

Representations & Warranties Insurance: Is It Worth It?

Representations & Warranties Insurance (“RWI”) allows both buyers and sellers to reduce exposure and realize benefits of a transaction. Coverage protects the Named Insured (typically the buyer in a transaction) in the event of a breach of the seller’s representations and/or warranties in the transaction agreement and responds to “unknown” issues that come to light after a transaction has closed. Underwriters aim to broadly cover the representations & warranties as presented in the agreement, proposing tailored exclusions in the event of a specific, known, material issue or gap in due diligence.

Benefits to Buyers

- Buyer secures greater protection (both in amount and duration) from an A-rated counterparty than the seller may be willing to provide
- In competitive situations, the buyer’s bid is superior to other options that require seller indemnity
- Provides recourse in deals with a no-seller indemnity structure
- Protects the relationship between buyer and seller, which is especially valuable if the seller remains involved in the business post-transaction
- Costs are absorbed into the transaction costs for tax benefits
- Protects the equity investment in the target company
- Streamlines the purchase agreement negotiation process
- Buyer receives access to an indemnitor with claims-handling capacity and function
- Offers peace of mind by ensuring financial protection against unknown risks

Benefits to Sellers

- Obtain best bids by maximizing indemnification
- Increased and immediate liquidity by minimizing or eliminating post-closing indemnities/escrows
- Clean exit, expediting the sale distribution process and, if applicable, PE fund wind-down
- Offers peace of mind financial protection against claims made by the buyer for breaches of representations and/or warranties post-close
- Post-closing recourse against the seller for general representations (if any) is typically limited to maintaining 0.25% - 0.50% of the enterprise value in escrow for a period of 12 months to cover the retention under the RWI policy
- Protects the relationship between buyer and seller in the event that the seller remains involved in the business post-transaction

Now, nearly 20 years since the placement of the first policies and despite an established global market with an estimated \$1BB of capacity at its disposal, we continue to field the question “is it worth it” from a variety of potential buyers: repeat insurance buyers with a clean claims history, strategic buyers questioning the impact on their diligence process, buyers entertaining small deals (\$5M - \$30M Total Enterprise Value), and more.



For many reasons, RWI coverage is an invaluable component to maximize deal outcomes. Perhaps more important, however, is the fact that we continue to field inquiries from clients who did not buy RWI coverage, discovered a breach post-closing and then sought to address these newly found liabilities with contingent liability insurance solutions. Relatedly, we have also encountered transactions where pre-signing breaches are discovered during the interim period and before closing.

2025 Underwriting Trends

Streamlined underwriting:

- Standard exclusions have narrowed to a tight set
- Underwriting calls rarely exceed 90 minutes
- Base policy form language has broadened, reducing the number of times a policy is turned, saving on legal fees

Improved economics:

- Even with recent upticks in premiums, rates hover around 3% rate-on-line, a historically low level
- Retentions have decreased from the traditional 1% TEV, with “true” fundamental representations subject to lower or potentially nil retentions

Broader appetite:

- More deal structures entertained: secondaries, minority deals, no-seller indemnity structures, small deals, public-to-private deals, higher limit programs for certain representations
- Broad underwriting appetite: very few industries are difficult to place; industry or deal-specific exclusions on general operations alone are limited

Quality service:

- Carriers continue to invest in building out underwriting teams, drawing from M&A counsel and CPA pools, ensuring knowledgeable underwriters, timely service, and the ability to manage more deal volume
- Claims handling is a priority for all markets, recognizing their reputation rests on handling claims in a commercial manner

Despite these favorable trends, the follow up question to “is it worth it” is always “but are claims actually paid”? The short answer is YES. Underwriters endeavor to resolve claim disputes expeditiously, often within a few months. More complex claims take longer to resolve. In our experience, while process and results vary, there is a better chance for a positive claims experience with an RWI insurer than under a traditional indemnity. A few large RWI carriers release annual claims studies offering insight into claim frequency, severity, most frequently cited breaches, and more. Carriers have also begun including claims payment statistics on their Non-Binding Indication Letters at the quoting stage. Claim frequency continues to trend around 20% (1 in 5 policies being noticed). Claim payments by the carriers have ranged from recognizing erosion of the retention for matters which do not exceed the retention amount to full limit losses. From published resources alone, we estimate that over \$5 billion has been paid in RWI losses.

With Vanbridge, you have a seasoned brokerage team ready to assist. We invite your inquiries to discuss further and answer any questions you may have.

If considering RWI, please contact us.

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