

# M&A Disputes Brochure

**EXPERT ADVICE FOR MANAGING DEAL VALUE  
AND M&A DISPUTES POST-COMPLETION**



**EXPERTS WITH IMPACT™**

# Introduction

FTI Consulting's M&A Disputes group brings together a unique combination of multi-disciplinary, market leading experts to help clients protect deal value post-completion.

Merger and acquisition ("M&A"), which range from price adjustments and deferred consideration disputes, to breach of warranty and fraud claims, are more common than most participants in M&A transactions may realise.

Recent developments have only intensified the scope for disputes: geopolitical uncertainty, the Covid-19 pandemic, the end of a low interest rate environment, the aggressive return of inflation, and volatility in the energy markets, to name a few. These disruptions and changes meet with a recent record M&A market and subsequent record decline, as well as the growing use of innovative products, such as Warranty & Indemnity (W&I) insurance.

## A multi-disciplinary approach to post M&A disputes

FTI Consulting's M&A Disputes group uniquely combines experts with a focus on M&A disputes from our forensic accounting, damages and valuation, technology, and strategic communications practices. Our multi-disciplinary team can assist clients in navigating complex disputes and managing transaction risks that may arise from M&A-and joint venture-related activities.

Our M&A Disputes group can help clients address high-value questions that may arise at different stages before, during or after completion, including the following situations:

*"[The FTI Consulting expert]...has a great ability to pick up key issues at the heart of a dispute which they can then translate into clear and easily understood damages calculations."*

## Expert determination

- Are you looking to negotiate or resolve a M&A dispute (e.g. completion accounts, earn-out) through expert determination?
- Have you received an Objection or Dispute Notice from the other party or do not agree with the calculation of the final purchase price or a deferred consideration by the other party?
- Are you looking to appoint an experienced independent accounting expert to resolve a M&A dispute?

## Warranty or indemnity claims and quantum of damages

Are there accounting irregularities or concerns post-acquisition that challenge the reliability of the representation and warranties obtained as part of the SPA?

- Is there contemplation of a claim for breach of warranty under an existing W&I policy?
- Is it known what warranties are believed to have been breached and an appreciation of the facts that will need to be established to demonstrate such a breach?
- Has there been consideration of the loss covered by the W&I policy, and has there been an assessment of quantum?

## Allegations of fraud or other wrong-doing

- Is there an indication of accounts being manipulated, intentional misrepresentation, or the deliberate omission of material information?
- Are there concerns about potential bribery and corruption within the company or its supply chain?
- Is there a need to establish the facts, form an opinion, and quantify the loss?

# Our M&A disputes propositions help protect deal value and respond to dispute risks post-completion

	PRICE ADJUSTMENT OR EXPERT DETERMINATIONS	BREACH OF WARRANTIES / SPA / W&I CLAIMS	FRAUD OR OTHER WRONG-DOING	QUANTUM	OTHER M&A ISSUES
High value post-deal issues					
Deal value risk drivers	<ul style="list-style-type: none"> <li>Disagreement over:               <ul style="list-style-type: none"> <li>Completion/closing accounts</li> <li>Deferred consideration (e.g. in locked box deals)</li> <li>Earn-out statements</li> <li>Need of an independent expert to resolve a post-completion disagreement</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Financial misstatements in warranted accounts               <ul style="list-style-type: none"> <li>This includes W&amp;I insurance claims</li> <li>We involve specialised dedicated technical accountants seamlessly</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Fraud and manipulation of financial statements is often alleged in M&amp;A disputes alongside breach of warranty claims</li> <li>Bribery and corruption, and asset misappropriation are other categories of wrong-doing that can have far reaching adverse consequences for buyers</li> </ul>	<ul style="list-style-type: none"> <li>Compensatory damages can equal or exceed the purchase price</li> <li>Some aspects that have a significant impact on quantum are specific to M&amp;A disputes: e.g., the issue of 'value v price'</li> </ul>	<ul style="list-style-type: none"> <li>Earn-out statements</li> <li>Material Adverse Change (MAC) clauses</li> <li>Ordinary course or other covenant breaches</li> <li>Disputes over Lols, exclusivity agreements and many other types</li> </ul>
How we can help	<ul style="list-style-type: none"> <li>Reviewing/preparing:               <ul style="list-style-type: none"> <li>Completion/closing accounts</li> <li>Dispute or objection notice</li> <li>strategy for good faith negotiation</li> <li>Help selecting a credible independent expert and negotiating terms of reference.</li> <li>submission to the independent expert</li> <li>Act as the independent accounting expert</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Providing expert advice / independent expert evidence including:               <ul style="list-style-type: none"> <li>all accounting and financial aspects of warranty breaches and indemnities</li> <li>Document robust link between warranted financials and 'value'</li> <li>A dedicated forensic accounting team with experience in W&amp;I claims</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Preserve key data sources for investigation and disclosure</li> <li>Extract and interrogate voluminous structured data sets</li> <li>Forensic analysis of underlying accounting records, communications, and other supporting material</li> <li>Gather source information to establish business and personal relationships</li> <li>Factual and expert reports prepared to assist claims and support legal proceedings</li> </ul>	<ul style="list-style-type: none"> <li>Quantification of damages</li> <li>Sensitivities under alternative counterfactuals               <ul style="list-style-type: none"> <li>the choice of counterfactual (as matter of legal instructions) can give rise to fundamentally different measures of damages</li> </ul> </li> <li>quantum of indemnities</li> </ul>	<ul style="list-style-type: none"> <li>We can advise or act as independent experts in disputes involving a broad range of complex M&amp;A-related disputes that arise               <ul style="list-style-type: none"> <li>before signing;</li> <li>in the closing period; or</li> <li>post-closing</li> </ul> </li> </ul>

## CORE CAPABILITIES

Forensic Accounting

Valuations and Damages Quantification

Forensic Technology

Strategic Communications

Transaction Advisory

# Case Studies

## **ACCOUNTING AND VALUATION SUPPORT IN A W&I INSURANCE CLAIM (BUY-SIDE ADVICE)**

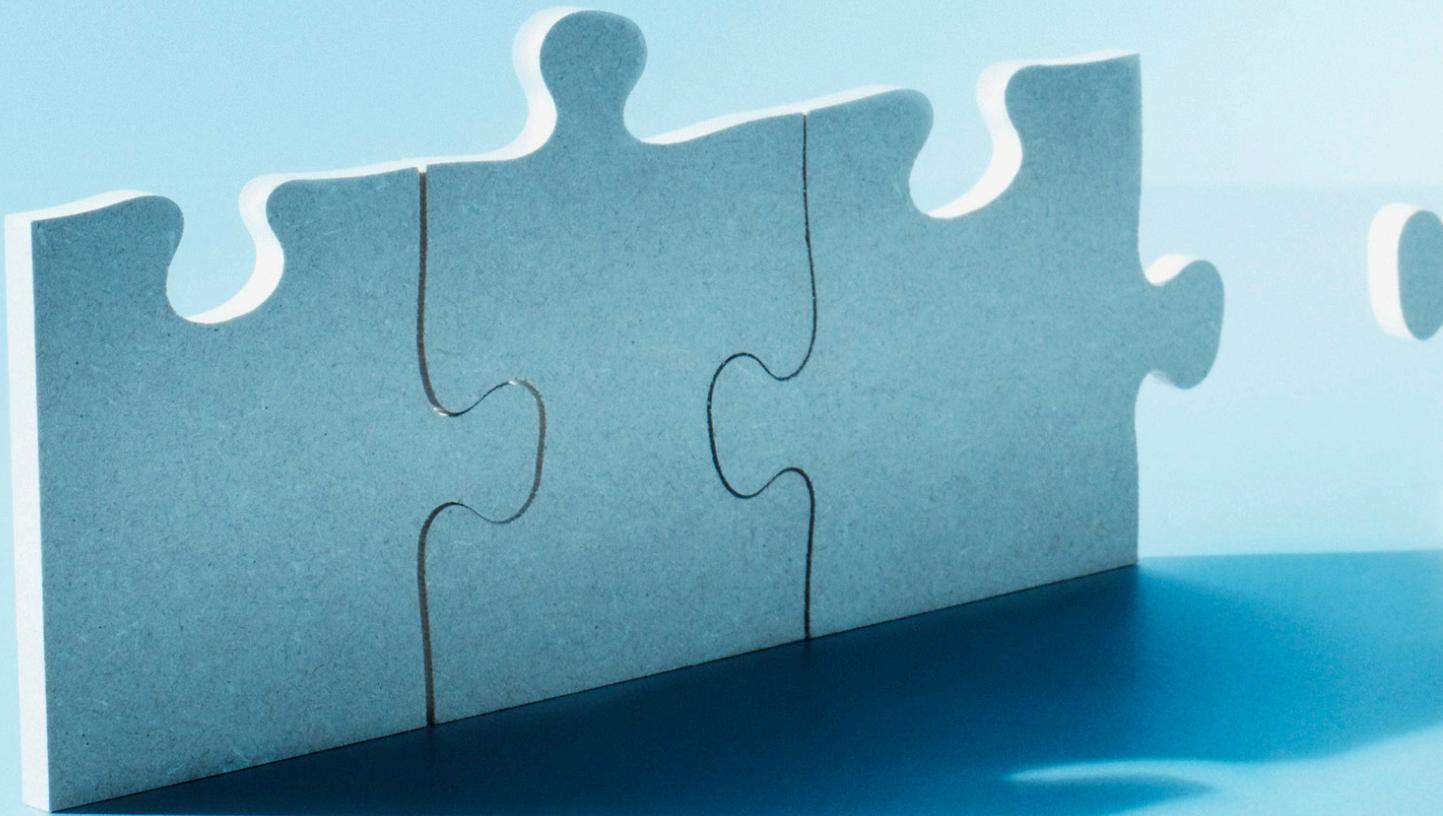
Following the completion of the sale of a business, FTI Consulting was approached by the Buyer to consider the valuation impact of certain alleged breaches of warranties and representations and to assist the buyer in negotiations with their W&I insurer. Our experts reviewed alleged misstatements in the warranted financial statements, quantified the impact of the misstatements on the value of the business, supported the Buyer and its lawyers with their correspondence with the insurer and the expert accountant appointed by the insurer.

- The insurer paid out the claim at the £30 million cap of the insurance policy.
- The Buyer received the payment without having to enter into formal legal proceedings.

## **COMPLETION ACCOUNTS DISPUTE DETERMINED BY AN INDEPENDENT EXPERT (BUY-SIDE ADVICE)**

FTI Consulting was appointed to advise a Buyer on a Completion Accounts dispute following its purchase of a building and construction business. The disputed items related to post balance sheet events, provisioning of bad debts, and assessing the level of work-in-progress and rebates receivable from suppliers.

- We worked closely with the Buyer and its advisors to clearly present the case to the Independent Expert. This involved helping the Buyer and its advisors with unravelling the complexities and inherent ambiguities in the underlying Sale and Purchase Agreement.
- The Independent Expert determined more than 85 percent by value in our client's favour, largely underpinned by the arguments we developed.



## ACTING AS INDEPENDENT EXPERT TO DETERMINE A COMPLETION ACCOUNTS DISPUTE

---

An FTI Consulting accounting expert was appointed as an Independent Expert to determine over twenty disputed completion accounts items, many of which included several sub items, with a total of approximately £130 million in dispute. The items in dispute required deep technical accounting expertise as well as taxation.

- The expert set out an effective determination process which allowed parties opportunities to make submissions and respond to the expert's questions.
- Taking into account the complexity of the items in dispute, the expert consulted tax experts and a Queen's Counsel (e.g. on contentious points of law).

## POST-COMPLETION EARN-OUT DISPUTE (SELL-SIDE ADVICE)

---

Following the completion of the sale of a business, FTI Consulting was approached by the Seller to help them resolve a dispute as to the amount of earn-out consideration payable. Our experts assisted the Seller to prepare a robust calculation of consideration payable, formulate clear and compelling without prejudice correspondence with the Buyer and effectively manage the overall dispute.

- With our advice, the Seller came to a satisfactory agreement with the Buyer as to the amount of earn-out consideration payable.
- The Buyer received the earn-out consideration without having to incur the cost and risk of appointing an independent expert.

# Our multi-disciplinary M&A Disputes group

---

## ALEX DAVIE

Senior Managing Director  
alexander.davie@fticonsulting.com

## JOHN HUDSON

Senior Managing Director  
john.hudson@fticonsulting.com

## KAMI ZARGAR

Managing Director  
kami.zargar@fticonsulting.com

## HEIKO ZIEHMS

Senior Managing Director  
heiko.ziehms@fticonsulting.com

## EXPERTS WITH IMPACT™

**FTI Consulting** is an independent global business advisory firm dedicated to helping organizations manage change, mitigate risk and resolve disputes: financial, legal, operational, political & regulatory, reputational and transactional. FTI Consulting professionals, located in all major business centers throughout the world, work closely with clients to anticipate, illuminate and overcome complex business challenges and opportunities.

©2024 FTI Consulting, Inc. All rights reserved. [www.fticonsulting.com](http://www.fticonsulting.com)

