

2025 UPDATE

M&A Undisclosed Liability Claims and Earnout Achievement

Key Insights from Road-tested Data

What does the latest data tell us about undisclosed liability claims and earnout achievement in private-target M&A?

To answer this question, we analyzed data from three SRS Acquiom private-target data sets: the 2025 Deal Terms Study, 2025 Life Sciences Study, and the 2024 Claims Insights Report — including a fresh look at key claims data points in 2025.

This analysis centered on **two key insights**:

- 1 Claims for breach of Undisclosed Liabilities representation are way up.
- 2 Actual earnout achievement rates do not necessarily match seller expectations.

1 No Undisclosed Liabilities Representation

A useful instrument in buyers' indemnification toolbox

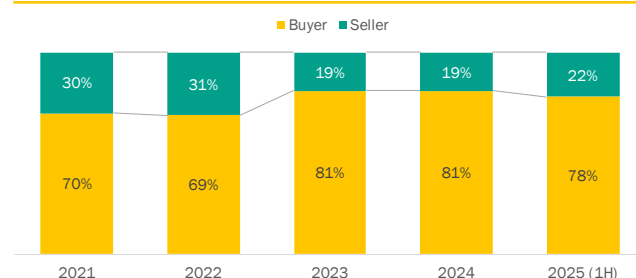
- + On virtually all private-target M&A deals, sellers are asked to represent that there are no undisclosed liabilities — or at least none that would require disclosure on a GAAP-compliant balance sheet. **Buyers know claims for breach of this No Undisclosed Liabilities representation can be an effective way to pursue post-closing indemnification.**
- + In today's market, buyers typically conduct comprehensive due diligence. This contrasts with deals that closed in 2021 and early 2022, when valuations and the pace of dealmaking made such thorough due diligence impractical. The claims data below compares deals closed during that pandemic-era M&A surge to deals closed prior to 2021. **Claims for breach of the No Undisclosed Liabilities representation tell a story of buyer dissatisfaction (with high valuations paid in 2021 and early 2022) and seller confidence (in those high valuations, resulting in a greater willingness to defend such claims).**

“Claims for breach of the No Undisclosed Liabilities representation tell a story of buyer dissatisfaction and seller confidence.”

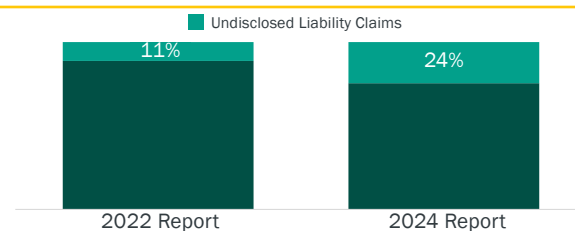
INCLUSION OF NO UNDISCLOSED LIABILITIES REPRESENTATION

	2022	2023	2024
All Deals:	99%	98%	97%

PARTY FAVORED BY DEFINITION



INDEMNIFICATION CLAIMS FOR BREACHES OF R&W



2024 REPORT: DISPUTE RESOLUTION

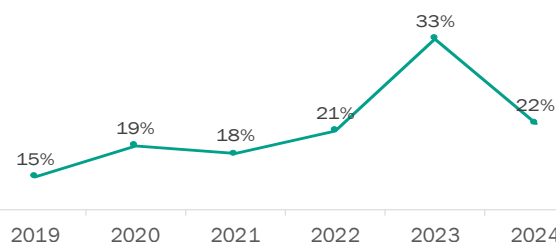
	All R&W Claims	Undisclosed Liability Claims
Full resolution of claim (median, months from notice date)	2.8 months	14 months
Deals with claims where one or more claims were litigated or arbitrated through judgment	3.7%	12%

2 Earnouts (Contingent Consideration)

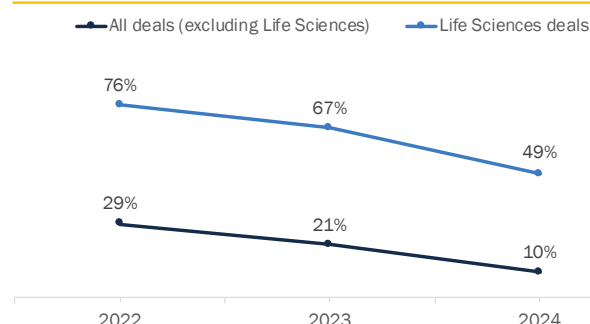
Proprietary data shows contingent consideration is not guaranteed.

- + The majority of M&A deals do not include an earnout, and for those that do, most of the dollars at play never get paid. Nevertheless, earnouts can be an effective means to get a deal done, and we continue to see a slightly heightened use of earnouts following a spike in 2023. For some industries, such as Life Sciences, an earnout structure can even be a necessity.
- + Ultimately, it's important that deal parties understand the details of any earnout provision and manage their expectations accordingly. **In light of several recent Delaware court cases, there is much focus on contractual diligence standards** — how a buyer must operate the target's business during the earnout performance period.

EARNOUT INCLUDED



PERCENT OF DEALS WITH AT LEAST ONE MILESTONE SUBJECT TO CRE: LIFE SCIENCES VS. ALL OTHER TARGET INDUSTRIES



“Most of the dollars at play never get paid.”

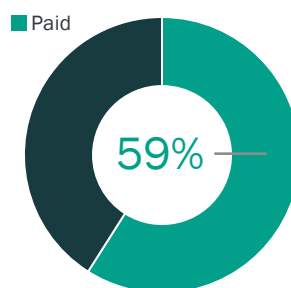
Outside of Life Sciences M&A, just over half of private-target deals with earnouts see some amount of payout, with most earnout dollars going unpaid.

- **Lower middle-market deals** (those with an upfront value of \$50 million or less) generally see lower earnout achievement rates.
- For deals with some level of success in delivering an earnout, the payout amounts to approximately **50 cents on the dollar**.
- When deals with no payouts are taken into account, that number drops to **21 cents on the dollar**.
- **In Life Sciences M&A**, such as deals with biotechnology and pharmaceutical (“Bio/Pharma”) target companies, earnouts are common. They are also typically complicated, with multiple milestones, long performance periods, and a significant portion of the deal consideration tied to them.
- **In Bio/Pharma M&A** specifically, only a small fraction of earnout dollars (**19 cents on the dollar**) are ever paid.

You can find considerable additional detail and analysis in the recently released 2025 SRS Acquiom Life Sciences M&A Study: srsacquiom.com/2025lss.

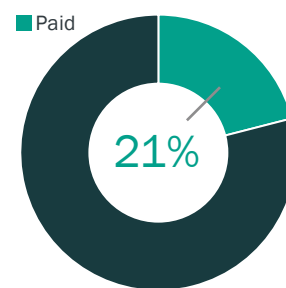
Earnout Achievement Overview

PERCENTAGE OF DEALS (EXCLUDING LIFE SCIENCES) WITH ANY EARNOUT AMOUNT (PARTIAL OR FULL) PAID



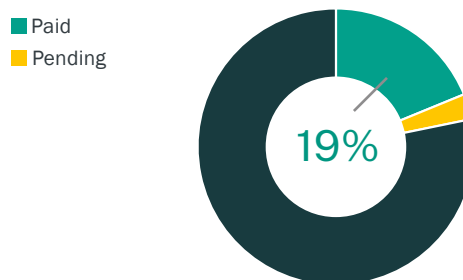
Deals: 100 deals closed since 2021

PERCENTAGE OF AGGREGATE MAXIMUM EARNOUT POTENTIAL PAID TO DATE FOR DEALS (EXCLUDING LIFE SCIENCES)



Dollars: \$3.6B

PERCENTAGE OF AGGREGATE MAXIMUM MILESTONE POTENTIAL PAID TO DATE FOR BIO/PHARMA LIFE SCIENCES DEALS



Milestones dollars due by mid-2025
128 deals / \$38.4B

Experience and Insights Drive Better Outcomes

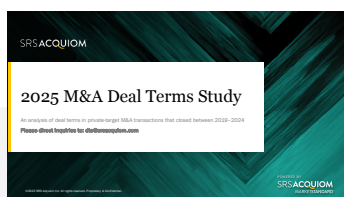
Combining data with practical experience yields insights that can drive better outcomes in M&A. One such insight that dealmakers know: **paying close attention to even the smallest provision** is essential to maximizing the overall value of a deal. To that end, the latest data highlights the increasing significance of the No Undisclosed Liabilities representation as well as earnout provisions.

Additional Resources:

For additional insights that could be critical to the success of your next M&A deal, explore these resources:



2024 M&A Claims
Insights Report:
srsacquiom.com/2024-claims



2025 M&A
Deal Terms Study:
srsacquiom.com/2025-dts



2025 Life Sciences
M&A Study:
srsacquiom.com/2025lss

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