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Continuation Funds in Private Equity:

Prevalence, Valuation Frictions, and the Emerging Disputes Playbook

Continuation funds have shifted from a niche liquidity tool to a core feature of the private equity landscape, and that rise has brought a corresponding increase in dispute risk, particularly around valuation when assets move from an older fund to an affiliated continuation vehicle.[1]

GP-led continuation transactions are now sufficiently large, frequent, and complex that they demand robust process discipline and valuation rigor to avoid litigation or arbitration.[2] The data shows record secondaries activity through 2024 and into 2025, with continuation funds accounting for a growing share of GP-led volume and, importantly, a double-digit share of sponsor-backed exit activity.[3,4] Against that backdrop, recent challenges filed in Delaware Court of Chancery illustrate how compressed timelines, information asymmetries, and fee or carry resets can catalyze disputes, often with valuation at the centre.[5,6,7]

This article synthesizes current market dynamics and the dispute typologies most likely to surface in order to offer practical guidance for sponsors and investors on process design, valuation workstreams, and dispute readiness.[8]

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Continuation funds are mainstream and still expanding

156-162

billion USD across LP and GP-led transactions

40-45%

Year-over-year growth

Continuation funds (also called continuation vehicles or CVs) have become a pillar of the GP-led secondaries market across cycles. Independent market surveys and bank advisory reports for 2024–2025 converge on a record year for secondaries in 2024, with aggregate volumes in the range of approximately USD 156–162 billion across LP- and GP-led transactions and year-over-year growth of roughly 40–45 percent.[9,10]

Several analyses also note that continuation funds have accounted for a meaningful and rising portion of sponsor-backed exit volume with estimates in the low-teens as a percentage of total sponsor exits and a further uptick observed in 2025.[11]

This breadth is reinforced by abundant dry powder and a deeper, more specialized buyer base that now includes large secondary funds, semi-liquid vehicles, and dedicated continuation strategies across private equity, infrastructure, and private credit.

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The structural conflict and why valuation sits at the fault line

Continuation funds are inherently conflicted vehicles because the GP is on both sides of the trade. legacy fund sells a portfolio company or a curated basket to a newly formed continuation vehicle managed by the same sponsor. Existing investors are offered an election to roll into the continuation vehicle on stated terms or to receive liquidity at the transaction price, typically funded by new investors. This architecture raises the classic “entire fairness” questions of process and price.

Valuation is the fault line because it simultaneously drives selling LP recoveries, rolling LP entry points, and the sponsor’s go-forward economics.[12] The reference date for net asset value, the scope and conclusions of the GP’s internal valuation, third-party validation through a fairness or valuation opinion, and evidence of a competitive process that sets a market-clearing price all converge on a single question: is the price fair?

Even when a professional fairness opinion is obtained and a lead secondary buyer price has been negotiated, legacy LPs may challenge whether the price reflects the most current performance, whether the reference date is stale, or whether bid dynamics were influenced by financing terms, stapled commitments, or other structuring choices.

Information parity compounds this issue. If the materials provided to prospective continuation vehicle buyers are more detailed or more optimistic than the disclosures given to legacy LPs - especially when legacy LPs are asked to vote on conflicts and choose roll-or-sell within compressed timelines - disputes are more likely.[13]

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The Institutional Limited Partners Association (ILPA) has sought to reduce friction through guidance that emphasizes early LPAC engagement, parity of information for all LPs, meaningful decision windows of about a month rather than days, and a “status quo” option that avoids worsening fee or carry terms for rolling investors.[14,15] In practice, transactions often deviate from those ideals for commercial reasons, but the guidance provides a benchmark for reasonableness that tribunals and regulators may look to when evaluating fairness. [16]

Finally, fee and carry resets can be lightning rods. [17] Continuation vehicles are typically concentrated, actively managed, and capitalized for future growth initiatives; their fee model may legitimately differ from the legacy fund. [18] Yet perceived windfalls, such as crystallization of carry on selling LP interests without a corresponding reinvestment by the GP into the continuation vehicle, or management fee bases that expand beyond operating need, invite challenge unless they are well-justified, fully disclosed, and clearly aligned to the business plan.

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The evolving legal and regulatory environment

The legal analysis of continuation fund disputes spans contract, fiduciary duty, securities regulation, and procedural law governing arbitration and interim relief. ost legacy private equity funds serving North American LPs are organized in Delaware or the Cayman Islands with New York or Delaware governing law, and fund agreements frequently require confidential arbitration on the merits while preserving parties' access to courts for interim relief to prevent irreparable harm.[19] That architecture matters, because it shapes both how and where challenges are brought.

In the United States, the Securities and Exchange Commission has signaled sustained interest in adviser-led secondaries and continuation funds.[20] In 2023, the Commission adopted a package of private fund adviser rules that, among other things, would have required SEC-registered advisers initiating adviser-led secondaries to obtain and distribute an independent fairness or valuation opinion and to provide a written summary of material business relationships with the opinion provider.[21]

In June 2024, however, the U.S. Fifth Circuit Court of Appeals vacated those rules in their entirety, concluding the SEC exceeded its statutory authority.[22] The immediate legal effect is that there is no federal rule that specifically compels fairness opinions or specified disclosures in continuation transactions.

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Outside the United States, regulatory frameworks vary. In the European Union and the United Kingdom, the Alternative Investment Fund Managers Directive and local rules emphasize conflicts monitoring, valuation governance, and disclosure. Those regimes do not target continuation funds per se, but their requirements supply additional process guardrails. Internationally active GPs therefore often harmonize to the stricter expected standard across their platforms.

For Canadian institutions, which are significant LPs in global private equity, the practical reality is that disputes will usually be governed by the fund's chosen law and forum, typically New York or Delaware law and seated arbitration, with Canadian public law playing little direct role. Nonetheless, Canadian fiduciary and governance norms, and the policy positions of Canadian LP trade bodies, can influence negotiation posture and side letter expectations around continuation processes.[23]

The critical point across jurisdictions is that fiduciary duty and contract terms anchor the analysis. Where agreements narrow fiduciary duties or expand discretion, conduct still must satisfy the implied covenant of good faith and fair dealing and adhere to express conflict-management covenants in the fund documents.

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Disputes are here: process, price, and parity frame the battleground

Recent litigation and arbitration activity confirms that continuation fund disputes are moving from theoretical to real.[24] The allegations are fact-specific, but common themes have emerged around timeline, information parity, valuation methodology and GP economics.

In late 2025, a sovereign wealth fund investor filed a complaint in the Delaware Court of Chancery to enjoin the closing of a single-asset continuation transaction proposed by its private equity sponsor.[25] The investor alleged that the sponsor compressed the LPAC approval process, withheld or sequenced information in a way that prevented meaningful review, and provided different valuation-related materials to prospective continuation vehicle investors than to existing LPs being asked to approve conflicts and make roll-or-sell elections.

The complaint characterized the transaction valuation as under-reflecting recent performance improvements due to a reference date that predated key value-accretive developments and challenged the reset of carry and fees as an impermissible transfer of economics to the GP. Although the fund agreements required disputes to be arbitrated on the merits, the plaintiff sought injunctive relief to prevent the closing before an arbitrator could hear the matter.

Public reporting indicates that shortly after filing, the sponsor agreed to defer the closing pending arbitration, illustrating a procedural pattern that is likely to repeat: public interim relief in court to preserve the status quo, followed by private adjudication of the merits under the partnership agreement.[26]

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That case is not an outlier in its architecture, even if it remains unusual in its publicity. It reflects a growing willingness by sophisticated LPs to test whether compressed processes, information asymmetries, and resets to GP economics meet a standard of entire fairness in conflicted transactions. It also illustrates how the availability of interim relief, even in the face of arbitration clauses, can be outcome-determinative in real time because it pauses the transaction at the moment when leverage is most acute.

A second, related dispute pattern concerns the allocation of transaction costs and broken-deal expenses between the legacy fund, rolling LPs, new investors, and the sponsor.[27] When cost allocations deviate from the fund's governing documents, or when they appear to benefit the sponsor in ways that are not transparently linked to value creation, LPs have challenged them as breaches of contract and fiduciary duty.

ILPA guidance explicitly recommends that sponsors disclose cost-allocation methodologies, share certain costs where the GP benefits from incremental fee revenue, and adhere to LPA-defined broken-deal allocation regimes.[28] Failure to do so invites grievance, particularly when rolling and selling LPs perceive that they are bearing disproportionate burdens.

A third locus of disputes is the roll-over election itself.[29] LPs have objected to decision windows measured in days rather than weeks, to election materials that are less complete than those provided to lead buyers, and to "status quo" choices that, in substance, alter fee, carry, or governance terms. In the most pointed allegations, LPs have described processes as coercive because a refusal or failure to elect was treated as a roll under new terms rather than a sale at the stated price.

Here again, ILPA's recommended baseline is simple: early notice, parity of access to the data room and management, and default mechanics that do not force an LP into a position it did not affirmatively accept.[30]

These common fact patterns supply a practical disputes playbook. Where processes conform closely to market guidance, including structured bids, recent reference dates, independent opinions, early and symmetrical disclosure to LPACs and LPs, and genuine status quo election options, challenges are rarer and harder to sustain. Where they do not, interim relief and arbitration on the merits are now demonstrably part of the LP toolkit.

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Valuation in the arena: methods, reference dates, and the proof problem

Because valuation sits at the centre of most continuation fund disputes, it warrants its own consideration. The techniques are familiar - discounted cash flow, trading and transaction multiples, and asset-specific approaches where appropriate - but the context is distinct. Parties are not debating an abstract fair value; they are contesting a price embedded in a conflicted process that reallocates economic rights between selling LPs, rolling LPs, new investors, and the GP.

Reference date selection is the first friction.[31] Continuation transactions often hinge on a negotiated price as of a stated date, with interim cash flows, performance updates, and sometimes deferred consideration used to bridge changes between the reference date and closing. LPs who know, or reasonably expect, that material value-accretive events occurred after the reference date may argue that the stated price is stale. Sponsors typically respond that the chosen date reflects the balance of evidence at the time bids were solicited and that buyers priced uncertainty accordingly.

The strength of each position often turns on documentation: the bid process record, contemporaneous valuation memos, monthly performance packs, portfolio management committee minutes, and the fairness or valuation opinion workpapers. Disputes about cross-currents between interim performance and the price as-of date are fundamentally evidence problems. Well-run processes minimize the evidentiary gap by time-boxing between bids, LP approvals, and elections.[32]

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A second recurring issue concerns control and growth assumptions.[33] Continuation vehicles are designed to fund a next chapter: product launches, geographic expansion, operational excellence programs, bolt-on M&A, or de-risking of capital structures. Valuation analyses therefore must distinguish between the value embedded at the time the legacy fund sells and the incremental value contingent on new capital and new risk. When models blur that line, selling LPs may claim that pro forma growth is being used to justify a lower base valuation; conversely, if models strip too much optionality from the base case, buyers may push price down unduly.

The fairness opinion provider's role is critical in framing these distinctions transparently. A robust opinion process that interrogates management cases, tests sensitivities, triangulates to multiples, and articulates the mapping between legacy value and go-forward value greatly reduces room for dispute.

The third valuation theme is the interaction of price and structure. Deferrals, earn-outs, and "true-up" mechanics can align interests and smooth valuation disagreements by making part of the consideration contingent on near-term performance. Allocation of post-reference date cash flows—dividends, interest, asset-level distributions—can be capitalized into price or settled as adjustments. Each choice has an economic and legal consequence, especially where the governing documents for the legacy fund set constraints on distributions or crystallization of carry.

Where structure is used to enhance headline price without equivalent economic transfer, LPs sometimes argue that it masks discounting. Where structure legitimately solves for risk transfer, it can be a powerful fairness tool if the rationale is documented and disclosed evenly to all constituencies.

In disputes, valuation experts should expect to be asked to do three things. They must reconstruct the contemporaneous basis for the price, using the documents the sponsor and its advisers actually had. They must opine on the reasonableness of assumptions and methods under both market practice and any specific valuation policies in the fund's governing documents. And they must isolate damages - if any - in a way that is tethered to the but-for world: what price would selling LPs or rolling LPs have received pursuant to a fairer process? The best reports make the bridge between process flaws and price impact explicit and quantifiable. Where process was sound, those same techniques often demonstrate that claimed price impact is speculative.

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Table 1: Common continuation fund dispute scenarios and practical implications[34]

Scenario 1: Interim injunction to pause closing pending arbitration

Core allegations:

- Compressed LPAC and LP timelines; asymmetric disclosures;
- Stale reference date;
- Fee/carry reset unfairly transfers value

Practical implication:

- Maintain a contemporaneous;
- Even-handed process record;
- align opinion provider's materials with LP disclosures;
- Build time for LPAC and LP review consistent with market guidance

Typical venue: Court for interim relief; arbitration on the merits under fund agreements

Scenario 2: Allocation disputes over fees, expenses, and broken-deal costs

Core allegations:

- Allocations deviate from LPA;
- Costs that benefit GP borne by LPs; management fee bases disproportionate to operating need

Practical implication:

- Pre-define methodologies;
- Disclose and document allocations;
- Tie to LPA language and financial reporting;
- Consider GP cost sharing where the GP directly benefits

Typical venue: Arbitration under LPA; sometimes coupled with regulatory interest

Scenario 3: Roll-over election fairness and "status quo" options

Core allegations:

- Insufficient decision windows;
- Lack of parity in information;
- Defaults that force roll-over; changes to fee/carry/governance for rolling LPs

Practical implication:

- Provide parity of information and access;
- Adopt clear, LP-friendly default mechanics;
- Avoid worsening terms for rolling LPs without compelling justification and disclosure

Typical venue: Typical venue: Arbitration, with potential for interim relief if closing is imminent

34 Scenario summaries are based on publicly described disputes and widely observed market practices; each case turns on its own facts and governing documents.

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Best practices that reduce dispute risk and improve outcomes

A sponsor's goal is not only to "win" disputes; it is to avoid them. Several process design choices materially reduce risk while still delivering the commercial outcomes continuation vehicles are meant to achieve.

Early and meaningful LPAC engagement is foundational.[35] Presenting a clear rationale for the continuation transaction, alternatives considered, and the value creation plan for the next hold period allows the LPAC to assess conflicts in substance, not form. Allowing in camera LPAC sessions and enabling LPAC access to independent counsel or specialists at the fund's expense on complex deals, reinforce the credibility of the conflict waiver.

Parity of information is the next pillar.[36] Sponsors should assume that courts, arbitrators, and regulators will compare what buyers saw and what LPs saw side-by-side. A single, controlled data room for both cohorts, supported by a Q&A log that records questions and answers, is an elegant way to demonstrate parity. Where confidentiality concerns necessitate redactions, they should be minimal, principled, and explained. The election window should be long enough to accommodate institutional decision-making. ILPA recommends around 30 calendar days or 20 business days; where an LP is subject to statutory or by-law approval layers, sponsors should be ready to extend reasonably.[37]

Fairness or valuation opinions will remain market practice notwithstanding the U.S. rule vacatur. Sponsors should select an opinion provider with no material recent business relationships that could reasonably be seen as compromising independence.

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Just as important, the provider's analyses, management-case vetting, and sensitivity testing should align with the materials in the LP data room. If the opinion provider builds a model with upside cases that are not visible to LPs, or uses multiples analysis that diverges without explanation from the sponsor's internal work, disputes will seize on the gap.

Economic terms must match the story. If the continuation vehicle is presented as an efficient way to fund a focused growth plan, then its fee base should track operating needs and its carry terms should reflect genuine alignment. Resetting carry at the new entry price is common and can be appropriate; failing to roll accrued carry from selling LP positions into the continuation vehicle is much harder to justify.[38] Cost allocations should be consistent with the LPA and with the principle that the beneficiaries of a cost should bear it.

Finally, documentation discipline pays dividends. Sponsors should anticipate that internal valuation memos, portfolio company board packs, bid process summaries, LPAC minutes, and election logs will all be examined later. A record that shows careful, even-handed consideration of conflicts and price is a sponsor's best defence on the merits and, if necessary, in interim relief proceedings.

For LPs, the complementary practice is to establish internal continuation transaction protocols that define approval gates, evidence requirements, and escalation criteria; these allow LPs to respond within market timelines without compromising diligence.

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Conclusion

Continuation funds have matured into an all-weather tool for sponsors and a recurring decision point for LPs. Their prevalence is no longer in question; the numbers confirm it.[39] The open question is whether participants will normalize processes that consistently meet a defensible fairness standard, or whether the friction inherent in conflicted transactions will continue to spill into interim injunctions and private arbitrations. The recent Delaware filings show that litigation and arbitration are, increasingly, a live option when LPs perceive that process and price have come apart.[40]

Residual uncertainty remains on the regulatory perimeter, particularly in the United States after the vacatur of the SEC's 2023 private fund adviser rules. Yet the market has already internalized many of the vacated rule's core concepts through investor expectations and advisory practice.[41] That convergence makes the practical guidance in this article sturdier. Continuation funds are here to stay; the right response is not to avoid them, but to execute them with the care and clarity that the current environment demands.

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Contact Us

Chris Polson

Partner, Canadian Disputes Advisory Leader, PwC Canada
Tel.: +1 416 894 4215
Email: chris.polson@pwc.com

Sammy Lai

ASA, ABV, CFA, CFE, CFF, CPA, CGMA
Partner, Dispute and Litigation Supports, PwC China
Tel.: +86 139 1080 3546 / +852 9680 3807
Email: sammy.lai@cn.pwc.com