VANBRIDGE
an EPIC company

REPS & WARRANTIES INSURANCE

2023

An In-Depth Reference Guide
Outlining the Process from Beginning to End

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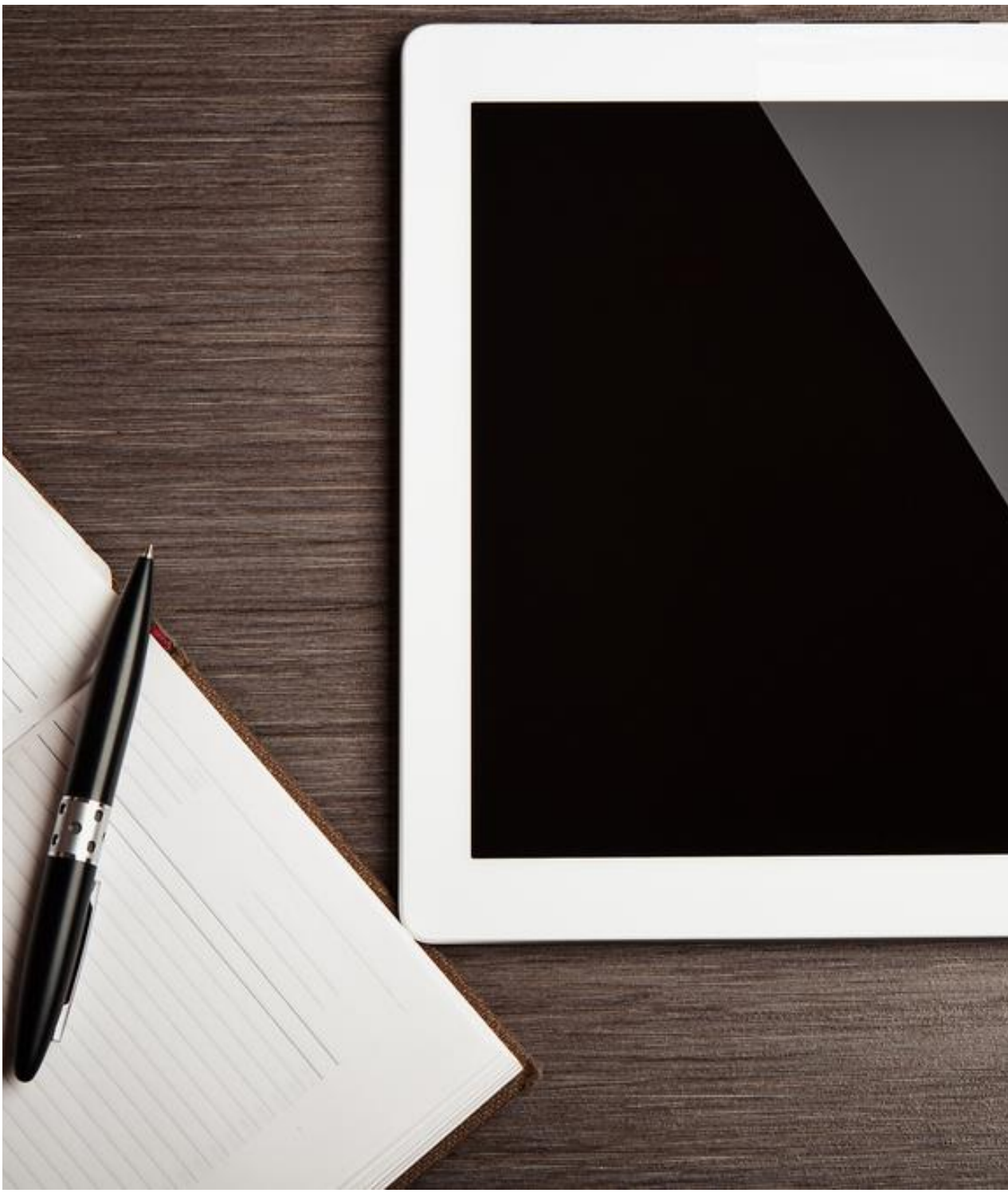
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Introduction

Reps & Warranties ("R&W") insurance is a transactional risk solution that protects the Insured (typically, the buyer) from losses due to breaches of the seller's representations and warranties in the transaction agreement. Each policy is bespoke, with coverage ideally mirroring the reps and warranties in the transaction agreement, so long as it is fairly balanced. To achieve broad coverage, buyers must conduct appropriate due diligence to validate the seller's reps and warranties and recognize that the policy is not intended to cover items identified in due diligence, noted as exceptions to the reps or addressed by specific indemnities. Other insurance solutions, such as tax or contingent liability policies, can be viable risk-transfer solutions for known matters excluded by R&W insurance.

R&W policies allow both buyers and sellers to reduce exposure and realize the benefits of the transaction.

Benefits to Buyer:

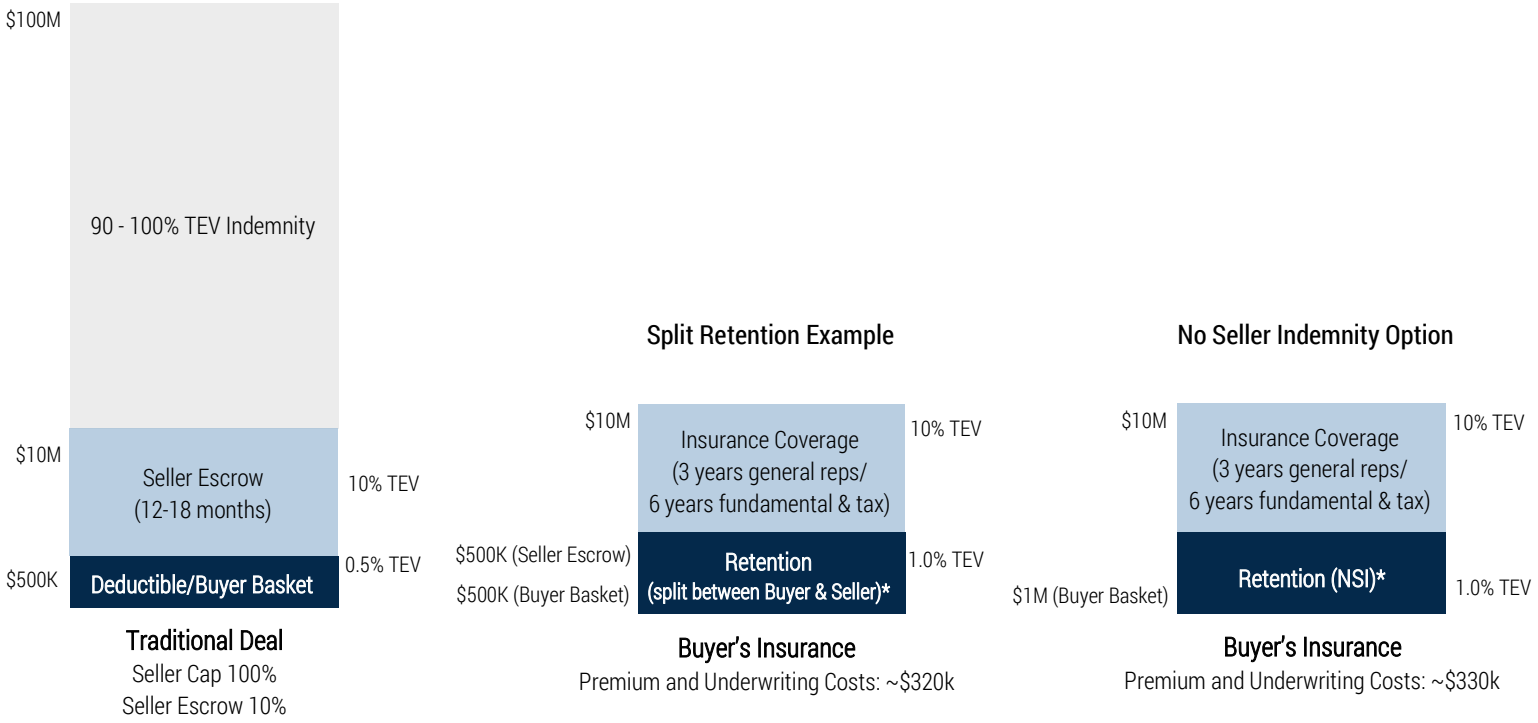
- Buyer secures more protection (amount and duration) from an A-rated counterparty than the
- Seller may be willing to provide
- In a competitive situation, the Buyer's bid is superior to other options that require Seller indemnity
- Provide recourse in deals with a no seller indemnity structure
- Protects the relationship between Buyer and Seller post-transaction
- Cost of insurance absorbed into transaction value
- Protects equity investment in the Target company

Benefits to Seller:

- Increased and immediate liquidity
- Clean exit
- Obtain best bids by maximizing indemnification
- May improve bid values by participating in cost of policy

Structuring and Process

Typical Structuring for Buy-Side R&W Deal, assuming $100M total enterprise value "TEV" transaction

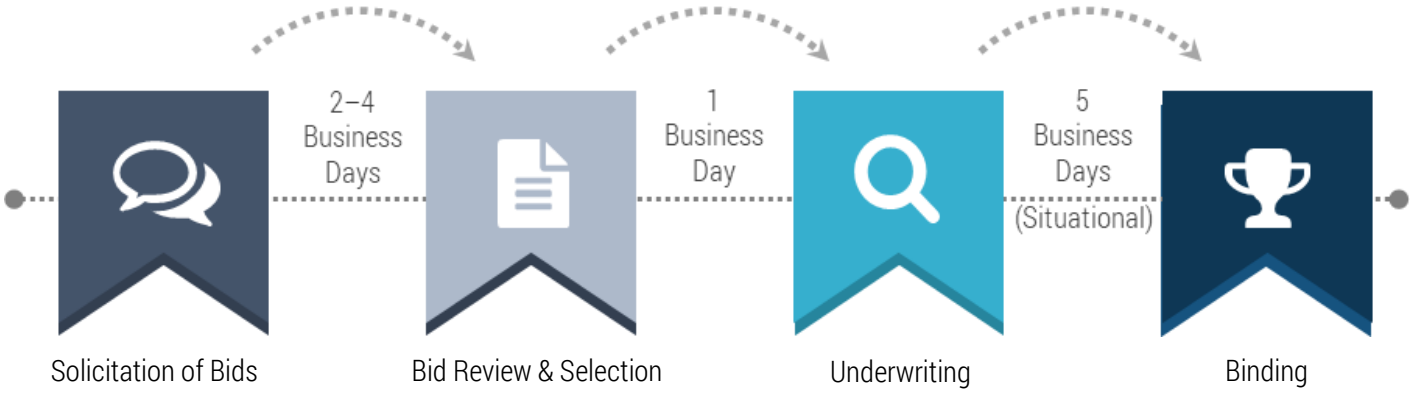


In the case of fraud or a fundamental rep breach the Seller is typically responsible for 100%

*The retention typically drops down to equal the lesser of (i) 0.5% TEV and (ii) 1.0% TEV less the amount of Loss then incurred or reasonably expected to be incurred that is not excluded under the Policy resulting from, arising out of, or related to Claims incurred on or before the Drop-Down Date (12-18 months post-close).

The above represent a typical program structure. On buy-side policies, other structures can be explored and higher limits can be considered for all coverages. The majority of programs contemplate limits that are 10% - 20% of TEV. Alternative structures include insuring to the full TEV for true fundamental reps. Tax gross up coverage, an additional payment to the Insured to offset the taxes due upon the receipt of insurance proceeds arising from a paid loss, can also be accounted for in the limits purchased.

Process, Timing & Required Information



Phase I – Solicitation of Bids (2-4 business days)

1. Execution of NDAs/Joinders/Confidentiality Agreements
2. Required Submission Information: latest draft of the PSA/APA, the target company's most recent financial statements, and any offering document, management presentation or CIM prepared in connection with the transaction. Carriers are also interested in what third-party reports will be commissioned and the advisors assisting on the transaction.
3. Vanbridge approaches the markets to obtain non-binding indication letters ("NBILs"). NBILs are typically valid for 30 days.

Phase II - Bid Review and Selection (1 business day)

1. Once all insurers respond, Vanbridge delivers a detailed summary of options and provides its recommendation.
2. A decision is made as to which carrier(s) will write the deal. Committing to the carrier requires executing their non-bindable indication letter or expense agreement and agreeing to pay their non-refundable diligence fee. Many carriers will accept payment of the fee at binding of coverage; if the deal fails to sign, however, the carrier's diligence fee remains due. The diligence fee covers the carrier's expenses to underwrite the transaction, which often includes legal fees due to outside counsel representing the insurer.
3. Execution of Non-Reliance and Hold Harmless letters are typically requested by the client's advisors.

Phase III - Underwriting (5 business days - situational)

1. Required Information: all third-party diligence reports prepared in connection with the transaction (legal, financial/tax, environmental, IP, IT, insurance, etc.).
2. Access to data room for underwriters and their counsel.
3. Underwriters require 2-3 days to digest the information provided.
4. Underwriting Call: the underwriting call is a culmination of the insurer's analysis of the provided diligence information. Lasting 2 hours, it includes the client, the client's legal counsel, and third-party diligence advisors. An agenda is circulated in advance requesting a summary of the transaction, the investment thesis and an understanding of the valuation as well as detailed questions derived from review of the diligence materials (data room and advisor reports). Aside from lead legal counsel, third-party advisors are scheduled for pre-set time blocks rather than requiring them to sit for the full call.
5. Follow-up Information and Calls: after the diligence call, additional information will be requested and follow-up responses may be required on open items. Markets are very flexible in accommodating call times and the speed of the process is generally dictated by how quickly the sought-after information is provided versus how quickly the markets can react once they've received it.
6. Policy Negotiation: carriers typically turn a first draft of the policy before the diligence call. Exclusions resulting from diligence are common, but they are used as "placeholders" for open diligence questions and narrowed or removed upon receipt of satisfactory responses. The intent is for policy negotiations to run concurrently with the diligence process. Markets are quick to review redlines provided by the client.

Phase IV – Binding (1 business day)

1. Required Information: at signing/policy inception, a copy of the final executed agreement and an executed no claims declaration ("NCD") letter from the insured (affirmation that the insured has no knowledge of a breach) are provided to the insurer. A virtual copy of the data room and complete closing set are required within 30 days of closing.
2. Payment of premium and surplus lines taxes: depending on the carrier, the client will have up to 30 days to remit premium payment.
3. The final policy will be issued once the underwriter has received the data room, closing set and any additional deal-specific subjectivities.

Coverage Considerations and Mechanics at Signing or Closing

Binding at Signing: Incept coverage at signing means the signing reps are covered such that if a breach of the signing reps is discovered prior to the closing, the breach is covered by the policy. Binding at signing does not protect against interim breaches ("new" breaches that both occur and are discovered by the insured after signing). Responsibility for such matters is expected to be negotiated between the Buyer and Seller prior to closing. To cover signing reps, most due diligence must be complete. Carriers allow for interim periods up to 120 days without charging additional premium. In some cases, interim breach coverage can be purchased; this is dependent on the deal size, target company, diligence and length of the interim period. When coverage effects at signing, a 10% "deposit" of the premium must be paid, with the balance due at closing.

Binding at Closing: Depending on whether there was a separate signing or whether the transaction was a simultaneous sign/close, the reps provided at either or both times may be covered subject to the receipt of the insured's NCD as of the respective date. Where the signing occurred first, underwriters will want to see that the agreement contained an ongoing disclosure mechanism and that the sellers brought down the reps at closing. A short bring-down call with the carrier is scheduled a day or two before closing.

Procedurally, immediately prior to binding, the insured will provide the NCD to its broker to be held in escrow pending confirmation of closing. Once closing is confirmed, the NCD and final executed copies of the transaction documents are released to the carrier. The carrier approves these final versions and releases a binder. Depending on whether the transaction was a separate or simultaneous sign/close, the subjectivities will differ. Post-closing, all subjectivities and the final premium are due.



Vetting a Deal

The Diligence Process

Buyer Based Policy

Underwriters expect that the buyer conducted independent, thorough due diligence, and will provide third-party reports around legal matters, accounting and tax diligence, environmental reviews and any other operation-specific risks of the target. In corporate transactions, it is common to see due diligence reviews conducted "in-house;" if that is the case, the buyer should prepare written summaries of their findings for the underwriters.

Seller Based Policy

Underwriters will focus on the reps negotiation process and the level and extent of the buyer's requests and the seller's responses thereto. In addition, underwriters may conduct their own independent reviews of the target's financial statements and tax returns. If any reports were prepared on behalf of the seller in anticipation of the transaction, those should be provided to the markets.

In all placements, underwriters require access to the data room and to the insured's advisors. A comprehensive due diligence call among the carriers, their counsel, the insured and its advisors will be conducted once the insurers have reviewed all reports, the data room, and the latest version of the agreement and disclosure schedules. Policy negotiations tend to run concurrent with the diligence process; however, the most critical negotiations occur after the diligence call and focus on proposed exclusions.

Impacts of Seller Rollovers

Seller participation in the go-forward company is generally a favorable deal dynamic. Rep & Warranty carriers will underwrite coverage as usual so long as the Seller's rollover represents <30% of the go-forward ownership. When the Seller represents 30-45% of the go-forward ownership, carriers request a Seller No Claims Declaration upon binding coverage. The No Claims Declaration is a statement signed by the Seller acknowledging that their deal team has no knowledge of a breach of a rep as of signing/closing. In the event of a breach, and therefore a claim to the policy, the carrier will verify that both the Buyer and Seller had no knowledge of the breach as of signing/closing. If the carrier successfully establishes that the Seller had knowledge, loss would be paid to the buyer on a pro-rated basis, equal to their ownership stake in the company. Rollovers exceeding 45% typically pro-rate Company-level loss automatically.

Motivation for Insurance

Underwriters appreciate the dynamics driving the use of R&W insurance. Is a buyer trying to differentiate itself in a bidding process? Is the seller seeking to liquidate and walk away with no post-closing indemnity obligations? Does the buyer utilize R&W insurance on all deals? Routinely, parties pursue a no seller indemnity construct when utilizing R&W insurance. Carriers are comfortable with this structure so long as it is clear that the buyer has been provided sufficient information about and access to the target and the agreement is sufficiently balanced.

While either a buyer or seller can be the insured under these policies, ~99%[1] of deals placed are buy-side policies. In the event of a claim, the buyer deals directly with the carrier and controls the claim process while significantly limiting the seller's involvement. This satisfies the seller's goal of limiting or eliminating post-closing indemnification obligations and the buyer's goal of having sufficient protections against losses from a breach.

Limits, Retentions and Pricing

R&W policies are generally priced between 3.0%-4% rate on line ("ROL") based on the limit of liability purchased (often ranging between 10-20% of the transaction value). For example, a $10M limit will price between $300K-$400K. This is a one-time premium for a multi-year policy. For large transactions requiring significant coverage, multiple insurers may participate in a "tower" of coverage. These carry a lower blended rate on line.

In addition to the premium, a non-refundable underwriting fee is charged. This fee is an additional cost and ranges from $40k-$50k for the primary carrier (typically with an additional $5k per excess carrier). Surplus lines taxes and fees vary by state and are in addition to the premium.

The typical retention is 1.0% of the transaction enterprise value. The retention amount may be lower on large transactions ($500M+) or higher on smaller transactions ($25M and below); the target's class of business and underlying business insurance program could also impact the retention size. Insureds choose if the retention should be split between the buyer and seller in the form of a buyer basket/deductible and seller escrow construct or borne solely by the buyer.

Policy Term

The policy will track the survival of the reps in the underlying agreement up to a maximum of 6 years. Typically, the general reps are insured for 3 years while fundamental and tax reps are covered for 6 years. It is possible to obtain a policy covering all reps for 6 years.

[1] Vanbridge R&W Survey (February 2020)

Basic Considerations and Questions

The Target Company's Operations

Carriers will readily underwrite all types of operations; however, some industries are more difficult to place. These include some healthcare targets (heavy government payor exposure), financial institutions (full service banks, pay day lenders, crypto currency), upstream energy and to varying degrees, targets in the cannabis industry. Clients in these industries may have fewer options with more conservative terms as well as potentially critical exclusions (i.e., compliance with federal law, anti-money laundering, product liability, import/export compliance). Operations where the majority of the target's client base consists of government entities (domestic or foreign) can also be challenging as the legal framework regulating government contracts is an area many markets avoid.

Robust and thorough diligence is expected by the markets in all transactions. Carriers outline heightened risks and exclusions in their initial indications. Heightened risks are matters where the carrier expects fulsome, clean due diligence. A gap in diligence or identified issues will rise to the level of an exclusion. Exclusions on an indication letter should be narrowed as much as possible at the outset as underwriters are unwilling to amend or remove in the diligence process. Exclusions arising out of diligence should be carefully negotiated to address the diligence finding and nothing broader.

Transaction Size

On smaller transactions seeking low limits (<$25M TEV), some markets may decline submissions due to minimum limit/premium thresholds or simply because of the high volume of business they are handling. Industry minimum limits are generally $3M and minimum initial retentions are $200K. Premiums for $3M limit range from $100K-$150K premium plus a $40K - $50K diligence fee. Carriers continue to support smaller transactions, with some now quoting competitive $1M or $2M limit options.

For large transactions, there is an estimated $2B+ in capacity for any single deal. Parties should begin the insurance placement process early in the transaction so the broker has sufficient time to arrange market capacity.

Paying for Coverage

This is typically part of the negotiation between the buyer and seller. Because the insurance ultimately benefits the seller, sellers often contribute to the cost (50%-100%); however, buyers in a competitive bid situation may assume the full cost if that ultimately allows them to win the bid.



Appendix

Key Underwriting Considerations

1. Audited financial statements: Underwriters prefer transactions where the target has audited financial statements. Where the statements are not audited, the rep should accurately reflect the standard of review presented in the financials. Reps that elevate the standard beyond "GAAP" are heavily scrutinized. While markets will follow materiality scrapes as respects breach and loss, some will not follow the scrape as to breach on the financial statement rep.

2. Tax Considerations: Sales and use tax compliance is highly scrutinized, particularly where the target's operations span a multitude of states and the diligence suggests the target should have been remitting taxes in specific states where it did not do so. In addition, the classification of employees (Independent Contractors, exempt vs non-exempt) is an area of concern and will likely result in an exclusion if non-compliance is identified and the number of non-exempt employees is significant.

3. Environmental Exposure: For environmentally sensitive operations, independent environmental diligence (Phase 1s) is recommended. Known environmental risks will be excluded under a R&W policy. The best option to protect against any post-closing (and ongoing) environmental risk is a separate environmental program. It is common to see buyers purchasing the two policies together and having the R&W policy exclude the environmental risk altogether.

4. Intellectual Property: Where IP is the driving force behind a transaction, robust and thorough IP diligence will be expected (including a separate IP report). As a starting point, the agreement's definition of IP should not include patent applications or provisional patents and should contain knowledge qualified representations as to infringement (by or against the target). Further, any patented technology should have been used by the company for at least 2 years.

5. Foreign exposures: Foreign exposures are often treated as "heightened risks". Specifically, underwriters expect the target to have robust internal training procedures instructing employees on how to avoid FCPA violations. In addition, tax and compliance with employment laws and regulations will be areas of focus. Written local due diligence (in English) should be procured on the topics of legal, financial and tax for any material foreign jurisdictions. Only where the operations are truly insignificant in the context of the target's complete operations, will a cursory review of the exposures suffice for underwriting purposes.

6. Litigation: Existing litigation matters are excluded under R&W policies. Litigation history is reviewed to ensure there are no systemic issues with the company's operations. Other solutions, notably contingent liability policies may be implemented to address litigation risks.

7. Reps acting as "financial guarantees": Reps effectively acting as guarantees of specific amounts (i.e., the collectability of A/Rs, "salability" of inventory and the amounts of tax attributes (NOLs)) are excluded items.

8. Product Liability: Underwriters will require evidence that the target carried adequate product liability & recall coverage historically and will continue to do so going forward. Review of both the historical claims data and adequacy of the insurance will determine if an underwriter is comfortable providing coverage. Adverse claims history or insufficient underlying coverage will prompt an underwriter to either exclude product liability & recall coverage or agree to sit excess and no broader than such applicable underlying insurance or propose a separate retention specific to product liability. If sitting excess and no broader, the reps policy will not "drop down" to replace gaps in the underlying insurance program.

9. Cyber Liability: Similar to product liability, underwriters may exclude or require certain coverages or limits of underlying cyber liability insurance from the outset. Adverse claims history or insufficient underlying coverage will prompt an underwriter to either exclude cyber coverage or agree to sit excess and no broader than such applicable underlying insurance or propose a separate retention specific to cyber. Target companies with significant PII will likely face a cyber exclusion, regardless of the underlying insurance program. Biometric privacy exposure and compliance will also be scrutinized.

10. Condition of Assets/Inventory: Thorough due diligence in the form of a written report, typically by a third-party expert, is expected to verify the condition of facilities/plants/fleet. Carriers will expect an inventory count to take place pre-close to confirm the condition and valuation of inventory.

11. Material Customer/Supplier: Claims alleging the loss of a material customer or supplier are on the rise. Loss calculations are significant as they often contemplate a multiple. Carriers will require notes detailing the results of the Buyer's calls to top customers and suppliers prior to signing/closing. Call efforts should reflect the breadth of the rep, assuming the majority of the top 10 customers were called by the buyer or its advisors in the event the rep speaks to the strength of the top 10 customer relationships. Internal controls around the administration of contracts should be completed, along with review of the contracts themselves.

12. Regulatory Compliance: Breaches of regulatory reps have been on the rise. Underwriters will look for robust compliance programs. Compliance with labor laws and, in particular, laws regarding the classification of employees, is critical. (FLSA, wage & hour)

13. Balanced Agreement: Underwriters will exclude off-market language in purchase agreements. There are varying degrees of agreement amendments from inserting knowledge qualifiers or clarifying written versus oral to deeming certain parts of a rep deleted for purposes of the policy.

Negotiating the Form

Critical Terms and Definitions

The R&W form is a bespoke policy. Underwriters will expect and entertain suggested revisions proposed by counsel. The language and comments listed below highlight the most crucial components of the policy and reflect wording that is commonly accepted by carriers.

1. Definition of Actual Knowledge: this definition should be as tight as possible as it establishes the basis for excluding coverage. Most markets will define it as an "actual conscious awareness" of the particular facts and circumstances underlying the breach AND that such facts and circumstances constituted a breach.
2. Defining Knowledgeable Parties: this list should consist of the key deal team members and should not include third party advisors.
3. Materiality Scrape: carriers will generally accommodate scraping materiality as to both Loss and Breach so long as the agreement provides for these scrapes and so long as the underwriters are comfortable that the seller's disclosure was made without the scrape in mind. If there is concern with the level of disclosure, a diminimis per claim threshold may be imposed.
4. Definition of Breach: should encompass inaccuracies in the R&Ws and, if materiality scrapes are being followed, such language should be incorporated into this definition.
5. Definition of Loss: should include all direct damages resulting from the Breach. Regarding enhanced damages, most carriers will accommodate this request by removing exclusions for such damages. Similar to Breach, if the carriers are following a materiality scrape, that concept will be incorporated in this definition. Lastly, Loss will be offset by any other recoveries "actually" received by the insured.
6. Exclusions: standard exclusions in all forms include actual knowledge of breaches, purchase price adjustments, known or disclosed matters, and underfunded pension plans.
7. Subrogation: the policy should expressly provide for subrogation against the seller only in the event of fraud. Carriers require that the Insured not limit their subrogation rights in the event of fraud.
8. No Claims Declaration: a tightly worded NCD will simply state that the transaction documents are true and complete copies of the final agreement between the parties, that the underwriters have received all final copies of the diligence reports and, most importantly, that the Knowledgeable Parties have reviewed the reps and warranties and know of no breaches as of the inception date of the policy.
9. General Cooperation Provisions (pursuing insurance recoveries): policies contain several pages outlining the claims process and each party's responsibilities in the event of a claim. Most notably, an insured must act as if uninsured and must pursue all possible recoveries in the event of a claim (and support the insurer in any subrogation efforts when a claim has been paid).

The Diligence Call

Sample Agenda Questions

Assuming a buy-side policy, the purpose of diligence calls is to provide the insurer comfort with the due diligence process. The underwriter will look to see that the seller cooperated with information requests and making disclosures, and that the buyer and its advisors identified any relevant risks and believe the reps to be accurate.

The buyer and its lead counsel should plan on participating for the full ~2-hour call. Legal specialists and other advisors dial in for their assigned sections. A timetable and agenda will be provided in advance of the call. If the response to a particular question is in process or unknown at the time of the call, it is acceptable to provide the response at a later time; the underwriter will circulate a list of follow up questions post-call.

Diligence calls follow a similar pattern: the calls begin with basic questions regarding the history of the transaction, the business rationale for the transaction and the thought process leading to the use of insurance. Additionally, there will be discussion regarding how the deal was transacted: how heavily the reps were negotiated, what disclosure obligations the seller has, what issues were particularly contentious and/or heavily negotiated, etc. Following this general background, the underwriter's questions focus on substantive operational issues and the diligence process. This portion of the discussion will flow through the following categories: Organizational, Environmental, Financial & Tax, Employee Matters, Legal Issues, Intellectual Property/IT and COVID-19.

The following are sample questions taken from buy-side transactions. While not exhaustive of the questions asked, this list provides a general sense of how underwriters frame their discussion. Depending on the subject matter, the insured's advisors will be expected to provide responses (legal counsel, financial advisors, etc.) along with input from the insured.

General Background

1. Please provide an overview of the business of the Company.
2. General overview and history of the business, including scope of operations and locations.
3. What attracted the buyer to the business? Please discuss the buyer's plans for the business post-closing. Will management / key employees be retained?
4. Please give an overview of the timeline and process for the transaction.
5. Please give an overview of the disclosure exercise performed and the general flow of information. Was there a diligence request list or tracking schedule? Are there any material diligence/information requests outstanding?
6. Please discuss the current management team. Will the management team and employees stay on following the closing? How many employees does the Company employ and where are they located? Any plans for layoffs? Does the Company have a general counsel function? Are finance, accounting, import/export functions centralized?
7. Please discuss the process for determining the purchase price.
8. Please give a brief overview of the key issues negotiated between the parties. Are any provisions of the purchase agreement still being actively negotiated?
9. Please describe the reason(s) for obtaining R&W insurance. What history does the buyer have with this product? Have any claims been made on previous transactions that the buyer was involved in?
10. Please advise any exposure to the Russia/Ukraine conflict.

COVID-19

1. How has the Company been impacted by COVID?
2. Has the transaction or your valuation been impacted as a result of COVID? Any adjustments to financials or projections as a result of COVID?
3. Have there been any impacts on customer/supplier/distributor relationship? Please speak to any supply chain issues affecting the Company as a result of COVID.
4. Were significant changes made to the operations of the business?
5. Has the Company endured any workforce shortages or other material disruptions?
6. What steps has the Company taken to ensure business continuity and the safety of its employees?
7. Did the company apply for and receive any PPP Loans or government assistance programs? If yes, have PPP funds been forgiven?

Legal and Financial Matters

1. Were lien/litigation/judgment/bankruptcy searches conducted on the Company and its subsidiaries? Were state and county level searches conducted in the jurisdictions where the Company conducts operations? Do the disclosure schedules adequately reflect all debt and liens? Discuss what debt is being paid at closing and which debt is remaining in place.
2. Discuss status of disclosure schedules. Why were certain disclosures removed between drafts?
3. Discuss the Company's history of litigation. Any material concerns?
4. Has the Company been subject to any recent (past three years) employment-related governmental inquires, audits or investigations (e.g., Occupational Safety and Health Administration (OSHA), Department of Labor (DOL), Immigration and Customs Enforcement (ICE), Internal Revenue Service (IRS)?
5. Describe scope of financial diligence. Discuss preparation of financial statements on stand-alone basis (relevant where the target is a subsidiary or division and financial information was extracted from parent level audited financials).
6. Please describe any procedures implemented to verify that there are no undisclosed liabilities that need to be scheduled.
7. Describe any limitations, deficiencies or weaknesses in the internal controls of the Company identified. Describe the diligence done on accounts payable and accrued expense.
8. Discuss any deviations from GAAP in the target's financials.
9. Discuss the Company's inventory procedures and reserves. Will there be a physical inventory conducted in connection with closing?
10. What work was performed to assess EBITDA and what were the major adjustments, if any, identified?

Product Liability/Warranty/Recall

1. Discuss target's history of product warranty and product liability claims. Any concerns? Does the target have adequate product liability insurance? What insurance will be in place going forward?
2. Discuss the warranties offered by the target. Does the Company maintain a warranty reserve, and, if so, is it adequate? Does the target have coverage for warranties and recalls?
3. Discuss your comfort with the adequacy of the Company's current insurance coverage.

Regulatory and Government Contracts

1. Discuss your diligence concerning the Company's compliance with laws and regulations. Any concerns regarding kickbacks, FCPA (or similar laws), OFAC, anti-dumping, import or export compliance, customs and trade compliance, etc.? What procedures/policies does the Company have to comply with the aforementioned?
2. Discuss open voluntary disclosures.
3. Discuss status of regulatory diligence. Any open issues or concerns?
4. Any material permits or licenses required for the business? Any issues or concerns with the permits or licenses required?

Tax

1. Please describe the tax diligence performed for the Company and by whom the diligence was performed.
2. Was a materiality threshold used when conducting tax diligence? Were any material tax exposures identified?
3. Please discuss the structure of the transaction (including any pre-transaction restructuring) and the tax consequences thereof.
4. Did you identify any federal income tax, state income, franchise or gross receipts tax exposure?
5. Did you identify any state sales and use tax exposure? Who handles sales tax filings for the Company? How does the Company determine the jurisdictions in which sales and use tax returns are required to be filed? What procedures are in place for documenting exempt sales?
6. Did you identify any employment tax exposure? Who handles employment tax filings for the Company?

Operational

1. Please discuss major customers and contracts with such customers (including any disputes).
2. Please discuss major suppliers and any contracts with these suppliers.
3. Are there any material contracts up for renewal? What is the status?
4. Were onsite visits conducted? Are you satisfied that the facilities and key equipment is in working order for the current operations?
5. What due diligence was performed on the effectiveness of the sales force?

Intellectual Property and IT

1. Describe your diligence on the Target's IP assets.
2. Please confirm that all material software licenses are either in the Company's name or consents have been obtained to transfer the licenses per this transaction.
3. Have you confirmed that all employees involved in IP development for the target signed IP assignments with present assignment language?
4. Is the company's existing IP in the Company name and in good standing? USPTO searches? Any issues?
5. Please describe the steps taken to conduct due diligence on the Target's IT infrastructure for its performance, sufficiency and adequacy for the operations of the business. Were any gaps identified in the Target's technology infrastructure?
6. Does the Target perform regular security assessments such as vulnerability and penetration testing?

Insurance

1. Did you review loss runs for last three years? Please describe the nature of any large or frequent claims.
2. Will all policies be in force as of closing? What additional policies will be obtained?
3. Please outline how prior acts coverage is being maintained for claims-made coverages.

Environmental

1. Were Phase I's review performed for all owned real property and for a facility that houses an UST or where vehicle maintenance is performed?
2. Does the Company have all required operating permits, storm water discharge, air, waste, etc.?
3. Does the Company handle or deliver hazardous waste or materials? Has there ever been a claim on the Pollution Liability Policy?
4. Any environmental compliance issues (hazardous waste data) needing immediate action?

Employment Matters

1. Please describe the general due diligence conducted with respect to employee benefit programs and executive compensation programs? Describe any material findings.
2. Welfare Plan Review:
    a) Please advise whether all basic plan documents (including Summary Plan Descriptions) have been provided and reviewed for the welfare plans and whether they have been evaluated for compliance purposes. Describe any material findings.
    b) Have forms 5500 been properly and timely filed for any plans requiring such filings?
3. Retirement Plans:
    a) Please advise whether all basic plan documents have been provided for the Company's Retirement Savings Plan, and whether they have been reviewed and evaluated for compliance purposes? Describe any findings.
4. Operational Failures:
    a) Have forms 5500 been properly and timely filed?
    b) Have there been any late contributions?
    c) Have there been any testing failures?
    d) Have there been any filings with the DOL or IRS regarding compliance or operational failures?
    e) Other operational failures?
5. Will termination of existing plans be required prior to closing?
6. Severance – Have you received the severance, retention, change in control and similar agreements you were waiting to receive? Are there any Section 409A concerns?
7. Code Section 409A:
    a) Are you aware of any other equity incentive/stock-based plans or arrangements? If so, describe the diligence conducted with respect to such plans?
    b) Are there any rights to gross ups for any additional or excise taxes that may be payable and, if so, are those rights being triggered by this transaction?
8. Code Section 280G:
    a) Are you aware of any payments that would be subject to Code Section 280G?
    b) Please describe the diligence conducted with respect to Section 280G payments.
    c) Have Section 280G analysis/calculations been conducted/provided and please describe the results.
    d) Will a shareholder vote take place to approve these payments?



Capacity Chart

The noted amounts represent the maximum capacity each carrier is able to deploy for an R&W risk. However, most carriers limit their primary layer to ~$25MM and will offer excess capacity on a ventilated program.

Insurer	S&P	AM Best	Moody's	Capacity	Direct or MGU
AIG	A+	A	A2	$100MM	Direct
Ambridge	–	–	–	$175MM	Direct
Archer Transactional Risk (Balance Point)	–	–	–	$25MM	MGU
ASQ (Travelers)	AA	A++	A2	$50MM	MGU
AXA XL	AA-	A+	A1	$60MM	Direct
Beazley	–	A	–	$60MM	Direct
Berkley	A+	A+	A1	$50MM	Direct
Berkshire Hathaway	AA+	A++	Aa2	$50MM	Direct
Blue Chip	–	–	–	$50MM	MGU
CFC	–	–	–	$50MM	MGU
Chubb	AA	A++	Aa3	$50MM	Direct
Concord	–	–	–	$155MM	MGU
DUAL	A+	–	–	$30MM	MGU
Ethos	–	–	–	$60MM	MGU
Euclid Transactional	–	–	–	$90MM	MGU
Everest Re	A+	A+	A1	$40MM	Direct
Fusion	–	–	–	$10MM	MGU
Great American	A+	A+	A1	$50MM	Direct
The Hartford	A+	A+	A1	$50MM	Direct
Liberty GTS	A	A	A2	$200MM	Direct
Mosaic	A+	A	–	$55MM	MGU
QBE	A+	A	A1	$50MM	Direct
RP Underwriting	A+	A+	A2	$25MM	MGU
RLI	A	A+	A2	$25MM	Direct
Themis	–	–	–	$50MM	MGU
Tokio Marine HCC	A+	A++	–	$70MM	Direct
VALE Insurance Partners	–	–	–	$50MM	MGU

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