CLIENT ADVISORY

Wrap-up Insurance Programs - Part Two

In Part One of our article series, we learned that Paul's Plumbing, Inc. has enrolled in the city's owner controlled insurance program (OCIP) for construction of the city's new hotel and convention center. His bid has been accepted by the city and he will start work shortly. The OCIP administrator, Spoils Risk & Insurance, has provided Paul with the documents that give a brief summary description of the OCIP. Paul has asked Karen Kelly, his account executive with Proficient Insurance Brokers, to meet with him to help him understand the OCIP documents. As this is the first time Paul's Plumbing has relied upon a wrap-up insurance program for liability insurance protection, Paul is concerned this new approach may leave him with gaps in coverage.

Exclusions to Paul's Liability Policies

Although Karen visits Paul to explain the OCIP to him, she first provides him with a copy of the endorsement to Paul's Plumbing, Inc. liability insurance. This endorsement excludes all coverage for Paul's Plumbing because a wrap-up insurance program has been provided at the city's hotel and convention center jobsite[1]. The exclusion applies whether the wrap-up provides the same coverage as Paul's own liability insurance, the wrap-up limits are adequate or if the wrap-up policy is no longer in effect. Karen is a bit upset that Paul's insurer refused to use a more limited and newer version of the wrap-up exclusion[2] – one which does not exclude coverage at the project site if the wrap-up has been terminated, as long as Paul provides his insurer notice of the wrap-up termination. Karen explains to Paul that given the recent economic challenges, large building projects have gone "belly up," resulting in cancellation of the wrap-up insurance program, leaving everyone enrolled "bare." The limited wrap-up exclusion is intended to address this situation.

Off-Site Coverage

Because Paul does some fabricating of equipment that will be installed at the convention center, he first asks Karen if the wrap-up will provide liability coverage for injuries or damages that take place while his employees are engaged in fabricating at his shop. Karen reminds Paul that the wrap-up provides coverage only at the project site and will not extend liability protection to Paul's shop.

In fact, Karen explains, work conducted away from the project is the main reason Paul's Plumbing, Inc. must provide evidence of off-site coverage to the city despite the wrap-up approach. Karen shows Paul that the Certificates of Insurance that were issued to the city as part of the bid require that Paul prove to the city that he has liability insurance that applies to work away from the the project site, as well as evidence that Paul has automobile liability insurance – both of which are not covered in the wrap-up program.

Warranty Work – Potential Coverage Gap

The documents note that the OCIP liability policies (totaling $100 million of liability coverage) will have a 36-month policy term, the expected time to complete the project, and that completed operations will be extended for an additional four years from project completion.

A closer look at Paul's trade contract with the general contractor reveals what Paul already knew – he is required to perform "warranty work" up to one year after he completes his portion of the job. Since his own liability insurance will not provide him with coverage at the project site, Paul is concerned that if he must return to perform warranty work after the 36-month policy term, he will not have coverage if, for example, he accidently drops a pipe on a patron at the convention center.

As the bodily injury Paul describes will not be considered within the products and completed operations hazard, it will not be covered by the extended completed operations portion of the OCIP. Karen agrees that Paul is not covered by his own liability insurance and, based on OCIP documents, does not appear to be covered by the OCIP for bodily injury or property damage resulting from warranty work after the OCIP policy term[3]. Paul's concern regarding coverage gaps in the OCIP begins to grow.

Extended Completed Operations – Another Potential Coverage Gap

The discussion quickly turns to the four-year extended completed operations coverage provided in the OCIP. Paul had previously asked his legal counsel the extent of liability Paul's Plumbing, Inc. may have for its completed work and was advised liability may be imposed for bodily injury or property damage that take place for up to 10 years after substantial completion of his work. For example, if Paul's work fails nine years after installation, Paul's Plumbing, Inc. can be held liable, but does Paul have coverage under the OCIP for the resulting water damage to the convention center occurring nine years after installation? If not, does Paul's Plumbing, Inc. have coverage under his own liability policy? Karen tells Paul the answer to both is no – Paul's Plumbing, Inc. would be entirely without liability coverage under either the OCIP[4], as the extended completed operations is only four years, or his own liability insurance. Paul does not like this wrap-up approach – at all.

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The OCIP's Self-Insured Retention (SIR)

In reviewing the OCIP documents, Paul and Karen both notice that the owner retains the first $250,000 of any liability claim – an SIR of $250,000. But as an incentive to maintain jobsite safety, an enrolled contractor or subcontractor will be required to pay its share of any claim for which it is liable, up to the $250,000 SIR[5].

This twist is particularly alarming to Paul and Karen. Paul's own liability insurance excludes coverage for the SIR – leaving any such claim to be paid out of the assets of Paul's Plumbing, Inc. Further, had Paul known about this shifting of responsibility of the SIR to enrolled parties, he would have sought insurance for $250,000 per occurrence for this job and passed the cost of that insurance along as part of his overhead in his bid. But now it is too late.

Paul tells Karen, in the words of Popeye the Sailor, "enough is too much!" He is livid and contacts the city and the CIP administrator. Apparently, Paul is not the only enrolled party that has vociferously protested this provision – the city has already relented and is amending the documents to indicate that the city is fully responsible for its SIR.

Conclusion

Wrap-up insurance programs can leave the enrolled parties with substantial gaps in coverage – including, but not limited to, coverage for warranty work, completed operations, and even the exposure of the sponsor's SIR. While many of these gaps can be covered by well-written wrap-up insurance programs, too often the wrap-up provides coverage that is less broad than that of the enrolled party's own liability insurance program, in our case Paul's Plumbing, Inc.

One approach taken by contractors who are required to rely on wrap-up insurance programs is to amend their own liability policies so that coverage applies on a "difference in conditions," or DIC, basis. That is, the Commercial General Liability (CGL) and the Excess Liability policies of the enrolled contractor amend the wrap-up exclusion to provide coverage that covers gaps between the CGL and the wrap-up program – such as warranty work, completed operations or even to fund the sponsor's CIP. Further, the newer, more limited wrap-up exclusion (edition date 2009) is also desirable. In the event a project dissolves before completion and the wrap-up insurance is cancelled, with the limited wrap-up exclusion, the enrolled contractor can look to its own liability insurance program for any claims that may arise out of the abandoned project.

Glossary

Wrap-up – The generic name for an insurance program that is characterized by the centralized purchase of insurance to protect most entities while performing work at a large construction project.
CIP – A consolidated insurance program; also a more formal name for a wrap-up insurance program.
OCIP – An owner controlled insurance program or a consolidated insurance program in which owner of the project is the sponsor of the CIP.
CCIP – A contractor controlled insurance program or a consolidated insurance program in which the general contractor (or construction manager) for the project is the sponsor of the CIP.
Sponsor – The entity that acts as the centralized purchasing entity and also arranges the CIP.
Administrator – The entity to which the sponsor delegates the administration of the CIP – often the insurance broker that also places the coverage for the CIP.
Off-Site Liability Coverage – As the CIP provides liability coverage only at the project site, the CIP sponsor customarily requires evidence of liability insurance for any bodily injury or property damage that may take place away from the project site. Operations such as assembly, fabrication, project meetings, etc. related to the project are examples of off-site exposures to be covered by the enrolled party's own liability coverage.

[1] Exclusion – Designated Operations Covered by a Consolidated (Wrap-Up) Insurance Program (CG 21 54 01 96) is the ISO wrap-up exclusion. CAUTION: Insurers may use a proprietary exclusion that may differ substantially from the ISO exclusion.

[2] Limited Exclusion – Designated Operations Covered by a Consolidated (Wrap-Up) Insurance Program (CG 21 31 05 09) is the ISO limited wrap-up exclusion. CAUTION: Insurers may use a proprietary exclusion that may differ substantially from the ISO exclusion.

[3] Some wrap-insurance policies will expressly grant coverage for warranty work done by an enrollee, provided the warranty work is done within a certain amount of time (such as one year) after the policy period.

[4] Wrap-up insurance programs often (but certainly not always) provide extended completed operations for 10 years or the applicable statute of repose.

[5] While such a requirement is not the norm as it is contrary to the prime purpose of the wrap-up (provide insurance to all enrollees), transferring all or some of the risk within the SIR to enrollees is not uncommon.

Craig F. Stanovich is co-founder and principal of Austin & Stanovich Risk Managers, LLC, a risk management and insurance advisory consulting firm specializing in all aspects of commercial insurance and risk management, providing risk management and insurance solutions, not insurance sales. Services include fee based risk management, expert witness and litigation support and technical/educational support to insurance companies, agents and brokers. Craig can be contacted at cstanovich@austinstanovich.com. Visit www.austinstanovich.com for more information.