CHAPTER 1

FIDELITY INSURANCE THROUGH THE AGES

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I. Introduction

Fidelity insurance plays an integral role in the United States economy. Such policies provide insurance against losses caused by either employee dishonesty, or more recently, employee theft. Practically all financial institutions are required by federal agencies with supervisory oversight to maintain such coverage. Commercial and government entities also purchase coverage to protect against financial loss due to acts of their employees because it often makes good business sense to do so.

Modern-day fidelity insurance, and the commonly used term “fidelity bond,” evolved out of personal suretyship, and it traces its roots to the Bible. The Book of Proverbs cautions against being a surety for a stranger.¹ Principles of suretyship were referenced in the eleventh century in the Magna Carta.² In its original sense, a fidelity bond was a guarantee made by the surety to another party (the obligee) of the honesty of the principal (or obligor). Within this agreement, the surety agreed to indemnify the obligee for losses they may suffer resulting from

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1. Proverbs 11:15.
2. Magna Carta of 1512 ch. 9 (“Neither we nor our bailiffs will seize for any debt any land or rent, so long as the chattles of the debtor are sufficient to repay the debt; nor will those who have gone surety for the debtor be distrained so long as the principal debtor is himself able to pay the debt.”)
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the dishonesty of the principal. So, for example, bonds provided the benefit of financial security to the employer if the employee did not fulfil his or her obligation to remain faithful and honest. Over time, fidelity insurance, also referred to as crime insurance, has evolved from a three-party surety bond to a two-party insurance policy.

The crime insurance policies available in today’s fidelity markets are largely the product of forms promulgated by the Surety and Fidelity Association of America and the Insurance Services Office, Inc. These two independent organizations have played a key role in the development of the fidelity and crime insurance industry by developing and filing standardized form language and rating information for insurer use. In addition to the standardized SFAA and ISO developed forms, many insurers have either developed proprietary endorsements to be used with these standardized forms or developed proprietary products, which often incorporate provisions attributed to the SFAA or ISO forms.

Other organizations also play active roles in fidelity insurance, including the Fidelity & Surety Law Committee of the American Bar Association and the Fidelity Law Association, which offer programs providing continuing legal education and continuing education credits for insurance company claims personnel, underwriters and other interested parties on current topics on fidelity insurance. And, there are many other organizations that play a significant role in the fidelity industry.

There are many fine articles and book chapters discussing the history and background of fidelity insurance. The purpose of this chapter is to

5. Formerly the Surety Association of America. Hereinafter SFAA.
6. Hereinafter ISO.
provide a brief overview of the history of crime insurance, to discuss the role of the key industry groups, and to summarize the important changes made to coverage over the years.

II.
From Individual Personal Obligations to the Rise of Corporate Suretyship

In nineteenth century England, household servants such as maids and butlers who could purchase a fidelity bond to ease the mind of a potential employer had a better chance of finding employment. These early fidelity bonds were obtained from professional sureties who, presumably, would conduct a background check of the servant and then, for a fee paid by the job-seeker, sign a bond that the hopeful servant could present to the prospective employer. The employer could make a claim on the

9. Id.
bond if the servant was dishonest.\textsuperscript{10} By the end of the nineteenth century, with the expansion of commercial activity related to the industrial revolution, the need for sureties greatly increased as businesses, governments, and individuals were increasingly forced to place significant assets and responsibilities in the hands of others whose character might not be well known.\textsuperscript{11} Also, as the pace of commerce quickened with the development of new technology, the laborious task of obtaining fidelity bonds from personal sureties became overly burdensome to both principals and obligees. As an added impediment, individual sureties were increasingly unable to guarantee the large contractual obligations and massive financial assets of these growing commercial corporations.\textsuperscript{12}

A solution to this need began to emerge in the mid-1800s in Great Britain, Canada, and later in the United States in the form of corporate suretyship.\textsuperscript{13} In contrast to individual suretyship, corporate suretyship is a system in which a corporation acts as a surety in exchange for the payment of a fee by the obligee. Obligees benefitted from this new system because corporate sureties had the financial capabilities to guarantee large financial obligations that even the wealthiest individual sureties could not. Corporate sureties could also be used to indemnify obligees for potentially significant losses they might suffer as the result of individuals being given access to and stealing large amounts of money inherent in increasingly sophisticated commercial and banking enterprises.\textsuperscript{14} Principals benefitted because they could more easily obtain a surety bond without having to depend on personal contacts that they might not wish to burden or might not even have. And of course, corporate sureties saw the opportunity to earn a profit for themselves. By

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\textsuperscript{10} David A Lewis, \textit{History of Fidelity Coverage; Types of Commercial Crime Policies}, in \textit{COMMERCIAL CRIME POLICY} 1-5, 1-7 (Gilbert J. Schroeder ed. 1997).


\textsuperscript{12} Babcock, \textit{supra} note 7, at 3.

\textsuperscript{13} Morgan, \textit{supra} note 11, at 162-171.

\textsuperscript{14} \textit{Id.}
the early 1900’s, corporate suretyship had mostly replaced personal suretyship arrangements as the preferred form of fidelity bonding.\textsuperscript{15}

While more efficient, corporate suretyship was not without its own problems. In its early stages of development, corporate suretyship still adhered to many of the formalities of personal suretyship. For example, until the early 1900s, corporate sureties continued to primarily issue bonds for individual principals, that is, three-party contracts guaranteeing the fidelity of individual employees or other persons. Such an arrangement remained cumbersome because whenever an obligee such as a bank hired a new employee, the bank and its employee had to arrange for a new fidelity bond to be issued. When an employee left the company, that bond had to be canceled. Also, early fidelity bonds often only guaranteed the fidelity of an employee when acting in a specific position with the obligee. Thus, if an employee was promoted or transferred to a new position, a new bond would often have to be obtained.\textsuperscript{16} As commercial activity expanded, this also proved intolerably cumbersome for all involved.\textsuperscript{17} This problem was first addressed by bonds issued to groups of employees (name schedule bonds), then by bonds guaranteeing the fidelity of certain employees in any position with the obligee (position schedule bonds), or by bonds guaranteeing the fidelity of any employee in certain positions with the obligee\textsuperscript{18} (blanket position bond).

\textbf{III. Continued Early Developments}

By 1911, Lloyds of London had entered the United States fidelity insurance market and in a groundbreaking move, agreed to bond all of the employees of an organization in a single contract on a “blanket” basis. This “blanket bond” guaranteed the fidelity of all employees of a given obligee, regardless of position or identity. It was called a “blanket bond” not because it provided “blanket insurance” for all losses, but because it provided insurance for all employees of an insured. The

\textsuperscript{15} James L. Knoll & Linda M. Bolduan, \textit{A Brief History of the Financial Institution Bond}, in \textit{FINANCIAL INSTITUTION BONDS} I, 3-4 (Duncan L. Clore ed., 1st ed. 1995).

\textsuperscript{16} Babcock, \textit{supra} note 7, at 3-4.

\textsuperscript{17} \textit{Id}.

\textsuperscript{18} \textit{Id.} at 3; Morgan, \textit{supra} note 10, at 170.
Lloyd’s form covered a variety of risks in a single policy, including employee dishonesty, burglary, robbery, fire, and disappearance in transit.\(^{19}\) Insurance regulations at the time prevented American insurers from covering these same varied risks within a single policy form.\(^{20}\) Given that the Lloyds policy represented the only option available where one policy could cover multiple risks, and since Lloyds was not subject to the same insurance regulations faced by American insurers, this policy quickly became popular with American insureds.\(^{21}\)

In 1912, likely in response to a request by the SFAA and the American Bar Association, the New York State Commissioner of Insurance permitted domestic insurers to combine into a single policy, various unrelated coverages for the purpose of streamlining the underwriting of bank insurance.\(^{22}\) The action taken by the New York Insurance Commissioner paved the way for American fidelity insurers to issue a blanket bond of their own.

Initially this “blanket bond” was only made available to banks and, as a result, the policy became known as the “Bankers Blanket Bond.” Because this new type of bond guaranteed the honesty of any employee, not just those named in the bond schedule, it more closely resembled a traditional two party insurance policy than the three party suretyship contracts of the past.\(^{23}\) These early blanket bonds still form the basis of the fidelity bond forms in use today.\(^{24}\)

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20. Id.
IV.

History and Role of Industry Groups in Modern Fidelity/Crime Insurance

Fidelity insurance is generally comprised of two sub-lines: (1) commercial and governmental entities; and (2) financial institutions. The industry has developed separate fidelity and crime insurance solutions for these sub-lines, including through the SFAA and ISO.

A. The Surety and Fidelity Association of America

Formed in 1908 as the Surety Association of America, the SFAA is a trade association of insurance companies licensed to write fidelity and surety insurance. In addition to its “traditional” trade association roles of advocacy and acting as a liaison for the industry, the SFAA also is an advisory organization. In this role the SFAA compiles insurance premiums and loss statistics, develops the loss cost component of the premium rate based on those statistics, prepares standard industry insurance policies and develops underwriting and rating rules for use by its members, which are insurance companies. SFAA members can elect whether to adopt the forms and rules for their own use. Many do and others use the base form but modify certain provisions.

The drafting of policy language is a collaborative process managed by staff of the SFAA with active participation from member companies. The SFAA may seek input of proposed policy language from certain trade associations, such as the American Bankers Association, who represent policyholders to make certain that the form meets the needs of those who will use the policy. With respect to the American Bankers Association, for example, liaison committees historically met to discuss the coverage and language of the form, and while the adoption of suggested changes was not mandatory, suggested changes were often accepted and incorporated into the forms.

The SFAA is licensed as a rating or advisory organization in all states, as well as in the District of Columbia and Puerto Rico, and has been designated by all state insurance departments as a statistical agent for the reporting of fidelity and surety experience. The SFAA represents its member companies in matters of common interest before various federal, state, and local government agencies.
B. The Insurance Services Office, Inc.

ISO develops and maintains standard insurance programs, including policy form language, rating-related and statistical information, for virtually all property and casualty insurance lines of business, other than workers compensation. ISO makes its form and rating-related information available for hundreds of participating property and casualty insurers for their use. ISO’s products are advisory in nature and insurance carriers licensing ISO’s materials are free to use or modify them in accordance with their business needs, subject to applicable state insurance regulatory requirements. The ISO Crime and Fidelity and Financial Institutions programs are filed in all states, District of Columbia, Puerto Rico, Guam and the U.S. Virgin Islands.

V.

Historical Development of Financial Institution Bonds and Commercial Crime Policies by SFAA and ISO

A. Evolution of Financial Institutions Insurance

Beginning with the first blanket bond issued in 1912, protecting insureds against exposure to loss caused by employee dishonesty has been the primary focus of coverage of financial institution bonds. Over time, the bond has also expanded to include coverage for other types of losses insureds typically incur, such as those resulting directly from the perils of robbery, burglary, and theft while property is lodged on an insured’s premises; “in-transit” losses; and losses from forgeries and/or alterations of certain types of instruments and security-type documents.

The inclusion of new coverages and revision to existing coverages for banking institutions has continued to evolve in response to marketplace competition, judicial interpretation, regulatory requirements, and changes in exposure brought on by technological advancement. To address these issues, the insured’s professional risk managers (if they have one) often work with experienced insurance brokers to obtain needed coverage, often negotiating endorsements or amendments to the coverage provided by the standardized fidelity bond available from an insurance company. These amendments, over time, may become commonly requested coverage enhancements and often will be incorporated into subsequent editions of standard fidelity bond forms.
The following is a summary of the main revisions to standard form financial institution bonds and policies of the SFAA and ISO: 25

1. **SFAA Bankers Blanket Bond and Financial Institution Bond**

   The discussion below outlines the evolution of the Bankers Blanket Bond from the Standard Form 1 up to and including the current Financial Institution Bond—Standard Form 24.

   a. The Bankers Blanket Bond up until 1941

      In 1916, the SFAA, with the assistance of the American Bankers Association, released the Bankers Blanket Bond—Standard Form 1. This alternative to the Lloyds policy form allowed American insurers to offer a competitive product to U.S. banks and contained several enhancements to induce potential customers to buy this new form. 26

      In 1920, the SFAA introduced Bankers Blanket Bond Standard Form 2, which replaced the Form 1’s coverage for “any Loss” with coverage for only “direct” losses. 27 Insuring only “direct loss” was intended to limit the insurer’s liability for losses sustained directly or immediately from the transaction itself and avoided the potentially broad interpretation of Form 1. 28

      During the 1920s, the SFAA introduced a variety of bond forms, designed for various types of insureds including mutual savings banks (Form 5); federal reserve banks (Form 6); war finance corporation banks (Form 9); federal home land banks (Form 10); stockbrokers (Forms 12, 13 and 14); and building and loan associations (Form 16). 29

      While bond coverage for banks had generally been broadened in the 1920s under both the Lloyd’s and SFAA’s forms, the onset of the Great Depression in the 1930s reversed this trend. In response to the introduction of laws for the governmental takeover and liquidation of failed banks, the existing cancellation clause in all standard form bonds

25. *See* also Appendix A—Charting The Evolution Of Financial Institutions Insurance.
28. *Id.*
was modified to provide for their immediate cancelation when an insured was taken over by a receiver, liquidator or regulatory agency.\textsuperscript{30}

By the 1930’s, the Form 2 and Form 8 became the two main policy forms for commercial banks.\textsuperscript{31} In 1936 the SFAA introduced a revised version of Form 8. This revised form represented an expansion of coverage from that offered by Form 2 and was developed to compete against broadened coverage being offered by Lloyds of London.\textsuperscript{32}

b. Bankers Blanket Bond—Standard Form 24

Bankers Blanket Bond Standard Form 24, now the Financial Institution Bond, continues to be the form on which all modern financial institution bonds are based. While still called Standard Form 24 today, there are various editions of it, an overview of which is provided below.

(1) 1941 Edition

In March of 1941, the SFAA introduced the Bankers Blanket Bond—Standard Form 24. The form provided broader coverage than Standard Form 8 to those institutions conducting “the greatest volume and variety of banking services,” by adopting an expanded definition of the term “Property,” by providing broader forgery coverage, and by including of the word “criminal” within the fidelity insuring agreement so losses resulting from “criminal” acts were also covered.\textsuperscript{33}

(2) 1946 Edition

The changes made in the 1946 edition included the addition of coverage for losses resulting from vandalism and criminal mischief under the On Premises Insuring Agreement. An optional rider was offered to broaden the definition of “employee” to include attorneys providing legal services for an insured. Other revisions to Form 24 broadened coverage by expanding the scope of coverage for losses of

\textsuperscript{30} Gallagher, et. al, supra note 22, at 13; Weldy, supra note 20, at 5.
\textsuperscript{31} Id.
\textsuperscript{32} Id.
\textsuperscript{33} Duke, supra note 7, at 539-40.
property in-transit, providing broader counterfeit currency coverage and providing coverage for losses to the insured’s books and records.\(^3\)

(3) 1954 Edition

The major revision to Form 24 in 1954 was a rider that converted the bond from providing “loss-sustained” coverage to “discovery” coverage. Under the “loss sustained” coverage in use prior to 1954, the insured was required to establish the date the loss occurred, and coverage was provided by the bond in force on that date. In contrast, coverage under the “discovery” form was provided by the bond in force when the loss was discovered, regardless of when the loss occurred. There was no coverage for any loss discovered after the bond canceled, terminated, or expired. However, the insured typically was able to purchase an extended period of up to twelve months after the expiration of the bond to discover losses that occurred during the policy period.\(^5\)

(4) 1969-1979 Revisions

Prior to 1969, the fidelity insuring agreement in Form 24 applied to losses arising from dishonest, fraudulent, and criminal acts. In 1969, prompted by a judicial decision in *Home Indemnity Co. v. Reynolds & Co.*,\(^3\) where the court found the sale of securities by employees of the insured in violation of an Illinois statute was a criminal act and as such was covered under the terms of the fidelity insuring agreement, the SFAA removed the word “criminal” from this insuring agreement.

From 1969 to 1979, the SFAA developed several amendatory riders for the Form 24 to address changes in exposure within the banking industry and to add reinforcing language to the bond to address judicial interpretation of coverage. One of the more important revisions to the form was introduced by the SFAA in 1976. With the introduction of amendatory Rider SR 6019, employee dishonesty coverage was limited to dishonest acts committed by an employee with the “manifest intent” to cause the Insured to sustain a loss and for which the employee obtained a financial benefit for themselves or another person or organization. Rider

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34.  *Id.*

35.  *Id.*

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SR 6019 also limited coverage by removing the phrase “loss through” and replacing it with the phrase “loss resulting directly from.” These modifications were made to counteract the growing predisposition of courts to interpret “dishonesty” to include reckless or negligent acts, violations of procedure, and intentional violations of trust and to ensure that the bond only covered losses for embezzlement type acts.

Other changes were designed to address the interpretation of coverage provided by the fidelity insuring agreement, to address the judicial expansion of coverage relating to interpretations of what is considered a loan, to address confusion of whether consequential or indirect losses were intended to be covered by the bond, to address how the bond would deal with exposure changes within the insured or changes in ownership of the Insured that occur without the knowledge of the Insurer, to address the prominence of large scale trading activities occurring within insureds and to address the rash of kidnappings of bankers and their family members for purposes of extorting ransom from the insured.

(5) 1980 Edition

The modifications found in Rider SR 6019 were made permanent in the 1980 edition of Form 24. Other of the previously mentioned language changes that had been made to the bond by rider during the 1970s were also incorporated. As noted above, the revisions were made in response to judicial decisions handed down over the years generally concluding that a dishonest act amounted to recklessness or mere negligence.

(6) 1986 “Financial Institution Bond”—Standard Form 24

The Savings and Loan Crisis of the early 1980’s resulted in the government takeover or forced merger of over 600 banks, and the

37. Insuring Agreement (A) of the 1969 Bankers Blanket Bond, Standard Form 24 covered “loss through any dishonest or fraudulent act of any of the Employees.”
38. Rider No. SR 6019, The Surety Association of America Binder of Standard Forms
40. Id. at 544-46.
liquidation or insolvency of hundreds of savings and loan associations.\footnote{41} As a result, banks frequently turned to their fidelity bond in an effort to recover some of the losses they experienced. This uptick in reported losses was further exacerbated by increases in the number of decisions by courts construing the bond in an overly broad manner and applying broad theories of bad faith. Within this environment, the fidelity industry experienced significant increased losses, thereby forcing carriers to increase premiums for banks. These developments spurred the fidelity industry to consider further changes to the standard form bond, which culminated in a new edition in 1986.\footnote{42}

The most obvious change made to the Form 24 in the 1986 version was the change of the name from “Bankers Blanket Bond” to “Financial Institution Bond.”\footnote{43} This change was made in response to some courts erroneously concluding that the term “blanket” implied broad coverage.\footnote{44} Additionally, the financial benefit requirement added in 1980 was modified to require a $2,500 financial benefit in loan loss claims. The 1986 Form 24 was modified so that it could be issued to savings and loan associations and savings banks, thereby eliminating the need for discrete bond forms for each of these types of institutions.\footnote{45}

(7) 2004 Financial Institution Bond—Standard Form 24

The 2004 revisions to the Form 24 were designed to address specific issues that were affecting the fidelity insurance marketplace and the risks associated with the expansion of electronic commerce that had occurred since the prior revision. These changes included revisions to Insuring Agreement (A) to address the interpretation by some courts that tort concepts should be applied to the meaning of the term “manifest intent” so that the intent of the wrongdoer could be inferred from the natural and

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43. Gallagher, Knoll & Bolduan, \textit{supra} note 22, at 19.

44. Weldy, \textit{supra} note 20, at 3.

45. \textit{Id.}
probable consequences of his actions. As such, the term “manifest intent” was replaced with “active and conscious purpose.” In addition, other amendments to the policy were made to address technological developments affecting banks such as desktop published checks and electronic signatures on financial documents.

(8) 2011 Financial Institution Bond—Standard Form 24

Just six years after the introduction of the 2004 Financial Institution Bond, the SFAA began a project to revise all the various form bonds to achieve greater consistency among the forms’ terms and provisions. Most notably, the “active and conscious purpose” intent requirement of the 2004 Form 24 was replaced by the formerly used “manifest intent” requirement.

2. ISO’s Financial Institutions Program

ISO’s development of the Financial Institutions Program was based on feedback received from customers of ISO’s crime and fidelity products who expressed interest in having ISO support the entire fidelity line of business with products and services. The program started with the development of policy forms designed for banks and savings institutions in 2004. As the program developed over the next few years, additional policies were developed for the remaining major classes of financial institutions including: broker/dealers; insurance companies; finance companies; investment companies; credit unions and mortgage bankers.

46. Duke, supra note 7, at 549-551.
47. Id. at 552-59.
48. The Surety & Fidelity Association of America, STATEMENT OF CHANGE FINANCIAL INSTITUTIONS BOND, STANDARD FORM 14 (REVISED TO MAY 1, 2011), FINANCIAL INSTITUTIONS BOND, STANDARD FORM 15 (REVISED TO MAY 1, 2011), FINANCIAL INSTITUTIONS BOND, STANDARD FORM 24 (REVISED TO MAY 1, 2011), FINANCIAL INSTITUTIONS BOND, STANDARD FORM 25 (REVISED TO MAY 1, 2011).
The 2004 filing introduced aggregate and non-aggregate versions of the Financial Institution Crime Policy—Banks and Savings Institutions. Fourteen separate insuring agreements representing coverages commonly written for banks and savings institutions were built into the policy, reflecting coverages for a variety of fidelity and crime perils. The Fidelity Insuring Agreement used a standard of “specific intent” rather than the more common standard of “manifest intent.” Only the fidelity insuring agreement was mandatory. All insuring agreements could be written with separate limit of insurance and deductibles.

Since its introduction, the Financial Institution Crime Policy For Banks And Savings Institutions has undergone two revisions as discussed below.

b. ISO 2007 Filing

The 2007 filing included several amendments for consistency with other financial institution crime policies that were being introduced by ISO. Changes to the Voice Initiated Transfer Fraud Insuring Agreement to add coverage for loss involving certificated securities and uncertificated securities, and insertion of a definition of tested to describe the method of authenticating the contents of a communication instruction in Telefacsimile Transfer Fraud Insuring Agreement were added.

c. ISO 2012 Filing

In the Fidelity Insuring Agreement “specific intent” was replaced with “manifest intent.” Both “specific intent” and “manifest intent” convey that a conscious act on the part of an employee to cause a loss to his or her employer and receive a financial benefit is required in order for coverage to apply. Manifest intent, however, was the term most

51. Hereinafter FICP.
commonly used because it had a long history of judicial opinion setting the parameters of coverage.

B. Evolution of Commercial Crime Insurance

While the first Bankers Blanket Bond was introduced in 1912, when it came to providing insurance to commercial establishments—that is, non-banks—fidelity and crime insurance continued to be offered through individual policies.

In 1926, the SFAA introduced the Commercial Blanket Bond, the first fidelity insurance policy available to non-banking businesses.\footnote{Babcock, \textit{supra} note 7, at 4.} Before the introduction of the Commercial Blanket Bond, non-bank businesses had been able to obtain fidelity insurance only by purchasing individual name or position bonds, or the Name Schedule or Position Schedule Bonds. Thus, the Commercial Blanket Bond brought to non-banking businesses the advantages of “blanket” coverage, such as being able to recover for losses caused by an unidentifiable employee or group of employees, and not having to notify the insurer of changes in employees or their positions. Individual name or position bonds still retained the advantage of providing for the potential recovery of multiple limits when a loss involved a number of colluding employees, whereas the blanket bond provided only a single limit for recovery regardless of the number of employees involved.\footnote{\textit{Id.} at 4-5.}

Burglary, robbery and theft coverages were developed by the National Bureau of Casualty Underwriters\footnote{Hereinafter the NBCU. The NBCU was a rating organization that developed robbery, burglary and theft policies for its member companies. The NBCU was succeeded by the Insurance Rating Bureau in 1968, which then merged with other rating bureaus in 1971 to form the Insurance Services Office.} for its member companies. These included: Bank Excess Securities Policy covering destruction or disappearance of securities; Combination Safe Depository Policy covering loss of customers’ property through the depository’s legal liability for such property or the robbery or damage of such customers’ property; Mercantile Open Stock Policy covering loss of merchandise by burglary or robbery of a watchman while the premises were not open for business; Money and Securities Broad Form Policy covering loss of...
money and securities through destruction, disappearance or wrongful abstraction inside the insured’s premises or banking premises, or outside the premises while being conveyed by a messenger or armored motor vehicle; and Innkeepers Liability Policy covering the insured’s liability for damage or loss of guests’ property.57

In 1940 the SFAA and the NBCU collaborated to introduce the Comprehensive Dishonesty, Disappearance, and Destruction Policy.58 Similar in design to the Bankers Blanket Bond, the 3-D Policy offered five separate insuring agreements which the insured could select, including: employee dishonesty, loss inside the premises (money and securities), loss outside the premises (money and securities), money orders and counterfeit paper currency coverage, and depositors forgery coverage (outgoing checks). Other coverages could be added by endorsement.

The SFAA developed the coverage, rules and rates for the employee dishonesty and depositor’s forgery coverage. The NBCU developed coverage, rules and rates for money and securities coverage (inside and outside the premises) and money orders and counterfeit currency coverage. Other crime coverages developed by the NBCU were offered by endorsement. Two versions of the policy—each with differing versions of employee dishonesty coverage—were offered: the 3-D Form A and 3-D Form B. The 3-D Form A offered the coverage of the SFAA Commercial Blanket Bond, where the employee dishonesty coverage limit applied to all employees involved in causing a single loss. The 3-D Form B provided the coverage of the SFAA Blanket Position Bond, where the employee dishonesty coverage limit applied separately to each employee involved in causing a single loss.

Eligibility rules for the 3-D Policy differed among the insuring agreements. For example, the Employee Dishonesty Insuring Agreement could not be written for a public official or political subdivision, but the other insuring agreements could. (Employee dishonesty coverage for the employees of a political entity was later offered by the SFAA under the Public Employees Blanket Bond and Public-School Systems Employee Blanket Bond.)

57. Bank Excess Securities Form (May 1, 1968), Combination Safe Depository Policy (September 12, 1962), Mercantile Open Stock Policy (October 28, 1964), Money and Securities Broad Form Policy (October 1, 1958) and Innkeepers Liability Policy (September 1, 1945).

58. Hereinafter 3-D Policy.
The marketplace continued to evolve and in 1957, the SFAA and the NBCU introduced the Blanket Crime Policy\textsuperscript{59} which was specifically marketed to smaller classes of commercial entities.\textsuperscript{60} The BCP provided the same coverages found in the 3-D Policy, except that a single limit of insurance applied to all insuring agreements, making all coverages mandatory. The application of a single limit allowed for a premium discount to be provided.

With the formation of ISO in 1971, ISO and SFAA continued to jointly develop the 3-D and Blanket Crime Policies for their respective member companies throughout the 1970’s and early 1980’s. Extortion threats were on the rise and endorsements were created by ISO to address business exposures involving threats to cause harm to employees and relatives and threats to cause damage to the insured’s property. With the rise in the use of computers and the potential for fraud caused thereby, the Computer Fraud endorsement was introduced to address losses to the insured that occurred through the use of computers to fraudulently cause a transfer of the insured’s property. Concurrent with the introduction of these endorsements, SFAA was also actively making changes. Endorsements were introduced by SFAA to include a “manifest intent” requirement for employee dishonesty along with exclusions addressing loss of potential income and indirect loss.

1. **Simplification of Commercial Insurance Policies**

With the conversion by ISO of its property and liability commercial lines programs to a modular, simplified language format, SFAA joined with ISO in the effort to modernize and streamline commercial fidelity and crime insurance coverages. The culmination of this effort was the 1985 filing of simplified crime coverage forms that could be written as part of the commercial package policy, along with other simplified property and liability lines, or as a monoline crime policy. The goals of the re-write were to:

\begin{itemize}
  \item \textsuperscript{59} Hereinafter BCP.
  \item \textsuperscript{60} Blanket Crime Policy (Edition of October 1958).
\end{itemize}
a. Simplify the text of policy forms and endorsements, including satisfying the most rigorous Flesch test requirements contained in state readability laws;  

b. Modernize coverage by taking out antiquated terms;  
c. Accommodate the needs of a portfolio approach to policy structure by adhering to a common format and style, observing uniformity of language in expressing provisions common to two or more lines of insurance;  
d. Reduce the number of policy forms and endorsements.

The original rollout of the program by ISO and SFAA included a Crime General Provisions form, individual coverage forms (which included the insuring agreements and specific provisions applicable to those agreements) and endorsements. The Crime General Provisions form contained common exclusions, conditions and definitions that applied to both SFAA and ISO coverages and was filed jointly by each organization for its respective memberships. The individual coverage forms and endorsements, however, were filed separately by each organization.

2. Discovery Coverage Offered as An Alternative to Loss Sustained Coverage

The 1990’s experienced an uptick in court decisions involving stacking of limits, or multiple recoveries, involving claims for undetected losses stretching over more than one policy period. *Cincinnati Insurance Co. v. Hopkins Sporting Goods, Inc.* and *A.B.S. Clothing Collection, Inc. v. Home Insurance Co.*, were two such cases where the insured argued for separate limits of insurance to apply each year of the

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61. In 1993, The National Association of Insurance Commissioners adopted the Property And Casualty Insurance Policy Simplification Model Act. The Model Act sets forth readability standards for property and casualty insurance which applies to all lines of insurance except policies in manuscript form; and ocean marine; surety and financial institution bonds; reinsurance or commercial aviation.
63. 522 N.W.2d 837 (Iowa 1994).
64. 41 Cal. Rptr. 2d 166 (Cal. App. 1995).
employees’ dishonest acts. To address these decisions, in 1997 the SFAA filed a new Crime General Provisions (Discovery Form) to provide insurers with an option of writing crime coverage on either a discovery or loss sustained basis.

When written on a discovery basis, the Commercial Crime Policy responded to loss sustained at any time, which was first discovered during the policy period or discovered within sixty days after the termination or cancellation of the policy. By the terms of the policy, only one limit of insurance would apply to the entire loss.

The Crime General Provisions form which provided loss sustained coverage, where the loss must be sustained and discovered during the policy period or discovered within one year from the end of the policy period, was retained and re-titled Crime General Provisions (Loss Sustained Form).

Due to the joint cooperation between SFAA and ISO on administration of the commercial crime program, it was necessary for ISO to make a similar filing as the changes also impacted the ISO Program.65

3. Separate Commercial Crime Programs

Year 2000 saw the introduction by SFAA and ISO of their own separate commercial crime programs to serve the needs of their individual participating companies. The coverages which were previously considered under the sole jurisdiction of one or the other organizations, going forward, would be developed independently by each organization. ISO entered into an agreement with the SFAA permitting each organization to share forms, endorsements and rating information so that each organization could independently develop its own crime and fidelity products.

The following is a summary of the main revisions to standard commercial crime policies of the SFAA and ISO:66

66. See also Appendix B—Charting the Evolution of Commercial Crime Insurance.
4. ISO 2000 Filing

The goal of the 2000 program was to incorporate the most popular of the crime coverages into one document, similar in structure to the withdrawn non-simplified 3-D Policy. The ISO standalone Commercial Crime Policy and Government Crime Policy combined the separate crime coverage forms that provided coverage equivalent to the 3-D Policy. Thus, the modular approach to writing coverage introduced in the mid-1980’s was streamlined by eliminating the need to attach many different forms.

The other significant change was the introduction of Employee Theft coverage as an alternative to Employee Dishonesty coverage. The coverage grant of Employee Theft requires an unlawful taking of property by an employee to the deprivation of the insured. In contrast, under Employee Dishonesty coverage, the employee must act dishonestly and with the manifest intent to cause the insured to sustain a loss and to obtain a financial benefit. Today, most commercial crime policies issued to commercial organizations provide coverage for loss caused by “theft,” as opposed to employee dishonesty.

To support the Commercial Package Policy, both a new Commercial Crime Coverage Form and Government Crime Coverage Form were introduced which combined the Crime General Provisions Form and the same coverage forms as the Commercial Crime Policy. This coverage form can be attached, along with coverage forms from other lines of insurance, to the Common Policy Conditions form to make up a Commercial Package Policy.

a. ISO 2002 Filing

In 2002, ISO introduced a separate Kidnap/Ransom and Extortion Policy and revised the Commercial Crime Policy to include the Funds Transfer Fraud Coverage previously offered by endorsement. New insuring agreements were filed for software contractors, destruction of

Handling Fidelity Bond Claims

electronic data or computer programs and unauthorized reproduction of computer software by employees. A final change was the inclusion of coverage for electronic signatures under the Forgery or Alteration Insuring Agreement in response to the passage of the Electronic Signatures in Global and National Commerce Act and the Uniform Electronic Transactions Act.

b. ISO 2006 Filing

This revision came in response primarily to court decisions affecting certain provisions of the Policy, including claims involving stacking of limits. Other court decisions also influenced changes to the policy.

In *Auto Lenders Acceptance Corporation v. Gentilini Ford, Inc.*, the court held, in part, that the definition of occurrence did not affirmatively indicate whether a “series of related acts” also includes acts occurring before the term of the current policy. Further, that the acts caused by the same individual at different times were separate acts and therefore separate occurrences. In response, ISO amended the definition of “occurrence” in order to elaborate on its meaning that a series of acts, whether or not related, committed by an employee acting alone or in collusion with other persons, whether committed during or before, or committed both during and before, the policy period shown in the declarations, is one occurrence.

In *Home Savings Bank, SSB v. Colonial American Casualty and Surety Co.*, the appellate court upheld the trial court’s ruling that the employee termination provision of the fidelity bond could only be applied in situations where the insured first learns of an employee’s dishonesty after the bond is issued. Based on the court’s ruling, a new

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73. 598 S.E.2d 265 (N.C. Ct. App., 2004).
exclusion was adopted for situations where the insured learned, before the policy was issued, that an employee had committed theft or dishonesty. The existing Employee Termination condition continues to address termination of an employee upon the insured learning of such theft or dishonesty after the policy had been issued.

A new exclusion was introduced in reaction to the increase in data breach attacks against businesses that resulted in disclosure of confidential or personal information held by the insured. The exclusion applied to unauthorized disclosure of information belonging to the insured (but not the unauthorized use of the insured’s information to cause loss) or the unauthorized use or disclosure of information of another person or entity which is held by the insured.

c. ISO 2012 Filing

The 2012 revision of the ISO Commercial Crime Policy was designed to combine the separate Computer Fraud and Funds Transfer Fraud insuring agreements and revise coverage to focus on an outside hack attack by a non-employee, similar to the coverage used commonly for financial institutions where coverage applies to fraudulent entry or change of electronic data or fraudulent entry or change of computer program in the insured’s computer system. The change was designed to reinforce that the incidental use of a computer to perpetuate fraud, such as the creation of false documents that are subsequently relied upon by the insured to initiate financial transactions, is not the kind of loss contemplated under Computer Fraud coverage. *Brightpoint, Inc. v. Zurich America Insurance*, Co.76 and *Owens, Schine & Nicola, P.C. v. Travelers Casualty & Surety Co.*77 are recent court decisions which prompted the change to coverage.

A second significant change was to introduce a new exclusion for expenses associated with loss of confidential or personal information in


75. See Appendix—ISO Commercial Crime Policy (Discovery Form) CR 00 22 08 13.


response to a data breach which was the subject matter of the decision in *Retail Ventures, Inc. v. National Union Fire Insurance Co.*

**d. ISO 2015 Filing**

Exposures related to the advent of virtual or digital currencies and social engineering scams were addressed in the latest revision to the ISO Commercial Crime Program in 2015.

In the Commercial Crime Policy, an exclusion addressing virtual currencies was added as these new kinds of currency were not contemplated under the definition of “money.” CR 25 45 11 15 Include Virtual Currency as Money endorsement can be used to amend the policy definition of “money” to provide coverage for virtual currencies scheduled in the endorsement.

A second change was the adoption of the Fraudulent Impersonation endorsement CR 04 17 11 15, which provides coverage for loss resulting from an employee being deceived into transferring money, securities or other property by someone impersonating an employee of the insured or a customer or vendor of the insured.

**e. 2017 ISO Filing**


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78. 691 F.3d, 2012 WL 3608432 (6th Cir. 2012).
80. *See* Appendix—ISO Commercial Crime Policy (Discovery Form) CR 00 22 11 15.
5. **SFAA Crime Program**

In 2001 SFAA created its own commercial crime policy called the “Crime Protection Policy.” The original version of the policy included Coverage Forms A, B, C, D, and R. Other coverage forms were offered by endorsement, including Coverage Forms F and G. With a few exceptions, the coverages of the Crime Protection Policy were largely the same as that provided by the Simplified Crime Policy developed by the SFAA and ISO. Nevertheless, the SFAA continued to support Coverage Forms A, B, O, and P for its member companies in writing coverage in a Commercial Package Policy.

a. **SFAA 2012 Filing**

In 2012, the SFAA revised the CPP to be in line with many of the changes that had been incorporated into the 2004 revisions made to the Form 24. Of significance was the amendment of the term “financial benefit,” found in the Insuring Agreement 1, to “improper financial benefit.” In addition, the phrase regarding benefits “received in the normal course of employment” was replaced by benefits “received” by the employee. This change was made to make it clear that wages, salaries, or commissions generated through a dishonest scheme were excluded from the loss calculation. Also, the coverage under the Computer Fraud Insuring Agreement was revised to reflect that the intent of coverage was to cover “Computer to Computer” transactions and that the coverage was not intended to extend to any loss that merely involves the use of a computer. The language was developed in response to case law where it had been decided, in part, that the use of email in a dishonest scheme could bring a loss within computer crime coverage.

b. **SFAA 2015 Filing**

In 2015, the SFAA developed the Fraudulently Induced Transfer Endorsement for the Crime Protection Policy. This endorsement adds a new Insuring Agreement to the policy that provides coverage for loss

83. *See* The Surety and Fidelity Association of America Newsletter, Volume XXVII, Issue 6, (September/October 2011).

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incurred by the insured as a result of effecting a wire transfer based on a person impersonating an officer, customer, or vendor of the insured who provides false information about where the money should be sent.

c. SFAA 2017 Filing

New ERISA Amendatory Endorsements were developed based on discussions between SFAA and the United States Department of Labor. The Department of Labor had objected to standard fidelity bond language, taking the position that such language did not comply with section 412 of ERISA, or with regulations governing ERISA. The new ERISA Amendatory Endorsement adds a new insuring agreement, which covers loss “resulting directly from fraud or dishonesty committed by a covered person.” “Fraud or dishonesty” is defined as: “larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion or willful misapplication, or any other fraudulent or dishonest act, including acts prohibited by title 18, section 1954 of the U.S. Code.” This definition tracks the language set forth in 29 C.F.R. § 2580.412-9.

VI.

Company Proprietary Insurance Programs

The need to offer insurance coverage solutions beyond that provided in standard forms is driven in large part by competition, the diverse nature of business risks, and the sophistication of entities who have the ability to negotiate coverage terms and premiums. This is most evident in the financial institutions markets where institutions employ professional risk managers who negotiate coverage terms and price with brokers and insurers. In the commercial market, larger companies often hire sophisticated brokers who similarly negotiate changes to standard policy language.

Insurers have developed solutions to these marketplace conditions in different ways. Those insurers who use the SFAA or ISO standard forms often include proprietary endorsements. Other insurers have created and maintain their own suite of bond and policy form products and are less

86. 29 C.F.R. § 2580.412-9; see The Surety and Fidelity Association of America Newsletter, Volume XXXIII, Issue 2, (March/April 2016).
reliant on SFAA and ISO standard forms. However, in many cases, even these proprietary forms contain wording developed by SFAA or ISO as the platform in designing these independent forms.

VII. Other Industry Organizations

The fidelity industry is also served by other organizations sponsoring educational programs providing continuing legal education and continuing education credits for insurance company claims personnel, underwriters, outside coverage attorneys and other interested parties on current topics of fidelity insurance. The Fidelity & Surety Law Committee of the American Bar Association\(^{87}\) holds two programs each year devoted to fidelity: one in November and at the other during the Mid-winter meeting in January. Presentations at these meetings are accompanied by written papers. And, the FSLC sponsors the publication of many fine books on the subject of fidelity law, such as this one, with experienced lawyers and other industry professionals expert in crime insurance authoring the chapters and editing the publications.

Another organization, The Fidelity Law Association, holds an annual Conference in November each year, traditionally in conjunction with the FSLC Fall program. And, the Association publishes the only scholarly journal devoted to fidelity articles, The Fidelity Law Journal.

Other organizations also hold conferences on fidelity insurance, including the Northeast Surety and Fidelity Claims Conference; the Southeast Surety and Fidelity Claims Conference; the Surety Claims Institute; and the Gulf Coast Fidelity and Surety Institute.

VIII. Conclusion

From its introduction in the United States more than a century ago, fidelity bond coverage has undergone continued revisions. Historically, these revisions have been made in response to changing business practices and risk exposures, erroneous court decisions misinterpreting the intent of coverage, and to respond to competitive pressures within the marketplace.

\(^{87}\) Hereinafter FSLC.
Many organizations have played important roles in the industry. As noted above, the SFAA and ISO are the two leading independent organizations that have played a key role in the development of the fidelity and crime insurance industry by developing and filing standardized form language and rating information for insurer use. These standardized forms have largely been influenced by incorrectly decided court decisions, competition among insurers, and new exposures in the business and government sectors.

The process employed in the development of the forms and amendments reflects the wide-ranging perspectives and input of the stakeholders involved. The ultimate goal is to make available a product that provides meaningful coverage which is responsive to the needs of insureds and which insurers are comfortable offering. And as also noted above, other organizations, including the Fidelity & Surety Law Committee of the American Bar Association, the Fidelity Law Association, and various proprietary organizations, provide valuable educational programming including books, Journals and papers.
APPENDIX A

Charting the Evolution of Financial Institution Bond Insurance

For SFAA, the Bankers Blanket Bond was used as the base form in the development of the other standard financial institution bond forms in use. This exhibit only focuses on the Bankers Blanket Bond. Likewise, for ISO, the Financial Institution Crime Policy For Banks and Savings Institutions (FICP) was used as the base form in the development of other financial institution crime policies This exhibit will only focus on the Financial Institution Crime Policy for Banks and Savings Institutions.

<table>
<thead>
<tr>
<th>Year</th>
<th>Organization</th>
<th>Form</th>
<th>Significant Developments</th>
</tr>
</thead>
</table>
| 1916 | SFAA         | Form 1 | • Provided coverage to banks against employee dishonesty, loss of property on premises and in transit through robbery or theft, and loss by false pretenses.  
• Indemnified the insured for “any loss” which might be interpreted to include indirect and consequential loss not only “direct losses.”  
• Included a special rider which provided superseded suretyship with a discovery period of up to five years for bonds that substituted for Lloyds coverage. |
| 1920 | SFAA         | Form 2 | • Narrowing of coverage from Form 1 by insuring only “direct losses.”  
• Provided coverage for employee dishonesty, on premises robbery, burglary, larceny theft or hold-up or destruction and in-transit robbery burglary, larceny, theft or hold up.  
• Coverage was also limited through the revision of the definition of property to refer to only tangible assets. |
| 1936 | SFAA         | Form 8 | • Contained separate Insuring Agreements for Fidelity, On Premises, In Transit and Forgery.  
• The Fidelity Insuring Agreement extended to “any dishonest or criminal act.” |

Fidelity Insurance Through the Ages
<table>
<thead>
<tr>
<th>Year</th>
<th>Organization</th>
<th>Form</th>
<th>Significant Developments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1941</td>
<td>SFAA</td>
<td>Form 24</td>
<td>• Reverted back to covering “any loss” rather than “direct loss” found on the Form 2.</td>
</tr>
<tr>
<td></td>
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<td></td>
<td>• Initially only offered to large banks for purpose of finding out if a new superior form might appeal to banks. It quickly became preferred to Form 8 and was soon offered to all Commercial Banks.</td>
</tr>
<tr>
<td></td>
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<td></td>
<td>• Provided fidelity coverage by covering “any dishonest, fraudulent or criminal act.” Policy offered a broader definition of Property and broader forgery protection than what was offered on the Form 8.</td>
</tr>
<tr>
<td>1946</td>
<td>SFAA</td>
<td>Form 24</td>
<td>• Amended bond to include loss through vandalism and criminal mischief under the On Premises Insuring Agreement.</td>
</tr>
<tr>
<td>1951</td>
<td>SFAA</td>
<td>Form 24</td>
<td>• Amended the bond to incorporate many of the revisions available by rider into the base bond form:</td>
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<tr>
<td></td>
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<td>– Added the broader definition of employee that includes attorneys,</td>
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<td></td>
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<td>– Broadened In-Transit coverage,</td>
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<td></td>
<td></td>
<td>– Broadened coverage for counterfeit currency,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>– Added coverage for insured’s books and records.</td>
</tr>
<tr>
<td>1954</td>
<td>SFAA</td>
<td>Form 24</td>
<td>• SFAA developed an optional rider that converted the Form 24 from “Loss Sustained” to “Loss Discovered.”</td>
</tr>
<tr>
<td>1969</td>
<td>SFAA</td>
<td>Form 24</td>
<td>• Removal of the term “criminal” from fidelity coverage in response to increase in court interpretation of “criminal” that expanded coverage to include losses resulting from employee violations of state statutes and not just criminal acts by employees involving theft and embezzlement.</td>
</tr>
<tr>
<td></td>
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<td>• Loan loss exclusion is expanded to refer to both “loans” and other similar transactions. In addition, exclusion was</td>
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<td>Year</td>
<td>Organization</td>
<td>Form</td>
<td>Significant Developments</td>
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<tr>
<td></td>
<td></td>
<td>24</td>
<td>also amended to specifically exclude check kiting losses except under specifically stated circumstances.</td>
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</tbody>
</table>
| 1980 | SFAA         | 24     | • Introduced the “Manifest Intent” clause within the Fidelity Insuring Agreement.  
• Removal of the right of a receiver or governmental entity who takes over the insured to purchase a one-year discovery period. |
| 1986 | SFAA         | 24     | • Name of the product was changed to Financial Institutions Bond—Standard Form 24.  
• Amended the Discovery provision of bond so that coverage is triggered by discovery of loss “regardless of when the acts causing or contributing to such loss occurred”.  
• Added the $2500 minimum benefit for losses relating to loans.  
• The term “Loan” is defined as “all extensions of credit by the Insured and all transactions creating a creditor relationship in favor of the Insured and all transactions by which the Insured assumes an existing creditor relationship.” |
| 2004 | SFAA         | 24     | • Insuring Agreement (A) amended to:  
  – Delete the “manifest intent” requirement and replacing it with the requirement that the employee have acted with the “active and conscious purpose” to cause the insured a loss.  
  – Modify the phrase “financial benefit” to “improper financial benefit,” and replace the phrase “earned in the normal course of employment” with the phrase “received by an Employee.”  
• Introduced revisions to Insuring Agreements (D) and (E) to prevent |
### Handling Fidelity Bond Claims

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<th>Year</th>
<th>Organization</th>
<th>Form</th>
<th>Significant Developments</th>
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<td>claims for the same loss being made under both Insuring Agreements. Insuring Agreement Revision to Insuring Agreements (D) so that coverage provided was exclusive of that provided by Insuring Agreement (E). Insuring Agreement (E) was revised to clarify that coverage only for loans made on the faith of forged documents enumerated in the agreement.</td>
</tr>
<tr>
<td></td>
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<td></td>
<td>• Introduced revisions to Insuring Agreement (D) and to the exclusion for losses relating to “counterfeiting” to provide coverage for losses resulting from false checks created with desktop publishing software. This change was necessary because there had been a question under the prior bond whether a check created by computer was a counterfeit, and whether a computer-generated reproduction of a signature was a “mechanical” reproduction.</td>
</tr>
<tr>
<td>2004</td>
<td>ISO</td>
<td>FICP</td>
<td>• Introduced financial institution crime program.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• The FICP contains fourteen separate insuring agreements. The Fidelity Insuring Agreement uses “specific intent” as an alternative to the more common standard of “manifest intent”.</td>
</tr>
<tr>
<td>2007</td>
<td>ISO</td>
<td>FICP</td>
<td>• Extended On Premises Insuring Agreement to include the premises of depositories maintained by a stock exchange in which the insured is a member, but only as respects its interest in loss of certificated securities.</td>
</tr>
<tr>
<td></td>
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<td>• Revised Voice Initiated Transfer Fraud Insuring Agreement to include certificated securities and uncertificated securities that are transferred or delivered from a voice initiated transfer</td>
</tr>
<tr>
<td>Year</td>
<td>Organization</td>
<td>Form</td>
<td>Significant Developments</td>
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<td>customer’s account in reliance upon a fraudulent voice instruction.</td>
</tr>
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<td></td>
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<td></td>
<td>• Revised Telefacsimile Transfer Fraud Insuring Agreement to introduce a definition of “tested”, meaning a method of authenticating the contents of a communication by affixing to it a valid test key agreed upon between the insured and the customer for the purpose of protecting the integrity of the communication.</td>
</tr>
<tr>
<td>2011</td>
<td>SFAA</td>
<td>Form 24</td>
<td>• In the 2011 Bond, “active and conscious purpose” was removed from Insuring Agreement (A) and the manifest intent standard that had been in place since the late 1970s was returned.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• The requirement that the employee also intended to obtain a financial benefit was added back as a requirement for coverage for all losses under Insuring Agreement (A), after having been removed by the 2004 Bond for all losses except those involving loans or trading.</td>
</tr>
<tr>
<td>2012</td>
<td>ISO</td>
<td>FICP</td>
<td>• Replaced “specific intent” with “manifest intent,” in recognition of market preference.</td>
</tr>
</tbody>
</table>
APPENDIX B

Charting the Evolution of Commercial Crime Insurance

The ISO Commercial Crime Policy and the SFAA Crime Protection Policy, both of which appear in the appendix of this book, have in many ways evolved over the last 80 years since the 3-D policy was introduced in 1939. The foundations of that first product, with five basic insuring agreements, still forms the basis of the current versions of forms, updated, where necessary, to respond to court decisions, newer technologies and marketplace demands.

The chart below summarizes in chronological order the major historical revisions to the commercial forms discussed above and identifies many of the significant changes that today shape the ISO and SFAA commercial crime programs.

<table>
<thead>
<tr>
<th>Year</th>
<th>Organization</th>
<th>Significant Developments</th>
</tr>
</thead>
</table>
| 1939 | NBCU and SFAA | • Introduced the Comprehensive Dishonesty, Disappearance and Destruction Policy “3-D Policy.”  
• Provided coverage for: employee dishonesty, inside the premises (money & securities); outside the premises (money & securities); money orders and counterfeit paper currency; and depositors forgery.  
• Separate limits of insurance and deductibles could be written. |
| 1957 | NBCU and SFAA | • Introduced the Blanket Crime Policy “BCP”.  
• BCP provided the same coverages of the 3-D Policy but a single limit of insurance and deductible applied to all coverages.  
• Designed for small markets. |
| 1970’s | ISO and SFAA | • Developed new and revised coverage endorsements for 3-D Policy and BCP, including:  
  o ISO—Extortion Threats and Computer Fraud insuring agreements.  
  o SFAA—revised employee dishonesty coverage based on “manifest intent” |
<table>
<thead>
<tr>
<th>Year</th>
<th>Group</th>
<th>Changes</th>
</tr>
</thead>
</table>
| 1980  | SFAA   | - Revised the 3-D Policy, BCP, CBB and BPB to include updates such as “manifest intent”.
|       |        | - ISO did not make a similar filing for the 3-D Policy or BCP as it already was beginning work on policy simplification and changes made by SFAA did not impact ISO coverages. |
| 1986  | ISO and SFAA | - Introduced the simplified Crime Forms Program, providing fidelity and crime coverage in a modular format on a standalone basis or as a coverage part to the Commercial Package Policy. |
| 1989  | ISO and SFAA | - Changed the name of the Combination Crime Policy to Commercial Crime Policy to track with Commercial Crime Coverage Part and withdrew the single loss limit of insurance option provided in Blanket Crime Policy-type coverage. |
| 1997  | ISO and SFAA | - Introduced discovery coverage through the Crime General Provisions (Discovery Form) as an alternative to loss sustained coverage. |
| 2000  | ISO    | - Entered into agreement with SFAA to share coverage and rating information so that each organization can develop its own commercial crime program.
|       |        | - Restructured 1986 commercial crime program its entirety by:
|       |        |   o Replacing modular format approach of attaching separate coverage forms and returned to the 3-D Policy format, combining popular coverages into one policy form.
|       |        |   o Introducing the Commercial Crime Policy, Government Crime Policy and Employee Theft and Forgery Policies (Discovery and Loss Sustained versions). |
### Handling Fidelity Bond Claims

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
<th>Details</th>
</tr>
</thead>
</table>
| 2001 | SFAA  | - Introducing coverage form equivalents to the policies named above for use with the Commercial Package Policy.  
- Adopted Employee Theft coverage as an alternative to SFAA Employee Dishonesty. |
| 2002 | ISO   | - Entered into agreement with ISO to share coverage and rating information so each organization can develop its own commercial crime program.  
- Introduced the Crime Protection Policy following 3-D Policy format, combining popular coverages into one policy form.  
- Continued to support existing commercial and government crime coverage forms for use with the Commercial Package Policy. |
| 2006 | ISO   | - Revised commercial and government crime forms in part due to Gentilini decision. Removes non-cumulation clause in favor of examples demonstrating allocation method of adjusting loss over multiple policy periods. |
| 2012 | ISO   | - Added confidential information exclusion due to DSW case and also combines Computer Fraud and Funds Transfer Fraud coverages. Computer coverage changes to require fraudulent entry of electronic data or fraudulent change in computer program similar to the financial institution approach to coverage. |
### Fidelity Insurance Through the Ages

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
<th>Details</th>
</tr>
</thead>
</table>
| 2012  | SFAA             | • Introduced “Improper financial benefit” to Employee Dishonesty Insuring Agreement.  
                        • Amended Computer Fraud to clarify coverage is for “Computer to Computer” transaction.  
                        • Added exclusion for Data Breech expenses and confidential information. |
| 2015  | ISO              | • Addressed virtual currency by adding exclusion in coverage forms and policies and adopting an endorsement to provide coverage.  
                        • Introduced Fraudulent Impersonation Insuring agreement a.k.a. social engineering. |
| 2015  | SFAA             | • Introduced Fraudulently Induced Transfer Coverage to address Social Engineering Fraud loss. |
| 2017  | ISO              | • Introduced endorsement to respond to ERISA.                           |
| 2017  | SFAA             | • Introduced endorsement to respond to ERISA.                           |