Credit Card Debt collection 'Robo-Signing'

"The problem, according to judges, is that credit card companies are not always following the proper legal procedures, even when they have the right to collect money. Certain cases hinge on mass-produced documents because the lenders do not provide proof of the outstanding debts, like the original contract or payment history". By JESSICA SILVER-GREENBERG

The same problems that plagued the foreclosure process — and prompted a multibillion-dollar settlement with big banks — are now emerging in the debt collection practices of credit card companies.

As they work through a glut of bad loans, companies like American Express, Citigroup and Discover Financial are going to court to recoup their money. But many of the lawsuits rely on erroneous documents, incomplete records and generic testimony from witnesses, according to judges who oversee the cases.

Lenders, the judges said, are churning out lawsuits without regard for accuracy, and improperly collecting debts from consumers. The concerns echo a recent abuse in the foreclosure system, a practice known as ***robo-signing*** in which banks produced similar documents for different homeowners and did not review them.

"I would say that roughly ***90 percent of the credit card lawsuits are flawed*** and can't prove the person owes the debt," said Noach Dear, a civil court judge in Brooklyn, who said he presided over as many as 100 such cases a day.

Last year, American Express sued Felicia Tancreto, claiming that she had stopped making payments and owed more than $16,000 on her credit card.

While Ms. Tancreto was behind on her payments, she contested owing the full amount, according to court records. In April, Judge Dear dismissed the lawsuit, citing a lack of evidence. The American Express employee who testified, the judge noted, provided generic testimony about the way the company maintained its records. The same witness gave similar evidence in other cases, which the judge said amounted to ***"robo-testimony."***

American Express and other credit card companies defended their practices. Sonya Conway, a spokeswoman for American Express, said, "we strongly disagree with Judge Dear's comments and believe that we have a strong process in place to ensure accuracy of testimony and affidavits provided to courts."

The problem, according to judges, is that credit card companies are not always following the proper legal procedures, even when they have the right to collect money. Certain cases hinge on mass-produced documents because the lenders do not provide proof of the outstanding debts, like the original contract or payment history.

At times, lawsuits include falsified credit card statements, produced years after borrowers supposedly fell behind on their bills, according to the judges and others in the industry.

"This is robo-signing redux," Peter Holland, a lawyer who runs the Consumer Protection Clinic at the University of Maryland Francis King Carey School of Law.

Lawsuits against credit card borrowers are flooding the courts, according to the judges. While the amount of bad debt has fallen since the financial crisis, lenders are trying to work through the soured loans and clean up their books. In all, borrowers are behind on $18.7 billion of credit card debt, or roughly 3 percent of the total, according to Equifax and Moody's Analytics.

Amid the surge in lawsuits, credit card companies are facing scrutiny. The Office of the Comptroller of the Currency is investigating JPMorgan Chase after a former employee said that nearly 23,000 delinquent accounts had incorrect balances, according to people with knowledge of the investigation.

The Federal Trade Commission is working with courts across the country to improve the process for pursuing borrowers who are behind on their credit card payments, mortgages and other bills. In a recent review of the consumer litigation system, the commission found that credit card issuers and other companies were basing some lawsuits on incomplete or false paperwork.

“Our concerns center on the fact that debt collection lawsuits are a pure volume business,” said Tom Pahl, assistant director for the F.T.C.’s division of financial practices. “The documentation is very bare bones.”

The lenders disputed the suggestion that they file lawsuits that include flawed or inaccurate documentation.

“We look at account records in our system to individually verify the accuracy of information before affidavits are filed and testimony is given,” said Ms. Conway, the American Express spokeswoman, who declined to comment on specific borrowers.

The industry has faced similar criticism over practices stemming from the housing crisis. Amid a surge in foreclosures, state attorneys general accused the banks of using faulty documents without reviewing them and improperly seizing homes. In February, five big banks agreed to pay $26 billion to settle the matter.

The errors in credit card suits often go undetected, according to the judges. Unlike in foreclosures, the borrowers typically do not show up in court to defend themselves. As a result, an estimated 95 percent of lawsuits result in default judgments in favor of lenders. With a default judgment, credit card companies can garnish a consumer’s wages or freeze bank accounts to get their money back.

In 2010, Discover sued Taryn Gregory for more than $7,000 in credit card debt. Ms. Gregory, of Commerce, Ga., had fallen behind on her bills, but said she had accumulated only $4,000 in debt.

After the suit was filed, Ms. Gregory, a 41-year-old child care assistant, asked Discover for proof of the balance. The resulting documents, which were reviewed by The New York Times, have inconsistencies. One statement, for example, says it was produced in 2004, but advertisements on the bottom of the document bear a 2010 date.

The lawsuit against Ms. Gregory is still pending. Discover declined to comment. Judges have also raised concerns about witnesses and affidavits.

In May, Michael A. Ciaffa, a district court judge in Nassau County, N.Y., challenged the paperwork signed by a Citigroup employee in Kansas City, Mo. He found that one document “has the look and feel of a robo-signed affidavit, prepared in advance,” according to court records. The case is still pending.

Emily Collins, a spokeswoman for Citigroup, said: “We continually review the effectiveness of our controls and policies for credit card collections, and ensure that affidavits are validated for accuracy and signed by Citi employees with knowledge of the client’s account. Citi Cards has a range of programs to support our clients who may be facing financial difficulty, and we make every effort to work with our clients to prevent delinquency.”

A review of dozens of court records showed that the same employee signed documents in cases filed against borrowers in three other states. In one lawsuit in Seattle, the employee attested in an affidavit in May that a customer, Vickie Sawadee, owed $14,000 on her Citigroup credit card. Although Ms. Sawadee was behind on her payments, she said she does not owe the full amount. She hired a lawyer to defend her case.

Many judges said that their hands are tied. Unless a consumer shows up to contest a lawsuit, the judges cannot question the banks or comb through the lawsuits to root out suspicious documents. Instead, they are generally required to issue a summary judgment, in essence an automatic win for the bank.

“I do suspect flaws,” said Harry Walsh, a superior court judge in Ventura, Calif. “But there is little I can do.”