Guide to Transactional Risk:

Insurance Due Diligence for Private Equity and M&A Transactions

2025 Edition

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The Deal Landscape: Bright Signs for 2025

In Q4 2024, the private equity deal landscape experienced a resurgence, largely driven by the Federal Reserve's monetary easing policies, which fostered a favorable financing environment. According to EY's "Private Equity US Market Insights and Trends," deal values surged by 26% and volume by 24% compared to 2023. In addition, the average debt/EBITDA ratio in deals rose to 5.2, up from 4.9 in 2023.

As we look ahead to the second half of 2025, what does this mean for the private equity landscape? Based on our historical experience of cyclical trends in private equity deals, current level of dry powder across the middle market, and our proprietary research here at Woodruff Sawyer, we believe the US private equity deal landscape will continue to improve throughout 2025. Although Pitchbook's 2025 US Private Equity Outlook notes there could be reduced fundraising activity in 2025, a pickup in realization activity and a decline in interest rates could expedite the exit recovery and sustain fundraising throughout the year.

Additionally, the Trump administration's deregulation agenda could boost transaction activity. However, new tariff regimes add uncertainty, with supply chain issues being the biggest concern, according to EY's Private Equity Pulse.

Due Diligence Is Essential

Drawing from over 25 years of experience working in the private equity and M&A community, we recommend performing insurance due diligence on every transaction to identify, quantify, mitigate, diminish, or otherwise transfer the potential risks that could negatively affect EBITDA for the portfolio company.

Furthermore, including an expert insurance advisory team on the buyer's due diligence bench will help avoid or mitigate potentially costly land mines, protect the investment in the short and long term, and ensure a cleaner exit. During due diligence, it's critical for a deal team to understand how the management team has historically approached insurance and employee benefits decisions versus how it should handle them on a go-forward basis as a private-equity-owned business.

Choose a Broker with In-House Specialists

The 2025 *Guide to Transactional Risk* explains how we help our private equity, growth equity, and strategic acquirer clients through their transactions. We've developed this *Guide* and these best practices based on our experience personally working on thousands of middle-market transactions, from before the letter of intent (LOI) through the transaction's closing, hold period, and continuing post-divestiture.

Broker expertise is an essential piece deal teams must consider when reviewing potential advisors for RWI brokerage services, insurance due diligence, and/or post-close brokerage work. It is never in the best interest of the private equity buyer if a brokerage firm uses an outsourced diligence team or centralized broker marketing model.

Hand-offs like these that occur before, during, and throughout the deal process and post-close can lead to significant issues in insurance and employee benefits programs.

> It is never in the best interest of the private equity buyer if a brokerage firm uses an outsourced diligence team or centralized broker marketing model.

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Why Does Insurance Due Diligence Matter?

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Here's why we believe it is critical to perform insurance due diligence on any transaction:

Understand how EBITDA is being protected at the company level.

The overall goal of due diligence is to uncover potential land mines that can negatively affect EBITDA for a target acquisition in both the short and long term.

Understand the foundation of insurance, general risk management strategy, and approach to employee benefits offerings that have been implemented historically to protect the business and employees before an acquisition.

How has the management team viewed insurance and risk management up to the point of selling the company? Which of the company's risks are uninsured, underinsured, deficiently insured, or adequately insured? How has the team developed, implemented, and maintained the employee benefits package?

Watch for implications on the total cost of risk. Uncover opportunities for cost structure improvement post-close.

Is the target company overpaying (or underpaying) for insurance? Are there opportunities for the target company to take on more risk to improve the cost structure and positively impact EBITDA over the long term from an insurance perspective? Are there ways of restructuring the employee benefits program or adjusting contribution strategies?

Avoid exclusions or issues with the representations and warranties insurance (RWI) process.

In almost every deal where RWI insurance is a component, the underwriter will request a report or memo for the insurance and benefits programs in place. If not answered correctly and adequately, exclusions may be added to the RWI policy. RWI sits in excess of all existing insurance policies the target has, so make sure the foundation is strong. This is particularly important regarding cyber coverage, directors and officers (D&O) coverage, and other management liability lines.

Understand historical losses.

Frequent losses are indicative of management's approach to risk management. Are historical losses likely to persist post-close? Is the current program set up to handle those losses? Do the losses indicate a potential for higher retentions or loss-sensitive financing arrangements to better control risks?

Coordinate run-off policies.

Some existing policies could be exposed to run-off provisions. Insurance due diligence helps the deal team understand the potential risks of buying run-off or tail policies at close (or not buying them), ensures protection of the asset from close, and provides a clearer understanding of who is responsible for what risks, why, and when.

Get a sense of evidence-based benchmarking.

How much commercial insurance does the target purchase? Is it enough? Is it too much? How does the benefits program compare to peer companies?

What value-added resources are being offered?

What additional loss control or claims management resources is the target company using, and how could that impact long-term strategic thinking and cost management?

Identify potential new program needs.

Depending on the transaction structure and agreement language, you may need to implement a new property, casualty, management liability, or employee benefits program at close.

Respond to lender requests.

When new lenders are added to the financial structure, they will require certificates naming them as the additional insured or lender's loss payable on the insurance program. Like RWI underwriters, lenders will require a base review of the insurance program. There will be certificates required for closing.

> Including an expert insurance advisor on the due diligence bench will enhance a deal team's understanding of the target acquisition pre-close—ensuring that no surprises come up post-close.

3.0

Transaction Timeline from an Insurance Perspective

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Transaction Timeline from an Insurance Perspective

In any given transaction, various items can arise that will lengthen (or shorten) a transaction timeline. The two main insurance-related workstreams are the RWI and due diligence processes. Understanding how these two simultaneous workstreams weave into the broader transaction timeline will help you avoid delays at the end of the process. For more information on this process and other insurance insights, subscribe to our *M&A Notebook*.

Here is the typical process for a stock buy-out transaction:

Phase 1 (5-6 days)	Phase 2 (5 days)

Information needs:

- Confidential Information Memorandum (CIM) or management presentation
- Financials (audited or reviewed); if unaudited, a quality of earnings report (QOE) will be required
- Draft purchase agreement (preferably buyer markup)

Sign/Close

- Non-refundable underwriting fee is paid (Day 1)
- Data room access granted to insurer and outside legal team (Day 1)
- All due diligence reports are supplied to the underwriter (Day 1)
- Two-hour underwriting call (Day 3)
- Draft policy and follow-up questions delivered to buyer (Day 5)
- Policy negotiation (Day 5–close)
- Policy bound (close date)

Due Diligence Process:

- **Day 1** — Data room access granted to diligence advisor
- **Day 2** — Information checklist provided to buyer
- **Day 3** — Intro call with management, as necessary
- **Day 4–14** — Data collection and due diligence
- **Day 14** — Due diligence report and go-forward applications delivered to buyer and underwriter for RWI if being sought
- **Day 14–16** — Diligence presentation and completion of go-forward applications
- **Day 16–Close** — Go-forward marketing for new coverages
- **Pre Close** — Lender requirements satisfied
- **Close** — New coverages bound
- **Close + 7 days** — Broker transition
- **Post-Close** — Risk management and insurance strategy planning

Phase 1 | Phase 2 | Phase 3 | Phase 4

Phase 1: Pre-LOI Through Execution of LOI

The pre-LOI period is often when a buyer engages an RWI broker to approach the marketplace to obtain quotes for the transaction. This is known as Phase I of the RWI brokerage process and includes submitting several pieces of key information to the broad RWI marketplace.

LOI Best Practices from an Insurance Perspective

- Involve your insurance advisor early in the deal process.
- Include a vetted RWI proposal with first or second round bid packages.
- Complete administrative work on the due diligence side to prepare for diligence to begin.
- Get familiar with the target company by reviewing the Confidential Information Memorandum, financials, management presentations, and initial insurance-related information.

Phase 2: Period of Exclusivity and Insurance Due Diligence

Once the LOI has been executed and the deal moves into exclusivity, the buyer will kick off all third-party diligence workstreams. Insurance and employee benefits due diligence should always be one of these workstreams.

> The goal of the insurance due diligence process is to uncover any instances or exposures that could negatively affect EBITDA for the target company pre-close, at close, or post-close in the short and long term.

First, the diligence team becomes acquainted with the target company by having a call with the management team to provide clarity on the insurance process and answer any insurance checklist-related questions. As more information is gathered and supplied to the buyer's team, the insurance diligence team begins their work.

Members of the deal team are not insurance experts. The insurance advisor should be considered an extension of the deal team and a partner in EBITDA protection, risk mitigation, and overall insurance strategy

The result of the diligence process should be a comprehensive, clear, and concise due diligence report outlining key findings, recommendations, and next steps as the transaction process moves forward.

What is the diligence team looking to find during their analysis?

- Acceptably insured exposures
- Deficiently insured exposures
- Underinsured / over-insured exposures
- Uninsured exposures
- Underfunded / unfunded liability exposures
- Evidence-based benchmarking
- Cost and coverage efficiencies (or inefficiencies) that can be maximized (or minimized) at close and post-close

Phase 3: Pathway to Close and Closing

Once the initial due diligence is completed, several things need to happen prior to closing.

1. RWI Phase II Underwriting Process

Phase II of the RWI process is completed when the private equity firm's deal team chooses an RWI insurer to underwrite the transaction, executes the expense agreement for the chosen insurer, and wires the non-refundable underwriting fee directly to the insurer.

Phase II of the RWI process can move forward once the primary, underlying transaction due diligence has been completed, reports for each diligence workstream can be provided to the underwriter, and, most importantly, a draft of the disclosure schedules is made available. The chosen underwriter (and their outside legal advisors) will gain access to the data room and "diligence the diligence" by performing a desktop review of all the due diligence reports. Following the initial review, we coordinate a 90- to 120-minute underwriting call, after which underwriters deliver a draft policy and follow-up questions to the buyer.

From that point until closing, follow-up questions are resolved as new terms of the purchase agreement are developed, and policy negotiation moves forward simultaneously as the deal marches toward sign/close. By the time the deal is ready to sign/close, a fully underwritten and negotiated RWI policy is ready to bind.

2. Coordination of Run-Off Coverage for Any Policies That Have a Change in Control Provision

This step typically includes existing professional liability, management liability, and cyber policies.

Typical policies that include Change in Control provisions:

- Management Liability (D&O, EPL, and Fiduciary Liability)
- Cyber Liability
- Professional Liability/Errors & Omissions
- Any other claims-made policies

3. Go-Forward Coverage Solicitation

Depending on the transaction's structure and the underlying policies in place, you will need to solicit and implement various new go-forward coverages at close. For example, if the transaction is an asset purchase, you should implement a property, casualty, and management liability program close. Alternatively, if the deal is a majority-controlled stock transaction, only those policies that include a Change in Control provision must be replaced at close.

4. Certificate of Insurance Coordination

Lenders will need certificates of insurance validating that coverage is in place as of closing. Certain organizations will also need to be added to the insurance program as additional insureds or lender's loss payable and may also stipulate cancellation notification provisions. These additions need to be referenced in certificates of insurance, which are typically required before close.

Phase 4: Post-Close Brokerage and Implementation

Once the deal closes, the real work and partnership begin between the operating partners of the private equity firm, the management team of the newly acquired company, and the insurance broker team. Post-close is when the advisor begins implementing any recommendations that could not be or were not implemented at close. It is also when the due diligence advisory team works hand-in-glove with the management team to develop a comprehensive insurance and risk management strategy for the short, medium, and long term.

POST-CLOSE TIMELINE

Step 1

1–7 Days Post-Close

Broker transition: The portfolio company management team completes the necessary paperwork to transition the insurance program to the buyer's insurance advisor

Step 2

2–3 Weeks Post-Close

In-person or virtual management meetings

Step 3

2–4 Weeks Post-Close

In-person or virtual insurance implementation and strategy planning session

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5 Key Insurance Due Diligence Findings in 2024

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5 Key Insurance Due Diligence Findings in 2024

Here are key findings that Woodruff Sawyer is seeing in middle-market private and growth equity transactions.

1 No comprehensive, strategic approach to insurance and risk management.

While a foundation of coverage has been established, no long-term insurance strategy for EBITDA protection has been developed or implemented. The insurance advisor should recommend ways to both professionalize the program and raise the level of sophistication of the insurance program post-close to maximize EBITDA protection over the lifecycle of the investment.

2 Key coverages are missing.

For many target acquisitions, the deal represents the first time the company has accepted institutional investors or considered a buyout from a private equity sponsor. This situation means new board members (or establishment of a Board of Directors, in general) and potentially a new approach to insurance. What may have been treated as low priority pre-close (due to cost, for example) may be treated differently with a new private equity owner or growth equity investment because the buyer or investor will always seek to protect their investment.

Some coverages that may be missing include management liability (directors and officers liability), commercial crime, cyber liability, and product recall liability.

3 Limits are inadequate.

As in the previous point, a company pre-close will choose a limit for a variety of reasons. We have found the company typically has not performed any benchmarking analysis around limit adequacy. When an institutional investor becomes involved, there should be greater thought around limit adequacy to protect the short- and long-term EBITDA of the company.

Some coverages that may have inadequate limits include cyber liability, business income and extra expense, contingent business income, and products liability.

4 RWI continues to be used on most transactions, and it's increasingly being used on deals that are smaller than $50 million, given market conditions.

The market is continuing to respond to the current deal flow by seeking out a broader range of risks. There is a lot of discussion and marketing around contingent risk and litigation risk, and tax continues to be a focus. It is worth noting that last year, a number of very large contingent liability losses made this a much less popular line for carriers. Cyber liability continues to be the underwriter's greatest concern when looking at insurance diligence and is worth exploring early in the quoting process. Many targets in the small- to mid-market world still come to market with no coverage in place, which can be challenging and impact RWI placement.

Read more about RWI market trends later in this guide>>

5 Management teams should expect varying premium/rate developments depending on product and industry on property, casualty, and management liability coverages.

The end of 2024 was a buyer's market with regard to premiums and rates for various lines of insurance coverage. Rates were generally improving in areas such as management liability, cyber liability, and commercial property. However, the commercial casualty and commercial auto marketplace remained tougher. Commercial auto rates, in particular, were still increasing in areas where target acquisitions and services-based portfolio companies had larger fleets of autos. These trends have continued through Q1 2025.

Read more about rate trends in:

Quarterly Commercial Lines Market Update: Trends and Pricing Predictions >>

Property & Casualty Looking Ahead Guide >>

Directors & Officers Liability Looking Ahead Guide >>

Cyber Liability Looking Ahead Guide >>

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Spotlight: Reps & Warranties Insurance Trends

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Spotlight:
Reps & Warranties Insurance Trends

RWI continues to be used on most transactions. It is still more frequent with PE buyers than corporate buyers but even with a more buyer-favorable market, we are seeing its use continue apace. Movement of underwriters between companies has continued to be high, and we continue to see new entrants, with one already in 2025. We continue to see a very competitive landscape with pricing ranging from 2.25% to 3% of the limit being purchased. There is much discussion in the market that these numbers are not sustainable and we imagine that as soon as there is an uptick in deal flow, pricing will rise. We are also seeing an increase in claims and expect a heavier deal flow through 2025 than we did in 2024. So, expect a slight rise in prices as the year goes on.

The market is responding to the slowing of deal flow by seeking out a broader range of risks. As we stated previously, there is a lot of discussion and marketing around contingent risk and litigation risk. The price was beginning to harden in these areas as demand picked up. Additionally, a series of large full-limit losses last year soured this market, and many insurers have pulled out altogether. Tax continues to be a focus, and its increased use in the last few years has allowed for easier underwriting and stabilizing prices. The smaller deals market is still popular and several underwriters have been trying to find “RWI light” approaches, with certain markets seeking to provide simpler coverage for lower pricing with a streamlined underwriting process. However, the coverage restrictions on these products have made them less popular than underwriters hoped.

Learn more about RWI in our
Guide to Reps & Warranties Insurance >>

We are also seeing almost every RWI broker implementing new fee structures for compensation.

A Strong Risk Management Strategy Can Bolster Your Company's EBITDA

Insurance and employee benefits due diligence may not be the top priority on a private equity, growth equity, or SPAC deal team's radar. After all, there are many other priorities during the hectic deal process. However, a comprehensive risk management and insurance strategy can bolster a company's EBITDA and protect against long-term issues. In the case of de-SPAC transactions, critical nuances from an insurance perspective must be implemented at close when the business combination completes and a new publicly traded company is formed through the merger.

Woodruff Sawyer Expertise in Protecting Private Equity & Venture Capital Firms:

$350+ billion
total assets under management insured at the fund level

$150–$350 million
average platform transaction size

250+
private equity and venture capital clients

250+
active engagements in the last 24 months

30+ years
working in the private equity, venture capital, and M&A space

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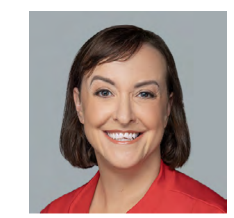

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About Woodruff Sawyer

Woodruff Sawyer, a Gallagher company, is a full-service insurance brokerage and consulting firm, serving emerging tech companies to global giants for over a century. Headquartered in San Francisco, we offer our clients access to a global platform of exclusive resources, tools, and data.

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