

FIDELITY, COURT AND CONTRACT BONDS

(Continued from page 4)

There are Court bonds, similar to the above, such for instance as assignees for the benefit of creditors, and it is well to remember that the risk to the surety companies is greatly increased if the assignee does not have his actions confirmed by the Court, because, failing this, the bonding company cannot obtain a release, nor can they have any of the rights and remedies, to which they would otherwise be entitled.

Judicial.

This class includes bonds issued to defendants, guaranteeing payment of judgments, and are of a hazardous nature, usually calling for collateral security.

In addition there are bonds given by plaintiffs guaranteeing payment of costs or damages sustained by the defendant, which are less hazardous.

Bank Accounts — Trust Accounts.

If the Fiduciary uses reasonable care in the selection of a bank, and deposits the funds there, as a separate and distinct trust account, both he and the bonding company will be relieved from liability should the bank fail. If the trust funds are deposited to his own credit, even if they are not mixed with his own, both he and the bonding company will be held liable for the resulting loss if the bank should fail.

Further, if the Fiduciary becomes insolvent and forced to assign, if the trust funds are deposited in his individual name, his creditors could seize the monies, and the surety company would be compelled to make good the loss. In addition, if the other property of the estate could not be identified as trust property, it could also be seized by his creditors.

Joint Control.

This system of having two signatures on each cheque, drawn upon trust funds, is resorted to wherever practicable by surety companies, as a safeguard, as it is felt that it would tend to check any possible manipulation of the funds for irregular purposes.

In this regard it is interesting to note that in certain states to the south of us, the fiduciary and bonding company are held liable for loss resulting from the failure of the bank, where joint control is exercised by the surety, it being held that this arrangement precludes the beneficiary from withdrawing the money from the bank on the first indication of danger, the restriction causing the monetary loss to the estate.

Contract Bonds.

This is a large and interesting subject, but I cannot deal with it at length tonight.

Before contract bonds became as generally favored as they are to-day, the custom was for the contractor to deposit with the obligee a marked cheque for a given percentage of the contract price, to guarantee completion of the contract.

When the work is complete, it was frequently found that the extras totalled up a very considerable sum, which the obligee generally thought excessive, the result being in many cases, that the contractor had difficulty in securing the return of his deposit money.

A further feature was, that this deposit represented cash, the lack of which hampered many a contractor in the completion of his work, if indeed it did not cause many to default.

Contractors, therefore, were relieved in these two vital respects when corporate bonds could be secured, and the public are now insisting upon the successful contractor securing a bond, before the work is actually assigned to him, on the principle that unless he can obtain a bond, his financial statement is either unsatisfactory, or else there is 'some fly in the ointment' that in the opinion of the surety company is likely to cause him to default.

A further consideration is, that bonding companies can frequently be of use to contractors, by insisting upon the deletion of irksome clauses that are often incorporated in agreements, which if allowed to remain, would prejudice the principal's chances of successfully completing the work.

There are several interesting differences between fidelity guarantee and contract bonds, viz:-

- (1) The fidelity bond sets out specified acts that the principal shall not commit, therefore is negative.
- (2) The contract bond is positive in its character, guaranteeing that the principal will perform his contract.
- (3) If an employee is honest, there can be no claim under a fidelity bond.
- (4) The principal under a contract bond may be absolutely straight, but if he fails in his contract, from lack of funds, executive ability, or any other cause, both he and the surety are faced with loss.
- (5) A fidelity bond can be cancelled after issuance, a contract bond can not.

In any walk of life, the successful business man must be able to size up his subject, and to decide whether the financial statement submitted by a contractor, is a correct and up-to-date reflex of his financial position.

Generally speaking, these statements are misleading, the values of real estate, plant and other assets, being over-estimated, with the liabilities under-estimated, all to show an increased worth.

It is always well to get information about the other contracts the applicant has completed, in order to ascertain his correct standard, and at the same time secure full particulars of the unfinished work on hand, enquiring into the progress and dates for their respective completion.

There is always a day of reckoning, and if a contractor is keeping his head above water, only through getting more new work, the end will soon arrive, and it is well to steer clear of such an individual.

Financial statements are very valuable in assisting an underwriter to gauge the ability of a contractor, for where you find his profits have been well invested, you at once feel more confidence in him, that it is possible to do in the case of a contractor who has his money tied up in speculative stocks that have no value.

Most of you, if not all, know the three bonds usually asked for by contractors, viz:-

- (1) The Bid Bond.
- (2) The Construction Bond.
- (3) The Maintenance Bond.

The names indicate the nature of the guarantee they contain, each being of an important nature.

There are some contracts more hazardous than others, that we come across in our somewhat limited field, such as:-

- (1) Bridge Builders—involving the laying of foundations under water.
- (2) Building of wharves and dams.
- (3) Building of sewers or tunnels.
- (4) Guarantee the wearing capacity of street pavings, etc.
- (5) Guarantee the efficiency of concrete work.

It will be readily appreciated that there are features about the above contracts that might not have been fully enquired into, when estimating the value of the work, that are likely to have their full effect upon the completion, for example:-

(1) Difficulty might be experienced in securing a base under water on to which concrete foundations may be laid for bridges or wharves.

(2) If a contractor, in estimating that cost of building a sewer, figures on excavating so many yards of sand, and so much rock, and when he gets the contract, finds that it is nearly all rock, he is liable to be discouraged and throw the completion on to the surety.

(3) Then again the question of the proper mixing of concrete is ever present and, if the bond guarantees efficiency or life of any work, especially over a period of years, this maintenance feature has to receive special attention.

Obviously one of the most important considerations is: Did the contractor secure the work at a figure that will enable him to complete, and at a profit?

How many contractors in Vancouver have over a series of years, made money out of their work? I think we can call to mind a very large number of prominent men who have not.

In competitive bidding some contractors are eager for work, in order to keep efficient workmen employed, and therefore take work on a slim percentage of profit, which can easily result in a loss if unforeseen delays or complications arise.

As a rule, however, the surety company can secure a statement of the other competitive bids, and if there is any substantial differences in an applicant's bid, as compared with other responsible firms who are really out for business, it is just as well to hesitate, and enquire into the figures before issuing the bond.

The clauses in the agreement, which is covered by the contract, have to be fully considered, for there may be stipulations incorporated that will not be fair to the contractor.

For instance, the agreement may provide that the contractor shall have a stipulated and substantial amount of work done, before he is entitled to a 'draw.' He may have a large sum of money tied up in the structure, yet, through no fault of his own, be unable to secure delivery of certain materials, consequently he cannot qualify for a 'payment on account.' If he should be forced to wait an unreasonable time, he might default for financial reasons.

The clauses of the agreement should be carefully scrutinised, to see that any such danger points are minimised, or excluded if possible.

Payments should be on an equitable basis, and regular, withholding a margin of say 15 per cent. until completion, which in the event of default will, with the work that has been put into the building, not protected by liens, reduce the loss to the surety, if they should be called upon to complete the building.

Companies sometimes issue bonds on individuals, lacking financial substance, on the strength of a friend going on their bond.