

RESEARCHING CORPORATE GENEALOGY

BY STEPHEN G. SWISDAK

A couple of years ago, I wrote an article in this publication on how to research a company's history ("The Value of Historical Research to In-House Counsel" (June 2009)). That article examined why in-house counsel should research their company's history and summarized some key electronic and print resources that professional historians use when researching corporate history. This article supplements my previous article and focuses on how to research corporate genealogy; that is, how to trace a company's history from incorporation, through merger and acquisition (M&A) transactions and other corporate actions, to bankruptcy or dissolution.

There are myriad legal reasons for attorneys to research a company's genealogy, including matters involving the search for potentially responsible parties (PRPs) to site contamination. In these instances, corporate genealogy research can determine if a historical PRP is currently viable (i.e., can be traced to a present-day successor), or whether the PRP is defunct and thus represents an orphan share to historical site contamination. Corporate genealogy research can also be used to understand historical M&A transactions, including whether specific transactions were stock or asset sales. This information can be particularly helpful in assessing a company's potential historical liability, for whereas in stock acquisitions buyers purchase a company's entire stock, including any known or unknown liabilities, in asset acquisitions buyers acquire only certain assets and assume only certain liabilities.

General Sources for Tracing Corporate Genealogy

When tracing corporate genealogy, researchers should first consult general business directories, which provide a

readily accessible overview of thousands of American companies. The most comprehensive of these directories is *Moody's Manuals* (now *Mergent Online*), which consists of a series of industry-specific manuals (e.g., *Moody's Industrial Manual*, *Moody's Public Utility Manual*, etc.) that supply an overview of thousands of publicly traded companies culled from SEC filings, annual reports, and newspaper articles. Thus, each issue of *Moody's* provides information on a company's history, subsidiaries, business lines and products, principal plants, management team (officers and directors), and balance sheet. Mergent recently digitized historical issues of *Moody's* (dating back to 1909) and made them searchable by company name.

Historical newspaper articles are another excellent source of general information on companies. Over the past decade, newspaper research has become significantly easier to conduct with the digitization of national "newspapers of record," including the *New York Times* and the *Wall Street Journal*, and select regional newspapers (e.g., the *Boston Globe*, *Cleveland Plain-Dealer*, *Los Angeles Times*, *New Orleans Times-Picayune*, and *Washington Post*) by *ProQuest* and *NewsBank*. Often, though, local newspapers provide the best coverage of local companies. The challenge in researching most local newspapers, however, is that they are neither digitized nor indexed and, save a time-consuming search of microfilmed newspapers, are therefore difficult to access. When faced with such a situation, researchers should seek out available newspaper clippings files at local libraries and historical societies, which were created by the yeoman efforts of local librarians who clipped articles from local newspapers and organized them into subject-specific vertical files.

Sources for Company Incorporation Records

Company incorporation records are maintained in the state in which the company was incorporated. While the contents of a company's incorporation file varies from state to state, in general these records include the official name of the incorporated entity, its stated business purpose, a list of its registered agents and directors, and information on the company's preferred and common stock. In most states, the secretary of state's office maintains incorporation records, which are typically accessible online or, for historical records, via submission of a state Public Records Act request. However, it should be noted that in some states other agencies maintain these records (e.g., the New Jersey Treasury Department's Division of Revenue maintains New Jersey's incorporation records).

Sources for Tracing Corporate Events and M&A Transactions

In researching major corporate events, including M&A transactions, facility expansions, and management changes, researchers should turn to historical corporate filings, and particularly corporate annual reports. Following the 1933 Truth in Securities Act, publicly traded companies doing business in the United States had to file certain reports, including official annual reports (10-K reports), with the Securities and Exchange Commission (SEC). While recent corporate filings (from 1993 to the present) are available online through the SEC's EDGAR database, historical SEC filings through the mid-1960s can be found within SEC records at the National Archives.

When tracing a company's genealogy, though, researchers should focus not on a company's 10-K report, but rather on its

corporate annual report to shareholders. While some companies merge the two reports into a single document, 10-K reports are technically distinct from corporate annual reports, with 10-K reports tending to focus on required corporate financial information, whereas corporate annual reports tend to contain broader information on annual corporate activities, plant expansions, product lines, R&D efforts, and future business prospects.

Most corporate annual reports can be located through research into the *ProQuest Historical Annual Reports* database or at research at major university libraries and the National Archives. For its part, the *Historical Annual Reports* database provides a full-text searchable interface to complete runs of historical annual reports from over 800 large American companies. For companies not included in this database, researchers should turn to collections maintained at various academic libraries. To facilitate this search, the Purdue University Library has an *Annual Reports at Academic Business Libraries* database (<http://www.lib.purdue.edu/abldars/>), which aggregates the corporate annual report holdings of twelve leading academic libraries.

When investigating historical corporate activities, researchers should not neglect the potential benefits of targeted research into federal government records collections. Indeed, researchers can learn much useful information about specific companies, industries, products, and manufacturing processes by targeting historical federal government records at National Archives facilities and other federal records repositories across the country.

While historical SEC records will probably be most useful in researching corporate genealogy, other federal government agencies may also have maintained records on specific companies. Most of these historical records are today in the custody of the National Archives, which maintains approximately 9 billion pages of textual records at dozens of archival facilities and federal records centers across the country.

Because of the volume of records at National Archives facilities and the idiosyncratic systems by which these records are organized, attorneys researching federal records should consider working with professional historians with experience conducting such research and with knowledge of the relevant historical context.

For example, it can be quite challenging to research the corporate genealogy of historical utility companies, especially for utility companies dating back to the 1920s and 1930s when a skein of holding companies controlled America's utility industry. Luckily for us, in 1928 Congress tasked the Federal Trade Commission (FTC) with investigating these holding companies and unraveling their complicated financial structures in order to determine which holding companies actually controlled which utility companies. Following their comprehensive investigation, FTC examiners reported their findings to Congress. The 101 volumes of published transcripts and exhibits resultant from these congressional hearings can be found at various federal repositories, including the FTC Library in Washington, D.C. As importantly, the National Archives maintains hundreds of boxes of the background materials from these hearings, including subpoenaed board minutes, organizational charts, and various corporate records that the FTC collected and used to prepare its reports.

Sources for Corporate Dissolution and Bankruptcy

Since bankruptcy is a federal legal matter, when a company files for bankruptcy, an official federal court record is created and is permanently maintained. Thus, the National Archives preserves copies of historical closed bankruptcy records at the National Archives facility or Federal Records Center serving the geographic area in which the bankruptcy was filed (e.g., the National Archives or Federal Records Center in Denver maintains records from bankruptcy proceedings in Utah). On the other hand, if a company does not file for bankruptcy and simply dissolves, dissolu-

tion records can typically be found in one of the sources described above. For example, the secretary of state's office in each state in which the company conducted business should have a copy of the company's formal certificate of dissolution. Similarly, local newspapers may have coverage explaining the company's dissolution, as may the company's final 10-K report and final corporate annual report.

In sum, all companies have a genealogy—a genealogy that attorneys can trace through diligent historical research and can use to advise their clients on a range of legal matters.

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