CHARTIS

Mergers & Acquisitions Insurance Group

Contingent Liability Insurance

It happens often in the Mergers & Acquisitions (M&A) world: a "contingent" liability unearthed in the course of a merger, acquisition, or other business transaction threatens to cost a buyer or seller significantly—and could keep the transaction from proceeding altogether.

Contingent Liability Insurance from Chartis' Mergers & Acquisitions Insurance Group enables buyers and sellers to address precisely these types of exposures. The coverage is highly customized for a wide array of M&A-related exposures, from indemnity obligations and successor liability concerns, to contractual disputes or government and regulatory issues.

Coverage Highlights

- Flexible structures accommodate specific client needs, e.g., coverage can supplement or "backstop" existing indemnity obligations or sit excess of primary insurance
- Pricing, limits and retentions are determined on a case-by-case basis, based on factors such as exposure type and insurance structure
- Defense costs coverage can be provided

Contingent Liability Insurance at Work

While the potential applications for Contingent Liability Insurance are as varied and customized as M&A transactions themselves, the following cases depict typical scenarios in which this coverage may come into play:

Potential Successor Liability

A private equity firm's portfolio company wants to acquire the assets of a target company. Even though one of the liabilities—existing litigation between the target company and a third party—is excluded from the transaction, the buyer is concerned about potential successor liability presented by this litigation.

Contingent Liability Insurance can insure the private equity firm and its portfolio company against this potential successor liability if the target company loses the lawsuit, the selling shareholders of the target company do not satisfy the judgment and the buyer is held liable as successor to the sellers.

Uncertain Governmental Approval

A strategic buyer's acquisition of a company presents antitrust concerns. If the transaction is not completed due to those concerns, the buyer could face a break-up fee that exceeds its existing cash on hand.

Contingent Liability Insurance can overcome this potential obstacle by enabling the buyer to insure a portion of the break-up fee.

Contingent Liability Insurance at Work, continued

Costly Contractual Disputes

A potential buyer wants the transaction rescinded if certain government contracts included in the purchased assets are not novated to the buyer after the transaction closes.

With properly structured Contingent Liability Insurance in place, the buyer is assured of its ability to recoup transaction-related costs and expenses it pays if the transaction is rescinded.

Expert Claim and Litigation Management

In the event of a claim, Chartis has a claims teams dedicated to transactional insurance, including Contingent Liability Insurance. These seasoned professionals specialize in disputes surrounding complex transactions and in processing customer claims in a professional and expedient manner.

Contingent Liability Insurance is part of a suite of insurance products that the Chartis Mergers & Acquisitions Insurance Group offers for the spectrum of exposures inherent in mergers, acquisitions, divestitures and other transactions. Other products in the suite include Representations & Warranties Insurance, Tax Liability Insurance, Litigation Buyout Insurance and Investment Banking Engagement Insurance.

To learn more about Contingent Liability Insurance, please visit www.chartisinsurance.com, e-mail MAInsurance@chartisinsurance.com, or contact your insurance broker.

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