



News & Views

Construction Materials Industry Investment Banking

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The Big Two: Price & Indemnity

In completing the sale of a company, there are numerous issues and details to be negotiated between sellers and buyer, but the two most important issues are the price and the indemnity. The price is obviously important because that's the amount the sellers get when they sell their company. But the indemnity provisions can be just as important, because that's how the buyer might recapture some of the price the sellers thought was theirs to keep.

First, let's look at the price. Obviously, it is always good to maximize price, but how can this be most effectively achieved? Identifying, pre-qualifying and generating interest among a broad range of potential purchasers improves the odds of finding the right buyer who will offer the highest price, and creating competition among potential buyers is usually the best mechanism for achieving that goal. Developing and implementing a competitive bidding strategy is one of the primary functions of an investment banker, so hiring a banker with experience managing such transactions can produce quantifiable improvements in price.

Aggregate Industry Size Rankings Inside

Another dimension to the price is maximizing the after-tax proceeds received by the sellers. Even in the simplest transaction where the sellers receive cash for their business, the form of the transaction (e.g., selling assets vs selling stock) is very important because the tax consequences can be quite different, and it is the after-tax result that counts. The tax rules are complicated, so it is important that sellers use the best structure to minimize the tax bill and maximize the after-tax proceeds of sale. An experienced investment banker, working with the sellers' accountant and legal counsel, can help work through the deal-specific issues and suggest alternative structures which might suit the sellers' particular circumstances.

But even if the highest price is obtained and the transaction is structured correctly, the indemnity can be very costly. Generally, buyers require sellers to make a number of

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The wash rack gets busy at the end of the day.



The Top 25 Aggregate Producers

This most recent (2006) list of the largest aggregate producers in the U.S., ranked by volume, shows some new names breaking in to the top 25. Note that the top seven producers have maintained their rankings, but some of the names will disappear in next year's list due to recent acquisitions (Cemex/Rinker, Car-meuse/Oglebay Norton, Heidelberg/Hanson, and Vulcan/Florida Rock).

<u>2006</u>	<u>Producer</u>	<u>2005</u>	<u>2004</u>	<u>2003</u>	<u>2002</u>	<u>2001</u>	<u>2000</u>	<u>1999</u>	<u>1998</u>
1	Vulcan	1	1	1	1	1	1	1	1
2	Martin Marietta	2	2	2	2	2	2	2	2
3	Oldcastle	4	4	4	4	4	4	4	11
4	Hanson	3	3	3	3	3	3	3	3
5	Rinker	5	5	5	5	6	8	8	9
6	Lafarge	6	6	6	6	5	5	5	16
7	Cemex	7	7	7	7	7	10	11	18
8	Holcim/Agg Indus	15	9	10	9	9	6	10	22
9	MDU Resources	9	10	9	10	14	—	—	—
10	Florida Rock	8	8	8	8	8	7	7	5
11	Rogers Group	10	11	11	12	11	9	9	7
12	Trap Rock Industries	—	—	—	—	—	—	—	—
13	Vecellio & Grogan	17	22	24	23	—	—	—	—
14	Luck Stone	12	13	16	16	17	19	19	17
15	TXI	13	16	13	15	12	20	18	15
16	Granite Construction	—	—	—	—	—	—	—	—
17	O-N Minerals	—	—	—	—	—	—	—	—
18	Teichert	16	17	21	18	23	—	—	—
19	New Enterprise	19	19	18	17	18	23	24	—
20	Cal. Portland Cement	—	—	—	—	—	—	—	—
21	DeAtley Crushing	—	—	—	—	—	—	—	—
22	Dolese Bros	18	21	19	20	20	—	—	24
23	Heidelberg Cement	—	—	—	—	—	—	—	—
24	Ash Grove Cement	—	—	—	—	—	—	—	—
25	Mathy Construction	—	—	—	—	—	—	—	—

Source: US Geological Survey

Transactions Closed in 2007



The Concrete Business of

Casino Ready Mix, Inc.

Las Vegas, Nevada

has been acquired by

Silver State Materials, LLC
and
Audax Group



The Concrete Business of

Builders Concrete Supply LLC

Las Vegas, Nevada

has been acquired by

Silver State Materials, LLC
and
Audax Group



50% of the stock of

West Coast Aggregates, Inc.

Tracy, California

has been acquired by

Lafarge North America Inc.

Eaton Capital Corporation provides investment banking and strategic advisory services to companies in the construction materials industry, with a primarily focus on merger and acquisition activity. Our services include business valuation, strategic advisory services, merger and acquisition project management, and expert witness testimony. For more information, please call or visit our web site at: www.eatoncap.com.



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representations related to corporate organization and power, title to the assets, accuracy of financial statements, etc. Sellers are also asked to indemnify the buyer for any losses if the representations turn out to be incorrect. So the language of the indemnity and its underlying representations is very important for minimizing the risk that the sellers will have to give back some of the purchase price.

Buyers naturally want all risks covered by an unlimited, “blanket” indemnity, but sellers should not agree to an unlimited indemnity. Just as with the price, buyers are generally willing to negotiate indemnity provisions, and there are market “norms” for how these provisions should be structured. For example, the buyer should be required to rely on their due diligence investigations in lieu of broad representation and indemnity provisions, and the sellers’ exposure under the indemnity should be limited or “capped” to a fraction of the purchase price. An investment banker who has been involved in many transactions with many different buyers can suggest alternative representation and indemnity language which protects the sellers’ purchase price while still giving the buyer an appropriate level of comfort.

An experienced investment banker can optimize both of the “Big Two” issues, with the goal of maximizing the price and minimizing the sellers’ risk under the indemnity.

Sometimes the highest priced bid is accompanied by the most onerous indemnity provisions, but it should be possible to negotiate more acceptable indemnity provisions, or it may even make sense to accept a lower priced bid, especially if the prices are close and the indemnity provisions are quite different.

Both the price and the indemnity provisions should be negotiated in as much detail as possible at the Letter of Intent stage, prior to selecting a buyer and allowing the buyer to begin due diligence investigations. Once a buyer is selected and a Letter of Intent is signed, the sellers’ negotiating power drops substantially, so it makes sense to try to settle as many issues as possible in the LOI.

Eaton Capital represents only sellers, and not buyers, so we have no conflicts of interest, and we can and will negotiate hard on the sellers’ behalf. We maintain good relationships with buyers, but they know when we are engaged by a seller that they will have to sharpen their pencils on price and they know the sellers will be well-represented during document negotiations. We know where the market is with respect to pricing and indemnities, and we will always work on your behalf, so if you are considering selling your business, give us a call to discuss the “Big Two” and other important issues.

Chuck Eaton