



Insuring transactional risks
Funk M&A Services



The breach of tax and financial statement-related warranties remains the driving force in reported W&I claims.

Liberty GTS Claims Briefing 2023

“Transactions from the manufacturing and energy sectors generate the most W&I claims”

Tokio Marine HCC TRI Claims Report 2023

“W&I Insurances are a negotiating tool; used correctly, they offer valuable strategic leverage”

Jan Wehkamp, Funk M&A Services

“We are seeing a continued soft W&I insurance market that offers optimal options for investors”

Benedict Prinzenberg, LL.M., Funk M&A Services

Transactions – a guaranteed success or a risk factor?

The M&A year 2023 was characterized by numerous economic challenges. The combination of the high inflation rate, a sharp rise in interest rates and an uncertain economic outlook led to a sharp slowdown in M&A activity compared to previous years. This applied not only to the absolute number of successfully completed transactions but also to transaction volumes, which were significantly lower than in the previous year. It is to be expected that investors will be even more risk-averse in view of increased acquisition costs

and will increasingly rely on protection instruments such as warranty and indemnity insurance to secure their investments. In 2023, more than 50% of all transactions with a transaction volume of over 100 million euros were covered by a suitable insurance policy – a worthwhile investment, as in the same year one in five Warranty & Indemnity policies resulted in a claim. Funk is your competent partner for all transactional risks, so that you can take full advantage of the opportunities presented on the M&A market.

The right companion for every investment



Warranty and Indemnity Insurance

Covering unknown risks



Contingent Risk/ Tax Liability Insurance

Covering known risks



Title Insurance

Covering ownership and other legal shortcomings



Handling crises before they start

Managing transactional risks with warranty and indemnity insurance

M&A transactions pose a challenge to everyone involved. In particular, striking a balance between the demands of the seller and the buyer can give rise to difficulties – and may even end in deal breakers in many cases.

The seller is focused on getting a good price. But post-M&A disputes have been raised by buyers more and more frequently in the past, causing the seller to have to return part of the money received due to breaches of warranties and indemnities given in the purchase agreement. This affects private equity and strategic investors as well as individual entrepreneurs, striving for a clean exit and avoiding potential upcoming claims.

The buyer, on the other hand, is facing a seller's market, whereby warranties and indemnities are some of the most important and resource-intensive points of negotiation. Moreover, if a business partner lacks solvency, there is also the risk that the buyer may only be able to enforce claims later through costly, short-term escrow solutions. The contractually determined jurisdiction may also represent an obstacle to the legal enforceability of claims.





Win-win situation for all parties

With W&I insurance, the insurer covers claims arising from breaches of guarantees and indemnities. This arrangement relaxes the tensions between the seller and the buyer and provides an appealing solution for both sides.

The seller is also able to conclude a W&I policy as liability insurance, but in more than 95% of policies, the buyer is the policy holder and can handle claims directly with the insurer. The seller transfers its own risk with this cover as follows: in the future, the buyer no longer asserts claims against the seller itself, but rather the insurer. Thus, the seller is able to minimise his liability under the purchase agreement, and even reduce it down to almost nil ('one-euro cap'). This arrangement also eliminates the need for a purchase price holdback in the form of an escrow account.

The buyer is also covered: Despite a 'clean exit' for the seller as shown above, the buyer still retains comprehensive guarantees for the purchased target through W&I insurance. In case of a distressed M&A scenario, for example, guarantees can be synthetically provided and insured that the liquidator is unable to provide. Limitation periods can also be extended and limits of liability increased beyond the original contractual regulation. Claims arising from intentional acts on the part of the seller are also included in the buyer's policy.

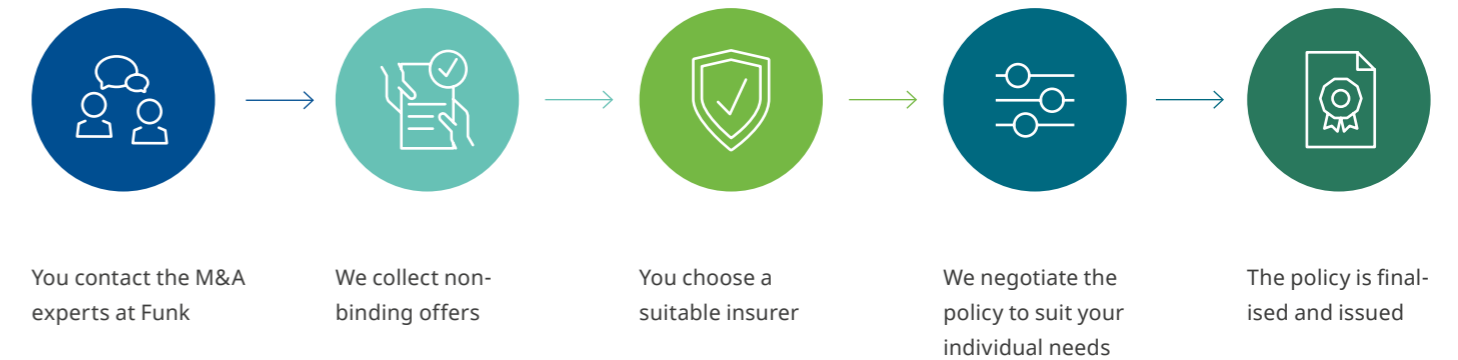
In just a few days, our experts can arrange comprehensive cover for your company and your transaction. Naturally we maintain the strictest confidentiality in the process.

Premium amount for W&I insurance

The premium is always a one-time payment, and the amount of the premium is based on the desired policy limit and the type of transaction:

- ▶ Insured sums between 15% and 45% of the transaction volume are generally requested.
- ▶ For corporate transactions, the premium amount is between 0.8%-1.5% of the policy limit.
- ▶ For real estate transactions, the premium amount is between 0.5% and 0.8% of the policy limit.

Step by step through a secure transaction





Tax Insurance

Tailor-made insurance coverage in the event of potential tax disputes

Due to the complexity of tax law even the advisors involved can often only point to a remaining legal uncertainty. Despite the possibly low probability of occurrence, the tax damage is often enormous due to its binary nature. This can become a hurdle in transactions or corporate reorganizations. In such situations, tax insurance offers a quick and comprehensive way of protection.

For their risk assessment, insurers require a tax opinion or a tax due diligence report in which the tax risk is analyzed and assessed.

Funk M&A Services is very familiar with the expectations insurers have of such tax reports and will be happy to advise you.





Other insurable risks

Environment	Processes	Intellectual property
<ul style="list-style-type: none"> › Risk of third-party claims or a remediation obligation under public law › Risk of remediation measures being inadequate or failing 	<ul style="list-style-type: none"> › Cost risk of out-of-court disputes › Cost risk of a negative outcome of a potential or pending legal dispute, including incurred costs of legal action and proceedings 	<ul style="list-style-type: none"> › Risk of third-party claims arising from intellectual property infringement › Financial losses including costs of legal action and proceedings

Insure known risks with contingent risk insurance

In the run-up to a transaction, risks of the target are regularly identified, the occurrence of which would entail considerable financial disadvantages. If the parties involved have differing opinions regarding the probability of occurrence, the financial valuation and the impact on the purchase price, this can bring the contract negotiations to a standstill. The financing of the project also faces considerable hurdles in this context, as substantial risks represent an uncertainty factor with regard to the return on investment.

While W&I insurance only covers unknown risks, contingent risk insurance makes it possible to cover these identified but uncertain risks and bridge difficult negotiation points and real deal-breakers. It can give the financing partners the necessary comfort and have a positive influence on the financing modalities. Contingent risk insurance can be used independently of a transaction. Here too, it covers a company's own significant risk. This is, for example a possibility when companies want to obtain final certainty about provisions to be made or questions regarding company valuation.

Contingent risk insurance can be taken out in favour of the buyer, seller or the target depending on the need and the negotiating position. Cover has a defined term and is valid until the legal position of the insured party is no longer vulnerable.

Transactions and the handling of known critical risks are subject to tight schedules. Efficient and committed consultancy from our experts allows you to examine even complex scenarios quickly and protect yourself as best as possible with contingent risk cover.

Contingent risk insurance at a glance

- › Premium rate: 2% to 20% of the policy limit
- › Premium payment: one time
- › Time needed for underwriting: approx. two to three weeks



Protecting against third-party claims

Cover for your property with title insurance

Real estate and portfolios are much sought-after transaction targets – but increasingly, M&A transactions are facing interventions and claims from third parties. Taking out title insurance allows you to protect against the financial risk of ownership and other legal shortcomings relating to real estate or even entire portfolios.

It typically secures the legal effectiveness of previous transfers against any challenges. Equally as common are disputes arising from restitution risks or potential usage restrictions due to third-party rights to a new property. Title insurance covers the incurred costs of defending against possible third-party claims and the financial damages incurred by the policy holder in the event that such claims are successful.

The insurance covers 100% of the value of the asset. This goes much further than the usual limit of a W&I insurance policy. It is also possible to combine W&I policies with a title insurance top-up cover.

In contrast to W&I insurance, title insurance does not cover any guarantees set out in the sales agreement, but instead protects ownership and other rights referred to ownership. It stays in place for as long as ownership of a plot of land or shares is held. For project developers, there is also the option of ceding cover to the subsequent purchaser of a property.



Transactions in the area of real estate and development

Title insurance is most commonly used in the area of real estate and development. In the course of the due diligence of the target company or asset, all sorts of legal issues may emerge.

The following aspects can put the success of the project and the security of the investment in a permanent threat:

- › Missing or lost documents and records
- › Uncertain legal situation concerning the validity of essential rental agreements and leases for the target
- › Uncertainty over the validity of building permits, regulatory stipulations and orders
- › Risk of claims by residents and associations against the project despite existing planning and building permission

You can overcome potential financial hurdles with tailored title insurance and development insurance and get your real estate transactions to the desired result.



Comprehensive cover in the real estate sector

You can cover the following financial risks of your transactions with title insurance:

- › Financial losses
- › Costs of legal action
- › Third-party losses
- › Reinstatement costs
- › Decommissioning costs
- › Business interruption
- › Loss of land and asset value
- › Frustrated expenses



On your side from start to end

More M&A services from the Funk experts

Insurance due diligence

Even prior to the transaction, Funk ensures that professional insurance due diligence is performed for the target company.

In the course of this inspection, you get a meaningful assessment of the insurance portfolio in question, the claims history and most important: potential shortfalls and gaps.

Factoring as a form of financing

Outstanding receivables often constitute up to 35% of the accounts of medium-sized businesses.

With our factoring solutions, you can convert receivables directly into available liquidity. This allows you to manage takeovers, protect traditional credit securities and transfer existing loans.

Supporting the acquired target

As an independent, family-run insurance broker and risk consultant, Funk is always on your side even after the transaction is complete.

With over 1,650 employees at 37 offices worldwide and our global 'Funk Alliance' network, we guarantee you comprehensive consultancy and support for your acquisition target.



Your experts

Want to learn more about securing transactional risks and our tailored insurance schemes? Our points of contact from Funk M&A Services will be happy to help you. We look forward to hearing from you!



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More about M&A

Further information about insuring transactional risks and an expert video on the topic can be found on our website:



funk-gruppe.com/ma-services

About Funk

Funk is the largest family-run insurance broker and risk consultant in Germany and is a leading broker firm in Europe. Founded in Berlin in 1879, the company today has 1,650 employees at 37 offices worldwide.

Funk enjoys a global presence through its own international network, the 'Funk Alliance'. As a system provider for risk solutions, Funk supports companies from all industries in insurance and risk management as well as pensions. Funk develops individual schemes for these companies and optimises their protection against all operational risks in a way that consistently matches their needs.



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