

Jon Lang Mediation

Mergers & Acquisitions – mediation examples

a claim under a share purchase agreement involving allegations of non-disclosure and breaches of warranty;

a dispute concerning the calculation of an 'earn out' following an acquisition, with discussion focusing on competing calculations of EBITDA;

a post-completion dispute concerning calculation of an earn-out payment raising issues of rectification of the SPA, the ramifications of rectification on a subsequent expert report valuing earn-out, and alleged manifest error in the expert report; various cases involving disputed valuations of shares, loans and other assets, many involving the presence of valuation experts;

a dispute arising out of the proposed de-merger of certain entities within a group following a dispute between shareholders, with the valuation of various pieces of land and the sharing of various third party contingent liabilities being very much in issue;

various cases involving disputed valuations of shares, loans and other assets, many involving the presence of valuation experts;

an M & A warranty dispute arising out of alleged breaches of environmental (and other) warranties concerning the general binding rules under the Environmental Permitting Regulations (England and Wales) 2016 (the EPR 2016) and the Building Regulations 2000 (amended by SI 2001/3335) relating to sewage/wastewater treatment;

a telecoms dispute arising out of the acquisition of a third party telecoms company;

a claim by vendors of a business for the balance of consideration said to be owing following an acquisition by a private equity firm and subsequent adjustment of price, with cross claims of fraudulent misrepresentation;

a dispute arising out of a Warranty and Indemnity insurance policy taken out by a private equity firm in connection with a major acquisition, with argument focusing on the proper calculation of loss and a detailed analysis of the value of the acquired business on a warranty true vs warranty false basis;

a claim arising out of a failure of an acquirer of a business to claim on a Warranty and Indemnity Policy taken out as part of the acquisition, and the effect of that (i.e. whether a condition precedent or not) on a breach of warranty claim brought against the vendor involving a close examination of the true nature of the claims of the acquirer and Policy exceptions;

a breach of warranty claim arising out of an M&A transaction in the care home sector;

several mediations arising out of business/company sale and purchase agreements including those concerning non-disclosure/breach of warranty claims and the calculation of loss in respect thereof; disputes in relation to materiality of non-disclosures; disputed interpretations of seller protection/claim reduction provisions; deferred consideration and earn-out provisions;

a post-completion dispute arising out of an M & A transaction concerning an allegation that the target business was running a regulated payment service within the financial services regulatory perimeter and should have been licensed pursuant to the Payment Services Regulation 2017;

a dispute concerning alleged misrepresentation and breach of warranty by the acquirer of a law firm, the debate focusing on proper accounting for WIP, and interpretation of certain tax and other covenants.

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