

SIMMONDS ON BANK INSURANCE

Edition 6-3

Consulting On, But Never Selling, Insurance

June 2012

Bad News About Your Bank's Liability Insurance

The good news is, every other bank in the US has the same problems. (Maybe not-so-good news.) Okay, I'm being bombastic.

Your liability insurance is probably pretty good — overall. It probably needs some tweaking. However, that's another matter — we can talk about at another time.

My title references the trouble that I see in two exposures. The problem comes to the fore in foreclosures and involves two liability topics: pollution and construction defects.

First, pollution. It is best to assume, unless you've been told otherwise, that your bank's insurance program does not provide coverage for the cleanup of pollution or for the liabilities that come from pollution at a foreclosed property. Not in your general liability, not in your umbrella, and not in your directors' and officers' insurance.

Let's say your bank takes over an apartment building. In the basement you find that the now former owner had stored waste motor oil, intending to use it to heat the building. The state environmental people get involved, and it comes out that the neighbor's well is contaminated.

Guess who's paying for the cleanup? Guess who is going to be visited by the neighbor's attorney, claiming birth defects from the polluted well? Guess who has no insurance coverage for any of these expenses?

So, fairly quickly we have identified a problem with your bank's insurance.



There is certainly pollution insurance available. The cost of admission is \$10,000. It could be more if you have any real exposures. Actually, if you have any exposures, no insurer will insure you for anything approaching a realistic premium.

Bank liability insurance problem two is construction defects.

Let's say your bank provides a development loan on a large shopping center. Halfway

through construction, the developer goes under. Your bank takes over the project and sells it to another developer, who finishes the construction and sells it. Two years later it's found that the roof is improperly installed and must be replaced. The current owner sues the final developer and your bank, as you have your fingerprints on the project.

Your general liability insurer and your umbrella insurer will do what they can to avoid paying this claim. The courts are now

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Facebook, Twitter, Blogs, and Employees

I think every mother has said to her kids, “It’s all good fun until someone gets hurt.” The same can be said of social networking. We know your employees are tweeting, blogging, posting, and poking. There are text messages, smartphone pictures, and videos being made every day by at least half your employees.

What starts out as fun is great, until someone gets hurt. The pictures become harassment or bullying. The texts become sexting. The Facebook posts turn into defamation.

Then there is the info available to you as the employer. You might be able to find all kinds of info out there about job applicants, employees, and customers. Sometimes, info is a good thing. Sometimes it’s just better not to know. (As the father of 5 kids ranging from 22 to 32, I have stopped reading anything on Facebook.)

This isn’t just a young-person thing. My 88-year-old mother-in-law is on Facebook every day. I found some of her postings scarier than what my kids put up.

■ **TACTIC 1:** Have a social media policy. Run it by your employment lawyer. Set guidelines and expectations: what is acceptable use of the bank’s equipment, name, and reputation.



■ **TACTIC 2:** Offer lunch-and-learn sessions with demonstrations that teach employees how to use social networking platforms; bring in a college kid who can walk people through setting accounts up and the use of the various security settings.

■ **TACTIC 3:** Assign someone in the bank the responsibility of watching the bank’s reputation on the Internet. What’s being tweeted, posted, and complained about? What are customers saying?

■ **TACTIC 4:** Figure out what to use and what not to use in researching job applications, employees, and customers. I’m not suggesting an ostrich-like approach. Neither do I think you should be James Bond. State laws are changing quickly in this area. What you can do and what you should do are often two different things in this area.

■ **TACTIC 5:** Stay up on this stuff. Management of your bank needs to have their ear to the ground on social networking, just like any other technology or communications medium. I’m sure you get the local newspaper. You should also subscribe to locally relevant social media sites. ■

Step-By-Step Bank Insurance Coverage Review

I’m often asked how my reviews of insurance work. Here’s a timeline from one of my recent bank insurance review projects:

■ **DAY 1:** The CFO of ABC Bank emails me. He is interested in a review of his bank’s insurance. We discuss his bank’s situation, current insurance, and his objectives. The call takes less than twenty minutes. In a few hours he has a proposal outlining costs, my approach, objectives, and value.

■ **DAY 5:** The CFO gets back to me, asking to move forward. He signs the proposal and cuts me a check for my fee. The bank emails me copies of the policies. I forward a survey of exposure questions to help me understand the bank. I start my review.

■ **DAY 15:** I email the CFO a copy of my

findings to be used in our phone call later in the day. At the appointed time we review the issues and I provide my recommendations. The CEO, CFO, and SVP of the bank are on the call. We set action plans and accountabilities for each issue.

■ **DAY 16:** I send the call participants a summary of the issues we discussed clarifying my recommendations. The CFO calls me with questions as the issues are addressed. I often talk with the bank’s agent about my suggestions. We are all on the same team.

■ **VALUE:** My clients get better insurance, better premiums, and easier insurance

administration. My clients don’t wonder about the quality of their insurance. They know it.

Send me an email at Scott@ScottSimmonds.com or call 207-284-0085. After a short conversation, I’ll send you a proposal for your consideration.

With a review of your bank’s insurance, you will have a better understanding of your insurance. You’ll know the coverage you have, and the coverage you don’t have. You’ll have specific recommendations on how to improve your coverage, and tactics to broaden your insurance protection. ■

Bank Insurance Commentary: What's Missing From Your Bank's Risk Management?



The bank world is filled with risk management. There are chief risk officers, risk management committees, and regulations about managing risk. There are books and magazines about bank risk management, and bank risk management associations. CEOs are charged with managing the bank's risk. CFOs build complicated models for the task.

However, few in the banking world see insurance as a part of the risk management plan.

IT IS, OF COURSE, AS AN "INSIDE OUTSIDER" TO THE BANKING WORLD, THE HOLE IS QUITE OBVIOUS TO ME. Many banks have not had their insurance reviewed by someone other than their current agent in years. Your agent may be a friend, relative, stockholder, or board member. Many insurance agents have little experience with the complicated policies that are a part of the standard bank insurance program.

SOMETIMES IT ISN'T EVEN THE "COMPLICATED" POLICIES. For example, I have long said that the biggest risk of multi-million-dollar lawsuits for most banks is not in directors' and officers insurance – where most bankers spend their worry-time. The greatest risk is in the oft-forgotten exposure of employees driving on bank business. A horrific car crash can lead to many millions in lawsuits and loss of reputation to the bank. Yet few bank risk managers even consider such.

ADD A CHECK-BOX TO YOUR RISK MANAGEMENT TASK LIST. Review your insurance with your agent at least once a year. Talk about trends in insurance, coverage concerns, and changes in your bank's operations. Speak with your peers about your insurance coverage and what issues they see in their own insurance. Talk frankly with your agent about your concerns. If you wonder about the quality of your insurance, now is the time to address those issues, not after a loss.

SOMETIMES IT'S JUST A MATTER OF ASKING QUESTIONS. Here are some for your agent, to get you started:

- If we were a prospect and not a client, which insurance company would you recommend we consider?
- What is your plan for the coming year's renewal?
- What should we consider for coverage improvements?
- What are your concerns with our insurance program?

I have compiled a list of sixty questions that will help you as you work with your agent. Drop me a line for a copy. Scott@ScottSimmonds.com.

Scott Simmonds, CPCU, ARM



Claims Management Teleseminar

Nobody plans to have claims. Your actions in the first few days after an incident can make all the difference. What process needs to be in place? Who do you call? When should you report claims?

I'll cover all of these issues and more in my June teleseminar. Forty-five minutes of solid information you will not hear anyplace else. Questions are encouraged and discussions are welcome. If you manage insurance for your bank, you need to be in on this teleconference call.

When: June 10, 2012 - 1:00 p.m. Eastern

Where: Call in and listen from any phone

Register for free by emailing Scott@ScottSimmonds.com or go to www.ScottSimmonds.com/teleseminar. No obligation, of course. Seats are limited. Register now. ■

Free Bank Insurance Resources

BECOME A MEMBER OF MY "INNER CIRCLE" to get free access to a wealth of bank insurance information. No other resource offers more information designed to help bankers who buy insurance for their banks. Access is free; just email me at Scott@ScottSimmonds.com.

GET ACCESS TO MY PAST BANK INSURANCE TELESEMINARS – Sessions have included: How To Renew Your Bank's Insurance, Lender Asset Protection Insurance, What You Should Know About Your Bank's Insurance, D&O for Dummies, and Banker's Bond Bugaboos.

QUESTIONS TO ASK YOUR INSURANCE AGENT – Sixty questions to ask your insurance agent to help you understand your bank's insurance coverage.

HOW MUCH COVERAGE? – Recommended insurance limits for banks. Do you have enough? Includes bond limits, executive risk, umbrella liability, cyber liability, and property insurance. Answers to the most common question I get: How much coverage should we buy? ■

**STAY CURRENT ON BANK
INSURANCE ISSUES.**

**JOIN OUR INNER CIRCLE FOR
FREE, PRACTICAL INSURANCE
ADVICE DELIVERED DIRECT
TO YOUR INBOX.**

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filled with such claims against developers. Insurers do not want to pay for defective construction. They will say the event is not an occurrence under the policy, that it is excluded, or that it is not the intent of the policies. A judge will ultimately decide. The result is, at best, lots of time and effort. At worse, lots of money will flow out of the bank. Frankly, you have little chance of winning this coverage battle.

I've been talking with my bank clients about the problems of pollution for many years. My solution has been to be very careful of the properties you foreclose on. I recommend environmental surveys and the like.

I've been talking about the construction defect issue for about a year now. My solution has been an indemnification agreement by the contractor the bank sells a project to. The final developer agrees to indemnify the bank for future claims against the bank. Not a great solution, I realize. Such a requirement changes the nature of the sale. It also gets the contractor thinking about bad stuff instead



of the good stuff any bank wants a buyer of bank-owned property to be thinking of.

Here is a risk management solution several banks have taken.

The bank sets up an LLC and sells the distressed loan to the LLC prior to foreclosure. The LLC forecloses on the property, compartmentalizing the risks of lawsuit to the LLC. The LLC buys a separate property insurance program and liability coverages. The theory is that the bank is insulated from a lawsuit involving the property. Assets of the LLC are at risk, not the assets of the bank.

I'm sure there are reasons why this would not work for every bank. I'm sure the solution is not perfect, and perhaps a claimant could still get to the bank. I'm sure I am not an attorney and that anyone thinking about this strategy should talk to their attorney.

Here is what I do know. Absent a strategy like this, your bank is exposed. There is no insurance policy I know of that will take care of these exposures for 99% of the community banks out there. To me, some strategy is better than the current exposures for REO properties.

One bank told me that their solution is to not make bad loans. That would take care of many problems. What does your bank do? I'd be glad to hear other suggestions. ■



Insurance Renewal Coaching Services

My bank insurance renewal coaching services are designed to help your bank get the best coverage at the best price in your next renewal.

Should you keep the same coverage? Are you missing protection? Is your agent working as hard as she should? Are you missing opportunities? Is this really the best there is?

The best time to start working on your renewal is 120 days before the expiration of your current policies. My tactics can help even if you are days away from the due dates.

Contact me now to discuss your bank's situation. Scott@ScottSimmonds.com or 207-284-0085. ■