

2009 M & A Holdback Escrow Report

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Summary

J.P. Morgan's Escrow Services is conducting an ongoing study of data points pertaining to "holdback" escrow accounts used in merger and acquisition transactions.

A "holdback escrow" is an escrow structure in which a portion of the merger consideration is placed into escrow. The buyer then can look to the holdback escrow for coverage of its indemnification claims.

Purpose:

- To provide insight to the outcomes of M&A escrows
- To provide transactions benchmarks
- The report highlights:
 - Deposit ranges
 - Account life span
 - Claims

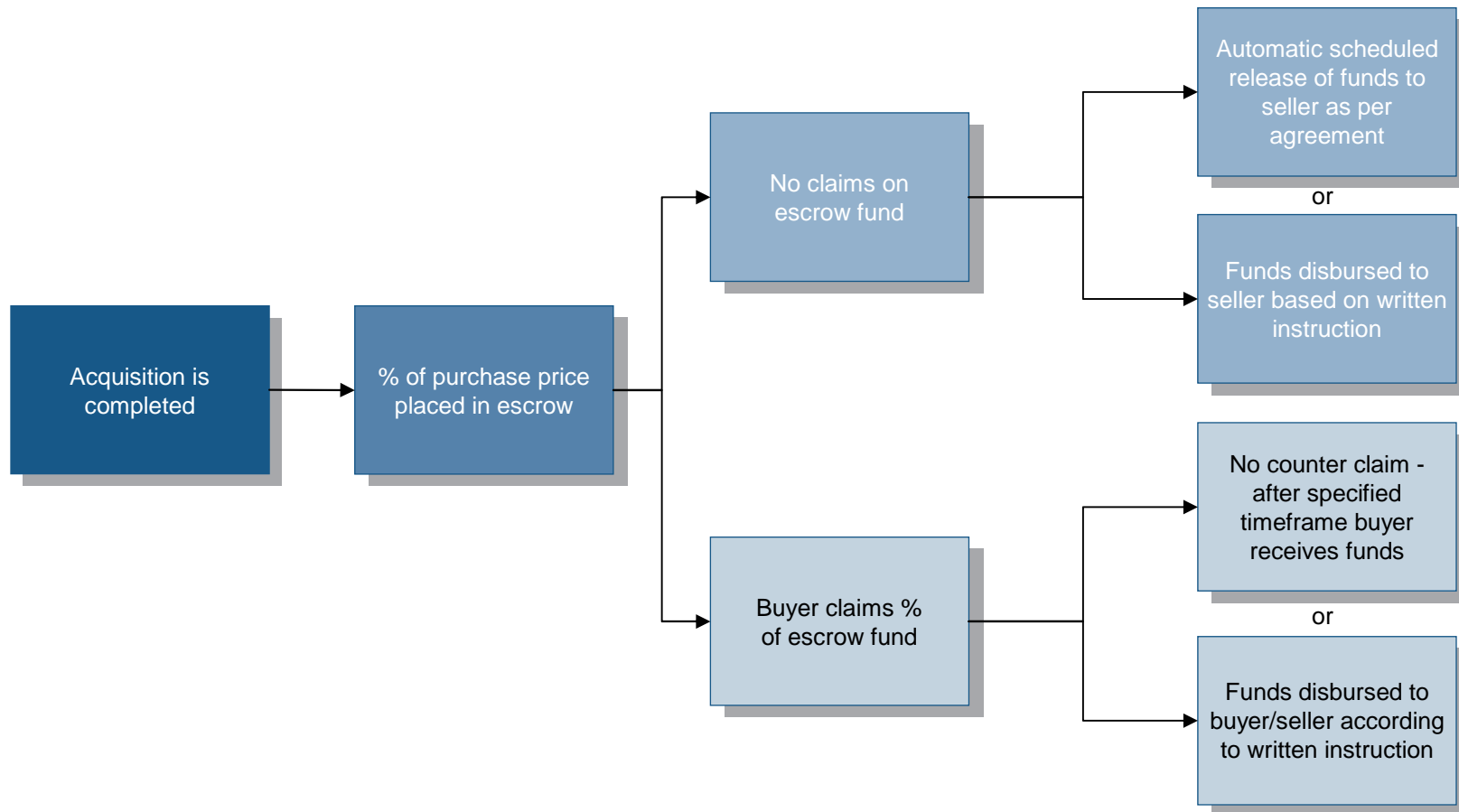
Scope:

- Sample size: 443 active and terminated J.P. Morgan escrow transactions
- Transactions originating across the US: Northeast, Midwest, Southwest, West
- Analysis was conducted for transactions originated between January 2007 – June 2008

Holdback Escrow Process

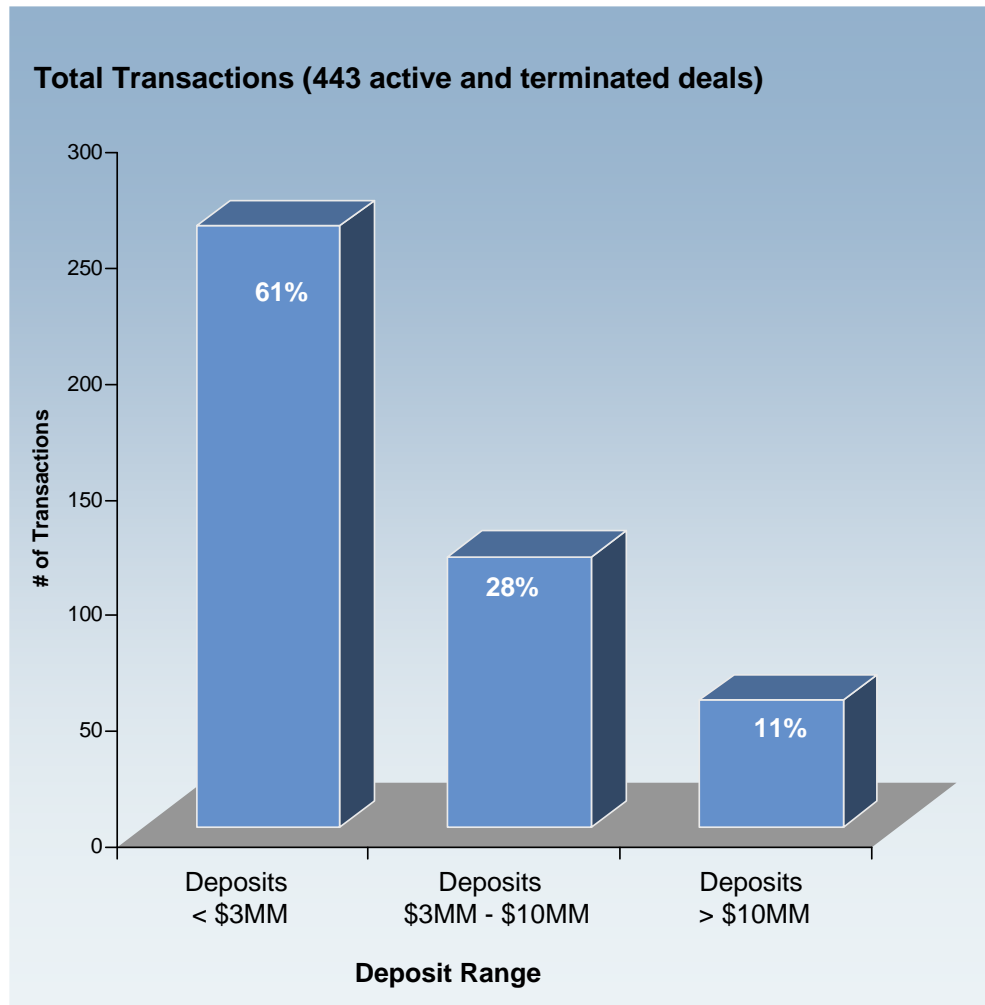
The purchaser sets aside a percentage of the total purchase price in an escrow account, which is held for a negotiated timeframe after completion of the acquisition.

The claims process provides the buyer with the ability to retrieve the funds in escrow in the event that the seller fails to meet specified terms of the sale & purchase agreement.



Escrow Deposits - By Size

61% of total transactions were under \$3MM; 99% of total transactions are cash deposits



- Deposit range: \$40K - \$250MM
- Most common escrow deposit is \$1MM; average deposit is \$7MM
- 99% of all transactions are cash deposits, with 1% of transactions in equity deposits (stock)
- 10% of agreements maintain a separate account for purchase price adjustment
- Similar deposit trends in 2007 and first half of 2008
- 7-15% of purchase price is deposited in 51% of escrow transactions with 10% of the purchase price being the most common deposit amount*

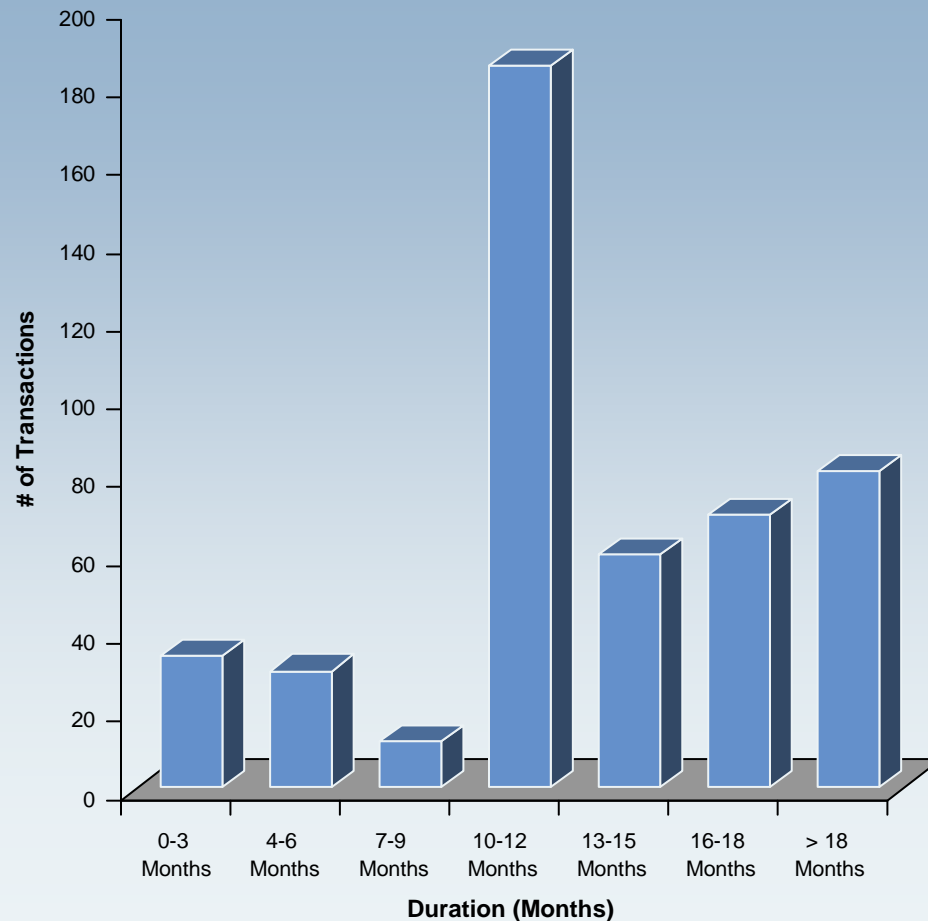
*2007 Private Target Mergers & Acquisitions Deal Points Study.

M&A Market Trends Subcommittee of the Committee on Negotiated Acquisitions of the American Bar Association Section of Business Law

Escrow Lifespan

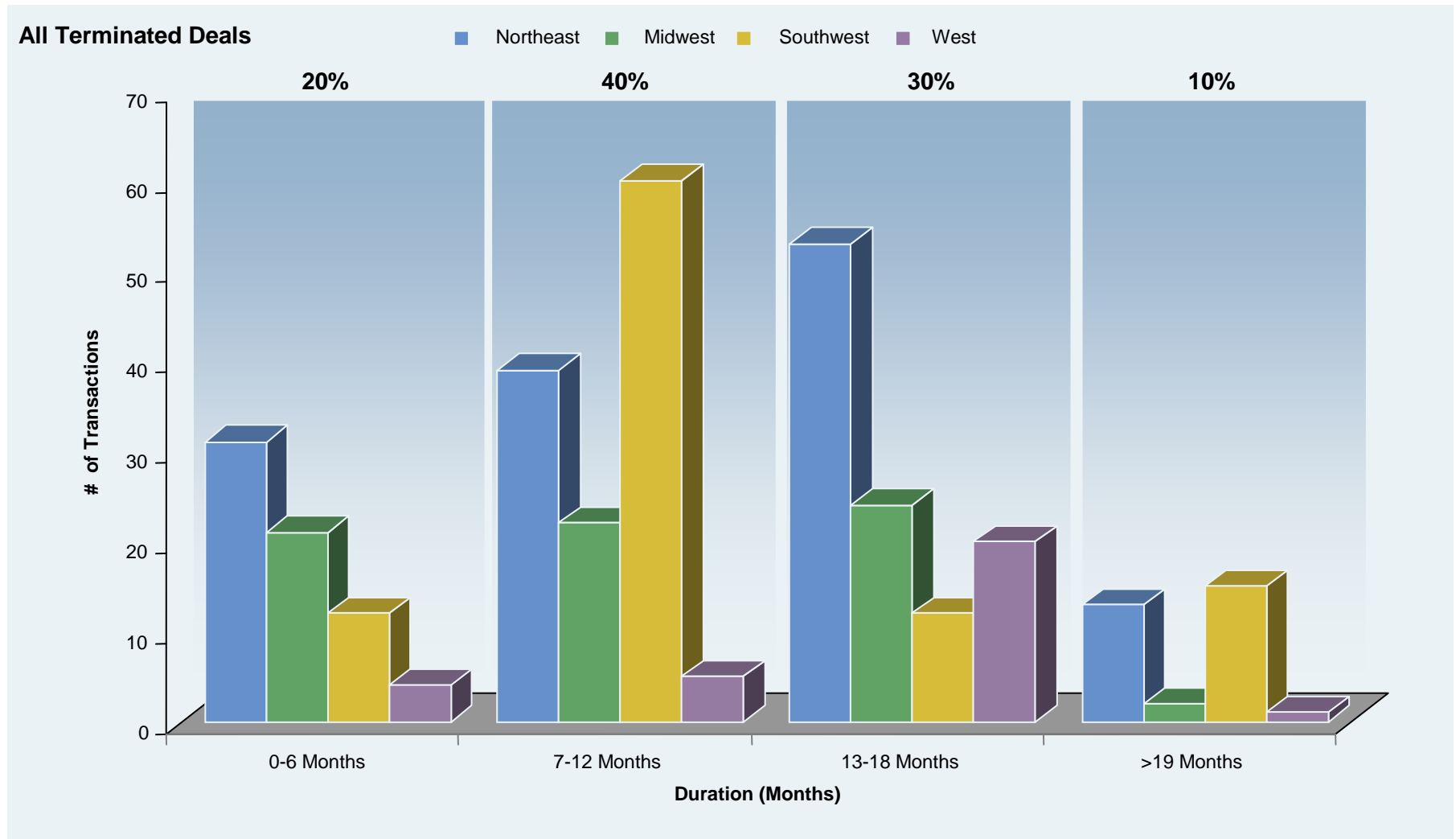
Most common scheduled lifespan of an escrow is 12 months

All Terminated Deals



- 50% of agreements specify a termination date to disburse funds, and 50% terminate upon written instruction to disburse funds
- 25% of all deals have clauses establishing multiple disbursement dates
- Scheduled disbursements range from 1 month – 72 months
- The most common scheduled disbursements are 12, 18 and 24 months from the closing of the deal.

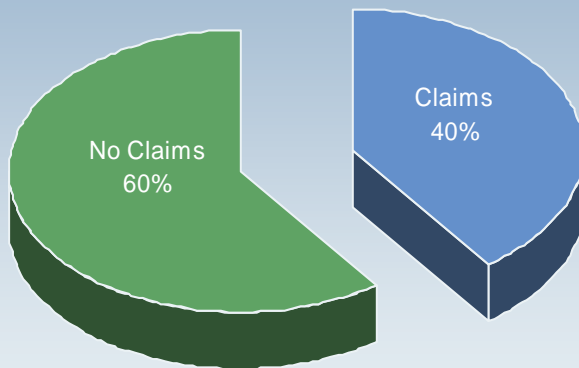
Escrow Lifespan - By Region



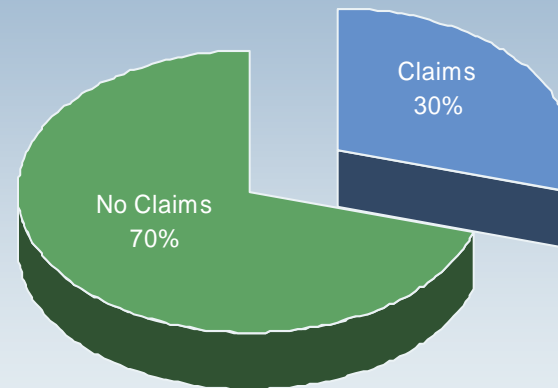
Claims Overview

Average recovery: 60% of the amount claimed

Claims: Percentage of Total Deals



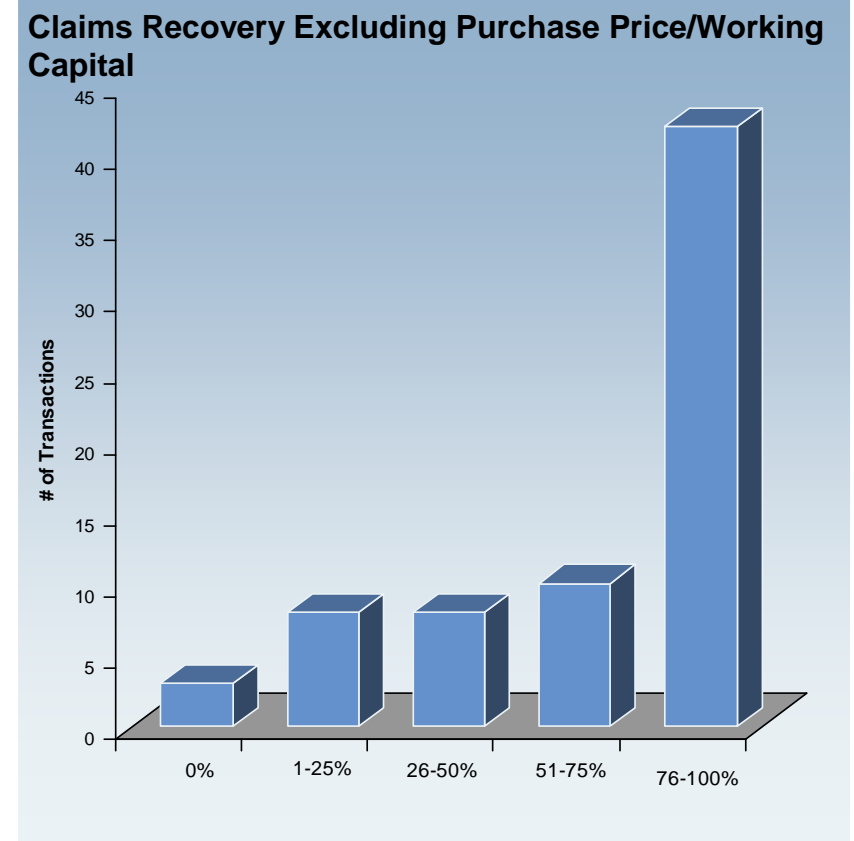
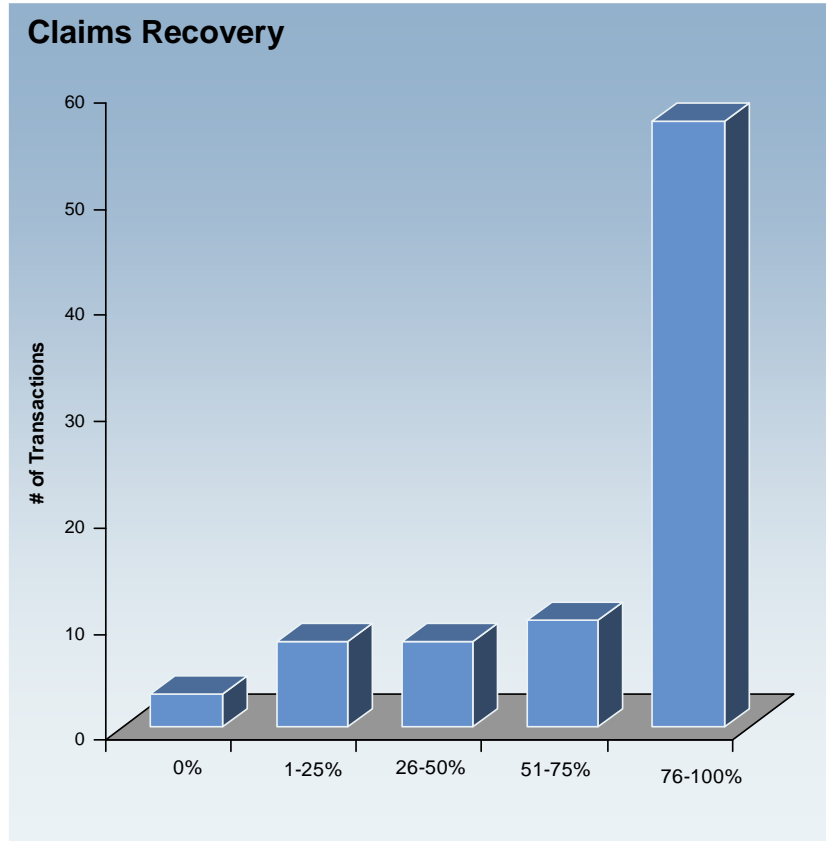
Claims: Percentage of Total Deals Excluding Purchase Price Adjustment/Working Capital Adjustments



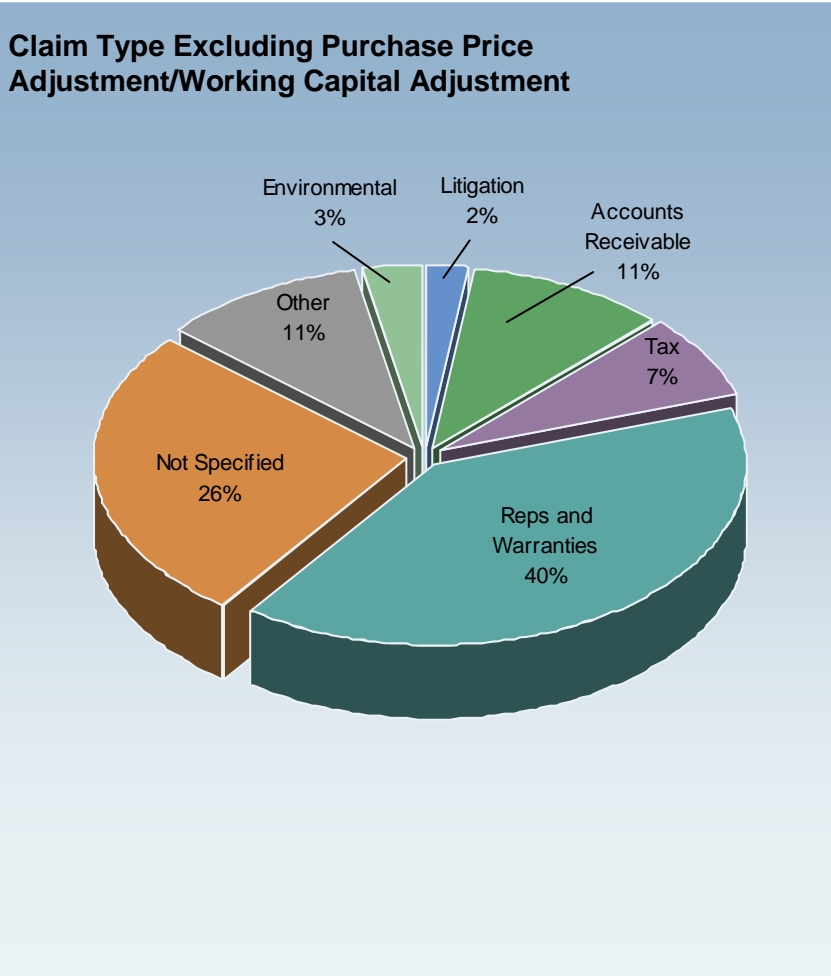
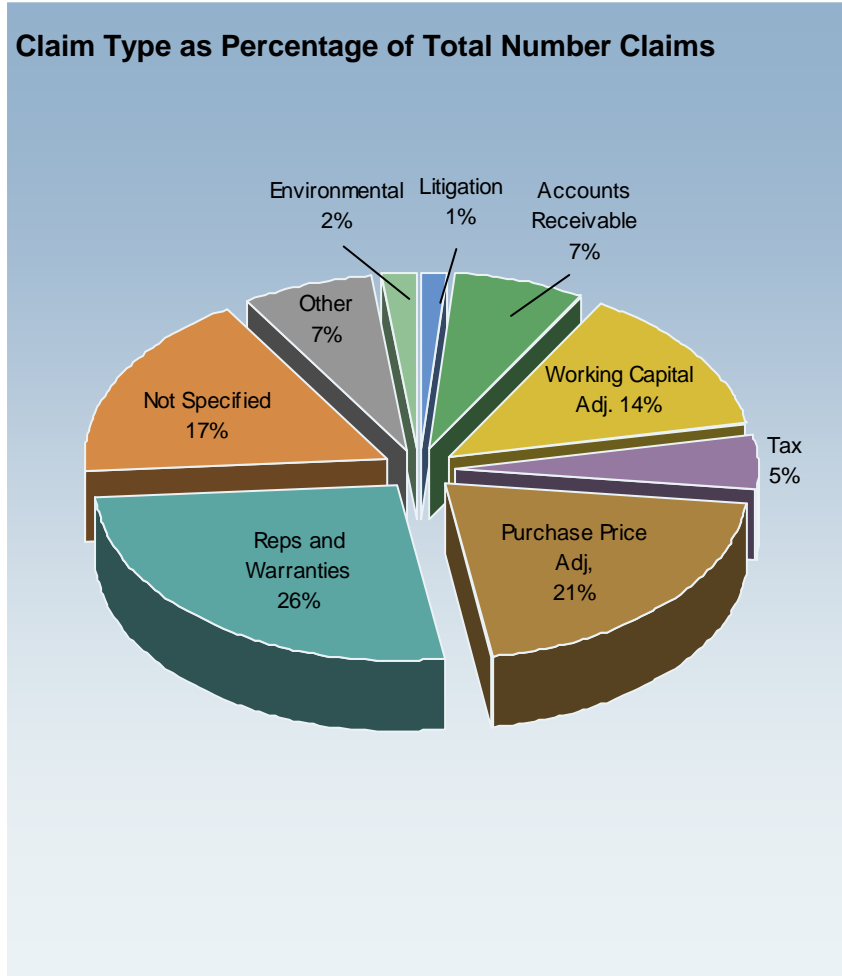
- Of 178 claims made by buyers, 176 received a recovery of some amount
- 90% of all escrow agreements have the claims procedure outlined in the agreement:
 - Claims procedure establishes timeline for buyer to make a claim, seller to object, and escrow agent to disburse funds if no objection

% of Claim Paid to Buyer

Average recovery: 60% of original claim



Claim Types

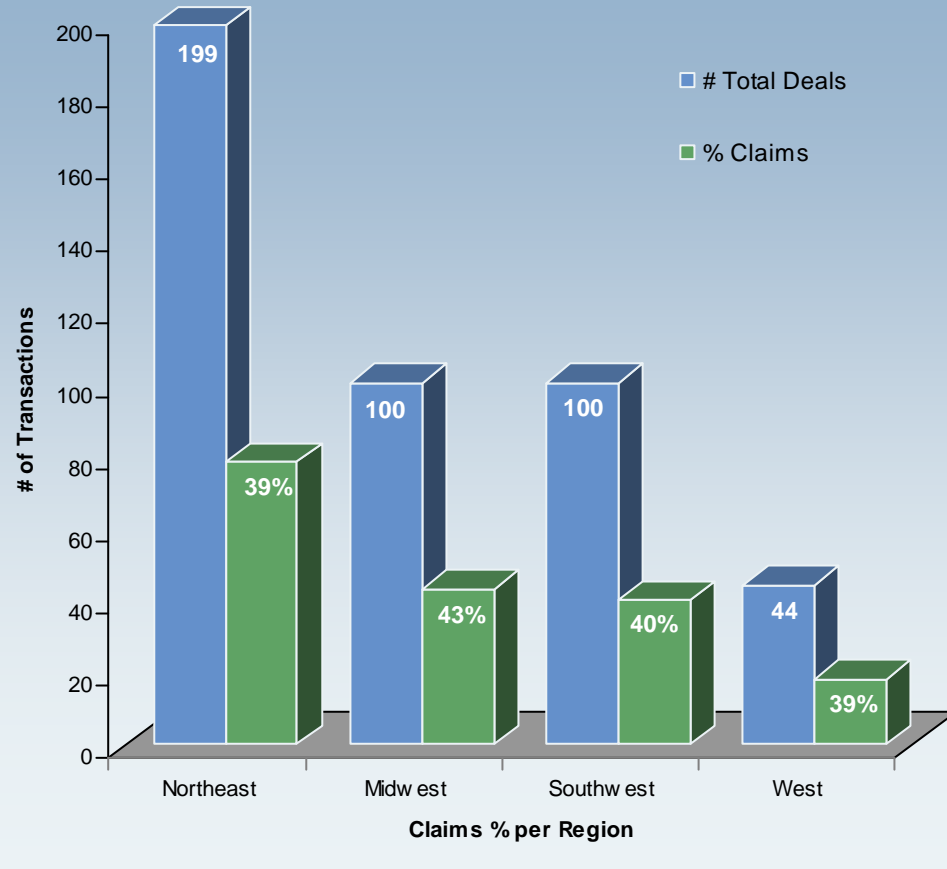


- “Not Specified” signifies disbursement of funds to buyer via joint instruction absent a claim presentation
- 60% of claims have multiple reasons listed in the claim

Claims - By Region

The average claim rate for all regions was 40%

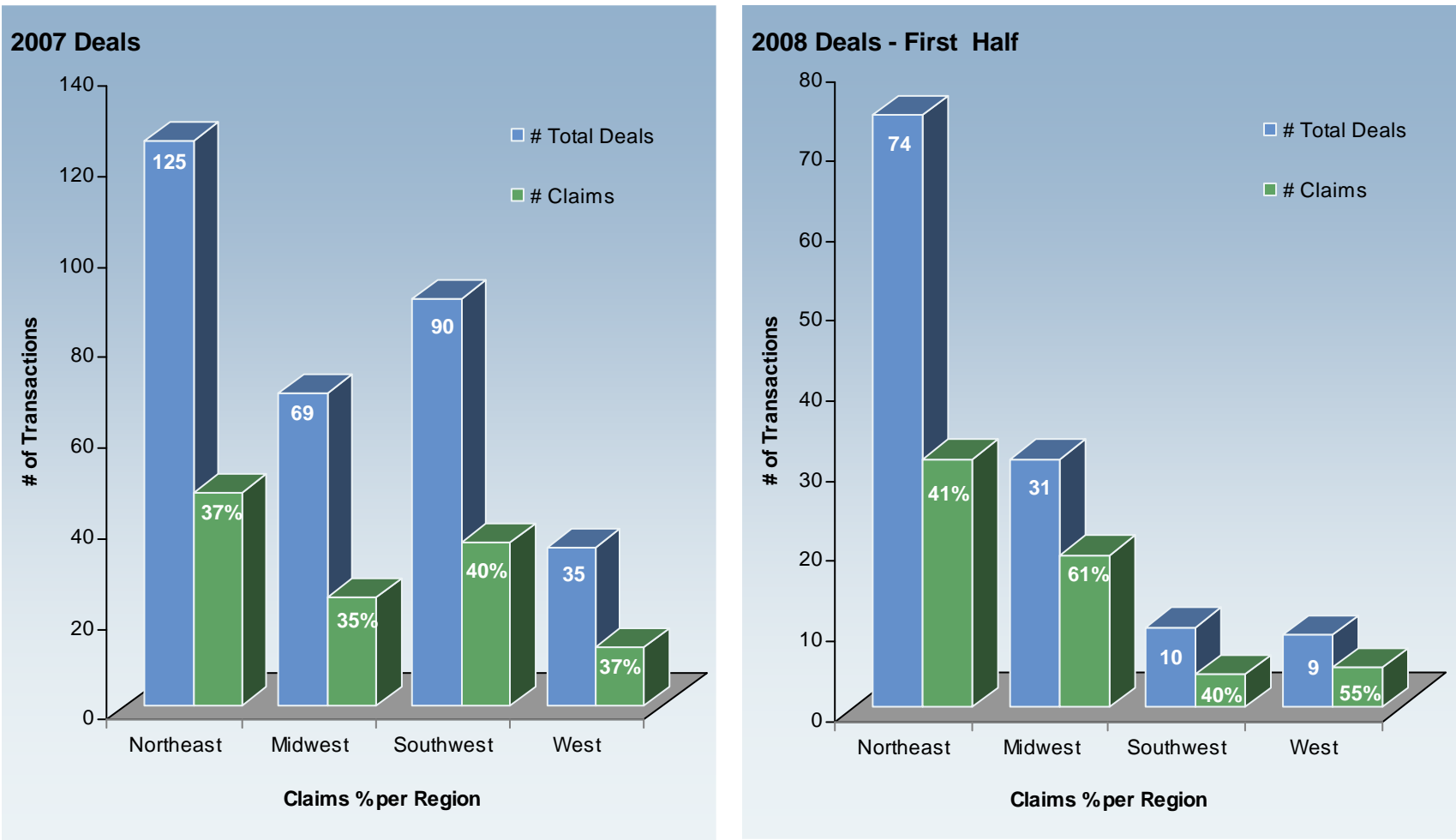
Total Deals and Claims Percentage



- 17% of all claims have no formal process
- Claims typically occur at the end of expected deal timeline

Claims - By Year

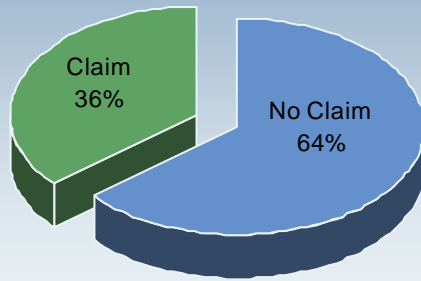
The percentage of claims increased from 2007 to 2008



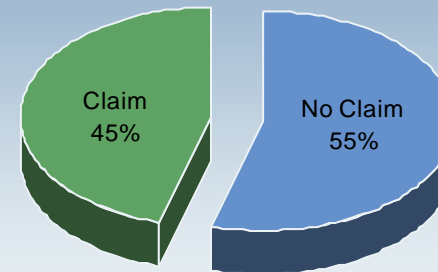
Claims - By Deposit Size

Claims 10% more frequent in deposits greater than \$3MM

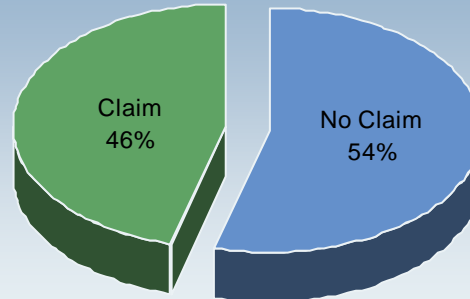
Deposit Size \$0-\$3MM



Deposit Size \$3-\$10MM

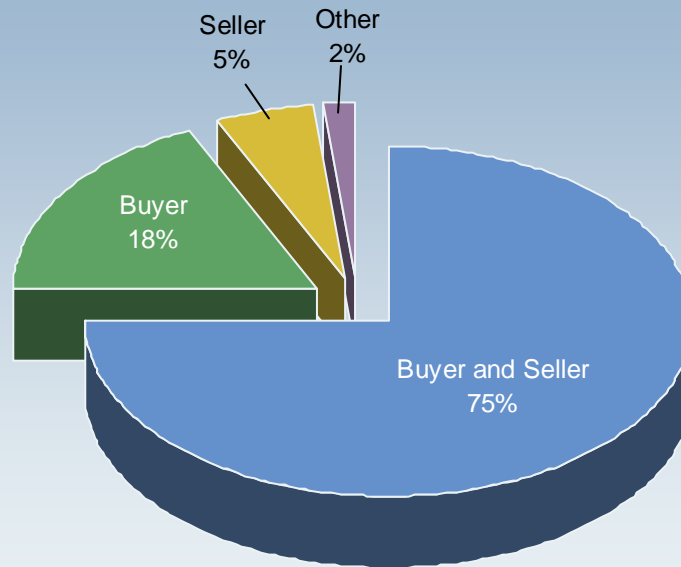


Deposit Size > \$10MM



Escrow Fee Payments

Total (443 active and terminated deals)



Note: Other denotes unique fee structure between buyer, seller, and escrow agent

J. P. Morgan Escrow Services

J.P. Morgan's suite of escrow services is built on experience and customized to cover the needs that arise in your client's business including, but not limited to, escrow structures for mergers & acquisitions, regulatory/litigation, payments and raising capital.

Our international capabilities and the ability to leverage our internal network of business partners, help to translate risk mitigation requirements into simple, workable solutions to meet our client's needs.

- **Quick turnaround:** Escrow Services provides rapid turnaround on escrow agreements, enabling clients to close deals without delay.
- **Fast, easy document preparation:** We walk you through the steps to complete the escrow transaction, and then provide you with a form of a contract that can be customized to meet the needs of your transaction and then quickly reviewed with a dedicated team of document specialists.
- **Dedicated escrow professionals:** J.P. Morgan has a team of dedicated escrow specialists, who understand the nuances of escrow and its many applications. They can translate your unique risk mitigation requirements into a simple, workable solution.
- **Global reach:** From Los Angeles to New York...to London and Amsterdam...to Hong Kong and São Paulo...we have escrow specialists across the globe. Escrow Services continues to expand geographically.
- **Financial strength:** J.P. Morgan's fortress balance sheet, strong capital base and rigorous risk management policies provide a strong complement to our leadership in escrow services. This is especially important as clients navigate through turbulent markets.
- **Integrated solutions:** Clients of Escrow Services have access to a broad range of related capabilities, such as foreign exchange services to address currency risk in cross-border transactions.

Why J.P. Morgan ?

When risk management is critical, rely on a trusted provider - the escrow professionals of J.P. Morgan.

- Leading provider of escrow services
- Depth and breadth of experience
 - Average 1,400 new deals per year globally
 - 5,000+ actively administered escrow accounts globally
- Unparalleled strength
 - Strong capital base, \$2 trillion in assets
- Disciplined risk management practices
- Global operating capabilities
 - Amsterdam
 - Chicago
 - Hong Kong
 - Houston
 - Lagos
 - Los Angeles
 - London
 - Mumbai
 - New York
 - São Paulo
 - Sydney

Questions/Contact

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