



Middle Market
M&A
SurveyBook

2025 Survey of Key M&A Deal Terms

Introduction

Seyfarth Shaw LLP is pleased to present the 11th edition of its Middle Market M&A SurveyBook (“2024/2025 Survey”), which analyzes key transaction terms from over 150 middle market private target acquisition agreements signed in 2024 and the first half of 2025.^{1,2} The information presented is intended to serve as a guide to buyers, sellers, and deal professionals on “what’s market” when negotiating these terms in private target acquisition agreements.

As in prior years, the 2024/2025 Survey focuses on key deal terms, including those comprising the “indemnity package” in most private target acquisition agreements to address a seller’s potential post-closing liability to a buyer and to set the parameters of a buyer’s ability to claw back purchase price from a seller. Each deal, of course, has unique facts and circumstances that affect the negotiation of the acquisition agreement, including the relative leverage of the parties. It is nonetheless helpful when negotiating an acquisition agreement to have a strong understanding of where the terms of your “indemnity package” fall in the current market spectrum.

Given the impact of the use of representation and warranty (“R&W”) insurance in private middle market M&A transactions, we have continued to track data from deals that included R&W insurance separately from deals where no R&W insurance was utilized. Approximately 53% of the transactions reviewed for the 2024/2025 Survey included R&W insurance, compared to approximately 57% in 2023/2024. Buyers consistently use R&W insurance in acquisition proposals to make their bids more competitive and attractive to sellers. Not surprisingly, the terms of the typical indemnity package differ substantially when R&W insurance is utilized. For example, the indemnity escrow amount and indemnity cap size are typically drastically lower in transactions that use R&W insurance as compared to transactions that do not. With respect to “no survival” private target acquisitions in which, similar to public company M&A transactions, the representations and warranties of the seller terminate at closing, data from SRS Acquiom showed a material decrease in “no survival” deals for the first time in several years when no R&W insurance is used, while “no survival” deals for transactions involving R&W insurance increased from 2023 but did not reach the peak from 2022. In the scenario of a “no survival” deal, recourse to R&W insurance is typically a buyer’s primary (or exclusive) remedy.

The 2024/2025 Survey again considers the number of private target acquisition agreements that included “fraud” exceptions to certain limitations on buyers’ indemnification rights and remedies, such as caps and baskets, and whether and how “fraud” was defined.

As anticipated, the middle market M&A environment in 2024 and early 2025 showed signs of recovery, though the path has been uneven across quarters and sectors. After a challenging 2023, dealmakers entered 2024 with optimism, supported by moderating interest rates, improved credit conditions, and record levels of private capital. While valuations have generally trended upward, overall deal volume has remained subdued, reflecting ongoing softness in the market despite early optimism.³

In the US middle market, private equity activity remained relatively resilient. Q1 2025 saw an estimated \$95 billion in deal value across nearly 1,000 transactions, reflecting a 10% year-over-year increase in deal value and a modest 4% increase in volume.^{4,5} This suggests that while buyers and sellers are finding some common ground, activity levels remain below historical highs. Private equity sponsors, under pressure to deploy significant dry powder, re-engaged in both platform and add-on acquisitions, while strategic buyers selectively pursued high-quality assets.^{6,7,8}

Nonetheless, economic pressures have continued to shape deal activity. The abrupt introduction of new tariffs in April 2025 created uncertainty, particularly for businesses with global supply chains, resulting in delayed closings and extended due diligence periods.^{9,10} While these disruptions caused a temporary slowdown in the second quarter, they did not derail overall momentum, as dealmakers adapted by incorporating more creative structures, such as earnouts and seller equity, to bridge valuation gaps and manage risk.^{11,12}

Within the middle market, technology, healthcare, and business services have remained active, while industrials, transportation, and consumer sectors tied to imports and tariffs have faced greater challenges.¹³ At the same time, emerging themes—such as the growing demand for data centers and electrical infrastructure to support AI—have spurred interest in niche areas of the market. Smaller, recession-resistant businesses in home services and specialty B2B services have also attracted strong buyer attention.¹⁴

Looking ahead, the outlook for the remainder of 2025 is cautiously optimistic. While macroeconomic and geopolitical uncertainty continues to influence timing and structure, the fundamentals remain favorable: abundant private capital, improving financing conditions, and a steady pipeline of quality businesses coming to market.^{15,16}

We hope that you find the information presented in our 2024/2025 Survey valuable, and we welcome the opportunity to further discuss our findings with you.

¹ This edition surveys deals signed in both 2024 and the first half of 2025 and compares those deals against deals signed in 2023 and the first half 2024.

² For purposes of this survey, “middle market” means transactions with a purchase price of less than \$1 billion, and “purchase price” means the total cash consideration paid by the buyer in a transaction but does not include contingent purchase price payments (e.g., earnouts). This survey does not include any transactions that involved the payment of consideration other than cash.

³ Calvetti Ferguson, Middle Market M&A Update: 2024 Review and Outlook for 2025.

⁴ PitchBook, Q1 2025 US PE Middle Market Report.

⁵ Forvis Mazars, Middle-Market Deal Activity Advances in 2024; Is Momentum Building?

⁶ Moore Colson, The 2025 Outlook for Middle Market M&A.

⁷ McKinsey & Company, Rich in Resilience: Dealmakers Deliver Strong First-Half Results in M&A.

⁸ See Footnote 5.

⁹ Capstone Partners, Middle Market M&A Q1 2025 and Middle Market Leveraged Finance Report – Summer 2025.

¹⁰ PKF Investment Banking: Middle-Market M&A Outlook—Q1'25.

¹¹ See Footnote 10.

¹² Deloitte, 2025 M&A Trends Survey – Midyear Update.

¹³ See Footnotes 5 and 10.

¹⁴ See Footnote 7.

¹⁵ KPMG, 2025 M&A Deal Market Study.

¹⁶ See Footnotes 6 and 7.

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Resources for More Information



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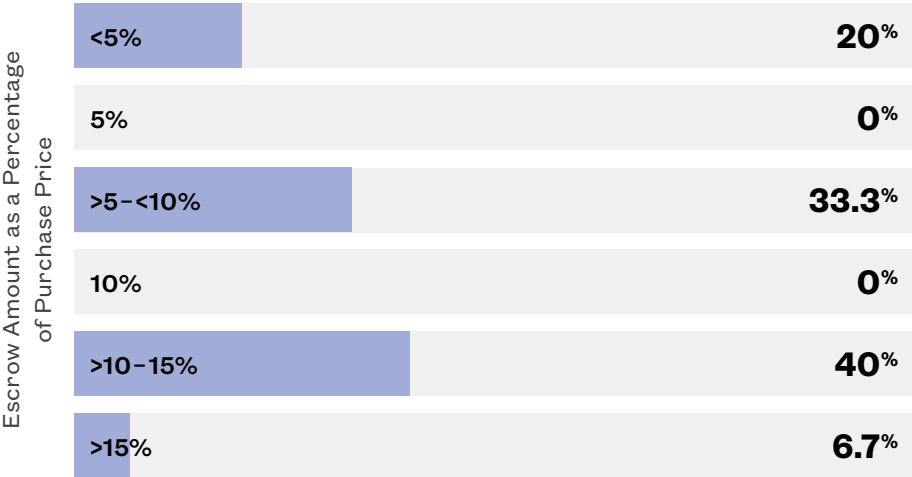
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Indemnity Escrow Amount

NO R&W INSURANCE



Percentage of Deals Surveyed Providing for Indemnity Escrow

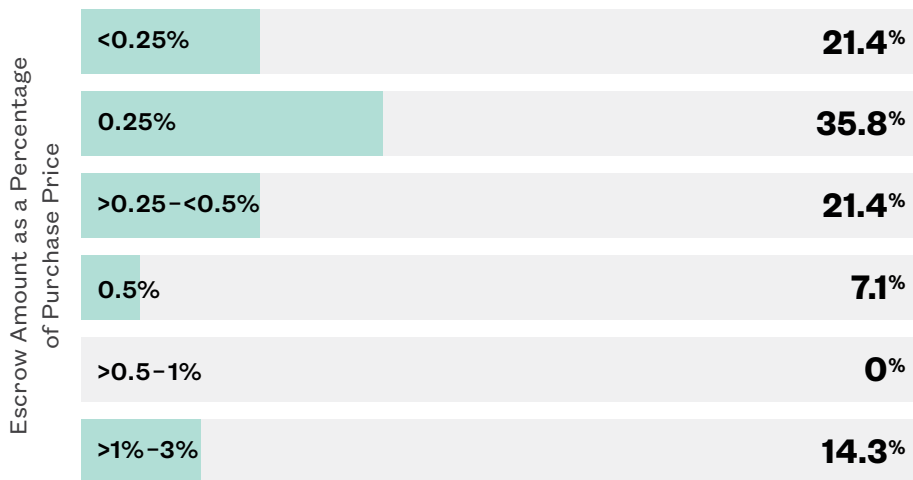
OBSERVATIONS

- The median indemnity escrow amount during the period of 2024 and the first half of 2025 (“2024/2025”) for the non-insured deals surveyed was approximately 9% of the purchase price, slightly more than 8% for the period of 2023 and first half of 2024 (“2023/2024”).
- However, approximately 47% of such deals had an indemnity escrow amount of 10% or more, a significant increase from approximately 33% in 2023/2024. This shift is less favorable to sellers.

IMPORTANT NOTE: Data included under “no R&W insurance” sections reflect deals where no R&W insurance was used, or where we were unable to confirm whether R&W insurance was used based on a review of the acquisition agreement. Data included under “R&W insurance” sections reflects deals where R&W insurance was used, as confirmed by the acquisition agreement.

Indemnity Escrow Amount

R&W INSURANCE



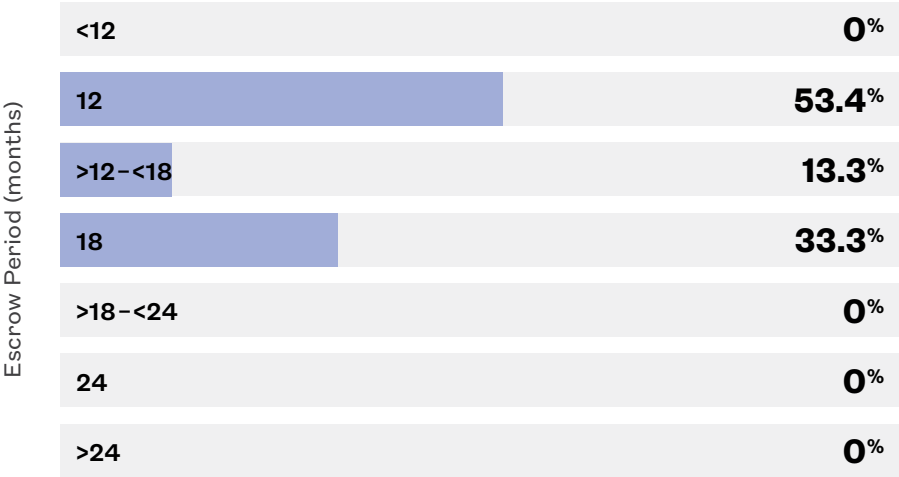
Percentage of Deals Surveyed Providing for Indemnity Escrow

OBSERVATIONS

- The median indemnity escrow amount in 2024/2025 for the insured deals surveyed was approximately 0.3% of the purchase price (as compared to approximately 1% in 2023/2024, which is likely due to lower retention (deductible) rates in R&W insurance policies). The data clearly illustrates the dramatic impact that R&W insurance has on the indemnity escrow amount (approximately 0.3% median amount for insured deals, as compared to approximately 9% for non-insured deals).
- All insured deals had an indemnity escrow amount of 3% or less, and approximately 86% had an indemnity escrow amount of 0.5% or less. This is consistent with the prevailing R&W insurance structure of including a retention (deductible) equal to 1% or less of deal value.

Indemnity Escrow Period

NO R&W INSURANCE



Percentage of Deals Surveyed Providing for Indemnity Escrow

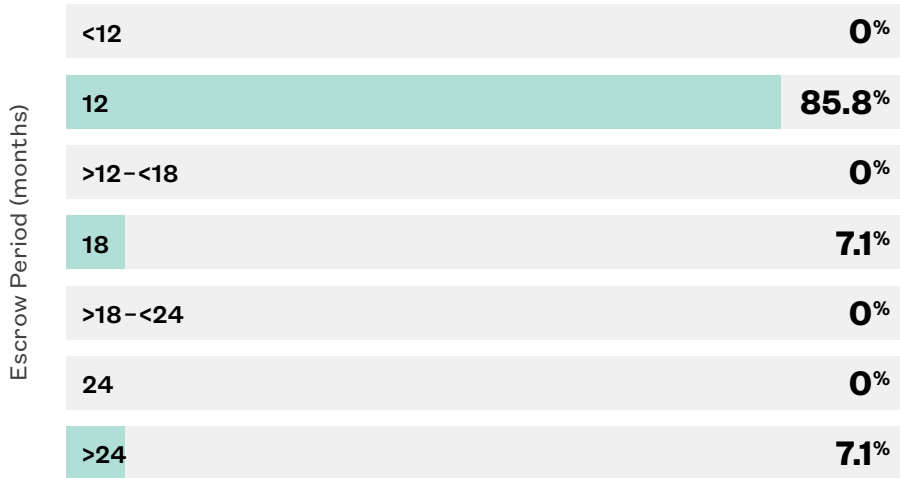
OBSERVATIONS

Of the non-insured deals surveyed which provided for an indemnity escrow:

- All such deals had an indemnity escrow period of 12-18 months.
- The median indemnity escrow period of such deals remained at 12 months, continuing a trend of seller-favorable, relatively short escrow periods.

Indemnity Escrow Period

R&W INSURANCE



Percentage of Deals Surveyed Providing for Indemnity Escrow

OBSERVATIONS

Of the insured deals surveyed which provided for an indemnity escrow:

- Approximately 93% of such deals had an indemnity escrow period of 12-18 months. However, without taking the Unique Deals into account, all of such deals had an indemnity escrow period of 12-18 months, which is consistent with 2023/2024.
- None of the deals had an indemnity escrow period of less than 12 months, which is consistent with 2023/2024.
- The median indemnity escrow period of such deals remained at 12 months, continuing a trend of seller-favorable, relatively short escrow periods.

IMPORTANT NOTE: A limited number of the insured deals surveyed had indemnity escrow periods of greater than 24 months, likely due to unique facts applicable to such deals (the “Unique Deals”). This highlights that the specific facts and circumstances of each deal will often carry the day in deal negotiations even if “not market.”

Trends in Indemnity Escrow Usage and No Survival Deals from SRS Acquiom

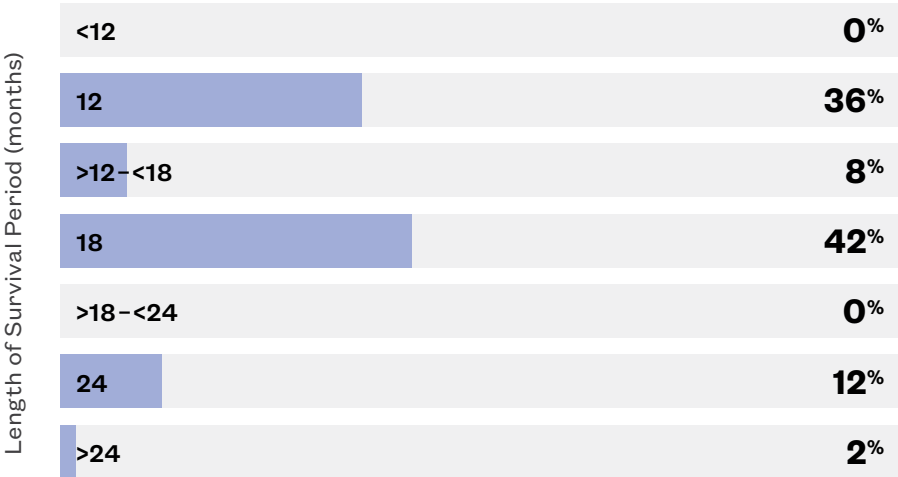
In recent years, our surveys have pointed to a decline in the use of indemnity escrows and a rise in deals adopting a “no survival” approach to general representations and warranties. We have also consistently observed that deals not utilizing R&W insurance are far more likely to include indemnity escrows and less likely to be structured as “no survival” deals. To further explore these trends, we partnered with SRS Acquiom (“SRS”), a provider of seamless M&A solutions, to present the comparative data below on indemnity escrow usage and the prevalence of “no survival” structures in deals surveyed by SRS.

	YEAR	INDEMNITY ESCROW	NO INDEMNITY ESCROW
All Deals	2020	68%	32%
	2021	65%	35%
	2022	66%	34%
	2023	67%	33%
	2024-1H 2025	56%	44%
No R&W Insurance Identified	2020	75%	25%
	2021	70%	30%
	2022	80%	20%
	2023	74%	26%
	2024-1H 2025	69%	31%
R&W Insurance Identified	2020	59%	41%
	2021	59%	41%
	2022	45%	55%
	2023	54%	46%
	2024-1H 2025	40%	60%

	YEAR	REPS SURVIVE	NO SURVIVAL
All Deals	2020	78%	22%
	2021	73%	27%
	2022	79%	21%
	2023	79%	21%
	2024-1H 2025	80%	20%
No R&W Insurance Identified	2020	88%	12%
	2021	84%	16%
	2022	88%	12%
	2023	88%	12%
	2024-1H 2025	94%	6%
R&W Insurance Identified	2020	64%	36%
	2021	63%	37%
	2022	49%	51%
	2023	64%	36%
	2024-1H 2025	58%	42%

Representation & Warranty General Survival Period

NO R&W INSURANCE



Percentage of Deals Surveyed

OBSERVATIONS

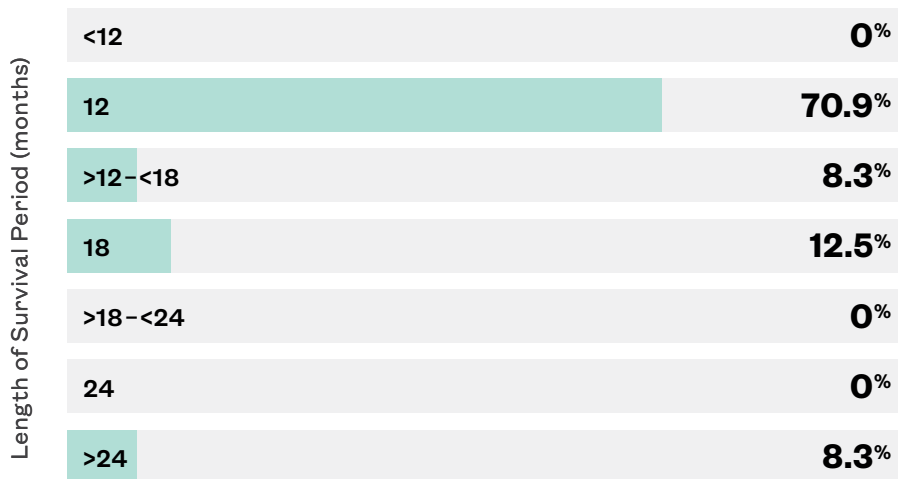
- The median general survival period for non-insured deals surveyed was 18 months which is slightly more than 16.5 months in 2023/2024.
- The vast majority (86%) of non-insured deals surveyed had a survival period of 12-18 months in 2024/2025, which is consistent with the length of the majority of indemnity escrow periods in such deals in 2024/2025, and generally consistent with 2023/2024. Putting aside “no survival” deals, our surveys continue to demonstrate that it is highly unusual to have survival periods of less than 12 months.
- 14% of non-insured deals had survival periods of greater than 18 months, which is generally consistent with 2023/2024. This is also generally consistent with the results from prior years where such deals represented only a small percentage of the total number of deals surveyed.

IMPORTANT NOTE: The calculations for the charts on pages 11 and 12 do not include “no survival” deals, where general representations and warranties do not survive the closing, which would have a significant impact on the data regarding general survival periods.

Representation & Warranty

General Survival Period

R&W INSURANCE



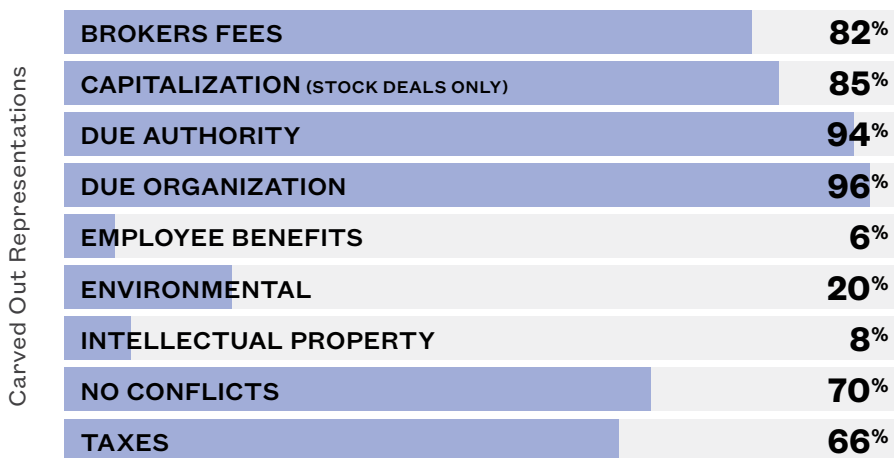
Percentage of Deals Surveyed

OBSERVATIONS

- The median general survival period for insured deals surveyed was 12 months, which is consistent with 2023/2024. In addition, this is consistent with the median indemnity escrow period of 12 months for such deals.
- The vast majority (approximately 92%) of insured deals surveyed had a survival period of 12-18 months in 2024/2025, which is consistent with the length of the majority of indemnity escrow periods in such deals in 2024/2025.
- Approximately 8% of insured deals had survival periods of greater than 18 months, which is consistent with 2023/2024. This is also generally consistent with the results from prior years where such deals represented only a small percentage of the total number of deals surveyed.

Carve Outs to General Survival Period

NO R&W INSURANCE



Percentage of Deals Surveyed in Which Applicable Representation Was Carved Out

OBSERVATIONS

Due Organization: The percentage of non-insured deals surveyed that carved out representations and warranties regarding due organization was 96% in 2024/2025. This demonstrates a continuing trend of increasing carveouts for due organization representations (approximately 86% in 2023/2024 and approximately 74% in 2022/2023).

Employee Benefits: The percentage of non-insured deals surveyed that carved out representations and warranties regarding employee benefits was 6% in 2024/2025, as compared to approximately 14% in 2023/2024 and approximately 26% in 2022/2023.

No Conflicts: The percentage of non-insured deals that carved out representations and warranties regarding no conflicts was 70% in 2024/2025. This demonstrates a trend of increasing carveouts for no conflicts representations over prior years (approximately 59% in 2023/2024, 45% in 2022/2023 and 41% in 2020/2021).

Environmental: The percentage of non-insured deals that carved out representations and warranties regarding environmental matters was 20% in 2024/2025. While more than in recent years (approximately 14% in 2023/2024 and 18% in 2022/2023), this is still less than prior years (approximately 26% in 2020/2021 and 38% in 2019).

IMPORTANT NOTE: The calculations for the charts on pages 13 and 14 do not include “no survival” deals where general representations and warranties do not survive the closing.

Carve Outs to General Survival Period

R&W INSURANCE

Carved Out Representations	BROKERS FEES	91.7%
	CAPITALIZATION (STOCK DEALS ONLY)	82.4%
	DUE AUTHORITY	91.7%
	DUE ORGANIZATION	87.5%
	EMPLOYEE BENEFITS	8.3%
	ENVIRONMENTAL	4.2%
	INTELLECTUAL PROPERTY	12.5%
	NO CONFLICTS	54.2%
	TAXES	70.8%

Percentage of Deals Surveyed in Which Applicable Representation Was Carved Out

OBSERVATIONS

Capitalization: The percentage of insured stock deals that carved out representations and warranties regarding capitalization was approximately 82% in 2024/2025. This represents an increase from prior years (approximately 72% in 2023/2024 and 73% in 2022/2023).

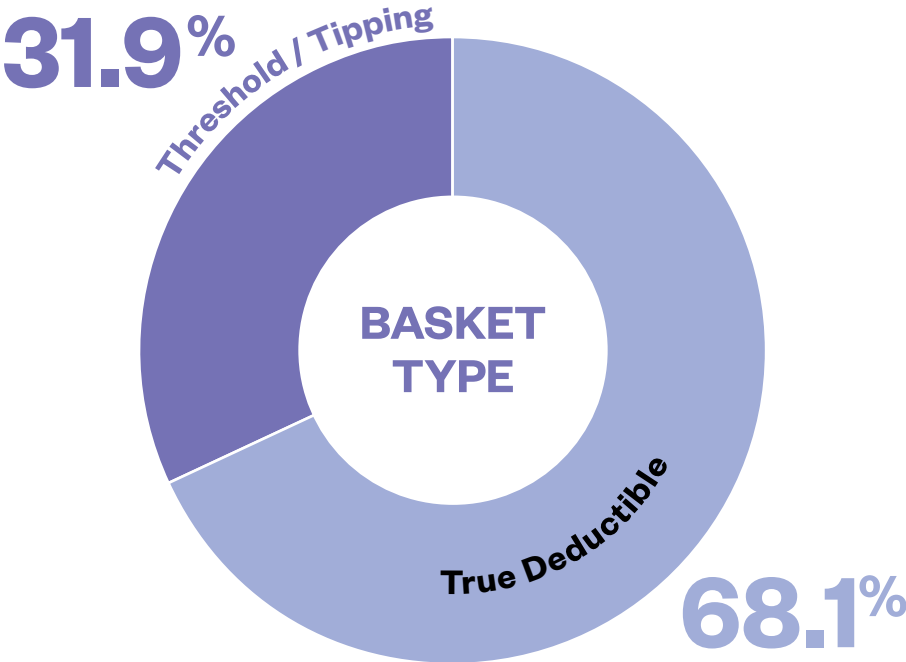
Intellectual Property: The percentage of insured deals that carved out representations and warranties regarding intellectual property was approximately 13% in 2024/2025. This represents a decrease from approximately 32% in 2023/2024 but is generally consistent with prior years (approximately 15% in 2022/2023 and 10% in 2020/2021).

No Conflicts: The percentage of insured deals that carved out representations and warranties regarding no conflicts was approximately 54% in 2024/2025. This represents a decrease from approximately 64% in 2023/2024 but is still greater than prior years (approximately 50% in 2022/2023 and 35% in 2020/2021).

R&W Insurance Policy Coverage of Fundamental Representations: In insured deals, the R&W insurance policy generally provides 6 years of coverage for fundamental representations and warranties (as opposed to 3 years for general representations and warranties).

Indemnity Basket Type

NO R&W INSURANCE



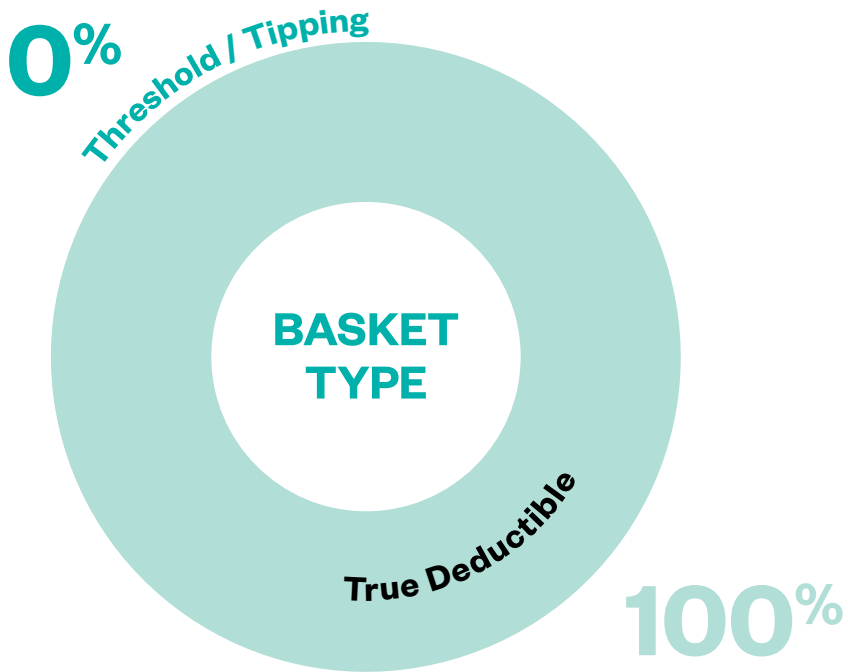
OBSERVATIONS

- 94% of non-insured deals surveyed provided for an indemnity basket, which is consistent with prior years.
- Of the non-insured deals providing for an indemnity basket, approximately 32% were structured as threshold/tipping baskets and approximately 68% were structured as deductible baskets, which is generally consistent with prior years (except for 2022/2023 in which approximately 83% of deals surveyed that provided for an indemnity basket contained the more seller-friendly deductible basket as opposed to the more buyer-friendly threshold/tipping basket).

IMPORTANT NOTE: The calculations for the charts on pages 15 and 16 only include deals with indemnity baskets that limit indemnity obligations for breaches of general representations and warranties, and therefore do not include “no survival” deals where general representations and warranties do not survive the closing.

Indemnity Basket Type

R&W INSURANCE

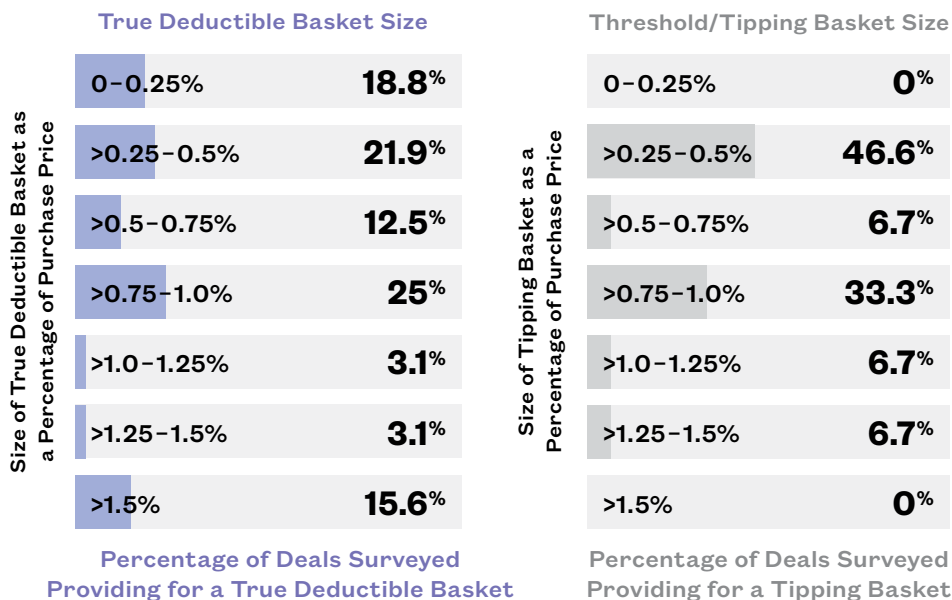


OBSERVATIONS

- Approximately 92% of insured deals surveyed provided for an indemnity basket, which is an increase from approximately 76% in 2023/2024 and 85% in 2022/2023, but less than approximately 94% in 2020/2021.
- All of the insured deals providing for an indemnity basket surveyed in 2024/2025 were structured as a true deductible. In prior years, a minority of the insured deals providing for an indemnity basket were structured as threshold/tipping baskets. The higher percentage of insured deals providing for a deductible basket, rather than a threshold/tipping basket, may reflect a more seller-friendly environment with respect to this deal term.

Indemnity Basket Size

NO R&W INSURANCE

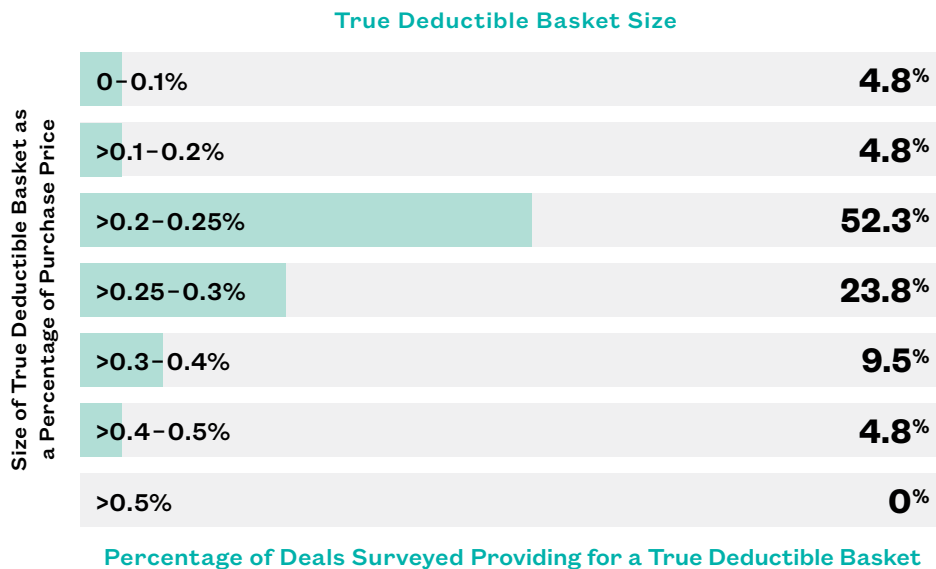


OBSERVATIONS

- The median basket size in non-insured deals surveyed in 2024/2025 was 0.7% of the purchase price, which is slightly higher than the median in prior years (0.6% in 2023/2024 and 0.5% in 2022/2023).
- The median basket size in non-insured deals with a deductible basket was 0.7% of the purchase price, which is slightly higher than prior years' median of 0.6% of the purchase price. Approximately 78% of non-insured deals with a deductible had a basket size of 1% or less (as compared to approximately 80% in 2023/2024) and approximately 53% of such deals had a deductible basket of 0.75% or less (as compared to approximately 60% in 2023/2024).
- The median basket size in non-insured deals with a tipping basket was 0.6%, which is slightly higher than prior years' median of 0.5% of the purchase price. However, approximately 47% of non-insured deals with a tipping basket had a basket size greater than 0.75%, as compared to approximately 31% in 2023/2024 and none in 2022/2023. This increase in basket size represents a seller favorable trend, although may also reflect a trade-off in using the more buyer favorable tipping basket rather than the more seller-favorable deductible basket.

Indemnity Basket Size

R&W INSURANCE



OBSERVATIONS

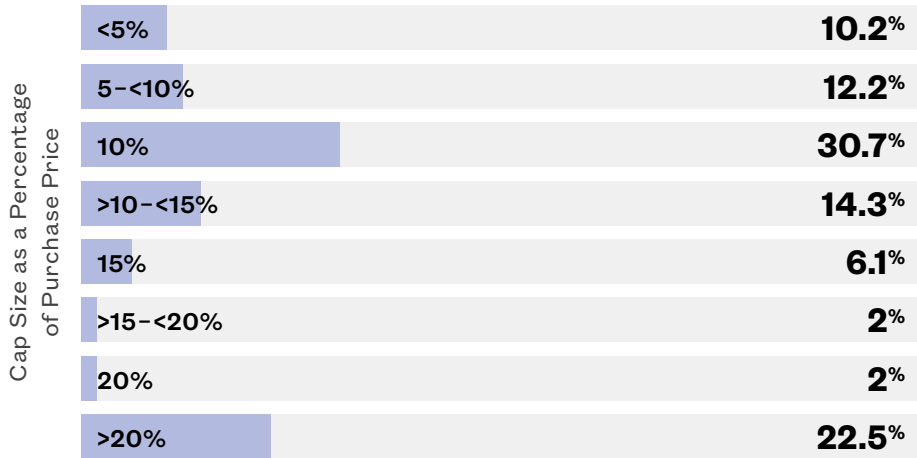
- The median basket size in insured deals with a deductible basket was 0.3% of the purchase price, as compared to 0.4% in 2023/2024 and 0.5% in 2022/2023. All insured deals surveyed with a deductible had a basket size of 0.5% or less (as compared to approximately 93% in 2023/2024 and 69% in 2022/2023) and approximately 62% of such deals had a basket size of 0.25% or less (as compared to approximately 29% in 2023/2024).
- As noted in the “Indemnity Basket Type” section on page 16, there were no insured deals surveyed that included a tipping basket.

IMPORTANT NOTES: The calculations on pages 17 and 18 only include deals with indemnity baskets that limit indemnity obligations for breaches of general representations and warranties, and therefore do not include “no survival” deals where general representations and warranties do not survive the closing.

A limited number of the deals surveyed, which such deals are included in the calculations on page 17, had a true deductible basket size in excess of 1.25% of the purchase price. These deals were likely subject to unique facts that warranted terms that vary from the “market” terms. Again, the specific facts and circumstances of each deal will often carry the day in deal negotiations even if “not market.”

Indemnity Cap Size

NO R&W INSURANCE



Percentage of Deals Surveyed Providing for Indemnity Cap

OBSERVATIONS

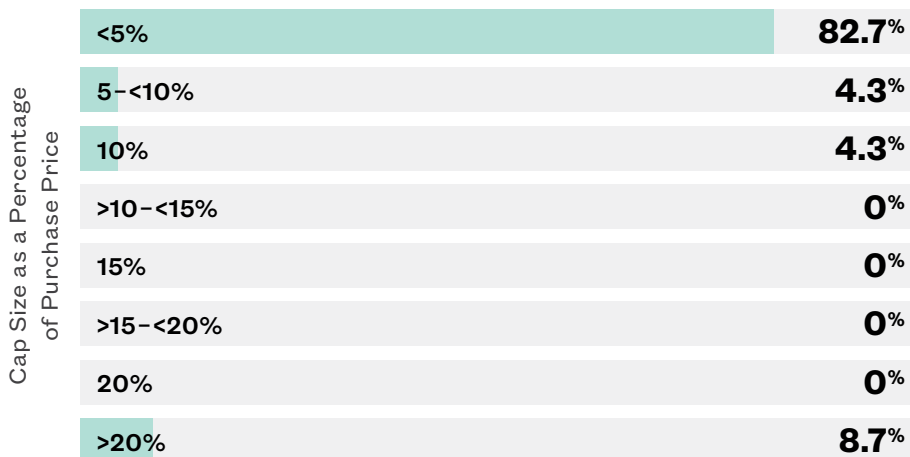
- 98% of non-insured deals surveyed in 2024/2025 provided for an indemnity cap, which is slightly higher than the 96% of such deals in 2023/2024.
- The median indemnity cap for non-insured deals was 10%, which is consistent with prior years.
- Approximately 53% of non-insured deals had an indemnity cap of 10% or less (as compared to approximately 57% in 2023/2024 and 71% in 2022/2023), and approximately 74% had an indemnity cap of 15% or less (as compared to approximately 76% in 2023/2024 and 80% in 2022/2023).

IMPORTANT NOTES: The calculations on pages 19 and 20 only include deals with indemnity caps that limit indemnity obligations for breaches of general representations and warranties, and therefore do not include “no survival” deals where general representations and warranties do not survive the closing.

A limited number of the deals surveyed, which such deals are included in the calculations on pages 19 and 20, had an indemnity cap greater than 20% of the purchase price. These deals were likely subject to unique facts that warranted terms that vary from the “market” terms. Again, the specific facts and circumstances of each deal will often carry the day in deal negotiations even if “not market.”

Indemnity Cap Size

R&W INSURANCE



Percentage of Deals Surveyed Providing for Indemnity Cap

OBSERVATIONS

- Approximately 96% of insured deals surveyed in 2024/2025 provided for an indemnity cap, which is consistent with 2023/2024.
- The median indemnity cap for insured deals was 0.3%, which is slightly lower than the median of prior years (0.4% in 2023/2024 and 0.5% in 2022/2023).
- Approximately 83% of insured deals had an indemnity cap of less than 5% (as compared to approximately 96% in 2023/2024 and 79% in 2022/2023).
- As is evident when compared to non-insured deals, the use of R&W insurance will typically greatly reduce the seller's indemnity cap (median cap of 0.3% for insured deals, as compared to 10% for non-insured deals) under the purchase agreement, which is due to the fact that the buyer can seek recourse under the R&W policy.

Fraud Exceptions and Definitions

Private target middle market acquisition agreements often include fraud exceptions to certain limitations on buyers’ indemnification rights and remedies, such as caps and baskets. Unless “fraud” is carefully defined in the agreement, however, a seller may find itself subject to post-closing liability for more than intended by the fraud exception. In the 2024/2025 Survey, we have continued to analyze the percentage of deals that included fraud carve outs to certain limitations on liability, and continued to track the percentage of deals that limited fraud to intentional acts with actual knowledge (as opposed to constructive knowledge and/or recklessness), and the percentage of deals that limited fraud to the representations and warranties made in the acquisition agreement (as opposed to in any information provided in the due diligence process).

NO R&W INSURANCE	R&W INSURANCE
Fraud Exception	
<p>Approximately 94% of non-insured deals surveyed in 2024/2025 included fraud exceptions to certain indemnity provisions of the agreement, as compared to approximately 89% in 2023/2024.</p>	<p>All insured deals surveyed in 2024/2025 included fraud exceptions to certain indemnity provisions of the agreement, which is consistent with 2023/2024 and 2022/2023.</p>
Fraud Defined	
<p>Of the non-insured deals that included a fraud exception, approximately 69% of such deals defined the term “fraud,” as compared to approximately 67% in 2023/2024.</p> <p>Of the non-insured deals that defined the term “fraud,” approximately 83% of such deals limited fraud to those representations and warranties contained in the agreement (or in ancillary documents delivered in connection with the agreement) only, down from approximately 91% in 2023/2024, but generally in line with 81% in 2022/2023.</p> <p>Of the non-insured deals that defined the term “fraud,” approximately 91% of such deals included a requirement of actual knowledge of falsity (as opposed to constructive knowledge) and/or expressly excluded fraud based on recklessness or similar fraud in the fraud definition, as compared to approximately 88% in 2023/2024.</p>	<p>Of the insured deals that included a fraud exception, approximately 99% of such deals defined the term “fraud,” as compared to approximately 96% in 2023/2024.</p> <p>Of the insured deals that defined the term “fraud,” approximately 95% of such deals limited fraud to those representations and warranties contained in the agreement (or in ancillary documents delivered in connection with the agreement) only, which is slightly more than the approximately 93% in 2023/2024.</p> <p>Of the insured deals that defined the term “fraud,” approximately 92% of such deals included a requirement of actual knowledge of falsity (as opposed to constructive knowledge) and/or expressly excluded fraud based on recklessness or similar fraud in the fraud definition, down from approximately 97% in 2023/2024 but generally consistent with 2022/2023.</p>

Following are a few examples of fraud definitions based on the agreements reviewed for the Survey, ordered from most to least seller protective.

- **“Fraud”** means, with respect to a Party, an actual and intentional fraud in respect of the making of any representation or warranty set forth in Article 5 or Article 6, as applicable, with intent to deceive the other Party, or to induce that Party to enter into this Agreement and requires (a) a false representation of material fact made in Article 5 or Article 6, as applicable, (b) any of the Knowledge Parties had actual knowledge that such representation was false when such representation was made, (c) an intention to induce the Party to whom such representation is made to act or refrain from acting in reliance upon it, (d) causing that Party, in justifiable reliance upon such false representation and with ignorance to the falsity of such representation, to take or refrain from taking action, and (e) causing such Party to suffer damage by reason of such reliance. For the avoidance of doubt, “Fraud” shall not include any claim for equitable fraud, promissory fraud, unfair dealings fraud, omission, any tort (including any claim for fraud) to the extent based on constructive knowledge, negligent or reckless misrepresentation, extra-contractual fraud, constructive fraud, and other fraud-based claims.
- **“Fraud”** means an actual and intentional misrepresentation of a material fact with respect to the making of the representations and warranties (and, for the avoidance of doubt, not constructive fraud, equitable fraud or negligent misrepresentation or omission) in this Agreement or the Ancillary Documents, that was relied upon by a Seller or Buyer Indemnitee, as applicable, to its detriment.
- **“Fraud”** means intentional (and not reckless) fraud within the meaning of Delaware common law.
- **“Fraud”** means common law fraud under Delaware law.

Choice of Governing Law

The 2024/2025 Survey results revealed that Delaware law continues to be the most popular “governing law” choice.

NO R&W INSURANCE

Of the non-insured deals surveyed in 2024/2025, the governing law for approximately 67% of such deals was Delaware (as compared to approximately 61% in 2023/2024), approximately 8% was New York (as compared to approximately 11% in 2023/2024), and approximately 25% was a jurisdiction other than Delaware or New York (as compared to approximately 28% in 2023/2024).

R&W INSURANCE

Of the insured deals surveyed in 2024/2025, the governing law for approximately 92% of such deals was Delaware (as compared to approximately 89% in 2023/2024), approximately 4% was New York (as compared to approximately 6% in 2023/2024), and approximately 4% was a jurisdiction other than Delaware or New York (as compared to approximately 5% in 2023/2024).

Earnouts

Of the deals surveyed in 2024/2025, approximately 13% included earnouts, as compared to approximately 15% in 2023/2024.

In addition, of the deals surveyed in 2024/2025 with earnouts:

- 45% of such deals provided for earnout amounts of 50% or more of the purchase price (as compared to 30% in 2023/2024).
- 30% of such deals provided for earnout amounts between 10% and 50% of the purchase price (which is consistent with 2023/2024).
- 25% of such deals provided for earnout amounts less than 10% of the purchase price (as compared to 40% in 2023/2024).

Bring-Down

Of the deals surveyed in 2024/2025:

- Approximately 79% used a “Material Adverse Effect” qualifier for the bring-down closing condition of the general representations and warranties, as compared to approximately 76% in 2023/2024.
- Approximately 17% used an “in all material respects” qualifier for the bring-down closing condition of the general representations and warranties, which is consistent with 2023/2024.

The high percentage of deals using the “Material Adverse Effect” qualifier for the representations and warranties bring-down closing condition is a seller-friendly term which increases certainty of closing for sellers in a transaction with a non-simultaneous signing and closing.

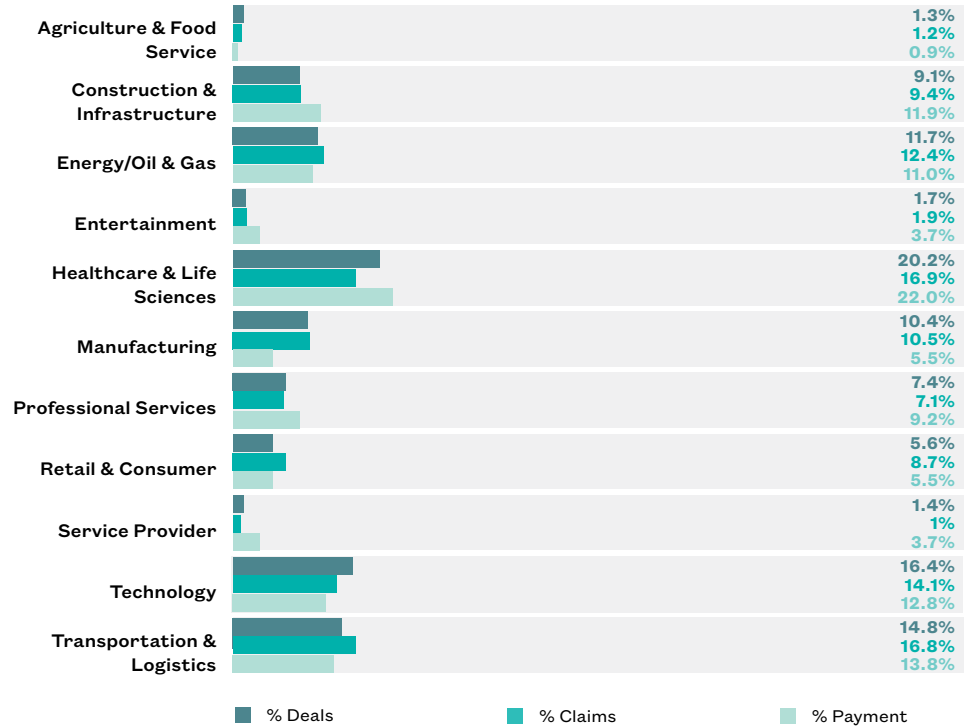
Seller Retains Attorney-Client Privilege

Of the deals surveyed in 2024/2025, approximately 80% provided for the seller retaining attorney-client privilege after the closing of the transaction, as compared to 74% in 2023/2024.

Claims Insight from AON

As the RWI product has matured, so has the volume of data that Aon continues to track on Aon-brokered policies. Through December 2024, Aon was involved in over 1,600 notified representation and warranties (R&W), warranties and indemnities (W&I), and tax insurance claims and helped clients secure more than \$1.75 billion in payments globally. In 2024, Aon clients received over \$300 million from RWI payments in North America alone, driven by the highest median payment size in a calendar year to date (\$5.5 million). This growing volume of claims has allowed for more in-depth analysis at the industry level in North America, giving M&A stakeholders the opportunity to better understand the risk factors associated with the industries they operate in.

Claims by Industry Type

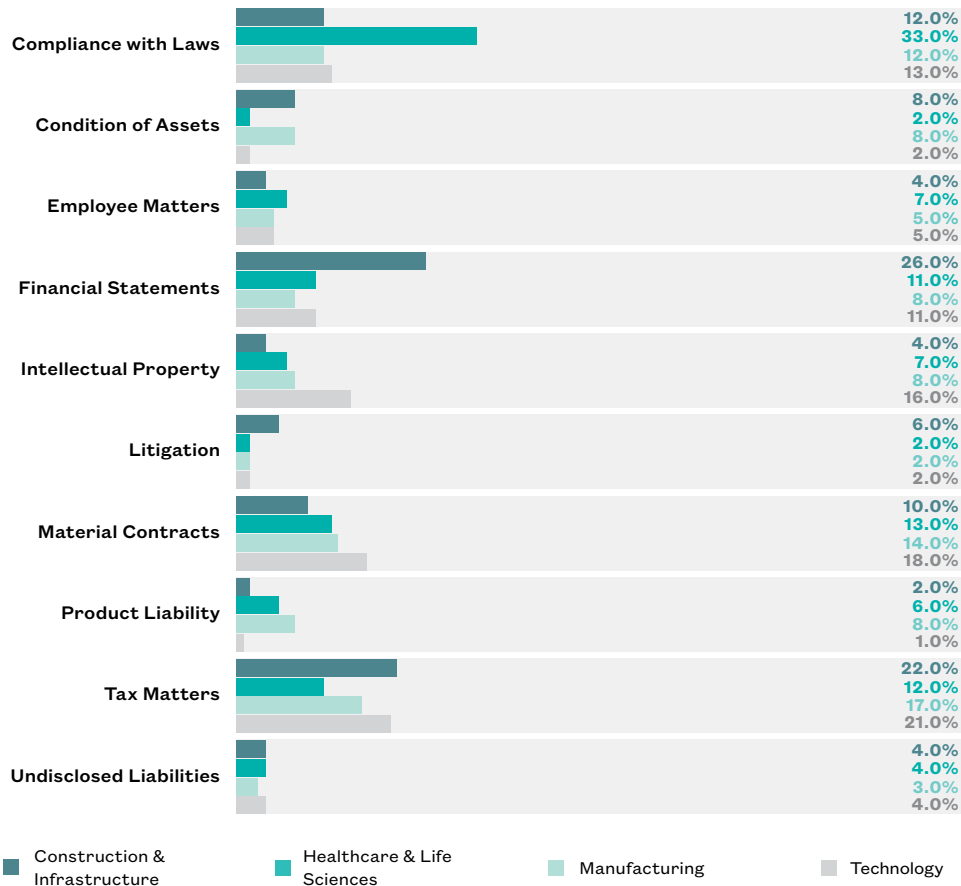


One frequent question that clients ask is whether there are industries that present materially higher or lower risks of incurring loss. While each industry contains a different breach frequency/severity risk profile, the Aon data shows notably even distribution of risk across sectors. This is illustrated in the chart above, which shows consistency across all industries when comparing claim frequency and severity to the percentage of deals that each industry comprises in Aon's book. This even distribution underscores the importance for deal professionals to be equipped with an

understanding of the risk profile for their industry. To properly understand these risk profiles, it is necessary to understand the frequency and severity of different breach types. However, even when two industries have a similar breach profile, the individual risks are often different and analyzing the underlying causes of those breaches is key to getting a better picture of the risk profile.

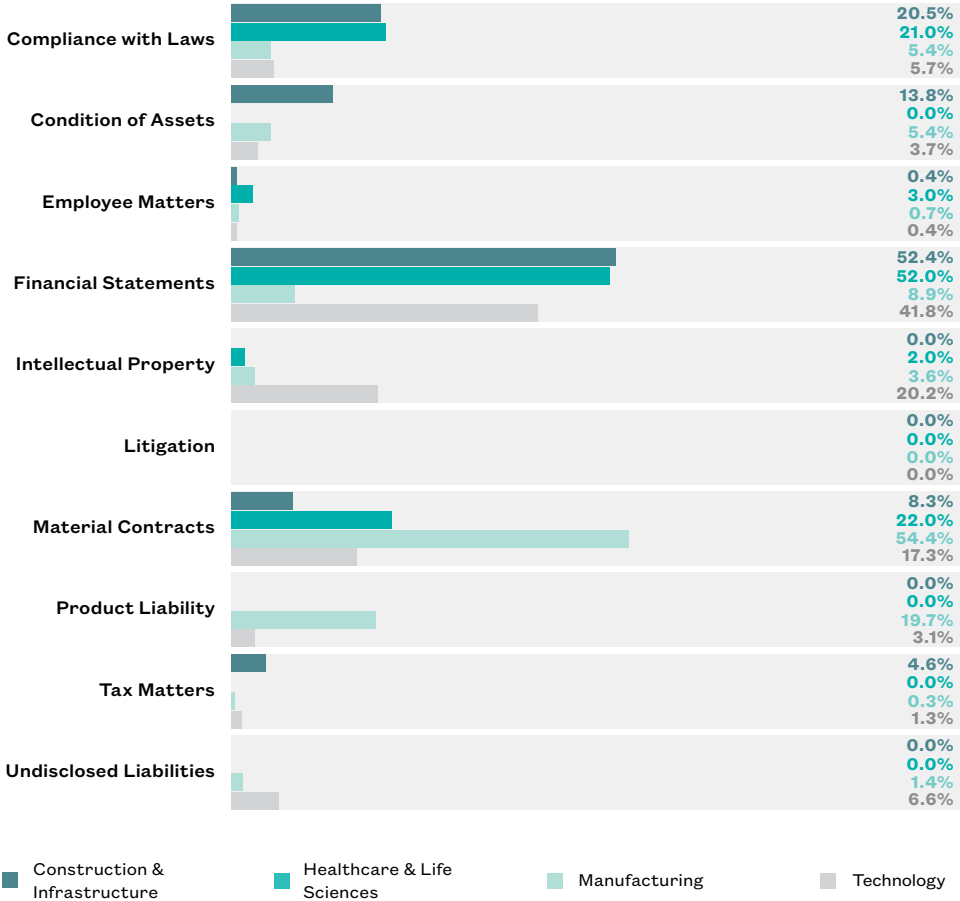
To break down these risk profiles, Aon analyzed data across certain major industry categories. The charts on page 26 and 27 show Aon’s data with respect to the breach frequency and severity in 2024 for four industries not touched on in Aon’s prior report: construction & infrastructure, healthcare & life sciences, manufacturing, and technology.

Claims by Breach Type



Claims Insight from AON

Loss Paid by Breach Type



All four industries have a relatively high volume of compliance with laws breaches, but the underlying facts driving these breaches are very different. For example, Aon notes healthcare compliance with laws claims are being driven primarily by billing and coding violations, followed by other general legal/regulatory disputes and violations of healthcare-specific laws. On the other hand, construction & infrastructure compliance with laws breaches are driven primarily by wage and hour violations, along with employee misclassification and other union-related violations. Both industries have over 20% of paid loss attributable to compliance with laws breaches, but very different root causes.

The material contracts representation also has a significant breach frequency across industries. As shown in the data, material contracts claims arise most frequently in the technology sector. However, the relative severity of claims in the technology industry is low in comparison to healthcare & life sciences and manufacturing. One reason for this is that the technology industry tends to have a lower customer concentration compared to other sectors. As a result, when breaches of contract or lost customer issues arise, they typically have a smaller impact on the value of the business. Contrasting this with the manufacturing sector, we see a similar breach frequency resulting in a significantly higher percentage of loss. However, the increased potential for high customer concentration in this industry results in significant impacts to the value of the business, with certain buyers repeatedly noting that they would not have gone through with the transaction had they known about an issue with any material customer.

Unsurprisingly, financial statements breaches continue to drive severity on R&W claims. In healthcare, financial statements claims are often the result of accounts receivable misstatements as well as the impact to future revenue caused by improper tracking of services / billing and coding errors. In construction, inventory misrepresentations and poor accounting procedures to properly accrue bad debt have led to substantial losses under R&W policies.

Another breach type highlighted in Aon's study for both technology and healthcare & life sciences is intellectual property (IP). IP breaches for technology are significantly higher than other industries. These claims typically contain allegations from a third party alleging the company's products are infringing on its IP, and losses can range from defense costs up to the full value of the transaction if a determination is made that the company cannot use the IP that was the basis for the acquisition. Because IP claims are generally third-party claims, the losses in the data likely are lagging behind other breach types, since such claims take longer to resolve.

Condition of assets breaches aren't frequently cited across the broader market but are more common in specific industries and can lead to some of the most severe losses when they occur. Infrastructure deals can be impacted significantly by the cost to repair infrastructure, especially when complicating factors such as changes to commodities or labor markets or environmental regulations must be considered. Condition of assets claims also are notable within the manufacturing industry, where improper maintenance of machinery, as well as overuse and general disrepair prior to closing, can significantly impact the ability of companies to keep up with production demands post-close.

In summary, the Aon data indicates that even though there is no one industry that stands out as "high-risk" for acquisitions, there are meaningful differences with respect to the types of R&W breaches being identified across sectors. Historical claim information can provide guidance to help dealmakers anticipate how a deal's risk profile can vary based on the target company industry and how to best focus their due diligence.

2025 Hart-Scott-Rodino Act Thresholds

The Hart-Scott-Rodino (“HSR”) Act requires that parties to transactions for the acquisition of voting securities or assets that exceed certain thresholds notify the Federal Trade Commission (“FTC”) and US Department of Justice (“DOJ”) of the proposed transaction; pay the required HSR filing fee; and observe a 30-day waiting period before closing so that the agencies can review the deal for potential anticompetitive effects. Effective February 21, 2025, transactions with a value greater than \$505.8 million are generally reportable regardless of the annual net sales or the value of the total assets of the acquiring and acquired entities, while transactions with a value greater than \$126.4 million but less than \$505.8 million are generally reportable if one party to the transaction has annual net sales or total assets valued at \$25.3 million or more and the other party has annual net sales or total assets valued at \$252.9 million or more. HSR reporting thresholds are adjusted annually and are tied to changes in the US gross national product. The HSR rules provide additional reporting thresholds for acquisitions of less than 50% of an issuer’s voting securities where the acquiring party’s total holdings cross a certain threshold (where the size-of-person test is met, if applicable): in 2025, parties must report the acquisition of (a) aggregate holdings of an issuer’s voting securities valued at \$252.9 million or greater but less than \$1.264 billion; (b) aggregate holdings of an issuer’s voting securities valued at \$1.264 billion or greater; (c) 25% of the voting securities of an issuer, if 25% (or any amount above 25% but less than 50%) is valued at greater than \$2.529 billion; and (d) 50% of the voting securities of an issuer if valued at greater than \$126.4 million. As required by the Merger Filing Fee Modernization Act of 2022, the FTC revised the HSR filing fee thresholds in 2025, so that HSR filing fees are now assessed on a six-tier range between \$30,000 (for transactions valued at less than \$179.4 million) and \$2.39 million (for transactions valued at \$5.555 billion or more) depending on the size of the transaction. On February 10, 2025, the FTC’s final rule amending the premerger notification form and reporting process under the HSR Act took effect. The final rule expands the scope of information and documents that transacting parties must disclose with their premerger notification forms; the FTC estimates the time needed to complete the new HSR premerger notification process for each filing party will increase by approximately 70 hours. The FTC also lifted its suspension on the ability of parties to request early termination of the 30-day waiting period effective February 10, 2025. For more information: <https://www.seyfarth.com/news-insights/new-rules-for-hsr-premerger-notification-filings-take-effect-february-10-2025.html>

Glossary

Indemnity Escrow Amount

The indemnity escrow amount is the portion of the purchase price held in escrow to serve as a fund to satisfy indemnification claims against the seller.

Indemnity Escrow Period

The indemnity escrow period is the length of time after the transaction closing date that the indemnity escrow amount is held before being released to the seller.

Representation & Warranty Survival Period

The survival period is the length of time after the transaction closing date during which a party may make claims for breaches of representations and warranties.

Carve Outs to General Survival Period

Certain specified representations and warranties may be carved out of the general survival period for representations and warranties and survive for a longer period of time.

Indemnity Basket

An indemnity basket requires a party to incur a certain amount of indemnifiable losses before it can seek indemnification from the other party. There are generally two types of baskets: true deductibles and threshold/tipping baskets. With a true deductible, the indemnifying party is only responsible for losses exceeding the basket amount. With a threshold/tipping basket, the indemnifying party is responsible for all losses from dollar one once a party's indemnifiable losses reach the basket amount. Indemnity baskets typically apply only to breaches of "general" representations and warranties.

Indemnity Cap

The indemnity cap limits a party's maximum liability under the indemnification provisions to a stated dollar amount. Indemnity caps typically only apply to breaches of "general" representations and warranties.

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The Legal 500

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US News & World Report: Best Lawyers

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We approach each transaction with a comprehensive grasp of our client's business and objectives, and understand that M&A matters frequently involve aspects of many legal disciplines. Seyfarth offers a cross-departmental, core team of attorneys across our platform to address virtually every issue arising in a transaction, including tax, real estate, labor and employment, employee benefits, intellectual property, privacy and data security, environmental, and antitrust matters. In this way, our clients receive full attention from dedicated, focused business attorneys and reap the benefits of a full-service law firm.

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