

What To Expect If You Want Your Claim To Go 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 approval.

Court Costs and Suit Fee

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

Court costs

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

Attorney's suit fees

(covering work of the attorney in preparing and filing necessary papers and appearances in court) 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 fee is usually sent to the agency to be forwarded to the attorney. Your check may be payable to the attorney or the agency, depending on the arrangement most convenient to you. Some agencies charge an additional administrative or service fee if suit is authorized. The amount of any such fee should be clearly stated in the 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.

Counterclaims

If the debtor files a counterclaim which will require your defense, the attorney may require a separate fee in addition to his usual suit fee.

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 expenses 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 years.

Provided by the Commercial Collection Agency Association

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