

You Have a Judgment, Now What? Mastering the Art of Judgment Collection

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Judgment enforcement requires a combination of strategy, creativity, diligence, and patience. With a valid judgment in hand, what do you do next?

Assessing Collectability and Informing the Client

The collection of a judgment is a significant engagement for both an attorney and their judgment creditor client. Judgment collection requires the collecting attorney to assess the collectability of the judgment and to discuss the prospect of collection and the likely cost of collection with the judgment creditor client so the client can make well-informed decisions about collection strategies.

To avoid a dissatisfied client, any discussion about judgment collection must include a candid and realistic assessment by counsel of the various challenges inherent in the process and a recognition that having a judgment does not guarantee it will be collected, even with diligent enforcement efforts. Any candid assessment of the collectability of a judgment should include:

1. an assessment of available asset information and a plan to obtain further information about the existence of potential assets from which the judgment can be collected;
2. an analysis of the jurisdiction from which the original judgment arose (whether it is the local jurisdiction, from a sister state, or a foreign country) and any process required to cause the judgment to be enforceable in the jurisdiction in which any of judgment debtor's located assets exist;
3. an assessment of the likelihood of further challenge to the validity and finality of the judgment;
4. the likely timeline for collection activities;

5. any applicable legal issues, such as applicable statutes of limitations; and
6. the likely cost of various collection activities, broken out by collection phase.

When preparing this analysis, counsel must also take into account a number of practical factors, including the amount of the subject judgment, the client's willingness and ability to invest further resources in the collection process, and the client's time horizon for recovery upon the judgment. With careful attention to these aspects of a judgment enforcement engagement, the attorney and client can formulate a clear, consensual, and preliminary collection plan that is practical based upon the circumstances and available information.

Gathering Information, Identifying Assets, and Conducting Discovery

Given the time and expense often involved in enforcing judgments, efficient asset recovery requires a targeted approach. There are often significant opportunities to gather information about the judgment debtor's assets from third parties through domestic legal processes, even where the judgment debtor is based overseas. Gathering timely, specific intelligence about the debtor's assets before initiating enforcement efforts is essential to combatting the myriad evasions typically employed by judgment debtors.

As an initial step, judgment creditors should attempt to identify assets of the judgment debtor located in the jurisdiction in which the judgment was entered. Such assets can be attached directly using the judgment jurisdiction's available enforcement mechanisms. Where no assets can be readily located in the judgment jurisdiction, judgment creditors can pursue domestic judgment enforcement in state courts through the Uniform Enforcement of Foreign Judgments Act ("UEFJA"), as adopted, or in federal courts through Rule 69 of the Federal Rules of Civil Procedure and 28 U.S.C. § 1963.

Where no assets can be located domestically and reason exists to believe that the judgment debtor may own assets abroad, counsel for judgment creditors can expand their search overseas. The two primary means of procuring discovery abroad are: (a) to sue on the judgment in order to domesticate it in the target jurisdiction and then issue discovery from that proceeding; or (b) to utilize the processes of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the "Hague Evidence Convention"). Both options present their own distinct challenges and often require retention of local counsel. Suing to register the judgment overseas often requires judgment creditors to initiate plenary proceedings, and foreign tribunals are typically reticent to recognize foreign judgments entered by default or otherwise lacking due process. Similarly, utilizing the Hague Evidence Convention can be notoriously cumbersome. Both avenues are constrained by the scope of discovery available in the target jurisdiction, which is generally significantly more limited than what is available in state and federal courts in the United States.

Given the difficulties of procuring discovery through foreign tribunals, targeting judgment debtor assets through United States banking channels can also be an attractive option. Issuing state or federal subpoenas to stateside financial institutions can often yield critical information about both domestic and foreign assets of the judgment debtor. Thanks to the centrality of the United States banking system to world financial markets, a significant portion of global financial transactions are routed through banks with footprints in the United States (read: subject to the jurisdiction of domestic state and federal courts). Accordingly, by serving carefully targeted subpoenas on such financial institutions, one can often identify crucial information regarding judgment debtors' domestic and overseas assets, without the need to petition a foreign court.

In short, counsel must consider all available domestic and international discovery options with an emphasis on efficiently enforcing judgments and maximizing return on legal investment.

Enforcement Litigation in the United States

Domestic state and federal courts are busy, to say the least. Constitutional considerations frequently require courts to prioritize the management of criminal dockets and trials. Moreover, the practical impact of budget and resource constraints, as well as the COVID-19 pandemic, are daily considerations for prioritizing the work of the courts. The net effect can be that judgment collection and enforcement litigation may not proceed at the pace a judgment creditor would prefer.

In state courts, debt collection challenges may arise out of commercial, business or consumer transactions or, more commonly, in the collection of money judgments obtained after trial or pursuant to default judgments. Counsel must understand and be prepared to stay within the laws relating to fair debt collection practices, including key state and federal fair debt collection laws. Counsel must also understand the specific discovery tools available in the state where collection and enforcement are pursued, as well as any exemption statutes.

In federal courts, a money judgment—whether originating in the same district or registered in another district under 28 U.S.C. § 1963—is enforced by a writ of execution under Rule 69 of the Federal Rules of Civil Procedure, unless the court directs otherwise. Rule 69(a)(1) provides, however, that the procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the federal court is located, though a federal statute will govern to the extent that statute applies. With regard to discovery specifically, Rule 69(a)(2) provides that a judgment creditor may obtain discovery from any person, including the judgment debtor, as provided by the Federal Rules of Civil Procedure or by the procedure of the state where the court is located. So, a judgment creditor must take into account any federal statute that may govern, the full array of enforcement procedures and options otherwise available in the forum state, and the discovery mechanisms provided in the federal rules. In many cases involving a default judgment debtor, enforcement efforts may culminate in a motion for a finding of contempt and sanctions against the judgment debtor for failing to comply with court orders governing discovery in

aid of execution. In such instances, counsel may also need to understand the requirements of 28 U.S.C. § 636 as they relate to proceedings before United States Magistrate Judges and the special procedures therein concerning contempt proceedings.

Considering that judgment collection and enforcement can be every bit as complex and challenging as the proceedings that gave rise to the judgment in the first instance, if not more, it should come as no surprise that effective judgment collection is fairly characterized as an art that necessitates a degree of mastery from practitioners.

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