

Are You Covered?

Insurance Recovery Group

Insurance Recovery

COVERAGE AUDITS

Insurance is an increasingly important and expensive asset for all types of businesses. Companies pay thousands, even millions, of dollars in premium to protect against fortuitous risks of loss to business and property, and to protect against liability to third parties. However, far more often than one might think, when it is time to make a claim, policyholders discover that those expensive policies contain substantial coverage gaps that leave important elements of a claim uncovered.

Reed Smith Insurance Recovery attorneys work with clients and perform "coverage audits" designed to find the most serious gaps in coverage under all forms of insurance policies. Our lawyers work with the client to determine which risks are most important and are most in need of insurance coverage, and then review the potentially applicable policies to make sure that those contracts do, indeed, provide coverage for those risks. If gaps are discovered, Reed Smith attorneys will work with the client and the client's insurance broker to help secure the coverage and develop appropriate policy wording.

Coverage audits are particularly important in the directors' and officers' liability area. Outside directors are becoming increasingly concerned about the availability of coverage and the rising tendency of insurers to try to rescind policies or deny coverage to all directors and officers, based on the allegedly fraudulent conduct of one or more insiders. In order to attract and retain qualified directors, companies are now looking to ensure that the coverage they purchase offers broad personal asset protection in the event of a non-indemnifiable claim or insider misconduct.

Coverage audits are also important in transactions. Acquiring companies should always review the insurance coverage available to the target to determine whether those coverages automatically terminate at the time of the transaction, whether those coverages can be assigned to the purchaser, whether consent of the carriers is needed, and whether the target has the proper coverages in place. Aggregate erosion should also be reviewed because it may be indicative of serious liability problems which have not otherwise come to the attention of the purchaser.

Our experience in coverage audits includes:

- Review D&O coverage for publicly held life sciences company to make sure that adequate coverage was provided for both inside and outside directors, and that the terms and conditions met the needs of the company.
- Review complex D&O coverage for publicly traded company to ascertain that terms and conditions were consistent throughout all layers of coverage and, where differences existed, highlight the practical effects of those differences.
- Review entire insurance portfolio of target company in acquisition. Brought to client's attention that certain exclusions in liability coverage included the target's primary business, leading to potentially significant uninsured exposure for the client if the acquisition went forward.
- Review D&O coverage for a financial institution to determine the extent of coverage available for the client's litigation risks, including potential government investigations.
- Review insurance coverage available to target company in acquisition and alerted client that pursuant to the terms of the deal, making a tender offer would terminate all coverage for the target company on a going-forward basis.
- Review D&O coverage for a high net-worth individual sitting on the boards of several public companies, to ensure that those companies were providing the director with proper personal asset protection.

For more information on coverage audits, call Practice Group Leader **Doug Cameron** at 412.288.4104 (dcameron@reedsmith.com), **Gary Thompson** at 202.414.9418 (gthompson@reedsmith.com), **Jay Levin** at 215.851.8126 (jmlevin@reedsmith.com), **Courtney Horrigan** at 412.288.4246 (chorrigan@reedsmith.com), **Doug Widin** at 215.851.8170 (dwidin@reedsmith.com), or visit www.reedsmith.com.

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