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CONTRACTOR ROLLING GENERAL LIABILITY ONLY PROJECT INSURANCE

Project insurance is written to cover a specified project or projects and is specific in terms of time and coverage. It has a clear beginning and end and is not intended to cover exposures beyond the named project(s). Sponsors of these programs aim to improve coverage and reduce the cost of risk.

Wrap-ups, owner-controlled insurance programs (OCIPs) and contractor-controlled insurance programs (CCIPs) are types of project insurance typically for workers' compensation and general liability and should be complemented by other coverages (such as builders risk, environmental and professional liability) to provide the broadest scope of protection to the risk. These ancillary covers can be provided on either a project-specific basis or as part of one's operations program. The first true rolling contractor-controlled insurance program was designed and managed by Willis in 2001. Since then, many contractors have used the approach on a site-specific project or as a more comprehensive approach to managing project risk.

Contractors opt to use CCIPs to isolate special exposures, provide profit opportunities, improve coverage certainty and promote minority or small business participation. Most CCIPs provide workers' compensation, general liability, and excess liability (WC/GL/XS). In some cases it may not be practical or desirable to provide both lines of coverage. State restrictions or workers' compensation rate conditions may limit the contractor's options for including workers' compensation. However, it is important to recognize that the key coverage benefits provided by a WC/GL CCIP are general liability-focused. Therefore, the most common reason for considering a GL Only CCIP is to achieve greater coverage certainty for all contracting participants on the job. A valid argument can be made that the coverage afforded by a project-specific policy is better than the traditional coverage approach used by the industry and, as such, it carries a greater value in terms of pricing.

Considering this value within the contractor's pricing model can increase the financial benefits for the contractor.

Interest in GL Only CCIPs, whether single-site programs or rolling multi-site programs, is growing and carriers are eager to look at these opportunities. Often CCIP success is measured in terms of savings; however, when contractors elect to use a GL Only CCIP, their first concern is typically coverage certainty. Savings are modest and may range between 10% and 15%.

ROLLING GL ONLY CCIP BACKGROUND

During the height of the residential boom in North America, the surplus lines market became the primary insurance source for owners and contractors using project

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insurance or wrap-ups on this type of project. California, Nevada, Arizona, Colorado and Florida led the nation in residential GL Only project placements. The demand for coverage became so critical that carriers were successfully pricing projects with modest insurance limits at a rate that could be as high as 10% of the project value.

Surplus lines underwriters were generating enough premium revenue from the residential market that they gave commercial projects little consideration. New carriers were quickly moving into this niche just as the residential market collapsed. Eager to find new sources of premium revenue, many of these carriers turned to the commercial building sector.

At the same time a very competitive insurance market resulted in decreased workers' compensation rates, which made traditional WC/GL wrap-ups less attractive in many states. Yet the key benefits of a consolidated general liability program for a project remained a key goal for owners and contractors seeking to reduce potential coverage gaps. This resulted in more interest in the GL Only solutions, which increased demand for excess and surplus lines carriers.
As a result, there are today a number of carriers which seek out commercial projects and bring new approaches to GL Only CCIPs. In fact, now there are both "admitted" and "non-admitted" options for this approach, which was traditionally not the case.

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MARKET DESCRIPTION

While traditional WC/GL CCIPs are underwritten by admitted carriers, these same carriers have not had the same appetite to underwrite monoline programs. This is driven by their reluctance to sign onto a program where future jobs may not be known. The surplus lines market is more flexible and has supported this approach with appropriate underwriting information. That being said, recently admitted markets have started to take notice of the consumer demand for GL Only CIPs, and some attempts have been made to compete in this arena. However, the E&S market remains the dominant market for this approach. Thus, a comprehensive marketing effort should involve both admitted and non-admitted carriers.

CONSUMER ISSUES RELATED TO SURPLUS LINES

The surplus lines market delivers great flexibility for those contemplating a Rolling GL Only CCIP, although some clear distinctions between the admitted insurance market and the surplus lines market should be considered before electing to bind a surplus lines program.

- Surplus Lines carrier forms are not approved by state insurance regulators. This allows latitude in drafting forms, which may result in policies that have not been fully vetted by court cases. Many of the key terms and conditions used in the standard ISO form have been litigated in one jurisdiction or another providing some idea of how the legal community has viewed the application of a policy clause state by state. This may not be true in all cases in the E&S community.

- There may be state restrictions on the use of surplus lines insurance. Generally, buyers cannot purchase coverage from the surplus lines market if it is available in the admitted market. Contract restrictions may also preclude the use of surplus lines insurance.

- States maintain a list of approved surplus lines insurers and may restrict surplus lines placements to these companies. Brokers typically are not permitted to broker coverage with unapproved surplus lines carriers.

- The use of surplus lines must be disclosed by statute and explained fully before purchasing these types of policies.

- Policyholders are responsible for surplus lines taxes and/or fees. These are payable to the state and need to be factored into the pricing.

- Carriers are often smaller and usually do not offer the same level of services (audit, claim and safety) on a direct basis as the admitted market.

- States with Guarantee Funds typically exclude surplus lines policyholder claims.

DEDUCTIBLES, SELF-INSURED RETENTION (SIR) AND COLLATERAL

When written in the surplus lines market, GL Only CIPs usually feature an each-occurrence deductible or SIR of $25,000 to $50,000. This is a key difference between admitted and non-admitted market approaches. In addition, the E&S market can be very flexible in how it negotiates deductibles. For example, Willis has successfully structured programs with deductibles as low as $10,000, a recent example being a Rolling GL Only CCIP with “stair-stepped” deductibles from $10K to $100K based on project size. In addition, surplus lines carriers typically are not focused on collateralizing deductibles, which is another difference between E&S and more traditional carriers. Carriers in the standard market usually require deductibles starting at $250,000, with collateral requirements that can range between 80% and 100% of the expected losses.

EXCESS LIMITS/CAPACITY

The GL Only CIP market has been flexible regarding limits as well. Limits range from very small for small residential projects to $200,000,000 on large transportation projects. There is little difference in the ability of the market to respond to capacity under traditional WC/GL versus GL Only programs, so capacity up to a point is not a major issue. Once limits exceed $200,000,000, capacity can be more difficult depending on the job and location as well as adjacent jobs. Notably with Rolling GL Only CCIPs, capacity for per-project limits will be capped at 10 to 20 projects (similar restrictions are usually found with WC/GL CCIPs). This is due to carriers trying to manage their overall exposure on all jobs from a single buyer and has become a topic of much discussion as these programs continue to grow.

PREMIUM TRENDS

GL Only CIP rates have dropped dramatically from the levels seen during the peak of residential construction. Rates are usually based and adjusted on construction values, and premium costs can vary substantially based on the type of construction, location and terms/limits. Rates are generally based on construction value rather than payroll. However, it is important to properly define the exposure base to ensure that uninsured exposures are not included in the premium calculation.

TERMS AND CONDITIONS

Because there is less regulatory oversight of these policies, surplus lines carriers can be more flexible or more restrictive than what consumers may find in the standard market. While some use the ISO General Liability form, others manuscript their forms. Most risk managers are familiar with the terms and conditions of the standard ISO forms. Greater caution needs to be exercised when considering a manuscript form. Some of these forms can restrict coverage far beyond the standard form. The following is not intended to be an exhaustive summary of all coverage areas to review but will give the reader a general awareness of key issues.

- Confirm whether the policy is an occurrence-based form or a claims-made form. A properly structured extended completed operations term eliminates some of the practical differences, but enough differences remain to make it important for the buyer to understand the application of the claims-made form.

- Some manuscript forms have been written for very specific types of risk; for instance, California residential construction. These forms may require adherence to specific legal requirements of the State of California, yet the form has been offered in states other than California.

- An insured versus insured exclusion on a GL Only CIP policy is a serious problem and can create coverage problems in the event one of the contractors insured by the program sues another contractor insured by the same program – a possibility that is real and difficult to manage. Be careful, as some carriers include a Joint Defense endorsement that can act very much like an insured versus insured exclusion.

- Somewhat related to the above point is the requirement that covered contractors waive their rights of recovery against other insureds. Although there might be some legal challenges with this clause, it creates the appearance of an insured versus insured exclusion.

- The policy needs to feature coverage allowance for any contractor that a GL Only sponsor has agreed to enroll in the program and provide coverage for through written contract. Requiring individual endorsement of coverage is not practical.

- Policies need to provide broad form Additional Insured coverage as required by written contract. The large number of contractors insured by a GL Only CIP makes it impossible to manage the number or additional insured requests or contractual requirements occurring during the construction process.

- Completed operations should extend their coverage to the statute of repose, or 10 years, whichever is greater. It is important to note that some states, such as Alabama and Iowa, have statutes that go beyond 10 years, and carriers may be unwilling or unable to go beyond 10 years.

- Many policies offer warranty-repair/call back work period coverage. This is not warranty coverage but rather, general liability coverage for CIP contractors returning to the project to conduct warranty-repair work. Many insurance carriers have severely restricted coverage under their contractor operations policies if the project was covered by a

CIP, even if such coverage has expired, lapsed or limits have eroded.

- The standard ISO form provides allocated loss adjustment expenses (ALAE), such as defense expenses, in addition to the limit. It is not uncommon for the surplus lines market to provide ALAE coverage "within" the limits, meaning payment of ALAE erodes the limit. This, however, is more common on projects with residential exposure.

- The buyer or sponsor needs to understand and appreciate the differences between an SIR and a deductible. Certainly an SIR presents a greater exposure to contractors enrolled in the GL Only CIP. In essence, they must rely on the sponsor's good financial wherewithal to pay this SIR or the contractor may be required to do so. With respect to the sponsor, they would need to factor in the additional costs to manage the claims or for a TPA. In addition buyers and sponsors should request a stop loss aggregate.

- A trend we have also seen is that the SIR may provide an opportunity for the contractor to integrate its captive into the Rolling GL Only CCIP for the purpose of financing losses, allocating costs and establishing pricings.

- There are a number of exclusions common with both surplus lines and standard market placements that can and should be amended to ensure that the CIP is appropriate for the risk.

In most cases the GL Only CCIP provides the only coverage available to the contractor and subcontractors. Failure to provide enough coverage and in a useful form can result in serious cover consequences for the contractor and the project. Although this concern exists with standard WC/GL CCIPs, our experience is that many GL Only programs are utilized on smaller projects that must be managed within smaller budgets. Covering multiple projects under a Rolling GL Only program increases the aggregate exposure, so per-project limits should be considered and managed throughout the program term.

It's worth noting that compared to a traditional WC/GL CIP, a GL Only CIP requires greater effort to manage the contractual protections and insurance waivers of subrogation to limit action over claims. Of course, worker safety remains critical in helping the sponsor and contractors avoid potential action over losses. Because most general liability claims arise from injured workers who pursue claims against other contractors, project management teams should understand and appreciate the implications of a failed worker safety program and the financial risk that presents to the sponsor of the Rolling GL Only CCIP.

PROGRAM ADMINISTRATION/ CONTRACTOR DEDUCTIONS

Managing a traditional WC/GL CCIP can be complex and generates a significant demand on resources. Most of this effort is spent managing the workers' compensation policies, payroll and claims. GL Only CIPs require a fraction of the administrative work associated with a WC/GL CIP. Typically the GL Only administration involves the enrollment of the contractor, certificate issuance and the close-out/notification of completion that triggers the completed operations for the extension period. Therefore, GL Only CIPs can be managed at a lower cost to the sponsor.

IN SUMMARY

General Liability Only CCIPs, whether single-site or rolling, are used primarily by contractors that want coverage certainty. The key driver behind this approach – trying to achieve more coverage certainty and claim alignment – has resulted in an increased interest in these as an alternative methods to insure projects. In fact, it may be better to consider the Rolling GL Only CCIP as a subcontractor-insurance program, where the general contractor gains coverage certainty and enjoys the benefit of also being a coverage beneficiary of the program. Using the rolling CCIP as the general contractor's only source of insurance is probably not the best approach. Contractors should "wrap" any operational or practice program around the Rolling GL Only CCIP to protect the long-term interests of the firm and in recognition of the project-specific nature of project insurance coverage. Careful consideration and coordination should be made to avoid anti-stacking restrictions, should one carrier become active on both the practice program and the CCIP.

We expect this approach to continue to mature and with it – more options to address general liability coverage on projects of various sizes.

For more information on how a rolling CCIP might enhance your risk management program, please contact your Willis broker or the Willis National Project Insurance Practice.

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CONTACTS

To find out more about how Willis can help build a project program for you, contact your Willis Client Advocate® or:

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