

Transactional Risk Insurance in M&A: Reps and Warranties, Contingent Liability and More

Leveraging Insurance to Allocate Risk and Protect Deal Value; Negotiating Coverage and Exclusions

THURSDAY, APRIL 27, 2017

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Toria Lessman, VP, Underwriting Leader for Transactional Liability Practice,
QBE North America, Chicago

Scarlet McNellie, Partner, Norton Rose Fulbright, Dallas & Houston

George H. Wang, Partner, Barton, New York

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TRANSACTIONAL RISK INSURANCE IN M&A ON APRIL 27, 2017

Toria Lessman, Vice President – Underwriting Leader
QBE North America

Scarlet McNellie, Partner
Norton Rose Fulbright US LLP

George Wang, Partner
Barton LLP

TYPES OF TRANSACTIONAL RISK INSURANCE

- Representations and Warranties Insurance
- Tax Liability Insurance
- Litigation Buyout
- Successor Liability
- Fraudulent Conveyance
- Environmental Liability

WHAT IS REPRESENTATIONS AND WARRANTIES INSURANCE (RWI)?

- One type of transactional risk insurance used in M&A transactions
- Tool to decrease liability exposure in M&A transactions

TRENDS IN REPRESENTATIONS AND WARRANTIES INSURANCE

- Growth rate of the product
- Current state of the market
 - Amount of coverage
 - Policy term
 - Premium
 - Retention
 - Underwriting fee

DIFFERENT TYPES OF POLICIES

- Buyer-Side Policy
- Seller-Side Policy
- Why would buyers and sellers want RWI?
- Potential benefits and pitfalls associated with this insurance

UNDERWRITING PROCESS

- NDA
- Submission to broker
- Quotes from insurers
- NBIL
- Underwriting diligence process

UNDERWRITING CONSIDERATIONS

- Identity of the parties, advisors
- Industry of the target
- Locations of the business
- Due diligence process
- Seller's liability under the acquisition agreement

NEGOTIATING THE POLICY

- Form policy from insurers
- Subrogation
- Right to Defend
- Definition of “Loss”
- Named Insured

EXCLUSIONS FROM THE POLICY

- Standard exclusions
- Transaction specific exclusions

NEGOTIATIONS BETWEEN BUYER AND SELLER

- Who pays for the insurance?
- Who is responsible for losses within the retention?
- Escrow or holdback?
- Key provisions in the acquisition agreement

CLAIMS

- Claims History
- Claims Process

OTHER TYPES OF TRANSACTIONAL RISK INSURANCE

- Tax Liability Insurance
 - Subchapter S Status
 - Effect of 338(h)(10) election
 - Tax Free Reorganization
 - Tax Free Cross Border
 - 280G Parachute Payment
 - Net Operating Loss Tax Credits
 - Retroactive Change in Law
 - Tax Contest Costs; Gross-up

OTHER TYPES OF TRANSACTIONAL RISK INSURANCE

- Litigation Buyout
 - Past, present, and future
- Successor Liability
- Fraudulent Conveyance
- Environmental Liability

THANK YOU

Toria Lessman

QBE North America

toria.lessman@us.qbe.com

Scarlet McNellie

Norton Rose Fulbright

scarlet.mcnellie@nortonrosefulbright.com

George Wang

Barton

gwang@bartonesq.com