PAUL HASTINGS | HOWDEN

The Buyer’s Playbook

Legal Insights Into M&A

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This article is a collaboration between Paul Hastings and Howden Broking Group. If you have any questions concerning the matters discussed in this note, please do not hesitate to contact the authors listed on the last page.

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Insuring the Deal: The Role of W&I Insurance

Warranty and indemnity (W&I) insurance is now a well-established feature of UK and cross-border M&A transactions. When structured properly alongside the sale agreement, disclosure process and diligence strategy, W&I insurance can reshape risk allocation between buyers and sellers, improve deal certainty and facilitate clean exits.

W&I insurance protects the insured party against financial loss arising from breaches of warranties (and, in some cases, indemnities) given in the transaction documents.

The product is most frequently used in private equity and competitive auction processes but is now routinely deployed across a wide range of strategic, cross-border and complex transactions. Understanding how W&I insurance operates in practice — and how it interacts with transaction documentation — is critical to achieving the intended commercial outcome.

In this instalment of *The Buyer’s Playbook*, we explore the role of W&I insurance within the wider transaction process. This article has been prepared in collaboration with Michael Watters, Nikhil Singal and Sachin Kucheria of Howden Broking Group Limited.

What W&I Insurance Aims to Achieve

The primary purpose of W&I insurance is to provide the insured party (most commonly the buyer) with recourse for losses arising from a breach of warranty, in circumstances where contractual recourse against the seller is limited or not desirable.

In a typical buy-side W&I structure:

- The buyer takes out the policy.
- Seller liability for business warranties under the sale agreement is limited to nominal amounts (frequently £1, save in the case of fraud).
- The buyer’s primary recourse for warranty breaches is against a creditworthy insurer rather than the seller.

For sellers, W&I insurance facilitates a clean exit by substantially eliminating post-completion warranty exposure and enabling distributions of sale proceeds at or shortly after completion.

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For buyers, it:

- Reduces the need for escrow or price holdbacks — claims will be made under the W&I policy so there is no need for an escrow or holdback to backstop warranty breach counterparty risk.
- Enhances bid competitiveness in auction processes — buyers backed by W&I insurance are more attractive than those without.
- Provides recourse where sellers are unwilling or unable to give robust warranties.
- Protects relationships in founder-led or management buyouts — buyers can claim for breach of warranty against the insurer rather than ongoing management.

As with any insurance product, coverage is not absolute. The scope of protection depends heavily on the quality of diligence, the robustness of disclosure and the way in which the transaction documents are structured.

Typical timeline for a W&I insurance process

1

Two to three weeks before signing

Broker Engagement

Buyer or seller engages a W&I broker to explore insurance options. Broker provides initial market feedback and non-binding indications of terms.

Key Participants:
Broker, Buyer/Seller

2

One to two weeks before signing

Initial Underwriting Q&A

Broker circulates underwriting questionnaire. Buyer provides draft sale and purchase agreement (SPA), diligence reports and deal overview.

Key Participants:
Buyer, Broker, Insurer

3

At least one week before signing

Underwriting Review

Insurer reviews materials and identifies key risk areas. Secondary underwriting questions are circulated, and a call may also be scheduled to discuss diligence scope and findings.

Key Participants:
Insurer, Buyer, Broker

4

Three to five days before signing

Further Underwriting Review/Underwriting Call

Buyer responds to secondary underwriting questions, or buyer's deal team and advisers join a call with the insurer to walk through diligence findings and confirm coverage scope.

Key Participants:
Buyer, Legal Advisers, Insurer

5

Day of signing or closing

Policy Negotiation and Binding

Final policy terms are agreed. The policy is signed and bound at exchange or completion.

Key Participants:
Broker, Insurer, Buyer

6

Ongoing

Post-Completion Monitoring

Buyer monitors for breaches. Claims can be submitted during the policy period, typically two to seven years depending on warranty type.

Key Participants:
Broker, Insurer, Buyer

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W&I Policy Terms

W&I Pricing

The following key pricing terms are typically achievable in the UK market:

Policy Feature	What Is Typically Achievable in the UK Market
Premium	**Operational:** 0.75%-1.6% of the policy limit.[1] **Real Estate:** 0.55%-1.0% of the policy limit.
Retention	**Operational:** 0.5% or 0.25% of transaction value as standard, lower/tipping options available for an increased price. **Real Estate:** Nil
De Minimis	**Operational:** 0.01%-0.1% of transaction value. **Real Estate:** As low as £15,000 for single assets (may be higher for portfolios). In each case, tied to due diligence (DD) materiality thresholds.

Market Standard Exclusions

In the UK market, it is typical for the W&I policy to contain the following standard policy exclusions: (i) actual knowledge of the buyer's deal team; (ii) matters fairly disclosed in the transaction documents, data room and/or DD reports; (iii) fines uninsurable by law and sanctions; (iv) defined benefit pension underfunding; (v) leakage/purchase price adjustments; (vi) forecasts; (vii) transfer pricing; (viii) secondary tax liabilities; (ix) post-closing availability of net operating losses or tax credits; and (x) asbestos and PCBs.

Other than the foregoing, insurers will not seek to impose any additional blanket exclusions at the outset and will instead assess other potential exclusions on a case-by-case basis during underwriting. The following are examples of areas that insurers typically scrutinise as part of that process:

- Anti-bribery and corruption (exclusion to remain for higher-risk jurisdictions).
- Professional indemnity, product liability and recall, technology E&O, service, public liability (if relevant) — cover will be subject to the adequacy of the underlying insurance programme, a robust policy limit and a clean claims history.
- Cyber — cover will be subject to the adequacy of the underlying insurance programme, a robust policy limit and a clean claims history, alongside a review of the target's IT infrastructure/security.

Core Policy Provisions

In the UK market, the following customary market terms have developed in relation to key W&I policy considerations:

Common Key Policy Provisions	What Is Typically Achievable in the UK Market
Cover for Representations and Warranties Repeated at Closing	Full seller-driven bring-down of disclosures is required. Cover for updated warranties is conditional on (i) an updated seller closing disclosure letter and (ii) the buyer delivering a closing no-claims declaration.
Warranty Spreadsheet	A warranty spreadsheet mapping each insured warranty to the policy position. The spreadsheet typically: (i) identifies any warranty-specific exclusions or limitations on an exceptions-only basis; and (ii) applies a set of blanket deemed amendments reflecting market-standard insurer positions.
Definition of Loss	Will typically follow loss mechanism under the transaction documents. Indemnity basis can be synthetically included as an enhancement.
Materiality Scrape	Can apply an ad hoc single materiality scrape as an enhancement, disapplying materiality and material adverse effect qualifiers in the insured warranties.
Knowledge Scrape	Can apply a blanket knowledge scrape as an enhancement.

Key Trends

Sector and Jurisdictional Appetite

Insurers are increasingly comfortable underwriting a broader range of sectors and jurisdictions. Notably, financial services and pharmaceutical transactions now attract more competitive terms than was previously the case. The W&I insurance product has matured globally, with improved outcomes even in traditionally higher-risk geographies.

[1] Policy limits are typically 10%-30% of the transaction value.

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Synthetic Warranties

Once reserved for distressed or administrative sales, synthetic warranties are now used strategically — particularly in auctions — to enhance bid attractiveness. Buyers are increasingly requesting full or partial synthetic warranty suites, reflecting the market's growing flexibility.

Use of Enhancements

With pricing pressure reducing premiums, clients are leveraging the opportunity to include enhancements at marginal cost. Insurers are more willing to cover legal risks beyond standard tax exposures.

Product Versatility

W&I insurance is now routinely used in mergers, joint ventures, carve-outs, loan portfolios and carbon credit deals. Its use in secondaries has surged, especially in GP-led continuation fund transactions and LP transfers.

Recent Claims Experience

Despite a decline in deal volume in 2023–24, W&I claims notifications remain high. Howden M&A reported a 14% increase in 2024, continuing the trend from 2022. This suggests a new baseline for claims activity.

Significant claims (over £10 million) continue to emerge in both the US and EMEA. The largest EMEA claim to date — approximately €120 million — was paid on a Howden-placed policy for B&C KB Holding's acquisition of Schur Flexibles Group.

Most claims relate to breaches of financial statement warranties, followed by material contracts and regulatory compliance. Tax breaches remain prominent, accounting for 23% of paid claims and 27% of notifications. The rise in tax-related claims may reflect increased scrutiny by tax authorities amid economic pressures.

Conclusion

W&I insurance is most effective when integrated early into deal structuring, diligence, disclosure and SPA negotiation, as the quality and scope of coverage will depend heavily on how those elements of the transaction are conducted and documented.

Policy enhancements can materially improve buyer protection but should be weighed against their cost and the risks presented by the transaction. W&I insurance is therefore a valuable tool for managing transaction risk, particularly when used alongside appropriate diligence, pricing, transaction structuring and contractual protections, including specific indemnities, escrows and retention arrangements.

If you would like to discuss any of the matters discussed here, please reach out to us.

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