

Why Strategic Buyers Don't Need Rep and Warranty but Shouldn't Do a Deal Without It

6 Reasons Strategic Buyers Should Insist on Representations and Warranties Insurance

Even as a strategic buyer with minimal financial risk in a typical merger and acquisition deal, it pays for you to ask that representations and warranties insurance be part of the process.

Below, are just some of the reasons that this coverage makes it *8 times* more likely for a deal to go through:

1. The Buyer Is Protected

Your biggest concern as a strategic buyer is that you buy a bad company, one burdened with unknown tax exposure or hidden financial problems. If the issue doesn't come up during due diligence or isn't disclosed by the seller, it could be a ticking time-bomb months or years after the deal is done.

But with rep and warranty coverage, you won't have to take expensive legal action against the seller. You file a claim, and the policy pays you.

2. Negotiations Are Quicker and Hassle-Free

After putting representations and warranties insurance in place, there is much less for buyers and sellers in a M&A deal to negotiate with the purchase and sale agreement.

The indemnification agreement and escrow amount are no longer a point of contention because if there is a breach of a representation or warranty... it's covered by the insurance policy. Remove that obstacle and you can expect a lot less back-and-forth between attorneys.

3. The Seller Is Less Anxious – and That’s a Good Thing

It’s one of the biggest issues you face as a strategic buyer: the nervous seller. Their personal and financial worth is tied up in the sale of their company. So, they are more likely to be more contentious in negotiations, especially for elements like indemnity cap and the amount of sale price held in escrow.

But with rep and warranty coverage, those points aren’t an issue. And the seller has a good feeling knowing there is less of their money held in escrow. That smooths negotiations and makes it more likely the deal will go through in the end.

4. The Survival Period Is Irrelevant

The length of time a seller is liable to the buyer (a.k.a. survival period) for each of their representations is another potential point of contention that is eliminated by rep and warranty insurance.

These policies are written to mirror the terms of the purchase and sale agreement, so survival periods outlined in an agreement are matched by the policy coverage term, protecting the buyer to the latest survival period.

With rep and warranty insurance in place, the length of time a seller is liable to the buyer becomes a non-issue. That makes the seller happy and makes negotiations easier. And that’s always a good thing for the buyer, too.

5. Eliminate that Awkward Situation of Having to Clawback Funds From Your Newest Partner

Even though the purchase and sale agreements carry provisions where the seller is liable to the buyer for financial loss resulting from a breach of the seller warranties, NO ONE really wants to “pull that trigger.”

Rather than risk alienating your newest “partner” by taking away their escrow and commencing a clawback of funds for indemnity, you can turn to a rep and warranty policy to collect directly from the insurer. Having a third party to reimburse your financial loss enables recovery without the emotional toll of pursuing the seller.

You are able to recover from your financial loss, while your newly minted “Rock Stars” are entirely insulated and can focus on the future.

Veteran M&A litigators agree. Breaches in uninsured deals are ALWAYS significantly more expensive, time consuming, and emotionally devastating than those covered by rep and warranty insurance.

6. R&W Enhances your Reputation as a “good citizen” in the M&A Community

The M&A community is a small one with a range of members from seller-friendly players to bare-knuckled grinders. Everyone knows who falls into this range and it’s no surprise that the grinders end up having to pay much more than the non-grinders.

R&W is clearly a seller-friendly tool, that, used regularly, will enhance a Buyer’s reputation as an attractive partner for other companies. Professionals in M&A routinely cite examples where the “good citizens” in the community win more deals at lower prices than the grinders.