IceMiller

RWI Market Trends Cheat Sheet

Below is a summary of what we are seeing in the RWI market today.

RWI Aspect	Details
Coverage Scope	• Breaches of representations and warranties of the seller and the target in the purchase agreement. • Breaches of the pre-closing tax indemnification (if included in the purchase agreement or synthetic in the case of a no seller indemnity transaction). • RWI does NOT cover breaches of covenants, purchase price adjustments, and forward-looking statements.
Coverage Exclusions	• Liabilities related to defined benefit plan underfunding, asbestos, PFAs or PCBs, CAREs Act liabilities, certain tax losses and transfer taxes, incomplete due diligence areas, and a handful of industry-specific risks. • Material issues uncovered during due diligence. • Fewer exclusions currently than in the past.
Coverage Amount	• Typically, 10%-20% of total enterprise value (TEV) or purchase price. • Can increase to the total TEV with additional riders (for higher premiums).
Survival Periods	• Typically, three years for general reps, six years for fundamental and tax reps. • Policies that provide for six-year survival for all reps are becoming more common. • Options for extended periods with additional premium costs (approx. 10% of premium).
Premiums	• Range from 2.2%-3.5% of the coverage limit amount, or about 0.22%-0.35% of TEV. • Minimum floor of around $100,000 to $150,000 (potentially making deals between $10 million to $20 million TEV cost-prohibitive). • Higher for no-indemnity deals or deals where the seller is not responsible for the indemnity (up to approx. 20% of premium).
Retention	• Ranges from 0.5% to 1% of TEV (some industries may be slightly higher). • Seller is usually responsible for a portion of this amount, typically escrowed at closing. • Typically will decrease, usually a year after closing.
Other Fees and Taxes	• Underwriter fees: $35,000 to $50,000. • State taxes on policy apply (e.g., 4% in NY based on premium amount). • Increased legal fees due to heighted diligence, although insurers now more flexible on diligence requirements • Broker fees around 15% of premiums, usually deducted from premium amount, although not as an additional cost.
Other Considerations	• Selecting an insurer with a good claim payment reputation is critical. • No-indemnity deals are utilized in a minority of transactions and offer the RWI policy as sole recourse. • Consequential and special damages typically covered. Policies are often silent on claims based on a multiple or diminution in value.

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