

M&A acumen

Mergers and acquisitions in the new economy **Interviewed by Meredith McKenzie**

This new economy presents unfamiliar challenges for companies looking to sell, and unique opportunities for those looking to buy. While funds are limited for acquisitions, buyers realize that now may be the best time to separate “the wheat from the chaff.”

“There are still people out there with money looking for the right acquisition,” says Bruce E. Dizenfeld, senior attorney at Theodora Oringer Miller & Richman PC. “Quality acquisitions are likely to be good companies with bad balance sheets available at a discount, or companies that differentiate themselves with a quality business and a solid balance sheet that may now be able to command a premium price. The key for sellers is to understand what opportunities may exist, how the seller may be perceived and, if possible, to tailor the business ‘story’ to project the right image.”

Smart Business spoke with Dizenfeld about the merger and acquisition opportunities in the new economy, and how an attorney can help a company prepare for the transaction process to increase value and decrease costs.

Where are the merger and acquisition opportunities in this environment?

For sellers with a strong core business, good market presence and a strong balance sheet, there are still buyers out there. Buyers are now competing for those businesses, there are fewer such target companies available, and the result is premium prices.

From a buyer’s standpoint, it is also a good market to find companies with either (1) good management or (2) good products or services that are unable to exploit their commercial advantage for lack of funding. This is a good time for buyers to pick up competitors and complimentary niche businesses at a lower price to position the buyer for the future.

How can an attorney help a company to identify and build value in preparation for a transaction, or control the costs of a transaction once a transaction opportunity is presented?

Counsel familiar with your business can help you anticipate what assets, rights or problems may exist to either discount or enhance your company’s



Bruce E. Dizenfeld
Senior attorney
Theodora Oringer Miller & Richman PC

purchase price or better terms. Your legal counsel can help you prepare for this event. Engaging counsel after a transaction is proposed, simply to handle the documentation process, is short-sighted. The biggest expense of a transaction is often (1) the conduct of due diligence, (2) preparation of the seller’s schedule of assets, and (3) correcting asset document deficiencies and overcoming transfer restrictions. Anticipating and identifying these problems in advance may eliminate problems later that might come at a significant expense.

How important is a strong relationship with an attorney prior to entering into a life-changing sale of your business?

Preparation makes the sale process work to your advantage. Take the time to get an attorney with your vision embedded in the company. These services can often be obtained at a fraction of the cost of ‘task-oriented’ legal services. Attorneys in the new economy are hungry to establish relationships that may generate task-based services. Your ‘embedded’ counsel should be like having a family member as an attorney, someone you can call at any time for general legal

advice. The embedded counsel is basically filling the role of a general counsel, but without being on payroll.

Larger companies may also benefit from the new economy, where a general counsel may need specialty counsel from time to time (e.g. litigation, employment, regulatory, securities, or geographically strategic counsel, etc.). Getting specialty counsel embedded in the culture of the business, available for casual inquiries and prepared to respond to required tasks, will make the task-oriented jobs flow more smoothly and generally at a lower cost due to a reduced learning curve and better understanding of the general counsel’s and company’s expectations.

Where do you see the merger and acquisition market in this new economy?

In general, I think we are all having to take a closer look at our core values and how we can deliver value — determining what is ‘spin’ and what is substance. First, realize that for the most part we are all in this together. Second, those who have the financing are still concerned about conserving those resources. We anticipate, however, that there will be consolidation within certain markets and competition for proven companies. We also anticipate a wave of more savvy entrepreneurs, and displaced executives with knowledge, industry experience and some personal funds, and colleagues with funds to invest. We expect these new entrepreneurs to identify and launch niche businesses or to acquire small companies with good products or know-how, but lacking management and/or funds. Those are not necessarily companies that will be selling right away, but are new growth businesses that will be launched during these challenging times as a matter of necessity, and which may become the business gems of the future.

For most of us, however, we are all exploring this new economy together. Anything is possible. Be prepared. <<

BRUCE E. DIZENFELD is a senior attorney at Theodora Oringer Miller & Richman PC. Reach him at bdizenfeld@tocounsel.com or (714) 549-6165.

Insights Legal Affairs is brought to you by Theodora Oringer Miller & Richman PC