

## Agenda

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

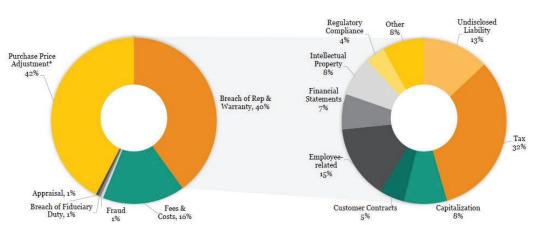
## Which provisions are the most heavily <a href="litigated?">litigated?</a>

- · Reps and Warranties
- Purchase Price Adjustment
- Earnout

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Subject matter as % of all claims (~1,000 cla Subset: breaches of R&W (~400 claims)



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

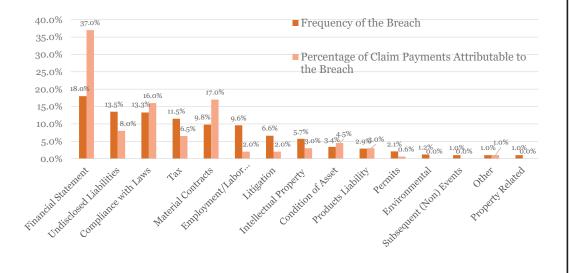
Due to rounding, percentages may not total 100% throughout this study.

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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

First appeared as part of the conference materials for the 17<sup>th</sup> Annual Mergers and Acquisitions Institute session "Lessons Learned from the Most Heavily Litigated Provisions"