



## RISK SETTLEMENTS

# FLSA Litigation Jeopardizes M&A Deal

” Last minute wage-and-hour lawsuit threatens near final M&A transaction; Risk Settlements provides solution.



### Case Status When Risk Settlements Was Engaged:

After months of heated negotiations over every detail in a stock purchase, a PE-owned HR company was finalizing the closing documents when it was served with a lawsuit alleging that it failed to comply with California's wage-and-hour laws. Suddenly the company was facing the prospect of years of litigation, uncapped legal expenses, statutory penalties, private attorney general fines, all of which represented \$11 million in exposure.



### Obstacles to Resolution:

Faced with the untenable choice of losing the sale or having to escrow a material amount of sale proceeds, the seller sought risk transfer for the litigation and any other wage-and-hour or FLSA cases which arose prior to the sale.

**The buyer was increasingly uncomfortable, because it did not know how large the exposure was and whether there were additional employment liabilities lurking in the shadows of this transaction.**



### Solution:

In order to make sure that the buyer's and seller's objectives were met, Risk Settlements designed a solution that:

- Met the parties' financial, legal and business objectives;
- Provided certainty with full risk transfer of known, threatened or pending litigation arising out of employment or wage-and-hour violations prior to the sale;
- Secured risk transfer for the first dollar of loss including payment of all litigation costs; and
- **Obtained coverage limits for seventy percent (70%) more than the potential exposure, which gave comfort to the buyer and allowed the seller to eliminate the special litigation escrow.**



### Results:

Because time was of the essence, Risk Settlements immediately commenced quantitative and qualitative risk analyses using the company's historical HR records, its proprietary database, and risk models. Within two weeks of being contacted by the seller, Risk Settlements interfaced with the seller's Rep and Warranty broker, deal team, M&A counsel and outside litigation counsel to design an optimal risk transfer solution with a total cost of less than \$3 million. **This solution provided a pathway to close the transaction on schedule, avoided a large specific litigation escrow, and gave the parties certainty concerning exposure from any pre-sale employment or wage-and-hour violations.**

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