



Koley Jessen is a strategically growing law firm serving the needs of middle market clients around the country. For business owners, strategic acquirers and private equity firms, we are active partners who provide multi-discipline counsel and get deals done. We provide national clients with Wall Street level service and leverage our Midwestern sensibility to excel in the middle market.

Michael Hupp | President and Chair of M&A

How would you characterize the deal-making environment today?

Today's deal making in the middle and lower middle market is characterized by high multiples and lots of private equity sponsor (and family office) interest in providing first-time institutional capital to closely-held businesses. This is coupled with not enough quality assets on the market, which feeds into the cycle of ever-growing multiples and a "seller's market". The "seller's market" over the last seven years has resulted in an acceleration of the timetable of some owners causing there to be fewer sellers than normal now. At the same time, PE sponsors have had success raising capital and are sitting on piles of cash with shrinking investment horizons. I wish I had a business to sell.

What are the biggest trends you are seeing in private equity today?

One of the biggest changes in the industry has been the spread of representations and warranties insurance (RWI) as a common tool in many private equity sponsor-backed transactions. Fueled in part by the continuing "seller's market", the usage of RWI (and decline of escrows and seller guarantees) has placed a higher premium on effective and efficient legal, tax and financial due diligence.

Also, with increased competition for transactions, we have seen private equity investors continue to expand their reach into the lower middle market, through roll-up strategies or simply funds with an investment focus on smaller companies. Businesses with less than \$5MM of TTM EBITDA are now squarely on the radar of many funds. Investing in these companies often presents a unique set of challenges for sponsors and their advisors.

While holding periods have shrunk in recent years, we expect pressure for them to increase. More and more founders are expressing concern for the impact of the sale process on their employees and sometimes go out of their way to avoid selling to a buyer that is likely to exit the business in three years or less even if they have to sacrifice

some on purchase price. Family offices are touting their long holding period as a big advantage to doing a deal with them and it seems to be resonating with sellers.

Deal sourcing has become harder than ever. How can lawyers help dealmakers find the right deal flow?

Private equity sponsors, family offices and intermediaries are seeking introductions to middle and lower middle market companies and business owners, while business owners look to us to provide meaningful introductions to the "right" potential liquidity provider or advisor. From our experience, clients truly appreciate a business lawyer that has a current and practical understanding of the market, including the many succession and liquidity options available, along with the ability and relationships to connect them with potential dealmakers to help them achieve their goals. Collaborating with our colleagues in complimentary estate and business succession practices focused on high net worth individuals, executives and business owners allows us to make meaningful connections.

What role do lawyers play in the transaction process?

Attorneys should be able to add value on the economics, negotiations and client understanding of the deal. On economics, a lawyer can add real value in structuring and the tax components of the deal. Additionally, an attorney should understand the working capital nuances of the company and how to capture value to the client's advantage within the transaction documents. On negotiations, the current market has forced attorneys to go straight to the market terms so that a buyer can be competitive with its bid. The clarity and transparency of market terms result in efficiencies for clients and allow us to clearly articulate to clients what is market. Finally, RWI has greatly changed the landscape in middle and lower middle market transactions. An attorney experienced with RWI can navigate a client through the interplay between the purchase agreement and the policy and negotiating the policy with the underwriter.

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