

GRAHAM ADVISOR

COMMENTS FROM THE CEO

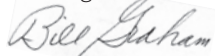
At The Graham Company, we believe effectively managing risk requires a proactive approach to safety. For more than half a century, our team has been helping clients take an active approach to safety through the implementation of strategic safety initiatives.

The truth is, lone safety initiatives do little to help a business achieve its safety goals. Safety training, policies and procedures and workplace inspections are important, but those activities will only be successful if your leaders and employees are committed to a strong safety culture.

In an effort to continue to provide value to our clients in the construction industry and beyond, we are investing in the development of a new model to help businesses redefine their current safety culture to a point where all employees are committed to working safely all the time. We are developing a Safety Culture Commitment Model by teaming up with some of the greatest minds in behavioral psychology to identify new and interesting ways to impact safety performance that are sustainable and effective. We believe this model will help yield safer employees and more productive businesses.

This month our newsletter is focused on relevant construction topics. I encourage you to read this newsletter and contact the authors or me at feedback@grahamco.com to learn more.

Best Regards,



WILLIAM A. GRAHAM, IV
CPCU, CLU, CEO



Insuring Construction Projects Through 'Wrap Ups'

A solution that offers project owners control over costs, coverage terms and conditions, claims processes and loss prevention

According to Labor Department data, construction industry employment reached a five-year high in August with the addition of approximately 20,000 jobs, bringing the industry's unemployment rate to 7.7%, the lowest unemployment rate for August since the recession began seven years ago. With this comes the good news that construction activity is picking up across most of the nation.

Construction project owners who find themselves in the position of starting new projects over the next few months would be wise to regroup with their insurance broker now to examine their existing insurance programs. At The Graham Company, we're always presenting solutions that will help our clients in the development and construction industries keep their businesses thriving. One solution that The Graham Company specializes in is what is known as Controlled Insurance Programs (CIPs) or "wrap ups."

Wrap ups provide general liability, workers compensation and excess liability insurance for the length of a construction project for all or a majority of the parties involved rather than requiring each participant – the general contractor and all tiers of subcontractors, among others – to be responsible for the procurement of insurance. Wrap ups are used

on large individual projects or on a "rolling" basis by aggregating smaller projects completed over time. A well-run wrap up offers an opportunity for significant cost savings – anywhere from 1%-1.5% savings on hard construction costs.

ADVANTAGES OF WRAP UPS

The key advantage with wrap ups is control – control over costs, coverage terms and conditions, claims processes and loss prevention.

CONTROL COSTS

Wrap ups enable a project owner to purchase insurance at a lower cost through economies of scale and enable them to purchase insurance on a loss-sensitive basis (i.e., a large deductible), which is where the potential cost savings is derived. In a large-deductible program, the sponsor of the wrap up pays the losses below the deductible in exchange for significantly reduced fixed costs (usually in the 35% range). If a project owner is able to control the losses on the project, they directly benefit. In contrast, in a non-CIP project, contractors include their insurance costs in their bids, which includes the fixed cost component of the insurance (about 40%) and the loss funding component (about 60%), regardless of whether or not there are any losses on the project.

CONTINUED ON INSIDE

ASK THE EXPERT



Peter Prinsen on how recent developments in the *Indalex* case may limit *Kvaerner* for contractors (hint: this is good news!)

Q. My business has been dealing with the unfavorable ruling in the *Kvaerner* case ever since it was decided back in 2006, and now I hear that the decision in the *Indalex* case may finally signal a significant improvement in General Liability coverage in Pennsylvania. Is this true?

A. Ever since the Pennsylvania Supreme Court decided the case of *Kvaerner v. Commercial Union Insurance Company* in 2006, insurers in Pennsylvania have been looking to deny coverage for claims alleging faulty workmanship. Insurers also claimed that allegations of negligence or strict liability were actually breach of contract claims and as a result, insurers were successful in denying coverage.

Seven years after the *Kvaerner* ruling, the Pennsylvania Superior Court in *Indalex v. National Union* (Dec. 3, 2013) held that *Kvaerner* is confined to cases where the underlying claims are for breach of contract and breach of warranty, and the only damages are to the insured's work product. The court further held that if the underlying action still contains negligence or strict liability claims, then the insurance carrier cannot attempt to convert those claims to contractual liability claims in an effort to deny coverage of the claim. If negligence and strict liability claims remain in those underlying lawsuits, the insurance carrier's duty to defend is triggered.

More good news came on September 18, 2014, when the Pennsylvania Supreme Court issued a one-page order denying National Union's (the insurer's) petition for appeal in the *Indalex* case. In light of the Supreme Court's summary refusal to hear the case, the *Indalex* decision is a strong step in the right direction in the market that once improperly limited insurance coverage if there was any allegation of faulty workmanship and it effectively stops insurers from unilaterally determining that an underlying suit against an insured really is a contract law claim as opposed to a tort law claim.

It is only a strong step in the right direction and not a leap since it involves a manufacturer, not a contractor, and involves the wording in an umbrella policy, not a general liability policy.

To learn more about how the *Indalex* case may impact your business and its policy coverage, please contact A. Peter Prinsen, Esquire, Vice President and General Counsel, at The Graham Company, at pprinzen@grahamco.com or 215.701.5284.

GRAHAM SIGHTINGS

Experts in the News



Michael J. Mitchell, CPA, CPCU, Vice Chairman, on what makes working at The Graham Company so great
Philadelphia Business Journal, an issue this Fall



Producers Luke Foley and Steve Phillabaum on automation risk
Industrial Distribution Online, October 2014

Awards & Recognitions



Ranked #68 on 100 Largest Brokers in U.S. List by *Business Insurance*



Ranked #35 on Top 100 Privately Held Independent P/C Agencies by *Insurance Journal*



Ranked Best Places to Work in Large Company Category by *Philadelphia Business Journal* (6x Hall of Fame winner)



Ranked on 2014 Employee Benefit Consultants List by *Philadelphia Business Journal*

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Follow us on Twitter @TheGrahamCo and we'll deliver daily insight to keep your employees safe and your business thriving.



For all the details on the latest insurance trends and how your business can benefit, follow our NEW blog at grahamco.com/KnowledgeCenter/Blog

SAFETY ZONE

A key element of an effective Owner Controlled Insurance Program (OCIP) is implementing a Drug and Alcohol Testing Program. Consider the following before implementing a Drug and Alcohol Program:

1. Know the drug and alcohol testing laws within the state where the testing will occur. Certain types of testing (e.g., post accident/incident) may not be permitted in some states.
2. Determine the types of drug and alcohol testing to implement. Options include: pre-employment; post-accident/incident/injury/near miss; reasonable suspicion/for cause; random; periodic; return-to-duty; post rehabilitation.
3. Know the type of tests (urine, hair, saliva, blood) to be conducted and the reason for selecting that type of test.
4. Establish a Substance Abuse Policy and have it reviewed by legal counsel before sharing with employees. This includes training supervisors and management staff in "Reasonable Suspicion" and establishing a protocol for dealing with an employee showing visible signs of impairment.
5. If using a Third Party Administrator (TPA) to assist with implementation, note that the TPA will do the following:
 - a. Help select and set up the collection facilities, train collectors and make sure all collections are performed per Applicable Law
 - b. Help select the illicit drugs to be tested for (5-panel, 7-panel, 10-panel, etc.). A typical 5-panel drug test will test for amphetamines, THC, cocaine, opiates and phencycline.
 - c. Establish the chain of custody for all drug testing
 - d. Package and send all lab-based drug tests or "inconclusive" initial drug tests if using instant test methodology to a certified laboratory for analysis
 - e. Provide a Medical Review Officer (MRO)
 - f. Maintain records of drug and alcohol testing

The Graham Company can help your business implement a Drug and Alcohol Testing Program; contact Mark Troxell, Vice President of Safety Services, at mtroxell@grahamco.com or 215.701.5340.

CONTROL TERMS AND CONDITIONS

Sponsors of wrap ups gain peace of mind that all contractors on a construction site have the same coverage and there are no gaps in coverage. The level of coverage that can be negotiated when purchasing in bulk is significantly greater than what an individual contractor can purchase on its own. The total liability limits available (usually a minimum of \$100M) through a CIP are much greater than the limits provided by the individual contractors.

CONTROL CLAIMS PROCESSES

In the event of a claim, having consistent coverage provided by one insurance company for all contractors streamlines the claims process and significantly reduces delays that may occur while sorting through the claim. By assuming the first \$250,000 or more of every workers compensation and general liability claim by having a large-deductible program, project owners gain the ability to influence the claim and dictate how it should be handled.

CONTROL LOSS PREVENTION

The most successful wrap ups focus on loss prevention since it's the key to cost savings. Since the owner is paying the losses below the deductible, the owner has a much greater interest in having a safe project and as a result, gets very actively involved in safety on the jobsite. The owner has the ability to control the loss prevention measures utilized on the project, such as drug testing protocols, fall protection policies and hiring practices. This is important not only for controlling costs, but also for meeting construction timelines.

IVY LEAGUE UNIVERSITY CLAIMS CONTROL OF INSURANCE PROGRAM

In 2007, The Graham Company took over the administration of an existing rolling Owner Controlled Insurance Program for an Ivy League university. At the time, the program contemplated several billion dollars of construction over a 10-year period, consisting of new dorms, academic buildings, utilities and laboratory space. Through an evaluation of the university's current program, The Graham Company determined the university's program could be strengthened by putting more of a focus on loss prevention and claims management measures.

From a loss prevention standpoint, The Graham Company implemented a drug testing protocol, which included on-site drug testing; got construction managers to agree to a 100% Fall Protection Policy; and got them to comply with accident notification and written investigation reports for each incident that were followed up by formal meetings. In addition, projects were observed two to three times per week, and the firm provided written reports to the university and respective construction managers regarding non-compliant safety issues observed. The Graham Company also hired a full-time safety consultant to be its eyes and ears on the construction site daily.

Through The Graham Company's audit of the existing program, it found leadership was not traditionally briefed when accidents occurred or as claims developed over time. Worse yet, the university was unaware of claims management and settlement decisions being made. The Graham Company implemented several changes to improve the claims management process that aimed at keeping everyone from leadership to construction managers and subcontractors informed.

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Within the first year of making these changes, the Ivy League university experienced a more than 50% reduction in claims costs. By the time the projects in the OCIP were completed, losses had gone from \$10.91 per \$100 of payroll (based upon more than \$61,000,000 of "pre-Graham payroll") to \$2.22 per \$100 of

payroll (based upon almost \$57,000,000 in "Graham payroll"), an almost 80% reduction.

Control probably isn't a word most construction project owners use when referring to their insurance program, but a wrap up can change the conversation. A wrap up can allow owners to streamline the administrative process and gain better control of insurance costs today and in the long term. It's a solution that can make a significant impact on the bottom line of construction businesses.

To learn more about insuring construction projects through "wrap ups," please contact Carl Bloomfield - Vice President at cbloomfield@grahamco.com or 215.701.5420 or Thomas Morrin - Vice President at tmorrin@grahamco.com or 215.701.5430 at The Graham Company.



EXECUTIVE ANNOUNCEMENTS

President & COO Delivers Keynote Speech at Temple University Graduation

Kenneth L. Ewell, President and Chief Operating Officer at The Graham Company, delivered the keynote speech at the 2014 Graduation Ceremony for Temple University's Fox School of Business' undergraduate and graduate degree programs on September 12 at the Temple Performing Arts Center in Philadelphia. In his closing remarks, Ewell, who earned his master's degree in business administration and bachelor's degree in mechanical engineering from the university, told graduates, "Beware of success without fulfillment. Define what fulfillment is. You'll know it when you feel it."

VP of Real Estate Division Speaks at 2014 Multifamily Executive Conference



Kevin D. Smith, CPCU, ARM, Vice President of the Real Estate Division at The Graham Company, was invited to speak at the 2014 Multifamily Executive Conference on September 23 at the Bellagio in Las Vegas as a panelist on the session "Mother Lode: The Rewards and Risks of Big Data." Smith appeared on the panel alongside other experts, including executives from D2 Demand Solutions and the Multifamily Data Exchange. He shared best practices on how multifamily organizations can mitigate the risks of data breaches through Cyber Liability insurance.

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