

C L I F F O R D
C H A N C E

PURCHASE PRICE ADJUSTMENT
DISPUTE RESOLUTION

EXCERPT FROM SELLER'S BID INSTRUCTION LETTER IN WHICH IT IS STATED THAT BIDDERS ARE TO PROVIDE, AMONG OTHER THINGS, THEIR PROPOSED PURCHASE PRICE:

Purchase Price: The enterprise value you would pay in cash to purchase 100% of the stock of [the target company], on a cash-free, debt-free basis, stated in U.S. Dollars. If you provide a value range in your Indicative Bid, [seller] will assume that your offer is the lowest value in your indicated range.

EXCERPT FROM BIDDER'S BID LETTER IN WHICH IT IS STATED, AMONG OTHER THINGS, WHAT BIDDER IS PREPARED TO PAY:

Purchase Price: Based on both the information contained in the Confidential Information Packet and our own proprietary analysis of the opportunity, and subject to the terms and conditions of this letter, including the key assumptions and due diligence requirements described below, we propose to acquire for cash 100% of the issued and outstanding share capital of [the target company) on a cash-free, debt free basis.”

Key Assumptions: Our proposal assumes, among other things, that:

- [The target company] will be delivered at closing with a normal level of working capital and the tax attributes communicated to us.”

EXCERPTS FROM THE PURCHASE AGREEMENT GIVING EFFECT TO SELLER'S AND BIDDER'S INTENT FROM PREVIOUS SLIDES:

"Purchase Price" means: (a) the Enterprise Value; plus (b) the Net Working Capital Adjustment (which may be a negative number); plus (c) the amount of Cash and Cash Equivalents; ... minus (e) the amount of Closing Date Indebtedness .

"Enterprise Value" means \$800,000,000.

"Net Working Capital Adjustment" means, as applicable: (i) the lesser of (x) the absolute value of any amount by which Net Working Capital exceeds the Target Net Working Capital and (y) \$5,000,000; or (ii) the lesser of (x) the absolute value of any amount by which Net Working Capital is less than the Target Net Working Capital and (y) \$5,000,000; provided that any amount which is calculated pursuant to this clause (ii) shall be deemed to be a negative number.

"Net Working Capital" means the aggregate value of the current assets of the Group Companies less the aggregate value of the current liabilities of the Group Companies, except as expressly modified by the (i) exclusion of certain current assets and current liabilities and (ii) inclusion of additional line items of certain non-current liabilities, in all such cases with respect to clauses (i) and (ii), as set forth in the exemplary calculation attached hereto as Exhibit B, determined on a consolidated basis without duplication as of 11:59 p.m. New York time on the day immediately preceding the Closing Date (but assuming that the consummation of the transactions contemplated by this Agreement had not occurred until immediately after such time) and calculated in accordance with the Accounting Principles. Notwithstanding anything to the contrary contained herein, in no event shall "Net Working Capital" include deferred Tax assets, deferred Tax liabilities, or any amounts with respect to Cash and Cash Equivalents ... or Indebtedness .

"Target Net Working Capital" means negative \$7,900,000.

"Cash and Cash Equivalents" means, as of 11:59 p.m. New York time on the day immediately preceding the Closing Date (but assuming that the consummation of the transactions contemplated by this Agreement had not occurred until immediately after such time), without duplication, all cash and cash equivalents (including marketable securities, checks, bank deposits and short-term investments with maturities not exceeding three months) of the Group Companies on a consolidated basis, including the amounts of any received but uncleared checks, drafts and wires issued prior to such time, less the amounts of any outstanding checks or transfers at such time, in each case determined in accordance with the Accounting Principles.

"Closing Date Indebtedness" means all Indebtedness of the Group Companies on a consolidated basis as of 11:59 p.m. New York time on the day immediately preceding the Closing Date (but assuming that the consummation of the transactions contemplated by this Agreement had not occurred until immediately after such time), determined in accordance with the Accounting Principles.

EXCERPTS FROM THE PURCHASE AGREEMENT GIVING EFFECT TO SELLER'S AND BIDDER'S INTENT FROM PREVIOUS SLIDES: (CONTINUED)

"Indebtedness" means, as of any time, without duplication, all obligations of any Group Company: (a) for borrowed money (including under the Credit Facility) or indebtedness issued in substitution or exchange for borrowed money or for the deferred purchase price of property or services, whether or not interest bearing (including obligations under capitalized leases, but excluding any trade payables and accrued expenses arising in the ordinary course of business); (b) evidenced by any note, bond, debenture or other debt security; (c) under any letter of credit (but only to the extent drawn), surety bond, performance bond, bankers acceptance, guarantees or similar obligation or instrument (it being understood that any obligations under such instruments described in this clause (c) shall only be deemed to constitute Indebtedness to the extent a Group Company has any existing reimbursement or direct payment obligation with respect to the amounts secured thereunder at the time of determination); (d) for declared but unpaid dividends; (e) in respect of retention arrangements or other compensation or benefits, in each case, the payment of which is triggered solely and directly as a result of the Closing (including any amounts payable to [Named Employee] under the terms of his employment agreement and/or the amendment thereto, but excluding, for the avoidance of doubt, payments with respect to any Company Equity Securities contemplated to be made pursuant to Section 2.9(b)(iii)-(vi)); (f) for prepayment penalties, breakage and redemption costs (including with respect to the Credit Facility) and other similar costs or expenses triggered by the execution and consummation of transactions contemplated by this Agreement; and (g) for accrued and capitalized interests related to the items listed above.

Notwithstanding the foregoing, "Indebtedness" shall not include any obligations of any Group Company: (i) under undrawn letters of credit (including any that are outstanding under the Credit Facility); (ii) under any interest rate, currency or other hedging agreements (other than breakage costs payable upon termination thereof on the Closing Date); . . . (iv) for deferred revenue; (v) for any intercompany indebtedness between or among the Company and/or any of its Subsidiaries; (vi) under operating leases; and (vii) incurred by Parent and its Affiliates (and subsequently assumed by the Company or any of its Subsidiaries).

"Accounting Principles" means: (a) the accounting policies, principles, practices, techniques, categorizations, evaluation rules and procedures, methods and bases adopted in the preparation of the most recent audited consolidated balance sheet of the Group Companies included in the Financial Statements (i.e., the balance sheet for the fiscal year ended December 31, 2014), and (b) to the extent not covered by the foregoing clause (a), GAAP in effect as of the date of such balance sheet.

EXCERPT FROM PURCHASE AGREEMENT APPOINTING INDEPENDENT ACCOUNTANT IF PARTIES CANNOT AGREE ON ABOVE CALCULATIONS:

(ii) The Representative shall have 30 days following receipt of the Proposed Closing Date Calculations to review such calculations (the “Review Period”). The Representative may, on or prior to the last day of the Review Period, give to Parent a written notice of dispute (a “Purchase Price Dispute Notice”), which shall specify those items or amounts in Parent’s calculation of the Proposed Closing Date Calculations as to which the Representative disagrees (the “Disputed Items”) and shall include a reasonably detailed description thereof with supporting calculations and the basis for such disagreement. If either (x) the Representative delivers a written notice to the effect that it accepts the Proposed Closing Date Calculations or (y) the Review Period terminates without receipt by Parent of a Purchase Price Dispute Notice, the Proposed Closing Date Calculations (including the Purchase Price, as calculated therein) shall become conclusive and binding if and when such notice is given or, if Parent does not receive a Purchase Price Dispute Notice prior to the end of the Review Period, upon termination of the Review Period. Parent or the Representative, as the case may be, shall within five Business Days of the date of the expiration of the Review Period make the adjustment payment required by Section 2.9(d) with respect to any component of the Purchase Price that is not the subject of Disputed Items. If the Representative delivers a Purchase Price Dispute Notice to Parent on or prior to the last day of the Review Period, Parent and the Representative shall each use commercially reasonable efforts to reach agreement on the Disputed Items set forth in the Purchase Price Dispute Notice in good faith within 20 days from the date Parent receives the applicable Purchase Price Dispute Notice from the Representative. The Parties acknowledge and agree that the Federal Rules of Evidence Rule 408 shall apply to any discussions related to the Disputed Items between Parent and the Representative during such 20-day period, including any subsequent disputes arising therefrom. If the Representative and Parent do not agree upon a final resolution with respect to the Disputed Items set forth in the Purchase Price Dispute Notice within such 20-day period, then the remaining Disputed Items shall be submitted immediately by Parent and the Representative to the dispute resolution division of an independent accounting firm of international reputation mutually acceptable to Parent and the Representative (the “Accounting Firm”). Each accounting firm evaluated to serve as the Accounting Firm will confirm that it does not have any material conflict of interest in serving as the Accounting Firm and any firm unable to make such confirmation will be ineligible to serve in such role. The Accounting Firm shall be requested to render a written determination with respect to the Disputed Items (acting as an expert and not as an arbitrator) within 30 days after referral of the matter to such Accounting Firm, which determination must be in writing and must set forth, in reasonable detail, the basis therefor and must be based solely on the definitions and other applicable provisions of this Agreement (including the Accounting Principles) (and not on independent review), on a single presentation submitted by each of Parent and the Representative and on one written response to each such presentation so submitted and no *ex parte* conferences, oral examinations, testimony, depositions, discovery or other form of evidence gathering or hearings shall be conducted or allowed; provided that at the Accounting Firm’s request, or as mutually agreed by Parent and the Representative, Parent and the Representative may meet with the Accounting Firm so long as representatives of both Parent and the Representative are present.

EXCERPT FROM PURCHASE AGREEMENT APPOINTING INDEPENDENT ACCOUNTANT IF PARTIES CANNOT AGREE ON ABOVE CALCULATIONS:
(CONTINUED)

The terms of appointment and engagement of the Accounting Firm shall be as agreed upon among the Accounting Firm, Representative and Parent, and any associated engagement fees shall initially be borne 50% by the Representative and 50% by Parent. Except as provided in the preceding sentence, all other costs and expenses incurred by the Parties in connection with resolving any dispute hereunder before the Accounting Firm will be allocated between Parent, on the one hand, and the Representative, on the other hand, in the same proportion that the aggregate amount of the disputed items so submitted to the Accounting Firm that is unsuccessfully disputed by each such Party (as finally determined by the Accounting Firm) bears to the total disputed amount of such items so submitted. In resolving the Disputed Items, the Accounting Firm shall limit its review to determining the amount for each Disputed Item in accordance with the provisions of this Agreement, including the related definitions and Accounting Principles, and shall resolve each Disputed Item by choosing an amount which is either equal to or in between the amount for each Disputed Item set forth in the Proposed Closing Date Calculations and the amount for each Disputed Item set forth in the Purchase Price Dispute Notice. Any determination of the Accounting Firm shall be conclusive and binding upon the Parties absent fraud or manifest error. The Proposed Closing Date. Calculations shall be revised as appropriate to reflect the resolution of any objections thereto pursuant to this Section 2.9(c)(ii), and, as so revised, such Proposed Closing Date Calculations shall be deemed to set forth the final ... Net Working Capital (and the related Net Working Capital Adjustment), Cash and Cash Equivalents, Closing Date Indebtedness ... and Purchase Price, in each case, for all purposes hereunder (including the determination of the Actual Adjustment).

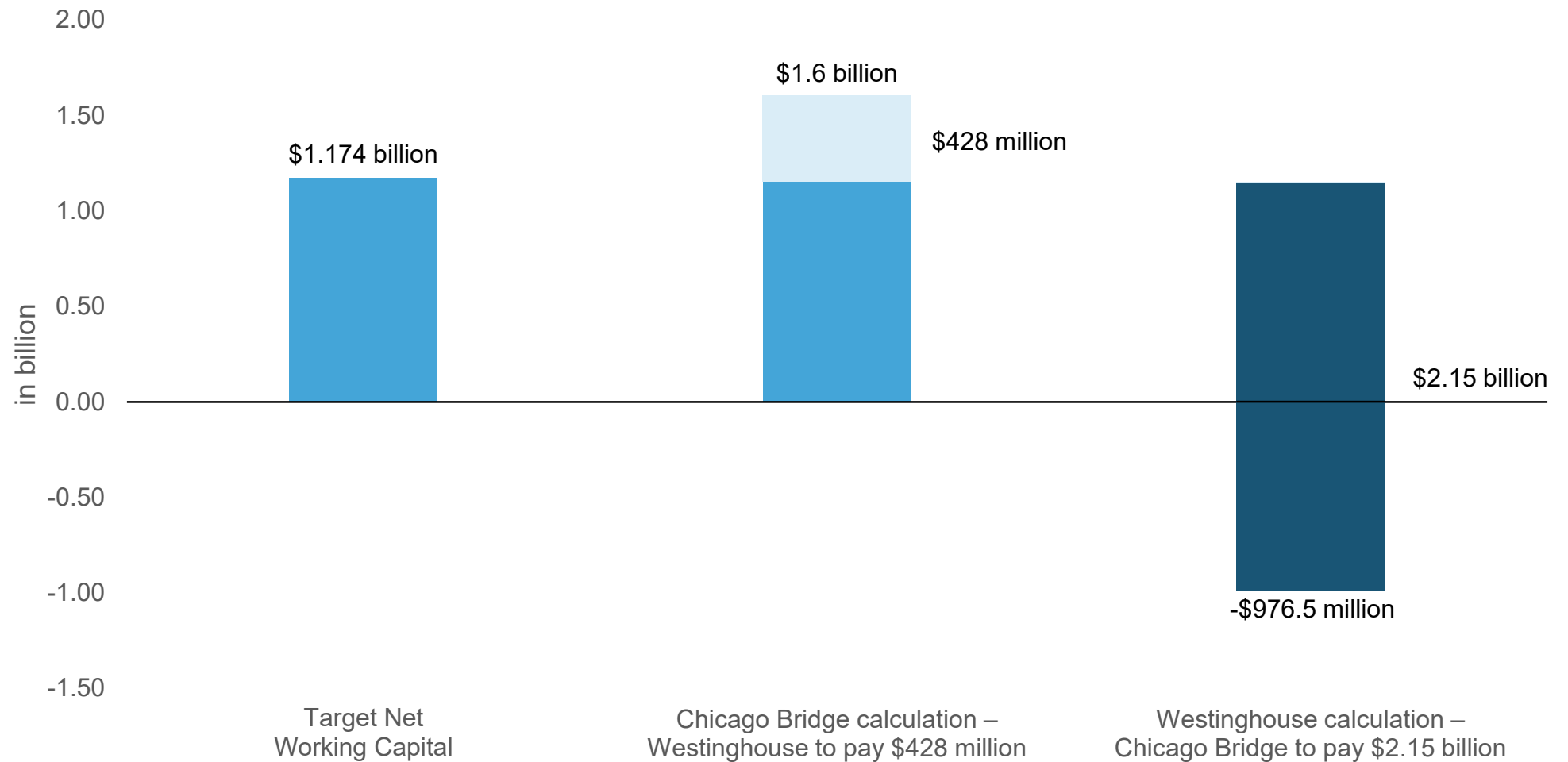
CHICAGO BRIDGE V. WESTINGHOUSE, 166 A.3D 912 (DEL. 2017)

ARTICLE X INDEMNIFICATION

10.1. Survival Period. Other than with respect to the Fundamental Representations and the Specified Covenants, none of the representations, warranties, covenants (other than (a) with respect to the representation set forth in Section 2.12(d)(ii)(A), which shall survive after the Closing through the expiration of the statute of limitations period(s) applicable to such representation under ERISA (the “Multiemployer Plan Representation”) and (b) those covenants which by their terms are required to be performed following the Closing) or agreements set forth in this Agreement or any in any certificate, statement or instrument delivered pursuant to this Agreement, including any rights arising out of any breach of such representations, warranties, covenants or agreements, shall survive the Closing (and there shall be no liability for monetary damages after the Closing in respect thereof); provided that this Section 10.1 shall not limit the rights of the parties hereto to obtain an injunction or injunctions to prevent breaches of covenants or agreements contained in this Agreement, to enforce specifically the terms and provisions hereof or to obtain other equitable remedies with respect hereto; and provided, further, that Purchaser and Purchaser Parent may, until the six (6) month anniversary of the Closing Date, specifically enforce (but not seek or obtain monetary damages with respect to) the covenant set forth in Section 6.5; and provided, further, that nothing herein shall relieve either party for liability in respect of actual fraud.

CHICAGO BRIDGE V. WESTINGHOUSE, 166 A.3D 912 (DEL. 2017)

(CONTINUED)



CHICAGO BRIDGE V. WESTINGHOUSE, 166 A.3D 912 (DEL. 2017)

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“The sum total of the logic of Westinghouse’s claims is worth stating. Based on challenges to large items included in the financials that Chicago Bridge represented were GAAP compliant, which Westinghouse knew about before closing, and which it did not use as a basis not to close, Westinghouse now says that it should keep stone, which it got for zero dollars, and be paid by Chicago Bridge over \$2 billion for taking it!”

[Chi. Bridge & Iron Co. N.V. v. Westinghouse Elec. Co. LLC, 166 A.3d 912, 924 \(Del. 2017\).](#)

EXCERPT DEFINING ACCOUNTANT AS AN EXPERT AND NOT AN ARBITRATOR:

(iii) If Seller Parent has any objections to the Net Proceeds Earnout Statement, it shall deliver to Purchaser within sixty (60) days of its receipt of such Net Proceeds Earnout Statement a written statement setting forth in reasonable detail each item in dispute and the reasons therefor (a “Dispute Statement”). If Seller Parent notifies Purchaser in writing of its acceptance of the Net Proceeds Earnout Statement or if a Dispute Statement is not delivered to Purchaser within sixty (60) days after receipt of such Net Proceeds Earnout Statement then such Net Proceeds Earnout Statement shall become final, binding and nonappealable and any Net Proceeds Earnout Amounts determined payable thereunder shall be considered finally determined and payable pursuant to Section 1.1 of this Schedule 1.3(d). If Seller Parent delivers a Dispute Statement within such sixty (60)-day period, (i) the Net Proceeds Earnout Amount included in the Net Proceeds Earnout Statement shall be considered finally determined and payable pursuant to Section 1.1 of this Schedule 1.3(d), and (ii) with respect to the amounts specifically identified in the Dispute Statement to be in dispute, such remaining amounts shall become final, binding and nonappealable upon the earlier of the date that such amounts are finally resolved in writing by Seller Parent and Purchaser and the date that such amounts are finally resolved in writing by the Independent Auditor (it being understood that the Independent Auditor shall be functioning solely as expert and not as an arbitrator). During the thirty (30) days immediately after the delivery of a Dispute Statement (or such longer period as Seller Parent and Purchaser may agree in writing), Seller Parent and Purchaser shall negotiate in good faith to resolve any objections set forth in the Dispute Statement. At the end of such thirty (30)-day period, Seller Parent and/or Purchaser may submit to the Independent Auditor for review and resolution in accordance with the terms and provisions hereof, any and all matters that remain in dispute with respect to the Dispute

YOUR CONTACTS



BENJAMIN SIBBETT
PARTNER

T +1 212 878 8491

E benjamin.sibbett
@cliffordchance.com



ANTHONY CANDIDO
PARTNER

T +1 212 878 3140

E anthony.candido
@cliffordchance.com



MARY JANE YOON
COUNSEL

T +1 212 878 8318

E maryjane.yoon
@cliffordchance.com



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Clifford Chance, 31 West 52nd Street, New York, NY 10019-6131, USA
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