PROFESSIONAL LIABILITY AGENTS NETWORK
NEWSLETTER
PLAN

Pushing Back on Higher Professional Liability Insurance Requirements

Clients sometimes ask an architecture or engineering firm to carry professional liability limits well above the firm's existing insurance program. Before simply accepting the requirement or walking away from the project, the firm should ask the client a basic question: Why was this limit selected? A standard insurance schedule may be the client's starting point, but it may not reflect a thoughtful assessment of this project's exposure.

The strongest response is usually practical rather than confrontational. The firm should explain its actual responsibilities, provide useful comparisons from similar engagements, and involve its insurance broker early. Explain that the mutual goal is appropriate protection for the client and the firm without adding insurance costs that the assignment's risks do not justify.

ASK WHAT SUPPORTS THE REQUIREMENT

Start by asking what led the client to the requested limit. Is the amount tied to a particular loss scenario, financing requirement, project characteristic, or company-wide standard? Also ask whether exceptions are permitted and who has authority to approve one.

A useful opening might be: "We understand the importance of appropriate insurance protection. Can you help us understand the exposure that led to this limit and whether your requirements allow an exception based on our specific scope of services?"

Raise the issue while the proposal and contract are still being negotiated. Your proposal should identify the limits included in the firm's fee and clearly note any exceptions to the client's insurance schedule. That brings the disagreement into the open while there is still time to address it.

If the answer is, "We require this from everyone," acknowledge the convenience of a uniform standard, but ask whether the same limit applies to every discipline, scope, and project size. Provide your client with a concise written request that describes the project, states the firm's current coverage, and identifies the specific revision being requested.

CONNECT THE LIMIT TO THE SERVICES

Focus on what the firm will actually do. Distinguish the firm's responsibilities from those of other project participants, including the prime designer when the firm serves as a subconsultant. A limit set for the entire design team may not fit a consultant with a defined, substantially narrower assignment. Saying only that the firm's role or fee is small is seldom persuasive.

Construction cost can provide context, but it should not be the only measure of exposure. Consider the foreseeable consequences of an error, including redesign and correction costs, delay, loss of use, and bodily injury. A modest fee can still be associated with a serious loss. The point is that the proposed limit reasonably fits the services and potential consequences. Total construction cost alone does not establish the exposure arising from the design professional's particular services.

For example, a consultant evaluating an existing parking area may have responsibilities that differ significantly from those of the architect and structural engineer designing an occupied building. The consultant can explain what it will evaluate, design, or observe and what could happen if that work is deficient. At the same time, the firm should avoid dismissing site work as unimportant. Drainage, accessibility, pavement, and traffic issues can produce substantial claims. A candid explanation is more credible than an overstatement.

SUPPORT THE REQUEST WITH COMPARABLE EXPERIENCE

Comparable projects can help show that your firm's proposal is commercially reasonable. Identify projects with similar services, complexity, and loss potential on which clients accepted the firm's existing limits.

Your insurance broker may also have useful information about commonly required limits, available market capacity, and relevant claims experience. Treat broad statistics carefully. Any figure should identify the group being measured, the period covered, and whether defense expenses are included. An average settlement does not establish the limit needed for a particular claim.

A short comparison of two or three projects is usually enough. Show the project type, services performed, insurance limits accepted, and any important differences. The point is not that another owner's decision controls this client. It is that your firm's proposed limit has been accepted in circumstances that meaningfully resemble the current project. If the client's project presents a materially different exposure, address it directly rather than forcing a comparison that does not fit.

BRING THE INSURANCE ADVISERS INTO THE DISCUSSION

When the project team cannot resolve the issue, arrange a discussion between the firm's insurance broker and the client's risk manager or insurance adviser. Your broker can explain the firm's per-claim and aggregate limits, whether defense expenses reduce the available limits, and how the policy applies. A practice policy serves many projects; its limits are not ordinarily reserved for one client.

Keep the amount of insurance separate from the obligations created by the contract. A higher limit does not expand coverage or make an uninsurable promise insurable. Review duty-to-defend

provisions, guarantees, elevated standards of care, and broad indemnity obligations with the broker and legal counsel, regardless of the required limit.

It is also useful to ask what is really driving the client's concern. Is the client focused on the amount available for a covered claim, the likelihood that limits will remain available, or the breadth of the firm's contractual responsibility? Those are different issues. A larger number on the certificate of insurance will not cure a coverage gap or an overly broad contract provision.

MAKE THE COST OF THE INCREASE VISIBLE

Do not discuss the financial effect of higher limits in the abstract. Ask your broker for an actual quotation and confirm what coverage is available, the cost, applicable conditions, and the period for which the client expects the higher limit to remain in place. A one-year premium increase may not reflect the full cost of an obligation that continues through design, construction, and a stated period after completion.

Present your firm's current coverage as the proposed requirement, then price any additional insurance as an alternative. If the client wants the higher limit, ask whether the incremental cost can be added to the project fee. Before committing, confirm that the coverage is available and that its terms will satisfy the contract.

The firm might say: "Our proposed fee is based on the insurance limits stated in our proposal. We have asked our broker to obtain terms for the additional coverage you requested. Once availability and conditions are confirmed, we can identify that cost separately so you can decide whether the additional protection is appropriate for this assignment." This approach makes the cost visible without suggesting that price alone determines the proper limit.

OFFER A TARGETED ALTERNATIVE

If the client demonstrates a need for additional protection, ask whether the market offers a targeted solution. Depending on the circumstances, project-specific or client-specific excess coverage may be more sensible than increasing limits across the firm's entire practice. Policy names and terms vary, so the broker must confirm that the proposed option actually satisfies the negotiated requirement.

For some projects, the parties may consider a project-specific professional liability policy or owner's protective professional indemnity coverage. Owner's protective coverage principally protects the owner and should not be described as an automatic increase in the A/E firm's own limits. Any alternative should clearly identify who is insured, the protection provided, the coverage period, and responsibility for the premium and related costs.

An intermediate limit may also resolve the issue. Your broker can price several available options so the parties can compare cost and protection. A compromise should still have a reasoned connection to the project's exposure and should be stated clearly in the contract. Simply splitting the difference between the parties' opening positions may end the negotiation, but it does not explain why the resulting number is appropriate.

PREPARE A SHORT EXCEPTION REQUEST

A useful exception request can often fit on one page. Identify the requirement to be changed, state the proposed replacement, summarize the services, and explain why the proposed limit is reasonable. Include one or two relevant comparisons and offer to involve the broker. If additional coverage has been quoted, state the cost and any significant limitations.

The tone should be cooperative but clear. The firm is requesting a specific contract revision, not merely expressing concern. End with a direct question: "Please confirm whether you will accept the proposed per-claim and aggregate limits and revise the insurance exhibit accordingly." Record the decision and notify the project team so that later proposals, certificates, purchase orders, or amendments do not inadvertently restore the rejected requirement.

A SUGGESTED RESPONSE TO THE CLIENT

"We currently maintain professional liability limits of [existing per-claim and aggregate limits]. Those limits have been accepted on comparable assignments involving similar services and exposures. Your requested limits of [requested per-claim and aggregate limits] would represent a substantial increase for this engagement.

"Based on our defined scope, we request acceptance of our existing limits. We can provide relevant project comparisons and arrange a discussion between our broker and your risk manager. If a particular exposure calls for additional protection, we would be pleased to evaluate a targeted option and identify its cost for inclusion in our fee."

Use the statement about comparable assignments only when the firm can support it. Incorporate any accepted reduction or alternative into the agreement or a written amendment before the firm relies on it.

If the client points out that another consultant accepted the higher requirement, ask whether that consultant has the same scope and already carries the requested limit as part of its practice program. Keep the discussion focused on what is appropriate and commercially available for this engagement rather than criticizing the other consultant's decision.

If the client says the requirement cannot be changed, confirm that the decision came from the person authorized to approve exceptions. A project manager may support the request but lack authority to revise the insurance exhibit. Ask for review by the appropriate risk or procurement representative. If the requirement is truly mandatory, the firm can make an informed decision about available coverage, a fee adjustment, or whether to pursue the engagement.

KEEP THE NEGOTIATION GROUNDED IN RISK

There are projects for which higher limits make sense. Complex services, costly correction work, substantial delay exposure, and significant defense expense may justify additional insurance. The firm should distinguish between resisting an unsupported requirement and evaluating its own coverage needs. Negotiating a lower contractual limit does not prove that the firm's insurance is adequate for every loss that might arise.

Before agreeing, confirm the reason for the requested limit, the person authorized to approve an exception, the comparisons supporting the firm's position, the price and duration of any increase, and the wording that will appear in the final contract.

DOCUMENT THE AGREEMENT AND FOLLOW THROUGH

If the client accepts a lower limit, make sure that decision is reflected everywhere the insurance requirement appears. An email from a project contact may not overcome conflicting language in the agreement, insurance exhibit, purchase order, or online vendor system. Authorized parties should approve consistent terms that describe coverage the firm can provide.

State both the per-claim and aggregate limits, the required coverage period, and any conditions affecting continued availability. Avoid replacing an excessive limit with another promise the firm cannot reliably perform. For example, an obligation to maintain a particular limit for several years after completion deserves careful review of likely cost and market availability.

Revisit the issue if the project changes. A substantial expansion of scope or the addition of a materially different service may alter the exposure and justify a new discussion. Conversely, a routine clarification should not automatically trigger an increase unless the client can identify the additional risk. Address insurance as part of the amendment rather than allowing the requirement to change informally.

FINAL THOUGHTS

An A/E firm does not have to treat every request for higher professional liability limits as a take-it-or-leave-it condition. Ask how the requirement was developed, relate the insurance discussion to the

firm's actual scope, provide fair comparisons, involve the broker, and show the cost of added coverage. A concise, fact-based request gives the client a practical reason to accept the firm's existing limits, agree to an intermediate amount, or consider a targeted insurance solution. It also helps the firm decide, with a clear understanding of the risk and cost, when it cannot reasonably accept a requirement.