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MAXIMIZE YOUR INSURANCE RECOVERY FOR THEFT OR FRAUD LOSSES

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According to a recent survey of 3,037 companies, "905 (30%) reported having experienced at least one incident of fraud in the last 12 months alone." *The Global Economic Crime Survey*, PricewaterhouseCoopers (Nov. 2009). Moreover, in light of the economic downturn, reports show that incidents of fraud are on the rise. *Kroll Global Fraud Report* (Sept. 15, 2008); *Treasury & Risk Management* at 10 (Mar. 2009). Given all the "tangled webs" being spun to deceive, insurance that covers theft and fraud is worthy of focus. Financial institutions and commercial policyholders should understand the types of insurance coverage they have in place and the steps they should take to maximize insurance coverage under a financial institutions bond or commercial crime policy.

If a financial institution or other policyholder experiences theft or fraud loss, insurance may well be available to cover the loss. Standard financial institution bonds and commercial crime insurance policies provide various types of insurance for fraud or theft. These policies are designed to reimburse policyholders for direct losses suffered as a result of an employee's dishonest conduct and other covered perils.

Standard Insurance Coverage under a Financial Institution Bond

Many insurance companies sell financial institution bonds based on Standard Form No. 24, which is published by the Surety Association of America. Duncan L. Core, *Financial Institution Bonds*, 967–73 (3d ed. 2008). Standard Form No. 24 and other standard commercial crime policies typically provide the following insurance coverage for loss arising form fraud or theft:

- "Fidelity" Insurance: covers loss arising from dishonest or fraudulent acts committed by an employee;
- "On Premises" insurance: covers loss of property—usually defined to include items such as money, securities, negotiable instruments, certificates of deposit, deeds, notes, mortgages, precious metals, and accounting records—while the property is lodged or deposited on the policyholder's premises, located anywhere, resulting from theft, false pretenses, larceny, robbery, burglary, misplacement, mysterious unexplainable disappearance, or destruction;
- "In Transit" Insurance: covers loss of property resulting from robbery, larceny, theft, misplacement, mysterious unexplainable disappearance or destruction while in transit and typically in the custody of a messenger or armored car;
- "Forgery or Alteration" Insurance: covers loss arising from the forgery or alteration of negotiable instruments, certificates of deposit, letters of credit or other financial instruments, as well as loss resulting from the transfer, payment or delivery of money or property on the basis of written instructions that have been forged;
- "Securities" Insurance: covers loss arising from forged, altered, lost, or stolen securities, titles, deeds, mortgages, notes, guarantees, or other financial instruments; and
- "Counterfeit Currency" insurance: covers loss arising from the receipt of counterfeit money.

Supplemental insurance may be included in addition to the standard types, including coverage for computer systems fraud, voice initiated transfer fraud, fraudulent mortgages, and telefacsimile fraud to name a few. If a fraud or theft takes place, the policyholder should check its policy for all potential available avenues of insurance coverage.

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Steps to Take after Suffering a Theft or Fraud Loss

Upon learning of a loss arising from theft or fraud, a policyholder should take several steps to ensure that it obtains the insurance coverage it paid for. First, the policyholder should immediately send notice of the loss to its insurance broker. The policyholder, with the assistance of its broker, should identify all potential insurance recoveries, which may include financial institution bonds, commercial crime policies, "blanket" bonds, all-risk policies with loss of property coverage, property policies with possible theft coverage, and commercial general liability policies with possible forgery endorsements. The policyholder should insist on confirmation from its broker that all potentially responsible insurance companies are subsequently notified. It is imperative that notice is provided to the insurance company immediately, as policies typically provide that notice shall be given to the insurance company within 30 days of discovery of the loss, while some policies even state that notice shall be given as soon as within 7 days.

Immediately following the loss, the policyholder should also conduct a prudent investigation to determine the amount of the loss, the number of wrongdoers, and the location where the loss occurred—as well as to locate the stolen property if possible. In the case of internal fraud or theft, it often is advisable or necessary to terminate or reassign the involved employee. Further, it may become necessary to inform all pertinent governmental authorities, perhaps, including state and federal prosecutors, the U.S. Department of Justice, and often regulatory agencies at both the state and federal level. Accounting firms and law firms are often able to assist in the investigation. Consider attaching assets of wrongdoers.

A key to recovery is acting promptly in gathering documents and proof necessary to establish the amount of the loss. The policyholder submits a "proof of loss" to the insurance company detailing the amount of its claim. Standard Form No. 24 states that this should be done within six months of discovery of the loss, but some policies purport to provide an even shorter window for submitting a "proof of loss". Duncan L. Core, *Financial Institution Bonds*, 967–73 (3d ed. 2008). Some policies cover, subject to a sublimit, the claim expenses the policyholder incurs in preparing its claim for loss. Therefore, the policyholder should keep track of claim expenses from the moment the loss is discovered.

Maximizing Recovery

After a loss, the policyholder should implement immediate safeguards to prevent further losses. If seeking fidelity coverage, to the extent possible, the policyholder should interview or retrieve statements from any potentially dishonest employees. Employees determined to be dishonest often should be terminated immediately. Other parties potentially responsible for the loss should be identified, and the policyholder should be prepared to commence litigation against them if the insurance claim is denied in whole or part. Claims against potentially responsible parties or employees should not be waived or released without complete restitution. The policyholder should not settle with responsible parties without considering contacting and informing its insurance company of the proposed settlement terms.

Notably, financial institution bonds and commercial crime policies often state that the policyholder, upon the insurance company's request, submit to examination under oath, produce for examination pertinent records, and cooperate with the insurance company in matters pertaining to the loss. Standard policies usually state that legal proceedings cannot be brought against the insurance company within 60 days or some time after the proof of loss is submitted. Further, the policies often contain a suit limitation clause, purporting to require the policyholder to commence any lawsuit against the insurance company within two years or even less of the discovery of loss. Policyholders should review their policy for all conditions and limitations to be in the best position to maximize insurance coverage in the event of a wrongful denial.

Conclusion

Thefts and fraud are committed by those who "practice to deceive." Policyholders should be aware of the insurance coverage they have in place and take all necessary steps to negotiate the "tangled web" of the insurance claims process and to ensure that they avoid double disaster.

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