

Debt Recovery and Collection USA

Looking further into the issues surrounding debt recovery and collection, *Lawyer Monthly* turns its attention towards the US and speaks to Laura Ellen Browning from full-service business law firm, Snell & Wilmer. Laura is a commercial litigation attorney who focuses on all areas of commercial litigation and administrative law. Snell & Wilmer has more than 400 attorneys practicing in nine locations throughout the western United States and in Mexico, including Arizona, California, Colorado, Nevada, Utah, and Los Cabos, Mexico.

Can you tell me about the type of work you carry out?

I represent many individuals and entities with significant holdings, including developers, financial institutions, contractors, hotel-casino companies, state agencies and other companies in general business disputes and complex commercial litigation. My practice also includes significant administrative agency representation and alternative dispute resolution.

What are the relevant legal frameworks for this practice area?

Debt collection processes vary depending on the type of debt that is being collected. The law differs depending on whether the collection involves a commercial or consumer debt and how that debt is secured. My practice includes traditional breach of contract, liens, foreclosure on deeds of trust, replevin of secured goods, and other recovery structures.

Have there been any recent legislative changes that are relevant to your work within this sector?

Given the state of the national and international economies over the last four years, legislatures have been tightening up debt recovery options. This includes shortening time periods to recover debt, limiting deficiency recovery, and limiting the sums that a purchaser of debt can recover. The law in this area is quickly changing and needs to be reviewed before entering into a

contract and again immediately when a default has occurred.

What can a company do to recover debt?

Creditors have a variety of options to recover debt depending on where they are in the debt recovery process. I recommend starting the recovery process before tensions rise and animosity grows, for the most efficient, amicable and successful debt recovery. This would include direct negotiations with the debtor and informal mediations. Should those options fail, creditors can move into traditional litigation and ADR options, where companies can seek pre-judgment remedies and the formal assistance of mediators prior to going to trial/arbitration.

What are the legal challenges that can often arise?

Delays in the collection process cause the most frustration and angst with my clients. Unfortunately, these delays can be caused by a debtor's filing of bankruptcy or frivolous counterclaims for the sole purpose of delaying collection. In extreme cases, debtors have disappeared, fleeing the jurisdiction to avoid collection.

Can you tell me about creditors' rights?

Creditors can most effectively protect their rights by starting the process in the beginning, with the thoughtful drafting of contracts. What type of

debtor is involved: individual, trust, entities, a combination? Evaluate the possible security that the debtor can produce and the stability of those assets, including real property, personal property, lines of credit, personal guaranties, etc. Then, secure the right to collect on those items through the initial contract documents, drafting the contract to permit the recovery through the easiest possible methods. Once an agreement has failed, creditors need to work quickly with their counsel to determine what collection options are available and for how long. Best advice: don't let your options dwindle by delaying action. **LM**

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