

Protecting Privileged Pre-Merger Communications Through Contractual Provisions

A Pepper Hamilton **client alert** discusses a Delaware case in which the court held that the sellers of a target corporation retained the right to assert attorney-client privilege over pre-merger communications with the target corporation's counsel because the parties included a provision in the merger agreement that explicitly precluded the buyer from using the communications in a post-closing dispute with the sellers.

"The court's opinion serves as an important reminder to sell-side counsel to negotiate for these provisions to ensure that privileged pre-merger communications between the target's counsel and the sellers cannot be used against them in any future disputes," the authors explain.

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