting is that I have seen a number of
25 debt collectors, when responding to a dispute under

1 1692-G, make the efforts to go and get the original
2 documents. We do not see that same effort being
3 extended when they're getting the disputes in under the
4 Fair Credit Reporting Act, which to me is anomalous,
5 because you have such a much higher standard for the
6 accuracy that they have to bear when they're trying to
7 verify debts under the Fair Credit Reporting Act.

8 And one of the things that I would impress is
9 that if the consumer is providing specific information,
10 that specific information must be responded to in
11 whatever the process it is, and that leads us to a
12 problem that we have with the e-OSCAR system, which is
13 that the e-OSCAR system itself is not capable of
14 conveying all relevant information to the data
15 furnishers, and we don't see the data furnishers pushing
16 back on the industry looking for better conveyance
17 mechanisms. We don't see documents being traded back
18 and forth over it. And it seems to us that that system
19 is inadequate to meet the needs of the consumer under
20 either of those two statutes.

21 MS. KUEHN: Eric, I'll give you an opportunity
22 to respond. I think this is a criticism you might have
23 heard before.

24 MR. ELLMAN: Sure. I think it's a very
25 important point, Becky, for you and for everyone else to

1 understand, that we and the consumer reporting industry
2 want successful re-investigations. Everyone wants a
3 successful re-investigation. Consumers want their
4 disputes handled quickly and they want their disputes
5 handled efficiently. They want action.

6 One of the greatest challenges, though, in a
7 re-investigation process is the attempted credit repair
8 of these collection trades. In fact, it's well
9 established that about one-third of all consumer contact
10 with credit bureaus are a result of credit repair, and a
11 significant high percentage of those disputes are from
12 the credit repair outfits continuing to pound and pound
13 and pound on those accounts in the hope that they will
14 beat the data furnisher into submission to have that
15 information removed from the file.

16 But let's talk about how re-investigations are
17 successful first. The FRB and the FTC, as you well
18 know, cited some data in you recent report from
19 TransUnion which showed that 95 percent of all disputes
20 are handled to the satisfaction of the consumer, and
21 only 5 percent of consumers keep coming back to dispute
22 that same information again. And we should keep in mind
23 that just because there's a repetitive dispute isn't
24 necessarily indication that the process is failing
25 because of this whole credit repair problem.

1 Disputes, in fact, are handled very quickly, 54
2 percent of all disputes submitted by consumers come over
3 the phone or the web. The use of these channels, in
4 fact, is increasing because consumers want their
5 disputes handled quickly and efficiently.

6 MS. KUEHN: Eric, could you speak a little
7 closer to your mike?

8 MR. ELLMAN: Sure, of course. Is that better?

9 Forty-four percent of the consumers who
10 submitted data in writing, about 85 percent submitted
11 only a standardized form or letter; approximately 10
12 percent involved an identity theft report. So, really
13 only 2 or 3 percent of all communications involve other
14 information. It's clear from this data that very few
15 disputes, in fact, involve extensive data from
16 consumers, and most of the consumers are coming in, like
17 I said, through the web or the telephone, and that is
18 increasing as well.

19 MR. LYNGKLIP: If I can address one of the
20 points that Eric was making about credit repair
21 organizations, there is no question that the credit
22 repair organizations are distorting the marketplace in
23 being able to allow the credit reporting industry to do
24 what it needs to do, which is to provide accurate
25 information. There is no question that they are bogging

1 down the credit bureaus and raising the costs so that
2 consumers cannot get the same level of service that we
3 would hope they would.

4 But one of the things that I would say is that,
5 you know, is that consumers may want action fast, but
6 they don't want action fast at the cost of a \$500,000
7 mortgage that's hanging in the balance. We want these
8 disputes responded to within the time frames provided by
9 the statute, and we want to make sure that the
10 information that's going back accurately reflects what
11 the state of affairs of the underlying documents were.

12 Well, one of the problems that we see is that we
13 have not had the opportunity and in many ways we're
14 prohibited as a consumer bar from taking action against
15 the credit repair organizations who are preying on
16 consumers, trying to get them to give them money to push
17 letters on the bureaus. The mandatory arbitration
18 clauses have really prohibited us from being able to use
19 the statutory remedies which have been provided to us
20 which would otherwise be very helpful to us to eliminate
21 those, and we would hope that the industry would support
22 us in allowing us to use those statutes, and we can't do
23 it as the market is currently configured.

24 MS. KUEHN: We had a question dealing with I
25 guess an overarching understanding of the industry, and

1 this goes to you, Mike, which is how often is an item
2 reported by a contingent collector as opposed to, say,
3 the original creditor reporting it as in collection?
4 What's your practice as an example?

5 MR. TORMEY: In our practice, when we report the
6 data on a consumer, we retain it and maintain it with
7 the credit reporting agency as long as we have that
8 assignment of the debt. Once the assignment ends, then
9 that is removed from the credit reporting agency.

10 I rarely see that when a credit grantor has
11 already reported the information to the credit reporting
12 agency, that they continue to report it as in
13 collection. So, we don't see a duplicate entry of that
14 data on the file.

15 MS. KUEHN: There were some examples yesterday,
16 and perhaps it's the nature of the industries involved,
17 one involved a utility reporting, which is that the
18 first collection they refer to that they don't actually
19 do credit -- that those collection agents don't do
20 credit reporting for those accounts, but if they need
21 further efforts, they may send them to a separate
22 collection agency that actually does reporting for
23 different periods of time.

24 Have you guys seen distinctions with your
25 customer base as to what their directives are on

1 reporting or are they involved in what the decisions
2 are, when to report, how to report?

3 MR. TORMEY: From one industry to another, I
4 think they're all pretty much the same. It's when it's
5 assigned, if it's truly an assignment of the debt to us,
6 then it is all reported, to the exception of -- I can
7 only think of one of my clients who -- a medical agency
8 who doesn't want any of their information reported, and
9 we, of course, oblige them and block that data.

10 MS. BRESLAW: One thing I would just add from
11 the banking agency's perspective is that we I guess
12 leave these choices to the parties, but what we would
13 expect to see would be that in the agreements between
14 the parties that it's clear who has the responsibility,
15 and not just at first but ongoing, so it's the party's
16 choice, but we want to make sure everybody addresses it
17 clearly.

18 MS. KUEHN: And does that lead to issues of who
19 handles the disputes or is there some sort of
20 arrangement -- it sounded like, at least in the initial
21 instance, in the information that debt buyers, at a
22 minimum, perhaps collectors are getting from the
23 creditors at the outset may not have all the information
24 to address a consumer's dispute.

25 Do you guys deal with credit reporting, for

1 example, by contract with the entities from whom you
2 purchase debt or on whose behalf you collect debt as far
3 as being able to handle disputes timely within the FCRA
4 guidelines and to be able to obtain the information
5 necessary to respond to consumers' disputes about
6 reporting?

7 MR. ELLMAN: Let me jump in for a second here,
8 if I could.

9 To Ian's point about, yes, speed is important,
10 but, of course, so is efficiency, and we are obviously
11 in regular communication with all data furnishers to
12 make sure the re-investigation process goes not just
13 quickly but also very efficiently, and I think what we
14 heard just a few moments ago was, from the debt buyers
15 and the debt collectors, was the information was good,
16 but it's not just a question of the information is good,
17 it's a question of the right kind of information, and
18 the data furnishers have been telling the consumer
19 reporting agencies that the information that they are
20 getting is sufficient to meet their re-investigation
21 obligations.

22 MS. KUEHN: Okay, Don or --

23 MR. REDMOND: If we're furnishing the data, we
24 think it's accurate.

25 MS. KUEHN: And what happens after you receive a

1 dispute based on that if the information that you have
2 in your files either doesn't address the dispute that
3 was raised or doesn't seem to have a piece of
4 information that you need?

5 MR. REDMOND: Well, again, I think any
6 responsible data furnisher tries to be as accurate as
7 possible. If any responsible data furnisher can't
8 report accurately, they shouldn't report.

9 MR. TORMEY: I would mirror the same sentiments.
10 When, as a contingency agency, we will receive a
11 dispute, we will go back to the firm that forwarded the
12 data or the assignment to us and seek validation, and in
13 that respect, if the information that we have in the
14 file is not adequate to answer the inquiry, more times
15 than not, upwards of 90 percent, they are the -- the
16 generated request that comes from the credit repair
17 plans, which is very generic, "This is not my debt,
18 period."

19 MS. KUEHN: That's what I was going to ask, as
20 far as your experience in handling disputes that have
21 come through the credit reporting system, you know, we
22 have heard talk about the credit repair problem. What
23 has been your experience with -- you know, you just gave
24 a figure of 90 percent.

25 MR. REDMOND: We get burdened by that stuff,

1 too, by the way. I mean, we get tons of the same form
2 letter that says the same thing from 20 different
3 websites where some poor soul bought that garbage for a
4 fee and mailed it out to all of their accounts, and, you
5 know, I think it's a terrible problem, terrible enough
6 that it's one of the only things I put in my comment
7 letter to the FTC, is that there is now an industry of
8 people who's out there to dispute things for a fee, and
9 I think you have to recognize that when you look at
10 credit reporting and similar issues.

11 There are people all over the internet today
12 trying to sell people -- lots of times, you'll see
13 documents that are fake legal documents. One of them I
14 get all the time is the "Petitioner's Private
15 International Administrative Remedy Demand." Some
16 lawyer in the room tell me what that means. We get that
17 same document over and over and over. It's like 40
18 pages long. It's full of all kinds of crazy things, you
19 know, quoting House Joint Resolution something or other.
20 It's nonsense.

21 MS. KUEHN: And by the 10th or 15th time you've
22 seen it, you realize it's a form letter.

23 MR. REDMOND: By the 10,000th time I've seen it.
24 That's how I know the name.

25 MR. LYNGKLIP: The credit repair organizations

1 are -- the clinics are clearly a problem, but that
2 doesn't really address the underlying question, which is
3 how you're dealing with actual disputes from consumers
4 which provide a reasonable amount of information saying
5 that the information is disputed, and what are you doing
6 in that process to get -- to get accurate information
7 back into the system.

8 And what we see, time and again, over the --
9 certainly over the ACDV system, is that there's not
10 really the same level of effort that's given to getting
11 those baseline documents, those foundational
12 transactional documents, to verify that debt, and that's
13 really what's at issue, at least for the consumers.
14 We're talking about the consumers tendering legitimate
15 disputes. What's the industry doing for them?

16 MS. KUEHN: Well, it sounds like from our
17 current panel's perspective that they have procedures in
18 place, but I did want to talk about an issue that you
19 raised, Ian, I think prior to our panel today, which is
20 the issue of reporting items as disputed and whether
21 there should be some requirement to go back and correct
22 prior reporting to note that an item is disputed, if you
23 could sort of summarize what your issue is, please.

24 MR. LYNGKLIP: Yeah. The difficulty is this,
25 that currently the way that the commentary to the FDCPA

1 is structured, there is no affirmative obligation to
2 credit report. What we see is that credit reporting
3 will continue on after a consumer has disputed this debt
4 and sought validation. This is a problem for a number
5 of reasons, but the chief one is that the debt
6 collectors are required to cease all collection activity
7 after there is a dispute that's tendered by the
8 consumer, and so if you're getting a timely dispute from
9 a consumer in response to a G-notice, you've got to stop
10 credit reporting during that time period until that debt
11 is validated and verified back to the consumer directly.

12 And so we don't see that happening, and one of
13 the problems is that we see the collectors relying on
14 the commentary for that and for other practices, like
15 just cease -- by stopping reporting in the face of
16 litigation.

17 MS. KUEHN: Well, I think to look at that
18 question and to really sort of examine it, we have to
19 understand sort of the nature of the frequency of
20 reporting by debt collectors and contingency collectors.
21 In comparison, most creditors, I understand, report on a
22 routine, frequent basis. Is that --

23 MS. BRESLAW: That's correct, yes.

24 MS. KUEHN: So, if something comes up, a dispute
25 has arisen, they can report it as disputed in the next

1 update, the next report, on that particular consumer?

2 MS. BRESLAW: Right, that's what we would
3 normally see on the banking side.

4 MS. KUEHN: And what I understand is the
5 reporting may be different or slightly different in the
6 collection area, or is that not the case?

7 MR. REDMOND: It's not been my experience. We
8 furnish data constantly.

9 MS. KUEHN: About the same consumers, whether
10 there's changes or no changes or --

11 MR. REDMOND: Absolutely.

12 MS. KUEHN: How about you?

13 MR. TORMEY: Indeed, the practice, at least with
14 the credit reporting agencies we deal with, is we
15 actually dump our last data from the last report, and we
16 supply an entire inventory of this week's data, and
17 that --

18 MS. KUEHN: Because I think --

19 MR. LYNGKLIP: That is, by the way, our
20 experience as well, and one of the things that's
21 interesting is that the position that we see from the
22 debt collectors is, well, if we haven't changed this
23 data, if this data has not been updated in some way, we
24 are not affirmatively reporting, even though they are
25 consistently doing exactly as described. They are doing

1 a complete data dump of all of their accounts -- all of
2 their receivable accounts.

3 When we get further down the road into
4 litigation and we see that, you know, there's a tape
5 that's going out every month with this information, we
6 can show that, yeah, they have been engaging
7 affirmatively in collection activities, but the view of
8 the industry is as long as we haven't updated that and
9 there is no change in the status of this debt, we don't
10 report it. Well, that's how -- it's acting out --
11 that's how it is that they're interpreting that on a
12 day-to-day basis, and it's leaving a lot of consumers
13 without actually having the benefit of the rights that
14 they've got under 1692-G, which is to have the debt
15 collector cease reporting until such time as they have
16 verified this debt.

17 MR. TORMEY: Let me clarify something. When I
18 use the word "dump," I mean that they remove all of the
19 data that we had previously reported and resupply it
20 with the current data. So, there's the difference
21 there. So, if a consumer disputes a debt with us on
22 Monday, we key that into our system. Friday, when we
23 generate the tape and transmit it to the credit
24 reporting agencies, they remove all the previous data,
25 and that data is subsequently blocked from reporting.

1 So, it disappears from the credit reporting file until
2 we resolve the dispute.

3 MS. KUEHN: So, it's no longer reported at all
4 regardless of --

5 MR. TORMEY: That's correct. That's our
6 practice.

7 MR. LYNGKLIP: But that is not what we see as an
8 industry practice. We see that those trade lines
9 continue to persist all throughout the validation
10 period, and sometimes the validations, when we're
11 dealing with ID thefts or other complicated issues, they
12 take months, and these items are still sitting on the
13 reports.

14 MS. KUEHN: What about the situation -- it
15 doesn't sound like, Don or Mike, that either of you are
16 one of these type of reporters, but there are what we
17 call the occasional furnishers. Eric, maybe you can
18 talk about that, sort of if there still are people
19 within the industry who only report when something has
20 changed or they report initially when they obtain an
21 account for collection and don't provide sort of that
22 regular updates, regular tapes.

23 MR. ELLMAN: Right, that's obviously the case.
24 There are businesses like that, and we fully expect that
25 anybody who furnishes to a consumer reporting agency,

1 whether they do it once a year or once a month, shares
2 the values that we share, which is to create a precise
3 credit reporting system that's in full compliance with
4 the FCRA.

5 MS. KUEHN: And I guess one of the ways that
6 this question has been posited and has come up are for
7 those what I call occasional reporters, that when they
8 reported it, the debt wasn't disputed, for example, but
9 that they no longer report on the account or the account
10 has been sold or transferred -- and we are going to talk
11 a little bit more about that -- but that the statute, at
12 least the Fair Credit Reporting Act, when it deals with
13 reporting, talks about when you furnish the information
14 and you know there's a dispute, you need to mark it as
15 disputed.

16 Is one of the issues that, you know, the FTC
17 should look at and address dealing with the situation
18 where there's been a previous report of information that
19 has not been updated, no further tapes have been
20 submitted, but a dispute has come in after the reporting
21 has done? And is that something, Ian, that you've seen
22 or --

23 MR. LYNGKLIP: Well, again, there's a disparity
24 between what we see the practice actually is and that
25 legal requirement. It seems to us that because the debt

1 collectors are, in fact, making monthly reportings that
2 we can look at them and say, yeah, you are furnishing
3 data on this consumer and you are reporting and you are
4 in violation if the consumer has disputed it and you
5 have not updated it and marked it with a dispute code,
6 or if now we know this debt is not actually valid, and
7 you are allowing your trade line to persist in the
8 credit files and the bureaus.

9 The occasional reporters, we're not seeing quite
10 so many of those, and so -- and it's very difficult to
11 know at first blush, when you get into one of these
12 cases, whether or not you are dealing with an occasional
13 reporter. I mean, you've got to do some serious
14 investigation to find out whether you're dealing with
15 them. So, it's not a problem that we've dealt with.
16 Most of the problems that we've seen have been with
17 regular reporters who, monthly, do their tape drops to
18 the bureaus.

19 MS. KUEHN: We have a good question from the
20 audience, which is perfect for Eric to answer. Since
21 we're speaking in acronyms up here, and when you do FCRA
22 work here, there is a tendency to fall into acronyms, if
23 you could explain what the e-OSCAR and ACDV systems are.

24 MR. ELLMAN: Sure. The e-OSCAR system is an
25 automated system for processing disputes that come in to

1 start the re-investigation process obviously under the
2 FCRA, which is the Fair Credit Reporting Act. The
3 dispute will come to the consumer reporting agency,
4 although as a result of the FACT Act, consumers can also
5 directly dispute to data furnishers, which we think is a
6 very positive step to promote the accuracy of the credit
7 reporting system.

8 The e-OSCAR system is, like I said, it's an
9 automated system. In fact, we're very proud of the fact
10 that the use of e-OSCAR has gone up from -- the use of
11 e-OSCAR has gone up from 83 percent in August 2006 to 94
12 percent in June of 2007, which is really only good news
13 for consumers, because that means that 72 percent of all
14 consumers, their disputes are now being resolved in 14
15 days or less.

16 MS. KUEHN: I wanted to just move off of this
17 for a little bit, a couple other issues we need to
18 cover, and the second one deals with -- and I think this
19 is an issue that's maybe a little more unique to the
20 debt collection industry than it is, perhaps, in the
21 creditor realm, even with the purchase and repurchase
22 and repurchase and consolidation of banks, which is the
23 multiple reporting of a single debt collection account,
24 where a debt collection account shows up multiple times.

25 A number of commenters, prior to the conference,

1 raised the issue that there will be multiple account
2 numbers associated with a single collection account,
3 will be different collection agencies, they show up
4 differently, they have different balances, they have
5 different amounts, and that from the creditor's
6 perspective, it can be difficult to interpret whether or
7 not these are multiple collection accounts or a single
8 account that's been reported a different way.

9 How does that impact, from the creditor
10 perspective, their ability to fairly evaluate a
11 consumer's creditworthiness?

12 MS. BRESLAW: Well, certainly the -- you know,
13 we're furnishers, but we're also users of this
14 information, and I think echoing what's been said maybe
15 for different reasons, it's certainly very important to
16 creditors to have as accurate information as possible so
17 that they can make accurate credit decisions about
18 people. So, I think that's certainly a concern of those
19 who are granting credit.

20 MS. KUEHN: Now, I understand that CDIA has
21 issued some guidance, particularly for the debt
22 collection industry, on reporting in an effort to sort
23 of, I think, address this issue. I wonder if you could
24 summarize -- closely to the mike, please -- for the
25 audience, Eric, what CDIA has put out.

1 MR. ELLMAN: First, before I get into that, it's
2 important for us to recognize that we don't support
3 duplicate reporting. I don't think that any collector
4 supports duplicate reporting either. A debt that's been
5 sent out for collection, we should make clear, will
6 often have two trade lines. It will have the original
7 debt, and it will have the collection account.

8 However, the Credit Reporting Resource Guide and
9 the Metro 2 format, the Credit Reporting Resource Guide,
10 which is a guide we provide to data furnishers to help
11 to ensure they are partners in the accuracy process of
12 the credit reporting system, is quite clear in that
13 collection agencies and debt purchasers must delete
14 accounts that have been cancelled and returned to the
15 creditor or sold to another entity. That's been made
16 very clear.

17 We regularly provide specialized notices to
18 certain data furnishers, groups of data furnishers. We
19 have done it for student loans. We have done it for
20 debt collectors and debt purchasers and others, and we
21 have recently re-issued, just in the last week or so,
22 again, specific notice to reinforce the fact that
23 collection accounts, collection agencies and debt
24 purchasers, have to delete the information if the debt
25 has been sold or transferred.

1 MS. KUEHN: And that includes going back to the
2 original creditor or is it just only in the instance
3 where it's sold or transferred?

4 MR. ELLMAN: Well, the point of the precise
5 reporting and the point of our notices is to make sure
6 that the information that's on the credit file is, in
7 fact, precise, which means that if the debts are sold or
8 transferred, then anything that doesn't belong on the
9 report is not on the report.

10 MS. KUEHN: Ian, you're chomping at the bit.
11 Have you seen this? Have you seen this experience, that
12 they do remove the items when they sell or transfer
13 debt?

14 MR. LYNGKLIP: Well, sometimes they do,
15 sometimes they don't, but this goes to a deeper problem.
16 Most of the problems that we have with debt collectors
17 reporting debt and the errors that we see them -- things
18 like re-aging, providing false balances, all of this
19 information can be easily verified through historic
20 records of the original creditors who had this, and mind
21 you, we're living in a marketplace where portfolios of
22 debt are incredibly fluid. I mean, you know, they're
23 moving from bank to bank, to bank to bank, they're being
24 sold and resold, and then they're getting transferred to
25 collection agencies or contingent collectors, and then

1 they're being sold to multiple debt buyers up and down
2 the line.

3 These same trade lines, these same debts, can
4 acquire, you know, upwards of a dozen account numbers
5 before, you know, before we get to the final end of
6 these problems, and one of the problems is, the first
7 problem is, we do not have any record retention
8 requirement in the Fair Credit Reporting Act to allow us
9 to trace these items back, so that somebody can actually
10 look at what has been reported and use the data,
11 assuming that it was accurate in the first place, so
12 that we can go back, trace the audit trail of this data,
13 and be able to show, look, this account came from here
14 and was transferred there and there and there, acquired
15 these different names, these different account numbers,
16 was disputed umpteen times, and was ultimately deleted
17 because somebody figured it out. We don't have that
18 record trail, that audit trail.

19 MS. KUEHN: And that's what -- in the comments
20 filed by NCLC, they mentioned this earlier, the idea of
21 a chain of title or a chain of custody.

22 MR. LYNGLIP: Well, that's chain of title, but
23 this also goes straight to the idea that, you know, in
24 this era where I can go down to the local computer store
25 and buy a terabit server, we can't preserve any of the

1 Metro 2 data? We know the bureaus discard this data
2 regularly, and we can't trace it back. We have no way
3 of doing it. Once they discard the data from the data
4 furnishers, we have got very limited mechanisms to be
5 able to identify what happened, and we should be seeing
6 that these reportings at least are retained during a
7 limitations period that's applicable to the reporting.

8 The second problem -- I'm sorry, but the second
9 problem is that the format itself, the Metro 2 format,
10 recognizes that there's a need for being able to
11 identify an originating creditor, and they've got a
12 whole special segment that's set out for identifying
13 that, and the problem is that that doesn't help us
14 identify a complete chain of title, nor does it help us
15 identify original account numbers or subsequent account
16 numbers or when a fraud account, by a major credit
17 cardholder or a credit card issuer, takes a fraud
18 account, closes the fraud account, and re-opens a new
19 balance with it, and creates a new account.

20 Each of those accounts, we've seen, you know,
21 those accounts take parallel, separate lives, but they
22 both wind up on the consumer's report in the hands of
23 different debt collectors, and the problem is that the
24 Metro format itself does not provide a mechanism and
25 does not provide the -- I want to say the requirement.

1 There is no industry requirement that that prior data,
2 the limited amount that's here, be provided.

3 That data, if a debt collector cannot provide an
4 original creditor, original balance, and a date on which
5 the account was opened, the information that is in the
6 base segment of this, the base information that
7 identifies that account, that data should be rejected as
8 inadequate, because it's inherently unreliable and
9 unverifiable. If you don't have the information about
10 the account, it's unverifiable and unreliable and
11 inaccurate and not from a reliable source.

12 MS. KUEHN: I am going to -- go ahead, I'll let
13 you answer, Don, then we'll circle back to my
14 original --

15 MR. REDMOND: You have made that point like 20
16 times in the last 45 minutes, and the point you just
17 made, which you made the first time I heard you
18 filibuster on this point about an account having upwards
19 of a dozen account numbers, is just not true. I have
20 never seen an account with a dozen account numbers. I
21 would love to see an example of it if somebody's got
22 that. That is not typical of the industry. You've made
23 it up or you have seen a very, very strange case. I'd
24 love to see an example of a dozen account numbers.

25 MR. LYNGLIP: You know, when these accounts get

1 transferred from a small, local bank to -- that is
2 bought up by large -- larger national bank, which is
3 transferred to another one, I mean, we can look right
4 straight to the Bank of America. I have accounts that,
5 you know, I can trace from local banks that go through
6 four separate national banks before they begin hitting
7 the debt collection industry, and acquire at each of
8 those new banks, acquire a new account number, at least
9 one new account number, because they're boarded by them,
10 they may retain an original account number initially,
11 but then change it when they want to restructure their
12 portfolios.

13 MS. KUEHN: Well, that sounds like an issue with
14 the creditor side on the transfer of debts from creditor
15 to creditor and not so much in the debt collection
16 industry.

17 MR. LYNGLIP: Well, let's say that a dozen is
18 not the --

19 MR. REDMOND: Someone does not typically just
20 willy-nilly change an account number every time they get
21 an assignment from somebody who owns an account. That
22 doesn't help anybody collect. How would assigning new
23 account numbers every time a collection agency gets an
24 account help anybody collect? If it's different every
25 time, you can't identify it. That doesn't make any

1 sense at all.

2 MR. LYNGKLIP: Obviously everybody has their own
3 internal account numbers on these -- you know, on the
4 initial dunning letters. You know, this is the original
5 account number, here's redacted to whatever it is, and
6 here's our internal number, and we see those internal
7 numbers being used as the reporting number, and we've
8 got a provision for it in the manual here, and maybe a
9 dozen is too many for industry standard, but it is not
10 uncommon, by the time a debt collector gets this or a
11 debt buyer gets this, to see an account have three or
12 four account numbers. That is a normal process, and
13 there's still, no matter what, not a mechanism to track
14 that account through the system.

15 MR. REDMOND: It is not a normal process for an
16 account to have three or four account numbers. That is
17 not normal.

18 MR. LYNGKLIP: Do you know what account numbers
19 have been assigned by prior collection agencies,
20 contingent agencies? Do you get that information?

21 MR. REDMOND: What I get is the account number,
22 the original account number, and that's the same one
23 that we use.

24 MS. KUEHN: Well, let's -- let's --

25 MR. LYNGKLIP: If it's been returned, you

1 wouldn't --

2 MS. KUEHN: Ian, I have to cut you off a little
3 bit, because we are going to run out of time if we
4 don't, but April wanted to say something, and then I had
5 a specific question about that.

6 MS. BRESLAW: I guess all that I would add to
7 this is that if accounts are being transferred within
8 the world that I know, which is, you know, among the
9 creditors, among the banks that you just described, you
10 know, not just the FDIC, but I think all the banking
11 agencies would expect would be that banks involved have
12 policies and procedures in place to make sure that
13 accurate reporting always happens, starts from the
14 beginning and always happens.

15 So, if they make the business decision to change
16 account numbers for some reason, that's okay, but they
17 need to make sure that the reporting to the credit
18 bureau remains accurate, and that's what we would hold
19 our institutions to.

20 MR. ELLMAN: And the Metro 2 format has a
21 standard to require -- or has a standard to establish
22 that the original creditor is reported by a debt
23 collector or debt buyer.

24 MS. KUEHN: And is it also the case -- and this
25 is a good question from the audience -- about sold and

1 transferred accounts and their reporting under Metro 2,
2 if you could explain a little bit, Eric, on that.

3 MR. ELLMAN: Well, just to reinforce what I said
4 earlier, again, because we all share in the importance
5 of creating a precise credit reporting system, is that
6 to prevent the multiple reporting of information like
7 Ian is talking about is to establish that when a debt is
8 sold or transferred, that there is an established
9 procedure that it be deleted so it doesn't show multiple
10 collections, which don't, in fact, exist anymore.

11 MS. KUEHN: And that was going to be my question
12 to Don and Mike, to give you guys an opportunity to
13 actually respond.

14 The question is, is the guidance provided by
15 CDIA about, in essence, deleting the reporting or
16 removing the reporting of accounts once they're sold and
17 transferred, is this something you've seen being adopted
18 in the industry? Is this something that you guys have
19 followed? What is your experience with that?

20 MR. TORMEY: Well the one thing I can say is
21 that, you know, even before the changes from CDIA and
22 the industry going back to Fair Credit Reporting 101 30
23 years ago or whenever it was is when you can no longer
24 validate or verify a debt, you can no longer report it.
25 So, when your assignment of a debt is terminated by your

1 client, and whether they take it back in-house and write
2 it off or they sell it to a secondary source, I cannot
3 ethically or legally continue to report that
4 information, and we delete it, and that is the common
5 practice in the industry.

6 MS. KUEHN: Don?

7 MR. REDMOND: It's no surprise that the Credit
8 Reporting Resource Guide is sitting here up on the
9 table. It's an excellent source of information. It is
10 very much the standard that everyone uses, and there are
11 good reasons for that.

12 MS. KUEHN: And it sounds like, at least, one of
13 the main problems that Ian has identified, which there
14 possibly being multiple chains of accounts or multiple
15 collection accounts reported with respect to a single
16 collection account, can be addressed at least in some
17 part by, you know, no longer reporting on accounts that
18 you're no longer collecting on. Mike wants to say
19 something.

20 MR. TORMEY: If I could talk to that a little
21 bit, what Ian was referring to is, let's say he has a
22 MasterCard account with bank A. Bank A subsequently
23 decide to sell their MasterCard business to bank B,
24 and then subsequently goes to bank C and bank D and bank
25 E. When you look at the credit report itself, there

1 will be those listings of those accounts, but it will
2 show zero balances, and it will show the account
3 experience that that bank had with that consumer for the
4 period of time that they owned the debt.

5 Then often, it will say "sold" or "transferred,"
6 and then you can see that chain of accounts, and the
7 original opening date of the trade line will stay the
8 same. Now, the account numbers may vary, but actually,
9 for credit reporting purposes, it's very important to
10 know that bank A had it for six months, bank B had it
11 for three years, bank C had it for two years, or
12 whatever the case may be, going back to the statute of
13 limitations. So, it's not inaccurate and it's not
14 duplicate; it is that those are different times that
15 those accounts belonged to a different vendor or a
16 different vendor of that credit.

17 And then, subsequently, if the information or
18 the debt becomes delinquent and it is then assigned to a
19 collection agency, then you'll get an additional trade
20 line showing the collection being assigned from the last
21 creditor.

22 MR. LYNGKLIP: If that account is reported with
23 a zero balance and only the -- the creditor is only
24 reporting the payment grid, that's correct. I mean, you
25 can show the historical data and the zeros, but I'm not

1 talking about zeros. I'm talking about when the first
2 bank doesn't zero the trade line or maybe the bank, bank
3 one, zeros it, but bank two, bank three doesn't, or debt
4 collector two or three doesn't zero their trade line.

5 One of the problems is, again, there is no
6 affirmative obligation, at least in the FDCPA, that
7 prior reportings be retracted. So, theoretically, under
8 the way that the FTC is interpreting this, that could
9 persist on the report even if it's not in the same way
10 that the CDIA is recommending that those data furnishers
11 actually handle it. The law does not actually comport
12 with what the industry standard is, at least.

13 Theoretically, if the industry standard was
14 being followed, that would go a large way to helping the
15 problems, but one of the issues is that we don't see
16 compliance, and we don't see the bureaus kicking back
17 that data, and we do not see the mechanism for the
18 bureaus to be able to recognize those account numbers
19 and correspond them to each other if there's a new
20 account number that's being assigned.

21 MS. KUEHN: And it sounds like that's one of the
22 challenges of a voluntary reporting system, that, you
23 know, as far as what information is reported, what
24 information the bureaus can, you know, ask for.

25 MR. ELLMAN: Can I make a couple of comments to

1 some of the things that have been said?

2 MS. KUEHN: Sure.

3 MR. ELLMAN: Becky, you are exactly spot on.
4 This is, in fact, a voluntary system, and that's what
5 makes it unique, and that's what makes it quite
6 beneficial, as we've heard from all the testimony in
7 Congress as a result of the FACT Act and other things,
8 which is a good segue into the point that the credit
9 reporting agencies -- that a precise credit reporting
10 system, an accurate credit reporting system, does not
11 happen and cannot happen in a vacuum.

12 We rely on data furnishers, we rely on users of
13 users of consumer reports, and, in fact, Congress
14 recognized this when they went through the FACT Act
15 debates in 2003, and it imposed new and significant
16 obligations on data furnishers that had never existed
17 before, and obviously the FTC and others are going
18 through the rulemaking process for furnisher rules and
19 accuracy, integrity and all that, and if, in fact, there
20 are deficiencies on the furnisher side, perhaps they
21 will be addressed in the rulemaking process.

22 MR. LYNGLIP: I will just point out that the
23 system is not voluntary for those people who are
24 disputing debts. They are clearly disputing debts, they
25 think they have a good reason to dispute them, and for

1 them it is completely involuntary that these items
2 persist on their reports.

3 MR. REDMOND: You know, something else we have
4 got to recognize, Becky, credit reports to anybody, even
5 people who do this stuff for a living, it's just
6 complicated material, and I think it's certainly true --
7 Mike was pointing out, you know, sold or transferred to
8 so and so. I mean, when you look at a credit report,
9 it's not easy for anyone to understand all the data
10 that's there sometimes.

11 I know from what I have seen, there are many
12 times when somebody is concerned about their credit
13 report, but they simply don't understand what's there,
14 and one of the problems is it's kind of like linear
15 algebra. There is no way to make it simple. And so
16 when people are looking at these, I think many times
17 they just don't realize what they've got there, even
18 though it's perfectly correct.

19 MS. KUEHN: There may be no errors; it's just
20 confusing and hard to understand.

21 MR. REDMOND: And there certainly are times when
22 there are errors, but I'm saying one of the things that
23 makes it difficult for any consumer, let alone the least
24 sophisticated consumer, dealing with a credit reporting
25 issue, is that the stuff is just complicated, and it's

1 hard to understand when you look at it.

2 MS. KUEHN: Well, let's go to two other areas as
3 we're closing in on our time, I want to make sure we
4 have adequate time to talk about these, and one of them
5 that came up I think in a number of comments filed in
6 advance of the workshop was the issue of what we like to
7 call re-aging of debt, and you guys had asked for a
8 definition in advance of discussing that.

9 In essence, that is a situation in which a debt
10 collector, a subsequent debt buyer, a subsequent
11 furnisher of information about an account, changes the
12 date of delinquency, i.e., the date that obsolescence of
13 the information is determined. In other words, the Fair
14 Credit Reporting Act -- I'm sure everybody in this room
15 knows this -- has limitations on how long negative
16 information about a consumer can be reported, and that
17 is keyed to the date on which the consumer has been
18 determined delinquent, the date of delinquency, and
19 there's some specific rules on that.

20 One concern we've heard, and we have heard this
21 from the consumer side and a number of commenters, is
22 that there are those in the debt collection industry who
23 are changing the dates or basically changing the date in
24 such a way, moving it forward in time, so that the
25 accounts stay on the report longer than that.

1 I wanted to let Ian briefly have an opportunity
2 to talk about sort of, you know, what he's seen with
3 respect to that problem and then talk about maybe ways
4 in which we can address that.

5 MR. LYNGLIP: Well, I think the -- and I'm not
6 sure that I want to say that this is an industry-wide
7 problem, because certainly there are -- we see a lot of
8 accurate information, at least as it relates to this
9 particular problem. We do see some of the market
10 players, the same market players, doing this over and
11 over again, and the way that this comes about is that
12 there's a specific piece of information that's required
13 by the Metro 2 code, and it's the date of first
14 delinquency, and what we see the debt collectors doing
15 is substituting in either the date on which they
16 acquired the portfolio or the date of the last payment
17 for the date of first delinquency, and there could be a
18 very big difference between these dates. And sometimes
19 we've seen -- sometimes -- that this is due to a simple
20 error of them not understanding, but after a debt
21 collector has been sued a couple times for making the
22 same error, we tend to doubt that that's actually an
23 error. It looks more like a policy to us.

24 One of the things, again, back to the idea that
25 having a record retention requirement for the Metro data

1 that's coming in from the original creditors or having
2 an actual chain reflected of the original creditor with
3 their date of first delinquency and any subsequent
4 assignees in the format, that would solve this problem
5 immediately, which is that we could always look back to
6 that data which is reported every single time and be
7 able to say, okay, the date of first delinquency that
8 the creditor had was January 1st, and all of a sudden,
9 it changes.

10 MS. KUEHN: And this is a question for April,
11 this issue, and I think it relates to the amount of
12 information that's provided from the creditors when they
13 sell debt or when they assign it for collection. Should
14 there be some requirement on banks or other issuers to
15 provide the original date of delinquency? Is there some
16 existing requirement when they're selling the debts to
17 debt buyers or on down the chain?

18 MS. BRESLAW: Well, again, you know, I'm sorry,
19 I'm beginning to sound like a broken record here, but
20 our, you know, approach is very much that the parties,
21 when they're selling debt or engaging in these
22 transactions, can make whatever arrangements make
23 business sense to them, but we would hold our banks
24 responsible for reporting accurate information, and they
25 would have to have a defensible date of first

1 delinquency when they start off. And I think we would
2 also expect that in the transaction, that this would be
3 covered in the transaction documents to make sure that
4 problems of that nature don't arise in the future.

5 MS. KUEHN: Don and/or Mike, about the
6 information that you obtain from creditors when you
7 purchase debt or you obtain it for collection, is this
8 information that you routinely get as part of the
9 information you do get on a consumer?

10 MR. REDMOND: Sure. We purchase date of
11 delinquency, and, you know, if anybody takes date of
12 delinquency -- it's supposed to be 2002, and they put
13 2005 for the purpose of extending the reporting period,
14 they're breaking the law, and no responsible player in
15 the industry would condone that.

16 MS. KUEHN: Mike?

17 MR. TORMEY: I would also add that the
18 marketplace takes care of some of this on its own, again
19 an anecdote, but some years ago when I was associated
20 with one of the credit reporting agencies, it came to
21 our attention of one of the people in the marketplace
22 was manipulating those dates. We barred them from
23 posting data to the database and did so for about five
24 years, and that had a severe impact on it.

25 I think in the case -- if Ian has an agency that

1 he knows about, if he takes that information to the
2 three major players, they would probably take a serious
3 look about whether they want to continue to do the
4 maximum reporting accuracy standard with that particular
5 agency.

6 MS. KUEHN: Let Eric jump in here. Sorry, Ian.

7 MR. ELLMAN: And Mike obviously highlighted an
8 important value, and that is CDIA and its members
9 strongly believe the data furnishers want to report data
10 that, in fact, is accurate and in full compliance with
11 the law. The date of first delinquency is specifically
12 regulated by the FCRA. It's specifically the subject --
13 it's the subject of specific guidance in the Credit
14 Reporting Resources Guide. There is one and only one
15 date of first delinquency, and that date never changes,
16 and it's clear in the statute, it's clear in the
17 guidance that we provide to data furnishers, and, again,
18 if this is an area and this is -- perhaps this is a
19 subject that's best addressed in a data furnisher rule
20 or, as I think we've heard from our panelists who
21 represent the business side, that there doesn't appear
22 to be a widespread problem.

23 MS. KUEHN: Don, we had a question of
24 clarification about your comments. You had said
25 something about purchasing the date of first

1 delinquency?

2 MR. REDMOND: When we purchase a file, that is a
3 type of data that is included in the file.

4 MS. KUEHN: Okay, and that's -- so, you're not
5 purchasing files where you don't have that information,
6 or is that not the case?

7 MR. REDMOND: That doesn't -- it doesn't do us
8 much good. I mean, the point is to get as much data as
9 we can. That doesn't mean that occasionally, you know,
10 a record won't come through that's incomplete. That
11 happens any time you get 5000 of anything. You might
12 have some that are wrong, but that's -- you know, or
13 incomplete, but that's obviously not the point. The
14 point is we try in every file to purchase certain data,
15 including the date of delinquency.

16 MS. KUEHN: I think one of the tensions here,
17 and I think this may be a question raised by the desire
18 to make sure we're not having multiple accounts reported
19 but at the same time making sure that the dates of
20 delinquency aren't reported.

21 What I call the alternative date of delinquency
22 rules that came out in the last amendments to the FCRA
23 depend on first knowing whether or not the account has
24 ever been reported before, and for, you know, accounts
25 that are, say, other than credit accounts, that have

1 traditionally been reported historically, that they may
2 only be reported first time in the collection process or
3 not, and you don't know, is that the sort of
4 information -- do you get history of what's been
5 reported by your prior debt owner, either a creditor or
6 a different kind of a debt owner, that reflects what's
7 been reported to the CRAs before it's come to you? In
8 other words, no the just the date of first delinquency,
9 but what information has been previously reported to the
10 CRAs.

11 MR. REDMOND: I'm not aware of having a credit
12 reporting history.

13 MS. KUEHN: Do you have any experience with
14 that, Mike?

15 MR. TORMEY: Most of my clients have never
16 reported before. A large portion of our business is
17 medical. So, they're not in the general part of
18 reporting on a routine basis. So, the first time it
19 hits the credit file, it's from us.

20 MS. KUEHN: Well, last --

21 MR. ELLMAN: One last point, if I could, before
22 we leave this topic, and that not only, of course, is
23 referring to the obligation dealing with the
24 establishment of the date of delinquency, but the new
25 component of the FACT Act puts a new standard of

1 liability on data furnishers that prohibits them from
2 furnishing data that they know or have reasonable cause
3 to know is not accurate.

4 MS. KUEHN: What I want to talk about last is
5 sort of intersection of FDCPA and FCRA, and it deals
6 with the issue of accounts that are reported to the
7 consumer reporting agency prior to a consumer knowing
8 that a debt collector or a debt buyer has the account
9 for collection. One of the proposals, specific
10 proposals, that's been raised is a proposal that the
11 debt collector, debt buyer, should delay reporting until
12 after the expiration of the initial 30-day notice under
13 the FDCPA.

14 The first question I want to ask relates to the
15 credit user industry, in other words, the credit
16 issuers. You know, what effect would that have, sort of
17 delaying by 30 days the reporting of accounts that are
18 sent to collection, on the data that credit issuers rely
19 on?

20 MS. BRESLAW: Obviously everyone wants the most
21 accurate and current information possible, so I think
22 that that, you know, would have -- it's only 30 days,
23 but I think that it would have some degree of
24 impairment, I guess, on the ability to make accurate
25 credit decisions.

1 I guess my own view is that, on balance, if
2 there was a serious consumer problem with that, that
3 might outweigh the concern that creditors might have
4 with it.

5 MS. KUEHN: I want to throw this to Don and
6 Mike, because this is a proposal that would affect
7 obviously your industry. So, the specific proposal is
8 to say once you send the 30-day notice, but you can't
9 actually report on the debt until after that period has
10 expired, you know, is that something that -- you know,
11 what kind of impact would that have?

12 MR. REDMOND: Well, I think it's a bad idea for
13 the credit economy overall. I mean, our credit economy
14 depends on accurate reporting. If people have debts
15 that aren't showing up on their credit reports, that's
16 not accurate. I agree, it's only 30 days, so the
17 prejudice that would result may not be huge, but I think
18 in the end, credit reporting is not about helping people
19 or hurting people or anything of the like. It's about
20 being able to make -- for future credit grantors to be
21 able to make good decisions based on accurate
22 information, and I think the credit reporting system is
23 going to work the best when the information is as
24 accurate as it can be.

25 So, if people have debts that shouldn't be on

1 their credit report, that's not accurate, that's a bad
2 idea, but if they have debts that aren't showing up on
3 their credit report, that's a bad idea, too. So, I
4 think, on balance, I don't think it's a great idea.

5 MS. KUEHN: I am going to let Mike jump in
6 before you, Ian. I see you're ready to go.

7 MR. TORMEY: One last thing that I would add to
8 that is I would think that we would see a further
9 chilling effect in the housing market, that particularly
10 in the C&D level paper, where marginal buyers are trying
11 to get into the housing market, that 30-day delay in
12 accurate information on a credit report could really
13 have an adverse effect on that market, which, frankly,
14 doesn't need any help right now.

15 MS. KUEHN: Ian?

16 MR. LYNGKLIP: This goes directly to a practice
17 that we -- you know, we see time and time again, which
18 we refer to as parking the debt on the consumer's
19 report. One of the most important concepts behind the
20 entire FDCPA is this notion that the consumer has got an
21 ability and a right to dispute this debt, and so, when
22 they do dispute these debts, to get the debt collector
23 to take a look at whether or not this debt is valid in
24 toto or whether it just is to some of the amounts that
25 they are being requested that they pay.

1 The problem that we see over and over again is
2 that debt collectors will park these items on the
3 consumer's report without ever sending the validation
4 notice, and so we see items on the reports for months
5 and years at a time before there's any contact with the
6 consumer, and the consumer does not have the ability,
7 does not have even the right to invoke the rights under
8 the Act to dispute the debt. The G-notice doesn't go
9 out, because the debt collector is not communicating.

10 And what's happening is that -- this is a
11 practice of report first, validate much, much later, and
12 what we're talking about is, you know, a very, very
13 limited period, and, in fact, you're raising what is
14 effectively a strawman, which is that, oh, somehow or
15 another this item is going to come off the report for
16 the 30 days, and the credit granting community is going
17 to be completely deprived of this data. Not so.

18 I mean, you can provide in your agreements for a
19 time of reporting. You can provide your buy/sell
20 agreements for these portfolios, that the original
21 creditor or the other debt buyer from whom you are
22 acquiring this debt will continue their reporting of
23 this item, and, in fact, we see them doing it anyways.
24 I mean, that's what we just talked about, that these
25 items continue on the report and there is no obligation

1 for them to actually remove it.

2 These items can persist on the report during the
3 validation period but should not do so under the new
4 debt collector or new debt buyer's trade line until they
5 have validated this debt or at least given the consumer
6 the opportunity. The relevant trigger on the FDCPA is
7 the first communication with the consumer, and if that
8 communication doesn't ever occur, then this item can
9 stay on the report for, you know, for a very long time
10 under the current statute.

11 MS. KUEHN: So, something akin to the negative
12 information notice, for example, that's required of
13 creditors prior to providing negative information on a
14 consumer report.

15 MR. LYNGKLIP: Absolutely, but at the very
16 least, even if we don't say you can't report during the
17 validation period, and I think that that would be --
18 that that is not, you know, what the FDCPA reflects
19 currently, at least if there's going to be reporting,
20 there should be the opportunity for the consumer to
21 dispute, have that be a trigger, which is permissible,
22 to allow the consumer to dispute.

23 So, once a debt collector decides that they're
24 going to send this information onto the bureau, they
25 should be required to send out some kind of a notice

1 that allows the consumer to activate their rights under
2 1692-G.

3 MS. KUEHN: Mike, you have got the microphone.

4 MR. TORMEY: Yeah, I do. In the real world out
5 there, I don't know of any collector that would choose
6 not to send a notice to a consumer upon the assignment
7 of a debt. We're asking for payment. And if we don't
8 want to get paid, sure, we won't send the notice, but
9 that's kind of silly. The point is is that we will send
10 that notice, and I believe in Colorado -- Laura Udis I
11 think is in the room, she may tell me whether I'm right
12 or not -- I think we're required to send that notice
13 within five days of the assignment of the debt, and so
14 no one would just park the debt on a guy's credit report
15 hoping that somehow they'll be turned down for credit
16 and they'll come looking to you to make the payment.
17 You won't represent your client very long if you do
18 that.

19 MR. REDMOND: Well, you just said stuff can get
20 on somebody's credit report, and I don't know where the
21 word "parking" came from, but it will get on somebody's
22 credit report and a notice won't go out for years.

23 Well, who --

24 MR. LYNGLIP: Or ever sometimes.

25 MR. REDMOND: -- who would do that? Who would

1 do that, do a debt and never try to collect it?

2 MR. LYNGLIP: A collector who is collecting a
3 debt that is less than \$100 and doesn't want to spend
4 the money on a stamp when only paid 37 cents for the
5 debt, that's who, and that's where we see it most
6 commonly in the context of, with all due respect, for
7 medical debts for a single blood test where there's a
8 \$57 debt or where there's an outstanding check.

9 Small debts are a prime target of that, and
10 certainly when you're dealing with a large debt, a
11 \$40,000 debt or a credit card debt of some kind,
12 absolutely, the debt collector needs to make contact and
13 needs to try and get out there and talk with the
14 consumer, find out whether arrangements can be made,
15 whether they intend to pay the debt, to do what is
16 appropriate to get that debt paid.

17 MS. KUEHN: And it is only when the consumer is
18 applying for credit years down the road that they
19 discover that this account has been reported.

20 MR. LYNGLIP: Well, there are -- I see that
21 time and time again for some of my consumers. I see it
22 for -- for others, you know, it may be just that they've
23 gotten their regular annual free credit report,
24 something like that.

25 MS. KUEHN: I was going to mention that. Thank

1 you for bringing that up.

2 MR. LYNGLIP: You know, these things turn up in
3 the oddest ways, but we do see consumers coming to our
4 offices, and it may be that simply the debt collector
5 has not actually effectively skiptraced them and found
6 them, the consumers have not received a notice. Now,
7 that may not necessarily be a situation where you didn't
8 send the G-notice, but we see consumers regularly
9 showing up at our offices with items on their report
10 that they've never received contact from a debt
11 collector, most frequently with very small debts that
12 would not merit sending a notice and invoking an entire
13 FDCPA compliance protocol under 1692-G.

14 MS. KUEHN: Well, it doesn't sound like, at
15 least with respect to our panelists, that's a practice
16 that they're familiar with and or with the debts that
17 they handle.

18 MR. REDMOND: I just don't know why anyone would
19 not try to collect the debt they have, and so the idea
20 that somebody would park a trade line without trying to
21 collect the debt just doesn't sound logical to me.

22 MS. KUEHN: So, at least with respect to the
23 debts that you guys are involved with, an initial notice
24 is going out, you guys are making that attempt to
25 collect, and so the consumers are at least aware of your

1 existence, that you have the debts.

2 You know, with respect to, you know, there are
3 collectors who are reporting on debts but who choose for
4 whatever reason at the time being not to collect on a
5 debt or they're waiting until a consumer's credit has
6 improved before attempting to collect on a debt, you
7 know, what's your view of a requirement, similar to the
8 negative information notice, that would at least
9 require, at the bare minimum, letting a consumer know
10 before any reporting is done on them?

11 You know, obviously I'm not sure it would
12 greatly affect you as much, because you are already
13 sending the initial notice, but is that something
14 that -- you know, do you see any downsides or pitfalls
15 to that?

16 MR. TORMEY: I do in one particular case. Let's
17 say we received an account from one of our clients
18 today, and when we put it into our database, we have
19 seven or eight other accounts that have already been
20 assigned, and the address that this client has given us
21 is an address we know to be bad. We know that we can't
22 find this person. This is already in a skiptrace
23 situation.

24 Now, if we're prohibited from reporting that
25 information until we can actually make a bona fide

1 attempt at validation, you could put that information
2 out there in limbo land for a long time and would deny
3 credit grantors accurate information.

4 MS. KUEHN: And the person could be -- you know,
5 and that was an issue that was discussed on the last
6 panel, to be able to sort of trace the right consumer
7 and give notice to them, you may not actually be able to
8 get notice to them, you know, if they've moved, if
9 they've changed addresses, and you haven't been able to
10 locate them.

11 MR. TORMEY: True.

12 MR. LYNGLIP: But that assumes that the
13 requirement would be that the consumer receives it, you
14 know, it's simply addressed by providing that the notice
15 has to be sent to the best available address. I mean,
16 once you've provided for that, then, you know, you can
17 send the notice. Send the notice and start your
18 reporting. And if you get no -- and if the consumer
19 contacts you later and says, by the way, I see on my
20 report, and they're talking with you, and now we've got
21 a G-notice as a backstop to provide you with the
22 opportunity to validate that debt.

23 MS. KUEHN: Well, guys, I am going to wrap this
24 up, because we started a few minutes early, and say
25 thank you to this panel. It's been very lively. The

1 questions have been great. Thank you so much.

2 (Applause.)

3 MR. KANE: Thank you very much, Becky and
4 panelists. I want to say, we are going to extend lunch.
5 Instead of an hour, we are going to make it an hour and
6 15 minutes, but we are still going to end today at the
7 same time. So, if you all would get back by 1:30 rather
8 than 1:15, we will need to start promptly at 1:30.
9 Thank you very much. Enjoy your lunch.

10 (Whereupon, at 12:15 p.m., a lunch recess was
11 taken.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AFTERNOON SESSION

(1:32 p.m.)

DEBT COLLECTION LITIGATION:

CURRENT ISSUES

MR. KANE: Thanks for coming back from lunch.
We'll get started now.

This first panel this afternoon will examine collection litigation practices that have caused concern among consumers as well as potential responses to these concerns, and our moderator will be Reilly Dolan. He's an Assistant Director in the Division of Financial Practices.

Reilly?

MR. DOLAN: Thank you, Tom.

Well, as I sat here for the last day and a half I kind of felt that my panel was being touted as the be-all and end-all I hope that I can live up to those expectations.

I want to introduce our panelists and quickly identify the topics we're hoping to cover today, and as you've heard throughout the day, if you have questions, if you write them on the cards, we have people walking around to collect those and hand them to me, and I will try and fold them into the flow of the conversation where appropriate, and if they don't quite fit into the

1 flow of conversation, I'll see if there's time at the
2 end.

3 This whole panel was scheduled to go to 2:30.
4 Because we extended the lunch to an extra 15 minutes, I
5 am going to extend this panel, keep its original time
6 slot, just shift the whole panel by 15 minutes, so that
7 we should be ending by 2:45.

8 The panel includes, to my immediate left, Lynn
9 Drysdale. She is a consumer protection attorney with
10 the Jacksonville Area Legal Aid, where she represents
11 consumers through litigation and legislative advocacy.
12 She has provided testimony to the Federal Reserve Board,
13 the U.S. Senate, as well as state and local authorities,
14 and she is a member of the National Association of
15 Consumer Advocates.

16 To Lynn's left is Roger Haydock, who is the
17 Managing Director of the National Arbitration Forum and
18 a professor of law at the William Mitchell College of
19 Law. He has taught dispute resolution and consumer law,
20 among several other topics, and he has extensive
21 experience as a lawyer, a mediator, and as an arbiter.
22 He has practiced as a consumer lawyer with the Southern
23 Minnesota Legal Services and is of counsel with Robins,
24 Kaplan, Miller & Ciresi. And I apologize if I butchered
25 that name.

1 MR. HAYDOCK: I'm not one of those.

2 MR. DOLAN: Next we have Steve Fritts, who is a
3 29-year veteran of the FDIC. His responsibilities have
4 included corporate functions, including safety and
5 soundness supervision, bank resolutions, and consumer
6 protection compliance, and he was appointed as the
7 associate director for risk management policy in July
8 2002 within the FDIC's Division of Supervision and
9 Consumer Protection.

10 To his left should be Bob Hobbs, who is the
11 Deputy Director of the National Consumer Law Center. He
12 specializes in Fair Debt Collection law, and all I'm
13 going to say is he seems to have a lot of publications
14 on the topic. If you want the specific publications,
15 they are in the biographies that are in the materials.
16 Mr. Hobbs also is the former Treasurer of the National
17 Association of Consumer Advocates and a former member of
18 the Federal Reserve Board's Consumer Advocacy Council.

19 To his left is Manny Newburger, who is the
20 president of the Fair Debt Consultants, LLC and the law
21 firm Barron, Newburger, Sinsley & Wier. He and his
22 attorneys in the firm have represented creditors,
23 collection agencies, debt buyers, and law firms in
24 FDCPA-related cases in a number of states. He also has
25 a fairly large number of publications to his credit.

1 Finally, last but not least is Adam Olshan, who
2 is a partner with the Law Offices of Howard Lee Schiff,
3 located in Connecticut. He also is licensed to practice
4 in New York, Massachusetts, and New Hampshire,
5 collecting consumer debt for a variety of national
6 clients, including financial institutions, health care
7 providers, debt purchasers, utility providers, retail,
8 and student loan providers. He is the Past President of
9 the National Association of Retail Collection Attorneys
10 and is the founder of the Connecticut Creditor Rights
11 Attorneys Association.

12 The one thing that I would like to remind each
13 of the panelists is that to the extent possible,
14 identify if you are representing the views of your
15 particular organizations or if they're your personal
16 views, just so we have a sense when we reculling through
17 the record what your comments are relating to.

18 The four topics we were hoping to reach today --
19 and I do think that there's a lot to cover, so, again, I
20 apologize to the extent that there may be more depth
21 that we could get into in any particular one, but in
22 essence, to try and reach all four with anything more
23 than a cursory look, some depth may need to be
24 sacrificed -- include garnishment of federally protected
25 funds; litigation to collect on time-barred debt; the

1 abuse of the court process, focusing specifically,
2 although not necessarily entirely, on the use of the
3 default mills; and finally, mandatory arbitration.

4 What I am hoping to do is to be able to dig a
5 little bit deeper than some of the topics that may have
6 already been addressed earlier in the workshop, but I
7 also want to avoid going down any rabbit holes. We've
8 heard a lot of broad, many times subjective perspectives
9 as to the prevalence of some of this conduct. By
10 analogy, I would say that over the last day and a half,
11 some people believe that the ice caps will be melting
12 tomorrow, and others believe that the ice caps will be
13 covering the entire globe by tomorrow. My suspicion is
14 that it is somewhere in the middle, so in discussing the
15 topics that we're going to discuss today, I'm asking the
16 panelists to give, to the extent possible, some sort of
17 objective perspective rather than just the subjective
18 "we're doomed or we're saved" kind of prognostications.

19 Moving on to the first topic, garnishing exempt
20 income, Adam, can you give like a 60-second synopsis of
21 the garnishment process, realizing that it does differ
22 state to state?

23 MR. OLSHAN: Absolutely, and my comments would
24 be as Past President of the National Association of
25 Retail Collection Attorneys.

1 Essentially the state level or state court judge
2 enters against a consumer. Once a judgment enters,
3 generally speaking, because laws do vary from state to
4 state, the judgment creditor is then able to levy a bank
5 execution against the consumer's bank account. The
6 plaintiff will apply to the court for an execution
7 order. They will get the order back from the court.
8 They will send it to a marshal. The marshal will then
9 go to a bank and serve it on the bank. The bank will
10 then, pursuant to state statute, review their records to
11 see if this individual has any account with their
12 organization. If so, pursuant to the state statute,
13 they'll freeze the funds. That's generally how a bank
14 execution order works in our country currently at the
15 state level.

16 MR. DOLAN: What evidence or support is the
17 local clerk of court looking for when signing that order
18 of garnishment?

19 MR. OLSHAN: These are general questions,
20 Reilly, because, again, it will vary from state to
21 state, but generally when the judgment creditor applies
22 to the court for a bank execution, the court clerk will
23 confirm that the application filled out by the plaintiff
24 is accurate, the judgment information has been entered
25 accurately, that the judgment date is there accurate.

1 If so, the application will be approved and sent back to
2 the attorney for levying by marshal.

3 MR. DOLAN: Perhaps or most likely a rhetorical
4 question, but is there any inquiry by the clerk's office
5 about the likelihood that there may be federally
6 protected or even state protected funds within the
7 accounts that you're seeking to include in your
8 garnishment order?

9 MR. OLSHAN: Well, there's not, and I think the
10 reason not is because the clerks in the court know that
11 where the attorneys do send interrogatories
12 post-judgment to the consumer, that we get them back
13 next to never. So, I have personally attempted
14 projects, if you will, where I've sent certified
15 post-judgment interrogatories to judgment consumers,
16 asking whether they have exempt funds, and if so, where,
17 and the rate of return was far less than 1 percent. So,
18 I believe that the court clerks recognize and understand
19 that that's the case. So, for the attorney, it's not
20 likely that they'll be in a position to know whether
21 there are exempt funds.

22 MR. DOLAN: To Lynn or Bob, how prevalent is the
23 garnishment of federally protected funds based on your
24 experience in your organizations?

25 MS. DRYSDALE: I can tell you that in my office,

1 and this is in Florida -- and I want to thank you for
2 the opportunity to speak today -- I can tell you that in
3 my office that I represent an awful lot of the elderly
4 people, pensioners, veterans, and disabled people, and I
5 have to tell each and every one of them that if they
6 have a judgment against them, then their bank account
7 will likely be garnished.

8 I have to tell them, also, that their funds are
9 exempt from garnishment, but that doesn't necessarily
10 mean that they're not going to be without their funds
11 for rent, medicine, as long as they've got a bank
12 account, which most of them are required to do to get
13 their benefits. Then if they have a judgment, their
14 assets are going to be frozen.

15 MR. DOLAN: Bob, do you have anything to add to
16 that?

17 MR. HOBBS: It's an area of a great deal of
18 complaint from legal services offices across the
19 country, and I could not quantify it, but I think that
20 the question is really not the right question. I think
21 if there's one grandmother out there who's losing all of
22 her assets for two weeks, that that's one too many.

23 MR. DOLAN: You may have actually bled right
24 into the very next question, which is what is the injury
25 resulting from a consumer whose funds are temporarily

1 frozen?

2 MR. HOBBS: So, there's a recent decision by the
3 Seventh Circuit that dealt with the situation where the
4 debt collector was told before they obtained the
5 judgment that the consumer was disabled. They were told
6 at the point after the judgment that the consumer was
7 disabled and was on disability, which is a nickname for
8 a type of Social Security. Usually the person who's
9 receiving disability will often be receiving less than
10 \$1,000 a month on which to live, and that disability was
11 then frozen for two weeks before it was released when
12 both the collection attorney and the consumer showed up
13 in court.

14 The court said that that was not unfair under
15 the Fair Debt Collection Practices Act, but maybe the
16 Federal Trade Commission could act, and I hope they do.

17 MR. DOLAN: Lynn, do you have something on that?

18 MS. DRYSDALE: Well, also, in my -- when I
19 advise people that that's going to happen, I also tell
20 them to write the plaintiff's attorney a letter and to
21 put in the letter that the only income that they receive
22 is Social Security, if that's the case, that the only
23 money in their account is the Social Security benefit.
24 Oftentimes, when the writ of garnishment is issued and
25 the bank is frozen, we will go into the court file and

1 the fact information sheet, which they're required to
2 fill out in Florida, is filled out, and that information
3 is contained in the court file, and yet their funds will
4 be garnished because it's being done by a firm that
5 handles thousands and thousands of cases, and they don't
6 have time to check on this before they go through their
7 routine procedure of obtaining the writ of garnishment
8 through the clerk's office.

9 MR. DOLAN: Adam or Manny, in your experience on
10 the other side, how frequent are accounts with federally
11 protected funds being garnished?

12 MR. OLSHAN: Well, Rob, if I'm thinking of the
13 same Seventh Circuit case you are, I'm not certain, but
14 in that case, I don't believe the attorney had actual
15 knowledge that the funds were exempt ahead of time.

16 But to answer your question, Reilly, the
17 collection attorneys currently don't have any way of
18 knowing whether or not there are exempt funds in the
19 account. As a result, we will apply for bank
20 executions. I agree with Lynn, that in many instances,
21 unless we have a place of employment and we're allowed
22 to attach wages -- in Florida, head of household, we
23 can't, other states we can't, but generally we can, and
24 unless the defendant is making payments voluntarily, we
25 will in many cases attempt the bank execution.

1 If we know for a fact that the judgment
2 defendant has no ability to pay outside of exempt funds,
3 then generally -- and a lot of what I say will be
4 industry norm -- I know that NARCA attorneys will not,
5 as a general matter, attach bank accounts where they
6 know for a fact that there's nothing in that account but
7 exempt funds, but frankly, we just don't know that a
8 lot.

9 So, my answer, Reilly, would be that it is
10 happening, and when it does happen and the consumer,
11 through personal responsibility, lets us know and
12 demonstrates to us that those funds are exempt, that
13 generally the attorneys will release the funds right
14 away and not go to a hearing.

15 MR. DOLAN: You had commented that in many
16 cases, you posit that the attorneys do not know. Are
17 there any particular factors that attorneys should be
18 considering, such as, for instance, the age of the
19 debtor, which most likely, if they're of a certain age,
20 Social Security is going to be their primary if not only
21 source of income? Are any of those kind of factors that
22 attorneys are or if not should be considering when
23 deciding whether to proceed with a garnishment order?

24 MR. OLSHAN: I believe there might be certain
25 situations where a judgment defendant is perhaps

1 elderly, ill, in a nursing home, these sort of
2 scenarios, where the file is and should be simply closed
3 without proceeding to the next levels; however, simply
4 because someone is elderly doesn't mean that they have
5 funds that are unattachable. So, I wouldn't agree that
6 when someone hits a certain point of age, that a bank
7 execution is no longer a desirable remedy.

8 MR. DOLAN: Manny, do you have anything to add?

9 MR. NEWBURGER: Well, I can tell you that --
10 actually, first of all, I would like to thank the
11 Commission for inviting the Commercial Law League to
12 send me. I have defended lawyers in Fair Debt matters
13 across the country, and in all the time I have done that
14 work, I have had exactly one case where a lawyer was
15 accused of garnishing exempt funds, and it wasn't Social
16 Security, and the plaintiff was trying to overturn a
17 hundred years of case law to assert that the garnishment
18 in question couldn't be done.

19 Now, I think we know it happens. If it didn't
20 happen, people wouldn't be here. The question is, is it
21 newsworthy because it's news because it happens rarely
22 or is it newsworthy because it's happening a lot and it
23 shouldn't? And I can only tell you as an attorney who
24 defends law firms, I'm not seeing clients sued very
25 often for that particular type of conduct.

1 MS. DRYSDALE: Reilly, just one response. I
2 think the problem is that your question presupposes that
3 you have an attorney that is paying attention to each of
4 these thousands of files that are being processed, and
5 that's not normally the case. That's not what we're
6 seeing.

7 Instead, you've got the attorney who is aware of
8 the federal laws which make these funds exempt, and they
9 also have the tools to determine what the funds are, but
10 instead, they're going through the process, and then
11 when the debtor does file an affidavit to unfreeze the
12 accounts after checks have been bouncing and rent is not
13 paid, then they will file affidavits saying that the
14 funds are not protected and require the consumer to go
15 to a hearing, and that's what we're seeing on a routine
16 basis, because they're not being handled on a case by
17 case. They're being handled by mill firms that don't
18 pay that much attention.

19 MR. DOLAN: Slightly jumping ahead of me, thank
20 you for having that at least out there as a placeholder,
21 but I did want to quickly pull us back to Steve to
22 discuss, from the banking side of things, at least, as
23 the banking supervising agency side of things, at least
24 one commenter has argued that banks should not honor
25 garnishment orders if the account has protected funds,

1 and the FDIC and I believe the OCC along with the FDIC
2 recently issued proposed guidance that would at least
3 try and address some of the concerns and potential
4 consumer injury from these types of orders when
5 federally protected funds are involved.

6 Can you, for the record, kind of say what the
7 guidance is, what's the status of the guidance?

8 MR. FRITTS: Sure, I'd love to, thank you.

9 I would say this: While there isn't good data
10 on this issue, what we hear from a lot of different
11 sources is that it is a growing problem --

12 UNKNOWN SPEAKER: Mike?

13 MR. FRITTS: Whoops, I'm sorry.

14 UNKNOWN SPEAKER: Bring it closer.

15 MR. DOLAN: The green light should be on. Just
16 need it pretty close.

17 MR. FRITTS: Thank you for the opportunity.

18 What we hear, and data is very difficult to come
19 by, that this is a growing issue, and it's a growing
20 problem, and what we can determine from a factual
21 standpoint is that typically this is happening, don't
22 have any good data on how often it's happening, and that
23 the process in and of itself causes a good deal of the
24 hardship on the consumer. It's where the state law and
25 the federal law intersect, and it doesn't intersect at

1 least very nicely in many cases, and it does put both
2 the consumer, especially, and the financial institution
3 in a tough place in trying to resolve that intersection
4 of the law.

5 And we and the other agencies on September 28th,
6 we issued proposed guidance for comment, we and all the
7 federal banking agencies, and basically there were two
8 pieces to that guidance. We identified nine best
9 practices that while we don't believe those will
10 necessarily totally solve the problem, they certainly
11 can go a long way to minimize the hardship on the
12 consumer, and the second piece of that issuance in the
13 Federal Register was asking some specific questions of
14 the public, both of the industry and other interested
15 parties, as to gather more factual information as to how
16 the process intersection works or doesn't work.

17 MR. DOLAN: Stupid question: Why do banks just
18 not honor the orders?

19 MR. FRITTS: I'm sorry --

20 MR. DOLAN: I am trying to bring it down to the
21 very base level of why the banks are even in that
22 difficult position, because someone will say, "Well, the
23 banks should just not honor the order," and then there's
24 no -- it's a difficult position for the bank.

25 MR. FRITTS: Well, I think there are two or

1 three issues there that make it complex. One, they may
2 not know themselves whether the funds are exempt. Two,
3 the funds may be commingled. And three, the order may,
4 on its face, be unclear as to the scope of it. And the
5 last piece is -- and I think this is the most difficult
6 piece of the intersection, and I think where the legal
7 uncertainty is -- is it a absolute bar and who enforces
8 that bar from an enforcement standpoint, or is it an
9 affirmative defense on the part of the consumer? And I
10 think -- I'm not a lawyer, but our lawyers and other
11 federal banking agency lawyers tell us that's a still
12 somewhat murky issue.

13 MR. DOLAN: Bob?

14 MR. HOBBS: I would like to say there's a
15 pending class action in the Southern District of New
16 York that has to do with the legality of banks freezing
17 Social Security accounts, and there's banks who are
18 defendants in that suit, and they are fighting a final
19 judgment in that case.

20 On the other hand, there's numerous banks in New
21 York City which do say their policy is not to freeze
22 Social Security accounts. So, some banks seem to be
23 able to identify which accounts are Social Security, and
24 it's information which moves electronically through the
25 banking system, is my understanding.

1 MR. DOLAN: Adam, I notice that you want to say
2 something here, and I'm going to ask you, but I also
3 then want you to respond to my very next question, which
4 is, what are the obligations on the attorneys and the
5 obligations on consumers in dealing with the threat of
6 garnishment, the actual garnishment, post-garnishment?

7 MR. OLSHAN: Okay. The attorney's obligation is
8 to collect debt fairly. That's an obligation that all
9 attorneys owe to their state supreme courts due to the
10 fact that they hold a license to practice law.

11 As such, the attorney -- where the attorney
12 knows for a fact that funds are exempt, in my opinion
13 and the opinion of NARCA colleagues, those are funds
14 that should not be intentionally attached. Where an
15 attorney files a bank execution -- and bank execution --
16 to answer your first question about why do banks do
17 this, it simply goes to Fair Debt Collection.

18 When a state court enters a judgment against an
19 individual, that order entitles the judgment creditor to
20 a court order payment that should be honored. Where the
21 defendant does not pay that, fairness dictates and the
22 judgment plaintiff should have remedies whereby they can
23 voluntarily get that judgment paid. A bank execution is
24 one that goes back many centuries.

25 Where the attorney hears that funds are exempt,

1 I believe that they have an obligation to inquire of the
2 judgment debtor more information. The judgment debtor
3 certainly has an obligation to inform the attorney that
4 funds are exempt. If the bank doesn't know that the
5 funds are exempt, the attorney certainly can't know.

6 My opinion is that the judgment debtor has an
7 obligation to communicate that. Where the attorney gets
8 this information, they should then investigate it, and
9 if they determine through receiving bank statements or
10 whatever information they get that those funds are, in
11 fact, exempt and there's no question of commingling,
12 then in that case, the matter should be released, and I
13 don't believe the consumer should need go down to a
14 hearing. That should happen very quickly.

15 MR. DOLAN: Does anyone else have anything to
16 add, because I want to move on to the next set of
17 topics. Hearing none, we shall continue.

18 One of the other major issues that has been
19 raised throughout the last day and a half is the threats
20 of suit or actual suits on time-barred debts, and just
21 kind of for laying the ground work, generally there are
22 state statutes. They vary throughout the states -- some
23 are fairly short, some are fairly long -- that prohibit
24 filing lawsuits to collect on debts at some point under
25 the statute of limitations. In some states, it is a

1 total ban; others raise it as an affirmative defense.

2 The first question I have -- and I am going to
3 throw this out to Manny, Adam, Lynn, and Bob, and I
4 guess I'll start with Bob this time and then move on --
5 is what is the consumer injury for filing a lawsuit on a
6 time-barred debt? Assuming that it is the correct
7 consumer and the correct amount on the debt, the only
8 issue is statute of limitations has expired?

9 MR. HOBBS: Well, the problem is is the debt
10 reaches a stage where it's stale, and particularly when
11 you're talking about people who are lower income, they
12 don't have an attic where they can store their bills for
13 10 or 20 years, and the records that the debt collector
14 has may be no longer in existence, and so society has
15 said -- so, that's one policy, is debts that get old are
16 less acceptable to proof.

17 The other problem is how long a person is asked
18 to engage in paying back a debt that they can't afford,
19 and we have policies in place that try to make this the
20 country of hope and opportunity rather than the country
21 of perpetual despair. I'm reminded of the popular song
22 when I was a child where the refrain was, "I owe my soul
23 to the company store."

24 In Massachusetts, if you get a judgment on a
25 debt -- and consumers are never represented on debt

1 collection matters in Massachusetts courts -- that
2 judgment is good for at least 20 years, and if the
3 judgment creditor goes in at 20 years, it's perpetual.
4 It earns 12 percent interest each year, which means
5 that's doubling every, what, six years? And I think
6 that part of what the business that's going on now is
7 creating perpetual debt, and people should be paying
8 their debts, but people also need, at certain points, a
9 fresh start or they are simply pressed down so hard that
10 they give up hope.

11 MS. DRYSDALE: Well, I think I see three
12 problems with suing on time-barred debts. One is the
13 obvious, that if the consumer is not going to have proof
14 of payment, they are not going to be able to provide any
15 defenses to the debt that they would have previously
16 had. The other problem I think is highlighted in --
17 I'll give an anecdote which is very typical of what I
18 see.

19 An 82-year-old veteran had come into the office,
20 and he was on the beginning stage of dementia, and he
21 had an account with Chase, and he had opened the account
22 in 1999, and he had opened it to pay off three credit
23 cards. So, it started out at about \$6,000. When they
24 finally sued him in 2007, they sued him for over
25 \$16,000. And generally, when I see the lawsuits, you

1 see that the card was a \$500 limit card, and the
2 lawsuits are generally going to be for \$1,500 to \$2,000.

3 But in his particular instance, for I guess
4 eight years, there had been an accumulation of
5 over-the-limit fees, late fees. Chase had charged him
6 with eight different products, including credit
7 protection, life insurance, payment stoppage insurance,
8 all different types of payment protection, credit
9 reporting insurance. It sold him all of these products.
10 So, for six or seven years, you had had this
11 accumulation and ever-growing of debt that absolutely
12 provided absolutely no benefit to the gentleman who was
13 being sued.

14 During that time period, they had instituted an
15 automatic withdrawal from his bank account every month,
16 so every month, they were getting \$200 of his limited
17 Social Security benefits while they were charging him
18 for all of these junk charges, late fees, and
19 over-the-limit fees. So, by the time they filed the
20 lawsuit, he had paid back probably three times more than
21 the actual amount at the beginning of the debt, yet he
22 still owed \$16,000 on a \$6,000 debt. So, that's the
23 other problem that you have on suing on debt that has
24 just been sitting there accumulating over the years.

25 Also, I think there's a greater chance of suing

1 the wrong person. I know you wanted to limit our
2 comments to people that owe the actual debt, so I'll
3 save that comment if you prefer, but that is the other
4 problem.

5 MR. DOLAN: You can go ahead and --

6 MS. DRYSDALE: Well, I know in one of the
7 earlier panels today they were talking about skiptracing
8 and about how reliable this was and it's a great
9 resource for making sure that you're suing the right
10 person. Well, I think that the longer you wait to sue
11 someone, the greater chance you are going to have that
12 you're going to sue the wrong person. I don't know how
13 many times I've sat in my office with a client in front
14 of me who is being sued on a debt.

15 I call the law firm, and we have about five or
16 six law firms in Florida that file most of these cases,
17 and I get one of the managing partners on the phone, and
18 he says, "You know, I know that you work for Legal Aid
19 and you don't have that many resources available to you
20 and we spend a lot of money to make sure that we're
21 suing the right person," and he went through this whole
22 spiel about their whole skiptracing and all the efforts
23 they took to make sure they were suing the right person,
24 and he said, you know, "I know you're supposed to
25 believe what your clients tell you --" and I hear this

1 all the time -- "but your client is a 40-year-old
2 deadbeat that works for the Post Office and he just
3 doesn't want to pay his bill."

4 I replied to him, "Well, if he's 40 -- if he's
5 40 -- if he's 40 years old, he really didn't age well,
6 because he's sitting across the table from me, he's 72
7 years old, he's not presently working, he has never
8 worked for the Post Office, and he doesn't have a common
9 name. So, I'm telling you that I don't know how much
10 you paid for the skiptracing, but it's not working."
11 So, that's the other problem.

12 MR. DOLAN: That, again, raises kind of the next
13 series of questions regarding time-barred debts.

14 MR. OLSHAN: Reilly, if I could just speak
15 briefly? It's unfair to an extent to discuss these sort
16 of anecdotal stories where the collection attorney isn't
17 here to answer for that, and I understand that anecdotal
18 discussion has a time and place, but I just wanted to
19 make that point.

20 MR. DOLAN: Well, that actually -- that does, as
21 I was about to say, bleed into, from your perspective,
22 you and Manny, what are the obligations of the attorney
23 in deciding whether to proceed with a case that may or
24 is known to be beyond the statute of limitations?

25 I realize that Lynn's example was raising other

1 issues because it was raising the skiptracing, but it
2 does -- bringing it back to this topic, it does deal
3 with -- you have a client who comes in with a case, says
4 I want you to go sue this person, and what is your
5 obligation as a lawyer?

6 MR. NEWBURGER: Well, you know, that's really
7 such a great question. It goes to the heart of what
8 I've been listening to hearing my clients take shots for
9 the last day and a half. I represent debt buyers, I
10 represent attorneys, and I've heard esteemed adversaries
11 on the other side of the consumer law docket talk about
12 issues such as you just raised, documentation, due
13 diligence, and investigation by the attorneys.

14 Now, when a consumer walks into a consumer
15 lawyer's office and says, "The car dealer lied to me
16 about the car," the consumer lawyer doesn't say, "I
17 won't represent you or file your suit because you don't
18 have a videotape of it or three witnesses." When a
19 consumer walks into a consumer lawyer's office and says,
20 "The bill collector cursed at me," now, some of them
21 will tell them what tape recording machine to get at
22 Radio Shack and how to set it up and call back again and
23 see if they can get them to repeat it, but for the most
24 part, they don't turn down the case because there's not
25 a recording and not three witnesses.

1 The people in this room, the debt-buying
2 industry, the law firms, what are they getting their
3 information from? They're not getting it from a pool of
4 consumers who -- and I will answer the question
5 earlier -- every minute of the day are denying owing
6 money that they are established in court to owe. They
7 are getting their information from nationally chartered
8 banks, regulated by the United States Government,
9 charged with keeping accurate records, required to
10 maintain those records, and that is the source of their
11 information, and those banks are representing to the
12 debt buyers and the lawyers that this information is
13 correct, that these are the people who owe the money,
14 that this balance is the balance that was due at the
15 time of charge-off, and they are relying on people
16 regulated by the United States Government.

17 If there was a problem with that, part of the
18 problem is the right people aren't here today, because
19 the United States Government has decided that banks only
20 need to keep records for two years. If you want to go
21 in and get the Federal Government to change Reg Z, 12
22 CFR 226.25, to say you have to keep the records for
23 seven years and transfer them when you sell the debt, a
24 lot of the complaints I've heard today may go away. But
25 to criticize the people in this room for relying on the

1 information furnished by a federally regulated
2 institution when the consumer bar does not hold itself
3 to the same standards is deeply troubling.

4 And the answer is, no one in the collection bar
5 is going to tell you that they should get to sue on
6 time-barred debts if they've read the law. The policies
7 of Adam's entire organization, the Commercial Law League
8 of America, are lawyers don't sue on time-barred
9 consumer debt. You asked what is the injury? There
10 isn't any injury. If people were damaged by
11 out-of-statute suits, you could sue for suing on any
12 cause of action that was time-barred. The injury is we
13 have a federal consumer statute that's been interpreted
14 to say you may not do this with regard to consumer debt,
15 and every prudent collection lawyer in the country
16 reviews the file, reviews the data, looks at the
17 information furnished, and does his or her best not to
18 sue on a time-barred debt.

19 Are there people who screw up? Yes. Are there
20 people who sometimes break the law because they don't
21 read the law? Sure. But the majority of the industry
22 works very hard to ensure they're not suing on
23 time-barred debts.

24 MR. OLSHAN: Reilly, before the attorneys open
25 their file, the attorneys will look at statute of

1 limitations information. The attorneys will look at the
2 date the account was opened or the date that the account
3 was last paid, the date that the account was charged
4 off. This is information that is sent to the attorneys
5 in the regular course of business either by the
6 originator creditor or by a debt buyer client.

7 The attorneys do this because the FDCPA
8 specifically states that one can't misrepresent the
9 legal status of the debt. So, for us to threaten suit
10 where the legal status of the debt is such that we can't
11 sue, it would be misrepresentation, and our obligation
12 and everyone's goal in this room, I would expect, is
13 fair debt collection. So, for that reason, we don't
14 support those suits.

15 MS. DRYSDALE: Can I just briefly respond?

16 MR. DOLAN: Sure.

17 MS. DRYSDALE: Just to briefly respond, I
18 certainly didn't mean to infer that any entity that's
19 regulated by the Federal Government would do anything
20 wrong, and I would also say that to talk to the two
21 gentlemen that have been my clients that I spoke of,
22 generally, I speak of them because they're
23 representative of many of my clients, and I don't think
24 that they would agree that there has not been an injury.

25 Lastly, you speak about prudent business

1 practices. I don't know that with the type of review
2 that you're talking about, from what my experience, fits
3 into the business model of the mill firms that we're
4 going against. They do not have the time, nor the
5 attorney hours, to review each of the files for each of
6 these cases that they're filing. If they are reviewing
7 them, then it's not like any type of practice of law
8 that I've ever been engaged in.

9 MR. DOLAN: Let me use that as a starting point
10 to Adam and/or Manny. If an attorney is not reviewing
11 the file with a level of detail that Adam was suggesting
12 and they are filing a case knowing that it is
13 potentially close, if not beyond, the statute of
14 limitations, there have been some who have argued the
15 statute of limitations, at least in many states, is an
16 affirmative defense.

17 Is that attorney acting properly to say, "I'm
18 going to bring that lawsuit and let the consumer raise
19 it as an affirmative defense," because attorneys say
20 affirmative defenses are waivable?

21 MR. NEWBURGER: I think the answer to that is
22 no, it's not proper. The courts have spoken pretty
23 clearly on that, and in my experience, most of the
24 collection attorneys I encounter around the country have
25 built that into their practices. They are trying not to

1 play games.

2 Keep in mind, statutes of limitations are an
3 interesting discussion topic. One claim would be
4 subject to multiple causes of action, depending on how
5 it is pled. Statutes of limitations can be tolled under
6 a variety of circumstances. But in terms of saying it's
7 an affirmative defense, I'm going to ignore the statute,
8 and it's the consumer's look-out to raise it, I think
9 the federal courts have been absolutely consistent on
10 that.

11 I see Bob nodding. I'd be interested in hearing
12 if we have any disagreement, but I suspect we don't.

13 MR. HOBBS: I wish I could tell you the name of
14 the defendant, but we're engaged in a class action now
15 in the upper midwest against a collection agency which
16 we believe is filing routinely time-barred suits. I
17 think it happens. I don't think it's the best
18 practices. I don't think probably anybody who's
19 testified in this room who's in the business would be
20 engaged in that business, but I think there are
21 companies and there are employees who do violate the
22 Fair Debt Collection Practices Act.

23 But we need to tailor the act so that it
24 addresses the problem collectors and doesn't hinder the
25 legitimate collectors, and that's the task, and we're

1 not trying to cast aspersions saying that what we're
2 describing describes the entire industry, but it
3 certainly describes what we need to take care of,
4 because it hurts consumers.

5 MR. DOLAN: Let me twist the question a little
6 bit. I have heard throughout the last day and a half a
7 number of attorneys who have said it doesn't happen or
8 it happens only in isolated instances, and the reason
9 why is because I love my law license or I need my law
10 license or whatever particular interpretation there is
11 there, and the logical conclusion of that is the FDCPA
12 doesn't need to address this issue; the state bar
13 already addresses it.

14 The question that I want to have each of the
15 four of you respond to is, is the state bar a
16 necessary -- excuse me, an appropriate and efficient
17 check on those attorneys that are not complying with the
18 statute of limitations on time-barred debts or not
19 complying with the case decisions that say that one
20 should not be bringing an action to enforce a
21 time-barred debt?

22 MR. OLSHAN: The state bar -- does that work?
23 No. The state bar is certainly, unequivocally, an
24 excellent actor to enforce that with regard to
25 collection attorneys. I do love my license. Thanks to

1 my license, quite a few people are employed for the New
2 England region, as well as with my law partners, and as
3 I mentioned before, we have an obligation to collect
4 fairly. All collection attorneys have that same
5 obligation.

6 In this instance where -- I agree with Manny,
7 where it's clear that there's an act that should not be
8 taken, when we're cavalier about it, or as you put it,
9 Reilly, if we cut close to the lines and take some
10 chances hoping no one watches, I'll hear it from the
11 judge, who is taking note; from the Attorney General,
12 who is watching. I will place my license in jeopardy
13 and my livelihood.

14 So, I believe that this is a perfect example of
15 how there are state nuances around the country and how
16 it's very relevant and important to let the state actors
17 enforce these obligations which attorneys have.

18 MR. NEWBURGER: One other additional point apart
19 from the state bar, there's the credibility with the
20 courts. If I were talking to my law students about
21 this, I'd be pointing out, this is your reputation with
22 the judges before whom you practice. As Lynn points
23 out, the attorneys of who she complains are in front of
24 those judges all the time. If you're an attorney with a
25 volume practice and you lose your credibility with the

1 judges before whom you appear, you have a problem in
2 representing your clients and making a living, and that,
3 too, is a pretty important check on the system.

4 MR. DOLAN: Bob?

5 MR. HOBBS: In connection with one of my
6 publications, I used to routinely review the opinions of
7 the state bar associations on ethical debt collection
8 practices by lawyers, and I must say, I haven't done it
9 in about 15 years just because there were so few
10 decisions. I would not think that it would -- I would
11 think the bar people might be responsive if there was a
12 complaint filed, but I don't think there's many
13 complaints filed.

14 MR. DOLAN: Lynn?

15 MS. DRYSDALE: I think that the state bars are
16 definitely a valuable resource for regulating and for
17 overseeing this, but I don't think that it's something
18 that we should leave solely to the state bars to
19 regulate.

20 Manny mentioned how the lawyers lose credibility
21 when they practice this way in front of judges, but,
22 again, the business model that we see in Florida is
23 these lawyers aren't the ones that are actually going to
24 court. They file the cases. We're in Jacksonville, in
25 Northeast Florida. All of these firms are in South

1 Florida. They get some local attorney to show up,
2 thinking that there won't be much to do, because it will
3 just go by default and they can get their judgment. So,
4 there is a real disconnect between the attorneys that
5 are filing the lawsuits and the attorneys that are
6 actually prosecuting them or acting as agents of the
7 attorneys in other areas.

8 I think one thing we do have to make sure is
9 that we -- if the -- for the Fair Debt Collection
10 Practices Act, that we don't allow the litigation
11 privilege to be broadened any further so that it
12 precludes effective enforcement through that Act of
13 these types of practices to save the consumers as well
14 as those who collect debts in a more legal way.

15 MR. DOLAN: That definitely is jumping into the
16 next topic, so I want to hold off on that.

17 Bob had mentioned that he was tracking opinions
18 and gave up at some point. Adam, Manny, are you aware
19 of any attorneys who have been sanctioned or disbarred
20 for mistreating consumers in debt collection cases?

21 MR. OLSHAN: Well, yes, and -- thank you, Manny.

22 Yes, as a matter of fact, the Boston Globe
23 series, which ran a year ago last summer, which I'm sure
24 we'll talk about very shortly, was spawned by the acts
25 of one Massachusetts collection attorney who lost a

1 license to practice law. I know of others as well over
2 the years.

3 It was -- well, Rob was looking at me. There
4 was one attorney in Massachusetts who committed such
5 perceived bad acts that that series ran, and we'll leave
6 it at that. I have seen it, and it's a very real
7 remedy, and it's something that all collection attorneys
8 think about every day as they build their practices.

9 MR. NEWBURGER: And I can confirm to you, a New
10 York law firm, in Buffalo, in fact, one that I
11 essentially shut down in Texas, because like the old
12 defense, he needed killing, and there are people who
13 need to be sued, was subjected to disciplinary action by
14 the State Bar in New York. One of the lawyers
15 surrendered his license. The other has been
16 indefinitely suspended. And I will tell you that no one
17 in this room that I know would endorse any of the
18 conduct being perpetrated by those attorneys, but the
19 bar did take action, and they're not practicing law
20 anymore.

21 MR. HOBBS: I was just shaking my head because
22 the fellow who was the debt collector and was
23 highlighted as a person who was seizing cars of people
24 to coerce payments was disbarred, but he was disbarred
25 for cheating a creditor, not for cheating consumers.

1 MR. DOLAN: What remedies were available, if
2 any, to the consumers who or the debtors who were being
3 the other side of these particular attorneys that you
4 were referencing? You said the attorneys were
5 disciplined, but what happened to the consumers who were
6 injured by their practices?

7 MR. NEWBURGER: Well, I know that a number of
8 NACA members actually filed suit against the guys from
9 Buffalo. Of course, now that they're disbarred, some of
10 those judgments are going uncollected, but nevertheless,
11 there were a fair number of lawsuits that were filed
12 across the country against them.

13 I know of at least one bankruptcy case involving
14 contempt sanctions for violating a stay. Truthfully,
15 they were facing criminal contempt sanctions in my case
16 when they decided maybe they'd quit collecting debts in
17 Texas.

18 MR. DOLAN: One of the questions that came from
19 the audience backs up to some points that Lynn was
20 making. What is the average caseload of an attorney in
21 a debt collection law firm? And kind of related to
22 that, what is the average rate of default by defendants
23 in these cases?

24 MR. OLSHAN: I'll pick that one up. The answer
25 truly does vary from state to state, from firm to firm.

1 The industry is such now that, as Bob Markoff talked
2 yesterday about, we're into the habit of not taking down
3 trees unnecessarily. So, electronic information is
4 passed from clients to attorneys every second through
5 very secure channels.

6 The attorneys, whether they choose to
7 meaningfully review or not, to some extent is their
8 choice due to some recent case law; however, I know with
9 NARCA, most attorneys will, in fact, meaningfully
10 review.

11 Speaking to Lynn's point, I myself meaningfully
12 review quite a bit of information, as do my partners and
13 the attorneys in my office, and I think that's a norm
14 within NARCA. As a result, we're able to view
15 electronic information throughout the day in order to
16 ensure that it meets our high standards.

17 Suits are filed later on if the consumer hasn't
18 paid or entered into a payment arrangement which is
19 substantial, but to answer the question pointedly, we
20 will open up perhaps hundreds of files in a week
21 pursuant to the electronic information available to us
22 based on today's technology.

23 MR. DOLAN: What is "meaningful review" in your
24 perspective?

25 MR. OLSHAN: Well, today what the attorneys do

1 is the attorney will take a look at the information sent
2 electronically by the clients, and the attorneys will
3 ensure that there is essentially a prima facie case to
4 go forward, and by prima facie case, I'm referring to
5 the name of the original creditor, the original account
6 number, that there is either an open date, so that the
7 attorney knows when the account was originally opened,
8 or a last payment date or a charge-off date. This is
9 information, I believe, that makes a case prima facie,
10 and if it were to go before a court, on its face would
11 be subject to a default judgment. So, attorneys who are
12 meaningfully reviewing files are ensuring that, at a
13 minimum, that type of information is there to proceed.

14 MR. NEWBURGER: And, Reilly, the difficulty with
15 your question is it sort of assumes some facts as if the
16 debts were identical. The answer may vary from type of
17 debt to type of debt. If you've got a firm that
18 collects bad checks, it could take a second and a half
19 or less to view the front and back side of a check. If
20 you were doing mortgage foreclosure, I would hope that
21 the review would be fairly substantial. And so
22 depending on the type of debt, the manner in which the
23 data is translated, all that's going to affect it.

24 I'd give you a slightly different answer than
25 Adam did, but I think it translates the same. An

1 attorney's review is meaningful when the lawyer is doing
2 the things that the state bar disciplinary rules say
3 that a lawyer has to do to be awake at the switch, and
4 that means supervising your nonlawyer staff, putting in
5 procedures to ensure that the suits you file are
6 correct.

7 But lawyers rely on information furnished by
8 their clients, rely on work done by their support staff,
9 and to that degree, they're no different than any other
10 professionals. You go to your doctor, the doctor
11 doesn't weigh you, the doctor doesn't take your blood
12 pressure, your temperature, your pulse.
13 Paraprofessionals do that. The doctor walks in, reads
14 the chart, and in 20 seconds tells you you've got the
15 flu.

16 Lawyers rely on their staff to assemble the
17 data, put the data together in a useful format so the
18 lawyer can come in, look at it, and decide, is this the
19 case we want to file? Is this one to which I want to
20 sign my name?

21 MR. DOLAN: Lynn, response?

22 MS. DRYSDALE: To answer your earlier question,
23 we see the major law firms, they're filing hundreds of
24 lawsuits each month, and that's just in our city, and so
25 if -- they work state-wide, so that it's easily

1 thousands of lawsuits each month. I would say that
2 anywhere from 75 to 80 percent are going by default or
3 going by the person showing up at the hearing and being
4 told that this is the amount that they have to pay.

5 Usually -- and I'm limiting this to credit card
6 cases -- all of them will use a form complaint. The
7 form will not contain the date that the account was
8 opened. It will not -- it will rarely provide the date
9 that it was -- the date of default, and it will not --
10 the complaint will not contain any signed document that
11 has been signed by the defendant, and most of the time,
12 it doesn't -- there's no attachment at all.

13 MR. DOLAN: We could spend who knows how much
14 longer on this particular topic, and I need to move on
15 because of the other two that we want to get to. The
16 next one, and I am going to use a comment that I -- I
17 apologize, I don't remember if Manny or Adam
18 mentioned -- is looking to have prima facie evidence so
19 that he can get a default judgment. Default judgments
20 have, as a result of the Boston Globe article, become
21 one of the lightning rods of debt collection practices
22 employing litigation where, as the Boston Globe article
23 was saying, that there are mills out there that
24 basically just file lawsuits and get the default
25 judgment and then move on from there.

1 What is the appropriate obligation of an
2 attorney before filing a lawsuit as well as proceeding
3 in that lawsuit? And the couple things I want you to
4 focus on in answering it is two issues that we hear a
5 lot about anecdotally are filing the lawsuit in one
6 jurisdiction, but the consumer may not live in that
7 jurisdiction and may be in a neighboring county;
8 relating to that, sending a notice to one address, but
9 when it comes time to serve the default judgment order,
10 serving it on the corrected address; and the other issue
11 has more to do with firms that file many lawsuits and
12 get defaults, but as soon as the consumer walks in the
13 door to contest it, they immediately drop the lawsuit.

14 MR. OLSHAN: Sometimes it's hard to speak to the
15 anecdotes that have been shared over the past day and a
16 half, as I know that a lot of the consumer organizations
17 in the room have people walking in the door with very
18 challenging stories, and the challenge is that
19 oftentimes the consumer advocates aren't hearing the
20 success stories where things worked well.

21 Generally speaking, the attorney with NARCA has
22 an obligation to be fair, that when an attorney utilizes
23 the power of the court, the attorney and the judge and
24 all players involved need to ensure that the public
25 trust is being advanced. That is our obligation. Our

1 obligation is Fair Debt Collection.

2 There is a unique power in utilizing the court;
3 however, it's certainly fair and effective to use a
4 court to collect a debt which has not been paid after
5 years of debt collection efforts in many cases.

6 The attorneys today will receive electronic
7 information in many cases from their clients.

8 Generally, the balances that are placed are charge-off
9 balances. As Manny stated before, the charge-off
10 balance, the balance which federal bank examiners and
11 the FDIC will approve. If these balances are reliable
12 to the FDIC, then yes, the balances are reliable to us
13 as coming from our clients.

14 We will review the account, take the charge-off
15 balance, and ensure that we have a certain amount of
16 information in many cases to backstop some sort of prima
17 facie case. I've stated twice already that the
18 attorneys will ensure that we have the originator's
19 name, the credit card number.

20 I want to say, speaking of the Boston Globe,
21 following that series last summer, the Chief Justice of
22 the Massachusetts District Court put together a working
23 group of 25 professionals. Rob Hobbs was on that group
24 along with me. There were judges on that group, small
25 claims magistrates, clerks, legislative representatives,

1 consumer advocates, and two collection attorneys.

2 Through the course of discussion over a 12-month
3 or longer period, we reached consensus on a number of
4 areas, and through discussing this question of default
5 judgments and what's appropriate, it was determined by
6 this group that the most reasonable and appropriate way
7 to proceed is to ensure that there is a certain modicum
8 of information shared in the initial complaint;
9 essentially, sharing information that backstops a prima
10 facie case. The originator's name, the originator's
11 account number, the date that the account last paid or
12 the date that the account went delinquent, the
13 charge-off principal balance, any damages added to the
14 account after charge-off, broken out.

15 This information gives the consumer defendant an
16 opportunity to best understand what this debt is about,
17 and I subscribe to exactly what happened in
18 Massachusetts, and I think that that recommendation is
19 about to go to the public. I think that similar
20 discussions need to occur at state levels across the
21 country.

22 I was talking to Marla Tepper yesterday about
23 discussions like that that should occur in New York and
24 I believe which will. Discussions like that have
25 occurred in California. They're occurring in Michigan,

1 as we speak, and they're beginning to occur in
2 Connecticut.

3 My point is that through that sort of discussion
4 with consumers, collection attorneys, and the judiciary,
5 we can reach fair ground. Keep in mind that state
6 courthouse budgets have fallen through the floor. At
7 the same time, the charge-offs have gone through the
8 ceiling, and placements to attorneys have gone through
9 the ceiling. As a result, we need to back up the clock
10 a bit. Abe Lincoln was a collection attorney many years
11 ago. In the 1870s, with the advent of telephone
12 technology, attorneys fell into background. Agencies
13 sprung up and began to collect most paper.

14 In the 1970s and '80s, attorneys began to get
15 used again, and as the volume began to get higher and
16 those attorneys began to be in court more and more, my
17 impression is that the attorneys developed relationships
18 of trust with the judges and the clerks and the marshals
19 and the sheriffs, and as the volume got higher through
20 the eighties and nineties, the courts began to lean on
21 those attorneys more and more with respect to this
22 volume that was striking.

23 In the 1970s, maybe it was appropriate for an OB
24 doctor to take a female patient into an office and treat
25 her. Today, there is an appearance of impropriety

1 there. You need a female intern. Today there's an
2 appearance of impropriety when a judge says to a number
3 of defendants, "Go into a hallway, speak to attorney
4 Olshan about these 15 cases, you can trust him, you'll
5 work it out." That might have worked in the seventies.
6 It doesn't work today, Reilly.

7 My point is I think that this occurred due to
8 the relationships of trust that developed through the
9 seventies, eighties, and nineties. Today, we need to
10 address how to assist with the massive volume in the
11 courts, and I think through the state-level discussions,
12 we will reach solutions, as we already have in
13 Massachusetts.

14 MR. DOLAN: Lynn, Adam was discussing where
15 Massachusetts is now compared to where it was probably a
16 year ago. You're in Jacksonville, Florida. Same story,
17 different story?

18 MS. DRYSDALE: Well, it's the same story as far
19 as the problem goes. I remember -- I know one of the
20 earlier panels today, they were talking about having
21 lack of verification of the debt and not having the
22 paperwork. I think the quote was "we are collectors,
23 not warehouseers." Well, when you get to court and you
24 file a complaint and you don't even have the information
25 as to when the account was opened and you don't have the

1 statements, at least the statements of the account, you
2 don't have anything in writing signed by the defendant,
3 you have a serious problem of not having the proof that
4 the debtor owes the debt, nor of the amount of the debt.

5 And somehow I think what I'm starting to hear as
6 we go through the process today is people are sort of
7 losing sight as to where the burden of proof lies once
8 you get to court. The burden of proof first lies upon
9 the creditor to show that there was an account, to show
10 that this account belongs to this debtor, and to show
11 the amount, and as far as things in Florida are going,
12 we have a lot of the judges that are becoming very
13 frustrated with the way their courts are being used, but
14 at this point, we don't have any process that has been
15 set up to try to remedy this problem.

16 MR. DOLAN: Okay, I have one more kind of
17 question on this and then I want to move to the next
18 topic, so I am going to throw it out to the panel, and
19 anyone who wants to answer can answer in 30 seconds or
20 less.

21 Is there an appearance of impropriety or more
22 than just an appearance of impropriety if an attorney is
23 filing a number of lawsuits and dropping any lawsuit in
24 which a consumer is actually contesting the allegations
25 alleged?

1 MR. OLSHAN: No. If the attorney brings a
2 lawsuit with prima facie evidence and they're able to
3 proceed to obtain a default judgment with that and in
4 some cases an affidavit of debt, then the suit is
5 certainly appropriate and justified. In instances where
6 a defendant files a bona fide dispute -- and "bona fide"
7 is the key phrase -- a bona fide dispute, the plaintiff
8 attorney can then go back to the client and determine
9 whether or not that client chooses to pay extra funds to
10 obtain the extra information necessary to prove the case
11 or to send a witness to court.

12 Again, as Ira Leibsker stated yesterday, only 15
13 or 20 percent of these accounts will pay. Based on that
14 ratio, the client has to make a determination as to
15 whether they want to spend more money on this account to
16 prove their case to the next level.

17 MR. DOLAN: And that was a little bit more than
18 30 seconds. Do Bob or Lynn want to give a 30-second
19 rebuttal?

20 MR. OLSHAN: Not much more, though.

21 MR. HOBBS: Actually, I would like to go back to
22 the Massachusetts experience. I want to make clear that
23 the Globe series had results that were very positive,
24 but the small claims study group's proposals have not
25 been adopted by the courts. They're simply proposals,

1 but there were results. The banking department decided
2 that every debt buyer had to be licensed in
3 Massachusetts, and they denied a license to the debt
4 buyer that was highlighted in the series, because he was
5 disbarred for treating a -- for taking money that
6 belonged to Sears.

7 And there's bills that have been introduced in
8 the Massachusetts Legislature that they have passed
9 raising exemption levels so that people who are can't's
10 are not made into wills, but there's a lot that still
11 needs to be done in Massachusetts, and hardly anything
12 has been done yet except a report that's been issued
13 with recommendations for rules.

14 MR. DOLAN: Okay. I would like to move on to
15 the final discussion, which is mandatory use of
16 arbitration in collection cases, and I want to turn it
17 over to Roger to explain what the mandatory arbitration
18 process is, and I know he's going to challenge my use of
19 terms at the very beginning.

20 MR. HAYDOCK: Well, good afternoon. I
21 appreciate the opportunity to be here in my role as an
22 educator and help explain how arbitration works so that
23 people can better understand it, how it can benefit
24 consumers and creditors, and how they can receive fair
25 and impartial services and results.

1 There are various types of arbitration.
2 Mandatory arbitration is generally known as arbitration
3 mandated by government or government agency. There is,
4 for example, state governments, the state legislatures
5 pass bills imposing mandatory arbitration for
6 automobile, personal injury, no-fault health care
7 disputes. Contractual arbitration, which is the focus
8 of this afternoon, is arbitration based upon an
9 arbitration agreement that exists in a contract.

10 The Federal Arbitration Act governs the
11 enforceability and acceptability of those arbitration
12 agreements and is the vehicle to legitimate the
13 enforcement of awards issued by arbitrators in those
14 contractual arbitration agreements.

15 The typical arbitration clause includes a
16 reference to a provider, and that provider operates,
17 whether it's the National Arbitration Forum or the
18 American Arbitration Association, operates like a clerk
19 of court who administers, from the filing on of the
20 case.

21 In addition, parties, if they're unable to agree
22 on an arbitrator to resolve their case, the provider has
23 panels of arbitrators that are available, and those
24 arbitrators then are appointed. The parties can
25 challenge them and remove them for cause and strike them

1 as a peremptory challenge to ensure that they are
2 getting someone who is fair and impartial.

3 There are tens of thousands of arbitrators in
4 America and throughout the world. They tend to be
5 former judges, very experienced lawyers, who are legal
6 experts in a specific area. They do not take a case
7 unless they complete a conflicts of interest check to
8 make sure that there's no conflicts. They will be
9 appointed to a case or receive a case if the parties
10 accept them or do not challenge them. They take an oath
11 to remain neutral at all times. They take an oath not
12 to allow self-interest to affect their judgments, just
13 like judges do in civil court.

14 One of the measurements to determine the
15 fairness and neutrality of arbitrators and the fairness
16 of the results is to compare the results in arbitration
17 cases to litigation outcomes, and an objective and
18 impartial review of the data available shows that
19 consumer and business outcomes in arbitration are the
20 same or very similar to the outcomes in court, and the
21 underlying data supporting that statement appears in the
22 FTC comments filed by the forum, as well as some
23 supplemental columns that will be made available
24 sometime next week.

25 MR. DOLAN: Roger, a point of clarification. In

1 your comment, the data the that you were comparing were
2 for all cases and not limited to debt collection cases.
3 Is that correct?

4 MR. HAYDOCK: Yes, and we have now separated the
5 data in our secondary comments to separate on collection
6 cases from contested cases. So, we'll provide the
7 information to support that statement along with
8 anecdotal stories from consumers who report success and
9 satisfaction with their arbitration experience.

10 MR. DOLAN: If the creditor is enforcing the
11 arbitration clause, and I live in Washington, D.C.,
12 where is my arbitration panel going to be sitting?

13 MR. HAYDOCK: The hearing -- the in-person,
14 face-to-face hearing takes place in the community where
15 the respondent, in that case the consumer, resides or
16 does business. So, it's the same general area location
17 as the courthouse, federal or state courthouse.

18 In addition, the type of hearing available in
19 modern arbitration, under modern arbitration rules,
20 includes, besides a face-to-face hearing, which every
21 party has a right to, an opportunity to provide
22 telephone or have witnesses appear by telephone,
23 opportunity to submit information and evidence both in
24 writing and by email, so that in terms of the new
25 technology available, we can provide much better

1 services to the parties with a dispute given their
2 various locations.

3 MR. DOLAN: And is arbitration or are the
4 arbitration clauses a one-way street or a two-way
5 street? By that I mean, if it's in my contract and for
6 some reason you choose to hand my paper over to Adam to
7 collect on me and he decides to sue me, can I use that
8 arbitration clause to say, "Oh, no, no, no, no, I agreed
9 to go to arbitration first"?

10 MR. HAYDOCK: The majority of the courts have
11 upheld that. The mutuality is a part of the
12 consideration for an enforceable arbitration agreement.
13 So, the arbitration agreement, binding arbitration, is
14 mutual. So, both sides have an obligation to arbitrate,
15 not litigate.

16 I just wanted to follow up with just a little
17 bit of background, because there is this confusion over
18 the due process protections afforded both individuals
19 and businesses. If you look at the standard rules of
20 procedure, because courts guarantee the fairness by
21 reviewing the published rules of procedure, determining
22 if they're fair, and provide due process protection, and
23 review the fee schedules that arbitration providers
24 provide and make sure that they're affordable and
25 accessible for consumers or that the costs are shifted

1 from the business, so the consumers pay no more in
2 arbitration than they would in litigation for those
3 costs, and they also are able to look at the panel of
4 prospective arbitrators and determine the qualifications
5 of those individuals, and then they're also able to look
6 at the awards the arbitrators complete to determine if
7 those awards meet fairness and due process standards as
8 well.

9 In addition, the rules themselves are really a
10 reflection of modern due process protection. Claims
11 have to be detailed with accounting documentation to
12 provide some of the -- to eliminate some of the
13 complaints we have heard over the past couple of days,
14 with inadequate information being provided the
15 decision-maker. Responses can be in handwriting.
16 Consumers can tell their own story in their own words.
17 There are no formal rules of pleadings required for
18 that.

19 All claims and defenses, rights and remedies are
20 available in arbitration just as they are in court.
21 Discovery is available. Parties have an obligation to
22 exchange information before the case gets to a hearing.
23 I've already discussed the opportunity the parties have
24 to choose different types of hearings and location for
25 that, and the arbitrator selection process, again,

1 arbitrators can be challenged for cause or stricken if
2 the parties are unable to agree on their own particular
3 arbitrator.

4 In collection cases, I'm just going to finish
5 up, where the consumer does not respond, it's important
6 to note that in arbitration cases, under the forum
7 rules, there are no pure default decisions allowable.
8 The arbitrator as to review the submissions and the
9 claim form and determine if that case has been proven,
10 and if not, the arbitrator can insist and require more
11 information to provide for the accuracy and verification
12 of the information. Only then can an award be issued on
13 the merits of the claim, not just because the consumer
14 failed to respond.

15 MR. DOLAN: Bob, I would like to get you to
16 highlight some of the injuries that you are seeing with
17 this type of process and also to give me a sense of how
18 prevalent you think those injuries are.

19 MR. HOBBS: Well, the Public Citizen in the last
20 few days has released a report analyzing the data which
21 is required to be reported to the State of California
22 with regard to the arbitrations that happened with its
23 citizens, and I think that report stands on its own
24 feet. The National Arbitration Forum is collecting a
25 huge, huge number of debts, mostly MBNA credit card

1 debts, and almost overwhelmingly, those judgments are
2 entered against consumers, but I think the reason that
3 report was written has to do with anecdotes, and the
4 only thing we have, except in California, is anecdotes,
5 because arbitration proceedings are secret.

6 It's like a secret court. The results are
7 secret. How many cases -- and there is a fear that the
8 hearing officers are biased because they're not paid by
9 the state. They're, in effect, being paid by filing
10 fees by MBNA and that maybe MBNA filing fees might
11 represent 90 percent of their income and that that could
12 result in bias. It certainly would result in the
13 appearance of impropriety if it was a judge. There's no
14 appeals or there's no appeals on the merits.

15 They are not bound by the law, because they're
16 arbitrators, so that if a consumer is represented by a
17 lawyer and the lawyer raises a Fair Debt Collection
18 Practices Act claim, it's up to the arbitrator whether
19 they follow the law that the consumer is entitled to
20 attorneys' fees. I have other anecdotes where they
21 don't get attorneys' fees. So, if consumers' attorneys
22 don't get attorneys' fees, the consumers will not be
23 represented. And --

24 MR. DOLAN: Can we just -- just because we're --

25 MR. HOBBS: -- and one last point, there are

1 separate rules for arbitration, so a Massachusetts
2 consumer who's representing themselves might be faced by
3 the rules of civil procedure for district courts, the
4 rules for small claims courts, and now the rules for
5 NAF, and it's a very -- it's a complex area. I have not
6 read the rules of all three, but I've skimmed through
7 them, and I would say that they're beyond the
8 comprehension of most consumers.

9 MR. DOLAN: One of the questions from the
10 audience -- and I know, Lynn, you want to say
11 something -- but I want to at least get this question
12 out there, and then I'll give Lynn the first chance to
13 answer that and give any comment she wanted.

14 It is because each party must pay part of the
15 arbiter's fee, can't arbitration be used by creditors
16 and collectors to strong-arm consumers to make payment
17 under the disputed debt? And quite frankly, I can't
18 read a lot of the rest of this, but I think the sense is
19 because the consumer has to pay the fee up front, they
20 may feel that it's cheaper to pay a debt that they're
21 disputing rather than go through the process, whereas if
22 it were in court, they as the defendant don't have to
23 pay a fee up front just to participate in the process.

24 I want to let Lynn -- although Roger is itching
25 to respond as well -- so, Lynn, your thoughts on that,

1 as well as whatever other point you were itching to
2 make, and then I'll turn it to Roger, and then the panel
3 is going to have to end.

4 MS. DRYSDALE: Okay, just very quickly, the
5 answer to that is yes, because it is very expensive for
6 the consumer to participate in arbitration, because they
7 do have to pay to respond, which they don't in court, as
8 well as they have to pay the expenses of the arbitrator.

9 Also, I think it's somewhat -- I don't agree
10 that it's a mutual obligation, because a creditor has --
11 a mortgage company gets to go through a foreclosure, a
12 car company can repo a car, a payday lender can take
13 money out of a bank account, without having to resort to
14 arbitration, where a consumer is blocked from the
15 courthouse and blocked from their right to a judge and a
16 jury.

17 I'm not sure that I agree that it's impartial.
18 Just quoting from the Public Citizen report, from the
19 records from California where they do have to report
20 this sort of thing, and the records from 2003 to 2007
21 for the NAF arbitrators with more than 100 cases, and
22 only 3.3 percent of the time did the consumers win in
23 those cases, and for the MBNA cases, only 2.8 percent of
24 the time did the consumer win.

25 Also, there is a limitation of remedies, and in

1 many of the consumer arbitration clauses I see, they
2 prohibit class actions, which is a very important
3 enforcement tool, particularly with payday lending,
4 because you've got debts of 100 to 500 for people who
5 clearly can't afford attorneys, and also you have NAF
6 advertising to the creditors that their process is one
7 where there's not much discovery, if any at all, and
8 that they can avoid the scrutiny of the courts.

9 I had the opportunity in a case of mine about
10 ten years ago of going through box after box after box
11 of information that NAF had to give to us as a result of
12 a subpoena, and predominantly, every case that we saw
13 where an arbitration award had been awarded to a
14 business, there was absolutely no supporting
15 documentation.

16 MR. DOLAN: Roger, the panel has ended, but I
17 promised you rebuttal, so 30 seconds.

18 MR. HAYDOCK: Thank you.

19 Well, let me just begin by saying with all due
20 respect to Bob and Lynn, who as a former legal services
21 lawyer, I happen to like, they're just plain wrong on
22 virtually everything they just said. There are no
23 secret hearings. A party can ask for a transcript.
24 People can be present for that. There are no mandatory
25 response fees by consumers. The cost is half to

1 consumers. They pay no more in an arbitration case than
2 they would pay for the filing fee that it would cost in
3 litigation.

4 I'm happy they brought up the Public Citizen
5 data, because it proves how fair and impartial
6 arbitration is. Here's the data comparing apples to
7 apples from court default cases. Studies that have been
8 documented -- and again, these appear on the website --
9 96 to 99 percent of the time, creditors win. Consumers
10 lose 1 to 3 percent of the time in court cases, which is
11 the equivalent of the same data the Public Citizen
12 reported in our California data.

13 We're no better -- or from some people's
14 perspectives, perhaps no worse -- than the litigation
15 system in providing access to civil justice for those
16 individuals, and there's no provider that prohibits
17 class action arbitrations. I could go on, but in
18 fairness to time, I'll end.

19 MR. DOLAN: And I wouldn't let you. Very
20 quickly, Bob, because we need to move on to the next
21 panel.

22 MR. HOBBS: I would like to say that in some
23 courts where consumers were represented by attorneys,
24 they're winning 100 percent of the time.

25 MR. DOLAN: And with that, I want to thank the

1 panel. I hope we got into these issues a little -- at
2 least a little more depth than we had before.

3 (Applause.)

4 MR. KANE: Thank you, Reilly. We will take a
5 break until 3:00. I'll see you back here at that time
6 for the final session.

7 (A brief recess was taken.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 PIVOTAL ISSUES AND PROPOSED SOLUTIONS:

2 NEXT STEPS

3 MR. KANE: Okay, folks.

4 Welcome back for our final session of the
5 workshop.

6 Folks, if you will take your seats?

7 This panel will discuss the main issues that
8 arose over the past two days and will debate recommended
9 changes to policy and law, including recommendations for
10 amending the FDCPA. The moderator is Peggy Twohig, the
11 Commission's Associate Director For Financial Practices.
12 Thanks, Peggy.

13 MS. TWOHIG: Good afternoon, everyone, and I'm
14 delighted to be moderating this final panel, and I have
15 to say I'm delighted and somewhat surprised and amazed
16 to see so many of you still here. We often have, in our
17 workshops, quite a drop-off by the end of the day and by
18 the end of a second day, and so perhaps we hit a nerve,
19 I guess, with this topic and with some of the discussion
20 that's been had so far. So, we've got an hour to go.

21 I've been asked -- we are a little behind
22 schedule, but not to worry, we will get you out as close
23 as possible to 4:00 as we can. I know that many people
24 have travel arrangements, and we will try to honor the
25 schedule. Just to re-assure you, I will have some

1 closing remarks, but they will be very brief. We will
2 try to leave most of the room for the discussion in this
3 panel.

4 In the last two days we've heard from many
5 different perspectives, we've heard different ideas,
6 we've heard complaints, we've heard statistics, we've
7 heard anecdotes. We've heard about problems faced by
8 both consumers and debt collectors in connection with
9 debt collection, and so this panel is about, given all
10 this information, some of it very rough in terms of some
11 of the things we've heard, not -- it's going to take us
12 a while to sort this through, for all of us to sort this
13 through, but the main question right now we want to try
14 to address is, where do we go from here?

15 Given these views, what do we need in terms of
16 changes in the law? And that could be not just the
17 FDCPA. What about changes outside the law? What do we
18 need in terms of enforcement, in terms of the
19 enforcement scheme, in terms of the regulatory
20 structure? What, if anything, do we need to think about
21 in terms of next steps? So, we're going to be talking
22 about those issues.

23 If possible, I'd like to try to develop any
24 areas where we have consensus on those topics, and we
25 have -- it's a pretty tall order, given all the issues

1 we've talked about for the last two days, so let's
2 begin.

3 I have a distinguished panel to talk about these
4 issues and to try to wrap things up. First, going down,
5 to my left, Rozanne Andersen, who you've heard from
6 before, who's General Counsel and Vice President of ACA
7 International. We have Richard Riese, who's Director
8 with the American Bankers Association. We have Margot
9 Saunders, who's Of Counsel with the National Consumer
10 Law Center.

11 We have Laura Udis, who's an administrator with
12 the Colorado Collection Agency Board. We have Cindy
13 White, who's Executive Director of the National
14 Association of Retail Collection Attorneys. And
15 finally, we have Gary Wood, who's President of Collins
16 Financial Services and also President of DBA
17 International.

18 So, the topics for this panel are going to be
19 the following: We're going to try to structure it to
20 first discuss what changes, if any, are needed in the
21 law, and in particular, what changes, if any, would
22 those recommend to the Fair Debt Collection Practices
23 Act? Then we're going to try to turn to what changes,
24 if any, are needed in the public or private enforcement
25 scheme, things like remedies issues or arbitration

1 issues, things like that. And those two areas may
2 overlap as we proceed with the discussion.

3 And then, I'd also like to try to get out on the
4 table what changes, if any, are needed outside of the
5 legal structure, things like financial literacy,
6 self-regulatory efforts, things like that. And so to
7 get things going, sticking first to what changes, if
8 any, are needed in the legal requirements, I'd like to
9 go down the row just to get things out on the table and
10 ask every panelist to say what are your top three
11 priorities for changes in the law and why.

12 Rozanne, if you would start first, we will just
13 go straight down.

14 MS. ANDERSEN: All right, first, for the record,
15 I would like to clarify and comment on the first thing
16 that I am going to reference as a desire in terms of
17 changes in the Fair Debt Collection Practices Act, and
18 that would be ACA is not seeking to eliminate the
19 individual states' rights to enforce the law or to
20 investigate complaints and to take appropriate action
21 per the law.

22 Having said that, what we are interested in is a
23 further dialogue about the possibility of federal
24 preemption, a single, uniform collection practices act
25 which controls the communications, conduct, and behavior

1 of debt collectors in the industry. So, I hope I have
2 made that point clear.

3 I will quickly refer to my other two points, but
4 I want to hold you at the edge of your seat and explain
5 this. When you step back and you listen to the comments
6 that we've heard throughout this two days, I'd like to
7 say that we also need to, together, collectively,
8 determine who are we talking about and what law
9 appropriately applies? If we only talk about federal
10 laws, whether stated or referenced during this
11 conference, you have to realize that every topic we
12 address also touches the Federal Communications
13 Commission, who seems to think we are telemarketers, who
14 puts us in a category with telemarketers and prohibits
15 us from using some of the technology that makes
16 compliance all that much more possible.

17 We look to the IRS that talks about a 1099-C
18 requirement, where debt buyers are required to report to
19 the IRS about forgiven debt, because they are called
20 "lenders."

21 We talk about other comments and opportunities
22 going on in the next few months. The Office of the
23 Comptroller of the Currency, the National Credit Union
24 Association, the Federal Reserve Board, they're holding
25 comment periods on garnishment, yet we're talking here

1 as debt collectors about garnishment, but we are not at
2 that table.

3 There are comments in hearings asking about
4 Social Security numbers and who should have access to
5 that, and yet we're spending two days talking about how
6 do we get to the right party and having any question
7 about who has access and need for personal identifiers?
8 So, I give that backdrop, because I think that that adds
9 a certain perspective.

10 And finally, we've barely touched on bankruptcy,
11 and yet we know that law is most likely going to be open
12 again, yet one of the greatest problems we have as debt
13 collectors is inappropriately, accidentally -- whatever
14 word you want to fill in the blank -- communicating with
15 a consumer that has filed bankruptcy but for which we do
16 not have notice.

17 So, I just wanted to state that -- and then I
18 will respectfully be quiet -- but explain that we also,
19 as a legislative wish, believe that one solution to this
20 whole communication issue with consumers has to do with
21 giving them not only, as the law allows now, the
22 opportunity to tell us the appropriate method and place
23 of communication -- the law currently permits consumers
24 to tell us the appropriate time and place of
25 communication. We suggest that we need to add method to

1 that consumer right.

2 And finally, as an industry, we seek a right to
3 cure requirement, a 45-day notice, heads-up, opportunity
4 to cure any problem that is alleged by a consumer as
5 being a violation of the law. Obviously further
6 dialogue is needed, but that would summarize our top
7 three issues.

8 MS. TWOHIG: Thank you, Rozanne.

9 Rich?

10 MR. RIESE: Thank you, Peggy, and I want to say
11 the American Bankers Association appreciates the
12 invitation to participate on this panel and to have
13 attended these last two days, and I want to particularly
14 acknowledge Chairman Majoras' opening remarks, which I
15 think were very balanced about the importance of
16 consumer credit and the issues that we're facing in
17 dealing with this workshop, and I think actually set a
18 tone of civility. As an old litigation attorney, I
19 thought that this was a very constructive workshop, and
20 I look forward to participating in activities that have
21 been spawned by it, to work with the parties involved to
22 advance the priorities that we are trying to talk about
23 here.

24 I'd like to characterize my three priorities
25 really being policy priorities with respect to the

1 FDCPA. I am not going to presume that they require
2 legislative correction or regulatory or guidance or
3 whatever it may be, but it's certainly clear in my view,
4 from listening to the discussions and from our
5 perspective, that probably the top two priorities, first
6 off, is bringing -- addressing what I'd call
7 communication convenience, and I say convenience because
8 of the orientation to the reality of what people, what
9 consumers, want to use and the means by which they want
10 to communicate, and I think we need to match the
11 realities and preferences better, and I think that's
12 clearly a number one priority that I've been hearing
13 echoed throughout this.

14 I think second is the credit validation. There
15 is no way you could have sat through the last two days
16 and not identified credit validation as an important and
17 primary issue here, and what I would underscore as my
18 view of the FDCPA is really that it is establishing a
19 fairness standard. It is not the standard by which
20 states set forth the requirements for proof of debt.
21 We're not looking for the FDCPA, I wouldn't think, to
22 supplant state law on debt, you know, collection, proof
23 of contract, and those kinds of issues. That does mean
24 that we're struggling with a variety of jurisdictional
25 standards, but I think FDCPA looks to put on a veneer of

1 commonality and an approach of consensual fairness to
2 the system, and I think that credit validation should be
3 looked at from that perspective.

4 I would like to say that I think in considering
5 that issue, that we identify really two elements of
6 that, one being the identification issue, the
7 identification. Do we have the right borrower with the
8 right account debt issue? That I believe to be much
9 more practical from my members' perspective, who have
10 substantial obligations to identify their customers. It
11 comes from a variety of statutes as well as established
12 practice, but I think that that's an area that we should
13 be able to tackle and make substantial progress on to
14 narrow that gap to as small as practical on that side.

15 I think the other issue is the question of debt
16 amounts and what components of debt and some of the
17 other features that have been talked about in the
18 various panels and I think proposed as part of NCLC's
19 comment letter, and I think all those should be on the
20 table for further discussion among all the parties to
21 work out what that set of fair elements are so that we
22 know that the debt being pursued is being pursued in
23 good faith.

24 And then third, something that probably hasn't
25 been talked about much but was mentioned I think

1 yesterday, and I think is important in our industry, is
2 greater clarity about the exemption really of mortgage
3 servicers from the FDCPA. I think we are certainly in a
4 market at this time that is trying to underscore -- in
5 fact, I don't know how many of you got your emails today
6 that Secretary Paulson has announced a new program that
7 involves a number of members involved in the mortgage
8 industry to make renewed effort to try to keep people in
9 homes and to work out the debt issues that we are facing
10 in this current economic environment, and I think that
11 that is best accomplished by clarity that mortgage
12 servicers are not under the FDCPA.

13 Those would be my three priorities.

14 MS. TWOHIG: Thanks, Rich.

15 Margot?

16 MS. MARGOT SAUNDERS: Well, we have lots of
17 suggestions, but I'll try to keep them brief to our top
18 three.

19 One relates obviously to the information
20 exchange. The verification should be the second step.
21 We think every first communication from a debt collector
22 to a consumer should include in it the name of the
23 original creditor, the principal of the debt, and the
24 itemization of fees and interest.

25 Second, the collection should only proceed if

1 the collector has reasonably determined that the
2 previous verification requests, if there were any, have
3 been satisfied. In other words, it should be
4 inappropriate or illegal under the Fair Debt Collection
5 Practices Act for a collector to collect on a debt which
6 has not -- for which the consumer has requested
7 verification and it has not been provided. That's what
8 we see all the time, consumers who are faced with
9 continued debt collection efforts relating to the same
10 debt, supposedly, from serial debt collectors who
11 serially cannot verify the debt.

12 Third, we need -- and in that category, the
13 collection should not proceed if the collector has
14 determined or can determine that the statute of
15 limitations bars the debt. That would address a number
16 of serious problems.

17 And next, we need updated remedies,
18 significantly. We do not have now in the industry, we
19 think, the incentives to comply with the law, because
20 the remedies are almost 30 years old, and we need
21 statutory damages to be -- therefore, must be increased,
22 and injunctive relief is a good way of dealing with
23 continued bad faith violations of the Act by some
24 collectors.

25 I'd like to take one minute to respond to the

1 previous -- the suggestions of the previous people on
2 the panel or -- do you not want me to do that?

3 MS. TWOHIG: Not now. We are going down the
4 line and then we will get back to all of them, I
5 promise.

6 Laura?

7 MS. UDIS: Thank you, and first I want to
8 mention that my comments will be my own comments and not
9 those of the Colorado Attorney General's Office or
10 necessarily those of other state regulators, and if you
11 count very carefully, you might see that three equals
12 four in my list, but I'll be very quick.

13 First of all, I think that it's important that
14 the federal Fair Debt Collection Practices Act be
15 amended so that consumers obtain, in writing, notice of
16 their right to cease communications. Consumers have
17 that right in the statute, but they are not notified of
18 it. They are notified of their right to dispute a debt
19 in the validation notice, but there's no disclosure to a
20 consumer of their right to cease communication.

21 And I would guess I speak for the majority of
22 state regulators that the vast number of calls to our
23 office are from consumers who say, "The collector won't
24 stop calling, what do I do?" And we tell them put it in
25 writing, mail it, usually certified mail, return receipt

1 requested, due to somebody's inability to either deliver
2 or receive mail, but if consumers knew that right, I
3 think that would go a great way in helping to ensure
4 that some of these disputes that interminably go on and
5 on would get resolved.

6 Secondly -- and I will be very brief on this --
7 despite the federal court cases that we've heard about,
8 there has to be -- I think we would all admit here in
9 this room -- there has to be better verification of a
10 debt than simply, to quote or borrow from a recent
11 movie, than from the creditor or collection agency says,
12 "Because I said so." There has to be more than that.
13 There has to be more than the creditor saying this
14 consumer owes the debt on a written piece of paper.
15 That cannot be sufficient verification of the debt.

16 The other issue I wanted to address is -- and
17 Margot did -- continual re-assignment of a debt,
18 particularly among debt buyers. It's incredibly
19 frustrating for a consumer to dispute a debt or file an
20 identity theft affidavit and the debt collector stops
21 communicating with them, but several months later,
22 there's a new collection agency doing the same thing.
23 There has to be some obligation on the part of the
24 collector and perhaps on the part of the creditor to
25 transmit that communication down the line, so it's not a

1 game of every time you get contacted by a different
2 agency, you must send the same written information.

3 But the primary issue which I wouldn't have
4 mentioned but for the ACA's filed comment in June with
5 respect to this meeting is federal preemption of state
6 laws, and as I'm sure you all know, currently, the
7 status of the federal law is that states can enact laws
8 that provide greater consumer protection in the area of
9 debt collection, but the written proposal from the ACA
10 would repeal that section and replace it with something
11 that would say a state cannot enact a law with respect
12 to any subject matter regulated under the FDCPA.

13 Now, Rozanne has perhaps clarified today that
14 this is not an intent to do away with state licensing,
15 but I assume, if I'm understanding correctly, that this
16 would mean that states could either pass an identical
17 version of the federal Fair Debt Collection Practices
18 Act or perhaps not and just enforce the federal law but
19 with no state variation, and while I'm, of course,
20 sympathetic to the comments of any business that has to
21 comply with 50 state laws, that is reality. Even if
22 there is federal preemption of state law, every debt
23 collector will have to deal with 50 state statutes of
24 limitations, for example. Federal preemption doesn't
25 solve that problem.

1 And there was someone on a panel yesterday from
2 Ford Motor Credit. Ford Motor Credit has to make sure
3 that when it sells or writes financing contracts in each
4 state, that it complies with those states' laws on
5 interest rates, right to cure, delinquency fees.
6 Perhaps the consistent model is Truth in Lending. Truth
7 in Lending, like Fair Debt Collection, allows states to
8 pass laws that provide greater protections, and quite
9 frankly, states typically can move more quickly than a
10 federal agency in both passing legislation and bringing
11 lawsuits.

12 With all due respect to the FTC, given its
13 variety of responsibilities, typically perhaps a debt
14 collection suit is filed maybe once a year, once every
15 couple of years, where states can move much more
16 quickly, and states that regulate debt collection
17 typically investigate and resolve every consumer
18 complaint filed with them, in part because they receive
19 a smaller piece of that complaint basket, and they have
20 resources to do it.

21 I think there's a place for both federal and
22 state law. I think if there is federal preemption of
23 state laws, you will see more private lawsuits and
24 perhaps more class action lawsuits under the federal
25 act, and, quite frankly, states have actually passed

1 some pretty good laws that both protect consumers and
2 put some logic into that framework.

3 For example -- and there was some mention of
4 this earlier this morning -- in Colorado, we have passed
5 a couple of variations from the federal act. We have
6 had on the books for over five years a law that says
7 that in our state version of the Fair Debt Collection
8 Practices Act that a debt collector cannot place
9 something on a credit report before the end of the
10 30-day validation period. Two reasons for this: One is
11 the whole purpose of the validation notice is to
12 informally resolve disputes and ensure that the
13 collector has the right consumer. If that can be done
14 before something's put on a credit report, great. If
15 not, it's something that can be done 30 days later.

16 In addition, we heard a little bit of
17 information about a phrase that someone coined about
18 "parking" a debt on a credit report, and that was a
19 situation that we were seeing with some collectors,
20 contingency collectors, that were charging very low
21 commissions that would not make it worth it to actively
22 work an account, and consumers wouldn't know about that
23 until they went to refinance their house and see it on
24 their credit report. So, we passed that specific
25 statute, and we would encourage Congress to do that on

1 the federal level.

2 In addition, we have had in our statute for
3 years a possible solution to the Foti (phonetic) case
4 where our law says that, yes, a collector must provide
5 meaningful disclosure of their identity, but only after
6 the other party to the call is identified as the debtor.
7 Maybe that's a solution to this problem.

8 Finally, our law requires that the validation
9 notice include a reference to our website where
10 consumers can get information about their rights. That
11 might be something that the FTC might want to think
12 about as well in recommendations to Congress.

13 But the point is, there can be good
14 state-specific laws, and for those reasons, we would
15 oppose federal preemption, and, in fact, perhaps a good
16 solution might be to add to the FDCPA a specific
17 provision that state AGs and state debt collector
18 regulators can specifically enforce the federal Fair
19 Debt Collection Practices Act.

20 MS. TWOHIG: Thank you, Laura.

21 Cindy?

22 MS. WHITE: Okay, thank you. I am here on
23 behalf of NARCA, and, of course, our perspective is from
24 attorneys that are doing debt collection as litigators,
25 and I think one of the first points that is important to

1 us is to step back and take a look at the purpose of the
2 Fair Debt Collection Practices Act.

3 When it was enacted, its proponent was talking
4 about including attorneys under the Act because
5 attorneys were acting as debt collectors. They were
6 making phone calls and writing letters. But what's
7 happened over the past few years is that courts have
8 broadened the impact of the Act so that now, when
9 attorneys are involved in litigation and they've filed a
10 case in court, when a case is in court, it's under the
11 jurisdiction of the judge. It's under the jurisdiction
12 of, you know, the clerks and any opposing counsel they
13 may have, and the need for continuing protections from
14 the Fair Debt Collection Practices Act, we just don't
15 see that.

16 And I think the previous panelists who have
17 spoken on behalf of NARCA and on behalf of themselves as
18 attorneys in court would confirm that there are many
19 problems with attempting to put the requirements of the
20 Fair Debt Collection Practices Act on top of a
21 litigation situation, which is already appropriately
22 dealt with through the court system.

23 And on the last panel, Adam Olshan and Bob Hobbs
24 were mentioning that, yes, they had sat down with the
25 judges and with the consumers to talk about issues that

1 came up in Massachusetts, and from our perspective,
2 that's where a lot of these problems can be dealt with,
3 that each state has its own particular laws and its own
4 particular rules of procedure, and we're looking for a
5 litigation exemption.

6 The gentleman, Mr. Riese, mentioned a mortgage
7 exemption. Well, we just think that litigation was
8 never really intended to be dealt with by this Act and
9 that the most important thing we're looking for is to
10 pull the litigation away from the Fair Debt Collection
11 Practices Act.

12 The other things that are important for our
13 members are going to be things like safe harbor letters.
14 One of the things that we see constantly is what is the
15 proper language for the letters? Members get -- members
16 and collect agencies, too, are sending out a letter
17 campaign of 10,000 letters at a time. If you've sent
18 out one wrong letter, you've sent out 10,000 wrong
19 letters, and nobody really wants to send out a wrong
20 letter, but, you know, you want to say -- give -- we
21 have had people sued for giving too much information to
22 the debtors. It's not -- I think we need to work on a
23 better way to standardize what's said in the validation
24 letters, what kind of verification there is, and I agree
25 with some things that have been talked about up here. I

1 think we disagree with some others, but, you know, this
2 is a dialogue that I think can happen over the next few
3 months.

4 The third point that we want to talk about is
5 all of the technology issues surrounding communications
6 with debtors. I think it's been made clear that being
7 able to call a debtor is most likely to result in
8 resolution of the case. Litigation is a last resort.
9 Only 5 percent of collection matters go to litigation in
10 the first place. So, it's important that everyone be
11 able to contact debtors, and, you know, when the FDCPA
12 was passed, we all recognize that a lot of the modern
13 technologies just weren't available, and we need to
14 amend the Act, if that's what it takes, to accomplish
15 the methods of communication that debtors are using that
16 makes it more likely that they'll respond, that will get
17 it straightened out, is this the right person, is this
18 the right debt, and not wait until something gets into
19 court to solve it.

20 So, those are going to be our three top issues.

21 MS. TWOHIG: Thank you, Cindy.

22 Gary?

23 MR. WOOD: Thank you, Peggy, and I'm going to
24 tell you how much we appreciate the opportunity to
25 appear here both yesterday and today. I will also tell

1 you that when you're sitting at this end of the table,
2 you don't get many opportunities to be original. I
3 would recommend that we have tuna fish sandwiches on
4 Thursday. That's about all that's left.

5 We're very interested, and I'm representing --

6 MS. TWOHIG: That's okay. We've got a long list
7 to cover, so if you don't have anything to add, that's
8 okay.

9 MR. WOOD: I'll make it brief. We're interested
10 in improved communication opportunities with our
11 customers as defined under the Gramm Leach Bliley Act.
12 We are interested, although this is not legislative, we
13 are interested in seeing more responsibility taken by
14 everyone that's involved in this process, the debtor,
15 the collector, the debt buyer, the issuer. We think
16 that there's too many places where responsibility is
17 just not being taken.

18 We're interested -- as Bob Hunt and Bill
19 Hampel's report yesterday pointed out, there's not much
20 information about what goes on in this business. They
21 were forced to use graphs that were based on data that
22 was five or six years old or based on data that was
23 probably almost made up. We ought not to have to do
24 that. There ought to be more research.

25 And the final thought I have, Peggy, before

1 passing it back is, we think that the enforcement role
2 of the Federal Trade Commission with regard to this type
3 of activity should be enhanced and that your budget
4 should be increased and we should be subject to less
5 private rights of action which give us state court
6 decisions that are a crazy quilt of almost unbelievable
7 complexity that we should try to deal with, so we would
8 very much like to see you guys have the opportunity and
9 the budget to do a better job on the enforcement.

10 MS. TWOHIG: Well, we are going to spend a lot
11 of time on that.

12 Actually, I'd like to -- this is a long list,
13 and so we have our work cut out for us in trying to
14 cover all this, and we just won't be able to, but I'd
15 like to tease out some of the common themes.

16 One common theme pretty clearly is verification
17 issues. That's been just a consistent theme over the
18 last two days. And so I want to see if we have any
19 common ground here, and over the last two days, some
20 things I've heard is debt collectors of all types, debt
21 buyers, collection attorneys, contingent collectors, say
22 that it's very important for them to have the
23 information they need to know that it's actually a valid
24 debt, especially if the consumer disputes it. They want
25 to get paid, that's their business, so that's important

1 to them.

2 Consumer groups obviously think it's one of the
3 most important issues, especially as debts are sold and
4 resold. I believe ACA International, we heard that it
5 was so important, they made it a key portion of the
6 revised Code of Ethics, and we heard I think just on the
7 last panel from collection attorneys that there is --
8 the list of minimum amount of information that I believe
9 he said he wanted before he -- that he thinks attorneys
10 should have before they file suit is very similar to
11 NCLC's list in the comment that they filed.

12 And so, just -- so, I want to know, is there a
13 general consensus around the notion that there needs to
14 be a basic set of information, perhaps more than is
15 required under the court cases that were referred to,
16 the bare minimum, when debt collectors -- debt is
17 collected by a third party, sold to a third party,
18 perhaps when verification is requested by the consumer,
19 and certainly before filing suit? Could I get thoughts
20 on that as briefly as possible? Is there a consensus
21 around that basic principle? Anyone want to go first?

22 MR. RIESE: I'd be glad to go first, because I
23 think that you can work toward this consensus. I'm not
24 sure that there's an identical set for every type of
25 credit. I'm not sure that in a world where people can

1 enter into credit obligations on the internet, where
2 there are no signatures, as signatures, that you can say
3 a minimum requirement is the original agreement with a
4 customer signature.

5 I'm not sure that in the health care situation,
6 where labs do tests, that you're going to find the
7 customer signature saying that, yes, I agreed that this
8 lab would charge me that amount. So, I'm not sure that
9 for all types of debt you have the same elements, but I
10 do think that there are probably some basic group of
11 elements that can be teased out of this process, and
12 we've heard, as you said, a number of things that seem
13 to be practiced. So, I think that there is that
14 potential to sit down and define those practices that
15 exist now and identify those gaps and see what can be
16 done to fill them.

17 MS. TWOHIG: So, I think that's a fair point,
18 that it may differ depending on the type of debt. If we
19 could stipulate to that, what about the basic principle?

20 Rozanne?

21 MS. ANDERSEN: We would absolutely agree that a
22 resolution has to be identified for this whole
23 verification issue, largely because it's creating such
24 confusion. In terms of the specific elements, I think I
25 would have to defer to Tom Haag's recommendation that

1 the whole point of a dispute and a request for
2 verification is so that the consumer's particular
3 concern is resolved, so we also have to keep that in
4 mind.

5 In talking somewhat casually at this conference,
6 so if nothing else, Peggy, you have brought a number of
7 people together to give them an opportunity to visit, I
8 think that there may also be an opportunity to use
9 technology in the form of the fair credit reporting
10 system to identify some solutions that we have not
11 fleshed out, but I think that additional dialogue and
12 future dialogue is critical.

13 I think the bottom line is it has to be easy, it
14 has to make sense, it has to be cost-effective, it has
15 to be meaningful to the consumer, and it has to survive
16 time.

17 MS. TWOHIG: Okay. Any other thoughts on just
18 the basic principle? And then I want to move to how we
19 work through the issues of exactly what that means,
20 perhaps in different kinds of debt situations. Any
21 thoughts on the basic principle?

22 Margot?

23 MS. MARGOT SAUNDERS: I think we've agreed on
24 the basic principle.

25 MS. TWOHIG: Okay, we're all agreed on the basic

1 principle. Okay, great.

2 So, then, thoughts on -- I think Rich raised a
3 legitimate point, which is it's easy to talk about a
4 basic principle. It's harder when you dig down deeper
5 into the details. How do we get there?

6 We're in a situation where one of the reasons
7 the FTC is having this workshop is so we could flesh out
8 the issues, try to find out if there's common areas of
9 consensus, where there's problems that do need to be
10 addressed. How do we go from here in trying to figure
11 out some of those issues? We are an agency that does
12 not reinforce the law, but we have no regulatory
13 authority under the Fair Debt Collection Practices Act,
14 so we don't have any formal mechanism -- we don't, as an
15 agency -- to sort through this kind of information and
16 get comments on the record other than in, perhaps, you
17 know, another workshop just on this topic.

18 How do we go from here or what do you think
19 about the process of sorting through that kind of issue
20 to try to help move forward? In other words, would it
21 help if the FTC had regulatory authority or some agency
22 to try to sort through this kind of issue so that when
23 problems arise in the industry or with debt collection,
24 some proposals can be made and can be discussed and
25 debated publicly? Any thoughts on that?

1 In other words, we won't be able to today, in
2 this panel, to figure out the answers to those questions
3 in terms of different kinds of debts, what is the bare
4 minimum in different kinds of situations, so where do we
5 go from here, next steps, on moving forward on these
6 very important and pervasive verification issues that
7 we've all talked about?

8 MS. MARGOT SAUNDERS: Well, can we -- can I go
9 middle ground and let me just try -- it seems to me that
10 you need to sponsor more conversations and that they do
11 not necessarily need to be as formal and large as this,
12 but you can, as I know you are able to do and have done,
13 sponsor negotiations or just discussions between various
14 groups that are here today, and I know we would be happy
15 to participate.

16 We've been doing that, actually, Rozanne and I
17 are old friends, because we have been negotiating for
18 years, and actually, there's a lot that we agree on, and
19 I think the suggestion that Laura made about changing
20 the law to provide a notice of the right to cease
21 communications was one of the issues that NCLC has been
22 asking to have a change in the law that I believe ACA
23 had agreed to, and just we're not able to agree to some
24 of the other parameters of that issue moving forward.
25 So, yes, I think you should sponsor more information,

1 more meetings.

2 But can I just drill down just a little bit on
3 what shall be included in the -- in this -- in the
4 verification, because I don't think it's that
5 complicated.

6 MS. TWOHIG: Sure, okay. Why don't you try, and
7 then we're probably going to need to move on to some of
8 the other issues.

9 MS. MARGOT SAUNDERS: Right. It seems to me
10 that health and medical related issues are in a separate
11 category and that those should be perhaps pulled out
12 because of privacy concerns, but everything else, all
13 other consumer-related debt, which is the only thing
14 that FDCPA is supposed to cover, should -- can have a
15 fairly routine -- routinized set of information that
16 must be provided or that should be required by the law
17 to be provided to the debt collector before the debt
18 collector proceeds.

19 The debt collector should be required to have a
20 copy of the original contract, and the original contract
21 may be electronic. The original contract always is
22 going to have a signature. It may be an electronic
23 signature, may be a handwritten signature, but it's --
24 or it may just be a checkmark or an "I agree," but there
25 is some reflection of the original contract that the

1 debt collector need not provide but the debt collector
2 should have before they proceed.

3 They definitely should provide to the consumer
4 the name of the original creditor, the amount of the
5 debt before it went into default, the amount of interest
6 and fees that have been added. In this day and age,
7 when electronic information is so easy to gather, that
8 information should be provided to the consumer up front.
9 Just think of how many requests for verifications won't
10 be necessary if that's provided to the consumer in the
11 first contact.

12 MS. TWOHIG: Okay, I want to move on to some
13 other issues, but I also do want people to address the
14 process issue here, because one -- Margot, I think your
15 list -- we have talked about it over the last two days,
16 NCLC's list, and I think it's probably fair to say that
17 the list five years ago might have been different, in
18 other words, as technology changes, that list might be
19 able to, in a low-cost way, grow, change, as contracts
20 change, as the form of contracts change.

21 So, how do we -- in other words, are you saying
22 that the list should be literally written out in the
23 statute and that any time that changes are needed,
24 Congress needs to pass the law, and Congress needs to
25 add to the FDCPA exactly what validation is required for

1 medical debts, for credit card debts, for these kinds of
2 debts? Is that what you're proposing as the legal
3 scheme to address an issue like verification going
4 forward?

5 MS. MARGOT SAUNDERS: We would propose we start
6 with a minimum in the law and then the FTC have
7 regulatory authority to add to it as necessary.

8 MS. TWOHIG: And any other thoughts? I'm
9 interested in the process issues, because we just don't
10 have time to sort through, you know, the substance. I
11 wanted to try to see if there was consensus on the basic
12 principle but then also talk about next steps in terms
13 of process.

14 MS. ANDERSEN: Well, I would like -- I'm sorry,
15 Laura, go ahead.

16 MS. UDIS: I was going to say that I would also
17 be supportive of Congress giving the FTC rulemaking or
18 regulation authority, and that would be one way to do it
19 as well, but it seems as though you could almost proceed
20 as if you had rulemaking or regulatory authority, but
21 then, at some point, you either have to go to Congress
22 or perhaps issue an advisory, interpretive letter, for
23 what that's worth.

24 MS. TWOHIG: Some courts, it's worth something;
25 some courts, it's not worth much. It depends on the

1 court, I think, is what the legal record shows.

2 MS. WHITE: I think it would be -- I know
3 amending the law is not an easy process. People have
4 worked for years to get amendments passed to the FDCPA,
5 and I think if we can come together in some way to work
6 on issues, it would be great. It's not going to have
7 the effect of a law or even a regulation. It's hard to
8 say where to go from here, because it's going to be
9 voluntary if it's not written in the law.

10 MR. RIESE: If I can just say -- and you know
11 that I'm a reformed regulator, and I do think that for
12 the banking industry in particular, we do have a very
13 involved regulatory structure with a lot of supervisory
14 oversight, and so I certainly do think that they need to
15 be involved at the table on this and can help at least
16 on the depository institution creditor side. We have
17 seen the FDIC's participation, and I know the other
18 agencies have been here attending, so I think that
19 that's another avenue to pursue.

20 MR. WOOD: And Peggy -- I'm sorry?

21 MS. TWOHIG: No, I keep promising Rozanne to get
22 to her. Go ahead, Gary. She will have the last word.
23 Go ahead.

24 MR. WOOD: Go ahead.

25 MS. ANDERSEN: No, I get the last word.

1 MR. WOOD: I forgot what I was going to say, so
2 you go ahead and I'll think of it.

3 MS. ANDERSEN: I just want to say that we
4 believe that there are a couple of options you have
5 short of changes in the law, but I think, really, after
6 listening to this dialogue, we may be all skirting
7 around the elephant in the living room. I mean, if
8 that's what it takes, that's what it takes in terms of
9 the next step. If you're bringing creditors, consumers,
10 debt buyers, debt collectors, together, I would like to
11 think that through further discussion and really
12 documentation of the information that we're really
13 sharing almost somewhat casually here, I think we can
14 move the ball forward.

15 I would just like to say, on behalf of ACA
16 International, I'm chomping at the bit to have further
17 dialogue. I just simply think that for some of us
18 sitting at this panel, it's just very difficult to go
19 through a checklist and agree right at this moment, but
20 I think that the people that we do represent want to be
21 at that table and not to be obstacles to progress.

22 MR. WOOD: I was just going to say that some of
23 the information that Margot was asking for, you have to
24 go beyond people that are sitting at this table to get
25 it. It just doesn't come to the collector, doesn't come

1 to the debt buyer, and in some cases, it probably
2 doesn't exist.

3 There are no signatures on a lot of telephone or
4 internet-created cards, and in general, the approval
5 process that the debtor goes through is when they sign
6 the charge slip, it says, "I agree to all the terms and
7 conditions," and all the terms and conditions change
8 periodically, and you keep signing and you keep agreeing
9 to them. It's very hard to keep up with which one's in
10 place.

11 MS. TWOHIG: And I think that, for the two
12 reasons Rozanne and Gary mentioned, is why I was
13 throwing out the idea of regulatory authority, because
14 you can have meetings, you can talk to individual
15 groups, you can gather information, but you don't know
16 for sure if you're hitting all interested parties, if
17 you're getting all views, unless it's on the record in a
18 fairly formal proceeding. So, that's why I wanted to
19 get thoughts on that.

20 I want to move on to another common theme that's
21 been discussed the last couple days and certainly was
22 mentioned by several of you, and that is methods of
23 consumer contact, or another way to put it is, are there
24 changes in the law that are needed to keep up with
25 modern communication technology and the way consumers in

1 2007 and maybe will change in the future? Thoughts on
2 that? Gary?

3 MR. WOOD: You guys are going to have to wait
4 now.

5 It's been discussed ad infinitum at this
6 meeting, Peg, that the case is -- you know, cell phones
7 didn't exist, recorders didn't exist. We just need to
8 bring the -- and some of it's beyond your control, it's
9 at the FCC -- but we need to somehow bring into the 21st
10 Century the ways that we can communicate with people who
11 are, in fact, by definition our customers, and we don't
12 want to communicate with them in ways that are illegal,
13 but we have to communicate with them.

14 And it's been suggested that maybe it could all
15 be done with letters, but with every 10,000 letters we
16 send, we probably get back 9000 of them because we don't
17 know where they are. They're returned mail. So, we
18 need to be able to communicate with them in whatever way
19 they approve of, whatever way is convenient for them,
20 certainly within the time frame. But as was also
21 pointed out, if I've got my Texas cell phone and I'm up
22 here in Washington, D.C., the time zones are not the
23 same, and nobody's going to know where I am. So, we
24 need to deal with that issue as well.

25 MS. TWOHIG: And is there any consensus around

1 that issue? Laura, Margot, do you want to address -- is
2 there anything that you've heard -- in the discussions
3 that you've heard that would lead you to think that
4 there is a common ground there?

5 MS. UDIS: Well, I am very sympathetic to the
6 debt collectors on the issue of cell phones and time
7 zones. You can't make that assumption anymore, and I
8 don't know what the solution is to that, but there has
9 to be a way to call a cell phone if the consumer agrees
10 to contact by cell phone when you don't know where that
11 person is in the world. So, I'd certainly support any
12 clarification that could be done statutorily on that.

13 On the issue of cell phones, I don't personally
14 think it's that complicated. I think if you get the
15 consumer's permission -- and I would say not when the
16 contract's created, but when the collection process
17 starts -- then call the consumer at the cell phone if
18 the consumer provides permission.

19 MS. TWOHIG: Rozanne?

20 MS. ANDERSEN: I would just like to say that
21 Congress in '77 didn't even contemplate permission to
22 call a land line, and I think that it would be a little
23 archaic to still view this as permission to use these
24 types of reasonable, commonplace forms of communication.
25 So, I resubmit, I mean, what we're really saying is I

1 think it's a powerful tool to presume certain reasonable
2 forms of communication are okay within the confines of
3 the law and request, urge, whatever you want to put, the
4 consumer needs to just simply say -- and that story
5 about the individual who works ten hours a day and only
6 has a cell phone that came up yesterday, I mean, the
7 answer would be, one comment, "Please do not call me on
8 my cell phone," and then the communication would shift
9 to another form.

10 I personally think that -- we never thought,
11 Laura, about your suggestion about the meaningful
12 disclosure, but not only is the method of communication
13 an issue, and I think that we could reach some consensus
14 on that, it's also there's a very, very troubling
15 disclosure problem that we have under the FDCPA, that
16 the FTC has respectfully suggested -- the courts have
17 resolved it for us, but it really hasn't been resolved,
18 and it's meaningful identity upon placement of a phone
19 call.

20 MS. TWOHIG: Answering machines or any
21 recorded --

22 MS. ANDERSEN: Answering machines, leaving
23 messages with other parties, I mean, really,
24 fundamentally, the law refers to placement of a phone
25 call.

1 MS. TWOHIG: So --

2 MS. ANDERSEN: It's archaic. I mean, there's
3 caller ID technology, there's all kinds of call
4 screening devices. What Laura suggests is the
5 meaningful disclosure would kick in possibly once you
6 know that you're communicating with the debtor. Right
7 now, that's a -- we can see the issue from both sides,
8 and you have an industry that is in distress over that
9 very issue.

10 MS. TWOHIG: Margot?

11 MS. MARGOT SAUNDERS: I'm very aware of the
12 clock, and I would just propose that this is a great,
13 great point of conversation for future meetings where we
14 can tease out all of these.

15 I really want to put on the record the absolute
16 critical need to update the remedies section of the Fair
17 Debt Collection Practices Act, because even if we triple
18 your budget, that still won't be enough to enforce this
19 Act and to create an incentive in the industry to comply
20 with the law. So, unfortunately, the facts of the
21 situation is that without private enforcement of this
22 law, there would be almost no compliance with it, and we
23 need to improve the mechanism for private enforcement in
24 order to stay up to date.

25 Now, I'm happy to talk about all these other

1 issues, but given that it's five to 4:00, I wanted to
2 make sure that's on the record.

3 MS. TWOHIG: Okay. I want to -- but before I --
4 I think I do want to shift to some legal enforcement
5 structure and remedies issues, but before we go back
6 there, I just want to close the loop, not that we can
7 decide all things, on the method of consumer contact.
8 The consumer contact, based on what I heard -- and not
9 just now but over the last two days -- it sounds like
10 the way -- it seems to me is that there are issues that
11 need to be clarified legally, that perhaps that if
12 there's clarification that allows consumers to be
13 contacted perhaps with consent in certain ways, like by
14 cell phone, there might need to be a corresponding right
15 of a consumer to say no at a certain point in time.

16 In other words, it might be not just a
17 clarification, you can do this, but there might be a
18 restriction on it, too, that needs to go with that. Is
19 that -- Margot is looking puzzled. It doesn't seem to
20 me from the discussion like there's that much consensus
21 around these issues. There's ideas floated. There's
22 different thoughts. There's a need from industry
23 clearly to want to get to the consumer, talk to the
24 consumer, try to resolve the debt as soon as possible.
25 There's concerns by the consumer groups about what that

1 means in terms of possible abuse and harassment.

2 So, it seems like there's some issues that need
3 to be sorted through there as well. And so, again, any
4 ideas -- and perhaps less consensus on exactly where you
5 go from here. I see nods, so I'll take that as a
6 somewhat fair summary.

7 Any ideas, other than just more discussions, on
8 next steps, on literally sorting through where the line
9 should be drawn or what the rights should be beyond
10 whatever the clarification is?

11 Laura?

12 MS. UDIS: Well, not to keep touting Colorado
13 law, but I will. I was just noticing we have a
14 difference in our statute, another difference, where
15 under 805, communication in connection with debt
16 collection, where the federal law says that the
17 collector cannot communicate at any unusual time or
18 place known to be inconvenient, Colorado law says time
19 or place or manner known to be inconvenient. So, that
20 could answer the cell phone problem.

21 MS. ANDERSEN: Right, manner. That's manner --
22 that's what we're trying -- that's the same section of
23 the FDCPA we're looking at, Laura, time, place,
24 manner -- I said method, but manner, and that's -- we
25 think that's a powerful tool for the consumer as well.

1 MS. TWOHIG: Okay, I want to turn to, in the
2 brief time we have left, some issues of the legal
3 structure, the enforcement structure. I think perhaps
4 federal preemption may fall into that. A couple of you
5 mentioned it. And so let's start with that, and then
6 we'll also talk about remedy issues some more so you can
7 respond to what Margot put on the table there.

8 But in terms of federal preemption, Rozanne, you
9 put that as your number one, and you already said why.
10 Laura said from the state perspective why that would not
11 be agreeable to them. Other thoughts on that?

12 MS. MARGOT SAUNDERS: Well, I'd like to add, I
13 think the consumer community would vehemently oppose any
14 bill that preempted state law on this, because there are
15 so many state laws that go so much farther than the
16 federal law. For one thing, many state laws cover
17 creditors, which the federal law doesn't, and until we
18 get anything equivalent to that in the federal regime,
19 there's no way we could even discuss it.

20 Not only do they cover creditors, many state
21 laws say that there's a statutory penalty for every
22 violation, and the statutory penalty for every violation
23 is indexed, so that it's now worth between \$3,000 and
24 \$4,000. So, if you're looking at federal preemption,
25 the starting place is at the best state law, but even

1 then, it's -- for all the good reasons that Laura
2 articulated, which I won't repeat but I underline, we --
3 I can't imagine that there would be a bill that we would
4 agree to.

5 MS. TWOHIG: And, Rozanne, before we continue
6 on -- I think I saw Gary wanted to say something, but
7 before we continue on, I just wanted to try to get some
8 clarity from you, and maybe you haven't thought about
9 this specifically, but are you talking about all state
10 and local laws, licensing laws, the licensed collectors?

11 MS. ANDERSEN: No. What I tried to say at the
12 very outset, we are absolutely not talking about state
13 regulations, state licensing laws. We are talking
14 specifically -- and if you would like to say it this
15 way -- provisions of the Fair Debt Collections Practices
16 Act, if you want to look at it -- if we are afraid to
17 just say "the law," but there are clearly certain
18 provisions in the FDCPA that we believe should apply
19 uniformly, across the board, to debt collector
20 communication and behavior and the corresponding
21 consumer rights, and if we have to bring people to the
22 table to discuss the optimum result, that's fine, and
23 just -- you know, I mean, this is where the future
24 dialogue is necessary.

25 I know Margot has her nonstarters. For example,

1 with us, for the record, I mean, injunctive relief is a
2 nonstarter when it comes to private consumer enforcement
3 power. So, I think you're going to -- as we push on
4 some of these, you'll see less consensus.

5 MS. TWOHIG: And in some of the federal statutes
6 that do have preemption, like the Fair Credit Reporting
7 Act, it has substantial preemption, not complete
8 preemption, but the states have the power to enforce the
9 federal law. What would you say about that if you were
10 proposing preemption under the Fair Debt Collection
11 Practices Act?

12 MS. ANDERSEN: Well, I would look first to our
13 executive committee and board of directors of just how
14 far I can go with the response to that question, but I
15 would say that if we could identify uniform practices
16 and uniform standards, that I would at least have to say
17 that we would be open to a meaningful discussion of
18 that, because we also understand your enforcement
19 challenges.

20 MS. TWOHIG: Cindy?

21 MS. WHITE: I think I've talked with Rozanne
22 about this, but when we're talking about collection
23 itself, I think that a uniform standard across the
24 country would be important, and it is something that I
25 think we'd like to discuss. Once again, I have to

1 reiterate, I think that NARCA members are looking for
2 exemption for litigation. So, as long as we're not
3 talking about litigation standards across the country
4 because those are governed by state law, and we don't
5 think that that's appropriate to preempt.

6 MS. MARGOT SAUNDERS: Can I say something?

7 MS. TWOHIG: Sure.

8 MS. MARGOT SAUNDERS: I am really astonished
9 that we're talking about preempting stronger state laws
10 in a system that is so clearly broken. I mean, we have
11 a catastrophe on our hands with debt collection, and I
12 understand that perhaps -- I'm sure none of the debt
13 collectors in this room are responsible for that, but
14 nevertheless, around the country, consumers, low-income,
15 elderly, disabled consumers are paying debts that they
16 don't owe, are being dunned for debts that are long
17 since past the statute of limitations.

18 We shouldn't even be talking about preempting
19 better state laws until we have at least on the table a
20 very strong, comprehensive federal law that we're
21 nowhere near even contemplating.

22 MS. ANDERSEN: We would submit that that's part
23 of the conversation.

24 MS. MARGOT SAUNDERS: Well, it's just -- when
25 you look at what's happened with other preemption of

1 other laws, all we have had is catastrophe. So, the
2 model is not good.

3 MS. TWOHIG: Okay. And Margot had also raised,
4 in addition to the point she just made, some issues of
5 remedies. Anyone want to respond to that before we move
6 on?

7 MR. WOOD: I'd like to catch up on what just
8 happened, if I can understand what that was. There has
9 been an awful lot of information provided that has to do
10 with anecdotal evidence of what happens in particular
11 law offices or whatever and then the extrapolation of
12 that to the assumption that it covers everyone on the
13 planet. I once did a study when I was in college to try
14 to find out how many people had bad teeth, and so I set
15 myself up right outside of a dentist's office, and
16 everybody I talked to had bad teeth, and I think
17 everybody that goes into some of these offices is going
18 to have a problem with a collector, but that doesn't
19 mean that everybody has a problem with collectors.

20 I think that if -- there has been an attempt to
21 paint rampant compliance issues out of hand and that our
22 industry and the collection industry are out of control
23 and need to be reined in. I think that's failed. I
24 think that we have wound up with some areas that
25 everybody agrees we need work on. We need work on

1 compliance, I'll give you that, we need work on
2 communications, we need work on strengthening the
3 ability of your organization to enforce the law.

4 I'm not too sure how I feel about rulemaking.
5 I'd have to talk to our guys about that, but I just want
6 to say that I think we slipped off the cog just a little
7 bit by extrapolating from some specific cases, which I
8 readily admit should never have happened. None of us
9 here wants that to happen. Our association, Rozanne's
10 association, we fight like the devil to keep our members
11 from misbehaving, and --

12 MS. ANDERSEN: Gary, I would just like to add,
13 too, to that that another perspective -- and the reason
14 one of our recommendations for nonlegal changes would be
15 a serious consideration and effort made for an
16 alternative dispute resolution program for consumers,
17 because we think they need the ability to be able to
18 resolve their disputes.

19 You have your purposes for your use of
20 complaints. We believe that to put enforcement solely
21 on the backs of the United States citizens who, to
22 listen to some in this room, although I do not
23 stereotype people, are indigent, challenged in terms of
24 their literacy, and to put full enforcement on their
25 backs in terms of filing lawsuits, going to court,

1 answering interrogatories, responding to discovery
2 requests, and that's the solution?

3 I think that is a disservice to put that on the
4 backs of those private individuals who apparently need
5 our help the most, and that is why ACA International
6 supports an alternative dispute resolution program that
7 does not draw the ire and all the negatives that
8 apparently came out, and I would hope -- and this is a
9 pretty bold statement -- but I would hope that any true
10 disdain for an alternative dispute resolution program
11 has absolutely nothing to do with consumer lawyer
12 interests.

13 MS. MARGOT SAUNDERS: Well, can I respond to
14 that?

15 MS. TWOHIG: We are actually over time, so my
16 apologies to the audience when I said we would try to
17 stick on the schedule, but since I don't see people in
18 droves leaving the room and am fairly interested in the
19 discussion, we will continue a little bit longer here.

20 Margot, if you could respond to that, and I
21 would actually like to turn to and open it up to
22 nonlegal regulatory enforcement solutions possibilities,
23 whether it's technology, alternative dispute resolution,
24 financial literacy. I know Gary mentioned as two of his
25 suggestions more research, and so I would like to throw

1 out and try to talk about some of the nonlegal solutions
2 in terms of next steps and how do we get there, but go
3 ahead, Margot.

4 MS. MARGOT SAUNDERS: I think that the consumer
5 community would not be adverse at all to an alternative
6 dispute resolution program so long as it was not binding
7 and it was open and free to the consumers. You're
8 absolutely right, Rozanne, there needs to be an
9 alternative, an additional way to resolve these problems
10 without going to court. We are not, at the National
11 Consumer Law Center, looking for litigation
12 opportunities. We are looking for ways to change the
13 current structure of the law, of the situation, so that
14 so many consumers are not so troubled.

15 We respond to legal services and private
16 attorneys who are representing consumers for free. So,
17 again, we would like to -- whatever we can do to resolve
18 the overall situation, not create litigation
19 opportunities. At the moment, preserving access to the
20 courts seems to be the best way to enforce this law and
21 to create an incentive to ensure that debt collectors
22 don't behave in abusive ways.

23 MS. TWOHIG: So, what would be the next step in
24 exploring that from anyone's perspective, in exploring
25 that possibility, of developing that?

1 MS. ANDERSEN: Well, I think the FTC has given
2 us some guidance in past speeches and recommendations
3 themselves about the auto manufacturer industry, the
4 advertising industry. There are apparently some
5 alternatives that are already out there and working, and
6 the National Council of Better Business Bureaus was
7 referenced yesterday. I know as industry, sometimes
8 groups come together and move those initiatives forward.

9 MS. TWOHIG: Okay. I think we do need to wrap
10 up, but I don't want to stop without talking about
11 Gary's idea, because it was pretty apparent from the
12 very opening session, the researchers and economists
13 that we had said from the get-go, we don't know a lot.
14 There's a lot of basic information about the industry
15 that just is not out there. Any thoughts on how that
16 changes?

17 MR. WOOD: I didn't think I was going to have to
18 come up with an answer. I just said it was a problem.

19 I don't know, because so much of what -- you
20 know, we've got four publicly traded companies that buy
21 debt. The rest of us are all private. It's very hard.
22 DBA International has worked to try to get its
23 membership to report information that might be useful in
24 fleshing out some of these issues, and it's very
25 difficult to do that, and I don't really -- anybody --

1 guys, do you have an idea?

2 MS. ANDERSEN: I have a suggestion, Gary, just
3 to state one obvious --

4 MR. WOOD: Go ahead.

5 MS. ANDERSEN: -- is that as the chief
6 enforcement authority -- and granted, we're not here to
7 talk about your limitations due to financial
8 resources -- but if there's one organization, entity in
9 this United States that would have a reasonable basis to
10 do research, you have statisticians, you have those
11 kinds of resources, I think that that is -- that would
12 be one logical source.

13 And I know the Federal Reserve Board fellow,
14 everyone was running around yesterday talking about what
15 opportunities can we do as an industry to start
16 conducting some research. So, boy, out of the gate, I
17 think it's safe for me to say that we would applaud
18 that, to give you that ability, to really dig down and
19 have a better statistical understanding of the industry
20 you are the enforcement authority of.

21 MR. WOOD: And Bob Hunt pointed out that he's
22 fascinated by this field, and perhaps that would be a
23 good place to start.

24 MS. TWOHIG: We will just hire Bob.

25 Margot, one last comment.

1 MS. MARGOT SAUNDERS: I think that would be a
2 great idea for you all to lead an investigatory effort.
3 I would like to caution, however, that you look at the
4 questions in terms of raw numbers and not just
5 statistics. We're not dealing with just one million
6 debt collections. We're dealing with a billion debt
7 collections. So that if you have a 2 percent problem --
8 and my example is just by way of example -- if there's a
9 2 percent problem, 2 percent of a billion is a whole lot
10 of -- it's a very big problem, so --

11 MR. WOOD: And the other side of that is 69,000
12 complaints on a billion contacts is a very small
13 percentage.

14 MS. TWOHIG: Well, we won't go back over that
15 territory. We don't have enough time for that.

16 I think we're going to need -- I am going to
17 stand up just to give some final closing remarks.

18
19
20
21
22
23
24
25

1 CLOSING REMARKS

2 MS. TWOHIG: Thank you all, again, for coming
3 and especially to our distinguished panelists here and
4 the previous panelists for their thoughtful
5 contributions to this workshop. We're very pleased that
6 so many of you came and that we had so much
7 participation in the process, and I know many of you
8 traveled from far away to attend, and we really
9 appreciate that.

10 I want to thank the folks that really made this
11 come together. Lydia Parnes, our Bureau Director,
12 mentioned some of them this morning, but I want to thank
13 them again, and that is mostly this group sitting here.
14 I think I see everyone, Tom Pahl --

15 (Applause.)

16 MS. TWOHIG: -- Tom Pahl, one of my Assistant
17 Directors, Tom Kane, Katie Harrington-McBride, Karen
18 Hickey, and they all were basically the planning team,
19 as well as Seth Coburn -- where is Seth? Okay, he's --
20 okay, he's -- he's not sitting right there, but we
21 applaud them all.

22 And we also had, as you know, other FTC staff,
23 including Chuck Harwood, Director of Our Northwest
24 Regional Office, Alice Hrdy, one of my Assistant
25 Directors, Reilly Dolan, another Assistant Director, as

1 moderators, and they all contributed significantly, and
2 I just want to thank them all. They had the job of not
3 only planning the substance, but putting together all
4 the nitty-gritty details that went into getting this off
5 the ground. I think things ran pretty smoothly, despite
6 some problems with the microphones -- we won't go back
7 there -- but I am really grateful for all your hard
8 work.

9 And so I just want to close with a quote from
10 Ethel Watts Mumford, an American novelist and humorist,
11 once remarked that, "In the midst of life, we are in
12 debt." Well, judging from the past two days, truer
13 words have never been spoken. We have all been talking
14 about debt and debt and debt. Matters of life and debt
15 impact all of us, some professionally, some personally,
16 and we've learned a great deal. I know I have learned a
17 huge amount over the last two days, and we have a lot to
18 process.

19 Clearly, the debt collection industry has been
20 in a period of significant change. Consumer debt levels
21 continue to rise. We have the subprime mortgage market
22 fallout that will likely only add to some consumer debt
23 troubles. We have technological advances that have made
24 a difference but will also continue to make a difference
25 as things change, and so we have our work cut out for

1 us.

2 Here at the FTC, we believe we have a duty to
3 try to keep abreast of these issues and examine these
4 issues, and especially when there's periods of change,
5 when we see -- and especially in times where, for
6 whatever reason -- we're not going to debate it -- we
7 do, in fact, see continuing consumer complaints and a
8 rise in complaints in proportion to other complaints,
9 and so that's the reason why we're here, the reason
10 why we're trying to gather information on as systematic
11 basis as possible, and so we appreciate your
12 efforts.

13 We will, of course, continue with our law
14 enforcement approach. An important part of our mission
15 is consumer education as well as business education, but
16 this event is really critical in trying to gather some
17 information that before the last two days we had a sense
18 of but didn't really know. I know much of it, some of
19 it was anecdotal, but it still helps to hear different
20 views on the different issues of the day.

21 We are planning to do a report on this workshop.
22 The report will summarize what we have learned. We will
23 try to synthesize all of this information as best we
24 can, and we will consider whether we will be making
25 recommendations or what our next steps will be, and so

1 you can look forward to that. I'm not going to make any
2 promises exactly when that's going to be out, I'm afraid
3 to, but we will be working hard on that. We will do our
4 best.

5 As you can tell from the work we've put into
6 this, this is a priority, to try to sort through some of
7 these issues, figure out what we think about it. We
8 will be continuing to reach out to you to get further
9 information, and I just thank you so much for all of
10 your participation.

11 (Applause.)

12 (Whereupon, at 4:16 p.m., the hearing was
13 concluded.)

14

15

16

17

18

19

20

21

22

23

24

25

1 C E R T I F I C A T I O N O F R E P O R T E R

2 DOCKET/FILE NUMBER: P074805

3 CASE TITLE: COLLECTING CONSUMER DEBTS

4 DATE: OCTOBER 11, 2007

5

6 I HEREBY CERTIFY that the transcript contained
7 herein is a full and accurate transcript of the notes
8 taken by me at the hearing on the above cause before the
9 FEDERAL TRADE COMMISSION to the best of my knowledge and
10 belief.

11

12 DATED: 10/29/2007

13

14

15

16 SUSANNE BERGLING, RMR-CLR

17

18 C E R T I F I C A T I O N O F P R O O F R E A D E R

19

20 I HEREBY CERTIFY that I proofread the transcript
21 for accuracy in spelling, hyphenation, punctuation and
22 format.

23

24

25 SARA J. VANCE