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Duane Morris team loses sleep over Malden Mills deal

Marty Shulkin, managing partner of the Boston office of **Duane Morris LLP**, was watching the Patriots lose to the Indianapolis Colts one Sunday in January when he got a call from his bankruptcy partner, Paul Moore. The Patriots' misfortunes would soon be the farthest thing from Shulkin's mind.

Duane Morris had been tapped by private equity firm Chrysalis Capital Partners LP, which stepped in at the last minute to be the stalking horse bidder for the ailing Malden Mills Industries Inc. How last minute? They had less than 48 hours to do their due diligence, a task that usually takes three weeks, minimum.

Why the rush? Another private equity firm, Gordon Brothers Group of Boston, pulled out of a deal that weekend to buy the Lawrence textile firm, whose Polartec fleece is its signature product. That Tuesday, U.S. Bankruptcy Judge Joel Rosenthal was planning to set a date and approve procedures for an auction intended to give any other interested parties a chance to bid on the company.

Chrysalis had worked with Duane Morris a few months before on its purchase of another firm in Chapter 11 proceedings, Plymouth Rubber Co. of Canton. That, too, was a rush job: 10 days for due diligence. Apparently, Chrysalis had confidence in Duane Morris' ability to work fast.

Chrysalis could have asked for a delay,

but it didn't want to take any chances that the judge or Malden Mills' main creditor, GE Capital, would lose patience with the drawn-out case (this was the company's third Chapter 11) and convert it to a Chapter 7 liquidation.

"At any moment, a judge can say, 'My hands are tied. The company is out of business,'" Shulkin said.

On Sunday night, Shulkin mobilized the firm's intellectual property lawyers (Malden Mills had more than 1,000 trademarks) and the next morning did the same with the firm's environmental and employment lawyers, whether they were in Boston, Philadelphia, Chicago, London or Singapore. The firm also hired outside lawyers in Hong Kong, the Netherlands, Poland, Turkey, Japan and Korea, where the company had sales offices. All of them were told to submit reports by the end of Monday.

"We still wanted some kind of comfort in putting up several millions of dollars," Shulkin said. "We at least wanted to run ... as much due diligence as we could while we were negotiating the agreement, so we could at least turn around to the clients when they were signing this thing and say, 'Based on a two-day, fairly high-level cursory review, we don't see any showstoppers here.'"

Shulkin and Moore pulled another late-night Monday, staying in the office until 3 a.m. Although things were looking good,

they didn't have a signed agreement by the time the hearing began Tuesday morning. Moore, in asking the judge to approve the bid procedures without a signed agreement, mentioned in passing how late he had been up the past two nights.

Moore: "This morning, I was up until 3 o'clock or so and started again this morning at six, so..."

Judge Rosenthal: "Gee, I remember a time, Mr. Moore, that was regular fare."

Moore: "You can tell, your honor, I'm getting old."

Maybe Rosenthal couldn't help but feel sorry for the lawyer standing before him. More likely, he decided it was the best hope for Malden Mills and its creditors. So he went ahead and scheduled an auction. As expected, no one came forward to counter Chrysalis' \$44 million offer, and the judge authorized the sale Feb. 27.

For employees, the outcome could have been much worse: The company (now called Polartec LLC) and the union representing hourly employees agreed to a 3 1/2-year contract that ensures their continued employment. The question will be whether Chrysalis has a plan for avoiding a fourth trip to bankruptcy court.

LEGAL NOTEBOOK

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