Commentary

The Subprime Crisis: A Briefing for Insurance Company Claim Professionals[1]

By
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The wave of litigation stemming from the collapse of the US subprime mortgage industry will likely reach new records of questionable distinction. They could include some of the highest levels of settlement amounts, parties sued, parties suing, and accounting complexity. By many yardsticks it will probably dwarf the lawsuits arising out past financial crises such as the October 1987 stock market crash, the savings and loan debacle in the late 1980's[2] as well as the Enron/WorldCom accounting improprieties earlier in this decade. Insurers are bound to be drawn deeply into it on many fronts.

At the heart of the subprime problem is the fact that millions of US mortgages originated by independent mortgage brokers were passed on to finance companies that in turn resold them to Wall Street firms and ultimately investors around the world. Other than the final investors, it would seem that no one along this chain needed to be worried about the credit quality of the home owners because they simply passed that entire risk on to parties down the line.[3]

Magnitude Of The Subprime Crisis

In its study, *Securities Class Action Case Filings. 2007: The Year in Review*, the Stanford Law School and Cornerstone Research found that the number of securities lawsuits filed in 2007 increased 43 percent from the year before. It attributed the increase to the subprime crisis. This dramatic increase in subprime litigation is no doubt because of the huge financial losses. For exam example, Deutsche Bank analyst, Stephen Taub, predicted in his article, "Subprime Losses Could Reach $400 Billion," that eventually 30-40 percent of subprime debt will default, (CFO.com, November 13, 2007). In February 2008, UBS, the giant Swiss financial group, estimated that the crisis could exceed $600 Billion, including a loss of $350 Billion to banks and brokers with the remainder spread out among other parties such as shareholders and the entire mortgage industry from appraisers to wholesalers. (By contrast, the U.S. savings and loan crisis of the 1980s ultimately cost taxpayers 3.2 percent of G.D.P., which would roughly translate into $450 billion today.) More estimates will surely be forthcoming as the subprime crisis unfolds.

Impact Of The Crisis On Insurers

The insurance industry will hardly be immune to this gathering subprime litigation storm. A February

2008 study by Navigant Consulting Inc.[4] found 278 lawsuits had already been made against virtually every participant in the subprime collapse. Fortune 1000 companies were named in 56 percent of these cases. Mortgage bankers and loan correspondents represent the highest percentage of defendants (32 percent) but defendants also include mortgage brokers, lenders, appraisers, title companies, homebuilders, servicers, issuers, underwriting firms, bond insurers, money managers, public accounting firms, and company directors and officers, among others. There is little doubt that most of these purchased professional liability coverage and have already notified their insurers.[5]

Also in February 2008, Advisen Ltd., a provider of technical information and data to the commercial insurance industry issued a report, "The Crisis in the Subprime Mortgage Market and Its Impact on D&O and E&O Insurers." In it, Advisen forecast D&O losses of $3.6 billion, "most of which will be borne by a small group of financial institution D&O insurers."

In mid-March Bear Stearns, which had considerable business in mortgage finance, had to be rescued through a takeover by JPMorgan Chase backed up by the federal government. No doubt every one of Bear Stearns professional liability insurers have already been notified. J.P. Morgan Chase indirectly confirmed this when it announced that its "transactional" costs for this deal, would total about $6 billion — which specifically included considerable reserves for the anticipated expense of litigation over the collapse of and its purchase of Bear Stearns.

As this article was being written the bad news kept coming. On April 23, 2008 Navigant Consulting, Inc. updated its February study and reported that the number of subprime-related cases filed in federal courts during the first quarter of 2008 had proceeded apace. A total of 170 cases were filed during the first *three* months of 2008 according to the firm. By contrast, there were 181 such filings over the final *six* months of 2007.

And perhaps for the first time, some carriers will find themselves simultaneously on many sides of a single case that is in dispute. For example, shareholders may sue the insurers' directors and officers for losing billions of dollars that they invested in the subprime bonds. But, as purchasers of collapsing subprime bonds themselves, insurers may consider an action against investment banks and brokers[6]. Finally, those insurers who provide professional liability insurance to directors and officers, investment banks, auditors[7] and other players in the financial and professional communities will experience an increase of claim reports *from* their policyholders as this crisis progresses.

One could easily imagine a scenario where the shareholders of an insurance company sue its Directors and Officers for losing money in subprime investments. When the insurer then sues the banks that sold it the bonds, it may discover that it provides those very banks with bankers' Errors and Omissions insurance protecting them against the claim they themselves made.

To minimize surprises, insurers need to consider how to stay ahead of the expected subprime litigation wave. They must simultaneously develop early and adequate reserves based on current information; prepare for any possible coverage issues; alert their reinsurers as quickly as possible; and, to the extent they can, influence the course of the litigation as it proceeds. For those insurers exposed, failure to stay on top of the oncoming subprime deluge would be very foolhardy.

Insurers' Roles

To get ready, the insurer's two principle activities will be the analysis of coverage and establishing adequate reserves.[8] These are discussed below:

(a) Analyzing Coverage

Prior to addressing the merits of the case against the insured investment bank, broker or rating agency, the insurer's claim professionals must first determine whether coverage exists for the claim under its insurance policy. They must satisfy themselves that the loss presented by the bank or broker is an insurable event as defined in the insurance contract, that the claim was first made during the policy effective dates (typically these are claim made policies), and that no condition or exclusion applies that would eliminate the claim from coverage.

It is much too early to predict what exact coverage questions will arise from this crisis and how they will

be decided. If the past is prologue, they may involve, among others, the following:

1. Rescission

Before anything else, the insurer's claim staff will need to see if the information provided by the policyholder in its application for coverage was complete and accurate at the time it was given. If it was not, several questions arise: Would it have made any difference? Would the underwriters have agreed to issue the policy anyway had they known all the facts? Or not? And if not, how can it be proven?

For example, the application would surely ask if the prospective policyholder knew of any facts or circumstances that could in the future give rise to a claim which would fall within the scope of the policy. If this was answered in the negative while rumors of the subprime crisis were swirling around, the insurer would have at least to consider rescission of the policy.

To rescind a contract is to have it declared void from the beginning — as if it never existed in the first place. In theory, an insurer may be able to rescind a policy issued to the policyholder if there has been a *material* misrepresentation made by the insured. Material means that it would have made a difference: chiefly, if the insurer had known the unrevealed facts it would not have issued the policy at all.

Property-casualty policies normally include conditions relating to the subject of rescission, such as:

- The policy is issued in reliance upon the truth of representations made by the insured.
- The policy is void if the insured intentionally conceals or misrepresents a material fact.
- The insured, by accepting the policy, agrees that the statements in the policy declarations are accurate and complete.

As a general rule, to be successful in rescinding a policy, insurers must show by clear and convincing evidence — a burden of proof that is greater than preponderance of the evidence — that the policy would not have been issued had their underwriters known of the information withheld by the policyholder (innocently or not).

Finally, some D&O policies contain "severability" language providing that false statements by some policyholders are not imputed to "innocent" insureds, whose coverage cannot be turned down. So, depending on the contract language, even if the insurer is allowed to show that it would not have written the policy if it had known all the facts, it may still owe full coverage to the innocent parties.

2. Trigger Of coverage

E&O and D&O policies, as a general rule, provide coverage only for claims that are first made against the policyholder during their effective dates—regardless of when the wrongful act was alleged to have been committed.[9]

At least two questions arise:

- What was the very first demand for money damages (i.e. the claim) made against the policyholder? Was it a letter; a phone call; the service of the complaint?
- When was this demand made? During the effective dates of what policy (ies)?

The answers to these questions are financially critical because they may determine in what policy year the claim will fall.[10]

3. The Applicability Of Retroactive Dates

E&O and D&O policies sometimes have retroactive date language that restricts coverage under the policy to those acts allegedly committed after a specified point in time in the past. At least one issue could be:

- What if the alleged wrongful act may have taken place over an extended period of time which straddles the retro date, beginning before and concluding after? How does one determine when exactly it did begin?

4. Intentional And Criminal Acts Exclusions

Nearly all policies exclude coverage for intentional or criminal acts. This is in line with basic underwriting principles and public policy.

Q: Is there full or only partial or no coverage if the complaint asserts negligence, statutory violations, and intentional acts? See footnote 14 below.

5. 'Other insurance' Clauses

Most policies have a clause that addresses the situation where more than one insurance contract issued to the insured applies to a claim. They sometimes state that the coverage will be excess to the limits of other applicable contracts or that both policies will provide coverage on a pro rata basis based on their limits.

Frequently, publicly held corporations purchase a variety of policies from one or several carriers. This bundle of policies will include insurance protection for Personal Director's Liability, corporate D&O reimbursement obligations, Employed Lawyers Professional Liability, ERISA Fiduciary liability, and Miscellaneous Professional Liability.

It can happen that the allegations in a single lawsuit overlap the coverage of more than one policy and/or more than one insurer. Both the priority and parity of each applicable policy will need to be explored.

6. Myriad Allocation And Aggregation Issues

By far the most bewildering, but financially very important, issue will be that regarding the delineation of a discrete wrongful act.[11] This will be true for both insurance and reinsurance coverage questions. There will be debates whether; on the one hand, the insured's entire business of marketing and packaging subprime debt is a single indivisible wrongful act; or, on the other hand, individual syndication deals each are separate wrongful acts. Or something in between.

Depending on the architecture and language of the defendant's insurance program, the resolution of these questions could involve diverse policies in different years and layers. It may also determine the extent, if any, of the policyholder's uninsured exposure. Then, after the insurers have resolved this issue with the policyholders, the process will repeat itself with the reinsurers who will have their own points of view.[12]

It is not possible at this stage in the litigation to predict with any certainty what the key coverage issues will be. At this time, those discussed above seem the most likely. With so much money at stake, though, it is not hard to foresee extensive coverage litigation.

It is within the exclusive province of an insurer to make this coverage determination. The insurer must promptly advise the insured of any significant coverage issues that it finds concerning the application of the policy to the claim.

Coverage (whether the insurance policy applies to the claim) and liability (the actual merits of the claims asserted against the insured) are distinct issues to be addressed separately, the first before the second.

(b) Independently Evaluating The Merits Of Claims Against An Insured

It is the business of the insurer to reach an independent opinion regarding the strengths of the case against its insured. To do this, the insurer's staff gathers information from all available sources and evaluates the factual allegations and the legal claims to determine the insured's liability and exposure to damages. As an integral part of this process, the reinsurers must be kept apprised of developments and their suggestions sought.

1. The Case Against Insureds

Just how successful some of these lawsuits are likely to be for the plaintiffs is unclear and will depend on what is asserted and the weight of the evidence. The allegations appear to fall into two very broad categories: first, violation of state and federal securities laws and other statutes; and, second, common law causes of action such as fraud and negligence. They will include additional causes of action unique to the facts of each case.

The following discussion is by no means comprehensive or generally applicable. It is meant only to provide a flavor of some of the issues that may very well come up.

a. State And Federal Security Laws

In its study, Securities Class Action Case Filings. 2007: The Year in Review, the Stanford Law School and Cornerstone Research described the chief allegations being made in the subprime litigation under the securities laws:

> It is noteworthy that approximately 19 percent of all cases in 2007 were specifically linked to issues in the subprime lending market. These subprime cases have caused a shift in emphasis from allegations related to traditional income statement line items to allega-

> tions related to balance sheet components. . . . Meanwhile, the percentage of GAAP-related cases alleging the understatement of liabilities, the overstatement of accounts receivable or of other assets, or problems with estimates all increased from 2006 to 2007.

On first blush, it would seem that many defendants will have a strong defense to the complaints asserting violations of securities statutes. For example, recent US Supreme Court decisions place the burden of proof squarely on the shareholders who are seeking recovery under federal securities laws. To even survive a motion to dismiss the complaint, the Court recently held that the shareholders must have evidence that is as "cogent and at least as compelling as any opposing inference of nonfraudulent intent."

In that June 2007 decision, the US Supreme Court, in *Tellabs, Inc., et al. v. Makor Issues & Rights, Ltd., et al*. No. 06-484 Argued March 28, 2007 — Decided June 21, 2007, interpreted The Private Securities Litigation Reform Act of 1995. This Act requires plaintiffs to plead improprieties that "give rise to a strong inference of fraud" in order to proceed with a case and to access corporate documents. The decision made the hurdles for plaintiffs to survive a motion to dismiss the complaint very high. The Court held that:

> An inference of fraudulent intent may be plausible, yet less cogent than other, nonculpable explanations for the defendant's conduct. To qualify as "strong" within the intendment of §21D (b) (2), we hold, an inference of scienter [fraudulent intent] must be more than merely plausible or reasonable — it must be cogent and at least as compelling as any opposing inference of nonfraudulent intent.

The decision seems to present a no-win position for shareholders with strong suspicions, but no hard evidence of wrongdoing. To prove their case of fraudulent intent, these plaintiffs would have to conduct discovery; but before they are even allowed to conduct discovery they would first need to have evidence of wrongdoing. Defendants on the other hand would argue that this is only fair: the plaintiffs should be required to have strong evidence of wrongdoing before they can be allowed to tie up the corporation and the courts in a protracted fishing expedition.

The defendants' may also simply plead pure ignorance: they did not know anything any more than anyone else and never meant to mislead anyone. How could they foretell that the whole subprime house of cards would come crashing down? It is unprecedented. If they were wrong, the whole world was wrong.

Further, in January 2008, the U.S. Supreme Court rejected an effort to expand the scope of secondary liability in private lawsuits under the federal securities laws. *Stoneridge Investment Partners, LLC v. Scientific-Atlanta.*, No. 06-43. Argued October 9, 2007 — Decided January 15, 2008.

In that case two suppliers of a cable company entered into sham contracts apparently for the sole purpose of allowing the company to falsely improve its balance sheet and mislead its auditor, Andersen. The shareholders' action against the suppliers, Motorola and Scientific Atlanta, was dismissed by the Court since they had not made any statements that the plaintiffs relied on.

> Reliance is tied to causation, leading to the inquiry whether respondents' deceptive acts were immediate or remote to the injury. Those acts, *which were not disclosed to the investing public*, are too remote to satisfy the reliance requirement. [Emphasis added]

Thus, in effect, the §10(b) private right of action does not extend to aiders and abettors of a stock market fraud if their statements "were not disclosed to the investing public." Some parallel could well be found as to the mortgage brokers, lenders, appraisers, title companies, etc. who may be sued under the federal securities laws. They might be successful in arguing that their misleading statements or acts, if any, were too remote to satisfy the reliance requirement because they were never disclosed to the public.

b. Common Law Fraud And Negligence

To prove a case of fraud under black letter law the claimant must demonstrate three elements: a material false statement made with an intent to deceive (scienter); a victim's reliance on the statement; and, damages.[13] As a first impression, many of the elements necessary for a successful prosecution for fraud appear

to be absent in the cases against the mortgage brokers, lenders, appraisers, title companies, homebuilders, etc. These firms will argue that they never made a statement that they *knew at the time* was false and that someone would reasonably rely on. They were just doing their jobs, not making up stories, and never dreamt of the subprime crisis that was to come. In fact, their businesses, tied closely to the sale of land, are drying up because of the crisis; they would have wanted to avoid the subprime collapse as much as anyone else.[14]

At common law, a negligence recovery can be made only if the party sued had a duty of care towards the injured claimant, breached that duty, and the breach proximately caused an injury to the claimant. It remains to be seen whether the defendants in the subprime litigation had either a duty of care to warn the plaintiffs or, for that matter, breached it. They may argue that they could not predict that subprime borrowers would begin to default en masse as they ultimately did. In any case, the investors assumed this risk themselves. After all, they may assert, many were aware that behind the bonds were homeowners with checkered credit histories; they received the higher interest rates the bonds paid precisely because of this extra risk.

To overcome some of these hurdles, claimants will probably make an effort to examine each defendant's contemporaneous internal reports, analyses, and all communications relating to the subprime business. They may look to see if the defendant was saying one thing internally (like it anticipated a meltdown) but quite the opposite publicly.[15] The claimants would still need to show there was some duty to disclose this information to them.

The obstacles to winning a case against credit-rating agencies, or Nationally Recognized Statistical Rating Organizations (NRSRO), are particularly daunting for claimants. In past cases, the raters have invoked constitutional protections of free speech; comparing their evaluations of a company's debt to judgments made in a newspaper editorial. In *Lowe v. SEC*, 472 U.S. 181, 210 (1985), for example, the Supreme Court found there could be "no doubt" that publications containing information and commentary on market conditions and trends were protected by the First Amendment.

c. Damages

As indicated at the very beginning of this article, the estimates keep changing as to the size of subprime losses. It would be imprudent at this early stage to talk about provable financial losses in specific cases other than to say that the amounts sought should be sizeable. Because of the great magnitude of the subprime meltdown, claim staff should anticipate protracted and extensive litigation — both in coverage disputes and to defend the policyholder — with the attendant high costs. It should also be borne in mind that, by the terms of many contracts, defense expenses erode policy limits and should therefore be considered as a part of damages.

To stay ahead of the curve in performing these two important roles, insurers need immediate, reliable and complete information.

Information Sources

Insurers expect to obtain most of their knowledge of the cases directly from their policyholders. But where the litigation involves vast amounts of money and is widely reported in the media, insurers can also turn surprisingly to publicly available information in evaluating insurance coverage and reserves for banks, brokers, investment advisors, and others. In fact, much of the required information will be readily obtainable.

1. Information Directly From The Policyholder

With the exception of privileged information, the policyholder is expected to fully cooperate and consult with its insurers and to provide a reasonable amount of relevant written documents.[16]

Privileged information — confidential communications between the defense attorney and the insured, his client — is different. The private advice given by defense counsel is protected and the plaintiffs are not entitled to acquire it. If it is shared with the insurers, the claimants might argue that this amounts to a waiver of the privilege and they may demand to see this information as well. If they were successful in this argument, it could have an adverse impact on both the insured and insurer, as disclosure of strategies and private advice clearly gives plaintiffs a better chance to prevail in the litigation. For this reason, insurers recognize their insured's interest and their own in main-

taining the confidential or privileged status of legal analyses. Policyholders, however, must strive to cooperate and keep the insurer fully informed, balancing this duty against the need to maintain privilege.

2. Legal Pleadings, Court Decisions And Public Discussion

Professional liability insurers will be able to use an extensive amount of publicly accessible information. In the course of the WorldCom litigation, just as an example, a website (*www.worldcomlitigation.com*) was maintained by the class action plaintiffs, which included general background information on the class action, pleadings, expert reports, court documents, court decisions, and certain settlement-related information, publicly filed pleadings and court decisions were available from other websites. Further, the litigation was regularly reported in the press and the relevant public information was frequently analyzed and evaluated by the media.

3. Information From Other Defendants

It is not uncommon that professional liability insurers specializing in this field will provide coverage to more than one defendant involved in the same major litigation. When it does not violate ethical standards or privilege, information common to all the defendants can and should be shared among the insurer's claim staff who are managing individual insured's cases.

4. Legal Analysis By Independent Counsel

In litigation especially on the magnitude of the subprime exposures, insurers commonly retain separate counsel to monitor the course of the discovery in the case and to liaise with the defense attorneys. These firms independently assess the strength of the case against the policyholder, the degree of the insured's exposure, and the effectiveness of the representation it is receiving. They also provide opinions regarding coverage.

Conclusion

The tangled subprime mess has invaded the insurance industry in a variety of ways and some carriers will play several roles in it simultaneously. They will be plaintiffs suing their investment advisors and brokers; defendants in shareholder lawsuits; insurers of defendants who are in shareholder and other lawsuits; defendants and/or plaintiffs in coverage litigation; parties in arbitration against their reinsurers. There will other roles they will play that cannot even be imagined now.

Coping with this will require ready access to full and accurate information, continuous analysis of coverage and exposures, and considerable internal coordination. It will be a challenge.

Endnotes

1. This article is intended as background only and is not intended to apply precisely to any particular case. Always seek professional advice on specific facts and issues.

2. "Looking at litigation activity from the savings-and-loan crisis of the early 1990s as a benchmark, subprime related cases filed in 2007 (federal court only) already equal one-half of the total 559 actions handled by the RTC over a multiple-year period." Subprime Mortgage and Related Litigation 2007: Looking Back at What's Ahead, Navigant Consulting Inc. Feb 2008 publication.

3. In a March 21, 2008 editorial, the New York Times described it as: "Translation: derivatives based on incomprehensible mortgages with unpredictable interest rates given to people who have no reasonable chance of understanding them, let alone paying them back."

4. Subprime Mortgage and Related Litigation 2007: Looking Back at What's Ahead, Published Feb. 2008.

5. A simplified outline of the NCI report is provided in the appendix. It indicates in summary form the claim categories, parties sued, allegations of wrongdoing. See the full report for greater detail. The insurance policies that may provide coverage have been added by the author.

6. *See, e.g. Bankers Life Ins. Co. v. Credit Suisse First Boston, et. al.*, No. 8:07-CV-00690 (M.D. Fl. Apr. 20, 2007).

7. *See* NYTimes, April 13, 2008 A Lender Failed. Did Its Auditor?

8. Retaining counsel and supervising the litigation will probably *not* be one of their activities. Policies typically covering these losses are indemnity rather than pay on behalf insurance contracts. Under indemnity contracts the insured pays for its defense first and is later reimbursed by the insurer. Also, defense costs often erode policy limits.

9. The Bermuda Form is a "notification during the policy" form. To trigger the cover under a Bermuda Form policy the injury or damage from a common cause must have taken place after the specified retroactive date of the policy and the "integrated occurrence" must have been first notified to the insurer during the policy period (or any extended notification period, if purchased). This wording was designed to eliminate the long tail liabilities that often impacted numerous occurrence-based policy years under, for example, a continuous trigger theory.

10. Let's say Policy Year One is with Insurer A with limits of $100 M and the following year, Policy Year Two, is with Insurer B with limits of $150 M. To the Insured, Insurer A, and Insurer B, determining in what policy year the claim was first made could result in a difference of $50 M, $100 M and $150 M respectively. Solution: If Policy Year One applies, the insured is covered for only $100M paid by Insurer A and Insurer B pays nothing. If Year Two applies, the insured is covered for $150 M — $50M more — paid by Insurer B and Insurer A pays nothing. The insured would get $100 M for Year One or $150 M for Year Two, a $50 M difference.

11. In many D&O and fiduciary policies coverage is provided for "wrongful acts" as defined in the contract. Perhaps more correctly they are "wrongful acts" that are alleged.

12. A discussion of the numerous ways to define a discrete wrongful act arising out of the subprime imbroglio under a D&O policy is well worth another commentary or two. They are sure to come. As implied in the text above, a wrongful act or integrated occurrence could range from being the insured's *entire* business of packaging subprime loans all the way to *individual* syndications — from the forest to the trees to the leaves on the trees. It depends on the language of the insurance contracts, the specific facts, and court rulings.

    For example, if the policyholder was self insured for the first $25 M of each loss and the "wrongful act" is decided to be the insured's entire subprime business, then it will pay the $25M just once and the insurer will pay the rest up to its limit. But, if it is decided that each syndication is a separate wrongful act, the policyholder itself will be required to pay the first $25 M many times over for every syndication, subject possibly to an aggregate limit. The possible permutations in defining a wrongful act are quite numerous.

13. Alternatively, the claimant must show that the defendant made a statement which was knowingly false and reasonably relied on by another person which proximately caused a financial loss.

14. Most D&O and financial professionals E&O policies exclude coverage for private profit, and for dishonest, fraudulent or criminal acts. But the language of the exclusion must be closely examined. Sometimes the exclusion requires a "final adjudication" of wrongdoing or contains the more open-ended requirement of wrongdoing "in fact." If a final adjudication is required then the insurer will need to provide a defense until the final adjudication is made. But if the latter, a closer question is presented.

15. In the recently concluded federal criminal trial in Hartford involving finite reinsurance, consider how critical Gen Re's Robert Graham's email was to his personal freedom: "How AIG books it is between them, their accountants and God," he wrote. He was convicted in February 2008 and faces 230 years in jail.

    Damaging emails and internal memos came to light in the government anti trust prosecution of Microsoft. The same thing happened with investment banks' internal analyses in the WorldCom Litigation.

16. As noted in footnote 8 above, it will most likely be the insured rather than the insurer that retains and supervises counsel. If this is the case, normally the policyholder is required to keep the insurer informed. ■

Appendix

Navigant Consulting Inc.
Subprime Mortgage and Related Litigation

2007: Looking Back at What's Ahead

By Jeff Nielsen
With Scott Paczosa and William Schoeffler

This is a simplified outline of the NCI report. It indicates in summary form the claim categories, parties sued, and allegations of wrongdoing. See the full report for greater detail. The insurance policies that may provide coverage have been added by the author.

See the entire report for greater detail.

Navigant Consulting Inc

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2007: LOOKING BACK AT WHAT'S AHEAD

Category	Professionals Sued	Allegations	Policies Impacted
Borrower class actions	Title insurers, mortgage brokers, mortgage companies, commercial banks, and thrifts	Inadequate disclosure, discriminatory lending	Bankers' E&O, Insurers' E&O, Directors & Officers Liability
Securities cases	Security Brokers Dealers, State commercial Banks, Mortgage bankers and loan correspondents, Federally chartered Savings institutions, REIT's, Securities and Commodities Services	Violations of Securities Acts of 1933 and 1934 Securities Fraud	Bankers' E&O Personal Director's Liability, corporate D&O reimbursement obligations, Employed Lawyers Professional Liability, ERISA Fiduciary liability, and Miscellaneous Professional Liability.

Category	Professionals Sued	Allegations	Policies Impacted
Commercial contract disputes	Mortgage originators	Violation of representations and warranties. Profiteering	Professional E&O
Employment class actions,	Employers	Employees did not receive the requisite 60-days advance written notice pursuant to the Worker Adjustment and Retraining Notification Act (WARN).	Employment Practices policies.
Bankruptcy-related,	Various	Disputes over the assets of the corporation, alleged fraudulent conveyances, preference claims, etc.).	
All other	Various	Various	