



XL Group
Insurance



Design Professional

Top 10 Warning Signs of a Claim

For most firms, avoiding costly claims is not just good business sense...it means survival. One of the best ways to avoid claims is to learn to recognize the warning signs and then take action steps to address the underlying problem as soon as possible.

Based on our years of experience helping our customers foresee potential claims and avoid disputes, XL Group's Design Professional team has put together this capsule guide to recognizing the warning signs of a claim.

We understand that in a growing firm like yours, avoiding claims is usually your responsibility. That's why we've made an effort to present these warning signs in a form that's easy to digest and remember.

To learn more about the warning signs of a claim and find out how you can obtain the over 500-page *XL Group Contract eGuide for Design Professionals : A Risk Management Resource for Architects and Engineers*, contact your broker or one of our agents (visit www.xldp.com – click on "Agents in your Area").

Section I: Warning Signs Before the Project Begins

1. SKELETONS IN THE CLOSET

Smart client selection requires you to do your homework. Before you agree to take on a project with a new client, use the Internet, local business publications and professional associations—and perhaps even speak with your competitors—to see whether you can rely on your potential client to deal fairly, pay on time and settle disputes out of court.

WARNING SIGNS	<ul style="list-style-type: none">• The owner has a history of litigation on projects.• The owner has sued design professionals in the past.• The owner makes a practice of using design professionals and their insurance as a “project contingency fund”—in other words, the owner sues in order to recover profit on a project.
ACTION STEP	If you find that some or all of these apply to the owner, you should seriously consider turning down the project.

2. UNREASONABLE NOW, UNREASONABLE LATER

People don't change overnight. If you have trouble negotiating a project contract with an owner, there's a high probability you're going to experience the same difficult attitude throughout the project, the kind of attitude that leads to costly claims.

WARNING SIGNS	<ul style="list-style-type: none">• The owner seems more inflexible than most when negotiating terms such as scope or payment.• The owner will only accept a one-sided agreement in which most of the risk is unfairly allocated to you.• The owner seems to view contract negotiations not as an opportunity to reach agreement but a chance to gain the upper hand.
ACTION STEP	If you detect any of the above prior to beginning the project, you should seriously consider abandoning the project—and the owner.

3. REPLACING ANOTHER CONSULTANT

When you're asked to replace another design professional, red flags should immediately go up. While there are legitimate and understandable reasons for a designer leaving a project, you'll want to make sure you're not walking into a potential claims minefield. Replacing another designer can put you in the middle of several important liability issues.

WARNING SIGNS	<ul style="list-style-type: none">• The owner speaks disparagingly of the previous designer.• The owner refuses to put you in touch with the previous designer or forbids you to make contact.• The owner refuses to indemnify you against claims arising from any services performed by the previous designer.
ACTION STEP	Ask the owner why the designer left and, if necessary, contact the designer to get his/her view.

4. UNDERFUNDED AND OVERLEVERAGED

Working with an owner that's underfunded and/or overleveraged often results in your not receiving full payment for your services, which can force you to file a claim for payment.

WARNING SIGNS	<ul style="list-style-type: none">• Payment for your submitted invoices is consistently late.• The owner constantly challenges your invoices.• The owner tries to use value engineering to cut every budgetary corner possible.
ACTION STEP	Before taking on the project or at any sign of trouble during the project, pull credit reports and other information to determine whether you can count on receiving timely payment for your services.

5. AMATEUR HOUR

While everyone enjoys a challenge, working with an unsophisticated owner or one who lacks experience in the particular project type or size is one challenge you might want to pass up. If the wheels come off the project, you don't want to be the only "professional" involved.

WARNING SIGNS	<ul style="list-style-type: none">• During contract negotiation, the owner doesn't raise the issues normally raised for this type of project.• The owner asks questions that an experienced owner would not.• The budget seems unrealistic for a project of this type or size.
ACTION STEP	Ask the owner, the contractor and other design professionals in your area specific questions about the owner's level of experience in a project of this type or size. If you decide to take on a project with an inexperienced client, be prepared to spend extra time educating the client and managing his or her expectations.

Section II: Warning Signs During Construction

6. AN AVALANCHE OF RFIS FROM THE CONTRACTOR

While the RFI (Request for Information) process is a normal part of the construction phase, many contractors will generate them simply to pave the way for claims against you for extras and delays.

WARNING SIGNS	<ul style="list-style-type: none">• The number of RFIs you receive is far above average for similar projects.• Many of the RFIs are related to areas that are not your responsibility.• Many of the RFIs ask questions that have already been addressed in the design documents and/or your previous responses.
ACTION STEP	Don't let RFIs go unanswered! Whether the RFI is related to your responsibilities or not, reply promptly in writing and send the owner a copy.

7. THE PROJECT IS OVER BUDGET

Any project that's over budget is a project on which you're not going to be paid all you're owed. An owner struggling to keep a project on budget or maintain the expected profit will be more than happy to look to you to help make up the difference. And that means claims.

WARNING SIGNS	<ul style="list-style-type: none">• The project is over budget.• You have billed significantly over your contract amount.• Payment of your invoices to date has been significantly delayed or hasn't been received.
ACTION STEP	In addition to having done your homework to avoid the type of owner whose projects often go over budget, at the first sign of trouble you should meet with the owner to discuss payment and remind the owner of the payment terms included in your contract.

8. THE COLD SHOULDER

Open and frank two-way communication is critical to maintaining good working relationships throughout a project. However, when the communication begins to flow just one-way—from you to the client—it's time to take action. If not, the next time the two of you communicate could be in a courtroom.

WARNING SIGNS	<ul style="list-style-type: none">• The owner does not return your calls.• You receive combative correspondence from the owner.• You perceive a curt attitude in your communication with the client.• The client doesn't invite you to a meeting you should have attended.
ACTION STEP	Don't overreact! Meet with the owner and see whether your hunch is correct that a problem exists. Then work with the owner to correct it.

9. THE MONEY SPIGOT IS TURNED OFF

There may be legitimate reasons why a client has to delay your payment, but more often than not it's a sign of trouble—either with your relationship or with the project in general.

WARNING SIGNS	<ul style="list-style-type: none">• Construction work has stopped.• You haven't received payment of recent invoices.• You haven't had any contact with the owner in an unusually long time.
ACTION STEP	Get to the bottom of the problem. Try to determine whether lack of payment is the owner's standard practice or a sign of dissatisfaction. Also, spell out clear terms of payment in your contract and hold the owner to those terms throughout the project.

Section III: Warning Signs after project completion

10. THE PROJECT IS COMPLETE BUT YOUR PAYMENTS AREN'T

This isn't so much a warning sign of an incoming claim as it is a warning against being too anxious to file your own claim for payment. Certainly once the project and your work are complete, you want to make sure all your invoices are paid, lest the owner moves on and leaves you high and dry. But taking legal action to force payment should be your last resort.

The moment you file a claim for payment, you can count on two things happening:

- The claim will not result in immediate or even timely payment.
- The owner will file a counterclaim against you, alleging mistakes, faulty design, construction delays, etc.

You'll then be involved in two, not one, lawsuits; your attorney and insurance company will have to get involved, and you'll have to pay your deductible and spend hundreds, if not thousands, of hours of your firm's time on the situation.

ACTION STEP	The best way to avoid having to sue for payment is to have a strong contract with clearly spelled out payment terms and to keep the owner in line with those terms throughout the project.
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Best Advice:

With XL Group, when you call your agent at the first sign of trouble, you initiate our Early Warning System—designed to bring our expertise to your situation so that we can work to avoid an expensive claim. We will often spend our money, not your deductible, to resolve the issue before it grows into a claim against you.

If a claim is ultimately made against you or your firm, you'll be placed in the hands of the very best claim professionals in the industry. The design professional specialists at XL Group know your business, as well as the regulations and laws specific to your area of practice. Our claim consultants and, if necessary, our approved counsel, will work to resolve the claim quickly and efficiently.

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