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Insurance News

A Newsletter from the Insurance Practice Group at Wiggin and Dana LLP

SUMMER 2010

We are pleased to share this latest issue of the Wiggin and Dana Insurance Practice Group Newsletter. Our intent is to circulate this newsletter by e-mail periodically to bring to the attention of our colleagues in the insurance industry reports on recent developments, cases and legislative/regulatory actions of interest, and happenings at Wiggin and Dana. We welcome your comments and questions.

Wiggin and Dana Insurance Practice Group

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In this Issue:

Wiggin and Dana Lawyers to Edit New Insurance Book

We are pleased to announce that members of Wiggin and Dana's Insurance Practice Group have been selected by the American Bar Association to co-edit a new resource for the insurance industry – The Handbook on Additional Insureds. Joe Grasso, Tim Diemand, and Michael Menapace will work on the book, which is slated for publication in the Fall of 2011.

Wiggin and Dana Authors Influential Brief on Behalf of Insurance Industry Trade Groups

The Connecticut Supreme Court this week issued an important decision on the extent to which the Connecticut Attorney General ("AG") must maintain the confidentiality of documents provided in response to an antitrust subpoena. The unanimous decision, in *Brown & Brown, Inc. v. Blumenthal* (No. 18334), was entirely consistent with arguments that Wiggin and Dana made in an insurance industry amici curiae brief filed in support of Brown & Brown ("B&B"), the party whose confidential documents were subpoenaed. A copy of the full decision may be found here. (http://www.jud.ct.gov/external/supapp/Cases/AROcr/CR297/297cr94.pdf)

Members of the Wiggin and Dana Insurance, Appellate, and Antitrust Practice Groups worked together to draft and file the amici brief and are pleased that the Court adopted the points advanced in the brief. Wiggin and Dana filed the amici brief on behalf of the American Insurance Association, the Connecticut Business and Industry Association, the Insurance Association of Connecticut, the National Association of Mutual Insurance Companies, and the Property Casualty Insurers Association of America.

The AG, as part of his investigation into broker compensation, had issued a subpoena under the Connecticut Antitrust Act to B&B, an independent insurance broker. B&B responded that it would not fully comply unless the AG agreed that it would abide by the Antitrust Act and not publicly disclose confidential information that B&B would be providing, including trade secrets. The AG refused. He took the position that his office was free to disclose B&B's business materials to anyone – including potentially the company's competitors – as long as the AG believes that the disclosure would be helpful in advancing the antitrust investigation. The trial court granted summary judgment in favor of the AG, and B&B appealed.

The Connecticut Supreme Court reversed the trial court and held that, while the state legislature granted broad investigatory powers to the AG to pursue antitrust investigations, it also provided counterbalancing protections to investigatory targets in light of the sensitive internal business information that may be disclosed in response to a subpoena. The Court further held that, if the

Attorney Notes

Joe Grasso has been appointed Chair of the U.S. Maritime Law Association's Committee on Marine Insurance and General Average.

Michael Menapace was recently named to the Technology Committee of ARIAS U.S.

In September, **Joe Grasso** will be attending the annual IUMI conference in Zurich and the International Marine Claims Conference in Dublin.

Michael Menapace recently participated in the ARIAS U.S. Spring Conference in San Diego, California.

AG is to share subpoenaed information with other government agencies in Connecticut or in other jurisdictions, the other agencies must first agree to abide by Connecticut's nondisclosure provisions. Finally, if the AG ends up filing suit, subpoenaed materials filed in that suit would be subject to Connecticut's existing practice rules for the sealing of court records. Those rules set a high standard for sealing or otherwise limiting access to court records, but they provide the affected party with the opportunity to move to seal the records and brief the issues.

The AG's position and the trial court decision, had it been affirmed, would have significantly undermined the confidentiality provisions in Connecticut's antitrust statutes and posed serious problems for companies responding to AG antitrust subpoenas.

Gulf Oil Catastrophe Insurance Claims - Round 1:
Transocean Insurers vs. BP Additional Insured Claim

By Joseph G. Grasso[1] and Charles Platto[2]

This article was published in the Insurance Litigation Reporter, Vol. 32, No. 9, June 18, 2010

There will undoubtedly be monumental insurance claims (and coverage litigation) arising out of the tragic and catastrophic blowout of the Transocean Deepwater Horizon drilling rig in the Gulf of Mexico and the resulting prolonged oil leak from the BP Deepwater Horizon well, which has resulted in enormous damage to the region. These will include claims for property damage, personal injury, business interruption, pollution, and potential coverage disputes among the various policyholders and insurers involved.

BP has repeatedly stated publicly that it is self insured, and also that it will assume responsibility for clean up and damage claims. Therefore, it was somewhat surprising when it was reported that on May 21, 2010 Transocean's excess liability insurers filed a declaratory judgment action in the United States District Court for the Southern District of Texas challenging a notice of claim by the BP entities as additional insureds under the Transocean policies, sent on May 14, 2010.

The Complaint is captioned Certain Underwriters at Lloyd's, London and Various Insurance Companies vs. BP plc [and other BP entities], Civil Action No. 10-01823 (SD Tex). The plaintiffs are listed as excess insurers who issued $700 million excess of $50 million of coverage under marine liability policies to Transocean covering the period May 1, 2009 to May 1, 2010. The explosion and fire took place on April 20, 2010, within the policy period.

There would seem to be little doubt, and it is acknowledged in the Complaint, that BP and affiliated entities are additional insureds under the Transocean excess policies, but the question raised by the Complaint is what is the scope of the Transocean coverage and in turn the additional insured coverage. According to the Complaint, this turns on the issue of which party has responsibility for various aspects of loss and damage from operations under the underlying drilling contract between Transocean and BP. The Complaint alleges that under the drilling contract, Transocean was responsible for loss or damage for pollution originating above the surface of the land or water from spills, leaks, or discharges of fuels,…liquids or solids in the possession or control of Transocean, and that the excess policy covered BP as an additional insured for liabilities or damage for which Transocean was responsible in this regard. However, the Complaint goes on to assert that BP was

About Wiggin and Dana's Insurance Practice Group

Highly regarded and deeply experienced, the Wiggin and Dana Insurance Practice Group provides international, national and regional insurers, reinsurers, brokers, other professionals and industry trade groups with effective and efficient representation.

Our group members regularly advise clients in connection with coverage issues, defense and monitoring of complex claims, regulatory proceedings, policy wordings, internal business practices, and state and federal investigations. We also defend clients faced with individual lawsuits and class actions – both at trial and on appeal; and represent clients in insurance and reinsurance arbitrations. We have broad experience in many substantive areas, including property, commercial general liability, inland and ocean marine, reinsurance, E&O, D&O, and other professional liability, environmental, and aviation.

A more detailed description of the Insurance Practice Group and biographies of our attorneys appear at www.wiggin.com.

responsible for liability for any pollution or contamination claims for operations and responsibilities not assumed by Transocean.

Ultimately, the Complaint asserts that under the language of the policies and the underlying drilling contract, Transocean is not responsible for any liabilities or damage relating to pollution from BP's well and, therefore, BP is not an additional insured under the Transocean policies for purposes of the claims resulting from this disaster.

According to the Docket, a status conference in this case is set for early September. There will perhaps be motions filed in the interim, which may provide some insight into BP's position. But this Complaint portends a classic "additional Insured" policy dispute. In addition to the issue of allocation of coverage and responsibility under the policies and the underlying drilling contract highlighted in the Complaint, complex questions ranging from fault and causation to the nature and scope of pollution and marine liability coverages will be presented. Additional insured coverage is designed to avoid disputes between parties, typically owners and contractors, and to allow them to jointly share in applicable insurance coverage. But in a case of this magnitude, complexity and visibility, with the filing of this Complaint, it is already obvious that additional insured coverage will be subject to a multitude of challenges.

At this early stage, and with limited information, it would be presumptuous of us to offer an analysis of the issues relating to coverage for additional insureds, pollution, or other marine risks and other issues – but as with the 9/11 number of occurrence cases and the Katrina wind/water cases, we can observe that these catastrophic events invariably raise complex insurance issues, and in this case, the additional insured question is now highlighted. Furthermore, as with claims arising out of the events of 9/11, the enormity of the damages may in any event eclipse coverage disputes and the dispute may play out in the context of defense obligations and costs in the first instance, depending on the defense provisions of any applicable policies. We will in any event continue to follow and report on the additional insured and other issues as they develop.

Update on Iran Sanctions

The UN Security Council adopted Resolution 1929 on June 9, 2010, imposing a fourth round of sanctions against Iran for refusal to comply with its international nuclear nonproliferation obligations. Resolution 1929 builds on existing UN sanctions to prevent Iran from acquiring nuclear materials and technology, including weapons delivery systems. It requires states to prevent the direct or indirect supply of nuclear materials and information to Iran, to restrict the travel of certain Iranian individuals, to freeze funds belonging to certain Iranian companies and individuals, and to require their nationals to exercise vigilance when doing business that might contribute to the development of Iranian nuclear weapons systems.

Iranian-owned or -contracted vessels in port and on the high seas are subject to inspection and seizure of prohibited cargo, and states are banned from providing bunkering services and critical support services, such as food and water, to ships allegedly carrying prohibited cargo. Among other prohibitions, Resolution 1929 also seeks to compel states to eliminate any financial services -- including insurance and reinsurance, asset transfers, and banking assistance -- that might further Iran's nuclear program.

Most importantly, Resolution 1929 authorizes states to take undefined additional measures against Iran to hamper its nuclear activities. The United States and European Union are leading

the Resolution's implementation with domestic legislation that goes beyond the Resolution's minimum requirements.

UNITED STATES: On July 1, 2010, President Obama signed the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (CISADA) into law. CISADA expands existing U.S. sanctions by broadening the President's power to penalize U.S., Iranian, and third-party companies who know or should know that their actions will further Iran's nuclear interests. Sanctions may be imposed on U.S and non-U.S. companies (1) who invest in Iran's petroleum production industry; (2) who sell, lease, or provide goods, services, technology, or information that could facilitate the maintenance or expansion of Iran's domestic production of refined petroleum; or (3) who export or assist Iran's ability to import refined petroleum products. CISADA also codifies existing sanctions, creates new types of sanctions, and requires additional due diligence from certain U.S. industries, including the financial services industry. CISADA may extend liability to U.S. subsidiaries of foreign companies for conduct taking place abroad, but the scope and implementation of these provisions remains unclear and will be discussed in future updates. The threat of increased sanctions has already caused some non-U.S. companies to avoid prohibited relationships with Iran.

CISADA includes an exception for insurers and reinsurers; sanctions will not be imposed against such entities if the President determines that they exercised due diligence in establishing and enforcing official policies, procedures, and controls to avoid insuring or reinsuring the sale, lease, or provision of goods, services, technologies, information, or support that could significantly further Iran's ability to import refined petroleum products.[3] However, it is unclear what actions may constitute due diligence and whether the prohibited $1 million (individual) or $5 million (yearly collective) transactions triggering sanctions would be applied to insurance premiums or limits of coverage.

CISADA tasks the Treasury Department with issuing regulations; that will hopefully address these and other areas of confusion. For now, it seems likely that following current policies and controls used to ensure compliance with Office of Foreign Assets Control regulations should suffice.

EUROPEAN UNION: The European Council announced on June 17, 2010 that it would impose new restrictive measures that would go beyond those required in UN Resolution 1929. Because of Europe's more extensive trade relationship with Iran, its sanctions will likely have more practical consequences than increased U.S. sanctions. Germany, Italy, and other countries with significant trading links with Iran have traditionally opposed sanctions, but are expected to ratify the new measures in light of Iran's growing nuclear program. It is unclear what countries that oppose sanctions as a matter of principle, such as Sweden, will do.

IRAN: Iran maintains that its nuclear program is intended for peaceful use. Mr. Ahmadinejad stated that Tehran will not make "one iota of concessions" as a result of the sanctions and will continue work on four new nuclear reactors.

[1] Mr. Grasso is the current Co-Chair of the Insurance Practice Group of Wiggin and Dana LLP. He is counsel to the American Institute of Marine Underwriters and wrote the Association's amicus brief to the United States Supreme Court in the Exxon Valdez case.

[2] Mr. Platto is Adjunct Professor of Insurance Law and Litigation at Fordham Law School, a Vice Chair of the ABA Insurance Coverage Litigation Committee and a Member of the Editorial Board of the Insurance Litigation Reporter. He is now an independent arbitrator and mediator in domestic and international commercial and insurance matters.

[3] Sanctions may also be permanently waived when it is "necessary for U.S. national interests." Additionally, the President may waive for 12-month periods sanctions against persons (1) whose government is closely cooperating with Iranian sanctions, (2) when such waiver is vital to national security, and (3) the President certifies both of the above requirements to the U.S. Congress.

From the Courts

Policyholder information not a trade secret under the Uniform Trade Secret Act. Black Letter law holds that a company must take adequate steps to protect the secrecy of materials it wishes to maintain as trade secrets, which means that trade secrets cannot be readily ascertainable by proper means from another source. *Nationwide Mut. Ins. Co. v. Mortensen* (2d Cir. No. 08-5214 May 11, 2010). Nationwide did not have in place adequate controls or procedures to prevent its agents from downloading electronic files that detailed policyholder information, including personal information, policy and claims, premiums and history. The defendants had printed out screen shots containing this information before terminating their relationship with the insurer and even though they then used the information to compete against the insurer, the court found that there was no violation of the Connecticut Uniform Trade Secret Act because there were no contractual provisions requiring the agents to protect the secrecy of the files and they were free to keep their own notes about the files' contents. One takeaway for insurers from this case is that they may want to consider setting internal procedures and controls to establish the ownership and secrecy of their information and how that information may be used by current or former agents/employees.

Insurer can be sued for bad faith outside the context of claim handling. Under Ohio law, a plaintiff may bring a tort claim against an insurer for improperly handling and processing claims, independent of a breach of contract cause of action. But, a federal district court recently held that an insurer's alleged failure to fully return unearned premiums also may form the basis for an independent cause of action in tort. *Pate v. Guarantee Trust Life Ins. Co.* (N.D. Oh. No. 1:09-cv-2454 Mar. 15, 2010). In this case, the insurer was sued in a putative class action after allegedly failing to refund unearned premiums when the insureds had satisfied their car loans prior to maturity despite the insurance policies' provisions requiring the insurer to refund a portion of premium in such cases. The court stated that "[b]ecause this allegation concerns one of the Defendant's responsibilities under the insurance contract, the Court finds that the Plaintiffs have stated a claim for breach of the duty of good faith and far dealing."

Environmental costs incurred because of a contractual obligation not a covered claim. In *Fischer v. Am. Specialty Lines Ins. Co.* (D. Conn. No. 07-1871 May 14, 2010) (full opinion here http://courtweb.pamd.uscourts.gov/courtwebsearch/ctxc/2o6Qh608.pdf), the court held that the insureds were not entitled to coverage for environmental contamination cleanup costs under a pollution liability policy because they did not submit a claim for costs incurred as the result of an environmental law. The insureds had sold the subject property to a gas transmission company and in doing so agreed to clean the site and remove various solid waste materials. After the clean up became more significant than originally anticipated, the insureds sought coverage for the cleanup costs. The insurer denied coverage and the insureds filed suit claiming breach of contract and bad faith. The court found that the insureds' obligation to clean the site arose from its contractual obligations to the purchaser of the property, not a cognizable claim under the policy, which provides coverage for "clean-up costs" if they are required by "environmental laws," defined as "any applicable federal state, provincial, or local law pursuant to which the Insured has or may have a legal obligation to incur Clean-Up Costs."

Equitable subrogation precluded claim by insurer against fiancé of homeowner related to hot tub fire. The Connecticut Supreme Court, in *Allstate Ins. Co. v. Palumbo* (SC 18276 May 18, 2010) (full opinion here http://www.jud.ct.gov/external/supapp/Cases/AROcr/CR296/296CR51.pdf), ruled that the doctrine of equitable subrogation was properly applied against an insurer where the defendant's negligence caused a hot tub to catch fire at the house owned by his fiancée. The defendant also lived at the house and shared in its expenses. The defendant argued that his status as fiancé and cohabitant of the homeowner rendered him a "covered person" under the homeowner's insurance policy, a position adopted by the court. In

justifying the finding that the equities weighed against subrogation, the court recognized that it would have been economic waste for the defendant to have purchased a separate policy and the subrogation action against the defendant would have been the equivalent of an action against the insured fiancé given their economically dependent relationship.

No duty to defend no-injury products liability lawsuits. In a case of apparent first impression, the 7th Circuit Court of Appeals held that insurers for a defendant named in a multidistrict class action over the use of bisphenol-A are not entitled to insurance coverage. *Medmark Cas. Ins. Co. v. Avent Am. Inc.* (No. 09-3390 July 15, 2010) (full opinion here http://www.ca7.uscourts.gov/fdocs/docs.fwx?caseno=09-3390&submit=showdkt). Fifteen consolidated class actions claim that Avent America Inc. failed to inform the class members of health risks posed by the leaching of BPA from baby bottles, nipples and other plastic products. The class seeks only economic damages. Avent's insurance policies cover only bodily injuries, but Avent claimed that the damages sought in the underlying suits stemmed from the plaintiffs' fear of bodily injury, which implicates the insurers. The court rejected Avent's claims because "even if the underlying plaintiffs proved every factual allegation in the underlying complaints, the plaintiffs could not collect for bodily injury because the companies do not allege any bodily injury occurred," which, the court added, was "not a drafting whim or mistake," but rather a "strategic decision" by plaintiffs' attorneys in seeking class status.

The Carmack Amendment does not automatically apply to shipments originating overseas under a through bill of lading. On June 21, 2010, the Supreme Court of the United States decided *Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp*., No. 08-1553 and *Union Pacific Railroad Co.* v. *Regal-Beloit Corp*., No. 08-1554. These cases involve multimodal shipments destined for the U.S., and the question the Court was asked to resolve is whether the terms of a through bill of lading issued abroad by an ocean carrier can apply to the domestic U.S. inland leg of transportation (i.e. rail or truck carriage), despite the provisions of the Carmack Amendment (49 U.S.C. §11706 and 14706), even when no separate domestic bill of lading has been issued by the inland carrier. (In this case, the through bill of lading provided for resolution of disputes in Japan, but Carmack provides for jurisdiction in the U.S.)

The Ninth Circuit Court of Appeals held that Carmack applies and permits the shipper to sue the inland carrier in the U.S. The Circuits were divided on this question: the Ninth and Second Circuits had held that Carmack does apply, while the Fourth, Sixth, Seventh and Eleventh Circuits had held that it does not. (The issue was not addressed in the *Kirby v. Norfolk Southern* case from 2004, because the parties did not raise the issue in that case.) The Supreme Court reversed the decision of the Ninth Circuit, holding, 6 to 3, that (i) the Carmack Amendment does not apply to the U.S. rail leg of international multimodal shipments traveling under a through bill of lading, and (ii) therefore foreign jurisdiction clauses in such through bills of lading are enforceable by both the intermodal carrier and the rail carrier. Three of the Justices issued a lengthy dissent.

Liability limited to $500 under COGSA even though the yacht at issue sustained $4.18 million in damages. A 72 foot yacht was damaged when a crane toppled over while the yacht was being unloaded from the M/V MADAME BUTTERFLY in California. Underwriters paid the insured approximately $4.18 million for the damage. As subrogee, underwriters sued several parties, including the ocean carrier, crane lessor, and the stevedores. *St. Paul Travelers Ins. Co. v. M/V Madame Butterfly* (S.D.N.Y. No. 08-civ-410 Mar. 30, 2010). (Full opinion available here http://nycourts.law.com/CourtDocumentViewer.asp?view=Document&jurisdictionID=31&searchArea=&searchText=&searchStartDate=04%2F01%2F10&searchEndDate=04

%2F10%2F10&searchLogic=and&searchDisplayNum=30&searchType=AdvSearch&page=1&docID=123192.) The underwriters argued that the defendants were liable under a service contract for the shipment of various yachts. The defendants argued that the service contract was not applicable and that the bill of lading, which contained a Himalaya Clause, was actually controlling. The court held that the bill of lading was the applicable contract and dismissed the claims against the crane lessor and stevedores because the bill of lading contained a broad clause prohibiting suits against anyone other than the carrier. The defendants had also argued that summary judgment should be entered on the total amount of damages the underwriters could recover. Specifically, they argued that COGSA applies and the maximum amount of damages was the $500 per package limitation under COGSA. The court granted summary judgment against the underwriters/subrogee and found that "the bill of lading in this case did provide the shipper with an opportunity to declare a higher value for the goods and pay for increased protection, but no such higher value was declared." Because the bill of lading was clear in this case, "the yacht constituted either one package or one customary freight unit . . .[t]he COGSA limitation is therefore $500." Underwriters have appealed the case to the Second Circuit Court of Appeals.

Illinois Appeals Court Vacates Award of Attorneys Fees in Reinsurance Arbitration. The intermediate appellate court in Illinois vacated an arbitration award for attorney fees finding that the award exceeded the powers of arbitration panel. *Amerisure Mut. Ins. Co. v. Global Reinsurance Corp. of Am.* (Ill. App. Ct. 1st Dist. No. 08 CH 42242 Mar. 15, 2010). In an arbitration over a quota share reinsurance agreement, which had an Illinois choice-of-law provision, the cedant had requested interest, costs, and exemplary damages. The reinsurer responded that panel could not award attorney fees because both parties had not requested them, the arbitration clause in the treaty did not authorize them, and there was no state statute to support an award of attorney fees. The panel issued an award in the cedant's favor and awarded attorney fees based on the panel's finding of the reinsurer's violation of its duty of utmost good faith to the cedant. The trial order upheld the award but the appellate court reversed holding that the panel awarded attorney fees based on state statute but that statute clearly reserves authority to award attorney fees to the courts. Moreover, the appellate court stated that a violation of the duty of good faith "does not, in itself, provide a basis for awarding attorney fees."

New York State court holds the follow the settlement doctrine does not apply. In a declaratory judgment action, a New York State trial court held that a group of reinsurers was not subject to the follow the settlements doctrine where the cedants' payments to the underlying insureds were made on an *ex gratia* basis. *Am. Home Assurance Co. v. Am. Re-Ins. Co.* (N.Y. Sup. Ct. No. 602485/06 May 27, 2010). Cedants had entered into a settlement agreement for approximately $140 million with their insureds after mediation and then billed the reinsurers. The reinsurers argued that the cedants paid the insureds for claims outside the scope of the reinsured policies. On summary judgment, the court found that the cedants failed to conduct a reasonable and businesslike investigation of certain claims billed by the insured before entering into the settlement agreement and, thereby, failed to assert potential coverage defenses. Because the cedants glossed over those critical coverage issues, they unnecessarily exposed the reinsurers to non-covered claims; thus, the reinsurers did not have to follow the fortunes of the cedants.

From the Regulators

The National Association of Insurance Commissioners recently released its 23rd edition of its Insurance Department Resources Report. The Report is intended to help state insurance departments assess their resources in comparison to other states. Copies of the Report can be ordered from the NAIC Store – it is available in hard and electronic formats. An overview of the Report findings include:

- Insurance premiums increased by 9.9 percent to $1.8 trillion from 2008 to 2009.
- In 2008, the five states with the most premiums written in all lines were California, New York, Florida, Texas and Pennsylvania, which states accounted for 42.9% of all insurance premiums in the United States.
- There were 7,869 domestic U.S. insurers in 2009.
- State insurance departments received more than 322,000 official complaints and 2.4 million inquiries in 2009.

Connecticut recently issued:
Notice to Surplus Lines Brokers Regarding Placement of Coastal Business in the Surplus Line Market (May 24, 2010). The Insurance Department states:

> The Department has been apprised of situations where a surplus lines broker is placing a coastal risk in the surplus lines market despite the fact that the insured received a renewal offer from their existing Connecticut authorized insurer. The Department wishes to remind all Connecticut licensed producers as well as Connecticut surplus lines brokers, that when an insured has been offered a renewal from their existing admitted insurers; any other Connecticut admitted insurer; or any residual market mechanism, it would be a violation of Connecticut statutes—specifically Conn. Gen. Stat. Section 38a-741—for the risk to be placed in the surplus lines market. The Notice may be found here. (http://www.ct.gov/cid/lib/cid/Notice_to_Surplus_Lines_Brokers.pdf)Surplus lines brokers and producers should review Bulletin SL-1 dated November 17, 2009 at the following link: http://www.ct.gov/cid/lib/cid/BullSL1.pdf for Connecticut requirements for the placement of surplus lines business.

Bulletin HC-80 (Jul 22, 2010). The purpose of this bulletin is to outline Insurance Department requirements for insurer filing revisions related to the federal Patient Protection and Affordable Care Act, Pub.L. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub.L. 111-152.

New York recently issued:
Regulation 194, which regulated the transparency of insurance producer compensation. Regulation 194 is slated to take effect January 1, 2011. Among other things, under section 30.3(a) of Regulation 194, producers are required to disclose: a description of the producer's role in the sale; whether the producer will be compensated based on the insurance contract sold; that the compensation paid to the producer may vary depending on a number of factors, including the contract and the insurer the purchaser selects and the volume of business the producer provides to the insurer; and that the purchaser may obtain information about the compensation to be received by requesting such information from the producer.

A trade group of independent agents and brokers have sued the New York Department alleging that it does not have the legal authority to regulate compensation disclosure.

Pennsylvania recently issued:
Bulletin 40 Pa.B. 3754 - Patient Protection and Affordable Care Act—Guidance for Compliance Filings; Notice No. 2010-07. This Notice provides guidance to insurance entities seeking to demonstrate compliance with the Patient Protection and Affordable Care Act relative to policies offered, issued or renewed in the Commonwealth. The guidance is limited to policy forms for which an insurance entity (insurer) is not seeking to make any changes other than as necessary to make the policy form comply with the PPACA.

Bulletin 40 Pa.B. 4050 – Application for Written Consent; Department Notice No. 2010-08. By Insurance Department Notice No. 2000-04 all persons and entities engaged or participating, or seeking to engage or participate, in the business of insurance in the Commonwealth were advised that the Insurance Department had adopted an application for written consent to engage in the business of insurance under The Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C.A. §§ 1334 ("act") (relating to application for written consent). Under the act, it is a criminal offense for an individual who has been convicted of a criminal felony involving dishonesty or a breach of trust, or an offense under the act, to willfully engage or participate in the business of insurance, or to willfully permit such participation, without the written consent of the appropriate insurance regulatory official. The Department's application for written consent is available on the Department web site.

The U.S. Congress is considering a number of bills in the wake of the Deepwater Horizon blowout. These bills would impact current U.S. laws on pollution liability, limitation of vessel owners' liability, and U.S. coastwise trade, among others. Please contact Wiggin and Dana if you would like a summary of the legislation.