

Andrew Schumacher in the Wall Street Journal: Buyers Test Coronavirus Excuse for Ditching Unwanted M&A Deals

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Winstead PC attorney Andrew Schumacher was interviewed by the Wall Street Journal about Material Adverse Change (MAC) clauses—a condition that allows parties to avoid contractual obligations due to a change in circumstances that causes a substantial decline in the value of a business—and their role during the COVID-19 pandemic. An excerpt is below:

“Companies are betting the coronavirus pandemic is a get-out-of-deal-free card in legal fights over stalled mergers. More than a half-dozen lawsuits have been filed since the beginning of April after buyers allegedly developed cold feet over deals inked before the pandemic struck.

In some cases, private-equity firms or companies they control are allegedly trying to back out of acquisitions by arguing the virus outbreak has damaged the economic health of businesses they agreed to buy.

The lawsuits hinge on Material Adverse Change, or MAC, clauses. A MAC is a standard part of an M&A contract a buyer can invoke to walk away from a deal if an event occurs that harms the target company before closing. The question before the courts is whether the coronavirus pandemic qualifies as such an event.

Buyers likely face long odds to get out of deals by invoking MAC clauses, according to lawyers, because the Delaware Chancery Court, which hears nearly all disputes on merger contracts, has only once ruled that a buyer can abandon a deal due to a material adverse change.

That 2018 ruling terminated a deal between pharmaceutical companies Fresenius Kabi and Akorn Inc. and gave hope to other companies that the court would let them escape unwanted deals because of a material event.

The Akorn decision “certainly opened the door and has more people thinking they can actually win these in Delaware,” said Andrew Schumacher, a member of the commercial litigation and appellate practices with the Winstead PC law firm in Austin, Texas.”

[Read the full article.](#)

Schumacher also co-wrote an article with attorneys Brad Monk and John Kincade for Winstead’s Securities Litigation and Regulatory Enforcement blog detailing what businesses should know before triggering a MAC clause based on COVID-19. [Read the blog post](#) and visit [Winstead’s COVID-19 Resource Center](#) for more business resources.

Schumacher is a member of Winstead’s Commercial Litigation and Appellate practices. He represents local, regional and national clients in complex litigation in state and federal courts in matters involving real estate, financial services, insurance coverage, intellectual property, tax controversies, business contract and tort claims, and defamation and libel claims. He also represents clients in Public Information Act issues before the Attorney General of Texas and other government enforcement and regulatory actions.

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