



REPRESENTATION AND WARRANTY

Forensic Accounting & Complex Claims (FACC) Practice



Clients today face many risks when purchasing an established business. At WTW our Forensic Accounting & Complex Claims (FACC) Practice can assist in evaluating if the value of the asset you received is equal to the price of the asset you purchased.

There are a number of ways a seller may misrepresent the value of the business they are selling, some examples are:

- Overstatement of sales
- Overstatement of receivables
- Overstatement of inventory

While we have not seen one buyer experience all the described tales of woe in one transaction, we have seen buyers experience some of or a combination of the above.

We have been involved in situations in which the work in process inventory was warranted as good only to find there was excessive obsolescence requiring extensive reworking before product could be converted into a finished good. The reworking increased cost of goods

sold and correspondingly reduced profits. The deal was structured as a multiple of earning based on historical earnings. Once the historical earnings were corrected to reflect the obsolete inventory, it became clear the buyer overpaid. The buyer submitted a claim under its representation and warranty policy to reimburse it for the excess purchase price.

Example scenario:

The Forensic Accounting & Complex Claims (FACC) Practice testified at trial where our client was selling one of their least profitable products. The seller was interested in quickly selling the product line and limited the potential purchasers due diligence. The limitation on due diligence became an issue at trial, however the seller provided the prior five years of historical sales data. The court found the sales data provided was accurate. The purchaser bought the brands as a multiple of prior year earnings. Unfortunately for the purchaser, their actual sales were substantially less than prior year sales for a number of reasons and they sued for fraud. Our client argued that the only thing they guaranteed was the accuracy of the prior years sales information and the court agreed with the seller.

In many business the 80-20 rule applies that is 80% of sales come from 20% of their customers. If your company is planning to acquire another company it is imperative you evaluate the stickiness factor. The stickiness factor address how many of that 20% will stay with your company after the acquisition is completed. WTW has seen numerous cases where the seller suggested the stickiness factor would be high, only to learn the seller knew maintaining stickiness was going to be a challenge. Today underwriters of R&W policies require a stickiness evaluation.

Another factor we have seen is product changes. To maintain or improve profitability companies will often change the ingredients, or components of their product. If the historical sales data is based on product sales before the change, it behooves the buyer to learn if product changes have been made, the extent of the changes and the likely impact on future sales.

In addition to representation and warranty claims, the FACC practice at WTW, working with our client advocates, assists clients in evaluating economical damages pertaining to:

- Builders risk claims
- Business interruption values & exposures analysis
- Construction claims
- Cyber claims
- Environmental claims
- FEMA requests for public assistance
- Fidelity/bond/crime claims
- Fixed asset valuation
- Litigation services
- Product recall /general liability claims
- Research and development claims
- Subcontractor default claims

About WTW

At WTW (NASDAQ: WTW), we provide data-driven, insight-led solutions in the areas of people, risk and capital. Leveraging the global view and local expertise of our colleagues serving 140 countries and markets, we help you sharpen your strategy, enhance organizational resilience, motivate your workforce and maximize performance. Working shoulder to shoulder with you, we uncover opportunities for sustainable success — and provide perspective that moves you. Learn more at wtwco.com.



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We add value to our clients by quantifying the loss amounts, gathering the necessary supporting documents, preparing and submitting the claim on the client's behalf, and managing the entire claim settlement process through resolution.

For more information contact your WTW client relationship director or:

Mark Gallagher CPA, CFE

Director, Forensic Accounting & Complex Claims

Direct: + 404 224 5027

Mobile: + 917 843 7028

mark.gallagher@wtwco.com

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