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Rise of Post-Closing M&A Disputes

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Post-closing disputes are becoming an increasingly significant concern in M&A transactions, particularly in middle-market deals valued at less than $1 billion. As deal structures become more complex and parties increasingly rely on mechanisms that defer valuation or risk-allocation issues until after closing, the potential for post-closing disagreement grows. Recent industry reports indicate that disputes involving earnouts, working capital adjustments and other post-closing obligations are the most common, especially where parties defer discussions about potential issues to facilitate a quicker signing or closing process. Representations and warranties also remain a frequent source of post-closing claims.

Recent economic, regulatory, and geopolitical shifts also contribute to increased disputes. Purchase agreements increasingly rely on earnouts, contingent payments, performance-based metrics, and other means that shift risk into the post-closing period. These provisions can become particularly contentious when the parties have different expectations regarding accounting methodologies, post-closing operations, or metrics used to determine payments. Private equity transactions can be particularly susceptible to these issues, as compressed deal timelines and expedited diligence processes can result in unresolved concerns being carried forward into the post-closing relationship rather than fully addressed before signing.

Given these trends, parties should prioritize careful diligence and precise drafting of indemnity clauses and post-closing provisions. Clear earnout calculations, detailed working capital adjustment processes, well-defined representations and warranties, and comprehensive dispute-resolution procedures negotiated pre-closing can significantly reduce the likelihood of future conflict. Buyers and sellers should identify potential areas of post-closing uncertainty early in the transaction process and work with counsel to ensure that risk allocation provisions accurately reflect the parties' expectations. Proactive planning and thoughtful drafting remain important tools for maintaining deal value and avoiding costly post-closing disputes.

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