

# Mergers & Acquisitions Litigation

Polsinelli's Mergers & Acquisitions Litigation practice represents buyers, sellers, officers, directors, and other parties involved in or impacted by M&A transactions and securities offerings. These matters involve and impact a broad cross-section of public and privately-held business organizations, including Fortune 500 companies, private equity firms, venture-backed companies, and family-owned businesses. Our lawyers practice law with a laser focus on the business objectives of our clients. Our business litigators frequently engage the firm's corporate governance, tax, intellectual property, professional liability, and employment law practitioners to ensure that a multi-disciplinary perspective informs the litigation services we provide.

Our clients include:

- Buyers and sellers in M&A transactions
- Private equity firms
- Directors, officers, managers, managing members, and general partners
- Boards, standing board committees, special committees, and their respective advisors
- Shareholders, members, partners, and other significant stakeholders
- Successors

Our experienced business litigators prosecute and defend M&A disputes arising from deals of all sizes, ranging from \$1 million to over \$1 billion. We regularly litigate these matters in courts and arbitration tribunals across the country. Our attorneys tailor strategies in each matter to meet the client's specific business objectives as effectively and efficiently as possible. In some cases, this means litigating the dispute to a final decision through a trial or arbitration hearing. In others, we execute litigation strategies designed to increase our client's leverage to reach a negotiated resolution. In addition to pursuing and defending deal-related claims where necessary, our litigators provide advice and counsel to help our clients manage the dispute internally, including notifying and updating their LPs, shareholders, and other investors.

Our M&A litigation experience includes:

- Shareholder derivative actions
- Breach of representations and warranties
- Breach of fiduciary duties
- Fraud
- Indemnification and contribution
- Valuation and valuation methodologies
- Audits and accounting
- Earn-out and hold-back provisions
- Statutory appraisals
- Books and records inspection rights
- Successor liability, veil-piercing, and fraudulent transfers
- Securities and investor fraud

- Post-Closing non-compete and non-solicitation provisions
- Internal investigations
- Asset acquisition in bankruptcy or receivership

Our team employs early case assessment, budgeting, and other tools and processes to formulate and execute litigation strategies that align with our clients' business objectives.

We also consult with boards and board committees and assist with process enhancements, such as recusal, special committees, and disclosures. Our business litigators, many of whom also practice in our Government Investigations practice, have considerable experience advising on regulatory matters and are well-equipped to handle investigations by the SEC, DOJ, and other governmental agencies.

In addition to handling litigation and disputes when they arise, our M&A litigation team works closely with our firm's transactional attorneys to provide advice and counsel in the negotiation of M&A transactions and deal terms. By anticipating areas of concern, our team assists clients in avoiding or mitigating litigation through forward-looking negotiations and the inclusion of appropriate protections within the deal documents. This experience of consulting on different transactions and reviewing a variety of deal terms gives our litigators a broader perspective, which is an advantage when disputes are unavoidable.

## Matters

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- Successfully defeated TRO brought in Delaware Chancery Court seeking to enjoin our client's acquisition of an international precious metals company.
- Represented seller of flight tracking platform against post-closing IP claims brought by vendor and indemnification claims brought by buyer.
- Represented a clinical stage biopharmaceutical company, and its executives and directors, in a 10(b)(5) securities class action case filed in federal court in New Jersey. Litigation settled on favorable terms shortly after defendants filed their motion to dismiss.
- As lead counsel, represented an international natural gas company in a commercial contract dispute with a former joint venture partner.
- Represented a national investment adviser in multiple suits alleging securities fraud and breach of fiduciary duty.
- Litigated claims under the Trust Indenture Act (TIA) on behalf of trustees and financial institutions.
- Successfully tried securities fraud claims on behalf of a national investment adviser to verdict before a Financial Industry Regulatory Authority (FINRA) arbitration panel.
- Defended securities class action, consumer fraud class action and derivative lawsuit. In *Re Able Labs. Securities Litigation*, 425 F. Supp. 2d 562 (D.N.J. 2006).