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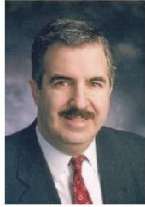
competent counsel and tax advisors. These agreements are essential to the success of any enterprise, and are particularly relevant when addressing governance issues.



Fellig, Feingold, Edelblum & Schwartz, LLC

By Thomas J. Fellig, Esq.
Member

Our client, a manufacturer/distributor which had been purchased by a private equity group several years before, had significant sales and was achieving operating efficiencies and cost controls because of changes put in place by new managers. But the amount of debt and cost of servicing the debt made a return to profitability impossible. With the market for their products turning up, we helped them restructure loans by giving additional security and a monthly priority payment to the lender in exchange for a reduction in the total debt amount. After three years of accelerated payments to the lender, a complete refinancing took place and a new operating agreement was negotiated between the investors and the managers who became equity owners as well. Our firm assisted in both ends of the transaction—first, by advising as to the loan restructuring, negotiating the best possible terms, and crafting favorable loan documents, operational agreements and asset security agreements. Three years later, we were instrumental in the ultimate business refinancing and with negotiating a new operating agreement that provided the backbone for the business to move forward into profitable operation.

Gibbons, P.C.

By Michael J. Lubben, Esq.
Director, Corporate Department

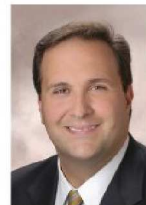
Our privately held clients frequently ask our advice with governance issues and whether to implement Sarbanes-Oxley provisions as "best practices." This includes whether to form an audit committee, adopt a code of ethics or conflicts of interest policy, or overhaul corporate bylaws to deal with an inactive board. Occasionally we are asked by closely held companies to advise them when there is a charge that an ownership group is suspected of disenfranchising the other ownership group(s). In a recent matter, we represented a one-third owner of two New Jersey companies. Our client came to us after a 20-year relationship became strained. The majority owners were disregarding the requirements of the companies' governing documents, demanding additional capital, attempting to usurp corporate opportunities for themselves and providing limited information to the minority owners. Relying on the existing organizational documents and minority shareholder protections under New Jersey law, we successfully helped our client. Once the majority owners realized the companies would have to comply with the existing corporate governance requirements, provide complete information, hold meetings, and open their accounting records, the playing field was leveled and the majority owners agreed to buy out our client at a price far greater than what our client anticipated.

Every agreement, policy and contingency must be incorporated into written documents. Nothing should be open to interpretation.

Herten, Burstein, Sheridan, Cevasco, Bottinelli, Litt & Harz, LLC

By Gianfranco A. Pietrafesa, Esq.
Member/Chair, Business Law Group

Our client was making a multi-million-dollar investment in a corporation. Although it would own a significant portion of the corporation, it would be a minority owner with no control over the corporation. It was, therefore, concerned about protecting its investment. We were able to negotiate several provisions into a stockholders' agreement to govern the corporation and protect our client's interests. Among other things, our client received representation on the board of directors and was required to be present for the board to have a quorum to take action. Our client also had to give its consent before the corporation took certain action, such as awarding compensation to officers and key employees, entering into agreements outside the ordinary course of business, borrowing money, issuing shares of stock, and pursuing mergers and acquisitions. In the event that our client's relationship with the controlling stockholders did not work as they intended, our client also had a means of exiting the corporation. It had a "put right," which gave it the right to force the corporation to purchase our client's shares based on a price determined in accordance with a formula in the stockholders' agreement.



Jackson Lewis, LLP

By Richard Cino, Esq.
Partner

Our clients face an ever-increasing need to focus on corporate governance. From early whistleblower statutes such as the Conscientious Employee Protection Act, to more recent enactments like the Sarbanes-Oxley Act, state and federal laws require employers to engage in greater oversight of their operations, establish mechanisms to receive feedback and complaints from employ-

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