

# Notice and Discovery Provisions of Commercial Crime Policy Strictly Enforced

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The United States District Court for the District of Maryland, applying Maryland law, has held that the discovery period in a commercial crime policy must be strictly enforced and that no coverage was available where notice of an employee's crime was given several years after the end of the discovery period. *Gray & Assocs., LLC v. Travelers Cas. & Sur. Co. of Am.*, 2008 WL 822130 (D. Md. Mar. 25, 2008).

An insurer issued a commercial crime policy to a real estate settlement company for the period of September 23, 2002, to September 23, 2003. The policy provided that the insurer would "pay only for covered loss discovered no later than one year from the end of the policy period" and that when the insured discovered such a loss, it must notify the insurer "as soon as possible" and provide a proof of loss within 120 days.

An employee stole money from the insured's escrow accounts during the discovery period, causing harm to a title insurance company for which the insured acted as an agent. The title insurance company sought coverage from the insurer and copied the insured on its request for coverage. The insurer denied the claim because the policy did not provide third-party coverage and the title insurance company was not a party to the policy.

The insured did not file a notice of claim by the end of the discovery period, so the title insurance company obtained appointment of a receiver in December 2004. The court ordered the receiver to make all claims of the insured on its insurance policies, but the receiver did not give notice to the insurer until May 2007. In his subsequent coverage action, the receiver claimed that he had not discovered the theft until January 2006 because of limited access to the insured's records.

The receiver argued that he had not been able to satisfy the discovery deadline because he was not appointed until after the discovery period ended. The court rejected this argument because the policy made clear that the insured is the entity that must discover the crime during the discovery period. To the extent the receiver stood in the shoes of the insured, the court found that the receiver "pled itself out of a cause of action" by alleging in his complaint that he did not discover the crime until January 2006, nearly 15 months after the end of the discovery period.

The receiver also argued that the discovery clause was satisfied because the insurer received actual notice of the crime from the title insurance company during the policy period. The court again noted that the crime must be discovered during the policy period by the insured, not the insurer or another party. For this same reason, the court denied as irrelevant the receiver's request for discovery of the insurer's actual knowledge.

Finally, the receiver argued that he should be allowed to take discovery regarding whether the insured actually discovered the crime during the discovery period. The court denied the request because, since the insured never filed a claim, it either did not discover the crime or did not provide timely notice of the discovery. Coverage would be unavailable under either scenario. The court therefore granted summary judgment in favor of the insurer.