Transactional Liability Predictions 2024

For further information or enquiries, please contact:

Kirsty Hick
Partner
khick@dacbeachcroft.com
+44 (0) 207 894 6378

Jack Holling
Partner
jholling@dacbeachcroft.com
+44 (0) 207 894 6001

DAC BEACHCROFT
Member of **Legalign Global**

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1. AI will speed up the M&A process

M&A activity has slowed in recent years and the deals which are going through are taking time to complete as buyers investigate a range of factors including the impact of recent economic challenges, regulatory compliance, tax, ESG and litigation risk. AI technologies will increasingly be used to speed up the due diligence process. AI enables the swift review of large data sets, efficiently flagging inconsistencies and potential risks for further investigation by the buyer and its legal team. Providing sensible human oversight is applied, the opportunities for using AI in the M&A process are significant.

2. ESG factors will be an important focus in M&A deals

Corporations recognise that tackling environmental, social and governance (ESG) issues can give them a competitive advantage and provide opportunities for growth. With greater scrutiny of ESG targets by consumers, employees, investors and regulators, ESG considerations are increasingly an important focus in M&A deals. Buyers are critically assessing sellers' commitments to energy savings, operational efficiencies and social responsibility as part of the acquisition process, to ensure ESG statements stack up and their merging corporate cultures will align. Significant differences in ESG ideology and performance criteria could be an obstacle to integration post-merger and may result in claims if mismanaged. ESG scoring – which uses quantitative measurements to independently verify ESG factors – is a growing market and it is expected to become more common place in the M&A due diligence process.

3. Challenging economic conditions will drive demand for warranty and indemnity insurance

Geopolitical instability, rising inflation, interest rate hikes, currency fluctuations and supply chain disruption have fuelled market uncertainty over the last two years and caused a slowdown in M&A activity. But this slower pace is perhaps not all bad news. It is giving deal makers breathing space to undertake due diligence, reflect on strategies and think innovatively. Deals that promote greater operational resilience, improve certainty of delivery, reduce production costs – such as joint ventures or vertical mergers with those in the supply chain - will be a key feature in 2024. This challenging environment will drive up demand for warranty and indemnity insurance, with greater recognition that insurance can protect buyers against undisclosed risks and help them weather this period of economic uncertainty.

4. Transactional risk insurers will continue to evolve their products and claims response to steal a competitive edge

The difficult market conditions mean competition among insurers remains fierce. There are fewer deals but there are still high value premiums to be won as deal makers look for certainty in these uncertain times. We continue to see brokers and insureds press insurers to provide wider, US-style cover. Insurers will need to remain vigilant with their policy wordings to avoid giving more cover than intended. On the claims side, insureds and brokers demand almost instant responses and insurers can differentiate themselves from the market by retaining experienced and knowledgeable legal and expert advisers.

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