

AGAINST THE ODDS, VICTORY OVER THE DISSIDENTS

> ENVIRONMENTAL MANAGEMENT SOLUTIONS INC. – PROXY CONTEST

CASE STUDY

Environmental Management Solutions Inc. (EMS), a leading environmental services company, was engaged in a “come from behind” proxy contest with a group of dissident shareholders as they attempted to gain control of EMS through the election of the Board of Directors at the April 29, 2005 Annual and Special Meeting. The dissidents—including the founder and former President of EMS who remained on the Board—sought to replace the Board and regain control of EMS.

THE CHALLENGE

EMS wanted to fend off this challenge and move forward with the existing Board and management in place. Mike Harris, former Premier of Ontario, was brought in by the founder and former President to serve as Chair of the Board of EMS in 2004 (and remains Chair of the current board). This precarious situation required an experienced and coordinated effort to communicate a strategically strong key message to retail and institutional shareholders.

Georgeson was retained by EMS and quickly ascertained that there was a significant hurdle to overcome. EMS was 25% behind in terms of shareholder support versus the dissident group. Despite the dissidents’ head start (dissidents 30%; EMS 5%), Georgeson endeavoured to close the gap and surpass the dissidents’ final numbers.

THE SOLUTION

The pressure was on and mounting. It would take a highly strategic and aggressive approach to ensure all favourable votes were voted during



“The expertise and experience utilized by Georgeson ensured success in defending our business plan – they were crucial advisors at every step and left nothing to chance. The future of the company was at stake, and EMS relied on Georgeson to analyze and interpret the data, communicate effectively and deliver results.”

Tony Busseri, President and CEO, Environmental Management Solutions, Inc.

the solicitation process. Georgeson worked very closely with the EMS “working group” (EMS officials and their counsel) to ensure every tactical advantage was utilized and Georgeson advised EMS on how to most effectively reach their shareholders.

Spending many late nights thoroughly soliciting and following up on every available “for” and “undecided” proxy (approximately 15 million votes), Georgeson engaged in daily conference calls with the EMS working group, keeping them apprised of significant events. Georgeson Account Executives and call centres were fully utilized, and the media was kept actively in the loop on progress.

Not to be understated was the unique role Georgeson played with legal counsel to EMS. Based on experience in hostile contests, Georgeson’s advice and interpretation of developing events and projected models ensured EMS could move with confidence. Georgeson worked closely with key intermediaries and the brokerage community in Canada and the US to communicate with registered and non-registered holders.

Georgeson’s global reach (research, technology and call centres) assisted in fulfilling the tactical action plan. Georgeson’s call centres in particular were utilized to constantly get the “pulse” of shareholders, and this critical information was shared with EMS to plot strategy. Media reports at the time suggested it would be a tight battle between EMS and the dissidents.

> ENSUING SUCCESS

During 2005 and into 2006 – due to ongoing challenges and concerns – EMS once again turned to Georgeson.

Georgeson again provided expert assistance at the special meeting on March 22, 2006.

THE RESULTS

The slate of EMS-nominated Board members achieved 50.3% of the final vote, edging out the dissidents by under 0.7% of the votes cast. It was virtually unheard of for this kind of come-from-behind victory and the “buzz” on Bay Street confirmed this. From determining the most advantageous record date, to negotiating with institutional investors and monitoring arbitrageurs, Georgeson’s proxy solicitation was tested and came out on top.

Georgeson’s proficiency, experience and knowledgeable staff allowed EMS to be prepared for all possible outcomes. The dissident group’s issues were successfully challenged, with Georgeson advising on how best to isolate, counter and neutralize. At the April 29, 2005 meeting, Georgeson’s understanding and interpretation of the proxy rules, combined with cross-border capability and familiarity of hostile challenges, proved invaluable.

ABOUT GEORGESON

Georgeson Inc. is the world’s leading provider of strategic proxy and corporate governance consulting services to corporations and shareholder groups working to influence corporate strategy.

Since 1935, Georgeson has specialized in complex solicitations such as hostile and friendly acquisitions, proxy contests and takeover defences. Georgeson leads more M&A transactions globally than any other firms combined. Georgeson also provides issuers with expertise in corporate events solutions such as post-merger unexchanged holder programs and information agent services.

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