Perrin Conferences
National Construction Defect Conference

Unwrapping the WRAP Policies

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Important WRAP Considerations

- Purpose(s) for WRAP-UP Insurance
- Differences between OCIP and CCIP Policies
- Benefits
- Drawbacks
- Distinctions of WRAP vs. traditional CGL Insurance
- Coverage Limits and Exclusions
- Coverage Limitations and Potential Work-Arounds

WRAP-UP Insurance

- A policy for either very large construction projects or for a string of smaller but related construction projects that are just as expensive in total

- OCIP v. CCIP
  - If the controlling entity is the project owner, the coverage is referred to as an owner-controlled insurance program or OCIP.
  - If the controlling entity is the general contractor, the coverage is referred to as a contractor-controlled insurance program or CCIP.

- Whether OCIP or a CCIP, a unified insurance program is “wrapped around” the entire project, for the protection of all enrolled parties. The scope of enrollment typically includes the project owner/developer, the general contractor, and the subcontractors.

OCIP & CCIP POLICIES

"The Good and The Bad"

THE GOOD – Potential Advantages

- Better Protection – Owner and/or Contractor can ensure the work performed on a project is adequately covered
- Lower Costs – Greater savings when aggregating the policies
- Simplified Claims Process
- Reduction in Defense Expenses - Streamlined Defense in event of a Claim/Lawsuit – PD and BI

THE BAD – Potential Disadvantages

- Administrative Challenges – Managing and maintaining all moving parts of policy can be burdensome
- Potential False Claims – Must ensure claims are legitimate and insureds are not taking advantage of protections
- OCIP Limits May Be Too Low – Multiple high-damage claims may erode the collective policies
- Burning Limits? – Defense Expense Often Erodes WRAP Limits

COVERAGE CONSIDERATIONS: WRAP v. CGL

Existing CGL Coverage

Prospective WRAP insureds will likely already have existing CGL coverage.

- Understand WRAP exclusions;
- Does WRAP enrollment destroy CGL coverage or will CGL become excess?
- What happens if WRAP limites are inadequate?
- What happens if trades refuse or fail to enroll?
- What about contractual indemnity rights?

Third Parties

WRAPs often do not provide coverage for parties that are hired to provide one-off services:

- Suppliers
- Transportation providers
- Construction material vendors
- Clean-up crews

Costs

- The premium cost to purchase individual CGL policies will almost always be higher than a WRAP premium – where the overall cost can be shared among enrollees.
- Wraps can be written on a loss-sensitive basis, allowing premium adjustments based on claim history.

WRAPS FOR BODILY INJURIES?

PROS

- Bring Down the Plaintiff's Damages
- Avoid conflicts between the contractors/subs & owners
- One Release

CONS

- Can Chip Away at the coverage for future Construction Defect Claims!

“

What to do? You ask

SUGGESTIONS

- EVALUATE YOUR PROJECT WITH SOME EXTRA CUSHION

- EXCESS CLAUSE IN YOUR CGL POLICY
  - Once WRAP amounts are paid, your CGL comes into effect

WRAP Policies -Maximizing Cost Recovery & Coverage

- Premiums
- Self-Insured Retentions (SIRs) and Deductibles
- Cross Claims
- WRAP Exclusion Work-Around

1.

Premium Payments

Premium? Who Pays and When

- Owner or Builder Pay Initially
- <u>Means of Recovery/Contribution</u>
  - <u>Contract Credits</u>
    - Owner or Builder Receive Contract Credit From Builder or Subcontractor
      - Reduced Bid Reflected in Schedule of Values At Outset

Premium? Who Pays and When

▷ <u>Invoice Deduction</u>

- Agreed Upon Percentage of Invoice Amounts
- Deducted from Subcontractor Invoices Automatically

<u>Insurance Deductions</u> Subcontractor shall provide Contractor with an Insurance Credit to Contractor based upon the percentage contained in the "Wrap Insurance Credit List". This amount will be deducted from the Contract price. The "Insurance Credit" or any subsequent insurance credit taken by Owner pursuant to the terms of this Addendum, or any other Contract Document, shall be hereinafter referred to as an "Insurance Credit". Such estimated costs and other information may be used to calculate the amount that Contractor shall be credited (by deduction) against Subcontractor's invoices for Contractor permitting Subcontractor to be enrolled on the Wrap-Up policy. Subcontractor agrees that Contractor will deduct the percentage amount of the Insurance Deduction (shown in Paragraph 1.0 of this Insurance Addendum) from the amount of each billing submitted by Subcontractor to Contractor, before retentions and discounts, including without limitation, options and any Additional Work (the "**Insurance Deduction**"). Subcontractor understands that this Insurance Deduction is <u>not</u> a "retainage" or "withholding" under the Master Subcontract and will <u>not</u> be paid to Subcontractor at some later time. The purpose of the Insurance Deduction is to reimburse Contractor for the cost of paying for insurance that benefits Subcontractor. If

2.

SIR/Deductibles

Agreed Upon Dollar Amount Per Occurance

- Contractual Agreement that ABC Subcontractor Pays $20,000 Per Occurrence
  - <u>Pros</u>
    - Certainty in Recovery Amount
    - Ability to Collect as Setoff Against “Other Projects”
  - <u>Cons</u>
    - Subcontractor CGL Coverage Issues – Contract Claim
    - Does Not Necessary Reflect Proper Contribution

Pro-Rata Contribution

- Contractual Agreement that ABC Subcontractor Pays Pro-Rata Share of SIR Paid By Builder

2.10 Subcontractor's Obligations Regarding Wrap-Up Self-Insured Retention. In the event of an occurrence which requires Contractor to satisfy any portion of the self-insured retention under the Wrap-Up and which arises out of or is in any way connected with Work by or for Subcontractor (or its sub- subcontractors), Subcontractor shall pay to Contractor such self-insured retention (**"SIR Contribution"**). Subcontractor's SIR Contribution shall be per "occurrence" or "construction occurrence", as the case may be, as those terms are defined in the Wrap-Up policy. The SIR Contribution shall remain uninsured by Subcontractor and will not be covered by the Wrap-Up policy.

Pro-Rata Contribution

- Pros
  - More Accurately Reflects Proper Contribution
  - Ability to Collect as Setoff Against "Other Projects"
  - Tort-Based Analysis – Assists Subcontractors With Coverage Under CGL Policies
- Cons
  - Burden of Proof – Proving Pro-Rata Liability Percentage

3.
Cross-Claims

Cross-Claims

- Most Policies Prohibit Cross-Claims (*i.e.*, Enrolled Builder against Enrolled Subcontractor)

- If Not Prohibitted, Worth Consideration
  - Key Questions:
    - Adequacy of Limits? Is Defense Outside of Limits?

- Where Defense Outside of Limits, Successfully Recover Money from WRAP Carrier for Claims Against Enrolled Subcontractor – At Minimum, Cost of Defense
  - Allows Recovery From Subcontractor Where CGL May Include Wrap Exclusion

4.

Wrap Exclusion Endorsements

Endorse Over? What is the Cost?

- Endorse Over - Complete
  - Builders/Subcontractors Can Endorse Over CGL Wrap Exclusions
- Excess Endorsement - Partial
  - Builders/Subcontractors Can Obtain Endorsements That Make CGL Excess to WRAP Coverage
- Cost-Benefit Analysis

Thank You For Your Attention

Questions,
Comments,
or Recommendations?