



# Representations & Warranties Insurance ("RWI") Services





# The Current State of Representations and Warranties Insurance

Representations and warranties insurance (“RWI”) has gained popularity in mergers and acquisitions as a way to shift potential liability stemming from breaches of the seller’s representations and warranties discovered post-transaction.

Traditionally, the seller’s indemnity has been backed by a portion of the sale proceeds placed in escrow for a negotiated period after closing. By choosing RWI, sellers can reduce indemnity obligations, streamline the bidding process and quickly exit the transaction. Buyers can use RWI to make their bid more attractive to a seller or extend the time allotted to discover any problems with the acquired business.

Insurance companies that sell RWI need specialized subject matter experts to evaluate the underwriting risk and respond to RWI claims, including underwriting and claims technicians, experts in financial due diligence, credentialed valuation professionals and industry-specific accounting experts.

## — HOW WE CAN HELP

FTI Consulting combines professionals from its Global Insurance Services and Dispute Advisory Services to provide insurers and insureds with expertise in RWI risks, coverage theories and claim quantification. Our CPAs and valuation professionals regularly evaluate M&A disputes across all industries, while working in tandem with our experienced practitioners in specialized industries such as telecommunications, pharmaceuticals, petrochemicals and banking. We can assist insurers and insureds alike in understanding the underlying business of the deal and its impact on potential coverage and claim valuation.

## Underwriting Services

To appropriately underwrite the risk, RWI requires a deep understanding of the implications of due diligence report findings, quality of earnings reports and the risks revealed by other financial documents in the deal data room. FTI Consulting regularly provides financial due diligence for transactions of all sizes and industries, and our professionals are well equipped to identify red flags that may not be covered under the RWI policy. We can help to identify red flags present in a target's operations or financial results, including:

- Inventory overstatement
- Improper revenue recognition
- Overstated accounts receivable
- Potential unrecorded liabilities
- Understated cost of goods sold (“COGS”)
- Abnormal trends in material



## Claims Services

FTI Consulting has the resources to help insurers and insureds navigate complicated RWI claims. We possess a depth of experience in objectively analyzing and quantifying the strength of claims and the dispute process. We partner with insurers, insureds and attorneys to negotiate favorable settlements and expeditiously resolve claims. Should the claim lead to a dispute, our professionals serve as seasoned and credible expert witnesses and have experience acting as independent arbitrators for purchase price disputes.

We have advised in claims and disputes related to:

- Working capital
- Balance sheet and income statement values and adjustments
- Fair market value and investment value
- EBITDA & EBIT calculation and multiples
- Earn-out and contingent purchase price calculations
- Financial statement misrepresentation claims
- GAAP and accounting practices consistency
- Contractual valuation
- Estimation techniques
- Lost customer claims
- Material adverse changes
- Benefit-of-the bargain valuations, diminution-in-value and lost-profits damages



## CASE STUDY

# EXAMINING RWI CLAIM VALIDITY IN CONSTRUCTION

An investor in a construction company filed a claim for \$130M under its RWI policy, an amount well in excess of policy limits. The investor alleged that the seller:

- Overstated earnings due to omitted accruals from prior years
- Possessed undisclosed liabilities in the current year related to bonus payments
- Misrepresented the collectability of accounts receivable and aging of accounts payable
- Overstated the expected profitability on certain construction projects, resulting in inflated revenue recorded in its financial statements on a GAAP basis

The insurer issuing the RWI policy retained FTI Consulting to evaluate the validity and amount of the alleged claims. Through its analysis, FTI Consulting determined that the claims were significantly overstated.

For example:

- The buyer's demands were duplicative, seeking indemnification for both the purchase price and cash payments.
- Despite the variance between actual results and expected results, assumptions regarding accounts receivable collectability were reasonable at the time of the sale and in accordance with GAAP. Moreover, the buyer had actual knowledge of historical accounts receivable and accounts payable aging, as explicitly reported in its due diligence materials.
- The assumptions and methodologies used to record expected gross profit under the construction projects was appropriate under GAAP.

As a result of our work, the insurer ultimately reached a favorable settlement with the buyer, settling below policy limits.



## CASE STUDY

# IDENTIFYING RWI BROKERS & CARRIERS FOR INSURANCE COMPANY SALE

FTI Consulting assisted the seller of a closed block of life insurance business in identifying brokers and carriers that are active in the RWI space, and that would potentially provide coverage in this transaction.

FTI Consulting provided the seller with information regarding prevailing insurance rates and the potential impact on the holdback escrow; and identified representations within the purchase agreement that could potentially be susceptible to a claim.

## CASE STUDY

# EVALUATING AN RWI CLAIM IN TELECOM

A global P&C insurance company had issued RWI for an asset purchase of a telecommunications company by the insured.

The insured alleged that the seller breached its financial statement representations when it underreported the annual assessments it owed to various regulatory authorities.

The insurance company engaged FTI Consulting to perform an analysis of the claim, including an evaluation of the basis for, and the quantification of the claim; identification of potential exclusions under the policy; evaluation of the appropriateness of the claim based on a multiple of damages; and an independent calculation of the potential impact to the buyer due to the misrepresentation. In addition, FTI Consulting included experts in telecom regulatory reporting to educate the insurer and counsel on the underlying issues.

FTI Consulting directly participated in ongoing discussions with the insured and the broker to assist with the ultimate settlement of the claim.



## CASE STUDY

# VERIFYING CLAIM VALUATION FOR P&C FIRM'S RWI POLICY

A global P&C insurance company recently began writing RWI for M&A transactions.

One of the company's insured filed a claim that alleged a loss in excess of \$30 million. The insured, a buyer of a waste management company, alleged ten distinct claims related to the seller's alleged misrepresentations, many related to an overstatement of EBITDA. The insurance company engaged FTI Consulting to assist with assessing and verifying the true value of the claim.

FTI Consulting performed an in-depth analysis of the claims, providing the insurance company with a realistic view of value of each claim. FTI Consulting experts identified flaws in the buyer's calculations and methodologies, including instances when the EBITDA multiple was being inappropriately applied.

The FTI Consulting analysis significantly reduced the true value of the loss, resulting in settlement for an amount lower than the \$10 million policy limit.



# Our Core Team



Kelly Bialas

Kelly Bialas is a Senior Managing Director and she is a member of the Global Insurance Services practice in the Forensic & Litigation Consulting segment.

Ms. Bialas provides clients with advice involving post-acquisition disputes, representations and warranties insurance claims, complex insurance and reinsurance issues, damage quantification and insolvency causation. Her representative experience includes determining the merit and value of claims made under representations and warranties insurance policies, analyzing liability and damage issues related to breach of contract and post-acquisition disputes, advising clients on accounting and financial reporting matters and providing transaction advisory related to insurance and reinsurance-related financial and operational issues.

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Basil Imburgia

Basil Imburgia is a Senior Managing Director and the North American Leader of FTI Consulting's Forensic & Litigation Consulting segment.

Mr. Imburgia has over 30 years of experience in providing forensic accounting and financial and economic analysis and thirty five years of accounting experience. He has acted a neutral arbiter in accounting/post acquisition disputes. He has calculated damages such as lost profits, reasonable royalties, excess costs, price erosion and loss of business value and loss of brand equity. He has additional experience with mergers and acquisitions due diligence, IPO's, Generally Accepted Accounting Principles analysis, and valuations.

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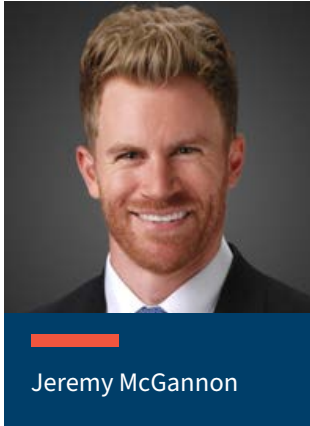


Wendy Shapss

Wendy Shapss is a Senior Managing Director and Co-Leader of the Global Insurance Services practice. She has over 25 years' experience in accounting, auditing, fraud and financial-based matters.

Ms. Shapss has advised on cases involving damage quantification; purchase price disputes; acquisitions and divestitures; lost profits; breach of contract claims solvency and insolvency; fraudulent financial reporting; price fixing; accounting irregularities; liquidation; and valuations.

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Jeremy McGannon is a Senior Managing Director who specializes in forensic accounting matters including investigations and flow of funds analyses, post-merger and acquisition disputes, and commercial damage analyses.

Mr. McGannon has conducted complex damage and valuation analyses resulting from alleged fraud, alleged breaches of certain representations and warranties provided in a stock or asset purchase agreement, and other breach of contract claims. Mr. McGannon has testified as an expert witness regarding his work on forensic accounting matters.

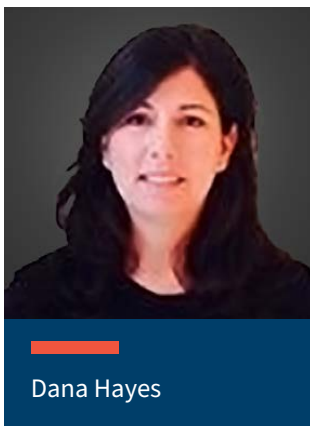
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Jeff Ellis is a Senior Managing Director and has extensive experience advising clients on the accounting and valuation for complex transactions.

Mr. Ellis has assisted clients on a wide range of matters involving accounting and valuation issues, financial statement restatements, consolidation of special-purpose entities/variable interest entities, asset securitizations, real estate sale transactions, debt restructurings, hedge accounting, debt and equity financing transactions, and product financing arrangements.

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Dana Hayes is a Managing Director and has more than 20 years of experience providing valuation, accounting and economic consulting services.

In connection with various matters, Ms. Hayes has analyzed and calculated financial damages due to lost profits, diminution of business value, disgorgement of profits, price erosion, reasonable royalty, expropriation and unjust enrichment. She has performed many enterprise and equity valuations as well as solvency analysis. She has directed engagements involving breach of contract, accounting fraud, underwriter due diligence, intellectual property, post-acquisition and antitrust issues.

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# About FTI Consulting

FTI Consulting is an independent global business advisory firm dedicated to helping organizations **manage change, mitigate risk and resolve disputes:** financial, legal, operational, political & regulatory, reputational and transactional.

Each practice is a leader in its specific field, staffed with experts recognized for their **depth of knowledge** and a track record of **making an impact**. Collectively, FTI Consulting offers a comprehensive suite of services designed to assist clients across the business cycle – from proactive risk management to providing rapid responses to unexpected events and dynamic environments.

## Our Largest Industry Groups



Transportation & Logistics



Financial Services



Real Estate



Healthcare & Life Sciences



Energy, Power & Products (EPP)



Mining



Telecom, Media & Technology (TMT)

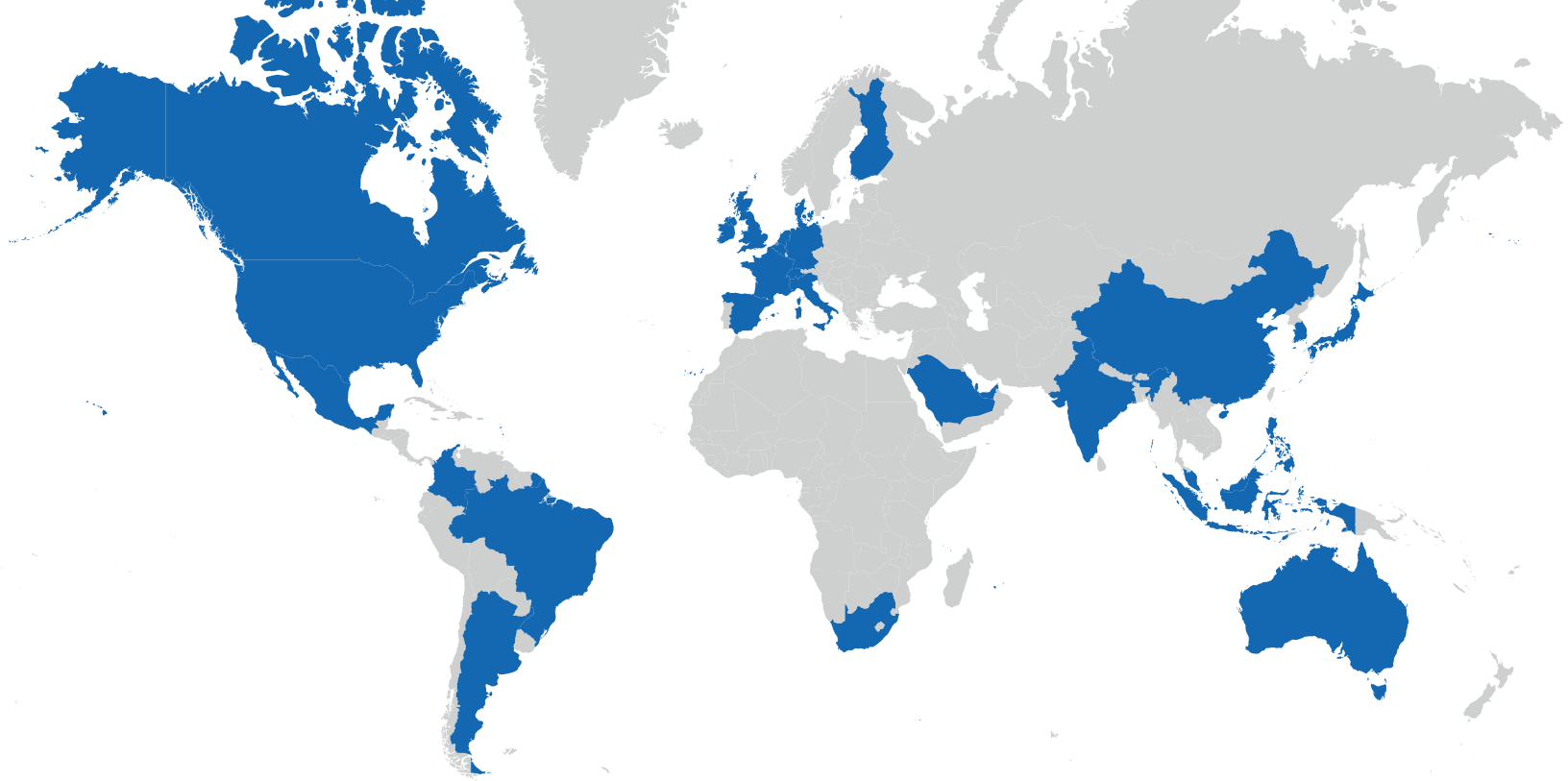


Retail & Consumer Products



Insurance





# EXPERTS WITH IMPACT™

With offices in every major financial center and every corner of the globe, we successfully serve our clients wherever challenges and opportunities arise.

Our clients include Fortune 500 corporations, FTSE 100 companies, global banks, major and local law firms and state and national governments and agencies in the U.S. and other countries. In addition, major U.S. and international law firms refer us or engage us on behalf of their clients.

**31**

Countries

**1982**

Year Founded

**8,000+**

Employees Worldwide

**NYSE:FCN**

Publicly traded

**Top 50**

Advisor to the world's top 50 bank holding companies

**99/100**

Advisor to 99 of the world's top 100 law firms

**\$7.7B**

Equity Market Cap\*

**82/100**

82 of Fortune Global 100 corporations are clients

\*Number of total shares outstanding as of October 19, 2023, by the closing price per share on October 26, 2023.





# Definitive Expertise



**Consulting Firm of the Year** (2016-2022); Most Experts Named to the **Consulting Experts Guide** (2016-2022)



**Best Firm to Work For** (2018-2023)



**Investigations Digital Forensics Firm of the Year** (2021-2022); and **Arbitration Expert Firm of the Year** (2015-2022)



**#1 Expert Witness Firm on GAR 100 Expert Witness Firms' Power Index** (2023)



**Marketing/PR Firm of the Year** (2021-2023)



**#1 U.S. Restructuring Advisor** (2008-2023)



**Global Turnaround Consulting Firm of the Year** (2015-2019, 2021-2023)



One of **America's Best Employers for Women and New Graduates** (2022-2023); One of **America's Best Management Consulting Firms** (2016-2023); **World's Best Management Consulting Firms** (2022-2023)



Recognized in **Crisis & Risk Management, Fintech and Litigation Support Guide** (2023)



## EXPERTS WITH IMPACT™

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**FTI Consulting** is an independent global business advisory firm dedicated to helping organizations manage change, mitigate risk and resolve disputes: financial, legal, operational, political & regulatory, reputational and transactional. FTI Consulting professionals, located in all major business centers throughout the world, work closely with clients to anticipate, illuminate and overcome complex business challenges and opportunities.

11/30/2023 | VN00485-v06

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