ATLANTIC GLOBAL RISK

2021 INSIGHTS

ATLANTIC

INTRODUCTION

In this report, we provide our insights and annual review of the North American M&A insurance market in 2021, along with predictions for 2022. As with prior years, representations and warranties insurance ("RWI") is the focus of our review, but we also touch upon developments to tax and contingent risk insurance.

This report analyzes premium rates, policy limits and retention levels across North American RWI policies placed by Atlantic in 2021. We provide insight into seller liability trends for deals that utilized RWI policies, and explore key underwriting trends, including cybersecurity matters and how carriers are adapting to evolving purchase agreement terms.

We offer a snapshot of M&A insurance market developments from our teams dedicated to transactions in the life sciences & healthcare, infrastructure & energy and secondaries verticals. We explore our RWI claims experience and key considerations to maximize recovery in the event of a breach giving rise to a multiplied damages award.

With the hardening of the M&A insurance market, our team's expertise and firm client advocacy are critical to securing industry leading terms and pricing.

Note to all charts

Policy Terms: Unless stated, statistics for policy terms are based on buy-side RWI policies bound by Atlantic in 2021, excluding real estate.

Deal Terms: Statistics for deal terms are based on purchase agreement terms for deals that utilized a buy-side RWI policy.

2021 ROUND-UP

2021 was a record-breaking year for the M&A insurance industry, by both deal count and gross written premium.

On the supply side, continued rate hardening in the commercial insurance industry in conjunction with increasing RWI claims resulted in upward pressure on RWI premium rates and a renewed focus on policy terms. On the demand side, record levels of M&A activity resulted in more than a 50% increase in insured deals in 2021 versus the prior year, enabling carriers to be selective about the deals that were underwritten. Despite RWI carriers' increased leverage, policy terms and cover remain robust with an appreciation that maintaining effective risk transfer is paramount to the product remaining a viable tool for deal-makers and their advisors.

Although one carrier withdrew from the class, two new market entrants in H2 2021 kept the number of active RWI carriers slightly up for the year. RWI premium rates increased significantly as 2021 progressed, culminating in an unprecedented final quarter with rates up more than 50% versus Q4 2020. The combination of record deal flow and increased premium rates led to an increase of more than 90% gross written premium year-over-year. For much of H2 2021, obtaining indications from only one or two carriers was relatively common. This is in stark comparison to previous quarters, where we would routinely receive five to eight sets of competitive terms. By November, many carriers imposed minimum deal size requirements while capacity for certain sectors (e.g., healthcare) became exceedingly difficult to secure. Despite the tightening market, Atlantic consistently delivered for our clients, negotiating solutions for even the most challenging deals by leveraging our carrier relationships, creativity and advisory-led approach.

The combination of **record deal flow** and **increased premium rates** led to an **increase of more than 90%** gross written premium year-over-year

2021 ROUND-UP

Looking ahead to 2022, we expect RWI capacity to be available for all industry verticals and deal sizes as well as a drop in premium rates from the highs of Q4 2021. However, if M&A volumes remain robust, material RWI premium rate decreases are unlikely, so rates would remain at or above their 2021 averages.

RWI accounted for 85% of overall gross written premium within the M&A insurance market with the balance attributed to tax and contingent risk insurance. The tax insurance market continued to soften in 2021 led by lower rates for renewable tax credits, which accounted for almost one third of gross written premium.

While RWI premium rate increases were consistent through 2021, the year was also marked by key underwriting shifts in areas like cybersecurity. Furthermore, there was continued application of RWI to support a wide variety of transaction structures, including non-control investments, growth equity, joint ventures and secondaries transactions.

RWI accounted for **85%** of overall **gross written premium** within the M&A insurance market

LIMITS & PREMIUMS

Policy Limits

For 2021, we adopted a new reporting method for premium rates and policy limits. We bifurcated the statistics into: (i) small-cap deals with an enterprise value ("**EV**") of $150m or less; and (ii) deals with an EV greater than $150m which captures middle market, upper-middle market and large-cap deals. We split the reporting to better reflect underlying trends given buyers generally elect for significantly higher policy limits as a percentage of EV on small-cap deals. Furthermore, we excluded real estate deals from all statistics given the divergence of terms in this sector (i.e., significantly lower policy limits as a percentage of EV, premium rates and retentions).

While RWI carriers were traditionally willing to deploy a primary policy limit of $30m or more, it has become universal practice for carriers to restrict primary policy limits to $25m. One carrier went a step further, largely restricting primary policy limits to $15m in Q4 2021. Looking ahead to 2022, we expect a primary policy limit of $25m to remain the "benchmark", although there might be pressure from (re)insurers to further ventilate capacity across the tower for certain industry verticals (e.g., life sciences & healthcare). This may lead to primary policy limits for certain sectors becoming less than $25m.

Across all industry verticals, the average policy limit as a percentage of EV was 17.80% for small-cap deals in 2021. The average policy limit for deals with an EV greater than $150m was 8.97% of EV. The fact that the policy limit to EV ratio decreases as deal size increases can be explained by two primary factors. Firstly, there is a perception that smaller deals are more likely to have a relatively large "issue". By way of example, if presented with the question of whether a $5bn EV target company is likely to have an unknown tax liability of $500m following tax diligence, most practitioners would state this to be improbable.

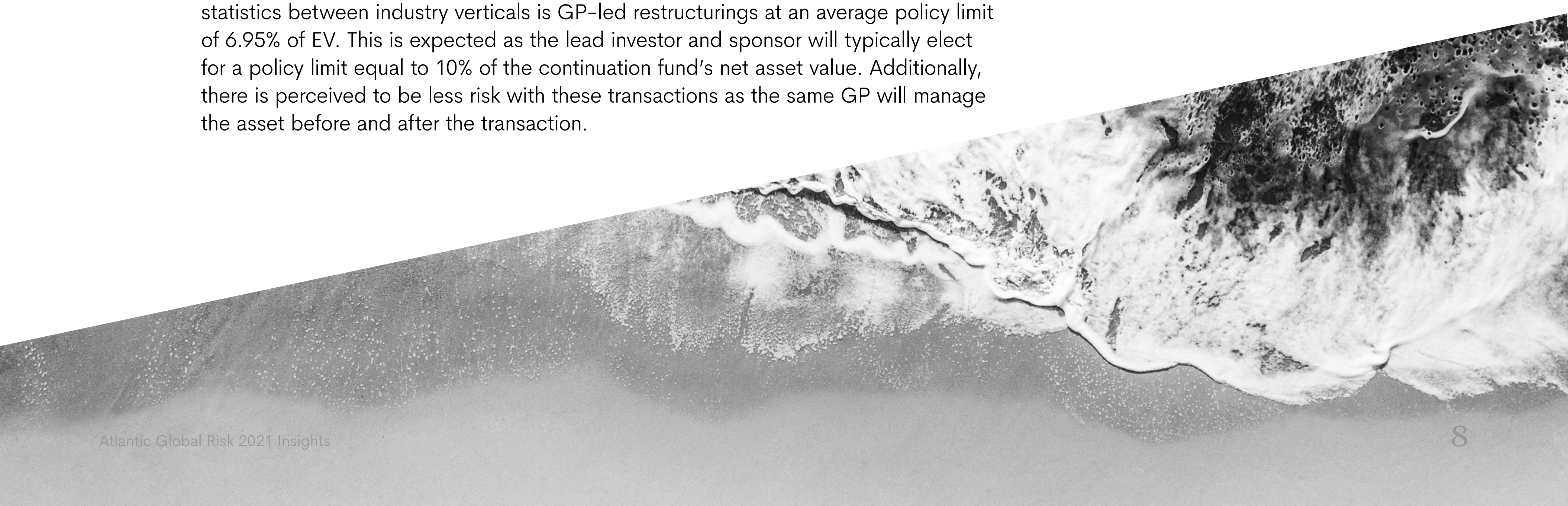
The **average** policy limit for deals with an **EV greater than $150m** was **8.97%** of EV

LIMITS & PREMIUMS

However, many practitioners would agree that a $5m tax liability for a $50m EV target company is a possibility. The second reason for the selection of relatively higher policy limits as a percentage of EV on small-cap deals is due to insurers' minimum premium requirements. On smaller deals which may be subject to such restrictions, we will obtain the highest policy limit the carrier is able to provide for the stated minimum.

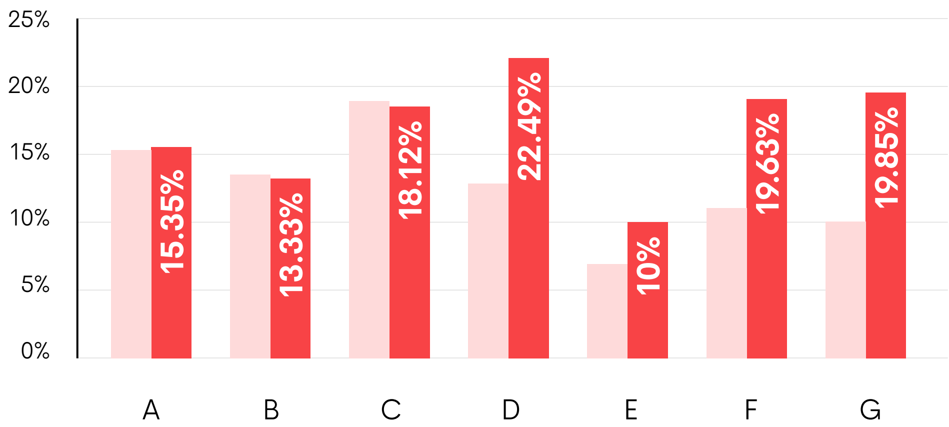
The average policy limit as a percentage of EV for deals with an EV greater than $150m was 8.97%, slightly lower than the 10% policy limit that has been the historical "default" for buyers. Significantly higher premium rates were the primary driver behind buyers electing for relatively lower policy limits throughout 2021 versus the prior year. Lowering the policy limit enabled buyers to manage the overall premium spend even with elevated premium rates.

For deals greater than $150m EV, the major outlier when examining policy limit statistics between industry verticals is GP-led restructurings at an average policy limit of 6.95% of EV. This is expected as the lead investor and sponsor will typically elect for a policy limit equal to 10% of the continuation fund's net asset value. Additionally, there is perceived to be less risk with these transactions as the same GP will manage the asset before and after the transaction.



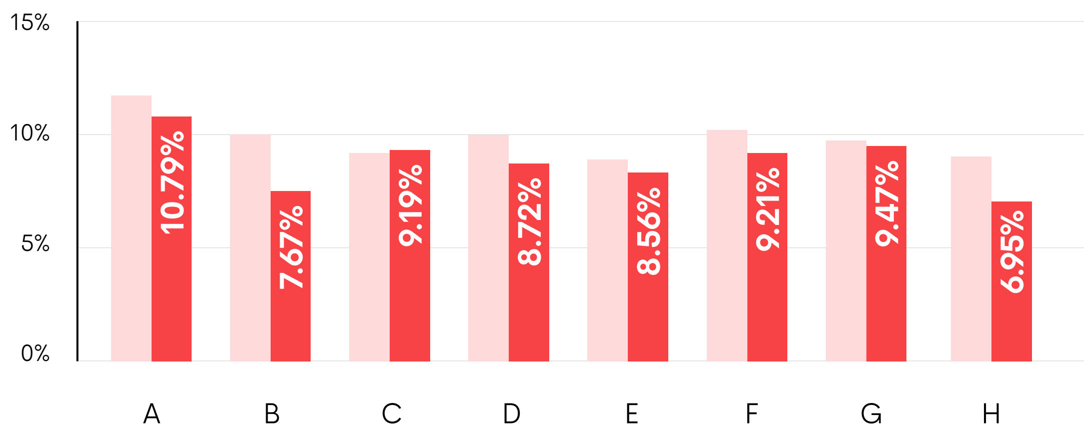
LIMITS & PREMIUMS

Policy Limits (enterprise value below $150m)



Average policy limit as a percentage of EV. For deals that utilized multiple "layers" of insurance, the total policy limit across the tower of insurance is used.

Policy Limits (enterprise value above $150m)



Sector

- A Consumer Goods & Services
- B Life Sciences & Healthcare
- C Technology
- D Manufacturing & Industrial
- E Infrastructure & Energy
- F Financial Services
- G Other
- H GP–led

Year

- 2020
- 2021

Premium Rates

Prior to late 2019, North American RWI premium rates had decreased year-over-year in large part due to increased market capacity and the continued maturity of the product. In Q4 2019, premium rates began rising in certain sectors and this continued in the second half of 2020 as the M&A insurance market rebounded from a dearth of activity as a result of COVID-19. In Q4 2020, premium amounts expressed as a percentage of the policy limit known as rate-on-line ("**ROL**") were: (i) 3.23% for small-cap deals; and (ii) 3.08% for deals with an EV greater than $150m. In Q4 2021, the average ROL across all sectors was: (i) 5.24% for small-cap deals; and (ii) 4.50% for deals with an EV greater than $150m, an increase of 62% and 46%, respectively, as compared to Q4 2020. Our graphic on page 11 illustrates the upward pressure on premium rates throughout 2021.

In 2021, the average ROL across all sectors for small-cap deals and deals with an EV greater than $150m equaled 4.36% and 3.87% respectively. This difference is explained by the nature of insurers' pricing. For small-cap deals, there will typically be a single policy provided by one carrier. Larger deals are unique with a "syndicate" of insurers following the terms of the primary carrier with each additional "layer" of insurance priced at a discount. The discount applied to the excess layers is what results in a lower premium rate even though the primary policy is likely to have a relatively high rate.

Examining the average premium rates between industry verticals reveals carriers' appetite and the perception of risk associated with certain sectors. Focusing on deals with an EV greater than $150m, financial services transactions have the highest ROL of 4.77% followed by life sciences & healthcare at an ROL of 4.38% and technology at an ROL of 4.03%. Similarly, transactions in sectors that are perceived as lower risk have corresponding premium rates, such as consumer goods & services at an ROL of 3.34% and infrastructure & energy at an ROL of 3.43%.

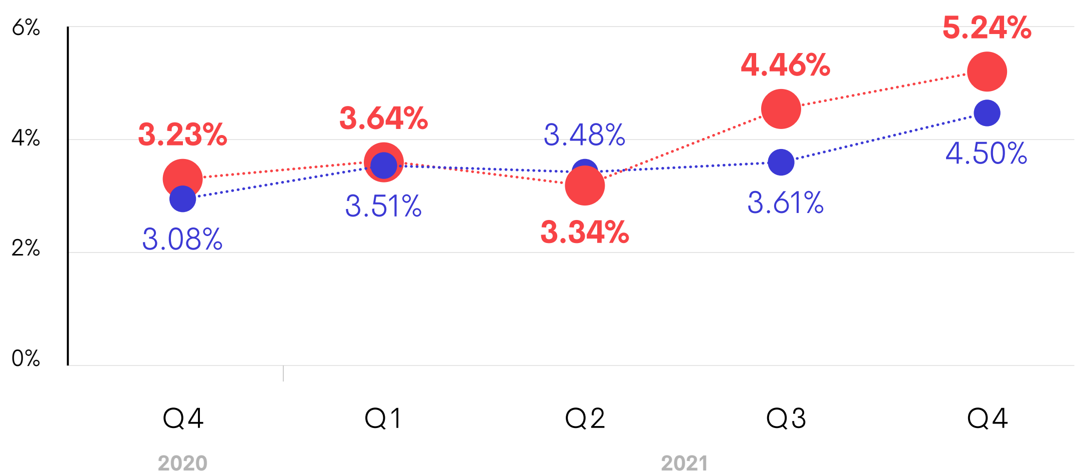
There was **upward pressure** on **premium rates** throughout 2021

LIMITS & PREMIUMS

Breaking down the average premium rates between industry verticals for small-cap deals generally reflects similar observations. Sectors perceived to be riskier have a higher premium rate, such as life sciences & healthcare at an ROL of 5.48% and technology at an ROL of 4.53%. Surprisingly, financial services transactions have a relatively low ROL of 3.39%. Examining the underlying data provides an interesting explanation. Firstly, a high proportion of our small-cap financial services transactions were completed in H1 2021 when premium rates were significantly lower than the second half of the year. Secondly, several were Canadian transactions that generally attract lower premium rates than a similar deal in the United States.

Average premium rates for GP-led restructurings at an ROL of 2.41% are significantly lower than other sectors given the reduced risks associated with these deals in light of the extensive knowledge qualifications, a theme explored later in this report.

Premium Rates (by quarter)



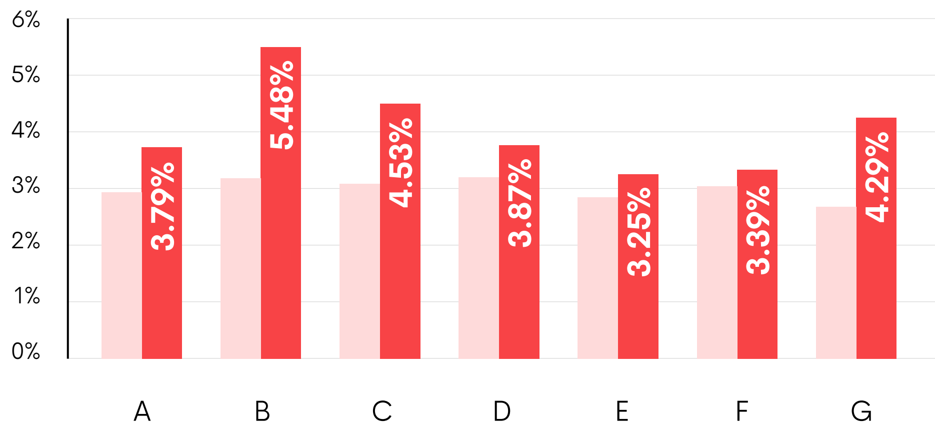
Average ROL across all sectors.

Transaction size

- Below $150m
- Greater than $150m

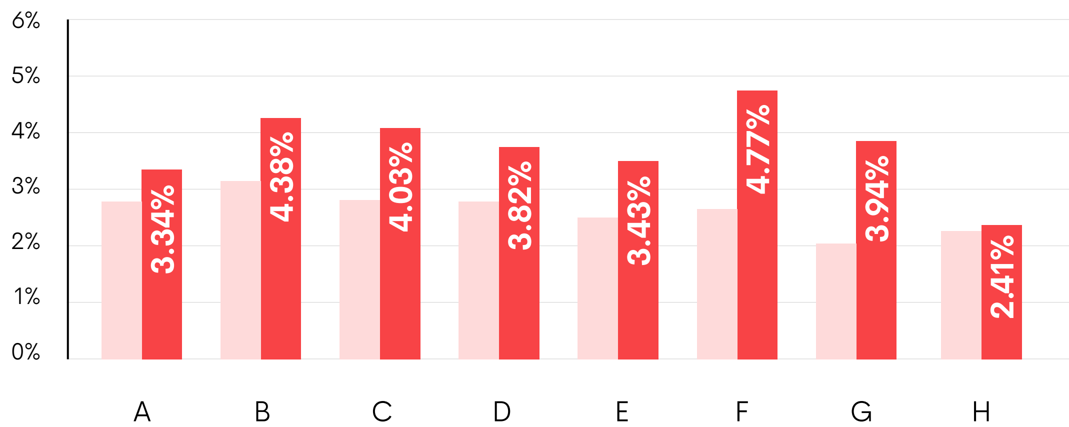
LIMITS & PREMIUMS

Premium Rates (enterprise value below $150m)



Average ROL by sector. For deals that utilized multiple “layers” of insurance, the average ROL across the tower of insurance is used.

Premium Rates (enterprise value above $150m)



Sector

A Consumer Goods & Services
B Life Sciences & Healthcare
C Technology
D Manufacturing & Industrial
E Infrastructure & Energy
F Financial Services
G Other
H GP–led

Year

2020
2021

RETENTIONS & SELLER LIABILITY

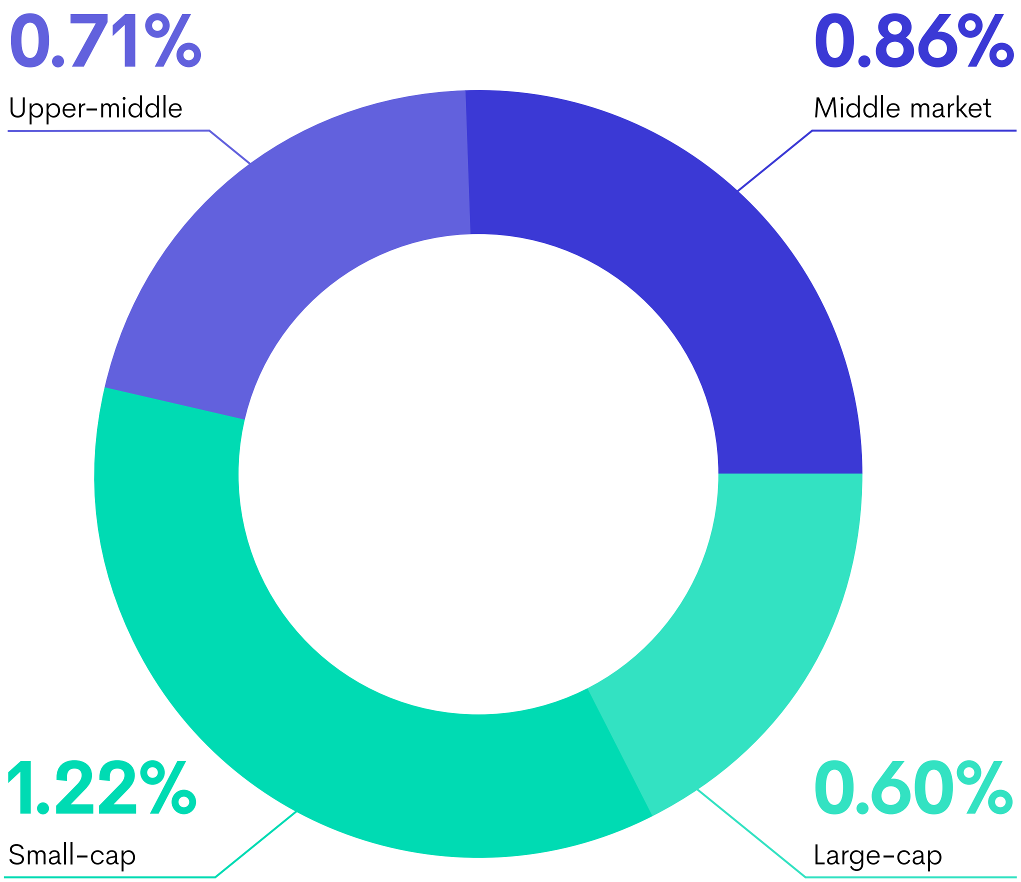
Retentions

We have shown our average retention rate for: (i) small-cap deals with an EV of $150m or less; (ii) middle market deals with an EV between $150m and $500m; (iii) upper-middle market deals with an EV between $500m and $1bn; and (iv) large-cap deals with an EV greater than $1bn.

The statistics demonstrate that carriers are generally only willing to offer an initial retention of ~1% of EV for small-cap and middle market deals. However, for small-cap deals, minimum retentions are typically ~$200k which explains an average retention of 1.22% of EV for deals in this category. For upper-middle market and large-cap deals with an EV greater than $500m, insurers are typically offering retentions of 0.67% of EV but this can be reduced to 0.50% of EV for certain larger deals subject to an additional premium. The major exceptions to this rule are: (i) GP-led restructurings where certain carriers can provide a retention of 0.75% of the net asset value; and (ii) infrastructure & energy transactions where Atlantic is regularly able to secure much lower retentions given their unique risk profile. This explains why the average retention rate is 0.71% and 0.60% of EV for upper-middle market deals and large-cap deals respectively.

Average retention rate is **0.71%** and **0.60%** of **EV** for upper-middle market deals and large-cap deals

Retention by Deal Size



Retention levels as a percentage of EV across all sectors. The statistics represent the initial retention which will typically drop to 0.5% of EV 12 months after closing.

Seller Liability

In 2020, 33% of sellers were provided with a complete walk-away from their general representations due to the nil seller indemnity structure of their deal. In 2021, the proportion of deals structured as nil seller indemnity for general representations increased to 58%. This significant rise reflects the continued leverage enjoyed by sellers alongside insurers' universal comfort with such a structure.

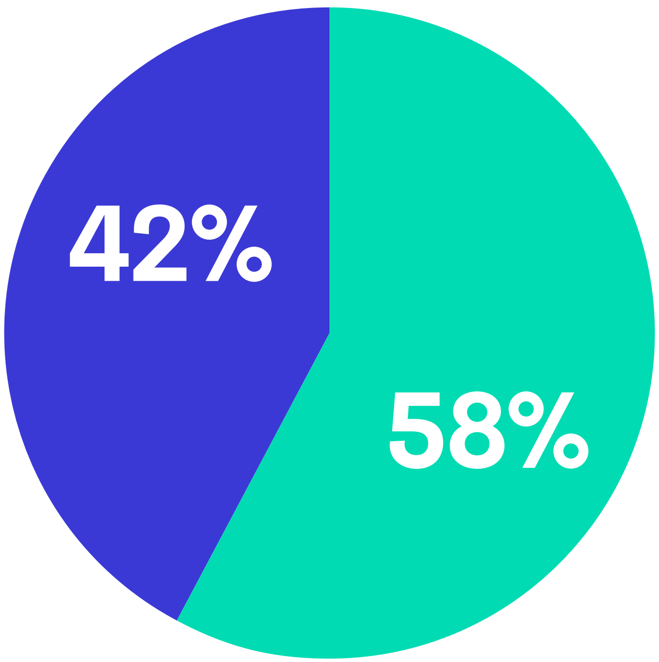
Regardless of whether a transaction utilized a nil or limited seller indemnity construct for the general representations, it was historically common for the seller to remain liable for the fundamental representations. We noted this was changing in our last report with the seller securing a walk-away for fundamental representations in 24% of transactions in 2020. This trend continued in 2021, with the proportion of deals structured as no liability for fundamental representations increasing to 41%. In instances where the seller retains no liability for fundamental representations, top-up insurance is available and priced at competitive rates. While top-up insurance has traditionally been deployed on transactions in certain sectors (e.g., infrastructure & energy) or for cross-border transactions, Atlantic structured top-up insurance on transactions spanning several industry verticals in 2021, including financial services. This is a trend we expect to continue in 2022.

We bifurcated the seller indemnity statistics for both general and fundamental representations into: (i) financial sponsor sellers including private equity and infrastructure funds; and (ii) other sellers to include corporates and individual shareholders. The statistics demonstrate that financial sponsor sellers are more likely to secure a complete walk-away for both general and fundamental representations, an expected observation given financial sponsors' desire to minimize tail risk and maximize distributions to investors. For general representations, financial sponsor sellers secured nil indemnity on 71% of deals, while other sellers were only able to secure nil indemnity on 49% of deals. For fundamental representations, financial sponsor sellers secured nil indemnity on 51% of deals, while other sellers were only able to secure nil indemnity on 33% of deals.

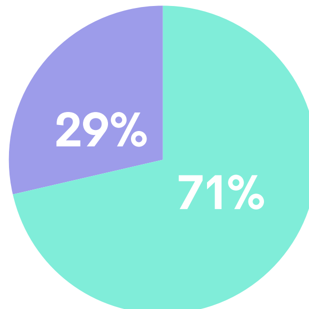
In 2021, the proportion of deals structured as **no liability** for fundamental representations **increased** to **41%**

Seller Liability for General Representations

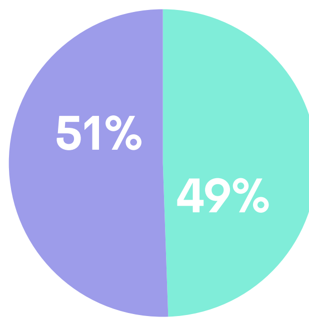
All Seller Types



Financial Sponsor Sellers



Non-Financial Sponsor Sellers

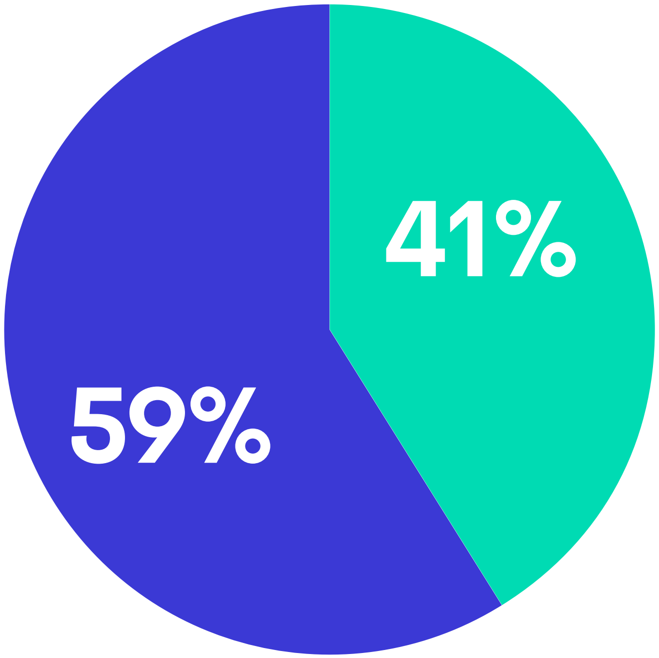


Seller indemnity
Seller is liable under the purchase agreement for the general representations. Seller's liability is typically limited to a low monetary amount (i.e., 50% of the retention) and for a short survival period (i.e., 12 months).

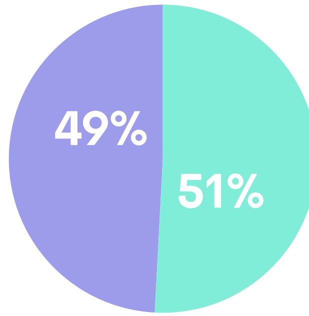
Nil seller indemnity
Seller is not liable under the purchase agreement for the general representations. Seller may remain liable for the fundamental representations and certain specific indemnities.

Seller Liability for Fundamental Representations

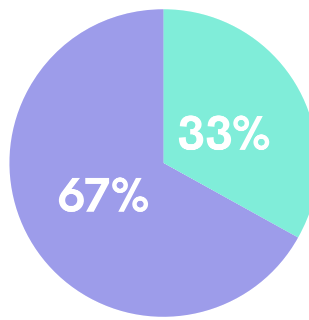
All Seller Types



Financial Sponsor Sellers



Non-Financial Sponsor Sellers



Seller fundamental indemnity
Seller remains liable under the purchase agreement for the fundamental representations (e.g., title, capacity, authority). Seller's liability is typically capped at the enterprise value with the survival period varying between 12 months to expiry of statute of limitations.

No fundamental indemnity
Seller is not liable under the purchase agreement for the fundamental representations. The buyer's sole right of recourse for any breach will be limited to the RWI policy and top-up policy (save for fraud) which means buyer is "exposed" in excess of the policy limit for fundamental matters.

RWI UNDERWRITING TRENDS

While the dominant RWI theme of 2021 was substantial increases in premium rates, the year also marked a renewed focus on coverage terms driven by: (i) COVID-19; (ii) RWI claims experience; and (iii) changes within the broader insurance market.

With the right facts, it is possible to avoid a COVID-19 exclusion entirely. More common is a narrow exclusion for compliance with any government response measures that the target company may have availed itself of, such as the forgiveness of Paycheck Protection Program loans. Furthermore, if the target company has a high number of employees and/or interaction with many individuals (e.g., travel and leisure), insurers will try to impose an exclusion for failure to protect such individuals from the transmission of COVID-19. More recently, certain insurers have started to focus on supply chain interruptions, particularly whether such interruptions might have resulted in the target company being unable to fulfill contractual obligations.

In our 2020 report, we noted that financial statements and material contracts breaches result in the highest number of paid losses. Carriers continued to focus underwriting on these matters in 2021, specifically carveout financial statements and the target company's relationship with its customers and suppliers. On the latter, it is possible to obtain cover for broad "material customers" representations, including a reduction in the level of sales if the representation is limited to a finite number of customers and the carrier is comfortable with the diligence exercise.

Certain insurers have started to focus on **supply chain interruptions**

RWI UNDERWRITING TRENDS

Sector-specific risks continue to be a focus for carriers, in part driven by claims experience. Examples include: (i) regulatory and reimbursement matters for healthcare transactions (e.g., anti-kickback, billing and coding); and (ii) intellectual property litigation and product liability for life sciences transactions.

With increasing deal multiples, particularly in the technology sector, carriers are focused on the buyer's valuation methodology given a large multiple will increase the severity of multiplied damages in the event of certain breaches. Atlantic's experts work with the buyer to clearly explain the basis for the valuation prior to underwriting to avoid an exclusion for multiplied damages. With limited exceptions, we avoided any form of multiple exclusion for transactions in 2021, even for those with a high EBITDA and/or revenue multiple.

We have undertaken an in-depth analysis of three areas that received heightened underwriting focus throughout 2021: (i) cybersecurity; (ii) purchase price adjustment mechanisms; and (iii) push-out elections.

Cybersecurity

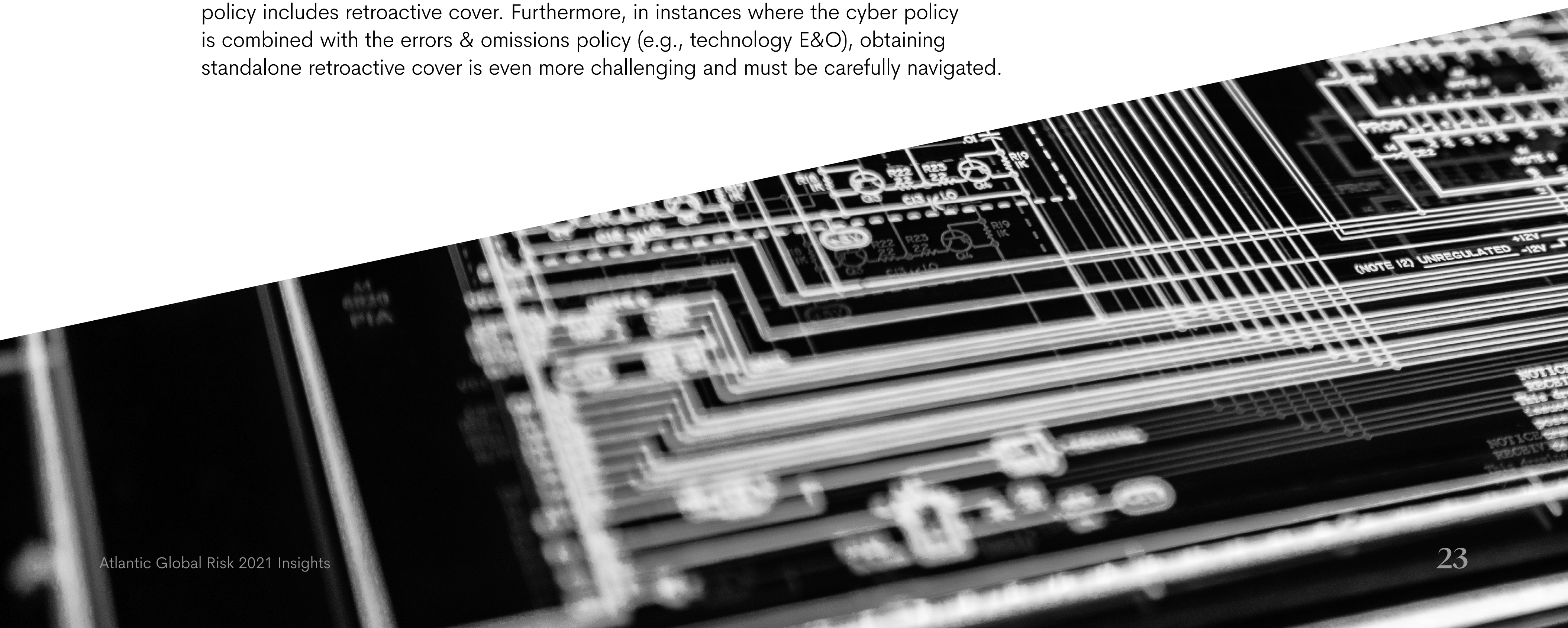
While it is common for buyers to secure broad and unqualified cybersecurity representations (e.g., no data or security breaches) in the underlying purchase agreement, cybersecurity is an area where RWI carriers have always exercised caution. A common limitation is to restrict cover for cybersecurity matters in the RWI policy to be "excess of and no broader than" the underlying insurance. Atlantic has successfully challenged these limitations in the past – obtaining unqualified cover for even the highest risk target companies. However, we noted in our 2020 report that RWI carriers were starting to reimpose such limitations in the second half of 2020 and this tightening of terms has continued and intensified in 2021. As a result, RWI carriers are increasingly trying to impose "excess of and no broader than" limitations for target companies which pose a higher risk for cybersecurity matters.

Several factors have contributed to more restrictive cover for cybersecurity matters. To begin, the standalone cyber insurance market has undergone a substantial hardening in 2021 with, in certain areas, a doubling of rates in response to: (i) a deteriorating loss environment driven by rising frequency and severity of ransomware incidents; and (ii) concerns around systemic risk. Additionally, RWI carriers have come under pressure from (re)insurers to manage cybersecurity exposure given aggregation concerns (i.e., a single (re)insurer being exposed to a cyber event from multiple policies such as an RWI policy and standalone cyber policy written by another agent/cedant).

The standalone **cyber insurance** market has undergone a **substantial hardening** in 2021

RWI UNDERWRITING TRENDS

Beyond influencing RWI carriers' cover for cybersecurity matters, the challenging market for standalone cyber insurance intertwines with RWI in other ways. Whether or not a RWI carrier imposes cybersecurity limitations, it is necessary to demonstrate a robust underlying cyber insurance policy to protect the target company and act as the "first layer" of defense. On a carveout transaction, or when the buyer elects to implement a new cyber policy or merge the target company into its existing program, it is important to demonstrate "continuity of cover" (i.e., cover for pre-closing data breaches that are discovered post-closing). In these situations, Atlantic will work with the buyer and its advisors to ensure the newly procured standalone cyber policy includes retroactive cover. Furthermore, in instances where the cyber policy is combined with the errors & omissions policy (e.g., technology E&O), obtaining standalone retroactive cover is even more challenging and must be carefully navigated.



Purchase Price Adjustment Mechanisms

It is a well-established principle of RWI that the policy excludes any amounts that are adjusted pursuant to the post-closing purchase price adjustment ("**PPA**") mechanism with the intent of the exclusion to avoid "double counting". The situation becomes more complicated when the PPA is limited through the use of a "floor", "collar" or "cap". When the PPA is limited in such a way, RWI carriers are wary of a buyer pursuing the policy for matters it has identified as "purchase price reductions" but by virtue of the PPA limitation is unable to recover from the seller.

Particularly among private equity sellers, the inclusion of a PPA limitation has been a common practice for several years, but it is only recently that RWI carriers have focused on the impact of such limitations. When a carrier is unable to get comfortable with the PPA limitation, its remedy is to revise the RWI policy so that it excludes: (i) amounts adjusted under the PPA mechanism; and (ii) amounts that would have been adjusted save for the PPA limitation. There are several methods that Atlantic uses to get insurers comfortable with PPA limitations but avoiding an expanded exclusion is not always possible.

In rare cases, the purchase agreement may not contain any PPA mechanism. In such situations, Atlantic will provide the buyer with advice on certain provisions that it should seek to incorporate into the purchase agreement to avoid an exclusion in the RWI policy.

RWI carriers are wary of a buyer pursuing the policy for matters it has identified as **"purchase price reductions"**

Push-out Elections

The changes implemented by the Bipartisan Budget Act of 2018 centralize the audit, assessment and collection of related federal income taxes at the partnership level. This means that when acquiring a partnership under the new regime, a buyer may be responsible for pre-closing tax liabilities as a result of an imputed underpayment being imposed on the target company. The underlying purchase agreement (or partnership agreement) will often contain a provision that enables the partnership to "push-out" adjustments to prior year partners. However, sellers are increasingly requiring the purchase agreement to prohibit a push-out election. This shifts the risk of pre-closing tax liabilities from the prior year partners to the buyer and, therefore, the RWI policy.

When the underlying purchase agreement prohibits a push-out election, certain insurers have been trying to impose limitations (e.g., an exclusion for certain pre-closing taxes). To avoid such limitations, Atlantic's tax team will work with the buyer and its tax advisor to scope a diligence exercise that will satisfy the RWI carrier's requirements.

When the purchase agreement prohibits a **push-out election**, certain insurers have been trying to **impose limitations**

SECTOR FOCUS

The following pages include a 2021 summary from our teams dedicated to transactions in the life sciences & healthcare, infrastructure & energy and secondaries industry verticals.

Life Sciences & Healthcare

As explored in the premium rate section of this report, life sciences & healthcare transactions accounted for the highest average premium rate for small-cap deals at an ROL of 5.48% and the second highest average premium rate for deals with an EV greater than $150m at an ROL of 4.38%, reflecting the higher risks associated with such deals.

The pool of carriers with appetite for healthcare transactions fluctuates over time. Certain carriers that historically underwrote small-cap and middle market transactions have pulled back, citing adverse claims experience. Recently, carriers have imposed broad exclusions for medical billing and coding matters while some have also revised underwriting guidelines to exclude target companies with a high proportion of government revenue. Capacity for healthcare transactions became very constrained in Q4 2021, but we expect this pressure to partially alleviate in early 2022. However, we anticipate premium rates for healthcare transactions to remain higher than most sectors, particularly when the target company has exposure to government reimbursement.

For life sciences transactions, appetite for certain risks such as product liability and clinical trials is limited with many carriers trying to impose "excess of and no broader than" limitations. Furthermore, if ANDA or Paragraph IV litigation is anticipated given the lifecycle of the product(s), carriers will exercise caution and will likely try to impose restrictions. Looking ahead to 2022, we anticipate reasonable capacity for life sciences transactions but with limitations around certain key risks (e.g., product liability, clinical trials, ANDA litigation) and elevated premium rates.

Capacity for healthcare transactions became **very constrained** in the second half of 2021

Infrastructure & Energy

In 2021, our infrastructure team supported a myriad of transactions including power generation, transmission and distribution, ports, terminals, bulk storage, rail, transportation and telecommunications infrastructure. However, the standout theme has been renewable energy transactions supporting the global focus on energy transition.

Many of the world's leading private equity and infrastructure investors have ambitious renewable targets and a key component is acquiring a platform with in-house development expertise and a healthy pipeline of development projects. Atlantic supported the acquisition of both utility-scale and distributed generation platforms in 2021. Furthermore, Atlantic has advised on the acquisition of single and portfolio development projects and we anticipate the demand for RWI to support project sales (rather than platforms) to increase in 2022 and beyond.

The key risks associated with such platform acquisitions include environmental, condition of assets, real estate matters and the safe harbour requirements that are necessary to satisfy the relevant "begun construction" tests to qualify for a given tax credit. Atlantic will work with the buyer and its advisors to scope a diligence exercise that will satisfy the carriers' requirements, with a focus on late-stage projects.

A theme that gathered momentum in 2021 was the early engagement of Atlantic's tax and structured credit teams by developers prior to seeking tax equity and/or back-leverage financing. By designing tailored solutions to protect against the recapture of tax credits and/or off-taker default, Atlantic can assist developers in obtaining favorable financing terms on a wider range of projects, including those with unrated and sub-investment grade off-takers.

Our **unique solutions** can assist developers in obtaining **favorable financing terms**

Secondaries

In our 2020 report, we predicted increasing use of RWI to support GP-led restructurings in 2021. This was emphatically proved out with more than 50 insured transactions, the majority of which involved single asset restructurings. To date, only a few carriers have adapted their underwriting techniques to meet the unique features of GP-led restructurings and LP transfers (i.e., limited due diligence). In 2022, we expect this to change with more carriers investing time and resources on underwriting secondaries transactions. While we anticipate greater carrier competition for secondaries transactions, we expect differences between carriers on certain key features, such as affirmative cover for the excluded obligations indemnity.

Historically, the standard practice on a GP-led restructuring has been for the lead investor to undertake limited due diligence on the underlying portfolio company and to obtain: (i) unqualified fundamental representations; and (ii) limited knowledge qualified business representations. As the pool of "investors" expands from traditional secondaries investors to funds that have historically focused on direct deals, the secondaries market has started to see an evolution in the demands of lead investors, including the desire for a broader set of representations and more access to information to support the diligence process. Atlantic has designed an approach to support the underwriting of extensive business representations that remain knowledge qualified. In some instances, we have obtained cover for certain unqualified representations (e.g., tax), even in the absence of lead investor due diligence.

More than
50 insured transactions
in 2021

RWI CLAIMS

In 2021, RWI claims have continued to evolve in both frequency and severity, with material contracts and financial statements representations accounting for the bulk of paid losses given the higher severity associated with such claims due to multiplied damages.

This has continued the claims trends from 2020 and is reflected in carriers' focus on such matters during underwriting.

Atlantic expanded its RWI claims resources in 2021 to support an increasing number of claims notifications. Our RWI claims have continued to be dominated by breaches of representations regarding financial statements, material contracts, tax and compliance with laws. Although compliance with laws and tax representations represent a significant share of claims notifications, often these claims notifications do not result in paid losses because the underlying tax audit or third-party claim which gave rise to the notification does not result in a fine or reassessment. Many RWI polices give carriers the right to associate in the response to tax audits and third-party claims, underscoring the necessity of prompt notice in such matters.

RWI claims continue to be **dominated by breaches** of representations regarding financial statements, material contracts, tax and compliance with laws

RWI CLAIMS

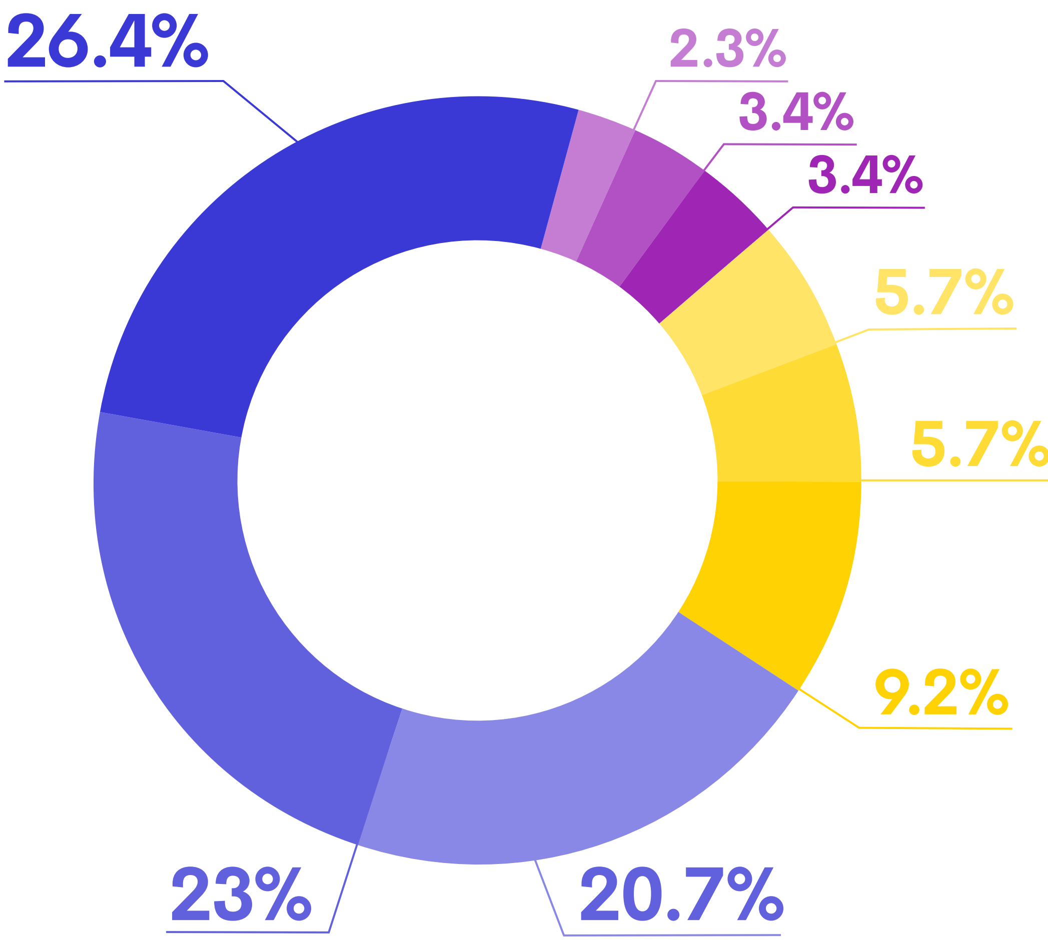
We have seen an increasing number of RWI claims touching on PPA exclusions. As noted in the purchase price adjustment mechanisms section of this report, RWI policies exclude amounts adjusted pursuant to a PPA in order to avoid "double counting". Many RWI policies also require a buyer to mitigate losses by attempting to first recover the relevant losses pursuant to the PPA. Where an RWI claim touching on the PPA is made prior to completion of the PPA, the RWI claim will likely not be paid until the PPA is completed.

The quantum and calculation of losses remain a focal point in RWI claims. Atlantic works with the buyer and its advisors (e.g., attorneys, forensic accountants, auditors) to ensure the buyer's "proof of loss" calculation is presented in an optimal way and captures the complete universe of covered losses, including direct losses, lost revenues, prosecution and defense costs and multiplied damages. The application of multiplied damages is a fact-specific inquiry that carriers scrutinize closely. Multiplied damages are typically only available where the buyer can demonstrate: (i) that the breach of the representation permanently impaired the value of the target company; and (ii) a multiple formed the basis of its valuation. For these reasons, buyers should document their valuation methodologies and be prepared to provide evidence in support of their loss calculations.

Atlantic works with buyers and their advisors to ensure the buyer's **"proof of loss"** calculation is presented in an **optimal way**

RWI CLAIMS

Claims by Type of Breach



Sector

- Financial Statements
- Material Contracts
- Tax
- Litigation
- Fundamental Warranties
- IP
- Compliance with Laws
- Other
- Employment

Note

Claim notification by type of breached representations received between January 2020 and June 2021 for RWI policies placed globally by Atlantic and Howden M&A. Where more than one type of breached representations are included within the claim notice, all are included within the statistics.

2022 OUTLOOK

Many RWI carriers have recently added underwriting resources, and two new carriers entered the North American M&A insurance market in January 2022.

The expansion of underwriting teams, new market entrants and fresh premium targets for 2022 have already resulted in more competition for deals as we move through Q1 2022. This has allowed Atlantic to obtain: (i) RWI premium rates significantly below the highs of Q4 2021; and (ii) a broad coverage position.

While inflationary pressures and tighter monetary policy pose considerable threats, record levels of dry powder and favorable financing terms suggest M&A volumes will remain robust in 2022. If this is the case, we expect RWI premium rates for primary policies to stabilize at the lower end of 4 – 5% ROL. This will enable us to obtain pricing across the tower significantly below 4% ROL for upper-middle market and large-cap deals.

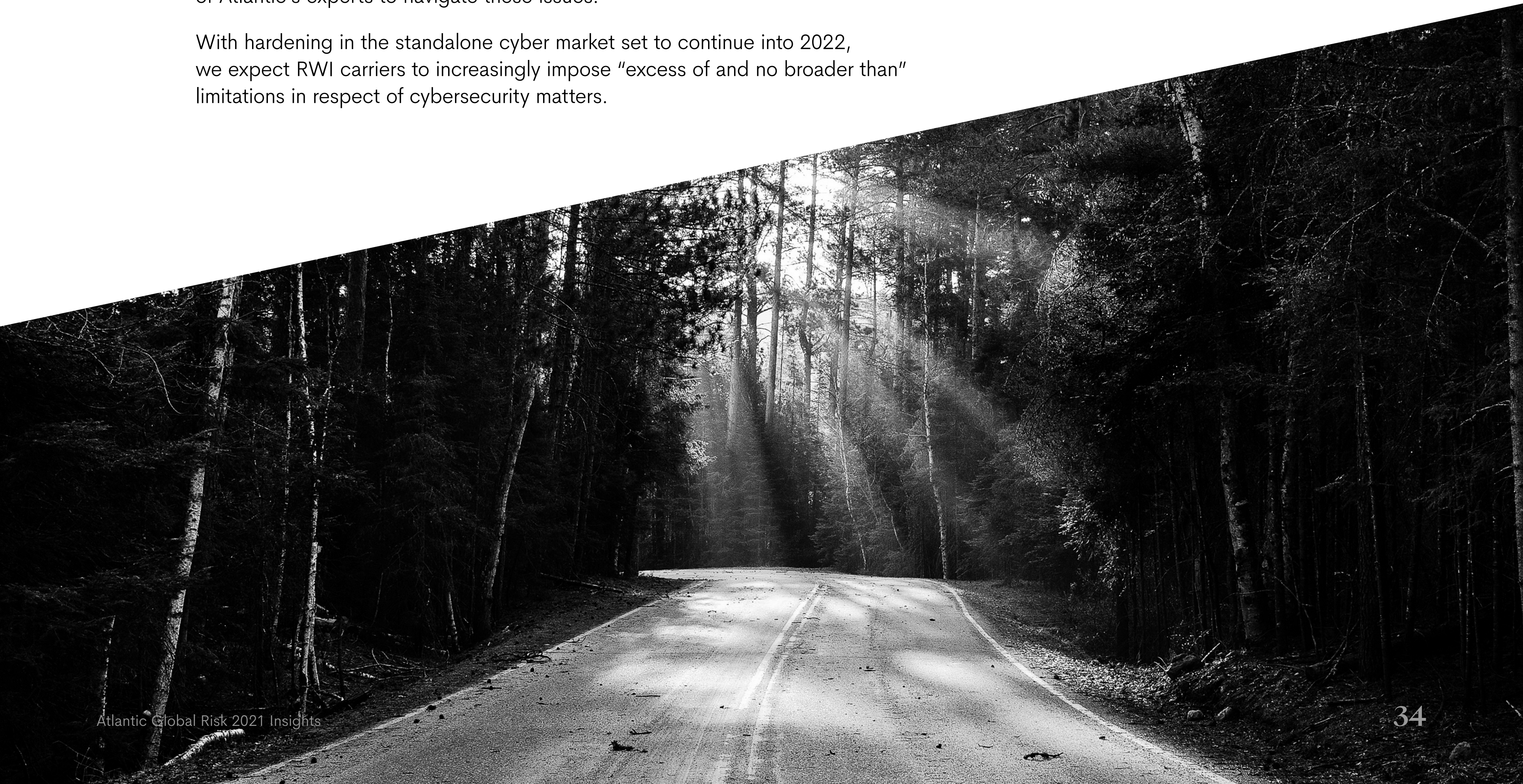
While we anticipate capacity for life sciences & healthcare transactions to be available in 2022, we expect premium rates to remain considerably higher than other sectors given the limited number of carriers with appetite for such transactions.

The expansion of underwriting teams, new market entrants and fresh premium targets have already resulted in **more competition for deals** as we move through **Q1 2022**

2022 OUTLOOK

We predict that carriers will continue to focus on valuation methodology for deals with very high multiples, highlighting the importance of early engagement of Atlantic's experts to navigate these issues.

With hardening in the standalone cyber market set to continue into 2022, we expect RWI carriers to increasingly impose "excess of and no broader than" limitations in respect of cybersecurity matters.



ABOUT ATLANTIC

Atlantic is a specialist insurance broker with solutions to support M&A transactions, provide liquidity to investors, optimize balance sheets and reduce capital constraints.

With offices in the United States and Canada, we work with many of the world's leading law firms, private equity sponsors, real estate investors, strategic acquirers and commercial & investment banks.

We have a reputation for thoughtful advice, firm advocacy on behalf of policyholders and unparalleled execution. Our collaborative culture ensures that our clients benefit from the collective knowledge and experience of our industry leading experts. Our professional backgrounds include attorneys (M&A, tax, litigation), investment bankers, insurance professionals and tax & accounting experts.

We have deep knowledge in a range of specialist risk transfer products, including transactional, tax, credit and contingent risk insurance.

The best minds from outside the **insurance industry**, inside

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