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Corporate & Executive Protection

Optimizing your D&O Policy to Address Bankruptcy

Priya Cherian Huskins, Esq. *Parter*

Insurance remains the best, most effective hedge against a director or officer's worst-case scenario—the lawsuit that comes on the heels of his or her corporation's filing for bankruptcy. In bankruptcy, you are at best an unsecured creditor standing in line with all the other unsecured creditors hoping the company's limited assets don't run out. Your D&O policy may be the only thing left protecting you.

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The FDA's Commitment to Increase Criminal Investigations: Practical and Proactive Considerations

Sara B. Brody and Cecilia Y. Chan, *Sidley Austin LLP*

In March 2010, the Government Accountability Office ("GAO"), the congressional watchdog of government agencies, released a report highly critical of the Food and Drug Administration's ("FDA") oversight of its Office of Criminal Investigation ("OCI")—the component of the FDA responsible for conducting criminal investigations related to FDA-regulated products and companies. The FDA responded with a list of performance improvement actions and a clear signal that it intends to get tough on corporate wrongdoing and to increase criminal prosecutions.

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Avoiding the Two Front War: Simultaneous Litigation against Plaintiffs and Insurers

Priya Cherian Huskins, Linda Klamm and Amelia Miazad

A recent decision emanating from the infamous R. Allen Stanford "ponzi scheme" litigation underscores the need for precise language in a directors' and officers' liability insurance policy (a "D&O Policy") if it is to respond when directors and officers need it. You will want to work with your skilled D&O insurance broker to ensure that the "conduct" exclusions (e.g. exclusions for fraud, theft, etc.) in your policy require a "final adjudication in the underlying case" before they are triggered. Without this specifically negotiated language, your insurer may have the ability to avoid paying legal fees.

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Employee Benefits

Government Guidance Issued on Grandfathered Plans under the Patient Protection and Affordable Care Act

Jennifer Lunski, Esq., *Vice President, Compliance Officer*

Section 1251 of the Patient Protection and Affordable Care Act (PPACA) provides that certain group health plans and health insurance coverage are subject only to particular provisions. The statute refers to plans known as "grandfathered" health plans. On June 14, 2010, the Department of Health and Human Services, Labor and Treasury issued a new regulation clarifying what plans are considered "grandfathered" under PPACA.

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Employee Benefits Legislation Update: June 2010

Jennifer Lunski, Esq., *Vice President, Compliance Officer*

At Woodruff-Sawyer, we offer regular updates on legislative changes that impact employee benefit plans. This update includes articles on the following topics:

- DOL New Electronic Signature Option
- The Patient Protection and Affordable Care Act Timeline
- Federal Mental Health Parity Addiction and Equity Act Interim Final Rules
- ARRA COBRA subsidy expiration
- California bills related to health care reform
- Obama administration comments on Healthy San Francisco appeal
- Employers Advised to Comply With Health Reform Law, Not Expect Repeal

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Claims

Telecommuting Risks Confronting the Insured

David Thamann J.D., *FC&S*

Most people know the joys of commuting to work every day: high gasoline prices, traffic jams, pollution from auto exhaust, and parking hassles, to name a few. However, there are also some very fortunate people who are free of these joys: telecommuters. This has benefits for the employer and the employee alike. But, it also has risk exposures that insureds need to consider and manage.

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Risk Management

Keeping Technology Risks in Check

Scott Schleicher and Steven Anderson, *XL Insurance*

It's a technologically driven world. From laptops to Personal Digital Assistants (PDAs), from memory sticks to web servers, all kinds of technology allow us to conduct business anywhere in the world and no matter where we are or where we may go. Unfortunately, as businesses' reliance on technology continues to grow, vulnerability to cyber risks is growing in tandem.

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Construction & Real Estate

Understanding the Obligations of Self-Insured Retention

Chuck Shoemaker, *Partner*

In *Forecast Homes, Inc. v. Steadfast Insurance Company*, the California Court of Appeals for the Fourth District addressed the issue of whether the self-insured retention (SIR) provision in the insurance policy purchased by subcontractors allowed for indemnity to the general contractor. This article addresses the key points identified in a review of this case.

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Woodruff-Sawyer is one of the largest independent insurance brokerage firms in the nation, and is an active partner of Assurex Global and International Benefits Network. For over 90 years, Woodruff-Sawyer has been partnering with clients to implement and manage cost-effective and innovative insurance, employee benefits and risk management solutions, both nationally and abroad. Headquartered in San Francisco, Woodruff-Sawyer has offices throughout California and in Portland, Oregon.

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