

Honoring New Jersey's Top Thought Leaders

The First Annual CIANJ/*COMMERCE Magazine* Best Practices Awards will honor executives for their innovative approaches to achieving business success, collected via e-mailed entries and a "best-of" collection from our past issues. For more information, see page 6.



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William Paterson University

By Kathleen Waldron, Ph.D., President

William Paterson University is the only public higher education institution in the state that now requires all students to complete at least three credits in a course that provides them with a specific experiential or civic engagement opportunity. The curriculum was amended two years ago and applies to all majors. Students will now engage externally to the university while seeking degrees to gain practical experience before they see new fulltime employment. We also have expanded our Career Development Center to increase internship and job placement opportunities and to help students prepare resumes, practice interviewing and learn to network, and a mentoring program for alumni has begun. In many disciplines, we have external advisory boards composed of corporate leaders who work with faculty to enhance and modernize curricula. These partnerships are invaluable and have provided a competitive edge to our students.

before planning to sell the company. Buyers like companies with good, profitable businesses, but they love companies that also have good corporate records. Not only does it inspire confidence in ownership and management, but it expedites due diligence and makes it less costly. There are no delays looking for or preparing missing documents. Maintaining formalities and tending to corporate housekeeping results in an expedited sale process.



Beattie Padovano, LLC

By Martin W. Kafafian, Esq., Managing Partner

One of the challenges we face when counseling business owners is educating them on the risk of misclassifying an employee as an independent contractor. Many owners believe they can avoid payroll taxes and other legal obligations of an employer by hiring a worker, designated as an independent contractor. We advise clients that the IRS and state tax authorities ignore labels and look instead into the substance of a working relationship to determine whether a

our business owner clients that the risk of misclassifying a worker is real, and the costs could be significant. In addition to back taxes, the agency may also assess penalties. If the misclassification is longstanding, or several workers have been misclassified, taxes and penalties can be substantial.



Connell Foley LLP

By Michael X. McBride, Esq., Managing Partner

Connell Foley LLP regularly reviews its own business practices to ensure that it operates efficiently and that it can adapt quickly to the ever-faster evolving needs of its clients. As an example of a best practice adopted by the firm to improve its client service and overall efficiency, Connell Foley streamlined its leadership, placing both decision-making and accountability into the hands of a smaller number of firm partners. By reducing its Executive Committee from 12 members to six and empowering its practice group leaders—those key opinion leaders who have their fingers on the pulse of the firm's clients—the firm has been able to minimize bottlenecks, expedite decisions, adapt more quickly to client needs and move faster on initiatives. All of this allows the firm to recognize opportunities, foresee problems and offer solutions often before clients even realize they may have a potential liability. As a result, the firm not only operates as efficiently as possible, but it is able to function as a true business resource to its clients, providing trusted legal advice while simultaneously operating as a business advisor.

LAW



Archer & Greiner, P.C.

By Gianfranco A. Pietrafesa, Esq., Partner, Corporate Practice Group

Many family-owned businesses operate too informally, which can cause problems when it's time to sell the company. Problems run the gamut. Some are easily correctable, such as failing to complete the incorporation process by holding an organizational meeting to adopt bylaws, issue stock certificates, etc. and not holding annual shareholders meetings. Others are more complex and time-consuming to correct, such as failing to protect intellectual property and confidential information and not having written contracts with key employees providing them with financial incentives and restrictive covenants to keep them with the company. Family-owned businesses should prepare themselves for sale by doing their corporate housekeeping



worker falls into one category or the other, relying on the so-called "twenty-factor test," to decide if the worker is truly "independent." These factors include whether the worker uses his/her own equipment, makes his/her own hours, carries his/her own insurance and participates in employee benefit plans or other programs. Often, a worker does not fit neatly into one category or the other, so the IRS needs to look at the overall picture. We try to impress upon



Dunn Lambert, LLC

By Richard J. Lambert, Esq., Founding Partner

Many inexperienced entrepreneurs don't realize until it is too late how important it is to have an understanding of the big picture before beginning a startup. Caught up in the excitement of the new venture, many entrepreneurs focus only on the few visible trees instead of the entire forest, and fall vic-

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tim to the old adage, "Build it and they will come." In addition to the creative ideas, optimism and opportunity, which are required ingredients for success, the startup must also be structurally sound. The seasoned business lawyer designs and builds to the strong foundation and structural walls needed for a sound startup. Some of the key legal issues that should be considered in any startup are: (1) choosing the right entity, management, employees and initial investors; (2) protecting valuable intellectual property; and (3) structuring capital investments and equity incentives. Before taking the first step of forming the startup, it is critically important for entrepreneurs to conduct market and regulatory research, and to prepare a comprehensive business plan with realistic and achievable projections. In our experience, the successful startups have been the ones that not only have a brilliant idea, but also take the time to prepare a thorough and viable business plan for the new venture.



Genova Burns Giantomasi & Webster

By Brian W. Kronick, Esq., Managing Partner

My advice to businesses looking to acquire a company or be acquired in a merger is to look for the right fit. Likewise, the most important thing an owner should consider before buying or selling a business is synergy. Pick an industry you know and carefully evaluate potential candidates that mesh with what you do well, and with your personal and business philosophy. The company's products or services should be related or complementary to what your existing business already markets and sells, and the merger or acquisition should bring efficiencies and result in improved cash flow to fuel additional projects. Look at the company's identity and reputation, consider the company's culture, and carefully evaluate the risks and costs. Once you've begun your due diligence, don't limit yourself to review of operations and financial statements. Talk to employees, customers and suppliers, and make sure you bring in an attorney who

is acquainted with both M&A generally, and with your industry, specifically. Finding a good candidate for a merger can take a lot of time, energy and money, but it can be worth the investment and a necessary way to grow in a fast-paced business world.



Gibbons P.C.

By Patrick C. Dunican Jr., Esq., Chairman and Managing Director

Many corporations demand an integrated approach to marketplace, workplace, and supplier diversity. Our solution at Gibbons was to launch a supplier diversity program, GDI-123, that addresses the different objectives of various constituencies in the vendor/client relationship. GDI-123 helps Gibbons and clients to meet diverse spend goals with qualified M/WBE vendors; utilize diverse Gibbons attorneys with total quality



management of services; and obtain competitive rates for legal work and other products and services. The GDI-123 administrator directs the entire process, so no burden is placed on clients' in-house personnel. Diverse spend and resource utilization goals are set based on each client's particular goals. We maximize diverse attorney utilization and use proprietary nationwide databases of certified M/WBEs, including client-requested vendors. During service delivery, Gibbons mentors M/WBE providers as needed, conducting education sessions to assist with certification, teach best practices, and promote visibility, helping increase the ranks of such businesses. The identification of a large pool of qualified, cer-

tified M/WBE vendors fosters competition and results in better service, price and quality. With M/WBEs increasing at six times the rate of non-M/WBE companies in the United States, it simply makes business sense to affiliate with such a fast-growing market segment.



Golub, Isabel & Cervino, P.C.

By Alan S. Golub, Esq., Managing Partner

Service professionals often talk about managing client expectations. Not only does that phrase have a negative connotation (after all, who wants to be managed?), it bypasses the more important concept: understanding client expectations. From day one, you and your client need to be on the same page regarding scope of work and project goals. That understanding serves as the foundation for the collaborative process by which you and your client will design and implement the best strategy to accomplish those goals. Of course, it may turn out that some of those goals are unrealistic or impossible; facts and circumstances change, and you and your client need to be nimble enough to adjust your strategy and your expectations to roll with those punches. But as long as you are both on the same page from the very beginning, those adjustments are merely a continuation of the collaborative process that was built upon the strong foundation of mutual understanding from the outset. To "manage client expectations" carries the whiff of failure, suggesting a reach that was beyond your grasp. It has no place in your best practices toolbox. After all, your job is to meet or exceed client expectations, not manage them.



Greenbaum, Rowe, Smith & Davis LLP

By W. Raymond Felton, Esq., Co-Managing Partner and Corporate Department Chair

The family-owned business has long been a foundation of our economy. Too often, however, these companies run into trouble by neglecting certain business components of the enterprise.

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A family relationship among principals is no reason to disregard good business practices and, in fact, may even be a reason for running a tighter ship. Start by considering the exit strategy. Whether the plan is to sell the business, go public or pass it on to the next generation, it's important that business records such as accounting books, personnel files, contracts and other legal documents be kept properly and completely. A buyer may discount the value of a business with shoddy records by questioning the integrity of the reported results. Similarly, the IRS may challenge the business valuation on a gift or estate tax return due to inadequate documentation. Another overlooked item is a shareholder or operating agreement among the related owners. A good agreement addresses management issues as well as the disposition of ownership following death, disability, resignation, retirement and termination of employment. Those events happen in family businesses

just as in other companies. The bottom line is that a family-owned enterprise is still a business and must operate accordingly.



Hoffmann & Baron LLP
By Lou Budzyn, Esq.,
Partner

In terms of patent issues, timing is critical in the development of cutting-edge technologies, particularly due to the desire to be the first party to market. In terms of patent protection, innovators most often control their ability to file patent applications—earliest patent filings are given priority over later filings and, thus, are desirable. Of course, a broad scope of protection to exclude the maximum level of competition is also important. It would be much easier to establish a patent strategy in a perfect world where money is not a factor. However, the reality is that money is a factor and, as such, some level of judgment is required.



LeClairRyan
By James P. Anelli, Esq.,
Shareholder

It is important to understand that while an organization may be exempt from taxation, it is still subject to most state and the federal labor and employment laws. It is, therefore, critical to understand at the board of directors level, that guidance is necessary in order to properly steer clear of legal pitfalls such as wage and hour claims, employment-related matters and even whistleblower claims. Accordingly, we have often advised boards of directors to consider placing at least one attorney on their board, where possible, in order to provide such guidance. Thus, having an attorney on the board is a great benefit to the organization and one which is critically necessary in this litigious age. Moreover, it is also critical that not-for-profit organizations consider obtaining employment practices liability insurance (often as a part of their errors and

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admissions policy). Even a single-employee organization can face liability under New Jersey law. Members of the board are often volunteers, receive no salary and are interested in carrying out the mission of their particular organization. Unfortunately, however, what is lost on many of them is that they have the same legal obligations as any for-profit employer in New Jersey.

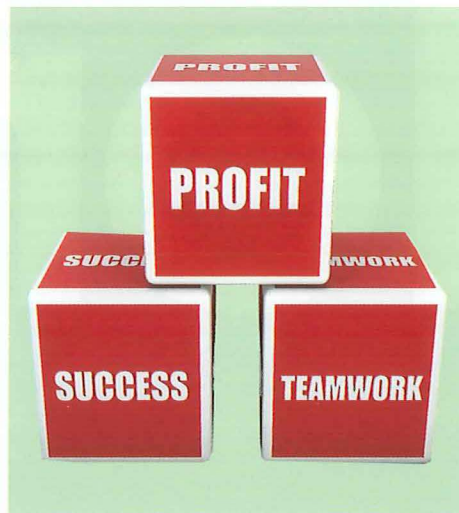


Lindabury, McCormick, Estabrook & Cooper, P.C.

By John R. Blasi, Esq., President

It takes men and women with a great deal of optimism and passion in order to take on the risks associated with creating a startup company. No matter how much thought has been given to the matter beforehand, it inevitably takes a huge leap of faith to take the startup plunge. The negative side of that optimism and passion is that it often makes it difficult for the founders to address certain issues

among themselves. Suppose you have three passionate founders of a new startup business. What happens if during the stresses of the early years of the business, one of the founders has difficulty managing those stresses and becomes significantly less productive than the other two. Is there a legal mechanism to address that issue?



Similarly, suppose one of the founders is in an accident and dies, and that founder's favorite nephew in Colorado inherits the ownership in the company. Are the other two founders stuck with the nephew who knows absolutely nothing about the business? The founders of a startup company should address these sorts of issues with legal counsel at the beginning of the venture, rather than leaving them to be addressed in difficult future circumstances.

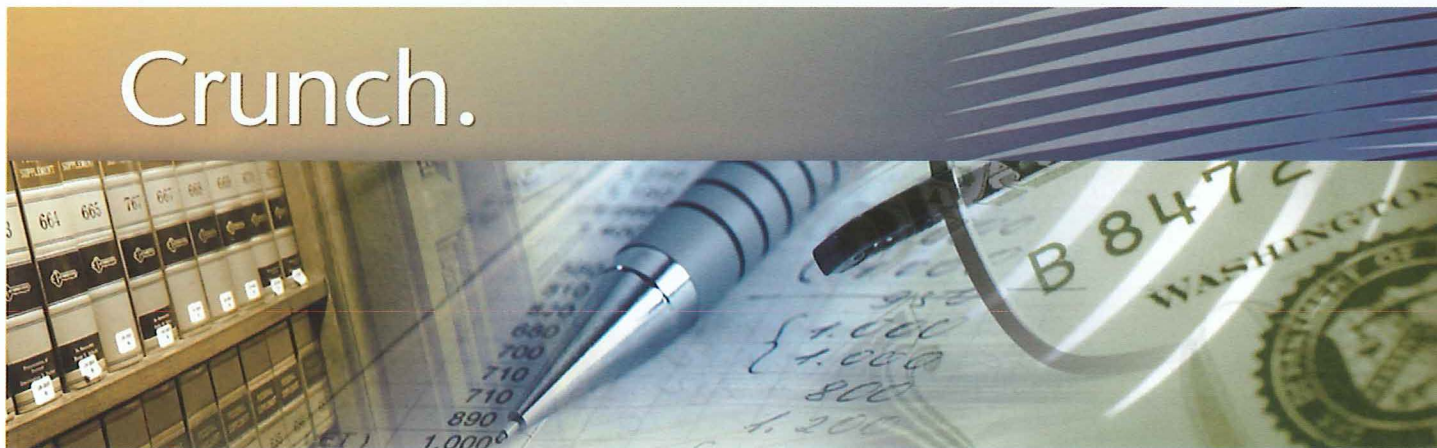


Lowenstein Sandler LLP

By Alice De Lancey, SPHR, Chief Human Resources Officer

The best practice we employ is the "We're All About You" (WAAY) initiative. In 2012, our managing partner held the firm's semi-annual Town Hall Meetings and added facilitated breakout sessions to discuss behaviors consistent with the Lowenstein Sandler brand; additional ways that employees can live the brand;

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and how each of us can engrain the brand from day one for new employees. This was the beginning of the WAAY initiative's employee rollout. In January 2013, Lowenstein launched a firmwide re-branding initiative that highlighted the WAAY brand promise, which emphasizes the importance of outstanding client service to external clients, the community programs we support and to our internal colleagues. More than 500 ideas were generated by employees. Seven subcommittees with employees at all levels and in all offices collaborated to prioritize, brainstorm and implement the suggestions. This included development and extensive communication of core values, additional client service training, networking between staff and attorneys, redesigning the corporate Web site, new firm logo, new letterhead and business cards, etc. A WAAY logo was also created to accompany any WAAY communications to identify initiatives suggested by our employees. The subcommittees and collaboration are ongoing.



McCarter & English, LLP
By *Stephen M. Vajtay, Jr., Esq., Managing Partner*

Entrepreneurs often don't appreciate how simple mistakes made in the early days of their business can have significant consequences down the line. Entrepreneurs need to choose the form of business entity carefully because it impacts tax treatment, liability protection and the ability to raise capital. The new venture needs to comply with applicable securities laws when raising capital to avoid giving rise to rescission rights. It also needs to secure rights to key intellectual property and ensure it owns IP created by its workers, or else it may lose important competitive advantages. Workers need to be properly categorized as employees or contractors based on applicable federal and state law, or the company, its officers and directors can face civil and criminal penalties. These and other potential pitfalls are easily avoided, but can be time-

consuming and costly to fix. Moreover, they can easily elude the attention of busy businesspeople or may be neglected or mishandled given the amount of misinformation on the Internet. That's why it is so important for an entrepreneur to have professional advisors—in particular lawyers and accountants—who have experience helping entrepreneurs launch and grow their businesses.



Meyner and Landis LLP
By *Albert I. Telsey, Esq., Partner*

I am counsel to the Environmental Compliance Brigade (ECB), a New Jersey nonprofit that uses the Environmental Rights Act to act as a private Deputy Attorney General to prosecute responsible parties who have failed to comply with deadlines to address contaminated properties despite prior warnings by the NJDEP and others. Avoiding environmental costs allows contaminated sites to lower property

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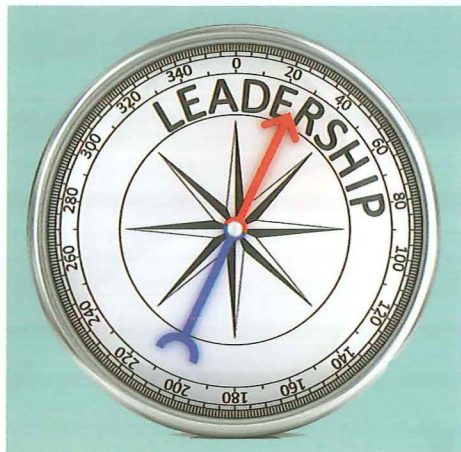
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values and generally depress the commercial health of the community. It is also unfair to the many responsible parties who do comply in a timely manner. New Jersey has too many contaminated sites that have sat fallow for too long. It is time to clean them up. Since the NJDEP does not have enough personnel to compel compliance in every instance, the ECB is stepping in to assist. The ECB uses penalty money for grants and low-

interest loans to help complying parties complete cleanups. In essence, the money is a substitute for the NJDEP grants and loan funds that have dried up. The ECB has successfully compelled compliance by the mere threat of prosecution and has collected penalty money when court action is required. The business model is working well and producing results.



Norris McLaughlin & Marcus, P.A.

*By Bob Gabrielski, Esq.,
Chair, Business Law
Group, Member,
Management Committee*

While business founders spend countless hours building their companies and constantly refining their growth strategies, many spend very little time thinking about an exit strategy or whether they may want to transfer some or all of their business to the younger generation. When it comes time to retire, sell the business or transition it to that

younger generation, or perhaps to employees, many of these businesses are not prepared. Their stock book, shareholder and operating agreements may not properly reflect what the owner believes is the current ownership. They may not have accounted for their operations according to GAAP or had reviewed or audited financial statements. Do they want to sell the business outright (a typical M&A strategy) or do they want to transition some/all ownership to the younger generation (an estate planning tool) or management/employees (an MBO or ESOP strategy)? M&A strategies typically involve a complete sale of the business with a consulting/earn-out component. Estate planning strategies generally involve the founder remaining in the business for some time while transfers/gifts take place. ESOPs allow the founder to sell, retain some control and take money off the table. Think ahead, prepare and consider all the options with your advisers.

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Is your company afraid of the "D" word?

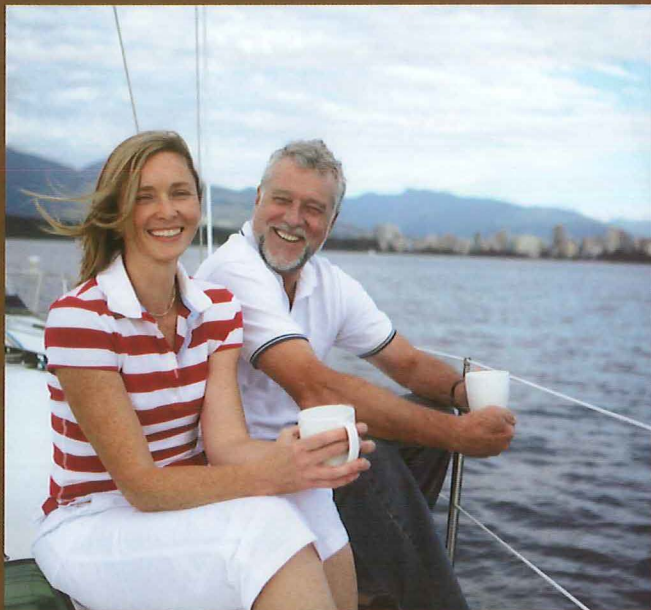
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NPZ Law Group

By David H. Nachman, Esq.,
Managing Attorney

One of our most important best practices is handling the cases of our clients in a very personal manner. One of the most important aspects of our success is our high-level of client communication. We have a "three-point-of-contact" rule. This means that any client is given the contact information for at least three persons in our office (while a case is in process). This is especially important since, on any given day, we have hundreds of clients traveling in and out of the United States and Canada.



Riker Danzig Scherer Hyland & Perretti LLP

By William G. Connolly, Esq., Partner

Two words of advice for a family business considering a sale: plan ahead, and that means estate planning. Equity can be gifted to family members at minimized gift tax cost during a business downturn, while the business valuation is depressed. This can result in proceeds not subject to estate taxes going to the next generation upon a later sale. Another key is clean up any messes. For example, before a buyer begins due diligence, clean up unorthodox financial reporting, environmental conditions, regulatory issues and other complications. This will prevent a buyer from reducing the value it puts on the business due to unknowns. Since you only sell once, make sure you screen professionals and obtain the best advice. Gather recommendations for investment bankers, attorneys and accountants specializing in M&A, and interview multiple candidates. Also, as a family views its business differently than a buyer, make profits and costs transparent. Normalizing inter-family arrangements by owning business real estate separately, interacting with affiliated entities on an arm's length basis and normalizing compensation allows a buyer to more appropriately value the business. You want family buy-in, so ensure everyone in the family is ready to sell and has a post-sale plan.



Rivkin Radler LLP

By Alan S. Rutkin, Esq., Partner

In a law firm, communication is the heart of the business. Communication must be great. So, we communicate promptly, clearly, and collaboratively. We're prompt. We demand that our lawyers answer calls and e-mails the same day. This rule is on our Web site. It's a promise to our clients. The old adage is wrong: late may not be better than never. Lawyers must be prompt. We're clear. Clarity is another rule on our Web site. We write to be understood. Clients and courts must understand us immediately. Our adversaries must also understand us; they need to know what we want. The Supreme Court writes simply; lawyers should too. We avoid legalese; we don't

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do "hereto." We collaborate. We use Dropbox and other technologies so clients can see our documents. I have an important proceeding later this month. It involves many documents. The client's iPad will have access to all of the documents, including the highlighting and the notes. We both mark the documents. I see his comments, and he sees mine. We're on the same page, literally. Too many lawyers hide behind Latin and other pretensions. They make simple things complicated. In our firm, we communicate to make complicated things become simple.



Sills Cummis & Gross P.C.

By R. Max Crane, Esq., Managing Partner

When it comes to M&As, always know what your goal is. There are usually many ways to get there, but you will be side-tracked unless you are relentlessly focused on the end result. Prior to establishing your goal, ask yourself: Is this the right fit for each company or are there too many cultural variables? Once the deal is over, be patient. Successfully combining companies takes time. Obviously there are far too many issues to mention here, but some of the key issues to consider include type of sale—cash or stock; earn-outs and seller protections; stock options and other incentives; liabilities, financial and otherwise; taxes; indemnities; geographic footprint; employment issues; due diligence; intellectual property; approvals and consents, including Board of Directors, stockholders, lenders etc.; antitrust issues; and legal, accounting, banker and broker's fees.



Wilentz, Goldman & Spitzer, P.A.

By Brett R. Harris, Esq., Shareholder, Business, Nonprofit and Technology Attorney

Embrace technology intelligently. We seek to capitalize on digital tools available to promote efficiencies within our firm and work with our clients to leverage technology to drive innovation while understanding the legal issues implicated. The Internet is a great outlet for brand promotion, but highlights the need to protect trademarks through registrations and enforcement activities. Social media offers incredible opportunities to engage customers and prospects, but is prone to lack of corporate control over postings. Educate employees on appropriate online activity to promote consistency in messaging and guard confidential information. Address cyber-preparedness by developing privacy and security policies and data breach response plans for compliance with notification laws. Recognize the blurred line between professional and personal use of technologies. Confront realities of managing mobile devices in the business setting while considering the drivers underlying the Bring Your Own Device (BYOD) movement. Cloud computing offers access to vast applications often impracti-

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cal to license or develop internally, but assess the model before deployment. Understand the terms to guarantee access to mission critical systems and to ensure that data storage is consistent with legal and regulatory obligations. Overall, face challenges of protecting trade secrets in the digital age through sound business practices.



Wolff & Samson PC

*By Laurence M. Smith, Esq.,
Member of the Firm*

Effective M&A counsel to a family-owned business should attempt to insulate the business from the family. In other words, try to ensure that intra-family factions, feuds and emotions play no role in corporate decision-making. To that end, put in place governance documents to achieve economic fairness (which may not mean parity, as all family members may not be actively involved or play the same role within the compa-

ny) and to ensure that business decisions are made by officers and directors, with shareholders acting in limited circumstances as provided by law. Complete democracy within a business may result in paralysis. The governance documents should include dispute resolution mech-



anisms that discourage litigation. Adherence to corporate formalities will promote harmony while the business is owned by the family and facilitate an exit, if and when the decision to sell is made. Instill the need to rely upon outside, objective professionals who can help make critical decisions (to grow, to downsize, to sell, to acquire, etc.) free of any feelings of nostalgia or personal attachment. The business is not a member of the family, and there is no shame in deciding to sell it.

REAL ESTATE



NAI James E. Hanson

*By Darren M. Lizzack,
MSRE, AVP, Healthcare &
Office Specialist*

To achieve success, it's often who you know, not what you know. Having knowledge about something will only take you so far; from there, you need to know the right people to accomplish your goals. I

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