

**PRESENTED AT**

**THE UNIVERSITY OF TEXAS SCHOOL OF LAW  
16<sup>TH</sup> ANNUAL MERGERS AND ACQUISITIONS INSTITUTE**

October 7-9, 2020  
Dallas, TX

**How Transactional Insurances Continue to Change the M&A Game**

**Representations and Warranties Insurance -  
Current Market Developments and Trends  
October 2020**

**Andrew Zimmerman**

Andrew Zimmerman  
Director, Mergers & Acquisitions Group  
Willis Towers Watson  
New York, NY  
[andrew.zimmerman@willistowerswatson.com](mailto:andrew.zimmerman@willistowerswatson.com)  
212.915.8631



# Representations and Warranties Insurance – Current Market Developments and Trends

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# Mergers & Acquisitions Transactional Insurance

## Overview of Transactional Insurance Solutions

### Representations & Warranties Insurance

- Used by private equity and strategic buyers to increase competitive position in auctions – offer sellers a limited or no indemnity deal
- Facilitates clean exits – sellers avoid escrows and holdbacks, and distribute proceeds to investors
- Acceptance and use of product has increased dramatically over last five years

### Tax Insurance

- Insure tax positions to facilitate transactions
- Covers taxes, penalties, interest and contest costs in the event of a challenge by the IRS or other tax authority
- Wide range of tax issues can be insured, including:
  - Tax-free mergers
  - S-corporation issues
  - Net operating losses
  - Alternative energy credits
  - Sales and use tax

### Contingent Liability/Pending Litigation/Other Insurance

- Used by buyers and sellers to transfer risk on contingent exposures to insurers
- Pending litigation
- Environmental
- Successor liability
- Fraudulent conveyance
- Loss portfolio transfer
- Antitrust consent
- Legislative contingency
- Fund liquidation

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First appeared as part of the conference materials for the  
16<sup>th</sup> Annual Mergers and Acquisitions Institute session  
"How Transactional Insurances Continue to Change the M&A Game"