

# 2008 Canadian Private Target Mergers & Acquisitions Deal Points Study (v1)

A Project of the Mergers & Acquisitions Market Trends Subcommittee  
of the  
Committee on Mergers and Acquisitions  
of the  
American Bar Association's Section of Business Law



# 2008 Canadian Private Target M&A Deal Points Study

**A Project of the M&A Market Trends Subcommittee  
of the Committee on Mergers and Acquisitions  
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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.



# 2008 Canadian Private Target Study Working Group

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## 2008 Canadian Private Target Study Sample Overview

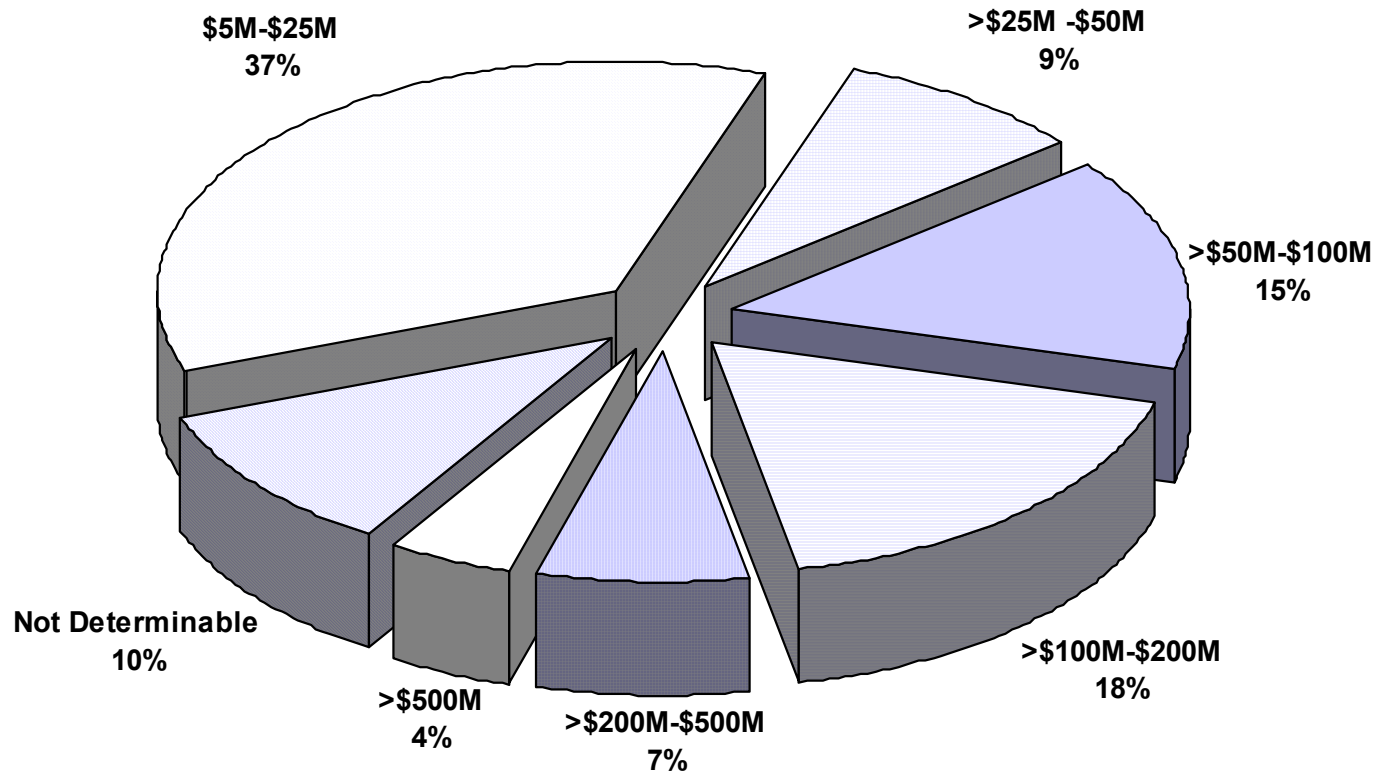
- This Study analyzes publicly available acquisition agreements for transactions completed in 2005 and 2006 that involved Canadian private targets being acquired by Canadian reporting issuers.
- The Study sample was obtained from searches for acquisition agreements filed on SEDAR (the “System for Electronic Document and Analysis”) maintained by Canadian securities regulatory authorities for reporting issuers.
- The final Study sample of 67 acquisition agreements (out of an initial yield of 122) excludes agreements from transactions in which transaction value was less than \$5M (Canadian), the Target was in bankruptcy, transactions involving non-arm’s length parties (e.g. income trust formations), transactions not governed by Canadian laws and transactions otherwise deemed inappropriate for inclusion.

Transaction Value* Range (Cdn\$)	# of Deals	Consideration			Form of Deal		
		All Cash	All Shares	Mixed	Asset	Share	Other
\$5M - \$3.4B	67	45%	9%	46%	36%	58%	6%

\* As reflected in the acquisition agreement or other public statements/filings (purchase price adjustments were taken into account where relevant information was available). Three of the 67 deals reported on in this Study had deal values greater than C\$500 million.

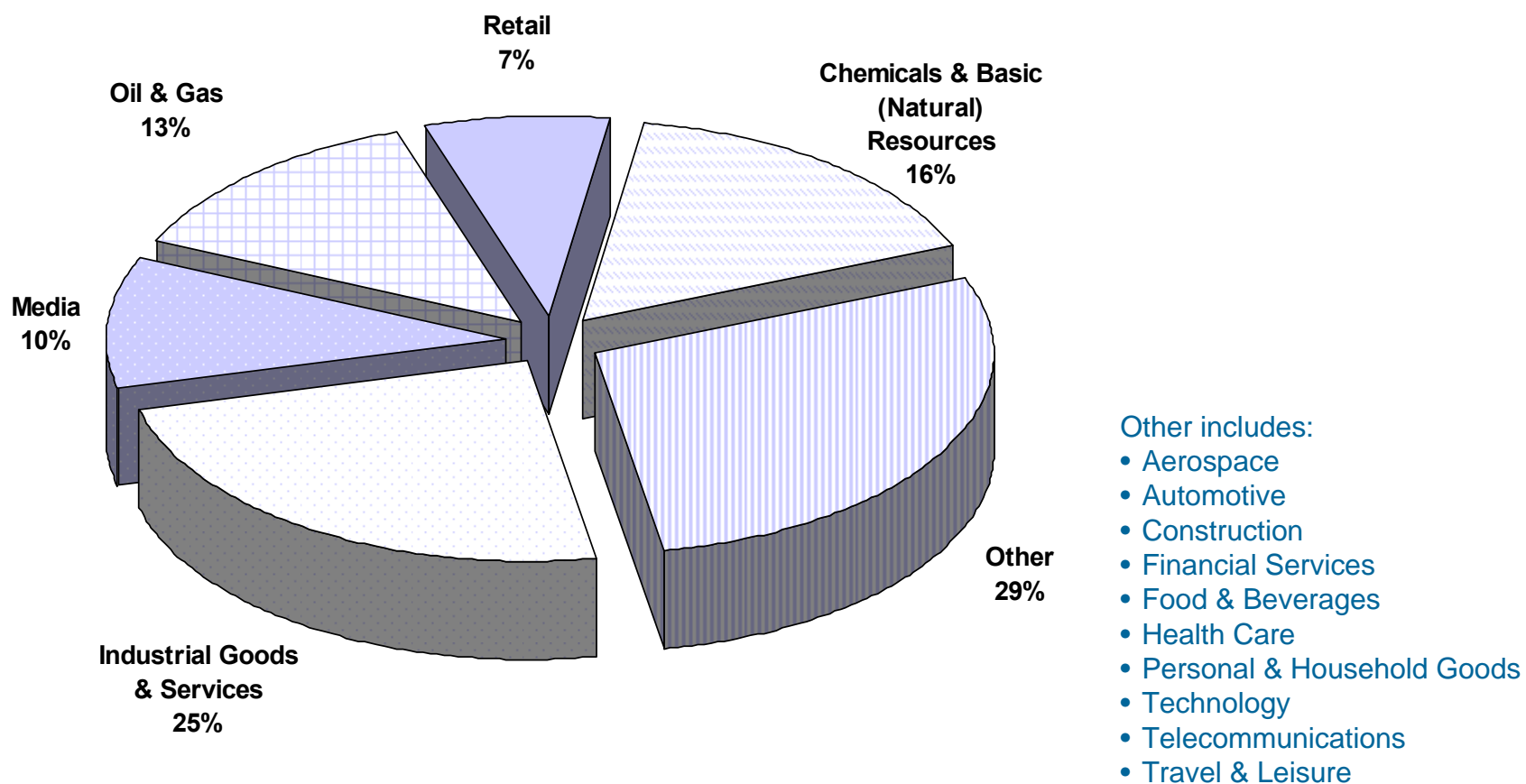


# 2008 Canadian Private Target Study Sample Overview (by transaction value – Canadian \$)







# 2008 Canadian Private Target Study Sample Overview (by industry)





## Private Target M&A Deals North America Comparison

	<b>US Deal Points Study</b> 	<b>Canadian Deal Points Study</b> 																		
<b>Years in Which Deal Closed</b>	<b>2006</b>	<b>2005, 2006</b>																		
<b>Number of Deals</b>	<b>143</b>	<b>67</b>																		
<b>Three Principal Industries</b>	<ul style="list-style-type: none"><li>• <b>Technology</b></li><li>• <b>Health Care</b></li><li>• <b>Industrial Goods &amp; Services</b></li></ul>	<ul style="list-style-type: none"><li>• <b>Industrial Goods</b></li><li>• <b>Chemicals &amp; Natural Resources</b></li><li>• <b>Oil and Gas</b></li></ul>																		
<b>Deal Sizes</b>	<table><tr><td><b>\$25M - \$100M</b></td><td><b>- 63%</b></td></tr><tr><td><b>&gt;\$100M - \$200M</b></td><td><b>- 18.2%</b></td></tr><tr><td><b>&gt;\$200M - \$500M</b></td><td><b>- 18.9%</b></td></tr><tr><td><b>&gt;\$500M</b></td><td><b>- 0%</b></td></tr></table>	<b>\$25M - \$100M</b>	<b>- 63%</b>	<b>&gt;\$100M - \$200M</b>	<b>- 18.2%</b>	<b>&gt;\$200M - \$500M</b>	<b>- 18.9%</b>	<b>&gt;\$500M</b>	<b>- 0%</b>	<table><tr><td><b>\$5M - \$100M</b></td><td><b>- 61%</b></td></tr><tr><td><b>&gt;\$100M - \$200M</b></td><td><b>- 18%</b></td></tr><tr><td><b>&gt;\$200M - \$500M</b></td><td><b>- 7%</b></td></tr><tr><td><b>&gt;\$500M</b></td><td><b>- 4%</b></td></tr><tr><td><b>Not determinable</b></td><td><b>- 10%</b></td></tr></table>	<b>\$5M - \$100M</b>	<b>- 61%</b>	<b>&gt;\$100M - \$200M</b>	<b>- 18%</b>	<b>&gt;\$200M - \$500M</b>	<b>- 7%</b>	<b>&gt;\$500M</b>	<b>- 4%</b>	<b>Not determinable</b>	<b>- 10%</b>
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<b>&gt;\$500M</b>	<b>- 4%</b>																			
<b>Not determinable</b>	<b>- 10%</b>																			

**Note to Reader:** When comparing the results of the US and Canadian private target deal points studies, readers should note the smaller number of deals for which information is available in Canada, the typically smaller deal sizes in Canada (37% less than \$25 million) and the large number of Canadian deals in the resources and oil & gas sectors.





# Contents

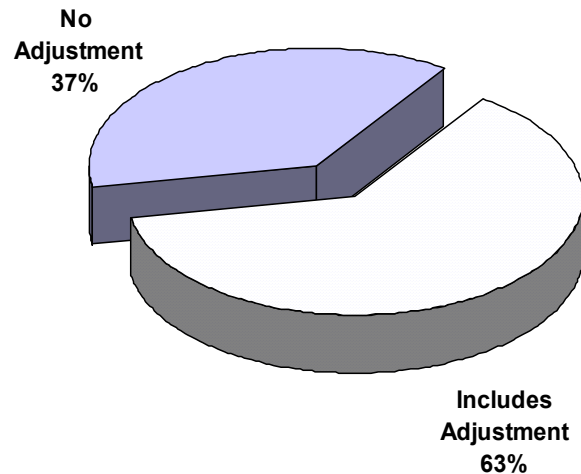
- I. Financial Provisions** ..... Slide 10
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  - C. Private Target M&A Deals - North American Comparison
  
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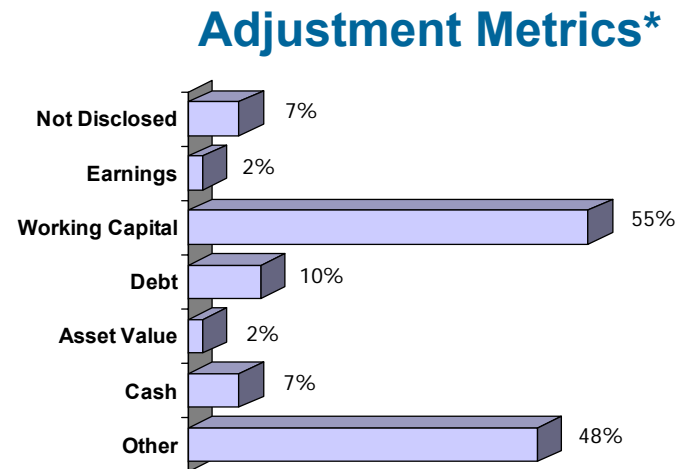
# Financial Provisions



# Post-Closing Purchase Price Adjustments



(Subset: includes closing adjustment)

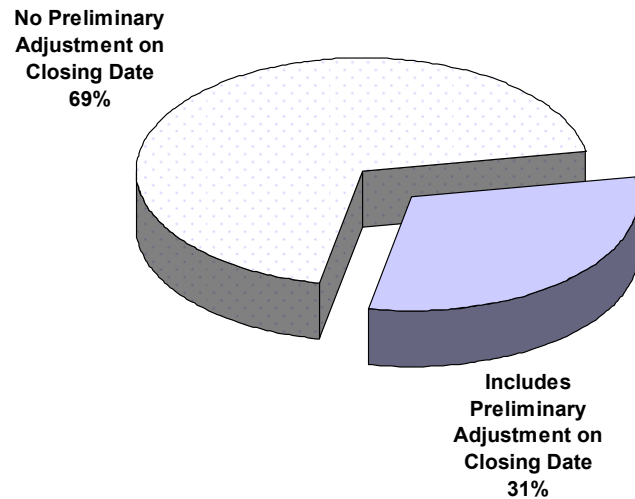


\* 19% of the post-closing purchase price adjustments were based on more than one metric.

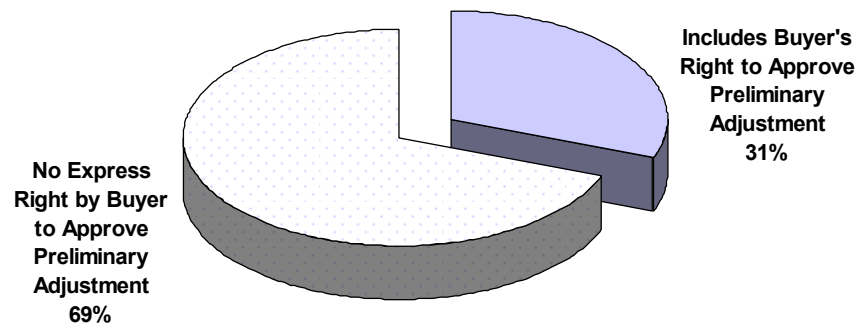


# Post-Closing Purchase Price Adjustments – Estimates at Closing

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



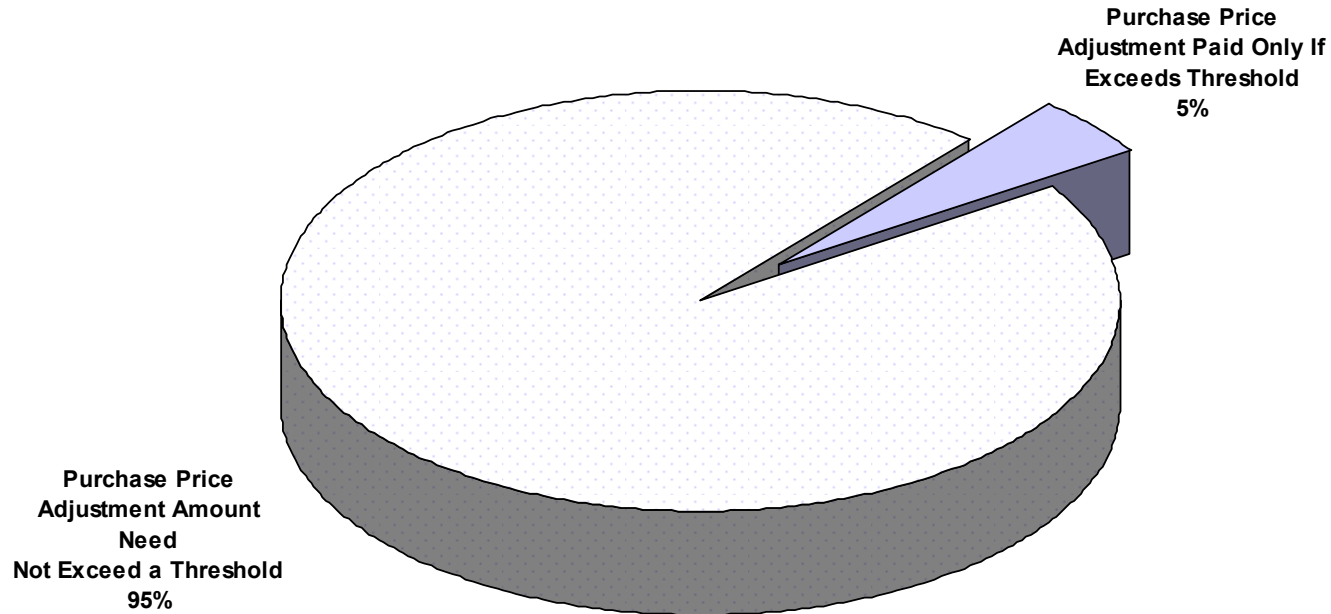
(Subset: includes estimated closing payment)





# Post-Closing Purchase Price Adjustments – Threshold

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

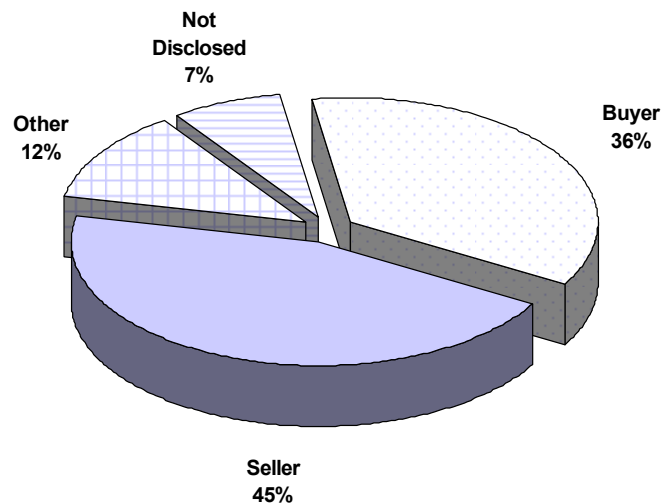




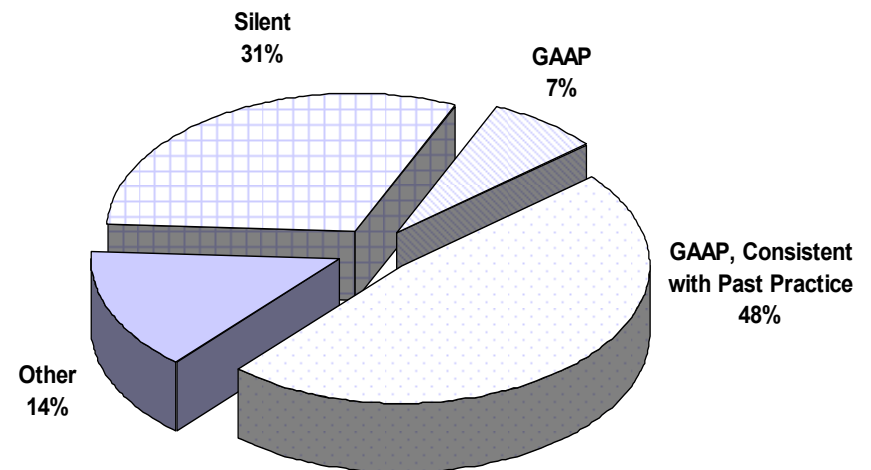
# Post-Closing Purchase Price Adjustments – Preparation of Closing Balance Sheet

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

## Preparing Party



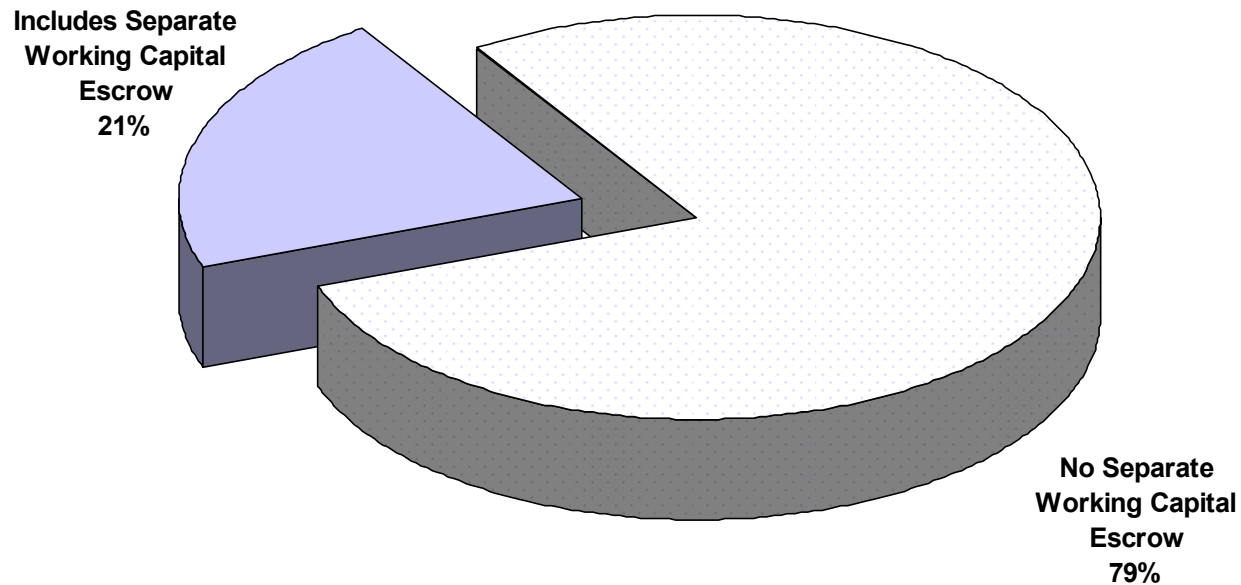
## Methodology





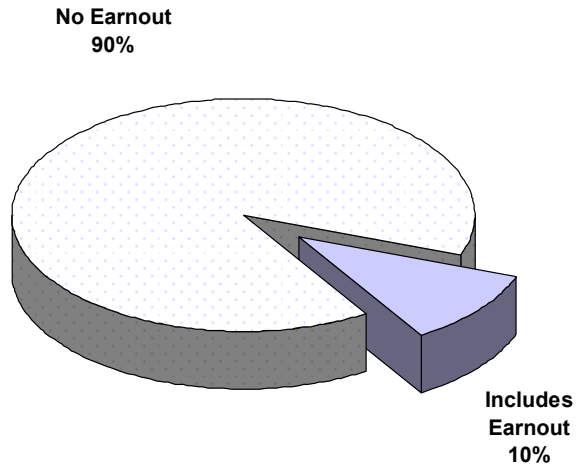
# Post-Closing Purchase Price Adjustments – Separate Working Capital Escrow

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



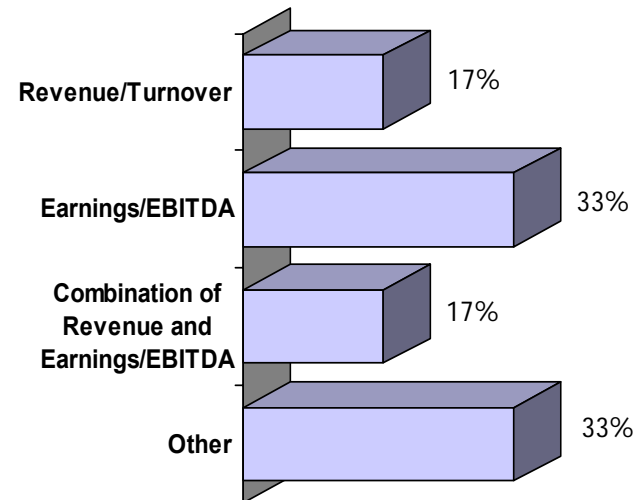


# Earnouts



(Subset: deals with earnouts)\*

## Earnout Metrics

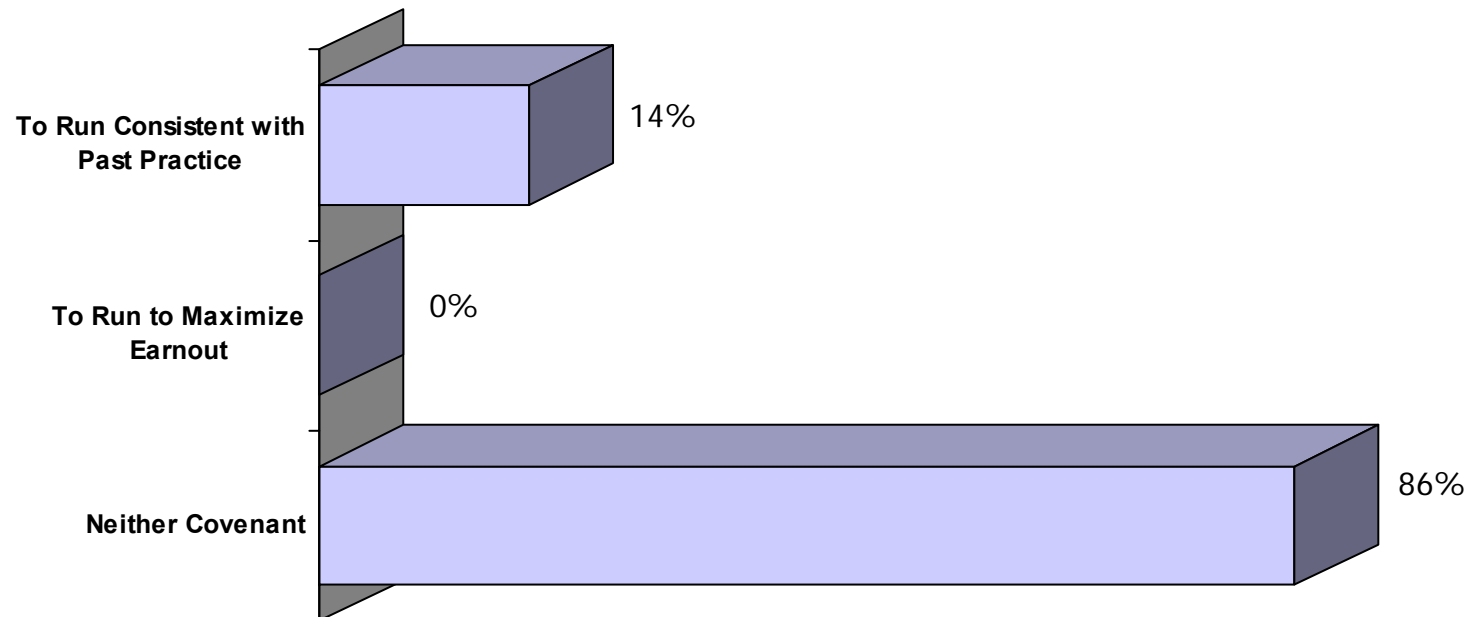


\* Reflects only seven transactions





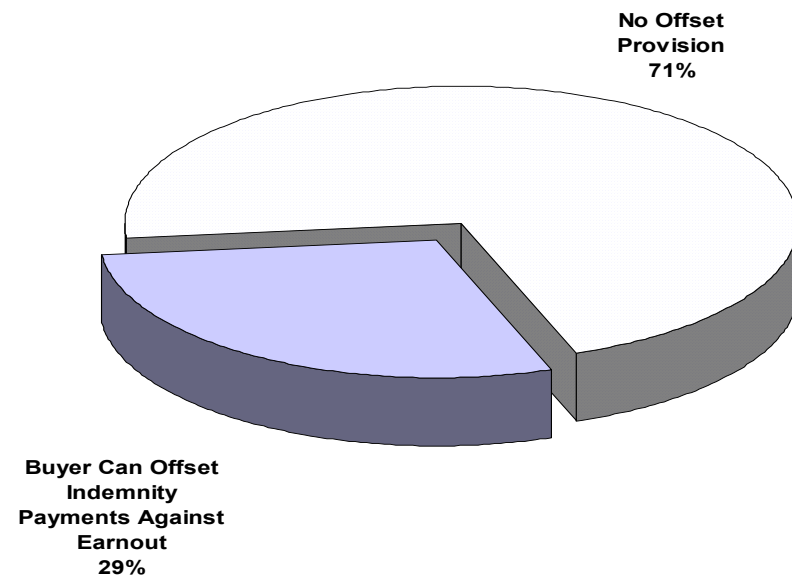
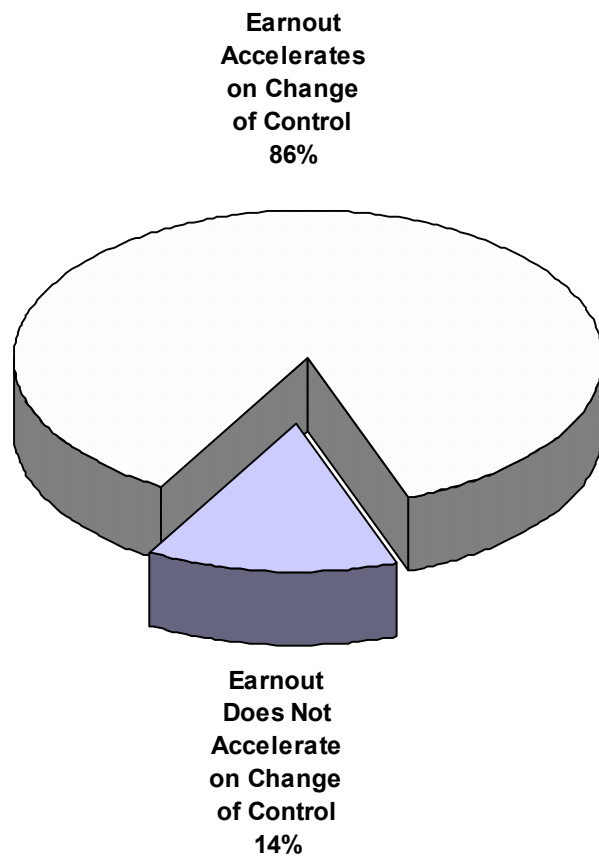
## Earnouts – Buyer's Covenants as to Acquired Business







# Earnouts – Acceleration and Offsets

(Subset: deals with earnouts)





## Private Target M&A Deals North American Comparison

	<b>US Deal Points Study</b> 	<b>Canadian Deal Points Study</b> 
<b>Deals with Post-Closing Adjustments</b>	<b>68%</b>	<b>63%</b>
<b>Working Capital as Adjustment Metric</b>	<b>69%</b>	<b>55%</b>
<b>No Minimum Threshold for Adjustments</b>	<b>90%</b>	<b>95%</b>
<b>Buyer Prepares First Draft of Closing Balance Sheet</b>	<b>79%</b>	<b>36%</b>
<b>Methodology – GAAP consistent with past practices</b>	<b>72%</b>	<b>48%</b>
<b>Deals with Earnouts</b>	<b>19%</b>	<b>10%</b>

See note to reader on slide 8.



# Target's Representations and Warranties\*



## Financial Statements – “Fair Presentation” Representations

### *“Fairly presents” is GAAP qualified*

Such 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)

### ***Financial Statements***

The Corporation Financial Statements and the Corporation Interim Financial Statements have been prepared in accordance with GAAP applied on a basis consistent with those of previous fiscal years and **each presents fairly in all material respects ...**

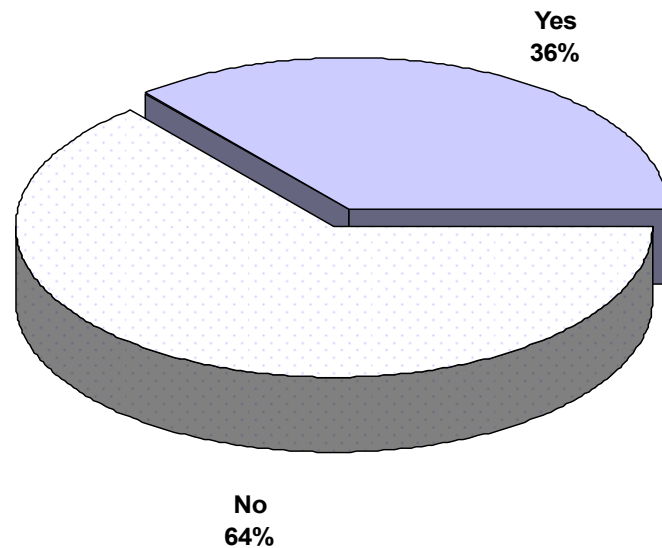
(AGF Management Limited Acquisition of Highstreet Asset Management)



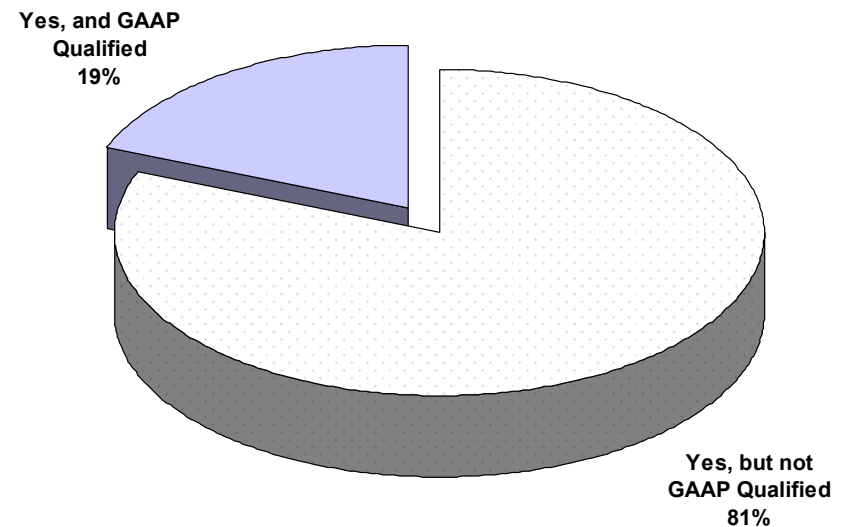
# Financial Statements – “Accurate and Complete” and “Fair Presentation” Representations

(Subset: deals with financial statement rep)

Is an “accurate and complete”  
standard included?



Is a “fair presentation”  
standard included?





## **“No Undisclosed Liabilities” Representation – Buyer-Favorable Formulation**

***No Undisclosed Liabilities.*** Except as set forth in Part 3.13 [of the Disclosure Letter], [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 the Ordinary Course of Business of [Target] since the date of the Interim Balance Sheet.

\*\*\*

**“*Liability*”**--with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

(ABA Model Asset Purchase Agreement)



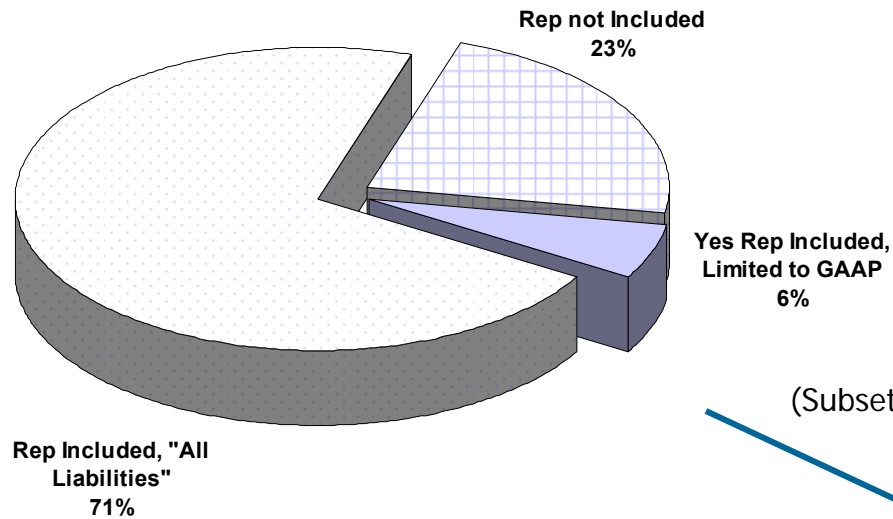
## **“No Undisclosed Liabilities” Representation – Target-Favorable Formulation**

***No Undisclosed Liabilities.*** Except as set forth in Part 3.13 [of the Disclosure Letter], [Target] has no liability **of the nature required to be disclosed in a balance sheet prepared in accordance with GAAP** except for ...



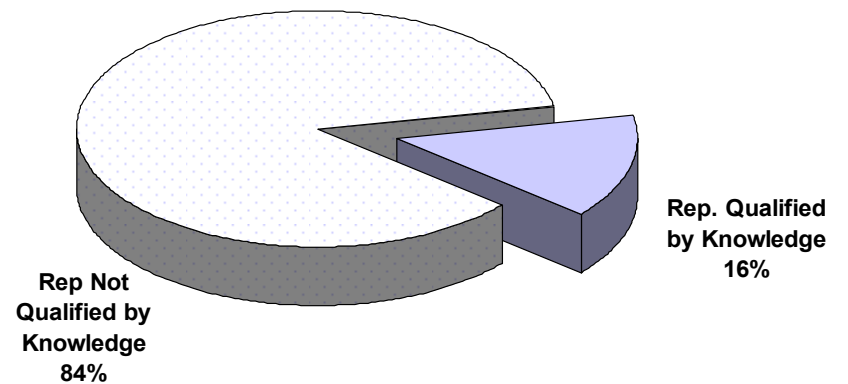


# "No Undisclosed Liabilities" Representation



(Subset: includes representation)

## Qualified by Knowledge?





## **“No Undisclosed Liabilities” Representation – Qualifiers and Exclusions**

(Carveouts for items that are (1) reflected on Balance Sheet; (2) immaterial (stand alone); and (3) ordinary course (since the Balance Sheet date))

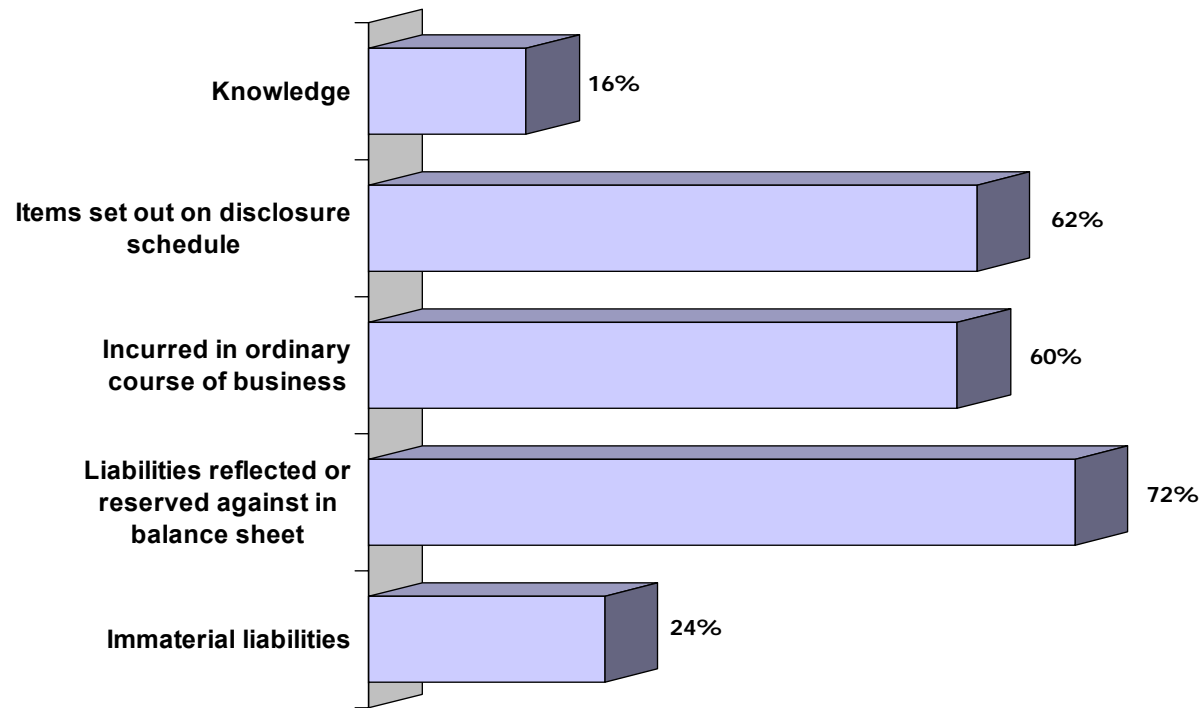
**Except to the extent reflected or reserved against in the Financial Statements or incurred subsequent to the date of the balance sheet ... in the ordinary and usual course** of the respective Business of each Vendor, GP and LP (and, following the Transfer Date, each GP and LP) does not have any material outstanding indebtedness or any material liabilities (including, for greater certainty, liabilities that are off-balance sheet liabilities) or obligations (whether accrued, absolute, contingent or otherwise), and any liabilities or obligations incurred in the ordinary and usual course of the respective Business since the date of the balance sheet included in the Financial Statements have not had any would not reasonably be expected to have a **materially adverse impact** on the Business or the Assets, condition (financial or otherwise), liabilities, operations or earnings of such Vendor (and, following the Transfer Date, each GP and LP).

(Canwel Building Materials acquisition of Alberta Wood Preserves)



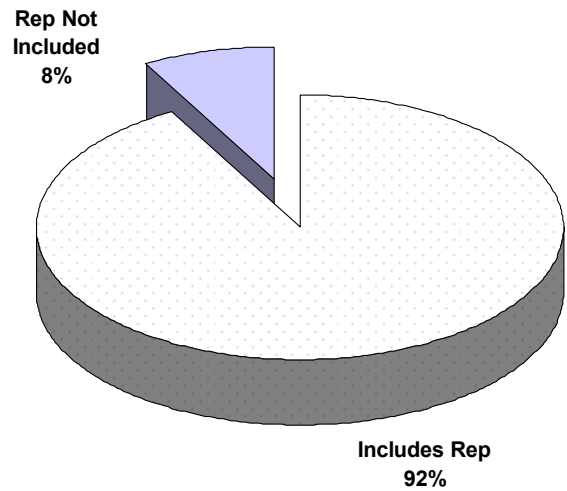
# “No Undisclosed Liabilities” Representation – Qualifiers and Exclusions

(Subset: deals with representation)

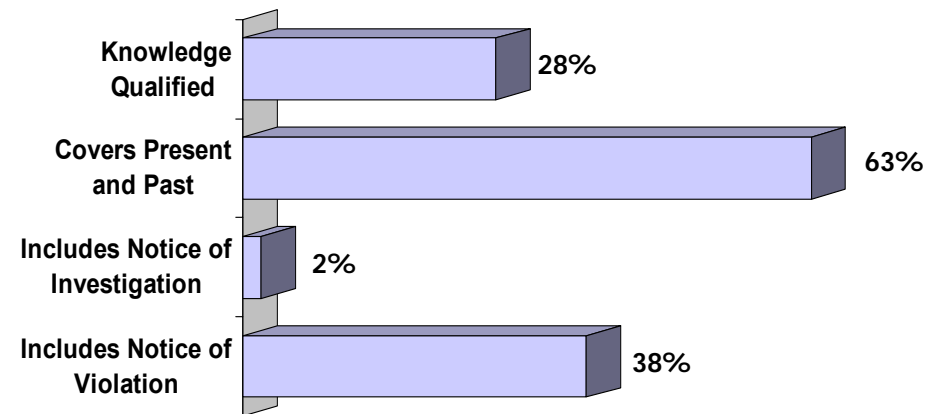




# Compliance with Law Representation



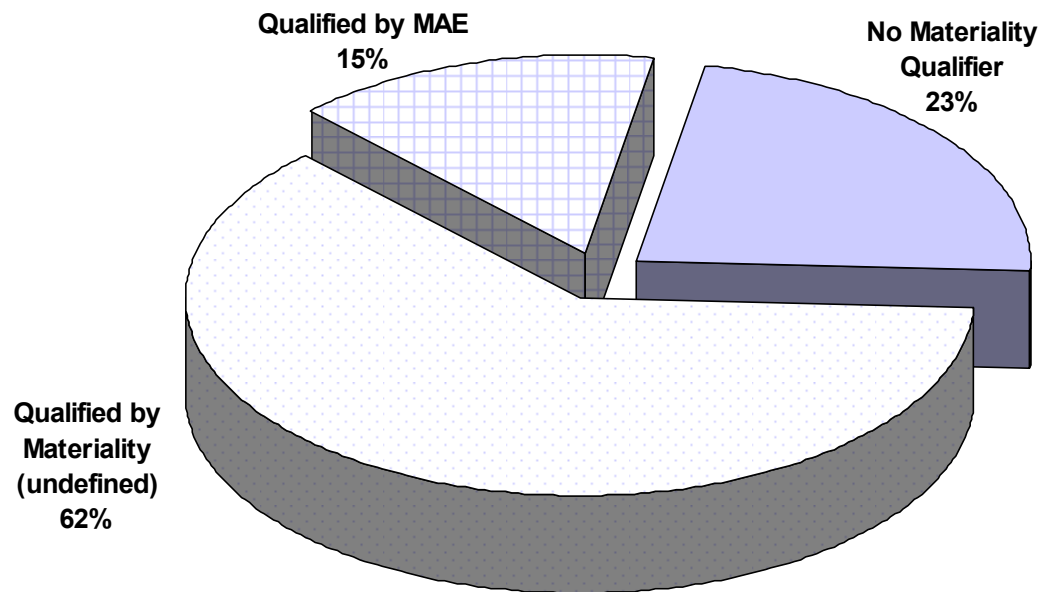
(Subset: includes rep)







# Compliance with Law Representation

(Subset: deals with representation)





## Private Target M&A Deals North American Comparison

	US Deal Points Study 	Canadian Deal Points Study 
<b>“Fairly presents” rep is GAAP qualified</b>	<b>24%</b>	<b>19%</b>
<b>Agreement includes “no undisclosed liabilities” rep</b>	<b>93%</b>	<b>77%</b>
<b>Carveouts:</b>		
<b>Knowledge qualified</b>	<b>7%</b>	<b>16%</b>
<b>Materiality</b>	<b>44%</b>	<b>24%</b>
<b>Ordinary course</b>	<b>92%</b>	<b>60%</b>
<b>Otherwise disclosed</b>	<b>not reported</b>	<b>62%</b>
<b>Compliance with law rep not included</b>	<b>1%</b>	<b>8%</b>

See note to reader on slide 8.



# 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 the Target in this Agreement shall have been accurate in all respects **as of the Closing Date** as if made on the Closing Date.

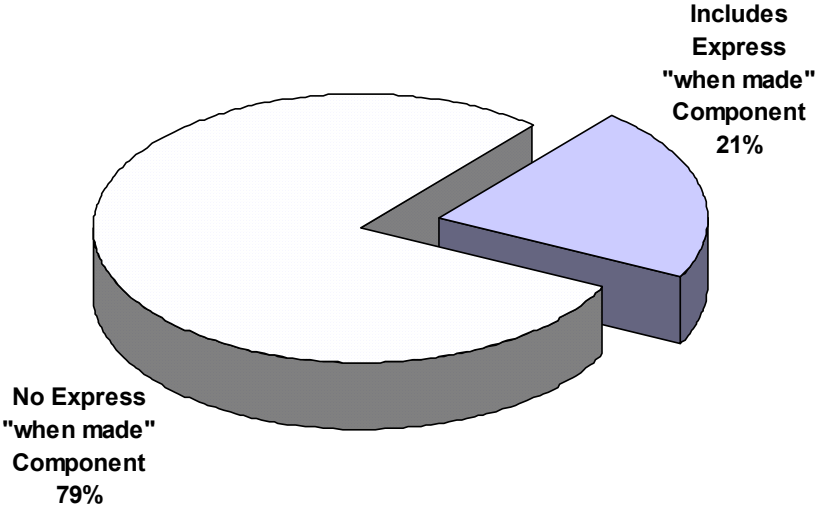
### *Two points in time: at signing and at closing*

Each of the representations and warranties made by the 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.

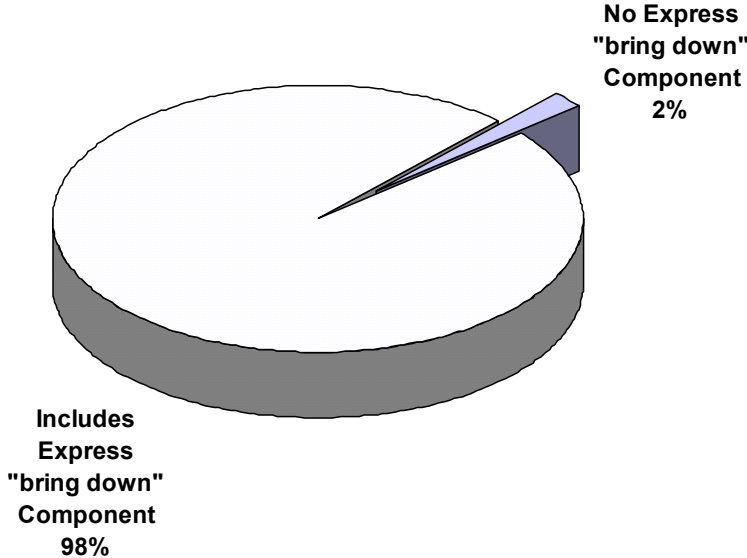


# Accuracy of Target's Representations – When Must They Be Accurate?

**“When Made”**  
(i.e. at signing)



**“Bring Down”**  
(i.e. at closing)\*



\* Includes deals with both “when made” and “bring down” requirement and deals solely with a “bring down” requirement. Disregards 11 deals which closed simultaneously with signing of the acquisition agreement.



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

### *Accurate in all respects*

Each of the representations and warranties made by the 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*

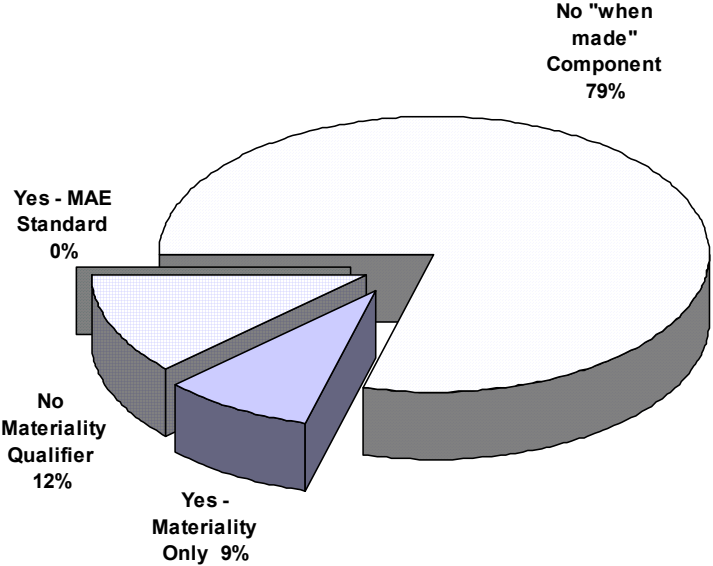
Each of the representations and warranties made by the Target in this Agreement shall have been accurate **in all material respects** as of the Closing Date as if made on the Closing Date.

### *The “Big MAC/MAE” qualification*

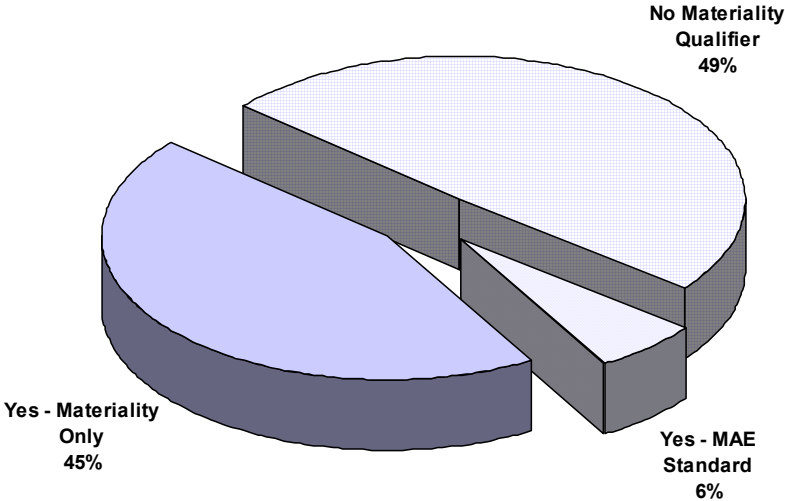
Each of the representations and warranties made by the Target in this Agreement shall be accurate in all respects as of the Closing Date as if made on the Closing Date, **except for inaccuracies of representations or warranties the circumstances giving rise to which, individually or in the aggregate,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

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

**“When Made”**  
*(i.e. at signing)*



**“Bring Down”**  
*(i.e. at closing)\**



\* Includes deals with both “when made” and “bring down” requirement and deals solely with a “bring down” requirement. Disregards one deal that did not have an express bring down requirement and 11 deals which closed simultaneously with signing of the acquisition agreement.



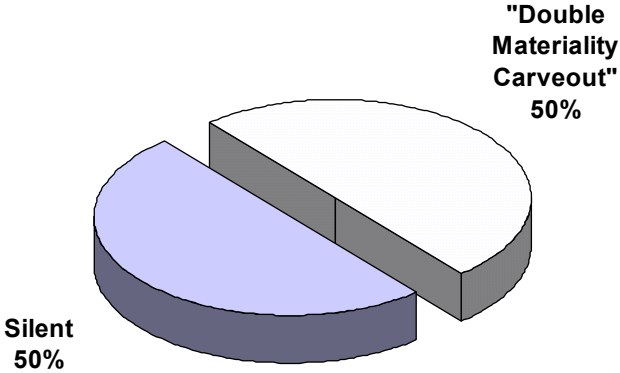
## Accuracy of Target's Representations – How Accurate Must They Be? ("double materiality" carveout)

Each of the representations and warranties made by the 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).**

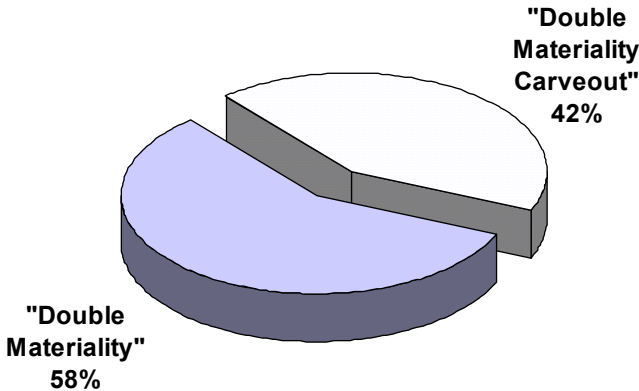
# Accuracy of Target's Representations – How Accurate Must They Be? (“double materiality” carveout)

(Subset: deals with materiality/MAE qualifiers)

**“When Made”**  
(i.e. at signing)



**“Bring Down”**  
(i.e. at closing)\*



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



## Buyer's MAC Condition

### ***Stand-Alone:***

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

### ***“Back-Door”:***

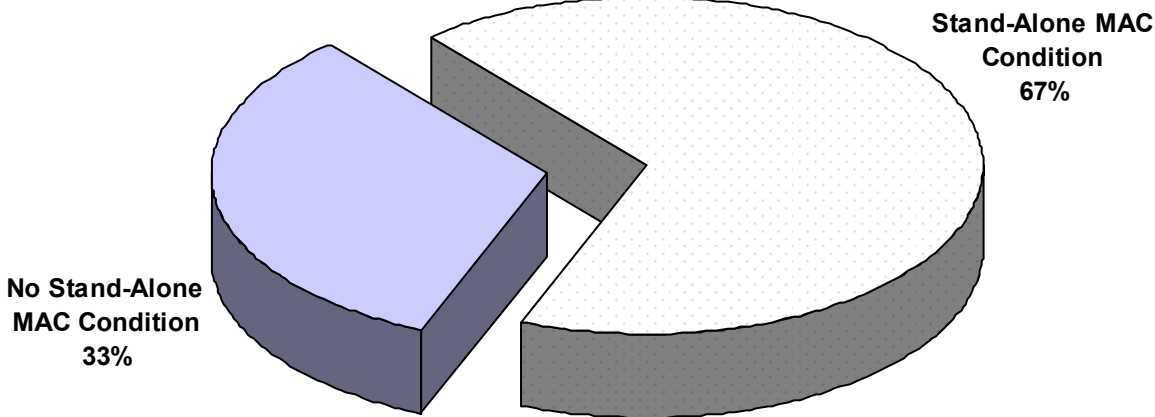
*“absence of changes” representation*

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

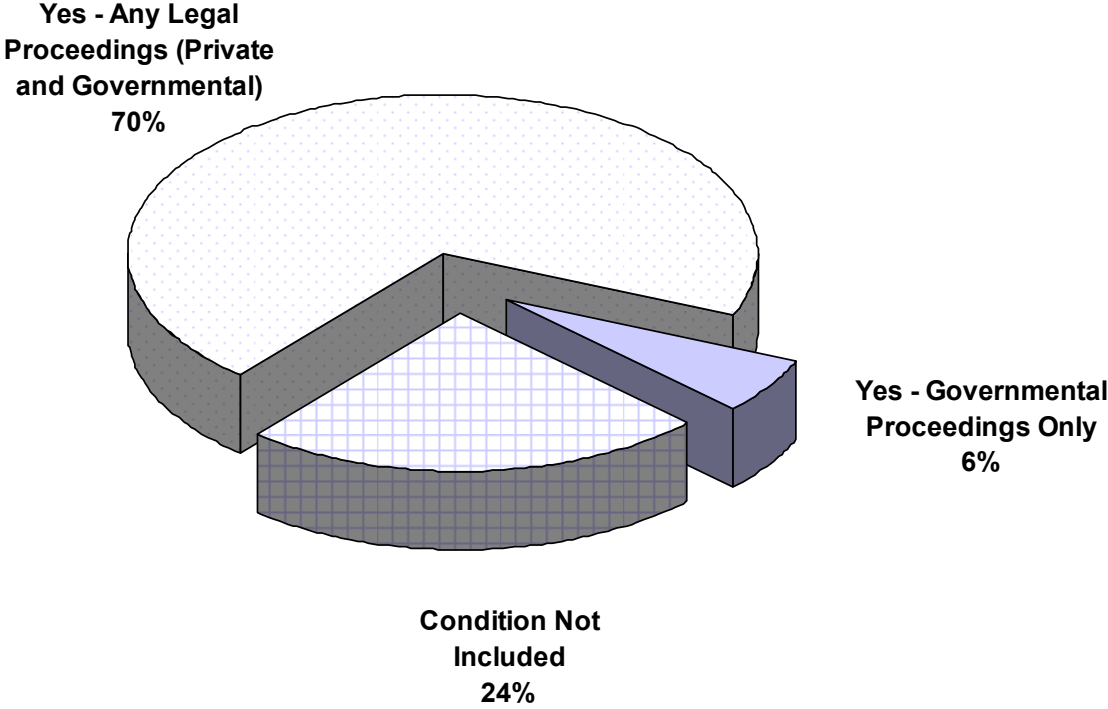
*plus*

- “Bring Down” formulation of “Accuracy of Representations” condition

# Buyer's MAC Condition ("stand-alone")



# No Legal Proceedings Condition ("stand-alone")

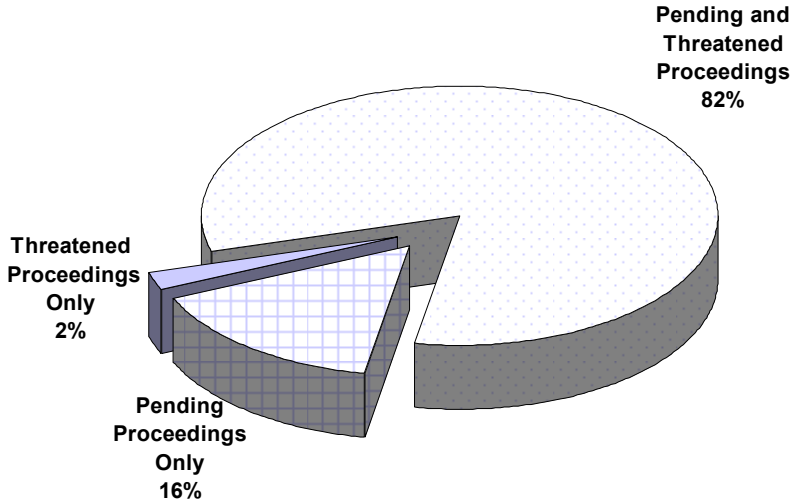




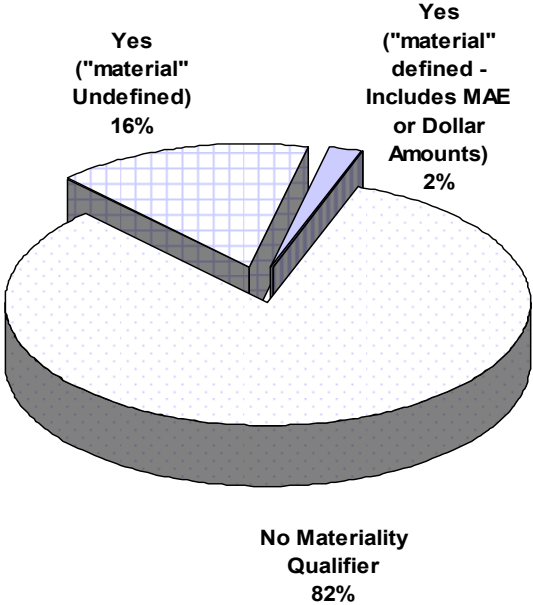
# No Legal Proceedings Condition ("stand-alone")

(Subset: deals including closing condition of no legal proceedings)

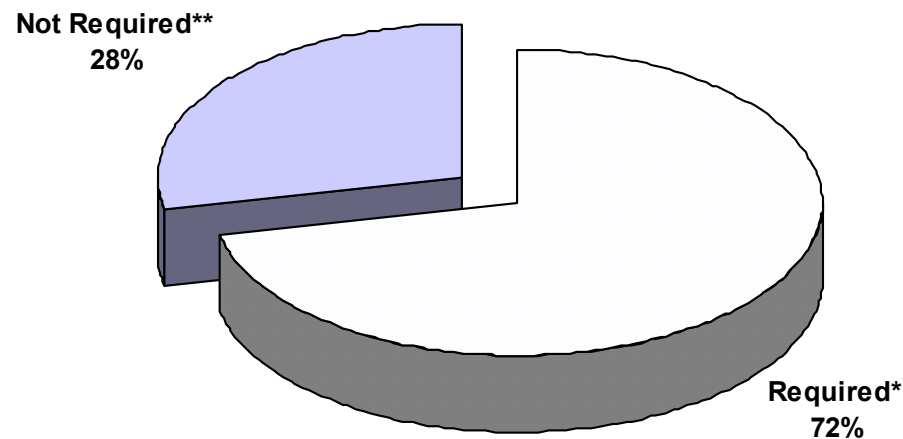
## Pending/Threatened Proceedings



## Materiality Qualifications





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



\* Typically, as a condition to closing, but includes opinions required in “closing deliveries” covenant requirement.

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

## Private Target M&A Deals North American Comparison

	US Deal Points Study 	Canadian Deal Points Study 
<b>When must target's reps be accurate?</b>		
- when made	<b>60%</b>	<b>21%</b>
- bring down to closing	<b>99%</b>	<b>97%</b>
<b>Double materiality carved out in bring down</b>	<b>75%</b>	<b>42%</b>
<b>Stand-alone MAC condition</b>	<b>78%</b>	<b>67%</b>
<b>Legal opinion (non-tax) of target counsel required</b>	<b>70%</b>	<b>72%</b>

See note to reader on slide 8.



# Indemnification



## Survival/Time to Assert Claims

### 10.1 SURVIVAL...

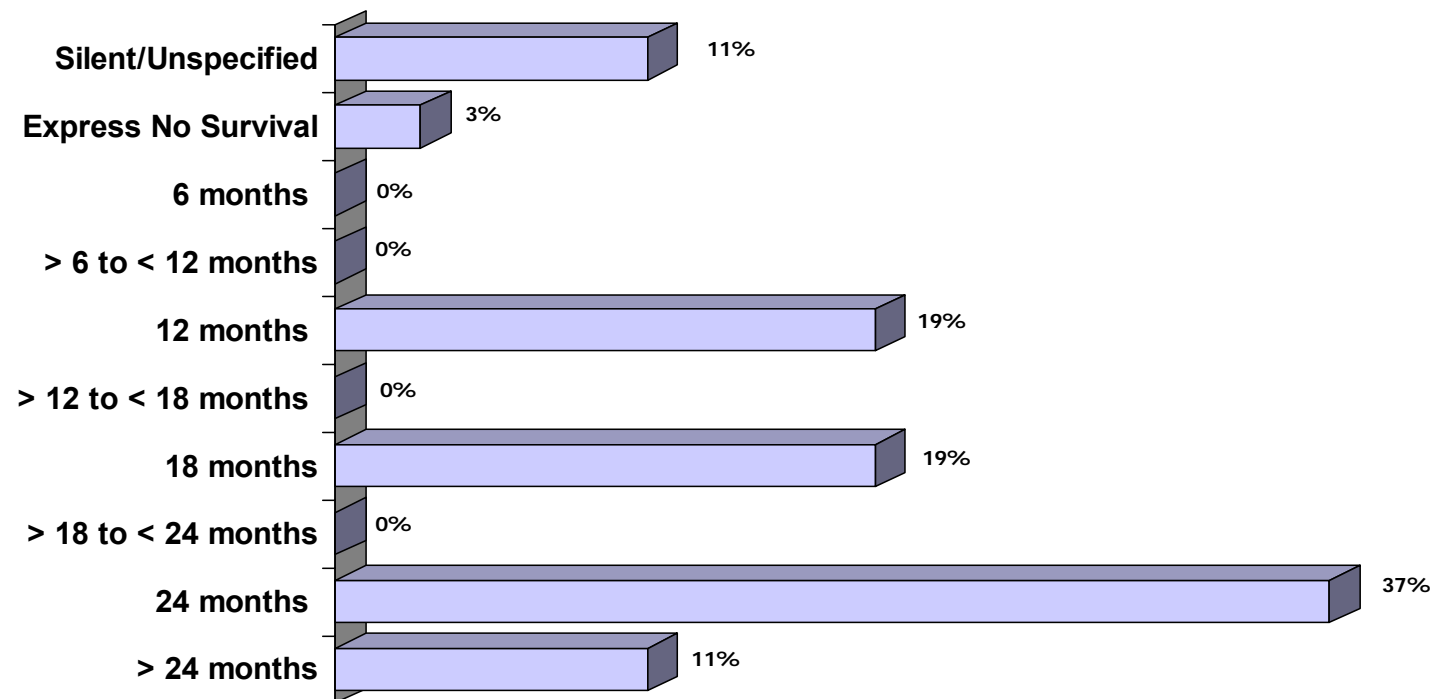
All representations, warranties ... in this Agreement, the Disclosure Letter, the supplements to the Disclosure Letter, the certificate delivered pursuant to Section 2.4(a)(v), and any other certificate or document delivered pursuant to this Agreement will survive the Closing...

### 10.5 TIME LIMITATIONS

If the Closing occurs, Sellers will have no liability (for indemnification or otherwise) with respect to any representation or warranty... unless on or before \_\_\_\_\_ Buyer notifies Sellers of a claim specifying the factual basis of that claim in reasonable detail to the extent then known by Buyer...

(ABA Model Stock Purchase Agreement)

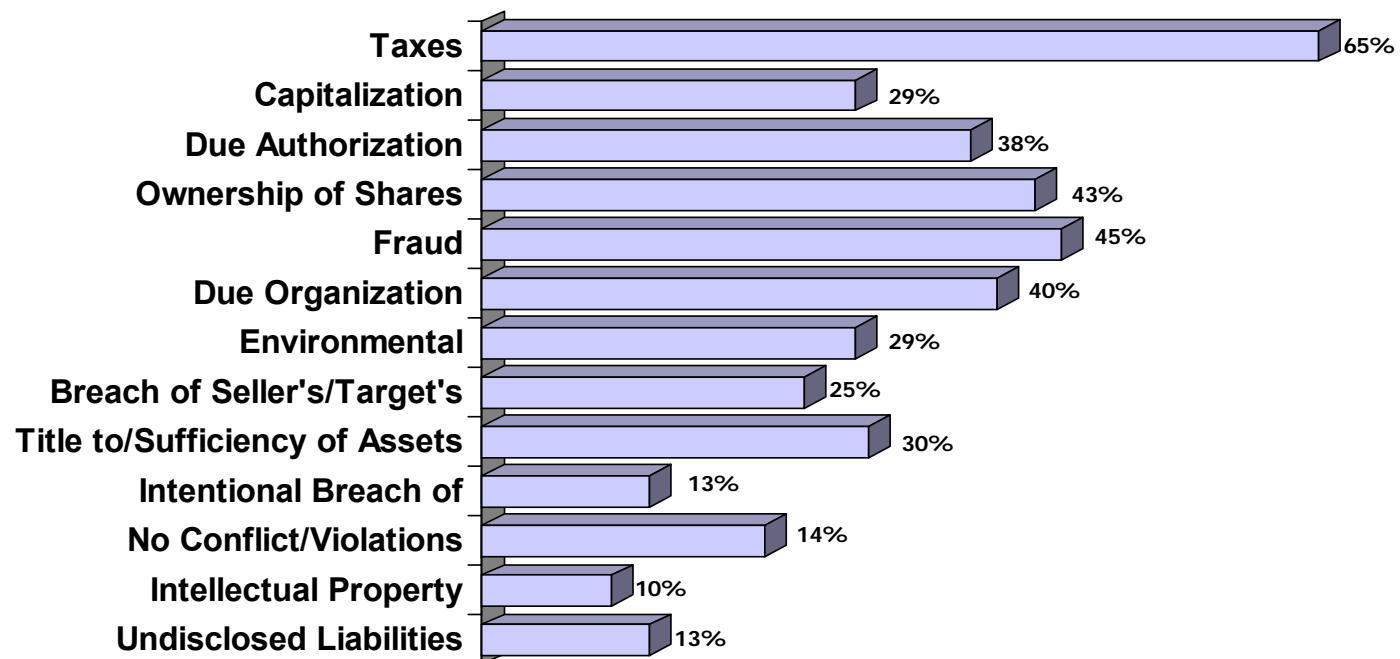
## Survival/Time to Assert Claims (generally)\*



\* Disregards two deals where survival periods in acquisition agreement were redacted.

## Survival/Time to Assert Claims – Carveouts to Survival Limitations\*, \*\*

(Subset: deals with survival periods)

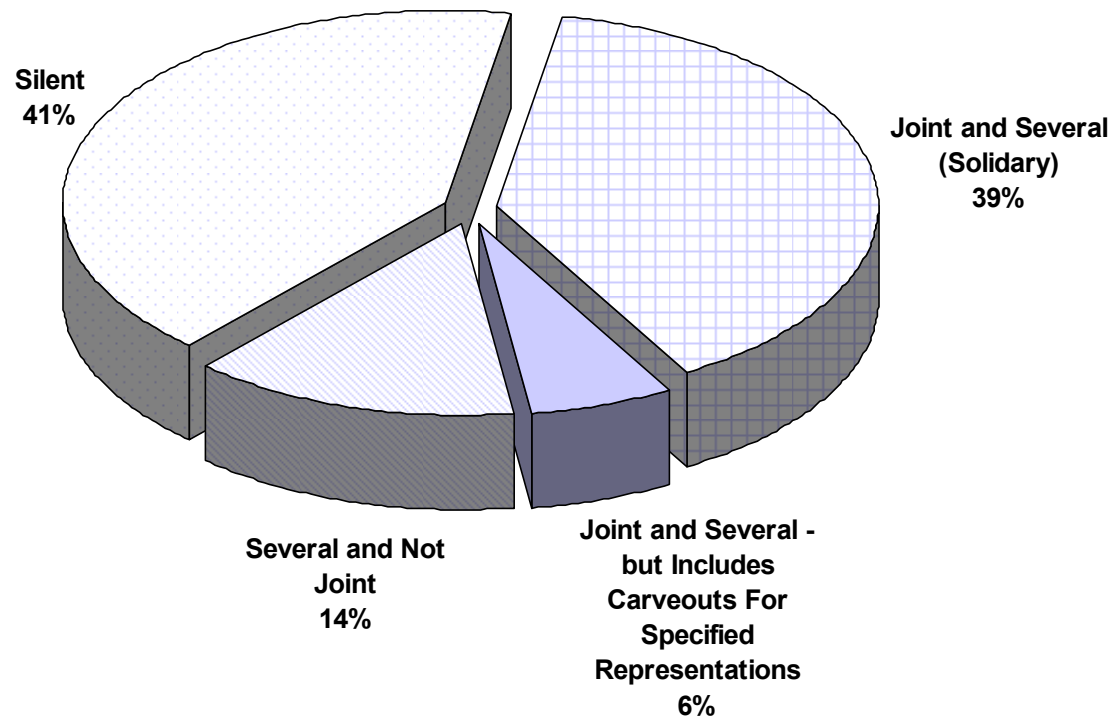


\* Only those categories appearing 10% of the time or more are shown.

\*\* Disregards two deals where survival periods in acquisition agreement were redacted and one deal where carveouts in acquisition agreement were redacted.

## Liability of Multiple Indemnitors

(Subset: deals with survival provisions that had multiple indemnitors)\*



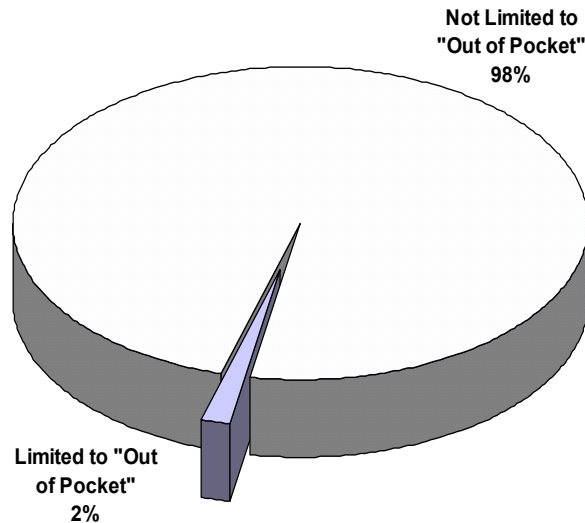
\* Disregards one deal which contained separate joint and several obligations.



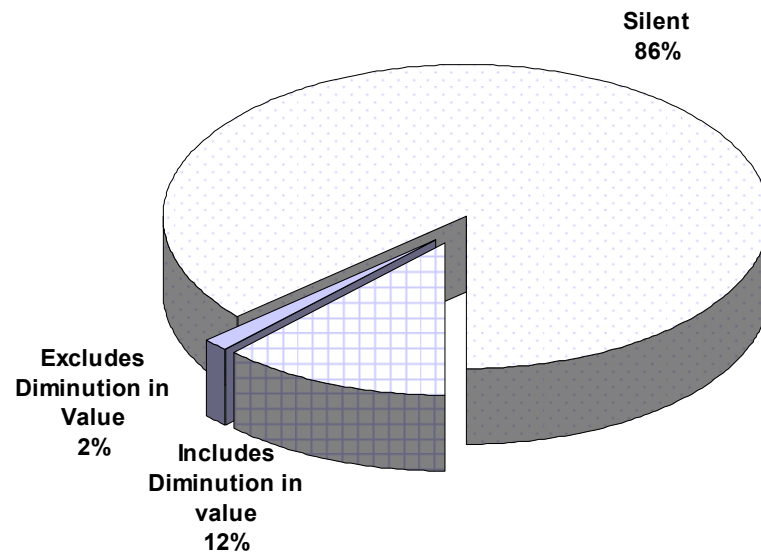
# Types of Damages/Losses Covered

(Subset: deals with survival provisions)

## “Out of Pocket” Damages



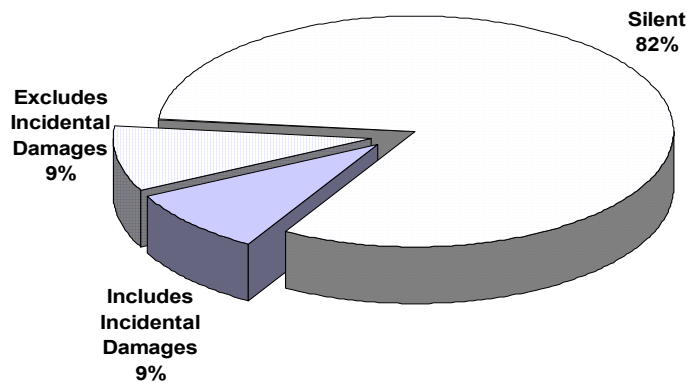
## Diminution in Value



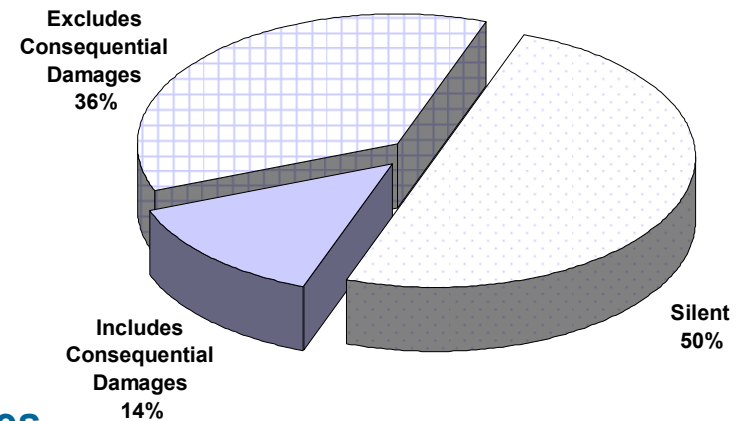
# Types of Damages/Losses Covered

(Subset: deals with survival provisions)

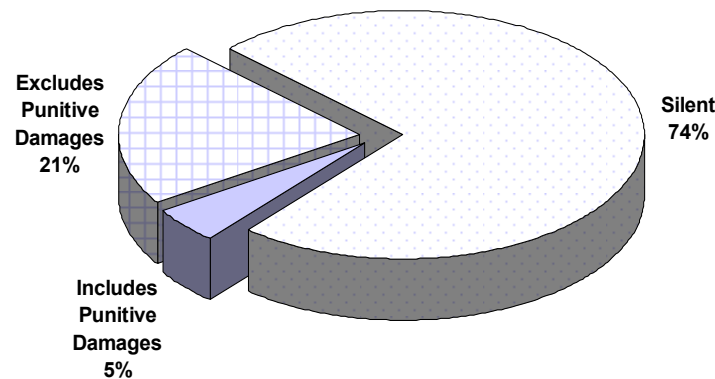
## Incidental Damages



## Consequential Damages



## Punitive Damages





## Baskets - Deductible

... the Vendor shall not be required to pay any such amount until the aggregate amount of all such Claims exceeds \$1,000,000 and upon the aggregate amount of all such Claims exceeding \$1,000,000, but subject to Section 10.1(b)(ii)B, **the Vendor shall only be required to pay all amounts in excess of such \$1,000,000 amount.**

(Manitoba Telecom acquisition of MTS Allstream Inc.)



## Baskets – First Dollar

Neither Sellers nor Purchaser shall have liability to any Indemnified Party... unless and until (and only to the extent)...the aggregate Damages of all Seller Indemnified Parties or Purchaser Indemnified Parties (taken as a whole), as the case may be, exceeds US\$750,000 **(it being understood that once such U\$\$750,000 threshold is exceeded, the entire amount of such threshold shall be recoverable by such Indemnified Parties).**

(Martinrea International acquisition of Tyssenkrupp Budd Systems)



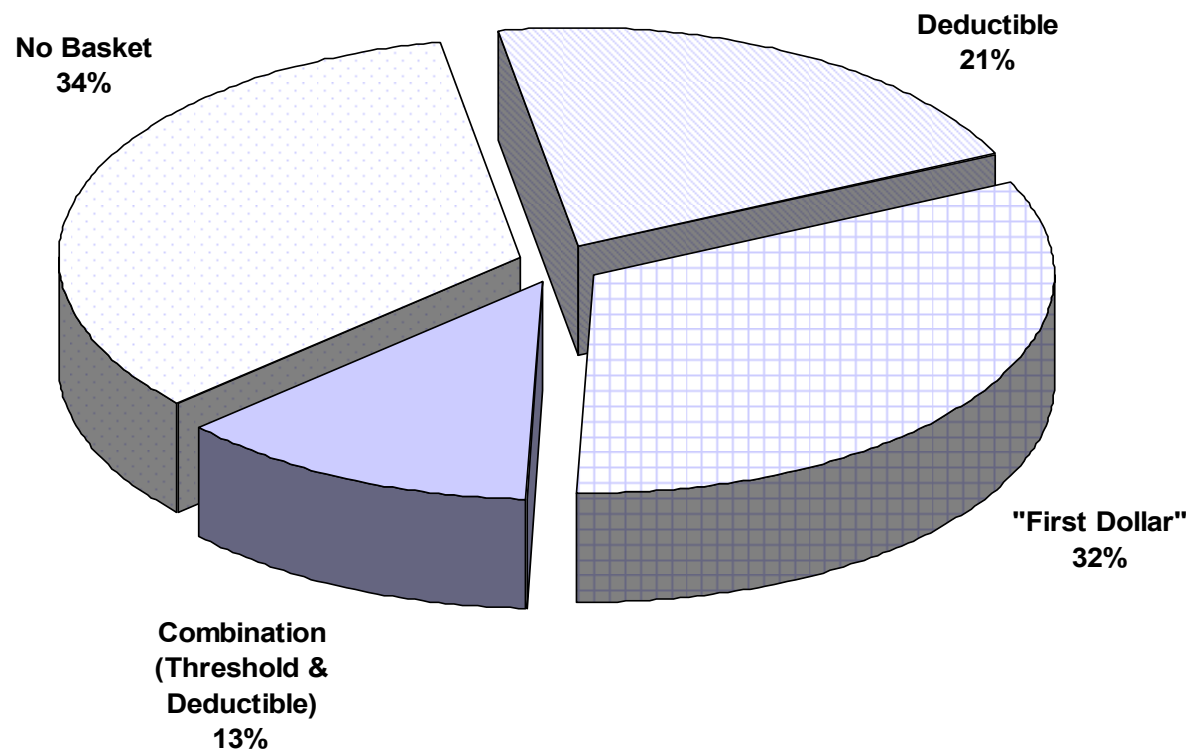
## Baskets – Combination

The Seller shall not be obligated to indemnify or pay the Purchaser pursuant to Section 7.2(a) hereof unless and until the aggregate amount of the Losses incurred... **exceeds an amount equal to one percent (1%) of the Purchase Price (the “Minimum Indemnification Threshold”)** in which case the Seller shall have an indemnification and payment obligation for all such amounts that exceed the Minimum Indemnification Threshold; **provided that the Seller shall not be liable to the Purchaser for any Losses relating to a single claim (or group of claims relating to the same matter) under Section 7.2(a) not exceeding \$1,000,000 (the “Basket Amount”)**.

(BCE Inc. Sale of Telesat)

# Baskets

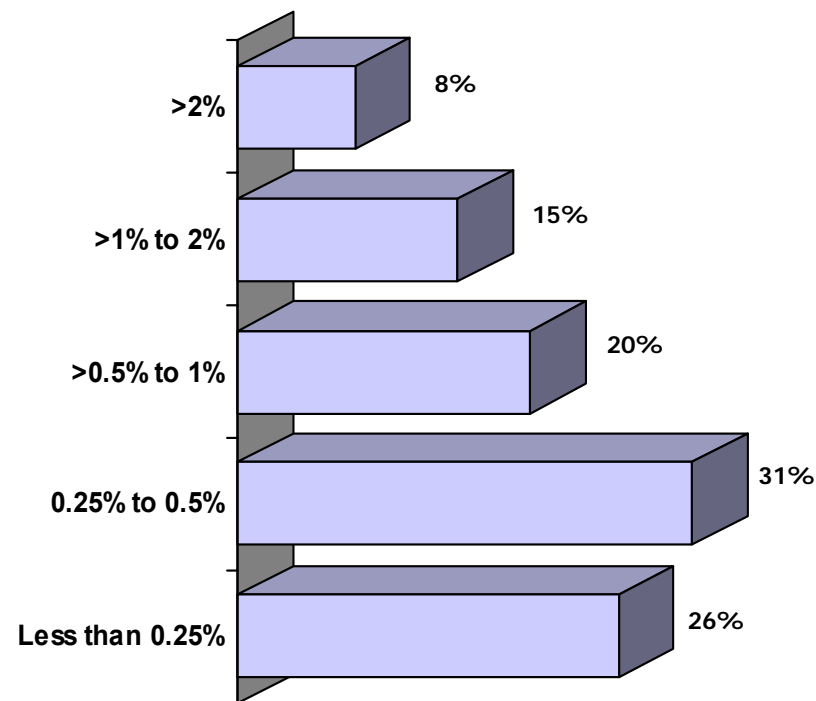
(Subset: deals with survival provisions)\*



\* Disregards two deals where basket provisions in acquisition agreement were redacted.

## Baskets as % of Transaction Value

(Subset: deals with survival provisions and baskets)\*



\* Disregards nine deals (including the two deals referred to in slide 54) where basket provisions in acquisition agreement were redacted or the final purchase price was not determinable. Note that in 34% of deals surveyed, no basket was provided.

## Baskets as % of Transaction Value (statistical summary)

(Subset: deals with survival provisions and baskets)\*

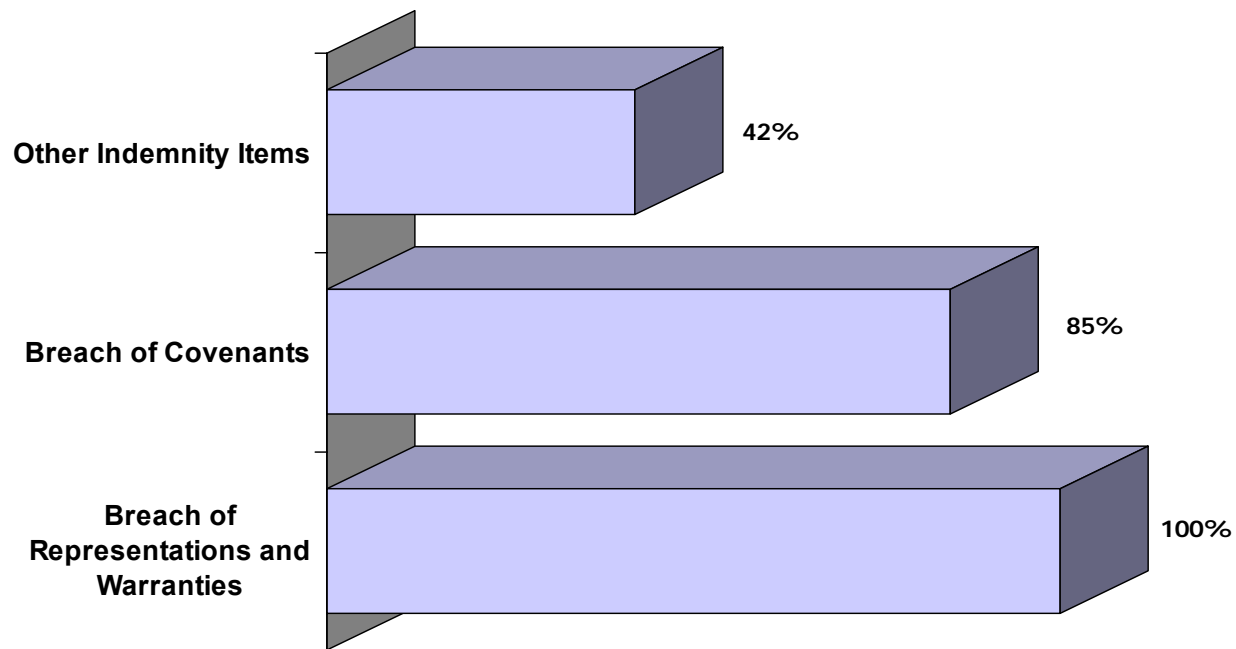
Basket Type	Mean	Median	Minimum (> 0)	Maximum
Deductible	1.77%	0.5%	0.096%	11.4%
First Dollar	0.57%	0.39%	0.0005%	1.8%
Deductible and First Dollar	0.99%	0.48%	-	-

\* Disregards nine deals (including the two deals referred to in slide 54) where basket provisions in acquisition agreement were redacted or the final purchase price was not determinable. Note that in 34% of deals surveyed, no basket was provided.



## Basket Coverage

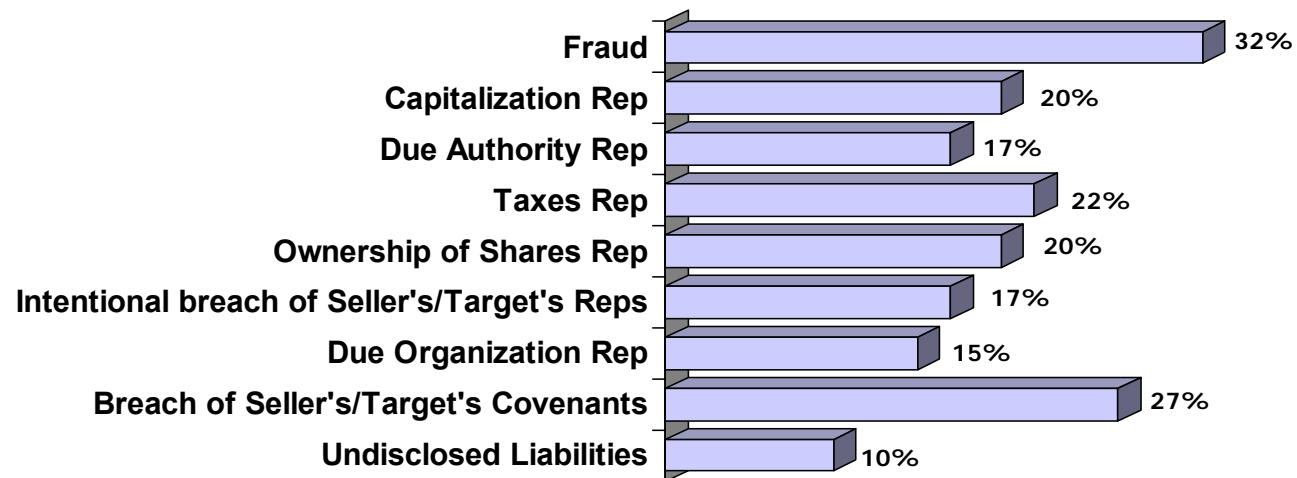
(Subset: deals with survival provisions and baskets)\*



\* Disregards nine deals (including the two deals referred to in slide 54) where basket provisions in acquisition agreement were redacted or the final purchase price was not determinable. Note that in 34% of deals surveyed, no basket was provided.

## Basket Carveouts\*

(Subset: deals with survival provisions and baskets)



\* Only these categories appearing 10% of the time or more are shown.



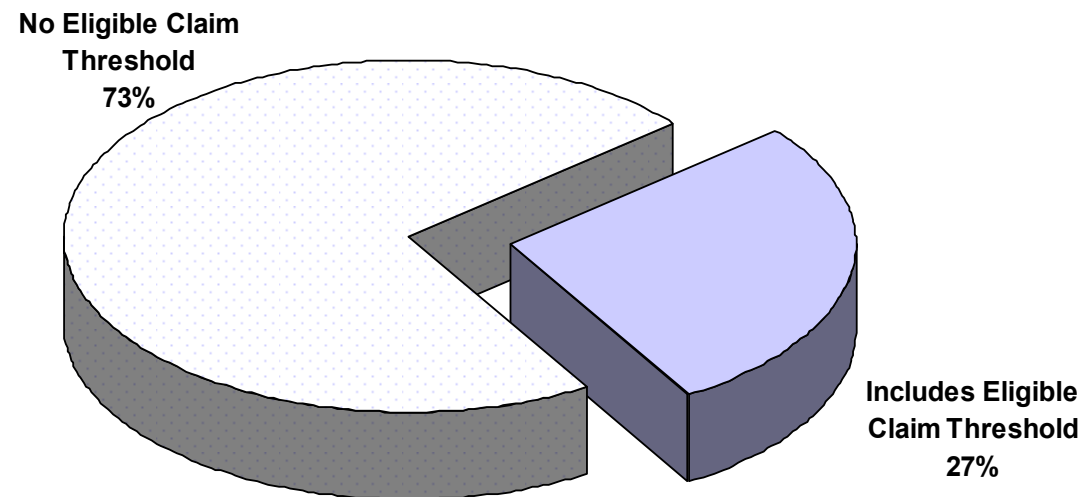
## Eligible Claim Threshold

No claim for indemnification may be made against the Vendors under Section 9.3(1)(a), Section 9.3(1)(b) or Section 9.3(1)(c) in respect of any Damages **unless the amount of Damages in respect of any claim for indemnification or a single matter is greater than Cdn\$25,000.**

(AGF Management Limited acquisition of Highstreet Asset Management Inc.)

## Eligible Claim Threshold

(Subset: deals with survival provisions and baskets)





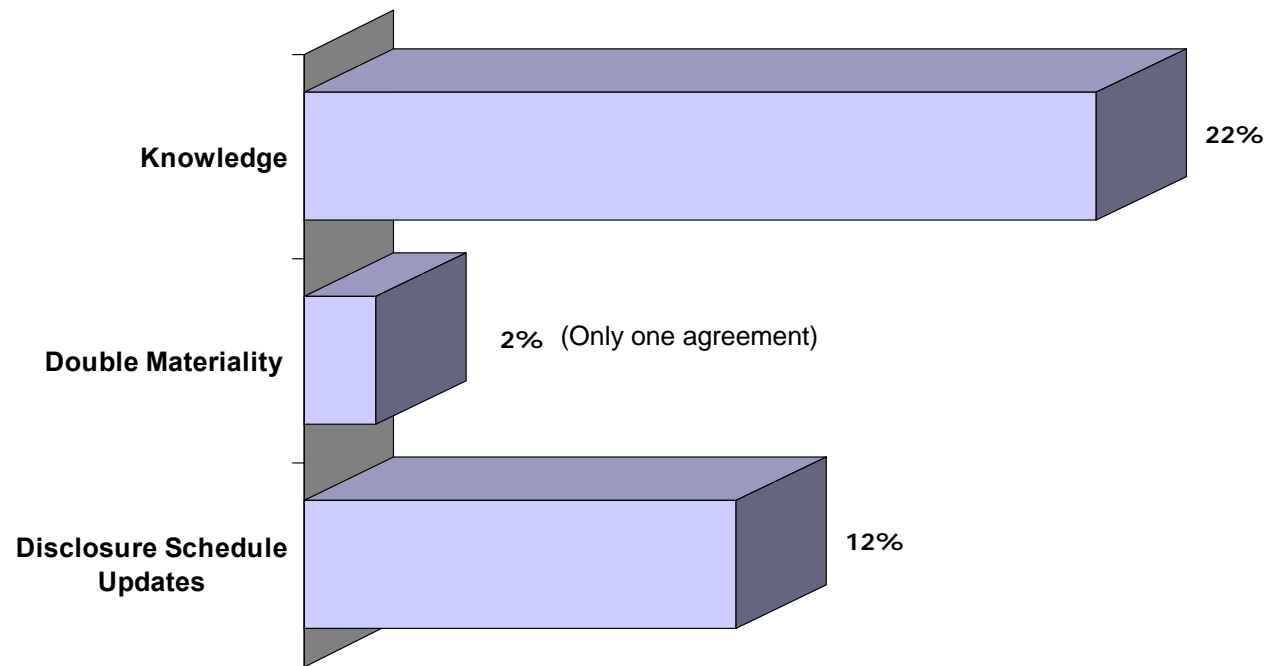
## “Double Materiality” (materiality qualification disregarded for indemnification purposes)

For purposes of calculating Damages pursuant to this Article 10, the representations and warranties given by Vendor and AGF **shall be deemed to have been made without the inclusion of the following limitations or qualifications as to materiality**: (i) the word “materiality” in Section 4.1(a)(iii)...the word “material” in Section 4.1(hh)(iv), not including the phrase “Material Contracts”.

(CitiFinancial Canada Inc. acquisition of Unisen Holdings Inc.)

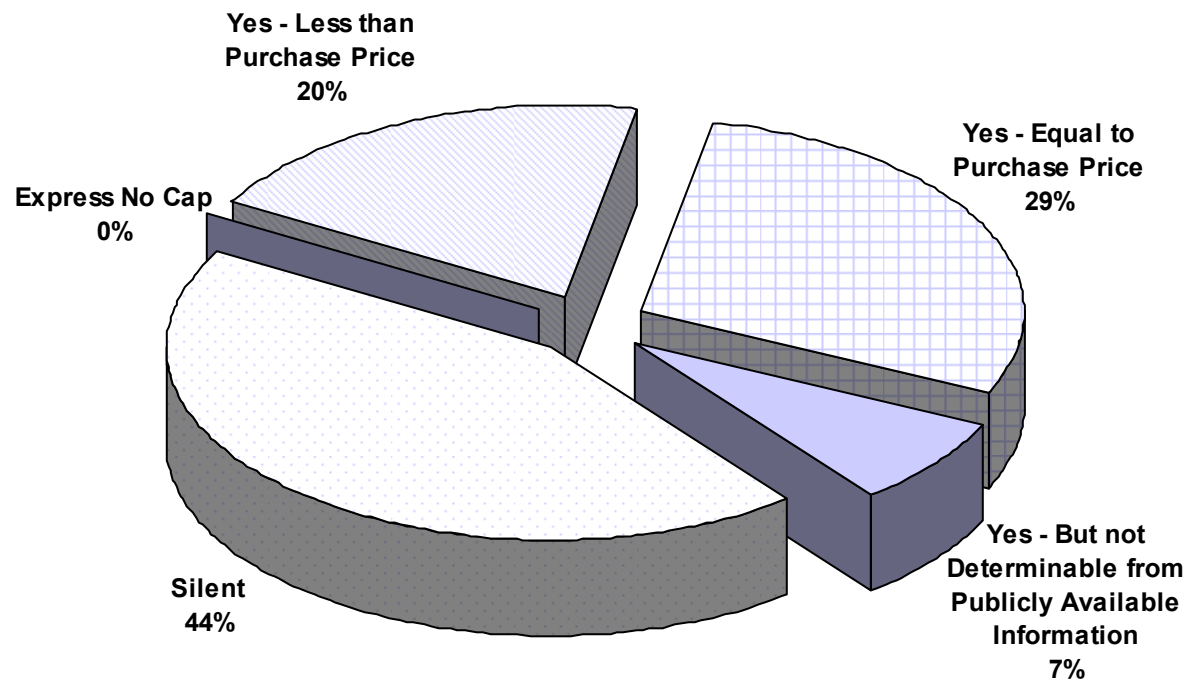
## “Double Materiality” (qualifiers disregarded for bringdown component)

(Subset: deals with survival provisions and baskets)



# Caps\*

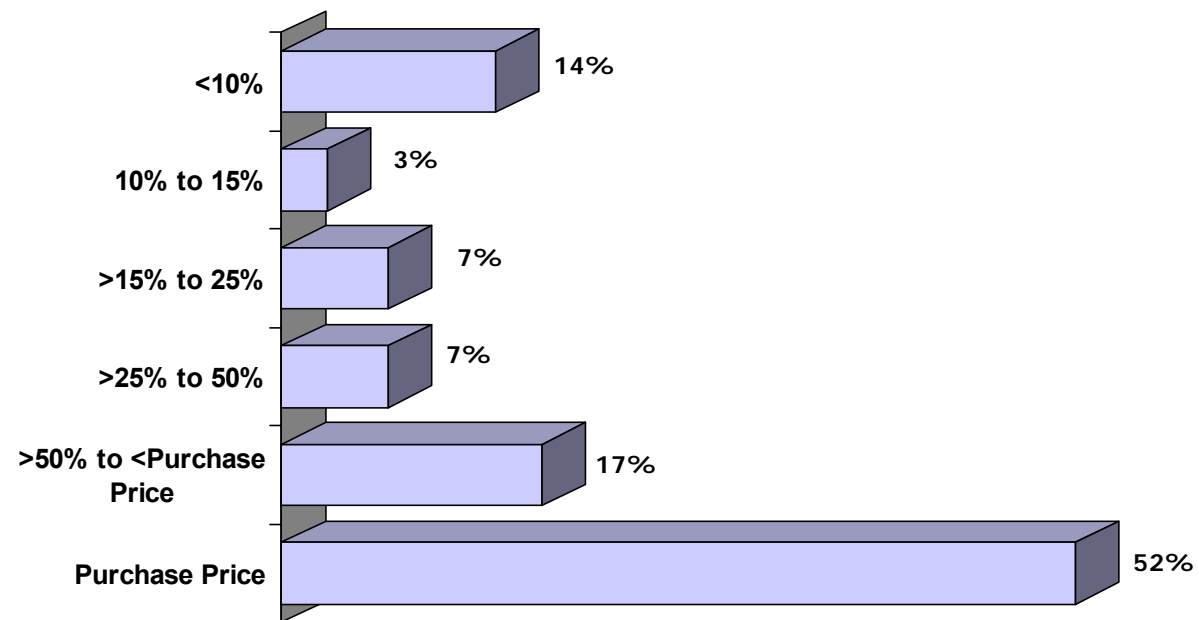
(Subset: deals with survival provisions)



\* Caps generally applicable to contractual indemnification obligations; does not take into account different caps for specific items (see “Cap Carveouts”). Disregards one deal where relevant provisions of acquisition agreement were redacted.

## Cap Amounts as % of Transaction Value\*

(Subset: deals with expressly stated cap)



\* Disregards nine deals where cap amount is all or partially redacted or the final purchase price is not determinable.  
 Note that in 44% of deals surveyed, no cap was provided.



## Cap Amounts as % of Transaction Value\*

(statistical summary)

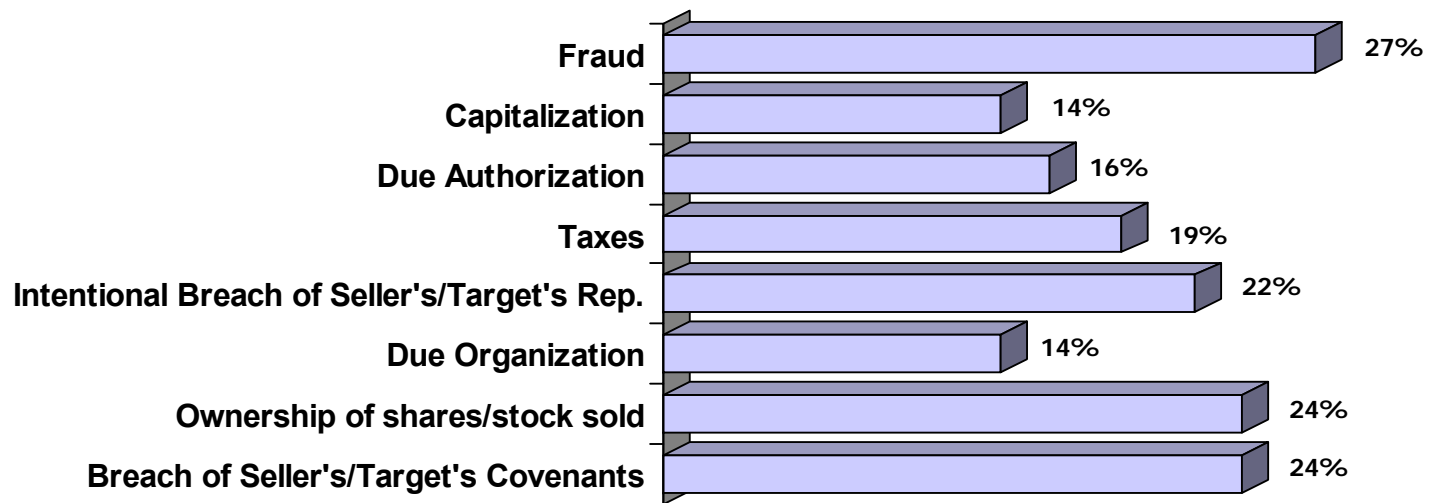
(Subset: deals with expressly stated cap)

Mean	Median	Minimum (> 0)	Maximum (≠ 100%)
65.3%	69%	1%	69%

\* Disregards nine deals where cap amount is all or partially redacted or the final purchase price is not determinable. Note that in 44% of deals surveyed, no cap was provided.

## Cap Carveouts\*

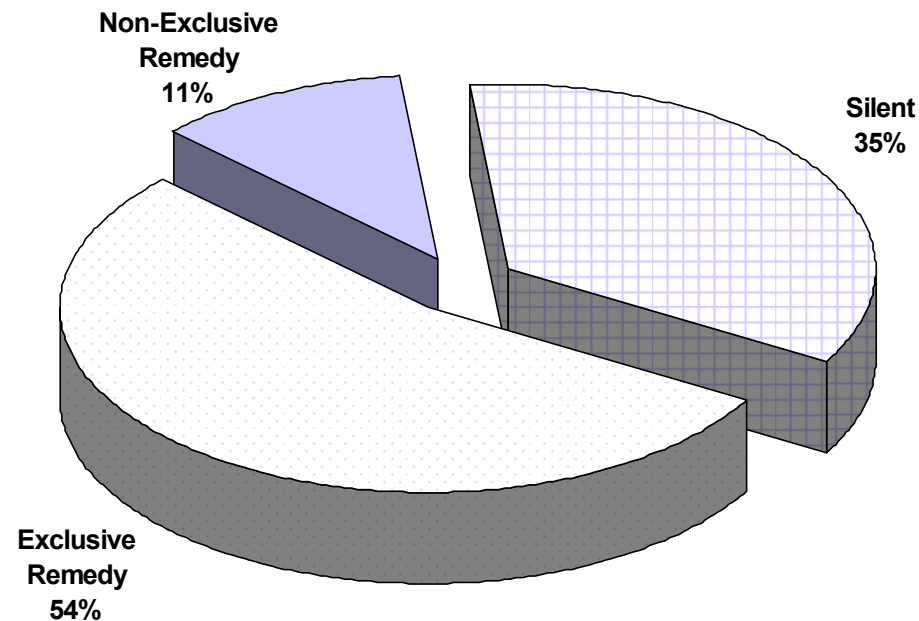
(Subset: deals with expressly stated cap)



\* Only those categories appearing 10% of the time or more are shown.

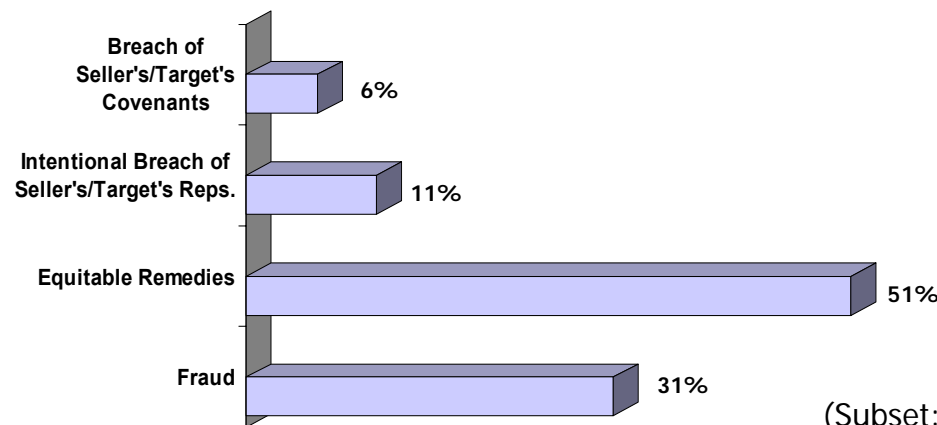
# Indemnification as Exclusive Remedy

(Subset: deals with survival provisions)

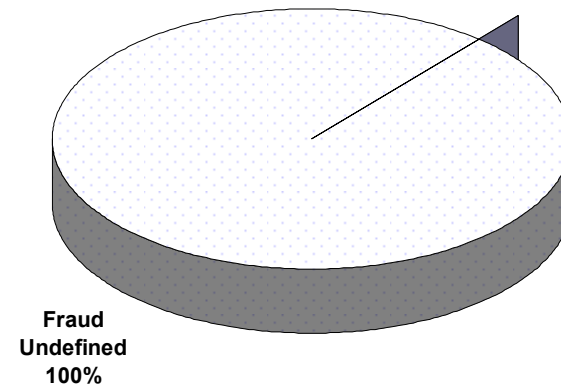


# Indemnification as Exclusive Remedy – Carveouts

(Subset: deals with indemnification as exclusive remedy)

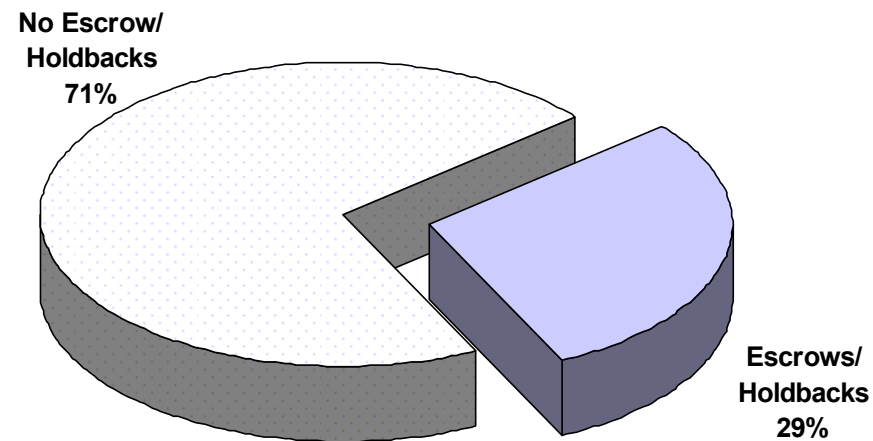


(Subset: includes fraud carveout)



# Escrow/Holdbacks

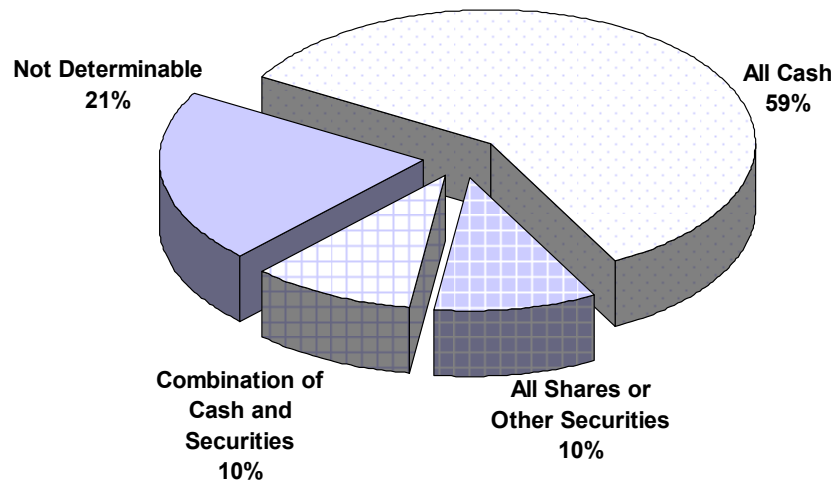
(Subset: deals with survival provisions)



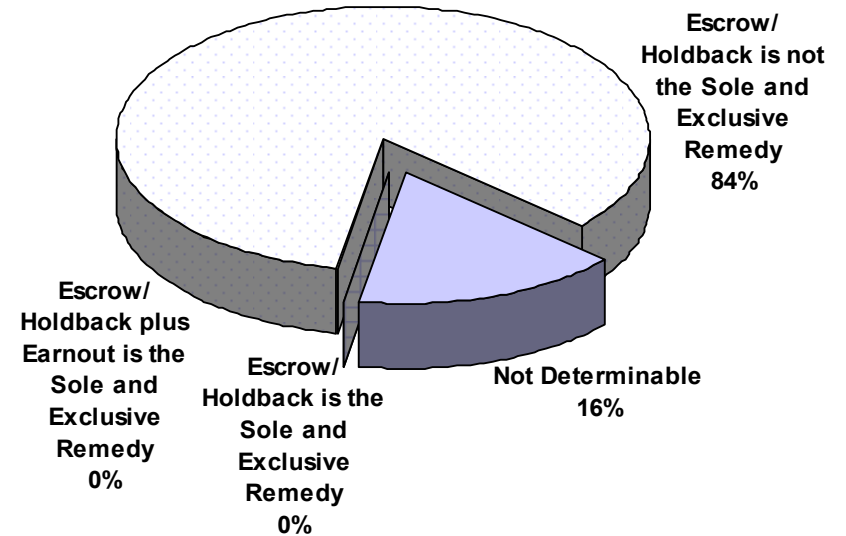
# Escrow/Holdbacks

(Subset: deals with Escrow/Holdbacks)

### Escrow Consideration

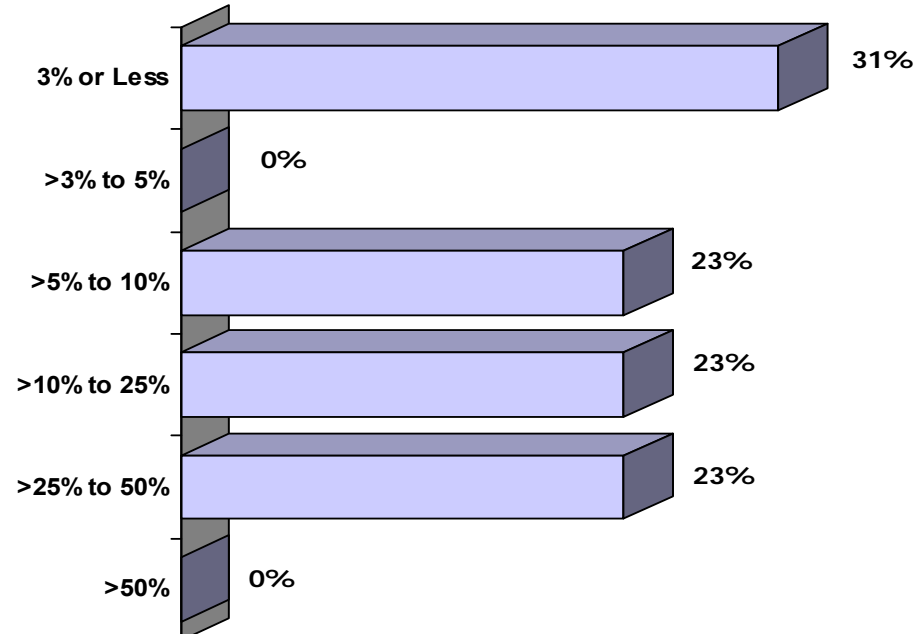


### Is Escrow Exclusive Remedy for Claims?



## Escrow/Holdbacks as % of Transaction Value

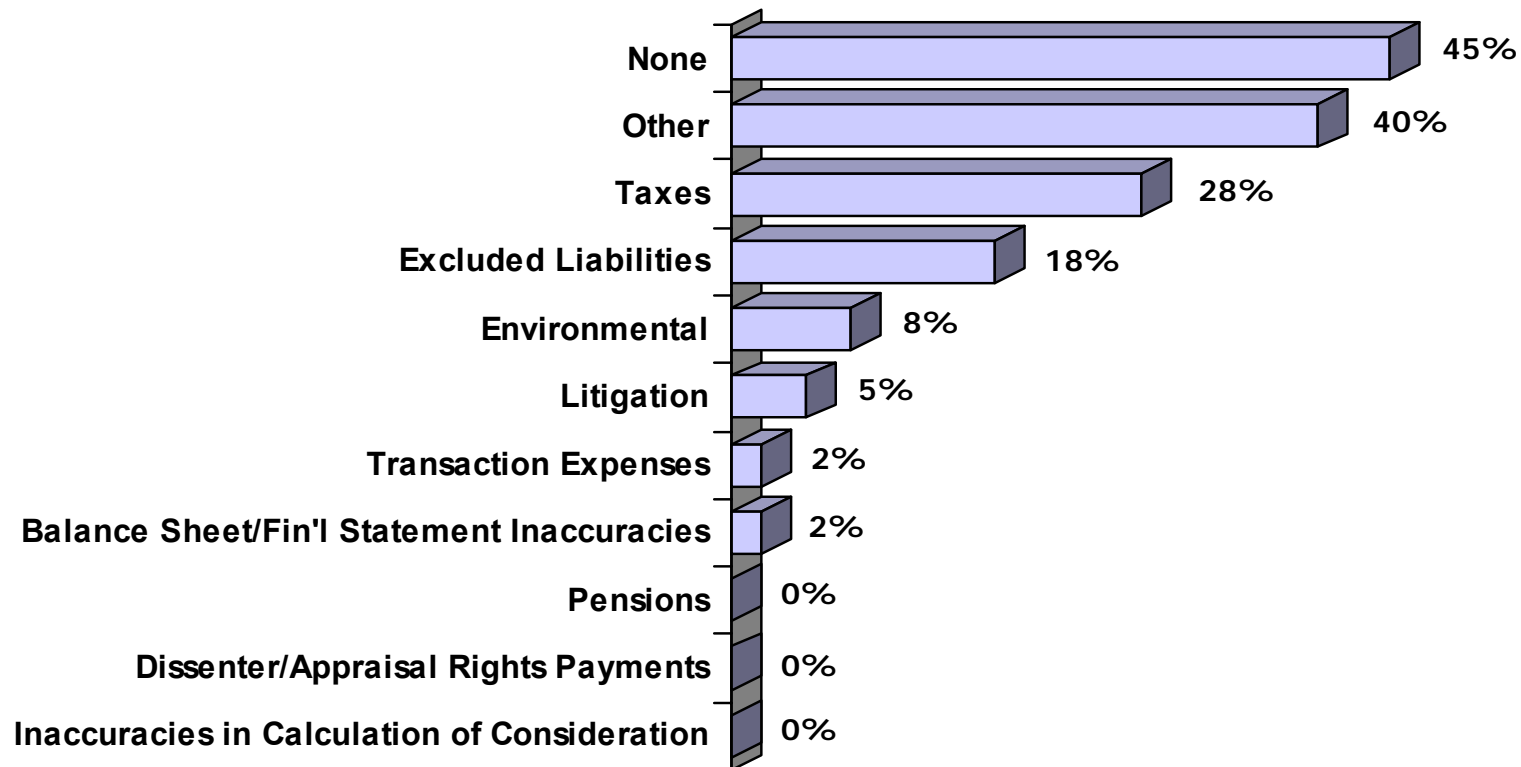
(Subset: deals with holdbacks and determinable escrow amounts)



## Stand-Alone Indemnities

(items for which indemnification specifically provided regardless of indemnification for breaches of representations and warranties)

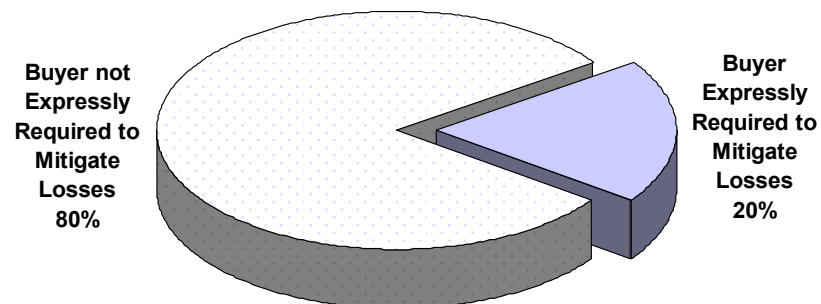
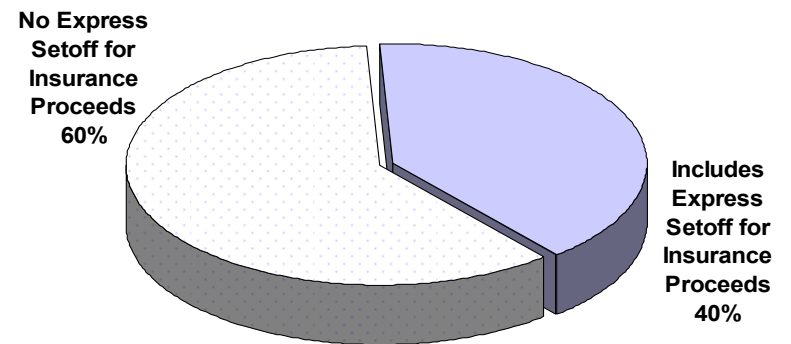
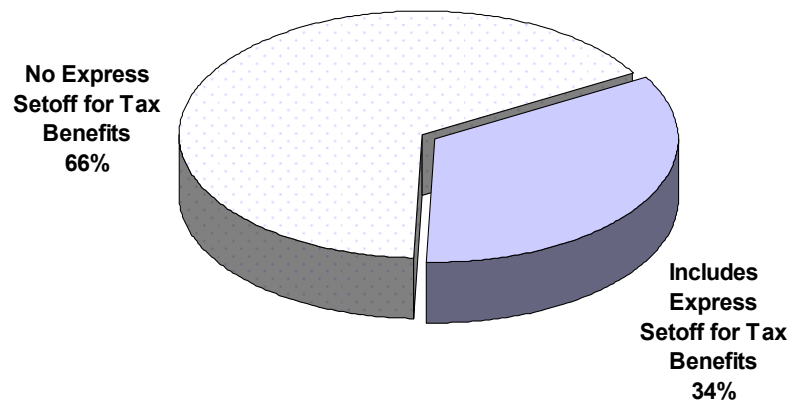
(Subset: deals with survival provisions)





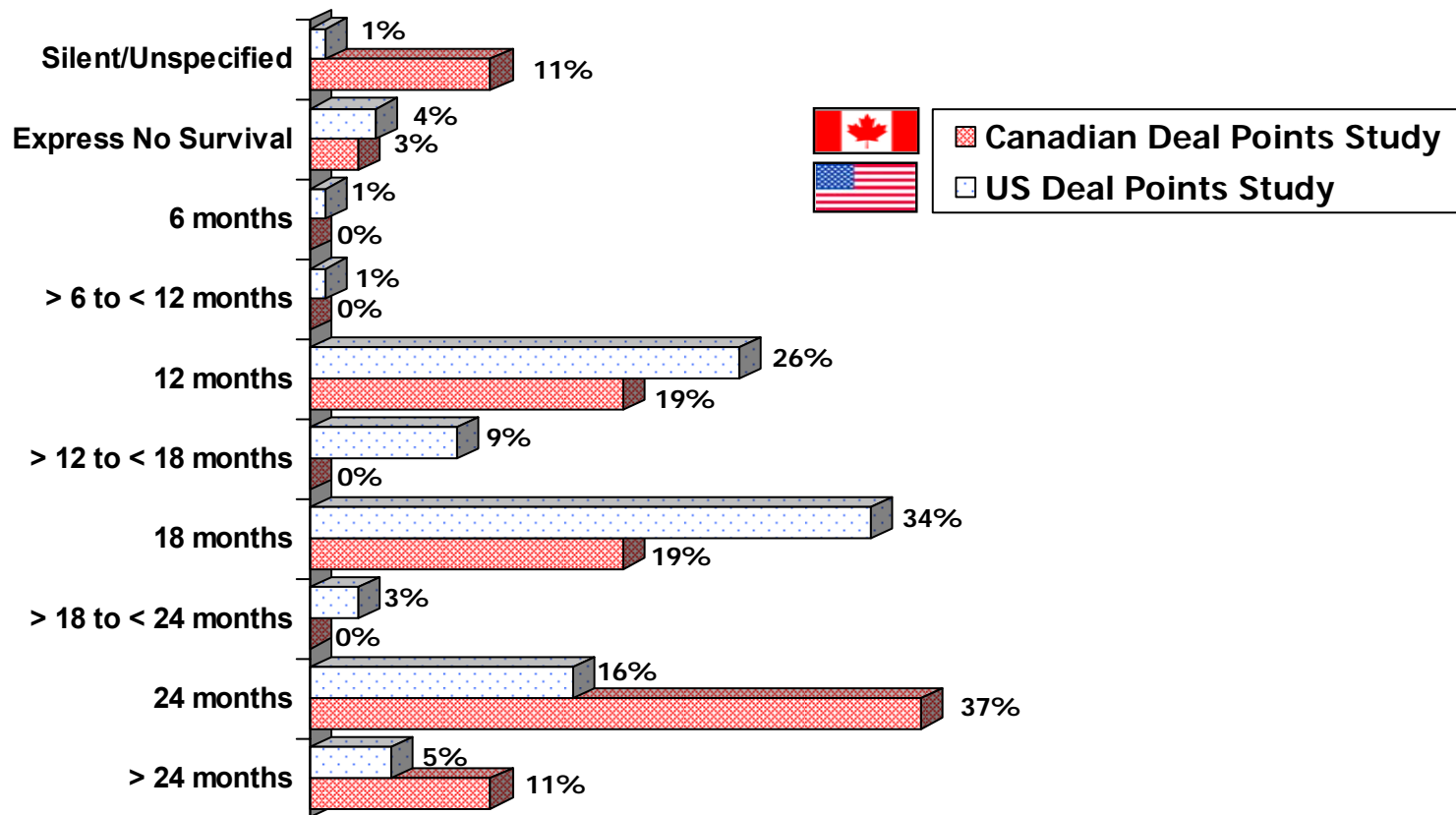
# Setoffs/Mitigation (reduction of Buyer's indemnification claims)

(Subset: deals with survival provisions)



# Private Target M&A Deals North American Comparison



## Survival Periods



See note to reader on slide 8.

## Private Target M&A Deals North American Comparison

### Baskets

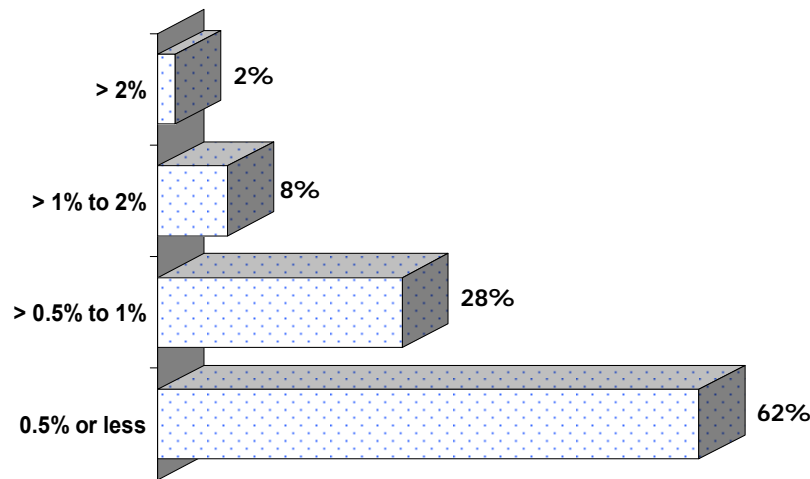
	US Deal Points Study 	Canadian Deal Points Study 
<b>No Basket</b>	<b>3%</b> (4% of deals in 2004)	<b>34%</b>
<b>Deductible</b>	<b>54%</b> (56% of deals in 2004)	<b>21%</b>
<b>“First Dollar”</b>	<b>36%</b> (40% of deals in 2004)	<b>32%</b>
<b>Combination (Threshold &amp; Deductible)</b>	<b>7%</b> (3% of deals in 2004)	<b>13%</b>

See note to reader on slide 8.

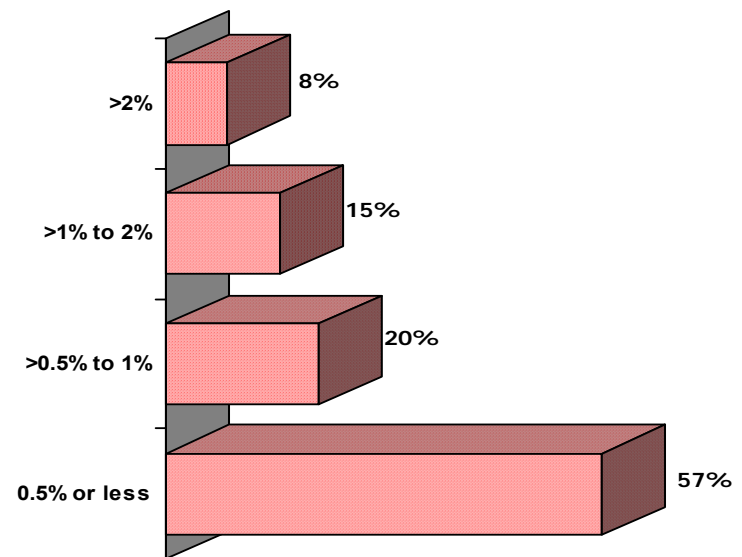
# Private Target M&A Deals North American Comparison

## Baskets as % of Transaction Value

US Deal Points Study









Canadian Deal Points Study



See note to reader on slide 8.

## Private Target M&A Deals North American Comparison (statistical summary)

### Baskets as % of Transaction Value

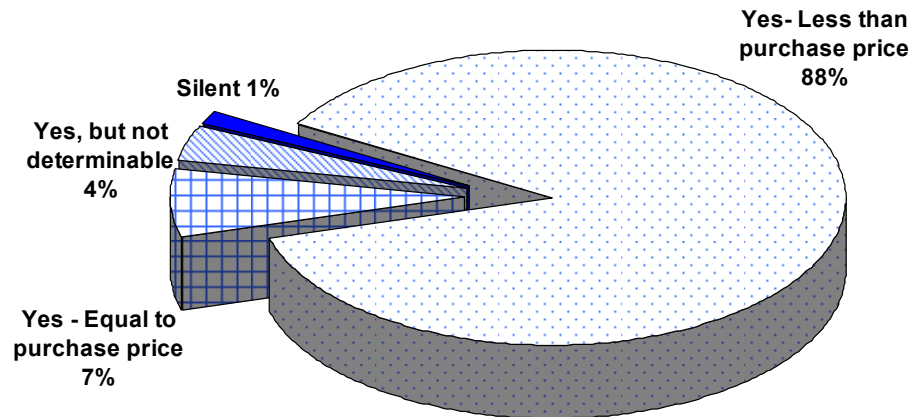
Basket Type	Study	Mean	Median	Minimum (> 0)	Maximum
Deductible		0.53%	0.40%	0.03%	2.0%
		1.77%	0.50%	0.096%	11.4%
First Dollar		0.50%	0.39%	0.2%	2.03%
		0.57%	0.39%	0.0005%	1.8%
Combination (Deductible and First Dollar)		0.52%	0.40%	-	-
		0.99%	0.48%	-	-

See note to reader on slide 8.

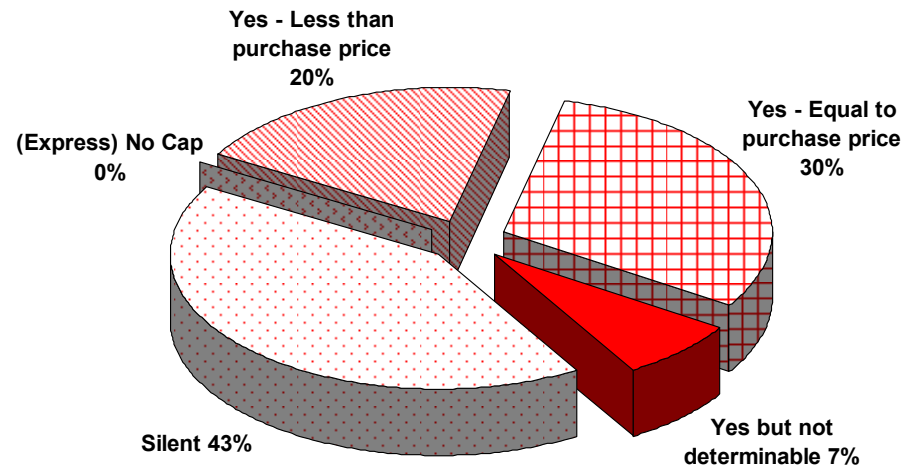
# Private Target M&A Deals North American Comparison

## Caps

### US Deal Points Study



### Canadian Deal Points Study

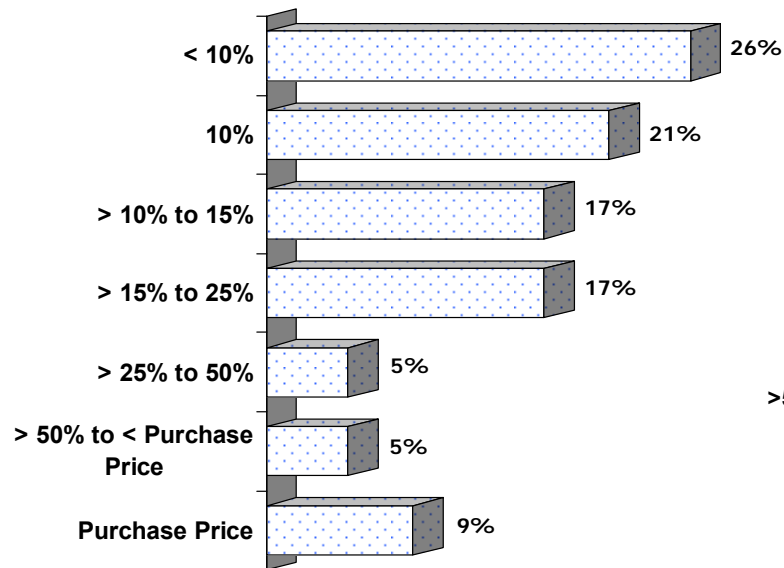


See note to reader on slide 8.

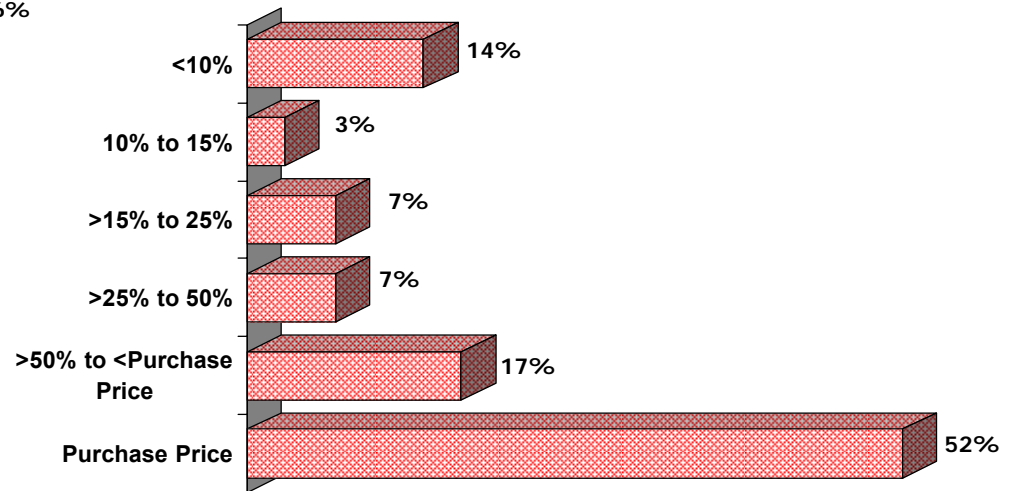
# Private Target M&A Deals North American Comparison

## Cap Amounts as % of Transaction Value

US Deal Points Study





Canadian Deal Points Study



See note to reader on slide 8.

## Private Target M&A Deals North American Comparison (statistical summary)

### Cap Amounts as % of Transaction Value

Study	Mean	Median	Minimum (> 0)	Maximum (≠ 100%)
	16.39%	10.14%	1%	80%
	65.3%	69%	1%	69%

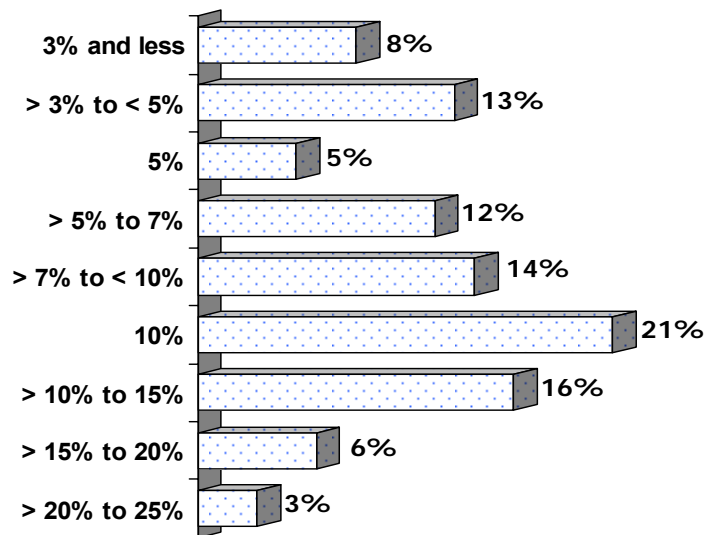
See note to reader on slide 8.



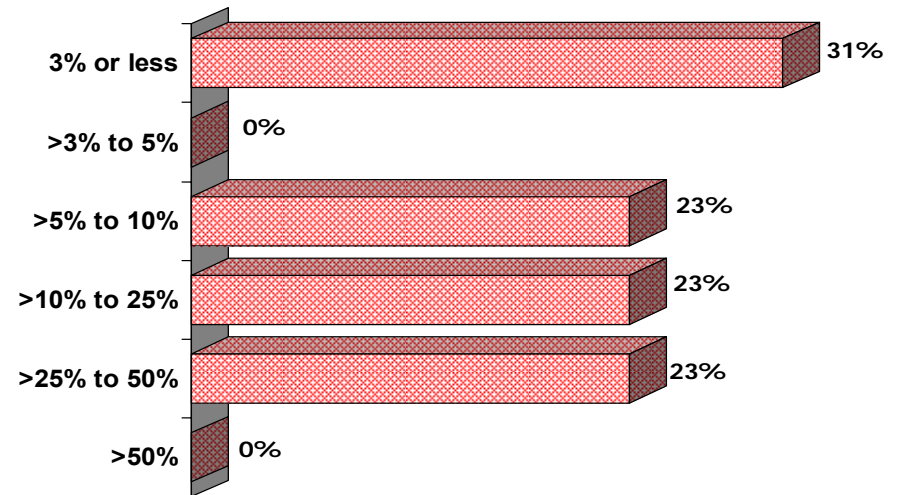
# Private Target M&A Deals North American Comparison

## Escrow/Holdbacks as % of Transaction Value

US Deal Points Study



Canadian Deal Points Study

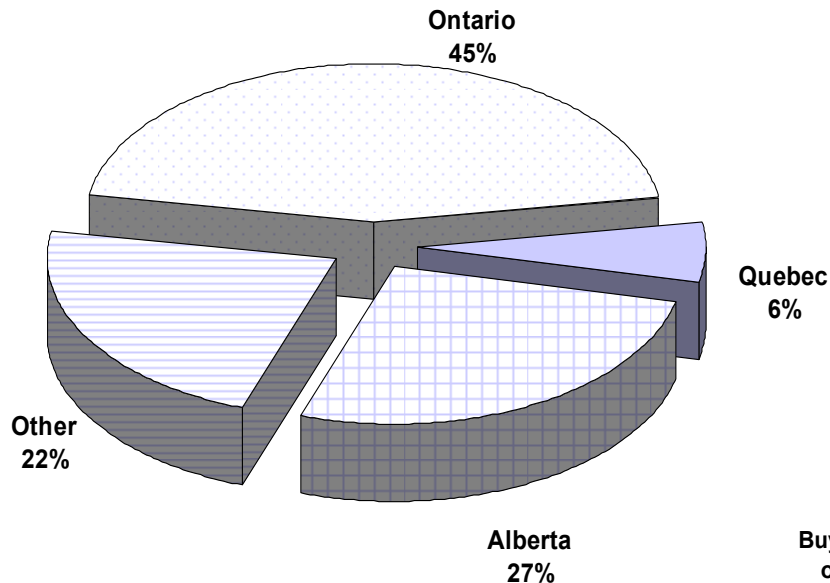


See note to reader on slide 8.

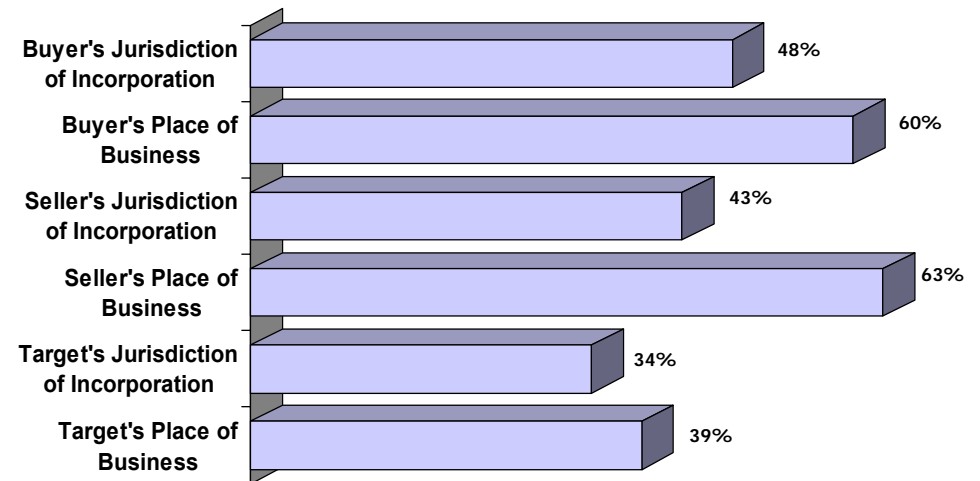


# Dispute Resolution

## Governing Law



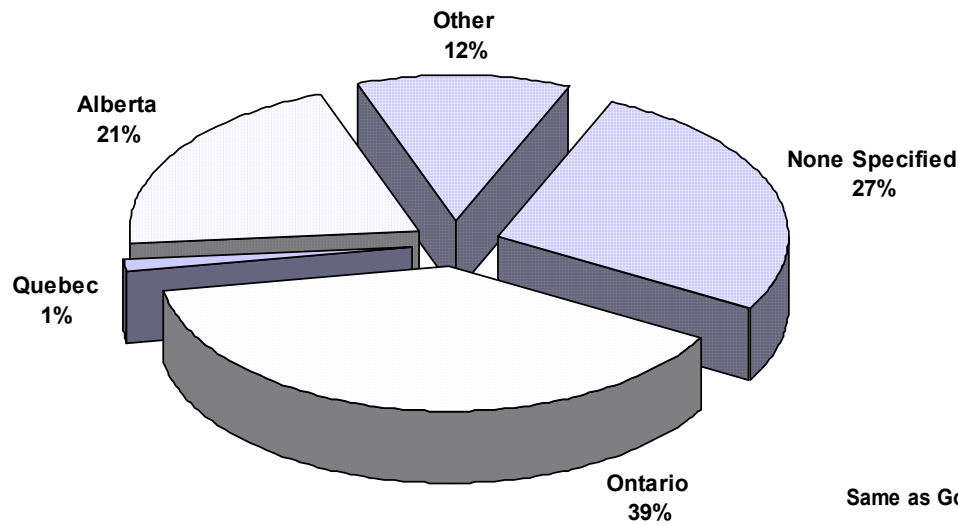
## Connection to choice\*



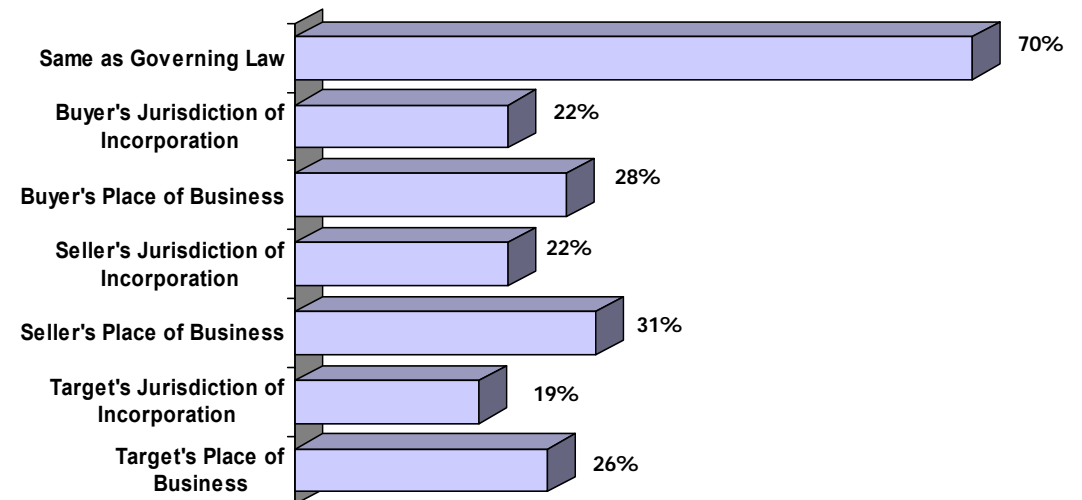
\* May be more than one.



# Venue for Litigation



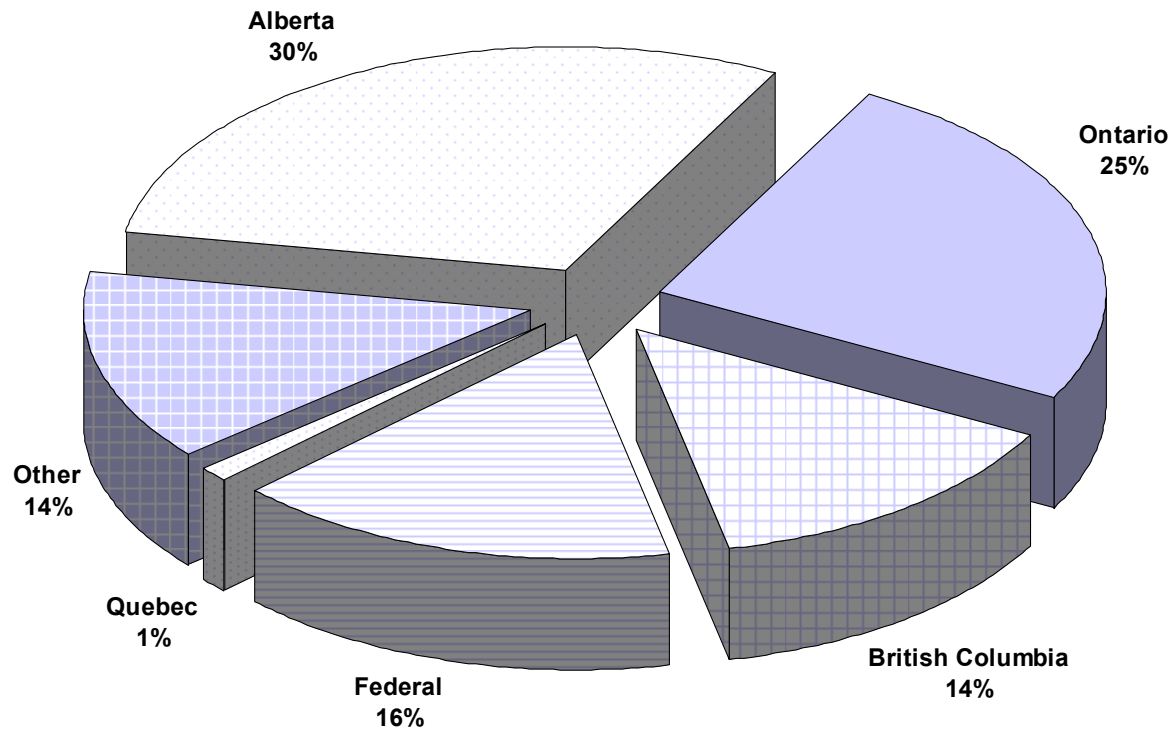
## Connection to choice\*



\* May be more than one.

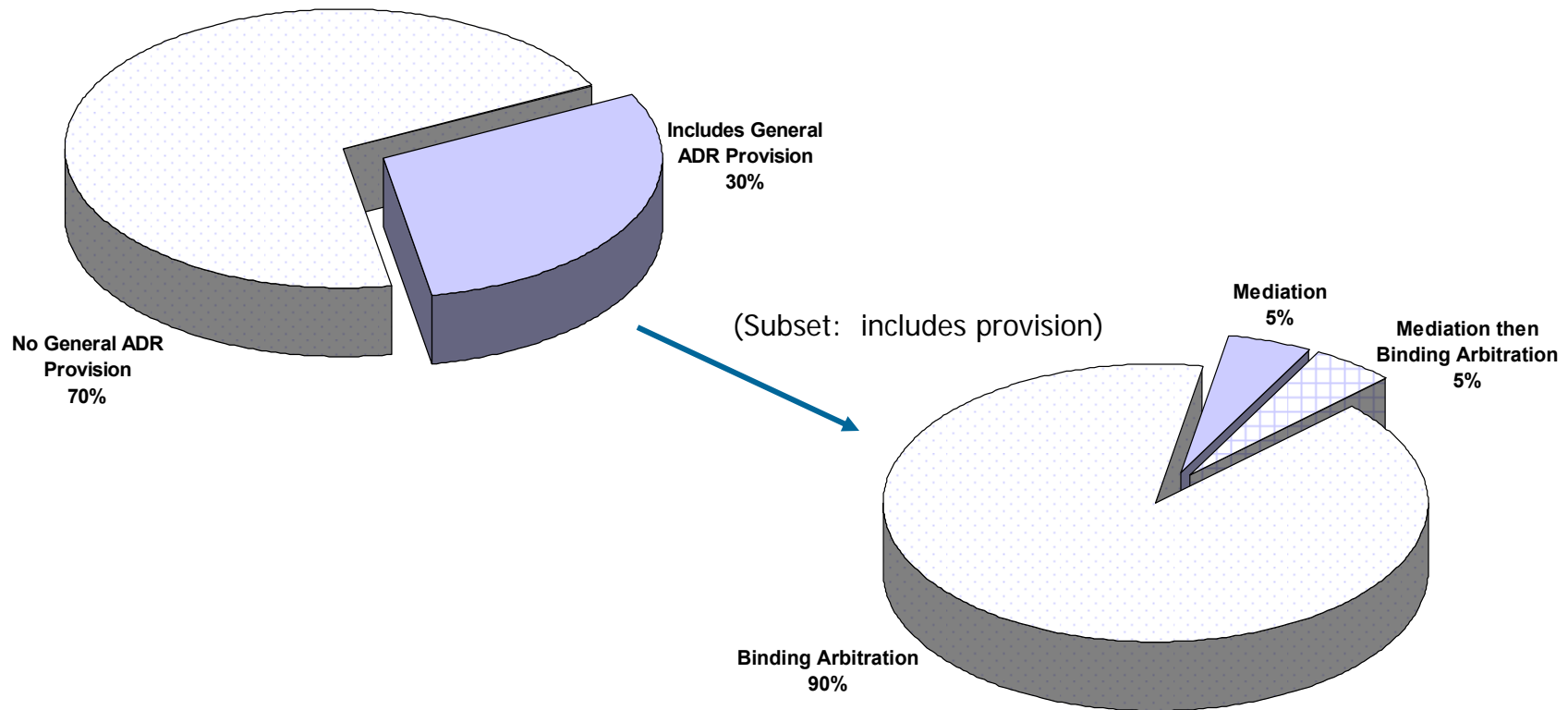


# Target's Jurisdiction of Incorporation





# Alternative Dispute Resolution ("ADR")\*

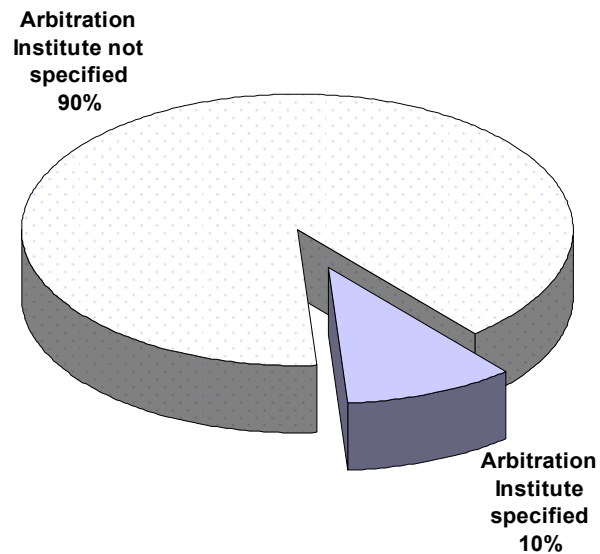


\* ADR provisions generally cover all disputes under the acquisition agreement (rather than disputes relating only to specific matters such as purchase price adjustments).

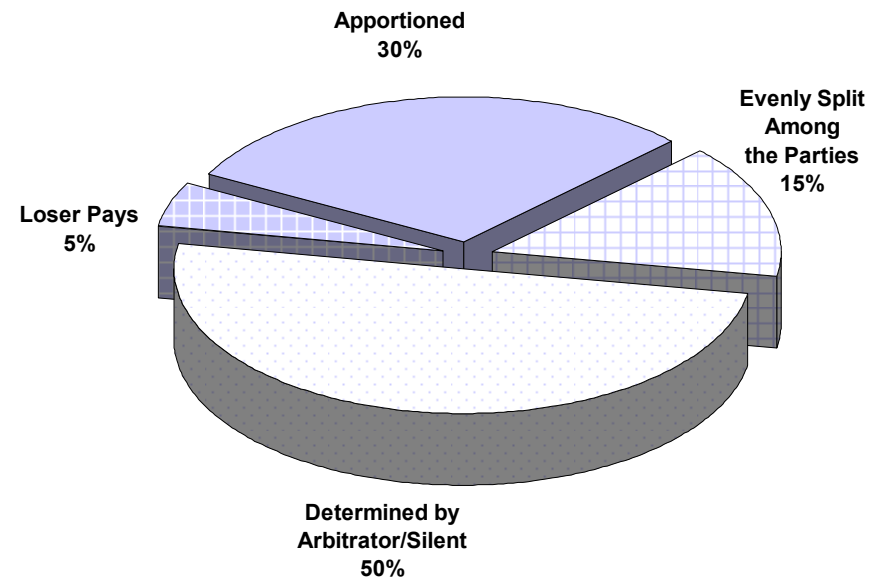
# Alternative Dispute Resolution ("ADR")\*

(Subset: deals with general ADR provisions)

## Specified Arbitrator(s)





## Arbitration Expenses





## Private Target M&A Deals North American Comparison

	US Deal Points Study 	Canadian Deal Points Study 
<b>Deals with general ADR provision</b>	<b>31%</b>	<b>30%</b>
<b>Chosen ADR method is arbitration</b>	<b>77%</b>	<b>90%</b>
<b>Arbitration expenses:</b>		
– Shared equally	<b>34%</b>	<b>15%</b>
– Apportioned	<b>9%</b>	<b>30%</b>
– Loser pays	<b>27%</b>	<b>5%</b>
– Silent/Determined by Arbitration	<b>30%</b>	<b>50%</b>

See note to reader on slide 8.