Appendices to Testimony

of

Margot Saunders

National Consumer Law Center

Appendices includes case histories of recipients of Social Security, SSI and other federal benefits who have suffered after banks have frozen their bank accounts containing electronically deposited funds.

Case histories are provided from the following states:

Alabama
Georgia
Illinois
Michigan
Mississippi
Montana
New Jersey
Nevada
New York
Pennsylvania
Virginia

In addition, there are letters from legal aid attorneys describing the problems caused to their clients from three legal aid programs:

Neighborhood Economic Development Advocacy Project in New York, NY
Legal Advocacy Center of Central Florida, Inc. in Sanford, Florida
Legal Aid Society of Roanoke Valley, in Roanoke, Virginia

Alabama

Ethel Silmon is a 59 year old, widow. Her only income is Social Security Disability of $889 per month. She has been on disability for several years due to severe anxiety, depression, COPD, and a heart condition. She had a credit card for years and paid regularly until she became disabled and could no longer work. After she became disabled, her income dropped dramatically and she could no longer pay the credit card debt. She defaulted on the debt. The credit card company charged off the debt. The debt was bought by Unifund CCR Partners, who sued her and got a judgment against her for $13,474. They started harassing her to collect the judgment.

Her Legal Aid attorney told her that she was judgment proof and that her income was protected. Her attorney also helped her submit a letter to her bank (Wachovia) about her exempt status. They also sent a letter to the debt collector explaining that Mrs. Silmon's only income was exempt from judgments.

Despite the letters, after obtaining a judgment, the debt collector filed a Writ of Seizure against Mrs. Stilmon's bank account held by Wachovia. The bank promptly froze her bank account. The writ was for $15,895.44 and the bank informed Mrs. Silmon and her attorney that they would not release the funds in the client's bank account until the full amount was collected or they received a court order dismissing the writ. At the time, Mrs. Silmon had less than $1,000 in the bank and she had written checks for her mortgage, electricity, medical expenses, and groceries that the bank refused to honor. The bank also charged Mrs. Silmon overdraft fees on each of the checks she had written.

The Legal Aid attorney called the bank several times, as well as the creditor, and the creditor's attorney. All call were ignored. The attorney filed several motions with the court to dismiss the writ. Almost a month after the funds were frozen in her Wachovia account, the writ was dismissed, the funds were released, and the overdraft fees were refunded.

During the month without access to her money, Mrs. Silmon suffered several severe anxiety attacks, she had to go to the food bank for food, and had to rely on her doctors for samples of medicine. She is still fearful that they will try it again and states that she can not handle it if they do.

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Georgia

Ms. T F is a 43-year-old resident of Wilkes County, Georgia. In 1999, Ms. F was in a car accident that left her unable to walk for over a year. She has had approximately ten surgeries on her legs and feet since the accident. After her accident, she used her credit card to meet her expenses because she did not have any income. After the credit card company raised the minimum monthly payment amount, she was no longer able to make the payments and the credit card company subsequently received a default judgment on the debt. In 2001, Ms. F began receiving Social Security disability income.

On March 29, 2006, the credit card company filed a garnishment against a bank account held by Ms. F at Regions Bank. The garnishment summons instructed Regions Bank to immediately hold all property belonging to Ms. F "except what is exempt." On April 3, 2007, the Social Security Administration electronically deposited $1,012 in disability income into her bank account. That same day, Regions Bank froze her account, withdrew $807.57 pursuant to the garnishment, and then withdrew an additional $75 for a garnishment fee. After the checks Ms. F had previously written all bounced due to the freeze on her account, Regions Bank charged Ms. F an additional $217 in NSF fees.

Ms. F learned about the garnishment on April 7, when she attempted to make a withdrawal at her local branch. She told the branch employees that she had Social Security in her account and they could not freeze it. An employee told her to get a lawyer to write a letter to the bank stating that Social Security is exempt and the bank might be able to release the funds. Ms. F asked a local attorney to write such a letter pro-bono and then took the letter to the bank branch. Ms. F did not know that Georgia Legal Services Program could assist her with a garnishment and she could not afford to hire a private attorney.

On May 11, 2006, the bank filed an answer in the superior court asserting that $807.57 in the account is subject to garnishment. It subsequently sent the money to the registry of the clerk, who then forwarded the money to the creditor. The garnishment answer form has a space for the bank to list the amount of exempt funds in the bank account. The bank did not describe any of the money in the account as exempt.

Ms. F had to borrow money from her family to pay the NSF fees and other charges charged by merchants after her checks bounced. She had to postpone a surgical operation on her knee because she could not afford to travel to the doctor's office during this ordeal. The garnishment cause Ms. F significant stress and she could not afford to fill her prescriptions Nexium and Celebrex. Her inability to take these medicines, combined with the stress caused by the garnishment, caused her to eat significantly less during the month of April. She lost approximately fifteen pounds that month.

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Illinois

This is a letter from this client to Senator Baucus

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September 17, 2007

Senator Max Baucus
Chair, Committee on Finance
U.S. Senate
Washington, D.C.

Dear Senator Baucus:

My name is Juanita Johnson. I am 74 years old and my only income is from Social Security and a VA pension.

In March 2005, a judgment was entered against me from an old credit card account. When I was originally sued on this account, I went to court to explain that I believed I had paid the bill in full. I had cut up my credit cards seven years earlier and no longer had any records of the account. I tried to reach the original credit card company, but they were no longer in business. The judge gave me a list of attorneys, but no one would agree to represent me. I went to court myself and objected and told the court I did not owe the money. I asked for documentation about the
account. The collection lawyer said that his client had bought the account and that this was all interest I supposedly owed. He gave the court an affidavit from his company and a judgement was entered against me over my objections.

A few months later, I was commanded to come back to court to disclose my assets. I was sworn under oath and interviewed outside the courtroom where I told the collection lawyer that my only income was my VA pension and Social Security. He said, "Well you need to make arrangements" to make payments, so I agreed to pay the $20 a month. I was not aware that my Social
Security and VA pension were exempt from garnishment.

I made some payments, but even $20 per month was more than I could afford. In late 2005, I had to go into a nursing home temporarily and missed two payments. Then all of a sudden in January, 2006, I received notice from my bank that my rent check had bounced. My landlord also called me screaming, "what is going on?" I had never had a problem paying my rent before. I couldn't understand what in the world was going on, so I contacted my bank and was informed that my account was frozen.

I was very upset, constantly crying, I was a basket case, and I had to be admitted to a psychiatric hospital for four days on heavy medication after my account was frozen. Finally, I was able to reach a legal aid lawyer who advised me that my income was exempt from garnishment, and no collectors should be able to take it even after it was deposited in the bank.

I was without access to my funds for three weeks, and bounced about six checks - the bank charged me $25 per check, plus $150 for the citations freezing the account, plus fees for overdraft and late fees on my other bills. I had to ask my doctor to write a letter to electric company to keep my lights on, and had to make arrangements with the phone company to keep my phone service. Finally my lawyer was able to get the freeze lifted, but only after the collection lawyer said they had no record of my many conversations with them where I told them my only income was pension.

Then they didn't show up when my lawyer went to court after they agreed to lift the freeze, and it was another four days without access to my money. The bank explained to me that they act immediately when they get the order to freeze the account, but they took their time releasing my funds even after they got the order lifting the freeze.

I have direct deposit, so my bank could easily know that my only deposits in the account were from my VA pension and Social Security.

Sincerely,

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Michigan

A 59 year-old, disabled man from Muskegon contacted CALL after SSD and VA benefits were wrongfully garnished from his bank account, resulting bounced checks and the accrual of overdraft fees. CALL's attorney intervened with the creditor and the bank, obtaining both the return of $586 in garnished funds and a credit for $66 in overdraft fees.

A disabled woman in Van Buren County contacted CALL following the garnishment of her bank account, which was comprised entirely of SSD and SSI benefits. The Social Security benefits were the woman's sole source of income, and this fact was known to the judgment creditor due to evidence produced at a debtor's exam several months prior to the garnishment. The hotline attorney was successful in convincing the opposing attorney to lift the garnishment without forcing the woman to resubmit proof of receipt of Social Security benefits (which would have caused a hardship to the woman, who suffers from mental illness), and also in convincing the opposing attorney to persuade his client cease all further collection activity against the woman, since the attempt to knowingly garnish exempt funds arguably constituted a violation of the Fair Debt Collection Practices Act.

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Michigan

Betty Reignbow (age 62) of East Lansing Michigan, had her bank account garnished sometime around August 7, 2007, even though virtually all the funds in her account came from Social Security and SSI disability payments. Betty is in her mid-60s, has numerous disabilities, and cares for her adult disabled son who is in his twenties. The funds that go into Ms. Reignbow's account at Fifth Third Bank each month are $511 for her own social security (plus another $69.70 in SSI funds), and $530 from her son's disability. During the month prior to the garnishment, her church gave her $200 to fix a broken pipe in her home, and this sum was also deposited in the account. She learned on August 7, 2007 that her bank account had been frozen, when she tried to buy gas with her ATM card. Despite repeated pleas to the bank her money was not released until a month later when her cousin, who is a law professor, contacted the bank's lawyer. In the meantime her September income from SSA was frozen as well.

Mrs. Reignbow survived during the month without access to her funds because of the kindness of her relatives.

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Mississippi

Client is 59, on social security disability for severe arthritis & anemia. She was sued on a credit card on 11/19/2004 and timely answered 12/15/2004, stating among other things in her answer that she was disabled and unable to make payment, and the answer was filed of record. So, at all times creditor was on notice of disability. Despite having answered, a default was taken against her without notice on May 31st, 2005, in the amount of $9768.18, plus interest, attorney's fees and costs, and on March 13th, 2007, again without notice, a garnishment was entered in the amount of $16, 380.16. No notice was given her of the garnishment.

At the time of the garnishment she had $3,421.13 representing a current month's social security check for 688.00 clearly apparent on her account transaction record and exempt pursuant to 42 U.S.C. Section 407 and a FEMA award for her Katrina losses also exempt by law.

No notice was sent her by her major national bank of the garnishment until her checks began to bounce at which point on April 16th, she was mailed an insufficient funds notice by her bank which did not reference the garnishment, her exemption rights, or how to assert her exemptions.

Client had life insurance, and Medicare prescription Part D payment automatically deducted. She told the bank her funds were all Social Security and FEMA funds and she was told there was nothing they could do. They did direct her to the creditor's attorney, who - most unusually - released the garnishment but the Court did not send a copy to the bank. It was not until August 27th that we were able to convince the bank to release the funds, this took me over 4 hours on the phone and fax machine. To date they still have not refunded the bounced check charges.

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Montana

June Tift – Billings, Mt.

Ms. June Tift has been disabled since childhood due to a traumatic brain disorder. She is 51 years old this year and lives in Billings, MT on Social Security of about $720 per month. She contacted Montana Legal Services Association (MLSA) after Chase Bank obtained a default judgment against her, and US Bank – the bank in which her Social Security funds had been electronically deposited – had permitted Chase to sweep her account. We were able to provide proof of her Social Security to the creditor's attorney and he returned the $107.74 swept, but US Bank would not return their "Non-Refundable" Levy fee of $75.

Even after we showed Chase's attorney that Ms. Tift's only income was exempt Social Security income, he sent a collection notice to Ms. Tift on a Discover card account. We contacted him and reminded him of Ms. Tift's collection proof status and he closed his account. Unfortunately, Discover sold the account to Johnson Rodenburg & Lauinger who began collection efforts in the summer of 2006. MLSA sent them a letter of representation and demanded that they cease contacting our client and informed them she had only Social Security for income. For months they continued to contact our client in violation of the Fair Debt Collection Practices Act. In February 2007, an attorney from Johnson Rodenburg and Lauinger contacted MLSA and asked for proof of Ms. Tift's Social Security. In April 2007, MLSA sent proof of her Social Security status. In July 2007, despite the repeated notices that Ms. Tift's only income is exempt, Johnson Rodenburg and Lauinger filed suit against Ms. Tift to collect her Discover debt which has grown to over $6000, because of additional fees and interest. MLSA is representing Ms. Tift in that action.

Dan Murray- Livingston, Mt

Mr. Murray, of Livingston, Mt., contacted MLSA when his bank account at Wells Fargo was attached because of a judgment from an old credit card debt. Wells Fargo allowed approximately $80 to be taken from his account. Mr. Murray lives entirely on SSDI and VA Compensation benefits of approximately $860 per month. He is 56 years old. He became disabled when he broke his neck and back. His back injury healed poorly and is inoperable. He has not been able to return to work as a truck driver. Mr. Murray contacted MLSA through our statewide Helpline and with the information provided, he was able to file his own request for a hearing on exempt funds and had his $80 returned to his account, but he too lost his "Non-Refundable Levy Fee" of $65 from Wells Fargo. He has since closed his bank account so that he does not have to fear further sweepings of his account. Mr. Murray is contemplating bankruptcy at this point because he continues to get calls from collection agencies and fears being sued again and having his benefits taken out of his bank account.

Lois O'Brien

Ms. O'Brien is a 60 year old woman on SSDI. She was sued by Collection Bureau Services of Missoula Montana for unpaid medical debts. Although she is on SSDI she had not yet been awarded Medicare and she had substantial medical bills. Her bank account at US Bank was swept and she contacted MLSA. MLSA was able to contact the attorney for Collection Bureau Services who agreed to lift the levy upon seeing proof of her SSDI and returned the $207.00 to O'Brien. Unfortunately, US Bank would not return their $75 Non-Refundable levy fee. Ms. O'Brien closed her account with US Bank and has moved to Rapid City, South Dakota.

Unfortunately, I have many more stories like these. I would say that on average we get one or two of these types of cases per week. We know there are many more Montanans out there who never come to MLSA and do not know how to get their exempt funds back once they are attached. I hope these stories help.

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New Jersey

Ms. H found out about a levy on her bank account when she went to buy needed medication. Of course, she was unable to purchase her meds because the creditor levied both her savings and checking accounts. This lady's sole source of income was exempt funds, and therefore the entire balance of each account was completely exempt. Moreover, each levy was for an amount less than the New Jersey statutory $1,000 exemption, and even collectively did not exceed $1,000.

Ms. H's legal aid lawyer contacted the creditor's counsel and provided documents to show that the funds were entirely from Social Security and therefore exempt from attachment. The creditor's attorney wrote to the Levy Officer at the bank to have the bank funds released. However, the bank did not respond for more than a week, and the court clerk insisted that there was nothing that could be done to free up Ms. H's funds in the absence of cooperation from the bank. The state court procedure permitted an appeal to the court for an order releasing the levies, but the judge assigned to hear these appeals was away on vacation. At this point, our client had been without her medication for more than a week.

The legal aid attorney contacted the attorney for the bank and requested assistance. With the cooperation of the creditor's plaintiff's counsel, the bank finally agreed to release Ms. H' funds.

The process took over two weeks, during which time Ms. H was without her life supporting medication, as a result her health deteriorated.

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New York

Anne D., 45, a Pilates instructor who suffers from mental illness and lives in Manhattan, discovered that her bank account, which contained only exempt funds, was frozen when she attempted to withdraw cash from an ATM last October. The victim of identity theft, Ms. D. was never served with a summons and complaint or a restraining notice, and did not know a default judgment had been entered against her in another county. While her account was frozen, Ms. D. could not pay her rent, buy food, or purchase medicine. In addition, her bank charged her fees for returned checks. Although a bank manager helped Ms. D. contact the plaintiff's attorney and even informed the attorney that Ms. D.'s account contained only exempt funds, the bank said it could not violate the restraining order by lifting the restraint on its own. The account remained frozen until Ms. D. successfully vacated the default judgment several weeks later.

The funds in Ms. D.'s accounts at that time consisted of Supplemental Security Income (SSI), which is exempt from collection pursuant to 42 U.S.C. § 407, and earned income, which is exempt from collection, pursuant to N.Y. Social Services Law § 137-a. The bank was Citibank.

George M., 57, of Manhattan, worked for the U.S. Postal Service for 22 years, and for the New York State Department of Motor Vehicles for five years, before he became disabled and unable to work approximately four years ago. Now homebound because he is unable to walk without great difficulty, he relies on his Social Security Disability checks, which are directly deposited into his bank account. Despite the fact that all of his income is exempt from collection, his bank account was frozen last June. "I thought that because my money comes from the federal government, they knew they couldn't touch it, but they did anyway," he said of the creditor. Because Mr. M. is homebound, he pays all his bills -- including his rent -- online, through his bank account. Once his bank account was restrained, he had no way of paying his bills, and considered closing his bank account to prevent it being restrained again.

The bank was Chase.

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New York

Ms. B, is a 72 year old resident of Washington Heights. Her only income is her monthly Social Security check. She deposits her check into a Chase checking account each month, and writes checks against it to pay her rent, her utility bills, and various other monthly bills, including several credit card accounts. Since her income is not sufficient to pay all of her monthly bills, she receives loans of money from time to time from family members, which she deposits into her Chase account.

Shortly, after September 27, 2005, Ms. B received a notice from Chase informing her that the bank had been served with a restraining order by a judgment creditor. The amount of the judgment, which resulted from unpaid dental bills, was $920.15. At the time, Ms. B's account balance was $929.54. Under New York Law (CPLR § 5222), the bank is required to freeze up to double the amount of the judgment for one year. There are also provisions allowing the account holder to vacate the restraint under certain circumstances, such as when the funds in the account are exempt from execution.

On September 29, 2005, a $53.83 check that Ms. B had written to Time Warner Cable Company on September 25, 2005 was presented to Chase for payment. Since there were no unrestrained funds in the account to pay the check, Chase refused payment, charged Ms. B a $30 NSF fee, and debited her account $30, reducing the balance from $929.54 to $899.54

This process repeated itself throughout October and November. On September 30, 2005, the bank refused payment on a $30 check to Household Finance and debited Ms. B's account for another $30. On October 3, 2005, the bank refused payment on three more checks and debited Ms. B's account for $90 - - $30 for each check. On October 4, 2005, the bank charged $60 in NSF fees for two additional checks, including a second charge for the $53.83 check to Time Warner Cable which had been presented to Chase for the second time. On October 5, 2005, Chase debited the account for another $60 because two "pre-authorized debits" - - one for $4.15 and one for $0.95 - - could not be completed. Ms. B had at some point authorized the bank to withdraw small amounts from her account every month to cover some card issued by the bank.

Over the following months, the bank pre-authorized withdrawals for $4.15 and $0.95 were blocked by the restraining order. By November 22, 2005, the funds in Ms. B's checking account were completely exhausted. The bank continued to charge NSF fees, however. The account balance had reached -$637.79 by the time Chase zeroed out the amount on April 12, 2006. (This was $1,567.33 less than the starting point on September 27, 2005).

The net result of this series of events is that Ms. B's lost the entire $929.54 which had been in the account on September 27, 2005. (In fact, her losses were probably higher than this if, as is quite likely, her other creditors charged her late fees when Chase refused payments on checks Ms. B had written to them). Meanwhile, the judgment creditor who had executed on her bank account received exactly nothing: Because Chase's NSF fees consumed the entire account balance, there was nothing left over for the dentist. In effect, the serving of the execution by the

judgment creditor caused the entire balance of Ms. B's account to be transferred, not to be judgment creditor, but to Chase.

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Nevada

We have had a number of clients recently who are having bank accounts garnished and the banks have done a couple of things that we don't believe are right - one action is to charge the client's bank credit card if the amount in the checking account is not sufficient to pay the garnishment levy (e.g. Wells Fargo checking account does not contain $400, but the issued Wells Fargo Visa credit card has $400 of credit on it, bank simply pays the $400 and charges the credit card, the garnishment notice from the creditor was for "bank accounts"); the second action is paying off the entire amount of the garnishment levy when the client does not have the amount in the checking account, but the client has overdraft protection, and the bank then charges the client the fees for the overdraft (e.g. garnishment levy is for $400, client has $100 in checking account, bank pays $400 creating $300 overdraft and charges client $45 fee under the overdraft protection).

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Pennsylvania

J and his wife, now deceased, purchased a Ford Focus automobile and entered into a retail installment contract for the purchase. After defaulting on this contract, the car was repossessed and sold, and a default judgment was entered against them for the deficiency, costs, and attorney fees totaling $12,370.64.

J has been disabled and unable to work since 1996 and is now sixty-seven years old. His sole source of income is Social Security disability payments of $963.00 per month.
J is a customer of CSB Bank, where he has a checking account into which the monthly Social Security payments are electronically deposited each month. On each such electronic deposit, a notation is prominently displayed identifying the source of such deposits: "SSA US TREASURY 303 SOC SEC."

J's creditor on the judgment against him and his wife obtained a writ of execution from the court clerk, which was served on CSB Bank, instructing it to attach all J's bank accounts that are subject to attachment. Although CSB Bank had actual knowledge that the funds in J's account were Social Security payments (and therefore exempt from both execution and attachment), the bank nevertheless freezed J's account for more than a month.

J's account was eventually unfrozen, but CSB Bank charged J $340.00 in legal fees on the basis that it incurred fees to clear up the matter. These charges were simply taken by CSB Bank from J's account at the bank which contained only Social Security benefits.

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Virginia

Mrs. Ruby Fauntleroy is 74 year old resident of Arlington, Virginia. She is a grandmother living in low-income housing. She tried for years to pay off the Capitol One debt (about $4,000, incurred mostly due to medical needs). She would pay $50 per month, but they demanded more, telling her that she might as well send nothing, if she's only going to send $50/month. So, she said ok. Now, due to interest and late fees, that same debt is up to about $7,000.

After Capitol One obtained a judgment against her in Richmond, Virginia, a garnishment order was also in Richmond. Her bank account in Arlington was frozen pursuant to the garnishment order before her legal aid attorneys had sufficient time to have the case removed to Arlington or for her to submit any response. However, both the Mrs. Fauntleroy's own Arlington bank and Capitol One, the garnishor, were notified in person and in writing about the exempt status of the fund in her bank account.

When her bank account was frozen, she borrowed money to pay her rent; she stopped the direct deposit of her SSA check to her bank; she stopped buying medicines; she started buying money orders to pay her bills. Money orders are difficult because she has physical difficulty getting around, and no transportation other than public. And, money orders drive up the cost of paying her bills.

But, she is now too frightened of the banking system to trust them again. So, she keeps a few dollars in her account to keep it open, but is too afraid to use it.

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September 17, 2007

Margot Saunders
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Re: Restraint of bank accounts containing exempt income

Dear Margot:

I write to describe a problem of epidemic proportions that affects seniors and people with disabilities in New York City. That problem is the restraint and seizure of bank accounts containing exempt income, such as Social Security and SSI, by debt collectors.

I am a Staff Attorney at the Neighborhood Economic Development Advocacy Project (NEDAP), where I direct NEDAP's Consumer Law Project. One of my responsibilities at NEDAP is to staff and direct the NYC Financial Justice Hotline, which provides free legal advice, information, and referrals to low income residents of New York City facing problems involving abusive lending and debt collection practices. Launched in September 2005, the Hotline is one of the only resources in New York City for low income people who need help with consumer problems. With one attorney, one paralegal, and a handful of interns and volunteers, we have served more than 2,000 individuals in the last two years.

The single most important issue affecting our clients is the restraint of bank accounts containing exempt income, such as Social Security and SSI. For example, in the first six months of 2007, we took 91 calls from individuals who could not access their exempt funds because they had been frozen by a debt collector. We receive approximately 15 calls per month on this topic. We estimate that 20% of our workload is devoted to helping people gain access to their government benefits and other exempt funds that have been deposited into bank accounts and then wrongly restrained by debt collectors.

When our clients lose access to their exempt income, they often fall behind in rent and utility payments or go without food. They have to borrow money from friends or roommates just to survive. Perhaps more important is the psychological toll of losing access to funds that represent a lifeline. Many of our clients live in fear that their account will be frozen multiple times. Some close their bank accounts and resort to paper checks, money orders, and check cashers because they cannot tolerate the uncertainty. Others make payment agreements that they cannot afford, going without necessities because they feel they have no choice if they wish to protect their income from restraint. As a final sting, the banks charge our clients up to $150 for each restraint, plus $35 for each check bounced while the account was frozen. This money is often not refundable and can easily amount to one quarter or even one third of our clients' total monthly income.

Below are case examples of clients who have called our Hotline because their exempt income was restrained by creditors:

1. Ms. Cassandra Suggs lives with her eleven year old daughter in public housing in New York City. She banks with Apple Bank, a New York State bank. Ms. Suggs has a number of outstanding credit card debts that she has been unable to pay since she became disabled about four years ago. She is currently homebound and in a wheelchair due to osteoarthritis and various other medical problems. Her only income is Supplemental Security Income (SSI). Her daughter is also disabled and also receives SSI.

Recently, Ms. Suggs was sued by a debt buyer on one of her old credit card accounts. She was not served with a summons, and her first notice of the lawsuit occurred when her bank account containing her SSI was frozen in September 2007. She notified the plaintiff's attorney of her exempt SSI income. Because she had deposited some of her daughter's SSI as cash into her own account to pay some bills, the attorney accused her of having commingled funds and refused to release the account. Our office eventually assisted Ms. Suggs to obtain a court order vacating the judgment and releasing the funds. But during the one month period that she had no access to her money, she could not pay rent and she received a notice of pending eviction from the public housing authority. Ms. Suggs is now one month behind in her rent and is also behind in her utility bills. Her bank charged her a legal process fee of $150, which they have not reversed.

2. Mr. L is 62 years old and disabled due to a heart condition. He is largely homebound, and lives on less than $700 a month in Social Security and pension benefits. When Mr. L began receiving letters from debt collectors about two years ago, he worried that his creditors would seize his exempt income, leaving him unable to pay his rent and medical expenses. Mr. L asked his bank – Chase Bank – whether it could protect his exempt income from creditors. A Chase employee stated that if the bank received a restraining order, it would have no choice but to freeze Mr. L's exempt funds, and that it would most likely take him three to six months to obtain their release. After this conversation, Mr. L cancelled his direct deposit and closed his bank account. For several years, he spent $57 each month to cash his check -- $27 on check cashing fees and $30 on a car service (he was unable to walk the three blocks to the closest check casher).

Recently, Mr. L decided to open a bank account again after he was diagnosed with terminal cancer and a friend of his was robbed at knifepoint after cashing her Social Security check at a local check casher. Two months later, his checking account at Commerce Bank was frozen by a debt collector even though it contained nothing but directly deposited exempt benefits. Although Mr. L eventually negotiated release of his account, he was without access to his funds for over a week.

3. In April 2007, Ms. Henrietta Sue Green's bank account at Chase Bank was frozen by a creditor who had obtained a default judgment against her. Ms. Green is a senior and disabled; she survives on Social Security, Workman's Compensation, and a small pension. Upon learning of the restraint, Ms. Green immediately notified the creditor and her bank that her account contained only exempt funds, but the creditor maintained the restraint for 13 days. During this time, Ms. Green was unable to buy food or medicine and had no money for transportation. She suffered unbearable anxiety and lives in fear that her account will be restrained again.

In October 2006, a debt collector restrained Ms. Beth Spine's bank account even though it contained nothing but directly deposited Supplemental Security Income. Ms. Spine had no access to her account for five weeks, and she lost two months of benefits. She had to apply to a local charity for funds to

pay her rent, and she had to borrow money for food from her roommate. Eventually, she agreed to make $50 payments in return for the release of her exempt funds, which never should have been restrained. In addition, her bank charged her $100 for processing the restraint. Approximately 7 months later, after paying off the first account, Ms. Spine was sued by a different debt collector. Although she disputed the debt, Ms. Spine agreed to make $25 monthly payments because she felt that if she did not agree to make payments, her account would be frozen again. Ms. Spine feels that her SSI benefits are not safe in the bank, and that the federal protections are meaningless. Ms. Spine cannot afford these payments and has been skipping meals and undergoing other privations in order to pay the debt collectors.

We have many more stories just like those above. Please let me know if I can provide you with more information about this distressing problem.

Sincerely,

Claudia Wilner
Staff Attorney

Legal Advocacy Center of Central Florida, Inc.
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September 17, 2007

Margot Saunders, Esquire
National Consumer Law Center
1001 Connecticut Avenue, NW
Washington, D.C. 20036

Re: Garnishment of exempt benefits

Dear Ms. Saunders:

We write to support your testimony regarding the adverse effects resulting from garnishment of clients' bank accounts which contain direct deposited Social Security and other exempt benefits. I offer some descriptions of particular incidents, and enclose a copy of a complaint we filed on behalf of a current client against a national bank whose legal order processing policy hurts low income families.

Legal Advocacy Center of Central Florida, Inc. is a non-profit legal services program handling impact cases throughout a 12 county area in Central Florida. We work closely with the federally funded Community Legal Services of Mid-Florida, Inc. (previously Central Florida Legal Services, Inc., Withlacoochee Area Legal Services, Inc. and Greater Orlando Area Legal Services, Inc.). We have provided legal aid services since 1969 through a variety of predecessor agencies. We currently handle a region of approximately 485,000 low income persons which includes approximately 55,640 disabled persons.

Since January 1, 2007, CLSMF and LACCF have served 845 clients with

representation, advice, or referral in matters of debtor relief and consumer defense. About 54% of these were disabled or retired former workers or their dependents who had no earned income or are dependent upon Social Security disability, retirement, survivor's or dependent benefits, Supplemental Security Income (SSI) or other federal or state benefits exempted by law from levy or garnishment by creditors.

Most of our clients receiving these benefits are strongly encouraged to receive a direct deposit each month from the U.S. Treasury or state source into their individual bank accounts. This saves them from the cost of cashing their checks, safeguards their money until it is needed, provides regular statements showing their expenses, and gives them the capacity to pay landlords, utility companies, grocery stores, and other creditors by check.. Furthermore, having a bank account is convenient, or even necessary, as many low income retirees have limited access to transportation or are shut-ins. When these clients' only resources are restrained, they may go hungry or without daily essentials, often including medical care and medication, electricity and other household expenses.

In a particularly egregious illustration of this problem, Deloris W.'s Wachovia bank account was frozen in 2005 due to a NY default judgment obtained without her knowledge. Their Wachovia account contained two direct deposit Social Security checks and a small private disability check for the husband. All funds in their account were exempt from garnishment under Florida and federal law. She had not lived at the New York address where service was made for over three years. She and her disabled husband have been Inverness, Florida residents since 2004. When the garnishment attached, Ms. W. had no access to any funds to pay for her regular living expenses. She signed a release for the bank to issue a check for $3107.47 to the judgment creditor so that she could keep the remaining funds in her account ($1482.64). She did so under pressure because Mr. W. was scheduled for chemotherapy and they needed some money for the chemotherapy treatment co-pay. Pursuant to its deposit agreement, Wachovia took $100 out of the account for its legal processing fee.

In 2006, LACCF filed suit in Volusia County, Florida to challenge the practice of Wachovia Bank N.A.'s honoring out-of-state garnishment orders against bank accounts which contain exempt funds. In *Judith Graziano v. Wachovia Bank* (Case

2006-31052-CICI), Volusia County, Florida, Wachovia, acting pursuant to receipt of a New York default judgment, restrained all funds in Ms. Graziano's bank account, including Social Security funds, without following any of the Florida post-judgment garnishment procedures. Ms. Graziano had not been a resident of the state of New York for 4 years when her account was frozen. *Fla. Stat.* 77 provides that all judgment debtors are entitled to notice of their right to claim exemptions and an opportunity for a prompt hearing before a local court to determine whether the funds restrained are exempt. Wachovia has defended this suit, arguing that it is obligated to freeze the exempt funds pursuant to the New York garnishment order and that Ms. Graziano, as a Florida resident, is not entitled to the protections of Florida garnishment procedures.

We would be happy to provide additional details, if needed.

Sincerely,

TREENA A. KAYE
Regional Counsel/Managing Attorney

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HENRY L. WOODWARD General Counsel

Senator Max Baucus
Chairman, Senate Committee on Finance
United States Senate
Washington DC 20510

Re: Garnishment of exempt federal benefits

Dear Senator Baucus:

I understand that your Committee is investigating the problem of creditor garnishment of exempt Social Security and other federal benefits from bank accounts of recipients. This is a chronic and serious problem in the part of Virginia served by my legal services program. I would like to bring our experience to your attention, and to that end will describe that experience, attach some client stories, a newspaper article, a court order and form, and copies of the letters our clients receive from banks when they are garnished.

1. I am General Counsel (executive director) of a state-funded legal services program of four lawyers which shares primary responsibility with a federally-funded office of one lawyer for meeting the civil legal needs of 32,053 low income people in a five-county area around the city of Roanoke, Virginia.

2. The Legal Aid Society in the twelve months ending June 30, 2007 served 388 clients with representation, advice, or referral in matters of debt relief and consumer defense. About half of these were disabled or retired former workers or their dependents who had no earned income or earning potential, but were at best dependent upon Social Security disability, retirement, survivor's or dependent benefits; Supplemental Security Income (SSI); Veteran's benefits; Railroad Retirement; Black Lung; Temporary Assistance to Needy Families (TANF);

Worker's Compensation; or other federal or state benefits exempted by law from levy or garnishment by creditors.

3. Most of our clients with these forms of benefit income receive it by direct deposit each month from the U.S. Treasury or state source into their individual bank accounts. This method is advantageous in that saves them from the cost of cashing their checks, safeguards their money until it is needed, provides regular statements documenting their accounts, and gives them the capacity to pay landlords, utility providers, grocery stores, and other creditors by check, which is less costly than money order and furnishes better proof of payment.

4. Most of our clients who are elderly or disabled have in their earlier lives prided themselves on keeping their bills paid and their credit clean. For many it is a source of humiliation and anxiety when their reduced income no longer allows them to pay such major debts as medical bills or credit card accounts swollen beyond recognition with assorted charges and mushrooming interest. Many go hungry or without daily essentials in the effort to keep up with obligations they can no longer realistically afford to pay.

5. An average of about two disabled or elderly clients per month come to Legal Aid with the complaint that their Social Security or other federal benefits have been frozen by creditor garnishment of the bank account into which they were directly deposited. The client is never aware that this is happening until after the freeze is in effect. I believe the debtors who come to us with this problem are just the tip of a large iceberg of affected persons.

6. Sometimes these frozen benefits are the only funds in the account, and the only source of income for the subsistence of the client. Often, however, our clients have withdrawn and re-deposited a portion of their benefits, or deposited trivial amounts of other funds such as refunds from purchases or gifts from relatives. The banks claim that this ordinary

use of accounts makes it difficult to isolate the exempt benefits and they can't tell what's exempt and what's not.

7. Virginia statutes provide that a garnished person must be notified of possible exemptions and given an opportunity to claim them. This process requires gathering of bank statements and award letters, application to the issuing court, notice to the creditor, and a real-world minimum of two weeks after filing to get to court. In our experience the courts hearing such exemption claims are sympathetic and generally order release of exempt benefits that can be proved. Another week or ten days is often required before the release order is actually implemented by the financial institution holding the exempt funds.

8. By the time of their release, however, substantial damage has been done. Mortgage or rent payment checks have bounced, placing shelter at risk. Utility providers may have shut off vital heat or lights or gas. For each bounced check there is a fee to be paid to the frustrated payee, a fee to be paid to the bank, and the risk of criminal prosecution if all is not taken care of immediately. The fees are rarely refunded despite court order for release of the exempt funds.

9. Almost by definition our clients receiving exempt benefits have some degree of impairment or disadvantage (mobility or mental or educational or all three) which makes it difficult for them, without help, to thread the needle of application for their garnishment exemption to be recognized. Frequently the experience of losing income they thought was safe triggers anxiety and panic, leaving a traumatizing effect often as serious as the loss itself.

10. Most benefit recipients who experience this sad sequence of events choose to switch their benefit payments to direct mailing to their homes instead of direct deposit to their bank accounts. Often another month of benefits is frozen before the request for home delivery can be processed. Those who give up direct deposit place themselves in the slippery hands of

exploitative check cashers and corner store money order merchants, and become easier marks for purse snatchers and conniving relatives.

11. In 2006 we represented disabled client John Wheeler to challenge garnishment of his Social Security from Wachovia Bank. The bank never even responded to our motion for contempt for freezing exempt funds. The court held Wachovia in contempt and imposed sanctions (order attached). When this result came to the attention of the banking community, they successfully lobbied Virginia's Administrative Office of the Courts to change the form garnishment order which had previously compelled a garnished bank to honor the exemption.

12. The answer form which Virginia courts furnish to a garnishee (attached) still permits the garnished bank to respond to the garnishment by checking a box which says "The funds held by the garnishee consist solely of direct deposited federal benefits and are statutorily exempted from garnishment." We are not aware of any bank serving our clients which regularly makes use of this answer in appropriate cases.

13. Instead the four major banks serving this part of Virginia (Wachovia, SunTrust, Bank of America, and BB&T) all appear to maintain multi-state policies of freezing and, if not ordered otherwise, turning over the exempt benefits to the court for distribution to the garnishing creditor. Each of them also, as a matter of policy, charges its customer a fee of $100 for the "service" of surrendering their customer's exempt funds to the garnishment (attached bank notice letters). This fee is not regulated by state law, and is generally not restored to the account even if a court orders release of the exempt funds.

Thank you for considering this information. Please let me know if any further details would be useful.

Respectfully yours,

LEGAL AID SOCIETY
Henry L. Woodward

LEGAL AID SOCIETY OF ROANOKE VALLEY
September 17, 2007

SAMPLE CLIENT STORIES – GARNISHMENT OF EXEMPT BENEFITS
(Some clients identified by case number only pending consent)

STEPHEN AND VIRGINIA MEADOWS, CASE 07-5000219. Disabled couple living in Roanoke VA received $924 per month in Social Security and SSI as only income for both of them. Judgment against husband on credit card debt was obtained in Richmond VA by Capital One. In February 2007 BB&T notified them that their joint account, where all their federal benefit checks were directly deposited, was frozen by garnishment and $100 charge deducted. Their March checks came into the same account and were also frozen. They faced loss of utilities, cancellation of car insurance and foreclosure on home. Applied to Richmond court by mail for exemption, about a month after the freeze their funds restored less bank charges.

JOHN WHEELER, CASE 06-5000420. Resident of Boones Mill VA suffered disabling spinal and nerve damage from a back injury at work, and lived entirely on $1001 per month of Social Security. A credit card debt buyer obtained judgment against him on old credit card debt and garnished his Wachovia Bank account, consisting entirely of direct deposited disability benefits, in April 2006. He was unable to pay his share of monthly expenses to the relatives with whom he lives, and could not pay for his pain relief medicine and other essential incidentals. The Legal Aid Society moved to have Wachovia held in contempt and sanctioned for disregard of the garnishment order's admonition to honor the exemption for directly deposited exempt federal benefits. Wachovia chose not to respond, and upon the bank's default the Franklin County General District Court held Wachovia in contempt and ordered damages and attorney fees to the debtor. When this result came to the attention of the banking community, they successfully lobbied Virginia's Administrative Office of the Courts to remove the direction to honor exempt benefits from the form garnishment order.

GARY HUGHES, CASE 07-5000393. Disabled man in Roanoke VA with bipolar disorder and agoraphobia lived entirely on $922.50 per month in directly deposited Social Security disability benefits. In 2005 he received notice from SunTrust Bank that his account was frozen but managed to negotiate release (but not refund of the $100 bank fee) without applying to the court. In March 2007 SunTrust notified him of another garnishment, for a Roanoke judgment obtained by a debt buyer of an old credit card account. The bank charged his account $100 and froze the rest. Only because of his prior experience did he know to take quick action, and by application to the court was able to recover his funds, though not the bank charges, in time to prevent loss of shelter and utilities.

ZONNIE STEWART, CASE 07-5000257. A 70-year old woman in Blue Ridge VA lived entirely on Railroad Retirement survivor benefits directly deposited to her SunTrust Bank account. Capital One Bank obtained judgment against her in Richmond for credit card debt and garnished her bank account. She is wheelchair bound, blind in one eye, and suffers from cerebral palsy and diabetes and is unable to get to court. When she came to Legal Aid in February 2007 her rent, telephone and cable bills were overdue. Release of her exempt funds was obtained about a month after the freeze by application to the Richmond court, but the bank retained its $100 garnishment fee.

BRENDA TRAN, CASE 06-5001410. Disabled resident of Forest VA lived only on monthly Social Security disability benefits of $603 directly deposited in a Bank of America account. Capital One obtained judgment in Richmond VA on a credit card debt and garnished her account. When she was notified of the garnishment in November 2006 the bank had already charged her account a $100 fee and frozen the remaining $16. She avoided loss of the next month's benefits only by promptly applying to the Richmond court, which ordered the garnishment released. The bank restored the funds to her account only after another week's urging.

CASE 06-5000413. A 67-year old Roanoke VA woman, homebound from diabetes and other maladies, received Social Security disability benefits directly deposited to SunTrust Bank as her only source of income. In April 2006 she suffered judgment on a credit card debt in Richmond Virginia by

Capital One, which then garnished her bank account. The bank froze her account and imposed a $100 service fee. Her account statement was confusing because she regularly withdrew and then re-deposited sums for her living expenses, though it was all from the benefit source. To meet the concern of co-mingled funds, she had to apply for exemption of $1403.35 under Virginia's Homestead Exemption law to cover the account, which seriously depleted her $5000 lifetime allotment of homestead rights. The freeze on her benefits caused her scheduled electronic mortgage payment to be refused, putting her house at risk. Although the Richmond court ordered release of the account, SunTrust took an extra week to comply, so that the client did not get use of all her exempt funds for over a month from the freeze.

CASE 07-5001003. Homebound disabled woman in Blue Ridge VA lived entirely on Social Security and SSI disability benefits of $643 per month directly deposited into her SunTrust Bank account. Judgment against her on credit card debt was obtained by Capital One in Richmond. In July 2007 her bank notified her that her account was frozen by garnishment and $100 fee charged. Her August checks were also frozen before she could stop direct deposit of benefits. When she reached Legal Aid in August her rent, medical co-pays, insurance premiums, and utilities had gone unpaid and she was unable to buy food. She applied to the Richmond court by mail for exemption, and the funds less charges were restored to her about two weeks later.