



AIA Best Practices: Practice management problems, pitfalls, and predicaments

Contributed by Thomas M. Bongi, Esq.

Summary

Twelve indicators of potential practice management problems exist. Recognizing any one of these signs early on can help a designer avoid a critical situation. exist.

If you could predict the future

Tradition holds that one's future can be foretold by examining the arrangement of loose tea leaves at the bottom of a cup. By "reading" these leaves, a trained seer can tell you if you will live in prosperity or face financial ruin.

While design professionals might benefit from seeing into the future, true rewards will come to those who not only anticipate what might happen but also take steps to change the course of those events. In short, today's projects require the design professional to be more than a tea-leaf reader.

The truth is that some projects are destined to result in a claim against the design professional even before he or she puts pencil to paper (or, more appropriately, before the CAD station is turned on). But if you know where to look, often you can see early signs of a claim just waiting to happen.

The early bird doesn't pay as much for the worm

No matter the cause or the source of the claim, it is incumbent on you to recognize the warning signs of a potential claim and take appropriate action. The longer an issue on a project goes unnoticed or simply ignored, the more it costs to ultimately address. ("Costs" here does not simply refer to money. All issues "cost" in terms of lost time, productivity, and opportunities. You also need to factor in the potential loss of good will with the client and potential impact to one's reputation.)

Simply put, it is in your best interest to recognize when there is a potential problem. To do so, you must learn to spot the warning signs. You must learn to read the tea leaves.

Let's take a look at some of the warning signs of a potential claim situation that may occur before, during, and after the project. We'll call them potential project problems, pitfalls, and predicaments.

Before the project begins

Some of the most glaring indicators that trouble is on the horizon are present right at the beginning, before work begins.

Unreasonable now, unreasonable later

Has the client been unreasonable during contract negotiations? Has he or she been inflexible and unwilling to negotiate? Does the client insist that you agree to an onerous and one-sided agreement with an indemnity clause that makes you liable for everything except the client's "sole negligence"?

A client unwilling to truly negotiate with you to reach a mutual agreement is sending you a strong signal. You are not entering into an arm's-length transaction but one where the client is demanding the upper hand. Ask yourself what the client's reaction will be if the contractor asserts your plans are incomplete. Who do you think will be asked to pay for cost overruns?

Litigation as a first resort

What is the litigation history of your client? Does he or she have a penchant for going after the design professionals on a project? Some owners and developers are well known for using the designers (and their insurance policies) as supplemental funding for their projects.

Stepping in for another

Are you taking over for another design professional? Why? What reason did the client give for the other professional leaving or getting fired? Probe. Don't just accept statements such as "We had a difference of opinion," or "We decided to go in a different direction." Most important, call the design professional you are replacing. In most cases, they will talk to you and give you valuable information. Often, the other designer will give you a completely different reason for their departure.

Obviously, if the previous professional says she left because she never got paid or because the client sued her, you need to reevaluate your relationship with the client.

Underfunded and overleveraged

Does the client have enough money to complete design and construction of the project? Lack of adequate funding leads to one of two things: You don't get paid or the client files a claim against you. The first is obvious. The second may take some explaining. Without adequate funding, the client may ask you to engage in "value engineering." Value engineering is often code for the client asking for a project of similar scope, quality, and schedule but at significantly less cost. Invariably, the client will not get what it wants and will seek free services or money to get the project the client couldn't afford to begin with.

Ask your client pointed questions about funding. Also, tell the client you perform credit checks on all clients and then do it. Credit reports are readily available and relatively cheap. Additionally, Dunn & Bradstreet reports are a wealth of information. If the client resists your research efforts, ask yourself why.

Amateur hour

Does the owner have experience with the type of project proposed? If not, you've got a problem. No matter how much the owner "talks the talk," there is no substitute for having "walked the walk." If there are any problems during design, construction, or subsequent operation of the project, you will be painted as the "professional" that got the job by holding yourself out as an expert in the field.

During construction

Buried in RFIs

The same day the contractor signed its contract, it submitted 50 requests for information (RFIs). What are you going to do? First, you need to determine whether there is a problem with your plans and specifications. Was there a lack of coordination of the different design disciplines?

If a QA check shows the plans are solid and the RFIs are unwarranted, you need to call this to the attention to the owner and the contractor in writing. Unfortunately, you also must respond to each RFI in a timely manner. An unanswered RFI can form the basis of a significant delay claim by the contractor. Even if the answer is obvious, you need to provide the answer to avoid the contractor allegation that sounds something like this: "We submitted over 200 RFIs on this project, which is proof the plans were inadequate. Furthermore, some weren't responded to for over six months!"

There goes the budget

Are your billings significantly over your contract amount? Is the project significantly exceeding the owner's budget? If so, it is likely you won't get paid for all your work. At worst, the owner will be looking to the design team to cover the cost overruns on the project.

The cold shoulder

Is the owner or client not returning your calls? Do you perceive a curt attitude on the part of others involved in the project? Were you not invited to attend a meeting you would typically attend? Any one of these issues is not necessarily a sign of an impending claim. Rather, they can fall into the category of "vibes," which can be hard to read. Listen to your gut, and be alert for bad vibes from owners and other project team members. If you perceive that someone has an issue, ask them about it. Get it out into the open, and soon. The longer an issue simmers, the harder it will be for you to address it.

Where did that come from?

If you receive combative correspondence from your client, you've moved well beyond the "vibe" stage and are approaching unmistakable signs of a claim. Do not overreact to such correspondence, but try to figure out what drove the client to take that action. You almost certainly will want to talk to the client about it, but you must also respond in writing. While you may think you have addressed the issue by talking it through with the client, document the discussion and the resolution reached.

The money spigot is turned off

Many clients take a long time to pay invoices. The hard part is determining whether the lack of payment is simply the client's standard business practice or a sign of dissatisfaction with your work. To avoid having to guess which it is, you need clear payment terms in your contract, and you need to hold the client to those terms. If you are able to get the client to pay you on a regular basis as agreed to in the contract, any disruption to that routine should be a warning sign to you. Either the client is running low on funds (could be trouble) or is dissatisfied with your work (definitely trouble).

Why aren't you working?

Construction work on the project has stopped. Time is money, and time is being wasted. Even if the reason for the stoppage seemingly has nothing to do with the design, this is a signal to watch your back. You may be surprised to find out that the owner or contractor is blaming your design for the stoppage. Or perhaps they believe you should have caught someone else's error during your construction phase services. Whatever the reason, you need to pay attention to construction disruptions and make sure you are not the cause—or are not perceived as the cause.

After project completion

You sue me; I'll sue you

The project is completed, but you are still owed a lot of money, and your client refuses to pay. What do you do? You sue! After all, you have an airtight case, you did the work, and you are entitled to the money. Maybe if you just file and serve the lawsuit, the client will come to his senses, right? Wrong.

It is estimated that 80% of lawsuits by design professionals to collect fees are answered with a countersuit against the designer for professional negligence and/or breach of contract. One lawsuit has become two, your professional reputation is taking a hit with every allegation made by the client's lawyers, your insurance company is involved, you owe a deductible, and you'll have to give deposition testimony.

The best way to avoid this scenario is to have a good contract with the appropriate payment terms and to stay on top of the fees owed to you. As the amount of money you are owed increases, the client's ability to manipulate the situation increases because your options and bargaining power have decreased. Don't allow yourself to be placed in that position.

Recognizing the problem is the most important step

While many of the situations mentioned above may seem to be obvious precursors to a claim, others may not be so apparent. By keeping the danger signs in mind, you should be able to spot even the not-so-obvious situations.

The key is to pay attention. People generally tend to focus on the good and ignore the bad. Some call it "whistling past the graveyard"—being cheerful or optimistic when the situation doesn't warrant cheer or optimism. Your task is to overcome the inclination to ignore or discount potential issues. To effectively manage project risks, the first and most important step is to recognize potential problems before they turn into claims. If you read the tea leaves correctly, you can take the steps necessary to overcome the problem.

About the contributor

Thomas M. Bongi, Esq, is an attorney and senior vice president of underwriting, and head of architects and engineers and miscellaneous professional liability, at the Argo Pro insurance company. He has more than 25 years of experience representing architects and engineers throughout the United States.

The AIA collects and disseminates Best Practices as a service to AIA members without endorsement or recommendation. Appropriate use of the information provided is the responsibility of the reader.

About AIA Best Practices

AIA Best Practices is a collection of relevant, experience-based knowledge and expert advice on firm management, project delivery, contracts and more, aligned with the *Architect's Handbook of Professional Practice, 15th edition*. See the full AIA Best Practices collection at aia.org/aia-best-practices.

This article corresponds to:

Architect's Handbook of Professional Practice, 15th edition Unit 1 - The Profession
Chapter 16 – Risk Management
Section 01 – Risk Management Strategies