BLAIS EXCESS & SURPLUS AGENCY OF TEXAS LTD.

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PRESS RELEASE

FOR IMMEDIATE RELEASE

COVERAGE DEVELOPMENTS: CONFIRMING COVERAGE FOR SECTION 11 & SECTION 12 OF THE SECURITIES ACT OF 1933 FOR PUBLIC COMPANIES

Several carriers have been successful in denying or limiting coverage for claims made under Sections 11 and 12 of the Securities Act of 1933 as late. Appropriately, many directors and officers have voiced tremendous concern over the response mechanisms in their management liability policy. To summarize the issue, it is important to understand that claims under the 1933 act involve allegations that the registration statement and/or prospectus related to the issuance of securities contained untrue statements of material fact or omitted material facts necessary to prevent the statements from being misleading.

Section 11 places minimal burden on a purchaser of securities seeking to enforce the 1933 Act's remedies against the issuer of the stock and/or the directors and officers who signed the registration statement/prospectus. Section 11 does not require plaintiffs to prove reliance, causation or even an intent to defraud. Section 12(1) imposes liability upon anyone including directors and officers who sell an unregistered security and 12(2) imposes liability upon anyone who offers or sells a security by means of a prospectus or oral communication containing material misstatements or omissions or material facts.

As a result of these exposures created by the 1933 Act, the concern of directors and officers points to ensuring coverage for these types of claims under their policies. However, recent court rulings have made this concern a primary fear. In short, the issue boils down to some judgments deciding that amounts payable on claims made under these sections are in the form of restitution or disgorgement of ill-gotten gains.[1] Therefore, carriers preclude coverage since it is either uninsurable by law or not within most definitions of "Loss."

Most case judgments are in the nature of damages usually covered by insurance, and Blais Excess & Surplus Agency of Texas, Ltd. now demands carriers to confirm coverage for these types of claims via endorsement. Endorsement wording should 1) confirm that these matters are insurable and 2) clarify that Section 11 and 12 damages constitute "Loss" under the policy. This coverage clarification is necessary to alleviate the fears of directors and officers that has come to light in recent years.

[1]Disgorgement is "the ***repayment of ill-gotten gains*** that is imposed on wrongdoers by the courts. Funds that were received through illegal or unethical business transactions are disgorged, or ***paid back***, with interest to those affected by the action. Disgorgement is a remedial civil action, rather than a punitive civil action."

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