THE M&A ADVISOR SYMPOSIUM REPORT

Featuring

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STALWARTS ROUNDTABLE
ENVIRONMENTAL DISTRESS

At The M&A Advisor's Annual Distressed Investing Summit in Palm Beach, Florida, January 27-29, 2016, Cathy Reece, Shareholder and Chair of the Financial Restructuring, Bankruptcy and Creditors Rights Group at Fennemore Craig PC, chaired a Stalwarts Roundtable on Environmental Distress. Reece was joined by Annette Jarvis, Partner, Financing and Restructuring, Dorsey & Whitney LLP; Dawn Cica, Partner, Fox Rothschild LLP, and Robert A. Del Genio, Managing Member, CDG Group.

The Stalwarts panel – three attorneys and a distressed investing advisor – discussed three significant bankruptcy cases that they recently participated in – Reichhold Inc., formerly a maker of resins used in composites and coatings; Veris Gold, a bankrupt mining company with operations in the US and Canada; and Tronox, Inc., a bankrupt minerals and chemicals processor with operations in the Western US. Each of these cases had its unique circumstances and twists and turns that made for an interactive discussion.

We hope that you will enjoy reading about and benefit directly from the insightful address of these unique cases and appreciate the responsible use of creativity and forward thinking in settling and adjudicating legacy environmental stewardship issues.

David Fergusson
President and Co-Chief Executive Officer
The M&A Advisor

Presented by

FENNEMORE CRAIG
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Executive Summary

Since the crash that resulted in the Great Recession of the last decade, the chemical, metals, and mining industries have seen their share of financial distress, and many of these cases have unmasked significant environmental issues for more constituents than creditors or shareholders. Three recent cases – Reichhold Inc., formerly a maker of resins used in composites and coatings; Veris Gold, a bankrupt mining company with operations in the US and Canada; and Tronox Inc., a bankrupt minerals and chemicals processor spun off from a wealthy parent (Kerr-McGee) – presented unique challenges to the participants in the restructurings of each company. Each case was a major study in strategy, tactics, negotiations, communications and creativity. The Stalwarts Roundtable, "Environmental Distress," described these cases at The M&A Advisor's Annual Distressed Investing Summit in Palm Beach, Florida, January 27-29, 2016.

"After 71 rounds of bidding, we increased the price 51% over what the stalking horse bid came in... The unsecured creditors didn't think they were going to get a recovery."
– **Robert A. Del Genio**

Introduction

At The M&A Advisor's Annual Distressed Investing Summit in Palm Beach, Florida, Cathy Reece, Shareholder and Chair of the Financial Restructuring, Bankruptcy and Creditors Rights Group at Fennemore Craig PC, chaired a Stalwarts Roundtable discussion entitled "Environmental Distress."

In this report, we summarize the observations and insights of these veteran M&A practitioners who participate in the restructuring process as legal experts and advisors. The panelists were:

- Cathy Reece | Shareholder and Chair of the Financial Restructuring, Bankruptcy and Creditors Rights Group, Fennemore Craig PC
- Annette Jarvis | Partner, Financing and Restructuring, Dorsey & Whitney LLP
- Dawn Cica | Partner, Fox Rothschild LLP
- Robert A. Del Genio | Managing Member, CDG Group

Three Cases - Three Positive Outcomes

Environmental issues present an additional complexity to restructuring cases involving companies in industries such as mining and chemicals. The Stalwarts panel, chaired by Cathy Reece of Fennemore Craig PC, looked closely at three recent bankruptcy cases: Reichhold Inc., formerly a maker of resins used in composites and coatings; Veris Gold, a bankrupt mining company with operations in the US and Canada; and Tronox Inc., a bankrupt minerals and chemicals processor spun off from a wealthy parent (Kerr McGee) with a legacy of environmental harm in the Western United States and not enough resources to remediate the damage. All of the cases ultimately resulted in positive outcomes for the environmental issues involved.

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Reece, who lives in Phoenix, AZ, chairs the Financial Restructuring, Bankruptcy and Creditors Rights Group at Fennemore Craig PC with over 200 lawyers and 6 offices in Arizona, Nevada and Colorado. She noted that, in these states, "The major cases tend to be either worked out or tend to be resolved with the environmental agencies."

She then asked the other panelists to briefly explain where they practice. Dawn Cica of Fox Rothschild in Las Vegas, Nevada, with 700 lawyers and 24 offices, practices in their Nevada,

California and New York offices, in the restructuring M&A, real estate, and financial groups. Annette Jarvis from Dorsey & Whitney in Salt Lake City, Utah has practiced for more than 30 years in the finance and restructuring department of her 19-office firm. She sits on the management committee and oversees the finance and restructuring department. Robert A. Del Genio is the managing member of CDG Group, a financial advisory firm based in New York that works on both financial advisory management as well as distressed investment banking.

Reece explained that the panel would be discussing the use of different forums and mechanisms available for addressing and solving environmental issues in restructuring cases, and it would not be discussing specifics of environmental remediation. She asked Bob Del Genio to open the discussion with a brief summary of the Reichhold case and his role in it.

De Genio described Reichhold as an 85-year-old billion-dollar manufacturer of composites and resins. It had 19 manufacturing plants around the world, operating in Asia, Europe, Latin America, North America, with customers in 85 countries. "With an 85-year-old chemical plant, you can imagine that over the years they had certain environmental issues," Del Genio said. Restructuring advisory firm Moelis & Company initially worked with Reichhold management. "We [CDG Group] were brought in initially to be interviewed as a chief restructuring officer. What we pointed out to them is [it would] probably be better if we had that responsibility without the title, and stay in the financial advisory role. Because what we thought would happen was the foreign operations would stay out, the US operations would go into Chapter 11, and we would be able to handle the sale because Moelis would then be at the parent level, and wouldn't be able to handle the US business. That's the role we played."

When Reichhold filed for Chapter 11 bankruptcy protection in 2014 to pursue a sale of its assets, it disclosed about $2.5 billion in filed environmental claims in addition to asbestos mitigation and an unfunded pension liability of nearly $100 million. "We had a triple-header there," Del Genio said, but added: "The foreign operations were relatively clean, and the notes really sat at a Dutch holding company, so it gave us some flexibility in terms of a structure."

Reichhold's restructuring team brought in Oaktree Capital as a non-traditional lender, after a traditional institutional lender "was sitting on an asset-based lending facility, receivables and inventory – they didn't want to get anywhere near any of the fixed assets," Del Genio said. Ultimately, Oaktree put a facility in place that led to a 363 auction of Reichhold's distressed US assets. "It became a very competitive process," he said. "We had a robust auction where we had a private equity firm bidding against, effectively, the note holders. The large note holders here were Black Diamond, JP Morgan's bond funds, and Third Avenue. After 71 rounds of bidding, we increased the price 51 percent over what the stalking horse bid came in… The unsecured creditors didn't think they were going to get a recovery.

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When the auction was over, there was about $24 million dollars in the estate for unsecured creditors after covering all the secured debt and 11 excess properties, which we didn't put in

the auction because those were all former manufacturing sites that had environmental issues. We knew no buyer would touch that so that was something that we had a separate process to deal with." After the auction, the team retained Hilco Real Estate to broker the sale of the environmental challenged properties. "The company tried for years to sell but they were using commercial brokers who are very qualified but really didn't understand the whole environmental issues. To date, there's been eight sold and that's created additional funds that have come into the estate as well."

"There were a few other things that we did that I think were creative," Del Genio added. Reichhold had one plant in the San Gabriel Superfund in California that had significant environmental liabilities. "We negotiated a Prospective Purchaser Agreement with the EPA and the Department of Justice to say that the purchaser would make a payment but if they made this payment, they want to know that they basically would get a free release and they wouldn't be considered a participating party before. I think the EPA and the DOJ rightfully determined that if they didn't accept this deal, the next deal would give them back the plant. They were able to negotiate about $800,000, which was pretty significant."

Reece asked Del Genio to describe the relationship with the the environmental agencies during the process. "What was their compliance history, their day-to-day relationship with various agencies state and federal?"

"What we found, which is very helpful in this process, is Reichhold had been a good steward over the years," Del Genio answered. "They had paid almost $100 million for environmental cleanup prior to this time, had worked with state and federal agencies all over the country – so they had a lot of credibility. On these excess properties that we were leaving behind -- that the buyers weren't taking – they were in discussions with them to say, "We're just not going to abandon this." During the negotiations with the agencies, he said, "It wasn't that we would just leave this in the estate and there will be no money. Over the years, on a lot of the remediation[s], they had set up LCs [letters of credit] to make sure that somebody's properties would be taken care of."

Del Genio said Reichhold was required to put up some insurance for two operating facilities that it sold that had some "minor environmental issues." He also said it was interesting that the attracted buyers were mostly "smaller entrepreneurial companies. You didn't see large companies buying this excess property." He continued: "Years ago, I sold a company and 3M was one of the buyers looking at it. They flew in 20 people on 2 corporate jets. The environmental people were basically walking around the facility with spoons looking at dirt and I said to one: 'What are you guys doing?' He said: 'Listen, you might think that the issue here on your balance sheet is a $5 million environmental issue…The day 3M buys this company, that becomes probably a $1 billion issue because we're a deep pocket, so we look at things very differently.' The [Reichhold asset] buyers were not what I would consider to be deep pocket buyers, but they were very entrepreneurial and they found a way to get comfortable with the state agencies and the EPA."

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"Now, moving on to the sale for just a second," Reece said. "There were 71 offers back and forth during the sale process. Tell us about the dynamics of that and why it took so long in that environment. Did you start too low with the price?" Del Genio said the prices were not too low; the creditors "did not want to leave anything on the table," and one buyer "was very robust and didn't stop, so they kept bidding increments and he kept bidding against them. Then, finally, at 3:30 in the morning, he stopped – we started in the afternoon. I don't think that they [creditors] realized that he was going to be as aggressive. I think what we realized is he understood where the state of the industry was and this particular company, and he felt the US business could be decoupled from the worldwide organization and still be a profitable standalone business." He added that the secured creditors were fully paid out, and the bondholders "now own 100 percent of the company on a worldwide basis. They actually are investing in this company and beat their forecast significantly. They're doing pretty well."

"These mines are major employers. This was the major employer in the town of Elko, Nevada. It had a well-known mine in Nevada. It had large environmental problems."
- **Annette Jarvis**

Reece asked Del Genio what his overall advice would be for handling an environmentally distressed case such as Reichhold. "First of all, if you're going to be dealing with a sales process to an environmental company, you need to have liquidity because it's going to take a little bit longer to get the sale done," said Del Genio. "There's going to be more due diligence, you should have a robust data room with a lot of information on environmental, and you need to have the right experts that can deal with buyers and buyer's experts to get them comfortable that this environmental issue is not an insurmountable problem. You also need to be talking to the regulatory agencies early in the process so they're well-informed, they know what's going on, that you can see that, you're going to be cooperative and you're not going to dump a problem in their lap. I think that is very key as part of this process." He added: "If there's certain assets that you know are just going to be problematic but somewhat insignificant, try to pull them out and create a separate process for those so you don't taint the entire 363 sale or the planned process. If you have foreign operations, try to keep all the foreign operations out of the US Chapter 11 if possible."

There's Gold In Them Thar Hills!

A Mark Twain character, Mulberry Sellers, may or may not have first uttered the famous line to explain the California Gold Rush of 1849, "There's gold in them thar hills." Gold mining remains a coveted and important industry sector that, like all commodities, has its booms and busts. For the second environmental distress case discussion, Annette Jarvis of Dorsey & Whitney, described a company – Veris Gold – that, unlike Reichhold, "had not been a good citizen as far as environmental compliance."

"It had no friends?" asked Reece. Jarvis responded, "Yeah, it had no friends anywhere. It was a real problem…Like Cathy, we do a lot of work in the mining industry in the West. These mines are major employers. This was the major employer in the town of Elko, Nevada. It had a well-known mine in Nevada. It had large environmental problems. It was owned by a Canadian company. It ended up in a cross-border situation where the Canadian parent was in a Canadian proceeding and then asked to be recognized in the American case, in a Chapter 15 case."

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Jarvis came in representing the buyer, who was "a very experienced gold mine operator. Cathy's client was the original DIP [debtor in possession] lender who was willing to credit bid for the assets, but needed a financial buyer that was very experienced in gold mining." Jarvis then described how Veris Gold filed under Canada's Companies' Creditors Arrangement Act (CCAA). Under CCAA, the Canadian court appoints a "Monitor," an independent third party whose duties include monitoring the business and reporting to the Court on any major events that might impact the viability of the company. The Monitor filed a Chapter 15 bankruptcy in the US, and then tried to sell environmentally impacted US assets of Veris Gold. The Debtors used two experienced investment banking firms but no buyers were found. "Nobody came in to buy the assets so it was a complete disaster as far as that was concerned," Jarvis said. "The lenders went in and asked for the Monitor to obtain expanded powers. The Monitor, in essence, then became the seller of the assets, not the operator. Whitebox [Advisors LLC] had come in and provided DIP financing that primed the pre-petition lenders and mechanics liens and when no other offers were received it agreed to become the stalking horse bidder. One of the conditions for closing the sale was finding an adequate financial buyer, which came in the form of my client. We made this bid through a 363 sale and then closed the sale." No chapter 11 had been filed and the sale occurred thourhg a chapter 15 proceeding in the US and a sale through the CCAA proceeding in Canada.

Reece added the Monitor was trying to stay as far away from all of the environmental liabilities as she could. Veris Gold, Reece said, had "gold mines that were also in the Yukon territories, and so it was very difficult. When the commodity prices go down," she added, "there is less cash for operating the business. When you have less cash to operate the business, you have to choose what you're going to pay – your employees, your taxes, your cleanup costs, the various suppliers that are involved and the people that are doing work on the project. Because the gold prices had gone down significantly, it involved a really distressed company that had a net operating loss on a regular monthly basis. The cleanup became important. You have the State of Nevada, the Bureau of Land Management and the US Forest Service. You also had the EPA in there monitoring. They were not shooting each other but they weren't cooperating. One of the things we found is that the lack of communication and failure to keep promises that a distressed debtor faces with its environmental agencies just makes the problems that much larger." Additionally, Reece said, a dust problem was uncovered in the mine. One of the federal agencies stepped in and shut down the mine for several days during the bankruptcy until the dust problem was solved. In addition there was a fire in the mill which also shut down the mill for 10 days. Reece said, "If you can't produce the product that generates the cash there is nothing to sell or restructure… having liquidity is very important."

Jarvis said the dust problem and other issues surfaced during due diligence by her client. "Fortunately, because this was a client that really understood gold mining. It didn't scare them off. They understood those problems." Added Reece: "It was not the end of the world. What it allowed a party that was a DIP lender to be able to realize that it needed a financial buyer with even more liquidity than they had so that, together, there would be a good, healthy financial history to provide to both the agencies [US and Canadian] as well as to the bonding company. The bonds became extremely important in this situation."

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Jarvis agreed. "Because the relationships within the company and their regulators were so poor, one of the things that we had to do when we stepped in was, basically, promise that we would clean the slate after we bought this and come up with our own credibility in our history in environmental compliance with the gold mines that our client had operated elsewhere, along with a plan to deal with the environmental issues going forward and a promise putting not only our operational history but our financial ability behind that we would make this better. Of course, in this situation, the environmental agencies were dealing with a mine that currently had no ability to really take care of its environmental problems. Because no other bidder had come in, the other alternative would be the closure of the mine and then the environmental problems become the problems of the government."

> "The complete spin-off, however, didn't actually occur until 2005 where they have a Master Separation Agreement. They made it clear that Tronox was responsible for all of the environmental claims but they backdated those documents to 2002."
> – Dawn Cica

"Having some cash bonds that bonded the environmental liabilities was an advantage," Jarvis added. "That, of course, helped us as well in getting the regulatory agencies not to demand a lot more in bonds from us." Reece also noted that good communication with the bonds' insurer – AIG – helped to "show them that buyer could manage the cleanup process and work well with the governmental agencies so as to minimize the risk for them." Jarvis also observed: "The regulatory agencies – some worked well together and some did not. You have so many different regulatory agencies involved. [For instance,] the NDEP [Nevada Department of Environmental Protection] worked well with the BLM [Federal Bureau of Land Management], so that was pretty easy." Eventually the insurer AIG and the regulatory agencies agreed that the surety bonds and cash bonds could be assigned to the buyer.

Reece said the last issue concerned the license of the mercury processing patents. "You couldn't operate without the patents. The patents were for equipment dealing with the mercury." She said, the Veris Gold had somehow allowed the employee who developed the equipment to own the patents. It became more complicated when it was discovered he was an employee of the Canadian company, not the US company and had licensed them to the Canadian company. "We had to work under Canadian law. Once we were able to work with the employee, get the transfer of the license blessed by the Canadian court, then the US court – they had no problems."

"Then in the long run, what happened is the sale did take place," Reece concluded. "At the same time, the Monitor abandoned the Yukon territory mine back to the province. The Yukon province and the insurance company and the mechanic's lien holders have to deal with those problems up in Canada, but the Monitor was able to sell and take care of the US assets. There's nobody who would buy or be creative or come up with the solutions that were necessary in Canada."

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A Legacy of Environmental Damage Fraudulently Conveyed

Turning to the third case in the discussion, Reece noted that the Tronox bankruptcy was completely different from Reichhold and Veris Gold. She turned to Dawn Cica of Fox Rothschild to describe the situation. "I represented the State of Nevada in Tronox. It was a very interesting case. Kerr-McGee was one of the biggest chemical companies in the world. For years, starting in the late 1920s, they acquired gas stations, oil refineries. They began uranium mining on the Navajo Nation properties. They had 33 wood treatment plants that use creosote. In the '40s, they bought a company called

American Potash and Chemical. That company owned – among other horribly, obnoxious plants – a plant in Henderson, Nevada [a suburb of Las Vegas]. They made rocket fuel there using ammonium perchlorate, which then trickled down into the Las Vegas water table, which flows directly into Lake Mead in the Colorado River and goes to Arizona and California. All in all, they had 2,700 environmental legacy sites in 47 states and 7 federal Superfund Sites."

In 2000, Kerr-McGee hired Lehman Brothers to separate their chemical operations from its exploration and petroleum operations. The restructuring created Tronox to operate the former Kerr-McGee chemical operations, including the Henderson plant. Tronox took on legacy environmental liabilities. "Just to give you an order of magnitude," Cica said. "From 2000 to 2005, the business generated $5.2 billion and the chemical business generated $312 million. During the same period, they incurred over $1 billion annually in environmental remediation costs." In 2002, Anadarko looked at merging with Kerr-McGee but backed away after seeing the environmental liabilities. By the end of 2002, Kerr-McGee and Lehman completed 11 transactions that separated the energy business from the chemical business. "Because they had consolidated financials, this was not really clearly disclosed," Cica said. "There was a footnote in the 2003 10-K that said Kerr-McGee distributed investments in primarily oil and gas into a newly formed holding company and merged into it. That was the sum of the disclosure. The complete spin-off, however, didn't actually occur until 2005 where they have a Master Separation Agreement. They made it clear that Tronox was responsible for all of the environmental claims but they backdated those documents to 2002."

Separately, Kerr-McGee's energy business was acquired by Anadarko for $18 billion, and as part of the deal, there was a $450 million facility for environmental indemnities, of which Tronox was to receive $100 million over seven years. "But it wasn't triggered unless Tronox spent a certain amount in remediation," Cica said. "Because they had a couple hundred million dollar net loss every year, they obviously weren't in a position to do that. They also left Tronox with about $700 million of unfunded pension liabilities and employment liabilities." In 2006, Tronox tried to sell its former plant site in Henderson, expecting about $550 million. "When the buyers came in to do the due diligence and talked to the NDEP, the Nevada Department of Environmental Protection, they backed out. The remediation was okay for it to be vacant land but the goal was to build houses and a casino on it which would have required immensely different remediation at a much higher cost."

"It sounds to me like a potential fraudulent transfer claim," Reece observed. "Tronox – how did it get into a Chapter 11? What happened? What triggered it?" Cica answered: "By 2008, they decided, 'Yeah, this is not going to work.' Tronox hired bankruptcy counsel. In 2009, 6 years and 13 days after the separation, they filed for Chapter 11. The first thing they did was to sue the former parent for fraudulent conveyance. In order to confirm its plan, Tronox needed to deal with these environmental legacies."

About 17 states and the federal government were involved in negotiating a settlement over Tronox's environmental legacies. "Most of the people sitting at the table were environmental lawyers. They were the EPA's environmental lawyers. They were each state's attorney general office that ran that state's environmental department. There wasn't really a lot of bankruptcy sophistication on that

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side of the group. The State of Nevada was able to say to Tronox, 'Look, you need to pay our bills. We're going to hire a bankruptcy lawyer because we don't really understand this whole fraudulent conveyance thing, and so we're not going to take a deal that relies on that.' Tronox really had to get us to buy into the fraudulent conveyance litigation or else they were never going to get a deal done."

After a year-long negotiation, in early 2011 the parties entered into a settlement agreement approved by the US Bankruptcy Court for the Southern District of New York, which resolved Tronox of its environmental liabilities with the EPA, other federal, state, and local agencies, and the Navajo Nation. It provided $270 million and 88 percent of Tronox's interest in a fraudulent conveyance case to the governments and bankruptcy-created trusts for cleanup costs incurred or to be incurred at these sites. In late 2013, the Bankruptcy Court announced its decision in the fraudulent conveyance lawsuit and found the defendants (Kerr-McGee Corporation and certain other subsidiaries of Anadarko) liable for damages between approximately $5.2 billion and $14.2 billion. Then in 2014, EPA and the Department of Justice announced an agreement to resolve fraudulent conveyance claims against Kerr-McGee Corporation and related subsidiaries of Anadarko Petroleum Corporation, resulting in the largest recovery for the cleanup of environmental contamination in history – Anadarko paid $5.15 billion plus interest to the litigation trust on January 23, 2015.

Reece asked Cica what happened to the potentially responsible parties, including officers, directors and individuals handling cleanups of the many contaminated Tronox sites. "They got released," Cica said. "The real big issue though was trying to get the government and the other states and the Navajo Nation to buy into this litigation. Primarily what we said was, 'Look, we think this is going to be at least a billion dollars.'" There were also issues with statutes of limitations in various states involved in the bankruptcy. "Was it Oklahoma, because that's where the [Kerr-McGee] headquarters were? Was it four years or because of the federal government and the debt collection, was it six years? Were you stuck with the 2005 date, which you clearly could get to under the four years, but you really need to go back to 2002? What the judge did was looked at when it happened, the fact that the financials were consolidated, that the creditors could look at Kerr-McGee. He looked at the intent of the parties; he looked at all of these factors and said: 'Yes, this didn't really happen until 2005.' With that, he went through the actual fraudulent conveyance and virtually found every badge of fraud. He went through a constructive fraud. Primarily the judge did that because this was the liability phase of the trial. The other side really did argue with a straight face that, yes, it was a reasonably equivalent value to give them $40 million dollars for roughly $5 to $15 billion of environmental legacy and that was fair. They argued that, seriously, with a straight face."

Cica said that of the $5.15 billion final damages settlement, her client [Nevada] got about $1 billion. "What is it going to do with its $1 billion?" Reece asked. "Most of it is going to go to remediate the perchlorate count and keep the perchlorate from leeching into the water table, which is a fairly significant undertaking"

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Three Important Outcomes – Lessons Learned

"What are the lessons to learn from the Tronox case?" Reece asked. Cica responded: "Don't be so blatant about having a spin-off whose sole purpose is to ditch the environmental liabilities. I mean, they had slides that they showed the board and there were books that the investment bankers used. They basically said, 'Good Kerr-McGee and bad Kerr-McGee.' At the time of the trial, the good Kerr-McGee was worth $60 billion dollars. They probably ended up way better off than they ever could have if they sold Kerr-McGee for $18 billion. They only had to pay $5 billion for the liabilities. Now, they have a $60 billion dollar market cap."

"There are different places to handle these things. To me, the most important thing and a lesson to learn from these are the creativity that is necessary when you're dealing with an environmental problem."
– Cathy Reece

"It ended up being a good decision from a business perspective, maybe not from a corporate governance or a corporate citizenship," Reece concluded, adding: "The other thing that I learned from watching that example was the importance of the governmental agencies working together but also taking control of the litigation rather than letting the debtor do it and having to supervise the debtor with its already tainted record." Cica then noted: "Many of the states after the settlement said that they absolutely should have hired their own bankruptcy counsel and not had their in-house state people."

As the Stalwarts panel moved to a close, Reece asked the panelists for thoughts on important lessons learned from environmental cases, noting that venue often plays a key role. She cited as an example a South African bank that she represented in a copper mine loan. "Between the borrower and my client, they decided to do a state receivership," she said. "We did not choose to do a Chapter 11; instead, we did a sale free and clear of liens in the state receivership, and [were] able to find the buyer and manage a sale process and get the state court judge to bless it. The receivership order became important to limit the liability of the receiver…There are different forums. There are different places to handle these things. To me, the most important thing and a lesson to learn from these are the creativity that is necessary when you're dealing with an environmental problem."

Del Genio said a lesson for him is getting to know "who your buyer is and making sure they understand. You don't want to waste time with people who don't understand environmental issues because you'll go through a long process and then they don't get comfortable." Reece added: "They have to understand that when you solve environmental problems with the operations going forward. If you have sufficient funding and you have sufficient ability to do it and communication and relationships, you can do it." Del Genio then said: "Communicating with all the regulators through the process and not waiting to the end and saying, 'okay, I have a transaction, this is what we're going to do.' It's not going to happen."

Jarvis opined: "I would say, the difference between having a good citizen that comes into a Chapter 11 or a Chapter 15 or receivership is huge compared to a bad citizen coming in. When you are faced with a company that has a history of non-compliance and clearly does not have the financial resources to do it, in order to work out things with the regulatory agencies you are going to have to clean house. You're going to have to bring in someone with credibility, someone with financial resources and start all over again. It's hard because it's really complex."

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Cica recommended: "You have to get the regulators involved early. If you don't have a receiver or a monitor or some other third-party, use the bankruptcy lawyers and explain what's going to happen and explain the plan and get them onboard because they can stop it. They can say 'No, we're not going to let you sell it to that person.' It's really important to get them involved."

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Video Interviews

To watch exclusive M&A Advisor interviews with these industry experts on "Environmental Distress," click on the following images:

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Symposium Session Video

To watch the Stalwarts Roundtable "Environmental Distress" at M&A Advisor's 2016 Distressed Investing Summit in Palm Beach, Florida, click on the following image:

Stalwarts Roundtable: Environmental Distress

Symposium Participant Profiles

Cathy L. Reece
Chair
Fennemore Craig

Cathy L. Reece is the Chair, Financial Restructuring, Bankruptcy and Creditors' Rights at Fennemore Craig. She has extensive experience in every aspect of corporate workouts and bankruptcies, but she also works with clients structuring complex transactions and purchasing distressed assets. Ms. Reece is a past President of the Arizona Chapter of the Turnaround Management Association and served as the Vice Presidents of Communications, Membership and Conferences, and as an Executive Board Member for the International Turnaround Management Association. She was selected as the Legal Advisor of the Year by The M&A Advisor in 2014. She is a member of the American Bar Association and serves as Chair of the Loan Workout Subcommittee of the ABA's Business Law Section. Ms. Reece is a Fellow of the American College of Commercial Finance Lawyers. She is the former chair of the Arizona State Bar Bankruptcy Section and the former chair of the Local Bankruptcy Rules Committee. Ms. Reece is a member of the American Bankruptcy Institute and is Board Certified in Business Bankruptcy Law by the American Board of Certification. She is listed in Best Lawyers in America and Super Lawyers. Ms. Reece is listed as a Litigation Star in Benchmark Litigation and in the inaugural edition of Top 250 Women in Litigation.

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Partner
Dorsey & Whitney LLP

Annette Jarvis is a Partner at Dorsey & Whitney LLP. As a nationally recognized expert in the insolvency field, Annette represents banks, financial institutions, and numerous other parties nationwide in resolving concerns related to Chapter 11 bankruptcy cases and out-of-court workouts. Her experience includes representing creditors, debtors, boards of directors, trustees, receivers, public bond holders, purchasers of distressed assets, and indenture trustees. She was awarded the 2007 Large Company Transaction of the Year Award (Turnaround Management Association) in recognition of her work in the USA Capital Commercial Mortgage cases. Annette also has strong, successful experience in receivership cases, representing receivers and acting as a receiver. She has handled SIPC cases brought under SIPA, and has experience in state insurance rehabilitation and liquidation cases. Annette is a member of the Firm's Management Committee and the Partner-in-Charge of the Transactions Practice Groups at Dorsey.

Dawn Cica
Partner
Fox Rothschild

Dawn Cica is a Partner at Fox Rothschild. Dawn has more than 25 years of experience working on transactions of all types, including transactional aspects of bankruptcy and creditor's rights such as strategic resolutions, workouts, restructurings, settlements, debtor-in-possession financings and asset sales. Her transactional experience also extends to a variety of other industries, particularly the complex details surrounding the gaming and real estate fields. She has built a renowned bankruptcy practice in the State of Nevada representing creditors, committees, affiliated parties and debtors. Dawn has counseled lender, guarantor and borrower clients on the full scope of their legal issues in major commercial and real estate matters She has also earned a reputation in the gaming industry for her sound judgment and strategic counseling on a range of matters, including lending, leasing, management agreements, acquisitions and sales, and restructuring issues.

Robert A. Del Genio
Managing Member
CDG Group

Robert A. Del Genio is a Managing Member at CDG Group. Robert is a recognized leader in the field of restructuring and mergers and acquisitions and has over 30 years of experience. He is a frequent guest speaker before organizations on such topics as "Recent Trends in Restructuring," "Valuation Considerations with Troubled Companies," "M&A Opportunities in Bankruptcy," "Valuations," "Deal Structuring," "Creating Shareholder Value," "Valuing Retail Deals in Volatile Financial Markets," "The Current M&A Environment," "Overview of Financial Statement Analysis in a Restructuring Context," and "Pricing the Deal." Since 1982, Mr. Del Genio has been advising companies, lenders, creditors, corporate boards, and equity sponsors across a diverse range of industries both domestically and internationally.

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Fennemore Craig, P.C. a 130 year old full-service business law firm, has one of the largest and most active bankruptcy and creditors' rights practice groups in the Southwestern states, representing clients nationally, regionally and locally. The Bankruptcy and Creditors' Rights Practice Group represents a diverse group of clients including secured creditors, unsecured creditors, financial institutions, bankruptcy committees, debtors, bankruptcy trustees and purchasers of financially distressed businesses. These representations occur in state and federal court proceedings, Chapter 11 cases, debt restructuring, liquidation cases, out-of-court workouts, asset recovery, foreclosure actions and other insolvency proceedings. Together with attorneys from other disciplines in the firm, the Bankruptcy and Creditors' Rights Practice Group plans and negotiates complex workouts and restructures.

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