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## REPRESENTATIONS AND WARRANTIES INSURANCE: REPRESENTATIVE REASONS CLIENTS PURCHASE R&W INSURANCE

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### WHY BUYERS REQUEST COVERAGE

- Buyer is unable to obtain desired level of seller indemnification
  - Buyer wants to increase the aggregate indemnification amount provided for in the acquisition agreement (e.g., buyer is in a weak negotiating position, a competitive auction situation, or acquiring a business from a financially-distressed seller or an investment fund that is being liquidated).
- Buyer is unable to obtain the duration of indemnification it wants
  - Buyer wants to extend the survival periods provided for in the acquisition agreement (e.g., from one year to three years)
- Buyer wants to distinguish its bid over other bids in competitive auction
  - By requesting a lower than customary level of indemnification, a buyer can distinguish its bid in an auction.
- Buyer is concerned about its ability to collect on the indemnity
  - Seller is having, is expected to have, or may have financial difficulties.
  - Pursuing claims for indemnification may be fraught with practical difficulties and may be expensive (e.g., the seller(s) may be geographically dispersed or otherwise difficult to locate, outside the reach of the relevant court(s), or may have dissolved or otherwise ceased to exist post-closing).
- Buyer wants to protect its deal
  - Buyer wants to avoid the risk of losing a critical deal by entering into a long and contentious negotiation with the seller over the appropriate level of indemnification.
  - Buyer believes insurance will be less costly than the increased consideration the seller will demand to provide an equivalent level of indemnification.
- Buyer wants to protect key relationships
  - Buyer values its preexisting commercial relationships with the seller and/or its affiliates and wants to avoid a long and contentious negotiation with the seller over the appropriate level of indemnification and having to sue the seller in the event of a breach.
  - Buyer wants to avoid making a claim against those key employees/shareholders (e.g., a founder) that it now employs.

- Buyer wants to supplement its due diligence efforts
  - Buyer is entering a new and unfamiliar line of business or geographical area and wants protection above and beyond the seller's indemnity.
- Buyer wants to insure certainty of purchase price
  - Buyer desires greater certainty in the purchase price and wants to avoid any significant unanticipated future expenditures in connection with the acquisition.
- Buyer needs to address stakeholder concerns
  - Buyer wants to provide additional comfort to its board of directors, lenders, advisors and other stakeholders.

### **WHY SELLERS REQUEST COVERAGE**

- Seller wants to reduce the risk of contingent liabilities
  - Seller wants to "lock in" its return on investment (e.g., a financial seller).
  - Seller wants to make a "clean break" and reduce the risk of contingent liabilities associated with the sale (e.g., a strategic seller that wants to completely exit a line of business).
- Seller wants to distribute sale proceeds
  - Seller needs all or most of the sale proceeds to pay down existing debt (e.g., a financially distressed seller).
  - Seller needs to distribute all or most of the sale proceeds to investors (e.g., a financial seller).
- Seller is motivated by strategic considerations
  - Seller wants to get a better price for the company by expanding the pool of potential buyers by offering an indemnity greater than it would otherwise be willing or able to provide.
  - Seller wants to eliminate obstacles to completion of sale.
- Seller wants to supplement its due diligence and disclosure process
  - Seller is concerned about unintentional non-disclosure.
  - Seller has not controlled, or has not been actively involved in the management of, the business for a substantial period of time.
- Seller is motivated by financial considerations
  - Seller desires greater certainty in the sale price and wants to reduce the risk of contingent liabilities associated with the sale.

- Seller needs to address stakeholder concerns
  - Seller wants to provide additional comfort to its board of directors, lenders, advisors and other stakeholders.

**HOW TO CONTACT US:**

Please visit our website, [www.AIG.com](http://www.AIG.com), send us an e-mail at [Mergers@AIG.com](mailto:Mergers@AIG.com), or contact your insurance broker.

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