

# EUCLID TRANSACTIONAL

— THE RIGHT ANGLE FOR RISK —

# Transactional Risk Insurance Products

## What is transactional risk insurance?

- **Representations and warranties insurance (R&W):** covers *unknown* breaches of representations and warranties made by sellers in an M&A transaction
- **Tax and contingent liability insurance:** cover *known* risks associated with M&A and other transactions

## Why insureds value transactional insurance?

- Increases cash that sellers receive at closing
- Helps win the deal
- Protects relationships
- Provides credit protection for buyers and extended survival protection
- Bridges the gap on deal at impasse
- Protects against unlikely liabilities

## What is the trigger for payment under a transactional insurance policy?

- Transactional insurance policies typically pay when a seller has made inaccurate representations to a buyer and the buyer suffers from such inaccuracies or when a known matter leads to unexpected loss



# R&W Insurance Basics

- **Two types of policies:**
  - Buyer-side Policy
  - Seller-side Policy
- **Price of coverage:** Typically 2% to 4% of the limit of liability for primary
- **Policy period:** Typically matches survival in underlying agreement
- **Retention:** Generally at least 1% to 3% of the transaction value
- **Coverage candidates:** \$20 million to \$4 billion in purchase price
- **Process:** Start to finish in 1 to 2 weeks, and sometime even shorter
- **Limitations of R&W Insurance:** Does not typically cover known matters, matters lacking comprehensive due diligence, future results of business
- **Broad range of matters covered:** Can cover undisclosed liabilities, non compliance with law, tax, environmental, IP, benefits and other areas relevant to the acquired business.



# R&W Insurance Uses

- Reduce seller escrow
- Reduces purchase price paid by buyer
- Increase amount of protection
- Extend length of protection
- Improve collateral and security and process when problems arise
- Protect relationships



# R&W Insurance Recent Developments

- Broadening of terms and coverage, limited seller indemnification
- Increased capacity in the market
- Improvement in underwriting process
- Increased use by strategic buyers in seller-friendly M&A market
- Claims paid



# R&W Insurance Limitations

- What industries are most difficult to insure?
- What are the most common exclusions on R&W policies?
- When does a known potential exposure become an excluded “known matter”?
- Can R&W Insurance cover estimate and projections?



# Smoothing the Underwriting Process

- Start early
- Use an experienced insurance broker
- Build on precedent and history
- Show your work in diligence
- Stick to your standards
- Recognize that known issues can take time to address
- Sign it up and work it out later



# Key Negotiated Deal Provisions

- What types of Loss will the policy cover?
- What recourse does buyer and insurer have against seller?
- Does the coverage start when the deal is signed or when the deal is closed?
- Does buyer knowledge of a matter prevent coverage?
- How does R&W Insurance interact with other areas of insurance?





# Lenders Benefit from R&W Insurance

- Policy proceeds can be assigned to financing sources
- Lenders often appreciate the insurance due diligence process and additional capital support
- R&W insurers can be flexible on forms of collateral assignment
- Credit risk of insurers are typically less than of sellers



# Claims

- Based on publicly available claims data, most claims are reported in the first 18 months of policy issuance
- Claims typically develop as they would between buyers and seller under an acquisition agreement absent insurance, including proving breach and proving loss
- Claims handling requires responsiveness to litigation and merger agreement related deadlines and involves legal and accounting experts
- Claims develop over weeks to years depending on the nature of the claim, including whether claim is first or third party
- Many claims fall within the policy retention or, to the extent paid, do not represent a significant portion of the overall limit of liability
- Open communications= Better claims process



# Tax and Contingent Liability Insurance

**Helps eliminate known contingent liability or tax exposure where the underlying legal conclusions may be subject to challenge**

**Covers a variety of exposures:**

- Taxes, including expenses, gross-up and interest
  - Typically requires a “should” level opinion from a third party advisor
  - Deal related tax exposures
  - Tax credit exposures
- Specific indemnity obligations
- Fraudulent conveyance
- Successor liability issues
- Contractual or regulatory consent issues



# The Future of Transactional Liability Insurance

## Future products?

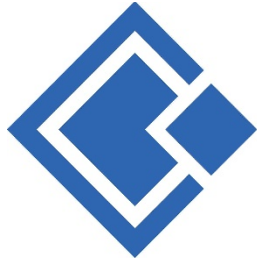
- The multi-deal catch all form
- Packaged deal insurance
  - Environmental
  - Cyber
  - Product Liability
  - D&O and E&O
- Expanded coverage for known matters
- The Seller flip, pre-underwritten, stapled insurance



# Pop Quiz

- 1) True or False: R&W Insurance can guarantee the future success of an investment by insuring that the business will perform as expected.
  
- 2) Which of the following is a potential benefit of R&W Insurance?
  - a) Seller avoids protracted negotiation on reps and warranties
  - b) Buyer avoids litigation with management sellers
  - c) Increased duration and amount of protection
  - d) Buyer is protected from hidden liabilities
  - e) All of the above
  
- 3) R&W Insurance can be used for cross border transaction?
  
- 4) True or False: R&W Insurance is being used more frequently than ever by operating corporations to help with strategic growth.





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