



How Far Should You Go to Collect Your Fees?

Fee Claims

Recent research by the Design Professional group of XL Insurance shines a sobering light on the frequency of fee claims. The latest statistics show that fee disputes can trigger significant claims.



While a sluggish economy may, no doubt, contribute to an increase in fee disputes, it's not the sole culprit. Our research reveals there are indications that A/Es are not exercising enough care in client selection and not placing enough emphasis on the timely collection of fees.

The equation is simple, according to the Head of Claims for Design Professional group of XL Insurance: You can engage in providing services to a client who is financially unstable, or one who is financially stable. If the project starts to lose money, it's obvious which of the two clients is more likely to refuse to pay your fees and file a specious E&O claim in response to your attempts to collect.

For advice on client selection, be sure to read, ["Client Selection: Your First Step Toward Project Success"](#).

Once you begin working with your client, one of the best techniques for collecting your fees is not letting your client's account fall behind. When there's a bill outstanding, deal with it head on, say our claims managers. If the problem turns out to be the client's inability to pay, as opposed to an E&O issue, then make sure you have a record of

correspondence and other communications about the issue. Six months down the road, if you're still trying to collect your fee, the client will be hard-pressed to argue that the fee isn't being paid due to some design error, because they never raised it in the first place—and you have the documentation to prove it. Staying up to date on your accounts is even more crucial when you have no construction administration duties. If you have no involvement in the actual construction and are still waiting to get paid, you should address the problem immediately. Once you've completed your part of the project, you have much less leverage.

In such cases, it's crucial that you include your XL Insurance broker or agent in the discussions.

A PL specialist might be able to intervene and improve the situation and make sure it's not ignored. XL Insurance agents can suggest strategies based on their wealth of experience in dealing with such cases. For instance, there may be some cases in which suspending or terminating your services on a project may be recommended. While no one relishes the idea of leaving a project, such a strategy might be better than staying on the project and letting lack of payment distract you from the work at hand and increase the chances of a major liability claim.

A vague or imprecise scope of services can also lead to situations where the client owes a significant sum. In many situations in which there's been no payment, we find that the client expects the A/E to provide services the A/E never intended to provide. If the scope of services is causing the problem, it's better to work out the issue at the point

the fees aren't being paid, as opposed to much later: You can clarify the scope at the point of dispute and, if it results in providing services you didn't expect to provide, you can request additional payment. But even if no additional payments are agreed to, at least you've resolved an issue and brought your accounts up to date, rather than having the situation fester and result in a multimillion dollar counter claim later.

Getting a retainer at the project outset may obviate many of the problems related to collecting fees. While it may be easier to get a retainer on smaller projects, it's a potential tool that should be explored with every project. For example, getting a \$25,000 retainer against which you bill for your services can really help in situations where you know the client has financial problems. Good advice: apply the retainer against the final invoice so you don't lose your leverage when you need it most.

Of course, the more adept you become at collecting fees, the less often you'll find yourself filing a claim to collect them. That can make a world of difference to your profitability, as one structural engineer recently found. After letting his client's account fall behind to the tune of \$95,000, he filed a claim to collect the fees. Naturally, the client counter-sued, alleging that the engineer's delays cost the client \$130,000. After spending six years and more than \$50,000 to pursue the fee claim, the engineer was awarded his \$95,000 in fees and his client lost the counterclaim. So the engineer won, right? Not exactly. Soon after losing the case, the client filed for bankruptcy and the engineer never collected a dime.

It's almost always best to avoid litigation as a way to collect your fees. If negotiation hasn't worked, one approach, albeit one that you and your attorney should use with extreme caution and only for fee disputes involving relatively small sums, is arbitration. Arbitration limited to only fee claims might be a good idea in some circumstances to prevent frivolous E&O counterclaims. (Be sure to read "[Taking Your Chances with Arbitration](#)".)

XL Insurance recognizes that our advice on the issues involved in fee claims needs to be applied on a case-by-case basis. Granted, There are business relationships that make it a lot harder to take the right steps on an individual outstanding bill. Notably, when it's a longstanding client and future work is expected, it's very difficult to cut off the relationship because of one project. Those kinds of pressures can make these remedial steps less attractive.

Remember, the key to avoiding fee claims is prevention. Take care in selecting your clients, and develop—and follow—a consistent collection strategy. Professionalism rarely offends good clients. Without compromising your client relationships or your professional stature, you can often follow sound business practices and—voila!—get paid for your services.

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