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# Deal Points

The Newsletter of the Mergers and Acquisitions Committee

## FROM THE CHAIR Scott T. Whittaker

I look forward to seeing many of you in my home town of New Orleans at the next meeting of the M&A Committee, which will be held at the Hyatt Regency Hotel on April 7 and 8, as part of the ABA Business Section Spring Meeting. As a member of the Host Committee for this meeting, I can promise that this will be a unique experience for all who attend!

Our subcommittees and task forces will meet throughout the day on Friday and Saturday, concluding with our full Committee meeting Saturday afternoon. A complete schedule is set forth at the end of this issue of *Deal Points*. Some of the highlights of our subcommittee and task force meetings are also described in the subcommittee and task force reports below. If you are unable to attend in person, please consider participating by teleconference. You can find the dial-in information for each task force, subcommittee, and the full Committee meeting at the end of this issue of *Deal Points*.

A special note of thanks to our sponsor for this weekend: **Practical Law/Thompson Reuters**. On behalf of the Committee, THANK YOU!

### **Deal Points Changes**

Please check out the new section of *Deal Points* that made its debut in our last issue, titled, "What's New & Trending." This section features short descriptions of and/or excerpts from upcoming publications or other M&A Committee work product as well as other subcommittee or task force content that should be of interest to Committee members. If you have any material that you want to suggest for the "What's New & Trending" section, please let Ryan Thomas, Editor of *Deal Points*, know.

### **Leadership Changes**

We have some Committee leadership changes that will take effect at our New Orleans meeting.

Freek Jonkhart will conclude his term as Co-chair of the International M&A Subcommittee, and Rick Silberstein will step up from his Vice-chair position to take over as Co-chair of that

subcommittee along with Franziska Ruf. Freek will be retiring, to enjoy "life after law" with his family. Freek has been an active member of the M&A Committee for many years, and has contributed greatly to the success of the Committee, especially through his involvement in our International M&A Subcommittee. Freek, we will miss you!

Steve Kotran will conclude his term as Co-chair of the Financial Advisor Task Force. Brad Davey, who has been serving as Co-chair along with Steve, will continue to lead the task force as the sole Chair. Steve was a co-founder of the Financial Advisor Task Force, and has led the task force since its inception. We thank Steve for his leadership and hard work on the task force, and look forward to his continuing involvement in the task force and other M&A Committee initiatives.

Tatjana Paterno will move from her position as Vice-chair of the Membership Subcommittee, to become Vice-chair of the Private Target Merger Agreement Task Force. On that task force Tatjana will work with Co-chairs Amy Simmerman and Melissa DeVincenzo on creating what promises to be yet another of our "must have" publications for the M&A practitioner.

### **Fall Meeting in Chicago**

After New Orleans, our next meeting will be September 15 and 16 in Chicago, in conjunction with the ABA Business Law Section Fall Meeting. We are looking for ideas for educational programs for that meeting. For more information about the types of programs we are seeking, see George Taylor's Programs Subcommittee write-up in this issue of *Deal Points*. Of course, we will also have our substantive subcommittee and task-force meetings, as well as some great dinners and socializing in Chicago. Please save the date and plan to attend if you can.

If you have any questions concerning our meeting in New Orleans, please don't hesitate to ask. I look forward to seeing many of you in The Big Easy!

## FROM THE EDITOR Ryan D. Thomas

"The world as we have created it is a process of our thinking. It cannot be changed without changing our thinking."  
- Albert Einstein

What was life like before smartphones? What will life be like in 10 years? According to Klaus Schwab, Founder and Executive Chairman of the World Economic Forum, the "Fourth Industrial Revolution" or twitter hashtag #4IR will completely change the way we operate as humans. The 4IR "[i]s characterized by a range of new technologies that are fusing the physical, digital and biological worlds, impacting all disciplines, economies and industries, and even challenging ideas about what it means to be human." There is a lot of press of course reminding us that we as lawyers are not immune to the changing tides. In this edition of *Deal Points*, our Deal People feature highlights two individuals who are already going paperless or focusing on digital communications in an effort to row with this current, not against. Many of us likewise have seen the new waves of technologies designed to enhance attorney work flow and productivity, utilize artificial intelligence or use technology to streamline tedious and time consuming (and therefore expensive) aspects of our work as deal lawyers, such as more efficiently managing the deal closing process. Ultimately our embracing many of these new (and to be developed) technologies and related services may be able to enhance our client service and experience, in addition to helping save ourselves and our clients time and costs. I hope you will walk away with a few ideas or just a shift in perspective on how to manage or embrace the new technologies and brave new world that perhaps awaits us. As always, thank you to all of those who continue to contribute to the publication. I look forward to seeing you in New Orleans!

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## DEAL TRENDS: ESCROWS AND HOLDBACKS IN CARVE OUT TRANSACTIONS

Rita-Anne O'Neill – Chair of Deal Points Study on Carveout Transactions  
*Sullivan & Cromwell LLP, [oneillr@sullcrom.com](mailto:oneillr@sullcrom.com)*

The Market Trends Subcommittee annually releases Deal Points Studies on recently announced public and private company acquisitions, and later this year, the Subcommittee will be releasing a brand new Deal Points Study on Carveout Transactions. We anticipate that the study will be a new exciting resource for practitioners to utilize in negotiating agreements and understanding the market with respect to carveout transactions.

A carveout transaction is the sale of a business line, division or portion of a larger company, pursuant to which the seller remains as a separate business that operates as a going concern. By their nature, carveout transactions combine many aspects of public company and private company M&A and also raise their own unique set of issues.

The Deal Points Study on Carveout Transactions currently includes analysis of various data points in carveout transactions that were announced between January 1, 2015 and June 30, 2016. After eliminating agreements that did not meet our study criteria, we had 92 agreements from this period and from which we obtained our raw data. We are currently in the process of adding agreements from the second half of 2016 as well as data points on specialist topics of tax, intellectual property and executive compensation and benefits.

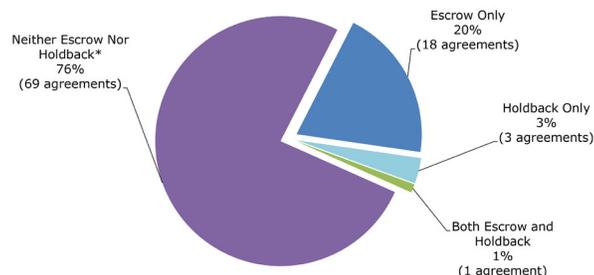
One particularly interesting topic we studied was the use of escrows and holdbacks for a seller's indemnification obligations. As shown in the chart below, 76% of carveout transactions that provide for seller indemnification do not include either an escrow or a holdback for such indemnification obligations.

These results differ significantly as compared to private deals in 2014 for which only 21% of agreements that contain survival provisions did not include an escrow or holdback. The low frequency of escrows and holdbacks in carveout transactions is consistent with expectations because there is a seller that remains to answer for any potential future indemnity claims.

As illustrated in the chart below, the typical length of an escrow period is from 12-18 months, which is consistent with the most common survival period for general representations.

### Escrow and/or Holdback for Seller Indemnification Obligations

(subset: 91 agreements with Seller indemnification)

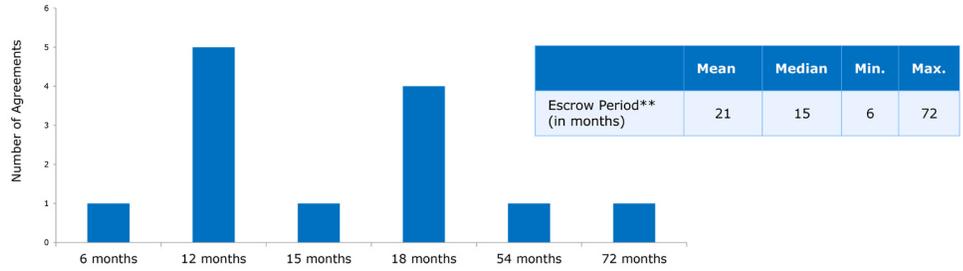


\* Includes one agreement that refers to an escrow agreement that is not provided, and there is no indication as to whether the escrow agreement applies to Seller indemnification obligations.

As an alternative (or a supplement) to an escrow or a holdback, parties to a carveout transaction may seek to obtain representations and warranties ("R&W") insurance. The utilization of R&W insurance has significantly increased in the past few years as terms have become more favorable, the process of obtaining insurance has become more efficient and insurance has become more

### Length of Escrow Period

(subset: 19 agreements with an escrow for Seller indemnification obligations)\*\*



\*\* Excludes six agreements with an escrow for Seller indemnification obligations, but for which the length of the escrow period was not publicly disclosed.

widely accepted within the practice of M&A. If insurance is obtained, the size of the escrow (if there is one) is generally significantly reduced below what would otherwise be considered market by the parties. Of the 92 agreements in our sample set, only five expressly contemplated the purchase of R&W insurance.



## GOT NEWS & TRENDS?

Ryan D. Thomas – Editor

Bass, Berry & Sims PLC, [rthomas@bassberry.com](mailto:rthomas@bassberry.com)

Are you following any new deal trends or have other news relevant to our committee? If so, we want to share your content. Simply contact us via email ([dealpoints@bassberry.com](mailto:dealpoints@bassberry.com))

# Diligencing China Inc: Getting Behind the Curtain in China's [Continuing] West-Bound Buying Spree

By Jingyi Li Blank  
Director, Hong Kong, *Mintz Group*

In mid-2016, a little-known consortium of Chinese investors, the Sino-Europe Sports Investment Management Changxing Co., made an \$825 million bid for the storied Italian soccer club, AC Milan, then owned by former Italian Prime Minister Silvio Berlusconi. The group supported its bid with documentation of corporate accounts purportedly held with the Bank of Jiangsu, a regional Chinese bank.

However, this documentation was later found to be questionable, and the Bank of Jiangsu denied that it had ever issued the bank statements, according to news articles. In March 2017, the obscure Chinese consortium lost the backing of its state-owned partner, and Bloomberg reported questions about the deal's viability.

## Soaring M&A

As China's economic power has grown, so has its appetite for acquisitions. In recent months, for the first time China overtook the United States as the world's largest player in cross-border mergers and acquisitions, with over \$200 billion of deals announced in 2016, according to financial data provider Dealogic. Europe and the United States have been, and likely will continue to be, the key focus of China's investment.

But dealmakers in the United States and Europe face a dilemma on whether to forego ostensibly "safer" offers from Western buyers in favor of higher bids from Chinese buyers, which are perceived to be riskier in regulatory or reputational terms. The question arises – how can Western companies on the auction block guard against these risks?

The answer lies in conducting proper due diligence. In many cases, Chinese companies (especially those that make unsolicited offers) have no international deal experience. U.S.- and U.K.-based M&A advisors, bankers and lawyers have no idea who these Chinese players are. Using due diligence as a tool to understand Chinese buyers who have shown a willingness to offer big premiums will allow sellers to maximize value from their sale – and also to sleep at night.

It goes without saying that fraud and corruption are all too common in Chinese corporate life; China-based reverse merger frauds are but one example.

In January 2017, a federal courtroom in Manhattan witnessed the last act in one of the oddest due-diligence disasters in recent Chinese business history. A U.S. district judge ruled that a company named Puda Coal and its chairman should pay \$228 million for misleading investors about its assets in U.S. securities filings. Puda went public in the United States through a reverse merger in 2005 and began trading in 2009. In 2010, prospective investors bought Puda's share offering.

The only problem was that the company was allegedly a shell with no assets, and shares collapsed within a year. The asset transfer out of Puda was documented in publicly available Chinese corporate records before the offering, according to news articles.

Just in recent weeks, the Chinese corporate bond world was shaken up by two cases of forged bank documents. In December 2016, China Guangfa Bank said documents and corporate seals in its name had been forged in a guarantee document for a bond offering, press accounts said. The bonds defaulted. Around the same time, the brokerage Sealand Securities said employees had allegedly conducted more than \$2 billion of bond trading using a forged company seal, news reports said. Sometimes what is on paper in China cannot be taken at face value.

## Outbound Investment as a Policy Tool

The government and private sectors in Asia are more closely intertwined than in the West, and an analysis of political and regulatory factors is crucial to understanding Chinese companies. Government support comes in a variety of forms, including via financing sources. Identifying and evaluating a bidder's political backers, and the policy implications in China of a potential acquisition, helps a client understand the buyer's motives and requirements. There are often numerous interested parties, including local and national governments, tax bureaus, employees, labor unions, business partners, and local community activists.

Beginning in November 2016, Chinese media reported on the State Council's decision to restrict outbound foreign investment. The goal has been to curb capital outflows, which are putting downward pressure on the Chinese currency and draining foreign exchange reserves. Its effects were immediately felt in the M&A space. For example, several deals in the entertainment sector, such as Dalian Wanda's \$1 billion acquisition of Dick Clark Productions Inc., have recently been called off. Zhou Xiaochuan, the People's Bank of China's Governor, said sports and entertainment purchases were being controlled because the purchases were "unsuited to the industrial policy needs of the country." Despite these recent controls, acquisitions in China's strategic interest and core businesses are expected to grow.

In addition, understanding how an acquisition fits into larger policy initiatives will inform decisions on negotiating points. In the largest sense, Beijing has strongly supported Chinese business expansion around the globe, as a way to enhance the nation's political and economic influence. In 1999, the Chinese government implemented the Going Global Strategy (走出去战略), encouraging its enterprises to invest overseas and establish strong connections with foreign consumers.

More recently, policies such as “Made in China 2025” (中国制造), aimed at improving production efficiency and quality, and “One Belt One Road” (一带一路), encouraging trade between Europe and Asia through infrastructure investments, have increased both overseas and domestic investment.

An understanding of the political micro-environment surrounding a potential deal – the potential acquirers’ political backers or official adversaries, for example – can help sellers gain a better understanding of the buyer, and increase the chances of the deal going through.

### **Due Diligence as Competitive Advantage**

Traditionally, state-owned enterprises’ acquisitions of energy and resources companies formed the bulk of China’s outbound M&A. Over time, a supportive political and financing environment has allowed private companies, Chinese private-equity firms and A-share listed companies to get in on the game. While bids by low-profile Chinese companies might seem fraught with risk, savvy sellers and advisors have retained research firms to gain a knowledge advantage. As part of standard due diligence, sellers want to know, naturally, about the buyer’s background, its track record, business partners, control and decision-making structure and any red flags.

But in an era of technology and electronic databases, while information is everywhere, its quality is uneven. Due diligence researchers can properly weigh the reliability of a source or a data point, and can track down primary sources. Most importantly, information must be placed in the proper context to guide decision-making.

In Asia, it is common to see extremely complex corporate structures, or founders’ listing family members, such as wives or mothers, as shareholders, directors or executives of various corporate entities. These relatives may be involved in related party transactions as customers or suppliers. It is also common for formerly state-owned Chinese companies to have up to hundreds of individuals as shareholders. Some privatized SOEs have sparked controversy about alleged improprieties – but some of those controversies have been blown out of proportion by self-interested political opponents. While Western sellers are likely to be uncomfortable about some Chinese corporate structures and corporate histories, complex situations understood in context need not lead to the death of a proposed deal; it takes on-the-ground savvy to help sort through the facts.

In addition, despite how quickly technology has advanced, most information gathering, including in the United States, still requires on-site visits to local government bureaus and associations, which house repositories of obscure records under the norms and customs of the locale.

### **Discretion and Nuance**

Despite the world becoming increasingly flat and interdependent, quality due diligence still needs to be conducted locally. While companies and executives have a

global footprint, and information sharing across borders has grown logarithmically, there are still large gaps in international information and identity checks.

Local due diligence researchers understand the nuance required in conducting due diligence. Beyond speaking the local language, researchers also grasp cultural norms, and adapt interviewing and due diligence skills to the local environment. A basic due diligence report will aggregate information from all available public-record sources and highlight local, political and financial issues of the company. More in-depth information can be obtained through, for example, discreet site visits to warehouses, or discreet interviews by seasoned researchers.

Researchers are trained to question the “facts,” analyze the sourcing of information and connect the dots. Most Chinese companies are protective of company and industry information, so preparedness is key in asking the right diligence questions. Even if the prospective seller has never heard of a Chinese company making an offer, many Chinese firms that are prowling for deals are national, local or sector champions, or have state-sponsored support. During the negotiation and due diligence process, making due diligence requests that appear to be unreasonable or paranoid can alienate a potential buyer.

### **Building Trust**

In addition to careful advance preparation by all parties, a fundamental understanding of the Chinese buyer will build trust, which leads to a higher chance of a deal closing. The seller will also be better placed to make key decisions, such as when to stop investing time and resources with a particular buyer.

The purpose of due diligence is not just finding any hidden adverse information that exists; it is understanding the context of each situation from various participants’ perspectives. Due diligence not only helps Western sellers understand their potential buyer, it also helps them better understand their own negotiating position, and assists them in unlocking the full value of their precious asset.

# Deal People

Technology changes faster than most businesses, particularly the law business! In this issue of Deal People we begin a series highlighting how M&A Committee members use technology in the practices.



## JESSICA PEARLMAN

Many of you know Jessica Pearlman, a partner in the Seattle office of K&L Gates where she has a busy M&A practice focused on various technology sectors. For almost 15 years Jessica has been an active member of the M&A Committee, including having served as Chair of the Market Trends Subcommittee. Currently

she chairs the Private Target M&A Deal Points Study.

Jessica doesn't use an iPhone but is a dedicated iPad user. Mixing platforms gives her flexibility as they function and interact differently with programs on her computer, such as Outlook. One technology tool that she uses often for work is an app that turns any photo of a document into a PDF. Among its many uses, the app is an easy way for Jessica to send handwritten timesheets to her assistant from the road. There are a number of similar apps in the market: the one that Jessica uses is called JotNot Pro.

Jessica also uses a signature app called SignNow (f/k/a CudaSign) so that she can sign documents with her fingertip if

she can't print a document while away from the office.

Clearly, it's an app world ....

When not trying to get a deal to closing (or her three kids to bed...), Jessica focuses her energies on providing pro bono legal support to immigrants in need. Jessica recently paired-up with a litigation colleague to represent Guatemalan twins who arrived in the United States as unaccompanied minors in seeking Special Immigrant Juvenile Status and asylum; that's through Kids in Need of Defense (KIND), which is a nationwide organization.

In the wake of the travel ban executive order, Jessica has done a shift through the Seattle office of K&L Gates, volunteering at the airport in case of detainment requiring legal assistance (more shifts to come). Jessica also has signed-up as part of a rapid response team to ICE workplace raids through Northwest Immigrant Rights Project (NWIRP) and volunteered at a City of Seattle event (Seattle Office of Immigrant and Refugee Affairs) where she helped legal permanent residents complete citizenship applications.

## About Deal People

**Deal People** is a feature in *Deal Points* that highlights members of the M&A Committee and things that interest them, other than doing deals. Ideas for future features in **Deal People** are welcomed.



## TOM ROMER

Tom Romer also is a long-time, active member of the M&A Committee. Tom has contributed to the work of the Task Force on Legal Project Management and currently leads a working group that is updating a section of

the Model Asset Purchase Agreement in addition to being on the MAPA2 Task Force editorial board.

In his professional life, Tom is a shareholder of Greenberg Traurig and practices in the firm's Denver office.

Tom loves to negotiate deals. But he hates paper. So, in the past few years, Tom has made a concerted effort to run a paperless practice, and he thinks he has reduced the amount of paper he uses by about 80%. He's done this in a few of ways.

First, Tom downloads all documents and research for his review onto his iPad Pro (in PDF format) and reviews the documents in an app called Notes Plus. Using the stylus for his iPad, Tom can make comments on documents ... in different colors of ink ... and then send the documents to his assistant for revision or to other members of the deal team for action. Tom can also use the stylus to sign documents that require his signature. Tom says that Notes Plus is better than paper because of the choice of ink color and ease at which his written comments can be erased/modified.

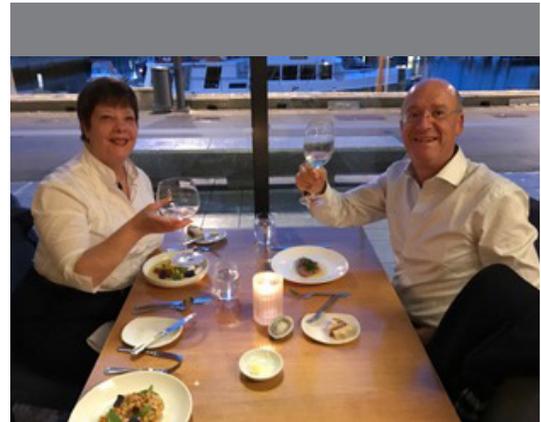
Tom prints only the penultimate draft of documents for final review.

And, Tom has only two drawers in his office for paper documents, and the drawers are used exclusively for personal items. All client documents – including closing books – are stored electronically and reviewed online.

Tom's best advice: Keep it simple. Find a good app, like Notes Plus, and a good document management system like, FileSite, and use them to their maximum capacity. Using too many programs or creating

complicated processes can be impediments to success.

Away from the office, Tom enjoys the Colorado outdoors (biking, skiing and hiking) and time with family. Tom's spouse is general counsel of a Denver-based technology company and they manage a busy household with three daughters (twins, age 7, and a four-year-old). Tom also is a board member of the Metropolitan State College of Denver Foundation Inc.



*Pictured: Diane Frankle and David Quigg*

## GET TOGETHERS

Several years ago, Diane Frankle and David Quigg met through the M&A Committee.

David, who is based in New Zealand, has an active M&A practice in Wellington. This year Diane and her husband, Bob, decided to start fulfilling some of their bucket list items - one of which is a trip to New Zealand. While traveling, David took Diane and Bob to dinner at Whitebait, which is located on Wellington's harbor. Among many other topics, they discussed their respective practices. Get togethers like these are a testament to far flung friendships made in the M&A Committee.

## About Deal People

**Deal People** is a feature in *Deal Points* that highlights members of the M&A Committee and things that interest them, other than doing deals. Ideas for future features in **Deal People** are welcomed.

## JOINT TASK FORCE ON GOVERNANCE ISSUES ARISING IN BUSINESS COMBINATION TRANSACTIONS

Our Task Force is preparing a handbook covering the governance issues that arise in business combination transactions. This is a joint project of the Corporate Governance Committee and the M&A Committee. We started this project in the fall of 2011 and now we are getting close to the finish line, with a targeted publication of early 2018. Our goal is to provide practical advice for all deal participants (counsel, bankers, management and boards) about the most common governance issues that arise in deal-making and mitigate risks from governance problems.

Topics include spotting and anticipating conflicts of interest, engagement and use of financial advisors, the use of special committees, Section 203 issues, and private company issues, to name a few. We are making steady progress toward publication of our handbook. Out of 18 chapters, we have drafts of all but three, and we expect those first drafts shortly. We are well into the editorial process and the Task Force Co-chairs have had multiple editorial conference calls since the Laguna Beach meeting to help get this across the finish line.

Our full Task Force will not meet in New Orleans as we are focused now on the editorial process, but all authors who have outstanding chapters should be getting those completed as soon as possible and ideally before the spring meeting. We are very excited by the content we have received to date, and based on what we have seen thus far from our authors, we believe this handbook will be a significant resource for all deal participants seeking to navigate the governance issues that confront us during the course of a deal. If you have questions or want to get involved, contact any of our four co-chairs, either at the meeting in New Orleans, or via email. We look forward to seeing you all in New Orleans!

DIANE H. FRANKLE, CO-CHAIR  
MICHAEL J. HALLORAN, CO-CHAIR  
LAWRENCE A. HAMERMESH, CO-CHAIR  
PATRICIA O. VELLA, CO-CHAIR

## TASK FORCE ON REVISED MODEL ASSET PURCHASE AGREEMENT

The Revised Model Asset Purchase Agreement Task Force did not meet in Laguna Beach, but we expect to meet in New Orleans to receive final versions of the commentary from the various working groups tasked with drafting the sections of the updated agreement. There are also still a few remaining drafting items outstanding, including the commentary on privilege issues. The next step is for the editorial board to be constituted to put together a unified draft of the agreement. Please contact either of the co-chairs if you are interested in helping on the remaining projects or joining us to finalize the agreement.

JOHN CLIFFORD, CO-CHAIR  
ED DEIBERT, CO-CHAIR

## JOINT TASK FORCE ON M&A LITIGATION

Exclusive forum selection by-laws are a useful tool for reducing wasteful M&A litigation, and otherwise ensuring a level of outcome predictability for intra-corporate disputes. They have received much attention since the Delaware courts and legislature's endorsement. While courts across the country largely have recognized their validity, questions persist as to how jurisdictions will enforce them, particularly where the by-law is permissive, allowing the company to consent to a forum other than the designated exclusive forum. Recent caselaw provides some guidance, but, as always, feedback from business lawyers is critical.

Using a current case litigated in both California and Delaware as a springboard for discussion, we will focus on exclusive forum selection by-laws during our Saturday session. We expect to post materials the week of April 3. We look forward to seeing you.

LEWIS H. LAZARUS, CO-CHAIR  
YVETTE AUSTIN SMITH, CO-CHAIR

## TASK FORCE ON **LEGAL PROJECT MANAGEMENT**

We continue to receive great feedback on the use of the tools from our “Guidebook on Using Legal Project Management in Merger and Acquisition Transactions.” The Guidebook sold out its first production run and is now back available for purchase. We continue to add new tools and update existing tools to the companion ABA website available to purchasers of the Guidebook. This enables us to enhance the existing tools and introduce new tools without having to wait for the release of the next hard copy edition of the Guidebook.

Access to the website and online editable versions of the tools are only available to purchasers of the Guidebook. The Guidebook is available to M&A Committee members at the reduced price of \$79.95. To order, just visit [www.ShopABA.org](http://www.ShopABA.org) and enter product code 5070698.

At our most recent meeting in Laguna Beach, we introduced a **Budgeting Tool** to enable deal counsel to present a budget for handling a particular transaction. The Excel based tool provides a logical framework for generating such an estimate or budget using the M&A Codes. The tool lists the various tasks to be accomplished and the level of attorneys that will work on a particular task, along with their billing rate and the estimated number of hours they will devote to the task.

We also introduced a **Deal Magnitude and Complexity Matrix** that provides a methodology for scoping the size and complexity of a deal based upon a set of customizable elements that are likely to influence total deal costs. The tool assigns points to various items that can drive up the cost of a

transaction (e.g., number of subsidiaries, number of patents, cross-border elements, etc.). The more complexity, the higher number of points and the higher the cost estimate.

At the Laguna Beach meeting, a number of our Task Force members also reported on programs and other outreach efforts to publicize the work of the Task Force. Task Force member Hermann Knott reported on a presentation he and others made at a recent meeting of the International Bar Association. Co-chairs Byron Kalogerou and Den White indicated that they had participated in a webinar that featured the Guidebook and that had been sponsored by ALAS Inc., a major legal malpractice insurer. If any Task Force member would like to put on a program on legal project management for their local bar association or other organization, please contact Byron and Den who have assembled a helpful library of presentation materials.

At the upcoming meeting in New Orleans, we are planning to introduce our next tool that will focus on Post-Merger Integration. We will be seeking volunteers to join in that effort. We look forward to seeing many of you in New Orleans.

BYRON S. KALOGEROU, CO-CHAIR  
DENNIS J. WHITE, CO-CHAIR  
AILEEN LEVENTON, PROJECT MANAGER

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## TASK FORCE ON **WOMEN IN MERGERS & ACQUISITIONS**

Our upcoming Task Force meeting is scheduled for Friday, April 7, 2017, from 2:30 pm to 3:30 pm at the Hyatt Regency New Orleans. At the meeting, Dr. Milana Hogan will lead a discussion entitled, “True Grit and a Growth Mindset: The Secrets of Success for Women Lawyers.” The under-representation of women in top leadership positions has led to much research on the obstacles or barriers that prevent women from ascending the corporate ladder in the same numbers as their male counterparts. While this is important, worthwhile research, rather than focusing on what *prevents* women from succeeding, Dr. Hogan will address the body of research that seeks to understand what successful women lawyers have *in common*. The goal of this approach is to learn from the experiences of these top female leaders and to understand more about what it takes to succeed in today’s complex, evolving organizations.

In particular, Dr. Hogan will focus on two critically important traits that successful women lawyers share: (1) grit, defined as perseverance and passion for long-term goals, and (2) growth mindset, defined as the view that one’s most basic abilities

(including intelligence) can be strengthened and developed through dedication, effort and deliberate practice. Drawing from her own research at the University of Pennsylvania and with the American Bar Association Commission on Women in the Profession, Dr. Hogan will suggest that these two traits are not only traits that many highly successful lawyers have in common, but they are also valuable predictors of future success for lawyers in all areas of practice. She will cover the science behind these traits, describe the specific tools used to assess levels of grit and growth mindset, and offer practical ways to put these concepts into practice.

We hope you will also attend our meeting to support our new Women in M&A scholarship program. We are hosting three Harvard Law students at the conference. Please come to meet and welcome our scholarship recipients.

JENNIFER MULLER, CHAIR  
RITA-ANNE O’NEILL, VICE-CHAIR

## TASK FORCE ON PRIVATE COMPANY MODEL MERGER AGREEMENT

The Task Force to prepare a model private company merger agreement continues to add volunteers to our project, and we hope that you will join us for our meeting in New Orleans. The goal of the Task Force is to produce a merger agreement with commentary that will be a practical resource for practitioners and highlight the key issues that arise primarily in the private company merger context. The draft will be a reasonable buyer's first draft. At the meeting in Laguna Beach, we continued to refine our fact pattern and had interesting discussions about the "reasonableness" of a variety of indemnification and non-reliance provisions in a reasonable buyer's first draft.

At the upcoming meeting in New Orleans, we expect to continue our traditional meeting format of reviewing any recent Delaware case law relevant to private company acquisition issues that might affect the drafting of our agreement. We will also have some of the authors of sections of our model agreement lead a discussion about drafting issues they are confronting as their drafting gets underway. We hope you will join us in person or by phone at our meeting in New Orleans.

MELISSA A. DIVINCENZO, CO-CHAIR  
AMY SIMMERMAN, CO-CHAIR  
TATJANA PATERNO, VICE-CHAIR

## TASK FORCE ON TWO STEP TENDER OFFERS

The Two-Step Tender Offer Task Force will not hold a general meeting in New Orleans. Eric and Mike will meet and continue to work through the current draft and contact editors individually. If you have questions, though, please feel free to contact either of us.

MICHAEL G. O'BRYAN, CO-CHAIR  
ERIC S. WILENSKY, CO-CHAIR

## ACQUISITIONS OF PUBLIC COMPANIES SUBCOMMITTEE

Many thanks to all of you who attended our Subcommittee meeting in Laguna Beach. Particular thanks to Jennifer Muller, for her annual review of the state of M&A deal-making, Claudia Simon for her discussion highlighting some of the interesting points from the Deal Points Study, and Chief Justice Strine for his thoughts in the Q&A segment of the meeting.

Our upcoming Subcommittee meeting is scheduled for Friday, April 7, 2017, from 1:00 pm to 2:00 pm. Eric Talley, Isidor & Seville Sulzbacher Professor of Law, Columbia Law School, will discuss his paper "Contracting Out of the Fiduciary Duty of Loyalty: An Empirical Analysis of Corporate Opportunity Waivers" that he co-authored with Gabriel Rauterberg, University of Michigan Law School. In addition, we will discuss some recent developments out of Delaware and will discuss emerging trends and issues in public company M&A.

As we mentioned before the Laguna Beach meeting, it's worth reflecting on the fact that it is our members that make the Committee, and this Subcommittee, so strong and our collaboration at these meetings that often changes the practice of M&A. We look forward to maintaining our great tradition of sharing our experiences and engaging in spirited debate. If you're seeing something new or different, or have an issue you'd like the group's views on, I encourage you to use this forum to speak up.

JENNIFER F. FITCHEN, CHAIR  
PATRICIA O. VELLA, VICE-CHAIR  
JIM MELVILLE, VICE-CHAIR

# INTERNATIONAL M&A SUBCOMMITTEE

The International M&A Subcommittee met from 10:30 am to 12:00 pm on Saturday, January 28, 2017, in connection with the ABA Business Law Section Mergers & Acquisitions Committee Stand-Alone Meeting in Laguna Beach, California.

## I. Introductions

The co-chairs of the Subcommittee, Freek Jonkhart and Franziska Ruf, introduced themselves and welcomed the participants. The Subcommittee members then proceeded to introduce themselves.

The co-chairs also announced with great pleasure that Rick Silberstein will be joining the leadership of the Subcommittee as Vice-chair commencing immediately.

## II. Canadian M&A

Ross G. Fletcher (*Duff & Phelps Canada Limited*, Toronto, Ontario) gave a very interesting presentation on his views of the M&A market in Canada, based on a review of the statistics gathered in respect of Canadian deal activity in 2016, both in terms of domestic and cross-border transactions. Somewhat surprisingly given the low value of the Canadian dollar, Canada remains a net buyer on the international front. Ross Fletcher also provided his views on the outlook for 2017, noting however the tremendous uncertainty that faces Canada in light of the recent election of President Donald Trump.

## III. What the Future Holds – The Impact of the Trump Administration’s Proposed Policies on International M&A

The panel presenting this topic was chaired by Gary McSharry (*McCann FitzGerald*, New York, NY) and comprised of Jennifer Muller (*Houlihan Lokey*, San Francisco, CA, and New York, NY), Brian J. McCarthy (*Skadden, Arps, Slate, Meagher & Flom LLP*, Los Angeles, CA) and Laurence J. Stein (*Latham & Watkins LLP*, Los Angeles, CA). Jennifer Muller set the stage by reviewing the statistics available in respect of M&A activity since the election of President Trump, highlighting the impact of the election on stock prices, oil prices, interest rates and industries generally. The potential repatriation of income held in foreign jurisdictions and the proposal to lower corporate income tax rates is generally thought to favor strategic buyers, whereas private equity buyers are impacted by increased interest rates. Inbound cross-border activity by the Chinese into the United States was up significantly in 2016, although this could be curtailed by current restrictions on the outflow of Chinese funds. Finally, the impact of regulatory review and challenges was also noted in respect of mega-deal activity.

Against this backdrop, Larry Stein provided an overview of some of the tax proposals that have so far been floated by the Trump administration, albeit without any

specifics to date, and which could, if implemented, result in significant tax reform in the United States. Queries currently surround the proposed (1) lowering of the corporate income tax rate, (2) disallowance of interest expense deductions, (3) mandatory deemed repatriation, (4) destination-based cash flow taxes and (5) border adjustment taxes. Most of these would represent substantial departures from the current U.S. tax regime, subject of course to the as-yet-to-be formulated details on each of these proposals.

Brian McCarthy moved on to the potential impact of other proposed regulatory reforms on M&A activity. Amongst others, it is quite clear that there will be a cut-back under the Trump Administration on regulation generally, as well as a lot of talk about job creation. In addition, it is possible that the Republican influence will result in a less aggressive attitude by the anti-trust regulatory authorities toward mergers and acquisitions. Conversely, it would not be surprising for a more detailed review of foreign investments to be conducted under CIFIUS, with the potential that the parameters of CIFIUS may be expanded beyond mere issues of national security.

## IV. Subcommittee Website

Our website at <http://apps.americanbar.org/dch/committee.cfm?com=CL560002> contains:

- Presentation by Houlihan Lokey on “Impact of the Trump Administration”
- Presentation by Laurence J. Stein on “Possible Tax Reform Proposals”
- Presentation by Brian J. McCarthy on “Proposed Regulatory Reform and Its Impact”
- Details of the Subcommittee’s publications, future meetings, other work-in-progress and other past program materials

## V. Next Meeting

The Subcommittee’s next meeting will be held on Saturday, April 8, 2017 from 10:30 am to 12:00 pm, in connection with the spring meeting of the ABA Business Law Section, Mergers and Acquisitions Committee, in New Orleans.

FREEK JONKHART, CO-CHAIR  
FRANZISKA RUF, CO-CHAIR

## MEMBERSHIP SUBCOMMITTEE

We are pleased to report that the M&A Committee continues to be the largest committee of the Business Law Section. That being said, we experienced a drop in membership since the first of the year. While we believe this decline is consistent with the drop in membership in the ABA as a whole, we also believe that our membership will increase if we continue to spread the word about the value of M&A Committee membership.

We launched our ambassador program at the stand alone meeting in January and look forward to continuing the initiative in New Orleans. We are looking for volunteers to participate in this and other efforts we will be making in 2017, including a new members reception in conjunction with the Women in M&A Task Force, and a possible joint partnership with ACG Chicago to host a welcome reception during our annual meeting. Please reach out to me at [tbradley@fortisrep.com](mailto:tbradley@fortisrep.com) if you are interested. Thank you!

TRACY W. BRADLEY, CHAIR

## M&A MARKET TRENDS SUBCOMMITTEE

At our last meeting in Laguna Beach we reviewed the status of recent and pending publications; Tasha Hutchins (*Thompson Reuters*) and Barbara Oikle (*Thompson Reuters*) reviewed the state of the M&A market; Rita O'Neill (*Sullivan & Cromwell*, Los Angeles, CA) shared highlights from the upcoming Divisional Carve Out Deal Points Study; Claudia Simon (*Schulte Roth & Zabel*, Washington, D.C.) shared highlights from the 2016 U.S. Strategic Buyer / Public Target Deal Points Study; and Steve Obenski (*Kira Systems*) made a presentation contrasting data from Kira's analysis of certain private target data points with the comparable data points in the Market Trends Subcommittee's 2015 Private Target Study.

Our next meeting will be held on Saturday, April 8, 2017 at the spring meeting in New Orleans. The meeting will take place from 9:00 am - 10:30 am (local time). The agenda includes:

- A review of recent and pending publications
- An update on the state of the M&A market
- Additional highlights from the 2016 U.S. Strategic Buyer / Public Target Deal Points Study
- Highlights from the 2016 Canadian Private Target Deal Points Study
- A Tales from the Trenches presentation

I look forward to seeing you in New Orleans.

HAL J. LEIBOWITZ, CHAIR

## PROGRAMS SUBCOMMITTEE

The M&A Committee is sponsoring four major presentations at the New Orleans meeting. One deals with advanced issues in selling a company; one is a nuts and bolts topic covering private equity deals, one focuses on the role of financial advisors; and the last covers rep and warranty insurance, with an emphasis on global transactions. We have great variety and accomplished speakers and are looking to making a solid contribution to the CLE offerings at the spring meeting. Please do your best to support these members by attending their presentations. In addition, we are co-sponsoring three other panels. A complete listing can be found in the schedule at the end of this issue of *Deal Points*.

In developing ideas for future meetings, our subcommittee continues to follow a matrix that calls for presentations in four different categories. The categories are: (1) M&A basics, (2) advanced M&A topics, (3) general topics of interest outside the M&A area but geared for the M&A practitioner (labor, tax, regulatory, etc.), and (4) international. We also have an omnibus category which would include areas not normally covered in any of the Business Law Section areas. This category would include topics such as practice development for M&A lawyers. We need to immediately begin the process of identifying and developing topics for Chicago in the fall. If you have a topic to propose, please contact me or one of our Subcommittee members.

In proposing panels for the Business Law Section meetings, we are particularly mindful of our charge to promote diversity. The diversity effort not only accomplishes its intended purpose (i.e. diversity) but has also pushed us to reach beyond the usual suspects (i.e. those who do so much of the regular and recurring work of our Committee) to add to our panels. In that regard, please give thought to those in your firm who are not active in our Committee but who may make great speakers.

GEORGE M. TAYLOR, CHAIR

## M&A JURISPRUDENCE SUBCOMMITTEE

The M&A Jurisprudence Subcommittee will meet soon in New Orleans: Friday, April 7, 2017, 9:00 am to 10:30 am.

Dial-in information for the meeting is included in the schedule at the end of this issue of *Deal Points*.

At the meeting we will discuss:

- as many recent court decisions as we can get to in our allotted time
- topics under review by the Judicial Interpretations Working Group, including the current version of the successor liability memo

The cases and other materials will be distributed by email. If you don't get the email, but would like to, please let one of us know.

### More generally:

For those of you who don't know us, the M&A Jurisprudence Subcommittee keeps its members and the Committee up to date on judicial developments relating to M&A. Our Subcommittee includes:

- The Annual Survey Working Group -- identifies and reports to the Committee on recent decisions of importance in the M&A area, and prepares the Annual Survey of Judicial Developments Pertaining to M&A, which is published in *The Business Lawyer*. The Annual Surveys also are posted in the online M&A Lawyers' Library, which Committee members can access from the Committee's home page on the ABA website (<http://apps.americanbar.org/dch/committee.cfm?com=CL560000>).
- The Judicial Interpretations Working Group -- examines and reports to the Committee on judicial interpretations of specific provisions of acquisition agreements and ancillary documents, looking for recent cases and also examining the deeper body of case law. The Working Group produces memoranda summarizing our findings, which are circulated to Subcommittee members and, when finished, posted in the M&A Lawyers' Library.
- The Library Index Project Group -- is creating a topic index for the M&A Lawyers' Library, which will allow online visitors to the library to search the material in the Library by topic.
- The Damages Project Group -- is preparing a comprehensive analysis of the types of damages recoverable in common M&A litigation contexts, and the methods that courts have used, or allowed the parties to use, to calculate damage awards.
- The M&A Lawyers' Library Publication Project Group -- is compiling the contents of the M&A Lawyers' Library into an ABA Publication.

We welcome all M&A Committee members to join our Subcommittee. The Jurisprudence Subcommittee is a good way to become involved in the Committee, especially for

younger Committee members, because extensive M&A transactional experience is not necessary.

### **We need cases!**

We ask all members of the M&A Committee to send us judicial decisions they think would be of interest to M&A practitioners. Submissions can be sent by email either to Nate Cartmell at [nathaniel.cartmell@pillsburylaw.com](mailto:nathaniel.cartmell@pillsburylaw.com) or to Mike O'Bryan at [mobryan@mofo.com](mailto:mobryan@mofo.com). Please state in your email why you believe the case merits inclusion in the survey. We rely on members to help identify important cases from all jurisdictions, so **we need you to help identify cases!**

To be included, a decision must:

1. Involve a merger, an equity sale of a controlling interest, a sale of all or substantially all assets, a sale of a subsidiary or division, or a recapitalization resulting in a change of control
2. (a) interpret or apply the provisions of an acquisition agreement or an agreement preliminary to an acquisition agreement (e.g., a letter of intent, confidentiality agreement or standstill agreement), (b) interpret or apply a state statute that governs one of the constituent entities (e.g., the Delaware General Corporation Law or the Louisiana Limited Liability Company Law), (c) pertain to a successor liability issue, or (d) decide a breach of fiduciary duty claim

We are currently excluding cases dealing exclusively with federal law, securities law, tax law and antitrust law. But if you feel a case dealing with an M&A transaction is particularly significant please send it, even if it does not meet the foregoing criteria.

In addition, the Judicial Interpretations Working Group is actively soliciting suggestions for topics for new memoranda for the M&A Lawyers' Library and seeking volunteers to research and draft memoranda. If you have ideas for new topics or would like to work on a memorandum, please contact Frederic Smith at [fsmith@bradley.com](mailto:fsmith@bradley.com).

To join the M&A Jurisprudence Subcommittee, please email any of us, or simply come to the next Subcommittee meeting.

MICHAEL G. O'BRYAN, SUBCOMMITTEE CHAIR

NATHANIEL M. CARTMELL, CHAIR  
ANNUAL SURVEY WORKING GROUP

FREDERIC L. SMITH, JR. CHAIR  
JUDICIAL INTERPRETATIONS WORKING GROUP

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LISA J. HEDRICK  
DAMAGES PROJECT

BRIAN S. NORTH  
PUBLICATION PROJECT

## PRIVATE EQUITY M&A SUBCOMMITTEE

At our January 27, 2017, meeting in Laguna Beach, we changed our format somewhat from some of our prior meetings and spent the entire meeting on a panel discussion entitled “Representation and Warranty Insurance: Where Did That Come From and How Does it Effect Our Practice?” I was joined on the panel by Nat Doliner (*Carlton Fields*, Tampa, FL), Linda Maxwell (*Houlihan Lokey*, Los Angeles, CA) and William Monat (*Willis Towers Watson*, Chicago, IL). The panel discussion covered a number of issues related to the explosion of the use of representation and warranty insurance in private equity deals, including the history, scope and strategy of the practice. Nat Doliner and I, with help from our experts, then negotiated both provisions of the purchase agreement that might play out differently if representation and warranty insurance is used, as well as the terms of the insurance policy itself. Finally, the panel discussed a number of issues related to how both representation and warranty insurance policies and their use might develop going forward

There has been some confusion as to the schedule for our meeting in New Orleans, but I am assured that we are scheduled to meet on Friday, April 7 from 10:30 am to 12:00 pm. As we continue our Nuts and Bolts series, Myron Steele, formerly Chief Justice of the Delaware Supreme Court and now a partner of Potter Anderson & Corroon LLP in Wilmington, Delaware, will discuss questions that Samantha Horn (*Stikeman Elliott LLP*, Toronto, Ontario) and I raise in a segment entitled “The Application of Delaware Governance Principles to Private Equity Deals.” Then, in our “Experts Speak” series, I will be joined by Martin Rubio (*Duff and Phelps Securities, LLC*, Houston, TX), for a discussion on “How To Get the Most Value From Your Investment Banker Prior to the Solicitation of Offers.” Finally, in our Recent Developments series, I will be joined by our Subcommittee’s Vice-chairman, Mireille Fontaine (*BCF*, Montréal, Québec) and Lisa Hedrick (*Hirschler Fleischer*, Richmond, VA), to discuss some recent cases including *In re Metrologic Instruments, Inc. Shareholders Litigation*, 2017 WL 541104 (New Jersey, 2017) and *SRS v. Gilead*, C.A. No. 10537-CB (Del.Ch.Mar.15, 2017). As always, we will try to squeeze as much content into our meeting as is possible into our 90 minutes.

You should also be aware that, from 10:30 am to 12:30 pm on Saturday, April 8, I will be moderating a program entitled “The Nuts and Bolts of Private Equity M&A: What Makes PE Deals Different.” I will be joined on the panel by Sophie Lamonde (*Stikeman Elliott LLP*, Montréal, Québec), Russell Light (*Kirkland & Ellis LLP*, New York, NY), Neal Reenan (*Kirkland & Ellis LLP*, Chicago, IL) and Martin Rubio (*Duff and Phelps Securities, LLC*, Houston, TX). The purpose of the program will be to discuss and analyze the various ways in which structuring and negotiating a private equity deal may be different than what one would see in other types of M&A deals. For those of you who have been coming regularly to the Private Equity M&A Subcommittee meetings, some of what we will cover has been covered in our previous meetings but some of it has not been and at the least the program will analyze and discuss in one place the principal differences between private equity transactions and other types of deals.

As always, I remain interested in **YOUR** feedback as to how you like the meetings, what you would like to have covered at the meetings, and what activities you would like to see our subcommittee perform between meetings. I also would love to hear ideas for programs you would like to be a part of, or developments you would like to present, or even that you would like to speak at a future meeting but you don’t have a particular topic you want to speak about. Please don’t be shy – I promise you that I am not spending too much time between meetings having these discussions with other members. Volunteers are absolutely welcome.

I look forward to seeing many of you in New Orleans. I will repeat again because I mean it -- if you are a new member of our Subcommittee and/or we have not personally met yet, I would love it if you would come up at some point over the weekend and introduce yourself to me as well.

DAVID I. ALBIN, CHAIR

MIREILLE FONTAINE, VICE-CHAIR

The **M&A Committee** thanks our sponsors.



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# COMMITTEE MEETING MATERIALS

Dial in information for Committee & Subcommittee Meetings  
HYATT REGENCY NEW ORLEANS | NEW ORLEANS, LA, USA | APRIL 7-8, 2017



Please note that times listed are **CENTRAL TIME** dial in numbers are meeting-room specific. Please be conscientious of start and end times. Leader pin numbers will be distributed to chairs on site.

Meeting Room	Toll-Free US Number	International Number	Conference Code
<b>Empire C&amp;D, Level Two</b>	(866) 646-6488	(707) 287-9583	6304783957
<b>Foster 2, Level Two</b>	(866) 646-6488	(707) 287-9583	7465900121

## Friday, April 7, 2017

9:00 – 10:30 am <b>M&amp;A Jurisprudence</b> Chair: Michael G. O'Bryan	Empire C&D, Level Two
10:30 am – 12:00 pm <b>Private Equity</b> Chair: David I. Albin	Empire C&D, Level Two
11:00 am – 12:00 pm <b>Revised Model Asset Purchase Agreement</b> Co-chairs: Ed Deibert and John Clifford	Foster 2, Level Two
12:30 pm – 2:15 pm <b>Section Luncheon</b> Ticket Required	Empire A, Level Two
1:00 pm – 2:00 pm <b>Acquisition of Public Companies Subcommittee</b> Chair: Jennifer F. Fitchen	Empire C&D, Level Two
2:30 pm – 3:30 pm <b>Women in M&amp;A Task Force</b> Chair: Jennifer Muller	Empire C&D, Level Two
3:30 pm – 4:30 pm <b>Legal Project Management Task Force</b> Co-chairs: Byron S. Kalogerou and Dennis J. White	Empire C&D, Level Two
4:30 pm – 5:00 pm <b>Meeting of Committee Chair and Vice Chairs, Subcommittee, Task Force and Working Group Meeting</b>	Empire C&D, Level Two

## Saturday, April 8, 2017

9:00 am – 10:30 am <b>Market Trends Subcommittee</b> Chair: Hal J. Leibowitz	Empire C&D, Level Two
10:30 am – 12:00 pm <b>International M&amp;A Subcommittee</b> Co-chairs: Freek Jonkhart and Franziska J. Ruf	Empire C&D, Level Two

12:00 pm – 1:00 pm <b>M&amp;A Litigation</b> Co-chairs: Lewis H. Lazarus and Yvette Austin Smith	Empire C&D, Level Two
1:00 pm – 2:00 pm <b>Private Company Model Merger Agreement Task Force</b> Co-chairs: Melissa D. DiVencezo and Amy Simmerman	Empire C&D, Level Two
2:30 pm – 4:30 pm <b>Mergers and Acquisitions Full Committee Meeting</b> Chair: Scott T. Whittaker	Empire C&D, Level Two
7:00 pm <b>Mergers and Acquisitions Committee Dinner*</b> Reception   8:00 p.m. Dinner Ticket Price: \$160 <a href="http://www.americanbar.org/groups/business_law/events_cle/spring_2017/cmte_events.html">http://www.americanbar.org/groups/business_law/events_cle/spring_2017/cmte_events.html</a>	Arnaud's 813 Bienville Street

## Programs

Friday April 7, 2017 8:00 – 10:00 am <b>What Deal Lawyers Need to Know About Rep &amp; Warranty Insurance, Trends in North America and Europe and Impact on Deal Negotiations</b>	Strand 12B, Level Two
Friday April 7, 2017 10:30 am – 12:00 pm <b>Tripwires On The Road To Selling A Company- Identifying and Neutralizing Deal Killers</b>	Strand 12B, Level Two
Saturday April 8, 2017 9:00 am – 10:30 am <b>The Financial Advisor and the Lawyer: What Practitioners Need to Know about Financial Advisors in M&amp;A Deals</b>	Strand 13B, Level Two
Saturday April 8, 2017 10:30 am – 12:30 pm <b>The Nuts and Bolts of Private Equity M+A--What Makes PE Deals Different</b>	Strand 13B, Level Two

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American Bar Association, Section of Business Law, Mergers and Acquisitions Committee. The views expressed in the Mergers and Acquisitions Committee Newsletter are the authors' only and not necessarily those of the American Bar Association, the Section of Business Law or the Mergers and Acquisitions Committee. If you wish to comment on the contents, please write to the Mergers and Acquisitions Committee, Section of Business Law, American Bar Association, 321 N. Clark Street, Chicago, Illinois, 60610.

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