

Crossroads: Should You Fight or Settle Your Debt Collection Lawsuit?

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If you have been sued by a debt buyer like [Midland Funding, LVNV, LLC, Portfolio Recovery](#) or any of other companies out there your initial reaction is probably that you want this to go away and go away now. Before making any decision take some time to evaluate your options. If you live in Arizona you have 20 days from the day you received the complaint and summons before you have to [file a response with the court](#). Take that time to make a sound decision. So what options do you have?

#1 – Settlement

I always tell me clients that if your main goal is to get the [collection lawsuit](#) to go away as quickly as possible they should look into settlement. Settlement can occur at any time even after a lawsuit has been filed and even after a judgment has been entered. That being said, the sooner you settle the better deal you may get. Settlement is merely the process of offering to pay the debt buyer less than what they are seeking in their lawsuit.

The obvious downside to debt settlement is that you have to come up with the money to settle the debt. Further, if a settlement is going to be reached the debt buyer is going to want their money now. The debt buyer will likely not accept any type of payment plan. In my experience debt buyers will settle for about 65% of the total amount, but you will likely have to really press them on this. It doesn't make a lot of sense because debt buyers like Midland Funding, LLC admit to paying 2 to 3 cents on the dollar for the debts they buy. But, if you have some cash, or can loan some, then settlement will likely be the quickest way to eliminate this annoyance in your life.

#2 – Litigate the Case

The next option is to [respond to the lawsuit](#) and make the debt buyer prove their case in court. Remember, the debt buyer is the plaintiff – it is *their* burden to prove that they own the debt and prove how much is owed. In a surprising number of cases they are

unable to do this. I recently participated in oral argument in a case against Midland Funding, LLC where I was demanding proof of ownership of a debt on behalf of my client. In a surprising moment of candor Midland's attorney stated that based upon the huge volume of accounts they were dealing with obtaining the requested level of proof of ownership would be very difficult if not impossible. Apparently they believe the Rules of Evidence apply only to those litigants with a small number of accounts!

While you may be successful in defending your lawsuit against a debt buyer, there are risks. If you lose you will not only get the full amount of judgment entered against you but depending on the law in your state and the underlying credit card agreement you may have to pay the attorney's fees of the debt buyer as well. It is important to weigh this when evaluating which route you choose.

#3 – Hybrid

The third option is a combination of #1 and #2. Many times the debt buyer will file the complaint but not attach any of their supporting documents or will only attach a portion of the documents. It is difficult to evaluate the strength or weakness of case without seeing what the other side has. After an answer to the complaint is filed with the court the parties will eventually need to exchange any documents they have related to the case.

Sometimes the best strategy is to file a written response (called the "Answer") to the complaint and then wait and see what documents the debt buyer has to support their case. If the documents support their allegations then settlement may be your best option. If the documents (or lack thereof) do not support their allegations then litigating the case may be your best option.

The important thing is to give yourself a little time to evaluate your options. Don't make a rash decision based upon the initial panic you felt when you were served with the lawsuit. Obtain as much information as you can, make a decision, and then act.

Image Credit: [Richard Elzey](#)

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