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Open Questions Posted on Avvo.com

Category:

Insurance Subrogation – Uninsured Automobile Accident – Potential Liability Considerations

Question:

"I was in a car accident and didn't have insurance. [I] got a notice in the mail in which the amount [I] owe is impossible for me to [pay]"

Briefly, the fact that you did not have insurance on the date of the accident "date of loss" allows the insurance carrier to contact you directly or to hire an attorney and send you a demand and ultimately file a lawsuit in an effort to collect the amount they allege you owe. The "No-Fault" Act in Michigan protects both drivers of vehicles from this type of activity "collision" and related damages claims when both vehicles are insured. If you are certain that your policy lapsed or otherwise was not in effect on the date of loss then they are entitled to make the demand upon you. Briefly some points to consider if you are considering bankruptcy. If you were intoxicated or intentionally caused the accident then a bankruptcy will not discharge the debt.

In other words, the debt will still exist despite the bankruptcy. Therefore, if you were drunk or woke up that day and said today is the day that I am going to get in an accident then bankruptcy is not for you to resolve this issue. If neither of those scenarios applies then you may wish to keep the following in mind regarding bankruptcy. Bankruptcy is like an ace is the hole in the event of financial disaster. Bankruptcy may provide a fresh start but it too is not a perfect solution as it carries with it limitations, restrictions and perhaps a lengthy recovery period to restore your credit profile before favorable types, terms and rates for the extension of credit become available to you.

These are issues best addressed by the bankruptcy practitioner now that you have a better idea of the questions you may wish to ask. NOW, with that introduction in mind and 16 years of debt collection and defense experience including insurance subrogation matters, just because you were not insured does not mean that you were responsible for the accident or that you are completely at fault. They still have to prove that you were negligent. This question may come down to a percentage of how much each of you contributed to the accident.

Not knowing the facts, you will have to ask yourself that question and whether you can support your position in court with testimony of witnesses, pictures or any other evidence. Further, police reports "to prove liability" are generally inadmissible "cannot be shown to the judge or jury." Now you

are getting in the area that will make the other side go nuts because they hate being confronted with the tough questions and being required to prove their case. How do they prove their case? They should be required to produce the other driver who generally does not wish to cooperate unless you made a bad impression or somehow got them really upset at the time of the accident.

The problem you face if you chose to represent yourself is that you got to appear or you're in default and when you appear without an attorney the other side will try to get all the evidence they need through your testimony alone. Now, once you get beyond the issue of who was at fault and to what extent the question becomes of whether the damages are related to the accident and whether the claim amount is correct. How likely is it that they got more than one estimate or that they can get the collision expert to testify?

When you start demanding these answers they are going to go bananas as you will be seen as a major inconvenience. These issues though are the best way to leverage a settlement and with manageable payment terms under a settlement agreement that dismisses the case now subject to reinstatement for entry of a pocket consent judgment in the event of default for non-payment of the terms of the settlement. This can be accomplished but it is usually difficult for a non-attorney representing themselves. A final major consideration -AVOID - if you default or a judgment enters then they can pull your driver's license. So you may wish to consider hiring a consumer debt defense attorney. You can always keep your bankruptcy ace in the hole in the event of a complete disaster.

Category:

"Venue," i.e. Place Where Consumer Suit Must be Filed – "Junk Buyer" Debt Collector – Residence and "Standing," i.e Proper Party Considerations

Question:

"Moved 4 years ago and junk buyer filed suit back in state I moved from th[i]s year?"

Briefly, complete information allows for the best assessment of your situation and how best to protect your interests. In Michigan, corporations are required to be represented in court by an attorney. Presumably that is the case throughout this land but you would have to check in the state jurisdiction. An attorney representing a "junk buyer" is governed by Federal Law under the Fair Debt Collection Practices Act "FDCPA" requiring the action to be brought in the jurisdiction in which the consumer resides at the time of the commencement of the lawsuit and subject to violations for their non-compliance with the FDCPA.

Michigan law also requires this type of lawsuit to be brought where the defendant resides. You may wish to find out what the state law where the suit was filed requires and monitor the progress of the lawsuit to avoid adverse results which may result in a default judgment (non-appearance) and

judgment transferred to Michigan (domesticated). The claim itself. Generally speaking a statute of limitation defense is a complete defense that a claim is time barred as stale or in other words brought too late after last payment and/or use or some other measuring aspect set forth in your agreement and as interpreted by the governing law in the jurisdiction for which the claim is properly filed. You indicated that the claim is now held by a "junk debt buyer" which may call for additional defenses such as "standing" to bring the claim.

In other words, can the junk debt buyer provide adequate admissible information that they are the proper holder of the debt. The line of defenses increase depending on the level of documentation that the junk debt buyer possess and this like any other collection matter requires that the consumer defendant remind the court that it is incumbent upon the complaining party "plaintiff" to prove each and every element of its claim.

After 16 years of debt collection and defense experience, just because they think you owe the debt simply because they "allegedly" purchased the debt for pennies on the dollar looking to make an easy profit does not mean that you do not have rights or that the amount they claim owed (presuming standing) is accurate (this is where a complete accounting is demanded - how did they get from the account opening balance of zero to the current alleged amount). Now you are getting in the area that will make the other side go nuts because they hate being confronted with the tough questions and being required to prove their case.

How do they prove their case? They should be required to produce admissible documentary (paper) evidence and witness testimony to substantiate the documents are trustworthy and accurate. Emphasize or establish a legal or factual argument placing into question material (important) issues that simply cannot be resolved without a trial. The junk debt buyer and consumer collection attorneys in general do not wish to cooperate along these lines as this makes their job difficult. The problem you face if you chose to represent yourself is that you got to appear or you're in default and when you appear without an attorney the other side will try to get all the evidence they need through your testimony alone.

These issues though, (in the event that you are mistaken about your statute of limitations defense) are the best way to leverage a settlement and with manageable payment terms under a settlement agreement that dismisses the case now subject to reinstatement for entry of a pocket consent judgment in the event of default for non-payment of the terms of the settlement (in the event that you cannot agree on and manage to pay a discounted lump-sum payment). This can be accomplished but it is usually difficult for a non-attorney representing themselves. A final major consideration -AVOID - a default or a consent judgment entry as they will then most certainly garnish assets. So you may wish to consider hiring a consumer debt defense attorney.

Category:

Property Liens – Creditors Judgment Remedy – Potential Ramification Considerations

Question:

"I have a lien on my home. Can a[n] insurance [company] who [is] trying to sue me for $19,000.00 put a second lien on my home if I lose the case?"

Briefly, YES. The prevailing party in a civil lawsuit is allowed under Michigan law to place a "Judgment Lien" on a person's home which typically does nothing other than sit as a cloud on title until some other event occurs such as a sale or refinance at which time the lien must be addressed to complete the sale or refinance. A judgment lien, depending on your particular circumstances, ordinarily does not interfere with a person's ability to keep their home. Further, this response is tempered by not knowing sufficient facts as to why insurance is claiming you owe $19,000.00.

In the event that you seek additional information from an attorney remember that complete information allows for the best assessment of your situation and how best to protect your interests. Bankruptcy may be your ace in the hole in the event of financial disaster brought on by the circumstances of your matter and the outcome of the lawsuit and it may provide you with a fresh start but bankruptcy is not a perfect solution as it carries with it limitations, restrictions and perhaps a lengthy recovery period to restore your credit profile before favorable types, terms and rates for the extension of credit become available to you. Perhaps you may wish to consider the alternative such as disputing the claim. NOW, with that introduction in mind and 16 years of debt collection and defense experience including insurance subrogation matters, just because Just because they say you owe $19,000.00 does not make it so and with the right representation you may be able to successfully defeat or reduce the amount of the claim or come to a mutually agreeable resolution including payment terms under a settlement agreement.

In other words, they still have to prove that you are responsible under typically a claim of negligence depending on what it is they said you did that was wrong. Depending on the number of parties involved, this question may come down to a percentage of how much each of you contributed to the event. Not knowing the facts, you will have to ask yourself that question and whether you can support your position in court with testimony of witnesses, pictures or any other evidence. Now you are getting in the area that will make the other side go nuts because they hate being confronted with the tough questions and being required to prove their case. How do they prove their case? They should be required to produce witnesses who generally does not wish to cooperate unless you made a bad impression or somehow got them really upset at the time of the event "date of loss".

The problem you face if you chose to represent yourself is that you have to appear or you're in default and when you appear without an attorney the other side will try to get all the evidence they

need through your testimony alone. Now, once you get beyond the issue of who was at fault and to what extent the question becomes of whether the damages are related to the event and whether the claim amount is correct. How likely is it that they got more than one estimate or that they can get their damages expert to testify? When you start demanding these answers they are going to go bananas as you will be seen as a major inconvenience.

These issues though are the best way to leverage a settlement and with manageable payment terms under a settlement agreement that dismisses the case now subject to reinstatement for entry of a pocket consent judgment in the event of default for non-payment of the terms of the settlement. This can be accomplished but it is usually difficult for a non-attorney representing themselves. A final major consideration -AVOID - if you default or a judgment enters then they can besides seeking a "judgment lien" on your home is to engage in collection activities in general which may include garnishment of assets including wages, bank accounts and state tax refunds. So you may wish to consider hiring a consumer debt defense attorney early in the matter.

Category:

Formerly Known As (f/k/a) – Correct Consumer Debtor but Incomplete or Stale Identification of Consumer's Name – Housekeeping Considerations Typically Not a Substantive Defense

Question:

"I got served a summons in my maiden name and not my current name. What do I do?"

Briefly, complete information allows for the best assessment of your situation and how best to protect your interests. In Michigan, you must "file and serve" an answer (File means court receives answer timely; Serve means post-marked timely to the other parties attorney) or "take other lawful action" (File and serve a Motion which is too complicated to explain in this response) "within 21 days of personal service or "within 28 days of service by alternate means (posting and mail) or the other side automatically wins and a default judgment enters for the full amount plus costs, interest and fees.

You will not get a court date if you do not answer the complaint. Do yourself a favor and answer the complaint timely or hire an attorney. You may not get a second chance to undue your mistake if you don't set yourself up properly to defend yourself. You can always settle later. Don't let yourself get stringed along. If you are not an attorney you will likely not understand the process, your rights, and obligations. Don't count on the judge or the other attorney to be sympathetic or guiding to your lack of understanding. It is not their role.

Yes, the corrected name change is most easily accomplished by an agreement for the correction. It is a simple housekeeping matter to address which should be brought to the court's attention right away. In filing an answer an affirmative defenses (points as to why their complaint should fail and be

dismissed or diminished) and an affidavit (your sworn statement under oath which depending on the points it raises may cause problems for the Plaintiff) provides a line of defenses depending on the level of documentation that the collection attorney possess and this like any other collection matter requires that the consumer defendant (you) remind the court that it is incumbent upon the complaining party "plaintiff" to prove each and every element of its claim.

After 16 years of debt collection and defense experience in and out of courts across this State, just because they think you owe the debt simply because it is "alleged" does not mean that you do not have rights or that the amount they claim owed (presuming standing) is accurate (this is where a complete accounting is demanded - how did they get from the account opening balance of zero to the current alleged amount). Now you are getting in the area that will make the other side go nuts because they hate being confronted with the tough questions and being required to prove their case. How do they prove their case?

They should be required to produce admissible documentary (paper) evidence and witness testimony to substantiate the documents are trustworthy and accurate. Emphasize or establish a legal or factual argument placing into question material (important) issues that simply can't be resolved without a trial. The consumer collection attorneys in general do not wish to cooperate along these lines as this makes their job difficult. The problem you face if you chose to represent yourself is that you got to appear or you're in default and when you appear without an attorney the other side will try to get all the evidence they need through your testimony alone.

These issues though, are the best way to leverage a settlement for a discounted amount in a lump-sum payment and dismisses the case or with a smaller discount including manageable payment terms under a settlement agreement that dismisses the case now subject to reinstatement for entry of a pocket consent judgment in the event of default for non-payment of the terms of the settlement (in the event that you can't agree on and manage to pay a discounted lump-sum payment). This can be accomplished but it is usually difficult for a non-attorney representing themselves. Finally -AVOID - a default or a consent judgment entry as they will then most certainly garnish assets and cause you financial grief. So you may wish to consider hiring a consumer debt defense attorney.

Category:

Widower Liability – Answering for the Debt of a Departed Spouse Express Liability Agreement – Defense Considerations

Question:

"My husband had a store credit card(Sears) in his name only [and] I was not able to use it. He died in December[,] am I libel [for] the balance[?]"

First and foremost, sorry for your loss of your dearly departed. Briefly, regarding your open question - NO, you are not responsible for a debt that was neither in your name nor for which you did not enjoy the use of the line of credit or its benefit. If they cannot prove (written dispute of a demand letter asking for very specific verification of the debt) that you signed for or requested the line of credit, did not use the line of credit nor personally remit any payment then any effort to pursue this claim against you personally by way of collection activity including by use of a collection agency or a collection attorney would be without any arguable legal merit and if they proceed to force the issue after you have made it clear (i.e. a sworn affidavit) why it is that you are not responsible then their continued collection efforts may be deemed frivolous and for which you may have additional legal remedies and be entitled to possible money damages in the event of litigation. That having been said, the prior respondent is correct in that they may have a claim against your dearly departed spouse's estate which calls for an inquiry of law (probate and estate law) that I do not practice.

My area of practice consists of a combined 16 years' experience as a debt collection attorney prior to and jumping the fence to help the little guy as a consumer debt defense attorney in defending against debt collection demands and lawsuits for which the satisfaction of helping the little is simply much more enjoyable then helping institutional clients deplete the assets and take advantage of those struggling to make ends meet and for whom the legal system is daunting.

You may wish to consider hiring a consumer debt defense attorney in the event that this or other collection demands befall you and you sense that you are in need of legal representation so that institutional creditors who have attorneys at their disposal do not run you over in their haste to collect your assets despite your circumstances.

Category:

Fraudulent Use of Identity for Obtaining and Use of Credit by Former Spouse – Potential Liability Considerations

Question:

"I am being sue[d] for a credit card in Michigan that my ex-husband took out in my name [sic] told me it was in his then stuck me with it"

Briefly, complete information allows for the best assessment of your situation and how best to protect your interests. It is important to be clear whether you first learned of the debt being in your name following the use and default or at an earlier time when you could have alerted the creditor to freeze the line of credit. You may also consider filing a police report against your ex-spouse claiming identify theft or misappropriation of your identity without your knowledge, consent or permission but prior to doing so consider the implication on your relationship as you may have children together and the police report is alleging a crime. Regardless of your decision, in Michigan, you must "file and serve" an answer

to the lawsuit (File means court receives answer timely; Serve means post-marked timely to the other parties attorney) or "take other lawful action" (File and serve a Motion which is too complicated to explain in this response) "within 21 days of personal service or "within 28 days of service by alternate means (posting and mail) or the other side automatically wins and a default judgment enters for the full amount plus costs, interest and fees.

You will not get a court date if you do not timely file and serve an answer to the complaint. Do yourself a favor and answer the complaint timely or hire an attorney. You may not get a second chance to undue your mistake if you don't set yourself up properly to defend yourself. You can always resolve later. Don't let yourself get stringed along. If you are not an attorney you will likely not understand the process, your rights, and obligations. Don't count on the judge or the other attorney to be sympathetic or guiding to your lack of understanding. It is not their role. Briefly, regarding your open question - You posed two questions.

The second based on last payment in 2009 but did not state who made the payment. Generally, in Michigan the statute of limitations is 6 (six) years from the latter of use, due date or last payment. If you never paid on the debt making it more than six years old then you may have an added affirmative defense to any liability. The first, larger, question based on it being your ex-spouse's debt- NO, you are not responsible for a debt that was neither in your name nor for which you did not enjoy the use of the line of credit or its benefit.

If they can't prove (written dispute (discovery demands if the court agrees to grant) or other demand letter asking for very specific verification of the debt)) that you signed for or requested the line of credit, did not use the line of credit nor personally remit any payment then any effort to pursue this claim against you personally by way of collection activity including by use of a collection agency or a collection attorney would be without any arguable legal merit and if they proceed to force the issue after you have made it clear (i.e. a sworn affidavit) why it is that you are not responsible then their continued collection efforts may be deemed frivolous and for which you may have additional legal remedies and be entitled to possible money damages in the event of continued litigation.

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Category:

Legal Proceedings – Terminology and Case or Docket Inquiry – Information is Power

Question:

"Can I find out if I [have] been subpoenaed???"

Briefly, your inquiry should include whether the item is a subpoena or a summons and complaint. If you accept service of process you will be called upon to obey the command be it a subpoena or a summons and you should be prepared to do so. This is where non-attorneys must proceed wearily and consider legal representation. If it is a subpoena and you fail to obey its command i.e., appear at a stated time and place and produce records it requires you to produce then you may be held in contempt of court which is distinguishable from "debtor's prison" which does not exist in a civil action for an unpaid judgment but jail time is always a possibility for ignoring a subpoena as the judge may deem the non-compliance as a disregard of the court's decorum, honor and respect it is afforded and hold you in contempt of court.

Actually, collection attorneys use a "creditor's examination" subpoena as a tool that I refer to as double-edged sword. If you appear then they are entitled to extract asset information out of you in an effort to collect an outstanding judgment balance. If the served party fails to appear then they can use the non-appearance for either a "Show-Cause" hearing or simply, depending on the court, proceed to ask the judge to issue a "bench warrant" and require a cash bond be posted at the time of arrest by the offending party who may be carted off to jail upon something as simple as being pulled over for a traffic violation.

If it is a summons and you fail to obey its command, i.e., file and serve an answer within the required time frame then the other party is granted a judgment against the non-responding party for whatever they asked for in the complaint which is typically, a money judgment. Under those circumstances there likely won't be a court date because courts don't usually schedule a court hearing benefitting a party that does not participate in the process.

Thereafter, the judgment creditor may resort to its judgment remedies including an effort to garnish and seize assets by methods including a "creditor's examination" subpoena by way of example. The peril of not knowing what process is being employed and upon the process server or court officer's continued inability to obtain personal service may result in the court granting a request for alternate service, i.e. posting and mailing the documents to you and for which if they claim service but you do not get or see the document in sufficient time to comply then unfortunate results tend to occur.

Now having said all that, there is no way of guessing whether you are the intended party or whether it is an attempt collect a debt against you or some other matter in which you may or may not

be a party versus simply a witness. Your question submission suggests that you live in Dearborn, Michigan which is located in Wayne County, Michigan. If it is a legal matter and if you are a named party in the proceeding then there is a good chance you may find your answer by contacting the 19th District Court in Dearborn, Michigan if the case involves an amount less than $25,000.00.

If the 19th District Court has a website that allows individuals to access court records you can find out by contacting the court or doing a Google search. If the amount exceeds $25,000.00 then your inquiry may have to proceed to the Wayne County Circuit Court records department. Wayne County Circuit Court does allow access to public records via the internet.

The website address should be available by contacting the court clerk for the information or by a Google search. Now, after 16 years of debt collection and defense experience in and out of courts across this State, simply because a party has undertaken a legal process for which you may become an involuntary or a voluntary party does not mean that you do not have rights but to protect your rights you may wish to consider hiring a consumer debt defense attorney as you should not count on the other party to protect your interests.

Category:

Harassing Phone Calls to A Consumer's Spouse at Work – Federal Protections under the Law (FDCPA) – Potential Consumer Remedies

Question:

"Can I file a complaint against a debt collector for calling my husband at his job?"

Briefly, complete information allows for the best assessment of your situation and how best to protect your interests. Debt collectors including agencies and attorneys representing Capital One are governed by Federal Law under the Fair Debt Collection Practices Act " FDCPA." The FDCPA allows communications with the spouse of a consumer debtor. The FDCPA, however, places limitations on the time in which a communication may occur and requires the collector to cease communications if instructed to do so subjecting the offending agent to violations for their non-compliance with the FDCPA. You may wish to accept the call for the limited purpose of pleasantly asking for a name and address to respond.

The phone response should have been sufficient but a written record of your demand that they cease communications may be useful in a claim or defense. If you choose to file a complaint then you should retain an attorney because if you do it wrong and lose then the FDCPA requires to you pay their attorney fees. Their claim, generally speaking a statute of limitation defense is a complete defense that a claim is time barred as stale or in other words brought too late after last payment and/or use or some other measuring aspect set forth in your agreement and as interpreted by the governing law in the

jurisdiction for which the claim is properly filed. You indicated that the claim is now held by a "junk debt buyer" which may call for additional defenses such as "standing" to bring the claim. In other words, can the junk debt buyer provide adequate admissible information that they are the proper holder of the debt. The line of defenses increase depending on the level of documentation that the junk debt buyer possess and this like any other collection matter requires that the consumer defendant remind the court that it is incumbent upon the complaining party "plaintiff" to prove each and every element of its claim.

After 16 years of debt collection and defense experience, just because they think you owe the debt simply because they "allegedly" purchased the debt for pennies on the dollar looking to make an easy profit does not mean that you do not have rights or that the amount they claim owed (presuming standing) is accurate (this is where a complete accounting is demanded - how did they get from the account opening balance of zero to the current alleged amount). Now you are getting in the area that will make the other side go nuts because they hate being confronted with the tough questions and being required to prove their case.

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[END]