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### REPRESENTATIONS AND WARRANTIES INSURANCE IN M&A TRANSACTIONS



#### **REPS AND WARRANTIES INSURANCE IN M&A TRANSACTIONS** DISCUSSION OUTLINE

- I. Increasing Use of R&W Insurance in Deals
- II. Basics of R&W Insurance
- III. Drafting Considerations in M&A Agreements
- IV. Claims Experience
- V. Other Transactional Risk Insurance Products

# INCREASING USE OF R&W INSURANCE IN DEALS

### INCREASING USE OF R&W INSURANCE IN DEALS

### Policies can now be obtained

- > For high limits
- > At reasonable prices
- > On a timely basis
- > With reasonable coverage
- > That are highly customized
- In a competitive marketplace
- Estimated that > 1,500 reps and warranties policies were sold in 2017

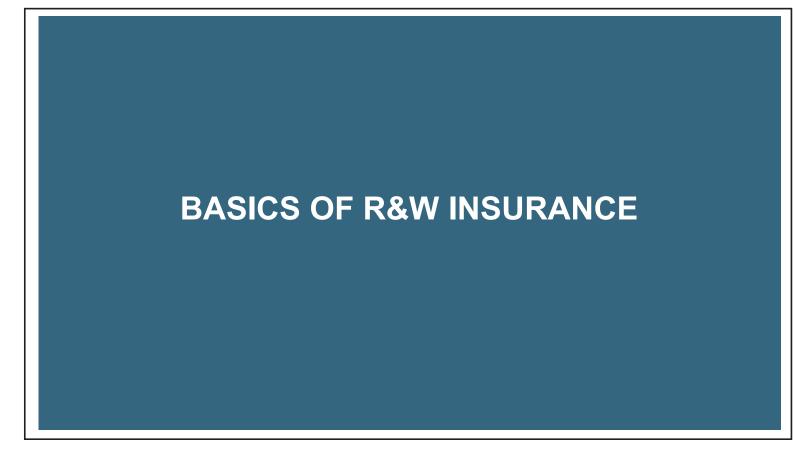


"I'm not here to take away your guns—I'm her to sell you some overpriced insurance."

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> Transfers risk away from both seller and purchaser
Potentially increases purchase price to seller by reducing contingent liability risk
Protects passive sellers who have not controlled or been actively involved in the
management of the target business from unintentional non-disclosure or breach of representations and warranties
Eliminates obstacles to getting a deal done over indemnity term negotiations (e.g., survival periods, escrow, caps, baskets, materiality scrapes, etc.)
Enhances protections of buyer for breaches of representations and warranties, supplementing or replacing entirely the indemnification provided by sellers
Can effectively extend duration of representations and warranties, permitting more time to detect and report problems
Eases concerns about ability to collect indemnification from single or multiple sellers
Protects relationships with sellers who may become key employees or business partners post-closing
> Typically covers insured's cost of defense
<ul> <li>Can protect buyer against successor liability risk</li> </ul>
> In distressed M&A can make up for a financially insecure seller



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# Title search: Representations and Warranties. Insurance in M&A Transactions.

Also available as part of the eCourse 2018 Corporate Counsel eConference

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