

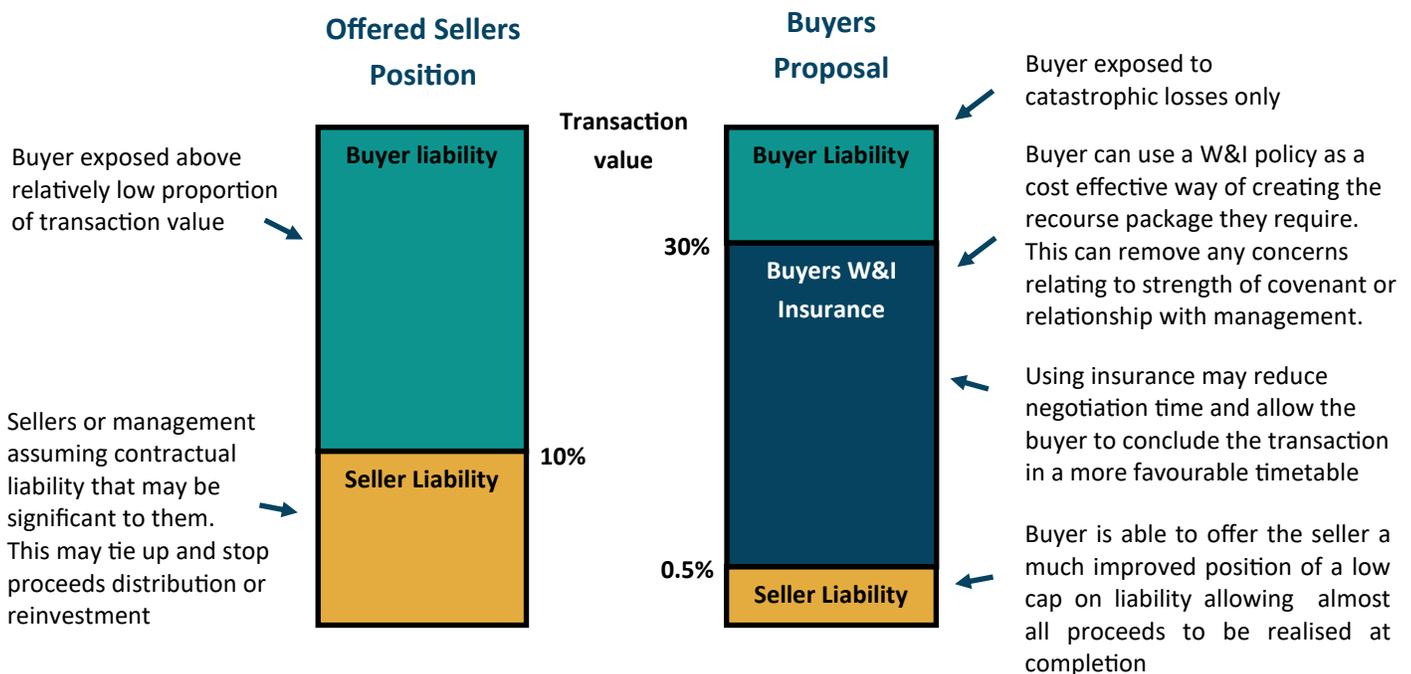


SUCCESSFUL AUCTION BIDS: STRATEGIC INSURANCE ALIGNMENT

High quality assets are often sold via fiercely competitive auction processes. As well as price, the seller will take into consideration its ability to exit cleanly and its confidence in the bidder's ability to complete within a strict timetable. Warranty & Indemnity ("W&I") Insurance has become the tool of choice for buyers to differentiate their bid by meeting all of the seller's demands and remaining in control of their own risk management requirements.

How the Insurance works

Regardless of the proposed recourse package the seller offers, a buyer can enhance their bid by transferring some or all of the recourse offered by a seller to a buyer's W&I Insurance policy to make their bid more attractive. Set out below are the key competitive advantages to a buyer in doing so.



Additional solutions

In certain situations a buyer may require sellers to have “skin in the game” but to remain competitive may use insurance to reduce the time periods, quantum or scope of matters which the sellers are liable for from completion. In such circumstances the following options can be available:

Reducing the tail of liability

- The SPA and supporting W&I Insurance policy can be structured so that the seller is liable on a diminishing basis. The seller will retain a limited cap for an initial period (e.g. 12 months) matching the policy excess. The policy excess will then “drop down” to zero as the seller’s liability falls away, becoming the only recourse to the buyer for the remainder of the liability period (up to 7 years).
- Alternatively the structure can be more complex with a phased reduction in seller’s liability with an insurance policy that sits above this amount but drops down accordingly as the seller’s liability is reduced. This structure can be used in tandem with the release of an escrow or retention account.

Enhanced Protection

- Buyers can also be selective about whether liabilities should remain with the seller or be covered by insurance. For example, the insurance policy could cover an enhanced set of warranties or a synthetic tax deed where having reviewed the due diligence, an insurer provides recourse to the buyer in place of seller indemnification.

About us

HWF is a Specialist M&A insurance broker and advisor led by senior professionals with extensive experience in M&A transactions.

We have worked with many leading legal and financial advisors in providing services to private equity houses, management teams, real estate firms, banks and corporates.

The team have a combined 30 years of experience in this market place and advised on over 2,000 transactions, with values ranging from £5m - £15bn and structured over 750 policies.

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