THE INDUSTRY'S LEADING TECHNICAL JOURNAL SINCE 1933

PMP PestManagement PROFESSIONAL

2019 MERGER GUIDE

INSIDE:

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ACQUISITIONS WITH A PERSONAL TOUCH

Alabama pest management firm gains improved employee care, growth and service as a new Arrow Exterminators office

In June, Sonny Adkison retired after 36 years in the pest management industry. He considers his last career move one of his best.

Twelve months before, Adkison and his partners sold their business, Knockout Pest & Termite in Baldwin County, Ala., to Arrow Exterminators in Atlanta, Ga. For Adkison, selling a company that he and his partners established in 2004 that was bringing in just under $5 million in revenue wasn't easy. But now he knows he can enjoy retirement with a peaceful mind, after working as an Arrow service center manager in the final year of his work life.

"They are really good people," Adkison, 56, says of Arrow, which has 121 locations in 11 states. "They treat us like we try to treat our customers — like family. And they have the same care about customer service that we have."

Not only did Arrow keep all 42 of Knockout's workers, the firm gave raises, improved retirement benefits — and provided health insurance, something Adkison could never afford to offer on his own.

"Most of the people who had worked for me were family and friends, and were with me a long time," Adkison says. "I wanted to make sure that whomever I sold to, they would be well cared for."

Adkison started in pest control in 1983 at a national firm, where he eventually advanced to the position of branch manager. He liked working with customers and solving their problems.

Then, in his early 40s, Adkison decided to launch his own business, just to see if he could. He says he also believed he could deliver better service than anyone.

By 2007, Knockout had opened a second location, in Mobile County, Ala. But as the company blossomed, it became harder for Adkison to manage growth. Knockout was expanding faster than the company could hire new workers. And Adkison was getting older.

By then, Arrow had reached out to Knockout several times, gauging Adkison's interest in a sale. It was no surprise to Adkison because that's what Arrow does, he says — over the past 30 years, Arrow has purchased more than 100 pest management companies.

Adkison balked at first. Then, he studied Arrow and visited its home office in Atlanta.

"I had anxiety about selling," Adkison says. "I had grown my business from nothing, and spent every day for 15 years taking care of it. But Arrow alleviated my concerns, just with their personal touch."

On the day of the sale's closing, Arrow's Top 3 executives were at Knockout, meeting with employees and assuring them they would be OK.

"You just don't get the owner of a company to come sit with you in a situation like that," Adkison says. "It was amazing to me."

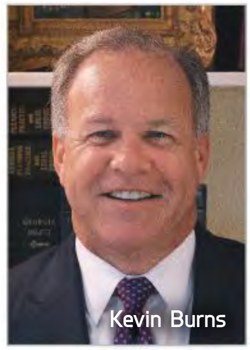
Arrow replaced all of Knockout's trucks, installed a more sophisticated billing system, and brought in the resources needed to ensure fast customer service. With five offices in Baldwin and Mobile counties, if a worker calls in sick, Arrow can cover for them.

"Arrow has proven through their growth that they will take care of their employees, as well as their customers," Adkison says. "For most companies, sales are more important than service. Arrow doesn't do that, and that was important to me."

ARROW EXTERMINATORS®
Beyond The Call®

Employees make the difference during mergers, acquisitions

BY **KEVIN BURNS |** Chief Development Officer, Arrow Exterminators


Kevin Burns

The key to a company's longevity is its people. That's why Arrow Exterminators has enjoyed 55 years in the pest management business: Our employees are family. We are there to support one another and celebrate our successes together.

If it weren't for our employees, we wouldn't be the second-largest privately-held pest control company in the country. We take pride in our company culture, which ensures we treat each other professionally, respectfully and fairly.

Our emphasis on a positive company culture makes a difference to the owners of the companies with whom we form a working relationship. Many times, we find they have formed strong bonds with their employees, and they want to ensure a merger or acquisition will be the right move for everyone involved.

We've worked with hundreds of companies and thousands of employees over the years. Each and every time, we make sure the employees of the companies that are involved in the merger and acquisition process are treated right. After all, they are the newest members of the Arrow Exterminators family.

I'm often asked what it takes to make a company an ideal candidate for a merger or acquisition. While revenue growth, recurring revenue and geographical expansion are critical to the process, company culture and key employees cannot be overlooked. Combining team members from two companies is an important part of every deal, and we do all that we can to help our team be the best it can be.

It's no coincidence that companies with motivated employees have satisfied customers. If your business is thriving and your recurring revenue is strong, chances are your key employees exhibit a positive morale and strong work ethic. We know these factors are key to short- and long-term success after a merger or acquisition.

Throughout the pages of this Merger Guide, you will learn more about the merger and acquisition process, including how to prepare for unforeseen circumstances that may lead to an unexpected sale, how to understand common contract terminology, and an analysis of pest management professionals' (PMPs') thoughts on industry mergers and acquisitions. Arrow Exterminators is proud to sponsor information that will help PMPs make a decision that's right for them when the time comes.

PHOTO: ARROW EXTERMINATORS

The acquisition of Tropical Pest Management, West Palm Beach, Fla., is one of many Arrow Exterminators has completed. From left are John Brogan (Acquisition Experts), Tim Pollard and Emily Thomas Kendrick (Arrow), Stacy and Jim Wright (Tropical), and Kevin Burns (Arrow).

On the rise

PMP's exclusive survey shows a merger or acquisition may be on the horizon for many in the coming months, as deals in the pest control industry take off

By Diane Sofranec | *PMP* Senior Editor

It seems each week, a new announcement is issued about a pest control company that has been acquired by another. Clearly, the statement "Every business is for sale; the only real question is, for how much" rings true for many pest management professionals (PMPs) — including 62 percent of those who responded to this year's *Pest Management Professional* exclusive Merger Guide survey.

It comes as no surprise that most of the PMPs who took the survey believe merging with a company would improve career opportunities and employee retention. However, many respondents who took the survey voiced their concerns over what would happen to their employees if they decided to sell their companies.

Most owners said they wanted assurance that their employees' jobs would be secure after selling their companies. Perhaps that's because knowledgeable and well-trained employees who know how to treat customers right often are the reason a business is successful. In addition, many owners form strong bonds with their employees and consider them family.

PMPs who answered our questions this year agree that merging can have a positive effect on a company's processes and practices. Marketing efforts benefit too, they believe.

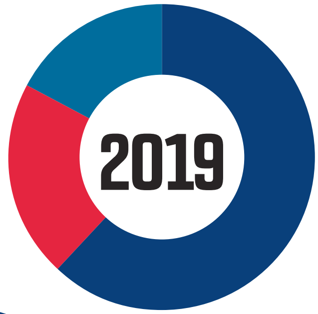
It's no wonder, as the trend in the pest management industry has been for larger, more established companies to buy up smaller firms in desirable markets. A company that may not have spent much time or money on promoting its business immediately benefits when its new parent company has expertise in that area. PMP

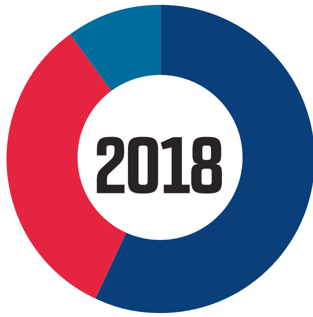
You can reach **SOFRANEC** at dsofranec@northcoastmedia.net or 216-706-3793.

Name Your Price

Every business is for sale; the only real question is, for how much?

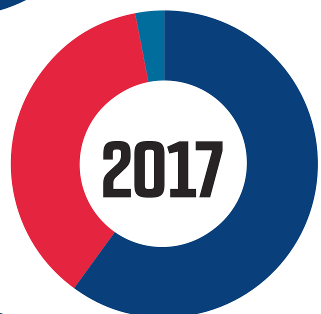
62% True
21% False
17% Not sure

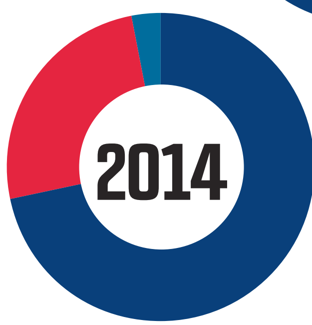




57% True
33% False
10% Not sure

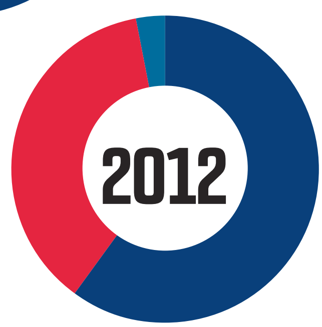
60% True
37% False
3% Not sure





65% True
26% False
9% Not sure

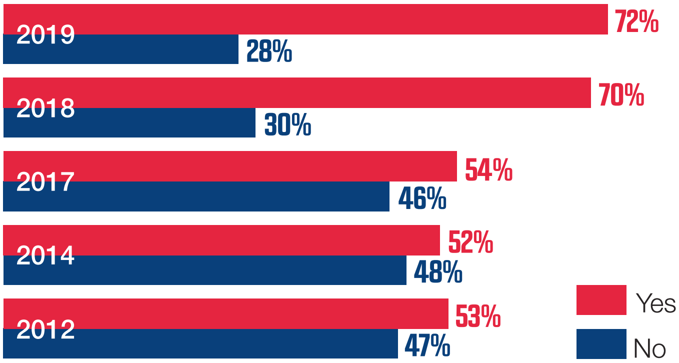
56% True
31% False
13% Not sure



SOURCE: *PMP* MERGER SURVEY 2012, 2014, 2017, 2018, 2019

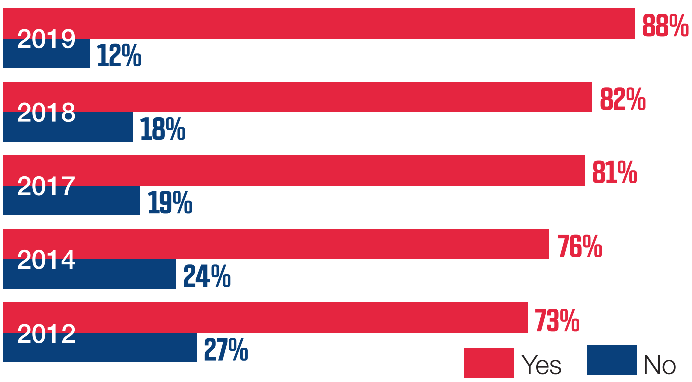
Processes and Policies

Can merging with a larger pest management provider help an acquired business access, and implement, more proven processes and policies?



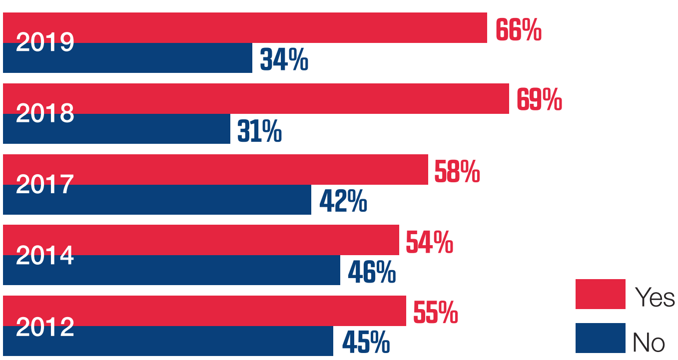
Bigger Brand and Budget

Can merging with a larger pest management provider help an acquired business improve marketing with the power of a bigger brand and budget?



Career Opportunities and Retention

Can merging with a larger pest management provider help an acquired business improve career opportunities and employee retention?



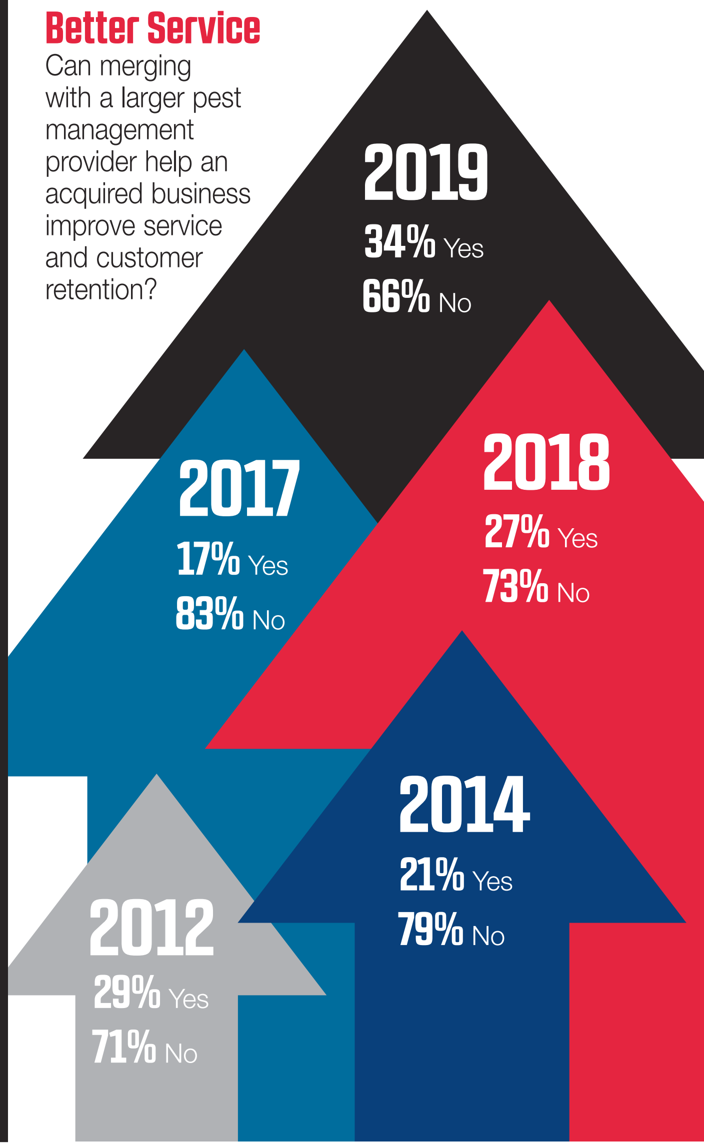
Tax Laws

Do current tax laws, or proposed changes to tax laws, make your company more or less likely to merge with a larger pest management company?

More likely	Less likely
2019 **37%**	2019 **63%**
2018 **24%**	2018 **76%**
2017 **19%**	2017 **81%**
2014 **24%**	2014 **76%**
2012 **24%**	2012 **76%**

Better Service

Can merging with a larger pest management provider help an acquired business improve service and customer retention?



Preparation leads to protection

Your business will be better off if you prepare now for unfortunate, unforeseen circumstances

By Kemp Anderson | *PMP* Contributor

The old business and finance saying of ÒYou canÕt time the marketÓ is especially true when it comes to selling your pest control business.

There are times when the sale of a business is a planned event, as the owner starts thinking about retirement or pursuing other interests. Unfortunately, there are also times when unforeseen circumstances are the catalyst for selling.

ThereÕs never a wrong time to begin planning for the acquisition process. As an owner, you want to know: What will it feel like? How will it work? Who will help you and support you throughout the entire process?

DEVELOP A PLAN

To the buyer, the financial condition of your business will be the most critical factor during the acquisition process. You must plan ahead. In some cases, depending on the size or scale of your business, planning your exit can take years.

But you donÕt have to go it alone. Assemble a team that includes an experienced mergers and acquisitions attorney, a certified public accountant, consultants and others. Your team will help prepare your business for the sale, and realize its highest possible value.

ItÕs important that your business is positioned to maximize its value at all times. This isnÕt a one-time occurrence, but an ongoing process that requires planning and execution.

By preparing in advance, you will be in a position to take the best deal for your business at the right time. If you choose to pass along your business to your heirs, it will be in excellent shape.

Most people donÕt think about the life cycle of a business. As author Michael E. Gerber writes in *The E Myth Revisited,* “There is ultimately only one reason to create a business of your own, and that is to sell it!Ó

EXPECT THE UNEXPECTED

With the end in mind, you can focus on increasing the value of your business, instead of just looking at the immediate income potential it provides. This may become especially important if situations that are out of your control arise in your personal life, causing you to become desperately interested in selling your business. Illness, partnership disputes, divorce and death are just a few of the unforeseen circumstances that may occur.

Keep in mind that positioning your business to sell for the highest possible price happens neither overnight nor by chance. Preparation is the only way to ensure maximum profit on your deal. Buyers want to see, and reward via the purchase price, a business that is growing and exemplifies certain business fundamentals. Likewise, buyers punish sellers whose businesses are in decline.

ItÕs never too early to plan ahead. (*See “A cautionary tale,Ó at right.*) In many cases, business owners donÕt think about dying or death. They donÕt ask themselves what will happen if they suddenly pass away. Yet this is a critical question, and requires business owners to think of their families, their employees, their customers, their finances and many other factors.

ILLUSTRATION: ©ISTOCK.COM/LVCANDY

GET PROTECTION

You need to protect your business when times are good, too. Do you require your employees to sign non-compete clauses and/or non-solicitation agreements? You should, because these important documents are legal and enforceable.

A non-compete agreement prevents a former employee from working at another company considered to be a competitor in the same industry. It often covers a specific timeframe and geographic area.

A non-solicitation agreement prevents a former employee from soliciting his or her former employerÕs clients and/or co-workers. It does not restrict the former employeeÕs right to work in the same industry and geographic area, but it does deter the former employee from taking clients and staff.

For guidance, business owners should consult a labor attorney who has experience with their state laws. Every state has statutes regarding non-compete and/or non-solicitation agreements. There is no such thing as a ÒstandardÓ non-compete clause.

AVOID MISTAKES

Your customer base is your biggest asset, and these documents are how you protect it. DonÕt make the same mistake as an owner who had a successful 50-year-old business he built from the ground up. He was preparing to sell, and did not have non-competes in place. When discussions about the sale of his company began, he said, “The employees are my friends and would never do anything to hurt me.Ó His attorney recommended implementing non-solicitation agreements, but he would not put them in place.

After successfully entering into a purchase agreement with a buyer, the owner met with one of his key employees and discussed the letter of intent — the document that spells out the details of the deal — he signed with the buyer. After the owner revealed his plans to sell his company, the employee quit, purchased a truck and related equipment, and started a new company on the very next day. The former employee immediately began soliciting the customers of his previous, long-term employer. Without a signed non-compete or non-solicitation agreement from each employee, your legal options to stop such behavior are limited.

DON'T WAIT

Prepare for a sale now by finding a trusted and experienced consultant or advisor with whom you will have many discussions and exchange detailed information. This expert will help you navigate the complexities of protecting your business and prepare you for a sale. The process may include improving profitability, protecting your business from potential litigation, and more.

Seek out someone who will help you achieve your goals and realize the value of your lifeÕs work. Keep in mind that your business must be adequately protected before you can realize its highest value. Just as owners protect their business from catastrophic events and harm from internal and external sources, buyers view a business as a Òsafe” purchase, and therefore are willing to consider a higher purchase price.

Many owners do not see their company from the standpoint of a potential buyer; they ignore the strategic management of the company. To achieve the best outcome from a sale, however, you should focus your attention on exit planning from the beginning. As a result, you will be better prepared for a sale when the time comes. PMP

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A CAUTIONARY TALE

Ensure your business is attractive to buyers before tragedy strikes. Consider this case in point:

A business owner learned he was terminally ill and needed to sell his company quickly. He had young children, a multi-million-dollar business, and only weeks to live. He quickly sent over his profit-and-loss statements, balance sheets and tax returns to the mergers and acquisitions firm. The business was in good shape, but a sale normally takes months, not weeks. A meeting was set up with his attorney to obtain a power of attorney (which provided written authority to act on the owner's behalf) and a board of director vote so the business could be sold after his death.

Fortunately, everyone worked together quickly. All the legal documents were drawn up and signed before the business owner passed away. But if he had died before these documents could be signed, his business would have ended up in probate — a time-consuming and costly process. Instead, his family was able to capture the reward of his life's work as he intended. To further help his family, trusts were set up for his children.

Estate planning is a critical, and often overlooked, means to protect a business and prepare for the inevitable exit.

Understanding the implications of representations and warranties will help sellers reduce risk

By Daniel S. Gordon, CPA and John P. Corrigan, JD, MBA, CPA
PMP Contributors

Contract language breakdown

ILLUSTRATION: ISTOCK.COM/FEODORA CHIOSEA

When you decide it's time to sell your pest control business, you can expect a fair amount of negotiation; it's an important part of every deal.

Understanding the language put forth in the contracts you sign will help reduce risk and result in a smoother sale.

When you start the sale process, you will sign an asset purchase agreement (APA) or a stock purchase agreement (SPA), depending on your transaction. Long before you close on an APA or SPA, however, the buyer will produce a letter of intent (LOI) that reflects the purchase offer. It will contain details about the sale, including total purchase price, down payment, financing period, assets, liabilities, deliverable net worth requirements, customer attrition penalties, restrictive covenants, exclusivity periods, and more.

SIGNIFICANT STATEMENTS

The LOI always will include a generic paragraph that seems fairly boilerplate and insignificant to a seller who is focusing on the major points of the deal. But the terms covered in this paragraph become 10 to 20 pages in the APA or SPA. More importantly, it is an area that is hotly negotiated once the buyer concludes due diligence and hands over the first draft of the APA or SPA. It is:

> *"The transaction is subject to the negotiation, execution and delivery by the purchaser and the seller of a mutually agreeable asset purchase agreement (the APA) setting forth the terms of the transaction and providing for (i) usual and customary representations, warranties, indemnities and other standard terms; and (ii) customary conditions to the purchaser's obligation to consummate the transactions contemplated therein, including approval of the transaction by the board of directors of purchaser.Ó*

Many sellers do not know the true meaning of "usual and customary" and "representations, warranties, covenants and indemnities" — let alone the distinction between them in the context of the sale of a business as reflected in an APA or SPA. So, let's explore these statements:

- **Representation** refers to any express statement regarding a particular fact or circumstance that serves to influence the consummation of the deal.
- **Warranty** is a guarantee by one party that a particular statement of fact is true.
- **Covenant** is an agreement to do, or to refrain from doing, something prospectively.

Within the context of these three items contained in the APA or SPA, topics concerning the business typically are included for which the buyer wants the seller to make representations and warranties (*see "Topics checklist," at right, for common examples*). These topics reveal to the seller what the LOI intended by the phrase "usual and customary" in the context of the sale transaction. The seller may refuse the representations and warranties a buyer asks for, but the deal may not get done.

How long do the representations and warranties survive? The survival period becomes another point of negotiation. Some buyers want an unlimited survival period in which to be able to sue, whereas others will accept two to three years. Still others want an applicable statute of limitations period. If a seller breaches any of the representations and warranties, then the buyer can sue the seller for breach of contract.

DISCLOSING FACTS

After due diligence — when the buyer looks at all the topics and relevant documents — the buyer will ask the seller to create disclosure schedules that support each representation and warranty being made by the seller in the APA or SPA. The disclosure schedules will be legal exhibits and made part of the APA or SPA.

If an issue crops up after closing the deal, and a disclosure schedule did not properly include facts about a known and murky problem, the buyer may file a lawsuit that will point out as proof that the disclosure schedule was inadequate, and therefore supports the buyer's breach-of-contract claim.

When it comes to a breach of contract regarding representations and warranties, buyers want to eliminate all risk for as long as they can. An indemnification provision, also known as a hold harmless provision, is a clause used in contracts to shift potential costs from one party to the other.

An indemnification provision is a negotiated clause, and the seller must understand the risk. Buyers want unlimited indemnification rights. Conversely, a seller should seek a maximum limit of indemnification, commonly called a cap, for the buyer. The cap may be equal to 30 percent, 50 percent or 100 percent of the purchase price. This ensures the seller wonÕt need to pay out of pocket for anything in excess of what he or she received in the deal.

A cap is crucial to a seller. Why should a seller assume more risk exposure than he or she would face by not getting involved in the sale? It is a compelling argument, and a buyer usually agrees to some level of cap.

A seller also should seek to not pay any indemnity claims until the buyer's losses have reached a certain level — commonly called a basket. Depending on the size of the transaction, the buyer may assume $20,000 to $75,000 in losses before receiving reimbursement from the seller.

REDUCING RISK

In the end, a seller has to be careful about representations, warranties and indemnities, and the consequences of improperly assuming that "usual and customary" is, in fact, a harmless and unimportant aspect of a clause.

A seller who did not follow this advice paid the price. He sold his business for $20 million, with a holdback of $2 million. The $2 million was held in escrow for two years to cover contingencies made for representations and warranties, and the provided disclosure schedules described any potential exceptions.

One year after the deal closed, the buyer decided he had overpaid for the company. He alleged breach of a representation about a certain matter set forth in the disclosure schedules.

The buyer alleged a disclosure was vague and not fulsome (large) enough to properly shift the liability for such matter, which surfaced after the sale transaction was completed. The seller wanted to sue to get back the $2 million being held by the buyer. In the end, the cost, time and effort needed to pursue litigation resulted in the seller and buyer agreeing to split the difference; each got $1 million.

Representations, warranties and indemnities are serious risk points.

TOPICS CHECKLIST

- ✓ Organization and good standing
- ✓ Authority and enforceability
- ✓ Capitalization and ownership
- ✓ Subsidiaries
- ✓ Financial statements
- ✓ Books and records
- ✓ Accounts receivable and payable
- ✓ Inventories and assets
- ✓ Absence of undisclosed liabilities
- ✓ Absence of changes and events
- ✓ Real and intellectual property
- ✓ Material contracts
- ✓ Tax matters
- ✓ Employee benefits
- ✓ Employment and labor
- ✓ Environmental, health and safety
- ✓ Compliance with law
- ✓ Legal proceedings
- ✓ Customers and suppliers
- ✓ Product warranties and liability
- ✓ Insurance and guarantees
- ✓ Related-party transactions
- ✓ Brokers and finders fees
- ✓ Full disclosure

Disclosure schedules should be thoughtfully prepared — not slapped together last-minute before closing the deal.

If you plan to sell your business, you should have in your camp both a certified public accountant and a mergers and acquisitions attorney, preferably with experience working on pest control-related deals. As a seller, you need to be aware of the risks that could occur during the due diligence phase and the APA or SPA contract stage of the sale transaction. PMP

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