

## TOP TAKEAWAYS

## Transactional Insurance Protections

**1. Consider Transactional Insurance on Every Deal.**

Whether the parties eventually decide to use representations and warranties insurance, tax insurance or environmental insurance or not, directors and officers (and lawyers) should consider whether transactional insurance should be used on every deal, not just deals with financial sellers.

**2. Transactional Insurance is More Than Just Reps & Warranties.**

Today, more than just traditional representations and warranties insurance is available to buyers and sellers in the M&A world. Insurers also help buyers limit their risks on environmental and tax matters as well.

**3. It's a Buyers' Market.**

The market for transactional insurance policies (including reps & warranties, tax and environmental) is robust and growing. There are more carriers in the market than ever before, and they are offering higher limits.

**4. Quick Turn-Arounds.**

Brokers and carriers are staffed with former M&A lawyers, and can underwrite and bind transactional insurance policies on real-world deal timelines.

**5. Cover Known Risks.**

Tax insurance and environmental insurance can cover known risks of loss (such as existing properties or an existing tax-free reorganization) that would be carved out of a traditional reps & warranties policy.

**6. Improved Terms.**

Over the last few years, insurers have offered increasingly favorable terms on reps & warranties policies, with fewer exceptions and broader coverage. This makes reps & warranties insurance more similar to a traditional seller indemnity; as a consequence, more and more buyers are opting to use reps & warranties insurance in transactions.

7. **Make More Deals Happen.**

Seller indemnification is invariably a controversial point in deal negotiations; using transactional insurance allows both sides to get more of what they want. Buyers get a higher cap on indemnification from the insurer and a longer survival period for claims. Sellers get more cash, sooner, and are protected against indemnity claims above a minimal (1-2% of purchase price) seller indemnity.

8. **Improve Your Bid in an Auction.** Buyers can make their bid in an auction transaction more attractive by using transactional insurance to increase up-front payments to sellers.

**For more information**

For more information on Transactional Insurance Protections, please feel free to contact the moderator directly:

Ethan D. Lenz  
Foley & Lardner LLP  
[elenz@foley.com](mailto:elenz@foley.com)