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International Affairs (Moscow), v. 59, no. 4, 2013
The Journal of Legal History, v. 34, no. 2, August, 2013
Shareholder Derivative Litigation: A Primer for Insurance Coverage Counsel and Other Lawyers, Too

By John D. Hughes, Gregory D. Pendleton, and Jonathan Toren

Unique procedural challenges in a derivative suit include special pleading requirements, determining when a claim has been made for D&O insurance purposes, and resolving insurance treatment for costs of the sued corporation’s special litigation committee. As litigation proceeds, a court must deal with the difficult question of how to apply third-party liability insurance when—technically—there is no third party. The complex interplay between indemnification permitted by statute and coverage under D&O liability insurance is critical.
Insuring Intellectual Property
By Michelle Worrall Tilton
In the rapidly changing world of intellectual property, where the threats to key business assets are real and lawsuits are aggressively pursued, companies should obtain the best coverage available for IP exposure. 28

TIP: Plaintiff and defense counsel must understand all implicated insurance policies, including limits of liability, self-insured retention, key terms, and any coverage issues, to fully represent their clients’ interests.

Allocation of Indemnity in Advertising Injury Intellectual Property Cases
By Timothy M. Thornton Jr.
Parties that anticipate allocation issues at the outset of IP litigation—from timing and coverage of offenses to damages and disgorgement of lost profits—can make informed decisions throughout the litigation and during any settlement process. 38

TIP: Damages experts’ reports in intellectual property cases often contain valuable information for allocation of loss by time, by geographic region, and between advertising and non-advertising uses.

Distribution of ERISA-Governed Life Insurance Benefits after Divorce: QDROs vs. DROs
By Joan O. Vorster and Courtney Cruz
A qualified domestic relations order creates or recognizes the existence of the right or assigned right of an alternate payee—a spouse, former spouse, child, or other dependent—to receive all or part of an ERISA plan participant’s benefits. 48

TIP: When evaluating competing claims by a deceased’s widow and ex-spouse to life insurance benefits under an ERISA plan, a plan fiduciary should determine first whether the ex-spouse’s divorce decree is a QDRO.

“But Your Honor, He’s an Illegal!”: The Inadmissibility of a Worker’s Undocumented Immigration Status
By Benny Agosto Jr., Lupe Salinas, and Eloisa Morales Arteaga
Recent civil cases affirm that persons present in the United States in an undocumented condition have the right not to be subjected to discriminatory treatment and are eligible to receive a remedy for lost future wages or other similar benefits when that right is violated. Any relevancy that the alien status of an injured worker may have in a particular case is likely outweighed by its prejudicial effect. 54

TIP: Should a trial practitioner bring up the alien status of his or her client? In short, no, because doing so means waiving any question on appeal.
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