Q&A

with **CONNOR WILLIAMS**
Managing Principal,
Contingent Risk Liability Practice Leader

Contingent Liability: An Evolving and Expanding Market

Q: What is contingent liability insurance?

A: Contingent liability is a broad category of insurance solutions encompassing a variety of legal and regulatory risks including litigation caps, judgment preservation, litigation financing, successor liability, antitrust review and similar scenarios. The threshold question for underwriting begins with a firm handle on the underlying facts (i.e., minimal questions of fact) and an analysis centered on the interpretation and application of the relevant laws, regulations and contractual provisions. Typically, the risk profile is one carrying a significant financial exposure coupled with a low probability of an adverse outcome loss.

Q: Can contingent risk policies be utilized outside of an M&A transaction?

A: Yes. Although contingent liability policies were an outgrowth of other transactional risk insurance utilized in M&A transactions, they have evolved beyond that context. Appetite for risks surrounding litigation, adversarial, regulatory and/or other administrative proceedings is increasing as these areas grow as an alternative asset class for investors. Underwriters prefer submissions that are driven by a motivation other than risk transfer (the exception being judgment preservation opportunities whereby a party seeks to insure an outcome awarded at trial).

Q: Who should know about contingent liability insurance?

A: Corporate plaintiffs/defendants, investment and litigation funds, and law firms alike should be aware of benefits of contingent liability insurance which include certainty around balance sheet liabilities, financial security, the ability to close M&A and other extraordinary transactions, and more.

Q: What are some examples?

A: Many situations may be suitable for coverage, including:

- **Judgment preservation insurance**: protecting plaintiffs that have won significant lower court judgments or arbitration awards from the risk of reversal, award reduction, annulment, or vacatur.

- **Adverse judgment/litigation cap insurance**: protecting defendants in pending or future litigation from the risk of large judgments against them (most commonly used in M&A transactions to ring-fence risks and potentially allow the release of litigation reserves or indemnities, and facilitating financing by providing comfort to lenders who may be concerned about extending funding where a target may be exposed to future significant liability);

- **Successor liability coverage**: protecting a buyer in an asset acquisition from acquiring historical liabilities specifically excluded within the agreement.

- **Litigation funding/principal protection insurance**: protecting capital that dedicated litigation funders (or secondary market investors) have committed to support either a single case or a portfolio of cases.

- **Law firm portfolio insurance**: providing certainty around future contingent fees that law firms will earn based on expected positive outcomes.

Q: What do underwriters look for?

A: Underwriting focuses on two key issues: the likelihood of an adverse outcome and the probable monetary loss associated with such an outcome. Underwriters are looking for clearly identified, defined risks. The threshold questions are whether the underlying facts are established via discovery proceedings or otherwise and whether the outcome turns on a matter of interpretation/application of rules of law, contractual provisions, or some other fulcrum.

Q: What are some characteristics of a contingent liability insurance policy?

A:

- Typically, designed for a loss exposure of at least $5MM
- Bespoke forms tailored to specific triggers for coverage
- Contain minimal exclusions (typically fraud by the insured) and taking actions that are inconsistent with the insured position
- Premiums generally range from 7-15% rate-on-line (one-time premium charge)
- Retentions may apply, depending on the risk/fact pattern
- Cover the total exposure until final resolution, regardless of timing

Q: How does the process work and how can Vanbridge help?

A: We begin each placement process by first understanding our client's specific needs and expectations. We review all available information and supporting documentation to make an initial determination as to whether a matter is insurable. If so, a detailed submission is prepared, including an overview memorandum and supporting documentation (i.e., case filings, memoranda from counsel, and/or outside damages estimates) and marketed to those carriers best suited to insure the specific risk. Detailed coverage and policy negotiations are conducted once a lead carrier is identified.

The Vanbridge team has successfully negotiated coverage relating to litigation, litigation funding, and successor liability, as well as other, more esoteric risks. The team has been active in this space since these products first entered the market and enjoy strong, long-standing relationships with leading underwriters who offer contingent risk coverage. The Vanbridge team consists of professionals with insurance, financial, legal and litigation finance backgrounds, enabling us to structure solutions and offer meaningful perspectives when working with clients and their advisors and presenting risks for coverage.

Working with Vanbridge to obtain contingent liability insurance means getting unmatched client service from a team of industry veterans experienced in structuring creative and tailored solutions for clients. We think outside the box to go beyond existing products and we deliver for our clients with a personal approach that puts the client first.

Interested in learning more? Let's talk.

NANCY RODRIGUES
Managing Principal
C: 917.733.3293
E: nrodrigues@vanbridge.com

CONNOR WILLIAMS
Managing Principal
C: 202.262.9781
E: connor.williams@vanbridge.com

VANBRIDGE
an EPIC® company