



Surety & Fidelity

Weekly



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SFAA Launches Surety & Fidelity Weekly

Welcome to the Inaugural Issue of Surety & Fidelity Weekly. This new weekly service replaces the bimonthly newsletter with the latest legislative and regulatory developments, association news, case summaries, statistical news, new bond requirements and events - all in a short, easily digestible format.

SFAA President Lee Covington states, "It is vital that we keep our members updated about the latest developments across the country and in Washington, so together, we can be proactive in advancing the interests of our members, and the agents and clients we serve. Along with our other member communications, the new Surety and Fidelity Weekly will be another tool to enable us to engage our members and accomplish our goals."

SFAA Increases Promotional and Advocacy Efforts

SFAA is taking its advocacy efforts to the next level. Among the priorities are to grow bonding opportunities in the private construction

market. Currently, contract bond premium related to private projects represents only 18.6% of the contract bond written premium. However, nonresidential construction spending dwarfs all public construction spending, \$452.8 billion vs. \$316.7 billion (*August 2018, Seasonally Adjusted, Department of Commerce*).



The initial target market to promote and grow bonding in the private market will be commercial bankers and commercial developers. In 2019, promotion and advocacy will include regional meetings with bankers and developers promoting the value of bonds.

One component of promotion and advocacy will be to use research and studies to demonstrate the value proposition of bonds, including the prequalification feature of bonds. Members of the Actuarial, Statistical and Contract Bond Advisory Committees are collaborating on the

implementation of the first study, which will be a comparison of the default rate of performance and payment bonds and the default rate on construction projects generally. The Committees currently are providing input to staff regarding the parameters of the study and possible data sources.

Midterm Election Results - It's Not Over

Election day was almost two weeks ago, and a few races remain to be called with five races in the House to be determined and a runoff in the Senate scheduled for next week.

In the House, Democrats needed 23 seats to control the House. As of today, Democrats garnered 37 seats with five races to be determined. In the Senate, Republican won 52 seats over the Democrats 47 with runoff scheduled in Mississippi next week. In the Gubernatorial races, Republicans retained control 27 state offices, which Democrats increased from 16 to 23 seats.

House: 232 Democrat - 198 Republican
Senate: 52 Republican - 47 Democrat
State Governors: 27 Republican - 23 Democrat

SFAA President Testifies Before NAIC



The National Association of Insurance Commissioners (NAIC) conducted their final meeting of the year and had two surety issues on the agenda. The NAIC recently formed a Native Alaskan/American Indian Liaison Committee to discuss insurance issues unique to these

SFAA's Model Contractor Development Program, which has resulted in increased bonding accessibility for small and emerging contractors, and offered to coordinate with Commissioners to conduct programs in their states.

groups.

SFAA President Lee Covington testified at the committee hearing to address any concerns expressed about bonding. A unique issue is that Native American Indian tribes are sovereign entities that make their own law and govern themselves.

Absent a clear and express waiver, an action cannot be brought against a tribe in federal, state, or tribal court. Since the contractor has none of its usual remedies and recourse, there is a greater exposure to loss. The surety may tighten its underwriting standards and bonds may not be as widely available.

The committee members who spoke acknowledged these issues and Mr. Covington offered SFAA's technical assistance as Commissioners work with tribes to promote infrastructure development and economic growth. Mr. Covington also provided information regarding

The NAIC also formed a Cannabis Insurance Working Group that is exploring issues regarding insuring persons and business entities in the marijuana business in states that have legalized it.

Commissioners are focusing on whether general liability or products liability products need to be changed. From SFAA's perspective, the problem that the NAIC needs to address is the conflict between state and federal law. Under federal law, cannabis is an illegal controlled substance and banks are prohibited from accepting deposits that are the proceeds of illegal activities. While some sureties may want to respond to new bond opportunities for these businesses, they cannot do so without fear from federal prosecution.

SFAA has worked on a bill in Congress with the American Bankers Association that would create safe harbors to operate within the parameters of the state laws that have legalized the product.

Case Law Developments

During the week of November 12, 2018, SFAA reported on the following cases involving surety bonds:

- *Smith's Ready Mix, Inc. v. Liberty Mutual Insurance Co.*, 2018 U.S. Dist. LEXIS 191773 (W.D.Ark. November 9, 2018) permitted a bond principal to intervene in an action initiated by the claimant against the payment bond surety.
- *LDR Industries, LLC v. The Hanover Insurance Company*, Case No. Adv. No. 16 A 404 (Bankr. N.D. Ill. November 8, 2018) held that a letter of credit furnished by the bond principal as collateral for a Customs bond could be used by the surety to cover losses paid under a previously issued Customs bond.
- *SureTec Insurance Company v. Eternity, LLC*, 2018 U.S. Dist. LEXIS 194884 (N.D.Ala. November 15, 2018) granted the surety's motion for a preliminary injunction, ordering indemnitors to deposit collateral. The court agreed with the surety that the irreparable harm was the loss of its bargained for right to demand collateral under the indemnity agreement.

Members and case summary subscribers may obtain additional details regarding these cases on SFAA website (www.surety.org)

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The Surety & Fidelity Association of America
www.surety.org

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