



Limiting Transactional Risk in M&A

In mergers and acquisitions (M&A), there are always risks. Hidden factors can linger even after a deal is done. That's where Representations and Warranties (R&W) insurance comes in. It helps deal makers feel more secure by protecting them from unexpected losses.

R&W insurance is a specialized type of coverage designed specifically for M&A transactions.

- **For buyers**, it offers additional financial protection beyond the indemnification provided by the seller. It can also enhance the likelihood of successful negotiations by alleviating concerns about post-closing liabilities.
- **For sellers**, R&W insurance can facilitate a cleaner exit from the business by minimizing the need to hold back a portion of the sale proceeds as an indemnity reserve.

In an M&A transaction, the seller typically makes representations and warranties about the condition of the business being sold. These statements cover various aspects such as financial performance, legal compliance and the absence of undisclosed liabilities. If any of these representations or warranties turn out to be untrue or are breached post-closing, the buyer may incur financial losses. When utilized effectively, this insurance can help to enhance deal certainty, and ultimately contribute to the overall success of the transaction for both buyers and sellers alike.

In short, this coverage can protect both the buyer and seller against financial losses resulting from breaches of representations and warranties made during the deal.

CONTACT

To learn more about how Amwins can help you place coverage for your clients, reach out to your local Amwins broker.

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Top 3 ways R&W insurance help businesses

Overall, R&W insurance plays a crucial role in reducing transactional risks and facilitating smoother M&A deals by providing a layer of financial protection against unforeseen contingencies. Here are some of the ways that R&W insurance can help businesses:

1. Facilitating clean exits for sellers

Sellers benefit from R&W insurance by mitigating the risk of future liabilities emerging from R&W claims. This shields their return on investment and facilitates a seamless exit from the business. Particularly advantageous for passive sellers uninvolved in target business management, it safeguards against inadvertent non-disclosures or breaches of representations and warranties.

2. Extending protection for buyers

For buyers, R&W insurance provides additional layers of protection against breaches of representations and warranties, complementing seller-provided indemnification. It also prolongs the duration of representations and warranties, affording more time to identify and address potential issues within the acquired business.

3. Strengthening seller relationships

R&W insurance alleviates buyer concerns regarding the feasibility of collecting indemnification from sellers due to financial instability or logistical challenges. Moreover, it fosters goodwill and preserves relationships with sellers, who might transition into key employees or strategic partners post-acquisition.



Underwriting process overview

Our team at Amwins has extensive expertise in securing R&W coverage for transactions across the U.S., Canada and Europe. Initiating the underwriting process requires gathering essential information, including the letter of intent, draft purchase agreement, audited financial statements of the seller/target company, due diligence checklist, Confidential Information Memorandum (CIM) and relevant due diligence reports. Additionally, outlining R&W insurance requirements such as policy type, desired limit and self-insured retention is imperative.






After gaining all of the necessary information, our underwriters typically provide non-binding indication letters (NBIL) within 2-3 business days, outlining general terms, conditions and areas of underwriting scrutiny. Subsequently, a carrier is selected, and then the applicant pays the underwriting fee—typically ranging from \$20,000 to \$50,000. Following fee payment, underwriters review the deal information, conduct a conference call with the buyer's deal team to address queries and produce a bindable policy within 24 hours post-call.



Policy structure overview

Underwriting for this product differs from most lines of insurance; R&W requires a 100% bespoke policy. Each policy is tailored to meet individual client needs, although pre-negotiated policies with select carriers can expedite the negotiation phase.

Let's look at a typical deal structure:

-  **Minimum deal size:** \$20 million enterprise value
-  **Coverage limits:** Negotiated between 10% and 30% of enterprise value, with a minimum limit typically set at \$2 million or \$3 million
-  **Self-insured retention:** Usually 1% to 3% of enterprise value, with recent deals incorporating a 1% retention that reduces to 0.5% after the initial 12 months, with a minimum retention of \$150,000
-  **Premium:** Ranges from 2% to 4% of the limit purchased, with a minimum premium of \$100,000 plus applicable taxes and fees
-  **Policy term:** Varied, with common structures including 3 years for general representations, 6 years for fundamental representations and 6 years for tax-related representations.

While \$100,000 might seem like a lot upfront, it's more than just a number. This type of insurance can be immensely beneficial for clients looking to sell their business, especially when faced with the prospect of

holding a significant portion of the deal value in escrow. For example, imagine a mid-sized company negotiating a sale to a private equity firm, where the buyer demands a 20% escrow, amounting to \$5 million, to cover potential breaches of representations and warranties.

Instead of tying up such a substantial sum for years, founders can opt for a R&W insurance policy. By doing so, they can swiftly receive their funds and safeguard them against any future claims, allowing for a smoother and more satisfying transition to their next venture.

R&W insurance not only mitigates financial risk but also facilitates a more seamless and lucrative exit strategy for the insured.

The current market

The R&W market is currently experiencing a soft phase, marked by an influx of new capacity. Despite its relative novelty compared to other insurance products, R&W has garnered increasing acceptance over the past five years. This trend can be attributed to a growing familiarity and comfort level with the product among stakeholders such as private equity firms and lawyers. As the market landscape evolves, this acceptance paves the way for R&W insurance to play a more prominent role in mitigating risks associated with M&A transactions.

We help you win

With a focus on partnership and a commitment to excellence, Amwins stands ready to empower businesses and insurance brokers alike in their M&A endeavors. As the market evolves and capacity continues to expand, R&W insurance remains a cornerstone for mitigating risks and driving successful outcomes in the ever-changing landscape of mergers and acquisitions.

Amwins is a leading professional liability insurance broker specializing in financial, professional and management risks. Our experts across the country, and around the world, collaborate to deliver the right solution for your clients. Through our expertise, market access and proprietary products, Amwins' professional lines insurance specialists find solutions for accounts of all sizes and complexities.

Retail insurance brokers who don't specialize in M&A can benefit from our partnership. We handle it every day – we can work directly with a retailer, or we can serve as an outsourced marketing department for policyholders.

Learn more [here](#).

About the Author

- Joe Catalano, EVP, Amwins Brokerage
- Larry Goanos, EVP, Amwins Brokerage
- David Lewison, EVP, Amwins Brokerage
- Jacob Manoni, Assistant Vice President, Amwins Brokerage