



GLOBAL FINEX - MERGERS AND ACQUISITIONS

Global Transactional Risks Update and Outlook

June 2023

This update analyses our observations of the current market conditions for Mergers and Acquisitions (M&A) based on our existing clients. It is not a review of the whole market. All rate changes are for guidance only and vary depending on risk profile and individual circumstances.

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1. Introduction and outlook

Surveying the lay of the Mergers and Acquisitions (M&A) landscape of 2023, let's start by acknowledging that despite its uncertainty, 2022 was in some ways a year of normalization, with the market undergoing a correction that brought deal flow back in line with pre-pandemic levels.

Reflection: Looking back and looking forward

2021 was an unusual time, driven in part by pent-up demand from the backlog caused by COVID-19 lockdowns, that year saw historic highs in transaction numbers with both record-breaking levels of execution and total value. The headwinds of 2022, geopolitical unrest, looming recession and rising interest rates while substantial, could have presented more of a challenge to deal activity. The fact that deals originated and closed at the rate that they did indicated the carrying across of buoyant deal team sentiment from the previous year and therefore, provides hope for renewed resilience later in 2023.

Record breaking demand for Warranty and Indemnity (W&I) insurance in 2021 resulted in both new entrants to global markets and to existing insurers adding depth to their underwriting teams and strength to their capacity bases.

In 2022, suppressed deal volumes - predominantly in the second half of the year - combined with the increase in insurer resourcing and capacity to soften the market, marked a clear reverse trend coming off of the Q4 2021 hard market peak. The broadening of insurer appetite along with increasingly competitive pricing makes it an ideal time for dynamic deal teams to take advantage of risk management market conditions.

2023 has begun with some investors adopting a “wait and see” approach – particularly those looking at large transactions (GBP750m+) – and instead assessing the strength of their existing portfolios before embarking on new acquisitions. A similar situation exists for sellers, some of whom sit back in anticipation, awaiting the return to more favourable market conditions.

Notwithstanding this, we have seen steady activity for small to mid-size M&A transactions (GBP10m – GBP500m) throughout H1 2023.

Typical levels of M&A activity seen pre-pandemic to return in H2

It is inevitable that at some point sales processes will begin an uptick as buyers keen to deploy latent capital regain their confidence. When this happens, there is likely to be a flurry of competitive processes for high value quality assets. While we have seen restrained deal flow for larger transactions for the first half of 2023, a return in H2 to the more typical levels of M&A activity seen pre-pandemic is possible with an increasing dynamism kicking off the transition from Q3 to Q4.

Notwithstanding the current macroeconomic environment, these are interesting times in W&I insurance markets and strategic players continue to find opportunities as geopolitics accelerates the transition away from hydrocarbons and macroeconomics makes its mark on asset values, capital deployment decisions and risk management metrics.

We have compiled this update with contributions from our Transactional Risk experts around the globe who have **reviewed the macro-economic trends** seen during the post pandemic period, **assessed movement in the transactional risk insurance market** in 2022 and set out some of **their expectations for the remainder of 2023**.

Warranty & Indemnity (W&I) Insurance Predictions for the remainder of 2023

- Return to more “normal” levels of M&A activity seen pre-COVID-19
- A soft market for W&I insurance, particularly in H1 2023
- Increased use of W&I insurance in newer and emerging markets
- Competition will spur innovation in W&I insurance, new products will be a source of differentiation in a competitive market
- Smaller deal sizes with an uptick in larger deals as we go through 2023

2. Warranty and Indemnity / Representations and Warranties Insurance

Global themes

Market growth

Global deal activity remained strong in the first half of 2022 as deals from Q4 2021 spilled into Q1 and Q2 of 2022. Amid soaring inflation, rising interest rates and geopolitical tensions, we saw deal activity slow in the second half 2022 bringing them back in line with more long-term M&A market trends. Unsurprisingly, all regions reported fewer deals in 2022 as deal makers sought to arrest the pace of expenditure with a view to waiting for more positive indicators on the health and stability of global markets.

The average deal size was down in 2021 and H1 2023 with the exception of Asia which saw a larger average deal size, albeit with less volume. While M&A activity dropped overall, we are continuing to see growth in the use of W&I insurance in Europe, LatAm and the Middle East. Spain reported an increase in the use of W&I insurance across small and medium size deals, possibly attributed to a growing awareness and education of the product and its benefits, as well as an increased

risk aversion complicated by the war in Ukraine, soaring energy prices and inflation.

WTW Israel reported significant market growth and after establishing the first on-the-ground W&I insurance team in Israel have acted on many transactions, including the largest ever transaction in the country with W&I insurance. Central Europe, in particular Poland, saw an increase in direct engagement from corporate clients as opposed to the usual trend of first enquiries coming from lawyers, again indicating an increased awareness and desire for deal specific risk management products.

Insurance capacity

Record deal flow and demand for W&I insurance in 2021 resulted in several new managing general agents (MGA's) opening their doors and existing insurers adding to their underwriting teams. All regions reported a significant increase in insurance capacity, increasing product availability and market diversity. Our Australian office was able to entice new capacity into the Australasian market in 2022 with five new carriers entering the market to provide primary terms.

The UK market has expanded further with two new carriers entering the market in 2022 and more lined up to make their debut in the course of 2023. In addition, insurers are actively seeking new markets and new M&A opportunities as evidenced by their significant expansion in the Middle East (Israel in particular where at least four new global insurers entered the fold in addition to strong appetite from existing insurers), Africa and LatAm. We expect insurance capacity to be readily available for all our clients as competition ramps up among insurers in 2023.

Pricing

All regions reported a restoration of premiums with levels being more consistent with Q1 – Q3 2021. In the UK and Europe, an influx of new entrants competing for smaller deals has restrained gross premium figures with rates regularly falling below 1%.

Underwriters who focus on larger and more complex risks tend to stand out from the crowd by focussing on coverage, a value proposition model that sells itself on depth of regional/sector expertise, technical understanding of complex transactional risks and the ability to deliver a broad range of enhancements. We expect competition amongst insurers to remain fierce with the resulting effect on pricing and coverage continuing the favourable conditions for insureds.



Limits of liability

Limits of liability taken out by insureds in 2022 remained consistent with prior years across all regions with the exception of Asia which reported marginally higher policy limits as insureds took advantage of lower premiums. Typically, policy limits range between 10% to 30% of the target company's enterprise value although these numbers vary primarily depending on deal size. Minimum premiums mean smaller deals tend to see a significant portion of deal value insured, sometimes up to 50% of enterprise value while policy limits for larger deals tend to taper off at between 10% and 20% of enterprise value.

One trend has been the increasing inclination of insurers in an excess tower to deploy lower capacity at the primary level along with a larger limit higher up the tower. This ventilation of exposure allows insurers more diversity of capacity deployment by limiting the impact of large transactions on their capital adequacy ratios. For insureds, the trend serves to spur market interest in underwriting those large transactions that can be difficult to find a home for. Suitors that might have a tentative view of a large and complex risk will often be persuaded by the presence of a prominent insurer's primary coverage on the slip.

Retention levels

Retention levels are broadly consistent with previous years although there are marked regional variations. In the UK and Europe we are still seeing nil retentions offered for real estate deals, while retentions for operational business have been as low as 0.25% of Enterprise Value. Larger transactions typically see a retention of 0.5% as these are usually multi-jurisdictional and more complex and therefore underwriters require a higher level of 'self-insurance' to offset exposure to any unknowable aspects of the risk.

In the US, retentions generally remained at 1.0% of enterprise value but dropping to 0.5% of enterprise value one year following policy inception. The increasing prevalence of low fixed retentions has been accompanied by a hesitant trend away from tipping retentions (possibly partly due to the presence of low fixed retentions at reasonable prices) and so it remains to be seen whether this US retention style will become a feature of markets in other regions.

Underwriting scrutiny

Underwriting scrutiny remains a constant with reporting of similar levels of technical review and deal analysis as in previous periods. One key theme is that as market conditions remain unsettled, deals take longer to progress and buyers proceed with caution. This additional time allowed to buyers and their advisors to conduct more thorough due diligence leads to a smoother underwriting process and more comprehensive coverage.

Where enhancements are offered such as knowledge scrapes or non-disclosure of data rooms, insureds can expect a higher level of underwriting scrutiny, a feature of the general market trend toward dotting the i's and crossing the t's in a time of economic prudence.

Split signing and closings

2022 saw the continued introduction of foreign investment regimes by governments across the globe to protect their national assets and critical sectors/industries. Worldwide, there are now over 100 jurisdictions that have some form of foreign investment regulations. This has had a considerable impact on dealmaking and we are now seeing more transactions now being structured with a gap between signing and closing.

From a W&I perspective, this has led to an increased focus on:

- (a) Coverage of warranties if/when repeated on closing.
- (b) Requirements for updated due diligence, particularly where there is a considerable gap before closing.

In respect of (a), it remains the case that insurers will, as a starting point, require a bring-down disclosure exercise in order to cover warranties when repeated on closing. However, it is important to note that a breach that occurs and is disclosed or discovered by the insured between signing and closing (i.e. an interim breach) is typically carved out of cover. While some insurers can offer "new breach" cover (i.e. cover for interim breaches), appetite remains selective. As a result, buyers and sellers should give careful consideration as to the operation of the W&I policy and its interaction with the contractual rights and obligations of the parties (including any termination rights) under the sale agreement.

In respect of (b), while insurers are typically comfortable with an interim period of up to 6 months, we have seen a divergence of approach between insurers for longer interim periods – e.g. part of the premium may be payable at signing; additional due diligence and/or a bring-down underwriting calls may be required before closing. It is therefore important that the insurer's requirements are clarified early in the W&I process to avoid any unexpected fees, costs or delays to the transaction.

Industry sector focus

In the UK and Europe, renewables emerged as one of the most active sectors and we expect this trend to continue throughout 2023 as companies, driven by both policy and by realpolitik, look to transition to clean energy sources. Consistent with previous years, technology, manufacturing, healthcare, technology, media and telecommunications (TMT), Infrastructure and Real Estate remained active sectors.

Innovation

(a) Small and medium sized enterprises (SME) and synthetic warranties

Smaller deals valued below USD10m have traditionally been considered “too small” for W&I insurance as they are not cost effective for an underwriter to commit resources to. There is however, an increasing interest in this lower end and in 2022 and H1 2023 insurers have been looking at ways to access this market and to provide solutions for SME transactions.

Two MGA's have recently launched products designed to target these smaller deals by using technology to streamline the process, synthetic warranties and standardized policy wording to underwrite more efficiently and at a lower cost. With current trends in the M&A market and the inclination toward smaller deals, these products are likely to generate increasing interest.

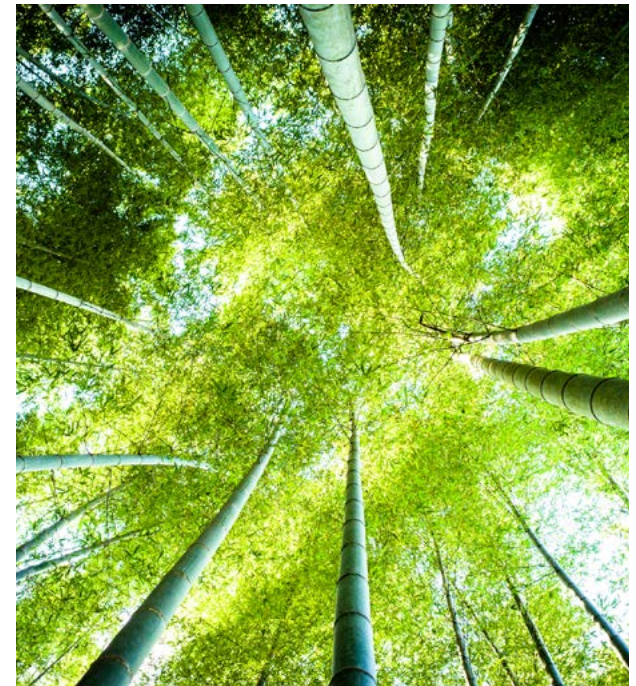
(b) Intellectual property

Where intellectual property (IP) due diligence is limited or non-existent, one underwriter has developed a product which employs the use of AI powered technology to conduct insurer due diligence and risk analysis. We expect this to be a useful tool in 2023 in those transactions where IP is core to deal value.

(c) Environmental

Environmental risks and the increasingly complex regulatory framework that they exist in continue to assume growing importance. Having integrated environmental, social and governance (ESG) considerations into investment decision making, both financial sponsors and advisors are tending to make this a key focus in the deal making process.

For those circumstances where there are limits on environmental coverage as a result of the buyer's knowledge or the seller's knowledge qualification, one insurer has developed an environmental insurance product which allows for the removal of standard pollution exclusions and the provision of synthetic coverage.



Key Underwriting Themes

Accounts, valuations and multipliers

We are seeing W&I insurers continue to increase their focus on the valuation of target companies. Some underwriters have taken the step of recruiting former corporate finance professionals to forensically examine financial due diligence reports. Accounts warranties are one of the most common sources of notifications and when policies require that losses are paid on the basis of a multiplier, they can also be the most costly. For this reason, it is critical for the insurer to understand where the buyer attributes value within the company. Better understanding of valuations can also support a pragmatic approach to underwriting as it enables underwriters to spend more time underwriting the high value areas and less time on those aspects of the business that are less material.

COVID-19

COVID-19 continues to be a point of discussion in underwriting, particularly as it relates to historical utilisation of furlough schemes. There is also an enhanced focus on those industries (such as travel and tourism) which suffered acutely from restrictions on movement. As would be expected, however, as the virus becomes endemic it is seen as being less of a concern from a transactional risk management perspective. As a result, in most jurisdictions it is no longer as common to see COVID-19 related exclusions with China, which is still grappling with COVID-19 issues, being a notable exception to this trend.

Cyber

Cyber risks remain a key area of focus for W&I insurers where the target business may have exposure. In such cases, insurers will typically require enhanced due diligence of the target's cybersecurity arrangements. Insurers are increasingly willing to sit in excess of existing cyber insurance policies where the underlying policies are appropriate in terms of scope and level of cover and the target has a clean claims history.

2023 Trends

Environmental, social and governance

Once the focus of niche impact investors, ESG is now a topic that sits squarely in the mainstream and is a key consideration for boards, shareholders, customers and the media. Acquirers are committing themselves to an ESG focus as part of the due diligence process as investor demands increasingly encompass ESG transparency and an audit of the full suite of climate, social justice, sustainability and corporate governance processes. In this context, an increasing concern for insurers is likely to be the expanding nature of legislative ESG requirements and their impact on those warranties related to target company compliance.

W&I insurers are shying away from those target companies or buyers who are seen to be disregarding their impact on the environment with both coal and oil being a particular area of sensitivity. We expect to see an increasing concern in this area with upstream oil, coal and other carbon heavy industries being subject to increased scrutiny and over time being increasingly squeezed from the perspective of insurer appetite.

Geopolitical impact

The economic and geopolitical upheaval of 2022 caused a sharp realignment in investment committee focus and the pursuit of stability and predictability is likely to lead to more deals among trusted partners in more traditional markets. This could signal a shift to a more stable risk environment in the M&A space with a focus on transactions in well understood markets. In this context, we would expect to see more 'friend-shoring' transactions going forward as investors commit to long term stability and seek to limit their exposure to bad economics and bad politics.

Return of the 'Lipstick Effect'

During H2 2022 we saw a 'Lipstick Effect' take hold as the economic downturn leads to a rise in spending on smaller, more affordable – rather than big ticket, more expensive – target companies. WTW's Quarterly Deal Performance Monitor (produced in partnership with the M&A Research Centre at City University London's Bayes Business School) confirmed that for the first time in over three years, no mega deals (valued over \$10 billion) closed during Q3 2022 and large deals (valued over \$1 billion) were significantly down on the same period in 2021 (49 vs 67). This trend has continued into H1 2023 though we expect to see an uptick in larger transactions is expected as the year progresses.

Opportunities in distressed M&A

With ongoing supply chain disruptions lingering from the COVID-19 pandemic, target company operational resilience remains a key consideration in M&A transactions. Such post-COVID-19 vulnerabilities may continue to deliver distressed deal flow in the worst-affected sectors and are also likely to be a catalyst for dynamic businesses to re-route their own supply chains with possible second order effects such as increased carve outs and spin-offs. By onshoring or nearshoring suppliers, businesses will aim to achieve greater security and resilience and the coincidence of these increased kinetics with a soft market may lead to less insurer resistance to those risks that emanate from business restructuring.

The above-mentioned difficulties will likely drive an increase in the pace of divestment from non-core assets in the pursuit of the stability of long-term value creation. Some deals will be strategic – firms will continue to jettison carbon intensive assets – while some sellers, cash strapped and debt laden in the

ongoing economic uncertainty, will have their hand forced. Sectors such as retail and leisure (which often have a higher operating leverage) are likely to see movement in this regard and discerning buyers will find themselves able to add product lines, services or supply chains at a reduced outlay.

Technology M&A: From defence to offence

The need for speed in the digital transformation across all industries, accelerated by an era of volatility, will keep dealmaking front and centre, with growth in acquisitions in the AI and machine learning space expected. Whether adopting new technologies and talent or reaching new markets, M&A continues to be the fastest way for businesses to transform in order to remain relevant and resilient and W&I insurance products (and more broadly transactional risk products) remain an important part of a deal team's toolbox when it comes to both managing the risk and getting the deal across the line.

Sell-side policies

Throughout the course of H1 2023, we have seen a shift in the M&A dynamics from seller to buyer with buyers – particularly corporate acquirers – pushing back on the well-established £1/\$1 liability cap. With sellers bearing more liability, we have seen a return to traditional sell-side policies. Whether this trend continues throughout the year as deal volume picked up will be an area to watch closely.



3. Tax Liability Insurance

In 2022, WTW saw continued client interest in tax insurance coverage with complex tax risks increasingly falling within widening insurer appetite.

Tax underwriting teams have continued to grow throughout 2022 as economic conditions and the enduring concern of tax investigation has led to an increase in clients being less likely to self-insure some of the lower to medium risk tax risks that they may have done in more predictable markets. Following general trends in transactional risk markets, geographical appetite has expanded such that tax risks in uninsurable or harder to insure jurisdictions can now be covered (e.g. Latam, Africa and Southern Europe).

Alongside the widening appetite of tax insurers has been a downward rate movement. Pricing for tax risks in the UK is typically 1.5% - 2.5% of the policy limit though, depending on the nature of the risk, rates can be lower. Rates in North America are typically between 1% to 5.5% while in Asia and Australasia we continue to see a broader spread of pricing. Overall, we expect to see competitive rates continue throughout 2023.

With demand for tax insurance coverage tending to increase with economic uncertainty, an uptick in tax insurance placements is expected as we progress through 2023.

Case study - carried forwards tax losses



Client challenge: Our client was looking to acquire a company with significant carried forward ring fenced corporation tax losses (c.\$400m). The client wanted to ensure the risk that the carried forward losses in the company could be utilised post acquisition. The losses represented a significant amount of the value being attributed to the target group and the certainty of its utilisation was key to obtaining investment approval.



Our solution: We adopted a global insurance placement strategy, due to the size of the liability, approaching insurers in London, Europe, Asia and the US. Detailed discussions and negotiations were held with each insurer to create a bespoke insurance solution via a tower of insurers covering the specific tax liability.



4. Contingent Risk Insurance

A useful tool in getting those deals across the line which have an identified risk that a buyer is unwilling or unable to countenance, contingent risk insurance is a key solution available to transactional risk managers.

In 2022, insurers expressed increasing willingness to think laterally in their application of capacity to innovative structures demonstrating a solid understanding of the market's desire for bespoke solutions on those complex transactions where a contingent risk is preventing movement.

The multijurisdictional nature of transactions into 2023, often driven by geopolitical events, adds another level of complexity as the depth of expertise required from underwriters to take on risks in unfamiliar jurisdictions cannot be taken for granted.

Contingent risks continued to involve enquiries for multi-year cover often with a requirement for policies with multiple triggers and so pricing can at times be uncorrelated with other transactional

risk markets. With ongoing economic and geopolitical uncertainty an uptick in contingent risk insurance placement is possible and for the moment capacity and appetite remain sufficient albeit with expertise being concentrated in a select handful of insurers.

The war in Ukraine and the resulting impetus given to the drive toward renewables has led to a flurry of disposals, restructuring and disputes all of which provide fertility to the risk landscape from which contingent risks are likely to emanate. The need to ringence such risks and to pass them from the deal parties balance sheet to that of the insurance market remains strong and as familiarity with the market increases this is a trend that we expect to increase throughout 2023.

Case study - End of Fund Life Policy

We provide you with a bespoke End of Fund Life policy to indemnify the fund for residual liabilities.



Client challenge: A global investment company approached us prior to the winding up of a real estate investment fund to explore an insurance solution in relation to, seeking residual liabilities of the fund, pursuant to historic transaction documentation when disposing of assets. We advised that we could negotiate an insurance policy that would cover any residual liabilities remaining in the fund group, predominantly arising out of historic disposals, to enable the fund to be wound up.



Our solution: We negotiated an End of Fund Life insurance policy. The insurer agreed to provide 'ground up' cover for residual liabilities which consisted of: (i) potential identified tax exposures including transfer pricing and secondary tax risk; (ii) extant tax warranties and indemnities; and (iii) extant title and capacity warranties. The liquidator was a named beneficiary of the policy to facilitate the voluntary winding up of the existing fund structure.

The client was able to wind up the fund faster ahead of the residual liabilities reaching their respective expiry date and thereby save on administration costs, ensuring a greater return on investment.

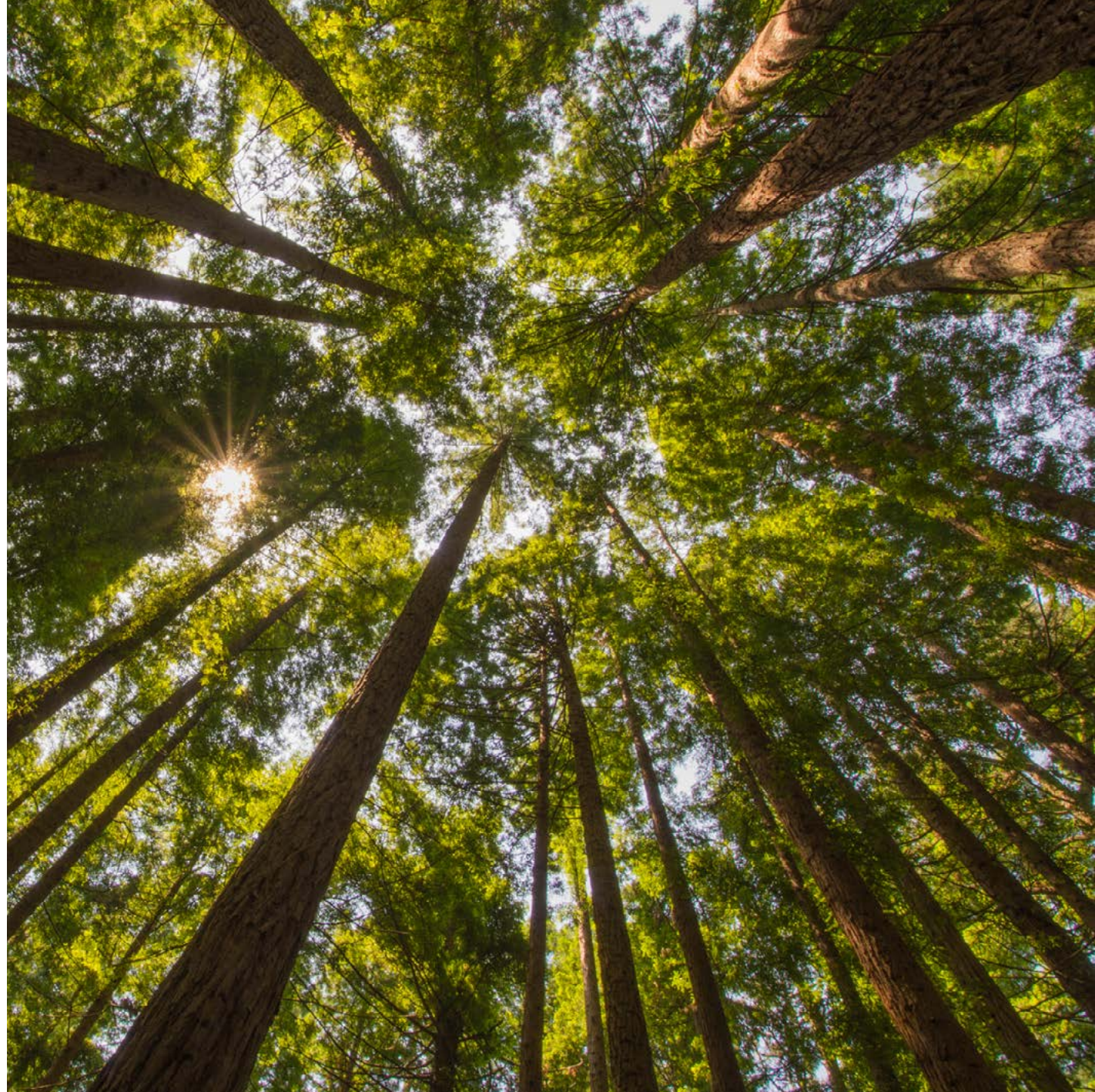
Case study – Intellectual Property



Client challenge: Our client engaged us to arrange a transactional insurance solutions relating to risks associated with the sale of intellectual property (IP) of technology they owned and developed over the past 20 years.



Our solution: WTW advised on a hybrid W&I policy combined with a high degree of focus on IP which was baked in to suit the transaction. What was also unique to this policy was that it was initiated and held by the seller. A USD 5,00,000 limit of liability was secured resulting in this inventive and unique W&I solution designed to fit the IP/patent sale between a FTSE 100 company and a US social media giant.





5. Claims Review

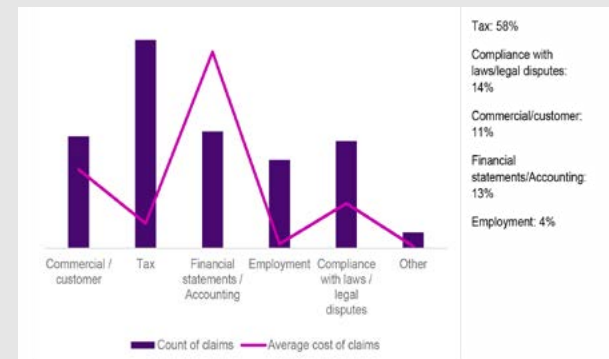
In this section, we examine claims notifications over a six year period for policies placed by WTW in markets around the world from the beginning of Q1 2017, through to the end of Q4 of 2022.

WTW manage W&I insurance claims in-house through our dedicated team providing both advocacy and advice and our review is based on the examination of a dataset of 500 claims notified by clients under GB, European, US, Australia and Africa policy placements.

Key take aways

- On average 20% of W&I policies placed received a claims notification – of these 1 in 8 (or 2.5% of policies placed) progress to a claim payment
- Tax breaches represent the most common type of losses notified, however “financial statements/ accounting breaches” have been the most costly on average.
- The average timeline between policy placement and discovery (hence notification) varies from 220 days for “compliance with laws/legal disputes” to over 400+ days for “tax and financial statements/accounting”.
- On average claims notifications have steadily increased as clients have become more aware of policy reporting periods.

Figure 1: Types of losses notified - United States, Great Britain, and Europe



The graph above illustrates the relative frequency and severity of the reported claims in the US, GB and Europe for clients globally. It will be noted that tax loss notifications occur most frequently but tend to be less severe. This is sometimes because tax losses are rarely subject to the application of valuation multiples as they tend to reflect discrete fixed liabilities whose quantum does not vary depending on how the business is valued.

Financial statements and accounting claims are second to tax in terms of claims notifications but have a far greater impact on claim amount. This is because when a claim arises from a target company's financial statements, the value of the company is impacted and so it is possible that the purchaser has paid more for the target company than it is worth. To put the insured in the same position as if the relevant warranty had been true (and the breach had not occurred), the value of the claim on a financial warranty may be multiplied; by way of example, if a company was valued using a multiple of 10x EBITDA, the breach of an accounting warranty valued at \$1m on the financial statements could have the same valuation multiple applied to it thereby valuing the loss at 10x \$1m (\$10m).

Commercial / customer contracts and compliance with laws / legal disputes make up a large portion of claims notifications. Breaches of this nature can have a material impact on the target company as they can affect revenue streams which in turn will affect valuation. Claims related to employment warranties appear less severe in GB Europe and the US as they are usually isolated incidents however, when there is a systemic issue within a company's employment protocols, these can lead to myriad loss event triggers. The reason for losses under the "other" category include data room content (disclosure accuracy / adequacy) and shareholder / bondholder disputes.

While claim types differ in terms of frequency and severity, during the referred period WTW have managed large losses valued at tens of millions of dollars across all categories reported.

Case study – Financial statements/accounting - Target company: Telecommunications



Client challenge: A claim notice was filed by the insured after discovering the target company was under reporting certain activities to government authorities. The activities were subject to a charge for a government telecommunications fund and subsequently certain fees were required to be paid that had not been discharged prior to the closing of the transaction



Our solution: As a result of the under reporting, the profits of the target company were impacted and the detriment meant that the financial condition of the target company had not been fairly presented. The insured had paid a 4.8 multiplier price on the target company EBITDA and insurers eventually paid out the entire policy limit to the seller. A USD 5,00,000 limit of liability was secured resulting in this inventive and unique W&I solution designed to fit the IP/patent sale between a FTSE 100 company and a US social media giant.



Case study – Compliance with laws/legal disputes. Target company: Healthcare



Client challenge: A customer of the target company alleged that the target company had been in breach of its agreement with regards to the management of the customer's healthcare facilities. The insurers raised the fact that the initial letter from the customer, prior to closing, was disclosed during the sale process and that this letter seemed to be referring to the same breach of contract. The customer filed an action against the insured, which was eventually settled.



Our solution: The insurers agreed to pay towards the settlement and defence costs in connection with the defence of the customer third-party claim.

Case study – Financial Statements/overstated earnings. Target company: IT & software



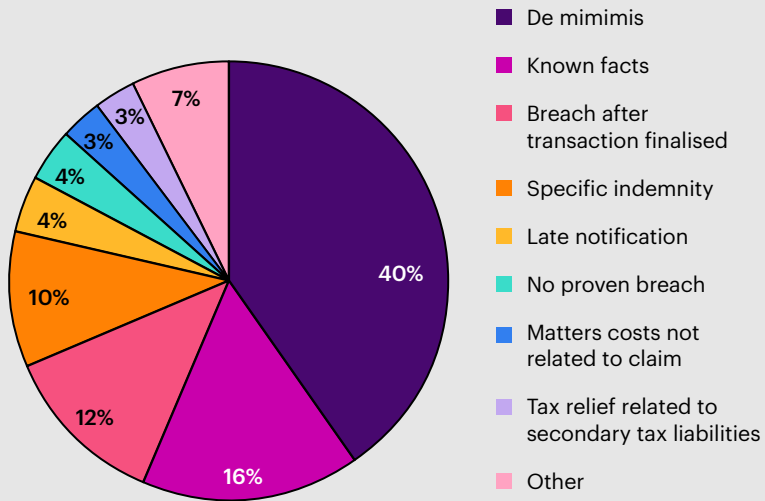
Client challenge: The claim was notified by the insured following the discovery that the target company had overstated their earnings. It was discovered the target company had accounting system issues which resulted in a material reduction in maintainable earnings and errors in profitability. As a result, the insured had incurred a loss as their purchase price of the target company had been based on a multiplier of the earnings before tax



Our solution: The insurers initially denied cover as they felt that the earnings impairment had been known at the time of the acquisition. However, an agreement was reached following independent forensic accountants engaged and discussions with insurers, who paid 75% of the policy limit.

Denial Reasons

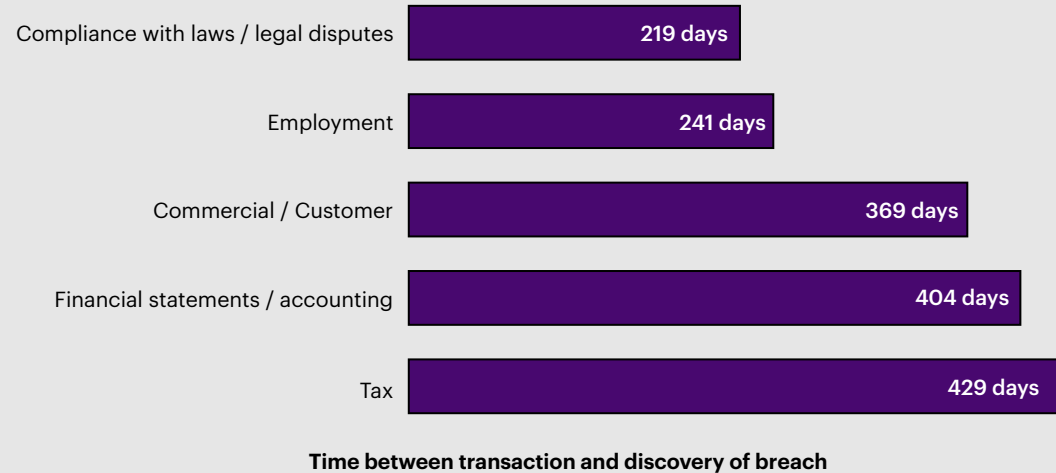
Figure 2: Reason for denial (GB, Europe and US)



To further analyse claims notified but not paid it is interesting to look at the reasons for denial provided by insurers. The chart above includes data from GB, Europe and the US. The majority of denials are due to the claim falling below the policy de minimis and therefore not eroding the retention sufficiently. Matters known or disclosed to the insured before policy inception make up 16% of claims denials. Breaches occurring after the signing date make up 12% of claims denials. Taken together, these figures may point to issues arising as part of the integration process between the target company and buyer. Late notification, specific indemnities/deal specific exclusions, secondary tax liabilities and unrelated claims make up the remainder of denials with the 7% “Other” category including geographic restrictions, bad debts, payments due under employment contracts (salary/benefit disputes) and structural defects.

Reviewing Timelines

Figure 3: Timeline by claim category



The chart above illustrates the average length of time (in days) that it takes for a breach to be discovered following an acquisition. Evidence of breaches related to employment related events and legal disputes tend to emerge closer to the acquisition date on average, whereas in contrast, events leading to claims related to taxation and financial statements / accounting often occur more than a year before they are discovered. This can be understood by the fact that employment / legal related disputes are generally isolated discrete incidents whereas financial statements/ accounting breaches may have more systemic effects which take longer time to manifest and only become apparent following a full audit cycle.



6. About WTW's M&A Practice

The WTW Global Transactional Risks team advised on more than 3,000 transactional risks policies in the last two years.

We often work for buyers and sellers or indeed multiple bidders on a single transaction. We are able to provide segregated teams for each client to give complete confidentiality/compliance and bespoke advice for each bidder.

WTW's M&A team is a highly qualified global team of insurance advisers, many of whom are ex lawyers and accountants, experienced in advising on and negotiating the optimum insurance solutions for each transaction.

W&I insurance is more than a placement process, our expert team assimilate all of the relevant data, anticipate underwriters' requests on key areas, advising on and creating the best available solutions and working closely with the client's other advisers throughout the deal process and beyond in the event of a claim.

The WTW team specialise in cross border deals where we provide W&I, Tax and Contingent insurance solutions globally; providing local knowledge on each transaction.

We work closely with our Insurance Due Diligence team, who give clients a clearer picture on target

WTW global M&A practice

A market leading team of 200+ M&A practitioners, many of whom are qualified in either Corporate Law, Tax and Accountancy principles or insurance, working together to help our clients navigate M&A transactions safely. We draw on the full resources of WTW to bring Sector expertise, analytics, risk evaluation and insurance placement (where required) to each transaction, in other words delivering the firm and focusing on our client's strategic objectives on a deal-by-deal basis.

We help solve complex risk issues, regularly working to tight deal timeframes. Our transaction related advice and insurance knowledge is valued by our clients, who often use this tactically buy-side and sell-side to enable a successful outcome to an acquisition or divestment.

Our team

For more information please contact our regional colleagues shown below:

International (ex North America)			
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