Corporate Optimization and Contingent Liability Management

Haynes Boone's Corporate Optimization and Contingent Liability Management team is a multi-disciplinary group of restructuring, insurance, corporate, and tax lawyers providing the full suite of capabilities to help companies evaluate and implement liability divestiture transactions on both the buy and sell-sides. We work with companies and market participants through all aspects of a contingent liability transaction, including:

- Liability identification and corporate structure analysis
- Diligence, data collection, and liability modeling
- Insurance and indemnity analysis
- Legal restructuring and corporate optimization
- Tax structuring
- Divestiture evaluation and execution, including risk-sharing through M&A deals and asset sales

There has been significant market activity around the development of methodologies to address the overhang of material contingent liabilities. Companies across industries have explored mitigation strategies for liabilities such as asbestos and silica, PFAS, environmental obligations, talc, and other mass tort-type claims, asset retirement obligations, and catastrophic event liabilities.

How Do Companies Manage Legacy and Other Contingent Liabilities?

Managing legacy and other contingent liabilities typically involves evaluating a combination of legal restructuring, insurance recovery, and divestiture strategies. Companies may explore transferring liabilities through, among other techniques, subsidiary sales and/or using structured transactions to isolate and ring-fence liability streams. The right approach depends on the nature of the liability, the company's corporate structure, available insurance assets, and tax considerations. Haynes Boone's team has experience advising on each of these approaches.

Insurance Recovery

Our Insurance Recovery Group handles some of the largest, most complex insurance-related matters in the world. That experience includes achieving nine- and ten-figure recoveries and obtaining precedent-setting decisions in insurance coverage litigation in jurisdictions across the United States. It is through that work, particularly in the long-tail, mass tort coverage space, that our insurance group has developed deep experience in the issues that drive contingent liability transactions (e.g., allocation). Our group has since advised on several market-leading liability divestiture transactions, including a nine-figure asbestos divestiture for a multinational industrial manufacturing company, and the first PFAS divestiture, which was on behalf of a distributor of protective equipment for first responders.

Restructuring

Successfully navigating a contingent liability transaction requires lawyers who understand both the law and commercial realities. Haynes Boone's restructuring lawyers have worked on complex reorganizations from every side of the table and from all parts of the capital structure, and they

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often have done so in the context of high-stakes cross-disciplinary matters. They bring that perspective to corporate optimization and legacy liability management engagements.

Corporate

Haynes Boone's corporate practice is international in scope with more than 150 lawyers. The firm is a globally recognized M&A presence, with strong capital markets and corporate securities capabilities. Our corporate lawyers have deep experience in reorganizations, divestitures, and structuring transactions to address complex business objectives.

We serve as outside counsel to more than 55 public companies — ranging from U.S. small-caps to multinational large-caps — as well as their senior executives and boards of directors.

Tax

Effective tax structuring is an essential component of any contingent liability transaction. Haynes Boone's tax lawyers are located across the United States and abroad and work closely with our restructuring, corporate, and insurance teams from the earliest stages of a transaction to identify and address tax considerations that can affect deal structure and timing.

Representative Contingent Liability Management Experience

Haynes Boone has experience representing both companies seeking to manage contingent liabilities and market participants seeking to divest or transact around them. The following are select representative matters:

- Counsel to a large international industrial products manufacturer in evaluating corporate optimization strategies with respect to asbestos liabilities.
- Insurance counsel for a global manufacturer in its divestiture of legacy asbestos liabilities through the sale of two wholly owned subsidiaries holding those liabilities and related insurance assets, including negotiating a nine-figure settlement with a group of affiliated insurers in connection with the transaction.
- Insurance counsel for a large protective-equipment company in its divestiture of legacy PFAS liabilities through the sale of multiple subsidiaries and corresponding liability streams and insurance programs, including securing a coverage-in-place agreement with the client's lead insurer prior to closing.
- Insurance counsel for a prospective purchaser of legacy asbestos and silica liabilities and related insurance assets of a global protective-equipment company.

Frequently Asked Questions

What is a contingent liability divestiture? A contingent liability divestiture is a transaction in which a company transfers responsibility for a legacy or contingent liability — such as asbestos, PFAS, or other mass tort claims — to a separate legal entity or third party, often in conjunction with the transfer of related insurance assets and cash. These transactions are typically complex and require coordinated restructuring, tax, insurance, and corporate (including M&A) work.

What types of liabilities can be addressed through corporate optimization strategies? Corporate optimization strategies have been applied to a wide range of liabilities, including asbestos and silica claims, talc, PFAS, environmental obligations, and other mass tort-type claims, and asset retirement obligations.

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What role does insurance play in contingent liability transactions? Insurance assets — including historic general liability policies — are frequently among the most valuable assets associated with a legacy liability. Recovering value from those assets, whether through coverage-in-place agreements, commutations, or litigation, is often a central component of a contingent liability transaction.

How is Haynes Boone's team structured to handle these matters? The team is multi-disciplinary, drawing on lawyers from Haynes Boone's restructuring, insurance recovery, corporate, and tax practices. This allows the firm to address all legal dimensions of a contingent liability transaction within a coordinated team structure.

RELATED PRACTICES Insurance Recovery, Restructuring, Corporate, Mergers and Acquisitions, Tax

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