

## Workshop M5

**Monday, October 9, 9:00 a.m.–4:30 p.m.**

# **THE TRUTH ABOUT WRAP-UPS**

## Panelists



**Daniel F. Conway**  
President  
AIG Constr. Risk Mgmt. Grp.



**Kathleen A. Creedon**  
Owner  
Wrap Strategies



**Richard Resnick**  
Senior Vice President  
Tanenbaum-Harber Co., Inc.

## Moderator



**Ron Rakich, CPCU, ARM**  
President  
Ron Rakich & Associates, Inc.



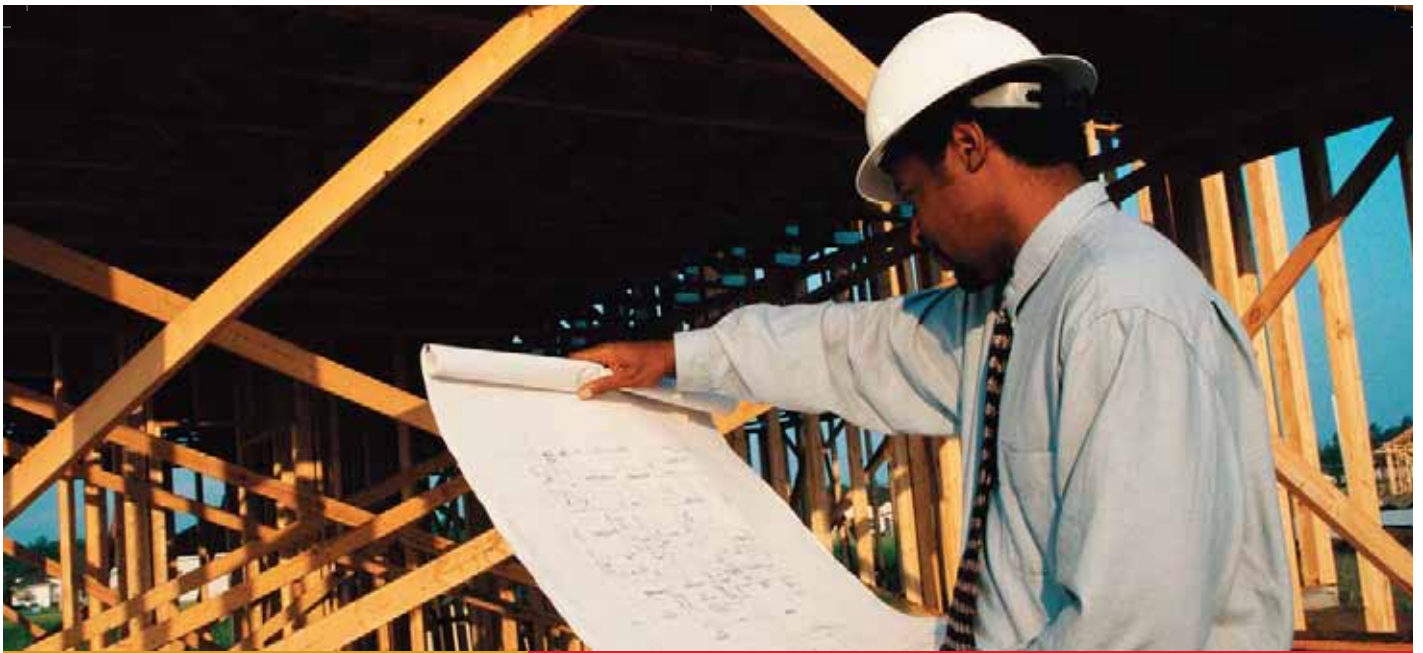
**Richard J. West, CPCU, ARM**  
Corporate Risk Manager  
BE&K, Inc.



**Jack P. Gibson, CPCU, CRIS**  
President  
IRMI

Once limited to very large construction projects, OCIPs and CCIPs are becoming more mainstream, even for projects that were once considered too small. While a wrap-up can be a useful tool, it is not a panacea, and the approach isn't right for every project. In this interactive session, a panel of seasoned wrap-up veterans will examine the most critical elements with a focus on giving you "best practices" to do wrap-ups right.

- Shows how sponsors are using wrap-ups creatively to solve a variety of risk and insurance problems.
- Discusses "best practices" for coverage, safety, administration, participant buy-in, and other key aspects of a successful CIP.
- Examines common concerns of participants and gives survival tips to help contractors protect their interests.



# 5 reasons CNA is the right insurance solution for contractors.

- 1** We understand the construction business and insure a significant share of the industry.
- 2** We provide enhanced critical coverages for contractors that aren't readily offered by other carriers. These include enhancements like wrap around and excess limits coverages for work performed on Wrap-ups.
- 3** We provide Risk Control programs, information and education—via the Web, printed guides and classroom training—that can help identify and reduce your loss exposures.
- 4** Our experienced claim adjusters process claims quickly and fairly and help injured workers get healthy and return to work sooner. Your agent can access cases—day or night—through our Claim Web site. We make certain claim information available, as permitted by law.
- 5** We actively listen to the needs of contractors and constantly look to refine our products and services. One of the ways we accomplish this is through our association with risk management leaders, such as IRMI.

We're a great insurance **partner** when you need us most.



CNA helps manage the unique risks of construction professionals. Our partnerships with trade associations, industry experts and independent agents ensure that we stay ahead of industry trends and develop coverages based on your needs. And with more than 100 years of experience providing Claim and Risk Control services, we're there.

To find out more about CNA, call your local independent agent or visit [www.cna.com](http://www.cna.com).

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**Daniel F. Conway**  
**President**  
**AIG Construction Risk Management Group**

Mr. Conway, a panelist for Monday's "The Truth about Wrap-Ups," Workshop M5, has 20 years of field and home office underwriting experience.

He began his career with AIG in 1995 with AIG's Philadelphia office. In 1998 he joined the Construction Risk Management Home Office as Divisional Vice President. He became President of the Division in 2004. He oversees approximately \$1 billion of casualty and surety premium and over \$2 billion in construction-related risks throughout AIG's domestic operation.

Mr. Conway is leading AIG's initiative, AIG Construction Solutions, as a natural extension of the scope of coverage and services available to contractors and sponsors of wrap-up projects. With this endeavor, he is responsible for the seamless coordination of primary casualty lines, builder's risk, excess/umbrella, pollution liability; A&E/Professional, surety, accident and health, Defense Base Act, and foreign voluntary workers compensation to AIG construction risk management clients and prospects.

Prior to AIG, Mr. Conway held various underwriting and management positions with a Pennsylvania regional mutual insurance carrier that specialized in workers compensation.

He graduated from Temple University with a B.S. in Risk Management.

**Kathleen A. Creedon**  
**Owner**  
**Wrap Strategies**

Ms. Creedon is a panelist for Monday's "The Truth about Wrap-Ups," Workshop M5. She has worked in the insurance industry for 30 years and has been involved in construction-related insurance since 1987. She started an independent consulting firm, Wrap Strategies, in 2001 to provide wrap-up expertise and training for its clients. Prior to Wrap Strategies, she spent 4 years with Aon Risk Services and worked exclusively on wrap-up programs. While at Aon she managed an OCIP for a \$450 million wrap-up project from an on-site construction trailer and gained valuable insight into the construction process and the many personalities involved with a large-scale project. After the on-site project, she set up and/or managed over 30 additional wrap-up projects of varying size, scope, and complexity. Ms. Creedon was involved in both rolling programs and those set up for single sites. Before Aon, Ms. Creedon held various positions in marketing and account management including a position where she was an account executive for a large national residential and tunneling contractor headquartered in California.

**Jack P. Gibson**  
**President**  
**International Risk Management Institute, Inc.**

Mr. Gibson is cochairman of the Conference and is also moderating Monday's Preconference Workshop M5, "The Truth about Wrap-Ups." He has been an integral part of International Risk Management Institute's management team since 1982, and became president of IRMI in 1985. Prior to joining IRMI, Mr. Gibson was a consultant with a leading national risk management firm. His consulting practice focused on financial institutions, public entities, and contractors. Mr. Gibson majored in risk management at the University of Georgia where he received a bachelor of business administration degree, cum laude, in 1977 and a master of business administration in 1979. In 1996, he was honored as Georgia's Outstanding Insurance Alumnus of the year. He is a Chartered Property and Casualty Underwriter (CPCU), a Chartered Life Underwriter (CLU), and holds the Associate in Risk Management (ARM) designation. Mr. Gibson is the coauthor of 11 reference works on insurance and risk management, all of which have been published by IRMI. Included among these works are *Contractual Risk Transfer*, *Construction Risk Management*, and *The Additional Insured Book*. In addition to his management duties, he continues as editor of *The Risk Report*, and is currently editor-in-chief of IRMI.com. A sought-after and highly rated seminar speaker, Mr. Gibson has been a presenter at the annual conventions or meetings of virtually every major industry trade association serving the risk management and insurance communities as well as many construction industry and lawyer seminars and meetings. He serves as cochair and presenter at the IRMI Construction Risk Conference, and received the Words of Wisdom (WOW) award. Mr. Gibson is an active member of the CPCU Society. He has held many committee and officer positions, including president, in the Dallas Chapter. Additionally, he served on a national level from 1985 through 1999, when his 3-year term on the Board of Directors ended.

**Ron Rakich, CPCU, ARM**  
**President**  
**Ron Rakich & Associates, Inc.**

Mr. Rakich is a panelist for Workshop M5, "The Truth about Wrap-Ups," on Monday. He is President of Ron Rakich & Associates, an independent risk management and insurance consulting firm that specializes in construction risk management, particularly in large public works projects and wrap-ups.

He is also the Risk Manager (under contract) for the Alameda Corridor Transportation Authority and the Los Angeles Community College District Propositions A and AA Bond Programs. Both have involved large (over \$2 billion) owner controlled insurance programs. Mr. Rakich has participated in various roles in more than 20 wrap-ups ranging from \$350 million to \$4 billion.

His career experience includes service as risk manager for a large public entity, risk management services director for a group self-insurance pool with more than 1,100 entities, and risk management consultant to a wide range of industries.

During his career as a consultant, he has taught courses in risk management and insurance at the university level and published dozens of articles in a variety of industry publications including *Professional Safety*, *Risk Management Today*, *The Risk Management Letter*, *School Business Affairs*, and *The School Administrator*.

He is currently editor of *The Insurance Advisor*, a monthly trade newsletter. He is a former editor of *The Risk Management Letter*, and former associate editor of *The D&O Book*. He coteaches a course on risk transfer, certificates of insurance, and additional insured status for the Insurance Educational Association.

Mr. Rakich holds the Chartered Property Casualty Underwriter (CPCU) and Associate in Risk Management (ARM) designations. He is a *magna cum laude* graduate of the University of Houston and has completed graduate business studies at the University of Houston and Wharton.

He has been active in many professional organizations over the years, including The Risk and Insurance Management Society (RIMS), The Public Risk Management Association (PRIMA), the American Society of Safety Engineers, The Society of Chartered Property and Casualty Underwriters, and the Institute of Management Consultants.

**Richard Resnick (Rich)  
Senior Vice President  
Tanenbaum-Harber Co., Inc.**

Mr. Resnick is a panelist for Workshop M5, "The Truth about Wrap-Ups," on Monday. For more than 32 years, Mr. Resnick has been associated with the insurance industry, earning a reputation for particular expertise in the design and development of wrap-up programs. He serves as an outstanding resource for clients, providing extensive knowledge of cash flow programs, captives, and self-insurance plans as well as the traditional insurance transfer programs.

As senior vice president of Tanenbaum Harber's wrap-up group, Mr. Resnick brings a strong understanding of complex insurance construction issues to his responsibility for the development and servicing of new wrap-ups. Prior to joining Tanenbaum Harber, he has held positions in the wrap-up group for Allied and prior to that Johnson & Higgins. As Northeast region OCIP practice leader for Johnson & Higgins, Mr. Resnick was responsible for the development and maintenance of wrap-up business for the Northeast region. He has also served as a manager and officer of other national brokerage firms and has dealt extensively with the contracting community as well as government agencies, including NYCHA, DOT, MTA, DEP, NYCTA, and GSA.

A frequent lecturer, he has taught classes for The Nassau County Insurance Agents Association and the Pohs Institute Licensing Program. In addition, he has served on the faculty of Hofstra University and currently is a faculty member of St. John's University.

Mr. Resnick has also moderated roundtable discussions at several IRMI conferences. He has participated in a wrap-up panel discussion for the Washington, DC, chapter of CFMA and also led a seminar discussion on wrap-ups for The Design Build Institute.

A graduate of CW Post College, Mr. Resnick earned an MBA in finance from Pace University. He also holds the Associate in Risk Management (ARM) designation.

**Richard J. West II, CPCU, ARM**  
**Corporate Risk Manager**  
**BE&K, Inc.**

Mr. West is a panelist for Workshop M5, "The Truth about Wrap-Ups," on Monday. He has been in the insurance industry for 16 years. For the past 8 years, he has worked as a Risk Manager for Bechtel Corporation and BE&K, Inc. Before moving into the risk management area, he worked as a broker for Johnson & Higgins and Sedgwick. He also received experience in the industry through a broker internship at Lloyds of London and an intensive underwriter training program at the Hartford.

Working as a risk manager, Mr. West has had extensive experience working with controlled insurance programs, including on-site management of a multibillion-dollar contractor controlled insurance program for a U.S. Department of Energy site in Tennessee. His experience includes contract negotiations when CIPs are being considered, negotiating insurance policy terms for both CCIPs and OCIPs, placement of CCIPs, and managing risks for projects involving CCIPs or OCIPs.

Mr. West earned a bachelor of business administration degree from Loma Linda University in Riverside, California. He also earned both the Chartered Property and Casualty Underwriter (CPCU) and Associate in Risk Management (ARM) designations.

# Feasibility

**Presented By:**  
**Richard Resnick**  
Vice President  
Tanenbaum Harber  
New York, NY

## Feasibility



- **What a feasibility is**
- **What a feasibility is NOT**
- **Tools of the trade**
- **Jurisdictional issues**
- **Critical mass**
- **Understanding “Traditional Insurance Costs”**
- **Estimated wrap-up costs**
- **Project profitability**
- **Caution signs**

## What a Feasibility Is



- Estimate of contractor credits
- Estimate of other avoided costs
- Estimate of wrap-up costs
- Estimate of profitability
- **OPERATIVE WORD: ESTIMATE**

**Used as a tool it will answer the following:**  
**DO WE CONTINUE OUR WRAP-UP**  
**DISCUSSIONS?**

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## What a Feasibility Is NOT



- It is not an insurance company quote
- It is certainly not an exact science
- It is not to be “micro managed”
- It is not the end all—Coverage considerations do matter

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### Tools of the Trade

- **Updated workers compensation rates**
- **Payroll benchmarks**
- **Construction knowledge**
- **Project budget**
- **Timeline**
- **Contractor benchmarks for GL rates**
- **Benchmark for wrap-up costs**

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### Jurisdictional Issues



- **State regulations, e.g., New York Insurance Law 2504 and 2505**
- **Trades not included in wrap-up, e.g., New York Electrical Union Local 3**
- **Prior approval for wrap-ups, e.g., Michigan**
- **Payroll regulations, e.g., NY Payroll Limitation Rule**
- **How experience modifications are affected**
- **Is it called a “Wrap-Up” or an “Owner Controlled Insurance Program,” e.g., Texas**

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## **Critical Mass**



- **Project hard costs**
- **Review budget for any large “non-labor” items**
- **Payroll drives the wrap-up**
- **Construction timeline**

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## **Traditional Insurance Costs**



- **Subcontractors insurance cost**
- **Construction manager or general contractors general liability costs**
- **General conditions**
- **Owners avoided cost of insurance**

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## Estimated Wrap-Up Costs



- **At maximum premium**
- **How to handle umbrella and excess costs**
- **Include all assessments and fees**
- **Costs at different loss levels**

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## Project Profitability



- **Up-swing risk**
- **Intangibles, i.e., coverage**
- **Be conservative**
- **Always anticipate the worst but plan for the best**

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## **Caution Signs**



- **Sponsor's experience**
- **Sponsor's motivation**
- **If something looks too good to be true, it probably is**
- **Minimal information available for feasibility**

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# Contractor Issues and Problems

**Presented By:  
Rick West  
Corporate Risk Manager  
BE&K, Inc.  
Birmingham, AL**

## Contractor Issues/Problems



**Problem:** Project owners considering CIPs often do not include the contractor in the planning process early enough.

**Result:** Instead of working with the owner as a partner, contractors who feel as though an OCIP is being forced upon them will end up opposing the concept and working against the process.

**Solution:** Owners should bring the contractor into discussions on the CIP and work with them as a partner. Discussions should include which party (owner or contractor) is the more appropriate party to control the CIP (OCIP or CCIP).

## Contractor Issues/Problems



**Problem:** CIP cost projections are often inaccurate and overstate “cost savings” of CIPs. These projections are often made without specific information from contractors on the cost of their master insurance programs or CCIPs.

**Result:** Owners can be disappointed when actual contractor deducts fall far below expected deducts. In some cases, accurate information may have changed an owner’s decision to use an OCIP.

**Solution:** Once again, early involvement of the contractor is key. Get accurate deduct information from the contractor in the financial analysis stage to determine whether or not a CIP makes financial sense.

3

## Contractor Issues/Problems



**Problem:** The party with the greatest risk of loss (usually contractor) is often not allowed to finance that risk by placing the project insurance program.

**Result:** Can create an adversarial relationship between owner and contractor. Can also add cost to the project by way of contractors purchasing difference in conditions (DIC) coverage or adding contingency to their contract price to account for uncertainties.

**Solution:** For turnkey projects where a contractor has assumed the majority of the project risks, the contractor should be allowed to finance that risk by controlling the project insurance program. If an OCIP is the only option allowed by an owner, the contractor should at least be allowed to participate in the design and placement of the program.

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## Contractor Issues/Problems



**Problem:** Some owners pursue OCIPs when, in fact, the contractor they have hired may have more experience placing CIPs and better buying power.

**Result:** In this scenario, the OCIP that may be put into place by the owner may be inferior in what the contractor could have done through a CCIP.

**Solution:** Another example of involving the contractor early. Discussions on experience and reputation in the CIP market (not the broker experience or reputation) can help determine the best way to set up a project insurance program. No offense to brokers, but their advice can be influenced by the commissions or fees they stand to earn. I recommend some direct discussions between owners and contractors when trying to determine which party may be in the best position to control the CIP placement.

5

## Contractor Issues/Problems



**Problem:** Some owners plan OCIPs for projects that are not good candidates for CIPs. These include projects where a contractor is self-performing all or most of the work; smaller projects (less than \$100 million); projects in jurisdictions that do not allow CIPs; projects where there isn't a dedicated work site; and projects in monopolistic W.C. states.

**Result:** CIPs for these types of projects will almost certainly not produce the intended benefits of a CIP.

**Solution:** Insurance programs for projects such as these should be left to the contractor for insurance. Likely, the best solution is for the contractor to use its existing master insurance program.

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## ***Notes***

This file is set up for duplexed printing. Therefore, there are pages that are intentionally left blank. If you print this file, we suggest that you set your printer to duplex.

# Wrap-Up Credit Tracking

**Presented by:**  
**Kathleen A. Creedon, CIC, CRM**  
**Owner**  
**Wrap Strategies**  
**Middleboro, MA**

## Traditional Savings Formula



**What the contractors would have charged in their bids**

**MINUS**

**What the sponsor pays for the program**

**EQUALS**

**Program savings**

## Purpose of Credit Tracking



- **Feasibility process provides best guess of contractors insurance costs**
- **Not an exact science—many variables**
  - **Charged vs. paid**
  - **Unburdened payroll**
  - **Allocation of payroll among trade classifications**
  - **Rates**
  - **Rate deviations**

3

## Purpose of Credit Tracking



- **Credit tracking process allows program sponsor to compare the feasibility prediction to the actual identified credits**

Feasibility Prediction

Best estimate of the amount of insurance that will be removed from contractors' bids

\$6,000,000

End of Project

Amount of insurance that was identified as being removed or was removed from contractors' bids

\$5,800,000

4

## Insurance Cost Identification Methods



- Identification with bid
  - As add alternate
  - As deduct alternate
  - Through submittal of two bids
- Other methods
  - By cost allocation, i.e., stipulated % (with net bid)
  - Calculation of cost by broker/administrator (with net bid or gross bid)

5



## Insurance Cost Identification Methods—Add Alternate

Sub Name	Base Bid <u>Excludes</u> Insurance	Add Alternate for Insurance
AAA Concrete	\$ 7,200,000	\$ 200,000
Concrete Co.	\$ 7,500,000	\$ 185,000
Big Concrete	\$ 8,800,000	\$ 155,000

6

## Identify with Add Alternate



### Advantages

- Potentially less friction between sponsor, CM/GC and contractor participants than deduct method
- Less administratively burdensome option than deduct method
  - Insurance credit verification may be excluded from buy-out process
  - Simpler accounting—insurance is not part of the cost of work

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## Identify with Add Alternate



### Disadvantages

- Must have competition, prior knowledge of costs or insurance cost backup to assess identification and removal of insurance costs
- Best practice approach dictates more work up front
- May provide unfair advantage to certain contractors due to equalization factor

8



## Bid Methods—Deduct Alternate

Sub Name	Base Bid <u>Includes</u> Insurance	Deduct Alternate to Remove Insurance
AAA Concrete	\$ 7,400,000	\$ 200,000
Concrete Co.	\$ 7,685,000	\$ 185,000
Big Concrete	\$ 8,955,000	\$ 155,000

## Remove with Deduct Alternate



### Advantages

- Provides tangible evidence of insurance cost removal
- May allow sponsor to extract more credits if errors are found during review of insurance cost calculation

## **Remove with Deduct Alternate**



### Disadvantages

- More labor-intensive than add alternate
- Possibly more friction with contractors
- Generally most administratively burdensome
- May affect accounting method or require additional accounting process
- Insurance negotiation part of buyout process  
Best practice dictates that negotiations should occur before contract award

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## **Insurance Cost Documentation Requirements**



- Insurance Cost Calculation Work Sheet
- Policy declaration and rate pages
- Experience modification work sheets
- Loss experience (If loss-sensitive program)

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### Potential Problem Areas

- Conflicts of interest
- Focus
  - Market conditions—buyer vs. seller
- No direction as respects change order quotations
  - Include insurance
  - Exclude insurance

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### Potential Problem Areas



- Umbrella/excess premium contributions
- Large deductible/SIR programs
- GL programs with minimum earned premiums
- Closeout calculations

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## **Trends**



- Coverage Focus
- CCIPs
- Add Alternate Approach

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## **Contract Issues**

**Presented by:**  
**Ron Rakich, CPCU, ARM**  
**President**  
***Ron Rakich & Associates, Inc.***  
**Dana Point, CA**

### **Wrap-up contract planning**



- **Start at the earliest possible point**
- **Include major parties, if possible**
- **Give an idea of what to expect**
- **Seek common interests**
- **Address risk issues**
- **Consider legal/tech specialists**

2

## **Coverage issues**



- **Description of coverage provided**
- **“Off-site” coverage requirements**
- **Exclusion of insurance costs**
- **Reference to CIP manual**
- **Pollution liability**
- **Professional liability**
- **Other**

3

## **Legal issues**



- **Eligibility and duty to enroll**
- **Address conflicts among documents**
- **Appropriate cross-referencing of docs**
- **Indemnity obligations**
- **Waivers**
- **Duty of cooperation**

4

## **Financial issues**



- **Risk allocation of retained losses**
- **Contractor other insurance**
- **Incentives**
- **Penalties**
- **Labor/Cost overruns & change orders**
- **Withholding of payments**

5

## **Safety/Loss control**



- **Duty of care**
- **Work area conditions**
- **Special training requirements**
- **Gross negligence**
- **Subcontractor safety plan**
- **Program safety plan**

6

## **Sponsor rights**



- **Owner/GC not insurer**
- **Right to modify or discontinue coverages**
- **Assignment of policy rights**
- **Audit rights**
- **Access to documents**
- **Remedies for noncompliance**

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# Underwriting Issues

**Presented by:**  
**Daniel F. Conway**  
**President, CRM**  
**AIG**  
**New York, NY**

1

## Underwriting Approaches



- **Sponsor of program and motivation for wrap-up**
- **Establishment of appropriate limits**
- **Levels of retention**
- **Size and scope of project**
- **Identification of safety practices and controls**
- **Jurisdiction issues**
- **Commercial vs Residential exposures**

2

## ***Notes***

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# Insurance Coverage Issues

**Presented by:**  
**Richard Resnick**  
**Vice President**  
**Tanenbaum Harber**  
**New York, NY**

1

## Insurance Coverage Issues



- **Reinstatement of Aggregate Limits**
- **Per-Project Limits**
- **Collateral Requirements**
- **Extended Completed Operations**
- **Construction Defects**
- **Builders Risk**
- **Trailing Deductibles under Umbrellas**
- **Defense within Limits**
- **Umbrella Term Limits**
- **Professional Liability Exclusions**
- **Environmental**
- **Third-Party Property Coverages**

2

## Insurance Coverage Issues



- **Reinstatement of Aggregate Limits**  
Are aggregate limits annual?
- **Per-Project Limits**  
If multi-project, will each project have its own aggregate?
- **Extended Complete Operations**  
How does policy define extended completed operations?  
When does extended completed operations “kick in”?  
How does it respond to multi-project wrap-ups?
- **Construction Defects**  
Construction Defects vs. Completed Operations  
Statute of Repose vs. Statute of Limitations
- **Trailing Deductibles under Umbrellas**  
What is a trailing deductible?  
How is it applied?  
Market solutions—Buffer layers, higher underlying limits

3

## Insurance Coverage Issues



- **Builders Risk**  
Dovetail with wrap-up
- **Defense within Limits**  
Are higher limits the answer?
- **Umbrella Term Limits**  
Does umbrella follow form of underlying?
- **Professional Liability Exclusions**  
Means and Methods
- **Environmental Liability**  
Separate program
- **Third-Party Property Damage**  
“Your work exclusion”

4

# Motivating Workplace Safety

**Presented by:**  
**Ron Rakich, CPCU, ARM**  
**President**  
**Ron Rakich & Associates, Inc.**  
**Dana Point, CA**

## Keys to success



- **Sincere sponsor commitment**
- **Prequalification**
- **Constant reinforcement**
- **Resource availability**
- **Feedback system**
- **Avoidance of conflicts of interest**

## **Roles of the Parties**



- **Sponsor**
- **Broker/administrator**
- **Insurer**
- **Subcontractor**
- **Consultant**

3

## **Priorities**



- **Safety, not savings**
- **Results, not statistics**
- **A successful project (on time, on budget)**

4

## **Modifying behavior**



- **Traditional incentive systems**
- **Internet-based incentive systems**
- **Negative reinforcement**
- **Behavioral principles**
  - **Reciprocated interest**
  - **Recognition**
  - **Resistance to change**

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# Risk Finance Issues

**Presented by:  
Daniel F. Conway  
President, CRM  
AIG  
New York, NY**

## Risk Finance Issues



- **Composition of the sponsor—traditional vs Limited Liability Corp.**
- **Cost of securing a program**
- **Public projects**
- **Private projects**
- **LLC and joint ventures**

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**Administrative Practices:  
The Good,  
The Bad  
& The Ugly**

**Presented by:  
Kathleen A. Creedon, CIC, CRM  
Owner  
Wrap Strategies  
Middleboro, MA**

**Relationships and Duty to  
Contractor Participants**



- Placing Broker
- Broker/Administrator
- Administrator Only
  - Duty to Contractor Participants
  - Duty to Broker

## Administrative Practices



### **THE GOOD**

- Full program disclosure before bid
- Complete, well-written and consistent documentation
- Well-trained and knowledgeable administrators
- Minimal paperwork requirements
  - Web-based solutions

3

## Administrative Practices



### **THE BAD**

- None of the above
- Small print on program forms
- Unreasonable or unattainable insurance requirements in addition to wrap-up (off-site, automobile and other coverages)

4

## **Administrative Practices**



# **THE UGLY**

- Intense focus on credit tracking
- Inferior/inadequate coverage
- Program deductibles—arbitrary assignment of responsibility
- Adversarial relationships
- Closeout calculations and withholding of retainage

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# Contractor Survival Guide

**Presented by:**  
**Rick West**  
**Corporate Risk Manager**  
**BE&K, Inc.**  
**Birmingham, AL**

## Contractor Survival Guide



**OCIPs do NOT completely replace a contractor's insurance program. Some cost needs to stay in contractors price even when OCIPs are used.**

- **Contractors are still responsible for:**
  - **Off-site work**
  - **Limits in excess of OCIP limits**
  - **Differences in coverage between OCIP and contractors' insurance**
  - **Claims received after end of completed operations period**
  - **Administrative costs to comply with OCIP procedures**
  
- **Negotiate fair cost to leave in price when in an OCIP**

## Contractor Survival Guide



- **Contract terms needed to protect the interest of contractors:**
  - **Minimum A.M. Best rating for OCIP insurers**
  - **Wording addressing what happens if the OCIP is canceled prior to project completion (include language that contractor will be reimbursed for cost of coverage at the time placed—not original deduct amount)**
  - **Provision for contractor to receive full copies of ALL OCIP insurance policies (not just W.C.)**
  - **Limit responsibility for deductibles to reasonable amounts and only those related to losses you cause**
  - **Limit audit rights of owner to only areas of master insurance program applicable to OCIP**
  - **Attempt to limit liability to owner to the proceeds of the OCIP policies**

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## Contractor Survival Guide



- **Contract terms to avoid:**
  - **Wording that requires contractor to remove all costs for insurance**
  - **Language that obligates contractor to provide more information than is necessary for OCIP purposes (for example, providing full copies of master insurance policies)**
  - **Obligation for contractor to replace insurance coverage in future at pre-determined cost (serious problems if insurance market changes—i.e., catastrophe incidents significantly change pricing or coverage availability)**
  - **Non-specific terms, conditions, limits, etc., regarding OCIP design. Contract should include detailed OCIP manual as an exhibit.**

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## Contractor Survival Guide



### Insurance policy terms to protect the interests of contractors:

- **Waiver of subrogation (all policies) in favor of all parties covered**
- **Cross-liability coverage (make sure CGL policy not amended to change standard separation of insureds clause)**
- **Blanket broad form contractual liability (make sure CGL policy not amended to exclude or limit coverage)**
- **Broad form property damage coverage including completed operations (carefully study any proposed amendments to standard CGL policy coverage)**
- **Completed operations period matching statute of repose**
- **Explosion, collapse, and underground property damage (make sure CGL policy is not amended to exclude if scope involves this type of work)**

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## Contractor Survival Guide



### Insurance policy terms to avoid:

- **Damage to property of owner that is not covered by builders risk**
- **Endorsements limiting contractual liability**
- **Other endorsements that conflict with those listed on previous slide**

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## ***Notes***

This file is set up for duplexed printing. Therefore, there are pages that are intentionally left blank. If you print this file, we suggest that you set your printer to duplex.