

LESSONS LEARNED FROM THE MOST HEAVILY LITIGATED PROVISIONS

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Agenda

- What are the most heavily litigated provisions?
 - Focus on post-closing disputes, private company acquisitions
- How to reduce disputes and costs of disputes

Which provisions are the most heavily litigated?

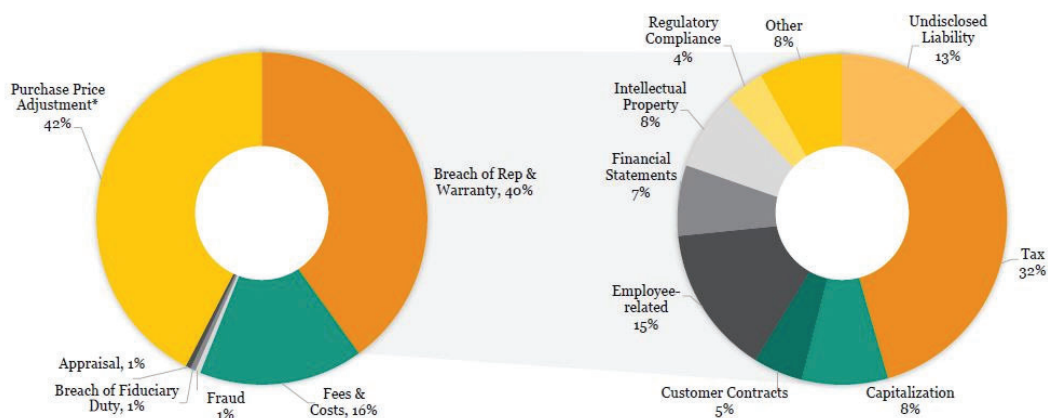
- Reps and Warranties
- Purchase Price Adjustment
- Earnout

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Deal Set Overview – Claim Subject Matter

Subject matter as % of all claims (~1,000 claims)

Subset: breaches of R&W (~400 claims)



*Claims pursuant to a post-closing purchase price adjustment mechanism (e.g., working capital).

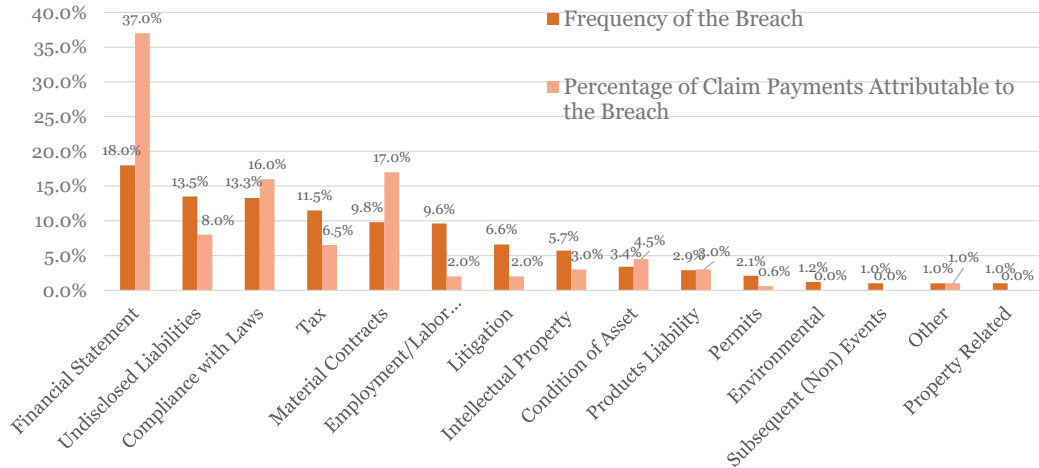
Due to rounding, percentages may not total 100% throughout this study.

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Reps and Warranties: Type of Breach vs. Percentage of Total Claim Payments

From Aon, Transaction Liability Ins. Claims Study (2020)



Minimizing Disputes and Costs of Disputes

- Assume “typical” structure
 - Specified survival/notice of claim period
 - Thresholds and Baskets
 - Caps on liability
- Potential for “public style” no-indemnity deals
- Note that these often differ for covenants as opposed to reps and warranties

Also available as part of the eCourse

[2021 Mergers and Acquisitions eConference](#)

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"Lessons Learned from the Most Heavily Litigated Provisions"