



# Private Companies Group *Approach*

August 2010

Dear Clients and Friends:

The year is only half over, and we are in danger of running out of overheated adjectives to describe the challenges that continue to face private companies. “Sweeping” legislative enactments, such as the Patient Protection and Affordable Care Act (known commonly as the Health Care Reform Act), put even greater pressure on companies to economize while complying with new requirements. The “unprecedented” financial reform legislation just passed in Congress promises “dramatic sea changes” that will affect all sectors. “Far-reaching” new rules governing derivatives and hedge funds will require companies that utilize those investment strategies to reevaluate and make sure they comply. All of which adds to the ever-increasing cost of doing business, *i.e.*, doing still more with possibly even less than before. Perhaps the only certainty is that “business as usual” is anything but.

On a daily basis, we help our private company clients confront these challenges. In this issue of the *Approach*, we offer a few views of how to deal with some of these legislative changes and other demands on already limited resources. Perhaps these issues are similar to those your company is facing. In addition, we invite you to participate in the upcoming Proactive Creditor Webinar Series; please see the back page for details. Other stories are featured in previous issues of the *Approach*, which are posted at [www.schiffhardin.com](http://www.schiffhardin.com), under “Publications.”

Whether your company is a start-up or a seasoned business organization, Schiff Hardin’s Private Companies Group brings to bear a wide range of specialties in a collaborative, “right-sized” approach to help your business succeed. Our attorneys understand our clients’ diverse businesses, their challenges and risks, and their opportunities. We understand the often intense pressure on their key resources: money, personnel and time. We help our clients thrive in this environment.

This is the Schiff Hardin *Approach*.



**Strong Advocates.  
Trusted Advisers.**  
*Lasting Client Relationships.*

Atlanta

Boston

Chicago

Lake Forest

New York

San Francisco

Washington

The recently enacted Patient Protection and Affordable Care Act (“PPACA”) exempts fully-insured and self-insured group health plans in existence on March 23, 2010 (“grandfathered health plans”) from some of PPACA’s health insurance reform provisions. But what changes will cause a plan to lose its grandfathered, *i.e.*, exempt, status?

The Internal Revenue Service, the Department of Labor and the Department of Health and Human Services have issued interim final regulations providing guidance to employers about grandfathering as they prepare to comply with PPACA’s health insurance reform provisions, some of which become effective for plan years beginning on and after September 23, 2010 (*i.e.*, January 1, 2011 for calendar year plans). Loss of grandfathered status may subject the plan to additional compliance requirements from which it otherwise would have been exempt.

Specifically, the regulations indicate what changes will cause a plan to lose its grandfathered status. Such changes include (among other things): \*

- the employer entering into a new policy, certificate or contract of insurance;
- eliminating all or substantially all benefits to diagnose or treat a particular condition;
- increasing a coinsurance amount;
- increasing a deductible or out-of-pocket limit, or a copayment, by a specified amount;
- decreasing the employer’s percentage share of the premium by a specified amount; and
- decreasing an overall annual dollar limit on benefits or imposing a new limit.

Changes that *will not* cause a plan to lose its grandfathered status include: \*

- changes to premiums;
- changes to comply with federal or state legal requirements;
- changes to comply voluntarily with provisions of PPACA; and
- changing third party administrators.

*\* These are examples and are used for illustrative purposes. These are not comprehensive lists.*

With the release of these regulations, employers now should be able to determine which (if any) of the benefit packages under their group health plans are grandfathered, and evaluate whether the benefits of maintaining grandfathered status outweigh the limitations on plan changes imposed by the regulations. Schiff Hardin attorneys can assist you with your review, plan design and compliance efforts related to the grandfathering rules, as well as the other provisions of PPACA.

For further information: **Ed Spacapan**, Employee Benefits and Executive Compensation, 312.258.5788, [espacapan@schiffhardin.com](mailto:espacapan@schiffhardin.com)



A global distributor seeks a comprehensive approach to its daily commercial contracting needs.

Our client, a global distributor, was inundated with numerous and varied supply, logistics, consignment and warehousing agreements from its customers, all requiring negotiation and review. Schiff Hardin was asked to develop a comprehensive approach to help our client efficiently manage its burgeoning workflow. Attorneys in our Private Companies Group worked with the client’s team to streamline the

(Continued)

contract review process by developing a standard set of contract terms, as well as standardized responses to typical customer and vendor requests, designed to respond to the client's needs while also managing the related business and legal risks. We also created an integrated client service team, working together with in-house counsel, to advise and assist with more sophisticated and high-stakes contracts and customer arrangements.

Our attorneys were able to leverage some of their own experiences working in-house, and seeing first-hand the intense pressures on cost, time and personnel resources that are faced on a daily basis. That experience, together with information technology tools, helped them develop a contract management system that enabled our client to conduct efficient and productive negotiations while maintaining valuable customer relationships. Our attorneys now serve as an integrated part of the client's inside legal department, greatly augmenting its internal legal resources.

For further information:

**Rich Miller**, Corporate and Securities  
 312.258.5596, [rmiller@schiffhardin.com](mailto:rmiller@schiffhardin.com)

**Darren Baker**, Corporate and Securities  
 312.258.5538, [dbaker@schiffhardin.com](mailto:dbaker@schiffhardin.com)

**Rob Sieland**, Corporate and Securities  
 312.258.5619, [rsieland@schiffhardin.com](mailto:rsieland@schiffhardin.com)



With respect to LEED certification, the parties should first agree on applicable standards. A primary area for consideration is energy savings, both in terms of levels for attainment and permissible methods. Second, other subjects should be brought into play, such as participation in building-wide paper recycling measures, water usage measures (including with respect to landscaping), and controlling interior environmental quality with respect to hazardous substances, including cleaning processes, painting and other decorating steps. These standards should be documented in a clear and concise operations manual that supplements each lease in question. The lease should allow the landlord to monitor compliance with the standards and incentivize both parties to achieve the stated objectives. Finally, the lease should allow the landlord to modify the objectives such that the building can, within reasonable limits, grow greener over the term of the lease, and also in order to keep up with changes in laws, technology and the leasing market.

Landlords have traditionally restricted permissible uses and activities, and for decades have carefully addressed the presence of hazardous materials. However, these developments may represent a new trend of cooperation for positive results, rather than restrictive approaches for protective purposes, with emphasis on creating a lease infrastructure to realize the benefits that the parties expect from going green. This process is more fully described in the article "Growing Green Leases," in the August 2010 issue of *Commercial Leasing Law & Strategy*.

For further information:

**Patricia S. Ullman**, Real Estate  
 312.258.5688, [pullman@schiffhardin.com](mailto:pullman@schiffhardin.com)

With the increased interest from landlords and tenants in "green" leases, more landlords are striving for LEED certification, and more tenants are considering this carefully in choosing a location. But how can the parties best write the lease to ensure that both landlords and tenants see some tangible benefit from the green status?

Schiff Hardin LLP presents

## The Proactive Creditor Webinar Series

**Financial Experts Anticipate Another Wave of Bankruptcy Filings in Late 2010 and into 2011.**



- Are you as prepared as you can be when yet another customer seeks bankruptcy protection?
- Do you have a solid understanding of how to maximize your chances of recovery from a troubled customer?
- Do you have a game plan in place to improve your recovery?

Please join our Restructuring, Bankruptcy & Creditors' Rights attorneys at the Proactive Creditor Webinar Series presentations for topical discussions of these issues. Our lawyers have represented creditors in virtually every industry and have compiled a series of detailed presentations addressing the following topics: bankruptcy basics; 503(b)(9) and reclamation claims; preferences and fraudulent transfer claims; proofs of claim and claims trading; executory contracts and unexpired leases; critical vendor status; automatic stay issues; asset sales under Section 363; creditors' committees; plans and disclosure statements; other out-of-court restructurings; pre-bankruptcy UCC remedies; and mechanics' liens and other lien rights.

**Who should attend:** Our Proactive Creditor Webinar Series is designed for all members of your company's credit department and in-house legal department. Other members of your company's business team, including those in your finance department, will also benefit from this twelve-part series. A comprehensive plan to maximize any recovery from a troubled customer requires close coordination of many different facets of your organization.

To view all the Proactive Creditor Webinar Series topics, a brief description of each webinar and to register, please visit: [http://www.schiffhardin.com/events/proactive\\_creditor\\_series/](http://www.schiffhardin.com/events/proactive_creditor_series/).

Webinar

Join us for the first of twelve complimentary webinars on **August 26, 2010 at 1:00 p.m. CDT.**

Please visit our Web site to learn more about Schiff Hardin.

[www.schiffhardin.com](http://www.schiffhardin.com)

**Steve Dragich**  
Chicago  
312.258.5692  
[sdragich@schiffhardin.com](mailto:sdragich@schiffhardin.com)

**Matt Galo**  
Chicago  
312.258.5643  
[mgallo@schiffhardin.com](mailto:mgallo@schiffhardin.com)

**Nicole Finitzo**  
Lake Forest  
847.295.4308  
[nfinitzo@schiffhardin.com](mailto:nfinitzo@schiffhardin.com)

**Brian Gannon**  
Atlanta  
404.437.7059  
[bgannon@schiffhardin.com](mailto:bgannon@schiffhardin.com)

**Bob Mullen**  
San Francisco  
415.901.8783  
[rmullen@schiffhardin.com](mailto:rmullen@schiffhardin.com)

**Todd Eskelsen**  
Washington  
202.778.6420  
[teskelsen@schiffhardin.com](mailto:teskelsen@schiffhardin.com)

