

The Strategic Use of Representation and Warranty Insurance in M&A Transactions

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The market for M&A deals in the US is on the rebound after a sluggish 2013, with the first and second quarters of 2014 being some of the most active quarters since the 2008 financial collapse. Today's M&A market is fueled by readily available acquisition financing on favorable terms, the largest "overhang" of private equity dry powder in US history, and excess cash on the balance sheets of US strategics. These conditions have heated a "sellers' market" where targets are frequently sold through an auction process with multiple bidders and high valuations. In this very competitive market, a buyer can strategically use representation and warranty insurance (R&W insurance or policy) to best position its bid in an auction. In that same market, a seller can be afforded greater certainty of sale proceeds by offering a "stapled" R&W insurance policy to be purchased by the buyer.

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