turnarounds & workouts

News for People Tracking Distressed Businesses

FEBRUARY 2011 VOLUME 25, NUMBER 2

Inside

Greektown Casino Exits Bankruptcy

Value Increases by $300-Plus Million After Restructuring

by Julie Schaeffer

Few cities were affected by the financial crisis as much as Detroit. Shattered by the woes of the automotive industry, by August 2009 it had a $300 million deficit and a $60 to $80 million dollar cash shortfall, leading one former auditor general to predict the city would file for bankruptcy by the end of 2009. In the middle of the madness, however, one business blossomed thanks to creative restructuring efforts.

"The Greektown Casino bankruptcy was unique because we were dealing with some of the most difficult economic conditions this country has ever faced, and two of the powerful constituents in the case – the Michigan Gaming Control Board and the city of Detroit – were not interested in maximizing creditors' value," says Charles Moore, Senior Managing

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Environmental Liability

Foreclosing on Distressed Property Creates Risks

by Julie Schaeffer

With foreclosure rates at record highs across the country, lenders foreclosing on real property must be vigilant about identifying and avoiding potential environmental liabilities – and turnaround specialists should be aware of the issues.

"You have to be careful as a turnaround guy to avoid becoming an operator, because that means you get tagged with the liability for environmental cleanup," says Thomas D. Hays III, principal of NHB Advisors and NHB Capital Partners.

As one example, Hays points to a Florida aluminum extruder that failed when demand for the gutters it manufactured declined during housing market correction. Significant cleanup was necessary with a total cost just under $500,000. "The cost of the cleanup

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Shifting Winds?

Restructuring Firms Find Work in Good Times and Bad

by Dave Buzzell

2010 was the year the economic winds began to shift. By late in the year, many indicators, from manufacturer shipments to retail sales to consumer spending had moved out of the doldrums. As discussed in the previous issue of *T&W*, 2010 was also a year when turnaround assignments were a little less plentiful, and the nature of many of those assignments changed. Looking at 2011, restructuring professionals are doubtful that smooth sailing lies ahead, for either the U.S. economy or their profession.

"2011 will be more of the same," predicts Dan Wikel, Managing Director of Huron's Restructuring Group in Chicago. He expects Huron to continue to see more assessment-type work to complement the restructuring work it had picked up in the latter half of

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Director at Conway MacKenzie, which provided turnaround consulting services to the casino. "Despite that, we wound up with a casino whose value grew from a range of $250 million to $350 million at the time the hotel was completed to approximately $660 million at the time of exit."

In 2007, Greektown Casino, owned by the Sault Ste. Marie Tribe of Chippewa Indians, was one of three casinos in the city of Detroit.

The casinos were all operating in temporary spaces until they could build permanent complexes with 400-plus-room hotels and large parking garages per development agreements with Detroit.

The casinos had significant incentive to complete their complexes: State gaming laws specified that, once a casino did so, it would receive a 5 percent gaming tax rollback, greatly improving annual cash flow, says Moore.

By early 2008, the city's other two casinos had opened their permanent complexes, but Greektown Casino had only completed a parking garage – and its construction deadline was looming in February 2009. Moving forward with construction, however, presented a problem: As of December 31, 2007, Greektown Casino was in default of its senior secured credit agreement, which left it with virtually no cash to cover construction costs – and the situation would only get worse, as Greektown Casino had a number of debt service payments coming due in June of 2008.

Although the casino's senior secured creditors agreed to waive its covenant violations, Greektown Casinos faced another hurdle: a financing order with the Michigan Gaming Control Board that had covenants similar to those in its senior secured credit agreement. "The Michigan Gaming Control Board not only refused to waive its covenants; it also threatened to force a sale of the casino under the terms of the covenant," says Moore. "And it had significant power to do so because it could choose to recall Greektown Casino's gaming license, without which the casino would have been virtually worthless."

In May 2008, Greektown Casino agreed to sell a 40 percent equity stake for $100 million. Because of all of licensing issues, however, closing that deal would take at least six months, if it ever happened.

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consultants and cleanup itself was a couple hundred thousand dollars, but the legal costs and other costs involved in figuring out how to remediate the situation were equal to that. It also occupied a lot of time and delayed things because no one wants to move until the environmental issues were resolved. In the end, we also ended up with the standard deed restrictions that prevented the property from being used for residential purposes."

Environmental laws under which liability may be imposed include:

- *CERCLA*. Environmental liability is most frequently imposed under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), which makes owners and operators of property contaminated by hazardous substances responsible for the costs associated with cleanup.

Lenders who take title to contaminated property have good reason to be concerned about CERCLA because they could be liable for remediation.

The good news is foreclosing lenders may meet the statutory lender liability exemption under CERCLA. In general, a lender that takes ownership of distressed real estate, but doesn't participate in the management of the property and divests the property after foreclosure, is considered exempt.

"Generally, the kind of management that can take the lender out of the exemption includes decisionmaking as to environmental compliance matters and participation in the day-to-day operations," says Milissa Murray, of counsel with Bingham McCutchen LLP.

Keep in mind, however, that divesting the property quickly under CERCLA refers to the "earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements."

"Generally, after foreclosure the lender can operate the business at the facility and undertake measures necessary to abate or prevent ongoing contamination, all without incurring liability, so long as it can establish that it acted to divest itself of the facility as quickly as practicable," says Murray.

Lenders may also seek exemption under what is referred to as the innocent landowner defense. This involves making

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2010. As for the economic outlook, Wikel anticipates that larger companies will continue to rebuild their balance sheets, while smaller companies will continue to trudge along. "However, if interest rates go up, it will tighten the system a little bit, and especially in the middle markets because they have been paying some healthy interest rates anyway."

Even among the middle market companies that comprise his clientele, Tom Hays of NHB Advisors doesn't see bankruptcies returning to the level they did in 2008 and 2009. One reason for this, says Hays, is the high cost of bankruptcy, which is either forcing out-of-court workouts or causing lenders to adopt a wait-and-see attitude, hoping the economy takes a turn for the better. Hays is pessimistic about that prospect, though. "Our leaders have false expectations when they think the economy is going to bump back up. It costs too much to do business in the U.S., and that's caught up with us. I think the economy will probably languish for some time until we foster a more competitive attitude toward world markets."

Regardless of the economy, Van Conway, Chief Executive Officer of Conway MacKenzie, is one who always believes his glass is more than half full. "In bad times, the economy gives you opportunities; in good times, the credit markets give you opportunities." Conway points to recent history: "A few years ago, the credit markets were way too loose, and deals got done that shouldn't have been done and then they blew up in 6-12 months. In great times you can a loan for anything." So, while an economic downturn may hasten Chapter 11 filings, Conway says, "I like good times better. Bankers are doing things that are very opportunistic for us."

Bill Henrich, Vice Chairman of Getzler Henrich & Associates, agrees that, apart from where the economy is headed, there will always be work in his profession. "2011 has the prospect of being a soft year. Banks are still pursuing a strategy of extend and pretend. If companies are relatively stable, even if they're not performing well, banks are not going to do anything about it." Nonetheless, there are plenty opportunities, says Henrich. "We have been in business for 42 years and you go through these ebbs and flows. "In good times or bad, companies are run by people, and even good managements will make mistakes. The fact of the matter is, there are always companies that need help." ¤

Research Report

Who's Who in the Great Atlantic & Pacific Tea Company, Inc.

by Francoise C. Arsenault

The Great Atlantic & Pacific Tea Company, Inc. (A&P), which was established in 1859 as a single shop in Manhattan, had become the first national supermarket chain and the second largest corporation in the United States by the 1950s, second only to General Motors. At its height, A&P operated about 16,000 stores across the country. Headquartered in Montvale, New Jersey, A&P today operates 395 supermarkets, combination food and drug stores, beer, wine, and liquor stores, and limited assortment food stores in the Northeast and Mid-Atlantic regions. "Banner" stores include A&P (101 stores), Food Basics (12 stores), Pathmark (128 stores), Super Fresh (57 stores), and The Food Emporium (16 stores) and Waldbaum (59 stores) chains. The company also operates 22 beer, wine, and liquor stores under its Best Cellars and A&P Liquor banners. A&P has approximately 41,000 employees, including about 28,000 part-time workers. Before its delisting, A&P's common stock was publicly traded on the New York Stock Exchange under the ticker "GAP." The European food and general merchandise retailer Tengelmann Warenhandelsgesellschaft KG controls approximately 42 percent of A&P's common shares . In the 12 months ended September 11, 2010, A&P reported approximately $8.4 billion in total revenues.

In the company's petition for Chapter 11, A&P officials said that problems in the U.S. economy affected A&P revenues and its operating cash flow. Falling consumer spending rates, which according to company officials were exacerbated by declines in producer and retail food prices, resulted in retail price deflation across the grocery industry as a whole. In turn, this deflationary cycle has been compounded over the past few years by the intense competitive pressure found in the supermarket industry. Most recently, A&P has faced increasing competitive challenges from mass merchandisers, warehouse clubs, drug stores, dollar stores, and convenience stores, including Costco, Dollar Tree, Sam's Club, Wal-Mart, and Target.

The company's $8.4 billion in revenues over the 12 months ended September 11, 2010, reflected an 8.9 percent decline over the period ended September 10, 2009, with A&P generating only $104 million in EBITDA over this time. In addition, legacy obligations included a significant number of "dark store" leases, which the company has been unable to fully assign, sublease, or terminate (A&P's estimated dark store net rental expense will be approximately $77 million in 2011 alone).

Despite a number of attempts to increase liquidity and reduce its costs, the company determined that the combination of falling revenues, a leveraged balance sheet, increased competition, legacy costs, and unfavorable supply relationships could not be repaired outside of the Chapter 11 process. On December 12, 2010, A&P and 53 of its affiliates filed for Chapter 11 reorganization in the United States Bankruptcy Court for the Southern District of New York. The company has obtained final approval from the court to access up to $800 million in DIP financing from a group of lenders led by JPMorgan Chase & Co. In its bankruptcy petition, A&P listed approximately $2.5 billion in assets and about $3.2 billion in liabilities.

In December 2007, A&P acquired its longtime rival in the Northeast, Pathmark Stores, Inc., for about $1.4 billion. The acquisition included $475 million in debt financing, which some analysts have cited for A&P's problems. There is now speculation that A&P's Dutch competitor Royal Ahold NV may bid for the company's Pathmark stores to add to its grocery operations in the United States. The United States accounts for approximately 60 percent of Royal Ahold's revenues.

The Debtor

Samuel Martin is the President and Chief Executive Officer of the Great Atlantic & Pacific Tea Company, Inc. **Frederic F. ("Jake") Brace** is the Chief Administrative Officer and Chief Restructuring Officer. Brenda M. Galgano is a Senior Vice President and the Chief Financial Officer. **Christopher McGarry** is a Senior Vice President, General Counsel, and Secretary.

Kirkland & Ellis, LLP is serving as the bankruptcy counsel to A&P. The team includes **James H.M. Sprayregan**, a partner in the New York and Chicago offices, **Paul M. Basta**, **Ray C. Schrock**, and **Leonard Klingbaum**, partners in the New York office, **James J. Mazza, Jr.** and **Michael B. Slade**, partners in the Chicago office, and **Robert H. Scheibe**, of counsel.

Lazard Freres & Co. LLC is providing investment banking services to A&P. **David S. Kurtz**, a managing director and co-head of the Lazard Freres Restructuring Group, heads up the team.

Huron Consulting Services LLC is providing A&P with financial advisory services. The Huron team includes **James M. Lukenda**, **John C. DiDonato**, and **Michael C. Sullivan,** managing directors, **Benjamin H. Mann**, **Brian S. Buebel**, **Lee Sweigart**, **Raymond Anderson**, and **Stuart Noyes**, directors, and **Matthew Anderson** and **Nick Zaccagnini**, managers with the firm.

The Official Committee of Unsecured Creditors

The Committee includes **Wilmington Trust Company**, serving as the Indenture Trustee; **Pension Benefit Guaranty Corporation**; **United Food & Commercial Workers International Union, CLC**; **Central States, Southeast and Southwest Areas Pension Fund**; **1199SEIU Healthcare Employees Pension Fund**; **Kimco Realty Corporation**; **McKesson Pharmaceutical**; **C&S Wholesale Grocers, Inc.**; and **Calip Dairies, Inc.**

Milbank Tweed Hadley & McCloy LLP is counsel to the Committee. **Dennis F. Dunne**, **Matthew S. Barr**, and **Abhilash M. Raval**, all partners in the firm's New York office, are working on the case.

Lowenstein Sandler PC is conflicts counsel to the Committee. **Kenneth A. Rosen**, **Sharon L. Levine**, and **Paul Kizel**, partners, are working on the case.

FTI Consulting Inc. is providing financial advisory services to the Committee. **Samuel E. Star**, a senior managing director in FTI's Corporate Finance practice, leads the engagement.

The Trustee

The U.S. Trustee is **Tracy Hope Davis**.

The Judge

The judge is the **Honorable Robert D. Drain**. ¤

Greektown, *from page 2*

"Greektown's situation was very unique in that there was an incredible amount of regulatory overlay with the city of Detroit and the Michigan Gaming Control Board relating to licensing issues stemming from having hedge funds taking large equity interests in a regulated gaming company," says Allan Brilliant, a partner and co-head of the restructuring group at Dechert LLP, which represented the bondholders.

As a result, Conway MacKenzie, which Greektown Casino brought onboard in April 2008, asked senior creditors to continue until the equity transaction could close. That request was denied. "The senior creditors didn't want to put any additional money into the casino when the Michigan Gaming Control Board was threatening to pull the casino license, because the value of a casino without a license is virtually nil," says Moore.

Conway MacKenzie thus decided it had to develop a strategy that focused on value maximization. "We felt very strongly that, in order to maximize value, we had to complete the construction project," says Moore. "First, the casino would be worth much more in a sale or restructuring when completed. Second, completion would allow the casino to obtain the gaming tax rollback. And third, completion would increase revenue and thus market share, which was down to 22.5% in 2008."

In order to succeed, however, Greektown Casino had to file for bankruptcy quickly: "We determined that the only way we could obtain the money necessary to complete construction was DIP financing," says Moore. "And in order to get financing, we had to remove the threat of the Michigan Gaming Control Board yanking Greektown Casino's license. Filing for bankruptcy quickly achieved both goals, as the automatic stay would prevent board from yanking the casino's license and encourage lenders to provide DIP financing."

On May 29, 2008, Greektown Casino filed for Chapter 11, and by February 12, 2009, three days short of the deadline, construction was completed. "It was an incredibly difficult process because many workers had walked off the site due to non-payment, and by the time we got them back there was no cushion in the schedule," says Moore. "The fact that we came in on time and under budget was really quite a miracle."

As soon as the construction was completed, Conway MacKenzie also brought in The Fine Point Group to manage Greektown Casino's operations and increase its profitability. "They did a phenomenal job,"

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"appropriate inquiries" into the condition of the property before foreclosing.

Hays says lenders would be wise to proceed cautiously and conduct extensive and documented due diligence before initiating a foreclosure proceeding.

Due diligence usually requires the retention of an environmental consultant to conduct a paper investigation into the history of the property, typically referred to as a Phase I investigation. "A Phase I is typically a paper investigation that includes a careful review of public records and databases to determine the geographical profile of the property; whether there have been any environmental incidents, landfills, or municipal or private dumps at or near the property; and the nature, duration, and likely waste disposal practices of any commercial or industrial activities at or near the property," says Murray. "A Phase I should also include a walk through so that any on-site indicators, such as suspect odors are identified."

"If the review of the property shows no historical use that would have led to contamination and no reason to believe nearby properties were contaminated, there is no reason to do a more detailed study," says Hays. "But if the Phase I investigation discloses any incidents of concern, a Phase II investigation would ensue. This involves monitoring ground water, testing soil, and doing other things deemed appropriate to understand the extent of the risk."

• *RCRA*. Liability may also be imposed under the Resource Conservation and Recovery Act (RCRA). It applies to owners of facilities that treat, store, or dispose of hazardous waste. RCRA's lender liability exemption is significantly more limited than CERCLA's. First, lenders are only eligible for exemption to protect against liability arising from the ownership or operation of underground storage tanks. Second, lenders may only claim exemption if they do not participate in the management of such tanks, and are not engaged in petroleum production, refining, or marketing. RCRA's exemption also does not shield lenders from citizen suits.

• *CWA and CCA*. The Clean Water Act (CWA) can apply to owners of foreclosed unfinished construction sites

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Calendar

American Law Institute/ American Bar Association
Commercial Real Estate Defaults, Workouts, and Reorganizations
March 10-12, 2011
The Westin Colonnade Coral Gables
Coral Gables, FL
Contact: www.ali-aba.org

International Association of Restructuring, Insolvency & Bankruptcy Professionals
INSOL Singapore
March 13-15, 2011
Shangri-La Hotel Singapore
Singapore
Contact: www.insol.org

The National Association of Bankruptcy Trustees
2011 Spring Seminar
March 25-27, 2011
Loews Santa Monica
Santa Monica, CA
Contact: www.nabt.com

American Bankruptcy Institute
29th Annual Spring Meeting
March 31 - April 3, 2011
Gaylord National Resort and Convention Center
National Harbor, MD
Contact: www.abiworld.org

Turnaround Management Association
TMA 2011 Spring Conference
April 27–29, 2011
JW Marriott Chicago
Chicago, IL
Contact: www.turnaround.org

Association of Insolvency & Restructuring Advisors
27th Annual Bankruptcy & Restructuring Conference
June 8-11, 2011
InterContinental Boston
Boston, MA
Contact: www.aira.org

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Special Report

Nation's Largest Industrial Auctioneers

Firm	Contact	Representative Clients/Industries
Asset Sales Auctioneers Charlotte, NC Tel. (888) 800-4442 www.asset-sales.com	Mike Stewart Lance Mannion	P&M Industries, EJM Aerospace, J&A manufacturing, Arrowhead Industries. Specialties are metal working and fabrication, plastics, wood working, and printing industries.
Biditup Auctions and Appraisals Studio City, CA Tel. (818) 508-7034 www.biditup.com	Steven Mattes, President Vince Presto, General Manager	Federal Mogul, Southern Steel Company, Gemini Mechanical Services, Wire EDM Masters, Safety Storage, Placer Fire Equipment, NBP Corporation, Revstone Plastics, W.K. Industries, Maysteel, HYCO Metals and C.A.G. Industries, METALOOX, Carlisle Tire & Wheel Company, MiTek Industries, Wells Bloomfield, Cleanpak International, Metso Minerals Industries.
GoIndustry DoveBid Owings Mills (Baltimore), MD Tel. (410) 654-7500 / (800) 722-3334 www.go-dove.com	Jack Reinelt, Chief Executive Officer David Fox, Managing Director, Principal Business	Pfizer, Infinera, Motorola, Eaton, HSBC, Honeywell, GE Credit, Alcoa, PNC, Parker Hannifin, Dana, Barclays, Procter & Gamble, Pepsi, Seagate, Hewlett-Packard, Robert Bosch, Bristol Myers Squibb, Intel.
Hilco Industrial Farmington Hills, MI Tel. (248) 254-9999 www.hilcoind.com	Robert Levy, Managing Partner Stephan Wolf, Managing Partner Mark A. Reynolds, Senior Vice President	J.W. Aluminum, Aerothrust Corporation, General Motors, Chrysler, Global Advanced Manufacturing, Rigid Building Systems, NUMMI, Sony, Caye Steel & Wire, Haworth, Beaconstrem Limited, ANI Pharmaceuticals, Fujisu, Key Plastics, Adams ChildrenswearGE Capital Mexico.
Investment Recovery Services Fort Worth, TX Tel. (817) 222-9848 www.irsauction.com	Gregg Trenor, President John Henry, VP Acquisitions Britton New, Real Estate Executive Adviser	IBM, United Rentals, FMC, Hertz Equipment Rental, Sprint, T-Mobile, Terex, Zurn, Nation's Rent, General Dynamics, Sunbelt Rentals, Thomas Equipment, Rental Service Corp.
James G. Murphy Co. Kenmore (Seattle), WA Tel. (425) 486-1246 www.murphyauction.com	Tim Murphy, President Todd Myers, Sales	Hertz, Stimson Lumber, Weyerhaeuser, PH&H Fleet Service, US Marshals Service, Puget Sound Energy, U.S. bankruptcy courts, financial institutions, cities and counties.
Orbitbid Grand Rapids, MI (616) 538-0367 www.orbitbid.com	Jim Smith, President Sid Miedema, CEO Scott Miedema, COO	H&G Steel Fabrication, Cosby Coatings Corp., Churchill Communications, Pinecrest Engineering, Wolverine Worldwide, Tru-Tech Roll Form Manufacturing, Tool Ventrues International, Weld-Tec Manufacturing, Mavri, Inc., P&K Steel Service, Stanco Industries.
Plant & Machinery, Inc. Houston, TX Tel. (800) 282-8466 www.pmi-auction.com	Bob Braman, President Ron Moore, Vice President	Caterpillar, G.E. Aircraft, Curtiss-Wright Corp., TECT, U.S.N.R., CBI, Trinity Industries, Chart Industries, Fadal, Ampex, Flextronics, Exxon, Shell, Texaco, Electro-Motive Div. of GM, Bethlehem Steel, USX Corp., Armco, Figgie International, Lufkin Industries, ARA Automotive, Cooper Industries, Combustion Engineering, Superior Industries, Sandvik, National Oilwell, plus many financial institutions and trustees.
PPL Group, LLC Northbrook, IL Tel. (224) 927-5300 www.pplgroupllc.com	David Muslin, CEO/President Joel Bersh, Executive Vice President	J.T. Ryerson & Son; Delphi, Raytheon; Federal-Mogul, G.E. Aircraft, Rolls Royce,Timken, Owens-Illinois, Oasis Corp, Water Pik, Abbott Laboratories, Vice Grip, a division of Newell-Rubbermaid. Specialties are metalworking, plastics, wood working, printing, hospitals, transportation, construction and aircraft.
Ritchie Bros. Auctioneers Vancouver, BC, Canada Tel. (800) 211-3983 www.rbauction.com	Peter Blake, Chief Executive Officer	Construction, transportation, material handling, mining, forestry, utilities, agriculture, petroleum, and marine industries.
The Branford Group Branford, CT Tel. (203) 488-7020 www.TheBranfordGroup.com	Bill Gardner, President James Gardner, Senior Vice President	Moll Industries, Toyota, Jabil Circuits, Celestica, Chrysler, TTM Technologies, Metaldyne, Cannondale, Neurogen, Sumitomo, Merix, Via Systems, Mercury Graphics, Actavis, MFlex, GDX Automotive, Photocircuits, Rubbermaid, Home Products, Panasonic, Jackson Plastics, Naturopathic Labs, Collins and Aikman, Continental, Toshiba.
Thomas Industries, Inc. Guilford, CT Tel. (203) 458-0709 www.thomasauction.com	Tom Gagliardi, Chief Executive Officer Tom Blakely, President, West Coast	International auctions of durable goods manufacturing equipment, real estate, inventories for: GE Global, General Dynamics, Nanya, IBM, RSB, World Color, RR Donnelley, Blue Cross, AIG, Intel, Qimonda, Bank of America, Wachovia, Citizens, Wells Fargo, Micron, MeadWestvaco, Muller Martini, Pinnacle Foods, NXP. International portion: 58 percent versus 43 percent in 2010.

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Worth Reading

The Turnaround Manager's Handbook

Author: Richard S. Sloma
Publisher: Beard Books
Softcover: 226 pages
List Price: $34.95

In the introduction, the author suggests that an appropriate subtitle would be "How to Become a Successful Company Doctor." Using everyday medical analogies throughout, Sloma offers an incisive book for "corporate general practitioners" charged with the fiscal health of their companies. As with many human diseases, early detection of turnaround situations is critical. The author differentiates turnaround situations by length of time to disaster: "Cash Crunch," Cash Shortfall," "Quantity of Profit," and "Quality of Profit."

The book centers on 13 steps to a successful turnaround. The steps are presented in a flowchart, showing the interrelationship of each. Extensive data collection and analysis are required, including the quantification of 28 symptoms, the use of 48 diagnostic and analytical tools, and up to 31 remedial actions.

The first step is to determine which of the 28 symptoms are plaguing the company. The symptoms generally pertain to manufacturing firms, but can be applied to service or retail companies as well. Most of the symptoms should be familiar to the reader, but the author lays them out systematically and relates them to the analytical tools and remedial actions found in subsequent chapters. The first seven involve the inability to make various payments, from debt service to purchase commitments. Others include excessive debt/equity ratio; eroding gross margin; increasing unit overhead expense; decreasing product line profitability; decreasing until sales; and decreasing customer profitability.

Step 2 employs 48 diagnostic and analytical tools to draw conclusions from the symptom data and to judge the effectiveness of any remedy. Says the author, "…if the only tool you have is a hammer, you will view every problem only as a nail!" Sloma then proceeds to lay out all 48 tools in his medical bag, which he sorts into two kinds: macro-tools and micro-tools. Macro-tools require data from several symptoms and are used to assess and evaluate more than a single symptom, whereas micro-tools are more general purpose in function. The 12 macro-tools run from "The Art of Approximation," to "Forward-Aged Margin Dollar Content in Order Backlog." The 36 micro-tools include "Product Line Gross Margin Percent Profitability," "Finance/Administration People-Related Expenses as Percent of Sales," and "Cumulative Gross $ by Region."

Turnaround managers are next directed to 31 possible remedial actions, categorized by the four turnaround situations mentioned above. The first six actions are to be considered at the Cash Crunch stage, and range from a fire sale of inventory to factoring accounts receivable. The next six deal with reducing people-related expenses, followed by 13 actions aimed at reducing product- and plant-related expenses. The subsequent five actions include eliminating unprofitable products, customers, channels, regions, and reps. Finally, managers are advised on increasing sales and improving gross margins by reducing costs in various ways.

The remaining steps are devising the actual turnaround plan, ensuring management and employee ownership of the plan, and implementing and monitoring the plan. The advice is comprehensive, sensible, and easy to grasp, without resorting to cliché or motivational babble. Having extensive prior experience as chairman, CEO, and COO of several companies, Sloma has operated on patients before and his therapies have restored them to good health. ¤

Greektown, *from page 4*

says Moore. "In 2008, Greektown Casino had approximately $50 million in earnings before interest, taxes, depreciation, and amortization and restructuring costs (EBITDAR). After the completion of construction in 2009, EBITDAR was approximately $73 million before the impact of the tax rollback. Moreover, market share had grown from 22.5 to 27 percent."

The latter, says Moore, is particularly impressive. "To grow almost 500 basis points in market share in one year is almost unheard of."

In early 2009, Greektown Casino started the sale process, which was required under the terms of its DIP financing. Initial bids came in at $250 million to $350 million, which Conway MacKenzie considered too low.

As a result, Greektown Casino decided, in conjunction with the secured lenders, to file a plan of reorganization that would give equity of Greektown Casino to the secured lenders based on an enterprise value of the casino that was less than the amount of the secured debt.

However, as time passed, other plans of reorganization were filed, delaying confirmation and giving the capital markets and the casino's revenues time to improved dramatically.

"It was the first of several restructurings that occurred in 2009 and 2010 where the valuation expectations changed dramatically during the course of the bankruptcy," says Brilliant.

The ultimate winner was a plan of reorganization filed by bondholders in November 2009. "Under the terms of the plan, secured debt would be paid in full in cash, and the primary bondholders would backstop a rights offering and get a significant portion of equity," says Moore of the plan, which was confirmed in 2010.

When regulatory approvals were completed in June 2010, Greektown Casino exited bankruptcy with an implied value of $660 million – and a significant improvement in EBITDAR. "EBITDAR was $50 million in 2008, and grew to $73 million in 2009, but litigation with the city of Detroit resulted in a gaming tax rollback that generated $18 million in additional EBITDAR per year for a total of $90 million," says Moore.

"You don't realize when doing something that you're at the front of a trend, but when we filed our competing plan, everyone laughed at us, saying there was no value there and we'd never be able to finance it," says Brilliant. "But six months later the market agreed with us, and then Six Flags and Visteon took similar paths of having creditors at the bottom of the capital structure that many thought were out of the money, but which became recognized as the fulcrum security." ¤

Special Report

Outstanding Bankruptcy Judges – 2011

Judge	District	Comments
Hon. Redfiled T. Baum	District of Arizona Phoenix, Arizona	Creative judge who expeditiously handled Phoenix Coyotes Chapter 11 case, dealing efficiently with matters of first impression under the bankruptcy code. Organized and digested volumes of extensive legal briefing on all areas of law (including anti-trust) and kept control of the proceedings so the time table proceeded on track.
Hon. Kevin J. Carey	District of Delaware Wilmington, Delaware	Presided over many of the largest bankruptcy cases in the country, including Xerium Technologies, Affiliated Media, OTC Holdings Corporation, Urban Brands, and Broadway 401. Cases involved a number of complex priority disputes and novel legal issues. Grasp of the issues and handling of the process were first rate.
Hon. Robert D. Drain	Southern District of New York New York, NY	Polite to practitioners, but exacting in what is expected of them. Understands case management from a legal and business perspective. Listens to lawyers and ensures fairness in his courtroom, but cuts to the heart of the matter and will make tough decisions. Now presiding over Great Atlantic & Pacific Tea Company Chapter 11 case.
Hon. Robert E. Gerber	Southern District of New York New York, NY	Has handled some the biggest, most complex, and most successful reorganizations in the past several years, including GM, Adelphia, Lyondell, BearingPoint, and Chemtura. Writes long and thoughtful opinions, often on issues of first impression. Work ethic and capacity to deal with complexity in a speedy fashion are unequaled.
Hon. Arthur J. Gonzalez	Southern District of New York New York, NY	Chief Bankruptcy Judge of Southern District for good reason. A smart and fair jurist who has handled and continues to handle mega cases, such as IGSC Group and Penton Business Media Holdings in 2010, as well as reasonably sized Chapter 11s. Patient, addresses matters promptly, and decides important issues swiftly and even handedly.
Hon. Kevin Gross	District of Delaware Wilmington, Delaware	Tireless in dedication to the proper administration of the bankruptcy estates. Devotes at least as much time ensuring that creditors and general public are not only protected, but that the public perception of the bankruptcy process is one of equity and fairness. 2010 cases included Local Insight Media Holdings and Regent Communications.
Hon. D. Michael Lynn	Northern District of Texas Fort Worth, TX	Presided over such notable cases as the Texas Rangers Baseball Partners and Pilgrim's Pride. In Rangers' case, deftly handled a very high profile and deeply acrimonious situation that had developed among the debtor, the parent and affiliates of the debtor, the lenders, Major League Baseball, and various other parties prior to the bankruptcy.
Hon. Raymond B. Ray	Southern District of Florida Fort Lauderdale, FL	Presiding over a law firm bankruptcy where the law firm was the criminal enterprise of a criminal RICO conviction for a $100,000,000 Ponzi. Demeanor, under tense circumstances, exemplifies the way a court room should be run.. Has handled many Ponzi cases, including *In re* Thomas Warmus and companion *In re* American Way.
Hon. Richard S. Schmidt	Southern District of Texas Corpus Christi, TX	Achieved remarkable outcome in ASARCO case, which lasted about 4 years and was a very difficult case to manage and while commodity prices fluctuated. By virtue of the way the case was handled, creditors received 100% of their claims (totaling about $2 billion) plus interest. Also presided over La Bota Development Company.
Hon. Brendan L. Shannon	District of Delaware Wilmington Delaware	Presides over very complex Chapter 11 cases with good humor and great knowledge of the bankruptcy code. Major bankruptcy cases handled in 2010 include Haights Cross Communications, Rubicon US REIT, East West Resort Development, and Fuddruckers, aka Magic Brands.
Hon. Donald H. Steckroth	District of New Jersey Newark, NJ	Handles complex issues and brings a practical approach and an excellent temperment to cases. Presided over and confirmed the complex Chapter 11 proceedings of Tarragon Corporation, involving real estate assets valued at nearly $1 billion. A true "lawyers' judge" and is universally considered a pleasure to appear before.
Hon. Maureen A. Tighe	Central District of California, San Fernando Division Woodland Hills, CA	Presides over one of the busiest dockets in the country, including Karykeion Chapter 11 case for the past 2+ years, one of the most difficult and contentious that any of the lawyers involved have ever seen. Through the case, balanced countless countervailing concerns and rancor by the parties to judiciously manage the case.

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Gnome de Plume

There's No Answer

by Christopher Beard

There were major events in Egypt this past week precipitating changes with global impact. Hosni Mubarek assumed control 30 years ago through an orderly transition, but in time the government became slow to respond and lost touch with the people. The world changed and other political leaders emerged. When things got out of hand, the old guard desperately tried to make up for lost time. In an attempt to regain control, Mubarek recruited Omar Suleiman, a prominent name from the old school, hoping to pacify the crowds, but without success. The public announcement of the deal merely inflamed the people and precipitated new strikes, bringing a change of government.

This past week the same thing happened at Microsoft in the smartphone business, precipitating important but less dramatic changes with international impact. Steve Ballmer, Microsoft president, assumed control years ago through an orderly transition from his college chum Bill Gates, but in time the company became slow to respond and lost touch with its customer base. The world changed, and other market leaders emerged. After Microsoft surrendered its advantage in smartphones and its market share dropped to 3%, Ballmer desperately tried to make up for lost time. In an attempt to regain lost market, he recruited Nokia, a prominent name from the previous mobile phone generation, hoping to get traction in the market, but without success. The public announcement of the deal merely inflamed Nokia's union and precipitated a strike. Nokia's management, stung by the negative market reaction, announced they had a side deal and were being paid "billions" to play ball.

In 2002 Microsoft introduced Windows CE, a distinct operating system for a smartphone that was not an abbreviated Windows operating system. Microsoft introduced Windows Mobile 5 in 2005. Apple came out with the iPhone in 2007 and Google launched the Android system in 2008. In November, 2010, Microsoft introduced its revamped smartphone software Windows Phone 7. It was greeted with a yawn. Apparently it is an adequate and competitive system, but there are no new features attractive enough to slow down Apple's and Google's stunning smartphone growth.

Nokia dominated the smartphone market with its 1996 introduction of the Communicator 9000, but recently has had serious problems competing using its own Symbian operating system. Nokia has lost half of its smartphone market share since 2007, and desperately needs a fix. Microsoft was the market leader, invested a fortune in a me-too product, and is under a lot of pressure to perform. The stock hasn't moved in ten years. They panicked.

In November, 2010, the month of the launch of the Windows 7 software, Microsoft sued Motorola, one of the top five smartphone manufacturers and a major Microsoft prospect, charging higher-than-agreed royalties on networking and wireless technologies. Microsoft was miffed at being rejected by Motorola, which itself had recently regained a market leadership position with Google's Android system.

Microsoft, which needs momentum, bought the business with Nokia, a company that has no momentum. Nokia's other choice was Google's Android, which is red hot, activating 300,000 smartphones a day. The day the deal was announced, Nokia's stock, already severely beaten down, dropped another 10%.

Deals between weak players in desperate circumstances usually double the number of problems rather than the number of opportunities. There are good reasons they're struggling. ¤

Christopher Beard is the publisher of Turnarounds & Workouts

Future Issues:

- *Special Report: Restructuring Depts. of European Accounting Firms*
- *Special Report: People to Watch – 2011*
- *Research Report: Who's Who in Appleseed's Intermediate Holdings*

Liability, *from page 4*

where stormwater runoff may be significant; the Clean Air Act (CAA) applies to foreclosed unfinished construction sites, where airborne dust is a problem.

Owners of such foreclosed property may be required to bring preexisting conditions into compliance with regulations, pay penalties for noncompliance, or acquire permits – and they may also be the target of citizen lawsuits.

Neither act has an exemption – and the consequences can be significant. "In one situation, a bank was fined more than $4 million for inadequate erosion controls at a foreclosed property worth less than half that amount," says Jill Teraoka, a partner with Bingham McCutchen.

"In another, a bank which acquired title to a property through foreclosure was ordered by a court to allow restoration of the property to its former wetlands condition."

• *State and local regulations*. Owners of foreclosed property may also face liability under state and local regulations – and many have nuances that warrant close examination, says Teraoka. One example is California's Hazardous Substances Account Act (HSAA), which imposes liability similar to CERCLA's. HSAA has an exemption, but it is much tougher to meet than CERCLA's.

Common law tort claims. Finally, says Teraoka, property owners should be on the alert for the possibility of tort lawsuits. Teraoka points to a case in Pennsylvania in which a bank sued for liability after foreclosing on a property that had been contaminated by a mortgagor in default. The bank claimed the plaintiff's state law claims were barred under Pennsylvania's lender liability law, as the bank was only engaged in routine commercial lending practices and quickly sold the property. However, the court accepted the plaintiff's allegation that the bank operated a facility from which hazardous substances were released. ¤

Turnarounds & Workouts is published monthly by Beard Group, P.O. Box 4250, Frederick, MD 21705 (240) 629-3300. Fax (240) 629-3360. ISSN 0889-1699. Publisher: Christopher Beard. Editor: Nina Novak (nina@beard.com). Assistant Editors: David Buzzell, Julie Schaeffer, Francoise C. Arsenault. Subscription Rate: $397/year. Send comments and coverage suggestions to above address or chris@beard.com.