



A Seat with an Expert Series: Nikki Coles

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In our *Seat with an Expert* video series, A&M Disputes and Investigations practitioners highlight key trends and developments in global disputes, investigations and compliance, forensic technology, and cybersecurity and provide expert analysis and insights into key issues affecting companies worldwide.

In this video, Managing Director [Nikki Coles](#) shares her expertise on the latest trends in post-acquisition disputes and provides key insights into:

- What are the key factors driving post acquisition disputes today?
- What kind of post-acquisition disputes do you expect to see?

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Transcript:

What are the key factors driving post acquisition disputes today?

During Covid, a record volume and value of deals were transacted fuelled by investor pressure to deploy unspent capital, historically low interest rates and high availability of capital, and fierce competition. This led to high valuations, often highly leveraged deals, and limited due diligence. In the current economic climate where we are seeing a loss of investor confidence due to economic uncertainty, geopolitical tensions, and supply chain disruption, this has meant that many investments are underperforming against expectations and the returns priced into the deals are not being achieved.

What kind of post-acquisition disputes do you expect to see?

Firstly, we are already seeing an increasing number of breaches of warranty claims. Warranties are especially important in locked box closing mechanisms where the purchase price is set with reference to the target's financial position at a point of time prior to completion. Warranties are also key, however, where due diligence has been curtailed.

Often, we see cases regarding the warranted financial statements on which the buyer sets its valuation. But we also see warranties around full disclosure, for example to the extent of liabilities. In recent years there has been an increase in the availability of warranties and indemnities insurance which effectively protects parties from losses arising from breaches of warranties and indemnities. The availability of this insurance may potentially lead sellers to be more willing to give extensive warranties in an acquisition.

Secondly, earn-out disputes. Earn-out clauses allow for adjustment of the purchase price to take account of post-acquisition performance. These have historically been used to tie in sellers and ensure they contribute to the success of the business post-acquisition, however increasingly, we see them used to bridge divergent views as to value between the buyer and the seller. This mitigates risk to the purchaser, however it leaves the seller vulnerable to the way in which the business is conducted post-acquisition. This can be addressed by putting clear restrictions on what the buyer can do post-acquisition. However sometimes one sees more subjective clauses such as a requirement that the buyer operate the business 'in good faith' or 'in the ordinary course' post-acquisition. Such subjective clauses can be very difficult to interpret, particularly in times of widespread market disruption. In addition, we often see issues as to the extent to which the buyer should be insulated from adverse extraordinary events.

Finally, price adjustments. Price adjustment provisions are aimed at insuring that the final price paid reflects the agreed upon value at closing. Commonly, we see these provisions in relation to working capital at completion, as working capital can be extremely volatile. This is particularly so in the current economic climate where we are seeing widespread supply chain disruption and working capital management being used to strengthen balance sheets. These provisions often lead to disagreement as to the correct interpretation of the underlying accounting terminology.

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