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Comparing Project-Specific Professional Liability Solutions for Construction Projects

As construction projects continue to grow in size, complexity, and contractual interdependence, project participants increasingly seek insurance solutions that provide certainty of recovery and reduce the potential for lengthy multi-party litigation. Traditional reliance on individual corporate professional liability policies often results in fragmented claims handling, competing insurer positions, and inadequate limits. Project-specific professional liability policies were developed to address these challenges by creating dedicated insurance programs for individual projects.

The principle behind project-specific professional liability insurance is straightforward: rather than relying on multiple consultants, contractors, and design professionals to maintain separate insurance programs and defend claims through different insurers, a dedicated project policy is established to respond to professional liability losses arising from a particular project. This approach streamlines claims resolution, provides dedicated limits, and avoids exposing corporate insurance programs to project-specific losses.

One of the primary drivers behind the adoption of project-specific coverage is the relatively low professional liability limits carried by many design consultants. While large engineering firms

may purchase substantial corporate limits, many consultants maintain limits in the range of only \$2 million to \$5 million, which are shared across all projects and operations. Even firms carrying higher limits are often reluctant to expose their entire corporate insurance tower to a single project. As a result, project owners and contractors increasingly seek dedicated insurance structures that provide greater certainty and more meaningful protection.

Architects & Engineers Project Specific Professional Liability (A&E PSPL)

The original solution to this challenge was the Architects and Engineers Project Specific Professional Liability (A&E PSPL) policy. The A&E PSPL is designed to insure the design team only and responds to third-party claims arising from negligent acts, errors, or omissions committed in the rendering of professional services. It provides dedicated limits for the project and protects the consulting team from potentially catastrophic losses associated with large-scale projects.

Today, market capacity for A&E PSPL policies is generally available and, in many cases, increasing. These policies remain a common and effective solution for traditional Design-Bid-Build projects and are also utilized on Design-Build and Progressive Design-Build delivery models. However, the A&E PSPL structure has several limitations:

- Policy limits are typically inclusive of defence costs and other claim expenses. In complex construction disputes, legal and expert fees can be substantial and may significantly erode available limits before any indemnity is paid. Consequently, the amount ultimately available to compensate project stakeholders may be far less than the stated policy limit.
- A further challenge arises from contractual limitation of liability provisions. Many design firms seek to cap their liability to the amount of insurance available under the project-specific A&E policy. In practice, this can leave owners and contractors insufficiently indemnified where project losses exceed available insurance proceeds.
- Recovery remains dependent on establishing liability against the design consultants, which can be challenging, time-consuming, and often requires extensive expert investigation and analysis. As a result, these policies frequently create an adversarial claims environment, as the design team and its insurer are typically defending against claims brought by the contractor, despite the contractor often being the party that procured and paid for the project-specific policy.
- As the contractor is not an insured under the policy, coverage is limited to the design team's professional liability and does not extend to professional services performed by the contractor.

Contractors Professional and Protective Indemnity (CPPI)

To address contractors' exposures, insurers developed Contractors Professional and Protective Indemnity (CPPI) policies. Under a CPPI policy, the contractor is typically the Named Insured, although subcontractors may also be included where appropriate. Like the A&E PSPL, the policy provides third-party professional liability coverage arising from negligent professional services performed by the contractor or its design consultants. However, the CPPI expands significantly beyond traditional professional liability protection through the inclusion of Rectification Coverage and Protective Indemnity Coverage.

Rectification Coverage is perhaps the most valuable feature of the policy. It allows the contractor to correct defective work resulting from negligent professional services before a third-party claim occurs or before damages become significantly worse. The contractor can access insurance funds to mitigate the consequences of the negligent design and complete corrective work while the claim is investigated by

the A&E PSPL policy (or the individual consultant's corporate annual policy). This often results in faster project recovery, reduced disruption, and lower overall claim costs. Following payment, the CPPI insurer may pursue subrogation against responsible design professionals or their insurers. Importantly, the contractor is less likely required to fund all repairs while waiting years for a professional liability action to proceed through the courts.

Protective Indemnity Coverage provides an additional layer of protection by acting as excess or contingent coverage above a project's A&E PSPL policy (or less commonly, annual A&E policies). If the A&E policy limits are exhausted through payment of claims or defence costs, or if coverage is restricted by policy limitations or exclusions, Protective Indemnity can provide additional recovery for the contractor. As a result, CPPI policies create a more contractor-centric solution by addressing both liability and project remediation concerns. They are particularly well suited for projects where the contractor bears significant design responsibility, whether through in-house professional services or subcontracted design consultants.

While this structure provides the broadest protection and greatest recovery options for the contractor, it is often the most expensive solution if it requires the purchase of both an A&E PSPL and a CPPI policy.

Contractors Professional and Protective Indemnity Wrap (CPPI Wrap)

The most integrated project-specific solution is the Contractors Professional and Protective Indemnity Wrap (CPPI Wrap) policy. Under this structure, both the contractor and the design team are insured under a single policy. This can be attractive because it creates a unified insurance program with common limits and eliminates many of the disputes that can occur between project participants and their insurers. However, the structure contains a trade-off because the policy generally does not respond to claims made by the contractor against the design team.

Although CPPI Wrap policies provide third-party professional liability protection and rectification coverage, they rely heavily on rectification as the primary mechanism for addressing design-related deficiencies whether caused by the contractor or design team. This changes how professional liability claims are managed as early reporting and early insurer involvement are required.

While the policy provides rectification coverage for correcting negligent design, the contractor generally

cannot pursue delay damages, impact costs, cost overruns, or other consequential losses against the design team because both parties are insured under the same policy (extent of coverage may vary by insurer).

In many projects, the contractual framework continues to allocate these exposures to the design team. As a result, design firms may need to rely on their own annual professional liability policies to address consequential loss exposures or claims that exceed the limits available under the Wrap policy. In some cases, design firms may also choose to purchase a separate A&E Project Specific Professional Liability policy to protect their balance sheets and corporate insurance programs, which can reduce some of the cost efficiencies otherwise associated with the Wrap structure.

Despite these concerns, some design builders and consultants favour the CPPI Wrap model. These organizations are often supported by extensive in-house engineering expertise and are comfortable managing design risk collaboratively rather than through adversarial recovery actions. Others have experienced challenges recovering under traditional A&E PSPL arrangements and prefer rectification-based solutions.

Conclusion

There is no universally superior project-specific professional liability structure, and each project and its stakeholders have their own risk management approach and risk tolerance. A&E PSPL policies remain highly effective where the objective is to protect the design team and maintain traditional liability allocation. CPPI policies build on this foundation by providing powerful rectification and protective indemnity features that improve project recovery and provide additional financial protection for contractors. CPPI Wrap policies offer the most integrated approach but require project participants to accept reduced opportunities for inter-party recovery in favour of a collaborative, insurance-driven risk management model.

The optimal solution ultimately depends on project delivery method, contractual risk allocation, the sophistication of the contractor, and the desired balance between fault-based recovery and efficient project remediation. For many large and complex projects, the trend continues to move toward structures that prioritize rapid resolution of issues and dedicated funding for corrections rather than prolonged litigation among project participants.

The views expressed are based on the author's experience advising contractors, project owners, and design professionals on project-specific professional liability programs across Canada.



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