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When Customer Won't Pay – Should you go to Collection Agency or Attorney?

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Your internal efforts have failed to collect a severely past due account, it's time to call in a professional. But who should you call, your corporate/general counsel, a collection attorney or a collection agency? Let's look at all three and determine what your best course of action is.

USING YOUR CORPORATE/GENERAL COUNSEL

Corporate counsels are lawyers who work directly for a business and general counsel is a law firm that is on a retainer to work a certain amount of time each month for your company. As such, all their time and energy is spent on their employer's requirements in various capacities and do not have a specific focus in collections. Their main job is to provide legal representation to their employer and their employees. Specifically, they will offer advice on legal matters and perform legal research for the benefit of the corporation. Additionally, they will offer opinions on issues like contracts, property interests, collective bargaining agreements, government regulations, employment law and patents. They may also represent their employers in court on defense matters and they are also utilized in forwarding litigatory matters to experts in pending litigation matters.

Now when it comes to handling a collection situation yes, they can handle it, but will they do the best job for you? If you have a large volume of placements can they handle it? Corporate/general counsel typically have little if any collection experience and very little of their day to day time is focused in this area. Collection agencies and collection attorneys have specific training and experience in handling collections that a corporate/general counsel usually does not have.

Also, if you use your corporate/general counsel to file suit against a customer who operates in another state normally they file the suit where your company is located as it is much easier to do. However, once you obtain a judgement, you will need to find an attorney in the local jurisdiction of your customer to domesticate and enforce it. Now you have two attorneys involved, a delayed resolution and increased expense.

Using your corporate/general counsel to collect a debt may be easier as they are either part of your company or are local and on a retainer and you might think your costs will be less but the retainer is only a charge against their hourly billing. A collection matter can cost a lot of money to pursue with no guarantee of success based on an hourly structure, *especially if your customer files a counter claim, it could wind up costing you much more in the long run.* So, will using your corporate/general counsel get the best results? We do not think so.

USING A COLLECTION ATTORNEY OR A COLLECTION AGENCY?

Based on the previous assessment the choice is now a collection attorney or a collection agency? There are hundreds of collection attorneys listed with the Commercial Law League of America and all of them have experience in collections and many do a great job. But, if your customer is delinquent and you cannot get paid, should your first stop be a collection attorney or a collection agency? This is a choice that companies frequently face as they try to find a collection professional to handle their placements who will provide the greatest chance of collection in the shortest period of time with the lowest costs. We think the decision is a straight forward one.

To further explain, let's look at the differences and why one choice is rather clear., collection agencies work on a contingency basis. That is, they will keep a portion of what is collected. If nothing is collected there is zero fee. When they do collect, a contingent fee is charged on the amount collected. Often these fees can be negotiated based upon the volume of accounts placed, size of the account and circumstances such as age of invoices, disputes, etc. A collection agency's goal is to collect to collect your money in-house in the shortest period of time, without having to use an attorney. When a collection agency has to forward a file to an attorney, it is their last resort in trying to get your money.

Collection attorneys, while many may work on a contingency basis, there are those that work on a fee for service basis. They will earn a fee based on the time spent regardless of the outcome. Additionally, attorneys earn their living by suing and filing a lawsuit costs money. Included in the suit costs will be the cost of filing a summons and complaint, serving the debtor, and various required attorney actions during the lawsuit. Collection attorney's make more money litigating. Unnecessary lawsuits are filed frequently and as the collection effort is non-apparent during the time of litigation, many times your customer can go out of business, pay other suppliers instead or file a counter suit, which will further increase your exposure. Once a lawsuit has been filed you are now at the mercy of the courts and the time frame to get you paid just got extended 6-12 months.

Collection attorneys are also normally regionalized to geographic locations. They usually do not have the reach to handle accounts in multiple states let alone matters that are international. Furthermore, if your placements are spread though out the country or around the globe you have much more "clout" when dealing with a national or international collection agency as opposed to a local law firm.

One of the critical difference between collection agencies and attorneys is that collection agencies are equipped to handle a large number of accounts. They are specifically designed and have the personnel and computer capability to deal with thousands of accounts at any one time and handle files that range in dollar amounts from \$100 to millions of dollars. Collection attorneys rarely have the capability to properly control a large volume of collections files and do not typically want to handle low dollar files. Agencies are designed with this capability, in mind. If they cannot successfully handle high volumes and low dollar files they will not be a very profitable business. Attorneys have assistants and associates

handling incoming calls and payments while working on other more important business, themselves. They are law firms not collection agencies and therefore do not operate like a traditional collection agency

If litigation is needed using a collection agency is still your best bet as collection agencies usually have a network of local attorney's that they utilize to bring suit, secure judgments and collect in a creditors behalf. They are staffed to "quarterback" attorney efforts to move the case as swiftly as possible. When questions arise, collection agency staff are versed in the various nuances of the litigatory process and are well prepared to get you the answers needed quickly and efficiently. Reputable agencies are fully bonded and insured and only utilize attorneys who are equally bonded and insured to provide creditors with maximum protection.

As collection agencies handle a large volume of accounts they also place substantial business with local law firms. Agencies have vetted the law firms they use who they feel do the best job in securing recovery for the creditor. Furthermore, an agency that is national in scope actually has more clout with a given law firm than any single creditor. Those attorneys that accept business from both collection agencies and credit grantors are bypassing the triadic system that has been in existence for over 100 years. It is unethical to accept business from a creditor as well as a collection agency. While you certainly want recovery of your funds we would believe that it should be accomplished in the most ethical manner possible.

CONCLUSION

Collection agencies FULL time responsibility is to collect the delinquent debt of their customers in the shortest period of time without litigation. Collection agencies are set-up and geared to making a maximum number of attempts at third party intervention to bring forth payment, quickly. When a customer asks that the agency call back next Tuesday at 10am, the agency has software to ensure that the call is made next Tuesday at 10am. This is what they do all day, every day. This is not how your corporate/general counsel or collection attorney is set up to operate and therefore they cannot deliver the results that a collection agency can. Also, if litigation is needed a collection agency will hire for you the best collection attorney in the jurisdiction of your customer, contain your costs and make sure the account is handled as efficiently as possible and bring you the results expected. A collection agency's goal is to collect your money in the shortest period of time and that means doing it ethically and as expeditiously as possible.