

BANKRUPTCY INSIDER

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Bankruptcy Database

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Bay State bedrock

Joseph Finn has carved a niche for himself in Massachusetts ABC cases

Anyone looking at a handful of the liquidations in Massachusetts known as assignments for the benefit of creditors would see one name repeatedly: Joseph F. Finn Jr.

For 37 years, the managing partner of Wellesley Hills, Mass., consulting and accounting firm **Finn, Warnke & Gayton** has been advising and turning around distressed companies, and often winding down and liquidating those too far gone to rehabilitate. To some, the latter may sound like grim, depressing work. But in much the same way as a nursing home should treat its residents, with the dignity and respect everyone deserves, Finn puts great care into his ABC cases.

"What I do, particularly in the rehabilitation business, the assignment business, I don't look at it like a business," he says. "I look at it as the ability to nurture people at a time when they're most vulnerable. It's quite gratifying work, because I can really help people that have been left out of a job, try to provide transition, give closure to the old company and give [the former employees] a platform to look for a new job."

That attitude possibly is the reason why Finn, who will turn 69 in May, has been able to carve out a career for himself in what is invariably a small niche of the reorganization and restructuring industry—ABC cases.

An ABC is an alternative to bankruptcy that troubled companies can take in several states. Under the right circumstances, it can be the best option for debtors and creditors alike.

"An ABC is a form of trust, a legal basis under Massachusetts General Law Chapter 203, which is concerned with trusts," Finn explains. "Basically, the assets of a corporation are transferred to me, so that I now own all of the assets, including contracts, lawsuits and anything else that is an asset. I then liquidate those assets for the benefit of creditors, who are my constituents, not stockholders. It's basically a transfer of assets, [much like] a bill of sale."

As Finn explains, it's a contract between a trustee and corporation, with no reference to a court, bankruptcy or otherwise. In fact, the only time a court is involved is if it's necessary to prosecute a claim against someone or if the assignee has been sued in his or her capacity as trustee. The contract itself is about nine pages long and is "pretty straightforward," Finn says. It mainly outlines the duties of the corporation, the assignee, the creditors and anyone else involved.

At first glance, an ABC seems akin to an out-of-court Chapter 7 proceeding, with the involvement of a trustee and a liquidation. But as Finn explains, there's one particular key advantage Chapter 7 cannot match, given regulations.

"An assignee has the ability to move with incredible speed," Finn says. "The assignee's decisions and actions are final, and [the process] moves on quickly." In contrast, "in a Chapter 7, you need court approval to do a number of things," he says. "There's always a 20-day appeal period."

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SOAPBOX FINN

PREVIOUS

Finn recalls one of his most recent assignments, when he was made trustee for **NoblePeak Vision Corp.** On Sept. 27, 2010, the video surveillance camera maker filed to liquidate its assets under an ABC. By Jan. 3, he had already issued the final dividend to creditors. In just 110 days, the company was shut down, its assets, including its intellectual property, were sold at auction, and claims were vetted. (Creditors usually have 60 days to agree to the assignment and then come up with how much they will get "on the dollar.")

"That's how quickly it can go," Finn says. He estimates, on average, depending on size, the first major dividend to creditors is distributed within six months after the start of a case. The Chapter 7 process can often take years to conclude.

But how did Finn, who can work on as many as eight different ABC cases during any given year, come to be the "go-to" guy for such insolvencies?

Finn has been involved in bankruptcy and restructuring since 1974. He earlier served as controller of **Nortel Networks Inc.** (formerly Northern Telecom Inc.) and Mosaic Tile Co., in addition to having spent time at Arthur Andersen & Co. But Finn, a graduate of the College of the Holy Cross and the University of Toronto, credits his work as assignee for biotechnology company Alpha Beta Technology in 1999 as the springboard to his specialty.

Although it was not the first ABC he worked on (that would be University Camera in October 1975), following the ABT case he obtained a number of contacts within the biotech sector, which is heavily venture capital-backed. Gradually, it "built on itself," Finn says, to the point where he now gets referrals from all the medium and large VC firms in Massachusetts. Many of the firms chose to wind down failed portfolio investments through the ABC process.

Finn, an avid golfer since the age of 6, was preparing for his next assignment even when reached on a recent vacation in Florida. Just as he's done with other pharmaceutical companies, Finn will be at the reins of molecular diagnostic company

Source Precision Medicine Inc., which did business as SourceMDx, and will liquidate its assets for the benefit of creditors.

The father of four and grandfather of four says one of his favorite things about working on an ABC is the human aspect, as he gets to work with many intelligent and talented individuals and forge long-term friendships.

"The key thing is, we don't value the property," Finn says. "I don't know what [any particular patent] is worth, I simply ... set up the sale procedure. So I'm really happy to be working with very talented people, [such as] scientists. They always want to have pizza with me even years after the ABC. 'Hey, let's get together with Joe Finn and have pizza,' they say to me. I'm effectively the guy selling off the company, but they still like working with me through that procedure."

ABC cases, of course, are not without their share of problems and challenges.

"Each [ABC] has its own unique problems," Finn says. "The challenge of it is to get the job done without getting entan-

gled in a lot of legal confrontation. I like to feel that a hallmark of a Joe Finn case is that everybody goes away happy, creditors get paid quickly, the company is wound down, and the IP goes somewhere safely."

While some common issues, such as landlord problems or claim disputes, often pose a challenge, Finn has found the answer to another thanks to nearly four decades of experience.

That problem is office equipment or, rather, what to do with it. As Finn tries to get the debtor to vacate the landlord's property to end continual lease payments, one of the main holdups is returning copy machines, phone systems and other typical office equipment.

The first thing Finn does is call the lessor of the equipment to come pick it up. "They never show up," Finn says. "So I now go the other way, and tell them that if they don't come get the equipment, I will abandon their equipment on Route 128 in Boston with their name on it."

That, not surprisingly, produces more action. ■

—Kevin Fung

Satmex begins plan solicitation

Satélites Mexicanos SA de CV is on its way back to U.S. bankruptcy court.

According to a March 8 statement, the Mexico City satellite owner and operator, which completed a cross-border reorganization in November 2006, is soliciting the support of secured noteholders for a prepackaged reorganization plan. If Satmex obtains the necessary votes by April 4 from holders of first-priority senior notes due 2011 and second-priority senior notes due 2013, it plans to file for Chapter 11 protection on April 6 in the U.S. Bankruptcy Court for the District of Delaware. Satmex seeks a May 9 confirmation hearing and anticipates emerging from bankruptcy on May 24.

In its disclosure statement, Satmex said looming debt payments and the need to launch more satellites prompted the move to restructure in court. Satmex hired **Lazard** in June 2010 to explore its options. After unsuccessful attempts to sell the company or reorganize its debt, Satmex negotiated a reorganization with key constituencies. The company announced Feb. 12 that it had the support of creditors holding two-thirds of its second-priority notes.

Under the proposal, first-priority noteholders would receive full cash payment for the principal of their securities and would collect accrued but unpaid interest at a rate of 12% per year. Satmex considers the group to be unimpaired. Holders of second-priority notes would have their claims swapped for equity or receive 38 cents on the dollar in cash.

Satmex would fund the plan with a \$325 million note offering, a \$96.25 million rights offering for 85.75% of new shares and cash on hand. A group of second-priority noteholders would backstop the rights offering. ■

—Chris Nolter