BINDING AUTHORITY

Insurance Coverage Decisions: Issued Today - Impact Tomorrow

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"Key Issues" Update: "*General Liability Insurance Coverage: Key Issues In Every State*" is now back in stock at Amazon.com. However, Amazon is showing only a few copies left before it is once again Sold-Out. As for the price, it continues to fluctuate. I've give up on trying to understand the pricing mystery. The only thing for sure in this regard is that the book has consistently been a better deal on Amazon than the Oxford University Press site.

Contractor Says Oh-CIP: I'm Not Enrolled In The Wrap-Up

Louisiana District Court Addresses Wrap-Up Policy Enrollment

Who says insurance isn't cool. After all, there are wrap policies. And no risk conscious rapper would be caught without an insurance policy to protect against such things as an FCC fine for indecency, liability if any of his violent lyrics incite someone to commit a crime, injury caused by exposure to legionella in the hot tub, and the myriad of construction risks that come from building the crib. And don't forget the jewelry rider to protect against theft of the bling.

While nobody misunderstands a wrap policy to this extent, there is still plenty of misunderstanding over what a wrap-up is and what it covers. In simple terms, a wrap-up policy is a liability policy that is obtained by a single sponsor, such as a project owner or general contractor, that is designed to cover multiple contractors involved with a construction project. The theory is that there are various advantages, such as with respect to pricing and claims handling, to having all of the contractors insured under a single, all encompassing policy, rather than each contractor securing its own separate policy.

Except for a few differences, a "Wrap-up" policy (a.k.a. Owner Controlled Insurance Program (OCIP) or Contractor Controlled Insurance Program (CCIP)) – even one covering a multi-million dollar project -- may not look much different, in visual appearance, than a standard CGL policy issued to a mom and pop contractor. For

example, a wrap-up policy may very well be written using a standard ISO CG 00 01 form. Further, don't look for the word "wrap-up" written anywhere on the policy -- because it may not be there.

Then what make a policy a "wrap-up?" Just a few key endorsements, such as an endorsement (1) stating that the policy is limited to a specific identified project; (2) amending the definition of insured to include all enrolled (more about this below) contractors and subcontractors (of any tier) involved on the project; and (3) extending the expiration date of the policy for several years for purposes of damage within the completed operations hazard. There are a few other possible wrap-up specific endorsements as well. But, in general, a wrap-up policy is a CGL policy with just a few enhancements required to achieve its objective of serving as an all encompassing policy for a single construction project.

Despite the theory and best intentions, the question whether claims handling is actually simpler, when claims are made against multiple insureds, because a wrap-up is involved, is another story. It probably depends who you ask and what that person's experience has been with a wrap-up policy involving multiple insured parties. While it is one thing to say that, in general, a wrap-up policy is designed to provide coverage for an entire project, the nuts and bolts of that are not so simple. Even under a wrap-up, coverage for each insured-contractor must be examined from the perspective of, well, each insured-contractor, and the damage that it allegedly caused. Therefore, putting aside some other factors, the use of a wrap-up policy may not eliminate the common and thorny problem seen in non-wrap-up construction defect situations – allocation of damage between an insured's own faulty workmanship (which is probably not covered) and damage caused by the insured's faulty workmanship (which is likely covered (my state of residence aside)).

In addition, the contractor/sub-contractor insureds under the wrap–up policy may also be insured under their own CGL policy, purchased for their other (non-wrap-up project) work. If so, and such policy(ies) does not have a wrap-up exclusion, then these policies are likely to be brought into play for purposes of coverage for the contractor insured itself, as well as for additional insured coverage that such contractor may owe to another contractor. Thus, the idea that the use of a wrap-up policy will eliminate complex cost sharing and other disputes between multiple insurers is easier said than done.

Williams v. Traylor-Massman-Weeks, LLC **– United States District Court, E.D. La., April 2, 2012**

While case law addressing coverage under a wrap-up policy is not unusual, it sometimes involves issues that are along the lines of typical construction defect coverage issues under a CGL policy. In other words, the case will involve a CD coverage issue, that just so happened to arise under a wrap-up policy. This week's decision from the Eastern District of Louisiana in *Williams v. Traylor-Massman-Weeks, LLC* is different. It involves an issue that is completely unique to a wrap-up policy – the enrollment process.

The issue arose as follows. Shaw Environmental & Infrastructure, Inc. was hired by the United States Corps of Engineers to build hurricane-related structures in the Inner Harbor Navigation Channel. Shaw hired Eustis Engineering as a subcontractor to perform work on the Project. A Eustis employee was injured. At some point after the Work Agreement was made between Shaw and Eustis, Shaw made available to its subcontractors an integrated Contractor Controlled Insurance Program (CCIP) ("Wrap-up"). Eustis sought to require the insurer of the wrap-up policy to provide insurance and workers' compensation coverage to Eustis for the employee's claims and related defense costs. *Williams* at 1-2.

The insurer argued that Eustis was not covered by the wrap-up policy because the program covered only those enrolled in it -- and Eustis admitted that it failed to enroll. *Id.* at 2.

An insured was defined under the wrap-up policy, in part, as follows:

b. Any "Enrolled Contractor" for whom the "Named Insured" contracts to furnish insurance under the "Controlled Insurance Program" and who performs work at the "Designated Project(s)."

Id. at 2.

According to the Contractor Insurance Manual, between the insurer and Shaw, an "insured" under the wrap-up was defined as follows:

The Shaw Group Inc., its affiliates, and Shaw Environmental & Infrastructure hereinafter called "the Sponsor", and Shaw Environmental & Infrastructure's Subcontractors of any tier *who are enrolled* in the CCIP and who have been named in a policy, certificate of insurance, or advice of insurance signed by a duly authorized representative of insurers. (emphasis added by the court).

Id. at 3.

The insurer argued that participation in the Wrap-up was not mandatory, as the Manual stated that "PARTICIPATION IN THE CCIP IS RECOMMENDED BUT NOT AUTOMATIC." The wrap-up Manual also stated that the program is "optional." The insurer argued that, according to the Manual, to participate in the program, subcontractors must (1) complete an "Insurance Cost Identification Worksheet and (2) receive a CCIP Certificate of Insurance by the CCIP Administrator, which constitutes proof that the subcontractor is enrolled and entitled to coverage under the policy. Eustis admitted that it failed to complete these steps. *Id*.

Eustis made various arguments in support of having insured status under the wrap-up policy. Most notably, Eustis argued that, under the terms of the Agreement between Shaw and Eustis, the participation of Eustis in the wrap-up was required. *Id*. at 4.

In the end, the court did not have much trouble holding that "no genuine issue of material fact exists regarding whether Eustis was an insured under the CCIP. Eustis admits that it

did not complete the steps required under the CCIP Manual for enrolling in the program." *Id.* at 6. In addition, the court held that it was immaterial that the Agreement between Shaw and Eustis required Eustis to be covered by the wrap-up, since the insurer was not a party to such Agreement. *Id.*

On one hand, *Williams v. Traylor-Massman-Weeks* is a simple decision: The policy required that Eustis be an "enrolled" contractor in order to be an insured under the wrap-up policy. Eustis failed to take the steps to become "enrolled." Therefore, Eustis was not an "insured." End of story. But the case also demonstrates an important lesson for insurers: When there are steps that a contractor must take, to achieve insured status (enrollment) under a wrap-up policy, be sure that such steps have been taken. Do not assume that, simply because the policy is a wrap-up, and the party at issue was a contractor or subcontractor of some tier to the general contractor, that the contractor is therefore an insured. Not every i gets dotted and t gets crossed when it comes to contractors and completing paperwork. *Williams v. Traylor-Massman-Weeks* demonstrates that there are real consequences that can flow from this.

A copy of the Eastern District of Louisiana's April 2 decision in *Williams v. Traylor-Massman-Weeks, LLC* is attached.

Please let me know if you have any questions.

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