



JAKE DEAN

DEAL DAYS: Alan Wisk of Strasburger & Price, whose office overlooks the Omni Dallas Convention Center Hotel. The hotel site was foreclosed on in the 1980s and sold for \$1 million.

Attorneys expect fewer noncompete lawsuits

BY LENA DIRBASHI | STAFF WRITER

A technology company based in Richardson learned the hard way that by not requiring noncompete agreements for its top-level employees, it was risking trade secrets leaking to competitors.

After a former employee went to work for a direct competitor in a similar position, the company started to require noncompete agreements. The agreements apply to employees with considerable access to confidential information. "That was a huge issue for us," said Lisa Conkwright, acting general counsel for the company.

Conkwright declined to name the local company and said the former employee was not accused of wrongdoing.

She said noncompetes aren't intended to restrict employees and their career goals, but to protect employers.

"The point of it is not to keep the employee from working somewhere else," she said. "It is for the current employer's confidential information not to be shared with competitors and put them in a disadvantaged position."

The company's new requirement for noncompete agreements is part of a growing trend, which is good news for employers in Texas, according to Jim Jordan, a shareholder and senior employment and labor attorney for Munsch Hardt Kopf & Harr.

Because of a 2006 court decision that expanded the enforce-



'Less people are going to court because the law is more predictable... It boils down to protecting information...'

James Jordan
Munsch Hardt Kopf & Harr Kpro

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Distress signals

BANKRUPTCIES, CREDIT CRUNCH CREATE MORE OPPORTUNITIES FOR LEGAL WORK RELATED TO TROUBLED ASSET DEALS

BY KAREN NIELSEN | CORRESPONDENT

General Motors, Movie Gallery and Pilgrim's Pride have all been in the news for selling off their distressed assets in the form of commercial property or inventory.

Countless other deals are waiting on the sidelines, which has local attorneys anticipating steady or increasing activity as distressed assets become a normal part of doing business.

Last fall, Richardson-based Texas Instruments Inc. closed on a \$172.5 million deal to purchase specialized tooling equipment for production of semiconductor chips from Qimonda, a Richmond, Va.-based company that had filed for Chapter 11 bankruptcy protection.

That acquisition was called a "huge and stunning discount" by those in the industry because it was pur-

chased for pennies on the dollar.

That deal, combined with a subsequent \$75 million purchase of additional equipment from Qimonda earlier this year, helped TI begin production at its 1.1 million-square-foot Richardson facility, which had sat vacant for nearly five years. A second phase of the analog manufacturing facility is now under way.

Joe Wielebinski, who led the Munsch Hardt Kopf & Harr PC team that represented TI in its stalking horse bid for Qimonda's assets, said a few years ago, a deal like this wouldn't have been possible.

"The climate has changed significantly," said Wielebinski, chairman of the firm's insolvency, restructuring & creditors' rights practice group. "Three to four years ago, there weren't any distressed assets. Companies were making money and there were lots of (available) loans out there. Everybody wanted to buy them at a discount, and they couldn't find any."



'The climate has changed significantly.'

Joe Wielebinski
Munsch Hardt Kopf & Harr PC

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NONCOMPETE BASICS

A NONCOMPETE contract restricts a departing employee from going to work for a competitor. Most noncompetes are enforceable in Texas, provided the limitations as to time, geographic area and scope of activity are deemed to be "reasonable" by a court.

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DISTRESSED: Deal climate strong

FROM P23

These days, the credit crunch is making it more difficult, but companies like TI that are well-positioned and looking for opportunities are able to buy good assets at distressed prices, Wielebinski said.

"The parties that are making these moves and acquiring assets are the profitable, nimble companies that are able to, in a tough time, spend money and invest in the future," he said.

Bart Thomas, TI vice president and assistant general counsel, said the company is aggressively investing in its businesses and capitalizing on opportunities that will support growth. "With these purchases specifically, TI is adding valuable manufacturing capacity at pennies on the dollar to meet the needs of our customers — both today and in the future," he said.

Smaller companies also are getting their fair share of the pie because they're better able to trade equity percentages and form alliances, said Matt Sanderson, an attorney in the Dallas office of Looper Reed & McGraw.

More bankruptcy filings

Distressed assets aren't always acquired through bankruptcy. In some cases, a company might want to unload an unprofitable unit or sell off real estate to remain solvent. But as bankruptcy filing rises, lawyers are expecting more deals in this realm.

The American Bankruptcy Institute reported that nationally, business bankruptcy filings in the first quarter of this year reached 14,607 compared with 4,086 in the first quarter of 2006.

In Texas, there were 4,567 business

bankruptcy filings in 2009 compared with 3,124 in 2008, according to the ABL.

When a distressed asset is purchased through bankruptcy, it changes the way law firms handle the transactions, Sanderson said.

"Eighteen months ago, to get a transaction or deal done, it could fall on my expertise and one other expert in banking law or a particular industry such as real estate," he said. "Now, because of the stressed nature, things are more complex. You need a bankruptcy lawyer to guide you through the debt or bankruptcy issues."

It also takes an experienced team to tackle the fast-moving deals. The TI and Qimonda transaction last year closed in just five weeks.

"These are very fast-paced transactions," Wielebinski said. "The seller wants to know that you've got the financial wherewithal to do this, and all of them want assurances of payment at closing. The ability to provide a creative solution to a unique problem is why we're hired."

Commercial properties

When commercial properties such as the Four Seasons Resort and Club in Irving show up in local foreclosure filings, it only fuels speculation of an anticipated wave of buying surrounding depressed real estate and overextended sellers.

In North Texas, the loan delinquency rate — 30 days or more late — for commercial properties is 9.3 percent, as of May 1, according to New York-based Trepp LLC, which compiled the list of local delinquent properties. Those 191 properties have a total delinquent loan

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NORTH TEXAS 4TH QUARTER '09 COMMERCIAL LOAN DELINQUENCIES (30-days plus delinquent)

PROPERTY TYPE	LOAN BALANCE		NUMBER OF LOANS		DELINQUENCY RATE
	DELINQUENT	TOTAL	DELINQUENT	TOTAL	
INDUSTRIAL	\$51.9M	\$585.9M	11	107	8.9%
LODGING	\$251.6M	\$1.5B	9	62	17.0%
MULTIFAMILY	\$487.3M	\$5.2B	72	614	9.4%
OFFICE	\$466.4M	\$4.8B	38	283	9.8%
RETAIL	\$362.4M	\$4.9B	50	672	7.4%
OTHER	\$57.4M	\$1.2B	11	165	4.8%
TOTAL	\$1.7B	\$18.1B	191	1,903	9.3%

SOURCE: Trepp LLC

balance of \$1.7 billion on \$18.1 billion worth of loans.

Nationally, the delinquent rate for loans 30 days or more late is 8.02 percent.

While Dallas-Fort Worth is faring slightly worse than the national average, the situation is far better than what happened with the real estate bust and savings and loan debacle in the 1980s, said Allan Wisk, a partner at Dallas-based Strasburger & Price LLP.

During the last big foreclosure surge in the 1980s, investors were snapping up commercial real estate for 10 cents on the dollar. Wisk, who can see the Omni Dallas Convention Center Hotel construction from his office window, remembers foreclosing on that property in the late 1980s for Bank One and reaping less than \$1 million. The 8-acre hotel project is now worth more than \$500 million.

"It shows you how depressed a time it was," he said. "Properties were selling for far less than their intrinsic value. A lot of people got rich who held on and sold them later."

That won't be the case this time around, Wisk said, citing fewer bank failures in Texas and more layers of government regulation to spread risk.

Wisk, a transactional attorney in the firm's financial institutions practice group, said his team is busy completing loan workouts, or plans to restructure debt.

"Now we're seeing loans that go into default are getting paid off, discounted payoffs are being done, loan modifications (are occurring) and we're seeing notes being sold," he said.

Changing climate

The buying and selling of distressed assets means different work for most law firms skilled enough to handle the cases.

Some firms say their clients haven't changed; client needs have. Sanderson of Looper Reed & McGraw said many of his clients are interested in challenging investment partnerships they've created and restructuring debt and equity to hedge against the risk of their companies becoming distressed assets.

Some companies prefer to sit on the sidelines and wait out the recession. Others are seizing opportunities while the taking is good.

"It's actually healthy in this kind of environment to allow the sale of distressed assets," Wielebinski said. "New parties come in and buy assets and do something with them, invest in them, deploy them. In the case of restaurants, they invest new money to clean them up, change the menu and hire more people. It's a natural part of the economic cycle."

NIELSEN is a freelance writer in Plano.



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