

Overview of Litigation

and Strategic Thinking in Debt Litigation

“Strategic thinking” means to think through your actions with a specific goal in mind and then to act accordingly – let all your actions move you toward that goal. When you have debt *problems*, this is important, but when you are *being sued* for debt it is absolutely critical because you can waive (let go of and lose) rights if you do not assert them, and anything you say can be used as an “admission” (a legally binding statement) or as evidence against you to hurt your case. If you say or do inconsistent things, therefore, you can severely hurt your chances. Therefore, your first action must be to develop a strategy that will guide you through the situation you are facing. You should have a list of favorable outcomes (goals) to achieve in whatever you are doing, at whatever phase of debt trouble you may be.

Your Goals

Let’s start with your **most fundamental goal**: to complete this litigation with **no judgment against you**. You want that because a judgment does long-lasting damage to you on your credit report as well as subjecting you to immediate and potentially devastating collection activities in the short term.

Avoiding judgment could potentially be accomplished in a number of ways, from complete victory to a “capitulation settlement” where you give the debt collector everything it wants in exchange for dropping the case. This would be better – if you can do it, and if you can do it without a judgment – than getting a judgment against you. Most people reading this manual, however, cannot afford a

capitulation settlement. Therefore, a **secondary goal** must be to complete this litigation at a **price you can afford**.

Far better than that still would be **your ultimate goal: a victory**. Complete victory both allows you to avoid paying any money to the debt collector and moves you a long way towards repairing the damage to your credit report that this debt has probably already caused. It is very definitely possible (and can be accomplished in settlement), and **to get there you must be committed to doing what it takes in terms of effort and learning**. You must also make sure that everything you do moves you toward that ultimate goal and nothing you do moves you away from it.

The Debt Collector's Goals

It is worth remembering that the debt collector's goals are different than yours and are *not completely opposite*. Whereas your ultimate goal includes avoiding judgment and repairing your credit, the debt collector has no interest in either a judgment or your credit report. It only wants money. A **debt collector's ultimate goal is to get as much money as quickly as possible** from you.

The reason that is so important to know is that when it comes to negotiation, you want to know what the other side wants and what it will give up. Of course they know what you want and fear – their whole industry is based on using that against you – but they will negotiate with only their own purpose in mind as a goal. Your offering them a judgment for example, in other words, would do nothing for them other than helping them get money from you, and they would much rather have the cash. They don't care about you or want to hurt you. *This means that wherever you are in the litigation – even if it's over and you have completely lost*

the suit – you can probably accomplish your goal of not having a judgment against you by offering them enough money (if you do it soon enough).

And that is true **no matter how hard-fought your case has been**. You might think that after you give them hell for a year and make them work like crazy to beat you the debt collector might be personally angry at you and want to hurt you. And it could be true (although it rarely would be – the opposite is, in fact, more likely to be true), but debt collectors are in business to make money, and they will do what it takes to achieve their main goal 99% of the time. Use that fact to give yourself permission to work like a maniac to defend yourself. Do everything you can – give them a hard time every time you can, make them work for every single thing – and even if you do not win, keep your head and negotiate knowing that they will act with only one thing truly in mind: your money.

Settlement

Here's a fact: almost all lawsuits end up settling, even debt lawsuits.

If you have a counterclaim and defend yourself vigorously, the chances are excellent that you will settle your case either with *them* paying *you* money, or for no money. There are lots of good reasons to settle, time and risk being the main ones. Lawyers expect to settle, and you should be aware that that is a likely outcome of your case.

However always remember: **the settlement will depend on how the parties view their chances of winning**. In other words, if you make it look like it will take the debt collector a ton of effort to get to trial and that it has a good chance of losing when it finally gets there, it will settle on terms closer to what you want. If it

thinks it will be easy to get to trial and easy to win, it will only settle on terms close to what it wants.

The Key to Strategic Thinking in Litigation

Thus the key to strategic thinking in litigation is **to work at all times as if the case will not settle and will go to trial** – to be completely committed to winning at trial – and at all times to make it look like you can and will win at trial. And then to be flexible enough to act in your strategic best interests in settling. In other words, work like mad to win, never give them anything that helps if you can help it, and then step back and act to do what is best for you without taking any of it personally.

Easier said than done! But you can do it.

This Manual

The materials in this manual are designed to help you position yourself to win, and they will give you a wide variety of materials that will help you understand and counter anything the debt collector does as you work your way through the case. Most of law is about figuring out what you want versus what they want and are trying to do, or doing the often dull work of putting that into words that convince the judge. The materials in this manual will save you a huge amount of time, both in the “figuring out stage” and in the work of putting your responses and next moves into effect.

The things I really cannot do, however, may be the most important of all. I cannot give you the heart to fight hard even when you’re uncomfortable or scared. And I cannot coach you on how to draw back at the last minute and negotiate as if

you had never been uncomfortable or scared. Let it be a goal of yours, then, to develop that sort of judgment and coolness under fire. You won't always get everything right – no one ever does, so don't blame yourself for that – just make sure you don't ever give the whole case away, and then keep fighting.

On “Heart”

There are two kinds of “heart” that are important in this litigation: yours, and theirs.

Your Heart

Most people with debt troubles and litigation are “troubled” by it. They are naturally scared and made uncomfortable by the lawsuit, but even more importantly I think, they very often are haunted by feelings of guilt, embarrassment, humiliation, and other things. Debt troubles can make you feel dirty and small – I know. You also probably grew up believing that the “right thing to do” is to “take responsibility” for... everything. Even in my Debt Master Program I say more or less the same thing.

But litigation is a special thing. Think of it as an arena, a football stadium where two teams are squaring off. The rules of litigation, like football, are not the rules of life. Football teams are there to win, and they must put their personal issues behind them and concentrate on winning the game. “Taking responsibility” in the litigation arena means putting your other feelings aside and working *only* to win.

It doesn't matter to the game of football that one of the players feels guilty or embarrassed about his life at home. Litigation is the same way: **don't let your**

feelings about your life, or even this debt, affect the way you play the game.

You must do everything within your power to win. Believe me, the debt collector will do that, and this may include calling you names. If you let that affect you, you will simply be weakening yourself. If the debt collector's opinions of you matter (and they shouldn't), just remember that they are fighters and they respect those who fight and not those who "take responsibility" by giving up. **Never give up!**

Their Heart

Debt collectors are, in general, "lazy" and "heartless." I don't mean that personally, although it may often be true; I mean they are mostly just button pushers. They have a lot of fruit in the tree, you might say, and their job is simple: shake the tree and pick up what falls down. They spend their time figuring out how to shake the tree better to get more apples to fall down, not on how to get up in the tree to pick a *certain* apple. They do not want to climb *far* into the tree to pick an apple even if it looks very, very juicy. They get a lot more fruit by shaking and picking. A lot more.

To put that into plain English, the typical debt collectors (and the large original creditors like Cap One and Discover, among others) have literally thousands of debts to choose from in bringing suit. What they do is file suit "in bulk" – in large numbers – and collect a vast majority of these as default judgments when people don't show up and defend themselves. They make a lot of money by doing this – enough so that whatever you owe, be it five hundred or fifty thousand dollars, is small potatoes to them. Do not worry, therefore, that your debt is "so big they'd never let it go." There is no such thing.

Of course bigger debts *may* justify *some* more action, but all their actions will follow their interest in maximizing their income. Remember “collection risk,” the risk they face of winning the case but never being able to collect the money because you don’t have it. A bigger judgment may look better in some ways, but it means more collection risk, too. If you fight hard, they will eventually lose money on your case however much money is at stake. Make sure they do, because that is a first step in making them walk away.

Debt collectors have no significant moral views about you or your case. I believe that in general they despise poor people (you might as well know it if you don’t already), but this is not really on moral grounds. It just makes it easier for them to rip them off and take advantage of them if they think less of poor people (and “poor people” means anybody they’re suing). They primarily think poor people are weak and defenseless, and they do have systems in place to exploit that weakness.

It is mostly *impersonal* for the debt collectors, and I usually suggest that you keep it that way. Use the fact that they have systems to do most of their work for them to your advantage. Let them think they are high and mighty as they sit back and push the buttons on their computers. They’re used to a few people falling between the cracks, and your job is to gum up their machine enough so that *you* fall between the cracks and get away.