

#### Purchase and Sale Agreements

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This is a general overview of the subject matter and should not be relied upon as legal advice or opinion. For specific legal advice on the information provided and related topics, please contact the author or any member of the Business and Commercial Law Groups.

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#### **Purchase and Sale Agreements**

10th Negotiating and Drafting Major Business Agreements Conference

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## Overview

- Background
  - reasons for the transaction
  - threshold structure issues
- The Agreement
  - essential terms
- Summary



## Background

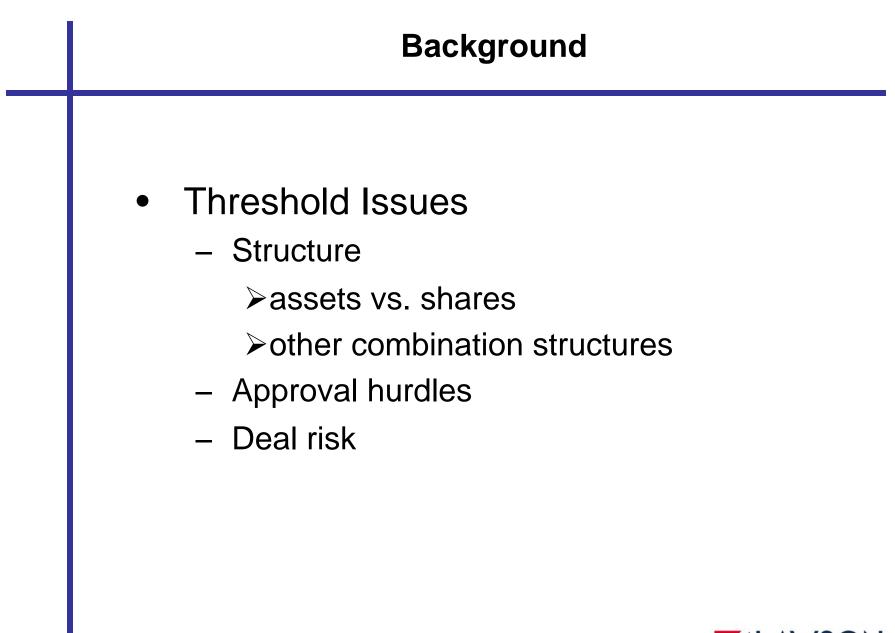
- Motivation of Buyers/Sellers
  - Seller.
    - ≻time to "cash out"
      - -lack of successor
      - -liquidity event
    - Future growth prospects difficult w/o capital
    - Change in business or regulatory environment
    - ≻survival



## Background

- Motivation of Buyers/Sellers
  - Buyer.
    - ➤ strategic expansion opportunities
    - ➤ geographic expansion opportunities
    - ≻"eat or be eaten"
    - ≻capacity issues
    - ≻opportunistic buys







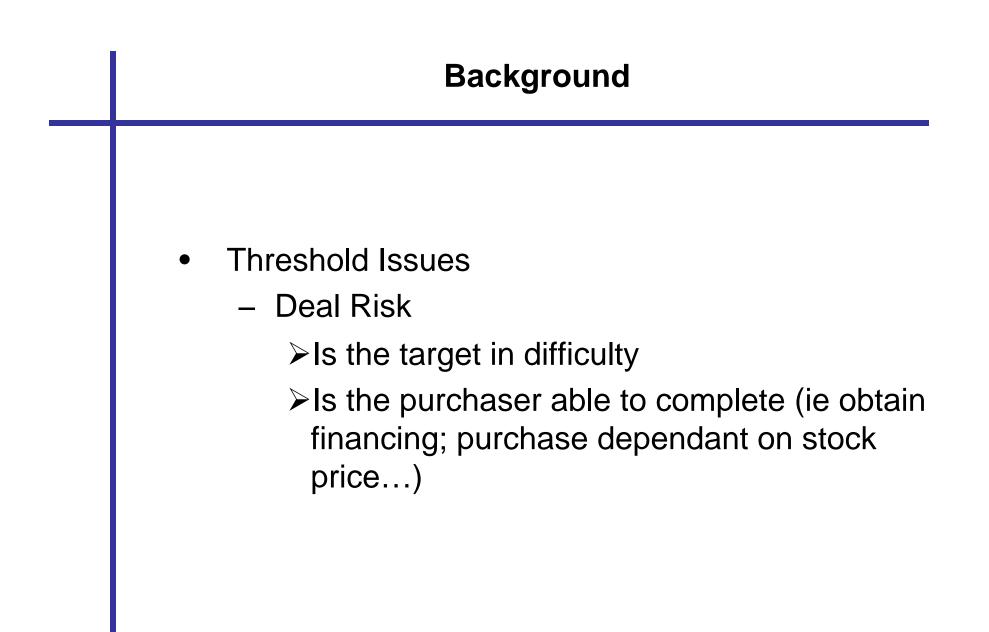
## Background

- Threshold Issues
  - Structure
    - ≻tax driven
      - -transaction proceeds
      - use of losses in target
    - ➤target liability concerns
    - ≻shareholder issues
    - ➢ jurisdiction (cross-border or domestic)

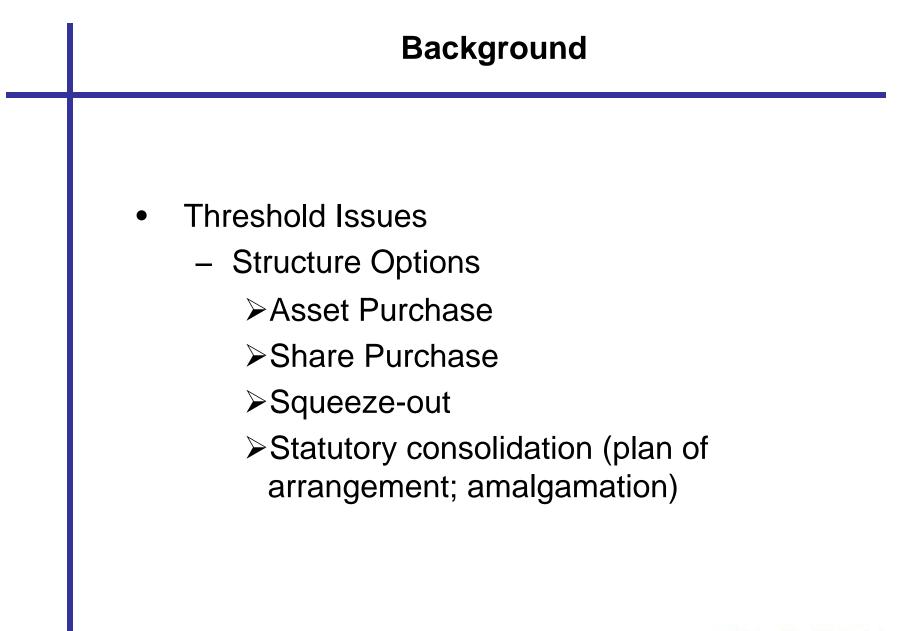


# Background **Threshold Issues** Approval Issues Competition/antitrust pre-merger clearance ➤ securities law compliance ➢ industry specific regulatory compliance ➢ foreign ownership restrictions >key non-regulatory third party approvals

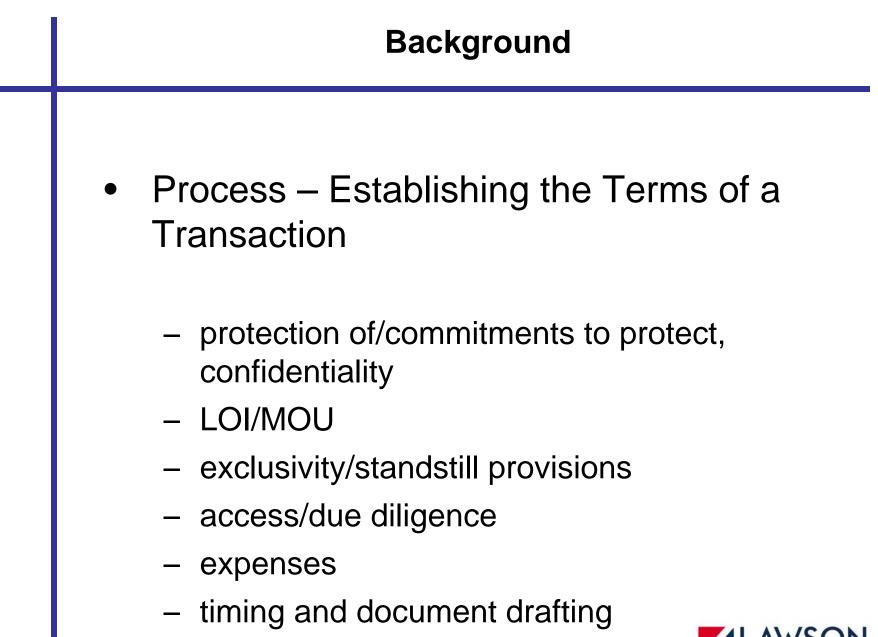




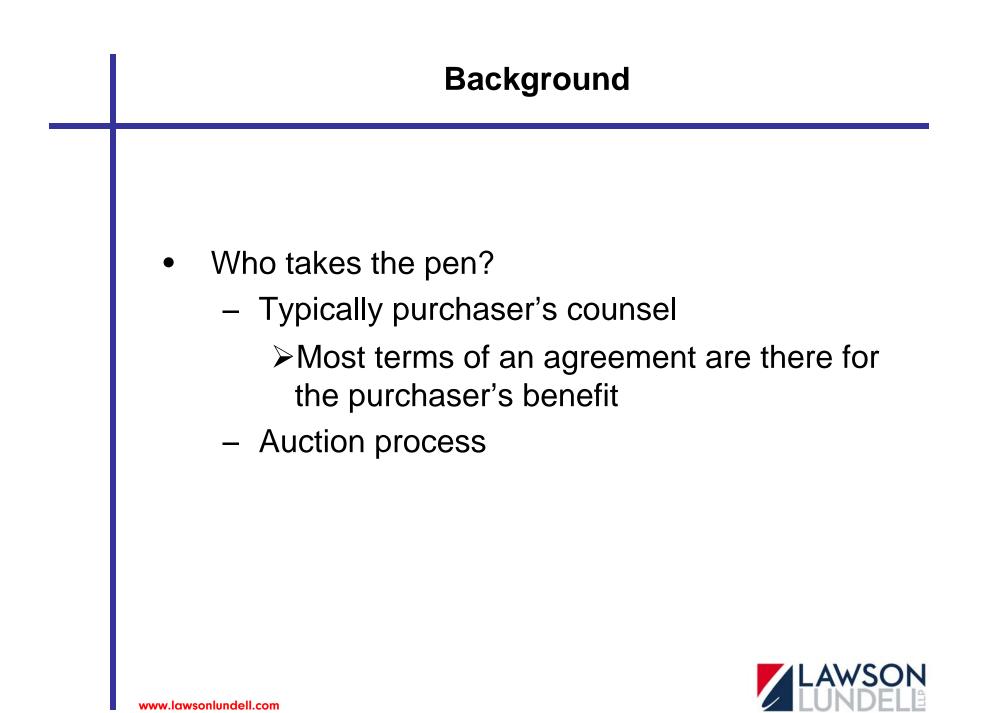






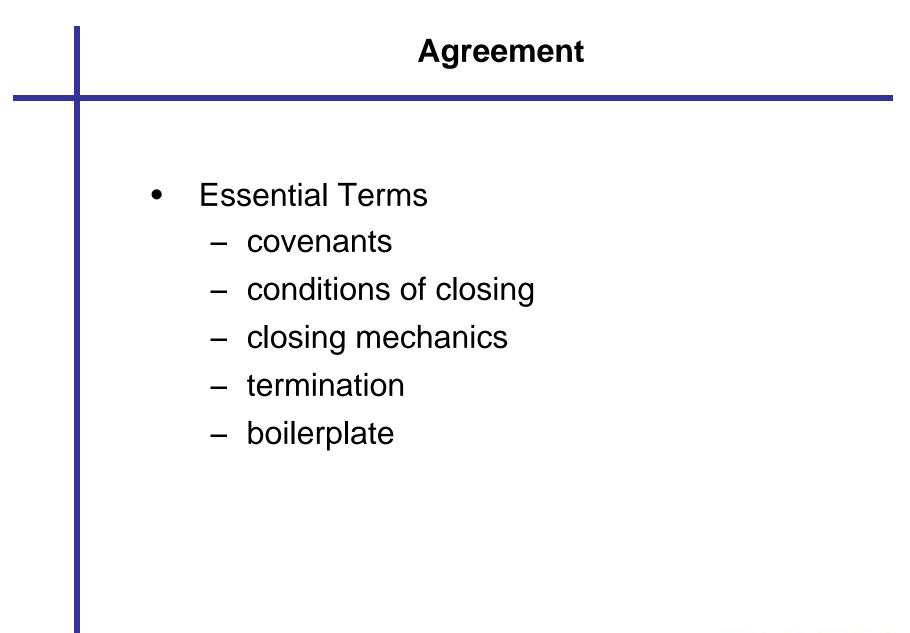














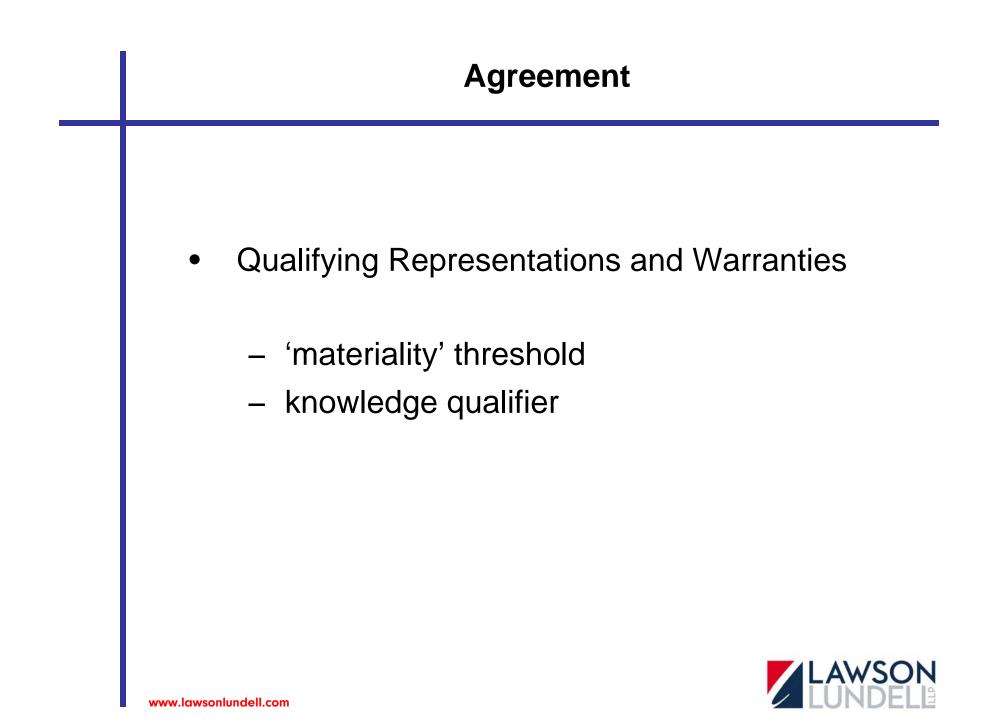
## Agreement **Purchase Price** – how determined? allocation of purchase price cash on closing or deferred payments - adjustments >working capital adjustments >adjustments based on target / other value determinants

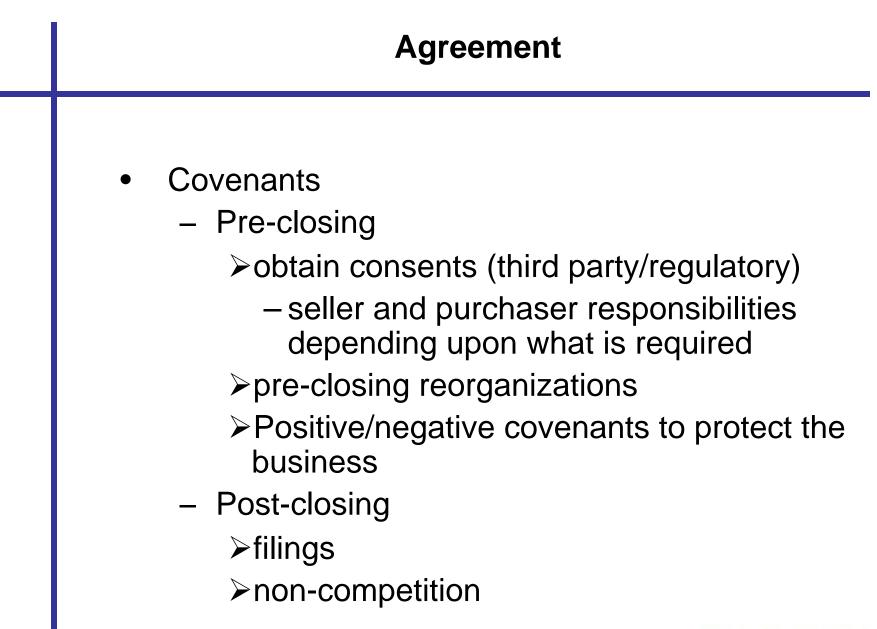
hold-back; escrow



- Representations and Warranties
  - risk allocation
  - due diligence / disclosure
  - confirmation of key issues and value drivers
  - industry-specific considerations
    - Particular representations and warranties
    - ➤Tolerance for agreement structure









- Survival
  - principal negotiation issue for vendors
  - different categories of representations and warranties
    - ≻ general
    - ➤ tax; environmental
  - exclusions from survival limits



- Closing Conditions
  - consents
  - key employee retention
  - financing
  - confirmation of all reps/warranties
  - delivery of all required documents
  - external events

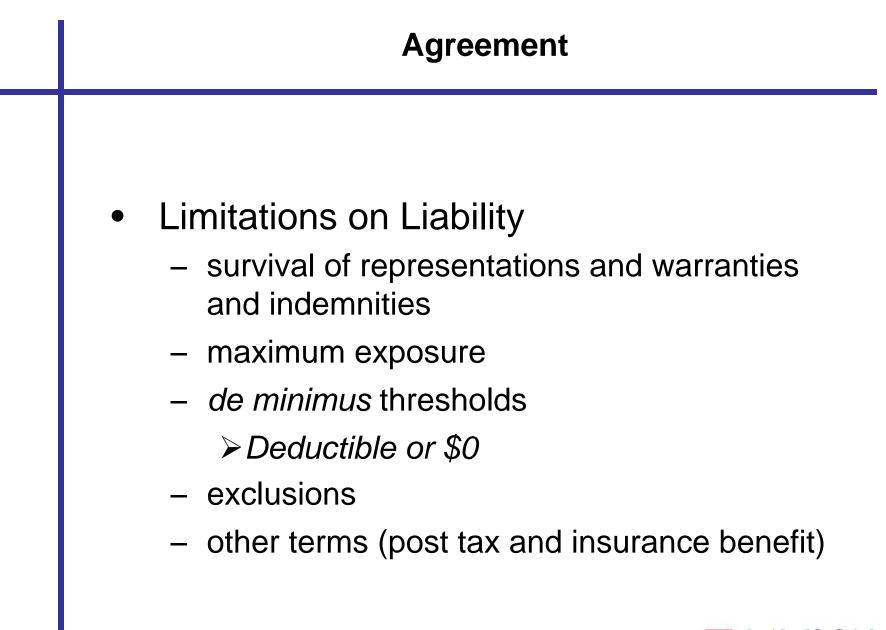


- Closing Mechanics
  - when/where
  - what is required to convey assets/shares and payment
  - escrow arrangements
  - financing requirements
  - post-acquisition requirements (e.g. amalgamation after the transfer of control)
  - bringing reps/warranties forward & confirmation of covenants



- Indemnities
  - who is standing behind representations and warranties
    - ≻affected by structure
    - >on-going relationship with sellers
    - ≻enforcement
    - Several or joint and several
  - extent of indemnities
    - Coverage and exclusions
    - misrepresentation or absolute
  - mechanics of indemnification

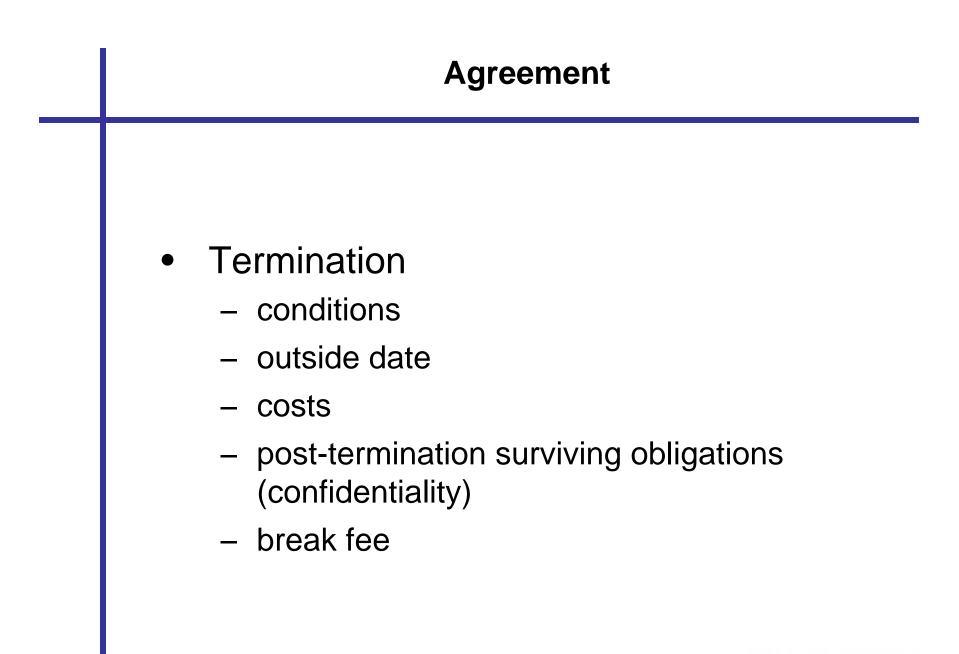




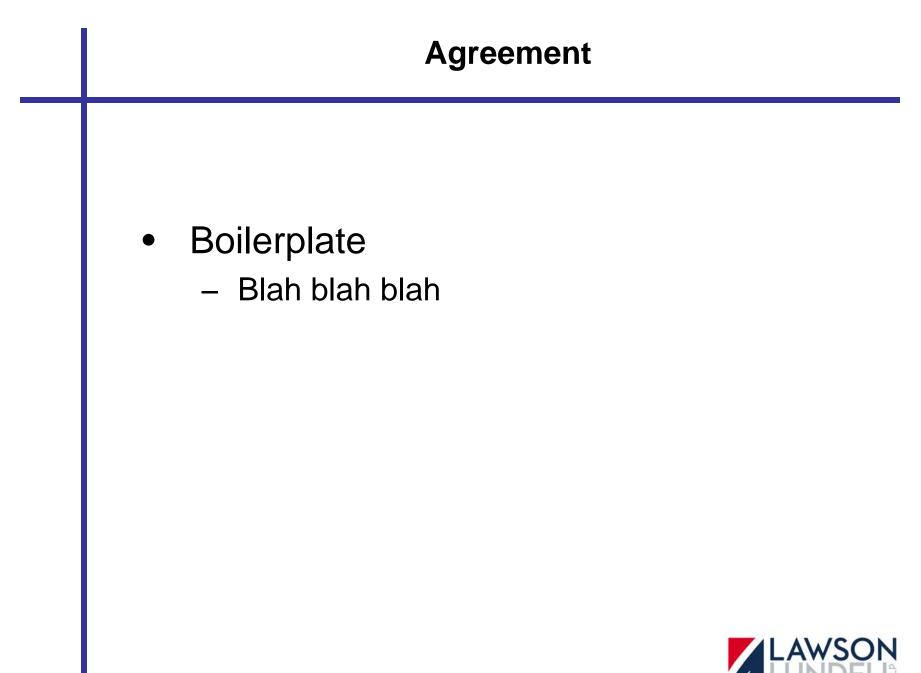


- Post-Closing Matters
  - audit
  - purchase price adjustments
  - dispute resolution (purchase adjustments, indemnification, earn-out mechanics)
  - filing requirements (e.g. regulatory)

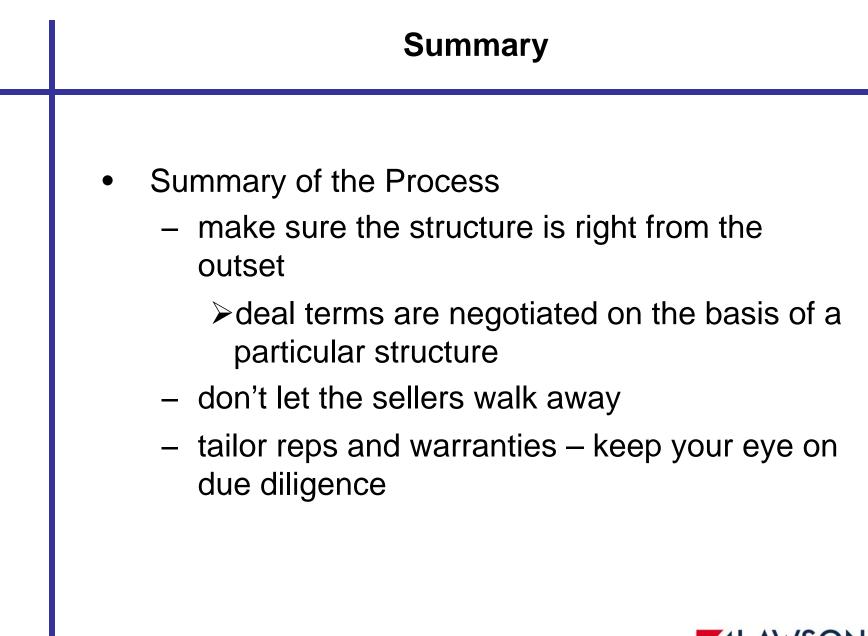




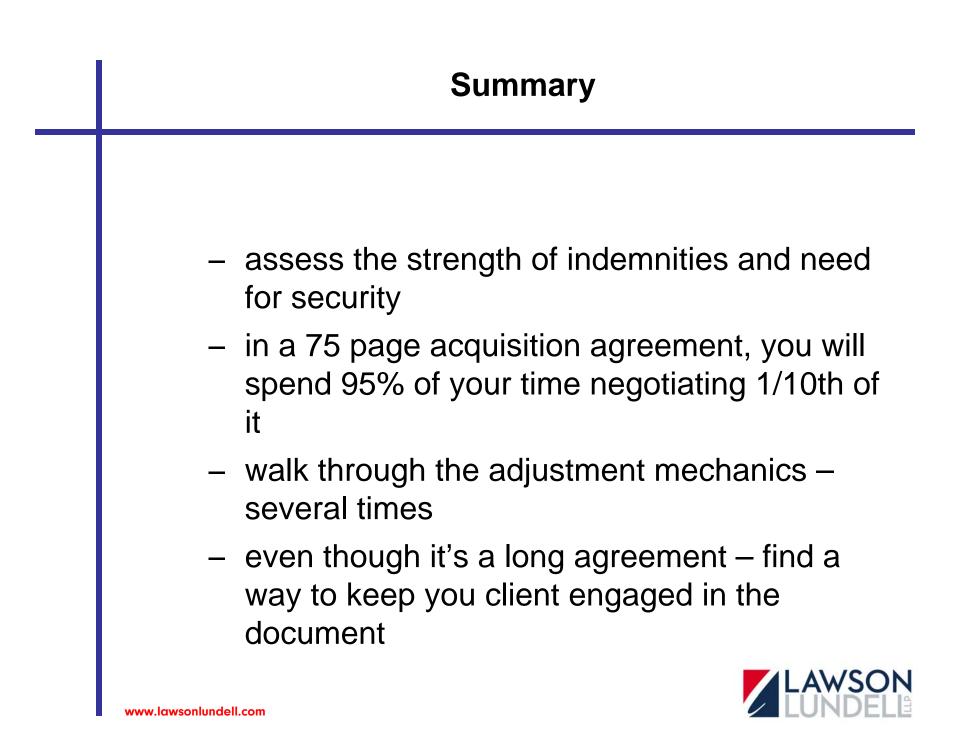




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