

Benesch Partner Matthew Fox Quoted in BevNET on M&A Earn-Outs and Seller Protections

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Matthew Fox, Partner in Benesch's Litigation Practice Group, was recently quoted in the BevNET article "Lawsuit Alleges Diageo Deceived 21Seeds About Casamigos Jalapeño Plans."

The article discusses a lawsuit against Diageo by a stockholder representative of 21Seeds, a flavored tequila brand it acquired in 2022. The lawsuit claims Diageo misled 21Seeds by secretly developing a competing product, Casamigos Jalapeño Tequila, while deliberately stalling 21Seeds' growth to avoid earn-out payments. The complaint alleges fraud and seeks damages, arguing that 21Seeds has been sidelined under Diageo's control despite the rising popularity of spicy tequila.

Matthew emphasized the importance of strategic protections in mergers, stating, "I think the best way to protect yourself is a combination of more general obligations, but also, if you're the seller, you have the best handle on what it would take to hit these milestones, and I would try and negotiate for some of those in the merger agreement."

Regarding the lawsuit, he noted that "the concern from 21Seeds over a competing flavored tequila brand and Diageo's representations (statements of facts) could 'feature heavily' in the outcome and could 'cut both ways.'"

Fox explained that the issue could be viewed as "material" (relevant) and show that 21Seeds was misled, supporting a claim for fraud or breach of contract. Or the court could argue that 21Seeds knew about the possibility and 'didn't secure a specific contractual representation on it.'"

In hindsight, he pointed out that sellers should take proactive steps to protect themselves, adding, "I think that is a little unique here and would probably show in hindsight that there are things sellers could do in advance to protect themselves if there are risks, they're already concerned about."

Read the full article here: [Lawsuit Alleges Diageo Deceived 21Seeds About Casamigos Jalapeño Plans - BevNET.com](https://www.bevnet.com/articles/lawsuit-alleges-diageo-deceived-21seeds-about-casamigos-jalape%C3%B1o-plans)