

## MagCorp suit targets owner and advisers

Magnesium Corporation of America's (MagCorp) Ira Rennert and his deputies now have company in the legal and environmental quagmire at the magnesium plant on the edge of the Great Salt Lake.

The newly appointed trustee for bankrupt MagCorp, for years the nation's worst toxic polluter, has filed a lawsuit in U.S. Bankruptcy Court in New York alleging that Rennert and his professional advisers illegally concealed crucial information from investors. Along with Rennert and other executives in his business empire, the suit targets financial and legal advisers who helped MagCorp raise \$150 million through a 1996 bond offering for the company, which emerged from bankruptcy last year with a new name, U.S. Magnesium.

Trustee Lee E. Buchwald's suit seeks up to \$1.5 billion, asserting bondholders were never clued in about a longtime waste-dumping dispute between the company and environmental regulators – a situation that ultimately prompted the U.S. Environmental Protection Agency to file a \$902 million lawsuit against the company.

"If bondholders had known about the potential environmental liabilities, they never would have invested," said Leo Beus, a Tucson, Ariz., attorney representing MagCorp's trustee.

The lawsuit is an assault on Rennert and the holding companies comprised by his privately held industrial empire, as well as those who helped engineer a key transaction that pumped nearly \$89 million into bank accounts controlled by Rennert and his executives while leaving bondholders empty-handed.

The magnesium company, now the world's second-largest magnesium producer, operates a plant on 4,525 acres in Rowley, about 23 miles northwest of Grantsville in Tooele County. About 450 workers sift and boil minerals from Great Salt Lake brine for use as a metal strengthener in everything from soda cans to automobiles.

Rennert, who bought MagCorp in 1989, also owns the company that makes Humvees, used by the military and well-heeled civilians; an Ohio steel company; a Missouri lead smelter; and all but three of Britain's 16 "deep" coal mines. He is under fire in his home state of New York for building a \$100 million, 100,000-square-foot mansion on the shore of Long Island.

His license to deal in securities was revoked in 1964, although that never precluded his companies from raising money through the sale of bonds.

MagCorp's 1996 bond offering was vintage Rennert.

It mirrored past deals, which funneled millions into Rennert's holding companies while leaving just a pittance for the company for which the money was ostensibly raised.

Potential investors were told upfront it was a high-risk deal.

A prospectus explaining the bond offering noted that more than half the money raised would not go to MagCorp but to its parent company, the Renco Group, as dividends and management fees. They also were informed that MagCorp would still have \$81 million more in liabilities than in assets.

Company officials also reported MagCorp was prepared to sink as much as \$40 million into modernizing the Rowley plant, a move aimed at cutting energy costs and reducing toxic air-pollution emissions. Once done, the improvements helped MagCorp slide from the top of the nation's list of worst toxic polluters to No. 51.

What bondholders were never told, according to the trustee's lawsuit, was that MagCorp had been fighting with state and federal environmental regulators since 1992 about the disposal of wastes classified as "toxic".

MagCorp insisted that Congress exempted all of the waste under a special provision of the Resource Conservation and Recovery Act. But the Utah Department of Environmental Quality and the EPA held that most of the hazardous solids and liquids had to be carefully handled or the company would face fines of \$25,000 a day or more.

In January 2001, the EPA sued MagCorp in federal court. Fines for at least 16 violations totaled \$902 million. And the agency wove language into its lawsuit to make sure Rennert, along with holding companies owned almost entirely by Rennert, would be on the hook for complying with the toxic waste law, including any required cleanup.

The toxic waste that most concerned regulators included heavy metals, dioxins and HCBs – all deemed dangerous to human

health and the environment. MagCorp would dispose those wastes into unlined ditches outside the processing plant, including one employee's called the "Red River" because of its odd color.

In August 2001, MagCorp filed for Chapter 11 bankruptcy, blaming a slump in magnesium prices and unfair foreign competition. The company's balance sheet at the time of the bankruptcy showed assets of about \$100 million, while liabilities totaled \$195 million – not counting whatever a court might decide on the EPA lawsuit.

The following May, Rennert's holding company bought back MagCorp's assets at a bankruptcy auction for \$23 million. U.S. Magnesium's chain of command is essentially the same as it was when the company was MagCorp.

The bankruptcy effectively left MagCorp a shell company.

The trustee, however, believes that MagCorp's financial advisers on the 1996 bond deal also have some accountability and wants the professionals on the hook for losses suffered by the bondholders and other creditors, which might eventually include the EPA.

KPMG Peat Marwick LLP, which reportedly made \$6 million on the deal, allegedly did a shoddy job of auditing the books, the suit says.

Also named were the brokerage firm of Donaldson, Lufkin & Jenrette Securities Corp., which underwrote the bonds and allegedly was paid \$6 million for its work; the investment banking firm of Houlihan Lokey Howard & Zukin, which provided a solvency opinion; and Cadwalader, Wickersham & Taft LLP, which performed the legal services.

"At the time of the 1996 [bond] offering, defendants knew or, absent a reckless disregard for the truth, should have known, that MagCorp had for years disposed of toxic solid and liquid wastes at the Rowley facility in violation of state and federal law," the trustee lawsuit says.

Buchwald also says the Renco officials and their professional team should have built in a reserve to deal with any environmental problems and should have disclosed the financial risks of violating toxic waste laws.

The five Utah-based officials named in the suit are MagCorp President and CEO Michael H. Legge, Vice President of Operations Ron L. Thayer, Finance Vice President Todd R. Ogaard, Human Resources Vice President Lee R. Brown, and Vice President of Sales and Marketing Howard J. Kaplan.

Jon Goldberg, a New York attorney representing Rennert and his executive team, said the defendants were "disappointed" about the case. He added that the claims were "cut and pasted" from the EPA's suit, which company officials have asked Utah's U.S. District Court to dismiss.

"We believe the allegations are categorically false," he said. "And we are confident the court will view it the same way."

Pen Pendleton, spokesman for Credit Suisse which acquired DLJ in 2000, said the company's policy is to refrain from commenting on pending litigation. Houlihan Lokey could not be reached for comment. The law firm said it had not seen the case.

KPMG spokesman Alec Houston also had no comment. He said: "We have yet to see a copy of the suit."

Beus, the trustee's attorney, is known in Utah for his representation of the U.S. Bankruptcy Court trustee in the case against Bonneville Pacific, a scandal-plagued alternative energy company whose fate dominated Utah business headlines for years.

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