Mergers & Acquisitions Support

RHSB

An Assurex Global Partner

Homegrown Roots - Global Reach

Independent Insurance Broker providing insurance solutions to companies, families, and individuals for over 70 years

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HEADINGS

Your efforts to create a competitive advantage for your company can include a variety of business strategies, including merger, acquisition, or sale. New risk management solutions are needed to reduce or eliminate uncertainty associated with liabilities that may be an impediment to completing merger/acquisitiontransactions.

RHSB can assist in the due diligence process and can also offer the following insurance products that address issues associated with the complex M & A market.

- Representations & Warranties Insurance
- Loss Mitigation Products
- Assorted Bid Cost Insurance
- Tax Option Guarantee Insurance

REPRESENTATIONS & WARRANTIES INSURANCE

Problem: M & A transactions generally require the seller to indemnify the buyer for breaches of the representations and warranties that are made in the purchase and sale agreement. Depending on the parties involved and the nature of the representations and warranties, the seller may be required to escrow a material percentage of the indemnification requirement. This requires the seller to maintain substantial illiquid capital following an exit. If the seller is a private equity fund, it may limit the fund's ability to wind down partnerships formed for investment purposes, and may further limit their ability to return funds to investors.

Solution: To address these obligations, RHSB offers a risk transfer insurance policy that can reduce or replace the indemnification and escrow requirements created by the seller's representations and warranties section of a purchase and sale agreement. The policy will pay excess of a retention, which is often the basket aggregate outlined in the purchase and sale agreement.

LOSS MITIGATION PRODUCTS

Problem: Often unresolved liabilities need to be quantified when considering mergers and acquisitions. The buyer or seller may need to reduce or eliminate the uncertainty associated with pending or ongoing litigation.

Solution: Liability Cap Coverage – The underwriters and their attorneys determine the Probable Maximum Loss (PML) for all claims. The PML and a buffer are added together to form a litigation cap. The provided umbrella policy gives coverage excess of the caps or insurance, whichever is greater, in exchange for a onetime premium. The cap and the premium are based on the underwriter's estimate of risk.

Claim Buyout – The underwriters and their attorneys determine the PML for all claims. The insured pays the insurance company the PML with insurance proceeds and/or cash. The insurance company then assumes the entire liability. If the underwriters settle under the PML, then the underwriters make a profit. If not, they assume the excess loss.

Retro Funding – At the time of settlement, the underwriter provides an insurance policy, which covers the settlement amount excess of insurance and provides coverage going forward. The policy premium is equal to the settlement, excess of insurance and the risk transfer cost of the policy going forward. The premium is financed over the term of the going-forward policy (usually one to three years). It allows the company to finance the loss over time, without drawing on their existing lines of credit or taking a large charge in the quarter when the loss settles.

ABORTED BID COST INSURANCE

Problem: The M & A community is filled with reports of failed mergers or acquisitions. These transactions fail for a variety of reasons, many of which are outside the control of the parties involved. Some of the reasons a deal falls through may include:

- Other party accepts a higher bid
- Failure to receive regulatory approval
- Loss of financing
- Withdrawal by the other party

Solution: To address these issues, RHSB offers Aborted Bid Cost Insurance. Offered presently through Lloyds markets, this coverage reimburses the company for external costs resulting from an aborted transaction that has failed for identifiable reasons outside the company's control. Although the insurance cannot prevent the failure of the transaction, it can insure that the experience is not also a financial loss. The coverage can be purchased as soon as an agreement in principle is reached.

TAX OPINION GUARANTEE INSURANCE

Problem: Corporations frequently take a particular tax position to obtain a substantial tax benefit. To support their position, the corporation will procure a tax opinion from a tax adviser (accountant or attorney), that outlines the pertinent tax coded, case law, and the adviser's interpretation. Based on this information, the tax adviser will assess what they feel the likelihood of success to be. These opinions range from "more likely than not", which means that the position has a greater than 50% chance of acceptance; to a "will" opinion, which has a 90% chance of acceptance.

If the IRS (or other non-U.S. regulatory authority) audits the corporation and denies the tax benefit, the corporation may face a substantial loss. The potential for the position to be challenged creates an unwanted liability for the company that utilized the position.

Depending on the company's appetite for risk, they may choose not to pursue an attractive opportunity because they are not comfortable with the contingent liability associate with the tax opinion.

Solution: In order to reduce or eliminate the unwanted contingent liability, RHSB offers an insurance policy that will respond in the event that the IRS successfully challenges the company's tax position.

The policy will pay the loss of tax benefits, as well as interest, gross-up charges and penalties.