

In this section, we'll talk about the fees that you incur in your transaction. In addition, it's a good chance for us to bash on lawyers for bashing so much money.

Clint: What kinds of fees come along with these LOI discussions?

Brad: Notwithstanding the fact that it's easy to complain about how expensive lawyers are, having a really great lawyer in the context of an acquisition is incredibly important. Getting the lawyer involved all along the process from the very beginning is critical because you want the best advice you can get as you're entering into a negotiation, one which you as a entrepreneur might not do very often but a great law has done many, many times.

The fees that you'll run up typically are related to the lawyer. Recognize that there will be fees on both sides of the transaction, your lawyer and the buyer's lawyer. Over time, we've come to the conclusion that the best way to do this in an acquisition context is just to accept it.

Find the best council you can find for the type of deal you're doing, have a relationship, hopefully, with that council, those lawyers before you get anywhere close to having an acquisition. Express your sensitivity to them about what their bills and what their fees are. Get an expectation from them about what they'll be but then just accept that that's going to be an expensive part of the process.

Clint: Give us a sense of scale. In the transactions you've been involved in, how much can the lawyers fee? What's the range like?

Brad: The low range of an M&A transaction for a small deal, one where a private company is acquired by another private company and it's very, very clean might be \$25,000-\$50,000. That's the low end. A typical deal that you're going to is probably going to end up costing you \$50,000-\$100,000, sometimes \$150,000. A large transaction, one where a company is bought for hundreds of millions of dollars might end up costing you \$500,000. So the best way to think about it probably is a \$50,000-\$100,000 range for a smallish transaction and \$250,000-\$500,000 for a large transaction, knowing that the complexity of the transaction will often add to it.

If you haven't done a good job of your corporate records along the way that will increase things. If you have complicated legal issues, that will increase things. If you have a very long and drawn out negotiation where it's hard to get closure on both sides, that will increase things.

Clint: Who pays for these fees? Does the buyer pay for their fees and the seller pay for their fees?

Brad: It depends. Most of the time, the buyer is going to work hard to push the cost of your fees to you. They'll pay their fees but they're going to push your fees to you. That comes through lots of different ways.

Let's say that you have a company of \$5 million of cash on your balance sheet prior to going down the path to the transaction and you sell the company for \$100 million. If you're good at negotiating, you probably can get the \$5 million of cash on your balance sheet and depending on what your balance sheet looks like, if you have a bunch of accounts receivables, let's say, and very little deferred revenue or liabilities, it's entirely possible that you could get even more than \$5 million. So instead of just making \$100 million in the transaction, you might make \$105 million.

But let's say then that it's a \$250,000 transaction. In that case, the extra money that you're getting, the buyer is almost certainly make it come out of your side. The best way to enter into it is to expect that you're going to be paying for your own legal fees and the other side is going to pay for theirs. Then depending on your circumstance, work to maximize the amount of existing value that you get out of the business around working capital and balance sheet dynamics.

Clint: Suppose we get close to the end and the deal doesn't happen. Are there any other fees that happen?

Brad: Occasionally, you'll have in the LOI negotiated a breakup fee. Breakup fee often happens in larger transactions or transactions where there are clear multiple bitter situations where you have some leverage to extract a breakup fee from the buyer.

A lot of times, in smaller transactions, companies ask for a breakup fee and most buyers have no motivation or desire to give it. Sometimes when a transaction falls apart, you can get some amount of company covered for your legal fees from the buyer if the reason that happened was something that was out of your control.

But typically, you should expect that there's really no recourse if the buyer decides to not go forward with you unless you've explicitly stated that there is a breakup fee in the transaction.