

Maximizing Returns and Minimizing Costs in Collection Lawsuits

By Lawrence R. LaSusa



Thanks to current economic conditions, huge numbers of collection lawsuits are being filed across the country every day. However, in many cases – even when the lawsuits produce a favorable judgment – they produce little or no recovery for the judgment creditor.

If your business accounts are past due, and you're considering a collection lawsuit, you'll want to call your attorney, but before you do, pause and prepare. The following methods will help you maximize your results and better budget the attorney fees and collection expenses you're facing:

Follow a Warm Trail

Hunters and trackers like to follow warm trails. Police feel the hood or exhaust pipe of a car to see if it has been driven recently. No doubt, a cold trail is hard to follow. The sooner you follow up on a delinquent account, the better are your chances of collection.

Ask and You Shall Receive

As a business owner or credit manager, the first question you should ask yourself or account representative is: Did you ask the

customer to pay our bill? Nobody likes to ask a client or customer to pay up – whether it is the front-line salesperson or the boss. Still, customers who purchase goods or services expect to pay for what they get, and before you incur any attorney's fees make sure they have been directly asked to pay.

If the customer has purposefully not paid their bill, find out why the account is past due. This is important information. You can find out if you have a business process or problem that needs fixing. You can learn if your product or service is defective or deficient. Such circumstances usually become the basis for nasty counterclaims. If the problem can be resolved without a lawsuit (or the threat of one) you may have saved a customer, their referrals, and the expenses and lost opportunity costs of trying to collect an overdue account.

Make them Put their Money where their Mouth is

If you are getting paid in full right then and there, a formal written agreement is not necessary. However, if you agree to give the customer additional time to pay up, or arrive at some arrangement outside the normal course of dealings, then a call to your attorney may be worthwhile. Put the terms of your agreement into letter form, with all

of the terms stated in plain language, and send it to your attorney for review. The likelihood is that your version can be used with only minor modifications, and this will save you attorney's fees and time.

The "Pay up or Else" Threat

If the customer does not answer your calls, or if the check has been "in the mail" one too many times, then it's time for the final notice. No form letter can cover every situation, but formatted letters streamline the process and yield more consistent results. When drafting your final demand letter, remember:

- Even if you never want or expect to see this customer again, resist the desire to use harsh language. A judge or jury may be reading the letter in the future, so be assertive but be discreet.
- Be clear about what you want. Make your letter as easy to follow as possible. Include an explanation of the account (including interest and other charges that have accrued), when you expect to receive payment, and who should be contacted if the customer has any questions.

Just the Facts, Please

If the demand letter does not

result in payment do not hesitate to contact your attorney. Pull together all the information on the customer and the account that you can. Prepare a simple letter of explanation for your attorney about the circumstances, including any possible counterclaims.

Your attorney is not simply your hired gun. He or she is your counselor, who can help you decide if a collection suit is a worthwhile step to take. The best way to do this? Arm him or her with information. Most helpful to your attorney:

1 Customer location. Give your attorney the customer's business name, address and phone numbers, including the same for any affiliated companies operated by the customer. Include individual guarantors or anyone else that may be jointly obligated on the debt. Social security numbers and FEINs are particularly helpful.

2 How to locate their assets. Tell your attorney everything you know, or can discover, about the customer's assets, from their bank accounts and other business assets to whether they own a home and where it is located. Check your records for copies of the customer's checks. The Secretary of State will generally provide you with the name and location of businesses operated by a corporation under other assumed names. Your attorney can follow up to determine whether or not any of these other businesses are open, operating and have available assets. Likewise, your attorney can check with the county in which the customer's business is located and with the Secretary of State to see if other creditors have security interests or liens on all or part of the customer's assets.

3 Names, addresses and phone numbers of other vendors who may have similar problems. What, if anything, have you

found out from other business people in the community?

Avoid spreading false information that may lead to counterclaims for libel or slander, but collect whatever information you can about the customer and their ability to pay other businesses.

4 A credit report. Either you or your attorney can order a credit report from LexisNexis, Dunn & Bradstreet, or other reputable credit reporting services. Credit reports help locate property and other attachable assets that may be liquidated to satisfy a judgment.

They also provide information about the customer's business operations (such as a recent business change, which may alert your attorney to other concerns), and other public record activity that may be useful to know when seeking to collect the debt. In short, even if you think you have collected enough information on the debtor-customer, paying for a credit report may be money well spent when deciding whether to pursue a collection lawsuit.

Decide Whether a Collection Lawsuit Should be Filed

Nobody should hire a painter for their home without getting more than one estimate and checking references. Your approach to hiring an attorney for a collection lawsuit should not be any different. Some attorneys pursue collection cases on a contingent fee basis; meaning that the attorney does not charge any legal fees and only gets paid a percentage of the amount recovered. Other attorneys handle collection matters on an hourly fee basis. In either case, you should expect to pay all the attorney's out-of-pocket

costs of the lawsuit, regardless of recovery.

Spending \$2,500 in legal fees and court costs to pursue a judgment only worth \$7,500, which has a low probability of recovery, is bad business. Agreeing to a one-third contingent fee on a \$100,000 claim with almost certain recovery is also bad business if the case is simple and only requires minimal attorney time. Ask questions, and do not be afraid to negotiate with your attorney.

The bottom line is simple: If you do your homework in

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advance, you may be able to avoid the expense of a lawsuit. But, if you have to use the courts, your preparation will help you work with your attorney to decide whether a collection suit is likely to produce cost effective results, and ultimately will help you to negotiate the best possible arrangement to pursue your case to successful conclusion.

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