

## Special Edition

### How to Sell Your Company in a Down Market – Part 7

#### How and when to release information in the sales process

To most of you selling a company is a very emotional process. If you have owned your company for any length of time it's "your baby". You want your legacy to continue. You want everything to run as it's always run and you want to make sure that all your employees are taken care of. That is what would happen in a perfect world, but we are not in a perfect world. It's very important for you to understand that;

- Selling your company is like planning your own funeral.
- It's very emotional.
- It's very stressful, and;
- At the end of the day you must recognize that your company as its structured today will not be the same company when it's sold.

#### During the process of selling your business, I've indicated that 3 things have to take place the day of an acquisition.

- The acquiring company must be able to service the debt.
- "Cash flow" the debt service, and;
- Have a return on earnings.

In order to do that, in most instances, unless the selling company is going to be treated as a separate operating division, many redundancies are going to be eliminated.

- Billing.
- Collecting.
- Direction of DOT.
- Accounting.

Most of those are "back office" functions will be assumed by the Buyer sometime in the future.

I am amazed when a Seller, makes demands that a Buyer has to retain certain employees. The Buyer has to retain "key" employees and the Buyer has to do this and the Buyer has to do that!

The reality of the situation is that if you are selling your business and if you feel a moral and ethical obligation to your employees to take care of them, then what you should do is "carve out" a portion of your purchase price and have it distributed to your employees. My point, it's not the Buyers responsibility. When you sell your house you cannot tell the new Buyer what color to paint the house. Once the house is sold, it's his house and he can do with it as he sees fit.

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**The comments that I'm making are not meant to offend anyone, but it's the reality of the situation. Having been involved in as many transactions as I have, it never ceases to amaze me that a Seller tries to make demands.**

- He wants a stock sale.
- He wants "key" employees retained.
- He wants this!
- He wants that!

**In reality, what a Seller is doing is setting him up for the deal to fail. It's important that you always remember that a Buyer is purchasing your company for a specific reason – to add value to his business.** If it means that certain employees are going to have to be let go, that's the way it is. Particularly in this market, nobody is going to pay for any overhead that is not necessary. **Trucking is and has always been a "pennies" business.**

**With that stated, assuming that you have agreed to a range of values for your business, and both the Buyer and Seller feel comfortable** with the range of values, you then need to know what to release and when to release it. The first part of the process is;

- Financial information and this is critical.
- The financial information should include the last 3yrs of detailed financial information, including a balance sheet and a P & L statement;
- An interim financial statement through the last corresponding month, and;
- If you are on a cash basis, have your accountant convert to an accrual basis, for review purposes.

**Although most Buyers prefer audited financial statements, they realize that smaller trucking companies are not going to provide audited statements; but on any items that are questionable or need clarification there should be accounting footnotes.**

**In reference to "add backs", to your company, that may add value to the purchase price of your company, you need to be very specific.**

- You can "carve" this out as a separate memorandum, but;
- It needs to be specifically documented what non-reoccurring expenses would be eliminated day of acquisition;
- **By non-reoccurring expenses I'm not implying that anything that a Buyer will eliminate when he acquires your company.**
- I'm referring to anything that you charge against your company, such as; AMEX, car payments, travel, entertainment, 401k, dividend distributions, etc. that would be eliminated.

**In addition, if you are an asset based company you should provide an equipment list with corresponding values.** The equipment list should be detailed and should include a specification sheet;

- Type of transmission?
- Gear ratios.
- Average miles on the tractors.
- Average age.
- Average equipment payments and the same information for trailers;
- An overview of your company.

**This will be the basis for a Buyer to determine if he wants to go forward or if not. Once that information has been provided** he can provide you a range of values based upon his review. At that point, the Buyer wants additional information; he should provide a letter of intent outlining your understanding.

- Once this agreement is executed, a Buyer will request copies of all State and Federal tax returns for the past 5yrs.
- Fuel tax statements.
- Miles by state, monthly or at least quarterly.
- The last 3yrs of Insurance loss information, for each line of coverage, including details of any claims over \$5,000.
- Copies of any DOT audits and rating.
- Descriptions of any litigation, that is currently unresolved, or any litigation that has taken place in the last 5yrs, with details, and;
- An aging of accounts receivable.

**At this point you still don't want to divulge the name of your specific customers, but a Buyer is concerned that;**

- You don't have too heavy of a concentration of revenue with any one customer – it should be no more than 10% to 20%, and;
- If you have a high concentration of revenue, with one customer, then, that may diminish the value of your “perceived Goodwill”.

**Assuming that a Buyer has reviewed all of the above and wants to proceed then you have to start releasing all proprietary information,** which would include:

1. The list of any owner/operators and date of hire – year to date.
2. List of company drivers and date of hire – year to date.
3. Top 25 customers with revenue to date and corresponding rates to date.
4. Agent agreements.
5. Details of any profit sharing, 401k plans, etc. and the corresponding accrued liability to date.

**This information should only be released once a LOI has been signed.**

**In reference to insurance, if you are self insured or have some form of retention, you need to be able to provide detailed information.** This would include:

- Incurred but not reported claims.
- Loss “pic” analysis – if available.
- Details of all claims \$25,000 and over, and;
- A profile on the party that is administering your claims and their expertise.

**A Buyers request may be broken down into a number of categories:**

**You will be required to provide a copy of each insurance policy with the name of the company, policy expiration, limit of coverage, premiums and terms. This will include automobile liability, bobtail** (if applicable), cargo legal liability, physical damage, workers compensation, general liability, directors and officers, etc; and also the insurance deposits and collateral requirements.

**In reference to financial accounting, you will need to provide copies of:**

- Real property leases.
- Personal property leases.
- Real property owned.

**In reference to any owned property, you will need to provide a list of locations, copy of deeds, name of record, title holder, copy of the mortgage, statement of balance due, title insurance policy,** property tax ID, environmental assessments – if any, government notice of alleged types of violations, proof of real estate taxes paid for current year and additionally you have to provide information in reference to;

- Underground storage tank and inspection results.
- Any fueling systems, and;
- EPA storm water permits and plans for all facilities; and the list go on and on.

**In reference to personal property owned, as part of the closing documents, provide titles to all pieces of equipment** and copies of the equipment registration. If there's any fuel hedge agreement, you need to provide copies of those as well as any commitments.

**In reference to contracts with employees, fleet owners, owner/operators, agents, consultants, fuel agreement** and distributors and dealers you need to provide copies of all those commitments as well.

**Also, you will need to provide a listing of all banks and bank accounts,** a list of brokers or finders agreements and list of all states in which your company files state tax returns.

**Next week, I will provide a complete due diligence check list of all the items that are necessary to handle the entire** process from the beginning offer to the sale and the purchase agreement.

**QUOTE OF THE WEEK:** “Life is facing challenges, going through them, and getting to the other side.”