

**Insurance, Risk Management
and Surety**



Hays

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Questions to Consider

- **Why does a government entity require a motor carrier (heavy haul, etc.,) to post a bond?**
 - Replace or repair infrastructure damage
 - Payment and performance bond
 - Payment for taxes and fees
 - License and permit bond
 - Fuel tax bond
- **How many of you have first hand knowledge that a bond company paid a claim to repair a bridge or other type of infrastructure?**
- **WY bridge.....\$786,000 later...who paid?**
 - Auto liability insurance up to the limit of liability, why?
 - MCS-90 endorsement



Key Question

- **When damage occurs to infrastructure or property, which instrument makes certain the damage is replaced and/or repaired and no government entity is left “holding the bag”?**



Bond vs. Insurance

P&P Bond

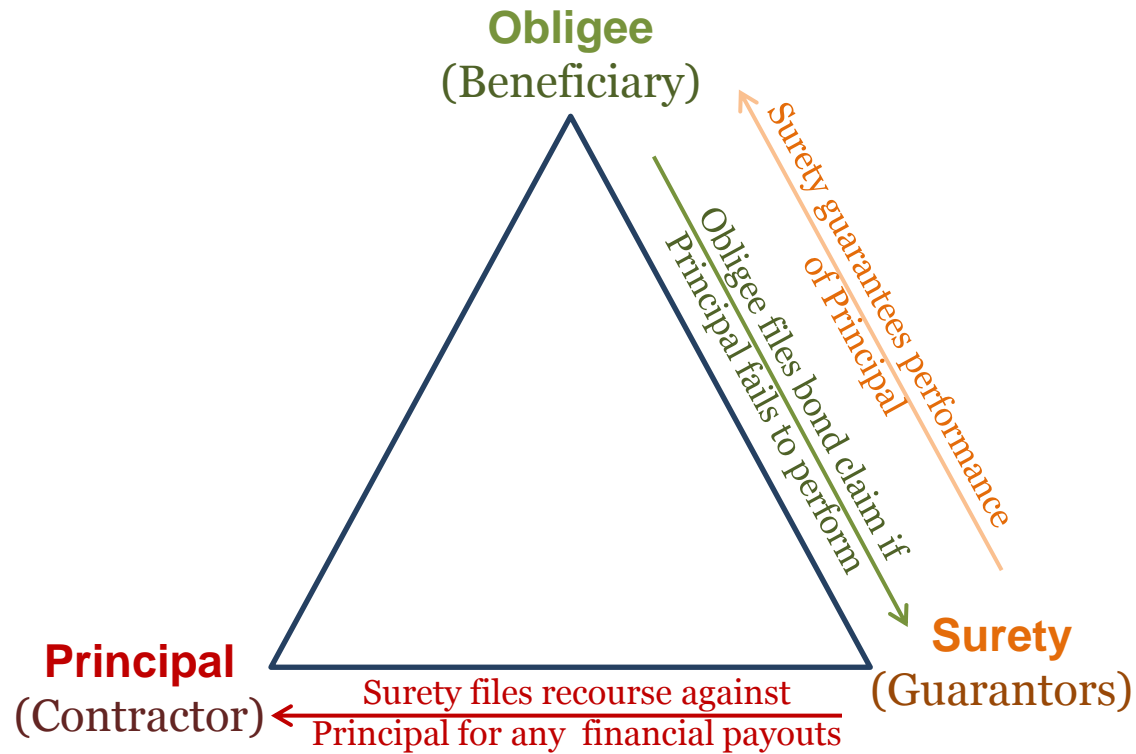
- **Surety guarantees the Principal's performance with a specific underlying contract for the benefit of the Obligee**
 - Surety: Insurance Company
 - Principal: Motor Carrier
 - Obligee: Beneficiary of the bond (State Agency in this case)
- **Recourse to the Motor Carrier**
- **Indemnify the Surety**

Auto Liability Policy

- **Pays 3rd party claims for bodily injury or property damage on behalf of the insured up to the limit of liability**
 - Insured: Motor Carrier
 - Insurer: Insurance Co.
 - Insurance Policy: Contract
 - Public at large: (3rd party)
- **No recourse to the insured**
- **No insurer indemnity**
- **MCS-90 endorsement**
- **BMC 91 X filing**
- **Form E filing**



How a Bond Works



Requirements

- Corporate F/S
- Personal F/S
- Corporate Indemnity
- Personal Indemnity
- Spousal Indemnity



P&P Bond

- **Bond form language (from GA DOT)**

- *“The purpose of this Bond is to guarantee that the Principal will be held accountable for any damage done to the roadway, or structures, within right-of-way along the permitted route.”*
- *“If the Principal does any damage to the Highway right-of-way as a result of movement on the road or deviates from the stipulated routes and does damage to the Highway right-of-way, this bond is hereby extended to cover any removal or corrective action determined necessary by the owner.”*



MCS-90 Form

- **MCS-90 endorsement to the auto liability policy**
(insurance policy is a contract between insured and insurer)
- **MCS-90 language**
 - *“The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured....”*
 - *“The insurer (the company) agrees to pay, within the limits of liability described herein, any final judgement recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere.”*



MCS-90 (continued)

- *“It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgement, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured.”*
- *“The limits of the company’s liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.”*
- **BMX 91-X filing**
 - Federal filing that corresponds to the MCS-90 insurance policy endorsement



Key Question

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Conclusion

- **Notwithstanding the language in the payment and performance bond form, the auto liability insurance policy (due to the MCS-90) is the first policy to respond.**
- **3rd party property damage is paid by the auto liability insurer up to the limit of liability. A limit greater than \$1,000,000 may be required to replace or repair the infrastructure.**
- **The MCS-90, endorsed to the auto liability policy, obligates the insurer to pay 3rd party property damage claims.**
- **As part of the permit process, require a copy of the trucking company's MCS-90.**



About Hays Companies

Company Facts

- 35 offices across the country
- 700+ team members
- \$169,000,000 annual revenue
- Privately-held
- Ranked in Top 20 Insurance Brokers (Business Insurance Magazine, July 2014)



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