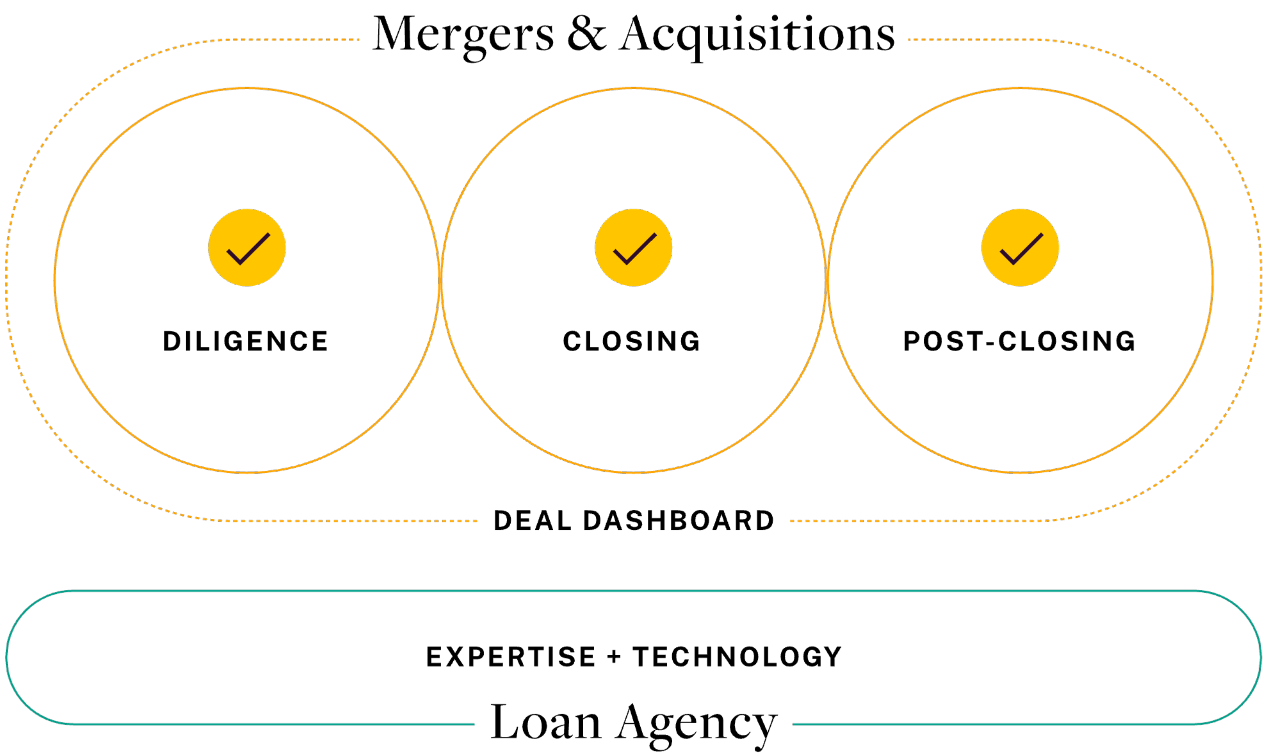
2024 M&A Claims Insights Report

An analysis of **indemnification claims** and **earnout achievement** for deals with fully released escrows between Q3 2022 through Q2 2024

Please direct inquiries to: claimsstudy@srsacquiom.com

Comprehensive Suite of Solutions

SRS Acquiom delivers the smartest way to run a deal™ with solutions that reduce the administrative burden throughout the entire deal lifecycle.



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The Smartest Way to Run a Deal™

Since 2007, we have helped sophisticated deal parties reduce administrative drag, enabling them to focus on building great businesses and maximizing value.

8,600+
deals engaged on to date

$1.5T+
aggregate deal value

$90B+
aggregate potential earnout value

500K+
shareholders represented* in more than 140 countries

3,600+
total indemnification claims resolved

$3.9B+
total value of contested claims

$2.5B+
total amount of contested claims SRS Acquiom has returned to shareholders

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*As post-closing shareholder representative.

About this Report and the Data

The 2024 Claims Insights Report Sample

This study analyzes more than 850 private-target acquisitions valued at $168B including 518 individual indemnification claims and nearly 200 earnouts. All deals examined in this report have escrows that were fully released during the period from Q3 2022 through Q2 2024.

SRS Acquiom receives claim notices with varying levels of specificity, and the claim resolution process is not always the result of communication supported by formal documentation between the parties. Categorization of claim and resolution data is often subjective. Therefore, the conclusions presented in this study may be subject to important qualifications not expressly articulated herein. All information herein is subject to change. Note that claim sizes listed here are based on the amount claimed by the buyer, not the eventual claim resolution amount. Earnout potential calculations generally exclude variable or formula-driven payments having no defined dollar amount or cap.

Buyers do not always disclose the presence of a buy-side RWI policy, and "Deals with RWI" data subsets in this study likely omit a small number of deals with RWI policies. SRS Acquiom may not see claims on deals with RWI once the escrow is exhausted.

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Why Our Report Is Unique

- *SRS Acquiom provided professional and financial services on these deals; the vast majority of these are not publicly reported.*
- *As shareholder representative, we have access to seller management, shareholders, and all deal documents, and we manage all post-closing matters.*
- *Our goal is to arm deal professionals who negotiate and advise on private-target transactions with robust, reliable information that cannot be found elsewhere.*

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Key Findings

Indemnification Claims: Fast-paced 2021 M&A Market Had a Big Impact

- 28% of private-target M&A deals experienced at least one post-closing indemnification claim, down slightly from 30% in the 2022 SRS Acquiom Claims Insight Report. (Slide 12 ▶)
- Claim sizes trended up, with a notable increase in claims in the $150,000 to $500,000 size range (Slide 12 ▶) and the median claim size of all breach of reps & warranties claims, as a percentage of the escrow, increased to 5% (Slide 14 ▶) from 3% in the 2022 SRS Acquiom report.
- Deals with Reps & Warranties Insurance (RWI) saw a slightly higher prevalence of indemnification claims, 31% compared to 28% in the 2022 SRS Acquiom report. (Slide 13 ▶)
- Tax claims continue to dominate, and undisclosed liability claims more than doubled since the 2022 SRS Acquiom report. (Slide 11 ▶)
- In the current environment, claims are taking about 25% longer to resolve with about 1 in 27 resulting in formal arbitration or litigation, up from 1 in 100 in the 2022 SRS Acquiom report. (Slide 18 ▶)

Earnout Achievement (excluding Life Sciences deals): Earnouts Are Not Guaranteed

- A majority of deals with an earnout due saw at least partial payment, but only about half of the maximum earnout amount is paid.
(Slide 22 ▶ and Slide 23 ▶)

NEW DATA POINT

"New Data Point" buttons appear on all slides featuring new data points throughout the study.

KEY FINDING

Click on the "Key Finding" button throughout the study to return to the Key Findings on page 6.

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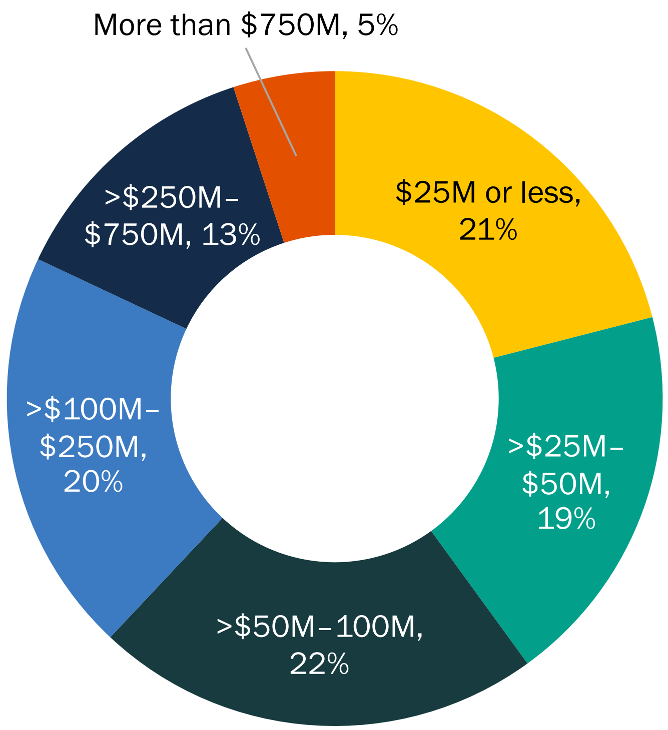
Deal Set Overview

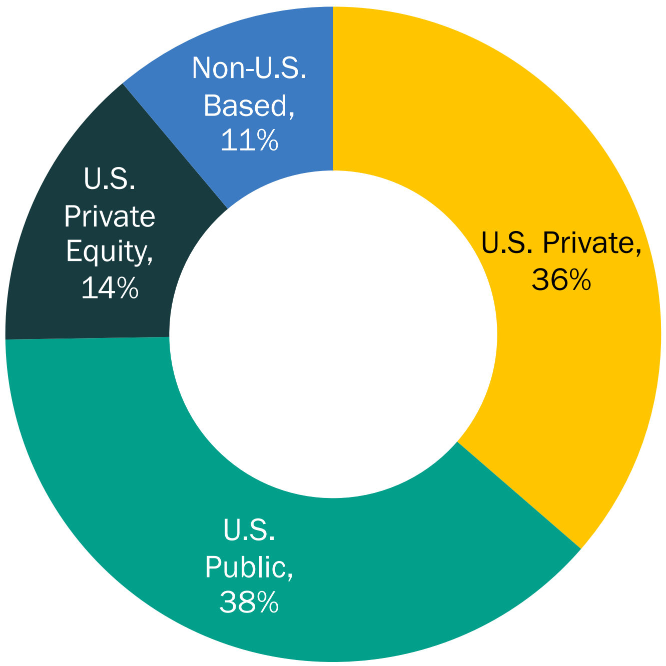
Deal Set Overview

Transaction Values* and Buyer Types

TRANSACTION VALUES



BUYER TYPES



Due to rounding, percentages may not total 100% throughout this study.
** The term "transaction values" includes escrowed amounts but does not include potential earnout consideration.*

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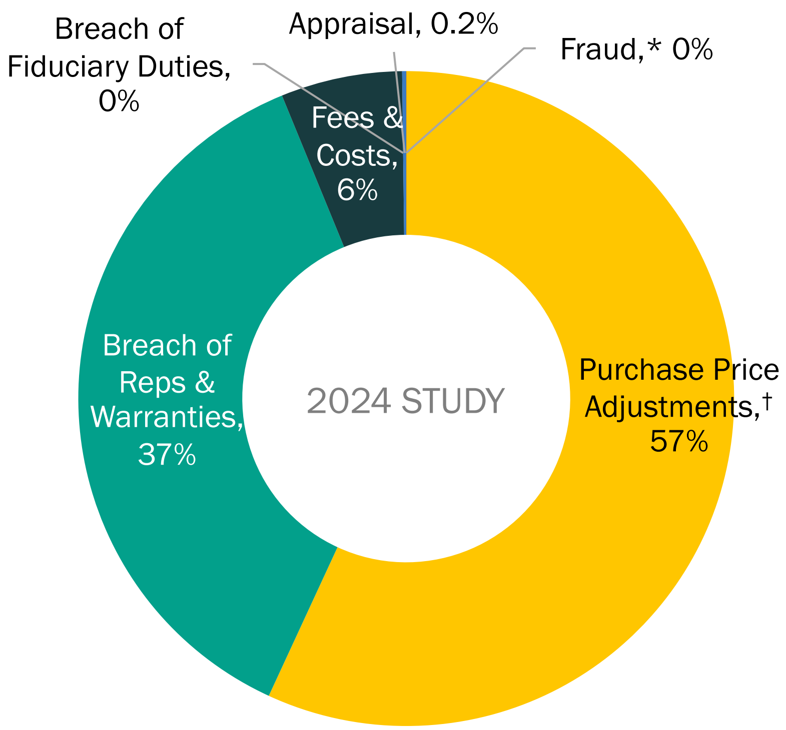
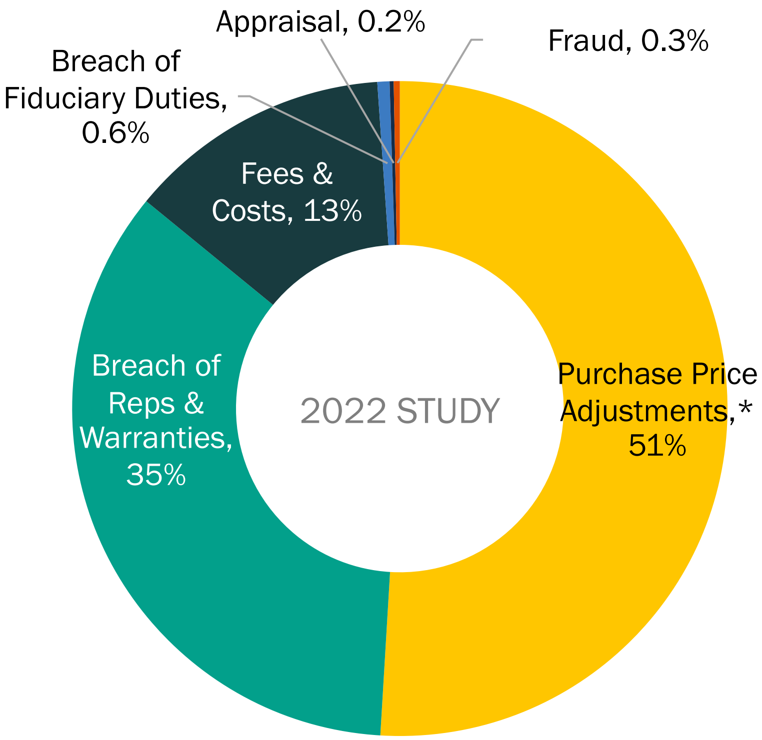
Deal Set Overview

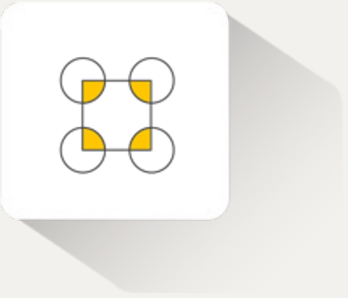
Subject Matter as Percentage of All Post-Closing Matters

Q3 2022 - Q2 2024 DEALS (~1,200 MATTERS)



Q4 2020 - Q2 2022 DEALS (~1,100 MATTERS)





Watch how actual post-closing matters can play out from the experts at SRS Acquiom:

Professional Shareholder Representation Services Success Stories

** Fraud was not the primary allegation on any indemnification claims during this time period but was included as a secondary claim on 1.6% of indemnification claims.*

† For a more detailed analysis of SRS Acquiom purchase price adjustments, please see the 2024 SRS Acquiom Working Capital PPA Study.

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Indemnification
Claim Activity

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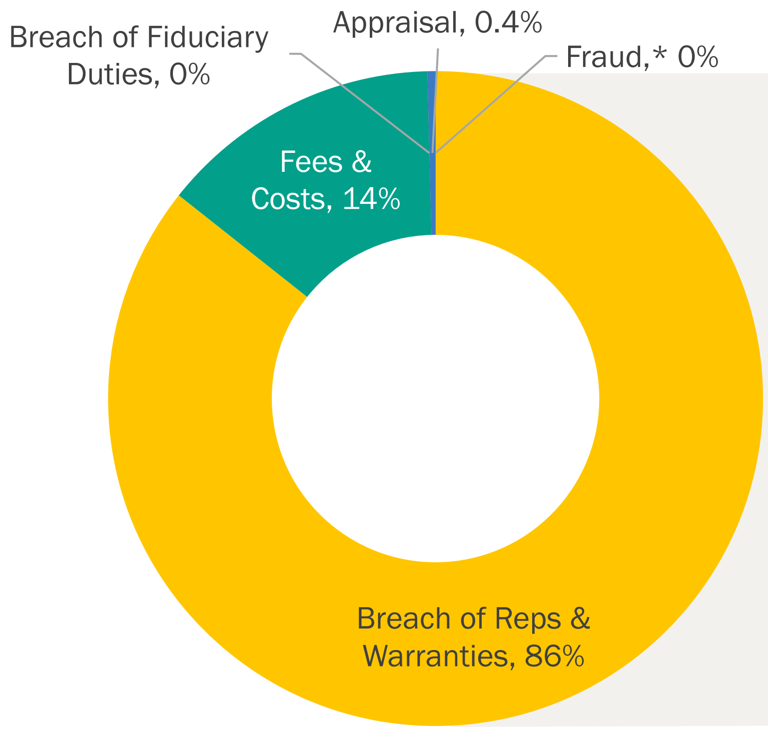
Indemnification Claims Set Overview

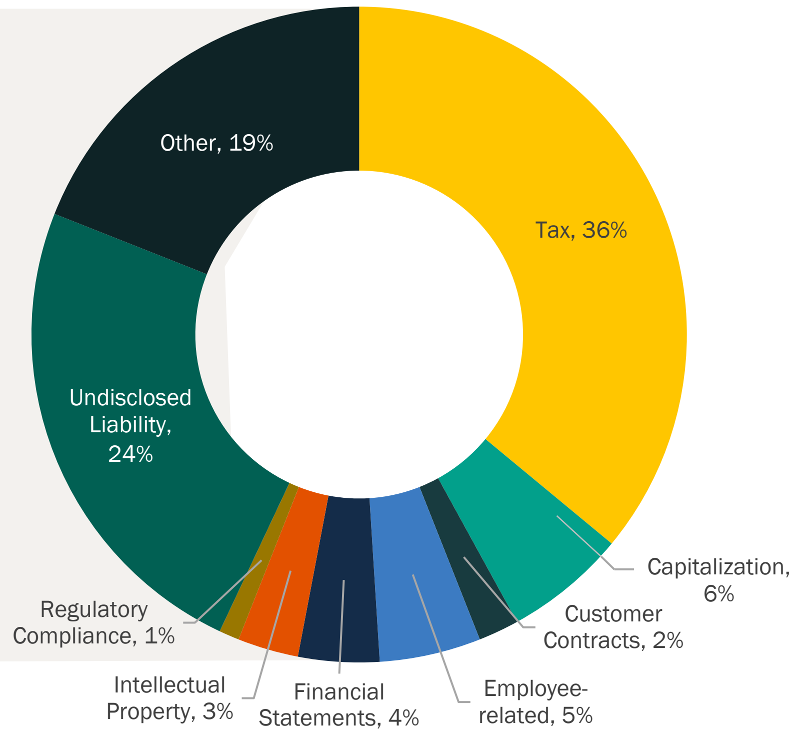
Claim Subject Matter

KEY FINDING

SUBECT MATTER AS % OF ALL INDEMNIFICATION CLAIMS (530+ CLAIMS)



SUBSET: BREACHES OF R&W (460+ CLAIMS)



* *Fraud was not the primary allegation on any indemnification claims during this time period but was included as a secondary claim on 1.6% of indemnification claims.*

For more information, see the SRS Acquiom article:

[The Importance of M&A Tax Advisory for Your Next Deal]

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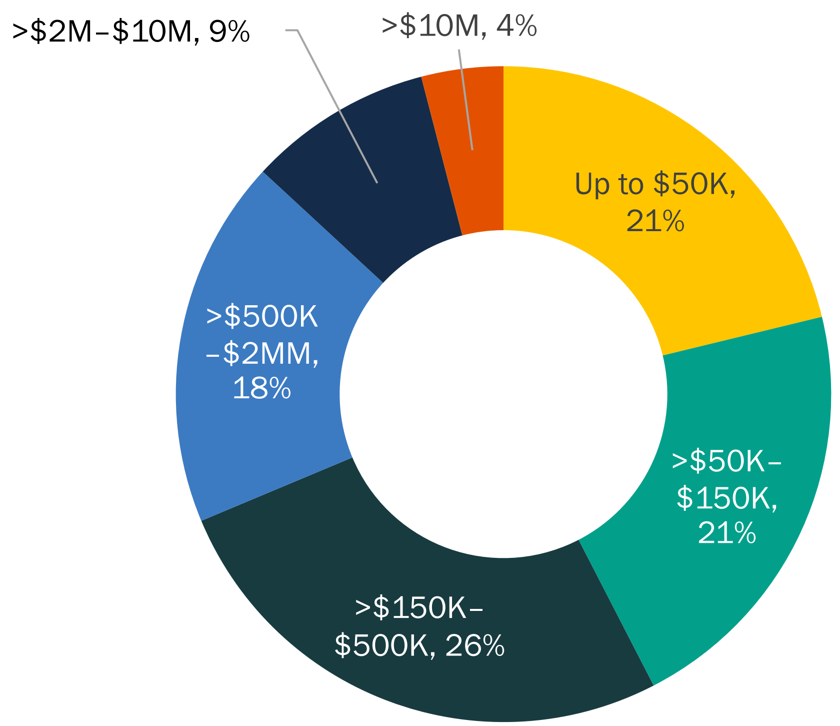
Indemnification Claim Sizes

All Deals

KEY FINDING

CLAIM SIZES



KEY POINTS

28% Percentage of deals with indemnification claims

27% Percentage of deals with at least one claim where the total was $1M or more

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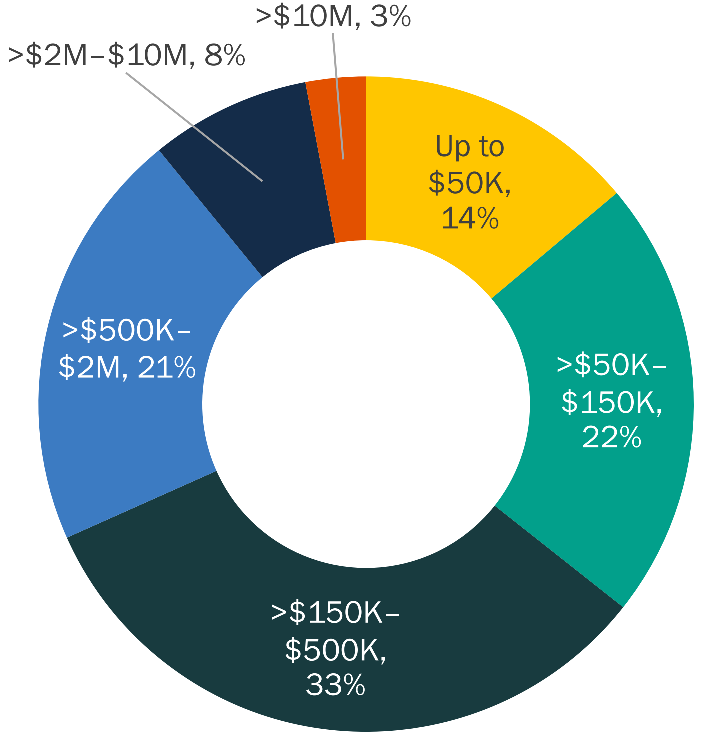
Indemnification Claim Sizes

RWI Deals

KEY FINDING

CLAIM SIZES



KEY POINTS

31%	Percentage of deals with indemnification claims
26%	Percentage of deals with at least one claim where the total was $1M or more

For more information, see the SRS Acquiom report:

[Why Are M&A Deal Parties Thinking Twice About RWI?]

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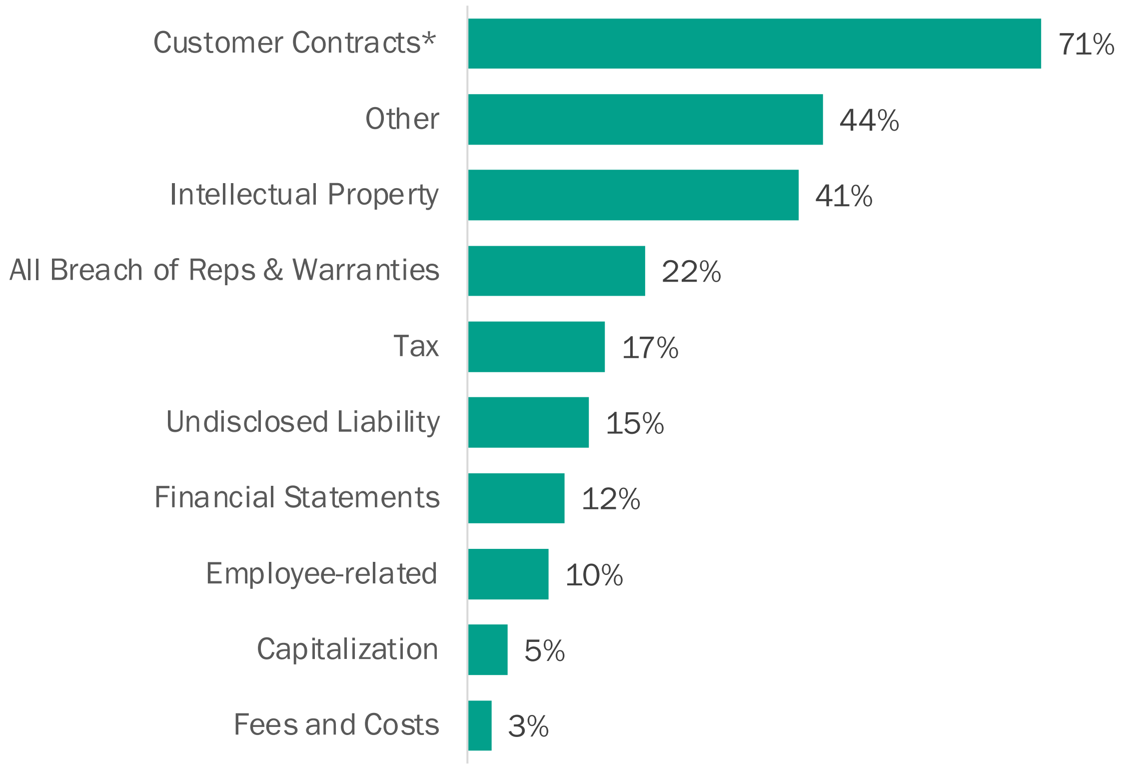
Average vs. Median Indemnification Claim Sizes

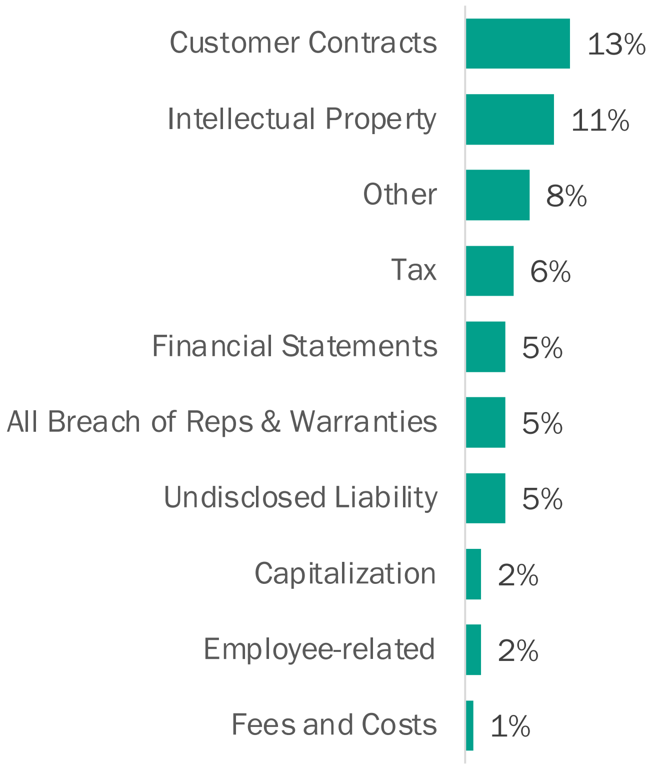
KEY FINDING

All Deals

AVERAGE CLAIM SIZE AS PERCENTAGE OF THE ESCROW, BY TYPE



MEDIAN CLAIM SIZE AS PERCENTAGE OF THE ESCROW, BY TYPE



** This data point is influenced by more than one deal where the initial claim amount significantly exceeded the escrow amount, but the ultimate amount paid on such claims upon final resolution was less than the escrow amount.*

Note: There was insufficient data for claims regarding appraisal, fraud, breach of fiduciary duty, and breach of the regulatory compliance rep.

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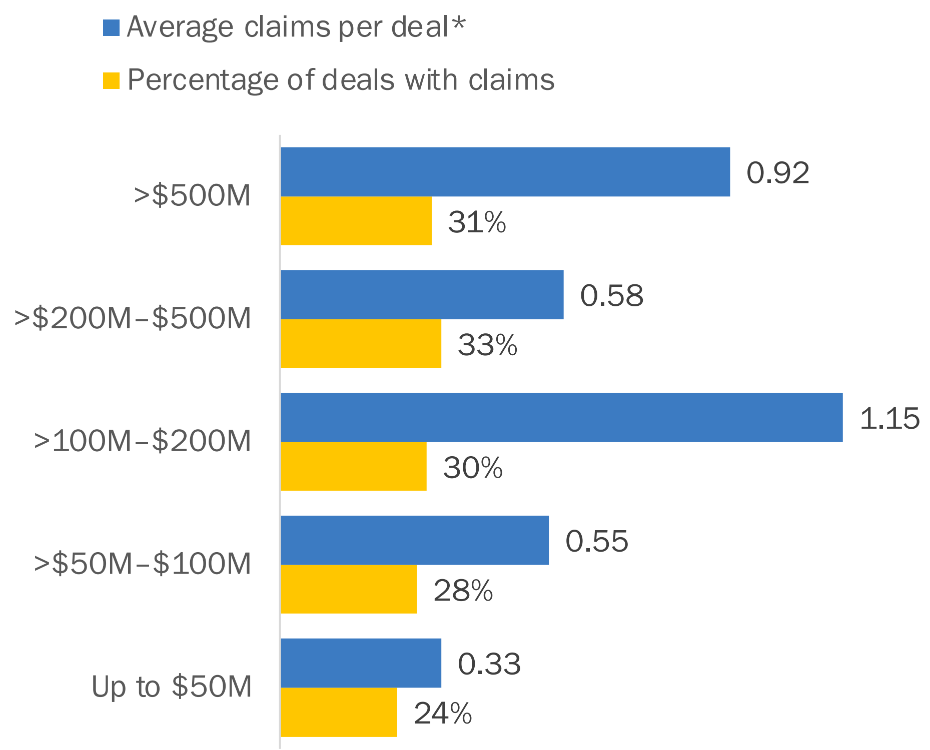
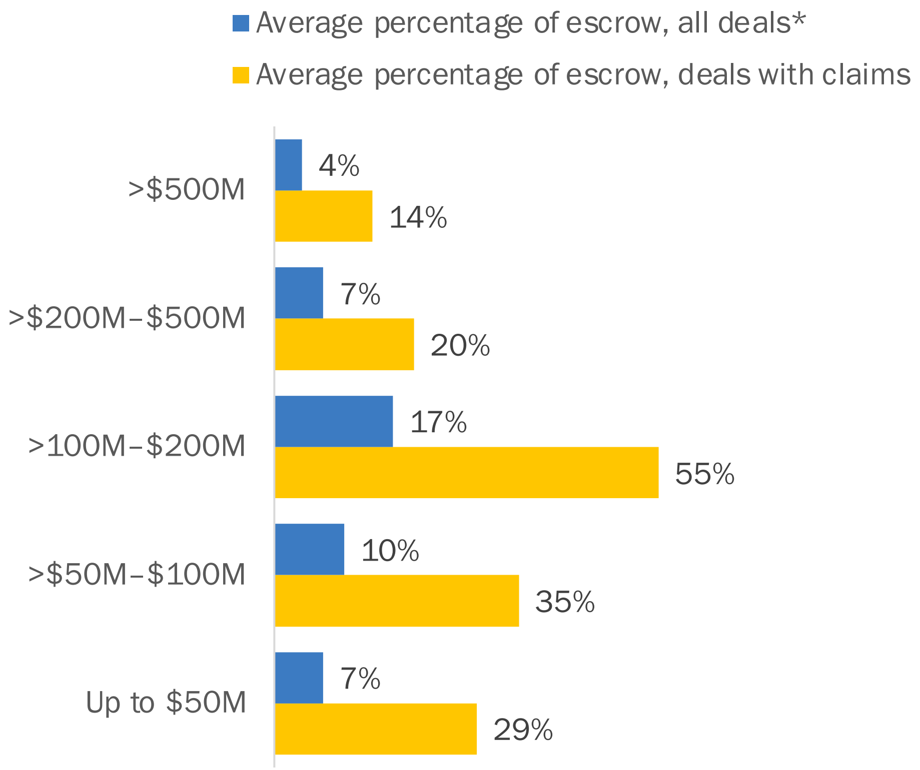
Indemnification Claim Activity by Transaction Value

All Deals

CLAIM FREQUENCY BASED ON TRANSACTION VALUE



ESCROW CLAIMED BASED ON TRANSACTION VALUE



** Including deals with no claims.*

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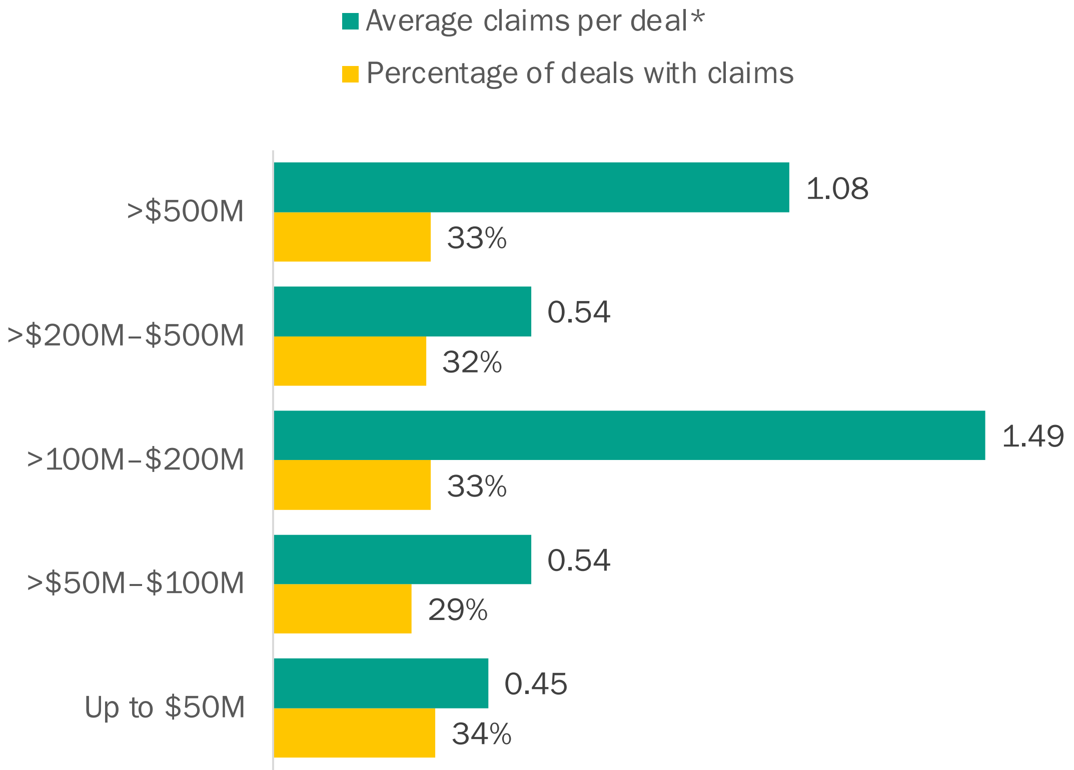
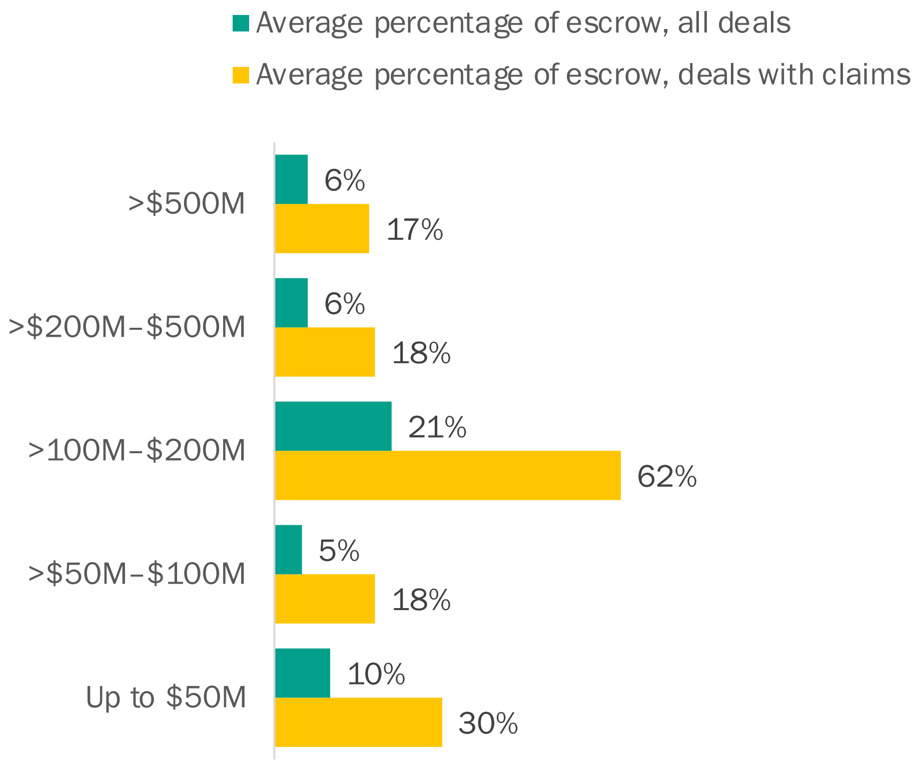
Indemnification Claim Activity by Transaction Value

RWI Identified

CLAIM FREQUENCY BASED ON TRANSACTION VALUE



ESCROW CLAIMED BASED ON TRANSACTION VALUE



** Including deals with no claims.*

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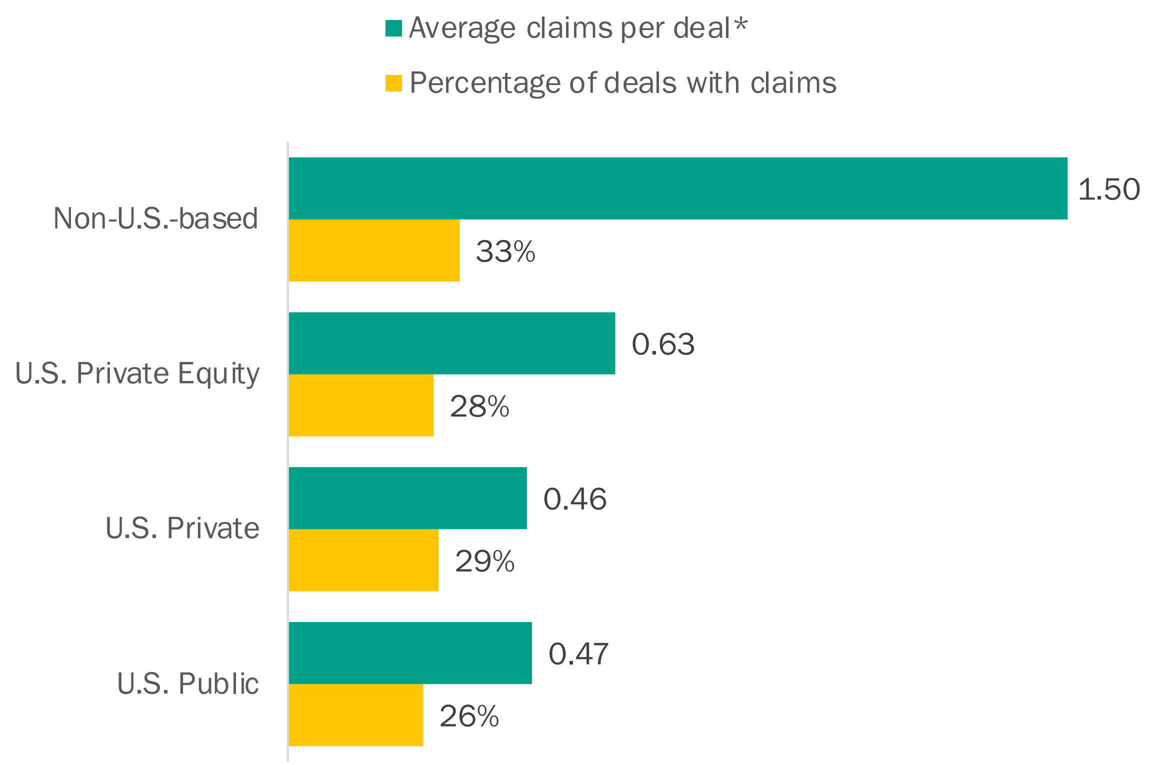
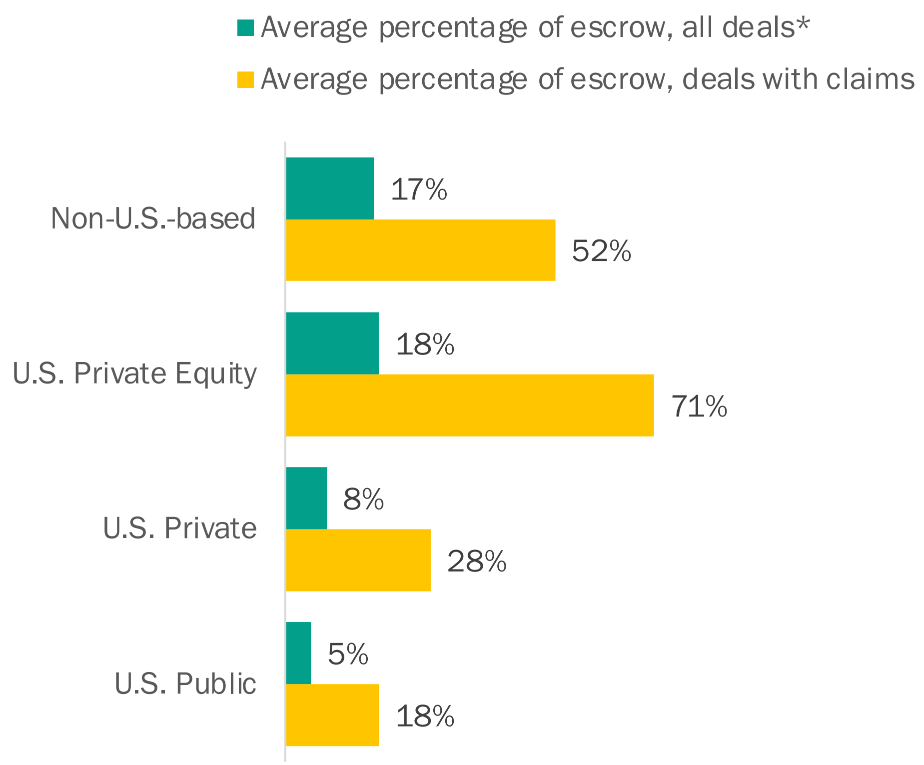
Indemnification Claim Activity by Buyer Type

All Deals

CLAIM FREQUENCY BASED ON TRANSACTION VALUE



ESCROW CLAIMED BASED ON TRANSACTION VALUE



** Including deals with no claims.*

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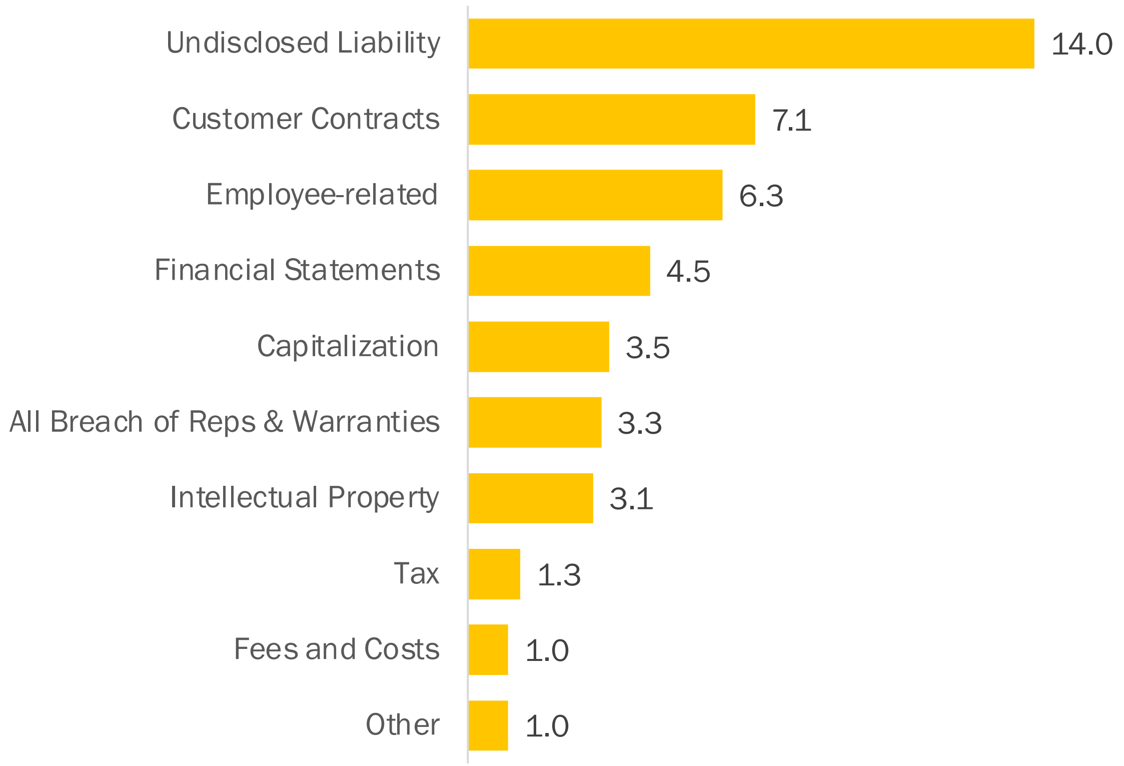
Resolution Time by Claim Type

KEY FINDING

MONTHS TO RESOLVE, MEDIAN



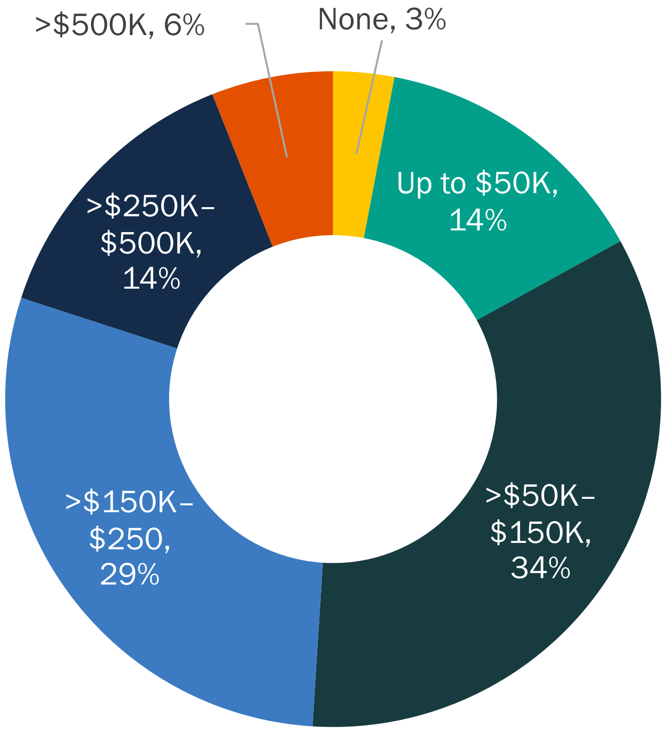
Note: There was insufficient data for claims regarding appraisal, fraud, breach of fiduciary duty, and breach of the regulatory compliance rep.

KEY POINTS

5.6 months	Full resolution of disputed claims from notice date (median)
2.8 months	Full resolution of all claims (including undisputed) from notice date (median)
3.7%	Deals with claims where one or more claims were litigated or arbitrated through judgment

Expense Funds

EXPENSE FUND SIZES



KEY POINTS

97% of deals in this data set had expense funds

	WITHOUT EARNOUTS	WITH EARNOUTS
Average size	$230,000	$332,000
Average as % of transaction value	0.18%	0.31%

For more information, see the SRS Acquiom white paper:

Guidance on Shareholder Rep Expense Fund – Why a Properly Sized Expense Fund Can Be Good for M&A Buyers and Sellers

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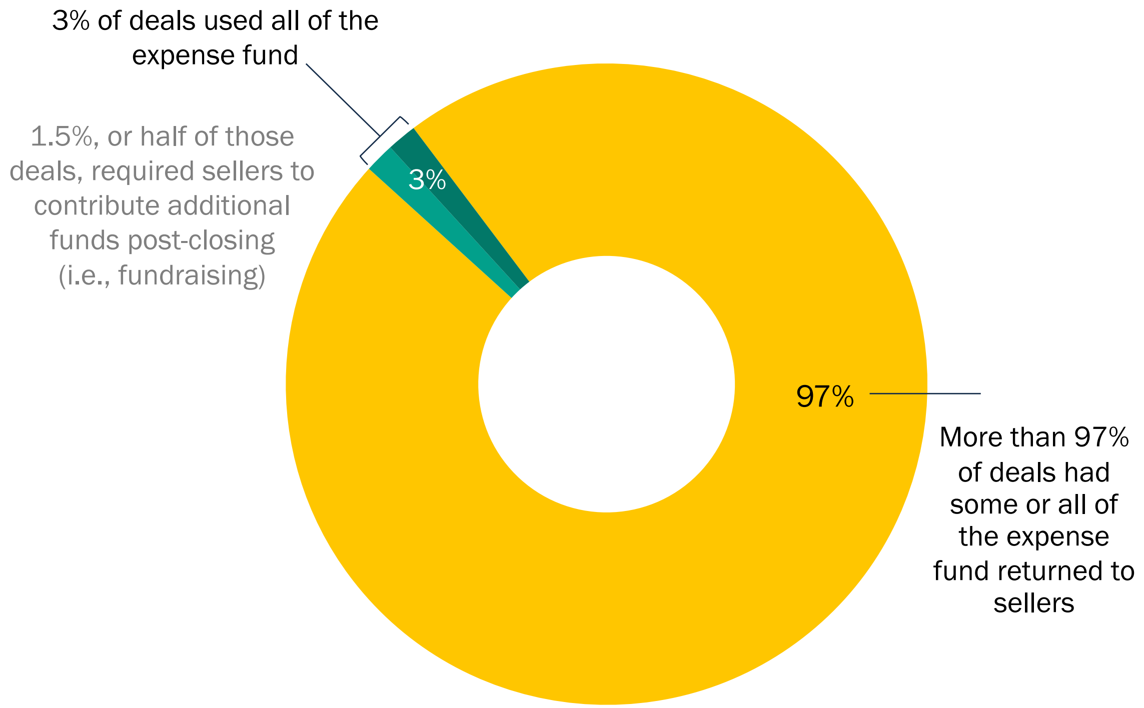
Expense Fund Utilization*

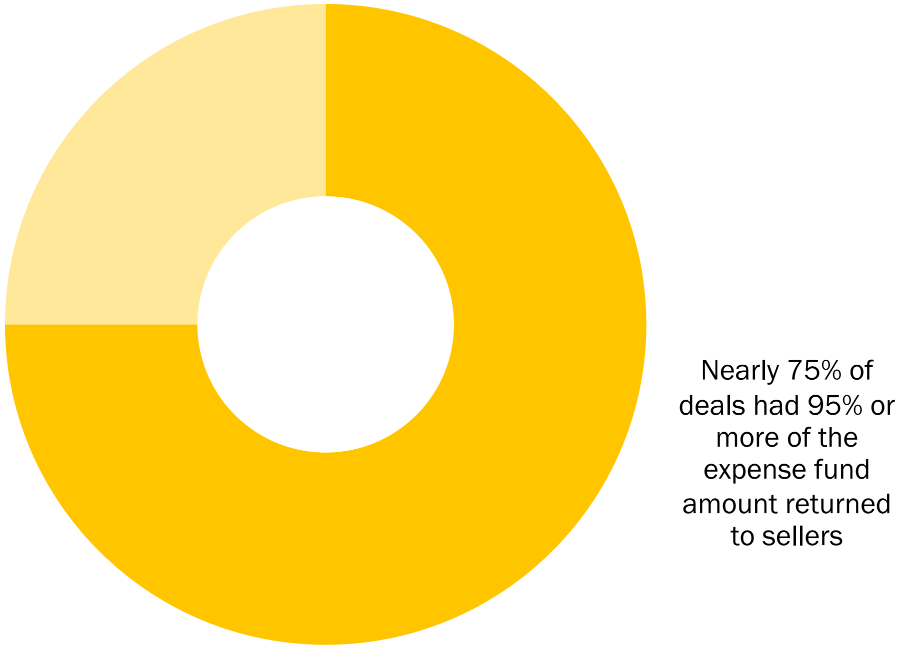
NEW DATA POINT

HOW OFTEN ARE EXPENSE FUNDS FULLY UTILIZED?



The need for fundraising was either a result of too small of an initial amount or exhausting the expense fund to defend claims. Fundraising is an arduous process, often resulting in major and key investors contributing a disproportionate amount.

HOW OFTEN IS NEARLY THE ENTIRE EXPENSE FUND RETURNED TO SELLERS?



** Based on 500+ SRS Acquiom deals closed since January 1, 2021, with fully distributed expense funds.*

Earnout Achievement

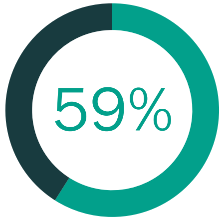
Earnout Achievement Overview

Excluding Life Sciences Deals

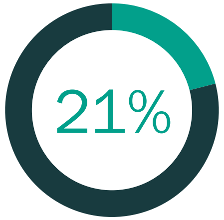
KEY FINDING

NEW DATA POINT

KEY POINTS



Deals in this dataset where some amount (partial or full) was paid out on the earnout



Percentage of aggregate maximum earnout potential paid to date

ADDITIONAL DETAILS

100	Number of deals with an earnout due in this dataset (excluding Life Sciences deals, “this dataset”)
$9.6B	Aggregate transaction value of the deals in this dataset
$3.6B+	Aggregate potential earnout payments for deals in this dataset
28%	Percent of deals in this dataset where sellers contested* the earnout
17%	Percentage of deals with a contested earnout where sellers were successful (payment amount increased)
$132M	Aggregate additional earnout payments as a result of renegotiations
3%	Percentage of deals in this dataset where the earnout was disputed and resolved via litigation or arbitration to final judgment

** At least in writing to the buyer; please note this dataset excludes pending earnouts, such as contested earnouts that are not yet resolved.*

For more information, see the SRS Acquiom article:

How to Structure Earnouts in M&A

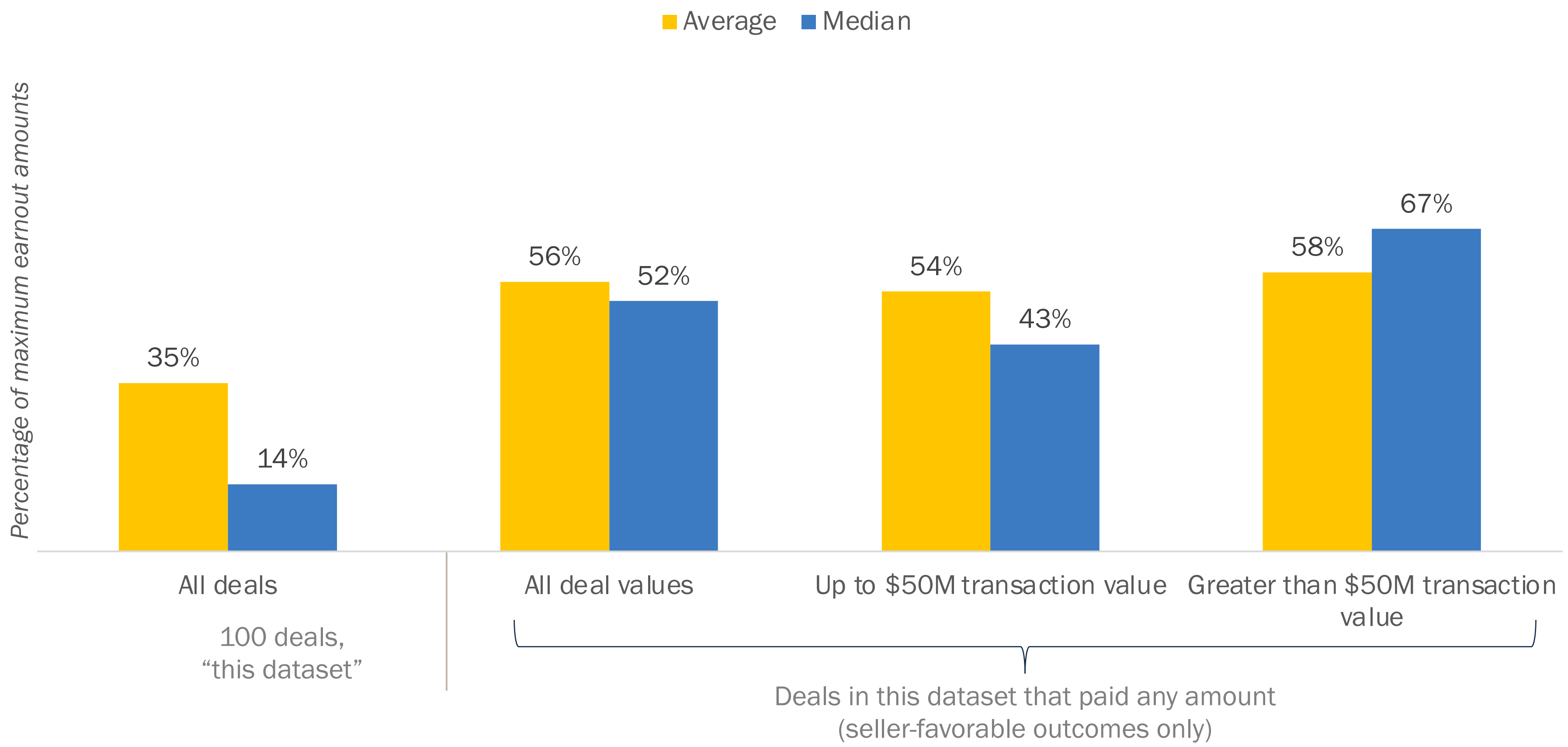
Earnout Achievement Detail

Excluding Life Sciences Deals

KEY FINDING

NEW DATA POINT

EARNOUT ACHIEVEMENT RATES, AS A PERCENTAGE OF MAXIMUM POTENTIAL PAYMENT AMOUNTS



For more information, see the SRS Acquiom article:

A Review of Earnouts in M&A Transactions

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Glossary

Glossary (A–F)

Appraisal rights	Shareholders' statutory right under state law to seek judicial determination of the value of their shares when the corporation is party to a merger. Appraisal rights claims are third-party claims where the buyer seeks indemnification for payments made, or that might be made, to dissenting shareholders.
Capitalization claim	These claims are typically made because a person or entity has claimed that they are entitled to additional merger consideration based upon inaccuracies in the closing capitalization and/or consideration spreadsheet. Includes former and current employees of the target who claim they are due additional merger consideration based on options or similar equity-based pay.
Customer contract claim	Third-party or direct claim type. Claims are placed in this category where the buyer's claim is based on a customer contract of the target. Common examples include claims that the target failed to provide a contracted service or product to the customer. Does not include claims involving contracts with vendors or suppliers of the target.
Earnout	Contingent consideration earned and payable after a set period of time and/or based on the level of achievement of certain milestones such as financial metrics (e.g., revenue, EBITDA, etc.) or operational metrics (e.g., regulatory approval).
Employee claim	Third-party claim type. Examples of claims in this category include claims by former employees involving non-equity-based compensation, lawsuits by former employees for discrimination or harassment, and claims by former consultants that they were in fact employees of the corporation and, as such, entitled to additional compensation.

Escrow	In the M&A context, a portion of the transaction consideration that is held to secure the selling shareholders' indemnification obligations to the buyer. After a predetermined period has passed (the "escrow period"), any amount in the escrow account not claimed by the buyer is released to the selling shareholders. This study does not distinguish between escrows and holdback accounts retained by the buyer for the same purpose.
Expense fund	A voluntary fund set aside by the shareholders from the merger consideration at closing for potential third-party expenses that might be incurred during the post-closing period.
Fees and costs claim	Can be either a direct or third-party claim. These claims may be based on terms such as seller's obligation to pay outstanding transaction costs, or costs relating to audits or litigation disclosed prior to closing.
Financial statements claim	Direct claim type. These claims are based on an alleged breach of representations and warranties regarding the accuracy of the target's financial statements. This may also include claims for a net working-capital adjustment included in the indemnification section rather than as a dedicated, short-term, post-closing adjustment mechanism.
Foreign buyer	Includes foreign companies headquartered outside of the U.S. Both public and private foreign companies are included.
Fraud claim	A claim based on the buyer's allegations that the target and/or selling shareholders committed fraud and/or intentional misrepresentation in connection with the transaction. Common examples include allegations that the target intentionally misrepresented its financial condition or fraudulently concealed certain liabilities.

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Glossary (I–U)

Indemnification	Where one party secures another against suffered losses. In the M&A context, the selling parties almost always agree to indemnify the buyer against certain types of losses that could be suffered in connection with the transaction.
Intellectual property claim	Usually a third-party claim type. Intellectual property claims are often based on alleged patent infringement by the target. Can also include a direct claim by the buyer that the target’s proprietary technology had defects.
“Other breaches of reps & warranties” claim	May be either a direct or third-party claim type. This category includes claims that do not fit into other categories included in this study. Examples of claims in this category include claims for royalty payments, an alleged breach of the “no broker” representation, an alleged breach of the material changes representation and related covenants, claims relating to missed sales due to technology breakdown, or self-audits.
Private buyer	Non-public companies headquartered in the U.S. Also includes companies whose stock is traded on the OTCBB or Pink Sheets and potentially the portfolio companies of private equity firms.
Private Equity (PE) buyer	Buyer that acquires a target as an investment rather than for the purpose of expanding its own business or for other strategic purposes.
Public buyer	Acquiring companies listed on U.S. public stock exchanges, e.g., NYSE or NASDAQ.
Purchase price adjustment (PPA)	A common deal feature where the transaction consideration is adjusted shortly after closing in accordance with a specified financial metric. While there are several metrics used to determine the adjustment, the most common is some variation of a net working-capital formula. As a result, claims in this category are commonly referred to as “Net Working Capital” claims. The adjustment can be in favor of either the buyer or selling shareholders.

Regulatory claim	Claims in this category are based on an alleged breach of the representations and warranties dealing with the target’s compliance with applicable laws.
Representations & warranties	In the context used in this study, a section of the merger agreement where certain assurances are made by the target as to the existence or non-existence of certain facts. These facts typically concern the condition of the target as of the time it is acquired.
Representations & warranties insurance (RWI)	Representations and warranties insurance is purchased to protect against losses arising due to the seller’s breach of certain of its representations in the merger agreement.
Tax claim	Tax claims are based on the target’s alleged failure to pay applicable state, federal, or foreign taxes. Includes, among others, income, sales, and use taxes.
Transaction value	The enterprise value to be paid by the buyer according to the transaction agreement. Does not include contingent consideration or adjustments to the purchase price.
Undisclosed liabilities claim	These claims are based on the target’s alleged failure to disclose a liability in the disclosure schedules. The undisclosed liabilities representation is sometimes used as a catch-all by buyers for unexpected third-party claims that do not fit under the financial statements or material contracts representations. The most common example is a buyer’s claim that the target did not disclose outstanding obligations to a vendor, supplier, or other partner.

The Industry's Most Powerful Deal Analytics Tool

1

The Most Comprehensive View of Deal-term Outcomes

- More than a decade of private-target M&A deal terms in a simple, powerful, visual, interactive online platform

2

Determine "What's Market"

- Compare market data to your deal terms
- Filter data to more closely resemble the deal you're negotiating
- Draw information from more than 4,000 deals—with more added quarterly

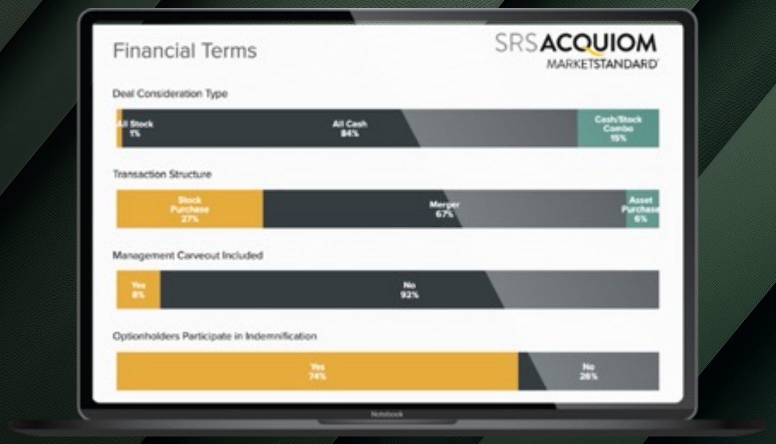
3

Customize Your View of the Data

- You determine what is relevant to your deal to negotiate with real-time knowledge
- Dynamically filter, sort, and explore more than 150 attributes with five different filters

► Visit srsacquiom.com/marketstandard/

SRS ACQUIOM MARKETSTANDARD™



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Additional Resources

- 2024 M&A Deal Terms Study
  https://www.srsacquiom.com/our-insights/deal-terms-study/
- 2024 M&A Working Capital PPA Study
  https://www.srsacquiom.com/our-insights/working-capital-adjustment-to-purchase-price/
- 2023 SRS Acquiom Life Sciences M&A Study
  https://www.srsacquiom.com/resources/life-sciences-deal-terms/
- SRS Acquiom MarketStandard®
  https://www.srsacquiom.com/marketstandard/

Please note that we cannot provide data that can be used to ascertain confidential information about deals or clients.

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