

## Counterclaims

A Counterclaim is a separate legal action brought by a Defendant (typically the debtor) against the Plaintiff (typically the creditor), in response to a lawsuit filed by the creditor. A Counterclaim typically seeks damages from the creditor for lost profits, etc., which the debtor claims were caused by the creditor's non-performance. If a Counterclaim is ignored by the creditor, the debtor can then obtain a Judgment against the creditor for the amount referenced in their Counterclaim.

A creditor has three options when a Counterclaim is filed, as follows:

- 1) **They can continue to pursue the matter through ABC-Amega, Inc.** If they choose this option, they will have to agree to pay the attorney his hourly fees to defend the Counterclaim. Hourly fees to defend Counterclaims are separate and distinct from, and in addition to, the contingent collection fees and Suit Fees that are due if any collections are ultimately made. Although the attorney will handle the defense of the Counterclaim in conjunction with the prosecution of the original lawsuit, a Counterclaim is technically a separate action, thus requiring the additional fees. If the Creditor chooses this option, they should respond to the allegations made in the Counterclaim as soon as possible and should also be prepared to send a witness to the Trial that will occur at a later date if this matter cannot be settled prior to a Trial being scheduled. If they can not/will not send a witness, then they should consider Option # 2, which is:
- 2) **They can authorize counsel to try to negotiate a settlement**, up to and including a mutual dismissal of their lawsuit and the debtor's Counterclaim. If the best we can do is to get the debtor to agree to a mutual dismissal, both parties would walk away with nothing.
- 3) **The creditor can hire their own attorney to handle a defense of the Counterclaim.** If they choose this option, our attorney will coordinate with theirs. We normally don't recommend this option on the theory that "too many cooks spoil the broth."

In any event, a Counterclaim is a serious matter and must be defended; otherwise the debtor could obtain a Judgment against our Creditor for the amount of the Counterclaim.