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Anti-Reliance Clauses in Delaware M&A: *Pearce v. NeueHealth* and Comparative Perspectives

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Recent Delaware cases, including *Pearce v. NeueHealth* (2024) and *Trifecta Multimedia Holdings v. WCG Clinical Services* (2024), make clear that parties in M&A deals remain exposed to fraud claims when anti-reliance clauses are missing or poorly drafted. In *Pearce*, the court refused to dismiss fraud claims based on projections shared during negotiations because the merger agreement did not contain a comprehensive anti-reliance clause binding the buyer. The decision underscores Delaware's firm stance: fraud claims cannot be eliminated through implication or boilerplate language – only precise, buyer-authored disclaimers of reliance will do.

Delaware's framework for anti-reliance clauses originates with *Abry Partners V, L.P. v. F&W Acquisition LLC* (2006). There, then-Vice Chancellor Strine distinguished between two types of fraud: intra-contractual fraud, which involves misrepresentations in the agreement itself and cannot be disclaimed, and extra-contractual fraud, which involves statements made outside the agreement and can be disclaimed if the contract clearly states the buyer relied only on the written representations. Since *Abry*, Delaware courts have consistently applied this principle. For example, in *FdG Logistics v. A&R Logistics* (2016), the Chancery Court stressed that effective disclaimers must come from the aggrieved party; a seller's statement about what it is or is not warranting does not substitute for a buyer's own disclaimer of reliance. Similarly, in *Prairie Capital III v. Double E Holding Corp.* (2015), the court explained that while "magic words" are unnecessary, the clause must be explicit and comprehensive, extending to oral statements, data room materials, management presentations, and financial forecasts.

The lesson of *Pearce* is the risk of imprecision. Without a clear buyer-side disclaimer, fraud claims based on extra-contractual projections survived the motion to dismiss. By contrast, Delaware courts regularly enforce well-drafted clauses to bar such claims at the pleading stage. The result is a framework that is technical but predictable: careful drafting can provide substantial protection, while vague disclaimers or generic integration clauses leave parties exposed to expensive litigation.

Delaware's approach differs from other jurisdictions: New York enforces anti-reliance clauses but requires specificity, and fraud claims may still proceed if the misrepresentation involves facts

uniquely within the counterparty's knowledge. Texas courts apply the *Forest Oil* factors – focusing on sophistication, counsel involvement, and voluntariness of negotiation – and generally uphold disclaimers in arm's-length transactions. California is much more restrictive; Civil Code § 1668 broadly prohibits contracting away liability for fraud, leaving little room for effective anti-reliance language. Compared to these jurisdictions, Delaware is the most permissive, but only if parties meet its technical drafting requirements.

For practitioners, several drafting lessons emerge. Effective anti-reliance clauses must include a clear buyer disclaimer, cover all categories of extra-contractual information, and address accuracy and completeness to reduce the risk of omission-based claims. In transactions involving earnouts or equity rollovers, mutual anti-reliance provisions may be advisable to protect both sides. Common pitfalls include relying solely on integration clauses, using seller-only disclaimers, or drafting clauses that conflict with fraud carve-outs elsewhere in the agreement.

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