



Case study

Post-acquisition purchase price dispute



Smart decisions. Lasting value.™

Perhaps the most important part of any acquisition happens after the deal is done – settling the final purchase price. While the true-up provisions in a contract are sometimes an afterthought, the process employed by a party (buyer or seller) can *significantly* affect the final purchase price and economics of the deal.



Choose the right team early for success

The post-acquisition purchase price true-up process gives the buyer a set amount of time, usually 90 to 120 days, to finalize the calculations of agreed-upon metrics, such as closing working capital, and determine if the purchase price should be adjusted. Buyers use this time to hunt for any liabilities, reserves, or other adjustments that might reduce the purchase price. Sellers seek to maintain the agreed-upon closing-date amount. In the best cases, buyers and sellers come to a mutual agreement. In some cases, though, these disputes might go to arbitration.

While many companies bring in a team to help vet the numbers once the agreement is already determined and the deal is already made, the earlier in the process you can bring in help, the better. Once you sign an agreement you are locked into its terms – so bringing in help before you sign is critical.

The Crowe team has extensive experience in crafting purchase agreement language and can help you identify areas of concern before the contract is executed.



Crowe helps buyer reduce acquisition cost

In this case, our client was the buyer. A large grocery store chain was looking to enter a new market. The company purchased a chain of stores for nearly \$100 million and planned to rebrand once the deal was finalized.

The client was drawn to the team at Crowe because of our extensive experience and personal attention. The client retained us 45 days into its 90-day process, and we obtained access to the seller's management team. The client had worked with seller's staff and already had found some potential liability and inventory issues, which would decrease the value of the deal.

We began with investigating, analyzing, and examining pre-acquisition accounting records and practices. Because Crowe was retained early, we also were able to interview prior management regarding historical accounting processes and the assumptions used in various balance sheet accounts.

This work uncovered additional working capital adjustments to the benefit of our client. We found that the calculated closing-date balance sheet amounts differed from historical practices and, in other instances, generally accepted accounting principles (GAAP).

We discovered that the seller had not recorded a liability for accrued vacation or paid time off – in fact, the seller had no idea how to even begin calculating this number. Though the system was lacking in specific details, we worked with the management team to estimate a number that was supportable if disputed in arbitration. Based on those findings, we prepared arguments for the appropriateness of the largest proposed adjustments in accordance with GAAP and the purchase agreement standards.

Experience as neutral arbitrators and consultants gives Crowe an extra edge in negotiations

If the parties cannot come to a mutual agreement on the final purchase price calculation, the dispute goes into arbitration. A neutral arbitrator is appointed to act as an expert or judge, reviewing both side's arguments and supporting documentation and making a final determination.

The team at Crowe has advocated for clients in dozens of previous disputes and has experience in arbitration. We know the nuances of arbitration and bring that expertise to our clients, preparing during the early stages of the true-up process as though our client's positions will be disputed and resolved in arbitration.

In this case, we worked with the client and their legal team to prepare the strategy for proposing adjustment calculations. Based on everything we uncovered, we proposed a substantial adjustment – \$12 million, a double-digit percentage of the total purchase price, in favor of our client. Because the difference was so large, we were

braced for a fight from the seller, so we conducted a variety of strategy meetings to discuss our approach.

The best defense is always a good offense, so we played devil's advocate with our client to make sure we had a sound and defensible strategy for each of the proposed adjustments. Because we considered all angles, we gathered the best evidence to support our position. After settling on the final purchase price calculations with the client team, we submitted our calculations to the other side and discussed our calculations and positions directly with the seller's expert.

While we were prepared to take this dispute all the way through arbitration, ultimately, to our client's benefit, arbitration wasn't needed. The seller accepted almost all of our adjustments. The combination of confidence in our work, supporting documentation, and experience helped the seller see the weakness in its position and ultimately ended up saving our client \$12 million.



Buyers and sellers can benefit from diversified experience and proven success

While in this case Crowe was working with the buyer, we work with buyers or sellers of all types, including private equity firms. For sellers, we have experience reviewing the numbers presented by the buyer's team and crafting arbitration arguments. Again, the earlier we enter the process, the better chance we have of helping you reach a satisfactory outcome.

When it comes to purchase agreements and acquisitions you might feel like you can do it all. In reality, having a team to help you with this piece of the puzzle allows you to focus on other vital tasks. Our client was thrilled with our ability to respond quickly while it handled other pieces of the integration of the newly acquired business – ultimately allowing the entire process to move faster and reach a satisfactory outcome for our client.





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