

Mergers & Acquisitions Insurance Group

Litigation Buyout Insurance

The uncertainty of pending or threatened litigation can adversely impact both an organization's day-to-day operations and long-term strategies, including successful closure of a merger, acquisition, divestiture or other business transaction.

Litigation Buyout Insurance (LBI) from Chartis' Mergers & Acquisitions Insurance Group enables a company to address underinsured or uninsured liabilities associated with these lawsuits. The insurance is typically underwritten to cover a specific known lawsuit or a portfolio of lawsuits or claims.

Coverage Highlights

- › Highly customized coverage can mitigate a wide range of exposures, including:
 - Contractual disputes
 - Securities litigation
 - Employment practices liability
 - Professional services liability
 - ERISA liability
 - Products liability
 - Intellectual property disputes
 - Successor liability concerns (e.g. associated with asset purchase transactions)
- › Pricing, limits and size of retentions are determined on a case-by-case basis, depending on factors such as the underlying exposure, its severity and the program structure
- › Options to purchase LBI are also available, enabling clients to hedge against threatened litigation

Key Advantages

LBI coverage can enable companies to:

- › Transfer existing third party liability exposures to the insurer, enhancing both day-to-day operations and long term business strategies previously blocked by pending claims or litigation
- › Quantify and limit future exposures to existing third party claims, easing risk management concerns and possibly enabling favorable public disclosures

Expert Claim and Litigation Management

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

Litigation Buyout Insurance at Work

Facilitating Strategic Objectives: Securities Litigation

A public company restated its quarterly financial statements after auditors discovered accounting irregularities. Its stock price declined, triggering over a dozen shareholder lawsuits. The company's reputation, market capitalization, financial condition and employee morale were all negatively affected. The company was also in the process of being acquired and the ongoing litigation was keeping the transaction from being finalized.

The company purchased LBI, which transferred the liabilities associated with the shareholder lawsuits to the insurer (excess of a self-insured retention). With this liability addressed, the company was able to focus on finalizing the M&A transaction. In addition, the company publicly disclosed (with the insurer's consent) that insurance was now in place to cap its litigation exposure. This helped to reduce uncertainty in the marketplace over the company's financial condition, increase the company's share price and ultimately facilitate the acquisition.

Litigation Buyout Option

A private equity firm that owned a significant stake in a middle market size company issued letters that threatened litigation against this company in an effort to replace the company's current management and obtain control of the board of directors. The private equity firm alleged that the company's management and board breached various fiduciary duties resulting in a \$63 million investment loss in the company. The company's Directors & Officers Liability Insurance policy denied coverage because of two separate exclusions. As a result of this potential litigation and the lack of available insurance, the company's independent directors threatened to resign their positions.

LBI provided the company with a two year option to purchase a \$5 million policy covering judgments and defense costs, with no retention. With the option in place, the independent directors agreed to remain on the company's board.

Litigation Buyout 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, Contingent Liability Insurance, Tax Liability Insurance and Investment Banking Engagement Insurance.

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

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