



**EMEA —
A CLAIMS
PERSPECTIVE**

RYAN
SPECIALTY

TRANSACTIONAL
RISK

“Ryan Transactional Risk’s claims team is a pleasure to work with. The team is responsive, transparent, and competent. In case of disagreement with the client, they adopt a pragmatic approach, searching for common ground and exploring amicable solutions.”

Head of Claims at a leading broker with 60+ claims with Ryan Transactional Risk

“Ryan Transactional Risk are one of our key providers and we have a large portion of our claims experience with them – they ask relevant questions to get to the heart of the issue quickly, engage transparently in the claims process and are practical in their approach to settlement. Ryan Transactional Risk are subject matter experts that understand the deal mechanics which helps collaboration with our clients during a claim.”

Head of Claims at a leading broker with 50+ claims with Ryan Transactional Risk

“Ryan Transactional Risk have been involved in some of our more complex claims which have necessarily taken time to resolve but which have resulted in significant payments to our clients.”

Senior Claims Broker at a leading broker with 30+ claims with Ryan Transactional Risk

“Ryan Transactional Risk continue to be at the forefront of underwriting M&A transactions not only in the UK but increasingly so on a global basis. As they have scaled rapidly over the last decade, with that has come an increasing focus on their claims team and their willingness to invest in this area to help them leverage this as a key differentiator for them. They have proved to be highly responsive time and time again with a willingness to look at things from a bigger picture perspective given the nature of their book. In our experience this has resulted in them being at the forefront of the market when it comes to handling, responding and ultimately paying out on claims.”

Claims Advocate at a leading broker with 10+ claims with Ryan Transactional Risk



RYAN

SPECIALTY

TRANSACTIONAL RISK

CONTENTS

Ryan Transactional Risk At A Glance	3
Welcome	4
Practical Claims Tips	
1. Involve Your Broker	5-6
2. Bridge The Information Gap	7-8
3. Managing Expectations	9-10
4. Collaboration & Communication	11-12
A Cautionary Tale	13
Claims Handling	14
Final Word	14

RYAN TRANSACTIONAL RISK AT A GLANCE

Over \$450 million of claims payments globally	Global blended claim notification rate of c. 16%	60% of global claims payments agreed and paid within 12 months of substantive claim notice
c. \$100 million of claims payments regarding UK targets alone	EMEA average claims payment of c. \$5 million	Insureds in over 35 jurisdictions across all continents
80% of claims received within 18 months from policy inception	Material claims (i.e. over \$5 million) are usually received within 12 months of completion	Tax matters account for a third of indemnity payments, by policy count
c. 40% of indemnity payments, by policy count, have been on static asset/real estate transactions	Ryan Transactional Risk deploys its own capital on every policy, unlike most other MGAs	Approximately half of non-tax claims payments, by policy count, have involved claimed loss exceeding the policy limit
Notifications received across 23 jurisdictions	Financial and professional services targets have been responsible for the largest quantum of claims payments	2018 and 2021 policies have experienced the highest notification rates

* Please note that all statistics relate to the period up to the end of 2023. The terms “Ryan Transactional Risk”/“RTR” and “RTR’s carrier partners” are used interchangeably throughout this document.

We are delighted to release Ryan Transactional Risk's ("RTR") inaugural claims publication. Whilst there is a large amount of publicity regarding transactional risk insurance claims statistics, this can be difficult to digest and has been elusive when it comes to disclosing data on claims severity. We therefore wanted to produce something different, something that provided meaningful information and assistance to the transactional risk insurance community. Accordingly, within this document you will find revealing claims severity data as well as helpful practical guidance, supported by case studies of real material claims payments made under RTR policies, for insureds to consider when making a claim under a warranty and indemnity insurance policy.

RTR is one of the longest-standing and pre-eminent providers of transactional risk insurance solutions across the world, with over **100** staff in **5** offices across **3** continents. Notwithstanding the truly global nature of RTR's operations and appetite, this document and the case studies herein only focus on RTR's claims data across EMEA (unless otherwise stated).

"Sadly transactional risk insurance claims payments are like the news, with rare declinations being sensationalised and "good news" stories of material claims payments often overlooked. Hopefully, with this publication, we go some way to addressing that imbalance as well as providing helpful practical tips for users of transactional risk insurance products. The record of claims payments under RTR policies, as explored in this document, speaks volumes, and illustrates the enormous value of the product to insureds."



Alex White

Head of Claims, International

0208 068 2393

alex.white@ryantrs.com



PRACTICAL TIPS TO GET THE MOST OUT OF YOUR CLAIM

1 INVOLVE YOUR BROKER

In the same way that brokers play an invaluable role in the placement of a policy, they can also bring immense worth in the event of a claim. Brokers have an intimate knowledge of the product, the policies they have placed, as well as a wealth of experience on claims processes, enabling them to assist an insured in pursuing a claim.

We would recommend that an insured involves their placement broker with claims related matters as early as possible, and ideally before making an initial notification. Positively, many brokers now have specialist claims teams. Albeit, in our experience, brokers can play an important role regardless of whether they have designated claims personnel.

Here are some of the ways that the broker can help:

- **assessing whether a claim should be made:** brokers may, for instance, assist insureds with coverage considerations including their preliminary understanding of policy construction and the efficacy of any exclusions, thus reducing the chance of insureds wasting their time with spurious claims;
- **preparing the initial claim notice:** brokers can help to ensure that a claim notice is adequately articulated and accompanied with appropriate supporting evidence;
- **assisting with the information exchange between the insured and insurer:** this may include seeking to make sure that insurer information requests are proportionate (we explore this in more detail later); and
- **utilising their close relationships with the insurer to collaboratively progress a claim, and leveraging this relationship more generally to the benefit of the insured:** brokers' solution driven attitude, typically applied in the context of a transactional situation, can equally be usefully deployed in a claim scenario to expedite a claim's resolution, and help to navigate around any differences in opinion.

Claims on RTR policies involving the broker have been paid twice as quickly when compared with those with no broker involvement

“Involving the broker in the claims process is, from my perspective, the most effective and simplest way for an insured to get the most out of its claim. Transparent communication is key to any successful relationship and represents one of the many ways that the broker can valuably contribute to a smooth claims process. I have handled numerous claims where the insured has achieved a far better outcome, much more swiftly, as a direct result of the broker being involved.”

Associated Case Studies

Misstated Financial Statements

\$10 Million

Shortly after completion, the insured discovered multiple irregularities in the acquired entity's audited and unaudited financial statements. This highly collaborative claims process, in which the broker played a crucial role in facilitating direct communications between RTR and the insured's representatives, was swiftly resolved through amicable settlement discussions. The agreed **settlement sum exceeded \$10 million** and was ultimately brokered by the placing broker. The broker played a key role in building trust and transparency between the parties.

Locked Box Accounts

\$5 Million

The insured identified, with the assistance of third-party forensic accountants, numerous material adjustments that should have been made to the locked box accounts. These errors impacted the insured's valuation. Whilst breach was confirmed in a few months, discussions regarding loss took a little longer given the complex nature of the claim and the requirement for valuation specialists. The broker remained involved throughout the process, in constant dialogue with all parties, and was integral to the matter settling. **Circa \$5 million was paid** to the insured.

Incorrect Lease

Quick Resolution

This claim related to a property deal where the capacity under a lease agreement was misstated. RTR worked collaboratively with the insured and the placing broker to resolve the claim, asking only one set of clarificatory questions within two business days of receipt of the initial claim notice. The insured responded comprehensively to these, facilitated and assisted by its placement broker. As a result, breach and loss were confirmed within seven business days of that response.



PRACTICAL TIPS TO GET THE MOST OUT OF YOUR CLAIM

2 BRIDGE THE INFORMATION GAP

The reality of most claims is that there will be an information asymmetry that will need to be addressed. One key area where this can exist is in respect of loss; this will need to be clearly demonstrated and evidenced. For certain types of claim, this may require the insured to provide its valuation model which, due to commercial sensitivities, may be reluctantly parted with but can be integral to properly calculating loss.

Consequently, it is vital to any successful claims process that an insured recognises the information gap that exists and that it willingly provides the information requested by an insurer. It sounds obvious, however the more quickly and comprehensively that an insured can respond to an information request, the more expeditiously a claim will be resolved. This is another area where the broker can valuably contribute to the claims process by helping to facilitate the information exchange.

Of course, a balance must be struck here, with an insurer also needing to be pragmatic and selective in requesting information during its coverage investigations. It is therefore important to have an experienced claims partner by your side, such as RTR, who will swiftly understand an insured's claim, the information required to confirm cover, and the likely direction of travel (and look to embrace, and not reject, the prospective outcome).

The more quickly & comprehensively that an insured can respond to an information request, the more expeditiously a claim will be resolved



“There is often a misconception regarding the basis for questions posed by insurers, namely that they are designed to catch an insured out. Rest assured, there is no such hidden agenda and the sooner this myth can be dispelled, the better for insurers and insureds alike. Rather, the simple aim is to enable insurers to reach the correct decision, regardless of how unfavourable that decision may be for them. Providing the requested information really helps us to get to the bottom of your claim quickly and efficiently. So please help us, help you.”

Associated Case Studies

Breached Supplier Arrangement

\$25 Million

This complicated matter involved the acquired target allegedly being in breach of an important supplier arrangement. Breach was confirmed early in the claims process, however loss was extremely complex requiring an extended timeframe where the insured worked collaboratively to provide further clarificatory information. Ultimately, the claim was resolved swiftly following the provision of key valuation information, with RTR's carrier partners agreeing to make an indemnity **payment of more than \$25 million** within weeks of that crucial evidence being provided.

Customer Information Inaccuracies

\$25 Million

This highly complex claim primarily related to alleged customer record inaccuracies. The insured was pro-active in articulating its claim, providing detailed legal analysis and a third-party forensic accountant report alongside its initial claim notice. Whilst providing such thorough supporting information and analysis is not a pre-requisite to any insured making a successful claim, it did greatly assist with the expeditious resolution of this matter. As a result, RTR's carrier partners agreed to make an indemnity **payment of circa \$25 million within 12 months** of the detailed initial claim notice being received.

Erroneous WIP

\$6 Million

In this claim the insured notified RTR on the final day of the warranty expiration period highlighting that, whilst rare, large claims can still occur late in the policy period. Numerous accounting breaches were alleged, including the supposed incorrect treatment of WIP, which required detailed forensic investigation. The insured and its advisors actively engaged with RTR during the claims process, providing information responsive to our requests. This allowed breach to be confirmed in respect of this extremely complex, multi-faceted, claim within 6 months. **Approximately \$6 million was indemnified** following further engagement on loss. Significantly, this payment constituted c. 50% of the total transaction value, thus also highlighting the pitfalls of purchasing small limits (as these can often be insufficient).



PRACTICAL TIPS TO GET THE MOST OUT OF YOUR CLAIM

3 MANAGING EXPECTATIONS

It is crucial to approach the claims process with an open and pragmatic mindset. Adopting this attitude helps to maintain a collaborative dialogue. It also reduces the time and cost involved and minimises the chance of escalation into litigation. Many insureds work with RTR regularly and have directly benefited from this approach. Broker involvement can also help meaningfully in managing expectations.

The main areas where we urge insureds to manage their expectations are:

- (i) **Timings:** the claims assessment process can sometimes take time given the complex nature of these claims, which may necessitate the involvement of third parties (such as sector specific experts and/or valuation professionals).

“It is not in insurers’ interests to delay matters or incur unnecessary additional costs in the claim assessment process. This is evidenced by the majority of RTR’s claims being paid within 12 months of formal notification. Where there is a delay, however, there is usually a good reason for this: it may be that we are trying to think of, and explore, a creative solution to an impasse.”



- (ii) **Loss:** it is vital to be realistic. It can be tempting to adopt a similar approach to that in litigation against an unwilling seller by (a) alleging as many limbs of loss in the hope that some might stick, or (b) seeking to apply the calculation methodology that yields the highest result. This is unhelpful in an insured claim where insurers are far more aligned to the insured’s interests. Put simply, insurers are in the business of paying claims, with close relationships with insureds and brokers alike. The inclusion of unrealistic limbs of loss only serves to protract matters and can increase the risk of escalation, all without tangible upside for the insured.

“Inflated loss arguments rarely bear scrutiny and only serve to jeopardise expeditious claim resolutions. In my experience, insureds stepping back and thinking about their loss objectively have certainly achieved the best resolutions at the lowest cost to themselves.”

Associated Case Studies

IT Systems Weaknesses

\$13 Million

There were alleged weaknesses in an acquired entity's IT systems resulting in purported breaches of the IT related warranties. The assessment of this claim involved a number of complex factual considerations and required both third-party IT expert as well as valuation specialist input. Nonetheless, after constructive engagement between the parties where the insured was pragmatic regarding its loss, RTR's carrier partners made an **indemnity payment of approximately \$13 million**.

Fraudulent New Business Division

\$10 Million

RTR's carrier partners **paid out circa \$10 million** in respect of a claim for the misstated performance of a new business division of an acquired company. Notwithstanding the particularly complex nature of this claim, breach was confirmed expeditiously. The insured was patient and collaborative whilst the position regarding loss was independently assessed, engaging actively with RTR's forensic accountants and valuation experts, resulting in this matter being resolved to the appreciation of the insured.

Undisclosed Customer Termination

\$6 Million

Shortly after completion the insured discovered that a material customer of an acquired business was terminating its relationship with the target. Certain individuals at the target knew about the proposed termination prior to signing, albeit this was not disclosed, thus triggering a breach of the material contract warranties. Whilst there was an information lacuna, particularly around loss, RTR maintained an open dialogue with the insured and, following further information being provided, RTR's carrier partners were able to justify making a **payment of more than \$6 million to the insured**.

PRACTICAL TIPS TO GET THE MOST OUT OF YOUR CLAIM

4 COLLABORATION & COMMUNICATION

The overriding sentiment in a successful claims process is that collaboration is key. There is no doubt that collaborative claims processes, where the insured and insurer are working in partnership, yield the best results for all involved.

It is in circumstances where an insured, perhaps seeing the claims resolution process as being more akin to that against an unwilling seller, is not collaborative that things can get frustrated, and matters can sadly then escalate. Escalation is, of course, the insured's prerogative; however, when exercised prematurely, it leads to a far more costly and drawn-out process (due to procedural hurdles). Therefore, RTR recommend that litigation should be seen as a last resort.

There will be times where insurers and insureds disagree on elements of a claim, but it is rare that such instances are irreconcilable. It is how the parties navigate out of any such disagreements that matters. This is one of the many reasons why selecting an experienced, reputable and long-standing insurer counterparty in this class, one such as RTR, is truly invaluable.

Disagreements occasionally occur on claims, however these can usually be resolved through collaboration & communication

The Kick-Off Call

Where appropriate, RTR's claims team will reach out to an insured to offer a kick-off call shortly after an initial claim notification. Not only is this a useful opportunity to introduce the parties to the claim, it also allows insurers to set out the likely process involved, thus managing the expectations of an insured (and its advisors). These early communications, and the opportunity to open a direct dialogue, can be a valuable way of establishing trust and setting the tone for a smooth and transparent claim process.



“Collaboration is something that we pride ourselves on at RTR and is pervasive throughout our organisation. Our collaborative outlook is demonstrable right at the very start of our relationship with an insured when we will work in close harmony to provide market-leading cover, constantly seeking to find solutions to coverage conundrums, without execution risk. What insureds might not know, however, is that we view our claims service through the same lens and consider it to be a continuation of the collaborative process that was commenced as soon as RTR was engaged to underwrite a transaction.”

Associated Case Studies

Seller Contracts

\$10 Million

This claim related to a number of material seller contracts allegedly having been incorrectly valued and/or not fully disclosed. Whilst the insured commenced arbitration proceedings against the seller, the coterminous claim under the policy was far more cordial, being handled outside of formal litigation. This difference in approach illustrates one of the many benefits of the W&I insurance product vis-à-vis the traditional, more litigious, buyer-seller claim dynamic. Whilst the insured lost its claim against the seller, RTR's carrier partners worked closely with the insured in substantiating its insurance claim and made an indemnity **payment of circa \$10 million** to the insured.

VAT Non-Compliance

\$10 Million

This claim related to a tax audit regarding the VAT non-compliance of cross-border supplies. This triggered a breach of a synthetic tax indemnity offered by RTR under the policy. The insured worked proactively with RTR to navigate the audit process and RTR's carrier partners accepted the insured's decision not to appeal the tax authority's decision. Incurred **loss totalled approximately \$10 million** with RTR's carrier partners making the claim payment following further engagement with the insured. Not only is this a poignant tax claim case study illustrating the benefits of a collaborative approach to settling a claim. It is also a perfect example of one of the many ways that the W&I insurance market can provide creative solutions (i.e. the synthetic tax indemnity) to meaningfully increase the breadth of cover available to insureds beyond that which can be agreed with a seller.





A CAUTIONARY TALE

Whilst there are plentiful good-news stories regarding material claims settlements, as highlighted within this document, this is sadly not always the case. One such matter, recently litigated in the English High Court, demonstrated that W&I insurance is not a substitute for a bad bargain and that, inter alia, insureds should: (i) provide all pertinent information prior to escalating a matter (but certainly in the early stages of a formal dispute), and (ii) critically assess their “loss”.

Defending matters through litigation is not something taken lightly, given the reputational and cost implications of getting a decision wrong. Notably, however, this was the first claim under a RTR policy that reached this stage. The defence of this claim was fully vindicated, winning emphatically, and so convincingly that indemnity costs were ordered.

“It is worth remembering that transactional risk products are intended to be held in the back pocket for when things actually go wrong (with the modest premiums being reflective of this risk). They do not compensate for buyer remorse for a poor acquisition, nor do they account for insureds seeking to weaponize the product. Such claims only result in premiums being increased to the detriment of the wider transactional community. Notwithstanding, as the material claims payments cited within this document demonstrate, transactional risk insurance policies offer meaningful value when bona fide claims are made.”

CLAIMS HANDLING

At RTR we strive for excellence in everything that we do, and that is no less true when it comes to our claims service. RTR's specialist claims department in EMEA is led by Alex White and focuses solely on handling transactional risk claims. Notably and uniquely the claims team is fully embedded within RTR's underwriting team. This "real time" access materially improves the claims process and information exchange, enabling a quick understanding of the intent and operation of each policy provision and allows RTR to facilitate an efficient and bespoke claims process. The integration alongside RTR's underwriters also helps with the diffusion of RTR's solution driven approach, ordinarily applied to underwriting, to its claims handling.

"We dare not wade into the MGA vs carrier debate that has been the topic of certain claims publications historically. However, the presence of our own related risk-taking vehicle deploying capital on all of our policies means that we offer the best of both; namely a creative, nimble MGA, benefitting from a diversified pool of insurer balance sheets, alongside company market alignment and the associated financial support structure." **Rich Stansfield**, Managing Director

FINAL WORD

There are now a record number of insurers providing transactional risk insurance solutions with more competition than ever before. Pricing is historically low, and coverage is at its broadest. It is in such circumstances that it is crucially important to not lose sight of the ultimate purpose of transactional insurance, which is to respond when things go awry. Accordingly, insureds should closely scrutinise insurer claims performance and seek to partner with an established insurer with a first-rate claims track record, one such as RTR. We urge you to consult with your broker for further guidance in this regard and we look forward to partnering with insureds for many years to come.



If you would like to discuss any element of this report further, please do not hesitate to get in touch with **Alex White, Ryan Transactional Risk's Head of Claims (International)** at alex.white@ryantrs.com, or another member of the Ryan Transactional Risk team.

Ryan Transactional Risk is a leading managing general underwriter specializing in transactional insurance solutions for the mergers and acquisitions market. Our products are underwritten by a panel of top underwriters at Lloyd's of London and other reputable insurers. As part of the Ryan Specialty family, we are dedicated to providing specialized products and solutions for insurance brokers, agents, and carriers. Ryan Specialty boasts a workforce of 4,000+ employees across three continents and is listed on the New York Stock Exchange.

Ryan Transactional Risk Offices

London

13th Floor
30 St. Mary Axe
London, EC3A 8BF
+44 (0)203 912 6692

New York

1185 Avenue of the Americas
Suite 2310
New York, NY 10036

Barcelona

Paseo de Gracia 98
4th Floor – 2a
08007 Barcelona
+34 910 603 945

Madrid

Velázquez 50
5th Floor
28001 Madrid
+34 609 706 969

Singapore

7 Straits View
Marina One East Tower, #05-01
Singapore 018936
+65 8207 5485

RYAN | **TRANSACTIONAL**
SPECIALTY | **RISK**

RYANTRS.COM

Please note that the application of any information within this document, and the extent of coverage for any particular claim, always depends on the applicable law, facts, circumstances and relevant policy language. Nothing within this document shall constitute advice and should not be relied upon as such. This document is not a complete summary of all of Ryan Transactional Risk's claims data, nor is it a complete summary of Ryan Transactional Risk's claims handling practices. Ryan Transactional Risk shall have no obligation to update this document and shall have no obligation to any person in connection with this publication or any matter contained herein.

Ryan Transactional Risk's operations are conducted through several legal entities, the choice of which depends on where the entities are authorised to operate. In the UK, Ryan Transactional Risk is a tradename of Ryan Specialty International Limited ("Ryan Specialty UK"), authorised and regulated by the Financial Conduct Authority (FRN 733324), Registered office: 30 St. Mary Axe, 13th Floor, London, EC3A 8BF, United Kingdom. Company number 07164987. In the EEA, Ryan Transactional Risk is a tradename of Ryan Specialty Nordics AB, Spanish Branch, authorised by the Spanish Financial Services Authority, Org nr 556741-6572. Registered office: Avenida del Doctor Arce 14, 28002, Madrid, Spain ("Ryan Specialty Spain"), CIF W0025091J. In the US, Ryan Transactional Risk are conducted by Ryan Transactional Risk (f/k/a Concord Specialty Risk), a series of RSG Underwriting Managers, LLC, a Delaware limited liability company ("Ryan Specialty US"). Ryan Specialty UK, Ryan Specialty Spain and Ryan Specialty US are subsidiaries of Ryan Specialty, LLC. Ryan Transactional Risk works directly with brokers, agents and insurance carriers, and as such does not solicit insurance from the public. Some products may only be available in certain jurisdictions, and some products may only be available in the US from surplus lines insurers. In California: RSG Insurance Services, LLC (License #0E50879).

©2024 Ryan Specialty, LLC