# ATLANTIC GROUP

## 2024 Insights and 2025 Outlook

REPRESENTATIONS & WARRANTIES INSURANCE

ATLANTIC

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# YEAR IN REVIEW

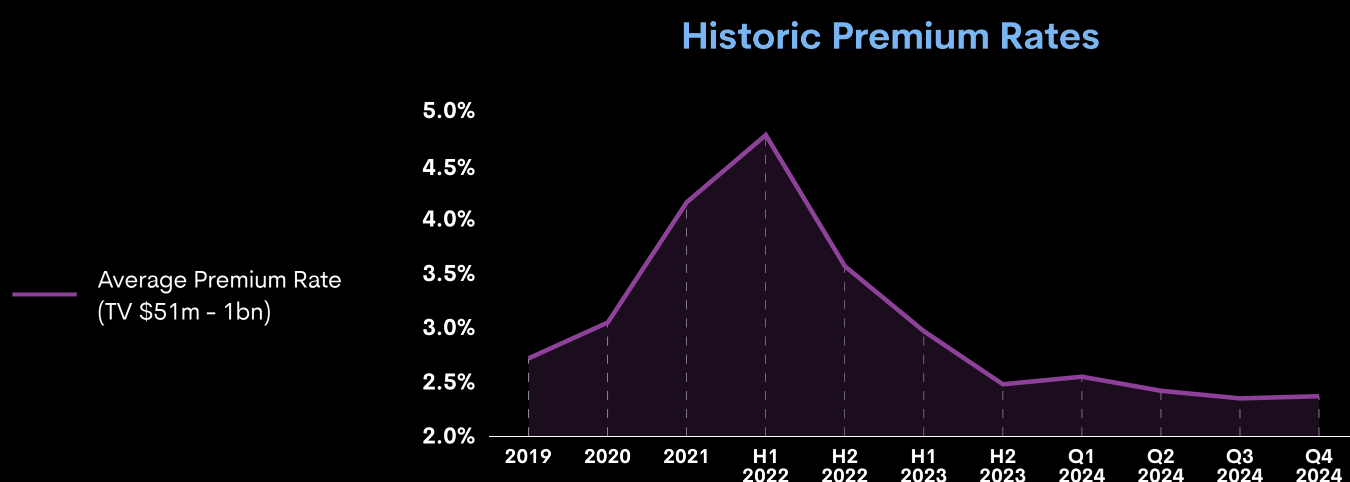
Following 18 months of falling premium rates, declining retentions and buyer-friendly terms, there was a lot of uncertainty heading into 2024 about whether RWI pricing had finally reached its trough. To the frustration of carriers, the soft market persisted through most of the year, even as M&A volumes moderately recovered. While a few carriers led the charge on rate adequacy, regularly quoting at 2.75% - 3.00%, the rest of the market averaged 2.30% - 2.50%, resulting in suppressed yet stable pricing, with a slight uplift in Q4. As we move into 2025, following a challenging capacity and reinsurance renewal season, deals quoted in the first six weeks of this year point to a hardening of the RWI market. However, if this is to be sustained, the much-anticipated uptick in M&A must materialize.

The trend of RWI being used to support "alternative" deal structures continued apace in 2024. While control deals still account for the bulk of RWI placements, Atlantic also placed RWI on take-privates, preferred equity investments, continuation vehicle transactions, LP transfers, GP stakes investments, growth equity investments, fund-to-fund transfers, joint ventures and strategic non-control investments. Another pervasive theme in 2024 was carriers' willingness to streamline the underwriting process, which we explore in detail in the Underwriting Focus & Claims section of this report. In the second half of the year, Atlantic placed RWI on several deals where the primary business of the target company was an AI program. These deals present unique and emerging risks for RWI carriers, including permission to access underlying data sets and data privacy, which our team carefully navigates on behalf of clients to ensure the broadest cover possible.

RWI loss experience across the market continues to be driven by infrequent but severe claims, and in 2024, Atlantic secured multiple eight-figure claims settlements. Claims experience is now central to carrier selection on every deal and carriers with strong claims track records and mature claims teams will continue to benefit via these "soft" factors. Atlantic is delighted to have bolstered its market leading claims team in 2024 and, as a firm, we place utmost importance on our claims advocacy service.

We hope that you find the insights in this report helpful. Thank you for your support in 2024 and we look forward to a busy 2025.

David Haigh, Founding Partner, Atlantic



# KEY TAKEAWAYS FROM 2024

- Premium rates continued to decline in 2024 before stabilizing in the third quarter and slightly increasing at the end of the year.
- Premium rate variance increased in the third and fourth quarters indicating a return of "risk premium" to more challenging deals and sectors (e.g., healthcare).
- Initial and dropdown retentions moderately decreased for most deal sizes. Smaller deals had material decreases.
- Nil-seller indemnity deals slightly increased for all seller types.
- Despite only a modest uptick in M&A, Atlantic increased deal count and policy count by 53% and 77%, respectively, as we grew market share.
- Volume of secondaries transactions increased materially, driven by continuation vehicle transactions.

# NOTES TO CHARTS

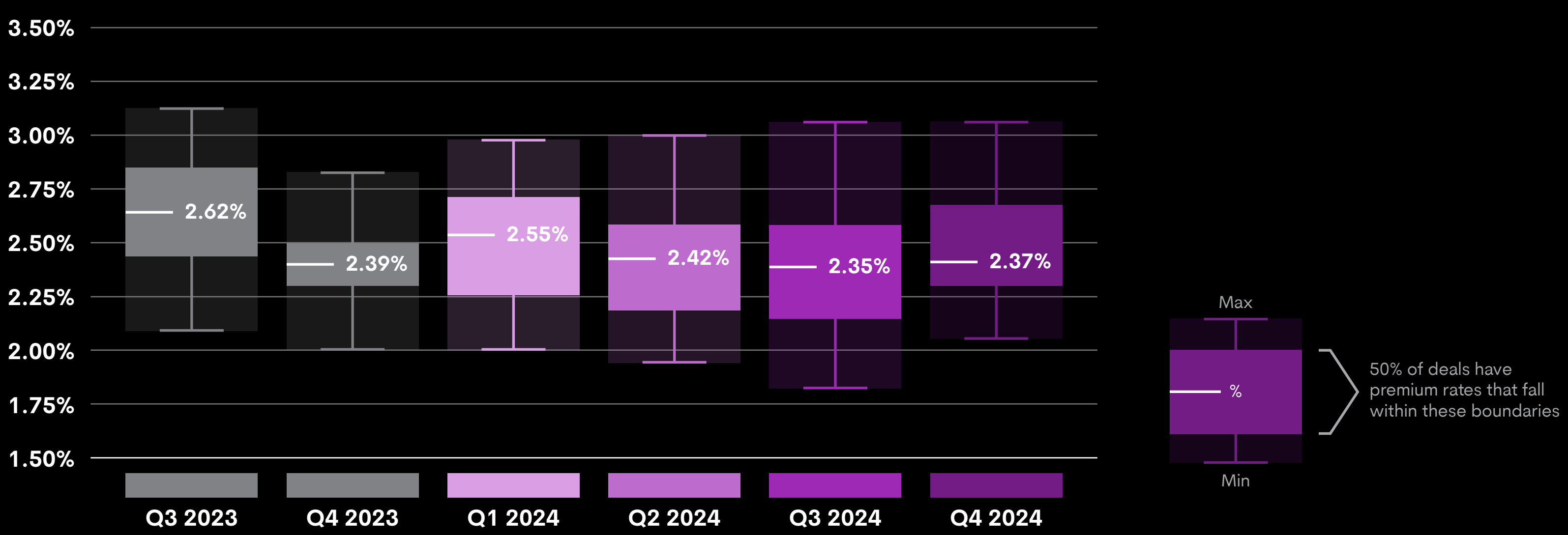
- Unless stated, statistics for policy terms are based on buy-side RWI policies bound by Atlantic for North American transactions, excluding real estate and secondaries.
- In the case of a 100% acquisition, the transaction value represents the total enterprise value of the target company. In other cases, the transaction value is the buyer's portion of the target company's total enterprise value.
- Premium rates are expressed as a percentage of the policy limit.
- Limits and retentions are expressed as a percentage of the transaction value.

# PREMIUMS

The chart below shows the average premium rate along with two measures of premium variance: (i) 50% of policies with premium rates closest to the average, as shown by the boxes and (ii) the maximum and minimum premiums, as shown by the tails. From Q3 2023 to Q1 2024, the maximum and minimum outliers were close to the average. This shows that carriers were generally pricing deals at similar rates, regardless of the sector or perception of risk in order to win business, following 2 years of low deal volume. By Q2 2024 deal volume had picked up and the upper tail started to increase, indicating that carriers had returned to pricing riskier deals (e.g., healthcare providers) at higher rates. With a hardening market in 2025, we expect this variance to remain with riskier deals commanding significantly higher pricing.

Prior to 2024, certain carriers had started to question the profitability of RWI with premium rates well below the long-term average of 3.0%. In an effort to lift rates in early 2024, a few carriers regularly quoted deals at ~2.75% - 3.00%, but with the rest of the market not following suit, the market shift didn't occur. The chart on the following page shows the average quoted premium rate by carrier for the first and fourth quarters of 2024. The chart shows a clear trend with carriers on the left-hand side quoting deals in both Q1 and Q4 at higher rates than carriers on the right-hand side. Furthermore, the carriers quoting higher premiums at the start of the year only marginally reduced pricing and in some cases increased it – as evidenced by the closely grouped averages on the left-hand side of the chart – whereas carriers quoting lower premiums at the start of the year tended to drop pricing as the year progressed – as evidenced by the dispersed averages on the right-hand side of the chart.

## Premium Rate Variance by Quarter (TV $51m – 1bn)

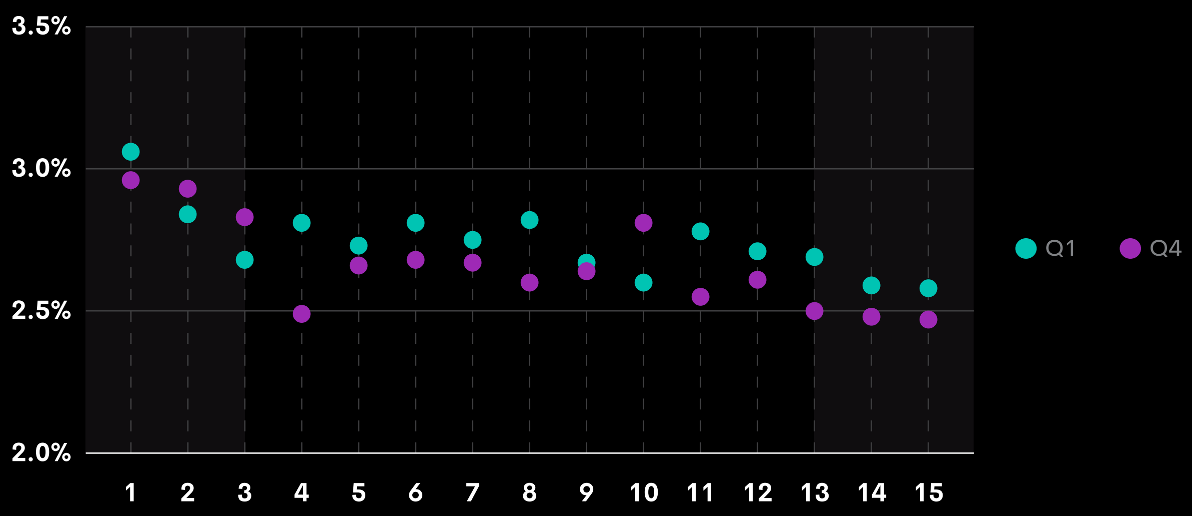


Despite M&A volumes only moderately recovering in H2 2024, there has been a notable increase in premium rates for deals quoted in early 2025. Examining some of the reasons behind this, the RWI market consists of more than twenty-five primary "carriers" which can be grouped into: (i) managing general agents (MGAs) and (ii) direct insurers. MGAs underwrite (via a binder agreement) on behalf of third-party insurers and reinsurers. By way of example, there might be more than five insurers that contribute capacity to one MGA, and, in turn, these insurers will each purchase reinsurance covering their broader financial lines exposure (i.e., transactional liability, D&O, E&O). Most insurers that underwrite RWI directly will access reinsurers via dedicated transactional liability treaties (i.e., RWI, tax insurance and contingent risk insurance). Whether direct or via an MGA, the reinsurance treaties will protect the insurer(s) against an agreed proportion of losses in the portfolio on a *pari passu* basis. Although a deep market with many players, the large reinsurers absorb risk through multiple channels and, as a result, have significant exposure to the RWI market. Recent focus areas of reinsurers have been: (i) material losses in the contingent risk market which have resulted in reduced or no capacity for certain types of legal contingent risk (e.g., judgment preservation insurance and adverse judgment insurance) (ii) RWI aggregation risk (e.g., multiple carriers participating on a single deal via a tower of insurance which rolls up to the same reinsurer) and (iii) RWI premium rate adequacy.

In recent renewal discussions for both MGA binder agreements and reinsurance treaties, RWI rate adequacy has been under the spotlight. MGAs and insurers have been pressured to increase pricing in response to deteriorating loss ratios, resulting in upward pressure on premium rates. As explained in the Underwriting Focus & Claims section of this report, large losses drive the overall RWI loss experience, and the most effective way to improve loss ratios is to increase the premium rate (rather than increase retentions).

Early 2025 has seen premium rates across the market increase to 2.75% - 3.00%, with the more established insurers pushing rates above 3.0%. In the mid-term, we expect market rates to settle at 3.0% – 3.5%, although loss ratio analysis from certain leading carriers suggests an average primary rate of 3.5%.

## Average Premium Rate Quoted by Insurer in Q1 and Q4 2024




### Note to Chart

The chart shows the average quoted premium rate in Q1 and Q4 2024 for primary policies by individual insurer. The chart is limited to the top fifteen insurers that Atlantic received quotes from throughout 2024. The insurers are generally organized from the highest average quoted premium rate on the left to the lowest on the right.

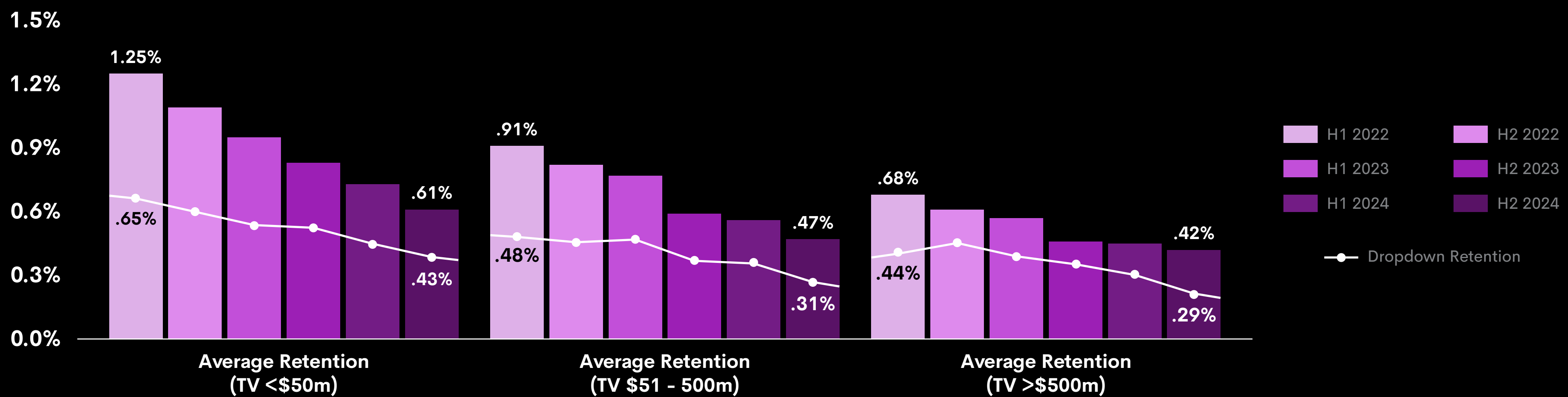
# RETENTIONS

The chart below shows how initial retentions have fallen significantly over the course of the last three years. Prior to 2023, initial retentions were generally 0.75% or more, with retentions of 0.60% reserved for deals in excess of $500m. 2023 saw the steepest decline in initial retention rates as abundant insurer human and financial capital and slow deal flow resulted in fierce competition. Average initial retentions for $51 – 500m deals fell 23 bps from 0.82% in H2 2022 to 0.59% in H2 2023. The rate of decline slowed significantly in 2024 with average initial retentions for $51 – 500m deals falling by 12 bps from 0.59% in H2 2023 to 0.47% in H2 2024. Small deals of <$50m did see a larger reduction with average initial retentions falling by 22 bps from 0.83% in H2 2023 to 0.61% in H2 2024, reflecting insurers' willingness to drop the absolute dollar retention amount.

Dropdown retentions have shown a similar trend, with the average for $51 – 500m deals falling by 8 bps from 0.39% in H2 2023 to 0.31% in H2 2024.

As the RWI market hardens, we do not anticipate retention levels increasing significantly. Rather, we anticipate carriers will choose to instead focus on premium rates which have a greater influence on loss ratios given that infrequent and severe losses (rather than attritional claims) drive overall loss experience.

## Initial and Dropdown Retention as a % of the Transaction Value



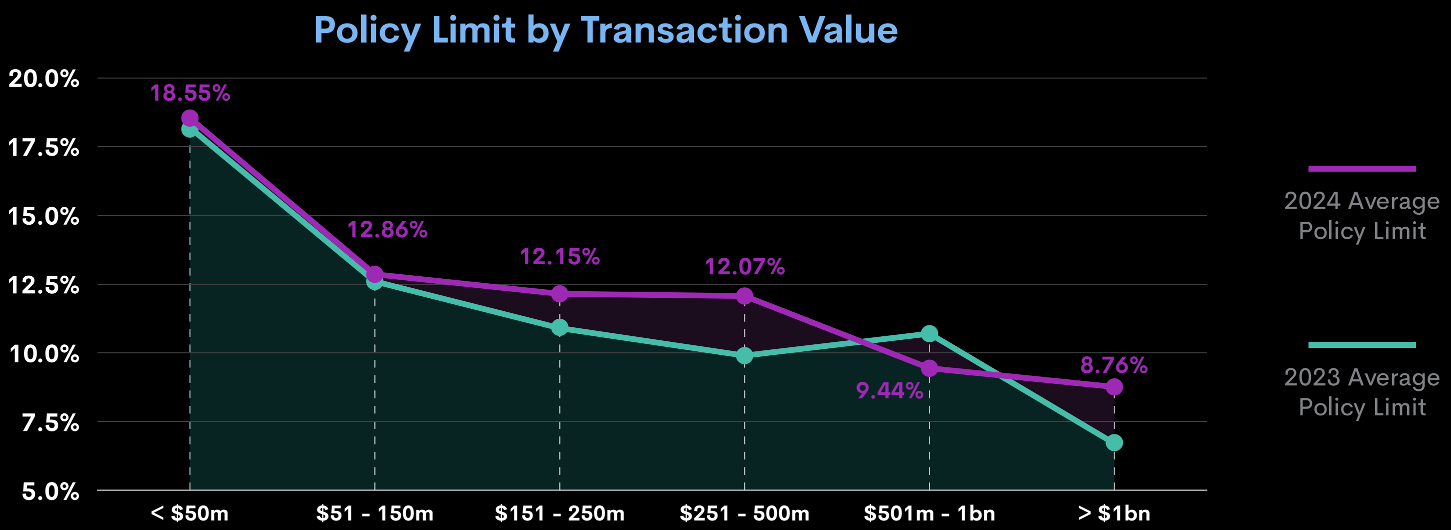
# POLICY LIMITS

Policy limits as a percentage of the transaction value increased moderately in 2024, continuing the trend established in the prior year. The higher policy limits purchased are a function of: (i) lower premiums which allowed buyers to purchase more insurance while keeping costs down (ii) a higher proportion of cross-border deals with international buyers tending to purchase higher policy limits (reflecting customary practice in overseas markets) and (iii) RWI claims experience showing that severe losses can exhaust 10% of the transaction value policy limits, sometimes from defense costs alone, thus leaving buyers exposed to any further loss.

As with prior years, there is a clear trend between policy limits and deal size. The smaller the deal size, the higher the policy limit as a percentage of the transaction value. Smaller deals tend to have relatively higher policy limits as: (i) buyers elect for the maximum policy limit that can be purchased at the minimum premium threshold, which often applies to these deals and (ii) the perception of absolute dollar risk overriding the relative risk.

The statistics do not include top-up policies which Atlantic regularly placed in 2024 to protect buyers against the risk of a fundamental breach in excess of the general RWI policy limit. Policies covering true fundamental representations (i.e., title, capacity, authority) are priced at approximately 0.50% of the policy limit. Policies covering a broader scope of representations (e.g., intellectual property, cyber, tax or environmental) carry higher premium rates of 0.75% to 1.25% depending on the scope of cover and nature of the target company. In 2024, Atlantic structured an innovative policy covering a buyer for breaches of any representation arising solely from management fraud in excess of the base RWI policy. This policy prevented gridlock between the parties resulting from the purchase agreement expressly shielding an institutional seller from fraud committed by the target's management team.

As the market hardens and premium rates rise, we expect buyers to continue electing for policy limits of at least 10% of the transaction value for $250m+ deals, with insureds who have experienced making large RWI claims purchasing limits of 15 - 30% of the transaction value.

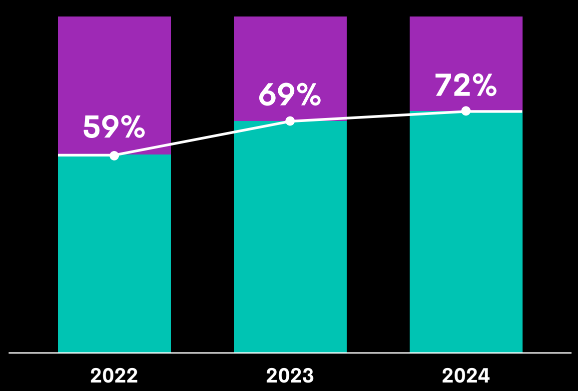


# SELLER LIABILITY

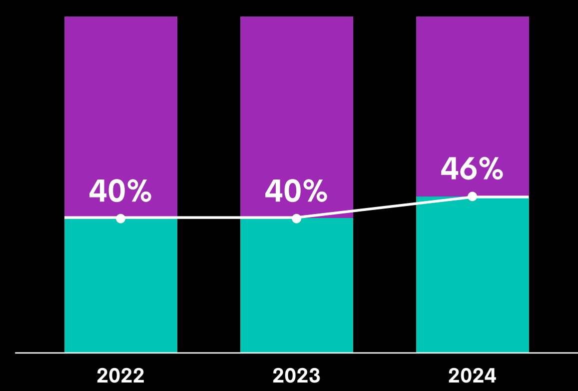
When determining the liability of the seller for a breach of the general representations (i.e., non-fundamental), there are two types of deals: (i) limited seller indemnity (LSI) or (ii) no seller indemnity (NSI) deals. In an LSI deal, the seller retains liability for a breach of the general representations – often capped at 50% of the policy retention. In an NSI deal, the seller has no liability for the general representations with the policy being the sole right of recourse, absent fraud – these are often referred to as "public-style" deals.

Over the last five years, the proportion of NSI deals has increased for both financial sponsor and strategic sellers. There are several factors driving this, including: (i) buyers' increasing familiarity and confidence in the RWI claims process (ii) insurers' comfort underwriting to an NSI standard with minimal or no difference in premium than when the seller has "skin in the game" and (iii) lower retention amounts which reduce the amount of uninsured losses that a buyer might otherwise look to recover from the seller. In 2024, 72% of deals involving financial sponsor sellers were NSI deals, up from 69% in 2023, despite it being a buyer's market. For non-financial sponsor sellers, there was a larger movement with 46% of NSI deals up from 40% in 2023. Even though corporate sellers do not face the same pressure as funds in exiting deals with limited exposure, they are increasingly insisting on an NSI construct, with buyers more willing to accept this position for the reasons outlined above.

## % of NSI Deals for Financial Sponsor Sellers




## % of NSI Deals for Non-Financial Sponsor Sellers




### Note to Chart

Statistics for seller liability are based on purchase agreement terms for deals that used RWI policies.

LSI

NSI

NSI (% of total RWI Placements)

# UNDERWRITING FOCUS & CLAIMS

Atlantic's claims experience and the numerous studies released by carriers demonstrate the inescapable lesson that severe claims drive the majority of paid loss in the market. While the number of notifications is reasonably high (~20% of policies), most of these notifications do not result in paid losses, often because the loss falls within the retention or actual loss never materializes. However, when retentions are eroded and payouts are made, they tend to be for a significant percentage of the policy limit.

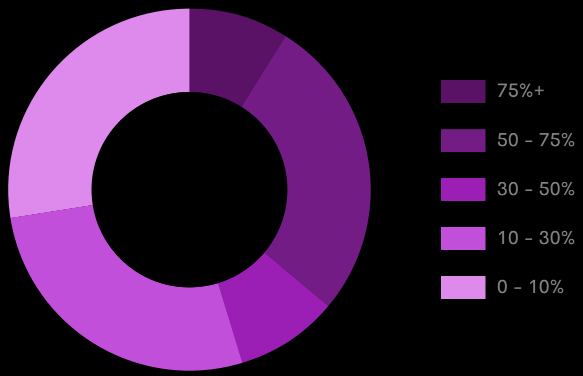
The chart on the left summarizes the distribution of paid claims as a percentage of the policy limit. This supports the view that severe losses drive the overall loss experience across the market. Of all claims payments made under policies placed by Atlantic, 36% have been for amounts exceeding 50% of the policy limit with these claims constituting 74.5% of all dollars paid. In short, while the chances of having a claim exceed the retention are low, if you suffer one, the chances of the losses being material are high.

Claims can generally be categorized as: (i) third-party claims typically made against the target company (e.g., litigation, intellectual property disputes and tax matters) and (ii) direct claims for which the buyer claims against the insurer because it overpaid for the target company due to a misrepresentation (e.g., financial statements and customer and material contract matters).

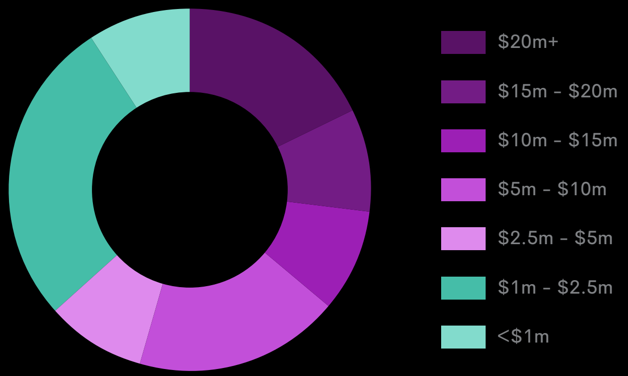
A significant portion of loss arising from direct claims constitute "expectation" or "benefit-of-the-bargain" damages, often calculated pursuant to an EBITDA and/or revenue multiple. While the biggest source of such losses arises from breaches of financial statements or customer and material contracts representations, other breaches often involve a multiple-based damages claim. Given the contribution to overall market losses, insurers' underwriting techniques have evolved to focus on such matters with financial statements and customers and material contracts often being a key focus of underwriting. It is telling that today almost every carrier will engage an accounting firm to assist with underwriting (indeed some carriers have this expertise in-house) when it was almost unheard of a few years ago.

In the short term as the market hardens, we expect that underwriting call times will lengthen slightly but the long-term trend of carriers focusing on the material areas (borne from claims experience) will continue.

## Paid Claims as a % of the Policy Limit




## Distribution of Gross Loss




### Note to Chart *"Distribution of Gross Loss"*

For each buyer-side RWI policy placed by Atlantic between 2019 and 2023 that resulted in a claim payment by the insurer (i.e., the retention has been eroded and loss paid), the chart shows the percentage of claims payments that resulted in gross loss (i.e., erosion of retention and paid loss) within the relevant range.

# SECONDARIES

The secondaries market encompasses a broad range of transaction types including GP-led secondaries and traditional LP transfers. Within those two broad categories there are several transaction structures, such as single- or multi-asset continuation vehicle (CV) deals, strip sales, tender offers, mosaic deals and many others.

The insurance market has evolved considerably over the last few years to meet the needs of GPs, selling LPs and incoming investors. While effectively all secondaries transaction types are now insurable, CV deals account for the vast majority of RWI policies in the secondaries market. Three years ago, there were only two insurers with the expertise to underwrite secondaries deals on a primary basis, but this has grown to more than ten today. This competitive insurer market has allowed Atlantic to obtain lower premiums, lower retentions and, most interestingly, innovative cover, policy structures and a streamlined underwriting approach.

There is a significant pricing discount for CV deals versus direct deals, with premium rates typically 1.40% to 1.80% of the limit of liability covering the fundamental representations, business representations and excluded obligations indemnities (which can be given on a synthetic basis). In addition to a base RWI policy with policy limits of 10% - 20% of the NAV, Atlantic frequently arranges top-up coverage to cover fundamental representations and the excluded obligations indemnity for total protection of 20% - 100% of the NAV. Top-up policies are typically priced at 0.75% - 0.90% of the additional limit and, notably, the purchase of top-up policies is much more common for CV deals than for direct deals.

The standard practice on CV deals is for fundamental representations to be given on an absolute basis while business representations are qualified by knowledge. An innovation that Atlantic has helped drive over the last few years is a "hybrid" approach where certain business representations are covered on an absolute basis when supported by diligence (including older reports that are disclosed in the VDR but were not commissioned as part of the transaction) or disclosures. In many cases it is possible to synthetically scrape knowledge qualifiers in the policy despite them remaining in the underlying transaction agreement. As an example, on most single-asset CV deals the GP will commission a quality of earnings report. If this is the case, Atlantic can structure a policy that covers the financial statements representation on an absolute basis without the requirement for the lead investor to undertake any diligence on financial matters.

Moving into 2025, we expect premium rates for CV deals to remain close to the current level with pricing increasing only slightly, if at all, and certainly less than the pricing increases we predict for direct deals. This is due to low claims frequencies and favorable loss ratios on secondaries deals and an increasingly competitive insurer market. It will be interesting to see whether the favorable loss ratios remain given the increased prevalence of hybrid cover, as described immediately above.

# HEALTHCARE & LIFE SCIENCES

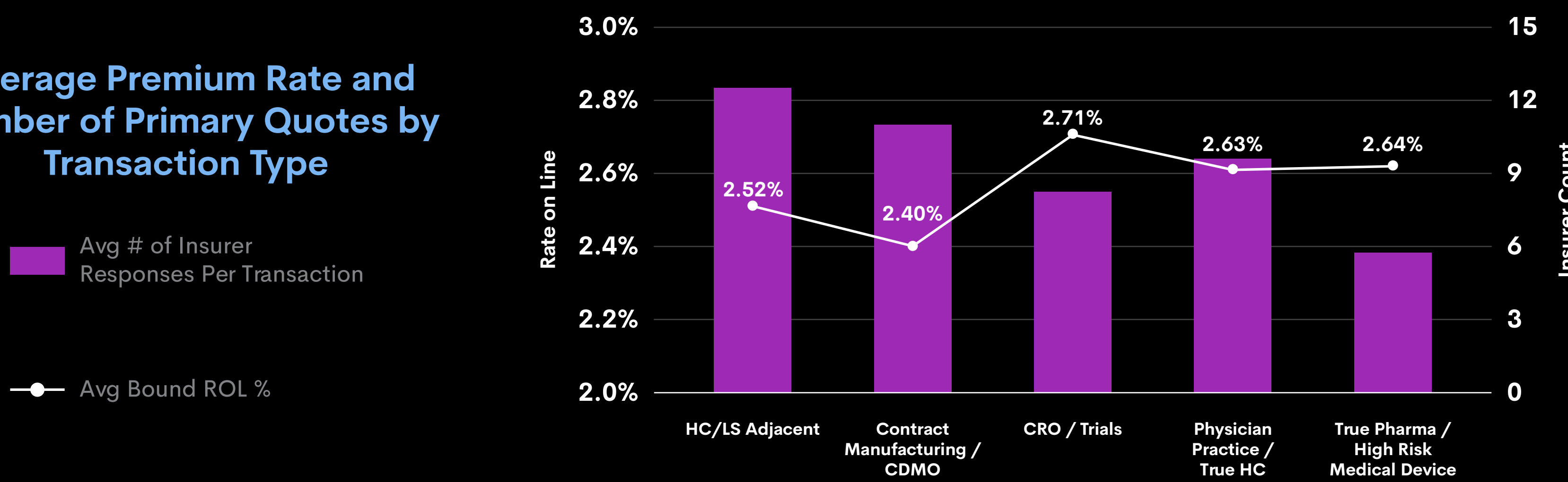
Over the course of the last eight years, the pool of carriers with an appetite for deals in the healthcare and life sciences (HC/LS) sectors has fluctuated significantly. The chart below shows how carrier interest varies among different sub-sectors in the industry. As you move from left to right in the diagram, the perception of risk increases, a fact which is generally reflected in the number of quotes per deal and pricing. For HC/LS-adjacent deals, such as healthcare technology (including pharmacy benefit management and revenue cycle management businesses) and digital health, we received an average of 12.5 quotes per deal, with average premium rates of 2.52%. Conversely, true pharma/high-risk medical device deals received an average of 5.75 quotes per deal, with average premium rates of 2.64%.

Deals in the true pharma or high-risk medical device category still tend to generate the least amount of interest in the insurance market as it has taken longer for underwriters to generally gain experience and comfort with key risks like product liability, warranty and recall (particularly with respect to bodily injury, illness and death), as well as FDA regulatory and intellectual property risks like litigation. However, a key trend we saw from mid- to late-2024 was a marked increase in inquiries from strategics (in particular) for RWI on these transactions. Given that only a small sub-sector of the RWI market has the appetite and expertise to underwrite these transactions, Atlantic's approach of utilizing industry-sector expertise to carefully frontload discussions about complex, deal-specific risks is all the more important for primary carrier selection.

With respect to physician practice/true HC transactions, our clients have been especially active in the home health, skilled nursing and hospice spaces, as well as in the fertility/women's health, pediatric dentistry and dermatology/med spa spaces. On transactions where revenue is concentrated in high percentages of government payor reimbursement (like home health and hospice), a carefully curated approach to billing and coding diligence, ensuring the parties are maximizing not only cover under the RWI policy, but also time- and cost-based efficiencies, continues to be at the forefront of Atlantic's workstream.

Based on recent conversations, we expect to see deals in similar sub-sectors in 2025, with potential for a spike in cardiology M&A activity and a return of investments in value-based care practices, an area which will be particularly interesting to observe in light of the Trump administration's healthcare agenda. As we do expect the RWI market to harden in 2025, there is potential for above average rate increases in the HC/LS space, but the key carriers with well-known expertise will continue to be hungry for these deals across the sliding scale of risk set out in the chart below.

## Average Premium Rate and Number of Primary Quotes by Transaction Type



# 2025 OUTLOOK

Although it remains early in the year, M&A activity and new deals brought to the RWI market have been relatively modest in the first six weeks of 2025. That said, Atlantic is regularly receiving quoted premium rates of 2.75% to 3.00% on deals that would have priced below 2.50% last year. This supports the views expressed earlier in this report that the RWI market has finally turned a corner after more than 2.5 years of falling premium rates, decreasing retentions and broad cover positions. As noted, we expect retentions to remain at the low levels established during the last 24 months, and if there is upward pressure on retention levels, it is likely to be for smaller deals only.

If the much-anticipated uptick in M&A activity materializes, carriers' focus for the foreseeable future will be rate adequacy. Assuming a typical policy limit of 10% of the transaction value, we expect premium rates to return to 2.75% to 3.25% with the position within this range determined by deal size, sector and other factors. As noted earlier in the Premiums section of this report, risk premiums returned in the third and fourth quarter of 2024 with carriers quoting higher risk deals and sectors (e.g., healthcare) at a substantial premium to other sectors. Another expected theme is carriers' approach to large deals. We expect primary $25m policy limit pricing on deals >$1bn to increase markedly and for excess carriers to exert more pricing influence.

As the volume of RWI claims increases, the ability of carriers to efficiently and equitably settle direct claims where loss is calculated pursuant to a deal multiple will become increasingly important. Ultimately these claims require a "meeting of minds" between the buyer and carrier. The experience and depth of the carrier's claims team and the approach of external counsel is important in achieving the desired outcome, in addition to the expertise and guidance provided by the broker. Atlantic places utmost importance on the claims experience and believes the role of a broker is critical to achieving a satisfactory loss recovery within a reasonable timeframe.

We expect RWI to continue being used on alternative deal structures with more sponsors considering and electing for RWI on take-privates. We expect a small squeeze on insurer capacity for HC/LS deals, increasing the importance of a specialist broker that can navigate the unique risks encountered on these deals. Based on carrier feedback, Atlantic had the highest submission count for secondaries transactions in Q4 2024 and we expect a very busy year ahead with premium rates expected to remain close to the current levels.

Lastly, we expect deals involving AI-focused target companies to increase and insurers to become more sophisticated in evaluating and pricing the unique risks associated with these deals. One thing for sure is that it will be a busy year, and we look forward to working tirelessly with our clients to obtain the best terms and service from the insurance market.

## 2025 PREDICTIONS

- **Retention levels to remain at low levels even as RWI market hardens.**
- **Premium rates to increase to ~3.0% if uptick in M&A activity materializes. Increases above 3.5% unlikely.**
- **The risk premium for primary $25m limits on larger deals and higher risk sectors (e.g., healthcare) will increase.**
- **Carriers' ability to efficiently settle multiple-based damages claims will remain key in ensuring equitable and timely settlements.**

# ABOUT ATLANTIC

**100+**
Employees

**10**
Offices

**53%**
Increase in Deal Count vs. Prior Year

**77%**
Increase in Policy Count vs. Prior Year

**$442M**
Average Transaction Size

**$10bn**
Largest Deal Size