RT ENVIRONMENTAL & CONSTRUCTION PROFESSIONAL

Market Update

2025

Contents

Contact

RT SPECIALTY - HAMILTON
2465 Kuser Road, Suite 202
Hamilton, NJ 08690
609-298-3516

Or contact your local RT Specialty broker or underwriter.
RTSPECIALTY.COM

RT ENVIRONMENTAL & CONSTRUCTION PROFESSIONAL

Introduction

RT Specialty's Environmental and Construction Professional (RT ECP) team has dedicated the past 20 years to helping agents, brokers and their clients identify effective risk management solutions available within today's complex commercial insurance marketplace.

Our 2025 Market Update represents RT ECP's view of the environmental and construction-related professional liability insurance trends currently confronting this specialty niche. It also contains the collective knowledge of our RT ECP specialists, who were surveyed along with representatives of many of the nation's leading carriers to provide what we believe is an insightful look into the "state-of the-marketplace" and the conditions we feel are likely to impact this highly specialized field. Our goal throughout this annual recap is to provide information we hope will help the marketplace. The 2025 Market Update reviews strategies designed to overcome industry challenges and strategically protect against the risks that can potentially impair a business' bottom line.

Overall, RT ECP anticipates a continued increase in claims activity during 2025 across all of our coverage platforms due to the sustained increase in social inflation combined with continued restrictions in terms and conditions for environmental coverage in the standard market policy forms. RT ECP also expects continued erosion of limit capacity related to project-specific professional liability. As a result, we continue to closely monitor the marketplace and the potential availability of new coverage forms; changes to policy terms, conditions, and exclusions; and the increased scrutiny placed on specific claims areas by carriers.

As an example, here are some of the *insights and trends* highlighted within the 2025 Market Update:

Contractor's Pollution Liability (CPL)

Projects related to the 2021 Infrastructure Bill commenced in 2024 and will continue in 2025. Project-specific CPL policies are a nice alternative to practice policies for the joint ventures entities often created for these infrastructure projects. In 2025, we expect new entrants to the CPL market, mostly due to claims remaining low.

Pollution Legal Liability (PLL)

Coverage terms for PLL have been impacted in recent years by mold exposures, rising legionella claims, PFAS and more. PFAS exclusions continue to be added by more markets, while some exclude PFAS for only certain classes of business. In 2025, we expect demand for transactional and operational PLL to increase due to increased PFAS regulation.

General Liability / Pollution Legal Liability (GL / PLL)

In 2024, we saw carriers starting to restrict coverage and increase rates for certain classes of business, with a market or two planning to exit the market in 2025 for certain classes. As with PLL, GL / PLL saw some markets including PFAS exclusions. In 2025, we expect the impacts of emerging contaminants and class restrictions to continue.

Professional Liability (GL / CPL / PL)

GL / CPL / PL continued to experience double digit rate increases during 2024 for environmental contractors with heavier fleets, specifically on the Excess. In addition, carriers are restricting Excess capacity forcing placement of unsupported excess limits which correlates to further exacerbation of the overall program rate. We expect more of the same during 2025 as well as more carriers mandating the use of PFAS exclusions.

Architects and Engineer's Professional Liability (A&E PL)

The past few years have shown a moderate hardening, with carriers striving to balance their desire for rate increases with the need to maintain premium volume. We expect the market in 2025 to remain stable with wide availability of both admitted and non-admitted carriers.

Contractor's Professional Liability (CPrL)

2024 saw market capacity tighten for CPrL with regards to certain types of projects. Rectification / mitigation claims continue to be the primary area of claims activity. We expect inflation to remain a concern into 2025. We also expect the market will continue to be primarily focused on design / build projects during 2025.

Owner's Protective Professional Indemnity (OPPI)

The OPPI market has more than a dozen insurer's participating with various capacity. Pricing can vary significantly between markets and depends on construction value and type of project. We expect the popularity of this product to continue as alternatives become more expensive.

Real Estate Developers (RED) Professional Liability

Popularity of RED continues to grow with at least nine insurers offering standalone products, with average limit capacity of $5 million. In 2025, we expect more capacity to be deployed and at least one more entrant to the standalone RED marketplace.

CONTRACTOR'S POLLUTION LIABILITY

ENVIRONMENTAL & CONSTRUCTION PROFESSIONAL

Overview

Contractor's Pollution Liability (CPL) provides coverage for pollution conditions that occur as a result of covered contracting operations performed by or on behalf of the insured. The market readily affords an occurrence-based form to all contractors at all tiers. The standard CPL form typically includes the following coverages:

- Jobsite (contracting operations)
- Transportation
- Non-owned disposal site (NODS)
- Pollution Legal Liability (PLL) for owned / leased / rented locations
- Emergency Response to minimize a sudden & accidental pollution conditions

Many of the approximately 40,000 projects associated with the 2021 Infrastructure Bill commenced in 2024 and will continue in 2025. Due to the magnitude and complexity of these projects, the formation of special purpose joint venture entities will continue to be a popular trend, with such entities electing to purchase project-specific CPL policies. Such policies remain an attractive alternative solution to utilizing annual practice policies, especially for those projects that require substantial limit of liability, a notable construction duration, and / or a prolonged completed operations period. Project-specific programs can be structured to include an owner-controlled insurance program (OCIP) or contractor-controlled insurance program (CCIP) endorsement, providing coverage to all contractors at all tiers. Finally, such policy terms can span 15 to 20 years once the active construction duration and completed operation period is included.

Risk Tip

Contractors should consider PFAS exposures, such as airports, bulk fuel terminals, old manufacturing / Brownfield sites, etc. when electing to bid projects in 2025. Recent federal regulations governing such chemicals increase liability to the contractor, especially high-risk projects within the remediation, utility, civil, and / or water treatment sectors.

2025 Outlook

New carriers are expected to enter the CPL market in 2025 predominantly due to claims remaining low in frequency / high severity. With that in mind, we expect several carriers will continue to offer up to $50 million per claim / aggregate limits. Excess limits are generally not a concern and largely contingent on project type. Premium rates are likely to remain stable in 2025 when compared to the past 5 years.

Compromised indoor air quality - typically in the form of mold, fungus, lead, asbestos – will likely continue to be the leading source of CPL claims. Projects that include an exposure to wood-frame, single family homes, and per- and polyfluoroalkyl substances (commonly known as PFAS / PFOA / "Forever Chemicals") will continue to experience heightened levels of underwriting scrutiny. Carriers may consider higher rates, reduce the available limit of liability, increase retentions, and / or restrict the insuring agreement to a claims-made trigger for these higher-risk exposures.

Markets will continue to monitor how recent changes to federal regulations surrounding PFAS compounds will impact construction activities, especially within the remediation, utility, civil, and water treatment sectors. Although PFAS exclusions remain uncommon within the CPL market, this will be closely monitored in 2025 as such exclusions gained traction within the General Liability and PLL markets within the past 12 months.

POLLUTION LEGAL LIABILITY

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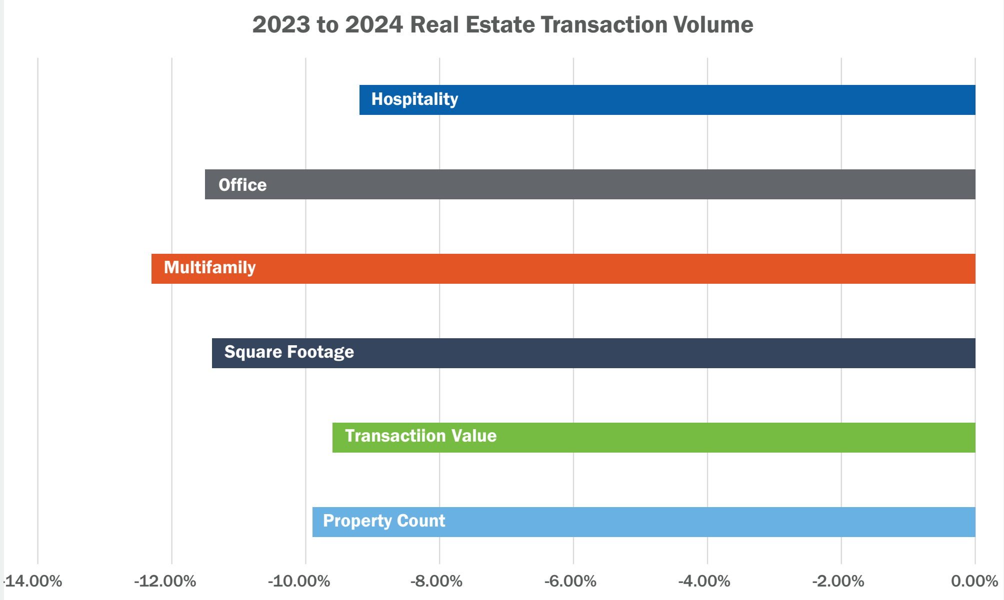
Overview

Pollution Legal Liability (PLL) continues to function as one of the primary risk management / insurance tools designed to facilitate contaminated property transactions and buoy the balance sheets of large real estate assets. Typical PLL coverage benefits apply to virtually every industry that owns, leases, acquires or divests real estate. This claims-made coverage, in our experience, consistently manages the on- and off-site clean-up / remediation expenses; third-party bodily injury, property damage; and defense expenses associated with industries including Commercial / Habitational Real Estate; Manufacturing; Healthcare; and Education to name a few.

The latest trends in United States real estate transaction volume show a decline in activity.

According to the Q3 2024 report from Altus Group, national transaction activity saw a 10.0% decrease in property count, a 6.6% drop in transaction value, and a 3.8% reduction in square footage compared to Q2 2024. Year-over-year, from Q3 2023 to Q3 2024, there was a 9.9% decline in property count, a 9.6% decrease in transaction value, and an 11.4% drop in square footage. Some specific sectors experienced more pronounced declines, such as multifamily (-12.3%) and office (-11.5%), while the hospitality sector saw an increase of 9.2% in transactions.[1]



Coverage terms have likely been impacted in recent years by the types of risk and a combination of high-profile mold exposures, rising legionella claims, natural disasters, contaminated site development claims and the growing focus on emerging contaminants such as per- and polyfluoroalkyl substances (commonly known as PFAS / PFOA / "Forever Chemicals"), which continue to be reviewed Federally with regards to setting regulatory standards. PFAS exclusions continue to be deployed by an increasing number of markets, continuing the trend that began in the second half of 2023, with several markets adding total PFAS exclusions on all renewals and new business. Other markets continue to exclude PFAS only for certain classes of business including airports, municipalities, and legacy manufacturing sites. As the market continues to gauge their response to this emerging contaminant, some carriers have begun to provide limited coverage where the proper data can be provided, although this approach was not widely used over the past year.

Markets also continue to restrict term length for policies providing mold coverage for specific classes, including habitational and hospitality. Longer terms are still available, depending on class; however, this can result in split terms with new conditions coverage still being restricted to the three-year term for the higher risk classes. Ten-year terms for transactional business continue to be available.

In our experience, coverage enhancements such as contingent business interruption, defense outside the limits, and first-party diminution of value continue to be readily available for inert real estate portfolios. As we move into the post-pandemic era, we are also seeing more markets beginning to offer limited disinfection coverage on non-target classes. The moratorium on this coverage remains for most healthcare classes, especially those that are true hospital systems. Several markets can also provide clean-up coverage for known pollution conditions for lenders requiring PLL. Indemnity triggers are sometimes used to address the known pollution conditions identified in contaminated property transfers.

2025 Outlook

RT ECP expects the demand for transactional and operational PLL to increase going into 2025 due to increased regulatory scrutiny and stricter environmental regulations regarding PFAS and other pollutants. Businesses are seeking more comprehensive coverage to protect against these potential liabilities.[2] Although we anticipate increased frequency of various pollution losses to continue to impact the marketplace, we expect the market to remain competitive due to a continued influx of new markets. This is also expected to broaden the risk appetites of these markets, allowing for a broader range of businesses to obtain PLL. The increasing frequency of climate-related disasters is also prompting companies to enhance their risk management strategies, including obtaining PLL insurance to cover potential pollution incidents.[3] We continue to monitor the approach to PFAS in the marketplace, as well as the resurgence of disinfection coverage becoming more readily available. We expect policy terms to remain consistent throughout 2025 with a maximum term of 10 years. We also anticipate prospective / ongoing coverage to remain in the one- to three-year range with the occasional five-year term.

Risk Tip

Given the dynamic nature of PLL portfolio policies, an effective way to manage scheduling of new properties is through the addition of an Automatic Acquisition endorsement, which typically outlines the criteria needed to automatically include new locations in a PLL policy. Also, the endorsement can specify set rates for different property types, which can be highly beneficial for insureds when estimating the insurance costs of adding new properties to their coverage.

1. https://www.altusgroup.com/featured-insights/cre-transactions/
2. https://www.risk-strategies.com/state-of-the-insurance-market-report-2024-initial-outlook-enviromental-liability
3. https://insurtechdigital.com/articles/what-will-environmental-insurtech-look-like-in-2025

GENERAL LIABILITY / POLLUTION LEGAL LIABILITY

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Overview

During 2024, the combined Pollution Legal Liability (PLL) (claims-made) and General Liability (GL) (occurrence) policy forms continued to be the go-to solution for facility-based risks with environmental exposures for insureds' products, sites and processes. The form blends ISO-similar GL language along with PLL and may include other environmental coverages including contractor's pollution, products pollution, transportation pollution, and non-owned disposal / location coverage all in a single non-auditable form (from most markets). Originally intended to provide focused coverage to chemical manufacturers, distributors, waste management facilities, and other manufacturers of "environmental" products, the marketplace has continued to expand its ability to entertain additional classes considered as new entrants to the marketplace to continue to push the product appetite toward higher hazard General Liability classes. With that said, 2024 saw, for the first time in several years, carriers starting to restrict coverages and increase rates for certain classes of business, and toward the end of 2024, one or two markets unveiled plans to exit specific classes of business (i.e., recyclers) altogether in early 2025.

Per- and polyfluoroalkyl substances (commonly known as PFAS / PFOA / "Forever Chemicals") exclusions became more common as the year progressed, with several markets including full PFAS exclusions. The ability to carve-back PFAS coverage for bodily injury or property damage, and products pollution, continued to require significant additional information and coverage grants were not guaranteed. In addition, without environmental due diligence, securing PLL coverage without a retroactive date or even gradual new conditions coverage, continued to be a challenge in 2024. We anticipate the approach to coverage for this emerging contaminant will not change in 2025.

GL / PLL rates stabilized through 2024; however, automobile and excess rates continue to be challenged. In addition, most carriers began retracting excess capacity as the year progressed, with many cutting their follow form or unsupported excess limits by 50% and charging close to, if not the same, premiums as the expiring full limit. This meant an overall premium increase (primary and excess) for insureds requiring specific limits (i.e., contract requirements). In addition, carriers began taking a harder line with withholding binders and policies without satisfying their subjectivity requirements.

Concerns continue over rising litigation of claims, costly effects of natural disasters (hurricanes / wildfires / convective storms), start-up companies, and social inflation, which has not abated in its impact on the economy. Auto coverage and its impact overall via nuclear verdicts has not diminished and the continued driver shortage remains as a noteworthy element to aiding insureds in controlling losses.

2025 Outlook

In 2025, RT ECP anticipates the impacts of emerging contaminants, class restrictions, as well as restricted PLL coverage and excess capacity to continue. For profitable accounts, we expect rates to range from flat to 5% to 10% increases depending on if excess is provided or not. We also anticipate higher rate increases for accounts with elevated loss ratios. We expect higher rate increases on Automobile and Excess coverages to continue in 2025.

Risk Tip

For higher hazard exposures, (i.e., manufacturing, chemical manufacturers / distributors, and recyclers), attention should be paid to the site pollution or PLL coverage provided. Carriers treat PLL coverage differently, with some providing sudden and accidental coverage only, while others provide sudden and gradual coverage with coverage trigger restrictions (i.e., third-party clean-up triggers). In other words, all PLL coverage is NOT the same in these forms and attention should be given to the type of coverage provided to avoid any "misunderstandings" or worse, in the event of a claim.

GENERAL LIABILITY
CONTRACTOR'S POLLUTION LIABILITY
PROFESSIONAL LIABILITY

RT ENVIRONMENTAL & CONSTRUCTION PROFESSIONAL

Overview

The combined Environmental Casualty Program typically provides General Liability (GL), Contractors Pollution Liability (CPL), and Professional Liability (PL) to specific market segments consisting of environmental contractors e.g., asbestos / lead / mold abatement, crime scene cleanup, emergency response, tank installation and removal, industrial cleaning & hygiene, vapor control & degassing, waste transporters, environmental consultants (Phase I & II reports), oil & gas, renewable energy contractors such as solar, and / or some combination thereof. These policies are typically written for an annual term and continue to be offered, depending on the carrier, on a flat and non-auditable basis. During 2024, very limited distribution continued to exist for environmental casualty markets who can offer complementary coverage such as Workers' Compensation and / or Automobile Liability.

The marketplace has seen several new entrants for smaller or program type business via MGA / MGUs with a focus on technology efficiencies for specific classes to expand and gain market share. Additionally, many markets offer "out of the box" programs for the smaller, traditional remediation and environmental type contractors. Several casualty markets are looking for ways to capitalize on the newer and evolving technologies and broadening their appetite classes (i.e., solar contractors who perform commercial work only).

Risk Tip

To qualify for GL in the environmental casualty marketplace, the prospect must perform at the bare minimum of this threshold percentage to qualify for a combined form GL / CPL / PL policy. Ask your clients for the maximum value of customer property that they take into their possession during busy season to determine recommended bailee's limits for fire / water restoration contractors.

Double digit rate increases have become commonplace for environmental contractors with heavier fleets especially on excess liability policies. This has resulted from nuclear verdicts and the limited driver pool, as the underlying auto line continues to struggle with losses. Excess limit capacity continues to shrink making pricing adequacy more difficult every day. However, a few environmental markets continue to charge for every single transaction on the policy (i.e., adding named insureds, notice of cancellations) and are less willing to make changes or broaden coverage. The marketplace is also reluctant to deploy limits greater than $5 million on their excess policies as many of the markets with an A- rating typically have only this much capacity available whereas even mature, higher rated markets are pulling pack capacity on an account-by-account basis

GL / CPL / PL generally provides GL and Excess Liability for fire / water restoration contractors. Distribution for this class of business continues to shrink compared to environmental contractors and consultants. Among the select handful of carriers, only a few can offer complementary coverage such as Workers' Compensation and Automobile Liability. Bailees Customer's Coverage is also available as a supplementary coverage part attached to the environmental casualty program from markets who target fire / water restoration. This is worth noting as these customers tend to take the customer's property into their possession when remediating water, fire, or mold losses. Direct repair networks or third-party administrators fill fire / water restoration contractors' pipelines by assigning jobs to these contractors across the country. These networks work for numerous insurance companies promising their clients that every contractor has minimum insurance, certifications, and other items.

RT ECP has noticed a relaxed approach with carriers more willing to deploy professional liability without limitations or designated operations and anticipate this continuing in 2025. The markets are becoming more mature and want to compete with the few carriers writing in the fire / water restoration space.

2025 Outlook

In 2025, we anticipate excess capacity shrinking even further and PFAS exclusions becoming mandatory due to reinsurance constraints regardless if exposure is present or not. We also expect carriers to continue to protect their loss ratios by limiting higher limits and tolerance for the frequency of claims or large severity losses. The excess liability market is still strong with carriers willing to put up towers, but more carriers need to be involved to get to higher limits as primary lead carriers are shrinking limits they are willing to deploy. Max capacity from one market is $10 million on the excess in most situations. We expect carriers to continue to scrutinize auto at every turn in addition to large fleets and excess rates as a result. We expect small increases of around 5% or less to continue for better performing contractors and continued rate push (10-15%) on poor performers. Residential continues to be a tougher class of business similar to New York work. We expect the typical coverage forms to remain conservative with many carriers carefully deploying limits and rewriting policy language to be less broad due to nuclear verdicts becoming the norm.

ARCHITECTS & ENGINEERS PROFESSIONAL LIABILITY

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Overview

Architects and Engineers Professional Liability (A&E PL) policies are typically written to insure professional service firms against third-party claims alleging damages resulting from the performance, or failure to perform, professional services. Such policies may be issued to a variety of firms including architects, engineers, environmental consultants, Agency Construction Managers, and surveyors. Coverage is typically secured on an annually renewable or "practice" basis, but some carriers can accommodate project-specific professional liability programs independent of a practice policy. S&P Global estimates that roughly one in eight professional liability placements are handled by the E&S marketplace.[1]

The American Institute of Architects (AIA) released their most recent report detailing architectural billings for the past 12 months in October 2024.[2] This report is known as the Architectural Billings Index (ABI) and serves as a leading economic indicator for construction activity broken down by both Regional and Market-Sector Categories. The October report confirmed:

1. Hesitant optimism among design firms, with roughly 40% of respondents expecting at least modest increases in billings for 2025 compared to 2024 and 33% expecting little or no change to their expected billings.[3]
2. Design firms specializing in institutional projects such as schools, universities, hospitals, and other projects intended for public use, have generally reported stronger billing trends than firms holding specialization in other project classifications.[3]

2024 has seen a continuation of several market trends specific to the A&E PL marketplace:

1. Continued inadequate professional liability limits ($2M or less) for Civil, Geotechnical and Structural Engineers according to a 2023 survey by the American Council of Engineering Companies (ACEC)
2. Profitability remains a top concern given the presence of social inflation and increased claim costs, incentivizing carriers to deploy capacity judiciously and seek rate where possible.
3. Substantial demand for project-specific professional programs remains, with relatively few market players able to consider true project-specific programs and affirmatively name all design participants to a single policy.
4. Distribution channels are in a state of flux, with several carriers withdrawing from the marketplace and other carriers withdrawing from difficult jurisdictions, such as FL. This has created potential disruption for those utilizing MGUs and MGAs to access certain A&E PL programs. Other carriers have amended their partnership strategies, shifting focus from retail to wholesale distribution.

Risk Tip

Ensure the A&E PL policy responds to the discovery of a design defect before a third-party claim is brought? While most A&E PL policies provide some degree of pre-claims assistance, several carriers can grant affirmative coverage for costs needed to rectify a design defect so that a third-party claim can be avoided. Design professionals should consider this enhancement to reduce the potential for third-party claims.

2025 Outlook

In 2025, RT ECP expects stable market conditions for A&E PL. Despite modest pressure for rate, engineers, architects, and other professional service firms should enjoy a healthy marketplace with access to a variety of carriers. However, capacity restrictions may complicate renewal efforts, necessitating multiple carrier participants to achieve the necessary limit deployment; agents and brokers should take a proactive approach to A&E PL renewals to address the above sources of friction.

[1] https://www.spglobal.com/marketintelligence/en/news-insights/research/us-e-s-insurance-market-report-growth-slows-for-excess-and-surplus-market

[2] https://www.aia.org/sites/default/files/2024-11/AIA%20ABI%20October%202024.pdf

[3] https://www.aia.org/sites/default/files/2024-11/AIA_2024_firm_survey_report_Infographic.pdf

CONTRACTOR'S PROFESSIONAL LIABILITY

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Overview

[Contractor's Professional Liability (CPrL)](#) is designed to provide coverage for damages arising from negligent acts, errors, and omissions in professional services performed by or on behalf of any construction firm. The typical CPrL form includes a Professional Liability insuring agreement along with two first-party insuring agreements: protective indemnity and rectification / mitigation.

For Q1 and Q2 of 2025, we expect that eyes will continue to be on interest rates and inflation metrics, which have impacted residential and commercial segments throughout 2024. As artificial intelligence and advanced computing components make their presence felt across various industries, data center construction is likely to experience an uptick.Overall construction spending in 2025 is expected to slow to a 2% increase vs. 7% growth in 2024. Manufacturing construction represented nearly a quarter of 2024 spending in the non-residential sector with declines in demand for downtown office space leading to a decline of 26% since 2022.[1]

While insurance carriers have been hinting at a desire to capture rate on construction-related risks for the last few years, the number of players in the marketplace has kept rate very competitive. Certain types of projects such as process engineering and heavy civil construction as well as design / build project delivery method projects, have continued to receive extra scrutiny from underwriters. Alternatively, general trade contractors and commercial general contractors continue to be desirable risks where carriers have been aggressive with premium and consistently consider rate decreases upon renewals.

Market capacity tightened over the course of 2024, particularly with respect to certain types of projects and project-specific policies. A few markets have limited their exposure, providing opportunity for other markets to serve as excess options. On this project-specific front, carriers continue to take a closer look at in-house design experience and responsibility, subcontracted design teams and their insurance limits, length of projects and contractual language.

Claims drive the industry. Rectification / mitigation claims continue to be the primary area of claim activity addressed by carriers in discussions about recent loss experience. The full extension of limits as to rectification / mitigation has not yet been impacted by this trend. Whereas within the last few years such claims were newer to the industry, the consistency within which this type of claim has been seen has led carriers to implement plans to promptly address and evaluate claims, hold discussions with insureds as to what occurred and what remedy may be available, and even to engage outside entities to help assess and address such claims. Insureds acting without carrier approval to rectify potential claims of this nature is a problematic concern worthy of discussion with all insureds who have rectification / mitigation included as part of their CPrL program.

Risk Tip

The definition of "professional services," which serves as the trigger for Professional Liability coverage, is not standardized. For example, a construction manager would want to be sure that construction management was part of the definition. What is included in this definition, and maybe more importantly, what is not included, can sway the value of a given CPrL program.

[1] https://www2.deloitte.com/us/en/insights/industry/engineering-and-construction/engineering-and-construction-industry-outlook.html

CONTRACTOR'S PROFESSIONAL LIABILITY

2025 Outlook

Inflation is likely to remain a concern moving into 2025 and has been at the forefront of carrier minds for multiple years. The CPrL market continues to be impacted most by carrier focus on design / build projects. 2024 brought about more use of the funds from the 2021 Infrastructure Bill and this should continue. Project-specific limit capacity could force excess participation at lower limit levels, but overall appetite remains the same with heavy civil construction carrying a higher rate than standard commercial projects. Condominium projects will continue to receive additional scrutiny with many markets restricting their appetite for such projects, while others have shown a willingness to be creative but attaching higher rates with this project type. The appetite for emerging alternative energy risk has been a focal point in discussion with carriers, solar roofing being a clear pain point for select markets while seen as an opportunity for others. Attention to design services and knowing that green-focused homebuilding, office building, and warehousing projects are likely to become more prominent as technology permits, make it even more important to focus on definitional wording as to "professional services" within CPrL policies.

OWNERS PROTECTIVE PROFESSIONAL INDEMNITY

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Overview

Owners Protective Professional Indemnity (OPPI) is a go-to risk transfer solution for project owners and developers looking for added protection against costly Professional Liability (PL) errors.

OPPI provides a broad excess layer of protection over all construction related professional services performed on a project. This includes services of architects & engineers (A&Es), construction managers, general contractors, design / build contractors and subcontractors whose scope includes even minor professional services. OPPI also typically provides a defense against third-party claims made against the insured alleging damages caused by professional services related to the insured project. Contractors Pollution Liability (CPL) can also be provided as part of the OPPI program.

OPPI has many benefits when compared to alternatives like project-specific professional liability solely for the design team. OPPI allows the owner to accept the PL limits available from participating A&Es and construction professional firms without requiring increased limits. OPPI is then placed as excess, with the owner as Named Insured, over all underlying PL policies.

Relying on the annual practice policies of A&Es and other construction professionals should be carefully considered by the risk management team. Damages from project delays or cost overruns can significantly outweigh the available PL insurance. To improve protection, it is common to require A&Es and construction professionals to increase practice policy limits for a specific project. The logistics of managing this process for multiple professionals combined with the added cost through the project risk life cycle often leads to OPPI be the preferred solution. Alternatively, project-specific PL policies for A&Es have become extremely expensive, another benefit of the OPPI policy.

A typical policy provides a retroactive date back to the start of design, a policy period that matches the construction schedule and includes an Extended Reporting Period (ERP) aligning with the applicable state statute. From the retroactive date to the end of the ERP is often close to 15 years.

> The OPPI marketplace remains competitive with more than a dozen insurer's willing to participate in various capacity. Economical solutions can be found for almost any type of project. Condominiums, however, remain difficult especially in coastal locations. Industrial manufacturing and process related projects can be difficult as well. Underwriting around complicated projects is creative. This flexibility has proven beneficial with the increase in multi-phase mega projects that stagger starts over an extended period.

With the popularity of OPPI, some markets must manage aggregation. Markets may limit participation in an OPPI when they already insure the underlying PL policy program. The increase in market participants has eased the concern.

Variation in pricing can be significant between markets depending on the overall construction value and type of project, along with the terms agreed upon in the owner agreement. Submission requirements have become more stringent as applications completed up front along with project schedules, budget, environmental reports, and prime contracts are needed to secure formal terms.

2025 Outlook

The outlook for 2025 is positive. OPPI has proven a valuable tool to help the ownership team manage risk. We expect the product's popularity to continue especially as alternatives become more expensive.

Risk Tip

It's prudent to evaluate Limitations of Liability (LOL)provisions with design professionals. LOL can interfere with the availability of the underlying limits and recovery by the insured due to the fact that OPPI policies typically pay for damages the Insured (under the OPPI) is legally entitled to recover from the design professional.

REAL ESTATE DEVELOPERS PROFESSIONAL LIABILITY

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Overview

Real Estate Developers (RED) Professional Liability is designed to protect against the covered losses arising from negligent acts, errors and omissions committed during the performance of real estate development professional services. RED policies generally combine the features of professional liability insurance for design professionals, contractors, real estate professionals and owners into a broader solution that can be customized for real estate developers. This includes those with ownership, firms providing services to third-party investors, or sophisticated real estate developers and owners looking for comprehensive risk management programs. The coverage can be structured on a corporate-wide or project-specific basis.

The popularity of RED Professional Liability continues to grow, particularly as interest rates stabilize and new commercial development activity increases. Since its introduction in 2009, the RED market has expanded to at least nine insurers offering standalone products as well as numerous other construction and miscellaneous professional liability carriers providing coverage on an ad hoc basis through a variety of professional liability product vehicles. Primary players, in our experience, report an average limit capacity of $5 million with ease of structuring follow-form excess layers offered via other carriers.

Many of these carriers are:

- Expanding the first-party coverage features commonly found within the contractor's professional liability arena including protective indemnity and rectification terms and conditions with each carrier having their own slightly different take on the coverages.
- Offering more expansive contractors pollution liability coverage for those developers with in-house construction and general contracting operations
- Customizing their nuanced professional services to accommodate the individual needs of clients, including some considering Real Estate Fund E&O insurance.
- Following the lead of construction professional liability insurers by becoming more selective about certain residential and renewable projects, as well as the project delivery methods they cover.

Risk Tip

Coverage details are critical when considering the combination of multiple professional liability programs into a single real estate developers E&O program. Consideration must be given to continuity of retroactive dates, breadth of policy definitions (i.e., an accommodating definition of professional services) and even the mechanics of canceling / rewriting incumbent programs.

2025 Outlook

The RED Professional Liability insurance market is starting to stabilize, mirroring the overall real estate industry with the interest rate environment starting to encourage additional engagement, project selection and insurance placement decisions. We see a limited RED market for project-specific placements and markets being more conservative on project types like residential and renewable energy. On the other hand, we have seen movement of underwriting talent among new carriers with plans of bringing more capacity looking to be deployed in 2025 with at least one new market entrant pursuing a standalone RED product. We see increased demand in the RED marketplace, as more and more investors and lenders are requiring this coverage. Going forward, we expect developers to continue to consider the cost / benefit of a more conservative "pay as you go" approach that utilizes project-specific RED and OPPI placements for new projects compared to those that favor a more consistent practice wide placement for development, property management, and leasing.

As such, we anticipate that long-term risk managers will continue to invest in more expansive, practice-wide RED programs or explore rolling project-specific placements.

Throughout 2024 we saw insureds combine separate A&E and Real Estate Professional Liability programs into more cohesive RED insurance programs, realizing generally broader coverage and additional cost efficiencies. We expect this trend to continue well into 2025.

Education on key issues (exposures, claims, coverage, program structure, transition from more limited coverage offerings, etc.) will continue to play an important role in the development of this insurance line. Value continues to be emphasized when assessing the sophistication of the carriers' claims response. We anticipate the need for diligent policy review and coverage assessments to remain important in the coming year given the marked coverage disparities that exist among the various standalone RED and miscellaneous professional liability carriers. We expect claims trends to continue to be severity driven, yet generally favorable across the industry. Despite a retrenchment in the FI market over the past few years, we have seen at least one market introduce a real estate fund E&O product as a compliment to their RED product. While time will tell as to the efficacy of this approach, it provides yet another consideration for developers as they manage risk.

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Contact

RT SPECIALTY - HAMILTON
2465 Kuser Road, Suite 202
Hamilton, NJ 08690
609-298-3516

Or contact your local RT Specialty broker or underwriter.

RTSPECIALTY.COM