

BANKRUPTCY PROFESSIONAL:

SPOTLIGHT



Mark L. Cluster

Carl Marks Advisory Group LLC, *Partner*
&
Carl Marks & Co., *President*

Established in 1925 and named after its founder, Carl Marks' original focus was foreign securities dealing. Despite its growth, Carl Marks continues to be family-owned and operated, with a timeless focus on "creating value through clear thinking, thoughtful strategy, creative advice, and adept execution of plans."

The Carl Marks of today is known as a "premier, multi-faceted, middle-market merchant bank," with principal investing and advisory service offerings. Its professionals possess "diverse, real-world experience" in the full range of specialties: corporate revitalization, distressed securities investing, health-care advisory, investment banking, private equity, and real estate.

It's an understatement to say that Mark L. Cluster is a prominent figure in the Carl Marks corporate family: He is the President of Carl Marks & Co. and Carl Marks Securities LLC; a Partner with Carl Marks Advisory Group and Carl Marks Healthcare Partners; and Co-Founder of Carl Marks Real Estate Group.

As a key management team member of Carl Marks' restructuring and reorganization business, Mr. Cluster has held executive management roles for companies across the full range of industries. He has

also served as financial advisor to a number of middle-market companies facing bankruptcy reorganization. We talked with Mark about the role of "recovering lawyers" in the restructuring business, Carl Marks' competitive edge and professional disappointment/satisfaction.

BP: Looking at your Web site, Carl Marks seems to offer a broad spectrum of services and investing capabilities. How would you summarize those for an elevator speech?

MC: We are a principal investor in both the private equity and distressed debt arenas. We have a strong capability in advisory services—including CRO roles, performance improvement, financial advisory capabilities, and healthcare advising.

BP: Your corporate bio indicates that you hold a BBA, with honors, from Ohio University; a JD from Hofstra University Law School; and a LLM in Taxation from NYU School of Law. How does your legal background impact your approach to financial advisory services?

MC: Lawyers sometimes have a hard time transitioning from law into business. I've always found that the restructuring arena is one of those business segments in which having a law background can really be helpful. For me, having both backgrounds helps

greatly in advising and problem solving. It offers a different perspective. Lawyers are taught to identify issues and to think critically, and that training is beneficial when advising companies facing a restructuring.

BP: Do a good number of your Carl Marks' colleagues come from a similar background in law?

MC: Several of our restructuring personnel are what I would call recovering lawyers, but having a law degree is certainly not a pre-condition to having success in restructuring.

BP: How has the current economic situation impacted your advisory approach?

MC: Over the last year certainly, it did impact our approach. With the lack of available credit you have to be very careful in the approach you take. Where you might have sought a bankruptcy reorganization before, you have to be more careful because financing may not be available to see you through the process.

Companies have been forced to liquidation or a quick 363 sale process as a result of the lack of liquidity in the markets. We now see complete extremes: 1) liquidation or a lightning-quick 363 sale or 2) kick the can down the road for 18 months and wait to solve the inherent problems with that company in better economic times.

Capital structures are increasingly complex. With multiple tranches and multiple investors within each tranche, it is more difficult to determine who holds the fulcrum security. Each tranche that can make some claim to being fulcrum security does so. As a result, we've seen a shift in our representations. Although Carl Marks has historically been more of a debtor-side advisor, this year we've been increasingly active representing creditor groups, senior secured lender groups in particular.

BP: What do you envision in terms of economic recovery in the short and long-term?

MC: In the short to mid-term, things will probably remain as they are today. For the situation to change, credit has to come back in the marketplace in a responsible way. Clearly, there was too much liquidity in the marketplace and now there is not enough liquidity. When some normalcy returns and credit begins to flow more freely, then the more traditional banking and reorganization activities will come back.

BP: What gives Carl Marks its edge in the marketplace?

MC: I think we have a couple of distinguishing factors: Carl Marks has been in the investment business for a long time.

As a principal investor, we've been lenders, equity, and we've been the borrowers. Our perspective as advisors comes from all three of those angles. That—along side with the fact that we have capital to invest—gives us all four legs of the stool that others don't have and a first-hand institutional knowledge base of what each party in a restructuring will want and need.

The other piece is a strong operational consulting capability. The senior lending groups we've been advising over the past year have found our operational capability of enormous benefit.

BP: You serve as the President of all of the Carl Marks' companies, and based on our review of recent cases, have also been a principal advisor to clients including the UCC in Linens 'n Things and financial advisor in the recent American Community Newspapers proceeding. Given all of the different roles you perform at Carl Marks, including actually advising clients, how do you manage to get everything done?

MC: We are unlike a lot of firms. We have mostly senior people at Carl Marks and very few junior people. Of course, we have some analysts and associates but we are definitely top heavy—we're talking about partners and managing directors. So you lean on people. You delegate. You rely on these people to successfully deliver the best results to our clients. At the end of the day, you only care about the client's satisfaction; and you can get that result with good people and partners on your team. I have great Partners and great colleagues at Carl Marks.

That's why we stay the size that we are at Carl Marks. We could have grown exponentially years ago, but we made a conscious decision to stay a mid-size boutique firm. We don't over-extend ourselves. Our mantra is quality, not quantity.

BP: Where do you see this economy/restructuring market going in the near and mid-term?

MC: They go hand in hand. You'll always have problems, even in a good economy, but I believe this economy will continue to sputter in the near-term. I

think things will remain vibrant in the restructuring practice for the next 12 to 18 months.

BP: What advice would you give to those professionals just beginning a career as a financial advisor? What do you wish you had known when you were at that stage?

MC: I don't know that I would have done it differently. I came to Carl Marks back in 1981. I came up in a whole different fashion since I entered the firm intending to use my knowledge in taxation. I ended up working in the trading business at the time instead. Although it was not intentional, that was where I experienced my first turnaround.

I would tell a younger person to get as broad an experience as you can. Go to a firm where you can be exposed to many different things. That's what makes our firm so unique: all of our young professionals cross-over. For example, a couple of our people who were hired on the financial advisory side of our business are on planes today traveling to remote destinations to work on operational restructurings. It's a little myopic if you are working on a financial restructuring without understanding how that will impact the operations of a company.

BP: What was your original role with the firm, and what were some of the first cases you worked?

MC: Our advisory business was a startup, born out of our investment business. We had to fix our own problems and we found we were good at it. I started the business with Stanley Frieze who was dean of the turnaround business, a real icon in the industry.

We didn't have a staff. We did everything: we were chief cooks and bottle washers. It was a lot of fun. This was back in 1991. We had a lot of operators from businesses in which we were investors, who were not ready to totally retire but did not want to work full-time. We had a cadre of highly capable people available to us to help get the business off the ground.

BP: Can you share any stories from your executive management experiences you've had while working with client companies?

MC: I think all of our partners share the same sentiment: You get involved with companies, either on the borrower/debtor side or the lender side; and you want to please people. If things don't work out the way the client fully expected, it's not only frustrating it's also

horribly disappointing. I take it personally. For us, our reputation is everything. We don't ever want to do anything to sully that.

On the other side, getting into a complex situation and solving complex issues is satisfying and intellectually challenging.

BP: Of the many cases you've worked in your career, which one caused you the greatest frustration, and/or regret? What one moment made you most proud of the work you do?

MC: Generally speaking, there have been a few where you think you're coming up with great ideas for the client and they dismiss you. It's frustrating. The disappointment, as I said earlier, is when clients aren't pleased.

On the positive side, I remember one situation in which I was working with a borrower who had personally guaranteed his bank loans. He was in his early 70s at the time; and the personal guarantee, if called, would have wiped him out.

At the end of the day, we were able to get him off the guarantees by selling his company. He had a lot of remorse: the company was his baby. It sold to a competitor—which made him even more unhappy—but we saved him from a terrible situation.

After not hearing from him for two years, he called to thank me. He said, "My life is great. I don't know what I was thinking back then." It wasn't the biggest case of my career or the biggest fee, but it brought me tremendous satisfaction.

BP: How do you spend your non-work hours?

MC: I'm very fortunate. I have a great family and spend a lot of time with them. My kids are all grown up, gainfully-employed in the marketplace. They're all in New York. My wife and I have been married for 33 years. I have a great marriage and great kids. As far as hobbies go, I am an avid golfer. I also enjoy traveling.

BP: Carl Marks' corporate Website references the firm's community service work: "The family and partners of Carl Marks take comfort in the fact their corporate investments have meaningful social returns in addition to financial ones." Tell us about your involvement on these fronts.

MC: We encourage everybody here to get involved in philanthropy in some way, shape, or form. I'm personally involved with the board of the North Shore – Long Island Jewish Health System. I serve on the executive committee and chair the quality committee and devote a good deal of my philanthropic time to North Shore.

The Carl Marks Foundation had been dormant but was restarted by me and my brother-in-law, Andrew Boas. Through this, we find a variety of charities, not

only in New York but also some nationally and even internationally, to which we contribute.

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