

United States

Atradius Collections US has a two-tiered collection process: the amicable phase and the legal phase. Amicable collection efforts can pursue the principal amount due, as well as interest, collection costs and attorney's fees. Legal collections in which a lawsuit is filed can only pursue the principal amount due, unless there is an agreement, signed by the debtor, in which the debtor agrees to pay pre-judgment interest and/or collection costs and/or attorney's fees.

Amicable collection

Our staff of collection professionals carries out the first US collection tier in-house. They relentlessly pursue debtors within the bounds of federal and state laws, and liaise with clients and the relationship management team to ensure that we service our clients efficiently and productively. Collectors work to ensure that, if the amicable phase is not productive, the file is adequately documented to fully utilise the second tier of the collection process, the legal phase.

Legal collection

The second tier of US collections is legal collections. The US has dedicated legal collectors who maintain an extensive network of commercial collection attorneys, servicing the US and parts of the Caribbean. We use only attorneys who are members of one or more law lists, which independently assess and bond prospective attorney members. In this way, we are assured that the attorneys working our files are committed to, and experienced in commercial collections in their respective jurisdictions.

Legal System

The US legal system is comprised of 51 separate legal systems: the federal court system and the court systems of the 50 states. The vast majority of commercial collection matters are handled through state courts.

Statutes of Limitations

The statutes of limitations govern the time period within which a lawsuit must be commenced. Statutes of limitation vary from state to state, and generally are between 2 and 6 years for an open account or sale of goods, and between 3 and 10 years for a written contract.

Attorney Process

Attorneys in the US are required to make amicable efforts to resolve an account before filing a lawsuit on behalf of a creditor. Attorneys will generally limit their amicable efforts from 7 to 30 days, depending on whether they are able to make personal contact with the debtor.

Attorney Costs and Fees

Our attorneys handle US legal collections on a contingency fee basis. The only exceptions to the contingency fee arrangement are if the account is heavily disputed, or if the debtor files a counterclaim against our client and the attorney must defend the client against the counterclaim. In those instances, the attorney will require compensation at an hourly rate, and will require an upfront retainer against which he will bill the hourly rate.

If our attorney has made no contact with the debtor, or the debtor remains uncooperative, our attorney will submit to us his recommendations and suit requirements for our client's consideration. An attorney's suit requirements consist of court costs and a non-contingent suit fee. Court costs cover the out-of-pocket costs an attorney must incur to file a lawsuit, such as the filing fee, service of process fee, and sometimes motions fees or garnishment fees. Any unused costs are refunded upon completion of the case.

The non-contingent suit fee can be up to 5% of the balance placed for collection. That amount is credited toward an overall contingent suit fee of 10%, when or if funds are collected after suit is filed. We negotiate with our attorneys to keep

non-contingent suit fees low, particularly on cases over USD100000. The attorney earns the non-contingent suit fee upon the filing of the lawsuit, and the fee is non-refundable.

US clients advance suit requirement to our office. This requirement ensures that our office incurs no expense to litigate a file on the client's behalf, and further confirms that the client will be fully responsive and cooperative throughout the litigation process. We forward suit requirements to the attorney, along with any required documentation, such as client's affidavit, declaration, or supporting documentation.

Filing the Lawsuit

Once the attorney receives the suit requirements and any necessary documentation, he will prepare the summons and complaint, and file both with the clerk of the court. All courts require personal service of process upon the debtor. Most courts require that the defendant be served with the summons and complaint within 90 to 180 days of when the lawsuit is filed and will frequently dismiss the lawsuit if the debtor is not served within the state's statutory period of time for service of process. If the debtor is a corporation, and service cannot be perfected on the corporation's registered agent, our attorney can seek leave of the court to perfect substitute service of process upon the Secretary of State for the state in which the debtor corporation is located. Substitute service of process is not available for individuals, sole proprietorships, or other businesses not registered with the Secretary of State.

Proceeding with Litigation and Discovery

When service of process has been perfected, the defendant will have between 20 and 40 days to file an answer to the complaint. The time limits vary depending on the state in which suit was filed.

If the debtor files an answer to the complaint, the next stage is discovery, the longest stage of litigation. Discovery is a court-mandated period of time during which the parties can formally request production of documents, requests for answers to interrogatories and requests to admit, and take depositions of witnesses for the opposing party. The court will set a deadline by which all discovery must be completed.

The most important aspect of discovery is that each party must provide the information they are requested to give. If a party does not fully provide requested information, the court will bar all information that has not been produced, or witnesses who have not been disclosed. This is a very serious stage of litigation, designed to promote resolution of a lawsuit without resorting to trial. In addition to barring evidence, the courts can impose monetary sanction on parties who are not timely or complete in their answers to discovery.

Alternative Dispute Resolution

The US courts are increasingly backlogged. More and more courts are requiring that parties to a lawsuit submit to non-binding mediation or arbitration before a case will be allowed to proceed to trial. The parties split the cost of the mediator or arbitrator, who is frequently an attorney or former judge.

Mediation or arbitration is an informal process by which an arbitrator or mediator meets with the parties' attorneys and one or two witnesses for each side. The parties each present their documentary evidence and one or two witnesses. The mediator/arbitrator will discuss the strengths and weaknesses of each party's case and will make a recommendation about a probable outcome at trial. If both parties agree with the recommendation, a settlement agreement is submitted to the court.

The recommendation of the mediator or arbitrator is non-binding, and either party can choose not to accept the recommendation. Nevertheless, there is one important consideration for the party that chooses not to accept the recommendation. If that party receives a lesser result at trial than what the mediator/arbitrator recommended, that party must pay the opposing party's attorney's fees.

Obtaining Judgement

Judgement can be obtained by 4 different methods, and will generally include an award of court costs (filing fees, service fee) and post-judgment interest at the statutory rate.

If the debtor does not file an answer to the complaint within the statutorily prescribed time, our attorney will file a motion for default judgment. Depending on the backlog of the particular jurisdiction, it can take from 30 to 180 days to obtain an order of default judgment from the court. A judgement debtor can file a motion in the court, seeking to vacate the default judgement order so that he can defend the lawsuit. Each state allows the motion to vacate to be brought within a specific period of time, usually from 6 to 12 months after the date the default judgment was entered.

Judgement can be entered as a result of a settlement agreement, through entry of a consent judgment order. Settlement agreements, whether from mediation, arbitration or simply the negotiation of the parties and their attorneys, normally include a consent to judgement clause. The consent judgement clause allows the plaintiff/creditor to ask the Court for immediate entry of judgement against the defendant/debtor, if the defendant defaults on the agreement, and does not cure the default within a short time period set forth in the agreement.

Judgement will be entered at the conclusion of a trial. Depending on the court backlog, it can take from 6 months to 5 years to obtain a trial date, as oldest cases are tried before newer cases.

A lesser-used, but effective, method to obtain judgement is the summary judgement motion. Summary judgement is reserved for cases where there is no dispute as to the material facts of the case. It is similar to a trial on paper, and no witnesses are presented. Any hint of a factual issue will usually defeat the summary judgement motion. If a motion for summary judgement is denied, the case is not concluded, and the matter will proceed to trial, if the parties do not settle. It can take from 3 to 12 months from the time the motion is filed for the court to rule on a summary judgement motion, because the parties are given time to fully brief the legal issues for the court.

Judgement Execution

After the Court enters the judgement order, our attorney records the judgement in the public record. The recording makes the judgement a lien against the judgement debtor's current or after-acquired property. Judgement liens will remain valid and enforceable from 5 to 25 years after the date of entry, depending on the jurisdiction. Post-judgement interest accrues from the date the judgement was entered, at the state's statutory rate, if the Court includes post-judgement interest in the judgement order.

The judgement must be served upon the defendant through service of process, after which the Court will enter a writ of execution. The writ of execution allows the judgement creditor, through the court and local sheriff or bailiff, to garnish bank accounts, seize and sell property, and in some states, place a keeper in the debtor's business to seize all moneys received on the days that the keeper is present.

All out-of-pocket costs to execute on the judgement are chargeable to the judgement debtor. Costs include garnishment fees, sheriff or bailiff fees, keeper fees, and any fees involved in seizing and selling the judgement debtor's property.

Our attorney will engage in post-judgement discovery if he is unable to locate assets for the judgement debtor. Post-judgement discovery can include interrogatories, requests to produce financial documents, and depositions of the debtor's principals, in order to learn the nature, extent and locations of the debtor's assets. If the debtor does not respond to post-judgment discovery requests, the court can issue a body attachment for the judgment debtor's principal. If that becomes necessary, the principal will be held in jail until he gives sworn testimony in court about his assets.

Appeal

Appeals are limited to cases in which there is a legal dispute as to how the law as applied to the facts of the case. Factual issues can not be appealed.

Bankruptcy

Bankruptcies are controlled by federal law, which prevents any collection effort or litigation from proceeding, so long as the bankruptcy petition is pending. More bankruptcies are being filed as "no asset" bankruptcies, in which the debtor gives a sworn statement that there are no assets to satisfy creditors. Creditors are not allowed to file proofs of claim in a "no asset" bankruptcy, unless the bankruptcy trustee locates assets. In that case, the bankruptcy court will notify creditors to submit proofs of claim. In bankruptcy filings where there are assets and creditors file proofs of claim, it can take from 12 to 24 months to learn if creditor will receive distributions from the bankruptcy estate.