

# HealthCare Bankruptcy – Not Your Average Chapter 11

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Attorneys at Law

March 29, 2016

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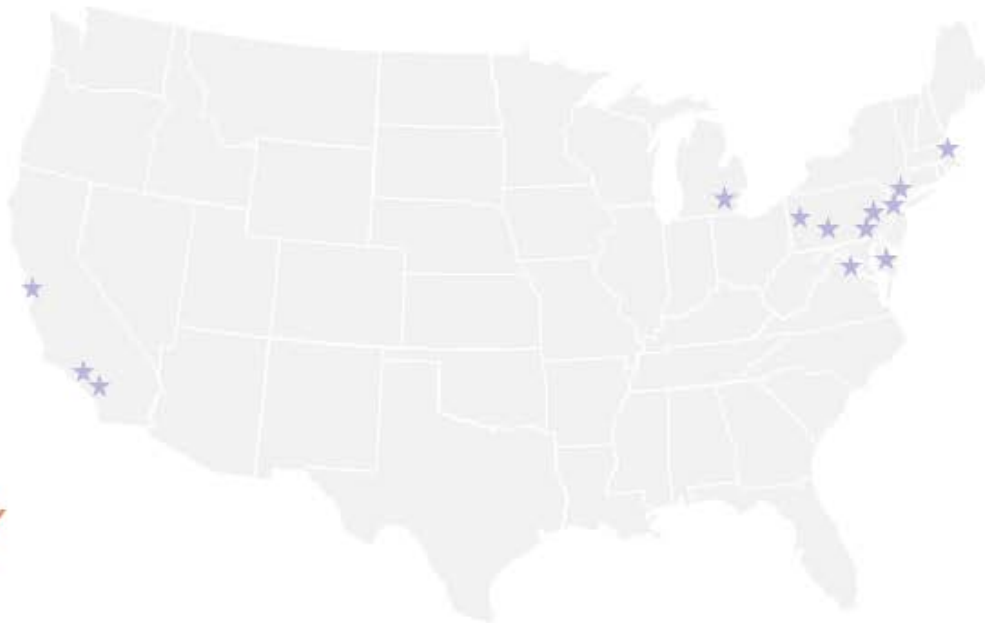
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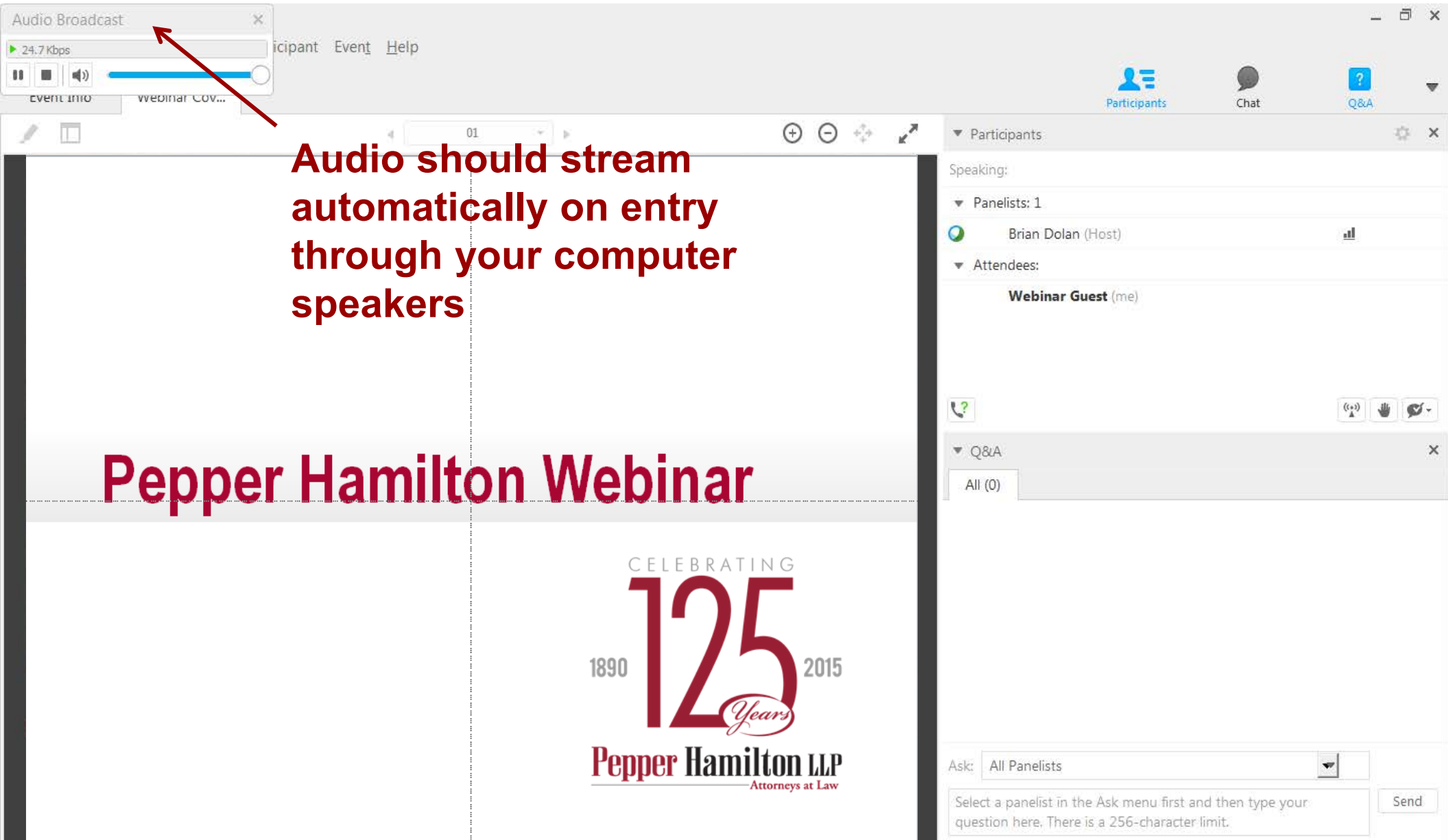
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Q&A

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# Q&A

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- Buttons for **Participants**, **Chat**, and **Q&A**.
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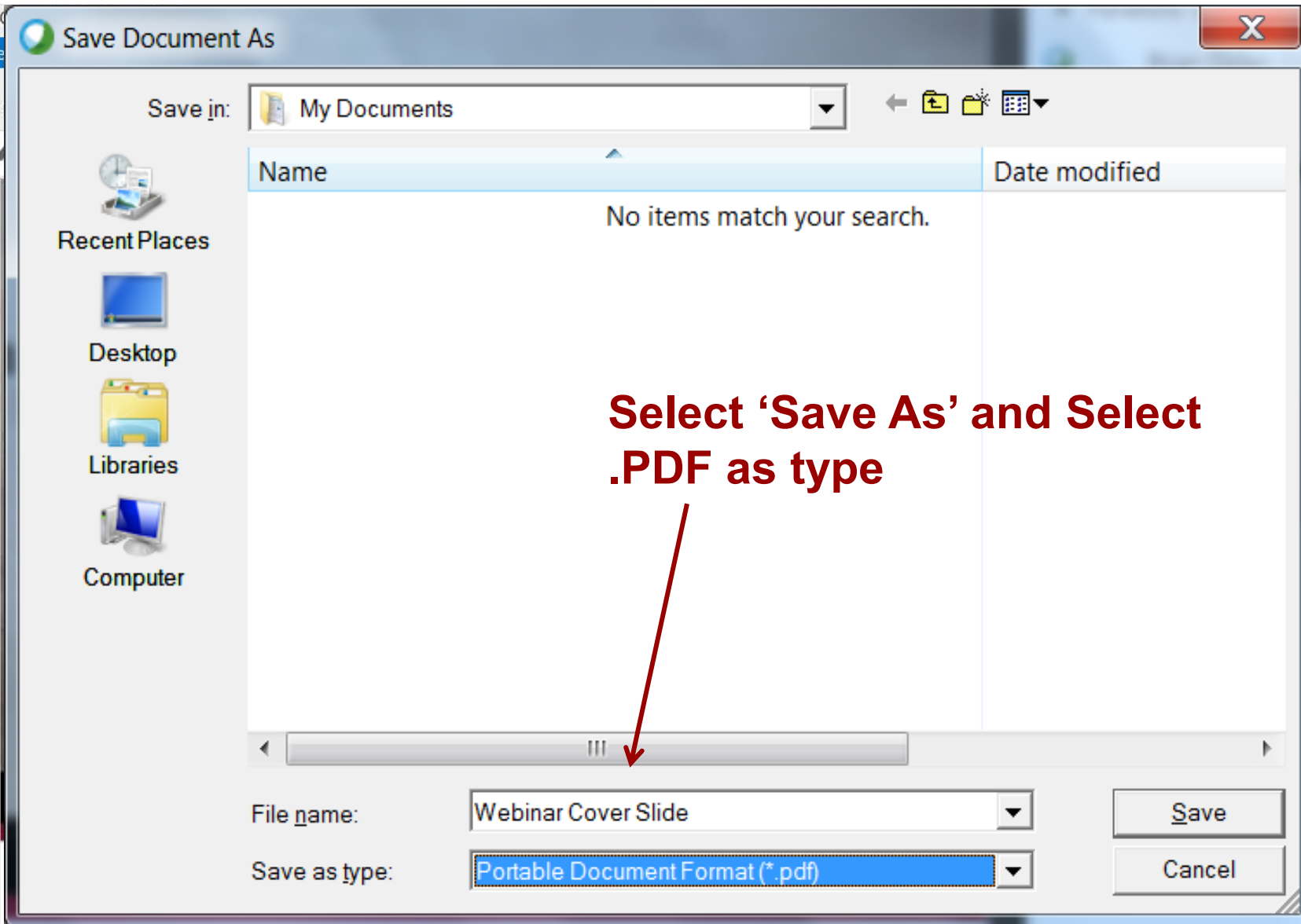
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- ▶ Broad experience in the reorganization of companies plagued with massive toxic tort liabilities, as well as companies in the textile, automotive, clothing and construction materials industries.
- ▶ Represented numerous buyers and sellers of assets in and out of bankruptcy proceedings



# Healthcare Restructuring 101 - Checklist of Key Things to Consider

## I. Types of Healthcare Businesses:

- Hospital, senior care, ambulatory care, home health, physician practice, etc.
- Bankruptcy Code definition of “health care business” (11 U.S.C. § 101(27A))
- For-Profit or Non-Profit

## II. Reasons for Distress in Healthcare Industry:

- **Poor financial management** – Unmanageable debt and inability to pay bills
- **Payer mix/reimbursement** – Reductions in Medicare and Medicaid payments
- **Poor overall management** – Ill-advised construction projects and physician practice purchases
- **Fraud allegations** – Executive mismanagement of payrolls taxes/pensions, embezzlement
- **Financial strategy** – Filing for bankruptcy to become a cheaper, more attractive lure for buyers
- **Competition** – Losing admissions and surgeries to area hospitals
- **Physician politics** – Lack of physician support for management, physician flight
- **Workforce issues** – Shortage of clinical workers, unionization
- **Declining volume**

# Healthcare Restructuring 101 - Checklist of Key Things to Consider

## III. Factors Unique to Healthcare Restructurings:

- Numerous stakeholders (patients, physicians, community, vendors, regulators, etc.)
- Government receivables
- Medicare/Medicaid
- Certificate Of Need – State & Federal Regulations
- Requirements for quality of patient care remain the same.
- Extensive regulation (provider agreements, CONs, etc.)
- Viable non-bankruptcy options (shut down, receivership, dissolution, etc.)

## IV. Patient Care / Privacy Issues / HIPAA Requirements:

- Patient care ombudsman
- Cost of patient care (budget, DIP, etc.)
- Patient records
- Schedule of creditors, diligence information, etc.

## V. Operational Issues:

- Collecting receivables (recoupment vs. setoff)
- Conflict between interests of creditors and goals of organization (non-profit, medical school, etc.)
- Maintaining regulatory compliance (Medicare conditions of participation)
- Potential collective bargaining agreements and union issues
- Pre-petition malpractice claims (self-insured vs. commercial insurance coverage)

# Bankruptcy Flow Chart

- ▶ Petition
  - Voluntary /Involuntary
  - Order for Relief
  - Non-profits not subject to involuntary filing
  - Imposition of Automatic Stay
  - Notice of Commencement of Case
  - 341 Meeting
  
- ▶ First Day Pleadings / Relief
  - Joint Administration
  - Maintain Cash Management
  - DIP Financing / Use of Cash Collateral
  - Critical Vendor Program
  - Prepetition Wages and Taxes
  - Maintain Bank Accounts

# The Claims Allowance Process

- ▶ Typical First Day Motions/Relief Requested
  - Typically, on the first day of a large Chapter 11 Case, the debtor will request that the Court enter numerous orders that are necessary to permit the debtor to function effectively in Chapter 11. First Day orders usually include:
    - Authorization to pay pre-petition wage and benefit claims held by employees;
    - Authorization to pay certain vendors and foreign creditors critical to the debtor's operations;
    - Authorization to continue securitization facilities;
    - Authorization to invest cash in certain accounts;
    - Authorization to engage in financing arrangements that are necessary for the debtor to operate;
    - Authorization to use certain significant assets, including cash collateral;
    - Joint administration of related cases (but not collapse of accounting for each debtor);
    - Authorization to retain attorneys and other professionals for the debtor; and
    - Authorization to operate the debtor's business including, in particular, its cash management systems, in accordance with procedures mandated by bankruptcy rules



# Bankruptcy Flow Chart

- ▶ Meeting of Creditors – Formation of Official Committees
  - Unsecured Creditors Committee
    - Trade / Noteholders / Litigations
  - Equity Committee
  - Ad Hoc Committees
- ▶ Sale of Assets
  - Section 363 of Bankruptcy Code
  - Assumption & Assignment of Executory Contracts and Leases
  - Service Agreements
  - Medicare Provider Agreement
  - Third Party Payor Contracts

# Bankruptcy Flow Chart

- ▶ Claims Allowance Process
  - Administrative Expense Claims
  - Priority Claims
  - Secured Claims
  - Unsecured Claims
  - Equity Interests
- ▶ Debtor's Exclusive Period & Negotiating with Creditors
  - Secured Creditors
  - Unsecured Noteholders
  - Unsecured Trade Creditors
  - Unsecured Litigation Claimants
  - Equity Holders / Equity Interests

# Bankruptcy Flow Chart

- ▶ Plan of Reorganization or Plan of Liquidation
  - Disclosure Statement
  - Approval of Plan
  - Bankruptcy Exit

# Commencing the Bankruptcy Case

## ▶ Voluntary Petition

- Case commenced by the Debtor filing a voluntary petition. The date of filing is usually referred to as the “Petition Date”
- The Debtor’s affiliated entities are usually filed at the same time (separate filing for each legal entity)
- The debtor may not pay pre-petition claims without the authority of the bankruptcy court
- The debtor must pay post-petition claims in full – post-petition claims are entitled to “administrative expense” status

# Commencing the Bankruptcy Case

## ▶ The Automatic Stay

- The most significant consequence of filing a bankruptcy petition is imposition of the automatic stay that stays, with certain exceptions, all pending lawsuits and arbitration proceedings
- The automatic stay forbids creditors holding pre-petition claims from seeking to recover those claims outside the bankruptcy
- The automatic stay only stops litigation against the debtor corporation; the automatic stay does not impede litigation against non-debtors

# The Debtor in Bankruptcy

## ▶ The Debtor-in-Possession

- A Chapter 11 debtor usually remains in control and possession of the estate's assets and is known as a debtor-in-possession (or "DIP"). The board of directors and officers of the debtor retain their right to exercise corporate governance
- In Chapter 7 an independent trustee – the Chapter 7 Trustee is appointed to take control and possession of the estate's assets. The Chapter 7 Trustee may seek authority to operate the debtor's business, but this is done rarely
- For accounting purposes, a debtor-in-possession is treated as a new entity as of the Petition Date
- The debtor may engage in ordinary, day-to-day transactions. For example, ordinary course of business sales and purchases and payment of post-bankruptcy wages will not be impacted by the bankruptcy case

# The Debtor in Bankruptcy

## ▶ Debtor's Right to Bring Claims

- Right To Bring Bankruptcy Claims: Chapter 11 debtors-in-possession are vested with the bankruptcy trustee's right to bring preference, fraudulent conveyance, and other causes of action to recover some of the monies paid to creditors pre-petition
- A significant right reserved for the debtor is the exclusive authority to file a plan during the exclusivity period. This period is the first 120 days after the petition date, but may be extended by Court order. If the debtor files a plan during the 120 days after the petition date, then the debtor has the exclusive right to seek approval of that plan for the 180 days following the petition date. No other entity may file a plan or seek approval of a plan during the exclusivity period

# Significant Events in a Bankruptcy Case

## ▶ Sale of Assets

- Section 363 of Bankruptcy Code
- Before a reorganization plan is confirmed, the debtor may propose to liquidate certain assets. This liquidation can only occur with Court approval
- Sales can be piecemeal or global (sale of the parts versus a sale of the whole)
- Sales are usually done by a court-approved auction process, where the Bankruptcy Court sets the bidding procedures and bid protections in advance of the auction. For example, the Bankruptcy Court may require that (a) bidders post a deposit before bidding, (b) bids be in certain monetary increments, (c) bids include, or exclude, certain assets, or (d) only cash will be accepted as a bid. Auction terms are decided on a case-by-case basis for each Chapter 11 Case
- Whether, and how much, a secured creditor may credit-bid its secured debt at an auction is often hotly contested in a bankruptcy case. (Understanding the secured creditor's motive at the outset of the case is important – i.e. loan to own)
- Role of State Attorney General in approving sale of hospital assets
- Role of State Attorney General in approving sale of non-profit/charitable assets
- Role of federal agencies – Medicare/Medicaid



# Non-Monetary Considerations for Sales of Assets of a Nonprofit Hospital

## ▶ General Standard for Sale Approval

- Section 363(b) of the Bankruptcy Code provides that a debtor “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate ...”
- Courts generally use the “sound business purpose” standard for approving sales pursuant to section 363 of the Bankruptcy Code, which standard requires a debtor to establish: “(1) a sound business purpose exists; (2) the sale price is fair; (3) the debtor has provided adequate and reasonable notice; and (4) the purchaser has acted in good faith”
- In connection with a proposed sale under section 363 of the Bankruptcy Code, a court will also analyze whether the sale is in the highest and/or best offer, which generally means the highest dollar value. In nonprofit health care cases, however, a higher dollar value bid may not be the most decisive factor in light of non-monetary considerations such as continuing the charitable mission of a health care facility and protecting the interests of its patients and employees

# Non-Monetary Considerations for Sales of Assets of a Nonprofit Hospital

## ▶ In re United Healthcare Systems, Inc.

- In re United Healthcare Systems, Inc., prior to the petition date the Children's Hospital of New Jersey was marketed for sale. For purposes of analyzing the bids, United Healthcare's board members were instructed by their financial advisor to consider four factors, with price ranking last in importance. Bids were received by St. Barnabas Corporation ("SBC") for \$13 million in cash and UMDNJ/Cathedral Healthcare Systems, Inc. for \$12 million plus the waiver of a \$1.2 million unsecured claim. United Healthcare's board considered the bids and approved the sale to SBC. On March 5, 1997 United Healthcare filed for bankruptcy in the U.S. Bankruptcy Court for the District of New Jersey and moved for approval of the sale. The bankruptcy court refused to approve the sale, concluding among other things, that the board did not exercise sound business judgment and that a process to obtain a fair market price for the assets pursuant to section 363 must be conducted. The district court, however, reversed, stating that mechanical application of highest and best offer principles was improper and that "the Court must not only weight the financial aspects of the transaction but also look at the countervailing consideration of a public health emergency." Moreover, the court noted that "[m]ere financial analysis of the two bids, with the clarity of hindsight, failed to examine the totality of the circumstances"

# Non-Monetary Considerations for Sales of Assets of a Nonprofit Hospital

## ▶ Nonprofit Entities And Examples Of Recent Cases

### - Generally

- Nonprofit entities generally are formed to be exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 (“Tax Code”). The types of nonprofit entities entitled to tax exempt status are set forth in section 503(c)(3) of the Tax Code, and include those organized for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international sports competition
- The corporate governance distinctions between a nonprofit entity and a for-profit entity are particularly important to the bankruptcy context. For example, nonprofit corporations do not have shareholders and are controlled by either their members or, for non-member corporations, by their officers, directors or trustees. This distinction is critical because, as described in detail below, the absolute priority rule set forth in section 1129 of the Bankruptcy Code, according to at least some courts, may not apply to membership interests in a nonprofit entity since they are not “equity” interests. Additionally, even though directors of a nonprofit entity are subject to breach of fiduciary duty claims in a bankruptcy case, they generally have greater protections than their for-profit counterparts for such breaches

# Non-Monetary Considerations for Sales of Assets of a Nonprofit Hospital

## ▶ In re Saint Michael's Medical Center, Inc.

- Saint Michael's Medical Center, Inc. and certain of its subsidiaries filed for bankruptcy on August 10, 2015 in the U.S. Bankruptcy Court for the District of New Jersey. In addition to facing liquidity issues, a stated reason for the debtors' filings was that a proposed sale of substantially all of their assets to Prime Healthcare Services, a for-profit entity, had been awaiting approval from the State of New Jersey for well over two years. As a result of the delay, the debtors filed a sale motion on the first day of the cases, seeking to consummate the sale to Prime pursuant to a "stalking horse" agreement, or to a different purchaser based on the results of an auction, by the end of the year

# Significant Events in a Bankruptcy Case

## ▶ Post-Petition Financing

- A critical step in a Chapter 11 Case is obtaining enough post-petition financing to fund operations. The Bankruptcy Code enables a debtor-in-possession to obtain post-petition financing (also known as debtor-in-possession or DIP financing)

# Significant Events in a Bankruptcy Case

## ▶ Executory Contracts and Leases

- The Bankruptcy Code empowers a debtor-in-possession to reject or assume executory contracts and unexpired leases. For contracts that are rejected, any related breach of contract claim becomes a pre-petition claim that may be dealt with in a reorganization plan. For contracts that are assumed, the debtor-in-possession must pay all amounts otherwise due on the contract
- Rejection of executory contracts and unexpired leases enables the debtor-in-possession to rid itself of unprofitable contracts and exit leased properties for minimal cost

# Medicare Provider Agreements as Executory Contracts

## ▶ Regulatory Framework

- Medicare's regulations, found at 42 C.F.R. § 489.18(c), govern the "Assignment of agreement" and provide that when "there is a change of ownership ... the existing provider agreement will automatically be assigned to the new owner." Practically speaking, this "means that the new owner assumes the obligation to repay HHS [Health & Human Services] for any of the assignor's accrued Medicare overpayments," regardless of which entity owned the actual provider agreement "at the time the overpayments were made or discovered"

## ▶ Bankruptcy's Rubric

- Bankruptcy injects, however, a potential wrinkle into this equation. If a Medicare provider agreement is classified as an executory contract under 11 U.S.C. § 365, then "the trustee, subject to the court's approval, may assume or reject" the agreement under Section 365(a) of the Bankruptcy Code. However, as is true in all circumstances involving assumption of executory contracts, the trustee may not assume the contract if there is an existing default unless the debtor cures the default or offers adequate assurances that it will cure the defaults. 11 U.S.C. § 365(b). Similarly, if an executory contract is assigned, then the assignee would be liable for the obligation connected with the Medicare agreement. On the other hand, if it is not considered to be an executory agreement, then the potential exists for the Medicare provider agreement to be the subject of a Section 363 Sale, with the result being that liability is "washed away"

# Medicare Provider Agreements as Executory Contracts

## ▶ Is It an Executory Agreement?

- Whether the Medicare agreement is deemed to be an executory contract is a question of judicial interpretation in light of the absence of statutory definition. Still, “courts have generally relied on the following definition: ‘an executory contract is a contract under which the obligation of both the bankruptcy and the other party are so far underperformed that the failure of either to complete performance would constitute a material breach excusing the performance of the other.’” *Sharon Steel Corp. v. Nat’l Fuel Gas Distribution Corp.*, 872 F.2d 36, 39 (3d Cir. 1989). Against this backdrop, a divergence of opinions has emerged, with a majority of bankruptcy courts treating Medicare provider agreements as executory contracts. Still, to be sure, that view is not unanimously shared



# Medicare Provider Agreements as Executory Contracts

## ▶ Courts Finding Provider Agreements as Executory

- In *In re University Medical Center*, 973 F.3d 1065 (3d Cir.), the Third Circuit rejected the contention that the “complexity of the Medicare scheme” excludes a provider agreement from the ambit of Section 365. Instead, it concluded that “a Medicare provider agreement easily” fit within the judicial definition of an executory contract
- More recently, in *In re Bayou Corp.*, 525 B.R. 160, 168 (Bankr. M.D. Fla. 2014), *aff’d*, 2015 U.S. Dist. LEXIS 83390 (M.D. Fla. June 26, 2015), the bankruptcy court held that the Medicare agreement was an executory contract. Citing a series of decisions, the Court observed that “the majority of courts have concluded that Medicare provider agreements are executory contracts ...” 525 B.R. at 168. Significantly, in reaching its conclusion, the Court noted that there are two approaches in reaching the same conclusion that a provider agreement is executory in nature. The first approach examines whether a portion of the contract was unperformed, and whether a party could thus be deemed to be in breach. The other approach is more of a “functional approach,” whereby a court examines the benefits that would run to the estate if the contract were accepted or rejected
- *Bayou Shores* involved significant litigation over an attempt by the Centers for Medicare & Medicaid Service (“CMS”) to terminate the debtor’s Medicare and Medicaid provider agreements, notwithstanding the bankruptcy court’s entry of a confirmation order providing for the assumption of the agreements. On June 29, 2015, the U.S. District Court for the Middle District of Florida issued an opinion in four related consolidated appeals that, among other things, vacated the bankruptcy court’s order prohibiting CMS from terminating its provider agreements with the debtor and finding that the bankruptcy court lacks jurisdiction to review CMS’s decision

# Medicare Provider Agreements as Executory Contracts

- ▶ **Court Finding Provider Agreement Not an Executory Agreement**
  - In *Hollander v. Brezenoff*, 787 F.2d 834 (2d Cir. 1986), the Second Circuit opened the door to characterizing the Medicare provider agreement as something other than a contract. Confronted with the issue of whether New York's six-year statute of limitations on contracts applied to a dispute between a disgraced nursing home operator, or whether its three-year statute of limitations applied, the Court ruled that the three-year statute pertained. Central to its determination was its characterization of the relationship as a "statutory business relationship"

# The Patient Care Ombudsman

## ▶ Patient Care Ombudsman

- 11 U.S.C. § 333 of the Bankruptcy Code provides that if a debtor is a case under Chapter 11 is a healthcare business, the court shall order, not later than 30 days after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of patients of the healthcare business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case. 11 U.S.C. § 333(a)(1)
- Patient Care Ombudsman are appointed in Healthcare Bankruptcies filed in Chapter 7, 9 or 11 of the Bankruptcy Code

## ▶ Role of Patient Ombudsman

- An ombudsman appointed under Section 333 of the Bankruptcy Code must “(1) monitor the quality of patient care provided by the debtor to the extent necessary including interviewing patients and physicians; (2) report to the court orally or in writing in not more than 60 days intervals concerning the quality of patient care provided, and (3) if the ombudsman determines that the quality of patient care is declining significantly or is otherwise being materially compromised, file a motion or report with the court immediately upon making such determination. 11 U.S.C. § 333(b)
- The ombudsman position was created to help protect the interests of patients in a healthcare bankruptcy
- The ombudsman functions as a friend, advocate and mediator

# The Consumer Privacy Ombudsman

## ▶ Consumer Privacy Ombudsman

- 11 U.S.C. § 332 provides that if a hearing is required under § 363(b)(1)(B) of the Code, the court shall order the United States Trustee to appoint, not later than 7 days before the commencement of the hearing, one disinterested person (other than the United States Trustee) to serve as a Consumer Privacy Ombudsman. It further provides that notice of such sale hearing be timely given to such ombudsman
- So, if the debtor has a privacy notice that prohibits transfers of personally identifiable information to parties not affiliated with the debtor, then a Consumer Privacy Ombudsman must be appointed to oversee the sale. 11 U.S.C. § 3634(b)(1)(B)
- On the other hand, a debtor whose privacy notice anticipates asset sales involving personally identifiable information that are consistent with the debtor's privacy notice may transfer the information through a sale or lease without the appointment of a Consumer Privacy Ombudsman

## ▶ Role of Consumer Privacy Ombudsman

- The Consumer Privacy Ombudsman may appear and be heard at the hearing required under Section 363(b)(1)(B) and shall provide to the court information to assist the court in its consideration of facts, circumstances and conditions of the proposed sale or lease of personally identifiable information

# Creditor and Equity Committees

- ▶ Creditor and Equity Holder Committees
  - The Bankruptcy Code mandates appointment of a committee of unsecured creditors. The Court is also authorized to direct the appointment of other committees, including committees of special classes of unsecured creditors such as bond holders and equity holders, where such committees are necessary to assure adequate representation of a particular group

# Creditor and Equity Committees

- ▶ Creditors' Committee Issues (cont'd)
  - Examples of where a member may have an interest which creates a conflict, or in which the creditor holds an interest adverse to the other unsecured creditors in the case:
    - Creditor is a partially secured creditor
    - Creditor holds a disputed claim against the debtor
    - Creditor works for a competitor of the debtor
    - Creditor received a preference payment from the debtor prior to the time that the case was filed
  - The existence of a conflicting or adverse interest may not automatically prevent an unsecured creditor from serving on a committee

# Creditor and Equity Committees

- ▶ Creditors' Committee Issues (cont'd)
  - The professionals retained by a committee will be paid by the bankruptcy estate; their fees and expenses are administrative expense claims, which will be paid before any distribution is paid to unsecured creditors
  - The Bankruptcy Code also specifically authorizes the reimbursement of the expenses of committee members if such expenses are incurred by the committee members in performing their duties as committee members
  - The Bankruptcy Code specifically allows the committee to retain counsel, financial advisors and other professionals

# Creditor and Equity Committees

- ▶ Creditors' Committees Issues (cont'd)
  - The committee's investigation of the debtor will include:
    - an examination of prior actions of the debtor to determine the reasons for the debtor's current financial condition; and
    - a review of the debtor's books and records to identify possible preferential or fraudulent transfers of other irregularities or misconduct that would require the appointment of a trustee
  - The committee has a fiduciary duty to represent the interests of all general unsecured creditors, and not the specific interests of the individual creditors appointed to the committee



# The Claims Allowance Process

## ▶ The Claims Allowance Process

- The debtor-in-possession must file various lists and schedules, including lists of the debtor's secured creditors, unsecured creditors, and equity holders. If the chapter 11 debtor lists its debts as undisputed, noncontingent and liquidated, then the claims are allowed in the scheduled amount (unless an objection to the claim is filed later) and a proof of claim need not be filed to evidence the claim
- If a proof of claim must be filed (because the claim was not scheduled, or because it was scheduled as contingent, disputed or unliquidated), then it must be filed before the bar date. In a Chapter 11 Case, the Court will set the bar date after a motion is filed and a hearing is held. Any claim filed after the bar date can be disallowed as untimely
- A proof of claim filed in the case is deemed allowed unless a party-in-interest objects. If an objection is filed, the claim can be disallowed only after a hearing before the Court. If a claim is disallowed, then the claimant cannot obtain a distribution from the estate or the reorganized debtor. The claimant may collect, however, from non-debtor parties such as guarantors

# Creditors and Equity Holders

- ▶ The Parties in a Bankruptcy Case
  - **Secured Creditors:** Most secured creditors are either (i) banks, insurance companies or institutional investors with blanket liens on the debtor's principal assets, or (ii) suppliers with liens on specific assets. Banks and institutional lenders in bankruptcy situations tend to be risk adverse and anxious to get their money back and terminate their relationship with the debtor. Suppliers with liens on specific assets may be over secured. If so, they will likely behave similarly to banks as described above. Suppliers whose loans are under secured will likely behave similarly to the trade creditors as described below
  - **Unsecured Creditors:** Most unsecured creditors are trade creditors that supplied goods and services to the debtor. **However, other unsecured creditors also pop up in healthcare bankruptcy cases, including, holders of unsecured bond/note debt, personal injury litigants, employees, and providers of employee retirement, health and medical benefits (i.e. the Pension Benefit Guaranty Corporation "PBGC"; third-party medical payors).** Because unsecured creditors' priority is below secured lenders, if the debtor liquidates, unsecured creditors may receive pennies on the dollar. Consequently, unsecured trade creditors have incentives to participate in a reorganization plan, even one based on questionable projections

# Creditors and Equity Holders

- ▶ The Parties in a Bankruptcy Case (cont'd)
  - **Unsecured Litigation Claimants:** Present a unique issue in a bankruptcy case given potential liability insurance issues and potential mass tort issues
  - **Equity Holders / Equity Interests:** Equity holders hold the most junior position. The absolute priority rule means that, absent payment in full of all creditors' claims, equity interests must be eliminated to confirm a reorganization plan not accepted by all classes of creditors. Some courts have fashioned an exception to the absolute priority rule. This so-called "new value" exception, where accepted, enables equity holders to receive distributions under a reorganization plan if the equity holders contribute sufficient "money or money's worth" to the reorganized debtor
  - In certain cases, equity holders can retain their stock notwithstanding a bankruptcy case. Where a debtor-in-possession is solvent, equity holders can play an important role in the bankruptcy process
  - **Many non-profit hospitals are uncertificated – no common stock – thus equity not an issue. When determining a legal issue in a non-profit bankruptcy case, the Bankruptcy Court may look to the non-profit debtor's charitable mission and ... This can really limit, if not prejudice, the recovery to unsecured creditors**

# Exiting the Bankruptcy Case

- ▶ Structured Dismissals
- ▶ Conversion of Chapter 11 Case to Chapter 7 Case

# Top 10 Bankruptcy Considerations of a Creditor

- ▶ Set-off/Recoupment\*
- ▶ Reclamation
- ▶ Section 503(b)(9)
- ▶ Critical Vendor
- ▶ Executory Contracts
- ▶ Committee participation
- ▶ Closeout contracts?
- ▶ Guarantees
- ▶ Collateral
- ▶ Letter of Credit

# Picking Up Assets

- ▶ Approach them now and buy property or pieces of their business
- ▶ Wait and bid for them in bankruptcy
- ▶ Wait and when they emerge from bankruptcy and buy what is left at that time

# Questions & Answers

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