



## After the Fact | Untangling Consumer and Medical Debt in the Courts

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### TRANSCRIPT

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**Lester Bird, senior manager, courts and communities, The Pew Charitable Trusts:** In the debt collection space, when people are not engaging, it's really hard to know what a person's ability to pay is. Taking 25% of a person's paycheck each week, or taking their bank account down to zero, it's causing more cascading consequences for that person, but also for the community in which they live.

**Dan LeDuc, host, "After the Fact" podcast:** Welcome to "After the Fact." For The Pew Charitable Trusts, I'm Dan LeDuc.

From credit card bills to unexpected medical expenses, millions of Americans have debt that can follow them for years. And many face a tough choice between paying off debt or covering basic needs like rent, food, and health care. In fact, a 2022 survey from KFF found that 41% of U.S. adults had some sort of health care debt.

And when debt goes unpaid, people can find themselves in court. Debt collection cases are filling civil court dockets across the country, leaving many people—who usually don't have a lawyer—to navigate the complex legal system and regain control of their finances.

Lester Bird from Pew's courts and communities project team is here to tell us more.

**Lester Bird:** What we're trying to do is to look at the different pain points in courts for people who are trying to navigate them. We want to get to a place where the courts are helping resolve problems better, not compounding problems for people.

**Dan LeDuc:** One of the things we want to talk about today is consumer debt, which affects millions of people and also makes its way into the courts. Can you walk us through what that looks like?

**Lester Bird:** We know from research that at least 60 million Americans have a debt in collections on their credit report. And a large number of those debts do show up in state and local courts where a business is suing an individual. The typical amount we see being owed is somewhere between \$1,600 and \$2,000.

And for that sort of dollar amount, that's being in jeopardy, there's not really a legal market for people to find a lawyer to help them navigate. When it comes to debt



collection cases, what we see is a lawyer on one side nearly all the time with the business who's doing the suing, but the person being sued typically doesn't have a lawyer.

**Dan LeDuc:** What about some of the issues around just people knowing they're being sued?

**Lester Bird:** It's not just knowing you're being sued; it's knowing what you're being sued for. What we're seeing as a growing trend in debt collection cases are debt-buying companies. What they do is they purchase large batches of debt.

For instance, a credit card company might sell off a whole bunch of accounts that they say, you know what? We can't collect on these debts. And what we'll do is take a loss on these debts and sell them for pennies on the dollar. And then a debt-buying company comes in, they then purchase that bulk of debt, they go through sort of all these cases, and they start filing them with the court, suing a person for the full amount owed.

**Dan LeDuc:** Now, let's make it clear too that in many cases that we consumers owe this money, right? And people should be paying their debts. And that's not what some of the reforms are about. We're trying to talk about a system and making sure people actually know that they're being sued, or know why they're being sued, or some of the details behind it, right? To make sure the system is fair.

**Lester Bird:** Yeah, I think that's where we look at how a case progresses, right?

Service is the notice that tells you a case has been filed. We're sort of familiar, I think, from TV and movies with the process server slamming a piece of paper in someone's hand and saying, "You've been served." That certainly happens, but we see service being done in newspapers, or even a posting on the courthouse door counting as a person being served.

In most of these cases, the person being served then is told, if you would like to answer this case with the court, you can file formal paperwork. Only at that point do you get a court date. Oftentimes what we see is people confused by the paperwork saying, "Debt-buying company A is suing you," but it doesn't say what that debt originated from—this was a medical debt from this hospital.

**Dan LeDuc:** You've never heard of this company before, so chances are you might see it as junk mail, for example.



**Lester Bird:** Or a scam, right? Increasingly we're sort of told to be wary of scams. We've seen court paperwork around the country that doesn't have like an official seal of the court on it, or it uses language that's unfamiliar to everyday people

**Dan LeDuc:** So, what happens next? It sounds like there are two tracks here: Some people don't know what to do in this situation, or ignore it, and others might jump into action.

**Lester Bird:** On the don't know what to do, or just simply don't know about it track, what we see is that 60% of these cases at least end in what we call a default judgment.

**Dan LeDuc:** This means that if a defendant doesn't show up for their court case, they automatically lose by default.

**Lester Bird:** With all judgments in these cases comes the ability to garnish a person, and garnishment is being able to take up to 25% of a person's paycheck each week or being able to wipe out people's bank accounts, often all the way to zero left, or being able to take property from people to satisfy these debts.

You could have officers of the court even come into your house and start taking items. In one state in Michigan where we've been working, the garnishment statute there was written in the 1960s, and it talks about how you can protect up to 10 cattle and two swine and a hundred chickens. But it doesn't mention personal computers or laptops, because they weren't even invented yet when this happened. So that's one pathway.

**Dan LeDuc:** So now take us down the other path.

**Lester Bird:** Yeah, so the other path, you're properly served, you answer the court, you get a court date. When you show up to court, you typically won't see a judge. What you will see is a clerk who will direct you to go sit at a table with the lawyer for the business who is suing you and try to work out a payment plan.

Oftentimes, there's not a conversation about what your rights are in those discussions. And these are trained negotiators on one side and then an untrained, typically unexperienced person on the other side trying to navigate these conversations.

**Dan LeDuc:** And the stakes are high for folks who made a mistake or don't owe debt and suddenly are being accused of having debt.



**Lester Bird:** It's true. Yeah. There's north of 40 states that still allow for the arrest of a person with one of these debts. The other thing with these cases, typically it's about 10 years that judgment is active. That judgment can then be renewed for another 10 years in most states.

And so, what we see across the country is for 20 years, these debts can follow you around, and within that time, you don't know when it'll happen. Your bank account could be wiped out.

**Dan LeDuc:** The court system by definition is an adversarial system. And the judge is this neutral person sitting there at a bench, making sure the adversaries follow the rules.

**Lester Bird:** It's true. And when you talked about the courtroom and the judge sitting there with the sophisticated team on one side and the unsophisticated team on the other side, what one judge shared with us in Utah was, he said, "I'm an umpire and I'm calling the baseball game, but I got the New York Yankees on one side and I got a Little League team on the other side, but I still have to call balls and strikes."

**Noam Levey, senior correspondent, KFF Health News:** This industry has undergone a transformation. It's become considerably more professionalized, which I think is both a good thing and a bad thing.

**Dan LeDuc:** That's Noam Levey. He is a senior correspondent at KFF Health News who reports on medical debt in America.

**Noam Levey:** The professionalization has allowed for a much more industrialized kind of system for collecting medical bills. These are factories. I have talked with judges who say, "I wish I didn't have to do this."

**Dan LeDuc:** Consumer debt cases make up over 40% of all civil court cases. Out of those cases, a significant percentage stem from unpaid medical bills. But it's difficult to know exactly how many. It makes sense when you think about it. Sometimes a person will use their credit card to pay for an unexpected medical expense. And if they can't afford to pay their credit card bill, they could get sued and end up in court. And once that case reaches a court docket, it becomes indistinguishable from any other debt case.

**Noam Levey:** Medical debt is a huge problem. So, 100 million people, we found, have some form of health care debt.

**Dan LeDuc:** That's like a third of the population.



**Noam Levey:** Forty percent of U.S. adults have some form of health care debt. Now, of those hundred million people who have some form of health care debt, a relatively small subset of them end up in the courts.

Most people, when they think about a delinquent car loan or a credit card balance that someone can't pay off as a result of some sort of imprudent spending by the debtor, right? Nobody plans to have medical debt. People end up going to the hospital because they have an accident, God forbid they get a cancer diagnosis. They get a huge bill, they can't pay the bill, and they end up in debt.

People run into issues with, they think their insurance should have covered something. "I thought that doctor was in network, wait a minute." Or, "I thought I was going to get some financial assistance."

We've found, hospitals will delegate collection companies to sue on their behalf. Only a subset of these medical debts are actually taken into the courts. But if they do use the courts, things can get ugly pretty quickly.

There is evidence that, if patients can test these bills, if someone stands up and says, wait a minute, I want to see the proof that they owe this, Mr. hospital attorney, go back and get that for me, the hospital may very quickly just drop it. And I think the important thing to think about in the context of medical debt and in the courts is that the reason people aren't paying their medical bills for the most part is because they don't have the money.

**Dan LeDuc:** Those of us who are fortunate enough to have the means to repay our bills, even then, you don't know what it's costing you when you walk in the door to have your surgery

**Noam Levey:** Which is another important difference between medical debt and our car loan example, right? When you sign up for the car, you know what it costs. It's interesting there are debt defense attorneys around the country who argue, and sometimes quite successfully, that patients should not be held accountable for some of these medical debts, because the relationship between the patient and the hospital isn't a standard contractual relationship because those costs are not divulged at the outset.

**Dan LeDuc:** Do we know anything else about folks who have medical debt? Whether it's issues of equity or anything else going on in society?

**Noam Levey:** Many of us are in health insurance plans that require us to pay a lot out of pocket for our medical care before the insurance kicks in. These kinds of health plans don't work. They just don't work. They don't protect people financially. So, people end up in debt. They end up in the courts.



These are not hardened criminals who are used to going through the courts. It's terrifying. And deeply traumatic. I have traveled the country over the last few years. I've been at kitchen tables and in living rooms, on front porches and in backyards. And listening to people relate the terrible things that they have had to do. Literally not putting food on the table because of medical debt. It's appalling.

These are people who have tried to do the right thing. They've gotten health insurance. And solving this issue is going to require a fix to the health care system, probably more than it will to the judicial system.

**Dan LeDuc:** We've learned that the growing number of medical debt cases in our courts is made worse by systemic problems like unaffordable health care, economic instability, and limited access to legal representation. But the solutions lie with policymakers who are looking to address these problems through meaningful reform.

One of these people is Minnesota's attorney general, Keith Ellison. He worked with legislators in his state to get the Minnesota Debt Fairness Act passed into law. The new law, which took effect in October, will help ease the burdens Minnesotans were feeling from medical debt.

**Keith Ellison, Minnesota attorney general:** It all started out when the issue got brought to the Minnesota State Bar Association, and they together with other partners, began to study the shape of the debt problem, some of the weaknesses of the system, and identified some problems in the way that the system was constructed.

The next thing that happened is that we at the AG's office said there ought to be a change in the law, right? But we're not legislators either. So, we went and found some legislators who agreed, and then we began to organize. It so happened that this is one of those bills that is bipartisan when it comes to how it affects people.

**Dan LeDuc:** Let me ask if you could, just for our listeners, detail the top three points of what this legislation actually does that makes things better?

**Keith Ellison:** It does a lot of things, but it bans medical debt from being reported to credit reporting agencies. Because it's not an accurate reflection of your creditworthiness. It bans medical providers from withholding medically necessary care because of unpaid debt.

You can still get your treatments. It eliminates an old law that automatically transfers medical debt to a patient's spouse. In Minnesota, if there's outstanding medical debt, they can name your spouse in the complaint. And if the person died, they could still go get that money. Not after the estate, after the spouse directly, which means they can garnish their pay, they can go into their accounts, they can do all kinds of things.



There was one gentleman by the name of Walt, and Walt was a man of around 67, 68 years old, good shape, and tragically his wife he lost to cancer. As they were suing him and his wife for the debt that they had incurred, which was north of \$125,000.

**Dan LeDuc:** Oh my.

**Keith Ellison:** He was a named defendant in that, even though he never got cancer. So, as he's grieving the love of his life and his, the loss of her, making funeral arrangements and everything else, he's got debt collectors barking at his heels. Now, he wasn't able to benefit directly from this law because this happened a few years ago, a group called Cancer Legal was able to step up and help him and get this situation resolved in a very favorable way, which gave him an opportunity to say goodbye to his wife to mourn her. To really let his mind be at ease.

**Dan LeDuc:** Does it protect wages or garnishing of wages?

**Keith Ellison:** In Minnesota, if you were below the poverty line or, and you, if you were low income, they couldn't garnish your check, but if you were not low income, they could take 25% of your check. Now, anybody who earns a living knows that there's a world of difference between not being in poverty and having some money, there's a big, there's a lot of space between there and there. And so, what we have set up is a middle tier which says that if you're low income, you're exempt, but if you're making very middle-class money, then you would pay significantly lower than 25%.

So, just by example, you might pay 15% if you're making 70 grand, right? But if you're making 120 grand, they can probably get you for the 25%, so it puts a middle tier for people who are above poverty but still probably living paycheck to paycheck.

**Dan LeDuc:** So, it's starting to take root now. Provisions are starting to take place. What is next? Do you already see that there is need for additional legislation? Is there a need for the courts to do anything differently that you need to help address?

**Keith Ellison:** I gotta tell you, I continue to be concerned. There's another legal process. If I get a judgment to collect on a debt, I can serve it on your bank and clear out your whole bank account. And personally, I don't think that ought to exist. It doesn't exist in every state.

But I think that, I think they shouldn't be able to just wipe you out. I think there ought to be a threshold, because if you clean out somebody's account, then how are they going to pay their mortgage?





How are they going to pay their rent? We're driving homelessness at that point. We should try to create pathways to prosperity, and saddling people with this debt, not trying to figure out ways that they can dig themselves out of it. I just don't think it's right. I don't think it's the American spirit.

We need to get to the point where people can handle their financial problems with dignity and can get on a firm financial footing so that they can take care of themselves and their family. And that's all we're really trying to do.

So, Walt certainly would have benefited. And he came to every presser that we had. He was willing to share his story. And I'll be honest with you, Dan, I wouldn't blame Walt if he didn't want to talk about it. But he is a tough guy, so he managed it, but he is a very active enthusiast around this law. And was one of those who spoke up and showed up whenever he could to talk about the importance of changing this law.

**Dan LeDuc:** And I'm sure there are many others like him.

**Keith Ellison:** I hope when I get to his age, I can do what he does. He's a soldier, man. I'm sure his wife is smiling down on him because of his advocacy for others.

**Dan LeDuc:** Thanks for listening. To hear more stories like this, visit us at [pewtrusts.org/afterthefact](https://pewtrusts.org/afterthefact). And if you have questions or feedback that you'd like to share, let us know what you want to hear about, you can write us at [podcasts@pewtrusts.org](mailto:podcasts@pewtrusts.org). For The Pew Charitable Trusts, I'm Dan LeDuc.