



# PRIVATE EQUITY

## The Fine Print: What Regulatory Coverage is Offered in your General Partnership Liability Policy?

In June 2023, Insight Venture Management, LLC agreed to pay a \$1.5 million penalty and reimburse its investors \$865,000 to settle an investigation related to allegations that they charged excessive fees. The news caused many private equity (“PE”) sponsors to wonder how their General Partnership Liability (“GPL”) policy would respond to a regulatory examination, investigation, or ultimately, a settlement.

Regulatory scrutiny is not new for the PE industry. For over a decade, regulators and lawmakers have thrown a great deal of time and energy at the industry to obtain clarity regarding the calculation of fee and expense practices, conflicts of interest, investor disclosures, and portfolio company valuation practices.

A GPL policy provides Directors & Officers Liability, Professional Liability, Employment Practices Liability, and Outside Directorship Liability in one comprehensive insurance policy tailored for PE sponsors. Broadly speaking, GPL policies provide some level of regulatory coverage but the scope of coverage can vary drastically from policy to policy. An off-the-shelf policy typically provides coverage for defense costs incurred in connection with a regulatory investigation, but may limit coverage to only insured persons (executive and/or employee) and/or require there to be a written formal investigative document received. A policy that has been amended to include more comprehensive language will typically extend coverage to the PE sponsor and incorporate coverage for “informal” investigations. In addition to defense costs, coverage may be available for settlements resulting from such regulatory investigations, depending on their characterization and the breadth of the GPL policy’s provisions.

An “informal” investigation by the U.S. Securities and Exchange Commission (“SEC”) and other regulatory bodies can last months, or even years, before becoming a “formal” investigation. This means that a PE sponsor may incur significant defense costs before an insurance policy responds. It is also often hard to determine when an investigation goes from “informal” to “formal”, so language should be negotiated to ensure that coverage is triggered at the early stages of an investigation, irrespective of whether the investigation is “formal” or alleges a “Wrongful Act.”

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In a time of ever-changing regulatory oversight, the importance of reviewing the regulatory coverage afforded in a GPL policy cannot be overstated. The distinction between an off-the-shelf GPL policy and one tailored to provide comprehensive regulatory coverage, can be drastic and quite costly in terms of when/if/for whom coverage is available. However, that doesn't always mean it costs more. With an experienced insurance broker that specializes in the PE industry, PE sponsors can avoid coverage gaps and maximize their potential insurance recoveries, all while keeping insurance premiums down.



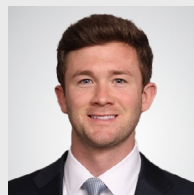
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