AN INTRODUCTION

New Crain's group publisher Jim Kirk greets readers in Cleveland. PAGE 6

AKRON: Student housing building will convert to market-rate apartments. PAGE 33

CRAIN'S
CLEVELAND BUSINESS

CRAINSCLEVELAND.COM | JANUARY 18, 2021

EDUCATION

University's prison program is embroiled in controversy

Most of Ashland's 2020 undergrad enrollees are distance learning inmates

BY AMY MORONA

Kristen Haley Theriot made her first and only visit to the campus of Ashland University in December 2018. She left with a purple blanket, a portfolio with the school's logo and an associate's degree.

The 33-year-old's classes were completed far from the small campus, though. Theriot took them from a Louisiana prison, where she was serving time for armed robbery.

"I was able to accomplish one of the things I thought I'd never be able to accomplish ever in my entire life," she said.

The majority of the 6,350 undergraduates enrolled in Ashland's courses this past fall are in prisons across 10 states and in Washington, D.C. No other college is in as many different prisons in as many other states. Its closest national competitor enrolled fewer than half of the students Ashland did last year.

The private Christian university nestled in the middle of Ohio is now a giant in America's prison education landscape. Its rise has come with a hefty dose of criticism.

"There has to be a quality of that journey for people that builds their confidence and their skills, and that's oriented toward degrees that are going to be valued out in the workplace," said Ann Jacobs, who has worked for decades in the sector in New York state. "I'm not sure that anything about the way Ashland approaches this is going to produce that result."

See **ASHLAND** on Page 36

Rocket Mortgage employs nearly 700 people in Cleveland, at offices in the Higbee Building downtown. The Detroit-based company plans to double that in the next five years, in a deal that hinges on securing incentives from the city, state and JobsOhio. | ROCKET COS.

Mortgage giant eyes 700-job expansion in downtown Cleveland

BY MICHELLE JARBOE | Rocket Mortgage, the mortgage giant formerly known as Quicken Loans, is eyeing an expansion that would bring 700 new jobs to downtown Cleveland over the next five years.

The Detroit-based company already employs nearly 700 people at its Cleveland office, a mortgage banking hub tucked inside the Higbee Building just off Public Square. Local economic development officials have been working on an incentive package to double that headcount in a deal that would create more than $50 million in additional payroll and bring welcome investment to a central business district grappling with fallout from the pandemic.

Rocket's top human resources executive confirmed the broad strokes of the company's growth plans during a recent interview.

"This a testament to our commitment to Cleveland," said Mike Malloy, whose formal title is chief amazement officer.

He said Rocket routinely weighs adding jobs in Cleveland against hiring in its hometown, bulking up a mortgage banking center in Phoenix and recruiting remote workers. Now, through what he described as a "partnership" with the city, Cleveland stands to notch more wins.

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SPORTS BUSINESS

'Now the fun begins' for fast-growing BoxCast

$20M Series A round will accelerate growth

BY KEVIN KLEPS

Prior to the pandemic, BoxCast, in the words of board member Mike Marchetti, "was on a great sales great trajectory."

The Cleveland company's revenue and customer base were increasing, and a 2019 acquisition strengthened a core component of its business.

Daily

But COVID-19, with large in-person events put on hold and more people staying home, sped everything up for a business that prides itself on delivering high-quality, easy-to-use streaming services.

In December, BoxCast raised $20 million in Series A funding. At the time, the company had 56 employees and revenue had tripled in the last year.

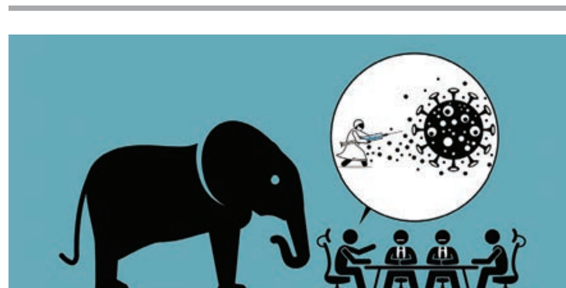
By the end of 2021, BoxCast expects its headcount to reach at least 100.

"We'd be lying if we didn't say that behaviors around COVID match quite well with livestreaming technology," said Sam Brenner, the company's chief operating officer.

Later this year, as COVID-19 vaccines are more widely distributed and conditions improve, in-person gatherings will increase. Still, Gordon Daily, who co-founded BoxCast in 2013, is confident that demand will continue to rise.

"It's not like it's going to drop off," said Daily, the company's CEO. "The customers we have, none really stop streaming once they start streaming, because people really start to depend on it."

See **BOXCAST** on Page 36



FOCUS | LEGAL AFFAIRS

The elephant in the boardroom: Thinking about mandatory vaccinations? You might want to think again. PAGE 8

Legal workforce: The non-attorney job market is rolling with changes in technology. PAGE 10

MANUFACTURING

Pandemic didn't stop growth plans at Cleveland's Dairy Free Co.

Maker of plant-based dips and spreads creates new product and moves locations

BY RACHEL ABBEY MCCAFFERTY

Last year was a tough one for the Dairy Free Co.

The maker of plant-based dips and spreads was still getting its footing and working on growth when the pandemic hit.

"Obviously, it's been a very trying year for us and for all businesses, and all people. It's really been a lot," said co-founder Eric Hurwitz. "From our perspective, yes, as an emerging brand, the pandemic's been really tough, because we've got (lower) foot traffic in stores. We always depended on people lingering in stores and looking around and looking for that next item. That's not really happening right now."

Hurwitz and co-founder Beth Meany decided the company needed to spend 2020 largely focused on operations, cutting costs and finding ways to become more efficient.

"We're really now perfectly positioned for growth and scale-up," Meany said. "There's just no fat in this business. We really know our business."

The Dairy Free Co. focuses on creating a "clean, honest product," Meany said, using simple ingredients. Right now, the company offers six cashew-based dips and spreads, but there are plans to expand beyond cashew products in the near future.

Hurwitz and Meany bought what used to be known as Red Lotus Foods in 2017, rebranding it as the Dairy Free Co. in spring 2019. Hurwitz had entrepreneurial experience, having started companies such as a brand and product licensing agency. Meany's background is in finance and marketing, including in the food space. Red Lotus Foods was known locally, but the new ownership team wanted to put their own "vision and stamp" on the company, Hurwitz said. The end of 2019 was also when Hurwitz and Meany took on more of a hands-on role in the company's operations, as another individual had been in charge of the day-to-day early on.

The company was ready for growth in 2020. Though the pandemic hindered those plans, the year wasn't all about cutbacks. The company also got in the kitchen and developed a new product, the first the Dairy Free Co. has developed internally since Hurwitz and Meany took over.

"I think we needed to do something that was fun," Meany said.

The product — Take It Cheezy — is a cashew-based dip designed to have a smoky, cheddarlike taste. Creating a new product during the pandemic posed some additional challenges, as the company had to rely on family and friends for feedback. But the company persevered, and the dip hit the market this fall.

And it's doing well in the stores. Meany said that in some retailers, Take It Cheezy is already outselling the company's other flavors.

The Dairy Free Co. plans to expand beyond the six cashew-based dips and spreads that it currently offers. | CONTRIBUTED

The Dairy Free Co. sells its products at retailers such as Heinen's, Giant Eagle and Whole Foods. Offering a refrigerated product means shipping is expensive, so it's tough to build a direct-to-consumer product, Hurwitz said. Those relationships with retailers are critical. Meany noted that the company also has a food service business, through which it works with restaurants.

"WE'RE REALLY NOW PERFECTLY POSITIONED FOR GROWTH AND SCALE-UP. THERE'S JUST NO FAT IN THIS BUSINESS."

— Beth Meany, Dairy Free Co. co-founder

Ultimately, Meany said sales remained flat for the Dairy Free Co. despite the pandemic, a notable fact for a nonstaple food item. The co-founders declined to share specifics on annual sales.

The company will now be able to take its experience developing and launching Take It Cheezy — tweaking the recipe, designing packaging, sourcing ingredients — and apply those steps to future products.

"So there was a learning curve with this first one, but now we're ready to roll," Meany said.

The Dairy Free Co. plans to add different nut or seed-based products, ideally by the third quarter of this year, Hurwitz said.

Another change for the Dairy Free Co. in 2020 was in location. The company has moved twice since Hurwitz and Meany bought it, most recently moving to the Central Kitchen Food Hub on Carnegie Avenue in Cleveland in September. It's given the small company a community, Meany said. The Dairy Free Co. has five employees. It's owned by its three co-founders — Hurwitz, Meany and Todd Goldstein, the LaunchHouse CEO who has another food manufacturer, Whoa Dough, in the region — as well as a group of friends and family, who serve as minority owners.

The Central Kitchen Food Hub aims to serve as a post-incubator space for food companies. Central Kitchen has seen a lot of companies struggle after leaving that initial launch phase. It can be expensive to create a space for food manufacturing and challenging to meet the minimums needed for co-manufacturing, said chief operations officer Zac Rheinberger.

He noted that the company that became the Dairy Free Co. — Red Lotus — actually got its start in the kitchen. The Dairy Free Co. is a "great company," Rheinberger said, and its focus on clean products is aligned with the Food Hub's values.

Cleveland is a good city for food makers, Rheinberger said, because there's easy access to ingredients through the port, the rail yard and the highways — and those options are available for companies to ship their products to customers, too. And, he added, the region supports local businesses.

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GOVERNMENT

Keeping the doors open during the down months

City, county and state programs aim to help restaurant industry that was battered by COVID-19

BY KIM PALMER

As overnight curfews and cold temperatures continue, and widespread vaccinations remain a long way off, the traditionally slow January/February period for the restaurant industry is looking rougher than usual.

The Ohio Restaurant Association has advocated for months for federal restaurant relief programs that to date have not materialized. In the place of federal aid, state and local governments have stepped in to provide restaurants with the funding needed to survive.

"The most recent stay-at-home advisories ... put our members on their heels," said John Barker, the restaurant association's president and CEO. "We have members who are down 70% versus the same period a year ago for 10 months."

In an effort to help restaurants that serve alcohol, the state of Ohio last year offered a one-time, $2,500 rebate to all its 15,488 liquor permit holders. But as of mid-January, only 70% of eligible businesses had taken advantage of the program, leaving on the table $11.6 million of the $38.7 million budgeted for the fund.

"The state is really trying to give out that money, but there are a number of establishments that have closed down," Barker said. "It is a difficult number to pinpoint because some people have just kind of gone dark."

The exact number of Ohio restaurants permanently shuttered due to pandemic closures is unclear, he said.

In December, Cuyahoga County announced a Restaurant Stabilization Fund Grant program aimed at full-service restaurants with less than $8 million in revenue and limited-service restaurants with less than $12 million in revenue and with at least 25% of local employees. Eventually, about $1.7 million in grants of $10,000 were awarded to 168 restaurants across the county. Of the recipients, 135 are in low- or moderate-income census tracts, 66 are women-owned and 64 are minority-owned businesses, according to the county. More than 800 restaurants applied.

With about 3,000 restaurants in Cuyahoga County, and about 20% of Northeast Ohio's economy specifically related to the hospitality industry, the sector is critical to the regional economy, said County Executive Armond Budish.

"WE SWITCHED TO A GRANT PROGRAM SO THAT WE COULD ADDRESS AS MANY OF THE RESTAURANTS AS POSSIBLE."

— Armond Budish, Cuyahoga County executive

"Restaurants are an important part of our identity, and we knew they were being hit the hardest in terms of economic impact and loss of revenue," Budish said.

The county's restaurant initiative, and a small business stabilization grant and loan program for businesses with fewer than 500 employees, was conceived and set up in a matter of weeks to help businesses that programs such as the Small Business Administration's Paycheck Protection Program (PPP) and the Federal Reserve's Main Street Lending Program could not.

"We came up with a program that originally provided loans or grants and we were overwhelmed with applications," Budish said. "From that experience, we found that for most, if not all the applicants, the loans were not sufficient. We switched to a grant program so that we could address as many of the restaurants as possible."

The city of Cleveland also created funds designated to help smaller restaurants, particularly as a second wave of new coronavirus cases collided with winter temperatures. The city's Department of Economic Development awarded 161 Emergency Working Capital Loans, totaling nearly $1.6 million, to small restaurants, and it reports it's in the process of working on loans for an additional 21 businesses.

A city-funded Winter Restaurant Operations Support Grant program was created late last year to give up to $5,000 to businesses for winter operations such as fire pits, outdoor heaters, awnings and plastic igloos. By January, 76 grant application recipients were approved for a total amount awarded of $380,000. The city is still accepting applications for the $500,000 program.

The county and city programs have been successful for businesses in need of funding, in part because they have less-stringent requirements than many of the federal programs. However, the pandemic has put a focus on the critical need for the businesses to create a sound financial structure, said LaRese Purnell, managing partner at CLE Consulting.

"Having to scramble to find financing in an emergency will make you reset and re-evaluate what's important," Purnell said.

CLE Consulting and Purnell are the operations manager of GlenVillage, a retail incubator at East 105th Street and Ashbury Avenue that's part of Mayor Frank Jackson's Neighborhood Initiative.

The city invested $1.4 million in GlenVillage and multiple food service businesses — Vitimin Kandie, Pipe 'N Hot Grill, Black Box Fix and Cleveland Cold Brew — in January 2020, right before COVID-19 shutdowns significantly curtailed foot traffic in the area near the Louis Stokes Cleveland VA Medical Center and University Circle.

Purnell said the GlenVillage businesses, though new, were able to apply for the financial assistance programs.

"We were able to make sure they had payroll in place, and their financials in order, and it put them ahead of the average small business," Purnell said. "They were able to take advantage of those funding opportunities."

A lot of businesses in the restaurant industry, he said, just were not prepared to provide the paperwork needed to get a loan or grant, and many smaller businesses do not even know how to go about searching for those resources.

"It becomes an intimidation factor," he said. "They do not know where to go to get an accountant or what questions to ask."

From Jan. 26-29, GlenVillage is taking part in Eat & Explore Cleveland, a Cleveland Neighborhood Progress and Destination Cleveland program designed to boost businesses — and restaurants in particular — throughout city neighborhoods. Purnell said he sees Eat & Explore as a relaunch for the GlenVillage businesses and that the marketing value is another creative resource the city and local organizations can provide for the battered restaurant industry.

"These community funding organizations need to pivot just like our businesses have," he said. "They need to think differently about the resources they provide to help businesses, too."

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MANUFACTURING

MMI Textiles to bring some manufacturing in-house

Westlake company plans new facility in North Carolina

BY RACHEL ABBEY MCCAFFERTY

Amy Bircher Bruyn has been part the textiles industry since she was young, and she has owned her own business in that space for more than two decades.

But there are always new challenges, and Bircher Bruyn is about to take one on: She's in the process of opening her business's first manufacturing facility.

Bircher Bruyn is the CEO, founder and owner of MMI Textiles Inc. in Westlake. The company, which has 34 employees, has worked with partners to manufacture its products, but the demand those partners faced for personal protective equipment during the height of the pandemic has driven the need for new solutions. In the first quarter of 2021, MMI Textiles plans to open a 30,000-square-foot facility in Lenoir, N.C., to do some of its own manufacturing.

Growing up, Bircher Bruyn's father and stepmother had been in the fabrics industry in the Carolinas. Though she lived with her mom in Northeast Ohio, Bircher Bruyn worked in their dyeing and finishing factory when she was spending time with her dad. The textile industry "was in my blood," she said.

She moved to California for a while, selling fabrics for her father's company. But when she moved back to Ohio, Bircher Bruyn decided to start a company of her own.

Today, MMI Textiles is in its 24th year. When Bircher Bruyn started it, she was serving as a rep for textiles companies, including her dad's. But the company quickly grew to include distribution as customers looked for her to source materials, such as labels, they needed for their finished products.

In 2007, Bircher Bruyn acquired her dad's textiles business. That was when the growth really began. Even through the recession, the company saw double-digit growth, Bircher Bruyn said. And through it all, MMI Textiles didn't have any manufacturing in-house.

MMI Textiles focuses on innovation, Bircher Bruyn said, consistently adding product lines and diversifying the markets it serves. The company has a strong military presence. A product for that customer base spurred the need for the new plant. The company's CTEdge product is a camouflage-printed webbing designed to look more natural than other products on the market. The existing product in that space had solid lines that stood out under night vision, Bircher Bruyn said. MMI Textiles came up with a way to weave yarn in the product to eliminate those lines, creating a fully U.S.-made product for that military space.

MMI Textiles has been making the CTEdge like it makes all its products: by outsourcing the manufacturing to trusted partners.

But in 2020, those partners saw demand for their services increase dramatically because of PPE needs created by the COVID-19 pandemic. That was understandable, Bircher Bruyn said, but MMI Textiles still needed their product.

"So we've made the decision to internalize the manufacturing," she said.

MMI Textiles will be making its MultiCam Printed Narrow Fabric products, seen here, at its new facility in North Carolina. | CONTRIBUTED

Bircher Bruyn

According to a news release, the company will hire employees and acquire equipment for the new facility. In addition to MMI Textiles, a printer the company works with will rent space in the building, creating an efficient workflow.

To start, MMI Textiles will solely manufacture the CTEdge product in North Carolina. But Bircher Bruyn said the plan is to add other military products and, possibly, commercial products.

"But we're taking it one step at a time," she said.

Other plans include growing MMI Textiles' presence in Latin America with a new distribution facility. Locally, Bircher Bruyn is looking for a new home in the Cleveland area for the company's office and distribution space.

Once the new plant in North Carolina is up and running, Bircher Bruyn expects about 20% of projected revenue for the year to come from products MMI Textiles will manufacture itself.

MMI Textiles saw sales of $25.8 million last year, Bircher Bruyn said, an increase of 37% that she attributed to PPE products. The company previously had a presence in the medical market, but more so in woven goods such as blood pressure cuffs. The company relied on its relationships to quickly expand into the non-woven products needed for face masks and gowns, she said.

MMI Textiles is an "innovative" company, said Kimberly Glas, president and CEO of the National Council of Textile Organizations in Washington, D.C., of which MMI Textiles is a member.

Prior to the pandemic, the textile industry was seeing investments and productivity gains, as well as record exports, Glas said. The pandemic changed all that as customers canceled orders and plants shut down.

Then conditions changed again as governments began to reach out for help in solving PPE shortages. That was a "lifeline" for the industry, Glas said. Today, she estimates that the industry is operating at about 80% capacity.

Glas said MMI Textiles' planned expansion is welcome news amid the slower economy.

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MILESTONES

SPONSORED CONTENT

Visionary leader leaves enduring legacy at UH

By JUDY STRINGER
Crain's Content Studio-Cleveland

Thomas F. Zenty III

Thomas F. Zenty III retires from University Hospitals this month after nearly two decades at its helm.

To say Zenty leaves the Cleveland-based health care system "better than he found it" — as the classic adage goes — is not necessarily inaccurate. It's just inadequate.

"Tom did more than set UH on the right path," said Art Anton, retired chairman and CEO of Swagelok and currently chairman of the UH Board of Directors. "He took it to the next level."

Zenty drove the transformation of UH from being a fiscally challenged, hospital-based medical system to becoming a regional health and wellness powerhouse. He shifted the focus to delivering care "closer to where patients lived," said Anton.

Under Zenty's leadership, UH has grown from three urban hospitals to a thriving network, which upon regulatory approval and the closing of the Lake Health transaction, will consist of 24 hospitals, more than 50 health centers and outpatient facilities, and over 200 physician offices in 16 counties throughout northern Ohio. Today, UH employs almost 30,000 caregivers, making it one of the region's largest employers. In December, Lake Health agreed to join the UH system, assuring convenient access to the most advanced health care and services for patients in Lake County and surrounding communities.

CULTURE OF INNOVATION

Along with expanding the system's reach, Zenty's tenure is marked by a culture of research and innovation.

He renewed a long-standing alliance with Case Western Reserve University School of Medicine, a move that Patti DePompei, president of UH Rainbow Babies & Children's Hospital and MacDonald Women's Hospital, said has been instrumental in attracting and retaining some of the nation's best trained physicians and scientists.

"Research opportunities attract physician-scientists, who want to not only care for patients today, but discover new drug, device and cell-based therapies that will advance the standard of care and provide hope for generations to come," DePompei said.

Zenty's commitment to innovation led to the launch of the Harrington Discovery Institute at University Hospitals in 2012, as part of the Harrington Project for Discovery & Innovation, an international initiative to enable advancement of therapeutic breakthroughs that is nearing $500 million in funding.

Anton said that while UH historically had a healthy portfolio of federally funded research in conjunction with CWRU, the creation of the Harrington Discovery Institute brought in private research dollars and expertise in therapeutic commercialization.

"And, because the Institute has an affiliation with Oxford University in the U.K., it's given UH an international reputation in drug discovery as well," he said. UH currently has nearly 3,000 active clinical research studies underway.

COMMITMENT TO COMMUNITY

Zenty also championed the leveraging of UH's growing prominence to address economic disparities. He worked closely with DePompei in the conception, capital fundraising and opening of the $26 million UH Rainbow Center for Women & Children. The new facility is in Midtown to meet the needs of the city's under-resourced neighborhoods and ultimately improve health outcomes among Black children and their mothers.

"Tom knew from an operational standpoint the UH Rainbow Center would not be an income generator for the system," DePompei said, "but he threw his support behind it 100%, because he innately understood that it was the right thing to do as an investment in the health and well-being of our community."

Zenty's desire to benefit the community even extended to how the center was built, she added. He saw to it that local construction crews, as well as minority and women-owned businesses, would be part of the project.

Both DePompei and Anton called Zenty an "intelligent, thoughtful and visionary leader" who, they said, will leave an indelible footprint on the history of UH and has positioned the incoming CEO, Dr. Cliff Megerian, for success.

"Tom would, however, be the first to say that his tenure is just one moment in time and that UH is never about one person or one leader, it's really about the collective team," DePompei said. "So, I am proud and grateful to have been a part of his team."

RETAIL

Duo preps plan for paint stores

Through paintCLE, Richard and Matt Warren plan to open the first of several stores dedicated to Benjamin Moore paints and related products. The first store will debut in February in Willoughby Hills. | CONTRIBUTED PHOTO

Benjamin Moore location will open in February in Willoughby Hills, the first of several planned by Richard and Matthew Warren

BY STAN BULLARD

Richard Warren, who has a deep background in office furniture sales and commercial real estate, and his son, Matthew, are starting to realize a long-term goal of launching a business together.

Together they have formed paintCLE to launch the first store of what they envision as a group of retail outlets selling Benjamin Moore paint in the Cleveland area.

The first store is set to open Feb. 15 in a shopping center at 2747 SOM Center Road in Willoughby Hills. The two also are negotiating for a second store in a few months in an eastern suburb they wouldn't identify because they have not yet signed a lease.

It's ambitious to open a chain of Benjamin Moore stores in Cleveland, the corporate headquarters of Sherwin-Williams, the world's largest paint and coatings company in 2019 in terms of revenue, since it means competing with the ubiquitous chain of corporate-owned Sherwin-Williams paint stores.

The soft-spoken Warrens don't seem like daredevils. But many might see them as such.

However, the elder Warren sizes up the prospect differently.

"Paint is a very large market," he said. "We'll have a quality product to sell, and we will service it like a local operator."

Matt Warren said he grew up seeing his father's experience as an entrepreneur and always wanted to own his own business, especially through working with his father.

Richard Warren is technically coming out of retirement after a long business career to launch paintCLE. He previously owned Warren-Chaney Office Furniture here, which was sold in 2011 to Naperville, Ill.-based Office Max Inc., now part of Office Depot.

The elder Warren also was one of the owners and the manager of the former Cragin Lang commercial real estate brokerage of Cleveland. The group sold it in 1992 to Grubb & Ellis Co., now the Newmark brokerage.

Those and other roles mean the elder Warren has decades of commercial real estate and construction contacts throughout the region. They expect the bulk of their sales will be to paint contractors and bulk buyers, with about 20% to retail customers.

Serving as a distributor for Benjamin Moore appealed to the elder Warren because it did not require a franchise. The venture also capitalizes on their shared backgrounds in marketing and business-to-business sales.

> "HAVE YOU EVER BOUGHT A SHIRT ONLINE AND FOUND IT WAS NOT THE SAME COLOR AS IT LOOKED ON YOUR COMPUTER OR PHONE? PAINT IS THE SAME WAY."
>
> **— Matt Warren, co-founder of paintCLE**

The younger Warren serves as paintCLE's general manager running the stores, while both focus on sales. Richard Warren's title in the outfit is — and they are serious about it — chief promise keeper.

The new store and future stores will be designed not to disrupt sales of existing distributors in the region and ACE hardware stores that carry Benjamin Moore products.

In a phone interview, Kelly Bye, regional sales director of Benjamin Moore's U.S. central region, said he is excited about the Warrens' undertaking.

"They came to us with a solid business plan," Bye said. Benjamin Moore, based in Montvale, N.J., is owned by Berkshire Hathaway Inc. and only sells through distributors.

While Northeast Ohio has no dedicated Benjamin Moore stores, Bye said they are common around the country. He noted there are large multi-unit operations in several other large metropolitan areas, including one in Chicago with 40 stores. With new operations, Bye said it studies the local market to ensure they will not oversaturate existing distributors.

The company sells through 7,500 independent stores in the United States, according to Kelly Sinatra, a Benjamin Moore spokeswoman.

As part of Omaha, Neb.-based Berkshire Hathaway Inc., it does not disclose unit sales figures and declined to discuss sales trends, although Sinatra noted the pandemic-driven increase in painting by do-it-yourselfers has benefited the brand.

In addition to paint, the paintCLE store and future additions will sell Wooster and Corona brushes and associated equipment.

Plans call to locate stores no closer than 15 minutes from each other, so they will serve neighborhoods with a shorter drive than the nearest big-box home improvement store.

Although brick-and-mortar retailers have been decimated by the recession and rising online sales, Richard Warren said he believes paint is in the category of items that customers need to pick out personally. The stores also will have a 100-square-foot conference center for architects and interior designers to roll out their designs as they make color selections.

"Have you ever bought a shirt online and found it was not the same color as it looked on your computer or phone?" Matt Warren asked. "Paint is the same way."

In a Zoom interview, the father and son agreed on most things, except how large they want paintCLE to become.

The short-term goal is for five stores within five years, Richard Warren said.

However, Matt Warren said he hopes to launch more over the long term, although the plan calls for future additions to be made after the initial two stores are established.

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Liberty Home Mortgage buys a home of its own

Company will move 100-plus staffers to Independence

BY STAN BULLARD

Khash Saghafi has fond memories of sledding on Oak Tree Boulevard in Independence as a boy growing up in adjoining Seven Hills.

The owner of Liberty Home Mortgage Corp. is about to start a new set of memories in that vicinity, although he now lives in Broadview Heights. He recently bought the four-story building at 6225 Oak Tree for $4 million as a new home for his growing company.

After substantial renovations, most being designed to improve what Saghafi calls the "employee experience," he plans to move about 140 of his head office staff — administrative, accounting and underwriting personnel, as well as loan processors — to the 41,000-square-foot structure. Another 80 staffers are off site serving as mortgage bankers finding clients in 35 states.

With the mortgage business in overdrive because of low interest rates and a generational surge in home-buying, he expects to add as many as 200 staffers during the next few years if things go as planned.

In any case, Liberty Home needed the space, as it had outgrown its 12,000-square-foot suite nearby at the Freedom Square office complex.

Saghafi said his employees, like most office workers, are laboring from home because of the pandemic. But he's certain when that ends, they'll be back in the office, even though he feels productivity has increased dramatically since February.

"You need an office to instill culture and values," Saghafi said. "When you bring in someone new, they really have to be in an office setting for three to four years learning the business before they can really work through it."

That's where his plans for amenities come in, along with serving as an antidote for the stress that comes with working in home lending.

Liberty will have a bowling alley, a steam room, its own cafe and even a first-floor wrestling room at the new headquarters. That's right, a wrestling room. It will be large enough for two 42-foot-by-42-foot wrestling mats, he said, and "will be both for employees and the community, such as area wrestling teams."

Wrestling has been a big part of Saghafi's life. He wrestled from grade school through graduation from Normandy High School and became a walk-on at Oklahoma State University's well-known wrestling program. These days, he's an assistant coach for the Brecksville High School wrestling team.

Working with high-achieving wrestlers, he said, gave him the focus and drive for succeeding at his business today, as well as through a 20-year career in mortgage banking.

Saghafi, a biology major in college, got into mortgage work through a friend instead of getting the medical degree his parents wanted him to pursue.

Today, Saghafi said Liberty grows because of a singular focus on single-family residential, primarily owner-occupied, homes. It eschews high-risk loans or commercial properties.

Saghafi promotes the business with a few billboards — his photo and the company's name — that serve as branding for Liberty. He also speaks at least twice weekly to groups of lawyers and real estate people who need continuing education credits.

Maureen Anter-Ressler, a senior associate at Passov Real Estate Group, and Khash Saghafi are shown in the Independence building Saghafi bought for his mortgage banking concern. | CONTRIBUTED

When Saghafi started his search for a building of his own two years ago, he told his agent, Maureen Anter-Ressler, a senior associate at Passov Real Estate, that he wanted it to be near Rockside Road between Brecksville Road and the western boundary of Independence.

"That's where I believe you have to be," he said, for ease of access for customers and employees. It's also a pretty narrow search area.

Anter-Ressler said in a phone interview that she prevailed on Saghafi to look at locations as far south as Richfield. But fate intervened last year when 6225 Oak Tree was vacated by Goodyear Aerospace and the prior owners, a real estate company based in New York City that took the building's street address as its name, and the building was up for lease.

"It's an empty building," Saghafi said, noting he told his agent, "Ask if they will sell it."

Abram Schwartz, a senior vice president at Lee & Associates in Pepper Pike, said Saghafi and Anter-Ressler's drive won the deal for them, not to mention making the highest offer for it.

"We had other prospects, including companies from downtown Cleveland who wanted to buy it, but they did not move as fast as Liberty," Schwartz said.

For her part, Anter-Ressler said she hopes that Liberty's purchase encourages other companies to look at buying their own office buildings — if they can find one available.

As everyone expects the hot residential market to slow down eventually, especially when interest rates someday rise from record lows, Saghafi has his own viewpoint on that.

"When interest rates were 15%, people still bought homes," he said. "They find a way to do it because they want a good place to live."

While business offers many roller-coaster experiences, Saghafi said he expects Liberty will continue to have staff and need the space, regardless of the state of the housing market.

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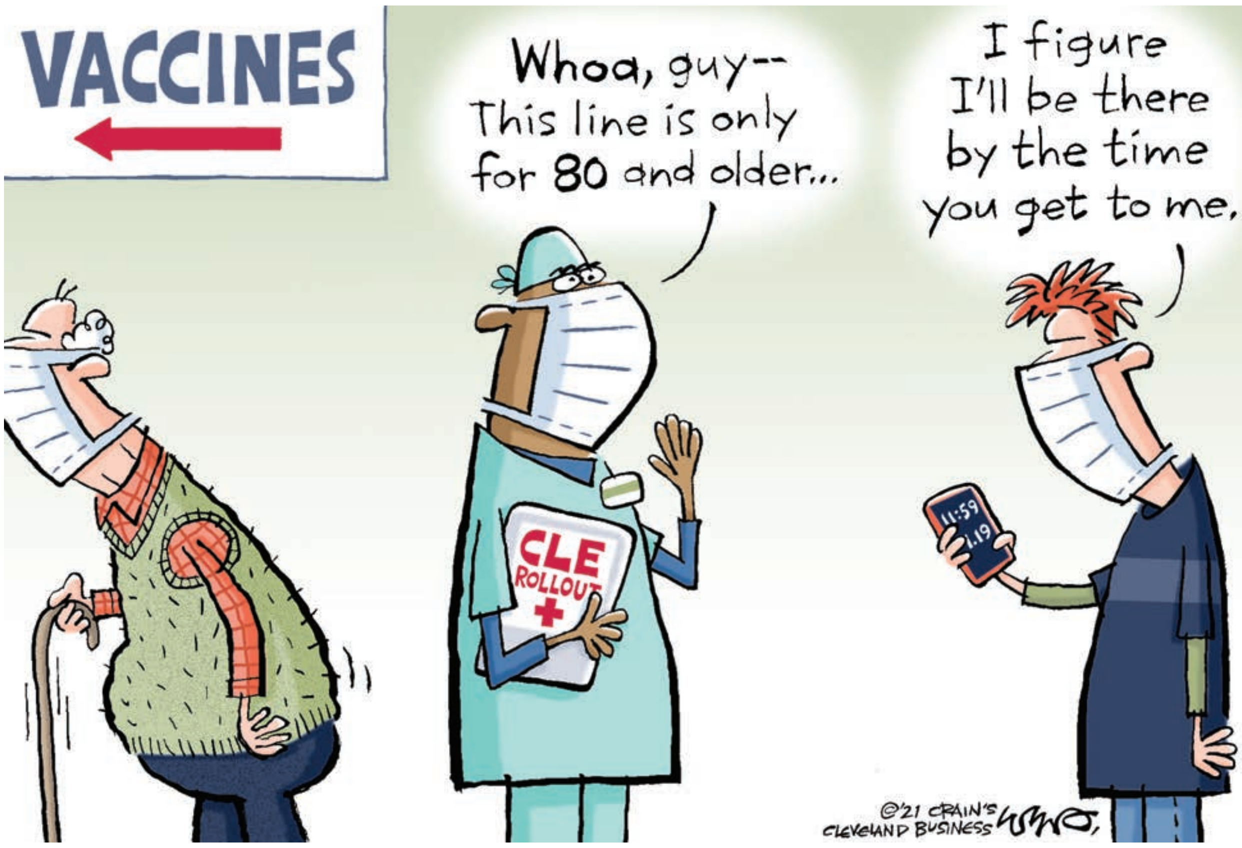
OPINION



RICH WILLIAMS FOR CRAIN'S CLEVELAND BUSINESS

EDITORIAL

Infrastructure weak

Less than three weeks into the new year, it looks like we might have put too much pressure on 2021 to rescue us from the mess of 2020. Rioters who put our democracy under threat are responsible to a large degree, but so is the slow pace to date of distribution of the COVID-19 vaccines — the major factor in our expectation that this year would be so much better than last.

There's plenty of blame to go around, starting at the federal level and extending down to state and local governments. We're still early in this, though, and there's time to get on a stronger trajectory for vaccine distribution, provided our government officials do a better job of communicating — both among themselves and to the public — and facilitate the smooth integration of the private sector into the effort.

CLEVELAND MAYOR FRANK JACKSON SAID LAST TUESDAY, JAN. 12, THAT THE CITY HAD ADMINISTERED LESS THAN 30% OF THE 6,500 COVID-19 VACCINE DOSES IT HAS RECEIVED SINCE LATE DECEMBER, A SLOW ROLLOUT THAT HE SAID WAS BECAUSE "THERE'S NO INFRASTRUCTURE FOR THIS."

The early results, though, are frustrating.

Cleveland Mayor Frank Jackson said last Tuesday, Jan. 12, that the city had administered less than 30% of the 6,500 COVID-19 vaccine doses it has received since late December, a slow rollout that he said was because "there's no infrastructure for this." He added, "There are pronouncements at the state and federal level over what is to be done, but it's up to the locals to figure out how to do it."

He's not wrong, but as Jackson is fond of saying, it is what it is, and the city will have to pick up the pace of building that infrastructure. This isn't easy, but it's a challenge all municipalities knew was coming. There are positive signs for the city's efforts to expand vaccination to residents beyond the state's top-priority groups, which include health care workers, first responders, and residents and staff of group and nursing homes. Vaccines are being administered at Public Auditorium downtown, and the city is preparing a mobile vaccination unit. Where the city needs to move more quickly — and moving quickly is not generally one of its strengths — is in the opening of other vaccination locations and the establishment of a web portal at the Cleveland Department of Public Health for people to sign up for a vaccine.

But building better distribution infrastructure doesn't go very far when supply is inadequate. And, as Ohio Gov. Mike DeWine noted last Thursday, Jan. 14, "The big picture on vaccines is that we do not have enough."

The state has vaccinated more than 360,000 Ohioans, representing about 72% of the vaccines it has received from the federal government. Not great, but not terrible.

A bigger challenge awaits. Phase 1B of COVID-19 vaccinations is set to launch this week, with residents age 80 and older eligible immediately. (Younger groups of Ohioans become eligible in subsequent weeks.) DeWine said the state is distributing about 100,000 vaccine doses this week. Those eligible now will need to turn to a hospital, clinic or pharmacy to find a venue with available supply and appointment slots.

"This is going to be a work in progress as we work our way through this and try to deal with the scarcity issue," DeWine said.

Northeast Ohio's big three hospital systems — Cleveland Clinic, MetroHealth and University Hospitals — are providing vaccines for eligible patients, hosting vaccination clinics and expanding appointments. DeWine said the state will start listing vaccination locations at coronavirus.ohio.gov. Retailers and pharmacies will play a key role in the information flow. Last week, for instance, Meijer announced that residents could send a text to register to receive a COVID-19 vaccine, or they could go online or simply visit a pharmacy. Others are doing the same. The lesson: Make it as easy as possible for people to get information.

Ohio is not alone in experiencing problems with vaccine distribution. This is a time for government at all levels to redouble efforts to combat what remains our biggest challenge to returning to (somewhat) normal life. David Kessler, a co-chair of incoming President Joe Biden's COVID-19 advisory board, said last week there is an "enormous opportunity for the country to come together." It requires the best work of everyone to get there.

FROM THE **GROUP PUBLISHER**

As we prepare for a brighter 2021, an introduction

Jim **KIRK**

As we turn the page on a year that many of us would like to forget, we here at Crain's Cleveland Business are focused and ready for a brighter 2021. We hope you are too.

We continue to strive to be your most important news and information resource — keeping you up to date on the best and most relevant information on what drives this great economy here, while also giving you the tools you need to succeed.

It is with this mandate that I introduce myself to you as the new Group Publisher of Crain Communications' "city-book" publications in Chicago, New York, Detroit and, of course, Cleveland.

I'm assuming the position held for the last two-plus years by Mary Kramer, one of Michigan's top journalists, whose award-winning career included many years helming Crain's Detroit Business before paving a new, successful path for the Crain city books as they aggressively navigate the digital age.

Let's make no mistake. I'm attempting to fill some big shoes.

Under Mary's steady hand, the Crain city books, including Crain's Cleveland Business, are stronger and reaching more readers and serving more business partners than ever before. She is leaving the publications in spectacular shape. We are more ready than ever to capitalize on the changes in the media landscape, and I'm honored to take the baton.

The good news is Mary is not leaving Crain. She is moving into a new role working on exciting, big projects for Crain Communications, continuing to report to Crain Communications CEO and Crain's Detroit Business Publisher KC Crain. Look for more big news from Mary in the coming weeks and months.

WE UNDERSTAND THE TREMENDOUS TRUST OUR READERS AND BUSINESS PARTNERS PUT INTO US EVERY DAY.

As part of the changes in leadership, I'd also like to announce that Lisa Rudy, associate publisher of Crain's Detroit Business, will expand her duties to manage the day-to-day operations of Crain's Detroit. Lisa has spent the last 18 months working not only with Crain's partners in Detroit, but also Cleveland and New York, helping set all three publications on stronger footing.

In Cleveland, under Publisher Mike Schoenbrun and Executive Editor Elizabeth McIntyre, we are dedicated to delivering the best fact-based reporting and editing and new products to readers and business partners alike. Our mission to provide exclusive journalism from the best newsroom in the region will only grow stronger in 2021 and beyond.

This is an extraordinary time to be in the media business. We understand that change is constant in our industry. And we also understand the tremendous trust our readers and business partners put into us every day.

That's why we continue to get smarter about how we deliver our content to readers and are working hard to refine our platforms so that we successfully meet the challenge of the changing needs of our readers as technology evolves.

Additionally, we are listening to our business partners as they continue to look for ways to solve their unique problems. We are committed to be the right resource to help them navigate this more competitive landscape.

We know the last year has been tough. But we also know that from difficult times in the past, new opportunities arise. We know that 2021 will be better and stronger. And that great things lie ahead for Cleveland.

We thank you, always, for taking us with you on your journey.

CRAIN'S CLEVELAND BUSINESS

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Sound off: Send a Personal View for the opinion page to emcintyre@crain.com. Please include a telephone number for verification purposes.

PERSONAL VIEW

The digital presence: a new year, a new you

BY SCOTT ALLEN AND MARIA SORIANO YOUNG

Many Northeast Ohioans are 10 months into the "work from home" life and may continue to be home-based for at least the first part of 2021. While many are eager to return to in-person work, even when businesses and offices begin to bring employees back together, some elements of digital work — like large team meetings over Zoom, Microsoft Teams, Google Meet, etc., and replacing work travel with electronic sessions, for instance — will probably stick around. Your digital presence will likely continue to be a priority — whether it's leading, selling, teaming, interviewing or networking.

To illuminate the areas of digital presence and presenting that should be prioritized and intentionally designed, we spent the spring and summer researching and speaking with leaders to inform our new book, "Captovation: Online Presentations by Design." The book explores topics such as setting, technology, delivery, slide design and online participation, with a goal of prompting you to examine your current practices to improve or adapt your own presentation methods for online delivery. Now that 2021 is here, it's critical to have a few key concepts top of mind to craft your digital presence with intentionality. The following are five online presentation considerations for 2021.


Allen is an associate professor of management at John Carroll University, and Soriano Young is the writing center director and coordinator of teaching for graduate assistants at John Carroll.

Setting

Simply put, your environment is the new first impression — for better or worse. While working from home, you are letting clients, senior leaders and co-workers into your space, as opposed to entering another person's or organization's space.

Designing a home setup that is professional and best complements your brand is an investment, either financially or with the time it might take to clear and organize the space you have available. Your area should be clean, warm and well-lit. People tend to go one way or the other here, plopping down in front of the whitest wall in their house or setting up in the middle of their messy kitchen (or a clothes closet, or even a bathroom … and, yes, we have seen people presenting online in both of those settings).

When you choose and design your space, you need to think about the first impression you would like to make.

Technology

The days of saying, "My internet connection is slow," or "My computer is so old" have long passed. Many have heard colleagues and other professionals use this excuse for months. Stop!

Leaders who have not yet fixed their chronic issues with connectivity, sound and lighting are beginning to look incompetent and unprofessional. Three steps to take right away to ensure that all of your presentations and meetings are visible, audible and accessible from your end:

1. Connect your router/modem directly into your computer;
2. Purchase a microphone or high-quality headset; and
3. Do your best to ensure that your lighting is consistent (regardless of the time of day).

These easy steps will help you maintain consistent connectivity and allow your audience members to see and hear you as clearly and crisply as if you were sitting across the table.

Slides

For those presenting to senior leaders, potential clients or colleagues, give special consideration to your slide deck. Does each slide have a purpose? Like a billboard, the main point should be easily and quickly understood. Visual aids are essential accompaniments to your presentation and serve important purposes — they spark conversation and thought, illustrate crucial points, highlight ideas and provide visual variety from the text.

However, visual aids must be intentionally designed. If they're too simple or uncontextualized, audiences will be confused about their relevance. If they're too complex or unreadable, the audience's attention will wander to the 100 other items to which they could attend.

As you design, the most important principle to remember is that your slides accompany your presentation. Thus, choose your material carefully so your audience's attention is on you for as much of the time as possible.

Delivery

Perhaps the most challenging component of presenting and communicating online is eye contact, which is just as difficult for the presenter to adjust to as the audience. You do not want your audience members to look up your nose or down at your forehead, nor do they want to watch you look off to the side for 45 minutes if you are using two screens.

In this new medium, think of yourself as a newscaster. Camera placement is crucial. Whether you have an external webcam or are using the camera embedded in your laptop or tablet, the camera eye must be level with your eyes and directly in front of you. Eye contact in this medium means that you look directly into your camera lens — not at the computer screen.

Participation

While most people are acutely aware of proper etiquette when "live," new norms are forming for online meetings and sessions, and we think that they deserve consideration. Pay close attention to the examples of your leaders. What are they wearing? Are their cameras turned on? Are they requesting your participation through interactive methods like polls, typing material into the chat box, or using "raise hand" to speak? Whatever your leader is wearing (a collared shirt, a dressier blouse, a jacket, etc.), wear the same type of attire. If they are on camera, be sure you are on camera. If they ask for participation, make an effort to unmute and contribute. Even from our own experiences, we know how easy it is to "just try to get a few other things done" during meetings when someone else is talking. When you are the presenter, keep that in mind, and try to find captivating ways to engage with your audience and make their time away from those "few other things" worthwhile.

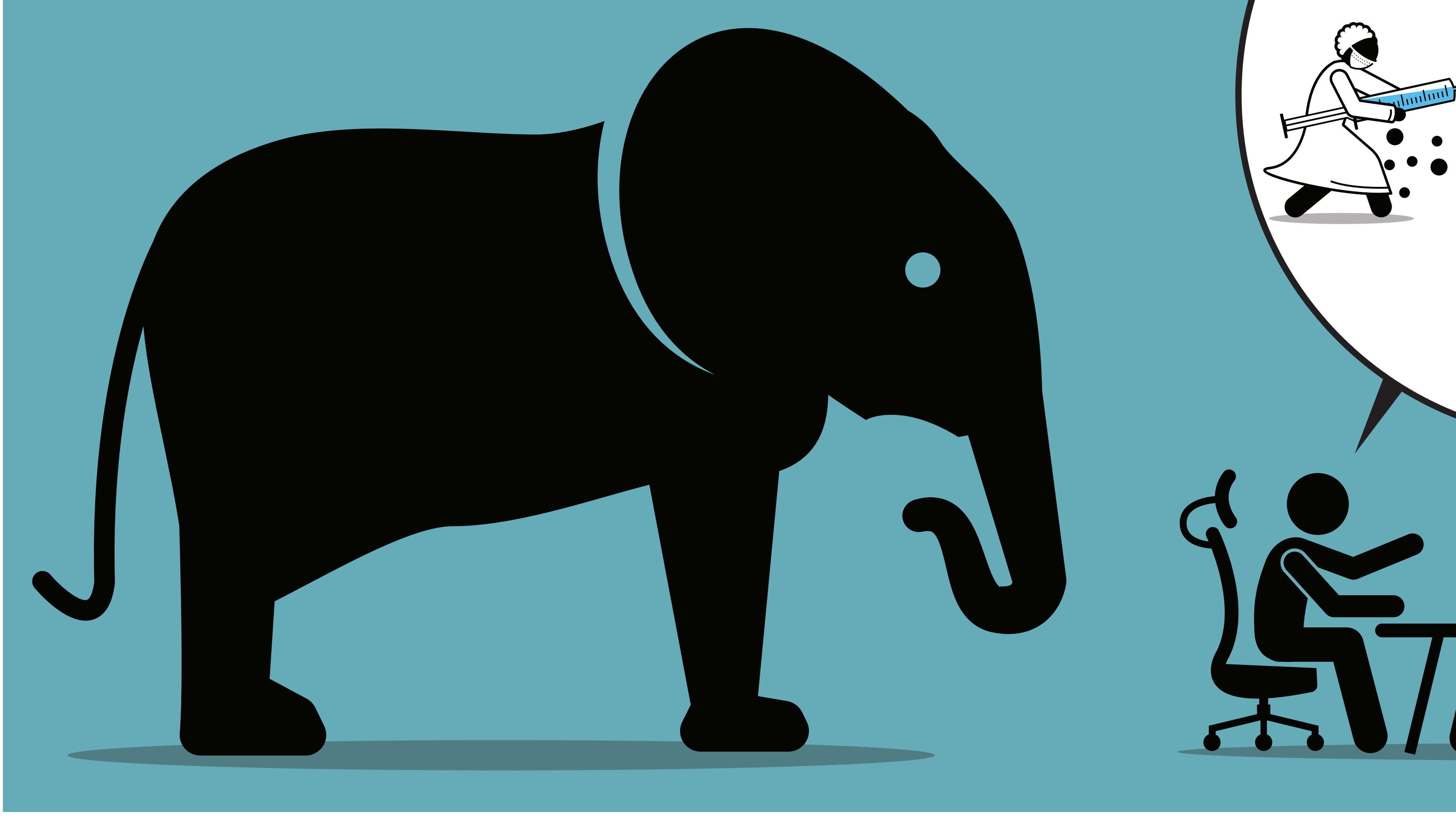
Conclusion

Presenting ourselves in a strictly digital format is new for all of us … but it's not all that new anymore. We have spoken with leaders who have formed impressions of employees who shifted with ease and others who have not. The reality is that each of us can improve, develop and grow.

Without venturing too deep into the topic of personal brand, these examples deserve mention, particularly because these situations left us dissatisfied with the time spent, as well as doubtful of the presenters' credibility and preparation.

We do not want you to make those same mistakes, as far as you can control them. The setting and your technology matter. Your slides and delivery matter. And your participation matters. From these recommendations, begin 2021 by asking yourself this question: "How do I want others to see me on-screen?"

THE ELEPHANT IN THE BOARDROOM



Employers grapple with mandatory COVID-19 vaccination policies

BY JEREMY NOBILE | For scores of employers, a confounding question today is not so much whether they can require coronavirus vaccination among personnel legally, but whether that's the best action to take at their respective operations — even if it may be the prudent move for public health and an action protected under the law.

"It's something I refer to as the 'Jurassic Park' maxim," said Chaz Billington, a partner with Vorys, Sater, Seymour and Pease who specializes in labor and employment laws and human resources issues, as he prepared to reference a famous line delivered by Jeff Goldblum's character in the 1993 film. "Don't be so preoccupied about whether you can mandate vaccination that you don't ask if you should."

That's what Billington and lawyers like him are advising companies to consider as they plan for a year amid the coronavirus pandemic and the future availability of vaccines.


Billington


Dejelo


Hagerty


Watts

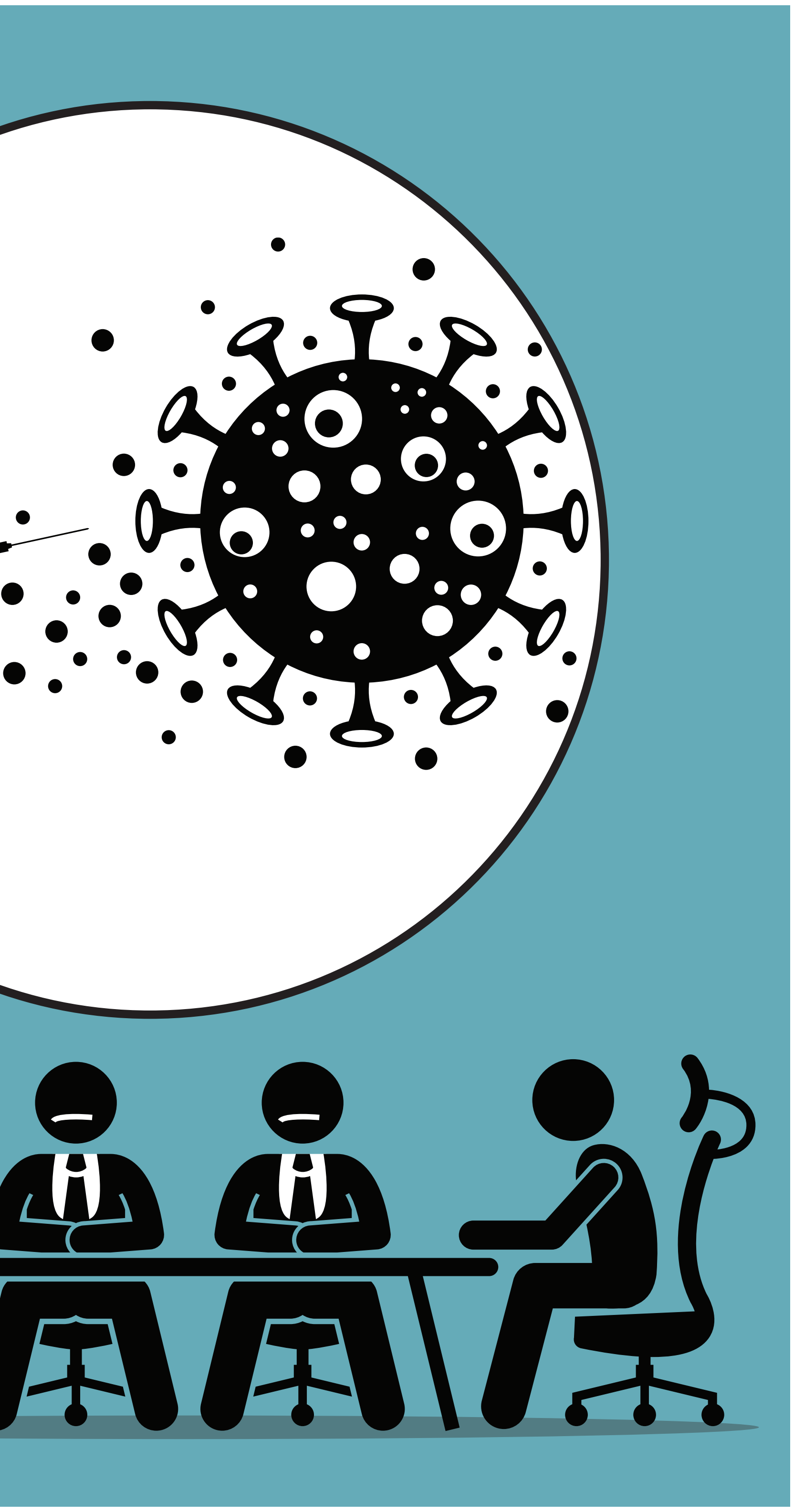
At this time, employers generally are either strongly encouraging voluntary vaccination in lieu of requiring it — usually with a heavy emphasis on education and possible incentivization (like an afternoon off to get the shot) — or are not yet taking or publicly stating a position at all, said Jason Dejelo, a partner with the labor and employment practice group at Calfee, Halter & Griswold.

Among those that say they are encouraging employees to get vaccines when they can — but are not planning to require it — are KeyCorp and the J.M. Smucker Co.

"We are committed to helping ensure the health and safety of our employees and are actively engaged with federal, state, local and other

WORKFORCE

Non-attorney job market is rolling with changes in technology, emphasizing client value **PAGE 10**



LEREMY VIA ISTOCK

partners to support the continued rollout of the COVID-19 vaccinations," Smucker said in a statement. "While we are not mandating employees get vaccinated, we will strongly encourage the vaccine and support adoption with education and access to the vaccine through our health care partnerships at the appropriate time in the priority distribution process.

"We will strive to reduce uncertainty and anxiety associated with the vaccine and help our employees make the best decisions for themselves and their families."

There does not yet seem to be any examples of businesses requiring a COVID-19 vaccine as a condition of employment.

This is seemingly due in part to the legal hurdles that could arise when administering a company-mandated vaccine, which requires complying with the Americans with Disabilities Act, state laws and so on. Pre-screening medical questions could implicate the ADA, for example.

But there's also simmering worry among Americans who are reluctant to get the vaccine, as Smucker references.

Some of these legal nuances are highlighted in December guidance from the Equal Employment Opportunity Commission that currently does not advocate requiring employee vaccination against COVID-19 carte blanche despite legal protections in place for employers doing so.

To be clear, an employer generally could require personnel to be vaccinated against a disease like COVID-19, barring some exemptions and accommodations. These could include someone refusing a vaccine because of religious beliefs, or if a collective bargaining agreement has jurisdiction over vaccination protocols for union employees. Outside these exceptions, a company could legally terminate an individual's employment if the person does not comply with mandates, Dejelo said. The precedent here is with employers, namely hospitals, requiring flu vaccines.

Yet a worry among companies is not over legalities but with possible blowback from the workforce, which could impact the bottom line, Billington said.

With studies showing a significant portion of Americans currently saying they'll refuse a vaccine for several reasons, that becomes a more acute fear.

A survey by the Society for Human Resource Management (SHRM), for example, found 24% of respondents would balk at getting a vaccine if their employer required it.

"My clients are paying a ton of attention to the downstream employee-relations effects," Billington said. "They don't want to cause an employee brouhaha when it can be avoided with a voluntary program that can probably be just as effective."

A Gallup Panel survey released in December indicated just 63% of Americans would agree to be immunized against COVID-19 with a vaccine approved by the Food and Drug Administration — the current available vaccines have received emergency use authorization under the FDA and have not yet gone through the typical FDA approval process. That 63% level is quite shy of the estimated 90% of the U.S. population infectious disease expert Dr. Anthony Fauci indicated last month that could need to be vaccinated to reach so-called "herd immunity" in America.

The combination of the potential for employee pushback and navigating the complexities of administering mandated vaccines is why most companies either don't yet have a position on requiring vaccines or are opting for a voluntary approach.

"We don't know what mandatory vaccinating looks like. We don't know the effect on the workplace," Billington said. "This all weighs in favor of cautious planning."

To be sure, employers in all sectors are grappling with whether to require COVID-19 vaccination among staff, said Tamara Hagerty, state director-elect for Ohio SHRM State Council, a regional SHRM affiliate, and an HR leader for Parker Hannifin Corp.

"I view the COVID-19 vaccine much like the flu vaccine," Hagerty said. "Organizations will have them available, but are they going to mandate them? That is really the big question right now."

Parker Hannifin itself declined to comment on any policies related to COVID-19 vaccination.

According to surveys by SHRM, as of December, 61% of employers said they intend to encourage COVID-19 vaccination but not require it. This comes as 66% of employers surveyed by SHRM deemed vaccination as very or somewhat necessary for business continuity.

Hospitals including the MetroHealth System typically require flu vaccination as a condition of employment. The Centers for Disease Control and Prevention has recommended annual flu vaccination for health care workers since 1984, decades before mandatory vaccination became a norm in health care.

However, Dr. Brook Watts, chief medical officer for community and public health with MetroHealth, said the hospital falls into the bucket of employers strongly recommending COVID-19 vaccination but foregoing a mandate.

"We believe the way we are going to come out of this pandemic is with vaccination," Watts said. "There is a strong sense that these are safe vaccines that are going to be a very important weapon and tool for us to end the pandemic. We will still have to do things like masks and social distancing, but all these things together are the path out of this."

Watts said she encourages people to "follow the evidence and the science, not the hype," noting that misinformation and social media combined are helping cloud judgment related to vaccination among the populous. She is quick to remind the public that polio was eliminated thanks to vaccines.

Issues in health literacy, the spread of misinformation and general public distrust of everything from the government to the health care system are fueling the anti-vaccination crowd, Watts said. Dejelo and Billington see the same trends at play feeding anxieties among the workforce.

Good education, Watts said, can help counter this, in addition to time. The belief is more people will warm up to the idea of vaccination as months go by and its efficacy is further proven out in the world.

"We want to be respectful of the decision-making process," said Watts. "But science points to this vaccine being extremely effective and very safe, and we are excited about the opportunity to bring it into the community as quickly as possible."

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Considering mandatory COVID-19 vaccination? Some key details to know

- The U.S. Equal Employment Opportunity Commission (EEOC) has confirmed employers may mandate that employees receive the COVID-19 vaccine when it becomes available to them, subject to certain legally protected exceptions for disabilities under the Americans with Disabilities Act (ADA) and for sincerely held religious beliefs under Title VII of the Civil Rights Act.
- Administration of a Food and Drug Administration-authorized COVID-19 vaccine to an employee alone is not a "medical examination" under the ADA.
- Unlike the administration of the COVID-19 vaccine itself, mandatory pre-vaccination medical screening questions may implicate the ADA.
- Regardless of whether vaccination is mandatory or voluntary, employers can ask or require employees to show proof of vaccination.
- Certain mandatory pre-screening questions may implicate the Genetic Information Nondiscrimination Act.
- Employers that mandate the vaccine may have to accommodate employees who cannot get a vaccine because of a disability.
- Employers that mandate the vaccine may have to accommodate employees who cannot get a vaccine because of a sincerely held religious belief.
- If an employer has any employees represented by a union, it is likely that the implementation of any COVID-19 vaccination requirement will be a mandatory subject of bargaining about which the employer will have to negotiate and reach an agreement with the union before implementing.
- Employers should consider the potential for workers' compensation claims should any employee have an adverse reaction to an employer-mandated vaccine.
- In addition to legal considerations, employers also need to be prepared for potential pushback and employee morale issues associated with mandating vaccination.

SOURCE: CALFEE, HALTER & GRISWOLD

FOCUS | LEGAL AFFAIRS

Non-attorney job market rolling with changes in technology

Law firms put emphasis on innovation, client value

BY DOUGLAS J. GUTH

Pandemic-wrought shutdowns have had a dramatic effect on the legal services industry, with law firms nationwide cutting costs through layoffs, pay cuts, furloughs and shortened seasonal programs.

Earlier this year, technology company Clio reported a 56% decrease in requests for legal assistance among surveyed respondents.

Despite the downturn, firms are embracing non-lawyer talent strategies fueled by innovation and a renewed emphasis on client value. Paralegals and administrative staff — the backbone of any modern law office — are being supplemented by highly skilled workers capable of developing and supporting new technologies.

Larger firms, which today operate like businesses as much as they do legal practices, are employing multiple non-attorney executives at the highest organizational levels. Remote work and the rising "gig economy" are having their own impact, placing temporary, contract and freelance workers in projects that can last years.

Chicago-based Benesch has 143 local attorneys — complemented by 125 legal secretaries, paralegals, file-room clerks, IT workers, accountants, marketing team members and others — working out of its Cleveland office. Benesch partner and general counsel Joe Gross said ramped-up activity has resulted in the return of not only some furloughed attorneys, but their support staff as well.

"We had to back off on hiring plans for new lawyers, but we're still actively recruiting at law schools," Gross said. "New lawyers are going to need legal assistants — that goes hand in hand."

"WE'RE GETTING [CLIENTS] TO OUTSOURCE ADMINISTRATIVE WORK TO KEEP UP THEIR PRODUCTIVITY AND PROFITABILITY. THAT'S WHERE I'VE SEEN THE BIGGEST CHANGE — OFFLOADING THE ADMINISTRATIVE STUFF AND MAKING SURE IT'S DONE WELL."

— Pivot Growth Partners managing partner Regina Olbinsky

Adapting

Pivot Growth Partners managing partner Regina Olbinsky has not seen a significant staffing downturn among the smaller family law and estate planning firms she consults. Thanks, in part, to COVID-sparked upticks in those two areas of law, every firm in Olbinsky's portfolio increased their employment rolls in 2020.

"I work with small firms, so it's not about replacing a lawyer one-to-one, or on any other level within the firm," Olbinsky said. "Some are for looking for attorneys, but also need talent like paralegals and on the administrative side. Or we're getting them to outsource administrative work to keep up their productivity and profitability. That's where I've seen the biggest change — offloading the administrative stuff and making sure it's done well."

See **HIRING** on Page 12

The pandemic of racism and a lawyer's duty

BY ANNE SWEENEY

Note to readers: Lawyers have a responsibility to use their privileged positions to dismantle racism and other systems of oppression. You, the public, consumers of legal information, clients of law firms, litigants in court rooms, must hold us accountable to do this work. The following observations offer us all a place to start.

Sweeney is managing attorney for community engagement at the Legal Aid Society of Cleveland.

COVID-19 continues to kill thousands of people across the United States and devastate families, with its enormous impact on Black and Brown communities. People of color are infected and dying at higher rates than white individuals. Unemployment soars for Black communities, while it is starting to fall for white individuals. A study from Brown and Harvard universities shows, as a result of the pandemic, Black children are further behind in school compared to white children. The pandemic continues to lay bare how pervasively racism has infected every aspect of this country: health care, employment, education, housing, wealth and the legal systems. Lawyers have a special responsibility for these systems.

On May 25, 2020, George Floyd's murder rattled our collective conscience. The confluence of COVID-19 disproportionately harming people of color, with a heightened awareness of murders, like Mr. Floyd's, implores change and compels action. Lawyers have a special responsibility for these systems and a role to play in changing them.

Structural racism was created intentionally, it is perpetuated deliberately, and it persists because of both action and inaction. For example, although in 1954 the U.S. Supreme Court held "separate but equal" schools unconstitutional, and in 1991 the Ohio Supreme Court found the state's system of funding schools through property taxes violates the Ohio constitution, the Ohio Legislature has failed to comply.

This country needs a period of "deconstruction" to end discriminatory policies. The urgency is different than in the past. Yet the enormity of the task — dismantling four centuries of racist laws, policies and practices — still threatens to paralyze white people. Lawyers must resist the path of denial, avoidance and accommodation, and embrace racial justice now.

Racial profiling, drug laws, sentencing policies, implicit racial bias, prosecutorial discretion and socioeconomic inequity contribute to racial disparities at every level of the criminal justice system. People of color make up 37% of the U.S. population but 67% of the prison population. The Sentencing Project has found that even though Black people are no more likely to commit a crime than white people, Black people are more likely than white people to be arrested. Once arrested, they are more likely to be convicted, and once convicted, they are more likely to face stiff sentences. A racist "justice" system suffocates Black people through incarceration and collateral consequences. Black people who are unfairly trapped by the "justice" system face health threats, lost opportunities, and denials and rejections based on criminal background. For example, a person in prison is two and a half times more likely to contract COVID-19. A person convicted of a misdemeanor for possession of marijuana faces up to 227 collateral consequences. Despite seeking employment at rates higher than the general population, formerly incarcerated individuals are half as likely to get a job and face unemployment rates five times the national average.

Upon release, a person is poor in income, health and opportunity. And yet each person released must secure housing and employment, care for family, finish their education, and avoid the police. Policies and practices that discriminate against applicants based on their criminal record make achieving these goals a Herculean task and disproportionately affect Black people, despite being no more likely to commit a crime than whites. Lawyers must do more to remove barriers for those returning to the community. To avoid these barriers, some people start their own business. People of color face inequity in the process such as limited access to capital because of low appraisal values and credit scores. The Economic Injury Disaster Loans created in the pandemic relief legislation should be responsive to these realities. Instead, small business owners who have been convicted of a felony in the last five years, are currently incarcerated, are on probation or parole, or are under criminal indictment are excluded. Lawyers should challenge such discriminatory legislation that punishes people who have been targets of a biased system.

As Bryan Stevenson said in The New Yorker, and reiterated in a recent event hosted by the Cleveland Public Library, "The great evil of American slavery wasn't the involuntary servitude; it was the fiction that Black people aren't as good as white people, and aren't the equals of white people, and are less evolved, less human, less capable, less worthy, less deserving than white people. ... You can't understand these present-day issues without understanding the persistent refusal to view Black people as equals.... The police are an extension of our larger society, and when we try to disconnect them from the justice system and the lawmakers and the policymakers, we don't accurately get at it."

Video platforms keep the courts 'rolling'

Cuyahoga County Domestic Relations Court administrative judge is among the early Zoom adopters

BY JUDY STRINGER

In a bid to stay in the forefront of judicial technology use, Cuyahoga County Domestic Relations Court Administrative Judge Leslie Ann Celebrezze said the court plans to begin livestreaming videoconference hearings as soon as early February.

The Cleveland courthouse — which oversees divorces, separations, domestic violence, and child custody and support filings — was among the early Zoom adopters following the March shutdown, moving the bulk of its attorney meetings and pretrial and trial proceedings to the virtual platform in early April. Three months later, Celebrezze issued an administrative order that requires paperwork in most cases to be filed electronically.

"Now we want to keep the ball rolling on technology implementation and see how much we can get accomplished," she said, citing webcasts as the next hurdle to "becoming a fully digital court."

"I've watched it done in Texas, where they are livestreaming their Zoom hearings," Celebrezze said. "We realize the need to have public access to court hearings, but clearly we can't have the public in the courthouse right now, so livestreaming would be a way to offer access to the public."

The domestic court's swift move to virtual proceedings was made possible in part by a state grant. In April, it received almost $52,000 as part of the Ohio Supreme Court's $4 million emergency technology fund, earmarked to help local courts maintain continuity of operations in the wake of the novel coronavirus.

Celebrezze said the grant helped with the purchase of laptops and Zoom licenses for the court's judges, magistrates and staff. In-house personnel managed implementation.

"I have to give kudos to our technology department and our court administration because they were the ones who really pushed this forward," she said.

Cleveland Metropolitan Bar Association CEO Rebecca Ruppert McMahon said other county courts, including probate and housing, — as well as many of the area's municipal courts — were also quick to restore operations via Zoom and other digital platforms during the COVID shutdown — many coming online within the first few weeks of April. And while most courts are still experiencing some lag as a result of the lockdown and ongoing pandemic challenges, virtual meetings have kept dockets flowing.

Celebrezze

"Video technology has absolutely been a game changer in being able to keep the courts open and moving forward as the pandemic has raged on," Ruppert McMahon said.

Both women report mostly positive feedback on video proceedings. Early on, Celebrezze said, some attorneys struggled with submitting discovery electronically, particularly in cases with a large amount of evidence.

Like litigants, however, lawyers overall tend to appreciate the extra time and convenience afforded by "not having to come down to the courthouse, pay for parking and wait for their case to be called," the judge said.

Megan Corsi, an Independence-based private practice attorney, said getting clients to take digital hearings as seriously as they do a courthouse visit can be a challenge. People join the video calls in T-shirts and hoodies rather than suits and dress shirts.

Celebrezze said one of her litigants was drinking a beer during a morning virtual hearing. A colleague, she said, conducted a hearing with a couple sitting in bed.

The informality is reflected in behavior, too. Litigants tend to argue with each other and disrespect judges more often on video calls than they do in the courtroom.

"I think being in front of a judge, who is sitting on an elevated bench with a black robe on, is a little bit more intimidating," Celebrezze said. "Of course, the benefit of Zoom is that I can mute them."

Corsi believes mediation, in particular, goes smoother when people are forced to meet face to face. She said there "seems to be less immediacy to resolving issues" in a digital environment. Although video technology has been used broadly by Cuyahoga County courts, civil cases lend themselves more easily to virtual hearings than criminal cases, according to Ruppert McMahon.

"When you're looking at criminal charges, those are much more complicated than civil because of the myriad constitutional protections that criminal defendants have about in-person [hearings] and confronting witnesses, etc.," she said. "But there are places on a criminal side where it works."

Still, Ruppert McMahon said, the legal community "like everyone else" is eager for the day when meeting in person is safe again.

"For people who are involved in the practice of trials, there is nothing like being in a courtroom, face-to-face, talking with your judge, meeting with your opposing parties, engaging in settlement discussions," Ruppert McMahon said. "Everything is at a different tenor when it's done in person."

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HIRING

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Common administrative tasks — from running QuickBooks to depositing checks — are mostly done in-house rather than on a freelance basis. Among the $10 million-and-below firms that comprise Olbinsky's clientele, keeping this work close is a simple trust issue. As law firms move client-facing and back-office functions to the cloud, virtual assistants and remote employees are becoming more common. Familiarity with client-management software prepared legal offices for the transition into remote work, Olbinsky said.

"Nobody used this technology five years ago — now they all do," she said. "That positioned firms well for the pandemic. Most had voice-over-internet phones, or just picked up their handsets and took them home. This allowed my clients to work incredibly efficiently."

The legal industry is also harnessing artificial intelligence to boost productivity and spend less time on monotonous tasks. Proponents say AI can flag specific documents, with machine-learning algorithms tracking down other materials relevant to a case. Additionally, AI simplifies contract revision by highlighting standard clauses for different applications. The technology can even predict legal outcomes, sifting through years of data to inform practitioners their chances of winning a case.

"AI is in lawyers' minds," said Gross of Benesch. "It may not be all about productivity, but rather helping them draft briefs and documents or do research."

Like a business

Meanwhile, corporate legal departments are expanding to support new business activity and address complex data privacy laws such as the European Union's General Data Protection Regulation and the California Consumer Privacy Act.

Larger offices like Benesch are also hiring or promoting non-lawyer talent at the executive level, aligning with trends percolating within the industry for decades. President and CEO Kevin Fitzpatrick came to Benesch 35 years ago with a bachelor's degree in civil engineering, establishing the firm as a go-to construction management consultant for the city of Chicago. Benesch's Cleveland location installed former manufacturing exec John Banks as chief operating officer, highlighting the expanded business focus evident across the industry.

"Every large firm is doing things the way a business school would teach a business to operate," Gross said. "In past years, lawyers would run their own practices, but business aspects are now being done by people with those skills."

According to the Bureau of Labor Statistics, the median annual wage for legal occupations was $81,820 in May 2019, with associate-level positions, including paralegals and legal assistants, accruing over $51,000 annually. While Cleveland-Marshall College of Law dean Lee Fisher expects firms to remain conservative on hiring until the pandemic recedes, the next wave of non-lawyer jobs won't necessarily require a juris doctorate to obtain.

"Students could be doing document review as opposed to jobs where a JD is required," Fisher said. "They don't need to have a degree, but they do need those organizational, project and technical skills."

Freelancers are supplementing the existing workforce, allowing workers to operate from home and employers to quickly scale up or down. Benesch contracts out electronic discovery and research on large cases, and hires consultants for other projects.

"There's no guarantee a project will last for more than a few years," Fisher said. "Work ebbs and flows, so it makes more sense to hire based upon temporary client needs."

When hiring resumes in earnest post-COVID, organizations seeking skilled workers will fall back on fit and culture, said Olbinsky of Pivot Growth Partners.

"It's the notion of being in a crisis and what kind of hard decisions you have to make," she said. "The coronavirus has highlighted that. 'These are our values, we have to do this.' "

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ACG® Cleveland

CORPORATE GROWTH & M&A

Contents

PRESIDENT'S LETTER

An optimistic year-end review and 2021 outlook

By THOMAS M. WELSH

It has been commonplace over the past year to attribute the occurrence of an unexpected event or unfortunate outcome as being par for the course in 2020. During the pandemic, businesses have had to shift away from existing strategic plans and acquisition strategies and alter the way they operate. The past year was no different for the Cleveland Chapter of the Association for Corporate Growth (ACG) and its approximately 500 members engaged in middle-market mergers and acquisitions and finance transactions. We have missed the in-person networking and nationally recognized ACG Cleveland events to which we have become accustomed, a prime example of which was the cancellation of the 2021 ACG Cleveland Deal Maker Awards. But as we enter this new year with optimism for normalcy on the horizon, I would like to reflect on the accomplishments of ACG Cleveland over the past year in furtherance of our mission to drive middle-market growth.

Pivoting to virtual events, we hosted more than 30 events in 2020, including panels, happy hours and networking events, highlights of which included:

- Our ACG Cleveland Women in Transactions (WIT) Group's virtual roundtable titled "Post-Pandemic Recovery: Surviving and Thriving Despite Uncertainty;"
- A virtual golf event for ACG members, followed by a fireside chat with PGA Tour Professional, Henrik Stenson;
- 2020 Deal Maker Award winner Edgewater Capital Partners serving as keynote panelist to discuss their success with "carve-out" transactions; and
- Our annual ACG Cup competition for college students with M&A aspirations.

When you combine all of our past and upcoming events, our special interest groups such as Women in Transactions (WIT) and Young ACG, and other ACG membership benefits, ACG continues to deliver value to its members and remains the premier organization for middle-market transactional professionals. I encourage prospective members to attend an event and consider the benefits of ACG membership.

I would like to thank our corporate sponsors for their continued support during 2020 and for adapting alongside of us with respect to our programming schedule. Further, I would like to thank ACG Cleveland's board of directors and committee members for their efforts and contributions this year. It has been my pleasure to have worked alongside all of you as current president of ACG Cleveland.

In closing, although we will not be celebrating our deal makers in person this year, I would like to congratulate all of the deal makers in Northeast Ohio who were successful in completing a deal in 2020 despite the pandemic. This is our largest group of ACG Cleveland Deal Maker Award winners yet! I look forward to seeing all of you in person soon.

Thomas M. Welsh is partner at Calfee, Halter & Griswold LLP, co-chair of the Corporate & Finance Group and president of ACG Cleveland. Contact him at 216-622-8529 or twelsh@calfee.com.

ABOUT ACG

ACG is a global organization focused on driving middle-market growth. Its 15,000-plus members include professionals from private equity firms, corporations and lenders that invest in middle-market companies, as well as experts from law, accounting, investment banking and other firms that provide advisory services. Learn more at www.acg.org. ACG Cleveland serves professionals in Northeast Ohio and has about 500 members. For more information, visit www.ACGcleveland.org.

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Revisiting earnouts in the COVID-19 era

By MICHAEL D. MAKOFSKY

The purchase price in a merger or acquisition deal is of paramount importance.

Beyond the dollar amount, however, the manner of payment is critical as well. While most sellers wish to receive 100% of the purchase price in cash at closing, an earnout is a common component.

An earnout allows a seller to receive a portion of the overall purchase price after closing if the target company achieves certain performance goals. Earnouts are often employed when a buyer and seller cannot agree on an overall value of a company. The earnout can bridge the divide in that it allows the seller to receive what they think their company is worth, if it performs as expected. Meanwhile, a buyer "hedges their bet" against overpaying for a company based on historical numbers and projections.

The COVID-19 pandemic has caused much performance uncertainty. Buyers and sellers may struggle to determine a company's value and purchase price. To address these uncertainties, there likely will be an increase in earnouts.

> **"Earnouts are often employed when a buyer and seller cannot agree on an overall value of a company."**

Even without a pandemic, earnouts can be complicated. Three important considerations are:

1. Metrics: The criteria used to determine if a seller has achieved the earnout. These are often, but not always, financial terms such as reaching certain EBITDA, revenue or new sales.

2. Earnout length: Prior to COVID-19, the median length of an earnout period was around 24 months. As a result of current economic uncertainties, earnout periods will likely increase.

3. Control: Since the earnout is often based on financial performance, a seller often wants a commitment from the buyer that the management team will be allowed to operate freely in order to achieve the earnout payment. This autonomy may not align with the buyer's plans and will need to be negotiated by the parties.

It is recommended that sellers and buyers use experienced M&A negotiators as the complexity of determining purchase price and manner of payment increases.

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Avoid delays and post-closing liability in private equity transactions

By CHRISTAL CONTINI and JASON KLEIN

While the impact of the COVID-19 pandemic has caused the termination or delay of many business acquisitions, private equity fund transactions are making a comeback and in some industries, are at higher levels than prior to COVID-19. Now more than ever, PE buyers need to continue to understand how a seller's pre-closing activities could affect a PE buyer's timing to close a transaction and its post-closing liability.

Two particular issues affecting private equity transactions post-COVID-19 are: (1) how to avoid closing delays because of a seller having received a loan through the Paycheck Protection Program (PPP) and (2) how to protect a PE buyer from potential operational issues affecting the seller because of COVID-19.

Avoid closing delays resulting from the PPP loan

The terms of all PPP loans require lender consent to certain transactions involving a PPP borrower. Recently, the Small Business Administration (SBA) issued guidance related to lender consent for change of ownership transactions involving a PPP borrower.

The good news is that the SBA has taken the common sense approach that the PPP lender may approve a change of ownership transaction (generally speaking, the sale of equity or assets of greater than 50%) if the PPP borrower prior to closing submits a loan forgiveness application showing use of all PPP funds and escrows funds with the PPP lender for the outstanding balance of the PPP loan. Failure to adhere to this procedure could cause the acceleration of the loan and/or cause the seller to lose the possibility of forgiveness of its PPP loan.

PE buyers should recognize that it takes time for a seller to file its forgiveness application and to finalize the escrow agreement with its PPP lender. This "apply and escrow" process should be taken into account when developing the closing timeline to avoid unnecessary closing delays.

Include buyer protections in the purchase agreement for COVID-19 related operational issues

Every purchase agreement requires that a seller make certain representations and warranties regarding its business. It is important for a PE buyer to understand how COVID-19 has affected the seller's business. While the PE buyer will have taken into account in the purchase price the financial impact of COVID-19 (if any), the purpose of specific COVID-19 representations and warranties is to capture how the seller's business has changed to allow a PE buyer to mitigate potential post-closing liability.

Specifically, we recommend that the PE buyer include COVID-19 representations and warranties that address:

- Specific COVID-19 orders that are in place for the given jurisdictions that the seller's business operates.
- Any changes to the seller's business since COVID-19 began impacting business operations in the U.S. (since around February of 2020).
- Certain developments since February 2020, such as:
  - Whether or not the seller has revised its budget or financial projects for this fiscal year and fiscal year 2021
  - Any agreement to modify or defer customer payment terms, write-offs of customer accounts, modifications or deferrals of trade payable terms, deferrals of payment of taxes, lay-offs, furloughs, terminations or changes to the compensation or benefits of employees
  - Any insurance claims made by a seller, temporary shutdowns or reductions in workforce, increases in indebtedness outside the ordinary course of business, any material disruption in the seller's supply chains
- A listing of all policies related to COVID-19 that have been adopted by the seller.
- Certain tax matters listing all actions taken by the seller outside the ordinary course of business.
- The number of employees of the seller's business that have tested positive for COVID-19 and names of employees on furlough and temporary leave of absence (regardless of COVID-19).

With respect to any transaction where the seller has taken out a PPP loan, the PE buyer should include a covenant in the purchase agreement stating that the seller will reimburse the PE buyer for any obligations, costs or expenses arising from or relating to the PPP loan, COVID-19 related debt, or other loans related thereto, as well as indemnify the PE buyer against any claims for such amounts.

Whether you are a PE buyer or a seller, the adage "time kills all deals" applies to every transaction. To avoid delaying a transaction in an ever-changing M&A landscape, both a PE buyer and a seller should plan ahead and work together to ensure that the PPP loan application and escrow process does not hold up the closing of the transaction.

Finally, both the PE buyer and seller should discuss at the beginning of due diligence how COVID-19 has affected the operations of the seller so that the seller can be prepared to respond to the representations and warranties in the purchase agreement.

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Investment training for the second and third generations

By CASSANDRA L. MANNA and RICHARD W. BURKE


Consider this scenario. Mom and Dad started the business from the ground up. Over the decades it has expanded into a money-making machine. They are able to sell the business and it results in a multimillion-dollar payday for their labors. The excess money has allowed Mom and Dad to invest with various financial advising firms, several fund management groups, and directly with new startups and joint ventures. Their experience has made them savvy investors, with a detailed understanding of how much to invest, when, and where. They cannot justify formation of a full family office with dedicated investors to manage the funds, but Mom and Dad have set up a trust fund for the children to allow these investments to continue to grow over the years. Eventually, Mom and Dad pass. Their children enjoy the fruits of their labors, and, by the time the grandchildren are adults, Mom and Dad's savvy investments are gone.

How does this happen?

There are many articles, theories, and research on why a family business or investment money rarely makes it to the third generation. However, one pervasive theme tends to stick out: the second generation and, in turn, the third generation, are untrained on how to manage, invest, grow, and use their family money in a positive, lasting way.

It makes sense. Mom and Dad had to learn every nuance of the industry and how to make every dollar count – they lived the on-the-job training that made them savvy investors. The next generations did not have that same "hard knocks" experience – they were taught by Mom and Dad, private schools and higher education. They did not have the urgency of making every dollar count because there were plenty of dollars available.

So, if Mom and Dad have enough money to create wealth for generations to come if it is properly cared for but they do not have enough to justify the cost of a full family office, what can they do to train their children on the importance of long-term investing for their benefit and more importantly for future generations?

A strategic family plan

What if there was an investment training opportunity for the second and third generations? Owners of family-run businesses, startups, or early-stage ventures are looking for investors to finance their expansion, create their new technology, or develop their next real estate project. These raises are the perfect opportunity for young investors to learn how to conduct direct investing at low buy-ins and allows them to discuss the pros and cons of an investment. A team of experts including the business owners (Mom and Dad), their financial advisors and legal counsel can collaboratively work together to set the plan into motion.

For example, if a client conducts a financing raise at $50,000 a share, Mom and Dad might buy one or two shares of the company. However, their children, who are in their 20s and 30s, most likely, cannot manage an investment that size. As part of the training of this second generation, Mom and Dad offer an opportunity to the children: if the children can pool together $25,000 between them, Mom and Dad will match those dollars to assist with purchasing a share. The children form an investment entity to hold the share in its name and any distributions made are divided among the children. The children would learn to read the PPM for the company, comprehend how the investment could grow or flop and understand how their investment entity will work on their behalf. They are interested and invested (both literally and figuratively) in the outcomes of the company because their personal money is invested.

This process results in Mom and Dad guiding their children through a valuable lesson: when, where, and why to take a risk with their own dollars. The second generation is able to learn directly from the most experienced resources they have, their parents, while they are still alive, able to answer questions, give advice, and discuss opportunities.

This is but one example. By providing clients, their children and grandchildren unique investment opportunities, structured in a way that provides profit and a training opportunity, clients' assets are more likely to grow and last over generations.

If you are interested in learning more about family boards, training and preparation of the next generations, and planning for long-lasting family wealth, consult a financial advisor and legal counsel.

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Pursuing M&A with a new playbook

By JIM RICE and JIM KLESSEL


New competitors, products and business approaches are on the horizon. There rarely has been a better time for companies to use mergers and acquisitions to embrace innovation, double down on strengths and build scale.

Today, it may be the talent and intellectual property at an early-stage enterprise that drives value and competitive advantage for an acquirer. Or it could be a megadeal designed to generate cost synergies, build scale and gain market share. Companies of all sizes and across industries can benefit from pursuing M&A, though with a new playbook that is more nimble, innovative and digital.

Why pursue M&A now?
With borrowing costs at historic lows, and disruption in nearly every sector, companies have an incentive to buy and sell assets now. But competition for assets is stiff, and companies need to move fast. Consider the following:

- During the 2008 global financial crisis, the best modern example of a market shock, active acquirers from January 2007 through January 2010 saw an average total shareholder return that was at least 10 percentage points greater than less-active companies, Ernst & Young LLP (EY) M&A research shows. While the ramifications of the COVID-19 crisis may be with us for some time, the window to act on M&A may be relatively small.

- More than 70% of a select group of U.S. CEOs who EY surveyed in November 2020 said investing in digital technologies would be their top strategic priority over the next six to 12 months.

- More than half of 2,900 C-suite executives EY surveyed globally in our recent Capital Confidence Barometer indicated they were opting to transform through transactions and planned an acquisition during the next 12 months.

Pandemic business disruption may be temporary, but changes to consumer behavior could have more permanence for business models. Many companies with disruption in nearly every industry — from retail, health care and real estate to energy and entertainment — face the need to transform.

How can you act now?
Particularly in light of the COVID-19 pandemic, top-performing acquirers tend to have the following six attributes:

1. They adopt a value-driven lens. The rationale for a deal should stem from a realistic awareness of value gaps, which allows the acquirer to find assets that present the best sources of value and revenue. A focus on customer need and product offering should precede shareholder-oriented financial targets.

2. They maintain a robust corporate development function to turbocharge M&A programs. Usually, teams follow a specific mandate and play an active role across all aspects of the deal life cycle, from origination and functional integration to synergy management.

3. They use a sophisticated, systematic diligence process to determine the value and the appropriate deal premium of a target to avoid overpayment. Remote diligence, which has moved to the cloud over the years, includes an advanced set of tools, from the 100% virtual clean room for finding operational synergies to the use of drones.

4. They use remote integration tools from deal announcement to close and post-close activities. This means leveraging the data rooms established in the diligence process and fostering digital communications between executives and among teams, to establish trust. EY found in one transaction that, despite pandemic restrictions, a remote integration for one client resulted in 40% more synergies than had been found in the deal model to start.

5. They drive constant, clear communications and change management. To bring two companies together, particularly in a remote work environment, regular CEO communications to both companies and managing change through communication at every level of the organization are important from day one and through the integration process.

6. They divest frequently. By pruning and prioritizing regularly, companies can fund growth areas and create a portfolio that can withstand waves of disruption.

With accelerated disruption in today's world, corporate leaders can use M&A to catalyze their transformation objectives. Businesses turn to seasoned strategy and transactions teams to help them with strategic growth through well-integrated and operationalized mergers, acquisitions and joint ventures. Providing end-to-end solutions can help companies refine their growth strategy, perform deal sourcing, conduct diligence and valuation, and implement M&A integration.

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The views reflected in this article are those of the author and do not necessarily reflect the views of Ernst & Young LLP or other members of the global EY organization.

Growing private equity firms prioritize marketing during the pandemic

By BRAD KOSTKA

A recent survey of 200 private equity managers asked about COVID-19's impact on their firms. The consensus was clear: Firms prioritize generating growth over cost reduction.

Although the pandemic means fewer conventions, leadership summits and in-person networking events to fuel that growth, it doesn't mean private equity firms aren't making deals. In fact, the survey, "Private Equity and COVID-19," published in September by Georgetown McDonough School of Business Research, found that most are actively fundraising and deal sourcing.

Smart firms have successfully done so by building their brands, positioning themselves as thought leaders and leveraging marketing automation to generate deal flow, raise funds, remain visible in the marketplace and differentiate themselves from competitors.

Build a differentiated private equity brand

Branding should be among a private equity firm's top priorities – after capital, of course. Through effective branding, a firm can own a position in the market that establishes itself as the go-to choice for deals that meet its investment criteria.

Building such a brand starts with strategic messages for each of a firm's key constituents, including limited partners, intermediaries and business owners. Each has different needs, and it is critical that a private equity firm's brand clearly articulates how it meets those needs through its investment thesis, deal criteria and growth methodology. The firm must then disseminate its messaging consistently, frequently and professionally.

A consistent message remains the same across all communication channels, from a company's pitch deck to its website and everything in between. Some firms have even branded their Zoom/Teams backgrounds during the pandemic to project a professional image.

Frequent communication is vitally important because people are bombarded by thousands of advertisements daily. For a private equity firm's brand to cut through the chaos, it must maintain a steady stream of communications via email, social media and advertising. This enables it to remain top of mind, particularly when the firm's business developers cannot be in direct communication with their contacts.

All communications must be professional and match a firm's brand identity because it's human nature to judge a book by its cover. Consider the times you decided against making an online purchase because a retailer's website appeared sketchy. Your constituents make similar judgements when reviewing your firm's marketing collateral.

Evolution Capital Partners is one private equity firm that has developed a strong brand. It is well known nationwide for growing micro-market companies. The firm even has a branded methodology called the Five Fundamentals, which enables its portfolio companies to professionalize, optimize and grow.

Establish thought leadership through content marketing

Positioning your private equity firm as a thought leader in the industries it targets builds trust with investors, deal sources and company owners. They want to do business with a firm that has the experience to help them achieve their objectives.

You can demonstrate your industry expertise through a multitude of content marketing channels, such as a blog, e-newsletter, news placements, whitepapers and LinkedIn posts.

Producing a podcast is a particularly unique and successful approach that few private equity firms are utilizing. Invite your target audiences to be guests on your podcast. They'll appreciate the opportunity and benefit from the resulting publicity. Plus, the content from the episodes can be repurposed across your other communication channels.

> **"Frequent communication is vitally important because people are bombarded by thousands of advertisements daily."**

Webinars are also very effective, and they have the added benefit of capturing new leads for your database. Riverside, for example, has produced a number of webinars as part of its Riverside University, covering topics such as sales, crisis planning and social media.

The key to these content marketing tactics is to serve as a source of education and information, rather than be in constant sales mode. A good rule of thumb is for 75% of your content to be informative and 25% of it to be promotional.

Implement marketing automation

Of course, executing these marketing tactics takes time and resources. Savvy firms are leveraging automation technologies within Salesforce, Deal Cloud, HubSpot and others to put some initiatives on autopilot and stay actively engaged with their contacts.

Consider email distributions. A series of messages can be automatically scheduled for delivery over a period of days or weeks based on actions a contact has taken, such as being added to a CRM database, filling out a form or participating in a webinar.

LinkedIn has a similar automated messaging platform that it launched in March called Conversation Ads. They enable you to add clickable call-to-action buttons in your Sponsored InMails, making them more engaging and improving results.

Digital advertising can also be automated through retargeting. By adding data to the internet browsers of your website visitors, you can display ads to them when they are visiting other sites. These ads can increase brand awareness and conversions.

With in-person networking on hold, now is the time to reassess your private equity firm's marketing strategy.

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PPP loan effects on financial covenants

Businesses may be impacted from related tax laws

By MATTHEW P. DELGUYD

Even after PPP borrowers navigate forgiveness, the story is not over. For those borrowers with debt financing, executive teams need to be aware of potential impacts PPP loans can have on financial covenants under a credit facility.

If a PPP loan is outstanding, this could potentially increase a borrower's level of funded debt and therefore increase a borrower's leverage calculation. Borrowers should make sure that prior to having a PPP loan forgiven the principal amount of a PPP loan is specifically excluded from funded debt calculations. Conversely, lenders are likely to require that any forgiven amount of PPP loans will be excluded from the calculation of EBITDA.

In addition, for PPP loans which are not forgiven, amortization payments on a PPP loan would typically result in a lower fixed charge coverage ratio or debt service coverage ratio.

Prior to the passage of the Economic Aid to Hard-hit Small Businesses, Non-Profits and Venues Act, more commonly referred to as PPP Round 2, the IRS had taken the position that all expenses paid for with PPP proceeds would not be deductible for tax purposes, which would have negatively impacted many businesses fixed charge coverage ratio and eventually liquidity covenants. Thankfully, Congress has included language in its most recent legislation which makes clear that any expenses paid for with PPP proceeds can be deducted.

In all cases, borrowers should be keeping the lines of communication open with their lenders. Make sure to run projections well in advance of a borrower's next covenant testing date so that any issues are not left to be addressed at the last minute, as lenders will be addressing these issues with many clients.

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How to keep managers motivated throughout the exit process

By MICHAEL SOUTHARD

Show me an engaged and committed manager, and I'll show you someone with something important to do, something exciting to look forward to and a reason to care about the business.

This doesn't change when a business is being sold, but it does become more important.

Be honest with key managers when you're selling your business. They'll appreciate your candor, and discussing your plans will provide an opportunity to communicate around these three issues.

1. Give them a role
Allowing trusted managers to help buyers perform due diligence can go a long way toward easing anxieties. So can giving key managers additional, meaningful responsibilities for which they are prepared — and this may help you to find more time to devote to the sale.

Recognition and inclusion can provide managers with a motivating sense of ownership.

2. Give them something to look forward to
Usually, there are reasons entrepreneurs align with particular investors. Maybe investors have a track record of growing businesses

> "Allowing trusted managers to help buyers perform due diligence can go a long way toward easing anxieties."

and enabling key managers to participate financially. Perhaps your investors are prepared to provide stay-on incentives for critical employees. Cultural fit can also be motivating to people who joined your business for reasons beyond compensation, benefits and perks.

Whatever benefit your investors bring to the table, be sure to communicate it. Managers with something to look forward to will naturally be more engaged.

3. Give them a reason to care
Usually, key managers are people who were engaged before the sale. So discuss with them the reasons they've remained committed. Help them understand why these reasons remain valid, even as the ownership equation is changing.

Is there something they can achieve from the sale? If so, uncover it and discuss what's "in it" for them. Managers with something to anticipate are more likely to remain engaged throughout the exit process.

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A multifamily office's approach to investing in private markets

By PAUL BODNAR

Interest in private markets, especially private equity and venture capital, has grown in recent years because of their ability to outperform public markets. An area that once was the domain of institutional investors has captured the attention of wealthy individual investors and smaller institutions. The illiquid nature of these investments, the wide dispersion of returns and greater complexity requires a more sophisticated, disciplined approach. The goal of investing in private markets is not to achieve median returns but to invest with top-performing funds. There are numerous factors that can lead to outperformance in private market investing.

Many investors often start investing in private deals through casual discourse: "I know this person who has a great deal." While this may occasionally be true, people would often be better off donating that money to charity. These peer-recommended "country club" deals often lack accompanying diligence, have very sponsor-friendly terms and often struggle to raise institutional capital for good reason. The best investments and funds often are hard to access and have more demand than they have capacity. The challenge for most people is recognizing the good from the bad. They do not see enough private equity, venture, real estate transactions or funds to determine how to rank an opportunity and relative risks.

Judging the best teams or the right fund to back is challenging. In venture, the top-performing funds have persistence and tend to deliver the best returns, consistently creating a lesser challenge. However, in private equity, this is not always the case, especially in the buyout space.

Steven Kaplan, Robert Harris, and Ruediger Stucke's research shows that since 2001, there was only a one-in-four chance that following a top-quartile fund, the firm's next fund would also deliver top-quartile performance.

Performance alone is not a sufficient criteria for selecting funds. We have noticed some themes to watch for that contribute to this lack of consistent success for buyout firms. Successful teams often raise an outsized follow-up fund, drift from their core targets to invest in new parts of the market or do not evolve to changing markets.

However, there are select teams that offer the best chances to outperform. Identifying them is possible by considering their track records combined with additional factors such as the repeatability of the investment strategy, end market attractiveness over the investment period and strong alignment with the investors. Here are some further considerations:

Casting a wide net, reviewing deals, and speaking with many investment teams is essential. This approach enables wealth management advisors to identify the best opportunities in venture, buyout, growth equity and co-investment deals. It seems obvious, but frequently investors often see limited deal flow. For example, in real estate, they may only see multi-family deals in Chicago, but the best opportunities may be in Nashville. The same holds true with investing in funds. A narrow view often leads someone to consider only what shows up in the inbox versus seeking out the markets with the best return potential.

Target less efficient, less-traveled markets to outperform. Each private asset class has unique characteristics. In venture, avoiding overcapitalized parts of the market such as late-stage venture may lead to more investments in early-stage targets. For credit, this could mean funds that provide bespoke solutions versus those that provide commoditized solutions. In the buyout market, the explosion in capital has mainly gone into funds that invest in the middle market and higher. According to Pitchbook, capital raised in the lower middle market by funds with sizes under $400 million accounts for just 16% of capital raised. The hunting ground is more extensive in our view because 86% of companies in the U.S. fall within a typical deal size for a sub-$400M fund. This is a larger universe and less efficient market to find platforms and add-on investments that have a more significant opportunity to add value.

Specialists and high value add teams. Over the past decade the market has shifted to favor sector specialists as a byproduct of the aforementioned number of funds and capital in the space. Outperformance often requires the ability to deliver returns through unique sourcing, sector knowledge and networks. This is true for private equity and venture investing. For example, portfolio companies look for sector experts, track records of customer introductions, or demonstrate an ability to help refine the go-to-market strategy. It is rarely about just providing capital.

At CM Wealth, we use these ideas and others to invest exclusively for our clients across venture, private equity, niche credit, real assets and co-investments. Our approach is to tactically allocate each year to the best ideas while still maintaining diverse programs for clients. Additionally, CM Wealth provides a full range of family office services for wealthy families, as well as tax and estate planning advice for business owners before an exit.

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Distressed M&A expectations for 2021 and beyond

By ALBERT D. MELCHIORRE and EVAN J. LYONS

The year of 2020 started out much different than how it finished. Early into the first quarter, the domestic economy was roaring, unemployment was at an all-time low, and GDP growth was very robust. As we all know, our life as we knew it seemed to have changed on a moment's notice with the worldwide COVID-19 pandemic. The strategic plans that we all intended to execute at the beginning of 2020 were turned upside down. We all began to go into some form of a "survival" mode. All businesses have been impacted by COVID-19; some good and some bad, but all impacted. How your business was impacted in large part can be attributed to what industry you were in and if the "authorities" deemed your business to be "essential" or not. Either way, all businesses are essential, big or small, public or private, it doesn't matter. People's livelihoods and their ability to provide for their family's financial needs in large part are tied to their business and that of their employees.

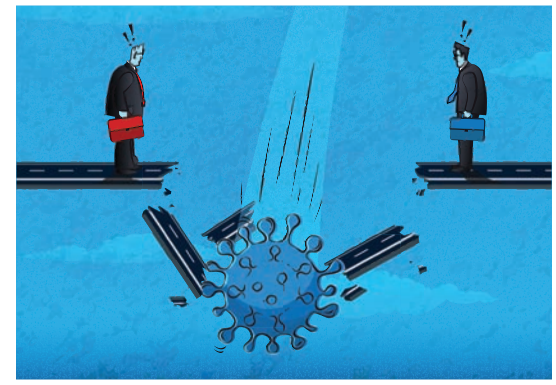
MelCap was fortunate to have been able to complete a number of M&A transactions; however, the process was very much altered. If you had told us at the beginning of 2020 that we would be conducting due diligence meetings and site visits virtually, we would have said you are crazy. Today, that has become very common place, and quite frankly, we have found that it may have increased the efficiency of virtual meetings and the deal process. In-person deals still require some form of onsite visits; however, they are conducted in smaller groups, and follow all of the guidelines for social distancing and sanitization protocols.

> **"In spite of all the distress, there remains a significant amount of capital available in the market to support M&A activity in 2021 and beyond."**

As we look into 2021, we are seeing an increase in the number of distressed M&A transactions. The deals are being transacted through a "process" (i.e. 363 bankruptcy sales, articles 9, etc.) or outside of a process. Special asset groups in regional and national banks are gearing up for a surge of troubled credits. Some businesses will be able to survive, but unfortunately some will not. According to the U.S. Bankruptcy Courts, approximately 6,000 Chapter 11 Bankruptcies (BKs) were filed through the third quarter 2020, compared to about 4,500 through the third quarter 2019.

In spite of all the distress, there remains a significant amount of capital available in the market to support M&A activity in 2021 and beyond. According to CapIQ, as of the third quarter 2020, and based on the S&P 500 non-financials, corporate balance sheets reflected more than $2 trillion of cash, an increase of about 35% from the like period in 2019.

Furthermore, according to PitchBook, the amount of "dry powder" available from U.S. private equity groups is estimated to be more than $725 billion. On a worldwide basis, PE dry powder is estimated to be nearly $1.3 trillion. As a result, there is still plenty of "fuel" to support M&A activity in 2021.



In fact, we have seen a "flight to quality" for businesses that have performed well in this environment. The number of quality acquisition opportunities for both strategic and PE buyers alike has decreased. Therefore, if you own a business that has performed well in 2020, the number of potential buyers interested in your business may actually be higher than what it might have been in a normal environment. With that said, a larger universe of buyers creates greater competition, which produces loftier valuations.

We remain optimistic from an M&A perspective as we operate in this "new normal," and are hopeful that with the vaccines being developed, we can get back to our old way of life. With that being said, we think that how you operate your business has been changed or altered in some way forever. We are also hopeful that we will come out of this experience much stronger.

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Divesting? Don't forget about data archiving

By SHELLY DISSER

A TSA stipulates a very short deadline for data archiving.

A buyer believes archiving is simple, so they leave it to the end.

A seller, low on resources, is not meeting data delivery deadlines.

As anyone who has ever participated in M&A knows, the ticking clock waits for no one. The Transitional Service Agreement (TSA) lays out steps and deadlines for the transition, including the transfer of massive amounts of the divesting company's data into the acquiring company's IT system. With their focus on going live with the fresher data, too often, it's the legacy data that is last on the list, resulting in mistakes and lost time and money. In the case of hospital system transactions, missing or incorrect data also can affect patient care.

Only about four years' worth of the divesting hospital system's data is converted to the buyer's Health Information System (HIS). The rest must be archived. The onus is mainly on the acquiring hospital to get the job done or suffer financial consequences. Sellers can be impacted as well, as they may need to do the work twice if the data appears to be incorrect, incomplete or is in an unusable format.

Complicating the issue is that in most cases, legacy data comes from multiple sources. Some of it could move to passive archives, but much needs to move to active archives where it may be easily accessed. The numerous drivers and routes require a GPS system with a well-planned ETA.

A successful transition benefits both sides.

Start with the right players

Proper planning and processes are key, staring with the right team.

• The acquisition's team should represent all archive end users – not just clinicians, but HIM, patient accounting and all other compliance and administrative personnel who will need the data for the longer run. Similarly, the divesting team needs to be representative of those who are familiar with and can coordinate the sources and current formats of all data.

• Determine what financial and clinical data must be accessible on day one for end users on the buyer side and set realistic deadlines. Consider regulations and audits, and possibly change the workflow throughout the archiving process, educating users along the way.

• Then prioritize what other archives need to be available, considering the time and budget it will take to extract and transition data for each stakeholder. Negotiate a step-down approach during migration, as different systems may become unnecessary, while others need to be archived, backloaded or converted to work down Accounts Receivables.

• Avoid extensions by accounting for risks beyond your control, such as systems failures at either facility, a community-wide power outage or a pandemic.

Merging archives

Most archiving headaches and unplanned expenses result from the lack of a plan that encompasses the scope of resource commitment to transition data, whether converting or archiving. Before the TSA is signed, both buyer and seller need to learn what is involved, including the process, challenges, timelines and the resources they will need to get the job done right the first time. Specifically:

• Establish the proper format for delivery that allows for easy archiving or conversion. Know the options for freeing up the data and making it clean and consumable wherever it ends up.

• Decide how to archive old data in the best extraction format for proper use of the systems, agreeing to which data can be images and which must be discrete in another form. This planning avoids wading through one giant PDF without discreet data and the risk of submitting a patient's entire medical record when legally required to report a single record for one visit or incident.

• Don't lose dollars from open revenue or billing. Determine if the buyer or seller will work down the AR, how long that will take, who gets the dollars, what it's worth and which systems to use. Working within the source system helps dollar recovery but may not offer the best ROI. Lastly, when in doubt, get help from a professional. An archiving specialist or contract consultant can work with the archiving team to develop the most efficient approach and help make this a better and more successful experience for all.

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Grow or stagnate in a virtual world? The choice is yours

By JAYNE E. JUVAN and LUDGY A. LAROCHELLE

In the 1999 sci-fi thriller The Matrix, Neo is presented with a choice by Morpheus to take either a blue or red pill. Take the blue pill, and Neo remains in the matrix built by the machines, blissfully ignorant but hampered by the reality that the machines have actually imprisoned the human race. Take the red pill, and Neo awakens to the unsettling truth that the world created by the machines is not real. However, this seemingly more difficult path of enlightenment and acceptance gives him the chance to learn how to use the virtual world to his advantage to ultimately prevail over the machines.

Much like the machines in The Matrix, the spread of COVID-19 has forced U.S. businesses into a battle for their survival. With the pandemic's consequential effects foreseeably dampening the economy well into 2021, like Neo, U.S. businesses have a stark choice to make: (1) (blue pill) take the path of least resistance and batten down the hatches, while the pandemic slowly but surely chips away at their bottom line, or (2) (red pill) muster up the courage to honestly face the harsh reality of the situation head on, while simultaneously embracing the chance to navigate this new normal and retooling so that they can exploit opportunities even in this virtual world we now inhabit.

Many executives we have observed this year have opted for the red pill. Here are a few enduring lessons we have learned from watching them.

Build a reputation that stands the test of time

Trusting relationships are at the core of most successful deals, but for now, gone are the hotel lobbies, the dim-lit restaurants and golf courses where relationships are built and deals are typically imagined, negotiated and consummated. The ability to "read the room" as is custom in traditional in-person interactions is not present in the virtual world. No doubt, the old adage that trust is best built through in-person gatherings rings hollow today. With more than 50% of the U.S. workforce currently remote, and stay-at-home advisories limiting business travel, the pandemic has required dealmakers to take a different approach to building trust.

Despite the upheaval, we have seen many business leaders effectively continue to deepen relationships during this period. Their style of leadership embraces new virtual technologies while staying true to traditional relationship-building virtues. They have demonstrated respect to counterparties through their thoughtful behaviors by consistently delivering on promises they have made, taking the extra time and care to explain their rationale if they need to change course, recognizing the impact of their decisions on others, and continuing to invest in relationships even when a deal is not imminently on the horizon.

Even in a global deal making environment, the world is still small, and there is a positive chatter that makes its way around about those who demonstrate an authenticity in their approach. No matter the platform, delivering for others and engaging in sincere communication at regular intervals leads to synergistic relationships.

Thoughtfully approach virtual due diligence

Though the pandemic may limit a business's ability to conduct an on-site due diligence assessment, there are unique ways to utilize the virtual environment to meet the objectives of a full review. Businesses that have reimagined due diligence through data management, record digitization and video teleconference applications will have the advantage over businesses that still require on-site document and personnel review.

For example, in lieu of onsite visits, companies have utilized drone-assisted virtual tours to take real-time videos of properties or factory floors, conducted physical inventory audits by remote video (with inventory reconciliation post-closing), and held remote Q&A interviews with key personnel. Fortuitously, using these virtual tools in place of onsite visits is likely to provide collaborators not only a cost-savings benefit (no travel expenses), but also a time-savings benefit (not subject to travel schedule).

Financial anomalies discovered during due diligence have made proper valuation of target businesses more difficult during the pandemic. Consequently, creative dealmakers are opting to include more future payout structures in their transactions, including earnouts and similar deferred compensation mechanisms. Many buyers and sellers are collaborating in good faith to craft formulas and mechanisms that allow a seller to be fairly paid if the business achieves certain milestones post-closing.

Solidify your business culture

Integration within the virtual environment presents unique challenges, especially given that the majority of the workforce is remote. Building a corporate culture for newly acquired employees requires business leaders to consistently and clearly communicate objectives, set realistic timelines and devote the necessary resources to ensure a smooth transition, while simultaneously recognizing certain impediments that are inherent with working remotely such as child care and technology concerns.

Strong relationships matter at every organizational level. Empathetic and accommodating businesses are positioned to develop more loyalty from their teams, a powerful advantage that should not be underestimated.

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Deal-making during a pandemic

COVID-19 upends financial markets and transactional processes

By DAVID PEASE

The COVID-19 pandemic is having a profound impact and causing a great deal of uncertainty in the deal market.

One impact of the pandemic on M&A transactions is the increasing difficulty in determining a company's continued viability. This will likely create significant valuation discrepancies between buyers and sellers. Sellers may find that their underlying business model is scrutinized beyond normal levels of due diligence, and they likely will be asked to demonstrate ways in which the pandemic's longer-term impact will affect customers, supply chains, marketing, infrastructure, sales and so forth.

For most M&A transactions during the pandemic, there will be purchase price adjustments made. In some cases, depending on industry, deals have become undesirable due to pandemic-related factors, making prospective parties uninterested in continuing to undertake a transaction. On the other hand, for companies fortunate to have continued success despite the pandemic, valuations have continued to hold and stay strong.

In a legislative response to the pandemic Congress passed The CARES Act. The law created several tax issues that buyers and sellers involved in M&A transactions will look to address, including which party (1) will pay the 2020 payroll taxes that have been deferred under the act; (2) will be entitled to any refunds caused by provisions of the act, including the changes to the rules regarding net operating loss carrybacks, AMT minimum tax credit recovery and the interest expense limitation rules; and (3) will be entitled to claim the employee retention credit or if a split of the credit between the parties is appropriate.

As government lockdowns and company health and safety policies require parties from both sides of the transaction to work remotely, there will be outside-of-the-norm ways in which parties engaging in transactions will address these specific issues and the unpredictable environment caused by the pandemic.

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What data breach?

Considering individual state law in data breach Representations and Warranties

By MICHAEL W. SCHAUER

Data breaches can result in huge losses for a company in terms of time, reputation and money. So not surprisingly, buyers,

in most acquisitions will require representations and warranties relating to data breaches from a seller. When evaluating a data breach representation, buyers and sellers need to know what constitutes a data breach under state law.

In order for a "data breach" to occur, the seller must maintain information that qualifies as personally identifiable information ("PII") and some action relating to the PII must

"Data breaches can result in huge losses for a company in terms of time, reputation and money."

occur. Both the definition of PII and what actions constitute a data breach vary on a state-by-state basis.

Generally, states agree that an individual's first name or initial and last name in combination with a social security number or driver's license number constitutes PII. The states' consensus rapidly diverges thereafter. Some states narrowly define PII to the above and financial information an attacker could use (i.e. a credit card number) while others also protect health insurance information and biometric data.

Beyond the different definitions of what constitutes PII, states disagree on what actions constitute a data breach. Some states look to access, others to acquisition and others still to access and/or acquisition; all of which are fact dependent.

Given these differences, a one-size-fits-all approach to data breach representations is not appropriate. Instead, representations should look to state law where the seller's customers, vendors and suppliers reside. Buyers should also ask for warranties tied to events and policies commonly associated with data breaches. These could include whether the seller lost physical hardware containing PII (laptops and hard drives) and the existence of protection safeguards. With the wide variance in state law, buyers and sellers should take the time to tailor representations and warranties to the specific laws that are likely to apply to their transaction.

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Using process to navigate risk through the COVID-19 environment

By JEFF SCHWAB and BRIAN STOVSKY

COVID has created a tumultuous landscape for all who work on M&A. The health care industry is experiencing one of the most flexible markets seen in years, whereas the Commercial Property & Casualty (P&C) market is experiencing market trends that are as hardened as they have been in over a decade. In addition, retirement plans are evolving for 2021, as new regulations make Pooled Empower Plans (PEPs) available to allow for portfolios to outsource most compliance functions, eliminate individual plan audits and potentially reduce plan cost.

Finding value in a virtual deal landscape

A good diligence partner in today's M&A environment requires the ability to perform virtually, quickly and with effectiveness. Whether it is an employee benefits, commercial insurance, or 401(k)/defined benefit (i.e. pension) review, a repeatable and effective process can drive enterprise value.

Traditionally, insurance has required loss control measures that are best suited onsite by walking through a facility, talking to the personnel and determining the quality of controls in place currently. It is now a necessity to complete these tasks virtually. Using technology to complete virtual walkthroughs and discussions with targets and portfolio companies is becoming the new standard, and as people become more comfortable with the process, it will ultimately create a more efficient, high-quality product.

The importance of Representations and Warranties Insurance in the COVID deal marketplace

Representations and Warranties Insurance (RWI) has become increasingly popular in M&A over the past 10 years and has been the primary way to combat risk during a transaction. RWI continues to be a great add-on from the buy-side to limit future exposure and address potential liabilities found during due diligence. In the past eight months, specifically with middle market and private equity transactions, deal flow slowed, and carriers were competing aggressively to write the limited deals available. However, in Q3 and Q4 of 2020, deal activity has surged, and demand has exceeded supply – driving up rates and tightening coverage terms.

Further, insurers have introduced COVID-19 specific exclusions to policies. Initially, these were broad exclusions, but they have narrowed over time on a deal-by-deal basis. Oswald's Transactional Risk Advisor Practice (TRA) has negotiated RWI for deals, both for financial and strategic buyers, of enterprise value as low as $15 million and as high as $1 billion. RWI negotiation is likely the first insurance risk undertaken by the buyer. Obtaining a clean policy that is "back-to-back" with the purchase agreement will lay a solid foundation for moving forward.

Driving value for existing holdings

Because of COVID-19, many funds and investor groups have pivoted their strategies for 2021 from new deal flow to strengthening and looking for value within the existing portfolio. A streamlined strategy to approach risk, and a synergistic process and strategy across the portfolio, allows buyers to drive down current cost and accurately portray future cost.

Health care, for example, tends to be among the largest expense items on the P&L from year to year. A leveraged buying program will drive cost down, therefore opening opportunities to identify overstatements of SG&A which can then be added back to EBITDA, thereby increasing enterprise value. This is a great way to recoup the top-line and margin lost during COVID. To provide some context for the effectiveness of this process, we have experienced a portfolio of 1,000 employees over a 12-month period realizing returns of more than $1 million in direct EBITDA impact (exceeding $1,000/employee).

Additionally, risk management strategies can assist in future cost avoidance. A volatile market creates anxiety for all. However, when we can get our arms around exposures, coverage gaps and root causes of losses, we can cap the maximum liability on a go-forward basis.

Key items to consider as we move through the holding cycle to exit

Many portfolio companies fear the "whiplash" effect of risk management. If processes are implemented up front to drive down costs and mitigate risk, will that reduction of cost be short-lived or long-term? The answer is simple. An effective risk management program is meant to be sustainable and create longevity in cost containment across the entirety of a portfolio. By managing cost and exposure over time, as a holding approaches exit, we can strategically position the company to realize maximum value in its exit year, driving higher returns for the seller.

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Preparing your business for a sale: Five tips to get it right

By MARK HEINRICH and JOE WAGNER

Selling your business can be the largest, and most stressful, transaction of your life. Many owners don't often realize the amount of planning that goes into closing a deal with good terms and attractive valuations. The key to success? Start early.

Planning the sale of a business involves personal readiness and business readiness. Personal readiness means finding your "financial independence number" — the amount you need from the sale of your business to meet your future financial needs. Business readiness is the process of improving the business and optimizing the sale, so you make or exceed that number.

Maximize your value drivers

Ideally, business readiness planning begins before you start looking for a buyer. We recommend meeting with your advisors to review the business, how it's positioned in the current market and what's needed to prepare it for sale. A "go to market" business will have characteristics such as:

- Strong financial performance
- A strong, sustainable competitive advantage
- Well-entrenched customer relationships
- A well-defined, credible and supported growth story

Collectively, these value drivers can have a significant impact on your business's valuation, which is why they deserve attention early on.

Reduce your risk

The other side of the valuation equation is risk. In general, buyers will pay more for a business with less risk because there's more certainty they'll get their cashflow out. Indicators pointing to high levels of risk include:

- A perception of commodity products
- Low margins and/or margin risk
- High revenue concentration (customer, geography, product line)
- Limited capacity for growth

Ask yourself if a transaction at this time would support your financial independence number. You may determine it's better to delay a sale to fix red flags and address deficiencies.

Structure the deal to maximize after-tax proceeds

Consider what entity type and tax structure will maximize your post-sale proceeds. These can move the needle significantly enough to make or break your post-sale financial independence number.

When structuring a deal, it's critical to understand how entity choice influences the transaction. Is the company currently structured as a C Corp or a flow-through entity? Will it accommodate the needs of a likely buyer? If not, what can be done to improve the outcome for both parties?

Whether you can make an entity change to benefit the deal often depends on your timeline. Even a couple of years in advance can be enough time to change to an S corporation and sell stock via an IRC section 338(h)(10) election, offering you the simplicity of selling stock from a legal perspective while giving the buyer tax benefits associated with an asset purchase.

Close the deal

The deal's not done until you're over the finish line, and that often entails fixing potential deal breakers along the way. If you have key staff— those with the expertise and industry knowledge that the buyer needs to successfully maintain the business — we recommend putting in place a "stay bonus" agreement, incentivizing each key manager to stay on. When the deal closes, the owner takes part of their proceeds and pays it to the management team member as a thank you for staying through closing.

A seller's severance package can provide similar security to key staff. This is a contingent promise to a key team member that if their position is made redundant within a certain period of time after closing, you'll provide a payment to ensure they have a cushion.

Avoid these common mistakes

Here are three common mistakes you want to avoid:

- **Sharing too much:** If an owner is approached by someone about selling their business and sends along information, such as financial statements or customer presentations, without positioning it in a way that optimizes value, it can be disastrous. Connect with your advisors before engaging with potential buyers.

- **Failure to explore options:** To find the best-fit buyer, it's important to engage in one-on-one discussions with multiple suitors. Because they won't know if other buyers are in the running, they're forced to accommodate your timeline and put their best foot forward at each phase.

- **Waiting too long:** There's a saying in the business, "You can sell a day early, but not a day late." If your business is optimized to sell and you're able to hit your financial independence number, then move toward a sale. Otherwise, a market event could happen that impacts your transaction negatively.

Get started now

You've decided it's time for a change. Retirement may be around the corner, or perhaps your business needs the right sale to be taken to the next level. You've got one shot at achieving the best outcome. It's never too soon to start planning for a sale, but it can certainly be too late — hindsight is always 20-20.

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Purchasing a unionized business? Think about these issues before the sale

By MELANIE WEBBER

Purchasing a unionized business is not a decision to be taken lightly, but if handled properly, it can lead to a successful business operation. And those selling a unionized company must understand that they have some important legal obligations as well. The decision to buy or sell – and the actions taken at and after the time of sale, may significantly impact the company's legal obligations to a unionized workforce.

The purchase of a unionized business can present a unique opportunity for the buyer to improve the labor contract. Unfortunately, such opportunities are frequently lost because buyers don't give adequate consideration to union issues. They either assume that they must accept the union and its contract or fail to consider alternatives. Consequently, it is vital that buyers and sellers understand their legal obligations in relation to the seller's union and work together to create a successful outcome.

As a seller, a company must address the sale with the union in what is typically called "effects bargaining." Although there is no duty to bargain over the decision to sell, the seller must afford the union an opportunity to bargain over the effects of the sale upon bargaining unit employees. For example, a union will typically make proposals geared to "cushioning the blow" of job loss in connection with a sale, such as severance pay and continuation of medical coverage. While a selling employer must meet with a union and bargain in good faith over the effects of the sale, there is no obligation to reach any agreement. Any resulting agreement should terminate the bargaining relationship and the collective bargaining agreement (CBA). And the agreement should carefully delineate the seller's responsibilities under retirement and welfare benefit plans.

Turning to the buyer, hiring decisions related to the seller's unionized workforce is a key consideration. While the buyer need not hire the seller's unionized employees, the buyer must be aware of various labor laws, such as those contained in the National Labor Relations Act (NLRA), which prohibit employers from discriminating against employees because of their union membership. The buyer will violate the NLRA if it refuses to hire the seller's unionized employees simply to avoid union recognition. The buyer may, however, require the seller's employees to complete and submit individual applications for employment. If a buyer goes this route, it should be prepared to defend any refusals to hire union employees by demonstrating that objective hiring criteria were applied uniformly to all applicants. For example, the buyer might decide not to hire back any workers with a history of attendance or disciplinary problems).

If the buyer does refuse to hire the seller's employees, the union must abide by the terms of its current CBA with the seller. For example, if an unexpired CBA contains a "no-strike" clause, the union cannot lawfully call for its workers to walk a picket line against the seller prior to the acquisition. Once the acquisition occurs and the buyer has not assumed the CBA, however, the union is no longer bound by the "no-strike" clause. It is, therefore, free to strike or utilize other legitimate economic weapons (such as handbilling) against the buyer.

In planning a transaction, a buyer must know whether the terms of a CBA contains a "successor clause" and plan accordingly. A successor clause is often included in CBAs, which typically state that the CBA will be binding upon any successor. This clause would be applicable if the majority of the buyer's workforce consists of union members so that the buyer becomes a "successor" to the bargaining obligation.

Despite such a clause, the buyer is free to set its own initial terms and conditions of employment and need not observe the union contract. Nevertheless, the successor must bargain on demand with the union concerning permanent terms of employment. Until a total agreement is made, the successor's initial terms remain in effect. This rule, however, may not apply if the buyer either fails to clearly announce its intent to establish new terms before inviting the seller's employees to accept employment, or if the buyer misleads the seller's employees into believing they will be retained without change in their employment. The buyer will forfeit the right to unilaterally initiate new terms and conditions. Thus, as a practice pointer, a buyer who intends to offer employment on terms different than those mandated by the seller's union contact should never mislead the seller's employees into believing that their retention will be without change in their wages or conditions of employment.

Planning for labor relations issues well in advance of a transaction's close will put a buyer in the best position to have a successful relationship with its new unionized workforce.

Melanie Webber is a partner in Fisher Phillips' Cleveland office and serves as chair for the firm's Women's Initiative and Leadership Council. Contact her at 440-838-8800 or mwebber@fisherphillips.com

Private equity improves as it evolves

By STEWART KOHL

Working in private equity for more than 30 years has given me a front-row seat to the massive changes the industry has undergone. We're a long way from the days when the ugly image of corporate raiders was even remotely accurate. Today, private equity only succeeds when the assets in which it invests thrive. In other words, generating real and lasting growth – creating value – is how to succeed in PE these days.

Finding and then nurturing growth in an increasingly competitive environment and rapidly changing world is a fascinating code to crack. For Riverside, it means working on growing more than 100 companies at any given time. Each company presents unique challenges and opportunities, and most involve partnering with an entrepreneurial founder or business owner. It makes what I do endlessly engaging and exciting.

Not too long ago, many private equity firms were fairly passive, focused on finding great companies in which to invest and then connecting those companies with the right buyers after a hold period. Today, we must accelerate growth immediately.

Spurring growth

Conjuring up growth paths is fun, but it's also tough. Private equity constantly is seeking ways to improve. That means being involved in the operations at each portfolio company. Decades ago, private equity firms rarely employed or leveraged operating talent — and when they did, it was often to address problems. Today, it is a normal business practice that's typically employed at every company in a portfolio. Operating is no longer about solving problems—it's about creating opportunity and driving growth. Operating partners typically chair the board of the portfolio company, work closely with portfolio company management and even fill interim C-suite roles if necessary. They're often bolstered by operating executives who bring industry expertise, sales and marketing talent, or other critical skills.

Increasing sales

Top-line growth is critical to creating value, which is why so many private equity firms invest in sales and marketing excellence. Those efforts can include buying and implementing excellent customer relationship management (CRM) systems, hiring and training exceptional salespeople and providing the right incentives to motivate them. All of those things require investments, but the payoff of sustained topline growth is well worth it.

Add-ons

Private equity is one of the few places on Earth where 1+1 can equal three (or even five!). For that we can thank add-on acquisitions. Riverside has completed more than 400 add-ons in its history – nearly double the number of its total platforms. That ratio is not uncommon in private equity because add-ons can add scale, products and customers. At their best, they can truly transform a company.

New products and services

Growth also comes from introducing

new products and services. Private equity firms provide the outside equity financing, resources and talent to help dozens of companies launch new products to drive sales. Whether that's money for a new production facility, engineering talent for new software or specialized industry knowledge that helps identify and implement new initiatives, private equity helps companies move forward.

Technology

No company today can grow without embracing technology. Private equity firms help portfolio companies digitalize, benefit from e-commerce and leverage technology in ways that would otherwise be impossible.

The private equity difference

The common thread for all of these growth levers is that they take a lot of talent, resources and experience to deliver. The ability to bring together these growth drivers is what makes private equity the best possible form of ownership. Nowhere else can an entrepreneur access growth capital, intellectual capital, international connections and an experienced team to help them grow – all perfectly aligned – while retaining a significant portion of their company.

The proof

Private equity is a favored asset class for many reasons, but the faster growth it offers is chief among them. That said, the COVID-19 pandemic has provided an interesting real-life stress test for the industry. While the pandemic has affected our broad and diverse portfolio differently on a company-by-company basis, every company faced challenges. Some were dramatic, requiring funding

"Finding and then nurturing growth in an increasingly competitive environment and rapidly changing world is a fascinating code to crack."

to continue operations or help in securing new sources of revenue. While the pandemic is far from over, we're deeply proud of how our portfolio has held up. Companies have done more than survive in this difficult environment – many have thrived. And overall, the value of the portfolio has increased. A year most of us want to forget has still been successful on the most fundamental level for the vast majority of our portfolio companies. That's one of many reasons I'm proud to do what I do.

Stewart Kohl is co-CEO of The Riverside Co. Contact him at 216-344-1040 or info@riversidecompany.com.

G3 and beyond

The importance of succession planning for multi-generational family businesses

By TERRENCE H. LINK II

We've all heard the grim statistics. A very small percentage of family-owned businesses make it to the third generation and beyond. While many of the reasons for this lack of longevity relate to the business itself, an often overlooked reason is the failure of the family owners to engage in their own succession planning. Succession planning in this context requires more than simply identifying a successor CEO and executing a shareholder agreement. Rather, it should be comprehensive and ongoing, incorporating long-term thinking regarding the family's business philosophy, values and expectations.

One family business I've had the privilege to work with provides an excellent example of effective succession planning. The family has worked extensively to define a set of values governing their relationship with one another and their role as owners of the business. They do not view themselves as mere shareholders, but rather as "stewards" of the business, having the role to protect, nurture and grow the business for subsequent family generations.

> **"Effective succession planning for family businesses must address legal, tax and estate planning issues."**

This family looks beyond quarterly reports, EBITDA multiples and exit strategies. They hold themselves accountable to understand the strategic issues facing the business. They emphasize the importance of a robust governance structure, with the business having a board of directors largely composed of independent directors with various professional backgrounds. The family understands the importance of the board's role in electing officers to lead the business, many of whom are non-family members. Family members' careers in the business are based on interests and aptitude. In short, this family has adopted an ownership model and set of values and expectations to foster and plan for multigenerational family ownership.

Certainly, effective succession planning for family businesses must address legal, tax and estate planning issues, which often results in the creation of buy-sell agreements, family employment policies, trusts, and other documents. While these documents must be carefully considered, equally, or perhaps even more important, is the family's commitment to engage in comprehensive succession planning activities. By engaging in these activities, and at the same executing appropriate legal documentation, a family increases the likelihood of a smooth transition to G3 and beyond.

Terrence H. Link II is the practice group manager of the Corporate, Tax and Transactional Group at Roetzel. Contact him at tlink@ralaw.com.

Resurgence in lower middle-market industrial deals a harbinger of 2021

By DICK HOLLINGTON

While deal activity since the pandemic began in March 2020 is down substantially from 2019 levels, there are multiple signs that early 2021 could put the industry back on pace. Through the pandemic, the lower middle market industrial business sector of private equity has taken its lumps but has been able to continue at a level that positions it to recover, barring more government forced shutdowns.

Deal activity in the sub-$100 million deal value is off by 25% to 30% versus 2019 levels. The deals that are getting completed are largely technology, health care and service-oriented businesses, or otherwise businesses that you would expect to have performed in the pandemic. In the industrial sector, activity paused in April and began to pick up after Labor Day. Shutdowns here and abroad played havoc on the supply chain for most industrial businesses. Capital budgets were slashed, and access to labor muted economic activity.

That said, the outlook for industrial deals in the lower middle market is brightening. Though there remains plenty of stress on sourcing critical parts used in manufacturing, there is much greater visibility into the outlook and therefore greater confidence in future business results.

In addition, the pandemic will likely accelerate the reshoring of parts to North America that were moved overseas. Leading indicators for deal activity can be seen through the service providers who support the deal activity.

Based on an informal survey of the industrial focused investment bankers in our network and recent discussions with representation & warranty insurance providers, operational consultants, accounting transaction services providers and law firms, a significant pick-up in activity is occurring. Therefore, it's likely we will see a strong beginning in 2021.

Dick Hollington is managing director and CEO at CapitalWorks, LLC. Contact him at 216-781-3233.

Opinions expressed in this commentary reflect subjective judgments of the author based on conditions at the time of writing and are subject to change without notice.

M&A outlook for 2021

By ANDREW K. PETRYK

Unlike the mortgage meltdown that triggered the 2009 financial crisis, the COVID crisis has been a social and health care issue. The capital markets only saw a short-term lag in confidence, and no credit crunch ensued. The initial COVID shock to the M&A market began to wane in May. Buyers and sellers quickly adapted to a new reality of virtual processes, and nimble dealmakers pivoted with creativity to move transactions forward. Momentum has been building since June, and in the approach to year-end, there has been a frenzy of activity that should carry into 2021.

The lasting COVID effect

COVID has reshaped business models and is redefining a new normal. Businesses continue to challenge their existing operating paradigms, including risks related to global supply chains, employee safety and remote workforces. COVID also is building cases for increased onshoring to reduce reliance on foreign suppliers, as well as investments in automation and technology that bring efficiencies to business practices.

The pandemic has highlighted the criticality of revenue resilience, with repeatability associated with greater downside protection and therefore higher value. Outsized growth, or the "COVID bump," and the sustainability of the bump, are being heavily diligenced, and asset selectivity remains high. COVID "winners" are seeing accelerated growth, while "losers" have lagged or virtually shut down under government-imposed restrictions and lockdowns. "Essential products and services" has become common verbiage in the marketplace, as investors show continued and increasing levels of interest in business models with longer-term revenue visibility and limited earnings volatility.

SECTORS

Industrials

The COVID slowdown in the industrial marketplace was short-lived. Supply chain and workforce disruptions were common; however, companies worked together to minimize the business impact, and relationships strengthened. Bright spots included suppliers of personal protective equipment, cleaning supplies, and other critical goods to combat the virus; building products focused on home improvement; and recreational equipment. Industrial transactions saw only a modest contraction in multiples earlier in the year, and valuations have essentially returned to pre-COVID levels.

Business & Industrial Services

The services marketplace is seeing significant appetite, notably in business models that access the infrastructure, utility and municipal marketplaces. "Essential services" businesses such as waste management and pipeline inspection are prime targets for investors because of their proven ability to deliver impressive earnings during the pandemic. Businesses servicing industrial end markets have experienced a temporary COVID slowdown; however, M&A has been unaffected given the ability to deploy capital into a marketplace that is ripe for price discipline and consolidation.

Consumer

eCommerce is seeing an unprecedented volume of new deals for the companies that have been unaffected by COVID, or have benefited/will benefit from a COVID-present environment. Despite high demand, the market has become exceedingly complex. Strategic buyers are highly discerning but are being extremely competitive for the right fit. Private equity sponsors and lenders are picking their spots but are being very aggressive in those spots. COVID winners are going to see continued outperformance, particularly as the country moves back into heavy lockdowns. Retail is going to continue to suffer.

In the Food & Beverage space, COVID has elevated key themes of home cooking, health and wellness, and food safety and supply chain transparency. Areas benefiting from the market shift and seeing increased investor appetite include private label suppliers, shelf-stable/center store products, ingredients, supplements, food safety testing and quality assurance, and retail-focused food distributors.

Healthare & Life Sciences

M&A has continued largely unabated through COVID, with themes of consolidation, growth and innovation continuing to drive investment. Diagnostics has performed well across the clinical and research space. Business models capitalizing on COVID testing requirements are attractive assets. The Diagnostics sector will continue to operate at an elevated level for the foreseeable future, even as COVID winds down, as companies will have greater demand for various forms of testing. Provider Services has been impacted at varying levels by the various elective procedure suspensions enacted at the state level, which slowed revenues given the operating restrictions placed on practices and facilities. Nevertheless, secular conditions continue to drive consolidation and M&A.

Multiples are either holding (such as Diagnostics) or have contracted modestly (as in Providers) but remain at historically high levels.

Outlook

Heading into 2021, strategic buyers are showing strong interest. Private equity funds are eager to put money to work, and lenders are there to support the transactions. The timing of a COVID vaccine being made readily available, as well as proposed tax reforms, are variables that could have significant implications on the transaction market.

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ACG® Cleveland

The ACG Cleveland Women in Transactions network group hosts a variety of professional development, educational, charitable and social events that provide valuable resources and connections to other professional women. Previous events (pre-pandemic) have included golf clinics, poker night, skeet shooting, Wine & Canvas, glass blowing, spa days, Dressing for Success, theater nights and leader speeches. The mission of the Women in Transactions is to bring innovative, educational content to advance careers and foster leadership.

Now entering its 40th year of establishment, ACG Cleveland is dedicated to serving the global business world with its membership of Northeast Ohio professionals who engage in middle-market mergers and acquisitions, as well as corporate finance. The Cleveland chapter is composed of about 500 members. ACG Cleveland aims to serve its members through a variety of ways, including serving as a resource for further business growth and promoting its membership as industry leaders within their particular area of expertise.

Additionally, ACG Cleveland provides its members with leadership opportunities, committee engagement, sponsorship opportunities and a wide variety of events, some of which have had to be conducted virtually as a result of the pandemic.

Its Diversity, Equity, and Inclusion Initiative, meanwhile, was formed to:

- Embrace diversity, equity and inclusion as drivers of member satisfaction as well as organizational innovation, value and growth;
- Serve as a DEI thought leader, advocate and resource for members while tapping into the worldwide collective DEI knowledge and experience of ACG Cleveland members and partners; and
- Recommend, and help execute on, programs, services, research, approaches and strategies that will help ACG Cleveland better leverage DEI as a competitive advantage, develop pipelines of leaders and future members, and lead the middle market M&A profession of the future.

ACG Cleveland networks afford additional opportunities for engagement and action, including:

ACG Akron, which services the needs of M&A professionals in the Akron area. The group provides networking and professional development opportunities several times per year. acg.org/cleveland/networks/acg-akron

Corporate Development, a network that is specifically designed for corporate development professionals who have a primary responsibility within their companies to drive growth through acquisitions.

Women in Transactions, composed of individuals who are active contributors to the deal transaction process, including private equity investors, strategic acquirers, lenders, investment bankers, consultants, transaction attorneys and accountants.

Young ACG, which is the largest young professional organization across 59 global ACG chapters. Young ACG Cleveland connects its young deal making professionals (ages 35 and younger) with peers across all of the mergers and acquisitions services and roles, including private equity, corporate development, banking, accounting, insurance, wealth management, consulting and more.

ACG Cleveland teed up its annual Golf Outing this year, albeit the framework was a bit different. Each foursome staggered times vs. having one large outing. The event concluded with a virtual meeting with PGA golfer Henrik Stenson.

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CRAIN'S LIST | SBA LENDERS

Ranked by dollar value of northern Ohio 7(a) loans approved in fiscal year 2020

RANK	COMPANY HEADQUARTERS CITY	VALUE OF APPROVED LOANS FISCAL 2020	VALUE OF APPROVED LOANS FISCAL 2019	% CHANGE	NUMBER OF LOANS FISCAL 2020	NUMBER OF LOANS FISCAL 2019	% CHANGE
1	**HUNTINGTON NATIONAL BANK** Columbus	$107,220,800	$126,709,500	-15.4%	873	892	-2.1%
2	**UNITED MIDWEST SAVINGS BANK NA** De Graff	$23,224,700	$11,043,000	110.3%	14	17	-17.6%
3	**KEYBANK NA** Cleveland	$22,927,200	$15,092,600	51.9%	38	35	8.6%
4	**FIRST COMMONWEALTH BANK** Indiana, Pa.	$19,959,500	$14,651,100	36.2%	16	15	6.7%
5	**LIVE OAK BANKING CO.** Wilmington, N.C.	$14,220,000	$14,409,000	-1.3%	8	13	-38.5%
6	**TCF NATIONAL BANK** Detroit	$11,048,100	$11,107,700	-0.5%	15	15	0.0%
7	**CFBANK NA** Worthington	$10,697,000	$320,000	3,242.8%	6	1	500.0%
8	**PEOPLES BANK** Marietta	$9,178,400	$3,319,800	176.5%	8	8	0.0%
9	**FIRST NATIONAL BANK OF PENNSYLVANIA** Greenville, Pa.	$8,662,400	$6,767,000	28.0%	9	8	12.5%
10	**PREMIER BANK** Youngstown	$7,798,800	$3,641,800	114.1%	11	5	120.0%

Source: Cleveland District office of the U.S. Small Business Administration. Send feedback to Chuck Soder (csoder@crain.com). | Numbers are for fiscal years ending Sept. 30 and include 7(a) loans made throughout the 28 northern Ohio counties in the SBA's Cleveland District.

AKRON | REAL ESTATE

22 Exchange building to convert from student housing

Renovation project will bring 236 one-, two- and three-bedroom market-rate apartments

BY DAN SHINGLER

The 22 Exchange student housing building, which its owner says will soon be converted to market-rate apartments. | SHANE WYNN/AKRONSTOCK

Downtown Akron is getting a new round of apartments that are expected to come online next year, thanks to the redevelopment of a major student housing complex.

The project is at the corner of South Main and Exchange streets in what's known as 22 Exchange — a student housing project that went into foreclosure and was subsequently sold last year.

The buyer, Alabama's Capstone Real Estate Investments, is converting the building to market-rate apartments that it plans to begin leasing next year, said Capstone principal and executive vice president Christopher Mouron.

"The entire property will be transformed, much of which is centered around enlarging bedrooms, creating kitchens, additional storage space and expanding bedroom closets while also changing the unit count," Mouron said.

The building currently has 142 units, but most are three- and four-bedroom pods designed for students, with individual leases for each bedroom, Mouron said. While 19- and 20-year-olds might not mind sharing their common space, including living rooms and kitchens, that's not a model that will work when it comes to leasing to health care workers and other adults, or to families, Mouron said.

"The older a person gets, the fewer roommates they want," he said.

With enrollment down at the University of Akron, 22 Exchange wasn't able to attract and keep enough student tenants, Mouron said. So the building needs to be redesigned if it's to succeed.

"When it (a building like 22 Exchange) fails at the purpose for which it's built, it often doesn't succeed at any other purpose. … 22 Exchange is built specifically for the more transient, 18 to 22 (-year-old) student," Mouron said.

Mouron

Redesigning it will result in more units, and Capstone's plans will leave the building with 236 units, including 123 one-bedroom apartments and 105 two-bedroom units, according to Capstone vice president of acquisitions John Baumhauer. The remaining eight units will have three bedrooms each.

Capstone purchased the building last year from Rialto Capital Management for a little less than $13 million, Mouron said. He declined to say what the company expects to spend on the redesign and renovations other than that it will be "millions" of dollars.

"We're excited. We're about to begin phase one, which will be our smallest phase. And then phase two will more or less coincide with the expiration of the current leases," Mouron said.

Because it's student housing now, most leases run from August through the following July to match the school year. Mouron said the major work on the site will begin when the next round of leases expire at the end of July. The whole building should be done by the summer of 2022, though Capstone will likely finish and rent some units before then, he said.

"We'll begin converting units in phase one. Phase one will also improve the offices there on site, the amenities there on site and when it warms up and the temperature allows we'll paint the exterior," Mouron said.

Phase two of the project will entail the conversion of most of the building, which Capstone hopes will then appeal to a different market than 22 Exchange has traditionally served — students — but also a different market than what many other developers in and around downtown are chasing.

Mouron said Capstone plans to offer units for rents that are lower than some of Akron's other notable developments, such as The 159 (formerly the Law Building) or the Bowery District. Rents in the Bowery, for example, typically range from about $1,000 to $3,000 per month. The Bowery, which already has rented many of its residential units, has reported no trouble attracting residential tenants, even while retailers and restaurants have held off awaiting the end of the pandemic.

Capstone's changes to 22 Exchange should make the building attractive to a larger market, though. That includes possibly some students, particularly graduate and post-graduate students, Mouron said.

"We're trying to deliver a product that is fairly price-conscious and lends itself to be more available to students, should they be interested in that product type, and nonstudents of course," he said. "We'll be able to publish rents probably in the springtime, but we will be well below the Law and Bowery."

That's a good plan in the eyes of the city, which is trying to attract a broad range of new residents downtown, from those who can afford the Bowery's most expensive units to those who need cheaper rent or even subsidized housing, said Jason Segedy, Akron's planning and urban development director, who said he's supportive of the project.

Segedy said Capstone's plan to offer more affordable rent is also a positive for another reason.

"The fact that he said that is kind of a sign of competition in the market. With housing in particular … it's almost hard to have too much," Segedy said.

Asked if he worried that downtown was developing more housing than the market can support, Segedy said he's not, so far, because city officials think downtown still has a way to go before it approaches market saturation.

"I'm confident it can (take more housing), and we have some data to back that up," Segedy said. "When the downtown plan was done a couple of years ago … it showed us downtown could absorb another 1,500 or so units. We're still a long way from that."

The city is also abating new construction in the hopes of spurring still more residential development, downtown and elsewhere. Segedy said improvements that Capstone makes at its building will enable it to take advantage of the city's 15-year abatement on any increase in property value that comes from the company's investment.

Mouron and his company are also not newcomers to this sort of development. Capstone owns 22 other properties, representing 11,000 bedrooms, most of them student housing, he said.

But it's successfully converted other buildings, including in Lexington, Ky., and Murfreesboro, Tenn., he said.

Capstone has done those conversations because, like the University of Akron, other schools have also seen their enrollments decline in recent years.

"The demographics would lead you to believe these tick-downs in enrollment are more holistic. … I don't think what they (UA) are facing is unique, Mouron said.

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THOUGHT LEADER FORUM
WORKFORCE AND LEADERSHIP DEVELOPMENT

THE BEST OF BOTH WORLDS

Meeting the needs of workforce development in a 21st century global innovation-driven economy demands a cooperative approach. The university-organization partnership plays a key role in advancing globally oriented workforce development initiatives on a community, region or state level. These partnerships often involve educational institutions and nonprofits, businesses, governments, school districts and other entities.

EVOLVING NEEDS

While university-organization partnerships are not new, changing economics, policies and demographics demand a more comprehensive and strategic approach to workforce development collaboration. The impact of state divestment in public higher education also has intensified the scope of a university's application of its resources, according to the American Association of State Colleges and Universities. Businesses, for example, want to partner with universities to help improve their competitiveness in a knowledge-based economy. Lawmakers and community leaders see higher education institutions as logical partners in researching and addressing workforce and other challenges in cities and regions.

MEETING EMPLOYERS' NEEDS

The Ohio Department of Higher Education is among 17 state agencies that engage in local, regional and statewide workforce development initiatives. The state considers this network of inter-agency partnerships and workforce programs as a foundation to help establish innovative strategies that will continue to grow Ohio's economy and its quality of life for its citizens, according to the Ohio Governor's Office of Workforce Transformation's 2020-2023 Combined State Plan.

UPSKILLING OHIO'S ECONOMY

Similarly, Ohio's TechCred program gives employers the opportunity to upskill employees in today's tech-centric economy. This program has funded more than 15,000 technology-focused credentials, which are certificates or certifications in fields such as business technology, health care technology, information technology, IoT and cybersecurity, and robotics/automation. Employers who submit approved applications will be reimbursed by up to $2,000 per credential when current or prospective employees complete eligible technology-focused credentials.

Eligible training providers include colleges, universities, technical centers and private training providers. The current application period is open through Jan. 29. Details: techcred.ohio.gov.

Many of the millions of workers nationwide who were laid off during the pandemic will need to train for new jobs requiring new skills. Meeting the labor market needs in Northeast Ohio will require an ongoing alignment of regionwide efforts and partnerships. By 2025, about 65% of Ohio's workforce will need to have a two- or four-year degree or certified marketable skill to meet those market demands. The post-COVID 19 economy accelerates the need for workforce development partnerships and initiatives, according to TeamNEO's 2020 report on "Aligning Opportunities in Northeast Ohio."

SOURCES: American Association of State Colleges and Universities, Brookings, Governor's Office of Workforce Transformation, Ohio Development Services Agency, OhioTechCred, TeamNEO

Compiled by Kathy Ames Carr, Crain's Content Studio-Cleveland

University-organizational partnerships: A model for success

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King oversees the Baldwin Wallace department that provides employee/organizational development and training services and helps Northeast Ohio organizations succeed by building partnerships with BW and its plethora of resources. She has been in higher education for over 10 years, and prior to this, spent time in the corporate environment in B2B trade show and event management, HR outsourcing, editing and sales.

What if your organizational needs, challenges and goals could be met through a seamless, flowing partnership with endless options, benefits and possibilities? It's not a dream, it's reality.

For decades, the idea of university-organizational partnerships typically centered around R&D outcomes or building internship connections in a bricks-and-mortar society. And often organizations had to contact multiple resources within the university to service their business needs, making the task daunting and tedious. Time and a recent global pandemic have proven a critical need for organizations and their providers to think strategically, be innovative and build strong, beneficial alliances.

Enter the new model of the university-organization partnership. The concept centers around working with organizations in a model that provides customizable benefits — from the individual employee to the entire organization — with one connection.

To create its model, Baldwin Wallace University built on decades of long-standing relationships with industry leaders to develop a new university-organization partnership framework.

"We realized there wasn't a one-size-fits-all approach to obtaining success or overcoming challenges," said John DiGennaro, associate provost at Baldwin Wallace. "So, we approach our organization partnerships by taking a consultative approach, working side by side, listening, working, listening, walking, listening, talking through the process of discovery … creating beneficial, multifaceted solutions to address their needs and build the foundation of their success."

This unique approach with a strategic university partner like Baldwin Wallace can help organizations retain and recruit the best employees, solve organizational problems and create growth.

"After nurturing numerous long-standing relationships with industry leaders, we've been able to build a strong, more intuitive model with a lengthy list of success stories."

For example:

- A small technology solutions company needed assistance in creating a new diversity, equity and inclusion department. Through one-on-one consultation, BW guided it through the process and, once implemented, it facilitated ongoing, honest, open discussions to bring employees closer together and more engaged.
- A global leader in manufacturing/research faced development challenges at a critical turning point in their managerial talent pipeline. Over 10 years, BW worked with the company to develop and present an integral, worldwide leadership program, re-evaluating and redesigning the content to fit changing strategies and environments.
- A regional health care provider developed a comprehensive partnership with BW, which packaged a variety of resources, from continuing degreed education for individual employees to consulting, training, internships and organization-wide development.
- And, most recently through the pandemic, Baldwin Wallace – realizing that many organizations faced serious budget constraints – offered free webinars for employees, customized to culture and goals, whether to address immediate challenges or long-term strategic outlooks.

As evidenced by BW's experiences, when an organization finds a successful, robust and holistic partnership with a university it can lead to a tailored plan that not only addresses current challenges but prepares the entity for future change.

BW BALDWIN WALLACE UNIVERSITY

THOUGHT LEADER FORUM

WORKFORCE AND LEADERSHIP DEVELOPMENT

A NEW AGE IN WORKFORCE DEVELOPMENT

For all the inertia and uncertainty brought on by the pandemic, restrictions in travel, social distancing and changes in consumer behavior also prompted a swift adoption of new technologies that organization executives say would otherwise have taken months or years to implement. Working remotely became the norm rather than the exception. Greater attention was paid to employee health and safety; digitization and automation; and distance and agile learning. "Innovation historically has driven changes beneficial to workers and humanity at large, and new workplace trends hold the promise of greater productivity that will fuel broader well-being," according to a Sept. 23 McKinsey report that included a survey of responses from 800 global executives on the impact on COVID-19 in the workplace now and looking ahead. Workplace transformation has revealed new opportunities for organizations to innovate and grow.

WELL-BEING TOP OF MIND

Work-life integration and employee well-being were big topics before 2020. Then the pandemic took hold, and the emphasis on employee health, safety and well-being focused to ensuring staff were equipped to work remotely or on-site safely and effectively. According to a 2021 Deloitte Global Human Capital Trends Survey, seven in 10 executives said the shift to a remote working environment had a positive impact on their employees' well-being.

CONSCIOUS INNOVATION

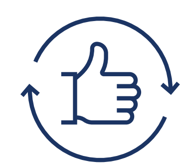
Greater digitization and automation will help organizations monitor costs, improve productivity and continue to innovate in a post-pandemic world, but they will need to make sure employees are prepared and well-trained to embrace these changes if their organization is to realize continued resilience and sustainability.

DEFINING NEW PRIORITIES

Employees' considerations of well-being shifted during this time, according to the Deloitte survey. Corporate benefits and well-being resources were not as important as access to digital collaborating software; personal choice in how work gets done; establishing new scheduling and meeting norms; investing in training; providing in-home Internet and needed technologies; and reconfiguring physical workspaces at home.

A NOD TO RECOGNITION

During periods of disruption, employees' desire to receive recognition increases 30%, according to Gartner. Appreciation does not necessarily equate to a raise either. Employees find gratification in public acknowledgement, development opportunities and low-cost benefits. Recognition also affords another opportunity for managers to continue a two-way conversation with their employees, on a regular basis, to help promote morale and productivity.



Compiled by Kathy Ames Carr, Crain's Content Studio-Cleveland

SOURCES: 2019 Deloitte and MAPI Smart Factory Study; Deloitte Insights; World Economic Forum

Building a workforce development strategy for a modern world

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Hutcherson covers the Northeastern Ohio, Western Pennsylvania and West Virginia markets. He leads a team focused on designing solutions for middle market organizations to enable improved communication, collaboration, engagement, development and work from anywhere. For almost two decades, he has led high-performance teams at Fortune 500 technology firms in the telecommunications and software industries.

It's the most wonderful time of year — annual performance reviews are here. As the business world has realized the potential that telecommuting has to offer, now is the perfect time to modernize your workforce development strategy to enable employees to thrive in a digital world by focusing on access, communication and performance management.

ACCESS

Building a culture of development at your company might be even more important than the specific purchases and processes, but giving your employees the tools to bring that culture to life is a critical beginning step.

Accessible, easy-to-use technology sits at the crux of any modern workforce development strategy with both hardware and software playing a role. To find out where to start in upgrading their technology stacks, employers won't need to look further than their employees' hands as the majority already own a smartphone.

To do so effectively, though, it's vital to pick a workforce development software application that offers user-friendliness and high functionality across devices. To achieve the best outcomes in adoption and utilization, it's also wise for employers to consider leveraging existing applications that all employees already have access to (hint: think payroll). Once employees are able to access and engage in their development journey using the right technology, employers are in position to build a culture of development.

COMMUNICATION

Employers need to look at how they are supporting and encouraging development outside of the traditional annual review process.

Keeping employees connected with those who support their development is key to any modern workforce development strategy. In the world of work-from-anywhere, it doesn't have to be difficult if you consider using two of the most popular mediums for communication today – social media and video.

Delivering company announcements, highlighting best practices and providing training courses using social and video in an asynchronous, on-demand fashion puts the employee in position to consume info and engage with others in a familiar, expected format.

PERFORMANCE MANAGEMENT

The most effective performance management process is an ongoing discussion from week to week, not a once- or twice-a-year process. This means employees, and supervisors, need continual access to performance goals and expectations and the ability to update progress regularly by journaling discussions and achievements throughout the year.

A modern performance management approach should also include feedback and recognition from peers, captured and logged in real time. This ensures the entire body of an employee's progress throughout the year is recorded, helping direct supervisors to provide more inclusive, accurate performance ratings with personalized development plans. Delivering an ongoing performance management review process that is transparent, accessible and objective will have lasting impacts on organizational health and company results.

To get started with incorporating these elements in your workforce development strategy, lean on the partners you trust most to help identify potential solutions, like your benefit broker, financial adviser or trusted HR and payroll solutions provider.

Paylocity's modern, all-in-one platform, backed by a culture that cares, sets you up for success today and well beyond tomorrow with tailored, right-sized solutions. To learn more about how we partner with you to go Forward Together, request a demo at www.paylocity.com.

BOXCAST

From Page 1

BoxCast has three primary revenue segments: houses of worship, sports, and municipalities and small businesses.

Houses of worship account for the largest portion of the customer base. That business was boosted by an October 2019 acquisition of Sunday Streams, a Florida company that was founded five years earlier and catered to faith-based organizations.

BoxCast's athletics business primarily is made up of high schools and colleges that stream games, but institutions have expanded the use of the company's streaming platform by broadcasting graduations, meetings and other events.

The fastest-growing segment is made up of local governments and small businesses.

"We see municipalities being a huge uptick of growth for us as we get to better understand that space," Daily said.

'Lofty aspirations'

BoxCast's first foray into venture capital funding was led by Updata Partners, a Washington, D.C.-based growth equity firm. Shure, an Illinois-based audio equipment manufacturer, also participated in the Series A round.

"A lot of different firms" wanted to invest in BoxCast, Brenner said. For the company, it was more about finding the best fit.

Updata Partners was appealing because of its commitment to investing in software companies that aren't located in the Bay Area. Shure, which was founded in 1925 and has nearly 40 facilities, was familiar, because the company had already invested in BoxCast.

"The strength of the funding round isn't because we needed to take money to continue survival," Daily said. "It's really because we have lofty aspirations of where we can take it and what we can do with that money to move the business even further."

The bulk of the funds will go into two key areas: people and products.

BoxCast expects to hire 40-plus employees in the next year, and could even double in size. At the start of 2018, the company, after outgrowing its space at Burke Lakefront Airport, moved to 2401 West Superior Viaduct. Its headquarters in the three-story office building in Ohio City has been largely unoccupied during the pandemic, but BoxCast is hopeful its workers will return to its offices later this year.

The new hires, Brenner said, will fill areas that are lacking and "double down" on parts that are already strong.

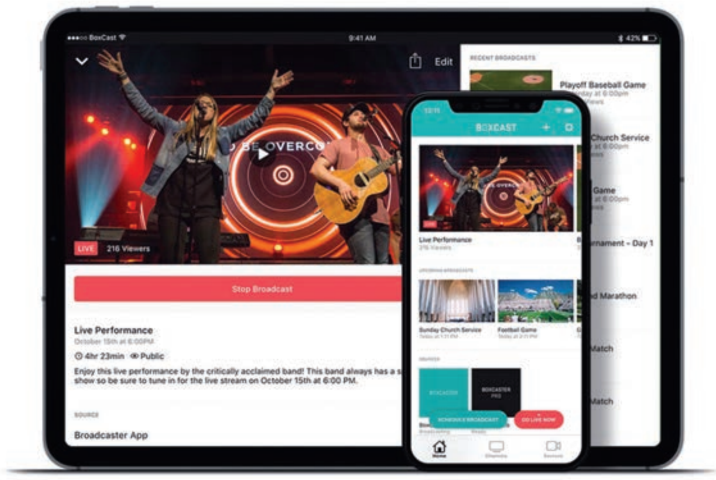
The company also will use the capital to "build better products and market ourselves better," Daily said.

'Idiot-proof'

Walsh Jesuit High School's largest annual fundraiser is held in April. Attendees dress up, are wined and dined, and participate in an auction.

Last year, the high school had about a month to turn the fundraiser into a virtual event. Using BoxCast's streaming platform, Walsh Jesuit put on an event that generated funds that were in line with previous years, said Charles Korecki, the school's technology support specialist.

"Even with nobody in the building, because we could reach our core clientele, it was very successful," Korecki said.



BoxCast's streaming platform allows organizations to film events and make them available on the mobile devices of people all over the world. | CONTRIBUTED PHOTOS

Jeff Lansky, an aspiring play-by-play broadcaster, calls Walsh Jesuit High School's sports events. Of the events that the high school streams via BoxCast, the football games draw the most viewers.

Like more than 100 high schools and colleges in the state, Walsh Jesuit mostly uses BoxCast's technology to broadcast sports events. The school also streams church services, and the pandemic prompted it to broadcast graduation.

"It's phenomenally easy to use," Korecki said. "It's rock solid and quite idiot-proof. You plug in and you go."

During football season, when Walsh rebounded from a rough stretch to post a 5-2 season, Korecki said he watched in awe as viewers tuned in from other states and Europe.

Jeff Lansky, a 2012 Walsh Jesuit graduate, calls the play-by-play for the school's sports events. The football team's turnaround, combined with the pandemic, made more people aware of the quality of the school's productions, he said.

Lansky, who hopes to be a full-time play-by-play broadcaster, mentors the school's student announcers. He's trying to get more to participate now that the broadcasts have received more notice.

BoxCast's reach extends to the big leagues, most notably via a deal with Major League Soccer, as well as six of its clubs. Some clubs buy back digital rights from the league, then use BoxCast's platform to stream games.

One of the more interesting uses of the technology occurs in Major League Baseball. Since 2018, BoxCast has had a partnership with the San Diego Padres, who share batting practice footage with season-ticket holders.

'The fun begins'

Now that BoxCast has received a major capital infusion, "the fun begins," said board member Marchetti, who has an extensive history of working with startups.

"When you have more money, you can move faster," said Marchetti, whose background includes leadership positions at Yelp and Yahoo. "You can focus on the product and organizational needs and meet those needs faster."

Marchetti joined BoxCast's board of directors shortly after moving to Northeast Ohio from the Bay Area in 2017. He said the company is progressing how he figured it would, thanks to a leadership team that he said is "strong, smart and cohesive."

As BoxCast has grown, so has outside firms' appetite to acquire a business that airs millions of broadcasts and has thousands of customers.

Daily said "it's pretty regular" that he's approached about an acquisition.

"There's an inevitability to it," he said of such a deal, though the CEO stressed that BoxCast will be patient.

"I can tell you when you take a $20 million investment, your new investor isn't ready to sell you right away," Daily said.

Carter Griffin, Updata Partners' general partner, is now part of BoxCast's five-person board. Daily declined to say how much equity the new investors have, but said his group still possesses "the lion's share of the business."

The approach — "building a great product and winning one customer at a time" — will be the same, the CEO said.

What will change, Marchetti believes, is the pace at which BoxCast's growth occurs.

"This is going to be a great success story," Marchetti said. "It already is for Cleveland, just with the jobs they've created."

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ASHLAND

From Page 1

Ashland officials said the program brought in more than $30.4 million over four years in Pell Grant funding as part of a federal pilot program that began in 2016. Those awards are earmarked for students with extreme financial need. The program is free for the vast majority of students who use their Pell allotment to enroll.

Enrollment in Ashland's program more than doubled between the 2017 and 2018 academic years. This comes as its traditional full-time undergraduate population, the steadiest source of revenue for institutions like Ashland, is shrinking. Its $47.6 million endowment sits far lower than similarly sized colleges in Northeast Ohio, and the university is just a few years out from earning a junk bond rating from Moody's.

Administrators said they're invested and would continue the work even if those grants went away. But with the impending expansion of that federal program that's behind the growth, the university finds itself in the middle of a national controversy with other providers over the quality of the education it's delivering.

The school said it's invited into states by departments of corrections, a number that's estimated to currently clock in at about 70 reported remote institutions. It's free for institutions, too.

Participating students are issued a tablet with a silicone keyboard. They use an online learning platform to watch videos, read course materials and take tests. Officials said there's about 20 to 25 students to one professor. A messaging service allows both sides to communicate. Some institutions have Wi-Fi capabilities. Others allow work to be submitted by connecting the device to a kiosk.

The majority of graduates — 765 over the past four years, officials said — earn an associate's degree in general studies or the same degree with a business concentration. A smaller number earn bachelor's degrees in communications, interdisciplinary studies or multidisciplinary studies.

That's different from how other higher ed prison programs work. Resources vary from place to place. The majority are set up around either a correspondence model, like the one Ohio University uses, or by offering in-person classes, which Sinclair Community College in Dayton did pre-pandemic.

As Ashland University's traditional enrollment has decreased, the number of students in its prison education program has been on a steady rise. | ALLISON WALTZ/ASHLAND UNIVERSITY

Asked about the program he oversees at Ashland, Todd Marshall recites the school's mission, emphasizing the word "transformative." The work on this front closely aligns, he said.

"It's a transformation, and offenders need transformation," said Marshall, Ashland's vice president for correctional education and innovation. "They want transformation. They asked for it. That's why they engage."

Ashland has been involved with prison education since 1964. The landscape changed for all institutions three decades later, when a federal crime bill stripped the use of the federal funding for those in prison. Ashland continued its face-to-face work during this time.

Its recent growth came via a federal pilot program established in 2016 under the Obama administration. This initiative, known as Second Chance Pell, offered a select amount of schools the option to again receive those Pell Grants for their prison programs.

As a recent article in The Marshall Project detailed, the offering exploded during the Trump administration. Ashland officials estimated they'd begin classes in about 20 new institutions this spring.

They're set to expand into the home state of New York's Ann Jacobs. She's the executive director of the

ROCKET

From Page 1

"The core of … the growth of any city is good-paying jobs that allow its citizens the opportunity for success," Malloy said. "And the city of Cleveland and the state of Ohio are very committed to that."

The first piece of the incentive proposal will become public Wednesday, Jan. 20, in the form of legislation introduced at Cleveland City Council. The deal also hinges on potential aid from the state and JobsOhio, the statewide private, nonprofit economic development corporation.

Nobody involved in the negotiations would discuss the package in detail. The city did not make anyone available for an interview about the project and was unable to provide a prepared statement to Crain's by deadline.

Cleveland's economic development toolbox includes job-creation grants, typically equal to 0.5% of new payroll. The city recently offered Brecksville-based CrossCountry Mortgage such a grant, with a five-year term, for the company's planned headquarters relocation to the eastern edge of downtown.

Kevin Kelley, council's president, said it would be premature to discuss the Rocket legislation. But he had plenty to say about the prospect of landing hundreds of jobs.

"I'm very encouraged. I'm very enthused. … This is the kind of news we need during a pandemic and during a recession to kind of kick-start our recovery," he said.

JobsOhio spokesman Matt Englehart confirmed that talks with the company are underway. Any assistance, he said, "will be made public after a final agreement is executed."

Malloy said that Rocket has room for growth at the Higbee Building, where the company has been a tenant since 2016. Beyond the company's current footprint, there's 110,000 square feet of available space at the former department store, which now houses a casino and offices.

City University of New York's John Jay College Institute for Justice and Opportunity. Programs as widespread as Ashland's don't know the structure or needs of the local communities they're setting up in, she said, making it hard to support those in prison when they transition out.

Ashland's tablet program is in about one-third of Ohio's 28 correctional institutions; there are no current plans to expand into more. An Ohio Department of Rehabilitation and Correction official said the school offered "in-person routine check-ins" pre-pandemic.

The criticism it receives, Ashland officials said, comes from "a prejudice against distance education."

"We're going there to light a candle in the darkness," said Ashland's Marshall. "Other people say, 'Well, our candle is better than yours, or we don't like your candle. So we're gonna try and blow out your candle.' That's not helping the students."

But some say it's a substandard education, arguing that critical thinking and communication skills aren't best delivered in a tablet-based environment. Marshall said the courses are the same quality as their in-person offerings. According to Ashland, each state's department of corrections looks through the curriculum, though there's no accrediting body dedicated specifically to this work.

Jim Verhoye used to work for Minnesota's Department of Corrections as an education director. Before he left to work at a nonprofit, he helped Ashland set up in two Minnesota prisons. Everyone he dealt with from the university was great, he said. But he ultimately called the experience "a mixed bag," adding that a tablet-focused delivery is far different than what others encounter.

"Some people will say, 'Well, you're incarcerated, how good should it be?' " he said. "I would argue, if we're gonna have it, we might as well do it right, do it well and have high quality, because it's the right thing to do."

The program was good for Ronnie Hopkins. Education was key when he was incarcerated, a lesson he first learned by trading potato chips for GED tutoring sessions with a fellow inmate. On the same day he earned that credential, a friend took him to the prison's site director to enroll in Ashland's program.

"It immediately hit me that this was a real-life college degree," said Hopkins, 37. "It was hard. It took a lot of work. It took a lot of discipline, and it taught me discipline. And that was one of the turning points in my life."

Hopkins got out of prison during his second semester and finished his degree at home, an experience he said was much different than the one behind bars because he had unfiltered access to the internet. Now he's working to get his bachelor's degree through Liberty University. His uncle is paying for it.

Those who want to continue their education after prison can face roadblocks by participating in the Second Chance Pell offering. That's because there's a set amount of money Pell recipients receive and a concrete time in which they can use it.

Meagan Wilson studied landscape of higher education in prison as part of her work with consulting group Ithaka S+R. One of the biggest takeaways was how little was actually known about the space, including Second Chance Pell. The experimental program could have real implications for those using their one shot at the grant.

"We didn't know what the quality of that programming was," she said. "I think that's a lot of the issue is, that there hasn't been a lot of that kind of quality assurance."

In the outside world, people have the freedom of choice in the market. Options are far more limited in prisons. But Ashland officials said no one's forcing students to enroll or use their Pell allotment.

"We're an educational institution, and we do everything we're able to help the students," Marshall said. "But ultimately, we are not a re-entry nonprofit organization."

And now more educational institutions will have the option to enter the sector. The most recent federal relief package included a move to restore Pell Grant eligibility for all incarcerated people. While those advocating for face-to-face contact are pleased about the expansion, they said they're worried about changes.

"I am afraid that now this is just going to open the floodgates to there being economic incentive for all sorts of other colleges to come in," CUNY's Jacobs said.

Ashland's Marshall downplayed any immediate plans, pointing out that details of the rollout haven't been specified. But he did say the university has broader experience than others in the space and knows how to scale.

The expansion has been on administrators' radars, though. In an October 2020 interview with Crain's, Ashland president Carlos Campo reiterated that the school's top spot in the prison eduction landscape is important.

"As the leader now in the nation, we don't want to lose that position," he said. "So that's certainly part of our longer-term strategy."

Amy Morona: amy.morona@crain.com, (216) 771-5229, @AmyMorona

THE WEEK

A landmark even before the Agora set up shop there, the complex at 5000 Euclid Ave. is more than a century old and, with the exception of the theater and ballroom, has just been sold by an affiliate of Hemingway Development of Cleveland. | COSTAR

GETTING BIGGER: STERIS plc, the Dublin, Ireland-based maker of sterilization products with U.S. operations headquartered in Mentor, agreed to buy Cantel Medical Corp. of Little Falls, N.J., in a cash and stock transaction valued at $4.6 billion, including the assumption of debt. Boards of both companies unanimously approved the deal, which is expected to close by the end of STERIS' first quarter of fiscal 2022, ending June 30. Cantel provides infection prevention products and services primarily to endoscopy and dental customers. STERIS said the companies "expect to realize annualized pre-tax cost synergies of approximately $110 million by the fourth fiscal year following the close, with approximately 50% achieved in the first two years."

FRESH START: Adding apartments to the four-floor office building with storefront retail is among the plans of the new owner of the commercial property at 5000 Euclid Ave. in Cleveland that's attached to the landmark Agora Theatre and Ballroom venue. The new owner is RS Agora Partners LLC, a joint venture formed by Budapest-based Sabor Group USA and Renew Partners LLC, a real estate development concern with a portfolio of multiple historic preservation projects in Geauga, Lake and Ashtabula counties. According to Cuyahoga County land records, RS Agora on Jan. 4 paid $1.7 million for the commercial components of the complex to an affiliate of Hemingway Development of Cleveland. Hemingway revitalized the old structure and made it a home for small businesses in a partnership with the local commercial development corporation MidTown Inc.

JOB WELL DONE: Downtown Cleveland Alliance announced that Joe Marinucci, its president and CEO, is retiring. Marinucci, 67, who has led the economic development organization since its 2006 inception, will continue in the job through the end of April. The transition committee of the DCA board of directors, co-chaired by chair TJ Asher and vice chair Karen Paganini, will lead the search effort for Marinucci's successor. DCA said that among Marinucci's accomplishments at the organization are helping downtown Cleveland reach 20,000 residents, establishing the largest Special Improvement District in the state, and assisting with the hosting of the 2016 Republican National Convention.

GOING WITH THE FLOW: After a busy expansion year in 2020, Everstream announced growth plans for 2021 that call for further building out its 5G network in seven markets, an initiative marking at least $47 million in investments. The affected markets are all within the business-only fiber internet service provider's Midwest footprint and encompass Fort Wayne and South Bend, Ind.; Lexington and Louisville, Ky.; and Cincinnati, Dayton, and Toledo. The company announced it plans to lay more than 1,000 route miles in those areas. It's part of 3,000 route miles Everstream intends to build out this year.

The property is controlled by Jack Entertainment, a spinoff from Quicken Loans founder Dan Gilbert's Rock Ventures family of companies — a group of businesses that also includes the Cleveland Cavaliers.

Conversations about Rocket's expansion began with a chat, nearly a year ago, between Cavaliers CEO Len Komoroski and an executive from the Greater Cleveland Partnership. The discussions didn't stop even as the pandemic sent thousands of office workers, including most of the lender's downtown employees, home. And negotiations continued after Rocket Cos., the parent business, went public in August.

Deb Janik, GCP's senior vice president of business growth and development, said she views the project as much more than a one-off transaction.

"It's the relationship, the ongoing relationship with the company, that's going to allow us to keep moving forward — and hopefully sustaining growth for a long, long time," she said.

Rocket Cos. employs more than 22,000 people nationwide, the vast majority of them in Detroit. The flagship mortgage business, which has been phasing out the Quicken Loans name, closed on a record $89 billion in loans during the third quarter. Its Cleveland bankers handle transactions across the country.

"The type of jobs that we can garner are well-paying jobs, above the median wages for Cuyahoga County — mortgage bankers, primarily," said Ed Chatmon, a GCP vice president of business growth and development. "So it's also an opportunity to upskill and maybe attract some workforce or hire residents within the local communities."

Striking an expansion deal with the nation's largest mortgage lender is likely to help Northeast Ohio make pitches to other growing companies, said Walt Good, managing director of projects for Team NEO, a nonprofit economic development group that serves as JobsOhio's regional affiliate.

"I don't want to use hyperbole," Good said, "but this is huge. Huge and very exciting. And I think the spinoff impact will also be very much felt."

For downtown Cleveland, Rocket's hiring spree would be one of its biggest victories since late 2011, when New York-based insurer AmTrust Financial Services Inc. disclosed its hopes of bringing 1,000 jobs to the struggling financial district.

Coupled with the Sherwin-Williams Co.'s plans to build a new headquarters just west of Public Square on long-languishing parking lots, the potential Rocket project shows that large employers still see the value of an office environment and a center-city address, said Joe Marinucci, president and CEO of the nonprofit Downtown Cleveland Alliance.

"You've got major corporations investing in the city," he said, "and that's a great signal that we can leverage and build upon."

Michelle Jarboe: michelle.jarboe@crain.com, (216) 771-5437, @mjarboe

PEOPLE ON THE MOVE

To place your listing, visit **www.crainscleveland.com/people-on-the-move**
or, for more information, contact Debora Stein at 917.226.5470 / dstein@crain.com

ACCOUNTING

RSM US LLP

RSM is pleased to announce that ***Matt Franko*** has been promoted to Principal, serving as the Risk Consulting Champion for Ohio. With more than 13 years' experience, Matt specializes in working with Consumer Products and Insurance companies to analyze their cybersecurity programs and develop customized strategies to align security needs with business goals. Matt's work is focused on serving clients in NE Ohio, the US and internationally as part of RSM's Security and Privacy Risk team.

ACCOUNTING

RSM US LLP

RSM is pleased to announce that ***Shawn Gilronan*** has been promoted to Principal, Business Intelligence & Analytics, leading the practice for the Great Lakes region. Shawn has over 15 years of experience serving clients in Northeast Ohio, as well as throughout the United States, as part of RSM's National Data Analytics team. He specializes in advising Industrial Product and Consumer Products companies, delivering data and analytics solutions designed to provide data-driven analysis and insights.

ACCOUNTING

Pease, CPAs

Alexander N. Semerano, CPA was recently named Equity Partner for Pease, CPAs. He joined the firm in 1998 and currently oversees the firm's Accounting & Tax Group. Alex holds several firm leadership positions and will continue to focus his efforts in the development of the firm's specialized practice areas. "In the 23 years we have worked together, Alex has proven that he has the right balance in strategic vision and strong leadership." commented Kuno Bell, Managing Partner at Pease, CPAs.

ACCOUNTING

Maloney + Novotny LLC

Matthew Ramsey has been elected the newest shareholder at Maloney + Novotny LLC (M+N). Matthew began his career at M+N in 2003 and works with clients in a variety of industries such as manufacturing, healthcare organizations, nonprofit entities, retail, governmental institutions and is an integral part of our SOC (Service Organization Controls) practice. Matthew is a member of the American Institute of Certified Public Accountants, the Ohio Society of Certified Public Accountants and ISACA.

Maloney
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CELEBRATING 90 YEARS

ENGINEERING / CONSULTING

Osborn Engineering

Osborn Engineering announces the hiring of Cleveland's new Director of Electrical Engineering, ***David Chesley, PE, RCDD***. David brings nearly 30 years of experience as an innovative electrical engineer and project manager, licensed as a professional engineer in 15+ states. David has spent much of his career promoting sustainable and resilient design principles and has a proven track record of client management and care. He will be an integral addition to the leadership at Osborn.

FINANCIAL SERVICES

JK Investment Group

JK Investment Group is pleased to announce the recent hiring of ***Roger E. Godin*** as Relationship Manager. Roger will help provide comprehensive wealth solutions and personalized service to existing clients of the firm. Bringing over 15 years of industry experience, Roger previously worked for Baird Private Wealth Management and Wells Fargo Advisors where he provided tailored financial solutions to high net-worth individuals and their families.

FINANCIAL SERVICES

JK Investment Group

JK Investment Group is pleased to announce the recent addition of ***Brian Kerber*** to the team as Director of Business Development. Brian brings over 20 years of experience in the financial services industry working in both retail and wholesale distribution. He brings his knowledge of all aspects of the financial services business to provide more robust services to the firm's growing network of advisors, as well as the expanding client base.

FINANCIAL SERVICES

Project Management Consultants LLC

Project Management Consultants LLC congratulates ***Alexander Previts, CPA*** on his promotion to Senior Financial Analyst. A Certified Public Accountant, Alex works with the PMC Team to secure and manage public and private financing options for development projects and to attract incentives for corporate clients that are expanding or relocating in Ohio and across the country.

LAW

Ulmer & Berne LLP

Ulmer is proud to announce ***Brett C. Altier*** has been promoted to Partner. Altier is a real estate attorney who assists clients in all aspects of real estate and environmental law, including the development, acquisition, disposition, and leasing of property. He also represents clients in litigation to resolve a variety of complex real estate and environmental disputes involving property valuation, mineral rights, and eminent domain. He earned his J.D. from Cleveland-Marshall College of Law.

LAW

Ulmer & Berne LLP

Ulmer is proud to announce ***Daniela Paez*** has been promoted to Partner. Paez is a business litigator who focuses her practice on complex commercial, banking, fiduciary, and broker-dealer litigation. She represents clients ranging from individuals, LLCs, and closely-held corporations to multinational companies and financial institutions, in state and federal courts, mediation, arbitration, and international disputes. She earned her J.D. from Case Western Reserve University School of Law.

LAW

Ulmer & Berne LLP

Ulmer is proud to announce ***Raymond D. Seiler*** has been promoted to Partner. Seiler is a real estate attorney who represents businesses, private equity firms, and financial institutions in all phases of commercial real estate lending, acquisition, disposition, management, development, and financing. He also assists with acquisitions, divestitures, and leases of long-term care facilities. He earned his J.D. from The Ohio State University Moritz College of Law.

LAW

Frantz Ward LLP

Bradley Reed has been elected Partner. He focuses his practice on working with hospitals, physicians, and other health care providers regarding complex regulatory and compliance issues as well as on a wide range of various data privacy and cybersecurity issues including investigating data security incidents and advising clients on data breach reporting, mitigation and responses. Brad earned his J.D. from the College of William & Mary Law School and his B.A. from The Ohio State University.

FW FRANTZ WARD ATTORNEYS AT LAW

LAW

Frantz Ward LLP

Ryan Smith has been elected Partner. He focuses his practice on employment litigation and labor relations. Ryan represents management in a wide range of matters, including employment discrimination, retaliation, and harassment, wage and hour disputes, including class and collective actions, and breaches of non-competition and other types of employment agreements. He earned his J.D. from The Ohio State University Moritz College of Law and his B.S. from Miami University.

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LAW

Brouse McDowell LPA


Fryan


Kopcho

Brouse is proud to announce that ***Laura Fryan*** and ***Nicholas Kopcho*** have been promoted to Partners. Laura is a healthcare attorney advising on HIPAA, Stark and Anti-Kickback compliance, vendor agreements and employment contracts, overpayments and government investigations, reimbursement issues, facility bylaws and peer review plans, state and federal licensing, and transactions. She earned a JD and an MBA from The University of Akron. Nick is an experienced trial and appellate lawyer in civil and commercial litigation. He also advises healthcare providers on contracting and reimbursement issues, HIPAA matters, and compliance with Medicare, Medicaid, Anti-Kickback, and Stark regulations. He earned a JD from Cleveland-Marshall College of Law.

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CRAIN

Crain's Cleveland Business is published by
Crain Communications Inc.
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G.D. Crain Jr. Founder (1885-1973)
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700 W. St. Clair Ave., Suite 310,
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(216) 522-1383

Volume 42, Number 2

Crain's Cleveland Business (ISSN 0197-2375) is published weekly, except no issues on 1/4/21 nor 7/5/21, combined issues on 5/24/21 and 5/31/21, 8/30/21 and 9/6/21, 11/22/21 and 11/29/21, at 700 West St. Clair Ave., Suite 310, Cleveland, OH 44113-1230.

Periodicals postage paid at Cleveland, OH, and at additional mailing offices.
Price per copy: $2.00.
Postmaster: Send address changes to Crain's Cleveland Business, Circulation Department, 1155 Gratiot Avenue, Detroit, MI 48207-2912. 1 (877) 824-9373.
Subscriptions: In Ohio: 1 year - $64, 2 year - $110. Outside Ohio: 1 year - $110, 2 year - $195. Single copy, $2.00. Allow 4 weeks for change of address. For subscription information and delivery concerns send correspondence to Audience Development Department, Crain's Cleveland Business, 1155 Gratiot Avenue, Detroit, MI, 48207-9911, or email to customerservice@crainscleveland.com, or call (877) 824-9373 (in the U.S. and Canada) or (313) 446-0450 (all other locations), or fax (313) 446-6777.

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