

**LITIGATION BUYOUT INSURANCE****QUESTIONS AND ANSWERS****INTRODUCTION****What is Litigation Buyout Insurance?**

Litigation Buyout Insurance (“LBI”) is a confidential and customized insurance strategy that assists clients in the management and optimal resolution of litigation involving large uninsured or underinsured liabilities and complex operational issues. Each policy is crafted to meet the unique needs of the client.

**What transactions are candidates for coverage?**

Chartis’ M&A Insurance Group (the “M&A Group”) can provide a client with a customized strategy to manage and resolve a wide array of negative events including:

- Securities litigation
- Employment practices
- ERISA liability
- Errors and omissions
- Contractual disputes
- Products liability
- Intellectual property claims

**How much coverage is available?**

Available limits depend on the size of the underlying transaction, the type and severity of the risk and the desired insurance structure.

**How much is the premium?**

Several considerations affect the pricing of LBI. They include risk assessment, policy structure and cost of capital. Risk assessment includes analyzing liability and damages to arrive at an expected outcome of loss for the risk. Policy structure impacts premium depending upon terms and conditions, such as attachment point (e.g., whether a self-insured retention is included). Cost of capital refers to the amount of insurance capital sought.

**POLICY BASICS****What is covered by the policy?**

LBI is typically underwritten to cover a specific known risk, lawsuit or claim. The coverage may also allow for amendments to or refilings of existing litigation. The insured may choose to have defense costs included in the program’s limit. LBI coverage has also been written for groups of claims or lawsuits (sometimes known as “loss portfolio transfers”), such as for multiple employment practices claims or multiple patent infringement suits.

**What do policies look like? Are there sample policies?**

Each policy is uniquely tailored or “manuscripted” to address the specific risk(s) at issue and reflect the negotiated insurance structure.

**What is the policy period?**

The policy term usually runs from the time of purchase (typically a transaction closing date or other specified event date) until settlement or final adjudication of the legal dispute being covered.

### **Who controls the litigation?**

In cases where Litigation Buyout Insurance coverage is “ground up” coverage or excess of a self-insured retention, Chartis would typically require control of the litigation strategy and outcome scenarios including settlement. If coverage is being written as excess of existing insurance, a different insurance carrier (or the insured) would likely have control over litigation and settlement strategy.

### **How large is the policy retention and how is it determined?**

The retention is determined by the client’s risk appetite and/or the amount of existing insurance. The retention can be structured in one of three ways: (1) excess of existing coverage; (2) excess of a specific dollar amount of risk the insured desires to retain; or (3) “ground up” insurance where there is a complete transfer of financial risk (up to the limit of liability) and the insurer starts paying loss first dollar.

## ***OBTAINING INSURANCE***

### **How long does it take to obtain coverage?**

It varies depending on the complexity of the risk (including type and current stage of litigation), the completeness of information available and level of cooperation of the insured and its outside counsel or consultants in the underwriting process. Given relatively complete information and cooperation, the underwriting period usually takes two to eight weeks from receipt of all required information to issuance of a term sheet by the insurer.

### **What information should an applicant supply?**

It depends on the nature of the risk and the maturity of the claim. Once a confidentiality agreement has been executed, we generally need to receive the following: (1) a brief description of the risk to be insured (including claim history and settlement discussions), coverage being sought and underlying transaction or event timing; (2) pleadings; (3) motions, discovery, court orders (including scheduling orders) and decisions; (4) expert reports (or other analysis of liability or potential damages); (5) applicable existing insurance policies and any coverage position letters issued by those carriers; and (6) copies of the associated purchase agreement, if applicable.

### **Will this information be kept confidential?**

We understand the need for confidentiality and will provide you with a form of confidentiality agreement tailored to LBI or otherwise execute a mutually acceptable form of confidentiality agreement.

### **What happens when the M&A Group receives this information?**

We will perform a preliminary analysis of the information received and generally determine whether coverage for the risk can be underwritten. We may also have some initial feedback on structure or strategy. If the risk is viewed as generally insurable, the process would move to a formal due diligence and underwriting process.

### **Are there any fees associated with the underwriting process?**

In order to move to the second phase of our underwriting review, a fee is required from the insured to cover outside due diligence and consulting costs. The fee can vary greatly depending on the size and complexity of the risk, but historically has ranged from \$20,000 to \$150,000.

### **When should an applicant contact us or its insurance broker?**

In the event you believe LBI could play a role in your transaction, you should promptly contact a professional in our M&A Group, or contact your insurance broker.

## **OTHER**

### **What does it mean to "bind coverage" or enter into a "binder agreement", and why is this necessary prior to "issuance" of the actual policy?**

It is typical in the insurance industry for an applicant and an insurer to agree to the terms and conditions of coverage prior to the time the coverage becomes effective. For example, LBI policies are not issued or effective until payment of premium, which is typically when the underlying transaction closes or upon some other specified event, but terms and conditions of coverage may be agreed to prior to such closing. Once the applicant and the insurer agree to the terms and conditions of coverage, a short "binder agreement" is entered into by the insured and the insurer. The binder agreement will specify the key coverage terms (for example, the premium, retention, and limit of liability) and the form of policy is generally attached as an exhibit.

### **Why should I rely on Chartis for my Litigation Buyout Insurance?**

Chartis is an innovator in the field of LBI and world a leader in insurance.

To learn more about transactional insurance products, please visit our website, [www.chartisinsurance.com](http://www.chartisinsurance.com), send us an e-mail at [MAInsurance@chartisinsurance.com](mailto:MAInsurance@chartisinsurance.com), or contact your insurance broker.



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