PUBLICATIONS

Enforceability of Non-Assignment Clauses in Asset Purchase Deals

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When contemplating an asset purchase deal, the availability of insurance to cover the risk of claims against the business that is being acquired often presents a significant issue. New policies can be purchased, but the new policies may exclude claims arising out of operations that occurred prior to the sale. In many cases, the most appealing option is to transfer the rights under existing insurance policies to the purchaser as part of the asset sale. Whether those rights can be transferred without the consent of the insurer depends upon the language of the policy and applicable law regarding the assignment of rights to insurance.

Most liability insurance policies contain a standard non-assignment or no-transfer clause which provides that the policy cannot be assigned "without the express prior written consent of the [Insurance] Company." The main purpose of the clause is to protect the insurer from a material increase in risk resulting from an ownership change. Courts differ, however, as to how this clause is enforced. The majority of jurisdictions draw a distinction between assignment of an insurance claim for an existing loss and the assignment of the insured's rights under the policy with regard to future losses.

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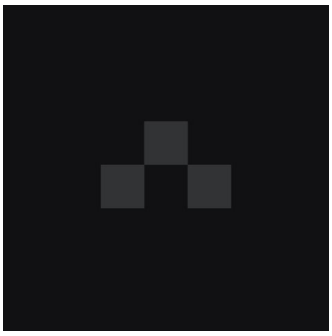

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