Beware the "Quick-Buck" Merger Consultants

By Michael D. Short on April 15, 2015

Last month I wrote about some ills within the law firm consulting industry and I identified the blend of characteristics that, I believe, result in an effective consultant today (The Changing Nature of the Law Firm Consulting Industry). This month I want to continue that discussion thread but in a more focused manner. I want to talk about the world of law firm mergers and the "quick-buck" consultants who attach themselves to this lucrative area.

It is no secret that the volume of law firm merger discussions is quite high at the moment, and probably will be for the foreseeable future. The reasons for this are numerous, and will be left for a future blog.

Some firms are quite experienced with mergers and acquisitions. These firms have closed many transactions and can identify strategic needs, find targets, evaluate them, and negotiate mutually beneficial combination terms with ease. Many firms, however, are novices in this world even though most firms with M&A lawyers view themselves as qualified, even though they have never worked in the professional services sector. I worry about these firms because the nuances and complexities of bringing together two type-A pools of smart professionals is fraught with challenges – some of which can only be navigated easily by experienced professionals.

For those who seek outside counsel, I worry about anyone who hires a consultant who expects a bonus or premium payment for negotiation services that result in a combination. (I'm not talking about a premium payment for identifying a strategic combination that neither firm would have identified on their own. I'm talking about a premium for simply assisting with the negotiations between two interested parties who request assistance with deal terms.) Ideally, due diligence related to the evaluation of a game-changing decision such as a merger should be as pure as new fallen snow. Avoiding biases in the advice related to this transaction is critical because so many of them are not properly founded on strategic goals OR they are spearheaded by a small group of Partners who do not reflect the will of the whole partnership. There are as many reasons to kill a deal as there are to make a deal. In fact, many CEOs and experienced law firm leaders will tell you that their best deals are sometimes the ones they don't make. Your advisor should not be incentivized to manufacture and endorse a potentially bad deal.

I worry about deals where each side has a consultant at the negotiating table and each consultant is focused on showing-up the other side and "winning" the negotiations. While there are certain combinations of consultants who trust each other and work well together to create the best New Firm possible, other combinations are about egos and personalities that can completely ignore the task at hand. The most productive approach is to have both sides agree on a consultant for the deal, if at all possible.

I worry about those who hire a consultant who will not stick around to assist with integrating the two practices into one. The hard work starts after the documents are signed. Furthermore, an experienced integration consultant will bring that perspective to the deal terms and create a natural nexus between the deal and integration…not ignore it. Without successful integration, all prior work is completely wasted.

I also worry about the toll that the "deal trolls" are exacting on the reputations of law firms. These are the desperate lightweights who call as many firms as possible about any combination that they can think of to develop a big portfolio of "blind shots in the dark," in the hope that one closes at some point. When that happens they come looking for a major

premium payment. This practice is quite similar to cybersquatting on a domain name. We recently heard of a firm that had a strategic interest in another firm. We contacted the second firm on behalf of the first and were told by the leadership of the second firm that the other firm had, in fact, contacted them several months prior and had made such a poor impression that there was no interest whatsoever in another call. We subsequently found out that the earlier approach was made by someone who claimed to represent the first firm but had no official role in the process. We also know of instances where two Managing Partners are contacted by a deal-hunter who claims to represent each firm to the other party and actually represents neither. A new entrant into this feeding frenzy are the real estate brokers who look at their companies' expiring law firm leases to see if any firm leadership teams are aging. If so, they "broker" the firm in anticipation of a demographic crisis. I wonder what the law firm leaders would think if they knew this was happening?

Your take-aways from this article are easy to remember:

1. If you engage a merger consultant, make sure that your agreement with that person results in unbiased advice.
2. Try to get both sides to agree to one consultant who can focus on your New Firm, rather than having two sides trying to "win" the negotiations, thus limiting the potential of the New Firm.
3. Remember to weave integration planning into the process. It is never too early to start planning this vitally important process.
4. If someone contacts you claiming to represent another firm, let the other Managing Partner know. This affords that person the opportunity to monitor the firm's image and reputation within the merger discussion world.

Good luck with your merger or acquisition efforts and beware those who are lurking in this practice space to simply make a quick buck.