

Championship-caliber dealmakers understand the language of business

By CHRISTOPHER J. HEWITT and JAYNE E. JUVAN

As LeBron James has certainly witnessed this season with the subpar start by the Cavs, building a team that includes the right players who understand the game on all levels is critical to cultivating a winning ball club. LeBron is regularly touted as being a player with a high basketball IQ, and his comprehensive understanding of the language of basketball has led to three NBA championships, three NBA Finals MVP awards and four NBA MVP awards.

Similarly, in the context of corporate transactions, making sure that attorneys on the deal team have the capacity to understand the language of business, or *lingua negoti*, is critical to accomplishing a client's objectives. Lawyers who understand business on all levels ensure that corporate transactions close and help their clients accomplish their goals with skillful precision. Conversely, the absence of business-savvy attorneys on a deal team can become an impediment to closing the deal.

From the perspective of most business people, many attorneys tend to speak in legalese — the formal and technical language of law that is often

hard to understand. But understanding the language of business means more than having a common vernacular. It also encompasses understanding how business people approach and solve problems.

Understanding the language of business requires an intelligent approach to due diligence in M&A transactions.

Legal due diligence should focus not only on identifying issues that need to be solved to close the deal, but also on identifying issues that may inhibit effective integration of the acquired company. The latter is often overlooked and is more likely to drive return on investment. For the former, lawyers need to focus on the diligence items that are most material and, when undesirable facts are discovered, be creative in order to minimize their impact on the closing.

The language of business requires listening to clients to gain an understanding of the issues that are most important to them. In some instances, lawyers will negotiate hard for issues that their clients have less concern over, yet neglect or be entirely unaware of other issues that impact the business. Lawyers who understand their clients' priorities can assist with advance planning that addresses these

issues before the deal closes.

The language of business requires experienced judgment. Many business decisions move at the speed of light. Business clients are constantly asking their legal counsel to answer questions or provide guidance based on their experience and judgment, even when the available information may be imperfect. Experienced legal counsel do not shy away from these opportunities and can be a real value-add to the client by providing insight in real time.

The language of business requires succinct and clear answers. Businesspeople usually want a yes or no answer. Especially in the fast-paced M&A context, nothing is more frustrating to a businessperson than to ask a question that should require a simple yes or no answer only to receive an incomprehensible 10-page memorandum that asks more questions than it answers. Even if the advice requires some explanation, busy executives expect a succinct executive summary that clearly provides an answer, possibly followed by a more robust explanation that the executive can read if she so chooses.

The language of business requires legal counsel to understand their clients' operations. Reviewing websites for most companies can provide a trove of information on their products, customers, core values, business philosophy and almost all aspects of their

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business. In addition, public company clients have robust disclosure in their federal securities filings about matters that would not be included on their websites. Being equipped with this level of detail can help lawyers work with their clients to identify the most important objectives in a transaction.

Understanding the language of business can help source opportunities for clients. The amount of dry powder chasing deals is staggering. With all the cash in private equity funds, in family offices and on company balance sheets, together with even a minimal amount of leverage, there is over \$10 trillion on the sidelines looking to be deployed. Attorneys who understand their clients' businesses and the industries in which they operate by keeping abreast of trends, reading trade publications and attending events are the best dealmakers because they can help clients identify proprietary buying opportunities. On the sell side, these attorneys can help clients find strategic buyers to maximize sales price.

Understanding the language of

business can help deal professionals of all types get their deals closed. Business-savvy deal lawyers do not focus on keeping score of deal points won or lost. Rather, they focus on whether a provision makes sense in the context of the transaction and, on the buy side, how the acquired business strategically fits into the client's existing business.

Just as LeBron needs to surround himself with teammates who have a high IQ for the game, lawyers who understand the language of business are critically important when building a championship-caliber deal team.

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At Tucker Ellis, we appreciate that legal issues are not resolved in a vacuum—almost all require a customized solution. In collaboration with our clients, we strategically analyze how the issue at hand relates to and affects their business, and we help them solve it from that perspective. In short, Tucker Ellis attorneys understand the language of business.

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