Insurance for Private Investment Funds

Case studies

Existing contingency prevents liquidation

A private investment fund has completed its investment program and all portfolio investments have been sold. In connection with the sale of one of its portfolio companies, the fund retained the obligation to indemnify the buyer for certain contingent liabilities that the buyer of that company was unwilling to assume. While the probability of the indemnification obligation being called upon is quite low, the fund manager is required to reserve for the full amount of the indemnification obligation until the obligation expires in two years, and thus cannot make a final distribution. As a solution, a *LiquidationGap®* policy may be obtained by the fund to meet the reserve requirement and allow the fund to make a final distribution.

Release of an escrow

The buyer of one of a private investment fund's portfolio companies retained access to an escrow that could be utilized to satisfy certain liabilities identified at the time the transaction closed. While the date for the release of the unused portions of the escrow to the fund has passed, the buyer is taking an extremely conservative view of the liabilities and is unwilling to release the escrow fund. The fund manager wishes to terminate the fund and make its final distribution. Attempts to negotiate a compromise settlement have been unsuccessful. The buyer indicates that it requires a full indemnity for the amounts held in escrow before it will release the funds. The fund and buyer may negotiate the release of the escrow on the condition that a *LiquidationGap®* policy is purchased for the benefit of the buyer to respond in the event the contingent liabilities crystallize into loss to the buyer, thereby allowing the fund to wind up.

Contingent liabilities relating to a settlement

One of a private investment fund's portfolio investments became insolvent 18 months after it was acquired. In contentious bankruptcy proceedings, the fund and its general partner were named in protracted litigation as the controlling persons of the portfolio company. The litigation was settled and releases were exchanged between most parties. There were parties to the litigation, however, that could not be found and did not sign releases. The general partner is unwilling to permit liquidation of the fund because of concerns about claims being made against the fund if these parties ever attempted to claim against it for the released matters. A *LiquidationGap®* policy may be obtained by the general partner to respond in the event that claims are made against it for the released matters, allowing the fund to liquidate.

Outstanding indemnification obligation prevents liquidation

A private investment fund has completed the sale of all of its investments but cannot make a final distribution because of continuing indemnification obligations that it has to the buyers of two sold portfolio companies. Until these indemnification obligations expire, the fund must hold back adequate assets to cover those obligations. A *LiquidationGap®* policy may be obtained by the fund to meet the hold back requirement and allow the fund to make a final distribution.

Ambridge Partners LLC, 1140 Avenue of the Americas, 5th Floor, New York, NY 10036 T: 212.871.5400, W: www.ambridge-group.com