



Maximizing Representation & Warranty Insurance (RWI) For Your Next Deal

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Seyfarth Shaw LLP

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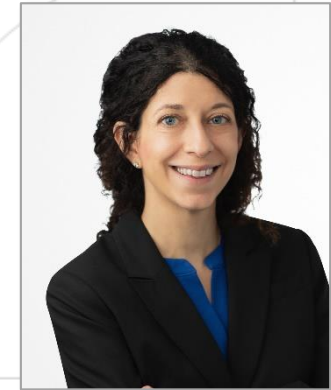
Today's Agenda

- 01** State of the RWI Market
- 02** Consider Materiality in the Context of the Policy
- 03** Don't Rely on the Rep!
- 04** Be Truthful
- 05** Be Prepared
- 06** Be Persuasive
- 07** Q&A

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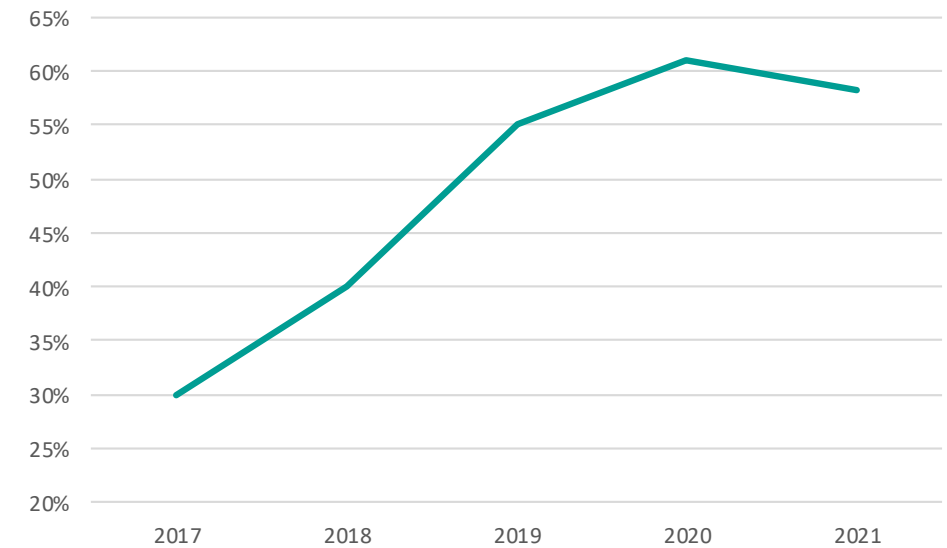


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Sharp Increase in Use of RWI During Last 5 Years

According to data from [Seyfarth's Annual SurveyBook](#) of M&A deal terms, the percentage of deals using RWI has doubled in deals we surveyed over the last 5 years.

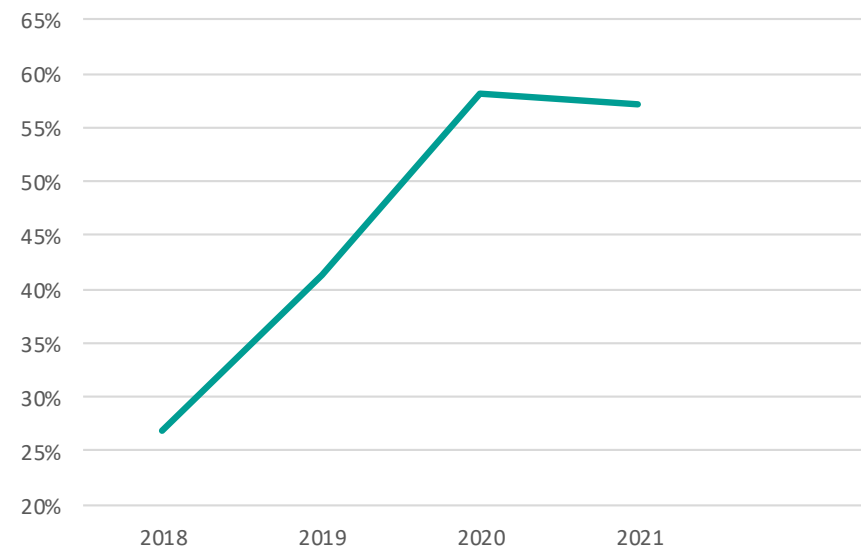
- **2021** - 58.3%
- **2020** - 61.1%
- **2019** - 55%
- **2018** - 40%
- **2017** - 30%



Use of RWI Results in Increased Use of Seller-Friendly Public Style/No Survival Deals

According to data from [Seyfarth's Annual SurveyBook](#) of M&A deal terms, the percentage of deals using RWI and employing a public style/no survival structure has sharply increased in recent years in deals we surveyed.

- **2021** - 57.1%
- **2020** - 58.2%
- **2019** - 41.4%
- **2018** - 26.9%



Materiality in the Context of the RWI Policy

- Key is to understand the basics of RWI economics.
- An issue can be immaterial in the context of the overall transaction, but quite material in the context of the RWI policy and the retention.
- Policies typically insure up to 10% of the EV, with the deductible (“retention”) sitting at 1% of the EV for the first year.

Never Rely Solely on the Rep

- Carriers are being asked to insure the reps based on standalone due diligence, independent analysis and judgment.
- Relying solely on the rep (and schedules) to gain comfort with the reps accuracy will not bring carriers comfort.
- For areas of heightened risk – e.g. wage and hour, environmental contamination – this will be especially important.
- Takeaway: Banish “relying on the rep” from RWI vocabulary.

Be Truthful

- Putting the best spin on an issue is fair game, but outright lying is not and will often be revealed in supplemental requests.
- Lying about one issue will damage your credibility for the deal at issue and on all future deals.
- Rules of professional conduct still apply – you wouldn't lie during discovery!
- Financial stakes are high because the insurer is underwriting a policy worth tens of millions of dollars.

Be Prepared

- Being unprepared is a disservice to the Buyer who spent time and money to obtain RWI.
- Almost all RWI carriers provide a call agenda at least 24 hours prior to the underwriting call.
- Annotate the answers, and be prepared to discuss all topics covered on the agenda.
- It is obvious when someone is unprepared for a call versus when answers have been prepared beforehand.
- Do not simply regurgitate the legal report.

Be Persuasive

- Be mindful of your tone.
- RWI is the last piece of the puzzle in the deal and underwriting counsel often have a short window to become familiar with the deal.
- Underwriters and their counsel are often juggling multiple deals, sometimes in the same day.
- Goal of Buyer is to emerge from the underwriting call with as few exclusions as possible – this is your opportunity to represent your client and to be persuasive.



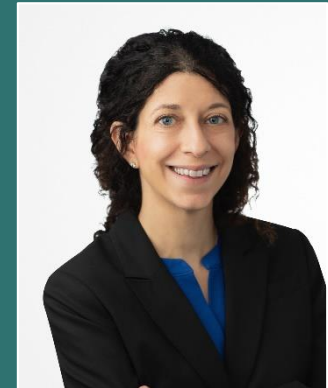
Q&A

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thank you



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