VOLUME 3 | ISSUE 1

Enforce

The Insurance Policy Enforcement Journal

IN THIS ISSUE

Enforce: The Insurance Policy Enforcement Journal is the industry's premier source for first-hand information and analysis of the insurance policy enforcement field.

Settle for Everything.™

WOOD BENDER LLP

Let *Enforce* Make Your Job Easier

Welcome to the third volume of *Enforce*: The Policy Enforcement Journal, Corporate Edition. If you received either or both of the prior two volumes, welcome back! We appreciate your readership. We're gratified by the positive feedback we have received from our past readers and hope that you'll find the current issue to be as informative and useful as the prior two. If you are new to *Enforce*, let us take a moment to explain this publication and why you'll benefit from reading it. Wood & Bender LLP created *Enforce* because our experience has proven there is a significant market need among policyholders to stay on top of developing news and issues that will enable them to strategize and negotiate policy terms and enforce claims more effectively. Twice yearly we compile this journal of information aimed at proactive risk management and protecting corporate value. The practical, results-oriented information featured in *Enforce* will help you understand current trends in insurance policy enforcement and allow you to prevent, minimize, finance, and recover from the insurable risks your organization faces.

David E. Wood

What's New at Wood & Bender Since the Last Issue?

Wood & Bender is continuing its development and expansion of a state-of-the-art national policy enforcement practice, and has become the preeminent source for information, advice and counsel on insurance enforcement trends and issues. To continuously expand and improve upon our services, we've made some exciting changes in the ways we interact with our clients and the industry at large. Some of the most significant recent developments include:

Enforce Special Editions: In addition to the Corporate Edition of *Enforce*, we've also released two special editions of *Enforce*: a Public Entities Special Edition and a Construction Industry Special Edition. We hope to issue other special editions on a regular basis in order to address the unique issues and concerns faced by certain segments of the insurance market. If you would like to receive a copy of either special edition or suggest an industry focus for a future special edition, please visit us at **www.wood-bender.com** and complete a contact form.

Information Focused Website: If you have not yet visited our website (**www.wood-bender.com**), we encourage you to do so soon. We have transformed our site into a content-rich, constantly updated source of policy enforcement information and trends. You'll find daily news, weekly in-depth features, interactive tools, and much more.

Summary Judgments – The Policy Enforcement Blog: No longer the exclusive domain of political commentators and tech-savvy teens, "Blogs" (or "Web Logs") have become an information delivery fixture in the legal world. Look for the launch of Wood & Bender's own policy enforcement focused web log, entitled "Summary Judgments," later this year. We will use this new web based forum to deliver timely and candid insight on the issues that concern policyholders most.

David P. Bender

Comments: As always, we welcome your comments about this publication and invite you to tell us about topics you would like to see covered in future issues. You'll find all the tools you need to submit your ideas at **www.wood-bender.com**.

At Wood & Bender, we firmly believe that in today's challenging business environment, corporate policyholders face unprecedented challenges from insurers, judges and juries. It is more essential than ever to arm yourself with information and tools that will enable you to make a persuasive case for reasonably inclusive coverage of all your business risks. Thanks to our clients, Wood & Bender has become the law firm of first resort for insurance policy enforcement issues. Now, through our growing suite of print and on-line publications, we are becoming the information resource of first resort as well. As always, we look forward to bringing you the information you need, in print and online, today and for many years to come.

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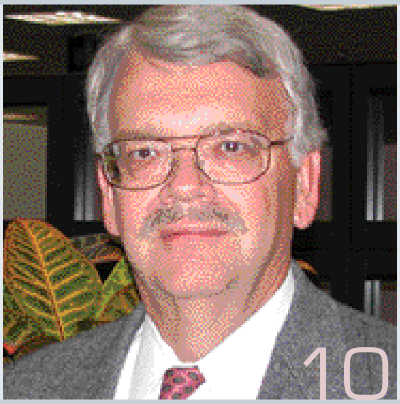

Shorter Takes

Highlights

WOOD BENDER LLP

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***Enforce:* The Insurance Policy Enforcement Journal** is published semi-annually by Wood & Bender, a California-based law firm with a national practice in insurance policy enforcement.

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Subscriptions are complimentary for clients, friends of the firm and those interested in the development of insurance policy enforcement law.

What's missing?

These will be the times when you need our services – when experienced resources can help you meet the needs of your clients. Huron's professionals are not only able to help – we're eager to. We can work with your internal resources to provide assistance with:

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Insurance Strategies

How Sarbanes-Oxley and Market Dynamics Are Shaping D&O Insurance:

A PRIMER FOR POLICY PURCHASERS

By David E. Wood, Esq.

Corporations have been blindsided by the jump in directors and officers (D&O) insurance rates over the last five years. Premiums have as much as tripled, while insurers have added unprecedented restrictions and exclusions to limit their liability. Two series of events combined to cause these increases. The first included the rash of insider trading, corporate looting, and other fraud that ultimately led to the passage of the Sarbanes-Oxley Act of 2002 (SOX). The second was the regular cycle of "hard" and "soft" insurance markets.

THE ROAD TO PERDITION

Corporate Malfeasance Reaches Epidemic Levels

The Sarbanes-Oxley Act of 2002 was in large part a response to what seemed an epidemic of lapses in management ethics and judgment. Several corporations paid dearly for management misdeeds. Cendant, for example, was sued for securities and accounting fraud by the nation's three largest pension funds, along with other shareholders. Cendant settled for $2.8 billion (and its accountants, Ernst & Young, paid an additional $335 million). Enron, WorldCom, Adelphia, Sunbeam, Rite-Aid, and others have paid or will pay hundreds of millions of dollars in damages, settlements, or both. Some executives have gone to prison and others are on their way. Employees, retirees, and shareholders have lost a collective fortune in stocks and pension funds, much of which will never be recovered.

Economic and Market Factors Combine to Form "Hard" Market

A "hard" market is defined as one where there is reduced competition among insurers, typically resulting from an increase in market risk that causes many insurers to exit the market. The recent hard market resulted from an overheated economy in the late 1990s, during which demand for D&O insurance expanded faster than the aggregate capacity of insurers. When the economy went into recession starting in 2000, shareholder suits mounted as once well-capitalized dotcoms were either sold at bargain prices or entered bankruptcy protection. The "hard" market aggravated the rise in premiums occurring as a result of corporate malfeasance and was, perhaps, an even a stronger driver of increased D&O rates.

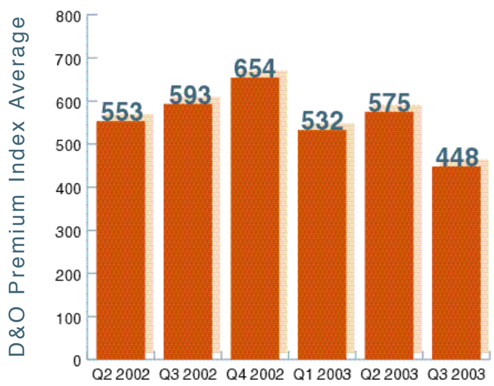
continued >

When the market hardens and carriers exit, the remaining insurers often adopt a series of practices that include:

- dramatically increasing premiums far beyond the amortized cost of potential loss exposure;
- expanding the number of restrictions and exclusions to avoid claims;
- erecting barriers to honoring policy terms, such as peremptorily filing lawsuits against policyholders when claims occur; and
- rescinding policies outright to avoid any financial responsibility.

Tillinghast's D&O Premium Index for 1999 through 2003 (Ex. 1) shows that among the 2,068 companies surveyed annually, premiums jumped dramatically since 1999. From 2002 to 2003 alone, the Index rose 33 percent.[1]

Exhibit 1



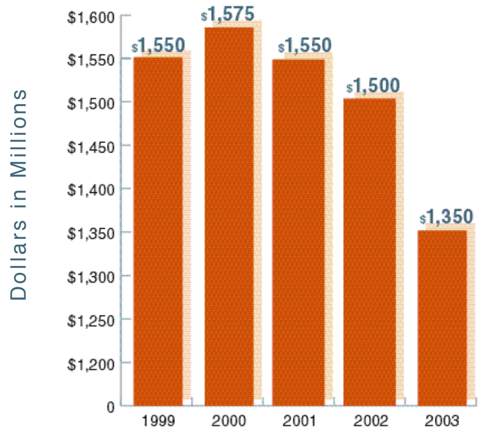
Tillinghast's Historical D&O Premium Index, U.S. for-profit companies only.

Among respondents, 70 percent reported an increase in premiums, 19 percent reported a decrease. The highest median premiums were reported by the utilities market for the ninth consecutive year.

As a result of insurers leaving what was perceived to be the high-risk D&O market, full-limits capacity fell during the 1998 to 2003 timeframe (Ex 2). As capacity is reached, corporations are forced to compete to secure coverage, driving up premiums. At $1.35 billion in 2003, the D&O insurance market's full-limits capacity was the lowest since 1997.[2]

Combined, these events had a predictable impact on D&O insurance rates. Coverage that cost as little as $150,000 per $5 million of coverage in 1998 jumped to as much as $425,000 per $5 million by 2002, with additional restrictions and exclusions.[3]

Exhibit 2



Full Limits Capacity, U.S. for-profit companies only.
In 2003, full limits capacity totaled $1.35 billion, the lowest capacity level since 1997.

THE ROAD TO RECOVERY

Enter SOX, a government attempt to solve the problems of corporate transgression. The act applies to all publicly traded companies. It amends federal securities law, allocating far more oversight and responsibility to company executives, directors, and others and establishing new standards for behavior and penalties for "mis"-behavior. Some of the key provisions of SOX stipulate that:

- CEOs and CFOs must certify that the all financial statements fully comply with the specifications of the Security Exchange Acts of 1933 and 1934, that they fairly represent the financial condition and operations of the company, and that there are no untrue or misleading statements or material omissions. Auditors must attest to these financial results as well.
- The statements must include all material off-balance sheet liabilities, obligations, and transactions.
- The signing officers must confirm that they have designed internal controls to ensure that they will be apprised of material information when changes occur, and they must have evaluated the effectiveness of the internal controls within 90 days of the above certifications. They must also have included a list of deficiencies and fraud information.
- The company must pledge to disclose information on material changes in financial condition or operations as soon as the changes are discovered and in easy-to-understand formats.
- The signing officers must attest to any significant changes in internal or related factors.
- Loans or extensions of credit to directors or officers are prohibited.

• If a company must restate its financials, the CEO and CFO must reimburse the company for any bonuses or profits received from sales of company stock during the 12 months following the issuance of the financials. This is called "disgorgement."

• There must be an independent auditing committee.

Risk managers and other commercial insurance purchasers must fully understand key SOX provisions when evaluating D&O and other insurance coverages. An informed insurance purchaser will be in a position to negotiate coverage terms that will protect the corporation from running astray of the Act's imperatives.

INTERPLAY BETWEEN D&O AND SOX

All D&O policies are not equal — indeed, they differ from insurer to insurer in almost every particular. Their issuance should never be a pro forma exercise for the buyer. Coverages can be and should be negotiated. This was true before the passage of SOX and is even more important now. Some of the key elements to consider include:

• Sarbanes-Oxley securities law exclusion. This exclusion, which appears to make no sense, appears in some policies nonetheless. Some D&O policies define securities claims as only those alleging a violation of the Securities Acts of 1933 or 1934 or related state or common law. On occasion, an insurer will insist that Sarbanes-Oxley is not a part of that definition (although SOX was drafted as a series of amendments to the SEA of 1934). Rather than fight this issue in the event of a claim, D&O purchasers must scrutinize policy definitions and insist on coverage that adequately encompasses SOX requirements. If such coverage is not absolutely plain and clear in the policy terms, demand that it be specifically written in before accepting the policy.

• "Insured vs. insured" exclusion. Most D&O policies seek to exclude claims brought by one insured against another. However, SOX creates new obligations for CEOs, directors, audit committee members, in-house counsel, accountants, and others that exponentially increase the possibility of claims among and between the various insureds. Insurance purchasers should weigh the risks of an "insured vs. insured" exclusion extremely carefully in the context of their organization and SOX's provisions. Although it may not be easy to persuade an insurer to drop the "insured vs. insured" exclusion, succeeding in this effort could dramatically increase the company's coverage in the event of conflicting claims.

• Disgorgement exclusion. Many insurers are now excluding "disgorgement" claims, i.e., those that arise when a CEO or CFO must reimburse a bonus or other reward to the company because the executive has to restate a financial report downward. Disgorgement is mandated under SOX. This exclusion, common now, is likely to become ubiquitous in the future.

• Fraud coverage, criminal acts, and personal profit. Almost all D&O policies exclude fraud or criminal action from coverage. Policy purchasers should scrutinize fraud exclusions carefully to be sure they apply only after such a judicial judgment is made by a court — and, also, that the fraud of one officer or director is not imputed to others.

• Level of D&O limits. Since SOX has made monetary penalties very much higher for record or document misstatement, tampering, alteration, and destruction, D&O coverage must increase as well. Prudent purchasers should set aside pre-SOX thinking about limits and carefully re-evaluate whether their D&O limits are high enough.

How high is high enough? In the five years ending in mid-2004, the average cost of settlements in cases that fall within the parameters of SOX was between $13 million and $23 million. There have been a number of settlements in the hundreds of millions.

• "Super" D&O policies. Since the advent of Sarbanes-Oxley, several insurers have introduced a new "super" liability policy for directors and officers that is activated when the company has gone bankrupt or the regular D&O policy has rescinded coverage. The "super" policy is nonrescindable, noncancelable, fully severable, and costly. Despite the price tag, adding this coverage to the corporate portfolio may be worth consideration.

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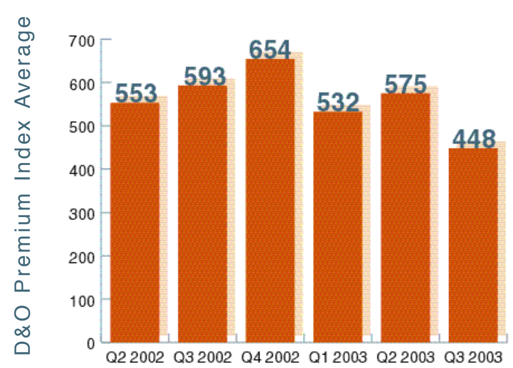
Wood & Bender LLP is sponsoring the **24th Annual IRMI Construction Risk Conference** at the Caribe Royal Resort in Orlando, Florida on November 8 & 9. David Wood will host a luncheon round table discussion on Insurance Policy Enforcement with an emphasis on legal issues related to mold, November 9, 2004. The conference will focus on better ways to manage and insure construction risks. To register, go to **www.irmi.com/Conferences/Crc**.

THE ROAD AHEAD—SOFTENING OF THE D&O MARKET

We appear to be witnessing another market shift now—to a softening D&O coverage market. It is likely that SOX contributed to this by restoring confidence within the capital markets and among insurers that future corporate bad behavior would be curtailed. The other primary contributor to the shift is simple supply and demand. When rates were low in the mid-1990s, many insurers, having lost the ability to turn a profit, simply exited the D&O market. Reduced competition resulted in rates increasing and posting historic highs as late as the third quarter of 2003. Consequently, several insurers returned. As insurers have reappeared and competition has re-entered the market, premiums have started to moderate and restrictions have begun to ease (see Ex 3).

Exhibit 3



D&O Premium Index by Quarter, U.S. for-profit companies only.
Reflecting a softening of the market, just 62 percent of surveyed companies reported premium increases in Q3 2003, as compared with 76 percent in Q3 2002.

As the market continues to soften and favor policyholders over insurers, in-house counsel, risk managers, CFOs, and others involved in risk management strategy have the potential to increase coverage while reducing premium expense and restrictions. To take maximum advantage of these opportunities, there are several steps these executives should undertake.

- Analyze corporate needs. Identify all potential D&O risks by auditing existing policies and seeking out coverage gaps.
- Strategize optimal solutions. Develop a long-term insurance approach as part of a comprehensive risk management strategy that takes into consideration the ongoing cycle of hard and soft markets.
- Compare best practices. Study how other companies in multiple industries are handling insurance strategies and adopt the approaches that best meet short- and long-term needs.
- Implement the practices. Execute the chosen strategy and best practices as quickly as possible to take maximum advantage of the current softening trend.
- Enforce binders and policies. When claims happen, be prepared to enforce policy terms, understanding that insurers may erect obstacles to paying claims.
- Partner with outside experts. Insurance markets change so quickly that no corporate executive can stay current with all developments. Partner with attorneys, brokers, and other experts who can provide professional guidance based on long-term experience.

For information and resources on insurance policy enforcement, visit **www.wood-bender.com**.

David E. Wood co-founded Wood & Bender LLP, one of the country's leading law firms specializing in insurance policy enforcement. He can be reached at DEW@Wood-Bender.com.

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[1] *Towers Perrin–Tillinghast, "Directors and Officers Liability: Taking a Closer Look, 2003 Directors and Officers Liability Survey, Executive Summary of U.S. and Canadian Results" (January 24, 2004). Available at http://www.towersperrin.com/tillinghast/till_webcache/jsp/search/search.jsp?query=2003+D%26O+survey&x=8&y=8.*

[2] *Ibid.*

[3] *Woodruff-Sawyer & Co., San Francisco, an independent insurance broker, provided this information based on the experience of its clients.*

Outside Perspective:

At Odds in the Industry

Halliburton Company is one of the world's largest providers of products and services to the oil and gas industries. Operating in more than 120 countries, the company has a depth and breadth of risks to manage, unequalled by nearly all other multinational corporations. James W. Ferguson, Assistant General Counsel and Director of Risk Management, Halliburton Company, outlined the company's approach to risk management to *Enforce* contributing writer Timothy Johnson in a recent interview.

Q **Recent SEC filings include 26 pages of risk factors, what do you consider Halliburton's three to five most significant risks?**

A We list anything we can think of that could possibly be a risk factor. We've put a broad program into place to deal with NYSE rules and Sarbanes-Oxley Act provisions that require us to have a risk assessment process and regularly report on it to the audit committee. We consider our top risk exposures to be: 1) damage to the reputation or image of the company, 2) technological obsolescence; (we rely on leading-edge proprietary technology, that's the key to our business, replace obsolete products with new ones); 3) unsuccessful projects (we are involved in a project right now outside of the U.S. that has cost us so far over $700 million); and 4) the risks of failing to provide adequate security to Halliburton employees and property.

We have identified seven basic risk categories and created a registry of risks within those categories. Then for each category, we assigned an executive to be responsible for having strategies in place to address the risks; e.g., for financial risk, it's the CFO; for regulatory and legal risks, it's the general counsel, etc. We have rated each on scale of 1 to 5 on potential severity to the company and the probability they could occur.

Q **How does Halliburton identify risk factors in an arena where there are few or no precedents; e.g., terrorism, kidnapping?**

A Unfortunate to say, we do have some precedents for kidnapping, in places such as Colombia where it is almost a normal business practice or Yemen because of how tribes and other groups negotiate with the government. Running a high-profile company associated with the U.S. government and actually managing bases for the U.S. military in Iraq make us a target. However, these operations are important to us. We take a three-pronged approach to security: one focused on the corporate level, one on regional security and the third on facility security. Until just a few years ago, we wouldn't have even named facilities as a particular risk area.

Q **How do you determine the role of insurance vs. other strategies?**

A We consider insurance in several situations, and purchase it when it's available to protect against catastrophic type risks—very large liabilities to third parties, things that could have a severe impact on the company. In some situations, we take advantage of cyclicality in insurance markets to purchase insurance where we otherwise would not. Through brokers, underwriters and peers and by participating in industry conferences, we develop a feel for the direction markets are going to take, then act to capitalize on any opportunities. In some countries we are required to buy insurance as part of our local legal or contractual requirements.

For the full unabridged interview with Jim Ferguson please visit **www.wood-bender.com**

How do you determine the best strategies for protecting against each type of risk?

A lot of the strategy development is done through our business operations. A major risk category is operation and project risk. We work all over the world and business management has to address this question daily for us to perform our work. We conduct meetings with senior executives, and down the line we may hold them with lower levels of management. We discuss what's in place to address these risks and ultimately what other possibilities might be implemented.

What is Halliburton's approach to managing insurance companies to ensure carriers take appropriate responsibility for occurrences?

We try to work with the most stable and financially secure companies on a long-term basis, building relationships with companies we know will respond when there is a claim. We know through our knowledge of the markets and experience which insurance companies have reputations of trying to get out of paying claims and we try to react quickly to enforce our rights when involved in a contentious situation.

What strategies does Halliburton employ in carrier claim disputes?

We give a few carriers a lot of business and these carriers know it's in their best interest to pay legitimate claims and compromise on disputed ones where there is a reasonable basis to do so. It is in our interest to maintain good relations, so we do not push claims that have no basis. Sometimes we litigate, such as over asbestos. We talk about settling, but carriers know the threat of litigation is there.

Although any insurance can be subject to differing interpretations in some circumstances, it seems that by their nature that D&O liability and general liability as applied to toxic torts are more often subject to disputes that other areas. Due to large losses and legal developments, insurance companies are constantly attempting to revise policy wording to reduce the scope of coverage and we are continuously monitoring those efforts and mitigating them to the extent possible at renewals or when considering new placements.

How does Sarbanes-Oxley affect your determination of, and protection against, risk factors?

I don't think we are conducting most of our business activities differently because of Sarbanes-Oxley, but we are paying more attention to what our risk processes are and how we manage these processes. Section 404 of Sarbanes-Oxley focuses on internal controls, auditors will have to certify that we are effectively identifying and prioritizing our risks factors. Halliburton has to demonstrate what we're doing and how we're doing it. This is a direct outcome of Sarbanes-Oxley, and it's probably good that we're doing this now. It can lead to improved business processes and greater profitability down the line.

What is your perspective from a broader perspective on risk as it relates to business?

With advances in technology we are all operating in a global context. Besides tremendous opportunity, this situation brings more and broader risks that must be dealt with, it is no longer possible to be successful by insulating a business from outside influences. Compliance with statutes and regulations such as Sarbanes-Oxley and SEC rules, applicability of multiple jurisdictions to business transactions and mergers and acquisitions, political turmoil, inter-relation of commodity markets, and a host of other issues all combine to require thorough analysis of risk exposures for all types of commercial activity. With the degree of international connectivity that we all face, the only certainty is that the risk factors will not remain static.

Giving Back: Philanthropy, Pro-Bono and the Legal Profession

By Amy Fauver

All of us know a lawyer joke or two. Some lawyers pride themselves on knowing more of them than their non-attorney peers. But how many times have you heard a lawyer story that showed the attorney doing something positive for his or her community?

Stereotypes aside, the fact of the matter is that for most law firms today, participating in the profession is about far more than billable hours. In states that survey and report on pro-bono and community service efforts, participation in pro bono and philanthropic activities among law firms of all sizes hovers in the fifty percent (50%) range and increases substantially as firm size grows.[1] However, there are no mandatory reporting requirements for this information, and as a result, much philanthropic and pro bono activity at law firms goes unreported, and unnoticed.

Pro-Bono Work That Did Get Noticed

Each year, the California Bar Association recognizes firms that have given back to the community. Below are the recipients of the 2004 State Bar President's Pro Bono Service Award for large, medium and small firms.

Large Firm

Wilson, Sonsoni, Goodrich and Rosati

Offices in California, Texas, Utah, Virginia and Washington

www.wsgr.com

It would be hard to find a firm that has integrated public service, pro bono activities, and philanthropy into its internal culture and public personal as successfully as Wilson Sonsoni. The firm is the winner of the California Bar Association's 2004 Pro Bono Award in the large firm category. Their proprietary foundation, the Wilson, Sonsoni Goodrich and Rosati Foundation, has given cash grants of over 4.75 million dollars to over 325 charitable organizations since its inception in 1990. In addition, the firm sponsors and encourages participation by attorneys and staff in an extensive array of volunteer and community service projects.

Receiving recognition for pro bono services to the community is always an honor. What makes Wilson Sonsoni's receipt of the 2004 CBA Pro-Bono Award particularly impressive is that they were nominated for the award by a legal services organization. "This was the first time our society ever decided to nominate a firm for this award," says Julia Wilson, Legal Aid of San Mateo's coordinator and directing attorney. "When we sat down to consider who demonstrated the most serious commitment to pro bono work in our community, Wilson Sonsini's name just leapt out."

Medium firm

Bird, Marcella, Boxer, Wolpert, Nessim, Drooks & Linceberg

Los Angeles, CA

www.birdmarcella.com

This 20 attorney firm served as pro bono co-counsel last year on two high impact cases against popular clothing retailers and helped win important victories for low-wage garment workers.

In one case, 19 Los Angeles-area laborers reported working long hours, six days a week, while being routinely denied wages and breaks. In addition, the workers described filthy, poorly lit, vermin-infested working conditions. Recently, the Ninth Circuit court handed down a landmark decision that reversed a lower court's dismissal of the case and opened the door to the workers' claims seeking retailer accountability for workplace violations.

In the other case, workers claimed they had been cheated out of wages through record falsification, treated inhumanely, fired in retaliation for their complaints and blacklisted from the industry. That case reportedly ended in a settlement with the retailer, as well as a federal district court judgment of more than $1.4 million against the contract shop where the laborers worked.

Small Firm

Seigel & Yee

Oakland, CA

Described as a humble, caring, "inspirational role model," attorney Alan Yee has long championed the rights of the elderly and those living on very little income in Oakland's Chinatown.

When 50 residents — many of them elderly Asian immigrants with little income — recently faced eviction and the possibility that they had been overcharged a total of $2 million in rent, Yee stepped in as lead counsel and key organizer and strategist in the complex, high-impact affordable housing case.

When plans for a large-scale commercial and residential development nearby threatened to endanger Chinatown's pedestrians and worsen the community's traffic congestion and air quality, Yee, a partner at the five-attorney firm of Siegel & Yee, spent hundreds of hours pursuing an environmental justice lawsuit against the City of Alameda. Assisting the Oakland Chinatown Coalition (Asian Health Services and the Oakland Chinatown Chamber of Commerce) with the lawsuit, Yee also served as a "community bridge" to help local residents understand the situation.

In the end, as part of a settlement, Chinatown stands to receive nearly $1 million in funding to help improve its traffic situation and make the community safer for pedestrians.

Wood & Bender's Susan Barry will speak on "Liability Insurance: Avoiding the Train Wreck for Assisted Living" at the California Assisted Living Association 2004 Conference & Trade Show at The Hyatt Regency in Orange County, California on November 9. To register, go to **http://www.caassistedliving.org/**.

Very Notable Mentions

In addition to these recipients, many other law firms, large and small, have exceptional philanthropic programs. Here are five that are truly noteworthy:

Going All Out

Sutherland Asbill & Brennan, LLP

Offices in Atlanta, Tallahassee, Washington DC, Austin, Houston and New York

www.sablaw.com

Sutherland Asbill & Brennan's 375 lawyers serve their communities in many ways—from representing indigent defendants charged with capital and other crimes, to teaching high school students how banks and credit cards work, to running and bicycling in order to raise money for local charities, to participating in the building of houses or cleaning of properties for charities in the cities where they work.

A Big Firm Doing Big Things

Jones Day

Offices in 29 Locations Worldwide

www.jonesday.com

The 2,200 attorneys at the global law firm of Jones Day are involved in so many charitable activities that they have a separate publication of pro bono service on their website (definitely worth checking out). The firm provides pro bono legal services to individuals and public service organizations, works with local legal and civic organizations and volunteers time and resources outside of the law, such as providing Thanksgiving dinners, donating winter clothes and tutoring children in local schools.

Giving Grassroots Organizations the Resources to be Effective

Weintraub Genshlea Chediak & Sproul

Sacramento, CA

www.weintraub.com

On the occasion of its 25th anniversary, the firm announced that it was contributing $25,000 to each of four outstanding community organizations. It also announced that it will expand their pro bono investment to help 25 grassroots organizations in need of premium legal counsel.

[1] *Based on a review of the 2002 and 2003 reports of pro bono and public service activities from the California, Florida, New York and Maryland Bar Associations.*

Our Philosophy

Wood & Bender LLP commends the philanthropic efforts and achievements of the law firms featured in this article. As a firm and as a member of our community, we believe it is absolutely essential that attorneys and law firms extend their resources to those in need. Accordingly, in fiscal year 2003, the firm donated a total of five percent of its pre-tax profits to deserving organizations, including Casa Pacifica, the Boys & Girls Club, Holy Cross College, St.Joseph Health and Retirement Center and the East West Bank Foundation. The firm's commitment to empowering the next generation of workers is reflected in the employment and mentoring of undergraduate students with an interest in a legal career. The firm's interns come from diverse backgrounds and institutions across the country. Last summer the firm's interns included: Dan Parziale (University of Notre Dame); Eric Hurtado (UCLA); Brenna Scannlon (Thomas Aquinas College) Allan Holzer (Cal Berkley) and Meghan Lueck (Holy Cross College). In addition, Wood & Bender LLP has extended, and will continue to extend, legal support to deserving non-profit organizations.

Wood & Bender's David Wood will be speaking on "The Forensics of Your Company's Insurance Portfolio: What You Have, What You Need and Who Pays." The Association of Corporate Counsel Chicago Chapter Conference at the Michigan Shores Club in Wilmette, Illinois on January 18, 2005. To register, go to **http://www.acca.com/chapters/chic.php**

Now That The Dam Has Broken

Brokers and carriers are under investigation and reeling; Insurance is a New Game With New Rules. ***Know How to Play?***

by David E. Wood,
Partner, Wood & Bender LLP

When it comes to New York State Attorney General Eliot Spitzer, at least three things are clear: He picks his targets carefully, he's got great aim and he's not afraid to go into the thick brush to bring down the big ones.

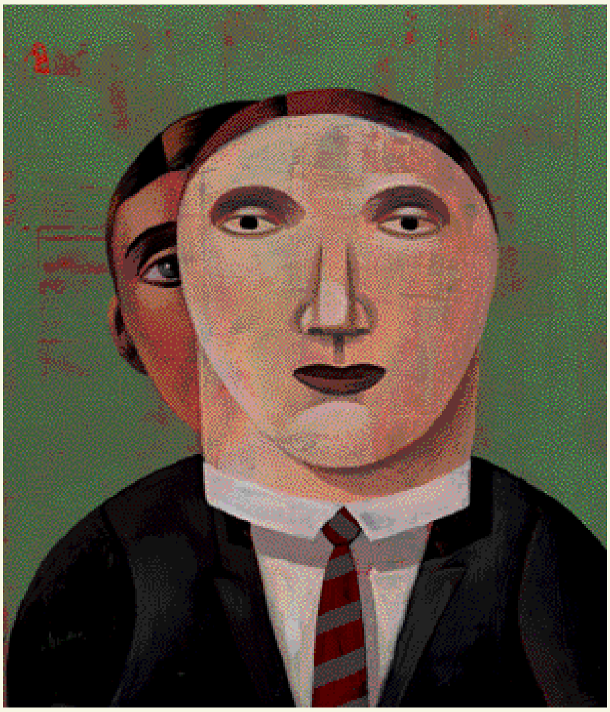
Spitzer's recent lawsuit alleging price-fixing and deceptive practices by insurance broker Marsh McLennan and major insurers lit up some back-room overcharging practices that appear shocking when exposed to daylight. One example is the practice of brokers steering business to carriers in exchange for contingent commissions. This may be seen as a direct conflict with brokers' stated objective to act on behalf of the corporations who hire them, finding the best coverage at the most reasonable price.

Your world is changing because of Spitzer, and it's changing for the better. Some insurers are already pledging to eliminate their so-called contingent commissions. Some may say that this is pure window dressing, but is nevertheless a useful measurement of their fear.

Use their fear.

With carriers and brokers on the ropes as a result of the current Spitzer suit and other potential suits, Corporate Counsel and Risk Managers have a unique opportunity to gain the upper hand when negotiating with brokers and carriers. It's a new game with new rules now — rules that allow corporations to confidently and aggressively:

- Negotiate or renegotiate policy terms with carriers and brokers and attempt to remove the restrictions and exclusions that have rendered past policies sub-optimal.
- Ask brokers directly if they receive any additional compensation in the sale of the policy.
- Demand a policy form within 30 days from the carrier or broker, and only pay a small percentage of the policy premium when signing the binder to retain financial leverage.
- Review your corporation's risk factors to affirm that current factors are still of concern and to identify any new risk factors.
- Determine the optimal risk management strategies for each risk factor and the role of insurance as part of that risk strategy.



Still, a big question remains: Should a wronged company risk enormous expense and time in pursuing claims against brokers and insurers when the outcome is uncertain — and with more similar suits on the way? That's difficult to say without knowing the particulars, but one thing is clear: Companies that think they have been cheated need to act quickly. The statutes of limitations are ticking, and in this new game there is no overtime — nor any timeouts.

To investigate whether there is a basis for claiming carrier or broker liability, corporate counsel should ask personnel in Finance or Risk Management to provide copies of the broker's engagement agreement, all communications with brokers and carriers for the past several years, all policies placed, and all claim-related communications. Counsel should then interview key company personnel who interact with the broker. Finally, Counsel should interview the broker. Or for potentially faster and less expensive investigations, look outside. Wood & Bender provides these services and is quite experienced — which means we are fast and can achieve economy of scale. But whatever the choice, move quickly. There is new opportunity in the land. ***Seize it.***

Insurance for Lawyers: *Are You Covered?*

by Caroline Hurtado

Caroline Hurtado is an associate with Wood & Bender LLP and concentrates on insurance policy enforcement with an emphasis on business litigation and errors and omissions.

Many corporate counsel assume that, as management-level employees of the companies they counsel, and often as officers of these companies, they are covered by corporate D&O insurance policies for their errors and omissions as lawyers. This is a dangerous assumption.

While a D&O policy will cover General Counsel in a shareholder action to the extent he or she is alleged to have erred as a company Vice President, actions claiming that the General Counsel committed misconduct outside his or her role as the company's senior legal advisor will be rare. Far more often, General Counsel, as well as members of the Legal Department who are not officers of the company, will be sued by shareholders for errors and omissions in the rendering of legal advice to the corporation, i.e., legal malpractice. A D&O carrier may indemnify defense expenses for this kind of claim where there is some colorable argument that the lawyer has been sued not only as corporate counsel but also for acts as an officer, but there will be no coverage for any settlement or judgment based on the lawyer's allegedly bad legal advice. Moreover, if the outcome of the claim reveals that it was a legal malpractice action from the start, the carrier may demand reimbursement of the defense costs it paid and could win.

Some recent case law indicates that courts will not consider corporate counsel who are not officers of their company (directors or officers of) for purposes of D&O coverage. In one case, a court considered whether corporate counsel stood in the same position as corporate officers for purposes of ascertaining whether there was personal jurisdiction over corporate counsel in a lawsuit. The court , considering the unique circumstances of corporate entities and the functions of corporate directors and officers, concluded that corporate counsel should be treated as employees or independent contractors for jurisdictional purposes. These opinions underscore the need for alternative insurance products covering in-house lawyers in legal malpractice suits brought by shareholders.

Alternative Insurance for Lawyers. Corporate counsel are subject to an increasing number of malpractice claims. Many incorrectly assume they are covered by their existing liability insurance. Virtually all commercial general liability policies specifically exclude coverage for professional liability claims, and D&O insurance often covers only acts, errors or omissions committed within the scope of the individual's duties as a company officer, not as a legal professional. It is important to consider alternative types of malpractice insurance, particularly if a General Counsel is not deemed to be a director or officer covered under a D&O policy.

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Wood & Bender's Susan Barry will speak on the "Seven Steps to Turn Corporate Insurance into a Competitive Advantage" at the Arizona Chapter of Risk and Insurance Management Society (RIMS), to be held in Phoenix at the Bank One Building on November 10 from 12:00-1:00 pm. To register, go to **www.rims.org**

Legal malpractice insurance coverage encompasses a variety of policies. Generally, this type of insurance is known as Lawyers Professional Liability Insurance (LPL), Employed Lawyers Liability Insurance, or simply Professional Liability Insurance. Employed Lawyers Professional Liability insurance, though similar to policies covering directors' and officers' (D&O) liability, caters specifically to corporate counsel. Employed Lawyers Professional Liability insurance can also cover:

- Claims by non-client third parties;
- Employment practices liability (EPL) coverage;
- Coverage for Securities and Exchange Commission (SEC) and regulatory claims;
- Coverage for claims by individual employees the in-house attorney is designed to represent; and
- Defense cost coverage for claims brought by the employer, board of directors, and officers.

Prior to passage of the Sarbanes-Oxley Act, attorneys appearing and practicing before the SEC were regulated as to their professional conduct primarily by the ethics standards of the various states where they practiced. SEC Rule 307 implemented standards of professional conduct for attorneys who appear and practice before the Commission. This rule implemented a Congressional mandate to prescribe minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers.

At the time when the SEC proposed standards of professional conduct for attorneys who appeared before the Commission, increased liability exposure for corporate counsel was a particular concern. This is because any potential fines or disciplinary proceedings are likely to be excluded under D&O policies, thus requiring alternate professional liability insurance. D&O policies, like lawyers professional liability (LPL) policies, specifically exclude coverage for fines and penalties. As such, professional liability exposures have traditionally been viewed as outside the normal duties of a director or officer for purposes of D&O insurance, and there is significant reluctance on the part of underwriters to include this type of a risk absent substantial premium increases.

Nuances of Insurance. As with any insurance issue, there are many subtleties to consider. For example, a Vice President for Legal Affairs will typically be insured in her capacity as a vice president, but may not be insured if acting as corporate counsel for some wrongful act in the vein of legal malpractice. Again, Employed Lawyers Professional Liability picks up where exclusions in D&O policies leave off. This coverage is specifically designed to address the malpractice risks faced by in-house counsel whether or not they are officers of a corporation, but is purchased by only a small faction of corporations regulated by the SEC.

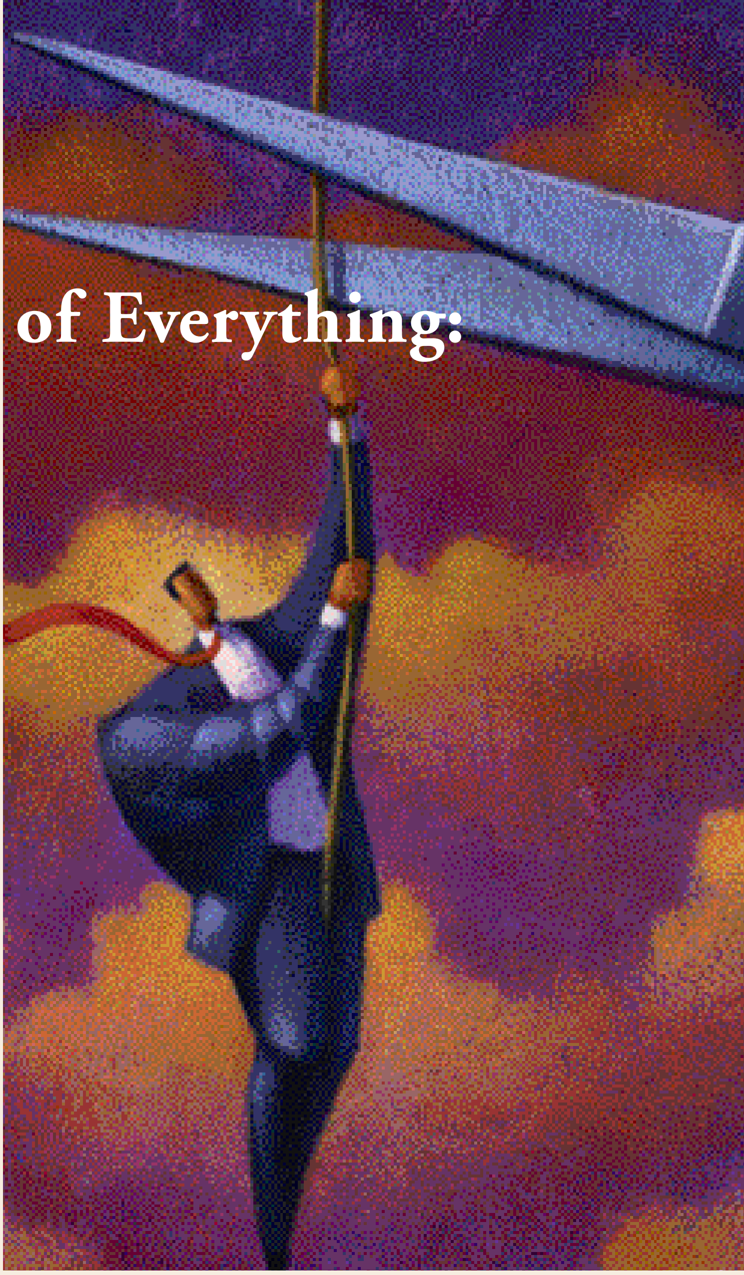
ELP policies may also include coverage for costs incurred in defending disciplinary proceedings. However, indemnification for fines, sanctions, and penalties arising out of a professional disciplinary proceeding may be excluded. In addition, ELP policies typically do not extend to attorneys employed in a non-legal capacity within a corporation, but only to those employed for the specific purpose of providing legal services.

Issues Concerning Privileged Communications. When an in-house attorney is sued in his or her capacity as a corporate officer (i.e., not as legal counsel advising a client on legal matters, but as a businessperson advising a principal on business matters), the attorney-client privilege should not attach to these communications. Conversely, if the suit alleges that the in-house attorney offered bad legal advice, then depending on the jurisdiction, the privilege is waived or the self-defense exception to the privilege attached. In some jurisdictions, in lawsuits brought by in-house attorneys against their employers for employment-related issues, the attorney-client privilege is waived and the in-house attorney may disclose privileged communications to his or her legal counsel if the privileged information is material to prosecuting the employment-related claim. Whether or not the attorney-client privilege attaches but for a waiver or the self-defense exception is an important means of distinguishing suits against in-house counsel in their capacity as officers (covered under D&O insurance) and those against in-house attorneys in their role as the corporation's legal counsel (not covered under D&O or general liability policies).

Look Outside the Box. In-house counsel face an increased risk of traditional malpractice suits filed by their own employers, successors (such as bankruptcy trustees), and investors or other third parties. Thus, it is critical to look outside the box and consider adding supplemental professional liability insurance to protect against these risks.

For the Wood & Bender LLP exclusive White Paper discussing this topic in-depth please visit **www.wood-bender.com/library.php**

Just When You Thought You'd Thought of Everything:



Some Practical Advice to Follow When the Carrier Goes Into Liquidation

By Jeffrey Kiburtz and Peter Osborn

Risk management is, by its nature, both an anticipatory and a reactive process. You do your utmost, in advance of a claim, to anticipate, plan for and appropriately finance every risk. When a triggering event occurs, you manage the claim strategically to maximize the prospects, and the amount, of your eventual recovery. Both prongs of this process, however, assume one essential fact — that the carrier will be existent, and solvent, when your claim needs to be paid. When this is not the case, because the carrier has been placed in liquidation, the policy enforcement challenge increases tenfold.

Case Study[1]

Tanya, Steve and Maria are all experienced executives with extensive background in risk management. Yet, each of them are caught short by carrier liquidations. How did they allow this to happen?

Tanya, the CFO of a Fortune 500 company in Michigan, receives a letter notifying her that one of the company's general liability insurers had just been placed in liquidation in Nebraska. She reviews the company's coverage chart and learns that the insurer issued primary policies to the company from 1978 through 1981.

Steve, the risk manager for a large city in California, receives notice that the city has been sued for environmental contamination that allegedly began in 1958. Steve immediately begins the tedious task of tracking down the carriers and learns that seven of the city's thirty carriers have been placed in liquidation. To further complicate matters, some of the carriers were placed in liquidation in the early 1980's. As to these carriers, the proof of claim deadlines have passed and some estates have been closed.

Maria, an in-house attorney for a construction company in California, learns that her client's suit against a subcontractor and its surety has been stayed because the Pennsylvania Department of Insurance placed the surety in liquidation.

What should Tanya, Steve and Maria do?

[1] Wood & Bender case studies, which are fictional, present common insurance enforcement legal issues and offer concrete solutions from Wood & Bender attorneys.

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Wood & Bender's David Wood and Dave Bender will be hosting a panel discussion on "Rules of Engagement: What Today's Insurance Strategies Mean to U.S. Corporations" at the West Coast General Counsel Conference being held at the Sheraton Palace Hotel in San Francisco on November 15 & 16. To register, go to **www.almevents.com/**.

General Overview of Insurance Liquidation – Governing Law

Although roughly analogous to a Chapter 7 bankruptcy, insurer liquidations are governed by state law and not subject to Federal bankruptcy laws. Virtually all states have enacted laws governing the liquidation of insolvent insurance companies. And while these state statutory schemes are for the most part similar, some critical differences do exist. As a result, a policyholder or creditor attempting to assert a claim against an insolvent insurer faces a patchwork of state laws, with little legal precedent interpreting those laws.

In 1969, the National Association of Insurance Commissioners (NAIC) promulgated the Post-Assessment Property and Liability Insurance Guaranty Association Model Act ("Guaranty Association Model Act"). The Guaranty Association Model Act has been adopted in some form in all fifty states and is designed to protect policyholders from insurer insolvency by providing some guarantee for the payment of certain types of claims against an insolvent insurer.

As a general rule, regardless of the applicable state law, the policyholder has three basic options in liquidation: either recovery directly from the liquidation estate, recovery from an insurance guaranty association, or recovery from a reinsurer.

Recovering from the Liquidation Estate

Upon petition by the insurance commissioner of the state where an insurer is domiciled, a state court will take jurisdiction over the liquidation proceedings and enter an order defining the scope of the liquidation ("Liquidation Order"). A Liquidation Order will typically (1) appoint the insurance commissioner as liquidator of the insurer's estate; (2) vest the liquidator with title to all of the insolvent insurer's assets; and (3) stay proceedings against the insolvent insurer and its insureds. The liquidator will thereafter (1) develop a liquidation plan; (2) set a deadline for all proofs of claim; and (3) notify the insurer's policyholders and creditors.

Policyholders and creditors are generally required to submit proofs of claim by a deadline established by the liquidation court. Most states' liquidation acts have provisions permitting the late filed claims for "good cause," but the liquidator retains discretion to reject late-filed claims, or subordinate them to a lower payment class. Further, although most states' liquidation acts have provisions providing that "all rights and liabilities of all persons with an interest in the estate are fixed" upon the insurer's entry into liquidation, contingent claims are permitted under certain circumstances. However, contingent claims must be liquidated by a second "claim liquidation" deadline set by the liquidation court.

Recovering from an Insurance Guaranty Association

Many property and casualty claims submitted to a liquidation estate will ultimately be handled and paid by an insurance guaranty association. A policyholder is generally eligible to receive payment from the guaranty association in the state where the policyholder resides or, in the case of first-party property claims, in the state where the insured property is located. The liquidation estate will ordinarily forward all potentially eligible claims to the appropriate guaranty association. However, it is prudent for the policyholder to take the initiative and directly notify the appropriate guaranty association or associations.

There are numerous limitations on the claims that will be covered by a guaranty association. First, the claim must be filed by the proof of claim deadline set by the liquidator or, in some states, within eighteen months of entry of the liquidation order. Second, the claim must be on a type of policy covered by the guaranty associations. Property and casualty policies are typically covered while other types of insurance (e.g., financial guaranty bonds) are typically not. Third, insurance guaranty associations will typically only pay claims when all other available insurance has been exhausted.

Contingent Claims Similar to liquidation estates, guaranty associations permit claimants to file a "contingent" claim in the event that a claim arises in the future based on an occurrence which took place years earlier. The filing of a contingent claim will preserve the claimant's rights to seek coverage from the guaranty association even if the claim does not arise until after the statutory deadline.

Other Insurance Guaranty associations do not provide coverage for claims covered by "other insurance." Continuous property damage and bodily injury claims typically allege liability based on continuous damage or injury over several years. The guaranty associations may take the position that the continuous damage claims are covered by "other insurance" if a solvent insurer provided coverage at any time while the property damage or bodily injured occurred. Most courts, however, have rejected this argument if other collectible insurance is insufficient to indemnify the insured.

Non-Admitted Carriers Insurers not licensed to issue insurance policies in a state are known as "non-admitted" carriers. You may purchase a policy from non-admitted carriers through surplus lines brokers. The prevalence of non-admitted carriers placing insurance appears to be increasing, especially in connection with insurance for construction defect and other business activities associated with a very high incidence of claims. In some industries, a company may have no economically practical alternative to purchasing insurance from a non-admitted carrier. However, if a non-admitted carrier becomes insolvent, the state guaranty association will not provide coverage and it is unlikely that assets distributed by the liquidator will come close to providing full coverage. As a result, purchasing insurance from non-admitted carriers is risky, but some non-admitted carriers have much better track records than others. Insureds should consult their surplus lines broker about the reputation of a non-admitted carrier before buying a policy.

Recovering Directly From a Reinsurer

After receiving premiums from issuing insurance policies, insurers frequently pay some portion of that premium to reinsurers, who are contractually obligated to reimburse the insurer for losses and loss adjustment expenses associated with the policies subject to the reinsurance agreement. Although a portion of an insured's premium may have been delivered directly to a reinsurer, generally policyholders have no right to seek recovery against reinsurers because they have no contractual relationship. However, when an insurer is declared insolvent, a reinsurer's liability to the insolvent carrier is an asset of the insurer's estate, which the liquidator will seek to recover for the benefit of policyholders and creditors.

There are exceptions to the general rule that policyholders cannot proceed directly against the reinsurer. Most commonly, the exception arises when the reinsurance agreement accords an insured a direct right against the reinsurer in the event of the direct insurer's insolvency. A direct right against a reinsurer may be in the form of a "cut-through," whereby the reinsurer agrees to pay reinsurance benefits directly to the insured upon the insurer's insolvency or in the form of an assumption of liability endorsement.

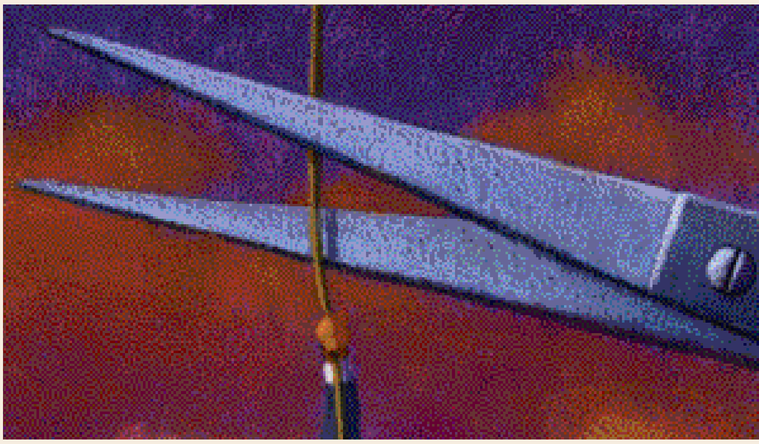
Only Wisconsin and Louisiana allow a third party claimant with claims against an insured to sue the insurer directly prior to obtaining a judgment against the policyholder. Most of the remaining states allow a direct action against the insurer once a judgment against the insured is won, or upon the insolvency of the insured. Many statutes allowing these judgment creditor actions against liability insurers typically do not define "policies of insurance" to which they apply or prohibit leap-frog direct actions against the reinsurers of insolvent insurer. Potentially, a "cut through" could be achieved by operation of law under these statutes, even where a reinsurer has not agreed to it ahead of time.

Putting the Law Into Practice

What strategies would place Tanya, Steve and Maria in the best position to recover on their claims? It would appear that Tanya and Steve should immediately file proofs of claim with the respective liquidation estates and with the guarantee associations in their states. Maria, on the other hand, will need to make several important strategic decisions before deciding whether to file a proof of claim. Regardless of the steps taken, all three will face significant hurdles to obtaining their objectives.

Tanya

Tanya — the CFO who received notice of the liquidation but is unaware of any claims that would trigger coverage under the insolvent insurer's policies — will face the obstacle that the claims are contingent and unliquidated. Nevertheless, she should immediately file a proof of claim for each policy issued, both with the liquidator and with the guarantee association in her state. The strategy here is to "keep her foot in the door" in the event that a triggering claim comes in at some later date. Tanya should also begin developing a strategy to discover information about the insolvent insurer's reinsurance program in the event that circumstances exist which might allow her company to seek coverage directly from a reinsurer.



Wood & Bender's David Wood will be hosting a presentation/panel discussion addressing "Risk Manager Boot Camp — Dealing with an Intransigent Insurance Industry," followed by an in-depth case study where Wood will lead a panel of industry experts who will share their differing perspectives on the "Three Phases of a Policy," at the San Francisco Chapter of Risk and Insurance Management Society (RIMS) Annual Conference being held at the Park Hyatt Hotel in San Francisco on November 19. To register, go to **www.goldengaterims.org**

Steve

Steve — the California-based risk manager who learned that seven of the city's insurers have been placed in liquidation (some over 20 years ago)—will face the obstacle that the claims are not timely and some of the estates have likely been closed. Steve should nonetheless immediately file a proof of claim for each policy issued with the respective liquidation estates and the California Insurance Guaranty Association. Even though the time for filing a claim with the liquidation estates may have expired, the liquidator may pay the claim on a reduced pro-rata basis. Similarly, although the statutory claim deadline for the guaranty association will likely have expired, a court may force the guaranty association to honor the claim if the city did not receive formal written notice of the liquidation.

The strategy here is to submit the claims and wait for a response from the liquidation estates and the guaranty association. Depending on the responses Steve receives, he will then need to decide which claims, if any, are economically viable to pursue. Steve should also begin taking steps to determine which, if any, of the city's insured risks were reinsured by other insurers and the identity of such reinsurers. After Steve discovers this information, he will need to determine if there are grounds for pursing claims against any reinsurers.

Maria

Maria — the in-house attorney overseeing a suit against a subcontractor and a surety who has just been placed in liquidation in Pennsylvania—must make strategic decisions about how best to proceed. As an initial matter, Maria's company will not be able to recover from the California Insurance Guaranty Association because it does not cover claims on surety bonds. Further, the liquidator will likely take the position that the California action, with respect to the surety, is stayed indefinitely and must be brought in the Pennsylvania liquidation court. If that is the case, Maria will need to decide whether to challenge the liquidator's position in the liquidation court or in the California court. Maria will first need to analyze Pennsylvania and California's liquidation laws to determine whether her company can effectively challenge the stay in California. Maria will also need to assess whether the subcontractor (or its indemnitors) would be able to pay a judgment, without contribution from the surety, or if her company will need to appear in the liquidation court to recover on the judgment.

Depending on those factors, Maria will need to either file a proof of claim and attempt to proceed within the framework of the liquidation proceedings or circumvent the liquidation and attempt to proceed in the California court. If Maria chooses the former course of action, her company will be forced to prove its claim through the Pennsylvania liquidation proceedings (quite often a frustrating process). If Maria chooses the latter option, the liquidation court may hold Maria and her company in contempt of the liquidation order. Although it is not clear whether the court has the requisite jurisdictional power to do so, the point remains that it probably is not good strategy to flout the liquidation court's order and then later appear in the liquidation court to collect on the judgment from the liquidation estate.

The Common Denominator

Tanya, Steve and Maria have varying prospects and paths for recovery. However, there is one thing all three have in common, they are faced with a policy enforcement challenge that involves a risk which, by its nature, could not have been anticipated.

While the three hypothetical claimants could not have seen into the future and predicted their carriers' liquidations, they each could take critical steps which would improve the ultimate chance of recovery-retention of qualified policy enforcement counsel. As well, policy enforcement experts with a comprehensive understanding of the client's policy portfolio can be an invaluable ally in navigating the complex process of getting a claim covered in liquidation. This counsel should include tracing carrier history, identifying the proper forum for your claim, perfecting the claim and marshalling arguments against any barriers to recovery. In an extremely complex situation, such as Maria's, effective policy enforcement advice can be the difference between full recovery, and no recovery at all.

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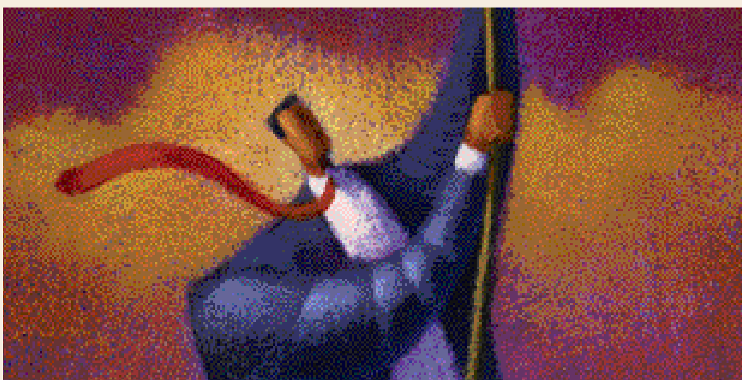
Peter Osborn, a Wood & Bender associate, focuses on litigating complex lawsuits under general liability and umbrella and excess policies of insurance.



POLICY ANALYZER℠

As one of our insurance policy enforcement services, Wood & Bender provides a completely independent legal and business analysis of an organization's policy coverages and risk exposures. Because Wood & Bender is a law firm – not an insurance broker – we have no stake in the recommendations we make. We do not sell insurance and provide this service on a fee-for-service basis.

A ***Policy Analyzer***℠ analysis helps better manage levels of risk and provides recommendations for plugging gaps in insurance portfolios. Many organizations use this service as a pre-litigation tool when perceived loss situations are anticipated, or as a means of planning risk distribution in critical corporate events like mergers or acquisitions.

The ***Policy Analyzer***℠ service is instrumental in guiding insurance-buying decisions, and in tailoring the extent to which insurance acts as an identified recovery source in the event of:

- Environmental suits
- Employment suits
- Errors and omissions in mergers and acquisitions
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- Blended tort/contract claims

THE ANALYSIS

Policy Analyzer℠ is a bundle of services packaged as a report. For example, we:

- Define each major area of risk exposure by company, division or operating group of the policyholder, and the scope of risk that each faces;
- Evaluate the quality and extent of coverages now in place, noting deficiencies; and
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THE DELIVERABLES

Every ***Policy Analyzer***℠ engagement is a custom project delivering a combination of:

- Meetings/interviews with designated individuals responsible for managing the insurance portfolio;
- Detailed reviews of the business organization, its business model and stated insurance coverage goals;
- Analysis of risk factors specific to the policyholder and its operations;
- Technical review and analysis of existing policies and coverages; and
- Comprehensive written recommendations for tailoring the insurance portfolio and risk management program to finance and reduce exposure.

PROFESSIONAL FEES

Each ***Policy Analyzer***℠ service is conducted for a flat fee based on the size of the company, the number of operational units bearing discrete risk exposure, and the number of insurance policies involved in the analysis. For a quote for your insurance policy coverage analysis, email us at info@Wood-Bender.com or call us at 805-484-3940.

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Let Your Insurance Portfolio Work for You

Wood & Bender's Policy Analyzer℠ is an independent, fee-for-service analysis of an individual corporate insurance policy or of an organization's entire insurance portfolio. This service assists clients in better understanding actual coverage protections, avoiding and financing risk, and outsourcing to independent insurance professionals the function of evaluating a company's insurance program. Policy Analyzer℠ findings can also be used to enforce policy terms so that companies realize maximum benefit under their existing insurance policies.

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Risk Radar:

Five Hot Topics to Watch in the Coming Months

Any good attorney or risk manager knows that risk management is, by its nature, a moving target. The issues that give rise to risk develop and change on a regular basis. The terrain is shaped by the insurance market and the American workplace as they interact with current events, statutory and case law developments and host of other factors. To help its clients keep pace with these changes, Wood & Benders' policy analysis and enforcement attorneys keep a constant eye on developing hot topics in the insurance industry. Five to watch in the coming months are:

TRIA Extension The Senate's interest in extending the government's terrorism insurance program may be on the upswing. Nearly every member of the Senate Banking, Housing and Urban Affairs Committee who participated in a recent hearing voiced support for reauthorizing the federal financial terrorism insurance backstop created by the Terrorism Risk Insurance Act (TRIA).

The federal program, which helps private insurers cover losses stemming from a future catastrophic terrorist attack, is slated to expire at the end of next year. Insurers, policyholders, brokers and others have called for an extension of the program through at least the end of 2007.

Obesity Related Liability A new report by the Insurance Information Institute finds insurers and re-insurers are potentially exposed to liability claims stemming from obesity-related lawsuits. In recent months, snack food manufacturers and fast-food giants have been targeted by numerous lawsuits seeking to hold them liable for the alleged detrimental effects of consuming their products. As these cases develop, carriers are likely to begin looking for ways to exclude such claims. Food industry risk managers and in-house counsel should review and update their enforcement strategies now to maximize potential coverage.

Mold Concern about the health and property damage consequences of mold contamination has become the subject of much discussion and the implications to the insurance industry could be huge in scope. Obtaining coverage for mold claims is an uphill battle now, and is likely to become more difficult in the future. (For more on mold, see Wood & Bender's recent article at http://www.wood-bender.com/library_articles.php)

Asbestos / Silica Liability In Ohio, lawmakers passed two pieces of legislation in May that address asbestos, silica and mixed dust claims. The first of their kind, they require plaintiffs to provide medical evidence proving that they have been exposed to these substances and that they are the cause of their illness. The legislation mandates that payments go to the sickest first. A large number of workers who are not yet ill are filing claims now out of fear that there will be insufficient funds available if they do become ill at some future date. (For additional information, see Wood & Bender's recent article at http://www.wood-bender.com/library_articles.php)

Spitzer v Brokers and Carriers New York State Attorney General Eliot Spitzer's lawsuit alleging price-fixing and deceptive practices by insurance broker Marsh McLennan and major insurers has changed the world of corporate insurance. It's a new game with new rules. Does your company know how to play to win? It's time to reexamine and possibly renegotiate those contracts. It's also time to learn which red flags to look for in past dealings with brokers. Act quickly. The statutes of limitations wait for no one. (For more information see the article on page 14).

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