

Business Insurance 101

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Agenda

- Present an overview of different types of insurance policies.
- Discuss what is commonly covered in each policy and what is commonly excluded.
- Discuss common pitfalls in each policy type and how to avoid them.
- Discuss actual real world claims scenarios and how claims were paid (or not paid!)

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- Property
- General Liability
- Commercial Auto
- Workers Compensation
- Umbrella
- Employment Practices Liability
- Miscellaneous Policy Types

Disclaimer

- Every Policy is different. Every carrier uses their own forms. When in doubt, ask your agent or read your policy. The material covered today is a basic overview. There is no “one-size fits all” approach.

What is Insurance? What is a Policy?

- -Insurance is a method of transferring the inherent risks of your business to a larger entity that could better absorb a catastrophic loss, for a predetermined cost to you (premium).
- -A Policy is a **contract** between you and your insurance company. It is legally binding and admissible in court. In exchange for your premium, the carrier agrees to compensate or defend you in court should you suffer a loss.

What is Insurable Interest?

- - Insurable Interest means that you have a substantial economic interest in the safety or preservation of the subject of insurance.
- For example. You cannot insure your neighbor's home and hope for it to burn down.

What does my agent do?

- -Your agent acts as a liaison between you and the insurer. The agent has a duty is to advocate for you to make sure you are treated fairly. The agent also has a duty to the insurance company to make sure that your risk is fairly represented on the application.
- Your agent should meet with you at a minimum of once a year. They should be able to answer questions about your policy and recommend ways to decrease costs/increase coverage/reduce risk.

Admitted versus Non-Admitted?

- Admitted carriers have to file their rates with the state, and cannot vary from their filed rates by more than a few percentage points. Admitted carriers are also backed by the state guarantee fund. Finally, admitted carriers cannot change their forms or policy coverages without approval from the state.
- Non-admitted carriers do not have to file their rates and are not backed by the state. Non-admitted carriers can write any type of policy and they can change their forms without seeking approval from the state.
- All things being equal, admitted carriers are generally preferable to non-admitted, but certain industries cannot find coverage in the admitted market.

AM Best Rating

- Every carrier has an AM Best rating with 2 components. The first is a letter (A+, A, A- etc...). This letter is a grade of the carrier's financial stability. The second is a roman numeral between I and XV. This is a grade of how much money the carrier has in reserve. (XV means they have 1.5 billion or more). Ask your agent about your carrier's rating.
- All things being equal, a higher letter grade and larger roman numeral are preferable. The biggest carriers (like Travelers, Auto Owners, Hartford, Westfield) have ratings from A to A++ and financial size of XV.

PROPERTY INSURANCE

- In the Early 20th century, Fire was the main peril insured against. Conditions were awful and fires were extremely common. Buildings were all wood, very closely packed together, and kerosene was used inside buildings for light and heat.
- When you bought a fire insurance policy, the company would put a metal emblem on your door (called a Fire Mark) that identified your house as being insured.
- Each carrier had their own fire department and would only respond to their own policyholders.
- There were also freelance fire departments that would assist in putting out the blaze if you had a fire mark. The fire mark told them that they would get paid!
- No fire mark on your door? You might get to watch your building burn down.

What kind of Property can I insure?

- Buildings
- Business Personal Property (Contents)
- Business Income
- Personal Property of Others
- Improvements and Betterments
- Equipment of a mobile nature (ie. forklifts, lawn mowers, are insured on a different type of policy)

Basic, Broad, Special Causes of Loss

- **If you have anything other than Special, talk to your agent.**
- Basic Causes of loss covers 11 perils and no more.
 - Fire, Lightning, Explosion, Wind/Hail, Smoke, Aircraft or Vehicles, Riot or Civil Commotion, Vandalism, Sprinkler Leakage, Sinkhole, Volcanic Action.
- Broad Causes of loss adds 4 more perils.
 - Falling objects, weight of ice/snow, Accidental discharge or leakage of water, Collapse
- Special Causes of loss covers “all perils” except for those specifically excluded.

What is excluded?

- Common exclusions include, but are not limited to: Earthquake, Pollution, Mold, Flood, Asbestos, Insect/Vermin Infestation, Chinese Drywall. This is not a complete list.
- Many of these exclusions are can be covered by purchasing an additional policy (notably, flood insurance)
 - Theft coverage is commonly excluded UNLESS you have a central station, reporting alarm system.

Replacement Cost vs. Actual Cash Value

- If you do not have Replacement Cost, talk to your agent.
- Replacement Cost means that in the event of a loss, the insurer will pay what it costs, in today's dollars to replace your damaged property. For instance, your roof blows off so the insurer buys you a new roof.
- Actual Cash Value means that in the event of a loss, the insurer will pay for the damaged property's depreciated value. For instance, maybe you paid \$8000 for your AC unit 6 years ago but at the time of loss it is determined to have an actual cash value of \$3000. You would get \$3000 minus your deductible.

What is Business Income?

What is Extra Expense?

- “Business Income” means Net Profit or Loss (before income taxes) that would have resulted through a period of restoration. This type of insurance pays your continuing overhead after a property loss that slows or stops your income stream.
 - Business Income can be bought several ways.
 - A dollar amount of coverage, split into a certain number of months
 - A dollar amount of coverage, with coinsurance provisions
 - Actual loss sustained
- “Extra Expense” pays for your additional costs if you go above and beyond to get your business open again. For example, your building has burned down, so in the meantime you set up shop in a rented trailer. The trailer costs you \$2000 per month. That is an extra expense.

Why do I have a % wind deductible?

- Blunt answer: to discourage small, “nuisance” type claims. The percentage wind deductible is one of the most commonly misunderstood items on the property policy. If you have a 2% wind deductible on a \$500,000 building, your wind deductible is 2% of \$500,000, or \$10 grand. It is NOT 2% of the loss, it is 2% of the building value. 2% is about as good as it gets. Many carriers go as high as 5% or 10%. Very few carriers have anything less than 2%.

What is Coinsurance?

- Coinsurance is a provision in your policy to make sure you insure to value. On your policy declarations page it will state the coinsurance (usually between 80-100%). For our example let's use 80%.
- Illustration: You have a building worth \$100,000. Your insurance policy has an 80% coinsurance provision, but you are only insuring the building for \$40,000 in an attempt to reduce your premium.
- Let's say you have a \$30,000 claim one day. At that time, it is determined by the adjustor that your building is worth \$100,000, and with 80% coinsurance you should be insuring it for AT LEAST \$80,000.
- They now take the amount you are insuring your building for (\$40K) and divide it by the amount you should be insuring for (\$80K). In this instance we would get 50%. So now on your \$30,000 claim, you are only going to get compensated for 50% of the expected loss, or \$15,000.
- The lesson here is to insure your building for what it is actually worth.

Coverage Scenarios:

\$300,000 building

- Your building suffers \$10,000 in damage from a hurricane. You have a 2% wind deductible
- Your building, which you have only insured for \$100,000, suffers a \$10,000 claim due to fire.
- Your building, which you have insured for \$290,000, burns down. You also have Business Income coverage at 6 months (ALS).
- Your building, suffers \$80,000 of water damage from rising water after a 3 day storm.
- Your building, which you have insured at \$300,000 Actual Cash Value, loses its roof in a windstorm. 2% deductible.

Pitfalls to avoid

- Actual Cash Value Coverage
- Under-insured or Over-insured values
- High Wind Deductibles
- Wind or Theft Exclusions
- Not carrying Business Income Coverage
- Not carrying Flood Coverage

General Liability

- General Liability Insurance protects the insured from legal liability for bodily injury or property damage arising from their operation.
- All businesses need this type of insurance to cover themselves for liability arising from premises, general operations, and products manufactured or sold.
- For coverage to respond there must be a LEGAL obligation to pay, not just a moral one and that obligation must be for damages (what a court would assess for the claimants injury)
- 2 types of coverage triggers. Occurrence versus Claims Made. If you have Claims-made, talk to your agent. You should have an occurrence policy unless you are in a specific high-risk class.

What are common GL exclusions?

- Liquor Liability, Pollution, Employee Injury, Intentional Injury or Damage, Automobile, Insured's Work or Product, Defects, Recall, Employment Practices, Professional Services
 - Most of these exclusions can be covered under other policy types.
 - Note: Damage to Insured's Work

What else is covered in my GL policy?

- Personal and Advertising Injury
 - Covers claims against the insured for false arrest, imprisonment, malicious prosecution, wrongful eviction, libel, slander, violation of copyright, misappropriation of advertising ideas or style.
- Medical payments
 - A voluntary or “non-legal” liability coverage. Payment is for medical, dental, hospital, and funeral services because of accident on the insured’s premises or due to insured’s operations.

Who is the named insured?

What/Who is additional insured?

- -The named insured is the person or entity listed on the declarations page of the policy. (ie. XYZ, Inc.) It is vital that this information is correct to ensure the policy is triggered in the event of a claim.
- -An additional insured is a 3rd party that has requested this status on your policy. An additional insured on your policy is provided coverage under your policy should they be sued for your operation or something that occurred on your premises.

What is Subrogation?

- If your insurance company pays a claim and later finds that another party was negligent, your insurer has the right to “subrogate” against the at-fault party (or their insurer) to recoup their loss
- If a 3rd party has been granted a Waiver of Subrogation on your policy, it prevents your insurance company from subrogating against them.

How is my premium determined?

What is an audit?

- Several methods can be used to calculate your premium. Your class of business determines what rating system is used.
 - Payroll, Sales, Units, Square Footage, Composite Rating
- The carrier reserves the right to conduct an audit and adjust your premium up or down retroactively based on change in exposure.
 - Important distinction between Admitted and Surplus lines
 - Rule of Thumb: with surplus lines you will never get money back, but you may owe!
 - With admitted carriers, you could owe money OR get a refund.

Coverage Scenarios

- A Tree Service is removing a dead tree and they drop a limb on a car.
- A Janitor is waxing a floor without proper warning signs and a passerby slips and falls.
- A patron twists his ankle when walking into your store. Floor is clean and in good repair, the patron just simply fell down.
- A restaurant serves produce contaminated with E. Coli, several patrons get sick.
- An employee quits and then claims that they were discriminated against due to race/age/or gender.
- A Painter uses the wrong type of paint, and after 3 months the paint is peeling.

Pitfalls to avoid

- Make sure the named insured is correct
 - Who owns the building? The company or the individual owner?
- Make sure rating basis (sales or payroll) is correct to avoid owing money at audit.
- If you have a pollution, alcohol, or CCC exposure and no coverage, talk to your agent.
- Make sure that your property damage deductible is “Per Occurrence” NOT “Per Claim” if possible.
- Do you offer employee benefits? If so, make sure you have Employee Benefits Liability.

Commercial Auto

- Important Distinctions versus Personal Auto
 - Can add non-family member drivers
 - PIP coverage is not as broad
 - Can be fixed via endorsement
 - Can often be packaged with the rest of your commercial policies (same carrier)

Liability Coverage

- Liability Coverage can be written 2 different ways
 - CSL = Combined Single Limit. The maximum amount the insurer will pay for your legal liability in any 1 accident (bodily injury and property damage combined). Common limits range from \$100,000 to \$1,000,000
 - Split Limits (10/20/10). Per person bodily injury/ Per accident bodily injury/ Per accident for property damage. Common limits range from 10/20/10 on up to 1 mil/1mil/1mil.

Other Auto Coverages

- Uninsured Motorist
 - Pays for YOUR bodily injury if the at-fault driver has inadequate (or no) insurance.
 - Common limits range from 10/20 to \$1 million
- Personal Injury Protection
 - Pays 80% of your bodily injury up to \$10,000 in an accident REGARDLESS of fault
 - Also pays 60% of lost wages up to \$10,000
 - For additional premium, limits can be raised, percentages can be increased, and definitions can be broadened.
 - If you do not have a personal auto policy, you will want to purchase “Drive Other Car” coverage.
- Medical Payments
 - Paid without regard to legal liability. Common limits range from \$1000 - \$10,000

Other Auto Coverage (cont.)

- Comprehensive
 - Pays for damage to your vehicle due to theft, vandalism, natural disaster/weather subject to deductible. Coverage is generally provided ACV.
 - Windshield claims are usually covered under COMP, and are offered at zero deductible.
- Collision
 - Pays for damage to your vehicle due to collision with another car or object (ie. tree) subject to deductible. Coverage is generally provided ACV.
- Miscellaneous
 - Other coverages available include Rental Reimbursement and Roadside Assistance/Towing.

What is Hired and Non-Owned Auto?

- Hired Autos are autos that you rent. If you do rent vehicles, you will need Hired Auto Liability and Physical Damage.
 - Liability protects you if you are at fault in an accident.
 - Physical damage pays for the vehicle you have rented.
- Non-Owned Autos are autos that may be owned by an employee or vendor and are being used in the course of business.
 - Liability protects you if your employee is at fault in an accident and you get named.
 - Physical damage pays for the employee's vehicle.
- "Any Auto" is the broadest of all coverage terms and literally grants you liability coverage for any liability claim you are responsible for. This term encompasses Hired, Non-Owned, and Scheduled vehicles. Even if you forget to tell your agent you bought a new vehicle and then get in an accident, if you have "any auto" coverage, your liability coverage would respond!
- When looking at your policy look for "Symbol 1: Any Auto". If you see "Symbol 7: Scheduled Autos", talk to your agent about changing to "Symbol 1".

Common Exclusions

- Wear and Tear, Intentional Damage, Pollution (except seepage), Cargo being transported, Injury to workers covered by workers comp.

Coverage Scenarios

- Employee runs to the post office in her own vehicle, while on the clock, at your request. Rear ends another motorist while in transit. Damage to employee vehicle, other vehicle, and employee injured.
- The owner of the company, with a business auto policy, goes on a personal vacation and rents a vehicle for the week. He is at fault in a fender bender in the parking lot. No injuries.
- You have an old truck in your parking lot that has been sitting/broken down for a while. Tags are removed. Vehicle is not on policy. A drunk college kid climbs on the truck and injures himself on a Saturday night.
- You hit a deer. You have comprehensive coverage but no collision coverage.
- A Vegetable Farm runs an ad for seasonal help. 2 prospective employees drive across the state to interview for the job. On the way they are involved in a fatal collision. The victim's families sue you.

Workers Compensation

- What does Workers Comp cover?
 - Injuries to workers – normal course of employment
 - Lost wages due to injury
 - Injuries to workers – due to employer negligence
- Note on independent contractors and subcontractors

What are the limits?

- Part 1 covers workers' injuries and lost time. There is no dollar limit.
- Part 2 covers employers liability for injuries due to negligence
 - Limits for this coverage are \$100,000 per employee per accident, \$100,000 per employee for occupational disease, and \$500,000 for all employees occupational disease.

How is my premium computed?

- Each employee is categorized by their job duty
- Each job function has a specific rate assigned by the State of Florida division of WC.
- The formula is $(\text{total payroll}/100) * \text{rate} = \text{premium}$
- At the end of the year, an audit will be performed to make sure your payroll was accurately reported.

What is my Experience Mod?

- Over the course of time, if your premium is adequate, you will develop an Experience Mod.
- Your rate is calculated by NCCI, an outside organization that is contracted by the state to handle this function.
- This can either increase or decrease your annual premium. Rates range from .75 to 2.0 and higher.
- A 1.0 rate is neutral. A .75 rate equals a 25% DISCOUNT on the standard rate. A 1.5 rate is a 50% INCREASE on the standard rate.
- Your Experience Mod goes up as your claims frequency and severity goes up. It goes down with good claims history.
 - Claims frequency impacts your Mod much higher than severity.
 - Lost Time claims impact your Mod higher than Injury claims.
- Best strategies for lowering your Experience Mod
 - Implement Drug Free and Workplace Safety programs
 - Run background checks on new hires
 - If possible, offer Health insurance to employees
 - Implement a “Light Duty” Return to Work program.

Are there other ways to lower my cost?

- Drug Free Program = 5% annual discount
- Workplace Safety Program = 2% annual discount
- Dividend Options
 - Completely dependent on carrier and premium size
 - Could be based on loss ratios or could be flat.
 - Dividends range from 3% to 51% !!
 - Dividends are never guaranteed, they are declared by the board of directors each year.
 - You must be current on premium due, with no lapses in coverage, and have completed your audit.

What is Employee Leasing?

- A PEO, or Professional Employment Organization, will hire your workers and lease them back to you for an administrative fee.
- They handle all tax withholdings and other payroll functions
- You retain all control of hiring/firing/assigning hours etc...
- The leased employees come with workers comp.
- Generally, but not always, more costly than just doing your own payroll and buying a stand-alone workers comp policy.
- Can usually write tougher classes of business due to their ability to generate higher revenue than a stand alone workers comp policy.

Coverage Scenarios

- You are an electrician. In the course of work, an employee is badly burned. His medical costs are \$8000 and he misses 3 weeks of work (\$1500 in pay)
- You use a PEO to cover your workers comp needs. You hire a new employee and before you report him to the PEO, he has an accident and has to go to the emergency room. Total bill \$5000.
- An employee is permanently injured in the normal course of business and ends up in a wheelchair for the rest of his life. A jury trial awards him a \$1,000,000 settlement and \$150,000 per year for the rest of his life.
- You provide your employee with a defective piece of equipment which leads to his injury. Medical costs and Lost wages = \$250,000

What is an Umbrella?

What does it cover?

- An umbrella goes over your base policies (GL, Auto, and WC) to increase your limits.
- Excess Liability goes over just 1 of your base policies (GL for instance) and is usually cheaper
- Umbrella Policies are generally “follow form”, so if something is covered by the underlying policy it will be covered by the umbrella as well.
- There can still be specific exclusions (ie. pollution) though, so read your policy

What is Self Insured Retention

- In the event that your umbrella policy picks up a claim that was not covered by your underlying coverage, the SIR is a basically a deductible. \$10,000 is the typical SIR.

Why does my umbrella go over my workers compensation policy?

- The umbrella only goes over the Employers Liability section of your Workers Comp policy
- (see coverage scenario below)

Coverage Scenarios:

GL Limit = \$1 mil., Auto Limit = \$1 mil.

Employers Liability = 100K/500K/100K

You carry a \$2 million umbrella that goes over all 3 policies

- Your product injures a customer and they successfully sue you for \$1.5 million. The claim IS picked up by your underlying GL.
- Your product injures a customer and they successfully sue you for \$1.5 million. The claim is denied by your underlying GL due to an exclusion. Your umbrella does not have that exclusion however and coverage is granted.
- Due to your negligence, your employee injures himself on some faulty equipment. His injuries and time lost from work total \$700,000
- In the normal course of work, your employee injures himself. His injuries and time lost from work total \$700,000

Employment Practices Liability

- Very few people carry this insurance, but EVERYONE should
- This is fastest growing area of law and the most common uncovered claim that we see.

What does EPLI cover?

- Helps Employers defend against claims brought by their employees for acts related to their employment. Examples?
 - Wrongful Termination, Discriminatory Hiring or Firing, ADA violations, Breach of Contract, Sexual Harassment, Wrongful Demotion, Failure to Promote, Hostile Workplace, Deprivation of Career Opportunities, etc...

What is not covered?

- Wage and Hour Disputes, Events that originated prior to policy inception or retro-active date, 3rd party claims, defense costs outside limits of policy.
- Several of these coverage gaps can be obtained (bought back) depending on the carrier.

Doesn't my GL cover this?

We don't have that many employees.

We don't have *that kind* of workplace, why do I need it?

- GL specifically excludes EPLI coverage
- Over 50% of claims are filed against firms with less than 50 employees.
- A claim can be triggered by mere allegation of wrongdoing. Plus, a claim could be triggered by the alleged actions of one of your managers.

We would settle out of court.

We would fight the charges and be found innocent!

- You probably would, while still incurring legal fees. The average settlement out of court in EPLI lawsuits is \$65,000
- The average legal fees incurred in an EPLI trial are \$42,000 regardless of guilt. If you are found guilty by a jury the average award is \$150,000.

Coverage Scenarios

- Milwaukee: Three female employees of a jewelry store sued the store for permitting a sexually hostile work environment that included inappropriate banter, touching by manager, and retaliation.
 - Settlement: \$155,000
- Michigan: A female employee and coworker alleged sexual harassment and abuse while working at a retail store; she was fired by the owner.
 - Demand: \$100,000
 - Jury award: \$347,250
- Anchorage: A pregnant employee claimed she was denied a promotion due to her pregnancy.
 - Settlement: \$55,000
- Florida: A Veterinarian sued her former employer for breach of verbal contract when she was not offered the opportunity to become a partner in the firm as was allegedly promised. This Veterinarian Firm did not carry EPLI coverage.
 - Settlement: \$180,000 out of pocket.

Other Types of Insurance

- We are limited by time, but there are dozens of other types of insurance available.
- Group Health – we could talk for hours....
- Pollution Liability
- Professional Liability
- Cyber Liability
- Directors and Officers
- Inland Marine
- Installation Floater/Builder's Risk
- And more...

Bottom Line

- Always read your policy, no one else does, but you may find something surprising.
- Always communicate with your agent about exposures that you think you have. Especially if your company is growing or changing.
- It is possible to be insurance rich/cash poor. You must balance the amount of insurance you purchase with the amount of risk you are willing to “self-insure” to achieve parity.
- The most important thing is that you know what your policy does and does not cover so that you are not SURPRISED at the worst possible time.
- Remember that not all agents are experts in every field. If the time comes to replace your agent because a new agent has a better product or more knowledge of your industry, you must do what is best for your business. Don't feel bad, your agent will get over it.
- Bottom line is: Pick an agent you feel you can trust to be a steward of your insurance program so that you can focus on running your business. Choose your insurance agent the way you would choose your CPA or Attorney. As a valued partner rather than as just a salesperson.