Historian's Corner

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The Bendix Takeover Battle

By Bill Cossaboom

In late summer 1982, as I was leaving work, a colleague greeted me with "Take a good look at the sign outside the plant -- tomorrow it may read 'Bendix'." Rumors had been floating for a few weeks concerning an unfriendly take-over attempt of Martin Marietta (Martin) by Bendix. I took a good look at the big 'Martin Marietta Blue' sign that graced the entrance to the Waterton campus as I sped down the curve. I had been an employee for fifteen months.

The take-over attempt did not elicit favorable reviews from the business world. The *New York Times* calling it a "tawdry spectacle" and stating "Aggression and treachery, hairbreadth escapes and last-minute reversals, `white knights' and 'shark repellents' - all of these and more can be found in the true-life adventure of the Bendix Martin merger war." Some of the press equated the efforts as business "Pac-Man" and a "reckless power struggle." The affair has been chronicled in many publications and is case 489-085 at Harvard Business School.

In 1982, William Agee, who at that time was the youngest man to ever lead one of the top 100 American corporations, headed Bendix. He obtained control of the company in 1977 at the age of 39, having been appointed President and Chief Executive Officer. Bendix at the time was quite diversified, being an aerospace, industrial and automotive giant. Agee thought the Bendix future lay outside automotive-focused production stating, "Automobile brakes are in the winter of their life and so is the entire automobile industry." (Note to self: never ask Agee to tell your fortune!)

There was at the time, internal to Bendix, a demoralized culture. Employees perceived that Agee had promoted his executive assistant to Vice President of Strategic Planning due to a personal relationship. Mary Cunningham had graduated from Harvard Business School with an MBA in 1979. In 1980, the situation at Bendix was exposed nationally and Cunningham resigned. This episode is relevant to this article because the acquisitions that Agee pursued have been linked to his effort to regain the trust of the Board and employees after the scandal. The episode also resulted in a lack of respect for Agee among major business leaders. Agee had previously backed off of an attempt to take-over RCA.

Martin had a stable balance sheet in 1982, but had little borrowing power and not much cash on hand. They also had (on the plus side) no cultural troubles that were threatening the company. Martin had a new (four month) Chairman and Chief Executive Officer in Thomas Pownall. President Reagan had just begun his defense build-up and Martin was deeply engaged in MX and Pershing Missile contracts.

One market observer, commenting later on the takeover bid called Martin "an undervalued gem." Martin was hiring at a frantic pace in order to fulfill the new contracts and Martin management was looking forward to a bright future. By the middle of August however, Martin became aware of increased buying of the corporation's stock.

That bright vision of a future was soon to change -- on August 25, 1982 at 8:30 in the morning, in fact, when William Agee placed a call to Thomas Pownall. Pownall (who was no-ones fool) did not take the call but coordinated within the corporate organization.

Later that morning, the official offer arrived at corporate headquarters. Bendix was offering $43.00 per share to acquire control of Martin. Martin's stock was undervalued at $33.00 per share of common stock at the time, so Bendix had tendered a premium bid.

September would be a flurry of activity on both sides. Martin was trying to avoid the takeover and Bendix trying to solidify their position. Both were working with allies in the industry.

Martin hired the firm Kidder, Peabody and Co. (Kidder) to handle their side of the equation almost a year prior, after they had been made aware that the company was 'ripe' for a hostile takeover bid; that proved to be a smart move. Kidder also had Martin Siegel heading their mergers and acquisitions department. Siegel was another 'wonder kid' of the day. The team to fight the takeover included the Chief Executive Officer, General Counsel, Chief Financial Officer and others, some of whom were former executive officers.

Thus began a counter takeover battle which has become a classic in the business world as mentioned previously. First, the Martin team was put on overdrive as they went on the offensive, tendering *their* offer to Bendix stockholders. The team and their support group would remain on overdrive until the crisis was over and the battle won.

The employees of Martin kept working as they always did to meet or better contract goals. Most employees were ignorant of the unfolding drama. I write this because I remember no communications by the corporation to the general employee population concerning the take-over attempt. I doubt that anyone within the corporation, other than the team, their support group and a few select business heads knew what was truly going on.

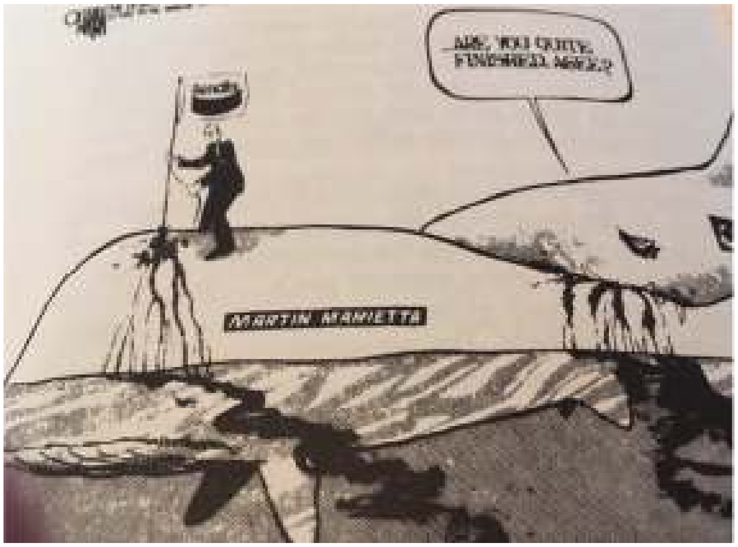
What was 'going on' (as typical of any corporation) was conveyed through the employee grapevine. Someone might have seen something on television or talked to someone who knew someone who 'knew'. I heard a lot from family and friends who watched newscasts and read business journals. A worry of mine was the Littleton commitment to Martin (my father had voted while on the Littleton City Council as a 'yes' for Martin). Would Littleton be without the corporation they had welcomed?

The Martin counter-attack was aggressive. The strategy (better known as Pac Man) was explained to the *Wall Street Journal,* as "That's where my client eats your client before your client eats mine." Public Relations had to kick into high gear establishing one point of contact for newspapers calling daily. These included: *The Wall Street Journal, The New York Times, The Washington Post, The (Baltimore) Sun, The Detroit Free Press, The Denver Post,* and others.

Thus began a month of high stakes business, legal, and 'political' maneuvering with many on the corporate team barely even getting home. There was one day when both Martin and Bendix lawyers were in courtrooms in ten jurisdictions! "A pox on both your houses" one judge remarked.

The states of Maryland and Delaware, which were the corporate headquarters for Martin and Bendix respectively, had different calendar requirements for such business dealings, and; as the Securities and Exchange Commission got involved, other requirements were put in place. Overall, the advantage time-wise went to Martin. According to the *New York Times*, Bendix requested injunctions from the Delaware Chancery Court in Wilmington, the United States Court of Appeals for the Fourth Circuit in Baltimore and the United States Court of Appeals for the Sixth Circuit in Detroit. Martin won in all three courts.

Business reporters were having the time of their lives. Martin was portrayed as the 'good guy' and Bendix as the 'bad guy', in part because of the enmity the business community held towards Agee due to the Cunningham situation and the fact that that Bendix had started this mess.



An example of the business press outlook

The culmination came on one busy weekend. Martin's Treasury had to get commitments for a billion dollars from Martin banking partners. Imagine how difficult it was to raise that amount of money when the company had little cash on hand and not much borrowing power.

One briefing had been made to corporate employees. Legal, as would be expected, was on high alert status, everyone manning their posts. By Monday, with everything in place, the Board of Directors voted to tender an offer for 11,900,000 shares of Bendix at $75 per share. The tipping point came when United Technologies Corporation (UTC), in the form of CEO Harry Gray, offered a plan to mount an unfriendly takeover of Bendix with Martin. It was UTC's entry that raised the Martin bid to $75. Bendix in turn raised their bid for Martin stock by $5 to $48; which Martin's Board of Directors rejected. Gray was one of those business leaders offended by the Agee/Cunningham episode.

By the week after Labor Day, Bendix had 58% of Martin shares tendered at the original price of $43 with a withdrawal period until the 16th of September. Martin had 75% of Bendix shares tendered. Both companies now owned each other. That percentage was achieved due to the work of Doris Rush, a highly regarded engineer and lawyer who worked for Martin.

Rush developed a legal theory of the fiduciary responsibility of Citibank (trustee of the Bendix Employee Trust, which held a weighty percentage of Bendix Common Stock) to tender the trust shares for a significant profit to the employees of Bendix.

At the last minute the shares were tendered. On September 23, an announcement was made that Allied and Bendix planned a merger. As stated in the *New York Times* that day: "The Allied Corporation and the Bendix Corporation announced yesterday that they had agreed to merge, making Allied the fourth entry in one of the most bizarre takeover battles in American corporate history."

"If Allied were actually to purchase Bendix in a deal involving nearly $1.9 billion, Allied would be taking over a company that has already bought a controlling stake in the Martin Marietta Corporation. Bendix acquired 70 percent of Marietta's stock on Monday."

Pressure was put on Bendix. UTC upped its merger offer to $85 per share. Martin gave strict conditions under which they would *not* seek control of Bendix. Bendix called a stockholders meeting which turned contentious and resulted in lights being turned out and microphones being turned off. The Bendix meeting chair walked out and a Martin stockholder took control of the meeting! This more or less saved the day for Martin -- at least that day.

The culmination could not have been more suspenseful had it been written in Hollywood. Because of disparities in securities regulations, Martin literally had ONE MINUTE, between midnight September 22 and 12:01 am September 23 to purchase the Bendix stock. In that one minute, Martin purchased some 8,988,912 shares of Bendix stock for $750 million. Martin had prevailed.

When I returned to work the next day, I again took a good look -- the sign had not changed. It still read *Martin Marietta*. I was relieved.

Post Script: Martin Marietta went on to merge with Lockheed and become Lockheed Martin, the largest United States defense contractor. Bendix was purchased by Allied who later purchased Honeywell and retained the Honeywell name. Bendix became a Honeywell brand.