



Berkshire Hathaway  
Specialty Insurance

# BHSI Saves M&A Deal With Litigation Buy-Out of Wage and Hour Risk

## Challenge

A private equity firm was purchasing a company with a significant Wage and Hour litigation exposure in California, a jurisdiction that can be particularly difficult for Wage and Hour litigation. The private equity firm was already purchasing Representations & Warranties Insurance from a carrier other than BHSI, but that policy excluded all of the Wage and Hour litigation risk.

Although the buyer felt that the Wage and Hour risk was remote, the potential exposure was significant and materially affected the economics of the transaction. As a result, the buyer sought to have the seller place a significant amount of funds in escrow to cover potential future Wage & Hour litigation costs arising from activities prior to the M&A transaction. Not surprisingly in the current seller-friendly environment, the seller refused to escrow any additional funds.

## Solution

The buyer approached BHSI, through its MGA Partner Risk Settlements, seeking a policy that would provide coverage for the risk of wage and hour litigation in order to avoid this significant escrow deposit that it was seeking. After evaluating the risk, we were able to structure a policy that covered the Wage and Hour litigation exposure for acts that occurred prior to closing. The limit of liability for the policy was equal to the amount of the proposed escrow and the premium was a fraction of the cost of escrow. The policy covered first-dollar losses without any deductible as well as all defense costs.

## Benefits

This specialized policy eliminated the need for the escrow account and required an out-of-pocket premium payment by the buyer that was significantly less than the proposed deposit amount. Similar policies can be used to address other class action litigation risks that threaten to: (a) delay or even derail otherwise viable M&A transactions; or (b) tie up the seller's funds with significant escrow funding requirements. In this situation, the customized and unique policy salvaged an M&A deal that was nearly thwarted due to the target company's Wage and Hour litigation exposure.

In addition, BHSI, working with the class action experts at Risk Settlements, helps companies design settlements that provide cost certainties to the chaotic and unpredictable world of class action lawsuits by evaluating litigation risk and designing coverages that mitigate risk and reduce uncertainties for businesses and during M&A transactions. As specialists in class action settlement insurance, we are able to absorb the risk of any one settlement into a diverse pool of settlements involving various venues, defendants, claims and class types. In every case, it is our mission to resolve class action litigation quickly and efficiently while transferring the risk from the insured.

*For more information about litigation buy-out insurance policy, please contact Robert Underhill of Berkshire Hathaway Specialty Insurance at [robert.underhill@bhspecialty.com](mailto:robert.underhill@bhspecialty.com).*

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