

13TH ANNUAL

Mergers and Acquisitions Institute

Negotiating the Attorney-Client Privilege in M&A

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Today's Topics

1. Attorney-Client Privilege 101 For Deal Lawyers
2. Preserving the Privilege (during diligence)
3. Controlling the Privilege (post-closing)

Disclaimers

This presentation (including the accompanying remarks) is intended merely to provide a general introductory overview of certain trends and developments affecting M&A transactions. It is not intended to provide a complete analysis of the matters covered and there are potentially important exceptions and qualifications that are not reflected herein or in the speaker's remarks.

The sample provisions included in these materials are intended only to serve as examples of hypothetical (*i.e.*, make-believe) provisions. M&A is an art not a science, so do your homework. For example, all provisions must be carefully tailored to reflect the specific terms of the transactions to which they relate.

Further, this presentation:

- does not necessarily reflect the views of the speakers or their firms, and we reserve the right to flip-flop as the context requires.
- is not (i) provided in the course of and does not create or constitute an attorney-client relationship, (ii) intended as a solicitation, (iii) intended to convey or constitute legal advice, and (iv) a substitute for obtaining legal advice from a qualified, high-dollar attorney.

Past performance does not guarantee future results. We do not use "cookies" or MSG. Do not text when driving, walking or reading this presentation. If you have an interest in this presentation that lasts more than 4 hours, get medical help right away.

ACP 101: Purpose

The purpose of the attorney-client privilege is “to encourage full and frank communication between attorneys and their clients, and thereby promote broader public interests in the observance of law and administration of justice.” *Upjohn Company, et al. v. United States, et al.*, 449 U.S. 383 (1981)

“. . . [T]he privilege exists to protect not only the giving of professional advice to those who can act on it, but also the giving of information to the lawyer to enable him to give sound and informed advice.” *Id.*

ACP 101: Purpose

- Rule 503 of the Texas Rules of Evidence:
 - (b)(1)(A): A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client . . . and the client’s lawyer.
 - (c): The privilege may be claimed by the client . . . or the successor . . . of a corporation . . .

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First appeared as part of the conference materials for the
13th Annual Mergers and Acquisitions Institute session
"Negotiating the Attorney-Client Privilege in M&A"