# THE FINANCIAL CRISIS:
# INSURANCE AND REINSURANCE LEGAL DEVELOPMENTS

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An economic storm has hit the world, the financial world has failed us, and capital markets around the world may never be the same. From the fall of Lehman Brothers, to the Great Pyramid of Madoff, to the bail out of Greece, to the bail out of corporate American, and the government run Fanny Mae and Freddie Mac, people WILL begin to hold those perceived to be responsible, even in part, liable for monetary damages.

The purpose of this exercise is to explore the variety of claims that might ensue and the form they may take. We will first however, examine what has occurred and the impact generally on litigation and how governments are and may react.

**What is the Government Doing?**

Two years last month, Bear Stearns was collapsing along with Lehman Brothers and others followed. Since then, Americans and Europeans have faced what some call the worst financial crisis since the Great Depression. While that assertion remains debatable, there is little doubt that, in the U.S., millions lost jobs, businesses have failed, housing prices dropped by vast amounts, and savings and 401K plans were cut dramatically and in some cases, completely wiped out.

The Government believes that the failures that led to this crisis require bold action. That the US and the World must restore responsibility and accountability in the financial system to give Americans confidence that there is a system in place that works for and protects them. While some believe they are going too far, the Senate Banking Committee released a revised financial regulatory reform bill, which would create the Bureau of Consumer Financial Protection. It would be housed

in the Federal Reserve but would have a separate budget and an autonomous governance structure. Some of the highlights of the proposed new Bill before Congress include:

- **Too Big to Fail**: No more bail outs. They plan to do this by creating a safe way to liquidate failed financial firms; imposing tough new capital and leverage requirements that make it undesirable to get too big and will update the Fed's authority to allow system-wide support but no longer prop up individual firms.

- **Advanced Warning System**: Creates a council to identify and address systemic risks posed by large, complex companies, products, and activities before they threaten the stability of the economy. The system had plenty of warnings two years ago. The problem was they were ignored and special interests controlled the response to the abuses. There is nothing to suggest that this would be any different.

- **Transparency and Accountability for Exotic Instruments**: This is intended to eliminate loopholes that allow risky and abusive practices to go unnoticed and unregulated. This has some chance of success but again, these practices were in place and NOT unnoticed two years ago, they were merely ignored.

- **Executive Compensation and Corporate Governance**: This is intended to provide shareholders with a say on pay and corporate affairs with a non-binding vote on executive compensation. While I cannot fathom why some of these executives command the pay they do get, it is certainly not the reason for the collapse.

- **Enforce Regulation Already on the Books**: This would strengthen the oversight and empower the regulators to aggressively pursue financial fraud, conflicts of interest and manipulation of the system.

- **New Consumer Financial Protection Watchdog**: This job will be to protect the American consumer from unfair, deceptive and abusive financial products and practices. This would include ensuring that consumers get clear information on loans and other financial products, including information from credit card companies and mortgage brokers. In other words, protect them from themselves.

**Modernization of Regulation - Insurance Reform**

The financial crisis has highlighted the need for modernization of regulation. Many believe that this point in history is critical to the insurance industry. It is believed that the U.S. financial services regulatory system must be modernized so that the nation's economic well-being does not remain prone to the gaps and insufficient oversight that were supposedly at the heart of the current economic crisis. For insurance, the current regulatory scheme looks a lot like it did in the 1850's. While national banks are regulated by the Office of the Comptroller of the Currency and investment services are regulated by the SEC, there is no federal insurance regulatory office that compares to either. For the past 150 years, the insurance industry has been regulated for the most part, by the states, which has led to a lack of uniformity and reduced competition across state and international boundaries.

The financial crisis exposed the integral role that insurance plays in the U.S. and world economies and the urgent need to modernize the U.S. regulatory scheme. In April of last year, the G-20 announced a fairly far reaching program of financial services regulation and free trade commitments in response to the financial crisis. But alas, the state-based U.S. insurance regulatory system is simply not equipped to either effectively represent the U.S. in the international regulatory conversation or for that matter, pursue trade commitments as they relate to insurance. President Obama did forward legislation to Congress that would create a Federal Office of National Insurance that would be empowered to do these things...but that remains on the shelf.

The IAIS (International Association of Insurance Supervisors - with regulators from about 140 countries) is pursuing an agenda in three basic areas of regulation:

- financial and solvency;
- corporate governance;
- market conduct.

The problem in the U.S. is that we have no national level regulator or representative in any of these bodies. Meanwhile, other individual countries are pushing change, most notably Solvency II, the Europe-wide insurance solvency standard and regulatory framework. Since there is a requirement that for countries outside of Europe to be treated equally with those inside Europe, the U.S. must take note. The regulatory systems of those countries outside of Europe must be deemed "equivalent" to Solvency II and those determinations will be made at the national level. Additionally, countries such as Switzerland and Bermuda have adopted or are working on regulation similar to Solvency II.

In summary, property and casualty insurance is among the most heavily regulated industries

in the U.S. But the government's regulation of insurers is not particularly effective and is operating in a 150 year old regulatory system comprised of 51 separate jurisdictions, all with their own complicated inconsistencies. The U.S. needs a solution to the antiquated regulations currently in effect, but we do not appear to be ready for that change.

## POTENTIAL CLAIMS ARISING OUT OF THE FINANCIAL CRISIS

With this background, what do we see as the nature and scope of claims that may arise by reason of the financial crises? We will attempt to review the potential claim types by form of coverage exposed.

### 1. Fiduciary Liability Insurance/EBL Insurance/Fidelity Bond Insurance

**ERISA CLAIMS: (Employee Retirement Income Security Act).** Multiple claims have been filed against the administrators of pension and other benefit plans for losses suffered due to the financial crisis. ERISA requires that a benefits fund fiduciary must "prudently invest" the funds assets. Many benefit funds are now managed by third party administrators, which qualify as fiduciaries. These administrators are facing an increasing number of claims due to the financial crisis and drop in asset prices. Additionally, more such suits are being brought under ERISA, because these benefit funds are finding it easier to bring ERISA claims against an administrator rather than a securities fraud claim under the Private Securities Litigation Reform Act. ERISA claims are easier to bring because such claims do not have the same heightened pleading standards as fraud claims.[i]

One example of these ERISA based claims is a series of class actions suits brought by various benefit funds against Austin Capital Management Ltd. In this case, the Healthcare Fund and several other similar benefits funds brought suit against their administrator, Austin Capital, for its investments with Bernie Madoff. The Complaint alleges Austin Capital failed to invest prudently because it missed several red flags involving Madoff Funds, including the lack of transparency in how Madoff invested, the constant return on the investments, and the inability of other funds to generate returns near what Madoff was promising. The benefit funds in the class claim they lost $184 million due to Austin Capital's investments with Madoff.

In a related case, New York Attorney General Andrew M. Cuomo this month sued Ivy Asset Management LLC claiming that it misled clients about the risks of investing with Madoff, causing them to lose over $227 million when the fraud came to light. The complaint alleges that Ivy ". . . saw the trouble with Madoff coming around the bend, but instead of guiding their clients through

the financial waters, they sold them down the river." In fact, Cuomo alleges that at some point, before the fraud came to light, Ivy learned that Madoff was not investing the clients' money as advertised and instead of disclosing the information to investors, Ivy kept it a secret. This says Cuomo, "... violated their basic responsibility as investment advisers by putting their own financial interests ahead of their clients'."

In 2009, several groups of plaintiffs accused Ivy, BNY Mellon and J.P. Jeanneret Associates of shirking their duties as financial advisers by failing to realize what Madoff was doing. This case arises out of the Attorney General's efforts to follow up on those charges.

While this is not a private cause of action state a claim pursuant to ERISA, the theory is the same. Here however, it is alleged that Ivy (and its principals) committed securities fraud in violation of New York's General Business Law, and of violating the Martin Act, the Investment Advisers Act of 1940 and the Executive Law. The suit also alleges fiduciary fraud.

## 2. D & O Coverage

The Financial Crisis has also spawned an increase in several types of claims that fall within the scope of D&O coverage.

**Securities Suits:** The Crisis has triggered a rise of securities suits by shareholders against mortgage lending corporations or other corporations that were part owners of the lending companies. These suits allege that the lending companies failed to properly disclose their subprime exposure and accounting treatments of certain asset-backed securities.[ii]

**Securities Fraud:** Perhaps the two most famous U.S. fraud cases arising out of the Financial Crisis are the Bernie Madoff and Allen Stanford scandals. Goldman Sachs may be another.

In the Allen Stanford Scandal, Mr. Stanford's companies were found to have engaged in a giant Ponzi scheme involving the sale of CD investments. However, the money from new incoming CD sales was not being invested but instead used to pay off interest on pre-existing CDs. The scheme resulted in billions of dollars in losses. The SEC and several investors filed civil suits against Stanford and other board members alleging various types of securities fraud. Stanford's D&0 carrier agreed to reimburse the board members for their defense costs subject to a reservation of its rights. As the litigation proceeded, the D&O carriers later denied coverage under the "money laundering" exclusion in the policy.[iii] The "money laundering" exclusion is an exclusion not found

in many D&O Policies. This, of course, may change given the schemes uncovered by the Financial Crisis.

The issue touched upon by the court in the Stanford coverage case that may have a broader appeal to insurers is whether a guilty finding in a criminal fraud case may estop the insured from challenging the applicability of the fraud exclusion in a coverage suit. Another director on the Stanford Board pled guilty to fraud. Most D&O policies contain a fraud exclusion; however, in most U.S. D&O policies the fraud exclusion does not apply until there is "final adjudication" of fraud. Courts have consistently held that there must be a finding of fraud in the underlying suit for the exclusion to apply. These same courts have held that a finding of fraud in the coverage suit is not sufficient to trigger the exclusion.[iv] Accordingly, D&O carriers have to pay to defend the entire underlying fraud case until it goes to judgment or, in most cases, is settled by the carrier. Courts, however, have not addressed whether a guilty plea or finding of guilty in a criminal suit triggers the fraud exclusion. Many directors and officers are pleading guilty to fraudulent conduct long before civil suits are filed or litigated. Thus, a growing coverage issue that does not appear to have been addressed by U.S. court is whether a guilty plea or judgment in the criminal suit will estop the insured from challenging the exclusion in the coverage suit.[v]

**Goldman Sachs**: The SEC has filed a fraud complaint against Goldman Sachs alleging that it, and one of its traders, young Fabrice Tourre, committed fraud by structuring and promoting a synthetic collateralized debt obligation product, or CDO, without disclosing the involvement of a hedge fund client, Paulson. In essence, after the CDO was issued, Goldman allowed Paulson to create a short position in its portfolio. The SEC states that it is unlikely that Goldman would have been able to market the product had the involvement of Paulson been disclosed. Whether Goldman ends up fighting the SEC or reaches a settlement and pays a fine, the SEC's actions have led to numerous shareholder claims and suits against Goldman and its Directors and Officers.

**Shareholder Suits:** There have been a rise in shareholder suits across all industries as many shareholders allege that their board of directors breached their fiduciary duties to the corporation because of extreme drops in share prices or other deals that have gone south. Interestingly, the Financial Crisis has given rise to shareholder suits against insurance companies themselves. In early 2008, various pension funds filed shareholder suits against some large insurers, including MBIA, Inc., MGIC, and Ambac. These carriers provided monoline coverage for many CDOs and other mortgage backed securities. The monoline insurers took large losses when the housing market crashed. The pensions/investors then filed suit against the monoline insurers alleging that the extent to which the insurers covered sub-prime mortgages was not properly disclosed to them pursuant to securities regulations.[vi]

**Corporate Bankruptcies:** Another wave of litigation involving D&O coverage stems from shareholder suits brought after a company has entered bankruptcy. The year 2009 saw the highest number of businesses filing for bankruptcy since 1993. Shareholders in turn bring derivative suits against the Board and Officers of the bankrupt company to try and recapture lost capital.

Moreover, these bankruptcies will likely trigger a substantial amount of coverage litigation as carriers try to rescind policies based on misrepresentations in the insurance application. Coverage litigation may arise regarding whether Side A coverage applies because the company is unable to indemnify the directors and officers for otherwise indemniable claims. Additionally, carriers may try to assert the "insured v. insured" exclusion in the context of a bankruptcy because it may apply to suits brought by a Chapter 11 trustee against the directors and officers of the company. Finally, carriers will find themselves dragged into bankruptcy-related litigation because more often than not, the insurance policy is the only remaining asset.[vii]

**Failed Banks**: Several class action suits have been filed by investors in the various banks that have been taken over by the FDIC; 140 banks failed in 2009 alone. The investors in these failed banks filed suit against the directors and officers alleging violations of the Securities Exchange Act. These suits specifically allege that directors and officers made material misrepresentations regarding the financial position of the banks and that the directors and officers caused financial statements to be issued that did not conform to applicable GAAP standards (Generally Accepted Accounting Principles).[viii] We expect that after FDIC is done with transferring the assets of many of the failed banks, additional lawsuits will be brought by investors.

## 3. E & O Coverage

Since so many financial professionals maintain Errors and Omissions coverage, this line of insurance may be the most affected by the Financial Crisis.

**Claims Against Ratings Agencies:** Some of the newest suits implicating E&O coverage are claims by various investment funds against ratings agencies such as Moodys, Standard & Poor's, and Fitch, for the alleged inflated bond ratings they gave to mortgage backed securities. A California state court just recently allowed CALpers, the largest public pension fund in the U.S. to precede with a suit against all three agencies in which CALpers claims it lost over $1 billion on failed asset-backed securities.[ix]

**Sub-prime Mortgage Claims:** Perhaps the greatest number of E&O triggering claims have arisen directly out of the sub-prime mortgage fallout. These claims have been in litigation for a few years in the U.S. and continue to spread.

It is important first to understand what "Sub-Prime" refers to. Simply stated, it is the practice of giving loans to borrowers who do not qualify for prime interest rates. They were given higher interest rates, adjustable rate mortgages with large increases in interest rates in later years, which resulted, with the help of the housing market crash, in innumerable "upside down" loans. That is, owing more on a mortgage than the home was worth. The borrowers were mislead about the terms of the loans and in combination with the devaluation of homes and the higher rates, defaults ran rampant as homes could no longer be re-financed to cover the debt.

The causes or enablers of this "perfect storm" are many. In summary form, we see:

| Type | Cause & Enablers | Effect/Impact | Response |
|---|---|---|---|
| Homeowner | Borrowing and spending beyond means; Home price declines | ARM loan rate resets/unable to refinance; increase mortgage default rates. | Loan adjustment workout; foreclosure |
| Housing Market | Excess home inventory; Housing price bubble correction | Declines in new home construction/housing inputs; housing wealth engine slows ➻ reduced investment & consumption/recession risk. | Downward pressure on home prices and GDP until excess home inventory liquidated. |
| Financial Institutions | Increasing risk and debt tolerance/high leverage; credit swap/derivative market grows. Risky offers (ARM, loan incentives, teaser rates; complex instruments & mark-to market accounting. | Liquidity declines; corporate financial condition unclear; mergers/acquisitions. Margin calls; CDO losses; bankruptcy of weaker lenders. | De-leveraging & cautious lending; capital infusions to banks by Fed & Sovereign Funds. Layoffs, restructuring, cost-cutting; loan adjust programs. |
| Economy & Financial Markets | Low Fed interest rates (2001-2004) increase liquidity; investment grade ratings for subprime MBS. Securitization "engine" drives funds into housing; housing wealth encourages borrowing and spending. | Risk repricing/premiums increase; stock market declines, securitization engine slows ➛ liquidity crunch/recession risk. | Litigation; improved debt rating methods. New regulations; enhanced disclosure. |
| Government & Central Banks | Fed interest rate increases (2001-2007) pressure asset & home prices lower; limit/local regulation of non-banks and credit derivatives. | Fed cuts interest rates (2001-2009); Fed expands lending practices | Legislative stimulus package; downward pressure on dollar = inflation. Government bailouts; increase government deficit and debt. |

The total cost of all this is in the trillions. To put that in perspective, if we throw $1 into a bucket each second, it would take 94,638 years to reach $3 trillion.

The claims that have and will arise out of this mess take many forms. Many claims arise out of the Truth In Lending Act (TILA), which requires lenders make certain disclosures at the closing. Several class actions involving thousands of people have been filed against mortgage lenders by people who are trying to avoid foreclosure or force loan modifications. These class actions allege the mortgage lenders failed to make the proper disclosures required by TILA. The individuals are claiming that because of the TILA violations they may modify or rescind their mortgages.[x] The mortgage lenders in turn are filing thousands of third party suits against the individual closing agents who handled the closings on these mortgages. The mortgage lenders and the thousands of closing agents are then turning to the E&O carriers for coverage.

A vast array of other claims arise out of the sub-prime mortgage crisis as well. The trend in claims includes those against institutional-lenders, title insurance companies, bankruptcy trustees and receivers. The allegations include due diligence failures related to all aspects of appraisals, loan applications and closing documents to the failure to detect fraud such as the unauthorized use of Powers of Attorney. Claims involving lender priority have also been noted due to failure to timely record the loan as required by state law. Foreclosure loan modification suits have also been filed. We have seen cases in Florida where a lender has been held responsible for the failure to adequately explain the terms and ramifications of a rescue scheme. Indeed, no good deed goes unpunished.

There are suits by homeowners against lenders, mortgage lenders against walls street bankers, wall street bankers against loan specialists and investors against everyone. The issues all relate in the first instance to whether the lenders and investment banks alerted borrowers to the risks imposed by sub-prime loans and/or the securities backed by them, and how much were they legally obliged to disclose. The cases have taken the form of class actions; securities cases; commercial contract disputes; bankruptcy; employment and professional liability. Suits against every participant in the process have been brought or are anticipated. That includes mortgage bankers and loan correspondents; mortgage brokers; lenders; appraisers; title companies; underwriting firms; bond insurers; money managers; public accounting firms; Directors & Officers; and lawyers. The claims against the professionals assert that the borrower was misled about the risks of subprime lending.

Claims have also been made gainst attorneys who represented a party to a business transaction which has gone bad. Allegations range from the failure to properly explain the loans or

even that the loan was not affordable, to delays in real estate closings allowing a borrower to get out of a purchase that is no longer viable.

A very recent suit against a two law firms in the U.S. have highlighted this exposure. It was previously believed that the U.S. Supreme Court somewhat protected law firms from exposure in client fraud actions when it rejected the concept of aider and abettor liability in its *Stoneridge* decision, albeit not completely. On May 11, 2010, the Greenberg Traurig and Quarles & Brady firms were named as defendants in an investor class action filed in federal district court in Arizona for allegedly aiding and abetting a Ponzi scheme run by a real estate loan company called Mortgages Ltd, and a financing company called Radical Bunny. To get around the *Stoneridge* decision, the complaint alleges violation of the Arizona state securities laws. The case was brought by some 2000 investors who claim to have lost over $900 million.

Mortgages Ltd made loans to real estate developers and then sold most of the loans to investors. Radical Bunny helped raise money for Mortgages Ltd by illegally operating as an unlicensed securities dealer - or so it is alleged. Mortgages Ltd. is alleged to have adopted a Ponzi scheme approach in which new investor money was used to cover operating expenses, investor interest and investor redemptions. The law firms are alleged to have played an integral role in facilitating the fraudulent scheme by, among other things, preparing multiple private-offering memoranda for investors while being fully aware of the Ponzi scheme. Apparently an internal Quarles partner "questioned in a file note whether Mortgages Ltd.'s relationship with Radical Bunny had a 'Ponzi scheme feel' to it."

**Claims Against Hedge Funds:** A specialty E&O Coverage that is heavily affected by the Financial Crisis is Investment Advisors Liability Insurance. This specialty coverage insures mutual fund advisors, private equity companies, and hedge funds. These entities have seen a dramatic increase in suits regarding their alleged failure to properly disclose an investment fund's risk and exposure to toxic assets. A string of litigation arose out of the collapse of Bear Stearns. Former Bear Stearns hedge fund managers were arrested for securities fraud arising out of Bear Stearns' "Enhanced Fund." Civil suits against Bear Stearns have since followed. Citigroup also recently settled a suit brought by several investors in which Citigroup allegedly made material misrepresentations about the risk of an investment fund. Citigroup told the investors they would at most lose 5% of their investment, but in reality, after the Financial Crisis they lost almost everything. In another high profile suit, UBS brought a $200 million dollar lawsuit against hedge fund MF Global, Inc. Clearly, the magnitude of some of the losses will greatly affect this line of specialty coverage.

## 5. CGL Coverage

**Housing Discrimination Claims:** We do not expect to see many CGL Policies triggered by the financial crisis; however, there are clearly some creative arguments to be made that CGL policies cover certain crisis-related claims. The Advertising and Personal Injury Coverage in some of the older versions of the standard CGL coverage may be triggered by Financial Crisis claims. Personal Injury coverage may be triggered by certain sub-prime mortgage class action suits, which claim discrimination against mortgage lenders who allegedly targeted African-Americans with predatory lending tactics.[xi] CGL policies with expanded advertising injury coverage may also cover mortgage class action suits that allege false or fraudulent terms in the mortgages or other suits involving misleading information on the risk and nature of other investments.

**Foreclosure Nuisance Claims:** Property Damage coverage under CGL Policies may also be triggered by several lawsuits brought by municipalities against mortgage lenders. Beginning with the City of Cleveland, several cities filed suit against mortgage lenders claiming that their foreclosure practices were creating a public nuisance. The various cities are seeking damages for code violations and the cost to demolish the homes. The allegations in these suits may be sufficient to at least trigger the duty to defend in the CGL Policy.[xii]

## 6. Employer Liability Coverage

**Claims By Laid-Off Employees:** The collapse in the overall economy led to massive layoffs, which in turn led to a dramatic increase in employment litigation. The New York Times reported in early 2009 that discrimination complaints to appropriate administrative agencies had jumped 15%, after years of trending downward. Additionally, lawsuits under the WARN Act are also making a dramatic comeback. The WARN Act was enacted in 1988 and it requires, among other things, that certain employers must provide sixty days notice before mass layoffs take place. Enforcement of the WARN Act includes payment of back salaries and civil penalties. This litigation has taken the form of large class action suits. WARN Act suits have been brought by employees of several companies, most notably, those of Lehman Brothers, Eos Airlines, and the law firms Thelen and Heller Ehrman. Success in employment suits is difficult, but regardless of the outcome, these suits will likely incur high defense costs. [xiii]

### Key Threats Facing Insurers Amid the Financial Crises

Separate and apart from the nature of claims facing the industry is the fact that we are in a period of both recession and soft market. Thus, we see additional industry impact by way of price

erosion and overreaching regulation arising from the financial crises. Continued price erosion coupled with a major "capital event" can lead to a shortage of capital among some companies. That in turn can lead to insolvencies, forced mergers, calls for more government aid, or requests for relaxed capital requirements. The implication: insurers need to protect capital today. Regulatory overreach is also a concern. While a unified approach does appear to be necessary in the States, the property and casualty insurers must take care to avoid being swept into any vast federal regulatory overhaul and dual regulation. As we argue, there are strong reasons for a Federal Charter, but not one that is duplicative of the States'.

Another area of concern we anticipate is the possible exploitation of insurance as a wealth redistribution mechanism. History shows us that courts and governments alike try to use insurance to advance notions of wealth distribution. This can take the form of subsidies extended to workers compensation; to poorly reasoned decisions in coverage litigation; to run away jury verdicts in covered cases; to so called "excess profits tax" on insurers. The industry should expect certain social and economic
inequities over time.

One obvious concern is long term reduction in investment earnings. Low interest rates, risk aversion toward equities and many categories of fixed income securities lock in multi-year lower investment gains. This has to be made up in underwriting profit. But, we also see creeping restrictions on underwriting; that is, attacks on underwriting criteria. Underwriters now use such things as credit score, education, occupation and geographic location. The social agenda sees many of these issues as discriminatory, creating an adverse impact on certain populations. The current social and economic environment will accelerate these efforts.

Additionally, there is a growing concern over possible socialization and partial nationalization of the insurance system. CAT risks are being socialized indirectly via state-run insurance and reinsurance mechanisms or by way subsidy schemes involving assessments and premium tax credits. In fact, some life insurers sought and received TARP money. There are efforts to expand the national flood program to include wind and as we all know, health insurance may be substantially socialized over time. Terrorism is already a "federal" protection, backed by insurers. Certainly, states like Florida, Louisiana, Mississippi, Texas and California will rely heavily on the federal government in the event of a mega catastrophic event that further threatens state finance.

Finally, the emerging tort threat presents a major exposure to the industry. Given the financial crises, coupled with the current social agenda, no tort reform is forthcoming and in fact, we may even see an erosion of recent reforms. There will be endless legislative initiatives

attempting undermine existing reforms or designed to develop new theories and channels of liability. This will of course impact both personal and commercial lines and has historically been extremely costly to the P/C industry.

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[i] **Gina Passarella, *ERISA Class Action Filed Against Fund Invested With Madoff*, Law.com, available at www.law.com/jsp/article.jsp?id+1202428299691.**

[ii] ***Lester v. Novastar Fin. Inc. Corp. Sec. Litig.*, No. 07-cv-139 (W.D. Mo.); Monica Piniciak-Madden and Katya Jestin, *Subprime Crisis*, New York Law Journal, Jan. 5, 2009, available at www.nylj.com.**

[iii] ***Allen Stanford et al. v. Certain Underwriters at Lloyds of London and Arch Specialty Ins. Co.*,** No. 10-20069, U.S. Court of Appeals, Fifth Circuit, available at 2010 U.S. App. LEXIS 5384.

[iv] ***Id.***

[v] Pacific Ins. Co. v. General Dev. Corp., 28 F.3d 1093 (11th Cir. 1994)(holding that a criminal guilty finding of fraud constituted a final adjudication of fraud such that the D&O carrier no longer owed coverage.

[vi] ***Id.***

[vii] **The D&O Diary.com, *Bankruptcy and D&O Insurance*, May 3, 2010, available at www.dandodiary.com/2010/05/articles/d-o-insurance/bankruptcy-and-do-insurance/**

[viii] ***See In re First Regional Bancorp*, U.S. District Court Central District of California.**

[ix] Jonathan Stempel, *CALpers May Pursue Lawsuit Against Ratings Agencies*, Reuters.com, May, 4, 2010, available at www.reuters.com/ article/idUSN0412418520100504

[x] **In Re: "Ameriquest Mortgage Co., Mortgage Lending Practices Litigation, 1:05-cv-07097 (N.D. Ill)**

[xi] **Marc E. Rosenthal and Bianca Chapman, *Insurance Coverage During The Economic Crisis: Key Policy Holder Considerations, Part I: Typical Claims and Avenues for Coverage*, Proskauer Rose LLP, Nov. 2, 2009, available at www.metrocorpcounsel.com; *City of Cleveland v. Ameriquest Mortgage Sec., Inc.*, 621 F. Supp. 513 (N.D. Ohio 2009); *City of Minneapolis v. TJ Waconia, LLC*, No.27cv0887880, (Minn. Dist. Ct. 2008); *Mayor & City Council of Baltimore*, v. *Wells Fargo Bank, N.A.*, 631 F. Supp. 2d 702 (D. Md. 2009).**

[xii] ***Id.***

[xiii] **Rosenthal and Chapman, *Key Policy Holder Considerations*, supra, at vii; Jonathan D. Glater, *Layoffs Herald a Heyday for Employee Lawsuits*, New York Times, Jan. 30, 2009, available at www.nytimes.com**