

CE News “Risky Business” No. 13

Anecdotal evidence suggests that filing a lawsuit to collect one’s fee from a nonpaying client may be the most common trigger to a negligence claim. The client uses part of the money owed to retain an attorney who, in turn, retains a “hired gun” expert willing to testify that your instrument of professional service (a report, plans, or specifications) contains errors or omissions, that the errors or omissions occurred because you failed to abide by the standard of care, and that, as a consequence, the client was damaged. Your expert will disagree, of course, which is exactly what the client’s lawyer wants. Because the opinion of an expert has the same weight as facts, the disagreement of two experts means facts are in dispute, thus necessitating a trial. Trials are expensive, which explains why so many engineers walk away from a debt rather than risk a far larger sum trying to collect it.

To reduce your risk, only extend credit (i.e., agree to perform a service) to clients that are creditworthy. Learning about a client’s creditworthiness seems to be far easier said than done, however, given that the average engineering firm is one of the only places in the United States where a person usually can obtain thousands of dollars worth of credit with no credit questions asked. Why not have clients complete a credit application? “We don’t want to embarrass the client,” many engineers say. But the truth is, they don’t want to embarrass themselves, because they feel uncomfortable talking about such things.

Reality: Almost all private sector clients operate on other peoples’ money: OPM. You have to pass a comprehensive credit check to obtain OPM. For that reason, most entrepreneurs and organizations that borrow money have a *pro forma* report at the ready, disclosing their assets, sources of income, and other such information that just about everyone (except engineers) needs to review and authenticate before advancing credit. In fact, if a client representative demonstrates even the tiniest bit of umbrage when you ask for credit information, carry the person piggyback to your fiercest competitor; they’ll

deserve one another! Face it: Clients who are on the up-and-up understand why credit checks are required and do not object to them. (Recognize that you also advance risk credit. By performing a \$5,000 service for a \$20 million project, you can easily saddle yourself with a potential liability worth \$5 million or more, which is why ASFE brought limitation of liability to the negotiating table more than three decades ago.)

Assuming you deal with a bank yourself, ask your loan officer to help when you need a credit check. Most bankers are happy to help, because personal service is something they (as you) must provide to keep clients happy. Speak, too, with other professionals you deal with (like a lawyer or accountant) to determine what they know about the prospect. And by all means, ask the client, “Whom have you used before? Why aren’t you using them now?” Check with the other firm. Often, a client’s explanation along the lines of “we had a philosophical disagreement” means that the client’s philosophy was not to pay.

“We can’t be bothered with all that checking,” you may say, because the fee often is too small to justify the time. But the opposite is true. ASFE’s case histories show that risk is *inversely* proportional to fee; i.e., the smaller the fee, the bigger the risk, possibly because so many practitioners give small projects short shrift.

If you are unwilling to perform the necessary checking on small projects, have someone else do it for you. In fact, for an amount that’s often less than 2.5% of your fee, a number of companies will guarantee your client’s credit and then pay you on the client’s behalf *within 48 hours* (vs. 75 days or more) of your submitting a bill electronically! Given that it costs at least \$50 to send a bill, and given that you often have to send three bills in order to collect a \$1,500 fee, 2.5% is a bargain basement price. Interested in the service? To get it, all you have to do is accept credit cards. Speak with your bank or a credit card company to arrange for the service.

If a prospective client says, “Our company doesn’t use credit cards,” you might want to insist on payment in advance or issue your reports or other deliverables COD. If you

don't, the client will have what it needs, including your unpaid fee it can use to retain an attorney should you decide to get paid for what you do.

Bottom line: Only give credit to those who are creditworthy. Collecting what's owed can be risky business.