Executive Risks

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Betty Toogood *Was* Too Good: Fidelity Claims Tips

Sadly, your loyal bookkeeper Betty Toogood, who has not taken a day off in years, is in a car accident. She must be hospitalized, and a coworker assumes her duties. Just as you finish signing the get-well-soon card, the coworker arrives in your office to report that something is amiss in the accounts payable ledger. Following an investigation, it appears that Betty had set up fictitious accounts for office supplies and was running a not-so-legal little business on the side. It appears that Ms. Toogood was, in fact, too good to be true.

Swift and Timely Notice

What now? If you don't have a Crime/Fidelity policy, you kick yourself. If you do, you inform your carrier at the earliest indication that you have sustained a loss that may be covered under your policy. Since there is no formal notice form to be completed, a narrative letter will suffice. This should include the facts of when and how the loss was discovered, the circumstances of the loss and the basis on which you intend to arrive at an accurate loss quantification.

Alert the Mounties – or Not

Next, you must determine whether your organization should alert the requisite local, state or federal authorities. In many cases, organizations do not want the negative publicity associated with a mention in the local – or not so local – police report. On the other hand, carriers generally look favourably upon notification to the authorities. Such notification is in fact required when coverage is sought for losses sustained due to the actions of a non-employee.

If you *do* alert the authorities, keep a duplicate set of the records of your investigation; law enforcement authorities require that you hand over relevant documents. Unless you keep copies, you will not have access to them until their investigation is completed. This can bring your claim to a standstill.

An upside to involving the authorities is that the spectre of criminal proceedings can sometimes bring the guilty party to the table to offer restitution (in hope of more favourable treatment). Also, a restitution order in a criminal proceeding by state/federal authorities saves the expense of obtaining a civil judgment against the likes of Ms. Toogood. Unfortunately for the insured, legal fees incurred in seeking recovery against the bad actors are *not* recoverable under most Crime/Fidelity policies.

Call Sherlock Holmes – or Not

Now the data gathering process begins. This is essential for securing coverage under your policy. This may involve conducting internal investigations, audits, inventories and record collection to show how the loss occurred and to quantify the amount. This is likely the same data that your organization would gather for its own risk control purposes. Be aware that most policies do not cover investigative expenses, though some may provide very limited coverage for specific purposes such as the hiring of forensic accountants. Caution: even if you *do* have investigative expense coverage, you must first obtain your underwriter's approval of the investigative firm you wish to use. In no case that we know of are the internal costs of such investigations covered.

Proof of Loss

Most carriers require submission of a proof of loss with necessary supporting documentation within four to six months of discovery of the loss. In many complex claims matters, however, it can take longer, sometimes years, to prepare the proof of loss. Extensions of time can be requested and are generally granted where there is a reasonable basis for the request. Failure to obtain such an extension, however, can be fatal to your claim.

Canadian Alert

Objects Lost May Be Larger Than They Appear

Typically, the loss amount at first seems small, perhaps even well within the policy deductible. Don't be fooled. Like an iceberg, what you see above the surface can sometimes be just the tip. We therefore recommend that you do not wait until all the facts are known and your investigation is complete before notifying your carrier. Under most policies, discovery occurs when the insured becomes aware of facts or circumstances that could give rise to a loss. One benefit of providing notice as soon as possible is that you may satisfy your policy's requirement for notification within a specific time period once a loss is discovered. Providing late notice – allowing time to pass between discovery and notice – may limit or eliminate coverage for your loss.

Restitution

The best time to extract restitution from the guilty party, particularly in employee dishonesty claims, is early on while the shock of being discovered is still upon them and they may feel remorseful for their actions – or simply afraid of the potential consequences. Although you have a duty under your policy to mitigate the loss by seeking to recover from responsible parties, you should not make any arrangements that would act as a release of those parties without getting consent from your carrier. Remember, if a carrier pays your claim, all rights of recovery to the extent of that payment are assigned to the carrier. They become subrogated to your rights to recover for that loss from all responsible parties. If you do something beforehand that impairs those subrogation rights, the carrier may have grounds to deny payment of the claim.

The Carrier Is On the Case

The carrier will begin its investigation into the claim after the proof of loss is filed. Depending upon the specifics of the fraud, the carrier may launch an independent audit, review financial data and reports, conduct interviews with witnesses and review internal investigative reports, employee personnel files, and any other information submitted in support of the claim.

In the case of Ms. Toogood, an insurance carrier would likely want to see the accounts payable books, copies of the checks she received and her bank records, if possible. The carrier would probably seek to interview Ms. Toogood and some of her coworkers as well as review her personnel file for, among other things, evidence of prior dishonesty.

After its investigation of the claim is complete, the carrier will give its opinion on coverage and the recoverable amount. More likely than not, there will be some differences of opinion as to the proven sums of loss. After all, few criminals keep good records on what they have stolen. Dollar amounts in confessions are suspect; whatever Ms. Toogood may have admitted, the carrier will still want to have some verifiable proof.

If an agreement with the carrier cannot be reached right away, you still have time. In most policies, you have two years from discovery to bring a suit. Like the proof-of-loss time period, this time period can be extended by mutual agreement of the parties.

One Last Note of Caution

Perhaps the case of Betty Toogood is not so cut and dried. She admits a bit of sloppiness in her bookkeeping, but denies wrongdoing. Perhaps the evidence is unclear. Should you decide that you accused her in haste and you give her another chance, be warned: if ultimately she does prove guilty, coverage for the losses caused by her criminal actions will not apply for those losses occurring after the moment of first discovery.

The moral of the story is clear. Be sure you have a Crime/Fidelity policy in place, know what to expect should you need to file a claim – and audit your books once in a while.

Willis publishes a US and a Canadian Executive Risks Alert series; both are available at www.willis.com.

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