turnarounds & workouts Trends

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Professional Profile......

Entrepreneurs at Heart

Kaufman and Owsley Lead Gordian Group

By Dave Buzzell

A little more than 25 years ago, Henry Owsley decided he wanted to go into business for himself. A self-described "entrepreneur at heart," he left Goldman Sachs, where he was running the firm's workout group, and ventured off on his own. He set up shop in temporary offices and named his new company Gordian Group. Peter Kaufman joined Gordian Group shortly thereafter and the two of them — Owsley as Chief Executive Officer and Kaufman as President and Head of Restructuring and Distressed Mergers & Acquisitions — have gone on to build one of the leading financial boutique firms in New York City.

Peter Kaufman

Henry Owsley

Owsley and Kaufman are very close friends, which is quickly apparent when speaking to them together. Owsley credits Kaufman with Gordian Group's success, but a few minutes later also gives credit to "hard work, clean living, and spiritual purity." The truth likely lies somewhere in between – both men

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Innovative Solutions......

A New Merger Model

SuperMedia & Dex One Prepackage Their Combination

By Randall Reese

The 2013 Chapter 11 filings of SuperMedia Inc. and Dex One Corporation were unique. While the filings represented each company's second trip through bankruptcy court, the coordinated filings also represented the first ever merger of two public companies through parallel Chapter 11 cases, according to Sean O'Neal, a partner at Cleary Gottlieb Steen & Hamilton LLP who represented SuperMedia in its bankruptcy filing.

Sean O'Neal
Cleary Gottlieb Steen & Hamilton LLP

Each company was separately one of the largest yellow pages directory publishers in the United States, as measured by revenue, and also offered its customers various other local marketing solutions, such as digital advertising products. SuperMedia, which was formerly known as Idearc Inc., became an independent public company in November 2006, when Verizon Communications Inc. completed the spin-off of Idearc's shares to Verizon's stockholders. In March 2009, the company filed its first Chapter 11 case, from which it emerged on December 31, 2009. Somewhat similarly, Dex One was formerly known as R.H. Donnelley Corporation and was the result of a June 1998 spin-off transaction from The Dun & Bradstreet Corporation. R.H. Donnelley filed for Chapter 11 protection for the first time in May 2009 and emerged as Dex One on January 29, 2010.

It would be an understatement to say that SuperMedia

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Gordian…

are responsible for the firm's success, and hard work was certainly a factor.

"Every day we compare notes about what we are doing and what we are going to do," says Owsley. "We stick to our knitting and that has allowed us to continue to prosper. Other restructuring people may find this to be a very difficult environment, but we actually closed on a successful year in 2013 and are looking forward to an even better year in 2014."

The two men also co-authored the definitive work in the field, *Distressed Investment Banking: To the Abyss and Back*, published by Beard Group. "We love what we do, and we have terrific partners and other professionals at Gordian Group that ease the burden of the high-stakes, highly stressful daily challenges," says Kaufman.

Aggressive Representation

Owsley relishes the niche his firm has carved out in the market. "We love the concept of being a financial boutique. It allows us to provide aggressive representation without institutional biases and conflicts. The world has moved toward boutique representations in the restructuring sector primarily for that reason."

In the case of Gordian Group, the representations are almost exclusively on the debtor side. Owsley and Kaufman believe that playing both sides of the street would compromise their debtor clients. "You are obviously less likely to want to eviscerate a creditor if there is a prospect that they are going to hire you on the next gig," notes Kaufman. "We believe you are who you negotiate for."

A key source of Gordian Group's work is to represent the board of directors and to obtain recoveries for old equity constituencies. "We do not subscribe to the philosophy that wherever the value stops in the capital structure defines what the outcome will be – if we can negotiate a better outcome for a client, we do that. Even if old equity is out of the money, it may have option value and control value," says Owsley.

Kaufman adds that Gordian Group has also built a strong practice in working with private equity firms, helping their portfolio companies with their capital structure challenges. "We don't have any conflict of interest or bias, and it allows us to offer zealous, creative advice about the best way of dealing with creditors to accomplish shareholder goals."

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Gordian Group has also been busy cleaning up securitizations on Wall Street, which Owsley says continue to be a mess even if they are no longer in the news. "Many people may think they've gone away, but we still work for insurance companies, regulators, and others cleaning that up. We think there will continue to be further securitization debacles down the road."

Gordian Group has also built a nice line of work in expert witness/litigation support, especially where there is the intersection of insolvency or complex situations and litigation. The firm is constantly involved in high-profile litigations, which in the past has included the likes of Madoff, Enron, and Revco.

"Where there is really ugly stuff, you will find us," says Owsley. "We may be behind the scenes, but in many of these cases, we are there. We testify as experts, with no bias toward working with plaintiffs or defendants. We like to believe we are on the side of the angels when we represent a litigation client."

Investing in Health Care Change

Reflecting their entrepreneurial bent, Kaufman and Owsley are aggressively pursuing two new opportunities. One is in health care. In their opinion, the changing economics of the health care profession are being accelerated by the Affordable Care Act (Obamacare).

"Health care has to change in the United States," Owsley says. "There are too many hospital beds in the country. We have to transition from an industry where people simply check into a hospital and stay there for awhile – that's uneconomic. Obamacare is moving that process along."

Kaufman says that between one-third and one-half of acute care beds in the United States will be eliminated over the next 10 to 20 years and, as a result, many hospitals will either downsize or close. On the flip side, primary care and outpatient services will prosper.

"Our vision is that existing acute care hospitals will be converted into medical villages that provide primary care and related services in inner cities, rural areas, and other communities," says Owsley. Gordian Group is working with the state of New York on that transition, but it has been tough going because of community opposition to hospital closures and the change it will bring in hospital jobs.

Regardless of the opposition, Kaufman and Owsley see the transformation as inevitable. "We are an agent for change, whether on behalf of government agencies, hospitals, bondholders, or whomever. We see ourselves as representing the hospital building and its interface with the community. We don't care who owns the building; our focus is converting the building to a better use, and that implies negotiating with unions, the government, creditors, or whomever is involved in this. We want to be in the center of the mix of this incredibly dynamic change."

Banking on Wine and Spirits

Another major initiative of the Gordian Group involves the wine and spirits business. Kaufman, Owsley, and Sam Bronfman of the Seagrams family joined forces to found Bacchus Capital Management, which has, to date, invested in nine wineries in California, Oregon, and Washington. Three wineries have been divested at nice returns, with the fund owning between 50 and 100 percent of the remaining six.

Accordingly, Kaufman and Owsley now have first-hand experience as private equity investors. Kaufman says, "This is a very important skill set when we talk to other private equity firms about their goals and concerns if they are considering hiring us or the Gordian side of the house to help them on their capital structure challenges."

"Wine and spirits are underbanked, particularly smaller, entrepreneurial ventures," observes Owsley. "Boutique wineries are evolving, and now we are seeing the same dynamic occurring in craft bourbon and craft beer. Companies in those businesses are going to experience challenges getting through the distribution system and in obtaining financing. We have special expertise in those areas."

"We think there is a business there," Kaufman continues. "People are coming to us because of our recognized footprint in this area, and we think we relate professionally and personally to entrepreneurs. One thing we bring to the table is helping wineries manage the extremely challenging process of distributing their products. The laws, which go back to Prohibition, are evolving. Wine can only be shipped direct to consumers in 36 states, and the things you can do in those 36 states are different."

"The opportunity to have your own business and be your own entrepreneur is one of the great things about this country. We have done it, and we take great pride in helping others do it."

"The real action is direct-to-consumer distribution," adds Kaufman. "It is very critical for profit margins for wineries to sell direct to consumers. Wine clubs, foot traffic through wineries – these types of initiatives can capture customers and turn them into ongoing purchasers."

Bacchus has started a new venture called Wine Works that sells three of their winery offerings directly to the public. "As we explore this ever-changing area, we really get down in the details. It is an example of how we manage our business."

That, in sum, is what defines Kaufman and Owsley – as entrepreneurs themselves, they know what works and what doesn't. Or, as Kaufman wryly observes, "At least we think we do!"

"The opportunity to have your own business and be your own entrepreneur is one of the great things about this country. We have done it, and we take great pride in helping others do it," says Owsley. ¤

New Model…

and Dex One found themselves in a challenging business environment. According to a Local Search Association Industry Usage Study, references to print yellow page directories in the United States declined from 14.5 billion in 2005 to 5.5 billion in 2012. That steep decline is reflected in both companies' revenues from print and direct sales, and the decline is expected to continue unabated. According to financial projections filed with the bankruptcy court, at the time of the merger each company expected its respective revenues from print and direct sales to decline between 18 percent and 21 percent annually between 2011 and 2016 – from pro forma combined revenues of over $2.7 billion in 2011 to expected 2016 revenues of less than $1 billion. While the companies project annual growth in excess of 20 percent over the same period for revenue coming from their digital offerings, even that is insufficient to offset the declines from the much larger print business.

Strategic Decisionmaking

Against that backdrop, SuperMedia and Dex One agreed to merge in August 2012, with Dex One being the acquiring company. In December 2012, the companies entered into an amended and restated agreement and plan of merger, which maintained the same basic economic terms of the August agreement. The amended agreement also provided that if either company were unable to obtain the requisite consents to the merger from its shareholders and to contemplated amendments to its respective financing agreements from its senior secured lenders to consummate the transactions on an out-of-court basis, the mergers could alternately be effected through voluntarily prepackaged plans of reorganization under a Chapter 11 proceeding.

After entry into the amended and restated merger agreement, both companies undertook the process of soliciting the consents necessary to effectuate the necessary transactions. An important strategic decision was made to simultaneously solicit consents necessary to complete the merger outside of a Chapter 11 filing and votes on the potential prepackaged plans of reorganization which would be used if a Chapter 11 filing for either or both companies was necessary. O'Neal notes that there were multiple benefits to utilizing this approach. "It is a time-saving measure because you solicit votes only once, but it also encourages acceptance," he says. "If you receive something in the mail that says 'we can do this transaction even if we don't get a 100% vote,' then you are more incentivized to go along with it."

"One of our main goals was not only to allow the merger to go ahead with less than 100% creditor support, but also to make it a quick, controlled process that would not get side-tracked by litigation."

Dual Pre-Packs

Ultimately, neither SuperMedia nor Dex One was able to obtain the requisite unanimous consents to the contemplated amendments to their respective financing agreements to effectuate the merger outside of bankruptcy court. Therefore, on March 18, 2013, each company, along with its respective subsidiaries, filed a voluntary Chapter 11 petition in the United States Bankruptcy Court for the District of Delaware. "We had to utilize the bankruptcy court because the Bankruptcy Code allows debt to be amended with less than 100 percent approval of the lenders," notes O'Neal. "In SuperMedia, we had bank lenders who did not consent to the extension of the maturities under the credit agreement that were required to allow the merger to proceed." Concurrently with the bankruptcy filings, the companies sought confirmation of their prepackaged plans of reorganization with the support of over 90 percent of both companies' senior secured lenders and shareholders.

Less than two months after the Chapter 11 filings, the companies emerged from bankruptcy and the merger was consummated on April 30, 2013. The combined company is Dex Media, Inc. and its common stock began trading May 1, 2013 on the NASDAQ stock exchange under the symbol DXM. Former SuperMedia shareholders received approximately 0.44 shares of Dex Media common stock for each share of SuperMedia common stock they held, while former Dex One shareholders received 0.2 shares of Dex Media common stock for each share of Dex One common stock they held. "This process was very beneficial to shareholders because it allowed the shareholders to retain the exact value in the in-court solution that they would have obtained in the out-of-court solution," O'Neal says. All creditors also received 100 percent recoveries under the prepackaged plans.

Synergies and Benefits

In an investor call regarding the merger, Dee Jones, Dex Media's Chief Financial Officer, highlighted some of the key anticipated benefits of the merger. "This transaction will bring annual cost synergies of $150 to $175 million by 2015," said Jones. "Second, extensions to the debt terms to all silos will provide us more time for our transformation. Third, the tax aspects and construct of the deal will allow the company to maintain and take advantage of its tax attributes and assets."

"I believe the creation of Dex Media is good for shareholders, lenders, employees and clients," said Dex Media's Chief Executive Officer Peter McDonald. "It took many people and significant effort to complete our transaction. We benefited from having experienced teams at both companies, as well as at our financial and legal advisors."

"One of our main goals was not only to allow the merger to go ahead with less than 100 percent creditor support, but also to make it a quick, controlled process that would not get side-tracked by litigation," says O'Neal. "Of course, the side benefit to that is that it becomes a much less costly bankruptcy."

He also suggests that these transactions set important precedents to be considered in the future. "For industries where there is distress, this process presents a good alternative for accomplishing a merger of two distressed companies without having to satisfy the normal consent requirements imposed outside of bankruptcy. I could see this being replicated for public and non-public companies in distressed industries where a merger makes sense and you have creditors or shareholders who are either recalcitrant or are simply unable to give the requisite consents." ¤

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