MUSGROVE
LAW FIRM P.C.

10,000 N. Central Expressway, Suite 1045, Dallas, Texas 75231
Phone 214.615.4150 Fax 214.615.4151
www.musgrovelaw.com

H. Len Musgrove, Jr.
lmusgrove@musgrovelaw.com

M&A Presentation—Vistage
February 23, 2017

1. Background Definitions in Discussion:

   a. I will assume the Target Co. is a Corporation, although the Concepts for an LLC or a Limited or General Partnership are Similar.
   b. My M&A Background Is Equally Divided between Buyers and Sellers, although my Firm specializes in acting as Corporate Counsel to Entrepreneurs.
   c. Tax Consequences do not "Wag the Dog", but are Extremely Critical for Target Owner(s)- What will Seller take home after income taxes?
   d. Accordingly, Coordination between Counsel and CPA Is Fundamental in an M&A Transaction.

2. Typical Mid-Market M&A Transaction Structure:

   a. Asset Purchase; or
   b. Stock Purchase.
   c. Variations Include 338(h)(10) Election by Buyer on Stock Purchase and either Traditional Merger and Triangular Merger.

3. Caveat:

   In Virtually All Situations, Asset Purchase for C Corp Target Shareholder(s) Is a Disaster, due to inefficient Double Taxation from Shareholder’s Perspective. Don’t Wait to Plan!

4. Excellent Deal for Seller:

   a. Either Sale of Equity (as noted above, Especially for C Corp Shareholders) or Sale of Assets with Virtually All Tax Allocation to Capital Assets for Pass-Through Entity;
   b. All Cash Terms; and
   c. Market Limitations on Indemnifications (e.g., basket and caps).

5. Excellent Deal for Buyer:

   a. Asset Purchase or Triangular Stock Deal (in both cases to limit liabilities of Seller);
   b. Significant Deferred Cash or Earn Out Terms; and
   c. Unlimited Indemnification with Material Set-Off and Claw Back Rights.

6. Caveat II:

   With all due respect to Corporate Counsel, the Best M&A Deals have more to do with Quality Trade Partners across the Table than a Brilliant Purchase Agreement; Quality Due Diligence and Research of Target and Buyer Are Key!