

Professional Liability Insurance – What are a Developer’s Options?

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When it comes to developing real property, proper insurance is critical. Insuring the contractors on a project is fairly straightforward. You can either rely on the contractor’s operational general liability policy or consider some form of Project Specific Insurance such as an Owner Controlled Insurance Program (OCIP). Every contractor will have an operational General Liability Policy and OCIPs are widely available from a number of sources, including for condominium projects.

For damage to the property under development, Builders Risk Insurance is required. Every Builders Risk policy needs to be tailored for the specific project but as is the case with Project Specific General Liability Insurance, Builders Risk coverage is currently available from a number of different insurance companies.

Insuring the errors or omissions of the design team, however, is more complicated. The complexity is further exacerbated by the type of project being developed. A commercial office building, for example, is considered significantly less hazardous than a “for sale housing” or condominium project. Regardless of the type of project, the developer has several options.

There are four basic options an owner may consider and some of these can be used in conjunction with another.

1. The Design Professionals Practice Policy (AE Policy) - Relying on the individual Design Professionals Practice Policy is the lowest cost option and the least effective in protecting the developer’s interests. There are several significant disadvantages to this approach from the owner’s perspective including:

- a. Limits on these policies may be inadequate for the project in question.
- b. AE PL policies are written on “claims made” policy forms and if coverage is canceled or non-renewed and not replaced, the AE would be uninsured.



- c. There is no guarantee that the AEs will continue to renew coverage as required by their contract.
- d. Claims on other projects could exhaust available limits leaving nothing for the owner’s project.
- e. Absent a formal review of the Design Professional’s PL policy, the owner will have no idea what type of policy form (broad or narrow) the AE PL policy is written on.

Despite these disadvantages, on other than large commercial projects or condominiums, this is the most common option. It is prudent for the developer to work with reputable, established and insured design professionals and to make certain that those design professionals renew their coverage as required by their contract.

2. Project Professional Liability Insurance

(PPL) - PPL Insurance is written to cover design professionals on a specific project for their errors or omissions arising out of the design of that project. It replaces the practice policy of each design professional. It is generally written to provide coverage from design through substantial completion of the construction plus an extended reporting period which is typically 3-5 years, but in some cases can be negotiated out as far as 10 years. Limits can be selected to fit the exposure of the project in question. Coverage can be negotiated and is uniform for the entire design team. In the event of a claim, the design team is jointly defended under the terms of a joint defense agreement. One of the key advantages of a PPL is that the limits are dedicated to the specific project and absent fraud in obtaining the policy or non-payment of premium, the policy cannot be cancelled. This is the best way for a developer to make certain the design professionals on his project will have appropriate coverage with adequate limits for the duration of the contractual requirement. Unfortunately, it is not widely available and will cost substantially more than the alternative of relying on the individual design professionals practice policy.

3. The third option is an **Owners Protective Professional Indemnity (OPPI) Policy**. The OPPI option can be used to supplement either the design professionals practice policies or a Project Professional Liability Policy. An OPPI policy

provides additional coverage to the owner for damages arising out of errors or omissions of the design team. The AEs are required to have minimum limits of Professional Liability Insurance in place (MIR or Minimum Insurance Requirements). The OPPI sits on top of those limits and provides excess coverage for the benefit of the owner as if the design professional had higher limits. The OPPI policy is triggered by a claim made by the owner against the design team. At the same time this claim is made against the Design Professionals Practice Policy, a claim is also filed with the OPPI carrier.* Third Party Claim Defense and Indemnity can also be provided under an OPPI. Basically this provides the owner with defense and indemnity if the owner is sued for the negligence of the design team. Unfortunately for residential for sale housing this is not readily available and if an underwriter is willing to provide it, the upcharge is approximately 50% of the primary OPPI pricing. Benefits of the OPPI policy include:

- a. The ability to layer higher limits to protect the developer for substantially less than it would cost to purchase a Project Professional Liability Policy.
- b. The OPPI policy may provide broader coverage than a Design Professionals Practice Policy and in those instances it can drop down and provide primary coverage subject to the policy deductible.
- c. The OPPI policy can be written on a project specific basis or on an annually renewable basis to cover all the projects a developer is working on.

4. The final option a developer might consider is a **Developers Professional Liability Policy (DPLP)**. This is an emerging coverage and not widely available. Coverage can be tailored to cover a variety of exposures. These might include a developer's direct design exposure (if they perform design in-house) and their vicarious design exposure (similar to the defense and indemnity that can be included in an OPPI policy). It could also include a developer's

pre-design phase exposures and services, conceptual land planning, zoning changes, financing models, title insurance and demographic surveys. Unlike an OPPI policy, it would not provide “protective” coverage (limits excess the design professionals limits for suits brought by the developer).

Final Comments

The key to managing the Professional Liability exposures on a new construction project follows basic risk management principals. First, the exposures to loss (what can go wrong) need to be identified. Secondly, the developer needs to work with his design team and contractor to try and reduce the frequency and severity of those exposures. Once steps 1 and 2 have been completed, consideration should be given to step 3, which is the Risk Finance options. This involves exploring the insurance marketplace for the various options explained above. It is only after considering the options available and the associated premiums that you can select the best option for your specific project.

Developing real property is complex. Every project is unique and between the ownership, the contractors and the design team, there are a significant number of stakeholders. This underscores the importance of working with both the right contract attorney and a specialist insurance broker.

*In the event of an OPPI claim that exceeds the Design Professionals Practice Policy limit, the owner is going to need to negotiate with the OPPI Insurer to collect the difference between the AE’s limits and any amounts the owner is “legally entitled to recover.” In other words, the owner is going to have to prove to the OPPI insurer what their actual losses are. The OPPI insurer will pay the difference between the agreed upon damages and what the Design Professional Practice Policy paid. ■

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How to Turn a Bad Day Around

Life is full of unexpected frustrations. Running late, spilling coffee on yourself or getting into an argument can start your day off on the wrong foot. The good news is that you can control your mood and prevent these obstacles from ruining your entire day.

The most important thing you can do is to focus on the positive. Studies show that when you're positive, you have 23 percent fewer health-related effects from stress, you're 31 percent more productive, you're 40 percent more likely to receive a promotion and your creativity levels triple.

Here are a few ways to turn a bad day around:

- Pinpoint the concrete reason for your frustration and address it immediately.
- Write down or recite three things you are grateful for.
- Choose **not** to be a victim of your frustration. Make a conscious effort to be positive.
- Set realistic expectations for your day.

Negative emotions can be contagious. It is worth taking control of your mood—not just for yourself—but for those around you.

This article is intended for informational purposes only and is not intended to be exhaustive, nor should any discussion or opinions be construed as professional advice. Readers should contact a health professional for appropriate advice.

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Detergent Packet Poisoning

Research is finding that children are consuming a dangerously large number of detergent packets. Calls to poison control centers increased 17 percent from 2013 to 2014. More than 22,000 children (mostly under age 3) were exposed to laundry packets during that period, according to the American Academy of Pediatrics (AAP). The AAP also noted a 14 percent increase in calls to poison centers concerning exposure to dishwasher detergent packets.

The packets (or pods) were introduced in 2012 as a less messy alternative to detergent powder, but their colorful designs and strong fragrances can be attractive to children. When ingested, the liquid packets double a child's odds of being admitted to a medical facility, because they are more toxic than traditional detergents.

Exposure to packets of laundry detergent can cause vomiting, throat burns and eye injuries. More severe cases can include breathing cessation, comas, cardiac arrest and even death.

Procter & Gamble, which makes detergents that include Gain and Tide, has set up ad campaigns to emphasize safety in households that use the packets, and says it has made its packaging more difficult for children to open.

Researchers recommend that parents of children under age 6 use traditional laundry detergent instead of the packets. Also, detergent should be stored out of sight and out of children's reach in a locked cabinet, and monitored closely while the cabinet is open.

Chicken Stir-fry

- 2 Tbsp. vegetable oil
- ½ cup carrots, peeled and thinly sliced
- ½ cup celery, thinly sliced
- ¼ cup onion, cut into strips
- 1 green pepper, cut into strips
- 1 Tbsp. garlic, finely chopped
- 1 Tbsp. ginger, finely chopped
- 1 lb. cooked chicken, skin removed, cut into strips
- ½ tsp. sugar
- 3 Tbsp. soy sauce
- 3 cups cooked rice (white or brown)

Directions

Add vegetable oil to a large pan over high heat. Then add the vegetables, garlic and ginger. Stir until the garlic is slightly brown.

Add the chicken, sugar and soy sauce. Stir for one minute or until heated through. Serve over rice.

Makes: 6 servings

Nutritional Information (per serving)

Total Calories	247
Total Fat	7.2 g
Protein	19 g
Carbohydrates	25 g
Dietary Fiber	2 g
Saturated Fat	1 g
Sodium	423 mg

*Percent Daily Values are based on a 2,000 calorie diet.

Source: USDA



Potential Zika Spread Mapped by NASA

NASA scientists have created a map showing the U.S. locations with the highest potential for the spread of the Zika virus. This information will be used to better target future search-and-destroy missions for the female *Aedes aegypti*—the mosquito responsible for the spread of the virus.

Researchers focused on 50 cities within or near the current *Aedes aegypti* population, applying factors such as temperature, rainfall amounts, poverty levels and whether people in those cities have traveled to Zika-affected areas. They then took things a step further and analyzed the chance of the mosquito surviving in those locations during each month of the year. In the wintertime, colder temperatures and a lack of moisture lessen the likelihood of mosquito eggs hatching.

While results of the study matched researchers' expectations, they were surprised as to just how far north the virus can spread in the summer months.

According to the study, all 50 cities studied exhibit the potential for at least low-to-moderate *Aedes aegypti* abundance. And most eastern cities are suitable for moderate-to-high *Aedes aegypti* abundance.

The cities with the highest potential risk include:

Miami, Orlando, Tampa, Jacksonville
and **Tallahassee** in **Florida**;
Savannah, Georgia; **Charleston, South**
Carolina; **Mobile, Alabama**;
and **New Orleans**.

The cities with moderate risk are cities along the eastern coastline, such as

New York, Philadelphia
and the **District of Columbia**,
and then across the country to
Kansas City, Oklahoma City
and **Houston**.



Spotlight On



Cavignac & Associates is proud to support local and non-profit civic organizations, including Workshops for Warriors.



Workshops for Warriors (WFW), is a State-licensed, board governed, fully audited, 501 (c) (3) nonprofit school founded in 2008. The mission of Workshops for Warriors is to provide quality training, accredited STEM educational programs, and opportunities to earn third party nationally recognized credentials to enable veterans, transitioning service members, and other students to be successfully trained and placed in their chosen advanced manufacturing career field.

Founder Hernàn Luis y Prado, a U.S. Navy officer with combat tours in Afghanistan and Iraq,

recalls, “I saw many of my fellow service members feeling lost with no path to a successful civilian life. I needed to change that.” Founded in 2008, Workshops for Warriors moved to its current facility on 2970 Main Street, San Diego in October 2011.

From 2011 to 2015, Workshops for Warriors trained 238 veterans and wounded warriors who qualified for more than 700 credentials, and obtained jobs in advanced manufacturing immediately after completing their programs.