

Greasing the wheels: Using rep & warranty insurance to get the deal done

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Agenda

- What is representation and warranties insurance (“**R&W Insurance**”)?
- What are the benefits of R&W Insurance?
- What are the typical features of a policy?
- What are the most common misconceptions?
- What is the process for obtaining R&W Insurance?
- What are the standard exclusions from a R&W Insurance policy?
- COVID-19 related considerations
- Purchase agreement negotiations
- Market trends

What is R&W Insurance?

Protects the buyer
against breaches of
representations and
warranties by the seller

Replaces/enhances
indemnification
provisions

SPAC / Public Deals

Distressed deals

Tax Indemnity Policies

Minority Investments

Adoption by Strategic
Investors

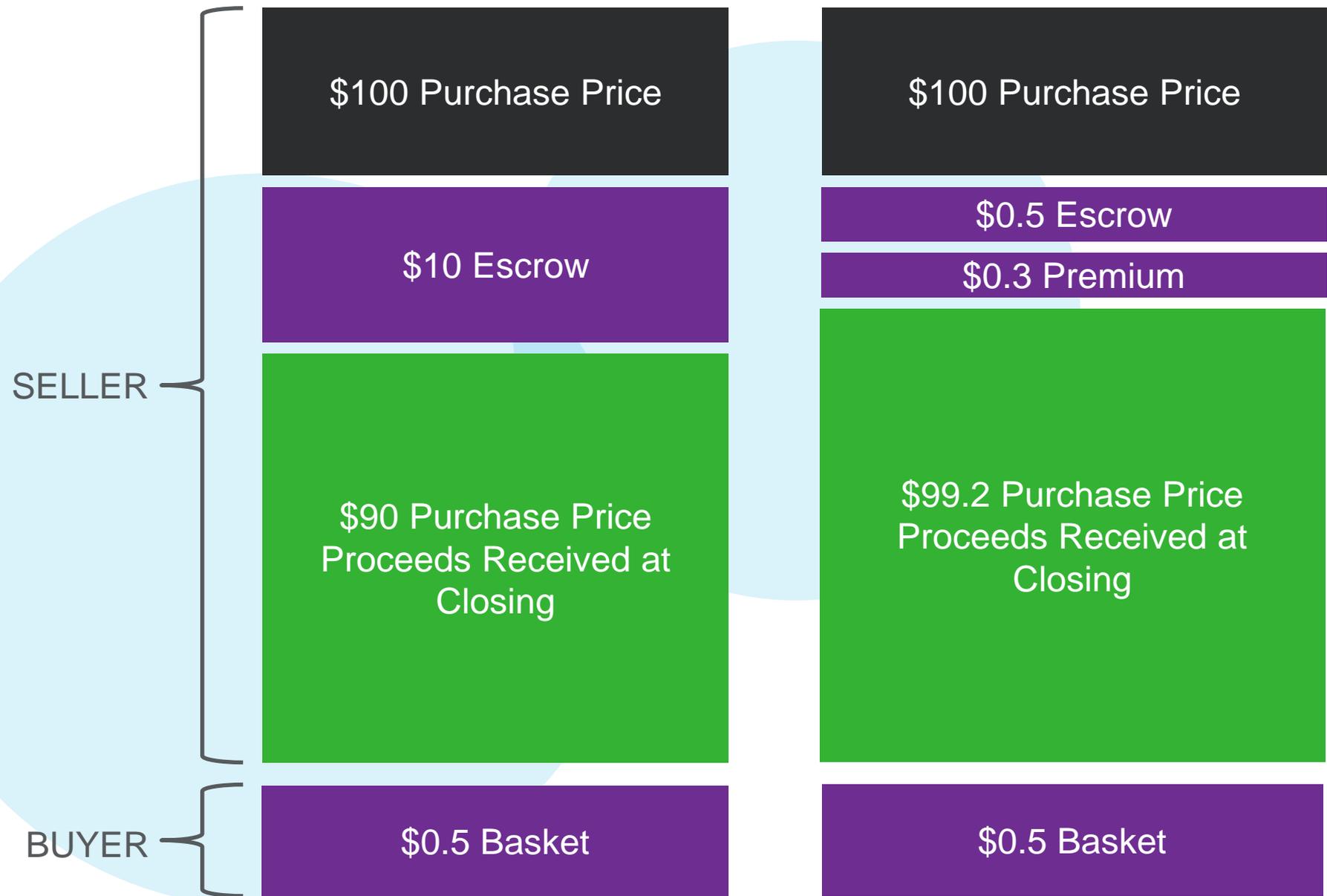
Reduce
Escrow /
Time Value
of Money

What are the benefits of R&W Insurance?

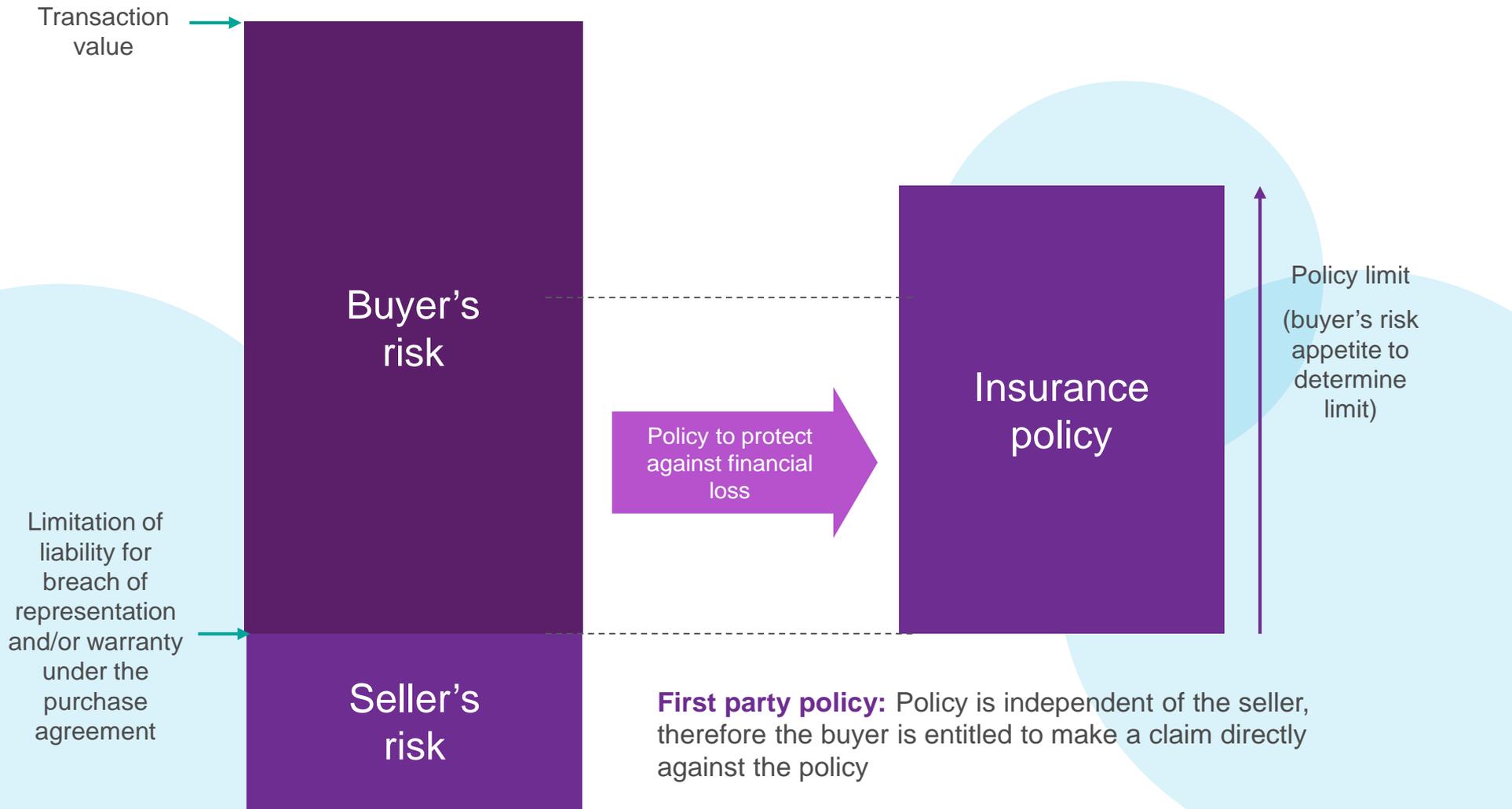
Buyer	Seller
<ul style="list-style-type: none">• Increase bid attractiveness• Extend the duration of the representations and warranties• Enhance or increase the dollar value amount of protection• Increase the seller's willingness to give more extensive representations and warranties	<ul style="list-style-type: none">• Reduction or elimination of the traditional seller's indemnity exposure• Reduction or elimination of an escrow or holdback• Provide for a cleaner exit• Increased comfort in giving more extensive representations and warranties

No Insurance

With Insurance



What are the typical features of a policy?



What are the typical features of a policy?

Premiums

Coverage

Deductible

Exclusions

Buyer as insured party

Term

What are the most common misconceptions?

Slows Down
the Deal

Complex
Claims
Process

Replaces
DD

General
Exclusions

Only for
Large Deals

What is the process for obtaining R&W Insurance?

Day 1

- Engage with an insurance broker and execute an NDA or deal joinder

Day 3-5

- Provide deal information (i.e. LOI, CIM, financials, draft SPA)
- Obtain quotes/non-binding indications from insurers

What is the process for obtaining R&W Insurance?

Day 5

- Review quotes
- Select the insurer
- Sign insurers' term sheet and pay underwriting fee
- Insurer commences underwriting

Day 5-15

- The insurer and their counsel access the data room
- Provide due diligence reports and draft disclosure schedules
- Organize conference call with deal team
- Answer follow up questions and negotiate final policy
- Bind policy

What are the standard exclusions from a R&W Insurance policy?

- Adjustments to the purchase price related to working capital (purely to avoid double counting)
- Breaches known to the buyer
- Tax consequences of any pre-close reorganization & NOLs and similar tax attributes (such as SR&D credits)
 - For known tax matters such as pre close reorg and tax credits – Tax insurance can be a solution
- Unfunded or Underfunded benefit plans
- Asbestos, PCBs (special substances – may cover via a separate Pollution Policy)
- Forward-looking representations and warranties

COVID-19 considerations

COVID-19 R&W Insurance Coverage Exclusions

- Concerns regarding COVID-19 developments during the interim period
- Definition of “Material Adverse Effect”

COVID-19 Effects on the Market

- Potential shift towards a buyer’s market
- Limitations on buyer’s due diligence
- Limitations on seller’s disclosure

Purchase agreement negotiations

Fundamental Breaches

Expiry of
Reps and
Warranties

Extraordinary
Loss

Liability
within
Exclusions

Fraud

<https://www.forbes.com/sites/allbusiness/2019/01/23/guide-mergers-acquisitions-representations-warranties-insurance/#21446d367f31>

Market trends

Liberty, AON and AIG 2020 claims reports

Liberty from 2010 - April 2020 (Americas)

- 2,000 policies
- ~325 claims

AON from 2013 - 2019 (US and Canada)

- 2,450 policies
- 340 claims

AIG from 2011 - 2018 (Global)

- 3,500 policies
- ~700 claims

Market trends

Liberty, AON and AIG 2020 claims reports

Most common types of breach	Liberty (Americas 2010-April 2020)	AON (US and Canada 2013-2019)	AIG (Global 2011-2018)
Financial	15%	13.5%	20%
Tax	19%	11%	18%
Material Contracts	16%	9%	13%
Employment	14%	10%	9%
Compliance with laws	13%	12.5%	16%
Litigation	13%	6.5%	7%
Intellectual Property	5%	5%	7%

AIG 2020 M&A: A Rising Tide of Large Claims - Representations and Warranties Insurance Claims Report

AON 2020 Representations and Warranties Insurance Claim Study

Liberty Global Transaction Solutions – 2020 Claims Study

5 November, 2020

Market trends

Liberty, AON and AIG 2020 claims reports

Claim frequency	Liberty (Americas 2010- April 2020)	AON (US and Canada 2013- 2019)	AIG (Global 2011- 2018)
2019	8%	6.2%	N/A
2018	13%	11.7%	~20%
2017	19%	23.3%	~20%
2016	15%	25.3%	~20%
2015	14%	20.6%	~20%
2014	9%	18.6%	~20%
2013	14%	22.5%	~20%

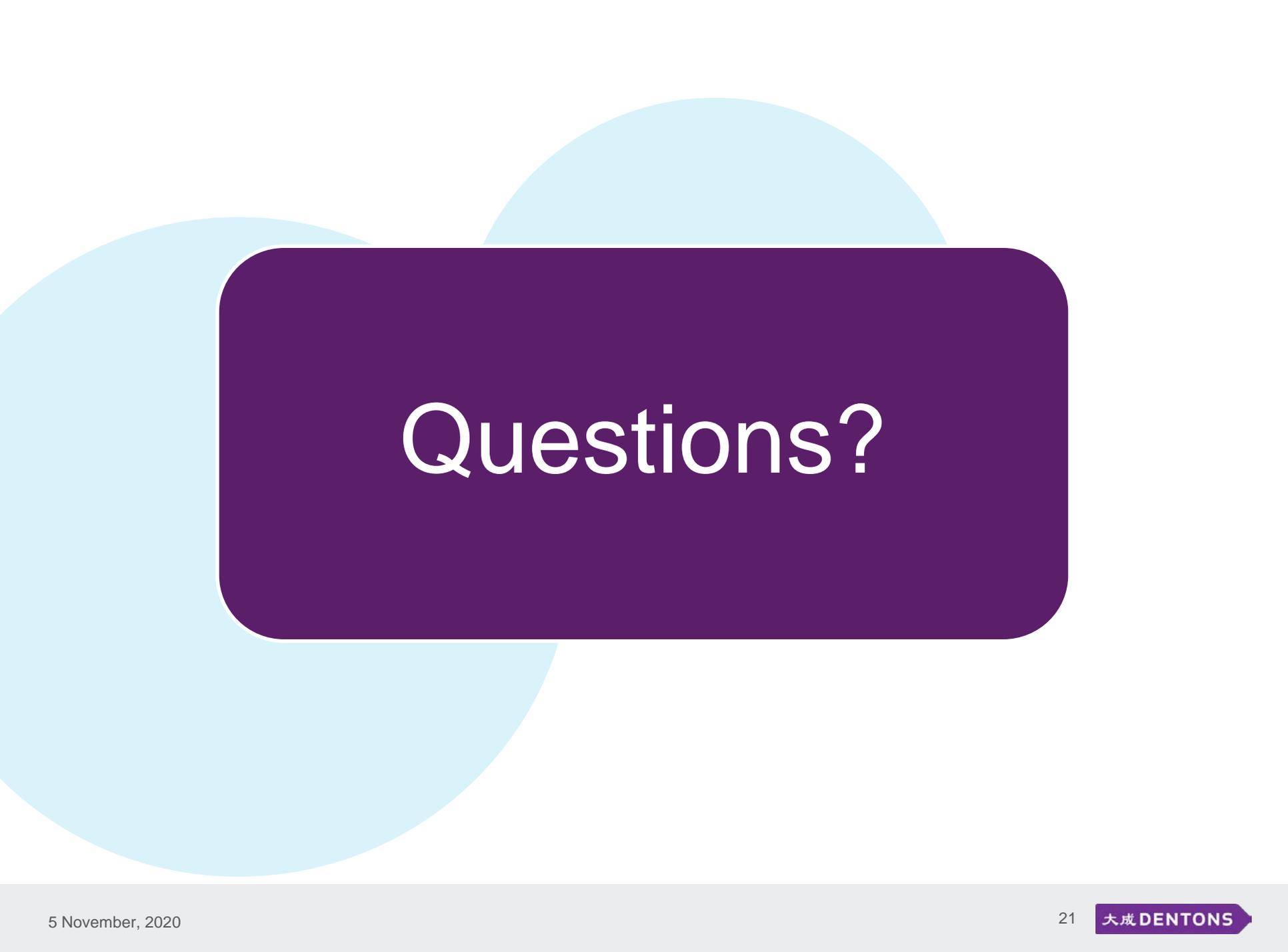
Market Trends

Liberty, AON and AIG 2020 claims reports

Claim severity	Liberty (Americas 2010- April 2020)	AON (US and Canada 2013- 2019)	AIG (Global 2011-2018)
<\$1 million	74%	19%	46%
\$1-<\$10 million	15%	57%	46%
>\$10 million	11%	24%	8%

Other trends?

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Questions?

Thank you



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