

www.kmkcollections.com

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

Garnishment: A Powerful Collection Tool

Garnishment is generally the most valuable single collection remedy for the creditor throughout the states. It is a court proceeding or suit whereby the creditor can directly attach or obtain the funds or wages of the debtor that are in the hands of a third party such as a bank or an employer.

Until 1969, when the U.S. Supreme Court ruled in *Sniadach v. Family Finance Corp. of Bay View* (392 U.S. 337), it was possible for the creditor to garnish income or funds contemporaneously to bringing suit to obtain a judgment on the debt or account. Although those "good old days" are gone forever, garnishment can often bring spectacular results for the creditor. It is not uncommon for our firm to successfully garnish \$5,000.00, \$10,000.00 or \$15,000.00 in a debtor's business account after obtaining judgment.

We can recall one incident when our firm "caught" \$60,000.00 in a bank account against a judgment of little more than \$1,000.00. When required, successive garnishments are surprisingly successful due to the need for a strapped debtor to keep his banking relationship at the same bank, on a continuous basis, since very often no other bank would have him. Clearly, garnishment is the remedy of choice whenever the debtor continues in business with a continuing cash flow through its business checking account.

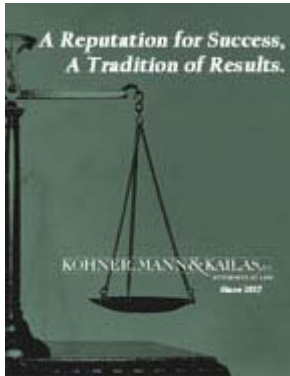
"The garnishment remedy is statutory and has been enacted in virtually all states, although the procedure and the reach vary"

To dramatize how effective garnishment can be for the creditor, if adroitly handled, our firm recently utilized Illinois garnishment as follows: in refusing any payment, the debtor arrogantly advised us that he flat out refuses to deal with any attorney or collector. We then filed suit and obtained judgment. The client knew where the debtor banked, and we therefore filed the Illinois "bank citation" against the debtor's account. In Illinois, the bank must hold all funds deposited into the account upon service of the citation. All funds were then frozen. After debtor's checks bounced, he deposited *additional* funds to cover those checks, and those funds were also frozen. In the end, there was more money in the account by far than the amount of our judgment! The bank was required to hold two times the amount of our judgment. The debtor then was forced to "do business" with us; we immediately obtained payment in full along with all court costs, interest, etc.*

Rules Can Vary By State

The garnishment remedy is statutory and has been enacted in virtually all states, although the procedure and the reach vary by state in many respects. In some states, garnishment isn't available to collect debts arising out of tort rather than contract.

In some instances, where the debtor's bank has called the debtor's loan, and particularly where the bank has offset the amount in the checking account and applied the funds against a secured balance due and owing to the bank by the debtor, the bank's security interest in the debtor's checking account funds will prevent successful garnishment by other creditors. Similarly, garnishment is less useful against individual persons in some states where there are substantial exemption rights which can be asserted to "protect" deposited funds or wages.



In a few states, garnishment can only be used after "execution has been returned as unsatisfied". Also, in many states, a contingent, unliquidated or uncertain amount is not subject to garnishment, and in some other states, garnishment is not available to collect on a negotiable note not yet due.

In Wisconsin, a garnishee defendant (the third party holding funds belonging to debtor) who fails to respond to the garnishment (including wage garnishment) against the debtor is subject to judgment against it for the full amount of the creditor's judgment against debtor!

Wage Garnishment

Garnishment of wages has been the subject of extensive additional legislation. Federal law provides that, in general, wages can only be garnished in the lesser of 25% of take-home pay, or the amount by which weekly take-home pay exceeds 30 times the minimum hourly wage. State law wage garnishment legislation which is equally or more beneficial to the wage earner is deemed to be not in conflict with federal rule.

Federal law also prohibits firing of a debtor because of a single wage garnishment. Most states provide for the same rule, and some states only permit firing if there are garnishments exceeding some greater number. In one state, seven garnishments must occur in a year before the employer may fire the debtor employee.

Generally, since 1994 all federal employees are subject to wage garnishment, although the respective agencies must be consulted for the procedure necessary, particularly in the case of military personnel.

*A wise creditor will make note of and track the bank account(s) of its customers, so that the name of the bank is readily ascertainable for garnishment purposes, should any customer account become delinquent and require suit, judgment and post-judgment collection activity.

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About KMK Collections

KMK Collections is a division of **Kohner, Mann & Kailas, S.C.**, a law firm founded in 1937 as a result of a conviction that businesses deserved more aggressive and cost-effective advocacy for their interests and contractual rights. Over 70 years as leaders in debt liquidation and commercial law, Kohner, Mann & Kailas, S.C. and KMK Collections have earned an industry-wide reputation. Each year we handle many thousands of commercial contract and collection matters for the liquidation of commercial debt and recovery of goods and services provided, delivering the consistently exemplary results that our American and international clientele has come to rely upon and expect of us. **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.