Kyle Conti Construction Completes 15 Years In Business
MEGA PROJECTS AND WRAP-UP EXCLUSIONS

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Owner Controlled Insurance Programs, or wrap-ups, have been an effective way to insure large infrastructure projects for decades. This is when the owner, or sponsor, of the project procures the insurance for all, or almost all, of the contractors set to work on the project. When well-run—in other words—claims are kept to a minimum, Wrap-up insurance programs can save the project owner or sponsor 1%-2% of the total construction costs on the job. On very large infrastructure projects that’s a substantial amount of money, so it should be of no surprise to you when you encounter a wrap-up on some of the large projects you are bidding. For example, most of the members of the UTCA are very familiar with the NJ Turnpike OCIP which covered the widening project. However, we are not going to focus on the actual “wrap-up” insurance purchased by the NJTP in this article. Instead, we will focus on the “wrap-around” coverage needed and the typical “wrap-up exclusions” found on most, if not all, of the contractors’ traditional insurance programs.

Let’s set a scenario, ABC Contracting works on a $50,000,000 project on the New Jersey Turnpike which is insured under a “Wrap-up” insurance program. The project is completed in 2015, and ABC Contracting is off to start other projects. Throughout the course of construction on the “wrap-up” project and the years after, insurance claims begin rolling into the program by the dozens with significant dollar figures. It’s now 2020, the wrap-up program has since expired because it only covered completed ops for 5 years after the completion of the project. The statute of repose in New Jersey is 10 years, so the contractor is “on the hook” for at least a few more years after the wrap-up has expired. In addition, the wrap-up limits are depleted because of the costly claims that came in over the years. Where do I turn to if the next claim is, or is alleged to be, as a result of my own work? Would you receive coverage from your own practice policy? Maybe, or maybe not. It depends on how closely you have reviewed the “wrap-up exclusion” which is likely found in your practice policy, how broad your “wrap-around” coverage is (if you purchased this) and how much excess limits you purchased to sit on top of the wrap-up project.

There are many variations of “wrap-up exclusion” endorsements used throughout the insurance marketplace. Some are better than others. When you are reviewing your specific wrap-up exclusion, there are a number of razor blades to look out for. A few examples are 1) does the exclusion provide a giveback in coverage for completed operations when the wrap-up is no longer in force; 2) does the exclusion provide a giveback in coverage in the case you are not an enrolled contractor in the wrap-up; and, 3) is there coverage for offsite work? These exclusions are worded very carefully by a team of lawyers who are looking to insulate the insurance company from paying claims. Insurance companies feel they shouldn’t pay any claims related to wrap-ups because they didn’t collect any premium associated with the risk. You will recall through your own experience that ABC Contracting did not pay any insurance premiums for Workers Compensation and General Liability/Excess Liability associated with the $50,000,000 New Jersey Turnpike job they worked on because those costs were deducted from the bid since the wrap-up provided the coverage. So, when you review a wrap-up endorsement, keep in mind this mindset when interpreting the coverage. If it seems like there is no coverage being provided by the endorsement, there probably isn’t even though many insurance company underwriters will try to say that is not the true “intent” of the endorsement.

When negotiating your insurance program, be sure your policy provides coverage for:

- **Extended Completed Operations Coverage** — This coverage will provide insurance for when the wrap-up completed operations coverage expires but the statute of repose still exists.
- 12 years, NJ - 10 Years, NY - Unlimited but incidents need to be reported within 10 years
  - **Offsite Work** – This would provide coverage for work that you perform outside of the project site but will ultimately end up in the project. (prefab work)
  - **Warranty work or Punch list work** – This would provide coverage for after the wrap-up’s regularly scheduled operations have completed but there is some additional punch list or warranty work still to be done.
  - **Difference in Conditions** – When enrolled in a wrap-up, the wrap-up policy will only cover the contractors for claims that are not excluded by the terms, conditions and exclusions of the wrap-up coverage. If a claim doesn’t fit within the wrap-up policy, a Difference in condition provision in a General Liability wrap-up exclusion endorsement could apply.
  - **Coverage for non-enrolled contractors** – Make sure your wrap-up exclusion clearly states that coverage exists unless you are “enrolled” in a wrap-up program. Often times, demolition or EFIS contractors will not be enrolled into the wrap-up and therefore will have to rely on their own practice policy for coverage. Also, contractors that don’t meet some minimum payroll threshold on the project will also likely not be enrolled.

- **Coverage excess of in force wrap-ups for ongoing operations and completed operations** – Often, the enrolled contractors don’t have much say in the limits purchased for the wrap-up. In some cases, the wrap-up policy owner may be buying too small of a limit or simply run an unsuccessful wrap-up project resulting in the exhaustion of limits. Purchasing a layer of excess insurance to “wrap around” the policy may be a worthwhile investment to protect your company.

Contractors working on large projects insured under a wrap-up program need to be conscious of their own wrap-up exclusions found on their general liability program. As the New Jersey Turnpike OCIP winds down, there are going to be many contractors who are surprised to learn they no longer have any completed operations insurance coverage for the work they performed on that project. Don’t let this be you.

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