GreenbergTraurig

BIGLAW REDEFINED

Dynamic Deal Architecture

Recent Trends in Private-Target M&A

Steven E. Bartz | Shareholder | bartzs@gtlaw.com

Monika Kluziak | Associate | Monika.Kluziak@gtlaw.com

MARCH 2026

GT GreenbergTraurig

The Shift in Deal Structure

Shift 1:

Away from static, fixed pricing toward dynamic, contingent structures

Growing reliance on earnouts and post-closing purchase price adjustments (PPAs)

Shift 2:

Shift from subjective metrics to objective, measurable benchmarks

Moving away from metrics such as EBITDA to metrics such as revenue

Shift 3:

Insurance-backed risk allocation replacing traditional seller liability structures

RWI and targeted escrows are replacing large holdbacks

GT GreenbergTraurig

Why the Market Is Evolving

1. **Economic Uncertainty:** Uncertain economic environments demand better risk management
2. **Avoiding Pitfalls:** Post-closing disputes increasingly costly—clearer metrics reduce friction
3. **Buyer Demand:** Buyers seeking enhanced protection against value fluctuations
4. **RWI Maturation:** Representation & warranty insurance (RWI) enabling more flexible risk structures

GT GreenbergTraurig

Pattern of Recent Changes to M&A Since Covid

2020–2021

Covid Pandemic

2021

Intense Government Stimulation - $10 Trillion

2022

- February: Russia Invades Ukraine

- Interest Rates Rise Steeply

2023

- March: Silicon Valley Bank Failure

- August: Interest Rates Peak @ +500 basis points

- October: Hamas Attach on Israel

2024

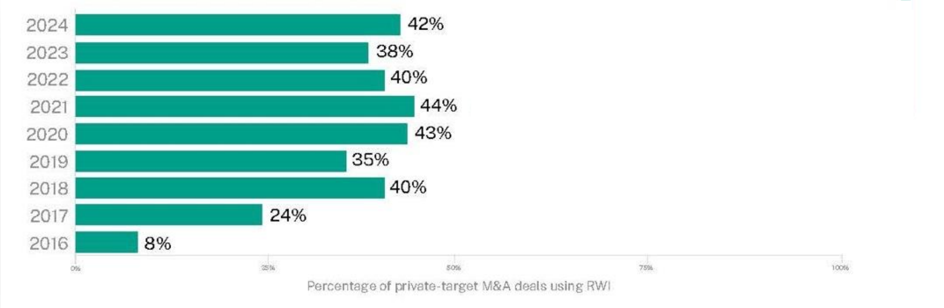
- September: Interest Rate Cuts Begin

- “Wait and See” about U.S. Presidential Election

2025

- Started Positive, Pro-Growth Administration

- Liberation Day April 2: Tariffs, then…DOGE, cont’d Geopolitical Uncertainty, Unpredictable Administration in D.C.

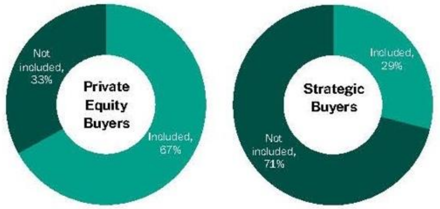


INCLUSION OF REPS AND WARRANTIES INSURANCE, BY TRANSACTION VALUE (2023-2024):

	RWI IDENTIFIED	
DEAL SIZE	2023 DEALS	2024 DEALS
Up to $25M*	10%	10%
$25M–$50M*	44%	34%
$50M–$100M	51%	44%
$100M–$250M	47%	63%
$250M–$750M	59%	62%
$750M+	55%	46%

*Lower middle-market deals

INCLUSION OF REPS AND WARRANTIES INSURANCE, BY BUYER TYPE (2024 DEALS):

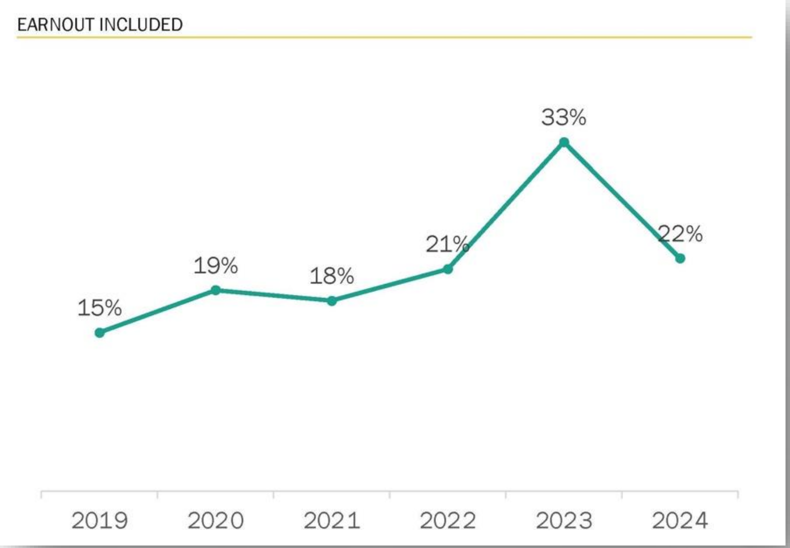


SRS Acquiom (2025). 2025 M&A Deal Terms Study Special Report: Influence of RWI on M&A Deal Terms.

GT GreenbergTraurig

Earnouts: Prevalence & Growth

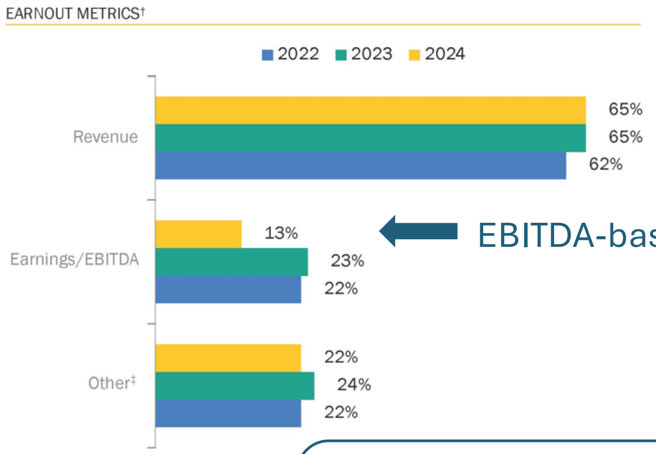
- **Non-life sciences deals:** Appx. 22% of 2024 non-life sciences deals included earnouts (up from 15% in 2019)
- **Life sciences deals:** Appx. 91% of biotech/pharma deals use earnouts
- **Earnout size varies dramatically:** 31% median in non-life sciences vs. 61% in pharma
- **Length:** Trend toward shorter earnout periods (median 24 months; max 4 years in 2024)



SRS Acquiom (2025). 2025 M&A Deal Terms Study: Deal Points (https://www.srsacquiom.com/our-insights/deal-terms-study/).

GT GreenbergTraurig

Earnout Metrics: EBITDA Decline



Revenue-based earnouts now dominant: **65%** of deals in 2024

EBITDA-based earnouts declined sharply: **13%** in 2024 (vs. **42%** historically)

Why the shift?

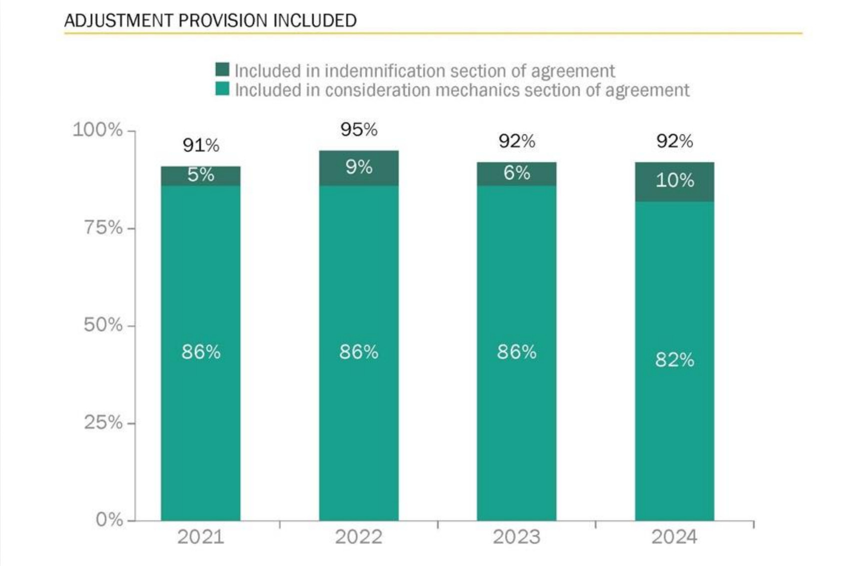
- Revenue is straightforward, less manipulable, objective
- Reduces post-closing disputes over accounting methodology

SRS Acquiom (2025). 2025 M&A Deal Terms Study: Deal Points (https://www.srsacquiom.com/our-insights/deal-terms-study/).

GT GreenbergTraurig

PPAs: Market Standard Adoption

- Over 90% of private-target deals now include PPAs (vs. 50% a decade ago)
- Private equity buyers lead: 95% of PE-backed deals use PPAs
- PPAs are economic fairness mechanisms
- PPAs protect buyers from negative value swings pre-closing
- PPAs allow sellers to capture positive working capital true-ups

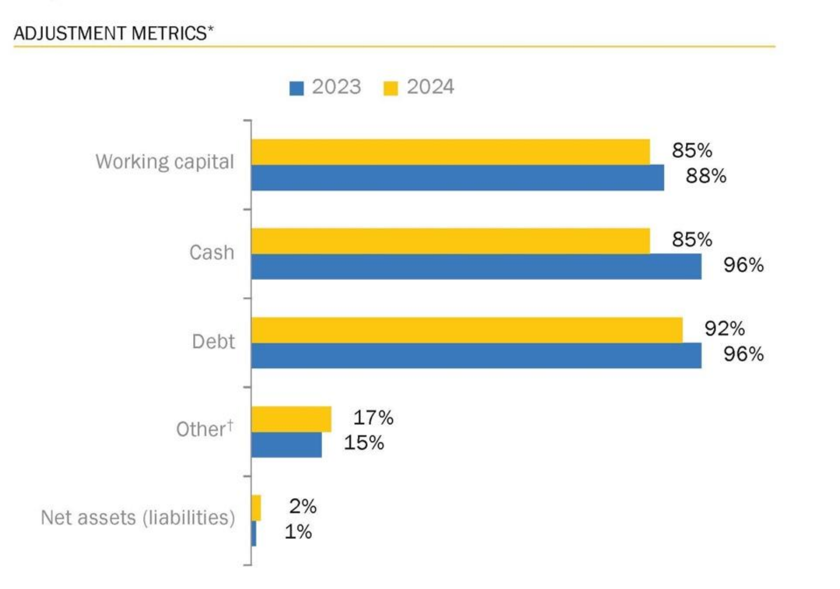


SRS Acquiom (2025). *2025 M&A Deal Terms Study: Deal Points* (https://www.srsacquiom.com/our-insights/deal-terms-study/).

GT GreenbergTraurig

PPA Evolution: Increasing Sophistication

- **98%** of 2024 PPAs based on multiple metrics (vs. **93%** in 2023)
- Cash and debt now standard adjustment items (not just receivables/payables)
- **86%** of deals exclude tax-related items from working capital calculations
- Reflects move toward more refined, comprehensive working capital definitions

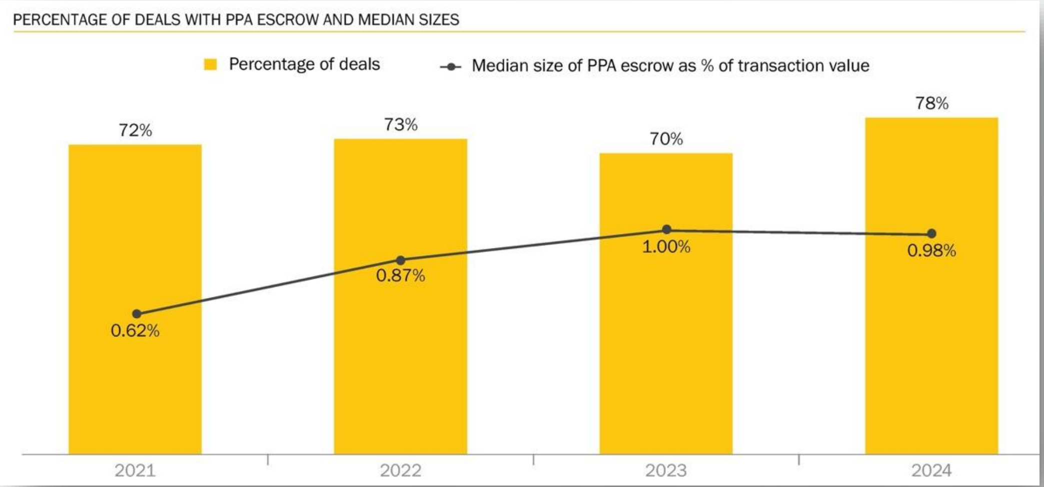


SRS Acquiom (2025). 2025 M&A Deal Terms Study: Deal Points (https://www.srsacquiom.com/our-insights/deal-terms-study/).

GT GreenbergTraurig

PPA Escrows: Market Approach

- **Adoption:** 78% of deals with PPAs now use separate escrows (established market standard)
- **Median escrow size:** Increased from 0.62% to ~1% of deal value over 4 years
- **Tracks average initial claim size:** 0.9% of transaction value
- **Correlation with RWI:** Sophisticated buyers layer multiple risk mitigation tools

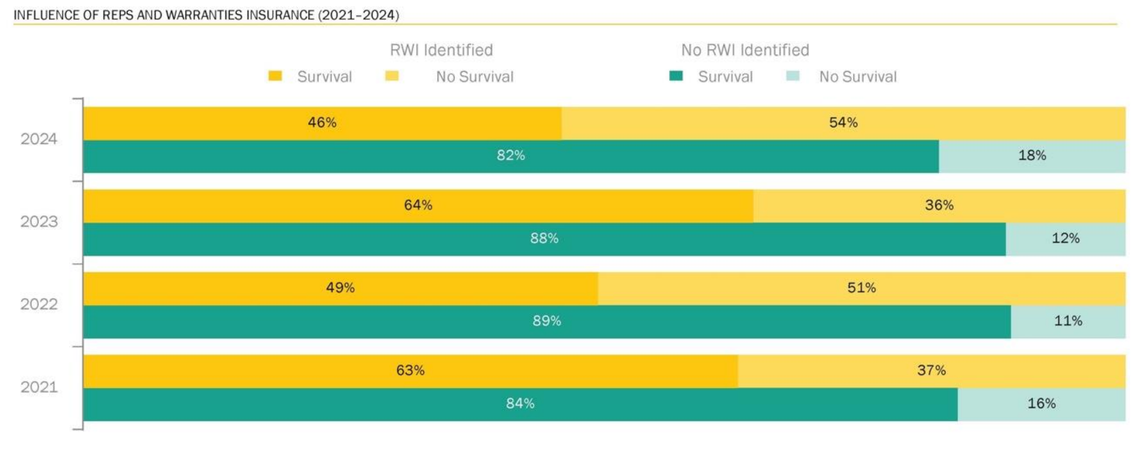


SRS Acquiom (2025). 2025 M&A Deal Terms Study: Deal Points (https://www.srsacquiom.com/our-insights/deal-terms-study/).

GT GreenbergTraurig

Risk Allocation: From Sellers to Insurers

- RWI fundamentally reshaping post-closing risk distribution
- Shorter reps & warranties survival periods (avg. **13.8** months in 2020 → **12.7** in 2024)
- Smaller holdback requirements enabled by insurance coverage
- Less than **50%** of insured deals retain survival periods vs. **80%+** without RWI



SRS Acquiom (2025). 2025 M&A Deal Terms Study: Deal Points (https://www.srsacquiom.com/our-insights/deal-terms-study/).

GT GreenbergTraurig

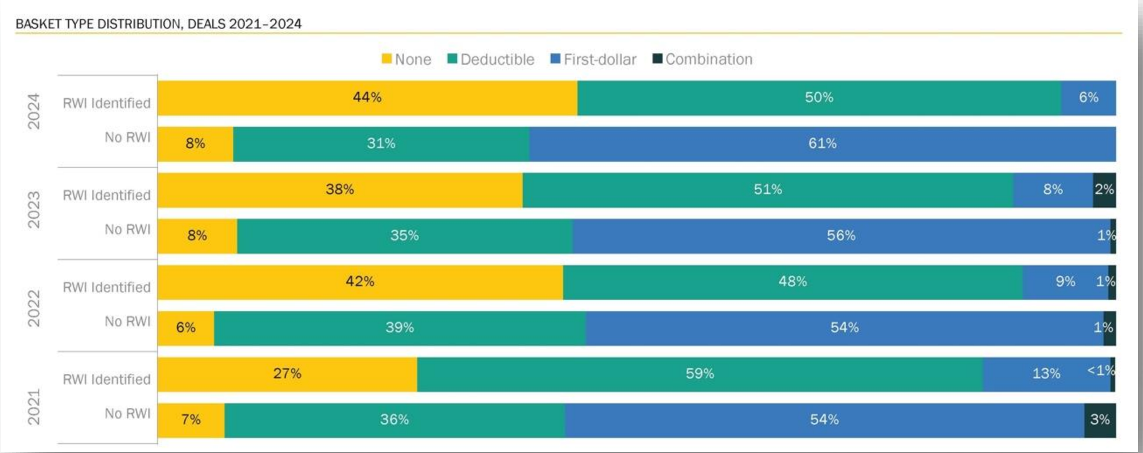
RWI Effect: Dramatic Escrow Reduction

Without RWI	With RWI	On a $100M Deal
10.9% average escrow 10% median escrow	1.4% average escrow 0.35% median escrow	With RWI: $350K–$1.4M Without: ~$10M+

GT GreenbergTraurig

Basket Structures: RWI Influence

- RWI enables more buyer-favorable basket structures
- **With RWI:** 50% deductible baskets vs. 6% first-dollar baskets
- **Without RWI:** 61% first-dollar baskets vs. 31% deductible baskets
- ~90% of baskets represent 1% or less of transaction value



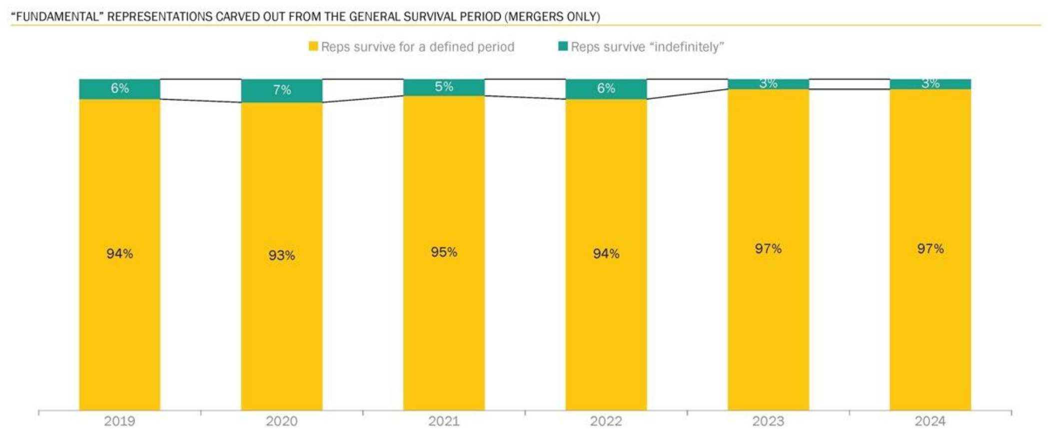
SRS Acquiom (2025). 2025 M&A Deal Terms Study: Deal Points (https://www.srsacquiom.com/our-insights/deal-terms-study/).

GT GreenbergTraurig

Indemnification: New Market Patterns

- Declining indefinite survival for fundamental reps: **6%** (2019) → **3%** (2024)
- Rise of "walk-away" deals where reps don't survive closing (seller-friendly trend)
    - ➢ Most common breach types:
    - ➢ compliance (20%)
    - ➢ tax (17%)
    - ➢ financials & contracts (13% each)
- Nearly half of claims asserted **12+** months post-closing*

**See Aon Transaction Solutions Global Claims (2025)*



SRS Acquiom (2025). 2025 M&A Deal Terms Study: Deal Points (https://www.srsacquiom.com/our-insights/deal-terms-study/).

GT GreenbergTraurig

Practitioner Takeaways: Earnout Strategy

- Clearly define earnout metrics & timelines to minimize post-closing friction
- Shift toward objective metrics (revenue, not EBITDA)
- Draft strong mitigating covenants around metric achievement

***Note:** RWI does **not** cover earnout disputes—structure carefully*

GT GreenbergTraurig

Practitioner Takeaways: Risk Allocation

- RWI + indemnity escrows + PPA escrows = powerful layered strategy for risk mitigation
- Assess working capital targets carefully; multi-metric PPAs now standard
- Consider seller's ability to pay post-closing obligations (escrow adequacy)
- RWI-backed deals attract sellers; minimal escrows reduce post-closing friction

GT GreenbergTraurig

Practitioner Takeaways: Holistic Approach

- Coordinate across disciplines: legal, finance, audit, business teams
- Understand interaction between earnouts, PPAs, RWI, and survival periods
- Balance certainty vs. flexibility, upfront consideration vs. performance-based payments
- Monitor Delaware court decisions on earnout enforceability (recent CRE jurisprudence)

GT GreenbergTraurig

Key Takeaway

Modern private M&A requires sophisticated integration of earnouts, PPAs, RWI, and indemnification structures to achieve optimal risk allocation and commercial outcomes.

GT GreenbergTraurig

Thank you!

Steven E. Bartz
Shareholder
bartzs@gtlaw.com

Monika Kluziak
Associate
Monika.Kluziak@gtlaw.com