

LEAKY SHIP

BY BEN FIDLER

After a contentious battle with Barack Obama for the Democratic presidential nomination, Hillary Clinton appeared to finally run out of steam last week after a grueling campaign. But one of her most ardent supporters, decorated General Wesley Clark, had his own tough run a year earlier — a 10-month stint at bankrupt freight transporter Summit Global Logistics Inc.

Clark served on the board of Summit as nonexecutive chairman and resigned as the company was on the brink of Chapter 11. Key to that tenure was that it came in the wake of a financing deal placed by the investment bank he also heads as chairman, Rodman & Renshaw LLC.

But while sources close to the case indicate that the transaction left the door open for a possible post-confirmation fraudulent conveyance claim, the outcome of Summit's case — which included agreements with its key creditor groups — may have left the list of beneficiaries of that potential claim bare. The result? In the end, likely a painless exit for both the general and his investment bank.

Clark spent more than 30 years in the Army and the Department of Defense, earning several decorations as well as the Presidential Medal of Freedom. But he has also fashioned a career in investment banking, first as a managing director of Stephens Inc. and then at his own strategic advisory firm, Wesley K. Clark & Associates. Three years later, in February 2006, Clark became chairman of Rodman.

In the meantime, Summit — then known as Maritime Logistics US Holdings Inc. — was at a financial and operational crossroads.

Already a domestic freight forwarder, Summit had its eyes on becoming a truly international, dock-to-dock logistics entity, and to that end, it acquired FMI International LLC and TUG USA Inc. in Novem-

ber 2006. TUG was a full-service U.S. ocean transportation logistics provider, while FMI provided freight forwarding, supply-chain logistics and warehousing services.

But the key for Summit was a third purchase made two months earlier — SeaMaster Logistics Inc., an Asian entity that would allow Summit to do the same things it does in the U.S. in Asia.

"[The idea was], if you can establish a presence in Asia and get the licenses and permits, you can actually pitch that you have the ability to be a one-stop shop," one source explains.

The rub was twofold. First, Summit needed to get those permits, which would come from the Chinese government, among others. Second, Summit needed the financing to make the November 2006 acquisitions.

Enter Clark and Rodman, which would serve as the placement agent for a three-tiered financing deal that would both lever up Summit and lead to the intertwining of the general's roles in both companies. The financing consisted of \$65 million in senior secured debt from Fortress Credit Corp., Ableco Finance LLC and Plainfield Asset Management LLC; another \$65 million in secured convertible notes; and \$33 million in common stock and warrants via a private investment in public equity, or PIPE.

As one source points out, the deal was on shaky footing from the start. Summit had originally been looking for a PIPE of up to \$40 million, with a condition that it be able to raise at least \$33 million. But during the week of the planned funding, at least one of the institutional lenders backed out, leaving Summit short of even its minimum target. As a result, members of management were forced to put in some cash so Summit could close the deal. Yet Summit still was as much as \$7 million short of its goal.

As placement agent for the deal, Rod-

man & Renshaw was paid about \$6 million for its role, according to papers filed with the U.S. Bankruptcy Court for the District of New Jersey in Newark.

Roughly three months later, and with Summit beginning to embark on its downward spiral, Clark was officially placed on the board.

"Because of my military background, I thought I might be useful to them," Clark says. "I thought that my experience in international affairs would prove useful."

Yet even with Clark onboard, Summit had attached itself to a debt structure that left little margin for error — all at a time in which its Ebitda had missed its 2006 target by \$7 million and while a perfect storm of factors was shaking the wheels off of Summit's operations.

As documents reveal, Summit had lost two of its large warehouse customers, was suffering from the painstaking efforts of getting SeaMaster afloat and, as largely a supplier to retail companies, was getting battered by the onset of the slowdown in the sector. The result?

"[Summit] defaults on its loans pretty much right out of the gate," one source with knowledge of the situation says.

Summit thus was forced almost immediately — in the spring and summer of 2007 — to go back and try to refinance the senior debt and gain incremental liquidity. It received a breather from its noteholders, which, together with management, pumped in an additional \$15 million. But although Summit had more cash, it also had more debt, and its time to turn things around was running out.

Summit continued to blow through its cash like water, and its results continued to disappoint. With the help of Raymond James & Associates Inc. and Alvarez & Marsal LLC, and eventually Gordian Group LLC, it feverishly explored all alternatives,

such as a sale or a restructuring of its senior and note debt.

"They were still in month to month defaults on their covenants with Fortress," the source says, noting that the convertible noteholders had the same covenants with "slight haircuts."

Fall 2007 rolled around, and the presidential race began to heat up. Amid Summit's floundering, Clark, who had made a short run for the Democratic nomination in 2004, announced on Sept. 15 that he would throw his support behind Clinton. His tenure at Summit, however, would last only three more months, as the company sank further and further into the abyss.

Clark announced his resignation from Summit on Dec. 14, about a month and a half before its Chapter 11 filing.

The reason seems a bit foggy.

"I was under pressure from having too many commitments," Clark says. "My ability to help the company was limited given what [it] was going through."

Indeed, if Clark had stayed aboard, the chairman post would have required lots of time, as daily meetings were proceeding on the part of a committee of board members trying to find an answer for Summit's problems.

A second source, however, believes that

Clark simply "didn't want to get his hands dirty" and be associated with a company going bankrupt as the campaign heated up.

"A high-profile guy like that? When a company goes bankrupt, they always resign from the board," that source says.

"Certain commitments got heavier, and new requirements emerged," Clark says. "And it's a constant process of the weighing of time requirements and contributions and the ability to be effective."

The resignation may, however, have also served other purposes. While sources were adamant that it wasn't a "fishy" occurrence, things likely would have become uncomfortable for Clark given the potential conflict between his roles at Summit and Rodman, which was the underwriter of the securities that had almost immediately been defaulted on.

Indeed, between the institutional relationships that Rodman had with some of the noteholders and the Summit securities it held, "it was probably becoming more difficult for [Clark]," the source explains.

What does all this mean for Summit? Luckily, it has been able to salvage itself in Chapter 11. Led by investment banker Gordian and counsel Lowenstein Sandler PC, Summit crafted an auction process that spurred its convertible noteholders to come

to the negotiating table. The company was then able to come to a complex restructuring deal with Fortress and its noteholders that has given it a second lease on life. But will this be the last that will be heard of the ill-fated 2006 financing?

"You wonder if someone is going to be looking into it [in terms of] post-confirmation," the second source says, mentioning the oft-carried-out practice of litigation following the confirmation of a plan. "Surely, just on its face, there's enough for someone to look into it."

Specifically, the source notes that money paid to Rodman could theoretically be considered a fraudulent conveyance under the Bankruptcy Code.

But perhaps fortunately, just who would do so? Summit's senior lenders were taken care of through its sale — a transaction valued at as much as \$75 million — as were the noteholders. (The senior lenders were paid off, while the noteholders accepted a 25% stake in the reorganized company.) And no official committee of unsecured creditors was formed during the case.

"Who is the beneficiary of it?" the source questions. "That's why I would sort of be shocked if someone did [pursue a fraudulent conveyance claim]."

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