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Alerts

Professional Lines Alert

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Lawyers for the Profession®

Hinshaw & Culbertson LLP is pleased to introduce the *Professional Lines Alert*, a publication brought to you by the firm's Professional Lines Practice Group. This publication will report on specific cases, legal developments, trends and other relevant news relating to professional liability defense, and is intended to supplement Hinshaw's *The Professional Line* newsletter. In each issue, we will present information that is helpful across industry boundaries.

- **Accountant**
- **Actuary**
- **Auditor**
- **Insurance Agent/Broker**
- **Psychologist**

Accountant

Bacon v. Stiefel Laboratories, Inc., 677 F. Supp. 2d 1331 (S.D. Fla. Jan, 4, 2010)

The U.S. District Court for the Southern District of Florida dismissed with prejudice claims of accounting malpractice brought against a firm that valued company stock for an employee stock bonus plan. The dismissal was based upon the conclusory allegations in the amended complaint, which failed to state facts sufficient to constitute an actionable claim.

Actuary

Nasrawi V. Buck Consultants, LLC., No. 1:09-CV-02061-OWW-GSA (E.D. Cal. May 11, 2010)

The U.S. District Court for the Eastern District of California ruled that an actuary who is an employee of a disclosed employer is not personally liable to third parties for alleged negligence in performing duties in the course and scope of his employment that allegedly caused economic loss to a third party because his duty of care is owed to his employer, not the third party. In so holding, the court relied upon United States Liability Ins. Co. v. Haidinger-Hayes, Inc., 1 Cal. 3d 586 (1970).

Auditor

Attorneys

Marissa I. Delinks

Service Areas

Accountants Liability
Architects & Engineers Liability
Directors & Officers Liability
Insurance Agents & Brokers Liability
Professional Liability
Real Estate Agents & Brokers Liability
Securities Brokers' Liability

Official Committee of Unsecured Creditors of Allegheny Health Education and Research Foundation v. PricewaterhouseCoopers, LLP, 989 A.2d 313 (Pa. Sup. Ct. Feb. 16, 2010)

PricewaterhouseCoopers, as successor to Coopers and Lybrand, was sued for allegedly colluding with its client to misstate the client's finances. PricewaterhouseCoopers contended that the fraud of the client's officers was imputed to the client. It then extrapolated that the client was at least equally culpable with PricewaterhouseCoopers and that therefore the doctrine of *in pari delicto*—which provides that parties involved in an action are equally culpable for a wrong—precluded the client from suing PricewaterhouseCoopers. The Supreme Court of Pennsylvania held that that imputation does not apply where the defendant materially has not dealt in good faith with the principal. It also held that the *in pari delicto*defense may be available in its classic form in the auditor-liability setting. However, as noted, imputation is unavailable relative to an auditor that has not dealt materially in good faith with the client-principal. This effectively forecloses an *in pari delicto* defense for scenarios involving secretive collusion between officers and auditors to misstate corporate finances to the corporation's ultimate detriment.

Auditor

Continental Cas. Co. v. PricewaterhouseCoopers, No. 133 (N.Y. Ct. App. June 29, 2010)

The New York Court of Appeals affirmed summary judgment in favor of PricewaterhouseCoopers. Plaintiffs alleged that PricewaterhouseCoopers induced them to invest in Lipper Convertibles through the year-end statements, as well as monthly reports, without having employed the proper auditing methods necessary to ensure that the financial statements were accurate. The majority held that plaintiffs, who were limited partners of the fund, experienced any losses in their capacities as limited partners in common with all other limited partners. Therefore, they could not recoup their pro rata share of the partnership injury and also recover for that same injury under a direct fraud action.

Insurance Agent/Broker

Mullen v. State Farm Casualty and Fire Company, No. 09-2392-JFA (D.S.C. June 1, 2010)

The U.S. District Court for the District of South Carolina ruled that an insurance agent had no duty to advise a policyholder as to how much coverage he needed to rebuild his house in case of a total loss. It held that the insured never requested specific advice from the agent that could have triggered such a duty. Further, as the insured had requested that his coverage be reduced, the court determined that there was no proximate causation between any claimed negligence and the alleged damage.

Insurance Agent/Broker

Watertown Tire Recyclers, LLC v. Nortman, No. 2009AP2465 (Wis. Ct. App. June 17, 2010)

The Wisconsin Court of Appeals affirmed summary judgment in favor of an insurance agent. The client alleged that the agent had negligently procured an insurance policy with a broad pollution exclusion, which resulted in a denial of coverage after a serious accidental tire fire. The trial court correctly determined that the policy would have precluded coverage regardless of the alleged negligence and ruled in the insurance agent’s favor.

Insurance Agent/Broker

Tiara Condominium Association, Inc. v. Marsh & McLennan Companies, Inc., 607 F.3d 742 (11th Cir. May 27, 2010)

The U.S. Court of Appeals for the Eleventh Circuit held that the insurance broker obtained the requested per occurrence, as opposed to aggregate, limits of coverage. The negligent misrepresentation claim failed because the correct coverage was obtained. The court stated that insurance agents are generally not treated as "professionals" under Florida law and certified the following question to the Florida Supreme Court: "Does an insurance broker provide a ’professional service’ such that the insurance broker is unable to successfully assert the economic loss rule as a bar to tort claims seeking economic damages that arise from the contractual relationship between the insurance broker and the insured?"

Psychologist

James Fredericks, et. al. v. Mary Margaret Jonsson, Ph.D., Nos. 09-1169, 09-1237 (10th Cir. June 21, 2010)

The U.S. Court of Appeals for the Tenth Circuit ruled that a psychologist was not required to warn neighbors of the danger posed by a client who had previously been convicted of stalking their daughters because the client had not communicated to the psychologist any serious threat of imminent physical violence against plaintiffs, as required by Colo. Rev. Stat. § 13-21-117.

For further information, please contact Marissa I. Delinks.

This newsletter has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.