American Bankruptcy Institute

Annual Spring Meeting

Unique Asset Sale Issues in Health Care

Hosted by the Asset Sales and Health Care Committees

Lorie R. Beers
Intrepid Investment Bankers LLC; New York

David E. Gordon
Polsinelli; Atlanta

Robert Orr
Sandton Capital Partners; Chapel Hill, N.C.

Cynthia Romano
FTI Consulting, Inc.; New York

CONCURRENT SESSION

2024

April 20, 2024, 8:30AM ET

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Panelists

Lorie Beers

Intrepid

Lorie Beers is the Head of Special Situations at Intrepid. She has 30+ years of experience spanning the full spectrum of restructuring. Working primarily with companies, she has completed numerous distressed M&A transactions, chapter 11 reorganizations, and out of court workouts. Prior to Intrepid, Lorie was a Managing Director and Head of Special Situations at Cowen and served in senior roles at Storm Harbour Securities, Variant Capital Advisors, Seabury Group, KPMG, and Gordian Group. She began her career as a bankruptcy attorney, ultimately becoming a partner in the Bankruptcy Group at Kasowitz, Benson, Torres & Friedman. She also served as CRO and COO for a marketing and branding organization. Lorie has writes and speaks extensively on many aspects of restructuring. She is a past member of the ABI Board of Directors and recently was the recipient of the 2019 M&A Advisor Leadership Award.

David Gordon

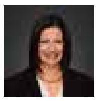
Polsinelli

David Gordon leads Polsinelli's national distressed health care practice. David counsels on business bankruptcies and insolvencies with a focus on healthcare industry restructuring. David has a wide breadth of experience representing healthcare providers, REITs, hospitals, lenders, landlords, healthcare systems, skilled nursing and assisted living facilities, purchasers of distressed assets, secured and unsecured creditors, committees, trustees and other parties-in-interest in Chapter 11 reorganization proceedings, receiverships and workouts throughout the United States. David's transactional experience includes representing purchasers in 363 sales and representing various parties in problem loan workouts, bridge loans and other financings, forbearance agreements and other distressed transactions. Prior to Polsinelli, David taught as an Adjunct Professor of Law at the Emory University School of Law.

Rob Orr

Sandton Capital

Rob Orr's background includes distressed debt, commercial banking and management consulting for financial institutions. Rob has covered a wide range of geographies and industries since joining Sandton in 2010 and is known for being fast to get up to speed, creative in structuring deals, and able to fund at critical times in a company's lifecycle. Prior to Sandton, Rob was part of the 2005 founding team at Square 1 Bank, where he held a variety of general management and corporate development roles in growing that institution to over $1 billion in assets. Prior to that, he was a management consultant, most recently with The Monitor Group. At Monitor, he had extensive experience advising financial institutions and other large corporate clients on growth strategies. Rob is a graduate of Stanford and UNC at Chapel Hill and is a Board Member of the Ronald McDonald House of Chapel Hill and North Carolina Supplemental Retirement Plan.



Cynthia Romano, CTP

FTI Consulting
ABI Healthcare Co-Chair

Cynthia Romano is a Senior Managing Director at FTI Consulting. She specializes in transformations, turnarounds and transactions that enhance liquidity, profitability and enterprise value. Cynthia helps companies transform their bottom line across multiple sectors, including healthcare, real estate, technology, and professional services. Her expertise includes liquidity management, profit improvement through operational restructuring, organizational and process redesign, capital sourcing and business and creditor workout and management. Historically, her work has returned ~10x within 24 months. Prior roles include founder, business owner, partner, and Global Director at multiple advisory firms. Cynthia is the recipient of numerous awards for outstanding work and has a variety of board seats, panels, and publications to her credit. She holds degrees from Brown University, MIT, and is a TMA Certified Turnaround Professional.

Overview of the Healthcare Industry: Subsectors, Status, Distress, and Transactions

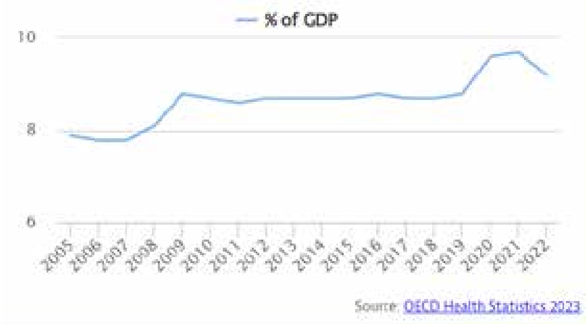
Healthcare Overview

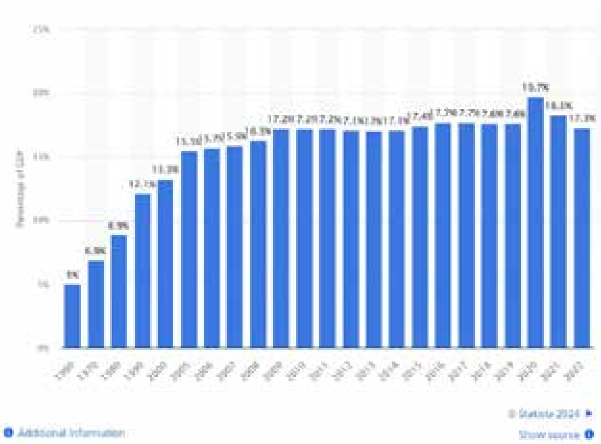
Healthcare is made up of numerous subsectors that, each in their own right is an industry. To talk about "healthcare" as a single industry does not capture the complexity of the ecosystem, despite some commonalities.

4

Healthcare in the US is Broken

- **Expensive.** We spend more on healthcare than any other wealthy country, with out-of- pocket spending ~5x higher than other countries in OECD and, including government spend, ~3x greater than the OECD average. And, in relative dollars, we spend ~17.3% of GDP on healthcare (the next closest were Germany at 12.7% and France at 12.1%).
- **Ineffective.** For all that money spent, we are not healthier or living longer. The life expectancy of the average American is 78.8 years, putting the US a fraction ahead of the Czech Republic, where out of pocket spending was just $236 last year.
- **Providers Failing**. While money is being spent, large quantities of it, providers are still not making it. Health care bankruptcies in 2023 reach the highest level in five years.
- **Consumers Failing.** Nearly 20 percent of Americans report having medical debt, and 62 percent of bankruptcies are related to medical debt.

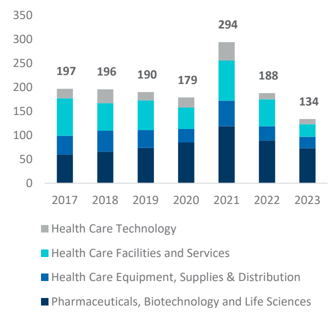




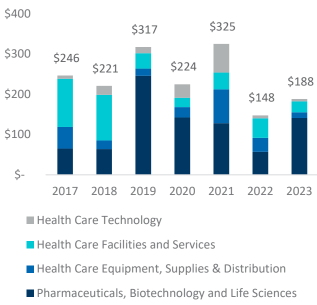
U.S. Healthcare Merger & Acquisition ("M&A")

Investors have continued to seek consolidation to gain market share and take advantage of the economies of scale necessary to meet the goals of increased access to care, lower costs, and improved quality of care.

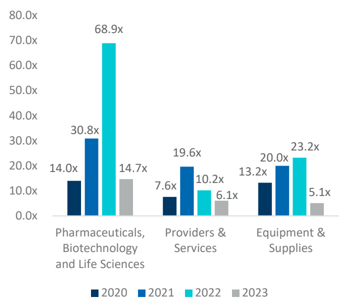
U.S. Healthcare M&A
Transaction Volume >$50M Through 2023[1]
(# of Deals)



U.S. Healthcare M&A
Transaction Value >$50M Through 2023[1]
($ in Billions)



Historical Average EV/EBITDA Multiples Through 2023[1]



HIGHLIGHTS

- 2021 continues to set the high-water mark for M&A activity in US Healthcare. The number and value of deals declined in 2022 and 2023, as the sector digested deals from prior years and financing tightened.
- We have also seen deal timelines increase as the profile of companies being marketed has changed (e.g., less sophisticated sellers, operating degradation due to economic pressures, tightening of financing, etc.)
- Multiples have also seen a decline in 2023, reflective of increased scrutiny in buyer diligence, less allowance for "pro forma adjustments", and the increased cost of capital.

Sources: CapIQ, VMG Healthcare M&A Report 2020, Levin Associates Healthcare M&A
[1] Information through 12/31/2023.

Healthcare Bankruptcy Activity

Bankruptcies increased in 2023 and the industry will likely see continued high levels of restructuring /bankruptcies in 2024, a result of reimbursement challenges, margin compression, and increased cost of capital.

HIGHLIGHTS

In 2023, there were 45 healthcare bankruptcies with liabilities $25M or more.

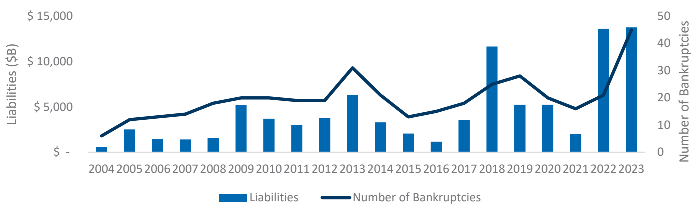
- Life sciences companies were the largest proportion of filings by volume and amount, with 16 filings and $3.6B of liabilities.
- Envision Healthcare (PPM), Genesis Care (Post-Acute), Mallinckrodt (Life Sciences), SmileDirectClub (Medical Devices), Air Methods Corporation (HC Services), and Akumin Inc. (HC Services) were the largest filers, each with $1B in liabilities.

Higher restructuring activity is likely to continue into 2024 as the healthcare industry adapts to lower operating margins, further challenged by a higher rate environment.

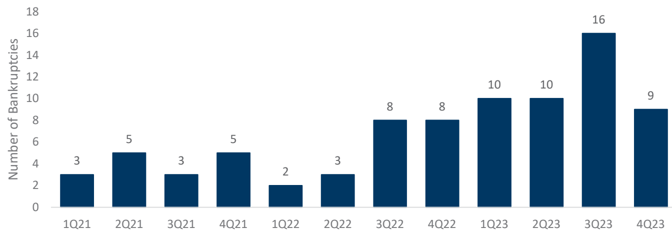
- Reimbursement pressure from payors, (especially gov't) will limit revenue growth.
  - On 11/2/23, CMS issued a final ruling on 2024 Medicare Physician Fee Schedule, which included a 3.37% rate **reduction**.
- Continued impact of No Surprises Act.
- Ongoing labor pressures (staffing shortages and higher wages) and higher supply costs.
- Compressed margins will limit borrowers' ability to service debt and CapEx.

In addition, new/refinanced capital will continue to be limited (and expensive!).

Total Healthcare Bankruptcies with >$25M in Liabilities[1]



Quarterly Healthcare Bankruptcies with >$25M in Liabilities (1Q21-3Q23)



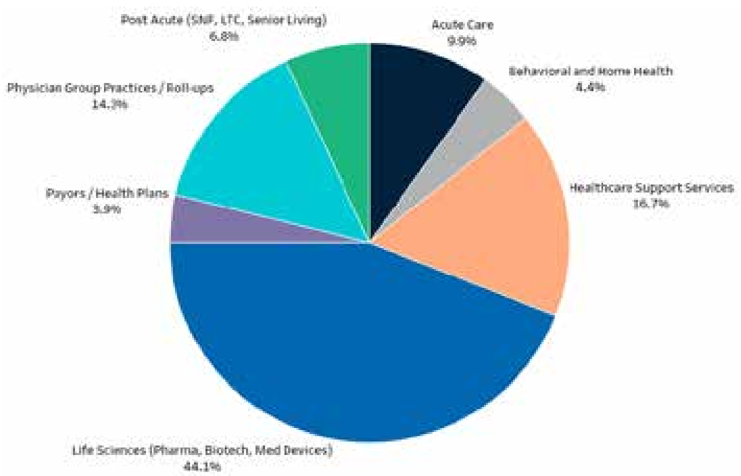
Sources: The Deal, Debtwire, Reorg, Rev Cycle Intelligence, Forbes

[1] 2018 and 2022 were skewed by large filings: HCR ManorCare and Endo International, which had over $4.3B and $9.5B in liabilities, respectively.

FTI Consulting's Proprietary Distressed Healthcare Debt Model

As part of our ongoing industry practice, FTI Consulting monitors sector exposures. The following is non-investment grade/non-rated loans >$50 million

Overall Exposure by Subsector



Sources: Refinitiv LPC, FTI Consulting estimates

Asset Sales in Life Sciences, Senior Living, Provider-Based Organizations

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Key Challenges in the Life Sciences and Tools/Dx Industry

Pricing and Reimbursement Challenges

- Companies within the life sciences industry spend a substantial amount of capital on R&D to get products through approval and to market resulting in the need to charge higher prices to recover costs
- Government, patient advocacy groups, and insurers for cost-effective solutions continue to push for lower prices and more stringent regulation around reimbursement
- As a result, companies in the life sciences industry are struggling to recoup the cost of R&D for their products and profitability becomes more challenging

Lack of Funding

- In recent history, life science companies were able to access the public equity markets and raise capital with relative ease
- Given the current market environment, life sciences companies have struggled to raise additional funds at attractive prices and have resorted to less attractive forms of capital or an inability to raise capital at all
- As many of these companies continue to burn a substantial amount of cash, not being able to raise traditional forms of capital has led to challenging situations within the space

Binary Nature of Drug Development

- Getting a drug or product to market is a time and capital-intensive endeavor with no guarantee of success
- Companies in the life sciences industry can invest millions of dollars to get a drug or product to market that can end up being delayed or terminated
- An example of this occurred with Tricida in which their lead asset failed to meet primary endpoints in their renal outcomes clinical trial, the Company had accumulated a deficit of $882M at that point and had to declare for bankruptcy within three months

Intellectual Property Concerns

- As companies in the life sciences industry strive to innovate, patents are key to staying ahead of the curve and challenges arise when there are disputes over infringement
- Additionally, within drug development, the rise of generics and biosimilars can complicate the profitability of a company post-patent expiration
- An example of this occurred with NanoString Technologies where the company had to file for bankruptcy after dealing with extensive patent litigation which drained resources

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Asset Sales in Life Science and Tools/Dx Cases

Types of Asset Sales

- In the case where the company has only a single drug or device, 363 sales of the enterprise are most common
- Where a company has multiple assets, there is the option of pursuing a hybrid approach: selling off one or a group of assets to raise liquidity to fund the a going concern; or, a complete enterprise sale
- Decisions will be driven by the composition of debtor and the liquidity needs

Unique Issues

- Because of the unique nature of life science companies, debtors in these areas often face issues not common to other chapter 11 cases
- Public company issues arise which are not usually found in small or mid-market cases
- Chapter 11 is often the only way for these companies to navigate asset sales
- Strategics are often difficult to engage and are incentivized to attempt to drive the debtor into liquidation to pick up the assets cheaply
- Boards can be confronted with and are highly concerned about reputational issues
- Results of similar cases are not necessarily precedential and can vary widely

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Case Study – Amyris Inc: The Hybrid Approach

Situation Overview

- **Amyris Inc. ("Amyris" or the "Company")** is a leading synthetic biology and consumer products company headquartered in Emeryville, CA. Through proprietary technology, cell programming, and the fermentation of sugar and yeast, Amyris successfully developed one of the largest global libraries of clean, sustainable ingredients and a portfolio of beauty and personal care brands
- Amyris's generated revenue through two main segments: (1) Consumer and (2) Technology Access. The Consumer segment was comprised of seven operating brands and the Technology Access segment delivered high-performing, sustainable molecules as ingredients to industry leaders across end-markets
- Following evaluation of strategic alternatives available, the Company elected to file for Chapter 11 on August 9, 2023 and sell its consumer brands portfolio through a section 363 sale process while reorganizing around its technology access assets

Strategy and Process

- Upon retention in July 2023, Intrepid immediately began preparing marketing materials and data rooms for the seven operating Consumer brands and immediately upon filing bankruptcy, Intrepid launched outreach and ultimately contacted 350+ financial and strategic parties, 167 of whom signed NDAs and gained access to the data room
- Intrepid fielded various diligence requests, conducted dozens of virtual and in-person meetings with both brand teams and shared services personnel, and hosted live, virtual management presentations attended live by over 50 interested parties across the brands with numerous others downloading or viewing the recording
- Intrepid received qualifying bids for each of the brands and in December 2023 held auctions for the brands
- In support of the Plan of Reorganization, Intrepid also ran a sale process for the Technology Access assets. Despite interest from multiple parties, no offers were received which cleared the reserve price and the Plan proceeded with the senior lender taking control of the remaining assets upon emergence from Chapter 11

Outcome

- Through close collaboration with Company management and other professionals, Intrepid was able to successfully close the sale of all 7 consumer brands and complete the required milestones needed for the Plan
- With the sale of the Brands, Amyris used the proceeds to fund the Plan with the goal of emerging from Chapter 11 in March 2024 with a clear focus in the future of its technology and R&D assets

amyris

Science and technology leader in sustainable ingredients

Closing

Advisor to Amyris Inc.

BIOSSANCE	has been sold to	THG
JVN	has been sold to	Windsong Global
ROSE INC	has been sold to	AA Investments
pipette	has been sold to	Windsong Global
MENOLABS	has been sold to	Dr.Reddy's
4U	has been sold to	scent theory products
Stripes	has been sold to	Sakana LLC

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Case Study – Zymergen: The Re-Sale to the Parent

Situation Overview

- **Zymergen, Inc. ("Zymergen" or the "Company")** headquartered in Emeryville, CA, was a biotech R&D company that designed, developed, and commercialized synthetic alternatives to petrochemicals, reconfigurable lab automation carts, and automation control software.
- The Company went public in April 2021 at a ~$3.0B valuation in anticipation of its first commercial product launch. Within four months of the IPO, the product launch failed, the stock price collapsed, and the Company was taken private by Gingko Bioworks ("Ginkgo") in October 2022 at a $236M valuation.
- The take-private was structured as an all-stock transaction, with Ginkgo assuming all liabilities (including shareholder lawsuits).
- Post-close, and after limited progress toward resolving ongoing litigation which materially depleted Zymergen's cash on hand, the Company's restructuring committee elected to file for Chapter 11 bankruptcy protection in October 2023.

Strategy and Process

- Ginkgo initially submitted a stalking horse bid to reacquire the assets of Zymergen for certain cash and non-cash considerations
- In parallel, Gingko and the Unsecured Creditors Committee engaged in extensive negotiations to approve the original stalking horse bid of $5M cash and assumption of certain liabilities. Ultimately Ginkgo increased its bid to $7.5M in exchange for certain releases against pre-petition actions
- After negotiating the stalking horse agreement with Gingko, Intrepid immediately began preparing marketing materials and identifying strategic and financial buyers for a fulsome marketing process
- Intrepid contacted over 300 parties and distributed 27 CIMs

Outcome

- Intrepid received one qualifying bid (for the nitrogen fixation IP portfolio) from Pivot Bio, which had collaborated with Zymergen on R&D
- After lengthy deliberations, negotiations, and bidding rounds over two days, the assets were split into two lots: Gingko Bioworks purchased the majority of the assets for $6,150,000, and Pivot Bio purchased the nitrogen fixation portfolio for $2,300,000

zymergen

has been sold to

GINKGO BIOWORKS

and

PIVOT BIO

through a Chapter 11 sale process

Advisor to Zymergen

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Case Study – Bind Therapeutics: The Extraordinary Case

Situation Overview

- **BIND Therapeutics, Inc.** (**NASDAQ: BIND**) is a clinical-stage nanomedicine platform company developing Accurins®, a novel class of therapeutics designed to target specific cells or tissues and concentrate therapy at the site of disease
- In April 2016, BIND announced topline data on its lead drug candidate, BIND-014, and concurrently announced that it was actively working with an investment bank to initiate a review of financial and strategic alternatives with the goal of maximizing stockholder value
- In April 2016, BIND received a notice of default letter for a violation related to a senior secured credit facility with Hercules Technology III, L.P ("Hercules") resulting in a request for immediate payment of $14.5 million
- On May 2, 2016, BIND filed for Chapter 11 bankruptcy protection and initiated a Section 363 sale of its assets
- **Engagement:** BIND engaged Intrepid professionals to find a buyer for its assets to continue its research and development efforts

Strategy and Process

- Intrepid professionals ran a broad marketing process to strategic pharmaceutical companies and life sciences-focused private equity and venture capital investors
- Despite receiving interest in the assets ahead of the bankruptcy filing, Intrepid professionals advised BIND to delay selecting a stalking horse until a more robust marketing process could occur
- The outreach resulted in multiple interested parties with three bidders ultimately participating in the auction process
- On BIND's behalf, Intrepid professionals provided valuation guidance to the bankruptcy court, allowing BIND to reach a settlement with Hercules and to use cash collateral during the bankruptcy case

Outcome

- On July 1, 2016, as a result of a robust sale process, BIND received a ~$20 million stalking horse bid from Pfizer Inc. ("Pfizer"). On July 26, 2016, Pfizer was declared the highest and best bidder in a competitive auction, which included two other qualified bidders. The ultimate purchase price represented more than a 100% increase over the stalking horse bid
- Sale price of $42 million allowed BIND to repay its creditors in full and return a distribution to equity holders in an amount greater than the trading price of the stock immediately prior to the auction. BIND is the first company that Pfizer has acquired out of bankruptcy
- The Bind Transaction won the Corporate and Strategic Deal of the Year (Over $25 million to $50 million) at the 15th Annual M&A Advisor Awards

BIND THERAPEUTICS

has been acquired by

Pfizer

through a Chapter 11 sale process

Advisor to Bind Therapeutics

2016

THE M&A ADVISOR

AWARD WINNER

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Case Study – PhaseRx: The Urgent Case

Situation Overview

- **PhaseRx, Inc. ("PhaseRx")** is a biopharmaceutical company producing a polymer technology that enables the delivery of nucleic acid, such as ribose nucleic acid (RNA) and other therapeutics, inside cells
- Until filing for Chapter 11 bankruptcy protection, PhaseRx's operations were funded primarily through the proceeds raised from its IPO, a debt financing, a series of private placements of convertible preferred stock, and the issuance of convertible notes and warrants
- Over its history, PhaseRx accumulated ~$70.0 million of losses, and was unable raise additional capital to continue funding the development of their lead drug candidate, PRX-ASL
- **Engagement:** PhaseRx engaged Intrepid professionals to pursue a sale

PhaseRx

has been acquired by

ROIVANT SCIENCES

through a Chapter 11 sale process

Advisor to PhaseRx

Strategy and Process

- Upon retention on October 13, 2017, Intrepid professionals immediately began building on the substantial prior interactions that PhaseRx had with potential business development partners, commenced a marketing process, and assisted in the development of a data room and teaser in order to effectively market PhaseRx
- After receiving a delisting notice from Nasdaq in October 2017, Intrepid professionals advised on PhaseRx's appeal process, guiding PhaseRx's appeal to Nasdaq's Hearing Panel, and delaying the suspension of PhaseRx's securities until a subsequent hearing was held on December 7, 2017
- In conjunction with the board of directors, Intrepid professionals determined that the most efficient way to maximize the value for all creditor constituencies was to sell substantially all of its assets through a section 363 sale

Outcome

- Given PhaseRX's lack of liquidity, the section 363 sale process needed to be completed as swiftly as possible and PhaseRx entered the auction without a stalking horse bidder
- Although PhaseRx entered the auction without a stalking horse bidder, Intrepid professionals were able to effectively market the assets to generate a strong competitive dynamic. Ultimately, Roivant Sciences emerged from the auction as the highest bidder for substantially all of the assets of PhaseRx

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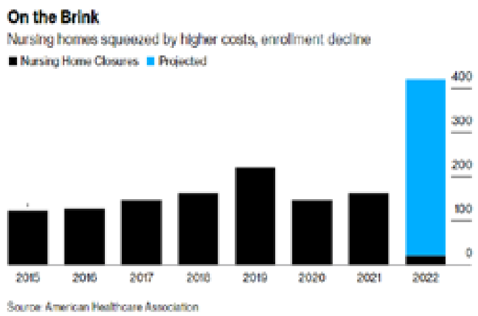
Asset Sales in Senior Living

Business

US Nursing Homes Face Closure Risks From Staffing Shortages

- Majority say can't operate more than a year in current climate
- Expenses are 41% higher than a year ago, survey says



Asset Sales in Senior Living

Driven by systemic failures

- **Pre-Covid issues now more pronounced and sped up the inevitable**
  - Lack of automation and low use of technology/AI
  - Very labor dependent delivery model
  - Many low skilled positions
  - Costly and inefficient delivery model
  - Talent shortages for various reasons
  - Competition for some positions is not in industry

- **Health care providers are being forced to limit capacity and cancel elective procedures because of issues with respect to availability and capacity of hospital staff, including:**
  - Nurses and other clinical positions – waiting to take a shift for more money, leaving for contract labor or higher paying positions
  - In some markets, lower paid clinical and back office are leaving to join restaurant or manufacturing industry for higher total rewards and less risk
  - No per diem talent available
  - Drawing unemployment benefits $$$
  - Child care issues
  - Burnout and earlier retirements/exits
  - Fear/Risks from COVID
  - Employer vaccination requirements

Asset Sales in Senior Living

Unique Issues in Chapter 11

- **A significant amount of senior housing facilities are operated by tenants who lease the facilities from healthcare REITs using long term, triple net leases.**
- **Are these leases "residential" within the meaning of Section 365 of the Bankruptcy Code?**
- **When debtor is a lessee of real property where it operates a senior housing facility, important issue arises as to whether the lease is a "residential" lease or a "non-residential" lease**
- **Different treatment under Bankruptcy Code**
  - 365(d)(2): In a case under chapter 9, 11, 12, or 13 of this title, the trustee may assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor at any time before the confirmation of a plan but the court, on the request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease.
  - 365(d)(3)(A): The trustee shall timely perform all the obligations of the debtor . . . arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title.
  - 365(d)(4): (A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

    (i) the date that is 210 days after the date of the order for relief; or

    (ii) the date of the entry of an order confirming a plan.

    (B)

    (i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 210-day period, for 90 days on the motion of the trustee or lessor for cause.

    (ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

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Asset Sales in Senior Living

Unique Issues in Chapter 11

- **Residential**
    - May assume or reject at any time before confirmation
    - Not required to timely perform post-petition obligations (i.e., pay rent)
- **Non-Residential**
    - DIP must continue post-petition performance (i.e., pay rent)
    - 210 days to assume/reject (subject to one 90-day extension)
- **Split of Authority**
    - "Property Test" - looks at nature of the property (majority view)
    - "Lease Test" – looks at nature of the lease (minority view)

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Asset Sales in Senior Living

Unique Issues in Chapter 11

- **Property Test**
    - Statutory analysis of "unexpired lease of nonresidential real property"
    - The term "nonresidential" modifies "real property" and not "lease"
    - Nature of the property – not of the lease –determines whether § 365 (d) (3) and (4) apply
    - *In re PNW Healthcare Holdings LLC, 617 B.R. 354, 362 (Bankr. W.D. Wash. 2020)*
        - Property test "is most consistent with the language of § 365 (d), its usage in the broader context of § 365, and the legislative history of the 1984 and 2005 Amendments"
        - The terms "residential" and "nonresidential" modified the real property, not the lease
        - To rule otherwise would make all commercial leases nonresidential, and such a result "would produce 'unsensible and unintended circumstance by requiring immediate surrender of real property where people live and depend on a licensed operator'"
        - Concluded leases were of residential real property, so § 365(d)(2) – and not § 365(d)(3) and (d)(4) – applied
    - Cases
        - In re Michael H. Clement Corp., 446 B.R. 394 (N.D. Cal. 2011)
        - In re Memory Lane of Bremen LLC, 535 B.R. 901 (Bankr. N.D. Ga. 2015)
        - In re Tex. Health Enters., 255 B.R. 181 (Bankr. E.D. Tex. 2000)
        - In re Bonita Glenn II, 152 B.R. 751 (Bankr. S.D. Cal. 1993)
        - In re Care Givers Inc., 113 B.R. 263 (Bankr. N.D. Tex. 1989)
        - In re Indep. Vill. Inc., 52 B.R. 715 (Bankr. E.D. Mich. 1985)
- **What makes a property "nonresidential real property"?**
    - Residential apartment building with commercial businesses and offices?
    - Transient or short-term patients?
    - Extended stay hotels?
    - Mobile home affixed to real property in manufactured housing community?
    - RV park?
    - Janitor or caretaker living on otherwise commercial property?

Asset Sales in Senior Living

Unique Issues in Chapter 11

- **Lease Test**
  - Examines relationship between lessor and lessee and nature of lease, to determine whether the lease is intended to produce income for the lessee.
  - *In re Passage Midland Meadows Operations LLC, 578 B.R. 367 (Bankr. S.D. W.Va. 2017)*
    - Isolating the word "nonresidential" in § 365(d) (4) "isolate[s] one portion of the statute from its balance"
    - Rather, the analysis must include references to other Bankruptcy Code provisions, including §§ 362, 365 and 541, which "indicate together that one cannot so easily dispense with the actual use to which the debtor will put the demised premises personally"
    - Criticized the property test, because it "focus[es] . . . on the use to which unnamed, unknown, nondebtor sublessees, perhaps far down the leasing chain, will put the property"
    - Believed the focus should be on "[t]he substance of the lease, namely the precise purpose the lessee has for the property"
    - Concluded lease was nonresidential; therefore § 365(d)(3) and (d)(4) applied
  - Cases
    - In re Clinton Care Ctr. LLC, 436 B.R. 390 (Bankr. N.D. Miss. 2010)
    - In re Summit Ventures, 1991 WL 133412 (Bankr. D. Vt. 1991)
    - In re Emory Props. Ltd., 106 B.R. 318 (Bankr. N.D. Ga. 1989)
    - In re Sonora Convalescent Hosp. Inc., 69 B.R. 134 (Bankr. E.D. Cal. 1986)
    - In re Condo Admin. Servs. Inc., 55 B.R. 792 (Bankr. M.D. Fla. 1985)
  - Lease Test Issues
    - Does this test conflate the terms "lease of nonresidential real property" with commercial income-producing leases, without a clear congressional intent to do so?
    - Will patients and residents be put out on the street?

Asset Sales in Senior Living

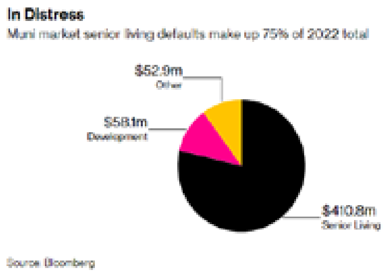
Unique Issues in Financing

Secured Lending

1. **Regulatory Risks –** highly regulated industry
2. **Operating Risks –** labor/staffing, management, resident care
3. **Event Risks –** people-intensive industry, occupancy rates affected by macro issues
4. **Liquidity Risks –** cashflows depend on government reimbursement/3rd parties
5. **Asset Valuation Risks –** certifications (CON/Medicare/Medicaid programs)
6. **Litigation Risks** – patients, governmental

Tax Exempt Municipal Bond Financing

1. The past 10 years have seen a significant rise in the number of senior housing facilities financed with tax exempt municipal bond debt
2. Most of the deals put together in the years leading up to COVID are extremely tight.
3. Senior Housing defaults are now the number one driver of distressed municipal bond debt in America.
4. Role of the Trustee & Restrictions on What It Can Do
5. Difficulties in Finding a Negotiating Party
6. Material Non-Public Information, EMMA, and "Cleansing" the Holders
7. Use of RSAs and Pre-negotiated Chapter 11s



Faculty

Lorie R. Beers is a managing director and head of Special Situations at Intrepid Investment Bankers LLC in New York. She has more than 30 years of professional experience that encompasses the full spectrum of restructuring. Primarily working with companies, Ms. Beers has completed numerous distressed M&A transactions, chapter 11 reorganizations and out-of-court workouts. Prior to joining Intrepid, she was a managing director and head of Special Situations at Cowen for seven years and served in a senior-level capacity at such firms as Storm Harbour Securities, Variant Capital Advisors, Seabury Group, KPMG Corporate Finance and Gordian Group. Beginning her career as a bankruptcy attorney, Ms. Beers ultimately became a partner in the Bankruptcy Group at Kasowitz, Benson, Torres & Friedman. She also served as CRO and COO for a middle-market marketing and branding organization. Ms. Beers has written thought-leadership pieces and spoken extensively on many aspects of restructuring. She is a former ABI Board member and recevied the 2019 M&A Advisor Leadership Award. Ms. Beers received her B.A. in economics from Dickinson College and her J.D. from the University of Pittsburgh School of Law.

David E. Gordon is a shareholder with Polsinelli PC in Atlanta and leads Polsinelli's national distressed health care practice. He counsels on business bankruptcies and insolvencies with a distinct focus on health care industry restructuring. Mr. Gordon has represented health care providers, REITs, hospitals, lenders, landlords, health care systems, skilled-nursing and assisted-living facilities, purchasers of distressed assets, secured and unsecured creditors, committees, trustees and other parties-in-interest in chapter 11 reorganization proceedings, receiverships and workouts throughout the U.S. His transactional experience includes representing purchasers in § 363 sales and representing various parties in problem loan workouts, bridge loans and other financings, forbearance agreements and other distressed transactions. Prior to joining Polsinelli, Mr. Gordon taught as an adjunct professor of law at the Emory University School of Law for more than seven years. He received his B.A. in 2003 from Georgetown University and his J.D. with honors in 2006 from Emory University School of Law.

Robert Orr is a principal with Sandton Capital Partners in Chapel Hill, N.C. His background includes distressed debt, commercial banking and management consulting for financial institutions. Mr. Orr has covered a wide range of geographies and industries since joining Sandton in 2010. Prior to Sandton Capital, he was part of the 2005 founding team at Square 1 Bank, where he held a variety of general management and corporate-development roles in growing that institution to over $1 billion in assets. Prior to that, Mr. Orr was a management consultant, most recently with The Monitor Group. At Monitor, he had extensive experience advising financial institutions and other large corporate clients on growth strategies. Mr. Orr received his B.A. from the University of North Carolina at Chapel Hill and his M.B.A. from Stanford Graduate School of Business.

Cynthia Romano, CTP is a senior managing director at AlixPartners, LLP in New York, and she specialized in transformations, turnarounds and transactions that enhance liquidity, profitability and enterprise value for more than 25 years. Her industry experience spans health care, manufacturing, technology, energy and oil and gas, distribution, restaurants, professional services and nonprofit engagements. Partnering with CEO-level management, Ms. Romano helps companies transform their bottom line to maximize value for owners, investors and other stakeholders. Her expertise includes liquidity management, profit improvement through operational restructuring, organizational and process redesign, capital-sourcing, and business and creditor workout and management. Ms. Romano has been recognized with multiple prestigious industry awards, including the 2021 Turnaround of the Year by Global M&A Network, the 2020 Turnaround and Transaction of the Year by the Turnaround Management Association, and the 2020 Out-of-Court Restructuring of the Year by Global M&A Network. In 2021, she was named one of the top women in asset-based lending by the *ABF Journal*. Ms. Romano is a frequent speaker for various industry associations on a wide range of topics and is regularly quoted in major news and business outlets, including Bloomberg, Debtwire, CFO.com, *Accounting Today* and *Modern Healthcare*. She received her B.A. in educational policy in 1993 and her M.B.A. in international management from the Massachusetts Institute of Technology Sloan School of Management in 2002.