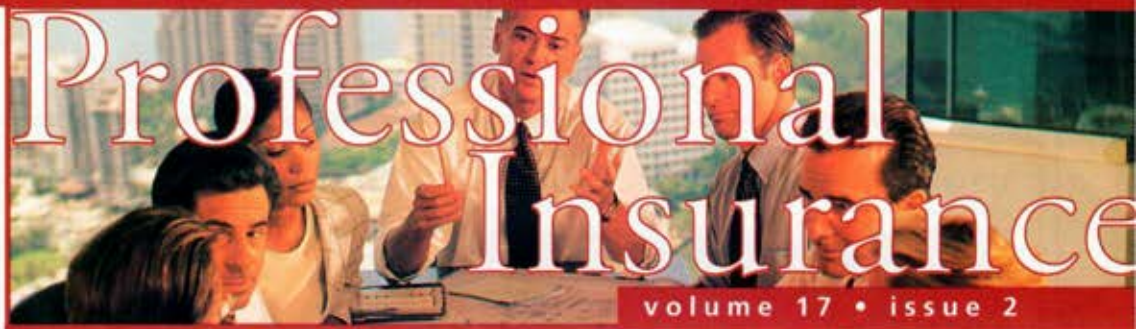


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MORRIS & REYNOLDS
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Coverage Unaffected by Merger

Mergers and acquisitions have dotted the landscape of corporate America for years. And, with the current economic downturn, more are expected in the coming years. A frequent issue that arises from any merger or acquisition is how to meld the two existing insurance programs. Typically, one insurance program will be selected and the remaining coverage will be cancelled. However, a state appellate court in California has issued a ruling that may affect future mergers.

The court ruled that the successor corpora-

tion is entitled to the insurance policy benefits of its predecessor company, if the successor has assumed the other's liabilities. This decision applies even if the policies have not been assigned to the successor company, as long as the claims arose during the period before the businesses were merged.

The court also noted that to rule otherwise would provide an unfair advantage to the insurers, and

would represent a windfall to those insurers that underwrote and received premiums for the risks. ■



New Hope for Medical Malpractice Liability Claims

One of today's most troubled lines of professional liability is medical malpractice coverage. The medical profession needs to find ways to reduce the number of claims, and, last year, the Joint Commission of Accreditation in Healthcare Organizations took a step in that direction by implementing a new standard for patient safety and medical errors.

The standard requires hospitals to ensure that they have processes in place to identify and manage near misses as well as actual events. The Joint

Commission realizes that near misses are important because under other circumstances, they could become loss events. One of the key strategies for controlling these events, both actual and potential, is root cause analysis (RCA): a prevention tool that focuses on systems and processes (rather than individual performance) to learn what factors led up to the event and what can be done to protect other patients from similar adverse outcomes.

Using RCA can greatly reduce the number of incidents and better control the cost of medical malpractice coverage. ■

Proper Notice for Dismissal



are required to state the basis for any disciplinary action, including termination. Failure to do so could invalidate the disciplinary action.

Defective or inaccurate employee notification regarding problems that merit disciplinary action or termination also can lead to liability issues.

Employers need to develop a standard operating procedure to handle employee terminations. You can't do it on a case-by-case basis. A recent arbitrator's ruling makes that clear.

The arbitrator said employers

You must develop thorough, standard disciplinary procedures; you also need to be sure you have employment practices liability coverage. We'll be happy to review this important coverage with you. ■

Listening to Employees



Violation of an employee's right to privacy is one of the fastest-growing areas in discrimination case law. So, even though recent events have made all of us more security conscious, you still need to be careful when conducting surveillance of employees.

Secretly recording employees is illegal. And, while you usually can read e-mails, listen to voicemail and track Internet usage, you must properly notify employees of such practices. ■

Costly Defects in Design

The construction industry as a whole is changing rapidly. One of the areas that has seen significant change is professional liability. The evolving relationship between builder, design professional and building owner has caused controversy over many issues. None, however, is more difficult than agreeing on what constitutes a construction defect. Each party to the construction transaction has their own view.

One of the most confusing aspects of this issue involves the separation of true construction defects from nuisance claims such as a squeaking floor or normal wear and tear. Actual construction defects can range from complex foundation or frame defects that

could impact the structural integrity of a building to simpler things such as deteriorating wood trim around a door. Although there are several types of deficiencies, one of the most common is design deficiency.



Design deficiencies are usually noticed when part of the building does not function as intended. The initial design may have been fine, but changes due to function, costs,

or aesthetics may have caused a defect in the completed design. Roofs are a typical design defect area. Problems with pitch or flatness, which result in poor drainage or leaks, top the list.

In trying to resolve these types of cases, the courts will frequently investigate if there has been a violation of any applicable building code, if workmanship falls below the standard of care in the building industry, or if there was a deviation from approved plans. Any professional involved in the construction process can be found culpable for these defects. Accordingly, it is extremely important to have appropriate professional liability coverage. ■

Another Blow to ADA

The Supreme Court has recently dealt another blow to the Americans with Disability Act (ADA). The case was brought by an auto assembly-line worker who had carpal tunnel syndrome. The high court ruled that the employee was not entitled to special treatment by having her employer tailor a job to suit her problems.

Although the ADA guarantees equal treatment for individuals with disabilities, it is directed at "major life activities" such as caring for oneself. The

Court found that "the central inquiry must be whether the claimant is unable to perform the variety of tasks central to most people's daily lives, not whether the claimant is unable to perform the tasks associated with her specific job." In essence, the Court stated that disability couldn't be assessed by looking only at someone's fitness to work.

This revised view of disability is certain to cause much uncertainty regarding workplace injuries. ■

Keeping an Eye on the Troops

Employers are continuing to face more and more claims for sexual harassment. The number of workplace discrimination suits now represents more than one-fifth of all federal civil lawsuits filed in the U.S. One of the most common causes for these lawsuits is employee e-mail correspondence. Many experts agree that the most effective method of avoiding litigation is to institute a risk prevention program.

A formal employment practices compliance program can minimize the risk of loss and can place the employer in a



better defense position in cases that do occur. Among the key ingredients of the compliance program is a state-of-the-art corporate policy statement written and distributed to all employees. The policy should include a formal complaint procedure that addresses equal employment opportunity, discrimination and harassment.

An additional component should be an employment practices insurance policy. Our professional liability specialist can recommend coverage designed for your specific needs. Just give us a call. ■

Economic Loss Doctrine

Liability problems for design professionals are significant and growing. The biggest area of expanding liability is "economic loss doctrine (ELD)." This concept actually began in the product liability area, but has expanded recently into the construction industry.

Typically the plaintiff in ELD cases is a contractor, alleging negligence. As courts nationwide have begun to rule in favor of economic loss claims,

design professionals have a greater need to define their actions. Even though there may be no written contract and thus no privity of contract, personal injury and/or property damage may be involved.

Design professionals should make certain that their professional liability policy extends to ELD losses. We will be happy to review your policy for appropriate coverage. ■

Cell Phone Safety



Most drivers are familiar with the current debate regarding cell phone use while driving. During the past few years, safety experts have voiced concerns about talking on a cell phone while driving. As a result, many people have decided to operate their phones via a "hands-free" device, which most people would agree makes cell phone use much safer. However, there's a side benefit that many people do not even realize – a reduction in product liability potential for manufacturers.

Another controversy involving cell phones, which has not received as much attention as driving safety, is a concern about brain cancer. Although the jury is still out on this issue, a cell phone trade association and many of its members are worried about the product liability potential. Increased use of "hands-free" phones certainly will help to diminish this exposure.

If your job requires cell phone usage, consider using "hands-free" devices. ■

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Are You a Professional?

Professionals are held to higher standards than workers in other fields. These learned individuals are expected to maintain a relationship of trust and confidence with their customers/clients. For years, it was generally believed that insurance agents and brokers were in this group. However, a New York Court of Appeals has ruled that agents and brokers in New York State are not considered "professionals."

The court found that insurance

agents and brokers are not entitled to the same legal protections afforded other professionals, such as lawyers, accountants, architects, and engineers. The New York Court would not apply a three-year statute of limitations that normally governs non-medical professional actions.

The long-term effects of this decision on agents' errors and omissions liability insurance remain to be seen. However, one thing remains clear: the need for such coverage remains. ■

Thank you for your referrals.

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