



OWNER'S PROTECTIVE PROFESSIONAL INSURANCE

COVERAGE APPLICATION

Owner's Protective Professional Insurance (OPPI) was developed to provide owners and developers of construction projects an alternative to costly project specific professional liability policies (PSPL). OPPI is a first-party policy that extends coverage to the named insured (owner or developer) for damages the owner incurs from professional liability created by the project design team. OPPI is a cost effective solution to PSPL for virtually any size project and is available to almost any type of construction project.

POLICY FORM

OPPI provides the owner with indemnity for damages arising out of negligent acts, errors and/or omissions created by the design professional that exceed the design professional's primary professional liability policy limit. The OPPI also offers "difference in coverage" above the design professional's professional liability insurance, a "sliding" Self Insured Retention and defense costs provided to the owner for third-party claims.

OPPI can be written on a project specific basis or "blanket" (all construction projects undertaken by the owner) basis. In the event an owner has future construction planned, the OPPI can be structured to "sit" in excess of the individual design professional's professional liability insurance for all projects. This effectively spreads the cost across all projects and reduces the issues associated with securing project professional liability coverage.

PROGRAM HIGHLIGHTS:

- The key advantage of OPPI is that it supplements the available professional

liability insurance provided by the design professional.

- Provides owners a cost-effective alternative to costly project insurance. OPPI is typically 40-60% less than project professional liability policies.
- The SIR does not apply when the underlying design professional's professional liability policy is unimpaired or limits are intact.
- All the benefits of having an owner controlled program exist such as primary protection for the owner, consistency in coverage and reduced cost. In addition, the program is structured to ensure the lead design professional's policy pays for covered claims in a timely fashion.
- OPPI offers "difference in coverage" above the underlying professional liability policy extending coverage to the owner in the event the underlying policy is deficient in coverage. Some examples of deficiencies include mold, construction management, and habitational exclusions.
- Increased financial security throughout the life of the project.
- Retroactive coverage can be afforded for those projects already in the construction phase.
- Reduces potential adversarial relationships with design professionals.
- Allows owner the flexibility in selection of design professionals.
- OPPI is less cumbersome for owners to manage since there is no need to follow up with design professionals on their insurance program's renewal, limits impacted by defense cost and coverage restrictions.
- Defense cost for third-party claims arising out of the design professional's services in the event the owner is sued.
- Contractor's pollution coverage can be

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included providing the owner with excess coverage for pollution claims, including mold.

- Policies providing provision that allows OPPI insurer to settle the claim excess of the recoverable insurance before the underlying claim between owner and design professional is paid or settled.

POLICY TERM

OPPI can be offered for construction periods of up to 15 years for individual projects (including extended reporting period) and annual for blanket programs.

MARKET OVERVIEW

With the high cost of PSPL policies many architects and engineers carry minimal professional liability insurance (\$2,000,000 or less). OPPI has become an acceptable alternative for many owners.

Marketplace → **Expanding**

The number of carriers offering OPPI has increased over the past two years with approximately 10 providers offering programs on a "primary" basis and several others entertaining OPPI on an excess basis. No change anticipated here. But, don't be surprised if another market or two shows up in the next couple years.

Rates/Pricing → **Decreasing**

Rates have decreased as result of the additional entrants in the OPPI marketplace. It is important to remember that OPPI pricing is primarily driven by the cost of the underlying professional liability limits of the prime design professional. Owners can still receive a savings of between 40% and 60% (or more) when compared to a primary project professional liability for the design team, while securing a limit of liability that protects their best interests rather than the interests of the design professionals. Profitable results coupled with the fact that

OPPI is an excess insurance will continue to drive underwriters to become more aggressive on premiums in 2017, which had become an increasing trend throughout mid-to late-2016. Many programs are now written on an auditable basis with a typical 10% leeway in construction values. However, some low risk, smaller projects (\$250 million +/- and under) can still be purchased on a flat/non-auditable basis.

Capacity → **Static**

Capacity of \$10 million with any one of the primary markets is typical, although some carriers can offer \$25 million. Most "primary" carriers will also provide excess, making total capacity somewhere between \$150 and \$200 million for a low to medium risk project like a mixed-use commercial office project. More complex projects like entertainment or heavy civil may yield limits of between \$75 and \$100 million.

Buying Motivators → **Static**

The primary driver for OPPI is asset protection – owners and developers of construction projects seeking supplemental protection to protect against catastrophic design errors made by design professionals. Typically, many design professionals buy lower limits of insurance. A great example is the recent American Council of Engineering Companies (ACEC) survey. This study found that the median per claim limit of liability purchased for all member firms generating \$50 million in annual fees or less is only \$3 million. Furthermore, in the two high hazard classes of engineering - geotechnical and structural, the average per claim limit of liability purchased by all such firms in the survey was under \$2.5 million. So, on larger projects of \$100 million construction value or higher, owners or developers should consider supplementing the design professional's limits of insurance. Owners have also become more

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knowledgeable and aware of the potential catastrophic design errors on projects and as a result have purchased limits of \$10 million or more when purchasing OPPI to construct complexes or other sizable applications.

Claims → **Static**

Carriers have reported no change in either the frequency or severity of OPPI claims in the past year. In fact, few OPPI claims have been reported in the past five years, making this product a growth area for underwriters. In addition, there are no new issues or industry trends that would seemingly reverse this direction in the short term.

Underwriting → **Static**

No major reportable changes occurred in the past year or are expected in the upcoming year. For the most part, the same underwriters underwriting architect/engineer professional liability and contractors professional liability are now underwriting OPPI resulting in a consistent knowledge base and underwriting approach. Again, the concern is for a limited underwriting talent pool. With the marketplace expansion and more carriers writing OPPI, the pool of experienced underwriters has diminished with other new carriers acquiring talent from existing carriers. This has led to less experienced individuals tasked to underwrite OPPI.

Coverage → **Expanding**

Overall, coverage forms from one carrier to the next are fairly consistent. Coverage itself continues to morph, but for the most part, remain stable.

Self Insured Retentions (SIR) only apply to the defense coverage part of the program, whereas in the past it applied to the indemnity coverage part as well the minimum insurance requirement (MIR) if it was not met. The definition of

professional services has been expanded to track closer with typical architect/engineer (A/E) definitions like the inclusion of building information modeling (BIM) and technology services. One coverage restriction that is consistent among carriers is the removal of the defense coverage part for third-party claims on habitational (commercial condominium) projects. This is driven primarily by the continued litigation associated with construction defects on habitational projects in certain regions of the country. Carriers are making appropriate changes to their policy forms to address the specific needs of design-builders. A few have even developed specific OPP policy forms to address the contractual relationship between the design-builder and the owner, rather than the older more dated forms that still only insure the owner for damages incurred by design professionals (DPs) directly under contract to the owner.

A small handful of carriers have made adjustments to their policy forms whereby coverage is affirmatively granted for the carrier acting as a consultant on the insured's behalf. This includes bringing the claim against the DP and the carrier's involvement in negotiating and resolving the dispute with the DP's provider. In the event the DP's provider refuses to settle the issue and the OPP carrier substantiates the claim and deems it should be covered under the DP's policy, the OPP carrier will then indemnify the insured for damages incurred, less the DP's insurance limit.

Carriers are still willing to add the excess Contractor's Pollution Liability (CPL) for the construction portion of the project at a very competitive price when compared to the purchase of a primary project CPL program. In addition, several carriers now include Pollution Legal Liability (PLL) coverage for pollution (pre-existing and unknown) on,

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at, under, or emanating from the property on which the project is being built. This provides the insured/owner the added benefit of an insurance product in the event construction activities only uncover and do not create environmental issues.

Although OPPI is offered on a "blanket" basis to the owners,, few have taken advantage of this option, preferring instead to insure on a project-by-project basis. Owners/developers should investigate the various options available when dealing with multiple projects to achieve more cost-effective solutions.

A LOOK AHEAD

Considering the size of the construction industry and the expense associated with insuring the design team on a project basis, OPPI is still an undersold and/or under-purchased product. It has become a very cost-effective way to insure against catastrophic loss. As the market continues to expand, it is likely to include an increased interest among owners and developers as well as a reduction in overall OPPI costs.

Although OPPI has been available for over 15 years, only a limited number of carriers have been willing to offer this coverage but the marketplace is slowly expanding. Similar to other professional liability products, OPPI is manuscripted by each individual carrier, therefore careful review of the form is a necessity.

LIMITS OF LIABILITY

- \$100,000,000 per loss/\$100,000,000 aggregate limit of liability if structured with various carriers from the professional liability insurance marketplace.
- \$25,000,000 per loss/\$25,000,000 aggregate with any one particular carrier.

RETENTIONS

- \$25,000 minimum and are structured as self insured retentions.
- The SIR only applies in the event the underlying design professional's professional liability policy is impaired or exhausted.

PREMIUMS

Typical premiums begin around \$25,000 for the \$1,000,000 per loss/\$1,000,000 aggregate limit of liability.

INFORMATION NEEDED FOR INDICATION

OPPI Application or the following:

- Project Values
- Lead design professional's professional liability coverage limit
- List of design team with services provided
- Description of the project
- Copies of contract(s)

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