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Wrap It Up! OCIPs, CCIPs and Wraps

Beth D. Bradley

Beth D. Bradley
Tollefson Bradley Mitchell &
Melendi LLP
Dallas, TX

BethB@tbmmlaw.com
214-665-0102

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By
Beth D. Bradley

Wraps got their start with construction of World War II defense plants, then spread to other large-scale government projects and, eventually, to public projects.¹ Once limited to large, single-site projects, Owner Controlled Insurance Programs (OCIPs), Contractor Controlled Insurance Programs (CCIPs) or, more generally, “Wrap Up” programs, have become more popular, and their use has expanded to smaller projects and to projects at more than one site (rolling OCIPS). The goals of a CIP or Wrap are to afford a more comprehensive insurance program, control costs, provide better safety and claim management and avoid disputes or litigation between participants. They also generally provide higher limits for a project than the individual policies that would typically be maintained by contractors. Besides having their own vocabulary, CIPs come with their own issues and may create novel or at least unforeseen problems.

I. Who Is Insured

The Program generally insures the owner, developer or general contractor, and all enrolled contractors. The subcontractors are typically required to enroll, but enrollment is not automatic, and requires some administration. See, e.g., *Briggs v. Toyota Mfg. of Texas*, 337 S.W.3d 275 (Tex. App. – San Antonio 2010, no pet.)(exclusive remedy did not apply where there was no evidence of written agreement under which owner agreed to provide workers compensation; subcontract did not mention OCIP and OCIP manual was insufficient evidence of agreement); *Zurich American Ins. Co. v. Illinois Nat’l Ins. Co.*, 940 N.Y.S.2d 271 (N.Y. Sup. 2012)(subcontractor who did not have executed contract and had not been enrolled was not covered). Enrollment may be limited to the time a subcontractor is actually active on the project, ending when that portion of the work is completed.

Design professionals are typically not included, although coverage may be available by endorsement.

Material suppliers, vendors and consultants are typically not included. Ancillary services, such as guard services, janitorial services, or delivery trucks may also be excluded. See, e.g., *Waco Scaffolding Co. v. Nat’l Union Fire Ins. Co. of Pittsburgh*, 1999 Ohio App. LEXIS 5058 (Ohio App., Oct. 28, 1999)(entity who provided temporary scaffolding, but no labor or materials, and who did not have contract incorporating terms of OCIP and did not comply with insuring requirements, was not an insured); but cf. *Am. Prot. Ins. Co. v. Acadia Ins. Co.*, 814 A.2d 989 (Me. 2003)(although OCIP excluded certain entities, including those who merely delivered materials, subcontractor was insured participant when work involved delivery and unloading, at site, as part of installation of metal fabrication)

Contractors whose work is deemed highly hazardous, or whose work is below a minimal dollar threshold, may also be excluded.

¹ David G. Jordan and Jeffrey J. Vita, *Application of the Workers Compensation Exclusivity Rule Under Wrap-Up Insurance Programs*, 24 John Liner Rev. 3, p. 47.

A subcontractor who is not enrolled will not be considered an additional insured. See *Five Star Elec. Corp. v. Zurich Amer. Ins. Co.*, 956 N.Y.S.2d 115 (N.Y. Sup. 2012) (subcontractor who did not participate in OCIP and was required to maintain separate coverage was not additional insured under builder's risk coverage of OCIP)

II. What Coverage Is Afforded

CIPs are often the result of negotiations and typically do not follow standard forms, so the policy needs to be carefully reviewed as coverage can vary widely. While some insurers start with ISO forms, and then modify by endorsement, others have developed their own forms which can be further tailored based on the insured project.

General liability coverage is at the core of a CIP, but may be afforded on an "occurrence" or a "claims-made" basis. Other coverages, such as auto, workers compensation, excess liability, pollution liability, builder's risk or professional liability may also be included.

The Texas Insurance Code defines a "Consolidated Insurance Program" as "a program under which a principal provides general liability insurance coverage, worker's compensation insurance coverage, or both that are incorporated into an insurance program for a single construction project or multiple construction projects." Tex. Ins. Code §151.001.

CIPs are project specific; owners and individual contractors may also be required to maintain coverage for claims outside the scope of the OCIP. See, e.g., *Zeitoun v. Orleans Parish School Bd.*, 33 So. 3d 361 (La. App. 2010) (elementary school student's injury was unrelated to construction activity and not covered under School Board's OCIP policy).

Where other coverages are not included, they may still be required to be maintained by the contractors and subcontractors. See, e.g., *Estate of Pitts v. City of Atlanta*, 746 S.E.2d 698 (Ga. App. 2013) (where OCIP required contractors to maintain automobile liability insurance, and exclusive remedy did not apply, subcontractor's employee was intended beneficiary and entitled to sue contractor for breach of contractual obligation to maintain insurance).

III. How Is Coverage Under a CIP Different?

The CIP applies only to the project or projects for which it is issued and generally limits coverage to accidents at the project site or having some connection to the project site. Unless it is a rolling CIP, the policy terminates when the project is completed, although extended coverage for completed operations may continue.

There may be no coverage for damage to the project, during ongoing operations, if there is no builder's risk component. There should be an extended period of coverage for warranty work or completed operations—often designed to correlate to limitations or the period of a statute of repose. In Texas, for projects beginning on or after January 1, 2012, a "Consolidated Insurance Program" that provides general liability coverage must afford at least 3 years of completed operations coverage. Tex. Ins. Code. § 151.051. Unlike the typical CGL, a CIP usually includes coverage for damage to an insured's own completed work or product.

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