WRAP-UP INSURANCE:  
The Push is On

A single “umbrella” policy for large projects may sound fine—but it could produce serious cost and administrative problems for subcontractors

Wall and ceiling contractors should be advised that the controversy over “wrap-up” insurance, especially on large projects, is heating up again.

And in many sections of the country, the issue is one of push coming to shove.

A wrap-up policy is one in which a single insurance carrier provides general liability and workmen’s compensation coverage for a particular project. It’s usually purchased by the owner, developer or general contractor.

These projects’ contracts are then let on an “ex-insurance” basis, meaning that the contractors and subcontractors exclude insurance costs from their bids.

For the time being, the use of wrap-up is pretty much restricted to projects which generate at least $500,000 in premiums. Insurance companies have estimated that this typically would apply to a project in excess of $20 million. However, two states have lower minimums. They are Wisconsin with $125,000 and Florida with $250,000.

Contractors Opposed

Almost all subcontractors along with many general contractors are firmly opposed to wrap-up insurance which also parades under such names as “package,” “wrap-around,” and “umbrella” insurance. Their opposition is based on the contention that such an approach increases their costs and decreases their control over their own insurance programs.

The controversy heated up quickly after the National Council on Compensation Insurance (NCCI), a New York City-based group representing some 516 member firms, launched another campaign to promote national acceptance of the wrap-up concept.

The campaign must be approved in the individual states because wrap-up often involves changes in premium rates, plan implementation and other administrative alterations which are subject to individual control of each state insurance commission.

The NCCI is licensed to establish rates in 29 states and functions in an advisory capacity in 11 others. So far, the wrap-up concept has been approved in 28 states and Washington, D.C. It has been rejected by seven states, and three others are now “considering” it.

Six other states are “monopolistic fund states” where the use of wrap-up would demand the restructuring of the entire system of insurance industry control. These states are Nevada, North Dakota, Ohio, Washington, West Virginia and Wyoming.

NCCI claims the advantages of wrap-up lies in terms of cost savings due to both administrative ease and premium reductions which result from ex-insurance bidding.

Smaller insurance companies see something else. In an industry beset with mounting losses due to medical malpractice suits, much higher court awards, and the substantially higher Workmen’s Compensation awards resulting from the liberalized benefits now being imposed on the states, the smaller insurance companies see the wrap-up carriers pushing a program that will enable them to “skim” or “cream off” the big premium risks where their greater resources will allow them to do the underwriting.

Problems Seen

Contractors and subcontractors see other — more serious — problems. Both the Associated General Contractors (AGC) and the American Subcontractors Association (ASA) express skepticism about the savings obtainable through wrap-up.

It’s not just the difficulty of eliminating insurance costs from their bids in the first place. They see premium levels established on a basis that does not reflect the contractor’s or subcontractor’s own experience rating, i.e., much higher, unrealistic premiums for coverage that perhaps might not be as full as the contractor can purchase himself for fewer dollars.

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This has actually happened in the case of one large mid-West iaWCC contractor. The insurance agent for the wrap-up on a large project sought to charge the contractor a premium for public liability and property damage that was four times as high as the contractor could purchase similar coverage from his own carrier.

Construction representatives claim that some owners, developers and general contractors have gone so far as to make it a condition of the contract that the individual subcontractor will pay a premium pegged on the former’s payroll rather than accept the subcontractor’s credit which is based on the sub’s own, usually smaller, payroll.

The only protection the subcontractor has in cases such as this is to gain contractual agreement with the wrap-up purchaser that the insurance carrier may not impose rates higher than the subcontractor is already paying for insurance.

Legal Question

Furthermore, wrap-up programs tend to leave the administration of safety programs to the insuree. This is a task which traditionally has been the contractor’s, and one for which an owner or developer is usually ill-prepared. There is some question if the courts will rule that such a shift in responsibility is legal-particularly in view of OSHA.

According to Dave Johnston, assistant director of the A GC’s building division, wrap-ups also tend to break up the centralized management which promotes the safest construction at the lowest cost.

In addition to a loss of management controls, subcontractors encounter even more serious problems: That is withholding or back-charging, often without verification of the premium amounts deducted.

In the words of Anthony J. Schiano, insurance committee chairman of the American Subcontractors Association, “As subcontractors see it, in the present market there are two types of ‘wrap-ups’ being used. Neither is desired but one is less detrimental than the other.

“The ‘true’ wrap-up is one in which the bids are received on an ex-insurance basis, a single liability contract is issued, and the owner pays the premium. There is no back charge or any payment of premium by the subcontractor.

“This is in direct contrast with what we call ‘the designated carrier’ which is nothing more than a poor excuse to rip off the subcontractor for additional funds. Under the designated carriers situation,

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instead of a master policy being issued, there are separate policies issued. The subcontractor is made to put up additional deposit premiums unnecessarily. If he should fail to pay, they are deducted from his requisitions. In some cases the general contractor or owner automatically back charges the sub, without verification of the amount.”

**Claim Efficiency**

Dave Hannum, NCCI secretary, insists that wrap-up has an overwhelming virtue in that it makes the handling of claims easier because there is only one office to report to, with one form to be filled out.

He explained that it also eliminates worry about which of the contractors or subcontractors is ultimately responsible for an accident, because the same carrier is going to pay the claim in any event.

Aside from the court’s yet to be decided view of the transfer of responsibility, the imposition of so-called “programs” such as wrap-up are done with exaggerated claims of coverage, Schiano said, and the subcontractor is left in a position of having a gap in his coverage.

These gaps can involve a subcontractor, his lawyer, the wrap-up carrier, and the sub’s carrier on the question of who should be responsible for answering a summons or complaint.

Also, delay by a designated carrier in answering a summons or complaint can expose the subcontractor to a default judgment situation.

**Savings Diminished**

The coverage gaps actually carry a double jeopardy for subcontractors. If they are required to purchase additional coverage, the anticipated savings of a wrap-up program are diminished. Since it may be impossible to experience-rate an entire group of contractors and subcontractors, the owner may likewise be charged a much higher premium rate and subcontractors with outstanding records of safety-consciousness may be unfairly penalized.

The chipping away of a subcontractor’s own insurance program can render it ineffective and expensive. Because he may have to pay substantially more premium in view of the reduced purchasing power in his own basic program, Schiano points out, “this means than any job he gets involved in, automatically bears the consequence of the higher base premium.”

Furthermore, should a subcontractor become involved with wrap-up carriers he could experience difficulties in his Workmen’s Compensation. Issuance of an experience modification is delayed by the Rating Board when it does not receive all the claims and premium reports from wrap-up carriers.

Overlapping renewal dates makes the modification more difficult to compute and often results in a policy being issued on a “neutral” basis until such time “as the modification is promulgated.”

When a contractor is on a substantial credit this usually produces higher finance charges for the increased premium until he ultimately receives his credit. There may be some advantage for a subcontractor who has a debit modification.

Many times, too, a subcontractor’s experience may be charged with a claim that does not belong to him. With the insurance under a so called “program” the wrap-up carrier if often less careful to check, and a subcontractor can be paying an insurance rate for a claim that should have been charged to another employer. Only a sharp lookout by the subcontractor’s own broker can avoid overpayment.

Despite the above problems, the main concern of contractors and subcontractors is their apprehension that the $500,000 figure will continually be lowered as more and more projects come under wrap-up coverage.

NCCI’s executive secretary, Dave Hannum, claims this is unlikely. He emphasized that when wrap-up was first introduced more than 10 years ago, the minimum premium was $250,000. As the costs of projects has escalated, so has the minimum premium.

He said the insurance industry still wants it restricted to the big project so if there is any threshold change it is likely that the move would be upwards.