

The Suit Process

Once the decision has been made to file suit, forward your check along with any supporting documentation to our office as soon as possible. Feel free to make the check payable to UMC rather than a different attorney each time you file a suit. We will endorse the check over to the attorney and forward it to him once we have reviewed the documentation to insure it is complete. The documentation you provide is a key ingredient to a successful lawsuit. At a bare minimum, the attorney will need an itemized statement of account. However, we suggest you forward invoices, purchase orders, credit applications, credit reports, proofs of delivery, copies of any pertinent correspondence between you and the debtor and any information you have regarding debtor's bank accounts or other assets.

Shortly after receiving the costs and supporting documentation, your attorney will file suit in the civil court usually in the county in which debtor is located. Debtor is then served with suit papers, informing him he has been sued and giving him 20-30 days to respond. *This step alone brings the matter to a head.* Your customer is now faced with a decision. It is in his best interest to resolve the matter as swiftly as possible. His options are to pay the balance, negotiate a settlement or payment plan, allow a summary or default judgment to be entered against him, or file an answer and/or a counter suit. In a large majority of the cases the debtor does not respond. After the time period for debtor to respond expires, our attorney will file a motion for the entry of a default judgment. The court normally grants the motion as a matter of course. Debtor is notified and is given 20-30 days to appeal the judgment. If he fails to respond again, judgment becomes "final". At that point, post judgment remedies can begin.

The entire process from filing suit to entering a default judgment usually takes 45-60 days. However, every debtor is entitled to his day in court. If your customer files an answer and/or a counter suit, we cannot get a default judgment. Instead, a hearing will be held and your firm will have to send an employee to testify at the hearing. Should your debtor file a counter suit, you must file an answer or a default judgment will be entered against your firm. Further, most attorneys will require a separate fee arrangement to defend a counter suit. Keep in mind that it is unusual for a debtor to file and answer and very unusual for them to file a counter suit. But you should be aware that when you file a suit, your customer does have these options.

In more complicated matters attorneys for either or both parties may "propound interrogatories". Interrogatories are merely a set of questions designed to define your position, what evidence you will present at the hearing, and what witnesses will testify. They may also exchange "Requests for Documents". These requests ask you to provide copies of the documentation you will use to support your position at the hearing. A "Discovery and Request for Production" is a combination of both the interrogatories and the Request for Documents. Prior to the hearing, either attorney may choose to depose the witnesses of the other side to determine what testimony they are going to give at the hearing. The depositions are not held before a judge or jury, but the witness will still be put under oath.

*United Mercantile Company
4074 Mt. Royal Blvd. Suite 202
Allison Park, Pa 15101*

Phone 412 487-2200 Toll Free 800.541.3833 Fax 888-285-4126 Email umc@umccollects.com

In some of the more complicated matters, some jurisdictions now require both parties to appear before an arbitration or mediation panel. These panels are usually made up of approximately three attorneys who hear testimony and make a decision that they feel is fair to both parties. If either side disagrees a hearing is set before a judge at a later date.

Once judgment is entered and becomes final, post judgment remedies can begin. The attorney files the judgment with the local court creating a lien against any property owned by the judgment debtor. This lien becomes a matter of public record and adversely affects their credit. Further, they cannot transfer clear title to any property they own or plan to buy until they clear the lien. Depending upon the jurisdiction, this lien will remain in force for 7 to 10 years and can be renewed at that time.

Finding attachable assets is by far the most difficult part of this entire process.

Judgment debtor can be brought into court to testify under oath as to his attachable assets in some states. However, some debtors go to great lengths to avoid the process server, delaying this process for months. If we do not know of any specific assets, the attorney will issue a general execution to the local sheriff or constable. That constable knocks on the debtor's door and if the debtor does not make arrangements to pay the balance then, the constable can "tag" the assets for sale at a subsequent auction. Unfortunately most companies that are in debt have their assets leveraged. That means a secured creditor technically owns the assets and we cannot execute upon them. The most effective means of enforcing a judgment is through a bank garnishment. Our attorney files the garnishment on the debtor's bank and we capture all the funds in the account at the time of the garnishment. Eventually, the funds are turned over to our attorney to be remitted to us. That is why it is vital that creditors keep accurate records as to their customers' current banking affiliation.

This description of the process of filing suit is very general in nature. Every state has slightly different rules and uses different terminology. This description is by no means complete, and it is intended to neither encourage nor discourage you from filing suit. It is simply intended to give you some idea of what may happen if you choose to sue.

