

## Dear Friends:

After a long, hot, and very wet Atlanta summer, we're glad to see that Fall is finally upon us.

This issue's feature article, "We'll See You in Court!," focuses on the lawsuit – that unfortunate but sometimes best alternative to recover a debt. The process is often painful, complex, lengthy, and costly, however, and these aspects of litigation should be understood before choosing this course of action.

On our calendar this Fall are the Yellow Page Publishers Association convention in Nashville, Tennessee, October 1st through 3rd and the Advertising Media Credit Executives Association convention in Los Angeles, California, October 9th through 12th. And – we are really looking forward to our annual Szabo Associates, Inc. Holiday Bash, here in Atlanta on December 3rd. Hope to see many of our friends there!

Best wishes for a terrific Fall season!



Pete Szabo, President  
Szabo Associates, Inc.

## We'll See You in Court!

(or: Holy cow, I could be dead by  
the time this thing is settled)

The mood was tense in the management offices of the small radio station. The account that had once held such promise had ended in a well-documented report of unanswered phone calls and dun letters. Stunned but determined to prove its righteousness and recover its due, the station called in counsel to begin the arduous course of action they had tried so hard to avoid.

Because the parties involved could neither agree nor compromise, the station decided that a lawsuit offered the best chance for recovering the debt. In doing so, however, they also had to recognize the unfortunate flip side to the litigation coin: While they stood to recover all that was rightfully theirs, the process could be very costly in terms of money and time.

### Why Does It Cost So Much?

Court costs, presentation of evidence, travel to out-of-town courts, and appeals are all expensive. Additionally, when you put yourself under the jurisdiction of a court in which you bring the lawsuit, the defendant has the right to counterclaim, or bring suit against you in a court you don't

choose. Since a counterclaim is likely if the debtor feels he has a legitimate reason for not paying you, it is imperative that you be absolutely sure of the reason for non-payment before filing a lawsuit.

Closely related to the issue of money is, of course, time. In addition to your attorney's time, the time that you and your staff spend on the case is costly. The time waiting for resolution, because of congested court calendars and the complexity of the litigation process, is also costly in terms of the depreciating value of the lost revenue.

### Why Does It Take So Long?

Szabo Associates is often asked, "Why does the litigation process take so long?" Let's assume you have decided to sue a debtor and have given us authority to proceed. Here is how the system works:

The claim is reviewed and sent to appropriate counsel in the correct jurisdiction. Upon receipt, the attorney acknowledges the claim in writing, issues verbal and written

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## See You in Court!

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demands to the debtor, and begins an investigation into the legal entity that needs to be named as the party in the lawsuit. The attorney then makes recommendations to the plaintiff based on this data.

Before filing suit, the attorney must have court costs, supporting documentation and, in some cases, an affidavit of the plaintiff's claim. The attorney then draws up the Complaint and files it with the Clerk of Court.

The defendant is then served with the Summons and Complaint, which notifies him of the lawsuit and of the necessity for an appearance. Once served, the defendant has approximately 30 days to answer the Summons and Complaint. If he does not file a formal answer, a Default Judgment is entered within 30 to 45 days. Once the judgment is finalized, the collection process can begin.

If an answer is filed (even if it is inappropriate), the process continues. Your attorney can then make application to the court on your behalf for a "Summary Judgment," which is granted by a judge and based solely on documentation. The judge will study the documentation of the claim, which could include your contract, affidavits of performance, statements of account, invoices, and letters from the debtor concerning the account. The court may grant judgment in your favor if the documentation provides conclusive evidence to support your claim. Summary

Judgments are difficult to obtain, however, because most judges believe that everyone deserves his day in court. If application is denied, the case goes to trial.

All pre-trial discovery procedures must be completed before a case is placed on the trial calendar. Discovery procedures are fact-finding processes through which both sides obtain additional information from each other regarding the validity of the claims. The procedures may include a pre-trial deposition, which allows questioning under oath any individual who has knowledge of the

events; a bill of particulars, which verifies the amount and terms of the debt; and interrogatories, or written questions that must be answered by the opposing party. These discovery procedures, which end when both sides have completed the discovery, usually take approximately 60 days but can take longer.

When all pre-trial procedures have been completed, the attorney advises the court that the case is ready for trial, and the court places the case on the calendar. In some states, the courts are so congested

## collector's corner

"Collector's Corner" is our readers' forum for suggestions, comments, and idea swapping. If you have information to share or input on how our newsletter can better serve you, please write or call.

**Question:** What are court cost deposits used for?

**R.B., Atlanta, GA**

**Answer:** When you or your attorney goes to the Court House to file a lawsuit, a "filing fee" must be paid to the Clerk of Court for processing of the case. These court costs vary from jurisdiction to jurisdiction.

After the case is entered on the docket and is given a case number, and a copy is filed at the Clerk's office, a "service copy" is sent to the sheriff to be served on the defendant. A fee must be paid to the sheriff's office for delivering this copy to the defendant.

After judgment is obtained, more fees must be paid to the Clerk to record the judgment on the court records so that it may become a lien on the debtor's property.

There are also costs associated with the collection of judgments, such as levies, garnishments, etc.

The attorney representing you will usually act as the escrow agent for these costs and will pay the appropriate amounts to the court when necessary. It is the attorney's fiduciary duty to refund to the client all unused deposits. Make sure your attorney or third party collection firm is doing so! These court cost deposits are your money, not theirs!

that it can take as long as three years for a case to go to trial. In other areas, it may go to trial quickly, perhaps in two weeks.

Regardless of who wins, either side may appeal the decision, prolonging the process even further. The judge may also choose to "take the matter under advisement," taking as long as three months to render the final decision. Only when a final decision is rendered can the collection process begin.

The following scenario, based on an actual case currently pending in New York City, illustrates a typical process and the length of time often required to pursue recovery through litigation. The names of the parties are fictitious.

**October 23, 1992:** The plaintiff, Acme Broadcasting Co., files suit against defendant, Here Today Productions. The Complaint and Summons are sent to the sheriff for service.

**November 17, 1992:** Plaintiff receives notification that defendant was served and given 30 days in which to file an answer.

**December 1, 1992:** (No answer filed.) Default Judgment, filed by plaintiff's counsel, is entered against defendant. Sheriff visits Here Today Productions in order to determine assets that might be used for recovery of the judgment. Debtor manifests objection to this investigation.

**March 1, 1993:** Defendant files a Motion to Vacate judgment.

**April 8, 1993:** Court renders decision vacating judgment and allowing debtor to file an answer. Debtor subsequently does so. Discovery process begins.

**November 1993:** Debtor indicates that settlement may be possible. This possibility is discussed as discovery process continues.

**February 4, 1994:** Plaintiff's attorney

requests that the matter be placed on the Trial Calendar.

**September 1994:** Case is still pending, awaiting the scheduling of a trial date.

### To Sue or Not To Sue

Clearly, it is advisable to do everything reasonable and possible to avoid engaging in a lawsuit.

Since lawsuits are a matter of public record, the threat of a lawsuit often encourages debtors to try to settle out of court. Idle threats do more harm than good, however, so you must be prepared to follow through.

If the debtor offers to pay in increments over a number of months, your first impulse may be to say, "I want all that you owe, and I want it this week." Resist that impulse, and consider the debtor's offer carefully in light of the alternatives. Ask yourself, "Would I really be better off if I sue?" Although it is maddening to feel you have to compromise when you know you're in the right, the practical advantages of getting a reasonable, guaranteed payment plan may outweigh its disadvantages.

It is unpleasant to think that a business relationship may someday end up in the courts, but we all know that it occasionally happens. Anticipate the unlikely by accumulating as much written documentation from your customers as possible. If you do decide to sue a debtor, the more documentation you have, the better your chances of stopping the litigation process in your favor at the Summary Judgment stage. ♦



"OUR ATTORNEY JUST CALLED WITH THE TRIAL DATE, BOSS. ARE YOU BUSY THREE YEARS FROM TUESDAY?"

# Why We Work the Way We Do Teamwork

One of the benefits of the way we've re-engineered the Szabo organization is that we're in a better position than ever to work closely with your sales/credit team.

Our people have in-depth knowledge in your media specialty. So we can work almost as an extension of your media department.

We can help you articulate and formalize your credit policy. That can help you locate and solve most credit problems before they get out of control.

We can help clear up communication channels between credit and sales. After decades in the

collection business, no one appreciates the needs of salespeople better than we do. Your salespeople not only provide valuable credit information; they can help us determine where disputes or discrepancies are involved. If you like, we'll even give you the benefit of our experience and our files in searching out client risks in advance.

Good teamwork can cut the time it takes to recognize a credit problem and take action on it. It's important to us to be alerted quickly when an account shows signs of becoming a problem. Early action can often make the difference between collection success and failure.

Your Szabo account representative can work with you to decide

(1) when an account requires a third-party collector, (2) whether the problem reflects a late-payment problem or a genuine dispute, and (3) what action to take when you want to achieve quick collection while retaining a good client relationship.

Teamwork can mean a lot more to your company than simply improving collections. It can be a way to put Szabo's media and collection expertise to work throughout your organization – a way to free your people to concentrate on your core business – without paying anything more than our standard collection fee.

That's a difficult deal to pass up. ♦

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