

## message from partner in charge

In this issue Pepper provides clients and friends with vital information to stay afloat in these challenging economic times. We also spotlight how companies can not only survive, but emerge stronger and savvier for the future.

In our lead article, Dusty Elias Kirk and Norm Berlin show real estate owners, tenants, developers and buyers eight ways to save money and salvage projects in today's tough market.

We also point readers to a Pepper webinar that outlines the new amendments to the Americans with Disabilities Act, which will change the standards for employees to be considered disabled and thereby eligible for accommodations. As always, but especially in this financial climate, employers need to know the amendments and how to prepare for them.

Finally, a happier tale—of how Pepper Hamilton helped a supplier to the automotive industry successfully emerge from bankruptcy this year. A fundamentally strong company, it was in temporary trouble. Now it can retrench and re-focus on the future.

Of course, comments about and suggestions for our newsletters are always welcome.

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## Finding Real Estate Savings in A Tough Economy: Eight Steps

Our country is in the midst of the worst fiscal downturn in decades. With anticipated revenues declining and expenses increasing, businesses are bracing for the impact, and savvy executives are looking at their expenses and determining ways to cut back. The real estate a company owns or rents is often one of its biggest expenses. Here are eight possible steps to maximize the investment in your real estate and reduce expenses and slow spending this year and next.

### Real Estate Tax Assessment Appeals

Payers of property taxes should consider real estate valuation appeals to reflect the recent reduction in real estate values. Both owners and tenants of real estate (in cases in which the tenants bear the burden of the taxes) may be able to file real estate assessment appeals. For retail properties, an anchor tenant or an out parcel tenant, on its own or ground-leased parcel, may be able to file a real estate tax assessment appeal depending on the terms of its lease. Our lawyers routinely help in these matters, and can review the assessment and assessment history. In the case of income-producing properties, our attorneys can review leases and net operating statements to determine whether the tenants have the right to appeal and whether owners or tenants would benefit from a successful appeal.

### Restructuring or Renegotiating Leases

Brokers of tenant office space are intensifying their efforts to reach out to tenants to analyze whether it makes economic sense, and is consistent with the tenant's business plan, to initiate discussions with landlords about possible lease extensions in return for current rent reduction. This could appeal to landlords who want to reduce the risk of vacancies and are willing to trade some current revenue for reduced financial risk in the future.

Retail tenants are also seeking rent reductions or reductions in leased space. Tenants who have excess space should consider (a) subleasing and/or (b) approaching landlords

to discuss partial surrender of space in return for lease extensions.

More frequently, corporate tenants whose lease expirations are imminent are considering the less expensive option to stay in place and renovated and/or expand, over the option to relocate. Pepper's long-standing relationships and knowledge of the market can help tenants leverage their current occupancy and options in order to obtain better lease renewal terms.

### **Distressed Real Estate**

#### *Lender/Workouts*

Lenders who have foreclosed or taken back commercial properties are engaging developers to assist them in asset evaluation, management and turning around foreclosed properties or in finding government economic incentive programs to help them develop or redevelop their acquisitions. (More on this in Step 5.)

#### *Developers Interest*

Developers are contacting lenders to cherry-pick distressed real estate at bottom pricing or to generate fees by assisting banks in real estate workouts. Pepper has the expertise to represent lenders, developers or purchasers of such distressed property.

### **Like-Kind Exchanges**

In tight financial environments many transactions may involve like-kind exchanges. Generally, if you exchange business or investment property solely for business or investment property of a like-kind, no gain or loss is recognized under Internal Revenue Code Section 1031. Like-kind exchanges may reduce the need to obtain outside investors and may permit an owner to upgrade real estate investments with a small investment of cash or financing. Pepper has both real estate and tax expertise to assist clients who might find it attractive to sell and acquire properties in this way.

### **Government Economic Incentives Programs**

Increasingly, businesses that are opening new facilities or relocating will search for economic development incentives such as grants, low-interest loans, tax credits, tax

exemptions, pooled financings and tax-exempt financing. Many complex projects, especially multi-use projects, also involve public/private joint ventures and operations. We are skilled at navigating through government bureaucracies and coordinating the requirements of government programs with the private-sector portion of joint projects. Several Pepper lawyers are veterans of key government agencies and are experienced at bringing all the public- and private-sector components of a project together. In an economic downturn, while expansion may be placed on hold, infrastructure improvements to sustain jobs may be necessary. Pepper can represent corporations in bond financing for these economic incentive programs. An example of some of the economic incentive programs which may be of assistance include:

- *Tax exemptions* – Pennsylvania Keystone Opportunity Zones, New Jersey PILOT projects, Pennsylvania Local Economic Revitalization Tax Assistance Act abatements, Pennsylvania Tax Increment Financing Act and Michigan TIF districts
- *Tax credits* – Job Creation Tax Credits
- *Grants* – Pennsylvania Infrastructure and Facility Improvement Program, Pennsylvania Keystone Opportunity, U.S. Department of Housing and Urban Development Brownfields Economic Development Initiative, and Pennsylvania Act 2
- *Low-interest loans/special loan programs* – Pennsylvania Capital Access Program, Pennsylvania industrial development loans
- *Pooled financing programs* – Pennsylvania Economic Development Financing Authority programs
- Tax-exempt financing for manufacturing facilities, parking facilities, solid waste facilities, mass commuting facilities
- Public/private infrastructure and multiuse projects (such as parking, utilities, river walks and air rights).

### **Sustainability Initiatives**

Increasingly, companies are looking at whether sustainability or green-building initiatives can reduce operating costs and whether governmental incentives are available to assist with the up-front capital cost of going green. There are many environmental, economic and social benefits to green building. Some of the economic benefits include reducing operating costs, enhancing asset value and improving employee productivity and satisfaction. Pepper's Real Estate Group and Sustainability and Climate Change

Team have the knowledge of the various programs and LEED® standards to assist companies with these matters. Two of our lawyers are LEED Accredited Professionals and are available to assist our clients. LEED, the “Leadership in Energy & Environmental Design” Green Building Rating System, is the nationally accepted standard for green buildings developed by the United States Green Building Council membership.

#### **Sales/Lease/Capital Transactions**

Equity investors are looking for sale-leasebacks involving high quality properties with low-risk tenants. Corporate owners still would prefer to lease real estate rather than own it, for reasons of flexibility. Pepper’s knowledge of the market and experienced real estate professionals who specialize in these transactions can assist in matching owners with the right deal and buyer. Pepper has experience with lenders in handling these types of sales for buyers.

#### **Delayed or Cancelled Projects – Contracts Counseling**

Developers are looking to share the risks imposed by the current economy. This means project cancellations, postponements or delays, deal renegotiation and restructuring. Pepper’s real estate attorneys can assist clients in all of these areas, since we are experienced in representing all parties involved in real estate projects and we understand the perspective brought by each party.

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## **News from the Bench and The Trenches: Navigating The ADA Amendments Act**

Employers will face significant challenges in the ways in which they deal with disabled employees after January 1, 2009. New amendments to the ADA will permit millions of people to qualify as disabled under the broader definitions of major life activities and will put new emphasis on the interactive process as employers determine their employees’ potential disabilities. Employers will soon discover that their managers may create new liabilities through their actions towards individuals who are not disabled but who can claim that they are “regarded as” disabled.

In order to prepare for the sweeping changes of these new amendments, employers must understand their profound impact and prepare their supervisors to deal with them.

This unique Pepper Hamilton webinar provides perspectives from the bench, in-house counsel and trial counsel on these critical developments.

#### **FEATURED SPEAKERS**

- James T. Giles, Of Counsel, Pepper Hamilton
- Mark Suprenant, General Counsel and Secretary, Wawa, Inc.
- Robert C. Ludolph, Partner, Pepper Hamilton

Visit Pepper’s webinar section at [www.pepperlaw.com](http://www.pepperlaw.com) to view the webinar recording and download the PowerPoint slides from this online event.

# Auto Supplier BHM Technologies Successfully Emerges from Bankruptcy, Despite Poor Economy

*Automotive Supplier Believed to be First to File for Bankruptcy in 2008 and Navigate Process Successfully*

With Pepper Hamilton's help, BHM Technologies recently became the first automotive supplier to enter bankruptcy in 2008 and successfully exit as a restructured company. The reorganization plan became effective December 3. BHM Technologies filed for Chapter 11 bankruptcy on May 19, 2008.

The Michigan-based company, which has significant expertise in advanced welded technology and product design and engineering, serves a variety of industrial end markets, including light vehicle, construction and agriculture.

Robert S. Hertzberg, who co-chairs the firm's Corporate Restructuring and Bankruptcy Practice Group, led the company through bankruptcy proceedings. "The majority of companies in a similar situation do not make it through bankruptcy," he said. "They are often sold, in whole or part, or the company is resourced and the work is redistributed."

In the case of BHM Technologies, there were several factors that greatly contributed to the successful navigation of the bankruptcy, Hertzberg said. They include:

- **Healthy operating entity** – "As a whole, BHM Technologies was a healthy operating entity," said Hertzberg. "The bankruptcy addressed the excess debt on the balance sheet by allowing a fundamentally strong company to reorganize and de-lever its balance sheet."
- **All parties committed to a swift and positive outcome** – "In this case, all of the parties involved played a major role in helping BHM emerge from bankruptcy quickly."

BHM Technologies was able to reduce the debt owed to lenders, removing approximately \$270 million from the balance sheet. The company emerged from the bankruptcy with the senior lenders owning the majority stock.

## Pepper Hamilton LLP Attorneys at Law

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