

10 Winning Tactics to Making Intelligent Choices When Purchasing Business Insurance

Presented by the AIA Small Project Practitioners Knowledge
Community and the AIA Small Firm Round Table
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Course Description

Mr. Feeny will share his 32 years of insurance company experience and brokerage experience by presenting useful methods and approaches to help small firm practices make intelligent choices when purchasing professional liability, business office package, umbrella liability, and workers' compensation insurance coverage.

His presentation is oriented toward the perspective of a small practice firm and will provide meaningful insight to understand these insurance coverages and confident that proper insurance coverage pricing was secured. There will be an opportunity for questions and discussion.

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Learning Objectives

- ▶ Explain the core Small Firm Practice business insurance policies and how insurance policy premiums are determined.
- ▶ List important information to request from an insurance broker insurance proposal and the keys to obtaining proper pricing.
- ▶ Understand how your policies may protect against indemnity agreement obligations.
- ▶ Learn how to cultivate positive insurance company relationships.

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They will be answered as
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John Feeney has designed, sold and underwritten insurance on a senior level basis for 30 years including; professional liability, director's and officer's liability for a variety of specialized industry groups on a regional and national basis.

He has lectured at several prominent trade association educational functions, such as the AIA, SEAONC, Chartered Property & Casualty Underwriters (CPCU), Professional Liability Underwriting Society (PLUS), and the Risk Insurance Management Society (RIMS).

John is the co-author of Law & Risk Management (2000ed) a 700-page professional designation course manual for the Building Owners & Managers Institute (BOMI), an affiliate of Building Owners & Managers Association (BOMA).

A&E Firm **Core Insurance Policies**

Core Insurance Policies

What is Professional Liability (PL) coverage?

- ▶ Protects against claims alleged to have been caused from an Insured Firm's professional service activities: Covers bodily injury, property damage or economic loss claims
- ▶ Differs from Commercial General Liability policies, which cover bodily injury & property damage claims from non-professional service activities
- ▶ Applies on a "Claims Made" basis

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Core Insurance Policies

What is Business Office Package (BOP) coverage?

- ▶ Combines several coverages into a single policy
- ▶ Includes Commercial General Liability*, Personal/Advertising Injury Liability, Building (if applicable) & Property coverage, along with a multitude of other special purpose coverages
 - * Includes (1) Premises, (2) Operations, (3) Completed Operations & (4) Products "bodily injury & property damage" liability coverage
- ▶ Special A&E programs exist
- ▶ Applies on an "Occurrence" basis

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Core Insurance Policies

What is the difference between a Claims Made & Occurrence insurance policy when a lawsuit occurs?

▶ Example:

- (1) Person injured at jobsite in 2008
- (2) Your firm cancels its PL and BOP policies in 2011
- (3) Law suit filed against your firm in 2012

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Core Insurance Policies

What is Umbrella Liability coverage?

- ▶ Umbrella policies are designed to provide excess limits of liability for commercial general liability, commercial automobile liability & employers liability policies when these policy limits are exhausted

Core Insurance Policies

What is Workers' Compensation (WC) coverage?

- ▶ Provides employees with medical care & compensation for lost income when injured in the course of employment

What is Employers Liability coverage?

- ▶ Covers situations where an employee decides to pursue a lawsuit to recover damages beyond the workers' compensation benefits and if sued by a third party affected by a workplace injury, such as a family member of the injured worker

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Core Insurance Policies

Very few insurance companies offer A&E centric policies in California:

- | | |
|-------------------------------------|------------------------|
| ▶ Professional Liability Policies? | At Least 55 Nationally |
| ▶ Business Office Package Policies? | 5 Offer A&E Forms |
| ▶ Workers' Compensation Policies? | Several Available* |

* May not offer required coverage

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POLL
**Does your firm currently purchase both
Professional Liability and Business Office Package
insurance policies?**

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**A&E Firm
Insurance Broker Selection**

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Insurance Broker Selection

Role of the Broker

- ▶ Assists identifying exposures & potential solutions
- ▶ Understands how to position Client business activities:
proper use of applications & attachments to applications
- ▶ An experienced negotiator
- ▶ Several established insurance company relationships

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Insurance Broker Selection

Role of the Broker

- ▶ Identifies pros & cons of insurance company options
(quality of policy, risk management, & claim services)
- ▶ Risk management advisor from an insurance and “non insurance” policy perspective (contract reviews, insurance certificate management & claim advocacy)

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POLL
**In the past year has your firm requested a
contract review from your broker?**

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Insurance Broker Selection

Special Comment: Using Multiple Brokers

- ▶ Goal is to end-up with the right carrier **and** the right broker
- ▶ Interview criteria
 - Broker association memberships (a/e ProNet, Plan, PLUS, & CPCU)
 - Insurance company relationships, percent of business placed with top 3 companies & type of access
 - Review typical Client proposal & sampling of contract reviews

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Insurance Broker Selection

Special Comment: Using Multiple Brokers

- ▶ Assign brokers a “fair number” of insurance company options
- ▶ Request similar proposal content from each broker
- ▶ Establish timetable for presentations with enough time for:
 - Secondary discussions
 - Addressing proposal subjectivities
 - Issuing certificates of insurance

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A&E Firm Professional Liability (PL) Coverage

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The Application Process

Professional Liability Coverage

- ▶ Select the best applications for your firm (small & larger business applications exist)
 - Goal is to tap into premium modification credits/contain debits
 - Effective use of Attachment A's (i.e., risk management practices, etc.)
- ▶ Importance of potential claim-incident & actual claim questions

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How Pricing is Determined

Step 1 of 3: Basic Formula

- 1. Determine weighted average billings (# years varies)**
2. Apply base rate(s) per \$1K of weighted average billings
3. Apply prior acts coverage factor
4. Apply state territory factor(s)
- 5. Apply professional service factor(s)**
- 6. Apply project type factor(s)**
7. Apply specific "higher exposure" activity factor(s)

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How Pricing is Determined

Step 1 of 3: Basic Formula, Continued

8. Apply various premium credit & debit modification factors (differs by carrier)
9. **Apply claim experience factor**
10. Apply limit/deductible factor(s)
11. Apply optional coverage factors (examples: contractors pollution, specific additional project/client limit)

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How Pricing is Determined

Step 2 of 3: Individual Risk Premium Modification (IRPM) Premium Debit/Credit Factors

- | | |
|--|----------|
| ▶ IL, IN, KY, NC, TN, VA, WI & WY | +50/-50% |
| ▶ AK, KS, MD, ME, MN, MO, MS, MT,
NH, PA, RI & TX | +40/-40% |
| ▶ SC | +25/-40% |
| ▶ GA & NY | +15/-15% |
| ▶ HI & NE | None |
| ▶ All Other States | +25/-25% |

* Source: May 2011 A&E Insurance Co. filing.

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How Pricing is Determined

Step 2 of 3: IRPM Subcategories

- ▶ **Quality of Contracts** +/- 25%
- ▶ Type of Client/Project Owner +/- 25%
- ▶ **Type of Projects** +/- 25%
- ▶ Internal Loss Prevention +/- 25%
- ▶ Qualification of Staff +/- 10%
- ▶ CE/Carrier Seminars/Prof Society Member ... -10%
- ▶ Foreign Work +/- 25%

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How Pricing is Determined

Step 3 of 3: Frequent Additional Credits/Debits

Business Practice Premium Modifiers

- ▶ **Use of Written Contracts** 5% db-cr
- ▶ Use of Limitation of Liability Clauses 10% db-cr
- ▶ **Separately Insured Sub-consultants** 5-15% cr
- ▶ Project Delivery Method 15-25% db
- ▶ Mergers & Acquisitions Up to 25% db
- ▶ Repeat Clients Up to 10% cr

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A&E Firm Business Office Package (BOP) Coverage

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The Application Process

BOP Coverage

- ▶ Key 1st Step: Advance Prep
 - Secure 5 year loss history in advance (from broker)
 - Obtain most current Additional Insured list
 - Special Comment: A&E firm applications exist (vs. Acord apps)

The Application Process

BOP Coverage

- ▶ Key Liability Coverage Limits
 - Commercial General Liability
 - Damage to Premises Rented to Others Liability
 - Umbrella Liability
 - Non-owned Auto & Hired Auto Liability

The Application Process

BOP Coverage

- ▶ Key Property Coverage Limits
 - Building Coverage (if owned)
 - **Special Property Categories**
 - ✓ Valuable Papers & Records
 - ✓ Electronic Data Processing Data & Media (Virus Too)
 - ✓ Computers & Media
 - ✓ Business Personal Property
 - ✓ Field Equipment

The Application Process

BOP Coverage

- ▶ “Other Coverage” Limits
 - **Accounts Receivable**
 - Fine Arts
 - **Earthquake Sprinkler Leakage**
 - Employee Benefits Liability
 - Employee Dishonesty, Including ERISA Compliance
 - Employment Practices Liability (sometimes)

How Pricing is Determined

BOP: Common Formula

- Commercial General Liability: Most common methods based on (a) property policy limits, (b) area occupied on premises, (c) payroll
- Property Coverages: Typically per \$100 of property values
- Other Important Factors
 - Office location & security features
 - Building updates, if building over 20 yrs old (plumbing, roof, heating, & wiring)
 - Loss history

**A&E Firm
Workers' Compensation/Employers' Liability
Coverage**

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The Application Process

Workers' Compensation/Employers Coverage

- ▶ Key 1st Step: Advance Prep
 - Obtain 5 year loss history* in advance (from broker)
 - * Experience Modification factor if eligible for one in CA
 - Determine projected payroll (just 1 class code in CA)
 - Extent of out-of-state travel (over 30 days any one time)
 - Coverage for (or exclude) officers/owners
 - Special applications exist (vs. Acord apps)

How Pricing is Determined

Workers' Compensation: Common Formula

1. **Base rate times per \$100 of estimated payroll**
2. Plus expense constant charge
3. Plus state taxes & assessments
4. Plus "flat charge" for broad form coverage endorsement
5. **Equals estimated "deposit" policy premium***

* Estimated policy premium adjusted by year end audit

A&E Firm
Broker Insurance Proposals

Broker Insurance Proposals: PL

PL Proposals Should Include

- ▶ **Limit & deductible options**
- ▶ Proper list of covered firms (plus predecessor firms)
- ▶ Extent of prior acts coverage
- ▶ **Special policy provisions**
- ▶ **# years of extended reporting period available**
- ▶ Policy premium options
- ▶ Premium rate per \$1,000 billings

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Broker Insurance Proposals: PL

PL Proposals Should Include, Continued

- ▶ A.M. Best's rating (Admitted/Non-admitted status)
- ▶ Broker & insurance company contract review capabilities
- ▶ **Subjectivities required to bind coverage** (no surprises)
- ▶ Policy payment options

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Broker Insurance Proposals: PL

1 st Dollar Defense Coverage (& Cost for It)
Consent To Settle Provision
Pollution Incident Coverage
Information Security Coverage
Infringement of Copyright Coverage
Worldwide Coverage
Project/Client Excess Coverage
Predecessor Firm Coverage
Pre-Claim Assistance
Mediation Deductible Credit
Extended Reporting Period Options
Multiyear Policy Options

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Broker Insurance Proposals: BOP

BOP Proposals Should Include

- ▶ A.M. Best's rating
- ▶ Key Policy Limits for
 - Liability coverage
 - Property coverage
 - Other coverages
- ▶ Addresses Special Client Requirements (additional insured coverage, separate limit per project, etc)
- ▶ Subjectivities required to bind coverage
- ▶ Policy premium & payment options

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Broker Insurance Proposals: WC

WC Proposals Should Include

- ▶ Estimated payroll used by insurance company for pricing*
- ▶ Base rate per \$100 payroll
- ▶ Taxes, fees and surcharges
- ▶ A.M. Best's rating
- ▶ Subjectivities required to bind coverage
- ▶ Policy premium (indicating optional premium items)
- ▶ Premium payment options

* Owner/officer payroll capped at \$101,400 in CA in 2011

A&E Firm Changing Insurer Checklist

Changing Insurer Checklist

Sample Checklist Criteria

- ▶ Satisfied with review of current & proposed new policy form
- ▶ Awareness of pricing for potential limit increases (deductible adjustments)
- ▶ Comfortable with insurer's appetite for potential changes in professional service activity & projects

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Changing Insurer Checklist

Sample Checklist Criteria

- ▶ Are all business entity names covered (inc'l predecessor firms)
- ▶ Have all potential claim-incidents been researched, identified & reported (to prior insurers)
- ▶ **Have all of the insurer's subjectivities been properly addressed**

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**A&E Firm
Special Comment on Indemnity Provisions**

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Client Contract Indemnity Provisions

Beware of Indemnity Provision

- ▶ Immediate Duty to Defend
 - Professional Liability
 - Commercial General Liability
- ▶ Not Tied to Negligence
- ▶ On-the-Hook for Everything, Even if 1% Negligent
- ▶ Counsel of Choice and Attorney Fee Obligation

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A&E Firm
Special Comment on Insurer Relationships

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Cultivating Positive Insurer Relationships

Effective Measures

- ▶ Consider holding conference call discussions with key insurance carrier personnel
- ▶ Schedule mid-year meeting (broker's office, your office, their office, over lunch/dinner)
- ▶ Attend presentations & webinars
- ▶ Place them on your key client correspondence mailing list

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POLL

What part of this presentation did your firm value the most?

- (1) Insurance broker role and use of multiple insurance brokers.**
- (2) Control how insurance companies determine policy premium.**
- (3) Proper content in your broker(s) insurance policy proposals.**
- (4) Pay attention items prior to changing your insurance company.**

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