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**NEGOTIATING THE INTERSECTION BETWEEN THE
EXCEPTIONS TO SUNSHINE LAWS AND THE DUTY TO
COOPERATE BY INSUREDS AND BOND PRINCIPALS**

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INTRODUCTION

Anyone familiar with the surety and fidelity industry knows that fidelity insurance policies often contain clauses that require the insured to cooperate with insurers in claim investigations. These clauses, commonly referred to as “cooperation clauses,” typically require cooperation by allowing insurers and sureties access to evidence, documents and records necessary for the investigation or settlement of a claim. While surety bond indemnity agreements do not include cooperation clauses as often as fidelity policies, bond principals have an implied duty to cooperate with a surety in its investigation of a bond claim. A problem can arise, however, when an insured, bond principal, obligee or creditor claimant fails to provide an insurer with the needed information, claiming that it is protected by a state’s open meetings or open records law.

Open meetings and open records laws, also known as “sunshine laws”¹ in some states, provide for public access to the meetings, records and votes of public governmental bodies.² Although the public policy behind open meetings and open records laws is to promote freedom of information to the public, there are specific instances where a meeting, record or vote may be closed to the public. These closed meetings, records and votes are considered to be exceptions to the open meetings and open records laws; therefore, in an attempt to prevent an insurer or surety from accessing information that may be harmful to either an insured’s fidelity claim or a claim against a principal’s surety bond, an insured or a principal may claim that such information is protected from disclosure.

This article addresses the interaction between the duty to cooperate of an insured, bond principal, obligee or creditor claimant and the exceptions to various states’ open meetings and open records laws. It will first provide an overview of what cooperation clauses are and how they operate. It will then go on to discuss the most common exceptions to open meetings and open records laws, as well as the procedural steps required for closing a meeting, record or vote. Finally, the article will address the best means for handling a claim investigation or settlement where the insured on a fidelity insurance policy, the principal on a surety bond indemnity agreement, or the obligee or creditor claimant on a surety bond claims that information needed for the investigation is protected from disclosure under a state sunshine law.

I. COOPERATION CLAUSES

A. *Duty to Cooperate*

A cooperation clause is a “policy provision requiring that the insured assist the insurer in investigating and defending a claim.”³ Under a standard cooperation clause, an insured is required to cooperate with the insurer in the investigation, settlement and defense of a claim or

¹ See MO. REV. STAT. § 610.010 et seq.

² See APPENDIX A for a list of each state’s open meetings and/or open records law(s).

³ BLACK’S LAW DICTIONARY 359 (8th ed. 2004).

suit.⁴ As a material condition of an insurance policy, the purpose of a cooperation clause is to protect and benefit an insurer.⁵ In addition to serving purposes similar to those served by a cooperation clause in a liability insurance policy, such as protecting the insurer's interests, assisting the insurer in handling a claim and preventing collusion between an insured and an injured third party,⁶ cooperation clauses in fidelity insurance policies can also prevent an insured from recovering on a fraudulent, invalid or untimely fidelity claim.

B. Breach of Cooperation Clause

Some states view cooperation clauses as conditions precedent to recovery under an insurance policy, meaning that no rights accrue under a policy until the condition has been satisfied.⁷ Other states view cooperation clauses as conditions subsequent, whereby an insurer can be relieved of liability under a policy if it can prove that it was prejudiced by the insured's breach of the clause.⁸ Regardless of whether a cooperation clause is viewed as a condition precedent or condition subsequent, an insured can only be relieved of liability under a policy if there is a substantial breach of the cooperation clause and the insured is prejudiced by such breach.⁹ The burden to show prejudice is on the insured.¹⁰ Furthermore, when an insurer invokes a cooperation clause by requesting an insured to produce certain information, the materiality of information is determined by its relevance to an investigation at the time it is asked for.¹¹

1. Breach by the Insured

While there are very few legal decisions addressing cooperation clauses in fidelity insurance policies,¹² there are a number of decisions enforcing cooperation clauses in other types of insurance policies. Tran v. State Farm Fire and Cas. Co.¹³ provides a great illustration of how a court analyzes whether a cooperation clause has been breached and if so, whether

⁴ Belz v. Clarendon America Ins. Co., 69 Cal. Rptr. 3d 864, 868 (Cal. Dist. Ct. App. 2007); Diamonds & Denim, Inc. v. First of Georgia, Ins. Co., 417 S.E.2d 440, 441 (Ga. App. 1992).

⁵ Pearl Assur. Co. v. Watts, 156 A.2d 725, 729 (N.J. Super. App. 1959).

⁶ Dillon Companies, Inc. v. Royal Indem. Co., 369 F.Supp.2d 1277, 1290 (D. Kan. 2005).

⁷ See TIG Ins. Co. v. Chapman and Chapman, P.C., 436 F.Supp.2d 1047, 1056 (D. N.D. 2006); Miller ex rel. Estate of Hott v. Augusta Mut. Ins. Co., 335 F.Supp.2d 727, 731 (W.D. Va. 2004); American Transit Ins. Co. v. Sartor, 814 N.E.2d 1189, 1193 (N.Y. 2004) ("it is permissible for an insurer to seek compliance with various notice and cooperation provisions as conditions precedent to its coverage obligations").

⁸ See Kearns v. Interlex Ins. Co., 231 S.W.3d 325, 331 (Mo. App. S.D. 2007); Goldman v. State Farm Fire General Ins. Co., 660 So.2d 300, 304 (Fla. App. 4 Dist. 1997).

⁹ Tran v. State Farm Fire and Cas. Co., 961 P.2d 358, 363 (Wash. 1998).

¹⁰ Ania v. Allstate Ins. Co., 161 F.Supp.2d 424, 427 (E.D. Pa. 2001).

¹¹ Id.

¹² See Mercedes Benz of N. Am., Inc. v. Hartford Accident and Indem. Co., 974 F.2d 1342, 1992 WL 207892, *3 (9th Cir. 1992) (recognizing that a cooperation clause in a fidelity bond is a condition precedent to recovery).

¹³ 961 P.2d 358 (Wash. 1998).

the insurer was prejudiced by such breach. Tran brought suit against his property insurer, State Farm, after it denied Tran's theft claim on the basis that he breached the policy's cooperation clause. After his business had been burglarized, Tran reported to State Farm that he suffered property damage and a loss of business inventory and personal property; however, when he first reported the burglary to the police, he told them that nothing was missing. Several months after State Farm provided Tran with a personal property inventory form that he was to complete and return together with documentation (i.e., canceled check, receipts, invoices, etc.) that valued the items on the inventory form, Tran finally returned the form. The form listed the stolen property and stated the claimed loss, but no documentation was attached. After numerous attempts to contact Tran by phone and letter in an attempt to get the requested documentation, and after Tran failed to appear at a meeting scheduled to discuss the claim, State Farm informed Tran and his attorney that they would be broadening their investigation to make sure that Tran did not have a motive for submitting a fraudulent claim.

In broadening the investigation, State Farm made requests for any documents relating to the circumstances surrounding the claimed loss as well as detailed business and personal financial information, but Tran's attorney only provided a police report and photographs of the premises taken after the break-in. Tran's attorney informed State Farm that Tran would not produce any financial records or tax returns; Tran also refused to answer any questions about his personal or business finances when he was questioned under oath by State Farm. After repeated attempts to obtain the information needed to evaluate Tran's claim, and after Tran withdrew his claim for inventory in hopes that it would relieve him of having to produce financial records, State Farm declined Tran's claim on the basis that he failed to comply with the policy's cooperation clause.

After determining that the court of appeals incorrectly concluded that an issue of material fact existed as to whether the State Farm was prejudiced by Tran's refusal to provide them with financial records they requested, the Tran Court granted summary judgment to State Farm.¹⁴ In making such finding, the court specifically addressed whether Tran breached the cooperation clause in his insurance policy and whether such breach prejudiced State Farm.

The Tran Court first determined whether Tran breached the insurance policy's cooperation clause. In order to determine Tran's duty to cooperate with State Farm, the court looked at the relevant language of the policy.¹⁵ In finding that Tran did indeed breach the policy's cooperation clause as a matter of law, the court stated that State Farm had good

¹⁴ Id. at 360.

¹⁵ The policy stated the following:

3. Duties in the Event of Loss. You must see that the following are done in the event of loss to covered property:

e. at our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed;

f. permit us to inspect the property and records proving the loss;

g. if requested, permit us to question you under oath at such times as may be reasonably required about any matter relating to this insurance or your claim, including your books and records. ...

i. cooperate with us in the investigation or settlement of the claim;

4. Examination of Your Books and Records. We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward. Tran, 961 P.2d at 363.

reason to broaden its investigation. Since Tran failed to produce the requested information, withdrew part of his claim hoping to avoid having to produce his financial records and told different stories to State Farm and the police, the “possibility of fraud was distinct and Tran’s financial records, therefore, became relevant and material to State Farm’s consideration of his claim.” Tran’s policy with State Farm allowed them to inquire about “any matter” relating to his claim and inspect his “books and records,” yet he refused to produce the requested financial information; therefore, the Tran Court held that “no reasonable juror could conclude that Tran substantially cooperated in the investigation or settlement of his claim.”

After finding that Tran breached the policy’s cooperation clause, the court had to determine whether State Farm was prejudiced by such breach. Even though State Farm did not have to make any payments on the claim and they still retained their right to subrogation, the Tran Court held that Tran’s failure to provide the requested documentation inhibited State Farm’s ability to adequately investigate the claim, therefore causing them prejudice. According to the court:

the business of insurance companies is . . . to provide coverage for the legitimate claims of the parties it insures. If insurers are inhibited in their effort to process claims due to the uncooperativeness of the insured, they suffer prejudice . . . If we were to reach any other result, we would be encouraging insureds to not cooperate and to submit fraudulent claims.

Another case that addresses a breached cooperation clause is Romano v. Arbella Mut. Ins. Co.¹⁶ In Romano, two sisters sued their property insurer, Arbella, for unfair claim settlement practices and breach of contract on the basis that Arbella denied their claim for loss resulting from a fire that occurred on their property. The Romano sisters’ policy with Arbella required them to produce records and documents pertinent to any loss, so when they failed to produce the financial records requested by Arbella on several occasions, Arbella denied their claim.

Similar to Tran, the Romano Court addressed whether the sisters breached the cooperation clause contained in their policy with Arbella, and if so, whether Arbella suffered prejudice as a result of the breach. Although the court found that the sisters breached the cooperation clause by their failure to produce the requested financial documents, Arbella was not prejudiced by the breach. Unlike in Tran, where State Farm never received the requested documents from their insured, the Romano sisters eventually provided Arbella with the requested financial documents, thereby allowing Arbella to make an adequate assessment of the claim.

2. Breach by the Principal

The duty to cooperate is also often apparent in the written indemnity agreement between the surety and the principal. While a written cooperation clause in an indemnity agreement can require a principal and an indemnitor to notify a surety of claims and cooperate in the defense of such claims, courts have found that the duty to cooperate is implicit in

¹⁶ 429 F.Supp.2d 202 (D. Mass. 2006).

indemnity agreements.¹⁷ The following is an example of a duty to cooperate provision in an indemnity agreement:

*The Undersigned shall give the Surety prompt notice of any claim, demand, suit, arbitration proceeding or other action which purports to be instituted on any Board and shall cooperate with the Surety in defense thereof.*¹⁸

A principal's duty to cooperate with a surety's investigation of a claim on a payment or performance bond is also a main factor in determining whether the surety acted reasonably and in good faith in settling the claim.¹⁹ In Atlantic Contracting & Material Co., Inc. v. Ulico Cas. Co.,²⁰ Ulico brought an action against Atlantic to recover under an indemnity agreement for payments it made on a payment bond claim. As stated in Ulico, a surety is not entitled to indemnification from a bond principal unless the surety pays a claim with reasonableness and good faith.

The Ulico Court set forth the following four factors to be used in determining whether a bond claim was paid in good faith: 1) the surety's obligations under the bond; 2) whether the principal has made more than generalized demands that the surety deny a claim; 3) the principal's cooperation with the surety's investigation; and 4) the thoroughness of surety's investigation. A surety must obtain information relating to the work covered by a bond from the principal; accordingly if Atlantic did not think the claim was covered under the bond, it should have provided Ulico with such information when Ulico asked for it. In holding that Ulico properly paid the claimant on the bond, the Ulico Court stated that Atlantic failed to provide Ulico with evidence and documentation as to why the claim should not be paid; there was nothing to indicate to a reasonable surety that there was an issue with the coverage under the payment bond.

As illustrated in Tran and Romano, an insured's failure to abide by a cooperation clause can relieve an insurer of liability under an insurance policy if the insurer is prejudiced by the insured's non-cooperation. While neither of those cases specifically deals with fidelity insurance policies, the analysis of the cooperation clause in each case is applicable to all varieties of insurance policies as well as surety and fidelity bonds. For example, many employee fidelity policies require an insured to provide notice of a loss to its insurer within a certain period of time after the loss is known or discovered. Accordingly, where an insured may have had knowledge of or had reason to know of a loss earlier than what it reported to its insurer, the insured may try to withhold certain records or documentation requested by the insurer which could reveal the insured's failure to provide notice within the stipulated period. If this type of situation occurred within a policy that included a cooperation clause, the

¹⁷ THE SURETY'S INDEMNITY AGREEMENT: *LAW AND PRACTICE, 2ND ED.* 351–52 (Marilyn Klinger, George J. Bachrach and Tracey L. Haley eds., 2d ed. 2008).

¹⁸ *Id.* at 351.

¹⁹ Atlantic Contracting & Material Co., Inc. v. Ulico Cas. Co., 844 A.2d 460, 474–75 (Md. 2004). See *a/so Gundle Lining Constr. Corp. v. Adams County Asphalt, Inc.*, 85 F.3d 201 (5th Cir. 1996)(holding that surety acted in good faith in settling a payment bond claim where the bond principal failed to return the surety's telephone calls or respond to the surety's letters).

²⁰ 844 A.2d 460 (Md. 2004).

withholding of such documents could be a violation of such clause if the insurer was prejudiced.

Furthermore, while Ulico illustrated that a bond principal has a duty to cooperate in a surety's claim investigation and its failure to cooperate is a determining factor in whether the surety's payment of a claim is found to be reasonable and in good faith, it is possible that a surety bond indemnity agreement could also include a cooperation clause. In such a case, the cooperation clause would be analyzed as in Tran and Romano.

3. Breach by the Obligee or Creditor Claimant

Of course, the notion of necessary cooperation in the investigation of a claim presented to a surety by a bond obligee or creditor claimant is also an inherent part of the claims presentation and resolution process. The covenant of good faith and fair dealing requires an obligee or creditor claimant to cooperate in a surety's claim investigation, and such cooperation is necessary in order for the surety to conduct a complete and accurate investigation of a claim.²¹ While the surety's job is to investigate a bond claim, it is not the surety's job to "create the claim."²² A bond obligee or creditor claimant must cooperate with a surety by accurately documenting its claim and submitting a proof of claim to the surety,²³ failure to submit substantiated claims can easily result in a claim denial.²⁴

In Balfour Beatty Constr., Inc. v. Colonial Ornamental Iron Works, Inc., a surety was released from its obligations under a private performance bond because the obligee failed to give the surety proper notice of default.²⁵ The performance bond in Balfour provided that when the obligee declared a principal in default the surety could remedy the default or, after "reasonable" notice to the surety, the obligee could arrange to remedy the default at the expense of the surety. The obligee in Balfour failed to give proper notice in a timely fashion, yet sought recovery from the surety. The Balfour Court found that "as a result of the [obligee's failure to give proper notice] the [obligee] fails to meet a necessary condition for [the surety's] liability under the bond and the [surety's] motion for summary judgment is granted."

Similar to Balfour, the performance bond in Dragon Constr. v. Parkway Bank & Trust²⁶ gave the surety the option, upon the principal's default, of either performing the contract itself or else arranging for a replacement contractor. Rather than cooperating with the surety and

²¹ BOND DEFAULT MANUAL 51 (Duncan L. Clore, Richard E. Towle and Michael J. Sugar, Jr. eds., 3d ed. 2005).

²² Farmer's Union Cent. Exch., Inc. v. Reliance Ins. Co., 675 F.Supp. 1534 (D. N.D. 1987).

²³ Id. at 1542.

²⁴ See id.

²⁵ 986 F.Supp. 82, 83 (D. Conn. 1997). See also, School Bd. of Escambia Cty. v. TIG Premier Ins. Co., 110 F. Supp. 2d 1351, 1353 (N.D. Fla. 2000)("Failure to adhere to a performance bond notification requirement is a material breach, resulting in the loss of an obligee's rights under the bond."); National Surety v. Long, 125 F. 887, 888 (8th Cir. 1903)(holding that an eleven day delay in mailing the notice of default did not comply with the condition precedent of the bond to provide "immediate" notice of the principal's default and therefore the surety was discharged from its obligations under the bond).

²⁶ 678 N.E.2d 55 (Ill. App. 1st Dist. 1997).

providing the surety with the right to complete the contract, the obligee hired its own replacement contractor upon the principal's inadequate performance. The Dragon Court held that the performance bond was null and void because the surety "was stripped of its contractual right to minimize its liability under the performance bond by ensuring that the lowest responsible bidder was selected to complete the job."

An affirmative duty to cooperate with the surety can further arise when the obligee deals directly with the surety in obtaining a bond. An obligee cannot withhold information from a surety which would affect a surety's decision to undertake a risk;²⁷ the obligee must not be silent about information that would amount to a misrepresentation and it must disclose information to which it has unique access.²⁸ If the obligee conceals information that is critical to the surety's decision of whether or not to undertake a risk, such concealment may permit a discharge of the surety.²⁹

An obligee's duty to cooperate with the surety is also apparent in the AIA Document A312-184 Performance Bond and A312-1984 Payment Bond. The A312-1984 Performance Bond requires the obligee to notify the contractor and surety of its intent to declare the contractor in default, and it requires the owner to arrange a meeting with the contractor and surety to discuss the performance of the contract and possible ways to fulfill the contract terms.³⁰ The A312-1984 Payment Bond requires a claimant that has direct contract with the principal to give notice of its claim to the surety and send a copy to the Owner, stating the amount of the claim with substantial accuracy.³¹ Claimants who do not have direct contract with the principal must: (a) give written notice to the contractor and owner within ninety (90) days of last performing work or providing materials, stating the amount of the claim with substantial accuracy and the name of the party to whom the materials were supplied or for whom the labor was performed; (b) receive a rejection from the contractor, but if a rejection is not received, the claimant must then wait thirty (30) days to receive any communication from the contractor; and (c) if the claimant is not paid within the thirty (30) days, it must send written notice to the surety, with a copy to the owner, enclosing the previous notice sent to the contractor.³² Whether it is an obligee making a claim on a performance bond or a creditor claimant making a claim on a payment bond, cooperation with the surety is necessary for the surety to conduct a sufficient investigation of the claim.

²⁷ See, e.g., Plant Process Equip. v. Continental Carbonic Prods., 1994 WL 201218, 1994 U.S. Dist. LEXIS 6459 (N.D. Ill. May 17, 1994).

²⁸ See, e.g., First Citizens Bank & Trust Co. v. Sherman's Estate, 250 A.D. 339 (N.Y. App. Div. 1937).

²⁹ See, e.g., St. Paul Fire & Marine Ins. Co. v. Commodity Credit Corp., 646 F.2d 1064, 1073 (5th Cir. 1981) ("A creditor who, during [contract] negotiations, actively and fraudulently conceals pertinent facts cannot then turn to the surety for reimbursement. Similarly, the surety has a defense to liability if, before the obligation is undertaken, the creditor knew of facts unknown to the surety and which he had reason to believe were not known to the surety, the facts materially increased the obligor's risk and the creditor had adequate time to disclose them but failed in his responsibility.") (citations omitted)).

³⁰ AIA Document A312-1984 Performance Bond § 3.

³¹ AIA Document A312-1984 Payment Bond § 4.1.

³² Id. at § 4.2.

Where we run into a problem, however, is when records and documents requested by the insurer or surety are protected under a state's open meetings or open records law. Are insureds and bond principals entitled to withhold documents requested by their insurer if the documents are considered to be protected under a state open meetings or open records law? Or, do insureds and bond principals have to produce the protected information in order to comply with a cooperation clause in a fidelity policy or indemnity agreement?

II. SUNSHINE (OPEN MEETINGS AND OPEN RECORDS) LAWS

While there are a myriad of titles (sunshine law,³³ freedom of information act,³⁴ open door law,³⁵ open meetings act,³⁶ open records act,³⁷ etc.) for the laws that provide citizens with access to information about the activities of public governmental bodies in their state, each law is designed to promote the freedom of information. Some states have a single statute that addresses both public body meetings and records,³⁸ but a majority of states have two separate statutes, one that addresses open meetings and another that addresses access to public records.³⁹ While statutes addressing public meetings have a different focus than those addressing public records, both statutes relate to one another and should be construed together.

A. *Open Meetings Laws*

Open meetings laws are based on the notion that citizens have a right to observe and question governmental operations and decision making. Open meetings laws require governmental bodies to discuss official business and conduct voting at meetings that are open to the public. "The intent of the Open Meetings Law is that citizens be given the opportunity to obtain information about and to participate in the legislative decision-making process."⁴⁰ While public policy favors a citizen's right to attend meetings of government bodies, virtually every state's open meetings law provides for executive sessions.⁴¹

Executive sessions are meetings that are closed to the public, and it is these executive sessions that can negatively affect an insurer's investigation of a fidelity or surety bond claim.

³³ See, e.g., Hawaii (HAWAII REV. STAT § 92-1 et seq.); Missouri (MO. REV. STAT § 610.010 et seq.).

³⁴ See, e.g., Delaware (DEL. CODE ANN. tit. 29, §10001 et seq.); Illinois (ILL. COMP. STAT. ANN. 140/1 et seq.).

³⁵ See, e.g., Indiana (IND. CODE § 5-14-1.5-1 et seq.).

³⁶ See, e.g., Alabama (ALA. CODE § 36-25A-1 et seq.).

³⁷ See, e.g., Kansas (KAN. STAT. ANN. § 45-215 et seq.).

³⁸ See, e.g., Alabama (ALA. CODE § 36-25A-1 et seq.); Missouri (MO. REV. STAT § 610.010 et seq.).

³⁹ See, e.g., Illinois's Freedom of Information Act (ILL. COMP. STAT. ANN. 140/1 et seq.) and Open Meetings Act (ILL. COMP. STAT. ANN. 120/1 et seq.); Texas' Public Information Act (TEX. GOV'T CODE ANN. § 552.001 et seq.) and Open Meetings Act (TEX. GOV'T CODE ANN. § 551.001 et seq.).

⁴⁰ Cole v. State, 673 P.2d 345, 349 (Colo. 1983).

⁴¹ See, e.g., Alabama (ALA. CODE §36-25A-7); Delaware (DEL. CODE ANN. tit. 29 §10004(b));Georgia (GA. CODE. ANN. § 50-14-4).

Since agendas and meeting minutes from executive sessions are often considered closed records,⁴² an insured, bond principal, obligee or creditor claimant may claim that such agendas or minutes are exempt from production under a cooperation clause, if production of those documents would be damaging to it. Although this article will later discuss how to best deal with the relationship between executive session records and the duty to cooperate in claim investigations, agendas and meeting minutes cannot be closed records in the first place if a government entity fails to follow the correct procedures in organizing and conducting an executive session.

1. Notice

Each state's sunshine statute sets forth minimum requirements for providing the public with proper notice of open meetings. While the notice requirements may vary among the states, governmental bodies are always required to provide the time, date, and place of all open meetings.⁴³ Notice requirements for executive sessions also vary among the states. Many states, including Alaska, Connecticut and Mississippi, require a governmental body to vote on whether to have an executive session during an open meeting.⁴⁴ Other states such as Arkansas, California and New Jersey just require the announcement of an executive session at a public meeting.⁴⁵ Still other states simply apply the same notice requirements that are used for regular or special meetings.⁴⁶

Whether a state's executive session notice requirements call for a vote or an announcement at an open meeting, it is important that the notice requirements for the open meeting were also properly met. If an executive session is voted on or announced at an improperly convened open meeting, it is probable that any action taken at the executive session will be invalidated or the session's agenda and meeting minutes will become open, as the improper notice requirements of the open meeting will likely pass through to the executive session. Furthermore, regardless of what specific notice requirements must be met to conduct an executive session, all government bodies are required to state the legal basis for convening in a closed session.⁴⁷

⁴² See, e.g., Arizona (ARIZ. REV. STAT. ANN. § 38-431.03(B))(" minutes of and discussions made at executive sessions shall be kept confidential").

⁴³ See, e.g., New York (N.Y. PUB. OFF. LAW § 104(1)); Oklahoma (OKLA. STAT. tit. 25 § 311(A)(1)).

⁴⁴ Alaska (ALASKA STAT. § 44.62.310(b)) requires a majority of the vote of the governmental body, Connecticut (CONN. GEN. STAT. § 1-225(f)) requires a vote of two-thirds of the public body members that are present and voting and Mississippi (MISS. CODE ANN. §25-41-7(1)) requires a vote of three-fifths of the public body members present.

⁴⁵ See, e.g., Arkansas (ARK. CODE ANN. §25-19-106(c)(1)); California (CAL. GOV. CODE § 11126.3(a)); New Jersey (N.J. STAT. ANN. § 10:4-13).

⁴⁶ See, e.g., Idaho (IDAHO CODE ANN. § 67-2343(3))(applying the same notice requirements as regular or special meetings, if the executive session is part of such meeting, but if an executive session is held alone, a 24-hour meeting and agenda notice must be provided to the public); New Hampshire (N.H. REV. STAT. ANN. § 91-A:2).

⁴⁷ See, e.g., Colorado (COLO. REV. STAT §24-6-402(3)(a)); North Carolina (N.C. GEN. STAT. § 143-318.11(c)); Washington (WASH. REV. CODE § 42.30.110(2)).

2. Legal Authority for Closed Meeting

Prior to conducting an executive session, a government body must provide the public with the reason or statutory authority for closing such session.⁴⁸ The topic or subject of the closed session must comply with those provided in the applicable state's open meetings law. Some states simply require a reference to the statutory exception that allows the executive session, while other states require a more detailed description of the matter to be discussed. Mississippi, for example, requires the reason for an executive session to be stated "with sufficient specificity to inform those present that there is in reality a specific, discrete subject matter which the board has determined should be discussed in an executive session."⁴⁹

Similar to the variation in notice requirements, the topics or subjects that may be considered in an executive session differ depending on the state. The most common subjects that may be discussed in executive sessions include: the hiring, firing or disciplining of an officer, employee, staff member or agent;⁵⁰ the acquisition or sale of real estate;⁵¹ discussions regarding pending litigation;⁵² and the review of records that are authorized by state or federal law to be kept confidential.⁵³ Other topics often permitted for executive sessions include: grading and administering examinations or tests required by a public body;⁵⁴ discussing the issuance, renewal, suspension or revocation of a license;⁵⁵ discussing the dismissal, suspension, or discipline of a student;⁵⁶ and discussing the development of security plans.⁵⁷ While most states have a number of topics that can be reserved for an executive session, Florida and Montana allow executive sessions for only one purpose, to discuss litigation strategy.⁵⁸

⁴⁸ See, e.g., Maryland (MD. CODE ANN., STATE GOVERNMENT § 10-509(c)(2)).

⁴⁹ Hinds County Bd. of Supervisors v. Common Cause of Mississippi, 551 So.2d 111, 111 (Miss. 1989).

⁵⁰ See, e.g., Hawaii (HAW. REV. STAT. § 92-5); Oregon (OR. REV. STAT. § 192.660(2)(a)-(b)); Virginia (VA. CODE ANN. § 2.2-3711(A)(1)).

⁵¹ See, e.g., Kentucky (KEN. REV. STAT. ANN. § 61.810(1)(b)); Nebraska (NEB. REV. STAT. § 84-1410(1)(a)).

⁵² See, e.g., Maine (ME. REV. STAT. ANN. tit. 1 § 405(6)(E)); North Dakota (N.D. CENT. CODE §44-04-19.1(9)).

⁵³ See, e.g., Iowa (IOWA CODE § 21.5(1)(a)).

⁵⁴ See, e.g., Nevada (NEV. REV. STAT. § 241.030(1)(b)).

⁵⁵ See, e.g., New Mexico (N.M. STAT. 1978, § 10-15-1(H)(1)).

⁵⁶ See, e.g., Michigan (MICH. COMP. LAWS § 15.268(b)).

⁵⁷ See, e.g., Louisiana (LA. REV. STAT. ANN. § 42:6.1(5)).

⁵⁸ FLA. STAT. § 286.011(8)(allowing a "chief administrative or executive officer of the governmental entity [to] meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency"); MONT. CODE ANN. §2-3-203(4)(allowing a closed meeting to "discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency").

3. Improper Notice

If a public body fails to follow the required notice provisions or fails to provide the statutory authority for holding an executive session, there are a number of consequences that may result. Most states permit a person to bring a civil action against a public body for failure to comply with the procedures and requirements necessary for holding an executive session. In Illinois, an improperly convened executive session may result in any of the following actions by the court: ordering that a future meeting be open, ordering minutes of a closed meeting to be made public, voiding any action taken in a closed meeting, and awarding attorney's fees to a citizen who prevails in such a civil action.⁵⁹

In Gumina v. City of Sterling⁶⁰, a city council's failure to comply with the requirements for holding an executive session under Colorado's Open Meetings Law resulted in the session's recorded minutes being open to the public. After Gumina had been fired from her job as the Assistant City Manager, she made a records request for the minutes from the two City Council meetings during which her employment had been discussed. The City produced everything she requested except the executive session minutes. In determining whether Gumina had a right to access the executive session minutes, the Gumina Court addressed whether the City Council had properly convened the two executive sessions, and if not, whether the minutes from those sessions would become open to the public.

Under Colorado's Open Meetings Law, a local public body may discuss "personnel matters" at an executive session unless the employee who is going to be the subject of discussion has requested an open meeting.⁶¹ Prior to holding the two executive sessions where Gumina's employment was discussed, Gumina had no knowledge that she was going to be the subject of discussion at such meetings, so she did not have the choice to request an open meeting. By failing to provide Gumina with notice that she was going to be the subject of the executive sessions, the court found that the City Council improperly convened the two sessions.

In Colorado, the meeting and recorded minutes of an executive session become open to the public if an executive session is not convened properly. In holding that the minutes of the two executive sessions became public records because the sessions were improperly convened, the Gumina Court stated the following:

Strictly construing the executive session provisions, and considering the legislative intent of the statute that favors public access to meetings of local public bodies, we conclude that if a local public body fails strictly to comply with the requirements set forth to convene an executive session, it may not avail itself of the protections afforded by the executive session exception. Therefore, if an

⁵⁹ 5 ILL. COMP. STAT. ANN. 120/3(c)-(d).

⁶⁰ 2004 WL 3015806, *5 (Colo. App. 2004).

⁶¹ COLO. REV. STAT. § 24-6-402(4)(f)(I). Alaska also has an open meetings law which gives individuals who are the subject of an executive session the right to have the session conducted in public. ALASKA STAT. 44.62.310(c)(2) ("subjects that tend to prejudice the reputation and character of any person" are proper topics for executive sessions "provided the person may request a public discussion").

executive session is not properly convened, it is an open meeting subject to the public disclosure requirements of the Open Meetings Law.

Other courts have found violations of open meetings laws where a public agency failed to cite the subject matter of an executive session by specific reference to the applicable statute.⁶² In Gary/Chicago Airport Bd. of Authority v. Maclin,⁶³ a citizen sued the airport board for violating Indiana's Open Door Law for its failure to provide accurate notice of an executive session. The public notice for the session stated that the following subjects would be discussed: (A) FOI Request Letter, and (B) Legal Matters. In holding that the notice was inadequate, the Gary Court stated that Indiana's Open Door Law requires a *specific reference* to the subject matter for which an executive session may be held. The court also found that the Airport Board violated the Open Door Law by failing to maintain memoranda from the executive session. Indiana's Open Door Law requires a public agency to maintain memoranda and minutes of its executive sessions,⁶⁴ so when the Board admitted that it did not maintain any memoranda from its executive sessions, it was apparent that there was another violation of the Open Door Law.

B. Open Records Laws

Just as public policy promotes citizen access to the meetings of public governmental bodies, every citizen also has the right to inspect and copy public records. Each state has an open records law which sets forth the procedures and regulations for inspecting and requesting copies of public records. Public records typically consist of all documentary materials maintained by a public agency including, but not limited to, papers, books, recordings and computer data.⁶⁵ While most of a public body's records are considered to be open records,⁶⁶ each state has particular documents that are exempted from its open records law and closed to the public. Again, it is these closed records that an insured, principal, obligee or creditor claimant may claim are exempt from production under a cooperation clause if production of such documents would be damaging to its claim. Similar to the notice requirements for executive sessions, public records cannot typically be closed unless they fall within an exemption to an open records law and are therefore designated as closed records.

⁶² See Gary/Chicago Airport Bd. of Authority v. Maclin, 772 N.E.2d 463 (Ind. App. 2002).

⁶³ 772 N.E.2d 463 (Ind. App. 2002).

⁶⁴ IND. CODE § 5-14-1.5-6.1(d) ("The requirements stated in section 4 of this chapter for memoranda and minutes being made available to the public is modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.").

⁶⁵ See, e.g., South Carolina (S.C. CODE ANN. § 30-4-20(c)) ("Public record' includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body."); South Dakota (S.D. CODIFIED LAWS § 1-27-21) (" [A]n official public document or record is any document officially compiled, published, or recorded by the state including deeds, publicly probated wills, records of births, deaths, and marriages, and any other document or record required to be kept open for public inspection pursuant to chapter 1-27.").

⁶⁶ See, e.g., Massachusetts (MASS. GEN. LAWS ANN. ch.66, § 10(c)).

1. Exemption Characteristics

No matter what state a public agency is located in, any refusal to disclose a public record must be based on an exception to the applicable state's open records law. Since the main purpose of open records and open meetings laws is to promote the free flow of information between public governmental bodies and citizens, requests for information are liberally construed⁶⁷ and exemptions to open records law are construed narrowly.⁶⁸

If the scope of an exemption is unclear, it will usually be interpreted in a manner favoring disclosure.⁶⁹ In addition, the public body claiming that a record is exempt from disclosure under an open records law has the burden of proving that such record is a closed record.⁷⁰ In situations where only a portion of a public record is entitled to be exempt, the remainder of the record should remain open for public inspection.⁷¹ Furthermore, if a public record is permissively exempt under an open records law, but the public office discloses it anyway, the office is usually deemed to have waived that exemption.⁷²

2. Categories of Exemptions

Each state's open records law lists the documents that are exempt from production under a public records request. Again, just as the executive session notice requirements vary among the states, so do the number and subject matter of exemptions to open records laws.

Some states have just a few open record exemptions, such as Pennsylvania's Right to Know Act which has only four categories of documents that are exempt from public disclosure⁷³ and Rhode Island's Access to Public Records Act which contains twenty five categories of exemptions.⁷⁴ Some states have hundreds of exemptions. Some exemptions are general, others are specific; some are mandatory, others are discretionary. Common exemptions to open records laws include: criminal investigation records,⁷⁵ information

⁶⁷ See, e.g., Texas (TEX. GOV'T CODE ANN. § 552.001(b)).

⁶⁸ See, e.g., Missouri (MO. REV. STAT. § 610.011). See also Capital Newspapers Division of Hearst Corp. v. Whalen, 505 N.E.2d 932, 936 (N.Y. 1987)("[New York's Freedom of Information Law] is to be liberally construed and its exemptions narrowly interpreted so that the public is granted maximum access to the records of government").

⁶⁹ See Orsini v. State, 13 S.W.3d 167, 170 (Ark. 2000).

⁷⁰ State ex rel. Nat'l Broadcasting Co. v. City of Cleveland, 526 N.E.2d 786, 790 (Ohio 1988).

⁷¹ See, e.g., Wisconsin (WIS. STAT. 19.36(1)).

⁷² See, e.g., California (CAL. GOV'T CODE § 6254.5).

⁷³ 65 PA. CONS. STAT. § 66.1.

⁷⁴ R.I. GEN. LAWS § 38-2-2(4)(i)(A)-(Y).

⁷⁵ See, e.g., Tennessee (TENN. CODE ANN. § 10-7-504(a)(2)(A)); Vermont (VT. STAT. ANN. tit. 1, § 317(c)(5)); Virginia (VA. CODE ANN. § 2.2-3706(F)(1)).

maintained in employee personnel files,⁷⁶ trade secrets,⁷⁷ records pertaining to pending litigation to which the public body is a party,⁷⁸ adoption records,⁷⁹ and any records specifically exempt from public disclosure by statute or common law.⁸⁰

Even though a record may be exempt from public disclosure, certain closed records are still required to be disclosed to certain individuals. For example, a closed record must typically be provided to the person who is the subject of the record.⁸¹ Overall, whether a document or record of a public agency is exempt from disclosure ultimately depends on what exemptions are included in the applicable state's open records law and how those exemptions are interpreted by that state.

III. SUNSHINE LAWS AND THE DUTY TO COOPERATE

Whether an insurer is investigating a claim on a fidelity insurance policy or a surety is investigating a claim by the obligee on a surety bond, cooperation by the insured, the bond principal and the obligee or creditor claimant is significantly important. In order to investigate claims adequately and timely, the insurer often needs information and documentation from the insured, bond principal, obligee or creditor claimant. As discussed in Section I above, fidelity insurers often incorporate cooperation clauses into their policies to ensure that they receive all of the information necessary for a claim investigation. While cooperation clauses are not as common in surety bond indemnity agreements, cooperation by a principal is still necessary, as it is a key factor in determining whether a surety acted in good faith in paying a claim on a surety bond.

While an insured's failure to cooperate may result in the denial of claim against a fidelity insurance policy, like in Tran, an issue can arise when such failure is protected by an open meetings or open records law. If documents or records requested by a fidelity insurer or a surety could reveal information that is damaging to the position of an insured, a bond principal or an obligee, such party may claim that the requested documents are protected from disclosure under the applicable state's open meetings or open records law.

Take the situation where an insurer is investigating a claim based on an employee dishonesty policy. The insured, a local government agency, claims that one of its employees has stolen thousands of dollars from the agency. Determining when the agency discovered the loss is a vital part of the investigation, because the policy requires the agency to provide notice of a loss to the insurer within thirty days of the loss being discovered. During its investigation, the insurer requests copies of the employee's personnel file for the purpose of confirming that there is nothing in the file showing that the insured had knowledge of or had reason to know of any prior dishonesty of the employee. The employee's personnel file may

⁷⁶ See, e.g., West Virginia (W. VA. CODE ANN. § 29B-1-4(a)(2));

⁷⁷ See, e.g., Iowa (IOWA CODE § 22.7(3)); Wyoming (WYO. STAT. ANN. § 16-4-203(d)(v)).

⁷⁸ See, e.g., Virginia (VA. CODE ANN. § 2.2-3705.1(3)).

⁷⁹ See, e.g., Maryland (MD. CODE ANN. § 10-616(b)).

⁸⁰ See, e.g., Delaware (DEL. CODE ANN. tit. 29, § 10002(g)(6)); Maine (ME. REV. STAT. ANN. tit. 1, § 402(3)(A)).

⁸¹ See, e.g., Utah (UTAH CODE ANN. § 63-2-202(1)(a)).

actually contain several memoranda referencing reports from other employees that the employee in question had been stealing money from the agency. One of the memoranda dates back to more than a year before the insured made its claim. Knowing that these memoranda and other material information in the file could potentially prevent the insured from recovering on the claim, the agency claims that the employee's personnel file is protected from disclosure under the state open records act. Since the applicable open records act exempts personnel records, the insurer and the agency are at an impasse. The insurer needs the personnel file to complete its investigation adequately; the agency claims that the information is a closed record.

Furthermore, while research did not bring to light any surety cases where an obligee or creditor claimant raised the confidentiality of information or documents requested by a surety pursuant to the generally accepted exceptions from disclosure, it is not hard to imagine such situations developing. One might be where there are allegations, say by the bond principal, that a particular employee of the obligee, now discharged, had acted inappropriately in the bonded transactions thereby providing a defense to the claim on the bond. In that circumstance the discharged employee's personnel file might have information and documentation, indeed, might be the sole repository of the information and documentation relative to the employee's wrongdoing maintained by the obligee; truly that information and documentation ought to be made available to the surety in relation to the bond claim arising out of the bonded transaction.

Since the courts have not addressed whether cooperation clauses and the duty to cooperate overrides the exceptions to the open meetings and open records laws, the remainder of this article proposes the best methods for dealing with an insured, principal, obligee or creditor claimant who fails to cooperate in a claim investigation on the basis that requested documents or records are exempt from disclosure under such laws.

A. Verification of Notice Requirements

When the insured on a fidelity bond or a principal or obligee on a surety bond is a public governmental agency, a request for specific documents may be subject to the corresponding state's open meetings law. As discussed in Section II above, every state's open meetings law provides for executive or closed sessions, and the agendas and meeting minutes from these sessions are typically closed as well. As a result, any claimant on a policy or bond may decide to refuse to cooperate with an insurer's or surety's request for copies of meeting agendas and minutes if such requests pertain to meetings that were closed to the public.

The first thing that an insurer or surety can do to deal with this type of problem is to verify that the executive session was properly held. As discussed in Section II.A.1. above, each state has particular notice requirements for convening an executive session. Almost all states require the reason or statutory authority for the executive session to be stated at a regular meeting. By obtaining a copy of the meeting minutes from the regular meeting that was held prior to the executive session, an insurer can verify whether the executive session was permitted by law. Many states require reference to the specific statute that permits the executive session, so simply stating that the purpose of the session is to discuss "personnel matters" will not be sufficient in most states. Other common things to keep an eye out for, if applicable, include: whether the public body conducted a proper vote for an executive session; whether the subject of a personal matter was given the right to choose whether he or she

wanted an open or closed meeting; and whether the proper posting requirements were followed for the regular meeting where the executive session was announced. Furthermore, even if the public body provided adequate notice requirements, it is important to make sure that executive session agendas and minutes are truly closed records dealing with subject matters exempt from disclosure, as that is not necessarily true just because they are from a closed session.

Since each state has different notice requirements for an executive session, and since a public body's failure to comply with notice requirements can result in the opening of agendas and meeting minutes from closed sessions, it is important to make sure that a public body has complied with all of the necessary requirements. If you discover that a public body (whether an insured, a principal, an obligee or a creditor claimant) has failed to comply with the applicable notice requirements, yet is claiming that requested documents are exempt from disclosure, bring this to that party's attention. A failure to follow proper notice requirements may prompt such party to disclose the requested information. If the public body continues to withhold the requested documents, the party making the request has the right to bring suit against the offending public body.⁸²

B. Verification of Applicable Exemption

Verifying the notice requirements for executive sessions is one thing; an insurer or surety should also verify the claimed exemption under which an insured or principal fails to produce requested records and documents needed for a claim investigation. It is important that an insurer or a surety carefully reviews the corresponding state's open records exemptions to make sure that the claimed exemption is indeed applicable. The exemptions vary greatly from state to state, so some things may be exempt in one state but not in another. Furthermore, even though some categories of information may be exempt from the general public, there are still certain people who can be provided with exempt records.⁸³

It is also important to remember that exemptions are typically construed very narrowly, and courts are typically in favor of providing the public with access to public documents. Nonetheless, if you have an insured or a principal that is a public governmental body, and the records that it is claiming to be exempt do not appear to fall within the state's open records exemptions, immediately bring this to the attention of the insured or the principal. Again, if the public body continues to withhold the documents necessary for the claim investigation, a suit can be brought against it.⁸⁴ As mentioned in Section II.B, if a suit is brought against a public body to enforce an open meetings law, the burden to prove that a document is exempt will be on the public body.

⁸² See *supra* Section II.A.3.

⁸³ See, e.g., Missouri (MO. REV. STAT. § 610.100(4)), which permits insurers access to certain records exempt from disclosure where necessary to claim investigations, including police reports regarding criminal activity pertinent to an insurance claim.

⁸⁴ See *supra* Section III.A.

C. Enter into a Confidentiality Agreement

When a public body has met all of the notice requirements for an executive session or there is a valid statutory exemption for certain documents that you requested in your investigation of a surety or fidelity bond claim, the best possibility for obtaining the necessary documents may be to enter into a confidentiality agreement with the insured, the bond principal, the obligee or the creditor claimant.⁸⁵ A confidentiality agreement will provide the insurer or surety with the documents that it needs to complete its claim investigation, and it will assure the other parties that private and confidential information will not make its way into the public domain.

A confidentiality agreement can include the specific documents that an insurer or surety needs to complete its investigation,⁸⁶ or it can be more general, stating that the insured or bond principal will provide any documents needed for the claim investigation.⁸⁷ An agreement can further specify the definition of important terms used in the agreement, the intended use of the confidential documents, how long the documents will remain confidential, how long the agreement will remain binding on the parties and the parties' rights and remedies upon breach of the agreement. While the content of a confidentiality agreement can vary greatly, there are several important elements that should be included in an agreement.

First and foremost, a confidentiality agreement must clearly identify the person/organization that will be disclosing information and the person/organization that will be receiving the information. Ideally, a confidentiality agreement should state the scope of information covered by the agreement. An agreement does not have to list every specific document that the insured or bond principal is going to disclose, but it is helpful to at least state the categories or types of documents that will be produced. By listing either the specific documents or the types of documents that will be disclosed, both parties can be made fully aware of the extent of the disclosures to be made.

Another important element of a confidentiality agreement is the purpose of the agreement. Including the reason behind the parties' wish to communicate the information can help to further define the scope of an agreement by setting forth intended use of the disclosed information by the insured or the surety. An agreement should also include a limitation stating who the insurer or surety can pass the disclosed information on to. At the same time, it is helpful if the agreement includes actions that an insurer or surety is not prohibited from taking with respect to the disclosed information.⁸⁸ It is also important to include the terms of the agreement: how long the information will remain confidential and how long the agreement will remain effective. Finally, a confidentiality agreement should include the remedies available for a breach of the agreement.

Although entering into a confidentiality agreement is a good way to resolve a situation wherein an insured, bond principal, obligee or creditor claimant refuses to produce confidential

⁸⁵ See APPENDIX B and APPENDIX C for several sample confidentiality agreements.

⁸⁶ See APPENDIX B.

⁸⁷ See APPENDIX C.

⁸⁸ See APPENDIX B.

information needed for a claim investigation, there is a possibility that it may not want to enter into an agreement if it knows that disclosing the information may be harmful to such party's position. If that is the case, an insurer on a fidelity insurance policy or the surety has no choice but to deny the claim based on the fact that the investigation could not be completed. As for a surety in the situation where the principal, say a public official, refuses to provide the requested necessary information, it can consider paying the claim, where adequately established, of the obligee or creditor claimant, and seek indemnification from the bond principal.

CONCLUSION

Although a problem can arise when an insured, bond principal, obligee or creditor claimant fails to provide the information needed for a claim investigation because it claims that the information is protected by a state's open meetings or open records law, fidelity insurers and sureties have several things they can do to help them obtain the information necessary for their claim investigation. While open meetings and open records laws do recognize specific instances where a public body meeting or record may be closed, an insurer or surety needs to verify that documents and records claimed to be closed are indeed closed. An insurer can do this by verifying that a public body followed the applicable state's notice requirements for an executive session and by verifying that a claimed exemption actually exists and is applicable to the document or record in question. When all notice requirements for an executive session have been properly executed and records claimed to be exempt are exempt, a confidentiality agreement is probably the best option for acquiring documents necessary for a claim investigation. A confidentiality agreement between a fidelity insurer and its insured or between a surety and its bond principal, obligee or creditor claimant is a desirable way for the insurer or surety to obtain the documents needed for an adequate claim investigation, while providing an insured, bond principal, obligee or creditor claimant with an assurance that the information to be provided will remain confidential.

APPENDIX A

Open Meeting/Open Record Statutes

State	Title of Statute	Citation
Alabama	Open Meetings Act	ALA. CODE § 36-25A-1 et seq.
	Open Records Act*	ALA. CODE § 36-12-40 et seq.
Alaska	Open Meetings Act*	ALASKA STAT. § 44.62.310 et seq.
	Open Records Act*	ALASKA STAT. § 40.25.110 et seq.
Arizona	Open Meetings Act*	ARIZ. REV. STAT. ANN. § 38-431 et seq.
	Open Records Act*	ARIZ. REV. STAT. ANN. § 39-101 et seq.
Arkansas	Freedom of Information Act	ARK. CODE. ANN. § 25-19-101 et seq.)
California	Public Records Act	CAL. GOV'T CODE § 6250 et seq.
	Ralph M. Brown Act	CAL. GOV'T CODE § 54950 et seq.
Colorado	Open Meetings Law	COLO. REV. STAT. § 24-6-401 et seq.
	Open Records Act	COLO. REV. STAT. § 24-72-101 et seq.
Connecticut	Freedom of Information Act	CONN. GEN. STAT. § 1-200 et seq.

Delaware	Freedom of Information Act	DEL. CODE ANN. tit. 29, § 10001 et seq.
Florida	Sunshine Law Public Records Act	FLA. STAT § 286.011 FLA. STAT. § 119.01 et seq.
Georgia	Open Meetings Act* Open Records Act*	GA. CODE ANN. § 50-14-1 et seq. GA. CODE ANN. § 50-18-70 et seq.
Hawaii	Sunshine Law	HAW. REV. STAT. § 92-1 et seq.
Idaho	Open Meetings Act Open Records Act*	IDAHO CODE ANN. § 67-2340–67-2350 IDAHO CODE ANN. § 9-337– 9-350
Illinois	Open Meetings Act Freedom of Information Act	ILL. COMP. STAT. ANN. 120/1 et seq. ILL. COMP. STAT. ANN. 140/1 et seq.
Indiana	Open Door Law Open Records Act*	IND. CODE § 5-14-1.5-1 et seq. IND. CODE § 5-14-3-1 et seq.
Iowa	Open Meetings Act Open Records Act	IOWA CODE § 21.1 et seq. IOWA CODE § 22.1 et seq.

Kansas	Open Meetings Act	KAN. STAT. ANN. § 75-4317 et seq.
	Open Records Act	KAN. STAT. ANN. § 42-215 et seq.
Kentucky	Open Meetings Act	KY. REV. STAT. ANN. § 61.800 et seq.
	Open Records Act	KY. REV. STAT. ANN. § 61.800 et seq.
Louisiana	Open Meetings Law	LA. REV. STAT. ANN. § 42:4-1 et seq.
	Public Records Law	LA. REV. STAT. ANN. § 44:1 et seq.
Maine	Freedom of Access Law	ME. REV. STAT. ANN. tit. 1, § 401 et seq.
Maryland	Open Meetings Act	MD. CODE ANN., STATE GOV'T § 10-501 et seq.
	Public Information Act	MD. CODE ANN., STATE GOV'T § 10-611 et seq.
Massachusetts	Open Meetings Act*	MASS. GEN. LAWS ANN. ch. 30A, § 11A ½
	Public Records Act	MASS. GEN. LAWS ANN. ch. 66, § 1 et seq.
Michigan	Open Meetings Act	MICH. COMP. LAWS § 15.261 et seq.
	Freedom of Information Act	MICH. COMP. LAWS § 15.231 et seq.

Minnesota	Open Meeting Law Data Practices Act	MINN. STAT. § 13D.01 MINN. STAT. § 13.01 et seq.
Mississippi	Open Meetings Law Public Records Act	MISS. CODE ANN. § 25-41-1 et seq. MISS. CODE ANN. § 25-61-1 et seq.
Missouri	Sunshine Law	MO. REV. STAT. § 610.010 et seq.
Montana	Open Meetings Act* Open Records Act*	MONT. CODE ANN. § 2-3-201 et seq. MONT. CODE ANN. § 2-6-101 et seq.
Nebraska	Open Meetings Act* Open Records Act*	NEB. REV. STAT. § 84-1407 et seq. NEB. REV. STAT. § 84-712–84.712.09
Nevada	Open Meetings Act* Open Records Act*	NEV. REV. STAT. § 239 et seq. NEV. REV. STAT § 241 et seq.
New Hampshire	Right to Know Law	N.H. REV. STAT. ANN. § 91-A:1 et seq.
New Jersey	Open Public Meetings Act Open Public Records Act	N.J. STAT. ANN. § 10:4-6 et seq. N. J. STAT. ANN. § 47:1A-1 et seq.

New Mexico	Open Meetings Act Inspection of Public Records Act	N.M. STAT. § 10-15-1 et seq. N.M. STAT. § 14-2-4 et seq.
New York	Open Meetings Law Freedom of Information Law	N.Y. PUB. OFF. LAW § 100 et seq. N.Y. PUB. OFF. LAW § 85 et seq.
North Carolina	Open Meetings Act Open Records Act*	N.C. GEN. STAT. § 143-318.9 et seq. N.C. GEN. STAT. § 132-1 et seq.
North Dakota	Open Meetings Act* Open Records Act*	N.D. CENT. CODE § 44-04-19 et seq. N.D. CENT. CODE § 44-04-17.1 et seq.
Ohio	Sunshine Law Public Records Law	OHIO REV. CODE ANN. § 121.22 OHIO REV. CODE ANN. § 149.43
Oklahoma	Open Meeting Act Open Records Act	OKLA. STAT. tit. 25, § 301 et seq. OKLA. STAT. tit. 51, § 24A.1 et seq.
Oregon	Open Meetings Act* Open Records Act*	OR. REV. STAT. § 192.610 et seq. OR. REV. STAT. § 192.410 et seq.

Pennsylvania	Open Meeting Law	65 PA. CONS. STAT. § 701 et seq.
	Open Records Act	65 PA. STAT. ANN. § 66.1 et seq.
Rhode Island	Open Meetings Act	R.I. GEN. LAWS § 42-46-1 et seq.
	Open Records Act	R.I. GEN. LAWS § 38-3-1 et seq.
South Carolina	Freedom of Information Act	S.C. CODE ANN. § 30-4-10 et seq.
South Dakota	Open Meetings Act*	S.D. CODIFIED LAWS § 1-25-1 et seq.
	Open Records Act*	S.D. CODIFIED LAWS § 1-27-1 et seq.
Tennessee	Open Meetings Act*	TENN. CODE ANN. § 8-44-101 et seq.
	Open Records Act*	TENN. CODE ANN. § 10-7-501 et seq.
Texas	Open Meetings Act	TEX. GOV'T CODE ANN. § 551.001 et seq.
	Public Information Act	TEX. GOV'T CODE ANN. § 552.001 et seq.
Utah	Open and Public Meetings Act	UTAH CODE ANN. § 52-4-101 et seq.
	Government Records Access and Management Act	UTAH CODE ANN. § 63-2-101 et seq.

Vermont	Open Meeting Law	VT. STAT. ANN. tit. 1, § 310 et seq.
	Open Records Act*	VT. STAT. ANN. tit. 1, § 315 et seq.
Virginia	Freedom of Information Act	VA. CODE ANN. § 2.2-3700 et seq.
Washington	Open Public Meetings Act	WASH. REV. CODE § 42.30.010 et seq.
	Public Records Act	WASH. REV. CODE § 42.56.001 et seq.
West Virginia	Open Governmental Proceedings Act	W. VA. CODE ANN. § 6-9A-1 et seq.
	Freedom of Information Act	W. VA. CODE ANN. § 29B-1-1 et seq.
Wisconsin	Open Meeting Law	WIS. STAT. § 19.81 et seq.
	Open Records Act	WIS. STAT. § 19.31 et seq.
Wyoming	Open Meetings Act*	WYO. STAT. ANN. § 16-4-401 et seq.
	Open Records Act*	WYO. STAT. ANN. § 16-4-201 et seq.

APPENDIX B

Confidentiality Agreement

This Confidentiality Agreement (“Agreement”) is made in connection with a Proof of Loss dated _____ (“Claim”) that _____ (the “Insured”) has submitted to _____ (the “Insurer”) under _____ (“Policy”) arising from _____. This Agreement is entered into in response to the Insured’s request.

In order for the Insurer to conduct a complete investigation of the Claim presented by the Insured, the Insurer needs the Insured to make available to Insurer and their counsel, _____, the following documents:

(List of Documents)

The Insured has represented that the requested documents will only be provided if it is deemed by it to be confidential. Without waiving any of the Insured’s or the Insurer’s obligations, rights or remedies under the Policy, the Insurer agrees to treat the documents as “Confidential Information”.

For purposes of this Agreement, Confidential Information shall be specifically limited to copies of the requested documents as well as any other documents marked “CONFIDENTIAL” by the Insured at the time that it is provided to the Insurer.

The Insurer agrees that for a period of two (2) years from the date of this Agreement, all Confidential Information will be held and treated by the Insurer in confidence and will not, except as provided herein, without the prior written consent of the Insured, be disclosed by the Insurer or used other than in connection with the investigation or resolution of the Claim.

The Insured agrees that the following will not constitute “Confidential Information” for purposes of this Agreement: (1) information which, at the time of disclosure, is in the public domain; (2) information which shall become part of the public domain after disclosure other than as a consequence of a breach of this Agreement by the Insurer; (3) information which is obtained by the Insurer from a third person or entity who, insofar as is known to the Insurer, is not prohibited from transmitting the information to the Insurer; (4) information which was already known by the Insurer prior to its disclosure by the Insured.

The Insured agrees that nothing in this Agreement shall prohibit the Insurer from:

A. sharing Confidential Information with (1) its employees, officers, and directors; (2) its legal counsel (including _____) and their staff; (3) its independent consultants, accountants or experts retained to assist in the investigation or litigation of the Claim; (4) its reinsurers, insurance regulators, and others analogous persons or entities to whom information regarding claims submitted to the Insurer is made available in the normal course of business, (5) current and former employees, officers and agents of the Insured, and (6) others in accordance with the provisions of paragraph B.

B. disclosing Confidential Information pursuant to the requirement of a subpoena, court order, discovery request, regulatory or governmental agency inquiry, or operation of law. The Insurer shall use reasonable efforts to notify the Insured of the request for Confidential Information and provide the Insured with the opportunity to object to such disclosure. If no objection is made or the objections to disclosure are rejected, the Insurer will provide the requested Confidential Information to the requesting party;

C using any Confidential Information in litigation between the Insurer and the Insured, or in litigation concerning the terms or conditions of the Policy issued on behalf of the Insured.

Upon completion of its Claim investigation, the Insurer shall maintain the entire Claim file, including Confidential Information in its standard storage facility and shall destroy the documents in accordance with its standard record destruction procedures, subject to any document hold imposed by any governmental body or court order.

This Agreement is for the benefit of the Insured.

This Agreement shall be governed by, and be construed in accordance with, the laws of the State of _____.

Accepted and Agreed,

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Insured or Representative of Insured

Insurer or Representative of Insurer

APPENDIX C

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement is made and entered into effective this _____ day of _____ 2008, by and between _____ (“Insured”) and _____ (“Insurer”) upon the following premises, terms and conditions and witnesses that:

RECITALS

WHEREAS the _____ (Insured) filed a Proof of Loss (“Bond Claim”) with _____ (Insurer) on _____, 20__ on _____ (Type of Bond) _____ Bond based upon _____ (Basis of Claim) _____, and

WHEREAS in conjunction with the _____ (Insured) filing of its Bond Claim, _____ (Insurer) has requested, through its attorneys, _____, a number of documents, files, and other information in order to more fully investigate the Claim;

NOW THEREFORE in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the _____ (Insured) and _____ (Insurer) acknowledge and hereby agree to the following:

COVENANTS

1. The _____ (Insured) will make available to _____ (Insurer) and its designated representative, including representatives of _____, Attorneys, all pertinent information requested by _____ (Insurer).
2. The _____ (Insured) specifically advises _____ (Insurer) and its representatives and agents that the information provided may include police reports, closed board meeting minutes, and closed personnel records.
3. _____ (Insurer) and its representatives and agents acknowledge that the information provided may include police reports, closed board meeting minutes, and closed personnel records and agree to utilize such information only in connection with the Claim.
4. _____ (Insurer) agrees that it will not disclose and will hold in confidence the documents, files and, other information provided by the _____ (Insured) _____, and that without the _____ (Insured’s) prior written consent, _____ (Insurer) shall not use the information for any purpose other than investigating the Claim.
5. This Confidentiality Agreement shall be effective as of the date set forth above and shall remain in full force and effect at all times subsequent to that date in accordance with the applicable requirements of the law now prevailing and as it may be amended.
6. If any terms or provisions of this Confidentiality Agreement, or any application thereof to any circumstances, shall, to any extent and for any reason, be held to be invalid or unenforceable, the remainder of this Confidentiality Agreement, or the application of such term or provision to circumstances other than those to which it is held invalid or enforceable, shall not be affected thereby and shall be construed as if such invalid or unenforceable provision had never been contained herein and each term and provision

of the Confidentiality Agreement shall be valid and enforceable to the fullest extent permitted by law.

7. Failure of either party at any time to require performance of any provision of this Confidentiality Agreement shall not limit the party's right to enforce the provision, nor shall any waiver of any breach of any provision be a waiver of any succeeding breach of any provision or a waiver of the provision itself or any other provision.
8. This Confidentiality Agreement shall contain the entire understanding between the parties and all and any amendments to this Confidentiality Agreement shall be in writing and executed by all the parties hereto.
9. This agreement is made by the parties in (State Where Agreement Made) and it is the intent of the parties that it be governed by (State) law.
10. Except as otherwise provided within this Confidentiality Agreement, neither party hereto may transfer or assign this Confidentiality Agreement without prior consent of the other party.

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Insured or Representative of Insured

Insurer or Representative of Insurer

BERNARD A. REINERT

Bernard A. Reinert is the founder of and a principal in Reinert & Rourke, P.C. Mr. Reinert's principal practice areas have been fidelity and surety law, financial institution bond claims and litigation, business and commercial law, claims and litigation, construction claims and litigation, and trials and appeals. Mr. Reinert has distinguished himself as one of the foremost surety and fidelity lawyers in the country, both as a practitioner as well as a publisher, lecturer and authority on the law.

Mr. Reinert received his undergraduate education from St. Mary's Mission Seminary College (Divine Word Missionaries) at Techny, Illinois and at St. Louis University. He graduated from St. Louis University with a Bachelor of Arts (History) degree and from St. Louis University School Law and was a law clerk to United States District Judge Omer Poos in Springfield, Illinois from 1962 to 1963.

Mr. Reinert lives in the St. Louis suburban community of Kirkwood and has been active in community affairs there, particularly as a member of the Kirkwood R7 School District Board (1976-1991) and as Chairman of the City of Kirkwood Civil Service Commission (1992 to the present).

Practice Areas:

Fidelity and Surety, Financial Institution Bond Claims and Litigation, Business and Commercial Law, Construction Law, Litigation, Trials and Appeals

Education:

J.D., LL.B. 1962, St. Louis University School of Law

A.B., 1958, St. Louis University; St. Mary's Mission Seminary College

Court Admissions:

Missouri, 1962

Iowa, 1962 (inactive status presently)

Illinois, 1963

United States District Court, Eastern District of Missouri, 1963

United States District Court, Western District of Missouri, 1963

United States District Court, Southern District of Illinois, 1963

United States District Court, Central District of Illinois, 1963

United States Court of Appeals, 8th Circuit, 1963

United States Court of Appeals, 7th Circuit, 1963

Legal, Professional and Civic Associations:

American Bar Association; The Missouri Bar; Bar Association for Metropolitan St. Louis; Illinois State Bar Association; ABA/TIPS Fidelity and Surety Law Committee, former Vice Chairman; ABA Tort and Insurance Practice Section; FSLC Fidelity and Surety News Subcommittee, Liaison Member to St. Louis University, School of Law Editorial Staff; Admitted to Practice Before the Armed Services Board of Contract Appeals; Admitted to Practice Before the General Services Administration Board of Contract Appeals; Admitted to Practice Before the United States Department of Labor; Member, National Bond Claims Association, Surety Claims Institute, St. Louis Surety Association

Reported Cases:

Shochet v. Allen, 987 S.W.2d 516 (Mo.App. E.D., Mar 16, 1999)

Yerkes v. Asberry, 938 S.W.2d 307 (Mo.App. E.D., Feb 04, 1997)

School Dist. Of University City ex rel. H & M Mechanical Corp. v. Reliance Ins. Co., 904 S.W. 2d 253, 103 Ed. Law Rep 496 (Mo.App. E.D., May 16, 1995)

Metro St. Louis Sewer Dist. v. Transamerica Ins. Co., 878 S.W. 2d 521 (Mo.App. E.D., Jun 30, 1994)

St. Louis Federal Sav. And Loan Ass'n v. Fidelity and Deposit Co. of Maryland, 654 F.Supp. 314 (E.D. Mo., Jan 09, 1987)

Steinberg v. Fleishcher, 706 S.W. 2d 901 (Mo.App E.D., Mar 11, 1986)

Pipe Systems, Inc. v. American Mfrs. Mut. Ins. Co., 609 F. Supp. 571 (E.D.Mo., Mar 19, 1985)

Community Federal Sav. & Loan Ass'n v. Transamerica Ins. Co., 559 F. Supp 536 (E.D.Mo., Mar 25, 1983)

Manufacturers Bank and Trust Co. of St. Louis v. Transamerica Ins. Co., 568 F.Supp. 790 (E.D.Mo., Mar 16, 1983)

Groppe Co., Inc. v. U.S. Gypsum Co., 616 S.W. 2d 49, 32 UCC Rep. Serv. 35 (Mo.App. E.D., Jan 27, 1981)

Wilbur Waggoner Equipment Rental & Excavating Co., Inc. v. Bumiller, 542 S.W. 2d 32 (Mo.App., Aug 03, 1976)

Commercial Union Ins. Co. of America v. Talisman, Inc., 69 F.R.D. 490, 1 Fed. R. Evid. Serv. 104 (E.D.Mo., Oct 31, 1975)

State ex rel. Caloia v. Weinstein, 525 S.W. 2d 779 (Mo.App., Jun 03, 1975)

Weeks v. Missouri Pac. R. Co., 505 S.W. 2d 33 (Mo., Feb 11, 1974)

American Ins. Co. v. Gilbert, 319 F. Supp. 1315 (E.D.Mo., Oct 27, 1970)

United Bonding Ins. Co. v. Parke, 293 F. Supp. 1350 (E.D.Mo., Nov 15, 1968)

Great American Ins. Co. v. Louis Lesser Enterprises Inc., 353 F.2d 1009 (8th Cir.(Mo.), Dec 16, 1965)

Great Am. Ins. Co. v. Louis Lesser Enterprises Inc., 353 F.2d 997 (8th Cir.(Mo.), Dec 16, 1965)

State ex rel. Great Am. Ins. Co. v. Jones, 396 S.W. 2d 601 (Mo., Nov 08, 1965)

North American Mechanical Services Corp. v. Hubert, 859 F.Supp. 1186 (C.D.Ill., Aug 03, 1994)

Farm Credit Bank of St. Louis v. Biethman, 262 Ill.App.3d 614, 634 N.E.2d 1312, 199 Ill.Dec. 958 (Ill.App. 5 Dist., Jun 10, 1994)

In re Thomas Companies, Inc., 166 B.R. 677 (Bankr.C.D.Ill., May 04, 1994)

United Fire and Cas. Co. v. Coggeshall Const. Co., 1992 WL 59099 (C.D.Ill., Feb 11, 1992)

United Fire and Cas. Co. v. Coggeshall Const. Co., 1991 WL 169147 (C.D.Ill., Jun 28, 1991)

A.J. Davinroy Plumbing & Heating v. Finis P. Ernest, Inc., 87 Ill.App.3d 1047, 409 N.E.2d 372,

42 Ill.Dec. 757 (Ill.App. 5 Dist., Aug 19, 1980)

Village of Crainville, Illinois v. Argonaut Ins. Co., 469 F. Supp. 11 (E.D.Ill., May 24, 1976)

Publications:

"New Duties of Care for Banks in Handling Checks and Funds of Customers," 16th Annual Northeast Surety and Fidelity Claims Conference, Atlantic City, New Jersey, 2005

"Named Obligee's Rights Under the Payment Bond; Are There Any?; Rights and Limitations on the Obligee's Rights on Exhaustion of Performance Bond Penalties," 10th Annual Northeast Surety & Fidelity Claims Conference, Iselin, NJ, October 21, 1999.

"The Duty of the Performing Surety to the Bond Principal and Indemnitors: Good Faith," Forum, Vol XV, No 5, Summer 1980, p.1005.

"The Duty of the Performing Surety to the Bond Principal and Indemnitors: Good Faith, An Update," 3rd Annual Northeast Surety & Fidelity Claims Conference, Rocky Hill, Connecticut, November 12, 1992.

"The Financial Institution Bond: Who is Covered Under Insuring Agreement (A)," 3rd Annual Northeast Surety & Fidelity Claims Conference, Rocky Hill, Connecticut, November 12, 1992.

"Quantum Meruit Claims and Defenses in Building Construction Cases," 6th Annual Northeast Surety & Fidelity Claims Conference, Iselin, NJ, November 16-17, 1995.

"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.

"Elements of Proof in the Contract Bond Surety's Subrogation Action to Recover the Bonded Contract Funds," The Subrogation Rights of the Contract Bond Surety, 1990 TIPS Annual Meeting, Chicago, Illinois, August 7, 1990.

Does the Exercise of Supervisory Control of Liquidation Constitute a "Taking Over" of a Bonded Financial Institution Which Activates the Automatic Termination Provision of the Blanket Bond? Bonding Company's View," Surety Claims Institute, Lake of the Ozarks,

Missouri, June 20, 1985.

“Claims for Damages and Defenses Contractor/Surety Defenses,” Forum on the Construction Industry and TIPS Fidelity and Surety Law Committee, Thursday, January 29, 1998.

“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.

AARON G. WEISHAAR

Aaron G. Weishaar is a principal and officer of Reinert & Rourke, P.C. Mr. Weishaar joined Reinert & Rourke, P.C. in February of 1998 as a law clerk and became an associate attorney following graduation from St. Louis University School of Law. While in law school, Mr. Weishaar was a student editor and later became the Editor-in Chief for the *Fidelity and Surety News*, which is a quarterly publication of the Trial, Tort and Insurance Practice Section of the American Bar Association. During law school, Mr. Weishaar was also extremely active with St. Louis University's Legal Clinic representing indigent individuals and families in the St. Louis Metropolitan Area. As a result of his dedication and service, Mr. Weishaar was recognized by the faculty at St. Louis University School of Law upon obtaining his Juris Doctorate in 1999.

Mr. Weishaar represents a wide range of clients, from large national surety companies and international corporations to local businesses and individuals. His practice primarily emphasizes surety, commercial and construction law. Mr. Weishaar is also active in a variety of professional and civic associations including the St. Louis Surety Association, the Associated General Contractors of St. Louis and the Regional Union Construction Center. In addition, Mr. Weishaar is a volunteer advocate for the St. Louis Metropolitan Tribunal in the Archdiocese of St. Louis.

Mr. Weishaar is a native of the St. Louis area and obtained his bachelor's degree from St. Louis University in 1994 graduating Magna Cum Laude. Mr. Weishaar lives in South St. Louis City with his wife and three children where they are active in their community and church.

Practice Areas:

Business and Commercial Law, Fidelity and Surety Law, Construction and Real Estate Law, International Law, Social Security Disability, Estate Planning, Litigation

Education:

J.D., St. Louis University School of Law, 1999

B.A., St. Louis University, *Magna Cum Laude*, 1994

Court Admissions:

Missouri

Illinois

United States District Court, Eastern District of Missouri

United States District Court, Western District of Missouri
United States District Court, Southern District of Illinois.
United States Court of Appeals, 8th Circuit
United States Court of Appeals, 7th Circuit
United States Court of Appeals, 5th Circuit
United States Court of International Trade.

Legal, Professional and Civic Associations:

American Bar Association; Missouri Bar; Illinois State Bar Association; Bar Association of Metropolitan Saint Louis; St. Louis Surety Association; Associated General Contractors of St. Louis; International Business Law Consortium; Missouri Athletic Club; St. Louis Metropolitan Tribunal; St. Gabriel the Archangel Parish Council; Sacred Heart Villa-Finance Council; Sacred Heart Villa-Advisory Board; Regional Union Construction Center; Brison Mechanical; LLC-Advisory Board

Published Opinions

Amwest Surety Ins. Co. v. Concord Bank, 248 F.Supp.2d 867 (E.D.Mo. 2003)

National Surety Corporation v. Prairieland Construction, Inc., et al., 354 F. Supp. 2d 1032 (E.D. Mo. 2004)

National Surety Corporation v. Mehlville School District, et al., 2005 WL 290146 (E.D. Mo. 2005)

In re Stevens, 322 B.R. 133 (Bkrtcy. E.D. Mo. 2005)

In re Courtney Excavating & Const., Inc., 325 B.R. 839 (Bkrtcy. W.D. Mo. 2005)

Lyndon Property Insurance Co. v. Overby Grain Farms, 2007, WL 1728263 (W.D. KY 2007)

Publications:

“The Use and Misuse of the General Indemnity Agreement,” 16th Annual Northeast Surety and Fidelity Claims Conference, Atlantic City, New Jersey, 2005 (co-author, presenter)

Named Obligee's rights Under the Payment Bond (Are There Any?); Rights and Limitations on the Obligee's Rights on Exhaustion of Performance Bond Penalties, 10th Annual Northeast Surety & Fidelity Claims Conference, Iselin, NJ, 1999 (contributor)

What is 'Property' Under Fidelity Bond Coverage?, 12th Annual Northeast Surety & Fidelity Claims Conference, Atlantic City, NJ, 2001(co-author)

Letters of Credit, What are they and what do I do with One?, 13th Annual Northeast Surety & Fidelity Claims Conference, Atlantic City, NJ, 2002 (co-author)

Liquidated Damages: Have the Courts Gone too Far? Have Upper Tier Contracting Parties Gone Too Far?, 15th Annual Northeast Surety & Fidelity Claims Conference, Atlantic City, NJ, 2004 (co-author)

Suretyship Update: Missouri: Law and Practice Pertaining to Construction Bonds and Other Surety Bonds, (MOBARCLE 2005) (co-author, presenter)

Jurisdictional Choices in Bond Litigation 17th Annual Northeast Surety & Fidelity Claims Conference, Atlantic City, New Jersey, 2006

Is Munsey Trust Alive? Recent Cases Involving the Payment Bond Surety's Subrogation Rights, 18th Annual Northeast Surety & Fidelity Claims Conference, Atlantic City, New Jersey, 2007 (co-author)

Construction Lien Law in Illinois, Lorman Education Services, Fairview Heights, Illinois, April 28, 2006 (co-author, presenter)

JENNIFER M. SLOMINSKI

Jennifer M. Slominski joined Reinert & Rourke, P.C. as a law clerk in the spring of 2005. She began practicing as an associate following her graduation from Saint Louis University School of Law in the spring of 2007. While in law school, Ms. Slominski served as the Managing Editor for the Saint Louis University Law Journal. Ms. Slominski was also a member of Saint Louis University's Trial Team, which won the regional rounds of the National Trial Competition (NTC) and advanced to the nationals in Houston, TX. The NTC is an annual invitational trial tournament co-sponsored by the Texas Young Lawyers Association and the American College of Trial Lawyers. Ms. Slominski received her Bachelor of Arts degree in Psychology and Bachelor of Science Degree in Criminal Justice from Quincy University in Quincy, Illinois in 2004.

Ms. Slominski focuses her practice on state and federal litigation involving construction law, commercial litigation, surety and fidelity, personal injury, and real estate. Ms. Slominski enjoys running marathons, coaching soccer, and mentoring.

Education:

J.D., St. Louis University School of Law, 2007

B.A., Quincy University, *Summa Cum Laude*, 2004

B.S., Quincy University, *Summa Cum Laude*, 2004

Court Admissions:

Missouri

Illinois

United States District Court, Eastern District of Missouri

United States District Court, Western District of Missouri

Legal, Professional and Civic Associations:

Missouri Bar

Illinois State Bar Association

Family Support Network