



February 2021

Transactional Insurance Markets and the Ongoing Impact of COVID-19

Mergers and acquisitions (M&A) activity remains strong despite the devastating COVID-19 pandemic, with many insurers seeing a corresponding demand for transactional insurance and representations and warranties (R&W) insurance. These insurance markets are responding to the ongoing COVID-19 trends and challenges in the following ways:

Transaction Activity

- The fourth quarter of 2020 saw record levels of M&A transaction activity, with insurers seeing submissions at rates that eclipsed prior levels.
- Strategic and financial sponsors have determined how to value targets in the COVID-19 environment, even in the hard-hit booking, entertainment, airlines, cruises/casinos, and hotels (BEACH) classes of business.
- Buyers have also found ways to effectively conduct diligence on targets, with more focused but limited physical site visits, as well as increased use of video to supplement the traditional legal, financial and HR diligence that's typically performed remotely.

COVID-19 Exclusions & Other Underwriting Trends

- During the late third quarter and early fourth quarter of 2020, underwriters became more flexible in their treatment of COVID-19-related claims, as insurers pared back or eliminated the breadth of proposed exclusions.
- In addressing COVID-19 exclusions, underwriters are more cautious and less flexible than they were during the fourth quarter of 2020, as a result of the higher infection rate that followed the Thanksgiving and Christmas holidays.
- Heightened underwriting scrutiny will likely dissipate as the vaccines become more widely administered and the overall infection rate and hot spots decrease.
- Where representations in a purchase agreement are deemed to be non-standard, overly buyer-friendly, and/or difficult to confirm with standard due diligence, underwriters are either reading in qualifying language or reading out certain language from the agreement. Material customer representations in purchase agreements continue to be highly scrutinized and are often a target of "read ins" and "read outs."

Claim Activity & Pricing

- R&W insurance claim frequency remains consistent at around 20% (i.e., one in every five transactions), but the number of overall claims continues to rise as more policies are purchased.
- Insurers are citing increased claim severity.
- Losses relative to breached financial statements, taxes, and material customer representations are trending as the most common claim sources.
- Premium rates are up roughly 20% to 25% over first quarter 2020 levels.

The Road Ahead

- Transaction activity and R&W submission levels in the first quarter of 2021 remain high, a marked departure from the typical lull in M&A activity this time of year.
- The political climate and shift in the makeup of U.S. Congress may have an effect on M&A activity through 2021, but expansive reforms typically take time to enact and become effective. We do not expect a change in the near term.
- Rates will remain at current levels as long as claim activity continues at the existing pace.
- Underwriters will continue to press back against overly buyer-friendly representations that are sweeping and broad, or that are difficult to support with traditional diligence.

How USI Can Help

As the market continues to adapt to COVID-19 changes, USI can help clients better understand their M&A insurance options by taking these and other important steps:

- Demystify the product and process by thoroughly explaining the timeline, underwriter interest, terms, exclusions, key underwriting issues, and pricing
- Work with underwriters to proactively reduce proposed purchase agreement modifications and provide supportive diligence arguments to limit or eliminate proposed exclusions
- Provide relevant counsel on current M&A issues and how to best present your risks to the general underwriting public

To learn more about how USI's transactional insurance specialists can help with your M&A activity, contact your USI representative or visit www.usi.com.

Helpful Resources

To help clients navigate these challenging times, USI has implemented a **STEER (Steer Through Epidemic & Economic Recovery) Task Force**. This cross-functional team is working to provide timely COVID-19 information, understand cross-industry and geographic impact and evolving responses, and to develop and deliver tailored solutions to help clients steer through this epidemic challenge and economic recovery.

For additional resources, tools and information, please visit our COVID-19 resource page: www.usi.com/public-health-emergencies

