

MANAGING KEY INSURANCE ISSUES *Corporate & Finance Transactions*

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Top Insurance Issues in Corporate/Finance Transactions

- 1 General Risk Management Considerations in M&A
- 2 General Contractual Insurance Requirements
- 3 Additional Insured/Waiver of Subrogation
- 4 Deductibles/Self-Insured Obligations
- 5 Compliance Terms
- 6 Anticipating/Managing Claims
- 7 Bankruptcy
- 8 Representations & Warranties Insurance

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All Deals Involve Risk

- **How Do You Handle Risk?**
 - Assume it (Self-insurance)
 - Transfer it (Contractual)
 - Insure it

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Risk Management Considerations

- **Acquired vs. Acquirer**
- **Partial or Total Acquisition**
- **Same Industry or Diversification**
- **New Geographical Operations**
- **Relative Size of Counterparties**

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Due Diligence Considerations

- **Who Retains Responsibility for Past Liabilities?**
 - What are they?
 - Predecessor company(ies) exposures?
 - Insurable?
 - Do you want to assume them?

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Due Diligence Considerations

- **What Insurance Survives the Closing?**
 - Need for run-off/tail coverages (D&O, Fiduciary Liability)
 - Are current policies transferrable?
 - $1 + 1 \neq 2$
 - Are acquirer's policies adequate to absorb the acquisition?
 - Detailed list/copies of historical policies available to respond to unknowns
 - Assignments: *Tex. Farmers Ins. Co. v. Gerdes*

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