

**University of Texas**  
**44<sup>th</sup> Annual Corporate Counsel Institute**  
**Houston, Texas**

**Putting Together the Deal: Navigating Deal Structure and  
Use of Representation and Warranty Insurance**

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**Moderator:**

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**Panelists:**

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## Topics to be Covered

- Basic M&A Structures
- Principal M&A Agreements
- Corporate Approvals/Fiduciary Duties
- Representation and Warranty Insurance
- Questions

## Basic M&A Structures

## Basic M&A Structures

- Stock Purchase
- Asset Purchase
- Statutory Merger
- Joint Venture

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## Stock Purchase

- **Description**
  - Buyer purchases stock of another company directly from the stockholders
- **Primary Use**
  - Frequently used when target stock is not widely held (*e.g.*, acquisition of closely held company or subsidiary of another company)
- **Advantages**
  - Buyer acquires all of the assets of the target - no need to specifically identify and define all acquired assets necessary to continue operating target business
  - Generally target liabilities isolated in target and do not become buyer liabilities
  - Generally target contracts remain in place without consent of third parties (unless a contract contains a "change of control" provision)
  - May not require target board approval
  - Does not trigger appraisal rights
- **Disadvantages**
  - Buyer indirectly inherits all liabilities of the target (although isolated within target)
  - Must obtain agreement from every selling stockholder
  - No "step up" in tax basis of target assets (unless 338 election made)

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