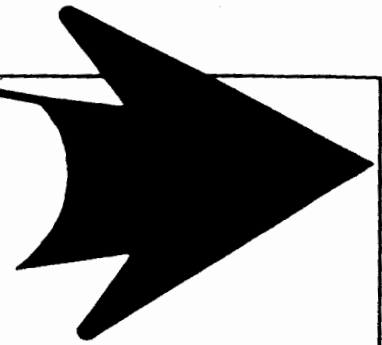


# THE ARROW

A Publication of:

GREENE & COOPER, ATTORNEYS



## How to Get the Most Out of a Commercial Law Firm

**W**hen forwarding claims to a receiving attorney, the forwarder is without a doubt entitled to receive the very best recommendation possible from the receiving attorney. One way to get results is to provide the attorney with as much information as possible. Below is a list of the information that our office has found to be of benefit and we provide it here in the hope it will provide help to forwarders in their dealings with other law firms.

1) Reason account forwarded. First, if the forwarder tells the attorney what the reason for forwarding the matter is initially, e.g., "Unable to contact the debtor," or "Debtor defaulted on commitments for payment," or "Account disputed," the attorney will be able to immediately begin focusing on what actions need to be taken. For example, if the claim is disputed, the Uniform Commercial Code provides that a debtor must inform the creditor of the dispute within a reasonable time after receipt of the goods. This notification should be in writing and if the debtor cannot produce a writing, the attorney can immediately put the debtor

on the defensive. Secondly, if the creditor is unable to locate the debtor, the attorney can immediately go into skip tracing procedures. Many law firms have local city directories which enable them to call neighbors surrounding the debtor's location. In addition, if the social security numbers are available for the principals, a credit bureau report can be generated. Also, where the debtor has defaulted on prior payment arrangements, if the attorney is aware of this, she will be much less likely to recommend the acceptance of payments without such assurances as a promissory note or an agreed judgment.

2) Correct Legal Name. If an attorney knows the correct legal name of the debtor, it will help her obtain judgment much faster. For example, if a creditor has dealt with a debtor under the name of XYZ Company and the Secretary of State's Office is unable to find a corporate listing for the firm, there may be personal liability on the part of the principals behind the company. Unless the attorney knows the names of the individuals who are running the

company, however, she will not be able to proceed with suit against them. The only alternative at that time would be to file under the name of the entity and then at a later date, once discovery has been taken, to amend the complaint to bring in the individuals. This obviously will take additional time. In addition, if the attorney knows she is dealing with an individual, she can contact the property valuation office to determine whether or not the individual owns real estate.

3) Supporting Documentation. Proper documentation can aid the attorney in discovering what legal issues may arise and perhaps ways to avoid them. For example, if the client intends to sue on a guaranty, the attorney will be able to review the guaranty to make sure it complies with applicable law. If the guaranty does not comply with the applicable law in the jurisdiction where the suit is to be brought, the attorney could then advise the client that it may wish to accept the debtor's settlement offer if one is made. This has routinely

happened in Kentucky where the state legislature in 1986 enacted a guaranty statute providing that any guaranty not written on the instrument involved must contain a maximum aggregate amount and a termination date. Many guaranties in use across the nation do not contain these clauses. Moreover, if the attorney is in possession of invoices, statements, or bills of lading, she will know the highest legal rate of interest rate available, and can see what goods were sold and where they were delivered. The Uniform Commercial Code provides that the shipment of goods creates a contract. In addition, written letters from the debtor to the creditor or agency stating that the debtor is aware of the debt and that he wishes to work out payment arrangements can be used to obtain summary judgment based upon the debtor's admission of the debt.

4) Financial Information.

All too often when one contacts the debtor for payment, the debtor will indicate that it is suffering from cash flow problems. This is an excellent opportunity to develop financial information. For example, what are the debtor's current sales, its expenses, the name of the debtor's bank, how long has the debtor firm been in business, is its inventory valuable, is its inventory secured, and is the inventory continuing to diminish in value so that it will be worth less in the future. If the forwarder in dealing with a debtor involved in a seasonal business, e.g., one dependent on the summer months or the Christmas season, then suit should be instituted so that judgment can be obtained before the season is concluded. Also, a

copy of a check received for a partial payment or an NSF check is of value since it will give the law firm the name of the debtor's banking connection.

We know that the above suggestions of how to best assist your counsel work for us and our clients. They should also work for any other commercial firms. □

*This publication is not a legal opinion of Greene & Cooper nor any partner thereof. You should consult with legal counsel prior to relying on any information contained herein.*