

Watch Your LOIs and MOUs and ‘Agreements to Agree’



If you are working with a third party on a term sheet, letter of intent or memorandum of understanding (an “LOI”) on what you view as a non-binding basis, make sure to say so explicitly in the LOI, advises **Perry Patterson** of **Buchanan, Ingersoll & Rooney**.

“Businesses use LOIs with each other all the time to negotiate and to develop a set of deal principles to be used in a final agreement, on anything from an acquisition to a significant commercial agreement, or conceivably even a key employee hire,” he writes in an **article** posted on **JDSupra.com**. “Primarily they serve as discussion documents for the many high level points that need to be agreed upon (in concept) before it makes sense to negotiate final agreements. Most people involved in the development of an LOI assume there is no final deal until the final documents are fully negotiated, signed and delivered.”

He analyzes a recent case from Delaware that has attracted attention both because of the breach of duty to negotiate in good faith that was found and because of the implications it has in determining damages for breach of that duty.

Read the article.