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OneBeacon  
PROFESSIONAL INSURANCE\*

## ***DPL News You Can Use*** **From OneBeacon Professional Insurance**

### **Welcome!**

Welcome to the latest edition of ***DPL News You Can Use*** from OBPI. Each edition will provide a look at what's new in the industry, some tips on coverage, a look at ethics and more. Our goal is to provide you with an entirely better professional insurance experience, and this newsletter is a part of that commitment. Please let us know how we're doing by sending us a note to [DPL News Feedback](#). We welcome any and all suggestions as to how we can improve our service to you.

### **What's New?**

The American Institute of Architects ("AIA") has recently published its "Guide for Sustainable Projects," Document D509-2011. Sustainable design projects (while commended and supported by OBPI) have created new risk management concerns for design professionals and professional liability carriers. Sustainable design contract provisions often read in terms of warranting or guaranteeing that the project will be designed in such a manner that it will receive a specified designation or certification. Owners mistakenly believe that the design professional is the party that controls sustainable design certification. AIA's D509 is an invaluable resource for assisting the design professional in educating Owners and avoiding the sustainable design project contract pitfalls that presently exist. Along with your broker and OBPI, AIA D509 helps the design professional to identify acceptable and not acceptable contract clauses on sustainable design projects. You can obtain a copy of D509 by visiting the AIA's website.

### **In the Spotlight: OBPI DPL Establishes West Coast and Midwest Presence**

OBPI DPL has established a presence on the West Coast and in the Mid-West. Jose Covarrubias, Master Underwriter, has relocated to San Diego where he will be able to respond to our West Coast Partners during the west coast business hours and with a west coast geocentric perspective. Our drive to become a leader in professional liability in the Mid-West has kicked into overdrive with the re-location of Beth Goodrich, Master Underwriter, to Colorado. Beth has over 15 years experience in the A&E market (but none with snow). Both Beth and Jose welcome your contact at [bgoodrich@onebeaconpro.com](mailto:bgoodrich@onebeaconpro.com) and [jcovarrubias@onebeaconpro.com](mailto:jcovarrubias@onebeaconpro.com).

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## Acting Ethically

A firm just had a project RFP accepted. The RFP required the firm to submit pre-design work; a proposed project budget; proposed scope construction services; and proposed agreement changes as well as other items. The lead project designer has instructed her reports to destroy all the paperwork that preceded the RFP. The reports are concerned about destroying the documents because they feel as though they are doing something unethical or illegal. Is the destruction of documents related to a project unethical? Or is it illegal? Is acting legally equivalent to acting ethically? Please drop a line to [Bruce Demeter](#), Vice President of OBPI's DPL Division, to provide a comment or opinion.

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## Coverage Tip: Hold Harmless Provision

The indemnification, defense and hold harmless provision ("indemnification") has been a troublesome area of exposure for the design professional for years. When this provision calls for "the indemnification of the Owner against damages arising from the design professional's alleged negligence in the performance of professional services," the risk exposure is acceptable because it allocates that risk that the design professional can control and why they have professional liability coverage. These provisions become problematic when they require indemnification for "all services," "willful acts," and/or "breach of contract." Each of these phrases creates a provision that is unacceptable from a coverage perspective. "All services" extends beyond "professional services" which is a coverage trigger. Similarly, "willful acts" and "breach of contract" do not normally include the "negligence" trigger that is needed to have a professional liability policy respond. When faced with a problematic indemnification provision you should advise the project Owner that its provision may not trigger professional liability coverage which you and the Owner want to occur. Your broker and OBPI can assist in advising the Owner on how to alter a "bad" indemnification provision. You can contact [Bruce Demeter](#) for more information.

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## Claim Tip: Get All The Agreements

A design professional should make it a practice to get the proposed contractor, subcontractor, construction manager and any other agreement the Owner plans to use on a project. Even though the Owner may be using industry/association form agreements, those agreements can vary in terms and conditions from version to version. Owner's often use older and differing versions of agreements on projects because they have had previous success with the agreements. The design professional services set forth in the Constructor/Owner agreement may not align with the services identified in the Design Professional/Owner agreement. Where the contract agreements are not coordinated, confusion and claims often arise as the parties' expectations do not line up. By reviewing and coordinating all project agreements, the design professional can protect themselves from potential claims. Your broker and OBPI can also provide support and advice with regard to this issue.

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## In the News:

**The DPL Farmington team** recently participated in a community service day sponsored by the local PLUS chapter. Brooke Beeman, Alex Yepez, Jim Rosado and Brett Fowler performed service work around the community. DPL is proud to support volunteerism and community development activities. For more information contact Brett Fowler at [bfowler@onebeaconpro.com](mailto:bfowler@onebeaconpro.com).

**The American Institute of Constructors** held its annual Intra-Industry Reception in Alexandria, VA. The event was attended by various construction industry professionals, associations and companies committed to promoting professionalism, education, ethics and cooperation in the construction industry. For more information contact Joseph Sapp at [jsapp@Talley.com](mailto:jsapp@Talley.com).

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## Entirely Better

For OneBeacon Professional Insurance and Design Professional Liability Entirely Better means being responsive. Ask us a question and we will provide you with an intelligent, meaningful answer. We may not be able to provide you with a response during your initial call, but we will obtain that answer as fast as possible. You will not have to follow-up with us, because we are committed to being responsive to you.

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