



# CLAIM AND LITIGATION TRENDS – VIEW FROM THE TOP

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# Managing Claims In Extended Soft Market

- A. How to Attract and Retain Claim Talent
- B. Managing Up, Sideways, Every Which Way
- C. Frequency and Severity Issues
  - Less 10b-5 cases
  - More derivative and “bump up” cases
- D. More pushback letters
  - When and how to involve broker?
- E. Business Accommodation versus Grey Area

# Litigation Environment

- Pressure to Control Claim Costs
  - Defense costs continue to spiral out of control
- Summary Judgment the lost remedy?
- Are we too quick to agree to ADR, mediation?
- Who can effectively mediate my case?  
Bueller?
- Are EPL claims becoming commoditized?

# Class Action Overview

- Securities
  - Decline in filings, # of settlements and average settlement
- Consumer Fraud (internet, social media)
- Wage and Hour
- FDCPA
- Other Market Conduct Class Actions

# Halliburton

- Background
- Potential impact on securities litigation
- Certain securities claims not impacted by Halliburton
- Efforts to circumvent Halliburton outside the courts
- Potential impact on D&O Insurance marketplace

# High Frequency Trading

- What is it and why is it problematic?
- Rhode Island Class Action
  - Plaintiff seeking to certify defendant class
- Impact of government investigations
- Potential D&O/E&O exposure

# Other Manipulation Cases

- Libor
  - Potential to impact Side A policies?
    - JP Morgan Libor derivative suit dismissed
- FX
- Gold

# M&A/Bump Up Claims

- Filed in almost every deal transaction
- Nuisance v Severity
- Delaware and other states
  - By-law choice of forum provisions
- Policy Language Implications
- Should these claims be arbitrated? Other solutions?



# SEC Enforcement Actions

- New sheriff in town – impact?
  - Insider trading
- More gatekeeper cases?
- More whistleblower cases?
- Admissions of Liability
  - Impact on private fund managers
  - Impact on coverage
- Potential for cyber enforcement proceedings down the road
- Impact of Judge Rakoff Reversal by Second Circuit

# Policy Wording/Coverage Issues

- Professional Services – how can D&O claims trigger E&O coverage?
- Meaning of “Securities of the Company”
- Investigations Cost Coverage
  - Policy language requiring subpoena has been expanded to include Wells Notices, Target Letters and sometimes Informal Investigations (interview requests and/or requests for documents).
- Claims Made/Claims Made and Reported Issues
  - Late Notice
- Related Claims – Still lots of uncertainty.

# Predictions for Remainder of 2014

- Will corporations outsource EPL claims to the insurance industry?
- Where will the SEC focus its resources and will this impact D&O Liability?
- Will securities cases continue to decline?
- Will we continue to see more industry consolidation?
- From an exposure standpoint what is the next shoe to drop?

# Questions & Answers

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