Jurimesh

W&I INSURANCE: A DETAILED GUIDE

PAPER 1

THE W&I SERIES

How the policy is structured, how underwriting actually runs, what gets excluded and why, and what happens when a claim lands.

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HOWDEN

On a Friday afternoon, a deal closes. The PE fund that sold the business begins preparing its LP distribution; proceeds will be paid out within thirty days.

Fourteen months later, the buyer's financial team is reconciling a tax position from three years before the acquisition and find a discrepancy that was never disclosed and never reviewed in DD. The exposure is €2.8 million.

They call the seller. The seller entity, an SPV set up for the transaction, has €12,000 in its bank account. The proceeds were distributed to fund investors thirteen months ago, spread across forty LP accounts in six countries. There is nothing to recover from, and there never was going to be.

This is not an edge case. It is how PE transactions are structured. The seller is likely to be empty by the time a claim surfaces. Most buyers who encounter this for the first time find out the hard way that the contractual protection they negotiated means nothing if the counterparty has been liquidated.

With a W&I policy in place, the buyer makes a call, files a claim, and waits. The broker and insurer handle the rest, and the loss gets paid. Not immediately, and not without process, but it gets paid.

Without one, this is a litigation problem. Fourteen months of accrued complexity, forty LP accounts across six jurisdictions, and a recovery action that will cost more to pursue than it is worth. Most buyers walk away. The loss sits on the balance sheet.

That is what Warranty & Indemnity insurance does. Not in theory, but in practice.

This paper explains how it actually works: the policy structure, the underwriting process, potential pitfalls, and what a claim looks like when it gets there.

1 Why W&I Insurance Exists

The problem W&I insurance solves is structural, not incidental. It is baked into the mechanics of how M&A transactions work.

When a buyer acquires a company, the seller makes a set of promises about the state of the business. These are the representations and warranties. If those promises turn out to be false, the buyer has a contractual claim against the seller for the resulting loss. In theory, this is clean risk allocation. In practice, it has three problems.

The solvency problem. By the time a warranty claim materialises, typically 12 to 36 months after closing, the seller may no longer be in a position to pay. In PE deals, the seller entity may distribute sale proceeds to fund investors within weeks of closing. The shell that remains has no assets. Pursuing a warranty claim against it is an expensive exercise in futility. Even in founder-led deals, a founding family that has received €40 million may be unwilling to engage constructively with a claim that threatens their personal liquidity. W&I insurance offers the possibility to claim directly against A-rated insurers and eliminate the need for escrow or other means of securities, allowing for 100% of the proceeds to be paid at closing.

The relationship problem. In deals where the seller is reinvesting, rolling equity, or continuing to manage the business post-closing, warranty claims create a poisonous dynamic. The buyer and seller need to work together; litigation does not help. W&I removes the interpersonal dimension from post-closing disputes.

The auction problem. In competitive processes, buyers who limit their warranty claims against the seller, or waive them entirely in favour of W&I, can offer cleaner deal terms. Sellers prefer a clean exit. A buyer who can say "we'll rely on W&I rather than on you for post-closing claims" is a more attractive counterparty. W&I has become a competitive bidding tool.

These three drivers explain why W&I has evolved from a niche product into a mainstream feature of European M&A in less than a decade. W&I can be structured for transactions ranging from as little as €5 million to multi-billion-euro deals. For transactions valued above €20 million, its use is now expected in most sale processes. In PE-to-PE transactions, it is almost universal. The question is no longer whether to use W&I, but how to use it effectively.

A brief history

W&I insurance originated in Australia in the early 1990s, initially as a sell-side product used by sellers to cap their warranty exposure. It migrated to the UK and North America in the late 1990s and early 2000s, initially as a niche product for large, complex transactions. The European mid-market adoption came later; the real inflection point was around 2014 to 2016, when premium rates compressed, retention levels dropped, and insurers became comfortable with smaller deal sizes.

Today the European W&I market handles several thousand transactions per year. Premium rates have roughly halved over the past decade. Retentions that were once around 1% of enterprise value are now frequently 0.25% or lower, with nil-retention policies available for real estate transactions and certain smaller operational deals. Increased competition and sophistication in the market has shifted differentiation toward the quality of coverage and process, speed of underwriting, and the ability to handle novel DD methodologies.

2 The Cast of Characters

Before explaining how W&I works, it is worth being precise about who does what. The broker and the insurer are frequently confused in market commentary, including occasionally by the deal parties themselves.

The buyer

The buyer is the policyholder under a buy-side W&I policy. They pay the premium, file claims, and receive the indemnification proceeds. In PE deals, the policy can be placed at the level of a acquisition vehicle (BidCo), for instance to extend coverage to reinvesting sellers or managers, or at the level of the investor itself.

The seller

The seller gives the representations and warranties in the SPA. Under a buy-side W&I structure, the seller's contractual liability is typically capped at a nominal €1 (at least in respect of the business warranties), or eliminated entirely under a synthetic policy structures. As a result, the seller benefits from a clean exit with certainty over their post-closing exposure.

The W&I broker

The broker advises the parties to a transaction on policy structure, approaches multiple insurers to prenegotiate competitive terms, and manages the underwriting process on behalf of the insured entity. The broker itself does not cover the risks. They are paid a brokerage commission by the insurer, typically 20% of the premium.

The broker's role extends well beyond negotiating price. An experienced W&I broker understands the deal dynamics and transaction documents. They can identify which insurers have appetite for particular deal types, industries and jurisdictions, which underwriting teams take a pragmatic approach to specific categories of exclusions, and how to structure and present the due diligence workstream to maximise coverage while minimising exclusions. A broker can also leverage its market position to ensure clients are treated as long-term relationships rather than one-off transactions, helping to achieve the best possible outcome both during the underwriting process and, if needed, in the event of a claim.

Key W&I brokers active in the BeNeLux and Nordic markets include Howden M&A (where Raphaël Delsaux works), Marsh and Aon.

The W&I underwriter / insurer

The insurer takes the risk. They review the deal, price the coverage, issue the policy, and pay valid claims. They are regulated insurance entities with dedicated M&A insurance teams that combine legal and insurance expertise.

The underwriter's job is to assess what risks exist in a transaction, based on the DD reports, the SPA, and the disclosure letter, and decide what they are comfortable covering and at what price. Exclusions are the underwriter's way of saying they are not comfortable with a specific risk, either because the DD did not cover it adequately or because the risk profile is outside their appetite.

Key W&I insurers active in the BeNeLux and Nordic markets include Transact Risk Partners, Dual M&A, Liberty GTS, Ryan Transactional Risk, Acquinex, Euclid, CFC, Ambridge, RiskPoint, and AIG.

The buyer's M&A legal counsel

The buyer's legal counsel plays a central role in the W&I underwriting process. In particular, they prepare the legal DD report on which the underwriter will largely rely. They are also responsible for responding to the insurer's legal underwriting questions, including explaining what was reviewed, how the review was conducted, and the basis for the conclusions reached. The quality of the legal DD exercise - and the team's ability to articulate it during underwriting - has a direct impact on the scope of coverage ultimately available.

A lawyer who simply states that "everything was reviewed and no issues were identified" gives the underwriter little to underwrite. By contrast, a lawyer who can accurately assess and present risks and can clearly explain the review process, the materiality thresholds applied, any limitations encountered provides the underwriter with a robust basis on which to offer broader coverage.

This dynamic is often underappreciated. The buyer's legal counsel is not only producing a report to support the client's investment decision, but also the principal underwriting document for the W&I insurer. The objectives are different, and the leading M&A teams understand how to adapt their due diligence accordingly.

3 Policy Structure — What You Are Actually Buying

A W&I policy is a specialist insurance contract. The terminology is specific, and the details matter.

Buy-side vs. sell-side policies

The vast majority of W&I policies placed in Europe today are buy-side policies. The buyer contracts directly with the insurer. If a warranty is breached, the buyer claims against the insurer rather than the seller, and the insurer pays.

Sell-side policies exist but are uncommon in Europe. Under a sell-side structure, the seller insures their own warranty liability. If the buyer makes a successful warranty claim against the seller, the seller then claims against the insurer to fund the payment. This requires the buyer to sue the seller before the insurance responds, which recreates exactly the friction W&I is designed to eliminate. Sell-side policies are occasionally used on specific occasions, but they are not the market standard.

Scope of coverage

The W&I policy is designed to provide back-to-back coverage for the warranties given under the SPA and the general tax indemnity (if any).

Synthetic coverage is also available on an increasing number of transactions. Under this structure, rather than relying on warranties or general tax indemnity given by the seller, the insurer provides a standalone suite of warranties and tax indemnities, underwritten directly by the insurer and appended to the W&I policy.

Policy limit

The policy limit is the maximum amount the insurer will be liable for across all claims made under the policy. Policy limits typically range from 10% to 30% of the Target's enterprise value, although limits of up to 100% of enterprise value can be obtained. Higher limits are often used to secure meaningful protection for fundamental warranties where the seller requires a fully clean exit.

Capacity is available from approximately €5 million up to around €1 billion per transaction, making W&I insurance suitable for both smaller and very large deals.

Deductible

The deductible, sometimes called the excess or retention, is the amount the buyer absorbs before the W&I policy responds. A policy with a €500,000 fixed deductible means the buyer bears the first €500,000 of any claim or series of claims.

The type of deductible applied to claims under W&I policies varies depending on the nature of the deal.

For operational transactions in the BeNeLux, insurers usually apply a deductible of 0.15% - 0.50% of the enterprise value, which can generally 'tip' to nil. In the BeNeLux, the deductible will typically not apply to the fundamental warranties.

For pure real estate transactions, hotels, data centres and renewable energy projects (in preconstruction phase), or certain smaller operational deals, the deductible will usually be nil.

Higher risk jurisdictions or industry sectors may require higher deductibles.

De minimis

The de minimis under W&I policies typically mirrors the financial materiality thresholds applied in due diligence. Where no such thresholds have been applied, insurers will generally offer a lower de minimis than the threshold typically sought by sellers under the SPA.

For W&I insured transactions in the BeNeLux, the de minimis applies to the general warranties and the tax indemnity, but not to the fundamental warranties.

Premium

The W&I premium is a one-off cost payable after completion and is typically expressed as a percentage of the policy limit.

In the BeNeLux market, current rates for standard operational transactions run at approximately 0.70% to 1.10% of the policy limit. Real estate transactions are cheaper, typically 0.40% to 0.80%.

Premium is driven by several factors, including deal size and complexity or the target's industry and geographical footprint. Certain jurisdictions and industry sectors command higher pricing, with premium rates increasing to as much as 2% - 4% of the policy limit for higher risk or larger transactions.

Premiums for W&I insurance policies are subject to insurance premium tax ("IPT"). The rate of IPT depends on the jurisdiction in which the insured entity is incorporated. For example, IPT is currently 21% of the premium in the Netherlands, 9.60% in Belgium, and 4% in Luxembourg.

Premium rates have broadly trended downward over the past decade, driven by increased insurer capacity and strong competition across the market. This trend has accelerated in recent years, and the market is currently more competitive than ever by historical standards.

Policy period

Irrespective of the time limitations in the SPA, a W&I policy will typically provide for the following cover period:

General warranties are typically covered for 3 years from closing. These cover the commercial, operational, and legal warranties: contracts, litigation, regulatory compliance. Most issues surface within 18 to 24 months of closing, so a 3-year period is usually adequate. Extensions to 5 years are available for IP, employment or environmental warranties, usually at an additional premium of 2 to 5% per extension.

Tax warranties and the general tax indemnity are typically covered for 7 years, reflecting the longer limitation periods applicable to tax assessments in most European jurisdictions. Tax is statistically the most frequent source of W&I claims, and the longer policy period provide a meaningful protection in this respect.

Fundamental warranties are typically covered for 7 years. The definition of fundamental warranties used for the purpose of the policy will generally be broader than the SPA definition. They are high-severity, low-frequency risks (e.g. title to shares or properties, validity of the transaction itself, capacity, etc.) that warrant longer coverage.

4 What W&I Covers — and What It Does Not

What it covers

A W&I policy covers loss arising from a breach of warranty or claim under a general tax indemnity that was **unknown to the buyer** at the time of signing or, in case of a repetition of warranties, at closing.

Certain known issues identified in due diligence (e.g. a potential tax liability) that are excluded from coverage under a W&I policy may still be coverable under a specialist insurance solution, such as specific tax risk insurance. The use of these complementary insurance products is growing exponentially, both in an M&A context or outside of any transaction.

Exclusions

A few market-standard exclusions apply to all W&I policies, including:

- Any fact, matter or circumstances of which the insured's deal team members have 'Actual Knowledge';
- Matters which are 'Fairly Disclosed' in the transaction documents, data room and due diligence reports, except where the data room and/or due diligence reports are (synthetically) carved out from the disclosure mechanism of the policy;
- Purchase price adjustments (other than those arising from warranty/indemnity claims) and leakage;
- Underfunding of defined benefit schemes;
- The physical condition/design of properties, unless a clean technical due diligence report is available; and
- Secondary tax liabilities, transfer pricing and the non-availability of carried forward tax-reliefs, although these matters can be brought back into cover subject to robust due diligence.

The disclosure exclusion in depth

In an M&A transaction, the disclosure process serves to qualify the seller's warranties by identifying facts, matters or circumstances that are known to the seller and that may be inconsistent with those warranties. Rather than amending the warranty suite itself, sellers under European-style SPAs will upload documents in the data room supporting the warranties, including any potential exceptions. Once fairly disclosed, these matters generally cease to constitute breaches of warranty and remain with the buyer.

In a transaction without W&I insurance, the disclosure process is therefore one of the key mechanisms through which risk is allocated between the parties. Buyers will typically seek a narrow disclosure standard, requiring disclosures to be sufficiently detailed to enable an informed assessment of the nature, scope and consequences of the relevant matter. Sellers, on the other hand, generally seek broader disclosure mechanics in order to minimise their residual liability. The negotiation of the disclosure standard is therefore often one of the central discussions in SPA negotiations.

In a W&I-insured transaction, the disclosure process retains the same function, but also directly determines the scope of cover available under the policy. As a general principle, insurers only cover unknown risks. Any matter that has been fairly disclosed to the buyer or that has been sufficiently identified in the due diligence reports will generally also be treated as disclosed under the W&I policy and therefore fall outside the scope of cover. During underwriting, insurers will review both the disclosure exercise and the due diligence reports to assess whether the disclosure process has been sufficiently robust and whether any disclosed matters should give rise to specific exclusions or other coverage limitations.

To optimise coverage, insurers will often be prepared to apply a synthetic disclosure standard that is narrower than the standard ultimately agreed between the buyer and the seller under the SPA (for instance, by applying a narrower definition of “Fairly Disclosed” under the policy, or by carving out the contents of the VDR from the scope of the disclosed information). This allows the buyer to benefit from broader insurance protection without necessarily requiring changes to the negotiated contractual position. The availability of such synthetic enhancements will depend on the quality of the disclosure and due diligence and the insurer's underwriting appetite.

5 The Underwriting Process, Step by Step

Stapling W&I insurance

Although the W&I policy is almost always taken out by the buyer, the W&I process is very often initiated by the seller. This is particularly true in auction processes, where sellers are keen to retain control over the insurance workstream, ensure a level playing field between bidders and minimise the risk of sensitive transaction information leaking into the market. Early engagement with insurers also gives sellers valuable visibility on likely coverage positions, insurer due diligence requirements and potential exclusions, allowing sellers to shape the SPA and disclosure process accordingly.

This approach is commonly referred to as "stapling" W&I insurance. In practice, there are two types of stapled process: soft stapling and hard stapling.

Soft-stapled processes are by far the most common. The seller appoints a broker to approach the insurance market, negotiate non-binding indications ("NBIs") and prepare an NBI report comparing the insurers' terms. Once the buyer or bidders are ready to engage with the insurance process, the broker establishes one or several separate clean teams for each bidder and "flips" to the buy-side. From that point onwards, the buyer or each bidder is supported by its own dedicated broker team, which assists with insurer selection, coordinates the underwriting process and negotiates the final policy. This approach allows sellers to organise and coordinate the insurance process while preserving each bidder's independence during underwriting.

Hard-stapled processes are much less common. Under this approach, the seller not only approaches the insurance market but also selects the insurer and substantially negotiates the policy before bidders become involved. While this may appear to save time, the practical benefits are often limited. Sellers may incur underwriting costs, the policy will still need to be updated following the buyer's due diligence, and bidders often prefer to retain flexibility over insurer selection and policy negotiations. As a result, soft stapling has become the market standard for the vast majority of European auction processes.

The section below outlines the key steps of a typical soft-staple process.

Preparatory phase Broker appointment, earlier than you think

Regardless of whether the W&I process is initiated on the buy-side or the sell-side, the W&I broker should ideally be appointed at an early stage of the transaction in order to maximise the value it can bring throughout the process.

During the preparatory phase, a sophisticated broker will advise on the overall W&I strategy, ensure that the insurance workstream is appropriately integrated into the transaction timetable and identify transaction-specific underwriting considerations at an early stage. This includes highlighting key risk areas, anticipating likely insurer due diligence requirements and identifying potential coverage limitations or exclusions while transaction documents remain capable of being amended. Where appropriate, the broker can also explore alternative risk transfer solutions, such as specific tax or contingent risk insurance, for risks that are unlikely to be covered under a standard W&I policy.

The broker can also play an important role in shaping the due diligence process. By reviewing the proposed scope of the vendor and/or buy-side due diligence at an early stage, the broker can identify potential gaps that may affect insurability and recommend targeted enhancements to the DD exercise.

The section below outlines the key steps of a standard soft-staple process.

Phase 1: Non-binding indication (NBI) phase

Following receipt of a limited set of transaction materials (typically including the draft SPA, an information memorandum and an estimate of the transaction value), the broker prepares a tailored submission to the insurance market.

Rather than merely requesting pricing, the submission is designed to test insurers on the key commercial and underwriting aspects of the transaction, including pricing, coverage positions on the principal risk areas, available policy enhancements and anticipated due diligence requirements.

Once the initial non-binding indications have been received, the broker undertakes a detailed comparative review of the insurers' positions and leverages the competitive tension between them to negotiate improved terms. The objective is to identify the insurer capable of delivering the broadest commercially viable coverage at the most competitive overall cost.

The outcome of these negotiations is summarised in a non-binding indication report (the "NBI Report"), which compares the insurers' pricing, coverage positions, due diligence requirements and policy enhancements, together with the broker's recommendation. The NBI Report can generally be delivered within five business days from the date on which the broker approaches the insurance market.

The NBI phase is typically free of any cost.

Phase 2: Flip to the buy-side, selection of an insurer and underwriting

Once the NBI phase has been completed, the broker establishes separate clean teams for each bidder and "flips" to the buy-side. The buyer then selects its preferred insurer and the underwriting process begins.

The selected insurer is granted access to the data room and reviews the latest draft SPA, the due diligence reports and the disclosure materials. Following its review, the insurer issues a written set of underwriting questions identifying any matters requiring clarification. In the current market, insurers generally no longer require a formal underwriting call, although one may still be organised on more complex transactions if considered helpful.

Once the underwriting questions have been addressed, the insurer finalises its coverage positions and issues the underwritten policy.

Throughout this phase, the broker plays a central role in maximising coverage. In particular, the broker advises the buyer on any due diligence considerations that may help broaden coverage, coordinates the underwriting process, negotiates the insurer's coverage positions and policy wording, and seeks to reduce exclusions, limit additional due diligence requirements and secure synthetic enhancements where appropriate.

The underwriting phase can generally be completed within 5 to 10 business days as from the moment the insurer receives access to the due diligence reports.

6 What Makes an Underwriter Comfortable and What Does Not

The deals that produce good coverage terms share certain characteristics. So do the deals that produce long exclusion lists.

What works in your favour

A DD report with a clear methodology. Not just conclusions, but process: what was reviewed, how it was reviewed, what the assessment criteria were. An underwriter who can follow the logic of a DD report from scope through findings to conclusion is much more comfortable than one who receives a report that asserts there are no issues without explaining how that determination was made. For this reason, the scoping sections are among the first parts of a DD report reviewed during underwriting and should be as detailed as possible.

Reporting. The way findings are reported is critical from a W&I insurance perspective. As a general principle, any matter that is fairly disclosed in the DD reports will also be treated as disclosed under the W&I policy and will therefore fall outside the scope of coverage. The wording, qualification and level of detail of each finding can therefore have a direct impact on the protection ultimately available under the policy. W&I insurance rewards sophisticated DD providers who are able to identify, assess and articulate risks accurately, distinguishing genuine, concrete, concerns from theoretical or low-probability issues.

Explicit gap analysis. Every DD process has gaps: documents that were not in the data room, contract categories that were out of scope, areas where the seller could not provide information. A DD report that acknowledges these gaps honestly, for example noting that three supplier contracts were unavailable and that the seller has confirmed they are on standard terms, is more credible than one that is silent on its limitations.

What creates problems

Scoping gaps. Insurers expect the combined scope of the sell-side and buy-side due diligence to match all aspects addressed by the final set of warranties in the SPA. If a particular area of risk, asset, or target entity or jurisdiction has not been subject to (adequate) due diligence, it will be challenging to secure cover in such area or for such risk, asset, target entity or jurisdiction.

Inaccurate risk rating. Overly conservative risk ratings, or the routine recommendation of "standard warranty protection" or "specific indemnity protection", will lead insurers to impose exclusions or other coverage restrictions that could otherwise have been avoided with a more calibrated reporting.

Open items. Outstanding information requests and unresolved DD findings are one of the principal causes of underwriting exclusions. To the extent possible, key open items should be resolved before or during underwriting. Where this is not feasible, insurers will typically expect additional information, targeted top-up DD or seller confirmation before providing coverage.

In-house due diligence. Insurers generally expect the principal risk areas - particularly legal, financial and tax matters - to be reviewed by appropriately qualified external advisers. While in-house DD may be acceptable in certain circumstances, its scope, methodology and the qualifications of the individuals performing the review should be discussed with insurers at an early stage to minimise any impact on coverage.

7 How Claims Actually Work

The claim process is almost never discussed in W&I literature. It is also the part that matters most.

What triggers a claim

A W&I claim requires two elements: a covered warranty breach and a quantifiable financial loss resulting from that breach. Both must be established.

A warranty breach without a loss does not give rise to a payable claim. A loss without a warranty breach is a commercial problem, not an insured event. The connection between the two is what the buyer must demonstrate.

The most common claim triggers are tax assessments in respect of a position that was warranted as accurate (the most frequent claim category by volume), financial warranty breaches where the accounts did not accurately reflect the financial position or undisclosed liabilities emerge post-closing (the most severe type of claims), undisclosed litigation where a claim surfaces that was pending or threatened at signing, commercial warranty breaches where a material contract was not as warranted or a customer relationship did not exist as described, and compliance breaches where a regulatory licence was not valid or a compliance matter was misrepresented.

The notification obligation

Buyers must notify the insurer of any circumstance that have given rise or may reasonably give rise to a claim within the policy period. The operative phrase is "may reasonably give rise": the buyer does not need to have a confirmed claim, only to have become aware of a potential one.

Late notification is one possible reason for a W&I claim being disputed or denied. Buyers should maintain a W&I register post-closing, a simple record of any issues that emerge that could potentially connect to warranted matters.

The claims process

Once a claim is notified, the insurer’s claims-handling team, potentially assisted by specialist counsels, will investigate and assess the claim. The buyer must cooperate with this process, providing documents, answering questions, and giving access to the target's management and records.

The claims process has four phases. First, an initial assessment where the insurer reviews the notification and determines whether it falls within the policy scope. Second, a liability investigation where the claims-handling team investigates the underlying warranty breach: was it a breach, what did the seller know, and does the known risk exclusion apply? Third, quantum assessment; the buyer's loss must be properly documented and assessed, and the insurer will challenge quantum where the methodology is unclear or the loss is overstated. Fourth, settlement.

The timeline from notification to resolution varies considerably. Straightforward, well-documented claims can be resolved in as little as two weeks. More complex may take two to three years from notification to final resolution, depending on the availability of supporting documentation. On average, a W&I claim is resolved and paid within approximately 16 months.

What happens to the seller

Under a buy-side W&I policy, the insurer will waive its rights of subrogation against the seller. In other words, once the insurer has indemnified the buyer for a covered loss, it agrees not to pursue the seller to recover the amounts paid under the policy. This waiver is one of the principal attractions of W&I insurance for sellers, as it enables them to achieve a genuinely clean exit while allowing the buyer to benefit from recourse against a highly rated insurer rather than the seller itself.

The waiver of subrogation does not, however, extend to fraud. Where the seller has deliberately and fraudulently concealed information or made fraudulent misrepresentations, the insurer will remain liable to indemnify the innocent buyer under the policy, but will retain the right to pursue the fraudulent seller to recover the amounts paid.

Claim statistics

Howden M&A's claims data over the past five years demonstrates that W&I insurance has evolved into a mature and effective claims product:

- Approximately 8% of W&I policies placed across Europe have received at least one claim notification. In the Benelux, the notification rate is higher at around 15%.
- For transactions with an enterprise value exceeding €1 billion, approximately 20% of policies have received at least one claim notification.
- Approximately 65% of closed claims involving an actual loss have resulted in either an indemnity payment or an erosion of the policy deductible. By contrast, many claims that are ultimately declined are notified primarily to preserve the insured's rights under the policy.
- Only around 2% of paid claims have required litigation or arbitration against the insurer, demonstrating that the vast majority of claims are resolved through commercial discussions.

Further analysis, practical insights and market data are available in Howden M&A's latest Claims Insights Report: https://www.howdengroup.com/uk-en/howden-ma-claims-insights

8 The Future of W&I

The W&I market is evolving faster than many practitioners realise. Several trends are worth watching.

Attractive market conditions

Driven by a combination of factors - including slower M&A activity in recent years and the continued entry of new insurers - market conditions are currently as competitive as they have ever been. Buyers are benefiting from lower premiums, broader coverage and increased insurer appetite for non-standard transactions.

Insurer appetite has expanded significantly across sectors, jurisdictions, asset classes and transaction types. The market has also developed a range of specialist solutions building on the traditional W&I product, including insurance for GP-led and LP-led secondary transactions, loan portfolio acquisitions and end-of-fund-life situations.

Specific risk insurance solutions

One of the most significant developments has been the growing use of tax and contingent risk insurance, which is designed to cover identified rather than unknown risks. These policies are increasingly being used both in connection with M&A transactions and as standalone risk management tools outside the transactional context.

The tax and contingent risk insurance market has developed a broad range of innovative solutions to help investors manage known risks and unlock value by reducing or eliminating the need for purchase price holdbacks, escrow arrangements or accounting provisions.

Growing use of synthetic policies

As deal structures become more complex, there is an increasing interest in synthetic W&I coverage across the BeNeLux market - particularly in situations where traditional seller backed warranties are not available or are insufficient.

In a standard W&I insurance policy, the insurer steps into the shoes of the seller. Coverage mirrors the representations and warranties given in the sale and purchase agreement, and claims arise only where those contractual warranties are breached.

Synthetic W&I coverage works differently. Instead of relying on warranties given by the seller, the insurer provides a standalone suite of warranties, given and underwritten directly by the insurer as an appendix to the W&I policy.

Synthetic coverage can now be deployed across a broad range of transaction structures. Early engagement with the broker remains essential, however, to design an appropriate underwriting approach and ensure that the disclosure process and due diligence exercise are aligned with the insurer's requirements.

AI-generated DD, the question the market has not answered

The most significant open question in the W&I market right now is how underwriters will treat AI-generated DD outputs. AI tools can now process data rooms systematically, flag issues, identify missing documents, and generate structured DD reports at a fraction of the time and cost of traditional manual review.

The underwriting challenge is not accuracy. AI-generated DD, properly configured, can be more systematic and consistent than manual review. The challenge is auditability: can the underwriter trace an AI-generated finding to a specific document and clause? Is the methodology transparent and consistent? Is there a human review layer that takes professional responsibility for the output? Is the gap analysis clearly articulated?

These are answerable questions. They are engineering and process questions, not fundamental objections to the technology. The W&I market will adapt to AI-generated DD in the same way it adapted to recent innovations. The question is not whether, but how quickly, and under what conditions.

The brokers and underwriters who engage with this question early, who develop frameworks for evaluating AI-generated DD quality and who build relationships with the legal tech providers developing these tools, will be better positioned than those who wait for industry consensus. The deal market does not wait for consensus.

Real-time underwriting

A longer-term possibility worth noting: as DD processes become more data-rich and structured, whether through AI tools, better VDR technology, or standardised reporting formats, the underwriting process could become significantly faster and more data-driven. Real-time risk pricing, faster underwriting timelines, and more granular coverage terms all become possible when the DD output is structured data rather than a narrative PDF. This is not imminent, but it is directional.

Conclusion

W&I insurance is a deal tool, not a safety net. The buyers who use it well treat it as part of the deal architecture from the start: involving the broker early, structuring the DD with the underwriting process in mind, and using the coverage to enable cleaner deal terms rather than to compensate for inadequate DD.

The buyers who use it badly treat it as a backstop, something to arrange in the final week of a deal process, expected to cover everything the DD might have missed. It does not work that way, and the exclusion list they receive will reflect that.

The foundation of good W&I coverage is good DD. Not perfect DD, which does not exist, but systematic, documented, auditable DD that gives an underwriter something to work with. The deal teams that understand this do better deals, get better coverage, and have fewer unpleasant surprises post-closing.

The rest of this series explores the perspectives of the people who know this best: the lawyers who conduct the DD, the PE funds who live with the results, the banks who finance the deals, the brokers who structure the coverage, and the underwriters who price the risk.