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The Material Adverse Change/Effect During An Economic Crisis

Many merger and acquisition transactions have unraveled in the time between announcement and closing as a result of the current economic crisis. Buyers are attempting to abandon transactions without penalty by citing a clause common in purchase agreements called the material adverse change/condition (MAC) or material adverse effect (MAE) clause. MAC/MAE clauses typically provide the buyer and seller with options for canceling the deal should an unforeseen event occur that substantially impacts the target company.

In fairness to sellers who have secured signed purchase agreements, courts such as the Delaware Court of Chancery have ruled that the target company must be disproportionately affected (relative to its peers) by changes in market or industry conditions to establish that a material adverse change or effect has occurred.

The Griffing Group, Inc. has been retained cases in the Delaware Court of Chancery and the New York State Supreme Court involving buyers who have cited a MAC/MAE clause as the basis for abandoning a purchase agreement. In both cases, we were retained by the seller to analyze whether the target company was disproportionately affected by changes in market or industry conditions during the period after the signing of the purchase agreement and before the expected closing date. The analysis we perform in these matters focuses on the changes in market and industry conditions and the resulting effects on the target company and its peers.

The Griffing Group, Inc. has extensive experience in providing litigation support and expert witness testimony in corporate litigation matters. We are regularly retained to assist in cases involving business valuation, intellectual property valuation, economic damages, and breach of contract. Our unique approach to analyzing valuation issues and communicating our expert opinions has led to our routine retention in jurisdictions such as the United States District Court and the Delaware Court of Chancery.

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