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Why are M&A deal parties thinking twice about RWI?

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Introduction

A common question in private-target M&A is whether escrows and insurance differ in the level of protection offered as a source of recovery for any losses incurred by buyers and as a shield to protect sellers from going out-of-pocket in such cases. Buyers in merger transactions generally want some form of protection against any misrepresentations made by sellers in the merger agreement. That protection has typically taken the form of an escrow, holdback, or insurance. If a buyer does suffer a loss for which it is entitled to indemnification, it will want to be made whole as quickly and efficiently as possible.

Whether RWI is right for a transaction should be a case-by-case determination because every M&A deal is unique. Deal parties are now taking a closer look at whether RWI is best suited to meet their respective needs.

Why It Matters to M&A Deal Parties and Advisors

On private M&A transactions, RWI usage had increased over the last decade but now the market appears to be level-setting after decreasing from the high-water mark in 2021.[1] Deals with RWI often have more seller-favorable reps and warranties language and even indemnification structures, potentially impacting buyer's post-closing protections. Deal parties should arm themselves with data and insights about post closing claims before making an informed decision on RWI.

> "The presence of Representations and Warranties Insurance (RWI) can add time and complexity to M&A indemnification claims..."

1. **Additional Steps:** Obtaining RWI coverage requires diligence, beginning with a look at availability, cost, self insurance retention, coverage, and exclusions.
2. **Additional Time and Complexity:** Post-closing claims data shows that the presence of Representations and Warranties Insurance (RWI) can add time and complexity to M&A indemnification claims, even with most claims not exceeding the policy retention (i.e., the deductible or amount the buyer and/or sellers will need to self-insure).
3. **Additional Claims:** Claims occur slightly more often for deals with RWI, and they take longer to resolve when insurance is involved, although a professional shareholder representative can help when utilized by the deal parties.

In this deep dive of the data, we outline **deal terms and post closing claims data** that show the impact of Representations and Warranties Insurance (RWI) on private-target M&A.

1 *See the 2025 SRS Acquiom M&A Deal Terms Study for additional detail. 42% of 2024 deals in SRS Acquiom's dataset included RWI compared to 44% in 2021. The American Bar Association (ABA) private M&A Deal Points studies also observe a decrease in RWI usage for publicly disclosed M&A deals: 55% for deals closed in 2022 and 2023 Q1, down from 65% for deals closed in 2020 and 2021 Q1, available here.*

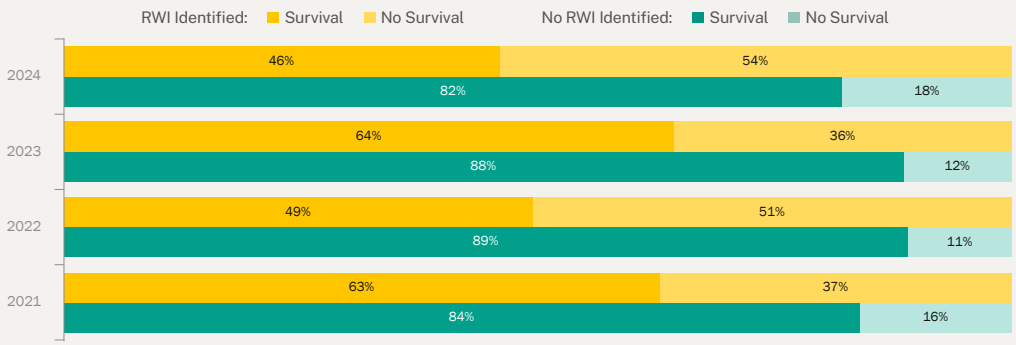
RWI Signifcantly Affects M&A Deal Terms[2]

Indemnification Provisions:

+ Deals with RWI are more likely to be structured as "no survival," or a walk-away.[3] Deals closed in 2024 saw an increase in walk-aways for deals with and without RWI identified.

INFLUENCE OF REPS AND WARRANTIES INSURANCE (2021–2024)

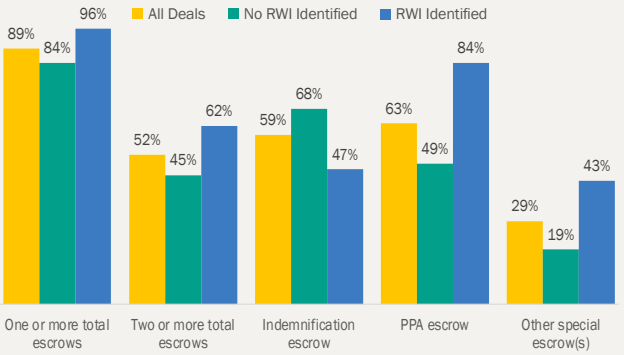
33% of 2024 deals were structured as "no survival."



+ Private M&A is experiencing an increase in the number and size of escrows generally, a trend that is partly driven by the use of RWI. Nearly three in five deals with RWI identified included two or more escrows.

Subset: 2024 deals; includes holdbacks

PERCENTAGE OF ALL DEALS THAT INCLUDE AN ESCROW, BY CATEGORY



Subset: 2024 deals with an indemnification escrow

AGGREGATE SIZE OF ALL ESCROWS AS A PERCENTAGE OF TRANSACTION VALUE

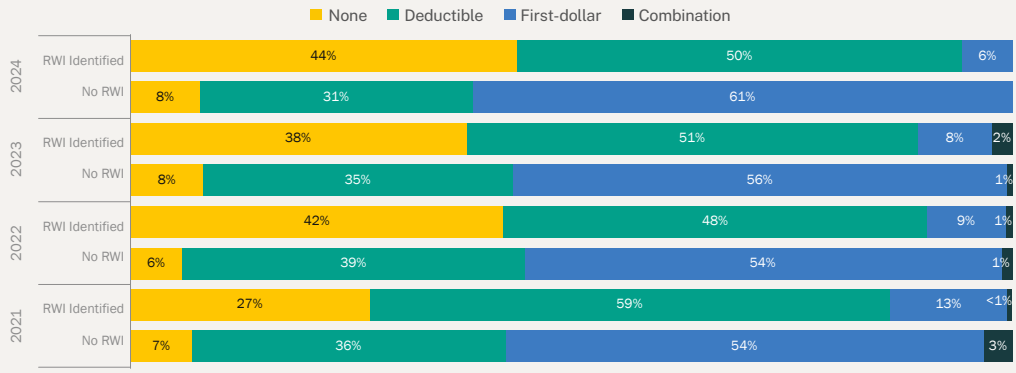
	Average	Median
All Deals	10.25%	10.0%
No RWI Identified	13.2%	11.3%
RWI Identified	4.1%	2.1%

SIZE OF GENERAL INDEMNIFICATION ESCROWS AS A PERCENTAGE OF TRANSACTION VALUE

	Average	Median
All Deals	7.8%	9.0%
No RWI Identified	10.9%	10.0%
RWI Identified	1.4%	0.35%

+ RWI deals are more likely to use a deductible basket or have no basket at all.

BASKET TYPE DISTRIBUTION, DEALS 2021–2024



2 *Source: 2025 SRS Acquiom M&A Deal Terms Study.*
3 *A private M&A transaction where the sellers' general representations and warranties do not survive closing (i.e. the sellers are not on the hook post-closing for any breach of those reps and warranties), but may include certain carve-outs for which the sellers remain liable post-closing, such as for fundamental reps and warranties or special indemnities.*

Deals with RWI See Slightly Higher Claims Frequency

Indemnification claims are typically made on less than half of private-target M&A deals. Data suggests insured deals experience more claims. As a professional shareholder rep, SRS Acquiom does tend to see many early, often smaller-amount claims made on RWI deals as buyers try to burn through the retention.

Deals with SRS Acquiom as the Shareholder Rep:

+ 31% of private M&A deals with RWI identified experienced a claim notice delivered to SRS Acquiom, which is slightly higher than all deals (28%).[4]

RWI Broker and Market Data:

+ Aon reports receiving claim notices against RWI policies as high as 24% for policies placed in 2016 and 16% for policies placed in 2019. Frequency of claims against policies placed in 2020 and 2021 is reported around 12% but with additional claim notifications anticipated for such policies.[6]
+ "[RWI] insurers (not surprisingly) have reported increases in both the frequency and severity of claims in recent years."[7]
+ 61% of claims submitted for RWI coverage fell solely within the retention amount.[7]

> " Insurers have reported increases in both the frequency and severity of claims in recent years."

RWI Claim Payment Times Are Changing

Lowenstein Sandler R&W Insurance Claims Report 2023 — a survey of 154 respondents (private equity, investment banking, strategic buyers, insurance brokers, and insurers).



51% of respondents report that payment of an RWI claim was one to three years from the time the claim was submitted, up from 46% of respondents a few years ago.

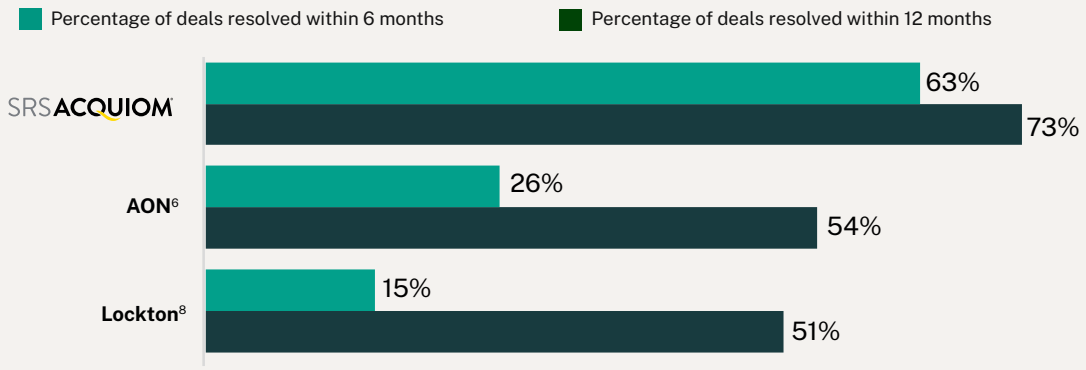
Further, more than 50% of respondents report that it takes more than six months from when a claim was submitted for RWI insurers to provide an initial coverage position for a claim.[7]

4 *2024 M&A Claims Insights Report dataset, which includes deals with RWI (~40%) and without (~60%). Excluding deals without RWI identified from SRS Acquiom's dataset, 55% of claims were resolved within 6 months and 67% were resolved within 12 months, with a median of 4.1 months.*
5 *Sellers may be responsible for half or more of the retention amount under the RWI policy.*
6 *Aon R&W Insurance Claims, presented to the ABA on September 9, 2023, which includes data for claims from 2013.*
7 *Lowenstein Sandler R&W Insurance Claims Report 2023, which included a survey of 154 respondents (private equity, investment banking, strategic buyers, insurance brokers, and insurers).*

Claims Take Longer to Resolve with RWI

Collecting on an insurance policy can be substantially harder than making a claim against an escrow. RWI claims, when compared to conventional deals with escrows, generally take longer to resolve given an insurance company is intricately involved in the claim decision, often with little to no historical familiarity with the deal or target company.

CLAIM RESOLUTION EFFICIENCY: SRS ACQUIOM VS. RWI BROKERS*



* *Euclid Transactional does not provide data on percentage of RWI claims resolved within 6 months, but does report that 74.8% are resolved within 12 months. Euclid Transactional Global Representations and Warranties Insurance Claim Study 2024, which includes data for 1,373 claims since 2016.*

Deals with SRS Acquiom as the Shareholder Rep:

+ **All Deals:** 63% of claims for all deals on which SRS Acquiom was engaged as the shareholder representative were resolved within six months of claim submission; 73% were resolved within 12 months. The median resolution time was 2.8 months.[4]
+ **All Deals with Disputed Claims:** When claims are contested by sellers,[5] 36% were resolved within six months and 60% were resolved within 12 months. The median resolution time was 8.7 months.[4]

RWI Broker Data:

26% of RWI claims tracked by Aon were resolved within six months of claim submission; 54% were resolved within 12 months.[6] Lockton reports that only 15% of RWI claims were resolved within six months, and about 51% were resolved within 12 months.[8] This seems to imply that RWI claims take about a year to resolve, on average.

> "...RWI claims take about a year to resolve, on average."

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7 *Lowenstein Sandler R&W Insurance Claims Report 2023, which included a survey of 154 respondents (private equity, investment banking, strategic buyers, insurance brokers, and insurers).*
8 *Lockton Transaction Liability Insurance: Market Update, The Americas, 2024, which includes data for nearly 550 RWI claims since 2018*

Deal Terms and RWI Claims Data Tell a Cautionary Tale

There are plenty of nuances and landmines for buyers to navigate when using RWI as a part of their indemnification protection. Informed dealmakers put all the data pieces together with the benefit of real life insights from the team of M&A experts at SRS Acquiom.

1. **RWI impacts due diligence.** Coupled with a years-long trend of buyers conducting full due diligence, adding a third-party insurer in the mix can require additional diligence.

2. **RWI adds time and complexity.** RWI claims are time consuming: Post-closing claims processes are often extended and require full-time shepherding.

3. **Policy retentions, limits, and exclusions require bespoke indemnification provisions.** Buyers often work around RWI coverage limitations by requiring additional special indemnity escrows.

4. **A professional shareholder representative can add efficiency.** While the data shows that RWI commonly makes the claims process more painful, it also shows that engaging a professional shareholder rep can help all deal parties resolve post-closing claims more quickly than without.

"Whether RWI is right for your next M&A deal is a case-by-case determination."

Whether RWI is right for your next M&A deal is a case-by-case determination. Deal terms and claims data can help buyers assess the true level of their negotiated protections. The data also helps set reasonable seller expectations about what post-closing risks remain to their hard-fought deal valuation. And while the data itself helps, when coupled with SRS Acquiom's experience administering over 4,400 M&A escrows and as professional shareholder representative on more than 4,000 transactions, over 1,000 of which included RWI, the insights become invaluable. Not to mention, buyers often want, if not outright demand, the deal include the resources and efficiency provided by a professional shareholder representative acting on behalf of the selling shareholders, which is especially relevant when reading what the data tells us about insured deals. RWI is a complicated approach to post-closing protection, proceed with caution.

About the Authors



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Michelle leads the Shareholder Advisory team of attorneys and accountants handling post-closing issues, including escrow claims, earnouts, working capital, tax, and disputes. She has extensive experience negotiating, mediating, and litigating in various forums.

During her federal clerkship, Michelle participated in more than 100 settlement conferences involving a wide variety of claims. Michelle then focused her practice at a leading labor and employment firm, where she specialized in drafting complex employment agreements and advising clients on a broad range of employment issues.

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Kip Wallen is a senior director leading the SRS Acquiom thought leadership practice. Kip has broad experience in M&A and provides guidance on market standards and trends. He leverages his extensive expertise and SRS Acquiom proprietary data to produce resourceful content regularly utilized by market practitioners.

Previously, Kip was a Director with the SRS Acquiom Transactional Group, where he collaborated with clients and counsel to negotiate M&A documents including purchase, escrow, payments, and other transactional agreements. Before joining SRS Acquiom, Kip was an attorney with a Denver-based boutique business law firm where he assisted clients with M&A transactions as well as general corporate governance and securities matters.

Kip received his J.D. from the Sturm College of Law at the University of Denver and an M.S. in Economics, B.S. in Economics and B.A. in International Relations from Lehigh University. He is a member of the Colorado bar.

About SRS Acquiom

SRS Acquiom delivers the smartest way to run a deal® with solutions that reduce the administrative burden in complex transactions. Our M&A services include paying and escrow agent services, online document solicitation and reporting, and professional shareholder representation. For loan and credit transactions, we provide independent Administrative Agent, Collateral Agent, Sub-Agent, and Successor Agent services. Since 2007, we have helped sophisticated deal parties get deals done more efficiently, enabling them to focus on building great businesses and maximizing value.

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