

[The Licensing Journal, M&A: AI Use in the Acquisition Context, \(Mar. 1, 2026\)](#)

The Licensing Journal

[Click to open document in a browser](#)

Contract Corner

Shane Safer, William R. Kolb, and Corey Brown

Shane Safer advises clients on a wide range of corporate matters at Foley Hoag in New York, with a particular focus on mergers and acquisitions. Shane has represented companies and investment firms on domestic and cross-border transactions, including mergers and acquisitions, divestitures, restructurings, tender offers, SEC reporting, and other governance matters.

Bill Kolb has over 25 years of broad experience helping clients achieve their business objectives, including assisting them to raise money, acquire companies, go public, be sold, enter into complex licensing arrangements, and address their day-to-day ongoing legal needs. As co-chair of Foley Hoag's Mergers & Acquisitions Practice Group, Bill works closely with clients in the life sciences, healthcare, technology, professional services, and manufacturing industries, among others.

Corey Brown is a co-chair of Foley Hoag's Mergers & Acquisitions Practice Group. Recognized nationally as a "Next Generation Lawyer" in middle market M&A by The Legal 500, his practice focuses on representing private equity funds and strategics in buy-side and sell-side transactions, including leveraged buyouts, minority and growth investments, going-private transactions, carve-out acquisitions, tender offers, and other strategic business transactions.

Introduction

AI is now a critical due diligence workstream. As AI becomes increasingly integrated into business operations, transaction parties must pay close attention to how a target's use of AI is addressed in transaction agreements, including identifying specific AI systems deployed, their functions, and any third-party technologies or data sources involved.

In order to understand the full scope of AI deployment, buyers and sellers should assess whether AI is used in customer-facing products, internal operations, or decision-making processes, as each use case presents distinct risks and regulatory considerations. In this way, representation and warranty insurance considerations are evolving. RWI underwriters have started performing their own AI diligence on targets, with policy coverage exclusions beginning to surface.

AI is now a critical component of due diligence and risk allocation in M&A and other corporate transactions. This article outlines practical guidance for drafting and negotiating the representations and warranties for such transactions (and related areas of focus in due diligence).

Understanding the Scope of AI Use

Whether working on the buy-side or sell-side, when conducting diligence or drafting representations and warranties, it is essential to understand the extent and nature of the target company's use of AI. This includes identifying the specific AI systems deployed, their functions within the business, and any third-party technologies or data sources involved. Parties should also consider whether AI is used in customer-facing products, internal operations, or decision-making processes, as each use case may present distinct risks and regulatory considerations.

The importance of understanding a target's integration of AI into its business must become a critical diligence workstream. Buyers and potential targets should now consider not only the regulatory implications of AI deployment, but also specific operational risks that arise from internal AI use. These risks include AI-enabled hiring practices that may raise discrimination and employment-law concerns, use of "shadow AI" by employees without formal company approval that can lead to privacy leakage, and, of course, heightened compliance requirements for companies operating in regulated industries such as financial services and healthcare. Relatedly, representation and warranty insurance ("RWI") underwriters have started to perform their own AI diligence on targets, with RWI policy coverage exclusions starting to surface and a greater prevalence expected to follow.

Key Issues to Address in Representations and Warranties

When marking up or preparing initial drafts of transaction agreements, parties should focus on several core issues:

- **Compliance with Laws and Regulations:** Representations should confirm that the target's AI systems comply with applicable laws, including data privacy, consumer protection, and emerging AI-specific regulations. Furthermore, the representations should address any internal use of AI by the target and ensure such usage has not resulted in violations of other (non-AI specific) laws (e.g., with respect to AI-enabled hiring practices).
- **Intellectual Property Ownership:** Representations should address the ownership and licensing of AI technologies, including software, algorithms, and training data, to ensure there are no undisclosed third-party rights or infringement risks.
- **Data Integrity and Security:** Given AI's reliance on large datasets, representations should cover the accuracy, provenance, and security of data used in AI systems, as well as compliance with data protection requirements.
- **Ongoing Maintenance and Support:** Representations can address the target's ability to maintain, update, and support its AI systems post-closing, which is crucial for business continuity.

Conclusion

As AI continues to transform business models, robust representations and warranties regarding its use are essential for effective risk management in transactions. Dealmakers should work closely with legal and technical experts to tailor and negotiate these provisions to the specific circumstances of each deal, ensuring that both parties are protected against the unique risks associated with AI technologies. Target companies should monitor and understand their AI use and practices well, and be prepared to respond to detailed diligence requests from buyers and their RWI underwriters.