



# Heading off claims

## Design Professional

Before a dispute turns into a claim, know the warning signs and how to remedy the situation.



Even though a formal complaint may allege negligence or breach of contract, the real reason an owner takes the step of filing a claim against an architect or engineer is often something far different: the deterioration of their relationship.

At AXA XL's Design Professional unit, our claims professionals find that many claims would never have made the jump from informal dispute to formal claim had the design firm recognized the warning signs of a dissatisfied client, one who was more apt to file a claim. If a problem is addressed early on, there's a much higher probability of resolving it and avoiding the time, cost and relationship damage that often result from a claim. In fact, our research shows that approximately 70% of those matters brought to our attention by insureds seeking loss prevention assistance (see sidebar, "Loss prevention assistance") do not develop into a claim.

### Loss Prevention Assistance

To help our insureds resolve pre-claim problems, AXA XL's Design Professional unit offers "Loss Prevention Assistance" as part of our insurance policies. We will often spend our money, not an insured's deductible, to resolve an issue before it becomes a claim.

As soon as we're notified of a potential claim, we establish a "loss prevention" file that does not negatively impact an insured's deductible, liability limit or premium.

To find out more about our Loss Prevention Assistance, please contact your agent or broker.

### Know the warning signs

To avoid having a dispute or even a simple misunderstanding develop into a claim, it's important to be able to recognize the warning signs that indicate trouble is brewing. Here are several of the more common warning signs:

- Costs or billings are significantly over budget.
- You perceive finger-pointing and the passing of responsibility onto you.

- There are signs of a communications breakdown, e.g., your client displays a curt attitude or fails to return your calls.
- You receive combative correspondence from your client.
- Project work has stopped.
- Your client has retained another professional for the same job.
- Your client doesn't invite you to a meeting you typically attend.
- Your client is slow to pay or isn't paying.
- Your staff members hear reports that differ from what your client is telling you.
- A risk manager appears on the project.
- The client retains an "expert" to review your services.
- Job site accident where a worker is injured.
- A project stakeholder is experiencing turnover of key personnel.

It's also important to make sure that everyone in the firm, whether or not directly involved in project services, knows these warning signs. For instance, a receivables clerk may notice that the delay between invoices and payment has been growing.

## See something, say something

Unfortunately, not everyone who recognizes a warning sign or becomes aware of a problem knows the right step to take. Some will try to fix the problem themselves, figuring it's best left to those directly involved. Others may try to appease the client by falling on their sword too soon, but taking responsibility for a problem without discussing it with firm management is rarely the right tactic. Still others may feel it's not worth waving a red flag when no formal action's been taken.

Ignoring a problem is not the answer. Many disputes would have been settled in the pre-claim stages had someone simply taken the step of notifying the right people both inside and outside the firm.

Your firm should have a formal policy that spells out the right steps to take. After notifying the appropriate people in the firm of a potential problem, the next step is to notify your professional liability insurance agent or carrier as soon as possible. Although your insurance policy obligates you to report actual claims (or, depending on the policy language, knowledge of an event that could reasonably lead to a claim), the earlier you get your insurer involved, the sooner it can take steps to head off that claim.

## Don't panic—help is on the way

To best assist your agent and your carrier in helping to defuse the matter, take the following steps:

- Remain calm; remember, no one has filed a claim against you yet.
- Gather all relevant documentation.
- Notify your employees of the situation and ask them not to discuss the matter outside of the firm.
- Assign a person to respond to media inquiries.
- Remember that your carrier is going to need access to your key employees regarding the matter.
- Take photographs of site conditions as appropriate.
- Keep the lines of communication open with all parties to help protect and preserve important relationships.
- Document the facts while the details are fresh in your mind.
- Accept any letters and/or suit papers without comment.

Equally important are the actions you shouldn't take:

- Don't assume or accept that you're at fault.
- Don't write or make statements to other parties that could be construed as admitting fault.
- Don't place blame on others or criticize subconsultants or other team members.
- Don't sign or accept releases from any parties.
- Don't expose yourself to unsafe conditions.

## What can make a claim worse

Be aware of issues that can exacerbate a potential claim:

- Admissions of liability
- Inflammatory emails, instant messages, or texts
- Poor document management
- Inappropriate document destruction
- Cyber breach / ransomware

## Timing is everything

Once your insurer's claims staff becomes involved, they'll use their wealth of experience in such matters to help resolve the issue. Their help may come in many forms and the amount of their direct vs. indirect involvement in the matter will vary by carrier and the situation. Some may want to help facilitate a meeting between you and the client, while others may simply ghostwrite a letter for you to send to the client.

Whenever you recognize a warning sign of a problem or a problem itself, remember, timing is key. Every day that passes without the appropriate staff and outside resources taking positive action toward resolving the problem is another day the problem will no doubt continue spiraling into a formal claim, a consequence you always want to avoid.

## Contact

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