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Risk Management Consultants - Established 1926

Crime Insurance - Discovery vs. Loss Sustained Form

Introduction

A crime insurance policy typically provides several different types of crime coverage, such as: employee dishonesty coverage; forgery or alteration coverage; computer fraud coverage; funds transfer fraud coverage; money and securities coverage; and money orders and counterfeit money coverage.

The Surety Association and the Insurance Services Office (ISO) provide standard insurance policy language for the insurance industry's use, including crime insurance. We will discuss key differences between ISO's "Discovery" and "Loss Sustained" crime insurance policy forms.

Background

Historically, commercial crime insurance was written on a loss sustained basis and not until the late 1990's did the Surety Association/ISO provide an alternative with the discovery basis form that historically was used to provide crime insurance for financial institutions. We find a lot of confusion still remains with the differences between these forms and our discussion will look to provide additional clarification.

Basically, the **Discovery basis** covers losses that are discovered by the insured during the policy period and sixty days thereafter (unless replaced with similar insurance) no matter when the loss occurred, and it does not matter if the insured had prior coverage. This is similar to claims-made coverage with full limits and coverage for prior acts.

Contrasted with the **Loss Sustained basis**, which provides coverage for losses that are sustained during the policy period or within the period of time provided in the Extended Period to Discover Loss Condition; which is typically one year from the policy expiration or termination date.

The Loss Sustained form also covers losses that occur under a prior crime policy if a) the prior crime policy was in force at the time of the loss, and b) if crime coverage has been in effect continuously, and c) the loss would have been covered by the prior crime policy and the current crime policy. This is similar to an occurrence type liability policy form.

Review ISO Commercial Crime Forms

1. **Discovery Form ISO CR 00 22 05 06 Commercial Crime Policy** reads:

"A. Insuring Agreements ... applies to loss that you sustain resulting directly from an "occurrence" taking place at any time which is "discovered" by you during the Policy

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Period shown in the Declarations or during the period of time provided in the Extended Period to Discover Loss Condition E.1.j.”

The key phrases to consider are “*occurrence taking place at any time*” coupled with “*which is discovered by you during the policy period*” ... “*or the Extended Period to Discover Loss Condition*”.

2. Loss Sustained Form ISO CR 00 23 05 06 Commercial Crime Policy reads:

“A. Insuring Agreements ... applies to loss that you sustain resulting directly from an “occurrence” taking place during the Policy Period shown in the Declarations, except as provided in Condition E.1.o. or E.1.p., which is “discovered” by you during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition E.1.j.:.”

The key phrases to consider are “*occurrence taking place during the policy period*” coupled with “*which is discovered by you during the policy period*” ... “*or the Extended Period to Discover Loss Condition*”. One additional point to consider is the phrase “*except as provided in Condition E.1.o. or E.1.p.*” which addresses prior crime insurance policies maintained by the insured, which is unique to the Loss Sustained policy form.

The Loss Sustained Form (CR 00 23 05 06) provides three detail examples on how a multi-year claim will be adjusted and are worth reviewing because it details how the recovery for a loss occurring over a period of years would be reduced. See pages 9 and 10. This less desirable result under prior year policies does not occur under the Discovery Form.

Summary

When one contrasts the “taking place at any time” to “taking place during the policy period”; it is clear that the discovery form can provide much needed historical coverage for an insured that has not purchased coverage previously and/or who purchased amounts of insurance that are less than the current amount; whereas the loss sustained form only provides coverage for an insured during the time they have maintained uninterrupted crime insurance policies and for amounts of insurance that were in force when that portion of the loss occurred.

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