

ACQUISITION RISK: INSURANCE GIANT FINED \$60M DUE TO SUBSIDIARIES' ACTIVITY — AND PRIOR ACTIVITY

A giant American life insurer has agreed to pay \$60 million in fines relating to the conduct of subsidiaries it acquired in 2010. The company has also agreed to cooperate with ongoing investigations by New York authorities into conduct by the subsidiaries dating three years prior to the acquisitions.

Has the liability concept of “long-tail toxic tort” now morphed into “toxic takeover”?

Acquisitions Also Merged Past Liabilities

Compliance officers need to be alert to the full history of prior conduct by a potential acquisition target. A U.S. insurance company that acquired two units from an insurance conglomerate in 2010 must now answer to prosecutors' allegations that the two units operated without proper licensure back in 2007 — long before the acquisitions. Prosecutors are also investigating whether the units failed to pay New York premium and franchise taxes — also during the pre-acquisition period.

Delaware-Based, Overseas Sales

The subsidiary units are both based in Delaware, and their sales are mostly overseas, comprising life, health and accident policies sold throughout the world. They are the dominant insurers in Japan and also sell in Central and Eastern Europe, the Middle East and Latin America. Despite the lack of any significant New York sales activity, the investigations were spawned because the subsidiaries solicited insurance business in New York — allegedly without a license — as part of their Global Employee Benefits business.

Seller Denies Any Violation of NY Law

A spokesperson for the seller of the subsidiaries has stated that the company “disagrees that the conduct in question violated the law,” claiming that the relevant statute requires a New York license “only where a foreign insurer issues policies covering New Yorkers.” He added, “There is no allegation, and we are aware of no evidence, that anyone has been harmed by the conduct at issue.”

New York Meetings and Discussions

Besides payment of the fines, the company also reached agreement with New York authorities regarding its ability to continue to conduct meetings via their subsidiaries: “The agreement with DFS makes clear that our Global Employee Benefits business can continue to have meetings and discussions in New York with our multinational clients and prospects about the capabilities of [our] non-U.S. affiliates and partners.”

Aggressive Financial Regulator

The superintendent of the New York State Department of Financial Services (DFS) has announced: “Our department will continue to aggressively investigate and pursue wrongdoing within this industry wherever we uncover it.” The complexities of global subsidiary operations — whether U.S.-based or foreign-based — mandate that Compliance Risk factors be reviewed by Global Risk experts in order to avoid similar scenarios.

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