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Firm's History with Client Key to $86M Refinancing Deal

By John O. Cunningham


C. Michael Malm

For C. Michael Malm of Boston, the recent closing of a complex refinancing was not just another pile of paperwork.

It was a matter of commitment, flexibility and "20 years of building a trust" with a special corporate client.

On April 30, Davis, Malm & D'Agostine completed a corporate refinancing that involved $86 million of senior and subordinated debt issued by a consortium of lenders to one of the firm's longstanding clients.

The history between client and firm was a key factor in getting the deal done, Malm stresses.

"Clean Harbors is a company that we incorporated in 1980. It had three employees and was the first company to get a hazardous waste hauler's license in Massachusetts," Malm recalls.

He says that the company now performs hazardous waste cleanup, treatment and storage for public utilities and a majority of the Fortune 500 companies and is "a publicly held leader in its industry."

Malm explains that Clean Harbors began looking at refinancing opportunities last fall in anticipation of $50 million of public debt coming due on May 15.

To pay down the debt and fund additional operations, the company needed a total of $85 million.

"But there was a dramatic change in the banking environment," Malm remembers.

He says that banks became very conservative due to the declining economy. They stopped lending on cash flow and asset-based lending was hard to procure for a hazardous waste company.

"Two of the largest players in the hazardous waste industry, Safety-Kleen and Philip Services, had both made bankruptcy filings. Clean Harbors had a good story and was profitable, but the industry was out of favor on Wall Street," he notes.

Finally, says Malm, "a local bank assured Clean Harbors that it could put together $55 million of debt in a three-bank syndicate. The company would then get $35 million of sub-debt from another group."

The lawyers got started in March to meet a target date of April 1, working nights and weekends to put together the deal. But after a few weeks, the local bank could not complete the syndication, leaving Malm and his client less than two months to procure, negotiate and close a complex refinancing.

Then a current lender to the company, Congress Financial, made a proposal for the senior credit facility.

Malm says it was important that "the sub-debt group, led by John Hancock, was still committed to the unsecured financing" in conjunction with Congress Financial.

It was also essential, Malm says, that "the company could close quickly with $50 million of debt coming due in weeks."

He suggests that the 20-year relationship of client and law firm was critical to beating the May deadline.

"Another outside person could not have done the transaction in the same period of time," Malm says. "We understood the assets, the business and the regulations affecting the company. We didn't have to learn it."

He explains why another firm would have had a sharp learning curve: "The company has real estate in 10 different states, conducts business in about 40 locations and has 13 subsidiaries."

He also points out that the waste industry looks unique to lenders. For instance, he says that "the company is audited by its clients all of the time. Most of the Fortune 500 companies do environmental audits on their providers in the industry."

Malm also notes that "many liens had to be placed on over 1,000 pieces of rolling stock."

Landlord estoppels, security interests on receivables and other intangible assets were part of the deal, as well.

Malm says that understanding all of the mortgaged assets enabled the lawyers to close quickly.

"We understood which facilities were most valuable to the secured lender. We worked for 20 years purchasing those facilities. We knew the documentation, the security issues and the local issues," Malm asserts.

The veteran lawyer adds that his firm "could help the lender's lawyers get up to speed quickly. Bank lawyers do not always understand the collateral as well as the borrower. We knew the important assets, and asked for waivers on less important assets."

Malm says that he also had to make sure that "all of the covenants worked together between the sub-debt and senior debt. If the covenants are not done right, you have to ask for more waivers and they get very expensive."

He re-emphasizes that "understanding the business is the key to making the covenants work for the borrower." Malm credits partner John D. Chambliss for "being a master of covenant work."

Professional flexibility and commitment were also essential elements of a swift closing.

According to Malm, three lawyers on the team plus their paralegals worked for 40 days to beat the deadline.

"We had to adapt and be flexible as the deal changed a number of times in a few months," he says.

"We also had massive amounts of paper. We knew what was important now and what could be put off until later," Malm says, adding that it was important to reach an understanding about this with the lenders as well.

Malm also praises the work of Sullivan & Worcester and Brown, Rudnick, Freed & Gesmer for "getting to the bottom line quicker because of tight deadlines."

Those firms represented the senior and subordinated lenders, and Malm offers that "jockeying between sub-debt and senior debt holders can often lead to problems because there don't seem to be any standard practices in this area." MLW