

## EXERCISE

### CLAIMS 'IF TRUE'

#### *Background*

Your client, a bike manufacturer, is being acquired by one of its competitors, and you're working on the deal. Both companies are privately held, and the buyer is a much larger and more well-known company than your client.

The draft acquisition agreement received from the buyer says that the seller has to indemnify the buyer for any third-party claim resulting from any alleged breach of the Agreement.

In addition, "Damages" is defined in the agreement as follows:

"Any and all losses, liabilities, damages, fees, reasonable out of-pocket costs and expenses, including costs of defense and, subject to the limitations set forth herein, settlement and reasonable fees and expenses of lawyers, experts, and other professionals."

Your client thinks that the indemnification provision referred to above (as well as the definition of Damages) looks fairly standard, and they're inclined to accept the language as drafted, but they'd like to hear your thoughts.

#### *Instructions*

Come prepared to discuss the following:

- Should your client accept the proposed language as is? Why or why not?
- If not, what's your recommended response to the buyer?
- Are there any compromises to suggest here if the buyer doesn't go for your proposal?
- What if you represented the buyer – would you want the language to remain as is? Why or why not?