

Introduction

It has been thirty years since the Fidelity and Surety Law Committee of the American Bar Association published the *Annotated Commercial Blanket Bond* as an important reference material and compilation of case law discussing the interpretation of standard form provisions in what was then referred to as a blanket bond. In the years since, the work has been updated and expanded with a supplement to the *Annotated Commercial Blanket Bond*, published in 1991, and with the *Annotated Commercial Crime Policy (Second Edition)*, published in 2006. As time has marched on, so too has the development of various standard forms of what are now more generally referred to as commercial crime policies or mercantile policies. What these forms have in common over their years of development is that they were designed to provide coverage for various defined hazards to commercial businesses. They began in formats that tended to follow the forms of a financial institution bond, but over time they have become distinct in many different ways. There have been a substantial number of changes and updates to the insuring agreements and coverage terms for these policies over time, particularly those available in various standard forms and in manuscripted versions over the last decade. For that reason, the Fidelity and Surety Law Committee felt that it was timely and important to publish the current edition of this book, now titled the *Annotated Commercial Crime Insurance Policy (Third Edition)*.

The three prior publications that have described the scope of the development of the case law over the decades have served as invaluable tools and references for the publication of this book. The purpose of the Third Edition is to provide annotations of all major cases decided based upon the language of any number of forms of commercial crime or mercantile policies, focusing on the standard forms that have been issued, but also addressing any particular manuscripted language that has become widely used or has been reviewed by courts.

In certain instances, the historical roots of these various insurance forms and the development of the general coverage of mercantile insurance over time can be very important to the explanation of coverage that exists in a particular policy. The history of these products, provided in Chapter 1 of this Third Edition, can serve as an important explanation of that background, as well as for the substantial changes that have occurred over time, particularly over the last two decades.

To summarize, there has been a colorful history of the development of these coverages. As Chapter 1 details, there are deep roots in history for these particular types of policies. In the mid-1980s, the Insurance Services Office, Inc. (“ISO”) and the Surety Association of America (now the Surety and Fidelity Association of America, or “SFAA”) jointly issued commercial crime forms that were designed to be part of package policies and combined with other commercial lines. Those products focused on fidelity and certain other traditional coverage agreements in separate forms that could be combined as needed or desired. In later periods, the SFAA and ISO began to issue separate policies and coverage forms of their own drafting.

Since 2000, there have been a series of stand-alone policies and provisions that could be combined with other packages issued as forms by the SFAA and ISO. During that time period, the SFAA language covering employee dishonesty and the ISO language covering employee dishonesty diverged, with the SFAA form continuing to include coverage for employee dishonesty, utilizing the manifest intent standard, and with the ISO form referencing coverage for employee theft. At the same time, various insurance companies began to draft their own proprietary and manuscripted forms that address both traditional insurance agreements and terms, and that also address more modern coverage language and risks. Some of the most notable of the insurance agreements and definitions that are appearing in company-specific forms include coverage for technology, computer, and electronic risks or causes of loss. As technology continues to develop, so too do the various forms of coverage made available for losses arising out of the use of technology.

The proliferation of the various forms of commercial crime or mercantile insurance available on the market has certainly made the reporting of the case law in this area a more challenging task. For that reason, the authors have organized their chapters in ways to assist the reader in locating helpful authority. In each chapter, standard form language is quoted and cited. Where there are multiple forms of standard language, the alternatives are quoted. Following the standard form language, each chapter identifies major categories of decisions reached by courts, and also provides annotations of the specific decisions that interpret the form language. Where non-standard language has been addressed by a court, there are additional subdivisions within the annotations describing those cases or notes that the decision addresses non-standard language. Where the language or provision has been addressed by a court in the context of another type of insurance product,

including the financial institution bond, certain cases are discussed as well. Finally, there is a list of secondary sources on each subject included in each chapter, broken down by subdivision, which may be helpful.

As a reference tool, the most recently issued forms of commercial crime and mercantile policies promulgated by ISO and the SFAA are included in the Appendix of the book. In most instances, the authors have focused on the most recent form language, but where needed, they have made reference to other standard language as well.

Like its predecessor editions, this Third Edition has sought to include all of the major cases that have construed the relevant insuring agreements, definitions, exclusions, conditions, and general terms. Cases decided over the last decade are new additions to this book, but all of the older case law that remains relevant or informative is reported as well.

This Third Edition contains what we hope are very helpful comments from the authors, all highly experienced professionals who focus on this area of law, on the individual elements that are covered in each chapter. The annotations that are included begin with any applicable decisions by the United States Supreme Court, and then include decisions by the United States Circuit Courts of Appeals, organized numerically by circuit, decisions by the United States District Courts, organized alphabetically, and finally decisions by the state courts, organized alphabetically and by highest to lowest court. The annotations appear in reverse chronological order, beginning with the most recent case law first.

All of the authors of the chapters have commented how important the earlier editions of the book have been to the development of this Third Edition. On behalf of ourselves and the current authors, we extend our deepest gratitude to the contributors who were involved in the production of the earlier three editions. Their names are listed in the acknowledgements to this Third Edition. William F. Haug, Carolyn Pratt Perry, Lana M. Glovach, and Cole S. Kain, all of whom were editors of earlier editions, deserve our sincere thanks and recognition as well.

As the editors of this Third Edition, we thank our friend and colleague Gary Valeriano, Chair of the Fidelity and Surety Law Committee, for entrusting this project, and the accompanying program where it will be presented, to us. For the real expertise and work that it took to translate all the authoritative writing into an actual book, we thank the individuals at Strasburger & Price, LLP, who made the formatting and the publication details of the book possible, in particular,

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Finally, we thank all the authors for the careful research and preparation of the materials included in the book. Their depth of experience and thorough preparation made the editing process a streamlined and enjoyable endeavor. We hope that this reference material is a very helpful tool to its readers and to all students of the law in this subject area.

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