

## EXERCISE

# SANDBAGGING

### *Background*

Your client, a bike manufacturer, is acquiring one of its competitors, and you're working on the deal. Both companies are privately held, and the acquisition will be signed and closed at the same time.

This is the first acquisition your client is doing, and the leadership team doesn't have much M&A experience.

The draft acquisition agreement includes a pro-sandbagging provision, and the seller has responded by striking it from the agreement. They say that most deals don't include sandbagging provisions and if anything, they'd like to see an anti-sandbagging provision in the agreement. The agreement is governed by Delaware law and has a very narrow definition of Knowledge.

You want to discuss the sandbagging issue with your client before responding to the seller.

### *Instructions*

Come prepared to discuss the following:

- How you'll explain the concept of sandbagging to your client.
- How you plan to advise the client on how to respond to the seller.
- Advice you'll give your client if it agrees to the anti-sandbagging provision.
- How your advice would change if the deal does or does not include rep and warranty insurance.