



**Lowenstein
Sandler**



**GETTING PAID:
A Look at
Representations
& Warranties
Insurance**



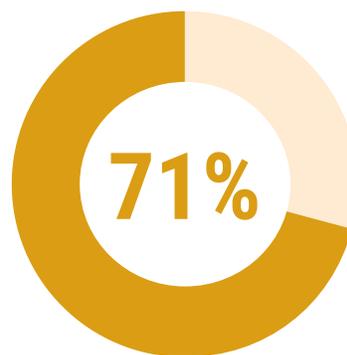
DO REPS AND WARRANTIES INSURERS PAY CLAIMS? YES—WITH CAVEATS, NEW SURVEY FINDS

National law firm Lowenstein Sandler's survey confirms that reps and warranties (R&W) insurance is, and will remain, a critical element of deal flow. R&W insurers are paying claims that exceed the self-insured retention (SIR). However, the survey also suggests that the risk-reward model for R&W insurance may need to be recalibrated as the majority of claims remain within the SIR.

During the last decade, intense deal activity spurred the growth of R&W insurance—an alternative risk-transfer mechanism to indemnify buyers for breaches stemming from a seller's misrepresentations in acquisition agreements.

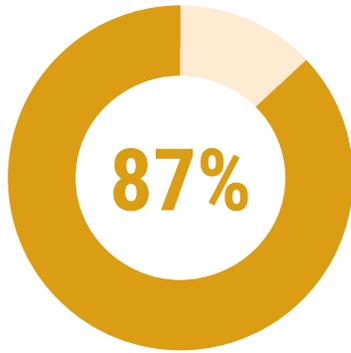
While R&W policies have proliferated, a key question remains unanswered: Do insurers actually pay the claims?

The answer is “yes”—with some caveats. A common hurdle to clear is incurring a loss that exceeds the SIR. Our survey revealed that more than two-thirds of all respondents said that all the claims fall within the retention and therefore do not result in payment by insurers.



of survey respondents reported having at least one claim that fell within the R&W policy's SIR.

For claims that do exceed the retention, our survey confirmed that R&W policies provide value to buyers. Indeed, the data shows buyers are able to negotiate with insurers to secure at least partial payment for the vast majority of claims that exceed the SIR.



of respondents said at least a partial payment was negotiated for all R&W claims that exceeded the SIR.

Finally, our survey data demonstrated that securing maximum value for claims takes time, diligence, and careful selection of the claims advocacy team.

Our survey, conducted in 2020, gathered input from 149 executives involved in the R&W insurance market across its key stakeholders: the buyers (private equity funds, investment banks, and operating companies) and the sellers (insurance companies and insurance brokers). Therefore, it offers a well-rounded view of the trends and differences experienced by leading players in the market.

Our report also offers buyers practical guidance—based on the data—to consider when presenting a claim under an R&W policy. This guidance and our findings take on greater meaning amid the disruption COVID-19 has caused to the global economy. [We will explain how the R&W insurance landscape will likely be altered by the pandemic.](#) We will also discuss how, while the crisis will likely slow claims processing in the short term, competition among insurers is expected to heat up once deal flow returns for this lucrative book of business.



EMERGING THEMES IN R&W INSURANCE

For years, the increasing popularity of R&W insurance was changing the mergers and acquisitions market. R&W insurance has become so popular that, to be considered competitive bidders, buyers often were required to include such insurance as a deal term. More players (both buyers and insurers) in the space also meant heavy competition, declining premiums, and lowering SIRs over time, as well as increased leverage for policyholders to negotiate policy terms.

Despite R&W's prevalence, little is known about the insurers' claim payment histories. This dilemma arises from confidential settlements of claims and because many R&W policies require arbitration. Multiple findings show that, for the claims that exceed the SIR, more than 50 percent of the loss is paid by the insurer, following a negotiation.

In addition to answering the key question of whether R&W insurers pay claims, our research revealed four themes:

1

Do not delay the payday. The claims process takes time. Policyholders should not wait to get started. This means moving ahead with claims—even if negotiations with the seller about indemnity issues are ongoing or it is not yet clear that the loss will exceed the SIR.

2

Knowledge is power. Buyers should not be afraid to negotiate with R&W insurers for better terms. This survey offers data that empowers buyers to challenge existing market conditions.

3

Be well armed in the claims process. When buyers make claims under R&W insurance policies, they should rely on the expertise of a claim advocacy team consisting of coverage counsel, experts, and brokers. Not only will the claim advocates be a resource in articulating the breach and valuing the loss but our survey shows that the insurers will be well armed with counsel and experts of their own—making it necessary for buyers to ensure an even playing field.

4

Don't take "no" for an answer. Our survey reveals that R&W insurers routinely issue knee-jerk claim denials, but those denials are the beginning, not the end, of the conversation. Ultimately, by challenging an early disclaimer of coverage, most buyers are able to turn the denial into a claim payment.

| What Is R&W Insurance?

R&W insurance is intended to largely supplant the traditional seller indemnity in purchase agreements and remove risks from balance sheets. Instead of pursuing claims against sellers, buyers can seek recovery from R&W insurers. R&W policies also:

- **Alleviate pressure on continued business relationships with management who will remain after a deal closes.**
- **Manage risks associated with enforcing indemnification rights against individuals, such as company founders.**
- **Mitigate risks related to financially distressed entities that may present a material credit risk, i.e., may not be able to stand behind a contractual indemnification.**
- **Allow buyers in a bid process to distinguish themselves or, more likely, remain competitive vis-à-vis other bidders that likely include R&W insurance in their bids.**
- **Ease deal negotiations between the buyer and seller with respect to the scope of R&W in the purchase agreement and the indemnity structure.**
- **Allow buyers to bring claims for a longer period of time than that of a traditional seller indemnity package.**

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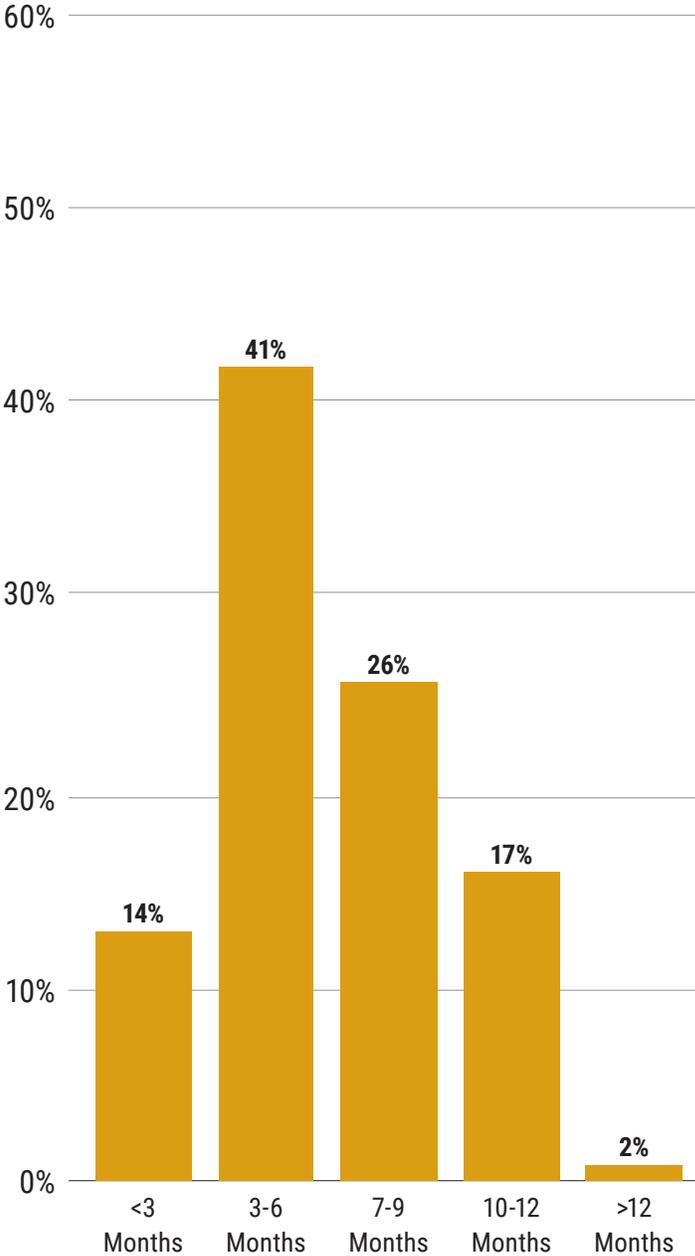


DISCOVERY AND SUBMISSION OF CLAIMS

A buyer's initial discovery of a breach often occurs within the first six to 18 months following a deal closing. But regardless of when the breach is first discovered, the buyer's submission of the R&W claim often lags well behind the buyer's discovery of the breach. That lag impacts how long it takes for R&W insurers to pay claims. In 45 percent of claims reported, it takes more than six months for a policyholder to submit the claim after discovering the breach.

What is the time period between the discovery of the breach and the reporting of the claim(s) to the R&W insurer(s)?

(Respondents who had identified multiple claims were allowed to select more than one answer. Chart reflects the percentages for the total number of claims reported.)



Most [respondents say](#) it can take between three and 12 months just for the issuance of a coverage position letter (marking the commencement of negotiations) and six to 18 months from the claim notice submission to receive a payment. Considering the time it [takes for claims to be resolved](#), it is important to ask why policyholders are waiting to make claims.

One reason may be that policyholders wait to see whether the loss exceeds the SIR, but that is usually not a good reason to delay. There is no harm in making a claim that is ultimately resolved within the SIR. R&W insurers expect to receive claims and certainly do not complain when they remain within the retention. Policyholders also should keep in mind that the SIR is subject to an aggregate so that, at the very least, they should get credit against the retention and be that much closer to securing insurance recovery if another breach is discovered.

Another reason for delayed reporting may be that the buyer is addressing seller indemnity issues and wants to fully resolve those issues before engaging with the insurer. This could be a trap for the unwary, particularly if the seller engaged in fraud and demands a broad release to resolve an indemnity claim. All R&W policies require policyholders to preserve the insurers' subrogation rights in the event the seller committed fraud. Thus, a premature and broad release of the seller may unwittingly impair—or eliminate—the buyer's rights under the R&W policy.

NEGOTIATIONS CONDUCTED WITH A CLAIM ADVOCACY TEAM

—consisting of coverage counsel, deal counsel, and/or experts (e.g., accounting and tax)—appear to be much more common.



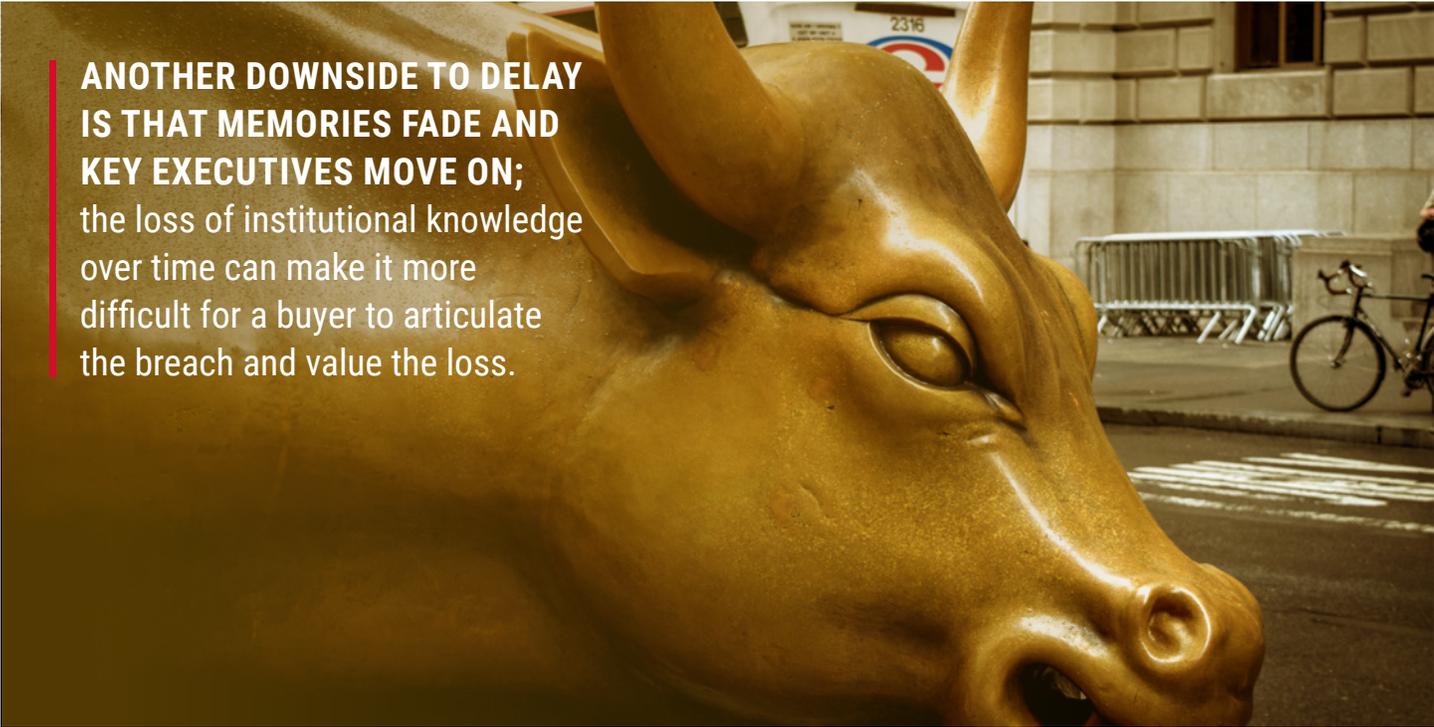


**POLICYHOLDERS ALSO
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Policyholders also may delay because of the perceived cost associated with making and pursuing the claim. While third-party advisors can require a meaningful upfront investment in the claim, our survey shows that will be money well spent because full-blown and expensive coverage litigation rarely—only about one-fifth of the time—is required to secure coverage. Negotiations conducted with a claim advocacy team—consisting of coverage counsel, deal counsel, and/or experts (e.g., accounting and tax)—appear to be much more common. R&W brokers also play a prominent role, not only in the placement of the R&W policy but also in ensuring that claims get paid, by leveraging their commercial relationships with insurers. Therefore, buyers should carefully select a broker who will be well positioned to facilitate a claim resolution.

Another downside to delay is that memories fade and key executives move on; the loss of institutional knowledge over time can make it more difficult for a buyer to articulate the breach and value the loss.

Ultimately, policyholders need to understand that waiting to make a claim can produce unwelcome results—beyond merely delaying the payday. Take, for example, a claim involving third-party liability and litigation costs or a settlement incurred without the insurer’s knowledge or consent. In these scenarios, the insurer might challenge the reasonableness or necessity of the amounts and refuse to provide credit against the SIR.



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the loss of institutional knowledge over time can make it more difficult for a buyer to articulate the breach and value the loss.

Moreover, insurers often try to deny coverage for claims based on a late-notice defense in spite of policy provisions requiring insurers to show that they were actually and materially prejudiced by delayed notice. That can be difficult for the insurers to prove, but our survey shows that insurers will still assert late notice so they can leverage it for a reduction of coverage by withholding “credit” against the SIR or by otherwise refusing to cover costs incurred without their knowledge or consent.

Therefore, early reporting of claims is a best practice that will accelerate the payment timetable, reduce coverage disputes, and maximize the value of claims.

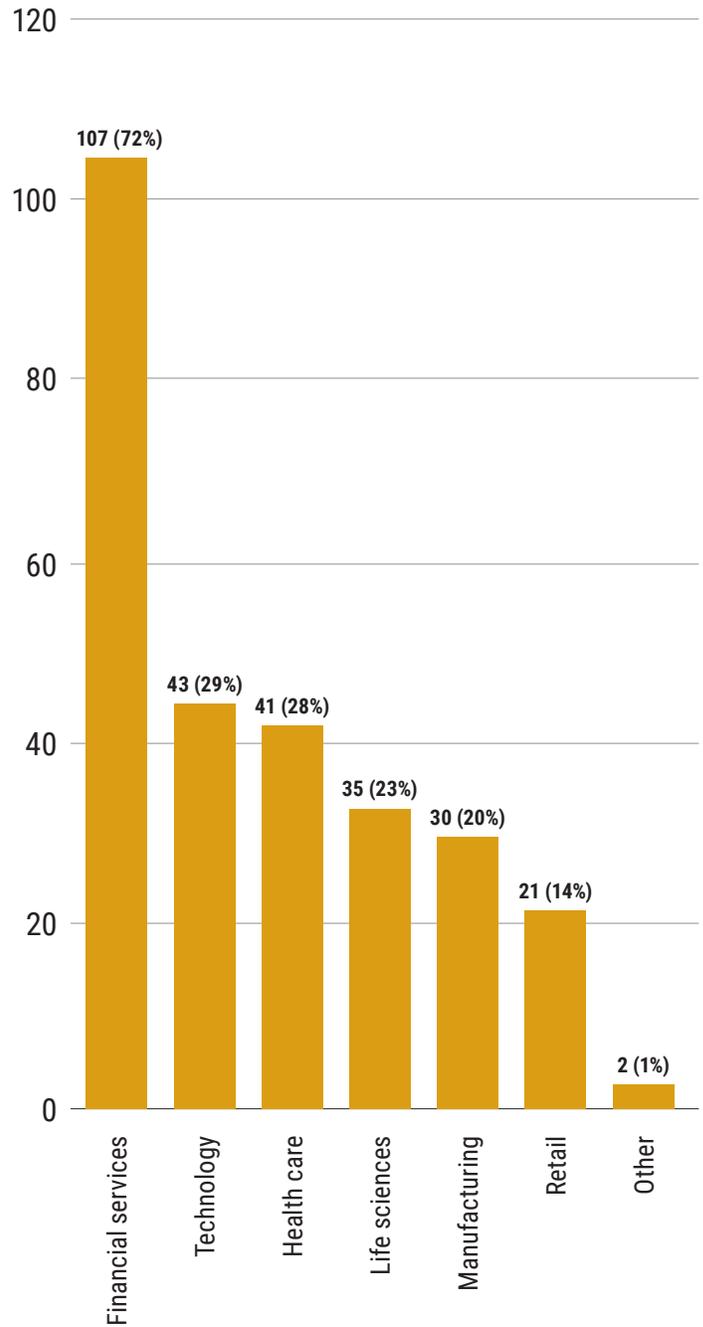
Policyholders should also push hard to keep the claims process moving. To that end, policyholders should negotiate policy terms that require insurers to provide coverage determinations and claim payments within set deadlines. They also should work closely with their claim advocacy teams to provide well-documented damages/losses, along with documents that substantiate the breach(es), to reduce follow-up information requests from insurers.

CLAIMS BY INDUSTRY AND NATURE

Based on our survey data, the financial services industry has far and away the largest number of R&W insurance claims; 72 percent of respondents selected that sector for at least one of the claims they have presented. Financial services was an early adopter of R&W insurance—indicating why it has made the most claims—and its deals have typically been far larger than those in other industries.

What industry does the Target Entity/Acquired Company, which is the subject of the R&W insurance claim, operate in?

(Chart reflects the percentage of respondents who identified a claim in each sector.)



Nature of Claims

The survey data shows that **most claims** (51 percent) result from direct harm to buyers rather than claims from third parties (e.g., lawsuits or other liabilities). That is not surprising, considering that a primary selling point of R&W insurance is protection against the risk of sellers directly causing harm through misrepresentations about the health and value of their businesses. R&W insurance minimizes buyer-seller disputes and helps maintain commercial relationships.



result from direct harm to buyers rather than claims from third parties (e.g., lawsuits or other liabilities).

The survey responses also focus on direct claims because third-party claims are often subject to coverage under other insurance policies that typically must be tapped before a claim will be paid under an R&W policy. Still, policyholders should put R&W insurers on notice of third-party claims in order to get excess coverage, fill a gap left by other policies, and avoid the possible pitfalls of delay discussed above.





Finally, [a clear majority of claims](#) stem from deals **with** seller indemnification (often representing half the SIR for at least breaches of general representations). Early on, insurers may have expected more claims from deals where a seller does not have “skin in the game,” and therefore would not have an incentive to heavily negotiate the R&W. However, the data shows that claims in no-seller-recourse deals are no more prevalent than in deals involving seller recourse. Consequently, buyers and sellers in no-recourse deals have acted in good faith when negotiating the R&W insurance, and sellers have recognized that they do have **some** skin in the game because R&W insurers have subrogation rights against sellers in the event of fraud.

R&W insurers appear to recognize no-seller-recourse deals are not necessarily more risky, because pricing for policies in deals without seller recourse as compared with pricing for policies in deals with seller recourse has dropped in recent years and is not materially higher today. Even so, our data suggests that there should be no difference in pricing.



TRENDS IN R&W CLAIMS

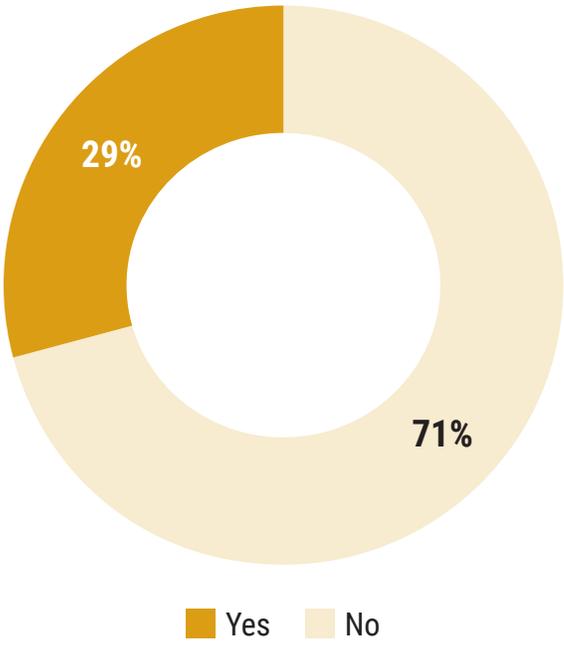
The increase in the use of R&W insurance has led to heightened competition with insurers offering terms more favorable to policyholders, including, most notably, by lowering SIRs over the past few years. In addition, as the R&W claims experience matures, the players in the market are seeing wider diversity in the types of breaches that occur.

SIRs

SIRs operate similarly to deductibles in that policyholders can access coverage only when—and for the amount by which—claims exceed the SIR. In the past few years, we have seen a market trend of insurers lowering the amount of the SIR—down from 2 percent of enterprise value (EV) to 1 percent (though SIRs might be lower for deals in excess of \$1 billion). The retention then typically drops down to 0.5 percent of enterprise value 12 (or 18) months after a deal closes. Nevertheless, our survey shows that more than 70 percent of claims resulted in losses that remained entirely within the SIR of the policy and for which, therefore, no coverage was provided (or required) by the insurer.

Did each/all of the R&W insurance claim(s) result in a loss that was entirely within the R&W policy retention?

(Select one option.)



Stakeholders in the R&W market need to take a hard look at the allocation of risk and reward associated with SIRs in particular and R&W policies more broadly. Our data reflects an imbalance: Insurers are collecting significant premiums, imposing substantial SIRs (even at 1 percent of EV), and then often paying claims at [a reduced percentage of the claim's full value](#) during the negotiation process.

How does the market correct this imbalance? One way is for R&W insurers to lower the SIR by reducing the percentage of EV below the current market-standard 1 percent. However, as the R&W market has matured, a percentage of EV may no longer be the correct measuring stick to determine the SIR. Insurers and policyholders should consider a transition to a more traditional model (e.g., D&O or cyber) where retentions are set based on perceived risks and claims experience. Under this model, insurers could also

offer buyers different SIR amount options at different premium price points. Additionally, the step-down process—where currently the reduction of the retention does not begin until 12 to 18 months after closing—could be accelerated. If SIRs do not change, upfront premiums could be reduced instead.

There are other creative solutions for market participants to consider. For example, insurers could provide credit against the SIR for costs incurred to address some or all otherwise uncovered or excluded breaches, such as deal-specific exclusions, even if the exclusion might remain in place to evaluate the insurer's coverage obligation above the SIR. Credit could also be provided against the SIR when losses, or portions of losses, are covered by a traditional insurance policy—an approach already used in other insurance contexts.



HOW DOES THE MARKET CORRECT THIS IMBALANCE?

One way is for R&W insurers to lower the SIR by reducing the percentage of EV below the current market-standard 1 percent. However, as the R&W market has matured, a percentage of EV may no longer be the correct measuring stick to determine the SIR.

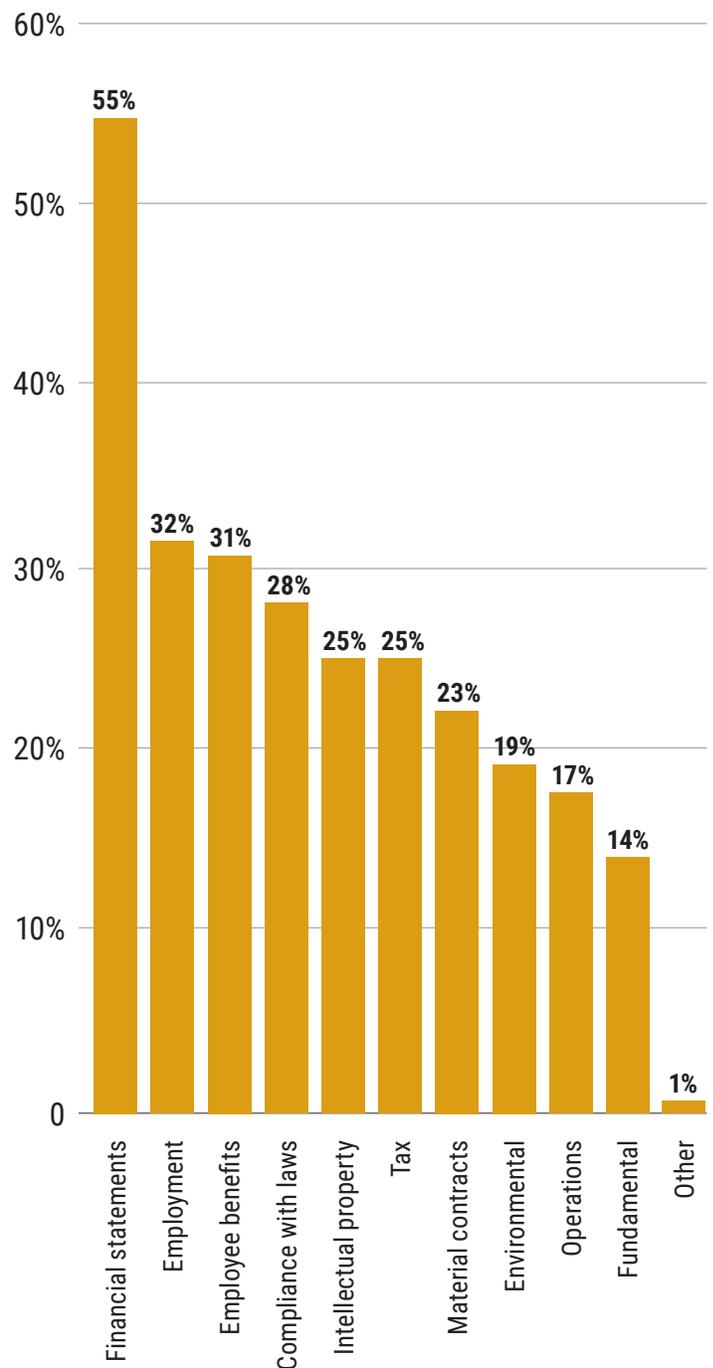


Most Common Breaches

It is striking that 25 percent or more of respondents identified six breach categories that were the basis of their R&W claims. However, by a wide margin, financial statements form the foundation for most claims reported on (55 percent), likely because those breaches go to the heart of every deal. To that end, policyholders are much more likely to identify a breach of a financial statement representation than any other kind of breach. This is likely because one of the first things a buyer does after closing is dig in to the company’s financial statements and records. Further, these losses are relatively easier to quantify with expert support and may be the most substantial losses, causing buyers to be more focused on an R&W insurance recovery. The prevalence of policies issued in the financial services sector (see above) is also a contributor to the volume of financial statement breach claims.

What was/were the type(s) of breach(es) that was/were the basis of the R&W claim(s)?

(Respondents who had identified multiple claims were allowed to select more than one answer. Chart reflects the percentage of respondents who identified each breach type.)



WHY POLICYHOLDERS SHOULD NOT TAKE “NO” FOR AN ANSWER

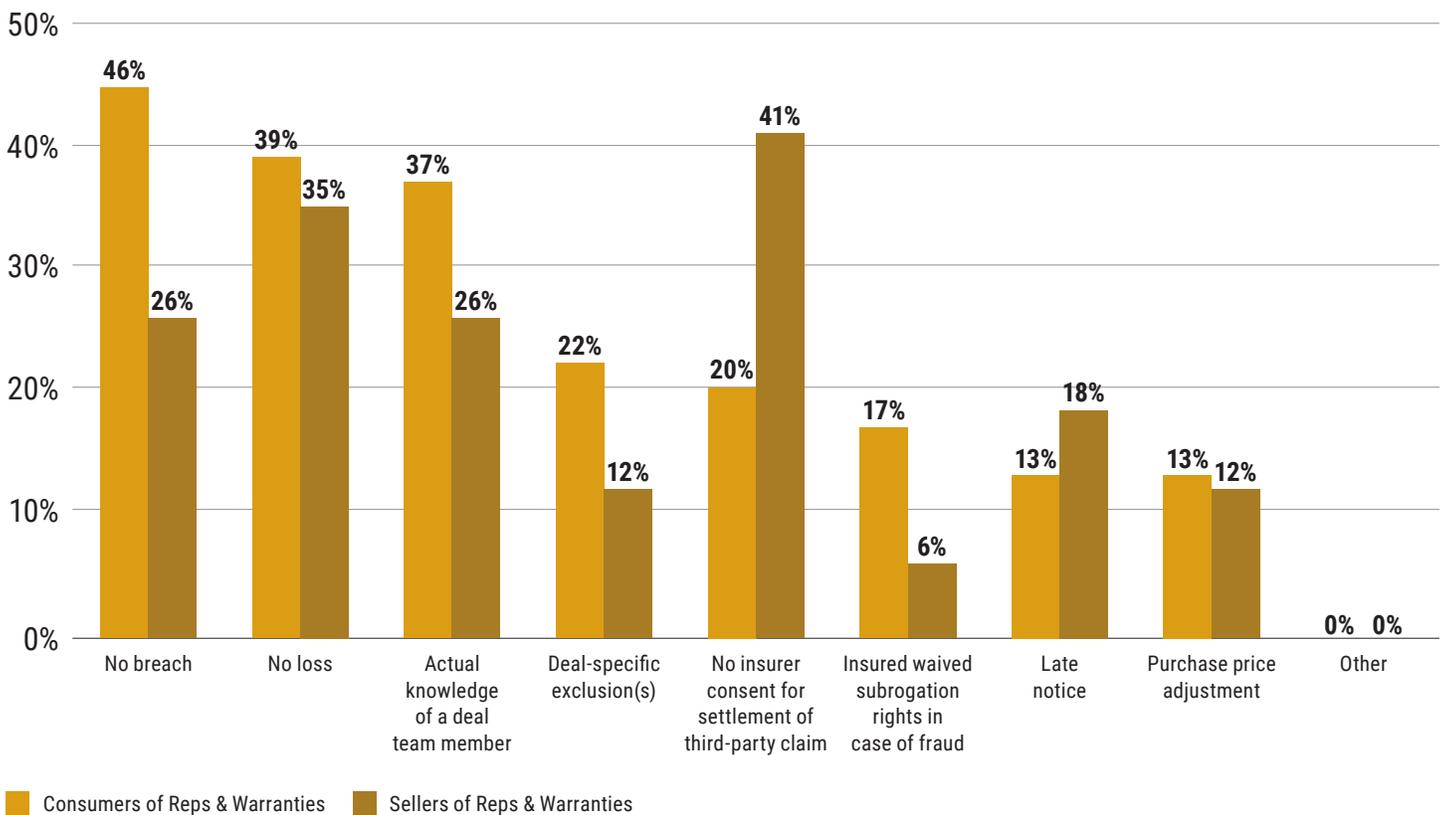
Whatever the nature of the breach that triggers a claim, policyholders should be prepared for a protracted claim negotiation—starting with a possible rejection by their insurer. Our data shows that while R&W insurers initially deny claims when they are presented, that denial does not end the process. Instead, [buyers are usually able to secure some form of payment for their claims](#) if they are willing and able to pursue them.

Reasons for the Initial Denial

R&W insurers often cite a wide range of reasons for denying claims. Interestingly, but perhaps not surprisingly, policyholders, insurers, and brokers are more divided on the question of why coverage is denied than on any other issue that we surveyed.

What was the R&W insurer’s asserted basis for the denial(s)?

(Respondents were allowed to select more than one answer.)



Policyholders report that insurers typically begin by taking the position that no breach has occurred or no loss has been suffered, or by citing the actual knowledge exclusion in the policy. Insurers and brokers report that the biggest reason for claim denial is the lack of insurer consent for claim resolution. Nevertheless, policyholders can use a number of tools to avoid or minimize the cited coverage defenses.

Actual Knowledge Exclusion and No Breach or Loss Defenses

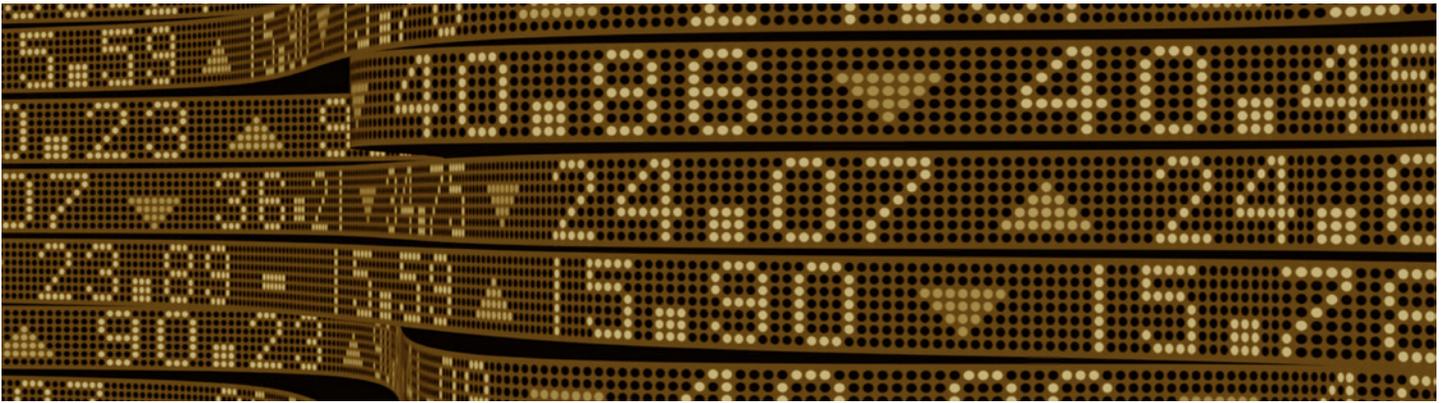
When it comes to the “actual knowledge” exclusion, buyers can limit the number of deal team members who are subject to the exclusion. Regarding the “no breach or loss” coverage defenses, the issues often relate to applicable case law and the ability of counsel to advocate the policyholder’s position. That makes it imperative to find experienced coverage counsel who know how to frame the facts and circumstances against the applicable policy language and law to secure and maximize recovery.

Easy-to-Avoid Coverage Defenses

Policyholders can easily avoid late-notice, lack-of-consent, and waiver-of-subrogation defenses by taking a few proactive steps. First, policyholders should provide prompt notice of all actual and potential breaches; even if the SIR may not be exceeded, the seller has some responsibility, or other insurance may be available to address the claim. Second, it is important to keep the insurers informed of all negotiations taking place with the seller and/or any other third parties that may be held responsible for the loss. Insurer involvement in these discussions even before the SIR is eroded will go a long way toward blunting the impact of (if not entirely eliminating) a lack-of-consent defense later. Finally, policyholders should avoid providing a broad release to sellers, or any other responsible party, without first discussing it with their insurers. An even better practice is to secure the insurers’ written consent to any settlement involving the sellers or other responsible parties. Taking all these steps will reduce or eliminate the later assertion of coverage defenses by the insurers.



**TAKING ALL THESE STEPS
WILL REDUCE OR ELIMINATE**
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Deal-Specific Exclusions

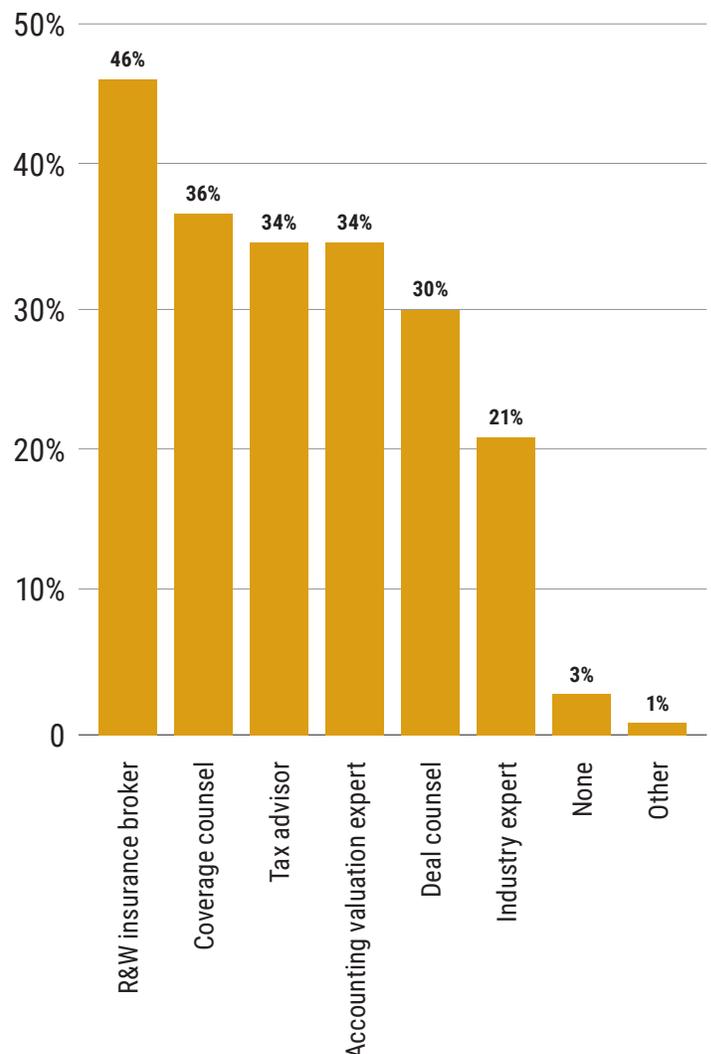
Deal-specific exclusions can be managed at the policy placement stage. Insurers will often agree to remove or substantially narrow such exclusions when pressed. So while it may feel like a distraction during the final stages of a transaction to pause and negotiate with insurers on the wording of those exclusions, that may be time well spent if it avoids an unwelcome claim denial after the deal closes.

Getting to “Yes”

Despite disagreement about why claims are denied, the vast majority of policyholders (86 percent) and insurers and brokers (89 percent) agree that at least some recovery results from a challenge of the initial claim denial and further negotiation of the claim. In fact, survey respondents report meaningful recoveries; more than 75 percent of respondents report claim payments that exceed 50 percent of the claimed loss.

Please identify any third-party advisor(s) your organization retained to resolve the R&W insurance claim(s).

(Respondents were allowed to select more than one answer.)



HOW DID BUYERS GET THERE?

A well-prepared proof of claim paves the way to getting the insurer meaningfully engaged in the negotiation process so that full-blown litigation or arbitration will not be necessary to secure payment for the claim.

How did buyers get there? A well-prepared [proof of claim](#) paves the way to getting the insurer meaningfully engaged in the negotiation process so that full-blown litigation or arbitration will not be necessary to secure payment for the claim.

Many policyholders can resolve claims through informal negotiation or formal mediation, an indication that insurers are amenable to a commercial approach to resolving disputes. In other words, policyholders have a meaningful chance to secure the benefits of their insurance policies without facing years of uncertain litigation risk, diversion of company resources, and substantial legal spend.

Nevertheless, about a fifth of claims do end up in litigation, and even more are resolved through binding arbitration, according to the survey data. Buyers should negotiate during policy placement for the right to commence litigation in open court. Such litigation can provide powerful leverage over insurers that are concerned about their reputations in the tight-knit R&W insurance community and in the court of public

opinion, where judicial decisions can be scrutinized and debated. Arbitration, conversely, provides insurers with a shield of secrecy against adverse outcomes that would otherwise set precedent for existing and future claims. Further, policies that require arbitration can discourage policyholders from proceeding with all but big-ticket claims because they may be responsible for at least half the arbitration costs.

Given all the complexities associated with this insurance product, it is crucial for policyholders to assemble [a strong and experienced claim advocacy team](#). This should include a broker to manage the business relationship, coverage counsel to articulate the legal basis for coverage and to negotiate the resolution (or litigate or arbitrate if needed), and experts to credibly value the loss. This team is critical, because our data shows that R&W insurers will have assembled their own team to try to minimize claim payments.



| CONCLUSION

Buyers should not hesitate to make claims—and to do so promptly. They should challenge existing markets to right-size pricing and retentions in order to better align the risk-reward model, and they should assemble strong advocacy teams that have the knowledge, skills, and experience necessary to quickly move the insurers from claim denied to claim paid. These efforts will go a long way to ensure that R&W insurers keep paying claims.

A COVID-19 EPILOGUE

In the coming months and years, everyone involved in the R&W market should expect exclusions related to COVID-19 (and broader pandemic concerns). In addition, policyholders should expect deeper diligence of COVID-19's intersection with other areas of heightened risk. Material contracts and suppliers, for example, have come under scrutiny as COVID-19 disrupts commerce and supply chains.

Many insurers were already concerned about cyber risk. Now, however, cyber risk will be evaluated with the additional understanding that COVID-19 forced a sudden, global shift to work-from-home models and required conducting all business virtually. COVID-19 has shone a spotlight on the wide spectrum of companies' preparedness with respect to security and workforce agility. Some companies transitioned seamlessly into virtual business. Others struggled mightily. R&W insurers will give careful, deal-by-deal consideration to how to insure these risks.

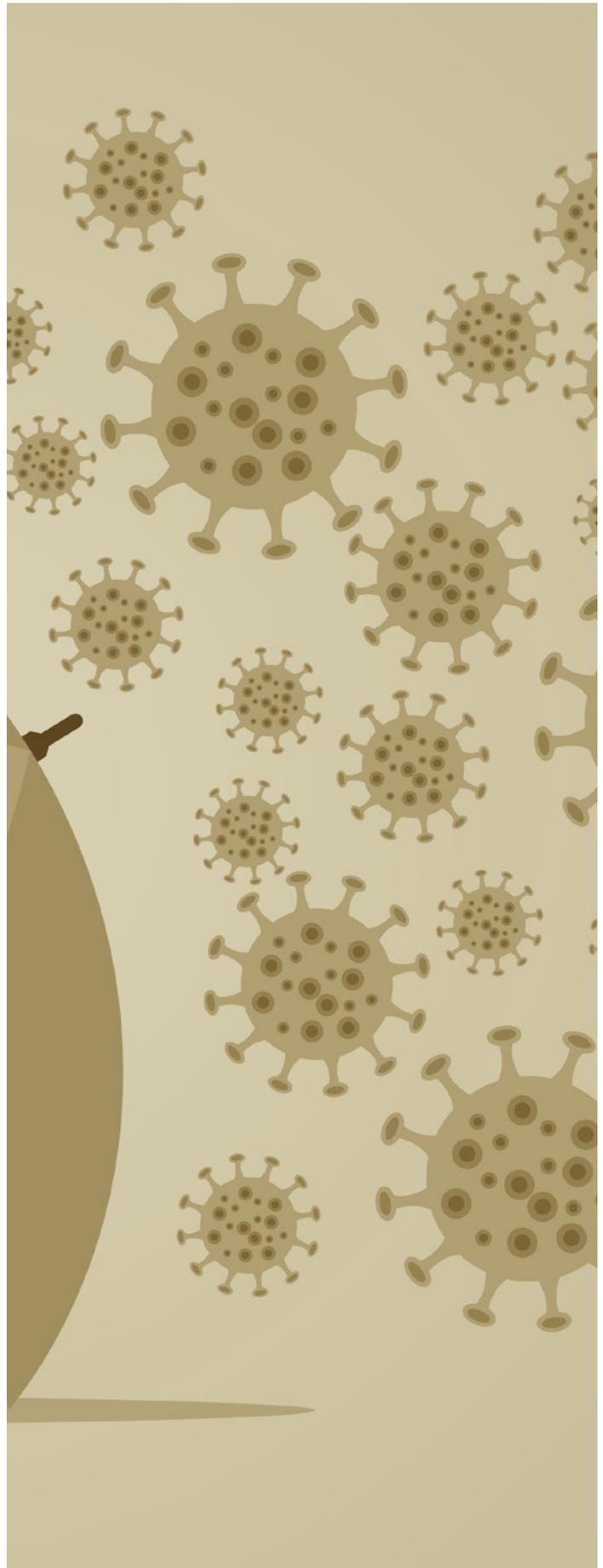
Similarly, we may see greater emphasis placed on the human capital assets that are included in every deal as R&W insurers more closely examine employment matters and maintenance of key business relationships. COVID-19 has also raised the profile of diligence concerning continuity and contingency planning for businesses.



In the short term, cash is king for all businesses, including insurers. While our survey found a healthy claims process from first notice to payment, that was before COVID-19. We expect that the claims process will be further extended as insurers try to retain cash and take a much closer look at claims to substantiate losses and damages. However, R&W insurers that go down this road may create a long-term risk to their reputation.

Our data shows that once deal flow resumes, insurers committed to the R&W market will need to become more competitive—and they can do so by continuing to pay claims, lowering SIRs, lowering premiums, and reducing deal-specific exclusions. It is possible that some insurers will leave the R&W space due to competition, capacity, and reinsurance constraints. Those insurers surely will be more resistant to paying claims because they will no longer be influenced by how they are perceived in the market. They will also have limited dollars available in the absence of premiums to replenish funding.

In the coming months, reduced deal flow could impede the changes we see as critical for the evolution of R&W insurance. However, given that just [29 percent of claims currently exceed the SIR](#), the R&W portfolio must be viewed as favorable—and profitable—for most insurers. It will remain so once deal flow resumes. Thus, many insurers will have an incentive to remain active in the market and compete. This should pave the way for policyholders to demand right-sizing of policy premiums and SIRs and to continue to customize policy terms.





DEMOGRAPHICS AND METHODOLOGY

In 2020, national law firm Lowenstein Sandler surveyed 149 executives involved in R&W insurance. Respondents included individuals holding a wide range of positions in private equity, investment banking, insurance brokerage, insurance companies, and operating companies (i.e., strategic buyers and sellers). More than 60 percent of these executives worked on at least 10 transactions involving R&W policies over the past 36 months, with at least four of those transactions resulting in claims.

In some cases, results total more than 100 percent because of rounding and/or because respondents were asked to select all options that applied, or respondents provided data for multiple claims.

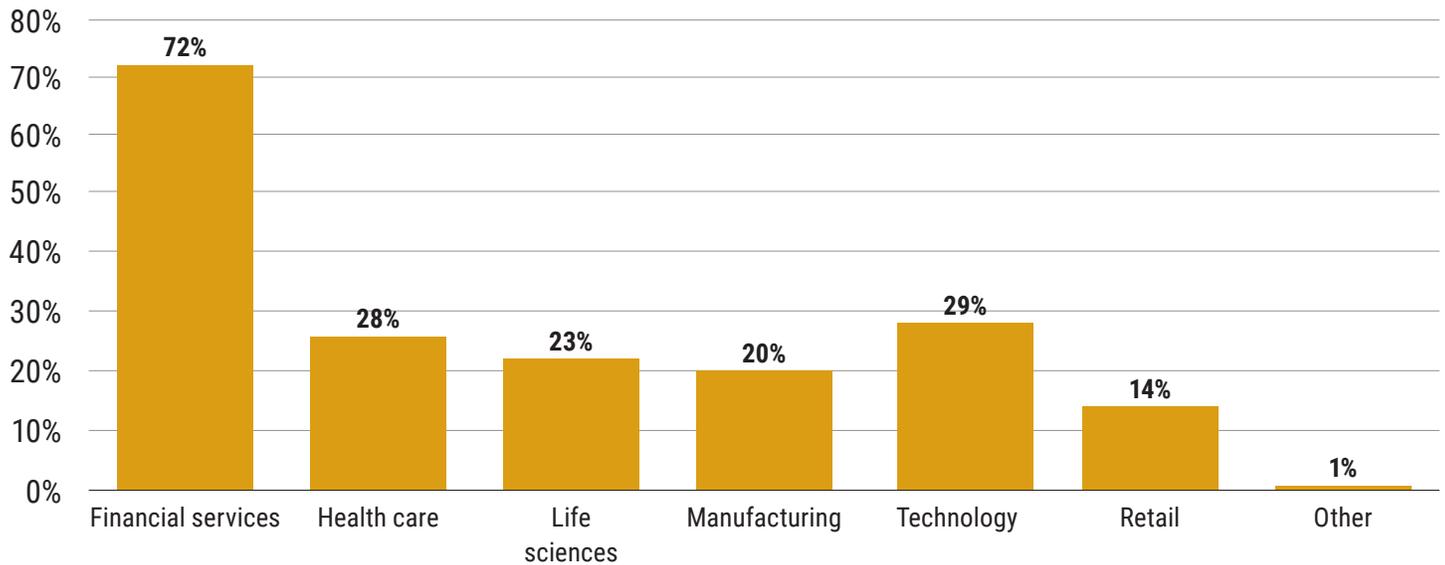


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I FULL SURVEY RESULTS

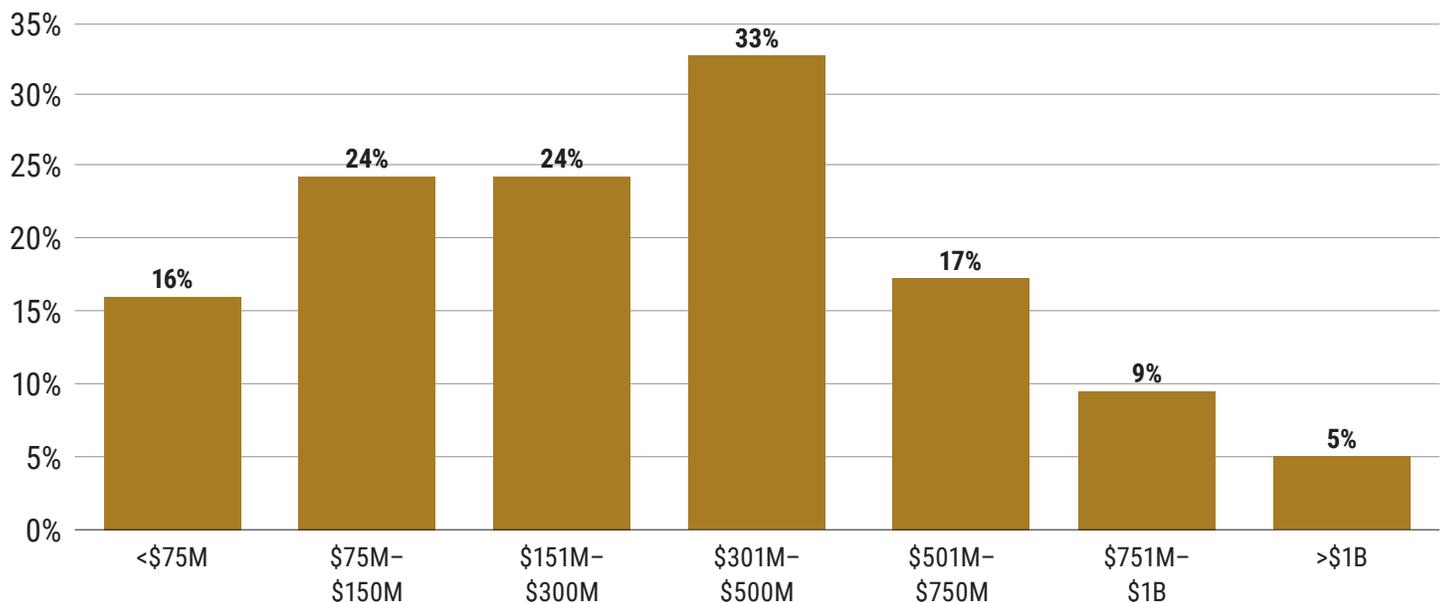
What industry does the Target Entity/Acquired Company, which is the subject of the R&W insurance claim, operate in?

(For multiple R&W insurance claims, select all that apply.)



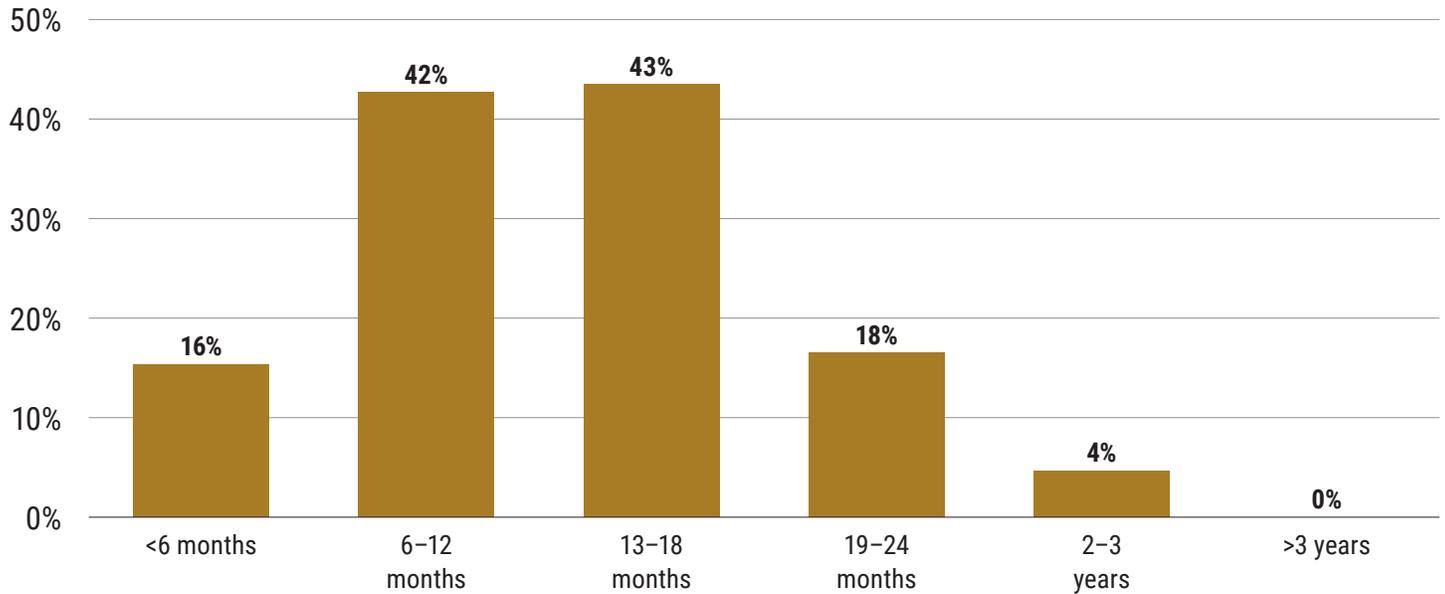
What is/are the deal size(s) for the R&W insurance claims that your organization has made?

(For multiple R&W insurance claims, select all that apply.)



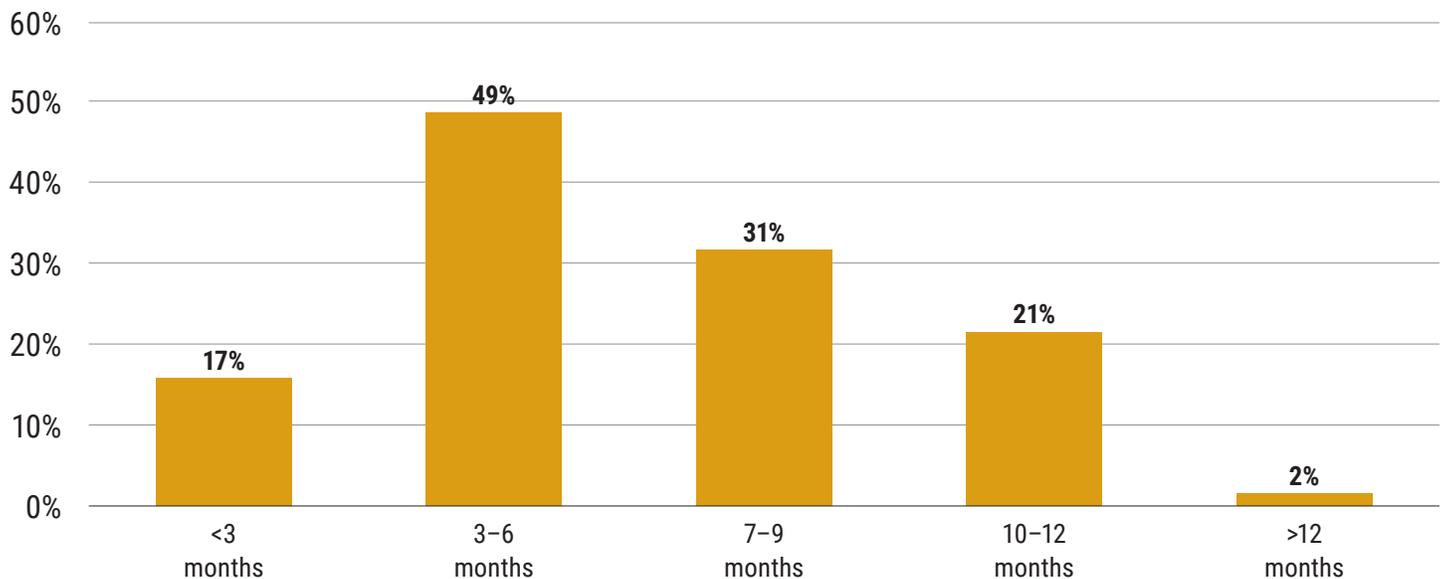
Within what period of time from the transaction's closing is/are the claim(s) first reported to the R&W insurer(s)?

(For multiple R&W insurance claims, select all that apply.)



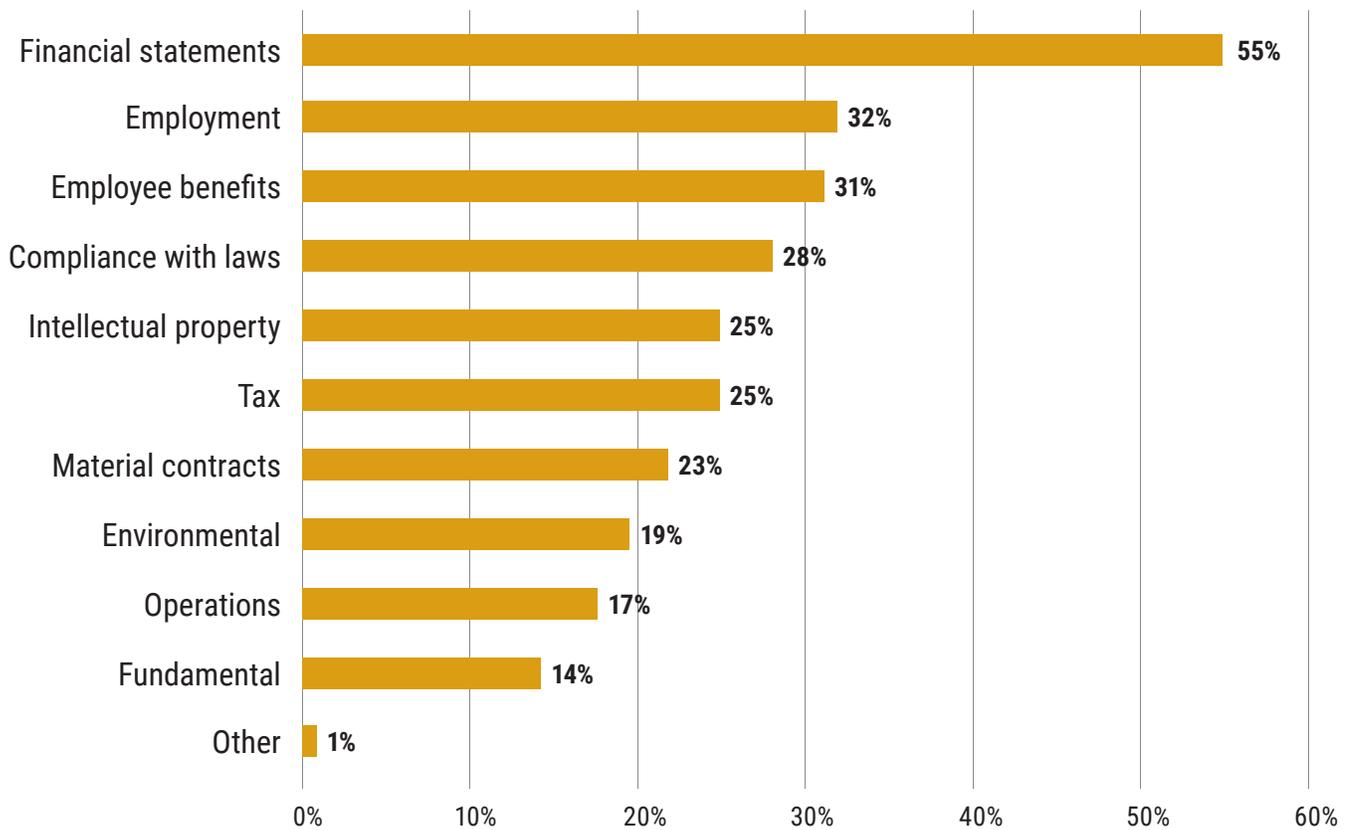
What is the time period between the discovery of the breach and the reporting of the claim(s) to the R&W insurer(s)?

(For multiple R&W insurance claims, select all that apply.)



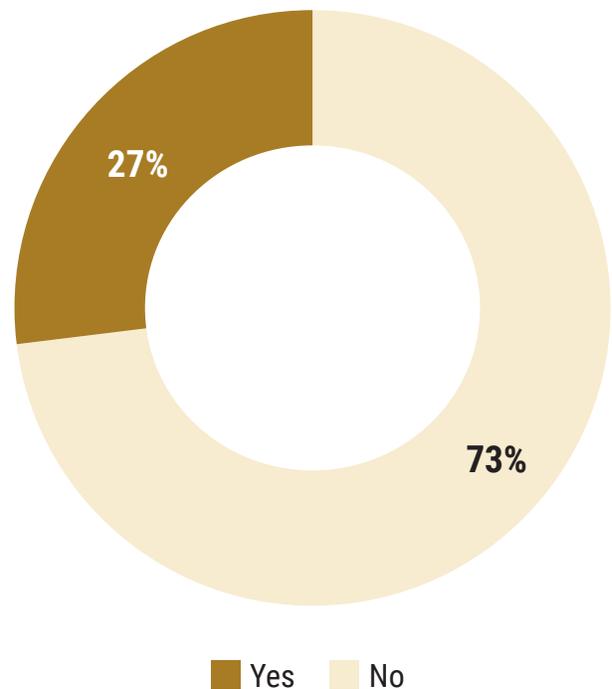
What was/were the type(s) of breach(es) that was/were the basis of the R&W claim(s)?

(For multiple R&W insurance claims, select all that apply.)



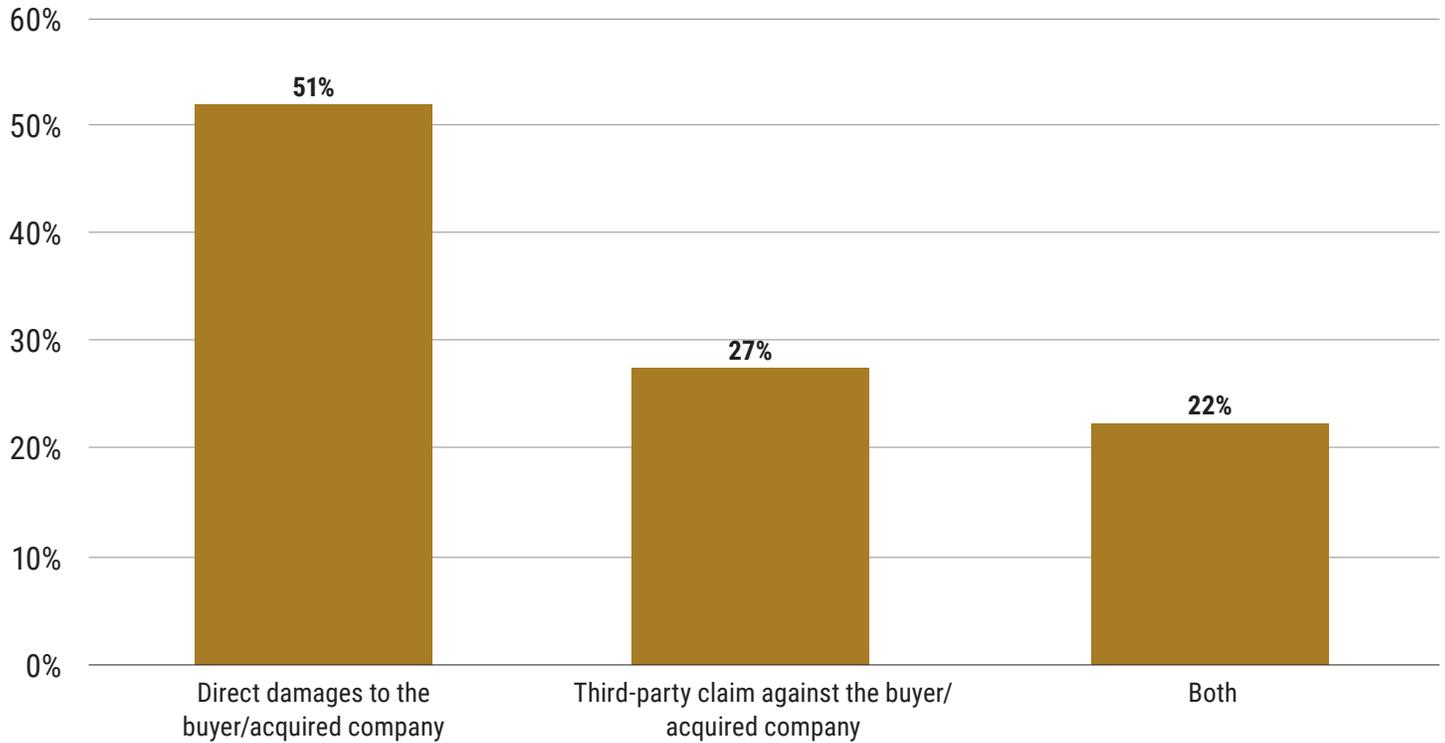
Did the R&W insurance claims you have addressed involve an acquisition/disposition transaction where the seller(s) had no indemnification obligation for breaches of representations?

(For multiple R&W insurance claims, select all that apply.)



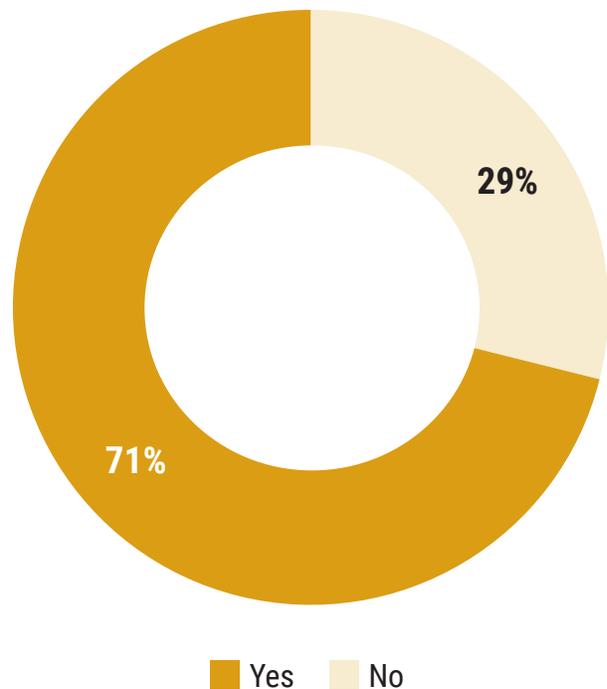
Was/were the R&W insurance claim(s) based on direct damages to the buyer/acquired company or a result of a third-party claim against the buyer/acquired company?

(Select one option.)



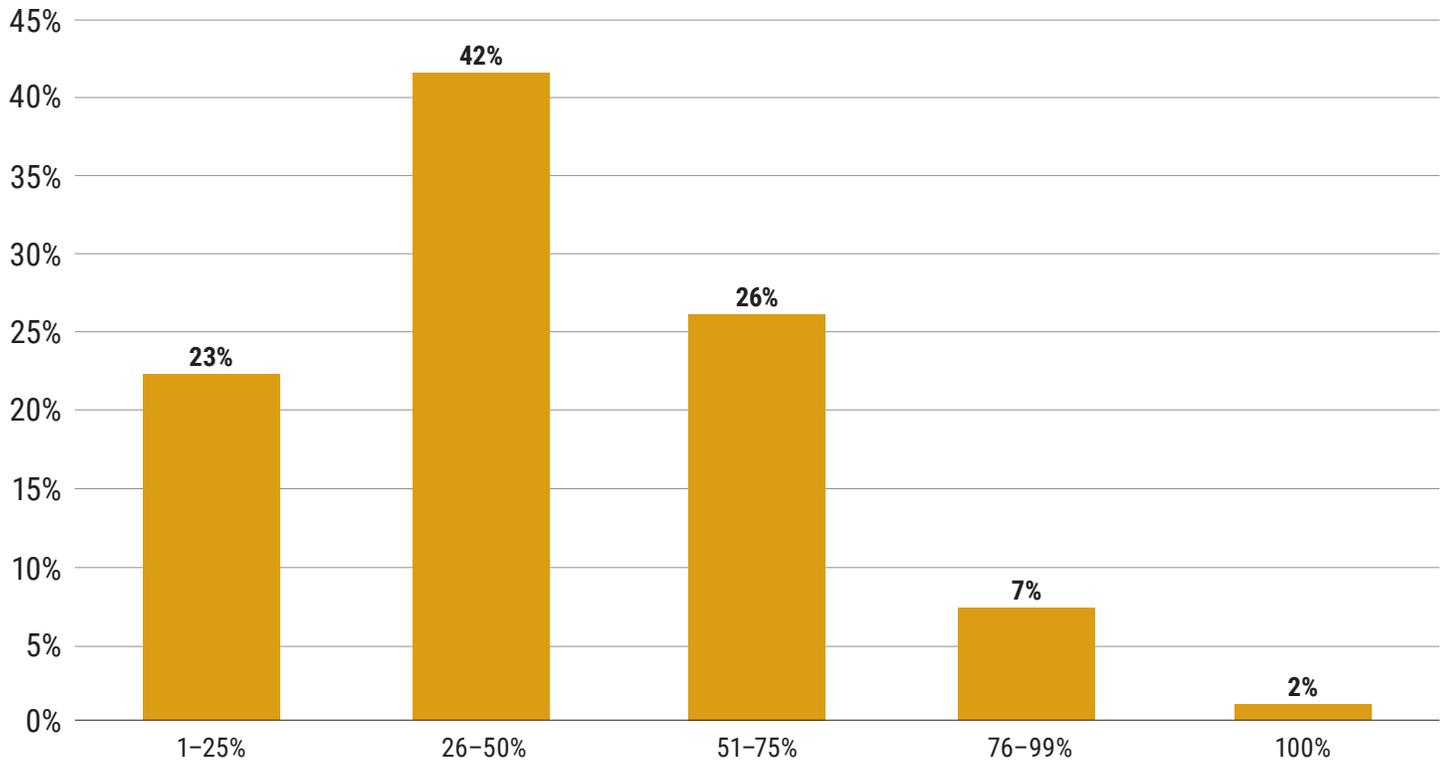
Did each/all of the R&W insurance claim(s) result in a loss that is entirely within the R&W policy retention?

(Select one option.)



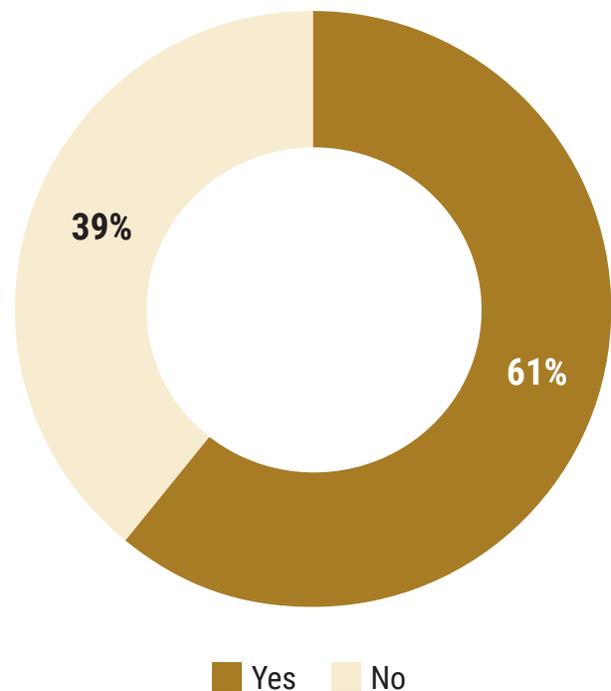
**(Asked of those who selected “No” for the previous question):
Which percentage of the claims would you estimate resulted in
a loss that is not entirely within the R&W policy retention?**

(Select one option.)



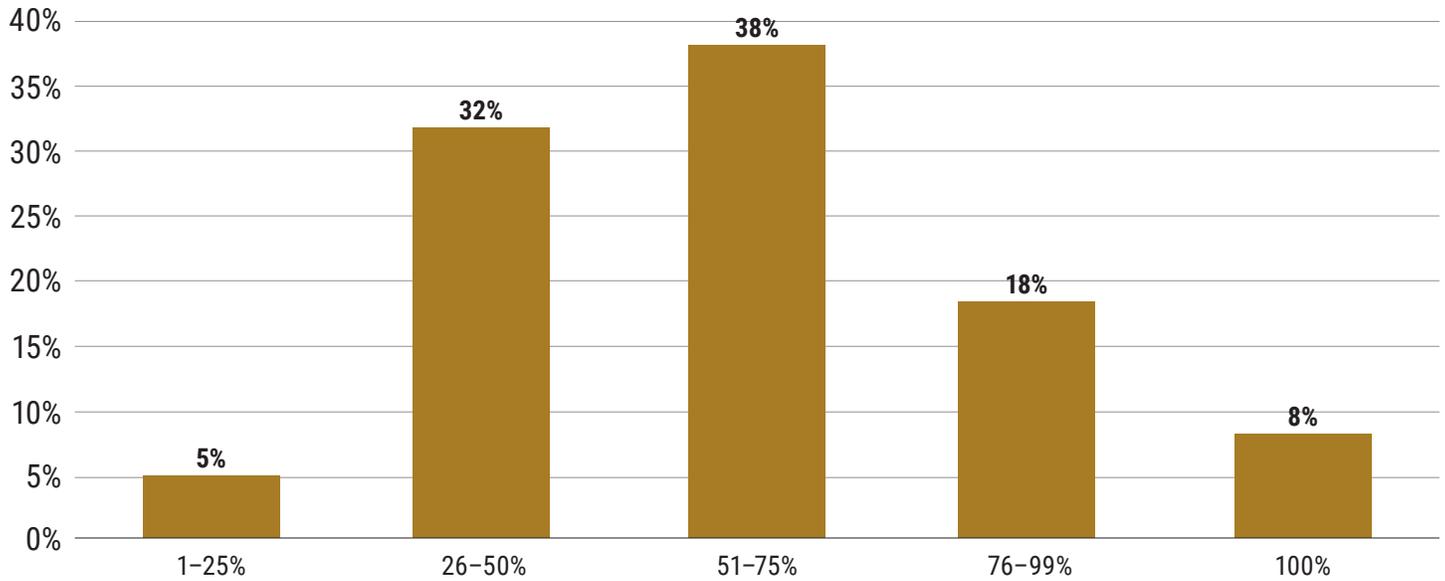
Did the R&W insurer(s) deny coverage for each/all of the R&W insurance claim(s)?

(Select one option.)



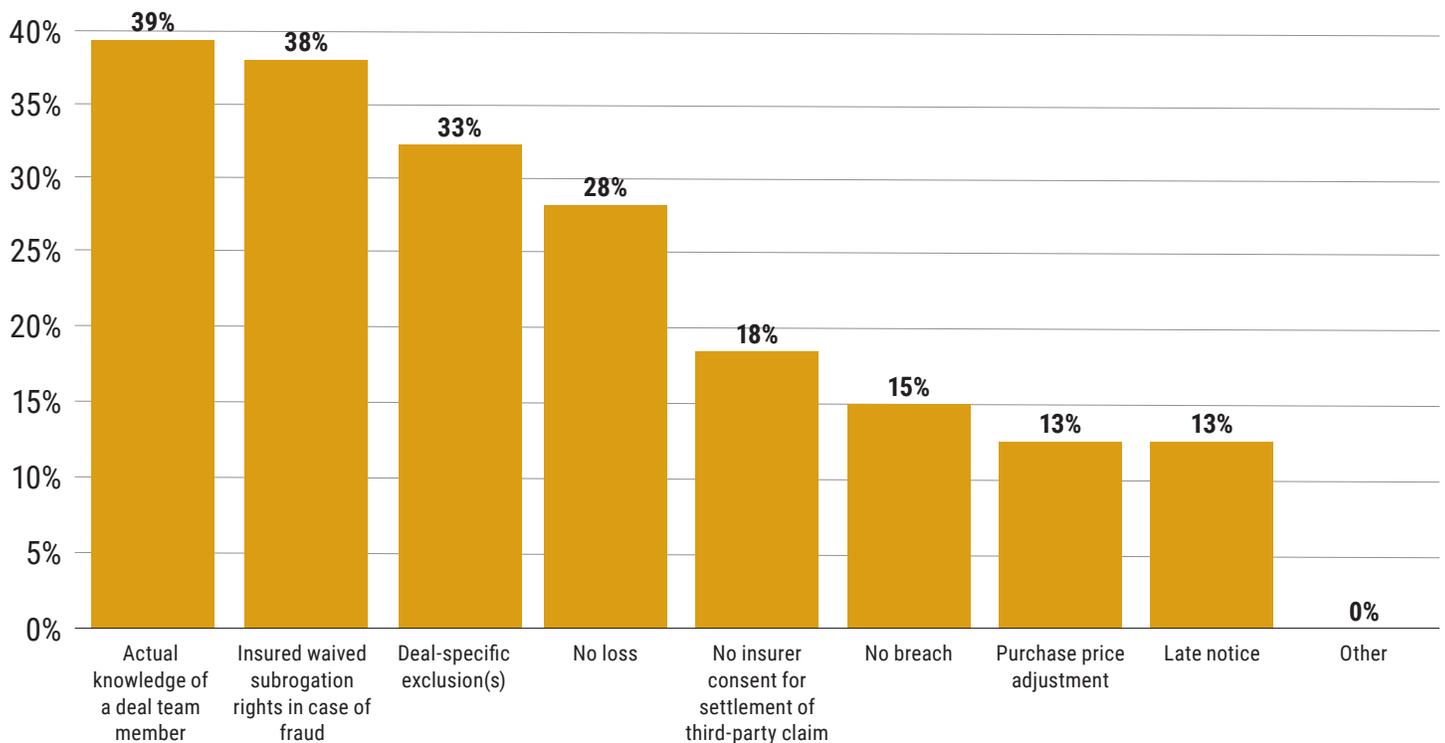
**(Asked of those who selected “Yes” for the previous question):
For which percentage of the R&W insurance claims did the R&W insurer(s) deny coverage?**

(Select one option.)



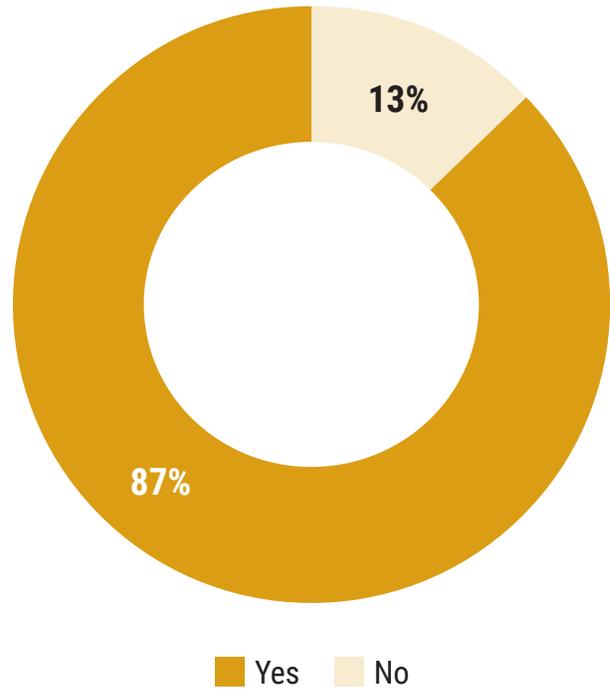
What was the R&W insurer’s asserted basis for the denial(s)?

(For multiple R&W insurance claims, select all that apply.)



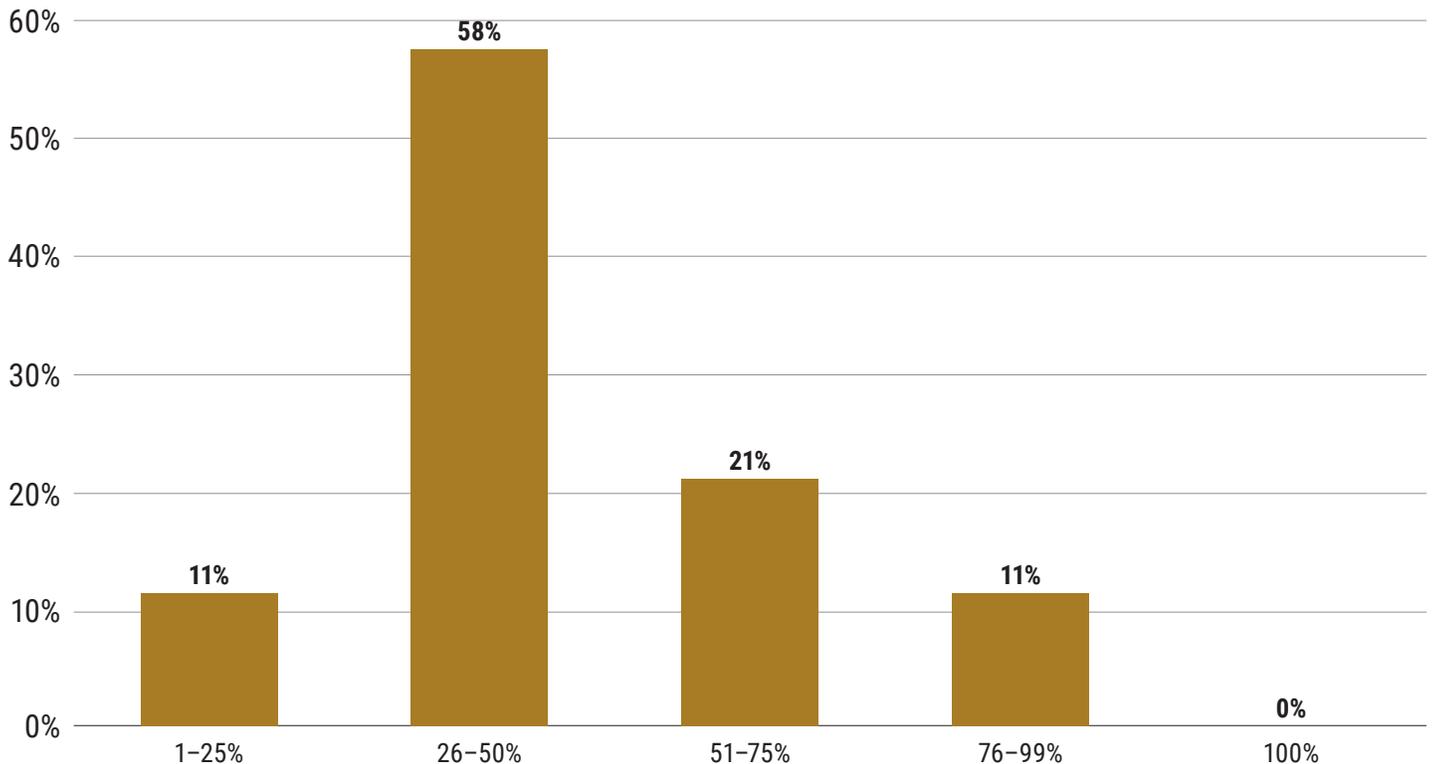
Notwithstanding the R&W insurer's initial denial(s) of the R&W insurance claim(s), was your organization still able to negotiate a payment for each/all of the R&W insurance claim(s) with the insurer(s)?

(Select one option.)



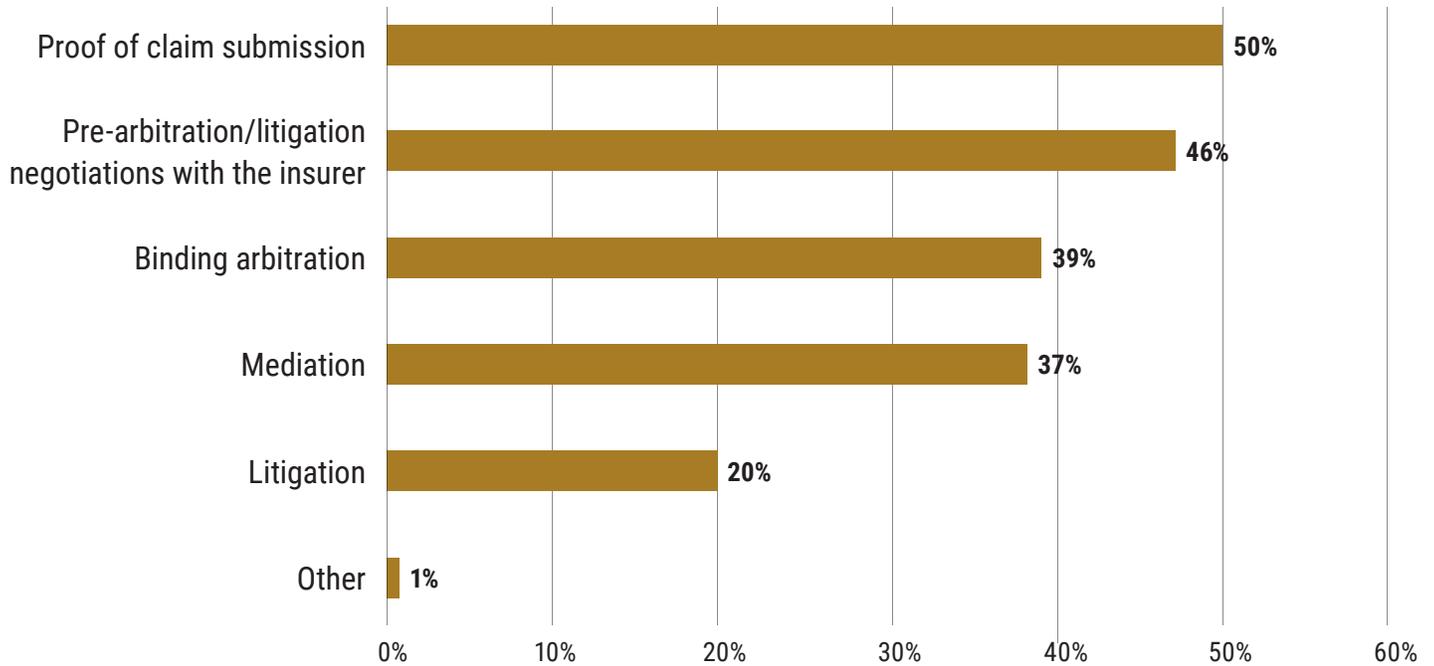
(Asked of those who selected "No" for the previous question): For which percentage of the R&W insurance claims was your organization not able to negotiate a payment with the insurer(s)?

(Select one option.)



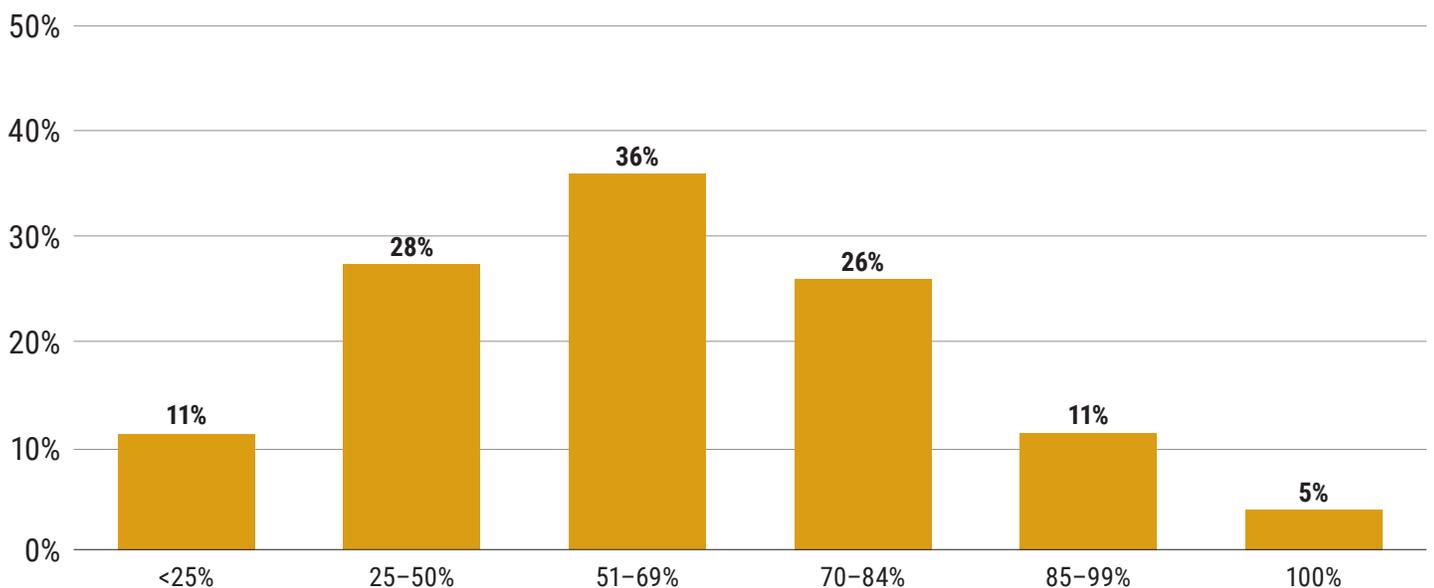
For R&W insurance claims that were ultimately paid by the R&W insurer(s), what steps did your organization or advisors take to get the claim paid?

(For multiple R&W insurance claims, select all that apply.)



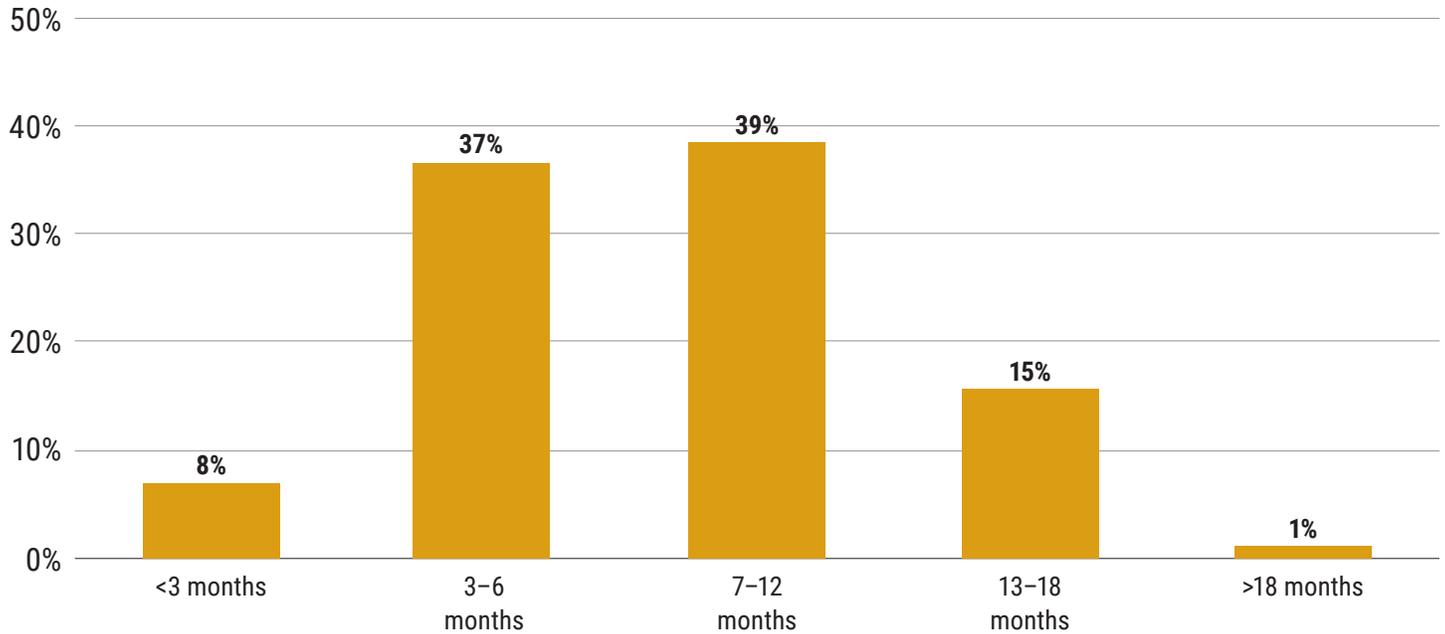
What percentage of the insured's total loss did the R&W insurer resolve the claim for?

(For multiple R&W insurance claims, select all that apply.)



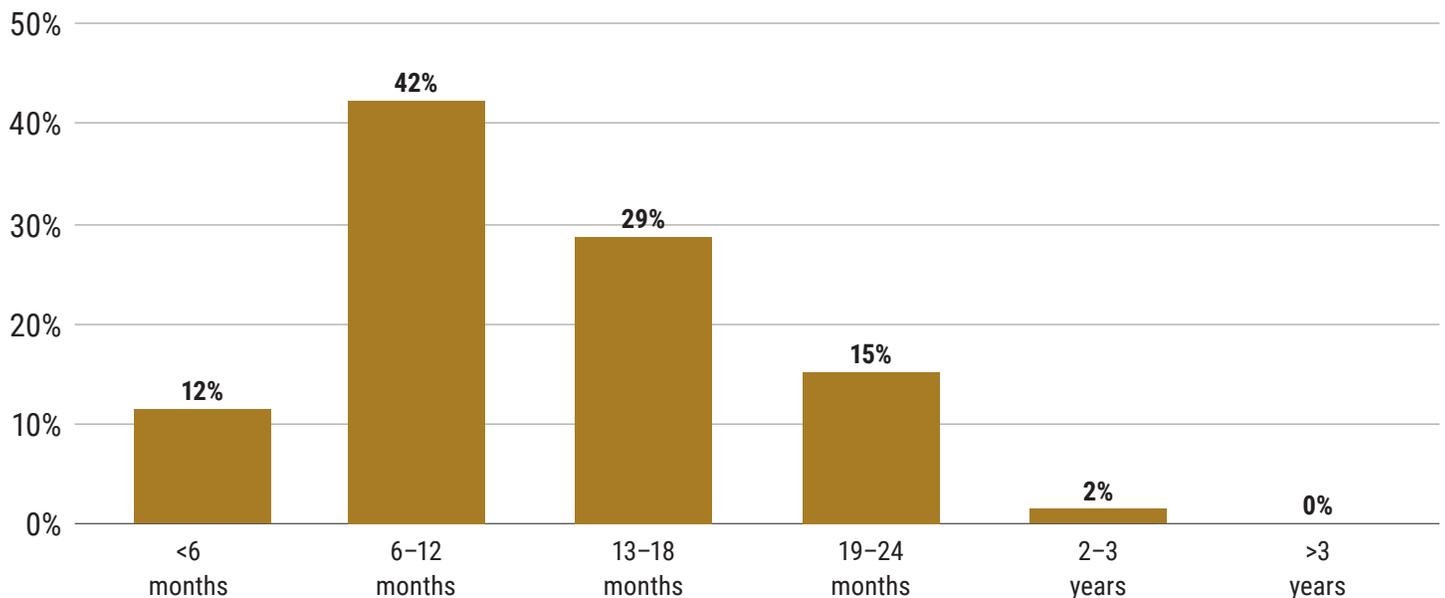
From the time the R&W insurance claim(s) was/were submitted to the R&W insurer(s), how long did it take for the insurer to provide its coverage position?

(In the case of multiple claims, please select the average time frame.)



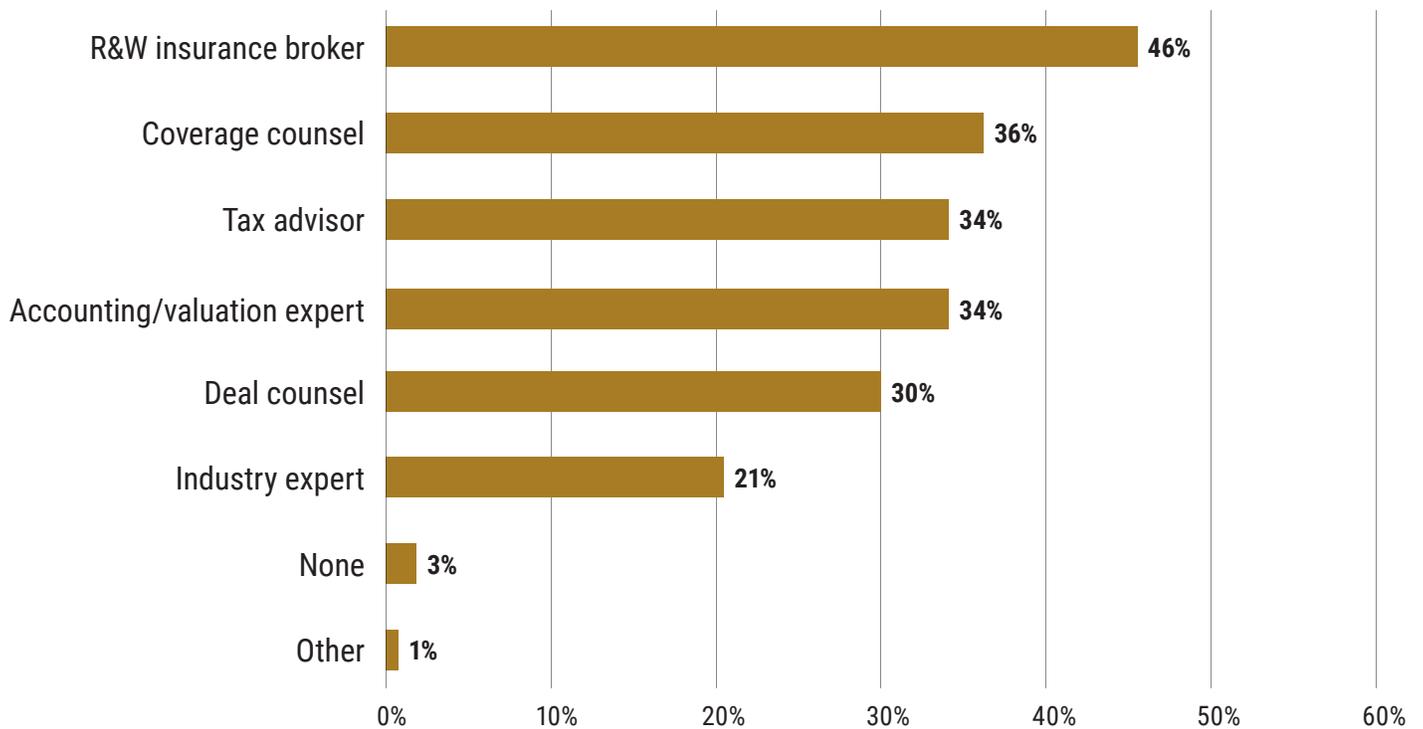
From the time the R&W insurance claim(s) was/were submitted to the R&W insurer(s), how long did it take for the insurer to make payment on the claim(s)?

(In the case of multiple claims, please select the average time frame.)



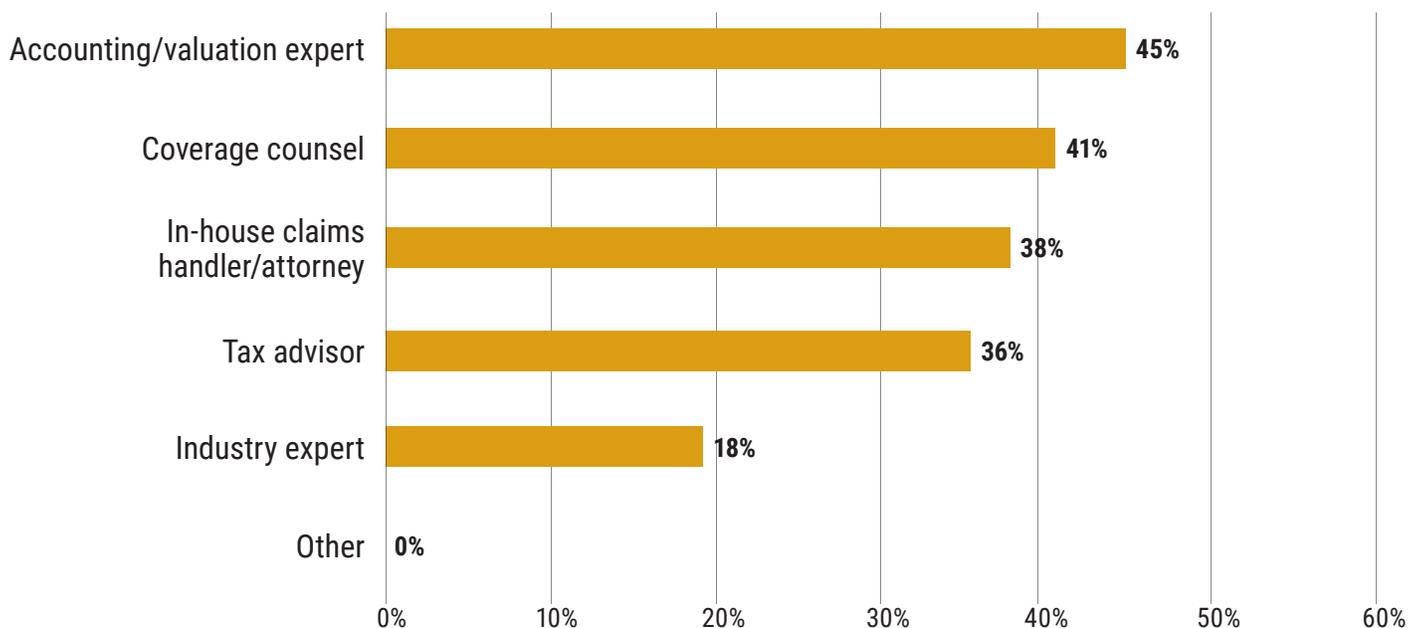
Please identify any third-party advisor(s) your organization retained to resolve the R&W insurance claim(s).

(Select all that apply.)



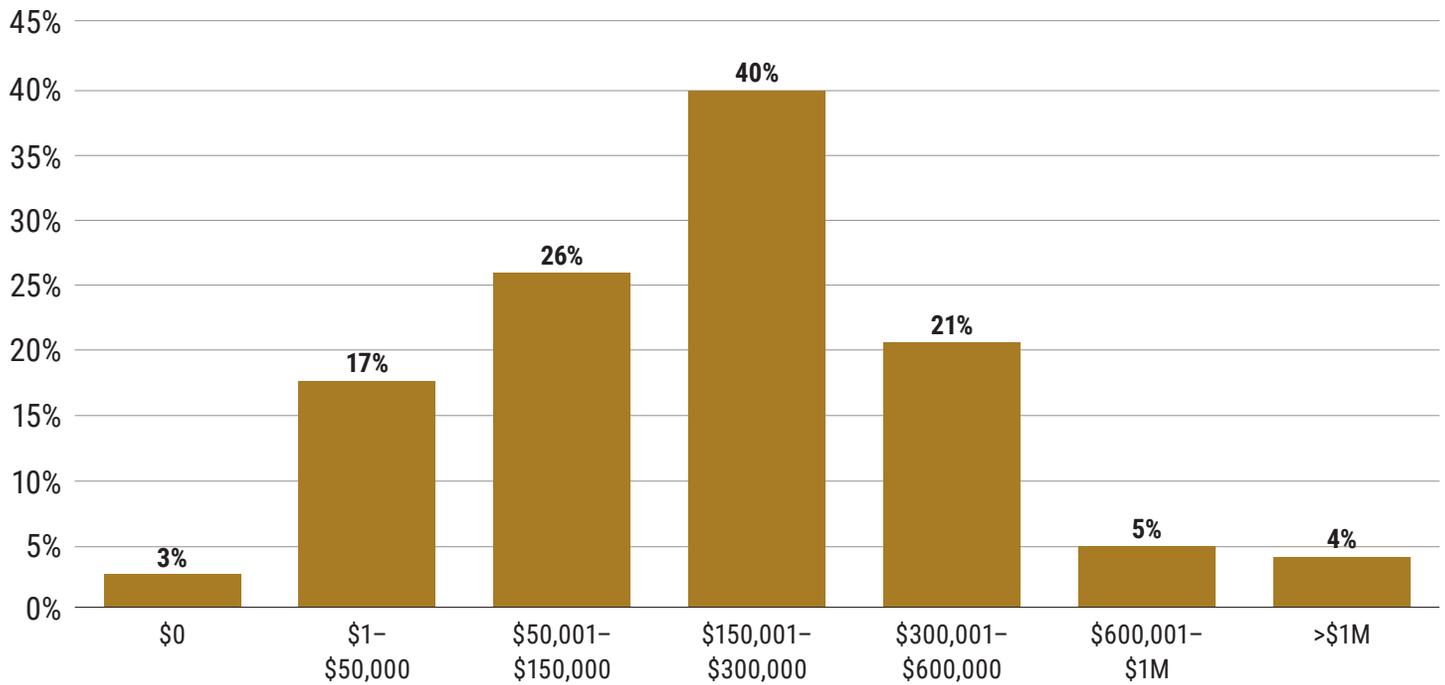
Please identify any third-party advisor(s) that the R&W insurer(s) relied on to resolve the R&W insurance claim(s).

(Select all that apply.)



How much did your organization's third-party advisors collectively charge in fees and expenses to pursue the recovery of each R&W insurance claim?

(For multiple R&W insurance claims, select all that apply.)





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[Biography](#)

Corporate policyholders rely on Lynda to aggressively litigate, negotiate, and resolve complicated disputes with insurers. To date, she has secured hundreds of millions of dollars in insurance recoveries for her clients.

With more than 25 years of commercial litigation experience, Lynda understands that it is generally not in the best interests of corporate policyholders to engage in protracted and costly litigation, especially when doing so may disrupt business and lead to unwelcome public attention. Her goal is to assess and resolve disputes in a manner that achieves successful outcomes for her clients while minimizing interruptions to business as usual. However, if litigation becomes necessary, she has a keen sense of strategy and will exert maximum leverage to resolve claims as quickly as possible.

Lynda has obtained significant recoveries for clients in environmental, asbestos, construction defect, mass tort, product liability, D&O, and professional liability cases. She also counsels clients with respect to contractual insurance requirements, new insurance products (such as cyber insurance), innovative risk management tools, and insurance program assessment. Working with the firm's transactional lawyers, Lynda regularly advises strategic acquirers and private equity funds regarding insurance coverage issues that arise in acquisition and investment transactions and she has a deep network in the reps and warranties insurance space that is an asset for any deal.

Lynda has chaired the Insurance Recovery group since 2011 and is a member of the firm's Executive Board and Compensation Committee. She previously served on the firm's Operating Committee and Recruiting Committee.

Lynda is strongly committed to advancing the role of women in the legal profession. She is a founder of the firm's Women's Initiative Network, is active in legal industry women's groups, and serves as a board member and past president of the New Jersey Women Lawyers Association.



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For over a decade, Eric has advised corporate policyholders on an array of insurance issues in mergers and acquisitions, claim disputes with insurers, and the placement and renewal of insurance programs. In particular, Eric has deep experience with several niche specialty policies: representations and warranties (R&W) insurance, directors and officers (D&O) policies, and cyber insurance.

Eric is an R&W insurance specialist, and he brings his expertise to private equity and strategic buyers' deals. He advises buyers on the selection of an R&W insurer—because they are not all created equal—and on the nuanced intersections between R&W policies and purchase agreements. Then, Eric negotiates R&W policy terms and conditions, narrows or eliminates deal-specific exclusions, and ensures a smooth underwriting process so that R&W insurance is a step ahead of the deal timeline.

Eric also counsels policyholders on their D&O and cyber insurance programs. When clients need to understand or enhance their coverage, Eric reads their insurance policies from “cover to cover.” Because of his deep awareness of the market and caselaw developments, Eric can guide clients to the policy enhancements that can pay dividends when a claim is presented.

When his policyholder-clients have encountered—as they inevitably do—insurers that refuse to pay claims, Eric has recovered hundreds of millions of dollars in insurance proceeds on their behalf. Eric has resolved claims under a host of policies, ranging from R&W policies to D&O policies to cyber policies, and he has defeated the assortment of coverage defenses that insurers have presented. To get insurers to pay, Eric focuses on the strategic issues and actions necessary to win, while working to avoid the distractions that can pervade claim disputes.



I ABOUT THE INSURANCE RECOVERY GROUP

Since the 1980s, Lowenstein Sandler's [Insurance Recovery Group](#) has represented corporate and governmental policyholders and has obtained billions of dollars in insurance recoveries. We strategically untangle the complex web of insurance issues that businesses face in today's global economy, from policy audits to claim negotiation to high-stakes coverage litigation.

The group offers a comprehensive and diverse practice that includes a dynamic and growing group of lawyers who advise clients throughout the United States about a wide variety of insurance issues. Our team prides itself on consistently obtaining significant victories for our clients, whether inside a courtroom or as a trusted insurance advisor to resolve insurance claim disputes. Our clients range from startups to Fortune 100 companies and include a wide variety of industries.

We seek to resolve insurance disputes quickly and efficiently. When insurance companies refuse to settle claims reasonably, we are ready to force them to provide coverage. Our team has litigated hundreds of cases in more than 40 states. We have extensive experience with dispute resolution and adeptly counsel clients through mediation and arbitration proceedings. Our litigation strategies are designed to expedite early resolution and to minimize the interruption of a company's daily business operations.

The Insurance Recovery Group's lawyers are more than insurance coverage litigators. We advise our clients on pre- and post-loss insurance disputes, conduct insurance policy audits, provide insurance input on master service agreements and other contractual documents, assist with policy purchases and renewals, and perform insurance due diligence in the context of corporate transactions and bankruptcy proceedings.

ABOUT LOWENSTEIN SANDLER

[Lowenstein Sandler](#) is a national law firm with over 350 lawyers based in New York, Palo Alto, New Jersey, Utah, and Washington, D.C. The firm represents leaders in virtually every sector of the global economy, with particular emphasis on investment funds, life sciences, and technology. Recognized for its entrepreneurial spirit and high standard of client service, the firm is committed to the interests of its clients, colleagues, and communities.

