



## Current Articles 2010 – February

### Dishonest Acts of Employees

Since my last article on Fidelity Insurance I am involved in some additional claims and for which an E & O claim has commenced against the broker. As previously mentioned, many times crime coverages and including fidelity are often included with relatively low limits and without a proper review with the client. Not only is there a need for fidelity and with an adequate limit but the coverage may have to be amended to fit a particular client's needs.

In the first case, a distributor of electronic components lost over \$200,000 of merchandise through the pilfering by two employees. These components individually have a high value but are small in size and can be easily removed from the premises in a lunch bag. The total inventory was over 3 million and adequately insured on a property form. When there is a loss under a property policy, the loss is the value of the inventory on the date of the loss. But not so with fidelity losses. In this case the merchandise was removed gradually and over a period of at least 4 years. This can make it difficult to recommend an adequate limit. The client had excellent accounting practises and money handling but lacked a good inventory control system. There is no question that an adequate inventory control would be difficult due to the enormous quantity of components and their small size.

Two employees working with an employee of a competitor and distributor were stealing merchandise from their employer and supplying the merchandise to another dishonest employee of the competitor who sold the products and they shared the proceeds. The client presented the claim to their property insurer who denied coverage because of the exclusion for "dishonest acts of employees" There was no fidelity coverage in place nor had it been recommended or discussed. Similarly the broker did not mention the dishonest acts exclusion.

In the other case it parallels a situation that happened several years ago and was the subject of an article in the Elliott Newsletter. Although there was Fidelity coverage in place the basic agreement covers the dishonest acts of their employees. The basic policy does not cover dishonest acts of an independent contractor and this was not explained by the broker. In the Tactics Advertising case the client relied almost 100% on their computers and back-up systems. They employed an independent computer consultant to upgrade their system over the week end while the firm was closed. The consultant made off with all the firm's computers and software. As the consultant was not an employee their fidelity insurer denied the claim.

This is one of those unique situations that a thorough risk management effort may have been able to solve this problem. One of the 60+ endorsements available for a 3D policy is to add agents of the insured as employees. Had that been done the dishonest act would have been covered.

Many times your clients will give you several reasons why they don't need a bond. The usual comment is that "it can't happen to me". Well, it can happen and it does! On April 14, your association will host a FREE one hour seminar prior to the luncheon meeting on Fidelity Insurance. We will supply an "Honesty Formula" prepared by the American Surety Institute to help to establish an adequate limit. The seminar will end with over 20 reasons that your client may use to refuse the coverage and we will supply rebuttal answers and examples that there reasons may be worthless! Hope to see you in April.

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