

Commercial Insurance Update

Topics Affecting Buyers of Commercial Insurance

MSP C 08/2008 – “Fiduciary Liability—Do You Need It?”

August, 2008

© 2008 Cavnac & Associates—All Rights Reserved



Fiduciary Liability

Do You Need It?

By Jeffrey W. Cavnac, CPCU, ARM, RPLU, CRIS

© 2008 Cavnac & Associates—All Rights Reserved

Nearly all our clients have some sort of employee retirement program as well as healthcare benefit programs. The fiduciaries of these programs are responsible for a number of things, including:

- Enrollment and Administration
- Establishing an Investment Policy
- Choosing a Plan Administrator
- Monitoring the Plan Results
- Educating participants with regard to investment choices

What many people may not understand is that all managers and fiduciaries that handle these programs are subject to personal liability in the event there is a claim related to employee benefit programs. This is imposed by the Employee Retirement Income Security

Act of 1974 (ERISA). For more information on a fiduciary's responsibilities, you can review the U.S. Department of Labor's Web site at:

<http://www.dol.gov/ebsa/publications/fiduciaryresponsibility.html>

Common Misconceptions

1. I have an ERISA Bond – I'm covered.

ERISA bonds are required by law and must be in an amount equal to 10% of the assets in the plan, or \$1 million, whichever is less.

Effective January 1, 2008, this requirement was increased to \$1 million for any plans that include

Fiduciary Liability (continued on page 2)

In this issue...

Fiduciary Liability—Do You Need It?	1-3
2008 FOCUS Seminars	2
Live Well, Work Well	3-4
Community Bulletin Board	
➤ Monarch School	5
➤ Senior Community Centers	6
➤ San Diego Humane Society	6
➤ Boys & Girls Clubs of Carlsbad	7
➤ San Diego Master Chorale	8

Published by

Cavnac & Associates

INSURANCE BROKERS

License No. OA99520

450 B Street, Suite 1800
San Diego, CA 92101-8005

✧ Phone 619-234-6848 ✧ Fax 619-234-8601

✧ Web Site www.cavnac.com

an employer's securities (any stock issued by an employer of employees covered by the plan). ERISA bonds protect plan participants from theft by Plan Administrators. This covers **only theft** – it does **not** cover claims brought by employees or plan participants.

2. We have Employee Benefits Liability (EBL) endorsed on our General Liability policy – I'm covered.

Employee Benefits Liability covers the company and its administrators from legal liability arising out of administrative errors. It specifically **excludes** breach of fiduciary duty.

3. We use a third party administrator to run our program, so the risk is theirs!

If a third party administrator makes a mistake, it may be responsible. However, ERISA specifically prevents those responsible for running employee benefit programs from transferring their personal liability to a third party by contract.

The exposure to fiduciaries has recently escalated. Historically, individuals could not bring suit against a fiduciary. It was only when a fiduciary error caused an entire plan to sustain losses that a suit was allowed. This changed in late February 2008 when the U.S. Supreme Court rendered its decision in a case involving James LaRue and his employer, DeWolff, Boberg & Associates, Inc.

LaRue sued his former employer for failure to move assets within his 401(K) as he had instructed them to do. He alleged that this failure cost him \$150,000. The court overturned the previous ruling that precluded an individual in a plan from bringing suit. It

2008 FOCUS Seminars

Cavignac & Associates' FOCUS Room
Bank of America Plaza
450 B Street, 18th Floor, San Diego, CA

- Paperless Document Management Solutions
Thursday, September 4, 2008 — 9:00 AM to 11:00 AM
- Sexual Harassment Prevention Training
Satisfies requirements for AB1825 Training
Friday, September 12, 2008 — 9:00 AM to 11:00 AM
- Disaster Recovery Preparedness
Tuesday, September 23, 2008— 8:30 AM to 10:30 AM

All training sessions available to our clients
Reserve early — seating is limited!

For more information about upcoming seminars:

- Visit our Web site at <http://www.cavignac.com/home.html>
- Contact Darcee Nichols at dnichols@cavignac.com or 619-744-0596

NOTE: Due to the high demand for our seminars and the limited space available, we regret that we are **unable to provide refunds or credits with less than 72 hours advance notice** of cancellation.

didn't rule on whether or not LaRue should prevail in the case, but ruled that individuals now have the right to bring suit against their employers if they feel the employer didn't exercise the appropriate degree of skill and care.

Although it remains to be seen, this may well generate an increase in claims against fiduciaries.

What Should You Do?

- If you don't currently have fiduciary liability coverage, consider it – The cost is fairly minimal (for a 50 person firm, \$1 million of coverage usually costs \$1,500 or less). In many cases, if you already carry either an Employment Practices Liability or Directors & Officers Liability policy, you can add Fiduciary Liability to the existing policy at a lesser cost.
- Choose the right Third Party Administrator (TPA) or Investment Advisor and make certain your contract with them requires them to be responsible and hold you harmless for the consequences of their negligent acts errors or omissions.
- Make certain your TPA or Investment Advisor has appropriate Professional Liability insurance.

Fiduciary Liability (continued on page 3)



- Review your Plan's investment options to make certain the choices are prudent and that a wide range of investment options are available.
- If company stock is one of the options in your program, warn employees about the dangers of accumulating high percentages of this asset.
- Make certain your employees are educated about your program and understand their options - A formal Education Meeting should be held at least once a year.

Fiduciary Liability is a real exposure. Although it lends itself to be managed, the cost of transferring this risk to an insurance company is fairly modest and should be considered. ✨

***Disclaimer:** This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.*

Live Well, Work Well

Articles courtesy of Cavnac & Associates
Employee Benefit Department

© 2008 Cavnac & Associates—All Rights Reserved

Backyard Safety

Summertime is outdoors time, and many of us spend it in our own backyards. However, as familiar as we may be with our homes, there may still be hazards lurking about. These suggestions will help you and your family have an injury-free summer:

- Regularly inspect your backyard swing set, tree house, and/or play equipment for any sharp edges or loose parts, no matter how new they may be.
- Remove any poisonous plants that may be in your yard, such as poison ivy.
- Examine your entire yard for any hidden holes or deep depressions and take action to correct them. Small children may fall into or trip over them.
- Scrutinize partially hidden areas of your house (such as under eaves or windowsills) and grounds (such as tree branches) for wasps' or bees' nests. Remove them safely.
- Stay hydrated, especially if it is very hot out. Make sure to take breaks to sit in the shade and drink some water.



And you'll now have an excuse to spend even more time in the yard! Try this delicious and speedy meal you can cook on the grill.

Raspberry Chicken

- ½ cup raspberry jam
- 3 tablespoons Dijon mustard
- 1 tablespoon honey
- 6 boneless, skinless chicken breasts (thawed)
- 1½ cups fresh raspberries
- White pepper

Spray the grill rack with vegetable oil. Mix the jam, honey, and mustard with a dash of pepper. Place the chicken on the grill, brushing them frequently with the mixture, until juices run clear. Cook time will be approximately 9 minutes per side. Throw away any remaining mixture. Sprinkle raspberries on top of the chicken before serving. Perfect with corn on the cob!

Live Well, Work Well (continued)



I Need How Much?!

It's no secret that health care costs are rising, but have you given thought to how much you will need to have saved to cover medical expenses alone in your retirement? According to the Employee Benefit Research Institute:

- A 65-year old man retiring this year would need \$64,000 saved up just to have a 50% chance to cover all possible health expenses. A woman needs \$86,000. In order to have a 90% chance, a man needs \$122,000; a woman needs \$140,000. (The figures differ because of women's longer life expectancies.)
- A married couple retiring this year needs savings of \$154,000 to have a 50% chance of having enough to cover health expenses, or \$235,000 for a 90% chance.

Even more sobering, these numbers do not include long-term care. Let this be a lesson in why saving for retirement is so important!

— Source: Employee Benefit News



My Achin' Back...

Back pain is one of the most common medical problems, affecting 8 out of 10 Americans at some point in their lives. Are you one of them? Try the following tips to help keep pain at bay.

- Maintain good posture – this includes while sitting down.
- Do not talk on the phone with it cradled between your ear and shoulder. It may be convenient, but it can stiffen your spinal joints.
- Regularly strengthen back, abdominal and leg muscles. You need not strive for rock-hard abs, but keeping the core muscles of your body strong will take pressure off your back and prevent injuries.
- When watching TV or taking a nap on the couch, do not use its arm as a pillow. The angle is too sharp.
- Warm up or stretch before anything physical, even gardening.
- Avoid high-heeled shoes.
- If already suffering from back pain, do not lie in bed for more than a day – it will make the pain worse.
- Quit smoking – it weakens blood flow.

If any back pain persists for more than 3 days, call your physician.



Activity	Calories burned in 30 minutes*
Washing the car	100
Chopping wood	215
Pulling weeds	180
Shoveling snow	225
Washing dishes	83
Walking up stairs	480
Mopping the floor	140
Ironing	75
Rearranging furniture	225
Carrying your small child	218
Window shopping/ browsing at a store	105

Burn Those Calories!

Hate the thought of the treadmill? The stair-stepper? Or lifting weights?

Well, good news: everyday things you do mindlessly may be just as good for you!

Hobbies and leisure activities will also do your body some good.

Want to burn even more calories?

Get a good night's sleep! Eight hours of rest per night can burn an extra 50 calories. ✨

Activity	Calories burned in 60 minutes*
Golfing (carrying clubs)	348
Dancing	219
Biking	292
Tennis	584
Bowling	153
Ice skating	511



Community Bulletin Board

"Neighbors helping neighbors in San Diego"



2008 "Fruit of the Soul" Benefit Coming on September 6th!

MONARCH SCHOOL

Enjoy a night of delicious food and drinks, fine art and live music at Monarch School's 2008 "Fruit of the Soul" benefit on Saturday, September 6th!

Fruit of the Soul proceeds benefit Monarch School's A Reason To Survive (ARTS) Program, which supports the preservation of music, art and sustainable education in San Diego. Last year's event raised \$15,000.

Fruit of the Soul is presented by Niamh Scott Productions and Kelly Orange. The event organizers believe that *"music, art and nutrition are the fruit of our souls, and the preservation of such in our educational system is necessary for our youths' left- and right-brain creativity and growth."*

What Does Monarch School Do?



Monarch School is dedicated to helping kids break the cycle of homelessness through education. It serves nearly 500 homeless and at-risk kids each year in grades 2-12, providing students with an accredited education and enrichment programs. It also provides basic needs such as medical and dental care, food supplements and clothing, and bus and trolley passes.

Although an average child arrives at Monarch three years behind grade level, **for every six months a child spends there, he or she typically progresses more than a year academically.**

What Fruit of the Soul Benefit

When Saturday, September 6, 2008
Begins at 6:30 pm

Where Specialty Produce Warehouse
1929 Hancock Street, Suite 150
San Diego, CA

For Tickets and Event Information
www.fruitofthesoul.org.

For Information about Monarch School
Contact Stacy Marshall, Development Associate, at

smarshall@monarchschoools.org,
619-685-8242, Extension 226, or
visit www.monarchschoools.org.

fruit of the soul.2008
Fine Food & Drinks - Live Music - Truck Art Show

A benefit show unlike any other...
supporting
The Monarch School & A Reason To Survive (ARTS)

MONARCH SCHOOL A REASON TO SURVIVE

Jake's Del Mar • Roseville MARKET Restaurant + Bar
Stingaree • Dish • The Pearl Hotel • Jsix
Trattoria Acqua • Enoteca Style • Top of the Market
Hash House A Go Go • Beaumont's • Brockton Villa
Firehouse American Eatery • Hotel Del 1500 Ocean
Roy's San Diego • Roy's La Jolla • Bleu Boheme
Nine-Ten • The Oceanaire • Adobe El Restaurante
Laurel • Kensington Grill • Chive • Cowboy Star
Catamaran's Atoll Restaurant • Gelato Vero
US Grant Grill • Saffron • Pacifica Del Mar
Tom Ham's Lighthouse • **+more**

Cocktail bar sponsored by: The Tractor Room

Gilbert Castellanos
Bushwalla
Lisa Campbell Band
Monarch Steel Drum Band

200+ Artworks for Sale
Silent Auction

\$40
INCLUDES FOOD,
DRINKS &
ENTERTAINMENT

all proceeds will benefit The Monarch School & A Reason To Survive (ARTS)

**PURCHASE TICKETS AND
VIEW COMPLETE LINE-UP AT
FRUITOFTHESOUL.ORG**

SpecialtyProduce.com MonarchSchools.org AReasonToSurvive.org

Saturday, September 6th 6:30 pm - 11:30pm

at Specialty Produce Warehouse 1929 Hancock St. San Diego 92110

SPECIALTY PRODUCE PALM TRUCKER TORREY PINES BANK **1st** Ego id Media

Brought to you by Niamh Scott Productions & Kelly Orange in collaboration with Specialty Produce.



Community Bulletin Board

"Neighbors helping neighbors in San Diego"



ATTENTION!

**NEW Windmill Thrift Shop
Location Is Now Open in City Heights!**

The East Village Store has moved to:

**4611 University Avenue
San Diego, CA 92105**

(Between 46th Street and Menlo Avenue)

Hours 10 am—6 pm

Open 7 Days a Week

Call
(619) 291-2415
to schedule
a pickup
(large items only)

- ✧ Don't know what to do with your old television?
- ✧ Are those unused cookbooks collecting dust?
- ✧ Need to get rid of your summer clothes to make room for your new fall wardrobe?
- ✧ Have your kids outgrown their toys?

If you answered yes to any of these questions, head over to the Windmill Thrift Shop in City Heights and donate your gently used items.

While you're there, check out their wide selection of merchandise, including:

- ✧ Home Furnishings
- ✧ Electronics
- ✧ Appliances
- ✧ Toys
- ✧ Clothes
- ✧ Books
- ✧ Jewelry

All Thrift Store proceeds benefit Senior Community Centers and Vista Hill



For more information about Windmill Thrift Stores or San Diego Senior Community Centers, visit:

<http://www.servingseniors.org/>



Fur Ball 2008: Fun for All!

The San Diego Humane Society's annual Fur Ball took place on Saturday, August 16th at the San Diego Campus for Animal Care at 5500 Gaines Street in San Diego. Over 600 people and 200 dogs attended the event that benefits the programs and animals of the San Diego Humane Society.

Activities included a cocktail reception, alfresco dining by Jeffrey Strauss of Pamplemousse Grille, an on-site raffle and silent auction, dancing and music by The New Moon Flyers, and fun activities for dogs.

The Society thanks all who attended, and hopes to see you again next year!



Julie Plemmons and Buster

Cavignac Pooch Wins Prize

"Buster," a 13-year-old terrier mix owned by Cavignac & Associates Account Administrator Julie Plemmons, won the award for the "Most Unusual Mix" at the Fur Ball.

Congratulations to Buster and his proud owner!

Photo courtesy of the San Diego Humane Society

"Meow Madness" a Feline Success

The figures are in! During the Meow Madness Adoption Event on June 7, 2008, 35 cats and kittens found new homes. An additional 89 felines went to new owners in June, bringing the total feline adoptions to 124 for the month.

Thanks to everyone who made this year's Meow Madness a yowling success! ❀



Community Bulletin Board

"Neighbors helping neighbors in San Diego"

2008 Vigilucchi's Beach Bocce Ball World Championships

Annual Bocce Ball Event
Benefits Boys & Girls Clubs
of Carlsbad

The 28th Annual [Vigilucchi's](#) Beach Bocce Ball World Championship was held at Dog Beach in Del Mar, California on July 12th. Proceeds benefited the Boys & Girls Clubs of Carlsbad, California.

Teams with colorful names such as *"Shoulda Seen Us Last Year," "Over Rated," "Sons of a Beach," "Hopin' for Luck"* and *"Stop Asking, We're Not Twins"* competed for fun and glory. According to Pat Maldi, Marketing Director of the Carlsbad Boys & Girls Clubs, *"It's North County's cleaner answer to the Over-the-Line Tournament in San Diego. It's a party on the beach — bocce ball with sand, food and fun."*

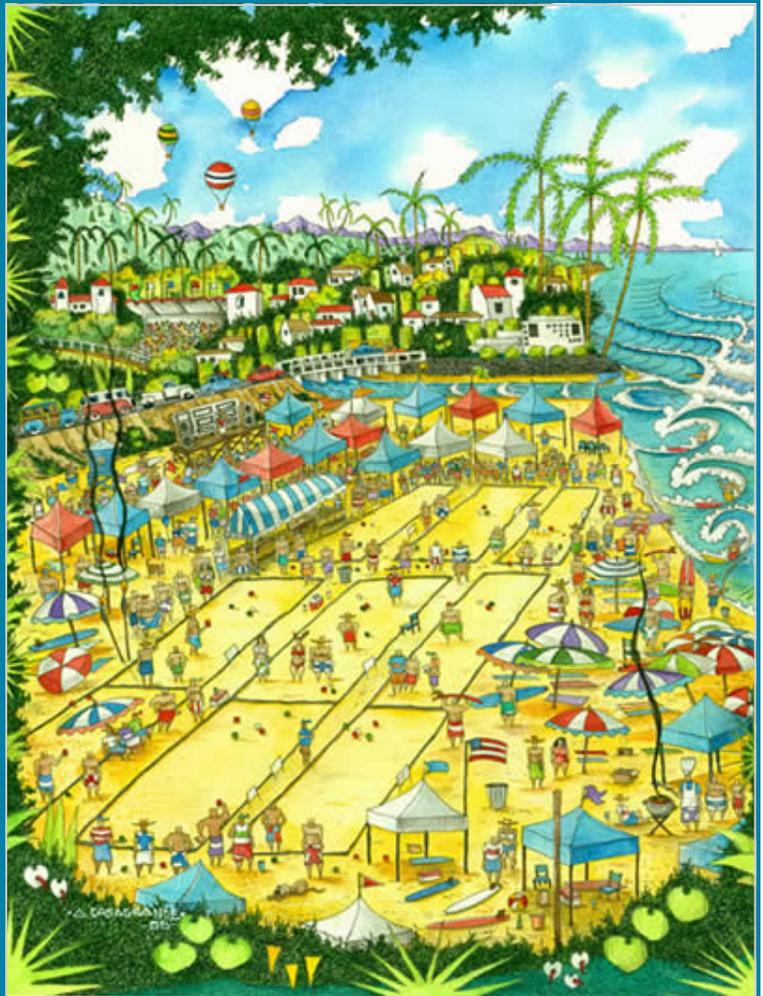
And it benefited a great organization. The event, which featured 318 two-person teams, sold out three weeks in advance, and netted over \$48,000 for the Boys & Girls Clubs of Carlsbad, an all-time record.

Cavignac & Associates Team members Patrick Casinelli and Matt Slakoff competed in this year's event. Matt Slakoff described the day as one of *"perfect weather, tough competition and a great cause. All in all, a great day!"*

In the photos at right, Cavignac & Associates Vice President Patrick Casinelli demonstrates classic bocce ball form.

For more information about this year's event, visit www.beachbocce.com.

For more information about the Boys & Girls Clubs of Carlsbad, visit www.bgccarlsbad.org. 



Bocce Ball Poster by [Alan Casagrande](#), [Bongo Bay Studios](#)





Community Bulletin Board

"Neighbors helping neighbors in San Diego"

San Diego Master Chorale

presents



*A Cordial Invitation
from*

Dr. Gary McKercher,
San Diego Master Chorale's
Music Director

And Our Esteemed Honorary Chairs

Maestros Jahja Ling, Jung-Ho Pak,
Marvin Hamlisch, Matthew Garbutt,
and Michael Morgan

Choral Fantasy An Evening of Music and Merriment

Sunday, September 14, 2008
6:00 PM to 9:00 PM

Admiral Kidd Club, US Naval Base,
Harbor Drive, Point Loma

Hors d'Oeuvres, Dinner and Silent Auction

Master of Ceremonies
Glenn Erath, Comedian/Song Writer

Featuring Nuvi Mehta
with his guided, musical tour of the

*San Diego Master Chorale's
2008-2009 Season*

Musical entertainment by
The San Diego Master Chorale

Nuvi Mehta, violin
Bryan Verhoye, piano

Tickets: \$125 per person
(Ticket price is tax deductible as allowed)

RSVP Enclosed
(858) 581-2203

Business/Cocktail
Attire

Only checks and credit cards accepted at the event.
No cash accepted per US Navy regulations.

Upcoming Concert Schedule

Sunday La Jolla Presbyterian Church
October 12, 2008

Sunday First United Methodist Church
October 19, 2007

Friday-Sunday San Diego Symphony Orchestra
October 24-26, 2008

Click here for more concert information