BCLP. Client Intelligent

M&A DISPUTES

OVERVIEW

BCLP's M&A Disputes team handles a wide range of disputes arising out of complex merger & acquisition transactions.

Recognized by *Legal 500* as a "Firm to Watch" for M&A Disputes, our team counsels on and litigates disputes of all sizes in courts and arbitration tribunals across the globe. We are intensely committed to carrying out our clients' business objectives as effectively and efficiently as possible, whether that means trying a dispute to a final decision in an arbitration or trial or by executing litigation strategies to leverage a negotiated resolution.

WORKING CLOSELY WITH OUR LEADING MID-MARKET M&A PRACTICE

Our mid-market M&A practice is annually ranked in Top 20 for volume of U.S. M&A deals. We work together on a range of pre-dispute, enforcement and defense issues, including:

- assessment of critical due diligence issues;
- contract negotiations and risk-mitigation;
- pre-dispute strategy and negotiations; and
- enforcement or defense of a party's obligations once a deal is complete.

Our experience with transaction-related litigation includes:

- Breach of representation and warranty claims
- Indemnification claims
- Representation and warranty insurance
- Avoiding transactions upon the occurrence of a material adverse event or failure of closing condition
- Working capital and other purchase price adjustment disputes
- Earnout disputes

- Pre-closing disputes
- Commercial non-compete
- Non-solicitation obligations and other restrictive covenants

MEET THE TEAM

Meryl Macklin

Partner, San Francisco

meryl.macklin@bclplaw.com
+1 415 268 1981

Herbert R. Giorgio

Partner, St. Louis

herb.giorgio@bclplaw.com
+1 314 259 2417

Joby Davies

Partner, London

joby.davies@bclplaw.com
+44 (0) 20 3400 4456

RELATED PRACTICE AREAS

- Business & Commercial Disputes
- Class Actions
- Corporate
- Finance

EXPERIENCE

- Defending seller in $250 million against claims for breach of reps and warranties and fraud in connection with alleged customer and operational issues underlying sale of healthcare business; Plaintiff is seeking damages and rescission of entire transaction
- Represented numerous investor and private equity clients in connection with various claims for indemnification, breach of reps and warranties, and fraud in connection with the sale of various businesses in hospitality, healthcare, road construction, telecommunications, logistics, analytics, consumer goods, energy, software, and other industries.
- Defended seller in defense of claims for diminution in value and specific damages alleging theories of indemnification and breach of reps and warranties concerning alleged employment issues, tax liabilities, and related issues; settled matter for small percentage of original claim.
- Defended seller against claims of fraud, indemnification, breach of reps and warranties, and various investigations by U.S. Attorney's office and various regulatory agencies in connection with a $550 million sale of a healthcare business; all contemplated charges were dropped and civil claims were settled for an amount below the funds remaining in the escrow account
- JWT v. Liberty, Delaware Chancery Court (May 2019). Defended buyer against breach of contract claims in expedited action seeking specific performance of obligation to close transaction where certain closing conditions not satisfied
- Confidential ICC arbitration, London, England (2018). Defended Fortune 500 seller of business against various breach of rep and warranty claims in connection with $335 million sale of medical imaging business
- Confidential Arbitration, St. Louis, MO (April 2017). Defended seller of business in working capital adjustment arbitration involving claim of nearly $10 million dollar downward adjustment of working capital

- Advised seller on rep and warranty claim arising out the sale of a portfolio of residential properties
- Represented private equity investor in breach of reps and warranties and fraud claim against selling shareholders in connection with an acquisition of a software company.
- Represented large software company in multiple breach of reps and warranty claims in connection with acquisitions.
- Confidential Arbitration, Administered by JAMS (San Francisco, CA)(June, 2014)(complete victory in defending claim of approximately $48 million brought against vertically integrated solar industry client by former shareholders of an acquired business asserting amounts due under an earn-out provision in merger agreement)
- Confidential Arbitration, St. Louis, MO (June 2015) (secured award of $2.3 million for seller of business in working capital adjustment arbitration where buyer had claimed it was entitled to a $42 million downward adjustment of working capital – which was more than 30% of the deal purchase price)
- Confidential Arbitration, San Francisco, CA (June 2014)(defended earn-out claim of approximately $48 million brought against publicly-traded, leading clean energy projects developer by former shareholders of an acquired business asserting amounts due under an earn-out provision in merger agreement; obtained complete defense verdict after six-day arbitration)
- Defended Fortune 500 equipment manufacturer in federal lawsuit claiming it wrongfully failed to pay $15 million multi-year earnout
- Coordinated indemnification disputes in group of 300+ lawsuits
- Trial and successful defense of a multi-year earn-out claim of over $45 million
- Argued appeal concerning arbitration and earn-out issues before U.S. Court of Appeals (Sixth Cir.)
- Receivables Management Partners Holdings v. RMP Group, Circuit Court of Cook County, IL (July, 2015) (represented buyers of receivables management business claiming breaches of representations in purchase agreement)

RELATED INSIGHTS

News

Apr 25, 2024

BCLP Ranked in Legally Israel 100

News

Dec 19, 2023

BCLP Earns Honors in Paris from Décideurs for 36 Practice Areas

Insights

Dec 01, 2023

Looking Forward - the future of (compulsory) ADR in business disputes and the impact of Churchill v Merthyr Tydfil

Considered as a cheaper, quicker and less stressful mode of dispute resolution, alternative dispute resolution (“ADR”) is no longer seen as an “alternative”, and indeed has been re-named “NDR” (negotiated dispute resolution) to reflect that. Instead, it is becoming an integral part of the dispute resolution process – one which is focussed on achieving earlier and less costly resolution over which parties have control rather than engaging in an often expensive, drawn-out dispute before the court with an uncertain outcome. Here we explore where its future lies and what this means for your business.

Insights

May 23, 2023

Drafters beware! Court of Appeal on the significance of express terms

Every so often the Court will reaffirm the primacy of express terms while re-stating the rule that implied terms can only be relied on to the extent they are (i) so obvious as to go without saying, or (ii) necessary to give an agreement business efficacy. The latest is Contra Holdings Ltd v Bamford [2023] EWCA Civ 374, handed down by the Court of Appeal last month. This commentary will come as no surprise to practitioners, and yet it serves as an important reminder that implied terms should not be relied upon as a fall-back where express drafting falls short.

Insights

Sep 29, 2020

Joint mediation protocol bridging Singapore and Japan

On 12 September 2020, the Singapore International Mediation Centre (“SIMC”) and the Japan International Mediation Center (“JIMC”) signed a Memorandum of Understanding on the operation of a joint protocol (the “Protocol”) which allows cross-border disputes to be resolved through expedited, economical and effective mediation procedures.The Protocol, together with the Singapore Convention on Mediation which came into force on the same day, seek further to advance mediation as a useful way of resolving disputes efficiently and economically.