# Christina Costley Featured in AHT Insurance's *Annual State of the D&O Market Report*

April 30, 2018

Partner Christina Costley provided insight on several hot topics in securities litigation for the "Expert Testimony" article of AHT Insurance's *Annual State of the D&O Market Report*. As the result of a recent Supreme Court decision, she anticipates a "significant increase" in Section 11 public offering claims filed in state court under the Securities Litigation Uniform Standards Act (SLUSA). Christina stated, "The number of Section 11 claims has been trending upward in recent years because the "strict liability" standard imposed by Section 11 makes them easier to plead than a traditional securities fraud claim. State courts, in particular, have become an increasingly popular forum for these cases because many do not enforce the mandatory discovery stay imposed by the Private Securities Litigation Reform Act (the "Reform Act") to deter frivolous litigation." She added that it is likely that plaintiffs will voluntarily dismiss federal Section 11 court filings as a result in favor of refiling in state court.

Christina recommends that public companies looking to minimize risks for securities lawsuits should manage their disclosures. "When disclosing bad news, it may be helpful to frame the disclosure in a way that tracks prior risk warnings and does not admit that any earlier statement was untrue. In some circumstances, it can also help to make clear when the company learned of the bad news, so there is no question that the knowledge did not predate a prior public filing. Also, be cognizant of timing—disclosing bad news at a time when the stock price is unlikely to fall, or the plaintiffs' lawyers are less likely to notice, may help avoid a lawsuit." She also sees great value in strong risk disclosures, stating, "This does not necessarily mean that companies should over disclose—it may be better to say nothing rather than to make a statement that can be viewed as omitting information a "reasonable investor" would consider material. On the other hand, if forecasts or business plans rest on the outcome of an event that is uncertain, it is almost always better to warn investors about that." (*Annual State of the D&O Market Report*, 2018)

## CONTACTS

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