

MERGER & ACQUISITION TRENDS

WILSON CHU, *Dallas*
K & L Gates

LARRY E. GLASGOW, *Dallas*
Gardere Wynne Sewell

State Bar of Texas
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Houston

CHAPTER 12

Wilson Chu is a partner in the Dallas office of K&L Gates, LLP. His practice focuses on US and cross-border M&A and other strategic transactions for clients ranging from Fortune 500 serial acquirors (e.g., Broadcom Corporation, AmerisourceBergen Corporation, and Xerox Corporation) to private equity funds (e.g., Oakhill Investment Management and SunTx Capital Partners) to high-growth, high-impact emerging technology companies in the US and abroad (e.g., Renren Inc (NYSE: RENN), commonly known as "China's Facebook" and Youku.com, Inc., (NYSE: YOKU) "China's Hulu). While he has experience in a wide range of industries, Wilson's practice is heavily-weighted in the technology sector. In a recent mid-year scorecard on www.infostor.com, for example, two of Wilson's deals made the list of "Top 10 Storage Acquisitions in 2010."

As the creator of the ABA's influential M&A Deal Points Studies (published by the ABA's Mergers & Acquisitions Committee), Wilson is widely recognized for his innovative leadership that continues to shape M&A practice in the US and abroad. He is also a member of the Advisory Boards of www.DealLawyers.com and Practical Law Company (US), Conference Chair, and Conference Co-Chair and Founder of the University of Texas M&A Institute. Wilson is recognized as a leading M&A lawyer in numerous publications, including, Chambers, Who's Who Legal - The International Who's Who of Merger & Acquisition Lawyers, The Best Lawyers in America -Corporate Law and Mergers & Acquisitions Law, and Texas Super Lawyers.



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Area(s) of Expertise

- [Corporate](#)
 - [Corporate Governance](#)
 - [Health Care](#)
 - [Mergers and Acquisitions](#)
- [Hospitality Industry](#)
- [Private Equity](#)



Practice Emphasis

Larry Glasgow has more than 25 years of experience assisting public and private corporate clients with corporate finance through offerings of equity and debt, mergers and acquisitions (including distressed acquisition opportunities), private equity matters, workouts, divestitures, restructurings, executive compensation, employment agreements, and general business matters. He has also counseled boards of directors and board committees on corporate governance matters. Additionally, Mr. Glasgow has represented private equity and venture capital funds in making investments in portfolio companies, as well as private equity funded portfolio companies in various capacities, including corporate and securities transactions and other matters.

Mr. Glasgow also has concentrated experience in the health care arena representing and advising physician practice management companies, ambulatory surgery centers, cancer treatment centers, hospitals, physicians, home health agencies, and non-profit health organizations. He also represents clients in connection with transactional, structural, and regulatory issues, managed care contracting, fraud and abuse, anti-kickback legislation, and compliance matters.

Clients and Matters

Mr. Glasgow has provided counsel in a large number of complex transactions involving a wide range of industries, including energy, entertainment, health care, hospitality, and technology.

Education

- J.D., Southern Methodist University Dedman School of Law
- B.B.A., The University of Texas at Austin

Publications and Speeches

Publications

- Co-Author, *They're Real and They're Spectacular: The 2009 Private M&A Target Deals Points*, 14 The M&A Lawyer 2 (Feb. 2010).
- Co-Author, *Hey, I Got Your Market Right Here! – 2007 Private Target Deal Point Study*, 11 The

M&A Lawyer 10 (Nov.–Dec. 2007).

- Co-Author, *Episode One: First Annual Deal Points Study*, 9 The M&A Lawyer 6 (Nov.–Dec., 2005).
- Co-Author, *You Can't Handle the Truth: Fourth Annual Deal Points Study*, 7 The M&A Lawyer 10 (April 2004).
- Co-Author, *Truth or Dare: The Realities of Negotiated Deal Points in M&A*, 16 Financier Worldwide (April 2004).
- Co-Author, *Analyze That: Third Annual Deal Points Study*, 8 Deal Points 2, The Newsletter of the Committee on Negotiated Acquisitions, Business Law Section, American Bar Association (Summer 2003).
- Co-Author, *Analyze That: Third Annual Deal Points Study, Contractual Points to Consider When Acquiring Private Targets*, Bowne Newsletter (July 2003).
- Co-Author, *Analyze That: Third Annual Deal Points Study*, 6 The M&A Lawyer 10 (April 2003).
- Co-Author, *Do Your Homework to Make HIPAA Compliance Less Of A Headache*, 2 Managing Workplace Conflict 11 (Dec. 2002).
- Co-Author, Resource Materials for *Big MACs and Other Deal Point Trends in Private Company M&A*, 2002 Annual Meeting of the American Corporate Counsel Association, Washington, D.C. (Oct. 2002).
- Co-Author, Resource Materials for *Negotiating Public-Private Mergers*, Teleconference Program Sponsored by RR Donnelley Financial (June 2002).
- Co-Author, Resource Materials for *If You Spell HIPAA with Two Ps, This Article is for You*, Privacy Issues/HIPAA/GLBA Teleconference, American Bar Association (May 2002).
- Co-Author, Resource Materials for *Latest Trends in Private Company M&A*, CLE Expo – Principles in Action, Minority Corporate Counsel Association, Atlanta, Ga. (April 2002).
- Co-Author, Resource Materials for *Mergers and Acquisitions: Then & Now*, Negotiated Acquisitions Committee Forum, 2002 Spring Meeting, Business Law Section, American Bar Association, Boston, Mass. (April 2002).
- Author, *To Sell or Not to Sell: A Decision Facing Many Physicians*, 2 Dallas-Fort Worth Medical News 11 (March 1998).
- Author, *To Sell or Not to Sell: A Decision Facing Many Physicians*, 8 Nashville Medical News 9 (March 1998).
- Author, *Foreclosure of Stock, Securities Issues*, Chapter 4, Texas Foreclosure Manual (Author, Mike W. Baggett; Publisher, Sheppard's McGraw-Hill), 1st Edition (1984).

Presentations

- Moderator, M&A Toolbox Series, Gardere Wynne Sewell LLP, Dallas, Texas (Jan.-March 2012).
- Co-Presenter, "Negotiation Trends Briefing: The 2011 ABA Private Target Deal Points Study," Merger and Acquisitions Section, Dallas Bar Association, Dallas, Texas (Feb. 14, 2012).
- Co-Presenter, "M&A Nugget-Palooza," M&A Section, Houston Bar Association, Houston, Texas (Jan. 24, 2012).
- Co-Presenter, "M&A Nugget-Palooza," M&A Section, Houston Bar Association, Houston, Texas (April 6, 2011).
- Presenter, "Choice of Entity," Center for Entrepreneurial Studies, Texas Christian University, Fort Worth, Texas (Feb. 28, 2011).
- Moderator, "Developing Trends in Public Company Takeovers," North Texas Chapter, National Association of Corporate Directors, Dallas, Texas (Feb. 3, 2011).
- Co-Presenter, "The Dance: Mock Negotiations of Key Deal Terms," The University of Texas School of Law, 6th Annual Mergers and Acquisitions Institute, Dallas, Texas (Sept. 30–Oct. 1, 2010).
- Co-Presenter, "Mergers and Acquisitions," Advanced Business Law Strategies Course, State Bar of Texas, San Antonio, Texas (Oct. 21–22, 2010).
- Co-Presenter, "Annual M&A Nugget Palooza," Mergers and Acquisitions Section, Dallas Bar Association, Dallas, Texas (Oct. 12, 2010).
- Co-Presenter, "Due Diligence & Deal Points" and "War Stories: Deals from the Dark Side," Mergers, Acquisitions, and Strategic Transactions, YPO-WPO Business & Personal Development Seminar, Dallas, Texas (April 16, 2010).
- Co-Presenter, "M&A Negotiation Trends: An Update from the 2009 ABA Private Target and Public Target Deal Points Studies," Mergers and Acquisitions Section, Dallas Bar Association, Dallas,

Texas (Dec. 8, 2009).

- Co-Presenter, "M&A Negotiation Trends: Update on Deal Breakers, Catch-alls, and Gotchas," Mergers and Acquisitions Section, Houston Bar Association, Houston, Texas (Nov. 18, 2009).
- Co-Presenter, "M&A Negotiation Trends: Insights from the 2009 Deal Points Study on Private Targets," Mergers and Acquisitions Committee, Business Law Section, American Bar Association Center for Continuing Legal Education, Live Teleconference and Webcast (Nov. 17, 2009).
- Co-Presenter, "M&A Negotiation Trends and Practices," 7th Annual Advanced Business Law Course, State Bar of Texas, Houston, Texas (Oct. 22–23, 2009).
- Co-Presenter, "Mock Negotiations of Key Deal Terms," The University of Texas School of Law, 5th Annual Mergers and Acquisitions Institute, Dallas, Texas (Oct. 15–16, 2009).
- Co-Presenter, "M&A Negotiation Trends and Practices," 6th Annual Advanced Business Law Course, State Bar of Texas, Dallas, Texas (Live Presentation: Oct. 30–31, 2008), and Houston, Texas (Video Presentation: Dec. 11–12, 2008).
- Co-Presenter, "Current M&A Market Deal Points/Trends," 27th Annual Business Law Institute, State Bar of Georgia, Atlanta, Ga. (Oct. 16–17, 2008).
- Co-Presenter, "Mock Negotiations of Key Deal Terms," The University of Texas School of Law, 4th Annual Mergers and Acquisitions Institute, Houston, Texas (Oct. 2–3, 2008).
- Co-Presenter, "What's Truly 'Market' in Today's Market?" 2nd Annual Private Equity SuperConference, Denver, Colo. (Sept. 22–23, 2008).
- Co-Presenter, "M&A Negotiation Trends and Practices," ACG 2008 InterGrowth Conference, Orlando, Fla. (April 9, 2008).
- Co-Presenter, "Latest Deal Terms for Today's M&A Market 2007: American Bar Association Private Target Deal Points Study," West Legalworks, Live Teleconference and Webcast (Jan. 23, 2008).
- Co-Presenter, "Private Targets Mergers & Acquisitions Deal Points Study," Mergers and Acquisitions Section, Houston Bar Association, Houston, Texas (Jan. 17, 2008).
- Co-Presenter, "M&A Negotiation Trends and Practices," 5th Annual Advanced Business Law Course, State Bar of Texas, Houston, Texas (Live Presentation: Oct. 25–26, 2007), and Dallas, Texas (Video Presentation: Dec. 13–14, 2007).
- Co-Presenter, "M&A Negotiation Trends: Insights from the 2007 Deal Points Studies on Private Targets, Public Targets, and Public Target LBOs," M&A Market Trends Subcommittee, Negotiated Acquisitions Committee, Business Law Section, American Bar Association Center for Continuing Legal Education, Live Teleconference and Webcast (Oct. 18, 2007).
- Co-Presenter, "Deal Terms, Trends, and Conditions: 2007 Update," The University of Texas School of Law, 3rd Annual Mergers and Acquisitions Institute, Dallas, Texas (Oct. 4–5, 2007).
- Co-Presenter, "What's Market," CLE International Private Equity Conference, Denver, Colo. (Sept. 27–28, 2007).
- Co-Presenter, "2007 Private Target Mergers and Acquisitions Deal Points Study," 2007 Annual Meeting, Business Law Section, American Bar Association, San Francisco, Calif. (Aug. 10, 2007).
- Co-Presenter, "Negotiating Trends and Practices in Mergers and Acquisitions: Private Targets and Private Equity," National Venture Capital Association Annual Meeting, Washington D.C. (April 17, 2007).
- Co-Presenter, "Negotiating Trends and Practices in Merger and Acquisitions: Private Targets and Private Equity," The Private Equity and Mezzanine Finance Conference, Charlotte, N.C. (Nov. 16–17, 2006).
- Co-Presenter, "Negotiating Trends and Practices in Merger and Acquisitions: Private Targets and Private Equity," The University of Texas School of Law, 2nd Annual Mergers and Acquisitions Institute, Dallas, Texas (Sept. 7–8, 2006).
- Co-Presenter, "First Annual Private Target Mergers & Acquisitions Deal Points Study," National Venture Capital Association Annual Meeting, San Jose, Calif. (April 26, 2006).
- Co-Presenter, "First Annual M&A Deal Points Study," Mergers and Acquisitions Group, Credit Suisse, New York, N.Y. (Feb. 27, 2006).
- Co-Presenter, "First Annual Private Target Mergers & Acquisitions Deal Points Study," Mergers and Acquisitions/Development Special Interest Group, Financial Executives Networking Group (Jan. 31, 2006).
- Co-Presenter, "2005 Private Target M&A Deal Points Study," Mergers and Acquisitions Section, Dallas Bar Association, Dallas, Texas (Dec. 13, 2005).
- Co-Presenter, "Emerging Deal Terms and Practices in Private Company Acquisitions," Private

- Equity and Mezzanine Finance Conference, Charlotte, N.C. (Nov. 17–18, 2005).
- Co-Presenter, “2005 Deal Points Study – Emerging Deal Terms and Practices,” The University of Texas School of Law, 1st Annual Mergers and Acquisitions Institute, Dallas, Texas (Sept. 14–15, 2005).
- Co-Presenter, “Truth or Dare: The Realities of Negotiated M&A Deal Points,” Harris Williams & Co., Richmond, Va. (July 15, 2005).
- Co-Presenter, “Truth or Dare: The Realities of Negotiated M&A Deal Points,” Mergers and Acquisitions Section, Houston Bar Association (May 19, 2005).
- Presenter, “Market Trends Update: The Dynamics and Realities of Negotiated M&A Deal Points,” Advanced Forum on Mergers and Acquisitions, The Canadian Institute, Toronto, Canada (April 15, 2005).
- Presenter, “Choice of Entity,” MBA Program, Cox School of Business, Southern Methodist University, Dallas, Texas (March 23, 2005).
- Co-Presenter, “Truth or Dare: The Realities of Negotiated M&A Deal Points,” Mergers and Acquisitions Subsection, Colorado Bar Association (Dec. 13, 2004).
- Co-Presenter, “Negotiating the Acquisition Agreement – Earnout Provisions; Representations and Warranties,” 9th Annual National Institute on Negotiating Business Acquisitions, Dallas, Texas (Nov. 11–12, 2004).
- Co-Presenter, “Ethical Issues in M&A Transactions,” 9th Annual National Institute on Negotiating Business Acquisitions, Dallas, Texas (Nov. 11–12, 2004).
- Co-Presenter, “2004 M&A Deal Points Study,” Committee Forum of the Negotiated Acquisitions Committee, New Orleans, La. (Oct. 30, 2004).
- Co-Presenter, “M&A Deal Points Study: Truth or Dare: The Realities of Negotiated M&A Deal Points,” Mergers & Acquisitions Group, Credit Suisse/First Boston, New York, N.Y. (Oct. 14, 2004).
- Co-Presenter, “Truth or Dare: The Realities of Negotiated M&A Deal Points,” Mergers and Acquisitions Section, Dallas Bar Association (Sept. 14, 2004).
- Co-Presenter, “Negotiated M&A Deal Point Trends,” TheCorporateCounsel.net (Aug. 2004).
- Co-Presenter, “U.S. M&A Deal Points Study: Truth or Dare: The Realities of Negotiated U.S. M&A Deal Points,” M&A Practice Group, Asahi Koma Law Offices, Tokyo, Japan (June 30, 2004).
- Co-Presenter, “U.S. M&A Deal Points Study: Truth or Dare: The Realities of Negotiated U.S. M&A Deal Points,” M&A Practice Group, Nagashima Ohno & Tsunematsu, Tokyo, Japan (June 29, 2004).
- Presenter, “Truth or Dare: The Realities of Negotiated Deal Points,” Dallas-Fort Worth Chapter, Association of Corporate Counsel, Dallas, Texas (March 18, 2004).
- Co-Presenter, “Truth or Dare: The Realities of Negotiated Deal Points in M&A,” 26th Annual Conference on Securities Regulation and Business Law Problems, Dallas, Texas (Feb. 19–20, 2004).
- Co-Presenter, “Deal Point Trends in Private Company M&A,” Dallas-Fort Worth Chapter, American Corporate Counsel Association, Dallas, Texas (May 2002).
- Co-Presenter, “Business and Legal Decisions Confronting Today’s Physicians,” Gardere Symposium, Dallas, Texas (March 1998).
- Co-Presenter, “Business and Legal Decisions Confronting Today’s Physicians,” Gardere Symposium, Houston, Texas (Feb. 1998).
- Presenter, “Structuring Physician Practice Consolidations,” 1997 Health Care Conference, Dallas Chapter, Texas Society of Certified Public Accountants, Dallas, Texas (June 1997).
- Presenter, “Physician Employment Agreements and Related Issues,” 9th Annual Health Law Conference, Sponsored by The University of Texas School of Law and the Health Law Section of the State Bar of Texas, Houston, Texas (April 1997).

Other Engagements

- Judge, Dallas Business Journal M&A Awards (2009).
- Contributor, The Deal Guys’ Blog, TheCorporateCounsel.net.
- Featured Attorney, “Business Startups in Tough Times,” Business Law Brief, KRLD 1080 AM Radio/ KTRH 740 AM Radio (Feb. 2003).
- Featured Attorney, “Buy-Sell Agreements,” Business Law Brief, KRLD 1080 AM Radio (May 2002).
- Featured Attorney, “Electronic Signatures, Eye on the Internet,” KRLD 1080 AM Radio (April 2001).

- Moderator, Panel Presentation, "Compliance: The Civil and Criminal Environment," Texas Hospital Association Annual Conference and Expo, Dallas, Texas (June 1998).

Professional Affiliations

- Member, American Bar Association
 - Business Law Section
 - Mergers and Acquisitions Committee
 - Founding Co-Chair, Deal Trends Committee
 - Venture Capital and Private Equity Committee
 - Health Law Section
- Member, Dallas Bar Association
 - Mergers and Acquisitions Section
 - Chair (2006–2008)
 - Founding Vice-Chair
 - Health Law Section
- Fellow, Dallas Bar Foundation
- Member, State Bar of Texas
 - Business Law Section
 - Health Law Section
- M&A Institute, The University of Texas School of Law
 - Founding Co-Chair (2005–present)

Honors and Awards

Mr. Glasgow has been regularly recognized in The Best Lawyers in America published by Woodward/White, Inc. (Mergers & Acquisitions Law and Corporate Law), and as one of the Top Rated Lawyers in Mergers and Acquisitions by The American Lawyer and Corporate Counsel magazines. He has also been listed in Texas Super Lawyers published by Law & Politics Media Inc. (Mergers and Acquisitions, Business/Corporate, and Health Care), and as one of "The Best Lawyers in Dallas" by D Magazine. Mr. Glasgow is AV[®] Preeminent[™] Rating 5.0 out of 5 Peer Review Rated in the Martindale-Hubbell[®] PEER REVIEW RATINGS[™].

Community Involvement

- Chairman, Board of Directors and Executive Committee, Business Council for the Arts
 - Co-Chair, 2010 Obelisk Gala and Awards
- Former Member, Council of Patrons, Texas Ballet Theater
- Former Member, Board of Directors, Dallas Summer Musicals
- Former Member, Board of Directors, March of Dimes (Dallas)
- Graduate, Leadership Dallas
- Graduate, Leadership Arts Institute, Business Council for the Arts

2011 Private Target Mergers & Acquisitions Deal Points Study

(For Transactions Completed in 2010)

**A Project of the Mergers & Acquisitions Market Trends Subcommittee,
Mergers & Acquisitions Committee of the American Bar Association Business Law Section**



2011 Private Target M&A Deal Points Study (For Transactions Completed in 2010)

**A Project of the M&A Market Trends Subcommittee,
Mergers & Acquisitions Committee
of the American Bar Association's Business Law Section**

Subcommittee Chair

Jessica C. Pearlman, K&L Gates LLP

Past Subcommittee Chairs

Wilson Chu, K&L Gates LLP (Founding Subcommittee Chair)

Larry Glasgow, Gardere Wynne Sewell, LLP (Founding Subcommittee Chair)

Keith A. Flaum, Dewey & LeBoeuf LLP

James R. Griffin, Dewey & LeBoeuf LLP

Chair, Mergers & Acquisitions Committee

Leigh Walton, Bass Berry & Sims PLC

2011 Private Target Study Working Group

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DISCLAIMERS

The findings presented in this Study do not necessarily reflect the personal views of the Working Group members or the views of their respective firms. In addition, the acquisition agreement provisions that form the basis of this Study are drafted in many different ways and do not always fit precisely into particular "data point" categories. Therefore, Working Group members have had to make various judgment calls regarding, for example, how to categorize the nature or effect of the provisions. As a result, the conclusions presented in this Study may be subject to important qualifications that are not expressly articulated in this Study.

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2011 Private Target Study Working Group

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M&A Market Trends Subcommittee, Mergers & Acquisitions Committee, <http://apps.americanbar.org/dch/committee.cfm?com=CL560003>

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2011 Private Target Study Working Group

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Mark Seneca Orrick Herrington & Sutcliffe LLP Menlo Park, CA	Tyler J. Sewell Morrison & Foerster LLP Denver, CO	Ryan Spiers Cooley LLP Palo Alto, CA
John E. Stoddard III Drinker Biddle & Reath LLP Princeton, NJ	Mark Stoneman Armstrong Teasdale LLP St. Louis, MO	Ben Straughan Perkins Coie LLP Seattle, WA
Jay Sullivan Goodwin Procter LLP Boston, MA	Kevin Sullivan Weil, Gotshal & Manges LLP Boston, MA	Brett Thorstad Weil, Gotshal & Manges LLP Dallas, TX
Jeff Vincent Grey Mountain Partners Boulder, CO	Samuel Wales McDermott Will & Emery Chicago, IL	Isabella Wezdecki Johnson & Johnson New York, NY
Rhys Wilson Nelson Mullins Riley & Scarborough LLP Atlanta, GA	Iain Wood Haynes and Boone LLP Dallas, TX	Tina Woodside Gowling Lafleur Henderson LLP Toronto, Canada
	Matt Zmigrosky Haynes and Boone LLP Dallas, TX	

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2011 Private Target Study Sample Overview

- ◆ This Study analyzes publicly available acquisition agreements for transactions completed in 2010 that involved private targets being acquired by public companies. The previous studies published in 2009 and 2007 analyzed such agreements for transactions completed in 2008 and 2006, respectively.
- ◆ The final Study sample of 100 acquisition agreements excludes agreements for transactions in which the target was in bankruptcy, reverse mergers, and transactions otherwise deemed inappropriate for inclusion. Asset deals comprised 17% of the Study sample.

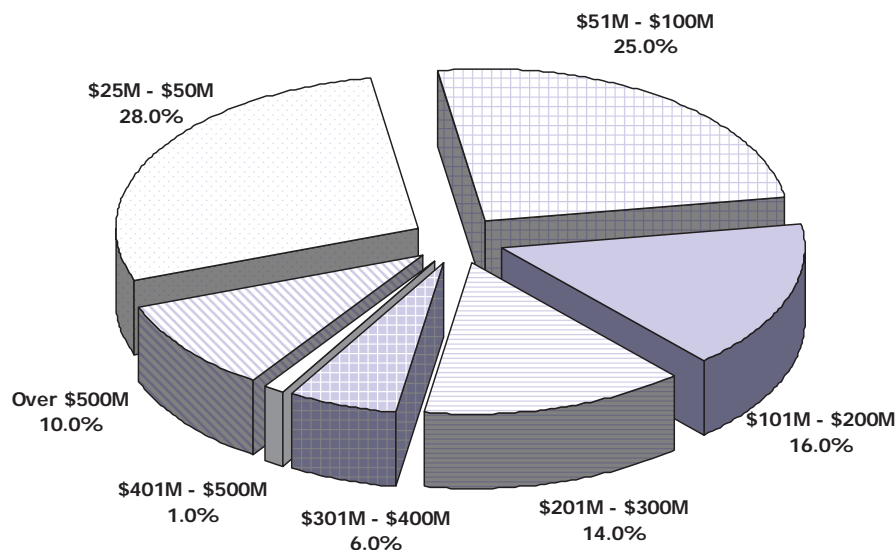
Transaction Value* Range	# of Deals	Closing	
		<i>Deferred</i>	<i>Simultaneous Sign-and-Close</i>
\$25M - \$960M	100	70%	30%

* For purposes of this Study, it is assumed that transaction value as determined by Westlaw Business is equal to "Purchase Price" as that term is used in the underlying acquisition agreements.

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2011 Private Target Study Sample Overview (by transaction value)*

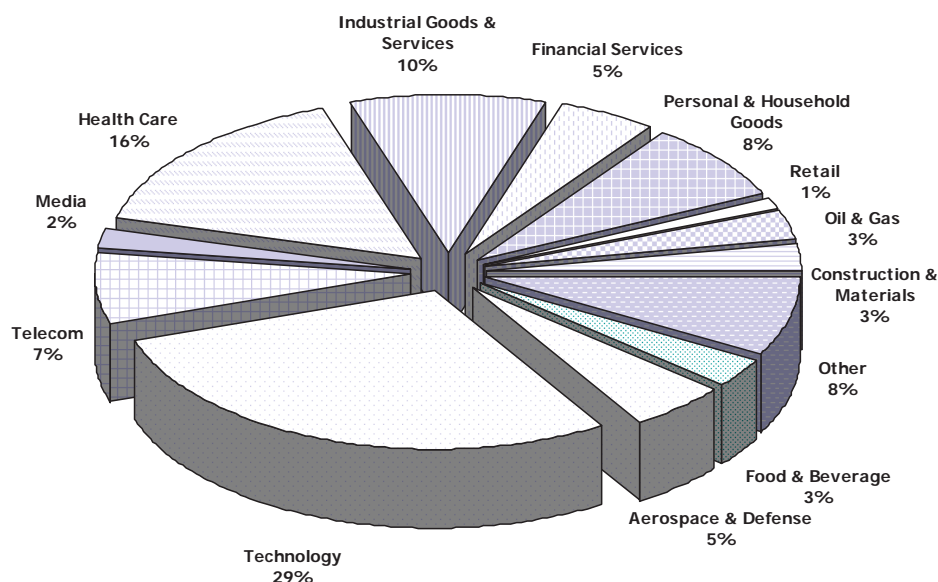


* For the Study sample, the average transaction value was \$175.99 million and the median transaction value was \$90 million. Excludes uncapped earnouts and assumption of debt.

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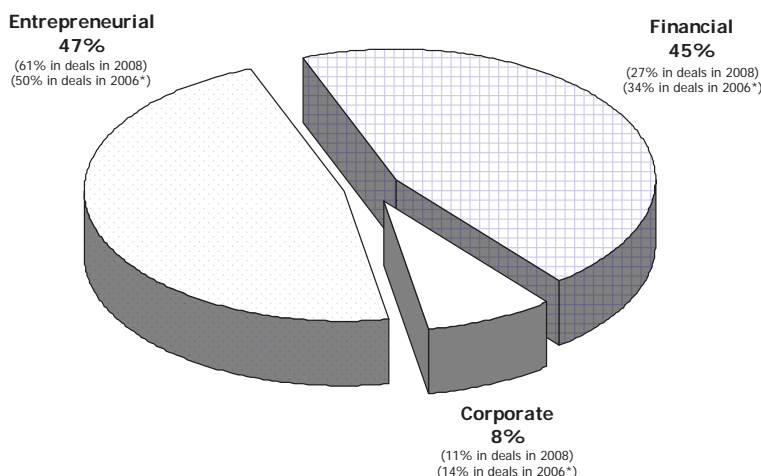
2011 Private Target Study Sample Overview (by industry)



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2011 Private Target Study Sample Overview (by nature of principal sellers)



Entrepreneurial: founders appear to dominate management/ownership

Corporate: founders appear not to dominate management/ownership (other than "Financial")

Financial: backed by financial sponsors (including VCs) who appear to have significant influence/control

* Approximately 1% of deals in 2006 were indeterminable.

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Financial Provisions

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Financial Provisions

Post-Closing Purchase Price Adjustments

The “Adjustment Amount” (which may be a positive or negative number) will be equal to the amount determined by subtracting the Closing Working Capital from the Initial Working Capital. If the Adjustment Amount is positive, the Adjustment Amount shall be paid by wire transfer by Seller to an account specified by Buyer. If the Adjustment Amount is negative, the difference between the Closing Working Capital and the Initial Working Capital shall be paid by wire transfer by Buyer to an account specified by Seller.

...

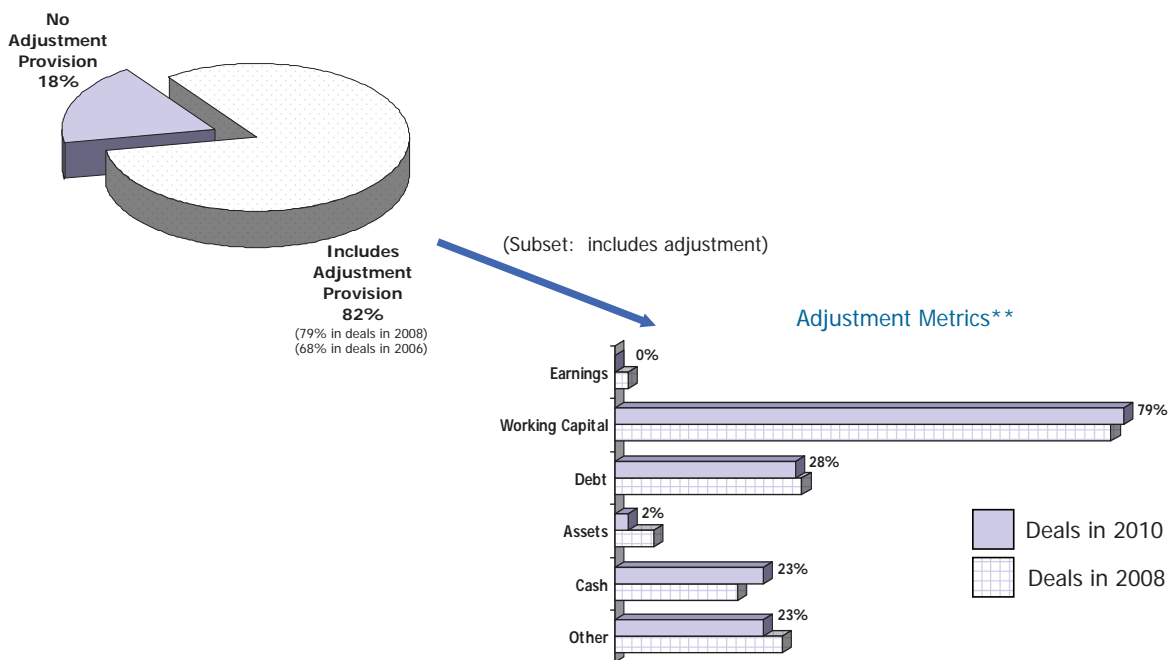
“Working Capital” as of a given date shall mean the amount calculated by subtracting the current liabilities of Seller... as of that date from the current assets of Seller... as of that date. The Working Capital of Seller as of the date of the Balance Sheet (the “Initial Working Capital”) was _____ dollars (\$_____).

(ABA Model Asset Purchase Agreement)

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Post-Closing Purchase Price Adjustments*



* Excludes one deal with two closings.

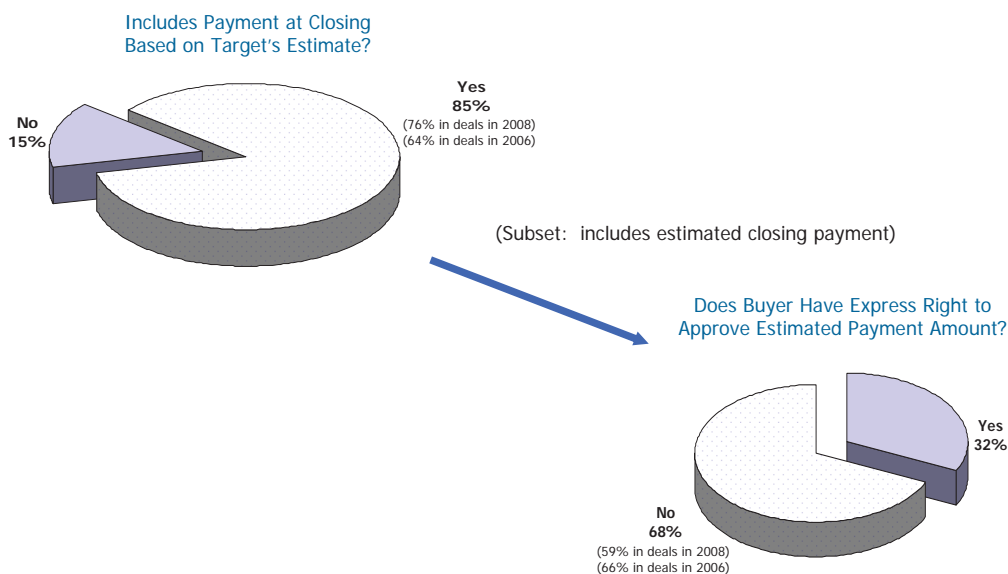
** 42% of the post-closing purchase price adjustments were based on more than one metric.

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Post-Closing Purchase Price Adjustments – Estimated Payments at Closing

(Subset: deals with post-closing purchase price adjustment)



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Post-Closing Purchase Price Adjustments – Working Capital Excludes Tax-Related Items

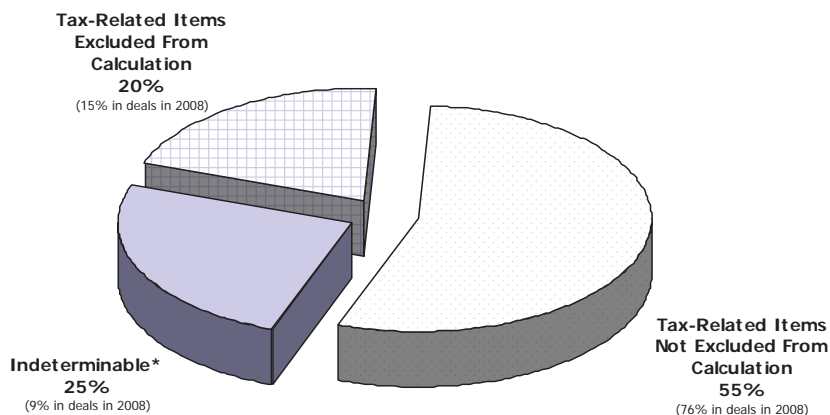
“Adjusted Working Capital” means current assets minus current liabilities; provided, however, that “Adjusted Working Capital” **excludes from current assets all tax assets and excludes from current liabilities all tax liabilities.**

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Post-Closing Purchase Price Adjustments – Working Capital Excludes Tax-Related Items

(Subset: deals with working capital purchase price adjustment)



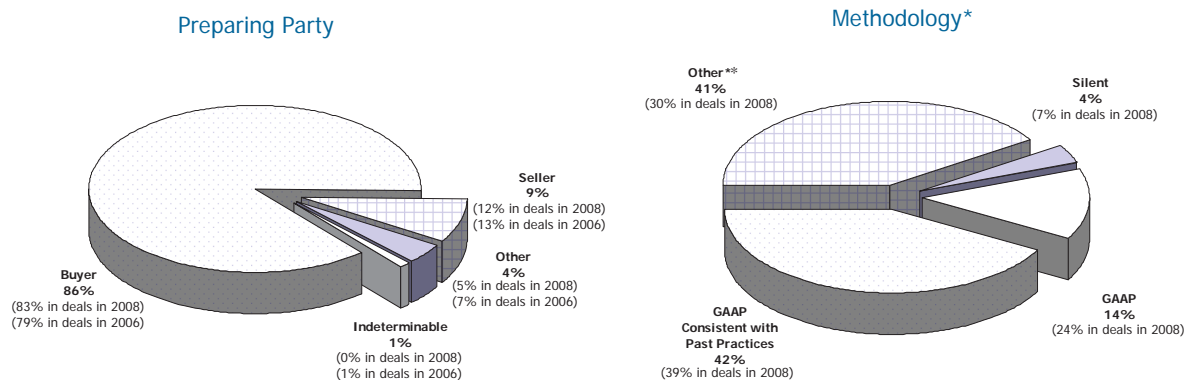
* Includes deals where provisions relating to working capital were contained in unfiled exhibits or schedules.

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Post-Closing Purchase Price Adjustments – Preparation of Closing Balance Sheet

(Subset: deals with post-closing purchase price adjustment)



* Percentages total 101% due to rounding.

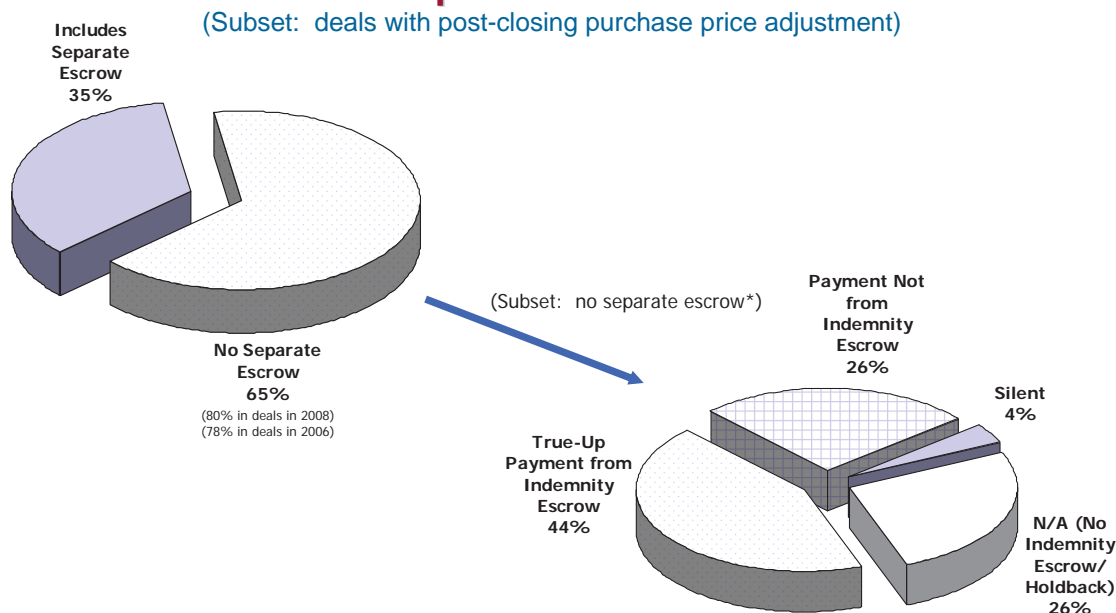
** Other commonly used methodology was GAAP as modified in the language of the agreement, or by the principles and changes set forth on a schedule.

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Post-Closing Purchase Price Adjustments – Separate Escrow

(Subset: deals with post-closing purchase price adjustment)



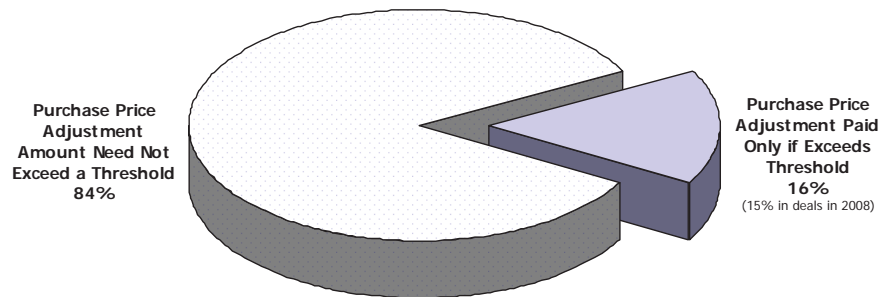
* Prior data omitted, as the previous Study omitted deals with no indemnity escrow/holdback from this calculation.

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Post-Closing Purchase Price Adjustments – Threshold

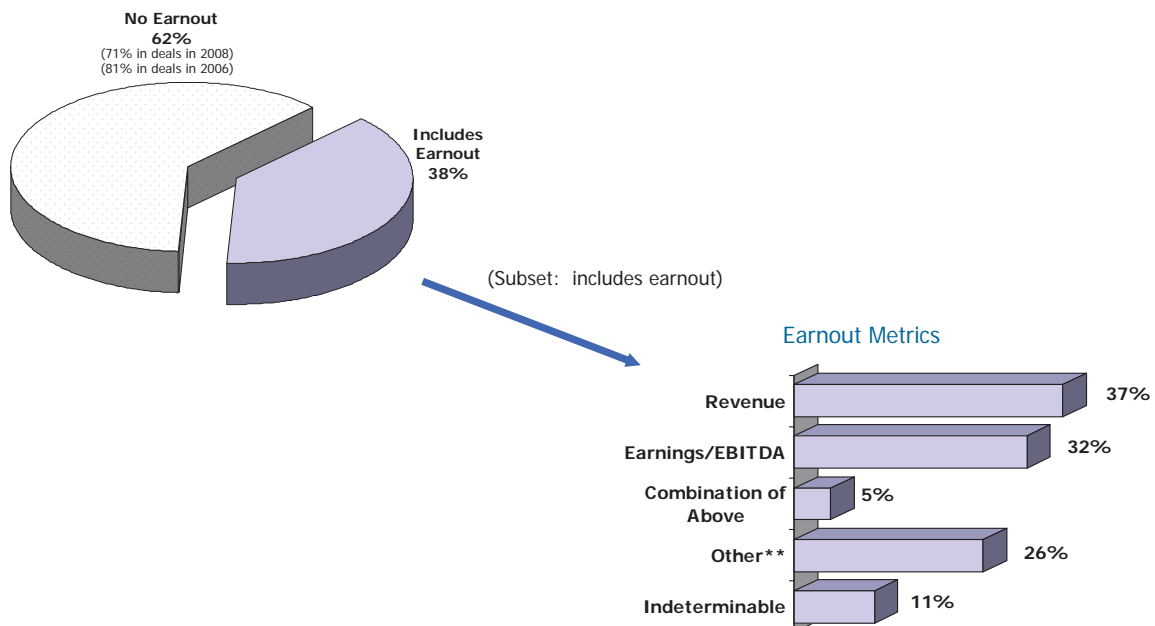
(Subset: deals with post-closing purchase price adjustment)



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Earnouts*



* Excludes one deal with two closings.

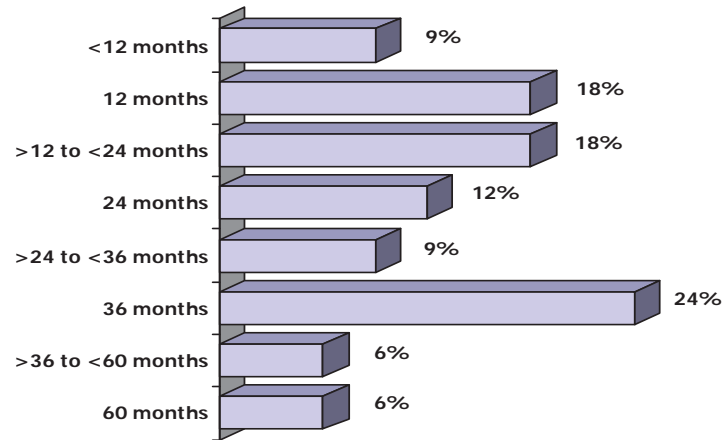
** Examples: gross margin; meeting certain thresholds under third-party contracts; achievement of sales quotas.

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Earnouts – Period of Earnout

(Subset: deals with earnouts*)



* Excludes 4 deals where provisions relating to period of the earnout were redacted or included in unfiled agreements or schedules and one deal with two closings. 2010 percentages total 102% due to rounding.

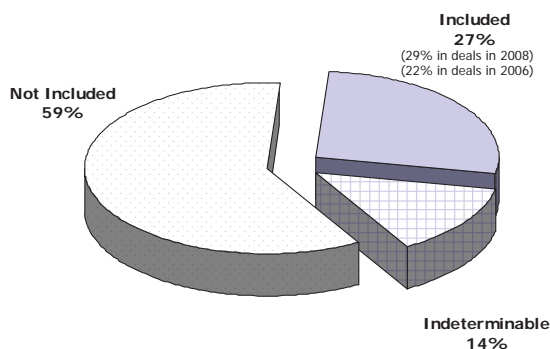
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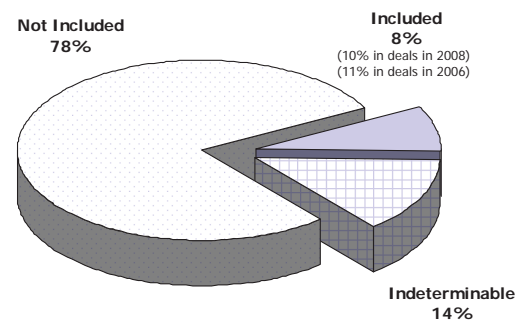
Earnouts – Buyer's Covenants as to Acquired Business

(Subset: deals with earnouts*)

Covenant to Run Business
Consistent with Past Practice



Covenant to Run Business
to Maximize Earnout



* Excludes one deal with two closings.

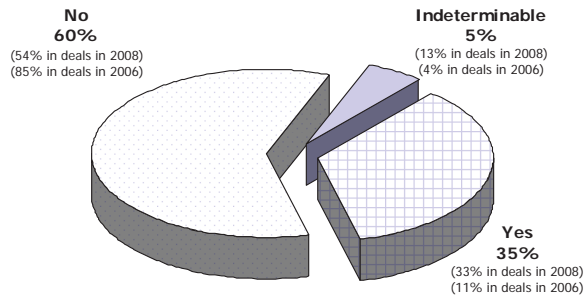
M&A Market Trends Subcommittee, Mergers & Acquisitions Committee, <http://apps.americanbar.org/dch/committee.cfm?com=CL560003>

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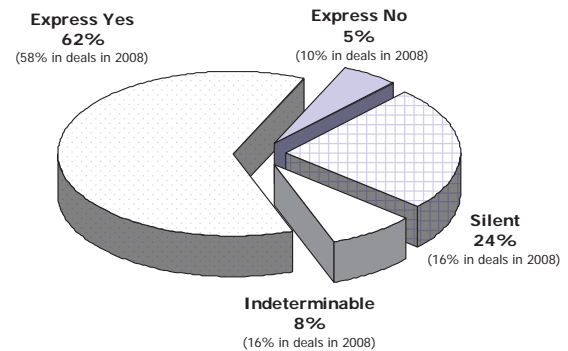
Earnouts – Acceleration and Offsets

(Subset: deals with earnouts*)

Does the Earnout Expressly
Accelerate on a Change of Control?



Can Buyer Offset Indemnity
Payments Against Earnout?***



* Excludes one deal with two closings.

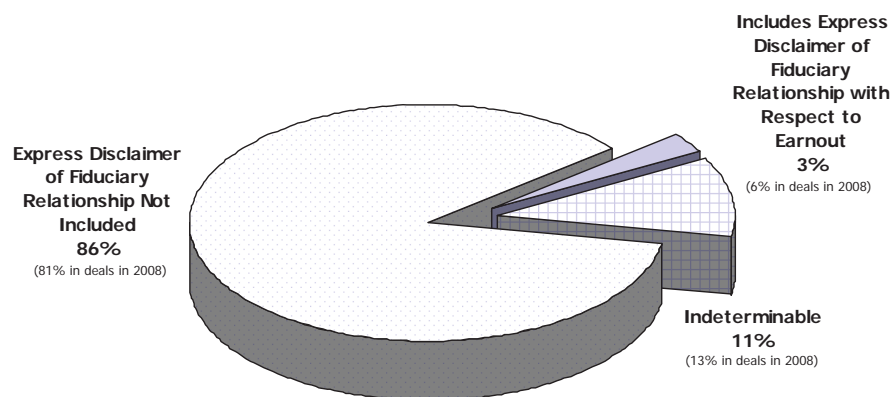
** Percentages total 99% due to rounding.

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Earnouts – Express Disclaimer of Fiduciary Relationship

(Subset: deals with earnouts*)



* Excludes one deal with two closings.

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Pervasive Qualifiers

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Pervasive Qualifiers

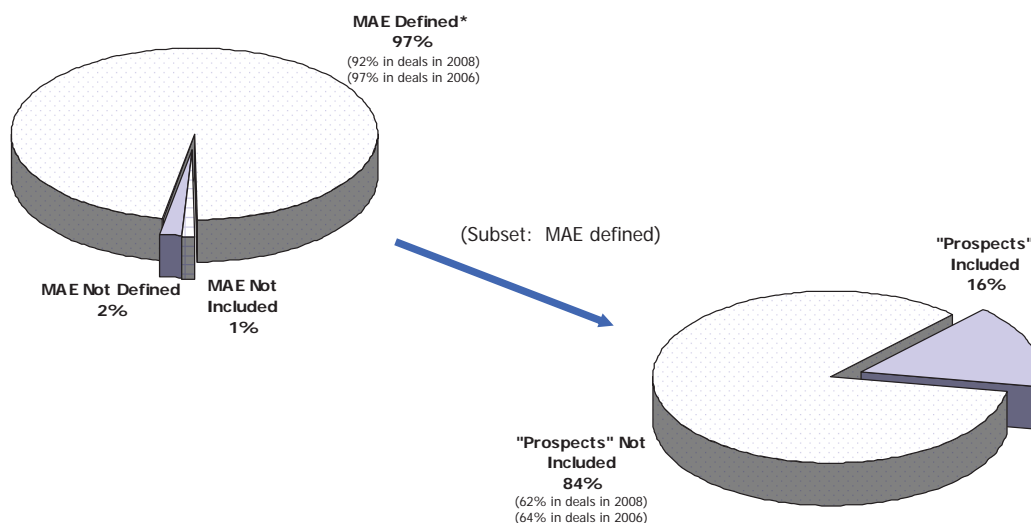
Definition of “Material Adverse Effect”

“Material Adverse Effect” means any result, occurrence, fact, change, event or effect that has a materially adverse effect on the business, assets, liabilities, capitalization, condition (financial or other), results of operations or prospects of Target.

M&A Market Trends Subcommittee, Mergers & Acquisitions Committee, <http://apps.americanbar.org/dch/committee.cfm?com=CL560003>

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Definition of "Material Adverse Effect"



* Excludes two agreements for which the applicable provisions were included on an unfiled schedule.

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Definition of "Material Adverse Effect" – Forward Looking Standards

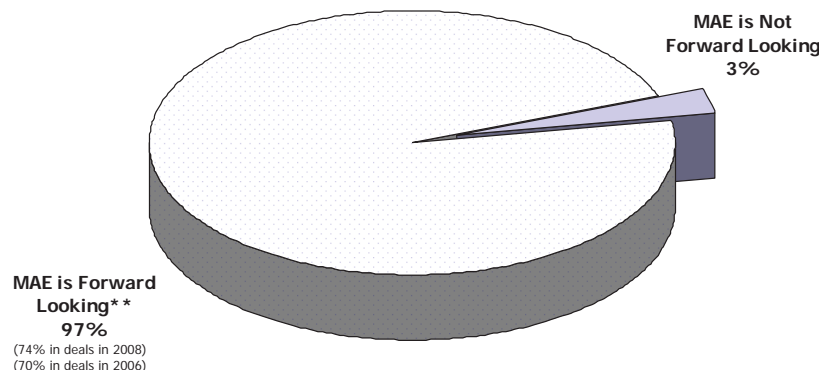
"Material Adverse Effect" means any result, occurrence, fact, change, event or effect that has, or could reasonably be expected to have, a materially adverse effect on the business, assets, liabilities, capitalization, condition (financial or other), results of operations or prospects of Target.

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Definition of “Material Adverse Effect” – Forward Looking Standards*

(Subset: deals with MAE definition)



* Because many agreements use multiple forward looking standards (e.g., “would be” or “could be”), often without a discernible consistency regarding the use of each standard, data as to the prevalence of various forward looking standards is omitted.

** Includes both deals where the MAE definition included forward looking language and deals where the MAE definition did not include forward looking language but forward looking language was predominantly used in conjunction with the use of the defined term in the body of the agreement.

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Definition of “Material Adverse Effect” – Buyer’s Ability to Operate Target’s Business Post Closing Target’s Ability to Consummate Contemplated Transaction

“Material Adverse Effect” means any result, occurrence, fact, change, event or effect that is or could reasonably be expected to have a materially adverse effect on (i) the business, assets, liabilities, capitalization, condition (financial or other), or results of operations of Target, (ii) **Seller’s ability to consummate the transactions contemplated hereby**, or (iii) **Buyer’s ability to operate the business of Target immediately after Closing in the manner operated by Seller before Closing**.

Definition of “Material Adverse Effect” – Includes Reference to Specific Dollar Amount Threshold

“Material Adverse Effect” means any result, occurrence, fact, change, event or effect that is or could reasonably be expected to (a) be materially adverse to (i) the business, assets, properties, condition (financial or otherwise), or results of operations of the Target and its subsidiaries, taken as a whole, or (ii) the ability of the Target to perform its obligations under this Agreement or (b) result in losses to the Target and its subsidiaries, taken as a whole, **in an aggregate amount equal to or exceeding \$4,500,000.00.**

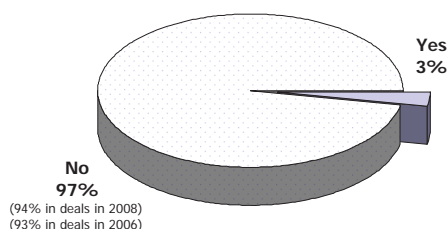
M&A Market Trends Subcommittee, Mergers & Acquisitions Committee, <http://apps.americanbar.org/dch/committee.cfm?com=CL560003>

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Release #: 17Jan12

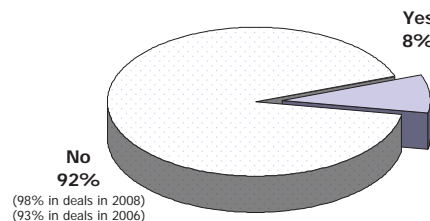
Definition of “Material Adverse Effect”

(Subset: deals with MAE definition)

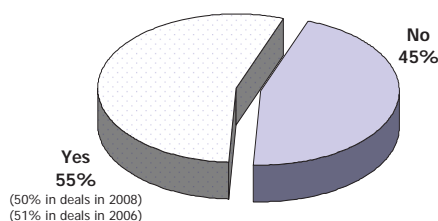
Includes Buyer's Ability to
Operate Target's Business Post Closing



Includes Reference to Specific Dollar
Amount Threshold



Includes Target's Ability to
Consummate Contemplated Transaction



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Definition of “Material Adverse Effect” – Carve Outs

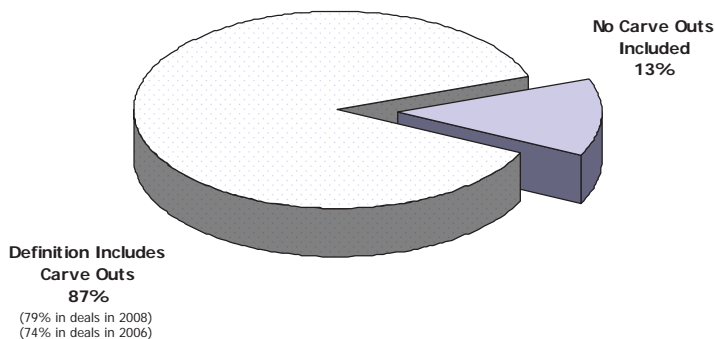
“Material Adverse Effect” means..., **except to the extent resulting from** (A) changes in general local, domestic, foreign, or international economic conditions, (B) changes affecting generally the industries or markets in which Company operates, (C) acts of war, sabotage or terrorism, military actions or the escalation thereof, (D) any changes in applicable laws or accounting rules or principles, including changes in GAAP, (E) any other action required by this Agreement, or (F) the announcement of the Transactions.

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Definition of “Material Adverse Effect” – Carve Outs

(Subset: deals with MAE definition*)



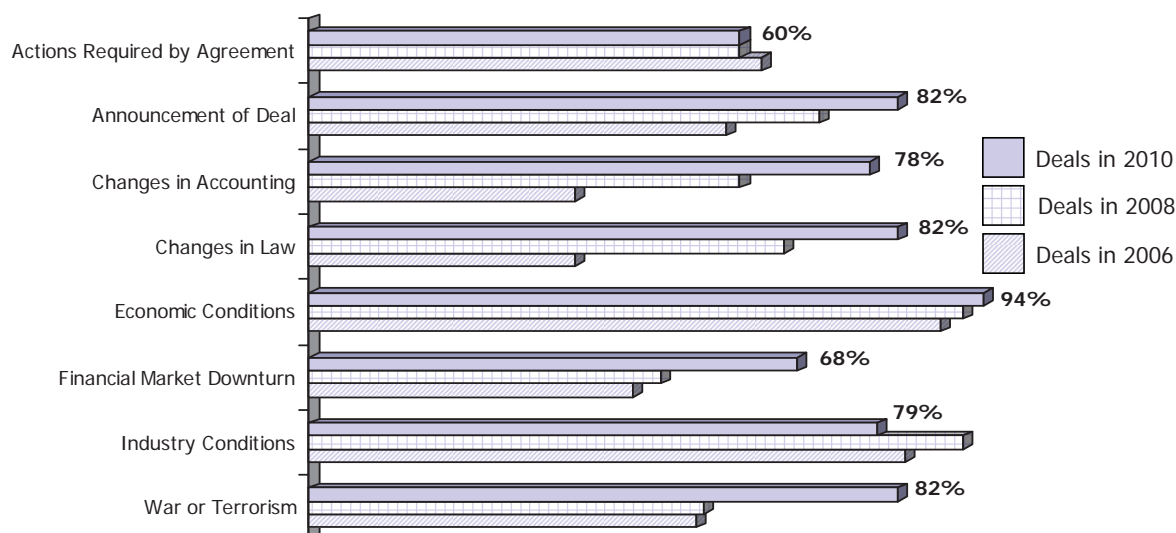
* Excludes two agreements for which the applicable provisions were included on an unfiled schedule and one deal where carve outs were subject to confidential treatment.

M&A Market Trends Subcommittee, Mergers & Acquisitions Committee, <http://apps.americanbar.org/dch/committee.cfm?com=CL560003>

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Definition of “Material Adverse Effect” – Carve Outs

(Subset: deals with MAE definition with carve outs*)



* Excludes two agreements for which the applicable provisions were included on an unfiled schedule and one deal where carve outs were subject to confidential treatment.

M&A Market Trends Subcommittee, Mergers & Acquisitions Committee, <http://apps.americanbar.org/dch/committee.cfm?com=CL560003>

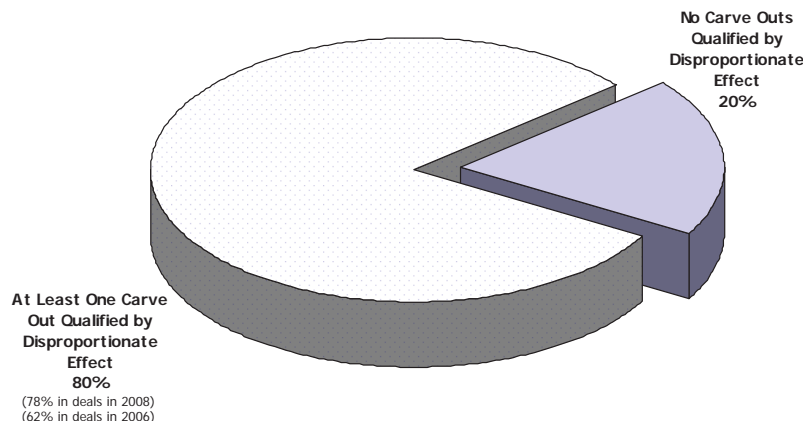
2011 Private Target Study, slide 35
Release #: 17Jan12

Definition of “Material Adverse Effect” – Carve Out(s) Qualified by Disproportionate Effect

“Material Adverse Effect” means..., except to the extent resulting from (A) changes in general local, domestic, foreign, or international economic conditions, (B) changes affecting generally the industries or markets in which Company operates, (C) acts of war, sabotage or terrorism, military actions or the escalation thereof, (D) any changes in applicable laws or accounting rules or principles, including changes in GAAP, (E) any other action required by this Agreement, or (F) the announcement of the Transactions **(provided that such event, change, or action does not affect Company in a substantially disproportionate manner).**

Definition of “Material Adverse Effect” – Carve Out(s) Qualified by Disproportionate Effect

(Subset: deals with MAE definition with carve outs*)



* Excludes two agreements for which the applicable provisions were included on an unfiled schedule and one deal where carve outs were subject to confidential treatment.

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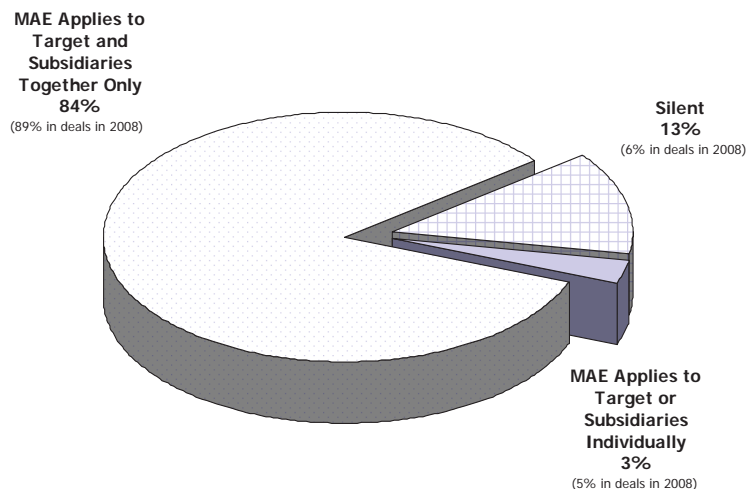
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Definition of “Material Adverse Effect” – Application to Individual Subsidiaries

“Material Adverse Effect” means any result, occurrence, fact, change, event or effect that is or could reasonably be expected to have a materially adverse effect on (i) the business, assets, liabilities, capitalization, condition (financial or other), or results of operations of **Target or any of its Subsidiaries**, or (ii) Seller’s ability to consummate the transactions contemplated hereby.

Definition of “Material Adverse Effect” – Application to Individual Subsidiaries

(Subset: deals with MAE definition*)



* Excludes 30 deals where the target had no subsidiaries and two agreements for which the applicable provisions were included on an unfiled schedule.

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Knowledge – Standards

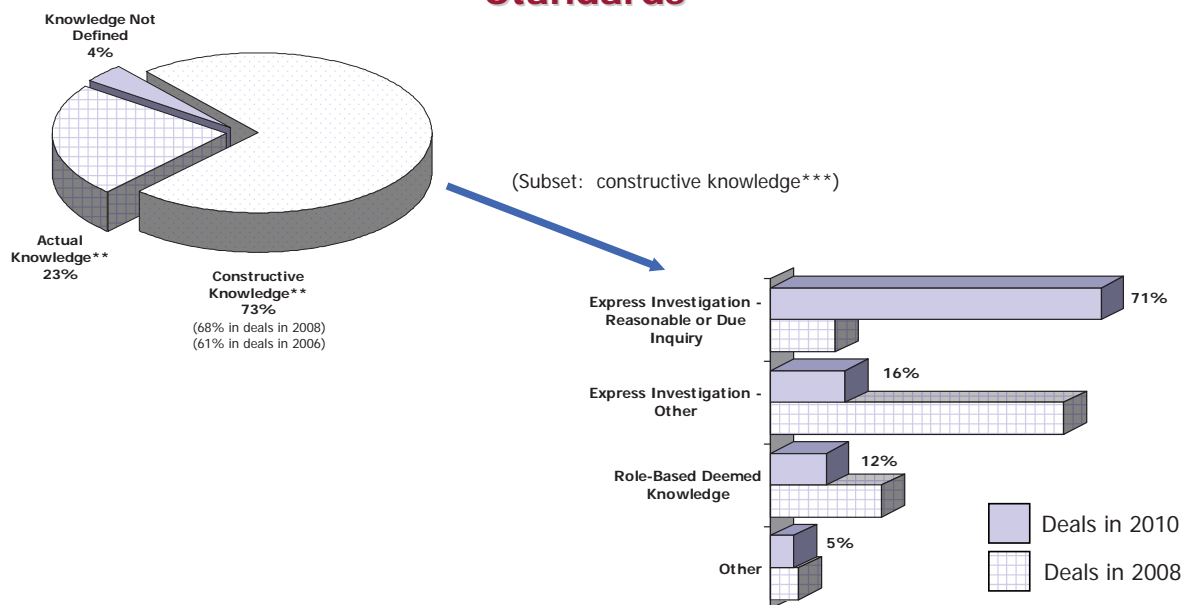
Actual Knowledge

“Knowledge” means the actual knowledge of the directors and officers of Target.

Constructive Knowledge (Role-Based Deemed Knowledge)

“Knowledge of the Target” means the actual knowledge of the Chief Executive Officer, the President and the Chief Financial Officer of Target and the knowledge that each such person would reasonably be expected to obtain in the course of diligently performing his or her duties for the Target.

Knowledge – Standards*



* Excludes one agreement for which the applicable provisions were included on an unfiled schedule.

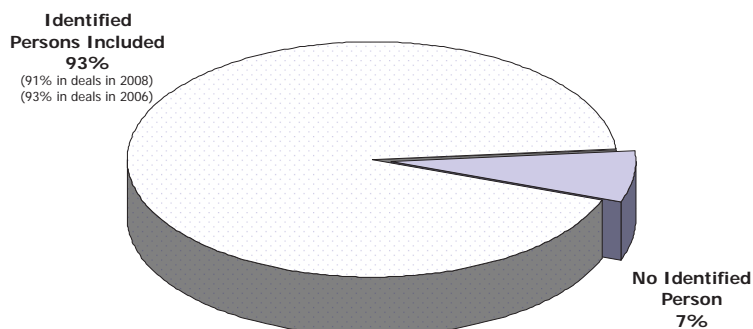
** Includes one agreement with both actual knowledge and constructive knowledge provisions.

*** 4% include more than one constructive knowledge element, e.g., role-based deemed knowledge and an express investigation requirement.

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Knowledge – Whose Knowledge is Imputed to Target?*



* Excludes one agreement for which the applicable provisions were included on an unfiled schedule.

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Target's Representations, Warranties, and Covenants

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Target's Representations, Warranties, and Covenants

Financial Statements – “Fair Presentation” Representation

“Fairly presents” is GAAP qualified

The financial statements fairly present (and the financial statements delivered pursuant to Section 5.8 will fairly present) the financial condition and the results of operations, changes in shareholders' equity and cash flows of [Target] as at the respective dates of and for the periods referred to in such financial statements, **all in accordance with GAAP**.

(ABA Model Asset Purchase Agreement)

“Fairly presents” is not GAAP qualified

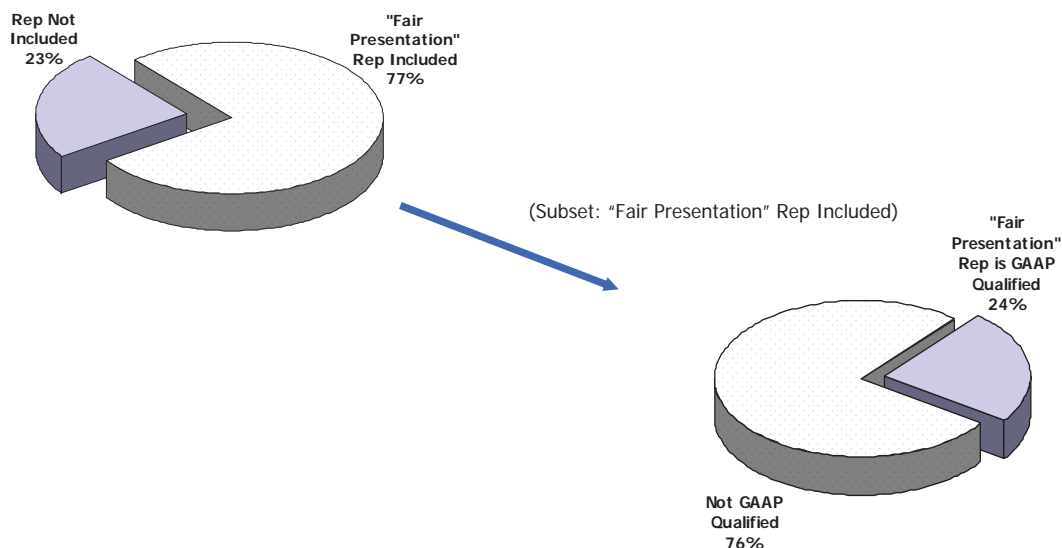
The Financial Statements (i) fairly present the consolidated financial condition and the results of operations, changes in shareholders' equity, and cash flows of the Company and its Subsidiaries as at the respective dates of, and for the periods referred to in, the Financial Statements, and (ii) were prepared in accordance with GAAP, subject, in the case of the Unaudited Financial Statements, to normal recurring year-end adjustments.

(ABA Model Stock Purchase Agreement, Second Edition)

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Financial Statements – “Fair Presentation” Representation



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“No Undisclosed Liabilities” Representation

Buyer-Favorable Formulation

Target has no liability except for liabilities reflected or reserved against in the Balance Sheet or the Interim Balance Sheet and current liabilities incurred in Target's ordinary course of business since the date of the Interim Balance Sheet.

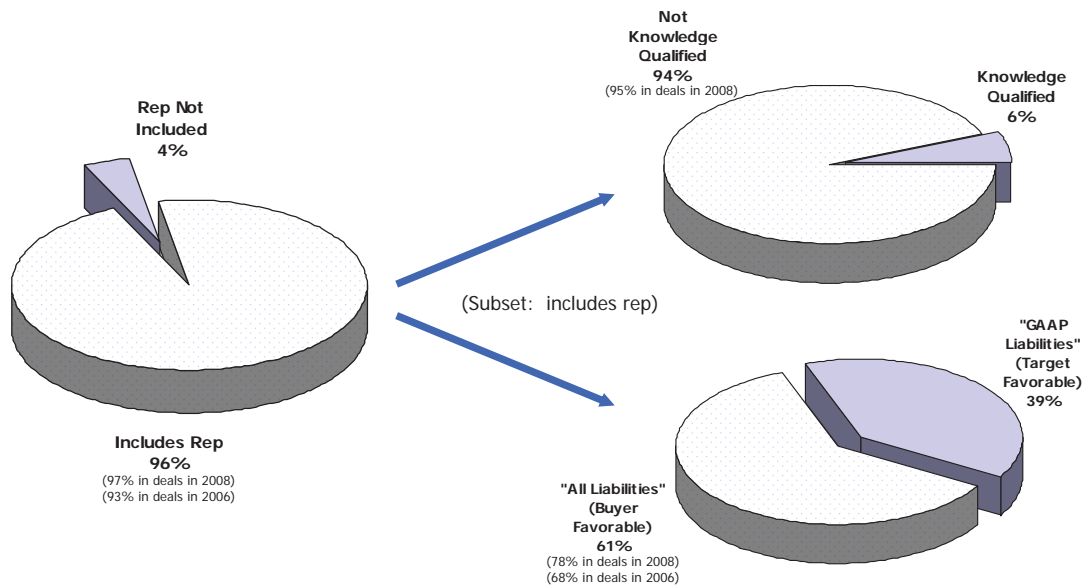
Target-Favorable Formulation

Target has no liability of the nature required to be disclosed in a balance sheet prepared in accordance with GAAP except for...

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"No Undisclosed Liabilities" Representation



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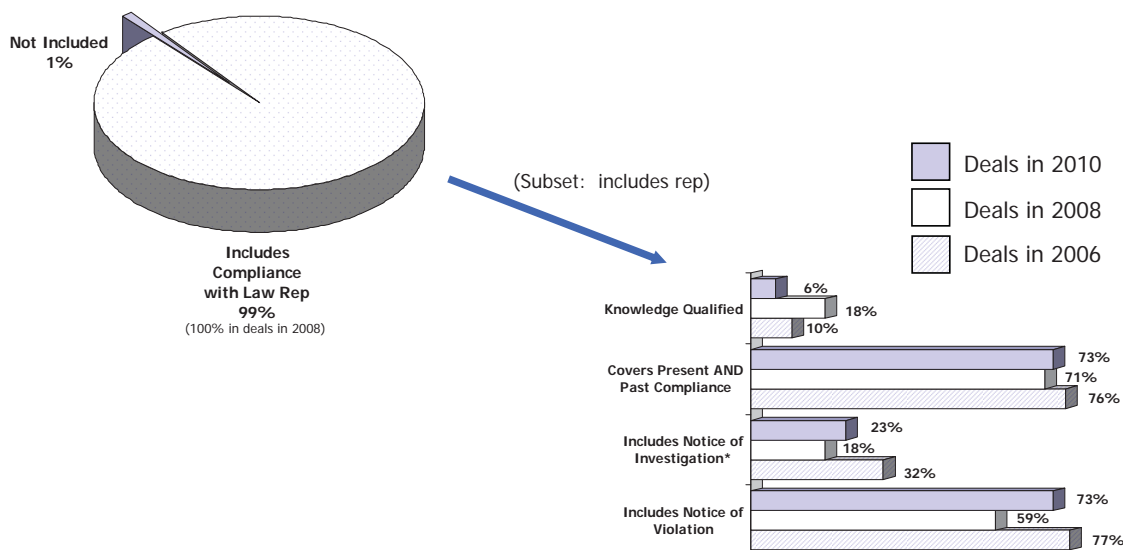
Compliance with Law Representation

[To the Sellers' knowledge,] the business of Target [has been and] is being conducted in compliance with all applicable laws.

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Compliance with Law Representation



* Does not test whether notice of investigation requirement appears in other representations.

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"10b-5"/Full Disclosure Representation

"10b-5" Formulation

No representation or warranty or other statement made by [Target] in this Agreement, the Disclosure Letter, any supplement to the Disclosure Letter, the certificates delivered pursuant to Section 2.7(a) or otherwise in connection with the Contemplated Transactions contains any untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading.

Full disclosure Formulation

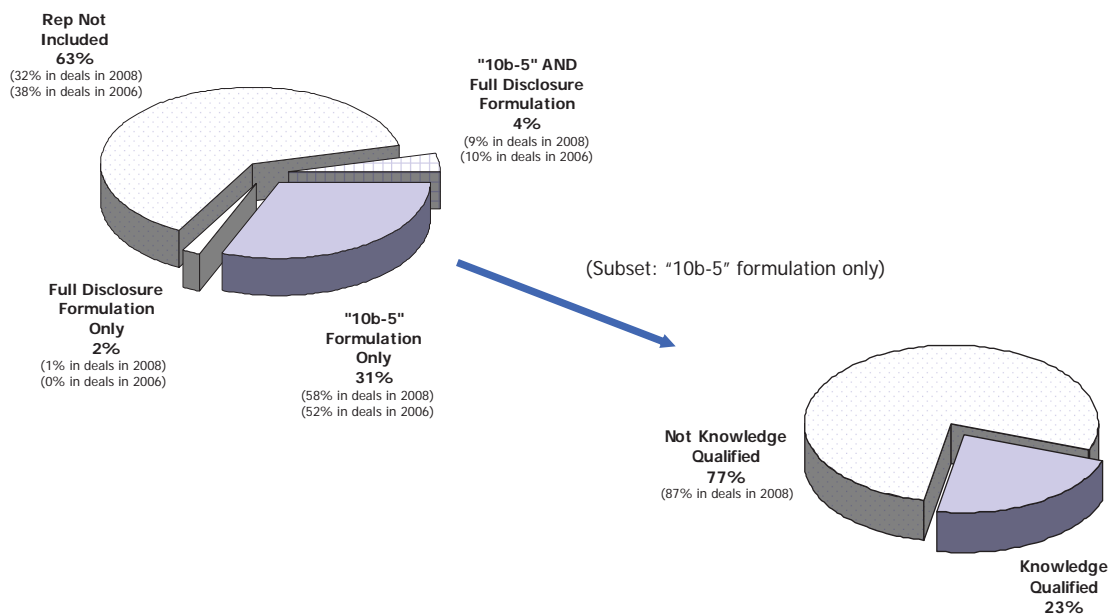
Seller does not have Knowledge of any fact that has specific application to Seller (other than general economic or industry conditions) and that may materially adversely affect the assets, business, prospects, financial condition or results of operations of Seller that has not been set forth in this Agreement or the Disclosure Letter.

(ABA Model Asset Purchase Agreement)

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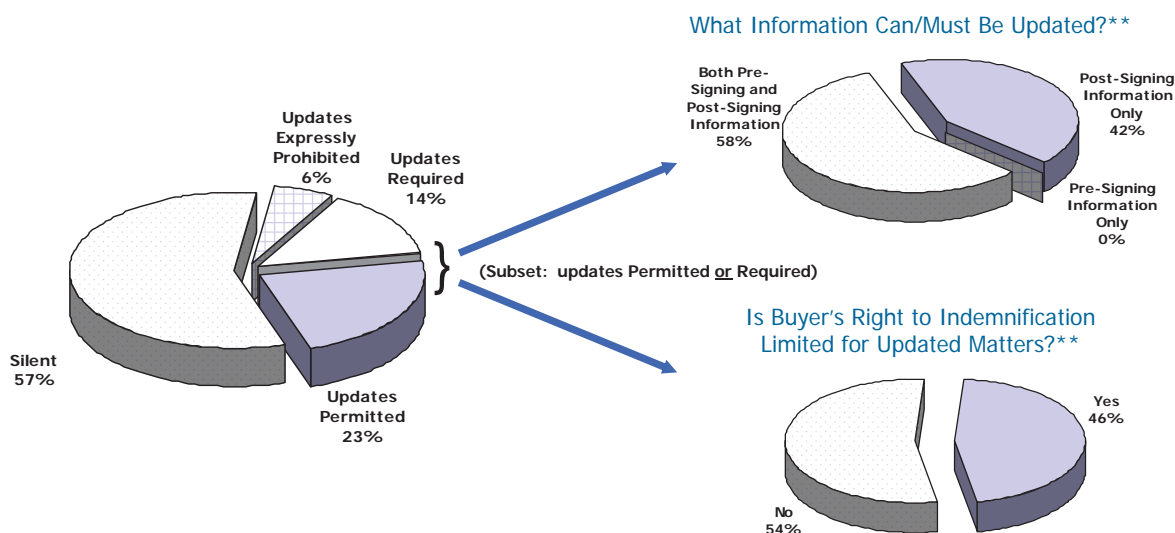
"10b-5"/Full Disclosure Representation



M&A Market Trends Subcommittee, Mergers & Acquisitions Committee, <http://apps.americanbar.org/dch/committee.cfm?com=CL560003>

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Covenants – Updating of Disclosure Schedules Before Closing*



* Includes deferred closing deals only.

** Prior data regarding express duty to update omitted as the 2011 Study takes a more nuanced approach by including provisions that permit Target to update schedules in addition to provisions that require Target to update schedules.

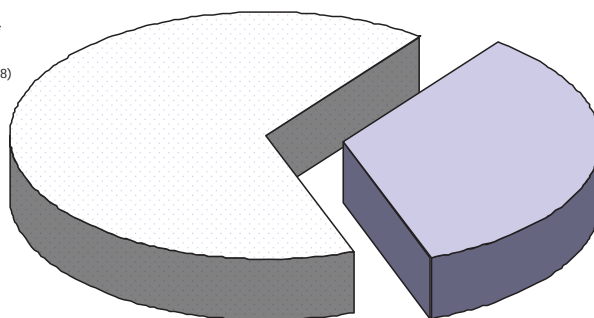
M&A Market Trends Subcommittee, Mergers & Acquisitions Committee, <http://apps.americanbar.org/dch/committee.cfm?com=CL560003>

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Target's Representations, Warranties, and Covenants

Covenants – Notice of Breaches of Representations, Warranties, and Covenants*

Target Expressly
Required to Notify
Buyer of
Breaches**
66%
(71% in deals in 2008)



Target Not
Expressly Required
to Notify Buyer of
Breaches
34%

* Includes deferred closing deals only.

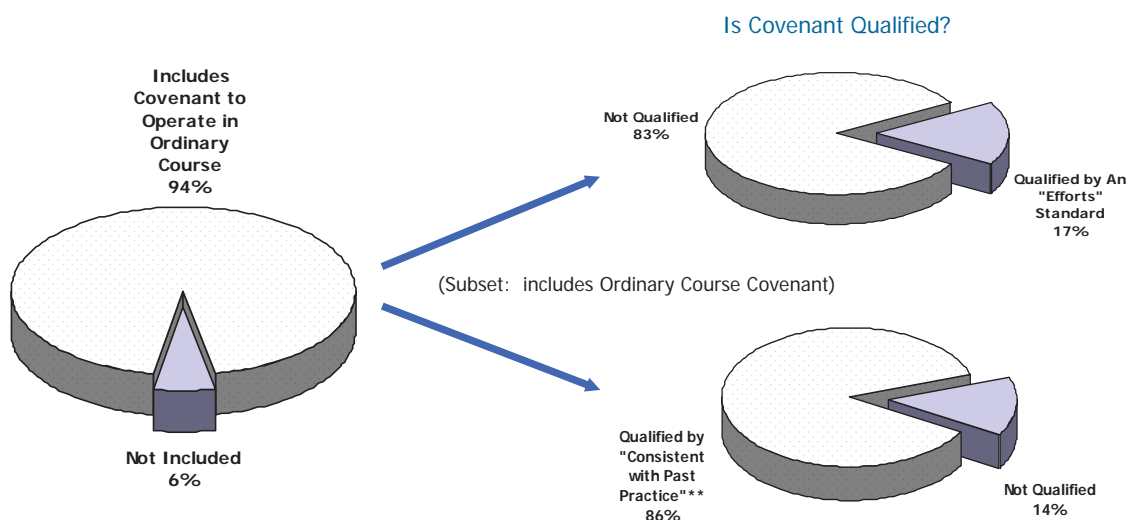
** Includes two agreements that require Target to notify Buyer of breaches that could have a material adverse effect.

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Target's Representations, Warranties, and Covenants

Covenants – Operation in the Ordinary Course*



* Includes deferred closing deals only.

** Includes one deal that effectively included two covenants to operate in the ordinary course, only one of which was so qualified by past practice.

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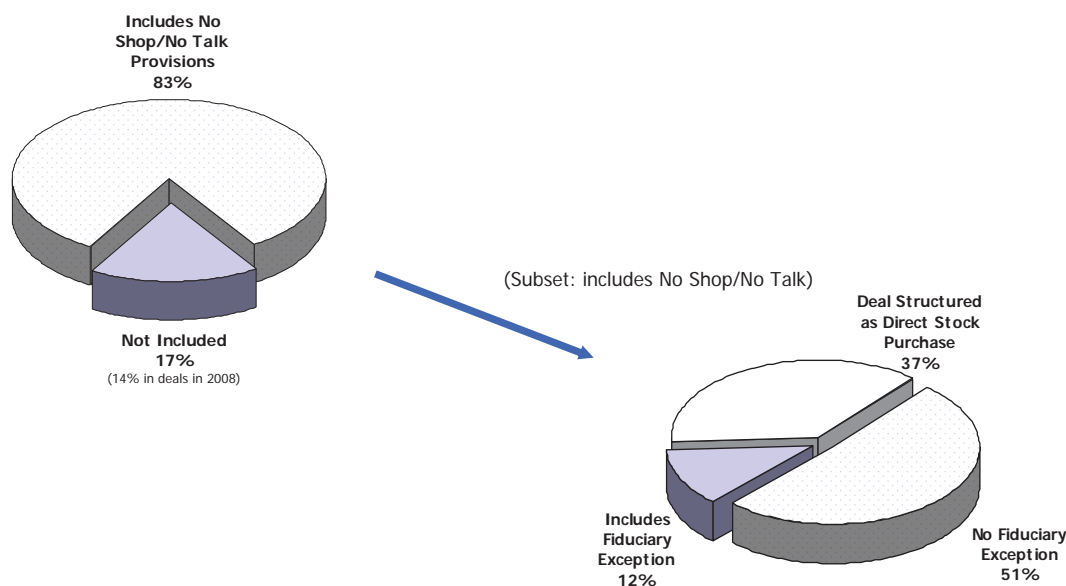
Covenants – No Shop/No Talk

Between the date of this Agreement and the earlier of the Closing and the termination of this Agreement, Target shall not, and shall take all action necessary to ensure that none of Target's Representatives shall (i) solicit, initiate, consider, encourage or accept any proposal or offer that constitutes an Acquisition Proposal or (ii) participate in any discussions, conversations, negotiations or other communications regarding, or furnish to any other Person any information with respect to, or otherwise cooperate in any way, assist or participate in, facilitate or encourage the submission of, any proposal that constitutes, or could reasonably be expected to lead to, an Acquisition Proposal.

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Covenants – No Shop/No Talk*



* Includes deferred closing deals only; disregards one deal with a redacted "No Solicitation" covenant.

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Conditions to Closing*

* Includes deferred closing deals only.

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Conditions to Closing

Accuracy of Target's Representations – When Must They Be Accurate?

Single point in time: at closing

Each of the representations and warranties made by Target in this Agreement shall have been accurate in all respects as of the Closing Date as if made on the Closing Date.

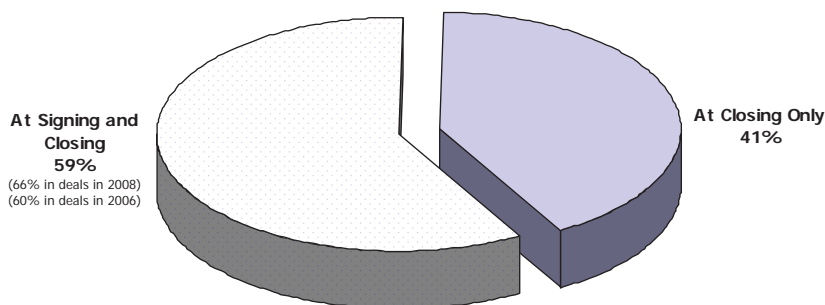
Two points in time: at signing and at closing

Each of the representations and warranties made by Target in this Agreement shall have been accurate in all respects as of the date of this Agreement, and shall be accurate in all respects as of the Closing Date as if made on the Closing Date.

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Accuracy of Target's Representations – When Must They Be Accurate?



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Accuracy of Target's Representations – How Accurate Must They Be?

Accurate in all respects

Each of the representations and warranties made by Target in this Agreement shall have been accurate **in all respects** as of the Closing Date as if made on the Closing Date.

Accurate in all material respects

Each of the representations and warranties made by Target in this Agreement shall have been accurate **in all material respects** as of the Closing Date as if made on the Closing Date.

MAE qualification

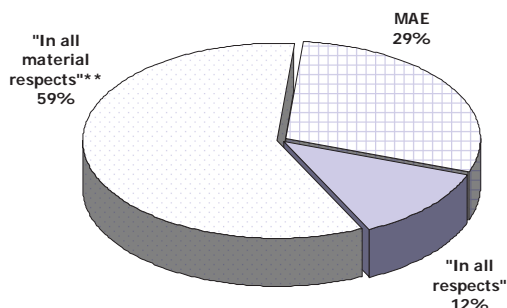
Each of the representations and warranties made by Target in this Agreement shall be accurate in all respects as of the Closing Date as if made on the Closing Date, **except for inaccuracies of representations or warranties the circumstances giving rise to which, individually or in the aggregate, do not constitute and could not reasonably be expected to have a Material Adverse Effect.**

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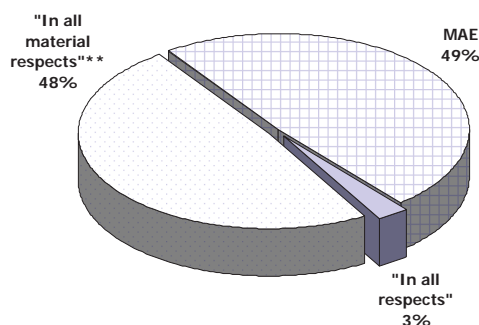
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Accuracy of Target's Representations – How Accurate Must They Be? (inclusion of materiality qualifiers)

“When Made”
(i.e., at signing)



“Bring Down”
(i.e., at closing)*



* Includes deals with both “when made” and “bring down” requirements and deals solely with a “bring down” requirement.

** Includes both deals where specific reps are carved out of general standard and deals that use a formulation such as “representations and warranties that are qualified by materiality must be accurate in all respects and all other representations and warranties must be accurate in all material respects.”

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Accuracy of Target's Representations – How Accurate Must They Be? (MAE qualifier with capitalization carve out)

The representation and warranty set forth in **Section 3.3 (Capitalization) shall be accurate in all [material] respects** as of the Closing Date as if made on the Closing Date. Each of the **other representations and warranties** made by Target in this Agreement **shall be accurate** as of the Closing Date as if made on the Closing Date, **except for inaccuracies** of representations or warranties the circumstances giving rise to **which, individually or in the aggregate, do not constitute and could not reasonably be expected to have a Material Adverse Effect.**

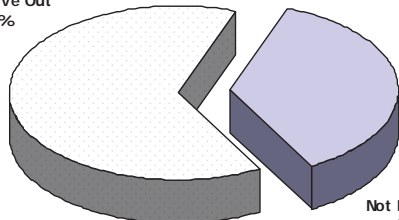
Accuracy of Target's Representations – How Accurate Must They Be?

(MAE qualifier with capitalization carve out)

(Subset: deals with MAE qualifiers*)

“When Made”
(i.e., at signing)

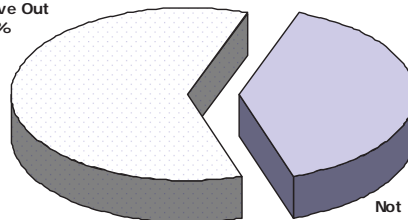
Includes
Capitalization
Rep Carve Out
64%



Not Included
36%
(73% in deals in 2008)

“Bring Down”
(i.e., at closing)**

Includes
Capitalization
Rep Carve Out
61%



Not Included
39%
(68% in deals in 2008)

* Excludes one deal in which “fundamental representations” are defined in a non-public annex.

** Includes deals with both “when made” and “bring down” requirements and deals solely with a “bring down” requirement.

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Accuracy of Target's Representations – How Accurate Must They Be?

(“double materiality” scrape)

Each of the representations and warranties made by Target in this Agreement shall be accurate in all respects as of the Closing Date as if made on the Closing Date, except for inaccuracies of representations or warranties the circumstances giving rise to which, individually or in the aggregate, do not constitute and could not reasonably be expected to have a Material Adverse Effect *(it being understood that, for purposes of determining the accuracy of such representations and warranties, all “Material Adverse Effect” qualifications and other materiality qualifications and similar qualifications contained in such representations and warranties shall be disregarded).*

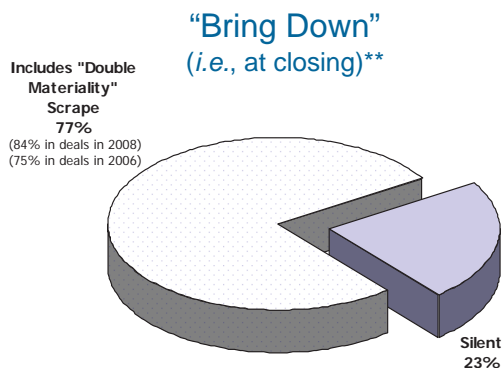
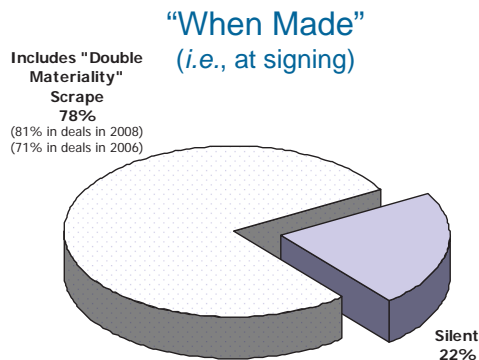
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Accuracy of Target's Representations – How Accurate Must They Be?

("double materiality" scrape)*

(Subset: deals with materiality/MAE qualifiers)



* Includes deals that use a formulation such as "representations and warranties that are qualified by materiality must be true in all respects and all other representations and warranties must be true in all material respects."

** Includes deals with both "when made" and "bring down" requirements and deals solely with a "bring down" requirement.

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Buyer's MAC Condition

Stand-Alone:

Since the date of this Agreement, there has not been any Target Material Adverse Change.

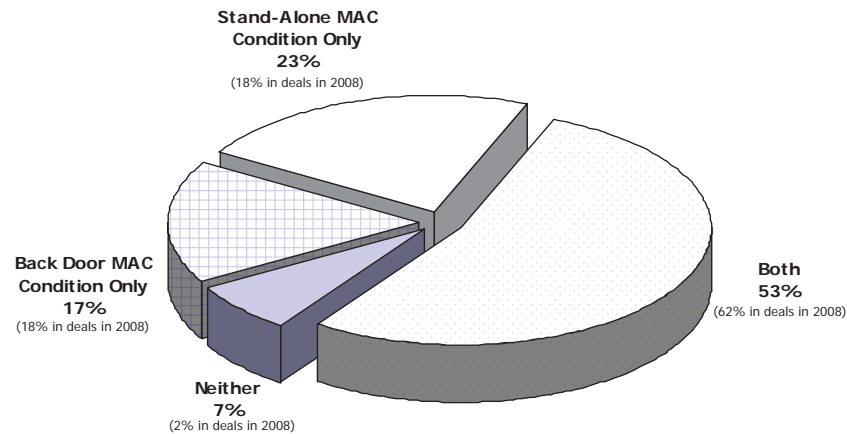
"Back-Door":

"absence of changes" representation

Since the Balance Sheet Date, there has not been any Target Material Adverse Change.

plus "bring down" formulation of "accuracy of representations" condition

Buyer's MAC Condition



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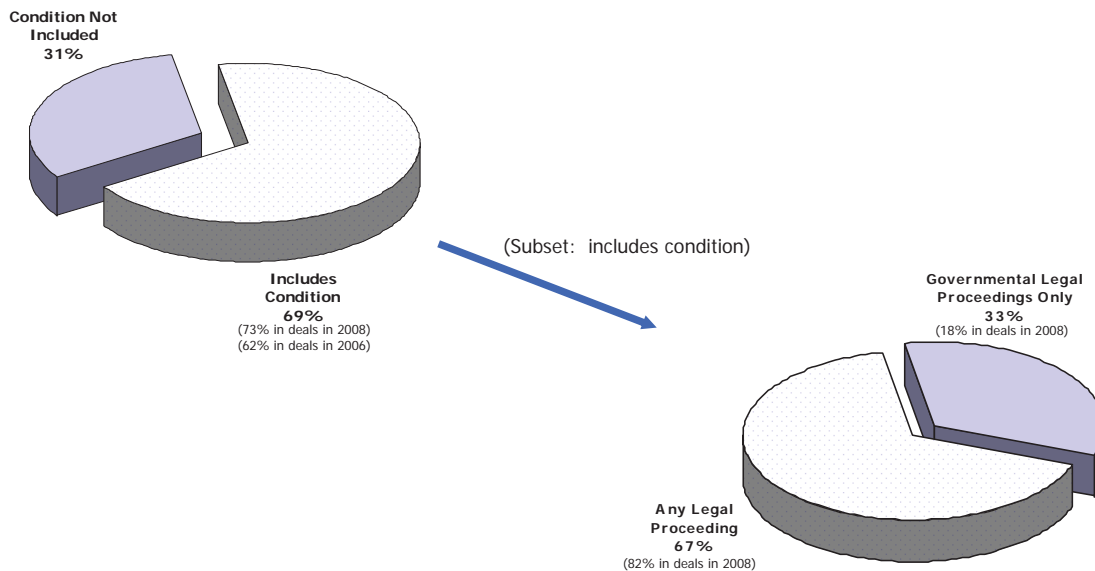
No Legal Proceedings Challenging the Transaction

There will not be pending [or threatened] any action, suit, or similar legal proceeding brought by any Governmental Entity [or third party] challenging or seeking to restrain or prohibit the consummation of the Transactions.

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No Legal Proceedings Challenging the Transaction

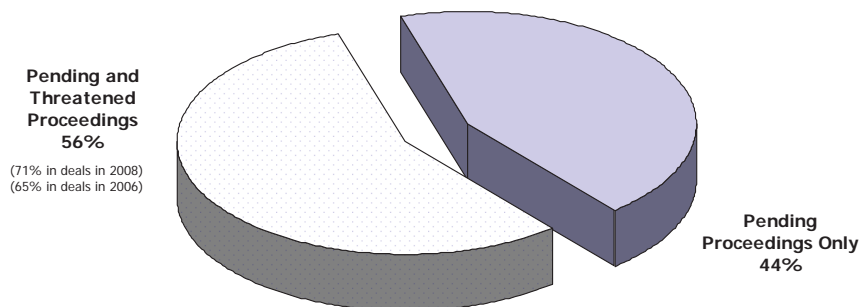


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No Legal Proceedings Challenging the Transaction

(Subset: deals with closing condition of no legal proceedings challenging the transaction)

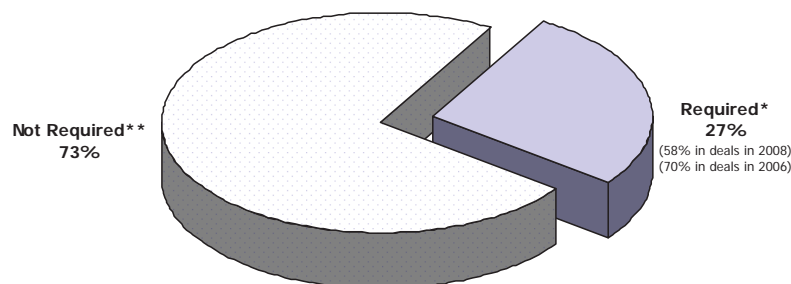


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Legal Opinions (Non-Tax) of Target's Counsel

(All deals: includes simultaneous sign-and-close deals)



* Typically as a condition to closing, but includes opinions required in a "closing deliveries" covenant.

** Does not account for opinions that may have been required or delivered outside of the express terms of the agreement.

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Appraisal Rights

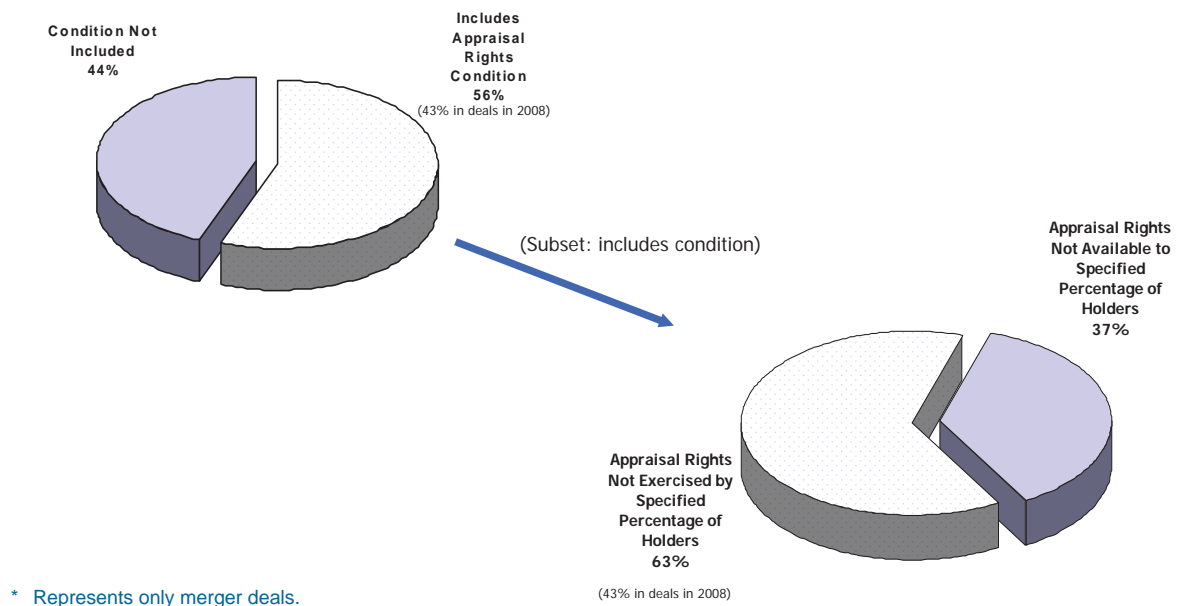
Appraisal Rights Not Available:

As of the Closing, Eligible Dissenting Shares, *or shares that may become Eligible Dissenting Shares*, shall represent not more than [10]% of the total voting power of the outstanding shares of Company's capital stock on such date, where "Eligible Dissenting Shares" means shares of Company's common stock or preferred stock for which the holders have either demanded or perfected appraisal rights in accordance with Section 262 of the DGCL and have not effectively withdrawn or lost such appraisal rights.

Appraisal Rights Not Exercised (or Perfected):

Stockholders owning beneficially or of record no more than [5]% of the outstanding shares of Company's common stock will have perfected their right of appraisal pursuant to the DGCL, and 20 days will have elapsed since the date of mailing notification of the Company Stockholders' Consent to each of the Stockholders who have not executed a Company Stockholders' Consent.

Appraisal Rights*



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Indemnification*

* Disregards 4 transactions with redacted indemnification provisions and 1 transaction with no indemnification provisions.

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“Sandbagging” (pro-sandbagging)

The right to indemnification, payment, reimbursement, or other remedy based upon any such representation, warrant, covenant, or obligation **will not be affected by... any investigation conducted or any Knowledge acquired at any time**, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of, or compliance with, such representation, warranty, covenant, or obligation.

(ABA Model Stock Purchase Agreement, Second Edition)

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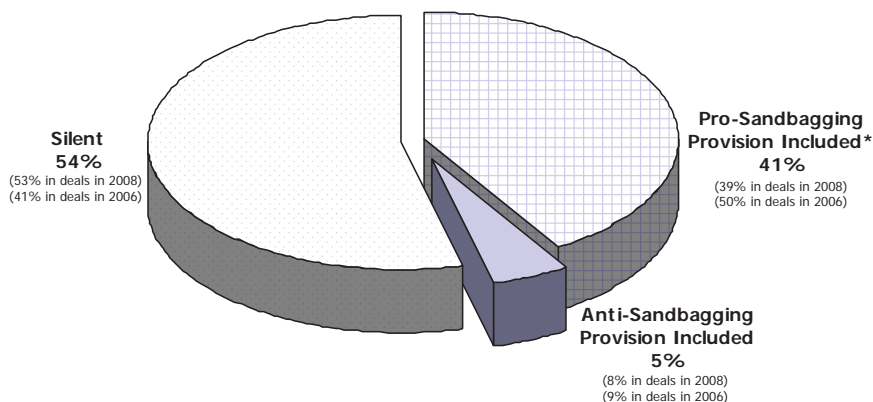
“Sandbagging” (anti-sandbagging provision)

No party shall be liable under this Article for any Losses resulting from or relating to any inaccuracy in or breach of any representation or warranty in this Agreement **if the party seeking indemnification for such Losses had Knowledge of such Breach before Closing.**

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"Sandbagging"



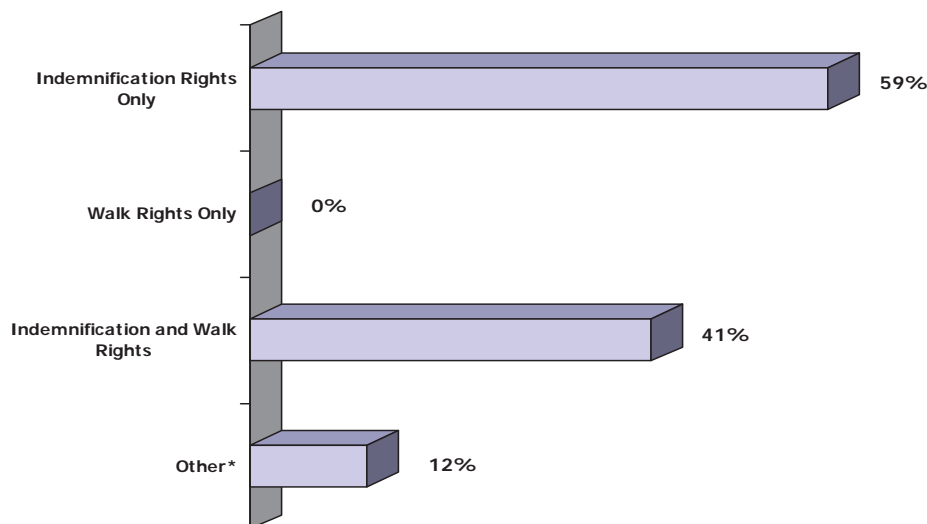
* Includes one deal with a hybrid provision that prohibits sandbagging only with respect to certain information prepared at the request of Buyer, but that otherwise allows for sandbagging. For purposes of this Study "pro-sandbagging" is defined by excluding clauses that merely state, for example, that Target's representations and warranties "survive Buyer's investigation" unless they include an express statement on the impact of Buyer's knowledge on Buyer's post-closing indemnification rights.

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"Sandbagging" – Scope of Pro-Sandbagging Provisions

(Subset: deals with pro-sandbagging provisions)



* E.g., "any other remedy based on representations, warranties, covenants, and agreements in this Agreement."

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“No Other Representations and Warranties”

Except for the representations and warranties contained in [Target’s representations and warranties] (including the related portions of the Disclosure Schedules), none of Seller, the Target or any other Person **has made or makes any other express or implied representation or warranty, either written or oral,** on behalf of Seller or the Target.

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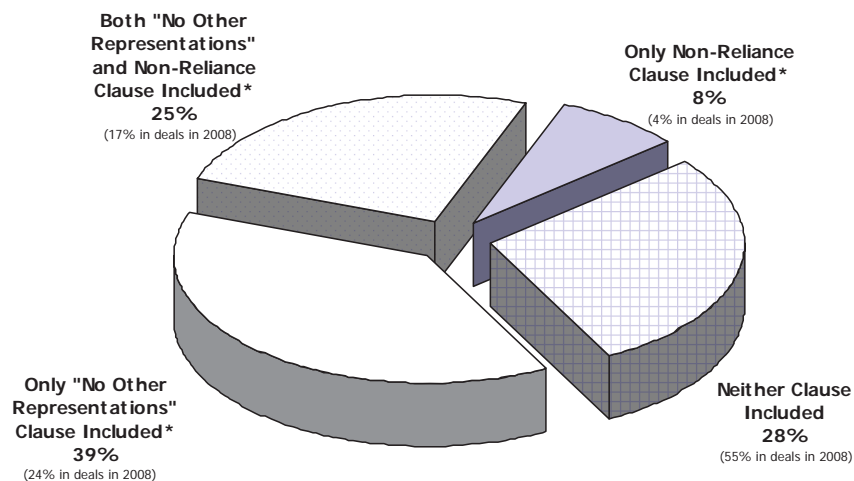
“No Other Representations and Warranties”/Non-Reliance

Buyer acknowledges that Target has not made and is not making any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except as provided in Section 3, **and that it is not relying and has not relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties in Section 3.**

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"No Other Representations and Warranties"/Non-Reliance

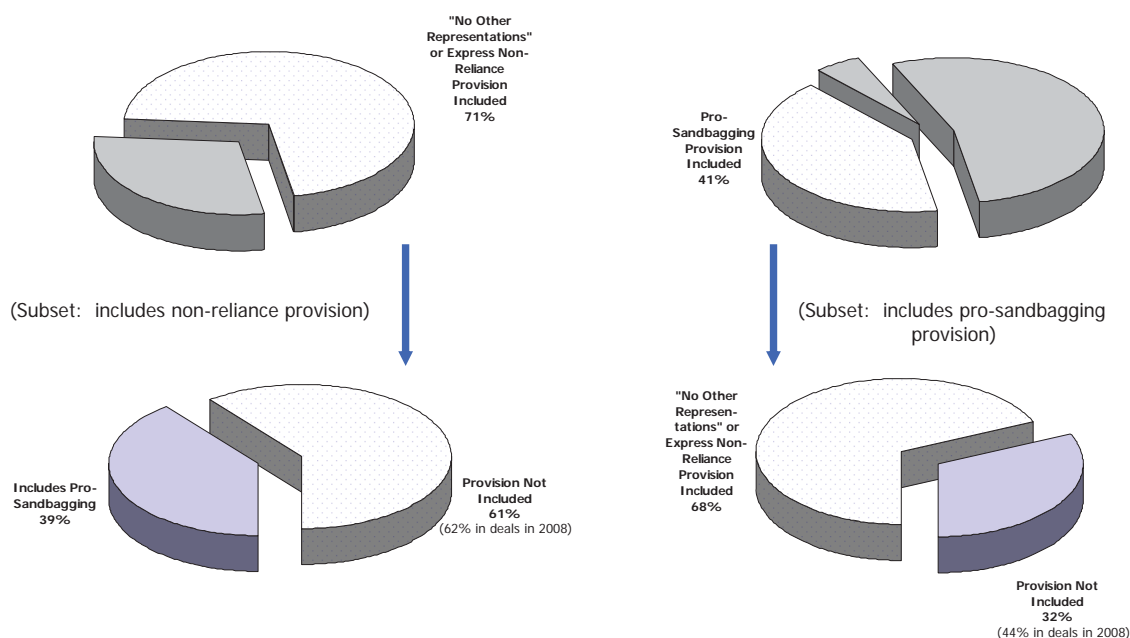


* Includes 5 deals with fraud carve outs to "no other representations" clause and 2 deals with fraud carve outs to express non-reliance clause.

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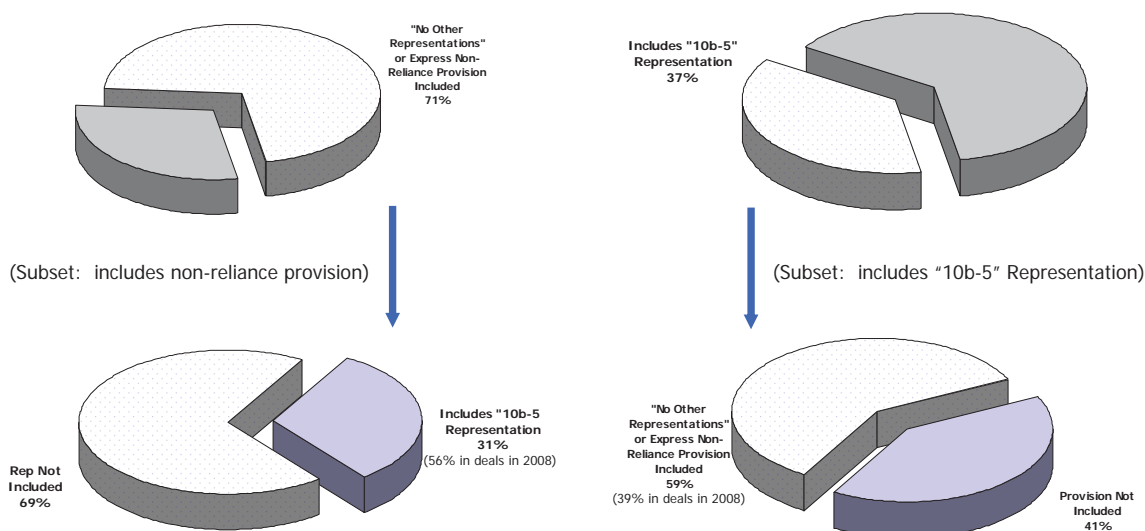
Non-Reliance and "Sandbagging" – Correlation



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Non-Reliance and "10b-5" Representation* – Correlation

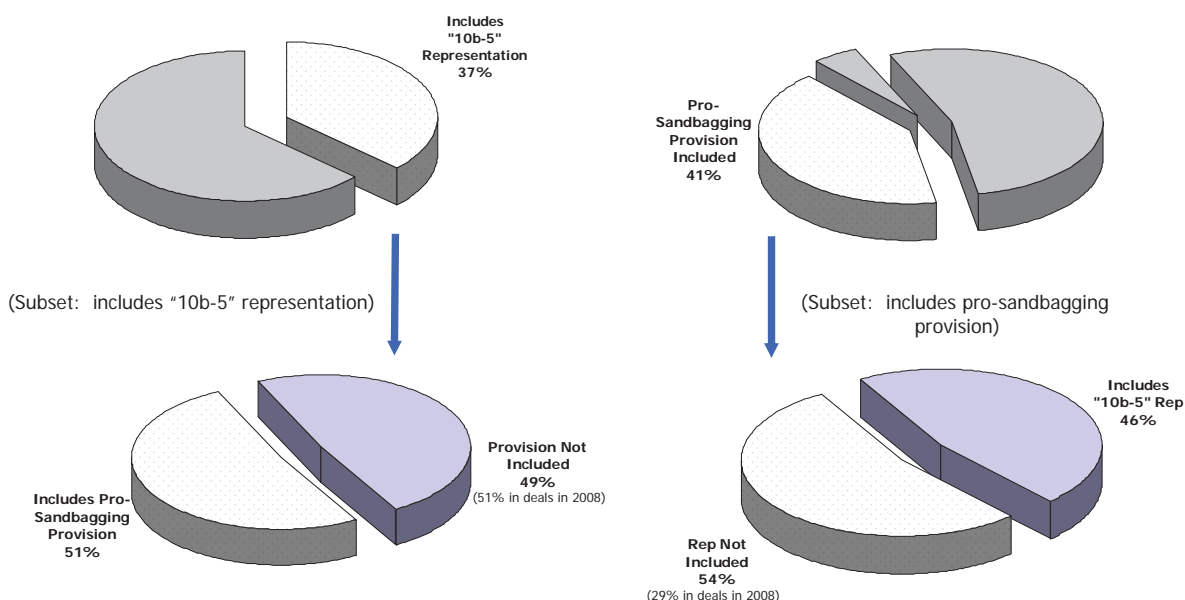


* Includes both "10b-5" and "full disclosure" formulations.

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"Sandbagging" and "10b-5" Representation* – Correlation



* Includes both "10b-5" and "full disclosure" formulations.

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Survival/Time to Assert Claims

11.1 SURVIVAL...

All representations, warranties, covenants, and obligations in this Agreement, the Disclosure Letter, the supplements to the Disclosure Letter, and any certificate, document, or other writing delivered pursuant to this Agreement will survive the Closing and the consummation and performance of the Contemplated Transactions.

11.5 TIME LIMITATIONS

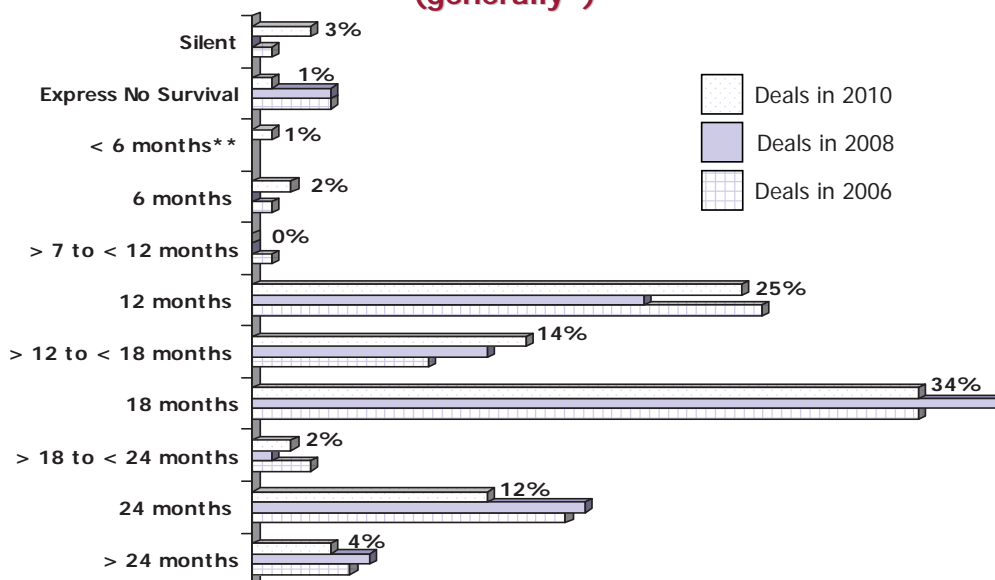
If the Closing occurs, Sellers shall have liability under Section 11.2(a) with respect to any Breach of a representation or warranty (other than those in Sections . . . , as to which a claim may be made at any time), only if on or before the date that is ____ years after the Closing Date, Buyer notifies [Target's representative] of a claim, specifying the factual basis of the claim in reasonable detail to the extent known by Buyer.

(ABA Model Stock Purchase Agreement , Second Edition)

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Survival/Time to Assert Claims (generally*)



* These periods apply to most representations and warranties; Certain representations and warranties may be carved out from these periods in order to survive for other specified periods.

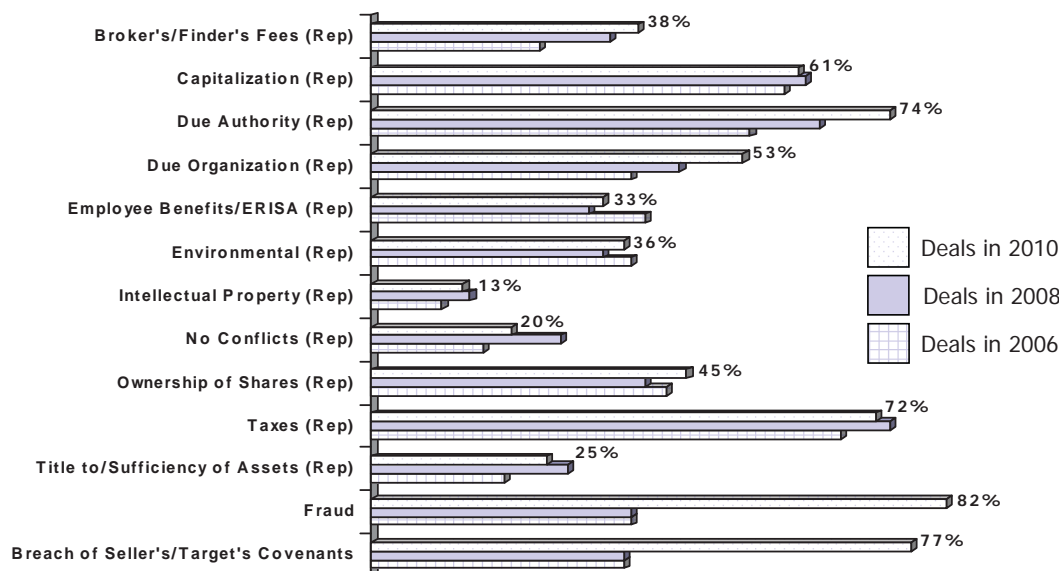
** Data not analyzed for prior years.

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Survival/Time to Assert Claims – Carve Outs to Survival Limitations*

(Subset: deals with survival provisions*)



* Matters subject to carve outs typically survive longer than time periods generally applicable to representations. Only those categories appearing more than 10% of the time for deals in 2010 are shown.

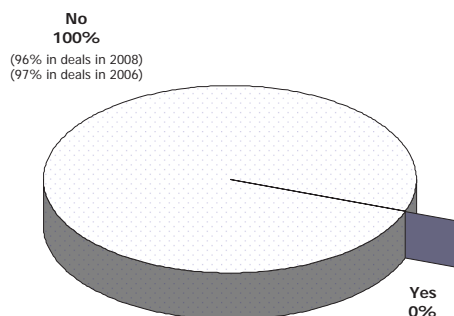
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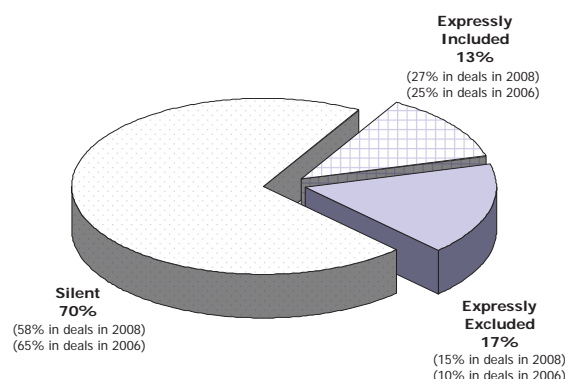
Types of Damages/Losses Covered

(Subset: deals with survival provisions)

Limited to "Out of Pocket" Damages?



Diminution in Value

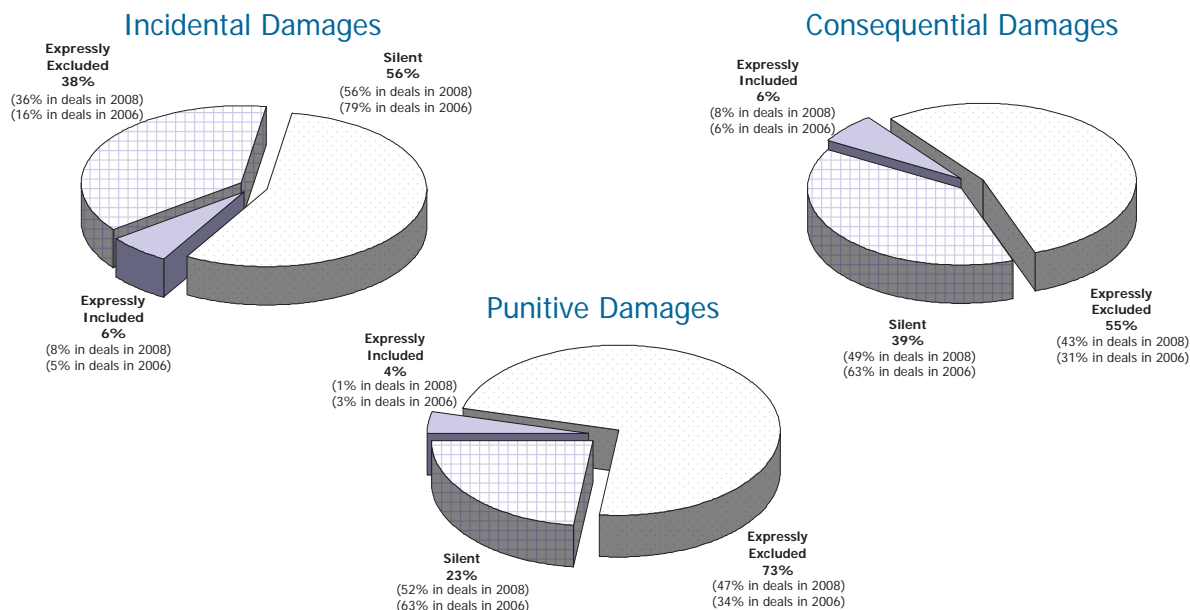


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Types of Damages/Losses Covered

(Subset: deals with survival provisions)



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Baskets

Deductible

Sellers shall not be required to indemnify Buyer for Losses until the aggregate amount of all such Losses exceeds **\$300,000 (the "Deductible")** in which event Sellers shall be responsible **only for Losses exceeding the Deductible.**

First Dollar

Sellers shall not be required to indemnify Buyer for Losses until the aggregate amount of all such Losses exceeds **\$500,000 (the "Threshold")** in which event Sellers shall be responsible for the **aggregate amount of all Losses, regardless of the Threshold.**

Combination

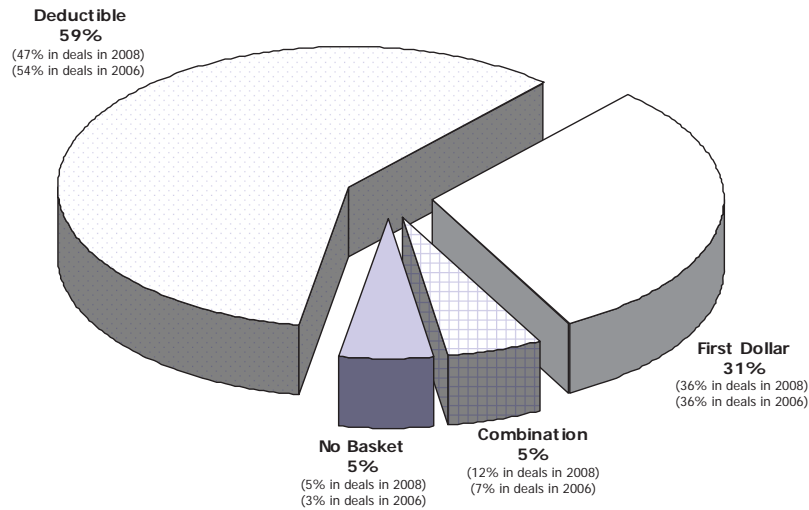
Sellers shall not be required to indemnify Buyer for Losses until the aggregate amount of all such Losses exceeds **\$500,000 (the "Threshold")** in which event Sellers shall be responsible **only for Losses in excess of \$300,000 (the "Deductible").**

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Baskets

(Subset: deals with survival provisions)

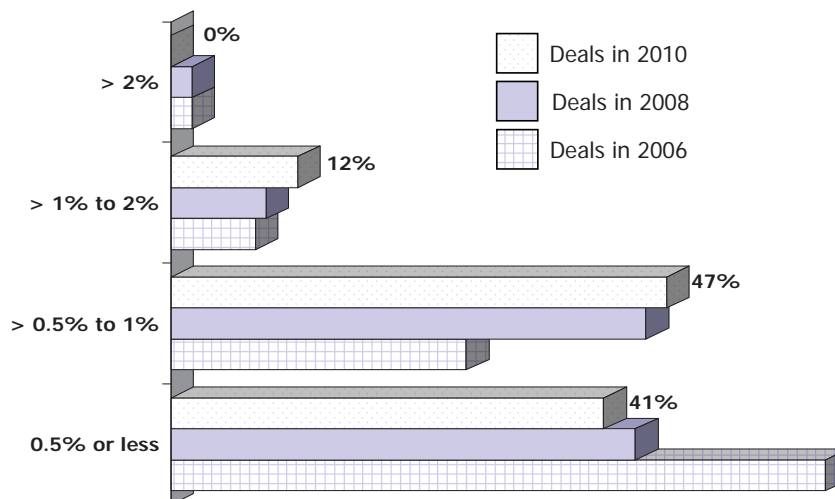


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Baskets as % of Transaction Value

(Subset: deals with baskets)



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Baskets as % of Transaction Value (statistical summary)

(Subset: deals with baskets)

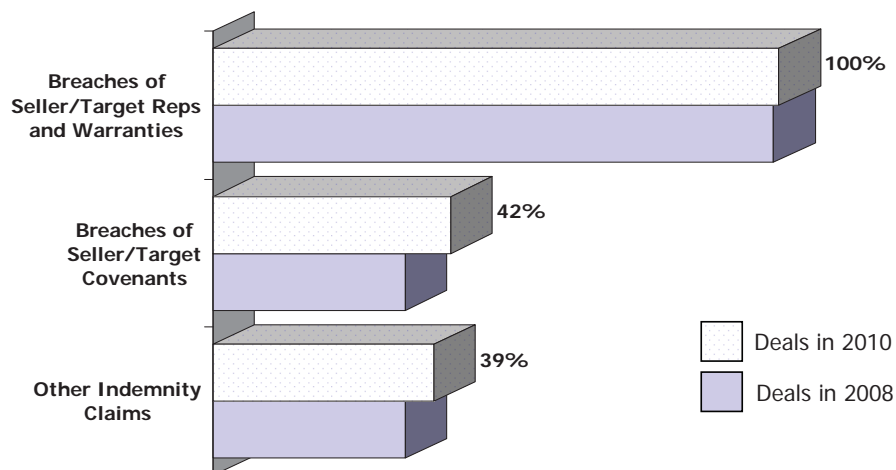
Basket Type	Mean	Median	Minimum (> 0)	Maximum
Deductible	0.66% (0.80% in deals in 2008) (0.53% in deals in 2006)	0.65% (0.66% in deals in 2008) (0.40% in deals in 2006)	0.04% (0.20% in deals in 2008) (0.03% in deals in 2006)	1.67% (5.00% in deals in 2008) (2.00% in deals in 2006)
First Dollar	0.59% (0.47% in deals in 2008) (0.50% in deals in 2006)	0.56% (0.45% in deals in 2008) (0.39% in deals in 2006)	0.08% (0.02% in deals in 2008) (0.02% in deals in 2006)	1.57% (1.19% in deals in 2008) (2.03% in deals in 2006)
All Baskets (other than Combination)	0.65% (0.66% in deals in 2006) (0.52% in deals in 2006)	0.65% (0.55% in deals in 2006) (0.40% in deals in 2006)	—	—

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Baskets - General Coverage*

(Subset: deals with baskets)



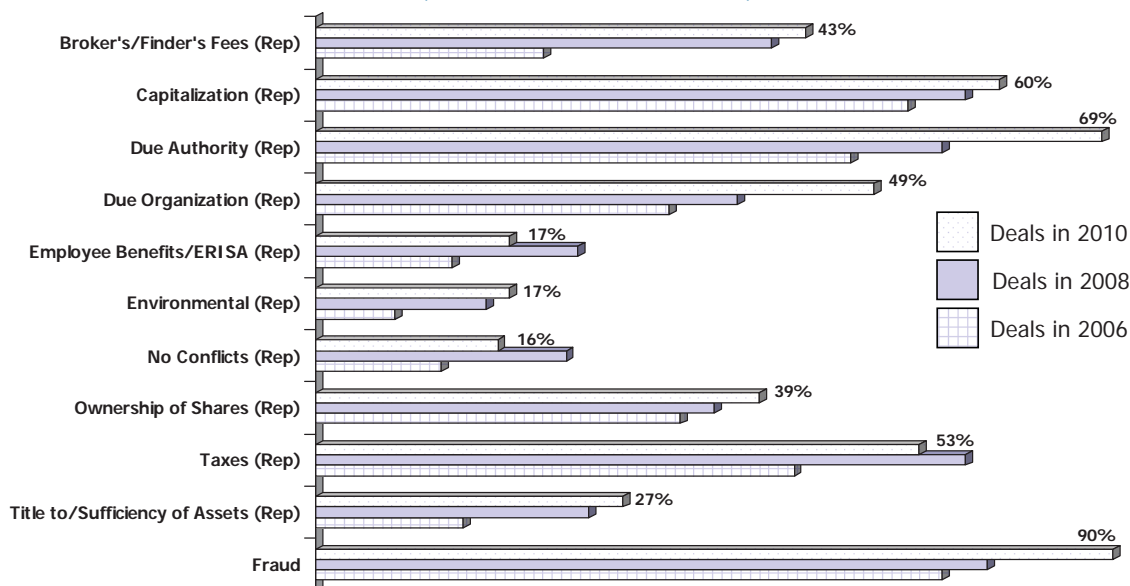
* Carve outs for individual representations and warranties, fraud, and intentional breaches of representations and warranties addressed on next slide.

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Basket Carve Outs*

(Subset: deals with baskets)



* Only those categories appearing more than 10% of the time for deals in 2010 are shown. Carve outs for breaches of Seller/Target covenants taken into account on prior slide.

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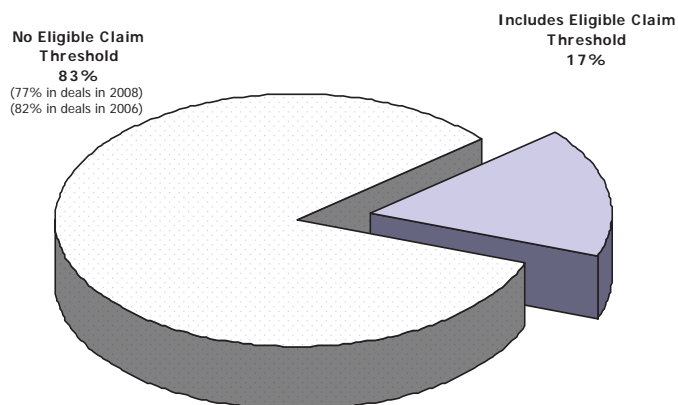
Eligible Claim Threshold

(Subset: deals with baskets)

Sellers shall not be required to indemnify Buyer for any individual item where the Loss relating to such claim (or series of claims arising from the same or substantially similar facts or circumstances) is less than \$15,000.

Eligible Claim Threshold

(Subset: deals with baskets)



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"Double Materiality" Scrape (materiality qualification in reps disregarded)

Materiality qualification in reps disregarded for all indemnification-related purposes

For purposes of this Article VIII (Indemnification), the representations and warranties of Target shall not be deemed qualified by any references to materiality or to Material Adverse Effect.

Materiality qualification in reps disregarded for calculation of damages/losses only

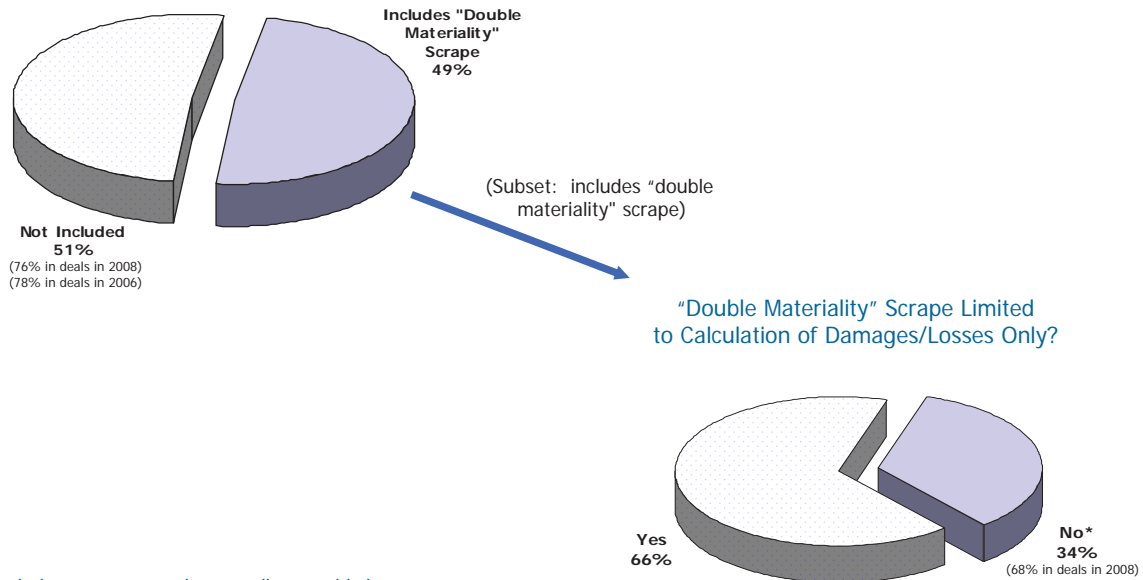
For the sole purpose of determining Losses (and not for determining whether or not any breaches of representations or warranties have occurred), the representations and warranties of Target shall not be deemed qualified by any references to materiality or to Material Adverse Effect.

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"Double Materiality" Scrape (materiality qualification in reps disregarded)

(Subset: deals with baskets)



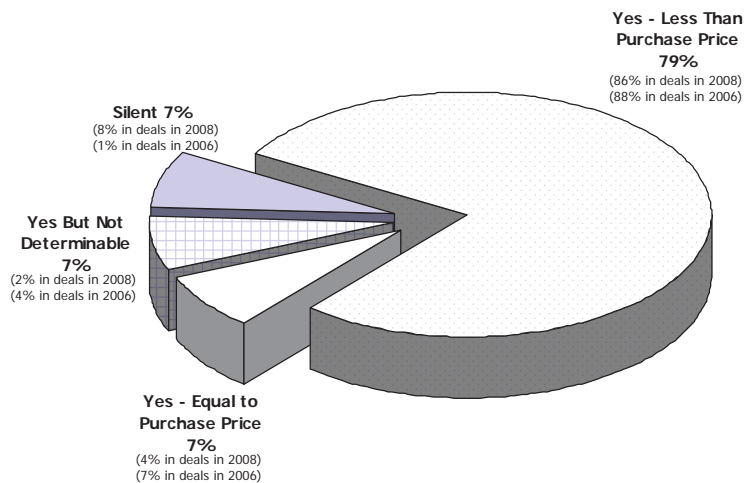
* Includes agreements that are silent on this issue.

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Caps*

(Subset: deals with survival provisions)



* Caps generally applicable to contractual indemnification obligations; does not take into account different caps for specific items (see "Cap Carve Outs").

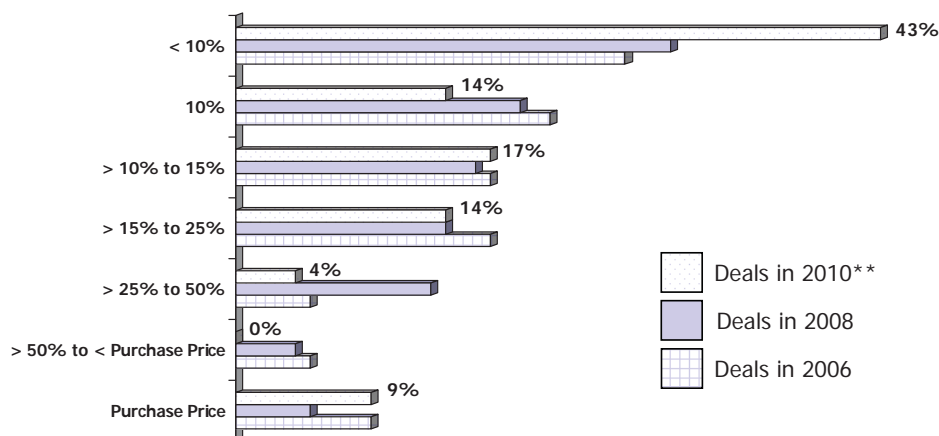
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Cap Amounts as % of Transaction Value*

(Subset: deals with determinable caps)

	Mean	Median	Minimum	Maximum
Deals in 2010	18.88%	10.00%	0.46%	100%



* Caps generally applicable to contractual indemnification obligations; does not take into account different caps for specific items (see "Cap Carve Outs").

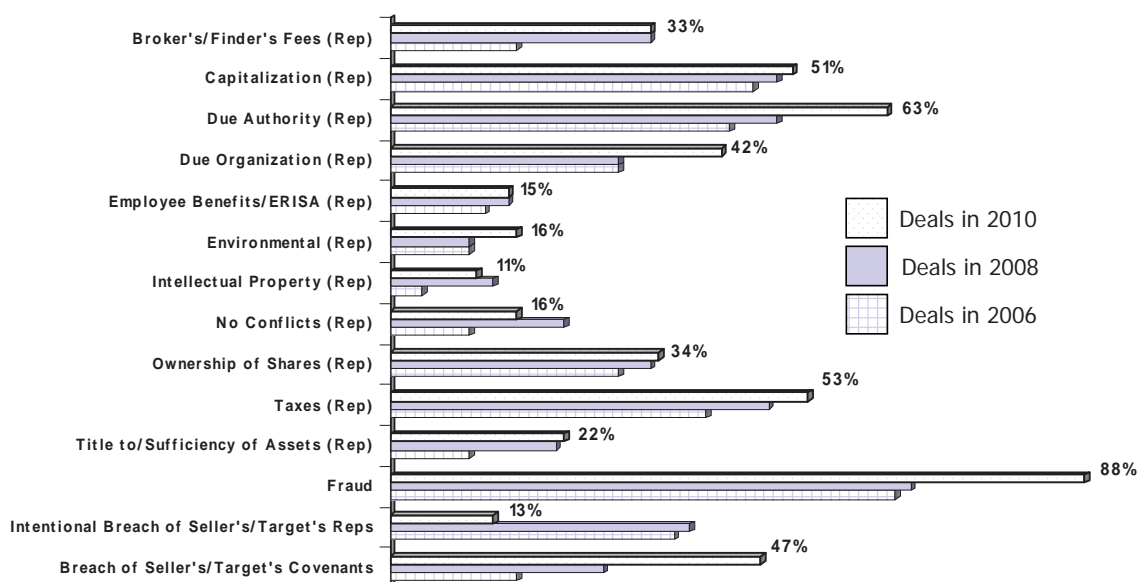
** 2010 percentages total 101% due to rounding.

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Cap Carve Outs*

(Subset: deals with caps)



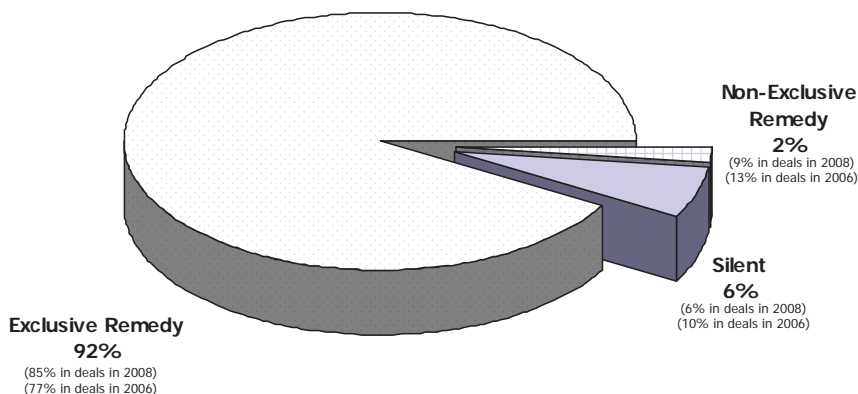
* Only those categories appearing 10% of the time or more for deals in 2010 are shown.

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Indemnification as Exclusive Remedy

(Subset: deals with survival provisions)

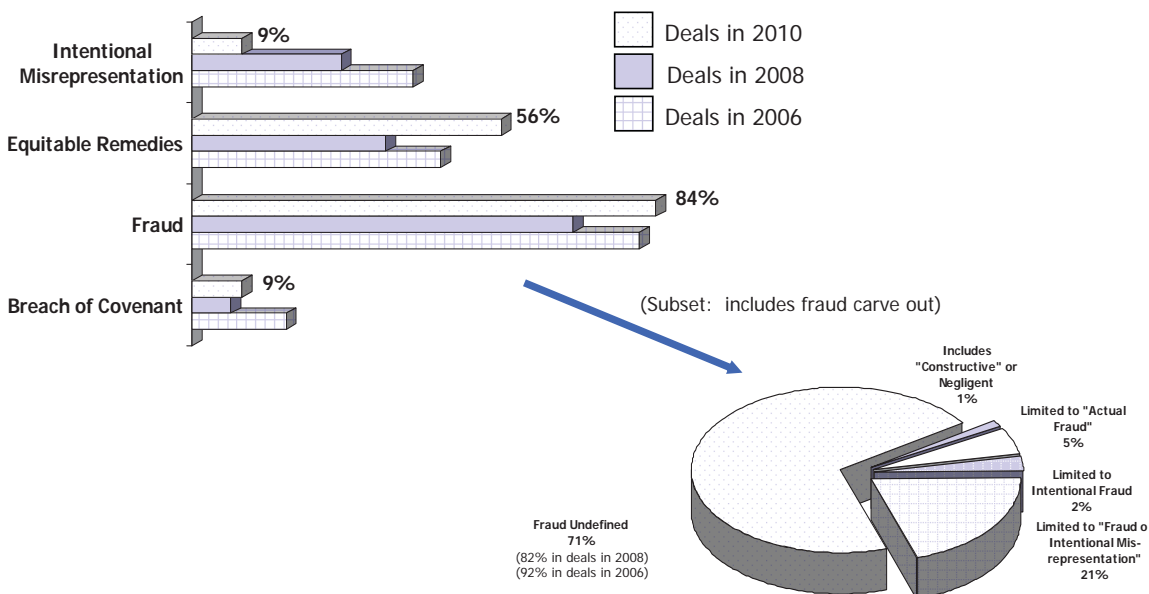


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Indemnification as Exclusive Remedy – Carve Outs

(Subset: deals with indemnification as exclusive remedy)

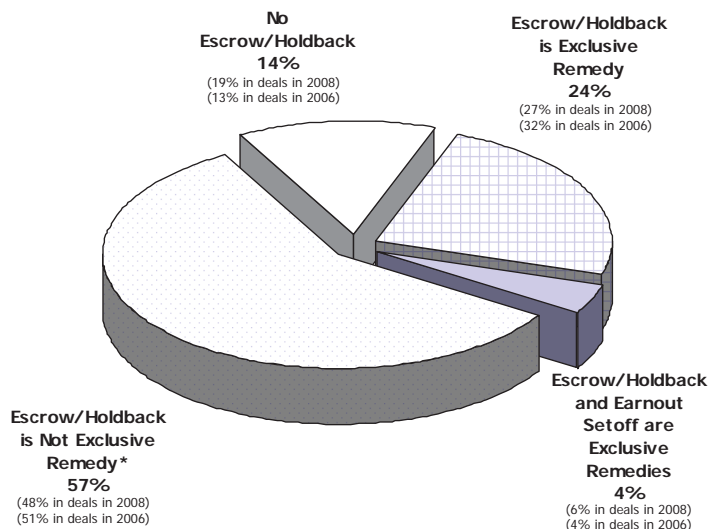


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Escrows/Holdbacks

(Subset: deals with survival provisions)



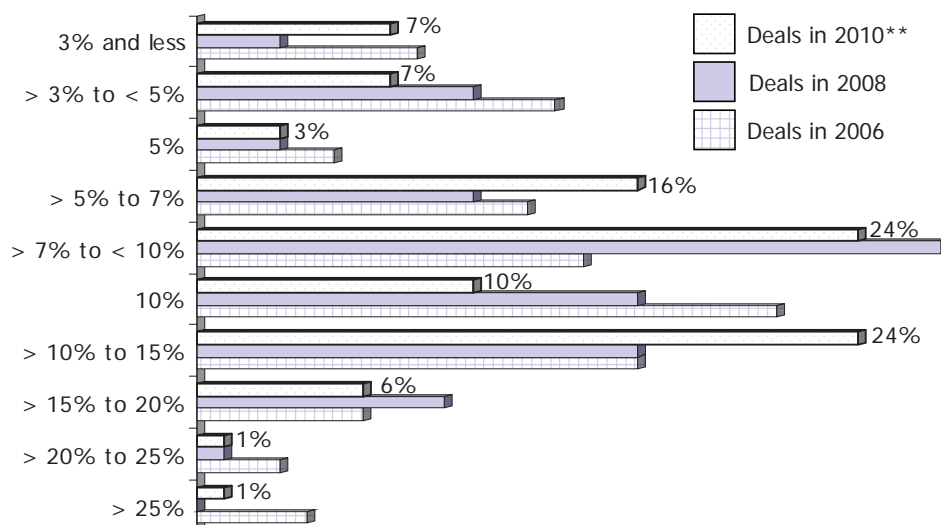
* Includes deals that state that the escrow/holdback is the exclusive remedy but provide one or more exceptions.

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Escrows/Holdbacks as % of Transaction Value*

(Subset: deals with determinable escrows/holdbacks)



* 51% of the deals with determinable escrows/holdbacks had a cap equal to the amount of the escrow/holdback.

** 2010 percentages total 99% due to rounding.

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Escrows/Holdbacks as % of Transaction Value (statistical summary)

(Subset: deals with determinable escrows/holdbacks)

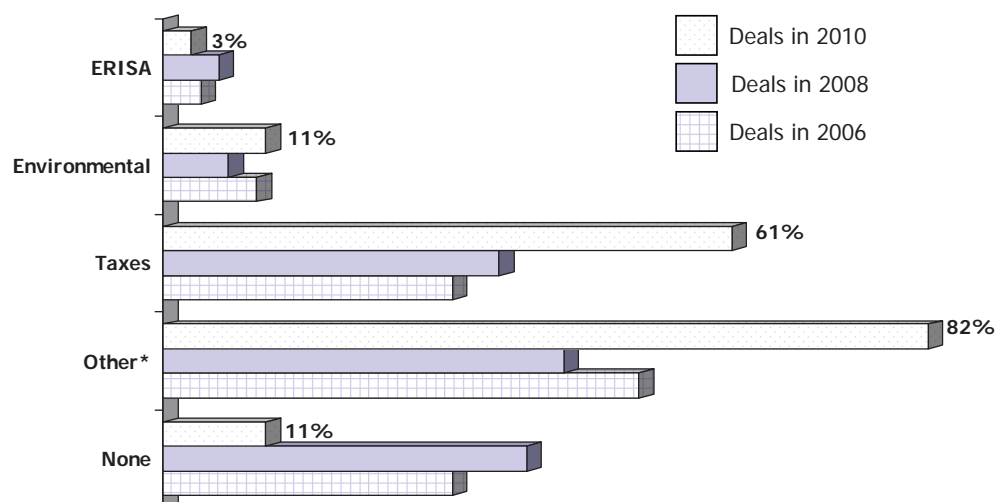
Deals in:	Mean	Median	Minimum	Maximum
2010	9.30%	9.19%	0.33%	27.34%
2008	10.51%	9.93%	1.23%	37.30%
2006	8.94%	8.95%	1.10%	25.00%

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Stand-Alone Indemnities (items for which indemnification specifically provided regardless of indemnification for breaches of representations and warranties)

(Subset: deals with survival provisions)



* Other frequently appearing stand-alone indemnities were items disclosed on a schedule; excluded or retained liabilities; and dissenters' rights/dissenting share payment claims.

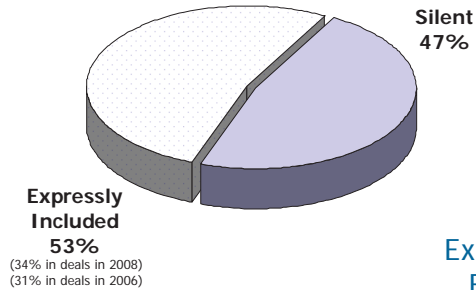
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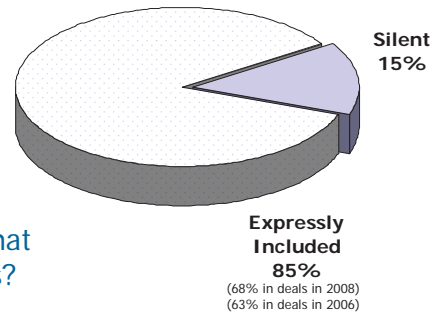
Reductions Against Buyer's Indemnification Claims

(Subset: deals with survival provisions)

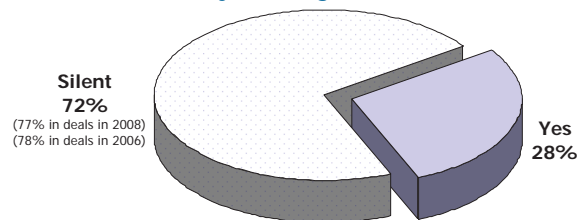
Reduction for Tax Benefits



Reduction for Insurance Proceeds



Express Requirement that Buyer Mitigate Losses?



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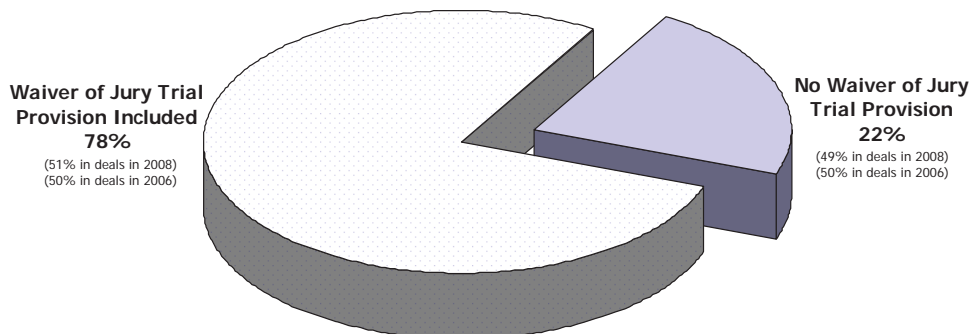
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Dispute Resolution

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Waiver of Jury Trial*

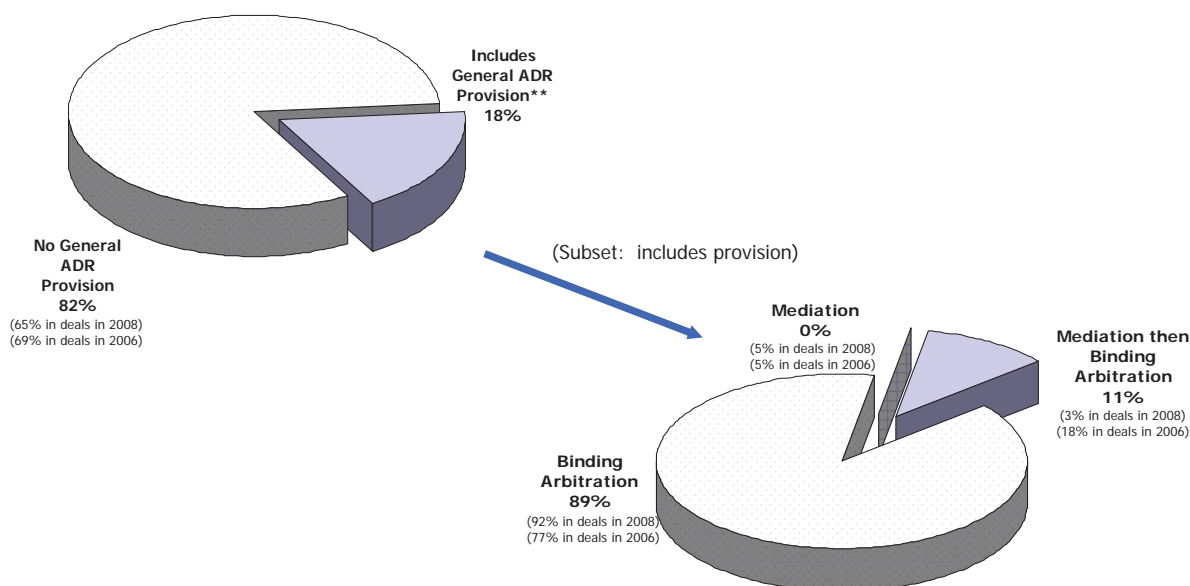


* May include deals in jurisdictions where jury trials are not available or where waivers of jury trials are unenforceable.

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Alternative Dispute Resolution ("ADR")*



* ADR provisions that generally cover disputes under acquisition agreement (rather than those limited to specific disputes such as purchase price adjustments or earnouts).

** Excludes one deal with undisclosed dispute resolution provisions.

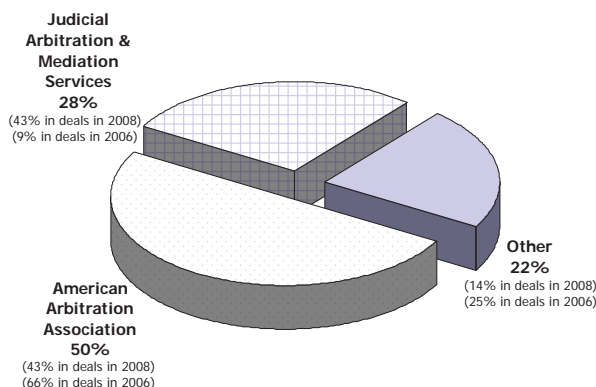
M&A Market Trends Subcommittee, Mergers & Acquisitions Committee, <http://apps.americanbar.org/dch/committee.cfm?com=CL560003>

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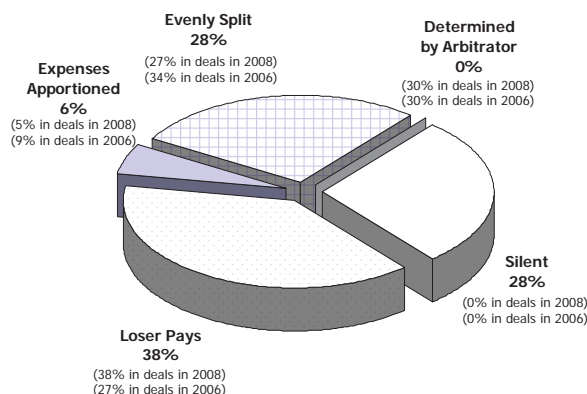
Alternative Dispute Resolution ("ADR")

(Subset: deals with general ADR provisions)

Specified Arbitrator(s)



Arbitration Expenses



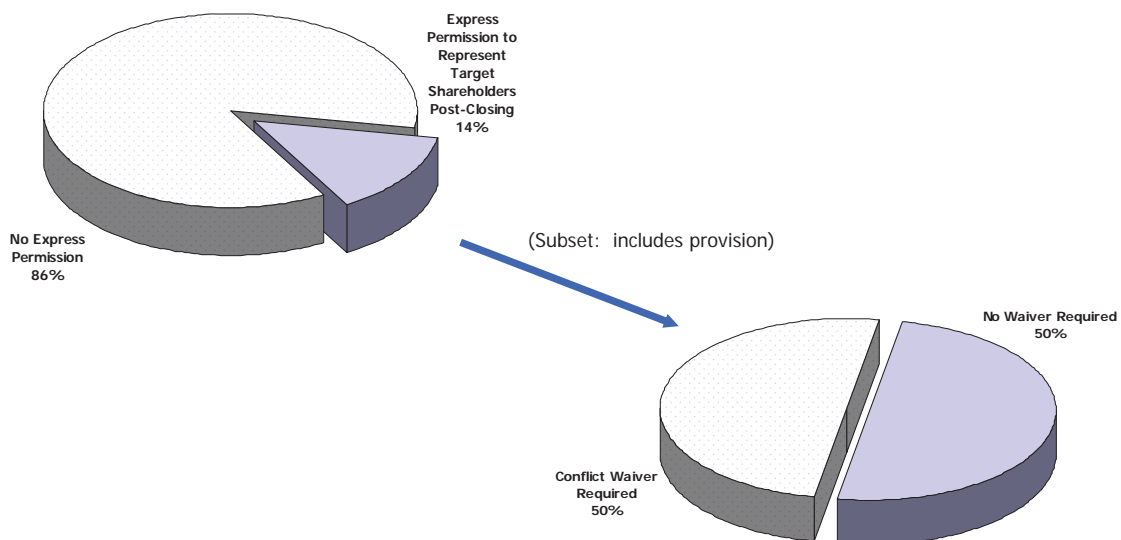
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Post-Closing Representation of Shareholders

In any dispute or proceeding arising under or in connection with this agreement following the Closing, the Stockholders' Representative will have the right, at its election, to retain ABC LLP (the "Law Firm") to represent it in such matter. Buyer, for itself and the Target and for their respective successors and assigns, hereby waives any conflicts of interest arising from such representation and consents to any such representation in any such matter.

Post-Closing Representation of Shareholders



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