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PAY UP

# Big Retail Chains Dun Mere Suspects in Theft

*Demands for Money Can Leave Targets With Little Defense*

By ANN ZIMMERMAN

After Miami handyman Glenn Rudge was accused of shoplifting an \$8 set of drill bits at [Home Depot](#), he thought he'd settled the matter when he showed his receipt to prosecutors and they dropped the charge.

But a few weeks later, a law firm hired by Home Depot began sending him letters demanding first \$3,000, then a total of \$6,000, implying he'd be sued if he didn't pay it.

In an escalating battle against theft, retailers are going after anyone suspected of shoplifting, turning over their names to lawyers and collection firms, who pursue the suspects for stiff penalties and split the take with the retailer.

### Civil Recovery

When lawyers and debt collectors pursue alleged shoplifters for monetary penalties with letters and phone calls, retailers call it "civil recovery." But the people targeted by the practice see it as something else. They describe it as a humiliating and intimidating process that leaves them all but defenseless.

See are some of the demand letters, and the shoppers' legal responses.



### Clear Evidence

A Palm Beach judge, Donald W. Hafele, writes to the Florida bar on behalf of one of the alleged shoplifters who received a letter demanding \$700. The judge claims the letter fails to itemize the supposedly stolen items and provide "**clear and convincing evidence**" of the damages.



### Boy's Money

A Massachusetts mother wanted to know why a Florida firm was demanding her 14-year-old son pay \$475 for a \$10.99 pair of sunglasses he attempted to steal when he was visiting his grandmother in Florida. The mother wrote, "...I find it hard to believe that justice is served in

There is little oversight of a system retailers call "civil recovery," created by special laws passed in all 50 states. With no proof of theft, the retailers demand money -- often \$200 but sometimes far more -- and promise to avoid suing if it is paid quickly. Laws vary by state, but in general, retailers can demand these sums even if the item at issue was worth far less and was quickly recovered and put back on the shelf.

The laws are meant to help compensate retailers for money they must spend to secure their stores against crime and recoup part of losses when thieves are not caught, says Neal Tenen, a founder of Civil Demand Associates, a firm specializing in civil recovery. U.S. retailers lost more than \$40 billion to theft in 2006, which equaled 1.6% of retail sales and was up \$3 billion from 2005, according to the National Retail Federation, a trade group.

But people targeted describe a humiliating and intimidating process, with no way to resist short of hiring a lawyer, a costly step few are able to take. Once a person's name is turned over to a collection firm, he or she is dunned with letters and often phone calls, which refer to lawsuits and sheriff's visits and sometimes multiply the penalty by demanding "pre-litigation" legal fees.

attempting to scare and threaten a young boy into handing over money **after he has already given back the merchandise.**"



#### Collect Call

A Florida Bar grievance committee found "no probable cause" in a complaint against a lawyer sending demand letters and calling the alleged shoplifters, but warned the firm to be careful about its collection tactics. "Harassment techniques in an effort to collect for your clients are not acceptable."



#### To Pay or Not to Pay

A Philadelphia firm first sought a total of about \$1,400 in civil damages from three women for merchandise that was undamaged and put back into stock for resale. Two of them paid and each received a letter saying the payment "satisfied her civil obligation." A third one did not pay, and instead got a "final notice," saying that she could have to pay "additional costs." And that her "credit rating might be adversely impacted."

#### How 'Civil Recovery' Works

- 1 Store accuses customer of shoplifting
- 2 Store gives suspect's name to a civil recovery agency to seek penalty even if merchandise can be resold
- 3 Agency demands suspect pay civil penalties, as authorized by state laws, or face possible lawsuit
- 4 Customer may need legal counsel to dispute agency's claim

Defenders of the process say that, besides helping stores recover a small part of their security costs, it reduces litigation and the clogging of the courts by allowing shoplifting cases to be settled without legal action.

This goal is evident in the way the laws are written. Many don't simply authorize retailers to demand money from suspected shoplifters but say retailers *must* make such a demand before they can file a suit.

But this legal first step has turned into a routine demand. For one thing, the laws often are vague about who can be targeted. Secondly, although the laws call the demands a prerequisite to suing, they don't say that retailers really have to intend to sue before making such a demand. There's nothing to stop them from demanding money from shoplifting suspects even if they have no intention of taking them to court.

Lord & Taylor, for instance, never follows up civil-demand letters by suing suspected shoplifters, its loss-prevention manager said in deposition about a year ago, citing the cost of going to court. Lord & Taylor collected about \$1 million in civil recovery from suspected shoplifters in a recent year, up from \$850,000 the year before, the official testified.

The chain's letters to suspected shoplifters are sent out by a Florida law firm called Palmer Reifler & Associates, which also handles the task for four dozen other clients, from [Wal-Mart Stores Inc.](#) to [Walgreen Co.](#), keeping 13% to 30% of what it collects. A partner at the law firm has said that it sends out about 1.2 million civil-recovery demand letters a year but follows up by suing fewer than 10 times a year.

Leading people to fear a suit when none is likely makes civil recovery a kind of "shakedown," contends Walter Hanstein III, a Maine lawyer who complained about Palmer Reifler to the Florida bar association last year. Palmer Reifler didn't return several calls seeking comment. In a letter to the bar

association, it defended civil recovery as "a first alternative dispute measure" to resolve cases short of litigation.

Civil recovery has rarely faced legal challenge. A 1993 challenge to Ohio's civil-recovery process cited the federal Fair Debt Collection Practices Act. A U.S. magistrate said that law didn't apply because civil recovery wasn't an effort to collect a debt but "a settlement offer for potential tort liability."

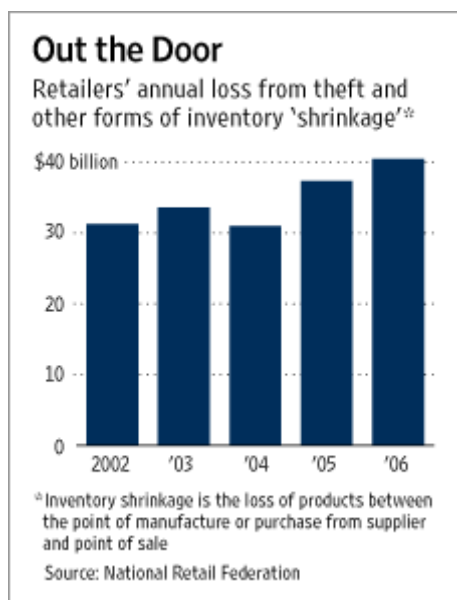
In 2005, a suit by three Pennsylvania teenagers suspected of shoplifting said a retailer's civil demand deprived them of due process. A federal court in Philadelphia dismissed their suit, saying that state law, not federal, established the rules. The lawyer for the teens, J. Conor Corcoran, didn't appeal. "I think the

statute is scandalous, but there are only so many windmills you can chase," he says.

Retail lobbies began pressing state legislatures for civil-recovery laws about two decades ago as their theft and store-security costs rose, says Stuart Levine, chief executive of another recovery firm, Zellman Group. He says the retailers wanted laws to help cover their security costs just as "when a cop writes you a speeding ticket, the funds funnel back to the state to pay for the police to catch you in the first place."

At Beall's Inc., a Florida-based chain of 550 department stores, loss-prevention executive Dan Doyle says, "We're just trying to get some money from criminals so our honest customers don't have to pay." The National Retail Federation describes the money retailers collect through civil recovery as "minimal" compared with their fraud losses and security costs.

In the Home Depot case, Mr. Rudge, the handyman, had a set of drill bits poking out of his shirt pocket when he went through the checkout line at a Miami store in December 2002, according to a suit he later filed against Home Depot. After he paid \$66 for his purchases, a security guard stopped him on his way out and asked him about the drill bits.



Mr. Rudge said he had carried them in, having bought them on an earlier trip to the store. After he kept insisting he was innocent, the guard handcuffed him, walked him to an interrogation room in back and took the drill bits. Mr. Rudge asked to call home to have his wife bring in the receipt but the store wouldn't let him, he said in a 2003 suit in Miami-Dade County Circuit Court, since settled. Home Depot declined to discuss specifics of his account.

Prosecutors charged the handyman with shoplifting, then dropped the charge in February 2003 when he showed them a receipt for the drill bits. But about a month later, according to his suit, he got a letter from the Palmer Reifler law firm demanding he pay a little over \$3,000 within 20 days.

He ignored the demand. Then he got a letter demanding an additional \$3,000, as "pre-litigation" attorney's fees, for a

total of just over \$6,000. If he didn't pay, one letter said, the sheriff's office would be called to notify him if a lawsuit was filed.

Mr. Rudge was doing some handyman work for a lawyer and showed her the letters. "I took one look and said, 'This is outrageous,'" says the lawyer, Alison Harke. "These letters are designed to make people settle because they believe they are going to jail." She filed a suit against the retailer, the settlement of which is confidential.

### *Costly Drill Bits*

Home Depot said Mr. Rudge was pursued for such a large sum because of a data-entry mistake that recorded the price of a \$8.09 drill-bit set as \$1,008.09. The law firm then tripled that, which the Florida statute permits in certain cases. The retailer said it now has extra processes to make sure it seeks correct penalties.

Home Depot's spokesman, Ron DeFeo, defended going after Mr. Rudge even though prosecutors dropped charges when he showed a receipt. "In Florida, no criminal conviction is needed to pursue civil demand," Mr. DeFeo noted.

As in this case, collection firms sometimes add legal fees to their demands. Most states permit a separate legal fee only if a court first approves it, but 10 states don't bar asking for "pre-litigation" fees, and Palmer Reifler sometimes does so. Two others, Civil Demand Associates in Van Nuys, Calif., and Zellman Group in Port Washington, N.Y., say they don't ask for such fees. Zellman's lawyer, Michael Asen, says doing so would be "gouging."

Sometimes, suspected shoplifters face another demand: a no-trespassing agreement. A Lord & Taylor store in Novi, Mich., detained three teenage girls in February 2005 on suspicion of stealing a \$50 pair of sunglasses. The store called the police, but before they arrived, it asked the three to sign statements agreeing not to enter any Lord & Taylor store for three years.

A security guard "made it seem like we had no choice, and at the time, we were just so nervous and scared that I signed it," said one girl, Sarah Eggen, in a deposition later filed in U.S. court for the Eastern District of Michigan.

When the police arrived, they looked at a surveillance tape and released two of the girls, including Ms. Eggen, concluding they weren't involved. The third teen later faced a retail-fraud charge that was dropped after she did some community service and attended a theft-deterrence class.

Lord & Taylor gave Palmer Reifler the names of all three teens, and each received a letter demanding a payment of \$200 within 20 days, in which case "no further civil action will be taken against you."

When they didn't pay, at least two of the girls got second letters from Palmer Reifler. These increased the demand to \$435 apiece, adding \$235 from each girl in pre-litigation attorney's fees, according to a suit they later filed. The store put the undamaged sunglasses back on the shelf for sale, Lord & Taylor's loss-prevention manager testified.

One girl had an aunt who was a lawyer, and she sued the retailer and its law firm on their behalf. The teens settled with the retailer and have a pending settlement with the law firm, says the lawyer, Mary Brigid Sweeney.

"You had two teens who were innocent and this was extortion," Ms. Sweeney says. "The legal intent of the law is a recoupment of losses, not to make a profit by suing over and over, multiple parties."

Lord & Taylor, now a unit of NRDC Equity Partners in New York, says it doesn't comment on litigation.

A little over a year ago, a Florida judge complained about the civil-recovery process to the state bar. In Palm Beach County Court, a woman had pleaded guilty to stealing \$222.90 of merchandise from a Saks Fifth Avenue store. Her sentence included court costs, and when the judge asked how long it would take her to pay them, she said a long time, showing him a letter saying she owed Saks \$669.

The judge, Donald Hafele, complained to the bar association that the letter, sent by Palmer Reifler, didn't spell out any injury or damage and could be misleading.

Palmer Reifler partner James R. Palmer told the bar association that his firm, applying Florida law, had tripled the recovery demand in a mistaken belief the merchandise had been damaged.

### *Compensable Injury*

In a letter to the bar group, Mr. Palmer defended civil recovery as "a 'cost spreading' measure to allow retailers to recover a small portion of the losses arising from people who get away with theft from the people who are caught trying to take items." He added that even if an item is recovered undamaged, the retailer has "suffered a legally compensable injury in the form of an invasion of a legal right to ownership

of and control" over it.

The bar association dismissed the judge's complaint, saying it lacked jurisdiction. Judge Hafele says, "The answer will have to come through case law or the legislature amending the statute, after determining whether the civil theft law is accomplishing what it is designed to do."

The bar association got four other complaints about Palmer Reifler last year, two of them complaining about excessive phone calls. The law firm disputed that notion, but the bar association questioned its "methods and professionalism" and warned the firm that "harassment techniques in an effort to collect for your clients are not acceptable."

In one of the complaints, a Massachusetts mother wanted to know why a Florida law firm was demanding that her 14-year-old son pay \$475 after he tried to steal an \$11 pair of sunglasses while visiting his grandmother in Florida. The boy entered a program that required him to do community service.

His parents added some punishment, doubling the amount of community service. But, his mother wrote to the Florida bar: "I find it hard to believe that justice is served in attempting to scare and threaten a young boy into handing over money after he has already given back the merchandise."

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