The Professional Liability Gap Owners Don't See Until It's Too Late

How Owner's Protective Professional Indemnity (OPPI) helps protect project owners when consultant and design professional limits fall short

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The foundations were poured long before the problem came to light.

A surveyor had incorrectly marked a property line. As a result, part of the structure was built on neighboring land. What began as a straightforward surveying error escalated into a major loss involving demolition work, redesign costs, project delays and a legal dispute.

As a result of the error, the project owner filed a claim against the surveyor, expecting their professional liability policy to respond. Instead, the owner discovered that the surveyor's professional liability limits had already been eroded by claims that arose on other projects, leaving very little money available to cover the loss.

This real-life claim scenario from Berkley Construction Professional highlights an exposure that many project owners don't fully appreciate until a loss occurs and they're left dipping into their own coffers.

It also underscores why more and more owners are reassessing how professional liability risk is transferred on large construction projects.

The limits of traditional practice policies

The professional liability policies carried by architects, engineers, and other design professionals are often written on an annual basis. This means multiple projects compete for the same aggregate limit (the maximum amount the insurer will pay for all covered claims over the policy period). Unfortunately, by the time a significant loss emerges, the available insurance policy may already be partially—or even fully—exhausted by unrelated claims. That concern has become more pronounced in recent years as claim severity, rising litigation costs, and social inflation exert increasing pressure on professional liability programs.

Although a consultant or contractor may satisfy the contractual insurance requirements at the outset of a project, owners can't rely on that coverage to be available or sufficient if a claim materializes years later.

It is also important to establish professional liability requirements for architects and engineers (A&E) during the contracting phase that reflect the project's size, scope and complexity. Although many A&E firms maintain primary professional liability limits in the $2 million to $5 million range, significantly greater capacity is available for large-scale projects through larger firms with robust insurance programs. For billion-dollar developments, such as major hospital projects, selecting a design partner with appropriately scaled coverage is essential, as claims related to design deficiencies can quickly escalate into the millions once remediation, delay, and redesign costs are factored in. The goal is not to rely on insufficient insurance limits, but to make sure risk transfer is commensurate with the project's exposure from the outset. Confirming adequate limits upfront helps prevent coverage gaps and better aligns risk transfer with the project's exposure.

How OPPI puts owners back in control

Owner's Protective Professional Indemnity (OPPI) coverage was designed to address this uncertainty by providing dedicated, owner-controlled limits that sit in excess of the professional liability insurance maintained by consultants and design professionals.

When that underlying coverage is unavailable, disputed or insufficient, OPPI can indemnify the owner for covered losses arising from design errors, miscoordination, malpractice, constructability oversights, incorrect surveys, or other professional failures.

It can also be structured on a multi-project basis, limiting administrative overhead and giving owners consistent coverage across ongoing capital programs.

Another advantage of OPPI is in claims efficiency. When a professional error causes a loss, the OPPI insurer can work directly with the owner to provide guidance on how to substantiate the claim and respond, even when the responsible consultant's or contractor's insurance is unavailable or contested. This approach helps prevent costly delays while parties go back and forth over or debate responsibility and coverage, keeping projects moving when remediation or corrective work is required.

In addition, OPPI can provide defense and indemnity to the owner if a third party files a lawsuit related to the project, even when the owner did not directly perform the professional services that triggered the claim.

Broad exposure for project owners

Surveying errors are just one example of the professional liability risks owners can face on construction projects. Other potential claims could include:

- A geotechnical engineer misjudged subsurface conditions, resulting in a foundation redesign after excavation revealed materially different site conditions.

- A mechanical engineer failed to properly account for heat loads in a cleanroom environment, requiring supplemental cooling systems to be added after construction.
- A building envelope professional failed to properly design or coordinate a curtain wall interface, resulting in water intrusion and mold remediation costs.
- A design professional specified cladding that failed to meet National Fire Protection Association (NFPA) 285 requirements, requiring replacement after the building official deemed it unacceptable.

While the technical issues vary, the underlying exposure for project owners is the same: the consultant or contractor responsible for the error may not have sufficient professional liability limits to fully respond to the loss.

Why project delivery models matter more than ever

OPPI is particularly important for owners who hire consultants, contractors, or design firms directly—a scenario that has become increasingly common with the rise of design-build and construction manager at risk (CMAR) delivery models.

As owners engage consultants and contractors earlier in the construction process, they may see the benefits of greater collaboration and efficiency, but that approach can also blur the traditional lines of responsibility and create more complex professional liability exposures.

And it's not only traditional project owners that face these risks. Any group that initiates, oversees, or funds construction can benefit from OPPI coverage, including developers, real estate investors, institutions such as hospitals and universities, public agencies, and corporate facility teams managing ongoing capital projects. These organizations routinely hire architects, engineers, design-build teams, or construction managers to perform professional services on their behalf, bringing owner-level exposure.

For organizations managing major capital programs, the exposure can increase significantly over time. A healthcare system, university, or large institutional owner may oversee dozens of projects and hire dozens of firms over multiple years. This raises the likelihood that some form of professional liability loss will occur. In these environments, OPPI should be seen as part of a broader, long-term risk management strategy.

The agent's role in closing the protection gap

Insurance brokers play a key role in helping project owners understand that a consultant or contractor's professional liability insurance is not the same as owner-controlled protection.

Most owners request a certificate of insurance (COI) as part of the hiring process, but a COI only confirms that coverage existed at a point in time. It does not reveal whether those policy limits have been eroded by other claims, are tied up on concurrent projects, or are close to being exhausted. Unfortunately, that is not information most firms willingly volunteer.

Another issue is that COIs don't show coverage exclusions. Professional liability policies may contain carve-outs for specific project types or disciplines, such as condominiums or structural engineering, removing coverage for risks likely to cause problems. By the time these coverage issues come to light, usually during a claim or litigation, it's too late for owners to manage the risk, and they are left bearing the financial burden for someone else's mistake.

An effective way for insurance agents to drive home the benefits of OPPI is to have a candid conversation with others that helps them understand the extent of their potential exposure. As construction projects grow in scale and complexity, owners increasingly need coverage that exists specifically on their behalf, coverage they can access directly if a professional error occurs.

OPPI can also be more cost-effective than asking consultants or contractors to buy project-specific professional liability limits. Those costs are usually passed through to the owner, often with additional markup embedded in project fees. Purchasing owner-controlled, first-party coverage directly helps avoid that additional cost while providing more tailored protection.

As always, it's important to remember that insurance is only one part of the risk management equation. Agents can help steer owners toward broader loss-prevention strategies, including:

- Project go/no-go decision-making
- Project delivery method evaluation
- Claims and litigation history review of prospective project partners
- Prequalifying design and construction firms

More broadly understanding the risk profile of the firms involved in a project can be just as important as understanding the insurance coverage itself.

Bringing structure to an uncertain risk environment

Nothing about the construction risk landscape is straightforward. Inflation, procurement constraints, and supply chain disruptions are all contributing to a shifting cost environment, where resolving construction issues several years down the road may be significantly more expensive than addressing them today with strategic OPPI coverage.

The takeaway is that even a relatively straightforward professional service, like surveying, can have an outsized impact on a construction project. But that doesn't have to escalate into a major financial exposure for owners.

OPPI should be considered as a critical tool in a project owner's risk management toolbox. It helps bring structure and certainty to professional liability risk management, enabling owners to keep projects moving as the risk landscape continues to evolve.

About the Author

Joe joined Berkley Construction Professional in 2025. In his role, he is responsible for spearheading the development and delivery of risk and practice management resources tailored to the unique challenges of construction professionals. Joe is a seasoned construction industry leader with over 15 years of experience managing complex projects across healthcare, higher education, and infrastructure sectors.

His recent experience includes directing a $1.3 billion hospital expansion and other transformative initiatives for a major healthcare organization. A licensed Professional Engineer in Virginia, Joe earned a bachelor's degree in civil engineering from the University of Pittsburgh, Pittsburgh, Pennsylvania, and holds a master's degree in leadership and organizational studies from Robert Morris University. Joe is based in Pittsburgh, Pennsylvania and can be reached at jshields@berkleycp.com.

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