

# MCLE PROGRAMS

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## Representations, Warranties, Indemnification & Termination Provisions

*Drafting and negotiating to allocate risk in business transactions*

This fast-paced, highly focused program illustrates the differing ways that representations, warranties, indemnification, and termination provisions are used in numerous business arrangements. Representations and warranties provide the foundation for parties agreeing to enter into a business transaction—whether it is an investment, sale of a business, or other complex business arrangement, such as a license, or consulting or marketing agreement. As representations and warranties typically provide an avenue for legal recourse, counsel must negotiate both the scope of the representations and warranties, and the allocation of risk and other consequences if breached.

The expert panelists focus on how representations and warranties are drafted for different business scenarios, strategies for preparing disclosure schedules, industry norms for allocating risk, and the impact of termination provisions. The faculty cut straight to the pertinent issues, such as the:

- Appropriate scope of “typical” representations, and some of the unique challenges associated with representations involving intellectual property and use of open source software, privacy regulations, tax, and other regulatory matters;
- Use in merger and acquisition arrangements of “baskets” and “caps” on liabilities, escrow and deferred payment structures, and other tools to protect a party when the other side breaches its representations and warranties;
- Use of indemnification tools—including how to address third-party claims, and how indemnification terms often differ between “fundamental,” “special,” and other representations;
- Ways in which parties can elect to terminate an agreement—and the ramifications of termination; and
- Recent Delaware court decisions and changes in Delaware laws affecting investment arrangements, mergers and acquisitions, and termination provisions.

Bring your questions and join the dialogue!

### Agenda

- 2:00 - 2:05 p.m. , Welcome and Introduction
- 2:05 - 2:45 p.m. , Basic Strategies in Drafting and Negotiating Representations and Warranties, Termination and Indemnification Provisions
- 2:45 - 3:25 p.m. , Recent Developments in Delaware Law
- 3:25 - 3:35 p.m. , Networking and Refreshment Break
- 3:35 - 4:15 p.m. , Negotiating Standard Issues in Representations and Warranties, Termination and Indemnification Provisions in Merger and Acquisition Agreements
- 4:15 - 4:35 p.m. , What is “Market” – A Review of the SRS 2016 Dealpoints Study and General Business Trends
- 4:35 - 4:50 p.m. , Future Challenges and Closing Thoughts
- 4:50 - 5:00 p.m. , "Ask the Experts" Q&A Session

### Chair

- Neil H. Aronson, Esq., Gennari Aronson LLP, Needham

### Faculty

- Carl F. Barnes, Esq., Morse, Waltham
- William J. Haubert, Esq.,

### Dates

### Tuition

- \$245.00

- \$245.00 Members
- \$245.00 New Lawyers
- *FREE* for MCLE OnlinePass Subscribers
- Email [scholarships@mcle.org](mailto:scholarships@mcle.org) to apply for a need-based scholarship.

### **Materials Included with Your Tuition**

- All presentation materials, including faculty slides and handouts, in electronic format

### **CLE Credits**

- Earn up to 3 substantive

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