

RENAISSANCE

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The Sovereign Citizen Movement: They Can't Derail Your Deal, But They Can Make Your Life Complicated

By Pia N. Thompson, Partner, Gould & Ratner LLP



Pia N. Thompson

What is a Sovereign Citizen?

By way of background, on the chance you are not familiar with the Sovereign Citizen Movement, I will explain it. Originally begun in the 1970s and fully developed by the 1980s, it is a loosely organized collection of groups and individuals who are anti-government extremists who believe that even though they live in the United States, they are separate or "sovereign" from the United States. They believe that they don't have to answer to any government

authority, including courts, taxing entities, motor vehicle departments or law enforcement. This last bit creates some contradictions in sovereign citizen behavior because one of their favorite tactics is the filing of liens against those entities and individuals seeking to collect a debt from them.

How it works is this: despite their being sovereign and not recognizing the currency of the United States, disgruntled obligors have been attempting to evade obligations or otherwise retaliate against creditors by filing astronomical liens against banks, attorneys, and government employees. Not surprisingly, these attempts have been unsuccessful.¹ But as we all know in the legal and distressed fields, just because someone will not prevail does not mean that it won't cause problems getting to your closing date or that you won't incur fees and costs in order to get the liens and other nonsense filed by the Sovereign Citizen cleaned up in your chain of title.

The rationale is as follows, and there are many helpful web sites to walk you through the becoming sovereign process, including <http://discharge-debt.com> and www.famguardian.org. Some of the supposed advantages of becoming sovereign and one that is most relevant to us in the turnaround community is the ability to discharge one's debts by bonds. Despite a rejection of all things government and contractual, there is an abiding love for the Uniform Commercial Code in the Sovereign community. One of the touted benefits of being a Sovereign is the ability to use Section 3-603(b) to pay off all debts. Paying off one's debts with bonds cannot be refused, the argument goes, because a debt tendered and refused is a debt discharge to the amount of tender. If the creditor refuses the tender, the Sovereign can "turn them in" to the U.S. Treasury for sedition against the U.S.

You may be familiar with the Sovereign Citizen movement as it did make an appearance in the Chicago-based Giordano's pizza chain bankruptcy proceeding. The owners of the debtor became involved with Marshall Home, a notorious Sovereign Citizen, and Home filed a \$150 million lien against the debtor's assets. The rationale behind filing the lien was for Home to be a priority secured creditor, who would then be able to control the business and return it to the Apostolous absent any debt. In affidavits the owners, Mr. and Mrs. Apostolou, stated that they were American Freemen who did not recognize United States currency. Perhaps debtor's counsel had no inkling of these proclivities, because days later debtor's counsel moved to withdraw, citing "irreconcilable differences." Judge Squires, who presided over the case, appointed a trustee to oversee the business. Mr. Apostolou was later enjoined from setting foot at the debtor's places of business. As will be discussed later, Sovereign Citizens have a tendency to lash out at individuals who operate with the American legal system to enforce contracts and laws against obligors. In this vein, in the Giordano's case there were reports that calls were made to the sheriff in order to have the Chapter 11 trustee arrested. It is conduct like this against professionals in restructuring cases that prompts this article.

Why, as a turnaround professional, do you care about Sovereign Citizens?

The fact that this movement exists is relevant to the turnaround professional in two ways: 1) If you are faced with one of these people as perhaps the most recent owner of the business prior to bankruptcy and/or the appointment of a trustee, you may be faced with trying to sell assets that are encumbered by outrageous liens and other similar clouds on title; 2) If you have one of these people involved even tangentially in one of your deals, you face exposure of having this Sovereign Citizen place liens against your home and take other steps against you personally. The question then becomes, what can you do about the cost and expense of freeing yourself from these burdens?

Your Deal & the Sovereign Citizen

While the liens filed by Sovereign Citizens can create a cloud on title of the assets you are seeking to sell or purchase (depending on your position on the deal), there are three ways to get around the cloud. The first and easiest is to have Chicago Title insure over the cloud. In my experience with respect to real estate, Chicago Title has been willing to provide title insurance with the Sovereign Citizen liens in place. I surmise

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Distressed Deal Buyer's Guide: Tread Lightly and Put Your Best Foot Forward

By Chad Striker, Shareholder, Greenberg Traurig and Alpesh Amin, Director, MorrisAnderson



Chad Striker



Alpesh Amin

As with any transaction or negotiation, achieving a successful outcome not only depends upon defining and focusing on your own objectives, but also, and perhaps more importantly, understanding the objectives of your counterparty. The distressed deal, and particularly the 363

bankruptcy sale, is no exception. To most effectively participate as a prospective buyer of a business in a 363 bankruptcy sale process, it is critical to understand two of the most important objectives that the debtor (and the other stakeholders) are trying to achieve—(1) certainty of closing a transaction and (2) maximizing recovery for the estate. Prospective buyers should not lose sight of these two fundamental objectives. While the approaches discussed below can give prospective buyers an advantage, these approaches may not be a “fit” for all prospective buyers, particularly those with a high degree of confidence that their proposed purchase price exceeds (or will exceed through the auction process) all others by a significant margin. With that said, those who have the flexibility, discipline and perhaps, risk tolerance, can reap significant rewards in the bankruptcy sale process by taking note of, and employing, a few simple concepts.

Tread Lightly to Assure Certainty of Closing

From a practical perspective, a prospective buyer of a business in a 363 bankruptcy sale, whether attempting to be selected as a stalking-horse bidder or participating in an auction process, can often be best served, and

can demonstrate its commitment to closing a transaction, by exercising restraint in its approach to the transaction documents and transaction terms. When presented with the debtor's form of purchase agreement (or the purchase agreement negotiated with a stalking-horse bidder), a prospective buyer should tread lightly. Nothing says, “*I’m going to be difficult to negotiate with—and we might never get a deal done,*” like a heavily marked-up purchase agreement.

A prospective buyer seeking an edge in the process should approach the purchase agreement and its mark-up with surgical precision—and not attempt to re-write the document. Because every edit creates a potential issue and potential uncertainty for the debtor and the other stakeholders, a real advantage can be secured if a bidder can focus only on what is important, use as little red ink as possible, work with the document that has been presented, and not re-write or replace provisions in their entirety unless they are beyond repair. For example, consider a form of purchase agreement that contains a working capital adjustment provision. The working capital language in the document will have already been reviewed and approved by many constituents, including the debtor's board of directors, the secured lender(s), the unsecured creditors' committee and each of their counsel. While a prospective buyer might prefer or be more comfortable with its own working capital adjustment language, proposing an entirely new provision will not only add uncertainty in terms of creating additional issues, it may very well add uncertainty in terms of having to obtain approval of the new working capital adjustment mechanism from all of the various constituents. Not only can working with the debtor's form of purchase agreement help a bidder, materially changing the form in a “lawyer's battle” can be a real disadvantage to a bidder.

The closing conditions in a purchase agreement, and specifically the conditions to a buyer's obligation to close, obviously deal directly with

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The Sovereign Citizen Movement *continued from page 1*

that its rationale for doing so lies in the fact that it is near impossible to imagine a scenario where such a lien will be upheld so the risk to the title insurer is slim to none.

A second way (and necessary when the liens attach to assets other than real estate) is to have this action happen in a state that has already revised Article 9 of the UCC and prohibited such conduct. There is such a bill pending in Illinois, Senate Bill 1692 (the full text may be found at <http://tinyurl.com/75s2ddc>). In addition to criminalizing bogus lien filings and imposing steep statutory fines, it would create a mechanism whereby a victim may have such fraudulent liens removed simply and inexpensively by providing an affidavit explaining that the financing statement is fraudulent. The law, if enacted, will also provide civil remedies including the recovery of damages, and the award of fees and expenses and punitive damages. The recovery of fees and damages is positive, but probably rather unlikely. If one were to realize such a judgment one would most surely be in a position of having to garnish wages, bank accounts or other assets. One does not envision Sovereign Citizens paying judgments voluntarily. The real advantage of a statute like this is the ability to avoid option three discussed below. While only a handful of states have adopted this key revision to Article 9, we can hope here in Illinois that Senate Bill 1692 will be enacted into law soon.

The final way to deal with this situation and close the deal with a buyer that will not close with the Sovereign Citizen liens in the chain of title is to initiate a quiet title action. Depending on the parties involved in addition to a common law quiet title action, you may be able to avail yourself of the remedies provided by the federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.* In the event that your Sovereign Citizen saboteur has filed a maritime lien, 46 U.S.C. § 31343(c)(2) provides a right of action to parties aggrieved by an improperly filed maritime lien, and arguably 46 U.S.C. § 31309 provides a civil penalty of up to \$10,000 against the fraudulent maritime lien filer. The cause of action brought against the Sovereign Citizen should seek (a) a judgment permanently enjoining the defendant from directly or indirectly claiming an interest in the property by way of further lien filings or otherwise; (b) a declaratory judgment declaring that the defendant's encumbrance is of no force and effect; (c) a judgment ordering the defendant's encumbrance be cancelled, removing the cloud cast on title by the defendant's adverse claim and quieting title to the property; and (d) reasonable attorney's fees, expenses of litigation and costs of suit. One should also note that pursuant to Federal Rule of Civil Procedure 65(a) (2), the movant may seek to have the court consolidate the preliminary injunction hearing with the trial on the merits. This can significantly speed up the proceedings and therefore possibly reduce fees and expenses related to the litigation.

You, as a private citizen, and the Sovereign Citizen

Here is the problem. Sovereign Citizens are reckless and lash out at anyone who pursues them. This includes agents and hired professionals. There are several reported decisions of criminal sentences imposed against the filers of fraudulent liens, when they file such liens against federal employees or agents of the federal government.² You as a turnaround professional are not a federal employee. Unless there is a statute in your jurisdiction similar to Illinois Senate Bill 1692 discussed above, you are on your own to clear any fraudulent lien off of your residence, for example.

Is this something you should address in your engagement letter? The problem with this is that you do not necessarily know that you are dealing with a Sovereign Citizen in advance. While many members of the movement are true believers, there are many that one must believe

are nothing other than opportunists, viewing this strategy as yet another tactic in avoiding debts and holding on to their company. So to provide for this at the outset of an engagement is next to impossible. Also, you are most likely dealing with a troubled business; what is the value of any sort of indemnity from them in any event? The issue will then be whether your employer will handle any expenses incurred in clearing your personal assets of improper liens that were put on solely as a result of your professional activities.

In the matters in which I have been personally involved that included Sovereign Citizens and the recent Giordano's bankruptcy case, judges do not suffer Sovereign Citizen nonsense. While they need to deal with pleadings as filed and the filing of a lien is not done with court approval, once a matter involving Sovereign Citizens is properly brought before a court, chances are better than even that the court will side with you and will attempt to help you out quickly. This of course does not mean that it will be free or that judges have authority to award fees and costs. As a practical matter, if you are "lucky" enough to get involved in litigation with a Sovereign Citizen who participates in the litigation (rather unlikely) you should explore seeking some sort of sanctions for any pleading filed that defends the initially filed fraudulent liens. Otherwise you should find out from your employer whether it will assist you in the event you are personally harmed by working on an engagement that involves a Sovereign Citizen. If the answer from your employer is no, you should strongly consider withdrawing from the engagement as soon as any Sovereign Citizen issues arise, unless you have a high degree of confidence that you will be able to extricate your property from any such fraudulently filed liens with minimum time and expense.

¹ See *United States v. Davenport*, 2011 WL 1155191 (E.D. Wash. March 29, 2011) (denying defendant's motion to dismiss a criminal indictment alleging that the defendant had filed a \$5 billion "maritime" lien against federal government employees); *Leitner v. LaHood*, 2010 WL 2539698 (W.D.N.Y. June 18, 2010) (*sua sponte* motion denying with prejudice a \$48 billion "maritime" lien filed against federal government employees because they were "fantastic, delusional and incredible"); *Chrystal v. Huntington Nat'l Bank*, 2010 WL 1965870 (M.D. Fla. May 17, 2010) (striking a "Sovereign Citizen/Tax Protestor's" \$2 trillion "maritime" lien filed against a creditor bank); *In re Stage Door Development, Inc.*, 2009 B.R. 238500 (Bankr. M.D. Ala. July 31, 2009) (recommending that the district court void a series of \$17.6 billion "maritime" liens and UCC financing statements that the debtor had filed against its creditor bank, the bankruptcy trustee, and the purchase of certain assets of the debtor, which filings were "invalid, illegal and wholly without support or merit.").

² See <http://www.justice.gov/briefing-room.html> for press releases regarding sentences imposed on violators, specifically Sept. 20, 2011 (FL) and June 7, 2011 (CA) for a couple of examples.

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certainty of close. A prospective buyer should be careful in requesting additional closing conditions—and at very least, not propose due diligence or financing outs. If a buyer does not need certain closing conditions proposed by the debtor, a buyer can bolster the certainty of close, and its bid, by eliminating those unnecessary closing conditions.

While it should go without saying, it is equally crucial that a prospective buyer not include or request provisions or terms that are atypical or simply not appropriate in the bankruptcy context. For example, while it may be nice to have a full set of representations and warranties that survive closing, along with post-closing indemnification for any breaches of those representations and warranties, those terms would be atypical in the bankruptcy sale context. Rather than attempting to negotiate representations, warranties and post-closing buyer protections, a prospective buyer should be prepared to rely on its due diligence, along with the liability cleansing effects of a 363 sale transaction.

In the end, a prospective buyer's concerted effort to "tread lightly" will translate into a transaction document, and a deal, that will be viewed by the debtor (and the other constituents) as a deal that can get closed. While it is much more difficult to exercise restraint in the mark-up of a purchase agreement, the failure to do so may very well prevent a prospective buyer from being able to participate (or participate effectively) in a bankruptcy sale process.

Put Your Best Foot Forward to Enhance Bid Value

Certainty of closing is not the only concern for the debtor and the other stakeholders—obviously, the chief objective is to maximize value of the recovery for the estate. While the basic underlying purchase price is of considerable importance, there are other elements of a bid that prospective buyers can and should consider, at all phases of the transaction, to enhance bid value without necessarily increasing the underlying purchase price.

Prospective buyers often include purchase price holdbacks or escrows to secure the payment of certain post-closing debtor obligations, such as purchase price adjustments. In valuing a prospective buyer's bid, the debtor may simply assume that the estate will never receive the holdback or escrow dollars. As such, where possible, bidders who eliminate holdbacks and escrows in a bid can significantly enhance the value of the bid.

If the circumstances warrant, a prospective purchaser might consider eliminating purchase price adjustment mechanisms, even if the debtor has proposed the mechanism. For example, a debtor may have proposed a working capital adjustment in a purchase agreement because it anticipated that prospective buyers would ultimately insist on such a provision. If a prospective buyer can get comfortable with its valuation and the working capital position of the business, the buyer may be able to add value to its bid (by adding certainty to the purchase price and eliminating the possibility of a downward purchase price adjustment) by removing the working capital adjustment.

In addition to matters that can have a direct monetary impact, prospective buyers must not overlook intangibles that can also enhance bid value. The treatment of certain non-monetary items can have significant impact on the ultimate value attributed to a bid. For example, in today's economy in which jobs are considered sacred, a prospective buyer's agreement to continue the employment of debtor's employees following closing can be a significant factor in enhancing the overall appeal (and perhaps even value) of the bid. A prospective buyer can also add value to its bid by simply excluding certain assets that may benefit or bring recovery to the estate, such as certain types of litigation claims. Moreover, in the context of a distressed company, in which every passing day can mean additional cash burn and exposure for the lenders and present additional risk and liability to the debtor (and the other stakeholders), elimination of closing conditions and more

importantly, acceleration of the timing of closing, can add substantial value to a bid in terms of loss and risk mitigation. In addition, vendors will obviously be interested in the outcome of the sale process and may dominate the creditors' committee. To ensure vendor support for the bid and to enhance value, a bidder may include assurances of continued future business or specific payments to critical vendors. These assurances may be of substantial value to the vendors, which may be dependent on the business and often see no or minimal recovery in bankruptcy. Ultimately, each situation will have its own special factors that may create value independent of the underlying purchase price—and a prospective buyer must not overlook these factors, which, in the end of the day, may win the deal.

Restructuring Advisor's Perspective

All too often, it seems that prospective buyers in the bankruptcy process waste time and money on financial analysis and due diligence that have little relevance in the bankruptcy sale context. For example, historical financial and operational results of a company in bankruptcy often may mean very little in terms of the future of the business and ultimately, the prospective buyer's investment thesis—yet the buyer will spend countless hours analyzing the historical data. A prospective buyer in the bankruptcy context needs to adjust its expectations, its diligence process and its risk tolerance, from levels that might otherwise be appropriate in a traditional (non-distressed) acquisition opportunity. Given the constraints of a bankruptcy sale, particularly the time constraints inherent in the process and the often limited resources of the debtor, a prospective buyer must focus on its investment rationale and objectives, and adjust its analysis and due diligence accordingly. Ultimately, this is once again a function of treading lightly and putting your best foot forward.

Take Away

Prospective buyers in a 363 bankruptcy sale process must be mindful of the primary objectives of the debtor and the other stakeholders. And those prospective buyers who can help achieve those objectives—by assuring certainty of close and maximizing bid value—will be effective, and hopefully successful, participants in the transaction process.

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Alpesh Amin is a director at MorrisAnderson. He has over ten years of experience in the areas of corporate finance, restructuring and banking and has served in an advisory capacity both for company management and creditors. His background includes company turnarounds and restructurings, Chapter 11 bankruptcy proceedings, asset sales and liquidations, business plan development and analysis, debt restructurings, cash flow management and forecasting, and due diligence assignments. Prior to joining MorrisAnderson, Alpesh held consulting positions with Huron Consulting Group's Corporate Advisory Services office, where he focused on restructuring and turnaround engagements, and with Bridge Associates, LLC, where he specialized in turnaround services and interim and wind-down management services. Alpesh is a member of the Turnaround Management Association (TMA) and the American Bankruptcy Institute (ABI). He holds a Bachelor's degree in Business Administration, with concentrations in Finance and Management Information Systems, from Miami University. He can be reached at aamin@morrisanderson.com.

NEWS DESK

MA in the News:



Deborah Hicks Midanek

MorrisAnderson Elects Deborah Hicks Midanek to Board of Directors

Midanek is president of Solon Group, a business development and turnaround management company, and co-manages Prevail Companies, an incubator dedicated to cultivating people, ideas, organizations and investment. "Deb is highly respected in the turnaround industry and will be a

strong addition to our leadership team," said Dan Dooley, CEO of MorrisAnderson. "She brings us extensive knowledge, a fresh perspective and a solid network in New York City, which is a target growth market for MorrisAnderson."

TMA Chicago/Midwest Executive Speaker's Forum Featuring Condoleezza Rice

MorrisAnderson hosted a table at the Hilton Chicago on December 1, 2011 to hear remarks by former U.S. Secretary of State, Condoleezza Rice. MorrisAnderson is a proud supporter and sponsor of the TMA Chicago/Midwest Chapter.

MA Team Members in the Press:



Dan Dooley

Dan Dooley, Principal

Published in the November 2011 issue of the *AIRA Journal*.

Article Title: *Impact of Commodity Volatility on Insolvency Work*

Terry Bartz, Managing Director and Aaron Gillum, Director

Published in the October 2011 issue of *The Secured Lender*.

Article Title: *A Successful Formula for a Lab Turnaround: Analytics, Inc.*

Jason M. Paru, Director

Published in the December 2011/January 2012 issue of the *ABI Journal*.

Article Title: *The Tool of the Turnaround: The Importance of Cash-Flow Forecasting*

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Merging Old and New: Hybridization in the Media Industry

By Kenneth R. Yager, Principal, MorrisAnderson



Kenneth R. Yager

While media companies have been merging and expanding for decades, up until 2000 it was not common for a company to attempt to cross over from one media type or delivery method to another. This was partially due to FCC limitations. More importantly, however, most companies simply didn't believe crossovers could succeed. The merged media companies that did form at that time frequently failed to work together, much less act synergistically.

Recently, however, smart executives in the media world have developed a passion for integrating with other media sources, and we are beginning to see more and more hybrids. Even among established industry players, it's hard these days to find a company that hasn't tried to modernize its operations to incorporate digital technology of some ilk.

The Need to Adapt—Carefully

So what are all of these companies looking for? My bet: survival. Forget scalability and defensibility (tenets of good investing); for many established media developers and outlets, incorporating new media is an absolute necessity to dodge potentially life-ending industry changes. As Jim Collins, author of *Good to Great*, puts it in his book *How the Mighty Fall*, failure to respond to change is a classic stage in the evolution to failure for many companies. On the other hand, jerking a company into new ventures simply because it seems possible is a classic stage of decline as well.

Just 15 years ago, we saw a similar technology explosion play out in the retail world as customers traded in-store checkout lines for online checkout screens. Many established businesses succumbed to the changes and went away forever. Meanwhile, emerging business models sought to make their way out of the proof-of-concept stage. Not many of them succeeded. The same thing is happening in social media circles today. Several early technology platforms are launching, yet it is too early to say exactly how (or if) these technologies will make money.

While established media companies can't afford to ignore new innovations, merging old and new technology poses a variety of potential problems. Beyond the big picture concerns of failing to adapt or betting on the wrong technology, there are a number of concrete, practical considerations these companies must address.

Small Steps to Big Changes

One of the most important things for media companies moving into new terrain to realize is that change can't—and shouldn't—occur overnight. A structural modification to a service business, such as the integration of a new digital arm, is a change in process. Unlike in manufacturing businesses, this change in process does not always involve concrete, physical alterations.

When MorrisAnderson advises established media companies that are merging with newer start-ups, we generally recommend that the company's managers sketch out three organizational charts: one that shows the two organizations as they are, one that pulls them together in a joint venture style and one that shows what the combined organization needs to look like in around 24 months, when the two companies can be fully integrated.

In that middle step, old and new services may be delivered simultaneously in parallel. Part of the reason for this step is to ensure the smooth rollout

of newly developed software. But it is also a question of understanding the human component of any business. Everyone involved—customers, employees and vendors—needs to be granted enough time to give up comfortable old habits and move to new, unfamiliar ones.

Mapping out the move from the middle step to the last one requires an acknowledgment that not all parts of the old business will be able to move over. Changes in services will inevitably render some relationships irrelevant. It is important, therefore, to include a review of strategic accounts in the process of envisioning the new organization. The company needs to understand that there will be sacrifices and to account for those sacrifices in making realistic projections about how the future organization will operate.

Problems of Scale

For media companies seeking to make it to the other side of the digital divide, a key consideration is the difference in scale that often exists between older business sectors and newer ones. Since digital media tends to be less expensive than traditional media, generating the same amount of revenue can require significantly more volume.

While differences in scale can often be handled effectively by software programs, it is much harder for humans to span the different environments. The disciplines are different, and so the expectations and incentives are different. Unless the company pays careful attention to service details, at some point one service will lose out or both will be watered down. Changes may need to be made over a significant stretch of time or merged companies may never be as synergistic as hoped.

Impact on Sales Strategy

The issue of scale has important implications for sales strategies. Because individual sales of traditional media bring in more money and commissions than do individual new media sales, salespeople working within a commission-based compensation structure are likely to focus their energy on older service types, ignoring the new media opportunities that the company needs to develop in order to secure its future. To avoid this problem, companies need to weight commissions to encourage investment in new services—even while these may bring in less revenue relative to the amount of effort required to close the sales.

Alternatively, the sales force could be separated into differentiated teams, each dedicated to either older or newer services. Dividing the sales force provides the additional benefit of allowing salespeople to specialize. The skills required to successfully sell a mature, well-known product or service are not the same as those needed to sell a newer product. Ensuring that salespeople with the correct skills are working with each type of product—and together when possible—is, therefore, critical.

Weathering the Winds of Change

In today's world, adaptation is essential. But, as we're often told in life, nothing worth doing is easy. If there are two things established media companies need to know about expanding into the digital realm, they are, first, that it's worth doing and, second, that it won't be easy.

Kenneth R. Yager, II, is a Principal at MorrisAnderson. He has nearly two decades of executive leadership experience in stakeholder communication. Ken regularly takes on P&L and risk management responsibility for cash-constrained companies in growth, leveraged-buyout and turnaround situations. He has also successfully worked on implementing dozens of initiatives involving operations and project management, team building, B2B marketing, and sales and joint-venture management. Ken has particular expertise helping companies in media, printing and construction materials supply chains. He can be reached at kyager@morrisanderson.com.

An Award-Winning Turnaround: Analytics, Inc.

By Terry Bartz, Managing Director and Aaron Gillum, Director, MorrisAnderson

At the 2011 Annual Turnaround Management Association Convention in San Diego this past October, MorrisAnderson was honored with a "Turnaround of the Year" Award in the "Small Company" category for our work with Analytics, Inc., a group of four Midwestern analytical chemistry laboratory businesses.



Situation Analysis

In early 2010, an Analytics, Inc. group of four independent laboratories—each with their own brand identity, service offerings and staff, but owned by one individual—was under pressure from their secured lender, Bank of America, which had extended a \$26 million line of credit to the company.

In April 2009, the lender determined an Article 9 foreclosure combined with a Federal Receivership would be the best solution. MorrisAnderson was named the court-appointed receiver and the most underperforming of the four laboratories—Azopharma—was liquidated. Around this time, the lender received an offer to purchase all of the assets for the remaining three laboratories for \$5 million from a distressed private equity buyer—an offer the lender declined.

Just prior to the time that MorrisAnderson assumed the receiver role, the three companies—Chemir, Cyanta and CAS-MI—had combined 2009 sales of \$13.3 million and approximately 70 full-time staff, most with advanced degrees.

Up for the Challenge

At the outset of the engagement, MorrisAnderson noted the following issues that required immediate attention and operational expertise:

- » High instances of fear, uncertainty and doubt (referred to as the "FUD factor"), leading to low staff morale
- » Flat or declining sales at two of the remaining business units
- » Lack of a comprehensive strategy within each separate business unit and for the three businesses, collectively
- » An inexperienced management team
- » Trade creditors reluctant or unwilling to extend credit
- » Well-known customers rattled by the companies' receivership status

Award-Winning Solution

MorrisAnderson approached the situation in three defined phases:

- » **Phase One: Triage.** An intensive process undertaken to provide leadership, stabilize the immediate situation and assess the most critical challenges and opportunities.
- » **Phase Two: Restructuring.** Development and implementation of a new business plan to consolidate the three surviving business units into one enterprise, including the implementation of a rigorous cash management and collections process, improving operational alignment and focusing a sales approach to emphasize repeat business from existing customers.
- » **Phase Three: Investment Banking.** Market and sell the restructured company as a valuable going concern to a qualified buyer.

The Proof is in the Results

During fall 2010, MorrisAnderson selected a stalking horse bidder, Evans Analytical Group, Inc., and negotiated an agreement to sell all assets of Analytics, Inc. for \$23 million, nearly five times the \$5 million offer the lender received at the start of the receivership.

The proceeds of the sale, when added to the proceeds of the receipts of Analytics operations and the Azopharma liquidation, repaid all of the secured lender's principal debt. Just as importantly, all jobs were saved across the three original companies and 15 jobs were added. During MorrisAnderson's tenure with the company, sales grew 23 percent and EBITDA improved 40 percent from \$3 million in 2009 to \$4.2 million in 2010.

MorrisAnderson's formula for Analytics Inc. was one part tailored turnaround strategy, one part buy-in from senior leadership and a 100 percent success.



Terry Bartz



Aaron Gillum

Terry J. Bartz is a managing director at MorrisAnderson. Terry has extensive experience reengineering organizations for optimal performance and value. He assists companies with improving their business strategies, investor relations, securing private investments, business expansion, marketing communications and turnaround facilitation. Terry holds a juris doctor, cum laude, from Hamline University School of Law and a bachelor's degree in business from Gustavus Adolphus College. He can be reached at tbartz@morrisanderson.com.

Aaron G. Gillum is a director at MorrisAnderson. Aaron has more than seven years of experience in strategic and restructuring consulting to Fortune 500 and middle-market companies. He assists companies with turnarounds, organizational change, financial management, private equity investment and sales and marketing strategy. Aaron earned a master's degree in business administration from the University of Chicago's Booth School of Business and a bachelor's degree in economics and public policy from the University of Michigan, graduating with honors. He can be reached at agillum@morrisanderson.com.



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MorrisAnderson is proud to partner with Frontline Real Estate Partners, a commercial real estate advisory firm providing consulting and advisory services in bankruptcy and distressed situations, as well as selectively acquiring distressed real estate assets. MorrisAnderson clients and referral sources now have unique access to in-house real estate services, including management of receivership and bankruptcy transactions.

Almost every distressed business has real estate assets. Frontline Real Estate Partners provides the expertise to maximize the value of those assets to achieve the best possible outcome for MorrisAnderson clients.



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