

Berkley DP Coverage Highlight

June 2014

“Change of Control”

The design industry is no stranger to mergers and acquisitions. The Berkley DP policy provides specific language addressing “change of control” in the event of a sale, purchase or merger involving a policyholder. We think it’s important for you to fully understand these policy terms when addressing your clients’ “change of control” events.

A Berkley DP Policyholder *is Purchased by* Another Entity

When this event occurs, **VII. Conditions, M. Change in Controlling Interest** applies and states:

M. Change in Controlling Interest. If, during the Policy Period: 1. a Named **Insured** merges into or consolidates with another entity such that the Named **Insured** is not the surviving entity; 2. another person or entity acquires the Named **Insured**; 3. another person or entity acquires a controlling interest in the Named **Insured**; or 4. There is a divestiture or sale of more than fifty percent of a Named **Insured**’s assets and/or liabilities; then the coverage under this Policy will continue for the Named **Insured**, but only for **Wrongful Acts** that happen before the date of such event described above. This will apply unless you notify us within thirty (30) days of such event and we issue an endorsement stating otherwise.

Note that **coverage is only provided for your client’s Wrongful Acts committed prior to the acquisition date**. In order for coverage to continue under the policy after the acquisition date, you must notify us within 30 days of the acquisition date. A Berkley DP underwriter must then review the pertinent underwriting information, deem the risk acceptable and issue a specific endorsement stating the terms and conditions for on-going coverage.

A Berkley DP Policyholder **Purchases** an Entity

When this event occurs, **VI. Definitions N, Insured, 9** is applicable and it states, in relevant part:

N. **Insured** means the following: 9. Your newly formed or acquired entities, other than a partnership, joint venture or limited liability company, which you maintain majority interest, provided there is no other similar insurance available to that entity; however: a. Coverage is only afforded for ninety (90) days after you form or acquire the entity or the end of the **Policy Year**, whichever is earlier; and b. Coverage does not apply to **Professional Services** provided prior to the date the firm was formed or acquired.

Note that **coverage is only provided for the acquired entity for the earlier of 90 days or the end of the Policy Year**. You must notify a Berkley DP underwriter and provide pertinent underwriting information to determine if further coverage will be offered. Changes to terms and conditions may be involved.

Change of control events affect many aspects of a design firm’s business; including their PL insurance. When your client experiences a change of control event, we encourage you to reach out to your Berkley DP underwriter as soon as possible to discuss the situation and work on the appropriate policy treatment for your client.

If you have questions about this coverage, talk to a Berkley DP underwriter or Bob Connor at 405-805-6635.

Just another way we are working hard to be, truly, **Better by Design**.