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Rep & Warranties Payouts Set Records In 2024, Aon Says

By Abraham Gross

Law360 (June 26, 2025, 8:42 PM EDT) -- Last year represented a banner year for payouts of representation and warranties claims, a key risk management tool in mergers and acquisitions, even as dealmaking activity remained subdued compared to its pandemic peak, according to a recent report by Aon.

An Aon report found the highest payouts to date for representation and warranties claims, a key risk management tool in mergers and acquisitions, with North American clients banking over \$300 million in 2024. (Prime_MZ/Alamy Stock Photo)

The broker's study of global transaction claims published on Tuesday found that North American clients were paid over \$300 million in 2024, the largest to date in a single year, underscoring the material payments that clients were receiving on their policies.

Representation and warranties, or R&W, offers buyers coverage for various breaches of a seller's assurances in connection to a deal, including financial statements, material contracts and compliance with laws.

Stephen Davidson, global head of claims at Aon, told Law360 that the report indicated that the market for R&W and related warranties and indemnity policies, or W&I, are maturing.

"We've got buyers who are increasingly using insurance for the traditional purpose of recovery and not just deal facilitation," he said. "And then I do think that there's an element of more sophisticated and experienced policyholders, who have greater awareness of their notification obligations."

In addition to the high overall payout figure, 2024 set the record for median payment size at \$5.5 million.

The high-claim activity could in part be a lasting effect of 2021, a "boom" year in M&A activity that saw the inception of numerous R&W policies and new carriers entering the market.

Dealmaking in subsequent years slowed from its frenzied pace due to a mix of factors, including the rising cost of capital, inflationary pressures and geopolitical uncertainty, according to the study.

"This reduced activity, combined with an influx of insurance capital post 2021 has led to a highly competitive market with our data showing the lowest pricing on record and advantageous terms for our clients," Aon said.

2024 also marked the final year of the typical three-year deadline to file a notice of claim, explained Andrew Shapiro, a partner at Pierson Ferdinand LLP who represents insurers in claims disputes. He said that he did not expect to see more claims from the 2021 period.

Syed Ahmad, an insurance recovery partner at Hunton Andrews Kurth LLP, said in an email to Law360 that M&A insurance market growth or contraction is largely driven by underlying deal activity, but that the record payouts may be another factor in the popularity of R&W policies.

"Recoveries at this rate can also influence perceptions and increase the demand for these products by repeat players in the marketplace," he said.

However, despite expectations that 2021 policies would see higher claim rates due to the fast-paced dealmaking and underwriting environment and higher values, Aon reported that only 16.3% of its 2021 policies received claim notices and other surveyed insurers reported a rate of 15% — the lowest-frequency year to date.

Shapiro told Law360 that the rate for claim notices in a given year typically hovered around 20%.

"I agree with Aon that we, like most of the industry, expected there to be a higher-than-historic claims rate for the 2021 year," he said. "So their results are different from, I think, what most of the industry expected from that policy year."

The study noted that it could not reach a conclusion about the severity of those 2021 claims, as 33% of them remained active.

Additionally, Aon noted that less than 1% of its claims went to arbitration or litigation, with only 4% being denied.

"Most claim payments are the result of a negotiated resolution between the insurer and insured, with the overwhelming majority getting done without alternative dispute resolution," the study reported.

Shapiro said that as policyholders become repeat players and grow more sophisticated, they are better able to provide supporting information faster and earlier in the claims process.

"What we're seeing is that the claims process is becoming more efficient as the policyholders understand and continue to understand the information that the insurance carriers need to be able to evaluate these rep and warranty claims," he said.

Aon's 2024 report was also the first that broke down the frequency and severity of breach type by industry, from construction to healthcare. Generally though, the most high-profile breach types remained consistent across industries: financial statements, material contracts, tax matters and compliance with laws.

"What that really supports for us is that there isn't any one industry in particular that's inherently more risky," said Aon's Davidson. "There are risks that are involved in every one of these M&A transactions."

Shapiro said that the industry breakdown was further proof of the value of an R&W policy, adding that "that's why I think this product is so great: because it can help facilitate deals at all these different industries, which have different risks and different risk profiles."

While Aon's report showed most claims were handled commercially, the data did not fully capture the claims-handling experience, said Eric Jesse, a partner at Lowenstein Sandler LLP's insurance recovery practice.

"This report is showing that you, potentially, get to the right place at the end, but my question is: What did it take to get there, and was it a smooth process?" he told Law360.

The dealmakers that purchase R&W policies may still face a contentious litigation-style process to back their claims, he noted, with bigger deals generating larger claims that often invite greater scrutiny.

Joseph Finnerty III of DLA Piper, who represents carriers, said that greater competition had pushed insurers to compete on improving the claims-handling and adjustment experience, and buyers over the last two years were increasingly making aggressive or overstated claims.

"We're seeing insureds are beginning to start the process with an aggressive tone, expecting that insurers will be commercial before there is a reasonable amount of substantiation of the claim and the quantum of the loss that is associated with the breach," he said.

He said that the firms advising policyholders may be applying a more traditional insurance claim philosophy better suited for other lines of insurance, like general liability or directors and officers coverage.

"That is just a shoe that doesn't fit in this particular market for this particular product, because it is a very sophisticated world of understanding what is an M&A transaction, how do the reps work and how do you quantify loss in this particular environment — which is a very refined, narrow world of expertise," he added.

Still, experts that spoke to Law360 found the top-figure payouts in the Aon report and relatively low incidence of alternative dispute resolutions a reassuring sign that the R&W market remained a responsive one.

"One of my mantras is that, especially in the rep and warranty insurance space, claims are good, and certainly paying claims is good, because it shows that this insurance solution does bring value to buyers," said Jesse.

--Editing by Bruce Goldman and Amy Rowe.

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