



1



2

## Legal Notice

*Information provided by Berkley Construction Professional is for general interest and risk management purposes only and should not be construed as legal advice nor confirmation of insurance coverage. As laws regarding the use and enforceability of the information contained herein will vary depending upon jurisdiction, the user of the information should consult with an attorney experienced in the laws and regulations of the appropriate jurisdiction for the full legal implications of the information.*

*Practice management recommendations should be carefully reviewed and adapted for the particular project requirements, firm standards and protocols established by the construction professional.*

*Products and services described above are provided through various surplus lines insurance company subsidiaries of W. R. Berkley Corporation and offered through licensed surplus lines brokers. Not all products and services may be available in all jurisdictions, and the coverage provided by any insurer is subject to the actual terms and conditions of the policies issued. Surplus lines insurance carriers do not generally participate in state guaranty funds and insureds are therefore not protected by such funds.*

© 2025 Berkley Construction Professional 3

3

## Presented by



**Edward L. Sheffele, Jr.**  
Executive Vice President

- 30 years of experience underwriting construction professional and environmental liability insurance
- Industry leader in CPPL insurance
- Authored several construction professional and environment liability articles



**Andrew D. Mendelson, FAIA**  
EVP, Chief Risk Management Officer

- Licensed Architect, firm principal
- 36+ yrs experience, large firm A/E
- PM, Market Leader, Contracts, CFO, Director of Practice Management
- AIA Documents Committee 2003-2017
- LFRT Legal Subcommittee 2000-2010
- ACEC Risk Management Committee 2014+
- Risk+Project+Practice Management = Firm Success

© 2025 Berkley Construction Professional 4

4

## Presentation Outline

- History of Professional Coverage for Construction Projects
- What is Protective Professional Indemnity Coverage?
- Additional Benefits of Protective Indemnity Coverage
- Coverage Enhancements
- Current Events and Trends
- Questions

© 2025 Berkley Construction Professional 5

5



6

## History of Professional Coverage for Construction Projects

### Contractors

- Limited purchasing of Professional Liability (PL) by GCs and CM-At Risk with exception of very large firms with robust Risk Management
- Entities that had responsibility for A&E exposures (i.e., in-house Design or involvement in Design/Build project delivery method) purchased PL coverage, especially if there was a Guaranteed Maximum Price component to the project



© 2025 Berkley Construction Professional 7

7

## History of Professional Coverage for Construction Projects

### A&Es

- Robust market of PL carriers that provided both annual and project-specific (PSPL) coverages

### Project Owners

- Focus more on A&E's PL limits than a Contractor's
- Traditional reliance on A&E's annual PL limits



© 2025 Berkley Construction Professional 8

8

## Need for Project Specific A&E Policy (PSPL)

### Design Team Initiated

- A&E
  - May not be comfortable exposing annual policy limits for the specific project
- Contractor (i.e., Design/Build Contractor) / Project Owner
  - Wants a dedicated limit for the specific project

### Benefits

- YES
- Not so much but WHY?

© 2025 Berkley Construction Professional 9

9

## Benefits of PSPL Purchased by Contractor or Project Owner

- ☒ Separate limit for the project
- ☒ Premium solely born by Contractor or Project Owner
- ☒ Contractor or Project Owner has no insurable interest in policy
- ☒ Contractor or Project Owner must bring suit against PSPL to recover loss
- ☒ Limit of Liability of PSPL eroded by defense costs in defending claim made by Contractor or Project Owner
- ☒ Once PSPL limit is exhausted, Contractor or Project Owner has no other recourse

© 2025 Berkley Construction Professional 10

10

## Question?

Is there professional coverage available that protects the contractor or project owner if?

- There is no interest in purchasing PSPL policy for the A&E/Design Team?
- They want access to refreshable annual A&E limits?
- Coverage is for more than A&E/Design team professional limits?

## Answer

- Professional Protective Indemnity Coverage

© 2025 Berkley Construction Professional 11

11



12

## What is Professional Protective Indemnity Coverage?

- 1st party coverage that indemnifies the Contractor or Project Owner only
- Arises out of negligent act, error or omission in the rendering or failure to render Professional Services by a 3rd party subcontracted professional (Responsible Entity)
  - Responsible Entity is not just licensed design professional
- Contractor or Project Owner must bring suit against Responsible Entity in order to trigger coverage
  - Cost to bring suit against Responsible Entity is not covered

© 2025 Berkley Construction Professional 13

13

## What is Professional Protective Indemnity Coverage?

- Excess over Responsible Entity's collectable professional liability insurance (Recoverable Insurance)
  - Recoverable Insurance is typically annually renewable insurance
- SIR may apply to access coverage
- Contractor's or Project Owner's own limit sits excess over Recoverable Insurance
- Drops down or becomes "primary" if Recoverable Insurance is eroded or exhausted (with no attachment point)
- Difference-in-conditions (DIC) coverage enhancing the aggregate pool of insurance proceeds available
- Allowance for Limitation of Liability must be acknowledged

© 2025 Berkley Construction Professional 14

14

## Simple Claim Scenario

- Insured hires Surveyor to map out project site boundaries
- Surveyor carries \$1M/\$1M in PL insurance limits
- Surveyor makes a mistake (i.e., professional negligence) in its work
- Insured incurs \$3M in additional expense to fix the mistake
- Insured brings suit against Surveyor and recovers \$1M of its expense
- Insured's Protective Indemnity coverage indemnifies Insured for \$2M XS \$1M recovered expense based on substantiated loss amount

© 2025 Berkley Construction Professional 15

15



16



## Covers Broad Spectrum of Professional Services

- Coverage is not restricted to prime architect or direct subconsultants
- May apply to construction manager or other professionals in contract with owner/contractor (or any other insured entity)
- Delegated design or management liability of construction entities is now insurable



© 2025 Berkley Construction Professional 17

17

## Covers Broad Spectrum of Professional Services

- Blanket Versus Project-Specific Coverage
- Premium savings based on reliance of A&E's annual practice limit versus paying for PSPL
- Access to annually renewable PL limits
- Paying only for your own coverage
- Coverage or limit may be broader on A&E's practice program as compared to the PSPL (in which case owner/contractor incurs liability not present if they left A/E insurance alone)

© 2025 Berkley Construction Professional 18

18

## Project Considerations

- Ability to work with highly specialized A&Es that carry limited to no PL insurance
- Certain projects that demand substantial and meaningful minority or disadvantaged business participation is allowable
- Certain challenging projects or work may limit pool of talent
- Finding a good fit for your project is now a question of capability and dedication, and not underlying insurance limits



© 2025 Berkley Construction Professional 19

19

## Moving Forward

- Insured's carrier will work with Insured in good faith because Insured controls the relationship
- Insured may not be well served by design firms concerned about undertaking the project risk and demanding PSPL protection (consider adverse selection in this instance)
- Substantial erosion of PSPL limit of liability due to united defense approach against Insured
- Market and capacity for A/E project insurance is unstable

© 2025 Berkley Construction Professional 20

20



21

## Current Enhancements

- Broader Professional Services
- Contractual Privity (No Longer Required)
- No Minimum SIR to access coverage
- No underlying PL coverage = No coverage
  - Utilization of SIR to replace missing PL coverage
- Protective Contractor Pollution
- Automatic allowance for Limitation of Liability if tied to insurance proceeds



© 2025 Berkley Construction Professional 22

22

## Proactive Resolution

- Insured must follow prosecution of Claim required under Protective coverage
- Undisputable substantiation (excess of Recoverable Insurance) of:
  - Liability of Responsible Entities; and
  - Value of Protective Loss
- Refusal of Responsible Entity or representatives of Recoverable Insurance to settle your substantiated claim
- Payment portion of loss in excess of available collectible Recoverable Insurance



© 2025 Berkley Construction Professional 23

23



24

## Current Trends & Events

- A&E Market has turned
  - Limited annual practice limit offering
  - Reduced market appetite for PSPL
- Contractors utilizing a Design/Build project delivery method for Heavy Civil Infrastructure projects are accepting PSPL again due to loss experience in this area; and A&Es wanting to protect their practice programs
- Heavy Infrastructure Project Owners are beginning to purchase their own Protective policies
- Mitigation/Rectification Coverage

© 2025 Berkley Construction Professional 25

25

## Why Berkley Construction Professional?

- Most experienced underwriting professionals and originator of the protective product
- Nationwide underwriting contacts
- Dedicated and experienced outside legal and claim consulting professionals
- Flexible underwriting approach
- Solid financial standing
- Stability and leadership



*A policy you won't need a magnifying glass to read!*

© 2025 Berkley Construction Professional 26

26

## Visit our Website:

BCP is solely dedicated to serving the professional and pollution liability insurance needs of the construction industry



<https://berkleycp.com/risk-management>

BCP is at the forefront of educating and identifying potential professional liability hazards of the construction industry and providing innovative solutions to the industry

### Claim Scenarios



These claim scenarios provide insight into instances where a claim may occur and the lessons learned

At A Glance Claim Scenarios

© 2025 Berkley Construction Professional 27

27

## Questions?

Andrew D. Mendelson  
EVP, Chief Risk Management Officer  
AMendelson@berkleyalliance.com  
312.340.3475

Edward L. Sheiffele, Jr.  
Executive Vice President  
ESheiffele@berkleycp.com  
973.775.7492

28