

*James A. Badeen*

58245 Travis Road \* New Hudson, Michigan 48165 \* jahb913@gmail.com

March 15, 2016

Michigan State Representative Anthony Forlini,  
Chairman of the Financial Services Committee,  
124 North Capitol Avenue  
P.O. Box 30014  
Lansing, Michigan 48909-7514

Reference: SB656 & SB657

Dear Chairman Forlini,

By way of introduction, I am the Operations Manager of Midwest Auto Auction, Inc., in Redford, I am writing in regards to the referenced Bills that have been placed before your Committee. I realize that both of these Bills seek to address a complicated consumer protection issue of great importance to all the citizens of our State. In light of this, I found it necessary to provide some explanation that I hope will clarify as to why these referenced Bills should be opposed and are bad legislation.

During the testimony pertaining to these Bills in the Senate Banking & Financial Institutions Committee, Senator Rick Jones, the sponsor of these Bills, made the remark that "basically we have a mess". This "mess" as he put it, is a result of judicial findings that have held that auto repossession, third party, forwarders are Debt Collectors under Michigan Law. His plan to repair this "mess" is to change the law so that these forwarders can be redefined as something other than what the Court has already defined them as and thereby, place them in a new category that exist beyond established consumer protection laws.

In one regard I agree that "we have a mess" but it is not due to the findings of our judiciary or the way the laws that protect us are written; it is owed to their gross lack of its enforcement. It is evident that this disregard stems from two factors. The first being that these forwarder entities have purposefully crafted deceptive descriptions of their business model to obviate and confound the law. The second reason is the fear of, and the power of, the banking and automobile lending industry that has used these forwarders to increase their profits and shield themselves from vicarious liability from angry indebted consumers. To dwell further, some in our Government and this Legislature, have failed to realize that it makes no difference what you call yourself, it's what you do that defines you, and it is not the purpose of the Legislature to change the law to accommodate business; rather it is the necessity of business to fit within the confines of the law. I fully understand that it has been proffered by some that these laws are an encumbrance to Lenders who are only trying to collect on their outstanding collateral. However, in our country we have laws with certain rights that are bestowed upon all citizens and a person does not abrogate these rights when he's late on his car payment. Moreover, it is not allowable for a Lender, or his agent, to stack unreasonable charges unto a debtors deficiency balance with accelerated interest when his car is seized for non-payment.

Irrespective of the nonfeasance of those with the mandate to enforce our laws in this matter, our Judiciary, both State and Federal, have not shirked their responsibility and have ruled in one loud chorus, that these forwarders are by their actions, Debt Collectors and therefore, must comply with all laws as Debt Collectors.

It has been clear to many in this industry as to why these entities have done everything possible to avoid being defined as what they are. As legally defined Debt Collectors, they can no longer purport the illusion that they

exist beyond and outside of consumer protection laws. They are now, (and should have always been), as accountable to the consumer protection laws as any other Debt Collector. In as much as they have been unable to change the Courts view as to whom and what they are, it is their intent with the introduction of these Bills, to annul these judicial findings and concretize this status quo that has been allowed to wrongfully fester at the expense of the consumers of this State. Moreover, these Bills will allow them to continue in their interference in the auto repossession industry, which has been all but destroyed, and to continue as unlicensed, unregulated, unaccountable, impediments that stand in midstream between the regulated Bank and the regulated Auto Repossessor. Our Courts, both State & Federal, have made their rulings and these forwarders should have been investigated and prosecuted for their alleged violations of our consumer protection laws years ago. Below is a sampling of the violations of which I speak, which as I understand are criminal misdemeanors for each individual incident. With approximately 80,000 such incidents per year, coupled with a fine of \$1000 per violation, this amount, just in fines, could be as much as \$80 million per year

- 1) MCL 339.601(1) "A person shall not engage in or attempt to engage in the practice of an occupation regulated under this act or use a title designated in this act unless the person possesses a license or registration issued by the department for the occupation."
- 2) MCL 339.915a(h) "Failing to deposit money collected into the trust account required to be maintained under this article" *(by the way, if they don't have trust accounts, where is the consumers money going, how is it being accounted, disbursed, etc.?)*
- 3) MCL 339.915a(i) "Commingling money collected for a client with the collection agency's own general or operating funds"
- 4) MCL 339.915a(j) "Using a part of a client's money in the conduct of a collection agency's business"
- 5) MCL 339.917(k) "Violation of any federal or state act relating to debt collection"
- 6) MCL 339.919 "Communication with person other than debtor; location information".
  - (1) A collection agency communicating with any person other than the debtor, for the purpose of acquiring location information about the debtor, shall state all of the following:
    - (a) The name of the individual seeking the location information.
    - (b) Whether the purpose of the communication is for confirmation or correction of location information about the debtor.
  - (2) For purposes of this article, location information shall consist only of a debtor's place of abode and place of employment and the telephone number at each place.
- 7) MCL 445.252(s) "Employing a person required to be licensed under article 9 of Act No. 299 of the Public Acts of 1980, being sections 339.901 to 339.916 of the Michigan Compiled Laws, to collect a claim unless that person is licensed under article 9 of Act No. 299 of the Public Acts of 1980." ***(This law seems to apply more to Lenders who hire non-licensed Collection Agencies)***

In addition to the aforementioned state laws, there are numerous federal laws that also apply to these legally defined Debt Collectors. These laws include the Graham-Leach-Bliley Act, the Dodd-Frank Act and its UDAAP provisions, The Bank Service Company Act and The Fair Debt Collection Practices Act, (just to name but a few). Despite numerous complaints, our State's Chief Prosecutor has failed to enforce our laws and allowed these entities, now for a second time in fourteen months, to attempt to make unwanted changes

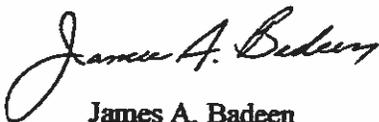
in our laws in their favor and at the expense of the citizens of this State. It is as though our AG has granted them amnesty so that they may continue in their unencumbered onslaught of my industry and our consumer protection laws. I and my company are victims, as defined under our States Crime Victim's Rights Act, P.A. 87 of 1985, yet our repeated pleas have not merely been ignored; they have been buried and their graves purposefully obscured. Given the magnitude of the plight of our citizens, backed with the credibility of our Courts, one can only imagine that the explanation for our State's Government, and more specifically our AG's disregard, in the face of clear, convincing and mountainous evidence, must surely be beyond mere incompetence. I pray that there are no nefarious reasons for this rebuff and that there exist some legal and moral justification for the allowance of my industry's continued destruction and the growth of "Debt Slavery" in our State.

Notwithstanding all of the aforementioned alleged contraventions of law, any student of this industry would readily observe that these forwarders are a nuisance to all auto borrowing consumers. They have no redeeming quality that is advantageous to any consumer and they do not compliment any procedure that would enhance productivity or efficiency while reducing cost to any consumer. Additionally, they are an unnecessary layer of commercial business bureaucracy between the lender and the consumer and they are an additional, unnecessary "weak link", in the chain of control of non-public information (NPI) that can fail. The Banking Industry may disagree and counter by saying that these entities have reduced cost and increased their profits; but they will fail to say that this is being done so at the expense of the already indebted consumer who has had their car repossessed. It is apparent that this business model was engineered so as to allow all of the cost and profits of the Forwarders' to be passed onto the already beleaguered consumer's deficiency balance; with accelerated interest. It is estimated that the additional cost for the services of these uninvited middleman invaders of my regulated repossession industry, (just to the indebted consumers of Michigan alone), could be as much as One Hundred & Twenty Million Dollars, (\$120,000,000) Per Year.

Of additional note, the timing of this proposed legislation, which is seemingly beyond coincidental. (See Handout Page 19 & 20). On November 18<sup>th</sup>, 2015, the Ingham County Circuit Court, (Case 15-000380), once again ruled that these forwarder entities were Debt Collectors and are subject to all laws concerning Debt Collectors. In a little more than two weeks these Bills were introduced in the Senate, It is obvious that *were crafted to overturn this judicial opinion through the legislative process and place them outside of regulatory oversight*. In short, this law was crafted by special interest, for special interest and - not - for the interest of the people of this State.

As a voter, taxpayer, and proud citizen of this Great State, I am disappointed. We have become a State of crisis. We have the Flint water crisis; the Detroit Public Schools crisis; our roads are falling apart; I and my fellow Michigan veterans are being shorted over a Billion (+) Dollars a year in benefits that we earned by putting our lives on the line and our State has failed to address the issue; my company of over 65 years and my entire industry, is being systematically destroyed by unlicensed, unregulated, big business competitors. Meanwhile, my State Government has the audacity to go out of its way to accommodate these out of state Debt Collection Agencies who order the seizure of, and control the liquidation of, approximately 80,000, cars a year from my indebted fellow Michigan consumers. Collection Agencies I would allege, that are being allowed, through the nonfeasance of pseudo civil servants, to force Michigan families to pay usury level interest on artificially bloated deficiency balances for the wrongful, if not illegal, seizure of their cars.

If the tone of this letter offends, please accept my apologies. In the crafting of its contents I realized that I was mistaken in saying that these Bills are bad legislation; in point of fact, they are an affront to ever citizen of this State.



James A. Badeen

# **SB656 & SB657 are BAD for Michigan**

**"We tried to stop Madoff but couldn't get anyone to listen. They wouldn't look at the proof"**

**Harry Markopolos concerning his repeated attempts at getting the FTC to investigate Bernie Madoff, who perpetrated the largest ponzi fraud in history.**

**"This is not a legislative problem, this is not a judicial problem, this is an enforcement problem"**

**Senator Glenn Anderson of the Michigan Legislature concerning the issue of Forwarders in the State of Michigan**

**"They are destroying the professionalism of the entire recovery industry"**

**Edward Marcum, President of the Recovery Specialist Insurance Group concerning Forwarders & the Auto Repossession Industry**

# **The reasons why Forwarders are bad for the Michigan & American Consumer is because they:**

- Weaken the consumer protections from release of nonpublic consumer indebtedness information.
- Increase the dangers to public safety through the use of unqualified & unlicensed firms.
- Increase repossession fees to already indebted consumers by adding an additional layer of cost.
- Limit the consumer's ability to bring litigation against Lenders for wrongful repossessions.
- Have created of an oligopoly that controls most of the auto repossession market and thereby, reduced competition & control – NOT REDUCE – the repossession cost that is passed to the indebted consumer.
- Destroy legitimate, licensed, bonded, insured, trained and equipped auto repossession agencies
- Have reduced the level of professionalism of the entire repossession industry and forced agencies to cut cost to survive.
- Often dictate orders to small repossession firms without regard to legality or safety.
- Have allowed their Banking Clients to become absolved of the responsibility for the repossession of collateral from their consumers, and have fostered an "Out of Sight, Out of Mind" mentality among their clientele.
- Have retaliated, through threats of litigation and cancellation of contracts, against small business repossession firms that refuse to take their assignment orders even when such orders are deemed illegal by reputable the Recovery Agency.
- Force the small business repossession, (through this business model), to assume almost all of liability for the entire repossession, while shielding themselves, and their Clients, from any litigation.
- Encumber and obstruct communications between the Repossessor in the field and the Lender who has ordered the seizure of the collateral.
- Force, due to their control of the recover market, independent repossession firms to enter their proprietary and consumer data into their "Forwarders" centralized data base in order to receive work assignments. This Data Base is subject to attack and has been breached.
- Made repossessions, fast, easy, convenient, profitable and legally armored, to the extent that repossessions are no longer the last resort in the recovery of collateral, it is now the first!
- They do not maintain trust accounts on the proceeds derived from the sale of the indebted consumers vehicle (chattel). Where is this money going? Is it protected? How is the interest that is accrued being accounted for as is required by all Debt Collectors? This money must be in trust to be protected in the event of insolvency, tax levy, lawsuit, etc.

## Auctions at Midwest Auto Auctions

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**From:** Auctions at Midwest Auto Auctions" <auctions@midwestautoauction.com>  
**To:** <jbrandt@senate.mi.gov>  
**Sent:** Monday, October 22, 2012 5:23 PM  
**Attach:** AG Letter Oct 17, 2012.pdf  
**Subject:** Midwest AG Response  
 Mr. Brandt,

In regards to our earlier conversation today, I have just received the AG's response to our criminal complaints from 2010, from Mr. Cunningham of the AG's office. Although I have not had the opportunity to review all of the material he sent to us, his cover letter makes clear that the AG's Office is diametrically opposite to the findings of our Attorney's and those of Mr. Barr, the Attorney for DELEG. Needless to say we are disappointed by the opinion of Mr. Cunningham, which I would add, he stated was reached in April of 2011. Moreover, his final sentence, which I quote " Our file will remain closed, and no further action will be taken." makes it apparent that no matter what, the AG's Office will remain firm in its decision to anything we say or could provide to further substantiate our claims. However, at least after 35 months we have learned that a decision was made, albeit some 16 months ago. Although this is gratifying in one sense to finally know the outcome, it is nonetheless also disturbing. It should be noted that until I called Mr. Lazet back in September, we have had -0- contact with anyone in the AG's Office. As a matter a fact we were informed by more than one source, that the entire case file was lost. I realize that Mr. Cunningham has apologized for this oversight, but seemed confused as to my relation to the case. Although this apology is accepted, this does not negate the fact that we have never been contacted or questioned as to the nature of our complainants as the victims, nor has our request for a meeting with the Prosecutor, or in the AG's office, been granted. Perhaps this confusion would have been explained away if such a meeting could have transpired. I would add that we, and our Attorney's requested this meeting from the outset back in 2010, and are still waiting. This request I would further add is evidenced by Mr. Greenstein's Email of April 22, 2010, where he stated "Midwest would like to set up a meeting with their attorney and representatives from the prosecutor's office and police department". Perhaps if the AG's Office would have granted us such a meeting or at the very least called to question us pertaining to our complaints before the decision of the Mr. Cunningham, things may have been very different. Unfortunately, in view of Mr. Cunningham's final sentence of his letter we will never know. Although I am not currently an Investigator, I was some years ago with the U.S. Army CIDC & MPI, and later with the Texas State Dept of Criminal Justice. In my past experience I seem to recall that it was generally customary to question the complainant/victim before making a determination and even more so when the complainant requested such a meeting. Obviously, things have changed over the years and Mr. Cunningham felt that it was unnecessary to speak to our Attorney's or us, even when we requested it. Of course, it could be said that the request was not made to the Attorney General but to the Wayne County Prosecutor. From our standpoint this makes no difference, we requested a meeting with the prosecutor, with our Attorney's and never got it. Moreover, it wasn't until we filed three different FOIA request, were told that the entire case was lost, then "out of the blue" received Mr. Cunningham's letter today, that we even knew for sure that the AG had our case, much less made a determination on it over a year ago.

As I said before, I am disappointed with this decision, I do not feel we have been treated fairly and I firmly believe that the ones who will be most injured by this myopic view of the law will be the citizens of our State. I suppose that now I should recommend that we should move our company out of state, so that we too can operate without the encumbrance of a license, be able to share consumer information with third parties without oversight, and not have to pay state taxes on the money we make repossessing cars from Michigan Consumers. I now know how the Investigator Harry Markopolos felt when he was attempting to stop Bernie Madoff.

Attached  
 Letter from the AG  
 Email From Mr. Greenstein  
 Letter From Mr. Barrington Carr  
 Letter From Mr. James Walsh

Jim Badeen  
 Operations Manager



MICHIGAN STATE SENATE

STATE CAPITOL  
LANSING, MICHIGAN 48913  
PHONE (517) 373-1707  
TOLL-FREE (888) 252-7306  
FAX: (517) 373-3995  
senanderson@senate.mi.gov

## GLENN S. ANDERSON

STATE SENATOR  
6TH DISTRICT

DEMOCRATIC VICE-CHAIR OF  
APPROPRIATIONS

SUBCOMMITTEES:  
COMMUNITY COLLEGES (DVC)  
CORRECTIONS (DVC)  
DEPARTMENT OF  
TRANSPORTATION (DVC)  
CAPITAL OUTLAY

July 10, 2014

Hon. Bill Schuette, Attorney General  
G. Mennen Williams State Office Building  
P.O. Box 30212  
Lansing, MI 48909

Dear Mr. Schuette:

As you know, on June 13<sup>th</sup> of this year, the Michigan State Supreme Court issued a unanimous decision in Case Number 147150, entitled *Badeen V. Par, Inc.*, ruling that forwarding companies do "satisfy the definition of a collection agency in MCL 339.901(b)."

Michigan Law – MCL 339.904(1), part of Article 9 of the Occupational Code – clearly states that collection agencies require proper licensure to legally provide their collection services within Michigan. It follows that any forwarding agency operating without a license has been and are in criminal violation of Michigan law.

In light of this ruling, I write to request that you take immediate action on behalf of Michigan businesses and consumers to end the illegal and unlicensed collection activities of forwarding agencies in Michigan, as well as, investigate any illegal activity conducted by unlicensed forwarding agencies prior to this ruling. Actions should include but not be limited to:

- 1) Issuing a cease and desist order to all unlicensed forwarding companies and all third party collection agencies conducting business in Michigan.
- 2) Requesting injunctive relief from the appropriate court of law to protect Michigan businesses and consumer from further harm resulting from any continued operation of unlicensed collection agencies.
- 3) Communicating to all licensed Michigan repossessioning agencies the requirements established in MCL 445.252 and directing them to refrain from accepting any collection assignments from unlicensed forwarding agencies.
- 4) Initiating and pursuing, without delay, criminal prosecutions against any unlicensed forwarding agencies who have engaged in collection activities without a license.

Please do not hesitate to contact me if you require any clarification as you consider this request. I expect and look forward to a response outlining the steps you intend to take to protect Michigan's businesses and consumers and ensure that all collection agencies operate in full compliance with Michigan law.

Sincerely,

Glenn S. Anderson  
Michigan State Senator



STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

In re PAR, Inc., d/b/a PAR North America,  
Petitioner-Appellant,

Case No. 15-380-AA

v

Honorable Clinton Canady, III

State of Michigan, Department of Licensing  
& Regulatory Affairs, Corporations, Securities  
& Commercial Licensing Bureau,  
Respondent-Appellee.

Excerpt of Attorney General Brief .

Page 9. of Brief.

“In its brief, PAR erroneously asserts that it is the Department’s obligation to apply the statute to PAR’s activities as described in PAR’s statement of facts. It is clear from the administrative rule that the Department may request additional information it deems necessary before issuing its ruling and thus is not limited to the information initially provided by PAR. Mich. Admin Code, R 338.81(6)(a). In this case, the Department requested additional information, namely copies of PARs contracts with lenders, agents and auction operators. Based on this information, the Department determined that PAR was clearly in repossession activities that fall within the definition of a collection agency.”

Page 10. of Brief

“PAR also claims throughout their brief that they simply refer lenders to licensed collection agencies and thus need not be licensed. However, this is inconsistent with the information they provided the Department for review. PAR does not, as they imply, simply connect a lender to the collection agency, which would require the lenders working directly with the collection agency. Instead, PAR contracts with the lender directly for services, including repossession. Then, according to their service agreement, PAR repossesses the subject vehicle, either through their own employees or through their contract with agents or subcontractors. This is not the hands-off forwarding process the Department envisioned when it filed its amicus with the Michigan Supreme Court in *Badeen v PAR*, 496 Mich 75, 853 NW2d 303 (2014). Thus, the Department’s position in that brief, is inapplicable to the case currently before this Court. Even more so in light of the fact that the Supreme Court ultimately disagreed with the Department’s interpretation of the Code at that time. Further, that brief was based on a general understanding of what the forwarding companies claimed to do. In contrast the declaratory ruling by statute, is based on application of the Code to a specific set of facts.”

**Pages 23 - 25 of the transcript of the  
aforementioned case #15-380-AA**

22

1 with, and the car is sold, and the proceeds are  
2 paid back to PAR, who in turn pays the licensed  
3 repossession agents, and pays the lender.

4 And so under that scenario the Court  
5 cannot disagree with the finding by LARA that PAR  
6 is acting as a collection agent, because the  
7 result is that the lender is hiring PAR to assist  
8 in collection of funds. And how they do it,  
9 whether they get repossessed or they aren't  
10 calling a person up or acting as a collection  
11 agent under traditional debt collection  
12 practices. But the result is they're going and  
13 repossessing the collateral, taking possession of  
14 it, responsible for selling it, and in turn after  
15 they sell it, they receive the proceeds and make  
16 the distribution back to the lender.

17 So under that scenario the Court cannot  
18 say that the findings of LARA, in making their  
19 decision, was not authorized by law.

20 I think the standard for review is set  
21 forth in Article 6, Section 28. Parties were all  
22 aware of that. That:

23 "All final decisions, findings, rulings --  
24 this would qualify as a ruling -- and orders of  
25 any administrative officer or agency existing

1 under the Constitution or by law, which are  
2 judicial or quasi-judicial, and affect private  
3 rights or licenses, shall be subject to direct  
4 review by the courts." That's where we are  
5 today.

6 "The review shall include, as a minimum,  
7 the determination whether such final decisions,  
8 findings, rulings and orders, are authorized by  
9 law."

10 In this matter LARA looked at the  
11 arguments made by PAR in this matter. PAR was  
12 handling the proceeds from the sale and making  
13 distributions. And the department did have a  
14 basis under law to determine that PAR's  
15 repossession activities did not fall under any of  
16 the Article 9 enumerated exceptions.

17 So the Court's going to find that the  
18 administrative decision was supported by law in  
19 this matter, that PAR does qualify as a  
20 collection agency under MCL 333.901(b), because  
21 it's:

22 "Engaging directly or indirectly in  
23 repossessing or attempting to repossess a thing  
24 of value owed or asserted to be owed or due to  
25 another arising out of an express or implied

1 agreement." I don't think there's any dispute on  
2 that.

3 Even though the language of soliciting had  
4 been deleted, it's still, under the Occupational  
5 Code, would seem that LARA's decision was  
6 supported under the provision dealing with  
7 repossession, transportation, storage, repair,  
8 appearance, reconditioning, sale of auction  
9 of used -- at auction of used vehicles, since  
10 they contracted with an auction house.

11 PAR argues that the matter refers to  
12 license collection agents. And they said they  
13 were not a collection agent but a repossession  
14 agent. The Court concludes that's inconsistent  
15 with the fact situation that the Court's been  
16 presented with, which shows that the lenders are  
17 working directly with PAR, who in turn is the  
18 collection agency.

19 PAR does not fit under any of the  
20 interstate communications acceptance. PAR's  
21 business -- not all of PAR's business in Michigan  
22 is limited to electronic communications. They  
23 have employees, they have service agreements with  
24 auto auctions and repossession agents.

25 And the Court would say that the decision

1           made by LARA that indicates that repossessing  
2           vehicles in the State of Michigan, that PAR would  
3           fall under the jurisdiction of the Occupational  
4           Code, and would require licensing, would be  
5           affirmed for the reasons stated here.

6                     MS. SMITH: I do have a proposed order.

7                     (Evidentiary hearing at 2:40 p.m.)

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## **PARTIAL LIST OF SIGNIFICANT ACTIONS THAT HAVE BEEN UNDERTAKEN**

**Jun 1, 2005 Letter of complaint to the FTC  
Action Taken: No Response/ Ignored**

**Jul 2005, Congressional Inquiry From Congressman Mc Cotter  
Action Taken: No Response/ Ignored**

**Nov. 4, 2005, Letter To Director Susan Crighton, FTC,  
Action Taken: No Response/ Ignored**

**Feb. 2, 2006, 2nd Congressional Inquiry from Congressman Mc Cotter  
Action Taken: FTC Referred Inquiry to Justice Department**

**May, 2006, Letter to FTC from DOJ endorsing our Letter of June 1, 2005 & requesting action form the  
FTC since this was FTC matter. Action Taken: NONE**

**Feb. 2007, Congressional Inquiries from Congresswoman Kilpatrick  
Action Taken: No Response/ both ignored**

**Jan. 2009, Complaint filed with Attorney General of Michigan  
Action Taken: Referral to Collection Practices Board**

**Feb. 2009, Compliant filed with Collections Practices Board of Michigan  
Action Taken: Opened Investigation**

**Mar. 2009, Investigation Completed & Findings Substantiated Complaint.  
Action Taken: Referred to Local Police, Redford Police, for Investigation.**

**Jan. 24, 2010, Police Investigation Completed, Findings Substantiated  
Action Taken: Referred to Wayne County Prosecutor**

**Mar. 2010, County Prosecutor returned case to Local Police and requested case be referred to State  
Attorney General due to Statewide Jurisdiction. Action Taken: Case given to Michigan AG in April 2010**

**Apr. 2010, Civil Case Filed - still awaiting meeting with AG and information on Criminal Filing  
Action Taken: Civil Case in Michigan Third Circuit Court.**

**Jul. 2012, Told that criminal case missing from Michigan's AG's Office.  
Action Taken: Denial of FOIA Request for update on status of case and prosecution.**

**Oct. 2012 Case located In AG's Office  
Action Taken: No meeting granted with AG's Office who refuses to prosecute**

***Civil Case proceeds through Court System to Michigan Supreme Court.***

**May 2014, AG files "post" amicus in Supreme Court Civil Case on side of Defendants  
Action Taken: Court accepts "Post Brief" sets new precedent**

**Jun 13, 2014 Civil case decided unanimously in Michigan Supreme Court  
Action Taken: Finding that Forwarders are Collection Agencies. Remanded back to 3rd Cir. on licensing issue**

**Dec 2014, Legislature changes definition of Collection Agents  
Action Taken: Removes the term "Soliciting" from Law**

**Oct 22, 2014, Attorney General Intervenes in Lawsuit on the side of Defendants  
Action Taken: Motion accepted by Court**

**Feb 6, 2015, Civil Case in Third Circuit stayed until decision of LARA on licensing issue  
Action Taken: Civil Case Stayed**

**May, 2015, LARA ruled that PAR must be licensed as Collection Agency,  
Action Taken: Ruling appealed to Ingham Co. Circuit Court**

**Nov. 22, 2015, Ingham Co. Circuit Court Rules that PAR must be licensed as a Debt Collection Agency.  
Action Taken: PAR appeals case to Mich. Court of Appeals, 3rd Circuit Remains stayed.**

**Dec, 12, 2015, Sen Jones Introduces SB656 & 657 to legally redefine "Debt Collector"**

JAMES J. WALSH  
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734-830-0237

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SUITE 400  
201 SOUTH DIVISION STREET  
ANN ARBOR, MICHIGAN 48104  
734-830-2494 FAX  
734-761-5780

**bodman**  
ATTORNEYS & COUNSELORS

March 25, 2009

Thea S. Ethington  
Regulation Agent  
Department of Energy, Labor & Economic Growth  
Bureau of Commercial Services  
Enforcement Division  
P.O. Box 02980  
Detroit, MI 48202-6026

Re: Complaint No. 311432, Midwest Recovery & Adjustment against PAR, Inc.

Dear Ms. Ethington:

We represent Midwest Recovery Adjustment.

PAR, Inc., d/b/a North America, is required to be licensed under Michigan Collection Practices Act, MCL 339.901 et seq. because it operates a collection agency in the state. MCL 339.901(b) defines "collection agency" as "a person directly or indirectly engaged in soliciting a claim for collection" or "repossessing or attempting to repossess a thing of value owed or due..." The statute further states: "A collection agency shall include a person representing himself or herself as a collection or repossession agency..."

PAR North America's own website states that it is "a nationwide provider of vehicle transition services including repossession..." This representation alone places it within the statutory definition of a "collection agency."

PAR North America must also be considered a "collection agency" because it has "engaged in soliciting a claim for collection," as evidenced by its arrangement with Chrysler Financial.

Moreover, the fact that it subcontracts repossessions in Michigan does not mean that it is not engaged in the repossession of motor vehicles in the State of Michigan. Nothing in the Collection Practices Act exempts repossessors who use subcontractors.

The licensing laws in Florida and Nevada are quite different from the Michigan statute requiring "collection agencies" to be licensed. Nevada regulates vehicle repossessors under Chapter 648 of its code, which is entitled "Private investigators, private patrolmen, polygraphic examiners, process servers, repossessors and dog handlers." All of these occupations are under the supervision of the Private Investigator's Licensing Board. Florida also combines regulation of repossession services with regulation of private investigators and private security services.

Thea S. Ethington  
March 25, 2009  
Page 2

We respectfully request that the Enforcement Division find that PAR, Inc. is a "collection agency" and is in violation of the requirement in MCL 339.904 that it have a license.

Yours truly,

James J. Walsh

JJW/vmd

c: George Badeen (via email)



STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

JENNIFER M. GRANHOLM  
GOVERNOR

STANLEY "SKIP" PRUSS  
DIRECTOR

January 12, 2010

George Badeen  
Midwest Recovery & Adjustment, Inc.  
14666 Telegraph  
Redford, MI 48239

Re: Complaint No. 311432  
George Badeen v. PAR North America

Dear Mr. Badeen:

Following a review of your complaint and all documentary evidence submitted to and/or collected by the Department, it appears that the Respondent in the above-referenced matter may be engaged in the unauthorized practice of Collection Practices. This is a misdemeanor under the Occupational Code, 1980 PA 299, as amended.

MCL 339.601(1) states, "[a] person shall not engage in or attempt to engage in the practice of an occupation regulated under this act or use a title designated in this act unless the person possesses a license or registration issued by the department for the occupation."

MCL 339.601(2) states, "[a] school, institution, or person shall not operate or attempt to operate a barber college, school of cosmetology, or real estate school unless the school, institution, or person is licensed or approved by the department."

A person, school, or institution that violates MCL 339.601(1) or (2) as referenced above, is guilty of a misdemeanor punishable by a fine or imprisonment, or both, pursuant to MCL 339.601(4), (5), (6) or (7), whichever is applicable.

If you have sustained damages resulting from the unlicensed practice of the respondent, you may file suit in the small claims division of the District Court in your area which, by law, can render a judgment of \$3,000 or less to your benefit. Forms are available at the Court and personnel may assist you in completing them. If the amount in dispute is more than \$3,000 you may consult an attorney to determine the feasibility of filing suit in the District or Circuit Court.

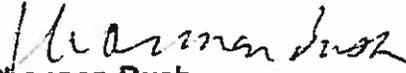
This Department has closed the complaint without administrative sanctions against the respondent at this time.

DELEG is an equal opportunity employer/program.  
Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

Bureau of Commercial Services  
P.O. BOX 30018 • LANSING, MICHIGAN 48909  
[www.michigan.gov/bcs](http://www.michigan.gov/bcs)

The complaint may be reopened if the Department receives additional information and/or evidence that would support continued investigation.

Sincerely,

  
Shannon Bush  
Regional Manager  
Enforcement Division  
313-456-0485

c: PAR North America

Regardless of how they label or define themselves  
- *the law has defined them as what they are.*

## \* Debt Collectors \*

All have ruled that Forwarders are  
and have always been  
**Debt Collectors**  
and are subject to all consumer  
protection laws as Debt Collectors

{ Ninth United States Circuit Court - Shannon v Widsor Equity  
Michigan State Supreme Court - Badeen v PAR  
LARA Declaratory Ruling 2015/001  
Ingham County Circuit Court - PAR, Inc. v The State of Michigan

### ✓ "Debt Collectors"

under the definitions of the Fair Debt Collection Practices Act (FDCP) Act.  
15 USC 1692 Section 803(6)

### ✓ "Collection Agencies & Debt Collectors"

under the definitions of Michigan State Law and other States.  
See Michigan MCL 339.901(b)

### ✓ "Financial Institutions"

under the definitions of the Graham-Leach-Bliley Act (GLBA) and the  
Federal Reserve Board.  
See the Bank Holding Company Act 12 USC Section 1843(k)

## What they are not -

nor have they ever been (as they claim to be) -  
1-800- Repo - Referral Services.

**The Logic Of The Forwarders  
& Their Lending Clients**

\*



*Although I may look like a duck, walk like a duck,  
quack like a duck, swim like a duck,*

***I'm not a duck!!***

*I'm a Collection Facilitator,  
Collection Forwarder, and or a  
Repo Referral Service*

*& because I say that's what I am - That is what I am!*

## Senate bill could affect auto repo issue

Egan, Paul  Detroit Free Press [Detroit, Mich] 12 June 2014: A.9.

"The contention that anyone who hires a licensed collection agency on behalf of a financial institution is itself a 'collection agency' ... is as illogical as it is self-serving," former Michigan Supreme Court Chief Justice Clifford Taylor and other attorneys for PAR and the banks said in a Supreme Court filing.

LANSING – The owner of a Detroit-area auto repossession company who fought some of the nation's big banks all the way to the Michigan Supreme Court said a "technical cleanup" bill passed by the Senate last week is a veiled effort to undermine his case.

Midwest Recovery & Adjustment of Redford Township sued an Indiana-based company – PAR North America – and four large banks in 2010, alleging prices were being undercut through the banks' unlawful use of unlicensed and unregulated middlemen, such as PAR.

Midwest owner George Badeen had his case argued before the state Supreme Court on April 2 and awaits a decision.

But on May 20, Sen. Rick Jones introduced a bill that would amend Michigan's Occupational Code to exclude companies such as PAR from state regulation. Two days later, Senate Bill 947 sailed through the Senate Regulatory Reform Committee, where Jones is vice chairman. It passed the full Senate 27-9 on June 4 and is now before the House Committee on Regulatory Reform.

Nobody testified about the bill in the Senate committee, but two lobbyists showed up in support of its passage. One represented PAR and the other the Michigan Bankers Association, records show.

Jones, R-Grand Ledge, who said he sponsored the legislation at the urging of the bankers and other parties he can't recall, said it is "more of a technical bill than anything" and he wasn't aware of any lawsuit.

But David Worthams, policy director of the Bankers Association, acknowledged that the bill is largely intended to influence the outcome of the lawsuit. Though he feels the defendants are on strong legal ground, "this is kind of the Plan B," Worthams told the Free Press on Monday.

"Any good strategy will involve a multifaceted approach," he said.

Worthams said PAR was the primary force behind the bill, and his association is playing a supporting role. He said Jones' office knew of the lawsuit.

Sandra McCormick, chief of staff to Jones, confirmed that, though she said she wasn't aware of the lawsuit or PAR's involvement until after the legislation was introduced.

Sen. Glenn Anderson, D-Westland, whose district includes Midwest Recovery, said he alerted his caucus to the potential ramifications of the bill before the vote. The bill looks like an attempt "to subvert the legal process," and the Legislature should hold off and "just give the man his day in court," Anderson said.

It wouldn't be the first time the Legislature passed legislation intended to affect the outcome of an ongoing court case. In 2012, the Free Press reported on a bill quietly passed by the Legislature that overturned a \$2.4-million judgment against the brother and business partner of Michigan Republican Party Chairman Bobby Schostak.

Gene Wheeler, corporate counsel for PAR North America, said he doesn't think the bill would affect the case before the Michigan Supreme Court since oral arguments have been held. But it could head off similar suits.

"It's all a matter of public record," Wheeler said of SB 947. "There was nothing clandestine or secretive about it."

At issue is lenders' use of unlicensed middlemen, sometimes known as forwarding companies, in connection with delinquent auto loans. Badeen alleges the forwarding companies are illegally engaged in collection activities in violation of the Occupational Code of Michigan, and the banks and other lenders are violating the Michigan Regulation of Collection Practices Act by using unlicensed collectors.

They say the forwarding companies are receiving information from lenders about consumers – including names, addresses, credit history, personal information such as Social Security numbers, and what they allegedly owe – and it should be regulated.



Michigan law says collection agencies – which must be licensed – are those “directly or indirectly engaged in soliciting a claim for collection.”

Joseph Xuereb, the Canton attorney representing Badeen, said in his Supreme Court brief that “forwarding companies have violated the Occupational Code by ... soliciting collection work from third parties, attempting to collect claims in Michigan and attempting to repossess vehicles in Michigan.

“The fact that they ‘forward’ the work on to licensed collection agencies is irrelevant,” the brief said. “Forwarders advertise themselves as repossession and collection agencies.”

PAR and the banks won in Wayne County Circuit Court in 2011, and that judge’s ruling was largely upheld by the Michigan Court of Appeals in 2013. Both of those courts ruled that “soliciting a claim for collection” refers to contacting debtors, not contacting banks and other lenders to solicit work, as Badeen interprets the law.

“The contention that anyone who hires a licensed collection agency on behalf of a financial institution is itself a ‘collection agency’ ... is as illogical as it is self-serving,” former Michigan Supreme Court Chief Justice Clifford Taylor and other attorneys for PAR and the banks said in a Supreme Court filing.

Such a rule, they said, “serves no purpose other than to guard the profit margins of disgruntled repossession agents like Badeen.”

SB 947, which changes Occupational Code requirements related audits of collection agencies, also adds the following wording: “It is not the intent of the Legislature ... to regulate companies that hire licensed collection agencies to repossess collateral.”

The Department of Licensing and Regulatory Affairs said in a brief filed after oral arguments that even if the forwarding companies are considered collection agencies, they should be exempt from licensing because they are out of state and their role is limited to interstate communications.

Contact Paul Egan: 517-372-8660 or [pegan@freepress.com](mailto:pegan@freepress.com)

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