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ERRORS AND OMISSIONS ISSUES AND ADVICE

Wrapping Up Wrap-Up Insurance

Wrap-up policies seem to be gaining in popularity. Even if you never place such a policy, you may have to deal with customers who are involved in construction projects that are covered by them. Therefore, every insurance agent may want to become familiar with the basics of wrap-up coverage.

A wrap-up policy is all-encompassing liability coverage meant to protect the owner, general contractor and subcontractors of specific construction projects—generally ones greater than $10 million. General liability is the most common coverage included in a wrap-up policy. These policies, however, often include coverage for excess or umbrella liability, workers compensation and employers liability, and can be tailored to include other coverage types, such as builders risk, professional liability, environmental liability, pollution liability and railroad protective liability.

Wrap-up policies are most often used with government infrastructure projects, transportation construction and residential construction. At least three states require the use of wrap-up policies exclusively for condominium construction. Wrap-up policies are usually identified by the sponsor of the program. The two most common sponsors are the owner and the general contractor of the project. Thus, the two most common forms of wrap-up coverage are the owner-controlled insurance program and the contractor-controlled insurance program. However, wrap-up policies can also be sponsored by construction managers, design builders, trade groups and associations.

To understand the advantages of wrap-up insurance, consider the use of traditional insurance on a large construction project. First, the owner of the project and the general contractor enter into a contract where the general contractor agrees to defend and indemnify the owner for any loss arising out of the construction project. The owner will also require the general contractor to obtain commercial general liability, workers compensation and employers liability coverage, and to include the owner as an additional named insured on each of these policies. The general contractor then works with various subcontractors, also requiring each of them to obtain these coverages and to include both the general contractor and the owner as additional named insureds on each policy. Between contracts and insurance policies, there are many opportunities for an error to occur in the procurement of coverage on a large construction project.

With wrap-up insurance, one policy replaces several policies held by the owner, general contractor, design professional and every subcontractor on the project. Not only does the sponsor control the coverages, but they also control who is included under the coverages. Wrap-up policies include broader coverage with higher limits than traditional insurance. A typical wrap-up policy may also include completed operations liability coverage for 10 years after the completion of the project. Furthermore, choosing a wrap-up policy frees the general contractor to hire any subcontractor it chooses without consideration of whether the subcontractor can obtain the requisite insurance.

Wrap-up policies can streamline claim handling procedures. When the owner, design professional, general contractor and each subcontractor have separate insurance policies, the parties must first allocate responsibility between themselves before the claim can be negotiated.

While wrap-up policies can offer advantages over traditional insurance, they present unique opportunities for insurance agents to commit errors. Some construction projects use a hybrid wrap-up/traditional coverage design. For example, on a project requiring $100 million in commercial liability coverage, there may be wrap-up coverage purchased to cover the first $50 million in exposure. The remaining $50 million would be supplied by the owner, general contractor and three subcontractors. By contract, each of these parties agrees to carry $10 million in general liability coverage written over the wrap-up coverage. As the agent of one of the parties placing the $10 million in coverage, verify there is no exclusion for wrap-up coverage, which is a common ISO exclusion. Be aware that some carriers may draft their own manuscript exclusion or include wrap-up in a broad, catch-all exclusion.

Agents dealing with customers involved in large construction projects may need to consider whether a wrap-up policy might be required or appropriate. Then they need to be careful in navigating through potentially dangerous waters. IA

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Off-Site But Not Out of Mind

Off-site fabrication involved in construction projects can also be a concern. Wrap-up policies only cover work performed at the construction site. If a portion of the construction is to be done off-site, there is no coverage under a wrap-up for any loss occurring off-site. This can leave a large uncovered exposure.

Additionally, there is great concern as to whether there would be coverage for an on-site loss caused by a defect in a component of the project fabricated off-site. Since wrap-up policies are manuscript policies tailored to a specific project, they lack the reliability of knowing how a court will interpret the coverage should a loss arise.

—J.R.

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