The Geoprosfessional Business Association (GBA) has for years advised its members to be extremely circumspect about suing clients to obtain payment. All too often, instead of paying what they owe, slow-paying clients use the money involved to retain a lawyer and a hired-gun expert to countersue, claiming negligence. In those cases, the typical outcome is months or years of costly litigation, frustration, aggravation, lost opportunities, lost productivity, and damaged reputation.

Consider the case of a GBA-Member Firm we’ll call Sadder, Wiser Associates (SWA), an engineering consultancy that had taken slow-pay clients to small-claims court on 60 separate occasions, winning almost every time.
If you must accept small projects for a new client, and possibly some ongoing ones, too, do not submit your signed, final report until you are paid in full. Demand estimated full payment in advance, and/or accept credit cards, and/or send your report COD.
did. But the owner still refused to pay. Instead, it retained another consultancy, with no licensed professionals on staff, to review what SWA had done and resample the observation well. After completing its resampling, the new consultant “averaged” the various test results and concluded the condition did not have to be reported, despite unambiguous, written regulatory-agency guidance to the contrary.

SWA sent a letter to the owner, documenting regulatory-reporting requirements, and the firm continued to submit monthly payment reminders. The client ignored the reminders and the additional telephone calls as well. A visit to the owner’s office also proved fruitless, as did SWA’s calls for mediation, a procedure SWA’s general conditions required before court action could occur.

Finally, after more than a year had passed, SWA decided to take the matter to small-claims court. Three days before the court date, the owner countersued for $20,000, alleging that SWA had contaminated its property when diesel fuel leaked from its drilling rig. The two cases were consolidated in district court, and SWA retained counsel. The attorney estimated that legal fees and expenses would not exceed $5,000; he was confident that SWA would prevail.

Discovery for both sides began when lawyers started reviewing files and interviewing participants, initiating the financial “blood-letting.” SWA also had to cover the time staff members spent collecting and copying files and discussing the case with the firm’s lawyers.

The property owner’s CEO’s deposition responses were startling. He readily acknowledged that he had no evidence to show that SWA had at any time acted negligently. Given these revelations, SWA’s attorney moved for summary judgment. But the judge denied the motion, saying he “needed to know more about the case.” As a consequence, the lawsuits plodded forward, with preparation of documentation, interrogatories, production of expert witnesses, depositions, motions, negotiations, and conferences. At that point, the owner retained a new attorney and made additional “fact allegations” that were not in the original complaint. SWA had no choice but to authorize its lawyer to perform the additional research needed to support an “abuse-of-process” claim.

Wearying of the process, the owner at this point offered to settle if SWA paid it $4,000. SWA rejected the offer, and both sides appeared before a pretrial-conference judge. The judge indicated that he probably would bar the owner’s expert and might even accept the abuse-of-process claim.

Immediately thereafter, the owner offered to settle if SWA paid it $2,000. Buoyed by its attorney’s belief that it would “do really well” with the abuse-of-process claim, SWA offered to settle for the original fee of $1,200, plus attorney and expert fees totaling $51,000. The owner countered, offering $5,000 to SWA. SWA rejected that offer, too, and — believing it could recover its legal fees — decided to go to trial. That’s when SWA’s attorney noted that doing “really well with the abuse-of-process claim” meant the owner could be required to pay no more than one-third of SWA’s legal costs. Learning that, SWA offered to settle for $25,000. The owner responded with a check for $16,000; SWA took it.

All told, SWA invested close to $100,000 in out-of-pocket expenses and the value of staff time. The client’s settlement of $16,000 took the net cost down to $84,000, an amount that exceeded all the money SWA collected on all the prior nonpayment claims, not including the damage done to staff morale, the value of billable time lost, and opportunity cost.

The moral of this story: If you must accept small projects for a new client, and possibly some ongoing ones, too, do not submit your signed, final report until you are paid in full. Demand estimated full payment in advance, and/or accept credit cards, and/or send your report COD. But above all, don’t sue!