

RENAISSANCE

The Newsletter for the North American Turnaround Management Industry

SEPTEMBER 2004

TURNAROUNDS & WORKOUTS: What's the Forecast?

By Daniel F. Dooley

Clearly, the trend of large company insolvencies that started in 1999 has come and gone. Most of us in the turnaround industry expect the next few years to have much slimmer pickin's.

I won't spend much time explaining why the cycle of distress has ended. It's clear to industry insiders that 1) big company bankruptcies, which drive the turnaround industry, are way down; 2) non-performing assets (NPAs) of most lenders are again within fully reserved levels; 3) bank workout staffing is down 25-75%; 4) capital funding returned to the market in late 2003 in all segments—equity sponsors, high-yield bonds, M&A activity, even cash-flow lending; 5) the U.S. economy is expanding in almost all sectors, and; 6) the boom-to-bust cycles of "hot" industries (internet, telecom, energy) driven by technology or regulatory changes have mostly run their course.

So what's a turnaround consulting firm to do when near-term business is likely to drop by 50% or so? The obvious solutions are being worked by many of us: skill redeployment to front-end M&A work; diversification into services such as M&A and

litigation support; and geographic expansion, mostly to Western Europe where local laws are evolving toward debtor-friendly rehabilitation.

That said, there are numerous structural

changes in the U.S. economy that I foresee making turnarounds a growth industry for decades to come. Consider the following phenomena.

1. Interest Rates

Many people believe that interest rates are about 200 basis points (or more) too low based upon history. Greenspan's dilemma is to move rates up gradually without stalling the economic recovery or unduly harming President Bush's re-election bid.

Since the high-yield flood gates re-opened in 2003, one might predict the next wave of distress around 2006...

LESSEE BEWARE: Bankruptcy Code §363 Asset Sales May Be Traps for the Unwary¹

By Mark A. Berkoff, Esq.

Bad facts make bad law. This maxim is exemplified in the recent opinion issued by the United States Court of Appeals for the Seventh Circuit in *Precision Industries v. Qualitech Steel SBQ, LLC*, 327 F.3d 537 (7th Cir. 2003). Many have perused and analyzed the Seventh Circuit's decision in an effort to explain and rationalize it, and understand the magnitude of its implications. For all the theorizing, however, one thing is clear: this decision will impact bankruptcy asset sales, real estate leasing and even intellectual property licenses.² If your work transcends any of these areas, you must read and understand this important circuit court opinion.

Procedural History of the Case

In *Precision Industries v. Qualitech*, a case of first impression at the circuit court level, the debtor, Qualitech Steel Corp., owned a parcel of land on which it operated a steel mill. Before it filed for bankruptcy, Qualitech entered into a supply agreement with Precision, which provided that Precision would build a warehouse on Qualitech's land and operate it for 10 years and, in February 1999, Qualitech entered into a lease with Precision pursuant to which Precision leased the one-acre parcel underlying the warehouse for 10 years at a nominal rent of one dollar per year. "In accordance with the two agreements, Precision built and stocked a warehouse on the leased property, and Qualitech began purchasing goods from Precision. The lease was never recorded." *Id.* at 540. Under the terms of the lease, Qualitech was given the option to purchase the building at the end of the lease term.

On March 22, 1999, approximately one month after entering into the lease, Qualitech filed for protection under Chapter 11 of Title 11 of the United States Code. Shortly thereafter, Qualitech filed a motion with the bankruptcy court presiding over its case to sell its assets, including the aforementioned parcel of land, pursuant to section 363 of the Bankruptcy Code. "On August 13, at the conclusion of a noticed hearing, the bankruptcy court entered an Order approving the sale." *Id.* at 540-41. The purchaser of Qualitech's assets was a group of senior pre-petition

Recent Engagements

Automotive Stamper – Debtor Representation – CRO, Assessment, Operations Improvement, Financial Plan, Cash Management

Manufacturer and Retailer of Boxed Chocolates – Debtor Representation – CRO, Business Assessment, Lender Negotiations, Refinancing, Exit Strategy Analysis, Sale Negotiations and Bankruptcy Management

Semiconductor Manufacturer – Lender Representation – Operations Due Diligence, Plan and Industry/Market Assessment

Receivables Factor – Lender Representation – Internal Control Assessment, Cost Reduction Identification, Borrowing Base/Collateral Monitoring Improvements

Aerospace Forging Manufacturer – Debtor Representation – Cash Management, Financial Modeling, Bankruptcy Preparation

Manufacturer of Refuse, Collection Equipment – Receiver Representation – Asset Sale of Distressed Business

Licensors of Mattresses and Bedding – Debtor Representation – Business Assessment, Due Diligence and Strategic Analysis of Financial Alternatives

Manufacturer of Backyard Storage Sheds – Equity Fund Representation – Due Diligence and Business Assessment Services, Sourced Debt, and interim CFO and CIO Management Consulting Services

Manufacturer of Cosmetic Packaging – Debtor Representation – Risk Assessment Analysis, Cost Minimization and Value Maximization Models

Automotive Aftermarket Distributor – Debtor Representation – Financial/Cash Modeling, Asset Sales, Bankruptcy Management

Aerospace Metals Manufacturer – Debtor Representation – CEO, Business Assessment, Cost Reductions, Financial/Cash Modeling, Business Brokerage, Value Maximization Strategy

Convenience Store Retailer and Gas Wholesaler – Lender Representation – Business Assessment, Financial/Cash Modeling, Development of Risk Reduction Alternatives, Debtor/Collateral Monitoring

Marketing Communications Services Provider – Debtor Representation – Business Plan and Operations Assessment, Cost and Liquidity Improvements, Exit Strategy Analysis

Commercial Electrical Contractor – Debtor Representation – Business Assessment, Operations Analysis, Refinancing

Wholesale Distributor – Debtor Representation – CRO, Cash Management, Lender Negotiations, Exit Strategy Analysis and Sale Negotiations

Cabinet Hardware Manufacturer – Debtor Representation – Crisis Management, Cash Controls

Steel Fabrication and Erection Company – Debtor Representation – CRO, Plan Validation and Operating Improvements, Cash Forecasting

Apparel Retailer – Debtor Representation – Business Assessment, Financial Modeling, Business Planning, Lender Negotiations

Injection Molder – Debtor Representation – Cash Management, Cost Reductions, Exit Strategy Analysis, Creditor Management

Fast Food Franchisee – Lender Representation – Cash and Financial Management, Business Brokerage

Metal Components Manufacturer – Debtor Representation – Cash Management, Assessment, Financial Projections, Business Brokerage

Trucking and Truck Leasing Company – Debtor Representation – Operations and Business Assessment, Strategic Alternative Analysis, Financial Modeling, Creditor Negotiations

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When interest rates rise, any struggling company now paying more than 5% of net revenue in cash interest will suffer a body blow to its meager profitability and liquidity.

2. High-Yield Bonds

The amount of capital in the market due to high-yield bonds is staggering and continues to grow. This is driven by major pension, insurance and mutual fund investors looking to improve fund IRR through higher risk investing in asset pools, where up to 10% of all investments are assumed to default and lose most of their value every 3-5 years. Since the high-yield flood gates re-opened in 2003, one might predict the next wave of distress around 2006, given a likely three-year time lag.

3. Equity Sponsors

After deal sponsors secure commitments for funds, they face a limited window (typically 2-3 years) in which to invest and deploy or return the money. With the equity markets and M&A activity nothing short of dismal in 2001 and 2002, activity levels started heating up in late 2003 and gained steam in 2004. Many equity sponsors possess significant "use it or lose it" money, so there is a great deal of "use it" buying going on right now which, of course, translates to increasing prices and pressure on lenders to increase allowable leverage.

Additionally, equity sponsors are loosely regulated when it comes to investment accounting. As such, sponsors generally are not eager to sustain investment losses, and frequently provide financial support to out-of-the-money investments to avoid write-offs.

Of note too, many equity sponsors hold within their portfolios troubled companies that they continued to support during the recession. Some of these companies will not make it. The public accountants who audit these portfolios do the investors a disservice by allowing some of these investments to be carried at cost when clear losses exist. This is the type of self-serving accounting logic that contributed to the S&L crisis in the late 80's and still overshadows how the Office of the Controller of the Currency (OCC) forces banks to rate and classify NPAs.

4. Continuing Bank Consolidations

With every bank acquisition comes the opportunity to play "purchase price accounting." Simply put, this

allows the new owners to write-off/down, sell-off or workout loans they acquired, and book the losses in excess of current reserves to a "purchase price reserve." With every bank consolidation comes the rare opportunity to clean the loan slate without P&L penalty. There have been two mega-acquisitions so far in 2004, and numerous regional acquisitions that continue to create this workout activity bubble. Bank consolidations will continue for the foreseeable future.

5. Increasing Market Strength of Commercial Finance

There are now huge commercial finance shops, with non-bank roots, that are growing quickly both internally and by acquisition.

Examples include GE Capital, Merrill Lynch and GMAC, to name a few. By their very nature, these are less regulated, higher risk/reward shops that tend to be more opportunistic and less structured in approach than traditional banks. Commercial Finance shops plan for loan-workout problems and maintain processes to routinely support this activity.

Many equity sponsors possess significant "use it or lose it" money, so there is a great deal of "use it" buying going on...

6. Financial Instruments are Increasingly More Sophisticated

In recent years, we have all witnessed an increase in options, such as mezzanine, sub-debt, Tranch B, P.O., export/import, stretch and others. Each of these instruments has one thing in common: helping companies increase financial leverage; however, when companies use these more sophisticated, higher risk sources of capital, they have less flexibility to "right the ship" and work out their problems on their own.

7. The Pace of Technology Change

As we saw with telecom, the internet and energy distribution, multi-billion dollar industries can spring up in as little as 5 years. With the increased pace of technology, lightning-quick access to information across the world, and the ability of capital to be quickly deployed in quantity to exploit economic opportunities, the U.S. economic cycle arguably has been permanently shortened from a 7- to 10-year

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cycle to less than 5 years. We will witness more "gold rush" industries where "what goes up, must come down."

8. Public Company Pressure

The U.S. public markets work on a quarterly scorecard—whether we like it or not. We as investors simply don't have the patience to reward long-term performance. This "instant gratification" factor also supports the likelihood that U.S. economic cycles will be shorter in the future.

9. New Liquidity from Debt Traders

Investors with huge resources have moved from primarily large public companies into the middle-market. Their primary concern is investment arbitrage; they thrive on insolvency, because banks aren't permitted by the OCC, as a practical matter, to maximize financial returns on troubled companies. They are forced to sell off non-performing loans to the benefit of debt traders...who often exercise their leverage or push for bankruptcy to maximize their gain at the expense of others. For example, Morris-Anderson was recently debtor's FA in a public company workout in which senior secured debt held by banks traded at 92¢...while the lower priority junior secured debt held by mezz investors traded at 98¢.

10. China

Last year, we worried about low labor rates in China destroying the U.S. industrial economy. This year, we're witnessing what happens to world commodity prices (steel, oil, etc.) as China's state-supported industry grows at an incredible 10% per year, heavily driven by "internal" consumption. The world's economic power is shifting from the U.S. to China and I don't think we can stop it. In short, the China factor will foster often-unpredictable market upheaval for years to come.

11. Resistance to Train U.S. Managers to Play Defense


The U.S. management development process in both schools and organizations is designed around sales growth and developing critical mass, with management financial incentives designed to match. It's just like high school—only the quarterbacks, running backs and receivers were idolized because they scored points. The guys in the pits, especially

the defensive line, were just players without much opportunity for glory.

As long as reward systems and management recognition primarily is based on revenue and quarterly earnings growth, management talent within bigger organizations, consulting and education will flow towards the money and the recognition.

Complicating matters is the generally accepted notion (and my personal conviction) that a completely different management skillset is needed to effectively manage a turnaround, as opposed to leading a growth company. The two management skills are perhaps even mutually exclusive.

We regularly see this in workout situations: the management team that was recruited to grow a business cannot adjust "psychologically" to what they perceive is the "bait and switch" of shifting to workout and downsizing actions. Compounding this issue is that owners and lenders are resistant to creating financial incentives for the management team now playing defense in a workout situation. In essence, the attitude of owners and lenders is that management should "help us out of the mess" without any incentives. In our experience, this attitude is a mistake, because owners and lenders should want to align the financial interests of senior management, owners and lenders. This is basic Motivation Theory 101. Until we develop managers within organizations who are good at managing troubled companies—and are rewarded financially and professionally for their success—turnaround consultants will continue to tap an unending flow of work.

Given all of the above factors, my prognosis is that business will be slow for turnaround professionals through the end of 2005. This will create a much needed shakeout of many "Johnny Come Lately's" to the industry... just in time for 2006's pickup. 

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lenders that credit bid \$180 million for Qualitech's assets. "Precision, which had notice of the hearing, did not object to the Sale Order." *Id.* at 541. The Sale Order provided that Qualitech was to convey its assets to the senior lending group "free and clear of all liens, claims, encumbrances, and interests, except for specifically enumerated liens..." *Id.* at 541 (emphasis added). The lenders formed a new company, "New Qualitech," to assume the rights of the purchaser under the sale order and take title to the property. The sale order gave the purchaser the right to designate which executory contracts and unexpired leases would be assumed by the debtor, and assigned to the purchaser at the sale closing. The sale closed on or about August 26, 1999. The period for the assumption and assignment of Precision's supply agreement and lease was extended four times by agreement. New Qualitech and Precision continued to negotiate over Precision's lease, but never reached an agreement, and both the lease and supply agreement were ultimately rejected by operation of law.

"Based on the terms of both section 363(f) and the Sale Order itself, the bankruptcy court determined that New Qualitech had obtained title to Qualitech's property free and clear of any possessory rights that Precision otherwise might have enjoyed under its lease. In relevant part, the court held that Precision's possessory interest was among those interests extinguished by the Sale Order: . . ." *Id.* at 541. Precision appealed and the district court reversed. The district court acknowledged that the provisions of Bankruptcy Code sections 363(f) and 365(h) were in apparent conflict. "Section 365(h) appears to grant the tenant the right to retain the benefits of the lease, while Section 363(f) appears to allow the [debtor] to divest the tenant of its leasehold." 2001 WL 699881, at *11.

Bankruptcy Code section 365(h)(1)(A), which is triggered by a Debtor's attempt to reject a lease, provides as follows:

(h)(1)(A) If the trustee³ rejects an unexpired lease of real property under which the debtor is the lessor and—

(i) if the rejection by the trustee amounts to such a breach as would entitle the lessee to treat such lease as terminated by virtue of its terms, applicable nonbankruptcy law, or any agreement made by the lessee, then the lessee under such lease may treat such lease as terminated by the rejection; or

(ii) if the term of such lease has commenced, the lessee may retain its rights under such lease (including rights such as those relating to the amount and timing of payment of rent and other amounts payable by the lessee and any right of use, possession, quiet enjoyment, subletting, assignment, or hypothecation) that are in or appurtenant to the real property for the balance of the term of such lease and for any renewal or extension of such rights to the extent that such rights are enforceable under applicable nonbankruptcy law.

Meanwhile, Bankruptcy Code section 363(f) states:

(f) The trustee may sell property under subsection

(b) or (c) of this section free and clear of *any interest* in such property of any entity other than the estate only if—

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value off all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. (emphasis added).

No creditor or party in interest challenged the sale of Qualitech's assets by asserting that any of the factors enumerated in f(1)-f(5) were not satisfied.

The district court held that the specific provisions of section 365(h) override the general provisions of section 363(f) when they conflict, as applied to the rights of lessees. This was the majority view at the time. Unhappy with this decision, New Qualitech appealed to the Seventh Circuit Court of Appeals.

Seventh Circuit Court's Holding

The issue presented to the Seventh Circuit on appeal was "whether a sale order issued under section 363(f), which purports to authorize the transfer of a debtor's property 'free and clear of liens, claims, encumbrances and interests,' operates to extinguish a lessee's possessory interest in the property, or whether the terms of section 365(h) operate to preserve that interest." *Id.* at 543.

The Seventh Circuit agreed with New Qualitech's arguments and reversed the district court. The Seventh Circuit held that section 365(h) does not supersede section 363(f), and that therefore the lessee's right to continued possession of the leased premises was extinguished by the bankruptcy court's section 363 Sale Order. The Court of Appeals based its holding on three grounds: "First, the statutory provisions themselves do not suggest that one supersedes or limits the other . . . Second, the plain language of §365(h)(1)(A) suggests that it has a limited scope . . . Third, section 363 itself provides for a mechanism to protect the rights of parties whose interests may be adversely affected by the sale of estate property. As noted above, section 363(e)⁴ directs the bankruptcy court, on the request of any entity with an interest in the property to be sold, to "prohibit or condition such . . . sale . . . as is necessary to provide adequate protection of such interest." Because a leasehold qualifies as an "interest" in property for purposes of section 363(f), a lessee of property being sold pursuant to subsection (f) would have the right to insist that its interest be protected." *Id.* at 547-8.

Precision did not insist on having its leasehold interest adequately protected. In fact, Precision did not stand

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up and object at all during the process. The Seventh Circuit noted that “not until months later, when New Qualitech changed the locks on the warehouse, did Precision take issue with the Sale Order, ...” *Id.* at 543. Further, Precision did not record its lease. Accordingly, Precision suffered the consequences of its inaction and lost its leasehold.

What does this holding mean?

Precision’s position was that the sale of the Qualitech parcel and warehouse was essentially a *de facto* rejection of its lease, and therefore Bankruptcy Code section 365(h) should allow it to remain in possession. Precision also argued that because section 365(h) is more specific than Bankruptcy Code section 363, section 365(h) should control. Further, section 365(h)’s legislative history suggests a dominant congressional policy protecting tenant’s possessory interests and expectations.

In contrast, New Qualitech argued that the plain language of section 363(f) allows a sale of its assets “free and clear” of *any* interest, including Precision’s leasehold estate. Qualitech argued further that section 365(h) applied only if the landlord rejected its lease, and since no such rejection motion was filed at any time in the bankruptcy case, New Qualitech argued that section 365(h) was never triggered and that Precision was out of luck. New Qualitech also asserted that the Bankruptcy Court’s Sale Order specifically extinguished all interests in Precision’s lease to the warehouse space in accordance with section 363(f) and that section 363(e) of the Code afforded “adequate protection” of Precision’s interests in the warehouse *if* Precision had asked for it. They did *not*, the argument ran, so Precision waived its rights to challenge the sale and the leasehold should be extinguished. In adopting New Qualitech’s arguments, the Seventh Circuit emphasized the fact that Precision did *not* timely object to the Bankruptcy Code section 363 sale or order and did *not* demand adequate protection of its leasehold interest. The Seventh Circuit also felt strongly that a “free and clear” sale under section 363 of the Code is consistent with the Bankruptcy Code’s policies of maximizing creditor recovery and rehabilitating debtors.

In determining the meaning of the words “any interest” under section 363(f), the Seventh Circuit reasoned, “the term ‘any interest’ as used in section 363(f) is sufficiently broad to include Precision’s possessory interest as a lessee ... The right that a leasehold confers upon the lessee is one to

possess property for the term of the lease. It is, therefore, not simply a right that is connected to or arising from the property, ... but a (limited) right to the property itself. That right readily may be understood as an ‘interest’ in the property.” *Id.* at 545. The Seventh Circuit also determined that section 365(h) focused on a specific type of event, *i.e.* rejection of leases by debtors. The Court determined that 365(h) did not attempt to deal with section 363 asset sales. The Seventh Circuit’s rationale for its decision boiled down to the following: “With these points in mind, it is apparent that the two statutory provisions can be construed in a way that does not disable section 363(f) vis-à-vis leasehold interests. Where estate property under lease is to be sold, section 363 permits the sale to occur free and clear of a lessee’s possessory interest—provided that the lessee (upon request) is granted adequate protection for its interest. Where the property is not sold, and the debtor remains in possession thereof but chooses to reject the lease, section 365(h) comes into play and the lessee retains the right to possess the property. So understood, both provisions may be given full effect without coming into conflict with one another and without disregarding the rights of lessees.” *Id.* at 548.

The Seventh Circuit went on to make the bold pronouncement that, “[C]ongress authorized the sale of estate property free and clear of ‘any interest,’ not ‘any interest *except* a lessee’s possessory interest.’” *Id.* at 548. Unwilling to carve out lessees’ rights to possession from bankruptcy asset sales, the Seventh Circuit made it clear that debtors should have the unfettered right to sell assets truly free and clear of all liens, claims, encumbrances and interests.

What are the lessons for landlords, tenants and others?

Landlords may shed an undesirable lease and tenant through a sale under section 363. Tenants, on the other hand, must be vigilant and vocal. If they are aware that their landlord has filed for bankruptcy, they must make sure that they receive timely notice of all pleadings so that they can be on the lookout for any proposed asset sales. If they do receive notice of any such proposed asset sale, they *must* timely object to the sale and demand “adequate protection” of their interests. Tenants should also talk with their attorneys and consider recording their leases where appropriate.

Bankruptcy Code section 365(n) has language very similar to section 365(h) but, instead, applies to licensees of

¹ The information provided in this article is for informational purposes only, and should not be construed or relied upon as legal advice.

² Certain commentators have written lengthy articles analyzing the complicated nuances of this case and critiquing the

Seventh Circuit’s analysis of bankruptcy law. Such an in-depth analysis is beyond the scope of this article.

³ Also, read “debtor-in-possession”.

⁴ 11 U.S.C. §363(e) provides, in relevant part, as follows:

(e) Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest. (emphasis added)

News Desk . . .

Chicago-based Principal **Daniel F. Dooley** is President-Elect of the *Chicago/Midwest chapter of the TMA*, but he still found time to moderate a panel discussion at Chicago's *7th Annual Conference on Corporate Reorganizations*. Principal **Jim Ross** also spoke at the event, which ran June 24-25.

On October 1, Dan will co-present "The Business Framework for the Negotiations" at Colorado TMA's *Corporate Restructuring* event. Then on October 18, he'll moderate a panel discussion covering "Issues Affecting Firm Management" at the *TMA 2004 Annual Convention* to be held in NYC.

Consulting Manager **Jacques Hopkins** spoke to a packed ballroom about managing distressed assets on June 24th at the *8th M&A Advisor Conference* in Chicago.

Next, the transaction guru teaches two half-day classes on November 9 covering "The Dollars from Distress" and "How to Market and Close Middle Market Transactions in under 90 Days" at the *IBBA/M&A Source* conference in Fort Worth, and then he speaks at *TMA Pittsburgh* on November 16.

Not to be outdone, Chicago-based Managing Director **Bob Morris** spoke about professional fee carve-outs June 4th at *ABI's 11th Annual Central States Bankruptcy Workshop* in Traverse City, MI. He also gave a 90-minute solo presentation to nearly 200 listeners on the "Nuts and Bolts of the Turnaround Process" at the *Institute of Management Accountants' 85th Annual Conference & Exposition*, which ran June 26-30 in Chicago.

Next up? He's on the "Is this Business DOA? Business Plans and Financial Statements in Small Business Cases" panel as well as leading a "Presenting the Feasibility Battle-Advanced principles in the use of financial information and experts in presenting or opposing confirmation" workshop at *ABI's Southwest Bankruptcy Conference*, which will luxuriate at the Las Vegas Bellagio September 9-12.



Three of Chicagoland's top lenders stopped by Oak Brook Hills resort for a candid discussion when Morris-Anderson held its annual 2-day MA&A Educational Conference in May.

From left to right: Woody Broaders, Sr. VP, GE Capital; Mark Gertzof, Director, Merrill Lynch Capital; Mitch Rasky, First VP, LaSalle Business Credit

Robert Wanat and **Michael Jakolat** have successfully completed their exams covering financial and managerial accounting and tax, turnaround and crisis management, and bankruptcy and UCC law, and earned the industry's Certified Turnaround Professional (CTP) designation. Morris-Anderson now boasts a total of 8 CTPs, with 4 more going through the testing. Congratulations, Bob and Mike!

Principal **John Kokoska** presented his case study "Spilt Milk" at *Orlando TMA's Chapter luncheon* on August 31.

Atlanta-based **Baker Smith**, Morris-Anderson & Associates' President, is on the lecture circuit. He participated in a panel discussion on "Consulting into the Storm: Opportunities for Non-turnaround Consultants in Crisis Situations" at the *Institute of Management Consultants' North American Conference*, which ran May 1-4 in Nashville. On May 25, he covered the topic, "Integration: the Importance of Implementing the Turnaround Business Plan" at the *Spring Venture Conference* held at The Cloister on Sea Island, Georgia. He also gave his how-to, "When Disaster Strikes: Surviving the Cash Crunch" at the *2004 Financial Management Conference of the South*, which ran August 26-27 in Atlanta.

He took time off to win his local chili cook-off, but can be found at the *Tennessee chapter of the TMA* September 16, when he participates in a panel discussion "The Future of Critical Vendor Motions." He's also scheduled to speak at the *10th M&A Advisor* conference, NYC, December 13-14.

Baker's Award-Winning Wild West Chili

2 lb ground bison	¼ cup chili powder
2 onions, chopped	or to taste
4 celery stalks, chopped	1 tsp black pepper
1 garlic clove, minced	or to taste
1-28oz can stewed tomatoes	2 tsp salt
1-28oz can tomato sauce	½ tsp sugar
	Olive oil, as needed

In saucepan, barely cover onions with water, bring to boil, then simmer until cooked. In separate saucepan, same as above for celery. In large skillet, combine ground bison with olive oil and brown. Do not overcook; bison is very lean meat so there will be no occasion to drain fat.

In large pot, combine all ingredients (do not drain water or oil) and simmer, covered, for 30-45 minutes.

Hint: Resist the temptation to boast that you cooked the chili "all day long"; in most cases, this rough treatment forces flavors out rather than blending them in. If you want to "feel the heat," add more chili pepper and/or Tabasco sauce to taste. If you must have beans, add just before serving for 5 to 10 minutes to heat through.

Serves 6. Enjoy.

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intellectual property. It is possible that the *Precision v. Qualitech* opinion will be extended to also apply to intellectual property interests.

Precision v. Qualitech: The Unanswered Questions

What type of a sale does not qualify under section 363(f)? Would section 365(h) prevent a "free and clear" sale of a lessee's leasehold interest outside the realm of the Seventh Circuit since the case was one of first impression at the circuit court level? In light of the *Precision v. Qualitech* decision, will other courts interpret lessee's requests for adequate protection in a different light? Other than licensees of intellectual property rights, who might be impacted by the *Precision v. Qualitech* decision? Is there a way for lessees to negotiate clauses into their leases with landlords that could protect them from the fate suffered by *Precision* and what would those clauses provide? These and other questions will likely remain unanswered until such time as other courts are confronted

with disputes similar to that presented in *Precision v. Qualitech* and render their decisions. It will be interesting to see whether other courts follow the Seventh Circuit's reasoning in what might be a strained attempt to rationalize section 363(f) with section 365(h) or whether other courts will distinguish the Seventh Circuit's opinion on the grounds that the somewhat unique facts of the case and *Precision's* seeming apathy to protecting its own interests forced the Seventh Circuit to rule the way that it did. Stay tuned . . .

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