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## PRESENTATION FOR ILLINOIS POLICYHOLDER COUNSEL GROUP APRIL 13, 2017

Coverage Issue: Employee vs. Independent Contractor

TELAMON CORPORATION V. CHARTER OAK FIRE AND TRAVELERS  
16-1205 & 16-1815 (Seventh Circuit 2017)

**Facts:** Juanita Berry worked for Telamon from 2005 to 2011. Telamon is a telecommunications firm based out of Indiana. Berry's employment was governed by a series of "Consulting Services Agreements" that were formally between Telamon and J. Starr Communications, Berry's own one person company. Through J. Starr, she billed Telamon which then paid J. Starr for her services. Over the course of Juanita's affiliation with Telamon the terms of the Agreements did not change, but her responsibilities did. She eventually became Telamon's Vice President of Major Accounts and its most senior person on the east coast. She grew to have considerable authority over operations and could hire and fire employees. In her capacity as Vice President she stole over \$5 million from Telamon. When the theft was discovered, she was arrested and convicted and ordered to pay restitution. Because the prospects for actual restitution were slim, Telamon made claim to its insurers for the loss. It had a crime policy with Travelers and a commercial property policy with Charter Oak Fire.

The Travelers policy covered theft by “an Employee” which it defined to include “any natural person...who is leased to the Insured under a written agreement between the Insured and a labor leasing firm, while that person is subject to the Insured’s direction and control and performing services for the Insured.”

The Charter Oak Fire commercial property policy covered direct physical loss, unless excluded. It had an exclusion for any “[d]ishonest or criminal act by...employees (including leased employees), directors, trustees, authorized representatives or anyone (other than a carrier for hire or bailee) to whom you entrust the property for any purpose”.

Both policies responded. Neither provided coverage to Telamon.

**Reasoning:** Travelers Policy: Berry was a natural person, but J. Starr is not a “labor leasing firm” – “a business concern that sells another person’s work for a specified time and a specified fee.” J. Starr was just her corporate alter ego and a legal convenience. It was not in the business of leasing labor.

Charter Oak Fire Policy: “[A]uthorized representative” is “a person empowered to act on an entity’s behalf.” She was the highest ranking person in New York and New Jersey. “[S]he had operational oversight over facilities....She hired and fired employees, ran meetings, and signed contracts on Telamon’s behalf....she was engaged...to be an authorized representative.” She was entrusted with the

equipment she stole, so Charter Oak “did not cover the losses for which she was responsible.”

**Take Away:** It is a commonly used practice for businesses to contract with and utilize independent contractors for various tasks and services as opposed to only using employees. While there may be many advantages to this, it is not without consequences – in this case an insurance coverage gap – no coverage when the Insured Company was defrauded by a person on the inside.

Charles R. Franklin manages the Franklin Law Group, a civil litigation firm located in Northfield, Illinois. He is well experienced in representing registered companies and licensed professionals in malpractice claims, lawsuits, disciplinary hearings and other licensure matters. Charlie also counsels clients (both companies and policyholders) in coverage disputes and with the presentation of claims. Charlie often serves as a "neutral" or independent arbitrator in various matters. He is rated "AV Preeminent" with Martindale-Hubbell. Charlie was a founder and original board member of the Claims Association of Greater Chicago. He attended the United States Air Force Academy and graduated from the University of Michigan with a degree in Asian Studies. Charlie received his law degree from the University of Miami (Fla.) in 1980.