

Matthew DiRisio Weighs in on Why the First MAE Case in the COVID-19 Era Settled on a Revised Agreement

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On the eve of what would have marked the first material adverse event case litigated in the COVID-19 era, Advent International and Forescout Technologies settled on a revised agreement that cut the cybersecurity company's valuation by nearly \$500 million. The settlement underscores how material adverse event clauses, or an MAE/MAC, remains a huge undertaking.

Winston & Strawn New York Partner Matthew DiRisio discussed the case with PE Hub noting: "a MAC win would have opened the floodgates for more disputes, but this outcome was beneficial to the buyer."

Matthew explains, "[PE] buyers may not actually be disappointed that this is settled. The reason for that is just looking objectively at MACs, you have to assume the odds are you're not going to win a MAC... On balance, a deal that's at a pretty good discount to the sale price is better than having the Court of Chancery say the deal doesn't constitute a MAC. That would be more damaging to buyers than a settlement on the eve of [the trial]."

Under the amended terms of the transaction, Advent is set to acquire all outstanding shares of Forescout common stock for \$29 per share, down from \$33 per share. The revised agreement brings the deal's value to \$1.43 billion, from \$1.9 billion.

He added, "MACs are incredibly difficult to prove. As the buyer, you always know that you have an uphill battle and that there's risk going in. It's really hard to win."

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