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Death won't stop these debt collectors



Glen Stubbe, Star Tribune

Todd Murray quit his old collections job last year after he was asked to call the spouses of recently deceased debtors to try to get them to pay old debts. Murray now runs his own private law practice protecting people from just such tactics by collectors.

Hounded series: A new breed of collector is targeting the still-grieving family members of people who have died without paying their bills.

By **CHRIS SERRES**, Star Tribune

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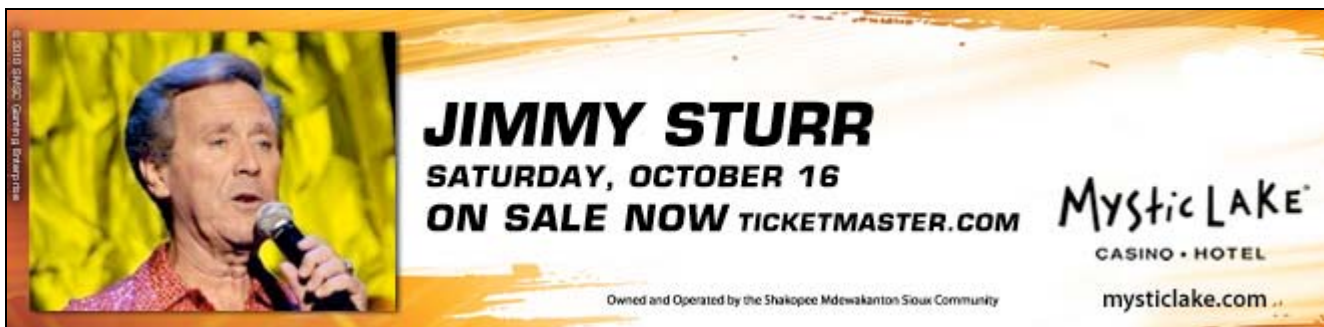
Todd Murray recalls the exact moment when he decided to end his brief career as a debt collections attorney.

In late summer of 2008, his boss at the collections law firm of Gurstel Chargo in Golden Valley informed him that he would be going after a particularly hard-to-tap group -- the dead.

"I remember thinking, My God, how can anyone actually do this?" said Murray, now a consumer rights attorney. "The whole idea of calling someone still grieving from the loss of a loved one, over some credit card debt, seemed so repulsive to me. I just couldn't do it."

Dead men pay no bills, but their grieving families can. Collecting on those debts has become a lucrative specialty in the booming collections industry. Employing tactics developed specifically for persuading the grief-stricken to pay, including the use of sympathy cards and scripted appeals, a select group of collection firms has made this its niche.

Creditors have always had the right to make a claim against a person's estate. In some cases, however, these collectors are working to persuade survivors to pay debts that they



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have no legal obligation to honor, because they weren't co-signers on the credit cards or loans. In others, the collectors are essentially trying to bypass the traditional probate process and get survivors to pay directly rather than take the chance that a court won't honor their claims.

Consumer advocates argue that the collection efforts rely on guilt or misinformation to get people to pay. The elderly are particularly vulnerable, they argue, often willing to write a check just to make the phone calls stop.

"The firms that do this are experts in all the psychological persuasion techniques," said Sally Hurme, an elder law attorney with AARP, an advocacy group for people aged 50 and older. "A month after the memorial service, the flowers are wilted, the casseroles are eaten up, you're all alone, and here's this person calling about a financial situation. ... The first impulse is to just make it go away."

Among the largest of these debt collectors is DCM Services LLC of Golden Valley. At least four other firms -- including Phillips & Cohen Associates Ltd. of Delaware; Estate Information Services LLC of Columbus, Ohio; Weltman, Weinberg & Reis Co. of Cleveland; and West Asset Management Inc. of Omaha

-- also specialize in collecting the debts of the dead. Minnesota's largest collection law firm, Messerli & Kramer, is active in deceased debt collection, though the firm doesn't specialize in the area. All these firms declined to comment or did not return requests for comment.

A spokeswoman for Gurstel Chargo said the firm has worked to collect on the accounts of the dead only in "isolated situations" and doesn't cold-call survivors.

Some outside the industry defend the practice.

Manny Newburger, an attorney who also teaches consumer protection at the University of Texas School of Law, said critics have failed to suggest realistic alternatives to calling family members, particularly when no court documents have been filed identifying the estate's representative. Survivors often fail to realize, he added, that creditors have a right to seek payment.

"If there are assets, shouldn't the creditors be paid before the family walks off with the jewelry and the TVs and the furs and whatever else there may be?" Newburger asked.

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Some household names are turning to these collectors. In court documents, Nordstrom, Citigroup, Wells Fargo & Co., J.P. Morgan Chase and Discover Financial Services have all been identified as clients of firms that collect dead people's debts.

There's a compelling reason to expect this peculiar branch of the debt collection business to keep growing: People are taking larger amounts of debt with them when they die.

The median debt level for families headed by someone age 65 to 74 is growing faster than that of any other age group, according to a Federal Reserve survey. Families in this group have seen their median debt load surge from \$9,500 in 1995 to \$40,100 in 2007. The percentage of these households carrying credit card debt has increased 20 percent over the same period.

"I'm sure there are heavy discussions right now among the major banks and credit card companies on how to handle the debts people are taking to the grave," said Lucia Dunn, an economist at Ohio State.

'When does it end?'

Increasingly, surviving family members

are turning to the courts for help. Collection firms that call families repeatedly are being sued under the Fair Debt Collections Practices Act, a federal law that protects consumers from harassment and misleading tactics by collectors.

In a lawsuit filed last year, Gloria Meyer, 70, of St. Paul, accused West Asset Management of calling her at least 15 times over a six-week period in 2009 about an unpaid loan taken out by her late husband. One of the collectors told Meyer that she was "now responsible for all of her late husband's debts," the lawsuit said. Another collector with the firm threatened to go after Meyer's home, while a third told her to write a \$9,000 check, the suit alleged.

Meyer "cried throughout many of these collection calls," the lawsuit said.

Meyer and the firm settled the case this spring. A spokesman for West Asset Management declined to answer questions, but said deceased debt collections was a "minor part" of its collections business.

Another Minnesota woman, Carol Madison, also went to court. Last year, Madison, 67, alleged in a lawsuit that DCM said it could put a lien on her home to pay the debt of her



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late husband, who died in May 2009. She alleged that DCM also asked if her late husband had any life insurance policies, according to the lawsuit. Madison and DCM settled the case last fall.

An Alabama plaintiff, Carlee Walker, accused DCM Services in a 2008 lawsuit of sending collection letters to her home less than four months after her son committed suicide. Walker said she repeatedly told DCM employees that she was not liable for her son's debts and there were not enough assets to open an estate for him. Even so, DCM called her 45 to 50 times, she alleged.

"The biggest culprits here aren't the collectors but the banks," said W. Whitney Seals, the Birmingham, Ala., consumer attorney who represented Walker. "Not only did we give them billions of dollars in bailout money, but now they're hiring goons to harass our brothers and sisters after we die. When does it end?"

'It becomes impossible'

Banks, retailers and credit card companies used to write off the debts of customers who died.

By turning to collection firms, creditors

discovered within the past decade that they can collect a portion of these debts without themselves risking upset to survivors, consumer attorneys argue.

Wells Fargo and Citigroup acknowledged using outside firms to collect debts owed by the deceased. However, both banks said they don't try to collect from family members who are not responsible for the debts. Citigroup said it prohibits outside collectors from demanding payment from survivors or suggesting that they are liable. A Discover spokesman said the company requires that family members be told up front that they are not liable for a dead relative's unpaid debt. J. P. Morgan declined to comment. At Nordstrom, the retailer uses an outside agency to collect such debts, but asks the agency to contact families only to find out the estate representative's contact information, according to a spokeswoman.

For the collection firms, the rewards can be significant. They can keep as much as 40 percent to 50 percent of the amount collected, about double what they keep from collecting traditional debts. The higher contingency fees reflect the fact that the debts are often more difficult to collect, say experts in the area.

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Prentiss Cox, a law professor at the University of Minnesota and former assistant attorney general in Minnesota, argues that collector calls to family members of the recently deceased "violate common standards of human decency" and should be prohibited. He said the calls are "by their nature misleading" because they are designed to create the impression that people are obligated to pay debts that often aren't theirs.

The firms that specialize in the practice often begin their letters with phrases, such as "Dear executor of the estate," which gives the impression that a family member has a legal obligation to pay, consumer attorneys say.

Cox argues that the firms are essentially trying to leapfrog other creditors by going to survivors rather than filing documents in probate court, which administers a person's estate and is responsible for examining creditor claims.

"What's happening here is that we have people attempting to circumvent the formal legal process, by preying on the family that's left behind," Cox said. "It's just unseemly, and we ought to think seriously about whether these calls ought to be allowed."

At minimum, collectors should be required to disclose to family members of the deceased that they face no legal obligation to pay certain debts, argued Lauren Bowne, a staff attorney at the Consumers Union in San Francisco.

Some collectors argue that many families never file documents with a probate court. Calls to bereaved family members are often the only way to find out whether the deceased had any assets, they say.

Steven Rosso, a St. Paul collections attorney, said in many cases the only information creditors have is an outdated credit file. "Collecting a debt is hard enough even when you know a person is alive," Rosso said. "But if you have a dead debtor, and you can't even call a relative? Then it becomes impossible."

'So sorry for your loss'

Job applicants filed into DCM's headquarters, a brick building in Golden Valley, on a recent weekday. Along the highway, a billboard announcing the firm's job fair promised, "You'd rather work here."

Inside a conference room, prospective employees heard about DCM's on-site perks -- two free breakfasts a week, flexible work

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hours, access to an exercise room, 15-minute massages at your desk. New hires could get a \$1,000 bonus after six months.

Despite the inducements, a few people walked away after learning how they would make their living.

DCM Services is the brainchild of Gary Becker, an attorney and former elementary schoolteacher from Chicago, and James Balogh, a Twin Cities attorney and the inventor of a product called Banko, a national database of bankruptcy filings.

Founded in 1999 as Balogh Becker Ltd., DCM is considered the first in the nation to focus exclusively on the collection of dead people's debts. It claims to manage more than \$1 billion a year in collections. It employs 180 people and generates an estimated \$11.1 million in annual revenue, according to a recent Dun & Bradstreet report.

DCM collectors are trained to begin each call with an expression of sympathy, such as "I'm so sorry for your loss," and to remind family members that the deceased was "a valued customer."

DCM also sponsors a website called MyWayForward.com designed to help

survivors "manage their new roles and responsibilities in the aftermath of the death of a loved one." The site includes a list of myths. Topping the list: "When someone dies, their debts are erased."

The firm's approach, though seen by some as disingenuous, appears to have helped insulate it from litigation.

Compared to other debt collectors, DCM has been the subject of few complaints and lawsuits. The Minnesota Commerce Department, which regulates debt collectors in the state, has just one recorded complaint against the firm.

DCM has been sued three times in federal court. Each case was settled quickly and the lawsuits were dismissed. "That is an astoundingly good performance record for any collections firm, let alone one working in as sensitive an area" as deceased debt collection, said Newburger, the University of Texas consumer law expert. "It proves that it's possible to run a compassionate collection agency."

DCM believes its methods are proprietary.

In 2008, the firm filed a lawsuit accusing three of its former employees of stealing



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confidential "trade secrets" from DCM after they left to start their own collections firm. DCM listed as confidential its "method of integrating grief training with a collections program," as well as "the manner in which DCM leaves telephone messages," according to court documents. The firm also said it had developed "particular words and statements" in communicating with debtors' representatives that were confidential.

The former employees disputed DCM's accusations. "Sensitivity is not a novel concept," they argued in court documents.

'Address to the graveyard'

Technology is helping DCM keep up with its growing business. The company maintains a database of more than 3 million estates. It also has developed tools for determining when estates are opened in many of the nation's 3,400 probate courts, enabling it to file claims quickly.

Still, the business relies on the time-tested tactic of having collectors call, and call, their targets.

At DCM, collectors who stay at the firm longer than six months can be expected to collect \$60,000 or more a month. Those who

fail to make these targets can be dismissed, former employees said.

One former DCM employee, who declined to let her name be used because she is still looking for work as a collector, said she had to make at least 15 telephone calls per hour just to meet her monthly goals.

"People would get so angry they'd say things like, 'I have an address to the graveyard where you can go and collect the money,'" she said.

Murray, the former collections attorney, is relieved that he left the industry.


Before quitting collections work, he made a few calls on deceased debt accounts, but never spoke directly with a grieving family member.

"My worst fears were never realized," he said. "But I knew that, had I kept going, I would have had to make one of those calls. That's when it became clear to me that, look, I just can't do this anymore. Life's too short.

"To me, the whole business is pretty transparent," he said. "These firms don't care about your loss. They just want to get as much money as they can for their clients."

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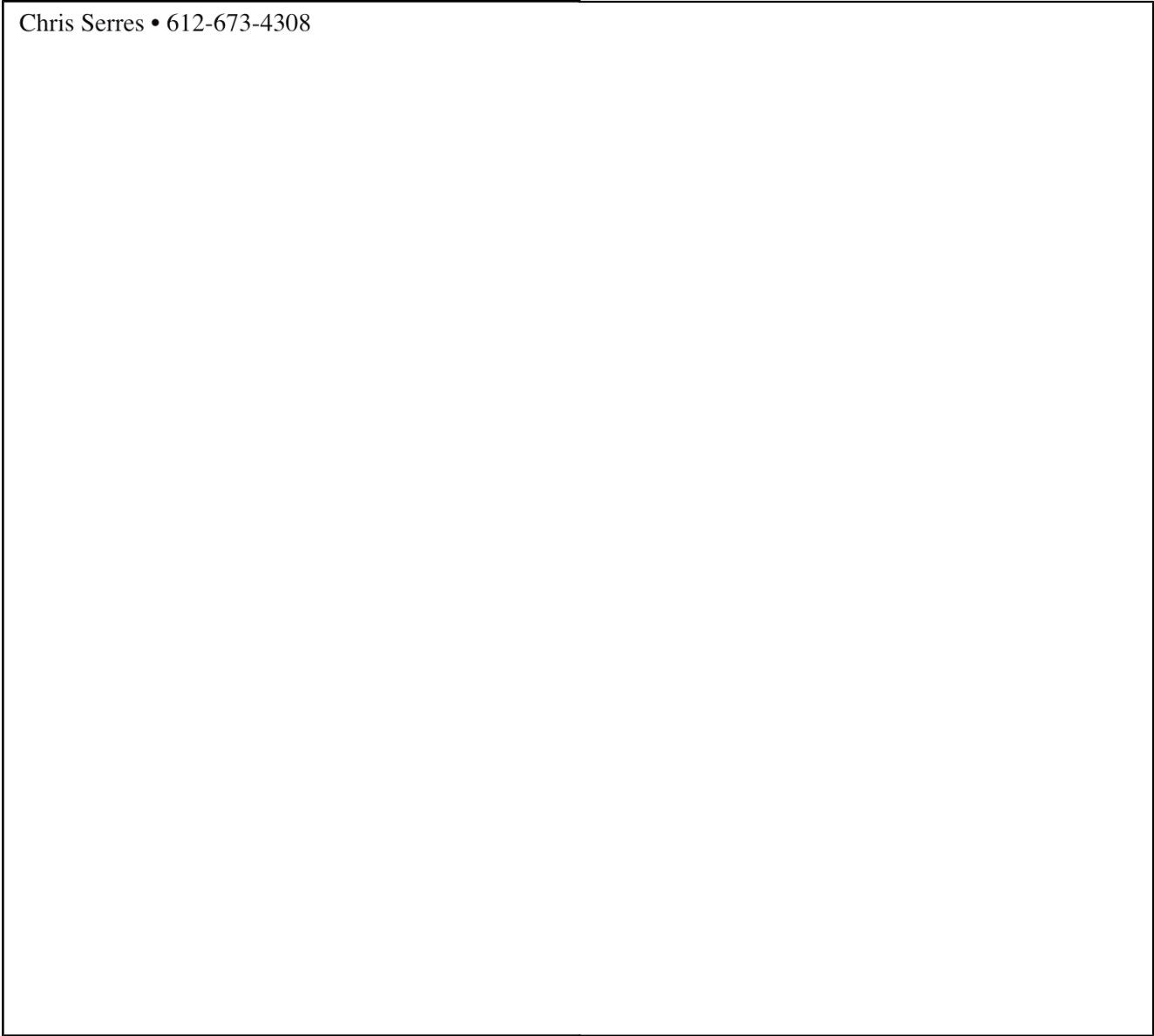
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