When facing a loss, the first rule of insurance recovery is “think insurance.”

With the stunning losses reported by institutional investors, growing multitude of lawsuits, government investigations, and collapse of Bear Stearns, it is clear that the sale of subprime mortgages and as investments in securities tied to those mortgages, has reached its breaking point. Despite the multitude of claims already filed and those that are likely to come, each of the participants in the mortgage securitization probably has available insurance. The D&O, E&O, Fiduciary liability and Financial Institution Bond or Commercial Crime Policy are among the prime policies to check for insurance for this problem.

Since 2007, almost 300 lawsuits have been filed relating to subprime mortgages. Those lawsuits are class actions brought by individual borrowers, shareholders, institutional investors and mortgage insurance companies. Even some cities have filed complaints because of the impact that subprime mortgages and allegedly predatory lending practices on their communities. With Merrill Lynch, UBS, and Citigroup each reporting losses of more than $3 billion, while Morgan Stanley and JPMorgan have reported losses of more than $2 billion, estimated losses and write-downs related to investments in mortgage securities and subprime-related investments estimated to reach between $285 billion and $400 billion, litigation related to subprime mortgages will continue to multiply.

Numerous factors contributed to the increase in home mortgage defaults and the ensuing meltdown in the subprime sector. At the core, loans have become inherently riskier. Additionally, revolving consumer credit has expanded from 4.5% in 2002 to 8.4% in June 2007, with a 12.2% increase in consumer credit lines. Mortgage defaults and foreclosures have sent shock waves throughout the financial industry because the nature and characteristics of the capital markets model and securitization of consumer mortgages. Investors rely on rating agencies to calculate the risk of an investment. However, in light of, among other things, the volatility and uncertainty in the market, even the rating agencies have been hard-pressed to accurately assess the risks associated with various classes of mortgage securities. In fact, Moody’s has recently proposed broad changes to its rating system, its calculations, and reporting.

Given the reach of the subprime crisis, regulators in the United States and Europe are evaluating underwriting standards and other risk management practices employed by investment banks. In the United States, regulators have been evaluating deficiencies in securitization and are expected to release a report that addresses various deficiencies in securitization.

The claims against investment banks, mortgage companies, and virtually everyone involved in the securitization chain implicate coverage under a variety of insurance policies.

William G. Passannante is a senior shareholder in Anderson Kill & Olick in New York and Pamela Hans is an attorney in the firm's Philadelphia office. Mr. Passannante and Ms. Hans regularly represent policyholders in insurance coverage disputes. Mr. Passannante can be reached at wpassannante@andersonkill.com or (212) 278-1328 and Ms. Hans can be reached at phans@andersonkill.com or 267-216-2720.