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CLAIMING WHAT'S YOURS: 10 CONSIDERATIONS FOR RECOVERY UNDER REPRESENTATIONS AND WARRANTIES INSURANCE POLICIES

Representations and warranties insurance is a valuable tool for mitigating risk in business transactions. While RWI policies are designed to mitigate risk conceptually, actual recovery in the event of a breached representation or warranty can be complex, requiring policyholders to navigate the claims process with care. This article examines 10 considerations that may affect recovery under RWI policies, ranging from fully understanding the nuances of applicable law to evaluating exclusions that could preclude coverage. By thoughtfully approaching the claims process, RWI policyholders can enhance their chances of recovering what they are owed.

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2025 may become a banner year for mergers and acquisitions (“M&A”) activity, with global deal volume poised to exceed \$4 trillion — the highest volume in four years.¹ Given the historically low premiums and retention levels being offered by insurers, representations and warranties insurance (“RWI”) will likely remain a mainstay in buyers’ risk mitigation toolbox.² When it becomes necessary to make a claim, various considerations will factor into buyers’ ability to

recover under RWI policies. Below we provide 10 practical legal- and policy-driven tips for buyers. While these tips are helpful starting points, their application often turns on the specific facts, applicable law, and pertinent policy language, which RWI policyholders should consider as they move through the claims process.

1. Consider the Available Remedies Under

Applicable Law: For starters, policyholders should think about the damages theory they are pursuing at the initial stages of the claims process to verify that their damages theory will not only allow the highest possible recovery, but also be well-positioned to withstand legal scrutiny. To be sure, the insurer receiving the claim will want to understand the damages theory to pay the claim without complication. The amount a policyholder can recover is driven by the policy language, which can incorporate provisions from the transaction agreements and governing state law.

¹ Anousha Sakoui, Anirban Sen & Kane Wu, *Dealmakers Eye \$4 Trillion-Plus M&A Haul in 2025 on Trump Boost*, Reuters (Dec. 19, 2024), <https://www.reuters.com/markets/deals/dealmakers-eye-4-trillion-plus-ma-haul-2025-trump-boost-2024-12-19/>.

² Kenneth Araullo, *RWI Market Sees Low Premiums, Latin America Expands* – Lockton, Insurance Business Magazine (Dec. 11, 2024), <https://www.insurancebusinessmag.com/us/news/breaking-news/rwi-market-sees-low-premiums-latin-america-expands--lockton-517683.aspx>.

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