

## **Produce or Pay**

Michael J. Whitlock, Vice President

American Surety Company

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Produce or pay. Not exactly complicated is it? So why is our industry witnessing a subtle effort to change this very simple rule, tearing at the very fabric of our profession.

It is the obligation of the commercial bail agent to have their client in court when required or suffer a financial penalty, all at no cost to the taxpayer. There are thousands of bail agents across the country honoring this pledge and commitment. It is a few misguided agents who, through their desire to prostitute the commercial bail industry for their own unbounded greed, have tarnished this honorable profession.

### **Where are we going wrong?**

It is my theory that the advent of the super retailer, the large volume producers writing bonds with little money down and no collateral, has created the forfeiture specialist out of necessity. A forfeiture specialist is able to dissect a forfeiture and defendant case file to determine if there is a basis for filing a motion for set-aside. Because the premise of these large writers is if you generate enough premium dollars you will have sufficient cash on hand to pay losses. The more premiums you collect the more losses you can tolerate. As we all know, this is a flawed plan.

We have seen a number of super retailers fall victim to their own grandiose schemes. Continued growth is an essential key to the success of these schemes. A retail agency's continued growth in the bail bond business is not assured as long as pretrial release, OR bonds, 10% deposit bonds, and citation in lieu of arrest programs continue to exist.

In order to keep losses and expenses under control, these super retailers spend their resources looking for ways to attack the forfeiture notice itself as opposed to paying investigators to locate and apprehend fugitives. These forfeiture specialists have become so adept at finding loopholes in the law that the practice of first seeking the return of the defendant to custody seemingly became the exception instead of the rule. Of course, you're going to have a legitimate grounds for filing motions for set aside; i.e., defendant in custody, defendant deceased, defendant has reappeared or has been surrendered, etc. Protecting the integrity of the industry they are prostituting has never been their concern of those owners employing forfeiture specialist, greed is.

### **Unhappy prosecutors.**

We're now hearing rumblings by county prosecutors in Los Angeles in particular bail agents are not getting their clients into court. When a forfeiture is entered, the bail agent soon responds, in a disproportionate number of cases, with a motion to set aside based on some obscure loophole in the law. If their motion is denied, an appeal is

frequently filed thus delaying the payment of judgment for as long as possible. The court and the taxpayer is neither getting their fugitive or the money. This is not good for the commercial bail industry.

### **Whatever happened to collateral?**

Some might argue the forfeiture doctor is a baby of the current system. With the onslaught of new agents, ever increasing public funded release programs, which release the more attractive defendants, have resulted in bail agents writing higher risk bonds with little or no collateral. Thus, when there is a failure to appear, the bail agent doesn't always have collateral or a strong co-signor to fall back on for recovery of their loss. If they cannot locate the defendant they look to the forfeiture hoping they can find some error in the forfeiture notice to possibly avoid what could be a catastrophic loss.

### **What's the remedy?**

It would be in the best interest of the bail agent, and thus the bail industry, to recommit ourselves to those three simple words, our motto, produce or pay. Underwrite your bonds with the idea your defendant won't go to court. Have sufficient collateral to apply the appropriate amount of pressure to find him. Underwrite bonds with the intention of seeing your defendants' get to court and if they don't you know where to find them. Require your clients to check in at least once a week and after every court date. Avoid writing a bad bond, knowing you can exploit a weakness in your court's forfeiture notification procedure, or because a court simply does not forfeit bonds. Remember how fortunate you are to be a member of an honorable profession. The standard of living you and your family are able to enjoy is a result of you writing bail. Live up to your responsibility as a bail agent. If you cannot produce your client, be prepared to pay your loss. The rules are simple, Produce or Pay.