REPS AND WARRANTIES: THE BASICS

Reps and warranties insurance is essentially breach of contract cover designed to enhance or replace the indemnification given by the seller to the buyer in an M&A Transaction.

Underwriters assess the risk on the following criteria

- Nature of reps and warranties
- Nature of SPA terms and conditions such as; multiples and consequential damage language, single of full materiality scrapes, sand bagging language or not etc.
- Quality of due diligence: Underwriters wish to provide coverage for the truly unknown, so they are looking to "diligence the diligence."

Whilst either buyer or seller can be the insured 90% of the policies placed are buy side, this is because:

- Buy side has additional fraud coverage which sell side cannot provide
- Buy side means the insured can pick a limit and time period beyond what the seller is willing to give
- Buy side allows the buyer to avoid suing their newly acquired management team, they can go directly to the carrier instead
- Buy side allows the buyer to offer lower escrows or more competitive terms in an auction.

The coverage is designed to cover all warranties. However certain exclusions are standard:

- Forward looking warranties (sales projections etc.)
- Issues known or discovered during diligence e.g., litigation or regulatory problems
- Purchase price adjustments
- Availability/usability of Net Operating Losses or R&D tax credits
- Certain areas as hard to get cover for; FCPA, Union activity, underfunding of pensions, wage and hour

It's a two-part process:

- Initial Non-Binding Indication: 1 week from receiving target financials, draft SPA, any IM that has been prepared by seller, costs nothing.
- Underwriting: $30k up front "diligence fee". Want access to data room, third party diligence reports and buying team for conference call. It takes 1 week but dependent on timing of deal process.

Pricing

- Retention: This is expressed as a percentage of overall transaction size. Minimum is 1%. $100m transaction has minimum $1m retention. This can be in the form of a sellers escrow, or the buyer's deductible or a combination of the two.
- Premium: This is expressed as a percentage of the limit of coverage bought and is not related to transaction size. Currently premiums running 2.5–3.5% of limit bought. $10m limit $250–$350k one-time payment for a six-year policy. It is worth noting that currently minimum premiums are running around $150–$200k and so we don't recommend this product if the insured seeks less than $5 million of coverage.

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PRIVATE EQUITY & VENTURE CAPITAL

As a Private Equity (PE) or Venture Capital (VC) firm, you're constantly fostering business growth and disruptive innovation—activities that expose you to particularly challenging risks. With our decades of experience working with the PE and VC sectors, you can trust Woodruff Sawyer to manage and mitigate risks across your firm, at your portfolio companies and wherever you're doing business.

We specialize in advising PE and VC firms to prevent litigation, and on disputes related to intellectual property, portfolio company shareholders, employment practices, M&A transactions and more. We know your business, and with our expertise in insurance, securities litigation, corporate governance and claims, we bring you comprehensive and customized solutions. Our dedicated team will respond quickly to your needs, advocate to mitigate your exposures worldwide, and leverage our deep market clout to get you the right insurance terms in a constantly evolving litigation environment. Our personalized approach is unique in this industry and a key reason why clients stay with us for the long-term.

Casting A Wide Safety Net

Whether you're a PE firm needing fund-level coverage and portfolio company protection, or a VC firm needing focused due diligence on intellectual property issues, we have capabilities to protect you:

- General Partner Liability
- Venture Capital Management Liability/D&O
- Portfolio Company Property & Casualty and Management Liability/D&O
- Cyber Liability
- Employee Benefits
- Deal Due Diligence
- M&A Transactional Insurance

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We were one of the first brokerages to specialize in the PE and VC industry over 25 years ago.

We have one of the largest PE and VC practices in the US.

We are the #1 insurance broker for IPOs.