









An Airline in Crisis

- AA is shattered by the terrorist attacks of 9/11 and the crash of Flight 587 in Belle Harbor, New York
- Driven by weakened demand for air travel, and the rising cost of jet fuel, AA loses billions of dollars
- The world's largest airline is teetering on the edge of the cliff

5

An Airline in Crisis, con't

- Strong likelihood the company will not survive
- Fast track to the steps of bankruptcy court

6

Crisis Management and the Role of Lawyers

- The crisis at AA, like those at other companies, carry heightened responsibilities for lawyers
- Imperative to focus on overall strategy, not dwell on immediate tactical issues
- Must avoid pitfall of zealous efforts to save the company at all costs

7

Crisis Management and the Role of Lawyers, con't

- Beware of efforts to stretch the limits of what may be legal or appropriate
- A time for vigilance, balanced against a responsibility to advance legitimate objectives of management

8

CORPORATE GOVERNANCE

9



Corporate Governance

- AA board of directors remained supportive of management throughout AA's twelve years of turbulence
 - Board is bound by duties of care and loyalty (citation)
 - Actions of the board are analyzed under the Business Judgement Rule (citation)
- No defections and little public boardroom turmoil despite enormous strain and difficulty

11

Corporate Governance, con't

- Pressure from labor unions, including picketing outside home of prominent Dallas board member
- During times of crisis, actions and conduct of the board are scrutinized

12

Corporate Governance, con't

- Board relies heavily on management and management's tone influences conduct of the board
 - Under Delaware Law, the board is authorized to rely upon statements and representations of management (citation)
- Fiduciary responsibilities and personal liability are front and center

13

Corporate Governance, con't

- Counsel to the company and board frequently face difficult ethical issues
- Lawyers must remain mindful about who it is they represent – the company, the board, an individual? (Model Rules of Professional Conduct, Rule 1.13)
- Lawyers often face “cross-loyalty” issues between senior management and board of directors

14

INSOLVENCY

15



Insolvency

- In the years following the 9/11 terrorist attacks, most major air carriers filed for Chapter 11 protection
- American opted for a voluntary restructuring in 2003
- With the spike in jet fuel, a global recession, and a substantial labor cost disadvantage, AA was forced to file for Bankruptcy in November 2011

17

Insolvency, con't

- The cost of the proceeding is enormous
- The process and outcome rarely unfold as planned
- Bankruptcy is a powerful business tool but carries substantial uncertainty

18

Insolvency, con't

- Ceding control to lawyers, a bankruptcy judge, and creditors' committees is risky
- The Official Committee of Unsecured Creditors has a vast array of powers and duties. Often carries substantial influence on outcome of the case (11 U.S.C. §1103)

19

MERGERS & ACQUISITIONS

20



Mergers & Acquisitions

- AA was strong proponent of airline consolidation but timing was critical
- When US Airways came knocking, AA was opposed to any combination while in bankruptcy
- AA labor unions embraced potential merger, placing pressure on management to consider merger partners

22

Mergers & Acquisitions, con't

- Creditors' committee pushed for full investigation of merger synergies
- Difficult interplay between management's anti-merger position and its obligation to maximize value to creditors and shareholders
- While board has fiduciary obligation to shareholders and creditors, determining best path forward is difficult task

23

Mergers & Acquisitions, con't

- Calculating merger synergies is two-edged sword, difficult to walk back numbers
- Board relies on recommendation of counsel, including ability to successfully complete transaction
- Regulatory hurdles can derail best-laid plans
- Lawsuit to enjoin merger places extraordinary pressure on parties

24

Mergers & Acquisitions, con't

- In the case of the AA/US Merger, the DOJ filed suit in August 2013 to enjoin the merger
 - Government cited substantial harm to consumers including higher airfares as a result of increased airline consolidation
 - Government alleged merger would lessen competition and “tend to create a monopoly” in violation of Section 7 of the Clayton Act, 15 U.S.C. §18

25

Mergers & Acquisitions, con't

- Don't underestimate value of political pressure on regulatory agencies
- Congressional grandstanding goes with the territory
- Never say never to settlement

26

LAW FIRM/CLIENT RELATIONSHIP

27



Law Firm/Client Relationship

- In times of crisis, the chief legal officer often depends on a “trusted advisor” for guidance
- Above all, an effective relationship must be grounded in mutual trust and shared goals
- The client’s best interest must be top priority, not the interests of the firm or individual lawyer
- Internal law firm friction regarding advice and strategy creates uncertainty and confusion

29
