

THE CLLA OPERATIVE GUIDES – AN UPDATE

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UPDATED DEFINITIONS

- ~~Commissions~~ – now “fee”
- 1.6 Fee. A fee is the compensation payable by a creditor and earned by a receiver for his services in effecting collection of a claim, in whole or in part, **following acknowledgement of a claim from a forwarder or creditor.** The fee is normally contingent and computed as a percentage of the sum collected.

UPDATED DEFINITIONS

- “Cost Advance” -A cost advance is a sum of money advanced by the creditor to the receiver, as a fund from which court costs or court related costs (such as process service fees or court reporter fees) are to be expended.

Contractual Compensation

- 3.1 Unless otherwise expressly agreed, **fees** are contingent on the recovery of money or property. **Upon placement of a claim, the forwarder shall state the total fees on that specific claim. If a forwarder requests a receiver to charge a contingent fee lower than the receiver's regular commission, the forwarder should explain to receiver the reason the forwarder is lowering the fees on that claim.**

Fees After Direct Payment

- **3.5 b.** The receiver is not entitled to compensation if payment was made by the debtor before the receiver made demand on the debtor or otherwise worked on the claim, provided notice of such direct payment was furnished to the receiver by the creditor or the forwarder **within a reasonable time and the receiver had not spent significant time working the claim** (see guides 3.9b and 7.1f).

Fees After Creditor Settles

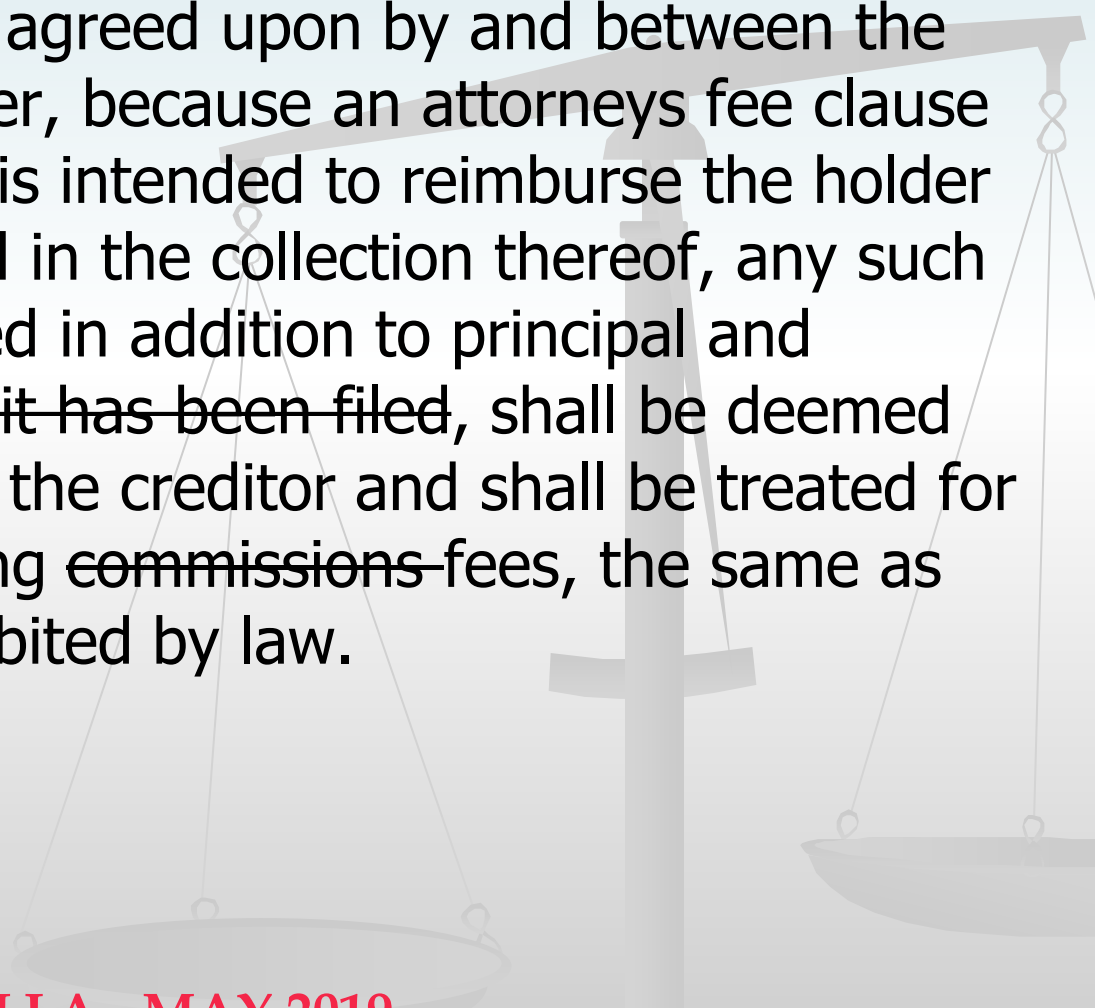
- b. Where the claim is in the hands of the receiver and either the creditor or the forwarder intervenes for the purpose of accepting a post-dated check or a promissory note, or an acceptance or other instrument from the debtor, thereupon withdrawing the claim from the hands of the receiver; the fee shall be computed upon the face amount of the instrument so taken, and shall be payable to the receiver in full upon the taking of the instrument, the same as if money had been collected, **unless otherwise agreed upon between the forwarder or creditor and the receiver.**

Full Fees Due After Failure to Remit

- **3.6 (C)(2)** If the creditor or forwarder demands possession of the instrument, **and thereafter fails to remit fees due to the receiver when the money is collected,** the receiver is at once entitled to full compensation computed on the face amount of the instrument, the same as if money had been collected. . . .

Calculation of Fees

- 4.1 Interest collected on an account or judgment is the property of the creditor, and the collection of interest must be disclosed by the receiver to the forwarder. Interest collected should be added to the principal collected for the purpose of computing the contingency fee. **Unless otherwise agreed between the forwarder and receiver, and where not in violation of the law of the forum, money collected should be first allocated to principal, then to interest, fees, and additional sums awarded (see Section 4.3), and then to costs.**

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- 4.4 Unless otherwise agreed upon by and between the forwarder and receiver, because an attorneys fee clause in a contract or note is intended to reimburse the holder for expenses incurred in the collection thereof, any such attorneys fee collected in addition to principal and interest, ~~where no suit has been filed~~, shall be deemed to be the property of the creditor and shall be treated for purposes of computing ~~commissions fees~~, the same as interest, unless prohibited by law.

Suit Fees Clarified

- 5.3 Suit fees are normally contingent, although a non-contingent suit fee should be provided on claims where,
 - a. the forwarder, at time of forwarding, has evidence of a risk of non-collectability in the receiver's jurisdiction or is knowledgeable of a potential dispute that could compromise the receiver's effectiveness in achieving resolution;
 - b. The receiver, upon commencement of work on a forwarded claim and prior to the presentation of suit requirements and acceptance of said requirements by the forwarder/client, uncovers knowledge of a potential dispute, circumstance or issue that deems the claim to be at a high risk of non-collectability in the receiver's jurisdiction;
 - c. The receiver is forwarded a claim where suit is commenced in a venue wherein the debtor is not located for purposes of enforcement in another jurisdiction; or,
 - d. Where the venue of the lawsuit is in a remote location, thus necessitating unusual time and effort for a receiver to get to that location to appropriately litigate the case.

Suit Fees Clarified

- 5.4 A suit fee is not earned until suit has been filed.
- a. Any non-contingent suit fee shall be applied against the total suit fee set forth in the forwarding contract at the time the claim was referred by the forwarder to the receiver, unless otherwise agreed to in writing.

Reasonable Compensation Expanded

- 7.1 d Where a claim is disputed and the dispute is known to either the creditor or the forwarder but is not disclosed to the receiver at the time of his employment, and the receiver has spent significant time on the claim and/or filed suit before the dispute is discovered, then the receiver **may request** compensation for services performed and expenses incurred by him in endeavoring to collect such claim in the event he is by reason of such dispute, unsuccessful in the collection thereof.

Reasonable Compensation Expanded

- 7.1.e. When either the creditor or the forwarder shall improperly interfere with the efforts of the receiver and thereby prevent collection. In this situation, the receiver shall be entitled to reasonable compensation for services rendered. **The term “improperly interfere’ shall include, but not be limited to:**
 - (1) the creditor’s refusal or inability to provide substantiating documentation to the forwarder to enable the forwarder to proceed with collection efforts;
 - (2) the creditor’s refusal or inability to sign sworn statements requested by the forwarder for court purposes
 - (3) the creditor’s refusal or inability to provide a witness with knowledge of the facts to the forwarder once the matter is already before the court;

Counterclaims

7.9 Where a receiver has a reasonable expectation that a counterclaim will be filed, the receiver shall notify the forwarder/creditor at the time suit is recommended; and that any counterclaim interposed must be defended.

- a. In the event that a forwarded claim is litigated, and the defendant files a counterclaim, the receiver shall notify the forwarder/creditor of the existence of the counterclaim and any particulars associated with the counterclaim, i.e. complaint papers, etc. The forwarder/creditor will respond to the receiver as to their intentions in defense of the counterclaim. The creditor has the right to substitute its own counsel of choice to defend the counterclaim or may elect to retain the receiver as the defender of the counterclaim.
- b. The counterclaim is a separate issue from the original forwarded claim and, unless otherwise agreed to in writing by the creditor/forwarder/receiver, the defense will be handled at the attorney's standard hourly rate.
- c. The costs associated with the counterclaim are separate from the original forwarded claim, as are any contingent fees that would occur should any payment or settlement be conditioned as part of the resolution of the counterclaim. In other words, should the original forwarded claim be paid in whole or in part, the receiver remains entitled to the agreed upon contingent fees as stated in the forwarding letter, regardless of whether the receiver is defending the counterclaim or the creditor has elected to utilize a counsel of their choice.

Return of Court Costs

8.4 Upon completion of a receiver's efforts on a claim, be it by payment in full, settlement or closure for any reason of uncollectability, including recall of a claim by the forwarder/creditor, all unused advance court costs should be returned to the forwarder/creditor along with an accounting of any expenditures that the receiver incurred during the course of their efforts. Unused advanced costs should not be considered as non-contingent compensation to the receiver, unless otherwise agreed upon between the forwarder and the receiver, and should be returned to the forwarder/creditor as soon as possible.

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Former Provisions – now Deleted

- 3.4 option for different fee based on settlement by extended payments or proceed to litigate
- 3.5 claims more than 1 year old entitlement to higher fee