



INVESTIGATIONS FOR CORPORATE CONTESTS

... too much in the course of a hostile takeover
...; Client, counsel and investigator simply need to
... methods to access key information. An investigator's
basic task is to identify who knows what and find an appropriate way to ask the right questions. The
investigator's role as an independent fact gather provides a real-time source of primary data to support,
litigation, public relations and regulatory oversight. As such information and intelligence, soft and hard,
can be utilized in the variety of forums available.

Takeover Investigations - General Discussion and Strategy

Three Primary Focuses: Historical Perspective, Strategic Information and Negative "Dirt".

- **Historical Perspective:** The only tool available to assess future actions is past behavior. We can develop a detailed understanding of management's strategies and performance. What are management's known strengths and weaknesses, negotiating style and strategy, etc.?
- **Strategic Information:** What is the other side planning? How hard or how fast are they willing to go. It is possible to obtain answers to the key questions - "how much" and "when", etc. Few organizations are capable of the discipline to hold even key information perfectly under control. Note: It is not necessary, or even very helpful to use dirty tricks or secret sources to conduct this research, but it is necessary to be aggressive, "The unasked question is never answered."
- **Negative "Dirt":** Only useful if it rises to a material business issue:
 - Material v. non-material financial disclosures
 - Failure to disclose a minor misdemeanor contrasted with a corporate felony
 - A CEO's ten-year-old divorce is of little interest, but several divorces involving abuse or a current divorce with large financial implications to the company may be of interest.

Major Consideration Covert or overt? There is always a trade off between absolute discretion and gathering material information. In a very large public fight where there are many interested parties the covert vs. overt issue is easier since it is hard to tell who is asking which question for whom.

We use our own cutouts and even if our involvement is known our diverse client base make it impossible to identify our specific motivation. It is usually appropriate for the investigator to be hired by outside counsel to protect findings under the Work Product Doctrine.

Investigative Techniques

Public Record Database and Field Research: This basic process helps us build a framework on which to proceed. We can identify: issues to address, locations in which to conduct further investigation, potential sources, key relationships and personal and corporate assets. In the course of this research we access a broad range of information sources including: real estate, corporation, partnerships and litigation records, liens and judgments, local and national media, industry newsletters - every publicly available source.

Research Based Contacts: Using sources identified in the course of our public record research we conduct follow-up investigations by contacting litigants, former employees, etc. These interviews are

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unpredictable as they are inherently "cold" contacts, however they are tightly focused on the subject organization.

Proprietary Sources: Our network of contacts provides relatively covert access to: Industry sources, media sources, geographic sources, law enforcement, local government, regulators, etc. These sources give us more control of the process and an opportunity to access non-public information. Proprietary sources are particularly useful if limited leads are available from the public record.

Other Techniques:

- Pretexts: Direct contacts/interviews using misdirection.
- Surveillance and other "hands-on" techniques: Speculative and labor intensive, but sometimes the best way to identify real-time information or follow-up on specific leads.

Specific Examples: Past Successes in Corporate Contest Investigations

Identified what a raider, or white knight is willing to pay.

Discovered problems with how opponent is financing a deal.

Discovered material non-disclosures by individual and corporate principals.

Discovered patterns of insider trading.

Discovered ongoing disputes with regulators.

Discovered current and past criminal problems.

Identified patterns of abuse of corporate assets.

Identified patterns of aggressive and inappropriate revenue recognition

Documented problems and patterns in a subject companies deal history.

Documented historical management problems.

Documented our subject's negotiating style and techniques.

Demonstrated factual inaccuracies in SEC documents, "fight letters" etc.

Vetted current and proposed management, board members etc. For both our client and subject

Identified key intermediaries to assist in negotiating a settlement.

Acted as a conduit for information to the press, to regulators and to law enforcement.