

**Principles
of
Suretyship**

Volume I

**John B. Fitzgerald
Ray H. Britt
Daniel D. Waldorf**

12—Principles of Suretyship

that the SAA member companies may use to determine the premiums necessary for specific risks. Each surety company must decide what expenses it needs to charge above and beyond the loss costs. (Chapters 9 and 10 examine surety ratemaking.)

Claim Representatives

Claim representatives of surety companies sort through the often conflicting information provided by obligees, third-party claimants, principals, and indemnitors. They frequently must make decisions and act in ways that affect the financial well-being of one or more of those parties. The effects can be beneficial to some and detrimental to others. They sometimes may be assisted by outside counsel or, in the case of construction-contract losses, by professional engineers. (Chapter 12 treats the claims process in greater detail.)

Sound claim practices include, but are not limited to, the following:

1. Determination of the facts
2. Evaluation of the facts
3. Review of the law and its application to the facts
4. Documentation of decisions and actions in order to demonstrate the process through which claim representatives made decisions or took action

Claim representatives must know the surety's claim philosophy and faithfully carry it out. Sureties are aware of their role in the economy and society. Their first duty is to the parties who rely on the protection of surety bonds. Their second duty is to the principals and indemnitors for whose business, personal necessity, or convenience they provide bonds.

The roles of producers, underwriters, and claim representatives in a fidelity and surety operation are very distinct. People should be trained fully in their roles, and one person should not attempt to perform all three functions because special skills are needed for each. The nature of the relationship that develops between producers and underwriters, on the one hand, and producers and their principals, on the other hand, is such that it is unwise for either a producer or an underwriter to attempt to resolve a claim situation even when it appears to be very simple.

SURETYSHIP, INSURANCE, AND BANKING

Some aspects of suretyship are most like other forms of insurance, but suretyship also shares some common features with banking. This section explains both the common features and unique characteristics of suretyship, insurance, and banking.

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Rights of Recovery. Claim personnel's information gathering is not only concerned with the claim presented, but also with establishing the company's rights to recover any loss or expense paid from the following sources:

- Collateral
- Principal (under the surety's common law right of indemnification)
- Principal and indemnitors (under other contracts of indemnity)
- Equitable subrogation to the rights of claimants it has paid

The obligations and rights of each party—claimant, principal, indemnitor—and the company are to be considered in the information-gathering process. The claimant is entitled to a statement of the company's position with respect to the claim within a reasonable time. The company is entitled to know the extent of its liability to the claimant and the parameters of its exposure to loss and expenses, as well as its prospects of recovery of its loss and expenses. While the company has reason to believe that the principal and indemnitors are aware of their liabilities and the extent of the company's potential loss, it is the responsibility of claim personnel to inform them of any new developments that may affect their rights or liabilities, thereby keeping them involved in the claim process.

Claim Evaluation. An integral part of the information-gathering process is an evaluation of the facts. Evaluation enables claim personnel to determine the truth and prepares them to make the necessary decisions about the claim presented and the company's rights to recover any loss or expenses paid. Evaluation also leads to decisions about the company's liability or nonliability to the claimant, the amount of reserve to cover a real or potential liability, and the sources of recovery of any loss and expense.

Occasionally, information developed is incomplete and contradictory with regard to contentions of the parties. When this is the case, claim personnel continue to seek the truth and avoid decisions detrimental to the interests of the company. They must not, however, lose sight that the bond was issued for the protection of the claimant. Many companies give their interests precedence and, at times, the benefit of the doubt. The approach taken, however, is a matter of company policy, which can vary from company to company. Some companies have policies that the interests of claimants and the company are to be given equal consideration, with no benefit of the doubt going to claimants.

tional plans may depend on a company's structure, such as whether it has branch or regional offices, or on its size, with variance between larger and smaller companies.

Claim personnel job duties vary, depending on whether they are handling contract, noncontract, or fidelity claims. Claim personnel must gather information and evaluate all the facts about claims and apply contractual provisions and, at times, the law to many varied situations. They decide the best course of action to follow to pay just claims promptly and to maximize salvage recovery. Claim personnel must be aware of the rights of parties under subrogation, as well as assignment, to ensure that they acquire essential information that might bear on these rights.

Claim personnel are concerned with establishing adequate and accurate reserves for anticipated losses, reporting claims to cosureties and reinsurers, and obtaining prompt payment of their surety companies' shares of losses and expenses paid. Claim personnel should have a sound grasp of general loss adjustment concepts; but they must also master the concepts particular to their daily work, whether it is in the contract, noncontract, or fidelity bond area. An important responsibility of claim personnel is accurate and complete reporting to reinsurers and cosureties. The United States Small Business Administration (SBA) Surety Bond Guarantee Program, which assists small emerging contractors, has special procedures and forms for claim handling, and claim personnel should be aware of them.