

# Earnouts – A Mock Negotiation

## Negotiators:

**Richard E. Climan**  
*(Buyer's outside counsel)*

Partner, Hogan Lovells  
Silicon Valley, CA

**Joel I. Greenberg**  
*(Sellers' outside counsel)*

Senior Counsel, Arnold & Porter  
New York, NY

## Commentator:

**Jessica Pearlman**

Partner, K&L Gates  
Seattle, WA

# Overview

---

• Fact pattern/positions	Slide	2
• What is an “earnout”?	Slide	3
• Earnout metrics	Slides	4-8
• Earnout measurements period(s)	Slide	9
• Operational issues	Slides	10-12
• Acceleration of earnout and other remedies	Slide	13
• Earnout payments	Slide	14
• Earnout based on total return	Slide	15
• Dispute resolution	Slide	16
• Are earnout interests “securities”?	Slides	17-18
• Key earnout cases and takeaways	Slides	19-27
• Earnout Statistics	Slides	28-31
• Speaker bios	Slides	33-35

## Facts pattern/positions

---

- Buyer is negotiating the acquisition of a privately held tech company (“**TechCo**” or the “**company**”) by means of a cash purchase of all of TechCo’s outstanding equity from TechCo’s shareholders (“**Sellers**”).
- After closing, TechCo will operate as Buyer’s wholly owned subsidiary, and TechCo’s current senior management team (all of whom are current TechCo shareholders) will continue to hold TechCo management positions.
- Sellers believe TechCo’s equity value is **\$300M**, based largely on TechCo’s rosy 2-year cash-flow projections. Buyer is skeptical and believes TechCo’s true equity value is closer to just **\$200M**.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Earnouts - A Mock Negotiation

First appeared as part of the conference materials for the  
20<sup>th</sup> Annual Mergers and Acquisitions Institute session  
"Mock Negotiation of Earnouts and Contingent Consideration"