

CHOOSING THE RIGHT FIRM FOR INTERNATIONAL COLLECTIONS

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PROBLEMS ASSOCIATED WITH CHOOSING THE WRONG PROFESSIONAL

Whether you're starting an out-of-court collection effort, or thinking of starting litigation to collect, chances are you will only get one chance to succeed and recover your outstanding monies. You'll get one chance to *sell* your idea, which is far better to *negotiate* a settlement agreement than to go to court. You'll also get just one chance to close in on a "problem" debtor before other creditors do. And finally, you'll get just one chance to win a case and force your debtor to pay.

When you are hiring a firm to collect your money, you need to ensure that you have the most reliable professional that can guarantee the best chances of succeeding. Otherwise, you'll miss your chance and end up with an uncollectible account; or worse, you might even go on spending time, money, and a lot of effort on a lost cause.

ESSENTIAL CAPABILITIES FOR INTERNATIONAL COLLECTIONS

Believe it or not, not all collections are equal. International collections present a greater challenge to a creditor. Under an international scenario, a creditor will have to venture into the debtor's country at some point and face very different legal and cultural systems. Without a doubt, a good and reliable professional will be needed, and reliability in this area of collections resides in capabilities far exceeding the norm.

1. Specialists on Debt Collections

Whether you are intending to hire a law firm or a single lawyer, you'll need to ensure that the legal professional is a specialist and has wide experience in debt collections. Debt collectors have an approach to collections that most lawyers simply don't have. Many lawyers are professionals with big egos who have the power to intimidate an ordinary person with the threat of filing suit. That's the lawyer's biggest weapon. If a debtor doesn't want to pay, he'll simply be taken to court. That's where the lawyer's power resides, but it is also a weakness.

On the contrary, a debt collector has the power to persuade a debtor – *through excellent selling skills* – and to find and reach agreement on the best possible terms to avoid lawsuits and effect recovery

sooner than would be the case by bringing suit. In debt collections, you need to give yourself a chance to persuade debtors to pay voluntarily before engaging in litigation. This is something that only a specialist can do.

2. Local Presence in Debtor's Domicile

Your debt collector needs to have local presence in the debtor's jurisdiction, either directly or through a local correspondent. This is essential for two things: 1) to assess the debtor's current situation and the potential risks involved; and 2) to be able to take immediate action to secure your interest.

It is simply impossible to discover a debtor's real situation at a distance. While you may be trying to negotiate with a debtor in good faith by phone, your debtor might be closing down, moving away, or selling his assets or his company. The debtor's operations, inventory, personnel, facilities, etc., are all key factors that need to be analyzed to uncover potential risks.

Needless to say, it is impossible to secure a valid *-one that will stand up in court -* written payment agreement from a debtor, or to seize a debtor's assets through legal action, without a reliable local lawyer that is ready to act immediately, before other creditors do. This cannot be achieved from a "remote" location.

3. Civil & Commercial Litigation Expertise

Experience and expertise in civil & commercial litigation is required for several important reasons. Firstly, you need to have a professional that will guarantee bringing the strongest case to collect your money. This can only be achieved with the help of a lawyer that knows the road and has a proven track record at winning these types of disputes.

Secondly, fraud-related actions and remedies require more than good litigation skills. They require sound and intelligent *proven* strategies to effectively pursue illegal transfers of assets, or to link and hold liable companies that represent the real interests of your apparently insolvent debtor. Once again, this can only be successfully achieved by a specialist that knows the correct strategy and approach.

4. Dominant on International Law

International accounts present unique problems. Two unique problems - conflict of laws and conflict of jurisdiction - appear almost every time an international dispute arises. A local court that is to resolve such a dispute will have to decide at some point which laws will govern the situation and

which courts will have jurisdiction to hear the case. Will it be the laws and courts from the creditor's jurisdiction, or the debtor's?

Additionally, the current trend is for the unification of commercial law worldwide. Today, countries everywhere are following this trend and are signing up to international treaties which replace local laws. In Mexico, for instance, the federal Commercial Code has been replaced by the Vienna Convention on Contracts for the International Sale of Goods for the governance of specific transactions. This is only one area of law, but there are others: powers of attorneys, applicable law, statutes of limitations, international promissory notes, etc. Is your lawyer knowledgeable in these areas of law, and does he or she know the current trends in the courts as they relate to resolving disputes based on these and other issues?

5. Ability to Work under Contingency Fees

Working under contingency fees guarantees that your lawyer will only file a lawsuit on your behalf if it has a real and decent probability of success. Contingency fees translate into an investment of time and money from your lawyer. If your lawyer is not willing to make any kind of investment in your case, it is probably because it is not a strong one.

Lawyers who do not work under contingency terms are not necessarily unreliable, but you have to ensure that your case carries a good probability of success. A lawyer who charges hourly fees may simply not be overly concerned with the best outcome for you. If you want to try a lawyer who only works on a non-contingency basis, ask whether he would take your case on a contingency fee above the usual billing rate. If the lawyer refuses to accept your offer, it is probably because your case is not a strong one.

CONCLUSION

To be successful with international collections, you need the right approach and a good strategy. This can only be achieved with the help of a collection specialist that has some essential capabilities. Only a lawyer knowledgeable of and experienced in commercial litigation and international law will know how strong your case is and, consequently, what your leverage is for negotiation. If litigation is needed to collect, it will be these skilled professionals who will provide you with the best chances for success. Local presence in the debtor's domicile is also essential to assess the debtor's real financial situation, and to take immediate action when needed.

Finally, it is fair in all senses that your collection case be handled under contingency fees. It is only this way that you'll be able to ensure that you're venturing into and investing in a cause that has a good probability of success. The collection specialist who is unwilling to work under contingency fees may simply not be overly concerned with the outcome.

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