

*The Orange County Bar Association
Corporate Counsel Section and COVID-19 Task Force Presents*

COVID-19 AND DEALS: A DISCUSSION OF THE IMPACT ON MERGERS & ACQUISITIONS

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Speakers

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Ric Tilley, Esq.

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Moderator

Kelly Galligan, Esq.

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Introduction By:

Faythe Gutierrez, Esq.

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The novel coronavirus has and will continue to have an impact on the mergers and acquisitions market. This Harvard Business Review article and WilmerHale 2020 M&A Report provide an outlook on this year's mergers and acquisition market, which is clouded by the impact of the COVID-19 pandemic.

<https://hbr.org/2020/06/what-ma-looks-like-during-the-pandemic>
<https://www.wilmerhale.com/en/insights/publications/2020-manda-report>

From a business perspective, COVID-19 has impacted how companies approach strategic acquisitions. The following articles discuss business concerns in considering a mergers and acquisition transaction, such as working-capital adjustments, purchase price protections, and financial, tax and valuation considerations.

<https://www.mossadams.com/articles/2020/06/mergers-and-acquisition-deal-tips-covid-19>
<https://www.armaninollp.com/articles/mergers-acquisitions-during-covid-19/>

The pandemic has stalled or ended negotiations on many in-process deals. Additionally, there are many factors that can extend a deal process. For example, in the current climate, physical visits to target companies may be difficult, a remote workforce might cause diligence efforts to take longer, government approvals may take longer due to government backlogs, and buyer financing might take longer to secure. The following article from Plante Moran considers domestic middle-market mergers and acquisition and discusses, among other things, the effect on transactions in process that had not closed when the pandemic hit.

<https://www.plantemoran.com/explore-our-thinking/insight/2020/04/covid-19-impact-on-domestic-middle-market-mergers-and-acquisitions>

Pre-deal diligence requires careful consideration in light of the COVID-19 outbreak, as outlined in these Latham and Watkins and Dechert LLP articles.

<https://www.lw.com/thoughtLeadership/covid-19-due-diligence-considerations-for-mergers-and-acquisitions-transactions>
<https://www.dechert.com/knowledge/onpoint/2020/3/covid-19-coronavirus--implications-for-due-diligence.html>

This Forbes.com article discusses how the pandemic has impacted deal activity, deal timing and delays, the impact on letters of intent, the ability and terms of financing of acquisitions, as well as the effect on negotiations over specific deal terms.

<https://www.forbes.com/sites/allbusiness/2020/04/17/impact-of-coronavirus-crisis-on-mergers-and-acquisitions/#2d303b86200a>

An international pandemic has attorneys in many sectors reviewing and considering the force majeure clauses in a variety of contracts. The following National Law Review article considers how force majeure clauses are being negotiated in the mergers and acquisitions context.

<https://www.natlawreview.com/article/how-will-covid-19-impact-ma>

The pandemic has also mandated careful devotion to the definition of “material adverse effect” in acquisition agreements. This Dechert LLC article discusses the allocation of risk, durational significance, exclusions, inclusion of COVID-19, and the buyer’s efforts covenant related to the material adverse effect definition.

<https://www.dechert.com/knowledge/hot-topic/coronavirus-business-impact/covid-19-and--material-adverse-effect--provisions.html>

Speaker Biographies

JIKJA CHUNG, ESQ.

Pacific Summit Energy

Jikja Chung is the General Counsel and Chief Compliance Officer of Pacific Summit Energy, the North American energy trading and marketing arm of Sumitomo Corporation. For the past 10+ years, she has been involved with various transactions related to natural gas, LNG, power and crude oil. As General Counsel and Chief Compliance Officer, Jikja is involved with all legal aspects of the company including advising the senior management on corporate strategy matters, serving as a real time commercial and regulatory resource for the commodity traders and marketers and participating in the company's organizational development.

Prior to joining PSE, Jikja started her practice at Shearman & Sterling in New York followed by Snell & Wilmer and McDermott Will & Emery in Orange County.

Jikja spent her childhood in Tokyo, Japan. She currently lives in Newport Beach with her husband and 2 daughters. She is a graduate of Harvard College and Columbia Law School.

CRAIG W. FITCH, ESQ.

Ensign Services, Inc.

Craig Fitch is the VP of Transactional Legal Affairs at Ensign Services, Inc., a subsidiary of The Ensign Group, Inc., which is the publicly traded parent company to independent operating subsidiaries that provide a broad spectrum of skilled nursing, senior living and healthcare and rehabilitative services at 225 healthcare facilities in 13 states.

Mr. Fitch represents and leads the company through its acquisitions and other transactional-related matters. Prior to joining Ensign, Mr. Fitch was an associate in the New York and Los Angeles offices of Latham & Watkins LLP, where he served as a member of the Finance Department and Banking Practice, representing financial institutions and corporate borrowers in leveraged finance transactions.

Mr. Fitch received his Juris Doctor from Washington University in St. Louis School of Law, and he received his Master of Laws in Law and Entrepreneurship from Duke University School of Law.

Mr. Fitch is a member of the New York and California bars.

CHRISTINA MCSPARRON, ESQ.*Rutan & Tucker, LLP*

Christina McSparron works closely with individual and corporate clients across the country, at all stages in the life cycle of the business. In her practice, she regularly acts as general outside counsel and advises on diverse matters such as entity structuring, corporate governance, mergers, acquisitions, debt and equity financing, licensing, and general business operations. She regularly advises entrepreneurs and executives in the automotive, technology, restaurant, food and beverage, building materials and manufacturing, and retail industries.

Prior to her practice of law, Christina was an entrepreneur, building two businesses in California and Minnesota, and was a director of an international non-profit. She is successful in assisting her clients to grow and protect their business potential while taking calculated business risks. Christina prides herself on bringing real-world business knowledge to her practice for a creative problem solving approach.

Christina is a graduate of the University of California, Los Angeles and University of Minnesota Law School, where she was an editor of the Minnesota Law Review.

RICHARD TILLEY, ESQ.*Foundation Building Materials*

Mr. Tilley is Vice President, Secretary and General Counsel at FBM. Prior to joining the Company in 2016, Mr. Tilley was the Vice President of Legal Affairs for Mophie, a technology company, and led the sale of Mophie to ZAGG, Inc. From 2009 until 2015, when he joined Mophie, Mr. Tilley was Assistant General Counsel for Multi-Fineline Electronix, Inc., a flexible printed circuit board manufacturer with operations in the United States, Asia and Europe.

Mr. Tilley graduated from the Dale E. Fowler School of Law at Chapman University and has a Bachelor of Arts in History from California State University, Long Beach.

KELLY L. GALLIGAN, ESQ.**Moderator***Rutan & Tucker, LLP*

Kelly Galligan is a corporate attorney with a focus on a wide range of general corporate law, with an emphasis on mergers and acquisitions, litigation funding, private equity, and corporate governance.

Kelly has experience in an array of corporate transactions, including representing acquirers and target companies in stock and asset acquisitions and divestitures, mergers of privately held

companies, joint venture transactions, litigation funding, and private equity investments. Her mergers and acquisitions practice is focused on the middle market with transaction values ranging between \$5 million and \$500 million. Kelly serves as outside general counsel for corporate clients, providing private companies day-to-day counseling on a broad range of transactional and governance matters.

Kelly's practice touches a variety of industries including private equity, apparel and beauty, financial services, food and beverage, health, wellness and fitness, logistics, manufacturing, construction, and entertainment.

Committed to serving her community, Kelly provides pro bono legal services through the Public Law Center and serves as the Board Member of Project Youth OCBF (former associate board chair), a nonprofit organization committed to keeping at-risk youth in Orange County in school, healthy and drug-free. Additionally, Kelly is a Board Member of the Orange County Bar Association (OCBA), Vice President of the Orange County Women Lawyers Association (to be President in 2021), and Past Chair of the OCBA Young Lawyers Division.