

**EIGHTEENTH ANNUAL
SOUTHERN SURETY AND FIDELITY CLAIMS
CONFERENCE**

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HELP US HELP YOU

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HELP US HELP YOU

Introduction

Our job is to maximize recovery while minimizing expenses. We do this through cutting edge technology, leveraging vendors and using dedicated experienced recovery specialists. Our success depends upon early intervention, thorough investigation and insightful business decisions.

Recovery does not necessarily begin after the claim is paid. From the moment a claim is opened everyone should be looking for recovery opportunities. Including the recovery department at the beginning of the claim process or before resolution of all outstanding claims has proven to be very successful. Such action affords the recovery department the opportunity to bring additional focus and attention to the salvage and subrogation aspects of the claim. Given the significant demands on claim managers/attorneys from insureds, obligees and bond claimants subrogation is often put on the back burner. Including the recovery department early in the claim's process allows us to shoulder some of the work load and insures that potential recoveries will be not overlooked or lost. Of course, not every loss will lend itself to this approach. Each file and/or claim must be evaluated on a case by case basis. Nevertheless our experience tells us that early intervention does enhance recovery results.

Surety

Early intervention may enhance recovery results in pursuit of affirmative claims and/or indemnity actions. Early intervention is especially effective in cases where the principal/indemnitors provide no assistance to the surety in resolving outstanding payment and/or performance bond claims. In such situations there is usually no practical consideration to delay recovery.

Three areas of concern are foreclosures, statute of limitations and bankruptcy filings. Claims must make a conscious effort to keep track of the above. Each state is different, and missing a deadline can mean the difference between recovery and no recovery. If there is any question on how to proceed, then claims should contact recovery for guidance on handling these items. If these notices are ignored and deadlines for filing claims or appearances are missed, then recovery options may be limited.

Meetings with the principal (who may also be an indemnitor) provide an excellent opportunity to initiate the recovery process. At the very least the principal and indemnitor should be put on notice of the surety's rights and intention to look to them for reimbursement and indemnification either under its common law rights of subrogation or its rights pursuant to any indemnity agreement that has been executed.

Assuming the underwriting file contains financial information, it is appropriate to review this information with the principal/indemnitor during any meeting as their finances may have changed since the information was submitted. Reviewing the financial information with the principal/indemnitor may indicate the best way to proceed. Questions to ask include: (1) Is the principal transferring and/or selling assets; and, (2) If assets have been sold, why were they sold and what happened to the money from their sale? Always confirm the current address for the principal and, if possible, confirm the address and telephone numbers of any indemnitors. If the principal and/or indemnitors use a post office address obtain their street address. These days it is often wise to ask for cell phone numbers and email addresses.

One's personal observations during a face to face meeting with the principal/indemnitor can provide valuable information that can be used later in the recovery process. For instance, did you notice what kind of vehicle the indemnitor was driving? How was the indemnitor dressed? Did he/she wear expensive jewelry?

If there is no financial information in the file the recovery department may be able to assist the claim department by running an asset search prior to any meeting. This may give the claim's person a better idea of how to negotiate and what direction to take when meeting with the principal. The recovery department would also be happy to assist claims by attending and participating in the meeting. A recovery person may bring a different perspective and/or strategy to the meeting. For example, recovery can play the "bad guy" if needed.

Once the claim is settled, it is important to obtain the executed release and assignment of rights before sending the settlement check to the insured and prior to referring the claim to the recovery department. There is less incentive for the obligee/claimants to sign the release once they receive their funds. If the recovery department is left with the job of obtaining the executed release and assignment, it can cause lengthy delays in the recovery process. In any recovery process, time is of the essence.

When the file is sent to the recovery department it should contain complete and current information. The file should come to us in a neat and orderly fashion. If the file is voluminous it is very helpful if tags are placed on important documents so we do not waste precious time thumbing through pages of documents to locate one letter.

Checklist of documents to include:

- Indemnity Agreements – executed by all Indemnitors
- Copies of Bonds
- Correspondence to and from Indemnitors
- Promissory Notes
- Payment Totals by Bond
- Current Contact Information for the Principal and Indemnitor(s)
- Current Asset Information
- Current Financial Information (most recent financial statements for businesses, current tax returns and current personal financial statement for indemnitors)
- Current Contact Information (home addresses, cell phones, home phones, email addresses, business address)
- Copy of claims check
- Copy of Executed Release and Assignment of Rights
- Notes on personal observations or any information which you think will aid recovery
- Attorneys'/Consultants' Invoices (preferably all located in one place in the file)

Fidelity

Assuming that when the insured submits a claim they have identified a principal(s), the first thing that should be done is to put the principal on notice of the claim. The notice letter should include language that the principal has been identified as the responsible party. If the principal responds with an admission, immediate steps should be taken to negotiate a repayment plan. This is true even if the loss has not yet been paid. It is easier to obtain a commitment from the principal at this point in time rather than months later. If the principal does not admit to the loss it may be possible to obtain a tolling agreement. Failure to recognize these situations may mean lost recovery opportunities.

When more than one person is responsible for the loss, it is important to make a demand on each party for the full amount of the loss as joint and several liability will likely apply. Making a demand on all parties sets the stage for useful negotiations in the future.

The fidelity file may contain information that can aid us in locating the principal or provide us with insight into the principal's financial status. The insured should provide the principal's personnel file. This is important because the personnel file will include things like, W2 (for address and social security information), bank account information (direct deposit, and pension or savings plan information) resume and employment application. Some companies also obtain a credit report before hiring a new employee.

When investigating the claim look for opportunities to discuss the principal with the insured. Some questions to keep in mind include:

Do you know what the principal did with the money?

Did the principal live beyond his/her means?

Did the principal live a lavish life style?

Did the principal have a drug or alcohol addiction or a gambling problem?

What is the principal doing now?

Has the insured spoken with the principal?

Did the principal express any remorse for what they did?

Fidelity cases typically involve criminal prosecution of the principal(s). Our insureds are directly involved in the criminal prosecution. Therefore, it is important to stay in contact with the insured as they are valuable resources for information. In some jurisdictions, information will only be provided to the direct victim (the insured), not the subrogee. Our insureds may be our only, or best source of contact information for the prosecutors and victim witness advocates, as well as for updates in the status of the criminal case. It is important to note that in those states where courts are willing to order restitution to the surety, a letter should be sent to the proper authorities placing them on notice of our identity, claim payment, and interest in restitution.

It is not uncommon for the surety to receive a fidelity claim with criminal charges pending against the principal. In these instances, it is important for the insured to understand the recovery provision of their insurance policy. An insured may be so invested in seeking justice against the principal that it believes it is entitled to restitution regardless of the policy language. Standard policy language sets out that recovery is first paid the carrier, net of any expenses. However, in those instances where there is an excess loss, recovery goes first to the insured up to the amount of its excess loss. Subsequent recovery is paid to the surety in reimbursement of its claim payment. Any further recovery is recouped by the insured for its policy deductible. Recovery is willing to assist claims in conveying this information to insureds. .

If it appears that a third party, e.g. bank, has liability for the loss, make sure the third party is put on notice as soon as a loss is identified. Ideally, the insured will have notified the third party of the loss, but in reality this often does not happen. Time is of the essence in these situations. The U.C.C., which governs many of these situations, has strict notice requirements.

Checklist of documents to include:

- Current contact information for the principal
- Names and contact information of the prosecutor/law enforcement.
- The docket number of criminal case
- Names and contact information for any probation or parole officers
- Copies of any civil complaints that may have been filed
- If the insured conducted their own investigation obtain a copy of the investigation
- Copies of any assets searches the Insured may have ordered
- Release and Assignment
- List any co-conspirators or third parties responsible for the loss

Finding People and Assets

The recovery department uses a variety of tools to locate the responsible party and to determine if there are sufficient assets with which to satisfy the loss(es). If it is determined that the principal and/or indemnitor is judgment proof, then, in most instances, good business acumen dictates that we do not pursue the party.

Outside vendors are sometimes employed to locate an individual or their assets. Outside vendors include private investigators, credit services, locator services and the like.

Skip trace/asset locate firms are often utilized to determine the current location and assets of the principal. They may also be able to provide additional information such as where the person is currently employed, whether there are existing liens, judgments or bankruptcies. All of this information provides a useful financial picture of the individual which is crucial in determining whether to incur further expenses in pursuit of recovery.

Collection agencies and firms that specialize in collection on a contingency-fee basis are especially useful, particularly on lower dollar-amount claims that do not warrant incurring legal expenses associated with filing a civil lawsuit.

Forensic accountants and banking experts are often consulted when there is apparent third-party liability.

Some of the best information and leads we obtain come from our insureds, agents, underwriters and claim folks. Regarding underwriters, they can provide valuable assistance in obtaining cooperation from both agents and insureds. It is important that the lines of communication among underwriters, agents and insureds be kept open.

More and more in today's world the internet serves as a tool by which we can track down individuals and information on individuals. The advantage of using

the internet is that the search results are immediate and inexpensive. Below is a list of some of the internet sites we use.

Westlaw – westlaw.com

PACER – <http://pacer.psc.uscourts.gov> –

www.google.com – free

www.altavista.com - free

www.whitepages.com – free

www.switchboard.com – free

www.smartpages.com – free

www.superpages.com - free

www.anywho.com – free

<http://www.411locate.com/> - free - finds web site or e-mail address by phone number, name, company name or keyword look-up

www.iaf.net – free searches by name or e-mail address

<http://www.skipease.com/> - free

http://www.zabasearch.com/index.php?se=GG&ref=zabasearch_google – free - people search

www.web-detective.com – Web Detective – free - but required to set up an account.

www.bop.gov – Federal Bureau of Prisons, free but the site is monitored

<http://www.dc.state.fl.us/inmateinfo/inmateinfoenu.asp> - Florida prison search

<http://www.inmatesplus.com> - Inmate locator

<http://ssdi.rootsweb.com/> - free - social security death index

http://dataland.com/subscribers/Death_Locator.htm - National Death Locator

<http://www.peoplefind.com/deathrecords.htm> - Death Records Search

<http://www.ancestry.com/search/db.aspx?dbia=3693> - Social Security Death Index

<http://www.nass.org/sos/sosflags.html> free - links to secretary of state web sites

<http://www.brpub.com/pubrecsites.asp> - there is a wealth of information on this site including links to states etc.

www.findlaw.com – articles on legal topics, links to internet legal resources, access to West's Legal Dictionary etc.

<http://jurist.law.pitt.edu/> - hosted by University of Pittsburgh School of Law, focus is on legal importance of news stories rather than on their mass-market appeal

www.washlaw.edu/ - Produced by Washington University School of Law, collection of law and law-related links as well as other web sites

<http://www.law.cornell.edu/> - Maintained by the Legal Information Institute at Cornell Law School. The mission of the website is to make law more accessible to U.S. legal profession etc. Site gained notoriety as source for recent U.S. Supreme Court cases. Now has links to variety of resources including entire U.C.C.

<http://www.llrx.com/courtrules/> - Court rules, forms etc

NOTE: While the internet is a useful tool which can aid in the location of people and/or assets do not forget that sometimes the old fashion way of looking for some one can still work. For example, many people today have cell phones, but still maintain residential phones and therefore some success may be obtained in utilizing the white pages of the local telephone directory, which will also provide a current address.

Sources of Recovery

(A) Wages:

Once a judgment is obtained, execution thereon may include wage garnishment. Currently, wage garnishment (except in certain instances, such as for child support) is not allowed in Pennsylvania, Florida, Texas, North Carolina, South Carolina to name a few.

(B) Bank Accounts:

With a few exceptions, bank accounts can also be garnished. However, obtaining bank account information is often difficult. This is where, as previously stated, the personnel file comes into play.

If the principal and/or indemnitors took steps to reimburse the insured or the obligee, using a personal checking account, bank account information may be obtained from their check. It is always a good idea to obtain copies of checks. In fidelity losses company checks may have been deposited into a principal's personal account. Thus, the account information may be found on the copies provided with the Proof of Loss information.

(C) Real and Personal Property:

After obtaining a judgment it should be recorded in the counties where the principal and indemnitors are known to own property. Execution on real property varies depending on the state and whether or not the property is owned jointly with a spouse. Be aware of any homestead exemptions and environmental concerns.

In today's world, it is not unusual to find principals and indemnitors who own expensive cars, boats, planes, jewelry or have amassed collections of "things", e.g., guns, antiques. These items should not be overlooked as sources of recovery. If these items cannot be liquidated they can be used as collateral.

(D) Co-conspirators:

Never overlook the possibility that there may be others who are also responsible for the loss.

(E) Third Parties:

Auditors, banks, accountants, bankruptcy trustees, and their insurance carriers are all sources of recovery when the responsibility of the loss lies not only with the dishonesty of the principal. In these instances there is evidence of the lack of usual and customary controls expected of the third parties and in some cases just down right negligence.

(F) Restitution:

As mentioned previously, in the case where the insured pursues criminal charges, the best chance of recovery is through the court. It is important for the recovery specialist to notify the prosecutor in writing of their subrogation interests, setting forth the order of recovery. It is important to monitor the criminal case to its conclusion, and maintain contact with the victim witness coordinator and/or the probation officer to ensure timely payments are made. In the case of a default, the probation officer should be promptly notified.

Conclusion

Attempting to pursue recovery without laying the foundation for success is a recipe for disaster. The foundation begins when the claim is set up. It is important to obtain as much information as possible so that we may make informed decisions on how to proceed. Never lose an opportunity to gather information. Never lose sight of the fact that it is permissible and even beneficial to involve or include a recovery person while the file is still in claim status. The old adage "strike while the iron is hot" was never truer then in recovery. When the recovery department and claim department work together recovery is maximized and everyone wins!

Surety Checklist

___ Indemnity Agreements – executed by all indemnitors

___ Copies of Bonds

- Correspondence to and from indemnitors
- Promissory Notes
- Payment totals by Bond
- Current contact information for the principal and indemnitor(s)
- Current asset information
- Current financial information (most recent financial statements for businesses, current tax returns and current personal financial statement for indemnitors)
- Current contact information (home addresses, cell phones, home phones, email addresses, business address)
- Copy of claims check
- Copy of executed release and assignment of rights
- Notes on personal observations or any information which you think will aid recovery

FIDLETY CHECKLIST

- Current contact information for the Principal(s)
- Names and contact information for the prosecutor/law enforcement
- The Docket Number of criminal case
- Names and contact information for any probation or parole officers
- Copies of any civil complaints/judgments that may have been filed/entered
- If the Insured conducted their own investigation obtain a copy of the investigation
- Copies of any assets searches the Insured may have ordered
- Is the principal's personnel file included
- Release and Assignment
- Are there any co-conspirators or third parties responsible for the loss

SALVAGE TRANSMITTAL SHEET - **SURETY**

DATE _____

PRINCIPAL: _____ CLAIM NO. _____
ADDRESS _____ BOND NO. _____
PHONE _____ PENALTY _____
PUBLIC/PRIVATE? _____

INDEMNITY TYPE _____ DATE _____

List all Names and Addresses of Indemnitors with SSN if known:

LOSS INFORMATION DATE OF RESERVES:

LOSSES:
EXPENSES: ATTORNEY'S FEES _____
CONSULTING FEES _____
OTHER _____

ATTORNEY INFORMATION

PRINCIPAL'S COUNSEL:	OUR COUNSEL:
Name _____	Name: _____
Address _____	Address _____
Phone _____	Phone _____
Fax _____	Fax _____

ASSETS AND FINANCIALS IN FILE? _____

COLLATERAL? _____ PROMISSORY NOTE? _____ MORTGAGE? _____
OTHER? _____ EXONERATION ACTION? _____ OTHER LITIGATION? _____
BANKRUPTCY? _____ CHAPTER? _____ CASE NO. _____
LOCATION OF COURT _____

COMMENTS

SALVAGE TRANSMITTAL SHEET - FIDELITY

DATE _____

CLAIM NO. _____
PENALTY _____
COVERAGE _____

BOND NO. _____
DEDUCTIBLE _____
LOSS _____
EXPENSE _____
RECOVERY _____

PRINCIPAL

NAME _____ ADDRESS _____
CITY _____ ST _____ ZIP _____
PHONE(HOME) _____ (WORK) _____
DATE OF BIRTH _____ MARITAL STATUS _____
SSN _____ EMPLOYED _____
WHERE? _____

INSURED

NAME _____ ADDRESS _____
CITY _____ ST _____ ZIP _____
NAME OF CONTACT PERSON _____
TELEPHONE NO. _____

PRINCIPAL'S ATTORNEY --IF KNOWN

NAME _____ ADDRESS _____
CITY _____ ST _____ ZIP _____
TELEPHONE NO. _____

PROSECUTORIAL INFORMATION

AUTHORITIES INVOLVED? FEDERAL? _____ STATE? _____ LOCAL? _____
HAS PRINCIPAL BEEN INDICTED? _____ TRIED? _____ CONVICTED? _____
RESTITUTION ORDERED? _____ AMOUNT? _____ DATE _____
WILL THE AUTHORITIES COOPERATE? _____

ADDITIONAL COMMENTS _____

