

## Controlled insurance programs: reducing expenses when good jobs go bad

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Construction-related risks are complex simply due to the intricate nature of some construction projects, such as risks involving steel erection, HVAC systems, concrete, foundations and exterior cladding, to name a few. On the other hand, many construction claims involve another layer of complexity due to the relatively large number of parties involved, especially when several parties are alleged to have caused or contributed to a loss or injury, and even more so where those parties all have some contractual relationship.

Due to the presence of multiple parties in close proximity and contractual relationships between those parties on a construction project, the construction industry has traditionally presented unique challenges to the insurance industry in terms of insured risks. This is especially true considering that all of the tiers on a project traditionally maintain separate insurance to protect their own interests and use complex indemnity clauses to attempt to transfer considerable risks among the various tiers.

The high cost of this traditional scheme was the driving force behind the development of controlled insurance programs (CIPs). A CIP is an insurance/risk management/safety program provided to all of the parties on a construction project, usually for the duration of the construction operations. The CIP typically includes commercial general liability (CGL) insurance, worker's compensation and employer's liability insurance, umbrella liability insurance and often builder's risk insurance, while automobile liability and contractor's equipment coverage are usually not included. Tiers that are covered will usually include the contractor, subcontractors, and sub-subcontractors through the lower tiers, while smaller subcontractors, offsite fabricators and suppliers are usually not included.

As previously set out, the use of CIPs has gained in popularity due to potential cost savings. The costs of individually insured contractors that were included in their bids would be reduced by the owner's (or, in some cases, the general contractor's) provision of a single insurance program insuring all participants. The savings in the bids are usually verified by requiring the contractor and subcontractors to bid the job including their insurance cost, and without their insurance cost, in contemplation of the use of a CIP. The keys to ensuring maximum savings using a CIP include: (1) a project of sufficient dollar value to extract such savings; (2) the risk management capabilities to effectively administer the CIP; and (3) above all, adequate coverage to apply to claims when needed.

Use of a CIP can provide several advantages, including mass buying power, elimination of overlapping coverages and complex indemnity agreements, reduced commissions and operating costs, higher limits and more certainty of coverage, and centralized cost control

and claims processing. At the same time, some of the potential disadvantages of using a CIP include the non-managing participants' loss of control of the project insurance program, disruption of the participants' own comprehensive insurance program, gaps in coverage requiring special endorsements, possibly short completed operations coverage, and loss of projected savings due to administrative costs.

When it comes to litigation, the natural conclusion would be that elimination of multiple insurers insuring each tier separately would reduce litigation between the parties over jobsite injuries, accidents or property damage. Unfortunately, such has not always been the case. One explanation for this is the "separation of insureds" clause, which requires that each insured participant, as a named insured on the CGL policy, is entitled to have coverage, including defense and indemnity available to it, evaluated separately from every other insured. This translates into a separate defense for each party involved in a jobsite accident.

Relatively speaking, CIPs are still a new concept within both the construction and insurance industries. While cost savings may have driven their initial development, CIPs remain an attractive choice due to the provision of adequate coverage to the participants on a construction project in light of the explosion of construction defect litigation and the possibility of serious bodily injury. As with any developing concept, there are pros and cons depending upon a party's status as owner, general contractor, subcontractor, sub-subcontractor or supplier. Nevertheless, in light of the difficulties that have been encountered as to insuring risks such as construction defects under traditional individual model, wrap-up or project specific insurance is likely to gain momentum within the construction industry.

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