

US RWI and UK W&I

A buyer's guide to coverage and seller recourse

Start with the protection you would require without insurance: the escrow or holdback, the seller's remaining obligations, and the losses you could absorb. Then compare standard UK W&I, enhanced W&I and US-style RWI against that benchmark. Price matters alongside the risks retained by the buyer.¹

Nothing in this briefing guarantees the availability, scope or payment of insurance coverage. Any coverage is governed by the terms, conditions, exclusions and endorsements of the binder, policy or other binding insurance contract actually issued.

01 HOW THE STARTING POSITIONS COMPARE

FEATURE	UK-STYLE W&I	US-STYLE RWI
Pricing	Usually lower premium and retention.	Usually higher premium.
Disclosure	Data room and diligence reports typically deemed disclosed.	No blanket data-room disclosure; schedules and express exclusions matter.
Loss measure	Commonly diminution in value (reduction in business value); indemnity-basis enhancement available.	Typically broader indemnity-based loss definition.
Materiality	Scrape available as an enhancement.	Double scrape commonly included.
Coverage review	Warranty-by-warranty coverage spreadsheet.	Identified representations subject to exclusions and amendments.
Exclusions	Often broader, including some cyber, product and asset-condition risks.	Often narrower, depending on diligence and wording.
Underwriting	Primarily written Q&A; seller diligence with buyer top-up may be used.	Usually buyer diligence and an underwriting call.

Typical starting positions, not mandatory terms.² A double materiality scrape disregards specified materiality qualifiers both when deciding whether a warranty was breached and when measuring loss. Policy exclusions still apply.

02 KNOWN BREACHES, SANDBAGGING AND DISCLOSURE

RWI generally excludes breaches actually known to the buyer's specified deal team. The policy defines whose knowledge counts, what must be known and when. This limits "sandbagging" against the insurer; it is separate from the rules in the sale and purchase agreement (SPA) on recovery against the seller.³

The disclosure distinction still matters: a data-room matter may meet the UK policy's disclosure standard even if the specified buyer team did not actually know of a breach. Deemed disclosure may then bar UK recovery while the US knowledge exclusion would not. Other exclusions and coverage requirements still apply. If that team actually knew of the breach, neither form ordinarily covers it.⁴

Ask counsel to test a concrete example against the disclosure and knowledge wording. Also check small-claim thresholds, which losses count toward the retention (the amount borne before insurance responds), loss valuation and notice deadlines.⁵

Coverage and seller recourse

03 SELLER LIABILITY ABOVE THE POLICY LIMIT

Replacing an escrow with insurance does not itself create or preserve a claim against the seller. Seller liability depends on the sale and purchase agreement (SPA), including survival, caps, exclusive-remedy and no-recourse provisions. A clean-exit structure can leave the buyer bearing losses above the insurance limit. Any excess seller indemnity must be expressly negotiated.⁶

Check fundamentals, tax and fraud separately: seller recourse is not automatic. Fraud recovery depends on law, wording, proof and collectability. The insurer's subrogation rights do not create an excess seller indemnity.⁷

04 EXCESS COVERAGE FOR SELECTED REPRESENTATIONS

In our experience, buyers often bind excess coverage for selected representations and warranties where potential losses warrant more protection. A published example documents excess coverage limited to fundamental representations, such as ownership and authority.⁸ Consider tax and other higher-risk representations, subject to underwriting and expressly agreed scope. These layers add limit only for specified risks. Confirm when the excess layer begins to pay, how the underlying limits must be used up, exclusions and coverage periods. Extra limit does not itself cover a known breach; identified tax risks may require separate tax liability insurance.⁹

05 CHOOSING THE COVERAGE LIMIT

Ten percent of enterprise value is a common starting point.¹⁰

A useful question is: what escrow or holdback would the buyer require without insurance?

In our experience, buyers commonly choose 10%–20% of enterprise value. Use the hypothetical escrow as a benchmark, then adjust for policy exclusions, retention, plausible losses and remaining seller recourse. Compare higher overall limits with targeted excess coverage; insurance and an escrow do not provide identical protection.

06 COMPARE THREE OPTIONS ON THE SAME BASIS

WolfTRI suggests comparing **standard W&I**, **enhanced W&I** and **US-style RWI**, where available. Request a schedule of priced enhancements and confirm which can be combined. Eligibility depends on the deal and insurer appetite.¹¹

At the same limit and currency, compare premium, fees, taxes, retention, small-claim thresholds, exclusions and policy periods. Check insurer strength and claims arrangements. Pricing depends on risk and market conditions; obtain actual quotes.¹²

For both U.S.-style RWI and U.K.-style W&I, map the diligence scope to the countries where the target operates, identifying the work planned or completed, responsible advisers and any gaps. Scope and requirements vary by jurisdiction and insurer.

Before signing, align coverage, diligence and the final SPA; address known issues separately.¹³

Notes and authorities

Observations about buyers choosing 10%–20% limits and the frequency of targeted excess coverage reflect our experience. The cited sources do not establish those frequencies.

1. Taylor Harris et al., *W&I vs. RWI: Key Differences for Cross-Border M&A*, DLA Piper (Jan. 7, 2026), <https://www.dlapiper.com/en-at/insights/publications/2026/01/wi-rwi-key-differences-cross-border-transactions>.
2. Harris et al., *supra* note 1; Dave J. Bartoletti & Ralph A. Caruso, *Representations and Warranties Insurance: Introduction and Policy Framework*, Taft (July 29, 2024), <https://www.taftlaw.com/news-events/law-bulletins/representations-and-warranties-insurance-introduction-and-policy-framework/>; Clifford Chance, *Warranty & Indemnity Insurance: Key Considerations Should a Potential Breach of Warranty Arise* 2–3 (2025), <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2025/09/warranty-indemnity-insurance.pdf>.
3. James Grayer, *Representation and Warranty Insurance Deal Dynamics: Agreement and Schedule Modifications*, Clifford Chance n. 5 (June 17, 2025), <https://www.cliffordchance.com/insights/resources/blogs/insurance-insights/2025/06/representation-and-warranty-insurance-deal-dynamics-agreement-and-schedule-modifications.html>.
4. Harris et al., *supra* note 1; Grayer, *supra* note 3, n. 5.
5. Clifford Chance, *supra* note 2, at 2–3.
6. Bartoletti & Caruso, *supra* note 2.
7. Bartoletti & Caruso, *supra* note 2; Clifford Chance, *supra* note 2, at 4.
8. Financier Worldwide, *Transactional Risk & Insurance 2025* 5 (2025), https://www.greatamericaninsurancegroup.com/docs/default-source/mergers-acquisitions-liability/transactional-risk-insurance-2025_garry-gordon.pdf?sfvrsn=d41f25b1_8 (profile of Garry Gordon; PDF pagination).
9. Pamela Brennan et al., *W&I Insurance Through a Tax Lens*, Eversheds Sutherland (Nov. 20, 2025), <https://www.eversheds-sutherland.com/en/germany/insights/w-i-insurance-through-a-tax-lens>.
10. Bartoletti & Caruso, *supra* note 2.
11. Harris et al., *supra* note 1; FAQs, Euclid Transactional, <https://euclidtransactional.com/faqs/> (last visited Oct. 5, 2026).
12. Bartoletti & Caruso, *supra* note 2; FAQs, *supra* note 11.
13. Bartoletti & Caruso, *supra* note 2.

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