

Kent W. Collier, J.D.,  
CRIS, LEED AP BD+C

Client Executive &  
Professional Services  
Risk Consultant

**GREYLING**  
INSURANCE BROKERAGE | RISK CONSULTING  
a division of **EPIC**®

# Design Professional Insurance

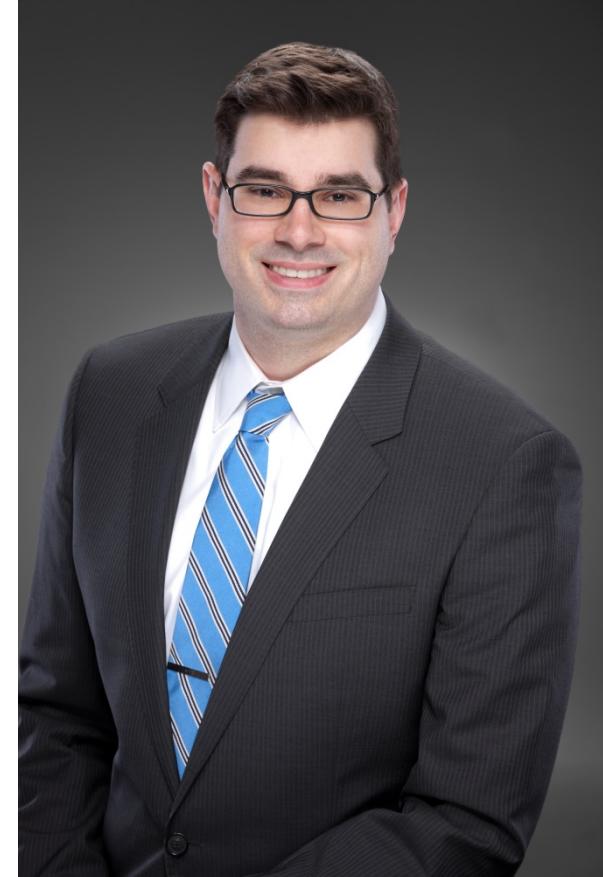
Practice and Project Specific Options

Insurance and Surety Committee of the Florida Bar

May 20, 2019

# Speaker

- **Kent W. Collier, J.D., CRIS, LEED AP BD+C**
- Client Executive and Professional Services Risk Consultant
- University of Virginia (2002) and Emory University School of Law (2005)
- 9 years in private practice at Sutherland LLP focused on construction law
- 4 years with Greyling
- Licensed attorney in New York, Georgia, and Florida (Board Certified in Construction Law)
- LEED AP BD+C
- IRMI Construction Risk & Insurance Specialist
- From Atlanta but now residing in Portland, Maine

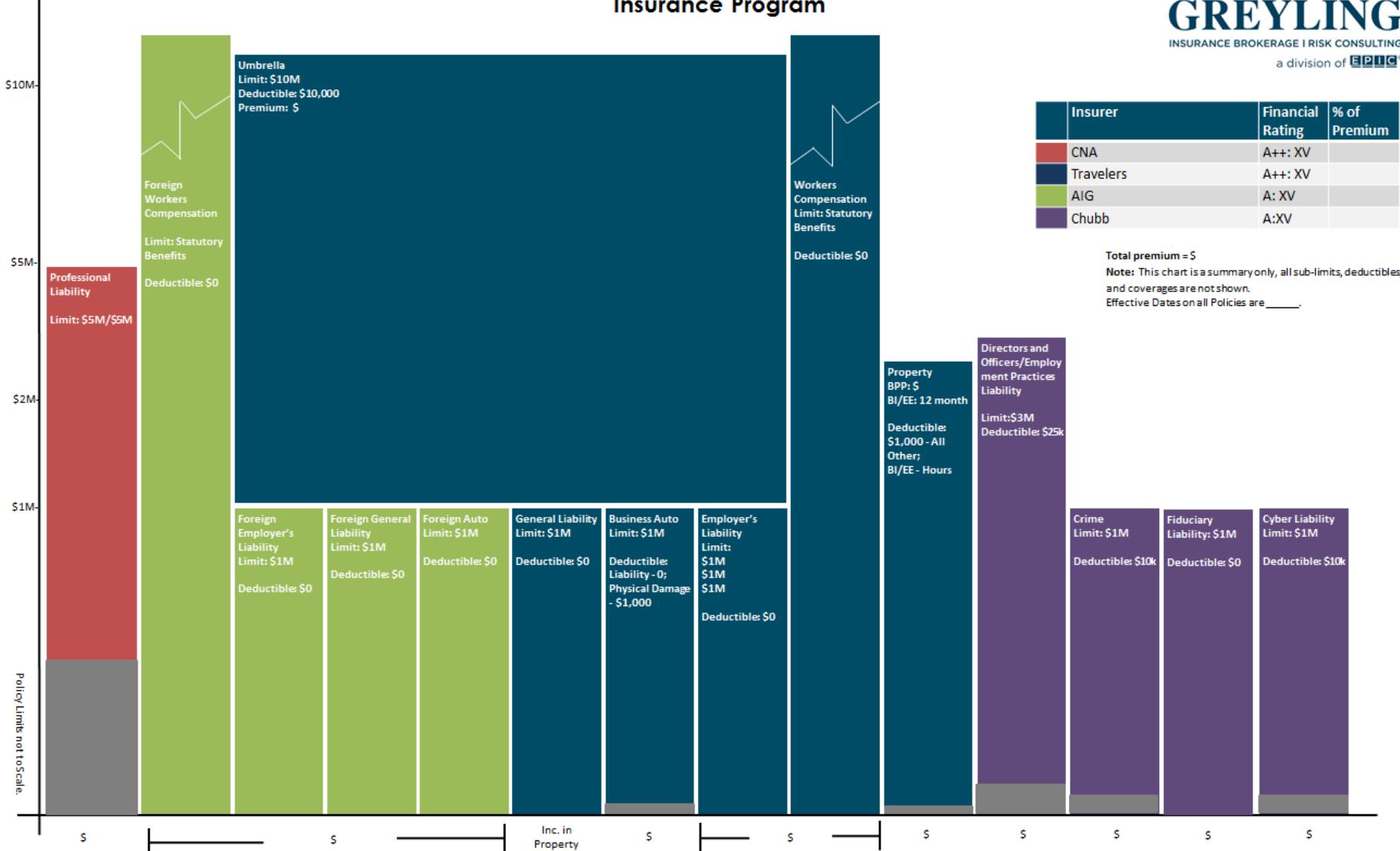


# Discussion Agenda

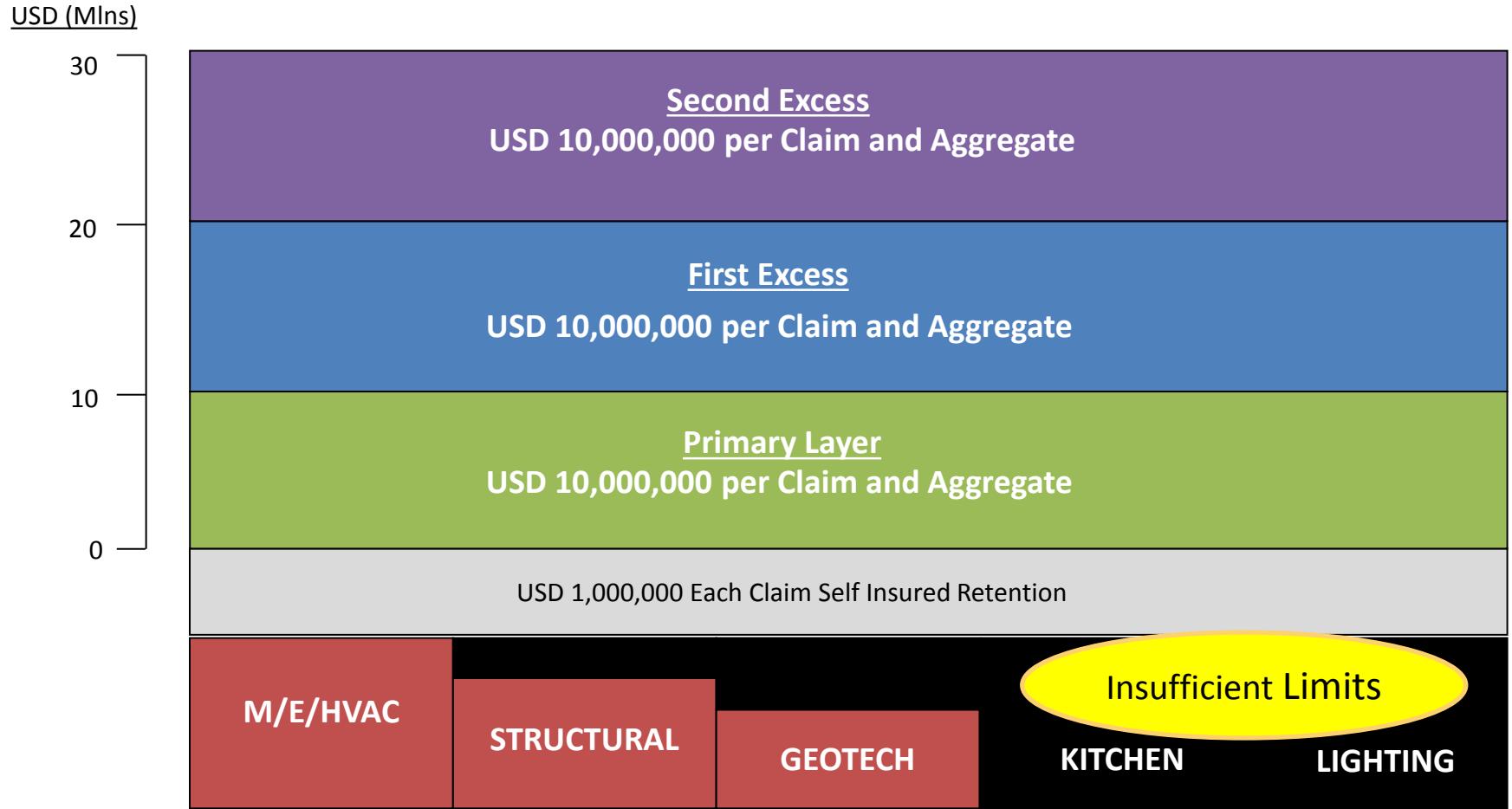
- Overview of Typical Practice Insurance Program of Design Professional
  - Coverages
  - Limits
  - Deductibles/retentions
  - Cost
- Project Specific Professional Liability
  - Project Specific Excess
  - Primary Project Specific
  - Owner Protective Professional Indemnity
  - Relationship to Contractor Project Specific Professional
- Hot Button Contract Clauses for Design Professionals

# Typical Practice Program for Design Professionals

## Design Professional Firm Insurance Program



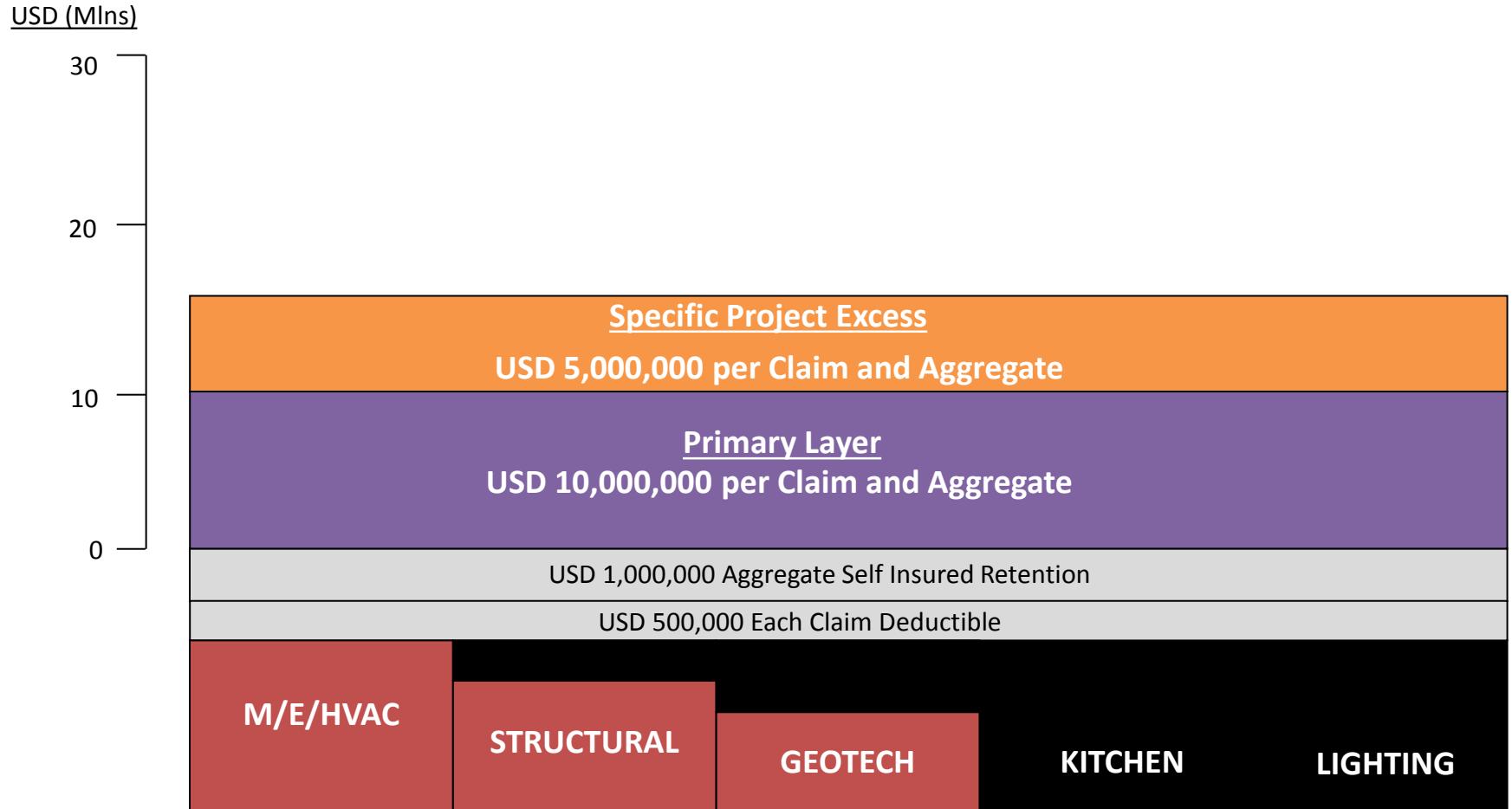
# Prime Designer's Vicarious Liability



# Project Specific Overview

- Increase limits of insurance
- Limits dedicated to project
- Control coverage
- Insurance marketplace hedge
- Protect against underinsured subconsultants
- Invite smaller players
- Decrease exposure to competing claims & policy erosion
- Risk management by insurer
- Coordination of joint defense
- Facilitate limitation of liability = encourages innovation and risk taking
- Not a bond
- Viewpoint and usage to support continued marketplace

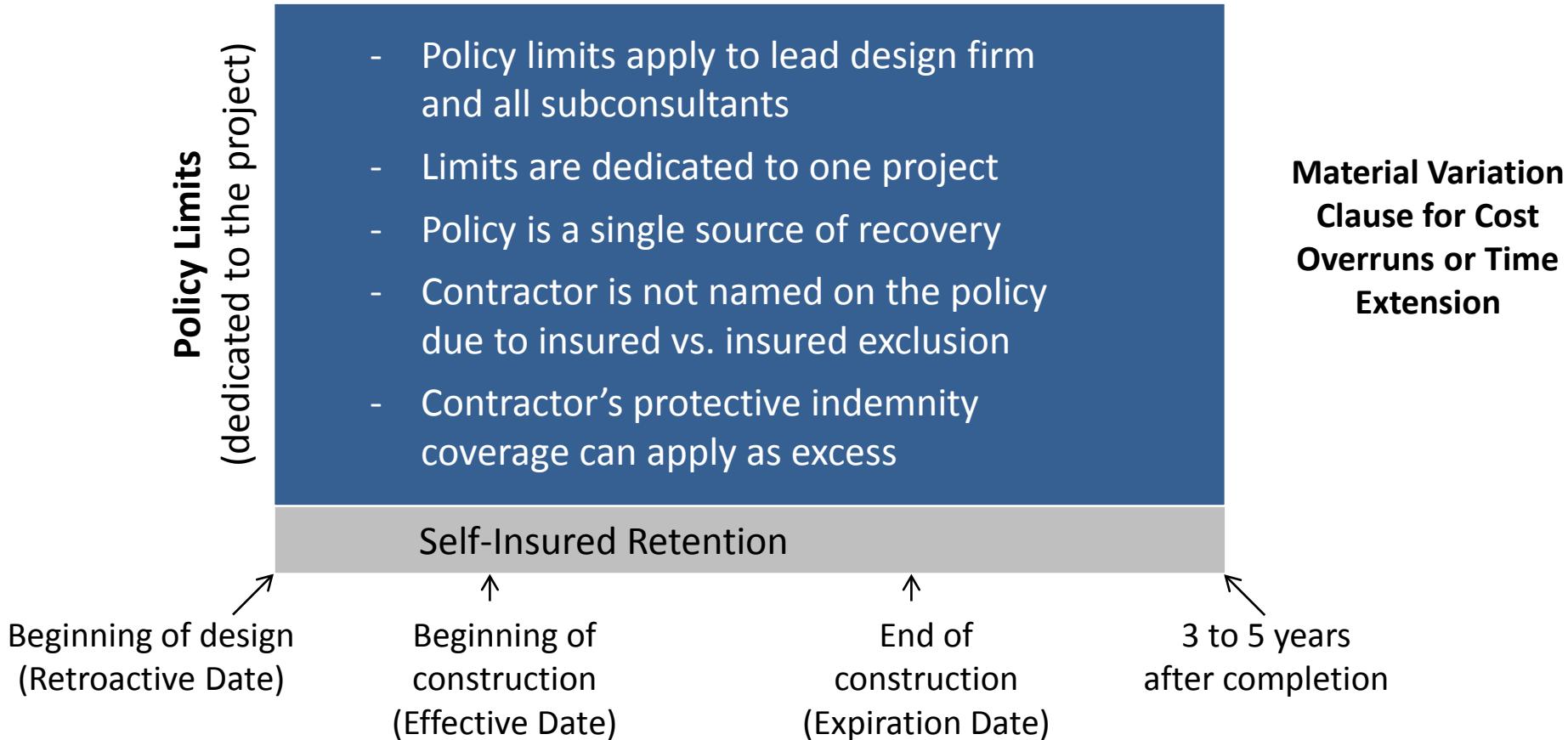
# Project Specific Excess (Individual Firm)



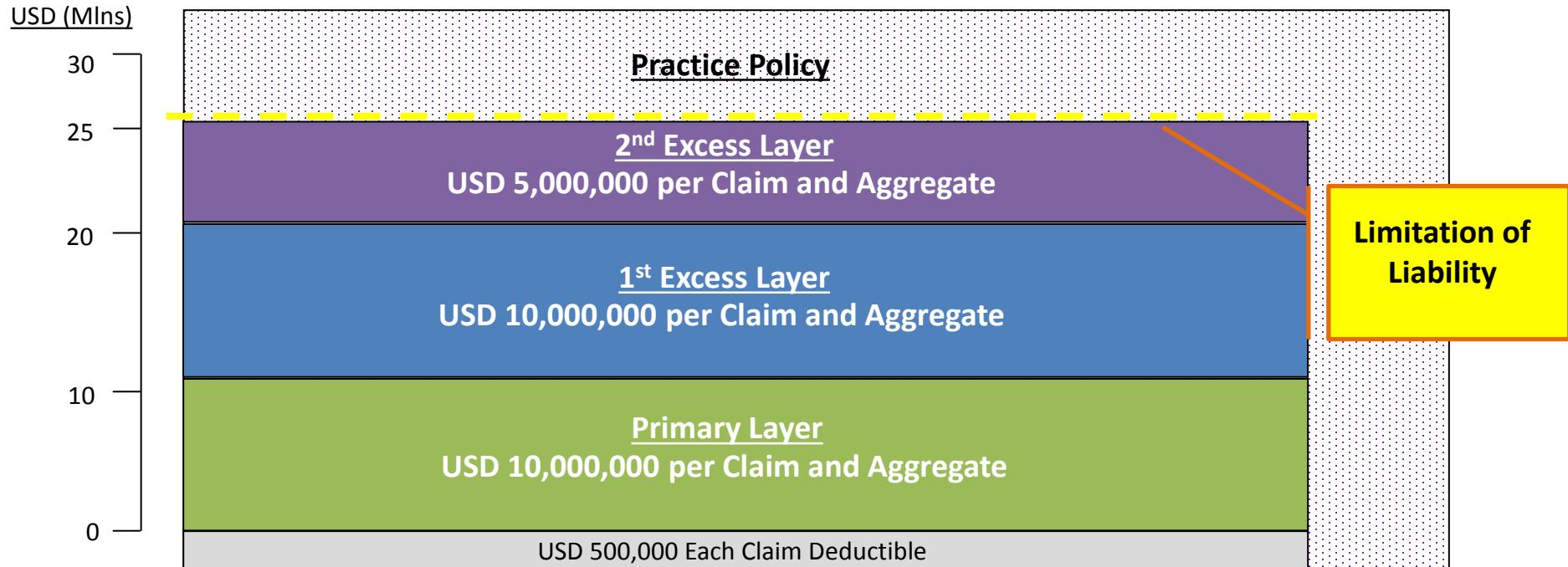
# Project Specific Excess (Individual Firm)

- Primary purpose is to increase limits above practice policy
- Annual additional premium
  - Minimum premium is typically \$5,000 per mil of coverage
- Not all insurers offer
- Most insurers limit the number of endorsements
- Premium should be fully cost reimbursable
  - Length of coverage
  - Future market fluctuations
  - Availability
  - Practice program changes

# Overview of Primary Project Specific PL



# Primary Project Specific Policy Structure

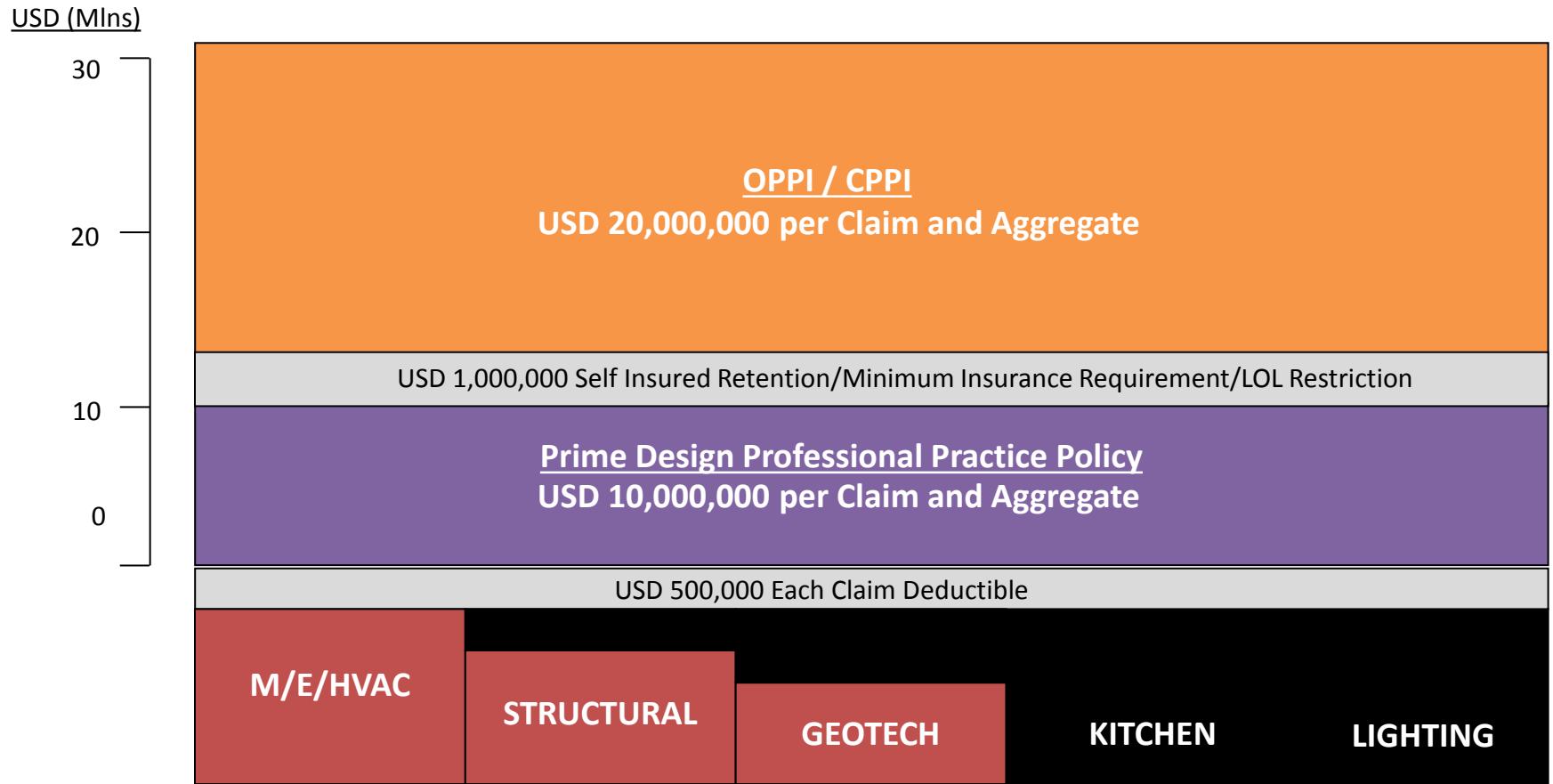


- Structure and retention based on insurer appetite and cost
- Practice policy as excess and for drop-down primary position in the event of project-specific exhaustion or lack of coverage
- Limitation of liability equal to project policy limits
- Owner as an Indemnified Party for third-party claims

# Protective Professional Indemnity

- Owner's Protective Professional Indemnity (OPPI)
  - Project specific or rolling/program
  - Often purchased by entities with multiple projects (schools, mass transit, hospitals)
  - Applies excess of available underlying design professional insurance
  - If no underlying available, owner may pay self-insured retention
  - Limitation of liability restrictions
  - Indemnified party endorsement for owner entities
  - Cost is 40-50% of primary project specific
  - Little benefit to design firms; often undisclosed

# OPPI Illustration



# Other Project Specific Coverages

- Contractors Professional
  - Often combined with protective indemnity, pollution, and rectification
  - Beware of insured v. insured exclusion
- Wrap-Up
  - Contractor- or Owner-Controlled Insurance Program
    - General Liability
    - Workers Compensation
    - Umbrella
- Builders Risk
  - Can include design defects as an insurable event
  - Can include soft costs such as re-design
- Terrorism

# Hot Button Contract Issues for Design Firms

- Indemnity
  - Duty to Defend
  - Negligence Trigger
  - Proportionality
- Standard of Care
- Liquidated Damages
- Insurance
  - Additional Insured Status & Forms
  - Contractual Liability Coverage
  - Required Limits
- Limitation of Liability

# Indemnification

Architect shall indemnify, defend and hold harmless the Owner, and its officers, directors, employees, agents, contractors, representatives, successors and assigns, from and against any and all claims, losses, liability, damages, costs and expenses (including attorneys' fees and defense costs) arising out of or related to (i) acts, errors, or negligence of Architect in performance under this Agreement or (ii) breach of this Agreement, regardless of any claimed liability on the part of an indemnitee, provided, however, Architect shall not be required to indemnify an indemnitee to the extent liability is determined by a court to be caused by the sole negligence of such indemnitee.

# Indemnification Edits for Design Professional

Architect shall indemnify, ~~defend~~ and hold harmless the Owner, and its officers, directors, employees, ~~agents, contractors~~, representatives, successors and assigns, from and against any and all **third-party** claims, losses, liability, damages, costs and expenses (including **reasonable** attorneys' fees and defense costs **recoverable under applicable law**) ~~arising out of or related to~~ to the extent caused by (i) negligent acts, errors, or ~~omissions negligence~~ of Architect in performance under this Agreement or (ii) negligent breach of this Agreement, regardless of any claimed liability on the part of an indemnitee, provided, however, Architect shall not be required to indemnify an indemnitee to the extent liability is ~~determined by a court to be~~ caused by the ~~sole~~ negligence of any ~~such~~ indemnitee.

# Greyling Insurance Brokerage & Risk Consulting, a division of EPIC

Georgia | Florida | Maine | Missouri | South Dakota

(770) 552-4225

[www.epicbrokers.com](http://www.epicbrokers.com)

**Kent W. Collier, J.D.**

**770-220-7692 (Direct)**

**[kent.collier@greyling.com](mailto:kent.collier@greyling.com)**

  
a division of 