

>> Tom Pahl: Good morning, everyone. My name is Tom Pahl. I'm an assistant director in the FTC's division of financial practices, and I'm glad to welcome you all here today to our third debt-collection arbitration and litigation round table. This round table today is gonna focus exclusively on the topic of debt-collection litigation. Before we begin, a number of administrative announcements I'd like to go through. The first is that we are going to try very, very hard to stay on schedule, so if you look at the times that are set for the beginning of each panel in our materials, we'd ask that you be back in the building and seated at that time so that we can start promptly. Reentry to the building, if any of you leave during breaks or over the lunch -- lunch hour, you will have to go back through security in order to get into the room here today. And so please plan on a little extra time if you leave the building for the security process. If you do come back into the room after a session has started, I would ask that you come in the doors near the back so that we don't interrupt the sessions that are going on. The bathrooms are located out in the main -- main hallway area behind the bank of elevators. And so, that's -- basically, it's on the -- I guess it's on the southeast side of the building. So, basically, it's behind the elevator banks for those of you who are looking for the restrooms. In the event of an emergency, please leave the building in an orderly fashion. Once you get outside the building, you will need to find New Jersey Avenue, which is the street which runs right in front of the building, right out here to my left. Across from the FTC is the Georgetown University Law Center. Look to the right front sidewalk, and that's the point where everyone's supposed to come together in the event of an emergency, and you will be instructed at that point where to go and what to do. Suspicious activity -- our security personnel have said if you see any suspicious activity here today, please let them know. Refreshments -- hot coffee and cold water will be available at the breaks out on the table outside. If you want other things to eat or drink, there is a cafe that's on the "G" Street side of our building, and you can go there and pick up something else. Structure of our panels here today -- we're gonna have four panels, each of which will have a moderated discussion. Time permitting, we're going to allow members of the audience to pose questions to the members of the panel. In your folders that you picked up when you registered, you'll find note cards. If you have questions, please write them as clearly as you can, as legibly as you can on those note cards and hold them up. People will collect them, and then they will be handed to the moderator of the panel sessions, who will read as many of the questions as they can in the time permitted. For those of you who are viewing this event today by webcast, you can submit questions to our panelists at consumerdebtevents@ftc.gov.

Same process will be used. We've got someone monitoring e-mails that come in, and they will feed the questions that come in by e-mail to the moderators. If your questions are not asked to the moderators, bear in mind, too, that there are things that we, the staff of the agency, will consider as part of reviewing all of the information that we receive. So just because a question you may have does not end up being posed, it doesn't mean it's not something that we will not think about and try to figure out what its implications are for debt-collection litigation. One thing that we will do at the end of each of our panels today is we'll have Joel Winston, who's the associate director in our division of financial practices, come up and try to summarize the discussions and provide some brief thoughts about what has been said. Cellphones -- to avoid interruptions, would ask that everyone turn your ringers -- turn the ringers on your cellphones off right now. And if you have any questions throughout the day, feel free to ask me, ask any of the other moderators, or ask the FTC staff out at the registration desk, and we will do what we can to help answer your question. Without further ado, I'd like to turn to introducing our speaker for our opening remarks. David Vladeck, the director of our Bureau of Consumer Protection, unfortunately, is unable to be here with us today. Fortunately, though, we have a wonderful substitute. Chuck Harwood was recently named deputy director in our division -- excuse me, in our Bureau of Consumer Protection. For many years, Chuck was the head of our regional office in Seattle, and in that position, he was actively involved in a lot of consumer-protection litigation, including debt-collection litigation. We are pleased that Chuck is here today to provide opening remarks to commence our round table. Welcome, Chuck. [Applause]

>> Chuck Harwood: Thank you, Tom. Good morning. Good morning to everybody. Glad to see all of you here this morning. Welcome to those here in the room, and, also, I want to welcome folks who are on the Internet viewing this over the Internet. This is the Federal Trade Commission's third and final round-table discussion concerning debt collection. And as you already know, today, our focus is particularly on debt-collection litigation. In connection with our ongoing review of debt-collection practices and through our previous round-table discussions, we've heard many stories that illustrate why debt-collection litigation is a timely topic for this round table. For example, we recently heard from a judge who wanted to be here today but, unfortunately, could not due to a scheduling conflict. The judge explained, though, how debt-collection litigation touched his own family and changed his approach on the bench to these cases.

And this is what he said. "My wife was contacted by an attorney about a credit-card account that she had never opened." Upon further investigation, it was found by the collection attorney who had actually contacted his wife that there was, in fact, no document trail linking the account to the judge's wife, and the attorney ultimately dropped the case. "But," the judge goes on to note, "six months later, someone else contacted my wife, again about that same debt." The judge observed that title to the debt continued to change hands from one debt buyer to another over a period of years, and a succession of debt collectors contacted his wife to collect. Debt collectors continued to contact her, even though she had disputed the debt and even though there was no documentation linking her to the account. Because of His Honor's experiences, he said that he's now particularly careful to examine documentation and evidence of title in debt-collection cases that come before him while he's sitting on the bench. Now, careful and conscientious judges like the one I've just described are obviously part of the consumer-protection solution to the problem we're here to talk about today. But they're not the entire solution. We need to figure out how debt-collection litigation can be restructured to protect consumers better. Too often, collection attorneys file lawsuits against the wrong parties or with little evidence to substantiate the debt. Too often, consumers find out that a judgment has been entered against them only when their bank accounts are frozen or garnished. These experiences and stories highlight the need to ensure that consumers receive adequate service of process so that they can appear and defend themselves. And they need to ensure -- and they need to ensure that debt collectors provide adequate information on complaints and during litigation, especially complaints regarding -- in complaints regarding old debts so that judges have a sufficient basis for decisions they may make about these debts and the need to ensure that banks and state courts devise a better system for garnishing bank accounts so that they do not freeze or garnish funds that are exempt from garnishment under federal law. To evaluate means of reaching these goals, we will have four panel discussions here today. Our first panel will address issues relating to the service of process. Second panel will examine concerns regarding old debts and statute of limitations. Third panel will assess issues concerning indebted -- evidence of indebtedness. And our fourth and final panel will address concerns relating to the garnishment of federally exempt benefits and bank accounts. To identify possible solutions, we're turning to the experts, the folks who will be sitting up here, and I'm delighted that so many distinguished individuals from industry, the consumer-advocacy community, the judiciary, academia, and law-enforcement agencies are here today to discuss debt-collection litigation, and

I thank all of you for helping the Federal Trade Commission find ways to better protect consumers. But while we will certainly be relying heavily on these experts, we also want to hear from the general public. Individuals and organizations may submit public comments to us, in paper or electronic form, concerning the topics they're going to be hearing about today until July 8, 2010. There are instructions -- Sorry -- January. Thank you. January 8, 2010. Important change. So, January 8, 2010. There are instructions on how to submit comments in our literature and on our website. After our round table, we will next turn to developing findings about the functioning of the current debt-collection system and recommendations for how to improve it. We intend to incorporate these observations into a report articulating changes in law, policies, and practices, as warranted. We hope to be a catalyst here at the FTC for reforming debt-collection litigation, the debt-collection litigation system, and improving a lot of American consumers. And with that, I thank all of you again for joining us here today. I'll turn you back over to Tom. Thank you. [Applause]

>> Tom Pahl: Thank you, Chuck. Before we begin our first panel, we'd like to show you a video. As many of you know, one of our priorities as part of our consumer-protection mission here at the FTC is educating consumers so that they can protect themselves. As part of these efforts, our division of consumer and business education has developed a new video on the rights of consumers under the Fair Debt Collection Practices Act. We'll show this video now. It's gonna take about three minutes. If any of you are interested in this video, we encourage you to link to it on our website. The video's available in English and Spanish. We also have copies of it in DVD form out in the lobby. So, I'd like to ask that the tape be played now. Give you some idea of what we here at the FTC do, in terms of trying to educate consumers. [Up-tempo music plays]

>> Male Speaker: In uncertain times, what can you be sure about? The sun rises in the east. What goes up must come down. Night follows day. But here's something else. When it comes to dealing with debt collectors, federal law gives you rights. For example, debt collectors can't call before 8:00 in the morning or after 9:00 at night... can't curse or insult you... can't demand that you pay more than you owe... can't lie about anything. They can't say the papers they send you are legal forms if they're not... Nor can they make up consequences for not paying your debt. And they can't call you at work if your employer doesn't allow it. You also have the right to stop debt

collectors from calling you. How do you do that? You have to notify them in writing. Sending them a letter should stop the phone calls but, of course, doesn't wipe out your debt. There's helpful information about dealing with debt at ftc.gov/moneymatters, a website from the Federal Trade Commission. It explains the rules of behavior for debt collectors. Take a look. There are some that may surprise you. If your debts have gone into collection, remember that you have rights. Asserting your rights doesn't make your debt go away, but it does give you a voice. The more you know about how to manage your debt and deal with debt collectors, the better off you can be. After all, money matters. If you think that a debt collector has violated the law, report it. File your complaint with the Federal Trade Commission at ftc.gov/complaint. Your complaint gives law enforcement a lead to follow up on and may stop it from happening to someone else. The Federal Trade Commission is the nation's consumer-protection agency. For more tips on credit and debt, visit ftc.gov/moneymatters or 1-877-FTC-HELP. 1-877-382-4357.

>> Tom Pahl: Our first panel today is going to focus on the topic of initiating suits in debt-collection litigation. Our panel will be moderated by Dama Brown, who's an attorney in the FTC's Atlanta regional office. At this time, I'd like to ask Dama and our panelists to come forward and take their seats, and we can begin. Thank you.

>> Dama Brown: Good morning. My name is Dama Brown, and I'm from the Atlanta office. It's my pleasure to be here today. I think we've got a great program lined up. On the panel this morning, we have 16 individuals with some -- really a wealth of expertise. My first task that was assigned to me -- Can everybody hear me? Speak up? Maybe I should just use a microphone. I'm always afraid of them because I get that tinny echo. Is that better? Okay. The first task that was assigned to me was to give a little bit of background on all the speakers. And, honestly, there's just such a wealth of experience that I could spend the whole hour just talking about their backgrounds. But let me very quickly summarize just some of the high points of the individuals who we have here, their careers. We have Judge James Abrams. He is a judge in the Connecticut superior court. Carolyn -- is it "co-fee"? "Coffee." And she is with MFY Legal Service, Incorporated. She represents low-income New Yorkers. Michael Debski is with the firm Rubin & Debski. He is the president and founder of that firm. And he is also the president of the creditors bar association in Florida. We have Judge Peter Evans, who has been on the 15th

Judicial Court of Florida in Palm Beach County for over 21 years, I believe. We also have Joanne Faulkner. She's a sole practitioner who practices consumer law. And she has been the recipient of the Vern Countryman Award of National Consumer -- from the National Consumer Law Center. Cary Flitter is a partner with the firm of Lundy, Flitter, Beldecos & Berger. Sorry. My eyes are failing me here. Cary is a consumer credit -- Oh, I'm sorry. Cary specializes in consumer credit and consumer fraud and is the author of "Pennsylvania Consumer Law." Michele Gagnon is with the firm Peroutka & Peroutka and is the lead attorney and compliance officer of that firm. Next to me is Mark Groves from the firm Glasser & Glasser. He is also author of "Collection Law in Virginia" and "Advanced Collection Law in Virginia." Judge Diane Lebedeff is to the left of me. She has been at the New York City civil court for 25 years. Carlene McNulty is with the North Carolina Justice Center. She does complex litigation on behalf of low-income individuals. Joann Needleman is from the National Association of Retail Collection Attorneys and is the vice president of Maurice & Needleman and the managing attorney of the Philadelphia office there. Donald Redmond is coming to us from Portfolio Recovery Associates, where he is the senior counsel. Yvonne Rosmarin represents individuals and classes who have been injured by unfair and deceptive trade practices. Marla Tepper comes to us from the New York City Department of Consumer Affairs, where she is the senior legal adviser. And we have Mr. Larry Yellon from the National Association of Professional Process Servers. And he is currently the president of the New York State Professional Process Servers Association. And finally, Albert Zezulinski. I'm sorry. Zezulinski. Zezulinski. He joins us from NCO Group, and he is also an executive -- where he's the executive vice president, and he is on the board of directors of A.C.A. So we have very divergent views and a wealth of experience, so I'm hoping that we can have everybody contribute today. We'll be following the agenda that is in everybody's binders. The first question that we come to this morning deals with the initiation of lawsuits and service of process and consumer participation. The first question that is listed is, "Why aren't more consumers defending against collection suits?" But it seems that that kind of assumes that they're not. So what I wanted to ask before we got to that first question is, "Are consumers defending against collection suits?" And if I can turn to Judge Abrams and ask for his perspective?

>> James Abrams: Yeah, I think we're seeing -- I think there's a natural inclination to behave like an ostrich in these circumstances -- stick one's head in the sand. Generally, people who are on the business end of a debt-collection lawsuit, it's not the only problem going on in their lives. They might be facing an eviction, a foreclosure, there might be -- frequently, there are medical bills. There might be medical issues in the family, so it's not a high priority, and I think the natural inclination is just to stick it on a shelf and try and ignore it and hope it'll go away, and it generally is not the biggest thing that's going on in these people's lives. When I was sitting as a small claims magistrate, we would see -- The level of defaults would vary. I'm now doing foreclosures, where the vast majority are undefended. And I think, generally, when we do get self-represented individuals to come into court, there are generally other things going on in their lives, and there are people who are juggling a lot of balls, and the debt-collection lawsuit probably is not paramount -- is not number one on their list of concerns, so I think that's a problem.

>> Dama Brown: Do you have any feel for about what percentage of collection suits may end in a default?

>> James Abrams: Well, I was -- When I sat, it was better economic times. I would say we were running -- Joann may have better knowledge than me. I would say we were running well over -- well over -- 60%.

>> Dama Brown: Okay. We have three judges on our panel. If I can next turn to Judge Peter Evans. Do you have a feel for how many judges -- how many defendants are defaults?

>> Peter Evans: Percentage are defaults? Again, it would have to be -- Oh, sorry. Again, I'd have to agree with Judge Abrams. It'd have to be a guess. I think it's a little higher. I would go 70% or 80% probably go by defaults. And I would add to the comments made, as far as people not appearing. I think there's also other reasons. I think not being able to get off of work to come -- you know, they're in bad financial situations often, and even if they could, they can't afford the time off is one of the problems. Fear of the system -- not so much that they don't care but they -- they're afraid, they don't understand, they don't have -- they've gotten calls from lawyers or law firms. They know they don't have that kind of artillery on their side, and they think it's hopeless.

>> Dama Brown: And finally, Judge Lebedeff.

>> Diane Lebedeff : Yes, well, interestingly, as a result of this problem -- and you'll hear from Judge Fern Fisher, who's the administrative judge of the civil court of the city of New York. In April of 2008, a requirement was added to the civil-court rules that, in debt-collection cases, that a special notice be sent out to avoid default judgments. And it's just sent out by regular mail, and the experiences has been really relatively positive. For one thing, comparing a part of 2008 with 2009, the number of defaults has actually gone down. And what that would indicate is that additional notice in a regular mail, in addition to any service or process, which could be sewer service, really does have an impact in reducing defaults. And I can give you copies of the rules. Let me just cite it to you so you know what it is. It's New York 22 NYCRR -- that's New York Compilation of Rules and Regulations -- 208.8 has that requirement. Let me just say, basically -- and I have copies that I'll give you -- credit-card litigation, what you see, basically, is that there's very little anybody can say but where you do see significant problems are that the credit-card debt is unidentified so that many people come in and say, "I don't know what account they're talking about. I never had a relationship with this person." There is a lot of that going on, and, in part, that relates to the assignments, which just has been highlighted in recent discussions about foreclosures where the banks don't track the paperwork. You see the same thing with credit-card debt, and I suspect it's even more massive, that the assignments are simply not documented. I have never, ever seen one piece of paper on an assignment. Now, where that gets really interesting is that there are many state courts, federal courts, and there's also a uniform act which bears on this and I'll give you the case citations, that in order to execute, in order to get a judgment recorded, generally, the plaintiff has to present a -- if they're benefiting from an assignment -- has to present a copy of the assignment to the county clerk, where they're registering their judgment. Now, that's something that I think it would be very important to have enforced because you just don't find the paperwork.

>> Dama Brown: We'll come back to some of the issues of other ways to avoid default, but specifically, right now, let's focus on trying to isolate what the rates of default are. If I can turn to maybe some of the creditor attorneys in -- on the panel? Donald Redmond, does your firm have

any feel for -- about how many defaults -- how many of the collection suits that are filed end in defaults?

>> Donald Redmond: I can't give you a percentage because we don't -- there's no way for us to aggregate that kind of data, but it is certainly very high. It is certainly true that many defendants in --

>> Male Speaker: Speak up a little.

>> Donald Redmond: I can't get it closer. It is certainly true that many debtors in debt-collection lawsuits don't show up. There's no two ways about that. And I don't know what the percentage is, but it is high.

>> Dama Brown: Mr. Groves?

>> Mark Groves: Thank you, Dama and Don. And we're in Virginia, and we can't speak to New York City's pleading requirements, but we do believe, as a general goal, that clarity and more information and transparency is better, such as the original creditor's name in the debt-buyer cases, the issuer's name, the account number or the charged-off account number. If the account number is changed, we do sense that there is a direct correlation between more information at the pleading stage is to avoid those -- Well, to get ahead of the game on disputes and to overcome disputes, 'cause at the end of the day, that's what we want to do. In my experience, from 13 years now in the industry, on the accounts receivable side, is that approximately 10% to 20% of the folks will show up in Virginia, which, in order to contest the case, you must appear on the court date in the \$15,000 and below general district courts to contest the case and set it for another date. So I believe someone -- the judge said earlier -- Judge Abrams said -- that transportation may play a point, getting off work may play a point. But then we see, when the folks do appear in court and it does become a default or a workout, about 29 out of 30 or 9 out of 10 or 4 out of 5, it's not because they showed up and they do owe it, and we're working out a deal in the courthouse or we're continuing over for a consent order or the 1% or so that do show up, we go in and sit before the judge and set a trial date. It's been my -- And I can't speak to New York or any

other court. I can only speak to where we are. A good day in court for us is when folks do show up. It's the first time we can speak with them a lot of times and learn more about their situation, the hardship, the job loss. So I would say approximately -- that the default rate cited by the judges over there is correct but oftentimes, the folks do appear. And it also becomes a default because they consent -- they make a general appearance. It's not a default, but they consent to a judgment or they consent to a workout.

>> Dama Brown: Miss Coffey, I believe your organization studied default rates in New York. Could you comment, specifically, as to New York?

>> Carolyn Coffey: I would like to comment on a few of the statements that have been made. I think the improving pleading requirements and some of these ideas are great. I think that it's true that, a lot of times, people who are sued don't know who they're being sued by or perhaps have other things going on in their lives and perhaps don't need the added stress of a lawsuit, but predominantly, the reason that people are not showing up in these kinds of cases is because of sewer service. I work for MFY Legal Services. We issued a report last year. We analyzed default judgment rates in New York, and only 10% of the defendants appeared in cases, and the predominant reason was because they did not know that they were being sued. We see hundreds of clients every year, and the first notice that they get of a lawsuit is when their bank account is frozen, when they see it on their credit report and they're denied housing, or when their bank account is frozen. And when they find out about the case, they try to do something about it -- they go to court, they try to defend themselves. This is not -- Usually, it's not a question of them not wanting to deal with it. The civil court in New York City -- I checked the numbers for 2008 recently. Again, 10% of people are responding. It's about an 80% default judgment rate, and I think that the reason that people aren't showing up is purely because they're not being served. It's a big, big problem.

>> Dama Brown: Okay, I think that we've probably touched on that already, but let's turn to the first question that is listed on the agenda -- why aren't more consumers defending against collection suit? Miss Faulkner, could you lead off the discussion on that?

>> Joanne Faulkner: Sure. First of all, I think everybody has to remember that 40% of our population is functionally illiterate. People have a hard time with these summons and complaints, which are drafted by lawyers for lawyers. I think that we need more simple, more consumer-friendly forms. Other people have said, "We need to know who on Earth is suing us," and I think that is exactly true. Sewer service is a big problem. I have had a couple of clients, one who had been evicted on foreclosure from her house, and yet she was served there by the same law firm who had evicted her three months later at this empty house. So that was a case of sewer service. Another one was where the process server said, "I know this is so-and-so's house because her name is on the mailbox." That was a very clever ploy, but, in fact, nobody's name is on anybody's mailbox in that area of Connecticut. So obviously there is some manipulation of service going on there. Another thing is that the first thing people think when they get a lawsuit is, "I need a lawyer. I can't afford a lawyer. What am I going to do?" I think Mr. Debski has a very nice quote. "A person just served with a lawsuit will be in such an emotional and/or mental state that it would lead them not to use reasonable judgment." I think a person just served with a lawsuit is like a deer in the headlights -- frozen, panicked. I don't have any solution to that problem. We are living in a mobile society. There are some statistics that say one out of every seven households move every year, so obviously, by the time somebody gets ahold of this account, that person may be long gone. It may not be what they think is sewer service, but it may be a very old address that the person hasn't lived in in a long time. It may also be a large, low-income housing project where the mail is all left on the lobby on the table and may or may not get to the person who lives in apartment 3C. Some people know that their debts have been discharged in bankruptcy, so they will just ignore the lawsuit, and they will have a default judgment, and, as Carolyn said, they will find out when their bank account attached -- is attached that they should have done something about it. Some people are the wrong person. If you saw last Sunday's "New York Times," Metropolitan section, page 1, talks about a person who was sued. He assured the collector he was not the right person. He didn't have the same last four digits of the Social Security number. He went ahead and sued him anyway. It says in the article, "Every day, 1,000 cases, on average, are added to the civil court dockets in New York over credit-card debt." That's an astounding number. We have in Connecticut one law firm of about a dozen lawyers who has 50,000 suits pending in the small claims court. That's astonishing. People cannot be actually looking over the data that they are getting. The "New York Times" article says, "Conducting a

digital dragnet, the collectors troll through commercial databases searching for debtors. Because of the vast sloppiness and fraud involved, Attorney General Cuomo has shut down two of the collection firms and is suing 35 law firms tied to the business.” Those are law firms that took advantage of a sewer service.

>> Dama Brown: Miss Faulkner --

>> Joanne Faulkner: Just one more point please. I think the major problem here is the debt buyers. I think the debt buyers are flooding the courts and bringing old lawsuits, and I think that's going to be the major problem in this area. Thank you. I'm sorry to --

>> Dama Brown: No, no problem. I hate interrupt. I just wanted to make sure everyone has a chance to speak. Mr. Debski, did you want to comment on that issue?

>> Michael Debski: Yes, thank you for quoting me, Ms. Faulkner, but I did want to make sure that we took in context what that quote was from that I did. It actually -- The quote about when entering a courtroom for the first time, they may be in an emotional mental state, that's actually dealing with an ethical rule of the Florida bar, in that you should not be at the courthouse steps poaching clients or soliciting clients at the courthouse steps while they're in an emotional state. And that was in response to legal aid trying to set up and meet with clients in the courtroom while they're trying to go before the judge right before and raising their hand and trying to -- "Hey, come, and I'll tell you about this. Now, I won't represent you, but I'll give you advice, but we won't sign into a representation contract.” That was in response to that.

>> Dama Brown: Thank you, Mr. Debski. Did you have any comment that you wanted to make about why you believe more consumers are not defending against collection suits?

>> Michael Debski: Well, I truthfully think that one of the things that we're seeing is that the access needs to be there. In Florida, we have many rules that allow both parties to appear by telephone. I think that a lot of times, this should be expanded, where the consumer or debtor should be allowed to appear by telephone, and many of our counties -- over 30 of our counties --

do not allow this type of thing. They wouldn't be missing work. They'd be able to appear, maybe take a break from work and appear at the court at that time. I think those things would help. I am interested to find out if any of the judges would like to comment about the service issues and what percentages do you actually see of your cases that are being overturned or judgments set aside based on this. I hear a lot about it in New York, but the rest of the states, I'd like to hear what they have to say about the percentages in their courts that they're setting aside.

>> Dama Brown: Judge Abrams, do you have any statistics or any --

>> James Abrams: No, it's more anecdotal. But I did -- In a foreclosure case last week, there was an issue of -- It was a single-family home, and the return said apartment 27 on it. So the person came in and said, "I didn't get served." The marshal came in and said they did get served. Well, apartment 27 -- how could he remember -- If he couldn't remember when did he the return three days later that it wasn't a 27-plus-unit apartment building but a residential -- a single-family residential unit. Out it went, even though the period for opening a judgment had passed because there was no personal jurisdiction. So, it does happen.

>> Dama Brown: I'm sorry. Judge Evans?

>> Peter Evans: Well, the problem with knowing how the sewer service -- we don't know. We don't know 'cause they are not there, and we don't know why they are not there, and we don't find out until much, much later. Now, I have, on occasion, inquired of people who appeared how they got notice. And what's interesting is I have found on many, many occasions -- and I wish I had kept statistics. Again, it's kind of impromptu -- "By the way, ma'am, how did you find out about this?" Many found out in much different ways than are reflected on the return of service. Very often, it's a simple, "Well, it was on my door." When the return and personal service with them present, we don't have a posting ability like that in civil cases in Florida. So the return reflects they were served personally, but they found it on their door, and they showed up. Those who are not showing up, we don't know why they are not showing up. Everything that I've given, and I'm sure the other judges, it's total speculation. You don't find out about the bad judgments until something happens in their life that brings them back to the court to say, "This is a mess. I don't

owe this money. There's been a judgment, and I didn't know about it for five years." And it's those people who are telling us that, gee, they got it in ways that are reflected different than what's on the affidavit and similar type things that are causing a lot of concern. But again, we don't know what's happening there, but there are enough red flags going up that we are concerned.

>> Dama Brown: Okay, let me turn to the other judge. Judge Lebedeff.

>> Diane Lebedeff : Yes. A couple of things. First, there are a lot of systems that require the use of certified mail, which is particularly difficult. People can't get off from work to pick it up. It's gone by the time they get to the post office. The notice goes to the wrong place, the wrong apartment number. I always like to see regular mail. One problem with service of process, and I wrote a decision about this, but it was in landlord/tenant, where you can track it, and you can get like 100 cases where each follows another, and they're requesting default judgments. And what I was able to see was that this process server and I wrote an opinion that said, "Faster than a speeding bullet, more powerful than a locomotive." Day after day went to this huge apartment complex and served process five minutes apart for absolutely every case. Now, that was an instance in which a judge can see the pattern, but I think it would be extremely helpful for someone to really spend some time on how you pick up and how you can identify process servers who are just flouting the law and engaging in sewer service. It is particularly hard because, unless you see the cases next to another and have a chance to analyze whether this is possible, it's very difficult for any system to identify it.

>> Dama Brown: And I think that Mr. Yellon has some good ideas that he'll be raising. But first, if we can turn to the third question, which is, "What are the other reasons for failure to participate?" And Miss Needleman, could you comment on some of the other reasons why debtors may not be participating in the collection suits?

>> Joann Needleman: Well, unfortunately, I think that one of the reasons, and it kind of ties into what Judge Abrams was saying, it's not the most important thing in their life, and for some of them, you know, they owe the money, and so they are not sure, at this point, you know, what to

do. I don't think that there's -- And they're also getting conflicting information. I think another reason that people aren't showing up is you have a lot of these debt-settlement companies, a lot of information on the Internet, that is incorrect to consumers. They're saying, "Well, if you don't owe it, send them a letter and tell them don't call you, don't respond to you. If you get a summons or notice, don't show up." They are receiving a lot of bad information. And a lot of these consumers are getting information from these settlement companies. They're paying them fees that says, "We'll settle your debt," and they don't know that that is a scam. And so they pay, they send \$50, they think that the matter's taken care of, so they get a notice of a summons. They're like, "Well, this can't be correct because I sent money to a debt-settlement company." So I think there's a lot of misinformation out there, and I think that if that is corrected and that is reined in a little bit, I think you will see more participation. But I think all the comments that have been made -- it's fueled as to reasons why people don't come. I don't think you can point to one direct reason. I do believe it has -- I don't believe that service is really the issue here. I think you have anecdotal situations. I'm sure that there was a problem in New York, and we heard about it, and it's being addressed. But if you look, as Miss Faulkner says, we've got all these -- we've got 50,000 lawsuits, we have all these lawsuits out there. The percentage of non-service is extraordinarily small. I don't think that's the main issue of why people are not coming. I think it's a combination of a lot of hardships that people are not there and a lot of fear, and I know that the collection attorneys here want very much the court to be a place where consumers feel comfortable, that they can come in. We want to be able to communicate with them. If we had better communication with them before filing a lawsuit, I think you would see the amount of lawsuits go down, and the unintended consequence of the act itself has prevented that.

>> Dama Brown: Miss Gagnon, can I get your comments on that?

>> Michele Gagnon: Yes. I just wanted to comment on the issue of service being bad. Service is very important to our firm, and we really started to track these numbers, and what we found, that in 0.02% of the time, a consumer defendant is filing a motion to vacate, claiming lack of service. So this is after the judgment, after a bank garner or wage garner -- 0.02% of the time. And I tell you this for two-fold. One, I don't think this sewer service being the cause of default is as big a problem as the perception is, but, two, that there is in the courts the remedy for that. In our court,

you go down as a consumer defendant, and they'll give you a pre-printed, user-friendly form that you can fill out. You fill it out, file it right with the court. They have their copy to take and a copy to mail to us, so... It happens far less than the perception is out there, and there's an easy remedy for it.

>> Dama Brown: Please, Judge Evans.

>> Peter Evans: You know, the remedy is not that easy and especially is not that easy to people who are uneducated and don't understand the system and feel that it's just beyond them. There's no way they're going to beat the system or even deal with it. And it may not also be an issue of do they owe some money, but it also is an issue of how much they owe. People who show up in my court on a regular basis will admit they don't owe -- or, they do owe some money. They have no idea how this number came about. And it is very rare that I have an attorney who can explain how it came about, other than a general statement, its interest, and charges. They could not pinpoint how that interest was computed, what the rate was, where the rate they say does apply came from. It's just a total lack of knowledge as to how those numbers were established, so it's not just simply not owing the debt but just not even understanding the numbers. And it seems to say that, when you say there's an easy remedy, that people understand how "easy" -- and I don't know that it's that easy -- that remedy is. 'Cause it's not that easy a remedy. They have to come in after defaults been entered. We're assuming it's good. We've assumed good service. So they have a burden of showing that it was bad service. They have a burden of showing that maybe there is a meritorious defense. They have some serious burdens they have to meet, and the fear factor of coming in, I think, is a great deterrent. I think that .02 number may be what's coming in, but I don't know that that's reflective of the bad judgments that are being entered.

>> Dama Brown: You know, Miss Rosmarin, I was going to ask you next for your comment. I see that Mr. Groves has a comment. If you don't mind, I'll let him make his, and then I'm happy to hear your perspective.

>> Mark Groves: Just a brief follow-up to the judge. When we see a post-judgment communication to us that "I did not live there" or "What's this garnishment from?" or "Why am I

being served with an interrogatory?" or "What's this judgment, lien against my real estate?" The first thing we do is stop everything, and with our policy and procedures, within 24 hours, there has to be a resolution. And the resolution, judge, would be from our office, a motion to vacate with a note to accompany an order overnighted to the court.

>> Peter Evans: Again, those cases that are brought to your attention, I don't know -- and I'm not really even being critical of that -- 'cause I think the lawyers, once they find out -- "Gee, there's no way they could've been served," they very often agree to it. I think we're misleading ourselves if we think only those people who complain and come to us are the ones who have been hurt by it.

>> Mark Groves: Agreed. I certainly agree.

>> Peter Evans: I think that would be a very poor way of judging that.

>> Dama Brown: Miss Rosmarin, you have a lot of experience dealing with low-income individuals. From your perspective, what do you see?

>> Yvonne Rosmarin: Well, I agree with all of the things that have been said about -- Fear and unfamiliarity is really a big -- a big factor. People don't understand the summons that they get, in many cases. Also, I agree about the fact that people often don't know who this is, or if they feel like it's not their debt, they don't understand that they still have to show up. Or if they think it's the wrong amount, or they may think, "Okay, I owe some money to creditors, but I've never heard of this person," when it's a debt buyer, so they don't think they owe the money to them, or they think it's a case of mistaken identity. Or sometimes they change the account number. And so they go, "This isn't my account number," and I've had people come to me and say, "This must be theft of identity," okay? So they think that that's what it is. And I also agree about the sewer service, although, in Massachusetts, there is no requirement for in-hand service for anything, in terms of starting a lawsuit. And all it has to be is dropped at their previous or their last known address, which may not be current, and often, it's found in the bushes, days later, or the next season, if it's the winter and it got under the snow. And then by regular mail. And again, if it's sent to a large

apartment building or it's in the middle of the city in a very urban area, that may never get to them, and it may never be returned to the post office by return address. But something that hasn't been mentioned here is the fact -- except maybe obliquely -- the fact that an awful lot of these cases, if somebody does show up, especially in small claims, they don't even get to the court. Before they ever get to see anybody, the attorney for the plaintiffs takes them, and sometime they think that they're -- sometimes in Massachusetts, I found, they think that they're a clerk with the court, because they're up there at the desk, and they're making deals, and they're telling people, "Oh, just agree to this, and then you don't have to show up in court." So then they'll get a default judgment against them, and that has happened many, many times, and whether sometimes it's in writing and sometimes it isn't -- sometimes it's presented. And the other thing that happens is that people see something on the summons, and they think that they need to call the other lawyer. Or they get -- there were also debt buyers who were sending letters saying, "You may not have to appear in court. Call us and make a deal and make payments." And so people -- Everybody who has ever done that, who I've talked to, thought that the case was gonna be withdrawn when they made the deal. They had no idea they were gonna enter a default judgment. Some of these people enter a default judgment get an execution right away and hold it, and as soon as they don't make a payment, you know, they've been seizing cars in Massachusetts, but putting liens on houses, things like that. So, people think that they -- if they make a payment, they don't have to go to court. And they're so afraid of going to court and so unfamiliar and they don't have a lawyer -- and it's very hard to get lawyers. There aren't that many consumer lawyers around and not too many that can take defense cases because people can't pay, and there's no way to get attorney's fees, unless they have a really good counterclaim and you want to bring that in state court where there may not be the best judges -- not talking about those who are present. But we have some people in small claims court, they're not even judges. They don't even have to be lawyers. They have clerk magistrates. So they don't even need to be lawyers.

>> Dama Brown: I see that Miss Needleman wanted to comment, but, also, if I could, next, I'd like to hear from Miss McNulty. But, Miss Needleman, you had a comment first?

>> Joann Needleman: I'll let her go first.

>> Carlene McNulty: In North Carolina, we don't allow sewer service. You have to be personally served, so we don't have that as a problem. In addition to all the problems that have already been said, once you're in court, it's designed for lawyers to represent you. If you don't have a lawyer, it's very hard to navigate the system. So the few people that do try to respond to a lawsuit get kicked out on some technicality down the way. Some people think, in North Carolina, that they could just show up in court, and it sounds like, in some states, you're able to do that. In North Carolina, you have to file a formal answer within 30 days, and if you don't, a default is entered against you. For those people that do try to respond, they'll next get served with discovery responses, and if they don't have a lawyer helping them, they'll often trip up on the technicalities required to respond to that, and the next step will be summary judgment, based on those lack of responses. So even the people that try to navigate pro se, it's impossible, or almost impossible, to do without an attorney, and there are just not enough attorneys available to represent consumers.

>> Diane Lebedeff : You know -- can I?

>> Dama Brown: Please do.

>> Diane Lebedeff: One of the problems is that all of us, I think, who know commercial cases, know chances are, if somebody defaults, they made a business assessment, whether it's worth the time, whether it's worth the legal fees, and the default's fair enough. This really is not true in credit-card cases. I don't think I've -- And in New York, we had a special part for consumer-debt cases, and we had mediators -- trained mediators -- available who -- You know, they could go over and talk over the case in a robing room with the collection attorney and the creditor. I don't think that there is ever a case I saw where somebody didn't show up, that they did not receive a better result, a more favorable result, than if they hadn't come. And I suspect that that is generally true. It really is not an adequate way of assessing it, to say so few people come back. There are massive differences in documentation, in how high the fees are, in how long they've run, and when a credit-card company declares a default and stops charging its credit-card rate of interest, you see identity fraud. I saw somebody -- an 85-year-old woman on an auto lease from a city that she'd never been in. I mean, you see horrible instances.

>> Dama Brown: If I can turn now to Miss Needleman for her comment, and then I'd like to move on to the next question.

>> Joann Needleman: There's a couple things. And in responding to what Miss Rosmarin said, many of the bigger cities, like Boston, Philadelphia, New York, obviously Virginia, the judges want you to go into a room and try to work out, if somebody does show up. So this idea that they're forced upon the lawyer and they have to take these terms, I disagree with that, because that's not what happened. That's not what I see, especially in Philadelphia small claims court. They have specially set up courts. And court doesn't start for hours because everybody's got to come in, everybody's got to meet, everybody's got to sit in a room and discuss what's happening. They have special forms that can be given to consumers about the settlements that they're being entered into. So I think the courts are really encouraging -- and the judges can chime in on this -- that if people do show up, that it's, number one, a positive experience, but it's ability to try to resolve the issue. Now, if the issue is, "It's not me. There's a problem," then the idea is, "We're going to set a date and figure out a time to come back so that the case can be tried, but I take exception with consumers are being forced upon a plaintiff's attorney to enter into an agreement that they don't want to enter into. I just do not see that. The other thing -- I just want to make the record clear. We're talking about process serving, and "process serving" can mean a lot of different things. It can be mail. It can mean a private process. But most courts in Pennsylvania, the only county where you can have private process is Philadelphia. Every other county is a sheriff, so when we talk about bad service, are we talking about reeducating our court staff, or are we talking about those bad service from private processors? I think we need to be clear. Because if we're talking that the court staff isn't serving properly, I don't know whether this is the proper forum to do it. So, thank you.

>> Dama Brown: I think you touched on the next question, which is, "What can courts and others do to increase the consumer participation in debt-collection suits?" And if I can have Donald Redmond lead off on that discussion...

>> Donald Redmond: Well, I'm not sure. I mean, I think Judge Abrams hit the nail on the head. It's simply human nature, if you've ever been -- And, you know, 20 years ago, I owed people

money, and I had collection calls and all that kind of stuff, and it's horrible. And it's even more horrible to be a defendant in a lawsuit about anything. And so when someone serves process on you and says, "You need to go to court to pay your \$4,000 MasterCard bill," it's a horrible circumstance. And I think it's certainly true that the biggest reason that people don't go to court is -- I can't remember who said it, but it's -- it's just the human nature of not wanting to go through that experience. And so, I don't know how we can increase participation. You know, every person who is lawfully served ought to go to court. Even the least sophisticated consumer is a grown man or a woman, and all of us, you know, as adults and citizens, have some personal responsibilities. And that's just -- One of the basic tenets of the court system is, if you have rights, you can't sit on them. You have to exercise them. So, I mean, Mr. Groves put it very well when he said, "A good day is when people show up." We don't want people not to show up. We want -- Matter of fact, we don't want to go to court in the first place because it's costly, it's time-consuming, and all that kind of stuff. We would much rather just deal with our customers on the telephone, by mail, you know, whatever. Court is a last resort, and, you know, I don't -- I would love to have every single defendant show up in court. And I don't know what we can do to increase that. I'll give you one suggestion. Maybe -- and I would be totally open to it -- serve people by overnight service, Federal Express, U.P.S., whatever. You get a signature on the thing, so, you know, there's a receipt. Somebody at the home signed for it. I'd go for that.

>> Dama Brown: Miss Tepper?

>> Marla Tepper: Yes. The department doesn't buy into the ostrich-in-the-sand idea. We think that there are ways to improve service and, at the front end, to improve debt-collection practices before that process server issue comes to the foreground. Among the suggestions the department has, based on its investigations of process servers is closely looking at the methods by which process servers serve process, as well as what documentation is required to show that they have actually served the process. We know from our investigations of process servers that many are not performing service. They are filling out false affidavits of service. They are not going to the addresses. They are not sufficiently checking the addresses of the so-called debtors. To address these deficiencies, we've come up with a few ideas to improve documentation.

>> Dama Brown: Miss Tepper, if you can, that is the last question that we have for the day, and I'm happy to hear your input. I did want to give Mr. Yellon the opportunity to lead off that discussion, but right now, we're on question four, which is, "What can the courts and others do to increase participation in the debt collection. So I'm happy to get back with you on the final question. But if I can get Mr. Zezulinski -- I'm so sorry. It's too many Z's. [Laughter] I knew I'd do it, too. I should have just called you -- Oh, Al. If I can get Al's comments, please. Do you have any suggestions of what you think could increase consumer participation in the debt-collection lawsuits?"

>> Albert Zezulinski: I actually don't have any suggestions on that.

>> Dama Brown: Okay.

>> Albert Zezulinski: But let me just give you some perspective. We operate two businesses, among many, that are in the debt-collection area. One is in the area of purchase portfolio. We acquired about 40 million accounts, and I'm just -- Don't hold me to the actual numbers. I'm trying to give you proportion. Of those 40 million accounts, about half of them are what we consider to be active. The other half are warehoused, and the -- What happens is the -- On those 40 million accounts or the 20 million that are active, we have about 250,000 outstanding judgments at this point in time, most of which were probably default judgments, probably 80%. That's about 1.25%. And the return on that is about 3%. About 3% of them are actually paying. So, from our perspective, particularly in the purchase portfolio world, unless we find someone who has assets and is hiding or attempting to hide, we're typically not suing a lot. In the other side of our business is where we are working for creditors, credit issuers, and they give us accounts to collect, and many times, they give us accounts to put into our attorney network, where we have about 200 attorney, little firms, working around the country doing collection work. It's a volume of around 10,000 a month. Of that 10,000, half are resolved in what we consider to be the pre-collection activities or pre-legal collection activities, where we inform the debtor, the consumer, that we are, in fact, going to start a lawsuit, "And before we do so, would you like to try to resolve this?" And about half of them do talk to us, and we do come to some arrangement. The other half, about 80% of them -- about 4,000 -- don't show up. And I can't tell you the reasons

why. I believe it tends to be more helplessness and hopelessness than anything else. They owe the debt. They just don't know what to do about it. And the thousand that do show up, quite frankly, we tend to work it out in the courtroom or in -- or on the steps. And whether it's the wrong person, it's something they don't understand, or we enter into a settlement, you know, that typically is what would happen.

>> Dama Brown: Miss Rosmarin, Do you have any suggestions of how we can increase consumer participation in lawsuits?

>> Yvonne Rosmarin: One thought, besides finding out a way to correct service issues, would be possibly a way to maybe have the courts make available -- and I'm not quite sure how they would do it -- sort of an attorney, maybe even legal services or something, who could represent people, and then that would be stated. I mean, you'd have to clarify the documents that actually go to people, first of all. And you have to make them very -- as, I think, Joanne Faulkner was saying -- very clear, very plain language. You're dealing with functional illiteracy. You're dealing with court -- you know, court jargon, legal jargon that people don't understand, and then that increases the fear factor, I believe. And if there was something very clearly that said -- laid out the steps, what they have to do, simply, and make -- maybe more simple requirements, and then say, "A lawyer could be available to you," so-and-so, and, "This is who it would be" -- not a name but where you would find them in the courtroom or how could you contact them ahead of time. And I know part of the problem with using legal services is they'd have to qualify for their services, and there are plenty of people who, you know, are in this problem who may not qualify because they may be temporarily -- not have a lot of money but they have assets because maybe they had a job problem or illness or divorce or whatever. So, if you had some way that they could know that there would be somebody there for them to advise them and maybe take some of the fear factor out of it and with very plain -- very plain language about that, as well as requiring them, the plaintiffs, to, as some of the courts are starting to do and the Massachusetts small claims has started to do, to state things like, "Who's the original creditor?" "What is the original account number?" And very clearly say, "What is the amount of the debt when it was in default, and what are these other charges?" so that they can clearly see if that's really theirs. 'Cause sometimes people have more than one account with another -- You know, with -- like, they might have three

Citibank cards or something, or they had -- all sorts of things so that they can clearly see what's at stake, what it's about so they can identify it.

>> Dama Brown: It looks like we have about 12 minutes, and we have another question to tackle, and I see a number of people are interested in responding to this one. So, if I can remind everyone to please be brief. Mr. Debski?

>> Michael Debski: I just wondered, one of the things I heard -- Sorry. One of the things I've heard from several panelists is that some of the documents are confusing in the court process. I know, in Florida, we have state bar committees that deal with each of the different rules. I'd really encourage -- And when I served on the state bar committee for small claims for six years, we made three or four changes to the small claims summons to add different warnings, to add different information to help consumers understand, you got to appear. A letter will not help you. Different things regarding venue or put it right into the summons that were never there before to help people respond to these type of things. So I think that the state bar committees and the different discussions between the judges and the consumer attorneys and anybody else would be a great forum to improve these documents if there is confusion. I think that's really where we should look to and how do we improve those forms?

>> Dama Brown: Mr. Flitter?

>> Cary Flitter: I see a little bit differently. Consumer participation I think of more as a ratio than a percentage, rather than a raw number. And I think a better way to get consumer participation is on the front end -- that is, look at the quality of the cases that are being filed. And one of the issues that we see a lot is the lack of a requirement that debt buyer "A" advise debt buyer "B" of defenses to which debt buyer "A" has been advised. There's 29 million cases of identity theft out there. At last count, maybe it's 30 million. I know your commission tracks that. So, the underlying assumption that's been the case for years, that a collection suit that's been filed is owed, it's simply a question of, "How much, how quickly can I get it, let's get a consent judgment on the record," just doesn't hold anymore. There are so many cases against people who do not owe the debt at all, and there are a great many against people who do owe the debt. So I think the

-- It's important that -- and this requirement does not exist right now, that there be a requirement that, when a debt collector -- whether it's a debt buyer or a collection law firm or whatever -- is advised of some defense -- "I wasn't served, it's not me, it's identity theft, I paid this off, I had a canceled check, this was settled, it's beyond the statute," and 20 other issues, that there be a requirement, that that perp-- The most common response to that, in my experience is, the debt gets sold. The debt gets sold. NCO has it. There's advice that the debt's not owed for a variety of reasons. NCO's not going to deal with it. The next time you hear is P.R.A. P.R.A., the next time you hear, it is asset acceptance. The next time you hear is the next one and the next one. So I know there's been some discussion about this, and I think that advising the subsequent buyer will go a long way towards improving the quality of the collection cases that are filed and, therefore, the response rate by the consumer.

>> Dama Brown: If I can, I'd like to hear, also, from Mr. Groves, Miss McNulty, Miss Needleman, and then I'd like a response from the judges. So, again, I'm reminding everyone -- please, keep it very brief.

>> Mark Groves: What can courts and others do to increase consumer participation or debtor participation? We have a lot of common ground here. One would be that identifying, for the functionally illiterate population, what the charge-off balance is or come to a consistent treatment across the states or even in a state of clarity, of easy-to-understand balance that was due at the time of charge-off or write-off. We certainly have common ground on that. With respect to -- Was it Chuck Harwood's introduction today about the judge who said that his wife was done and they closed the account and they resold it? I would say to this, I would refer that person to Dale Pittman or another good lawyer in Virginia because the Fair Credit Reporting Act. This provision prohibits that, and I believe they would be able to dovetail that into an FDCPA -- a private Attorney General action. So, it's unlawful to transfer a debt. And Don Redmond and NCO may speak more to this, but I would refer that to a consumer counselor. I'd say, "Go after that entity," presuming they don't have a conflict. And the third point is, I would like to be in the courtrooms, applauding, when the New York state puts the folks who were serving these papers and lying about it in jail for a long time, because that brings the reputation of the industry down, our clients' brand, our own brands suffer, and this is not what we want. We actually want to treat people like

we would want to be treated, and that's not to lie or cheat about services because that's under affidavit. It's perjury, and if there's any sewer-service issues or anything like that, let's go ahead and put it out in the open and get rid of those bad actors.

>> Dama Brown: Miss McNulty?

>> Carlene McNulty: I just wanted to say what North Carolina did in response to the issue of the notice and people not knowing who it was that was suing them. We passed a law last summer that requires 30 days advanced notice of the lawsuit, and that notice must include the name, address, and telephone number of the debt buyer -- this only pertains to debt buyers -- the name of the original creditor and the debtor's original account number, a copy of the contract or other document evidencing the consumer debt, and an itemized accounting of all amounts claimed to be owed. This will give the consumer some more information, provided the debt buyer has this, that will allow them to know who's suing them and why. Then, when the debt buyer files a lawsuit, additional documentation has to be included with the complaint. And that has to be valid documentation that the debt buyer is the owner of the debt and reasonable verification of the amount of the debt allegedly owed, including documentation of the name of the original creditor, the name and address of the debtor, as appearing on the original creditor's record, the original consumer account number, a copy of the contract or other document evidencing the consumer debt, and an itemized accounting of the amount claimed to be owed, including all fees and charges. So we're hoping that if these suits continue, that the defendant will have this information right up front and that'll help them respond to the lawsuit.

>> Dama Brown: And I hate to do this to the judges, but if I can, in 15 seconds or less... Judge Abrams?

>> James Abrams: One issue that only got touched on a little bit are transportation issues. A lot of the defendants do not have access to cars. Outside of the major metropolitan areas, there are not mass-transit options. I live in a city, a gritty old mill town, 60,000 people. They closed the small claims court because of budget problems. Now you have to go over the mountain. There's really no way to get there.

>> Dama Brown: Judge Evans?

>> Peter Evans: 15 seconds. Quickly. There's a couple things that need to be attacked. First is the sewer-service problem. One solution to that that I would like to see is requiring private process servers -- 'cause that's where I see the problems -- in filing, whether it be a daily, weekly, monthly log of who they have served and when they served it will help us go a long way towards preventing fraud in that case. And there is fraud in that area. Secondly, I kind of question the ability -- and I think we have some good-meaning ideas -- the ability of the state to -- or, rather, the willingness of the state to provide a -- I assume -- a state-funded lawyer to give advice to civil defendants. It's just not gonna happen in today's economy. We can't even afford to keep the court system opened on basically bare bones that we have right now. I just don't see that that's going to happen. I think the solution there is not to necessarily look to state rule regulation to change the forms, 'cause I think we -- Those rules that Mr. Debski talked about go to all types of cases, and these are a unique type of case. I think this is where your federal regulation can come in that, when a lawsuit is filed, we need to have really good information given to the debtor as to what it's about. And we have very loose pleading requirements in small claims courts, but with federal regulations, where did it come from?

>> Dama Brown: I think that relates to Ms. McNulty's comments.

>> Peter Evans: Right. How was the interest computed? Where do we get these numbers from? If that's documented, I think it's gonna go a long way to have more meaningful participation.

>> Dama Brown: And Judge Lebedeff.

>> Diane Lebedeff: Well, I thought the comment was very well-taken that we really need to parse out the places where there's public service, through marshals or otherwise, service of process, and places where there are private process servers. I thought that was an excellent point, and I think we should identify the differences. There was a question apparently from the web --

>> Dama Brown: Gonna get to the questions in a minute, yeah.

>> Diane Lebedeff: Oh, okay.

>> Dama Brown: Hopefully, we'll have time for questions.

>> Diane Lebedeff: And I've written a couple of cases. I probably wrote a really significant analysis of the laws relating to credit cards, the laws relating to assignment, the laws relating to default judgments in this area just because it's a really sticky, sticky legal problem. I brought some copies of those. I'll leave them with you, and I'll put the sites up on the web.

>> Dama Brown: And now we're at the final question, and I had indicated to Mr. Yellon that he would have an opportunity, and although we're pressed for time, I think he has a lot of ground to cover, and I hope that he can educate us on this. Mr. Yellon, again, is from the process servers industry. He is the president of the New York State Professional Process Servers association. I think his profession got beat up a little bit today, and I'd like to give him a chance to address the final question, which is, "What actions can we do to address the issue of service of process?" Mr. Yellon?

>> Larry Yellon: I left my armored suit in the hotel room. I didn't know I would need it. What we -- What I'd like to talk about for a brief few minutes is the existence of several associations that deal -- that involve process servers throughout the country and in specific states. The National Association of Professional Process Servers, which is what I am vice president of, represents thousands of members across the country who have agreed to abide by best practices and standards acts that we've developed in which the sewer service would be abhorrent and contrary to what they believe in. Any practicing attorney has access to the members in this association through the website, and I'd be glad to give anybody on this panel -- get a copy of this book to them. In addition, there are state chartered associations that are members of the National Association, and many of these associations, which are on the back cover, of which I am president of the New York state, offer certification classes to process servers. In New York state, we have certified over 300 members who have taken a class and have been given a test and have

passed the test. As a matter of fact, we are privileged to have Wanda Sanchez from the Department of Consumer Affairs in the city of New York at our March 2008 class, in which we had a very successful class and an attending of about 80 people. And we have offered and been in meetings with the Department of Consumer Affairs to assist them in developing an education program, which is lacking, on their part, for probably 40 years. The other fact, what state associations can do, my association, in respect to the law that was put into effect in the civil court that Judge Lebedeff referred to, requiring that additional mailing, which was an excellent law, where the court itself makes the mailing to the defendant with a set of instructions. And if that comes back undeliverable, then judgment cannot be entered. We took, randomly -- and one of my members from the New York State Association. Bill Malotok randomly did 10 motor-vehicle searches on those same individuals that the mailings came back. And all 10 of them came back with good, positive DMV searches at that particular address that the envelope was returned from, saying no such address or unknown address or moved, left no forwarding address. We presented this to the civil court, and in April 21, 2009, that law was amended to allow for a good service, when a mailing is returned, if it was based on a motor-vehicle search, which abstract is attached to the affidavit of service. In New York state, there are several decisions in the appellate division which say that holding out on a driver's license provides collateral estoppel for the defendant to prevent him from saying he was not served properly, if served at that address, and that's the reason that this law was amended in the civil court. So, that's what state associations do. That's what the national associations do. We stress education, certification, and we feel an educated process server is a knowledgeable process server who will not commit sewer service.

>> Dama Brown: And I got a question from the audience directed to Miss Tepper and Mr. Yellon. Essentially, it is covering the same issue. What should be done against process servers who are submitting false affidavits? But, Miss Tepper, please.

>> Marla Tepper: Look, the department has jurisdiction over process servers, and we investigate faulty service and also welcome referrals from the bar and from courts to investigate allegations of improper service. When we find improper service, which we do through a range of activities, such as review of books and records and undercovers, we can prosecute the process server. We can revoke their license which, of course, means that they cannot serve process in New York

City. We can also suspend their license or invoke fines and penalties. We think that we need to do more than just education. We think that one of the main problems with process servers in New York City who are private process servers, generally, they're independent contractors employed by process-server agencies is to ensure that they are paid enough to encourage and motivate them to engage in proper service of process. To that end, we are proposing to the New York City council that process servers be paid a minimum fee of \$7 per service, and we encourage the advocates in New York City and others to come forward in support of that. We also think that it's about time for process servers to use the technology that is available and to mandate that they do so through use of things like global positioning systems, WiFi, and other technological systems so that we can actually track and know where the process servers are when they file affidavits of service. It's fine to have logs. It's fine to file affidavits of service. But what we need to do now is take into account technology that is available. We, of course, welcome the participation of the professional associations in beefing up training and, as Mr. Yellon said, we have met with the professional association to do so. But we think that more aggressive steps need to be taken now and are trying to get that implemented now through the city council. At the front end, for the collection process itself, our new rules and laws take into account many of the concerns raised here. They require increased bookkeeping, increased records and increased ability of consumers to know exactly what the debt is that is being charged against them. So we think that we need to take steps from the front end. For the purposes of this conversation, though, we are very concerned about improving the practices in which process servers engage through the steps that I've discussed today.

>> Dama Brown: Ms. Coffey, I believe your organization did a study on this, and you had some recommendations, as well?

>> Carolyn Coffey: Yeah, I think I want to reiterate something that Miss Tepper just raised. And I think when you're looking at the big picture here, particularly in debt-buying cases, you're talking about accounts that are bought in bulk and then distributed to debt-collection law firms in bulk, and then the debt-collection law firms hire process servers to serve in bulk. And what we found, and what the Department of Consumer Affairs has found, is that a lot of these consumer cases are being served for an extraordinarily low amount of money. People are paid

approximately \$3 to effect service, and what's key is that, if you don't effect service, you don't get paid, so there's really no incentive to perform your job well. So I think that part of any solution to the process-serving problem has to be tied back to the debt-collection law firms and the debt collectors themselves, who have a business model where, as far as I'm concerned, obtaining default judgments because of improper service is the most effective way for them to collect. I had a couple of other suggestions. In terms of improving the process-serving industry, I think greater enforcement by city and state officials is really, really important. In New York state, the Attorney General did an investigation of one particular process-serving company that they knew or suspected of having problems. They worked with the courts to examine the cases and ended up vacating 100,000 default judgments across New York state and, as was mentioned before, are investigating 35 debt-collection law firms who used this particular process-serving company.

>> Dama Brown: I see that there's three more that want to have very -- four more that want to have very quick responses. If I can have Mr. Debski again, very, very quickly -- about two minutes.

>> Michael Debski: One thing I would like to talk about is -- at least in Florida, we do not have a choice of which process servers we can use. They're either certified by the chief circuit judge over the circuit or they're appointed by the sheriff, or you can use the sheriff. So there's a limited amount of people that we can use. And we really hope that they enforce the law. If you file a false affidavit in Florida, third-degree felony, five years in jail, can never serve process again. That's what we want to see enforced.

>> Dama Brown: Miss Needleman?

>> Joann Needleman: I wanted to address what Miss Coffey was talking about, as far as if process goes bad that it has to go back to the debt-collection agency and the law firm. I think you have a fundamental problem with that because process servers, in and of themselves, have to be independent. If they become an agent of our law firm, then the service from the get-go is going to be defective. I mean, that's what all the rules of various states say. So there has to be an independent aspect to process serving, which is, I guess, the reason in Pennsylvania why 66

counties don't even allow private process. They have the courts to do it. I agree with you. There's got to be enforcement, and I agree with Mr. Debski. If someone doesn't go do good service, there has got to be sanctions and remedies, and we as collection attorneys, who are licensed under our very Supreme Courts and state bars, in no way, shape, or form ever want to have bad service. It doesn't look good on us, it's not appropriate for the consumer, and whatever -- I can tell you the collection bar can do to initiate good service, proper service, ethical service, we want to be part of that.

>> Dama Brown: Miss Rosmarin.

>> Yvonne Rosmarin: Just quick, two points. One is that, in Massachusetts, if you're gonna do anything with private process servers, the ones you might consider public -- sheriffs and constables -- they're not really. The constables are just private businesspeople. They get appointed by a town or a city. And the sheriffs in Massachusetts are -- They only are process servers, and they man the jails. There's no other function they serve. And they also operate very much almost like a private business. The other one is that this need to be independent -- that's very important, too, because there are some places -- some of the debt buyers in Massachusetts have these deals with process servers, and they're using them not to serve the process to the -- Well, they use them for that, too, the court, but to do executions on, and they have this arrangement, and these process servers are charging huge amounts for this, and that's -- Their whole business is based on maybe this one debt buyer or mostly this one debt buyer and doing these thing, and they have this agreement, and it's maybe not in writing, that they -- that they are supposed to do this and charge this, because we sued them and tried to get them to produce that.

>> Dama Brown: If I can, I'd like to give the last word to Mr. Yellon.

>> Larry Yellon: I agree with them, Miss Coffey. The practice of not paying process servers for attempted services where they cannot effectuate is wrong. It will encourage bad service if you tell someone the only way they're going to get paid is if they serve it. It's not my practice to do that and never has been. And I would never agree to anything like that with any account that I had, and I know many members of NAPS and New York state wouldn't, either. And that's very

clear. In addition, you mentioned this \$3 service for process servers. At a hearing at the Department of Consumer Affairs in June of '08, an individual testified that the person -- the entity that pays \$3 a service that is involved in the chain of getting \$3 service -- was the city of New York itself as contracting the services out. So, that's -- it's not blanket that everybody gets \$3. This person had agreed to a low-ball price with the city of New York in order to get that contract, and it resulted in him having to pay \$3 per service to satisfy that contract.

>> Dama Brown: It's very hard for me to say no, Mister -- Judge Evans has one very quick comment that he'd like to make, and then Joel Winston will join us.

>> Peter Evans: I understand in Florida they have Mr. Debski's plan. We do have these certified process servers. However, there's still a private, if you will, enterprise aspect to it, and they have to get hired by the law firms, and I'm sure the percentage of successful services that they actually perform will factor in very much into who gets hired by these firms that are filing 10,000, 20,000 lawsuits at a time -- certainly, if they have a better percentage. Even if they're paying for the bad ones or the ones that don't get served, they're gonna go to the firms that get service more often. Having an independent check such as a law or something like that could help prevent against that.

>> Dama Brown: And I'm sorry that I can't hear more from everybody, but if I can, Joel Winston will be coming up. He is associate director of the Federal Trade Commission's Division of Financial Practices.

>> Joel Winston: Good morning, everyone. This one? Okay. Can you hear me now? Great. Good morning. And thanks to all the panelists for a terrific discussion. I think it sort of ran the gamut from some serious disagreements to movement toward consensus at the end, which is the way we like it. We do a lot of workshops here. I've been through many of them, and they really do run from near fisticuffs to, you know, kumbaya. This one, I guess, is somewhere in between. But let me try to play back what I heard, in terms of areas of agreement, areas of disagreement, where we might go from here. First, I should talk a little bit about what the FTC's role in all this is, other than hosting. We are a law-enforcement agency. We have responsibility for enforcing the FDCPA, which we do quite vigorously. But we also have a role to play in education of

consumers, education of businesses, and policy setting, and I think that's where this really falls. What are the right policies? What should we be recommending be done? At the current time, we don't have rule-making authority under FDCPA, so a lot of these solutions that we might consider as part of a rulemaking, we can't do. But we do frequently make recommendations to Congress. We make recommendations to state governments. We make recommendations on self-regulation, industry standards, that sort of thing. So it's sort of the bully pulpit role that we play that I think is probably most relevant here. Let me talk first about where I thought there was some areas of consensus. I think there was pretty good -- And if anybody disagrees with me on any of these, feel free. Put your card up vertically, and, you know, let me know. I don't want to mis-state anybody's views here. But there seems to be some agreement that the participation rate of consumers in these collection lawsuits is very low. Now, there's disagreement about why, and I'll get to that in a minute, but most seem to agree the participation rate is very low. Anybody disagree? No? Good. There's a high percentage of defaults. And there is also seemed to be agreement that consumers are better off, generally, when they do participate. There are lots of things that can happen in the course of the participation that can make it better for them. I think there is also agreement that the process here, the litigation process, is not very consumer-friendly. It can be made more consumer-friendly. So far, so good here. And that the process could be improved by making it easier for consumers to participate, giving them incentives, giving them information that enables them to participate at the higher rates. So, here's where I think we ran into some disagreements. What are the reasons for the lower -- low participation rates? And they really ranged from consumers don't participate because they realize there's no point in it. They owe the debt, they're not gonna win, so they just don't show up. Although, Judge Lebedeff mentioned that, at least in credit-card-debt cases that she doesn't feel that's necessarily the case very often. Second is that debt-settlement companies are out there, and we have a proceeding ongoing with debt-settlement companies. But debt-settlement companies are out there telling consumers they should not speak with debt collectors, they should not participate in this process, and that's problem. Then there's the sort of general idea of panic and fear misunderstanding, confusion. It's a very complex process. It's legalistic. Consumers fear the system. They're not quite sure what's going on. And that that's compounded sometimes by the lack of information that is transmitted through the pleadings in these cases. Consumers don't really understand who the -- who the creditor is. They don't understand where the debt comes from, in some cases, and

that it can be very hard to navigate the process, so consumers opt-out of it. Related to that is the issue of illiteracy, that too many consumers just cannot understand the documents. Then there's the ostrich effect, I think it was referred to by somebody, that consumers are sort of pretending that if they put their head in the sand, then the problem will go away. That's another idea that came out. Then sort of practical problems -- consumers don't have transportation, they have to take off work to get to the hearing, and it's just very inconvenient and expensive to do that. And then finally, of course, we talked a lot about service of process problems. Although there's some - - obviously some disagreement about the extent to which that's a problem. The extent -- we even disagreed about the extent to which service of process is done by private entities as opposed to court entities, so... But then we moved into solutions. What can be done by the courts, by others, to increase participation? So, one comment we heard was nothing. Nothing can be done. It's human nature. People don't want to show up. People know they owe the debt, they can't do anything about it, so they don't participate. Another idea was that there ought to be greater transparency in pleadings. They ought to be simpler, they ought to be more descriptive so the consumers, again, can understand better what the nature of the issue is. There was discussion about designating an attorney or a professional by the court to be available to represent debtors and letting them know that that's something that they could take advantage of. There was discussion about model pleadings in instructions to make them simpler. There was discussion about steps that could be taken to prevent the filing of bogus or erroneous suits that, for example, that as debts are passed down the collection chain, perhaps there should be better communication of the defenses that the consumers have raised during the process. Perhaps this is an identity-theft situation. And it occurred to me one possible offshoot of that would be, should the pleadings in the case or the papers filed in case document what collection efforts were undertaken in the course of collecting this debt and by whom? Is that something that consumers would benefit from having, and is that something that would be practical for industry to do? And then there was discussion about lower-cost proceedings. Should there be a telephone option for consumers to adjudicate these? But most of the discussion related to service of process, of course, and there, I think, we had a number of ideas that people raised. One, obviously, is greater oversight by the court. Should the court require logs by service processors of the service they have done? Should we use new technologies to track process servers to make sure that they're actually doing what they say they do? Should there be greater prosecution of the rogue collectors under the perjury

laws and otherwise? Should there be a follow-up notice that goes out either by first-class mail or by express mail that consumers sign for that, again, would increase participation? I think one of the judges -- I forget who -- mentioned that in -- I think it was in New York -- there was some effort made to do these follow-up letters and that that seemed to increase consumer participation rates. So, you know, there are a lot of ideas here. What I think we still need to think about, and I'll confess to being a little bit frustrated, because I like to walk away from these things, "Ah, here's the answer. These are the four things we need to do, and we're done," and it's not obviously that neat or that simple. But what remains a question in my mind is, what are the roles of the various parties involved in the solution? You know, what should be done at the industry level? What should be done by the courts by the local levels? What should be done by state law? And ultimately, from our perspective, what can the FTC do? Is there something that Congress ought to be doing that we should be recommending? That's the sort of specific guidance that would be very helpful to us in the future, so as we continue to go through the day and as people think about this issue and perhaps file comments on it, I would appreciate at least getting beyond the, "Here's our position, here's your position," and more to what specifically can be done and who ought to be doing it. What's going to work here? So, thanks again for the great discussion, and I look forward to the upcoming panels. And I think we're gonna take a break now? Yep? [Applause]

>> Tom Pahl: We'll take a break and ask everybody to be back in their seats so we can start promptly at 11:00. Thank you.