

# Saldutti, LLC

## Creditor, Collection & Business News

*Saldutti, LLC /Creditors' Rights Division of Lario & Saldutti  
Attorneys at Law*

Spring, 2006

.....  
**Inside this issue:**

Bankruptcy Filings Rebound	1
Credit Snapshots	2
Q-Law Software	3
What's New in State Law	4
Threats to Collateral	6
Scoring Collections	7
Saldutti, LLC Info	8



*Philadelphia skyline*

## Bankruptcy Filings on Rebound

Six months after the new bankruptcy law was put in place to reduce the number of cases, consumer filings appear to have bottomed out and are again climbing, with some experts predicting the number of filers will return to previous levels in a year or so.

Additionally, pre-bankruptcy credit counseling—one of the more controversial requirements of the new law—appears to have little impact on steering people away from bankruptcy.

The law's critics say the rising numbers support their complaints that the new hurdles to bankruptcy will not significantly reduce filings because few people abuse the system.

But, banking groups that pushed for the changes say they're encouraged by early results showing a sharp drop in filings since the new law went into effect on Oct. 17, and they say it's too early to

judge the long-term effectiveness of the law.

Though cases are rising now, banking groups add that the figures are not at the level of recent years in which personal bankruptcies easily topped one million annually.

In the weeks after the law took effect, bankruptcies plummeted. Figures show they trickled to between 500 and 1,000 a day, down from the typical 6,000 cases.

Still, there is nothing in the numbers to indicate that filings will remain low. Filings are now increasing and have reached about 2,500 a day.

Also, 60 percent of filings late last year were under Chapter 13, twice the usual percentage. In March, Chapter 13 cases fell below 40 percent of filings, with Chapter 7 filings making a comeback.

The surge in last-minute filings was far greater than banks expected, and some

ended up writing off hundreds of millions of dollars in uncollectible debt. Despite the hit, banking groups say they are optimistic that the new law will rein in filings, or at least get more filers who can afford to repay debt to do so.

"If the new law is making people take a closer look at bankruptcy, that's not a bad thing. We were growing at such a high rate, it was just not sustainable," said Laura Fisher, spokeswoman for the American Bankers Association.

The decline in filings "does suggest that there was a lot of discretionary filing, which was the key argument that we put forward," said Fritz Elmen-dorf, a spokesman for the Consumer Bankers Association. "It's often become something of a financial planning tool, and it's not necessarily people at the very end of their ropes."

*(Source: Baltimore Sun, April, 2006)*



[www.saldutticollect.com](http://www.saldutticollect.com)

TEL: 856-795-6213  
FAX: 856-795-9776  
TOLL FREE: 1-877-809-4345  
E-MAIL: [rsaldutti@saldutticollect.com](mailto:rsaldutti@saldutticollect.com)

**New Jersey Office**  
89 North Haddon Avenue  
Haddonfield, NJ 08033

**Pennsylvania Office**  
15 Walnut Street  
Philadelphia, PA 19104

**N.J. State Capitol Office**  
98 Franklin Corner Road  
Lawrenceville, NJ 08648

# Consumer Credit Snapshots

## U.S. Consumer Credit Forecast

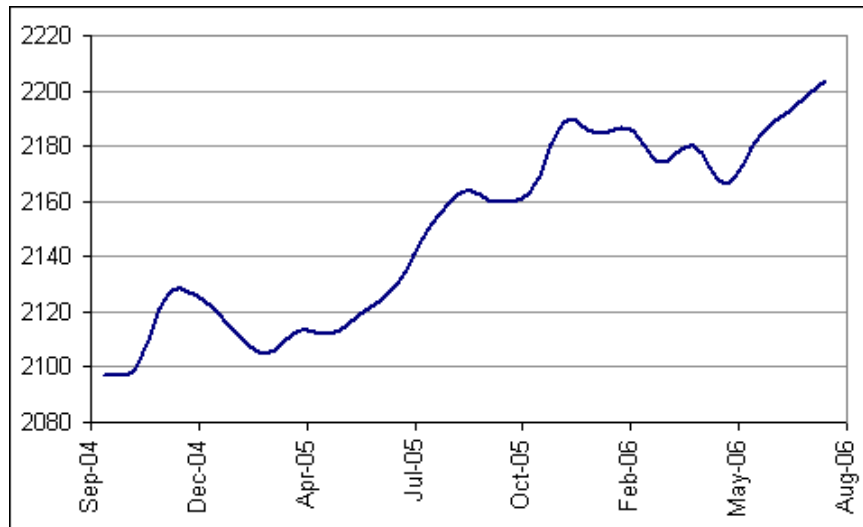
Total U.S. Consumer Credit Outstanding. Billion US Dollars, NSA

	Mar 2006	Apr 2006	May 2006	Jun 2006	Jul 2006	Aug 2006
<b>Forecast Value</b>	<b>2,174</b>	<b>2,180</b>	<b>2,166</b>	<b>2,184</b>	<b>2,193</b>	<b>2,204</b>
50% Correct	28	31	33	35	36	37
90% Correct	71	79	83	87	91	94

(Updated 3/21/06)

## Total U.S. Consumer Credit Outstanding

Past Trend, Present Value & Future Projection



## Mortgage Delinquencies Rise in Q4, 2005

According to the Mortgage Bankers Association, delinquencies on residential properties climbed to 4.70% in the fourth quarter of 2005, up from 4.38% a year ago. MBA representatives were not surprised by the figures and pointed to three key factors:

- 1) Increased amount of adjustable rate and sub-prime mortgages
- 2) Rising energy prices
- 3) Climbing interest rates

In addition, Hurricane Katrina rendered many borrowers in Louisiana and Mississippi unable to make home payments.

The MBA survey covers more than 41.2 million loans. Of those, 31.1 million are prime loans, 5.5 million are sub-prime and 4.6 million are government loans.

(Source: MBA)

## Credit Scores Reveal Key Differences

	Consumers With Less Than 660 Score	Consumers with More Than 720 Score
<b>Avg. Monthly Payment</b>	\$291	\$724
<b>Average Debt</b>	\$6,661	\$15,015
<b>Average Debt Usage</b>	27.7%	17.8%
<b>Average Number of Late Payments</b>	2.32	0.0021
<b>Average Number of Inquiries</b>	3.07	1.44

In February, 2006, Experian announced the results of a nationwide study on the differences between consumers in low and high credit score ranges. "Consumers focus too much on the three-digit number and not on how their credit behavior relates to that number," said Ed Ojdana, group president of Experian Interactive.

(Source: Experian)

## Saldutti LLC Selects Q-Law to Create State-of-the-Art Credit Collection Firm

After a detailed analysis, Saldutti LLC has selected Q-Law software, the most advanced legal collection platform in the market. Saldutti LLC, after extensive testing, has implemented the new software, designed specifically for collection law firms. With this acquisition, Saldutti LLC will have such capabilities as:

- Enhanced reporting capabilities;
- Task oriented scheduling on debtor claims including the ability to seamlessly integrate data using EDI from various creditors;
- The highest data security software, including privacy of debtor information;
- Electronic data interface reporting requirements;

- Paperless skip tracing with seamless interface with a variety of online information sources;
- Upgraded electronic filing of electronic claims with the Superior Court of New Jersey and the Federal Bankruptcy Courts in Pennsylvania and New Jersey;
- Financial integration of debtor information and history;
- And much more...all of which raises client service to a new level at the firm.



## Private Companies Voluntarily Adopting Sarbanes-Oxley

CEOs of fast-growing privately-held businesses are more positive than negative in their assessment of how the Sarbanes-Oxley Act has affected corporate governance and transparency in the public company sector. And although one in four of these private businesses have voluntarily adopted Sarbanes "best practices," three in four are opposed to mandating these principles across-the-board.

One-fourth (27 percent) of those surveyed say their company has adopted Sarbanes-Oxley "best practices." Among these, 30 percent have applied its principles in governance, 26 percent in transparency, and another 43 percent in both areas. Adopters tend to be from larger businesses, averaging \$74.2 million in revenues (51 percent above the average). They have grown faster over the past five years, and expect 25 percent higher revenue growth over the next 12 months.

*(Source: Barometer Surveys, PWC, January 2006)*

## Creditors' Resource Corner



Here are some helpful resources that focus on credit and collection issues:

**[www.defaultrisk.com](http://www.defaultrisk.com)**

Refer to this page when trying to gain extra insight into credit risk and default. Access more than 800 free downloadable research papers.

**[www.allbusiness.com/articles/FinanceAccounting/1441-32-1772.html](http://www.allbusiness.com/articles/FinanceAccounting/1441-32-1772.html)**

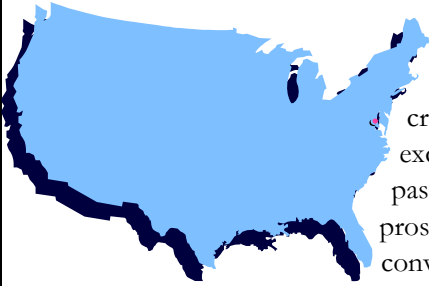
Visit this site when considering the sale of your receivables.

**[www.privacyrights.org/fs/fs27plus.htm](http://www.privacyrights.org/fs/fs27plus.htm)**

If you're working with a debtor from a state outside your region, check out this website. You'll find information on debt collection laws in every state.

## The Latest in Federal & State Law

### ***SPENDING DEBTOR TAKES ADVANTAGE OF CREDITOR***



It is important to review the terms of your own credit line system. Occasionally, a line of credit is misused. This debtor exceeded the credit line, began passing bad checks and was prosecuted. The customer's conviction, however, was overturned when it proved that the bank had issued paperwork stating that the bank would cover the customer's checks. Since that was the case, the customer couldn't have written bad checks.

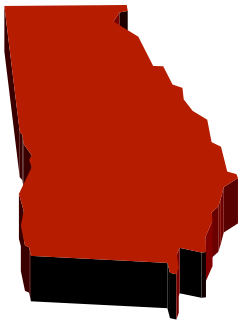
*Goldyn v. Hayes, U.S. Appeals Ct., Ninth Circuit, No. 04-17338, 2/1/06*

### ***BANKRUPTCY APPLIES TO RETIREMENT SAVINGS FUNDS***

If a debtor declares bankruptcy, you may be entitled to money set aside for their retirement. A debtor who filed for bankruptcy argued that his Individual Retirement Account should be excluded from the estate, and the bankruptcy court agreed. The decision was overturned, however, because the purpose of bankruptcy is to give debtors "a fresh start."

*Skiba v. Auman, U.S. Dist. Ct., W.D. PA, Civ. A. 05-261, 05-11208, 2/3/06*

### ***GEORGIA: Creditor contacts impromper debtor representative***



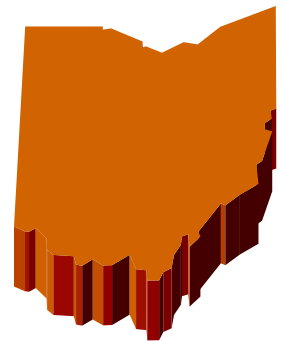
It's a good practice to verify that you're dealing with the appropriate representative for the debtor. Although it eventually won, one creditor had to go to court when a debtor claimed the company had incorrectly dealt with a branch manager, rather than its designated representative. The court ruled the branch manager had sufficient authority despite the debtor's claim otherwise.

*GMAC Mortgage Cop. V. Bongiorno, GA Appeals Ct., No. A06A0053, 1/23/06*

### ***OHIO: Creditors may not be first in line for cash***

Creditors do not necessarily have first access to cash when delinquent debtors receive cash proceeds. A judgment creditor discovered that a debtor had worked on a project, and sued it for failing to pay its debt from the proceeds. The judge ruled: "It's well-settled that a judgment creditor has no better rights to a judgment debtor's property than the judgment debtor."

*Berg C. Sigcom Group, OH Ct. Of App., 8th Dist., No. 86180, 12/08/05*

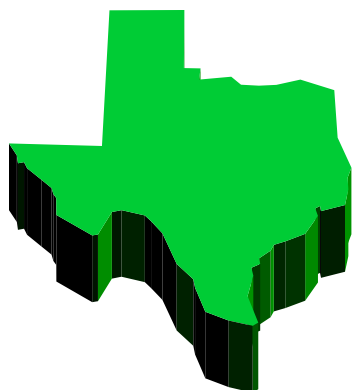


## The Latest in Federal & State Law (cont.)

### **TEXAS: Good luck changing prices in Texas courts**

Debtors may have trouble getting a court to lower your prices because they must prove you acted fraudulently in having them pay the original price. One debtor sued its creditor after finding it hadn't bought as much land from the creditor as it had intended, but it couldn't prove the creditor acted fraudulently, so the price remained the same.

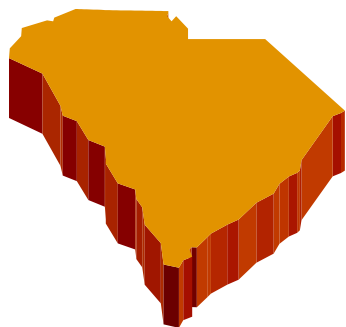
*Cardenas v. Varner, TX Crt. Of Apps., No. 07-03-0537-CV, 12/17/05*



### **TEXAS: Creditors who hesitate often lose**

It's always wise to check the statute of limitations laws in any state in which you do business, and be certain to check your own guaranties for renewal regularly. In this particular case, the debtor defaulted on a promissory note, and the creditor declared breach of contract. Unfortunately, the creditor learned it had waited too long and the statute of limitations had expired.

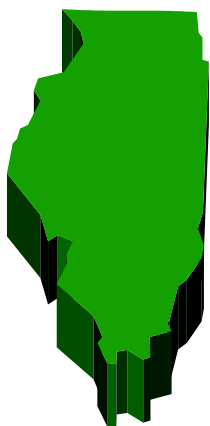
*Mid-South Telecommunications Co. v. Best and Faris, Tex. Appeals Cr., No. 03-04-00586-CV, 1/27/06*



### **SOUTH CAROLINA: Be careful when using compelling arbitration**

When writing arbitration clauses into contracts, remember to stipulate that the clause covers disputes that arise *after* the contract ends. One creditor tried to force arbitration after discovering that a debtor used its financial information to fraudulently obtain credit elsewhere. However, the judge ruled that the dispute was not subject to the arbitration clause because the contract expired when both sides fulfilled their obligation.

*Aiken v. World Finance Corp. of S.C., SC Cr. Of App., No. 4055, 12/12/05*



### **ILLINOIS: Deceptive threats of legal action cause problems for creditors**

One creditor's recent collection letter violated the law by indirectly threatening legal action. The letter stated that "a bad check can be considered a violation of Illinois Statutes" and indicated to the debtor that she may be sued, particularly since the letter was from an attorney. Legal action was unavailable for a stopped payment check under the Illinois Statute.

*Francis v. Snyder, 389 F. Supp. 2d 1034 (N.D. Ill. 2005)*

## Transactions that Threaten Collateral

The value of collateral depends on the priority of the secured creditor's interest in it. Sometimes the borrower's business activities can put the secured lender's interest in collateral at risk. Obvious threats include the failure to insure or properly maintain the collateral. However, there are other activities that can also pose risks to collateral, which are generally not considered by lenders:

**Collateral Sale:** A lien ends when the collateral sells during the normal course of business. Secured lenders generally consider the attachment of their lien to the sale proceeds as an equivalent substitute for the collateral sold. But if the debtor transfers those



funds or commingles them with other property, the lender can lose its security interest.

**Collateral Purchase:** Lenders financing the purchase of property must carefully investigate not only liens against its own customer, but also against its customer's seller in order to avoid losing the priority of its security interest.

**Subsequent Advances:** Lenders providing extensions of credit secured by junior collateral positions must carefully investigate the existing lender's security agreements and commitments to make future advances to the debtor. Existing lender's future advances are secured by its priority lien and can push a junior lender from a secure collateral position. It is advised that Junior lenders obtain agreements from existing lenders limiting future advances or the priority of the liens securing future advances.

**Utility Interruptions:** In addition to the value of perishable collateral that is affected when utilities are suspended, any loss of power can also deactivate security systems, water pumping

devices and other essential services. Lenders may find it difficult monitoring a borrower's payments for utilities. Should a borrower file for bankruptcy, utilities may also be affected. Secured lenders holding collateral that may be damaged by the loss of utility service should actively participate in the first days of a bankruptcy case to ensure that utilities are maintained.

*(Source: debt Magazine, Jan/Feb, 2006)*

### Mergers & Acquisitions

Although M & A activity has slowed in many industries, your company should still watch trends and ask questions so you're prepared for the effects:

-Which company assumes the debt when the companies merge?

-How does a merger or acquisition affect any credit enhancements you've put in place, such as personal guaranties, promissory notes or security interests?

-Do you notice a different buying pattern or other changes in the customer's habits?

## Credit Card Fees Worry American Businesses

A survey conducted by the Association for Financial Professionals (AFP) revealed that organizations are unable to refuse credit cards, even as the high cost of accepting credit and debit cards becomes a growing concern. Half of the respondents speculated that they would lose significant sales if they no longer accepted Visa and/or

Mastercard.

The typical organization accepting Visa and Mastercard reports that the blended rate for accepting cards has risen by four percent, but almost one-quarter report increases of 10 % or more, and 18% report a 10-24% increase.

The survey's respondents employ a

variety of tactics to reduce costs of accepting credit cards. More than half have attempted to negotiate lower fees, 30% restrict consumer choice to certain cards and 29% request unbundled pricing.

Review the survey's full results at:  
**<http://www.AFPonline.org/research>**

*(Source: Association of Financial Professionals)*

## ATMs easy target for “white card” fraud



According to research firm Gartner, Inc., half of all banks don't check to see if the ATM card used to withdraw money is really the ATM card they gave the consumer.

Withdrawals with cloned cards are known as “white card” fraud in the banking industry, because stolen data are loaded onto the back of blank, white plastic cards that look like credit cards. Encoders that write data to the magnetic stripe on blank ATM cards are readily available and sell for \$50 on the internet. The encoders

are sold for legitimate purposes, but can create havoc in the hands of a criminal. Often, cloned ATM cards are the end result of a successful phishing e-mail, which tricks a consumer into divulging a PIN and account number. Numbers can also be obtained from receipts or “shoulder surfing” for PIN codes. One bank reported that it lost \$1 million a month to such fraud, and Tony Hayes, an ATM analyst with Dove Consulting, said the fraud is serious, and represents the first real challenge to the PIN-based security of ATM cash machines.

(Source: MSNBC, August 2005)

## Scoring Collections

There are a number of key factors that are essential to a solid scoring process, though some scoring services are missing some or most of these elements:

**-Skip Element:** Does the scoring process first identify the most recent address of the debtor? If not, the score is relying upon an address that may be old or outdated.

**-Telephone number:** Does the scoring process use the updated or verified address to locate the best telephone number of the debtor?

If the above two items are not done properly, the entire scoring algorithm loses its validity.

**-Scrub element:** Does the scoring process attempt to locate not only bankruptcies and SSDI information, but judgments and liens as well? If not, the score may not reflect that there are judgments and liens that would directly affect the ability to collect the debt.

**-Asset Identification:** Can the scoring process identify not only real property, but such items as cars, boats, planes and other high value items?

**-Type of debt:** Each type of debt has its own characteristics, and some are easier to collect than others.

**-Time since charge-off:** The earlier the better and this needs to be weighted.

**-Number of agencies:** How many agencies have worked the paper? The higher the number, the harder it is to collect.

**-Balance due:** This is also vital and directly affects possible work rules. It is obviously far easier to collect a smaller balance than a larger one, so if the scoring process considers a Probability of Payment factor, the program will give a higher score to a lower balance, which is obviously not the desired result.

(Source: Collection Industry.com)

### When should an account be turned over for collection?

- Notices are being returned with “no good address”
- Failure to respond to your statements or phone calls
- Lapse in payment agreements
- Repeated changes in occupation and address
- 90-120 days without response

When one or more of the above exist, the account should be reviewed for collection.

### Firm's Intern Wins Gold Medal

Saldutti, LLC's intern, **Jessica Sheehan**, rowing as a member of the Princeton University lightweight crew team, won a Gold medal in the recent National Competition at the Murphy's Cup Regatta in Philadelphia. Congratulations!

Information contained in this publication should not be construed as legal advice or opinion, or as a substitute for the advice of counsel. The enclosed materials may have been abridged from other sources. They are provided for educational and informational purposes for clients and others who may be interested in the subject.

# ***Saldutti, LLC***

***Creditors' Rights Division of Lario & Saldutti  
Attorneys at Law***

---

***89 North Haddon Avenue  
Haddonfield, NJ 08033***

## ***Saldutti, LLC***

***Creditors' Rights Division of Lario & Saldutti  
Attorneys at Law***

---

### **Complete Creditors' Rights Service For New Jersey & Pennsylvania**

***“Where Knowledge is Power”***

- Collection of past due accounts on a contingency basis or flat fee
- Commercial and Consumer Debt Recovery
- Defense of Consumer Fraud and related Fair Debt Collection violations and defense against the sophisticated debtor
- Asset transfer litigation; including bankruptcy fraud
- Asset Search-Skip Traces — Fraud Investigations
- Bankruptcy litigation and recovery of property and funds; relief from automatic stay, reclamation of vehicles, including boats, equipment and real property
- London Bridge Link/eCommerce/Electronic Interfaced
- National and international collections

---

**Contact Robert Saldutti at 856-795-6213 (or) 1-877-809-4345**

***rsaldutti@saldutticollect.com***

***www.saldutticollect.com***