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INSURANCE BROKERS

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# Owner Controlled Insurance Programs: A Primer

*By Jeff Cavignac, CPCU, RPLU, ARM, MLIS*

Owner Controlled Insurance Programs (OCIPs) or *wrap-ups* as they are commonly known, are project-specific, general liability insurance policies designed to cover the job site risks and completed operation exposures of the owner and contractors on a construction project. The program sponsor is the entity that buys the insurance and is usually the owner (OCIP) or the general contractor (CCIP). With the exception of who secures the coverage, the policies are basically the same. For the purposes of this article, the term OCIP collectively refers to both OCIP and CCIP policies. There are other types of coverages that can also be project specific, including: builders risk or course of construction policies, workers compensation, project professional liability policies (PPLI) and project pollution policies. This article will focus on project-specific general liability policies.

Historically, OCIPs were designed for projects with construction values of $100 million or more. The primary reason to implement an OCIP on larger projects is to create a profit center for the program sponsor and to allow for better coordination of loss prevention and safety. OCIPs are also used on nearly every condominium project regardless of size because these types of projects have been fraught with litigation. On projects of 50 units or more, the chance of litigation is close to 100%. Because of this, most, if not all, subcontractors in California have a *condominium exclusion* in their operational general liability policy so the only way these projects can be insured is with an OCIP. Other types of residential projects like tract homes and apartments may also employ OCIPs, however, coverage is generally available on a subcontractor's operational policy so OCIPs might not be necessary. Apartment projects that could be converted to condominium projects within the statutory timeline for reporting latent defects (see next page) may also want to consider using an OCIP that does not include a condominium exclusion. Alternatively, you might want to consider *deed restricting* the project so it cannot be converted to condominium ownership within the statutory timeline.

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There are a number of reasons an owner, developer or general contractor may want to consider an OCIP. One is that it ensures that all contractors on a job have insurance coverage. It can lower the overall cost of the project to the extent the offsets provided by the subcontractors, who now do not need to use their own insurance, exceeds the OCIP premium. In this way, it can also be a profit center for the sponsor of the program. Finally, the joint defense requirement can save a lot of time and money in the dispute resolution process.

## How Does an OCIP Work?

An OCIP policy must be placed before the start of construction. It usually continues through substantial completion of the project plus a number of years thereafter. This period is known as the *extended reporting period* (ERP) or tail. Ideally, the tail extends through the applicable statute of repose, which, in California, is 10 years after substantial completion. Regardless of who the policy sponsor is (usually the owner or the contractor) named insureds will include the owner, general contractor and all enrolled subcontractors. Some underwriters are willing to include the design team under an OCIP. Recognize that this is not a substitute for a design professional's professional liability policy. An OCIP is a general liability product that only covers damages that result in bodily injury or tangible property damage. Professional liability, on the other hand, extends to legal liability that includes economic damages as well as damages for bodily injury or tangible property damage.

The limit of coverage applies for the policy term, meaning the limit is not reinstated annually. Defense costs are commonly included inside the policy limit of insurance for condominiums but can be provided in addition to the limit on other types of projects. There is also a Joint Defense requirement, that applies in the event of a claim. Insureds under the policy will be jointly defended by an attorney assigned by the insurance company.

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It is recommended that the liability limit be 50%-75% (at a minimum) of the hard construction costs. The policy will have a deductible in the form of a *self-insured retention* (SIR), which is a dollar amount specified in a liability insurance policy that must be paid by the insured before the insurance policy will respond to a loss. Minimum deductibles start as low as $15,000, but, depending on the size of the project, can be higher. Payment of the deductible is usually apportioned to the contractors that caused the problem. It is critical that you address the deductible allocation in the contracts. Minimum premiums for attached residential projects begin at about $50,000. The ultimate premium will vary but it is not uncommon for a fully layered (primary and excess coverages) OCIP policy to cost 1-2% of construction costs.

## Builders Risk Policies - A Critical Complement to an OCIP

Nearly all OCIPs written on residential projects and some written for commercial projects will exclude damage to the project itself while under construction. This makes it imperative to place a builders risk policy on the project that includes the interests of all the parties working on the job. Builders Risk, or *course of construction* insurance, provides first-party property coverage for damage to the project during construction caused by an insured peril (i.e., a specific source of loss such as fire). Coverage should be written on a special peril form (all-risk) and the perils of earthquake and flood should be considered.

## Administering a Wrap Program

Enrolling the various contractors into the program, obtaining premium credits from each contractor, and managing an OCIP program is complex. The enrollment process starts with the bid documents that need to clearly spell out that an OCIP will be provided on the project and how it will work. It should explain the coverage, limits, and deductible obligations. Participants will also be asked to provide an insurance credit as an offset in their bid. This credit reflects the money the contractor will save on their operational policies since this project is being insured under an OCIP. The insurance section of the subcontract agreement must also address the wrap-up program including the enrollment process, how the policy will be administered, who is responsible for the deductible and any other relevant provisions. There are wrap up administration companies that specialize in providing appropriate legal wording for bid documents and contracts as well as provide enrollment services and can provide *insurance recovery services* for a fee. A wrap-up administrator will make certain the sponsor of the program is receiving appropriate insurance credits from all enrolled subcontractors. Contract and enrollment administration fees start at $15,000 as do the insurance recovery services. Underwriters of OCIPs will also require that the services of a quality control company be employed. The quality control company will review plans and inspect and document the project during construction. In the event of litigation, this can be a crucial element to a defense.

## Subcontractors

If you are a subcontractor participating in an OCIP program, you need to understand the coverage being provided, the insurance credit you will be asked to provide, and your deductible obligation. You should also know whether your general liability policy will dovetail with the OCIP and provide excess coverage in the event the wrap-up limits are exhausted. Note that most general liability policies available to subcontractors will specifically exclude condominium work and any work done on a project covered by an OCIP policy. Subcontractors will also be required to provide evidence of insurance for other coverages such as off-site general liability, workers compensation, and automobile. The insurance broker that manages your operational policy should review any OCIP you are considering.

## Final Comment

OCIPs are complex. Whether you are a developer or contractor, if you are going to sponsor or be an insured under an OCIP, it is imperative that you understand the coverage and your obligations under the contract. The benefit of an experienced insurance broker and attorney who understand this type of coverage is a critical component in your risk management efforts.■

Health and wellness tips for your work and life—presented by Cavignac & Associates

## This Deadly Flu Season is the Worst in Nearly a Decade

According to the Centers for Disease Control and Prevention (CDC), the 2017-18 flu season is more intense than any other since the 2009 swine flu pandemic. Unfortunately, the CDC says this flu season is going to get worse.

In addition to the increasing number of individuals falling ill with the flu, the hospitalization rate for the flu has jumped. This year's dominant virus, H3N2, has been around for 50 years, but it is usually the most lethal of the seasonal strains.

As a result, the CDC urges those who haven't yet gotten the flu vaccine to do so, as it is the best way to prevent the flu. Because some doctors and pharmacies have run out of vaccines, check here to find out where you can obtain your vaccination.

## Eating Healthy Doesn't Have to Be Expensive

Eating a well-balanced diet is a key component in living a long, healthy life. Many Americans think that eating healthy means they have to empty their wallets, which isn't necessarily the truth. Keep the following money-saving tips in mind next time you're grocery shopping:

1. **Make a weekly meal plan.** Before you go to the store, think about what meals and snacks you want for the week. Read recipes thoroughly so you can make an accurate list of everything you need, reducing the risk that you'll have to run back to the store later in the week.
2. **Create a list—and stick to it**. Make a detailed list of what you need to buy before you go to the store. When you get to the store, don't buy anything besides what's on the list.
3. **Plan where you're going to shop.** Many grocery stores run sales or offer coupons on various healthy foods. Check out the ads and plan your grocery list around what's on sale.
4. **Shop seasonally**. Fresh fruits and vegetables that are in season are usually easier to get and may be a lot less expensive. Click here for a list of what's in season.
5. **Cook at home as often as possible**. Many foods prepared at home are cheaper and more nutritious. Go back to the basics and find a few simple and healthy recipes that your family enjoys.

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## One Pan Potatoes & Chicken

4 medium potatoes
1 pound chicken breast (boned and skinned)
2 Tbsp. oil
1 cup salsa
1 15-ounce can whole kernel corn (drained)

## PREPARATIONS

1. Cut potatoes into ¾-inch cubes.
2. Cook potatoes over medium-high heat until fork-tender. Remove from pan.
3. Heat the oil in a skillet over high heat. Brown the chicken for 5 minutes.
4. Add the potatoes back into the pan and cook until lightly browned.
5. Add salsa and corn. Cook until heated through.
6. Serve warm.

Makes: 6 servings

**Nutritional Information (per serving)**

| | |
|---|---|
| Total Calories | 285 |
| Total Fat | 7 g |
| Protein | 21 g |
| Carbohydrates | 35 g |
| Dietary Fiber | 4 g |
| Saturated Fat | 1 g |
| Sodium | 316 mg |
| Total Sugars | 3 g |

Source: USDA

# Sleep and Your Health

The National Sleep Foundation sponsors Sleep Awareness Week every March to educate Americans on the importance of sleep to their overall health and well-being. The CDC has linked insufficient sleep to the development of chronic diseases and conditions, including diabetes, heart disease, obesity and depression. In honor of Sleep Awareness Week occurring this March 11-17, try adopting the following five healthy sleep habits:

1. Keep a regular schedule—try to go to bed and wake up at the same time each day, including weekends.
2. Create a good sleep environment, including comfortable room temperature, minimal noise and sufficient darkness.
3. Keep track of habits that help you fall asleep, like relaxing music or reading before bed. Repeat those activities each night.
4. Avoid caffeine and nicotine three to four hours before going to bed.
5. Limit alcohol before bed, as it can reduce sleep quality.

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# *Get a Good Night's Sleep with Food*

These sleep-inducing foods will help your muscles relax, quiet your mind and produce sleep-inducing hormones to get you right off to bed.

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Serving Seniors is a San Diego based non-profit with a national and international reputation for providing impactful programs and services to older adults living in poverty. Serving Seniors is supported primarily by donations, grants, bequests and investments.

Our goal is to provide seniors life sustaining services in a welcoming and supportive environment where they can get the help they need. Nearly 5,000 low-income seniors rely on Serving Seniors every year, and we are proud to provide all our services free of charge.

*For more information, go to www.servingseniors.org*