From Toxic Assets to Toxic Releases

How Sun Capital Partners' Investment Strategies Destroy Economic Value, Undermine Worker Safety and Destabilize Communities

CAPITAL STRATEGIES DEPARTMENT
The International Brotherhood of Teamsters

A Case Study of Emerald Performance Materials, LLC
and its Negative Impact on Sun Capital Investors
Preliminary Report X September 2011

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1. Executive Summary

Concerns About Sun Capital Partners, Inc. Performance

Institutional investors who have invested in Sun Capital Partners, Inc. or are considering doing so in the future should take in account the following concerns:

1. Historical financial performance metrics may fail to give proper information to investors about the future performance of Sun Capital, given the recent rise in bankruptcies and continuing distress within Sun Capital's portfolio.

2. Social performance at Sun Capital's portfolio companies reveals business strategies often not consistent with the social principles espoused by the United Nations Global Compact[i].

This report is broken down into two parts. Part one provides a general introduction to our concerns with Sun Capital Partners' overall investment strategies, its performance and whether it satisfies generally accepted investment principles that can sustain the viability of portfolio companies as well as their impact on society and the environment. Part two provides a detailed analysis of the ongoing crisis in industrial relations, worker safety, and its community ramifications at Emerald Performance Materials, LLC, a chemicals company owned by Sun Capital Partners, with several plants in the USA, Europe and Latin America.

The case of Emerald Performance Materials, a Sun Capital portfolio chemicals manufacturer, highlights the threat posed to the environmental health and safety of workers and communities that arises from Sun Capital's apparent investment approach. Sun Capital's approach, which incorporates high leverage and a drive to cut costs to unsustainable levels, undermines operations, demonstrates a clear disregard for workers' and communities' well-being, and creates the potential accumulation of undisclosed liabilities to investors that arise from mismanagement.

The crisis at Emerald has taken its most acute form in Henry, Illinois (USA), where management locked out 42 workers on March 27, 2011, leaving them with no jobs and no health insurance for nearly six months. The workforce was locked out after they rejected daunting and unsustainable cuts coupled with continued degradation of health and safety conditions, including a 30-percent cut in average pay, slashed vacation and overtime pay, outsourcing of the quality control lab, and elimination of the health and safety operator position.

The Henry plant, surrounded by farmland and the slow-moving Illinois River, is less than two miles away from a grade school, senior citizens' homes, residences and a high school. The Henry plant is currently being operated by less skilled replacement workers. There have been nine reported accidental releases of toxic gases, including hydrogen sulfide and carbon disulfide, since the lockout began at the plant, where environmental health and safety was already a contentious issue. Under Sun Capital ownership, the company has been repeatedly cited for violating the federal Clean Water Act with liquid discharges, and the plant has already been fined for not reporting toxic gas emissions to local and state authorities in 2009.

Conclusions and Recommendations

Institutional investors should be wary of investing with Sun Capital Partners due to the social and environmental risks highlighted in this report and should closely review the overall financial risk-orientation of Sun Capital's portfolio.

We expect institutional investors that already have ties to Sun Capital to reexamine their exposure and take an active role in ensuring that their money is appropriately deployed in accordance with their investment mandates.

In the case of Emerald Performance Materials, a Sun Capital portfolio chemicals manufacturer, there is cause for alarm due to terrible health and safety conditions of its workers, and the local community's well-being.

Sustainability of the overall investment strategy at Emerald is in doubt as a relentless cost-cutting drive destabilizes normal operations and health and safety at Emerald Performance's plant in Henry, Illinois and other facilities. These risks can be mitigated by negotiating a fair settlement with the Henry workers, investing in and implementing improved health and safety standards and practices.

2. Sun Capital Partners Toxic Investment Strategies

The Great Recession Disrupts Sun Capital's Investment Strategy

Florida-based Sun Capital Partners likes to present itself as a turnaround-leveraged buyout shop that offers its limited partners attractive historical rates of return, taking over small and mid-cap distressed companies, and reselling them later at a huge return on equity[ii]. "We used all the same tools, all the same plays, but on steroids" said co-CEO Marc Leder in comparing Sun to other private equity companies.[iii]

Future financial performance at the private equity firm, however, may fail to live up to its past record, given the sharp rise in bankruptcies and distress within Sun Capital's portfolio companies since 2007. Many of these problems have been concentrated in the 2005 $1.5 billion Sun Capital Partners IV LP fund[iv].

Sun Capital was founded in 1995, enjoying the upside of a long period of low interest rates which both promoted financial asset-booms and were deployed by monetary authorities to deal with the ensuing busts. Workers' incomes stagnated over the same period, yet the relative buoyancy of consumer demand in the 1990s and into the 2000s was maintained by expanding debt. In 2007, at the peak of the financial asset bubble, Sun Capital raised $6 billion for Sun Capital Partners V LP fund, four times as much as its 2005 predecessor[v].

Many of Sun Capital's mid-cap/small-cap leveraged investments are consumer-driven, pro-cyclical companies that were already struggling before the 'Great Recession.' Sun Capital's current portfolio now has to deal with significantly different structural macroeconomic conditions than in its early years. As such, many of its portfolio companies have found themselves in an extremely vulnerable position, with falling consumer demand and excessively leveraged balance sheets.

In 2009, reacting to the deep contraction in the real economy and brewing troubles in its portfolio, Sun Capital Co-CEOs Marc Leder and Rodger Krouse sharply cut staff at the investment firm itself, and mandated 25-percent cost reductions across the board at Sun's portfolio companies, while resisting cutting fees to investors.[vi] Sun Capital was also forced to come up with several liquidity injections into its portfolio companies, diluting returns, and, as a consequence, has faced limited partner pressure to reduce its management fees and other costs.[vii]

"We took early, aggressive action, cutting costs to the bone," which started in the last quarter of 2008, according to Leder. According to press reports 'Sun Capital insisted portfolio company managements not come below that level, no matter their concerns.'[viii]

Cutting costs can keep companies afloat, but without due diligence, excessive cost cutting can also destabilize operations and sustainability by short-changing essential business functions. According to one investor, commenting on the layoffs at Sun Capital itself, "There was no rhyme or reason for this except the economic model was broken by the greed of the founders and supreme arrogance that the high-volume, high-fee environment could last forever."[ix]

After cutting the headcount by 50 out of 200 people and decimating its New York office in 2009[x], Sun Capital is now managing a large portfolio, and a much larger Fund V, with a workforce that is still 20 percent below pre-crisis levels.[xi]

Rising Bankruptcies within Sun's Portfolio

Sixteen of Sun Capital's portfolio companies filed for bankruptcy from the start of 2008 to January 2010[xii], and another three filed between January 2010 to September 2011[xiii], including clothes retailer Anchor Blue, which was acquired in 2003, went bankrupt in 2009, was re-acquired by Sun Capital out of bankruptcy in 2009 and has once again gone bankrupt a year and a half later, in January 2011.[xiv]

Sun's portfolio troubles continue: This July, Real Mex, which controls El Torito and Chevys Fresh Mex restaurants, was unable to make a debt payment in time, and Sun Capital had to cover the shortfall. The heavily indebted Mexican food chain has to execute a turnaround plan by the end of October amidst falling sales and large losses.[xv]

While bankruptcies do not always mean Sun Capital's investors are losing money, they almost always involve real human pain and economic dislocation for workers, communities and other businesses.

Investments with Toxic Consequences

A review of Sun Capital Partners' social performance at its portfolio companies reveals that its business strategies are often not consistent with the social principles espoused by the United Nations Global Compact.[xvi] Sun's aggressive financial engineering can destabilize companies that could otherwise be saved. Sun's practices stand in clear contrast with the principles of sustainable investment, and can hurt limited partners' returns.

Labor rights violations, asset stripping, job losses, and health and safety crises add to the ledger of human misery at Sun Capital's portfolio companies. Examples of this include:

Mervyn's: Assets Stripped; 30,000 Jobs Destroyed

Sun Capital, Cerberus and Lubert-Adler acquired Mervyn's department stores in 2004 for $1.2 billion through a leveraged buyout with $400 million of their own equity, saddling the company with $800 million in debt. Sun and its partners then proceeded to strip the 59-year-old retail chain of its real estate assets. The resulting sale-leaseback agreement nearly doubled Mervyn's rental costs, but kept the proceeds from land and lease sales for Sun and its partners.

This arrangement proved unsustainable for the company, ultimately destroying 30,000 jobs in just four years. In October 2008 the 18,000 employees that had survived ongoing cuts were terminated without notice or severance pay and in many cases without weeks of accrued vacation pay, as Sun and its partners liquidated Mervyn's.[xvii] Workers filed for class-action status, accusing the company of violating their rights under the Worker Adjustment and Retraining Notification (WARN) Act. The WARN Act requires at least 60 days advance written notice of the employee terminations and continue paying certain wages, salary and benefits during the notice period.[xviii]

Creditors were also left in the lurch; as one of the creditors stated to the press, "The Sun people acted like the classic short-term oriented Wall Street guys: 'I want to get my money and run,'" Approached by creditors, CEO John Goodman had Mervyn's file suit against its private equity controllers, in a desperate attempt to save the retailer from liquidation, stating that: "By separating Mervyn's real estate assets from its retail operations, the private equity players made sure that any residual value or upside in the real estate assets were reserved for themselves and not for Mervyn's." According to documents filed, "The 2004 transaction is a transaction that ultimately led to Mervyn's bankruptcy and is a fraudulent transfer that cannot withstand scrutiny."[xix]

Jevic Transportation Workers Left Stranded, Sick and Dying

In May 2008, trucking company Jevic Transportation ceased operations, abruptly fired about 1,200 workers and filed for Chapter 11 bankruptcy. Sun Capital Partners had acquired Jevic in July 2006.[xx] Truck drivers were left on the road with no way to get home and, for some, their final check bounced. Health insurance coverage was stopped almost immediately for the drivers and their families. One driver had to stop chemotherapy treatment for cancer and died less than three months later.[xxi]

Former Jevic workers filed a class action lawsuit against Jevic Transportation and its parent company, Sun Capital Partners, alleging violations of the Worker Adjustment and Retraining Notification (WARN) Act.[xxii]

British Homeform Workers, Suppliers, Customers Left High and Dry

In July 2011, just like Mervyn's and Jevics workers, most Homeform employees in the UK were laid off without notice, losing up to six weeks of accrued pay and other benefits owed to them. "We haven't been made officially redundant, so we can't even claim benefits," a worker said at a protest.[xxiii] Sun Capital bought the British kitchen and bath group Homeform in 2007, then refused to give it any fresh funding as the economy soured, and instead walked away with Sharps, the most profitable part of the group free of debt under a "pre-packaged" bankruptcy, buying it from itself.[xxiv]

Big 10 Tires: Asset Leaseback Contributes to Bankruptcy and Store Closures

The real estate asset sale-leaseback deal that killed Mervyn's also sunk Big 10 Tires, a tire service chain acquired by Sun Capital in November 2006,[xxv] which went into bankruptcy in April 2009, citing rent that was "above market rates" as a contributing factor.

Sun Capital had arranged a sale-leaseback transaction for 70 percent of the company's outlets after taking control.[xxvi] Unable to renegotiate leases, and seeing four potential buyers spooked by the "unfavorable lease terms," Big 10 filed for bankruptcy.[xxvii]

Sun Capital, also a large creditor to Big 10, provided debtor-in-possession financing, and worked to maintain control of Big 10, effectively selling it to itself. Sun Capital's affiliate "New Big 10" served as a stalking-horse bidder for Big 10's assets under Section 363 of the U.S. Bankruptcy Code; the sale was approved on June 26, 2009.[xxviii] This appears to be a recurrent strategy, where

Sun Capital sits on both the creditor and the ownership side, gaming the bankruptcy process. A shrunken Big 10 was eventually sold to Pep Boys in May 2011 after closing 20 locations.

Marsh Supermarkets: Violation of Fundamental Worker Rights

Problems at Sun also extend beyond those Sun Capital portfolio companies that are veering into bankruptcy. In February 2010, Marsh supermarkets, acquired by Sun Capital in 2006, was charged by the U.S. National Labor Relations Board with violating federal labor law by threatening, intimidating, interrogating and coercing workers to discourage them from forming a union; two employees were fired for union activity. Workers at Marsh started their organizing effort with Local 700 of the UFCW following the deterioration in working conditions under Sun Capital's ownership.[xxix] Marsh's 100 stores remain nonunion.

Hollowing Out Local Economy in Ontario

Furthermore, acquisitions by Sun Capital and its affiliates are not a promise of renewed economic vitality for newly acquired facilities and their communities. London, Ontario has had the unenviable record of having seen Sun Capital buying three companies and closing them down in the space of four years. In 2007 it bought cookie and candy maker McCormicks and shut it down, refusing to pay workers what was owed to them in terms of severance, vacation pay and pensions. Workers fought back, winning partial reparation after a two-year-long legal fight. In 2008 a Sun Capital affiliate bought H. Jones Packaging and shut it down, refusing to pay severance, eventually reaching a deal for half the amount. In June 2011 Sun-controlled Specialized Packaging Group in London said it would shut down by year-end, cutting 189 jobs[xxx]. The union representing workers at the facility complains it never had an opportunity to address concerns about cost savings through negotiations[xxxi].

3. Unsustainable: The Case of Emerald Performance Materials

Sun Capital's high-risk investment approach is reflected in the case of chemicals manufacturer Emeralds Performance Materials where the drive to cut costs has resulted in a health and safety crisis, adverse industrial and community relations and potentially growing liabilities.

We will review: 1. how Sun Capital put Emerald together, and highlight concerns related to its capital structure, 2. the ongoing industrial safety crisis at Emerald's Henry, Illinois facility, and 3. how underinvestment in industrial safety is a chronic affliction across Emerald facilities.

Leveraged Buyout and Growth by Acquisition

Emerald Performance Materials makes additives, dyes, fine chemicals, silicones and specialty polymers. Emerald's products are used in tires, automobiles, aerospace, food, beverages, cosmetics, toothpaste, household products, paint, sports gear and other applications.

The company operates through seven business groups, including Polymer Additives (antioxidants and accelerators for rubber and tire manufacturers, fuel lubricants), CVC Thermoset Specialties (epoxy resins), Carolina Chemical (resins for paper and textiles makers), Hilton Davis (dye and color additives), Kalama Chemical (ingredients for food and beverage preservatives, as well as pharmaceutical additives), Foam Control (for food and industrial applications) and Specialty Nitrile.[xxxii]

In May 2006, Sun Capital Partners formed Emerald Performance Materials after acquiring the business from Lubrizol[xxxiii], and has pursued growth at the company through add-on deals, including the acquisition of a Dutch plant in December 2010,[xxxiv] which was financed by scandal-ridden[xxxv] hedge fund Frontpoint.[xxxvi]

Hedge funds are lightly regulated speculative vehicles and are likely to charge interest rates that are typically higher than banks, along with other onerous terms that can, in some instances, destabilize the borrower.[xxxvii] Recourse to hedge-fund financing suggests Emerald may have been unable to borrow funds from traditional sources, such as regional banks and specialty lenders like CIT Group.[xxxviii]

Exact terms of the transactions were not publicly disclosed, and there has been no transparency with North American unions representing workers at Emerald regarding the overall capital structure, in the face of aggressive corporate demands for concessions in contracts.

Emerald Performance Materials belongs to Sun Capital Fund IV, which has had a large number of bankruptcies.[xxxix] It is likely that Sun Capital is pursuing an exit strategy at this point in time, in the context of overall difficult market conditions.

The Industrial Safety Crisis in Henry, Illinois Spurs Unionization in 2007

The Polymer Additives segment operates a facility in Henry, Illinois that manufactures Emerald Polymer Cure-rite Accelerators and Antioxidants, used in tire manufacturing.

Henry is a plant where a number of dangerous chemicals are handled, including sulfuric acid, formaldehyde, acetonitrile (aka methyl cyanide), sodium hydrosulfide, caustic soda, carbon sulfide and hydrogen sulfide, all of which are toxic and, if mishandled, can pose a threat to workers and the surrounding community[xl].

About half of the workforce has been there for more than 20 years. Workers unionized about five years ago when Sun Capital's management began taking "what we believe to be dangerous cost cutting measures," according to the Brett Wiedman, chief union steward and 23-year employee at the Henry plant. "That's when we turned to the Teamsters for representation." The newly organized workers bargained a collective agreement which expired in early 2011.

New Round of Cost Cutting Leads to Lockout in 2011

On March 21, 2011, Sun Capital's Emerald management brought in replacement workers and locked out the 42 hourly employees of the Henry plant after they rejected a contract proposal that included drastic cost-cutting demands: a 30-percent cut in average pay, slashed vacation and overtime pay, outsourcing the quality control lab, and elimination of the health and safety operator position.

Prior to the lockout, Emerald's Henry employees had already experienced forced overtime, the curtailment of necessary safety training, and decrease in personnel under Sun Capital's management.

On September 21, they will have spent six months without working, their company-provided health care insurance having run out long ago. Their families are living with uncertainty and financial hardship.

Emerald is currently operating the plant with managers pulled from other locations and temporary workers whose only hands-on training at the plant involved "shadowing" skilled employees for two weeks prior to the lockout. Many of Emerald's longtime employees locked out at the Henry plant spent a year or more to familiarize themselves with the exacting processes and quality control standards in chemical manufacturing and have decades of experience.

A Drastic Rise in Toxic Emissions Following the Lockout

From when the lockout began in March to September 1, 2011, there have been five accidental releases into the air of hydrogen sulfide (April 6 and 9, May 20, June 4 and August 20) and three of carbon disulfide (April 6 and 9 and August 20) reported to the National Response Center (NRC) by Emerald. On July 20, 2011, an outside caller reported the release into the air of an unidentified substance to the federal agency.[xli]

The last accidental release reported to authorities prior to the lockout had been on July 25, 2009, a 20-month interval. The Environmental Protection Agency (EPA) fined Emerald $158,000 for failing to inform authorities in a timely manner of this accident, which released carbon disulfide and hydrogen sulfide in excess of acceptable limits into the air.[xlii]

Both substances are extremely hazardous and toxic. In high concentrations, carbon sulfide can cause permanent nervous system damage, while hydrogen sulfide is flammable and can also affect the nervous system; in small concentrations they remain dangerous to the nervous system.[xliii]

EPA stated that the toxic release was likely to affect Marshall County and Illinois, yet it took Emerald management more than 24 hours to notify state-level authorities and more than two months to notify county emergency authorities.[xliv]

In addition, since being acquired by Sun Capital, Emerald's water discharges have repeatedly been in non-compliance with the federal Clean Water Act. Just 10 days after the lockout, the State of Illinois issued yet another notice to Emerald's management under the Clean Water Act.[xlv]

Community Impact and Reaction

A grade school, the high school, senior citizens' homes, and many of the workers own dwellings are but a short distance away from the Henry plant, which is surrounded by fields and sits alongside the Illinois River. Nearby residents complained to the press that they have smelled gas releases more than once. "Especially if the wind is in the right direction, it might come into town," said Don Allison to NBC reporter Ashlee McNamee. "The breathing part of it, it is not a good situation."[xlvi]

The surrounding community has been protesting Sun Capital's mismanagement of Henry, demanding an end to the lockout and adequate investment to ensure a better environmental and safety record.[xlvii] Community protests have been joined by local and national politicians[xlviii], environmentalists from the Sierra Club Illinois chapter and the Blue Green Alliance, health and safety experts from the Chicago Area Committee on Safety and Health, representatives of Emerald's other unions and the Secretary of the International Federation of Chemical, Energy, Mine and General Workers' Union.

Lockout Results in Operational Dysfunction

Sun Capital's management attempt to force severe cost-cutting through intimidation of the lockout has clearly resulted in operational dysfunction.

Industrial accidents require the shutdown of a chemical process reducing overall productivity[xlix]. In addition, unqualified replacement workers likely pose a threat to themselves[l].

The hiring of replacement workers and additional security personnel from out of town, along with the pulling in of managers from other Emerald locations is costly, since they need to be lodged and fed at Emerald's expense. Finally, the use of managers from other Emerald locations may potentially reduce efficiency at other plants.

Local union members have manned a picket line since their lockout, and have been observing weekly traffic of railcars and trucks; judging from transportation flow, in their opinion, production has often been below capacity.

A Dangerous Decline in Safety Under Sun Capital Prior to the Lockout

The lockout at Emerald lays bare the problems with Sun Capital's investment strategy, but ending the lockout alone will not resolve the health and safety crisis at the Henry plant.

"Safety used to be number one," said Chief Union Steward Brett Wiedman, echoed by many of his colleagues. Indeed shortly after Sun Capital's takeover, Emerald management could boast that on October 30, 2006, the Henry facility had reached 15 years without a lost-time injury, and was launching a multi-million dollar investment into a new process that would allow it to substantially decrease sulfur dioxide emissions[li]. The honeymoon was short.

Under Sun Capital there has been a deep erosion of safety standards and practices at the Henry plant. According to workers, hazardous materials (Haz-Mat) training has not taken place in almost two years; fire safety training has been dialed down and drills with the Henry Fire Department have stopped. "Over the last few years, under Sun Capital's management, we have not had much training at all. With the toxic and in some cases explosive chemicals we handle, this is very serious," Wiedman said.[lii]

Henry workers overwhelmingly report that, since Sun Capital took over, modernization and maintenance of plant equipment has been inadequate; that replacement parts are often not in stock and that they have to work with faulty sensors, broken gauges, valves and filters.

In this context, the corporate demand to eliminate the health and safety operator[liii] position and reassign its functions to a number of management figures, whose main responsibility is to achieve production targets, is obviously misguided as it creates a conflict of interest, and it diffuses responsibility for a crucial operating function.

NaHS Unit: Built Under Sun Capital, Unsafe from the Start

The one new process into which Sun Capital's Emerald invested money is the sodium hydrosulfide (NaHS) unit, which allows the Henry plant to recover waste from existing product lines and turn it into a sellable commodity, more commonly referred to as "NASH":[liv] In 2006 the company had touted it as a safety improvement.[lv]

Henry production workers describe the NaHS unit as the most dangerous part of the plant today. Using inexperienced replacement workers in such a setting raises the level of risk and accident to these workers and the surrounding community further (see Appendix 3: The Sodium Hydrosulfide (NaSH) Process and Its Dangers).

Excess Overtime Increases Risks of Accidents

The production workers at Emerald's Henry facility report having worked an average of 500-800 hours of mandatory overtime over the last few years, which adds up to working the equivalent of more than 15 months every year[lvi], even as the overall headcount was reduced. Data obtained by Teamsters Local 627 during bargaining confirms that for the first 51 weeks of 2010, overtime had peaks of 983 hours, with an average overtime load of 468 hours per employee, and no one falling below 217 hours.

Exhaustion from excess work itself is a leading cause of accidents across industries, all the more important to reduce the overtime load and increase staffing at Emerald Performance. Eight-hundred hours of mandatory overtime is a number that should raise alarm.

There is strong evidence in medical literature that ties excess overtime and extended working hours to fatigue, accidents and injuries, cardiovascular disease and possible psychological side effects. This is a material risk for the employer, since accidents and sickness can disrupt operations, increase turnover, and increase health care and workers' compensation costs[lvii].

There is a wider community impact on family life, tied to dysfunction of marriages, problems with care of elders, child care and child development in the absence of a parent, often entailing additional costs; fatigue can also lead to increased traffic accidents, which is a safety problem for the community at large.

OSHA in the Plant

The Occupational Safety and Health Administration (OSHA) has been investigating safety failures at the Henry facility, having undertaken four visits and extensive walkthroughs between July and August 2011. A final assessment is pending. The union expects several fines and items requiring company action to emerge from this governmental inquiry.

Health and Safety Issues Are Pervasive Across Emerald

While Henry is the current flashpoint and the most acute health and safety crisis at Sun Capitals' Emerald Performance Materials, other shop floors in North America represented by the Emerald Unions Council[lviii] report inadequate attention to health and safety, aggravated by chronic understaffing and underinvestment.

The Emerald Unions Council stated on June 8:

> "Before being acquired, we had worked decades to assure our plants were among the safest, most productive, with the highest quality for our customers. Since being acquired by Sun Capital Partners private equity group things deteriorated rapidly. We want Emerald to succeed, our livelihoods depend on it; but we believe that Sun Capital's current slash and burn approach is destroying our company and our jobs."

Preliminary results of Emerald Unions Council's Health and Safety Survey administered across several plants in North America show understaffing is a chronic problem. In the words of one worker, "They keep upping production and cutting men." In some locations management has been refusing to train-up newer employees to keep them on a low rate.

Across plants, members complain of "lack of maintenance employees to fix projects in a timely manner" and express concern that this may be "putting employees in danger." Many also complain of encountering broken gauges, valves, alarms and sensors and that the primary equipment is not properly maintained.

These are signs that underinvestment is pervasive across Emerald and cost-cutting directed by Sun Capital is eating into essential functions intended to protect the viability and performance of the company, exposing it to potential liabilities arising from industrial accidents, injury and chronic health and safety problems.

4. Conclusions and Recommendations

Institutional investors should be wary of investing with Sun Capital Partners due to the social and environmental risks highlighted in this report and the overall financial risk-orientation of Sun Capital's portfolio.

We expect institutional investors that already have ties to Sun Capital to review their exposure and take an active role in ensuring that their money is appropriately deployed in accordance with their investment mandates.

As we have shown:

> Historical financial performance metrics may fail to give proper information to investors about the future performance of Sun Capital, given the recent rise in bankruptcies and distress within Sun Capital's portfolio.
>
> Social performance at Sun Capital's portfolio companies reveals business strategies often not consistent with the social principles espoused by the United Nations Global Compact. Labor rights violations, asset stripping, job losses, and health and safety crises add to the ledger of human misery at Sun Capital's portfolio companies.

Sun's aggressive financial engineering can destabilize companies that could otherwise be saved. Sun's practices stand in clear contrast with the principles of sustainable investment, and can hurt limited partners' returns.

In the case of Emerald Performance Materials, a Sun Capital portfolio chemicals manufacturer, there is cause for alarm due to terrible health and safety conditions of its workers, and the local community's well-being. This threat needs to stop, and adequate safeguards and investment into health and safety have to be restored.

Sustainability of the overall investment strategy at Emerald is in doubt as a relentless cost-cutting drive destabilizes normal operations and health and safety at Emerald Performance's plant in Henry and other facilities.

Appendix 1: Sun Capital at a Glance[lix]

Sun Capital Partners specializes in leveraged buyouts and equity and debt investments. Rodger R. Krouse and Marc J. Leder are Co-Chief Executive Officers at Sun Capital Partners, Inc. Krouse and Leder co-founded the firm in 1995.

Sun Capital Partners, Inc. is based in Boca Raton, Florida and has offices in Boca Raton, New York and Los Angeles; its overseas affiliates are Sun European Partners, LLP with offices in London, Paris (Sun European Partners, SAS), Frankfurt (Sun European Partners, GmbH) and Luxembourg (Neuheim Lux Group Holdings V S.à r.l), and Sun Capital Partners Sourcing, LLC with offices in Shanghai and Shenzen.

Sun Capital raises its money mainly from pension funds and university endowments, such as the State Universities Retirement System of Illinois, Massachusetts Institute of Technology Endowment, New Mexico Public Employees' Retirement Association, New York State Teachers' Retirement System, Oklahoma Police Pension & Retirement System, Notre Dame Endowment, University of North Carolina at Chapel Hill Endowment, University of Virginia Investment Management Company (UVIMCO) and Yale University Endowments amongst them.

Sun Capital focuses on small-cap to mid-cap companies with $50 million to $5 billion in sales across a wide variety of industries. Acquisition and investment targets have included private companies, divisions of larger companies, and publicly-traded companies, often entities in distress. Sun Capital affiliates have also acquired and invested in businesses through bank workout groups, Chapter 11 proceedings and from other private investment firms.

Sun Capital owns more than 70 companies, including the restaurant and supermarket companies Souplantation, Sweet Tomatoes, Boston Market, Fazoli's Restaurant, Friendly's, Real Mex Restaurants, Smokey Bones Barbeque and Marsh Supermarkets; the clothing retailers Hanna Anderson, Lee Cooper, The Limited, ShopKo; and other specialty companies such as the SCOOTER store.

Sun Capital advertises itself as being "uniquely positioned to pursue leveraged buyouts, and make investments in underperformers, turnarounds, and special situations." According to Sun Capital, "Typically, investments by Sun Capital affiliates have leading market positions in their industry, long-term competitive advantages, and significant barriers to entry."

Appendix 2: Sun Capital's Portfolio Bankruptcies

Year	Company	Sun Acquisition Date	Bankruptcy	Details
2011	Anchor Blue[lx]	Acquired in 2003 and acquired again after 2009 bankruptcy	2009 and Jan-2011	January 2011, filed for second bankruptcy in two years, liquidating in summer of 2011
2011	Berkline/BenchCraft[lxi]	May-07	May-11	Filed for bankruptcy in May 2011
2011	Homeform Group[lxii]	Apr-07	Jun-11	Into administration in June 2011-'Prepackaged' sale of division back to Sun Capital
2011	Big 10 Tires[lxiii]	11/1/2006 and again after 2009	Apr-09	Filed Chapter 11 bankruptcy in 2009; Reacquired at auction, then sold in May 2011
2010	Lee Cooper[lxiv]	Jun-05		Filed bankruptcy in France in 2010
2009	Mark IV Industries[lxv]	Jan-08	Apr-09	Filed for Chapter 11 bankruptcy in 2009
2009	Von Weise Inc.[lxvi]	Dec-07	Feb-09	Filed Chapter 7 in January 2009
2009	Fluid Routing Solutions[lxvii]	May-07	Feb-09	Filed Chapter 11 in February 2009
2009	Indalex Holdings Finance Inc[lxviii]	Feb-06	Apr-09	Filed bankruptcy in April 2009
2009	Drug Fair[lxix]	Nov-05	Mar-09	Filed for bankruptcy in March 2009
2008	Sharper Image[lxx]	May-07	Feb-08	Sun Capital purchased with Windsong Brands. Sharper Image filed for bankruptcy February 2008
2008	Jevic Transportation[lxxi]	Jul-06	May-08	Filed for Chapter 11 bankruptcy in May 2008
2008	Lillian Vernon Corp[lxxii]	May-06	Feb-08	Filed for bankruptcy February 2008
2008	Mervyn's[lxxiii]	Aug-04	Jul-08	Sun Capital purchased with Cerberus Capital and Lubert-Adler. Mervyn's filed for bankruptcy in July 2008
2008	Wickes Furniture Co.[lxxiv]	Mar-04	Feb-08	Filed for bankruptcy February 2008
2007	Rag Shops Inc[lxxv]	Oct-04	May-07	Filed for Chapter 11 bankruptcy in May 2007
2006	Musicland Holding Corp[lxxvi]	Jun-03	Jan-06	Filed for Chapter 11 bankruptcy in January 2006
2006	Bachrach[lxxvii]	Feb-05	Jun-06	Filed for Chapter 11 bankruptcy in June 2006

These are the bankruptcy filings we were able to identify as of 9/1/2011. Sun Capital Securities Fund also co-invested alongside Cerberus into GMAC and Chrysler[lxxviii], which both had to be rescued by the U.S. federal government in 2009.[lxxix]

Appendix 3: The Sodium Hydrosulfide (NaHS) Process and Its Dangers

Prior to the building of the NaHS unit at Emerald's Henry facility circa 2007, waste from other production processes resulted in the flaring of carbon disulfide and hydrogen sulfide on a regular basis. These highly toxic gases were burned upon exit from a smokestack, releasing sulfur dioxide into the atmosphere.[lxxx] The company claims to have reduced sulfur dioxide emissions by 60 percent[lxxxi].NaHS is inherently a dangerous process, all the more so when improperly engineered.

According to Teamsters Local 627 members who work in the NaHS unit, there are still no full operating specifications available for the NaHS process, now more than four years into operation. The process is still run essentially only by the operator's knowledge. As of the date of the lockout (3/21/2011), the NaHS process also lacked adequate fire alarms, gas alarms or any fire suppression system. This is in the section of the plant where a toxic gas incident is most likely to occur.

Regarding NaHS process and its dangers, a U.S. Chemical Safety Board bulletin released on July 14, 2004 said[lxxxii]:

> CSB investigators uncovered 45 accidents associated with sodium hydrosulfide that have caused 32 deaths and 176 injuries since 1971. They noted, however, that accident data are incomplete and there may have been additional deaths and injuries attributable to the chemical. The Safety Bulletin is an outgrowth of the Board's investigation of a January 2002 accident involving sodium hydrosulfide that caused two deaths and eight injuries at an Alabama paper mill.
>
> Sodium hydrosulfide, known by its chemical symbol NaHS (often pronounced "nash") is used in the leather tanning, pulp and paper, chemical, dye, and mineral extraction industries. NaHS is used as a pure solid (flake) or more commonly as a solution in water.
>
> The Safety Bulletin points out that when NaHS is inadvertently combined with acid materials, deadly hydrogen sulfide gas is produced. Such inadvertent mixing can occur in a chemical process sewer, for example. Hydrogen sulfide gas has the characteristic smell of rotten eggs. The bulletin notes that hydrogen sulfide is insidious, because even moderate exposures impair a human's ability to smell the gas by deadening the nerves in the nose. Health effects from inhalation range from shortness of breath and severe lung damage at lower concentrations (50-150 parts per million in air) to rapid unconsciousness and death at higher levels (800-1,000 parts per million).
>
> The Bulletin describes several common themes in NaHS incidents: spills, leaks, or inadvertent mixing that bring NaHS solutions into contact with acid; **engineering controls that are inadequate, including lack of detection devices or ventilation systems; and inappropriate emergency response, where workers and responders may rush to help a fallen worker before sampling the air or donning protective gear.**

Sources and Acknowledgments

This case study is backed by extensive one-on-one interviews with workers at the Henry, Illinois Emerald plant, government sources detailing regulatory violations, union interaction with the company during nearly six months of a lockout, reports and surveys across Emerald's North American plants, made possible by the formation of Emerald Unions Council, comprising local unions from the Teamsters, International Chemical Workers Union Council-UFCW, the United Steelworkers of America in the USA, and FNV Bondgenoten, which represents a plant in Rotterdam, the Netherlands.

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[liii] As per Company's proposal voted down by Henry employees in March, 2011.

[liv] The NaHS unit combines Hydrogen Sulfide and Caustic Soda to generate NaHS and Water. NaHS produced in Henry, IL is in liquid form, with water molecules mixed in, it is then fed back into the process, or sold to third parties, loaded onto 30,000 gallon storage tanks.
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