

Industrial

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Much is at risk in a large construction project. Huge sums of money, time and effort are invested before the first shovel hits the dirt. Ceremonial groundbreaking gives way to critical timelines and a dangerous mix of rumbling trucks, heavy equipment and busy workers. Traditionally, to help manage and finance the risk of loss, owner and contractor were expected to provide their own insurance. All contractors, each with their own insurance carrier in tow, were expected to answer for any loss. Complicated disputes and resultant insurance coverage litigation became as much a legacy of construction industry activity as the high rises, tract homes and condominiums built.



There had to be a better way. With that impetus, the notion of one all-encompassing insurance plan, known as wrap-up insurance, was developed.

WHAT IS WRAP-UP INSURANCE?

In seeking to answer this question, a federal district court in Oregon noted that wrap-up insurance programs can take various forms. They can be contractor-controlled or owner-controlled and can include various types of coverage. The court further explained wrap-up insurance:

"... generally covers the owner or developer, the contractors and subcontractors, and potentially others such as architects and engineers. A typical program will include builders risk, general liability, and workers compensation/employers liability insurance. Sometimes, umbrella and professional liability insurance may also be wrapped up into the insurance program."

The selection of coverages provided in a wrap-up program are not uniform. There is no single standard "wrap-up policy" form. More often than not, standard forms from each line selected (e.g., commercial general liability (CGL), workers compensation, etc.) are combined with endorsements to accomplish the objectives of the wrap program.

WHY IMPLEMENT WRAP-UP INSURANCE?

Program objectives typically revolve around saving costs. Owners and contractors see wrap-up insurance programs as a mechanism to control the cost of insurance while ensuring sufficient limits are available to cover the project, especially with respect to large scale construction. Owners and contractors can have more control over the type of insurance covering the subcontractors on site and greater confidence each is sufficiently insured. Advantages may be realized through pricing and economies of scale, as offset by the administrative cost borne by the owner or contractor (i.e. the program sponsor).

Because one policy covers all participants (otherwise known as enrollees), there are no competing policies at issue. Since all project participants draw from the same insurance limits, there is an expectation in-fighting amongst contractors will be minimized, and any loss to be addressed under the wrap insurance program can be handled more expeditiously by a single carrier.

Because only one carrier underwrites the program, a platform also exists for a more far-reaching safety program to be administered across the project, thereby driving costs savings and reducing the risk of future loss or injury.

WRAP-UP INSURANCE LITIGATION

As one might expect, despite the advantages posed by the concept of wrap-up insurance, its implementation has not completely eliminated litigation over coverage. However, case filings have not been extensive. There are less than 50 or so reported decisions nationwide involving issues unique to wrap-up insurance.

Wrap-up insurance programs are built around traditional policy forms, whether they be CGL, professional liability, workers' compensation or otherwise. Court decisions regarding the interpretation of terms traditionally litigated in these insurance lines remain pertinent.

Litigation often arises out of who is qualified as an "insured" under the wrap policy. Although the objective of wrap insurance is to cover all contractors at the site, not every contractor will qualify. Subcontractors in wrap-up insurance programs must be properly "enrolled" to be included in a program. Enrollment requirements are set by the carrier and failure to comply has caused those left out of the program to initiate litigation.

Not all classes of "subcontractor" can be insured under a wrap-up policy, despite a clear intent of the parties to do so. Thus, material men, deliverymen and others who don't actually perform work on the insured property, may find themselves outside the scope of coverage.

Disputes can arise with outside carriers. Each contractor typically brings with it its own set of insurers as part of its business operation, notwithstanding the contractor's expectation of coverage from the wrap-up insurance program. Gaps in coverage arise where coverage has been denied under the wrap insurance program, causing contractors to turn to their own insurance, often creating inter-carrier conflicts.

The desire to reduce litigation as between contractors and their carriers has fostered the use in wrap-up insurance policies of waiver-of-subrogation provisions, which have also become the subject of litigation. Similarly, many contractor policies include wrap exclusions, which seek to insulate a contractor's carrier from being involved in any loss covered under a wrap insurance program.

Despite some legal challenges, wrap-up insurance can be a powerful tool. On a project large enough to justify the expense of administration, controlled insurance programs offer an owner or contractor opportunities to better control costs and risk.