

The Sandbagging Conundrum Explained

“There is perhaps no more consistently vexing problem for transactional attorneys on opposite sides than figuring out a fair contractual resolution for “sandbagging” issues.” warns Allison J. Sherrier in Goulston & Storrs’ *What’s Market*.

“One problem for attorneys is the extraordinary difficulty of defining and proving what kind of actual or constructive pre-closing knowledge a buyer had or should have had. As a result, lawyers and their clients frequently choose to avoid wrangling over contractual terms associated with sandbagging for fear of blowing up a deal or spending inordinate time to reach agreement on this one problem.”

“Because transactional contracts often fail to address sandbagging, the post-closing resolution of sandbagging issues frequently hinges on applicable common law, and courts in different states have very different views about the proper resolution of these controversies. This makes the choice-of-law provision in transactional contracts extremely important.”

Read the article.