

# Many New Jersey Firms Find Success and Growth Through Mergers & Acquisitions

M&As can be about fighting off a hostile bidder or addressing the debt fallout of past deals.

COMPILED BY MILES Z. EPSTEIN  
EDITOR, COMMERCE

**M**ERGERS AND ACQUISITIONS (M&A) ARE ONE of the constants—in good and bad economic times—that provide businesses with a path for growth or an escape mechanism for an economic model that is no longer working. Law firms are integral players in these deals and *COMMERCE* features the following case studies to showcase how they are a winning part of the team.



**Brach Eichler LLC**

*By Brian R. Lenker, Esq.  
Member, Corporate & Securities  
Practice Group*

Brach Eichler represented a purchaser in an acquisition of a Delaware corporation (target). The purchaser negotiated a letter of intent whereby the purchaser would acquire all of the target's assets. During due diligence, we determined that the target had a defined benefit plan. After reviewing the most recent

IRS Form 5500s and the target's financial statements, we believed that the plan was overfunded. The plan documents provided for a distribution of surplus assets to its sponsor—the target—upon termination. The purchaser engaged an actuary to evaluate the funded status of the plan and confirmed that it was significantly overfunded. After carefully examining any potential liabilities of the target, we proposed a stock purchase and redemption to the target's shareholders instead of an asset purchase. This restructuring was approved by all parties. After the closing, the purchaser caused the target to terminate the plan and satisfied its liabilities to its participants through the purchase of annuities. Once this was completed and the appropriate income and excise taxes were paid by the target, the remaining surplus funds were used to pay down the acquisition indebtedness of the target. Depending on interest rates and investment success, defined benefit plans may reveal hidden assets or liabilities on a termination of the plan, which should be evaluated when structuring a transaction.



**Connell Foley, LLP**

*By John D. Cromie, Esq.  
Partner and Chair,  
Corporate Law and  
Transactions Practice Group*

Closely held businesses are the engine of the New Jersey economy. Recently, I received an inquiry from a closely held business. The company business consisted of two distinct businesses which were run by third-generation family members. The individual owners sought my advice as to how best to position the company for sale and to maximize the value of the company's under-performing real estate. We developed a plan to separate the operating assets of the company into two newly formed and legally separate operating entities, each controlled by a corporate shareholder. This strategy enabled each shareholder family to address individual valuation and tax planning issues, and to position each new operating company for sale. Ultimately, each of the separate operating companies was sold to separate buyers and the clients realized their goals of maximizing value and creating an exit strategy. Moreover, we were successful in converting the under-performing real estate into a state-of-the-art retail commercial development. The owners retained control over their respective locations and the real estate income derived from that development. This provided a mechanism for converting under-performing real estate to a valuable asset and providing a long-term bonus for our clients.

**Greenbaum, Rowe, Smith & Davis LLP**

*By Raymond Felton, Esq.  
Co-Managing Partner,  
Chair, Corporate Department*

Our attorneys often creatively solve issues that threaten to derail M&A transactions. For example, our firm represented a mortgage service company acquiring substantially all of the assets of a target company. The target

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