

Wrap-Up Coverage Tips for Subcontractors

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Poorly designed

Wrap-Ups increase risk, cost time and money and might even sink contractors and projects. Avoiding uncontrolled, unlimited risks is especially important for subs.

Controlled Insurance Programs (CIPs) consolidate coverage of owners, general contractors and subs for General Liability and often include Workers' Compensation, Builders Risk and other lines.

Owner Controlled (OCIP) and Contractor Controlled (CCIP) Insurance Programs "Wrap-Ups" ostensibly improve efficiency and safety; reduce premiums; heighten transparency; increase coverage certainty (should eliminate some risk transfer); reduce litigation; cover difficult risks; increase participation; and, include Completed Operations coverage.

CIPs are Not All Created Equal

When designed primarily to protect and enrich Sponsors, CIPs may leave subs seriously exposed.

Fairer is Smarter

The American Subcontractor's Association (ASA) has a number of documents available that 1) educate subs 2) provide recommendations to level the playing field and 3) help subs remain financially sound.

A Few Steps in the Right Direction

- **Cross Suits** between/among insureds under the same Wrap-Up are often expressly excluded by blanket cross-liability exclusions, which eliminate coverage for a sub when injured employees of another sub sue for negligence. Remove the exclusion for bodily injury.

- **Damage to the Work** can occur. Subs should be sure the Builders Risk will provide full coverage for damage to their work and/or the Wrap-Up treats them as third parties when they claim other Wrap-Up participants damage their work.

- **Blanket-Mutual Waivers of Subrogation** are problematic when not properly coordinated with coverage under Builders Risk, GL and Workers Compensation.

- **Warranty/Repair Endorsements** allow subs to do post-completion warranty work and other repairs. Without this endorsement on the Wrap-Up, as a sub, insure your GL coverage allows such work on Wrap-Up projects.

- **Sponsor's Termination for Convenience** without a corresponding right for the sub to terminate contract obligations may leave a sub in an untenable position.

- **Sponsor's Failure to fund SIR (Self-Insured Retentions)** leaves subs with significant financial burdens to trigger coverage for completed operations hazard when single-asset-project entities are insolvent.

CIP terms can be onerous. Wise subs evaluate project-insurance requirements before estimating and bidding. Look before you leap.

Exhausting Wrap-Ups is beyond the scope of this introduction. Additional, suggested articles by Richard B. Usher:

"Respond to Wrap-Up Risks With New and Updated ASA Resources." ASA Today. Special Report. January 2008. http://www.hillusher.com/files/Jan_2008_ASA_Today.pdf

"Risk Shifting - A Moral Hazard: Contract Additional Insured and Indemnity Obligations: A Deterrent to Construction Safety and Quality." <http://www.corrdedense.org/AcademiaGovernmentandIndustry/B-07.pdf>

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