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RIMS Breakfast Seminar

M&A and the critical role of the Risk Manager



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Leadership, Knowledge, Solutions...Worldwide.

Panel Participants

- Patrick Hurley, Insurance Manager – Consolidated Edison Company
- Craig Schioppo, Managing Director – Marsh USA
- Howard Spilko, Partner – Kramer Levin Naftalis Frankel
- David Pellegrino, Managing Director – Marsh USA

M&A activity is once again increasing



A positive sign to be cautiously optimistic

The Risks that can Effect a Successful Acquisition

Letters of Credit / Collateral

Open Litigation

Insolvent Insurers

Fraudulent Conveyance

Reputation Risk

Corporate Governance

HR Function

Organizational Change

Environmental

Key Employee Retention

Long- and Short-term Incentive Comp.

Employee Selection

Surety

Severance Costs

Impaired Credit

Tax Issues

International Transactions

Hidden Liabilities

Purchasing of High Yield Debt

Compensation Alignment to Business Results

Payroll

Retirement & Other Employee Benefits

Under Insured Risk

Materiality

Employment Agreements

Product Recall

Political Risk

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Sources of Capital

Under Funded Liabilities

Impact of Stand Alone Insurance Costs

Economic Risk

CIC Plans/Parachutes

Organization Culture

Coverage Gaps

Prior Indemnity Agreements

Exit Strategy

Deferred Comp.

Initial Steps on Due Diligence Approach

- General Legal
- Financial
- Insurance DD

Legal Findings / Issues

- Product / Warranty exposure
- Compliance with laws
- Existing contract dispute
- Potential known tax issue
- Concern relating to post-closing seller indemnification
- Environmental

Insurance Findings / Issues

- Insurance needs to be in place at Closing since insurance policies for the divested entity will not be afforded once financial close occurs.
- Target's internal cost allocation for insurance is materially below what the cost is likely to be under our program.
- Target has a pension plan that appears to be underfunded.
- Additional collateral required for self insured WC.
- D&O run-off / go forward D&O coverage.

How Insurance can play a role in a M&A transaction

Issue	Insurance Solution	Solutions
Historical D&O Acts	Yes	Run-off and go-forward
Environmental	Yes	PLL Policy
Product Liability known issue	Potentially	Contingent Liability policy
Compliance with laws	Yes	Reps
Lack of post-closing indemnity	Yes	Reps
Collateral Issues	Yes	Yes
Contract Dispute	Yes	Contingent Liability policy
Tax	Yes	Tax policy
Underfunded pension and Insurance Cost allocation issue	No	Retain Risk

Transactional Risk Solutions

Created to address issues that are discovered during the negotiation of the transaction or during due diligence that may prohibit the deal from closing. Common examples include:

- Gaps between buyer and seller in the negotiation of escrows and/or indemnification caps in regard to warranties and tax indemnities.
- Identified tax positions, such as tax structures/tax planning, taken by the seller that the buyer is being asked to assume post close.
- Identified contingencies or litigation involving the seller that the buyer is being asked to assume post close.

Transactional Risk Solutions Overview

- Representations & Warranties Insurance
 - Indemnification obligations can be a frequent point of negotiation between Buyers and Sellers.
 - Buyers are unwilling to only rely on indemnification provisions and are concerned about Sellers ongoing ability to indemnify.
 - Seller & Buyer policies available.
- Tax Indemnity Insurance (for specific tax matters)
 - Tax treatment can have significant impact on M&A Transactions.
 - Current, prospective and past tax positions of Corporations.
 - Tax liability assumed as a result of corporate restructure.
- Litigation Solutions/Contingent Liability Solutions
 - Transferring or capping existing contingent liabilities.

Warranty and Indemnity Insurance

- What Representations & Warranties Insurance covers:
 - Financial losses due to breach of negotiated warranties under the SPA.
- What R&W insurance does NOT cover:
 - Most indemnities (against known matters).
 - Disclosed liabilities.
 - Pension funding liability.
 - Projections of future business growth/forward looking warranties.

Questions



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