

## Hawaii Court Rules That Policyholder May Recover Employee Dishonesty Coverage Under Multiple Successive Policies

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A Hawaii federal district court ruled that a company was entitled to recover the \$250,000 per-occurrence sublimit for each of five successive policies for losses stemming from an employee's theft over a twenty-year period. *Arc in Hawaii v. DB Ins. Co., Ltd.*, 2021 WL 2481672 (D. Haw. June 17, 2021).

The insured discovered that its accountant had engaged in numerous incidents of theft and forgery from 1998 through 2017, resulting in nearly \$7 million in losses. The company sought coverage under Forgery and Employee Dishonesty provisions in commercial property policies. DB Insurance argued that it fulfilled its obligation by paying a single limit of \$250,000 under the Employee Dishonesty provision and that it had no coverage obligation under the Forgery provision.

The court ruled that coverage under the Forgery provision was triggered and that a Criminal Acts Exclusion did not bar coverage. The court explained that the exclusion appeared in the general policy, whereas the grant of forgery coverage was issued in a separate "Enhancement Endorsement" and that under state law, specific provisions preempt general provisions where the two conflict.

In addition, the court rejected DB Insurance's contention that it was obligated to pay only a single policy sublimit under the Employee Dishonesty provision. DB Insurance argued that payment under successive policies was prohibited by a "one occurrence provision," which stated that "All loss or damage: Caused by the same person or persons; or Involving a single act or series of related acts: is considered one occurrence." The court rejected this argument, finding the policy language ambiguous as to whether an "occurrence" can extend beyond a policy period. The court also rejected the contention that a non-cumulation provision limited the insurer's obligation to provide coverage under successively-issued policies, finding the provision "temporally ambiguous" as to whether it applies across successive policies.

However, the court granted DB Insurance's motion to dismiss the bad faith and punitive damages claims, emphasizing that the issues in dispute related to ambiguous provisions and unsettled questions of law.

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