

DAVID V GOLIATH: ENHANCING NEGOTIATION STRATEGIES FOR ARCHITECTS

INTRODUCTION

At the 2025 OAA Conference in Ottawa, John Hackett, Salvador Knafo, Philip Ghosh, and Leslie Parker presented a compelling session titled “*David v Goliath: A Stone’s Throw Away to a Better Negotiating Position.*” This article summarizes the key points from their presentation, offering valuable insights into improving negotiation strategies for architects.

THE CHALLENGE OF NEGOTIATION

Architects often feel inadequately equipped to negotiate contract terms, facing daunting legal implications and concerns about Professional Liability Insurance (PLI) requirements and coverage. The session aimed to empower architects with the tools and strategies needed to navigate these challenges effectively.

ARCHITECTS’ ALLIES

Architects have several allies to support them in negotiations:

- **OAA Practice Advisors:** Offering guidance on practice-related issues.
- **RAIC Practice Advisory Service:** Providing resources like the Canadian Handbook of Practice (CHOP).
- **CEO Engineers:** Assisting architects in saying “No” to unfavorable terms.

- **Pro-Demnity:** Offering risk services, education, bulletins, and articles.
- **Client Project Team Members:** Valuing the working relationship with architects.

YOUR ARSENAL FOR NEGOTIATION

Architects can leverage several tools to enhance their negotiating position:

1. **Willingness to Look After Your Own Interests:** Take the lead in negotiations, with support from Pro-Demnity and OAA.
2. **Professional Status and Knowledge:** Your scope of practice is protected, and you offer tangible value as a professional.
3. **Standard Forms of Contracts:** Utilize standard contracts like OAA Document 800-2021, OAA Document 600-2021, RAIC 6-2022, and others.
4. **Engineering Subconsultants:** Use ACEC Document 31-2010 for agreements between clients and engineers.
5. **Legal Advisors:** Seek [legal assistance](#) through Pro-Demnity's risk services.
6. **Client Representatives:** Build relationships with clients who value your expertise.

THE POWER OF SAYING “NO”

One of the strongest negotiating tools is the willingness to say “No” professionally and diplomatically. Architects can propose alternatives that align with their interests and limitations, such as:

- Limiting indemnification obligations to the coverage and limits of their PLI.
- Ensuring dispute resolution provisions do not restrict the PLI insurer’s ability to defend.
- Maintaining existing PLI limits or seeking client reimbursement for higher limits.

CASE STUDY: EMAIL EXCHANGE

An email exchange (which Pro-Demnity typically wouldn’t see) between a client project manager and their lawyer highlighted the importance of standing firm on contract terms. The architect’s refusal to accept unfavorable changes led to the lawyer advising the client to “tolerate” the architect’s proposed changes to avoid project delays.

ARBITRATION: A FOUR-LETTER WORD

Salvador Knafo discussed the drawbacks of mandatory arbitration, including:

- Prejudicing the architect’s legal defense.

- Triggering a [sub-limit on damages and expenses](#) as per the insurance policy's limitations
- Higher costs compared to court proceedings.
- Increased costs passed on to all Ontario architects.

REASONABLE LIABILITY CLAUSES

Philip Ghosh emphasized the importance of reasonable liability clauses in contracts. Architects should:

- Limit responsibility for other consultants.
- Make explicit that architects do not control construction.
- Limit liability to insurance limits.
- Eliminate exposure to consequential loss.

COMBATting SHIFTING NARRATIVES

Leslie Parker addressed the fight against shifting narratives for an architect's standard of care in site review. Architects should:

- Use irrefutable facts to combat misrepresentation.
- Call out those who misrepresent facts.
- Read contracts carefully to avoid signing away their defense.

CONCLUSION

Negotiating contract terms can be challenging, but with the right tools and strategies, architects can enhance their negotiating position and protect their interests. By leveraging allies, utilizing standard contracts, and standing firm on key issues, architects can navigate negotiations effectively and ensure a better outcome for their practice.

For more personalized architectural practice risk management advice, you may request a complimentary and confidential meeting to [Speak with an Expert](#) or [Report a Claim](#).
