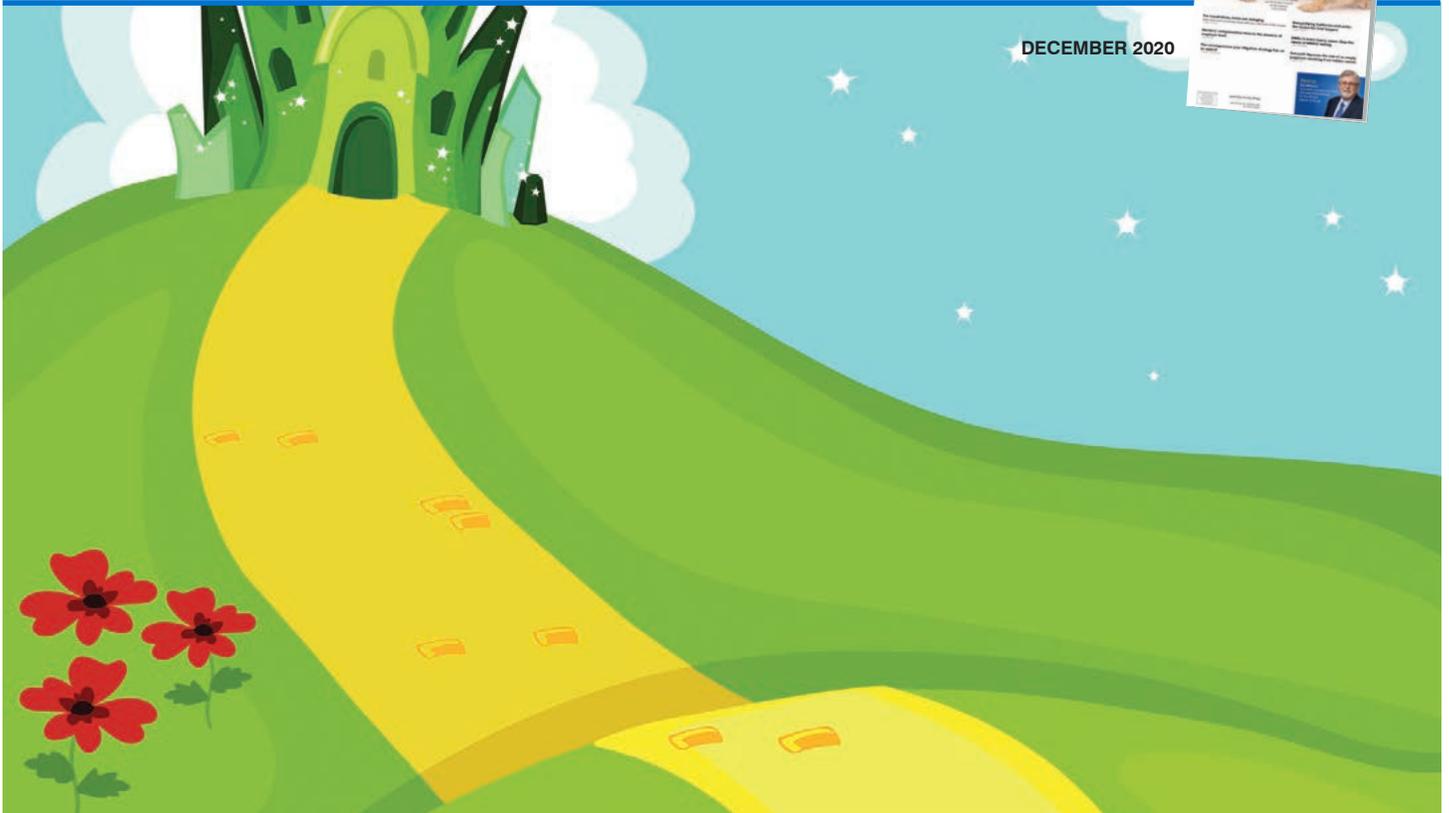




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# Get paid! Squeeze the risk of the empty judgment

You won the judgment but now there's the matter of defendant's protected assets. Follow the yellow brick road

BY DAVID J. COOK

Asset protection is always good business. Here is the proof: *Asset Protection* by Jay Adkisson outsells *Debt Collector's Handbook* by David J. Cook. So how do you get to those protected assets? Let's take a trip down the yellow brick road to collecting your judgment.

## Identify the legal capacity of the defendant

Identify the legal capacity of the defendant, if not a natural person. If the judgment debtor is ABC Co., the sheriff will refuse to serve the writ of execution unless the legal entity, i.e., "a corporation" or "limited liability

company" is stated in the writ. (Code Civ. Proc., § 699.520, subd.(d).) Otherwise, the writ screeches to a halt, and assets take flight. Remember that the legal entity designation must appear in the complaint, summons, request to enter default, and judgment.

Identify the Defendant from the Secretary of State Business Search, County Clerk for Fictitious Business Names ("FBN"), and recorded instruments with the County Recorder, or a UCC if filed with the Secretary of State or County Recorder, or other lawsuits ["imitation is the sincerest form of flattery"]. If a bar, restaurant, or retailer is the liable party, cross-check the names of the parties with the State Board of

Equalization, Department of Alcoholic Beverage, other government entities, or city permits or tax records. You might discover that the owner of "Slush Fun" is "123MapleLLC." Don't be surprised if you trip over multiple owners and even the liable party who was not named in the first place.

Dive into the Fictitious Business Name (FBN) records of the County Clerk because after the incident, the principals will form a new entity but file an FBN that uses the name of the original party. Dive into the county recorder to locate the bulk sale notice or ABC license transfer which might disclose that the successor is doing business under the defendant's name and business owned by the successor. By the



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way, did you file the claim in the escrow? Time to file a claim: 12 business days for a bulk sale and 30 days (or more) for a liquor license transfer. You can always fax (or even email) the claim to the escrow holder.

You will never spend too much time beating back these shell games.

**Serving the summons**

Complete the endorsement at the bottom of the summons. Don't leave this task to the secretary, paralegal, or process server. The endorsement headlines the complaint: YOU ARE SUED. If a person, check box #1. If an LLC, check box #3 and "association or partnership." If a corporation, check box #3 and "corporation." A quash motion after three years is painful because of C.C.P. § 583.250 [Three years to serve.]

Serving someone out of state? Engage the local sheriff or constable, engage a local process server, and serve under California law, which is registered receipt and certified, and all of them. (Code Civ. Proc. § 415.40.). Most out-of-state process servers are unfamiliar with California service requirements. Expect errors, shortcuts, or even garbled proofs. Be wary of the returned registered receipts signed by Mr. Scribbles. Learn to dread *Dill v. Berquist* (1994) 24 Cal.App.4th 1426 [proof for out-of-state service cratered based on the three-year rule...] The more the proofs, the lesser risk of a bad proof.

If a local service of process, do not hesitate in hiring a dozen process servers. Competition gets the suit served. Mass service of process costs less than dinner for four at *Le'Outrage* in NY with wine, no less.

Splurge good money to guaranty valid service.

**Defaults**

Here are the common default fact patterns. Upon being served, the Defendant retains counsel and notifies Plaintiff. Time is running out to answer the suit. Plaintiff provides in writing (not

an email) seven days for the Defendant to file an answer or face a default. If Defendant lacks counsel or declined to engage in any communication, Plaintiff bears no obligation of a warning. The summons is the warning. If the default has been entered, and free of any claim of "sharp practices," and absent bona fide "mistake, inadvertence, surprise or excusable neglect," sit on the default which forces Defendant filed a § 473 motion. A righteous default enhances a settlement or drives away the defense attorney who would only accept the case if the default is voluntarily set aside. Once in a while, a judge will deny a motion to vacate a default.

A credible default might open the door to a settlement which otherwise would not have been available.

**Extensions and their limits**

Granting an extension of time to respond to the complaint is a crapshoot. Granting MegAbank a 30-day extension isn't going to warp the case when counsel is Muck, Muck and Muckity Muck, LLP (Founded 1789). Granting Mr. Uninsured a 30-day extension when counsels' website is JudgmentProof.Net is a bad idea. Some attorneys would only accept the defense if the plaintiff would grant the 30-day extension and if not, the attorney would walk. Some attorneys seek the extension and never file an answer. In the interim, the big-ticket asset takes flight. Some attorneys serve the answer, but never file the answer with the court. "Why pay the filing fee, when the Plaintiff stumbles through vacuous litigation?" thinks the Defendant's attorney.

Granting an extension might well enhance goodwill among reputable counsel but not at the risk of assets flooding out the back door. Trust but verify.

**Rejecting waiving notice**

Waive notice? Bad idea. Don't waive notice of anything before the court. Don't waive notice of any order, judgment, or decree. Don't waive notice of any order from the bench. No way, sir! Why are you

forfeiting up two to five days of your response time to the adverse counsel? Or absent notice, the clock might not even run and you have infinite time. Depending upon the court sections 1013(a) and (c) offer two or five extra days to file an amended pleading, motion, opposition, or reply or respond to a motion or order. Don't forget, electronic service offers you two days. (§ 1010.6(a)(4)(A) [" . . . . shall be extended after service by electronic means by two court days."].)

Whatever is received, calendar the date and method of service. Preserving the two-or-more days to respond offers more time to craft the winning hand. Waiving notice just makes you work harder. The more time that you have is more time to deliver a winning product.

**Parting note**

Personal injury awards easily top \$5,000,000 when the defendant's insurance ranges from \$300,000 to \$1,000,000 and rarely includes an umbrella. Facing this risk, the Defendant (and counsel) will engage in a stout defense and, in the absence of a policy-offer settlement, will engage in asset protection. These guideposts on the front end of the case squeeze the risk footprint of litigation, especially the risk that assets might disappear.

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