

## **OVERVIEW**

Property owners and prime contractors have become increasingly aware of the need for limits of liability dedicated to their project. Without project specific limits, the majority of all contractors and consultants evidence a blanket annual aggregate limit that covers all work performed in the course of a year. Owners and prime contractors may not get adequate protection for their exposure because the contractor's policy limit of liability is shared with other projects.

Additionally, many large projects will have multiple contractors due to logistics, size and project phases. These scenarios lead to probable coverage differences in the various policies contractors provide. Some contractors may be uninsured for asbestos and lead or other environmental exposures.

Under the construction contract, the general contractor is usually responsible to the owner for all claims arising out of the construction activities, including those arising from a release of pollutants caused by or exacerbated by construction activities. There is typically an indemnification provision that goes along with the promise of the general contractor to be responsible for these types of claims. In this type of indemnity situation, the general contractor is responsible to the owner for claims arising out of the activities of subcontractors hired to perform services on its behalf.

With respect to environmental damage claims (bodily injury, property damage or cleanup), the general liability policies purchased by the general contractor and by subcontractors contain pollution exclusions. To fix this coverage gap, the owner or general contractor may purchase a Contractor's Pollution Liability policy on an owner-controlled (OCIP) or contractor-controlled (CCIP) basis. These policies insure the owner, the prime contractor and all subcontractors of every tier against claims arising out of a pollution incident caused by construction activities. OCIP and CCIP policies are a cost-effective method of providing comprehensive environmental protection for the project with uniform coverage and adequate limits for all contractors and for the owner.

An alternative method of providing environmental protection is for the parties to purchase separate policies and require each subcontractor to purchase its own CPL policy that would provide protection either to the project alone or for all projects where the insured entities provide services during a policy year. This approach has the weakness of allowing contractors to satisfy an insurance requirement with lower limits and inferior insurance to that which is typically available through an OCIP or CCIP Policy. It also can result in situations where contractors that do purchase practice policies (applying to all projects) could exhaust their available limits through payments on claims unrelated to the current project. In such cases, the owner, developer and prime contractor may be relying on the promise of a small contractor to pay for claims arising out a pollution incident that occurs during construction activities that is unsupported by insurance.

Since there is no adequate way for the owner to assure itself that the prime contractor and subs have purchased and maintained the required insurance, there is a possibility of claims not being paid when they arise. There may also be disputes regarding the cause of a release and claims by third parties that name more than one party or cross-claims filed by one contractor or subcontractor against other contractors.

The least desirable situation is where the prime contractor and subcontractors are not required to purchase environmental insurance, but are nonetheless expected to be responsible for the costs of any claims arising out of pollution events caused by construction activities. In these cases, the owner is relying on the promise of the contractor and subs to be responsible for claims, but not assuring the financial ability of these parties to respond when a claim occurs. Such claims are likely to result in contentious disputes and litigation among the parties and may ultimately require the prime contractor and subs with substantial net worth to respond on behalf of subs that are judgment-proof.

### **Why Not Insure Just the Owner or Contractor?**

From an insurer's perspective, insuring only the owner or the owner and general contractor is viewed as the same risk as insuring these parties along with all of the contractors and subcontractors involved in the project. The same is true where these parties are asked to bring whatever insurance they have to the project and no other coverage requirements are imposed. The carrier will not recognize any significant difference in insuring only the owner and prime contractor and insuring these parties along with all contractors and subs since they expect to be, as the insurers of the prime contractor or owner, the ultimate source of all material resources devoted to resolving any claims that may arise. Therefore, the carrier will not be willing to offer any premium reductions if the policy is structured to cover only the owner and/or the prime.

Given this situation, it best for the owner, developer, prime contractors and all subs to be insured on a single policy with the broadest protection possible and limits that reflect the recognized environmental risks associated with the project. This minimizes internal disputes and litigation and maximizes the protection afforded to the project and the parties for the financial consequences of an environmental event. This superior protection is only available through a properly structured OCIP or CCIP Program.

### **COVERAGE OFFERED**

- Contractors Pollution Liability\* (CPL)

### **OPTIONAL COVERAGE'S OFFERED**

- Pollution Legal Liability\* (PLL)
- Owners Protective Professional Indemnity\* (OPPI)

\*All programs can be endorsed to provide coverage for claims arising from Mold/Microbial Matter issues.