



# RISK NOTE

**SERIES: Risk Management in Construction**

**SUBJECT: Owner-Controlled Wrap-up Liability Insurance - Who Pays the Deductible?**

The Risk Management Branch (RMB) has instituted a province-wide owner-controlled insurance program [Provincial Construction Insurance Program (PCIP)] for the benefit of all provincial agencies, including the Health Care Agencies (HCAs) covered under the Health Care Protection Program (HCPP). HCAs are required to arrange owner-controlled insurance for construction projects in excess of \$5,000,000.

This Risk Note discusses the Wrap-up Liability (WUL) component of the construction insurance program including a common area of misunderstanding – **who pays the deductible?**

A Wrap-up Liability policy insures the project owner and all parties involved in the project – including the construction manager, general contractor, and the subcontractors at every level. It “wraps up” all parties into one unit for the purposes of insurance. As the project owner, the HCA furnishes a single liability policy for all parties involved in the project for the duration of the project term.

The most economical way of arranging liability insurance on large construction projects is using a WUL. Under a WUL policy the owner (HCA) experiences several benefits:

- Cost savings when contractors and subcontractors exclude the cost of insurance from their bids;
- Cost savings as a result of the buying power of the owner and due to the economy of scale of placing coverage for the entire project;
- Elimination or reduction of the duplication of premium costs when contractors and each of their subcontractors are purchasing separate coverage for overlapping exposures;
- Equalization of the bidding process for smaller contractors by removing obstacles related to insurance requirements;
- Provision of a single, coordinated loss control and claims handling center;
- Elimination of coverage disputes and subrogation between multiple insurers;
- Broader insurance coverage and higher limits dedicated exclusively to the project;
- The assurance that all parties to the project are insured, instead of relying upon a multitude of certificates with varying expiry dates.

Because the owner (HCA) has placed the insurance coverage, the terms of the policy will make the owner responsible for any and all deductible amounts under the policy. It is therefore important for the owner, through the contract language with their contractor, to ensure that where the contractor is responsible for a loss, the contractor (and/or their subcontractors) will pay the deductible.

Contractors should be required to retain some portion of any loss they have caused so they have an incentive to mitigate risks on the job site. Generally, the prime contractor should bear most of the deductible and may allocate portions to responsible subcontractors.

The CCDC 2-2020 (Canadian Construction Document Committee – Stipulated Sum) is HCPP’s recommended form of contract. It includes a provision that deductibles will be paid by the parties in direct proportion to their responsibility for any loss.

Once the appropriate contract language has been used, it is important to enforce it. We often see owners who fail to hold their contractors responsible for the deductible even though the contract terms require this. If construction is not yet complete, the deductible can be subtracted from any hold-back amount that is due to the contractor. However, once construction is complete and final payment has been made, it may be more difficult to recover the contractor’s portion of the deductible.

Where the owner has paid a deductible that is the responsibility of the contractor, and the contractor is unwilling to pay, the owner may find their only recourse is to take legal action against the contractor for breach of contract.

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It should be clearly understood that this document and the information contained within is not legal advice and is provided for guidance from a risk management perspective only. It is not intended as a comprehensive or exhaustive review of the law and readers are advised to seek independent legal advice where appropriate. If you have any questions about the content of this Risk Note, please contact your organization’s risk manager or chief risk officer to discuss.