THAT'S A WRAP

It is important to know how wrap insurance is different from a traditional liability policy.

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"Wrap" insurance programs have become a popular alternative to traditional insurance arrangements, particularly on large construction projects. However, contractors need to be aware of some of the unique issues that arise in wrap programs – specifically, liability insurance wraps.

In the past, each contractor on a construction project secured its own liability insurance policy to cover individual liability exposures, including those exposures on a project. Under a wrap program, either the owner or the general contractor secures a single insurance policy that applies to the entities and risks involved in the project. These programs are commonly referred to as an Owner Controlled Insurance Program (OCIP) or Contractor Controlled Insurance Program (CCIP).

Wrap liability policies typically use standardized general liability provisions that you would find in the more traditional forms of liability insurance. Thus, the wrap general liability policy does not normally change the fundamental policy language that you would find in your more typical individual insurance policy.

Because traditional insurance forms often support a wrap program, it tends to involve many of the same coverage issues that traditional forms of insurance involve. But there are a number of unique issues that arise with wrap programs that will set it apart from your traditional insurance.

Scope Of Coverage

A primary inquiry seeks to learn who is insured and where are the coverage boundaries. It is rare to find a wrap program that provides coverage for every entity working at a project or for every risk that a project faces. An OCIP will normally name the owner, general contractor (or prime contractor) and subcontractors as insureds.

The CCIP will normally name the general contractor (or prime contractor) and subcontractors as insureds. The owner may be an additional insured under the CCIP. Normally, vendors, designers, architects and engineers are not covered by a standard wrap liability policy. It is important to know which entities are not insured and what operations are not covered so that you can secure other insurance to fill in the gaps.

Waiver of Liability

Wrap programs typically require insureds to waive claims between themselves that are covered by the wrap. The waiver typically appears in the contract and wrap manual, and is further reinforced by policy language. The contract will have specific sections or paragraphs addressing the waiver.

The wrap policy manual might state that the wrap insureds agree not to sue each other for claims covered by the wrap and that the insureds will waive their rights to subrogate against one another. A wrap policy might also include an exclusion that bars coverage for one insured suing another insured.

Because of these waivers, it is important to consider what claims are covered versus not covered before asserting claims against other insureds who worked on the project. It could be that by asserting a claim against another insured that you are, in effect, making a claim that is not covered by the wrap program.

The Duty To Defend

The wrap insurer's duty to defend can become a significant issue in large loss situations. Some policies are written so that the primary wrap policy provides the sole duty to defend, but the excess wrap policy or policies do not provide a duty to defend at all. In a large loss situation, the primary insurer's limits might quickly be exhausted by payment of some claims.

In that situation, the insureds may be left to defend themselves because the excess policy or policies do not provide a duty to defend. If the intent of the wrap is to provide a duty to defend until all primary and excess insurance is exhausted, special attention should be paid during the underwriting process to secure policies with duty-to-defend provisions that state that each insured will be defended as long as the wrap limits are not exhausted.

The COE Endorsement

Because wrap policies normally terminate when the project or projects are completed, a question arises as to how to insure liability that might arise after the project is completed. The insurance industries' answer to this question has been to include a completed operations extension (COE) endorsement in wrap policies. In general, the COE endorsement extends completed operations coverage for a certain period of time after the project is completed and the wrap policy is terminated. The language in these endorsements is often unique, and special attention should be paid to the language used in the specific wrap policy.

When reviewing these endorsements, it is important to consider under what conditions the endorsement applies. There can be situations where there might be more than one limit that applies – i.e., one limit might apply to a claim arising from a part of the project that is completed and another limit that applies to a claim arising from a part of the project where operations are continuing.

Finally, it is important to consider when the COE endorsement expires. The duration of the endorsement should align with the exposure for completed operations, and the duration of exposure will depend, in part, on the applicable statutes of limitations, statutes of repose and other relevant time limits. In sum, it is important to carefully review the language used in each unique COE endorsement.

Deductibles and Retentions

Sometimes a wrap policy will contain a deductible or self-insured retention that needs to be satisfied before the policy responds to a claim. Issues sometimes arise as to who is required to pay the deductible or retention, how the deductible or retention must be satisfied, and how many deductibles or retentions apply to a loss.

For example, the first named insured (i.e., the owner or general contractor) might be the only entity that can satisfy the deductible. Moreover, a deductible or retention might be satisfied only by payment of defense costs. Finally, multiple deductibles or retentions might be owed where there are multiple claims relating to different aspects of the project. There is no hard and fast rule as to who must pay deductibles or retentions, how they are paid, and how many deductibles or retentions must be paid. It is therefore important to understand how the deductible or retentions work in your wrap policy.

Language Controls

Typically, a wrap manual will accompany a wrap insurance program that will outline the coverage afforded under the wrap program. It is important to keep in mind that the wrap manual is usually not prepared by the insurer or insurers that have actually issued the wrap policies. Thus, although the wrap manual might be a useful guide in understanding the wrap program, they are generally not a substitute for reading the policies. If there is a conflict between what is stated in the manual and what is stated in the policies, the policy language usually controls.

Although wrap liability programs are similar in many ways to traditional insurance arrangements, there are important issues that arise that are unique to wrap programs. It is important to understand the distinctions between traditional insurance and wraps in order to receive the most from what a wrap program can offer. ◆

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