When Professional Liability Limits Fall Short: How OPPI Steps In

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As project complexity and project values continue to grow, owners are increasingly asking for professional liability limits that exceed what an Architect or Engineer (A&E) can reasonably provide through their practice policy or afford through project-specific solutions. Owner's Protective Professional Indemnity (OPPI) coverage offers an alternative solution to satisfy a project owner's desire for higher limits without an A&E firm taking on additional insurance costs.

What Is OPPI

OPPI is a project-specific professional liability policy developed for project owners to help protect against losses arising out of professional services performed by designers, engineers, and other consultants. While the coverage ultimately responds to professional negligence, it is separate from and excess of the A&E firm's own professional liability policy. In addition to being excess to the design professional's insurance, differ-in-conditions provisions typically allow the coverage to "drop-down" and respond when the A&E firm's limits have been eroded by other claims/losses or when an exclusion precludes coverage. Ultimately, this policy allows owners to secure higher limits aligned with project exposure at a more cost-efficient premium compared to Project Specific Professional Liability (PSPL). OPPI is often 40-60% of the cost of a PSPL program for an A&E firm.

Cost Drivers for OPPI

Similar to PSPL, an OPPI program's pricing is usually driven by project type and complexity, construction values, limit structure, third-party SIR, and most importantly the minimum insurance requirement (MIR). Because the coverage is excess to the design professional's (DP) insurance, underwriters typically apply an MIR, which is the minimum insurance a DP is expected to evidence at the time of a claim. A higher MIR reduces the OPPI premium.

Generally, the MIR and third-party SIR is driven by project type and the owner, with underwriters pushing higher MIRs/SIRs for higher hazard projects (e.g. data centers, condos, infrastructure) and owners opting for a higher MIR/SIR for cost savings. An MIR is often thought of as a minimum attachment point, but it should be noted that the coverage will still sit excess the available insurance (this is where Limitations of Liability come into play!).

Underwriting Requirements

OPPI underwriting is contract-focused, while indications can be obtained with much of the same information gathered for Builder's Risk or Owner Controlled Insurance Program

(OCIP)/Contractor Controlled Insurance Program (CCIP) quotes. Formal terms generally require a thorough review of contracts between the owner and any design professional with whom they've directly contracted. Underwriters will examine waivers of consequential damage, limitations of liability (LOL), and scope of work. An LOL that is more restrictive than the MIR (e.g. $250,000 LOL and a $2M MIR) will generally be unacceptable to the underwriter and may require renegotiation of the contract before bindable terms are provided. OPPI underwriters generally want to see an LOL that includes available insurance proceeds or, at a minimum, matches the MIR. In addition to contract review, the underwriters will typically request:

- A completed OPPI application
- Schedule of the Prime General Contractor (GC) / Design-Builder and any DP in direct contract with the owner
- Certificates of Insurance (COI) evidencing Professional Liability (PL) limits that meet the MIR
- Project Budget/Schedule
- Geotechnical Report

<u>Benefits for A&E Firms</u>

OPPI does not provide coverage for the DPs; coverage is strictly for the owner in the event the DP's insurance limits are inadequate to cover the loss, eroded by other claims, or an exclusion applies. However, even though A&E firms are not covered by OPPI, there are still some benefits for A&E firms:

1. Lower Insurance Costs – Rather than being required to purchase higher practice limits, PSPL, or project/client specific excess policies, OPPI can help to strike a balance between the owner's desire for higher Professional Liability limits with what is realistically available in terms of capacity and cost.
2. Peace of Mind for the Owner – Often times, A&E firms use their practice policy to meet the insurance requirements put forth by the owner. This means that limits can be eroded or coverage might non-renew, cancel, or lapse without their knowledge. In one instance, a retail partner shared the tragic story of a design professional who unexpectedly passed away. There were concerns that the PL policy might not be renewed and the owner would have no recourse for design.
3. Easier Access to Elevated Capacity – The A&E's owner client can readily access elevated capacity via an alternate segment of the insurance marketplace than the A&E segment, which has seen reductions in capacity over the past several years.
4. Non-disclosure Conditions Don't Apply - In the current OPPI marketplace, carriers generally no longer apply non-disclosure conditions. Historically, OPPI products attached coverage-bearing conditions restricting project owners from disclosing the existence of an OPPI policy to the design professional. These conditions have largely gone away, allowing for

open dialogue on pursuit of professional liability capacity if through alternate mechanism of PSPL or excess over A&E's practice program.

Conclusion

OPPI can be leveraged to help owners achieve their goal of higher PL limits without passing additional insurance costs to the A&E firm. For producers focused on Architects & Engineers, mastering OPPI can differentiate your expertise and strengthen relationships on both sides of the transaction.

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