



Lowenstein Sandler's In the Know Series

Video 1 - Reps & Warranties Insurance

By [Eric Jesse](#)
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Eric Jesse:

Hi, I'm Eric Jesse, Partner in Lowenstein Sandler's Insurance Recovery Group. Some of you may have been reading our series on LinkedIn called "In the Know," where each month we share relevant and practical tips about insurance policies and the insurance market. Now I'd like to welcome you as we move our "In the Know" series to video. And for our inaugural video, I'd like to talk to you about an insurance policy that is near and dear to my heart: Reps & Warranties Insurance.

The second half, and really the fourth quarter, of 2021 showed us again that the popularity of R&W insurance in mergers and acquisitions continues to climb. During that time, the market was incredibly hot, and underwriters were overwhelmed to the point where they had to turn down deals because of lack of bandwidth, something we had never seen before. And as we get into 2022, the R&W market has had a chance to breathe a bit, but it still remains active. However, the best practices that buyers learned last year, and maybe had to learn the hard way, are something that they should continue going forward.

So first, start the R&W process early, and earlier than you normally did on past deals. In the controlled chaos of signing or closing a deal, R&W insurance can certainly join and be part of that process, but there is no downside and no commitment to having a broker go out to the market early to obtain quotes. For one thing, brokers need surprisingly little inform to go out to the market, and once you as the buyer have the quotes, you can evaluate them. You can eliminate the uncompetitive ones, and you can identify the leading insurers and have them refresh their quotes as the deal docs move along.

Second, select the insurers that don't sweat the small stuff. And what I mean by that is: a critical part of the R&W process is allowing insurers to get comfortable with the risk by understanding the diligence that was conducted and allowing the insurers to ask questions. Some insurers have the confidence and the background to focus on the key and material issues, and others do not. Other insurers get too far into the weeds, and as you are racing to try and sign or close a deal, that can slow things down, sometimes insurers can become unfocused. An insurer can be focused on a particular issue, and when you go back and actually read the rep that the seller is making, that issue is nowhere to be found. And so here your broker and your coverage counsel, who know the insurance market and know the insurers' reputations can steer you in the right direction.

Last but not least: an ounce of prevention is worth a pound of cure. And so buyers should really take the time to prepare for the underwriting call with the R&W insurers. Doing so will avoid headaches and more work later on. Before that call, buyers and their advisors, particularly those that have been through this process before, should be able to identify the weaknesses and issues in their diligence and should be prepared to address them with insurers. They should be prepared to put those weaknesses or those issues into perspective, and they should be working to allay the insurer's concerns and explain why those aren't particularly important issues for the insurer to care about. All this will minimize the need to chase down answers, to follow up questions, to have to push back on deal specific exclusions, and ultimately dig out of avoidable holes all as all the parties involved are trying to seal the deal.

So we hope this was helpful. Thank you for joining us, and we look forward to seeing you next month on "In the Know."