

# **Understanding CIPs, Builder's Risk, and Inland Marine Insurance Policies**

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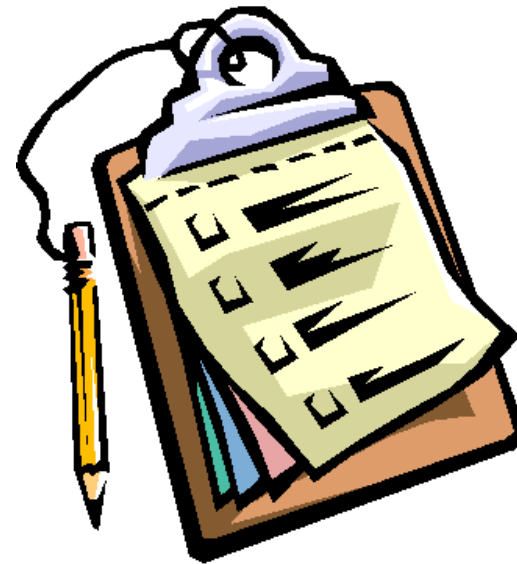


# Today's Agenda

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## Insurance for Construction Project(s)

- CIPs (Controlled Insurance Program or Wrap-Ups)
- Builder's Risk
- Inland Marine



# Wraps-Ups: What Are They?

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- Most often used for large, single-site projects
- Can also be used for multi-site projects
- Combine majority of insurance for project into one policy



# Wrap-Ups: Who Wraps?

- One party procures insurance on behalf of other parties
- **Owner Controlled (OCIP)**
  - Project owner sponsors and controls program
- **Contractor Controlled (CCIP)**
  - General contractor sponsors and controls program





# Wrap-Ups: What is Insured?

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- **Insured:**
  - ✓ Work at project site
- **Not Insured:**
  - Specific operations
    - ✓ Blasting
    - ✓ Demolition
    - ✓ Other high hazard operations
  - Work away from project site
  - Warranty work after project complete



# Wrap-Ups: Who is Insured?

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- **Property Owner**
- **General Contractor**
- **Subcontractors**
  - Limitations on coverage!
- **Professionals (?)**
  - ✓ Architects
  - ✓ Engineers
  - ✓ Designers

# Wrap-Ups: Named Insured (OCIP)

- Stakeholders

## NAMED INSURED ENDORSEMENT (OCIP)

*This endorsement modifies insurance provided under the following:*

### COMMERCIAL GENERAL LIABILITY INSURANCE FORM

Policy Declarations, “Named Insured” is amended to include as Named Insureds:

All contractors and/or subcontractors/consultants and/or subconsultants for whom the Owner or Owner’s agent are responsible to arrange insurance to the extent of their respective rights and interests.

Coverage afforded by this policy is automatically extended to contractors who are issued a Workers’ Compensation policy under this Owner Controlled Insurance Program (OCIP). All other contractors not issued a Workers’ Compensation policy must be endorsed onto the policy to be afforded coverage under this policy.

“Named Insured” does not include vendors, installers, truck persons, delivery persons, concrete/asphalt haulers, and/or contractors who do not have on-site dedicated payroll.

All other terms, conditions and exclusions remain the same.



# Wrap-Ups: Additional Insureds

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- **Additional Insured (OCIP):**
  - Less important for owner to collect additional insured endorsements from contractors
- **Additional Insured (CCIP)**
  - General contractor is first named insured
  - Subcontractors are named insureds
  - Owner may be additional insured
  - **NEED EXAMPLES**

# Wrap-Ups: Subcontractors Not Insured For . . .

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- Equipment
- Automobiles
- Workers compensation for activities unrelated to the project
- General liability for activities unrelated to the project



# Wrap-Ups: Who Is Not Insured?

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- Suppliers and vendors
- Haulers and truckers
- Size restrictions



# Wrap-Ups: Who is Insured?

## A. Contractor Controlled Insurance Program

Contractor has elected to implement a Contractor Controlled Insurance Program (the "Program") for this Project. The Program will provide Commercial General Liability insurance and Excess Liability insurance (the "Program Coverage"), as summarily described below, to those parties who are properly enrolled in the Program. The Program is more fully described in the Bernards CCIP Insurance Manual ("Insurance Manual") which is incorporated herein by this reference. The Insurance Manual is available on the Bernards Public Workspace for this project which can be accessed as indicated in the cover letter supplied with this Agreement. Subcontractors of any tier performing labor at the Project site must enroll in the Program unless they are Excluded Parties (as defined below).

1. Definition of Enrolled Parties: The Program will provide Program Coverage to Enrolled Parties. Enrolled Parties are: the Contractor and eligible Subcontractors of all tiers that enroll in the Program

1. Definition of Enrolled Parties: The Program will provide Program Coverage to Enrolled Parties. Enrolled Parties are: the Contractor and eligible Subcontractors of all tiers that enroll in the Program and such other persons or entities as Contractor may designate in its sole discretion. For purposes of this Attachment "D", Subcontractors of any tier shall collectively be referred to as "Subcontractor". The enrollment process is described more fully in the Insurance Manual.
2. Definition of Excluded Parties: The Program does not provide any insurance coverage to the following "Excluded Parties":
  - a. Hazardous materials remediation, removal and/or transport companies and their consultants;
  - b. Architects, surveyors, engineers, and soil testing engineers, and their consultants;
  - c. Vendors, suppliers, fabricators, material dealers, truckers, haulers, drivers, and others who merely transport, pick up, deliver, or carry materials, personnel, parts, or equipment or any other items or persons to or from the Project site;
  - d. Any Subcontractor that does not perform any actual labor on the Project site, and;
  - e. Any parties or entities excluded by Contractor even if they are otherwise eligible.
5. Contractor's Program Obligations: Contractor shall pay the costs of premiums for the Program Coverage including all adjustments to such costs, whether by way of other moneys due, return premiums, audits, or otherwise. Subcontractor hereby assigns, and shall ensure that each of its Sub-Subcontractors will assign to Contractor the right to receive all such adjustments. Contractor's furnishing of Program Coverage shall in no way relieve or limit, or be construed to relieve or limit, Subcontractor of any responsibility, liability, or obligation imposed by the Agreement, other contract documents, the Program insurance policies, or by law, including without limitation any indemnification obligations which Subcontractors has to Contractor. Contractor reserves the right at its option, without





# **Wrap-Ups: What Policies Are Wrapped?**

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- ✓ **General Liability/Completed Operations**
- ✓ **Umbrella/Excess Liability**
- ✓ **Builder's Risk**
- ✓ **Inland Marine**
- ✓ **Environmental Liability**
- ✓ **Workers Compensation and Employer's Liability**
- ✓ **Contractor Default Insurance**

# Wrap-Ups: State Involvement

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- States may impose coverage requirements for state projects
- A few states impose restrictions on commercial projects



# Wrap-Ups: What Policies Are Wrapped?

## A separate

workers' compensation policy will be issued to each enrolled Party.

## Workers' Compensation and Employer's Liability

Coverage: Statutory limits required by the Workers' Compensation laws of the applicable jurisdiction, excluding monopolistic states, with Employer's Liability.

Part One -	Workers' Compensation	Statutory Limit
Part Two -	Employer's Liability	<u>Annual Limits Per Enrolled Party</u>
	Bodily Injury by Accident, each accident	\$2,000,000
	Bodily Injury by Disease, each employee	\$2,000,000
	Bodily Injury by Disease, policy limit	\$2,000,000

- This policy does not cover off-site operations of any Enrolled Party.
- This insurance is primary for all occurrences at the Project Site.

## A single general liability policy

will be issued for all Enrolled Parties with all Enrolled Parties Named as Insureds.

## Commercial General Liability

Coverage: Third Party Bodily Injury and Property Damage Liability.

	<u>Limits of Liability Shared by All Enrolled Parties</u>
General Aggregate Per Project	\$4,000,000
Products/Completed Operations Aggregate Per Project	\$4,000,000
Each Occurrence Limit	\$2,000,000
Fire Damage Legal Liability (any one fire)	\$100,000
Medical Expense Limit (any one person)	\$5,000

General Liability Insurance generally equivalent to ISO Occurrence Form 2007 or later.

- This insurance is primary for all covered occurrences at the Project Site.
- This insurance will NOT provide coverage to any insured party, vendor, supplier, off-site fabricator, material dealer or other party for any product manufactured, assembled or otherwise worked upon away from the Project Site.
- This policy does not cover off-site operations of any Enrolled Party.
- Products & Completed Operations Extension of the Project with a single non-reinstated aggregate limit for the period beginning from the earliest occurrence of (i) when the Project is put to its intended use, (ii) project completion, or (iii) CCIP policy termination, and ending after the earlier occurrence of (i) ten (10) years or (ii) the expiration of the applicable statute of repose established per the civil code of the state where the Project is located.

# Wrap-Ups: What Are Benefits?

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- ✓ Consolidated Coverage
- ✓ Broader Coverage
- ✓ Higher Limits/Site-Specific Limits
- ✓ Control
- ✓ More Accurate Pricing
- ✓ Insurance Cost Reduction
- ✓ More Projects
- ✓ Larger Projects
- ✓ Easier Bidding






# Wrap-Ups: Risks and Potential Issues?

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- **Bid Preparation Costs**
  - ✓ For sponsor
  - ✓ For bidders
- **Market Risk**
  - ✓ Increased premium
  - ✓ Hardened market
- **Administrative Burden and Cost**
  - ✓ Feasibility study
  - ✓ Consultants



# **CCIPs: General Contractor Working with Subcontractors**

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- **Disclose loss control and administrative requirements**
- **Share program coverage, limits, and duration**
- **Do not inflate subcontractor insurance costs to demonstrate savings—remove only insurance costs that subcontractors would have charged without a CCIP**
- **Allow subcontractors to participate in claims adjustment**
- **Beware of state restrictions on shifting liability to subcontractors**



# Wrap-Ups: When to Consider?

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- Size of project
- Number of potential contractors
- Availability of willing sponsor (owner or general contractor)
- Traditional insurance leaves coverage gaps and under-insured losses
- Avoid multiple insurers and resulting coverage and liability disputes

# Wrap-Ups: Who Administers?

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- ✓ Program Sponsor (Owner or GC)
- ✓ Insurance Broker
- ✓ Wrap-up Administrator





# Wrap-Ups: Claims Resolution

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- **Streamlined Claims Handling**
  - Unified loss control and safety program
  - No cross claims!
  - Waivers of subrogation

# Wrap-Ups: Hot Issues

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## ➤ Allocating loss among insurers

- *Certain Underwriters v. Illinois National Insurance Co.* 2015 U.S. Dist. LEXIS 48141 (S.D.N.Y., March 13, 2015): company's umbrella policy and the project wrap-up excess policy contributed equally to payment for bodily injury to workers at project site

## ➤ Exclusive remedy defense

- *Sibert v. National Oilwell Varco, L.P.*, 136 So. 3d 283 (La. Ct. App. 2014): statutory employer entitled to immunity regardless of actual payment of benefits
- *Duchenne v. 774 Development, LLC*, No. 21612/01, 2013 N.Y. Misc. LEXIS 6648 (Dec. 13, 2013): exclusivity not applicable to OCIP

# Wrap-Ups: Hot Issues

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- **When Do They End?**
  - *Louisiana Pacific Corp. v. Teafood Co.*, No. 3:11-CV-00317, 2012 WL 3150721, at \*4 (M.D. Tenn. Aug. 2, 2012): coverage hinged on termination of policy
- **CIP continues until owner accepts project acceptance or project is “Complete”**
- **Completed operations coverage**

# Wrap-Ups: Hot Issues

- What Controls?
  - Insurance Policies
  - CIP Manuals

*Workers' Compensation Fund v. Wadman Corp.*, 210 P.3d 277, 283 (Utah 2009):  
OCIP manual supplemented individual insurance policies issued to contractors and subcontractors and set forth the terms of the OCIP

## About This Manual

Turner Construction Company ("Turner") and Turner Insurance And Surety Brokerage ("TSIB") prepared this Insurance Manual. Turner is the Sponsor for this CCIP. TSIB is the CCIP Administrator for this CCIP. The Manual is designed to identify, define and assign responsibilities for the administration of the CCIP for this project. It also outlines the coverages provided by the CCIP, procedures for bidding, and the CCIP Enrollment process.

### This Manual:

- Generally describes the structure of the CCIP
- Identifies responsibilities of the various parties involved in the Project
- Provides a basic description of CCIP coverage
- Describes audit and administrative procedures
- Provides answers to basic questions about the CCIP

### This Manual does not:

- Provide coverage interpretations
- Provide complete information about coverages and exclusions
- Provide answers to specific claims questions

# Builder's Risk Insurance

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## **Builder's Risk Insurance: Specialized Coverage for Construction Projects**



# **Builder's Risk Insurance: Nuts and Bolts**

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- **Special type of property insurance**
- **Covers building under construction or renovation**
- **Commonly referred to as “Course of Construction” insurance**
- **Each policy is different**



# Builder's Risk Insurance

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- ✓ Purchased by property owner or general contractor
- ✓ Contract specifies responsible party
- ✓ Can be purchased as part of a wrap-up policy



# Builder's Risk Insurance

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- **Provides specific coverage**
  - Only property identified in the policy
  - Includes materials to be incorporated into building

Except as limited below, *Insured Property* shall mean all materials, equipment, machinery, and supplies owned by the Insured or for which the Insured shall be legally liable or shall have assumed liability, to be used in or incidental to the fabrication, erection, or construction of the Insured Project, provided the value of the *Insured Property* has been included in the estimated *Total Project Value* shown in the Declarations.



# Builder's Risk Insurance

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## Insures:

- ✓ **Property owner**
- ✓ **Contractor**
- ✓ **Subcontractors**
- ✓ **Lender with financial interest in property**



# Builder's Risk Insurance

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- Typically insures damage to building caused by:
  - Fire
  - Explosion
  - Weather damage
  - Vandalism
  - Theft



# Builder's Risk Insurance

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- Typically does not insure
  - Earthquake
  - Water damage
  - Weather damage to property in the open
  - Employee theft

# Builder's Risk Insurance: Important Issue

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- **When does coverage begin and end?**
  - ✓ Must define when the course of construction begins and ends



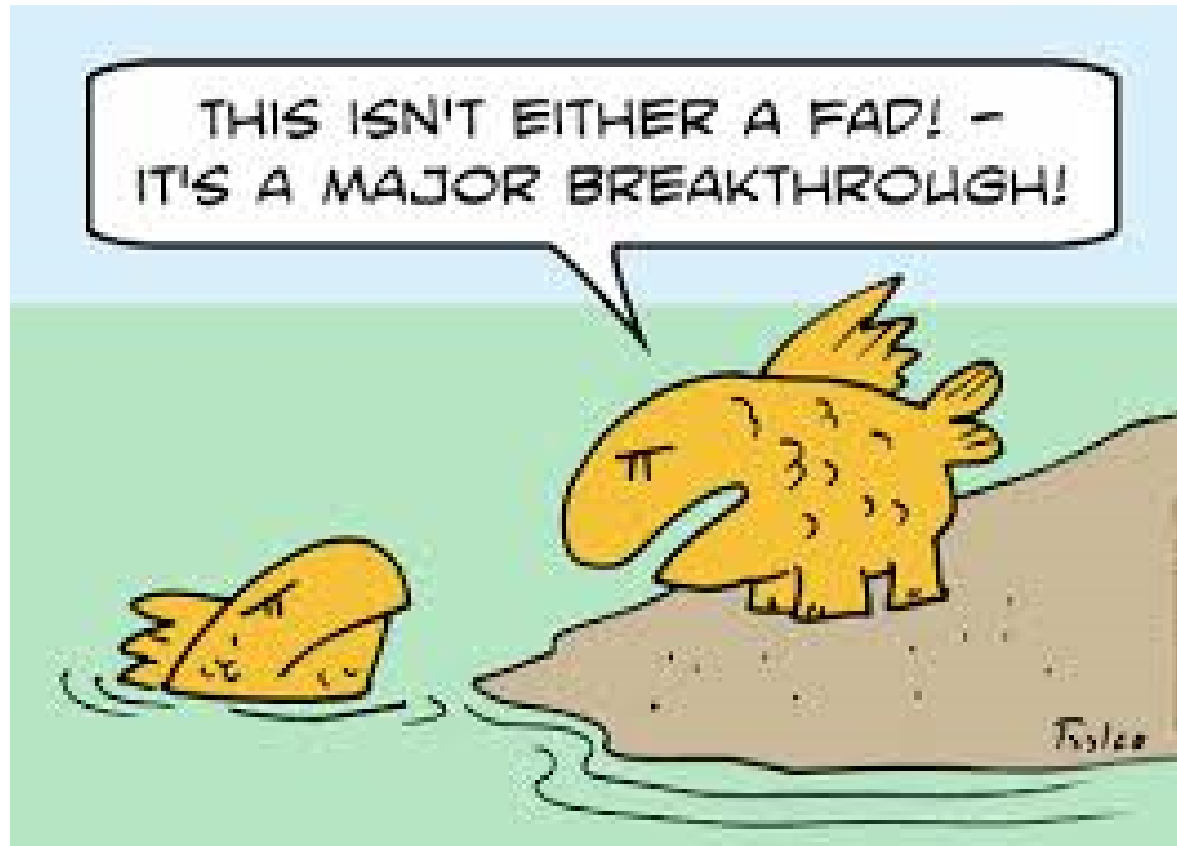
# Inland Marine: Purpose

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- Insures moveable property



# Inland Marine: Brief History



# Inland Marine: Insures

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- ✓ Property being transported;
- ✓ Computer equipment data
- ✓ Contractors' equipment
- ✓ Rental equipment





# Inland Marine: Why Purchase?

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- ✓ **Protect equipment**
  - ✓ Tools
  - ✓ Moveable equipment like skid loaders
- ✓ **Protect property not yet at site**



# Coverage Do's

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- ✓ Establish scope (site, term, end)
- ✓ Be mindful of coverage gaps
- ✓ Identify sponsor
- ✓ Identify insureds by status
- ✓ Purchase adequate limits
- ✓ Address insurance in bidding
- ✓ Understand governing state law



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# Questions?

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