

Strategic Alliances: Insurance Considerations

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SUMMARY

Strategic alliances are business ventures. No matter how they are structured legally, the parties to an alliance may be exposed to the risk of additional liability. All parties to an alliance should take care to ensure insurance coverage of any additional liability.

POTENTIAL RISKS

Design firms typically form alliances to bring together complementary skills or expertise. Responsibilities are generally apportioned according to the alliance partners' respective skills. It is common and understandable for the alliance partners to assume that liability for professional acts is similarly apportioned.

From the perspective of an injured party, however, the alliance may appear to be a single, integrated business entity. Legally, the alliance partners may be considered "jointly and severally liable," meaning that each partner is fully liable for the acts of the entire alliance. Clients or other parties alleging harm or loss due to the professional acts of a strategic alliance may be able to seek and recover losses from any member of the alliance. For these reasons, it is advisable for the parties to an alliance to obtain the same type of insurance coverage that would apply to a joint venture or partnership.

INSURANCE OPTION: SINGLE INSURER

Design firms often rely on their practice policies to protect and defend them in loosely structured business arrangements. Most practice policies will not cover the acts of an alliance partner, however. Alliance partners should confer with their respective insurance brokers to determine whether their individual policies provide adequate coverage.

In any joint venture where firms rely on their separate policies, the risks may be simplified if the partners are insured by the same insurance company and have policies with similar limits of coverage and deductibles. Because the insurer assumes the risk for both firms separately, the question of which partner is responsible for any claim or judgment against the alliance may become moot. If the policies are not all with the same carrier and with similar limits and deductibles for all firms, the firms may intentionally or unintentionally rely on one policy more than the other, creating a situation that neither the firm nor the firm's insurer appreciates.

INSURANCE OPTION: JOINT VENTURE POLICY

It may be far more practical, and more protective, for the alliance to be covered by a separate professional liability insurance policy, which eliminates the need to apportion liability through reciprocal indemnification (possibly difficult to write and more difficult to interpret). The parties can use a common-sense standard of fairness to allocate the deductible obligation among them by written agreement.

INSURANCE OPTION: PROJECT POLICY

It may be both possible and pragmatic for a strategic alliance to secure one policy covering all the parties involved in a specific project. A project-specific policy covers a prime

professional and all other professional participants for a specific period of time. In addition to the benefits of a joint venture policy, a project-specific policy may provide greater assurance of adequate insurance coverage to the owner, who need not worry that the limits of a practice policy might be exhausted by other projects of the alliance.

ALLIANCES WITH NONPROFESSIONALS

Design practice affects the life, health, and safety of the public. Design professionals must satisfy the licensing procedures to determine whether they meet the standards of professional competence demanded by the scope of their practice. When design professionals join other professionals in a strategic alliance, it is fairly clear which responsibilities each professional will assume and how those responsibilities will be covered either by separate professional liability policies, a joint venture policy, or a project-specific policy. The same is not always true when a licensed design professional joins a nonprofessional such as a contractor to produce a project. While it may be possible to secure a project policy covering both the design firm’s professional liability exposure and the contractor’s design exposure, thought must be given to how responsibility and liability are to be divided.

In many contractor-design professional joint ventures, little forethought is given to the equitable allocation of risk. The design professional, through licensure, demonstrates responsibility for the adequacy of the project design, thereby providing the required public protection. The contractor, however, is not required to be licensed by the state in the same manner. The contractor has a general responsibility to avoid negligence in the pursuit of the work to prevent injury to the public. But when harm occurs, the responsibility may shift in the direction of the party with the appropriate insurance coverage.

A strategic alliance may be a “temporary partnership,” but for the purpose of rectifying harm to another party it may be characterized as a joint venture in which all partners are liable for the actions of all other partners in the context of the jointly assumed project. The design professional, therefore, may be jointly

and severally liable for exposures it can neither manage nor insure. Likewise, a contractor’s risk may extend to the design aspects of a project that are not included in the contractor’s normal insurance coverage. A responsible design professional certainly does not want the other joint venture partners to be exposed to uninsured risks, particularly when design liability is such a great exposure.

Whenever a contractor’s responsibility and liability goes beyond construction to project design or construction management, the need for the contractor to carry professional liability insurance intensifies.

It is strongly advisable for the partners in an alliance of professionals and nonprofessionals to consult their respective attorneys and insurance brokers to ensure that neither party is needlessly exposed to undue risks.

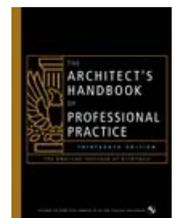
More Best Practices

The following AIA Best Practices provide additional information related to this topic

- 12.02.01 Selecting a Liability Insurance Broker
- 12.02.04 Design Build Insurance Considerations
- 06.03.01 Forming Strategic Alliances

For More Information on This Topic

See also “Strategic Alliances” by Ralph Steinglass, FAIA, *The Architect’s Handbook of Professional Practice*, 13th edition, Chapter 6, page 93. The *Handbook* can be ordered from the AIA Bookstore by calling 800-242-3837 (option 4) or by sending email to bookstore@aia.org.



Keywords

- Practice
- Project administration
- Project team
- Joint venture partners



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