EXHIBIT C

CENTER FOR RESPONSIBLE LENDING

High-Cost Payday Lending Traps Arizona Borrowers

September 16, 2008

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- Over 700 payday lenders charging up to 459% annual percentage rate (APR) for a two-week loan are located throughout Arizona; with the highest concentrations per capita in Pinal, Mohave, and Maricopa Counties.

- A typical Arizona borrower pays an estimated $516 in fees for a $325 payday loan and still owes the $325 in principal. Overall, payday lending costs Arizona families nearly $149 million each year. Payday lending drains $91 million and $23 million from Maricopa and Pima County households, respectively.

- Payday lenders will no longer be able to charge triple-digit interest rates when their exemption to Arizona's 36% rate cap expires in 2010 unless Proposition 200 is approved by voters this November. This proposition only decreases the cost of a two-week payday loan from 459% to 391% APR.

We conclude that Proposition 200 will not lead to effective reform; instead, its passage would mean Arizona payday borrowers would remain mired in the debt trap.

Introduction

A payday loan is a small, short-term loan of up to $500 secured by the borrower's personal check. Marketed as a quick and easy solution to dealing with an unexpected expense, these loans are generally due in about two weeks. In Arizona, borrowers can be charged up to $17.65 per $100 borrowed, which equates to a cost of 459% APR.

Payday Loan Basics

- Loans of up to $500
- Usually due in two weeks
- Fee of $17.65 per $100 borrowed, or 459% APR
- Average borrower takes 9 loans per year

To qualify, a customer seeking a payday loan typically needs just a form of identification, a checking account, and proof of income either from a job or government benefits like Social Security. The borrower provides the lender with a personal check for the amount of cash they are receiving that day plus the fee. If the borrower does not pay back the loan when due, the lender can cash their personal check as repayment.

Because the entire loan amount, plus the fee, is due in two short weeks, borrowers typically find it hard to pay back a payday loan and also meet their regular living expenses. The result is that borrowers either have to extend their loan out another two weeks by paying an additional fee, or pay back their loan and then take out another a few days later when their money runs out. This is the start of the payday lending debt trap cycle, where a borrower intends to only take one loan, but ends up having to take another each pay period. The average payday borrower takes out 9 payday loans a year, and an industry researcher has noted that the typical borrower stays in payday loans for 18 months.[1]

Arizona's Payday Lending Experience

Until the beginning of this decade, no Arizona lender was permitted to offer a small loan product in excess of 36% APR. In 2000, however, the legislature passed a law exempting payday lenders from the 36% APR rate cap for all other small loan products. Instead, payday lenders were allowed to charge up to $17.65 per $100 borrowed for loans of up to $500 with a term of at least five days. For the typical two-week payday loan, this equates to an APR of 459%. This legislation, which was signed into law by the Governor in April 2000, includes a sunset provision, which removes this special exemption to the 36% APR rate cap on July 1, 2010. This means that payday lenders will soon no longer be able to charge triple-digit rates and instead will have to abide by the laws that apply to all of Arizona's other small loan lenders.[2]

As of August 2008, there were over 700 payday lending licensees located across Arizona. While payday lenders are distributed throughout all but two counties, the most payday lenders per capita are in Pinal, Mohave, and Maricopa Counties.

Nationally, payday borrowers take out an average loan of $325. Payday lenders tend to charge the maximum allowed by state law; not competing on price with nearby storefronts. Based on this data, we find that **payday lenders make over $841 million in loans each year, draining nearly $149 million in fees from Arizona borrowers.**

County	Payday Lenders[3]	Loan Volume[4]	Total Fees Paid[5]	Stores per 100,000 people[6]
Apache*	0	--	--	--
Cochise	14	16,639,350	2,936,845	11.9
Coconino	15	17,827,875	3,146,620	12.9
Gila*	6	7,131,150	1,258,648	11.7
Graham*	3	3,565,575	629,324	9.0
Greenlee*	0	--	--	--
La Paz*	1	1,188,525	209,775	5.1
Maricopa	434	515,819,850	91,042,204	14.1
Mohave	30	35,655,750	6,293,240	19.4
Navajo*	9	10,696,725	1,887,972	9.2
Pima	110	130,737,750	23,075,213	13.2
Pinal	31	36,844,275	6,503,015	16.7
Santa Cruz*	4	4,754,100	839,099	10.4
Yavapai	21	24,959,025	4,405,268	12.5
Yuma	16	19,016,400	3,356,395	10.0
Other licensees	14	16,639,350	2,936,845	
TOTAL	**708**	**$841,475,700**	**$148,520,461**	

*These counties have populations of less than 100,000.

The vast bulk of revenues generated by payday lenders leave Arizona, flowing to companies headquartered in other states. Each of the top ten lenders in Arizona listed below is headquartered elsewhere.

Business Name	Number of Locations	Company Headquarters
Ace Cash Express	108	Texas
Advance America	56	South Carolina
Loan Mart/Money Mart (Dollar Financial Group)	55	Pennsylvania
Check Into Cash	47	Tennessee
Southwest Check Cashing/Check$mart (Buckeye Check Cashing)	46	Ohio
Quik Cash (Q.C. Holdings)	40	Missouri
Check 'n Go (Southwestern & Pacific Specialty Finance)	34	Ohio
Allied Cash Advance	33	Florida
Fast Payday Loans, Inc.	29	Georgia*
Checkmate Payday Loans (L.M.S.A. Financial Corporation Arizona)	27	Washington State*

*Headquarters for Fast Payday Loans and Checkmate could not be confirmed; however these companies' primary contact information lists an out-of-state address

For the average borrower taking out nine loans per year (an initial loan and then 8 subsequent consecutive transactions), this means they will pay $516 in fees for $325 in credit, and still owe $325 in principal. **In total, they pay $841 to borrow $325.** Because these nine loans are typically taken out one after the other—either as a renewal or as a back-to-back transaction—the borrower is not really extended new credit each time, but rather paying a fee to re-open the initial loan every two weeks.[7]

$325 Loan	
Fee of $17.65 per $100 borrowed	$57
Total fees paid with nine loans	$516
Total fees plus principal due to payday lender $516 (fees)+ $325 (principal)	$841

Payday Lenders Threaten to Continue the Debt Trap Cycle

The payday lending industry depends on borrowers becoming trapped in debt for the bulk of their revenues. For example, national data show that:

- 90% of payday lending business is generated by borrowers with five or more loans a year, and
- 60% of payday lending business is generated by borrowers with at least 12 loans a year.

This dependence of repeat borrowers is evident in a statement by Carol Stewart, the Vice President of Government Affairs for Advance America. When asked why her company was opposed to limiting borrowers to five loans a year (which would allow them to navigate more than one financial emergency a quarter), she stated: ""We can't live on five [loans]."[8] A remark from the CEO of Cash America is also telling: "And the theory in the business is you've got to get that customer in, work to turn him into a repetitive customer, long-term customer, because that's really where the profitability is."[9]

With the special exemption allowing payday lenders to charge triple digit rates scheduled to come to an end in Arizona in July 2010, payday lending revenues are threatened by the prospect of no longer being able to trap borrowers in debt. In response, payday lenders have put Proposition 200—which would remove the sunset provision and allow payday lenders to continue to charge triple-digit APRs—on the ballot. Called the "Payday Loan Reform Act," this ballot initiative also includes provisions such as limiting borrowers to one loan at a time and one payment plan per year that sound promising. However, in other states that have adopted these types of reforms, with much stronger enforcement that proposed in Arizona, payday borrowers continue to be trapped in long-term, high-cost debt at roughly the same levels as before this "reform" (see Appendix 1 for more details on all of Proposition 200's provisions and Appendix 2 for a summary of how these reforms have failed in other states).

Industry-Sponsored Payday Loan Reform Act

-Repeals sunset clause which would lower payday loan rates to 36% APR in 2010

-Only lowers rate charged from 459% APR to 391% APR on a two-week payday loan

Proposition 200 will not stop the payday loan debt trap

Many states and the federal government have acted to end triple-digit interest rate payday loans. Fifteen states and the District of Columbia enforce reasonable interest rate caps on all small loans (these states' rate caps are detailed in Appendix 3). [10] In addition, Congress passed and President Bush signed into law a cap of 36% APR on loans to members of the military, whose security clearances and deployment schedules were found to be threatened by payday and other high-cost lenders.[11]

In July 2010, Arizona is poised to similarly eliminate the harmful impact of this abusive product on its citizens. However, if payday lenders have their way and pass Proposition 200, Arizonans will be paying 391% APR on their payday loans (down from 459%), rather than falling back to the 36% cap in 2010. In fact, the whole point of the payday lending industry's ballot initiative is to remove the 2010 sunset date that would force them to lend at the 36% interest cap for all other small lenders in the state. This sunset date, if not removed by the payday industry's initiative, will level the playing field for all small loan lenders, by eliminating the special exemption that has allowed payday lenders to charge rate 10 times higher than other small lenders.

From our analysis, we must conclude that **Proposition 200 will not lead to effective reform; instead, Arizona payday borrowers will remain mired in the debt trap.**

APPENDIX 1: Proposition 200 provisions

The proposed changes in Proposition 200 include:

- *Removing the sunset provision in the 2000 authorization of payday lending.* Payday lenders' exemption from the 36% APR small loan rate cap is scheduled to sunset on July 1, 2010. This provision removes this sunset clause, thereby allowing payday lenders to continue charging triple-digit annual interest.

- *Lowering the allowable fee from $17.65 per $100 borrowed to $15 per $100 borrowed.* This provision reduces the APR on the typical two-week payday loan from 459% to 391%, still 10 times higher than the interest rate cap for other small lenders in the state.

- *Capping the maximum loan term at 35 days.* While the provision would cap the maximum loan duration at 35 days, it fails to lengthen the minimum term of 5 days. Thus, lenders could still make two-week loans at 391% APR.

- *Limit to One Loan Outstanding with a 24 Hour Cooling Off Period.* The proposition includes no effective enforcement for this one loan at a time provision. Even if this provision were enforced, a payday lender could make as many as 24 two-week loans to a borrower in a single year. In Florida, which already has this provision and clear enforcement through a comprehensive database, the typical borrower still gets caught in the same debt trap--paying off their loan, waiting a short period of time, and then taking out another in a "back-to-back transaction."[12]

- *Debit Access to Borrower Accounts.* While characterized by the industry as offering convenience, in reality this provision would give payday lenders unfettered access to customer bank accounts and facilitate overcharging through continuous fees. In addition, this provision could open the door to other forms of payday lending, such as internet and kiosk payday lending.

- *Repayment Plan.* This provision would limit consumers' rights of renegotiation to one request of a repayment plan annually. Currently Arizona law allows borrowers and lenders to engage in unlimited renegotiation. In addition, it merely gives borrowers the right to ask for a repayment plan, rather than requiring lenders inform them of this option. States that collect data on repayment plan usage report only between 1-3% of eligible transactions employ this option.[13]

- *Borrower Database to Track Borrowers with Repayment Plans.* While other states employ databases to enforce provisions such as a one loan limit and cooling off period, the database proposed in Arizona will only be used to ensure that borrowers do not take advantage of more than one repayment plan each year.

- *Disclosures in Spanish or English.* This proposal would require that a copy of the written agreement currently required under Arizona law be made available to borrowers at their request in Spanish or English.

APPENDIX 2: Experiences of other states with payday lending "reforms"

As shown in the table below, the experience of states introducing similar payday lending "reforms" short of a rate cap at or about 36% interest are ineffective.

	Regulations	Results
Florida[14]	• $500 maximum loan amount • No more than one outstanding loan at a time • $10 per $100 (plus verification fee) maximum fee • 24 hour cooling off period after each loan • 60 day grace period available, upon declaration of inability to repay • Rollovers prohibited • Database	• 89% of loans go to borrowers with five or more transactions per year • 58% of loans go to borrowers with 12 or more transactions per year • Average of 8 loans per borrower • Less than one percent of transactions take advantage of the 60 day grace period • 45% of new loans are taken out the day after the previous loan paid off; 88% of new loans are taken out in the same two week pay period that previous loan is paid off
Michigan[15] *13 month time period as reported by regulator	• $600 maximum loan amount • No more than two loans outstanding at a time (can only have one loan outstanding per lender) • Maximum fee of 15% for 1st $100 borrowed; 14% for 2nd $100; 13% for 3rd $100; 12% for 4th $100; and 11% for 5th and 6th $100 • Payment plan option • Rollovers prohibited • Database	• 94% of loans go to borrowers with five or more transactions* • 77% of loans go to borrowers with 12 or more transactions* • Average of 8 loans per borrower • 2% of eligible transactions employ payment plan

	Regulations	Results
Oklahoma[16]	• $500 maximum loan amount • No more than two outstanding loans at a time • $15 per $100 maximum fee on loans up to $300; $10 per $100 maximum fee on loans of $301-500 • Two business day cooling off period after 5th consecutive loan • Payment plan option available after 3rd consecutive loan • Rollovers prohibited • Database	• 91% of loans go to borrowers with five or more transactions per year • 64% of loans go to borrowers with 12 or more transactions per year • Average of 9 loans per borrower • Less than 2% of eligible transactions employ payment plan • 59% of new loans are taken out the day after the previous loan paid off; 87% of new loans are taken out in the same two week pay period that previous loan is paid off
Washington[17]	• Cannot borrow more than $700 from a single lender at one time • $15 per $100 maximum fee on loans up to $500, then $10 per $100 on remaining portion of loan up to $700 • Payment plan option available after 4th consecutive loan with same company • Rollovers prohibited	• 89% of loans go to borrowers with five or more transactions per year • 56% of loans go to borrowers with 12 or more transactions per year • Average of 8 loans per borrower • 1.2% of all transactions employ the payment plan option

APPENDIX 3: States with reasonable small loan interest rate caps

State	Maximum Annual Interest Allowable[18]
Arkansas (new AG ruling that this cap applies to payday loans)	17%
District of Columbia	24%
Georgia	60%
Maine	30%
Maryland	33%
Massachusetts	23%
New Hampshire (new law, taking effect Jan 2009)	36%
New Jersey	30%
New York	25%
North Carolina	36%
Ohio (new law, being challenged by ballot referendum by payday lenders)	28%
Oregon	36%
Pennsylvania	24%
Vermont	18%
West Virginia	31%

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[1]Summarizing all available state regulator data, the Center for Responsible Lending reports a national average of 8.7 loans per borrower per year. See Uriah King and Leslie Parrish, *Springing the Debt Trap*, Center for Responsible Lending (December 13, 2007). Pat Cirillo of Cypress Research Group, in testimony to the Ohio House Committee on Financial Institutions, Real Estate and Securities, January 31, 2008 noted that "...if you look at the cycle, the amount of time that folks tend to use this product, they are in and out of it really for about 18 months." Transcript on file with the Center for Responsible Lending.

[2]For more details, see Ariz. Rev. Stat. § 6-1251 et seq.

[3]Arizona Department of Financial Institutions, Deferred Presentment licensees as of August 27, 2008.

[4]The Center for Responsible Lending finds that, nationally, the average payday lending store makes 3,657 loans per year and the average payday loan size is $325. To estimate loan volume for Arizona counties, we multiply the number of stores by 3,657 loans. Then we take the total loans and multiply by $325. For more information on the Center for Responsible Lending's estimates, see Uriah King, Leslie Parrish, and Ozlem Tanik, *Financial Quicksand*, Center for Responsible Lending (November 2006).

[5] Payday lenders generally charge the maximum amount permitted by law. In Arizona, payday lenders can charge up to $17.65 per $100 borrowed.

[6]Arizona population by county from U.S. Census (2000).

[7]Regulator data from Florida and Oklahoma (the only states with this level of detailed data available) shows that 45% and 59% of repeat payday transactions, respectively, are opened at the borrower's first opportunity. In addition, 88% and 87% of new loans are originated before the borrower receives their next paycheck. Data on file with the Center for Responsible Lending.

[8]Jeff Shapiro, "Payday-loan fights loom." *The Richmond Times-Dispatch* (February 29, 2008).

[9]Dan Feehan, CEO of Cash America, remarks made at Jefferies Financial Services Conference (June 20, 2007). Transcript on file with the Center for Responsible Lending.

[10]High-cost payday loans are not available in the following states/jurisdictions: Arkansas, Connecticut, the District of Columbia, Georgia, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, Vermont, and West Virginia. In addition, Oregon's small loan law allows small loans of 36% plus a $10 per $100 fee for a 31 day or longer loan term. Ohio's new 28% APR rate cap was to take effect in September 2008 but is currently being challenged by a payday lending industry-sponsored ballot initiative and New Hampshire's 36% APR rate cap will take effect January 1, 2009.

[11] The Military Lending Act, which caps interest rates on small loans of 91 days or less to active duty military and their dependents was part of the John Warner National Defense Authorization Act for Fiscal Year 2007, signed into law in October 2006. The interest rate cap took effect October 1, 2007.

[12]According to the state regulator, nearly half (45%) of repeat payday transactions happen as soon as the 24 hour cooling-off period expires and 88% of transactions are originated before the borrower receives their next paycheck. Data on file with the Center for Responsible Lending and summarized in Uriah King and Leslie Parrish, *Springing the Debt Trap*, Center for Responsible Lending (December 13, 2007).
[13]According to regulator data, 0.42 percent of eligible transactions have employed a grace period in Florida; 2.4 percent of eligible transactions have gone into a payment plan in Michigan, and 1.8 percent of eligible transactions have gone into a payment plan in Oklahoma. See Uriah King and Leslie Parrish, *Springing the Debt Trap*, Center for Responsible Lending (December 13, 2007).
[14] *Florida Trends in Deferred Presentment*, Prepared by Veritec Solutions LLC for the Florida Department of Banking and Finance (August 2007). Summary calculations by the Center for Responsible Lending.
[15] *Michigan Trends in Deferred Presentment*, Prepared by Veritec Solutions LLC for the Michigan Office of Financial and Insurance Services (July 31, 2007). Summary calculations by the Center for Responsible Lending.
[16] *Oklahoma Trends in Deferred Deposit Lending*, prepared by Veritec Solutions LLC for the Oklahoma Department of Consumer Credit (May 2007). Summary calculations by the Center for Responsible Lending.
[17] Data is based on reporting from 92% of the industry. See *2006 Payday Lending Report*. Washington State Department of Financial Institutions (2007).). Summary calculations by the Center for Responsible Lending.
[18] For more information on interest rate caps on small loans by state, see www.paydayloaninfo.org, maintained by the Consumer Federation of America.

EXHIBIT D

www.chicagotribune.com/news/nationworld/chi-sun-debtchasers-jun08,0,5667609.story

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Debt collectors pushing to get their day in court

More aggressive strategies fill court dockets, result in mistaken identities

By Ameet Sachdev

Tribune reporter

June 8, 2008

Cook County Circuit Court has been turned into a frenetic debt collections machine, a reflection of easy credit gone sour and a collections industry determined to get paid.

More than 119,000 civil lawsuits against alleged debtors are clogging courtrooms, and at least half will result in judgments that debt collectors will use to dock wages, seize bank accounts and file liens against homes, compounding the woes of troubled borrowers.

But because debt collectors operate on volume—pushing through lawsuits based on little more than lists of names, addresses and alleged amounts due—there are also plenty of instances of mistaken identities, cases where debts are alleged when the bills have been paid and even situations where people have fallen behind and tried to work out repayments only to be hauled in to court.

"The system is out of control," said Michelle Weinberg, a supervisory attorney at the Legal Assistance Foundation of Metropolitan Chicago. "It's one thing to call a debtor on the phone. It's another thing to file a lawsuit in court."

The cases that bother the judges the most are those where people have simply fallen behind because of illness or job loss or inability to keep up with escalating bills, a situation that is expected to worsen as a result of rising food, gasoline and housing costs.

"These people aren't deadbeats," said Cook County Circuit Judge Daniel Gillespie, whose docket contains 12,000 debtor suits, about double from two years ago. He also supervises seven courtrooms on the Daley Center's 11th floor where such cases are brought. "These are real people with real problems," he said.

Down slippery slope

Geraldine Wandall is an example. When her health began failing about four years ago the retired bookkeeper, who lives on Social Security, fell behind on bills.

Wandall said she wrote letters to the department store that issued the credit card to see if it would reduce or eliminate some of the interest charges and late fees on her account. She said she never got a response.

"I have never bought anything that I couldn't pay for," said Wandall, 77, who suffers from congestive heart failure and now spends much of her days lying in bed in the living room of her Southwest Side bungalow.

She lifted the bedcovers over her face in shame while discussing her inability to repay on time. "I can't tell you how bad I feel."

In January she was sued by LVNV Funding LLC, the debt collector claiming she owed $4,759.92 on her old account. The suit was filed Oct. 17, 2007, more than five years after her last purchase with the card, according to court papers.

Her attorney, Alan Alop of the Legal Assistance Foundation, asked the court to dismiss the case because the statute of limitations to legally enforce the credit agreement expired after four years. LVNV's attorneys countered in court papers that she was legally liable for up to 10 years.

On May 29, Circuit Judge Moira Johnson threw out the suit, ruling the debt was too old.

For its part, debt-collection industry officials say they want to help consumers who fall behind on bills, said Rozanne Andersen, general counsel of ACA International, the main industry trade group. "No one wants to go to court."

On Mondays and Tuesdays, the heaviest court days in Chicago, judges often encourage the parties to go outside the courtroom and try to settle their cases. But sometimes people who pay their bills are forced into court.

Take Amy Volpert of Chicago. In 2006, she began getting calls about a credit card balance of $986.92, according to court papers. She repeatedly told the collector and its law firm that she had settled the account a year earlier and faxed them copies of the release letter. But she was sued anyway, on Dec. 8, 2007.

She and her lawyer did not show up for a scheduled court date in January because they had been assured that the collector would investigate her complaint, said her attorney, Jason Shanfield. Later, on Jan. 28, RJM Acquisitions LLC obtained a judgment against her because she did not appear in court.

The collector's Chicago law firm said the judgment was an innocent mistake. Once it learned of the error, the law firm vacated the judgment and dismissed the suit, the firm said in court papers.

Shanfield said Volpert's experience is "a perfect example of zombie debt. You pay it, and it comes back to life."

A default judgment could have allowed RJM to begin garnishing 15 percent of Volpert's wages. State judges once had discretion to lower the amount docked from paychecks. But a change in the law last year pushed by creditors' lawyers took away that judicial discretion.

In the courtroom, the biggest advantage collectors have are lawyers while defendants rarely have legal representation. The courts where such suits are handled were set up for small claims, involving less than $10,000, and lawyers weren't deemed necessary.

But debt collecting is anything but small claims. In 2006, industry revenues were about $15.5 billion, according to Kaulkin Ginsberg Co., a collections-industry strategic-advice company.

Changes to system

A new breed of collector has transformed the industry in the last decade, purchasing distressed debt from credit card issuers, retailers and other consumer lenders. Debt buyers usually only pay pennies on the dollar for packages of unpaid bills that include limited electronic information about the borrowers. Before filing lawsuits, debt buyers attempt to recoup money via letters and phone calls.

Collectors cannot misrepresent the amount of a debt and aren't allowed to harass consumers or falsely threaten legal action under the federal Fair Debt Collection Practices Act and Illinois law.

Last year, the Federal Trade Commission received 70,951 complaints against third-party debt collectors, a fivefold increase from 2000.

Complaints have soared because debt buyers more aggressively pursue aging accounts, consumer groups say.

These firms are more likely to sue. Publicly traded Asset Acceptance Capital Corp., for example, said that in 2007, 39.9 percent of collections came via the courts, up from 28.5 percent in 2003.

The increase in litigation also reflects easy credit, and consumers falling behind on payments. U.S. credit card debt has grown 75 percent in the past 10 years to more than $940 billion, according to the Federal Reserve. Another reason for more suits is that debtors increasingly tell collectors to stop contacting them, said Andersen of ACA International. But that doesn't make debts go away.

Since 2000, the number of debt-collection cases in Cook County has more than doubled, to an estimated 130,000. The vast majority of suits are against Chicago residents. In 2007, debt collectors obtained 60,699 default judgments where the accused debtor did not appear in court.

"Most people know they owe the money," said Bob Markoff, a Chicago lawyer who is president of the National Association of Retail Collection Attorneys. "But for whatever reason they choose not to show up."

Filled with flaws

Consumer groups say the high number of default judgments can mask flaws with the lawsuits. Credit agreements and payment histories are often not included when suits are filed. Instead, debt collectors file an affidavit attesting to the validity of the debt, and it's not unusual for that affidavit to be erroneous, said Bob Hobbs, deputy director of the National Consumer Law Center.

Andersen acknowledged that there is ambiguity about the minimum evidence needed to verify a debt. In New York, an Urban Justice Center study in 2006 found that in 99 percent of a sampling of default judgments that the evidence used to obtain the judgment did not meet the state's legal standards.

"If the debtor wants accurate information about their debt they allegedly owe, she has to work hard to find that out," said Dan Edelman, a Chicago lawyer who represents borrowers.

Michelle Moore has been learning that the hard way. The pregnant mother of two sat holding a crinkled manila envelope bursting with papers outside Courtroom 1106 in the Daley Center last month.

A debt collector called CACH sued the Blue Island woman in December for $1,685.33 allegedly owed on a Bank of America credit card. Moore maintained that she had never owned such a card, and she had documents proving she was not living at the address where the card was being billed.

When her case was finally called, Moore, who didn't have a lawyer, asked CACH to show her paperwork that proved she held the account. For more than a year she had been waiting to see a credit agreement or a monthly statement. "We ordered the documents from our client and they haven't arrived," the CACH lawyer replied.

Moore produced letters showing that she lived in Las Vegas, not Chicago, where the card was allegedly billed.

"We can't resolve it today if that's what we're getting at," the judge said.

The CACH attorney asked for a postponement until late July, but that's when Moore's baby is due. Both sides agreed on Oct. 6 for another court date. If she fails to show up, Moore could face a default judgment.

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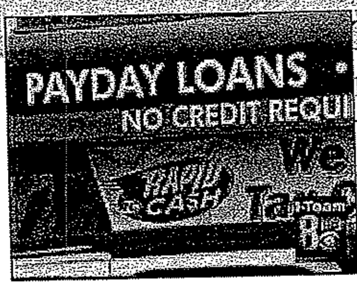
Adrienne Augustus, Investigative Reporter

Courts Are Overloaded With Payday Loan Lawsuits



The courts are swamped with lawsuits and one-third of all cases come from payday loan-type businesses. It's a reflection of the loan industry and it is bogging down the courts.

The *I-Team's* Adrienne Augustus explains why so many loan companies are filing lawsuits and how the courts are coping with it.

Clerk supervisor Kristina O'Conner said, "Five years ago, ten years ago you didn't see this type of industry on the corners of the street. You saw more of the pawn shops, title loans, those types of items."

It's a real problem for the county clerk's office. About 60,000 civil cases are filed every year. Nearly 20,000 are lawsuits filed by loan companies against clients who didn't repay their loan.

The court system is struggling to keep up. Everyday they show up by the box load -- high interest payday lenders and installment loan companies filing hundreds of lawsuits against their customers.

Also on LasVegasNow.com

Kristina O'Conner, court civil division manager, said, "Five years ago, ten years

- Putting The Pressure on Payday Loan Companies
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ago you didn't see this type of industry on the corners of the street. You saw more of the pawn shops, title loans, those types of items."

O'Conner says the jump in payday loan-type businesses directly affects the courts. They are a large reason court clerks are working mandatory overtime.

"The volume was so immense so quickly that it really has kind of bottlenecked with us in the court," she explained.

The high-risk lending industry has steadily increased, despite a client default rate of more than 20-percent, which translates to loan companies and collection agencies suing thousands of people.

Those cases must be processed along with all of the lawsuits filed by everyone else. Many lawsuits filed by lenders end up in default judgment because the defendant doesn't respond. That cycles more paperwork back to the clerks.

When a defendant does respond, the case ends up in front of a judge.

Chief Judge Douglas Smith, of the Las Vegas Justice Court, said, "The first one that I had was a bit of a shock when you had seven or 800-percent interest."

Eight years ago Chief Judge Douglas Smith heard his first payday lending lawsuit. "I believe that I determined that it was a contract of adhesion, which means that it was a bad contract."

When a client doesn't repay the loan, the companies sue for two to three times the amount borrowed. In that case, the defendant had already repaid more than three times what they borrowed.

Reporter Adrienne Augustus: "Are they abusing the judicial system?"

Chief Judge Douglas Smith: "No."

Reporter Adrienne Augustus: Why do you say no?"

Chief Judge Douglas Smith: "Because they're following the law."

Legislators are working to change lending laws that could end up reducing the number of lawsuits. But until that happens, lenders will continue to sue, as more people borrow and can't, or choose not to make good on their loans.

Click here to read more on Assembly Bill 478.

One attorney says payday and installment loan companies typically recoup only 30 to 50-percent of the money they sue for. But clearly, that doesn't stop them from taking people to court.

Again, clerks currently have about 20,000 cases they have to handle. And it takes months to go from the initial filing to the actual judgment and settlement.

Email your comments to Investigative Reporter Adrienne Augustus.

Comments

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EXHIBIT E

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Payday lenders sue more clients

By Scott Simonson
ARIZONA DAILY STAR

Payday-loan customers in Tucson are learning that if they don't pay, they can expect to be sued.

Payday lenders increased the number of lawsuits they filed in Pima County Justice Court from about 15 per month in 2002 to a high of 66 a month in 2004. They averaged 52 a month last year, and in January this year alone, they filed 135.

Interest and fees can accumulate quickly for customers who don't pay back their loans within the customary two-week borrowing period.

Angela Randolph of Tucson said she took out a $500 loan in 2004 that she could not repay on time. After nine months and paying more than $1,000 in fees and interest, Randolph still hadn't paid off much principal. The lender, Speedy Cash, sued her.

The court cases do not explain why more payday customers seem to be defaulting on their short-term, high-interest loans, in which they borrow up to $500 against their next paycheck. A spokeswoman for one of the nation's largest payday loan companies said the rise in suits could be attributable to growth in the lender's business.

"The product is extremely popular, and demand is growing and growing and growing," said Patsy Alston, spokeswoman for Advance America, which has 11 locations in Tucson.

Kelly Griffith, deputy director of the Southwest Center for Economic Integrity, which opposes payday lending, said that as time passes, people are finding that the loans postpone financial woes, but don't solve them.

"You get into spiraling debt," Griffith said. "You hit the wall. You can't do it anymore."

For a customer who is sued, the cost of a payday loan increases. Customers who lose in court must pay legal fees and interest. Losing in court also can mean lenders take a bite out of an employee's paycheck by garnisheeing wages.

By the numbers

- Payday loan stores in Tucson, South Tucson and Green Valley. The figures don't include stores that have opened and closed.

2000: 10
2001: 29
2002: 52
2003: 63
2004: 99
2005: 124
2006: 124

Source: Arizona Department of Financial Institutions

- Lawsuits filed by Tucson-area payday lenders in Pima County Justice Court. (Year, number per year, average per month)

2002 186 15.5
2003 422 35.2
2004 800 66.7
2005 627 52.3
2006 1,620* 135

*January's total projected over 12 months.

Source: Pima County Superior Court Web site

Advance America sues often

One of the companies that is suing customers most frequently is Advance America, which bills itself as the nation's largest provider of payday loans.

From 2002 through 2004, Advance America filed a total of three lawsuits in Pima County Justice Court, according to court records. Last month, the company filed about 90.

Alston said she's not sure what explains the increase, but said the company prefers to work with customers to find ways to repay the loans. She added that more than 97 percent of customers pay their loans back on time.

"We do everything we can," Alston said. "We will negotiate payment plans."

Payday lenders usually go to court when people stop answering calls or letters about their loans, said Lee Miller, a lobbyist who represents Arizona Community Financial Services Association, the trade group for payday lenders.

"Court is only a recourse for those people who have broken communication with the company," Miller said. "If [lenders] cannot communicate with you at all, some companies view justice court as a chance to, as they say, kick it up a notch."

When lenders go to court, customers usually end up paying more to settle their debt. Last July, payday lender Quik Cash sued Tucsonan Katrina Wyzykowski, who didn't repay her loan of $437.23.

Quik Cash won its suit, and Wyzykowski was required to pay about $586.

The total included $77.94 in fees, $25 for a bounced check, and $46 for Quik Cash's cost to file the suit and serve notice to the defendant. The judgment also assessed 10 percent annual interest.

Wyzykowski, who could not be reached for comment, also ended up losing a portion of her paycheck. Some suits, like hers, end with a payday lender obtaining a court order to garnishee wages.

Angela's sad story

Angela Randolph said she was 21 when she took out her first payday loan in 2003. She repaid that $200 loan, and was subsequently approved for larger loans. In 2004, she took out a $500 loan, but found that she couldn't pay it back while working 30 hours a week at $7 an hour.

"It was irresponsible of me," she said in an interview. "Initially, if you don't have the money and you don't have the credit to get a normal loan, then maybe you shouldn't do it."

She went back to Speedy Cash every two weeks, and the company extended the term of the loan, but she could afford to pay only interest and fees. She took a second job, moved back home with her mother, and still couldn't pay off the loan.

After paying $1,109.50 in fees and interest on the $500 loan, Randolph stopped paying. That's when Speedy Cash sued.

"If I had known I was going to get sued, I would have asked to work out a payment plan," said Randolph, who works full-time and attends Pima Community College.

Consumer advocates like the Southwest Center for Economic Integrity say habitual users of payday loans often see their debts spiral out of control.

Griffith said escaping payday debt resembles exercise on a treadmill: constant effort, but no progress.

The center estimates that 60 percent of payday customers are women who are the heads of their households, often single mothers.

"The cost is really to children and families," she said.

Class-action counter

Randolph responded to Speedy Cash's suit by countersuing.

Her suit, filed in October, is a class-action case on behalf of customers of Speedy Cash. The suit claims the lender's customers have been overcharged for their loans by an estimated $5 million during the past two years.
Calls to Speedy Cash's main Arizona office were referred to its corporate parent, Tiger Financial Management of Wichita, Kan. Representatives of Tiger Financial Management did not return calls seeking comment.
Randolph's lawyer, Gary Urman, said state laws allow payday lenders to charge a fee of 15 percent of the loan every two weeks — $75 on a $500 loan. But, Urman said, lenders calculate fees that impose an effective rate closer to 17.6 percent, based on their reading of state law.
"I think the statutes were not particularly well-crafted," Urman said. "It has led to the potential for abuse by these lenders, in terms of these fees that are charged."
The first challenge for Randolph is to prove she has the right to sue; Randolph and other Speedy Cash customers sign a form agreeing to waive their right to participate in a class action suit.

By the numbers

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Source: Pima County Superior Court Web site

• *Contact reporter Scott Simonson at 573-4176 or at ssimonson@azstarnet.com.*

EXHIBIT F

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In re

MARK PATRICK BREWER and
MARLENE DIETRICH BREWER,

Debtors.

Case No. 03-33181

Chapter 13

MARK PATRICK BREWER and
MARLENE DIETRICH BREWER,
Plaintiffs,

v.

QC FINANCIAL SERVICES, INC. d/b/a QUICK CASH,
Defendant.

Adv. No. 03-2532

MEMORANDUM DECISION

BACKGROUND

The events that led up to the filing of this adversary proceeding are set forth in some detail in *In re Brewer*, 313 B.R. 795 (Bankr. E.D. Wis. 2004), in which this court held that presentation of a post-dated check by the payee after the payor filed a bankruptcy petition, and resulting receipt of the proceeds, was excepted from the automatic stay under 11 U.S.C. § 362(b)(11). Whether retaining the proceeds after demand by the debtors was a violation of the stay under 11 U.S.C. § 362(a) was reserved until the facts were determined. A trial was held on February 2, 2005, and the parties briefed the remaining issues.

The recitation of the pertinent facts will be shortened considerably in this decision. To summarize, the debtor husband took out a payday loan from the defendant, QC Financial Services, Inc. (QC), which was rolled over and interest added to principal several times, and occasionally the loan amount was reduced slightly. By the time the last loan was agreed to (without cash advance) on August 19, 2003, the amount the debtor agreed to pay was $390 (APR 541.23 %). A post-dated check for $390 dated September 2, 2003, was left in the possession of the defendant to seal the agreement.

The debtors filed a chapter 13 petition on August 29, 2003, and an employee of the debtors' attorney, Lauren Grahovac, testified that she sent a facsimile transmission to the local QC store to inform it of the filing before the check was cashed. This was not disputed. However, the debtors did not stop payment on the check, and it was negotiated by QC on September 2, 2003. It was honored by the debtors' bank the following day. The debtors incurred $67 in bank charges because other checks were not honored by the bank for insufficient funds.

QC's store manager, Diane Fox, testified that at the time of the debtor husband's transactions, the Kenosha store was a new store, and there were no written procedures telling employees what to do when a borrower files a bankruptcy case and QC is in possession of a post-dated check. She did, however, state that their current practice is not to cash it, and she acknowledged that QC had no right to the money once the case was filed. That is how she trains employees now, but there was no specific bankruptcy training in August 2003. At that time, she would consult with the main office for advice, and apparently that is what she told the debtors' attorney's employee when a refund was requested. However, no action was taken to return the funds. Ms. Fox had worked for a finance company before being employed by QC, and she stated that her former employer's practice was to return to the debtor a car the lender had repossessed before filing.

Kerry Hart, QC's loss prevention supervisor from Kansas City, Missouri, testified that he was responsible for advising store managers what to do when a borrower files a bankruptcy case. He acknowledged that current practice is not to retain funds of debtors when a post-dated check is negotiated after bankruptcy, and this policy might have developed in response to this case and other similar instances involving bankruptcy debtors. He also stated QC did not refund the money after it negotiated the check because he believed, apparently after consultation with counsel, that negotiation was not a violation of the stay. This testimony differs from Ms. Grahovac's testimony that Mr. Hart told her they would not refund the money because the loan was too close to the date of the bankruptcy filing.

DISCUSSION

The only issue before the court at this juncture is whether QC's conduct constitutes a violation of the automatic stay under 11 U.S.C. § 362(a) and, if so, whether the debtors are entitled to damages, including punitive damages, under 11 U.S.C. § 362(h). This court is satisfied that it is and they are.

The pertinent portion of § 362(a) prohibits a creditor from engaging in "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate[.]" 11 U.S.C. § 362(a)(3). The funds in the debtors' checking account were property of the estate at the time of filing. 11 U.S.C. § 541(a)(1), (a)(2)(A). Property of the estate may be claimed exempt by debtors under 11 U.S.C. § 522(b), and the debtors claimed recovery of this $390 check as exempt. No objection to the claim of exemption was made, so exempt property passes out of the estate and remains property of the debtors, free of the claims of creditors. Nevertheless, at the time of filing and at the time the creditor recovered the debtors' funds, the funds were property of the estate and are accorded the protection of the automatic stay.

The general provision of § 362(a)(3) is trumped by an exception under § 362(b)(11), and this court has found that the defendant's act to obtain possession of property of the estate, i.e., presenting the check and having the bank honor it, is within the narrow scope of the exception. *See In re Brewer*, 313 B.R. 795 (Bankr. E.D. Wis. 2004). QC proposes to latch onto that narrow exception, which was not even intended for the protection of a creditor like QC, who knowingly takes the debtors' money to the exclusion of the debtors' exemptions or other creditors' interests in the estate, and extend the exception to allow it to keep the money because it is too small and too much trouble for the debtors to recover.

One defense that QC advances is that the transfer of the debtors' funds was a voluntary transfer by the debtors because the debtors did not stop payment on the check. The debtor husband testified that stopping payment would have cost $29 in bank fees. Someone who has to patronize a loan store like QC's that charges over 500% interest – a disabled veteran like Mr. Brewer – cannot spend $29 unless it is absolutely necessary. In hindsight, of course, that would have been cheaper than the $67 the bank charged for checks that bounced because the Brewers thought the $390 was still in the account. Their assumption is not unreasonable, given that Ms. Grahovec notified the creditor that the bankruptcy was filed before the check was negotiated, and that meant the debt was discharged and the stay prevented the creditor from paying itself. The fact that negotiating the check falls technically under § 362(b)(11), a statute designed to protect banks that process vast numbers of checks without knowledge of a bankruptcy, does not give the creditor the right to point a finger at the debtor and say, "This is your fault because you didn't stop me, and now I get to keep the money."

The automatic stay was intended to preserve the status quo at the time of filing. However, the creditor's position in this case does not preserve the status quo; it allows the creditor to improve its position vis a vis other creditors and the debtors *after* filing. Thus, failure to immediately return the funds after negotiating the check is an exercise of control over property of the estate. Just because an entity comes into possession of property of the estate legally after filing does not entitle the entity to keep it, even if the entity is a creditor. The creditor in this case had no interest in the funds that it had a right to protect. The money rightfully belonged to someone else, namely the debtors, assuming the exemption is allowed, or the estate if it is not, and failure to turn over the funds is an unauthorized exercise of control over property of the estate that is prohibited by the automatic stay. 11 U.S.C. § 362(a)(3).

The major factor that makes the creditor's conduct outrageous is the "so sue me" or "catch me if you can" posture it took. QC eventually offered to refund the $390, but only after this adversary proceeding was filed, as it had done in other similar cases. Mr. Hart admitted as much. If one can assign anthropomorphic qualities to a corporation, one can see the creditor with its thumb firmly pressed to its nose, fingers waving in the breeze. It would have been easy to return the check to the debtors or to issue them a new one – even easier than returning collateral in which the creditor had a perfected security interest, as Ms. Fox testified her previous employer had done. Doing so would have preserved the status quo, while keeping the money did not. Forcing the debtors to incur legal costs they clearly could not afford, for the admitted purpose of keeping money the creditor knew it was not entitled to, is entirely reprehensible, especially given the disparate abilities of the parties to pursue litigation. The protection of 11 U.S.C. § 362(b)(11) was not intended to facilitate the conduct practiced by this creditor after it recovered the debtors' money, and it does not compel a result that authorizes it. The prohibition under § 362(a)(3) against "exercise [of] control over property of the estate" includes control over property obtained lawfully post-petition. *See, e.g., In re Del Mission Ltd.*, 98 F.3d 1147 (9th Cir. 1996) (retention by state of funds pending an appeal of bankruptcy court order requiring state to refund taxes paid by trustee was an exercise of control over the estate's property in violation of the automatic stay).

Ms. Grahovec stated that Mr. Hart told her QC would not return the funds because the bankruptcy was too close in time to the loan sought to be discharged. Mr. Hart stated his refusal was because he believed QC had not violated the automatic stay. Perhaps he did know about § 362(b)(11) at the time, but QC had to give back the money in other cases, and this court had not yet ruled on the issue. Also, his reasoning does not follow, as lawfully obtaining funds does not necessarily convey the right to keep them. It is akin to post-petition conversion, once the funds were legally in the possession of QC and demand had been made for their rightful return. If Mr. Hart felt there was some fraud involved, QC would need to file an adversary proceeding. The stay applies even to debts excepted from discharge, *In re Passmore*, 156 B.R. 595, 599 (Bankr. E.D. Wis. 1993), so the timing of the debt, especially a rollover where no money changed hands, is no excuse. What Mr. Hart was saying was that QC was exercising self help to collect what *might* be a non-dischargeable debt, without the necessity of involving the bankruptcy court in an adversary proceeding under 11 U.S.C. § 523 and without the necessity of according the debtors due process. This approach violates both the spirit and the letter of § 362.

Both the debtors and the creditor have advanced theories of recovery and defenses based on turnover under 11 U.S.C. § 542, and a post-petition transfer under 11 U.S.C. § 549. Because this court has found the creditor violated the automatic stay by retaining funds recovered by negotiating a post-dated check post-petition, it is not necessary to address these theories. *See In re Crawley*, 318 B.R. 512 (Bankr. W.D. Wis. 2004) (holding chapter 13 debtors did not have standing to invoke trustee's strong-arm avoidance powers).

This is a consumer debt. The court is satisfied that QC's conduct in this case is willful and outrageous, and the debtors are entitled to recover actual damages, including costs and attorney fees. 11 U.S.C. § 362(h). A separate hearing will be set to determine the appropriate amount. As to punitive damages, both Ms. Fox and Mr. Hart testified that QC no longer engages in the practice complained of by the debtors. Many courts have considered the deterrent effect in determining punitive damages. *See, e.g., In re Ocasio*, 272 B.R. 815, 825 (B.A.P. 1st Cir. 2002) ("the primary purpose of punitive damages awarded for a willful violation of the automatic stay is to cause a change in the creditor's behavior; [and] the prospect of such change is relevant to the amount of punitive damages to be awarded"); *In re Diviney*, 225 B.R. 762 (B.A.P. 10th Cir. 1998) (in fixing punitive damages at $40,000, resulting in 2.25 to 1 ratio of punitive to actual damages, bankruptcy court expressed intent that award be sufficient to deter bank, and similarly situated creditors, from unilaterally determining scope and effect of automatic stay).

Nevertheless, deterrence is not the sole factor in an award of punitive damages. Pursuant to § 362(h), individuals injured by willful violations of the automatic stay are entitled to recover punitive damages in "appropriate circumstances." 11 U.S.C. § 362(h). The Bankruptcy Code does not attempt to delineate further what this means, leaving it to the sound discretion of the bankruptcy court. Usually, an award of punitive damages requires more than mere willful violation of the automatic stay. Relevant factors are: (1) the nature of the creditor's conduct; (2) the creditor's ability to pay damages; (3) the motive of the creditor; and (4) any provocation by the debtor. *In re Heghmann*, 316 B.R. 395 (B.A.P. 1st Cir. 2004).

The cases interpreting "appropriate circumstances" indicate that egregious, intentional misconduct on the violator's part is necessary to support a punitive damages award. *See, e.g., In re Sumpter*, 171 B.R. 835, 845 (Bankr. N.D. Ill. 1994) (holding "punitive damages are awarded in response to particularly egregious conduct for both punitive and deterrent purposes"); *Davis v. IRS*, 136 B.R. 414, 424 (E.D.Va.1992) (finding "only egregious or vindictive misconduct warrants punitive damages for willful violations of the automatic stay"); *Nissan Motor Acceptance Corp. v. Baker*, 239 B.R. 484 (N.D. Tex. 1999) (upholding award of actual damages in the amount of $23,000, plus punitive damages, where the court found that the creditor's failure to turn over a repossessed automobile for two months after it received notice of the debtor's chapter 7 filing was a willful violation of the automatic stay); *In re Omni Graphics, Inc.*, 119 B.R. 641 (Bankr. E.D. Wis. 1990) (award of punitive damages requires not only willful violation of stay but also finding of "appropriate circumstances," such as egregious, intentional misconduct by violator). The testimony at trial established that QC's conduct was egregious and intentional with respect to the husband debtor in this case, and punitive damages will be imposed.

This decision constitutes the court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052. A separate hearing will be set to determine the debtors' actual damages and to assess the appropriate amount of punitive damages.

Dated: April 13, 2005.

BY THE COURT

Honorable Margaret Dee McGarity
Chief United States Bankruptcy Judge