THE UNIVERSITY OF TEXAS SCHOOL OF LAW 12th ANNUAL MERGERS & ACQUISITIONS INSTITUTE

PUBLIC COMPANY CREEP: Exploring the good, the bad, and the ugly of concepts and developments from public target deals that bleed into private target M&A

October 20, 2016

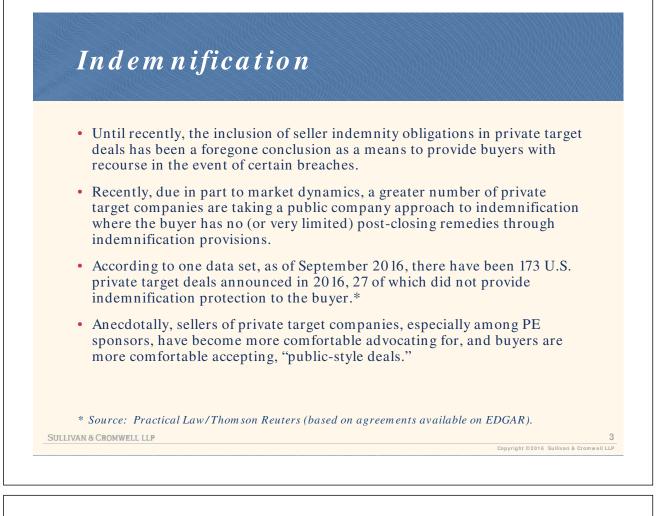
<u>Moderator</u>: Krishna Veeraraghavan, Sullivan & Cromwell LLP <u>Panelists</u>: Timothy P. FitzSimons, Jones Day

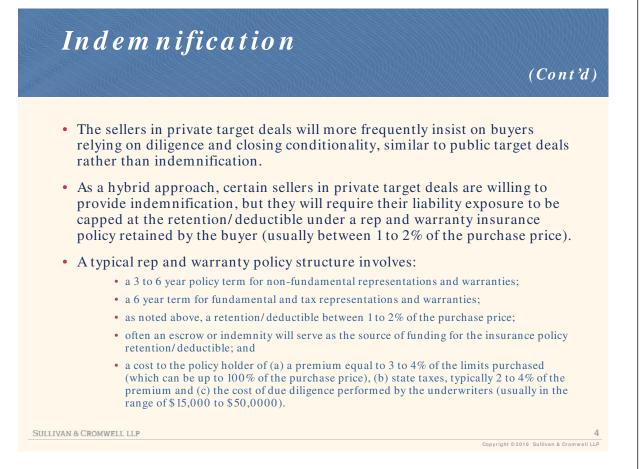
Michael G. O'Bryan, Morrison & Foerster LLP Claudia Simon, Schulte Roth & Zabel LLP

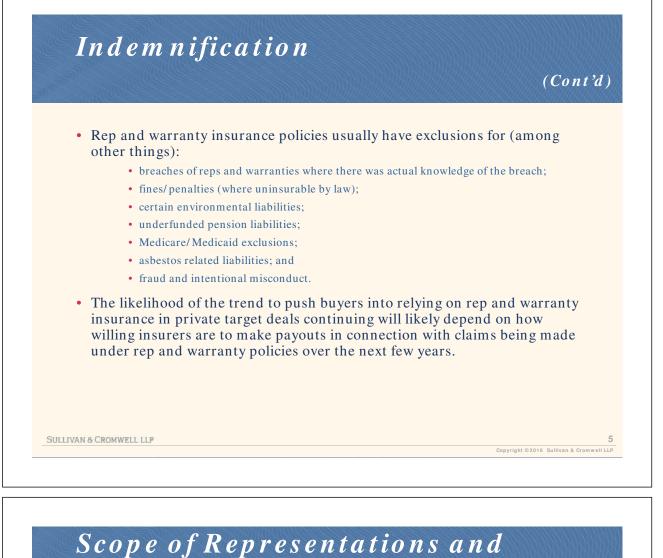
Introduction

- Indemnification
- Scope of Representations and Warranties
- More Precise/Tightened Conditionality
- Appraisal Rights
- Williams Act/ Tender Offer Issues
- Shareholder Litigation
- Stockholder Approval with Different Classes of Stock
- Type of Consideration

right © 2016 Sullivan & Cromwell I I P









• There is also a trend of more frequent use of materiality and MAE qualifiers in private target companies' reps and warranties in private target deals. Therefore, even if there is an indemnity obligation on the part of the sellers, depending on whether there is a materiality scrape for purposes of determining losses, the indemnity obligations with respect to breaches of reps and warranties may not provide very much comfort to a buyer.

SULLIVAN & CROMWELL LLP

Copyright © 2016 Sullivan & Cromwell LLP

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the <u>UT Law CLE eLibrary (utcle.org/elibrary)</u>

Title search: Public Company Creep

Also available as part of the eCourse 2016 Mergers and Acquisitions eConference

First appeared as part of the conference materials for the 12th Annual Mergers and Acquisitions Institute session "Public Company Creep"