So... Your Debtor Has Filed a Countersuit

By ABC-Amega Inc

You've decided to sue a debtor for an unpaid collection account, you've gone through all the steps and it appears that filing a lawsuit is a good option. You think all is going to unfold without much issue, but then the debtor files a countersuit against your company. What does this mean for your company, and what should you do? Here is an overview of the countersuit process.

What is a countersuit?

It's a lawsuit filed by a debtor against a creditor in direct response to a suit brought against the debtor by that creditor. The countersuit asserts an independent Cause of Action in favor of the defendant (debtor).

It's important to note that, in many jurisdictions of the United States, the word *countersuit* and counterclaim are synonymous. However, in some jurisdictions, a *counterclaim* is merely an answer or denial of the plaintiff's (creditor's) allegation. Therefore, if you are told a counterclaim has been filed, clarify its meaning immediately.

While some countersuits simply seek declaratory relief from your claim, most also seek a monetary award. They are often based on *a tort*, a civil wrong for which the court will provide a remedy in the form of punitive damages. Torts address negligent acts or omissions independent of contracts.

Be aware that, in some cases, an unscrupulous debtor may fabricate a spurious countersuit simply as a defense tactic in the hope that it will cause you to drop your claim against him.

How should you respond when a countersuit is filed?

Once you are notified of a countersuit, you have several options. You can choose to have the attorney who originally filed your suit against the debtor defend you in the countersuit. You can hire a second attorney to handle the countersuit separately. Or, you can instruct your original attorney to seek a mutual dismissal of both cases. In this last instance, you must be prepared to defend if the debtor refuses a mutual dismissal.

An option you do not have is to ignore the countersuit – a mistake sometimes made to the ultimate regret of the creditor. If you don't defend against a countersuit by the deadline given, a Judgment will likely be entered against your company for the full amount requested by the debtor.

How much do countersuits cost?

When you decide to file a suit against a U.S. debtor whose account you have placed with a collection agency, the agency's affiliate attorney typically quotes an amount of money sufficient to cover court costs – filing fees, process server fees, writ of garnishment, etc. You will also be quoted a suit fee, which is generally 10% in the United States. The suit fee may be partially or fully contingent upon collection.

These fees relate to handling your claim against the debtor. They **do not cover** an attorney's fee for the defense of a countersuit. In the United States, while countersuits are heard concurrently with the initial lawsuit, they are considered separate actions. Attorneys charge separately for their defense at hourly rates ranging from $200 to $700.

Sometimes the cost of defense against a countersuit may be fully or partially covered by your liability insurance.

Should I forego filing suit since the debtor might file a countersuit?

If you know your case against a debtor is sound, there are no *valid* disputes, the debtor is in business, and the matter economically justifies legal action, don't be intimidated by the threat of a countersuit. Less than 10% of all collection lawsuits result in a countersuit.

This information is provided by ABC-Amega Inc. and is not intended to be legal advice and is not a substitute for competent legal advice on the referenced subject.

About ABC-Amega:

Founded in 1929 as The American Bureau of Collections, ABC-Amega is a commercial collections agency specializing in global debt collection and accounts receivable management solutions.

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