CAC Specialty™

# USING CONTINGENT RISK INSURANCE TO SAVE DEALS AND MITIGATE OTHER KNOWN EXPOSURES

While RWI has gone a long way in offsetting unknown risks in M&A transactions, tricky known issues and liabilities can throw a wrench in a deal or scare away bidders. Whether you are a buyer or a seller, CAC Specialty can often craft solutions to transfer these risks to insurance markets. Though the types of contingent risk solutions available are as varied as the risks they are built to transfer, the following list helps illustrate the scope of what is possible:

### Litigation Cap or Stop-Loss Policies

» A known or potential litigation exposure is an obstacle to a deal or may scare off potential buyers.

» The seller wants to avoid a dispute about the size of an exposure, the likelihood of the risk, and/or who should bear the risk under the transaction documents.

» A carefully crafted policy can transfer the risk that the liability balloons beyond estimates. (In limited circumstances, an insured may be able to transfer the entirety of the risk.)

### Judgment Preservation

» A party—either plaintiff or defendant—has won at the trial court level but faces years of potential appeals.

» A policy can be placed to insure against the monetary loss from unexpected liability or loss of the award if the trial court is reversed.

### Regulatory Adverse Action

» A corporation has a known or potential exposure to an adverse regulatory action – whether related to permitting, medical billing, data privacy, etc.

» A policy can transfer the risk of the adverse action or determination, facilitating rational behavior in transaction negotiations, the release of cash reserves, etc.

### Settlement Liability

» A corporation plans to enter into a consent decree or settlement agreement, either with plaintiffs in a class action or with the government on behalf of consumers.

» The settlement will be funded by the corporation, but there is a risk that the funds will be insufficient due to greater class participation or costs than anticipated.

» A policy can be placed to cover for a settlement liability overrun. CAC should be engaged before submitting the plan to a judge or formally entering into the consent decree with the government.

### Successor Liability

» An asset acquisition is structured to leave certain known potential liabilities behind with the seller.

» A risk remains that successor may still be found liable by operation of the applicable state successor liability law.

» A policy can be crafted to cover the risk of successor liability trailing to the buyer.

### Enforcement/Collection Risk

» A party has secured a judgment against a defendant, but obstacles remain for enforcement and collection.

» Time sensitivities or other considerations create a need to backstop losses associated with a failure to enforce or fully collect.

» A policy can transfer the risk of a failure to collect to an insurer.

Our team of former corporate litigators craft each contingent risk insurance solution to your specific situation, goals, objectives. The benefits and strategic advantages of these solutions are as nearly limitless as the kinds of risks they can transfer.

### Risk Examples

- Breach of contract and business torts
- ESOP valuation liability for trustees
- Fraudulent conveyance liability
- Environmental liability (leveraging CAC's expert Environmental Team)
- Data privacy and security liability
- Appellate litigation and judgment preservation
- Large personal injury
- Transaction-fallout liability (shareholder disputes, etc.)
- HIPAA or other privacy breach notification liability
- Patent infringement and invalidation disputes
- Trademark, IP, and copyright disputes
- Medical billing liability
- ERISA litigation
- Construction and engineering disputes
- Product liability
- Professional liability
- Toxic torts
- Energy disputes
- International arbitration
- Shareholder dispute
- Class actions
- Settlement liability
- FSLA, Wage & Hour, or other employment liability
- Government investigations

### Solution Benefits

- Save an otherwise sound deal
- Reduce seller's escrow requirements
- Expand the horizon of possible investments
- Gain smoother, faster, and more reliable recourse through insurance markets rather than legacy owners (who may be current executives)
- Enhance terms and price of prospective or current acquisition
- Leverage objective, third-party pricing of risk to facilitate deal negotiations
- Release cash reserves
- Take troublesome liabilities off the balance sheet
- Rate arbitrage by backing capital facilities with insurance
- Credit-risk enhancement
- Public company investor relations
- Solidify IRR for private equity investments to boost fundraising efforts
- Counterparty de-risking
- Hedge against counterclaim risk
- Transfer risk of legal positions of company regarding key regulatory issues
- Solve for regulatory or market inefficiencies regarding reserves, credit requirements, permissible investments, etc.
- Protect against select IP losses

## ABOUT CAC SPECIALTY

CAC Specialty is a risk solutions company of seasoned and proactive senior industry leaders, operating as a nimble and collaborative partner who puts you and your business first. With a knowledge-driven approach informed by data and decades of honed instinct, CAC Specialty brings an innovative vision to insurance broking and structured solutions to solve your risk challenges – from the simple to the previously unsolvable.


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