

7 Lessons M&A Attys Learned The Hard Way

By **Chelsea Naso**

Law360, New York (August 12, 2016, 2:13 PM ET) -- Building a successful practice as a transactional attorney is a challenging process that begins with surviving those early years as an associate. Here, Law360 outlines seven bits of advice that established mergers and acquisitions partners had to learn the hard way.

Don't Forget the Basics

It's true that being a creative thinker and problem-solver can help make an attorney a more valuable aid to one's clients and therefore become a more valuable asset to a law firm. But early on in the process, it can pay off to commit some of the basic principles and standards to memory, explained Scott Anthony, a Silicon Valley-based Covington & Burling LLP corporate partner.

Anthony recalls being told early on that the Revlon standard and definitions of items like material adverse effect and material adverse change should just "roll off your tongue" to ensure that if a young attorney is ever on the spot in a board or client meeting, they come off as knowledgeable.

"Presentations need to be crisp. What that really means is that you need to memorize some of these legal standards that we use on a regular basis," Anthony said. "The point is really that if you can do that, you still have to be able to apply it and understand it but you start off by being just able to recite it and sounding like you know what you are talking about."

Keep Track of the Market

For budding M&A attorneys, it can be easy to be consumed by the day-to-day demands of the job. Those who want to excel, however, should carve out time to follow the overall M&A market, explained David Swerdloff, a Day Pitney LLP corporate partner.

"My basic advice is to follow the market. In other words, the way to become a good M&A lawyer is to watch what's happening in other deals. Read newspapers or online reports daily so you are tracking what is happening with large deals."

Following the market gives up-and-coming M&A attorneys a better grasp of the ongoing trends and challenges unique to the deals market, and having that knowledge of what is going on around them can help make sure they are putting their best foot forward.

"Typically you'll see a small part of a deal as a starting lawyer," Swerdloff said. "But if you're reading more generally about big deals and the issues that are going to the courts and the issues people are wrestling with, it's going to trickle down."

"Young lawyers want to be as knowledgeable as they can so they can understand the deal and provide good advice," he added.

Appreciate Every Deal

Attorneys just breaking into the M&A world are often eager to work on their first high-stakes, headline-making transaction. But it's essential to remember that every transaction and every agreement help form the foundation of a strong practice, said William Aaronson, a Davis Polk & Wardwell LLP partner.

"A lot of young M&A lawyers focus on 'I want to work on the big, hostile takeover,' and 'I don't want to work on a commercial arrangement or a small private company acquisition,'" he said. "You should just be focused on working on as broad a set of transactions as possible because that's the way to make yourself more valuable and marketable to clients."

And no matter what transaction crosses the desk, up-and-coming M&A attorneys should take the time to open their eyes to the negotiation process and the nuanced challenges, such as employee benefits issues and tax issues, that deals often face.

"I realize it's hard because M&A associates are working around the clock, and sometimes all you have the energy to do is process, but if you can, you should really pay attention to issues that arise in the non-M&A parts of the deal, the specialized parts of the deal," he said.

Doing so will not only help a newer M&A attorney become familiar with different hurdles that deals must overcome, but it can also make a difference as the attorney's career progresses, and they become the one at the negotiating table, noted Jeff Beuche, the firmwide chair of Perkins Coie LLP's M&A practice.

"You get to be a fifth- or sixth-year associate, and all of a sudden, maybe you are just two or three years away from negotiating definitive agreements and other transaction documents yourself. And that can be a very overwhelming, scary and uncomfortable thing when you become the primary negotiator unless you have a really good understanding of all the arguments on all sides of the issues," he said.

Pay Attention to Detail

When pounding out draft documents and other elements of a transaction, budding M&A attorneys should make sure they have dotted all their i's and cross all their t's — literally.

"Showing attention to detail, even with spelling and punctuation and grammar, allows you to become more credible more rapidly with the supervisor. If a supervisor catches a typo, they also wonder, 'Maybe I should be catching other things too,'" said Jamie Leigh, a Cooley LLP M&A partner.

That's why it's key to slow down and review the work even amid deadline pressure, according to Phillip Torrence, a Honigman Miller Schwartz and Cohn LLP partner.

"Go slow to go fast. Take your time, be thoughtful, and when you're drafting or preparing documents,

even if you have someone really pounding the table to get the draft, take the extra hour or five minutes or whatever it is to read through it. Make sure it makes sense,” Torrence said.

It’s a skill that will be essential throughout a career as a transactional attorney, Beuche noted. But up-and-coming transactional attorneys will be tasked to scaling that attention to detail to the overall deal, rather than an individual piece, a skill that comes with time.

“If you’re a detail-oriented person and you want things done correctly and you want to be very thorough with your work, those are all wonderful things as an M&A lawyer. Those are really key attributes to be a great M&A lawyer,” Beuche said. “But somehow, you have to take those and deliver them within the context of the deal.”

See the Bigger Picture

Junior M&A attorneys will often be tasked with handling small sections of transactions. However, whether budding attorneys are drafting documents or conducting due diligence, they should be sure to take the time to zoom out and understand where their piece fits into the larger puzzle, explained Lane Watson, a Day Pitney LLP corporate partner.

“It’s especially easy for young attorneys to work in a silo where they are very focused on what it is they are doing, but if they understand where their part of it fits in, they can both learn more and do a better job,” he said. “You might notice things that would be relevant to other people on your deal team that they might not have picked up on.”

Anthony recalls his time as a junior associate and being in a partner’s office at the end of the day, when everyone working the deal would fill each other in on their progress. Doing so helped the team get a sense of the purpose of the deal as a whole and taught Anthony something it’s easy for attorneys to forget: They are also project managers.

“We like to think of what we do as being special in terms of providing high-level advice to boards or business people and identifying issues and helping,” he said. “People also have to think about it and pick their head out of the documents and look at the big picture and realize they are managing the overall process from start to finish, and as a result of that you need to have a view on: What is the end goal, and how do I get there?”

Build Relationships

M&A attorneys who are just starting out are focused on understanding the basics, drafting their first deal documents and carrying out due diligence as they work around the clock on their first few transactions. While relationship-building may be more important to the practice of a partner-level attorney, it’s essential not to forget about it in those early years, Aaronson explained.

“I would work on an M&A transaction, I would develop a good relationship with the client, not just the company but individuals, and then the deal would close, and I’d move on to the next deal and the next client and the next set of individuals,” he said. “Now as a partner, I make the time to keep in touch with clients on a regular basis between transactions. I wish I had done that at an earlier age.”

Relationships within the law firm are also important. Working well with fellow associates is key, but so is honing relationships with partners and senior associates, noted Mayer Brown LLP corporate partner

Paul Crimmins.

“It’s not a job; it’s a career. The relationships are very important,” he said. “Your relationships are not just with your client — they are with the senior associates and partners.”

It’s important to remember that M&A attorneys will often cross paths with the same transactional lawyers from other law firms, and treating others poorly can be a disservice to the client. With that in mind, respect is key, according to Dykema Gossett PLLC’s Thomas Vaughn.

Vaughn will never forget a time very early in his career when he took advantage of an attorney sitting across the table. Not long after, they again crossed paths, and although the attorney had the opportunity to take advantage of Vaughn this time around, they took the high road.

“He taught me such a great lesson because he had the chance to give me payback, but he was more professional than I was at the time. He taught me a career-long lesson,” Vaughn said. “We owe each other professional courtesy and professional relationships. That is the best way to conduct your practice.”

Keep Your Cool

Negotiating a transaction can be, to put it lightly, stressful. The parties involved are going back and forth over various parts of the proposed agreement, and there’s no guarantee that everyone at the table is experienced with transactions.

“M&A deals can be really stressful, but you really need to remain calm and treat everyone respectfully even if they are not treating you respectfully,” Watson said.

Watson remembers early in his career getting frustrated during negotiations when the clients were present. He noticed his voice was rising and quickly course-corrected, but it serves as a reminder to not let things boil over.

“It’s always good to take a step back and keep your cool,” he said.

One way to step back and really establish composure is to not become embroiled in the wins and losses at the negotiating table, Anthony explained.

“It really does matter to keep the goals of the client in mind in the sense [that] we often find ourselves negotiate over the details of the merger agreement and getting wrapped up in who is winning and losing and keeping score and allowing our own feelings about opposing counsel or the particular terms in the way of getting the deal done,” he said. “And sometimes, stepping back from that personal involvement is harder than you think.”

And, maybe most importantly, never forget to enjoy the ride.

“When we do these deals, we get a chance to be in the show,” Crimmins said. “It’s important in the midst of all of that to take a step back from the action and enjoy it.”

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