

# Food, Agribusiness and Beverage

---

## M&A and Intellectual Property webinar

5 December 2024





# Introductions



**Richard Fawcett**

Industry Leader – Food, Agribusiness & Beverage (UK)



**Dominic Rose**

Head of Corporate Client M&A, EMEA M&A and Transaction Solutions



**Sunneth Lawrence**

Client Manager  
IP Risk & Structured Solutions





# Sector expertise

**We understand your business and the industry in which you operate. This is demonstrated by our sector expertise:**



Aon clients represent **51%** of the **top 100** Food and Drink manufacturers in the UK including **8** of the **top 10** (The Grocer Top 150 Food & Drink Suppliers Survey, November 2023)



Globally, Aon advises **9** of the **top 10** largest food manufacturing companies in the world

Our UK Food & Drink Practice brings together our experts from across the UK and internationally. Our group meets regularly to share insights and best practice, but also brief colleagues on new and innovative solutions available for our clients



Our industry experts contribute regularly to our thought leadership communications, and these can be found on our **Practice website**



Aon is an Associate Member of the Food & Drink Federation and regularly support and attend its events

Over the last 5 years our claims consultants have **actively managed over £200m** of major losses in the Food & Drink Sector to accelerate positive claims settlements and avert crises

**Addo Foods** **Apetito** **Asda**  
 Associated British Foods **Bakkafrost**  
 Bernard Matthews **Bacardi** Bidfood  
**Boparan/2SFG** Brake Brothers Britvic  
 Country Style Foods **Cranwick**  
 Daniel Thwaites **Danone** David Wood Baking  
**Dawnfresh** First Milk Fox's Biscuits **Fentimans**  
 Frontier Agriculture **Greencore**  
 Hazlewood Foods **Hills Biscuits** Hovis  
**Iceland Seafoods** Kerry Foods  
**Kettle Produce** Lidl **Marr Seafoods**  
 Marstons **Martin Brower** Meadow Foods  
**McQueens Dairies** Morrisons **Mondelez**  
 Nestle **North British Distillery** Ocado Princes  
 Peters Foods **Pure Malt** Quintessential Brands  
**Saputo** UK S&A Foods **Scottish Salmon**  
 Scottish Shellfish **Simpsons Malts**  
 Samworth Brothers **Sofina Foods**  
 Strathmore Foods **Tesco** Tate & Lyle  
**Thatchers** Thomas Tunnock **Unilever**  
 Upfield Foods **Walkers** William Jackson Foods  
**Whyte & Mackay** Wyke Farms



# Aon's Insights

## Top Risks in the Food, Agribusiness and Beverage Industry

### Current Top 10 Risks

1

Commodity Price Risk or Scarcity of Materials

2

Supply Chain or Distribution Failure

3

Business Interruption

4

Cyber Attack or Data Breach

5

Climate Change

6

Weather or Natural Disasters

7

Damage to Reputation or Brand

8

Regulatory or Legislative Changes

9

Failure to Attract or Retain Top Talent

10

Product Liability or Recall

Source: Aon Global Risk Management Survey Results 2023





# Poll Question:

---

Are you expecting to be involved in any M&A activity (as seller or buyer) during 2025?





# How we support our clients in M&A

---









































# Our experience | Deal focus

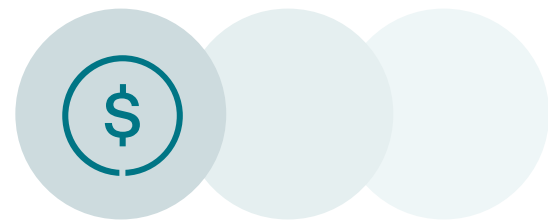
## A global footprint in trusted deal execution in the food & beverage sector

### Food & beverage

|  |   |  |  |  |  |
|--|---|--|--|--|--|
| <br>     | <br>     | <br>     | <br>     | <br>     | <br>     |
| <b>Wilderness Trail</b>  | <b>Wells</b>  | <b>Chef</b>  | <b>Refresco</b>  | <b>Dutch Seafood Co</b>  | <b>Grieg Seafood</b>   |
| Whiskey, EMEA  | Ice cream, EMEA   | Food distributor, UAE  | Beverage bottler, UK   | Food producer, EMEA  | Seafood, UK  |
| <br>     | <br>     | <br>     | <br>     | <br>     | <br>     |
| <b>Bay Group</b>   | <b>Addo Food</b>  | <b>SimplyCook</b>  | <b>Woowa Brothers Corp</b>   | <b>Illy Café</b>   | <b>Pret a Manger</b>   |
| Convenience food, UK   | Chilled food, UK  | Recipe kits, UK  | Food Delivery, S. Korea  | Coffee, Europe   | Restaurant, UK   |
| <br> | <br> | <br> | <br> | <br> | <br> |
| <b>Fox's Biscuits</b>  | <b>Burton Foods</b>   | <b>Wagamama</b>  | <b>Hovis Holding Ltd</b>   | <b>Grenade</b>   | <b>Harrogate Water</b>   |
| Confectionery, UK  | Confectionery, UK   | Restaurant, UK   | Bakery, UK   | Energy bar, UK   | Water, UK  |

# Aon M&A | what we bring

Insights & solutions to reduce volatility, enhance business performance and create value



## Transaction Advisory Services

Specialist due diligence

**Cyber, digital & tech** – tools & data-led approach to analyse, assess and, where appropriate, quantify value in terms of cybersecurity, intellectual property & technology

**People** – review, assessment and quantification of pensions, benefits, talent & related HR infrastructure, leveraging scale & global reach. Enabling post-deal integration processes

**Insurance commercial** – qualitative and quantitative analysis and advice on the insurance market & players, leveraging data & analytics

**ESG** – identification and assessment of key environmental, social and governance risks and opportunities



## Transaction Solutions

Event-driven risk

**M&A** – enhance deal returns & process with warranty & indemnity, tax insurance & deferred consideration insurance, supported by better diligence insights

**IPO** – ring-fence issuer & its directors for prospectus liabilities from launch, coupled with protecting & consolidating shareholder value with IP protection strategy, operational tech & digital resilience and executive compensation & reward arrangements

**Litigation** – lock in returns, reduce provisioning and help monetise awards with judgment preservation insurance and adverse judgment insurance



## Balance sheet & capital optimisation

Funding – access to capital efficiency

**Structured IP solutions** – IP strategy & valuation combined with insurance to facilitate asset-backed lending

**Credit solutions** – support & flex contractual covenants, including pension, decommissioning, company guarantee & payment obligations, supplier/receivables financing



# Transaction Solutions: tailored solutions for sell-side / buy-side

---

01

W&I insurance

02

Tax insurance

03

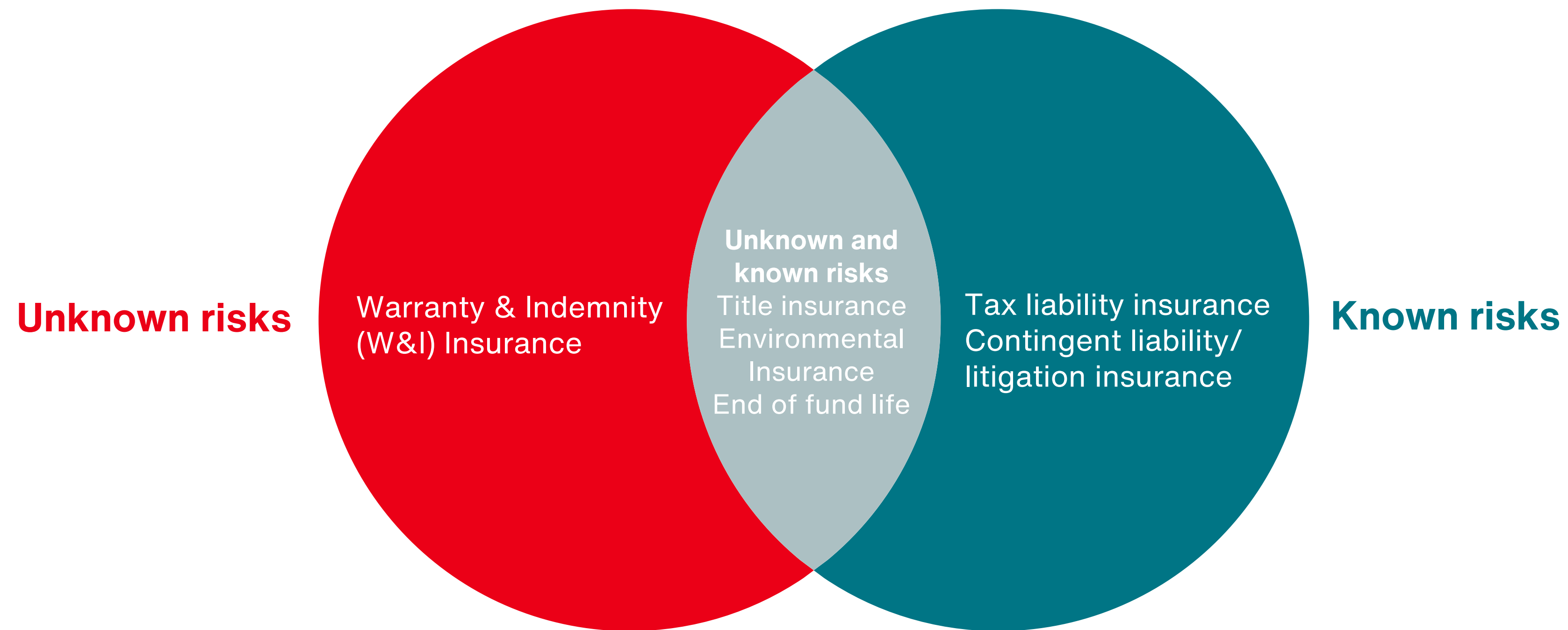
Contingent risk insurance



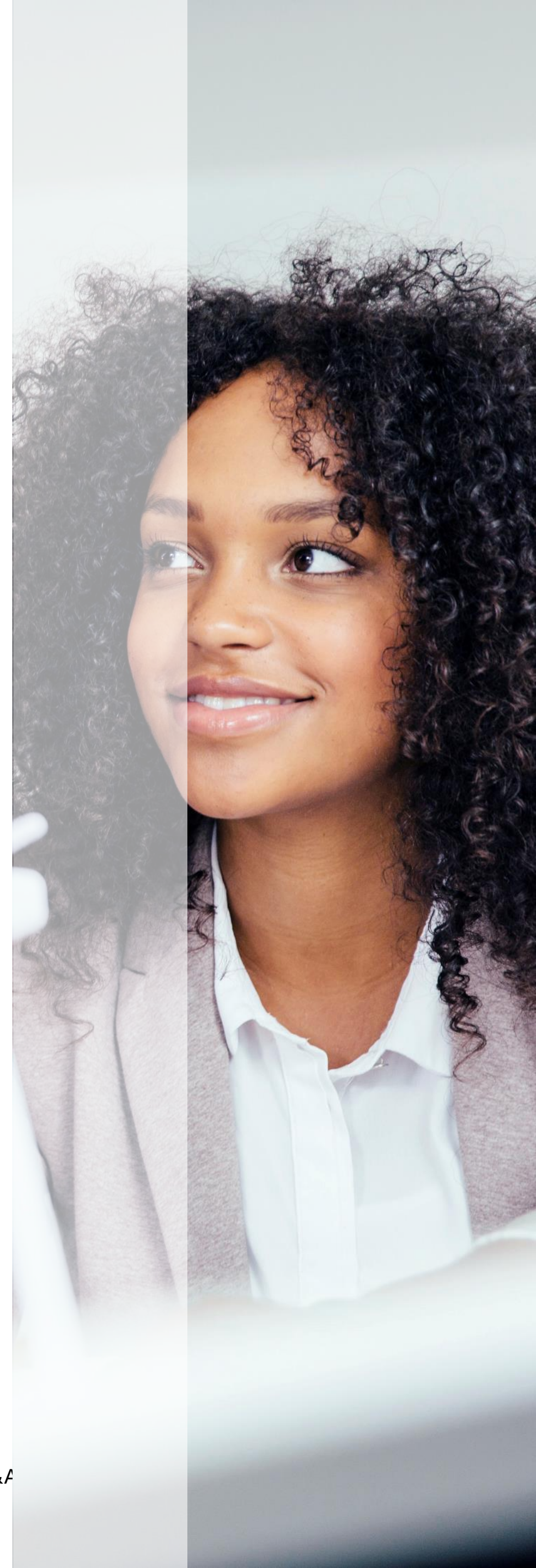


# An overview of transaction liability insurance solutions

Insurance markets provide an alternative capital source to de-risk, facilitate and enhance M&A transactions



Bespoke insurance solutions to cover both unknown and known risks





# W&I Insurance | what is W&I insurance

W&I Insurance protects parties in an M&A transaction from financial loss arising from unknown historic matters giving rise to breaches of warranties given by a seller to a buyer under a sale and purchase agreement (SPA).





# Strategic & tactical benefits of W&I insurance

## seller considerations

| Value benefits   | Process benefits   | Post-close benefits   | Planning to succeed   | Control  |
|--|--|---|---|--|
| <ul style="list-style-type: none"> <li>• Bridging the certainty gap without a price chip</li> <li>• Optimise capital efficiency: capital released from escrow / alternative to escrow</li> <li>• Extended cover limits and scope beyond SPA terms available</li> </ul> | <ul style="list-style-type: none"> <li>• Bid differentiation for buyers</li> <li>• W&amp;I can remove negotiation blocks and enable bidders to focus on more transaction-critical issues</li> <li>• Faster SPA negotiation</li> <li>• Facilitates exit for minority or passive co-investors</li> </ul> | <ul style="list-style-type: none"> <li>• Preserves relationships between buyer, management and seller</li> <li>• Buyer claims against highly-rated insurer instead of pursuing multiple claims against individual sellers</li> <li>• Clean seller exit</li> </ul> | <ul style="list-style-type: none"> <li>• Early identification of potential deal issues, allowing time to address thoughtfully</li> <li>• Transaction-critical issues</li> <li>• Maintaining competitiveness between bidders by placing them on an equal footing and aligned with desired SPA limitations</li> </ul> | <ul style="list-style-type: none"> <li>• Seller-initiated process can reduce coverage gaps through co-ordinated alignment of SPA &amp; W&amp;I</li> <li>• Can obviate need to negotiate &amp; arrange security package (PCG, LoC, escrow)</li> <li>• Lack of capacity for certain insurers can limit the number of bidder trees and thereby limit competition if bidders are left to approach the insurance market individually</li> </ul> |



Optimise sell-side strategy with clear communication of W&I approach and diligence expectations in the process letter



# Case study | Structuring W&I insurance on a European ‘Mega-deal’

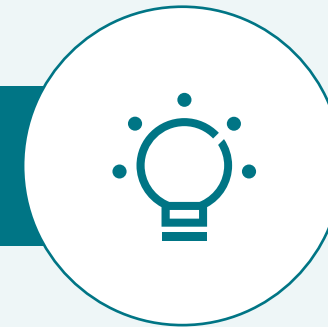
## Structuring and placing significant amount of W&I insurance capital in a competitive and complex cross-border auction

### Context



- A leading PE firm was disposing of their global white label drinks and beverage bottling business
- The target business footprint of 72 plant sites spanned two continents and included 13,000+ employees
- Mega-deal transaction size ~ EUR 6 billion
- Competitive auction process

### Solution



- Aon met deal challenges head on, leveraging its experience, market position, team capacity and global insurer relationships
- A “hard-staple” process was run on the sell side to an extremely tight timeline. This involved performing an underwrite on the sell-side, using vendor due diligence in order to tee-up a more streamlined process once a bidder was selected.
- We approached the market to understand appetite for a transaction of this nature and we were able to demonstrate we could obtain €800m+ of cover by utilising both strong market relationships as well as our capacity from Aon Bermuda.

### Outcome



- The buy-side team worked with the successful bidder to put together a very sizeable programme of insurance.



# Poll Question:

---

Have you come across, or ever considered using, tax insurance?





# Tax insurance | back to basics

## Transferring risk to facilitate transactions and enhance client value



### What is tax liability insurance?

Tax liability or tax opinion insurance can help a company reduce or **eliminate** its **exposure** to an **identified risk** of a loss arising from a successful **challenge by a tax authority** to the expected tax treatment of a proposed or historical transaction.



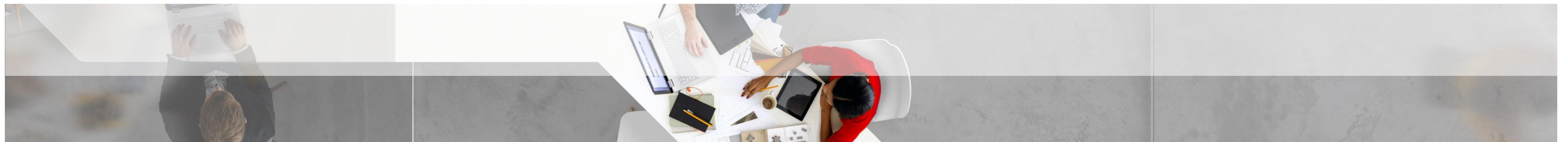
### What is covered?

- Losses arising from the failure to achieve the expected tax treatment
- Losses include tax, contest costs, interest, penalties and gross-up



### Key terms






- Premium is typically a one-off payment due at inception
- Policy duration is linked to statutory limitation period for a challenge
- Usually very few exclusions
- Definition of “insured tax event” and contents of letter of representations often negotiated





# Tax insurance | what risks can be insured?

Certain tax risks are more suitable for an insurance solution.

|   |   |
|---|---|
|    | <b>Low-medium probability but high impact risks</b>   |
|    | Resulting from a historical or proposed transaction where the law is not completely black and white   |
|  | <b>No appetite to insure aggressive tax avoidance / contrived structures</b>  |
|  | There must be a <b>sound legal basis</b> for the tax position being taken – cannot insure on the basis that a “mistake” will not be spotted                                     |
|  | Appetite <b>extends beyond M&amp;A</b> to non-transactional corporate risk, such as <b>restructurings</b> and <b>transfer pricing</b> exposures, <b>HNW</b> personal tax issues |





# Case study | Hive-down of IP assets (IP)

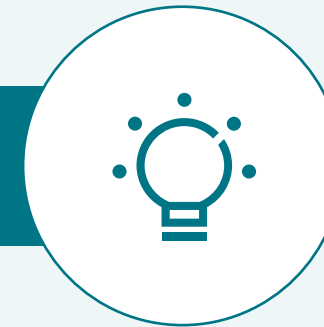
## Structuring tax and W&I insurance solutions helps unlock food sector deal

### Context



- The sale of a UK-based food business involved hiving-down IP assets to a newly formed seller-group subsidiary (“IP Newco”) and the subsequent sale of IP Newco to the buyer
- Achieving the hive-down process involved the prior transfer of IP assets within the sell-side group
- Deal structuring analysis identified a potential UK tax de-grouping charge relating to the IP hive-down which, if applicable, could be triggered on the sale of IP Newco to the buyer
- Contractually, the hive-down included put/call option arrangements – given the time/process involved – but it was imperative for the buyer to secure W&I cover for the SPA warranties at the earlier time of executing the put/call deed

### Solution



#### Tax risk:

- the parties had taken their own professional advice and were confident that the tax de-grouping charge was low risk; but the analysis was complex and the risk relatively material
- transferring this known risk to the insurance market could address the deal uncertainty in a commercially-enhancing way

#### W&I angle

- locking in W&I protection at the put/call option stage was a key priority for the buyer
- achieving this required the creation of an insurable interest for the buyer so that SPA warranties were deemed given at the put/call option stage

### Outcome

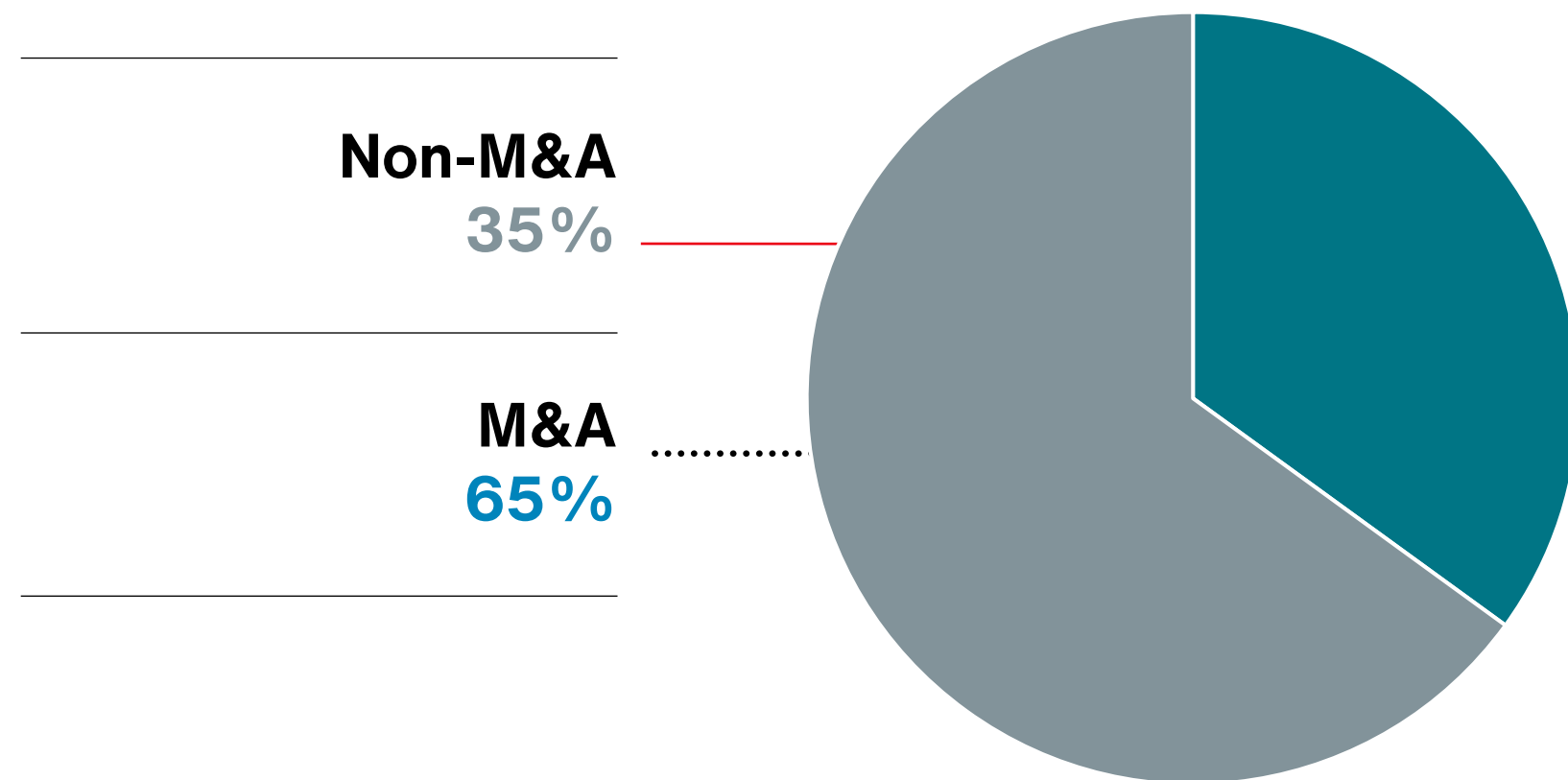


- Parallel tax and W&I insurance solutions were structured to provide simultaneous protection for the buyer, facilitating the timely acquisition of the business and related IP in a tax-efficient manner
- The buyer successfully transferred the de-grouping risk to the insurance market, thereby obviating the need to seek a seller indemnity or allocate capital against that contingent liability
- Structuring the W&I to provide ‘accelerated cover’ ensured that the deal timetable remained on track, notwithstanding the hive-down, preserving the buyer’s W&I protection and deal certainty



# Tax insurance | users of tax insurance

## M&A VS NON-M&A



There has been a significant increase in the use of tax insurance beyond just M&A transactions in the last two years

## EXAMPLES OF RISKS INSURED

- Internal restructurings or refinancings
- Cross-border payments (dividends, interest or royalties)
- Insolvencies, liquidations etc.
- De-grouping charges
- Debt for equity swaps
- Entity classification
- Tax treatment of earn-out payments
- Availability/existence of Net Operating Losses / base cost
- Validity of tax grouping/fiscal unity
- Applicability of transfer taxes (stamp, SDLT, RETT, FIRPTA etc.)
- HNW personal tax issues
- State aid?





# Contingent and Litigation Risk Solutions for Corporates and Financial Sponsors

## Contingent or Litigation Liability?

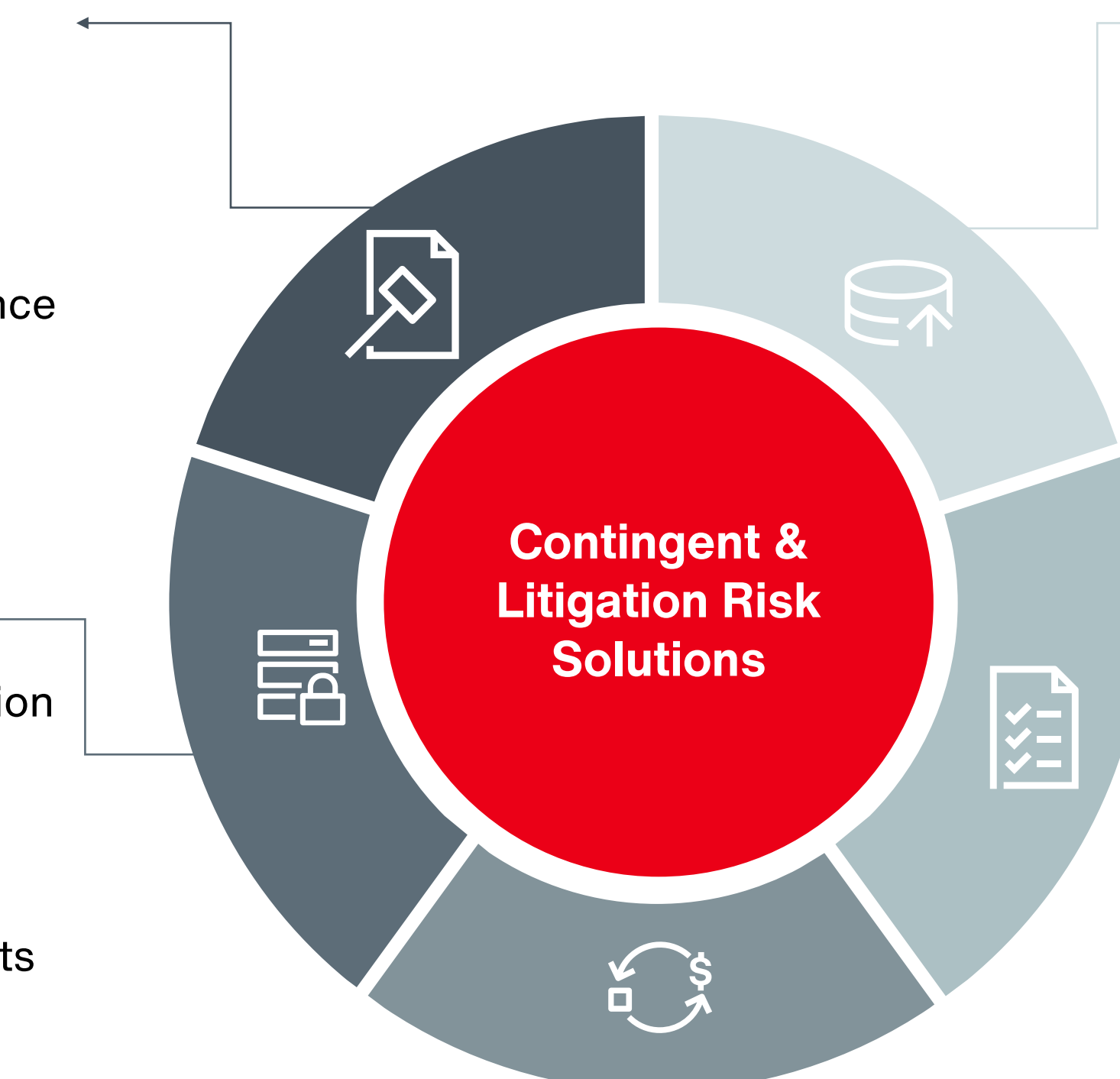
Exposure to a contingent liability or defendant in litigation that has a material impact on business operations?

**Solution:** Contingent or Adverse Judgment Insurance protects against the potential adverse outcome.

## Successful Monetary Award?

Successful monetary award in litigation or arbitration that may be overturned or reduced on appeal?  
Want to accelerate the proceeds of the award?

**Solution:** Judgment Preservation Insurance protects the value of the award and shores up the balance sheet. This can be combined with financing.



## Legal Cost Exposure?

Uncertainty on litigation or arbitration spend and exposure to opponent's legal costs?

Security for costs required in legal proceedings?

**Solution:** After the Event Insurance to protect against an adverse costs order or a Court surety bond.

## Identified Contingent Risks?

Exposure to specific identified contingent risks that could make or break a transaction?

**Solution:** Contingent Risk Insurance that facilitates the transaction.

## Outbound Claims?

Multiple claims against third parties where the value could be locked in or accelerated with financing?

**Solution:** Principal Protection Insurance combined with Litigation Finance could improve the balance sheet.



# Intellectual Property

---

01 IP Liability Insurance

02 IP Lending





# What is Intellectual Property?

| IP Type                      | Definition  | Example                  |
|------------------------------|---|--------------------------|
| <b>Patents</b>               | <ul style="list-style-type: none"> <li>• Design and/or functional use of a tangible good</li> <li>• Patents do not necessarily give its owner the right to use that design and /or function, but excludes others from using it</li> </ul> | AirPod case design       |
| <b>Trademarks</b>            | <ul style="list-style-type: none"> <li>• A recognizable sign, design, or expression that identifies a product and/or service that distinguishes its source from others</li> </ul>   | Nike Logo                |
| <b>Trade Secrets</b>         | <ul style="list-style-type: none"> <li>• Internal know-how, confidential information</li> </ul>   | Coca-Cola Secret formula |
| <b>Copyrights / Software</b> | <ul style="list-style-type: none"> <li>• Exclusive legal right to copy, distribute, adapt, display, and perform a creative work</li> </ul>  | Music lyrics, software   |



# Poll Question:

---

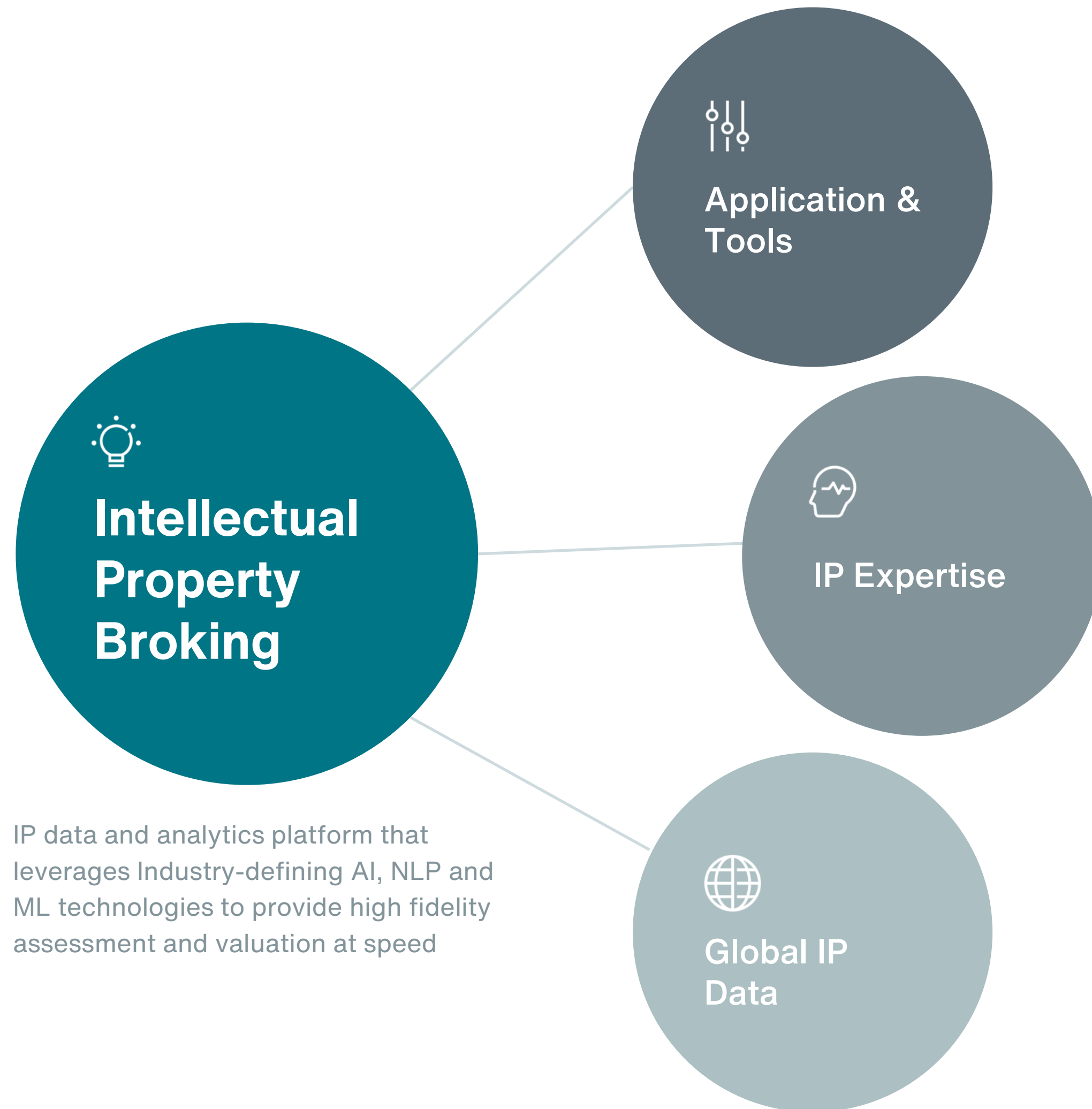
In the M&S v. Aldi case on Colin the Caterpillar, what IP rights did M&S have in the Colin the Caterpillar cake?





# Aon Intellectual Property Broking

## Our Global Team



**20+**

**Largest Dedicated IP Broking Team**

Chicago, New York, London, Singapore, & Bermuda

**\$2B+**

**Total Limits Placed**

**10+**

**Fortune 500 Clients**

**\$100M+**

**In IP Liability & CPI Claims Recovered**

### Industries Represented

**23%**

Technology

**30%**

Manufacturing

**28%**

Software

**19%**

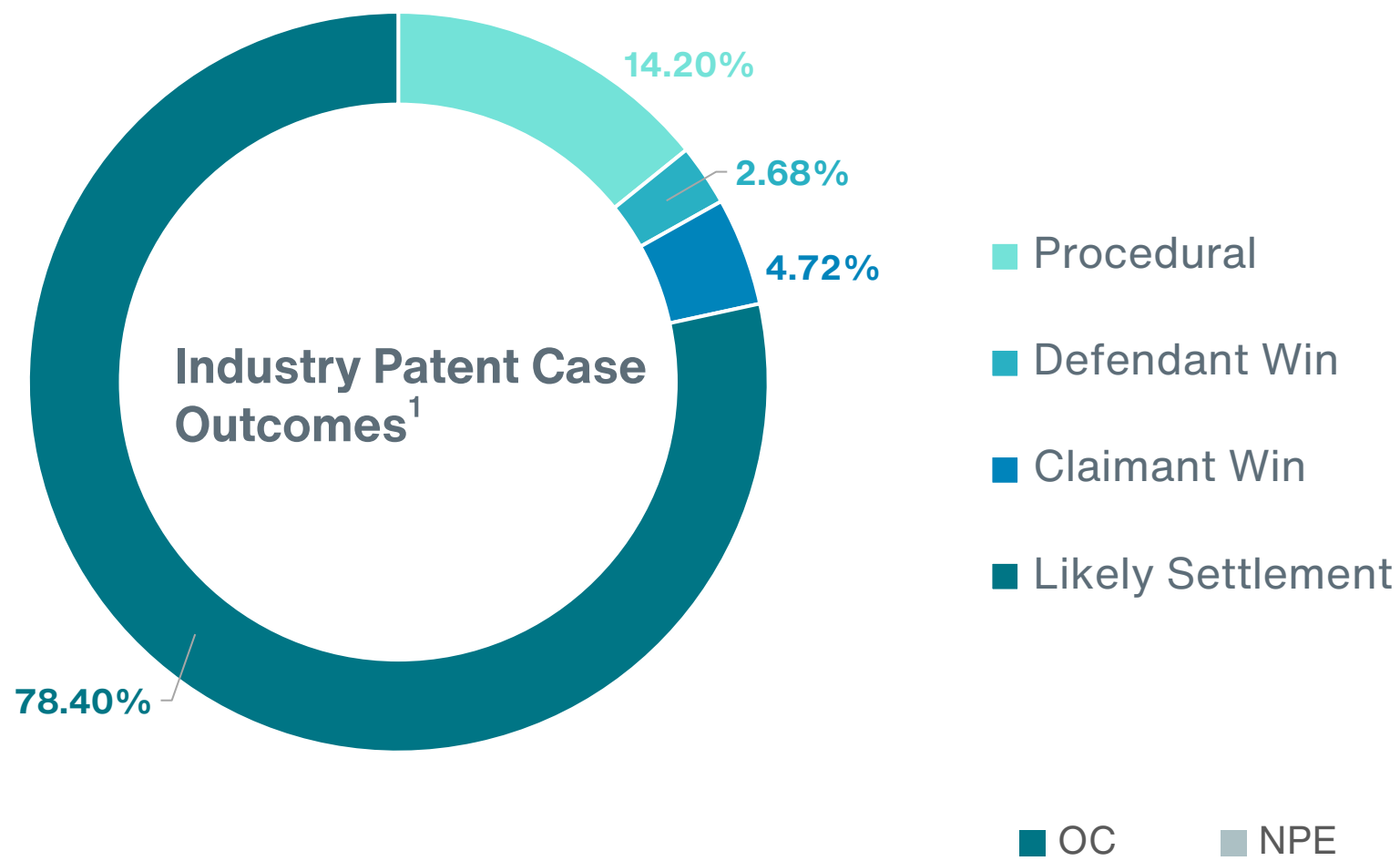
Other



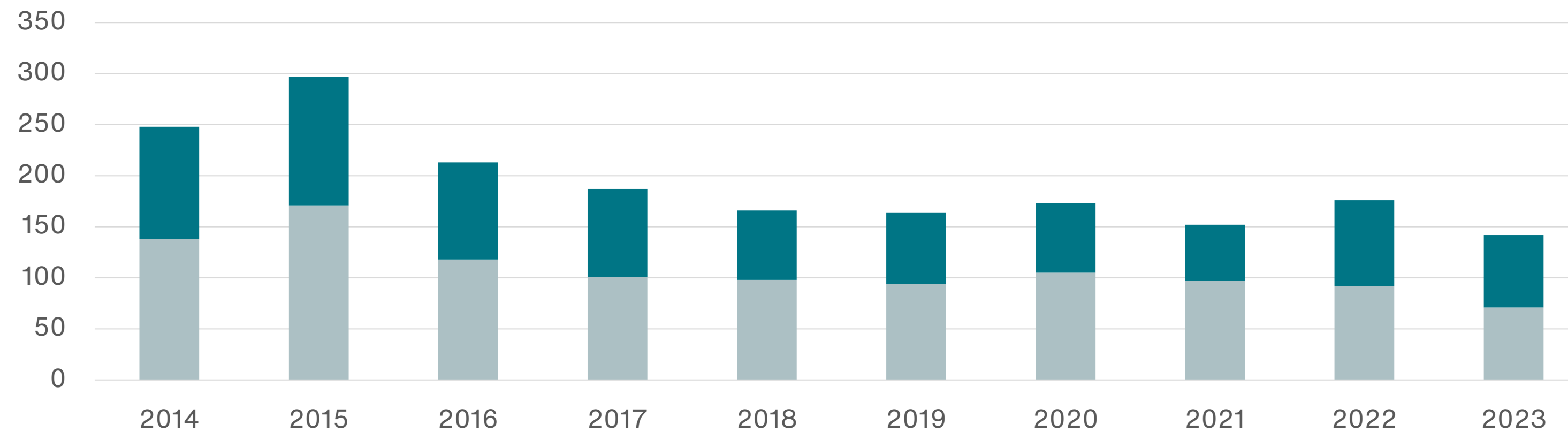
# Market Context

## Food and Beverage patent disputes

| Industry Patent Litigation <sup>1</sup> |          |
|---|----------|
| Average Number of Cases per Year:       | 173.8    |
| Average Case Duration:                  | 347 Days |
| Mean Damages:                           | \$13.34M |



### Patent Case Count



Source: Aon & Lex Machina, Data limited to US disputes only

| Technology Areas                      | Case count |
|---------------------------------------|------------|
| Nutrition and Health Science Products | 193        |
| Energy Drinks                         | 333        |
| Bottled Water                         | 54         |
| Ready to drink teas and coffees       | 82         |
| Sports drinks                         | 333        |
| Breakfast Cereals                     | 37         |
| Dips and Spreads                      | 68         |
| Grain based Snacks                    | 53         |
| Dairy Products                        | 84         |
| Baby food                             | 57         |

Source: Moat Metrics, US disputes only

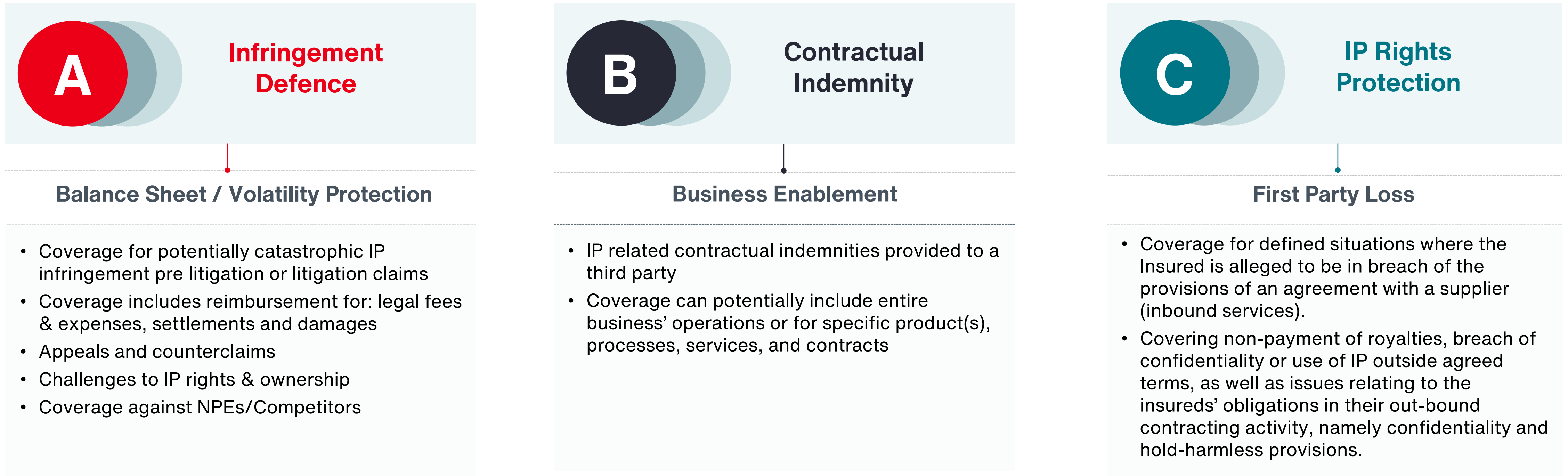
### Damages Awarded

| Area                            | Closing Date | Damages Awarded |
|---------------------------------|--------------|-----------------|
| Dips and Spreads                | 2021         | \$73m           |
| Energy Drinks                   | 2021         | \$29m           |
| Ready-to-Drink teas and coffees | 2019         | \$25m           |



# Capabilities and Solutions

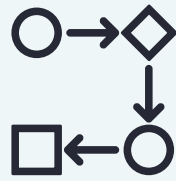


IP Liability Insurance can protect companies by covering against





# Capabilities and Solutions

## Additional Coverages Available

| Coverage Element   | What it Covers  |
|--|---|
|  <p><b>Business Interruption</b></p>  | <p>Covers the reduction in profit suffered by the Insured during a defined period as a result of injunctive relief or IP impairment such as loss of title, compulsory granting of license to a third party or invalidation or revocation of Insured IP. Note that these are sub-limited and restricted to the Business Interruption Indemnity Period.</p> |
|  <p><b>IP Rights Protection</b></p> | <p>Challenges to the Insured's rights in or ownership of IP, including validity, rectification, cancellation or revocation proceedings or applications to amend any register. Applications for entitlement for a post grant, grant of a compulsory license &amp; declaration of non-infringement.</p>   |
|  <p><b>Contract Enforcement</b></p> | <p>Provides cover for the legal costs and expenses incurred when the Insured needs to enforce their rights under a contract that controls the exploitation of their products/solutions or IP.</p>   |



# Aon's Insurance-Enabled Solutions

Aon offers a unique suite of insurance-enabled solutions, de-risking capital markets transactions for lenders and providing innovative funding solutions for borrowers

## Collateral Protection Insurance

- Aon's unique access to the insurance market facilitates a solution that protects from collateral value impairment
- **Collateral Protection Insurance (CPI)** insures the value of the collateral in a transaction, which pays on failure to realize the value

## Capital Formation via IP-Backed Lending



**Deal Size:** \$20m-\$100m



**Structure:** 3-4 years, some amortization or interest only throughout (cash & PIK) with bullet payment at maturity



**Equity Requirement:** No equity or warrants between 0%-5%



**Cost of Capital:** All-in between 13%-17%  
 ▪ 4%- 8% margin,  
 ▪ 5%- 7% insurance premium per annum



**Industry Focus:** Technology, Industrials, A&D, MedTech, Consumer, FinTech, & more

## Typical Borrower Profile



Inflection point for revenue growth and profitability



In need of runway capital to fund milestones



Seeking alternative to dilutive equity raise



Significant IP investment to serve as loan collateral



Opportunity to enhance IP value during loan period



Aon network can provide meaningful value-add partnership

IP assets include: patents, trade secrets, know-how, copyrights, trademarks / brand, data rights, source code, regulatory rights, long term agreements, licensing agreements

# Case study | Agri-Tech High Growth Business

## Innovation in IP: unlocking debt capital for IP-backed loan.

### Context



- Indigo Ag, a high-growth agri-tech business, needed funding for a key phase of its corporate journey as the monthly cash burn continued.
- Although IP-rich, the business had limited physical assets on which to secure traditional debt finance and lenders struggled to assess and value the IP portfolio
- Keen to avoid dilution from third party equity investment at this stage of Indigo's development, but prepared to offer the IP portfolio as collateral, the shareholders sought an alternative solution from Aon

### Solution



Aon structured an insurance solution to protect the lender with respect to the collateral.



### Outcome



- Indigo secured access to the debt funding that it sought, and the lender obtained sufficient insight, protection and ongoing support with respect to the intangible collateral offered by Indigo as security to advance the loan

“In a first of its kind deal, Aon leveraged an approach that articulated the value of our IP – making it a true capital asset – which allowed us to secure a significant amount of non-dilutive debt financing.”

**Jim Young, Chief Financial Officer  
Indigo Ag**



# Questions and answers

---





# Contact Us

## Dominic Rose

Head of Corporate Client M&A, EMEA

[dominic.rose1@aon.co.uk](mailto:dominic.rose1@aon.co.uk)

+44 (0)7769 364701

## Sunneth Lawrence

Client Manager – IP Risk and Structured Solutions

[sunneth.lawrence@aon.co.uk](mailto:sunneth.lawrence@aon.co.uk)

+44 (0)7796 938 617

## Richard Fawcett

Industry Leader – Food, Agribusiness & Beverage (UK)

[richard.s.fawcett@aon.co.uk](mailto:richard.s.fawcett@aon.co.uk)

+44 (0)7774 751 378

<https://www.aon.com/en/industries/food-agribusiness-and-beverage>



## About Aon

**[Aon plc](#) (NYSE: AON) exists to shape decisions for the better — to protect and enrich the lives of people around the world. Through actionable analytic insight, globally integrated Risk Capital and Human Capital expertise, and locally relevant solutions, our colleagues provide clients in over 120 countries with the clarity and confidence to make better risk and people decisions that help protect and grow their businesses.**

Follow Aon on [LinkedIn](#), [X](#), [Facebook](#) and [Instagram](#). Stay up-to-date by visiting Aon's [newsroom](#) and sign up for news alerts [here](#).

While care has been taken in the production of this document, Aon does not warrant, represent or guarantee the accuracy, adequacy, completeness or fitness for any purpose of the document or any part of it and can accept no liability for any loss incurred in any way by any person who may rely on it. Any recipient shall be responsible for the use to which it puts this document. This document has been compiled using information available to us up to its date of publication and is subject to any qualifications made in the document.