

Crafting successful representations and warranties insurance claims: Establishing liability, quantifying losses



Representations and warranties insurance (RWI) covers losses flowing from breaches of representations and warranties made by sellers to strategic or financial buyers. Policy coverage is typically a dollar amount equal to 10% of the purchase price, and the buyer secures coverage in approximately 90% of all cases.



State of the RWI market

- ▶ One in five insured deals result in a claim.
- ▶ Breach claims were related to the following areas: Financial statements (21%), Tax (19%), Compliance with laws (16%), and Material contracts (12%).
- ▶ The average claim was \$19 million for claims over \$10.¹

Considerations for claims

Investigation and assessment of liability

- Data preservation
- Policy terms
- Notice to carrier

Submit claim and proof of loss

- Develop loss model
- Quantify and substantiate loss
- Carrier assesses claim
- Negotiation
- Settlement or adjudication

Data preservation and analysis

- Obtain and secure potentially relevant structured and unstructured data
- Review and analyze data relevant to misrepresentations

Investigation

- Identify relevant information (including data in the public record and/or with other third parties, as appropriate) related to the misrepresentations
- Investigate and assess the nature and scope of misrepresentations
- Assess misrepresentations to understand “who knew what and when”
- Capture the indicia of fraud or illegal behavior

Quantification of losses

- Assess the economic impact of breaches of representations and warranties
- Synthesize data and information with claim quantification
- In the “but for” world, the buyer might have valued the opportunity differently
- Misrepresentations might result in material and sustained ongoing damages
- Consider buyer’s actions post-closing and mitigation



Investigate nature and scope of misrepresentations and develop a credible claim

Organizations turn to CRA when they need to investigate alleged misconduct and assess the related losses. Our valuation professionals, CPAs, digital forensics experts, e-discovery professionals, and economists routinely provide independent financial, accounting, and economic analytics informed by industry, regulatory, and legal guidance. CRA offers deep experience assessing liability and quantifying losses in post-acquisition dispute situations, including related claims under Representations and Warranties insurance policies. CRA has exclusive relationships with leading practitioners and academic experts, and more than 50 years of experience providing expert support and testimony, data collection, preservation, and analysis.

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¹ Duffy, Mary, Michael Turnbull, Joel Townsend, Anna Rozin, Rory O'Broin, David Rasmussen, and Darren Savage. “M&A: Elevated Claim Levels Put Focus on Due Diligence.” AIG. AIG, 2021. www.aig.com.