

www.kmksc.com

**Washington Building
Barnabas Business Center
4650 N. Port Washington Road
Milwaukee, WI 53212
Telephone: 414-962-5110
Facsimile: 414-962-8725**

Collecting Commercial Debt in the US Need Not Be Daunting

By Christopher C. Kailas and Stephen D. R. Taylor of Kohner, Mann & Kailas, S.C.

Recovering debt from commercial creditors located in the USA is supposedly particularly problematic. This is an odd notion when one considers that US businesses recover debt every day. Unfortunately, overseas creditors are often unaware of the solution that many US businesses choose.

The Source of Confusion

The USA comprises 55 distinct legal systems: the federal system and those of each state and territory. Attorneys are admitted to practice by a state bar, which does not grant the right to practice in other states – most attorneys are only admitted in one state. Federal jurisdiction is limited in scope, with state law determining many issues, including contracts, even if federal jurisdiction is available. Bankruptcy, however, is a federal matter. The result can be a bewildering choice of venue, law and procedure, and the choices made can significantly impact the cost and likelihood of success. Sometimes a dispute can require action in state and federal courts, and actual recovery may require recognition by another jurisdiction where assets are located.



Common Responses

Four alternatives are often considered by creditors outside the USA.

1. Submit a claim to a collection agency for collection, but write off the debt if amicable collection fails
2. As above, but allow the non-lawyer collector to select a lawyer licensed in the place(s) where suit must be brought.
3. Personally engage individual collection lawyers in each jurisdiction where representation becomes necessary.
4. Retain a mega law firm with offices and attorneys throughout the USA.

Unfortunately, each of these has drawbacks:

- Writing off debt whenever non-lawyer collection fails produces unnecessary losses.
- Relying on a collector to choose local counsel entrusts complex, strategic legal choices of venue, law and other issues critical to success in US litigation, to non-lawyers.

- Retaining law firms across the US on an ad-hoc basis is both time consuming and costly to manage.
- Large law firms typically have a cost base that filters through into higher fees.

The Alternative Solution: National Practice Commercial Law Firms.

US law firms that focus on liquidating debt are called “commercial” law firms. In loose terms, these are ‘hybrid’ law and collection operations. ‘Hybrid’ firms differ from most law firms in that they handle large volumes of claims and employ non-lawyer collectors in addition to dedicated collection attorneys and commercial litigators. Significantly, they offer success-related fee options, allaying the cost fears overseas companies often associate with US law firms.



Such firms represent a “one-stop” resource able to manage all commercial debt recoveries in the US, for both creditors and collection houses. Despite typically having few offices, ‘hybrid’ firms have acquired a multi-state capacity to collect delinquent debts through:

- A long-established network of local collection counsel across the United States.
- A strong record of collection recoveries throughout the US, with and without legal action.
- A US-wide client base.
- A significant practice in associated areas of business litigation and transactional law, including bankruptcy.

While these firms often secure out-of-court resolutions, regular activity in multiple jurisdictions supplies the current knowledge essential to making the best decisions on issues that can be dispositive should court action be required.

What to Look For

Before obtaining verifiable client references, look for evidence the above characteristics, but also review websites for articles – good US lawyers are expected publish - related to collection, contract documentation and enforcement and the differences between US practices and those of other legal systems. Transnational legal advice needs to identify and address such differences if costs and misunderstandings are to be avoided.

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Christopher C. Kailas, +1 414 962 5110, ckailas@kmksc.com

Attorney Christopher Kailas heads the attorneys and collectors of KMKCollections, a division of Kohner, Mann & Kailas, S.C. He leads the recovery of commercial debt and assets from debtors located throughout North America. He manages a network of over 150 local associate counsel throughout North America and co-ordinates the sharing of legal information and tactical insights within the network.



Stephen D. R. Taylor, +1 414 962 5110, staylor@kmksc.com

Stephen Taylor is a British national with nearly two decades of experience in business and financial management, including establishing operations, markets and revenues in the United States. An attorney, he holds a Diploma in International Trade from the UK Institute of Export and an MBA from the University of Surrey. His practice with Kohner, Mann & Kailas, S.C. focuses on international business and transactions.



About KMKCollections

KMKCollections is the commercial division of **Kohner, Mann & Kailas, S.C.**, which arguably manages the largest volume of commercial debt recovery of any law firm in North America. **Kohner, Mann & Kailas, S.C.** is a business law firm listed in Martindale-Hubbell's Bar Register of Preeminent Lawyers that provides exemplary legal service in all areas of law encountered by businesses in the normal course of their operations and growth.

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Founded in 1937, KMKSC is a business and commercial law firm listed in Martindale-Hubbell's Bar Register of Preeminent Lawyers. KMKSC provides quality legal expertise across the areas of law encountered by businesses in the normal course of their operations and growth. Our services range from high-profile appellate representation and international business issues to ensuring that critical everyday needs, such as debt recovery, are fulfilled efficiently and expertly. Our purpose is to deliver excellent results for our clients, whether the issue is advice on the avoidance of legal disputes, closing a deal, protecting assets or winning in court. KMKSC is continually advancing the interests of its clients in negotiations, transactions, litigation and alternative dispute forums across North American and beyond. We help U.S. companies address the legal issues raised by trading across international borders and provide legal support and advice to foreign companies operating in American markets.

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