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Jokes and Contests Can Lead to Serious Consequences

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media•insights is published periodically by OneBeacon Professional Partners to address the broad scope of exposures faced by our agents' and brokers' clients, as media-related companies scramble to meet the public's appetite for information, news and entertainment in an increasingly litigious society. This issue of media•insights illuminates questions the risk management team of a media firm engaging in atypical media activities should be asking their insurance provider.

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The death of a radio contestant last January who was vying for a Nintendo wii gaming console demonstrates the unexpected and tragic consequences that sometimes arise from media contests and promotions. Jennifer Strange allegedly died from water intoxication from a water drinking contest promoted by a local station in Sacramento, CA, wherein contestants consumed large quantities of water to determine who could drink the most water in a short period of time without going to the bathroom. Ms. Strange died a few hours later, and all ten

persons associated with the station's morning team were fired. Subsequently, a wrongful death action was filed against the radio station, its officers and involved employees.

The public's appetite for stunts, reality-type programming and provocative – and often suggestive – adult commentary is at an unprecedented level. Such programming is often rewarded with higher ratings that command higher advertising revenue. Many well-known radio personalities have moved to satellite radio to avoid oversight by the FCC, which will punish broadcasters for obscene, indecent and profane radio content. The FCC may revoke a station license, impose a monetary fine or issue a warning in such instances. "Shock Jocks" such as "Opie and Anthony" on satellite radio are high profile and have received high compensation for their juvenile behavior. One stunt involved telling listeners in Boston that the mayor was dead. They also were the source of encouragement for a couple who behaved as if they were engaged in sexual acts at New York City's St. Patrick's Cathedral. Most recently, the two played along with a "homeless man" (guest) on their show who expressed his desire to physically abuse and have sex with Secretary of State Condoleeza Rice and First Lady Laura Bush. Because the show airs on XM satellite radio, there are no federal restrictions on content. However, XM radio has announced a 30-day suspension of the show. Similarly, long-time radio host Don Imus was recently fired by MSNBC and CBS Radio due to comments made about women on the Rutgers University basketball team.

Radio stations and their disk jockeys often engage in such behavior to increase ratings and establish themselves as announcers. While creativity is expected, many announcers have taken ideas to illogical extremes involving crassness and vulgarity. It has been difficult for many to determine the line between appropriate and inappropriate behavior. Syndicated radio personality Erich "Mancow" Muller recently created the "Foundation for Responsible Radio" and has called for an end for such behavior. He also has established a fund for Ms. Strange's three children.

Earlier this year, a "guerrilla marketing" firm disrupted the city of Boston while promoting a cartoon for Turner Broadcasting. The publicity stunt involved the placement of blinking mechanical devices, including circuit boards, to advertise the new television cartoon, "Aqua Teen Hunger Force". The devices were placed in a number of sensitive locations, such as bridges, and unleashed a sense of chaos prompting law enforcement to go into an emergency response. Bomb squads, extra police and officials from the Department of Homeland Security and the FBI were all called in to respond. The Boston mayor called the marketing scheme "outrageous" in the post-9/11 world. Turner Broadcasting System apologized to Boston-area residents for the security scare and agreed to pay \$1M dollars to the city and \$1M to Homeland Security.

Finally, on a more humorous note involving the "mockumentary", *Borat: Cultural Learnings of America for Make*

Glorious Nation of Kazakhstan, two fraternity brothers from South Carolina sued the producers on the basis that they were induced to engage in inappropriate behavior. The men complained they were encouraged to drink excessively and then make insulting comments. They claim that they were told about the film, asked to sign a release and then became part of the film. They allege that they have suffered humiliation, mental, emotional and physical distress, and have suffered damage to their reputations due to their role in the film. To date, they have been unsuccessful seeking to enjoin the studio, Twentieth Century Fox, from displaying their image and likeness in the movie, as well as the DVD.

All of the foregoing media content and campaigns, which were supposed to be relatively benign and entertaining, have given rise to serious consequences. At the very least, the involved companies and individuals will incur defense costs extricating themselves from litigation. Before undertaking unconventional media activities, planners should involve key company personnel, such as the risk manager and in-house counsel, to fully evaluate the attendant risks. In light of the tragic circumstances surrounding the wii contest, broadcasters might also be well advised to seek the advice of a physician before embarking on a contest that could create a physical or emotional strain on participants. Certainly, any activities that could give rise to bodily injury should be avoided. There are a number of questions that need to be posed and explored among the risk management team: Is there any insurance available for the risks associated with the activity? Does the insurance policy provide coverage for

promotional activities, including contests? If not, is it possible to acquire coverage for the special event or promotion? Can liability be limited through the use of waivers or consent forms? Often times, it is also important to evaluate the activity before the court of public opinion: Will it be difficult to defend the action on national television, as well as before a judge or jury, should the unexpected take place? These questions, and more, must be seriously evaluated when undertaking unusual media activities.

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