

AN FTI CONSULTING REPORT - PUBLISHED 04/10/2020

# COVID-19, Force Majeure, and Material Adverse Change Clauses

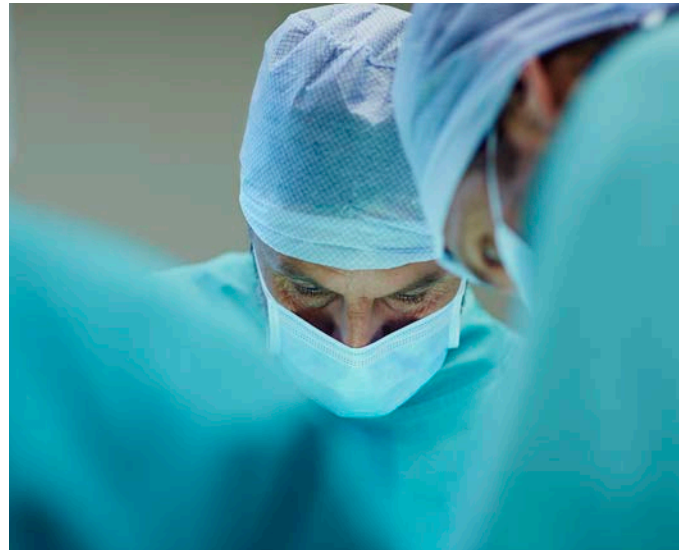
## An Empirical Review of Recent SEC Filings



## Introduction

In 2020, the COVID-19 pandemic wreaked havoc on global public health systems, the financial markets, global supply chains, and aggregate production and consumption conditions, resulting in government mandated lockdowns across most of the world. As of April 2, 2020, more than half of the world’s population was under some form of restriction, including more than 90 percent of the United States.<sup>1</sup> While the pandemic will eventually subside and quarantines will be lifted, the economic repercussions of COVID-19 are likely to last well into the future.

Most firms, particularly in the legal and professional services sector and the insurance sector, are now considering whether COVID-19 constitutes a Force Majeure (“FM”) event that will trigger various contractual clauses, and whether economic disruptions due to COVID-19 will trigger Material Adverse Change or Material Adverse Effect clauses (collectively, “MAC”) in Merger & Acquisition (“M&A”) contexts.



In this paper, we highlight potential considerations in damage analyses. In addition, we review MAC clauses in recent M&A Securities & Exchange Commission (“SEC”) filings over the last six months and catalogue references to FM, acts of God, epidemic, pandemic, and other similar terms, as well as terms related to hostilities and natural disasters. Our intention is to give an overview of how common these clauses are, the typical language used, the precision or vagueness within various contracts, the commonality of these types of clauses, how frequently they appear, their structure, whether pandemics are specifically mentioned and in what detail, and so forth. We perform this analysis as a thought exercise, as opposed to an attempt to make any definitive statements regarding their use and intended meaning of relevant terms.

In short, fewer than 20 percent of the M&A agreements we reviewed make reference to COVID-19 or more broadly “pandemics,” “epidemics,” “virus,” or “disease”. If one wishes to enlarge this category to include the more generic terms “FM” or “act(s) of God,” we find that still less than half include these terms.

<sup>1</sup> See, e.g., Juliana Kaplan, Lauren Frias and Morgan McFall-Johnsen, “A Third of the Global Population is on Coronavirus Lockdown — Here’s Our Constantly Updated List of Countries and Restrictions,” Business Insider, available at <https://www.businessinsider.com/countries-on-lockdown-coronavirus-italy-2020-3> (accessed on April 5, 2020); and Holly Secon and Aylin Woodward, “About 90% of Americans Have Been Ordered to Stay at Home. This Map Shows Which Cities and States are Under Lockdown,” Business Insider, April 2, 2020, available at <https://www.businessinsider.com/us-map-stay-at-home-orders-lockdowns-2020-3> (accessed on April 6, 2020).

## Force Majeure Defined

Force Majeure (French for “Superior Force”) clauses are typically found in contracts (e.g., insurance) and agreements (e.g., M&A) with the purpose of excusing a party’s nonperformance under the contract or agreement when some extraordinary event prevents the party from fulfilling its obligations.<sup>2</sup>

While FTI does not offer legal advice, and the triggering of an FM clause is typically case specific, it is our understanding that U.S. Courts generally examine three factors: (1) the specific language included in the contract (e.g., it may specify typhoons or earthquakes or global pandemics);<sup>3</sup> (2) whether the risk of non-performance is predictable and whether this risk could be mitigated;<sup>4</sup> and (3) whether performance is actually unfeasible or would merely require additional resources.<sup>5</sup> If a party can demonstrate that Factor 1 has been met, it typically must also meet the conditions set by Factors 2 and 3.

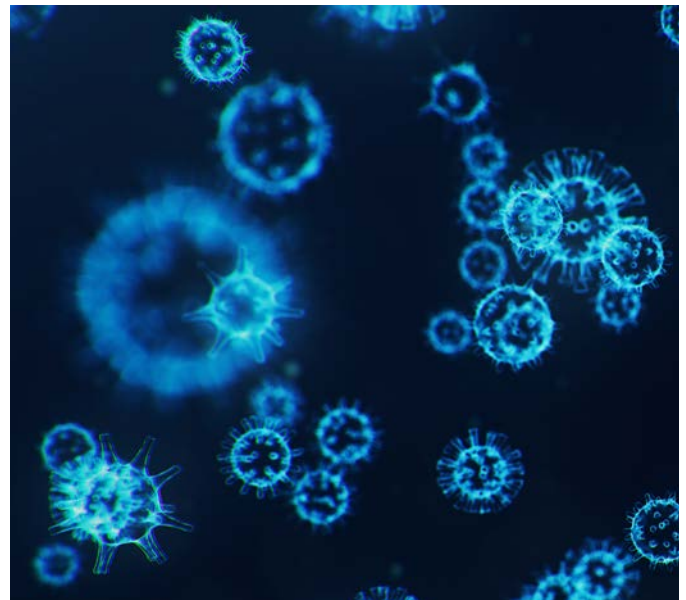
## Material Adverse Change Defined

MAC clauses are typically found in M&A and financing agreements with the purpose of excusing a party’s obligations under the agreement when some extraordinary events prevent the party from fulfilling those obligations.

The interpretation of a MAC clause is predominantly a legal question that is highly case-specific. MAC provisions are typically interpreted narrowly, with U.S. Courts having set a high bar for claims that an event constitutes a MAC.<sup>6</sup>

Moreover, some MAC clauses explicitly exclude pandemics, and there is some indication that the language governing MAC clauses is already evolving to exclude COVID-19.<sup>7</sup>

Nevertheless, MAC clauses do not provide exhaustive lists of excluded events. Additionally, MAC clauses are often drafted with vague language (e.g., “act of God”), leaving room for legal ambiguity. Again, while FTI does not offer legal advice, it is our understanding that in such instances, to find that a MAC occurred, Courts will examine the aforementioned Factors 1 to 3 (see previous section). Courts will also examine two additional factors, namely whether: (4) a long-term investor will experience a loss of value; and (5) the loss is significantly greater than that of other firms in the respective industry.<sup>8</sup>



<sup>2</sup> See, e.g., *Ner Tamid Congregation of N. Town v. Krivoruchko*, 638 F. Supp. 2d 913, 931 (N.D. Ill. 2009), as amended (July 9, 2009).

<sup>3</sup> See, e.g., Richard A. Lord, *Williston on Contracts* § 77:31 (4th Ed.) (“What types of events constitute force majeure depend on the specific language included in the clause itself”).

<sup>4</sup> See, e.g., Lord, § 77:31 (noting that a party seeking the benefits of a force majeure clause must show that performance is impossible “in spite of skill, diligence, and good faith” to continue to perform).

<sup>5</sup> See, e.g., Lord, § 77:31 (“Nonperformance dictated by economic hardship is not enough to fall within a force majeure provision.”); and Tracy Bateman et al., 77A *Corpus Juris Secundum*, § 370 (“Inability to sell at a profit is not the contemplation of the law [of] a force majeure event excusing performance and a party is not entitled to declare a force majeure because the costs of contract compliance are higher than it would have liked or anticipated.”)

<sup>6</sup> Only one Delaware Chancery case has found that a MAC occurred (*Akorn v. Fresenius*). Very few MAC disputes have been litigated to judgement. See, e.g., “COVID-19 As A Material Adverse Change In M&A Agreements,” *Law360*, March 25, 2020, available at <https://www.law360.com/articles/1256428/covid-19-as-a-material-adverse-change-in-m-a-agreements> (accessed on April 2, 2020).

<sup>7</sup> The recent Morgan Stanley – E\*TRADE agreement (dated February 20, 2020) excluded the COVID-19 pandemic from its MAC clause. See, e.g., “Morgan Stanley, E\*Trade Merger Excludes Coronavirus,” *Bloomberg Law*, February 28, 2020, available at <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-morgan-stanley-e-trade-merger-excludes-coronavirus> (accessed on April 2, 2020).

<sup>8</sup> See, e.g., *Akorn v. Fresenius* (Del. 2018).

## Two Simple Examples of FM/MAC in Action

Factors 2 and 3 under FM and factors 4 and 5 under MAC are likely to require careful financial and economic analysis related to the specific facts of any particular case. Other than giving a general statement of qualifications, it would be difficult, if not impossible, to itemize each economic inquiry that one would need to pursue. Consider the following examples.

**Example 1 – Supply Chain.** LA Inc. manufactures widgets in Los Angeles. ACME purchases widgets in LA and delivers them to New York Inc. once a week. New York Inc. receives the widgets and resells them to its own end customers. Because of COVID-19, New York Inc. does not receive its weekly shipment and is forced to close. New York Inc. sues ACME for non-performance, who in turn sues LA Inc. for non-performance.

**Example 2 – Vertical Integration.** ACME, instead of purchasing widgets from LA Inc., decides instead to acquire LA Inc. and thereby vertically integrates to ensure itself a steady supply of widgets. The parties enter into an M&A agreement. However, because of COVID-19, ACME loses liquidity and is forced to back out of the agreement citing to a MAC clause in the agreement. LA Inc., who had already expended resources, laid off certain staff, and informed third-party clients to find other sources of widgets, sues ACME for damages.

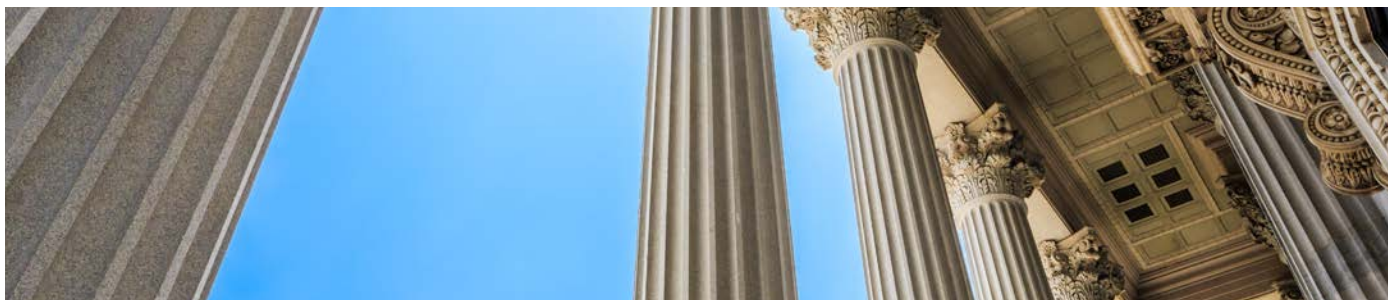


Applying the FM and MAC factors, one would then need to consider, among other considerations: Applying the FM and MAC factors, one would then need to consider, among other considerations:

- Could the pandemic have been predicted?
- Could its effects have been mitigated?
- What was the impact of the government mandated shutdown on each of these businesses?
- Were alternate supplies of widgets available?
- At what extra cost could the widgets have been manufactured and delivered?
- Could the parties have obtained liquidity elsewhere?
- Could the transaction have been restructured?

Without having case-specific facts, the list is practically endless. Here, we outline some generic, non-exhaustive, and non-exclusive elements to consider for damages calculations:

- Lost revenues (e.g., reduced sales, reduced prices)
- Increased direct costs (e.g., increased materials and labor costs, increased delivery charges, increased legal and other professional fees, increased management and employee time)
- Increased indirect costs (e.g., lost business opportunities due to distracted management)
- Harm to reputation and loss of brand value (e.g., direct damage to brand value, damage to future business opportunities and contracts)
- Increased borrowing costs and cost of capital (e.g., changes to direct borrowing costs, need to recapitalize at higher cost sources of capital)
- Ability to mitigate, cost of mitigation efforts, and success of such efforts (e.g., whether alternate suppliers or customers have been found)
- Time parameters (e.g., when does damage begin, when does it end)
- Whether the FM or MAC clause covers (i.e., excuses) all elements of contractual performance, or just certain ones
- Whether damage estimates that rely on stock prices are affected by recent market volatility



## Results of SEC Filings Review

Private business contracts not being available, we were not able to examine the prevalence of FM and MAC clauses in such situations (i.e., Example 1 above). In order to look at this issue empirically, we focused on Example 2 above. To that end, we identified M&A transactions announced during the six-month period between October 2019 and March 2020 that met the following criteria: (1) either the acquirer or target was public; (2) the target company was headquartered in the United States; and (3) the transaction value was greater than \$10 million.<sup>9</sup> This resulted in 473 transactions with a total value of \$384.8 billion, an average value of \$813.5 million, and a median value of \$80.0 million. The largest transaction was \$41.8 billion, and the smallest transaction was \$10.1 million. We then searched for references to: (1) force majeure; (2) “pandemics”/“epidemics”/“viruses”/“diseases”; (3) “acts of God;” (4) more generic language referring to war and terrorism; and (5) more generic language referring to natural disasters such as earthquakes, hurricanes and volcanoes.

Of the 473 announced transactions, 128 had M&A agreements filed with the SEC with a total value of \$207.9 billion, an average value of \$1.6 billion, and a median value of \$208.6 million. The largest transaction was \$28.4 billion, and the smallest transaction was \$11.0 million.

Of the 128 agreements, 26 (20.3 percent) contained a specific reference to FM; 32 (25.0 percent) included reference to an “act(s) of God”; and 22 (17.2 percent) referenced either a “pandemic,” “epidemic,” “virus,” or “disease.” In total, 62 (48.4 percent) make reference to at least one of these three categories.

Finally, 120 agreements (93.8 percent) refer to hostilities such as “war,” “terror,” or “civil unrest,” and 94 (73.4 percent) refer to natural disasters (e.g., “earthquakes,” “tornadoes,” etc.). [See Table 1.](#)

Interestingly, there were two transactions that specifically referenced COVID-19. The agreement between Morgan Stanley and E\*TRADE states: “any acts of God, natural disasters, terrorism, armed hostilities, sabotage, war or any escalation or worsening of acts of war, epidemic, pandemic or disease outbreak (including the COVID-19 virus).”<sup>10</sup> Similarly, the agreement between Assertio Therapeutics and Zyla Life Sciences states: “the outbreak or escalation of war or acts of terrorism or any natural disasters, acts of God or comparable events, epidemic, pandemic or disease outbreak (including the COVID-19 virus).”<sup>11</sup>

## Conclusion

In this paper, we defined the terms “Force Majeure” and “Material Adverse Change,” discussed how these terms are applied in various transactions, and presented examples of how the COVID-19 pandemic could disrupt supply chains or mergers and acquisitions. Through an empirical analysis of MAC clauses contained in recent merger and acquisition agreements filed with the SEC, we provide insight into the structure of such clauses and the frequency with which various COVID-19 relevant terms are employed within those clauses. One of our most surprising findings is that less than 20 percent made reference to “pandemic/epidemic/virus/disease.” Table 1 below provides the actual clauses and word counts on each transaction reviewed.

<sup>9</sup> Includes transactions that have been completed, are still in process, or were cancelled since the announcement date.

<sup>10</sup> Agreement and Plan of Merger between Morgan Stanley and E\*TRADE Financial Corporation, dated February 20, 2020 (emphasis added).

<sup>11</sup> Agreement and Plan of Merger between Assertio Therapeutics, Inc. and Zyla Life Sciences, dated March 16, 2020 (emphasis added).

**Table 1: Summary of MAC Clauses<sup>12</sup>**

| Acquirer                               | Target                            | MAC / MAE Excerpt   | MAC Clause Specifically Cites: |              |  |                                 |  |
|--|-----------------------------------|---|--------------------------------|--------------|--|---------------------------------|--|
|  |                                   |   | “Force Majeure”                | “Act of God” | “Pandemic”, “Epidemic”, “Virus”, “Disease” | “War”, “Civil Unrest”, “Terror” | Natural Disasters<br><small>(e.g., “Earthquake”<br/>“Hurricane”<br/>“Volcano”)</small> |
| AcelRx Pharmaceuticals, Inc.           | Tetraphase Pharmaceuticals, Inc.  | general conditions in the financial markets, and any changes therein, and any changes arising out of acts of terrorism, war, weather conditions, viruses or pandemics or other force majeure events, to the extent that such conditions do not have a materially disproportionate impact on the Tetraphase Companies, taken as a whole, as compared to other industry participants  | ✓                              |              | ✓  | ✓                               | ✓  |
| Assertio Therapeutics, Inc.            | Zyla Life Sciences                | the outbreak or escalation of war or acts of terrorism or any natural disasters, acts of God or comparable events, epidemic, pandemic or disease outbreak (including the COVID-19 virus)  |                                | ✓            | ✓  | ✓                               | ✓  |
| Clarus Corporation                     | SKB Corporation, Inc.             | earthquakes, any weather-related or other force majeure event or natural disasters or outbreak or escalation of hostilities or acts of war or terrorism   | ✓                              |              |  | ✓                               | ✓  |
| Provident Financial Services, Inc.     | SB One Bancorp                    | changes in national or international political or social conditions including the impact of pandemics or the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon or within the United States, or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States |                                |              | ✓  | ✓                               |  |
| Basic Energy Services, Inc.            | C&J Well Services, Inc.           | earthquakes, hostilities, acts of war or terrorism  |                                |              |  | ✓                               | ✓  |
| United Community Banks, Inc.           | Three Shores Bancorporation, Inc. | changes, after the date hereof, in global, national or regional political conditions (including the outbreak of war or acts of terrorism) or in economic or market (including equity, credit and debt markets, as well as changes in interest rates) conditions affecting the financial services industry generally and not specifically relating to such party or its Subsidiaries; the occurrence of any natural or man-made disaster   |                                |              |  | ✓                               | ✓  |
| Comfort Systems USA, Inc.              | TAS Energy Inc.                   | any acts of God, (g) any hostilities, acts of war, sabotage, terrorism or military actions, or any escalation or worsening of any such hostilities, act of war, sabotage, terrorism or military actions   |                                | ✓            |  | ✓                               |  |
| Farmers and Merchants Bancshares, Inc. | Carroll Bancorp, Inc.             | any change resulting from any natural disaster or any acts of terrorism, sabotage, military action or war (whether or not declared) or any escalation or worsening thereof  |                                |              |  | ✓                               | ✓  |
| Item 9 Labs Corp.                      | OCG, Inc.                         | United States or global financial or securities markets or conditions or any act of terrorism, similar calamity or war (whether or not declared) or any escalation or worsening of any of the foregoing   |                                |              |  | ✓                               |  |

<sup>12</sup>The list of transactions is from S&P Capital IQ. The MAC clause information was retrieved from agreements as part of SEC filings.

MAC Clause Specifically Cites:

| Acquirer                        | Target                          | MAC / MAE Excerpt   | “Force Majeure” | “Act of God” | “Pandemic”... | “War”... | Natural Disasters... |
|---------------------------------|---------------------------------|---|-----------------|--------------|---------------|----------|----------------------|
| WillScot Corporation            | Mobile Mini, Inc.               | changes in national or international political conditions (including any outbreak or escalation of hostilities, any acts of war or terrorism or any other national or international calamity, crisis or emergency) or in general economic, business, regulatory, political or market conditions or in national or international financial markets; natural disasters or calamities  |                 |              |               | ✓        | ✓                    |
| Gilead Sciences, Inc.           | Forty Seven, Inc.               | any change, circumstance, condition, development, effect, event, occurrence or state of facts arising directly or indirectly from or otherwise relating to any act of terrorism, war, national or international calamity, natural disaster, epidemic or any other similar event   |                 |              | ✓             | ✓        | ✓                    |
| INTL FCStone Inc.               | GAIN Capital Holdings, Inc.     | acts of war, sabotage, terrorism or natural disasters   |                 |              |               | ✓        | ✓                    |
| Equitrans Midstream Corporation | EQM Midstream Partners, LP      | acts of war, terrorism or other hostilities (or the escalation of the foregoing) or natural disasters or other force majeure events   | ✓               |              |               | ✓        | ✓                    |
| Cornerstone OnDemand, Inc.      | Saba Software, Inc.             | national or international political, social and economic conditions (or changes therein), including an engagement in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack; earthquakes, hurricanes, tsunamis, tornadoes, floods, mudslides or other natural disasters, weather conditions, explosions or fires or other force majeure events   | ✓               |              |               | ✓        | ✓                    |
| Intuit Inc.                     | Credit Karma, Inc.              | acts of war, sabotage or terrorism, military actions or the escalation thereof or natural disasters, weather conditions, changes in geopolitical conditions or other force majeure events   | ✓               |              |               | ✓        | ✓                    |
| Dialog Semiconductor Plc        | Adesto Technologies Corporation | changes after the date of the Agreement in political conditions in the U.S. or any other country where the Acquired Companies have material operations, or acts of war, sabotage or terrorism in the U.S. or in other locations in which the Acquired Companies have material operations, except in each case to the extent such changes or acts have a disproportionate effect on any of the Acquired Companies as compared to other companies in the semiconductor industry; acts of God, natural disasters, weather conditions, epidemics, pandemics, or the worsening of any of the foregoing, or other calamities occurring after the date of the Agreement, except in each case to the extent such events or conditions have a disproportionate effect on any of the Acquired Companies as compared to any of the other companies in the semiconductor industry |                 | ✓            | ✓             | ✓        | ✓                    |
| Morgan Stanley                  | E*TRADE Financial Corporation   | any acts of God, natural disasters, terrorism, armed hostilities, sabotage, war or any escalation or worsening of acts of war, epidemic, pandemic or disease outbreak (including the COVID-19 virus)  |                 | ✓            | ✓             | ✓        | ✓                    |
| Ally Financial Inc.             | CardWorks, Inc.                 | any change after the Execution Date in general global, national or regional political conditions (including protests, strikes, riots, acts of terrorism, military action or war) or in general global, national or regional economic or business conditions or in general national or global financial or capital markets, including changes in interest rates; any change after the Execution Date resulting from or arising out of hurricanes, earthquakes, floods, other natural disasters or similar force majeure events   | ✓               |              |               | ✓        | ✓                    |

MAC Clause Specifically Cites:

| Acquirer                       | Target  | MAC / MAE Excerpt   | MAC Clause Specifically Cites: |              |               |          |                      |
|--------------------------------|---|---|--------------------------------|--------------|---------------|----------|----------------------|
|                                |   |   | “Force Majeure”                | “Act of God” | “Pandemic”... | “War”... | Natural Disasters... |
| LendingClub Corporation        | Radius Bancorp Inc.   | changes, after the Execution Date, in global, national or regional political conditions (including the outbreak of war or acts of terrorism) or in economic or market (including equity, credit and debt markets, as well as changes in interest rates) conditions affecting the financial services industry generally and not specifically relating to such party or its Subsidiaries  |                                |              |               | ✓        |                      |
| Nicolet Bankshares, Inc.       | Commerce Financial Holdings, Inc.   | changes in national or international political or social conditions including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon or within the United States   |                                |              |               | ✓        |                      |
| Gibraltar Industries, Inc.     | All Assets of Delta Separations, LLC and All Assets of Teaching Tech, LLC             | acts of war (whether or not declared), armed hostilities or terrorism or the escalation or worsening thereof; any natural or man-made disaster or acts of God   |                                | ✓            |               | ✓        | ✓                    |
| Smith Micro Software, Inc.     | Operator Business of Circle Media Labs, Inc.  | any outbreak of hostilities, terrorists activities or war, or any material worsening of any such hostilities, activities or war underway as of the date hereof; any natural disasters, including earthquakes, wild fires, floods, mud slides, tsunamis, storms and other similar force majeure events   | ✓                              |              |               | ✓        | ✓                    |
| Synacor, Inc.                  | Qumu Corporation  | acts of terrorism or war, weather conditions (including, without limitation, earthquakes, hurricanes, tornadoes or similar natural disasters), power outages, and other force majeure events, but solely to the extent that such conditions and changes do not have a disproportionate impact on Synacor and its Subsidiaries, taken as a whole, relative to other companies of comparable size operating in the industry or industries in which Synacor operates that are located in the same geographical areas as Synacor and its Subsidiaries | ✓                              |              |               | ✓        | ✓                    |
| CoStar Group, Inc.             | Assets of RentPath, LLC   | national or international disasters, calamities, emergencies or any military conflict, outbreak or escalation of hostilities or declared or undeclared war or act of foreign or domestic terrorism of any kind  |                                |              |               | ✓        | ✓                    |
| Heartland Financial USA, Inc.  | AIMBancshares, Inc.   | any outbreak of hostilities or any new declared or undeclared acts of war   |                                |              |               | ✓        |                      |
| Harsco Corporation             | Domestic Environmental Solutions business of Stericycle Environmental Solutions, Inc. | general economic, political or business conditions or changes therein (including commencement, continuation or escalation of war, armed hostilities or national or international calamity); any act of God or natural disaster; any acts of terrorism or changes in geopolitical conditions   |                                | ✓            |               | ✓        | ✓                    |
| Collegium Pharmaceutical, Inc. | Assets related to NUCYNTA of Assertio Therapeutics, Inc.                              | the commencement, occurrence, continuation or intensification of any war, sabotage, armed hostilities or acts of terrorism; earthquakes, hurricanes or other natural disasters  |                                |              |               | ✓        | ✓                    |



MAC Clause Specifically Cites:

| Acquirer  | Target   | MAC / MAE Excerpt   | “Force Majeure” | “Act of God” | “Pandemic”... | “War”... | Natural Disasters... |
|---|--|---|-----------------|--------------|---------------|----------|----------------------|
| Science Applications International Corporation                    | Unisys Federal   | any Changes resulting from acts of war (whether or not declared), civil disobedience, hostilities, sabotage, terrorism, military actions, cyber-attacks or the escalation of any of the foregoing (whether perpetrated or encouraged by a state or non-state actor or actors), any hurricane, flood, superstorm, tornado, earthquake or other weather or natural disaster, or any outbreak of illness or other public health event or any other force majeure event, or any national or international calamity or crisis, whether or not caused by any Person;  | ✓               |              |               | ✓        | ✓                    |
| Advent International Corporation, Crosspoint Capital Partners, LP | Forescout Technologies, Inc.   | any geopolitical conditions, outbreak of hostilities, acts of war, sabotage, terrorism or military actions (including any escalation or general worsening of any such hostilities, acts of war, sabotage, terrorism or military actions) in the United States or any other country or region in the world (except to the extent that such Effect has had a materially disproportionate adverse effect on the Company relative to other companies of similar size operating in the industries in which the Company and its Subsidiaries conduct business, in which case only the incremental disproportionate adverse impact may be taken into account in determining whether there has occurred a Company Material Adverse Effect); earthquakes, hurricanes, tsunamis, tornadoes, floods, mudslides, wild fires or other natural disasters, weather conditions, epidemics, pandemics and other force majeure events in the United States or any other country or region in the world (except to the extent that such Effect has had a materially disproportionate adverse effect on the Company relative to other companies of similar size operating in the industries in which the Company and its Subsidiaries conduct business, in which case only the incremental disproportionate adverse impact may be taken into account in determining whether there has occurred a Company Material Adverse Effect) | ✓               |              | ✓             | ✓        | ✓                    |
| Leidos Holdings, Inc.   | L3 Security & Detection Systems, Inc./ MacDonald Humfrey (Automation) Ltd. | any Effect related to any earthquakes, floods, hurricanes, tornadoes, tropical storms, cyclonic storms or fires or other natural disasters or any national, international or regional calamity, terrorist acts, declared or undeclared war or other hostilities or conflicts that commence after the date of this Agreement or, if commenced prior to the date of this Agreement, the continuation, worsening or escalations thereof  |                 |              |               | ✓        | ✓                    |
| BG Staffing, Inc.   | EdgeRock Technologies, LLC   | any national or international political event or occurrence, including acts of war or terrorism; any natural or manmade disasters, hurricanes, floods, tornados, pandemics, tsunamis, earthquakes or other acts of God  |                 | ✓            | ✓             | ✓        | ✓                    |
| Northwest Pipe Company  | Geneva Pipe, Inc.  | acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; any natural or man-made disaster or acts of God  |                 | ✓            |               | ✓        | ✓                    |
| Kingswood Capital Management, LLC                                 | Stein Mart, Inc.   | the occurrence, escalation, outbreak or worsening of any hostilities, war, police action, acts of terrorism or military conflicts, whether or not pursuant to the declaration of an emergency or war, the existence, occurrence or continuation of any force majeure events, including any earthquakes, floods, hurricanes, tropical storms, fires or other natural disasters or any national, international or regional calamity   | ✓               |              |               | ✓        | ✓                    |

MAC Clause Specifically Cites:

| Acquirer  | Target   | MAC / MAE Excerpt   | “Force Majeure” | “Act of God” | “Pandemic”... | “War”... | Natural Disasters... |
|---|--|---|-----------------|--------------|---------------|----------|----------------------|
| Ecoark Holdings, Inc.   | Banner Midstream Corp.   | No MAC Clause Included  |                 |              |               |          |                      |
| InsPro Technologies Corporation                                 | Majesco  | any natural disaster or any acts of terrorism, sabotage, military action, armed hostilities or war (whether or not declared) or any escalation or worsening thereof, whether or not occurring or commenced before or after the date of this Agreement   |                 |              |               | ✓        | ✓                    |
| Penn National Gaming, Inc.                                      | Barstool Sports, Inc.  | national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States   |                 |              |               | ✓        |                      |
| South State Corporation   | CenterState Bank Corporation   | changes, after the date hereof, in global, national or regional political conditions (including the outbreak of war or acts of terrorism) or in economic or market (including equity, credit and debt markets, as well as changes in interest rates) conditions affecting the financial services industry generally and not specifically relating to such party or its Subsidiaries   |                 |              |               | ✓        |                      |
| Pacific Premier Bank  | Opus Bank  | any outbreak or escalation of hostilities, declared or undeclared acts of war or terrorism or other international, national or regional calamity or any material worsening or escalation of such conditions; any hurricane, earthquake, flood, fire or other natural disaster, outbreak of disease, or other acts of God  |                 | ✓            | ✓             | ✓        | ✓                    |
| Macquarie Infrastructure and Real Assets, MIP V (FCC) AIV, L.P. | Cincinnati Bell Inc.   | the outbreak or escalation of hostilities or any acts of war, sabotage or terrorism, or any earthquake, hurricane, tornado, tsunami or other natural disaster   |                 |              |               | ✓        | ✓                    |
| Village Super Market, Inc.                                      | 5 New York City stores and Distribution Center of Fairway Group Holdings Corp. | national or international political or social conditions, including the engagement by any country in hostilities, whether commenced before or after the date hereof and whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack; the occurrence of any act of God or other calamity or force majeure events (whether or not declared as such), including any natural disaster, fire, flood, hurricane, tornado, or other weather event | ✓               | ✓            |               | ✓        | ✓                    |
| Seacoast Banking Corporation of Florida                         | Fourth Street Banking Company  | N/A   |                 |              |               |          |                      |
| Capstar Financial Holdings, Inc.                                | FCB Corporation  | worsening of national or international political or social conditions including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon or within the United States, natural disaster or other force majeure event  | ✓               |              |               | ✓        | ✓                    |

MAC Clause Specifically Cites:

| Acquirer                                       | Target                           | MAC / MAE Excerpt  | “Force Majeure” | “Act of God” | “Pandemic”... | “War”... | Natural Disasters... |
|--|----------------------------------|--|-----------------|--------------|---------------|----------|----------------------|
| Business First Bancshares, Inc.                | Pedestal Bancshares Inc.         | changes, after the date hereof, in global, national or regional political conditions (including the outbreak of war or acts of terrorism) or in economic or market (including equity, credit and debt markets, as well as changes in interest rates) conditions affecting the financial services industry generally and not specifically relating to such Party or its Subsidiaries  |                 |              |               | ✓        |                      |
| FB Financial Corporation                       | Franklin Financial Network, Inc. | changes, after the date hereof, in global, national or regional political conditions (including the outbreak of war or acts of terrorism) or in economic or market (including equity, credit and debt markets, as well as changes in interest rates) conditions affecting the financial services industry generally and not specifically relating to such party or its Subsidiaries; the occurrence of any natural or man-made disaster  |                 |              |               | ✓        | ✓                    |
| Clarivate Analytics Plc                        | Decision Resources, Inc.         | any natural disaster or pandemic or any acts of terrorism, sabotage, military action or war (whether or not declared), or any escalation or worsening thereof, whether or not caused by any person, or any national or international calamity or crisis  |                 |              | ✓             | ✓        | ✓                    |
| Travelzoo                                      | JFC Travel Group Co.             | Effects arising as a result of acts of God (including earthquakes, hurricanes, floods, or other natural disasters or weather-related conditions) or the commencement, occurrence, continuation, or intensification of any war (whether or not declared), sabotage, armed hostilities, military attacks or acts of terrorism  |                 | ✓            |               | ✓        | ✓                    |
| Perion Network Ltd.                            | Content IQ LLC                   | any political conditions (or changes in such conditions) acts of war, armed hostilities, sabotage or terrorism (including any escalation or general worsening of any such acts of war, armed hostilities, sabotage or terrorism) or other national or international calamity, crisis or emergency, or any governmental or other response or reaction to any of the foregoing, in each case, whether occurring within or outside of Israel, to the extent that such acts do not have a disproportionate adverse effect on such Company as a whole relative to other similarly situated companies operating in the same industries or geographies as the Company |                 |              |               | ✓        |                      |
| Cott Corporation (nka:Primo Water Corporation) | Primo Water Corporation          | any acts of terrorism or war, geopolitical or weather conditions or other force majeure events   | ✓               |              |               | ✓        | ✓                    |
| Brookfield Renewable Partners L.P.             | TerraForm Power, Inc.            | any natural disaster, epidemic or pandemic or any conditions resulting from natural disasters, epidemics or pandemics, (vii) acts of terrorism, sabotage, military action, armed hostilities or war (whether or not declared) or any outbreak, escalation or worsening thereof   |                 |              | ✓             | ✓        | ✓                    |
| Woodward, Inc.                                 | Hexcel Corporation               | changes, after the date hereof, in global, national or regional political conditions (including the outbreak of war or acts of terrorism) or in economic, market (including equity, credit and debt markets, as well as changes in interest rates) or other general industry-wide conditions affecting the industries in which such party and its Subsidiaries operates; weather conditions or other acts of God   |                 | ✓            |               | ✓        | ✓                    |

MAC Clause Specifically Cites:

| Acquirer   | Target                                  | MAC / MAE Excerpt  | “Force Majeure” | “Act of God” | “Pandemic”... | “War”... | Natural Disasters... |
|--|---|--|-----------------|--------------|---------------|----------|----------------------|
| Teladoc Health, Inc.   | InTouch Technologies, Inc.              | 1) flood, earthquake, other natural disaster, acts of war, sabotage or terrorism, military actions or the escalation thereof<br>2) a flood, earthquake or other natural disaster or any act of terrorism or war affecting the United States or elsewhere in the world  |                 |              |               | ✓        | ✓                    |
| R1 RCM Inc.  | SCI Solutions, Inc.                     | national or international political or social conditions, including the engagement by the United States in hostilities or the escalation thereof, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or the escalation of any military or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States; any “act of God,” including, but not limited to, weather, natural disasters and earthquakes |                 | ✓            |               | ✓        | ✓                    |
| OncoCyte Corporation   | Insight Genetics, Inc.                  | the outbreak or escalation of hostilities involving the United States, the declaration by the United States of a national emergency or war or the occurrence of any other calamity or crisis, including an act of terrorism  |                 |              |               | ✓        |                      |
| Eli Lilly and Company  | Dermira, Inc.                           | geopolitical conditions, the outbreak or escalation of hostilities, any acts or threats of war (whether or not declared), sabotage, cyber-intrusion, terrorism or any epidemics, or any escalation or worsening of any such acts or threat of war (whether or not declared), sabotage, cyber-intrusion, terrorism or any epidemics, any hurricane, tornado, flood, fire, volcano, earthquake or other natural or man-made disaster or any other national or international calamity, crisis or disaster   |                 |              | ✓             | ✓        | ✓                    |
| Norwood Financial Corp.                                      | Upstate New York Bancorp Inc.           | N/A  |                 |              |               |          |                      |
| Kimbell Royalty Partners, LP, Kimbell Royalty Operating, LLC | Springbok Energy Partners II, LLC       | national or international political conditions, including any engagement in hostilities, whether or not pursuant to the declaration of a national emergency or war, the occurrence of any military or terrorist attack, a shutdown of the United States federal government or any default on the debt obligations of any sovereign entity; effects of weather, meteorological events, natural disasters or other acts of God, other than any such effects that involve the physical destruction of the oil and gas properties of Buyer Parties and their subsidiaries              |                 | ✓            |               | ✓        | ✓                    |
| MTBC, Inc.   | CareCloud Corporation                   | any national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States  |                 |              |               | ✓        |                      |
| Blucora, Inc.  | Honkamp Krueger Financial Services, Inc | any natural disaster or any acts of terrorism, sabotage, military action or war or any escalation or worsening thereof   |                 |              |               | ✓        | ✓                    |

MAC Clause Specifically Cites:

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|--|-----------------------------------|--|-----------------|--------------|---------------|----------|----------------------|
| Anika Therapeutics, Inc.                     | Arthrosurface, Inc.               | any engagement of hostilities, act of war (whether or not declared) or terrorist activity; any effect of weather, geological or meteorological events  |                 |              |               | ✓        | ✓                    |
| Anika Therapeutics, Inc.                     | Parcus Medical, LLC               | any engagement of hostilities, act of war (whether or not declared) or terrorist activity; any effect of weather, geological or meteorological events  |                 |              |               | ✓        | ✓                    |
| ChoiceOne Financial Services, Inc.           | Community Shores Bank Corporation | any outbreak or escalation of hostilities, war (whether or not declared) or military action or any act of terrorism, the occurrence of any natural disaster, or occurrence of any man-made disaster of wide-spread consequences  |                 |              |               | ✓        | ✓                    |
| Franchise Group, Inc.                        | American Freight of Ohio, Inc.    | the taking of any action at the written request of Parent; pandemics, earthquakes, tornados, hurricanes, floods, acts of God and other similar force majeure events; acts of war (whether declared or not declared), sabotage, terrorism, military actions or the escalation thereof   | ✓               | ✓            | ✓             | ✓        | ✓                    |
| WESCO International, Inc.                    | Anixter International Inc.        | changes in financial, securities or currency markets, changes in prevailing interest rates or exchange rates, changes in general economic or political conditions, changes in the industry in which the Company or any Company Subsidiary operates, changes in commodity prices, or effects of weather or acts of God; any attack, outbreak, hostility, terrorist activity, act or declaration of war or act of public enemies or other calamity, crisis or geopolitical event |                 | ✓            |               | ✓        | ✓                    |
| Brookfield Infrastructure Partners L.P.      | Cincinnati Bell Inc.              | the outbreak or escalation of hostilities or any acts of war, sabotage or terrorism, or any earthquake, hurricane, tornado, tsunami or other natural disaster  |                 |              |               | ✓        | ✓                    |
| Northfield Bancorp, Inc. (Staten Island, NY) | VSB Bancorp, Inc.                 | changes in national or international political or social conditions including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon or within the United States, or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States                   |                 |              |               | ✓        |                      |
| IAC/InterActiveCorp                          | Care.com, Inc.                    | changes in global or national political conditions (including the outbreak or escalation of war (whether or not declared), military action, sabotage or acts of terrorism), changes due to natural disasters or changes in the weather or changes due to the outbreak or worsening of an epidemic, pandemic or other health crisis   |                 |              | ✓             | ✓        | ✓                    |
| Investar Holding Corporation                 | Cheaha Financial Group, Inc.      | changes in national or international political or social conditions including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon or within the United States, or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States                   |                 |              |               | ✓        |                      |
| Evans Bancorp, Inc.                          | FSB Bancorp, Inc.                 | any outbreak or escalation of hostilities, declared or undeclared acts of war or terrorism   |                 |              |               | ✓        |                      |

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|---------------------------------|--|---|-----------------|--------------|---------------|----------|----------------------|
| Act II Global Acquisition Corp. | Flavors Holdings Inc.                          | any change in global or national political conditions, including the outbreak or escalation of war or acts of terrorism (including cyberterrorism); earthquakes, hurricanes, tsunamis, typhoons, blizzards, tornadoes, droughts, floods, cyclones, arctic frosts, mudslides, wildfires and other natural disasters, weather conditions, acts of God and other force majeure events  | ✓               | ✓            |               | ✓        | ✓                    |
| Xperi Corporation               | TiVo Corporation                               | natural disasters, acts of war, terrorism or sabotage, military actions or the escalation thereof   |                 |              |               | ✓        | ✓                    |
| The Rubicon Project, Inc.       | Telaria, Inc.                                  | geopolitical conditions, the outbreak or escalation of hostilities, any acts of war, sabotage or terrorism, or any escalation or worsening of any such acts of war, sabotage or terrorism, or any trade wars or sanctions, any hurricane, tornado, flood, earthquake or other natural disaster  |                 |              |               | ✓        | ✓                    |
| Apergy Corporation              | Upstream Energy Business of Nalco Champion LLC | 1) general conditions in the financial markets, and any changes therein (including any changes arising out of acts of terrorism, war, weather conditions or other force majeure events), to the extent that such conditions do not have a disproportionate impact on the Athena Companies, taken as a whole, relative to other companies in the industry in which the Athena Companies operate<br>2) general conditions in the financial markets, and any changes therein (including any changes arising out of acts of terrorism, war, weather conditions or other force majeure events), to the extent that such conditions do not have a disproportionate impact on the Newco Business, taken as a whole, relative to other companies in the industry in which the Newco Business operates | ✓               |              |               | ✓        | ✓                    |
| F5 Networks, Inc.               | Shape Security, Inc.                           | acts of war, armed hostility, sabotage, cyber-attacks, terrorism or military action, in each case to the extent that such conditions have not had a disproportionate impact on the Company relative to other similarly situated companies; acts of God, calamities or natural disasters, in each case to the extent that such conditions have not had a disproportionate impact on the Company relative to other similarly situated companies   |                 | ✓            |               | ✓        | ✓                    |
| CNB Bank                        | Bank of Akron                                  | N/A   |                 |              |               |          |                      |
| The First Bancshares, Inc.      | Southwest Georgia Financial Corporation        | changes after the date of this Agreement in global, national or regional political conditions (including the outbreak of war or acts of terrorism) or in economic or market (including equity, credit and debt markets, as well as changes in interest rates) conditions affecting the financial services industry generally (except to the extent that such change disproportionately adversely affects SWGB and its Subsidiaries or FBMS and its Subsidiaries, as the case may be, compared to other companies of similar size operating in the same industry in which SWGB and FBMS operate, in which case only the disproportionate effect will be taken into account)  |                 |              |               | ✓        |                      |
| Kearny Financial Corp.          | MSB Financial Corp.                            | worsening of national or international political or social conditions including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon or within the United States; natural disaster or other force majeure event  | ✓               |              |               | ✓        | ✓                    |

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| Acquirer   | Target   | MAC / MAE Excerpt  | “Force Majeure” | “Act of God” | “Pandemic”... | “War”... | Natural Disasters... |
|--|--|--|-----------------|--------------|---------------|----------|----------------------|
| Citizens & Northern Corporation                                    | Covenant Financial, Inc.   | changes, events, or developments, after the date hereof, in global, national or regional political conditions (including the outbreak or escalation of war or hostilities, any occurrence or threat of acts of terrorism or any armed hostilities associated therewith and any national or international calamity, disaster, or emergency or any escalation thereof) or in economic or market conditions affecting the financial services industry generally and not specifically relating to such party or its Subsidiaries, or other changes, events or developments, after the date hereof, that affect bank or savings associations or their holding companies generally |                 |              |               | ✓        | ✓                    |
| Francisco Partners Management, L.P., Evergreen Coast Capital Corp. | LogMeln, Inc.  | changes in global or national political conditions (including the outbreak or escalation of war (whether or not declared), military action, sabotage or acts of terrorism), changes due to natural disasters or changes in the weather or changes due to the outbreak or worsening of an epidemic, pandemic or other health crisis   |                 |              | ✓             | ✓        | ✓                    |
| WPx Energy, Inc.   | Felix Energy, LLC  | political conditions (or changes in such conditions) or acts of war, sabotage or terrorism (including any escalation or general worsening of any such acts of war, sabotage or terrorism); earthquakes, hurricanes, tsunamis, tornadoes, floods, mudslides, wild fires or other natural disasters, weather conditions  |                 |              |               | ✓        | ✓                    |
| International Flavors & Fragrances Inc.                            | Nutrition & Biosciences business of DuPont de Nemours, Inc.  | any changes resulting from weather, natural disaster or any man-made disaster, any act of terrorism, war, national or international hostilities, or any worsening thereof  |                 |              |               | ✓        | ✓                    |
| Amneal Pharmaceuticals, Inc.                                       | AvKARE Inc/ Dixon-Shane, LLC   | any acts of war, sabotage, terrorist activities or changes imposed by a Governmental Authority associated with additional security, effects of weather or meteorological events  |                 |              |               | ✓        | ✓                    |
| PGT Innovations, Inc.  | NewSouth Window Solutions, LLC   | There is reference to an Excluded Matter in the MAE, which includes any change arising in connection with any natural disaster (including earthquakes, hurricanes, tornadoes or other acts of God), or outbreak of hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions existing or underway as of the date hereof  |                 | ✓            |               | ✓        | ✓                    |
| Talos Energy Inc.  | All Producing Assets and Certain Primary Term Acreage and Prospects of ILx Holdings I, II and III. | acts of God, force majeure events and Casualty Losses; acts or failures to act by Governmental Authorities; civil unrest or similar disorder or terrorist acts   | ✓               | ✓            |               | ✓        |                      |

| Acquirer                        | Target                       | MAC / MAE Excerpt  | MAC Clause Specifically Cites: |              |               |          |                      |
|---------------------------------|------------------------------|--|--------------------------------|--------------|---------------|----------|----------------------|
|                                 |                              |  | “Force Majeure”                | “Act of God” | “Pandemic”... | “War”... | Natural Disasters... |
| Monocle Acquisition Corporation | AerSale Inc.                 | any earthquake, hurricane, tsunami, tornado, flood, mudslide, wild fire or other natural disaster or act of God, and other force majeure event to the extent that such event does not have a materially disproportionate impact on the Company and its Subsidiaries, taken as a whole, as compared to other participants in the same industry; any national or international political or social conditions in countries in which, or in the proximate geographic region of which, the Company or any of its Subsidiaries operates, including the engagement by the United States in hostilities or the escalation thereof, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or the escalation of any military or terrorist attack upon the United States, or any United States territories, possessions, or diplomatic or consular offices or upon any United States military installation, equipment or personnel to the extent that such condition does not have a materially disproportionate impact on the Company and its Subsidiaries, taken as a whole, as compared to other participants in the same industry | ✓                              | ✓            |               | ✓        | ✓                    |
| Fidelity D & D Bancorp, Inc.    | MNB Corporation              | any act of terrorism, war (whether or not declared), national disaster or any national or international calamity affecting the United States that does not disproportionately affect such party and its subsidiaries, taken as a whole, relative to other participants in the industry, in the United States (including the other party hereto), and, with respect to any party, means the imposition or consent to a formal enforcement action by or with any Bank Regulator, including, but not limited to, a consent order or cease and desist order, except for an enforcement action related to or resulting from either party’s management rating.   |                                |              |               | ✓        | ✓                    |
| Cambridge Bancorp               | Wellesley Bancorp, Inc.      | changes, after the date hereof, in global, national or regional political conditions (including the outbreak of war or acts of terrorism) or in economic or market (including equity, credit and debt markets, as well as changes in interest rates) conditions affecting the financial services industry generally and not specifically relating to such party or its Subsidiaries  |                                |              |               | ✓        |                      |
| Cleveland-Cliffs Inc.           | AK Steel Holding Corporation | geopolitical conditions or changes that are the result of, or any escalation or worsening of, acts of war (whether or not declared), sabotage, cyber-intrusion, terrorism or any epidemics, or threat of war (whether or not declared), sabotage, cyber-intrusion, terrorism or any epidemics, and any hurricane, tornado, flood, fire, volcano, earthquake or other natural or man-made disaster or any other national or international calamity, crisis or disaster  |                                |              | ✓             | ✓        | ✓                    |
| Akerna Corp.                    | Solo Sciences, Inc.          | general economic, regulatory or political conditions or changes in the countries in which the Business operates, military action or any act of terrorism   |                                |              |               | ✓        |                      |



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|-----------------------------------|---|--|-----------------|--------------|---------------|----------|----------------------|
| Veracyte, Inc.                    | Exclusive worldwide license to nCounter FLEx Analysis System and certain other assets of NanoString | any changes in geopolitical conditions, acts of terrorism or sabotage, war (whether or not declared), the commencement, continuation or escalation of a war, acts of armed hostility, weather conditions, natural disasters or other force majeure events, including any material worsening of such conditions threatened or existing as of the date hereof  | ✓               |              |               | ✓        | ✓                    |
| Standex International Corporation | Torotel, Inc.   | acts of war or terrorism (or the escalation of the foregoing) or natural disasters or other force majeure events   | ✓               |              |               | ✓        | ✓                    |
| The Charles Schwab Corporation    | TD Ameritrade Holding Corporation   | N/A  |                 |              |               |          |                      |
| HMS Holdings Corp.                | HMS Claims Recovery Solutions, LLC  | changes in global, national, regional or local political conditions (including the outbreak or escalation of war (whether or not declared) or hostilities, military action, sabotage or acts of terrorism) or changes due to natural disasters or changes in the weather or changes due to the outbreak or worsening of an epidemic, pandemic or other health crisis, the occurrence of any broad-based cyber, military or terrorist attack, whether inside or outside the United States   |                 |              | ✓             | ✓        | ✓                    |
| Universal Corporation             | Fruitsmart, Inc.  | any force majeure circumstances or acts of God such as fire, earthquake, hurricane, flood or tsunami; any acts of war (whether or not declared), insurrection, armed hostilities, sabotage or terrorism or the escalation or worsening thereof, national emergency or strike   | ✓               | ✓            |               | ✓        | ✓                    |
| Bank First Corporation            | Tomah Bancshares, Inc.  | changes after the date of this Agreement in global, national or regional political conditions (including the outbreak of war or acts of terrorism) or in economic or market (including equity, credit and debt markets, as well as changes in interest rates) conditions affecting the financial services industry generally (except to the extent that such change disproportionately adversely affects TB and its Subsidiaries or BFC and its Subsidiaries, as the case may be, compared to other companies of similar size operating in the same industry in which TB and BFC, as applicable, operate, in which case only the disproportionate effect will be taken into account) |                 |              |               | ✓        |                      |
| United Bankshares, Inc.           | Carolina Financial Corporation  | changes, after the date hereof, in global or national political conditions (including the outbreak of war or acts of terrorism) or in general economic or market conditions affecting banks and their holding companies, generally, including changes in market interest rates, credit availability and liquidity, price levels or trading volumes in securities markets, in each case except to the extent such Party is affected in a disproportionate manner as compared to other community banks and their holding companies; the occurrence of any natural or man-made disaster   |                 |              |               | ✓        | ✓                    |
| NextGen Healthcare, Inc.          | Medfusion, Inc.   | acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof  |                 |              |               | ✓        |                      |

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|----------------------------------|--|---|-----------------|--------------|---------------|----------|----------------------|
| Apollo Global Management, Inc.   | Tech Data Corporation                              | changes in domestic, foreign or global political conditions (including the outbreak or escalation or worsening of war, hostilities, sabotage, military actions, acts of terrorism, cyber-attacks or computer hacking carried about by any Person affiliated with or related to any Governmental Authority, national emergency or similar events), including any material worsening of such conditions threatened or existing on the date of this Agreement; weather conditions or other acts of God |                 | ✓            |               | ✓        | ✓                    |
| Inphi Corporation                | eSilicon Corporation                               | any act of terrorism, war, force majeure event or natural disaster  | ✓               |              |               | ✓        | ✓                    |
| Open Text Corporation            | Carbonite, Inc.                                    | political conditions in the United States or any other country or region in the world, acts of war, sabotage, terrorism or epidemics, pandemics or natural disasters (including any escalation or general worsening of any of the foregoing) in the United States or any other country or region of the world   |                 |              | ✓             | ✓        | ✓                    |
| Anheuser-Busch Companies, LLC    | Craft Brew Alliance, Inc.                          | changes in any political conditions, acts of war (whether or not declared), hostilities, military actions or acts of terrorism, or any escalation or worsening of the foregoing; weather conditions or acts of God (including storms, earthquakes, tsunamis, tornados, hurricanes, pandemics, floods, droughts or other natural disasters)  |                 | ✓            | ✓             | ✓        | ✓                    |
| Yageo Corporation                | KEMET Corporation                                  | general economic, regulatory or political conditions (or changes therein) or conditions (or changes therein) in the financial, credit or securities markets (including changes in interest or currency exchange rates) in any country or region in which the Company or its Subsidiaries conduct business; any acts of God, natural disasters, terrorism, armed hostilities, sabotage, war or any escalation or worsening of acts of war  |                 | ✓            |               | ✓        | ✓                    |
| Digi International Inc.          | Opengear, Inc.                                     | any change in national or international political conditions, including any engagement in hostilities, whether or not pursuant to the declaration of a national emergency or war or the occurrence of any military or terrorist attack, or change in national or international economic conditions or credit or financial market conditions, any natural or man-made disasters or acts of god   |                 | ✓            |               | ✓        | ✓                    |
| Sientra, Inc.                    | Certain Assets Of Vesta Intermediate Funding, Inc. | any event, circumstance, change or effect arising directly or indirectly from or otherwise relating to any act of terrorism, war (whether declared or not), national or international calamity or any other similar event   |                 |              |               | ✓        | ✓                    |
| Taylor Morrison Home Corporation | William Lyon Homes                                 | changes in general global, national, regional or local political conditions (including the outbreak or escalation of war (whether or not declared), military action or acts of terrorism), changes due to natural disasters or changes in the weather, or other force majeure events, or changes due to the outbreak or worsening of an epidemic, pandemic or other health crisis   | ✓               |              | ✓             | ✓        | ✓                    |

| Acquirer   | Target  | MAC / MAE Excerpt  | MAC Clause Specifically Cites: |              |               |          |                      |
|--|---|--|--------------------------------|--------------|---------------|----------|----------------------|
|  |   |  | “Force Majeure”                | “Act of God” | “Pandemic”... | “War”... | Natural Disasters... |
| Laredo Petroleum, Inc.   | Certain Oil and Gas Properties and Related Assets and Contracts of Cordero Energy Resources LLC | any effect resulting from general changes in industry, economic or political conditions in the United States; civil unrest, any outbreak of disease or hostilities, terrorist activities or war or any similar disorder; acts of God, including hurricanes and storms  |                                | ✓            | ✓             | ✓        | ✓                    |
| First Horizon National Corporation                                   | IBERIABANK Corporation  | changes, after the date hereof, in global, national or regional political conditions (including the outbreak of war or acts of terrorism) or in economic or market (including equity, credit and debt markets, as well as changes in interest rates) conditions affecting the financial services industry generally and not specifically relating to such party or its Subsidiaries  |                                |              |               | ✓        |                      |
| Vishay Precision Group, Inc.   | Dynamic Systems Inc.  | any acts of war (whether or not declared), armed hostilities, sabotage or terrorism occurring after the date of this Agreement or the continuation, escalation or worsening of any such acts of war, armed hostilities, sabotage or terrorism threatened or underway as of the date of this Agreement; any earthquakes, hurricanes, floods or other natural disasters  |                                |              |               | ✓        | ✓                    |
| CynergisTek, Inc.  | Backbone Enterprises, Inc.  | N/A  |                                |              |               |          |                      |
| Google LLC   | Fitbit, Inc.  | changes in political conditions, geopolitical conditions, or the commencement, continuation or escalation of any military conflict, declared or undeclared war, armed hostilities, terrorism, government shutdown, acts of foreign or domestic terrorism, or other national or international calamity, including any material worsening of such conditions threatened or existing as of the date hereof; any hurricane, flood, tornado, earthquake or other natural disasters  |                                |              |               | ✓        | ✓                    |
| Clayton, Dubilier & Rice, LLC, Clayton, Dubilier & Rice Fund x, L.P. | Anixter International Inc.  | changes in financial, securities or currency markets, changes in prevailing interest rates or exchange rates, changes in general economic or political conditions, changes in the industry in which the Company or any Company Subsidiary operates, changes in commodity prices, or effects of weather or acts of God; any attack, outbreak, hostility, terrorist activity, act or declaration of war or act of public enemies or other calamity, crisis or geopolitical event |                                | ✓            |               | ✓        | ✓                    |
| PTC Therapeutics, Inc.   | Substantially All of the Assets of BioElectron Technology Corporation                           | acts of war, sabotage or terrorism (including any escalation or general worsening of any such acts of war, sabotage or terrorism) in the United States or any other country or region in the world (except to the extent adversely affecting Seller or the Business in a disproportionate manner relative to other Persons operating in the industries or markets in which Seller or the Business operates)  |                                |              |               | ✓        |                      |

MAC Clause Specifically Cites:

| Acquirer   | Target                            | MAC / MAE Excerpt   | “Force Majeure” | “Act of God” | “Pandemic”... | “War”... | Natural Disasters... |
|--|-----------------------------------|---|-----------------|--------------|---------------|----------|----------------------|
| Northwest Bancshares, Inc.                             | MutualFirst Financial, Inc.       | changes in national or international political or social conditions including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon or within the United States, or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States, unless it uniquely affects either or both of the parties or any of their Subsidiaries, taken as a whole   |                 |              |               | ✓        |                      |
| SmartFinancial, Inc.                                   | Progressive Financial Group, Inc. | changes after the date of this Agreement in global, national, or regional political conditions (including the outbreak of war or acts of terrorism) or in economic or market (including equity, credit and debt markets, as well as changes in interest rates) conditions affecting the financial services industry generally (except to the extent that such change disproportionately adversely affects PFG and its Subsidiaries or SMBK and its Subsidiaries, as the case may be, compared to other companies of similar size operating in the same industry in which PFG and SMBK operate, in which case only the disproportionate effect will be taken into account) |                 |              |               | ✓        |                      |
| LVMH Moët Hennessy - Louis Vuitton, Société Européenne | Tiffany & Co.                     | geopolitical conditions, the outbreak or escalation of hostilities (including the Hong Kong protests and the “Yellow Vest” movement), any acts of war (whether or not declared), sabotage (including cyberattacks) or terrorism, or any escalation or worsening of any such acts of hostilities, war, sabotage or terrorism threatened or underway as of the date of this Agreement, any hurricane, tornado, flood, earthquake or other natural disaster  |                 |              |               | ✓        | ✓                    |
| Flushing Financial Corporation                         | Empire Bancorp, Inc.              | N/A   |                 |              |               |          |                      |
| Reliant Bancorp, Inc.                                  | First Advantage Bancorp           | acts of war, armed hostilities, or terrorism within or involving the United States  |                 |              |               | ✓        |                      |
| PTC Inc.   | Onshape Inc.                      | geopolitical conditions, the outbreak or escalation of hostilities, any acts of war, sabotage or terrorism, or any escalation or worsening of any such acts of war, sabotage or terrorism threatened or underway as of the Agreement Date; any natural disaster or acts of God  |                 | ✓            |               | ✓        | ✓                    |
| Centreville Bank                                       | PB Bancorp, Inc.                  | changes, after the date hereof, in global, national or regional political conditions (including the outbreak of war or acts of terrorism) or in economic or market (including equity, credit and debt markets, as well as changes in interest rates) conditions affecting the financial services industry generally and not specifically relating to such party or its Subsidiaries; natural disaster or other force majeure event  | ✓               |              |               | ✓        | ✓                    |
| Roku, Inc.   | dataxu, inc.                      | acts of war, hostilities, terrorism or natural disasters  |                 |              |               | ✓        | ✓                    |
| Community Bank System, Inc.                            | Steuben Trust Corporation         | N/A   |                 |              |               |          |                      |

MAC Clause Specifically Cites:

| Acquirer                              | Target                              | MAC / MAE Excerpt  | “Force Majeure” | “Act of God” | “Pandemic”... | “War”... | Natural Disasters... |
|---------------------------------------|-------------------------------------|--|-----------------|--------------|---------------|----------|----------------------|
| Alexion Pharmaceuticals, Inc.         | Achillion Pharmaceuticals, Inc.     | general market, economic or political conditions (including acts of terrorism, war, national or international calamity, natural disaster or any similar event) that do not disproportionately affect the Company, as compared to other companies participating in the same industry as the Company   |                 |              |               | ✓        | ✓                    |
| SailPoint Technologies Holdings, Inc. | OverWatch ID, Inc.                  | any act of God, any act of terrorism, war or other hostilities (whether or not declared), any regional, national or international calamity, disaster or any other similar event, or the escalation or worsening of any of the foregoing, in each case, whether commencing before, on or after the date of this Agreement   |                 | ✓            |               | ✓        | ✓                    |
| Better Choice Company Inc.            | Halo, Purely For Pets, Inc.         | any national or international political or social conditions, including the engagement or cessation by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States; changes in the weather, meteorological conditions or climate or natural disasters (including storms, hurricanes, tornados, flooding, earthquakes, volcanic eruptions or similar occurrences)   |                 |              |               | ✓        | ✓                    |
| Aytu BioScience, Inc.                 | Pediatric Portfolio of Cerecor Inc. | 1) any outbreak or escalation of war or any act of terrorism; or general conditions in the industry in which Buyer and its Subsidiaries operate<br>2) earthquakes, hurricanes, tornadoes, natural disasters or global, national or regional political conditions, including hostilities, military actions, political instability, acts of terrorism or war or any escalation or material worsening of any such hostilities, military actions, political instability, acts of terrorism or war existing or underway as of the date hereof (other than any of the foregoing that causes any material damage or destruction to or renders unusable any material Purchased Assets and so long as the effects do not have a materially disproportionate adverse effect on the Purchased Assets, taken as a whole) |                 |              |               | ✓        | ✓                    |
| Parsley Energy, Inc.                  | Jagged Peak Energy Inc.             | political conditions (or changes in such conditions) or acts of war, sabotage or terrorism (including any escalation or general worsening of any such acts of war, sabotage or terrorism); earthquakes, hurricanes, tsunamis, tornadoes, floods, mudslides, wild fires or other natural disasters, weather conditions  |                 |              |               | ✓        | ✓                    |
| ARC Group, Inc.                       | All Assets of Soaring Wings, LLC    | acts of war, sabotage, terrorism, or military actions, natural disasters or acts of God  |                 | ✓            |               | ✓        | ✓                    |
| Lantheus Holdings, Inc.               | Progenics Pharmaceuticals, Inc.     | acts of war (whether or not declared), cyberattacks, sabotage or terrorism, or any escalation or worsening of any such acts of war (whether or not declared), cyberattacks, sabotage or terrorism, pandemics, fires, earthquakes, floods, hurricanes, tornados, acts of God, any change resulting from weather conditions or other natural disasters   |                 | ✓            | ✓             | ✓        | ✓                    |

| Acquirer                        | Target              | MAC / MAE Excerpt  | MAC Clause Specifically Cites: |              |               |          |                      |
|---------------------------------|---------------------|--|--------------------------------|--------------|---------------|----------|----------------------|
|                                 |                     |  | “Force Majeure”                | “Act of God” | “Pandemic”... | “War”... | Natural Disasters... |
| United States Steel Corporation | Big River Steel LLC | any national or international political or social conditions, including changes in or repeal or institution of tariffs or an outbreak or escalation of hostilities, acts of terrorism, military acts, political instability or other national or international calamity, crisis or emergency, or any governmental or other response to the foregoing, in each case whether or not involving the United States; any hurricane, earthquake, flood or other natural disasters |                                |              |               | ✓        | ✓                    |



## C. Paul Wazzan, Ph.D.<sup>13</sup>

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## C. Paul Wazzan is a Senior Managing Director with FTI's Forensic and Litigation Consulting division.

C. Paul Wazzan is a Senior Managing Director with FTI's Forensic and Litigation Consulting division. Dr. Wazzan specializes in providing financial, economic and statistical expertise in the areas of complex damages, finance, (e.g., valuation, corporate finance, securities fraud/10b5, option valuation, class certification, pricing of mortgage risk and MBS/CDOs, commodities price manipulation, solvency analysis), intellectual property (e.g., patent, trademark and copyright infringement, theft of trade secrets), labor and employment (e.g., class certification, managerial misclassification, wage & hour, discrimination), antitrust and competition policy (e.g., market definition, merger analysis, predatory pricing, price-fixing, exclusionary conduct, price discrimination, attempted monopolization) and public policy. Dr. Wazzan also specializes in large scale (i.e., millions of records) data analytics (e.g., data acquisition, database design and development and statistical/econometric analysis).

Dr. Wazzan's analyses have covered a wide range of industries, including basic manufacturing (e.g., automotive, mining, oil and gas, steel, food processing and distribution); high-tech (e.g., aircraft and avionics, semiconductors, digital signal processors, computer peripherals); real estate (e.g., appropriate interest rates in bankruptcy settings, lending discrimination); financial services (e.g., banking, metals and other commodities trading, organized financial markets) and pharmaceuticals (e.g., pricing of proteins, drugs and the modeling of expected sales).

Dr. Wazzan's research has been published in peer reviewed economics journals and law reviews and he has testified in a wide range of matters in Federal, State and Bankruptcy Courts, the International Trade Commission, domestic and international arbitration proceedings, and in front of legislative bodies. In addition, his testimony has been featured and relied upon in published judicial decisions.

Dr. Wazzan is president and CEO of Wazzan & Co. Investment LLC, a venture capital firm providing seed level funding to firms specializing in semiconductor, optical networking, bio-mechanical, bio-medical, and related technologies.

Dr. Wazzan has been an adjunct assistant professor of business and economics at California State University, Los Angeles and has also taught MBA classes at the University of Southern California, Marshall School of Business.

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### Lisa A. Marovich is a Senior Director with FTI Consulting's Forensic & Litigation Consulting segment.

Dr. Marovich has consulted on cases involving claims of patent infringement, monopolization, price fixing, anticompetitive agreements and conspiracies, exclusive dealing, bundling and tying, predatory pricing, and labor and employment violations. She has also worked on class action cases, mergers and acquisitions, government investigations, antitrust matters, and cases involving analyses of both liability and damages.

Dr. Marovich's case work has covered a broad range of industries, such as pharmaceuticals, medical devices, healthcare, cellular communications, sports technologies, music, home entertainment, event ticketing, payment cards, office products, metals, building products, food and groceries, transportation services, semiconductors, and personal computers. Her strengths include the management, analyses, and organization of massive amounts of information; in-depth market research and economic analyses; providing support services for the preparation of expert reports and acting as the primary client contact on cases.

Prior to joining FTI Consulting, Dr. Marovich worked as an Associate Director at Berkeley Research Group (BRG); a Senior Economist at Compass Lexecon; a Managing Economist at LECG and a Senior Economist at Economic Analysis, LLC. In addition to her case work, Dr. Marovich has also served as the Research Staff Manager and Staffing Coordinator for several years.

Dr. Marovich has significant experience in academia. Prior to her consulting career, she taught courses in economic history at both UCLA and Loyola Marymount University. She focused her academic research on the history of patents and intellectual property in the United States. Her doctoral dissertation was awarded the Herman E. Kroos Prize for the Best Dissertation in Business History by The Business History Conference, as well as the Mary Wollstonecraft Prize for the Best Dissertation on Women/Gender at UCLA. Her dissertation was also a finalist for the Allan Nevins Prize for the Best Dissertation on U.S./Canadian Economic History, awarded by The Economic History Association.





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### Joseph K. Tanimura is a Senior Director with FTI's Forensic and Litigation Consulting segment.

Dr. Tanimura has consulted on a wide variety of matters, with a particular focus on litigation involving complex economic and financial issues. He has worked on matters involving antitrust liability and damages, class certification and damages, commercial damages, corporate valuation, derivative securities (including commodity futures, credit default swaps, and employee stock options), franchises, insider trading and market manipulation, intellectual property, and public policy.

Dr. Tanimura's work has covered a broad range of industries, including agriculture, consumer products, electric vehicles, financial services, medical devices, mobile devices, music, pharmaceuticals, precious metals, private equity, restaurants, sports equipment, and video games.

Prior to joining FTI, Dr. Tanimura worked as a Director at Berkeley Research Group, a Managing Economist at LECG, and an Economist at Economic Analysis. He has been an Assistant Professor of Finance at the San Diego State University, Fowler College of Business and also taught classes at the University of Washington, Foster School of Business.

Dr. Tanimura's research has been published in peer reviewed journals such as the Asian Economic Journal, the California Journal of Politics and Policy, the International Journal of Financial Management, and the Journal of Financial Research. His current research focuses on corporate governance, corporate scandals, economic history, and insider trading.



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Since joining FTI Consulting, Mr. Demirjian's work has included performing damage analyses across various industries and assisting in large-scale investigations.

Prior to joining FTI Consulting, Mr. Demirjian was an Analyst at Compass Lexecon in its Finance practice.

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Dr. Derpanopoulos has consulted on matters involving antitrust law allegations (price-fixing and cartel behavior, monopolistic conduct); securities law allegations (insider trading, breach of fiduciary duty, misrepresentation); intellectual property law allegations (patent infringement, copyright infringement); employment law allegations (wage and hour, misclassification); contract disputes; and valuation disputes. His case-work has covered a broad range of industries, such as electronics; cable television; financial services; insurance (health, auto, fire); chemicals; beauty products; gaming products; transportation; and non-profits.

Dr. Derpanopoulos' strengths include designing and executing econometric and statistical analyses; communicating the findings of quantitative analyses; providing support services for the preparation of expert reports, deposition, and trial testimony; and acting as the primary client contact on cases. He has extensive experience in analyzing different types of data, using several programming languages (Stata, SAS, R, Excel) and quantitative techniques (regression analysis, conjoint analysis, financial modeling). Dr. Derpanopoulos has also testified as a damages expert in an arbitration hearing for a contract dispute case in the field of electrical components.

Prior to joining FTI Consulting, Dr. Derpanopoulos was a Teaching Fellow for graduate and undergraduate classes in statistics and political economy at the University of California, Los Angeles (UCLA). At UCLA, he also published his research in peer-reviewed venues and presented his research at international academic conferences.

Dr. Derpanopoulos holds a Ph.D. and an M.S from UCLA, an M.Phil. from Cambridge University, and a B.Sc. from the University of Bristol. During his graduate studies, he was awarded ten research fellowships by UCLA and external research institutes.

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