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UT LAW CLE

TEXAS Law
The University of Texas at Austin School of Law

THE LAST WORD ON FRAUD IN M&A TRANSACTIONS

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The Last Word on Fraud in M&A Transactions

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HYPOTHETICAL FACT PATTERN

Rick's Client: The seller and sole shareholder ("Seller") of the target company ("Target")

Keith's Client: Buyer

Transaction: Buyer to buy 100% of the stock of Target from Seller for $300M, pursuant to a stock purchase agreement ("SPA")

Certain SPA Terms:

- General Indemnity: Seller to indemnify Buyer for any losses arising from breaches of Seller's reps about Target's business
- Cap: Seller's general indemnification liability capped at $30M (10% of purchase price)
- Governing Law: Delaware

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- Recent M&A-related civil fraud actions
  - *River Valley Ingredients, LLC v. Am. Proteins, Inc.* (Del. Super. Ct. 2025) – $55M judgment for fraud committed in sale of business (structured as sale of assets)
  - *Hartree Nat. Gas Storage, LLC v. PAA Nat. Gas Storage, L.P.* (Del. Super. Ct. 2025) – $30M judgment for fraud committed in sale of business (structured as sale of LLC membership interests)
- Recent M&A-related criminal fraud prosecutions
  - *United States v. Lynch* (N.D. Cal. 2025) – relating to sale of listed company (Autonomy)
  - *United States v. Javice* (S.D.N.Y. 2024) – relating to sale of business (structured as sale of shares)

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A seller of a business commits the civil tort of **fraud** if:

- ***Material Misrepresentation***:
  The seller makes a **materially false representation** to the buyer
- ***Scienter***:
  The seller makes a false representation with **scienter**
  (*i.e.*, with **intent to deceive** or **reckless disregard for the truth**)
- ***Reliance***:
  The buyer reasonably **relies** on that false representation and suffers damages as a result

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Potential fraud remedies in civil/equitable actions

- Uncapped damages
- Punitive damages
- Rescission

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Title search: The Last Word on Fraud in M&A Transactions

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