TOP 10 TRENDS IN M&A KNOWLEDGE MANAGEMENT

By Melissa Sawyer and Jill Gadwood

Melissa Sawyer is a partner in Sullivan & Cromwell LLP's Mergers & Acquisitions Group and is Chair of the firm's Knowledge Management Committee. Jill Gadwood is a practice area associate at Sullivan & Cromwell LLP and is responsible for knowledge management in the firm's Mergers & Acquisitions Group. Contact:
sawyerm@sullcrom.com or
gadwoodjc@sullcrom.com.

Knowledge management is becoming a firmly embedded part of the practice of law. This unsurprisingly coincides with a technological disruption in the legal industry in which new technology products are being developed at a rapid pace. It can be a challenging process for law firms and in-house legal departments to navigate through the vast array of options and come up with a plan for how best to leverage KM tools within the practice. In this article, we explore ten areas in which knowledge management is impacting the legal industry in M&A. We offer explanations of trending technologies and practical suggestions for how law firms and in-house legal departments can capitalize on these trends to increase the quality and efficiency of their M&A practice.

1. Collaboration Sites and Extranets

Deal management is a critical part of the M&A practice. Clients greatly benefit from deal teams that work together collaboratively, both internally and with their client and its other advisors. Depending on how it is used, technology can either enhance or stymie collaboration within a deal team. Team members often get bogged down by inboxes flooded with hundreds of individual emails during active phases of a deal. The legal tech industry has realized the need for technology that facilitates organized, online collaboration without causing more of a burden than a benefit. Collaboration sites can enhance the deal management process by taking a lot of the deal team's interaction off email and keeping all members of the team updated and organized.

Useful features of collaboration sites include document co-editing and organization, task lists, transaction timelines and calendars, threaded discussions, team contacts, client news alerts and filings, closing set creation and signature tracking tools. Collaboration sites can be built using Microsoft's SharePoint or purchased off the shelf from any number of deal management software providers.

One of the biggest challenges in facilitating external online collaboration between law firms and their clients is concerns over security. Many of the deal management platforms that offer external collaboration are cloud-based, meaning the documents, discussions and other confidential information posted to the collaboration site are stored in the cloud. Law firms and their large institutional clients have been slow to embrace cloud technology. However, cloud-based platforms that certify compliance with the latest cloud security standards can actually provide a more secure venue for exchanging confidential documents and discussions than email. As law firms and their clients start to embrace the cloud, they may be better able to capture the benefits of the fast-paced innovations in legal technology without having to incur the costs and delays of housing such technologies on premises.

2. Due Diligence Automation

There is no doubt that artificial intelligence will find a way to disrupt the legal industry, and its first stop is due diligence. Clients are understandably interested and excited about the possibility of using artificial intelligence software to review and summarize contracts quickly and efficiently. Due diligence automation products are now on the market and law firms are taking a serious look at whether they are ready for prime time. Some major law firms have already bought into these products and are helping the artificial intelligence engines "learn" what provisions to look out for during diligence review.

One of the biggest questions facing due diligence AI tools is accuracy. Some due diligence automation vendors peg their software at around 90% accuracy when used for contracts based off a similar form. However, at this stage, it is not clear that any of the available AI tools for due diligence is capable of accurately analyzing bespoke and complex agreements, summaries, minutes, pleadings and other types of legal due diligence documents. The benefit of artificial intelligence is that, like attorneys, it learns on the job. So if trained by the right people, then the more it is used, the smarter it gets. We can expect to see continuous improvement in due diligence automation products as more firms invest in this technology.

3. Standard Forms and Contract Assembly Software

Annotated standard forms are a heavily used resource within law firms and legal departments. However, standard forms can become stale without regular updating. Creating standard forms can be a burdensome process, as it often involves pulling multiple precedents, reaching group consensus on drafting techniques and explaining complex deal terms in footnotes. Within law firms, designating a "champion" for each form, usually a partner supported by a few associates, can help smooth the process. For firms and companies who do not have the resources to create

their own standard forms, some third-party vendors offer annotated forms for common deal documents as part of their subscription.

Even for firms who have updated standard forms, turning those forms into a first draft can take hours of purely mechanical work, including deleting bracketed language, removing footnotes and making sure the resulting draft hangs together. Contract assembly software has the power to significantly reduce the amount spent on that low-level work, freeing up more of a lawyer's time to think about the substance of the agreement's provisions and enabling a law firm to get the first draft into its client's hands faster without compromising quality.

Contract assembly software involves coding a standard form with different variables to create a Word template that is populated using an online questionnaire. A lawyer can answer the questions based on the specifics of the deal and, once the questionnaire is completed, the software produces a first draft based on the template and the lawyer's responses. The drafting notes that were once displayed as footnotes in the Word form can be included within the questionnaire, giving the lawyer context and guidance as he responds to each question. Some products make the coding process easy enough for even a lawyer to learn, which is important because an understanding of the underlying agreement is critical to ensuring the accuracy of the coded template. This task could fall to a knowledge management lawyer, contract attorney or experienced legal assistant. A practice group should consider starting with forms that are most frequently used by its lawyers, such as an engagement letter or NDA. Even portions of more complex transaction agreements can be coded to reduce a lawyer's time spent on drafting mechanics simply by answering a few basic questions about the deal that impact multiple sections of the agreement.

4. External Research Platforms

Third-party research products have made signifi-

cant advancements in using technology to support legal research. Within a matter of minutes, lawyers can search across thousands of publicly-filed M&A deals, compare granular deal terms and even create statistical graphics to insert into presentations. In addition to precedent and market research, these external platforms also offer a repository of practical guidance that facilitate a lawyer's understanding of the various pieces of an M&A deal. These include overviews of the various structures and stages of an M&A transaction, guidance on drafting a specific transaction document or SEC filing, checklists for negotiating a particular agreement, and much more. These resources are kept current and can be used to supplement those that a law firm maintains internally.

External research providers have begun investing in artificial intelligence technology and are developing new AI-based legal research tools. For example, not only would these databases be able to search across thousands of precedents for a particular search term or tag, but they would analyze the precedents to determine how a particular agreement or clause compares to the market. Over the next few years, we can expect to see a lot of development in how the major legal research providers will use AI technology to advance the capabilities of their products.

5. Internal Precedent Databases

Third-party research products are useful for searching public M&A deals, but those products often do not capture the full range of deals on which a law firm advises. Firms need a way for their lawyers to quickly and easily access their internal precedents, which are often buried in their firm's document management system, burned onto a CD or displayed in hardcopy closing sets on their bookshelves. Companies who are active in M&A often struggle with the issue of receiving closing sets from multiple firms and not having a central electronic database in which to store and search them.

Firms and in-house counsel can use technology to enhance the accessibility of their closing set collection. Closing sets can be displayed as a virtual bookshelf—similar to iBooks or the Kindle app. A lawyer can browse through his own closing set collection, search across the closing sets of the entire department or firm, and send a closing set to a colleague with just a few clicks.

A firm or company's deals can be tagged by specific deal terms to make it easier to drill down into on-point precedents using filters. Examples of tags relevant to an M&A deal could include deal structure, industry, consideration, documentation, jurisdiction, parties, advisors, regulatory filings, and more granular deal terms relating to the various provisions in the transaction agreements. Combining such deal data with the underlying deal documents into a user-friendly database will make precedent searching a seamless process.

6. Topical Knowledge Collections

Clients look to their outside M&A counsel not only to manage the deal process, but also to advise on complex, substantive areas of the law. Know-how tools can help law firms answer the frequent question: "What advice have we given to our clients on this issue?" One way to assist lawyers in giving their clients sound, consistent advice is by using topical knowledge collections.

Topical knowledge collections organize content by topic. The type of content can include research, substantive memos or emails, market studies, checklists, presentations, practice notes, training materials and videos. Each of these pieces of content can be tagged with a topic, so that lawyers looking to get up to speed on a particular topic or who need a quick answer to a research question can dive right into the topical collection without having to search across the firm's entire DM system or knowledge base.

The two main requirements for creating topical knowledge collections are: (1) a taxonomy of topics;

and (2) good content. This can be a daunting process if starting from scratch, but a practice group can short-cut the process by finding a partner who has been keeping an updated set of topical files, whether in hardcopy or electronic form, with an index of topics to match. It will be easier for the practice group to build on this initial set of files and topics once they see the value in making a partner's files widely available to the group. The members of the group can self-curate the content by submitting only content they deem precedent-worthy and redacting any confidential client information. Once the topical collections grow, a relevance algorithm and rating system can be layered on to float the most relevant, highly-rated content to the top of the collection.

7. Know-How Tools

Legal know-how tools can give junior associates a leg up in learning how to become an effective member of an M&A deal team and provide more efficient, higher quality service to the firm's clients.

Know-how tools such as deal outlines can help guide associates through the life of an M&A deal, pointing them to the firm's best internal and external resources available for each stage of the deal and highlighting practical insights based on the experience of other lawyers within the practice group. While a firm may have several different types of KM resources, including many of the ones mentioned in this article, a deal outline will help an associate figure out which are the right resources to use when, based on the structure and stage of the deal. As most of the firm's KM resources are online, deal outlines can embed links to live searches of precedent databases and topical collections, as well as links to standard forms and third-party resources, helping associates get to the right KM content faster. Even more senior associates and partners can use deal outlines as a checklist to make sure nothing gets missed when managing a complicated transaction.

8. Online Training Videos

Law firms and legal departments should think innovatively about how to deliver effective trainings to their lawyers and clients. Formal training programs often consist of a series of in-person, multi-hour sessions with PowerPoints and handouts. While these sessions can help lawyers dive deeply into a particular substantive area of the law, the training may occur long before (or after) a lawyer or client is faced with that particular issue.

One approach to help solve this problem is recording in-person training sessions and then breaking them apart into smaller, bite-sized videos that are available on demand. A lawyer or client involved in a deal can then zero in on the particular section of the training session that is relevant to the current task at hand. These trainings can be accessed at any time right from the lawyer or client's computer or mobile device.

Regular training on how to use the firm or legal department's knowledge resources is also important to ensure lawyers and clients are making efficient use of their time. Short KM trainings can be folded into regular practice group or department meetings. KM lawyers can prepare on-demand videos with voiceover that show exactly how to click through important KM tools using common deal scenarios and example searches.

Making training accessible when lawyers and clients need it most will increase the value and effectiveness of formal training programs.

9. Fee Estimate Databases

Deal teams often require fee estimates and budgets at the outset of a transaction. It can be difficult to predict all of the different variables that will impact the aggregate legal fees on a deal. Regardless of whether a firm uses an hours-based billing model or a value-billing model, a database of estimates, budgets and actual billings in similar transaction can be a very useful resource. Depending on the size of the firm and the

number of deals it completes, the database could be as simple as a spreadsheet that lawyers maintain on an ongoing basis. This kind of tool could be enhanced with notes about key factors that affected the actual fees incurred, such as whether there was a protracted regulatory process or an interloper.

10. Experience Databases

One of the greatest assets of any law firm or law department is the body of experience and institutional knowledge of its lawyers. To date there is a dearth of off-the-shelf technologies that help junior lawyers plug into that rich history. As a result, many large organizations are developing their own databases and systems to assist with this. For the most part, these tools do not need to be particularly technologically sophisticated. They can range from very simple web listings of lawyers with their corresponding specialty areas to message boards where junior lawyers can post questions in an effort to be matched up with the relevant senior lawyer. Some law firms are also trying to connect this information with their business development databases, since in many cases the same information can be used to identify which lawyers in a firm have the requisite expertise to pitch the firm's experience to a prospective client.

Conclusion

M&A technologies can enhance the efficiency and quality of practitioners' work. Indeed, many commentators have predicted that the proliferation and wide-spread adoption of AI tools heralds the end of the legal profession as we know it. In reality, none of the available M&A technologies is a good substitute for the judgment, creativity and experience that seasoned practitioners bring to the table. These tools can be a good investment because they free up lawyers' time to focus on abstract and nuanced analysis and developing complex arguments, but investments in technology must be coupled with investments in training to ensure that lawyers are able to use the tools properly and with a full understanding of their inherent limitations.

The opinions expressed are those of the authors and do not necessarily reflect the views of the firm or its clients. This article is for general information purposes and is not intended to be and should not be taken as legal advice.