

THE

# ReCOREder

*Core Recovery Bureau Quarterly Newsletter*

*January, 2005*

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**Editors Note:** Now that the holiday rush is over, it's time to settle in and get back down to business. Included in this newsletter is a little poem I found on the Internet. It certainly hit home for me. Many of us will be spending a good portion of this winter paying for the grand holiday we just enjoyed. A good reminder to use credit wisely, I think. Happy New Year!! As always we welcome your comments and suggestions. Please email them to [Support@corerecovery.biz](mailto:Support@corerecovery.biz)

## ***What to Do with Checks Marked "Paid in Full"***

### ***Parties must agree***

The issues presented by checks marked "Paid in Full" are like crabgrass. They keep coming back despite our best efforts. Normally, this problem arises when a debtor sends in a partial payment and writes "payment in full" or similar language on the face of the check. After the creditor has cashed the check and sent out a balance due bill, the debtor (and some attorneys, who should know better) claim that the acceptance of the check under these circumstances constitutes an accord and satisfaction.

"Accord and satisfaction": is a legal theory that operates when a debt is in actual dispute. The debtor tenders partial payment as payment in full and the payment is accepted by client. Acceptance, under these circumstances, is tantamount to a binding settlement. However, before there can be an accord and satisfaction, there must be an actual dispute. Just because a patient does not want to pay the balance in full does not constitute an actual dispute.

The debtor must have a specific argument on the amount owed or the calculation of the balance.

### ***Courts Say No***

In a New York case, a contract debtor sent in a check with "Paid in Full" in the memo portion of her check, even though she had additional bills still outstanding. The creditor accepted the check and billed the remaining accounts, which the debtor refused to pay. The creditor sued and the County Court found in favor of the debtor, dismissing the creditor's lawsuit. The creditor appealed and the Appellate Division reversed the lower court, holding that acceptance of a check bearing the legend on the front "final payment paid in full" did not constitute an accord and satisfaction. To establish an accord and satisfaction, the debtor must show that there is a disputed and unliquidated claim between the parties that they have mutually resolved through a new agreement.

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Pennsylvania courts follow the same rule as New York courts when there is no actual dispute and hold that a partial payment will not be considered an accord and satisfaction in cases in which the creditor has given no consideration. The Pennsylvania Supreme Court held in a creditor's favor in *Law vs Mackie*, 373 Pa. 212, 222, 95 A.2d 656, 660 (1953): "There must be an honest dispute and a person cannot create a dispute sufficient for the purpose of an accord and satisfaction by a mere refusal to pay a claim undisputed in fact."

### ***Majority Rule, Minority Rule***

Taking this fact pattern one step further, what happens when there is an actual dispute as to the amount of the debt? Unfortunately, there are two rules, referred to as the majority rule and the minority rule. When there is a dispute, Pennsylvania follows the majority rule under its version of the Uniform Commercial Code (UCC). Acceptance of a check marked "Paid in Full," even under protest, will normally be fatal to a creditor's claim for a remaining account balance if the check is accepted with prior knowledge of an ongoing dispute over the existence of the account or the calculation of the balance due.

New York's Court of Appeals notes that a creditor may preserve its rights to the balance of a disputed claim by an "explicit reservation" in its endorsement of a check as full payment by endorsing the check "UNDER PROTEST" or "ALL RIGHTS RESERVED," or similar language under the Uniform Commercial Code (UCC).



## **Do it yourself**

*Two men in a brand-new truck drove into the parking lot of a lumberyard. They conferred for a moment, and then the passenger went into the office.*

*"We would like to buy some four-by-twos," he said to the clerk.*

*"Don't you mean two-by-fours?" asked the clerk.*

*"I'll go check," said the customer. He soon returned and said that they did want two-by-fours. The clerk then asked, "How long do you want them?" The customer scratched his head and went back out to the truck.*

*When he returned, he said, "We want them permanently. We're building a house."*

## ***Five Quick Telephone Collection Tips***

1. Before you call the patient, make sure that you are ready. Have all the facts regarding the account in front of you, and examine them. This will help you anticipate the patient's questions or excuses.
2. Ask for payment in full by disclosing the full amount owed. If the patient is currently on a payment system, still ask for payment in full. Always regard it as the ideal option.
3. Pause for effect. A pause has the psychological effect of putting the burden of speaking next on the patient. This may get him or her to offer payment in full or explain the delay in paying.
4. Don't get into a debate with the patient. Even if you win, that doesn't guarantee prompt payment, but it will likely encourage problems with the patient. This will only lead to future debates and waste time!
5. Move on! Conclude your business with the patient and move on to the next call. Each contact should last from three to five minutes on average. Any longer, and you are likely having a problem.

# WEB OF LIES

## UNWITTING CONSUMERS TURN TO WEBSITES OFFERING BOGUS GET-OUT-OF-DEBT SCAMS

*There once was a woman whose debt  
Was as large as her lenders would let.  
She sought advice oh-so-wacky,  
(Or was it wacky tobacky?)  
No, it all came from the Internet.*

The scenario painted by this limerick is more real than fantasy. Too many Americans are drowning in debt and are turning to the Internet for some questionable advice.

Where is our debt crisis coming from and why is it leading more and more Americans to scams? Corporate cutbacks have caused the sudden loss of income for hundreds of thousands over the past decade. Those who have replaced their lost salaries often have done so with jobs that pay far less than their prior employment. Further, as the cost of medical insurance has skyrocketed for employers, the number of American removed from insurance tolls has moved in the same direction. The lack of insurance means that a few days in a hospital can result in a financial catastrophe for many. Finally, the ease of access to credit especially credit cards, means that Americans owe record amounts of money—in many cases, far more than their income allows them to pay.

Desperate times can lead to desperate measures. Many are turning to fraudulent schemes and wacky legal advice in an attempt to rid themselves of their financial troubles. Where are these schemes coming from? The Internet.

Some Web sites promise consumers the world, yet deliver only deeper financial turmoil. These sites, some free and some requiring large fees, provide pseudo-legal advice and bizarre suggestions to people who either think they can legitimately avoid their debts or who knowingly resort to fraud. A number of the sites are operated by anti-government extremist groups.

What do these Web sites offer? The schemes are as varied as your imagination and include such hair-brained methods as:

- Convincing consumers that their own names are trademarked, and that they can prohibit creditors from using such names on demand letters, lawsuits or other court filings.
- Providing “hocus-pocus” language for individuals to use that allegedly stops creditors in their tracks.
- Advising those saddled with credit card debts that the banks involved never made a valid loan because no gold was transferred which, as the argument goes, is the only legal tender.
- Advocating that revoking one’s citizenship will cancel debts, or that such person is a “sovereign” not subject to federal and state laws.

In fact, one scheme that involved hucksters selling worthless bonds, bills of exchange or other fictitious instruments of payment was recently singled out by the federal government. In an alert dated Oct. 1, 2003, the Office of the Comptroller of the Currency warned banks and government official to be on the lookout for such fraudulent payment schemes. The letter advised banks about five Web sites and two other organizations that were promoting fraud. Those schemes often get those who use them in deeper debt because of the excessive fees that some of the Web sites charge. Others who use such methods find that creditors who recognize the fraud will often respond with a quicker “trigger finger” to file lawsuits, wage garnishments, bank attachments and real estate liens. Further, judges tend to lose patience with parties who use obviously fraudulent and meritless arguments. As one federal judge stated, “Some people believe with great fervor preposterous things that just happen to coincide with their self-interest.”

It is not just low-income people who are suffering from such financial distress. Middle class is sometimes defined as families with income of \$25,000 to \$99,000. Of the 1.6 million people who filed for bankruptcy in the 12-month period ending June 30, 2003, the Consumer Bankruptcy Project at Harvard University reported that 92 percent were middle class.

The truth of the matter is that consumers do not need to resort to scams and schemes to get out of debt. Practical and lawful options abound. Many consumers saddled with debt successfully negotiate with their creditors. Others retain legal counsel or consumer credit counseling services to do the same thing. Obviously, many Americans choose to file for protection under federal bankruptcy or state receivership laws. If only they asked themselves, just as they would if confronted by a get-rich-quick scheme, “is this too good to be true?” If the answer is “yes”, then there is only one thing you should do with the “get debt-free quickly” scheme. Forget about it!

## *Happy New Year from Core Recovery*



Twas the day after Christmas, and all through the house,  
Every creature was hurtin', even the mouse.  
The toys were all broken, their batteries dead;  
Santa passed out, with some ice on his head.  
Wrapping and ribbons just covered the floor,  
While upstairs the family continued to snore.  
And I in my T-shirt, new Reeboks and jeans,  
Went into the kitchen and started to clean.  
When out on the lawn there arose such a clatter,  
I sprang from the sink to see what was the matter.  
Away to the window I flew like a flash,  
Tore open the curtains and threw up the sash.  
When what to my wondering eyes should appear,  
But a little white truck, with an oversized mirror.  
The driver was smiling, so lively and grand;  
The patch on his jacket said "U.S. POSTMAN."  
With a handful of bills, he grinned like a fox  
Then quickly he stuffed them into our mailbox.  
Bill after bill, after bill, they still came.  
Whistling and shouting he called them by name:  
"Now Younker's, now Dunham's , now Penny's and Sears  
Here's Robinson's, Meijer and Target and Mervyn's.  
To the tip of your limit, every store, every mall,  
Now charge away—charge away—charge away all!"  
He whooped and he whistled as he finished his work.  
He filled up the box, and then turned with a jerk.  
He sprang to his truck and he drove down the road,  
Driving much faster with just half a load.  
Then I heard him exclaim with great holiday cheer,  
"Enjoy what you got...you'll be paying all year!"



**Source:** What to Do with Checks Marked "Paid in Full":  
Taken from Healthcare Collector, Oct. 2004

**Five Quick Telephone Collection Tips:** Taken from  
Healthcare Collector Nov. 2004

**Web of Lies:** Taken from Healthcare Collector, June 2004

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