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How Might Dodd-Frank Affect your Directors & Officers Insurance?

Since the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act earlier this year, much has been written about the possible effects the new legislation will have on banks, both large and small. As banking, legal and regulatory experts continue to debate the Act and its potential ramifications, one thing is clear: more rules and regulations are on the way. Anytime new laws are created, particularly those of the size and scope in Dodd-Frank, it is important to review your D&O contract for potential coverage shortcomings and exclusionary language.

Directors & Officers liability insurance is designed to protect against claims involving actual or alleged omissions, errors, misstatements and misleading statements. The potential to unintentionally violate one of the numerous significant new regulations or laws resulting from Dodd-Frank is very real. For example, the creation of the Consumer Financial Protection Bureau and the new laws intended to ensure fair and equitable access to credit create many potential lender liability coverage implications.

Most entity claims are due to general errors and omissions during the lending process

A study of our claims data reveals that general errors and omissions during the lending process are the largest source of paid entity claims, and many of these allege violations of lending laws such as TILA or other Federal or State regulations. We can expect to see violation of law allegations increase if the predictions of 5,000 new pages of banking regulations from Dodd-Frank hold true. The coverage implications are enormous as some policies specifically exclude violations of lending laws. This not only precludes coverage for any judgment or settlement, it also means defense costs are not covered. While intentional violations of law are never covered, look for policies that expressly agree to pay defense costs for these matters.

Regulatory Exclusion coverage issues

Another potential coverage issue to consider is the Regulatory Exclusion. Some D&O policies commonly purchased by community banks do not provide coverage for claims brought by regulatory or supervisory bodies, most often through a specific exclusion or the definition of Loss. This is already a significant coverage restriction; if we see more regulatory actions as a result of Dodd-Frank, the exclusion will become even more punitive. If your bank is in good financial condition and operating

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SIDE NOTES

NEW ABA MEMBERSHIP BENEFIT:

New Employment Screening Solution

The American Bankers Association, through its subsidiary the Corporation for American Banking, endorses the Employment Screening Solutions available through LexisNexis® Screening Solutions. LexisNexis leads the industry with the most advanced technology and comprehensive data solutions so you can make the right decisions quickly about who you hire—contractors and employees. User-friendly screening solutions that support LexisNexis' service excellence, compliance updates, and best practices allow you to manage workflow efficiencies more effectively and maximize the value of your investment. Background checks, fingerprint and drug-screening tools can be integrated into the bank's existing HMS applications, providing one interface to manage all aspects of hiring.

The LexisNexis Screening Solutions will help your bank:

- ≡ More effectively compete for and successfully hire talent, while meeting your organization's risk model.
- ≡ Ensure consistency by automating screening orders based on position.
- ≡ Speed up results by customizing adjudication and scoring criteria.

For more information, call:

- ≡ Lisa Gold Schier at ABA, 1-800-BANKERS, ext. 5098
- ≡ LexisNexis, 1-800-590-8535

Or visit lexisnexis.com/risk/screening.

ABA INSURANCE SERVICES IS ATTENDING THE ABA INSURANCE RISK MANAGEMENT CONFERENCE, JAN. 30 - FEB. 2, 2011.

For information or to register, visit www.aba.com/Events/IRM.

How might Dodd-Frank affect your Directors & Officers insurance? continued

without an order, do not accept a regulatory exclusion. Contrary to what you may have heard, strong-performing community banks can still find policies that do not contain this exclusion.

There is no better time than today to review your D&O contract. New rules and regulations created by Dodd-Frank are on the way, and you don't want to find yourself in a difficult position because of inadequate insurance coverage.

For questions regarding Directors & Officers coverage, please contact your agent or visit www.abais.com.

Additional Dodd-Frank Act resources available to you

To help you understand more about the Dodd-Frank Act and its potential effects, the American Bankers Association has created the ABA Dodd-Frank Tracker at regreformtracker.aba.com. This resource provides current information on the implementation of the Dodd-Frank Act and contains posts made to the site regarding Dodd-Frank. This is available to everyone—you do not need to be a member of the ABA to access the information.

The blog is organized for easy finding and tracking of information that you're interested in. The banking-related areas of Dodd-Frank are organized into categories such as the Volker Rule, Prudential Supervision, Systemic Risk, Deposit Insurance, Interchange Fees, Preemption, Trust and Securities, and more. Features include news stories on Dodd-Frank Act proposals, comment letters and rules; a calendar of comment letter deadlines; and links to ABA resources. Special sections focus on key issues, such as interchange, deposit insurance and the Consumer Financial Protection Bureau. Visitors can sign up to receive updates—via e-mail or RSS—as new content is posted. In addition to following the blog updates, ABA members may also subscribe to receive updates to all information provided in the ABA Dodd-Frank Tracker.

Connecting with Bill Shero, Complex Account Specialist



Bill Shero has been with our program for over 17 years, starting as an underwriter with Progressive after graduate school. He earned his B.S. from the University of Dayton and MBA from Kent State. In order to better serve his customers, Bill also obtained the designation of Registered Professional Liability Underwriter. As a Complex Account Specialist, Bill's primary focus is writing coverage for banks with more than \$1 billion in assets, which typically offer a diverse array of products and services, thereby having exposures unique to large institutions. Outside the office, he enjoys hiking and is into college football. Sharing his love of sports with his four kids, he coaches their basketball and football teams.

Bill can be reached at 1-800-274-5222 or bshero@abais.com.

Transition update: Everest now insuring policies in Virginia and Louisiana.

The carrier transition from Progressive to Everest is proceeding very smoothly. Banks with approaching expiration dates will receive transitional non-renewal notices as required by state regulation. This ensures that you are aware that Progressive is withdrawing from the marketplace. Currently, policies are insured by Everest in all states except in Alaska, Arkansas, California, Florida, New York, Massachusetts, and Washington. The process in these states will begin as state approvals are obtained. For questions, please feel free to contact your agent or ABA Insurance Services.