



Transactional Risk Insurance
FAQ - FREQUENTLY ASKED QUESTIONS
Pending Litigation

1. What is an example of a successful placement?

Pending Litigation Insurance Example: Buyer Wants to Acquire Company “A” but Seeks to Avoid the Litigation Risk of a Pending Lawsuit Against Company “A”

- Situation: Company “A” sells heavy equipment built to specification. It has been sued by a customer that has filed for bankruptcy alleging that, because Company “A” breached its contractual obligations, it lost its entire enterprise value and expected stream of income., which would amount to millions of dollars (despite the fact that the allegedly defective equipment was sold for a few hundred thousand dollars and a replacement machine was obtained without additional cost). Sellers could not sell Company A if millions of dollars had to be held in escrow.
- The Hartford Solution: Issued a pending litigation policy to the buyer of Company “A” with a retention amount that Seller could afford to place in escrow, allowing the transaction to close.

2. What is the typical price and structure for pending litigation insurance?

The most preferred structure is that the taxpayer share some of the risk either through (i) a retention, (ii) a coinsurance provision or (iii) reduced limits.

The Retention is a function of the following factors:

- (1) magnitude of exposure;
- (2) probable cost of defense; and
- (3) probable settlement range.

A Retention adequate to cover the probable cost of defense and probable settlement range will generally result in a premium that is at the lower end of the premium range of 5 – 10% of the limits of liability. A lower retention may be offered generally for additional premium.

An underwriting fee is generally charged as part of the acceptance of the quote and/or at time of binding. The underwriting fee is generally approximately ten percent of the rate on line.

3. What is the typical underwriting process for pending litigation insurance?

The initial submission should identify or provide:

- The insured;
- The pleadings (complaint, answer and all court orders) filed in the litigation;
- Any substantive motion papers
- Extrinsic reasons for buying the insurance (e.g., to allow for a litigant to be acquired);
- The procedural status of the case;
- The proposed structure of the insurance; and
- A damage analysis, if available.

Contacts

For general information or forms:

Jacqueline Pierangelo, Administrative Assistant – (212) 277-0724

For more particular inquiries, please feel free to call:

Kenneth W. De Berry, CPA, First Vice President – (212) 277-0441 (reps)

Martin J. Conroy, Esq., Vice President – (212) 277-0449 (specific litigation)

David M. Anderson, Esq., Vice President – (212) 277-0448 (tax)

David S. De Berry, Esq., First Vice President - (212) 277-0489 (managerial)