

NOVEMBER 24, 2009

RECENT, RELEVANT, PROFESSIONAL LINES LAW FOR SUBSCRIBERS

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- Coverage / Bad Faith
- EPL- Labor & Employment
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SETTLEMENTS

November 13, 2009. Marsh & McLennan Pays Millions to Settle Major Securities Suits. Marsh & McLennan Co. (MMC) has agreed to pay \$35 million to settle a class action under ERISA alleging that the insurance giant failed to warn investors in its employee investment plan that the company's stock was inflated as a result of bid-rigging and price-fixing. The company also announced that it has agreed to pay \$400 million in suits filed by on behalf of investors by the State's Attorneys General of Ohio and New Jersey.

DIRECTORS & OFFICERS

Maryland – November 12, 2009. Directors and Officers' Duty Transforms When Corporation Is Offered for Sale. Despite a statutory scheme that details explicit duties of corporate officers and directors, Maryland common law imposes additional duty of candor and maximization of shareholder value upon corporate directors when faced with an inevitable or highly likely change-of-control situation. The court ruled that once the decision is made to sell the company, the board must act with best interests of the shareholders in mind to be candid in their dealings and maximize the selling price of the stock.

Shenker v. Laureate Educ., Inc., --- A.2d ----, 2009 WL 3769349 (Md.).

FINANCIAL INSTITUTIONS

California – November 6, 2009. Loan Modification Not Mandatory for Homeowners. Homeowners these days are employing novel theories to combat foreclosure and using favorable federal legislation to bootstrap their arguments. Nevertheless, a California District Court has refused to bite. The court held that recent law does not impose a duty on servicers of loans to modify the terms of loans, nor does it create a private right of action for borrowers under the Emergency Economic Stabilization Act of 2008 or the Hope for Homeowners Act. On the contrary, the Hope for Homeowners Act was intended to help borrowers refinance their mortgages and obtain loans insured by the Federal Housing Administration.

Santos v. Countrywide Home Loans, 2009 WL 3756337 (E.D.Cal.).

EPL- LABOR & EMPLOYMENT

Iowa – November 13, 2009. Employer Not Liable to Spouse of Independent Contractor. The wife of an independent contractor regularly exposed to asbestos at work could not maintain a cause of action against the employer when she developed a disease related to asbestos exposure. While the plaintiff was allegedly exposed to the toxic substance while laundering her husband's work clothing, the work performed by her husband did not involve a peculiar risk or abnormally dangerous activity that would bring this within the realm of reasonable foreseeability. Thus, the court concluded that the employer owed no duty to a household member of an independent contractor's employee.

Van Fossen v. MidAmerican Energy Co., --- N.W.2d ----, 2009 WL 3786656 (Iowa).

PROFESSIONAL LIABILITY/ E&O

New Jersey – November 2, 2009. Shareholder in Close Corporation Can Sue Corporation's Securities Counsel. Even with no cause of action under federal securities law, a New Jersey court found state law supporting a cause of action by a shareholder in a closely held corporation against the corporation's securities counsel

for negligent misrepresentations or omissions in the preparation of SEC filings. The allegation that the corporate attorney violated his duty regarding negligent misrepresentation was enough to keep the case alive.

Cohen v. Telsey, 2009 WL 3747059 (D.N.J.).