



From: Stacy, Liz [mailto:LStacy@thewoodlands.com]
Sent: Friday, August 08, 2008 4:08 PM
To: Director - FASB
Subject: File Reference No. 1600-100

LETTER OF COMMENT NO. 181

Comments Regarding Proposed FASB Statements #5 & #141

1. The FASB 5 rules are sufficient as currently written. Which investors and other users of financial information have expressed concerns that disclosures of loss contingencies are inadequate? How does the FASB know that such disclosures are relevant and material? The FASB presents no justification for additional disclosure requirements other than reference to an unsubstantiated need by undisclosed users.
2. The proposed rules will result in a waiver of the attorney client privilege for information regarding case assessment and strategies for dealing with claims. Paragraph 5b requires disclosure of an unasserted claim if it is probable a claim will be asserted and the likelihood of loss is more than remote. Communications between an attorney and his/her client are generally privileged, meaning that the communications cannot be disclosed unless the client waives the privilege. Disclosure of confidential communications to a third party, such as an auditor, constitutes waiver of attorney-client privilege. Consequently, an opposing party can discover confidential communications between a client and his attorney because the attorney communicated such information to an auditor. This makes the work of plaintiff attorneys much easier by giving them access to potentially damaging information for present or future cases. To reduce the threat of disclosure, clients are less likely to consult their legal counsel when precise legal advice is needed most.

3. Disclosure of maximum potential aggregate contingent liabilities is unreliable and unrealistic because the maximum exposure would rarely happen, and would, therefore, overstate contingent liabilities.
4. Plaintiffs demands may not be the same as the actual exposure.
5. Plaintiff lawyers will argue to juries that the maximum identified exposure is an admission of what should be paid.
6. If a claim reserve is required, that will become the amount demanded by the other party in any dispute.
7. The proposed rules will result in the substitution of the judgment of accountants for the professional opinion of attorneys regarding litigation and claims assessment.
8. Paragraph 6 requires disclosure of any loss contingency if the loss contingency will be resolved within one year and the resolution could severely impact the entity. A "severe impact" means a significant financially disruptive effect. The FASB provides no bright-line definition of "severe impact." The proposed standard requires the attorney to determine if the loss contingency will be resolved within one year. This may be a guess at best taking into account the court docket and willingness of each party to settle or go to trial. The attorney must also make a financial judgment of the magnitude of the loss contingency. The client and auditor must determine whether it will have a sever impact. There is no safe harbor provision so the client, lawyer, and auditor may all be liable for damages to an investor who relied on a disclosure or lack thereof. The number of new ways an investor will be able to claim fraud or misrepresentation boggles the mind.

9. In summary, the proposed statement is ill-advised. It places the client and attorney in the position of guessing if an issue could be a loss contingency and if so, how much is it worth. At some point, such as when a lawsuit is filed, some general disclosure may be necessary. But this is like waving a red flag at a bull. Every misstep is a potential lawsuit under this proposal. Corporate attorneys are justly concerned about increased liability.

A. Karen West
Vice President and General Counsel
The Woodlands Operating Company, L.P.

Liz Stacy CPS

Legal Assistant to A. Karen West
Vice President and General Counsel
The Woodlands Development Company
2201 Timberloch Place
The Woodlands, TX 77380
Direct: (281) 719-6225
Fax: (281) 719-7325
lstacy@thewoodlands.com