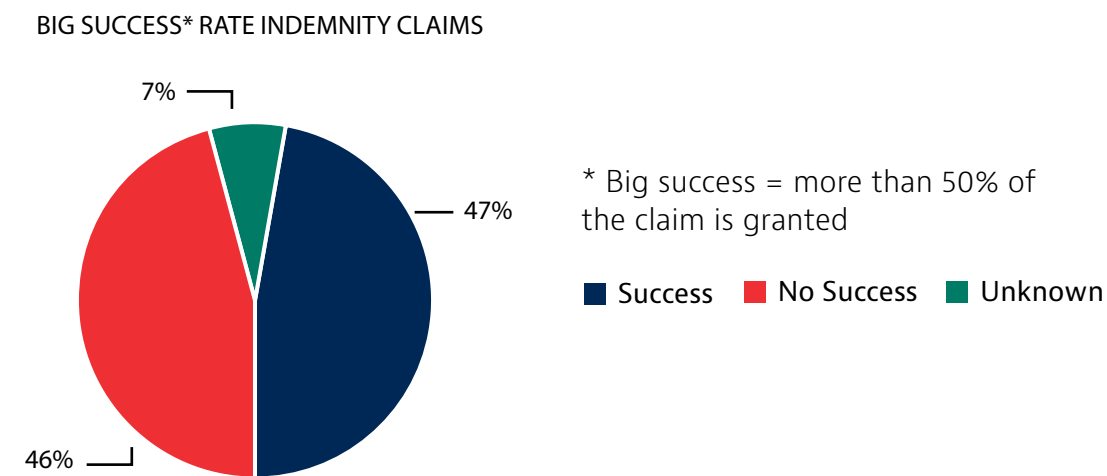
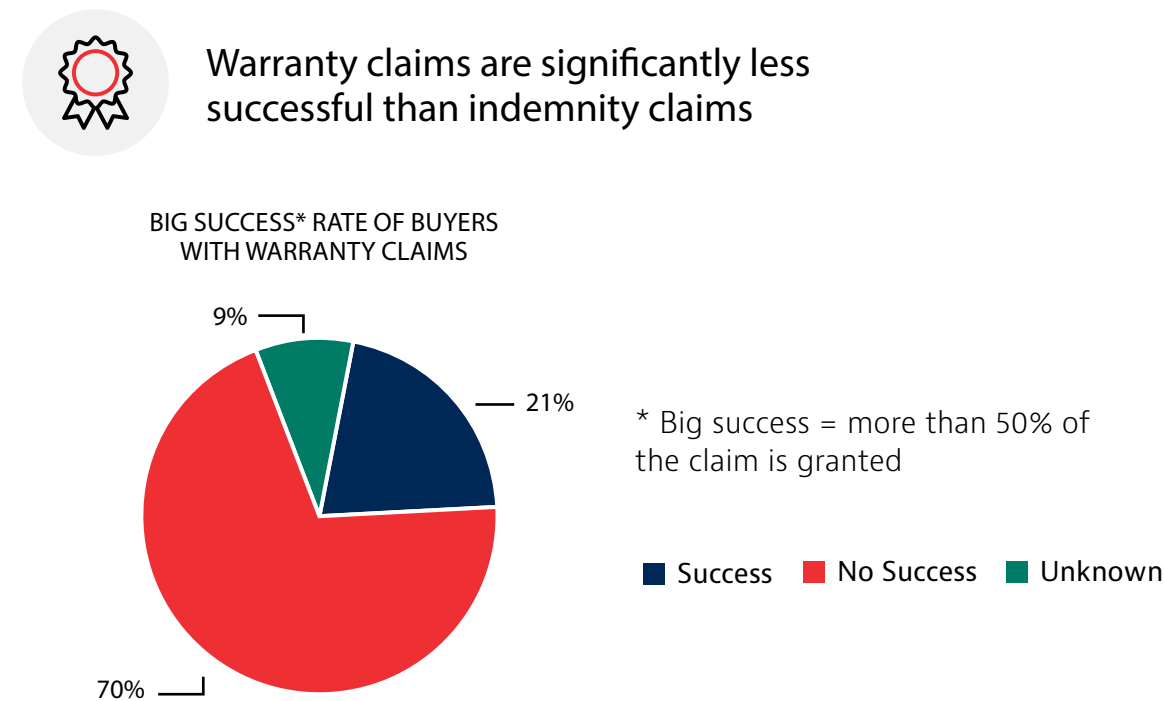
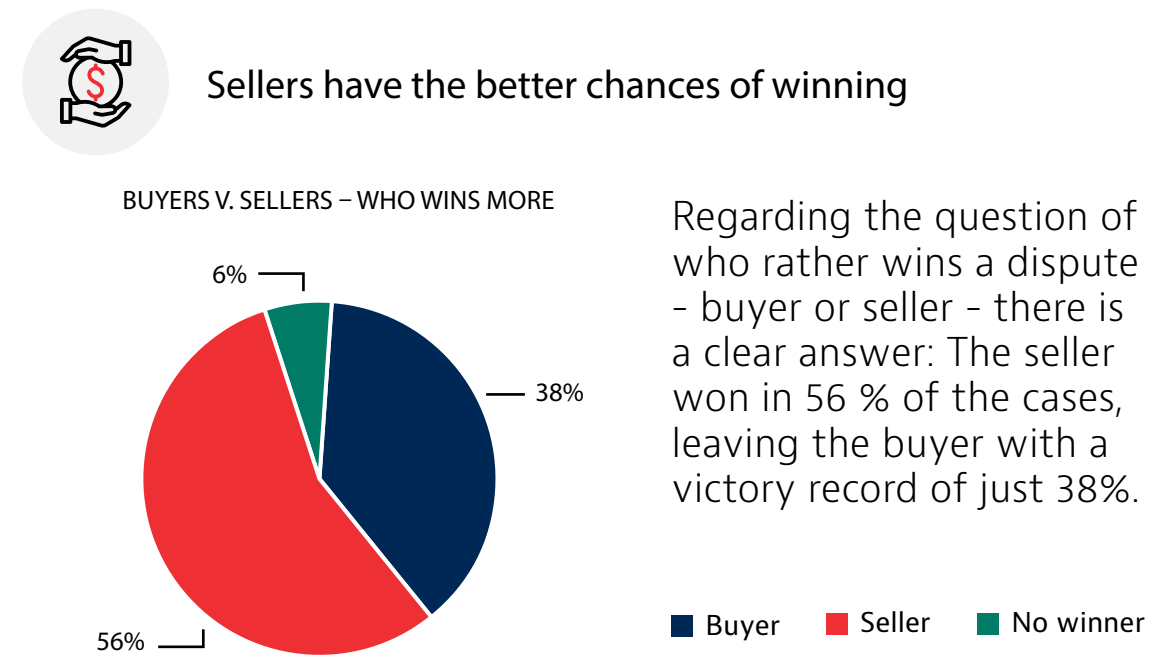
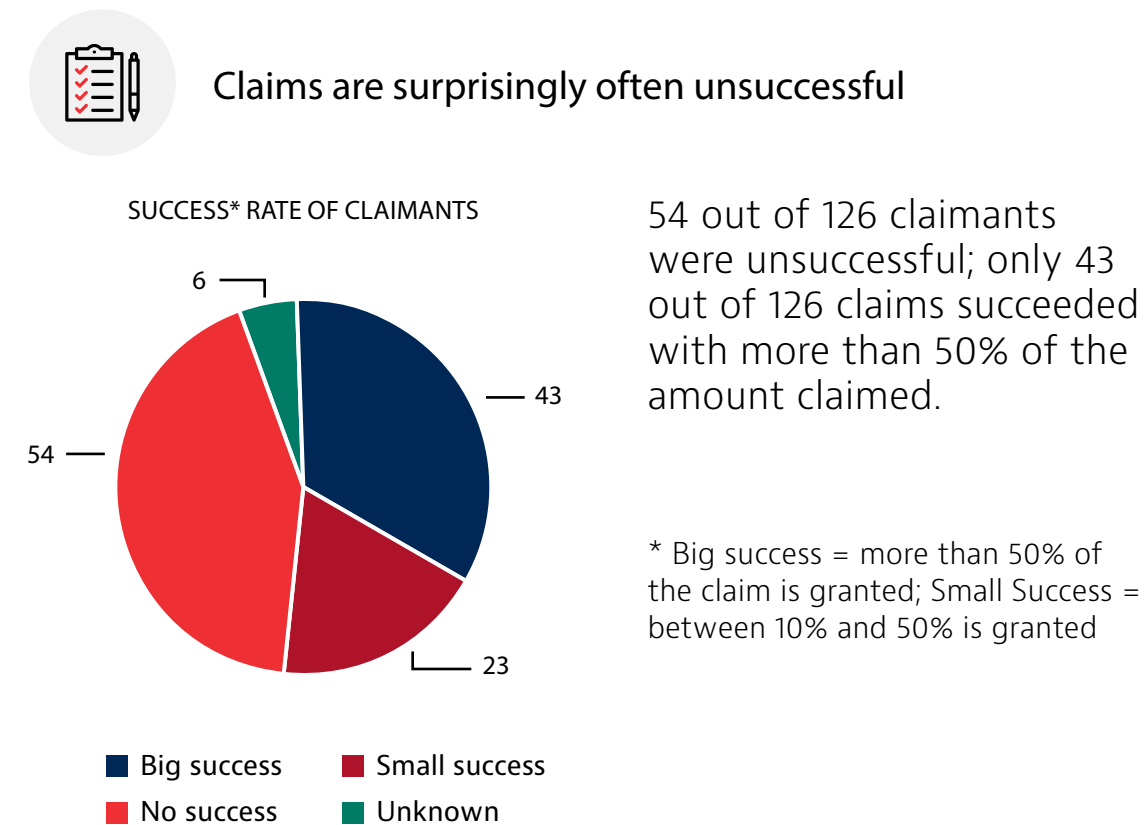


KEY THEMES

What can we learn from previous post-M&A disputes to mitigate risk on future transactions? During this session, we presented the findings from examining 100+ arbitration awards and English court judgments on post-M&A disputes. From a transactional perspective, we explored provisions of the underlying contracts that are most likely to raise disputes and the outcomes of these disputes.

Key findings of our quantitative analysis:



While warranty claims were unsuccessful in the majority of cases, indemnity claims were significantly more often successful.

The panel discussed the findings and agreed that:

- More established use of W&I and related deal insurance

A tool that was originally used more often in the realm of Private Equity deals has become more established as a market practice in general M&A transactions over the past few years, according to Helen Chapman. Aon's recent insurance claims study analysis indicates that, of all claims brought by policyholders against insurance companies, only around 1-2% reach the arbitration or litigation stage and only a small percentage of claims during a sample period were wholly denied by the insurers.

- The number of cases regarding earn outs in the findings of our analysis was comparatively small

Purchasers seek earn-out clauses in particular in those transactions where the target company does not have a long track record and the purchase price is driven in part by future growth prospects. With parameters changing during the integration phase into a larger business setup, there is a high potential for disputes arising out of earn-out clauses. An explanation for the limited number of earn-out disputes in our analysis can be explained with the small proportion of deals that include earn-outs rather than that they are less contentious than commonly thought.

- Where possible, the focus of transactional advising should be to identify issues and price them in or seek indemnities, rather than to rely on warranties providing sufficient protection

Ash Tiwari summarized that, based on the data findings, it is much more likely to receive a fulsome recovery under indemnity claims as opposed to warranty claims. She suggested that, where possible, buyers should be carrying out more fulsome diligence and negotiating a price chips-indemnity rather than relying on warranties. Statistically, the buyer stands a better chance of winning in a potential dispute regarding indemnities than warranties.

GUEST SPEAKERS



SPEAKERS