

## American International Group

### Buffett-AIG deal prompts fears over US insurance

Lawyers question whether claims on policies will be met after risks are transferred



Warren Buffett © AFP

JANUARY 23, 2017 by: **Alistair Gray** in New York

Lawyers who act for US companies have raised concerns about whether claims on insurance policies will be met after [American International Group \(http://markets.ft.com/data/equities/tearsheet/summary?s=us:AIG\)](http://markets.ft.com/data/equities/tearsheet/summary?s=us:AIG) struck one of the industry's biggest risk transfer deals with Warren Buffett's [Berkshire Hathaway \(http://markets.ft.com/data/equities/tearsheet/summary?s=us:BRK.B\)](http://markets.ft.com/data/equities/tearsheet/summary?s=us:BRK.B).

AIG, the biggest US insurer by market value, is [paying Berkshire about \\$10bn \(http://www.aig.com/about-us/news-and-media\)](http://www.aig.com/about-us/news-and-media) for backstop protection on workers' compensation and other policies that its corporate clients have purchased.

Depending on the size of future claims, Berkshire could be on the hook for as much as \$20bn worth of insurance payouts.

Lawyers who represent companies in disputes about policy coverage maintain the growing popularity of such arrangements make it more likely legitimate claims will be rejected.

“The concern is we’re going to have to litigate more and more for claims that are clearly covered,” said Robin Cohen, head of McKool Smith’s insurance recovery practice.

Ann Kramer, partner at Reed Smith, said insurance company customers had been “burnt so often” by such deals with claims going unpaid.

A person close to AIG said the agreement “does not impact [AIG’s ability \(http://next.ft.com/content/5b067bac-a13d-11e6-86d5-4e36b35c3550\)](http://next.ft.com/content/5b067bac-a13d-11e6-86d5-4e36b35c3550) to protect the interest of its policyholders and ensure payment of valid claims”.

Under the terms, AIG will retain “sole authority to handle and resolve claims”. That is in contrast to a similar deal AIG reached six years ago when Berkshire’s subsidiary National Indemnity Company (Nico) took on responsibility for handling asbestos-related claims.

However, AIG also said that Nico would this time have “various access, association and consultation” rights.

“The concern for policyholders is what that means in real life,” said John Sylvester, partner at K&L Gates, who specialises in insurance coverage litigation.

“On the surface, it seems less threatening to policyholders than prior deals, which didn’t use this kind of language and Berkshire itself handled the claims. But the proof is in the pudding.”

Richard Mattick, a partner at Covington in London, said: “This deal would merit close monitoring from policyholders to see how claims are handled under the new deal and ensure that policyholders have options for recourse should claims not be handled properly.”

While all insurers have reasons to minimise claims costs, the worry is that the incentives change once risks are transferred to a third party. The reinsurer — in this case Berkshire — does not have the same direct relationship with the policyholder.

“If you’re trying to sell new insurance to the same policyholder, the policyholder has some leverage,” Ms Kramer said.

The agreement is the latest in a series of deals that insurance companies have struck with Berkshire, which is able to use the premium income to make investments — an important part of its business model.

This month, Berkshire agreed to take on as much as [">\\$1.5bn of asbestos risk \(http://next.ft.com/content/a218bc54-d1cf-11e6-9341-7393bb2e1b51\)](http://next.ft.com/content/a218bc54-d1cf-11e6-9341-7393bb2e1b51) from US insurer Hartford Financial Services.

Liberty Mutual, CNA Financial and Equitas, the vehicle set up to take on liabilities that nearly brought down the Lloyd's of London market in the 1990s, have also passed on risks to the group.

The latest agreement covers a chunk of AIG's "long-tail" exposures — policies that pay out over long periods of time, which have long caused problems for the insurer and weighed on its share price. It is about six times larger than the asbestos deal AIG struck with Berkshire in 2011.

"It's disturbing, in a sense, that all roads tend to lead to Berkshire Hathaway for long-tail claims," said Mr Sylvester of K&L Gates. "You might have bought coverage from five different insurers over the years. Now it could be the case that no matter what insurer you seek coverage from, you are forced to deal with Nico."

Berkshire did not respond to requests for comment.

*Additional reporting by Oliver Ralph in London*

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