

RIDERS ON THE STORM: AN EXAMINATION OF INDUSTRY TRENDS RELATIVE TO SPECIAL FIDELITY BOND RIDERS AND ENDORSEMENTS

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I. INTRODUCTION

With the proliferation of crime and fidelity products, and a continued soft market¹, as the millennium draws near, special endorsements and riders have perhaps more than ever been seized upon by producers and insurers as marketing tools. The carrier offering a standard Insurance Services Office commercial crime policy² might “throw in” a claims expense endorsement to differentiate itself from another insurer offering the identical (or virtually identical) product. A financial institution insurer might offer a revised definition of dishonesty to make its otherwise standard form product more attractive.

Endorsements of recent vintage tend to expand rather than restrict coverage. As a result, claim situations will arise where coverage, clearly not available under the standard form, might become available by virtue of a special endorsement. Thus, when professionals analyze claims, they must

1. A “soft market” is one in which premium levels have not materially increased, policy limits have remained level or perhaps increased and deductibles have trended downward. Generally speaking, the property and casualty industry is today offering more fidelity coverage for less premium than was the case in the 1980’s.

2. Forms of the Insurance Services Office, *reprinted in* COMMERCIAL CRIME POLICY (Gilbert J. Schroeder ed. 1996)(hereinafter “ISO Forms”).

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be mindful of the “special circumstances” created by endorsements or riders which the underwriters have, in their ultimate wisdom, seen fit to offer (frequently at no additional premium) to the insured.

Fidelity claims and litigation typically require resolution of complex factual and legal issues. While in the ordinary course policy interpretation is considered a question of law, to be resolved by the court³, factual implications from time to time come into play with respect to special and non-standard policy endorsements. While there is typically very little negotiation between the insurer and insured concerning standard policy language, there is frequently detailed discussion of special issues which lead to riders and endorsements⁴ that in some fashion modify the terms of the form policy in question. The underwriting intent of the parties in this area is something that can be proven through evidence of communications between the parties leading to adoption of the endorsement. For this reason, it is critical that the claim professional study the policy form, gain an understanding of the reasons behind any special endorsements, and determine the “intent” of the endorsements at issue.

This article will briefly discuss several significant endorsements which seem to be “in vogue.” While each rider must be handled on the strength of its own special language in relation to the insured, the insurer and the balance of the policy, there are now in the marketplace certain common products which create certain common issues.

I. BORING (BUT IMPORTANT) RIDERS – ENDORSEMENTS

The following endorsements, discussed in the order in which they are likely to be seen in a policy, although basic in nature, are all too frequently overlooked.

A. Declarations

Although technically not an endorsement, the declarations page is the baseline from which all policy claims must be analyzed. Not only are perils identified and limits stated, but frequently information is set forth concerning prior coverages. Exhibit A to this article is a specimen declarations page

3. *See, e.g.,* Waller v. Truck Ins. Exchange, 900 P.2d 619 (1995); A.I.U. Ins. Co. v. Sup. Ct., 99 P.2d 1253(1990).

4. Riders and endorsements, as discussed in this article, are used interchangeably. The Surety Association of America “Glossary” defines a rider as a “printed form of special provisions added to a bond, sometimes called an endorsement.” An endorsement is defined as “a form attached to a bond to add to, alter or vary its provisions.” *See* Surety Assoc. of Am., GLOSSARY - FIDELITY/ SURETY (Rev’d Jan. 1977).

from a standard form Financial Institution Bond. Exhibit B to this article is a specimen declarations page from a standard form Crime Policy.

First of all, the named insured is identified on the “dec. page.” This is important because most policies do not, on “their face” necessarily include coverage for all entities and subsidiaries of an insured. Coverage for related entities is typically found on a separate endorsement. Only the policy inception date was shown on older discovery forms such as the pre-1986 Financial Institution Bond. Inception and termination dates are now typically shown on both Financial Institution and commercial coverages. The deductible amounts, both in terms of single loss and aggregate (if applicable), are indicated, as are policy limits. Covered perils are typically shown.⁵

This large quantum of information is a claim professional’s first and best source of basic coverage information. Although one “cannot tell a book by its cover,” the declarations page must be read before any other part of the policy.

B. Named Insured Endorsement

Exhibit C to this article is an example of a named insured endorsement. This is an important endorsement because it specifies, beyond the generic description of the insured typically found on the declarations page, the related entities which are within the coverage of the policy. Note that Exhibit C specifies that “majority owned subsidiaries” of the insured are covered. As a result, a majority owned subsidiary of the named insured, even if not expressly identified on the named insured endorsement, would have the benefit of coverage subject, however, to at least two pertinent policy provisions.

The first pertinent policy provision is the Joint Insured clause, found at General Agreement E of the Financial Institution Bond, and in a variety of places under commercial forms. This clause generally identifies who shall act for the insured, and who shall receive policy benefits. This provision protects the insurer from disputes between various insureds. Even if a covered loss is sustained by a subsidiary, the first named insured has the authority to pursue the claim, and to receive any amounts due under the bond.

On the other hand, the Joint Insured General Agreement of the Financial Institution Bond makes clear that whatever the first named insured knows, the subsidiaries are presumed to know, and vice versa. This provision is designed to prevent an insured from disclaiming knowledge of facts

5. Financial Institution Bonds, like many commercial forms, frequently provide for a greater limit of liability for employee dishonesty/theft than for other available coverages such as premises, transit and depositors’ forgery. Special riders are generally identified on the declarations page. Additionally, the previous policy, if from the same company, is typically identified.

which could impact coverage (for example, discovery of loss or knowledge of prior dishonest acts). The Joint Insured provisions of the policy specimen must therefore be taken into account in the examination of the named insured endorsement.

The other pertinent provision of the policy form is that which deals with mergers and acquisitions. Absent a named insured endorsement which automatically covers companies acquired by the insured, the insurer must be notified of such acquisitions, and any additional premium must be paid. General Agreement B of the Financial Institution Bond form spells out the procedure for such notification for financial institutions. General Condition B(2) of the 1995 General Crime Provisions ISO forms⁶ requires that the insured provide timely notice and pay any further premium that may be due.⁷

In those situations where an insured has multiple subsidiaries, or operates under various business names, it is important to track the named insureds because endorsements will either add or delete insureds. It is advisable, in cases of doubt, to review the producer's file if there is confusion from the underwriting file relative to the inclusion or exclusion of a particular entity from coverage.

C. Notice of Cancellation Endorsements

Fidelity policies frequently contain endorsements which expand the obligation of the insurer relative to cancellation. Most policies contain simplistic cancellation provisions obligating the insurer to provide to the insured written notice of cancellation within a specified number of days.⁸ By special endorsement, however, insurers are frequently obligated to notify regulatory agencies or other entities who have business or licensing arrangements with the named insured of policy cancellations.

Exhibit D to this article is a standard form rider obligating the insurer to provide notice to a regulatory authority.. Failure to comply with that special notice requirement arguably voids the insurer's cancellation of the bond.⁹ Similar riders are routinely attached to Financial Institution Bonds in that

6. ISO forms, *supra* note 2, at appendix.

7. See Cynthia A. Mellon, *General Conditions: Who, Where and What?*, in COMMERCIAL CRIME POLICY, *supra* note 2, at 5-6

8. See, e.g., FINANCIAL INSTITUTION BOND, Standard Form No. 24, §12(a) (Rev'd Jan. 1986), *reprinted* in STANDARD FORMS OF THE SURETY ASS'N OF AMERICA, *supra* note 2, Coverage Form A - Blanket, §2(b).

9. Although the insurer would have a strong argument that the cancellation is effective as to everyone except the entity that did not receive the notice specified in the rider.

the federally insured financial institutions are required to maintain bonds. By way of rider, insurers can be obligated to notify state or federal regulatory agencies of any bond cancellations so as to give such agencies notice that the bond coverage is being terminated. The agencies can then act as necessary to compel the insured to obtain replacement coverage.

From a claim professional's point of view, notice endorsements of this type generally come into play where a claim is made on a policy which has been terminated. The claim person must verify that requisite notices called for by rider or endorsement have been given. If not, the claim professional must ascertain the impact of the failure to give notice as required. What might otherwise be an uncovered claim could in theory be viable where a notice specified under a rider is not given.¹⁰

II. TRADITIONAL (BUT IMPORTANT) RIDERS – ENDORSEMENTS

The property and casualty industry has made available special coverage for certain perils not otherwise within the scope of standard fidelity and crime forms. These coverages, by endorsement, expressly cover a peril not otherwise within the scope of the basic policy form or ease or remove policy conditions. Certain of these endorsements have been used with such frequency that most claim professionals are familiar with them.

A. Notice to Risk Manager Endorsement

The Notice to Risk Manager Endorsement radically changes time related requirements under financial institution and commercial crime forms. What appears to have begun as a marketing tactic, perhaps the brain child of a broker, has evolved to the point that many insurers are being routinely asked to include such endorsements with their policy form.¹¹ Under such an endorsement, an insured discovers a loss only at such time as the risk manager or some other specified individual discovers the loss. This very significant endorsement can materially alter the obligations of an insured,

10. The Federal Deposit Insurance Corporation and the (now defunct) Resolution Trust Corporation have in the past taken the position that the provisions of a Financial Institution Bond calling for termination "upon takeover" are void absent written cancellation notices being given by the insurer. These arguments have not succeeded. *See Sharp v. FSLIC*, 858 F.2d 1042 (5th Cir. 1988). *See also FDIC v. Ins. Co. of N. Am.*, 105 F.3d 778 (1st Cir. 1997); *U. S. Fire Ins. Co. v. FDIC*, 981 F.2d 850 (5th Cir. 1993); *Cal. Un. Ins. Co. v. Am. Diversified Sav. Bank*, 948 F.2d 556 (9th Cir. 1991); *FDIC v. Aetna Cas. & Sur. Co.*, 903 F.2d 1073 (6th Cir. 1990). With the drastically reduced number of government "takeovers" of financial institutions, this argument is perhaps now academic. It does, however, underscore the need of the claim professional to make sure that the underwriters have done their jobs by giving notices (upon policy cancellation) to the entities that are identified in special riders and endorsements.

11. Indeed, some insurers have included the key language within one of the policy forms itself so that no endorsement is actually necessary.

and quickly eliminate many defenses to a fidelity claim otherwise available to the insurer. An example of such an endorsement is found at Exhibit E.

It is generally accepted that when an insured discovers a loss the notice, proof of loss, and commencement of suit obligations are triggered. Further, policy provisions terminating coverage as to the employee whose dishonesty is discovered are "in play." Discovery occurs when a reasonably senior (and non-colluding) employee of the insured learns of "facts which would cause a reasonable person to conclude that dishonest acts had occurred." For that matter, the Financial Institution Bond conjunctively specifies that discovery occurs "when the insured receives notice of an actual or potential claim in which it is alleged that the Insured is liable to a third party under circumstances which, if true, would constitute a loss..."¹²

A good deal has been written on the subject of whose knowledge is imputed to the insured for purposes of discovery of loss. That issue is clearly beyond the scope of this article, but several articles contain a good analyses of the subject.¹³ With the benefit of the risk manager rider, however, it is only when the information percolates to the risk management department that the "clock" begins ticking with respect to the time-related conditions of recovery, and with respect to termination of coverage as to dishonest employees.¹⁴

Thus, in reviewing any bond or policy with a comparable provision, the following questions must be asked:

1. Does the provision specify that discovery of loss for notice, proof of loss and commencement of suit purposes only occurs when the risk manager (or some other designated person) discovers the loss?
2. Does the endorsement specify that coverage as to a dishonest employee is terminated only at such time as the risk manager (or other designated person) has knowledge "or learns of" a fraudulent or dishonest act on the part of the employee in question?

If the answer to either of the above questions is yes, it will be necessary to determine how or when the person identified in the endorsement discovered the loss. That inquiry would necessarily, although perhaps anecdotally, call for the claim professional to ascertain when and how the loss was made

12. *Supra* note 8, at §3.

13. *See, e.g.*, Edward Etcheverry, COMMERCIAL CRIME POLICY, *supra* note 2.

14. Duncan L. Clore and Michael Keeley, *Discovery, Notice, Proof Loss, and Suit Limitations, in FINANCIAL INSTITUTION BONDS* §(d) (Duncan L. Clore ed. 1992).

known to others within the insured entity. Although the endorsement seems to tie the hands of the insured relative to the possibility of an earlier discovery date, should it be determined that there was actual discovery below the level of the person designated at an endorsement entering a prior policy period, there may be disclosure obligations that the insured has violated. In that eventuality, the insurer may have available to it the option of rescission.¹⁵ Also, misrepresentation and/or nondisclosure of material facts may serve as a basis upon which to, while acknowledging the existence of the bond, deny a claim.¹⁶

The risk manager endorsement thus operates to relieve the insured of important and traditional notice-related obligations.

B. Fraudulent Mortgages Rider

The Surety Association of America makes available to its members a standard form rider through which coverage is provided to financial institution insureds for losses sustained through fraudulent mortgages. An example of that rider is found at Exhibit F to this article. That rider provides, in pertinent part, indemnification for loss “through the insured having, in good faith and in the course of business in connection with any Loan, accepted or received or acted upon the faith of any real property mortgages ... which prove to have been defective by reason of the signature thereon of any person having been obtained through trick, artifice, fraud or false pretenses....”

There are now two strongly worded decisions which deal with this rider, each of which make clear that a covered loss is only that which is caused by the specified peril.¹⁷

The fraudulent mortgages rider is thus the subject of sufficient judicial interpretation that it, like Insuring Agreement E, can be applied to any given factual situation. The rider is clearly a form of coverage in addition to that otherwise made available to a financial institution under the standard form bond. Mortgages and the other documents mentioned in the endorsement which are defective, unenforceable, by reason of signatures obtained by fraud in the *factum* (but not in the *quantum*) can, depending on the type of fraud perpetuated, support a claim. It may provide some solace to the industry that, unlike other riders discussed in this paper, the fraudulent mortgages rider at least appears to generate a separate premium.

15. FDIC v. Moskowitz, 946 F. Supp. 322, 329-32 (D.C.N.J. 1996).

16. Cynthia Young, *Misrepresentations in the Financial Institute Bond Application*, II FIDELITY LAW ASSOC. J. 51 (1996).

17. F.D.I.C. v. Fireman's Ins. Co. of Newark, 109 F.3d 1084 (5th Cir. 1997); Jefferson Bank v. Progressive Casualty Ins. Co., 965 F.2d 1294 (3d Cir. 1992).

C. ERISA Endorsement

Written frequently as a stand alone product, but often as an endorsement to an existing policy, the ERISA endorsement provides separate and better indemnity to protect the assets of pension and related plans which are within the purview of ERISA. By way of that endorsement, the insurer (with no deductible and with regard to persons not necessarily otherwise treated as “employees” under the basic coverage form) provides protection consistent with the provisions of ERISA. An example of a standard ERISA endorsement is found as Exhibit G to this article.

This endorsement, and the various ancillary coverages, are mandated by statute. ERISA specifies that “fiduciaries” of pension, profit sharing and related plans “must be bonded.”¹⁸ But who is and is not covered under an ERISA endorsement and/or the ERISA language of a policy form?

Although somewhat beyond the scope of this paper, the Ninth Circuit decision in *Rosenbaum v. Hartford*¹⁹ specifies that not all dishonesty losses suffered by ERISA plans are necessarily covered under ERISA endorsements. Despite the somewhat expansive language in the endorsement relative to whose dishonesty is in play, the prudent claim professional will still need to determine whether, under the language of the endorsement, the individual who caused the loss is construed for purposes of the endorsement as an employee.

Not addressed in this article is the federal jurisdiction, preemption, limits on punitive damages, and related ERISA issues that can surface with respect to ERISA claims and litigation. To the extent a claim or suit is made against an insurer relative to an ERISA endorsement, there is abundant authority available for guidance.²⁰

D. Computer Crime

The onset of the computer age brought with it new opportunities for mischief. Risk managers, with good reason, became concerned about the different perils to which their employers would be subjected by way of the proliferation of computers and the creation and utilization of the information highway.

18. 29 U.S.C. §112(a).

19. 104 F.3d 258 (9th Cir. 1996).

20. See generally *ERISA Litigation: Tactics And Strategy* (unpublished paper presented at ABA Nat'l Institute 1992).

In 1985, the Fidelity and Surety Law Committee of the American Bar Association presented a program simply entitled “Computer Fraud.” In it, three papers were presented at the program discussing computer fraud, computer payment systems, and computer crime coverages. The program materials are a good baseline from which to better understand the risks and early coverages available for computer related losses.²¹

By 1991, computer crime coverage was the subject of a paper presented at the annual meeting of the National Bond Claim Association. That paper, entitled “Computer Crime Coverage,”²² concludes that there are four basic types of computer-related crime, namely:

1. theft of computer time and service;
2. theft of computer software or data;
3. theft of computer components which may constitute trade secrets, and
4. theft of “other property” by use of a computer.

The author concludes that, in general terms, coverage is “now afforded” for thefts “effectuated by the use of computer.”

ISO coverage for computer fraud is provided by way of the Computer Fraud Coverage Form, a copy of which is found as Exhibit H to this article. That form provides coverage for “theft of property following and directly related to the use of any computer to fraudulently cause a transfer of that property from inside the premises ... to a person outside those premises....” Where a “hacker” is able to effect a transfer of funds from the account of an insured, such would theoretically be covered under the ISO rider. The rider thus applies to a clearly discernible risk of loss.

Other, more complex, computer endorsements are available as well. Attached as Exhibit I to this article is a sample of a financial institution “computer systems fraud” endorsement which applies to “fraudulent” entry of electronic data which causes property to be “transferred, paid or delivered.” Exhibit I is detailed, and must be carefully read. It appears to direct itself to the type of situation addressed in the commercial form, namely, the use of a computer to fraudulently cause the transfer of “property.”

Care must be taken to analyze claims creatively submitted under computer crime coverages that are based upon the simple premise that a third

21. (Unpublished papers presented at ABA Mid-Winter Meeting of The Fidelity & Surety Law Committee, New York, N.Y., Jan. 25, 1985).

22. Gary Valeriano, *Computer Crime Coverage* (unpublished paper presented at National Bond Claims Institute Program, Sept. 1991).

party in some fashion used a computer to facilitate misappropriation or theft of property. For example, claims have been submitted based upon the use of a computer in billing by a vendor who overcharged an insured. The use of a computer for word processing and/or billing does not meet the threshold requirements of the computer crime coverages. Those requirements, as noted above, are that the computer itself, and the data generated through the computer, cause the money transfers/movements of property. Virtually all businesses use computers in some aspect of their operation, and the fact of incidental use of a computer in a transaction giving rise to a loss does not in and of itself give rise to a coverage under a computer systems fraud endorsement.

III. TRENDY (BUT IMPORTANT) RIDERS – ENDORSEMENTS

This article now address those endorsements of relatively recent vintage. These endorsements “du jour,” which are primarily the product of competitive creativity among the insurers, give new and additional reasons for an insured to select a particular market. There is little doubt that within the next few years every claim professional will be asked to respond to a claim involving one or more of these endorsements.

A. Claims Expense Endorsement

By use of this endorsement, the underwriters specifically abrogate one of the most clearly stated exclusions otherwise found in the standard fidelity policy. Section 2(u) of the Financial Institution Bond²³ excludes recovery of the insured’s cost of “establishing the existence of or amount of loss covered under this bond.” The 1995 ISO General Crime Provisions²⁴ exclude at Section A(c) the insured’s expenses “in establishing either the existence or the amount of loss under this insurance.” In one fell swoop, the fidelity claims expense endorsement not only undoes the exclusion, but offers affirmative recovery to an insured “for independent outside firms or individuals retained to determine the amount and extent of loss...” Exhibits J and K are two samples of claims expense coverage endorsements. Exhibit J is not particularly well drawn in that there are few express qualifiers to the endorsement. For example, does the insurer have to agree in advance that the insured has actually suffered an insured loss? If not, why would an insurer agree (prior approval being required under the endorsement) that the insured could incur expense when a covered claim has not yet been submit-

23. *Supra* note 8.

24. *Supra* note 2.

ted, much less acknowledged? At least it does specify that the deductible applies.

Exhibit K is a bit more concise, removing the requirement of prior approval, but limiting the amount of coverage by a “reasonableness” standard. Exhibit K makes clear that internal costs (for which insureds frequently make claim anyway) are not covered by the endorsement.

Fidelity claim adjustment has “come a long way, baby.” The carriers will not only pay for the covered loss, but for the cost of establishing the loss. Policy implications are perplexing (will insureds be encouraged to prosecute frivolous claims since the cost of same will be borne by the insurer? Will a cottage industry of outside professionals develop who solicit work from insureds knowing that their fees will be paid by the insurer?) Despite the wonderment raised by this kind of endorsement, it is an economic reality in a soft market, and it raises practical complications for the claim professional.

Depending upon the exact wording of such an endorsement, at what point should the insurer offer to pay or actually pay the third party who is assembling the claim? Is this endorsement in the nature of a “contingency fee agreement” in that it is payable only if the insured establishes a covered loss? More importantly, can it be construed as an attorney’s fees clause so that the insurer would face the prospect of an award of attorney’s fees incurred by the insured (as well as expenses in putting the claim together) in successfully prosecuting a suit to recover policy benefits? These are serious questions with which the claim professionals will need to grapple, and which hopefully have been taken into account by the underwriters.

In fairness to the industry, on the other hand, the concept of claims expense coverage is not entirely new. In fact, older form Financial Institution Bonds frequently contained “audit expense” coverage, typically with nominal limits, but applicable only to the cost of audits or examinations (by accountants) required by regulators by reason of the discovery by the insured of a covered loss. The 1986 Financial Institution Bond²⁵ does not provide for audit expense. It is still available by endorsement, in some markets, as shown by Exhibit L.

It is unclear as of this publication what premium, if any, is charged for claims expense endorsements. It is as well unclear, for lack of data, what losses will be paid by the industry under such endorsements. Only time will tell.

25. *Supra* note 8.

It is in closing noteworthy that at least one fidelity product is available in the market which provides for claims expense to be borne equally by the insurer and insured through a designated claim adjustment process. Using professionals from a pre-selected panel, the insured will in theory work with the insurer in the investigation and adjustment of a covered loss, with the expense thereof being shared between them. It is unclear whether this form of expense sharing will be accepted in the marketplace, especially where the insured has the option to seek independent and full claims expense coverage.

B. Special Fidelity (Definition of Dishonesty) Endorsements.

Those who handled fidelity claims in the late 1970's recall that a strange creature called the "definition of dishonesty endorsement" began appearing at that time. It was a radical new addendum to fidelity products in that, for the first time, the term "dishonest or fraudulent acts" defined in somewhat unconventional terms. Within a few years, the insurance industry became sufficiently enamored with the endorsement and it was incorporated into the basic policy forms.

One author, Frank Skillern, was somewhat skeptical about the effectiveness of the new language.²⁶ Mr. Skillern's concerns were not borne out with the passage of time. Instead, with a surprisingly few number of exceptions, most courts examining the language originally contained in the definition of dishonesty endorsement have found it to be unambiguous. The industry has had an incredible success rate in litigating the endorsement, and the language therefrom.²⁷ (For surveys of the litigation over the key language, please see Murray, "Extent of Liability, Including Definition of Dishonesty; Koch, "The Financial Institution Bond and Insuring Agreement (A) - Fidelity Coverage Circa 1994;"²⁸ and Ford, "The Current Status of the Manifest Intent Requirement in Fidelity Bonds."²⁹)

Since things have gone so well with the definition of dishonesty, it is not surprising that certain insurers have begun to "tinker" with its language for

26. Frank Skillern, *The New Definition of Dishonesty in Dishonesty in Financial Institution Bonds*, XIV THE FORUM 339 (1978).

27. Jerome Murray, *Extent of Liability, Including Definition of Dishonesty* (unpublished paper presented at the International Association of Defense Counsel Surety Trial Practice Program, Jan. 1987).

28. Harvey Koch, *The Financial Institution Bond and Insuring Agreement (A) - Fidelity Coverage Circa 1994* (unpublished paper presented at A.B.A. Fidelity & Surety Law Committee Mid-Winter Meeting, New York, N.Y., Aug. 1994).

29. Jeffrey Ford, *The Current Status of the Manifest Intent Requirement in Fidelity Bonds* (unpublished paper presented at the Annual Meeting of the Surety Claims Association, Maryland, June 1997).

marketing purposes. Attached as Exhibit M is a form of endorsement by which the conjunctive requirements of manifest intent to cause loss and manifest intent to obtain financial benefit are changed to a disjunctive “either or” proposition. That is to say, by way of this endorsement the standard language of the definition of dishonesty is changed to provide that coverage is available where the employee in question had the manifest intent to either “cause the insured to sustain such loss” or “to obtain financial benefit....” Since many of the written opinions on the subject have been decided in favor of the insurers due to the inability of the insured to meet *both* prongs of the definition of dishonesty, Exhibit M represents a material change, clearly an easing of coverage in favor of the insured.

A variety of other variations of the definition of dishonesty endorsement are beginning to appear in the marketplace. It is no longer safe to assume that all fidelity claims require that the insured establish fraudulent and dishonest acts by way of the “standardized” definition of dishonesty³⁰ Some insurers, including the London market, have even from time to time agreed to write fidelity coverage using the pre-1976 fidelity insuring language, in which the phrase “dishonest or fraudulent acts” is not defined in any way.

Claim professionals receiving claims with modified definitions of dishonest or fraudulent acts must acknowledge the reality that they can no longer rely upon the strong and coherent body of case precedent that has developed supporting the definition. Thus, what goes around, comes around. What started as an endorsement, the definition of dishonesty, but found its way into the text of standard form policies, has again become an endorsement, this time relaxing the well tested and firmly grounded definitional language of the employee dishonesty insuring clause.

C. Independent Contractors – Agents Endorsement

An obvious predicate of any employee dishonesty claim is that the mischief giving rise to same must be perpetrated by an employee of the insured. A good deal of case precedent has evolved as a consequence of disputes between insurers and insureds over the status of the miscreant individual. Was he an employee or an independent contractor? Was he actually an agent? There are several very good resources upon which claim professionals can rely in studying this employee versus non-employee issue.³¹

One way to reduce the likelihood of this debate taking place is to expand the policy definition of employee to include individuals not traditionally

30. *Supra* notes 2, 8.

31. *See, e.g.,* Arman Shahinian and Scott D. Barron, *Who Is A Covered “Employee” Under the Financial Institution Bond* in FINANCIAL INSTITUTION BONDS, §3 (Duncan L. Clore ed. 1995); David T. DiBiase and Lisa LeNay Copelan, *Who Is An Employee; Unidentifiable Employee Coverage, in COMMERCIAL CRIME POLICY, supra* note 6, at 3.

viewed by the insurance industry as employees. There is some history of such taking place. For example, Financial Institution Bonds, and their ancestors (Bankers Blanket Bonds, Savings and Loan Blanket Bonds and the like) have since the 1930's included outside attorneys within the bond definition of employee.³²

Insureds have for some time been able to purchase, for an additional premium, agents coverage. Such coverage, which was included within the standard form of insurance company blanket bond, is now available (as it has been for many years) to other financial institutions by rider. A sample agents rider is attached as Exhibit N. The Standard Surety Association version of this rider is actually a schedule rider on which the insured must list the loan servicers, real property managers, data processors or independent software contractors who will be deemed employees for purposes of the bond to which that rider is attached.³³ Obviously, the insured does not exercise day-to-day "control" over the activities of such persons, yet their fidelity and integrity is now protected by any fidelity product with such riders.

Exhibit P to this article is still another example of what insurers are willing to do to expand the realm of persons whose dishonesty can sustain a covered loss. Exhibit P is an independent contractor endorsement. Its approved intent is to cover loss caused by temporary employees. However, that seems redundant of policy language found elsewhere which applies directly to temporary employees. In any event, by way of endorsements of this nature, the insured receives the benefit of indemnity for loss caused by the fraud of third parties. If and when this endorsement becomes commonplace, fidelity products will no longer provide protection from the dishonest or fraudulent acts of employees, but from the dishonest and fraudulent acts of anyone.

Claim professionals presented with a claim on a policy with an agents and/or independent contractors endorsement must review the situation with company underwriters to determine exactly who the company intended to "cover." Indications are that such endorsements are frequently producer driven, not necessarily written to deal with a specified situation. In that event, the claim adjustment will require independent and fair assessment of the expectations of the insured, and the application of the clear language of the endorsement.

32. *Supra* note 7, at § 1(a)(2). Commercial policies do not include outside attorneys within the definition of employee.

33. *See* Exhibit O to this article.

IV. CONCLUSION

This article highlights a few of the endorsements that are likely to find their way to the claim professional's desk over the next few years. Many of these endorsements are arms length, negotiated addenda to fidelity products, but others of them are gratuitously offered coverage embellishments designed to retain or expand market share. It would appear that the soft market in fidelity products will continue on for some time and, until loss ratios within that line deteriorate, we can expect still more creative coverage endorsements to be written.

EXHIBITS

FINANCIAL INSTITUTION BOND
Standard Form No. 24, Revised to January, 1986

Bond No.

(Herein called Underwriter)

DECLARATIONS

Item 1. Name of Insured (herein called Insured):

Principal Address:

Item 2. Bond Period: from 12:01 a.m. on _____ to 12:01 a.m. on _____
(MONTH, DAY, YEAR) (MONTH, DAY, YEAR)

Item 3. The Aggregate Liability of the Underwriter during the Bond Period shall be
\$ _____

Item 4. Subject to Sections 4 and 11 hereof,
the Single Loss Limit of Liability is \$ _____
and the Single Loss Deductible is \$ _____

Provided, however, that if any amounts are inserted below opposite specified Insuring Agreements or Coverage, those amounts shall be controlling. Any amount set forth below shall be part of and not in addition to amounts set forth above. (If an Insuring Agreement or Coverage is to be deleted, insert "Not Covered.")

Amount applicable to:	Single Loss Limit of Liability	Single Loss Deductible
Insuring Agreement (D) -FORGERY OR ALTERATION	\$	\$
Insuring Agreement (E) -SECURITIES	\$	\$
Optional Insuring Agreements and Coverages:		

If "Not Covered" is inserted above opposite any specified Insuring Agreement or Coverage, such Insuring Agreement or Coverage and any other reference thereto in this bond shall be deemed to be deleted therefrom.

Item 5. The liability of the Underwriter is subject to the terms of the following riders attached hereto:

Item 6. The Insured by the acceptance of this bond gives notice to the Underwriter terminating or canceling prior bond(s) or policy(ies) No.(s) _____ such termination or cancellation to be effective as of the time this bond becomes effective.

EXHIBIT A

**CRIME POLICY DECLARATIONS
FORM A**

This Policy consists of this Declaration Form, the Common Policy Conditions, the Crime General Provisions Form and the Coverage Forms indicated as applicable.

POLICY NO. _____

COMPANY NAME AREA

PRODUCER NAME AREA

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

1. NAMED INSURED _____

2. MAILING ADDRESS _____

3. POLICY PERIOD: From _____ to _____
(12:01 a.m. Standard Time at your mailing address shown above)

4. COVERAGE, LIMITS OF INSURANCE AND DEDUCTIBLE

Coverage Forms Forming Part of This Policy	Limit of Insurance	Deductible Amount
--	--------------------	-------------------

5. ENDORSEMENTS FORMING PART OF THIS POLICY WHEN ISSUED:

6. CANCELLATION OF PRIOR INSURANCE: By acceptance of this Policy you give us notice cancelling prior policy or bond Nos. _____

_____ the cancellation to be effective at the time this Policy becomes effective.

COUNTERSIGNED _____ BY _____
(Date) (Authorized Representative)

EXHIBIT B

RIDER

To be attached to and form part of Bond No. _____
in favor of _____.

It is agreed that:

1. The Name of Insured on the Declarations Page shall read as follows:

_____ and its majority-owned subsidiaries as of the effective date or created subsequent to the effective date of the bond to which this rider is attached and any other Employee welfare or pension benefit plans in existence or created by the Insured for the benefit of its employees.

2. It is further understood and agreed that: this bond does not include coverage for _____ and any of their subsidiaries or Employee welfare or pension benefit plans.

2. This rider shall become effective 12:01 a.m. on _____.

SPECIMEN

RIDER

To be attached to and form part of Bond No. _____
in favor of _____.

It is agreed that:

1. The attached bond is amended by adding to the Section which provides for cancellation of this bond, as an entirety, an additional paragraph as follows:

"No cancellation of this bond, as an entirety, whether by or at the request of the Insured or by the Company or Underwriter, shall take effect prior to the expiration of _____ days after written notice of such cancellation has been filed with _____ unless an earlier date of such cancellation is approved by said _____."

2. This rider is effective as of the time the attached bond becomes effective.

GENERAL CANCELATION CLAUSE RIDER
FOR USE WITH ALL FORMS OF BONDS WHERE NOTICE
OF CANCELATION MUST BE GIVEN
TO COMPLY WITH A STATUTE OR DEPARTMENTAL AUTHORITY.
REVISED TO JUNE, 1990.
SR 5083c

EXHIBIT D

RIDER

To be attached to and form part of Bond No. _____
in favor of _____.

It is agreed that:

1. The attached bond is amended by deleting in its entirety Section 3., DISCOVERY, and substituting the following:

"DISCOVERY

Section 3. This bond applies to loss discovered by the Risk Manager or an officer within the same or any higher level of management of the Insured during the Bond Period. Discovery occurs when the Risk Manager or an officer within the same or any higher level of management of the Insured first becomes aware of:

- a. facts which may subsequently result in loss of a type covered by this bond, or
- b. an actual or potential claim in which it is alleged that the Insured is liable to a third party, regardless of when the act or acts causing or contributing to such loss occurred even though the amount of loss may not exceed the applicable Single Loss Deductible, or the exact amount or details of loss may not then be known."

2. This rider shall become effective 12:01 a.m. on _____.

EXHIBIT E

RIDER

To be attached to and form part of Financial Institution Bond, Standard Form No. 24 _____,
No. in favor of

It is agreed that:

1. The attached bond is amended by inserting an additional Insuring Agreement as follows:

"Loss resulting directly from the Insured's having, in good faith and in the course of business in connection with any Loan, accepted or received or acted upon the faith of any real property mortgages, real property deeds of trust or like instruments pertaining to realty or assignments of such mortgages, deeds of trust or instrument which prove to have been defective by reason of the signature thereon of any person having been obtained through trick, artifice, fraud or false pretenses or the signature on the recorded deed conveying such real property to the mortgagor or grantor of such mortgage or deed of trust having been obtained by or on behalf of such mortgagor or grantor through trick, artifice, fraud or false pretenses."

2. The Loan Exclusion Clause, Section 2(e), shall not apply to the Insuring Agreement set forth in paragraph 1 of this rider
3. The Single Loss Limit of Liability for the Fraudulent Mortgages Insuring Agreement is limited to the amount shown on the Declarations Page, or amendment thereto.
4. This rider shall become effective as of 12:01 a.m. on

FRAUDULENT MORTGAGES INSURING AGREEMENT

FOR USE WITH FINANCIAL INSTITUTION BOND,
STANDARD FORM NO. 24, "DISCOVERY" FORM,
TO ADD AN INSURING AGREEMENT COVERING REAL
PROPERTY MORTGAGES AND ASSIGNMENTS THEREOF
WHICH ARE DEFECTIVE BY REASON OF FRAUD
WITH RESPECT TO THE SIGNATURE ON SPECIFIED INSTRUMENTS.

REVISED TO JUNE, 1990.

SR 5609g

EXHIBIT F

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WELFARE AND PENSION PLAN ERISA COMPLIANCE

Provision 1. of this endorsement applies to the CRIME GENERAL PROVISIONS FORM and all Crime Coverage Forms forming part of the Policy. The other provisions of this endorsement apply only to the EMPLOYEE DISHONESTY COVERAGE FORM A – BLANKET.

PROVISIONS

In compliance with certain provisions of the Employee Retirement Income Security Act (ERISA):

1. "Employee" also includes any natural person who is:
 - a. A trustee, an officer, employee, administrator or a manager, except an administrator or a manager who is an independent contractor, of any Employee Welfare or Pension Benefit Plan (hereafter called Plan) insured under this insurance, and
 - b. Your director or trustee while that person is handling funds or other property of any Plan insured under this insurance.
2. If any Plan is insured jointly with any other entity under this insurance, you or the Plan Administrator must select a Limit of Insurance for the EMPLOYEE DISHONESTY COVERAGE FORM that is sufficient to provide an amount of insurance for each Plan that is at least equal to that required if each Plan were separately insured.
3. If the Insured first named in the Declarations is an entity other than a Plan, any payment we make to that Insured for loss sustained by any Plan will be held by that Insured for the use and benefit of the Plan(s) sustaining the loss.
4. If two or more Plans are insured under this insurance, any payment we make for loss:
 - a. Sustained by two or more Plans or
 - b. Of commingled funds or other property of two or more Plans

that arises out of one "occurrence", is to be shared by each Plan sustaining loss in the proportion that the amount of insurance required for each such Plan under ERISA provisions bears to the total of those amounts.

5. The Deductible provision of the EMPLOYEE DISHONESTY COVERAGE FORM does not apply to loss sustained by any Plan subject to ERISA which is insured under this insurance.

CR 10 27 01 86

COMPUTER FRAUD COVERAGE FORM

- A. COVERAGE - We will pay for loss of, and loss from damage to, Covered Property resulting directly from the Covered Cause of Loss.
1. Covered Property: Money, "Securities" and "Property Other Than Money and Securities."
 2. Covered Cause of Loss: "Computer Fraud"
- B. LIMIT OF INSURANCE
- The most we will pay for loss in any one "occurrence" is the applicable Limit of Insurance shown in the DECLARATIONS.
- C. DEDUCTIBLE
- We will not pay for loss in any one "occurrence" unless the amount of loss exceeds the Deductible Amount in the DECLARATIONS. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance. In the event more than one Deductible Amount could apply to the loss, only the highest Deductible Amount may be applied.
- D. ADDITIONAL EXCLUSIONS, CONDITIONS AND DEFINITIONS: In addition to the provisions in the Crime. General Provisions, this Coverage Form is subject to the following:
1. Additional Exclusions: We will not pay for loss as specified below.
 - a. Acts of Employees, Directors, Trustees or Representatives: Loss resulting from any dishonest or criminal act committed by any of your "employees," directors, trustees or authorized representatives:
 - (1) Acting alone or in collusion with other persons; or
 - (2) While performing services for you or otherwise.
 - b. Inventory Shortages: Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:
 - (1) An inventory computation; or
 - (2) A profit and loss computation
 2. Additional Conditions
 - a. Duties in the Event of Loss: If you have reason to believe that any loss of, or loss from damage to, Covered Property involves a violation of law, you must notify the police.
 - b. Special Limit of Insurance for specified Property: We will only pay up to \$5,090 for any one "occurrence of loss of, and loss from damage to, manuscripts, drawings, or records of any kind or the cost of reconstructing them or reproducing any information contained in them"
 3. Additional Definitions
 - a. "Banking Premises" means the interior of that portion of any building occupied by a banking institution or similar safe depository.
 - b. "Computer Fraud" means "theft" of property following and directly related to the use of a computer to fraudulently cause a transfer of that property from inside the "premises" or "banking premises" to a person (other than a "messenger") outside those "premises" or to a place outside those "premises."
 - c. "Messenger" means you, any of your partners or any "employee" while having care and custody " of the property outside the "premises.
 - d. "Occurrence" means an:
 - (1) Act or series of related acts involving one or more persons; or
 - (2) Act or event, or a series of related acts or events not involving any person.
 - e. "Promises" means the interior of that portion of any building you occupy in conducting your business.
 - f. "Theft" means any act of stealing.

RIDER

To be attached to and form part of Financial Institution Bond, Standard Form No.

in favor of

It is agreed that:

1. The attached bond is amended by adding an Insuring Agreement as follows:

COMPUTER SYSTEMS FRAUD

Loss resulting directly from a fraudulent

- (1) entry of Electronic Data or Computer Program into, or
- (2) change of Electronic Data or Computer Program within any Computer System operated by the Insured, whether owned or leased; or any Computer System identified in the application for this bond; or a Computer System first used by the Insured during the Bond Period, as provided by General Agreement B of this bond;

provided that the entry or change causes

- (i) Property to be transferred, paid or delivered;
- (ii) an account of the Insured, or of its customer, to be added, deleted, debited or credited, or
- (iii) an unauthorized account or a fictitious account to be debited or credited.

In this Insuring Agreement, fraudulent entry or change shall include such entry or change made by an Employee of the Insured acting in good faith

- (a) on an instruction from a software contractor who has a written agreement with the Insured to design, implement or service programs for a Computer System covered by this Insuring Agreement, or
 - (b) on an instruction transmitted by Tested telex or similar means of Tested communication (except a Telefacsimile Device) identified in the application for this bond purportedly sent by a customer, financial institution or, automated clearing house.
2. In addition to the Conditions and Limitations in the bond, the following, applicable to the Computer Systems Fraud Insuring Agreement, are added:

DEFINITIONS

- (A) Computer Program means a set of related electronic instructions which direct the operations and functions of a computer or devices connected to it which enable the computer or devices to receive, process, store or send Electronic Data;
- (B) Computer System means
 - (1) computers with related peripheral components, including storage components **wherever** located,
 - (2) systems and applications software,
 - (3) terminal devices, and
 - (4) related communication networks

by which Electronic Data are electronically collected, transmitted, processed, stored and retrieved;

Accepted:

COMPUTER SYSTEMS FRAUD INSURING AGREEMENT
FOR USE WITH FINANCIAL INSTITUTION BOND,
STANDARD FORM NO. 24
REVISED DECEMBER, 1993

SR 6149c

Page 1 of 2

- (C) Electronic Data means facts or information converted to a form usable in a Computer System by Computer Programs, and which is stored on magnetic tapes or disks, or optical storage disks or other bulk media.
- (D) Telefacsimile Device means a machine capable of sending or receiving a duplicate image of a document by means of electronic impulses transmitted through a telephone line and which reproduces the duplicate image on paper;
- (E) Tested means a method of authenticating the contents of a communication by placing a valid test key on it which has been agreed upon between the Insured and a customer, automated clearing house, or another financial institution for the purpose of protecting the integrity of the communication in the ordinary course of business.

EXCLUSIONS

- (A) loss resulting directly or indirectly from the assumption of liability by the Insured by contract unless the liability arises from a loss covered by the Computer Systems Fraud Insuring Agreement and would be imposed on the Insured regardless of the existence of the contract;
- (B) loss resulting directly or indirectly from negotiable instruments, securities, documents or other written instruments which bear a forged signature, or are counterfeit, altered or otherwise fraudulent and which are used as source documentation in the preparation of Electronic Data or manually keyed into a data terminal;
- (C) loss resulting directly or indirectly from
 - (1) mechanical failure, faulty construction error in design, latent defect, fire, wear or tear, gradual deterioration, electrical disturbance or electrical surge which affects a Computer System, or
 - (2) failure or breakdown of electronic data processing media, or
 - (3) error or omission in programming or processing;
- (D) loss resulting directly or indirectly from the input of Electronic Data into a Computer System terminal device either on the premises of a customer of the Insured or under the control of such a customer by a person who had authorized access to the customer's authentication mechanism;
- (E) loss resulting directly or indirectly from the theft of confidential information.

SERIES OF LOSSES

All loss or series of losses involving the fraudulent acts of one individual, or involving fraudulent acts in which one individual is implicated, whether or not that individual is specifically identified, shall be treated as a Single Loss and subject to the Single Loss Limit of Liability. A series of losses involving unidentified individuals but arising from the same method of operation shall be deemed to involve the same individual and in that event shall be treated as a Single Loss and subject to the Single Loss Limit of Liability.

- 3. The exclusion below, as found in the attached bond, does not apply to the Computer Systems Fraud Insuring Agreement.

"loss involving any Uncertificated Security except an Uncertificated Security of any Federal Reserve Bank of the United States or when covered under Insuring Agreement (A);"

- 4. his rider shall become effective as of 12:01 a.m. on SR 6149c

SR 6149c

Page 2 of 2

RIDER

To be attached to and form part of Bond No. _____
in favor of _____.

It is agreed that:

1. The attached bond is amended by adding an additional Insuring Agreement as follows:

"FIDELITY CLAIMS EXPENSE

(K) Loss resulting directly from fees and expenses incurred and paid by the Insured, with the prior approval of the Underwriter solely for independent outside firms or individuals retained to determine the amount and extent of loss in excess of the Single Loss Deductible applicable to Insuring Agreement (A) as shown on the Declarations."

2. By deleting Section 2.(o), EXCLUSIONS, and substituting the following:

"(o) all costs, fees and expenses incurred by the Insured:

- (1) in establishing the existence of or amount of loss covered under this bond, except to the extent covered under Insuring Agreement (K), or
- (2) as a party to any legal proceeding whether or not such legal proceeding exposes the Insured to loss covered under this bond."

3. The Single Loss Limit of Liability: for the FIDELITY CLAIMS EXPENSE Insuring Agreement is limited to the amount shown on the Declarations Page, or amendment thereto.

4. This Rider shall become effective _____ a.m. standard time on _____.

EXHIBIT J

RIDER

To be attached to and form part of Bond No. _____
in favor of _____.

It is agreed that:

1. Item 2 of the Declarations, Limits of Liability, is amended by adding the following:

Investigative Costs Coverage: \$ _____

2. The following is added as a new Insuring Clause:

Insuring Clause 9 - Investigative Costs

The Company shall be liable for Investigative Costs of the Insured.

3. Subsection 6, Exclusions, is amended by deleting paragraph (D) in its entirety.
4. Subsection 26, Definitions, is amended by adding the following:

Investigative Costs means reasonable expenses incurred by the Insured in establishing the existence and amount of any direct loss covered in excess of the Deductible Amount under this coverage section, as set forth in Item 3 of the Declarations. The reasonableness of such expenses shall be determined by the Company and shall not include internal corporate obligations of the Insured, such as employee wage, or, internal costs.

All other terms and conditions remain unchanged.

Authorized Representative

Date

EXHIBIT K

RIDER

To be attached to and form part of Bond No. _____
in favor of _____.

It is agreed that:

1. The attached bond is amended by adding an additional Insuring Agreement as follows:

“AUDIT EXPENSE

(H) It is agreed that coverage under the attached bond is extended to include reasonable fees paid to the Insured's auditors with the prior approval of Underwriters hereon (excluding the cost of services rendered by Employees of the Insured) for producing and certifying particulars of details of the Insured's business required by the Underwriters in order to arrive at the loss payable under Insuring Agreement (A) only. It is further understood and agreed that if no loss is established hereunder then the Insured will bear all such expenses.

This Rider applies to loss discovered after 12:01 a.m. on _____.

SPECIMEN

EXHIBIT L

RIDER

To be attached to and form part of Bond No. _____
in favor of _____.

It is agreed that:

1. The attached bond is hereby amended by deleting in its entirety Insuring Agreement (A) FIDELITY and substituting the following:

"FIDELITY

- (A) Loss resulting directly from dishonest or fraudulent acts committed by an Employee acting alone or in collusion with others.

Such dishonest or fraudulent acts must be committed by the Employee with the manifest intent:

- (a) to cause the Insured to sustain such loss; or
- (b) to obtain financial benefit for the Employee or another person or entity acting in collusion with the Employee.

Notwithstanding the foregoing however, it is agreed that with regards to Loans and/or Trading this bond covers only loss resulting directly from dishonest or fraudulent acts committed by an Employee with the manifest intent to make and which results in a financial benefit for the Employee.

Notwithstanding the foregoing, where the proceeds of a fraud perpetrated by an Employee arising from Loans and/or Trading are actually received by persons with whom the Employee was acting in collusion, but said Employee fails to derive a financial benefit therefore, such a loss will nevertheless be covered hereunder as if the Employee has obtained such benefit provided the Insured established that the Employee manifestly intended to participate therein.

As used throughout this Insuring Agreement, financial benefit does not include any employee benefits including: salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other emoluments."

2. The term Loan as used in this Insuring Agreement shall mean all extensions of credit by the Insured and all transactions creating a creditor or lessor relationship in favor of the Insured, including all purchase and repurchase agreements, and all transactions by which the Insured assume an existing creditor or lessor relationship.
3. The term Trading as used in this Insuring Agreement shall mean trading or other dealings in securities, commodities, futures, options, foreign or Federal Funds, currencies, foreign exchange and the like.
4. This Rider shall become effective 12:01 a.m. standard time on _____.

EXHIBIT M

RIDER

To be attached to and form part of Financial Institution Bond, Standard Form No. 25,
No. _____

It is agreed that:

- 1. The attached bond is amended by adding an additional Insuring Agreement as follows:

AGENTS FIDELITY

Loss resulting directly from dishonest or fraudulent acts committed by an Agent named or described below acting alone or in collusion with others.

Such dishonest or fraudulent acts must be committed by the Agent with the manifest intent:

- (a) to cause the Insured to sustain such loss; and
- (b) to obtain financial benefit for the Agent.

As used in this Insuring Agreement, financial benefit does not include any benefits earned in the normal course of the agency relationship, including: salaries, commissions, fees, bonuses, promotions, awards, profit sharing or pensions.

- 2. Only an Agent named or described below is covered under the Agents Fidelity Insuring Agreement, and then only for an amount up to the Single Loss Limit of Liability applicable to that Agent. Any amount paid by the Underwriter under this Insuring Agreement is a part of, and not in addition to, the amount set forth in Item 3 of the Declarations Page of the attached bond. The Single Loss Deductible Amount applicable to Insuring Agreement A as set forth on the Declarations Page is applicable to this Agreement.

The Agents named or described below are covered as follows:

- Single Loss Limit of Liability of \$ _____ applicable to _____
- Single Loss Limit of Liability of \$ _____ applicable to _____
- Single Loss Limit of Liability of \$ _____ applicable to _____

- 3. The term Agent shall be deemed to include the partners, officers and employees of such Agent and all such persons shall collectively be deemed to be one person for the purposes of Section 2 of this rider
- 4. Exclusion (u) of the attached bond shall not apply to the Agents Fidelity Insuring Agreement set forth above.
- 5. In the On Premises Insuring Agreement any reference to an office of the Insured shall be deemed to include, ann office of an Agent.
- 6. The following are added to the conditions and limitations of the bond:

ASSIGNMENT OF RIGHTS

This bond does not afford coverage in favor of any Agent, and upon payment to the Insured by the Underwriter on account of any loss or losses for which such Agent is liable to the Insured, an assignment of such of the Insured's rights and causes of action as it may have against such Agent by reason of such liability shall, to the extent of such payment, be given by the Insured to the Underwriter, and the Insured shall execute all papers necessary to secure to the Underwriter the rights which are herein provided.

INDIVIDUAL TERMINATION

This bond terminates as to any partner, officer or employee of any Agent (a) as soon as any Insured, or any director or officer of the Insured not in collusion with such person, learns of any dishonest or fraudulent act committed by such person at any time, whether in the employment of the Insured or an Agent or otherwise, whether or not of the type covered under the Agents Fidelity Insuring Agreement, against the Insured or any other person or entity, without prejudice to the loss of any Property then in transit in the custody of such person, or (b) 15 days after the receipt by the Insured of a written notice from the Underwriter of its desire to cancel the bond as to such person.

- 7. This rider shall become effective as of 12:01 a.m. on

AGENTS FIDELITY INSURING AGREEMENT
FOR USE WITH FINANCIAL INSTITUTION BOND,
STANDARD FORM NO. 25, WHEN ISSUED
TO A LIFE INSURANCE COMPANY TO PROVIDE
DISHONESTY COVERAGE ON NAMED OR
DESCRIBED AGENTS.
ADOPTED JUNE, 1990
SR 6185

EXHIBIT N

RIDER

To be attached to and form part of Financial Institution Bond, Standard Form No. 24, No. _____

in favor of

It is agreed that:

1. An additional portion is added to the definition of "Employee" in Section 1 of the bond as follows:

(6) any person, partnership or corporation listed by name as an Agent in the Schedule below and any employee, partner or officer thereof. Such person, partnership or corporation must be duly elected or appointed by the Insured to serve as its Agent to do or perform any act or thing which the Insured, in the ordinary conduct of its business, might do or perform, excluding, however, any such person, partnership or corporation elected or appointed by the Insured to act in the capacity of

(a) servicer of real estate mortgage or home modernization loans made, held by or assigned to the Insured, or

(b) manager of real property owned by or under the supervision or control of the Insured, or

(c) data processors of checks or other accounting records of the Insured, or

(d) independent software contractors.

In the event of loss caused by an Agent listed below, or in which such Agent is involved, the total limit of liability of the Underwriter is limited to the Amount of Coverage set forth for that Agent. The Deductible Amount applicable to Insuring Agreement (A) shall be applicable to any loss caused by an Agent listed below, or in which such Agent is involved.

SCHEDULE

AGENT

AMOUNT OF COVERAGE

2. This rider shall become effective as of 12:01 a.m. on _____ standard time as specified in the attached bond.

AGENTS RIDER
FOR USE WITH FINANCIAL INSTITUTION BOND,
STANDARD FORM NO. 24, WHEN
ISSUED TO A SAVINGS AND LOAN INSTITUTION
OR SAVINGS BANK, TO COVER
SCHEDULED AGENTS.
REVISED TO OCTOBER, 1987,
SR 5976c

EXHIBIT O

RIDER

To be attached to and form part of Bond No. _____
in favor of _____.

It is agreed that:

Subsection 7, Exclusions is amended by deleting in its entirety subpart (D) and substituting in lieu thereof the following:

(D) Loss caused by any broker, factor, commission merchant, consignee or other agent or representative of the same general character;

It is further agreed that subsection 26, Definitions, is amended by adding subpart (F) under the definition of Employee as follows:

(F) Independent Contractors and leased Employees.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

EXHIBIT P