LEMBERG & ASSOCIATES

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We understand that you may be working under a deadline, and promise to return your call or email as quickly as possible.

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About Lemberg & Associates

Based in Stamford, Connecticut, Lemberg & Associates, LLC is a nationally recognized consumer law firm with a mission to level the playing field between corporations and consumers by providing consumers with legal representation, engaging in issue-focused public education, and supporting public policy initiatives that protect and empower consumers.

Lemberg & Associates practices law in New York, Connecticut, Massachusetts, Pennsylvania, and the District of Columbia. The firm's Of-Counsel attorneys represent clients in Arkansas, California, Colorado, Georgia, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, North Carolina, North Dakota, Oklahoma, South Carolina, Tennessee, Texas, West Virginia, and Wisconsin.

The Firm's Philosophy

Many corporations use and abuse the legal system for profit. They also often use an arsenal of illegal tactics, counting on consumers' ignorance and their inability to fight back. In the process, consumers – many of whom are already disempowered or marginalized – get steamrolled. They don't have the knowledge or the resources to fight back. Lemberg & Associates recognizes that leveling the playing field involves educating consumers about their rights under the law, leveraging the fee-shifting provisions of many consumer rights laws in order to represent consumers, bringing claims on behalf of large groups of consumers through class action lawsuits; and supporting public policies that strengthen consumer rights laws and regulatory enforcement actions.

Practice Areas

- Fair Debt Collection
- Lemon Law & Auto Fraud
- Do-Not-Call Complaints
- Commercial Junk Faxes
- Commercial Spam Texts
- Fair Credit Reporting
- Personal Injury

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Fair Debt Law Backgrounder

For additional resources regarding fair debt collection, please visit www.StopCollector.com, or contact Sergei Lemberg at 203.653.2250 or slemberg@lemberglaw.com.

Fast Facts

- The federal Fair Debt Collection Practices Act (FDCPA) was enacted on September 20, 1977, and was last amended on October 13, 2006
- Debt collection agencies that violate the FDCPA may be liable for actual damages, up to $1,000 in additional damages, and the consumer's attorney fees
- The Federal Trade Commission and the Consumer Financial Protection Bureau are charged with enforcing the FDCPA

Original Creditors vs. Collection Agencies

The federal Fair Debt Collection Practices Act covers debt collection agencies, but generally doesn't cover original creditors. Bank credit cards (like Visa and MasterCard), for example, typically use in-house collectors and don't fall under the FDCPA. The same is true if, for example, a hospital directly employs someone to collect on an overdue bill. However, some states have laws that protect consumers from abuse by original creditors. Debt collection agencies or collection law firms are companies hired by original creditors to collect the money owed. Debt buyers purchase old debt for pennies on the dollar, either from original creditors or debt collection agencies. Collection agencies, collection law firms, and debt buyers are the debt collectors regulated by the FDCPA.

About Bill Collectors

According to the U.S. Bureau of Labor Statistics (BLS), there were 401,700 bill and account collectors employed in 2010. The BLS estimates that the job prospects for debt collectors is more than rosy; the agency anticipates the field will grow 14 percent by 2020, at which time it anticipates that there will be 458,900 debt collectors going after consumers.

Nationally, the median wage for a bill collector is $15.05 an hour. About a quarter of debt collectors are categorized in "business support services," while about 8 percent work in doctors' offices or for hospitals.

How Debt Collectors Track Down Consumers

Debt collection agencies employ a variety of tactics to find consumers, including utilizing the data mining industry, exploiting public records, conducting Internet searches, contacting friends and family members, and using social media sites. These are all legal practices. Most Americans leave a sizable digital footprint, and information on their whereabouts is relatively easy to access.

How Debt Collectors Track Down Consumers

The FDCPA outlines a number of specific debt collection practices that are considered illegal, but provides a murkier definition of others. Here's a rundown:

Contacting Others: Debt collectors can use almost any means to locate a consumer, including contacting the consumer's friends, family members, and coworkers. However, the debt collector cannot tell a third party that the consumer owes a debt, and cannot contact a third party once he knows the consumer's contact information.

Collection Calls: Debt collectors can call consumers, but not at all hours of the day and night. The law prohibits debt collection calls early in the morning or late at night, unless the consumer has told the collector to call at one of those times. A collector can't call "at a time or place known or which should be known to be inconvenient to the consumer," such as the workplace. While the law prohibits collection call harassment, it doesn't define what constitutes harassment. Calls are likely to be viewed as harassment if there are more than a couple of calls per

Fair Debt Law Backgrounder, Continued

week or if the collector repeatedly calls and hangs up. In addition, in every call the bill collector is required to provide the consumer with his true name, and tell the consumer that he's trying to collect a debt, and that the information the consumer offers will be used for that purpose.

Verbal Abuse and Threats: The law broadly defines harassment, which includes "the use of obscene or profane language, or language the natural consequence of which is to abuse the hearer or reader." Under the law, harassment isn't judged based on how a specific consumer felt; the more generous standard of the "least sophisticated consumer" is applied. So, harassment happens anytime the hypothetical least sophisticated consumers might feel confused or threatened. So, for example, it is illegal for a collector to threaten to repossess property for an unsecured debt; to threaten arrest or imprisonment; to threaten a lawsuit that is past the statute of limitations; or threaten to garnish wages.

Communicating via Mail: Debt collectors are allowed to send letters through the mail, but they're not allowed to embarrass consumers by sending a postcard or an envelope with printing that indicates it relates to a debt. According to the law, a bill collector can't use "any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business."

False Representation: The FDCPA prohibits false representation. False representation isn't just when a debt collector assumes a false identity, but it also applies to documents related to the collection. This means that a bill collector can't send a document that looks like (or says it is) an official court, governmental agency, or state document. Debt collection agencies will often mail "official" looking paperwork to consumers, hoping that people will react to what they perceive are governmental documents.

Collecting More than is Owed: Debt collection agencies often attempt to collect more than is owed. They may, for example, add on a "collection fee" or interest charge. The FDCPA prohibits that, saying that a debt collector is not allowed to collect interest, add a fee, or attempt to collect more than the original debt or charge unless the contract that created the debt – or state law – allows the charge.

Misleading Consumers About a Course of Action: The FDCPA prohibits "the false representation or implication that documents are not legal process forms or do not require action by the consumer." If the consumer has the opportunity to take action, either by contesting the validity of a debt, or negotiating a payment plan or settlement, a bill collection agency can't give the consumer the impression that he or she should do nothing. A favorite tactic of deceptive collection agencies, though, is to mislead consumers so they won't take action. Then, when the window of opportunity has closed, they'll sue the consumer for not taking action.

Misusing Postdated Checks or Electronic Withdrawals: Debt collectors often request that consumers send post-dated checks, or approve a series of electronic check withdrawals on certain dates according to a payment schedule. It's illegal for a bill collector to accept the checks and deposit them earlier than the agreed-upon date. In fact, within three days of the date written on the check, the collector must send the consumer a notice of his intent to deposit the check.

The Right to Dispute

Consumers have the right to dispute the amount the collector is seeking to collect. The law says that, within five days of contacting a consumer, a debt collection agency has to notify the consumer in writing of the amount he or she owes. The collection notice must contain provisions that allow the consumer 30 days to dispute the amount. The debt collector must then provide verification of the debt, and may not continue contacting the consumer until he verifies the amount in writing. The consumer has 30 days to dispute the amount under the Fair Debt Collection Practices Act. Asking for this information often buys a consumer the time he or she needs in order to formulate a plan of action, so consumers should take advantage of this legal provision.

The FTC and CFPB

The Federal Trade Commission (FTC), and the Consumer Financial Protection Bureau (CFPB) are charged with administrative enforcement of the FDCPA. The CFPB

Fair Debt Law Backgrounder, Continued

issues an annual report to Congress that tallies the number of complaints the agency receives about abusive debt collection practices. In its 2012 report on complaints filed in 2011, the CFPB stated that 142,743 complaints were filed by consumers, but acknowledged that the numbers "may understate the extent to which the practices of debt collectors violate the law." The report noted that there are "more complaints about the debt collection industry than any other specific industry."

The FTC has brought a number of successful actions against debt collection agencies that engaged in abusive practices. Often, the FTC enters into "consent decrees" or a court issues a "stipulated final order" that enables the defendants to pay a fine without admitting to a violation of the FDCPA. For example, in May 2012, the agency alleged that Luebke Baker and Associates "falsely told consumers that magazine subscription debts are exempt from the statute of limitations" and "illegally threatened to garnish wages and take other unintended legal actions."

In 2011, the FTC obtained civil penalties against West Asset Management ($2.8 million) and Asset Acceptance, LLC ($2.5 million), and filed actions against several payday lenders.

Under the authority of the Dodd-Frank Act, the Consumer Financial Protection Bureau has supervision authority over the largest debt collection agencies beginning January 2, 2013. According to the CFPB, "This authority will extend to about 175 debt collectors, which account for over 60 percent of the industry's annual receipts in the consumer debt collection market."

READY TO ASSIST YOU

The debt collection industry regularly labels Attorney Sergei Lemberg as one of the "most active" consumer attorneys in the nation. He and his colleagues can provide you with information regarding:

- The Fair Debt Collection Practices Act
- Debt collectors' dirty tricks
- How consumers can fight back
- Legal and illegal debt collection practices
- Why consumers should dispute a debt - even if they owe the money
- How the debt collection business model burdens taxpayers

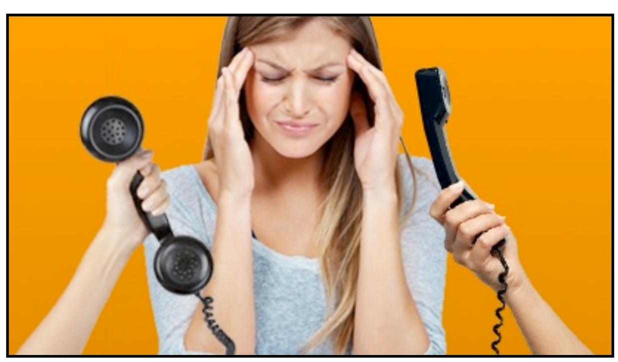
They can also refer you to Lemberg & Associates clients who live in your geographic area and who want to share their stories with your readers, viewers, or listeners.

Telephone Consumer Protection Act Backgrounder

For additional resources regarding the Telephone Consumer Protection Act, please visit www.Do-Not-Call-Complaints.com, www.SueJunkFaxers.com, or www.SueSpamTexters.com. Or, contact Sergei Lemberg at 203.653.2250 or slemberg@lemberglaw.com.

Fast Facts

- The federal Telephone Consumer Protection Act (TCPA) was signed into law in 1991
- The TCPA gives broad authority to the Federal Communications Commission to enact related regulations
- The TCPA laid the foundation for the National Do-Not-Call Registry and protects consumers from telemarketer harassment, robocalls, junk faxes, and spam texts
- A 2012 case, *Mims v. Arrow Financial Services*, enabled consumers to pursue TCPA violations in federal court
- Consumers can receive $500 per violation, or triple that if the law was violated knowingly and willfully
- Increasingly, debt collectors are violating the TCPA through their use or robocalls and autodialed text messages



Telephone Consumer Protection Act Backgrounder, Continued

Do-Not-Call Registries

The federal Telephone Consumer Protection Act (TCPA) laid the foundation for the National Do-Not-Call Registry (www.donotcall.gov). Consumers can register their home and cell phone numbers, and telemarketers are required to "scrub" their call lists every 31 days by comparing them to the National Do-Not-Call Registry. If a consumer continues to receive telemarketing calls 31 days after registering, the caller is likely violating the TCPA.

In addition, companies are required to maintain their own do-not-call lists. A consumer who receives an unwanted commercial call can asked to be placed on the company's do-not-call list. The consumer's request must be honored for five years.

Robocalls

Also called "automated telemarketing calls," robocalls use pre-recorded voices or automated dialers to call consumers. The Federal Communications Commission amended and clarified its rules in 2012 to say that commercial robocalls are illegal unless the consumer has given a business his or her permission to receive such calls.

Regulations say that, at the beginning of a robocall that could go through to voicemail, a company must provide a toll-free number consumers can use to be removed from the list. During robocalls meant to be answered by a live person, the caller must provide a means to be removed from the list, such as by pressing a certain number on the telephone keypad.

Telemarketer Harassment Checklist

This checklist provides an overview of telemarketing rules and outlines what constitutes violations of the TCPA:

Calls from Live Telemarketers

A company *HAS* violated telemarketing rules if:

- The caller refuses to provide the consumer with his name, the name of the business on whose behalf he is making the call, and the telephone number or address of that business.
- A call is made before 8:00 a.m. or after 9:00 p.m. in the consumer's time zone.
- The consumer made a do-not-call request directly to the telemarketer anytime in the previous five years, but they called the do-not-call number anyway.
- The call came in on a do-not-call phone number that was registered with the National Do-Not-Call Registry (www.donotcall.gov) at least 31 days prior to the call.

A company has *NOT* violated telemarketing rules if:

- The person works for and is calling on behalf of a tax-exempt non-profit organization.
- The person works for and is calling on behalf of a political campaign.
- The call is healthcare-related and covered under the Health Insurance Portability and Accountability Act.

Pre-recorded or Automated Calls (Robocalls)

A company *HAS* violated telemarketing laws if:

- The consumer did not give permission to receive robocalls (by signing a form, replying to an email, checking – or not unchecking – a box when ordering a product online, signing up to be on a list, or completing an online survey.)
- A company tricked the consumer into accepting telemarketing robocalls, and didn't clearly state that they were asking for permission to call.
- A company forced the consumer to give permission to accept robocalls as a condition of providing goods or services.
- The consumer gave permission to receive robocalls, but then told the company he or she no longer wanted to receive the calls, and they called anyway.
- At the beginning of a robocall on voicemail, it didn't give a toll-free number that the consumer could call to be removed from the list.
- The consumer answered a robocall, and the automated call didn't give him or her the option to be removed from the list, for example by pressing a certain number on the telephone's keypad.
- The consumer called the toll-free number to be removed from the company's list, and was forced to speak to a salesperson.
- The consumer hung up on a robocall, and the robocall didn't disconnect the call and free the phone line within five seconds.

Telephone Consumer Protection Act Backgrounder, Continued

- The call was made to a cell phone, pager, or any service where the consumer was charged for the call.

A company has *NOT* violated telemarketing laws if:

- The call was informational, such as one from a child's school or an appointment reminder from a doctor's office, and did not promote or try to sell something. The call was on behalf of a political party or candidate.
- The call was from a charity – if the charity (and not a third party) was calling.
- The call was from a bank or telephone service provider – if the calls were made from the companies and not by third parties.

Junk Faxes

The Telephone Consumer Protection Act protects consumers and businesses from unsolicited faxes. In addition, the CAN-SPAM Act of 2003 and the Junk Fax Prevention Act of 2005 apply to unsolicited faxes.

According to fax laws and FCC regulations, it's a violation to send an advertising fax to home or business fax machines unless two conditions apply. First, a company can only send a fax if there's an "established business relationship." Second, in order to fall under the "established business relationship" provision, the advertiser must have obtained a fax number in one of three ways:

- Directly from the recipient (e.g., on an application or registration form
- From the recipient's directory, ad, or website
- Through a third-party directory where the recipient voluntarily provided a fax number

In addition, senders must include "opt-out" information on the first page of a fax, and include a fax number and phone number. The sender must honor the opt-out request within 30 days.

Spam Text Messages

The Telephone Consumer Protection Act and CAN-SPAM Act, along with Federal Communications Commission regulations, govern commercial text messages. New FCC regulations that took effect July 11, 2012 prohibit text messages to a cell phone using an autodialer. The only exceptions are if it's an emergency message or if the consumer has given the sender written permission to transmit a text message to his or her phone. A consumer's written consent can either be physical or electronic. If a consumer opts out of receiving further texts from a company, the company has ten days to honor the request.

A company can send a text message regarding a product or service that the consumer has already purchased; this is called a "transactional or relationship" message.

Avenues of Redress

Consumers who have been on the receiving end of robocalls, telemarketer harassment, unsolicited faxes, or spam text messages can sue in federal court for $500 per incident. They can also file a complaint with the Federal Communications Commission.

READY TO ASSIST YOU

Attorney Sergei Lemberg and his colleagues can provide you with information regarding:

- The Telephone Consumer Protection Act and related regulations
- The CAN-SPAM Act
- How consumers can fight back against robocalls, unsolicited faxes, and spam text messages
- Legal and illegal telemarketing practices
- How Mims v. Arrow Financial Services increased consumer protection by enabling consumers to sue for TCPA violations in federal court

They can also refer you to Lemberg & Associates clients who live in your geographic area and who want to share their stories with your readers, viewers, or listeners.

Lemon Law Backgrounder

For additional resources regarding fair debt collection, please visit www.LemonJustice.com, or contact Sergei Lemberg at 203.653.2250 or slemberg@lemberglaw.com.

Fast Facts

- Every state, along with the District of Columbia, has enacted a Lemon Law
- Provisions of Lemon Laws vary from state to state
- The Connecticut Lemon Law was the first enacted in the United States, and was signed into law on June 4, 1982

First in the Nation: Connecticut Lemon Law Signed June 4, 1982

"John J. Woodcock III, a Connecticut State Representative, was the proponent of the first 'Lemon Law' enacted in the United States. Governor William A. O'Neill signed the bill (PA 82-287) into law on June 4, 1982." *Source: Central Connecticut State University, Center for Public Policy & Social Research. http://library.ccsu.edu/about/departments/spcoll/lemonlaw/*

Historical Context

"President Ronald Reagan's policy of deregulation left consumers subject to fraud and other abuses by manufacturers. A federal law, the Magnuson-Moss Warranty Act of 1975, and Uniform Commercial Codes provided some protection for the consumer, but the way in which these laws were written meant the consumer usually ended up filing a lawsuit against the manufacturer. Seeking redress under either statute led to 'frustration, delays, expense and uncertainty.' (Kegley and Hiller, 1986, p. 88). Hence the need for a more consumer-friendly procedure." *Source: Central Connecticut State University, Center for Public Policy & Social Research. http://library.ccsu.edu/about/departments/spcoll/lemonlaw/*

Types of Vehicles Covered by Lemon Laws

The types of vehicles covered vary according to each state's Lemon Law. Every state covers new passenger vehicle purchased and used for personal and household purposes, but many states' laws go much further. Coverage can include business vehicles, leased vehicles, motor homes, motorcycles, and even ATVs.

Legal coverage is more uneven when it comes to used vehicles. Some states have separate statutes that cover used car purchases, typically by mandating a "sliding scale" warranty that grants longer warranties to more expensive vehicles or vehicles with fewer miles on the odometer. Many states' new car Lemon Laws cover vehicles that are sold or transferred within the manufacturer's original warranty period. So, for example, if a consumer purchases a used car that is less than a year old and has only a few thousand miles on it, the chances are good that it is covered by the state's new car Lemon Law.

Definition of a Lemon

While the definition of a lemon varies from state to state, generally speaking a lemon:

- Has a defect (or sometimes a series of defects) covered by the manufacturer's express warranty that substantially impairs the safety, use, or value of the vehicle
- Has been taken in several times (laws vary, but generally require from two to four repair attempts) for the same problem or series of problems, or has been out of service for a specified number of days (typically 30 days)
- Has a defect that occurs within the Lemon Law period (most often a specified time period, such as one year from the date of delivery of the vehicle, or a specified odometer reading, such as the first 12,000 miles)

Replacement and Refund Requirements

Generally, Lemon Laws state that, if a dealer or manufacturer cannot conform a vehicle to the manufacturer's express warranty after a certain number of repair attempts or a certain number of days out of service, then the manufacturer must either give the

Lemon Law Backgrounder, Continued

consumer a comparable replacement vehicle or a refund. The refund usually includes the purchase price, tax and license fees, and collateral expenses, less an amount representing the consumer's use of the vehicle.

Consumer Requirements

Lemon Laws typically require consumers to take a number of actions prior to seeking relief under the law. For example, a Lemon Law may require the consumer to notify the manufacturer of the problem in writing, via certified mail, and give the manufacturer a final opportunity to repair the vehicle.

Lemon Laws often require the consumer to go through a manufacturer- or state-operated arbitration hearing. Some states give both the consumer and manufacturer a right of appeal following an arbitration hearing, others make the arbitrator's decision binding for the manufacturer but not the consumer, and still others make the decision binding to both parties.

Why Consumers Need Lemon Law Attorneys

Most vehicle manufacturers follow the principle of "No lawyer, no money." In other words, they count on being able to outmaneuver the consumer who hasn't retained a Lemon Law attorney. Even in informal dispute resolution processes, the consumer is only on equal footing if he or she has an advocate at his or her side. The attorney's experience enables the consumer to easily dispute the manufacturer's testimony.

But perhaps the most important reason for a consumer to have a Lemon Law lawyer is that it sends a clear signal to the manufacturer that the consumer is serious about the claim, and is willing to sue them in order to get justice. Vehicle manufacturers have powerful legal teams that are adept at avoiding or stalling Lemon Law claims, and often only obey the law when they're faced with the threat of a lawsuit by consumer attorneys. When they are, they usually settle very quickly, since they know that the cost of going to court will be much higher. In addition, consumer attorneys generally don't charge consumers for representation, since most Lemon Laws require the manufacturer to pay the consumer's attorney fees in successful actions. For these reasons, it's in the consumer's best interest to have an advocate who knows the law and works on the consumer's behalf.

Specific Information by State

You can easily find information about specific states' Lemon Laws at www.LemonJustice.com.

Auto Fraud

Next to buying a home, buying a car is the biggest purchase most consumers make. When consumers are blindsided by auto fraud, it can impact virtually every aspect of their lives. Two of the most common forms of auto fraud are;

Odometer Fraud: The National Highway Traffic Safety Administration estimates that consumers are ripped off to the tune of $1 billion per year due to odometer fraud. The law enables consumers to sue those who have defrauded them, and recover three times the monetary damages they suffered or $1,500, whichever is greater.

Spot Delivery and Yo-Yo Scams: Consumers often drive off the lot without having read the contract's fine print, which says that delivery is conditioned upon approval of their financing package. The scam happens when the dealer calls several days or weeks later, saying the financing fell through and telling the consumer he or she has to pay a higher interest rate or a larger down payment.

READY TO ASSIST YOU

Attorney Sergei Lemberg and his colleagues can provide you with information regarding:

- New car lemon law
- Used car lemon law
- Auto insurance and financing fraud
- Magnusson-Moss Warranty Act

They can also refer you to Lemberg & Associates clients who live in your geographic area and who want to share their stories with your readers, viewers, or listeners.

Sergei Lemberg Bio

In almost a decade of practicing law, Mr. Lemberg has earned a reputation as a tough and tireless advocate with a passion for helping average people fight for compensation they deserve. He stands up to huge carmakers, insurance companies, debt collection agencies, and other big businesses. In fact, he has been designated the "most active consumer attorney" by the debt collection industry.

After holding positions with several major law firms in New York and Connecticut, Mr. Lemberg launched his own practice in 2006. Since starting as a solo practitioner, Mr. Lemberg has grown his firm to 4 full-time and 16 part-time attorneys, paralegals, and support staff. He has been lead counsel in a number of class actions, and is considered an authoritative source for consumer law issues by national media such as ABC News, MSN, and Chanel 7 in Boston, the Los Angeles Times, Consumer Reports, and the Boston Herald. Mr. Lemberg is a native speaker of Russian, and speaks French and Spanish.

Degrees:

- University of Pennsylvania Law School - J.D. (2001)
- Brandeis University - B.A. in Economics with a minor in Business (1997)

State Admissions:

- Massachusetts (2002)
- New York (2002)
- Connecticut (2005)

Federal Court Admissions:

- District of Massachusetts (2006)
- District of Connecticut (2006)
- Southern District of New York (2003)

Appeals Court Admissions:

- First Circuit Court of Appeals (2009)
- Second Circuit Court of Appeals (2011)
- Third Circuit Court of Appeals (2010)
- Ninth Circuit Court of Appeals (2010)

Publications:

- Connecticut Civil Complaints for Business Litigation – Contributing Author – Lemon Law and Auto Defect Litigation
- Seize Your Power: How to Stop Debt Collectors NOW - Author