

Massachusetts' Debt Trap

How private debt buyers are using the courts to hurt families



Working Paper by Ginger Haggerty, The Midas Collaborative

How big is the problem of consumer debt?

A large portion of Massachusetts residents, 23%, have an average of \$4600 in debt in collections¹, and over 42%, have subprime credit scores², which increases their expenses and reduces access to home-buying, credit, education, employment, and more. This contributes to the state's extreme inequality³.

23%
of Mass. residents
have debt
in collections

How did a new financial industry take hold?

Where communities or leaders may see economic risk, debt buyers see a new profitable marketplace. When lenders noted increased defaults in repayments in the ballooning consumer credit markets, new accounting rules incentivized the sale of debt to third parties⁴. A number of new vendors arrived in the marketplace, buying debt for pennies on the dollar, and began engaging in unregulated and opaque pursuits of consumers⁵ to make a profit. The debt buyers with their purchased lists - many with errors - immediately sue borrowers for profits. Consumers often don't respond to the unknown plaintiffs and face snowballing fees, exorbitant wage garnishment, and civil arrest for these dubious claims. While low-income consumers rarely have legal representation and face compounding legal consequences for obsolete and inaccurate claims⁶, the debt buying industry has increased 6.5 times in 38 years⁷.



How does the public sector support private debt collection?

Over the last decade, private debt buying companies have increasingly used local court systems to secure their unsecured debt. This use of local public sector services to support the private debt collection market has bogged down local small claims and civil courts with an increasing number of cases. In 2015 alone, more than 66,000 cases were filed in Massachusetts small claims and district courts by debt collectors⁸. The cost to sue someone in small claims is so low (\$40) that it presents an incentive for debt buyers to pursue claims in court⁹. **The balance of the court costs are borne by taxpayers.**



Default judgments --when the court rules against a defendant who does not appear-- are common outcomes for such cases. Many consumers are not present when they are being sued because the notice was improperly delivered, the debt documentation is inaccurate, the plaintiff (debt buyer) is an unfamiliar entity, and/or the court is inaccessible due to work or transportation issues. Default judgements are favorable to debt buyers as they can affirm or renew undocumented or expired debt, initiate wage or bank account garnishment, and put liens on property. These default judgments are difficult to overturn by consumers. They continue to swamp the courts and law enforcement agencies with the responsibility and cost of collection and enforcement, particularly when civil arrests are executed. The court cases can take upwards of a year to resolve, as many cases require ongoing monitoring of the consumer's repayment of judgments.

What is happening to consumers as regulations fail to keep up with industry changes?

The debt buying industry has outpaced regulations that would protect consumers from abusive and evasive practices. As a result, consumers are sued on the basis of faulty documentation because large debt buyers are not required to have accurate information and purchase the debts in bulk from the original creditors. In an investigation conducted by the Federal Trade Commission, only 6% of the 3.9 million accounts bought by nine of the biggest debt buyers have sufficient documentation to pursue collection of those debts.¹⁰

Only 6%
of debt buyers
presented sufficient
documentation of debt
in court

In Massachusetts, recent court observation research found that consumers are not faring well in small claims court. Of the 315 debt collection cases observed in the local Boston Municipal System, 200 resulted in a judgment against the consumer – 81% of those being default judgments¹¹. The other 115 outcomes were continuances, capias warrants, dismissals, stays, payment plans, transfers, and settlements. In this same study, **the court requested additional documentation for only 13 cases, and only 3% of the plaintiffs produced the required documents when it was requested.**

Though the majority of plaintiffs in the research study were unable to produce the necessary documentation, the low incidence of court requests for documentation highlights a hole in consumer protections. Because consumers are unfamiliar with the small claims/debt collection process, and rarely represented by counsel, few realize that they can request proof of the debt.

In a recent study of one sample month of Massachusetts court records from the Boston Municipal Small Claims Court, the Midas Collaborative found that people were being sued for relatively low amounts, averaging \$1908. Since it's cheap to sue someone in court, people are being taken to court for amounts as low as \$246.

What Should We Do?

Consumer education and meaningful regulation of these financial activities are urgently needed. The debt buying and collection industries represent a systemic risk to the economy akin to that unleashed by the subprime mortgage industry. Now is the time to act to prevent needless damage to consumers and to reduce the burden on taxpayers.

"This is the powerful mechanism of intractable poverty; debt becomes a trap, and inequality is sustained,"
Margaret Miley, Executive Director of The Midas Collaborative.



The Midas Collaborative advances the financial security of low and moderate income residents across Massachusetts in collaboration with its member organizations and other partners. We facilitate asset development and asset protection of families in a manner that is collaborative, helps build communities, and is practitioner-tested and informed by state and national initiatives.

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¹ Urban Institute, Delinquent Debt in America(2014)(http://www.urban.org/research/publication/delinquent-debt-america/view/full_report)

² CFED, Assets & Opportunity Scorecard for Massachusetts (2015)(<http://scorecard.assetsandopportunity.org/latest/state/ma>)

³ Boston is listed as most unequal in the USA. Brookings Institute, City and Metropolitan Inequality on the Rise, Driven by Declining Incomes (2016) (<http://www.brookings.edu/research/papers/2016/01/14-income-inequality-cities-update-berube-holmes>)

⁴ Center for Responsible Lending,(2014) (<http://www.responsiblelending.org/state-of-lending/reports/11-Debt-Collection.pdf>)

⁵ Halpern, J. The Paper Boys (2014) (http://www.nytimes.com/interactive/2014/08/15/magazine/bad-paper-debt-collector.html?_r=0)

⁶ For more detail, see Stauffer, Brian, Human Rights Watch, "Rubber Stamp Justice; US Courts, Debt Buying, and the Poor" (2016) (<https://www.hrw.org/report/2016/01/20/rubber-stamp-justice/us-courts-debt-buying-corporations-and-poor>)

⁷ Hunt, R. (2013). (<http://www.ftc.gov/bcp/workshops/lifeofadebt/UnderstandingTheModel.pdf>)

⁸ National Consumer Law Center, (2016) Debt Buying Statistics (Unpublished research) \

⁹ Commonwealth of Massachusetts, (2010) (<http://www.mass.gov/ago/consumer-resources/consumer-assistance/small-claims-court.html>)

¹⁰ Federal Trade Commission (FTC). (2013).(<http://www.ftc.gov/os/2013/01/debtbuyingreport.pdf>)

¹¹ Greater Boston Legal Services (2016) (Unpublished research)