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AIG, the insurance giant, recently released its annual Global M&A Claims Study. Now in its third year, this study is beginning to provide valuable insights into the world of mergers and acquisitions for companies considering an M&A transaction. For example, AIG has compiled statistics based on claims made under its representations and warranties insurance policies. These statistics have confirmed many suspected trends and revealed a few surprising ones.

In 2018, nearly one in five AIG representations and warranties policies received a claims notice. This figure demonstrates an increase in claims over the previous two years' studies and confirms an overall increase in indemnification claims generally. However, perhaps more interesting is the breakdown of the claims data by breach type and by industry.

For deals in the manufacturing industry, most claims are tied to a breach of either the financial statements representations (17%) or the material contracts representations (16%). In the health and pharmaceutical industry, the study observed a much higher rate of claims from breaches of the compliance with laws representation (31%). The technology industry had the most claims coming from breaches of the tax representations (25%) and intellectual property representations (19%). The statistics from the study are also broken down by deal size and by geographic region.

This information can be incredibly helpful in the due diligence process by assisting buyers, sellers, and investors in focusing on more difficult areas of the target business. However, the study and the number of claims made also show that no matter the thoroughness of the due diligence process, there will always be some level of uncertainty and risk. As the pool of data continues to increase, the statistics will become more and more relevant and these studies will become a valuable tool to help clients and their counsel avoid major pitfalls in the M&A process.

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