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The **Corcoran & Havlin** Insurance Group has been awarded the 2010 Reader's Choice Award for the 7th consecutive year.



RISK ADVISOR

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Corcoran & Havlin Insurance Group

- An insurance update for financial officers
- News, Views, & Current Events
- A publication of Corcoran & Havlin Insurance Group

MANAGING YOUR RISKS, PROTECTING YOUR INTERESTS

Corcoran & Havlin is excited to present you with the latest addition of our quarterly News Letter. We hope that the season finds you happy and well, and as always never hesitate to contact us with questions!

The Impact of Employees vs. Independent Contractors in Workers Compensation

Massachusetts recently introduced a new law affecting the definition of "employee" versus that of an "independent contractor" in worker misclassification circumstances.

When is a worker and "employee or an "independent contractor?"

The answer has become increasingly elusive as more and more employers, stung by the economic downturn, are searching for ways to reduce costs. For some employers, a course of action has been to keep workers off their payrolls by classifying them as independent contractors. Doing so, allows employers not only to avoid worker's compensation premiums, but unemployment taxes, income taxes and FICA taxes as well. While in some cases, these workers legitimately meet the definition of "independent contractor," in many circumstances, these workers are intentionally misclassified as a calculated scheme to save costs. The

practice is particularly prevalent in the construction trade where the costs savings can be substantial and allow unscrupulous contractors a competitive – albeit unfair- advantage in bidding on projects.

Labor advocates are up-in-arms because workers of employers skirting the law are being deprived of government benefits. Likewise, workers of law-abiding employers in some industries are missing out on work because their employers are being

The Internal Revenue Service estimates that one in seven U.S. employers intentionally misclassify workers, resulting in a loss of more than \$4.0 billion a year in federal tax revenues.



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Corcoran & Havlin Launches Personal Lines Private Client Group

Corcoran & Havlin has formed a new group to service successful individuals and families with significant personal assets who need higher levels of protection and customized property and liability solutions for their fine homes, luxury autos, private collections, and watercraft. Led by Tom Fitzgerald, Director of Client Services, the **Corcoran & Havlin** Private Client Group delivers these services through a dedicated team of highly knowledgeable industry professionals.

C & H's Commercial Team

Jim Serevitch

Bob Cleary

Kathy Uvanitte

Mike Curtis

George Doherty

Debi Drury

Tim Graham

Brenda Hovey

Carolyn Jenkins

Jack Keefe

Jane Loomis

Paul McDonald

Martha Mullin

Mary Mullin

Sandra Pachomski

Megan Peterson

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Rick Weden

Jeff Whelan

Tom Fitzgerald

Virginia Handerhan

Corcoran & Havlin's Carolyn Jenkins Creates Fire Safety Prevention Class for Students

Students in the town of Dedham joined peers in cities and towns across the country to recognize National Fire Prevention Month by participating in the Hartford's Junior Fire marshal Program. Dedham Fire Department Representatives joined Carolyn A. Jenkins of the Corcoran and Havlin Insurance Group of Wellesley and Medfield, to engage students from the Dedham Community house Preschool with lessons on fire safety and prevention. The class covered fire safety topics including Stop, Drop and Roll; avoiding matches and lighters; and identify exits in case of fire. As part of the Hartford's be safe Fire Kit, students received activity sheets and the signature red Junior Fire Marshal

helmet. Additional information on the program can be found at <http://www.thehartford.com/jfm>.



Carolyn Jenkins and Dedham Firefighter Nick Foss

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undercut in the bidding process. Regulators, meantime, also are angry because intentional misclassification of workers is not only depriving workers of rightful government benefits, but also cheating states out of much-needed revenue. The Internal Revenue Service estimates that one in seven U.S. employers intentionally misclassify workers, resulting in a loss of more than \$4.0 billion a year in federal tax revenues.

The Commonwealth of Massachusetts reports recovered funds of over \$1.4 million in a 12-month period as a result of heightened enforcement. New York similarly netted almost \$7 million allocation for a joint initiative with the Department of the Treasury to hire 100 investigators.

The federal government is getting involved as well. The Department of Labor's proposed budget for fiscal 2011 includes a \$25 million allocation for a joint initiative with the Department of the Treasury to hire 100 investigators to ferret out employers who misclassify workers. Bills also have been introduced in Congress with the same goal.

Far and away, however, the most activity is happening at the state level with enforcement efforts ranging from enhanced sharing of information among state agencies to full-blown sting operations where state officials "sweep" unannounced on a job site to check workers and their duties against payroll records. Specifically Massachusetts has taken action.



The Division of Industrial Accidents has become particularly aggressive in its efforts to verify workers' compensation coverage by out-of-state businesses with projects in Massachusetts. Included is a coordinated initiative with law enforcement in which out-of-state truckers are stopped at check points and asked to provide

proof of workers' compensation coverage if they are traveling to jobs within the state. Failure to show proof of coverage or have its insurance carrier verify coverage can result in a stop-work order and penalty. The law became effective this past November.

Article as reported by Arcadia Insurance.

www.chinsurance.com

Be Aware of Social Media's Risks for Businesses

When just about any business these days is deeply involved with social media, it is apparent that these sites and tools have become mainstream. Indeed, it is hard to imagine that their use will not grow in coming years. They bring businesses to the places where their customers are and enable conversations. However, as with anything, the use of social media comes with risks of which every businessperson should be aware.

The great thing about social media is that a business's customers can talk about it. The bad thing about social media is that a business's customers can talk about it. When they're happy, social media is a boon, but when they're not, it can be a public relations nightmare. A disgruntled customer can post a negative comment on Twitter or Facebook at 3:30 p.m. on a Sunday, and by 4:00 a few million people may have seen it or passed it on. There is little a company can do to control the spread of this kind of message.

A major concern with social media is that a business may unintentionally violate local laws and regulations, since messages on Facebook and similar sites spread all over the world. Among the areas of concern are:

- **Advertising** — Businesses may land in hot water if statements on social media sites are false or misleading, if they improperly influence bloggers to write favorably about their products, or if they improperly use user-generated content.
- **Defamation** — Not all countries defer to free speech rights to the extent the United States does. A statement that U.S. law might not consider defamatory may be just that under the laws of another country.

- **Privacy** — Social media sites are easy to use; without much effort, employees can publicly reveal trade secrets, information about products under development, troubles within the business, or even private information about employees.
- **Employee use** — Employees can create a "hostile work environment" (as U.S. law defines that term) by making inappropriate and derogatory posts about their colleagues.
- **Securities disclosure** — If employees post information that could appear to be an attempt to manipulate financial markets or that appears to be insider information, securities regulators may take action against the company.

There are a number of steps a business can take to manage social media risks, including:

- Developing and enforcing a company policy for using social media
- Designating an individual as the point person for social media
- Learning the requirements of every country's laws and regulations
- Reviewing insurance policies with an eye toward social media risks and purchasing additional insurance to fill in gaps

Social media sites and tools are important ways for a company to market and brand itself. However, they must be used with care and forethought. With the proper controls in place, a company can reap the benefits of social media while minimizing the risks.

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against private companies. Customers and competitors are also frequent sources of suits against private companies.

D&O insurance covers many types of claims, including:

- A lawsuit by one shareholder against the majority owners, claiming that the company lost money because the majority gave themselves excessive compensation.
- A key employee leaves one company and joins a competitor as a director. His former employer sues him and the competitor, claiming that he violated his contract and used confidential company information with his new employer.
- Shareholders sue a company and its directors and officers, claiming that they misrepresented the quality of a potential new product when they sought funding for its production.
- A shareholder sues the president of a company for failing to promptly notify shareholders of a major

pending transaction and for not pursuing litigation against a partner company that did not live up to its agreement.

- A lender sues a company for allegedly failing to repay a loan.
- Members of a private company's board of directors are sued for allegedly using their positions for personal gain.
- The government sues a company for alleged anti-trust activities.

Even though courts dismissed some of these lawsuits, the legal defense costs were still significant; D&O insurance covers these costs. Because all organizations and their leadership are vulnerable to these types of claims, they should work with professional insurance agents to identify companies that can provide the coverage they need at a reasonable cost. Businesses face many different risks today; consequently, D&O insurance is a necessity.



Did you know **Corcoran & Havlin** is on Facebook? Become our fan for up-to-date news and articles relating to your insurance needs.

D&O Insurance: A Necessity for Your Business

For the last several years, stories of wrongdoing and bad judgment by corporate managers have filled the headlines. Enron, Worldcom, and Countrywide are just some of the companies that became household names because of mistakes or criminal acts their leaders committed. These stories became big news because they were exceptional; the vast majority of companies do not fail in such a spectacular fashion. However, all corporate managers have the potential to make mistakes, and some mistakes can lead to significant losses for the company, its shareholders, employees and vendors. When this happens, having the appropriate insurance coverage can make all the difference between survival or corporate and personal bankruptcy.

Most businesses carry commercial general liability insurance that covers the business's legal liability for bodily injury, property damage, and personal and advertising injury suffered by others. However, this insurance probably will not cover claims against corporate officers for their errors in running the company. These claims often involve allegations of monetary losses, such as falling stock prices or loss of capital. While real, these losses do not meet the CGL policy's definition of "property damage," which is physical injury to tangible property, including resulting loss of use, or loss of use of property not physically injured. In these claims, people lose money but their property is intact. Therefore, companies that rely solely on their CGL policies will have no insurance in these cases.

Directors and officers liability insurance covers a business's legal liability for "wrongful acts" of its directors and officers acting within their capacity for the business. A typical policy defines "wrongful act" as including errors, misstatements, misleading statements, acts, omissions, neglect, or breaches of duty actually or allegedly committed or attempted by an individual in her capacity as a director or officer of the insured business.

Directors and officers are subject to lawsuits from many sources, including the entity they work for, shareholders, employees, government entities, competitors, vendors, and other third parties such as consumer groups or groups that represent segments of the population. Leaders of all types of organizations are vulnerable, though the source of a legal claim will vary by the type of entity. Most claims against public companies come from shareholders, while employees file most of the claims against non-profit organizations and half the claims



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