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INTRODUCTION

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This issue of the *American Bankruptcy Institute Law Review* addresses healthcare bankruptcy, restructuring, and liquidation issues. With the continuing influx of healthcare bankruptcy cases, the numerous receiverships, and the number of healthcare businesses failing, this *Law Review* provides bankruptcy professionals with much needed knowledge of the healthcare industry and why it is failing. In addition, this issue of the *Law Review* discusses many of the cutting edge issues that continue to arise in the healthcare restructurings and liquidations.

Upon the introduction of managed care several years ago, the healthcare industry was transformed. Healthcare companies began operating as "true" businesses and tried to develop ways to efficiently deliver healthcare services. Many healthcare organizations believed that such efficiencies could be achieved if the size of their healthcare organizations grew exponentially. Thus, many organizations went on acquisition frenzies and acquired multiple practices and multiple types of healthcare businesses in order to form one huge conglomerate that could provide total patient care. By growing larger, these healthcare businesses believed that they would achieve economies of scale.

However, many of these large conglomerates are failing or have failed. Many of the businesses grew too fast and were unable to fully integrate their new businesses. As a result these businesses faltered under tremendous overhead expenses – expenses that should have been eliminated by the consolidation and resulting economies of scale.

Other healthcare businesses that engaged in the acquisition frenzy simply showed poor judgment. These businesses overvalued practices and other segments of the healthcare industry. In addition, these businesses overestimated the number of patient lives serviced by the acquired physician groups. Many healthcare companies did not grow their businesses with any particular strategy in mind such as filling a niche market.

Most importantly, however, something happened that could not have been predicted by anyone – the Medicare reimbursement rates were cut dramatically by the Balanced Budget Act of 1997 ("BBA"). This decrease in the level of reimbursement devastated the healthcare industry. For many of the healthcare businesses heavily dependent on Medicare reimbursements, such as home health agencies and nursing homes, this change was unexpected and created financial difficulties. Although Congress has passed legislation to counteract the BBA, these changes are not significant enough to undo the damage done to the healthcare industry and certainly cannot revive those businesses that have failed.

Every day, more and more healthcare businesses liquidate or seek to restructure their finances inside or outside of bankruptcy. Every sector of the healthcare industry has been impacted, at different times, by the BBA. Every size of healthcare business has been impacted, from the "mega"−healthcare organizations to the "mom and pop" businesses. As the BBA was introduced and the acquisition expenses grew, many healthcare businesses began seeking protection under the Bankruptcy Code. Two of the first high profile chapter 11 cases were the chapter 11 cases of Allegheny Health Education and Research Foundation, a not−for−profit company which owned, among other things, hospitals, physician practice groups and medical schools, and FPA Medical Management, Inc., a large physician practice management company. Recently, nursing homes such as Vencor, Sun Healthcare Group and Lenox Healthcare Group have sought bankruptcy protection. Hospitals also have sought protection. Clearly, the financial difficulties of healthcare businesses continue to rise and likely will continue for several years.

This issue begins with a roundtable discussion of the healthcare industry, why healthcare businesses are suffering from financial difficulty and the tools available to restructure these businesses. I was honored to moderate this roundtable discussion which involved many prominent healthcare bankruptcy professionals, Keith J. Shapiro, Deryck Palmer, Thomas Salerno, Karen Ferrell, Timothy Czmiel and Professor Thomas R. Prince. The debate was lively, and I am sure you will enjoy reading it.

This issue also includes an article by Elizabeth J. Austin and Holly G. Gydus exploring the out−of−court liquidation alternatives available to financially troubled nursing homes. Ms. Austin and Ms. Gydus explore Connecticut receivership laws and analyze the successes and pitfalls of a nursing home receivership in Connecticut involving AHF/Hartford, Inc. and AHF/Windsor, Inc.

Sam Stricklin has written an insightful article exploring the characterization of healthcare receivables. In this article, Mr. Stricklin considers whether healthcare receivables are "proceeds" or "rents" or whether they are excluded after−acquired property. Depending upon the characterization of such receivables, the pre−petition lender either will or will not hold a lien against such receivables in accordance with section 552 of the Bankruptcy Code.

This issue also includes an article addressing issues impacting physicians. Matthew Gensburg has contributed an article exploring whether physician practice management agreements are assumable under section 365 of the Bankruptcy Code.

As noted above, more and more bankruptcy cases are being filed by healthcare businesses. Many of these cases are filed in Delaware. William H. Sudell, Jr. and Eric D. Schwartz submitted an article analyzing certain large healthcare bankruptcy cases pending in Delaware and the relief being afforded such companies in their efforts to restructure.

Professor Thomas R. Prince has contributed an article analyzing hospital closures and whether there is any relationship between such closures and the lack of technology at such hospitals. Professor Prince discusses the "haves" and the "have−nots" in this article in analyzing the technology gap between the financially viable hospitals and the financially struggling hospitals.

Finally, this issue includes a student note on HMO debtors and whether they are ERISA fiduciaries. The note provides a timely bankruptcy perspective on the above issue.

This *Law Review* provides all bankruptcy professionals with a comprehensive perspective on the healthcare industry and its financial difficulties. It provides bankruptcy professionals with information concerning the benefits and potential pitfalls of an out−of−court restructuring/liquidation as compared to an in−court restructuring/liquidation. This information will benefit the many of us who are and will be involved in healthcare restructurings and liquidations. These cases are among the most difficult as you attempt to balance the interests of the many constituencies – the creditors' goals of maximizing their returns, the patients' goals of ongoing quality care, the physicians' goals of maintaining their employment and investment, and the federal and state governments' goals of regulating the industry and maintaining high standards of patient care.

I would like to extend thanks to Deborah L. Fish of Allard & Fish, P.C., who was instrumental in helping put together this issue of the *American Bankruptcy Institute Law Review*. In addition, I would like to extend thanks to each of the authors, roundtable participants and students who worked on this *Law Review*.

FOOTNOTES:

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