



BHSI Litigation Insurance Policy Saves M&A Transaction

For months, a company had been seeking to sell its business to a private equity firm. While the parties largely agreed on the terms for the deal, they could not agree on the potential liability arising from a class action against the company involving the Fair Credit Reporting Act. The parties' views of the company's potential exposure differed by orders of magnitude. Without a solution for this litigation risk, the buyer was prepared to abandon the transaction.

Prior to seeking an insurance solution, the company was faced with two options: either settle the litigation on highly unfavorable terms or lose the deal. Instead, Berkshire Hathaway Specialty Insurance was able to bring in its exclusive MGA, Risk Settlements, with expertise to find a solution that worked for all.

Within the time constraints of a fast-moving M&A transaction, Risk Settlements together with Berkshire Hathaway Specialty Insurance worked expeditiously to perform quantitative and qualitative analyses of the risk and design a solution that could meet both parties' financial, legal and business objectives. The litigation buy-out insurance policy, issued by Berkshire Hathaway Specialty Insurance, provided insurance for the first dollar of loss including payment of all litigation costs arising from the class action. The cost to the company was far more attractive than an unfavorable settlement and the policy ended the disagreement over the valuation of the class action.

With the litigation buy-out insurance policy in place, the company solved the existential known risk arising out of the class litigation and was able to complete its sale to a private equity investor on a timely basis. After the deal, the company's insurance broker stated: *"It was a pleasure working with BHSI. They quickly analyzed the class action litigation that was holding up our M&A transaction and... issued a litigation buy-out policy, without which, the transaction would have been lost."*

For more information about litigation buy-out insurance policy or a class action settlement insurance policy, please contact Robert Underhill of Berkshire Hathaway Specialty Insurance at robert.underhill@bhspecialty.com.

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