

# Failure to Comply with Special S&L Statutory Notice Requirement Voids Endorsements to D&O Policy

---

June 2001

The United States Court of Appeals for the Eighth Circuit has held that an insurer's failure to serve written notice of modifications to a directors' and officers' liability policy issued to a savings and loan association, as required by Missouri law, voids the modifications. *Gersham v. Am. Cas. Co. of Reading, Pa.*, No. 00-1230EM, 2001 U.S. App. LEXIS 11594 (8th Cir. June 5, 2001).

The policyholder, a savings and loan association, purchased a directors' and officers' liability policy from the insurer in 1983. As a part of the 1988 renewal, the insurer added a "receivership" and an "insured v. insured" endorsement. Under Section 369.124.5 of the Missouri Code, insurers of savings and loans are required to serve written notice on the state of any modifications to a policy form previously approved by the state. The insurer did not provide notice of the new endorsements to the state.

Thereafter, the S & L association became insolvent, and the receiver filed suit against a director of the insured for mismanagement and breach of fiduciary duties. The insurer denied coverage based on the "receivership" and the "insured v. insured" endorsements. The director brought a declaratory judgment action, and the insurer moved to dismiss based on the endorsements. The district court granted the motion, finding that although the insurer did not comply with the statutory notice requirement, the statute contained no penalty for noncompliance. The director appealed.

The Eighth Circuit reversed and held that noncompliance voids the endorsements added to the policy. The court reasoned that the purpose of the provision is to permit the state "to monitor liability insurance policies in order to determine whether a reciprocal organization is needed to protect the savings and loan industry." Accordingly, the court found that forfeiture of modifications would provide incentives for insurers to comply with the filing requirement.