

Claims Handling of OCIP/Wrap Policies

Yolanda Gonzalez

Unit Manager of Liability Claims

North American Risk Services, Inc. (NARS) is a third party administration company that prides itself in being in the forefront of both claim handling and technology that provides a unique and efficient method of program administration for all clients. The area of OCIP/Wrap claims is a specialized area of general liability, often times deemed “Complex Litigation”. Some construction projects are covered under an Owner Controlled Insurance Program (OCIP) or “wrap-up program” (Wrap). Unlike traditional construction insurance coverage, an OCIP/Wrap policy provides eligible trade participants of a construction project with general liability coverage under one policy. As a consequence, OCIP/Wrap program claims can be costly and complex. It is critical that file handlers are familiar with nuances particular to the OCIP/Wrap environment.

The most important elements for handling of OCIP/Wrap policies are as follows:

Identify the insureds. Not only will the insured be listed on the Declarations page of the policy but they could also be listed on a separate Named Insured Endorsement(s).

Typically, the Named Insured Endorsement will identify actual named insureds and also a class of persons or entities, such as those who performed work on the project. It will be important to identify each enrolled contractor or subcontractor. This could be determined by certificates, contracts and/or enrollment forms, that usually are maintained by the developer of the project. Sometimes the underwriting file may have this information, or it may be available through the insured-developer or General Contractor. An example of a “Named Insured Endorsement”:

NAMED INSURED ENDORSEMENT

This endorsement modifies insurance provided under the following:

It is understood and agreed that Policy Declarations, Item 1, Named Insured is completed to read as follows:

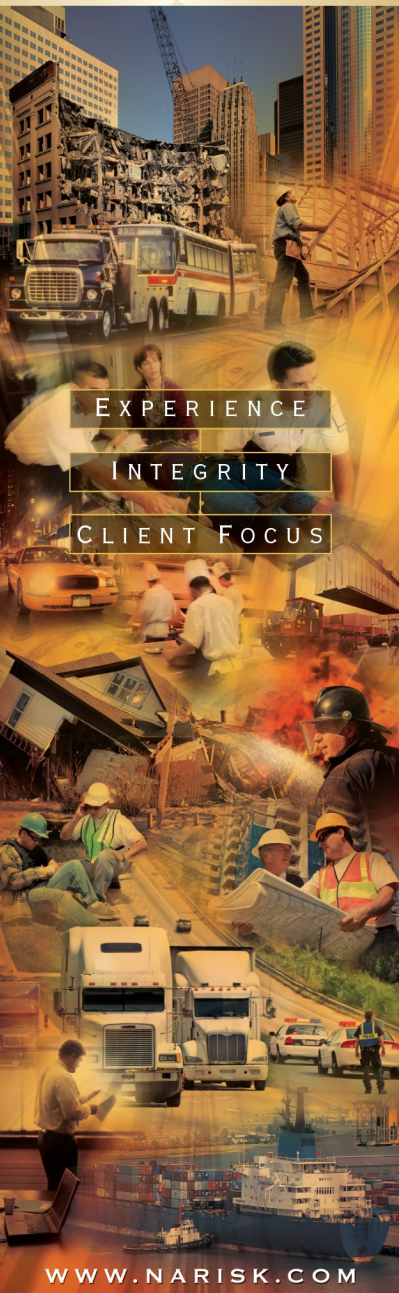
1. ABC
2. All contractors and subcontractors enrolled in the Owner Controlled Insurance Program (OCIP)

This policy will apply solely to the liability of the above entities arising out of the project located at Park Ridge Road, Newport Beach, CA.

Wrap policies are project-specific. It is important to determine whether the designated project is implicated in the claim at hand. Some policies could have more than one project. The policy may contain a “Designated Project Limitation of Coverage Endorsement”, that may read something like the following example:

DESIGNATED PROJECT – LIMITATION OF COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:



It is understood and agreed that this policy applies only to “bodily injury,” “property damage,” or “personal Injury,” and “advertising injury” arising out of the project shown in the schedule below:

SCHEDULE

Project: Best Apartment Building
Location: Between Road 20 and Road 21
San Pablo, CA

Many wrap policies have a Self-Insured Retention (SIR) or the amount specified in a liability policy that must be paid by the insured before the insurer pays. It is important to determine the amount and application of the SIR. Some allow the insured to pay fees and costs until satisfied, while others require the insured to pay over the entire amount before the carrier's obligation is triggered. Usually, anyone who qualifies as an insured can satisfy the SIR. Another issue to consider is whether the SIR applies on a per-occurrence, per-claim or some other basis. Ultimately, it comes down to careful reading of the SIR endorsement.

Some wrap policies have a "burning limits" or "wasting" component whereby both defense expenses and indemnity payments reduce the available limits. Whether a policy includes a burning limits component will affect how a claim is handled as discussed more fully below.

Determine the applicable limit of the policy at issue (i.e., per-occurrence or general aggregate for products-completed operations). This comes into play with regard to liability analysis and whether a "burning limit" component exists. Erosion of the policy will be more expedient when a burning limits provision is made part of the policy due to payment of defense expenses to one or more counsel (and third parties such as experts, mediators, depo costs).

It is critical to track impairment of the policy by loss run or other means at the start of the claim and throughout the course of it to recognize remaining available limits.

Exclusions. When analyzing the allegations compared to the policies, review which exclusions may be applicable. Oftentimes, typical exclusions may be deleted or inapplicable such as Exclusion "I" (Your work) because subcontractors performed the work. An example of such deletion of exclusions may come in the form of an endorsement, such as the following.

AMENDMENT – DAMAGE TO YOUR PRODUCT

This endorsement modifies insurance provided under the following:

It is understood and agreed that Exclusion K. (Damage to Your Product) on Coverage Form CG 001 01 96 is deleted in its entirety and replaced with the following:

“Your product” does not include “Your Work” at the Designated Project or any part thereof.

Reserves. Loss and expense reserves should be posted timely and reflect the potential exposure for indemnity and defense. For indemnity reserving purposes, defense counsel’s initial report is important as it will provide counsel’s general impressions of the case to glean initial reserve data. Take into consideration things such as the size of the project, the allegations in the Complaint or formal Notice of Claim (varies by state) and the involved parties and their respective roles in the project. For defense reserving purposes, litigation budgets are key.



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Budgets should be secured within the first thirty (30) days into the case and should be provided by phases – initial (pre-mediation), then mediation phase, then trial phase if the case reaches that level. In addition to reviewing the budgets, also discuss the budget and likely strategy with defense counsel.

Client Reporting. Most wrap files trigger carrier specified captioned reports due to the fact these cases are costly and frequently exceed the standard authority ceded to a TPA. Refer to reporting thresholds which vary by client and are usually specified in service level agreements.

Counsel. Every party is entitled to competent, non-conflicted counsel. This is particularly important when the subcontractors are formally brought into the litigation directly by the Plaintiff or via the developer by way of a third-party complaint. If multiple insureds are implicated, a determination will need to be made whether one or more counsel is needed. Typically, this can be discussed with defense counsel. However, be careful not to create a conflict unintentionally. The common conflict that can be created unintentionally is when the defense of subcontractors is bundled and assigned to one firm but the trades have different interests in the case. An example is when one trade partner has a defense or indemnification obligation to another. If one trade might have actionable rights against another, then clearly a conflict would exist. In such an instance, it is important to ensure the subcontractor trades do not create a conflict. These potential issues can be discussed with defense counsel in advance of defense assignments. Assuming conflicts do not exist and/or can be waived, consider assigning the defense of un-conflicted insureds (usually enrolled subcontractors) to the same firm and or where available, consider flat-fee defense arrangement. These approaches can be quite cost effective.

If multiple defense attorneys are needed and the policy includes a "burning limits" component, carefully monitor erosion of the limits as previously discussed.

Tenders. If the developer and/or GC are the only entities implicated, obtaining other primary or additional insured carrier information is important. Some policies may not have residential or wrap exclusions requiring participation in the defense. The cost of this evaluation and exercise can be meritorious, as just the participation of one more carrier can save quite a bit on defense, (and perhaps preserve the policy in the case of a burning limits component). If enrolled subcontractors are implicated, co-carrier tenders should be issued for the same reasons. Subcontractor insurance policies may also be important if the claim exceeds the primary limit. Depending upon the date of occurrence and retroactive dates, some carriers might have multiple policies implicated.

Notice should be given to the excess carrier as soon as possible when applicable. If the liability or settlement evaluation is in excess of the primary limits, the excess carrier will need to participate and be provided with necessary information. Given the application of the primary policy and liability/settlement evaluation, a ceding arrangement between the primary and excess carrier should be considered. Usually, an excess carrier may be more motivated to enter into a ceding agreement where a burning limits component is present and liability is certain to reach or pierce the excess layer.

Other potential parties. Identify other parties who may have responsibility for the damages and liability and who are not insureds under the policy. They could present another source of contribution. In wrap settings, these parties may be suppliers or manufacturers of products incorporated into the project.

Wrap programs can be complex and costly. In order to ensure the best outcome, identifying these issues and determining whether resolution is appropriate or available early in the process is key. If the policy does not have



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a burning limits component, a carrier will be tasked with paying pre-litigation and/or litigation costs which can be very expensive and do not come off the policy. That means a primary carrier could face liability up to the applicable limit, plus defense.

ABOUT THE AUTHOR

Yolanda Gonzalez has been in the insurance industry for over 25 years as a claims professional and in management. She has worked in a myriad of lines of business ranging from personal lines (auto/homeowner), personal umbrella, commercial general liability, and construction defect coverage. Ms. Gonzalez has extensive experience handling and supervising large, complex, multi-party complex construction defect matters across various states nationwide on behalf of insurance carriers, including direct primary carriers for the developer and/or general contractor entities.

ABOUT NARS

North American Risk Services, Inc. (NARS) is a privately held, national third party administrator dedicated to providing comprehensive claims and insurance-related services to insurers, brokerages, managing general agencies, reinsurers, liquidation bureaus and self-insured funds. NARS prides itself on strong customer service, depth of insurance and claims knowledge, and ability to tailor every aspect of claims administration to fit client needs. With a diverse portfolio of programs across many industries and jurisdictions, NARS has dedicated units for Commercial Property, Construction Defect, General and Professional Liability, Homeowners, Personal Lines, Transportation and Workers' Compensation, Recovery, Special Investigations and Catastrophe Management. Please explore our web site www.narisk.com to learn more about the North American Risk Services solution.

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