

Professional Liability

Professional Liability responds to damages resulting from professional services performed by architects, engineers, construction managers, and design-builders.

Professional exposure comes from a claim alleging a negligent act, error, or omission in the performance of professional service.

Professional Design firms that carry Professional Liability may have lower limits, restrictive coverage, and share the limits across all the clients they work for. In some circumstances there may be a design firm that does not carry professional insurance for a myriad of reasons.

An option for an owner is to purchase Project Specific Professional Liability in lieu of reliance on the design firm's policy. An owner can purchase a Project policy to cover all design firms on a single project from the beginning of design, through construction and on to completion. A Completed Operation Extension is also available. Professional Liability policies are written on a Claims Made basis. Extended reporting period extensions of 3-10 years are typically available based upon an individual project's exposures.

The Owner thus is able to secure dedicated limits at an effective premium instead of relying on an Architect's or Engineer's Professional Liability program which is spread amongst all their work in an annual term. By bringing all design firms into the Project policy, the Owner can structure more limits at a competitive rate. The cost remains stable over the term of the project. Additionally, since all Design firms are covered with one "clean" policy, an Owner can reduce their under-insured/uninsured exposures.

The administration process is also reduced as the Owner does not have to create a certificate of insurance tracking system for all the Design firms' professional liability insurance.

These policies are available, as primary or excess, of the design professional's policy. A project specific policy written on a primary basis can remove a claims conflict that could arise had the policy applied excess of the design firm's policy. The excess approach can work when the professional liability premium budget does not allow a primary approach. Another alternative is a first party coverage that provides limits in excess of the various professional partners. This is called an Owner's Protective Professional Liability Insurance (OPPI) policy. The primary or excess technique that is implemented should be consistent with the risk management philosophy utilized for the Controlled Insurance Program. A review of OPPI follows.



Owner's Protective Professional Liability Insurance Program

The Owner's Protective Professional Liability (OPPI) policy indemnifies the Owner's organization for losses arising out of the professional negligence of the architects and engineers that exceed the limits available under the A/E's master program. The loss can be established by a court or a mutually agreeable settlement. This policy would then protect and indemnify the Owner should the loss amount exceed the A/E's available insurance or a self-insured retention amount, whichever is higher.

For example, assume an OPPI limit of \$5 million, with a self-insured retention of \$50,000. If a loss is incurred in the amount of \$2 million, the A/E's insurance pays the available limit under their policy of \$1 million. The OPPI then pays the balance of \$1 million. Note that the insurance payment would not be reduced by the \$50,000 self-insured retention since the amount of coverage available under the A/E policy exceeded the self-insured retention.

Why should you consider the OPPI program?

A design mistake could potentially have serious financial impact on the bottom line of a project. Often, you can not fully rely on the A/E's professional liability insurance for a number of reasons:

- An A/E's professional liability insurance is generally written on a claims made or annual basis. There is no guarantee it will be renewed and available when a claim is made on the project. The OPPI program typically carries a 3-year Extended Reporting Period. A 5-10-year option may be available, depending on the project's exposures. This option would increase quoted premiums.
- A/E policies have aggregate limits, which can be exhausted from claims on other projects.
- A/E often has low limits of insurance.
- If A/E insurance is not available, the A/E firm rarely has sufficient assets to back a loss in proportion to the risk on the project.

The advantage of the Owner's Protective Professional Liability coverage is that it will offer broader coverages affording the Owner greater protection at a much reduced price compared to project specific professional liability programs. The OPPI can improve the relationship with the Architect and Engineer since there is no interference with their master insurance program. This flexibility will allow the Owner to expand the selection of A/E firms on their projects. Firms, which may have previously been rejected due to insurance considerations, may now be considered and the interests of the Owner's organization will be protected. Additionally, in the event of a professional liability loss, the Owner's organization will collect on a first party basis versus having to file suit against the professional in question to recover damages.





CONSTRUCTION INSURANCE
PARTNERS, LLC