

10 Questions to Ask Before Suing a Collection Account

From ABC-Amega

You've placed your claim with an outside collection agency. They've done their best to collect, but the debtor is not paying. They tell you that your only option is filing a lawsuit. There is a price tag involved with lawsuits, including court costs and fees. Is filing suit your best option? Here are 10 questions to ask before deciding to file.

1. Is your claim large enough to sue? Most attorneys in the United States will not file a collections law suit under \$1,000. Some won't file for anything under \$2,500. If the claim amount isn't worth a lawyer's time, you should consider that it might not be worth it in the long run to you either.

2. Is the debtor still in business? This seems like a silly question to ask, but if the debtor's company is no longer in business, the assets have probably already been distributed and sold. Unless you have a personal guarantee from the owner or an officer, there aren't going to be any funds to collect.

3. If the debtor is not a corporation, is there an address where Service of Process can be made? In the United States, Service of Process is the procedure whereby the debtor is given notice of legal filing. In the case of sole proprietorship and partnerships, service must be made at the owner's primary place of business or residence. If the debtor is a corporation, service should be made on an officer of the company. However, if that's not possible, service can be made on the Secretary of State where the company is incorporated.

4. Does the debtor appear to have sufficient assets to satisfy a judgment if one is awarded? Unless you simply want to make a point, or are hoping the debtor's business will pick up in the future, suing a debtor that doesn't have the ability to pay a judgment, even if you get one, may not be worth the time, effort and expense. However, some creditors will file suit just the same to have the judgment on the record. In the U.S., the judgment will remain on file for 10 years and acts as a lien on any future assets.

5. Does the attorney (or your OCA) have a previous experience with the debtor? If they have, they may also have a good idea whether or not the debtor has enough assets to pay a judgment. Or, exactly what his method of operating is. Some debtors won't pay until a legal action is filed against them. Then they turn around and either offer a settlement or just pay up.

6. Is the debtor disputing the account? Are you sure you're in the right? If the debtor has any legitimate disputes of the account, you're generally better off accepting a settlement if one is offered. Disputes might relate to quality, timeliness of

delivery, non-performance of the contract, pricing changes, etc. If the debtor feels they have a case, they could potentially file a counterclaim against you.

7. Can you supply sufficient documentation to substantiate the debt? This is a list of the basic things that must be proven in court to win your case.

1. You received an order from the debtor.
2. You and the debtor agreed on a price for the merchandise or service to be provided.
3. You delivered the merchandise or provided the service.
4. You made a demand for payment.
5. No payment has been received.

8. Has the debtor threatened to file a counterclaim? Defending against a counterclaim can cost a lot of money and time. If you're not 100% sure that the debtor is wrong and you are right, it's probably not worth taking the risk.

A counterclaim is considered a separate action. Although you can use the same attorney for the initial filing and to defend the claim, they will charge separate hourly fees to handle the counterclaim.

Some debtors, even without legitimate disputes, will threaten or even actually file countersuits in an attempt to force you to back away from your lawsuit, or to accept a lower settlement.

9. Will you be able to supply a witness if one is required? If your case does end up going to trial (most are settled out of court) you will be required to provide a witness. An affidavit or deposition will not suffice. Before turning down any settlement offer, be sure to figure the costs of providing a witness into your calculation of the costs involved in pursuing a trial.

10. Do the costs involved warrant filing a lawsuit? Are they in line with what is owed? Generally, initial court costs should not exceed 10% of the value of the claim.

Initial court costs generally include all the filings required by the court to render a judgment. They usually do not include filing a Writ of Execution or any supplementary proceedings required to attempt collection, should the debtor choose to ignore the judgment.

To determine whether there is a likelihood of obtaining a favorable judgment and collecting it, carefully consider the answers to each of the preceding questions. If you've been using an OCA and an attorney, they should be able to guide you to the decision that is favorable to your company.