

## message from the managing attorney

As we look back on the second quarter, we note that the Detroit office is proudly marking its 30th anniversary in the Motor City. We're obviously proud of this milestone. For this great occasion, we've planned a gala celebration, but that's not all: we're continuing the office's tradition of contributing to the community as part of the celebrations this year.

We also report that merger and acquisition activity is likely to increase during the remainder of the year as a result of the high level of distressed debt, according to a study commissioned by Carl Marks Advisory Group LLC and Pepper. Pepper also will host a webinar on this topic; see page 3 for details.

In Pepper's world online, Mr. Canavan is featured in a Peppercast to help employers plan layoffs to consider the morale of those remaining employed. And, in an online seminar, Pepper partners Ms. Demont, Mr. London and Mr. Rosener will participate in a August 5 webinar addressing recent trends in shareholder activism and reasons why directors and management should be proactive.

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## Pepper Hamilton LLP Celebrates 30 Years in Detroit

Pepper Hamilton LLP is celebrating the 30th anniversary of its Detroit office, and to mark this great occasion, and in recognition of the difficult economic times, Pepper has coordinated a campaign to give back to the community, including:

- Employees at the firm are participating in a 10-week fundraising effort. Pepper will match employee contributions collected and donated to a Detroit area charity.
- Pepper employees will be collecting needed items from July 1 through July 31 to benefit the Detroit Rescue Mission.
- Pepper employees will serve dinner meals at the Detroit Rescue Mission and at Genesis House III. Volunteers will make pizza and serve approximately 100-300 residents at each meal.
- Pepper will purchase and produce dinners for the parent guests of the local Detroit Ronald McDonald House by providing the food and labor.

"While these tokens will not solve all the problems facing our community, we feel every little bit helps. If everyone in the community contributes, the cumulative effect will be significant," says attorney in charge Barbara Rom.

In addition to the community events, to mark its 30<sup>th</sup> Anniversary Pepper treated nearly 200 clients and guests to an evening of various family activities, food and drinks to view the spectacular fireworks display on June 24.

"Our food and drink theme was all Michigan products," said Pepper partner René Hansemann, chairperson of the coordinating committee. "Our team of attorneys and staff produced a truly outstanding event!"

"The fireworks served as an exclamation point marking three decades of expanding legal services our firm has provided the Michigan business community, national clients and international entrepreneurs," said Rom.

## About Pepper Hamilton's Detroit Office

Established June 1, 1979, the Detroit office became one of the first tenants of the Renaissance Center, following Ford Motor Company. Pepper occupied 2,545 square feet at a cost of \$11.50 per square foot. Today, its multi-floor suite covers over 39,000 square feet. Originally, one attorney and five support staff opened this office. One of the original staff hires, Michelle Makulski, remains a loyal Pepper secretary today.

Pepper's initial practices included labor law, occupational safety and health, employment discrimination, counseling and litigation. Then the office grew by adding partners in the areas of corporate and securities counseling, venture capital and small business matters, environmental, employment, litigation, public finance, real estate, energy and tax matters.

In 1989, several attorneys from the prestigious law firm of Hertzberg, Jacob & Weingarten joined Pepper Hamilton and entered a new area of bankruptcy and reorganization law. Pepper's Detroit office represented debtors, creditor committees, and trustees in cases throughout the country. Founder Stuart Hertzberg's son, Robert, now co-leads Pepper's national bankruptcy and reorganization practice from this office.

"We are very proud of what we've accomplished here in Detroit over the past 30 years with our clients and the community," said Bob Hertzberg. "I can think of no better way to say 'thank you' than to give back to Detroit organizations that we care deeply about and support."

Pepper's Detroit office is the national center for the SBIC (Small Business Investment Company) practice. Pepper's Detroit partners have served as members of Michigan boards that foster investing in early stage companies: past president of INSOL International (an international association of restructuring, insolvency & bankruptcy professionals); past chairpersons of the Michigan State Bar environmental law section, real estate section and litigation sections; president of the Detroit Metropolitan Bar Association; Chief of Staff of the Criminal Division; U.S. Department of Justice; and currently serve as a member of the Michigan Gaming Control Board. Detroit office lawyer alumni include a Michigan Circuit Court Judge.

The Detroit Rescue Mission Ministries is one of the largest providers in the fight against homelessness and substance abuse in the country. For more information, visit [www.drmm.org](http://www.drmm.org).

Ronald McDonald House of Detroit is a home-away-from-home and offers support services to parents with hospitalized children. For more information, visit [www.rmhdet.org](http://www.rmhdet.org).



## Peppercast: Reductions in Force - What About Those Left Behind?

In this tough economy, many organizations have come to the conclusion that layoffs are necessary if the business is to remain afloat. Most companies try to come up with a plan for discharging those employees in a manner that maximizes their human dignity and minimizes disruption to your business operations.

In this podcast, Mike Canavan, an attorney in Pepper's Princeton office concentrating his practice in labor and employment law, discusses how to get the most out of your remaining employees who are about to watch their friends and colleagues lose their jobs.

Listen today by visiting the Labor and Employment section of Pepper's podcenter at [www.pepperpodcasts.com](http://www.pepperpodcasts.com).

## Market Conditions to Produce Significant Distressed M&A Opportunities in Second Half of 2009

The current economic downturn will offer greater discounts on distressed assets than previous downturns have offered, drawing both financial and strategic buyers to the market in the coming months, according to 92 percent of respondents to a new **Distressed M&A Outlook** survey conducted by mergermarket, Carl Marks Advisory Group LLP and Pepper Hamilton LLP.

In the second quarter of 2009, Carl Marks Advisory Group LLP and Pepper Hamilton LLP commissioned mergermarket to survey 75 investment bankers, private equity practitioners, hedge fund investors and lawyers regarding their outlook for distressed M&A activity in the upcoming year. Respondents provided invaluable insight into current market conditions, as well as a forecast for the year ahead.

“With a variety of factors contributing to an increased volume of distressed opportunities, both buyers and sellers are expected to eagerly pursue deals, as each side stands to gain unique benefits,” said Jim Rosener, managing partner of the New York office and head of the International Practice Group at Pepper Hamilton LLP.

Aside from attractive discounts, debt-related issues will likely be the most prominent drivers of distressed M&A activity in the upcoming year, according to respondents. An increase in covenant defaults is identified as a major catalyst to distressed deal flow, as is companies’ inability to meet debt obligations or refinance upcoming maturities.

Distressed investors are likely to find the greatest opportunity in the following two sectors:

- Real Estate, where 63 percent of respondents expect to see the highest volume of distressed deals in the year ahead, and
- Financial Services, which 38 percent of respondents believe will experience the highest volume of distressed M&A this year.

### Distressed M&A Outlook Webinar

August 11, 2009

12:00 – 1:00 P.M. EASTERN

To gain perspective on the current distressed M&A market, Carl Marks Advisory Group LLC and Pepper Hamilton LLP commissioned mergermarket, a research and publishing company, to survey a diverse group of corporate executives, private equity practitioners, hedge fund investors and lawyers regarding the foremost issues facing distressed investors today.

Join us for a complimentary, one-hour online seminar, that will discuss the report findings and implications for the combination of eager sellers and opportunistic buyers who will undoubtedly provide fuel for distressed activities in the second half of 2009.

Register online at [https://www.regonline.com/Distressed\\_MA\\_Opportunities](https://www.regonline.com/Distressed_MA_Opportunities).

Please contact Brian Dolan at [dolanb@pepperlaw.com](mailto:dolanb@pepperlaw.com) with questions about the event or to request a copy of the study.

63 percent of respondents expect most distressed deals to be handled outside of court; however, Chapter 11 reorganizations may be an exception as these are expected to be extremely common over the next 12 months.

The predominance of out-of-court deals is likely related to time constraints, as many respondents cite time as a major drawback to handling deals in court. 59 percent of respondents say the distressed M&A process can exceed four months when handled in court. Meanwhile, on cases handled outside of court, only 25 percent of respondents say the process can take this long. “If implementable, out-of-court solutions are generally less expensive and disruptive. However, it is not clear whether companies with complex capital structures will ultimately be able to obtain all of the consents necessary to use these solutions,” explains Duff Meyercord, partner at Carl Marks.

Time constraints also are expected to put pressure on management teams within distressed companies, which in

turn may influence the dynamics of distressed transactions going forward. According to Jim Rosener, “Not only is the market characterized by people having to do something and forced to do it on a tight timetable, but there also is an increased opportunity as management loses focus and interest over these orphaned businesses.”

Additional findings:

**Exit outlook:** 65 percent of respondents plan to delay their exits from distressed investments in the upcoming year.

**Valuations:** 54 percent of respondents say asset-based valuations tend to be the primary determinant of price.

**Alternative strategies:** 79 percent of respondents expect debt buy-backs to increase in the year ahead.

**If you would like a copy of this report, please contact Brian Dolan at 215.981.4568 or [dolanb@pepperlaw.com](mailto:dolanb@pepperlaw.com).**

## Addressing Recent Trends in Shareholder Activism: Directors and Management Should be Proactive

August 5, 2009  
12:00 – 1:00 P.M. EASTERN

Join us for a complimentary, one-hour, online seminar that will focus on the trends in shareholder activism, recent developments in Delaware corporate law, the SEC’s proposed regulations on proxy access, the current status of poison pills and recommended actions for directors and management.

### Speakers

Valérie Demont, Partner, Pepper Hamilton LLP  
Richard De Rose, Managing Director,  
Houlihan Lokey

Steven R. London, Partner, Pepper Hamilton LLP  
James D. Rosener, Partner, Pepper Hamilton LLP

Register online at  
[https://www.regonline.com/Shareholder\\_Activism](https://www.regonline.com/Shareholder_Activism) or  
contact Brian Dolan at [dolanb@pepperlaw.com](mailto:dolanb@pepperlaw.com).

## Pepper Hamilton LLP

Attorneys at Law

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