

Coordinating Roles between In-House Counsel and Outside Counsel in a Merger or Acquisition Transaction

By Larry Gold

Situation:

Acquisitive client is engaging outside counsel to assist in handling an important strategic acquisition in which the selling entity is a strong competitor, and the client's management team respects the principals and knows them well.

In-House Counsel Challenge:

To ensure that the roles and responsibilities of outside counsel mesh with the goals and objectives of the client and are coordinated with the efforts and duties of in-house counsel.

Approach Adopted:

Ideally, outside counsel should be engaged as early in the process as possible and before negotiations result in a letter of intent. In-house and outside counsel should meet early to establish a coordinated approach that defines their roles (e.g., due diligence, document preparation, review of schedules, negotiating tactics, need for special expertise such as tax; environmental; labor; and HSR). In-house counsel should set guidelines that provide for the leanest possible deal team and regular communication with in-house counsel and management. Weekly conference calls should be scheduled to avoid surprises

and ensure that the transaction proceeds in a timely manner.

One of the often neglected aspects of this relationship is the fact that the goals of in-house and outside counsel do not always mesh entirely. While outside counsel understands the importance of maintaining long-term client relationships, its primary goal is to close the transaction.

In-house counsel shares the immediate goal of completing the transaction on terms as favorable as possible for the buyer, but also has the task of assisting in post-closing integration of management and sometimes other in-house counsel. From the buyer's perspective a closed transaction is not the end, but just the beginning.

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