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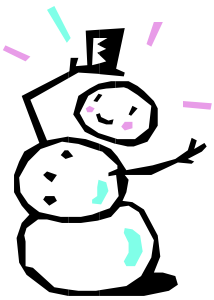
A Newsletter from Chicago Underwriting Group, Inc.
Underwriters of D & O and Professional Liability Insurance

Issue 7 December 1999

In This Issue... **This is the anniversary of our first Newsletter, and just as we did last year, we would like to send Holiday Greetings to all our business partners!**



This has been a newsworthy year in the executive liability world. We have highlighted below what we believe are the three most significant stories. We hope that we have been of some assistance to you and your clients during this past year of change and anticipate that the year 2000 will challenge all of us to develop solutions for our mutual clients.

CUG's Issues of 1999

The IPO Avalanche

1998 may have been a big year for IPO (Initial Public Offering) launches of new public companies, but 1999 has been bigger. In 1998 there were around 270 IPOs; as of late November 1999 the number was 430, many of them Internet-related.

In the current economy, relatively "mature" companies are facing the prospect of being merged, being acquired or acquiring. This causes shrinkage in the number of such companies. However, the IPO explosion has resulted in the formation of new companies, helping to offset some of this "mature" business contraction.

For most IPOs, D&O insurance is often their biggest insurance expense, and this has created a micro-boom in the technology D&O marketplace. This is in contrast to the market for mature D&O insurance where there is currently over-capacity.

More info: www.ipomaven.com

The Securities Exchange Commission (SEC)

During the past year the SEC has focused its scrutiny on what it sees as dangerous corporate governance practices. One area of SEC concern is the selective and restricted disclosure of pertinent financial information to a small constituency of insiders, large investors and analysts rather than to the investing public as a whole.

Another SEC target has been the manipulation of financial results with the goal of meeting analysts' expectations rather than depicting a company's performance as accurately as possible.

While enforcement actions have been limited to date, the SEC under commissioner Arthur Levitt, has made its displeasure known. Those market participants who do not examine their market practices and adjust them as necessary do so at their own peril.

More info: www.sec.gov

Silicon Graphics

On July 2, 1999, the United States Court of Appeals for the Ninth Circuit, which includes Northern California, issued its long-awaited decision in the *Silicon Graphics* case. In this decision, the Ninth Circuit rejected allegations of motive and opportunity alone as sufficient under the Reform Act standard. The Ninth Circuit imposed a higher burden on plaintiffs to plead facts demonstrating "a height-ened form of recklessness, i.e., deliberate or

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conscious recklessness" to establish fraudulent intent. On August 4, 1999, the Ninth Circuit panel issued a revised opinion, requiring a "strong inference of deliberate recklessness."

The Ninth Circuit has thus established the most rigorous pleading standard under the Reform Act, while the standards adopted by the Second and Third Circuits, where pleading "motive and opportunity" alone can suffice, are the most lenient.

This split among the circuits presents the possibility of further review of the *Silicon Graphics* decision by the United States Supreme Court. It is thus likely to be a few more years before directors and officers, and their lawyers and insurers, can expect a uniform pleading standard under the Reform Act.

More info: http://securities.stanford.edu

Finally, we should say that 1999 has been a significant year for Chicago Underwriting Group. We launched our web site (www.cug.com), published this Newsletter on a regular basis, as well as our more analytical quarterly commentary, "Prior & Pending." Some of you saw us as we traveled around the country, and we hope to see many more of you in 2000! ❖

Best Wishes for the Holiday Season!

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