

# ACEC Business Practice Summit Professional Liability Trends 2017

February 15, 2017

# Topics for Today's Discussion

- Current Professional Liability Rates and Marketplace.
- Higher Limit Requests and Project Policies.
- Cyber Liability.
- Update on the Duty to Defend and 8/14/2014 Law Changes.

# Professional Liability

- Currently about 48 carriers in the marketplace
  - Due to claim made and reported format, carriers can easily enter and exit the marketplace.
  - A flood of carriers writing the coverage has created a buyer's or soft market.
  - New carriers can offer lower rates as they have no historical data negatively impacting rates (claims).
  - Rates are substantially more competitive than 10 years ago.
  - 14 Carriers have 75% of the business.
  - Carriers focus more on specific client risks than “book”.

# Professional Liability – What to Look for in a Carrier

- Look for longevity in line of business.
- Review Policy form for coverage.
- How large is staff? Do they have dedicated claim people, underwriters and risk managers?
- Review policy exclusions.
- Review definition of professional services.
- Review AM Best Ratings.
- Admitted Status vs. Non-Admitted Status.
- Capacity of carrier.
- Know what you are purchasing!

# Professional Liability – What Does the Future Hold?

- Soft market too continue?
- May start to see some carriers dropping from PL market.
- No change regarding availability of Project Policies.
- No change in perceived high risk projects?
  - Condos, Residential, geotechnical, schools, surveying.
- Practice policies with higher limits.
- In MN, rise in condo claims.

# Professional Liability Limits on the Rise

- 5 years ago a \$1M/\$2M limit was considered a standard for the industry.
- Higher practice policy limits are being requested by clients.
- In our office, standard limit now is \$2M/\$2M with \$3M/\$3M a close second.

# Professional Liability Limits

## Limits carried per 2016 ACEC survey

- Less than \$1,000,000 : 3%
- \$1,000,000 : 29%
- \$2,000,000 : 30%
- \$3,000,000 : 8%
- \$4,000,000 : 1%
- \$5,000,000 : 18%
- Greater than \$5,000,000 : 12%

# Professional Liability Limits

- Ways to increase limits:
  - Practice policy increase
  - Project Specific Endorsements
    - SALE
    - SJX/SCX
  - Excess or Project Specific Excess
  - Project Policies

*Options should be discussed with your agent to determine what is best for the firm.*

*Underwriting review is needed for these options . Give your agent and the carrier time to properly review the information*



# Indemnification Update

- In 8/1/2014 MN enacted law which states, any provision in a design professional contract that attempts to indemnify, hold harmless, or defend an indemnitee from or against liability for loss or damage not caused by the indemnitor's negligence (or those for who the indemnitor is legally liable) is not enforceable.
- Good news – should prevent upfront defense provisions.
- Bad news – most carriers still will not pay for a client's defense costs even after liability has been determined.
- Good news – it is a move in the right direction!

# Changes since 8/2014

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# Cyber Coverage Overview

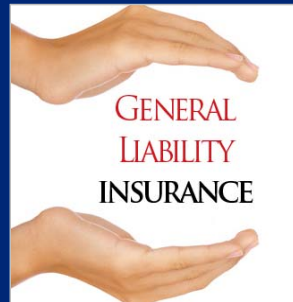
- Rapidly evolving coverage developed to cover the risk associated with living in a paperless world of data!
- Multiple Carriers offering multiple products.
- No “template” coverage by ISO (yet) – Wild, Wild West of Insurance!
- Cyber Breaches: Size of company and/or systems is no longer a factor. Vulnerability of the system is a factor.

# Evolution of cyber Risk Insurance Solutions

2000-2016



**Early Attempts**  
Rely on potential coverage from  
traditional policies



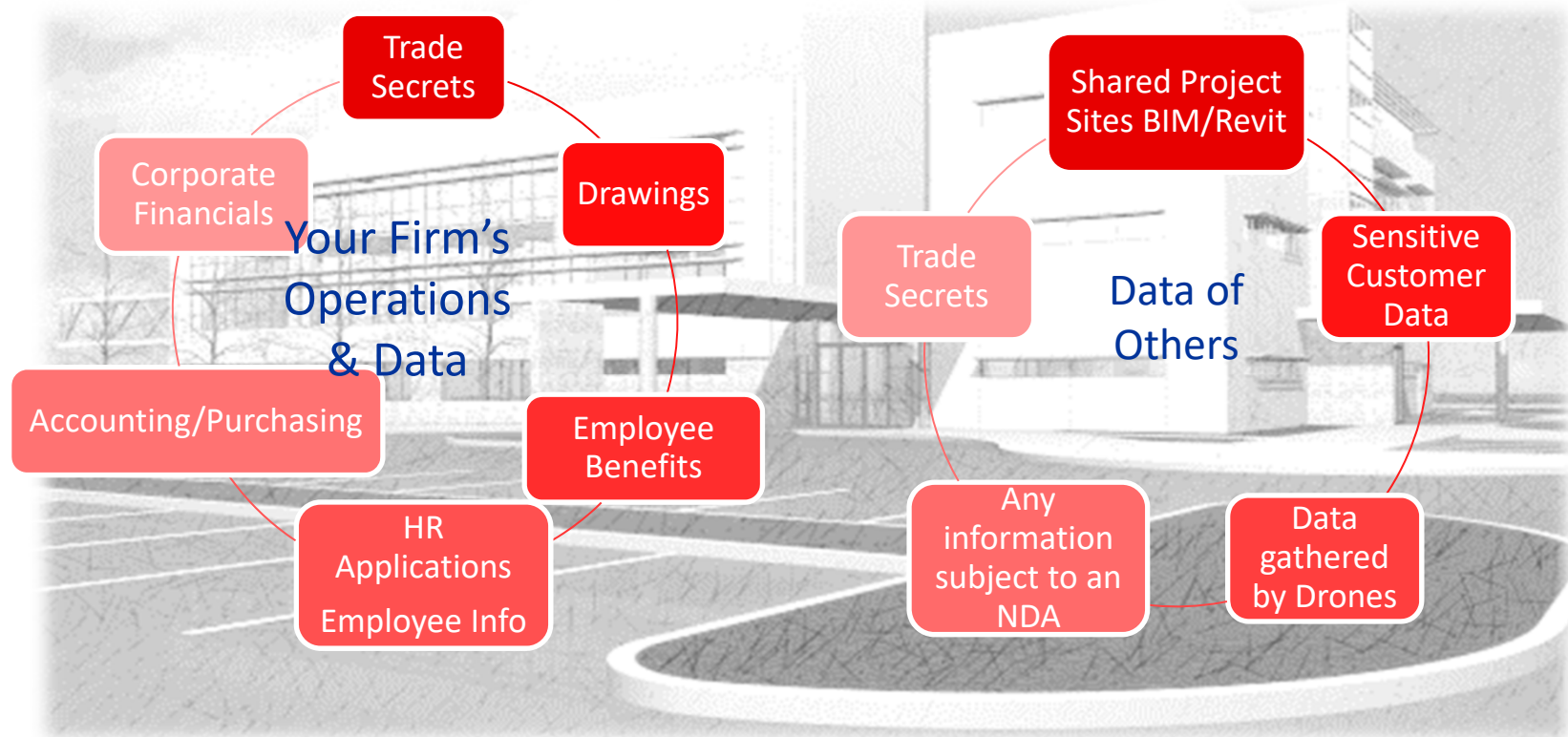
**Recognition of Distinct Risk**  
Endorsements or wording added  
to professional policies



**Robust Solution**  
Stand-Alone Cyber  
Policy – 1<sup>st</sup> & 3<sup>rd</sup>  
Party combined

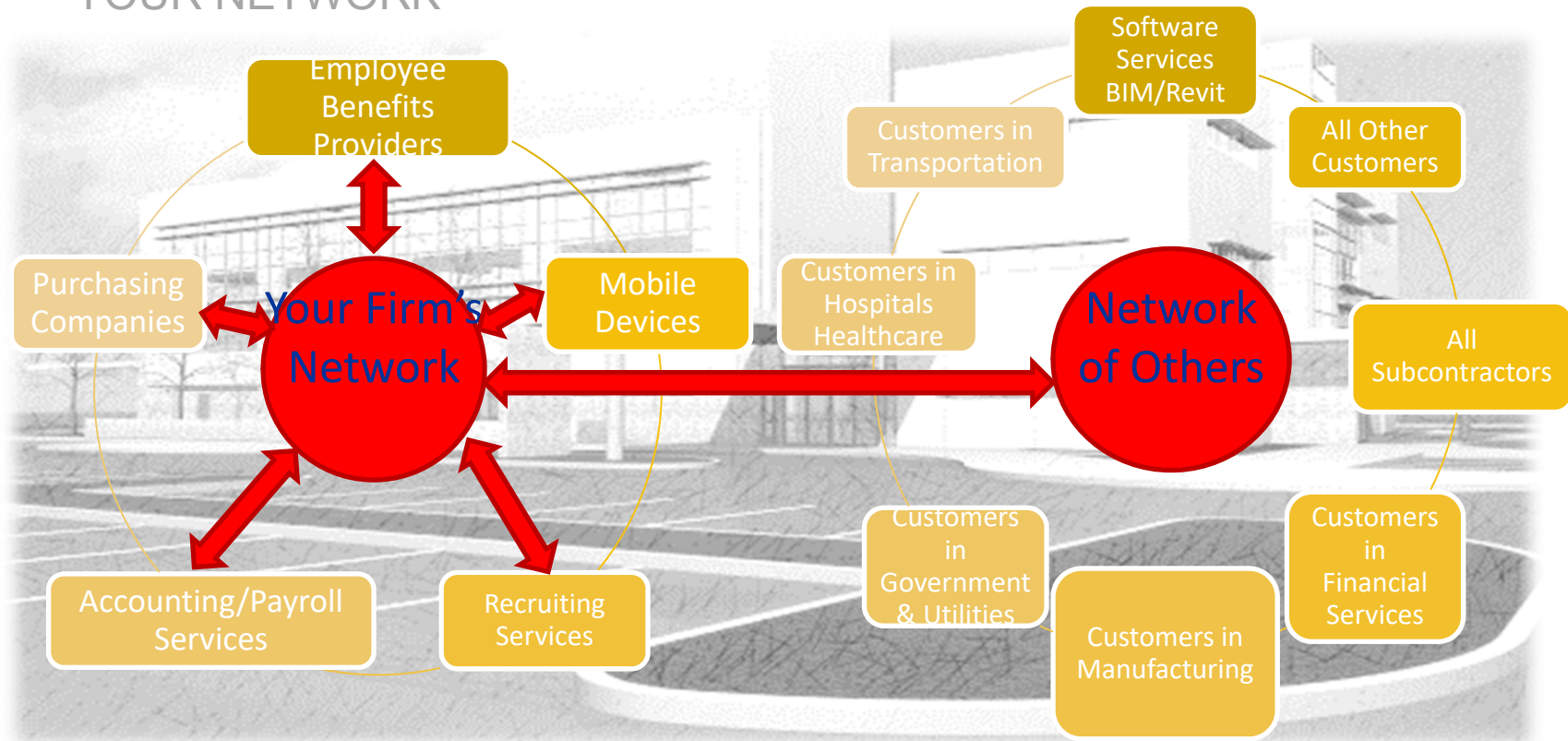
# Your Firm's Network/Cyber Risk Identification

HOW DOES TECHNOLOGY DRIVE YOUR BUSINESS?



# Your Firm's Network/Cyber Risk Identification

GATEWAYS OF ACCESS = VULNERABILITIES OF RISK TO/FROM  
YOUR NETWORK



# Cyber Coverage and Traditional Insurance

Property: may be limited coverage for 1<sup>st</sup> party damage. No coverage for Crisis Management Expense or Extortion costs. Most carriers do not consider loss of data as a tangible property loss and therefore there is no coverage per policy definitions.

General Liability: exclusions typically apply such as professional service exclusions; contractual liability; care, custody, and control issues.

# Cyber Coverage and Traditional Insurance

Crime Policy: may cover electronic funds transfer but this is only 1<sup>st</sup> party and does not include reimbursement of crisis management expenses or other losses that may be sustained as a result of a breach.

As Cyber losses become more and more prevalent and costly, traditional insurance will move away from coverage.



# Cyber Risk Classifications

First Party – protection for your firm

- Loss of Data, Damage to Data
- Business Interruption/Extra Expense
- Regulatory Compliance and Fines
- Ransomware
- Reputational Harm
- Notification Expenses

Third Party – demands made by others upon your firm

- Damage to someone else's data
- Privacy Injury – theft of PII
- Virus Infection

# Cyber Threats

## Inside Threats

- Employee Negligence – loss phones/laptops. Security Failures
- Improper Security Measures
- Rogue/Malicious Employees
- Failure to update software

## Outside Threats

- Social Engineering/Phishing
- Hacker Attacks –Targeted and Untargeted
- Malware
- Security measures of subconsultants

# Typical Coverage

## Digital Crime (1<sup>st</sup> Party)

- Electronic Funds Transfer
- Telephone Toll Fraud
- Cyber Extortion
- Deceptive Transfer

## Breach Liability (3<sup>rd</sup> Party)

- Privacy Liability and Notification
- Regulatory Fines and Compliance
- Payment Card Industry

## Breach Rectification

- Costs of forensic experts
- Business Interruption and Extra Expense coverage
- Digital Asset loss

# Cyber – In Conclusion

- Analyze your Risk – in today's world, everyone is at risk. How much are you willing to “self insure”. Do you accept credit cards as payment?
- If your firm has an IT person, discuss this coverage with them and let them help you determine whether or not your risk should be insured.
- If you have “cloud coverage” do not rely on the provider to cover any losses.
- Review your current policies with your agent to make sure you understand what is covered and what is not covered. Watch for changes in coverage.
- If you decide to purchase coverage, know what you are getting!

# Questions?

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# The End

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