

When A Claim Goes To Court

When you place a commercial claim with a collection agency, you usually authorize the agency, when necessary, to forward the claim to an attorney in the area where the debtor is located. The attorney is selected by you or the agency with specific provision that suit will not be filed without your prior authorization.

Court Costs and Suit Fees

If you authorize suit by your attorney, the agency will inform you of the court costs and suit fees requested by the receiving attorney, which are in addition to the contingent collection fees.

Court Costs

Filing fees, service of process, etc. vary widely in different courts and different states. Court costs are refunded if collected.

Attorney's Suit Fees

Attorney's suit fees are for work in preparing and filing necessary papers and for appearances in court. Attorney suit fees may be contingent (retained only out of recoveries) or more commonly non-contingent (payable in advance regardless of any collection), or a combination of both.

A check for the amount of court costs and suit fees, made payable to your attorney, is usually sent to the agency to be forwarded to your legal counsel. Some collection agencies charge an additional administrative or service fee if suit is authorized. The amount of any such fee should be clearly stated in the collection agency's agreement with you.

Witnesses

If there is an uncontested default judgment, it usually will not be necessary to provide witnesses to verify documents or allegations in the complaint. In some cases, however, courts may require a witness even in default situations. If the claim is contested, it usually is necessary to have one or more witnesses who are personally familiar with the issues.

Counter Claims

If the debtor files a counter claim which will require your defense, the attorney may require a separate fee in addition to his/her usual suit fees.

The Final Decision Is Yours

You must determine whether the likelihood of recovery on the claim, and the probable amount of recovery, will justify the time and expense of litigation. Remember, litigation is a slow process. While in some instances the filing of a suit may prompt the debtor to settle the case, crowded court dockets and tactics utilized by debtors can often delay a judgment for many months or even years.

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