

RESOLVING DISPUTED CLAIMS

No matter how good a business' systems and processes are, from time to time disputed claims are likely to arise.

Disputed claims are high risk. In addition to the principal debt being in jeopardy, potential legal costs need to be closely managed so as not to undermine the net return achieved. There are three major factors which have the greatest impact on the net outcome creditors achieve on disputed claims.

1. Determining prospects early

When a dispute arises, one of the first and most important questions is "What are my prospects of success?"

The strength of your case will have a direct impact on the strategy you propose to adopt, the budget you are prepared to allocate to resolving the dispute and the settlement range you are prepared to accept.

Unless advice on prospects is obtained early, it will be very difficult to determine the most effective strategy.

2. Developing an effective strategy

The best net return can only be secured if a clear, effective strategy is set at the outset.

The vast majority of disputed claims are resolved by negotiation, rather than determination by a Judge.

As such, it is important that the adopted strategy has the effect of simultaneously progressing the matter towards resolution by the court and creating maximum pressure on the debtor.

Summary judgment applications can be a very effective strategy when the debtor's prospects are limited. Similarly, securing an admission for an undisputed portion of the debt can be a very effective way of compelling an immediate part payment and increasing pressure on the debtor for a global resolution.

These are just two of a broad range of strategic options available in resolving disputed claims. Adopting the right strategy is crucial for achieving the right result.

3. Considering cost / benefit

The objective in pursuing contested claims is almost always to maximise net return. There are two variables in securing net return – gross recovery and legal costs. When you know your likely prospects (prospective benefit), the next crucial piece of information is the anticipated costs to achieve resolution.

Only when you know the likely legal costs to execute on the strategy, are you in a strong position to make good commercial decisions about pursuing and resolving disputed claims.

Obtain advice early

Upon receipt of a defence, Results Legal utilise a standard advice which we call a "key issues" advice.

The key issues advice sets out:

- the key issues raised in the defence;
- our advice as to prospects of succeeding on the claim;
- our recommended strategy to achieve resolution; and
- our estimated fees to execute on the strategy.

If and when you a disputed claim next arises, consider whether a key issues style advice could assist you to make more effective commercial decisions and maximise your net return.

For further information or advice, please contact Results Legal or NCI