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Will Anti-Reliance Provisions Preclude Extra-Contractual Fraud Claims? Answers Differ in Delaware, New York, and California

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Merger agreements and other complex contracts often contain "anti-reliance" provisions reciting that the representations in the agreement are the sole representations on which the parties relied in entering into the contract. The law regarding the interpretation and enforceability of such clauses—whether in a merger agreement, a settlement agreement, or other commercial contract—varies by jurisdiction, and continues to develop. On November 24, 2015, the Delaware Court of Chancery in *Prairie Capital III, L.P. v. Double E Holding Corp.* held that, as a matter of Delaware law, there are no "magic words" to disclaim reliance on extrinsic representations. While a standard integration clause (reciting that the contract is the sole agreement between the parties and replaces any prior agreements) is insufficient to limit the parties' obligations to promises within the agreement, the Court of Chancery reaffirmed that where a party expressly represented that it had relied *only* on information within the contract, that party could not later state a fraud claim relating to *other*, extrinsic promises.

Delaware's anti-reliance law is similar to that of New York, but stands in contrast to the law in California, which disfavors allowing even sophisticated parties represented by counsel to contract away liability for fraud. In all jurisdictions, anti-reliance clauses that are clear and specific have a greater chance of being enforced than do more vague or general statements.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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