



PROTECTIVE PROFESSIONAL LIABILITY INSURANCE

Zurich's Construction Professional Liability Group offers Owners and Contractors' professional liability insurance protection that is superior in the marketplace.

Owner's protective (OPPI) is coverage for the construction project owner, usually on a specific or multi project basis, which supplements the A&E primary policies as opposed to replacing these insurances. OPPI is a first party indemnity contract that pays based on an established third party liability loss, that which arises out of the owner's subcontracted A&E professional services excess over the available primary A&E insurances or a pre-determined self-insured retention. The OPPI policy also includes third party liability defense coverage in the instance the owner incurs a loss from a third party attributable to the negligence of it's A&E's.

Contractor's Protective and Professional Liability insurance (CPPI) offers a combination of third party professional liability insurance comparable to what the other markets offer to contractors. Contractors incur professional liability exposure when they self-perform or subcontract any design or provide professional construction management services to a project owner. In addition, the CPPI policy offers first party indemnity coverage for the contractor claim (similar to the OPPI policy) against an uninsured or under-insured A&E in contract with the contractor (insured). Coverage B-indemnity is most essential to a contractor when entering into a design/build project delivery system.

1. The only viable alternative to OPPI has been A&E project specific insurance. In the past decade owners and design/builders have paid almost as much money in project premiums as insurance companies have paid in attorney fees defending their A&E's, proving that on significant claims, project insurance ultimately becomes the legal defense fund for A&E's who do not want to accept responsibility for having done something wrong on a project.
2. With protective E&O, the owner or design/builder is the Named Insured. The burden is on the insurance company to act in good faith when settling a claim. There is no such burden placed on the A&E project insurer as they have no duty to protect the interest of the owner or design/builder. The A&E project policy is for a third party, this is why there is no pressure on these insurers to settle a claim fairly and they can spend all the money on defense costs if their A&E's do not force a settlement. All of the moneys under the owner's and contractors' protective policy are left to indemnify the owner or design builder. There is no defense coverage to the A&E's. The lack of defense coverage for the A&E's comprises over 30% of the premium savings in our OPPI and CPPI programs. Almost 90% of all moneys from A&E insurers are paid to owners or design builders from their claims against design firms. Third party liability claims (those made by anybody not in contract with the A&E) comprise less

than 5% of loss dollars for A&E professional liability insurers. These losses and exposure are of no concern to project owners or design/builders and are best insured by the A&E through their annual or practice programs, not a project specific policy.

3. Of some concern is that the A&E project policy limit may be spent on third party claims before there is any insurance left to pay the owner or design/builder. With the OPPI and CPPI policy, all payments are left to indemnify the owner or design/builder for their claim. Only the owner or design/builder can make a claim under the OPPI or CPPI policy. Examples of third party claims that can exhaust the A&E project limits have come from contractors and other trade subcontractors or suppliers, insurance companies' subrogation actions and the general public.
4. Zurich Construction writes over \$1.5 billion in annual premiums and we are more capable of withstanding a substantial loss under our protective programs than most of today's project insurers.
5. The project policy is usually for specified professionals in contract with the prime architect. When it comes to insuring the professional construction manager or other subcontracted professionals to the owner or design/builder, i.e. the geotechnical, interior designer, or specialty trade consultants, i.e. the curtain wall engineer, the material tester, the fire safety or elevator consultant and others, the A&E project policy approach has significant shortfalls.
6. The protective policy covers all A&E professional services including those of the replacement A&E's and their respective sub consultants. If there is a need to replace the prime architect mid-term through the project, the project policy usually is entitled to be rewritten and repriced. All the protective program demands is that there is compliance with the minimum insurance requirements as our rates are flat and more a function of project values.
7. The OPPI and CPPI policy easily expands to cover contractor pollution, mold or asbestos claims. Since the project policy is procured for the benefit of the architect, it usually lacks in offering these coverages to contractors as architects are resistant to extend their insurance to non-professional risks.
8. The protective policy may be broader, have fewer exclusions than a typical A&E project policy and provide difference in conditions insurance as respects the insured when compared to the A&E's policy. The OPPI and CPPI policies are underwritten with an umbrella mentality as opposed to specific primary insurance.
9. Even though A&E have the best intent of doing a good job at the beginning of the project, loss of staff or financial drains may affect their ability to spend the best effort mid-way though the project. With protective E&O, A&E's are compelled to dedicate their best staff to your project.

10. With A&E project insurance, the owner takes responsibility for insuring the A&E's. To the extent the owner fails to adequately protect the A&E, the owner incurs liabilities they never had which fall outside of the project policy. This was the case with a major sports and exhibition authority. The owner bought a project policy of only \$5mm where there was a design claim made by the general contractor in excess of \$50mm. There is another similar claim taking place on an unrelated project where the owner only bought \$15mm on A&E project insurance and the claims on the project also far exceeded its limit. The A&E's on the first project argued successfully that it was the owner's problem that there was inadequate insurance protection as the A&E insurance companies enforced their "separately insured projects" exclusion.

This exclusion affirms that there is no coverage for a separately insured project on the A&E practice policies. If the owner had left the architect's practice policies alone on the first project (which by the way in limits exceeded \$100,000,000) the owner would have had no concern with the loss. The A&E's practice policies would have been more than adequate to cover the claim. As this was not the case, the owner settled the contractor claim at its own expense outside the limits of the project insurance coverage. This will inevitably also be the case on the second project.

11. With the A&E project policy, the owner or design/builder incurs the cost of the project policy without receiving the benefit of some comparable or better insurance deduction from the A&E's, even though their practice policies exclude coverage for the separately insured project. With the protective program, the owner or design/builder is placed in the best of recoverable position because the A&E's may have substantial insurance of their own to pay for the loss first. To draw a comparable limit comparison you have to purchase a policy equal in limits as the A&E's practice policy in addition to the project limit to equal the coverage provided under the OPPI program. When you add the additional insurances of the sub-consultants to the recovery process there usually is no comparison in limits between the OPPI or CPPI policy and an A&E project specific policy.
12. When an owner's protective program is implemented, our experience has been that the practice carriers tend to settle claims more promptly and fairly as practice carriers take into account their business relationships with their A&E Insureds. As we waive subrogation against an A&E who has maintained its underlying insurance most A&E's actually prefer the owner or design/builder purchase the OPPI or CPPI policy as it is free added insurance protection. The onus is on the A&E practice carrier to settle the claim promptly and fairly or else they could face extra contractual (bad faith) claims. Conversely, today's project insurers rarely have any relationship with the A&E's other than the project policy and have little, if any business relationship reasons to consider when settling a claim.
13. At face value, our protective premiums are substantially lower than average project premiums, anywhere from 40 to 60% less. This is a minor benefit of the program when compared to the other points raised in this memo.

14. Project premiums are auditable and may go up. The protective premiums usually are flat and not subject to audit.
15. Project policies usually are fixed in time and you have to negotiate extensions. With the OPPI programs, the term of the construction schedule is of less concern and extensions are usually negotiated up front. Coverage is even afforded under the OPPI policy for work that takes place after the policy period to complete or put the project to its intended use. This is usually negotiated and not available coverage under a traditional A&E project policy.
16. With project insurance, some owners take the responsibility of paying for the deductible. With protective E&O, there may not even be a deductible if the A&E maintains insurance in an amount equal to the self-insured retention at the time of settlement of the claim. The cost of the deductible may escalate if the prime architect passes down the deductible to the sub consultants to the point that the ultimate cost of the project policy may increase three to five times. One of the studies we did for one of our clients who had a multitude of projects was to grasp the charge that the A&E's were adding to their overhead because the owner had imposed a deductible much larger than they were accustomed. When all the numbers came, the owner discovered that in just deductible buy down charges from the A&E's they were paying premiums equal to the full limit of liability of the A&E project and practice policies.

For example, if the project premium was \$1,000,000 and the total redundancy charge from the A&E for their full insurance was another \$1,000,000. The deductible buy down charge was over \$2,000,000 making the ultimate cost of the project approach well in excess of \$4,000,000 while the owner's protective approach was only \$1,500,000: \$500,000 for the policy premium and \$1,000,000 for allowance of the A&E overhead. We have seen some project policies force the owner to take full responsibility of the deductible which serves as the worst incentive to the architect. These costs rarely are considered at inception of the program but can become a severe financial drain on the project owner or design/builder at the time they make the claim when not only they (the owner or design/builder) are paying to make the claim but also have to pay the A&E's for its defense.

17. The majority of A&E's generally oppose project insurance. Project insurance disrupts their business relationships with their agents and insurance companies and raises valid concerns about the adequacy of coverage and handling of significant claims. The majorities of A&E's feel comfortable dealing with their own insurers and agents and are reluctant to expand their relationships to unknown entities.
18. Project insurance increases the owner's administrative burden. With protective E&O, the administration process is much easier. All that is required is a simple application and one-time copies of certificates of insurance.

19. Project insurers argue that a unified defense for the architects is the most economical approach to saving money on claims handling costs. Of course, this unified defense is typically against the owner's or design/builders' claim. In addition, as most A&E claims are handled through some mediated approach, saving on litigation or defense costs are insignificant when compared to the many other advantages the owner's protective program offers the owner or design/builder. Because of the reduction in costs that mediation offers to practice insurers many policies even offer first dollar defense and credit A&E deductibles for claims settled through mediation. The last thing an owner or design/builder needs to see when they make a claim against their A&E's is a unified defense approach where all A&E's argue they have done no wrong. When it comes to getting the best results for the owner or design/builder's claim, a divide and conquer approach is what any smart lawyer looking for their (the owner or design/builder) interest would recommend.
20. We expect that in the not to distant future, most projects are going to go protective as more and more companies shut their doors to project insurance or the few remaining markets price or restrict themselves out of the coverage. If you have a pool of good A&E candidates bidding on your projects with adequate amounts of practice A&E coverage, the owner or design/builder is best served by utilizing these existing coverages to obtain a more comprehensive and cost effective insurance alternative through the owner's or contractor's protective policy.
21. Lastly, OPPI and CPPI offer the owner or design/builder the ability to better manage limitations of liabilities to their A&E's when such limitations are tied to reasonable insurance proceeds on the project. Every A&E practice insurer recommends to A&E's that they limit their liability on their projects. To the extent these limitations and tied to meaningful insurance limits, the OPPI and CPPI policies are more than reasonable in backing these limitations. Finally, with the OPPI and CPPI policies, owners and design/builders can finally quantify the cost and insurance availability when negotiating contractual limitations to their A&E's.

Below are the reasons why Zurich is the only viable market for purchasing protective E&O insurance:

1. Zurich created and pioneered the concept of protective E&O insurance. We have the most experienced staff and project references to back this claim.
2. Zurich has written over 99% of all historical protective E&O premiums. It is by far our best performing product offering as backed by our commitment in staff and resources.
3. Protective E&O is what we prefer to sell to project owners and design/builders. You do not have to force us to quote protective E&O as opposed to other markets who are very apprehensive about quoting OPPI and CPPI. This is what we do every day what we have done for over 9 years.
4. Protective E&O is now in its ninth year of development. Zurich has by far the best claims staff and experience to handle the sophisticated coverage needs of project owners and design/builders.

5. With \$50,000,000 in capacity available to our OPPI and CPPI products, Zurich's commitment is unequaled to the marketplace in our product line.
6. We have written practically every type of project on an OPPI and CPPI basis. Our senior underwriting staff has not come across any obstacle in providing protective E&O coverage to any project.
7. Our policy form is in its third revision and is by far the broadest coverage available in the marketplace. Everybody else's coverage is just an imitation. Add to that our creativity and flexible underwriting approach and you have an underwriting company unequaled in strength in the marketplace.
8. Protective E&O is a core product offering for Zurich's Construction Group. Our mission is to service the needs of construction owner and contractors with the best and most innovative programs and insurance solutions.
9. Zurich has a long-term perspective on business as evidenced by the many years we have been providing this insurance. We are not a market that enters and exits a business based solely on the assumption of short-term profit needs. We have been there for our Insureds in times of wealth and in times of attrition.