

ISO Modifies Wrap-Up Exclusion

By Jeffrey J. Vita
Saxe Doernberger & Vita, P.C.

For those contractors and other parties enrolled in wrap-up insurance programs, one nagging issue frustrating risk transfer has been the Designated Operations Wrap-Up Exclusion found on many contractors' programs. See, for example, ISO CG 21 54 01 96, which provides in relevant parts as follows:

"This insurance does not apply to 'bodily injury' or 'property damage' arising out of either your ongoing operations or operations included within the 'products-completed operations hazard' at the location described in the Schedule of this endorsement, as a consolidated (wrap-up) insurance program has been provided by the prime contractor/project manager or owner of the construction project in which you are involved."

This exclusionary language creates an obstacle to the parties' intended risk transfer in situations involving unenrolled trades or offsite exposures. For example, where an unenrolled trade causes a loss and the general contractor, construction manager and/or project owner are sued, the intent of the parties is for the upstream party(ies) to transfer the risk to the unenrolled party via the unenrolled party's additional insured coverage. The existence of the wrap-up exclusion cited above, or any of the manuscript versions currently in use, however, frustrates this intent as certain courts interpreting the language have held the exclusion applies to the additional insured claim despite the fact that the downstream trade causing the loss is not enrolled in the wrap-up program.

As a result, upstream parties have attempted to remedy this problem by requiring the unenrolled trades to endorse their

programs either to modify the wrap-up exclusion such that it does not apply to instances where the named insured (downstream party) is not enrolled in the wrap-up program or to include an exception to the exclusion for a specific project. Alternatively, the downstream party has tried to modify the wrap-up exclusion such that it does not apply to additional insured claims. Finally, upstream parties may be forced to enroll parties in the wrap-up program that they did not initially intend to enroll, in order to avoid any gap in coverage.

ISO has now solved this dilemma by issuing endorsement CG 21 54 12 19 which states that the wrap-up exclusion applies only if you (i.e. downstream party) "are enrolled in a 'controlled (wrap-up) insurance program' with respect to the 'bodily injury' or 'property damage' described...above at such location." This new language closes a major loophole in the risk transfer scheme utilized in wrap-up insurance programs when dealing with unenrolled trades or offsite exposures.

Any owner in an OCIP or contractor in a CCIP should request that all unenrolled trades and enrolled trades providing offsite coverage utilize this new endorsement on their corporate programs to remedy this potential gap in coverage and reflect the parties' intended risk transfer.