Community Bank Lender Liability Coverage

In a previous article breaking down Community Bank coverage we covered Trust Liability and Director D&O. Today we'll cover Lender Liability. Several types of Lender Liability involve:

- Wrongful failure to honor a loan commitment
- Wrongful failure to renew a loan
- Deliberately creating a technical default or wrongfully declaring a default in order to generate fees and penalties or to acquire the property
- Improperly foreclosing a mortgage or a security agreement without giving proper notice or following proper legal procedures
- Wrongful interference with a borrower's day-to-day activities or the borrower's contractual relations with third parties
- Breaching a fiduciary duty that the lender may have assumed with respect to the borrower

In Siegner v. Interstate Production Credit Association of Spokane (PCA), the PCA loan officer made a series of promises about funding, assuring the plaintiffs that PCA understood the cattle industry was cyclical and that plaintiffs could take 10 to 20 years to pay off a capital loan. PCA also induced the plaintiffs to purchase a second cattle ranch.

When the time came to sign the loan papers, the plaintiffs noticed that the documents contained new provisions to which they had not agreed and that the document structured the real estate loan for only one year. However, based on the officer's assurances that they were mere formalities, the plaintiffs signed the documents.

When PCA failed to honor its oral promises the plaintiffs sued. PCA defended itself based on the parol evidence rule. The appellate court applied the parol evidence rule and found that the oral agreements were not inconsistent with the written agreement and were the type of agreements that might have been made separately. The court found that it would have been highly unlikely for the plaintiffs to have agreed to repay the loan in a year as reflected in the loan documents; if so, the plaintiffs would have purchased the ranch knowing with virtual certainty that they would lose it, as well as other assets, at the end of one year. A one-year loan would also mean that PCA had made the loan knowing it would be required to foreclose on it in one year. As a result, there was nothing inconsistent with loan documents prepared on a yearly basis, with a separate oral agreement to renew over a long period.

Among the many coverages offered by Travelers Community Banks Business Insurance is lender liability coverage and professional services liability coverage under its bankers professional liability insuring agreement:

- Lender liability coverage:
  - Coverage extends to the bank, its directors, officers and employees
  - An expanded definition of lending acts applies, including loan servicing when the bank has an ownership interest in a loan
- Professional services liability coverage:
  - Coverage extends to the bank, its directors, officers and employees

The product and eligibility may have been revised or discontinued since the original article was written. Review the Information page for each product on Big "I" Markets for current content and instructions.
An expanded definition of professional services applies, with no need to schedule professional services to be covered

- Professional services include loan servicing on behalf of a third party

Critical Policy Features:

Directors and Officers Liability (D&O):
This policy provides liability protection when claims are asserted against directors and officers for actual or alleged wrongful acts. The assets of the company or organization, as well as the personal assets of its directors and officers, are protected from costly litigation.

Employment Practices Liability (EPL):
This policy helps protect company assets from employee lawsuits alleging discrimination, harassment or wrongful termination and other employment-related claims.

CyberRisk:
This policy provides coverage to protect against data breaches and other fast-evolving cyber exposures not covered by standard property and liability policies. The Travelers CyberRisk policy responds in multiple ways, such as security breach remediation and notification expense, network and information security liability, regulatory defense expenses, crisis management event expenses and computer program and electronic data restoration expenses.

Fiduciary Liability:
Fiduciary liability insurance responds to claims made against employers, employee benefit plans, board members and employees for breaches of fiduciary duty with respect to employee benefit plans. These claims can include allegations of imprudent investment of plan assets, excessive fees paid to service providers, non-compliance with plan documents, and false and misleading statements to plan participants.

Bankers Professional Liability Coverage:
Community banks offer a variety of services to customers, and such services continue to expand - especially with the evolution of the e-business platform. Personnel who manage these professional services, as well as the bank itself, could be liable if errors and omissions occur in the execution of services. With bankers professional liability coverage from Travelers, banks can be protected from a wide range of related exposures.

Trust Liability Insurance:
Among the many roles potentially served by a bank and its employees is that of trustee. As a trustee, a bank may be responsible for managing an estate, a trust account or other similar asset. This representation could occur in a variety of capacities, including executor, administrator, custodian, and other roles. But the banker who assumes this role, as well as the bank itself, could be liable if a customer is not pleased with the service provided, or if errors and omissions occur.

Professional Liability for Financial Institutions:
Professional liability coverage is designed to protect all types of financial institutions and their directors, officers, and employees from claims relating to the rendering of professional services. Insurance company professional liability insurance is intended to protect insurance companies from claims arising out of their claims handling. Financial institutions
professional liability can assist banks and credit unions with lender liability and professional services claims.

Financial Institutions Bond:
Financial Institutions Bond, with optional endorsements for social engineering fraud, electronic signatures, virtual currency, and account takeover coverages, provides an important backstop against the actions of dishonest employees, protecting a financial institution's balance sheet, assets and stakeholders' investments.

Kidnap & Ransom (K&R):
This coverage helps safeguard companies and their key managers against the significant costs associated with kidnappings and extortion, including threats of bodily harm, property damage, product contamination, computer viruses or loss of trade secrets.

Identity Fraud Expense Reimbursement:
The coverage reimburses certain expenses relating to restoring a victim’s identity, including lost wages, pre-approved attorneys’ fees, long distance telephone charges, loan re-application fees and notary and certified mailing charges.

Travelers SelectOne® for Community Banks, underwritten by Travelers Casualty and Surety Company of America, is endorsed by the Independent Community Bankers of America. To find your local community bank, visit ICBA's community bank locator at www.icba.org/about/find-a-community-bank. Simply type in your zip code and the app will show you all the community banks in your area.

A specimen policy is located in “Product Resources” on www.bigimarkets.com.