Design Professional Insurance
Practice and Project Specific Options
Project Finance and Development Committee of the Business Law Section of the ABA
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Speaker

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Discussion Agenda

• Overview of Typical Practice Insurance Program of Design Professional
  – Coverages
  – Limits
  – Deductibles/retentions
  – Cost

• Project Specific Professional Liability
  – Project Specific Excess
  – Primary Project Specific
  – Owner Protective Professional Indemnity
  – Relationship to Contractor Project Specific Professional
Typical Practice Program for Design Professionals
Prime Designer’s Vicarious Liability

- **Primary Layer**: USD 10,000,000 per Claim and Aggregate
- **First Excess**: USD 10,000,000 per Claim and Aggregate
- **Second Excess**: USD 10,000,000 per Claim and Aggregate

USD 1,000,000 Each Claim Self Insured Retention

- M/E/HVAC
- Structural
- Geotech

Insufficient Limits

- Kitchen
- Lighting
Project Specific Overview

- Increase limits of insurance
- Limits dedicated to project
- Control coverage
- Insurance marketplace hedge
- Protect against underinsured subconsultants
- Invite smaller players
- Decrease exposure to competing claims & policy erosion
- Risk management by insurer
- Coordination of joint defense
- Facilitate limitation of liability = encourages innovation and risk taking
- Not a bond
- Viewpoint and usage to support continued marketplace
Project Specific Excess (Individual Firm)

Specific Project Excess
USD 5,000,000 per Claim and Aggregate

Primary Layer
USD 10,000,000 per Claim and Aggregate

USD 1,000,000 Aggregate Self Insured Retention
USD 500,000 Each Claim Deductible

M/E/HVAC
STRUCTURAL
GEOTECH
KITCHEN
LIGHTING
Project Specific Excess (Individual Firm)

- Primary purpose is to increase limits above practice policy
- **Annual** additional premium
  - Minimum premium is typically $5,000 per mil of coverage
- Not all insurers offer
- Most insurers limit the number of endorsements
- Premium should be fully cost reimbursable
  - Length of coverage
  - Future market fluctuations
  - Availability
  - Practice program changes
Overview of Primary Project Specific PL

- Policy limits apply to lead design firm and all subconsultants
- Limits are dedicated to one project
- Policy is a single source of recovery
- Contractor is not named on the policy due to insured vs. insured exclusion
- Contractor’s protective indemnity coverage can apply as excess

Self-Insured Retention

Beginning of design (Retroactive Date)  
Beginning of construction (Effective Date)  
End of construction (Expiration Date)  
3 to 5 years after completion

Material Variation Clause for Cost Overruns or Time Extension
Primary Project Specific Policy Structure

- Structure and retention based on insurer appetite and cost
- Practice policy as excess and for drop-down primary position in the event of project-specific exhaustion or lack of coverage
- Limitation of liability equal to project policy limits
- Owner as an Indemnified Party for third-party claims
Protective Professional Indemnity

• Owner’s Protective Professional Indemnity (OPPI)
  – Project specific or rolling/program
  – Often purchased by entities with multiple projects (schools, mass transit, hospitals)
  – Applies excess of available underlying design professional insurance
  – If no underlying available, owner may pay self-insured retention
  – Limitation of liability restrictions
  – Indemnified party endorsement for owner entities
  – Cost is 40-50% of primary project specific
  – Little benefit to design firms; often undisclosed
OPPI Illustration

OPPI / CPPI
USD 20,000,000 per Claim and Aggregate

USD 1,000,000 Self Insured Retention/Minimum Insurance Requirement/LOL Restriction

Prime Design Professional Practice Policy
USD 10,000,000 per Claim and Aggregate

USD 500,000 Each Claim Deductible

M/E/HVAC
STRUCTURAL
GEOTECH
KITCHEN
LIGHTING
Other Project Specific Coverages

• Contractors Professional
  – Often combined with protective indemnity, pollution, and rectification
  – Beware of insured v. insured exclusion

• Wrap-Up
  – Contractor- or Owner-Controlled Insurance Program
    • General Liability
    • Workers Compensation
    • Umbrella

• Builders Risk
  – Can include design defects as an insurable event
  – Can include soft costs such as re-design

• Terrorism
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