



## Current Articles 2004 - May

### Fidelity Coverage and the "3D" Policy

Before I begin with the 3D coverages, please note that my article last month was written and submitted prior to FSCO removing the limitation on Towing and Storage. Consequently there will be no limit for towing and storage and the OPCF 48 is not required. Will "they" ever make up their minds!

The Dishonesty, Disappearance & Destruction (3D) Policy includes in Insuring Agreement 1 Employee Dishonesty Coverage. Agreement 1 gives two options – Form A or Form B. Both forms cover the loss of money securities and other property caused by dishonest or fraudulent acts of employee(s).

If Form A is selected the applicable limit is a limit per occurrence. Regardless of how many employees colluded to commit the crime, the limit shown for Form A is the maximum available. Under Form B the limit shown is a limit per employee. If three employees worked equally together to cause the loss and the policy limit for Form B was \$50,000, this limit would apply to each employee and it is possible that the limit for a loss could be \$150,000.

In a recent E & O case, the broker told the client that the limit for Form B is the limit stated multiplied by the number of employees involved. That is not the same as outlined in the previous paragraph. In the case involved, the limit for Form B was \$500,000. Over the course of many years the comptroller, with the help of two other employees (who were related to the comptroller but never let on), masterminded to fraudulently obtain employer funds totaling \$1,250,000! When the client, after learning of the loss, read his policy and was shocked to see a limit of \$500,000 and believing that amount would be the total paid, called the broker who told the client that the limit (\$500,000) would be multiplied by 3 because there were three employees involved. The client, doing the math, believed that he therefore would have \$1,500,000 coverage and that his loss would be fully paid.

Not so! The matter was taken to court by the two insurers effecting the coverage and the judge awarded \$750,000 as damages caused by the "mastermind" and \$250,000 each as damages for the two accomplices. Based on this decision, the policy would only pay \$1,000,000 being \$500,000 for the mastermind and \$250,000 for each of the accomplices. The client immediately commenced an action against the broker for improper advice and the short fall of \$250,000.

Another clause applicable to the Fidelity sections that is often overlooked is the clause "Prior Fraud, Dishonesty or Cancellation". If the insured has knowledge that an employee has committed a fraudulent or dishonest act while working for the employer or has knowledge of a similar act while working for a previous employer, there will be no coverage for that employee. In order to correct this gap it is necessary that the broker must submit details to the insurer and the insurer must agree in writing to include that employee for Agreement 1. Although insurers may take a more liberal view, this clause would apply whether the dishonest employee was charged, convicted or not.

You may not be aware, but there are over 50 approved endorsements for a 3D policy. Space does not permit a review of all but some are interesting. If you are insuring a non profit or benevolent organization, an endorsement can extend the Bond to cover " Volunteers, Campaign Workers". Another endorsement can add as employees "Agents of the Insured". Have a look at ALL the endorsements and you will find that many of your clients may have need of a few.

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