

TRANSACTIONAL INSURANCE

CLAIMS MANAGEMENT AND SCENARIOS

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Introduction:

In today's market, getting an M&A deal across the finish line can prove to be particularly challenging. Transactional insurance products help meet this challenge. These products facilitate mergers, acquisitions, divestitures and other business transactions, and include Representations and Warranties (R&W) Insurance, Tax Liability Insurance, Contingent Liability Insurance and Litigation Buyout Insurance. The Mergers and Acquisitions Insurance Group of Chartis has been underwriting R&W insurance since 1998 and is a leading provider of transaction insurance solutions.

When choosing an insurer, the prospective insured must look beyond the insurer's quote and policy form. While it is certainly important for insureds to obtain appropriate pricing and satisfactory terms and conditions in their insurance coverage, it is just as important that the insured select a carrier with proven claims management expertise. The true test of your policy's effectiveness comes after a claim is reported.

In the event of a claim, Chartis has a claims team dedicated to transactional insurance products, including R&W insurance. These seasoned professionals specialize in disputes involving complex transactions and in processing customer claims in a professional manner. They work closely with the R&W underwriting team to ensure that claims handling is consistent with the underwriting intent and to facilitate prompt responses to our clients. In addition, Chartis has unparalleled capabilities and resources, such as long-established relationships with premier law firms and experts, and access to best in class resources around the country.

The M&A Insurance Group has received claims notices on over 20% of the R&W/transactional insurance policies it has written since 1998. As such, the M&A Insurance Group has extensive experience in handling claims. Here are some examples of claims addressed by Chartis in connection with its transactional insurance products:

Patent Infringement: This claim involved the sale of stock in a technical company by its three individual shareholders. Here, the M&A Insurance Group's seller-side policy responded to a claim brought by the buyer for breach of the representations and warranties regarding intellectual property resulting from a third party patent infringement claim. Pursuant to the terms of the underlying acquisition agreement, the buyer brought an indemnification claim against the sellers, and the sellers in turn made a claim against the policy. The parties engaged in alternative dispute resolution, resulting in a settlement whereby Chartis paid over \$2.25 million in damages and expenses to resolve the claim.

Material Adverse Change: This claim involved the acquisition by a private equity firm of a horticultural business. In this example, our buyer-side policy responded to a claim brought by the buyer against the seller and the R&W policy for alleged breaches of representations and warranties regarding financial statements, ordinary course business operations, material adverse effects on the business, title to assets, contracts and account receivables. The buyer and seller arbitrated their dispute, and Chartis' claims team monitored the proceedings. While the parties were still engaged in their dispute, Chartis and the buyer reached a settlement with respect to several of the contested matters. As a result of this settlement, Chartis paid over \$1.5 million in damages and expenses to the buyer.

Accounts Receivable: This claim involved the sale of a restaurant chain by a private equity firm. Here, our seller-side policy responded to a claim brought by the purchaser against the seller for a breach of the financial statements and accounts receivable representations and warranties arising in connection with the target company's issuance of approximately \$1 million of gift certificates that had not been recorded in its financial statements. The buyer's auditors presented the seller and Chartis with a report itemizing the alleged breaches and the related damages. Chartis' claims team and its advisors reviewed the report and determined that the claim was covered under the policy. As a result, Chartis paid approximately \$1 million in settlement and expenses to resolve the claim.

Conclusion:

The unfortunate reality of M&A transactions is that breaches of representations and warranties do occur and claims are brought. While pricing and the terms and conditions of any insurance policy are key factors in choosing an insurer, the insurer's ability to respond to claims is also of paramount importance. Not only are Chartis' transactional insurance products competitive from a pricing and terms perspective, they are also supported by Chartis' unrivaled experience in claims management, providing our insureds with the comfort and confidence they seek when closing a deal.



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