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San Francisco, CA
Northern California Chapter
Professional Liability Underwriting Society

Representations and Warranties 101
Used as a strategic tool to help get deals done

Two types of policies: seller-based and buyer-based

Target deal size is $50M to $1B (sale price)

Internationally for some time before that

Coverage has been available in the US since the mid-90s and

a traditional D&O policy

Risks and warranties are generally not the subject of coverage under

a subsidiary or a basket of assets

seller to a buyer in connection with the sale of a company, a

Policy covers breaches of representations and warranties made by a

What is Reps & Warranties Coverage?

Introduction
The terms "representation" and "warranty" are often used together in practice.

- A warranty is a promise of indemnity if the assertion is false.
- A representation is an assertion as to a fact, true on the date the contract is entered into or made to induce another party to enter into a contract or take some other action.

What are Representations & Warranties?
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- A breach or inaccuracy serves as the foundation for an indemnification claim in case of

- The reps and warranties allocate risk between the parties and transactions being transferred.

- The seller's reps and warranties tend to be more extensive because they include information about the target company or business and the stock or assets and liabilities being transferred.

- In M&A transactions, reps and warranties are given by both parties to disclose material information.
Taxes  ❖
Real Property  ❖
Litigation  ❖
Inventory  ❖
Compliance with Laws  ❖
Financial Statements  ❖

Standard Representations  ❖
Authority  ❖
Capitalization  ❖
Title to Shares  ❖

Fundamental Representations:  ❖

Examples of Representations & Warranties  ❖

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Key Definitions

- **Survival period**: the length of time that the buyer can rely upon the seller's reps and warranties will absorb before the seller indemnity obligation will deal. The amount of damages from breaches that the buyer will be legally obligated to indemnify the buyer is the "deductible" for the indemnity obligations of the Seller for breaches of the reps and warranties.

- **Basket or Threshold**: In essence, the "Cap" is the upper limit on damages for which the seller is legally obligated to reimburse the buyer. The Escrow is the amount of money required to backstop the indemnity obligations of the Seller for breaches of the reps and warranties.
Misrepresentations made by the sellers to the insurer can void the coverage.

- Breaches of the reps and warranties in the sale agreement
- Reimburse the seller for claims brought by the buyer for in the transaction
- The insured under the policy is the seller(s) in the transaction

Seller-based Policies
Claims are paid directly to the Buyer
the coverage
Misrepresentations made by the buyers to the insurer can void
in this country are buyer-based
Approximately 80% of the Reps and Warranties policies sold
works both as first party and third party insurance
agreement
sellers' breaches of the reps and warranties in the sale
Protects the buyer against damages that it incurs as a result of
The insured under the policy is the buyer in the transaction

Buyer-based Policies

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coming forward as management in the merged operations rather than from former shareholders—some of whom may be
Bridges negotiation disagreements over deal terms
distiguish buyer in auction process
shorter survival period
lower liability cap
lower escrow requirement
deel terms

Allows the buyer to make an initial offer with more attractive

Buyer-based Policy Strategic Uses
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... or a combination of one or more of these structures.

structures

Rev Insurance Program

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Insurance decliners provide a non-refundable quotation.

One week's timeline, but faster if needed.

Reviews contents of the deal data room.

The insurer conducts a comprehensive review of the due diligence process.

Client pays a non-refundable underwriting fee.

Full Underwriting Stage

(Two to four days (depending on time constraints, multiple quotes may be offered)

Two-step underwriting non-binding indication.

Underwriters decline, request additional information or provide a

Initial Indication Stage

Two Step Underwriting Process

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Updated Terms of Deal Documents

Access to the deal data room

Due Diligence reports

Full Underwriting Stage:

Audited financial statements of the target

Draft of the disclosure schedules

Asset Sale Agreement

Most recent draft of the deal document (Securities Purchase Agreement)

Initial Indication Stage:

Required Underwriting Materials

PLUS ✦
Ironshore

Hartford

Concord Specialty Risk

Chubb

Beazley

AVAC

American International Group

Ambon Group

Marketplace

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Limited Claims Data
Coverage forms are not standard
Middle market is underserved
Focus on larger transactions
Efficiency for underwriting process
Potential backlog for quote responses
Strong demand for products
Marketplace
Claim Activity in the R&V

Notification and association process

Claim example of recent SME placement

Notification volume remains relatively constant

Rather than risk transfer

Driver of R&V has historically emphasized deal facilitation

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