Workers’ Compensation Insurance, Crime Insurance, Commercial Umbrella Liability, and Bonds

A. Workers’ Compensation Laws (a.k.a. State Industrial) can be monopolistic and compulsory (required) in some states. In this case, monopolistic means coverage can only be purchased from one source, the state government. Some states allow the coverage to be purchased from the insurance industry. In this case, compulsory means it is required that employers provide benefits for employee’s work related sicknesses or accidents.

Workers’ Compensation laws provide money and medical benefits to an employee for occupational disease, sickness or accidental injuries, while on-the-job. These laws are intended to benefit the employee and employer alike. The employee receives money (usually on a weekly or biweekly basis) and medical benefits in exchange for forfeiting the common law right to sue the employer. The employer benefits by receiving immunity from court actions against them by the employee, in exchange for accepting liability that is limited and pre-determined. The question of negligence on the employer's part is usually not an issue. This is known as the Exclusive Remedy.

- Exclusive Remedy... The worker’s sole remedy against the employer will be through the workers’ compensation system.

1. Standard Policy Concepts
   a) Who is an employee? For workers' compensation purposes, an "employee" is anyone, including a contractor, subcontractor or contract laborer, who works for an employer in providing the goods or services of a business. Workers' Compensation Coverage must cover all employees, including part-time employees.

   Who is an employer? For workers' compensation purposes, an "employer" means any person or group of persons engaged in any work, by way of trade or business, or who contracts with one or more workers for their personal labor.

   b) Compensation... Workers' Compensation laws vary from state to state, but in general, the pay benefits are in four categories:

   - Medical benefits pays for the cost of various types of medical services required as a result of an employment related injury or illness. The benefits are paid with no dollar limit or time limit on covered expenses.

   - Disability or loss of income benefits (wages).....Compensation for permanent disabilities is usually reimbursed up to $66 \( \frac{2}{3} \) % of the employee’s wages, subject to a maximum and minimum weekly amount. In most states, an additional scheduled benefit is provided for specific permanent partial disabilities, such as loss of limb, sight or hearing, etc.
• **Vocational Rehabilitation** is covered to help train the employee to secure another type of employment. Necessary physical, mental, and vocational rehabilitation, including institutional care, are commonly provided.

• **Death and Survivor Benefits** compensate a surviving spouse and children of an employee whose death results from a work-related injury. Survivor benefits include a weekly benefit which is usually 66 \( \frac{2}{3} \% \) of the deceased worker’s wages. A stipulated or flat amount for funeral and burial expenses is also paid.

2. **Work Related vs Non Work Related** employment injury and sickness:

   *Acting in the course of employment* means the worker acting at his or her employer’s direction, including time spent going to and from work on the job site. It is not necessary that, at the time of injury, the worker be doing the work on which his or her compensation is based.

   *Acting in the course of employment does not* include time spent coming to or going from an office.

3. **Other States Coverage** provides automatic coverage in states which have non-monopolistic workers’ compensation laws. It may be purchased at the employers' option. The state where the work will be done must be listed on the policy as soon as the business has workers there.

4. **Employer's Liability** (a.k.a. Stopgap Coverage)......One provision offered in some workers’ compensation insurance packages is employee liability coverage. This provision covers expenses related to any lawsuits filed against the employer as a result of a work-related injury which is NOT covered under his general liability policy.

   • *It protects the employer against liability arising from work-related injuries or diseases not covered by the workers' compensation law or the employer's general liability policy.* For example, children file a suit against the employer for a work injury which put their father, the employee, into a wheel chair. The children no longer have their healthy father due to employment.

5. **Workers' Compensation Premium Determination**: There are three criteria which insurance companies generally use to determine the payment of premiums. These are:
   a) **payroll**
   b) **employer classification**
   c) **experience record** and number of accidents and severity of injuries included for this employer. A single claim will not adversely affect an employer’s individual **manual** rate, but may affect possible premium adjustments.
B. Crime Insurance pays an owner for the loss of property due to its wrongful taking by someone else.

1. Theft is any loss of property by stealing, including both robbery and burglary.

   - Burglary is the breaking and entering into the premises of another with felonious intent, leaving visible signs of forcible entry or exit. Burglary is usually committed when a business is closed.

   - Robbery is the taking by force or fear of force of the personal property of another. Robbery is usually committed while a business is open.

2. Robbery and Safe Burglary covers any combination of the following coverage which the insured may select:

   - Robbery of a custodian covers loss of property of the insured, OTHER than money and securities of the insured (owner) or an employee who has custody of the property within the premises. In crime insurance, a custodian is the insured (owner) or a regular employee or partner of the owner. A custodian is Not a watchperson or a janitor.

   - Robbery of a messenger covers loss of property of the insured, other than money or securities, by robbery of the insured, and employee or armored car outside the premises. A messenger can be the insured (owner) or a regular employee or partner of the owner. A messenger is Not a watchperson or a janitor.

   - Safe Burglary covers loss of property, other than money and securities, from within a locked safe by force or removal of the entire safe. Lock manipulation is not covered.

3. Employee (Theft) Dishonesty covers money, securities, and other property lost through the dishonest acts of employees.

   - Blanket Coverage covers acts by any employee.

   - Named Scheduled Coverage covers acts of a specific individual named in the declarations.

   - Position Coverage covers acts of an individual occupying the position described in the declarations.

   - While burglary and robbery losses are usually discovered immediately, certain losses, such as extortion, forgery and embezzlement, may not be discovered until weeks, months or years after they occur. The discovery clause states that...
losses that occur during the policy period, but are not discovered for up to one year after the policy has expired, can be covered under the expired policy.

- **Employee Theft** will not pay based on an inventory shortage or profit and loss computation.

- **Fidelity Bonds** can also be used to protect an employer against the dishonest acts of employees. A Fidelity Bond, which is NOT an insurance product yet is sold by insurance companies, is similar to Employee Dishonesty Insurance.

4. **Theft, Disappearance and Destruction** provides broad coverage for loss of money and securities. It covers both inside and outside the premises. It does not cover employee dishonesty.

5. **Forgery or Alteration**: This insurance coverage protects your business in the event of forgery or alteration of your company's business checks, promissory notes, drafts, consignments, or similar documents.

- The crime of fraud, which means deception in order to gain by another's loss, includes forgery. **Forgery** is the process of making, adapting, or imitating objects or documents, with the intent to deceive. **Forgery is one of the techniques of fraud, including identity theft.**

C. **Commercial Umbrella Liability** coverage is the same as the personal umbrella and personal excess policy but is used for business exposures. Umbrella policies are written to provide insurance on an excess basis, above the underlying insurance or a self-insured retention. Commercial umbrella forms provide a minimum of one million dollars of insurance, but they are frequently written with limits of $10-$50 million or more.

- **Underlying Coverages** - there must be an underlying policy providing commercial liability coverage. The umbrella policy pays after the underlying limit has been used.

- **Self-Insured Retention** is the deductible which the insured will pay when the underlying policy will not cover the loss, but the umbrella policy will.

- **Contrast with Straight Excess Liability** - an excess policy provides the same additional coverage; however, it will only pay if the underlying policy covers the loss.
D. Surety and Fidelity Bonds (a.k.a. Suretyship) are the means by which one person or entity, the surety (a.k.a. guarantor), guarantees another entity (obligee), that a third entity, the principal (obligor), will or will not do something.

Promise of the Surety - If the principal defaults, the surety pays the obligee, but then the surety has the right to recover its losses from the principal.

Parties to the Contract of Surety:

- **The Principal**, (a.k.a. *Obligor*) - the person or business *on whom the bond is written and whose performance is guaranteed*.

- **The Surety**, a.k.a. (Guarantor) - the party that agrees the performance or faithfulness of another. This is *usually an insurance company*.

- **The Obligee** - the person or business *who is protected* by the bond. The obligee under a bond is the same as the insured under an insurance contract. In the case of a construction bond, the person for whom the building is being built is the obligee, and the builder is the principal.

Difference Between Surety and Insurance:

- **Bonds** are contracts between *three parties*; insurance between two parties.

- **Subrogation rights**: Sureties can go after the principal to recover any losses.

- **No subrogation rights**: Insurance companies cannot go after the insured for recovery of paid losses. For example, if Travelers Insurance pays a liability claim to a third party because of the insured's negligent act, Travelers cannot sue the insured for recovery of the amount paid to the claimant.

**SURETY BONDS** guarantee that the principal **WILL DO** something. **Contract Bonds** guarantee the fulfillment of contractual obligations. The following are types of Contract Bonds: *Performance Bonds, Bid Bonds, Supply Bonds and Payment Bonds.*

**FIDELITY BONDS** guarantee that the principal **WILL NOT DO** something. *Fidelity Bonds protect an employer against the dishonest acts of employees.* These have similar features as Surety Bonds, such as the Parties to the Contract and the Promise-to-Pay Agreement. They also are similar to *Employee Dishonesty Insurance*.

- A **Fidelity Bond** guarantees to the Obligee (like a bank) that something *won’t happen*. For example, if a bank teller steals money, the bank is reimbursed by the bonding company for the amount stolen. The bonding company then will go after (subrogate) the teller for reimbursement.