All Ohio
Convocation 2018
Questions from the Field
I’m thinking of Selling / Acquiring / Merging with another firm . . .

• Deal drives the insurance program; not vice-a-versa
• What about past liabilities
• What about WIP (work in process)
• Other ownership transition issues
• Contact agent early
• Contract does not reflect PL correctly
• Checklist
Are 1099’s Covered?

• 1099’s are not covered under your insurance policies.
  – You have coverage for your legal liability arising from their services.
  – Might be possible to add as additional insured for services rendered on your behalf of your firm BUT…

  – Why would you want to?
When are we Crossing the Line into safety methods, means

• Actions speak louder than words
  – Actions in the field can trump contract disclaimer language.
    • Directing portions of the Work
    • Engaging in safety related discussions
    • Reviewing safety programs but not be confused with safety rules on-site
  – Contract wording that explicitly or implicitly puts you in control of the Work.

• You are allowed to say No
  – Putting your firm at risk for the client’s convenience
My Client wants us to hold the contract to purchase, install equipment (or hire trades)

- Consultant is acting solely as Client’s procurement agent with respect to the Purchased Equipment, and Consultant will have no responsibility or liability for the Purchased Equipment. Client agrees to look solely to the suppliers of the Purchased Equipment for any indemnification related to any claims arising or alleged to arise out of the Purchased Equipment, and further agrees to defend, indemnify, release and hold Consultant harmless from any and all such claims, liabilities and causes of action of Client, its contractors or any third parties arising out of or resulting from, in whole or in part, the Purchased Equipment.
My Client wants us to hold the contract to purchase, install equipment (or hire trades)

- Need a pass through indemnification
- Affect on the General Liability: Now you are a GC
Are we covered when we hire Geotech or Environmental, Asbestos Consultant etc

- Try not to
- If must: Pass through Provision
- Vicarious Liable for their actions but coverage is provided (subject to T&C, exclusions, conditions of the policy)
Are we covered when we hire Geotech or Environmental, Asbestos Consultant etc

• The Client acknowledges the Consultant has no expertise in the _______________________ to be performed, but is contracting for those services at the request of and solely for the convenience and benefit of the Client. Consultant has retained ABC Geotechnical Engineering (ABC) to provide soils testing services for the benefit of the Client and Project. Under its contract with ABC, Consultant required ABC to carry insurance for the Project and to indemnify Client in accordance with this Agreement. Client is a third party beneficiary under the contract between Consultant and ABC. Accordingly, Client agrees Consultant is not responsible to Client or any third parties for negligence, errors, omissions, any other claims or causes of action, or other deficiencies in the services of ABC rendering design, engineering or related services for the benefit of the Client or the Project. In the event of a dispute relating in any way to the services of ABC, Client will look solely to ABC for redress. Consultant shall assign, if necessary, any rights it holds to enable Client to pursue its claims against directly against ABC.
When Should we Call You About a Problem on a Project?

• If you are wondering if you need to call, you probably need to.
• If you are losing sleep, you should be calling us
• Demand for Money or Service
• Anything a responsible person believes could lead to a Demand for Money or Service
What are our Options When the Client wants Higher Limits?

• Higher Practice Policy Limits
• SJX/SCX endorsement

• Project Professional
• Project Excess
• Owners Protective Professional Indemnity (OPPI)
What is the Impact of a Claim on our Future Coverage and Premiums?

• It depends
  – Frequency
  – Severity
  – Loss Ratio

• LPs have no impact
  – “claim” is just their nomenclature
Do we have Coverage when we sign Confidentiality Agreements?

• Only if you have the “right” Cyber Coverage
• Not covered under your Professional Liability coverage
Negotiating Contracts

• There are some bad things in this and I signed already but can you tell me what I agreed to?
• Client won’t make changes but we need this project….
• We sent contract and did the work but they never signed it and won’t pay until we sign their contract…
• You understand issues better than me can you call the client and negotiate this…
• There is some bad language in this but I have a 20 year relationship…
• Its just a small job….