



Post M&A Dispute Resolution Services

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Executive Summary

Buyers, sellers, legal advisors and all of an M&A transaction's stakeholders are eager to move on to important post-Closing business, notably: integration and post-divestiture operations or capital redeployment, after a deal has closed. Unfortunately, this can be materially delayed by lingering post-closing disputes, which can often interfere with the parties' respective goals.

Introduction

Post-M&A disputes often entail divergent interpretations of complex accounting concepts: properly quantifying transferred working capital, determining whether earnout thresholds have been met, assessing claimed breaches of financial statement representations and warranties, and sometimes, investigating allegations of fraud. When post-closing issues arise, it is critical to engage expert advisers who possess a thorough understanding of these issues as it can make a meaningful difference in the outcome of the dispute and ultimately, a party's bottom line.



Why DLA LLC?

DLA LLC is a leading provider of expert accounting advisory, neutral arbitration, valuation consulting, and testifying expert services to companies facing post-closing purchase price disputes. We help private equity funds, corporates and venture capital firms with disputes ranging from routine negotiation of post-closing working capital differences to conducting arbitration proceedings administered by our neutral accountants, to in-court litigation.

Post-M&A Dispute Resolution: Our Advantages

CONFLICT-FREE NEUTRAL ACCOUNTANTS AND ADVISORS



We are not in the attestation business, so we don't put forth financial audit opinions. While we're deep on CPAs and CFAs, we are not independent auditors and accordingly, we avoid many of the biases faced by our competitors – enabling us to independently resolve disputes among parties or serve as their experts, providing for the strongest position possible.

VALUATION EXPERTS



Our depth of credentialed, valuation experts are uniquely qualified to assess or calculate damages, particularly in matters that focus on alleged breaches of historical financial statement representations and warranties, which often allege purchase price adjustments at a multiple of forecasted earnings. We are able to quickly assess the basis for damages based on future cash flows, putting forth cogent and unimpeachable determinations, that allow our clients to return to their, with minimal disruption.

INDUSTRY EXPERTISE



Our colleagues have decades of experience in serving as internal controls experts for an endless variety of industries. We understand our clients' businesses from the inside because of the years of experience working as professionals within those sectors. There is no waste of resources on the basics – we know how to quickly identify and assess only that information which is relevant to supporting or rebutting financial statements and underlying estimates.

WE'VE MASTERED THE PROCESS



Our team understands that getting the parties back to business is essential. We are experts at administering and navigating post-M&A arbitration proceedings and work efficiently to ensure that our clients do not linger in drawn-out procedural disputes.

TECHNICAL EXPERTISE

While we do not serve as financial statement auditors, our teams of technical experts are highly sought after to provide technical accounting and financial reporting guidance to registrants in the US and global markets, with deep experience in US GAAP and IFRS.

TRUSTED RISK MITIGATION ADVISORS FROM BIG TO SMALL

Our clients run the gamut from the world's leading private equity firms to small family-owned businesses. We understand that no matter is too small to the individual stakeholders and every client receives the full attention of our best-in-class experts—ranging from family law disputes to global Fortune 50 consulting, DLA is the trusted advisor on each clients' most significant matters.



What We Do

Our expert advisor teams include CPAs, CFEs, CFFs, CFAs and ABVs with many holding advanced degrees in accounting, finance and valuations. We regularly advise on disputes involving a wide variety of issues including:

Contractual and GAAP Accounting Calculation Disputes

- Post-closing adjustments based on working capital and purchase price determination
- Earn-out achievement determination calculations
- Interpretation and application of “consistently applied” provisions (U.S. GAAP and IFRS)
- Quantifying and valuation of balance sheet assets, liabilities and accounting reserves

Valuation and Damages Disputes

- Shareholder valuation disputes
- Benefit-of-the-bargain valuation and diminution in value claims
- Representation and Warranty breach claims

M&A Dispute Resolution Specific Expertise

Working capital calculation issues

- Assessment of compliance with specified basis of preparation including US GAAP, IFRS, consistent historical practices, contractually specified or other applicable guidance
- Application of Subsequent Events guidance in GAAP-basis calculations

Strategic guidance during the dispute resolution process, including:

- Arbitrator selection and party communications
- The structure and content of written submissions including the use of experts and fact witnesses
- Assistance with rebuttal submissions and settlement negotiations

Earn-out achievement determination

- Evaluation of earn-out achievement including revenue, gross margin, or EBITDA targets as well as specified non-financial statement thresholds
- Consistency of applied policies, practices and methods across relevant measurement timeline
- Calculation of transaction purchase price based on defined earnings, revenue or margin multiples including assessing the reasonableness of and consistency of revenue and expense inputs
- Application of consistency provisions including quality of earnings and post-closing financial management
- Assessment of pre- and post-closing management forecasts and projections Evaluation of strength of strength of positions and settlement strategy considerations

Assistance with evaluating alleged financial statement breaches of representations and warranties, including:

- Quantifying and assessment of “benefit of the bargain” damages, lost profits or diminution in value
- Applicability of the earnings multiple in damages determination
- Propriety of valuation methodologies advanced in damages claims

Case Studies

Collaborative Expertise Yields a \$300 Million Purchase Price Refund

In connection with the multibillion-dollar acquisition of the international division of a global beverages business, the parties entered into arbitration to resolve a purchase price dispute of approximately three-quarters of a billion dollars. Our M&A Dispute Resolution accounting expert and a valuation advisory services expert were retained to assist in resolving the dispute.

We guided the valuation expert in putting forth two affidavits and our dispute resolution accounting expert provided strategic insight and other assistance in the preparation of initial and rebuttal submissions to the arbitrators.

Working on behalf of counsel for the Buyer, we collaborated with the client's accounting, legal and industry advisors through multiple rounds of written submissions and arbitrator Q&A to oppose the Seller's proposed calculations. The efforts of our expert witness and strategic advisors, who possess deep expertise in serving as a neutral accountant and party advisor, assisted the Buyer and their team in settling for a favorable purchase price adjustment that exceeded three hundred million dollars.

Neutral Arbitrator in an Earn-Out Matter

In collaboration with Counsel for both Parties and the investment advisers responsible for managing the predecessor and successor entities that raised and managed funds exceeding \$5 billion, our accounting expert served as Neutral Arbitrator to resolve a \$200 million Earn-Out dispute concerning contractually-derived management fees of nearly a quarter-billion dollars. We negotiated an arbitration timetable, solicited submissions and rebuttals from the Parties and provided our ruling, in the form of a reasoned report, within 45 days of the date of retention.

Closing Indebtedness Dispute Resolution

On behalf of Counsel for a Private Equity Seller, DLAs' expert was retained to provide accounting and industry advisory services to defeat the Buyer's proposed multimillion-dollar purchase price reduction in connection with this portfolio company sale valued at approximately \$1 billion. A former telecommunications industry CFO and a CPA with lease accounting experience, our expert submitted an affidavit and rebuttal to the Buyer's expert. The arbitrator found in favor of our client and defeated Buyer's attempt to rewrite the accounting principles guiding the calculation of the purchase price allowing the Seller to prevail at arbitration.

About DLA LLC

Founded in 2001, DLA LLC is an accounting advisory and capital markets organization focused on a comprehensive internal audit, accounting advisory and corporate finance choice for employees, office of the CFO, audit committees and public accounting firms and law firms on behalf of their clients. DLA LLC is headquartered in Fairfield, New Jersey, with offices in Shrewsbury, New Jersey, Boston, Chicago, and New York City.

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