

# Trends in Private M&A: Material Adverse Effect Carveouts



# Introduction

For transactional lawyers, understanding the impact and prevalence of material adverse effect (MAE) carveouts in M&A agreements isn't academic. It's critical for helping clients achieve the best outcomes in deal negotiations, whether that means securing favorable terms, reducing risk, or avoiding costly surprises between signing and closing.

Increases in MAE-related disputes are historically correlated with periods of economic and geopolitical turbulence. With new uncertainty looming, from inflation to potential trade disruptions, dealmakers are scrutinizing MAE provisions more closely.

This report presents our analysis of the prevalence of MAE carveouts in private target M&A transactions. We examined publicly filed agreements from 2024 involving private companies acquired by public buyers, with deal values ranging from \$30 million to \$750 million. Our review excludes transactions involving bankrupt targets, reverse mergers, and divisional sales.

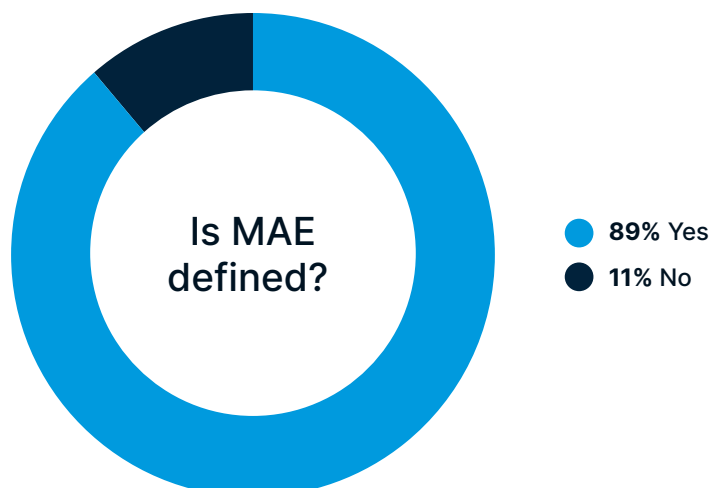
## Why MAE Clauses Still Matter

While MAE clauses are nearly universal, successful judicial findings that an MAE has occurred, justifying a buyer's termination, remain rare. In *Akorn v. Fresenius*, Delaware upheld a buyer's termination for the first time, citing a 50%+ EBITDA drop and regulatory breaches. In contrast, *Hexion v. Huntsman* failed on a modest earnings dip, and the English High Court in *BM Brazil v. Sibanye* reaffirmed that MAEs are not a fallback for failed diligence—they're a safeguard against unforeseen, sustained events.

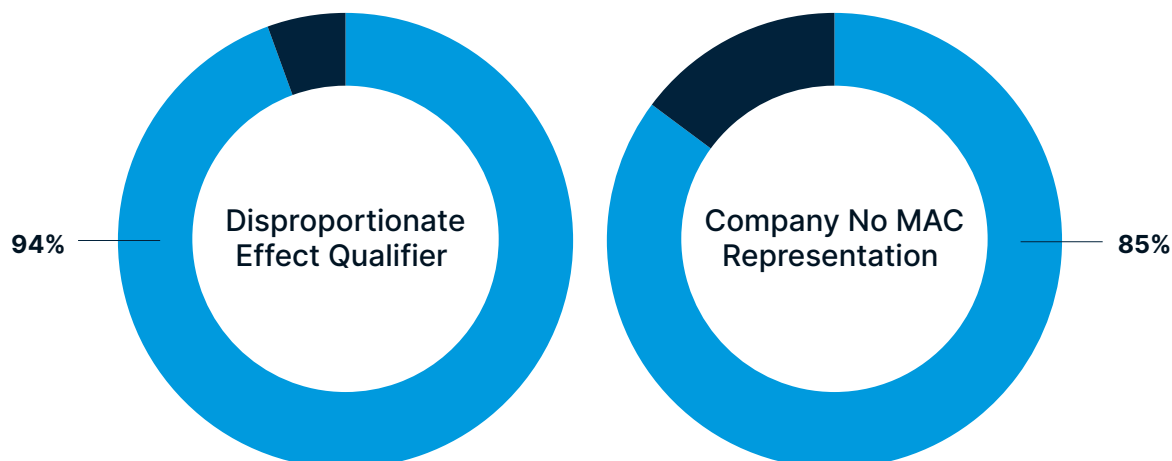
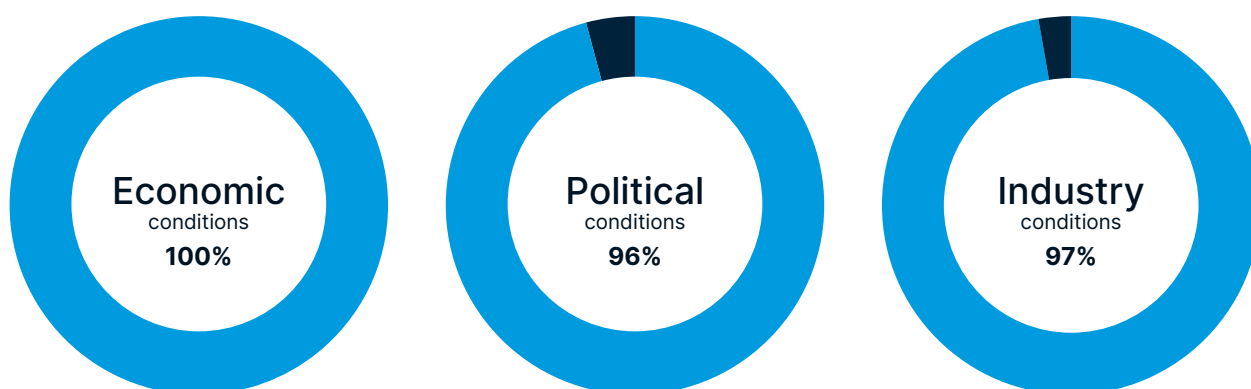
Using Litera [Foundation Insights](#), we reviewed the documents filed with the SEC's EDGAR in the year 2024. Powered by Litera AI+, Foundation Insights automatically identifies and extracts deal terms for M&A, real estate, credit agreements, and more. Our team of legal knowledge engineers—lawyers who have worked at leading global law firms—built fields, tested extensively against publicly available documents, that can identify common carveouts in MAE definitions with a high degree of accuracy.

By surfacing this intelligence directly from real-world deals, Foundation Insights turns precedent into practical guidance, saving hours of manual research and ensuring legal advice is backed by market reality, not guesswork.

# Results



Of the 72 agreements with MAE definitions, we found the following results among carveouts for economic conditions, political conditions, and industry conditions:



# Advising Sellers

When representing sellers, the goal is to minimize post-signing risk and ensure your client is protected from broad market shifts. Our analysis reveals consistent trends in how MAE provisions are drafted and negotiated. The insights below can help strengthen your approach and align with market standards—while still advocating for your client’s best interests.

- **Negotiate Broad Carveouts:** Since nearly all the agreements included carveouts for economic (100%), political (96%), and industry (97%) conditions, ensure these are robustly drafted to protect your client from systemic risks.
- **Push for Disproportionate Effect Qualifiers:** With 94% inclusion, this is standard—ensure it’s present and narrowly tailored to avoid undue exposure.
- **Include a No MAC Representation:** 85% of agreements include this—leverage it to reinforce the absence of material adverse changes at signing.

# Advising Buyers

Buy-side counsel must carefully assess risk allocation in M&A agreements—especially around MAE clauses and carveouts. Our review highlights prevailing market practices and areas where buyers can push for stronger protections. The following recommendations can help sharpen your negotiation strategy and ensure your client is well positioned.

- **Scrutinize Carveouts:** While ubiquitous, carveouts can dilute the effectiveness of the MAE clause. Consider narrowing or conditioning them where appropriate.
- **Negotiate Disproportionate Effect Standards:** Ensure the qualifier doesn’t overly limit your client’s ability to invoke an MAE.
- **Evaluate No MAC Representations Carefully:** Confirm they align with your risk tolerance and diligence findings.

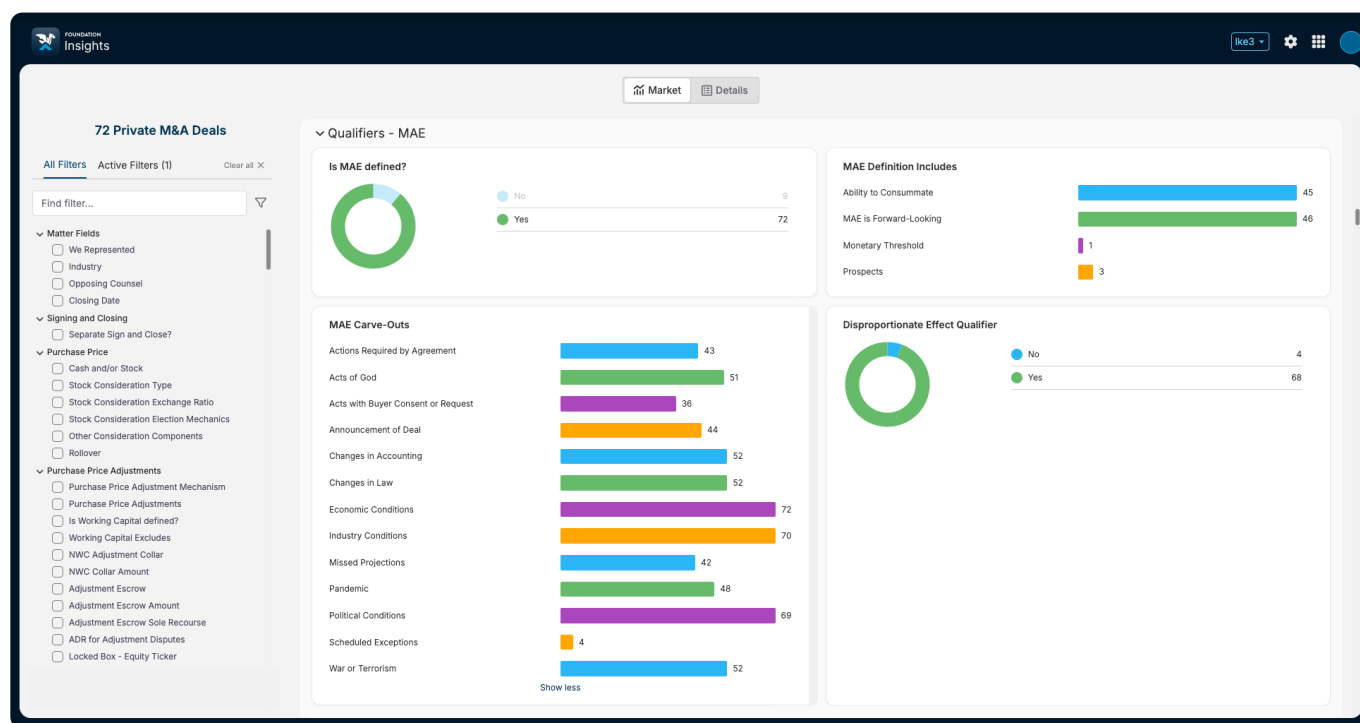
# Methodology

Our data set consisted of 81 M&A agreements filed on EDGAR between January 1 and December 31, 2024. We imported these agreements into [Foundation Insights](#), which instantly identified which had MAE definitions and what carveouts were included. Insights accurately identified these provisions, despite considerable variation in their drafting.



# Turn Data into Strategy: Insights for Smarter M&A Negotiations

With tools like Foundation Insights, legal teams on the buy and sell sides can use tested language to reduce negotiation friction and risk of ambiguity. With quick access to firm data, you can negotiate more confidently with statements like, “these clauses are market, as seen in x% of M&A agreements in this industry.” The power to immediately find thousands of examples of clauses and filter them by whether the firm represented a seller, buyer, lender, or borrower, is the kind of insight that transforms collective experience into strategic advantage. If you have uploaded your previous M&A agreements into Foundation Insights, you can also benchmark terms from new deals against terms of comparable deals from firm precedent to justify positions that differ from market norms—especially when pushing for tighter definitions or fewer carveouts.



The trends in this report highlight the value of data-driven drafting.

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