

What Happens after the Deal Closes – M&A Representation and Warranty Insurance Claims

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In certain deals, we continue to see an increase in circumstances when a party obtains a representation and warranty insurance policy. The question that deal counsel (and others) are often asked is – what types of claims are being made on such policies? Here are some of the statistics from a recent piece by AIG[1]:

- The most commonly alleged breaches under a M&A representation and warranty policy were for the following representations: financial statements (28%), tax information (13%) and contracts (11%).
- The remaining common categories of representation and warranty breaches were intellectual property (10%), employee matters (8%), litigation (8%) and compliance (5%).
- Approximately one in every seven policies issued reported a claim.
- The probability of a claim being filed against an R&W policy varied by the size of the deal covered, with deals under \$100 million having a slightly higher claim probability.
- From a timing standpoint, more than half of all claims reviewed were reported within the first year after a deal closed, and 74% were filed within the first 18 months.
- While the majority (about three-quarters) of policies were purchased by the buyer, seller-purchased policies tended to have a more likely rate of a claim being reported (19% vs. 13%).
- That said, policies purchased by buyers were more likely to have a large loss as the majority of the top 15 largest claims reported during the study's review period belonged to buyer-side policies.

[1] Statistics from an Article entitled What Happens After the Deal Closes, American International Group, Inc., January 2016. The article references data from a 2011- 2014 time frame

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