

>> Tom Pahl: Okay, we're about to start our second panel. The moderator of our second panel -- If everyone could please take your seats. Thank you. The moderator of our second panel will be Bevin Murphy, who's an attorney in the FTC's division of financial practices. And the topic of our second panel of the day will be "Statute of Limitations Issues and Debt-Collection Litigation." So, Bevin, if you could begin, we'd appreciate it. Thank you.

>> Bevin Murphy: Okay, everyone. Can you hear me? Okay. How's that? Yes? Now?

>> Female Speaker: Yes.

>> Bevin Murphy: Okay. Welcome back, everyone. As Tom mentioned, we're gonna be looking at issues pertaining to statutes of limitations and essentially, this is gonna be divided into, I guess, two sub-issues, so, we have what's occurring, what's being said, what's being given during the process of collecting and then we have what's occurring during litigation, when a suit's being filed. So, taking those in turn, starting with the actual process of collecting the debts, what we're hoping to talk about is when a debt is past the statutes of limitation, how frequently is it being collected on? So, we want to get some experiences, data from you all on that. We also want to look at what, if anything, should be disclosed to the consumer during collection. Should there be disclosures, for example, that a consumer, if a debt is past the statute of limitation is not legally obligated to pay or that any sort of small token payment may revive the debt? And then we also want to tackle the question of, in fact, should a debt be allowed to be collected on if it's past the statute of limitation? So, that is gonna be probably the main topic, so I'm sure you all will volunteer other topics as well in terms of collecting. And then in terms of when we get into the courtroom and the process of filing suits, what, if anything, should be required there of the attorneys? So, for example, should an attorney have to put in their complaint what was the date of last payment or should they have to somehow swear or affirm that, in fact, the debt has not passed its statute of limitations? And then we also want to look at, should there be a uniform federal statute of limitations, and if not, is there any room for the states to become involved and legislate there? So, I'm just gonna -- I want to start talking about the collections first and then I'll move in to the courtroom scenario. So, assuming that debts are being collected on that are past the statute

of limitations, how frequently is this occurring? Does anyone want to start us off? Yes, Ms. Faulkner?

>> Joanne Faulkner: Um, there are people in the debt-buying industry that make it a practice to buy primarily out of what they call out-of-statute debt, OOS debt. They make millions of dollars collecting out-of-statute debt. The New Mexico attorney general is now considering regulations controlling the collection of out-of-statute debt, but there is one person, debt buyer, who has \$100 million worth of out-of-statute debt in his portfolio to sell, and how does he collect it? He has a website, and the website implies that the consumer will be sued if he is not going to pay the debt. "We believe that the added cost of litigation and the negative effect on your credit can be overwhelming. While our clients reserve the right to handle this account in civil court under applicable state law should voluntary arrangements not be made, we will make every effort to offer you a plan to resolve this issue." So, the volume of collection of out-of-statute debts is enormous. I personally think that there should be -- it should be an unfair practice to buy or sell out-of-statute debts, and I think that would make the problem pretty much go away.

>> Bevin Murphy: Thank you. Ms. Needleman?

>> Joann Needleman: Well, the question was, how frequently do debt collectors seek to collect a debt that is beyond the statute of limitations. This is a litigation. I'm sorry. Can you hear me now? Sorry. This -- I'll repeat. The question was, how frequently do debt collectors seek to collect on out-of-stat debt? From my understanding, this is a litigation roundtable talking about litigation. So, to the extent you are talking about collection attorneys who file lawsuits out of stat, if that happens, it is completely unintentional. Ethical, legal collection attorneys do not make an intentional attempt to file out-of-stat debt. They look to seek information provided from their clients. If they're within the applicable statute of limitations of their state for credit card, then the suit will be filed if it warrants it.

>> Bevin Murphy: We're actually interested in both issues, both collecting of out-of-stat debt as well as litigating.

>> Joann Needleman: As far as litigation, I would say that is not the purpose of what legal debt -- litigation debt collectors do.

>> Bevin Murphy: Does everyone agree with -- does anyone not agree with that?

>> Joanne Faulkner: I don't.

>> Bevin Murphy: That attorneys are not suing on out-of-stat debt?

>> Yvonne Rosmarin: Oh, that's not right. People are suing on it all the time. Maybe the attorneys don't know or maybe they choose not to know. You know, they -- you know, if they get a -- let's say they get a complaint from somebody or they find out that somebody's -- that they're getting debts from, you know, a particular one or more are out of the statute of limitations. Maybe they choose not to go and look and ask that client whether they -- you know, whether the rest of them that they're sending them are out of statute of limitations, but they do all the time, and, in fact, there are some -- some attorneys who are also debt buyers. They run their office. They buy the debt. There's one in Massachusetts that sends out letters to people that they're collecting on saying, "Thank you for your payment of such and such whatever," to try -- which the debtor has never made that payment, just so that they can later back it up and say that there was, you know, no statute of limitations problem.

>> Bevin Murphy: Judge Lebedeff?

>> Diane Lebedeff: You see this complicated by two practices. First, all of the collection agents that we've mentioned very frequently call up debtors and ask, "Can you just send a payment? Can you send us \$5? Can you send us \$10?" And then they treat that as waiving the statute of limitations, and you also see it in cases with dead people, where they'll write you as a child saying, "You know, your mother had this bill and all of a sudden, you know, can you do anything on it or send us \$5 on it or whatever?" And all of a sudden, they treat you then as the primary obligor who's waived the statute of limitations. Could be 10 years old.

>> Bevin Murphy: Then should there be some sort of disclosure, in your opinion?

>> Diane Lebedeff: I don't know what their obligation is to advise people that they're waiving the statute of limitations. You know, that really is a matter of ethics. I know that there is an ethical code which I believe someone here should be able to talk to that collection agents are not supposed to engage in unethical things, but let me just go back to the question about the lawyer. These are really medieval terms, champerty and barratry. It's absolutely illegal in New York, and probably every state, to -- especially for a lawyer to purchase a debt with the intention of only suing on it. So, there really are some major ethical questions.

>> Mark Groves: I agree with the judge and Joanne and all that has been said that ethical collection attorneys and whether it be under the FDCPA and Kimber and the Kimber lawsuit and its progeny or the state ethical guidelines that we follow, along with our local rules of court, it's clear that collecting on out-of-stat consumer debt is a bad idea, and what we do is we initial scrub, and I think I speak for -- along with all the fellow NARCA attorneys here, is that the first thing you do when you receive files is you run scrubs based on the statute of limitations, whether it be date of charge-off, the charge-off amount, dates of last payment, and date of first delinquency as well as any other information such as whether or not it's a written contract, implied contract, or an open account based on local rules of statute of limitations. So, the first thing I want to say is, those lawyers we see on the list serves that say it's an affirmative defense, that may well be true, but I would chime up to them offline or online saying it's a bad idea. You need to turn these accounts around and send them back to your clients. We are here for legal debt collections, not to warehouse accounts, and we don't want to have the misinformation being given that we're gonna sue them if we're not. So, the very first scrub we do along with deceased, bankruptcy, service-members act, yada, yada, yada, is the statute of limitations and scrub, and we will work with our clients to ask them not to send them in the future. If we find one, I would like -- No one's perfect. I guarantee you there's accounts that go through, but our scrubs are multiple, and I say scrub meaning reviews of the data fields and the file compliance elements to ensure this doesn't happen, and I don't know how long it's been since Kimber out of the Alabama court came around, but ever since that case came down, ethical and people and attorneys that don't want to go out of business don't file suits on out-of-statute, as far as I can tell.

>> Bevin Murphy: So, just to clarify, I had wanted to talk about these issues separately, but I think they are somewhat opposite sides of the same coin. When you're talking about scrubbing, that's before filing suit, not before collecting, correct? Or what were you referring to?

>> Mark Groves: Well, the file review would be at the time of placement, and if you have an ongoing relationship with a client, you either visit their -- their headquarters or wherever their principle place of business, you work with the client, and if you see that a client or a new client's gonna be sending you out-of-statute debt, you're gonna go ahead and review with them. I bet you if you go around this table and in the audience, all attorneys here, they don't want to handle out-of-statute debt. Given the 10 point something unemployment rate and the similar charge-off rate, there are so many accounts that are pre-statute of limitations. There's no real reason to want to -- there's only trouble coming along with collecting out-of-statute debt. So, the scrub, to answer your question, Bevin, was related to it at the time of placement.

>> Bevin Murphy: Okay. It's hard we're sharing a mike. Yes, Ms. Rosmarin?

>> Yvonne Rosmarin: That may not be true for those attorneys who have set up a business of collecting -- you know, of buying debt and collecting it, where they have their own banks of collectors and then they file lawsuits. So, maybe they aren't -- maybe aren't members of the organization, but that's where I see a lot of it happening there.

>> Bevin Murphy: Mr. Debski?

>> Michael Debski: I just want to clarify. My understanding is the FTC has issued opinion that collecting out-of-stat debt outside of litigation is not against the law, and they've issued a formal opinion as to that. So, if it's happening or not, I guess the point is, going forward with litigation, we now have a case that says that that would be violation of the FDCPA and it would be unlawful to do that, and I don't think anybody wants to intentionally break the law, and I don't intentionally break the law, and if they're intentionally breaking the law, then there is the remedy under the FDCPA.

>> Bevin Murphy: Yes?

>> Peter Evans: Judge Evans. I see out-of-state cases coming before me every day, and I handle these cases.

>> Female Speaker: He needs a mike.

>> Joanne Faulkner: Oh, sorry.

>> Peter Evans: I see out-of-statute cases coming before me on a regular basis or at least cases that appear on their face to be out of statute. And not able -- we have a two appearance system in Florida. At the initial appearance, very often when they appear to be out of state, the lawyer can never give me a reasons as to why -- what has waived it, whether it's been a payment, et cetera. Now, what I'd like to point out, and we talk about it being an affirmative defense and whether the litigant has to raise it and et cetera, I think we lose sight of the fact that, hey, most of these cases are in what we call small-claims courts. Small-claims courts are designed basically for people without formal legal training to be able to come in and get a fair shake. These people do not know the word "affirmative defense." They probably don't know statute of limitations. They may know it's been a long time, but they don't know to raise these things. A simple requirement that people be advised of what their rights are and initial probably go a long way to keeping this, shall we say, more aboveboard. People do not know what an affirmative defense is. They don't know to raise it, and again, it's -- I think we need to strive to a way to give small-claims courts a way to keep that playing field level, the way it was designed and what it's intended to be. And just someone taking advantage based on a look of knowledge of a defendant or a consumer does go against the grain of what the philosophy behind small-claims courts may be.

>> Bevin Murphy: And when you say that something on its face appears to be out of stat, what -- in your experience, what sort of information do you typically get in your court regarding? Do you get a date of last payment? Do you get some sort of affirmation?

>> Peter Evans: Typically, we get nothing. From the plaintiff, what we get is a party saying, "I haven't even thought about this account or heard about it in seven years." Well, you know, that's how we get it. On the face of the complaint, sometimes we can find it, generally not. The pleading requirements in Florida, at least in these cases, are very lax. It's not strict. It's very simple pleadings. You don't have to give a lot of information. It's more people coming in to our pretrial conferences and indicating that it's been a long time.

>> Bevin Murphy: And what do you think can be done to, in your words, level the playing field? What can improve this?

>> Peter Evans: If we go back to our last session when we were talking about what information should be given when people are brought in to court, I think there was some sort of consensus that perhaps more information should be given out as to where the debt originated, who has held it, as debt buyers have come down the mark, what the date of alleged last payment was, what the interest rate -- whatever information we determine, I think that can go a long way towards providing that information, along with an explanation of what their rights are on old debt, that they do have -- that they do have a defense there, they may, however, very well want to work out something, arrangements, because they don't -- Most people like to pay their debts. They don't want to be deadbeats. And I think there's a lot -- there's a good number who would even pay after a statute, but I think they need to do it knowingly as opposed to being hoodwinked, and I connect it with the philosophy of what a small-claims court is supposed to be.

>> Bevin Murphy: Thank you. Mr. Redmond?

>> Donald Redmond: So, I've never had a lot of luck in my life arguing with judges, but I'm gonna take a shot. So, judge, there's no question that nearly everywhere in the country the statute of limitations is an affirmative defense. We know what that means. Nonetheless, you're the judge. If you see a case that you say is on its face, looks like it's out of stat, dismiss the complaint. That's what judges do.

>> Peter Evans: Without giving a day in court? Maybe some judges do it. I do like to give a day in court. I think that's kind of -- You know, very often it appears that way, I have a lawyer in front of me who probably doesn't know much about the case.

>> Donald Redmond: No rep--

>> Peter Evans: Excuse me.

>> Donald Redmond: Sorry.

>> Peter Evans: Mr. Debski and I were talking about this earlier today where a lot of these firms that handle these work on a statewide or even national basis. They have appearance attorneys in the local areas that come to court with very little information on the case and, basically, their response is, "Judge, we'll show you at trial." Okay?

>> Donald Redmond: With respect to whether or not it's out of state or not?

>> Peter Evans: We can determine at that point, and they're entitled to that. They're entitled to be able to show us at trial.

>> Bevin Murphy: Judge Lebedeff, do you want to jump in?

>> Diane Lebedeff: Yeah. In New York City, we have a requirement that they actually plead, that it's not barred by the statute of limitations, if it's timely.

>> Peter Evans: We don't have that in Florida.

>> Diane Lebedeff: And I think that that's a far more positive and effective approach. Just remember, as part of a judicial function, generally when a suit's for money only, the judgment's going to be granted by the clerk. There often isn't a judicial function. In landlord/tenant, for example, or someplace where there's a possessory judgment or something other than a straight

money judgment, a judge often has the ability to look over papers and say, "No go. They're not good enough." But usually, there's quite a restriction, either by case law, by statute, or by the appellate courts, for judges to jump in on a money suit where there's nobody appearing. Wait. Remember, and we already talked about some people saying that there's a 90% default rate in credit-card suits. So, having this affirmative pleading requirement, I think, is really the best way to go.

>> Peter Evans: It doesn't hurt a thing.

>> Diane Lebedeff: Right.

>> Bevin Murphy: Ms. Gagnon?

>> Michele Gagnon: I feel it already is out there. With Kimber, it is a violation of the FDCPA to sue on an out-of-statute case. So, you are violating the FDCPA if you're doing that. There is already this line of -- this bright line that we are not to do it, and ethical collection attorneys are simply not doing it. We're not exposing ourselves. We're not violating the law. We're trying to say within the law.

>> Diane Lebedeff: It would be great if we could clone you.

>> Peter Evans: Can I make one comment?

>> Bevin Murphy: Let Ms. McNulty jump in. I want to make sure we get everyone here.

>> Carlene McNulty: In North Carolina, it's fairly routine to see collections, lawsuits, brought on out of state, I mean out-of-statute debt. We see that all the time. I don't know whether these would be considered the unethical collection attorneys, but it happens all the time.

>> Bevin Murphy: I just want to linger on you for one more moment. What do you think we could -- in your opinion, what should be done about that?

>> Carlene McNulty: It's part of the statute in North Carolina for debt buyers. It's now made explicitly an unfair trade practice, because creditors, attorneys argue that Kimber doesn't apply in North Carolina, or whatever, that we have had that argument. It's now for debt buyers. It's explicitly an unfair debt collection practice, and we've also put in pleading requirements on when the last payment was made.

>> Bevin Murphy: Ms. Coffey?

>> Carolyn Coffey: I think the fact that -- the fact that filing out-of-statute cases, which happens all the time in the cases that I see, just the fact that it's -- the threat of it being a violation of the FDCPA really isn't really much of a deterrent, especially when you're talking about consumer cases where only 1% of defendants are represented by counsel. So, the fact that any of those defendants are going to figure out that this case was a violation of the FDCPA and then be able to bring an FDCPA lawsuit against the creditors is, you know, ludicrous.

>> Carlene McNulty: I have a couple of suggestions.

>> Bevin Murphy: Yes.

>> Carlene McNulty: What I was gonna say was basically the same thing that she said about that. Besides the pleading requirement, which I think is good, and making them have to affirmatively plead it, I think also, I agree that I -- most of the people, debtors, that I've seen, they do want to pay their debts. So, I think an answer to that would be make a payment of something that was out of the statute of limitations, not revive the statute of limitations, and make any default judgment that was gotten, or any judgment that was gotten on a debt that was out of the statute of limitations void, so that somebody could come back in and challenge it.

>> Bevin Murphy: Mr. Abrams?

>> James Abrams: We, in Connecticut, do not have a pleading requirement, unfortunately. So, I would see them fairly frequently, but I felt my hands were tied. It's an adversarial proceeding. The other thing, as Ms. Coffey said, if no one's there to raise the statute of limitations defense, who's gonna raise the unfair trade practice defense? It's just there's nobody there. The threat may be there, but it generally is not going to happen.

>> Bevin Murphy: Mr. Flitter?

>> Cary Flitter: Just to take a step back, the general state of things is that the majority of states -- I'm from Pennsylvania. That's, I think, the majority of states, including Pennsylvania, say that if the statute of limitation has run, that bars the remedy but not the debt. Right? So, if one were to go to court and there's an affirmative defense of the statute of limitation raised, then that's a reason to have the case dismissed or denied or what have you. But that alone does not make the debt go away, and it's still -- it's still not improper for a debt collector to continue to try to collect the debt through non-litigation means, as long as you don't reference suit, litigation, court and things like that. And that just -- I think that rule in itself has worked fairly well. I don't see a lot of collection letters coming through from the various debt collectors threatening litigation on time-barred -- on time-barred debts. The issue on whether there are suits on time-barred debts where there's no disclosure up front to the consumer is really a separate issue. I think that one of the -- one of the issues this goes in tandem with that is exactly what is the statute of limitations? Now, at the moment that is on a state-by-state basis, and I don't -- I don't expect that that will change. I don't know. But even within any given state, what's the statute of limitations? There's suits on notes. There's suits on open accounts and things, and I should add in the case of credit-card debt, which is an awful lot of these collection matters, they tend to rely on credit-card agreements from MBNAs and -- well, what was MBNA and a lot of the Delaware-based banks incorporating -- specifying Delaware law, and, of course, Delaware has a three-year statute of limitations. So, then, the question comes up, if you're in Pennsylvania, generally for -- I don't know what Florida is and some other states, if you -- if a debt buyer shows up or a creditor shows up, yeah, what's the statute of limitations? Four years is a general presumption, but it may well be three if you're applying the Delaware law analysis. And the only thing I wanted to add in terms of a -- if I may, a uniform, I don't think that's a great idea to have a uniform national statute

of limitation. I think that's something that's so historically been reserved for the states to decide how long they want to allow, but if there were to be one, I would think the statute of limitation for the Fair Debt Collection Practice Act ought to be pretty much co-extensive. So, the FDCPA statute's one year right now. I think if you are going to a national statute for debt collection, I think the FDCPA statute of limitation ought to be the same duration.

>> Bevin Murphy: Okay. Let's stick to that topic for a minute. Who has a comment on whether they're -- I guess, first of all, is it difficult to determine what the statute of limitation is, and if so, should to be simplified with a federal one? Yes, Ms. Needleman?

>> Joann Needleman: Well, I would disagree that there should be a federal one. I agree with about 95% of what Mr. Flitter said, which should shock him. [Laughs] But there shouldn't be a federal, and I think a year really harms consumers, because if they feel that there is a lot of lawsuits now, wait till you have a one-year statute of limitation. You're gonna be overburdened with lawsuits, and I don't think it's fair enough to the consumer, because in a lot of these cases, we're talking about job loss, we're talking about some sort of catastrophic medical problem that has resulted in them unable to pay their bills. Those things may pan out after a year or so. You give it time to try to work it out. But I think it is best left to the states. The states, I think in Pennsylvania, have done a really good job in developing court systems to handle these type of cases. I see a judge here from Blair County, who's done wonderful job. They recognized an issue with the citizens of their county and developed a specific court, and I think they're in the best position, the states in the best position to determine what is the best statute of limitations to serve their citizens, and that's the way it should remain.

>> Bevin Murphy: Do you also think it would be helpful if each state set a uniform statute of limitations, for example, so that unwritten contracts and written contracts have the same, per each state?

>> Joann Needleman: I think there should be a collaborative discussion about that. Absolutely.

>> Bevin Murphy: Okay. Anyone else? Yes, Judge Evans.

>> Peter Evans: Having a standard statute of limitations I think would make my life easier. We have all sorts of mixed up things. We have people -- we have a transient society. We have people who incur debt while living in Ohio, who are now in Florida, from a credit-card company that was issued out of North Dakota and is now being sought by a debt buyer in New Jersey. Okay. Excuse me. I'm sorry. One of those states out there nobody comes from. You know, we forget this is a creature of basically federal law. We don't have -- You know, you are able to bring -- these credit cards exist because there's high interest rates that can be brought to different states that don't allow those interest rates because of federal law. Having a federal statute which applies only to these type of cases, I don't see anything wrong with that, and I don't see it interfering with state law or state rights. It lets everybody know and be on the same page. And it is a creature of federal law.

>> Bevin Murphy: Thank you. Mr. Zezulinski.

>> Albert Zezulinski: Thank you. I know you find this hard to believe, but while we think that legal action is an important remedy in collection, it is not the preferred remedy, which is one of the reasons that you see so few lawsuits. Now, I know that's shocking to you because you are the recipient of all of them, but the percentage or the reliance on legal for collection is relatively minuscule. In terms of the total number of accounts we handle. We have 300 million accounts that we deal with, 70 million on a daily basis. We make 600 consumer -- 600 million consumer contacts a year, 150 million by letter. The rest are in- or outbound phone calls. And when you begin to look at that, legal actions is not a remedy that is efficient and effective, and we don't rely on it a lot. That doesn't mean that we don't have 250,000 judgments -- we do -- in our purchase portfolio. I can't tell you the number of judgments that we get on behalf of the clients that assign accounts to us. That is a different -- we don't measure that, but having said that, one of the things, and I agree with Ms. Needleman, and that is that shortening the statute of limitations is going to put more burden on the courts. The collection process, the collection activity from the point of default to the point that it goes to legal, you know, if it is less than a year, you're just going to see the burden. It's just going to overwhelm you. And to a certain extent, we're in a perfect storm right now because of the economy and where it is, but the reality of it is we are seeing vast

changes in consumer debt. It's half of where it was a year ago, went from over 500 billion -- 5 billion, rather -- 5 trillion, I'm sorry, to about 2 trillion, and that's just over the course of a year. It's just going to be very, very difficult. We're going to see essentially evolve in a -- separation of class here those who can get credit and those who can't, and the functionally illiterate, probably the 40%, may not get credit. That sounds kind of un-American to me that we wouldn't give credit to someone because they can't read, but maybe that's a test that needs to occur. But the reality of it is, at this particular point in time, I there's a pig and a python going through time right now. The reality of it is, that's going to pass through over the next few years and the volume of activity is going to decline, and I think that with reliance on -- on litigation as a remedy is going to shrink, primarily because the volume is going to shrink. Not as many credit cards being issued. We see that coming down the pike in our business. It's just not going to be the same volumes. Shrinking the -- or shortening the statute, you know, the period to one year, two years, or even three years is, in fact, going to create a problem because it will push more to legal more quickly. Judge Lebedeff?

>> Diane Lebedeff: I just wondered what he the experience was in bankruptcy court for how they are treating this, because you have some different issues there with credit card debt and bankruptcy.

>> Albert Zezulinski: You know, I actually don't -- in the area of bankruptcy, that just is something that comes right out of our pile of work. It's not something we focus on.

>> Diane Lebedeff: Okay, 'cause it can survive, and wondered how they are treating the statute there. My question was how the statute of limitations is being addressed in bankruptcy court, because you have more survival of credit-card debt there, and are they declaring some of that out of bounds? If they are doing anything different. And, basically, whenever you talk about changing the statute of limitations, I don't believe could you change it retroactively. It would be prospectively, only just to add a footnote.

>> Bevin Murphy: Okay. And I guess the question could actually be parsed out to, normally, should there be uniform statute of limitations, and as you just mentioned, or I've heard a couple

mentions, if there were going to be, a year seems to be too short for everyone. So, putting aside whether you believe there should be one, if there were to be some sort of uniformity, what would be the appropriate time period? Does anyone want to take that?

>> Albert Zezulinski: I would argue that it should match credit-bureau reporting, and I would argue for seven years. Now, having said that, I see a lot of people shaking their heads. That's why we're all here.

>> Bevin Murphy: I do as well. We will get to them. Anyone else on this side?

>> Carolyn Coffey: I think that is exactly the problem with having a uniform federal statute of limitations is that we won't agree on a number, and seven years is a lot longer than most states, or many states, and in terms of the drying up of credit, I just want to point out that different states do have different statutes of limitations, and as far as I can tell, credit is available in the states where the statutes of limitations are lower, so I don't know that should be a big concern. And I'm sorry, also the flooding the courts as a result of decrease in the statute of limitations -- I mean, right now in New York City, we have 300,000 debt-collection cases filed each year in civil court. The statute of limitations was lowered, I would think that there would be a lot less lawsuits filed there.

>> Bevin Murphy: Mr. Debski?

>> Michael Debski: I would just say I think this is exactly why the states have decided on their own statute of limitations. They have had a chance to look at their rules of evidence. They've had to look at whatever document retention laws they have or any other things relating to their procedures to decide what would be appropriate in their state under their procedures, and I think that's why this should remain a state issue and be determined by the states.

>> Bevin Murphy: Mr. Flitter?

>> Cary Flitter: I just wanted to comment on the availability of credit, if that is an issue. Now, I don't -- I don't think I agree with the notion that the -- an illiterate borrower is less likely to get

credit. I think -- my sense is it is precisely the opposite. A very literate borrower, you have a banker, an executive, a lawyer, shops credit, is going to get a very favorable rate, and I think sub-prime lenders would tell you that their most profitable loans, the ones that are interest-rate ceilings of 15, 18, 22 or more are going to be from the sub-prime market, are going to be from a very frequently uneducated and unsophisticated borrower. So, I don't know that that ties together.

>> Bevin Murphy: Let's take Ms. Faulkner and then Ms. Gagnon and then Ms. Rosmarin.

>> Joanne Faulkner: First, I would like to comment on the drying up of credit. I have been around a long time, and that is what they were all saying in 1969 when the Truth in Lending Act was enacted. Credit has grown by leaps and bounds since the Truth in Lending Act, which was a horrible thing for creditors. In addition, the FTC, when it adopted its credit practices rule a long time ago, had a study as to whether adopting consumer protections dried up credit. It did not. So, I think that's just a mirage -- something, a red flag, whatever. I want to talk about the -- a couple more points, if I may, because the discussion keeps going around -- lawyers filing suits on time-barred debts. It does happen. And the reason it happens is because their clients are giving them bad information. "Oh, yes, so-and-so paid \$10 an to check two years ago." And when the attorney goes back and looks, "Oh, sorry. No, we don't have any evidence that that client paid two years ago." So, I think it's bad information from the creditors. The practice of duping is a recognized practice in the debt-collection industry, and that is a practice whereby you try to get somebody to recognize the debt even though it is beyond the statute of limitations, and therefore you can now have this acknowledged debt within the statute of limitations again. One collection agency would send off a letter saying "Tear off the bottom. I want to pay this debt but I can't pay it now. Get back to me later." And that can renew the statute of limitations in some areas.

>> Bevin Murphy: I definitely want to get back to that issue, but let's just first hear from Ms. Gagnon and Ms. Rosmarin.

>> Michele Gagnon: I do think that such a short statute of limitations will cause a chilling on credit, and I understand what you were saying, Mr. Flitter, about the sub-prime market. You can charge the high interest rates. But at the end of the day, if you cannot collect on these accounts,

you will not give credit, and when you're talking about a one-year statute of limitations, I think tracking back to what Ms. Needleman said, then there is absolutely no time for the consumer to rehabilitate themselves, to get over their medical issues, to find a job again, and therefore, if you cannot collect in that time period, you will not be extending credit.

>> Bevin Murphy: Ms. Rosmarin?

>> Yvonne Rosmarin: I just want to emphasize also, I think the idea of a uniform statute of limitation is kind of a dead end, and nobody is gonna agree on how long it should be, and it's always been a traditional states area. I think the focus should be more on what to do about it, what to do about when you do have that problem, and the disclosures in the pleadings, affirmatively having to disclose them in the pleadings, barring this duping or any kind of reviving the statute of limitations. I mean, if the people do want to pay their debts, if you really want to encourage them to do that, then don't make them be penalized by reporting on the credit report. It revives the credit reporting. It revives possibility statute of limitations if they do pay. And then the other thing is, if they do happen to get a default judgment, because somebody doesn't know or doesn't show up in court, well, then make it void. I think you have got to remedy it and not focus on the statute of limitations.

>> Bevin Murphy: Mr. Redmond, I saw you shaking your head.

>> Donald Redmond: Well, I don't think reviving the statute of limitations has any impact on credit reporting. Credit reporting is what it is, seven years from the date of first delinquency, period. I agree with Ms. Rosmarin that, number one, I don't think that the country will ever agree on a uniform statute of limitations. I also agree it is a matter of state law, and it'll stay a matter of state law, because Nebraska isn't the same as New York, and there are a lot of things that go in to it. And I also think it's the likelihood of there being a national statute of limitations is so low that it is just not realistic. So, on that we agree.

>> Bevin Murphy: Thank you. Getting back to that -- this issue of whether there is any duping or encouraging of token payments, what can you all comment on how frequent this is and what

consumers understand when they make a small payment? Can anyone take that? Ms. Faulkner, you had mentioned this issue of a token payment reviving the debt?

>> Joanne Faulkner: Yes, it does in many states. I think the Debt Buyers Association recommended a disclosure, and this is to the New Mexico effort. Based upon our information, this debt may not be subject to suit. However, you may pay on the debt. If you do pay on the debt, the time to file suit may be renewed. This is not intended to be legal advice. You should always consult your own attorney. And then the American collectors association also had recommended language given to the New Mexico Attorney General. Based upon our records, this debt may be too old to enforce in a lawsuit, but please remember the debt may still affect your ability to obtain credit or employment. If you acknowledge you owe the debt or make a voluntary payment, then the statute of limitations may be waived or renewed.

>> Bevin Murphy: Ms. Gagnon?

>> Michele Gagnon: The DBA and ACA are not attorneys. The NARCA members who are sitting here, we are attorneys, and we have a duty to zealously represent our clients. And right now under the case law, under the FTC opinion, we can collect. We can't sue or threaten to sue on an out-of-statute, so, by requiring attorneys to put those disclosures in our letters, I think that is running foul of the ethics, the ethical duty to my client, to do the best for them, and I think it is a different situation for DBA and the collectors. They don't have the ethical duty.

>> Joanne Faulkner: These comments were submitted by their lawyers.

>> Joann Needleman: That is their lawyers not collecting the debt, that NARCA members who do collect, have to -- who've been retained by their clients have to zealously advocate for their clients' interest. If I am making disclosures to the debtor that this payment could affect their defense, then I'm running afoul of my duties to my client. So, I mean, I think it puts attorneys, as most portions of the FDCPA do, in a very precarious position.

>> Yvonne Rosmarin: But not all collection attorneys are NARCA members.

>> Joann Needleman: That's true. That's true.

>> Yvonne Rosmarin: They don't all follow your guidelines.

>> Bevin Murphy: Mr. Flitter?

>> Cary Flitter: I don't think there would be any sky falling if there was that kind of a disclosure. Every collection attorney in the room, especially the talented ones here at the table, the NARCA members, already include a 6092 G notice that the act requires in every single letter, and sometimes every single lawsuit, and they do it quite ably and without really event and without I think them acting adversely to their clients. So, if there were to be a federal rule, whether it's a -- I mean, term of art. I know the FTC doesn't pass rules under FDCPA, but if there were to be a rule or a statutory amendment requiring a straightforward disclosure about the effect of making a payment on a time-barred debt, since that would be a required statement, I don't think there would be any issue at all about the creditor counsel giving advice or giving bum advice or acting adversely to the interest of their client. I would just add, the Pennsylvania rule actually works pretty well to my mind. Just the way it's developed under the case law, which is if there is a payment made after the running of the statute of limitations, the payment itself does not revive the debt unless it is accompanied by an unequivocal statement of intent to revive the debt. So, the statute has not lapsed. Then, any payment extends the statute of limitations another four years, but if the statute's already run, you need something more than a payment in order to reinvigorate the statute of limitations, some unequivocal statement -- "Okay, here is \$20, and I agree that a new statute of limitations will run." I think that something like that would be a very sensible approach. I think it would be equitable. I think it would permit good consumers who want to pay, because they owe the debt and they need more time to do that without duping or without really misleading anyone into reviving a statute of limitation unwittingly.

>> Bevin Murphy: Mr. Debski?

>> Cary Flitter: I need to add one -- just 10 seconds. I want to correct myself from a remark in the prior session. In talking about the assignment, I mentioned some debt buyers by name, NCO and Portfolio Recovery, and I was corrected at the break that they do not sell debt they know to be -- I will say be problem -- have defenses or statute barred. So, I only want to mention -- I mentioned them because they are the big players in the field, not because I have specific knowledge that they are known to do that.

>> Bevin Murphy: Thank you. Mr. Debski?

>> Michael Debski: I think the number-one concern for attorneys are when we start dealing with pleadings and different things that deal with the courts, we are now taking what other debt collectors do into the courtroom. When we start dealing with pleading requirements, pleading specifically that the statute of limitations and those things have not run, where clearly in my state it's an affirmative defense and I have a duty to my client, we are now taking it into the ethics that is governed by our state Supreme Courts, and those are issues that should be dealt with the state Supreme Courts, who govern what I do at the courthouse steps. If you want -- I think it is very different, an initial dunning letter, compared to dealing with pleadings and other things and that notification of the right to dispute. Once we get to court, I think that it's very clear that these are state issues that deal with the Supreme Courts or whoever regulates your bar in your states, and I think that is distinguishable.

>> Bevin Murphy: Yes, Ms. Faulkner?

>> Joanne Faulkner: I just wanted to add one thing, that in the New Mexico proceeding, the American Collectors Association concurred that it should be an unfair or deceptive trade practice for a debt collector to seek or obtain from the consumer any acknowledgment containing any affirmation of any debt barred by the statute of limitations or a waiver of any legal rights of the consumer without disclosing the nature and consequences of such affirmation or waiver and the facts the consumer is not legally obligated to make such affirmation or waiver.

>> Bevin Murphy: Thank you. And getting back to what Mr. Flitter mentioned, that even if -- not so much talking about disclosure but, you know, what really should -- if you have a debt that is past the statute of limitations, should that even be able to -- should a mere payment be able to extend the time period without something else, some sort of affirmation, some sort of written statement? Who has a thought of that?

>> Joanne Faulkner: That is a matter of state law, and it differs in many states.

>> Bevin Murphy: And what -- Judge Abrams?

>> James Abrams: Joanne gave me my entree here. I'll put on my old hat. I was a state legislator for 10 years, and the issues of both, making it a jurisdictional requirement that the -- if you bring the action, it be within the statute or that you have to affirmatively plead it, and also, revival of actions with a payment would be lobbying the state legislatures and having them enacted. When I was in the state legislature, we have a small claims -- below 5,000 is in the small-claims court, which is not judges. It is part-time magistrates. Their service of process is not as strict. And when I was in the legislature, they raised the jurisdictional -- we raised the jurisdictional limit I think from 1,500 to 2,500 and then to 5,000, and all of us thought, "This is great for consumers," you're thinking Judge Wapner. You're thinking people can get in and get access. Now I realize that may have been driven by other forces and other interests to get -- to raise that limit. So, if could I take those votes back, I would, and I would lower the jurisdictional limit.

>> Okay. But in terms of -- I suppose anyone who -- even if you weren't a state legislator, assuming you are now, let's put on our normative hats here, what should the state legislature rule on that issue? I mean, what should be required of a consumer to affirmatively revive the debt?

>> Yvonne Rosmarin: Can I say something?

>> Bevin Murphy: Yes.

>> Yvonne Rosmarin: I mean, the only way I would think that they could revive the debt or should be able to revive the debt is by some affirmative statement that they have written, not that somebody sends them and they send something back, something that they actually write and say that, you know, not only that I would like to pay this debt but that I realize that it's, you know, you -- you know, it's past -- the statute of limitations are past -- they don't have to use that term, but past the time that you can actually collect, but I still want to pay it and, you know, something clearly to that effect that they want to do that.

>> Bevin Murphy: Mr. Debski? And then Judge Evans.

>> Michael Debski: Just the point, difference here. Obviously an affirmation. There's nothing wrong with collecting a bill that is out of statute. So, therefore, no affirmation would be needed if they decided to continue to pay that debt and we are not dealing with litigation. I disagree there should be an affirmation. I think what the statute of limitations shouldn't be is debt avoidance. It should than we believe that the statute of limitations was put in place to protect the consumers or whoever it might be from things getting too old, to the point that there aren't documents, there aren't -- we don't remember, all those kinds of things where the evidence would become unclear. I think that's the basic rules behind the statute of limitations, so that the question is, wherever that point is, if they call me up and say "I'd like to pay this bill for this thing, I'm assuming at that point, when you're making a payment, you're aware of the bill, you know who it's owed, and you're making a decision to send that check. And if they are not doing that, that is a different issue.

>> Bevin Murphy: Okay. Thank you. Judge Evans, and then we have a couple of questions.

>> Peter Evans: Okay. We should be allowed, and there are people who do wish to, shall we say, waive their rights and proceed and honor the debt. However, we're talking about disclosure here and we're talking about -- and I keep coming back to keeping the playing field level. You know, we -- in the legal profession, it is not unusual for people to waive rights. However, for instance, in a criminal case, people enter pleas and waived their rights to jury trial every day, waive their rights to counsel, but we have to make sure they understand what they are doing and they are

doing it with knowledge. And a disclosure requirement would let them do it with knowledge. I think it also -- I can't see the ethical problems that a lawyer has if they comply with a rule or statute that says "you must make disclosure." That's not an ethical violation to your client. That is compliance with the law. And again, it also makes that waiver, if it occurs, one that is knowledgeable, one done with understanding of what they are doing, and that's what we're doing. If I can also make one more comment on some of the remedies that have been suggested, and that is making some of these judgments void. That does not solve the problem. Once you have a judgment out there, it affects that consumer, it affects their credit, it affects their ability to get a mortgage. It affects their ability to get a job. They have to come to court to get a declaration that it is void. It just really is not a remedy.

>> Bevin Murphy: Thank you. We have a question from the audience. Everyone keeps saying that we can't agree on a national statute of limitations. Can we see just how far off the panel is? Go around and very simply answer the following. I'm reading this so, you know, you can't blame me. This is a question. [Laughter] "Should there be a national statute of limitations, yea or nay? If yea, what should be it be in years?" Starting with Judge Abrams.

>> James Abrams: No, but if there were, I'd say three years.

>> Carolyn Coffee: I'd say no, but if there were, it would be two years.

>> Michael Debski: I'd say no, and in Florida, I don't wish our statute of limitations upon anybody, because I don't think you can figure out what it is, but generally it is five, I think, is fine.

>> Peter Evans: I guess maybe I'm going to say yes because I'm from Florida and I sometimes would like to make it easy to figure out what it is. So, it makes it easy and I think it should be four or five. I'm not married to either one.

>> Joanne Faulkner: I say no because Congress made a mess of it when they preempted usury laws, and they made a mess of it when they preempted the statute of limitations for student loans, and I think they'd probably make a mess of it again.

>> Cary Flitter: I would say no, but if there were, it should be co-extensive with a statute of limitation on fair debt claims. So, four years would be four years.

>> Michele Gagnon: No. I'm abstaining. No, and I say it should track with the credit reporting, seven years.

>> Mark Groves: I echo Michele. Seven years from the date of charge-off with the charge-off being used as the universal number and trustworthy number and highly regulated number, and having an accrual from the date of charge-off or in fact if you want to have a nationalized accrual date, as well. But generally, I would leave it to the states.

>> Diane Lebedeff: I have been a judge for 30 years. I am so used to deferring to the legislature that I'm really going to abstain. But one thing I would like to mention is we also have the Soldier and Sailors Relief Act, which can extend statute of limitations. I think, short of national banks, that's FDIC or national banks credit cards, I'm not sure that there's a great legal authority for having federal regulation in this area, so I'm a little dubious about that. And I know we are talking about statute of limitations, but let me just throw in, there are -- There are not only state statute of limitations, there are state statutes of fraud which govern the forms of the contracts, and there may be other laws that bear on it, such as New York has provisions in the personal property law, which relate to different kinds of credit agreements. So, legally, it is what we really call a rich question, and I really find it is far more complicated than just posing it.

>> Carlene McNulty: I would say no because I'm skeptical, like Joanne, that Congress would get it right.

>> Joann Needleman: I would say no, and I agree with Judge Lebedeff for those reasons, but if we had to make a decision, definitely four years from charge-off date.

>> Donald Redmond: I just say no.

>> Yvonne Rosmarin: And I agree. I just say no.

>> Albert Zezulinski: I think you already have my answer.

>> Bevin Murphy: We have a little bit of time left. Would anyone like to expound on their answer? Ms. Coffey?

>> Carolyn Coffey: I just want to say that in terms of national statute of limitations, you know, credit-card debt is a two-year statute -- I'm sorry. Telephone debt is a two-year statute of limitations. So, that's something that I find a lot of creditors' attorneys forget.

>> Bevin Murphy: And actually, in terms of -- Thank you. In terms of the fact that there are state statutes of limitations, I guess I'd like to hear from anyone, but especially our representatives of creditors. How difficult is it when you're, you know, looking at a debt, to figure out what the applicable statute of limitations is? Mr. Redmond?

>> Donald Redmond: Sure, I will take that. I don't think it is all that difficult. It is certainly true from time to time that you -- you know, we have 22 million accounts, and it is, you know, from time to time, we will have data that is unclear. If you have data that is unclear, you don't sue on it. I mean, there's no two ways about it, and I will say, and at the end of this discussion, it's almost over, no reputable player in the collection industry, certainly including my company, would ever intentionally sue on an account that is past the statute of limitations, which doesn't mean that mistakes don't occur. But no one who is a reputable player would intentionally do that, and for all the -- Ms. Rosmarin and my friends on the plaintiffs' bar, if you find somebody who intentionally sues on that kind of stuff, sue their pants off because they don't do anything for our industry except hurt its reputation and damage those of us who try to do everything we can to be clean about it.

>> Bevin Murphy: And you spoke specifically about suing on a debt, but in terms of if an account is unclear, is it collected on? Or how does the --

>> Donald Redmond: Sure, absolutely. I think Mr. Debski is one who mentioned that there is nothing wrong with collecting on a debt that's passed statute of limitations. I know people keep quoting your piece that was put out a few years ago, but it is true. A statute of limitations is nothing more than a time period in which you can sue someone. That's all it is.

>> Bevin Murphy: Judge Lebedeff?

>> Diane Lebedeff: Yeah. I will tell you where I would really think that you might be able to act and it might be helpful, and that is in defining a charge-off date. When you see this litigation, different institutions, different players, sometimes they let it go, and it also has an incredible effect on the interest rates, the penalty charges, the monthly no-payment charges, all of that stuff, and how it just multiplies and feeds on itself like the blob growing. If there were a uniformed charge-off date that everybody could refer to that could be used for computation of the statute of limitations, that would be helpful, and I don't see why you wouldn't have the power to do that. And let me just say, all the fine collection attorneys here, I really think you're terrific and I wish that you were cloned and in my court and that I didn't see some of the other specimens that we see. [Laughter] But anyway, take a look at a regulation of a charge-off date, because I've seen -- I've seen things carried for five years, and I don't know if I should mention, the only bank I ever saw that had a uniform policy was Citibank, and Citibank was the clearest as to its administrative procedures and had a clear operating set of instructions, supplied it on every case, and it really was quite helpful to me as a judge to just know how things were going to get treated, how things were going to get cut off, and what principles they brought in to play. It's really, really complicated for judges when dates are all over the lot and, you know, there's the underlying debt problem is what you don't know. And that, you know, make it a year, make it two years, make it something, but it would help.

>> Bevin Murphy: We are going to hear from Mr. Flitter and then Ms. Needleman.

>> Cary Flitter: Just a point of clarification for the judge. The charge-off date I understand for credit reporting purposes under the Fair Credit Reporting Act, the time period starts to run 180 days after the post to profited loss, the charge-off date. For statute of limitation purposes for -- for -- before -- for statute of limitation purposes, it doesn't have anything to do with the charge-off date, Judge, does it? It is the date of default, the date the creditor could first have sued is the date that starts the clock running for statute of limitations, doesn't it?

>> Diane Lebedeff: Just go to I don't think -- I don't -- The statute of limitations, Judge, it just applies state law, but there is a -- most of actually what goes on with credit-card litigation is the intricacies of it, what the interest rates are, what the additional charges are, how many multipliers you're going to attach to the underlying debt, and generally, at least, it is possible, if you have a charge-off date, just to start from that date forward, applying legal interest. And it would be extremely helpful for that, and there were some institutions that would only ask for legal interest after the charge-off date. There's some that would ask for all of the credit-card rolling charges in all their multifaceted glory. You know, keep on accruing, and it causes a great deal of lack of uniformity, and it -- it takes a lot of judicial work to sort your way through that stuff.

>> Bevin Murphy: Thank you. Ms. Needleman?

>> Joann Needleman: I think the charge-off date is really important, and I think we're gonna get in to that in some of the panels later today, because it is the most regulated amount that we have. It's regulated by the FDIC, the controller of currency. So, I think that's a great starting point, and we can have a discussion. Usually a charge-off date is about six months after the last date of payment. So, back it up. So, if you have the charge-off date, that gives you a clear understanding of where to begin or where to end, so to speak, so you can look at that and say, "All right, I'm gonna go back 120 days." That's when the clock should start ticking. But I agree with the judge. That is something the FTC absolutely could do. As far as the amount of time after the six months prior to charge-off date, as I think everybody agrees here, that is not a federal issue. That is a state issue. But I have consensus on that, absolutely.

>> Bevin Murphy: Okay, I'm gonna sneak in one final brief question. We have a question from the audience. "Are collectors..." and I assume that would be creditors and buyers, as well, "...getting sufficient information on accounts in order to allow them to compute the statute of limitations?"

>> Michele Gagnon: I would say yes, and again, we go back to that charge-off. The charge-off date mandated by the FDIC and the OCC is 120 days from the last payment on a closed-in account. 180 days on an open-end. So, once you get that charge-off, you can track back to your date of last payment, although many of my debt-buyer clients are also giving me both the charge-off and the last payment, and they are computing. So, if your charge-off on a credit-card debt, which is open end is June, your last payment is January, that's when your statute is running.

>> Bevin Murphy: Okay, thank you. We have to cut it off there. Joel Winston is going to be joining us again to summarize.

>> Joel Winston: I am back. It's kind of a funny role I'm playing here, but... Let me start by just sort of summarizing what I think took place here, and thanks, Tom, for your thoughts on this. There was first a discussion about the prevalence of collecting and suing on post-stat debt, and I think it is important to keep those two things distinct. In terms of collection, mostly what I heard was that there's nothing inappropriate about collecting on post-stat debt, nothing illegal. It happens a lot. So, I think Mr. Groves said that in his experience, collectors are scrubbing the lists against the statute of limitations once they acquire those lists, and therefore, they're not collecting on post-stat debt. So, there seems to be some disagreement about the extent to which that happens. I think there's also disagreement about how often lawsuits are filed on post-stat debt. Some people felt that it never happens and certainly shouldn't happen. It's a clear violation of ethics rules. Others thought that it happens fairly frequently. There's -- next there is some discussion about the extent to which consumers understand the statute of limitation issues and the difference between an affirmative defense and a bar on filing a lawsuit. I think most agree that consumers probably don't understand that level of distinction, and there was some talk about perhaps that should be explained better when the lawsuit's filed, that the lawyer maybe should be putting that into the complaint...as opposed to leaving it to the consumer to figure out this is a

possible defense they might have. There's a lot of discussion about a uniform statute of limitations, whether at the federal level or the state level. I think everyone but one thought that there should not be a federal statute of limitations, and at the least, Congress shouldn't be setting one, which I can't disagree with that. Maybe the FTC should. I don't know. And more disagreement about whether it should be done at the state level, and certainly widespread disagreement about what it ought to be everywhere, anywhere from I think a year to seven years is what I heard. And then the issue of revival of out-of-stat debt and when that should occur and what should consumers be told about it. I think there was some disagreement about what it should take to revive the post-stat debt and whether and how it should be disclosed to consumers that any particular action would revive the debt. You know, I'd like to go from that to a little bit of my own view on this. This is an issue that we have been talking about and thinking about for quite a while, both the issue of when collectors should be able to collect post-stat debt and under what circumstances it should be revived. A lot of what I'm hearing today is about the idea of disclosure, that consumers need to know more, they need to understand what the consequences are of making a payment, and they need to understand the difference between paying on a debt versus a collector being able to file lawsuit on a debt. And the idea being that some consumers may want to pay even though the -- it could not be enforced in court. All this rests on the assumption that this is information that could be effectively disclosed to consumers, and that's where I have some trouble. This agency has spent a lot of time in recent years thinking about and testing the proposition that you can disclose information to consumers in a way that's going to make them understand what are often fairly complex propositions. It's come up in the case of privacy notices, for example. The approach that this agency traditionally has taken is that you give consumers more information, you tell them exactly what is going on, what the pros and cons are, and consumers get to make choices. Who can disagree with that? That is the way our system runs. The reality unfortunately is quite a bit different, and we are looking at the idea of a post-disclosure world, that there's so much information out there that consumers are getting thrown at and so many complex transactions in which they have to engage, that they are really struggling to understand what is going on. And take -- again, take the privacy notice. When we first started looking at the issue of privacy, the idea was you tell consumers what -- how their information's gonna be collected, what's gonna be done with it, who it's gonna be shared with. Some consumers don't care. "Go ahead and share my information." Other consumers don't want their

information shared. Let's tell them what's going on and let the consumer choose. Well, the reality is nobody reads privacy policies. Those who do don't understand them. So, a lot of time and a lot of energy is spent by lawyers writing privacy policies that nobody is reading. So, what sense does that make? I think the same kind of issue was raised here. I'm not drawing any conclusions from it, but the notion that you can explain to a consumer when you are trying to collect a post-stat debt that they owe the debt and they can pay it if they want, but if they don't, we can't sue you. To me, that is a very difficult message to convey to a consumer. It is almost counterintuitive or at least -- or at least confusing. On the one hand, you are -- you are getting a -- you are the consumer, you are getting a collection call from a collector and it is saying, "You owe this debt and this is how much it is and we would like you to pay," and then you are saying, "Well..." But you don't really have to pay because you could -- you'd have an affirmative defense. That is -- that is a very difficult nuanced message that I think consumers are going to have trouble with. I think the same issue arises with the issue of revival, and how do you explain to a consumer that by -- that you don't have to make a payment. No one is requiring you to. You do owe it. We can't sue you for it, and if you do make a payment, even a small one, it's going to revive the statute of limitations. Pretty tough message, and I -- I appreciate hearing what some have suggested in response to the New Mexico law. I would -- I would bet you that you if you did a test of consumers where you read that disclosure to them, as a collector might over phone, and asked them what it meant, that would you get a very low rate of effectiveness. That's what our experience tells us here. We do a lot of consumer testing, and typically, consumers don't understand even the simplest of disclosures, much less things that nuanced. So, that really raises a dilemma, and I know I'm editorializing here. I don't know what the answer is. I think that is something that we want to think about in terms of making recommendations. You know, the solution could be you can't collect post-stat debt or the solution could be we have got to come up with a better disclosure for consumers. You know, I don't know what the solution is, but that's the sort of thing that we are -- we are really struggling with, and needless to say, if anyone has any data on possible disclosures and what consumer take-away from those disclosures is, that would be welcome. So, again, thanks. A great panel. Thank you very much, and we'll be back at what time?

>> Female Speaker: 1:45.

>> Joel Winston: 1:45. And remember, if you leave the building, it is going to take you a while to get back in. So, thanks. [Applause]