

What Is Wrap Up Insurance and Why Do I Care?



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Introduction

When a Project Owner makes a performance bond claim based on alleged defective construction, it's time to look for insurance to mitigate the potential loss. This becomes even more important when the bonded principal is out of business and the indemnitors are either long gone or dead.

In the case of construction defects, sureties typically look to the bonded principal's commercial general liability policy to defend it against an Owner's claims of negligent construction or defective work. As occurrence-based products, these policies apply even if the bonded principal is out of business as long as the loss took place during the policy period.

If there is an Owner Controlled Insurance Program or Contractor Controlled Insurance Program ("CIP" or "Wrap Insurance") for the project, the Owner's claim against the bonded principal should also be tendered to that carrier. A defense and indemnity provided by a CIP is preferred because the Owner usually pays any applicable deductible and the loss is not assessed against the bonded principal (if it is still in business) for any future premium calculations. Further, a CIP is usually primary over other responding commercial general liability policies and has a separate project limit, which is usually quite large.¹

The surety can access the defensive benefits of a CIP in several ways. The first is the most common – assert the surety's rights against the policy per the Indemnity Agreement, which typically include assignment and attorney-in-fact provisions. This is commonly referred to as "stepping into the shoes" of the bonded principal. Under this method, a surety's rights under the Indemnity Agreement arise upon default.

The surety can also rely on its common law right of equitable subrogation. This right of subrogation is granted under common law when one party has made a payment on behalf of another and becomes entitled to whatever recovery rights the other party has against a responsible third party.² A surety's rights under common law equitable subrogation arise upon performance or payment of an obligation on behalf of its bonded principal.³

Understanding the fundamentals of Wrap Insurance is key to accessing it in the event of a loss.

What Is Wrap Insurance?

A wrap-up policy or CIP is a risk financing option. It is centrally purchased and administered for a single project or a series of projects. CIPs provide insurance coverage for all or most of the project participants, including the owner, general contractor, and

¹ See What is an Owner-Controlled Insurance Program (OCIP)? | Construction Coverage, last visited May 11, 2025.

² *Pearlman v. Reliance Ins. Co.*, 371 U.S. 132, 137 (1962).

³ *Id.*

subcontractors on one policy.⁴ This differs from the traditional risk management approach, where each project participant purchases its own insurance program and relies on contractual indemnity provisions and additional insured endorsements to provide insurance coverage for the project as a whole.⁵

CIPs are typically sponsored, controlled, and paid for by an owner (an “OCIP”) or by a general contractor (a “CCIP”). They usually include worker’s compensation coverage, as well as general and excess liability coverage.⁶ These types of programs “seek[] to distribute, share, and manage risk at construction sites.”⁷

Most CIPs are designed for a single, mega-project because the added administration costs dictate that these programs make financial sense only on larger projects (or a series of projects); any savings is driven by the insurance cost savings minus the added administrative fees.⁸ The underlying purpose of a wrap-up policy “is to make the insurance programs used primarily for construction projects more equitable, uniform and efficient. [CIPs] eliminate the costs of overlapping coverage and delays caused by coverage or other disputes between the parties involved in a project and, at the same time, protect all the contracting parties by bringing the risk of loss from the project within the insurance coverage of the [wrap].”⁹

In general, program sponsors purchase combined-line CIPs (workers compensation and liability) for two reasons – cost savings and to ensure sufficient insurance coverage.¹⁰

In addition to single project use, owners can create “rolling” CIPs for a series

of their projects when any single project does not make financial sense. Large contractors can also sponsor “rolling” CIPs that cover multiple projects on an on-going basis. Examples of other CIPs include maintenance CIPs that cover contract maintenance and renovations at a large plant or facility, environmental CIPs, and international CIPs.

History of Wraps in the US

In the United States, CIPs were used for the construction of defense plants during World War II, New York City’s Public Housing, the United Nations Building, the third Lincoln Tunnel, and the headquarters of Chase Manhattan Bank. Pacific Gas and Electric Company, the California utility, explored the concept of a CIP with its insurance brokers in the late 1930s and launched its first wrap-up in 1952. Bethlehem Steel Corporation sponsored a “rolling wrap-up” at multiple plant locations during the 1960s and 1970s. A CIP covered the World Trade Center from 1975 to 1985. During the last 30 years, especially from the 1990s to the present, CIPs have become increasingly more common.¹¹

For condominium projects and multiple residence building projects, the use of CIPs has dramatically increased in the past 20 years. This has been driven by the increase

⁴ Kathleen A. Creedon & Ron Rakich, WRAP-UP GUIDE (5th ed. 2018).

⁵ See, e.g., *Factory Mut. Ins. Co. v. Peri Formworks Systems, Inc.*, 223 F. Supp. 3d 1133, 1143 (D. Ore. 2016).

⁶ The WRAP-UP GUIDE, *supra*.

⁷ *Kraft Co. v. J & H Marsh & McLennan of Florida, Inc.*, 2006 WL 1876995, at *1 (M.D. Fla. July 5, 2006).

⁸ The WRAP-UP GUIDE, *supra*.

⁹ *Va. Sur. Co. v. Adjustable Forms Inc.*, 888 N.E.2d 733, 737 (Ill. App. 1st Dist. 2008).

¹⁰ The WRAP-UP GUIDE, *supra*.

¹¹ *Id.*

in construction defect claims, especially the long-tail losses covered under typical completed operations hazard provisions in commercial general liability policies. This, in turn, caused a lack of available insurance for contractors working on these types of projects, particularly in the western United States.

Now, CIPs are not at all uncommon. By way of example, Zurich has about 250 CIPs on any given day, and there are about 2,000 active CIPs at any given time in the US.

The Basics

a. The Players

CIP Sponsor – The sponsor is typically the developer/project owner or the general contractor. The sponsor selects the broker, administrator, safety professional, or other vendors, such as an on-site medical provider. The sponsor may choose to perform some of the administrative duties itself or delegate these activities to the CIP Administrator.

CIP Broker – The broker markets the project to insurance carriers and places the CIP. These brokers are typically large and sophisticated. Some brokers have in-house administration capabilities and retain the functions of both broker and administrator. If not, the sponsor will choose an administrator (most likely at the recommendation of the broker). Payment for broker and administration services varies. It can be lump sum, based on payroll or overall contract value, or on a time and expense basis.

CIP Administrator – Sometimes called a third-party administrator or TPA, the administrator is at the center of the implementation of the CIP. Retaining a knowledgeable and experienced administrator is the key to realizing the savings possible with CIPs. They must be knowledgeable regarding large scale construction finance, safety, and claims management. CR Solutions, Wrap Up

Associates and Construction Insurance Partners are three (3) large CIP administrator companies that make up about 80% of the market.

General Contractor – Under a CCIP, the general contractor is the sponsor. Even under an OCIP, however, general contractor buy-in is key to success. Because of its contractual relationship with the subcontractors, the general contractor is in a prime position to ensure compliance with the project safety program, which drives savings. The general contractor is also in daily contact with its subcontractors and can relay CIP information efficiently and effectively.

CIP Participants – Participants are the trade contractors or subcontractors. They are enrolled in the CIP and are obligated to flow CIP information and requirements downstream to their lower-tier subcontractors. This information includes advising them regarding how to price their work in light of the CIP deduction or credit. Participants are further required to incorporate the terms of the CIP in their subcontracts, including participation in the claims program and final audit.

CIP Insurer – The insurance carrier will underwrite the account, as well as negotiate the price of the policy and terms of coverage. It will provide the policy forms, manual and any related documents. Traveler's, Hartford, Liberty Mutual, Chubb, Arch, Markel, and Zurich are a few examples of insurers in the CIP marketplace.

b. The Coverages

A typical CIP will provide commercial general liability and excess coverage, as well as worker's compensation protection.¹² CIPs provide coverage for all participants, as defined within the policies, and the owners as named insureds through one or a series of policies.¹³ As noted above, there are some liability-only programs.

Other coverages can be added to a CIP, including construction management,

¹² The WRAP-UP GUIDE, *supra*.

¹³ See *Guar. Ins. Co. v. Old Republic Gen. Ins. Corp.*, 2012 WL 4468352, at *1 (S.D. Fla. Sept. 26, 2012).

professional liability, builder's risk, and environmental coverages. Auto coverage is typically excluded from CIPs.

Finally, a CIP provides no coverage for off-site contractors, non-enrolled subcontractors, or other entities.

Mechanics and Administration

a. Bidding with Insurance Deductions / Credits

Under the traditional risk allocation model, each subcontractor pays for their own insurance and this cost is added to its cost of work or bid. Under a CIP, the subcontractors remove these costs because they are being insured for the project under the CIP. To accomplish this, bids can either exclude subcontractor insurance costs or include them for later removal or deduction at the end of the project. The excluded price is sometimes called a net bid and the included cost is sometimes called a gross bid. Under the "net bid" process, the subcontractor works with its agent or broker to identify the insurance costs (liability and worker's compensation) for the project and then deducts it. This does not require a great deal of administrative effort.¹⁴

Under the "gross bid" approach, the subcontractor includes its insurance costs for the project. This option gives the sponsor more ability to identify the insurance costs and adjust them if they prove inaccurate. The "gross bid" option carries the most administrative burden, and if subcontractors do not fully understand the process, they will be displeased when their subcontract amount is reduced at the end of the job. There are also many sub-sets of these two general accounting methods.

These costs are generated using estimates of the subcontractor's payroll for the work to be performed on the project. Specifically, estimated payroll for workers compensation and estimated payroll or initial subcontract value (without change orders) for liability. So, if there are changes in the project

that impact a subcontractor's payroll, the CIP insurance deduction under the "gross bid" method will have to be adjusted at the end of the project. On the one hand, where payroll and contract scope have increased, thus increasing the subcontractor's insurance costs, the sponsor can increase the deduction. On the other hand, where payroll and contract scope have decreased and the subcontractor's insurance costs have gone down, the sponsor can decrease the deduction at the end of the job. Sometimes, however, a sponsor will increase the deduction if payroll and scope go up, but will not give a corresponding decrease to the deduction if project payroll or scope goes down. It is up to the CIP sponsor. The program may also require change orders to include insurance costs. Again, this adds to the administrative burden of the sponsor.

b. Enrollment

The CIP administrator is responsible for enrolling subcontractors into the program. Enrollment is an important process, as it initiates coverage for the subcontractors. Once the subcontractor submits its enrollment form, the administrator determines whether the subcontractor is eligible and then issues evidence of enrollment. Typically, the enrolled subcontractors become named insureds on the CIP liability policy and are issued individual worker's compensation policies. Some subcontractors that may not be eligible to participate include those that do not spend payroll at the project site, such as suppliers, material vendors, haulers, and truckers. It is also common for CIPs to exclude certain high hazard operations, such as blasting, demolition, waste removal, and crane operation.

c. Claims

Subcontractors must be issued information about how to report an accident under the CIP. These procedures and forms can be issued as separate documents or as part of the CIP manual. These documents

¹⁴ See The WRAP-UP GUIDE, *supra.*, regarding Mechanics and Administration.

typically provide information on how, when, and where to report claims and can include instructions on using the on-site medical services. These forms may include: an incident investigation form, an injured worker statement, a witness statement, a worker's compensation claim form, a liability claim form, and an authorization for medical treatment.

Coverage Issues

As noted above, CIP will not cover unenrolled subcontractors or off-site subcontractors. For accidents caused by those subcontractors, the owner and general contractor will have to look to the traditional risk transfer protection of additional insured status on those subcontractors' liability policies. There are many different CIP exclusions in the marketplace, but one example is Insurance Services Office, Inc. ("ISO") Wrap-Up Exclusion ISO CG 21 54 01 96:

This insurance does not apply to "bodily injury" or "property damage" arising out of either your ongoing operations or operations included within the "products-completed operations hazard" at the location described in the schedule of this endorsement, as a consolidated (wrap-up) insurance

program has been provided by the prime contractor/project manager or owner of the construction project in which you are involved.

These wrap-up exclusions also create another issue. Because of these exclusions, participants do not have completed operations coverage for the project covered by the CIP under their own insurance programs. For this reason, the CIP must have extended completed operations hazard coverage. Typically, this coverage extends until the end of the applicable statute of repose, which in most states is ten (10) years.

The cross suit exclusion is another standard ISO exclusion that precludes coverage for claims brought by one insured against another. This exclusion is meant to prevent, for example, related companies from suing each other in order to trigger insurance coverage under a policy where both are insureds.

This is a fine concept for a commercial general liability policy, but it doesn't work so well with a CIP. Under a CIP, the owner, general contractor, and all subcontractors are insureds. A cross suits exclusion would bar coverage for any claims an owner might have against, for example, a general contractor for losses caused by it or its subcontractors' negligence. Similarly, under a CCIP, the general contractor would have no coverage for construction defect claims against its subcontractors. These types of construction defect claims are some of the major risks that should be covered by the CIP. If a cross suits exclusion is allowed to remain in a CIP, only losses caused by third parties would be covered.

Conclusion

When dealing with latent construction defects, a sophisticated surety

looks for any and all available insurance coverage to mitigate its loss, including commercial general liability policies purchased by the bonded principal, builder's risk policies, and any other liability policies available because of additional insured status or otherwise. In addition to these much more common policies, sureties should always check to see if there is potential CIP coverage. These policies can be a great source of recovery because: (i) they typically

have much higher limits; (ii) their policy limits are dedicated to a single project to avoid potential erosion or exhaustion; (iii) they avoid any "anti-indemnity" statutes that might bar additional insured coverage; and (iv) they cover all project participants thereby eliminating most potential subrogation actions.