Insights into Warranty and Indemnity claims

Introduction

- In the first half of 2026, BDO's Forensic M&A Services team held a number of roundtable discussions with leading M&A lawyers, insurance underwriters and brokers to discuss recent challenges in Warranty & Indemnity ("W&I") claims.
- Our discussions focused on two key areas:
  - the burden of proof in relation to accounting warranty claims; and
  - the approach to quantifying loss in claims involving non-accounts warranties.
- These challenges can be central to whether a claim is capable of being progressed successfully and on a timely basis. While each claim will turn on its own facts, a consistent theme from our discussions was the importance of contemporaneous evidence including calculations showing how the target was valued and how the alleged breach(es) would have impacted the price paid.
- This article presents our thoughts and the thoughts of those that attended the roundtables, we hope you find these interesting and informative. We would like to express our gratitude to all the attendees of our roundtable discussions for their participation and insights.

Key observations from our discussion

- **Contemporaneous evidence is critical.** Claims are more persuasive where they are supported by documents created at the time of the transaction, rather than analysis reconstructed after the event.
- **The basis of valuation should be clearly evidenced.** A clear trail from initial offer to final purchase price can be central to assessing both causation and quantum.
- **Materiality is transaction-specific.** Accounting materiality and transaction materiality are not always the same, and the assessment should consider the particular parties and transaction context.
- **The loss methodology should follow the facts.** A multiple-based claim may be appropriate in some cases, but it should not be assumed. Where the issue is discrete or one-off, a pound-for-pound adjustment may well be more appropriate.
- **Early assessment of quantum can assist all parties.** Early involvement of forensic accountants can help focus the issues, assess the realism of the quantum claimed, and support efficient engagement between buyers, insurers and advisers.

Burden of proof in financial warranty claims

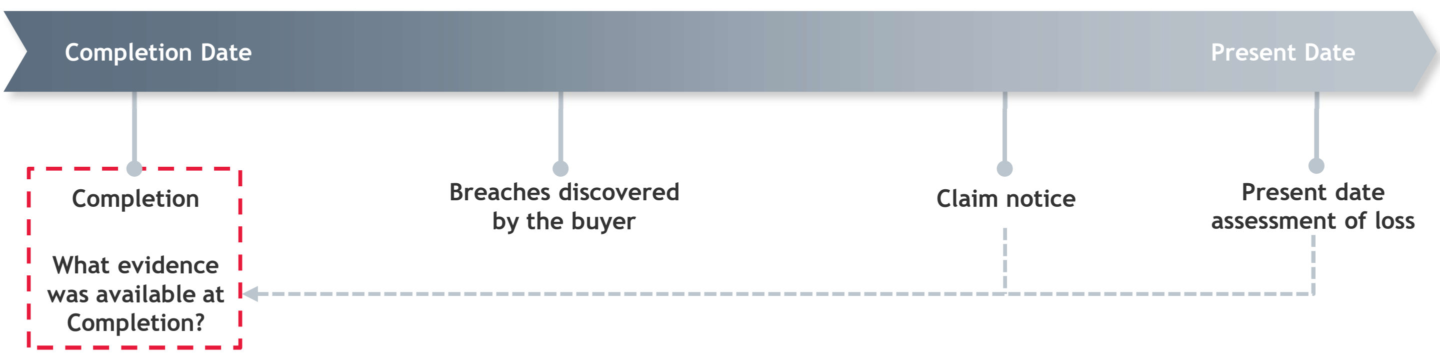
- A buyer will be required to provide sufficient evidence to demonstrate a breach, and sufficient evidence that there is a loss arising from the breach.
- Our attendees noted that there is an important distinction between insured and uninsured claims. In an insured claim, insurers may have a commercial incentive to deal with valid claims efficiently, whereas in uninsured claims the process can be more protracted. However, this does not alter the fundamental position that the burden of proof rests with the Insured/buyer.
- Obtaining this evidence can be challenging and can lead to detailed exchanges between buyers, insurers and advisers. Requests for further information are often required where the initial claim submission does not clearly articulate how the alleged breach arose, why it was causative of loss, and how the loss has been quantified.

Establishing breach

The general view amongst the attendees was that it is rarely straightforward to establish breach, particularly where the warranties contain materiality qualifiers or where the relevant terms are not clearly defined in the SPA. For example, in claims concerning whether accounts show a “true and fair view”, it may be necessary to not just consider the financial impact of any breach but also to demonstrate consideration of the commercial context of the transaction.

Assessing quantum

- Even where breach can be established, the buyer must still demonstrate that the breach caused loss. The starting point for this is often to consider the difference between the Warranty True Value and the Warranty False Value. In broad terms, this requires an assessment of how a willing buyer and willing seller would have priced the business had the actual position been known at the time of the transaction, as illustrated in the diagram below.
- In practice, this analysis can be complex. Buyers may have used a range of valuation methodologies during the deal process, which can be entirely appropriate when triangulating value or sense-checking an offer. However, in a claim context, it can create difficulties if it is unclear which methodology drove the final purchase price.
- A recurring issue identified by our attendees was the absence of a clear valuation model or supporting evidence showing how the purchase price was determined. Where there is no clear trail from the initial offer through to the final agreed price, it can be difficult to assess how the alleged breach would have affected value.
- In our experience, claims often arise where a variety of valuation metrics were considered in arriving at the Purchase Price. In these circumstances, as illustrated in the diagram below it is important to consider contemporaneous evidence, such as board minutes, transaction documents and correspondence, in order to understand whether one particular method was favoured, or whether the purchase price reflected an assessment across a range of different valuation metrics.
- From an insurer perspective, establishing the policyholder’s valuation methodology at an early stage can help reduce friction if a claim arises. However, attendees acknowledged that detailed valuation calculations are not always provided during the underwriting process, although we understand that most underwriters ask about the basis of valuation as part of their underwriting questions. The detailed valuation model may later become highly relevant when assessing whether the alleged breach caused loss and, if so, how that loss should be quantified.



Non-Accounts warranties

- Our roundtable discussions also considered claims involving non-Accounts warranties, such as warranties relating to regulatory, operational or other business-specific issues.
- Our attendees noted that buyers often seek to advance non-Accounts warranty claims on an earnings multiple basis. A multiples-based approach is widely understood and can be relatively easy to articulate. However, it may not always be appropriate, particularly where the alleged breach relates to a discrete issue that would not be expected to affect the underlying maintainable earnings of the target, as is often the case with non-Accounts warranties.

		Example A: Non-recurring	Example B: Recurring
Illustrative examples		Balance sheet adjustment required for an amount of £5 million in relation to a write-off of obsolete stock due to flood damage in warehouse. This would be written off on the balance sheet and expensed through the P&L.	Adjustment required to increase audit fees which have historically been misstated by £1 million. This would be reflected by an increase to expenses in the P&L.
Revenue	A	No impact	No impact
Expenses	(B)	Increase by £5 million	Increase by £1 million
Reported EBITDA	**A - B = C**	**Decrease by £5 million**	**Decrease by £1 million**
Adjustment for one-off non-recurring expenses	D	Increase by £5 million	No impact
Maintainable EBITDA	**C + D = E**	**No change**	**Decrease by £1 million**

Multiple is applied to the **maintainable EBITDA** when calculating Enterprise Value

Loss calculated on a £ for £ basis as no change to the maintainable EBITDA

Loss calculated on a multiple basis as maintainable EBITDA has reduced

Assessing loss: multiple or pound-for-pound?

- Depending on the facts and the warranty in question, non-Accounts breaches are often more appropriately assessed on a pound-for-pound basis. This may be the case where the issue relates to a specific liability, cost, compliance matter or other one-off item that would not be expected to affect the future earnings capacity of the business, as shown in Example A in the diagram above.
- By contrast, an earnings multiple-based approach may be more appropriate where the breach affects maintainable earnings, the risk profile of the business, or a key driver of enterprise value, as shown in Example B in the diagram above. However, this needs to be supported by evidence. It is not sufficient simply to assert that the purchase price was based on EBITDA and a multiple if the contemporaneous documents do not support that position.
- The bridge between enterprise value and equity value is also important. If the alleged issue would have been treated as a debt-like item, working capital adjustment or other specific pricing adjustment, this may point towards a different assessment of loss.
- Attendees also noted the practical difficulty of quantifying certain non-Accounts losses, particularly where the alleged impact involves subjective factors, reputational issues or uncertainty as to future performance. In such cases, the evidential link between the breach and the value impact becomes particularly important.

Final thoughts

- W&I insurance remains an important feature of the M&A landscape. However, successful claims require more than identifying a potential breach. Buyers need to evidence the breach, demonstrate that it caused loss, and explain how that loss has been quantified.
- For both financial and non-Accounts warranty claims, the key message from our roundtable discussions was clear: contemporaneous valuation evidence matters. The stronger the evidence showing how the business was valued and how the alleged breach would have affected that valuation, the stronger the foundation for the claim.

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Rosie has specialised in Forensic Accounting for over 20 years. She has acted as expert on a large variety of commercial disputes involving loss of profit and contractual disputes, her primary area of specialism is in post-transaction disputes. Rosie regularly acts for both insurers and insureds in warranty and indemnity claims and has been appointed and testified in uninsured warranty claims that have proceeded to both litigation and arbitration. Rosie is a Fellow of the Institute of Chartered Accountants in England and Wales. Rosie also undertakes appointments as an expert determiner in post transaction disputes and has provided advisory and expert work on earnout disputes.

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