



Lowenstein Sandler's In the Know Series Video 11 – Are Buyers *Still* Getting Paid? The Evolution of R&W Insurance Claims

By [Eric Jesse](#)
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Eric Jesse:

Hi, I'm Eric Jesse, partner in Lowenstein Sandler's [Insurance Recovery Group](#), and welcome to "[In the Know](#)."

Back in 2020, on what turned out to be the eve of COVID, we conducted a survey of stakeholders and the reps and warranties insurance market to answer the critical question that many private equity firms and strategic buyers were asking, and that was: Does reps and warranty insurance actually pay claims?

The answer was "yes," though there were caveats. For claims that exceeded the self-insured retention, 87 percent of respondents reported at least a partial payment that was negotiated. However, the majority of respondents—71 percent—reported claims that fell entirely within the policies for retention.

Fast forward to today: R&W insurance has evolved since then, as we emerge from the pandemic and companies face new and emerging risks. We wanted to refresh our survey to see if R&W insurers are still paying claims, and the results were surprising. We are going to release our R&W claims survey in mid-April but wanted to share a few key findings with you in advance.

First, the survey showed that there is a need for R&W insurance to protect buyers post-closing. Several R&W insurers report that claims are made on about 20 percent of the policies that they sell, and our survey shows that more claims are exceeding the policy retention, bringing the loss amount into the policy limits that insurers should pay. Sixty-one percent of respondents reported claims within the retention, this time down from 71 percent in 2020.

Second, the claim process is a challenging one. For claims exceeding the retention, 60 percent of respondents reported that a partial claim payment was negotiated, which is down from 87 percent in 2020. And the claim investigation and resolution process is a lengthy one, with most respondents reporting a 1-3 year time frame to resolve a claim.

Third, in this survey, we asked about R&W claims involving ESG-focused or -driven companies, and SPAC transactions. The survey showed that surprisingly, ESG companies are not immune from R&W claim activity,

with respondents reporting that 49 percent of claims involved in ESG company and 22 percent of respondents reported claims involving SPAC deals, which may be high considering that SPACs are a subset of all M&A transactions.

So, what does all this mean? Well, we can't share all the details here; you're going to have to read the report for that. And if you would like to be on our distribution list, please email RWIsurvey@lowenstein.com.

But one thought we can share now is that based on these results, the commerciality that defined the R&W insurance claim process may be slipping, with insurers treating R&W insurance like other commoditized insurance products that are often prone to coverage disputes. R&W insurers would be well-served to reevaluate their claim processes to ensure that R&W insurance is responsive and timely when buyers need it, so that R&W insurance can be as in demand in the future as it is today.

Thank you for joining us, and we look forward to seeing you next time on ["In the Know."](#)