# Construction Wrap-Up Insurance Programs: Erecting a Solid Foundation

**By Dennis J. Artese, Finley T. Harckham and Luma S. Al-Shibib**


In the construction industry, owner-controlled insurance programs (OCIPs) and contractor-controlled insurance programs (CCIP), also referred to as "wrap-ups," commonly are used to provide insurance coverage for the owner, general contractor and subcontractors on a project.

Under these programs, one set of insurance policies is "wrapped" around a specific project to provide coverage for the enrolled parties. A wrap-up thus provides one set of policy limits that is shared by all enrolled parties. This differs from the "traditional" approach to construction insurance coverage, where each project participant is required to obtain its own insurance coverage for the project through its individual corporate insurance policies.

Because of the benefits provided by wrap-up insurance programs, the utilization of wrap-ups has increased recently and these programs are no longer limited to large-scale construction projects. Whether an owner or general contractor considering the implementation of a wrap-up, or a subcontractor likely to be involved in a project involving an OCIP/CCIP, it is important to understand how these programs work and the typical coverages that they afford so as to adequately protect their interests.

Each wrap-up program will contain differences in the scope and conditions of coverage. It is necessary, therefore, for contractors to read the governing documents pertaining to both the project and the wrap-up in which they are involved to understand the project's insurance requirements and the scope, conditions and limits of coverage afforded by the wrap-up program.

Following are some of the common provisions usually found in OCIPs/CCIPs and typical issues of which wrap-up participants should be aware.

## THE BASICS

The decision to implement a wrap-up is made by the party procuring the insurance, i.e., the "sponsor"—either the owner in the case of an OCIP or the general contractor in the case of a CCIP. As an initial matter, the sponsor cannot implement a wrap-up unless the contract governing the construction project authorizes the procurement of insurance coverage through a controlled insurance program. If CCIP enabling language is not already provided for in the project contract, then amendments to that contract will be necessary in order to institute a wrap-up insurance program on the project.

Once permissible under the project contract, the sponsor may implement a wrap-up program by purchasing insurance coverage on behalf of all or the majority of participants in the construction project, usually including the owner, the general contractor and most subcontractors (the "enrolled participants").

Wrap-up programs typically include commercial general liability coverage, workers compensation and business auto liability coverage. Additionally, a wrap-up program generally contains primary, umbrella and excess policies, the limits of which are shared by the enrolled participants.

Reprinted from constructionexec.com, April 10 and April 17, 2020, a publication of Associated Builders and Contractors.

### Stand-Alone Wrap-Up vs. Rolling Wrap-Up

A “stand-alone” controlled insurance program refers to a project-specific wrap-up program. This is the more common type of wrap-up program implemented within the construction industry. Another kind of wrap-up program—not as prevalent—is becoming more commonplace: the “rolling” controlled insurance program. Unlike a stand-alone OCIP/CCIP that insures one specific project, a rolling wrap-up insures multiple projects. The sponsor establishes the rolling wrap-up program to cover its ongoing projects.

Projects are rolled into the rolling wrap-up program upon their commencement and subsequently rolled out of the program upon completion—typically with extended coverage for completed operations claims.

### Subcontractor Enrollment in Typical Stand-Alone Wrap-Ups

Once a wrap-up is implemented, enrollment is typically mandatory for all qualifying project participants. Depending on the project and its applicable contractual provisions and insurance specifications, some wrap-up programs may exempt subcontractors with smaller bids from enrollment.

For those parties for which enrollment is mandatory, the wrap-up insurance program replaces and supplants the enrolled participant’s individual corporate insurance policies in connection with any project-specific claims, except to the extent that those individual corporate policies are endorsed to provide coverage in excess of the wrap-up for specifically identified projects.

Depending on whether the wrap-up is implemented prior to the start of construction or after it is underway, subcontractors either submit bids excluding the cost of their individual insurance for the project or receive a subsequent deduction for the costs of insurance included in their original bids.

## WHY IMPLEMENT A WRAP-UP?

Generally, the implementation of a wrap-up program has several potential benefits.

First, it provides a streamlined process for the administration of claims. A properly implemented wrap-up should eliminate or reduce disputes between insurance companies for the enrolled participants regarding which of their policies are triggered for project-related losses and the order in which these policies will provide coverage. This is because a wrap-up provides one set of policies for project-related claims and one administrator that services the claims on behalf of the enrolled participants.

Notably, standard general commercial liability policies in the construction industry typically contain wrap-up endorsements that exclude coverage for claims arising from a loss or occurrence on a project for which an OCIP or a CCIP has been implemented. In theory, as a result of this exclusion, claims on projects subject to a wrap-up program are covered under the wrap-up insurance policies only—and not under the individual corporate liability policies of the general contractor and subcontractors involved.

The benefit of this structure is that when a claim arises, the potential for finger-pointing between insurance carriers (as they try to avoid or limit their individual exposures) is eliminated. This, in turn, reduces the need for enrolled participants, and their respective insurance carriers, to sue each other for coverage and priority determinations. The reduction in litigation theoretically should amount to a cost savings for the enrolled participants.

Second, depending on deductible losses, the sponsor of an OCIP/CCIP may be able to realize a financial benefit from its implementation in the form of lower insurance premiums versus those incurred under “traditional” insurance, i.e., the sponsor’s individual corporate liability policies. Overall, wrap-up programs are intended to reduce the cost of insurance by providing wholesale pricing for a project.

Third, while policy limits are shared by all enrolled participants, a wrap-up program often affords a subcontractor higher limits for an OCIP/CCIP project than it would have available for the same project under its own corporate insurance policies in the absence of a wrap-up.

## PROTECTING INTERESTS IN A WRAP-UP PROGRAM

Regardless of whether an owner is implementing an OCIP, a general contractor instituting a CCIP or a subcontractor enrolled in an OCIP/CCIP, it is important to be aware of the limitations that wrap-up coverage affords. A party can better protect its interests by being adequately informed. Because these insurance programs are fairly sophisticated, it is advisable to retain the assistance of an insurance broker that specializes in the purchase and implementation of wrap-up insurance programs.

1. **Have the broker read and understand the insurance requirements for the project.** This includes the insurance specifications for the project as a whole, as well as those that individuals are required to maintain. The project contract will list the insurance specifications for the project participants. Participation in an OCIP/CCIP may not satisfy all of the contractual insurance requirements (e.g., offsite liability). It is important to know what types and amounts of insurance coverage is required to maintain on a project (both with or without an OCIP/CCIP being implemented on that project) and ensure compliance with those requirements. A broker experienced in construction insurance placements should be able to identify the insurance requirements for a project and ensure that involvement in the wrap-up program for that project, whether as a sponsor or participant, complies with contractual insurance obligations.
2. **Have the broker read and understand the OCIP/CCIP manual and insurance policies.** This will allow the broker to assess and advise clients as to the different types of coverages that are and are not afforded under the wrap-up. By comparing the coverage provided under the OCIP/CCIP with the insurance specifications set forth in the construction contract, the broker and client can determine whether additional insurance is needed outside of the wrap-up program. Notably, a wrap-up may not provide coverage for all types of claims. Often, builder's risk coverage is not included in an OCIP or a CCIP. Also, wrap-ups typically do not provide coverage for activities occurring off the construction site, even though they may be related to the project.
3. **Does the wrap-up program have sufficient policy limits?** The construction contract will specify the amount of insurance that is required to be maintained on the project. Typically, the party procuring the wrap-up policies (either the owner or the general contractor) will attempt to obtain the highest policy limits that are financially feasible. Since wrap-up limits are shared by all enrolled participants on a project, consult with the broker to assess whether those limits are sufficient to adequately protect interests. If not, individual coverage that applies excess of the wrap-up program's policy limits may be needed.

   Corporate policies may contain wrap-up exclusions that exclude coverage for claims related to or arising from a project subject to an OCIP/CCIP, except to the extent that specifically identified projects are endorsed with excess of wrap-up coverage. If you decide that you want your corporate policy limits to apply excess of the wrap-up policy limits on a particular project, then have the policy endorsed accordingly.
4. **When does coverage under the wrap-up program begin?** Once a contractor or subcontractor begins work on a project prior to being enrolled in the OCIP/CCIP, then they likely are not covered under the OCIP/CCIP for claims arising out of work performed prior to being fully enrolled in the wrap-up program. In this event, it is important to make sure they are coverage under their individual corporate policies during the pre-enrollment period. This may require a modification to the standard wrap-up exclusion discussed above. Specifically, those exclusions are interpreted as barring coverage for any claims related to a project for which a wrap-up program has been implemented even if those claims relate to work performed prior to the inception of the wrap-up and/or enrollment therein. In consultation with a broker, determine the necessary modifications that must be made to the wrap-up exclusion in the corporate liability policies in order to prevent a situation where claims related to work on a project are not covered by either corporate policies or the OCIP/CCIP.
5. **Do individual corporate policies provide coverage for project-related offsite activities?** Depending on the wrap-up program's policy provisions, any project-related work or activities occurring off the construction site may not be covered under the OCIP/CCIP. If this is the case, then, based on the anticipated level of offsite project-related activities, it might be prudent to obtain offsite coverage under corporate liability policies through a modification of the wrap-up exclusion endorsement.

6. **Is the wrap-up being implemented mid-stream? If so, is there protection for completed operations claims arising from work performed prior to implementation of the OCIP/CCIP?** Although OCIPs/CCIPs generally are implemented prior to the commencement of the construction project, a wrap-up implemented mid-stream (after the start of the project), while complicated, nevertheless may be feasible. If involved in a mid-stream wrap-up, be cognizant of the possibility that work performed prior to the implementation of the wrap-up could give rise to a claim after the completion of the project.

Typically, wrap-up programs will provide completed operations coverage for project-related claims that arise from work performed after the implementation of the OCIP/CCIP – but not before. At the same time, individual corporate policies may exclude claims for any work performed in connection with a project on which a wrap-up has been implemented – regardless of whether that work was performed prior to or after the implementation of the OCIP/CCIP.

In order to ensure adequate completed operations coverage for project-related work performed prior to the implementation of an OCIP/CCIP that is commenced mid-stream, the broker should confirm that the corporate program will provide coverage for completed operations claims arising from work performed prior to the implementation of the project's wrap-up program.

A wrap-up program has a number of potential benefits; however, these policies may not provide complete or iron-clad coverage for enrolled participants. Whether a sponsor or a participant in an OCIP/CCIP, protect interests by working with an insurance broker or risk management consultant to conduct appropriate due diligence regarding:

- the insurance requirements of the construction project;
- the scope and limits of coverage under the wrap-up program; and
- the scope and limits of coverage under the corporate liability policies.

Once properly advised as to the parameters of what is covered, contractors and subcontractors can better assess what, if any, additional coverage they may need depending on the type of project-related work and activities in which they will be engaged.

While wrap-up insurance programs are being utilized with increased frequency, the interplay between the wrap-up program's insurance policies, the individual corporate insurance policies of the enrolled participants and the project contract's insurance specifications, may give rise to complexities. This article provides tips on how to avoid potential pitfalls, but when encountering a coverage dispute in connection with a wrap-up program, consult and retain experienced insurance coverage counsel to represent the company.

Written by Dennis J. Artese - Shareholder, Insurance Recovery Group, Anderson Kill P.C.

Dennis Artese is a shareholder in the New York office of Anderson Kill. He is also co-chair of the firm's Construction Industry practice group. Dennis' national practice concentrates on all types of insurance recovery litigation, with an emphasis on securing insurance coverage for construction-related first-party property losses and third-party liability claims as well as for property and business interruption losses stemming from natural disasters and other perils.

Written by Luma S. Al-Shibib - Shareholder, Insurance Recovery Group, Anderson Kill P.C.
Contact Info: lal-shibib@andersonkill.com

Luma S. Al-Shibib is a shareholder in the New York office of Anderson Kill. She focuses her practice on insurance recovery for corporate policyholders, with an emphasis on directors & officers liability insurance, comprehensive general liability insurance and cyber liability insurance. Luma also has a background in bankruptcy and has represented clients in bankruptcy cases involving insurance claims.

Written by Finley T. Harckham - Shareholder, Insurance Recovery Group, Anderson Kill P.C.
Contact Info: fharckham@andersonkill.com

Finley Harckham is a senior litigation shareholder in the New York office of Anderson Kill and serves on the firm's Executive Committee. Finley regularly represents and advises corporate policyholders and other entities in insurance

Reprinted from constructionexec.com, April 10 and April 17, 2020, a publication of Associated Builders and Contractors.