

# Spalding Restructured Again

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On September 4, a United States federal bankruptcy court approved the sale of the assets of Top-Flite Golf Corp. Top-Flite, the former Spalding Sports Worldwide and the first American manufacturer of golf clubs and golf balls, was sold to Callaway Golf Company, currently the world's largest golf club manufacturer.

This puts an end, at least for the foreseeable future, to the independent operations of one of the most famous American manufacturers of sports equipment. In reality, Spalding has changed owners many times before, but the current sale took effect under court supervision to accomplish certain results available only under the United States bankruptcy laws.

That fact is especially interesting because it may show how similar cases may occur in the future, both in the United States and elsewhere. And of course the sale has relevance to all of us who follow the game of golf.

I will explain the legal procedures below, but first let me provide a little background about the company and its history.

A.G. Spalding was a famous baseball pitcher in the 1870's who, like others of that period, made his own baseballs. He started his company in 1876, and expanded to golf by importing golf clubs from Scotland around 1893, making clubs in America in 1894 and golf balls in 1895. The golf line became very popular. Indeed, the first golf clubs I ever used were my grandfather's A. G. Spalding & Brothers "Robert T. Jones, Jr." model clubs made in the 1930's.

Spalding golf balls are now sold under the well-known Top-Flite, Strata and Ben Hogan brands. Top-Flite, as the company has been known recently, has been the second-largest golf ball manufacturer in the United States, behind Acushnet, which makes Titleist and Pinnacle balls. Top-Flite has a huge plant near Springfield, Massachusetts and another in New York State. In addition, the company holds many key patents and has perhaps the lowest-cost production operations in the golf ball industry. At full capacity, it can produce about 30 million dozen golf balls per year. However, in the present economy, industry analysts say that only about 19 million dozen are being produced.

As I said, Spalding has changed owners before. In 1958, Pyramid Rubber Company of Ohio, later known as Evenflo Company, a manufacturer of baby bottles and other infant products, began to acquire shares of A.G. Spalding, Inc., eventually acquiring control. In 1962, Pyramid merged with a company called Dunhill International, and then Dunhill and the AP Parts Corporation, a maker of automobile mufflers, merged under the name Questor Corporation. Dunhill and AP Parts were both owned and run by one of my childhood classmates in Toledo, Ohio and her family.

By 1998, golf products were \$394 million of its sales or 77 percent of its business. It was not profitable, however.

What happened? Was it bad management? Could it have been poor marketing strategies? Tired brands? Far too much debt? All these could be causes, but in fact often business difficulties are a result of changes in the market or in the economy as a whole. In Spalding's case, it seems clear that an increasingly competitive industry due to new and highly aggressive entrants like Callaway, Nike, Adams, Orlimar and several others, shifts of manufacturing to China and other low cost areas, plus a decline in industry sales in the late 1990's, put unbearable pressures on its business and forced it into further radical restructuring.

Conditions got so bad that Spalding sold the Etonic line of golf products, and then in April of this year it took the unusual step of selling all of its non-golf businesses, including all inflatable balls and other sports equipment — and even the long-famous Spalding brand name — to a competitor, Russell Athletic Corporation. The remaining company changed its name to The Top-Flite Golf Company, based on the Top-Flite golf balls and clubs; its leading brand in terms of revenues and profits.

However, these efforts were too late. By June 2003, the company's \$250 million in sales for 2002 could simply not support its \$530 million in debt and the market had, in management's view, become impossibly competitive. The end was in sight. Management looked for a buyer for what remained.

At this point, however, buyers for what had become essentially a failed company were very scarce. No one wanted the debt burden and in order to get any reasonable price for the assets, the company would have to transfer them free of the liabilities.

To accomplish this required Top-Flite, as the company was now named, to declare bankruptcy under Chapter 11 of the United States Bankruptcy Code. However, the legal procedure used was that of what is called a "Section 363 Sale." Section 363 enables a debtor to sell property other than in the ordinary course of business with the approval of the Bankruptcy Court and thus to avoid having to file a plan of reorganization and engage in a lengthy recovery process.

In other words, this is a process that permits a seller to sell assets without lengthy negotiations with creditors. In reality, like other Section 363 Sales, the sale was preplanned and agreed with the buyer, which was Callaway. All details were agreed and submitted to the Bankruptcy Court as a "pre-packaged" deal. This has in recent years become a dominant method of selling assets by insolvent debtors.

Naturally, it is common for creditors and other potential buyers to object to a Section 363 Sale on grounds that it is a scheme to strip them of various protections of the Bankruptcy Code. However, assuming that one can meet the test of a sound business purpose, such as the presence of severe cash flow problems and a threat of liquidation that may lead to even worse results for creditors, courts will allow this procedure.

A Section 363 Sale begins with what is called the identification of a "stalking horse" buyer. This means a buyer who takes the lead, possibly encouraging

other buyers, but in fact is expecting to conclude the sale itself. Notice is then given to other interested parties, who may wish to bid against the stalking horse buyer's commitment, under bidding terms approved by the court. An auction takes place under court supervision to assure that the "highest and best" offer for the assets is obtained. That may include factors other than price, such as speed, financing availability, likelihood of regulatory problems, etc. Once chosen by the court, it enters an order to direct the sale that normally says that the buyer takes the assets free of liabilities, and it gets the benefit of assignments of any contracts proposed to be acquired.

It is beyond the scope of this article to discuss other types of bankruptcy proceedings, but it is clear that the Section 363 process is very attractive to both a buyer and to a seller that is trying to save as much as possible of its declining business entity.

Callaway Golf wanted Top-Flite's very low-cost golf ball production facilities and Top-Flite's brands. It could also gain Top-Flite's technology and to stop having to pay patent royalties. Callaway itself had entered the golf ball business in recent years, but it had never made a profit and had limited market share, with a plant having capacity of only six million dozen balls per year. Under the deal negotiated with Top-Flite, it became the stalking horse with a bid of \$125 million for the assets, free and clear of debt.

Taylor Made Golf, a subsidiary of Adidas-Salomon AG, quickly offered a competing bid. Nike and Acushnet were other obvious prospective bidders, but neither stepped forward. Acushnet already had such high market share in golf balls that it would have had antitrust regulatory problems in achieving a deal.

By September, after more than 30 bids and counter-bids, Adidas withdrew, and the Bankruptcy Court approved the sale to Callaway for \$174.4 million.

One non-price factor may have been that Callaway planned to maintain the Top-Flite factory in Massachusetts, a major local employer with 935 workers. Adidas had made no such commitment.

Some of the Top-Flite brands may decline, but it is most likely that Callaway will preserve them to keep market share. In addition, the Ben Hogan club line is considered to be "premium-quality," and reaches a different group of customers compared with Callaway's own clubs, which generally have a forgiving, game-improvement reputation. My guess is that Callaway, which is a company with strong marketing skills, will do its best to strengthen all the acquired brands.

That would be good for the industry, for golfers who have wider choice of products and for the legacy of Spalding and of Ben Hogan. The late Ely Callaway is often criticized for making the golf industry too business-oriented. Seldom recognized is that his mother's cousin was a man named Robert T. Jones, Jr., perhaps the most beloved sportsman in golf history. Callaway, himself a fine golfer, took Jones as his personal model.

# 繰り返し再建された

## スポルディング

9月4日、アメリカ合衆国連邦破産裁判所は、Top-Flite Golf Corp.の資産売却を認可した。Top-Fliteは、Spalding Sports Worldwideの前身で、ゴルフクラブ及びゴルフボールのアメリカにおける最初のメーカーであるが、現在世界で最大手のゴルフクラブメーカーであるCallawayに売却された。

Top-Fliteは合衆国破産法第11章(チャプターイレブン)に基づく破産を選択した。用いられた法的手段はいわゆる「§363の売却」であった。「§363とは破産裁判所の認可により、債務者が通常以外の方法で資産を売却することができ、それにより再建計画を申請し、長期にわたる再建プロセスを取らないことを可能にしている。

言い換えれば、これは売り手が、債権者との長期にわたる交渉なしに資産を売却することを許可するプロセスである。実際、他の§363の売却のように、売却は事前に計画さ

れ、買主であるCallawayに同意されていた。全ての詳細が同意され、「あらかじめ組み込まれた」取引として破産裁判所に提出された。これは、近年破産した債務者による資産売却のもっとも有力な方法となっている。

もちろん、債権者及び潜在的買主にとつては、彼らから破産法による様々な保護を奪う方法になるという理由で、§363の売却に反対することはもっともである。しかしながら、債権者にとつてさらに悪い結果をもたらすであろう厳しいキャッシュフローの問題や倒産の危機など、着実な営業を指すための基準に見合うと推定した場合は、裁判所はこの手続きを許可する。

§363の売却は、いわゆる「Stalking horse」隠れ馬(ハンター)が狩りをするときに馬の陰に隠れて獲物を獲得したこと由来に、買主の特定から始まる。隠れ馬とは、この場合、

自ら名乗り出ること、他の買主を募り、先導するが、実際の目的は売却そのものを終わらせることを期待している買主のことを意味する。他の利害関係人で、「隠れ馬」である買主の入札表明に対抗して入札したいと希望するものに対しては、裁判所から認可された入札案項に基づき、通知される。

資産に対する「最高値で最善の」付け値を担保するために、この競売は裁判所の監督の下で行われる。これには価格以外にも、処理期間、資金調達の可能性、規制に関する問題が見込まれるかなどの要因も加味される。一度裁判所によって買主が選定されれば、裁判所からの命令により、通常買主は債務のない資産及び取得した契約の譲渡益を得ることになる。

その他の種類の破産手続きを論じているが、§363のプロセスは、減少していく企業実体を可能な限り救おうとす

る買主及び売り主の双方にとつて非常に魅力的であることは明らかである。

Callaway GolfはTop-Fliteの非常に低コストなゴルフボールの生産設備とTop-Fliteのブランドを必要としていた。また、Top-Fliteの技術を手に入れ、特許使用料の支払いをやめることができた。Callaway自身は、近年ゴルフボール事業に参入してきたが、一年にわずか600万ダースのボールしか製造できない工場で、一度も利益を上げることがなく市場占有率も限られたものでしかなかった。

Top-Fliteと交渉された取引によって、隠れ馬として、1億2500万ドルの入札をなした。Adidas Salomon AGの子会社であるTaylor Made Golfは、素早く競争入札に申し込みにした。NikeやAcushnetは明らかに見込みのある入札者であったが、両方とも名乗りでなかつた。Acushnetはすでにゴルフボールにおいてかなり高い市場

占有率を有しており、取引を達成するには独占禁止が問題になる可能性があった。

9月までには、30以上の入札とそれに対抗する入札が行われた後、Adidasは手を引き、破産裁判所は1億7440万ドルでCallawayへの売却を許可した。価格以外のひとつの要因として、CallawayはマサチューセッツにあるTop-Fliteの工場、935人の労働者とともに主要な地元の雇用主を維持する計画をしたことが挙げられる。Adidasはそのような貢献はしていなかった。

Top-Fliteのブランドのいくつかは下降気味であるが、Callawayがそれらの市場占有率を保つ可能性が高い。私の推測では、Callawayは強いマーケティング力を有しており、獲得した全てのブランドを強化することで最大限の力を発揮するであろう。

(左本文より抜粋)



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