



Middle Market **M&A** **SurveyBook**

2026 Survey of Key M&A Deal Terms

Introduction

Seyfarth Shaw LLP is pleased to present the 12th edition of its Middle Market M&A SurveyBook (“2025/2026 Survey”), which analyzes key transaction terms from over 160 middle market private target acquisition agreements signed in 2025 and the first half of 2026.^{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 2025/2026 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 62% of the transactions reviewed for the 2025/2026 Survey included R&W insurance, compared to approximately 53% in 2024/2025. 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 that “no survival” outcomes slightly decreased year over year, with the decrease more pronounced in transactions without R&W insurance. In the scenario of a “no survival” deal, recourse to R&W insurance is typically a buyer’s primary (or exclusive) remedy.

The 2025/2026 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.

Middle market M&A activity entered 2025 on a stronger footing, with deal volume and value rebounding in the first quarter as buyer confidence improved after a challenging 2024. However, tariff-related uncertainty during 2025 temporarily slowed activity, widened valuation gaps between buyers and sellers, and led some transactions to be restructured, repriced, or abandoned. As those concerns moderated, confidence improved and companies increasingly viewed M&A as a strategic tool to drive growth and strengthen competitive positioning.³

Consistent with these broader market themes, regional differences in US middle market M&A continue to reflect variations in industry composition, valuation, and transaction structure.

The West recorded the highest average valuation multiples, while the Mid-Atlantic and Northeast also remained comparatively strong. Much of the regional variation appears attributable to sector mix, with healthcare, technology, and business services generally supporting higher valuations than manufacturing-oriented industries. The Midwest and Southeast exhibited distinct industry profiles, while the Southwest recorded the lowest average valuation multiples and stood out for its elevated use of seller rollover equity. Together, these findings suggest that regional dynamics influence transaction structure as much as valuation, underscoring the importance of local market characteristics when evaluating opportunities across the US middle market.⁴

The middle market has remained active through 2026 so far, although capital deployment has increasingly favored larger transactions. While middle market deal value has remained strong, the segment’s share of overall US private equity buyout value has declined to 39.9%, reflecting greater concentration in larger deals. Lower middle market businesses nevertheless have continued to attract strong buyer interest, supported by lower entry multiples and a steady pipeline of acquisition opportunities.⁵

Looking ahead, market participants continue to monitor several factors affecting deal activity, including interest rate policy, inflationary pressures, geopolitical developments, and the growing importance of evaluating AI-related risks in acquisitions and portfolio companies.⁶ Recent interest rate increases, and the potential for additional increases, may moderate buyer activity in certain segments of the market as higher borrowing costs affect acquisition financing and transaction valuations. Layered on top of these near-term factors is a structural shift already underway in deal supply, as baby boomer retirements are expected to bring an increasing number of small and medium-size businesses to market in the coming years, with more than one million of these companies representing viable acquisition candidates valued at up to \$5 trillion in aggregate enterprise value.⁷ While higher financing costs may temper transaction activity at the margins, this accelerating pipeline is likely to support continued deal flow from institutional/private equity, strategic, and independent buyers.

While macroeconomic and geopolitical uncertainty may continue to influence transaction timing and structure, the fundamental drivers of middle market M&A remain favorable. We hope that you find the information presented in our 2025/2026 Survey valuable, and we welcome the opportunity to further discuss our findings with you.

¹This edition surveys deals signed in both 2025 and the first half of 2026 and compares those deals against deals signed in 2024 and the first half of 2025.

²For 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.

³Capstone 2025 Middle Market M&A Valuations Index

⁴Association for Corporate Growth (ACG), “The Regional Map of Middle-Market M&A”

⁵US PE Middle Market Report Q1 2026 - Pitchbook - June 2026

⁶Cherry Bekaert LLP U.S. Private Equity at Mid-year 2026: Activity Held, Value Collapsed

⁷McKinsey Institute for Economic Mobility, “The Great Ownership Transfer: A new era of business stewardship,” February 26, 2026

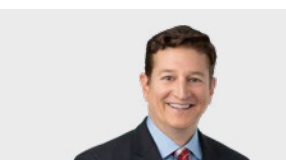
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Resources for More Information



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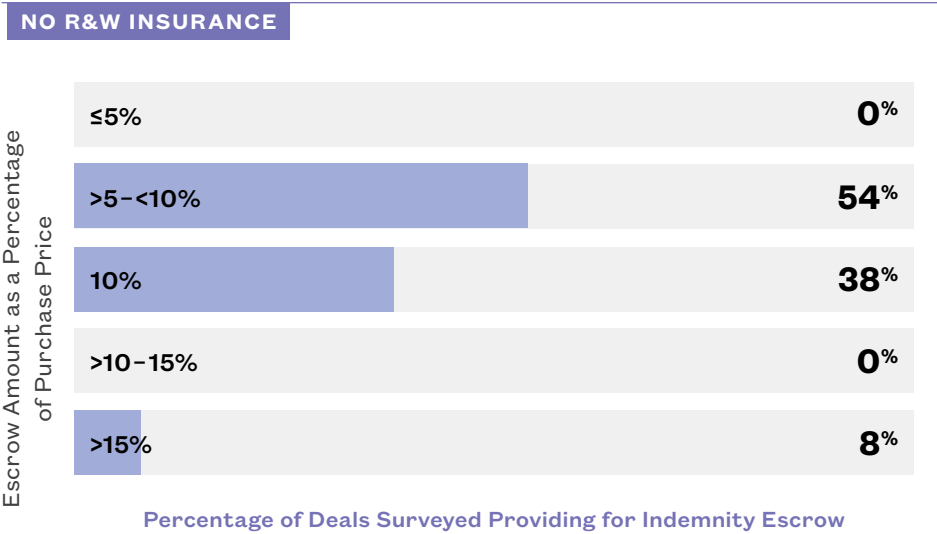


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Indemnity Escrow Amount



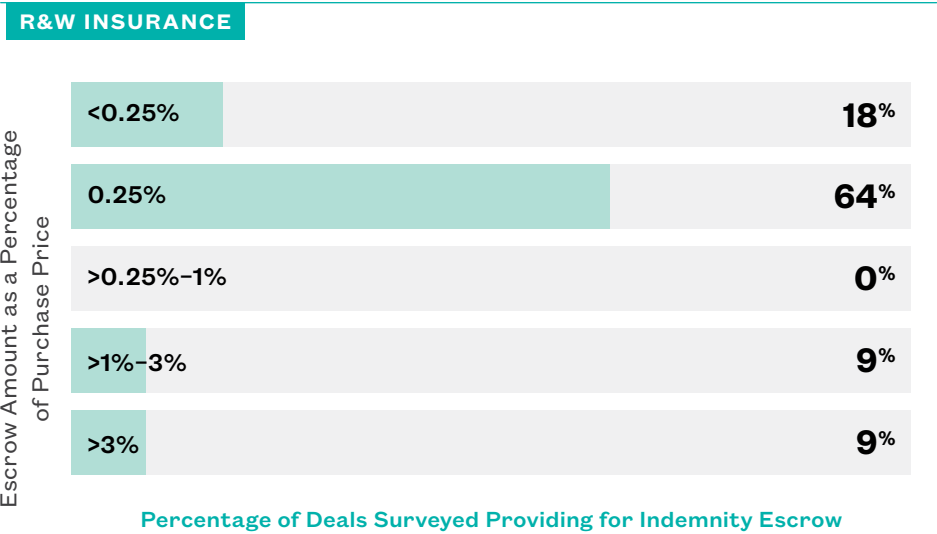
OBSERVATIONS

- The median indemnity escrow amount for non-insured deals surveyed during the period of 2025 and the first half of 2026 (“2025/2026”) was 10% of the purchase price, which is a slight increase from 9% for the period of 2024 and first half of 2025 (“2024/2025”) and 8% for the period of 2023 and first half of 2024 (“2023/2024”). Of the surveyed deals, 46% of such deals had an indemnity escrow amount of 10% or more, reflecting a slight decrease from 47% in 2024/2025. This slight upward change in median indemnity escrow amount reflects a less seller-favorable shift for this deal term, as buyers increasingly hold back a larger portion of the purchase price in escrow.

IMPORTANT NOTES: 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.

Unless otherwise indicated, all percentages, medians, and other figures presented in this SurveyBook are approximate and have been rounded for presentation purposes.

Indemnity Escrow Amount



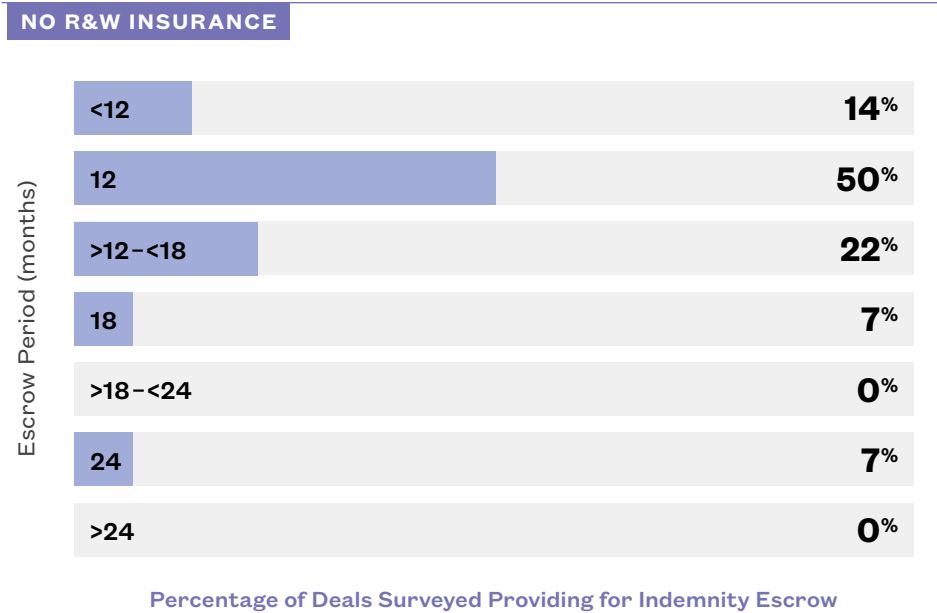
OBSERVATIONS

- The median indemnity escrow amount in 2025/2026 for the insured deals surveyed remained at 0.25% of the purchase price, which is, similar to 2024/2025, 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 (0.25% median amount for insured deals, as compared to 10% for non-insured deals).
- Without taking the Unique Deals into account, all of the insured deals had an indemnity escrow amount of 0.25% 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.

IMPORTANT NOTES: A limited number of the insured deals surveyed had indemnity escrow amounts of greater than 1%, 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.”

The continued growth of “no survival” deals correspondingly reduced the population of deals with a stated general survival period, and therefore, also reduced the data available for the escrow, carve-out, basket, and cap metrics discussed in the sections that follow, each of which is calculated only from deals where general representations and warranties survive closing. Readers should keep this smaller sample size in mind when evaluating year-over-year variability.

Indemnity Escrow Period

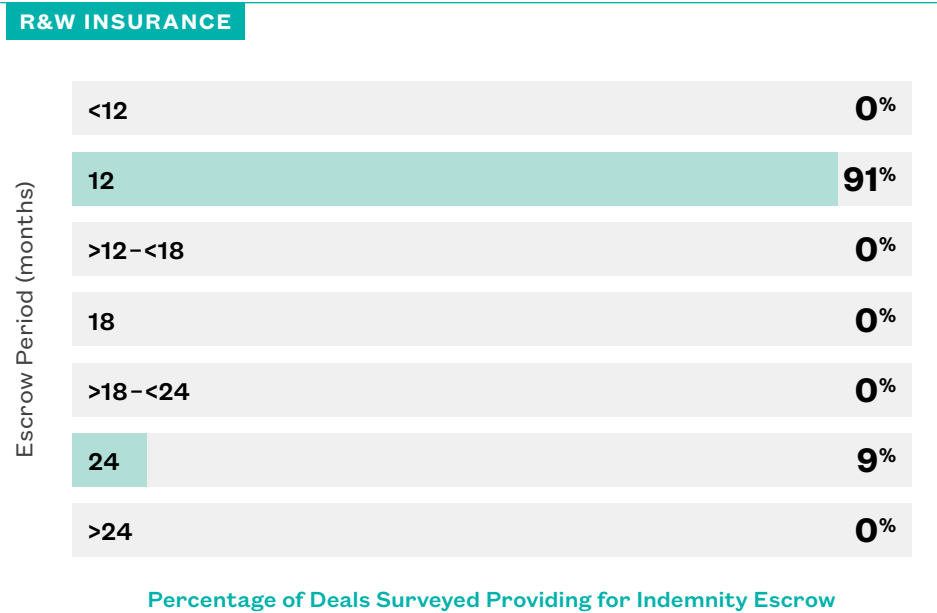


OBSERVATIONS

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

- 14% of such deals had an indemnity escrow period of less than 12 months, as opposed to no such deals in 2024/2025. Overall, 64% of non-insured deals in 2025/2026 had an indemnity escrow period of 12 months or less compared to 53% in 2024/2025, a seller-favorable shift.
- 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



OBSERVATIONS

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

- 91% of such deals had an indemnity escrow period of 12 months (which was the median indemnity escrow period of such deals). The remaining 9% of such deals had a 24 month indemnity escrow period; however, those were Unique Deals, reinforcing that a 12 month escrow period is the market norm in standard R&W insurance deals, which is consistent with prior years.
- None of the deals had an indemnity escrow period of less than 12 months, which is consistent with 2024/2025.

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

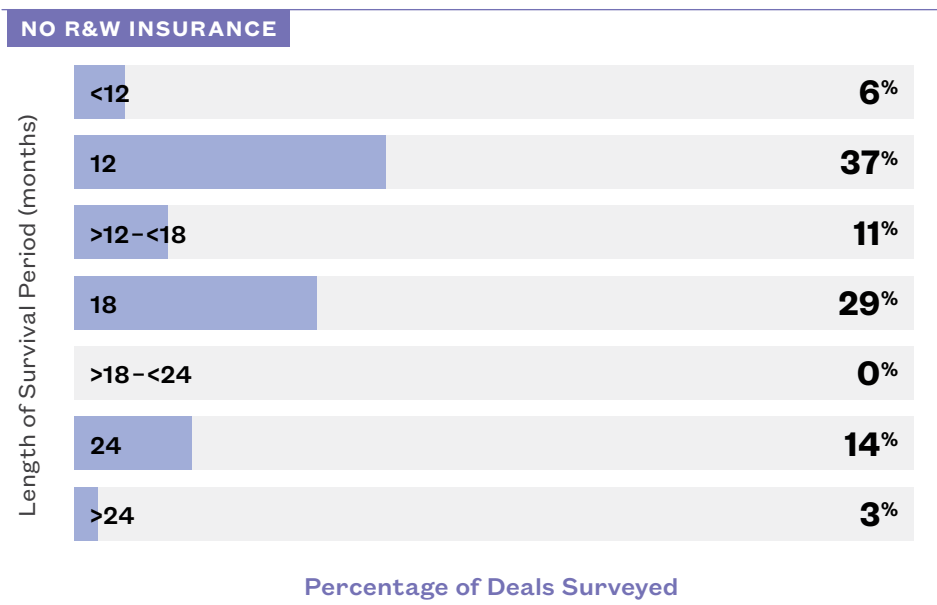
In recent years, our surveys have pointed to a decline in the overall use of indemnity escrows and a rise in deals adopting a “no survival” approach to general representations and warranties. We have also consistently observed differences between transactions that utilize R&W insurance and those that do not, with non-insured deals far more likely to include indemnity escrows and less likely to be structured as “no survival” deals. To further examine these distinctions, we partnered with SRS Acquiom (“SRS”), a provider of seamless M&A solutions, to review trends in transactions surveyed by SRS and present the comparative data that follows. While the SRS dataset reflects a different population of transactions than those included in our survey, it offers useful insight into how indemnity escrow usage and “no survival” structures vary across insured and non-insured deals.

	YEAR	INDEMNITY ESCROW	NO INDEMNITY ESCROW
All Deals	2021	65%	35%
	2022	66%	34%
	2023	67%	33%
	2024	59%	41%
	2025-1H 2026	56%	44%
No R&W Insurance Identified	2021	70%	30%
	2022	80%	20%
	2023	74%	26%
	2024	68%	32%
	2025-1H 2026	76%	24%
R&W Insurance Identified	2021	59%	41%
	2022	45%	55%
	2023	54%	46%
	2024	47%	53%
	2025-1H 2026	38%	62%



	YEAR	REPS SURVIVE	NO SURVIVAL
All Deals	2021	73%	27%
	2022	79%	21%
	2023	79%	21%
	2024	80%	20%
	2025-1H 2026	82%	18%
No R&W Insurance Identified	2021	84%	16%
	2022	88%	12%
	2023	88%	12%
	2024	93%	7%
	2025-1H 2026	97%	3%
R&W Insurance Identified	2021	63%	37%
	2022	49%	51%
	2023	64%	36%
	2024	59%	41%
	2025-1H 2026	60%	40%

Representation & Warranty General Survival Period

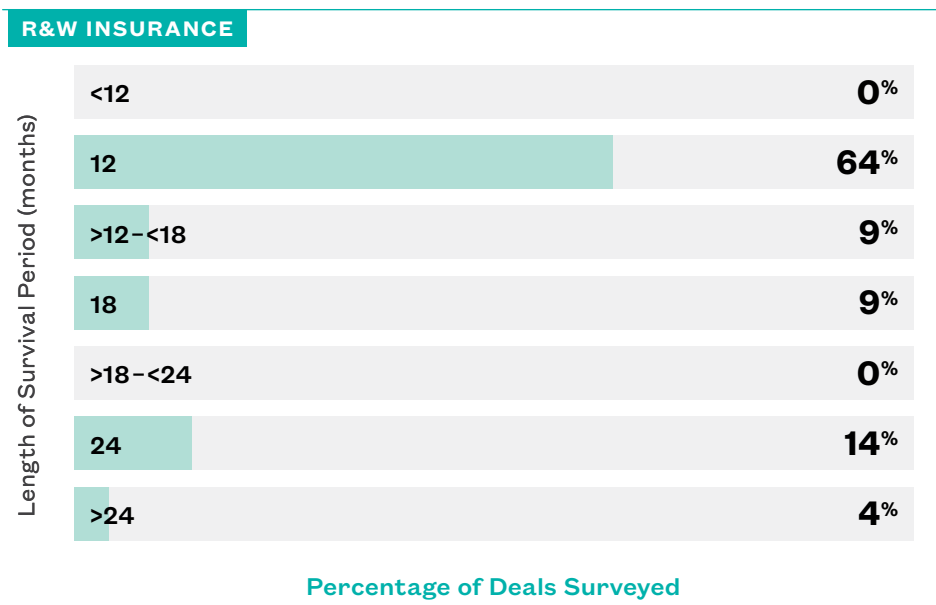


OBSERVATIONS

- The median general survival period for non-insured deals surveyed was 15 months, which is lower than 18 months in 2024/2025 and a more seller-favorable shift.
- The majority (77%) of non-insured deals surveyed had a survival period of 12-18 months in 2025/2026, which is lower than 86% in 2024/2025. The 15 month median survival period exceeded the 12 month median indemnity escrow period.
- 17% of non-insured deals had survival periods of greater than 18 months, which is slightly higher than 14% in 2024/2025. However, this is generally consistent with the results from prior years where such deals represented only a relatively 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.

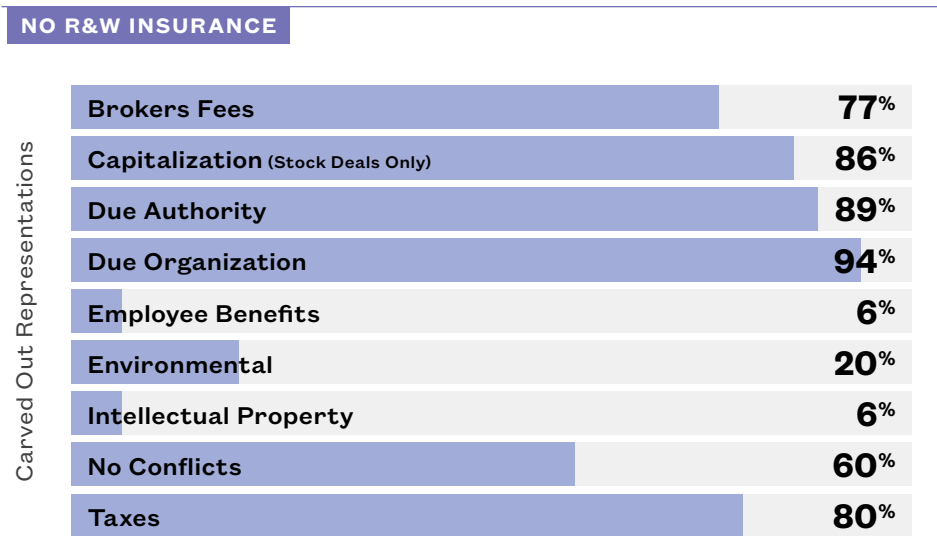
Representation & Warranty General Survival Period



OBSERVATIONS

- The median general survival period for insured deals surveyed was 12 months, which is consistent with 2024/2025. In addition, this is consistent with the median indemnity escrow period of 12 months for such deals.
- The vast majority (82%) of insured deals surveyed had a survival period of 12-18 months in 2025/2026, which is consistent with the length of the majority of indemnity escrow periods in such deals in 2025/2026.
- 18% of insured deals had survival periods of greater than 18 months, which is higher than in 2024/2025. However, this is generally consistent with the results from prior years where such deals represented only a relatively small percentage of the total number of deals surveyed.

Carve Outs to General Survival Period



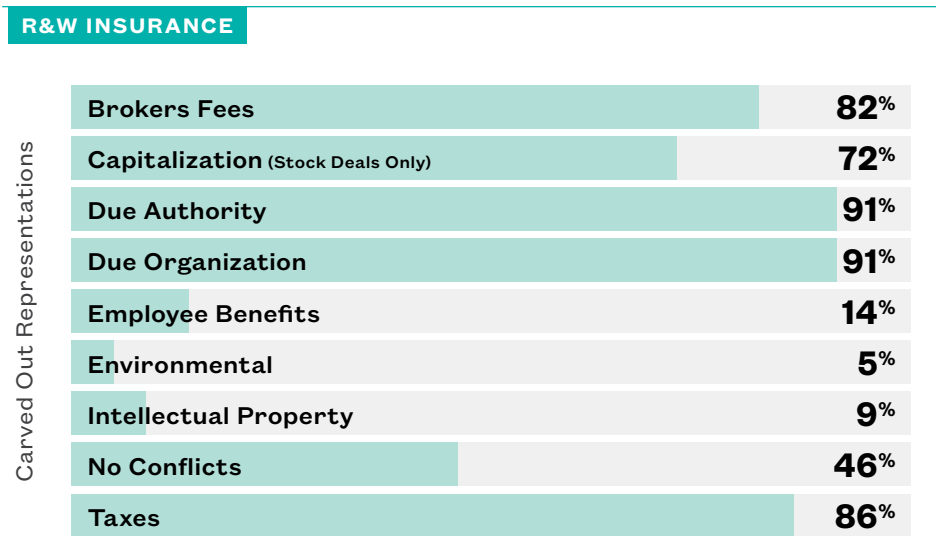
Percentage of Deals Surveyed in Which Applicable Representation Was Carved Out

OBSERVATIONS

- **Taxes:** The percentage of non-insured deals surveyed that carved out representations and warranties regarding taxes was 80% in 2025/2026. This is a significant increase from the 66% reported in 2024/2025 and 68% reported in 2023/2024.
- **No Conflicts:** The percentage of non-insured deals that carved out no conflicts declined to 60% in 2025/2026, down from 70% in 2024/2025, though still above the 59% and 45% reported in 2023/2024 and 2022/2023, respectively.
- **Brokers Fees:** The percentage of non-insured deals surveyed that carved out representations and warranties regarding brokers fees was 77% in 2025/2026, a slight decline from 82% in 2024/2025 and 80% in 2023/2024.

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



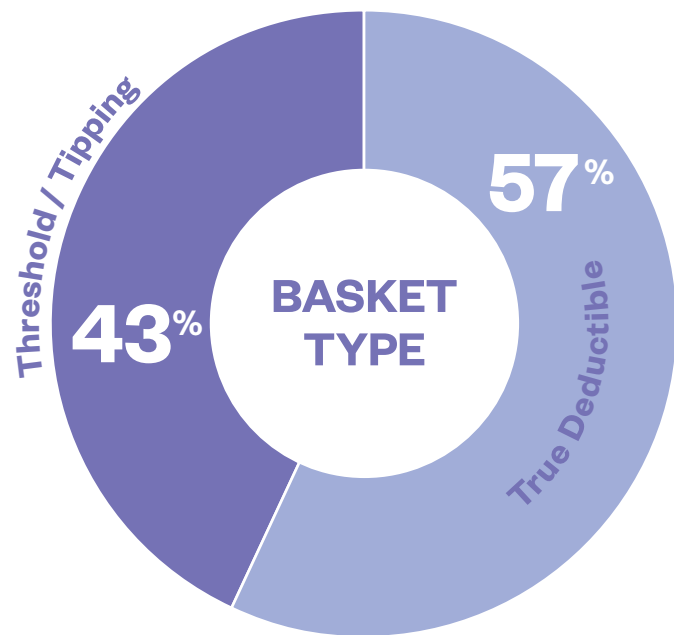
Percentage of Deals Surveyed in Which Applicable Representation Was Carved Out

OBSERVATIONS

- **Capitalization:** The percentage of insured stock deals that carved out representations and warranties regarding capitalization was 72% in 2025/2026. This represents a decrease from 82% in 2024/2025, but is consistent with the 72% found in 2023/2024.
- **Intellectual Property:** The percentage of insured deals that carved out representations and warranties regarding intellectual property was 9% in 2025/2026. This represents a relative decrease from 13% in 2024/2025 and years prior (32% in 2023/2024 and 15% in 2022/2023).
- **No Conflicts:** The percentage of insured deals that carved out representations and warranties regarding no conflicts was 46% in 2025/2026. This represents a decrease from 54% in 2024/2025 and prior years (64% in 2023/2024 and 50% in 2022/2023).
- **Brokers Fees:** The percentage of insured deals surveyed that carved out representations and warranties regarding brokers fees was 82% in 2025/2026, a relative decline from 92% in both 2024/2025 and 2023/2024.
- **R&W Insurance Policy Coverage of Fundamental Representations:** The carve outs identified above generally reflect representations treated as “fundamental” as opposed to general representations and warranties. This distinction matters in insured deals because R&W insurance policies typically provide six years of coverage for fundamental representations and warranties, as compared to three years for general representations and warranties, meaning a carved out representation carries a longer coverage window under the policy.

Indemnity Basket Type

NO R&W INSURANCE



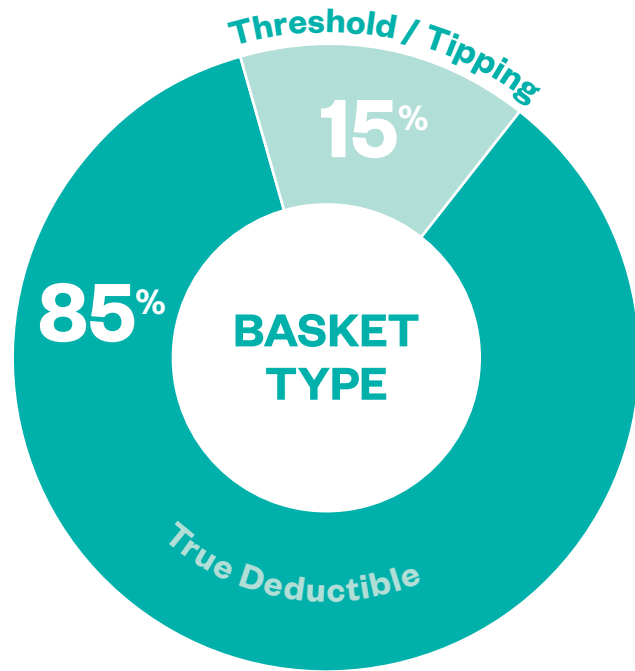
OBSERVATIONS

- 86% of non-insured deals surveyed provided for an indemnity basket, a decrease from 94% in 2024/2025 and consistent with a broader decline from 95% in 2022/2023 and 98% in 2020/2021. This decrease over the years reflects a buyer-favorable shift.
- Of the non-insured deals providing for an indemnity basket, 43% were structured as threshold/tipping baskets and 57% were structured as deductible baskets. This reflects a continued buyer-favorable shift toward the use of threshold/tipping baskets, up from 32% in 2024/2025, 30% in 2023/2024, and 17% in 2022/2023.

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

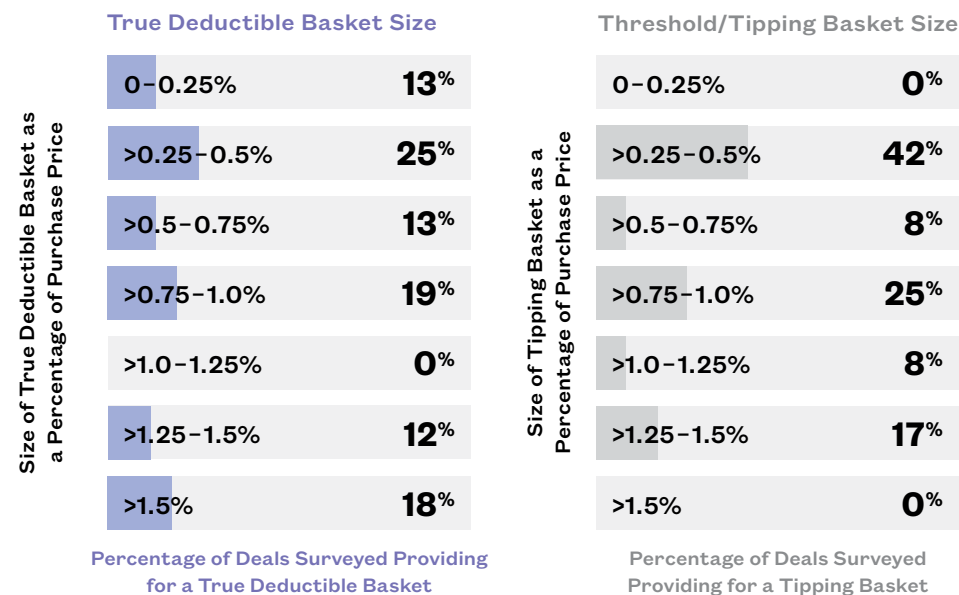


OBSERVATIONS

- 59% of insured deals surveyed provided for an indemnity basket, which is a decrease from 92% in 2024/2025, 76% in 2023/2024, and 85% in 2022/2023. Part of this decline may reflect the shrinking pool of insured deals with a stated survival period, as the continued growth of “no survival” deals leaves a smaller and more volatile sample from which to measure basket usage. The decline may also reflect a trend in which buyers are increasingly forced to look to the R&W insurance policy, rather than seller indemnification, as their principal source of post-closing recovery, thereby narrowing seller indemnity exposure and correspondingly diminishing the utility of a separate contractual basket.
- A minority (15%) of the insured deals surveyed providing for an indemnity basket in 2025/2026 were structured as threshold/tipping baskets, with the majority (85%) structured as a true deductible. This reflects an increase from 2024/2025, in which none of the insured deals providing for an indemnity basket were structured as threshold/tipping baskets, and is consistent with the buyer-favorable shift in this area.

Indemnity Basket Size

NO R&W INSURANCE



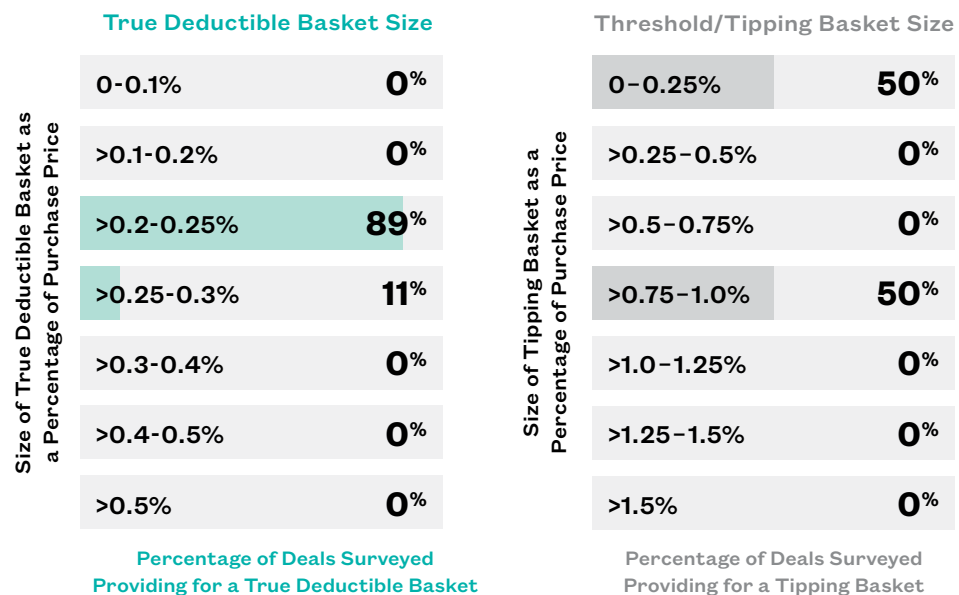
OBSERVATIONS

- The median basket size in non-insured deals surveyed in 2025/2026 was 0.8% of the purchase price, which is slightly higher than the median in prior years (0.7% in 2024/2025 and 0.6% in 2023/2024).
- The median basket size in non-insured deals with a deductible basket was 0.9% of the purchase price, which is slightly higher than prior years' median of 0.7% of the purchase price. 70% of non-insured deals with a deductible had a basket size of 1% or less (as compared to 78% in 2024/2025) and 51% of such deals had a deductible basket of 0.75% or less (as compared to 53% in 2024/2025). This increase in basket size is a seller-favorable development, as a larger basket requires more losses to accumulate before the buyer is entitled to any indemnification.
- The median basket size in non-insured deals with a tipping basket was 0.8%, which is slightly higher than prior years' median of 0.6% of the purchase price. However, 50% of non-insured deals with a tipping basket had a basket size greater than 0.75%, as compared to 47% in 2024/2025 and 31% in 2023/2024. This increase in basket size represents a seller-favorable trend, although it may also reflect a trade-off in using the more buyer-favorable tipping basket rather than the more seller-favorable deductible 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.

Indemnity Basket Size

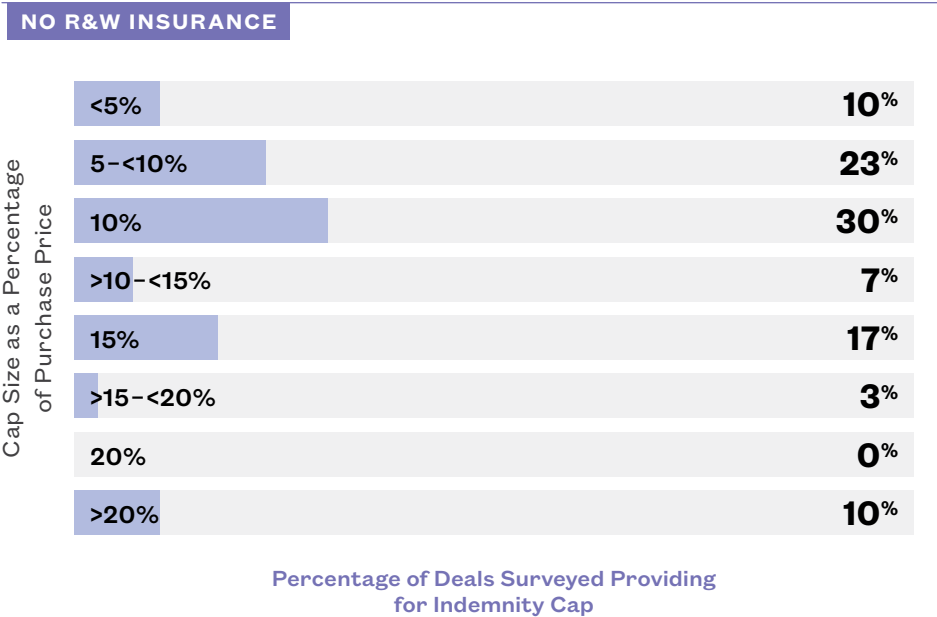
R&W INSURANCE



OBSERVATIONS

- The median basket size in insured deals with a deductible basket was 0.25% of the purchase price, as compared to 0.3% in 2024/2025 and 0.4% in 2023/2024. All of the insured deals surveyed with a deductible had a basket size of 0.3% or less (which is consistent with 2024/2025 and generally in line with 93% in 2023/2024) of which 89% had a basket size of 0.25% or less (as compared to 62% in 2024/2025).
- The median basket size in insured deals with a tipping basket was 0.6% of the purchase price, reflecting the reappearance of tipping baskets among insured deals after none were identified in 2024/2025, and an increase from 0.1% of the purchase price in 2023/2024. As in prior years, insured deals structured with a threshold/tipping basket remain a very small minority of insured deals overall, with the vast majority of insured deals continuing to use a true deductible basket.

Indemnity Cap Size



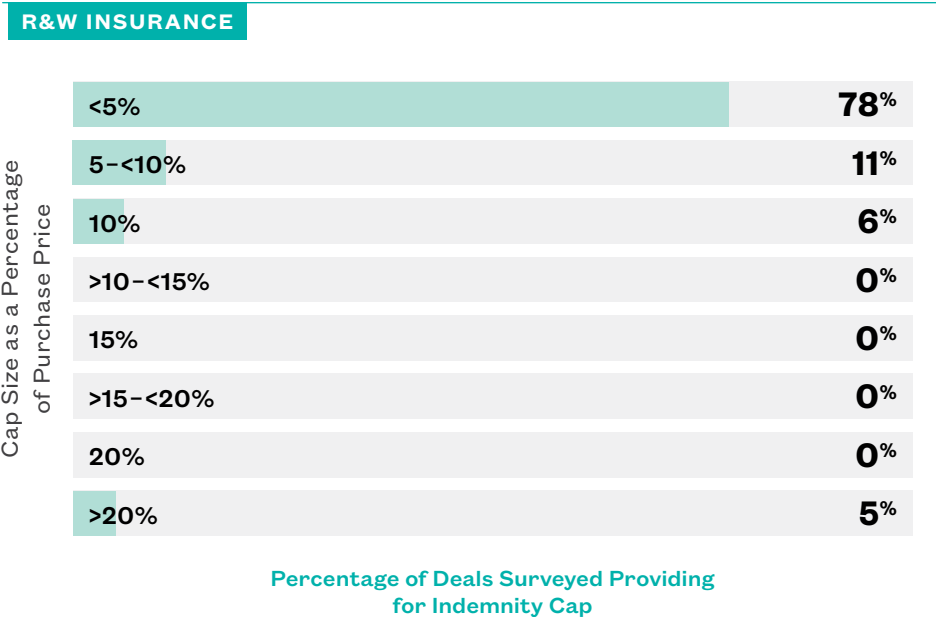
OBSERVATIONS

- 91% of non-insured deals surveyed in 2025/2026 provided for an indemnity cap, which, while lower than the 98% of such deals in 2024/2025, still represents the substantial majority of such deals.
- The median indemnity cap for non-insured deals was 10%, which is consistent with prior years.
- 63% of non-insured deals had an indemnity cap of 10% or less (as compared to 53% in 2024/2025 and 57% in 2023/2024), and 87% had an indemnity cap of 15% or less (as compared to 74% in 2024/2025 and 76% in 2023/2024).

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.

Certain of the Unique Deals had an indemnity cap greater than 20% of the purchase price. These Unique 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



OBSERVATIONS

- 95% of insured deals surveyed in 2025/2026 provided for an indemnity cap, which is consistent with 2024/2025 and 2023/2024.
- The median indemnity cap for insured deals was 0.3%, which is consistent with 0.3% in 2024/2025 and 0.4% in 2023/2024.
- 78% of insured deals had an indemnity cap of less than 5% (as compared to 83% in 2024/2025 and 96% in 2023/2024).
- 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 insurance policy.

Fraud Exceptions and Definitions

The treatment of fraud continues to be a closely negotiated aspect of private target middle market acquisition agreements. While buyers frequently seek to preserve fraud-based claims notwithstanding negotiated caps, baskets, and other liability limitations, the ultimate reach of those claims depends largely on the parties’ definition of “fraud.” Absent a carefully tailored definition, sellers may remain exposed to liabilities that exceed their intended risk allocation. Consistent with prior editions of the Survey, the 2025/2026 Survey examines the frequency of fraud carve outs to negotiated liability limitations and analyzes the percentage of deals that limited fraud to intentional acts involving actual knowledge, rather than constructive knowledge and/or recklessness, and restricted fraud claims to representations and warranties contained in the acquisition agreement, rather than information provided in the course of diligence.

NO R&W INSURANCE		R&W INSURANCE	
Fraud Exception			
88% of non-insured deals surveyed in 2025/2026 included fraud exceptions to certain indemnity provisions of the agreement, as compared to 94% in 2024/2025.		95% of insured deals surveyed in 2025/2026 included fraud exceptions to certain indemnity provisions of the agreement, a slight decrease from the 100% recorded in the 2024/2025 and prior year Surveys. However, fraud exceptions remain effectively standard in insured transactions, consistent with R&W insurance structures that preserve the buyer’s recourse against the seller for fraud.	
Fraud Defined			
Of the non-insured deals that included a fraud exception, 60% of such deals defined the term “fraud,” as compared to 68% in 2024/2025.		Of the insured deals that included a fraud exception, 97% of such deals defined the term “fraud,” as compared to 99% in 2024/2025.	
Among the non-insured deals that defined the term “fraud,” 83% of such deals limited fraud to those representations and warranties contained in the agreement (or in ancillary documents delivered in connection therewith), which is consistent with 83% in 2024/2025, but lower than 91% in 2023/2024.		Among the insured deals that defined the term “fraud,” 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 consistent with 95% in 2024/2025.	
In addition, 83% of non-insured deals that defined “fraud” required actual knowledge of falsity (as opposed to constructive knowledge) and/or expressly excluded recklessness or similar standards from the fraud definition, compared to 91% in 2024/2025.		Of the insured deals that defined the term “fraud,” 97% of such deals required actual knowledge of falsity (as opposed to constructive knowledge) and/or expressly excluded recklessness or similar standards from the fraud definition, an increase from 92% in 2024/2025.	

The following examples, taken from the agreements reviewed for the Survey, illustrate the spectrum of approaches to defining “fraud,” arranged from most seller-protective 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 (a) in the case of Seller in Article 2 above that was relied upon by any Buyer Indemnitee to its detriment, and (b) in the case of Buyer, in Article 3 above, that was relied upon by a Seller 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.

Earnouts

Of the deals surveyed in 2025/2026, 19% included earnouts, as compared to 13% in 2024/2025.

In addition, of the deals surveyed in 2025/2026 with earnouts:

- 15% of such deals provided for earnout amounts of 50% or more of the purchase price (as compared to 45% in 2024/2025).
- 67% of such deals provided for earnout amounts between 10% and 50% of the purchase price (as compared to 30% in 2024/2025).
- 18% of such deals provided for earnout amounts less than 10% of the purchase price (as compared to 25% in 2024/2025).

The shift toward earnouts falling between 10% and 50% of the purchase price, rather than 50% or more, suggests that while earnouts became more common in 2025/2026, they are also being structured with more moderate stakes tied to future performance. This is generally a more balanced position for sellers, as it reduces the share of total consideration contingent on post-closing performance while still preserving (and increasing the use of) the earnout as a deal mechanism.

Choice of Governing Law

The 2025/2026 Survey results revealed that Delaware law continues to be the most popular “governing law” choice. Of the deals surveyed in 2025/2026, the governing law for 78% of such deals was Delaware (as compared to 80% in 2024/2025), 6% was New York (as compared to 6% in 2024/2025), and 16% was a jurisdiction other than Delaware or New York (as compared to 14% in 2024/2025).

Bring-Down

Of the deals surveyed in 2025/2026:

- 85% used a “Material Adverse Effect” qualifier for the bring-down closing condition of the general representations and warranties, as compared to 79% in 2024/2025.
- 11% used an “in all material respects” qualifier for the bring-down closing condition of the general representations and warranties, as compared to 17% in 2024/2025.

The high percentage of deals using the “Material Adverse Effect” qualifier for the representations and warranties bring-down closing condition, as compared to 2024/2025, reflects a seller-favorable trend that increases closing certainty for sellers in transactions with a non-simultaneous signing and closing.

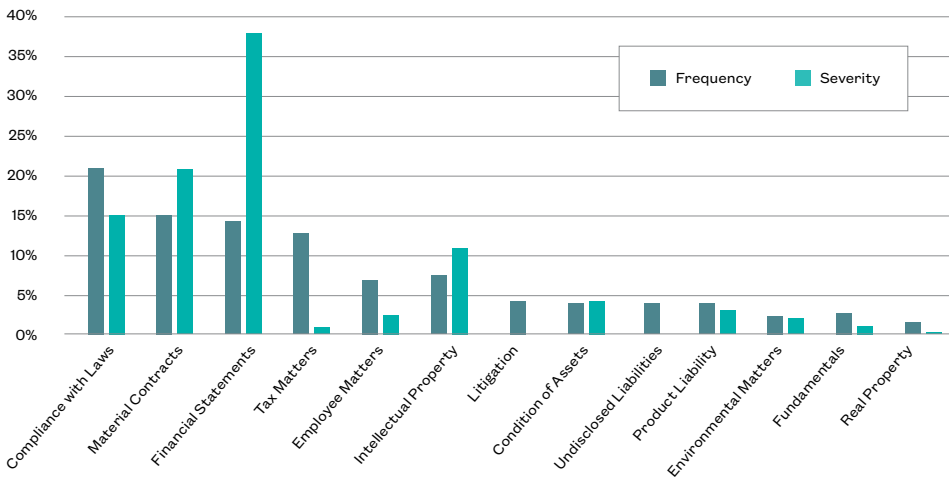
Seller Retains Attorney-Client Privilege

Of the deals surveyed in 2025/2026, 76% provided for the seller retaining attorney-client privilege after the closing of the transaction, as compared to 80% in 2024/2025.

Claims Insight from AON

As RWI products have matured, so has the volume of data that Aon continues to track on Aon-brokered policies. Through 2025, Aon was involved in over 2,000 notified representations and warranties (“R&W”), warranties and indemnities (“W&I”), and tax insurance claims and helped clients secure more than \$3 billion in payments globally. In 2025, Aon clients received over \$1 billion in transaction solutions payments in North America, including \$440 million from R&W alone. R&W payments had the highest median payment size in a calendar year to date (\$8.2 million).

Figure 1



Breach trends behind these losses remain relatively consistent with prior years. As you can see in Figure 1, financial statements breaches continue to be a key driver of loss, accounting for 38% of paid losses on policies placed after 2019. While material contracts breaches remain the second most severe, the gap between financial statements and material contracts losses has grown in recent years. Compliance with laws breaches continue to be the most alleged breach and remain another significant driver of loss. The most notable difference in the data is the increased severity of intellectual property breaches, which last year accounted for 5% of overall losses since 2019, but is now over 10%.

To better understand what is driving the increased severity of R&W claims, we have analyzed the most common fact patterns underlying substantial claims within these four most severe breach types: financial statements, material contracts, compliance with laws, and intellectual property.

Financial Statements

The leading driver of loss for financial statements breaches has historically been improper revenue recognition (see Figure 2). One key issue tends to be the timing for recognizing revenue, where a seller accrued for unearned revenue or failed to properly accrue for changes to project milestones or contract performance obligations when using work in progress/percentage of completion accounting. In other cases, the company simply booked certain expenses as revenue by mistake. Another consistent revenue recognition issue is channel stuffing, which results in overstated revenue from customers

within the trailing twelve-month (or deal-specific timeline) period. For certain industries, such as software and technology, misstatements about churn or renewal rates and pricing have impacted revenues as well.

The second leading loss driver for financial statements breaches stems from improper accounting controls. These claims include the improper accrual of operating expenses, commission fees or revenue share amounts owed to vendors, improper reserves for liabilities or indebtedness, misstatements of asset retirement obligations, or general misclassification of certain liabilities as assets. General accounts receivable issues also remain common, usually due to billing and/or management deficiencies related to purchase orders.

When examining trends in financial statements breaches across industries, the underlying drivers of financial statements issues vary on an industry-by-industry basis. We have seen a greater frequency of improper revenue recognition and accounts receivable issues in retail, technology, and among service providers, while other financial statements issues impacting inventory and cost of goods sold representations are most prevalent in the manufacturing and industrials sectors. This demonstrates that while the breach type might be the same, the underlying causes can vary greatly by industry.

Material Contracts

As Figure 3 shows, material contracts payments predominantly result from (1) the loss of or (2) a material reduction in business with a material customer that was known prior to closing but not disclosed to the buyer. Although the level of diligence that goes into customer relationships might suggest otherwise, customer breaches continue to result in significant losses for insurers and other participants in the M&A ecosystem. While fraud allegations remain uncommon overall, they most frequently arise in connection with breaches of the material customer representations.

Figure 2

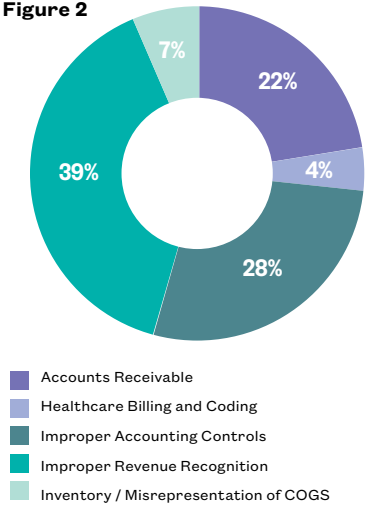
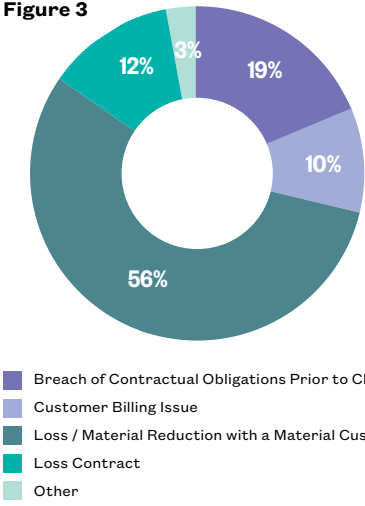


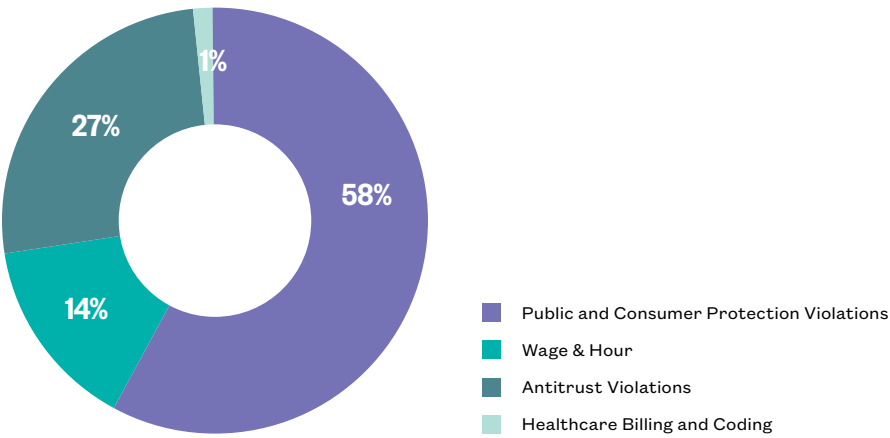
Figure 3



Claims Insight from AON

Another way that material contract breaches often manifest is through a seller's failure to comply with contractual obligations prior to closing. Breaches of supplier agreements by manufacturers, inability to meet production quality or production timelines resulting in penalties or termination of contracts, or other failures to obtain the required approvals or consents under existing contracts are commonly cited events in these types of claims. Contracts where the seller fails to disclose that the costs to perform the contractual obligations are greater than the revenue generated and customer billing issues are the other key categories of loss within this breach type. When customer billing issues arise, it is usually due to billing for services that were not provided, improperly tracked, or mispriced.

Figure 4: Compliance with Laws

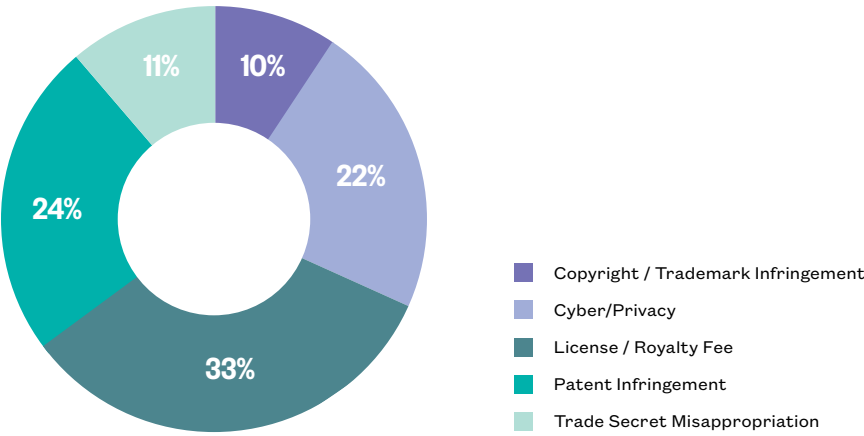


The distribution of claims and associated loss across compliance with laws breaches has continued to evolve. Historically, wage and hour claims have accounted for almost 10% of compliance with laws breaches, but only 1% of compliance with laws losses paid on policies placed since 2019 as most losses have remained within the retention. On the other hand, Department of Justice antitrust investigations are less frequent but tend to have higher severity, representing over half of recent compliance with laws payments. Losses from public and consumer protection violations commonly result from (1) disabilities act violations, (2) biometric information privacy act ("BIPA") violations, (3) telephone consumer protection act ("TCPA") violations, (4) building and product safety violations, as well as (5) other penalties arising from niche, industry-specific government audits.

Billing and coding violations also continue to be a significant driver of loss for companies in the healthcare sector. These breaches often fall within both the compliance with laws and the financial statements representations, and our categorization typically depends on whether the discovery of the breach arises from a third-party claim or is a self-discovered issue within the company's financials.

While compliance with laws breaches typically involve third-party claims resulting in dollar-for-dollar losses, it is always important to assess whether the misrepresentation has an impact on the profitability of the business moving forward.

Figure 5: Intellectual Property



In 2025, the severity of intellectual property breaches increased from 5% to over 10% of total losses on policies placed since 2019, which was driven by third-party license/royalty disputes and patent infringement lawsuits. Overall, 33% of losses relate to third-party disputes regarding license and/or royalty fees, driven by usage disputes for standard commercial software licenses as well as underpayments of fees related to more bespoke license or royalty agreements. Patent infringement litigation has resulted in significant losses as well, especially given the material defense costs that are incurred even in a successful defense. Cyber and privacy issues are the third most severe, but actual cyber security incidents are not the typical cause of loss. The loss is typically driven by payment card industry data security standard ("PCI") compliance violations, general information technology ("IT") / cyber security asset deficiencies, or violations of data privacy laws. We have also seen disputes with sellers or third parties regarding trade secret misappropriation as well as general trademark and copyright infringement allegations in sectors such as pharma, retail, and manufacturing.

The R&W market is seeing increasingly large and complex losses, underscoring the importance of understanding not just where claims arise, but which factors are most likely to drive significant loss. By examining patterns in breach data we can begin to identify the characteristics of the claims that truly matter from a severity standpoint. Our hope is that these insights will help deal teams sharpen their focus, refine diligence priorities, and ultimately make more informed, risk-aware decisions on their next transaction.

2026 Hart-Scott-Rodino Act Thresholds

The Hart-Scott-Rodino (“HSR”) Act requires that parties to transactions for the acquisition of voting securities, non-corporate interests, 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 waiting period (generally 30 days) before closing so that the agencies can review the deal for potential anticompetitive effects. Effective February 17, 2026, transactions with a value greater than \$535.5 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 \$133.9 million but less than \$535.5 million are generally reportable if one party to the transaction has annual net sales or total assets valued at \$26.8 million or more and the other party has annual net sales or total assets valued at \$267.8 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, and where the size-of-person test is met, if applicable: in 2026, parties must report the acquisition of (a) aggregate holdings of an issuer’s voting securities valued at \$267.8 million or greater but less than \$1.339 billion; (b) aggregate holdings of an issuer’s voting securities valued at \$1.339 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 \$2.678 billion; and (d) 50% of the voting securities of an issuer if valued at greater than \$133.9 million.

As required by the Merger Filing Fee Modernization Act of 2022, the FTC revised the HSR filing fee thresholds in 2026. Filing fees are now assessed on a six-tier range between \$35,000 for transactions valued at less than \$189.6 million and \$2.46 million for transactions valued at \$5.869 billion or more, depending on the size of the transaction. Separately, the FTC’s expanded premerger notification form and related reporting rules, which took effect on February 10, 2025, was vacated by the US District Court for the Eastern District of Texas in February 2026 as a result of litigation brought by the US Chamber of Commerce and others challenging the overhaul. Although the FTC initially obtained an administrative stay, it was unsuccessful in securing a stay pending appeal. As a result, the FTC’s Premerger Notification Office currently accepts filings under the pre-February 2025 form and instructions, while also permitting parties to submit filings voluntarily under the February 2025 form. In May 2026, the US Court of Appeals for the Fifth Circuit granted the government’s unopposed motion to hold the appeal in abeyance through December 31, 2026, while the FTC and DOJ consider potential revisions to the HSR reporting requirements. The agencies anticipate issuing new revisions to the premerger notification form by year-end 2026. The litigation does not affect the 2026 HSR jurisdictional thresholds or filing fees. The FTC also continues to permit requests for early termination of the HSR waiting period, which remains available only if both antitrust agencies complete their review and determine not to take enforcement action during the waiting period.

For more information: <https://www.seyfarth.com/news-insights/ftc-announces-hart-scott-rodino-act-thresholds-and-filing-fees-for-2026.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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