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## 3 Ways To Make Your Next Deal Better, Faster, Cheaper

Law360, New York (October 10, 2012, 12:00 AM ET) -- Clients frequently see lawyers as a cause of delays and increased expenses. There is no question this can be the case with lawyers who are inexperienced in deal negotiations or who do not try hard enough to assist clients with the deal process. Many times, however, the client does not permit the lawyer to provide meaningful assistance during negotiations — a decision that can often be costly.

Following are three key ways in which clients can enlist their transactional lawyers to increase deal revenues or decrease outgoing payments, close faster and save significant amounts of money on legal fees. By utilizing these three tips, on a typical deal, clients could save an average of 25 percent to 50 percent on legal fees, close transactions one to two months faster and materially improve their overall deal terms.

### **1) Use Your Deal Lawyer for the Term Sheet (and Use a Term Sheet in the First Place)**

There are two main points here, and the first one is simple math. A term sheet is a relatively short document, frequently between one and three pages. Any of the major points that need to be debated in a term sheet can be drafted, discussed and modified at a relatively low legal cost because the document is generally short and typically nonbinding (and therefore the wording does not need to be as meticulously drafted as final agreement wording).

There is only so much time a lawyer can possibly spend revising one to three pages — normally less than two hours. However, once the parties enter the realm of a 30- to 50-page definitive agreement, the time and expense needed to draft the wording, review the document, discuss issues and make changes increases exponentially. Instead of two hours of attorney time, materially revising the definitive agreement would amount to at least four hours, likely more.

Repeat this a few times as the parties continue to debate the core issues, and the saved attorney time continues to grow towards and beyond the \$10,000 mark, while the time to signing accelerates by anywhere from a few days to several weeks. If you can discern the central issues early before anyone has drafted a definitive agreement, you can fast-track the process and substantially lower legal expenses.

Secondly, there is a good chance your lawyer will notice an issue in the term sheet the first time it is presented to him or her. While the parties are still discussing the term sheet, it may be relatively easy to work out a change before moving on to the definitive agreement. However, once the term sheet has been agreed to, going back to the other side and asking for a change usually triggers a lot of finger-pointing and a need to give up something in return, which may be quite valuable.

## **2) Ask Your Lawyer to Locate and Review Prior Agreements Signed by the Other Side**

You can save a significant amount of time and expense by obtaining publicly filed agreements entered into by the other side. You will also probably end up with improved deal terms.

While obtaining and carefully reviewing agreements by the other party takes more time and expense at the beginning, doing so will usually end up saving both in the end. For example, let's assume that in reviewing the other side's agreements, your lawyer notices that some provisions are nearly identical across a number of them.

If you can live with those provisions, why not just include them in your initial draft? If you don't, you will likely end up wasting time drafting a different provision, only to waste even more time waiting for the other side to replace it with their preferred version. If you preempt this drawn-out process, you can save significant time and legal expense.

Notably, another key benefit to including the other side's preferred wording in the initial draft is that you send a clear signal that you are quite familiar with the deal terms they have agreed to in the past. When you send this signal, the other side likely will be more careful to avoid giving you a false "We never agree to that" response during negotiations. Even if they do try such a tactic, you will be prepared to show them the various recently signed agreements where they agreed to precisely the provision you are proposing.

## **3) Send a Redline or Talk? Ask Your Lawyer for Advice**

This is definitely my favorite. For some reason, when a document is received from the other side, many lawyers and clients hurry up and send another version in advance of the next conference call or meeting. I suggest thinking twice about whether that makes sense.

If you find that your new version simply rejects many of the changes made by the other side, question why are you paying your lawyer to send a new version that looks an awful lot like the previous one you sent. Clearly, there needs to be some discussion with the other side to understand each other's positions and to attempt to arrive at a mutually acceptable solution. The chances they accept the same provisions they just rejected are relatively low.

Resisting the urge to send another draft prior to a conference call or meeting will save several thousand dollars in attorney fees and speed the time until signing by several days. The savings on legal fees should be apparent; the time savings to signing is derived from the extra time the other side would need to review and internally discuss a new draft. The other side may even postpone the scheduled call or meeting to provide for sufficient review time.

In addition, the opportunity to revise the agreement is valuable currency. Why use your drafting turn to revert back to earlier wording that you know will probably be rejected? There will be a teleconference or meeting with the other side, after which the parties will walk away having agreed to a number of modifications to the agreement. Wouldn't you rather have the first opportunity to write those new provisions in a favorable way instead of handing the other side the chance to do so?

Too often, lawyers and clients believe the fastest way to sign a deal is to send back a new version of the agreement as soon as possible. However, the goal is not to send new versions back and forth; the goal is to sign the deal. Speed to the next step is not the same as speed to signing.

## **Conclusion**

A good lawyer has a substantial amount of experience in managing the deal negotiation process. He or she has been involved with more than a hundred deals over the years. Clients who follow these three simple strategies and otherwise take advantage of their lawyer's negotiation experience will be able to improve deal terms, close faster and dramatically lower their legal fees.

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