

# Continuing Education

Provided by the Design Professional group of XL Insurance

EARN ONE AIA/CES  
LEARNING UNIT

## Managing Client Expectations to Reduce Professional Liability Risk

*Practice management techniques can lower the risk of client dissatisfaction and professional liability claims.*

Put yourself in this design professional's shoes for a moment. You're well known within the metro area for designing the kind of house that makes most luxury homes look like in-law apartments. A couple asks you to design a similar house for them, but they're on a budget. It's a seven-figure budget, but only about half of what you're accustomed to. Do you:

- politely tell the couple that you don't accept projects in their budget range and refer them to an architect who does?
- discuss their needs and wishes in order to determine whether you're the right architect for them?
- give them a tour of your most expensive homes, which leads to the wife saying she wants exactly that type of home in a different neighborhood and within their budget, and then take them on as clients?

If you answered "c," congratulations! You're well on your way to a career filled with defending against claims. However, if you answered "a" or "b," you show some potential for avoiding costly claims through the art of managing client expectations.

Amazingly, the example above isn't hypothetical. It's just one example of the types of claims professional liability insurers see year after year, in which the failure of design professionals—engineers and architects—to manage their clients' expectations results in disastrous projects, costly claims and/or settlements, damaged reputations, and the like. In fact, the home the architect designed for this couple has yet to be built, due to disputes over many things, primarily the cost of construction. That architect may think twice before giving his next guided tour.

This article examines the ways in which design professionals can assess their clients' expectations for their projects, help their clients develop realistic expectations, and manage those expectations throughout each project.



Terri Buckley, Chief Claims Officer for the Design Professional group of XL Insurance asserts, "You've taken steps to select the right client. Now you need to reduce risk by managing your client's expectations and including a clearly defined scope of services in the contract. All parties—especially your staff—need to understand the contract terms you've negotiated and how they relate to the client's definition of success."

### THE RISKS OF UNREALISTIC CLIENT EXPECTATIONS

Most seasoned design professionals have experienced the challenges presented by clients that want sterling silver projects delivered at plasticware prices, or that believe Rome was built in a day. But such unrealistic client expectations aren't the real risk. The real risk comes when you, the

#### Continuing Education



Use the learning objectives below to focus your study as you read **Managing Client Expectations to Reduce Professional Liability Risk**. To earn one AIA/CES Learning Unit, answer the questions in the separate test form, then follow the reporting instructions.

#### Learning Objectives:

##### After reading this article, you should be able to:

- Identify the leading causes of professional liability risk pertaining to client dissatisfaction.
- Determine a client's highest project priority.
- Understand the risks of unrealistic client expectations.
- Describe at least three ways to manage risk through external and internal communications.

seasoned design professional, try to fulfill those expectations. Whether driven by the desire to get another project on the books, the fear that not satisfying a longtime client's unrealistic expectations might result in no longer working with that client, or the pride in being able to deliver the impossible, trying to fulfill such expectations puts your practice at risk. Here's another real-world example:

A small architectural firm headed up two similar projects for two different clients involving the fast-tracked design of medical clinics. Construction began on both before all the construction documents were completed. In the case of both projects, as expected with projects with overlapping phases, changes were required in previously issued drawings as new drawings were issued.

In the first case, the client was a developer and fellow architect, so he knew to expect such difficulties, and included a contingency in the budget. In the second project, the client wasn't as savvy and blamed the architectural firm for errors and omissions (E&Os), and demanded that the firm pay for the changes.

Following an internal post-project review session, the architectural firm discovered the main difference between the two projects: the first client had realistic expectations and a budget based on them, and the second had neither. In retrospect, if the firm had spent time up-front educating the second client about the realities of fast-track project delivery—in other words, “managing the client's expectations”—the outcome might have been different.



*The client and design professional may have different conceptions of a project's priorities. To help reduce risk, the design professional must educate the client and promote realistic expectations.*

The fact is design professionals cannot afford to pay for someone else's unrealistic expectations. You wouldn't go into a big box store asking to buy a riding mower for the cost of a weed whacker and expect to get it, would you? Similarly, your clients should not expect to receive more than what they're paying for—whether that relates to the design itself, the time it takes to deliver the project or the scope of services you'll perform.

But how do you keep clients from developing such unrealistic expectations to begin with? Part of the solution involves finding out what's driving the client, before the project even begins. First, however, you have to put the right person in charge.

#### **INVOLVE THE PROJECT MANAGER—ASAP**

While design firm principals, and perhaps a select group of other individuals, such as a business development executive, are normally charged with reeling in the next project, it also makes sense to involve the intended project manager as early in the process as possible.

You might counter that your project managers' hours are billable and you don't want them to get involved until there's a signed contract. But consider the choice—do you want to absorb some of a project manager's hours within your sales and marketing budget and make sure that what you promise the client is actually deliverable, or do you want to save the money now and have to spend a much greater amount later, when it turns out that something promised during initial client meetings just can't be delivered within the budget, on time, or both?

***The more the project manager knows about the project from the opening discussions and the more face time the PM enjoys with the client, the more likely the project will proceed in harmony.***

Insurers see plenty of claims related to projects in which firm principals select the client, sign the contract, and drop the project in the project manager's lap. When told to “get it done,” the PM's usual response is, “What is it?” Claim postmortems often reveal that if the PM had been brought into the process much earlier—for instance, as the contract negotiations began—there would have been much less likelihood and/or severity of the claims.

Involving the project manager early on only stands to reason. During construction, the PM is going to be the A/E firm's most valuable risk management asset. The PM is in a unique position, very likely being the one person who, in the view of the client, represents the design team. The more the project manager knows about the project from the opening discussions and the more face time the PM enjoys with the client, the more likely the project will proceed in harmony.

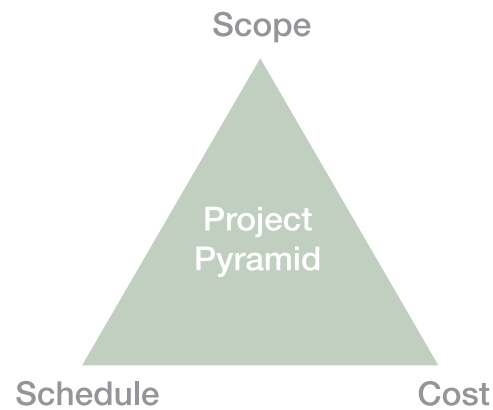
The PM often represents the A/E firm's first line of defense against the client's unrealistic expectations. A client's constant requests to "do it cheaply" or "use X in order to save money" must be met with the proper response. "A good PM," says Randy Lewis, Vice President of Loss Prevention and Client Education for the Design Professional group of XL Insurance, "can explain to the client, who is often a business-oriented person, the choices and possible outcomes in terms of economic value. Then, naturally, the good PM will also communicate the client's decisions to the A/E firm, particularly when amendments to the contract are required."

### DOCUMENT, DOCUMENT, DOCUMENT

Now that you have a project manager involved, you can assign the PM the responsibility for one of your firm's best defenses against unrealistic client expectations—documentation. While the command "document everything" has practically become a mantra for those in the design professions, more A/Es should actually practice it. Poor or missing documentation can expose a firm to a host of legal issues.

While A/Es should document decisions that come up during the normal course of business, it's also important to document any decisions that take place outside of the meeting environment. Meeting minutes or a simple memorandum can be sufficient to document a change. At other times, it might be better to get a formal letter describing the change and its impact—and to request the client's signed approval.

The best bet is to establish an internal documentation policy and stick to it. "We recommend developing a set of letter templates that address out-of-scope work, client-driven changes, and information requests and approvals sought and granted," Lewis says. "Templates allow for ease of documentation and consistency in the communication."



*The project pyramid depicts a project's constraints for the client's consideration. Using this drawing, the A/E firm asks the client to specify his/her highest priority: schedule, cost or scope.*

Terri Buckley says there's another good reason for documentation. "One of the biggest challenges an insurance company faces when defending a claim made against a design firm is getting good-quality documentation. Any change that affects the scope, schedule, or cost of a project should be put in writing—its approval secured by a signature—and filed carefully."

The sequence of emails, drawings, and letters should demonstrate reasonably well how the scope has changed and/or grown over time.

Thorough recordkeeping should be common practice for all of the reasons covered above; those who have experienced difficulties with client expectations or, worse, litigation know precisely why. "When faced with an unhappy or litigious client, the best documentation practices will give the A/E firm and its insurer a leg up," Buckley says.

### THE PROJECT PYRAMID

The project pyramid (see figure above) represents the three main constraints in any project: cost, schedule, and scope. All the parties involved in the project are concerned with these elements to some degree; conflict is created when you find, usually at some point during construction when it's too late, that the client is obsessed with cost, the contractor's focused on schedule, and you've been concentrating on scope since day one.

One of the best ways to manage your client's expectations is to first determine which of these three project components is your client's highest priority. At the very least, the client must tell you which two of the three are his/her main priorities.

Emphasizing any of these three undoubtedly affects the others. For instance, if the client states that his/her most important priority is cost, then the scope of the project's design may have to be scaled back to reflect that. If, on the other hand, the client values schedule and speed above everything else, then the scope won't necessarily have to change, as long as the client realizes the project may cost more.

Once you know which aspect of the project is most important to your client, you'll be able to tailor your work to fulfill the client's expectations. But that doesn't mean you'll concentrate on schedule, for instance, and have your interns handle the cost and scope. It does mean that you'll have a better way to decide how to allocate resources and to measure how well the project is living up to the client's expectations.

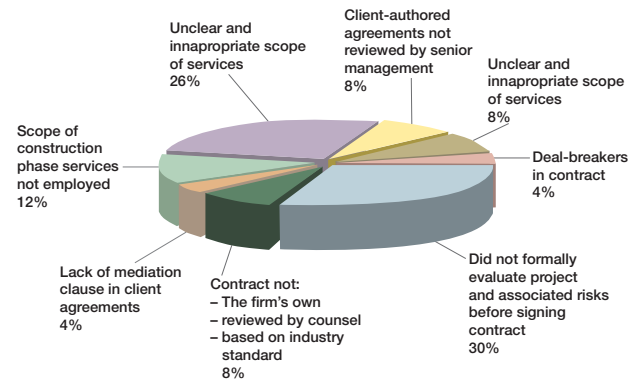
The discussions surrounding the relative importance of these project constraints must be done early in the process and certainly before prices are given and contracts signed. While every client would love to say that "all three" are most important, you need to insist that the client choose one (or maybe two if absolutely necessary). One firm makes it a practice to have the client assign weights to each aspect, with the stipulation that the three cannot all weigh the same.

Your success depends on your client's satisfaction. Your client will be (at least partly) satisfied when his or her highest priority has been well managed. Help your client figure out just which one that is, document the decision, and you're on your way.

#### CLIENT EVALUATION AND EDUCATION

Now that you know where the client stands in terms of project priorities you have to evaluate just how experienced the client is with the project design and construction process. The best way to do that is to ask. "This will offer some insight into the client's level of understanding and the client's expectations of the designer," says Albert J. Rabasca, Director of Industry Relations for the Design Professional group of XL Insurance. "How the client negotiates and what the client writes into the contract will also tell you a lot about the client's experience. A client who insists on low fees, limited scope, and inappropriately allocated indemnities is a sure sign of a problem client," Rabasca says. "Ideally, you'll evaluate your client before you commit to the project. We've seen too many claims that could have been avoided had the A/E walked away from the project as soon as a red flag was spotted."

## Negotiation and Contract Issues



© 2010, X.L. America, Inc.

*Working with an unclear and/or inappropriate scope of services is a major cause of the negotiation and contract issues that arise during projects.*

It's up to you as the design professional and, in some cases, as the most experienced party on the project, to educate your client about the process at a level that complements the client's experience. Obviously, some will need more education, others less. But in all cases, Rabasca notes, "You can never go wrong taking the time to educate the client about everyone's roles and responsibilities in the design and construction process, including the client's."

Randy Lewis agrees. "The truth is, the success of every construction project depends as much on the client as it does on the designers and contractors," he says. "As early as possible in the planning process, talk to the client about the importance of his/her own obligations. If both sides clearly understand their roles and responsibilities, this sets realistic expectations and helps mitigate the potential for conflict."

Included in your client education process should be a presentation of the services your firm offers. AIA's Practice Management Digest suggests that A/Es can use such a review to confirm that the client understands crucial contract elements such as cost, schedule, etc. Your work in making a detailed presentation will be rewarded in the long run by the increased probability of a successful project and fewer claims.

#### SCOPE OF SERVICES

Your contract's scope of services, or the acknowledgment of which services you will and will not provide during the project, is one of the primary methods you have for setting and managing expectations.

## UNDERSTANDING “STANDARD OF CARE”

According to the American Institute of Architects and construction law and insurance professionals, new AIA documents help to more clearly define what “standard of care” means, setting client expectations at a more reasonable level and dispelling any contemplation of perfection. It is a conversation worth having early and often with every client.

As simple as defining one’s scope of services may sound to some, it can present quite a challenge. Robert J. Smith, a Madison, Wisconsin-based lawyer with Akerman Senterfitt Wickwire Gavin, who is counsel emeritus to the Engineers Joint Contract Documents Committee, says that inadequate scopes of services are very common because contracts are often drawn up quickly based upon previous contracts. “Often, in the heat of competition and the enthusiasm to get going, you get a vague or generic scope of services that can lead to differing expectations,” he warns.

Perhaps another example from the claims files can best illustrate the danger of having an undefined or poorly written scope of services.

Prior to the purchase of a large apartment building complex, an engineering firm was subcontracted to perform portions of a property assessment related to mechanical, plumbing, electrical, and fire protection systems. The firm’s fee for a one-day assessment and report was just over \$3,000.

Once the assessment was performed and the complex was purchased, there were major problems with water leaks throughout the complex. The purchaser of the complex, who became “the plaintiff,” alleged that the engineering firm should have identified the leaks as a problem and notified the purchasers about them.

While a well-defined scope of services within the engineering firm’s contract could possibly have helped the firm successfully defend against the claim, the firm had used an ill-fitting form contract with a vague, at best, scope of services.

As a result, and despite the fact that the engineering firm was being paid so little, the purchaser had developed an unrealistic expectation that a “clean bill of health” from the engineers amounted to a guarantee or warranty that there were no

problems with the complex. A well-defined scope would have specified the extent of the engineers’ one-day assessment. The result was a six-figure settlement of the engineering firm’s liability.

A detailed and clearly defined scope of services, written into the contract and communicated to the project team, helps designers stick to the services they promised to provide. The moment an architect or engineer veers from the scope, or, as noted above, performs work in the absence of a clear scope, there exists the possibility of increasing client expectations and taking on additional liabilities.

According to Lewis, “The scope of services should include the following three elements: Services the design professional will perform for a basic fee; services available to the client for an additional fee; and services excluded because the consultant doesn’t provide them, the client has refused them, or the client has sought those services from a third party.”<sup>1</sup>

“Design firms run into trouble when they include broad, general language in their scope of services provisions,” Rabasca warns. “For example, by writing in the contract the phrase,

## WHEN SCOPE IS NOT DETAILED ENOUGH

If a project contract does not include a detailed work scope, architecture and engineering firms can append a scope checklist or matrix to the agreement. The A/E firm, and its attorney, might consider language such as:

### Scope of Services

The Client and the Consultant have agreed to a list of services the consultant will provide to the Client, set forth on the appended Scope of Services, Exhibit A.

If agreed to in writing by the Client and the Consultant, the Consultant shall provide Additional Services, which shall be labeled as Exhibit B, appended hereto. Additional Services are not included as part of the Scope of Services and shall be paid for by the Client in addition to payment for services listed in Exhibit A. Payment for Additional Services will be made by the Client, in accordance with the Consultant’s prevailing fee schedule, as provided for in Section \_\_\_\_, Compensation, or as agreed to by the Client and the Consultant.<sup>2</sup>

### “EXCLUDED SERVICES”: WHEN IT’S NOT IN THE CONTRACT

If a contract does not have a separate provision on “excluded services,” the A/E firm should consider adding the following paragraph to the Scope of Services clause:

**Services not set forth above and not listed in Exhibit A of the Agreement are specifically excluded from the scope of the Consultant’s services. The Consultant assumes no responsibility to perform any services not specifically listed in Exhibit A.<sup>3</sup>**

‘providing any and all engineering services necessary,’ or ‘providing complete architectural services,’ the designer makes a sweeping and open-ended offer. The scope is not clearly defined.”

Without a clearly defined scope, a design firm might find it difficult to charge for what its principals consider to be additional services. Given the nature of design projects fraught with changing conditions, codes, regulations, construction limitations, etc., additional services are often needed. If you provide them, you certainly should be paid for them.

“We always advise our insureds to make a specific determination of what services the firm will—and will not—provide and specify them in the project contract’s scope of services,” Lewis says. “If this is not done and the firm decides to bill for what it considers to be additional services, it may be in for a surprise when the client, or client’s lawyer, disputes such charges.”

To get an idea of just how effective a clearly defined scope of services can be, consider the following situation:

An engineering firm provided services to a city that was repairing its sewer collection system. As part of its services, the firm agreed to provide a resident project representative (RPR), who would be responsible for construction administration and construction observation services. During construction, a contractor failed to properly dispose of material containing asbestos, which led to major problems with the project. Fortunately for the engineering firm, the contract read that neither the RPR nor the firm was required (or permitted) to “supervise, direct or have control over Contractor’s work.” Further, the RPR had no “authority over or responsibility for the

### Project Scope/Contract Summary

Client: \_\_\_\_\_ Project: \_\_\_\_\_  
 \_\_\_\_\_ Location: \_\_\_\_\_  
 Client’s Budget: \_\_\_\_\_ Project Budget: \_\_\_\_\_

PROJECT DESCRIPTION (include square footage, number of floors, site conditions, types of spaces, special spaces, special mechanical, structural, computer or lighting requirements, number of units, parking spaces, commercial versus noncommercial space, landscaping, etc.)

\_\_\_\_\_

\_\_\_\_\_

CLIENT GOALS (Identify whether cost, schedule or scope is the client’s primary driver, e.g., is meeting an occupancy date the client’s driving factor?)

*This concise format for basic project information will help keep all project team members on the same page. The form captures basic project and client information, the client’s budget, a project description, and the client’s highest priority: cost, schedule or scope.*

means and methods, techniques, sequences or procedures selected by Contractor.”

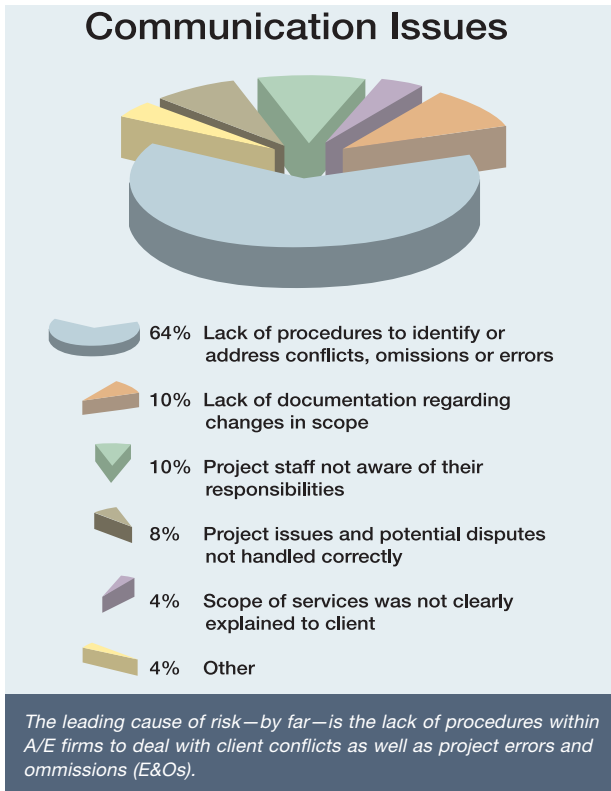
Though the city included all parties in its ensuing claim, it never charged negligence on the engineering firm’s part. A settlement was reached in which the firm’s only obligation was to provide a limited amount of in-kind services on a future project. However, had there been a less specific scope of services, or none at all, the engineering firm could have been on the hook for a lot of money.

### MANAGING CLIENT EXPECTATIONS AS FIRM PROTOCOL

As you move from client to client and project to project, each situation will present its own special set of challenges. Your ability to successfully meet these challenges and manage your clients’ expectations will be greatly enhanced if your firm has a set of internal procedures it follows without fail. If you haven’t already instituted the procedures below, consider starting.

#### • Project-Specific Measures

Since, presumably, you’ve worked hard to include a thoroughly considered, well-crafted scope of services in your project contract, it’s important to communicate it to the entire project team, and to constantly revisit it as the project progresses. Rabasca suggests that A/E firms “institutionalize” internal communications to confirm project team members’ understanding of the exact extent of services required on a



project. “The scope and its status should be addressed at every internal meeting,” he says. “This needs to be a priority action item on every internal meeting agenda in order to keep it ‘top of mind’ for all project team managers and members.”

Absent such consistent emphasis, members of the project team, caught up in the day-to-day details of the project, can easily find themselves performing tasks not included in the agreed-upon scope of services. In addition to making the scope of services review part of every meeting agenda, Lewis suggests a handy way to keep scope in the spotlight.

“One surprisingly simple yet powerful tool we recommend is a project scope and contract summary,” he says. “It’s a concise form covering many aspects of the project and contract that will help keep project team members on the same page.” The summary lists basic project and client information, the client’s budget and the client’s highest priority: cost, schedule, or scope.

“The project scope and contract summary should serve as a touchstone throughout the course of the project,” Lewis adds. “Members of the design team, and all client parties, should frequently refer to the document during each phase of the project.”

#### • Client Representative Report

From the minute the design firm becomes involved with a project, even before contracts are signed, another avenue for managing client expectations is the client representative report. Prepared weekly by the project manager for delivery to the client’s rep (or directly to the client), this report not only serves as a snapshot of where the project stands in terms of schedule and cost, it also reminds the client of the value the design firm has provided in the past week and will provide in the coming week. It also spells out all the matters the client needs to decide or provide more information to the design team about.

The client rep report is a great way to let the client know you’re staying on top of all aspects of the project. Once documented, it’s a lot more difficult for the client to claim at any point, “You never told me about X, Y, or Z.” One firm reports that since they instituted client rep reports, “it’s absolutely amazing the number of problems that simply went away.”

Finally, should the project manager or other key member of the project team change during the course of the project, a new person can use the client rep reports to quickly get up to speed on the project.

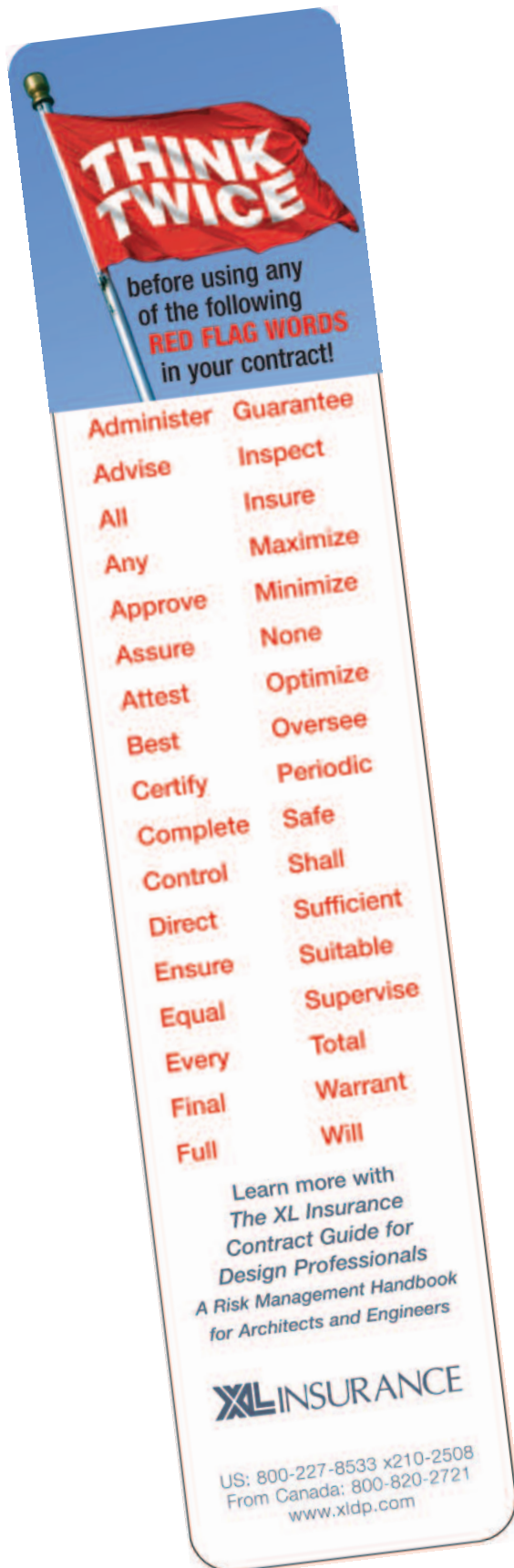
#### • Gatekeepers

Another safeguard firms find useful in managing client expectations is the appointment of “gatekeepers” for clients and their projects. By giving just one or two staff the primary responsibility for client management, the firm takes a giant step toward project consistency. For instance, clients are prevented from approaching multiple team members in order to get them to perform tasks outside the scope of services. “Gatekeepers are the people in firms that make the go/no-go decisions to

### USING A CLIENT REPRESENTATIVE REPORT

To adequately manage risk, architecture and engineering firms should become familiar with the best practices in client communication. One tool for improving client communication is a weekly Client Representative Report. This report generally includes descriptions of:

- Progress made during the week
- Planned accomplishments
- Scope, budget, and schedule status
- Client decisions needed<sup>4</sup>



accept the client, the project, terms, conditions, scope, and fees,” Rabasca explains. “By limiting who can make these decisions, the firm can better manage the risk of selecting clients who bring unrealistic expectations to the process.”

- **Post-Project Reviews: Learning from Experience**

In order to make sure you carefully manage the client’s expectations on your next project, you’ll do yourself a big favor by reviewing how well you managed them on the last one.

Each project should receive a thorough postproject study, with careful attention paid to where the project may have veered from the scope and how much the client’s expectations—whether realistic or not—contributed to the project’s ultimate outcome.

#### **LOSS PREVENTION EDUCATION: ANTIDOTE TO THE “SOFT CAUSES” OF CLAIMS**

The best A/E professionals and PMs take what they’ve learned—often, the hard way—and use it to gear the project process toward success.

Part of successfully mitigating risk and preventing loss, whether by managing client expectations, writing effective contracts, selecting the best clients, etc., is becoming an educated practitioner. By taking advantage of available education courses, books, and other resources, design professionals at all levels can sharpen their practice management skills. Several professional associations and institutes have deep resources, and some insurance firms place a high value on continuing education for professional liability.

According to Randy Lewis, an effective loss prevention course of study should include the following key topics:

- **Liability knowledge.** This should include an overview of the common causes of claims and the best ways to prevent them. Courses in contract review and revision provide a strong working knowledge of basic contract elements, terminology, and effective approaches to common clauses. Most critical is finding guidance in developing and negotiating professional services agreements to minimize liability exposure.

- **Reviewing contracts.** Key skills include reviewing contract clauses, addressing loss prevention issues, and negotiating with clients on contractual matters. Since contracts are much deeper and more complicated than ever, additional education might be important for more senior associates and principals of firms.

- **Documentation.** Experienced professionals should know how to review existing documents and develop new ones for recording and reporting project management procedures throughout all phases. Another key facet is tackling pre- and post-project evaluations.

- **Identifying and allocating risk.** Risk management, project management and practice management are highly intertwined, so understanding risk drivers and how to manage them—such as poor project evaluation and selection, scope of services problems, and breakdowns in contract protocols—is crucial to any A/E firm.

- **Selecting the right client.** It may seem difficult to learn, but most firm leaders get better at selecting the right clients with practice and study. “It’s the first step in sound risk management,” according to Lewis.

- **Negotiating to succeed.** To learn how to take client negotiations to another level, A/E firm leaders should learn more about the styles, skills, and strategies needed to negotiate the strongest professional services agreements.

- **Building better teams.** Every firm can benefit from acquiring this skill. Putting together just the right team for each project is important in mitigating risk, as a project team’s capabilities can impact claims.

- **Managing time and project starts.** When schedule matters to clients most, tools and tactics for time management—and project initiation—impact client satisfaction, professional risk, and the A/E firm’s profitability.

Now that you have a better handle on how to help your clients develop realistic expectations for a project and how to keep your work in line with those expectations throughout a project, you should develop your own set of metrics, in which project profit is just one measurement, for assessing project success. Following many of the suggested procedures and protocols described in this article will not only help avoid costly claims, it will also help you satisfy the toughest client of all: yourself.

[Click here to take the Quiz](#)

*"XL Insurance" is the global brand used by XL Group plc's (NYSE: XL) insurance companies. Coverages underwritten by Greenwich Insurance Company, Indian Harbor Insurance Company, XL Specialty Insurance Company, and XL Insurance Company Limited—Canadian Branch. Coverages not available in all jurisdictions.*

**ENDNOTES:**

1 Source: The XL Insurance Contract Guide for Design Professionals: A Risk Management Handbook for Architects and Engineers © 2007 X.L. America, Inc.

2 Ibid.

3 Ibid.

4 Source: XL Insurance "Client Selection" education program.

Form PUB001