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## WHAT ABOUT MY ATTORNEY'S FEES?

You had a contract. You provided goods or services as agreed. The other party has not paid. Cordial negotiations have broken down, and you are at a standstill. Now what?

Almost every business owner will, sooner or later, be confronted with the dilemma of the non-paying customer or client. Typically payment issues are resolved via phone calls or payment plans or other non-litigation alternatives. But when the "check in the mail" does not arrive (again), the phone calls go unreturned and your invoices ignored, it is time to contemplate litigation.

When discussing the possibility of litigating a contract matter for non-payment, two questions invariably arise, "How much will this cost me?" and "May I recoup my attorney's fees?" The answer to that second

question, whether you can recover the amount of money you paid your lawyer to get the money you were owed, is, like most legal answers, "it depends".

The general rule in Pennsylvania is that absent a statute or agreement to the contrary, each party in litigation is responsible for its own attorney fees. Other countries have "loser pays" rules, but we don't live in those countries. Furthermore, your typical contract dispute does not implicate a statute or law that provides for the award of attorney's fees.

Now, notice I wrote, absent statute "*or agreement*". This is where you and your attorney can provide for the recoupment of attorney's fees in a successful contract action. If your agreement is important enough to put on paper, whether it is a formal contract document or a proposal (with acceptance indicated by a signature), then your agreement is important enough to provide for attorney's fees in case of non-payment.

You are already negotiating terms and conditions in your agreement. Your agreement provides

for quantity or quality of goods sold, type or level of services to be provided and price and payment terms. You can easily protect yourself in the event of litigation by inserting a provision that provides for the payment of reasonable attorney's fees in the event of non-payment or default.

Assuming that all of the other legal conditions for a valid contract are present, if there is a provision for reasonable attorney's fees, there is not a court in Pennsylvania that will refuse to award those fees upon successful conclusion to your contract lawsuit. Similarly, there is not a court in Pennsylvania that will award you attorney's fees in the absence of such a provision.

**Absent** an attorney's fee provision many contract disputes involving \$3,000-\$10,000 are not cost effective to litigate with a lawyer. You should have your attorney review your current standard contracts or proposals to ensure that an enforceable attorney's fee provision is included.



*Wishing you a safe and prosperous Fall Season. Please don't hesitate to contact me with any legal questions you may have.*

*Brendan Keith Petrick, Esquire*