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## Illicit Stock Certificate Loss Not Covered, 11th Circ. Rules

Share us on: By **Jeff Sistrunk**

Law360, Los Angeles (February 09, 2015, 5:49 PM ET) -- An Alabama bank isn't covered under a Travelers Cos. Inc. financial institution bond policy for losses it suffered when a customer defaulted on loans secured in part by a fraudulently obtained stock certificate, the Eleventh Circuit ruled Monday, finding that the certificate isn't counterfeit as defined by the policy.

Applying Alabama law, a three-judge panel ruled that the financial institution bond's definition of counterfeit doesn't include a "duly authorized stock certificate procured under false pretenses."

The panel affirmed a lower court's ruling against Bank of Brewton, which had sought coverage under the Travelers policy for losses it incurred when a customer defaulted on more than \$1.5 million in loans after the stock certificate securing the loans was found to be worthless.

"In sum, we conclude that although [the certificate at issue] was fraudulently procured, and as such, valueless, it was an authentic document and thus not 'counterfeit' under the terms of the bond," the panel wrote.

The bond that Bank of Brewton acquired from Travelers covered, among other things, losses directly resulting from the bank's extending credit in good faith based on a counterfeit security.

The bank issued a number of loans to longtime customer Jackson Hines over the years. In November 2005, as collateral for one of those loans, Hines assigned 180 shares of stock in the Securance Group to the bank and delivered a stock certificate for those shares, court documents said.

A Bank of Brewton employee in March 2009 realized that the certificate, referred to as Certificate No. 2 in court documents, was actually a copy of the original certificate. Hines told the bank that he had

inadvertently delivered a copy and had lost the original, and further asserted that he hadn't pledged the certificate with any other bank, court papers said.

Upon Hines' request, TSG issued a new certificate — Certificate No. 11 — representing the same 180 shares, which Hines then gave to the bank, according to court documents.

In December 2009, Bank of Brewton consolidated all of Hines' outstanding loans into one loan of about \$1.5 million and issued an additional \$95,000 loan. Several months later, the Securance Group's president discovered that Hines had previously assigned the 180 shares of stock represented by Certificate 2 to another bank and told Bank of Brewton that Certificate 11 was therefore void, according to court documents.

Hines declined to replace the 180 shares with other collateral and subsequently defaulted on the loans and filed for bankruptcy, court papers said.

Travelers refused to cover Bank of Brewton's losses from the default, and the bank filed suit in Alabama state court in February 2013. The insurer removed the case to federal court.

According to Bank of Brewton, either Certificate 2 or Certificate 11 would constitute a counterfeit security, triggering coverage under the Travelers financial institution bond. Travelers argued that the bank couldn't have relied in good faith on Certificate 2 in issuing the loans and that Certificate 11 wasn't counterfeit.

The trial court granted Travelers' motion for summary judgment. No claim based on a loss stemming from Bank of Brewton's reliance on Certificate 11 is covered by the bond, because the certificate is an authentic document that just happened to be null and void when it was issued, the lower court found.

On appeal to the Eleventh Circuit, the bank asserted that the trial court erred in concluding that Certificate 11 isn't counterfeit, contending that Hines acted with the required intent in giving the bank a worthless stock certificate that appeared to be a valuable certificate.

The appellate panel rejected that argument, saying that the bond only provides coverage for deception-based losses tied to "documents that imitate an original." Certificate No. 11 was unquestionably authentic, as it was issued by the Securance Group and numbered, dated and signed by the appropriate officer, the panel said.

"An attempt to deceive by means of a document that imitates the appearance of an authentic original is not the same as an attempt to deceive by means of false factual representations implicit in an authentic document," the panel wrote.

Attorneys for the parties did not immediately respond to requests for comment Monday.

Judges Gerald Bard Tjoflat, Jill A. Pryor and R. Lanier Anderson III sat on the appellate panel.

Bank of Brewton is represented by Charles Nelson Gill and Richard Hamilton Gill of Copeland Franco Screws & Gill PA.

Travelers is represented by Sybil Vogtle Newton, Scott D. Stevens and L. Graves Stiff III of Starnes Davis Florie LLP.

The case is Bank of Brewton v. Travelers Cos. Inc., case number [14-12472](#), in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Brian Baresch.

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