

E&O Insurance for Individual Projects

Project owners – the buyers of design and construction services – are faced with an array of hazards related to the professional services they seek from design and construction professionals (DCPs). DCPs, such as architects, engineers, agency construction managers, project managers and owners' representatives, are of course an integral part of our industry, but they may be involved in losses of many kinds, from cost overruns, delayed completion, bodily injury and sick building syndrome to environmental pollution.

While most design firms – and an increasing number of construction and project management firms – carry Professional Liability insurance (PLI), from a project owner's point of view traditional PLI policies may have significant limitations:

- Low policy limits: most design firms carry \$1 million limits or less.
- Shared limits: limits cover all projects undertaken by the firm and are subject to erosion by other claims and defense costs.
- Claims-made coverage: PLI policies must be renewed annually to maintain coverage.
- Limited coverage terms: underwriters may restrict coverage for such exposures as design/build, construction and project management, mold and terrorism.

Knowledgeable project owners strive to reduce project risk through several means, including careful DCP selection, contract language and the financial strength of a DCP's PLI carrier. Unexpected events can, however, quickly derail an otherwise successful project – and the financial damages may exceed a project's contingency allowance or available insurance recovery. A project owner may be left with additional, unplanned financial exposure. Two insurance products are designed to provide a financial backstop for project owners.

Project-Specific Professional Liability

A Project-Specific Professional Liability (PSPL) policy provides a single multiyear source of insurance for damages arising from errors or omissions in the provision of professional services on a project. The insurance is designed to cover architectural and engineering firms, consultants, sub-consultants and, under some circumstances, the project or construction manager.

Owner's Protective Professional Indemnity

An Owner's Protective Professional Indemnity (OPPI) policy responds on an excess and difference-in-conditions (DIC) basis if the underlying professional liability provided by the architectural and engineering firms, consultants, sub-consultants and, again under some circumstances, the project or construction manager, is insufficient.



Professional Liability Newsletter for the Design and Construction Industry

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What Is Needed to Obtain a Bindable Quote?

The underwriters will require the following information:

- 1) Completed PSPL or OPPI application
- 2) Five-year loss history for prime architect or engineer
- 3) A copy of the agreement between the project owner and the prime architect or engineer
- 4) A copy of the agreement between the project owner and the construction manager, and/or general contractor
- 5) Detailed information on any existing environmental conditions and summary information on soil and sub-surface conditions
- 6) Project schedule and budget
- 7) Project organization chart
- 9) Certificates of Professional Liability coverage for each prime DCP

Project-Specific Professional Liability

What Is PSPL?

Project-Specific Professional Liability (PSPL) insurance is stand-alone coverage designed to provide a single source of defense and indemnity coverage for the negligent acts, errors or omissions in the performance of professional services by all the DCPs engaged on a single project. The policy replaces the coverage that would otherwise have been provided by the individual Professional Liability policies of the project's consultants.

The individual Professional Liability policies of the design and construction professionals may also respond to claims on an excess basis over the PSPL, subject to policy terms and conditions.

Who Would Purchase PSPL Insurance?

The coverage is either purchased by the lead DCPs or by the project owner on their behalf.

...And On What Kinds of Projects?

Underwriters will generally consider the following project classes:

- Public infrastructure
- Institutional
- Commercial
- Industrial
- Mixed-use
- Residential

Under current market conditions, coverage for condominium projects is highly problematic and may only be offered when the DCPs are already policyholders with PSPL carriers.

When Does It Apply?

The following claims scenario outlines the mechanics of a PSPL policy.

A design team purchased a \$10 million PSPL policy with an SIR of \$250,000. The owner allegedly sustained a \$16 million loss due to the design team's negligence and filed a claim against them. The PSPL carrier defended the design team using a joint-defense approach, and incurred \$4 million in defense costs. The mediator awarded the owner \$8 million in damages. The PSPL paid the available limits of \$6 million. Depending on the terms of the settlement, the owner could then seek recovery either via contract or from the individual consultant's Professional Liability policies (the individual Professional Liability policies may be able to sit excess over the PSPL).

Who Provides PSPL?

Lexington is the primary market. A limited number of other carriers offer PSPL but require that they also write the practice policy of the design professional. These markets include Zurich, Arch, Liberty International and ACE. Lexington is the only carrier that will offer coverage to DCPs who are not existing policyholders, unless it is a condominium project (in which case they will require that they write the DCP's Professional Liability policy).

Capacity

Lexington will currently offer limits of \$10 million to \$15 million (5 million x 10 million on a net basis). Facultative reinsurance support may be available on select projects up to a total limit of \$25 million. The maximum policy term in most cases is 10 years, including ERP.

For the Underwriters

In addition to the information listed above ("What is needed to obtain a bindable quote?"), the underwriters may require sufficient information for them to develop a detailed description of the scope of work and schedule for the project which would form the basis for a material variation clause in the policy. Such a clause states that in the event that there is substantial variation in the scope or schedule, the underwriters retain the right to modify cover, obtain additional premium or cancel the policy.

Owner's Protective Professional Indemnity

What Is OPPI?

Owner's Protective Professional Indemnity (OPPI) insurance provides a project owner with insurance coverage for damages suffered when the individual Professional Liability policies of the DCPs are inadequate or unavailable to cover claims arising from negligent acts, errors or omissions on the part of DCPs.

Coverage is provided on a direct first-party basis between the project owner and the carrier. Subject to an underlying limit and/or SIR, coverage will drop down at such time as the underlying policy limits are eroded or exhausted by claims from unrelated projects.

Who Would Purchase OPPI Insurance?

Project owners purchase OPPI coverage.

...And On What Kinds of Projects?

Underwriters will generally consider the following project classes:

- Public infrastructure
- Institutional
- Commercial
- Industrial
- Mixed-use
- Residential

When Does It Apply?

The following claims scenario outlines the mechanics of an OPPI policy.

A project owner purchased a \$10 million OPPI policy with an SIR of \$500,000 and an underlying limit requirement of \$2 million. The owner sustained a \$5 million loss due to the architect's negligence. A mediator awarded the owner \$5 million in damages. The architect's Professional Liability policy paid the available limit of \$1.5 million. The OPPI policy paid the uninsured portion of the damages, or \$3.5 million. If the architect's practice policy had been completely exhausted by claims on unrelated projects and was unavailable, the OPPI policy would have indemnified the owner for up to \$4.5 million of the awarded damages – the difference between the damages and the SIR.

Who Provides OPPI?

Currently, Zurich, Arch and Lexington are writing OPPI coverage. Zurich is the most consistent market in terms of offering quotations.

Capacity

Depending on the project class, Zurich may offer limits of \$10 million to \$50 million. The maximum policy term in most cases is 10 years, including ERP.

For the Underwriters

In addition to the information listed above ("What is needed to obtain a bindable quote?"), the underwriters may require sufficient information for them to make a risk engineering and structural engineering evaluation.

Contacts

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