

KLINK & CO., INC.

A Global Leader in Risk Consulting

Communiqué

SHOW ME THE MONEY – AFTER THE VERDICT, WHERE DO YOU GO TO COLLECT?

The following is a Klink & Co., Inc. Communiqué discussing issues facing attorneys and corporate counsel.

It's been seven years of pleadings, motions, extended discovery – depositions, interrogatories, production of documents, a four-week trial and the appeals. Finally, the Supreme Court has just denied the post-trial motions and upheld the \$7,000,000 verdict that you won.

It feels good, but there is now, one problem – How do you collect on that judgment?

This is what your client wants to know, and often this is the “real” work begins. Without locating and recovering the assets or money, the judgment isn't worth the paper it's printed on.

Searching for, finding, and collecting on a judgment can be a difficult chore. In many cases, you are dealing with a defendant that will not willingly pay the judgment.

These defendants often hide and launder assets under various covers, including real estate developments, shell corporations, fiduciary accounts, international numbered accounts and annuities.

So how do you begin collecting on the judgment?

Discovery in aid of execution might assist you in uncovering some assets held in local banks or brokerage houses, but when dealing with an “uncooperative” defendant, the big money is often offshore or hidden in shells or fictitious entities.

Consider these suggestions.

1. Investigate Early

The earlier an investigation begins into the assets of a defendant, the greater the likelihood of a successful recovery.

In a case that involves the potential for a large recovery, the investigation should begin prior to the filing of litigation.

Early investigations enable you to:

- Collect information prior to litigation and perhaps before the defendant has thought through the laundering process;

- Provide a baseline to assist you in tracing assets once a judgment is obtained; and
- Determine if the expense of litigation is warranted.

2. Develop a Strategy

Developing a phased approach to locating assets sounds logical but it's often overlooked.

Initially, the investigation should begin before commencing any discovery in aid of execution. This enables you to be armed with valuable facts and information when conducting discovery, and often leads to the identification of additional assets.

Also, a successful strategy should, initially, include: the identification of the defendants, their family members, business associates, and corporate affiliations.

The second phase should consist of a follow-up on these individuals and entities to determine what, if any, real assets exist; how and by whom the assets are being held; when they came into existence; and tracing the “flow” of the assets.

If assets do exist, a third phase would include more in-depth research into records and “avenues of diversion.”

3. Gather a Team of Trained Professionals

Asset searching is a challenging assignment. Often the assets being sought have been deliberately concealed, especially when the matter involves embezzlement, fraud or theft.

Many mistakenly believe that the “internet” will provide them with the answers. But in reality, often the “internet” will provide you with inaccurate and unreliable information.

With the addition of new privacy laws and regulations, legal and ethical considerations must be addressed prior to investigating.

Recent cases in federal and state courts have resulted in hefty fines and disciplinary action.¹

Also, some state and federal prosecutors are prosecuting violators of privacy laws. They have charged “info brokers” with selling private records.

These prosecutions often result in public identification of the customers that seek such information. A recent case was filed in Baltimore, Maryland. It revealed that a national bank and a well-known insurance company purchased dossiers from indicted information brokers.

An “in-house” or untrained investigator may uncover some assets but there are risks involved, namely violation of privacy laws and

finding no assets when, in fact, assets are being hidden.

By following these simple suggestions, you will increase your chances for recovering on judgments. And in the end, you, your clients and the judgment will be very satisfied.

The Klink & Co., Inc. Communiqué is prepared in summary form and is not to be construed as legal advice or opinion on any specific fact or circumstance.

For more information regarding Asset Recoveries or other services, please call:

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¹ See, Commonwealth of Massachusetts v. Source One Associates, Inc. and Duncan v. Handmaker, 149 F.3d 424 (6th Cir., 1998).