



UNCOMMONLY INDEPENDENT

TRANSACTION LIABILITY

# REPRESENTATIONS & WARRANTIES INSURANCE FOR **HEALTHCARE** **TRANSACTIONS**

Our Transaction Liability Practice has assembled a group of former M&A lawyers and industry veterans with unparalleled reps and warranties insurance experience.

For purchases or mergers in a specific industry, like healthcare, we aim to identify potential issues before they arise, leveraging years of specific transaction advisory experience to maximize our placement value.





GIVEN THE NUANCES RELATED TO PLACING RWI ON HEALTHCARE ACQUISITIONS, IT IS CRITICAL THAT A BUYER CAN RELY ON THE UNIQUE EXPERIENCE AND EXPERTISE OF A SPECIALIZED BROKER TO UNDERSTAND:

### MARKET LANDSCAPE

There are more carriers now willing to underwrite healthcare transactions (which varies based on the underlying business of the target).

### PRICING

In light of the smaller number of carriers offering RWI for healthcare deals, regulatory scrutiny of the target, and complex nature of healthcare operations, RWI pricing often is more expensive than other transactions.

### TYPES OF BUSINESSES

Healthcare spans many types of businesses, including service providers (MSOs, DSOs, inpatient and outpatient, etc.), home health, clinics, pharmaceutical and medical device manufacturers and monitoring services, and healthcare tech and healthcare-adjacent transactions, all of which come with their own quirks.

### COVERAGE CONSIDERATIONS

Billing and coding exposure (particularly with respect to government payers), HIPAA, protection of PHI, and regulatory compliance (including anti-kickback laws and FDA) will all be key focuses of underwriting.

### DEAL DATA

Size and complexity will also affect timing, placement, and cost.

## RWI REPLACES TRADITIONAL INDEMNITY

RWI is an insurance policy typically issued to a buyer in an M&A transaction whereby an insurance company agrees to indemnify the buyer for loss resulting from an unknown breach of a representation or warranty in the transaction agreement.

### BUYER BENEFITS

- Facilitate deal negotiations
- Maximize investment protection
- Minimize execution risk

### SELLER BENEFITS

- Transfer contractual liability to insurer
- Maximize proceeds
- Minimize post-closing liabilities





## CASE STUDY

# PRIVATE EQUITY FIRM ACQUIRES HEALTHCARE COMPANY

### *Overview*

#### POLICY TYPE

Representations and warranties insurance

#### CASE

Private equity fund to acquire group of ophthalmology clinics.

The total enterprise value was \$70M, and the target was located in Texas, which is a notoriously high-risk jurisdiction with regard to healthcare regulatory enforcement.

#### OUR PROCESS FOR OBTAINING THE BEST POLICY

We approached more than 25 carriers in the RWI market to ensure that we were obtaining the best possible terms. Given the high-risk jurisdiction, we also requested that the carriers treat the healthcare regulatory representations as fundamental representations (e.g., providing six-year rather than three-year coverage). As a result, we were able to obtain 10 quotes. The selected carrier agreed to treat the healthcare regulatory representations as fundamental representations for only 5% additional premium and ultimately provided coverage without any deal-specific exclusions.

#### MAJOR TAKEAWAYS & CONSIDERATIONS

Historically, healthcare deals have been very difficult to underwrite, largely due to the high-risk nature of medical malpractice and government regulatory enforcement. As the market has evolved, however, more carriers have gained appetite for these acquisitions. The key was brokering the deal to as many carriers as possible, leveraging our detailed knowledge of which carriers have an appetite for niche healthcare risk and using that leverage to drive the best pricing and coverage terms for our client.



**FOR MORE INFORMATION,  
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