

Mergers & Acquisitions

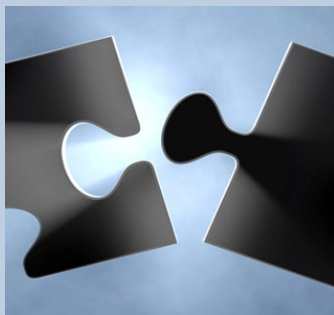
Involved in a merger or acquisition? Involving your legal counsel is automatic, but what of your insurance broker?



At GPL, we can assist you during your due diligence process to review insurance matters that may help in negotiating the purchase price or provide awareness of costs not previously considered.

Irrespective of the size of the deal, whether it be the purchase or sale of a business, assets, liabilities or products, you will invariably be exposed to a multitude of risks, hidden costs, potential gaps in insurance, and liabilities. Such situations can have a negative financial impact on your company or investment.

We understand that during an M&A transaction the seller makes representations & warranties in good faith and the buyer closes the transaction relying on these declarations. However, you may be facing a breach of warranty or unexpected liabilities which will inevitably have a financial impact regardless if you are the seller or buyer. You can also face risks common to such transactions which can threaten the successful conclusion of the business deal.



Consider the following scenarios:

- The two parties agreed upon the terms of sale, but they reach an impasse when the seller wants to leave the minimum amount in escrow but the buyer wants the largest amount possible;
- “Company A” wants to buy “Company B” which benefits from over \$5 million in tax loss carry forward. The buyer is concerned about what impact a subsequent unfavourable ruling by the tax authorities would have on the value of these tax losses;
- A company wants to sell off a manufacturing division and estimates \$2 million in reserve for a contaminated site clean-up; however the potential buyer is concerned that this figure could climb above this estimate once the work actually begins;
- A seller may be faced with the transaction being delayed or stalled due to a lawsuit.

GPL provides its clients with solutions to all these issues, and we welcome the opportunity to be involved even before the transaction begins. Our involvement includes:

- Identifying potential deal-breakers before a commitment is made;
- Proposing solutions to mitigate or reduce risks and liabilities, and to speed up the process when there are contentious issues that need be addressed (e.g. monies in escrow);
- Providing you with figures (where viable) to help you negotiate the purchase price or consider added costs related to the risks and liabilities.

An insurance due diligence will reveal significant liabilities which are not necessarily identified through the legal and financial due diligence. Once the due diligence is completed, we will present our findings, and the options and solutions at your disposal to transfer potential unexpected risks and liabilities of a major transaction. There are many solutions available such as:

- Representations and warranties insurance;
- Aborted bid coverage;
- Tax opinion liability insurance;
- Environmental risk solutions;
- ContinuumSM;
- Directors and officer run-off;
- Successors liability;
- Discontinued products liability protection.

Considering the complexity and the growing number of transactions, the risk and insurance review should be a crucial step in your due diligence. Recognizing risks and exposures, identifying hidden costs and awareness of insurance transfer solutions can provide you with tools to eliminate transactional obstacles, avoid insurance gaps and limit your liability.

At GPL, we can assist and provide you with options to help mitigate the risks associated with asset-exchange corporate transactions.

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