

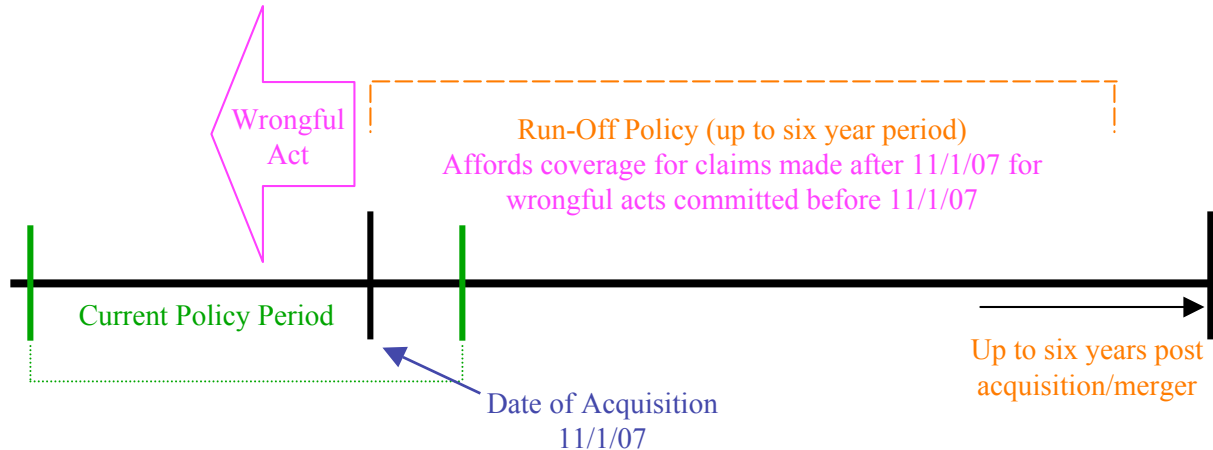


# S.H. SMITH & COMPANY, INC.

## Run-Off D&O Coverage for Acquisitions/Mergers

**D&O run-off insurance provides coverage for claims arising out of wrongful acts that occur prior to an acquisition/merger.**

- The policy will protect the directors & officers against claims made during the run-off period (which is after the acquisition) for wrongful acts prior to the transaction.



### Types of transactions that require the purchase of run-off

1. Any transaction where there is a contractual requirement to purchase directors and officers liability insurance for the acquired entity (non-surviving entity).
  - Mergers
  - Acquisitions
  - Stock purchases
2. The merger agreement will most often require the acquirer to purchase directors and officers liability coverage which will be “equivalent in all material respects” to the expiring D&O policy.

### Types of transactions when purchasing run-off is not required, but prudent

1. Any transaction where the acquirer assumes the liabilities of the company acquired, but is not contractually obligated to buy insurance, and wants to insure that exposure
2. When the acquirer purchases a company and is contractually obligated to indemnify the old board of directors but is not required to provide insurance for that indemnification, such as a company which does not carry D&O
  - Purchasing a subsidiary/affiliate of a company
  - If the acquirer is uncomfortable with the past acts of the acquired company and would like to insure that exposure



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## **Run-Off Exposures**

- **The exposures facing the board of an acquired company are numerous.**
  - Anyone who feels disadvantaged may sue over decisions regarding the sale, or the procedures used to arrive at those decisions, i.e. The valuation of the company or the purchase price.
  
- **Who could sue?**
  - Shareholders
  - Bondholders
  - Employees
  - Regulatory authorities
  - Customers
  - Auditors
  - General creditors
  
- **What types of suits?**
  - Adequacy of transaction
  - Derivative suits
  - Employment related suits
  - Disclosure claims
  - Misrepresentation made by the acquirer against the acquired and its individuals
  - Corporate mismanagement/ breach of fiduciary duty

**For more information, please contact a member of the Professional & Management Liability Team at 860-561-3600.**

**We offer a complete range of insurance solutions for Public, Private and Not-for-Profit companies, as well as Hedge Funds and Financial Institutions.**