



SLATER, TENAGLIA, FRITZ & HUNT, P.A.

Collection Newsletter – September 2009

COMBAT THREATS AND COLLECT MONEY PRIOR TO SUIT.

Debtors often attempt to derail a creditor's collection efforts by skipping, filing bankruptcy and fabricating disputes. Collection agencies and law firms must overcome these and other obstacles on a daily basis to be effective.

The debtor that utilizes threats of litigation against the creditor in an attempt to frustrate the collection process presents one of the most difficult challenges. Pre-litigation efforts can be stopped in their tracks due to threats of litigation and allegations of violation of the Fair Debt Collection Practices Act ("FDCPA"). Unfortunately, some creditors with legitimate and collectible claims decide not to pursue necessary litigation when threatened with a counter-lawsuit.

The partnership between our law firm and Receivable Management Services (RMS), ensures that the use of threatened legal action will not derail the collection effort. We combat debtor threats and respond with aggressive correspondence and direct telephone contact with the debtor and/or their attorney. Experience demonstrates that this approach neutralizes threats and maintains focus upon collecting the underlying account receivable.

- **CASE STUDY**

Lawyers Love Threats. Our law firm recently received a letter alleging several violations of the FDCPA from a law firm that owes money for insurance premiums. Rather than close the file, an attorney in our law firm sent an aggressive letter advising the attorney/debtor that the FDCPA did not apply to

this case and that, since her threats were without merit, our collection efforts would continue. We then contacted the attorney and reached an amicable resolution to the undisputed balance. This case demonstrates how threats of legal action, when addressed effectively, can still result in collection without the necessity of suit.

KNOWLEDGE IS POWER. One of the many advantages of the pre-litigation/non-litigation partnership between our law firm and RMS is the electronic sharing of information. When a claim is placed with our law firm, we can review the entire collection history at the push of button. Timely review of debtor's disputes, broken promises to pay or lack of response, provides valuable information that increases the collectability of a case.

- **CASE STUDY**

Pro-Active Use of Information. Our law firm is currently handling a large balance pre-litigation case, where the claim notes indicated that the debtor had a specific dispute with the underlying claim. Prior to calling the debtor, we obtained specific documentation from the creditor to address the dispute. When the debtor raised this dispute once collection efforts commenced, we provided a custom letter with documentation, to rebut the dispute. We are now discussing payment of this obligation rather than debtor's alleged dispute. This aggressive collection effort was made possible by utilization of the important claim information obtained and shared by RMS.

ABOUT OUR LAW FIRM

Slater, Tenaglia, Fritz & Hunt, P.A. specializes in debt collection, creditor's rights and complex commercial litigation. Since 1976, we have represented National Collection Agencies, Fortune 500 Corporations, Atlantic City Casinos and Hospitals in debt collection matters. Our experienced attorneys handle debt collection cases in a variety of industries from the pre-litigation stage of the collection process through post-judgment execution. Our Firm is consistently rated among the top commercial law firms in the country for debt recovery. The Firm represents creditors in Federal Bankruptcy Court and defends clients in a variety of civil actions in State and Federal Court.

Slater, Tenaglia, Fritz & Hunt has three offices throughout New Jersey and New York and handles debt collection and creditor's rights cases for clients throughout the country.



RESOLVING CASES WITH UNRELIABLE DEBTORS ...

SETTLEMENT AGREEMENTS WITH TEETH.

Experienced collection attorneys know that a collection case is never truly settled until the money is received and the funds are available to remit. Settlement discussions are nothing more than a part of the collection process – an important part of the process, but certainly not the end game. Indeed, debtors and their attorneys often use the negotiation process, and even promises of payment, to create delay.

When a debtor has shown a tendency to make and break promises either in its dealings with a creditor client or a collection agency, attorneys and clients must take notice. As a practice, our law firm always reduces a settlement to writing. However, in this difficult economy, our law firm is seeing more broken promises and breached settlements than usual.

So the inevitable question is how should clients settle with unreliable debtors? The answer is to draft settlement agreements with teeth.

All written settlement documents should contain: (1) A clear statement of the overall settlement amount and payment terms; (2) Who the check is made payable to and where it should be mailed; (3) The date payment or payments are due; and (4) A default provision, in the event of non-payment. It is surprising how many clients ask our law firm to use pre-approved settlement agreements that do not contain these elements. A poorly drafted agreement is an impediment to collection.

- **Case Study**

- The Importance of Default Provisions.

Several months ago our law firm received a claim for \$28,000 of an insurance client against a debtor which we have had two previous cases against. This debtor is a large, non-profit corporation infamous for juggling creditors. This debtor waits until they are sued and then tries to settle for a fraction of the underlying balance with an extended payout plan. In this particular case, we filed suit immediately, settled the case with no grace period for curing a missed payment and a default provision for the full amount of complaint – settlement terms this debtor typically would not agree to. The debtor,

true to form, made the first two payments then defaulted. Our law firm secured judgment, executed on the judgment for the full amount of the complaint and recently levied the defendant's bank account for over \$29,000. This case demonstrates the value of a settlement agreement customized to the situation and drafted with teeth.

CREATIVE SETTLEMENT SOLUTIONS.

There are some collection cases where a creative approach to settlement is necessary. Simply stated, debtors are becoming increasingly unreliable in this economy. As a practice, our law firm makes aggressive demands for payment, prior to making a recommendation for client to proceed with suit.

Traditionally, in cases where a debtor agrees to pay prior to suit, either a settlement letter or promissory note is drafted. A settlement letter clearly states the debtor's obligation under the settlement agreement and requires a counter-signature. The problem with this settlement instrument is that it cannot be used to secure a judgment once litigation is commenced. Promissory notes, on the other hand, are a more effective pre-litigation settlement document, but many debtors will not agree to become personally liable for a corporate debt and Judges have become less inclined to enforce confession of judgment provisions.

Our law firm advocates a creative and aggressive approach to more difficult pre-litigation settlements. For instance, when our experienced non-attorney collectors or attorneys, identify cases, where settlement discussions are taking place and the integrity or reliability of the debtor and/or their attorney is in question, we contact the creditor client and recommend that client file suit immediately to secure a docket number with the court.

Next, we make the debtor aware of the filed lawsuit. If both sides agree on a settlement, we have the debtor sign an acknowledgment of service of the complaint, while simultaneously sending the debtor a copy of a stipulation of settlement. All of our law firm's settlement agreements contain default provision that provides for an automatic judgment for the full amount of complaint in the event of default. The settlement agreement is then filed with the

court, resolving the lawsuit and the creditor client has protection in the event of default.

This methodology allows the settlement agreement to be reduced to a judgment in the event of default. Even if the debtor fails to sign the settlement agreement, they have been properly served with a lawsuit and must immediately hire an attorney or risk being in default.

- **CASE STUDY**

Settling with an Unreliable Debtor. Our law firm handled a \$50,000 collection case for a client, where the case was settled for \$40,000 three weeks after it was placed. The attorney in our law firm who negotiated the settlement recommended that client authorize the filing of suit and stipulation of settlement. Unfortunately, the client chose not to expend the money for suit. When it came time for the first payment, the debtor became habitually “unavailable.”

Creditor then authorized our law firm to file suit. After ten months of contested litigation and a scheduled mediation date, the two parties settled the case for the same \$40,000 with similar payment terms. Now, the client can secure a judgment if the debtor breaches the agreement. However, if this client had followed our creative settlement recommendation, ten months of delay and contested litigation could have been avoided.

POST-JUDGMENT EXECUTION, IN TOUGHER ECONOMIC TIMES.

Post-judgment execution efforts can be a frustrating experience. After all, judgments do not get clients paid, but only provide the legal right to execute on a judgment debtor’s assets.

The key to successful post-judgment execution is securing accurate asset information in a timely manner. Many clients fail to realize that they are often the best source of asset information and should retain copies of checks, tax id numbers and banking information. As an experienced and aggressive collection law firm, we have relationships with effective

local, state and national asset investigators. And while good investigators are valuable, they cost money and in some cases can take several months to locate assets.

- **CASE STUDY**

Client Records make the Difference. Our law firm just satisfied a \$10,000 judgment for a client through levying on a debtor’s bank account. This was a collection case where we secured a default judgment, but our outside investigator could not locate assets. Our law firm knew the debtor was still in business, so we again asked our client for asset information. The client provided a copy of an old check from the debtor. We forwarded the check to the Court Officer who levied the debtor’s bank account for the full amount of the judgment, plus the Court Officer’s 10% execution fee. This is an example of a client providing investigative information that a twenty-year asset investigator could not obtain. It was the copy of an old check that made the difference between collecting \$10,000 and closing the case with an unsatisfied judgment.

DID YOU KNOW THAT IN NEW JERSEY ...

- Law Firms filing over 1,000 lawsuits annually in Superior Court, Special Civil Part (Claims \$3,000-\$15,000) must file lawsuits electronically starting March 1, 2010. Since we file over 1,000 lawsuits annually we are already prepared. We have been filing lawsuits electronically on behalf of creditor clients for the past 12 months.

Monthly Collection Tip

As a business practice, creditors should request and retain customer asset information and have a procedure for providing that information to their collection agency and collection law firm, when an account is placed for collection.

FOR MORE INFORMATION VISIT: WWW.STFHLLAW.COM
301 THIRD STREET • OCEAN CITY, NJ • 08226 • (609)-399-9960
2300 NEW ROAD • SUITE 102 • NORTHFIELD, NJ • 08225 • (609)-383-8222
230 PARK AVENUE • SUITE 1847 • NEW YORK, NY 10169 • (212)- 692-0200