2018 Consumer Debt in NY, #10YearsAfter: Crisis, Progress, and the Work Ahead

Plenary I –
New York Consumer Debt: A Retrospective of the Past Decade
Plenary I – Plenary Organizers

• Carolyn E. Coffey, Director of Litigation for Economic Justice, Mobilization for Justice (formerly MFY Legal Services)

• Robert A. Martin, Associate Director, District Council 37 Municipal Employees Legal Services (Retired)
Plenary I – Speakers

- **Gina M. Calabrese**, Professor of Clinical Education & Associate Director, Consumer Justice for the Elderly: Litigation Clinic and Co-Director, Public Interest Center, St. John's University School of Law

- **Susan Shin**, Legal Director, New Economy Project

- **Shanna Tallarico**, Supervising Attorney, Consumer Protection Unit, New York Legal Assistance Project

- **Mark Weliky**, Pro Bono Coordinator & Executive Director, Queens Volunteer Lawyers Project, Inc.

- **Claudia Wilner**, Senior Attorney, National Center for Law and Economic Justice
Plenary I – Introduction

• What was the consumer landscape like in 2008?

• What advances have we made in NY and in the country since 2008?

• What challenges do consumer still face?
Plenary I – Introduction

Remember 2008?

• President George W. Bush gave his last State of the Union address in January

• In February, the Senate passed a $170 billion economic stimulus package by a margin of 81 to 16

• NY Governor Eliot Spitzer resigned unexpectedly in March

• Barack Obama secured the Democratic Party presidential nomination on June 3
Plenary I – Introduction

Remember 2008?

• And the Consumer Financial Protection Bureau (CFPB) was still just an idea proposed by Elizabeth Warren . . .
In 2006, consumer debt filings in New York City Civil Courts reached an all-time high of: **over 320,000**

By contrast, in 2006, the total number of civil cases filed in U.S. District Courts totaled: **270,171**

*Consumer debt filings in Bronx, Kings, Queens, and Richmond Counties totaled 279,310 in 2006; New York County did not keep records of consumer debt cases until 2008, and that year recorded 41,634 cases*
Plenary I – Introduction

New York City Consumer Debt Filings 2008-2017

<table>
<thead>
<tr>
<th>Year</th>
<th>Filings</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>299,743</td>
</tr>
<tr>
<td>2009</td>
<td>240,212</td>
</tr>
<tr>
<td>2010</td>
<td>201,137</td>
</tr>
<tr>
<td>2011</td>
<td>134,581</td>
</tr>
<tr>
<td>2012</td>
<td>96,423</td>
</tr>
<tr>
<td>2013</td>
<td>80,007</td>
</tr>
<tr>
<td>2014</td>
<td>76,726</td>
</tr>
<tr>
<td>2015</td>
<td>55,414</td>
</tr>
<tr>
<td>2016</td>
<td>46,837</td>
</tr>
<tr>
<td>2017</td>
<td>75,633</td>
</tr>
</tbody>
</table>
Plenary I – EIPA

• Exempt Income Protection Act
  • Signed into law September 26, 2008
  • Effective date January 1, 2009
EIPA ended the “epidemic” of frozen bank accounts.

- Bank receives restraining notice for a natural person’s bank account
  - Account contains directly deposited statutorily exempt income (government benefits)
    - $2850 cannot be restrained
  - Other accounts: cannot restrain amount based on the applicable minimum wage
    - $3120 - NYC, 11 or more employees & default amount
    - $2880 - NYC, 1-10 employees
    - $2640 – Westchester and Long Island
    - $2496 – Upstate NY
  - Bank sends accountholder notice and forms to claim that additional funds are exempt
    - “Self-help”
Plenary I – EIPA

Frozen bank account
(Can’t withdraw money, bounced checks, fees)

Default Judgment (When? No Notice.)

Debt Buyer Lawsuit (Who?? Never had a credit card with?)

Sewer Service (Substituted service on fictionalized person)

Subprime Credit Card Debt
(Consumer inevitably defaults because of onerous terms of credit)

Income Inequality (Credit Cards as “Plastic Safety Net“)
Plenary I – EIPA

Before EIPA

Bank Closed My Account

12 mins near New York, New York

Bank

Closed my account without warning on fall holiday

didn’t recurve my funds In till almost over 2 months the amount of stress and arguing daily was unimaginable!
Because it was my personal account all my bills were late I had no money to live and the only answer I was giving was it’s being investigated!
No one should be aloud to withhold funds from you ever! I no longer do business with chase and never will again . I had just had a baby and the amount of stress they gave me can not be undone .. I hope this never happens to anyone again!

Like

Comment

Share

Winter holiday

Bank

Closed My Account likes this.
NYS Exempt Income Protection Act
(Effective Jan. 1, 2009)
Prepared by Gina Calabrese, Professor of Clinical Education, St. John’s University School of Law and the Empire Justice Center. (revised June 2018)

**PROTECTION FOR STATUTORILY EXEMPT FUNDS**
Account contains reasonably identifiable exempt funds direct deposited in last 45 days

- **$2,850 or less in account:** Restraint deemed void; all funds remain available
- **More than $2,850 in account:** $2,850 remains available; balance is restrained

** Protection for Earnings**
Account does not contain funds identifiable as exempt

- **$3,120 or less in account:** Restraint deemed void; all funds remain available
- **More than $3,120 in account:** $3,120 remains available; balance is restrained

**Debtor completes forms and returns to bank and creditor within 20 days of postmark**

- **Bank sends forms to debtor within 2 days of receipt**
- **Debtor does not return forms**

**Excess funds remain restrained and subject to marshal’s or sheriff’s execution**

**Bank releases account.**

*Note: These provisions do not apply when the state of NY, its agencies or municipal corporations is the judgment creditor, or if the debt enforced is for child or spousal support, maintenance or alimony and the restraining notice contains a legend at the top in 16-pt type, with language set forth in statute stating such.*
Plenary I – Legislative and Regulatory Reforms

Remember the setting . . .

• Debt Collectors
• Debt Buyers
• Process Servers
Plenary I – Legislative and Regulatory Reforms

New York City:

• Licensing Debt Buyers:
  Local Law 15 (2009)

• Regulating Process Servers:
  Department of Consumer Affairs holds hearings and adopts new rules and City Council passes new law (2010)
Plenary I – Legislative and Regulatory Reforms

New York City: Credit Checks in Employment

• The “Catch 22”: you have bad credit because you are unemployed, and you can’t find a job because you have bad credit
• A perfect meshing of justice issues for job-seekers and consumers
Plenary I – Legislative and Regulatory Reforms

• April 2015 New York City passes ‘Stop Discrimination in Employment Act’
• Strongest law in the nation
Plenary I – Legislative and Regulatory Reforms
Plenary I – Legislative and Regulatory Reforms

New York State

**Consumer Credit Fairness Act (CCFA)**
- Make debt collectors prove their case
- Give actual notice to defendants, reduce defaults
- Clarify statute of limitations and reduce the time to sue

→ After several years trying, new hope for CCFA?
Plenary I – Legislative and Regulatory Reforms

New York State

• No CCFA yet, BUT: NY Office of Court Administration (June 2014) issues rules on default judgments in consumer cases (more on that later)

• AND: New York Department of Financial Services (Nov. 2014) adopts rules governing debt collectors
Plenary I – OCA Reforms

Office of Court Administration (OCA): Rules for Obtaining Default Judgments in Consumer Credit Matters

“[T]he consequences of an unwarranted default judgment can be devastating for the typical debtor – ordinary consumers, a lower-income or working person, who is almost always unrepresented. Such people can ill afford to have their bank accounts seized, their wages garnished, their credit ruined . . . not when they’re trying to support a family, find a job, and keep a roof over their heads.”

--Chief Judge Jonathan Lippman’s 2014 Law Day Speech 2014
Plenary I – OCA Reforms

“The problems I have described have not gone unanswered. Attorney General Schneiderman’s Bureau of Consumer Frauds and Protection has, in fact, been highly proactive in investigating and combating deceptive debt collection practices – as he has been in so many areas involving consumer rights. Likewise, Superintendent Benjamin Lawsky of the State Department of Financial Services is in the process of adopting rigorous regulations to protect consumers from debt collection abuses at the prelitigation stage. And Assembly Judiciary Chair Helene Weinstein continues to be a leader in this area, sponsoring important changes in law to protect consumer debtors as far back as 2008, and now sponsoring the Consumer Credit Fairness Act, a comprehensive legislative reform package that we strongly support and endorse. All of these efforts have helped to inspire the reforms that the court system announces today.”

--Chief Judge Jonathan Lippman’s 2014 Law Day Speech
Plenary I – Advocacy

White Papers and Reports

Where’s the Proof?

When Debt Buyers are Asked to Substantiate Their Claims in Collection Lawsuits Against NYC Employees and Retirees, They Don’t

DEBT DECEPTION

How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers

May 2019

THE DEBT COLLECTION RACKET IN NEW YORK

June 2019

District Council 37 Municipal Employees Legal Services
December 2009
Plenary I – Advocacy

Amicus Briefs

16-2165-cv

IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

FRANKLIN ARIAS,
Plaintiff-Appellant,
v.
GUTMAN, MINTZ, BAKER & SONnenfeldt, P.C., and 1700 Development Co. (1700), Inc.
Defendants-Appellees

On Appeal from the United States District Court
for the Southern District of New York

BRIEF OF AMICUS CURiae ON APPEAL IN SUPPORT OF PLAINTIFF-APELLEES URGING AFFIRMANCE (Amici listed on next page)

Gina M. Calabrese
St. Vincent de Paul Legal
Program, Inc.
Consumer Justice for the
Elderly: Litigation Clinic
St. John’s University
School of Law

Carolyn E. Drilly
Of counsel to Jerome Zehof, Esq.
MPH Legal Services, Inc.

On the Brief
Daphne Schloss
Sandra Reeds
St. John’s University
School of Law

August 20, 2013
Plenary I – Pro Se Reforms

To seek help with CLARO or volunteer your services, visit the CLARO website at: http://www.claronyc.org/

• https://www.youtube.com/watch?v=ti3crPMVEms
Plenary I – Pro Se Reforms

- Civil Legal Advice and Resource Office (CLARO)
- Volunteer Lawyer for the Day (VLFD)
Plenary I – Pro Se Reforms

• Other Resources for Pro Se Litigants
  • Answer Form
  • DIY Forms
Plenary I – Pro Se Reforms

• Other Resources for Pro Se Litigants
  • Videos

• http://www.clarovideo.org/videos/all
Plenary I – Enforcement Actions

• NY Attorney General: criminally charged American Legal Process for failing to provide proper legal notification to thousands of New Yorkers in debt collection lawsuits and causing them to unknowingly default (2009); further actions against 35 law firms and two debt collectors follow
Plenary I – Enforcement Actions

- Department of Financial Services: 2013 Notice to Debt Collectors Not to Collect on Payday Loans
Plenary I – Enforcement Actions

- **Consumer Financial Protection Bureau (CFPB):** sues Encore Capital Group and Portfolio Recovery Associates for deceptive debt collection practices (2015)
Plenary I – Enforcement Actions

- **NYC Department of Consumer Affairs**: brought actions against Major World in Queens and five Brooklyn used car dealers for bad practices; DCA also moves to hold three national finance companies accountable for these practices (2017)
Plenary I – Advocacy Through Committees and Coalitions

- New York City Bar Association Civil Court Committee
- New York City Consumer Advocates Taskforce
Plenary I – Advocacy Through Committees and Coalitions

- New Yorkers for Responsible Lending
Plenary I – State Court Decisions

Court of Appeals:

• *Portfolio Recovery Assoc., LLC v. King* (N.Y. 2010)

• *Eric M. Berman v. City of New York* (N.Y. 2015)
Plenary I – State Court Decisions

Appellate and Trial Courts:

• *Colorado Capital Invs. v. Vilar* (NYC Civ. Ct. 2009)--motion for SJ denied; action dismissed. (Manhattan Legal Services)

• *Capital One Bank v. Suarez* (NYC Civ. Ct. 2016)--motion for SJ denied because affidavits inadequate to substantiate business records. (CAMBA Legal Services)

• *CACH LLC v. George*. (Dist. Ct. Nassau Co. 2017)--motion for SJ denied for failure to show standing and other deficiencies. (Local 237 Teamsters Legal Fund)
Plenary I – State Court Decisions

Other Appellate and Trial Courts:

• *Ford Motor Credit Co. v. Smith* (NYC Civ.Ct. 2017)--denial of car finance company’s motion for SJ for failure to show service of 10-day notice of sale on consumer. (CAMBA Legal Services)

• *New Century Fin. Servcs. v. Thomas* (App. Term, 2nd Dep’t 2017) and *Xaverian H.S. v. Carmona* (App. Term 2nd Dep’t 2018)--court vacated old default judgments and ordered traverse hearings where defendants specifically rebutted affidavits of service. (*Pro se* consumers who received assistance from Brooklyn Volunteer Lawyers Project)
Plenary I – Federal Court Decisions

• Sykes v. Mel S. Harris & Assoc., No. 13-2742 (2d Cir. 2015)

• Madden v. Midland Funding, LLC, No. 14-2131 (2d Cir. 2015)

• Arias v. Gutman, Mintz, Baker & Sonnenfeldt LLP, No. 16-2165 (2d Cir. 2017)
Plenary I – Media Coverage

SPEAR THE LOANSHARKS
Daily News, July 9, 2009 • ERROL LOUIS

HOW TO SPEAR CREDIT SHARKS
Daily News, October 11, 2009 • ERROL LOUIS

Suit Claims Fraud by New York Debt Collectors
Plenary I – Media Coverage

REIN IN WILD DEBT COLLECTORS
Daily News, June 20, 2010 • ERROL LOUIS

STATE'S TOP JUDGE TAKES AIM AT DEBT COLLECTORS
Times-Union (Albany), May 1, 2014 • RICK KARLIN

New York state Chief Judge Jonathan Lippmann takes on ‘zombie’ debts
Daily Record of Rochester, May 1, 2014 • Denise M. Champagne
Plenary I – Media Coverage

The Debt Getter
New York Times, August 17, 2014 • JAKE HALPERN

New York just dropped some tough new rules on debt collectors
New York Business Journal, September 17, 2014

State Courts Adopt Rules to Safeguard Those in Debt
New York Times, September 17, 2014 • MARC SANTORA
Plenary I – Media Coverage

Court system adopts new consumer debt rules
Daily Record of Rochester, September 25, 2014

A Debt Collector's Day
New York Times, October 5, 2014 • JAKE HALPERN

Rules aim to ensure debt is legitimate
Daily Gazette (Schenectady), October 9, 2014
Plenary I – Media Coverage

Exploring shady world of Buffalo debt collection
Buffalo News, October 12, 2014 • Jonathan D. Epstein

Legal Bytes: Leveling the playing field in consumer debt actions
Daily Record of Rochester, October 21, 2014 • Moira H. Cooper

Consumer debt cases get closer look
Buffalo Business First, October 31, 2014 • Michael Petro
Plenary I – Media Coverage

Debt Buyer Faces Fine in Doubtful Lawsuits
New York Times, January 9, 2015 • JESSICA SILVER-GREENBERG

Credit checks for jobs nixed
Daily News, April 17, 2015

2 Banks Agree to Erase Debts From Credit Reports After Bankruptcies
New York Times, May 8, 2015 • JESSICA SILVER-GREENBERG
Plenary I – Media Coverage

Debt Collectors to Pay $61 Million in Consumer Refunds and Amend Their Practices
New York Times, September 10, 2015 • ANN CARRNS

Victims of Debt-Collection Scheme Receive $59 Million in Lawsuit Settlement
New York Times, November 14, 2015 • BENJAMIN MUELLER

Payday loan settlement means refunds for Western New Yorkers
Buffalo Business First, May 19, 2016 • Allissa Kline
Plenary I – Media Coverage

Keep Payday Loans Out of N.Y.
Daily News, June 7, 2016 • ERROL LOUIS

The Used Car Was Repossessed, But the Lender Is Still Collecting
New York Times, June 19, 2017 • JESSICA SILVER-GREENBERG and MICHAEL CORKERY

Region becomes 'ground zero' for debt collectors; Prosecutors targeting unscrupulous firms
Buffalo News, August 5, 2017 • Phil Fairbanks
Plenary I – Media Coverage

The Color of Debt: How Collection Suits Squeeze Black Neighborhoods

Our first-of-its-kind analysis shows that the suits are far more common in black communities than white ones.

by Paul Kiel and Annie Waldman, ProPublica
October 8, 2015
Plenary I – Payday Lending Fight

• Video

https://www.youtube.com/watch?v=PDylgzybWAw
Plenary I – Payday Lending Fight

- NY Department of Financial Services Offensive Against Payday Loans
  - Aided/encouraged by consumer advocates
  - February 2013 notice to debt collectors not to collect on illegal loans
  - August 2013 DFS sends warning letter to 35 internet payday enders not to make usurious loans to New Yorkers
Plenary I – Payday Lending Fight

• “It appears that your company and/or its agents are using the Internet to offer and originate illegal payday loans to New York consumers...These payday loans violate New York’s civil and criminal usury laws...Effective immediately, your company and agents are directed to CEASE & DESIST offering and originating illegal payday loans in New York.”

• DFS also notifies 117 banks nationwide, and the banks’ Automated Clearing House Network.
Plenary I – Payday Lending Fight

• Result of DFS Actions: New York (largely) slams the door on Internet payday loans!

• Payday Lenders respond with a lawsuit challenging DFS’ Authority, but in the Otoe-Missouria case (2014), DFS action is upheld
Plenary I – Payday Lending Fight

• Year after year...Legislators introduce bills to allow high-interest/fee loans

• Necessitating many trips to Albany...

    Train 63: NEW YORK (PENN STATION), NY - ALBANY, RENSSELAER, NY Depart 7:15 AM, Tuesday, April 1, 2015

• Allow check cashers to become lenders? (Not a good idea)

• New high-tech proposals for “pilot programs” and carve-outs to NY usury laws
Plenary I – Payday Lending Fight

• Keep New York as a leader of “Freelandia” (the 15 states where payday loans are illegal).

• Promote non-predatory financial services for all.

• Build communities.
Plenary I – Conclusion

“The time is always right to do what is right.”

--Dr. Martin Luther King Jr.