Executive Risks

Willis

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Raft of New Fidelity Claims: Funds Missing at Bill Collection Agency

Any company relying upon the use of outside agents to collect or disburse funds may be affected by the recent failure of CashPoint. Fidelity carriers are facing a barrage of new claims from companies that used the collection services of the now defunct CashPoint Network Services, a money transfer and check cashing service provider. Among the services CashPoint provided to its corporate clients (predominantly utility companies) was the collection of bill payments – totaling millions of dollars a day – from customers that paid bills on a cash basis. Unfortunately, some of what was collected never got redistributed; considerable amounts of money had apparently "gone missing" prior to regulators locking the company's doors. While the total amount of missing funds is still being determined, current estimates run between $75 million and $100 million.

Although formal criminal charges have not yet been filed against the principals of the firm, at least one utility company is known to have filed suit against CashPoint alleging criminal and fraudulent conduct. Federal prosecutors are exploring the situation. Meanwhile, fidelity claims stream in.

Insurance Implications

Upon request, fidelity underwriters have historically endorsed policies to include agents coverage, which protects insureds from the theft of property by their agents. The carriers' inability to review the internal controls of the covered agents, however, has always left them a bit uncomfortable with the risk. As a result, while underwriters have traditionally offered agents coverage, it has always been done with some reluctance and often subject to a sub-limit of liability.

The potential severity of the CashPoint loss – and the fact that it involves so many of the leading fidelity markets – may have a profound effect on the availability of agents coverage in the near future. While the CashPoint loss involved a specific category of agent, insureds should be prepared for close scrutiny by underwriters regarding all types of agents. Almost certainly, underwriters will continue to offer agents coverage, but in order to gain a clearer understanding of the exact nature of an insured company's exposures, the underwriters will likely require additional information about the services provided by the agent, the agent's access to the insured's property and the property's value. In addition, companies should be prepared for the possibility of higher deductibles and lower limits for this coverage.

Loss Control Measures

There are several risk management measures that companies can implement to protect themselves from potential agent-related losses. The most significant measure involves investigating the agent, including its size, financial strength, longevity and reputation. In addition to requiring that the agent maintain its own crime policy – a practice followed by the majority of insureds utilizing agents – insureds should determine whether the limit of liability under the agent's crime policy is adequate. While the limit may seem adequate in relationship to the insured's own property, consideration must be given to how many other organizations there are for whom

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the agent provides a similar service. Any bond carried by the agent will not have a limit dedicated to the insured's own property, but rather a single limit applicable to all property handled by the agent.

Companies should also understand the terms and conditions of the agent's own fidelity bond. The standard bond excludes loss caused by the "insured or a partner," which case law tells us includes a sole shareholder. As a result, crime policies insuring smaller agents will usually not cover any loss caused by the owner of the company.

When requiring an agent to carry a fidelity bond, companies should also require the policy to include a "client property" endorsement, which acknowledges the underwriter's obligation regarding the theft of client property by an employee of the agent. In an effort to increase the value of a bond for smaller agents, it should be required that the policy also be endorsed to cover theft by the sole proprietor/agent, and not only the agent's employees. While this last provision is generally difficult to obtain and often results in additional premium charges, Willis has had some success in securing it.

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