

Insurance Coverage Litigation Arising Out of the Financial Crisis

What Policyholders and Carriers Need to Know

March 18 | The Harvard Club, New York City

CONFERENCE CHAIRS: Walter J. Andrews, Esq., Hunton & Williams LLP, McLean, VA
Matthew L. Jacobs, Esq., Jenner & Block LLP, Washington, DC



Wednesday, March 18, 2009

8:00 Registration & Continental Breakfast

8:30 Welcome & Introductory Remarks
Walter J. Andrews, Esq., Hunton & Williams LLP, McLean, VA
Matthew L. Jacobs, Esq., Jenner & Block LLP, Washington, DC

9:00 Who is Filing Claims, Who is Being Sued and What Causes of Action are Being Asserted?
• Claims by shareholders of almost all large financial institutions against those companies and their directors and officers;
• Claims by holders of subprime-backed bonds and CDOs against the issuers, underwriters, sellers, and trustees of those instruments;
• Claims by beneficiaries of ERISA pensions plans against the trustees, administrators, and asset managers of those funds;
• Causes of action under the Securities Act of 1933, Securities Exchange Act of 1934, ERISA, and the common law of fraud and negligent misrepresentation
David Grais, Esq., Grais & Ellsworth, New York
Additional speaker to be announced

10:00 Bernie Madoff and Satyam - The New Ponzi and Enron Redux?
• Class Actions and third-party investor suits
• Clawbacks
• Tax litigation
• Due diligence questions – did institutional investors and hedge funds do everything they could have to protect their clients' interests?
• How hedge funds and banks can avoid exposure to law suits
Plaintiff perspective: Stuart Singer, Esq., Boies Schiller & Flexner LLP, Fort Lauderdale, FL
Defense Perspective: to be announced

11:00 Morning Break

11:15 What Kinds of Damages are Being Sought and How will Damages be Measured?
• Damages by the type of claim
• Alternative notions of the "but for" world
Elaine Buckberg, PhD, Senior Vice President, NERA Economic Consulting, New York

11:45 Networking Luncheon

12:45 What Types of Insurance Policies May be Available for Claims Arising from the Financial Crisis -- An Overview
• A description of the policies -- D&O, E&O, other professional liability, other coverages and how they work -- general, standard terms and conditions
• Terms, conditions, provisions, and exclusions
William Skinner, Esq., Covington & Burling, Washington, DC

1:15 Coverage Issues Most Likely to Arise from Credit Crisis Claims, including the Application (or not) of Various Exclusions and Limitations to Coverage
• Notice Provisions
• Duty to Defend v. duty to reimburse and all related issues (panel counsel)
• Settlements and Issue of Consent to Settlements
• Exclusions:

- Fraud and Dishonesty
- Prior Acts
- Personal Profit
- Insured v. Insured
- "Related" Claims

Lorie Masters, Esq., Jenner & Block, LLP
Lon Berk, Esq., Hunton & Williams, McLean, VA

2:30 Afternoon Break

2:45 Failed Financial Institutions and the Impact on Insurance Coverage Issues
Timothy Burns, Esq., Perkins Coie, Madison, WI

3:15 Underwriting Considerations and New Policies or Exclusions Resulting from the Crisis
Greg Flood, President, IronPro, New York
Michael White, Senior Vice President, Executive Risks, Willis HRH, New York
Steve Shappell, Managing Director, Financial Services Group, Legal & Claims Practice, AON Risk Insurance Services West, Inc., Denver

4:15 Government Investigations and Insurance Coverage
• Is the service of a subpoena for the production of documents a "claim"?
• What if the first notice to the policyholder is a request for voluntary compliance?
• What happens when the investigation becomes a "formal order of investigation"?
• Defense Issues
• Settlement Issues
Rina Carmel, Carlson, Calladine & Peterson, Los Angeles

4:45 A Case Study: Claims Against Hedge Funds - Will They Be Covered?
• Damages -- Disgorgement, Restitution or Remediation
• Hedge funds, including their advisors and general partners, are a prime target of the over 600 pending lawsuits following the subprime mortgage meltdown and the global credit crisis. Allegations against hedge funds include misrepresentation regarding the security of investment packages, failure to follow investment guidelines, bad pricing based on a known-high risk of securities, negligence in not diversifying investment portfolios, and even fraud.
• Many hedge funds have E&O or professional liability policies which could be triggered. The insurance industry reportedly is facing at least \$3.7 billion in E&O exposure due to the subprime mortgage litigation, and may take an aggressive view toward paying claims. Key terms at issue may include the definition of professional services and certain exclusions, including the "conduct" and "investment banking" exclusions.
• Hedge funds should prepare to aggressively pursue their insurance claims, and even fight, to ensure they receive the benefits of the coverage they purchased.
Matt Schlesinger, Esq., Reed Smith, Washington, DC
Dan Bailey, Esq., Bailey & Cavalieri, Columbus, OH

5:30 Networking Reception

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