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**WHAT IS “PROPERTY” UNDER FIDELITY BOND
COVERAGE AND RELATED COVERAGES?**

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“Things are not what they seem.”

--Henry Wadsworth Longfellow

I. Introduction

We have all heard it said, “Things are not what they seem.” This is, of course, in contrast with the admonition that, “You should mean what you say, and say what you mean.” The contrast between these concepts can exist in many different circumstances. One of these circumstances, albeit an arcane one for most people, is the adaptation of fidelity bond coverage to a world filled with computers, e-commerce, PDAs (personal digital assistants), wireless internet, and a host of other new services and emerging technology. Insurance companies, insureds, and courts have struggled with adapting traditional words and definitions to this brave new world. This paper will focus on one aspect of this struggle: “property”. This paper will discuss the term “property” and types of property which are the subject of fidelity bond coverage at the dawn of the Twenty-First Century.

II. Coverage Provisions

The beginning of wisdom in any analysis of “property” as the subject of fidelity bond coverage is the coverage provision itself. Let us examine the most common coverage provisions.

A. The Financial Institution Bond

The typical language of the fidelity coverage of Insuring Agreement (A) Financial Institution Bond (FIB) Standard Form No. 24 (Rev. 1987) provides that the underwriter agrees to indemnify the insured for:

- (A) Loss resulting directly from dishonesty 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 a loss; and
 - (b) to obtain financial benefit for the employee or another person or entity.
- However, if some or all of the Insured’s loss results directly or indirectly from loans, that portion of the loss is not covered, unless the employee was in collusion with one or more parties to the transactions and has received, in connection therewith, a financial benefit of at least \$2,500.00.
- As used throughout this Insuring Agreement, financial benefit does not include any employee benefits earned in the normal course of employment, including: salaries, commissions, fees, bonuses, promotions, awards, profit sharing or pensions.

Insuring Agreement (B) of the FIB provides for “on premises” coverage. That coverage provides that the underwriter agrees to indemnify the insured for:

- (B)(1) Loss of Property directly resulting from
 - (a) robbery, burglary, misplacement, mysterious unexplainable disappearance and damage thereto or destruction thereof, or
 - (b) theft, false pretenses, common law statutory larceny, committed by a person present in an office or on the premises of the insured.

while the Property is lodged or deposited within offices or premises located anywhere.

- (2) Loss of or damage to
 - (a) furnishings, fixtures, supplies or equipment within an office of the Insured covered under this bond resulting directly from larceny or theft in, or by burglary or robbery of such office or attempt thereat, or by vandalism or malicious mischief, or
 - (b) such office resulting from larceny or theft in, or by burglary or robbery of such office or attempt thereat, or to the interior of such office by vandalism or malicious mischief, provided that
 - (i) the Insured is the owner of such furniture, fixtures, supplies, equipment or office or is liable for such loss or damage, and
 - (ii) the loss is not caused by fire.

Insuring Agreements (C) and (D) of the FIB provide that the underwriter agrees to indemnify the insured for:

- (C) Loss of Property resulting directly from robbery, common-law or statutory larceny, theft, misplacement, mysterious unexplainable disappearance, being lost or made away with, and damage thereto or destruction thereof, while the Property is in transit anywhere in the custody of
 - (a) a natural person acting as a messenger of the Insured (or another natural person acting as messenger or custodian during an emergency arising from the incapacity of the original messenger), or
 - (b) a Transportation Company and being transported in an armored motor vehicle, or
 - (c) a Transportation Company and being transported in a conveyance other than an armored motor vehicle provided that covered Property transported in such a manner is limited to the following:
 - (i) records, whether recorded in writing or electronically, and
 - (ii) Certified Securities issued in registered form and not endorsed, or with restrictive endorsements, and
 - (iii) Negotiable Instruments not payable to bearer, or not endorsed, or with restrictive endorsements.

Coverage under this Insuring Agreement begins immediately upon the receipt of such Property by the natural person or Transportation Company and ends immediately upon delivery to the designated recipient or its agent.

- (D) Loss resulting directly from
- (1) Forgery or alteration of, on or in any Negotiable Instrument (except an Evidence of Debt), Acceptance, Withdrawal Order, receipt for the withdrawal of Property, Certificate of Deposit or Letter of Credit,
 - (2) transferring, paying or delivering any funds or Property or establishing any credit or giving any value on the faith of any written instructions or advices directed to the Insured and authorizing or acknowledging the transfer, payment, delivery or receipt of funds or Property, which instructions or advices purport to have been signed or endorsed by any customer of the Insured or by any banking institution but which instructions or advices either bear a signature which is a Forgery or have been altered without the knowledge and consent of such customer or banking institution. Telegraphic, cable or teletype instructions or advices, as aforesaid, exclusive of transmissions of electronic funds transfer systems, sent by a person shall be deemed to bear a signature which is a Forgery.

A mechanical reproduced facsimile signature is treated the same as a handwritten signature.

The definition of "property" under the conditions and limitations section of the FIB is as follows:

"Property means Money, Certified Securities, Uncertificated Securities by any Federal Reserve Bank of the United States, Negotiable Instruments, Certificates of Deposit, Documents of Title, Acceptances, Evidences of Debt, Security Agreements, Withdrawal Orders, Certificates of Origin or Title, Letters of Credit, insurance policies, abstracts of titles, deeds and mortgages on real estate, revenue and other stamps, tokens, unsold state lottery tickets, books of account and other records whether recorded in writing or electronically, gems, jewelry, precious metals in bars or ingots, and tangible items of personal property which are not hereinabove enumerated."

As is clear from a reading of the foregoing coverage provisions of the FIB, “property” is generally an issue in regards to Insuring Agreements (B), (C) and (D).¹ Under those agreements, the insurer generally agrees to indemnify the insured for:

- o Loss of “property” which results from a covered condition (robbery, burglary...) “on premises” (Insuring Agreement (B)(1));
- o Loss of or damage to furnishings, fixtures, supplies or equipment within an office or to the office itself which results from a covered condition (larceny, theft, burglary...) “on premises” (Insuring Agreement (B)(2);
- o Loss of “property” which results from a covered condition (robbery, larceny...) while the property is “in transit” (Insuring Agreement (C));
- o Loss resulting from forgery or alteration of (Insuring Agreement (D)(1):
 - o A Negotiable Instrument (except Evidence of Debt);
 - o Acceptance;
 - o Withdrawal Order;
 - o Receipt for the withdrawal of Property;
 - o Certificate of Deposit; or
 - o Letter of Credit.
- o Loss resulting from transferring, paying or delivering any funds or Property (Insuring Agreement (D)(2));
- o Loss resulting from establishing any credit or giving any value on the faith of any written instructions or advices directed to the Insured and authorizing or acknowledging the transfer, payment, delivery or receipt of funds or Property, which instructions or advices purport to have been signed or endorsed by any customer of the Insured or by any banking institution but which instructions or advices either bear a signature² which is a Forgery or have been altered without the knowledge and consent of such customer or banking institution (Insuring Agreement (D)(2). Under the FIB, in addition to coverage which pertains to loss or damage to particularly enumerated or specified things, there is coverage pertaining to loss of “property” as defined in the FIB. Coverage questions sometimes center on whether the item in question is

¹ A scenario not involving those Insuring Agreements but implicating Insuring Agreement (A) could theoretically exist. In such case, an analysis of Exclusion (Q) should be made. That exclusion excludes:

“loss of any tangible item of personal property which is not specifically enumerated in the paragraph defining Property and for which the Insured is legally liable, if such property is specifically insured by other insurance of any kind or in any amount obtained by the Insured and in any event, loss of such property occurring more than 60 days after the Insured shall have become aware that it is liable for the safe keeping of such property, except when covered under Insuring Agreement (A) or (B)(2);

This exclusion could be applicable under the other insuring agreements as well.

² Telegraphic, cable or teletype instructions or advices, except for transmissions of electronic funds transfer systems, sent by a person are deemed to bear a signature which is a Forgery. (Insuring Agreement (D)(2).

contained within the definition of “property” under the FIB. Thus, there may be an issue as to whether an item on the proof of loss was “money”, “certified securities”, etc... The resolution of this issue can be straightforward in the case of some of the listed items. However, resolution of this issue may not be so straightforward. As will be seen from some of the cases later in this paper, this issue is particularly troublesome in deciding whether an item is “tangible” or not.

B. Commercial Crime Policy

The Commercial Crime Policy (CCP) treats fidelity coverage of property in a different way. Coverage Form A of that policy provides:

“We will pay for loss of, and loss from damage to, Covered Property resulting directly from the Covered Cause of Loss.”

“Covered Property” under the CCP includes “Money,” “securities,” and “Property other than money and securities.” These are defined as follows:

“‘Money’ means:

- a. Currency, coins and bank notes in current use and having a face value; and
- b. Travelers Checks, registered checks and money orders held for sale to the public.

‘Securities’ means any negotiable and non negotiable instruments or contracts representing either ‘money’ or other property and includes:

- a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
- b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;

But does not include ‘money’.

‘Property other than money and securities’ means any tangible property other than ‘money’ and ‘securities’ that has intrinsic value but does not include any property listed in any Crime Coverage Form as Property Not Covered.”

In short, the CCP covers loss of and loss from damage to “covered property” resulting directly from a “covered cause of loss”. The “covered property” includes:

- o Money;
- o Securities; and
- o Property other than money and securities.

Coverage under the CCP is dependent upon there being a loss of or damage to items listed as “covered property”. This may be dependent upon an item being “money” or “securities” under the bond. The determination of this issue can be straightforward. However, if coverage is dependent upon an item being “property other than money and securities”, the issue may not be so straightforward. As will be seen from some of the cases later in this

paper, this issue can be particularly troublesome since coverage under the CCP of loss of “Property other than money and securities” is limited to “tangible property” with “intrinsic value”.

III Analysis

The most difficult coverage questions in regards to “property” under both the FIB and the CCP involve construction of the broader, more general items of coverage within their definitions of “property” and “covered property”, respectively, rather than the specifically delineated items. Thus, under the FIB the more difficult coverage questions arise when construing “property”—as opposed to “furnishing” or “negotiable instrument”, for example. Likewise, under the CCP the more difficult coverage questions arise when construing “property other than money and securities”—as opposed to “money” or “securities”. These questions are particularly vexing with the advent, indeed prevalence, of computers, e-commerce and the internet.

Resolution of coverage issues begins with the bond itself. Often, however, this is not sufficient to give one a clear understanding of whether an item in question is “property” under the bond. Fortunately, there are bodies of law which can aid in the analysis. These include:

- o Cases involving fidelity bonds and other insurance;
- o State law, including the Uniform Commercial Code (UCC);
- o State and Federal criminal statutes and cases;
- o The Uniform Electronic Transactions Act (UETA) and the Electronic Signatures in Global and National Commerce Act (“E-SIGN”);
- o Tax law.

A. Fidelity Bond and Other Insurance Cases

The issue of what is “property” has been addressed by a number of courts in the context of fidelity and other insurance coverage questions. The following are cases that are illustrative of how courts have dealt with this issue:

- o *Benchmark Printing, Inc. v. American Manufacturers Mutual Ins. Co.*, 2001 WL 66310 (N.D.N.Y. 2001). In this case, the insured under a CCP, Benchmark, was a commercial printing company that sought to recover on its policy for kickbacks that were paid to one of its employees as well as lost profits. Benchmark contended that these amounts were covered property within the meaning of the policy. The court held that the losses were not covered property under the policy:

“In this case, what Benchmark really lost were business opportunities whereby Errico essentially put himself in the place of his employer. As a result, Benchmark lost the

opportunity to either perform the contracts itself or refer them out. Had it performed the contracts itself, then it would have received a profit. Had it referred them out, then it would have received the kickback. In either case, Benchmark is asking AMMIC to cover lost profits it hoped to receive. It cannot show that it actually earned, owned, ever held, or had any liability for these profits. Accordingly, Benchmark's alleged losses of the kickbacks paid to Errico and profits are not covered property under the clear language in the insurance policy and are not recoverable."

- o *National Surety Corp. v. Applied Systems, Inc.*, 418 So.2d 847 (Ala. S.Ct. 1982). In this case, the founder of a computer services company, Applied Systems, discovered that certain programs and master files were missing. Subsequently two former employees who had started their own company returned the materials. However, the company formed by the two former employees acquired a computer that was compatible with that used by the computer services company. The evidence showed that the programs used by the employees in their new business would have taken over 471 man-days to create and would not have been for sale from any software house and would have to be copied in order to be operational in the time involved. Applied Systems, brought an action against the former employees to recover for conversion and against the surety to recover on an indemnity bond. The court held that the computer program could be the subject of conversion and that the computer company had a property interest in programs developed for it by former employees. The court reasoned that there was a conversion whether one concluded that the actual tapes were converted and then copied and returned or that only the programs were taken. In the latter scenario, the court reasoned that intangible personal property could be converted. In support of this, the court cited Alabama's criminal code which defined "property" as "[a]ny money [t]angible or intangible personal property . . ."
- o *Peoples Telephone Company, Inc. v. Hartford Fire Insurance Company*, 36 F. Supp. 2d 1335 (S. D. Fla. 1997). In this case, Peoples Telephone Company sued its insurer under a CCP seeking to recover for losses attributed to an employee's misappropriation of mobile telephone serial and identification numbers. The employee had allegedly sold those numbers, which were necessary to activate and use cellular phones, to third parties who in turn used the number combinations to program or "clone" other cellular phones. This allegedly resulted in Peoples having incurred significant charges for unauthorized telephone usage. This along with deactivation/reactivation charges that the telephone company incurred to disconnect the stolen numbers and install new numbers on its cellular phone inventory amounted to approximately \$660,000.00. The court held that the list of the mobile, telephone, serial and identification numbers were not "tangible property with intrinsic value" under the CCP. The court reasoned that the numbers had value in relation to phones, not intrinsically, and the telephone company had sought to recover based solely on that value. In its discussion, the court cited the definitions of tangible and intangible property:

“According to Black’s Law Dictionary, “tangible property” is “that which may be felt or touched and is necessarily corporeal, although it may be either real or personal” the same source defines “intrinsic” as “internal; inherent; pertaining to the essential nature of a thing”. By contrast, “intangible property” is defined as follows in Black’s: “as used chiefly in the law of taxation, this terms means such property as has no intrinsic and marketable value, but is merely the representative or evidence of value, such as certificates of stock, bonds, promissory notes, copyrights and franchises”. Id at 1337.

This case is also notable in that the court, in its discussion, cites a number of cases from various jurisdictions regarding the definition of “tangible property”.

- o *Royal American Group Inc., v. ITT Hartford*, 1994 WL 14888 (Ohio App. 9 Dist. 1994). In *Royal American*, the insured, Royal American was engaged in the business of providing customers with access to its long distance telephone network for a fee. Royal American had contracts with other telephone companies that permitted them access to their long distance networks. Royal American's customers would connect using security codes that were stored at Royal American's headquarters. The codes were stolen via computer and resulted in \$37,489.38 worth of unauthorized long distance calls. Royal brought a claim under its crime policy (CCP) with Hartford but Hartford denied coverage. In an unpublished opinion, the appellate court reversed the trial court and held that Royal American’s contracts were not covered property under the CCP. The court specifically rejected the trial court’s finding that the contracts were “contracts representing***other property” as defined under “securities” under the CCP. Moreover, the court reasoned, even if these contracts were securities under the policy the loss still would not be covered under the policy since it provided coverage only for "loss of, and loss from damage to, covered property."
- o *Portland Federal Employees Credit Union v. Cumis Insurance Society*, 894 F.2d 1101 (9th Cir. 1990) (loan loss sustained because of fraudulently appraised collateral was covered under credit union’s fidelity bond as a loss of “securities”);
- o *First Federal Savings & Loan v. Fidelity & Deposit Co.*, 895 F.2d 254 (6th Cir. 1990) (loss of property within definition of bond occurred where proof showed that insured had paid for missing securities; bond only required that insured have some interest in items for the items to be property covered by bond);
- o *G&C Construction Corp. v. St. Paul Fire & Marine Ins. Co.*, 731 F.2d 183 (4th Cir. 1984) (wages of laborers not “property”);
- o *FSLIC v. Transamerica*, 661 F.Supp. 246 (C.D. Cal. 1987) (federal book entity securities were property covered by Savings and Loan Blanket Bond)

In addition to the foregoing fidelity bond cases, there are a number of other cases involving insurance policies that are helpful in resolving the issue of what is “property”:

- o *St. Paul Fire & Marine Insurance Company v. National Computer Systems, Inc.*, 490 N.W.2d 626 (Minn. App. 1992). In this case, a company engaged in the business of developing and supplying computer systems, NCS, alleged that the insured under a CGL Policy had misappropriated the company's confidential, proprietary information giving the insured a competitive advantage over that company in bidding on computer services for the United States Department of Education's guaranteed student loan program. The court held that this confidential proprietary information was not "tangible property" within the meaning of the CGL Policy even though the information was in tangible form since the information itself was not tangible.
- o *Retail Systems, Inc. v. C&A Insurance Companies*, 469 N.W.2d 735 (Minn. App. 1991). In this case, the court held that computer tape and information contained on the tape were tangible property under a general liability provision that limited coverage to physical injury or destruction of tangible property.
- o *Auto Owners Insurance Company v. Toole*, 947 F.Supp. 1557 (M.D. Ala. 1996), In that case, the court made the following distinction between "tangible property" and "intangible property":

"[T]angible property' is that which may be felt or touched; such property as may be seen, weighed, measured, and estimated by the physical senses; that which is visible and corporeal; having substance and body as contrasted with incorporeal property rights such as franchises, chooses in action, copyrights, the circulation of a newspaper, annuities and the like. Tangible property must necessarily be corporeal, but it may be either real or personal."

"[I]ntangible property' is property which has no intrinsic and marketable value, but is merely the representative or evidence of value, such as certificates of stock, bonds, promissory notes, and franchises. Intangible property is quite different in nature from corporeal property, and there is an obvious distinction between tangible property and intangible property. Intangible property is held secretly; that is, it cannot be readily located, and there is no method by which its existence or ownership can be ascertained in the state of its cites, expect, perhaps in the case of mortgages or shares of stock. The value of intangible is not easily ascertained." *Id.* at 1565. (citing *American States Insurance Company v. Martin*, 662 So. 2d 245 (Ala. S.Ct. 1995).

- o *American Guarantee and Liability Insurance Company v. Ingram Micro, Inc.*, 2000 W.L. 726789 (D.Ariz. 2000) (computer tape is tangible property when integrated with the tangible medium);
- o *State Farm Fire and Casualty Insurance Company v. White*, 777 F.Supp. 952 (N.D. Ga. 1991) (architectural plans in a blue print were tangible property);
- o *Lucker Mfg. v. Home Insurance Company*, 23 F.3d 808 (3rd Cir. 1994) (loss of use of system design was not loss of tangible property);

- o *Schaefer-Karpf Productions v. CNA Insurance Company*, 76 Cal. Rptr. 2d 42(Cal. Ct. App. 1998) (video tape is tangible property, however information on tape is not);
- o *Magnetic Data, Inc. v. St. Paul Fire and Marine Insurance Company*, 442 N.W. 2d 153 (Minn. S.Ct. 1989) (commercial general liability policy did not cover loss of use claim arising from mistaken erasure of magnetically coded data on customers cartridges because the erased information was not “tangible property”).

The foregoing cases are illustrative of how courts have defined “property”, “tangible property”, “intangible property” and “intrinsic value” for insurance purposes. Accordingly, they should provide guidance as to how a particular item should be categorized for purposes of fidelity coverage.

B. State Law, including the Uniform Commercial Code

In addition to insurance coverage cases, it is useful to look to the classification of items and property under the law in general. An example of a non-fidelity case that would be helpful in the analysis of fidelity coverage is *Compuserve Inc. v. Cyber Promotions Inc.*, 962 F.Supp. 1015 (S.D. Ohio 1997). In that case, a commercial online computer service brought an action against a company that was in business of sending unsolicited electronic mail advertising (“spam”) to Internet users, claiming trespass to personal property or chattels. The question for the court was whether sending unsolicited advertisements to any electronic mail address constituted trespass to chattels. In its decision, the court recognized that electronic signals generated and sent by computer as well as related systems were sufficiently physically tangible to constitute “property” or chattel of value so as to support a trespass cause of action. In support of this, the court cited the Restatement (Second) of Torts as well as *Thrifty-Tel, Inc. v. Bezenek*, 46 Cal. App. 4th 1559 and an Indiana Supreme Court decision, *State v. McGraw*, 480 N.E.2d 552 (Ind. 1985), which recognized in dicta that a hacker's unauthorized access to a computer was more in the nature of trespass than criminal conversion. The court went on to hold that there was a trespass since the value of CompuServe’s equipment was diminished by the enormous volume of mass mailing it received since this placed a tremendous burden on its equipment.

The Uniform Commercial Code (UCC), in particular, can be helpful in determining issues regarding property coverage since the UCC systematically defines various items which can be “property” under fidelity coverage. Obviously, a complete discussion of the state law in this regard is beyond the scope of this paper. Nevertheless, it is helpful to remember that the following articles of the UCC, including the definitions and classifications therein, may be particularly relevant to property coverage issues under both the FIB and CCP:

- o Article 8 governs certified securities;
- o Article 3 governs negotiable instruments, evidences of debt and certificates of deposit;

- o Article 4 governs certificates of deposit and withdrawal orders to the extent that these are an “item” as defined by UCC §4-104(a)(9);
- o Article 5 addresses letters of credit;
- o Article 7 governs documents of title and certificates of origin or title;
- o Article 9 governs security agreements

C. State and Federal Criminal Law

Another area of the law that is particularly useful in analyzing what is “property” is criminal law. A massive amount of legislation has been enacted on the state and federal level in response to computer crime. This legislation, in response to the perceived and real inability of existing criminal law to cover these new “cyber crimes”, has frequently dealt with the issue of what is “property” for purposes of coverage under these statutes. The cases and statutes in this regard can shed light on “property” issues involved in fidelity coverage.

Most states have now incorporated computer crimes into their criminal codes³—many of these statutory developments define computer systems, data and transmissions as “property” and create actions for computer trespass, unauthorized access, forgery and theft. Effect may be to create definitions of property that may widen scope of coverage of bond

For example, see the following state statutes:

(1) In Illinois, 720 ILCS 5/16D-2 provides:

“(d) In addition to its meaning as defined in Section 15-1 of this Code, “property” means: (1) electronic impulses; (2) electronically produced data; (3) confidential, copyrighted or proprietary information; (4) private identification codes or numbers which permit access to a computer by authorized computer users or generate billings to consumers for purchase of goods and services, including but not limited to credit card transactions and telecommunications services or permit electronic fund transfers; (5) software or programs in either machine or human readable form; or (6) any other tangible or intangible item relating to a computer or any part thereof.”

(2) In Virginia, VA ST §18.2-152.2 provides:

“Property” shall include:

1. Real property;
2. Computers and computer networks;

³ See, for example: CT ST. §53a-251 et seq. [Connecticut]; 720 ILCS 5/16D-1 et. seq. [Illinois]; MD Code 1957, Art. 27, §146 [Maryland]; MA ST. 266 §33A [Massachusetts]; MO. ST. §§569.095, 569.097, 569.099 [Missouri]; N.J.ST. 2C:20-23 et seq. [New Jersey]; NY Penal §156.00 et seq. [New York]; PA ST 18 Pa.C.S.A. §3933 [Pennsylvania]; VA ST §§18.2-152.1 et seq. [Virginia].

3. Financial instruments, computer data, computer programs, computer software and all other personal property regardless of whether they are:
 - a. Tangible or intangible;
 - b. In a format readable by humans or by a computer;
 - c. In transit between computers or within a computer network or between any devices which comprise a computer; or
 - d. Located on any paper or in any device on which it is stored by a computer or by a human; and
4. Computer services.”

(3) In New York, NY Penal §156.00 specifically defines “computer program”, “computer data” and “computer material” as “property”.

(4) In Pennsylvania, PA ST 18 Pa.C.S.A. §3933, provides that:

“Property.’ Includes, but is not limited to, financial instruments, computer software and programs in either machine or human readable form, and anything of value, tangible or intangible.”

In addition to the foregoing statutes, there are a number of cases involving the National Stolen Property Act, 18 USC §2314, as well as other federal statutes which involve the issue of what is “property”:

- o *United States v. Farraj*, 2001 WL 533325 (S.D.N.Y. 2001). In this high-profile case, Defendants, brothers Said and Yeazid Farraj, were charged with conspiracy, interstate transportation of stolen property, and computer fraud. In the summer of 2000, Said Farraj was a paralegal at a law firm which represented the plaintiffs in a class action tobacco case. In preparation for trial, the firm created a trial plan exceeding 400 pages. The plan included trial strategy, deposition summaries and references to trial exhibits. Said Farraj e-mailed an excerpt of the trial plan to the defendants' attorneys in the tobacco case and offered to sell them the entire plan. The defendants' attorneys notified the FBI. Subsequently, an FBI agent posing as one of the defendants' attorneys negotiated with Said and agreed to purchase the plan for \$2 million. Yaezid Farraj met with an FBI agent to receive payment and was arrested. Said Farraj was charged, inter alia, under 18 USC § 2314, which provides that, “[w]hoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares merchandise, securities, or money, of the value of \$5,000 or more, knowing the same to have been stolen, converted, or taken by fraud ... shall be fined under this title or imprisoned...” Said Farraj moved to dismiss the Government's claim, arguing that 18 U.S.C. 2314 applies only to the physical transportation of tangible goods or currency, not to information stored and transmitted electronically, such as the Trial Plan excerpt e-mailed here.

In rejecting the Defendant’s argument, the court held that the transfer of electronic documents via the internet across state lines does fall within the purview of § 2314. In its decision, the court rejected the defendant’s argument that what he was accused of transmitting was an “intangible” and

therefore not a "good" under the statute, but merely "information." The court reasoned that the text of 18 USC §2314 makes no distinction between tangible and intangible property, or between electronic and other manner of transfer across state lines.

- o *United States v. Brown*, 925 F.2d 1301 (10th Cir. 1991). In that case, Defendant, John Brown, was charged with three counts of violations of the National Stolen Property Act (18 USC §2314) arising out of the alleged theft of computer program and source code. The United States District Court for the District of New Mexico dismissed the indictment for failure to state an offense. The defendant worked as a computer programmer for The Software Link, Inc. a computer company in Georgia. One asset of TSL was a computer program known as MOS/386. During an FBI investigation of defendant a search of his residence uncovered three ring notebooks and a hard disk, which contained portions of the source code for the MOS/386 program.

The 10th Circuit upheld the District Court's dismissal of the indictment and its reliance on *Dowling v. United States*, which held that §2314 does not apply to crimes which involve mere copyright infringement. The court agreed with the defendant's argument that the source code was "intellectual property" that could not constitute goods, wares or merchandise under §2314 and held that purely intellectual property is not within this category. The court held that although such property can be represented physically, such as through writing on a page, the underlying, intellectual property itself, remains intangible.

- o *United States v. Riggs*, 739 F.Supp. 414 (N.D. ILL. 1990). In *Riggs*, the defendants devised and began implementing a scheme to defraud Bell South Telephone Company and to steal Bell South's computer text file which contained information regarding its enhanced 911 system for handling emergency calls to police, fire, ambulance, and other emergency services. In December 1988, defendant Riggs began using his home computer to gain unlawful access to Bell South's computer system and download the text file. Riggs then transferred the stolen computer file to defendant Neidorf in Missouri by way of an interstate computer data network. Among other charges the defendants were charged with violating 18 USC §2314, which prohibits interstate transfer of stolen property and 18 USC §1343, which prohibits wire fraud. The court rejected defendant's efforts to dismiss the charges, reasoning that: (1) The wire fraud charge was not based on the deprivation of an intangible right. Rather, the government charged the defendants with scheming to defraud Bell South out of property--the confidential information contained in the E911 text file. Bell South considered this information to be valuable proprietary information. The court held that such valuable, confidential information is "property," the deprivation of which can form the basis of a wire fraud charge under §1343; (2) Citing *U.S. v. Gilboe*, infra., the court rejected defendant's argument that the government could not sustain a §2314 charge because the only thing which they allegedly caused to be transferred across state lines was "electronic impulses." : "The

manner in which the funds were moved does not affect the ability to obtain tangible paper dollars or a bank check from the receiving account. If anything, the means of transfer here were essential to the fraudulent scheme." *Id.* The court went on to hold that the computer-stored information in the case satisfied §2314's tangibility requirement. The court distinguished *Dowling v. United States*, *infra.*, by distinguishing a copyright (which the *Dowling* court held were intangible) from confidential, proprietary business information which the court held was an item of "property" and therefore could be the subject of §2314.

- o *Dowling v. United States*, 473 U.S. 207, 105 S.Ct. 3127 (1985) involved an appeal to the U.S. Supreme Court from a conviction for mail fraud, interstate transportation of stolen property, and conspiracy to transport stolen property interstate. The 9th Circuit Court of Appeals had affirmed the conviction. Sometime around 1976 defendant Dowling began in conjunction with codefendant William Theaker to manufacture bootleg phonographic records of unreleased Elvis Presley recordings. The operation was primarily handled through the mail with Theaker taking care of collecting customer orders from a post office box in Los Angeles and Dowling filling those orders in Baltimore. The eight 18 USC §2314 counts on which Dowling was convicted arose out of six shipments of bootleg records from Los Angeles to Baltimore and two shipments from Los Angeles to Miami. Each shipment included thousands of albums and each album contained performances of copyrighted musical compositions for the use of which no license had been obtained. The U.S. Supreme Court, in reversing the conviction, held that the "property rights of a copyright holder have a character distinct from the possessory interest of the owner of simple 'goods, wares, [or] merchandise...'" and that therefore the copyright infringement at issue would not be covered by §2314.
- o *United States v. Gilboe*, 684 F.2d 235 (2nd Cir. 1982). In *Gilboe*, Defendant was convicted on charges of wire fraud in violation of 18 U.S.C. 1343 and transportation of funds obtained by fraud in violation of 18 U.S.C. 2314. The convictions stem from two shipments of grain arranged by defendant to China, one from Argentina and the other from the United States. Defendant used telex and telephone communication channels to defraud China and a ship owner out of payments due for the purchase and shipping of grain. In affirming the conviction, the court held that §2314 covers the electronic transfer of funds.
- o *United States v. Goldberg*, 830 F.2d 459 (3rd Cir. 1987). *Goldberg* involved a Defendant who was convicted of causing the commission of wire fraud and causing the transportation of stolen property in interstate or foreign commerce. Goldberg used a check-kiting scheme to defraud several financial institutions across three countries out of hundreds of thousands of dollars. In affirming the conviction, the court rejected Goldberg's argument that §2314 only covers tangible items and held that electronic transfers of money are covered by §2314. The court reasoned that what is significant is the fact that when the transaction was completed, money existed at the final destination.

The court also found persuasive the Second Circuit's reasoning in *Gilboe* that electronic signals in this context are the means by which funds are transported and that the manner in which the funds were moved does not affect the ability to obtain tangible paper dollars or a bank check from the receiving account.

- o *United States v. Bottone*, 365 F.2d 389 (2nd Cir. 1966). In that case, Defendants were convicted of interstate and foreign transportation of cultures and documents stolen, converted or taken by fraud and of conspiring to do so. The defendants stole microorganisms used in the production of three antibiotics and a steroid, and instructions for the drugs' manufacture from Lederle Labs. In its decision, the court found that "when the physical form of the stolen goods is secondary in every respect to the matter recorded in them, the transformation of the information in the stolen papers into a tangible object never possessed by the original owner should be deemed immaterial."

D. UETA and E-SIGN

The Uniform Electronic Transactions Act (UETA)⁴ governs electronic transactions and has to date been enacted by thirty-seven (37) states.⁵ A full discussion of the UETA is beyond the scope of this paper. Nevertheless, a basic understanding of the UETA is necessary because of its possible coverage implications as it pertains to the issue of what is covered property under the bond. These implications arise in particular from the fact that §7 of the UETA provides that: "A record or signature may not be denied legal effect or enforceability solely because it is in electronic form." Thus, the UETA may have an effect on the definition of property by negating definitional requirements of the bond that ordinarily would not be satisfied by electronic documents⁶. In order to analyze the effect, if any, the UETA has on coverage, the following questions should be posited?

⁴ The text of the UETA, including official comments, can be found at <http://www.law.upenn.edu/bll/ulc/fnact99/1990s/ueta99.htm>.

⁵ As this was being sent to print, the UETA—with individual variations--has been enacted by Alabama, Arizona, Arkansas, California, Delaware, District of Columbia, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia and Wyoming. A state-by-state comparison table, setting out the status of the UETA in the various states, can be found at <http://www.bmck.com/ecommerce/uetacomp.htm>.

⁶ For example, in Mark E. Wilson, "Fidelity Coverage for External E-Commerce Fraud", the author argues that UETA §16 could negate the writing and signature requirements that would otherwise be required for coverage to apply under Form 24 in the case of electronic notes and documents of title:

"A significant exception, however, applies to electronic notes and documents of title. Under Section 16 of the UETA, records that would be notes or documents of title if in paper form under Articles 3 and 7 respectively of the UCC are "transferable records" under the UETA if the parties to the transactions so intend. Notes under Article 3 can be negotiable instruments under Article 3 and notes are by definition documents "evidencing the customer's debt." A "note" is an unconditional promise to pay a fixed amount of money. The bond defines "negotiable instruments" to require a physical writing and to contain a manual signature. Under Section 16, however, electronic notes and documents of title are "transferable records" and therefore the writing and signature requirements are arguably satisfied." *Id.* at 8.

- o Has the UETA been enacted in the relevant jurisdiction?
- o Even if the UETA has been enacted, does the UETA even apply? In other words, is the transaction within the scope of UETA as set out in §3 of the UETA, which “applies to electronic records and electronic signatures relating to a transaction”?
- o Even if the transaction is generally within the scope of the UETA, is the transaction governed by §3(b) of the UETA, which provides that the UETA does not apply to “a transaction to the extent it is governed by” various other enumerated laws, including the UCC. Thus, an analysis needs to be made as to whether the transaction at issue is governed by one of the enumerated laws and therefore is outside the scope of the UETA. Thus, for example, many of the items defined as “property” in Form 24 are governed by the UCC and would generally be outside the scope of the UETA.
- o Finally, even if the transaction is governed by the UETA, is there an effect on coverage?

The Electronic Signatures in Global and National Commerce Act (“E-SIGN”), 15 U.S.C. §7001, was enacted on June 30, 2000. The major provisions of the E-SIGN Act went into effect on October 1, 2000. Significantly, this federal legislation provides that a signature, contract or other record relating to a transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form. The E-SIGN Act, like UETA, excludes certain instruments to the extent they are covered by, inter alia, the UCC. Moreover, the E-SIGN Act sets out certain circumstances where its provisions may be modified, limited or superseded by state law. The most important of these circumstances is where the state has enacted UETA. Thus, UETA preempts federal law in those states where it has been enacted. In other states, further analysis of the E-SIGN Act is necessary to determine whether there is any effect on fidelity bond coverage. This analysis would be similar to the analysis under UETA.

E. Tax Law

One of the most helpful areas of the law in the analysis of a property issue is tax law. Local, state and federal tax law frequently define what is “property” for purposes of taxation. Moreover, of particular relevance to the CCP, is the fact that there are numerous cases dealing with “tangible property”, “intangible property”, and “intrinsic value”—all of which are terms of relevance to CCP coverage. Thus, tax law is of great usefulness in analyzing these terms for purposes of fidelity coverage. In addition, from a practical standpoint, how the insured treated a certain item for tax purposes can shed great light on how an item should be classified for fidelity purposes. Thus, review of the insured’s accounting and tax records can aid in a fidelity investigation and ensure that the insured is not taking a position for fidelity coverage purposes which is inconsistent with the position that it takes for accounting or tax purposes.

The following are tax cases pertinent to property issues:

Cases holding items to be tangible property

- o *Norwest Corporation and Subsidiaries v. Commissioner of Internal Revenue*, 108 T.C. 358 (U.S. Tax Court 1997). In *Norwest* the United States Tax Court decided the issue of whether certain computer software expenditures made by a company during certain years qualified for the investment tax credit (ITC). The resolution to that issue depended on the characterization of the acquired software as either “tangible” or “intangible” property as only investments in tangible property are eligible for the investment tax credit. The Tax Court concluded that the acquired software was tangible personal property which was eligible for the investment tax credit. In its decision, the Tax Court declined to utilize the “intrinsic value” test first announced in *Texas Instruments, Inc. v. United States*, 551 F.2d 599 (5th Cir. 1977) which test had been followed in another Tax Court case, *Ronnen v. Commissioner*, 90 T.C. 74 (U.S. Tax Court 1998) (computer software in issue in that case was intangible property for the purposes of the ITC). Instead, the *Norwest* Court examined the term “tangible personal property” and examined the legislative history of the ITC. The Court recognized the fact that “intangible intellectual property rights and the tangible or physical manifestations or embodiments of those rights are distinct property interests. See, example, 17 U.S.C. § 202 (1994) (ownership of copyright distinct from ownership of any material object in which work is embodied). A purchaser of a particular tangible manifestation or embodiment of intellectual property acquires only property rights in that manifestation or embodiment and does not acquire any rights to the underlying intellectual property.”

- o In *Texas Instrument, supra*, the 5th Circuit held that seismic data tapes and film “have intrinsic value because the seismic information thereon does not exist as property separate from the physical manifestation” and therefore, were tangible personal property for purposes of the ITC. In that case, a subsidiary of Texas Instrument (GSID), was in the business of collecting, processing and selling or licensing seismic information to customers engaged in oil and gas exploration. *Id* at 608. GSID customers were furnished with pictures derived from a complicated collection and editing process that depicted the contours of the earth’s different strata. After doing a detailed analyses of the technical aspects of the recording process, the 5th Circuit explained its holding as follows:

“The value of the seismic data is entirely dependent upon existence of the tapes and film. If the tapes and film were destroyed prior to any reproduction of the film analogue, nothing would remain. In investment in the data simply does not exist without recording of the data on tangible property. Thus the basis of the tangible tapes and films must include the costs of collecting seismic *** data and recording it on the tangible property, with the result being an asset constituting “tangible property.” *Id* at 611.

- o *Walmart Stores, Inc. v. City of Mobile*, 696 So. 2d 290 (Ala. 1996) (computer software is tangible property that is subject gross receipts tax);
- o *Comshare, Inc. v. U.S.*, 27 F.3d 1142 (6th Cir. 1994) (computer program's master source code embodied in magnetic tapes and disks constituted tangible personal property for purposes of the ITC);

Cases holding items to be intangible property

- o In *Ronnen v. Commissioner*, 90 T.C. 74 (U.S. Tax Court 1998), the Tax Court adopted the so-called **intrinsic value** test formulated in *Texas Instruments*, supra.. In *Ronnen*, the taxpayers were principal shareholders of a corporation, HSL, formed to purchase the rights to a computer software package that was designed to assist nursing homes with the regulatory reporting requirements. The corporation received, among other things, copies of the computer program and directions to commercially exploit the program in a particular territory. The court distinguished a series of 9th Circuit cases which held that certain master sound recordings and motion picture negatives were tangible personal property eligible for the ITC. Then, applying the intrinsic value test, the court concluded that the intrinsic value of the HSL software was attributable to its intangible elements rather than to its tangible embodiments. The court then held that the computer software at issue was intangible and thus ineligible for the ITC. *Ronnen* at 100.
- o Since *Ronnen*, the Tax Court has, on numerous occasions, held that computer software is intangible property for purposes of the ITC. See, example, *Kansas City S. Indus., Inc. v. Commissioner*, 98 T.C. 242 (1992); *Gantner v. Commissioner*, 91 T.C. 713 (1988), affirmed on other grounds 905 F.2d 241 (8th Cir.).
- o *District of Columbia v. Universal Computer Associates, Inc.*, 465 F.2d 615 (D.C. Cir. 1972) (computer software, which was valuable only because of the intangible information contained on the computer punch cards, represented intangible values and therefore the software was not subject to the District of Columbia tangible personal property tax).
- o *Western Resources, Inc.*, 919 P. 2d 1048 (Ks. App. 1996) (application software is intangible property which is not subject to personal property tax for tangible property; however, even though such property was non taxable, it could be included in valuing the business of a public utility as a "going concern" to the extent that it was used to enhance the value of tangible personal property in the unit).
- o In *Computer Associates International, Inc. v. City of East Providence*, 615 A.2d 467 (R.I. S. Ct. 1992), the court held that custom software was intangible personal property that was not subject to personal property tax. In that case, the question was in regards to a program, which was loaded into a licensee's computers and then modified to suit the licensee's particular

needs. The court found that this involved an intangible service element that distinguished it from **canned**, ready to execute computer software programs. Therefore, the court distinguished *Hasbro Industries, Inc. v. Norberg*, 487 A.2d 124 (R.I. 1985), wherein the Rhode Island Supreme Court had held that canned ready to execute computer software programs were tangible personal property and therefore subject to state sales and use tax.

- o In *Northeast Datacom, Inc. v. City of Wallingford*, 563 A.2d 688 (Ct. S. Ct. 1989), the court held that computer software was intangible personal property which was not subject to municipal taxation under the statute. In coming to its holding, the court concluded that the fact that “tangible property is used to store or transmit the software’s binary instructions does not change the character of what is fundamentally a classic form of intellectual property.” The court went on to analyze the United States Copyright Act:

“Software is a variety of “literary work” covered by the Copyright Act. 17 U.S. §§ 101, 102(a) and 117. To be copyrightable, an “original work of authorship”, such as a program, must be “fixed in any tangible medium of expression.” 17 U.S.C. § 102(a). Despite being so fixed, the original work of authorship is legally distinct from the medium, and from each copy of the work, including “the material object...in which the work first fixed.” 17 U.S.C. § 101. ***

When one buys a video cassette recording, a book, sheet music or a music recording, one acquires a limited right to use and enjoy the materials content. One does not acquire, however, all that the owner has to sell. These additional incidents of ownership include the right to produce and sell more copies, the right to change the underlying work, the right to license its use to others and the right to transfer the copyright itself. It is these incidents of the intellectual, intangible component of the software property that Wallingford has impermissibly assessed as tangible personal property by linking these incorporeal incidents with the tangible medium in which the software is stored and transmitted.”

In its decision, the court noted that its holding was consistent with a number of other jurisdictions that have held that computer software constitutes intangible property. *District of Columbia v. Universal Computers Associates, Inc.*, *supra*; *State v. Central Computer Services, Inc.*, 349 So. 2d 1160 (Ala. 1977); *Honeywell Information Systems, Inc. v. Maricopa County*, 118 Ariz. 171, 575 P.2d 801 (1977); *First National Bank of Springfield v. Department of Revenue*, 85 Ill 2d 84, 421 N.E. 2d 175 (1987); *Appeal of AT&T Technologies, Inc.*, 749 P.2d 1033 (1988); *Matter of Protest of Strayer*, *supra*; *Compuserve, Inc. v. Lindle*, 41 Ohio App. 3d 260, 535 N.E. 2d 360 (1987); *Commerce Union Bank v. Tidwell*, 538 S.W. 2d 405 (Tenn. 1976); *First National Bank of Fort Worth v. Bullo*, 584 S.W. 2d 548 (Tex. Civ. App. 1979); but see, *Measurex Systems, Inc. v. State Tax Assessor*, 490 A. 2d 1192 (Md. 1985); *Comptroller of the Treasury v. Equitable Trust Company*, 296 Md. 459, 464 A.2d 248 (1983); *Hasbro Industries, supra*; *Citizens and Southern Systems, Inc. v. South Carolina Tax Commission*, 280 S.C. 138, 311 S.E.2d 717 (1984); *Pennsylvania and West Virginia Supply Corporation v. R.*, 268 S.E. 2d 101 (W.Va. 1988).

- o *Gilreath v. General Electric Company*, 751 So.2d 705 (Fla. App. 2000) (computer software is taxable as “intangible personal property” under Florida’s tax statute).

As the foregoing cases demonstrate, the large body of tax law can be extremely helpful in the analysis of whether an item is “tangible property” (implicating coverage, for example, under the CCP) or “intangible property” (not generally covered) or whether an item has “intrinsic value” (implicating coverage under the CCP).

IV. Conclusion

In sum, resolution of the issue of what is “property” under a fidelity bond or policy can be central to the issue of whether there is coverage at all. Analysis of this issue can be aided by resort to areas of the law other than fidelity law to examine how “property” is analyzed. Other insurance cases, the UCC, criminal law, UETA, the E-SIGN Act and tax law may be particularly important or relevant in determining property issues.

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Biographical Sketch

Bernard A. Reinert is a principal shareholder, the Chairman and the President of the St. Louis law firm, Reinert & Rourke, P.C. Mr. Reinert was admitted to the Missouri Bar in 1962 and the Illinois Bar in 1963. He went to undergraduate school at St. Mary's Mission Seminary College at Techny, Illinois and at St. Louis University in St. Louis, Missouri where he graduated with a Bachelor of Arts degree in 1958. He graduated from St. Louis University School of Law in 1962 with a Bachelor of Laws degree. He was a law clerk to the United States District Judge Omer Poos in Springfield, Illinois in 1962-1963.

Mr. Reinert is a member of the American Bar Association, the Missouri Bar, the Illinois State Bar Association, and the Bar Association of Metropolitan St. Louis. He has been a member of the Torts and Insurance Practice Section and of the Fidelity and Surety Law Committee for approximately thirty years. He has served several terms as a Committee Vice-Chairman. He has participated in many of the Committee's programs, chaired a program in San Francisco, and presented papers at dozens of industry programs.

One of Mr. Reinert's many papers which he has authored is entitled "Duty of the Performing Surety to Bond Principal and Indemnitors: Good Faith". Mr. Reinert has participated in many other activities of the Committee including the Commercial Blanket Bond National Institute, the Financial Institution Bond National Institute (London, 1992) and the Commercial Blanket Bond Annotation Project. He has participated in updating the Banker's Blanket Bond Annotation and has participated in the publication of the Fidelity and Surety News (FSN). Mr. Reinert participated in the "Subrogation Project" culminating in the August 1990 ABA Annual Meeting Program the Fidelity and Surety Law Committee entitled "The Subrogation Rights of the Contract Bond Surety". At that meeting, he presenting a paper entitled "Elements of Proof in the Contract Bond Surety's Subrogation Action to Recover the Bonded Contract Funds". Mr. Reinert and his firm have participated in the Northeast Surety and Fidelity Claim Seminar for many years.

Mr. Reinert lives in the St. Louis suburban community of Kirkwood, Missouri and has been active in community affairs there, particularly as a member of the Kirkwood R7 School District Board for 15 years, 1976 to 1991 and as Chairman of the City of Kirkwood Civil Service Commission.

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John W. Rourke is a shareholder and principal in the St. Louis law firm of Reinert & Rourke, P.C. His practice emphasizes fidelity and surety bond claims and litigation, construction litigation, and commercial law. He is a graduate of the University of Virginia and the University of Missouri School of Law.

Mr. Rourke is licensed to practice law in Missouri, Illinois, and a number of federal courts. He is a member of the American Bar Association, the Missouri Bar, the Illinois State Bar Association, the Chicago Bar Association, and the Bar Association of Metropolitan St. Louis. He has been a contributor to or co-author of a number of papers and publications pertaining to fidelity law, surety law and construction law. Most recently, he has been involved in the following papers or publications: "Issues in Litigation By and Against Banks Arising Under the Uniform Fiduciaries Act, Related Provisions of the Uniform Commercial Code and the Related Cases", 7th Annual Northeast Surety & Fidelity Claims Conference, Iselin, NJ, October 24, 1996; "Fair Debt Collection Laws and Sureties", 8th Annual Northeast Surety & Fidelity Claims Conference, Iselin, NJ, November 6, 1997; "The Fair Credit Reporting Act and Sureties", 9th Annual Northeast Surety & Fidelity Claims Conference, Iselin, NJ, October 22, 1998; "The Use of Waiver and Estoppel Against Fidelity Bond Sureties", 9th Annual Northeast Surety & Fidelity Claims Conference, Iselin, NJ, October 22, 1998; Mechanics Lien Law and Strategies in Missouri, National Business Institute (July 14, 1999 ed.) (co-author); Advanced Construction Law in Missouri, National Business Institute (1998 ed.) (co-author); Managing Construction Claims and Litigation for the Missouri Paralegal, Institute For Paralegal Education (1998) (co-author); "Keeping Crime From Paying: Strategies and Tactics for Recovering Funds From Embezzling Employees", 10th Annual Northeast Surety & Fidelity Claims Conference, Iselin, NJ, October 1999; Missouri Construction Law: What Do You Do When...?, National Business Institute (2000 ed.) (co-author).

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