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BUILDING VALUE IN A DOWN ECONOMY
A PERSPECTIVE FROM THE TRENCHES . . .

By: Adam Rose
Shareholder
Schwabe, Williamson & Wyatt

Adam Rose is a shareholder in the business and corporate department at the law firm of Schwabe, Williamson & Wyatt (Portland, Oregon). Mr. Rose's practice emphasizes mergers and acquisitions, joint-venture relationships, venture capital transactions, business and succession planning, fiduciary duty advising, business ownership disputes, and real estate acquisitions and dispositions.

Even in a down market, there are plenty of ways to increase the value of your business and your business ownership interest. With a little bit of extra time on your hands, now may be the perfect time to explore creative ways to take advantage of the opportunities that won't exist tomorrow and to position your business for solid growth when the economy rebounds. This article outlines a few specific strategies for creating value.

Seize Opportunities by Understanding Your Negotiating Leverage in a Weak Economy:

A major change in economic conditions has the potential to dramatically alter a party's market position and negotiating leverage. By understanding your business's leverage and your personal leverage, you can take advantage of a weak economy to increase the value of your business and your personal interest in your business. Look for ways to capture today's discounted valuations and lower prices to create long-term value.

1. **Seek out Under valued Company Acquisition Targets.** With many businesses in financial distress and willing to consider exit-strategies at significant discounts to their prior market value, now is a great time to make a strategic acquisition (a) to expand your market share; (b) to acquire a complementary service line; or (c) to expand into a new geographic service area. When the economy rebounds and you're ready to sell your business, your newly-expanded business has increased revenues, a higher EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization), and that means a higher value. *But watch out and be thorough in your strategic planning, analysis, and due diligence. The opportunities may be great, but so are the risks associated with a misstep—now is not the time to cut corners in making a strategic acquisition.*

2. **Purchasing Distressed Assets.** A business considering or in bankruptcy may create an opportunity for another business. Consider purchasing key assets from a financially distressed competitor. *But, be careful about acquiring assets from a business on the verge of bankruptcy — bankruptcy trustees have broad powers and can avoid many contracts entered into by a distressed business in the period prior to filing a bankruptcy.*

3. **Commercial & Industrial Leases.** In many real estate markets, a weak economy means lower lease renewal rates. If you have a lease term expiring in the next year, now is a great time to begin strategizing on how to reduce your monthly lease obligation. A soft market for commercial and industrial space is a great time for a tenant to flex its negotiating muscle. Every dollar saved on your business expenses can have a multiplier effect on the value of your business. Now is a great time to lock in today's market rates on a long-term lease. *If you have additional leverage, ask for additional concessions such as adding a five- year extension option (or two) based on a multiple of today's lease rates and/or a right of first refusal on adjacent space. For added protection, record a memorandum of your lease in the real property records.*

4. **Lock in Today's Interest Rates on Long-Term Financing.** This strategy likely only works for those with strong balance sheets or assets with built-in equity. If your lender will permit it and it helps you achieve your long-term goals, why not lock in a favorable interest rate on a longer term loan? *If your balance sheet doesn't permit you to pursue this strategy alone, consider finding a guarantor or business partner to bolster your chances of locking in a longer term loan.*

5. **Vendor Contracts.** Has a key vendor's revenues taken a beating recently? Is a salesperson looking to bolster his or her year-end sales statistics? Why not offer to make a new purchase today in exchange for the vendor's agreement to lock in today's prices in a long-term fixed-price contract? *But, watch out for the risk that a supplier may go bankrupt—a contractual promise from a bankrupt company isn't worth much. It's a bad time to make a prepayment to a company at risk of bankruptcy.*

6. **Purchase a Hedge Against Future Supply Cost Increases.** Is your business heavily dependent on the price of coal, iron ore, steel, oil, copper, or other commodities that have recently dropped in value because of decreased global demand? Why not lock in future profits today by purchasing commodities futures contracts?

WARNING: THIS STRATEGY SHOULD ONLY BE PURSUED WITH EXPERT PROFESSIONAL GUIDANCE.

7. **Shareholder Agreements.** Many Shareholder Agreements and Operating Agreements contain mechanisms for determining the contractually-agreed upon value of a company when a key "triggering event" occurs, such as a death, disability, retirement, employment termination, etc. Be careful of valuations based on old assumptions as to a company's value that may no longer be accurate with today's changed economic conditions. *Many agreements provide a mechanism for the parties to establish a new value for their company without amending the entire agreement—now is a great time to review what valuation mechanism you have used in your company's agreements.*

8. **Employment Contracts.** In many industries, a soft economy means a soft labor market. Seize the moment by hiring talent that you wouldn't otherwise be able to recruit or afford. *Do you have additional*

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leverage? Why not protect valuable customer relationships and intellectual property with a carefully prepared non compete agreement?

9. **Consider Challenging your Real Estate's Assessed Value.** Does your company own the real estate associated with your business? Is the county tax assessor still claiming that your property is worth what it was worth two years ago and setting your annual property tax obligation accordingly? Consider property tax savings by contesting the assessed value of your real estate. *Note, however, this strategy may not result in any tax savings if the assessed value of your property has not previously kept pace with inflation or if local property tax laws have created a disconnect between the assessed value of your property and the value on which your property taxes are assessed.*

Protecting the Hard-Earned Value of Your Business:

A weak economy also creates additional threats and traps for the unwary.

1. **Breach of Fiduciary Duties.** With less money being earned and less money to be shared, economic downturns often result in disputes among owners. Poorly defined business and legal relationships can create problems — particularly when economic conditions change. *Now is a good time to be aware of business partners, officers, and directors of your company and how they are handling corporate opportunities. Now is also a good time to revisit shareholder agreements and operating agreements that define your relationships with your business partners. Pay specific attention to specialized fiduciary duty standards that may be built into your company's legal documentation.*

2. **Terminating Employees.** Employees who are terminated in a tight job market are less likely to be able to quickly secure another job. Without a replacement job, employees are more likely to bring a claim against their former employer alleging some form of wrongful action. *Careful documentation and human resource management—particularly for employees who are about to be terminated—can save substantial litigation costs incurred in defending against a suit brought by a disgruntled employee.*

Conclusion:

In our current down economy, many business owners are sitting on the sidelines and wringing their hands in disbelief. Rather than wondering how to use their time productively, now is the time to look for ways to seize market openings and protect against specific threats that are posed by the weakened economy. With a little bit of planning and effort, there are rewards and opportunities waiting for business owners willing to boldly face the future—even in these tough times.

Schwabe, Williamson & Wyatt, 1211 SW Fifth Avenue, Suite 1900, Portland, OR 97204