



AMERICAN
BANKRUPTCY
INSTITUTE

Winter Leadership Conference

Senior Care: Financial Stressors in the Sector Across Borders

Hosted by the Health Care and International Committees

Suzanne A. Koenig

SAK Healthcare; Riverwoods, Ill.

Charles Phiri

CP Advisers (PTY) LTD; Johannesburg, South Africa

Robert M. Schechter

Porzio, Bromberg & Newman, P.C. Morristown, N.J.

John E. Thomas

Squire Patton Boggs; Washington, D.C.

Stressors and General Overview of Healthcare Receiverships

SAK HEALTHCARE >
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Stressors

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Major Stressors in Healthcare

Declining Census and Occupancy

- Move to home health care instead of nursing homes
- Move to clinics instead of ED and PCP
- Pressure from payors to reduce length of stay



Declining Revenue

Billing Issues

- Lack of negotiating power with insurers
- CMS — Medicare/Medicaid prices are set and not negotiated
- Small/struggling providers have limited bargaining power
- Reimbursement — Improper Coding by Diagnosis

Overall Operational Issues

- Cash is often poorly managed
- Reimbursement is incredibly complicated
- Collection efforts are often poorly managed

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Major Stressors in Healthcare

Nursing Challenges

- Nursing shortage
- Agency utilization
- Unions Doctor Challenges
- Shortage
- Hospitals hiring doctors at high compensation rates as doctors drive patients in the door



Increasing Costs

Capital Demands

- Aging infrastructure with significant deferred maintenance
- Electronic medical records
- Expensive
- Many implementation failures

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Major Stressors in Healthcare



Increasing Costs

Increasing Costs

- Drug costs
- Other medical supplies
- Litigation costs
- Insurance costs
- Regulatory environment
- Provider taxes - all states except Alaska use at least one provider tax to help finance Medicaid

Receivership is a better option for addressing these risks than bankruptcy

- More cost effective
- Can preserve or realize value in a default situation

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Why a Receivership Makes Sense

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What does a receivership look like in a healthcare setting?

In a real-estate default, lenders/landlords can foreclose against property

- To eliminate subordinate liens
- To remove the borrower from possession

A receiver takes control of property & related business pending result of foreclosure

Receivers can be appointed in State or Federal court —

- Scope of receivership determined by court order

The Receivership Estate

- Includes all assets, to be preserved for the benefit of all creditors
- Liable only for debts after receiver's appointment
- Pre-existing debts paid after Receivership Estate's obligations

Receivership involves a healthcare business and real property

- i.e. SNF, Assisted Living, etc.
- Often sought out by landlords
- Often specified in terms of lease
- Typically, a lender or landlord wants to transition to a new operator or sell.

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Benefits of Healthcare Receiverships

Allows for Orderly Transition to New Operator or to Tee Up Sale

- Without displacing residents
- Without disrupting patient care
- Without jeopardizing licenses
- Allows a new operator time to obtain licenses

Court Order Specifies Duties of Receiver

- Receiver can take over operations, stabilizing and improving business before transition to new operator or new owner
- Manage business & property until foreclosure is resolved via new lease or sale to a third party Authorizes interim management agreement

Insulates Lender/Landlord from risks associated with operating a healthcare business

Cost Effective

- Establishes Receivership Estate, alleviating need to service pre-receivership debts. All assets to be preserved for benefit of all creditors.

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Pitfalls of Healthcare Receiverships

License

- Receiver must have authorization to operate under existing licenses

Management

- Must establish interim management agreement with Receiver

Funding

- Multiple legal entities may be involved — cash-flow may go to operator rather than tenant, or to a separate working capital lender.

Staff

Patient/Resident Retention

Bankruptcy Filing

- Tenant may attempt to avoid receivership by filing for bankruptcy

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ABI Winter Leadership Conference 2023

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Speakers

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SAK Healthcare; Riverwoods, Ill.

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Squire Patton Boggs; Washington, D.C.

Robert Schechter (Moderator)
Porzio, Bromberg & Newman, P.C.; Morristown, NJ

In the News Around the Globe

27 Percent of Nursing Homes and Related Service Facilities in Japan May Go Bankrupt or Shut Down Operations

Japan Economic Newswire, *Kyodo News International, Inc.*
July 7, 2023

"Nursing care facilities are not able to pass along cost increases to consumers in the same way as other companies, and this has a significant impact on their business," said an official of Minkaiyo, an association of nursing care providers."

"The group was among those that conducted the online survey in March covering around 1,200 nursing care homes and facilities across Japan. There are also concerns about a potential decline in the quality of nursing care services as some facilities have either reduced staff or postponed hiring due to high prices."

"The survey found that over 90 percent of facilities have been affected by price increases. When these facilities were asked about their future business plans, 64.3 percent felt they can weather the challenges and continue operating, followed by those who were worried about shutting down their operations or going out of business in coming years. Among multiple answers on how facilities are dealing with increased costs due to price hikes, the most common was saving electricity and goods, followed by withdrawing savings and reducing or forgoing salary increases and bonuses."

"Some 16.2 percent chose staff reductions and suspension of new hiring, according to the survey."

DOREAFAMILIE Restructuring Proceedings - Investors Shy Away From Care Homes As Operator Insolvencies Rise Sharply

MENAFN- GlobeNewsWire - Nasdaq
May 31, 2023

"A wave of insolvencies in Germany's care home sector is scaring off investors in an asset category that, until recently, was seen as a one-way bet on Germany's ageing demographics."

"The latest large nursing home operator to file for part-insolvency is Dorea GmbH, which applied last week to the Berlin-Charlottenburg District Court for protection from its creditors while it tries to restructure itself. The filing affects 25 of its operating companies including about half of its nursing homes and assisted living facilities. The company operates 80 in-patient facilities, 17 assisted-living sites and 9 outpatient care services."

"DOREA-Group, which operates under the DOREAFAMILIE brand, is one of the largest private care providers in Germany, focusing on traditional geriatric care, with 76 inpatient facilities, 17 locations with assisted living, and nine outpatient care services. In total, the group cares for approximately 7,500 people in need of care."

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In the News

ORPEA's Financial Restructuring: Court of Nanterre Approved the Company's Proposed Accelerated Safeguard Plan

Contify Investment News
March 16, 2023

"ORPEA SA has achieved a significant milestone with the approval of its Accelerated Safeguard Plan by the Nanterre Specialized Commercial Court, a cross-class cramdown. The Accelerated Safeguard Plan aims to save the company, maintain employment, and guarantee the quality of care and support for the 267,000 patients and residents it welcomes every year. The Court's approval will enable new shareholders to acquire a stake in a Group that will have a completely different face, accelerating the transformation already underway."

"The Accelerated Safeguard Plan will include capital increases aimed at settling existing debt and raising new equity, amendments to the terms and conditions of the June 2022 financing, adjustments to the legal documentation of financing agreements at the subsidiary level, and the extension of part of the Company's tax and social liabilities. The implementation of the conversion into equity of all of ORPEA SA's unsecured debt, followed by cash contributions of up to €1.55 billion, will begin as soon as the final condition precedent has been fulfilled. The Company points out that these capital increases will result in massive dilution for existing shareholders if they do not participate."

"The Specialized Commercial Court of Nanterre approved the Accelerated Safeguard Plan by way of a cross-class cramdown, with the main characteristics of the capital increases planned under the financial restructuring plan. The main characteristics of these capital increases include equity Capital increases, Groupement Capital increases, and Rights Issues. The Company's commitment to providing care for the most vulnerable people in society is evident in the company's efforts to save the company and maintain employment."

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Sample Recent U.S. Senior Care Bankruptcy Cases

Central Oklahoma United Methodist Retirement Facility, Inc. dba Epworth Villa

Bankr. W.D. Okla. (23-12607)

Date Filed: 10/02/2023

"Like many retirement communities, the COVID-19 pandemic had a severe detrimental impact upon Epworth Villa's occupancy because it was extremely difficult to conduct marketing activities to obtain new residents, resulting in a gradual reduction in liquidity."

"Under that financial strain, Epworth Villa defaulted on its Bond Debt in November 2021. Thereafter, Epworth began placing entrance fees of new residents into escrow."

Declaration of Ron Kelly in Support of Debtor's Chapter 11 Petition and First Day Pleadings [ECF No. 31]

Windsor Terrace Healthcare LLC

Bankr. C.D. Cal. (23-11200)

Date file: 08/23/2023

"In addition to having approximately \$63 million of collective pre-bankruptcy general unsecured debt, there are a multitude of asserted litigation claims with unknown liabilities, and more litigation claims are anticipated to be asserted in the future."

"[T]he Debtors have no economic ability to pay their massive amount of pre-petition debt at this time and to absorb the enormous costs of defending against the numerous outstanding pre-petition litigation matters, all of which were incurred while the Debtors were under prior ownership and management."

"The Debtors concluded that they are in need of the protections and breathing room afforded them by the chapter 11 bankruptcy process, the Debtors anticipate that, absent these bankruptcy cases, the number of lawsuits could well be over 100 with claims exceeding tens of millions of dollars over the next few years."

Omnibus Declaration of Tianxiang Shawn Zhou in Support of Emergency First Day Motions [ECF No. 14]

Global Premier Regency Palms Colton, LP

Bankr. C.D. Cal. (22-10517)

Date Filed: 06/22/2023

"The outbreak of COVID-19 and the subsequent shutdown and government imposition of restrictions caused construction delays and cost overruns for the Debtor's project."

"These restrictions caused unexpected delays in the development and opening of the Facility [...] As a result, Lender stopped funding the project."

'In addition, several contractors and/or subcontractors assert mechanics' liens against the [f]acility."

Initial Status Report [ECF No. 40]

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Evangelical Retirement Homes of Greater Chicago, Incorporated, d/b/a Friendship Village of Schaumburg

Bankr. N.D. Ill. (23-bk-07541)
Date Filed: 06/09/2023

"[COVID-19] dealt hard blows to the Debtor's business model, which was to promote active lifestyles for Seniors who now found themselves living behind closed doors, cut off from outside friends and family."

"After months of financial losses, the Debtor, which was financed by bondholders which had secured claims of more than \$130 Million Dollars (\$130,000,000.00), informed the Bond Trustee that Debtor could no longer afford to pay debt service on the bonds."

Declaration of Mike Flynn In Support of the Debtor's First Day Pleadings [ECF No. 16]

Avenir Memory Care @ Knoxville LP

Bankr. D. Ariz. (23-02047)
Date Filed: 03/31/2023

"Like many industries, the memory care industry in general, and the Facility specifically, were significantly adversely affected by the global COVID-19 pandemic, and the Debtor's operations and revenues suffered greatly beginning in 2020 and have not yet reached their pre-COVID levels"

"To avoid the costs associated with defending the receivership action in the State Court, to prevent a potential foreclosure sale of the Facility, and to prevent the loss of value that can be used to, among other things, pay other financial obligations of the Debtor."

Declaration of David L. Craik in Support of First Day Motions [ECF No. 8]

Amsterdam House Continuing Care Retirement Community, Inc.

Bankr. E.D.N.Y. (23-70989)
Date Filed: 03/22/2023

"In 2021, the Debtor again faced challenges with its occupancy that were exacerbated by the unprecedented impact of the COVID-19 pandemic."

"[A]s the Debtor struggled to stabilize following the 2021 Chapter 11 Case, the Debtor's financial condition was further strained by rising labor costs and inflationary pressure felt by CCRCs across the country."

"Together, these challenges began to threaten the Debtor's ability service its debt obligations, honor Entrance Fee Refunds and remain in regulatory compliance."

Declaration of Michael Morton In Support of the Debtor's Chapter 11 Petition and First Day Motions [ECF No. 13]

Paradise Senior Apartment Complex, LLC

Bankr. S.D. Cal. (22-02986)
Date Filed: 11/21/2022



2023 WINTER LEADERSHIP CONFERENCE

"Due to supply chain issues, significant increases in material costs and shortages the Debtor ran out of funds and ceased construction in the spring of 2022."

Declaration of Tolga Horoz in Support of Debtor's Motion Authorizing Postpetition Secured Financing [ECF No. 16]

Leading Life Senior Living, Inc.

Bankr. N.D. Tex. (22--42784)

Date Filed: 11/18/2022

"The Debtor has suffered from liquidity issues owing to competition in the assisted living sector, the financial challenges related to the COVID-19 pandemic, and most recently, the mismanagement or diversion of funds by its prior manager."

"Although the situation has improved under the new board and the new management and the debtor's facilities are at approximately 80% occupancy, the debtor is still facing significant liquidity issues,"

Debtor's Motion for Approval of Sale, Bid Procedures, Form of Notice of Auction and Sale and Form and Manner of Assumption and Assignment of Executory Contracts [ECF No. 56]

Mariner Health Central, Inc.

Bankr. D. Del. (22-10877)

Date Filed: 09/19/2022

"[The debtor] has experienced significant decreases in resident occupancy and revenues during the pandemic, and has had substantial increases in operating expenses, particularly for labor costs, personal protective equipment, and facility improvements or modifications."

"[However] the Debtors have been forced to commence these cases because [of] the Ledesma Judgment, which in my opinion exceeds the value of the Debtors' assets and operations multiple times over."

Declaration of Lawrence Perkins in Support of Chapter 11 Petitions and First Day Pleadings [ECF No. 12]

Christian Care Centers, Inc.

Bankr. N.D. Tex. (22-80000)

Date Filed: 05/23/2022

"Residents and their families were concerned that COVID-19 would spread rapidly across the Campuses and were concerned regarding the health risks that COVID-19 would cause, particularly in light of the constituency of CCCI's residents"

"Increased care requirements for the residents over the course of the COVID-19 pandemic significantly impacted CCCI operating costs, in particular, increasing labor costs and a placing a greater reliance on higher-cost labor agency services. "

"Market forces limited the ability to raise revenues from resident rent to match these increased liabilities. Decreases in fundraising contributions also meant donations were not sufficient to defray the shortfall."

Declaration of Mark Shapiro in Support of Debtors' Chapter 11 Petitions [ECF No. 3]

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Fairport Baptist Homes

Bankr. W.D.N.Y. (22-20220)
Date Filed: 05/06/2022

“New York’s reimbursement rates for Medicaid and Medicare were not keeping up with inflation – costs outpacing reimbursement to the point that facilities could lose money per patient”

“With the onset of the COVID-19 pandemic in March 2020, New York implemented various new mandates, requirements and protocols for senior care facilities [...] (i) all employee screening for symptoms; (ii) increased supplies of protective equipment; and (iii) twice weekly testing [which] led to drastic increases in expenses that completely shifted the financial status and outlook for the entire organization.”

“In addition to COVID-19 expenses, occupancy at all of the Debtors’ facilities began to drop in April 2020.”

Declaration of Thomas H. Poelma in Support of Chapter 11 Petitions and First Day Motions [ECF No. 5]

Northwest Senior Housing Corporation

Bankr. N.D. Tex. (22-30659)
Date Filed: 04/14/2022

“Turnover at all levels of the [...] organization has taken place over the last five years.”

“The Debtors incurred significant costs as a direct result of the COVID-19 pandemic, including but not limited to those necessary to retain qualified staff. Expenses have increased due to dramatically higher labor costs and costs for additional personal protective equipment. Labor pressures not only persist but appear to be worsening.

“The global COVID-19 Pandemic put substantial pressure on Edgemere, drove occupancy down, and drained cash, as revenues declined and refunds paid exceeded Entrance Fees collected.”

Declaration of Nick Harshfield in Support of Chapter 11 Petition and First Day Pleadings [ECF No. 7]

BSPV-Plano, LLC

Bankr. E.D. Tex. (22-40276)
Date Filed: 03/01/2022

“The construction delays and cost overruns [...] persisted as the ongoing COVID-19 pandemic strained global supply chains, while skyrocketing inflation and interest rates continued to produce unprecedented, widespread shortages in materials and labor, along with skyrocketing prices.”

“The resulting, lingering supply-chain disruptions and materials and labor shortages subjected the Debtor to subcontractor defaults, revised bids, greater expenses, and further construction interruptions.”

“These effects were compounded by unusually poor and inclement weather—including but not limited to the severe winter storm ‘Uri’ that infamously afflicted Texas in February 2021.”

Debtor’s Objection to Bond Trustee’s Disclosure [ECF No. 308]



Faculty

Suzanne A. Koenig, LNHA, CTP, LSW is president and founder of SAK Management Services, LLC in Riverwoods, Ill., a nationally recognized health care management and consulting services firm, with specific expertise in senior living, skilled nursing and long-term-care facilities. As owner and operator of SAK Healthcare for more than 30 years, she provides assistance in the areas of operations improvement, staff development, business acumen and quality assurance. Having owned senior living facilities herself, Ms. Koenig understands the challenges and opportunities confronting senior living and long-term-care providers in managing the industry's changing dynamics. She has held executive positions in marketing, development and operations management for both regional and national health care providers representing property portfolios throughout the country. She also has held numerous appointments as the Patient Care Ombudsman in several health care bankruptcy filings in Delaware and throughout the U.S. Ms. Koenig is the most frequent court-appointed Patient Care Ombudsman to medical facilities, advocating for patient care, in the country. She also has held management roles with more than 500 facilities nationwide, providing in-house management to restore care and fiscal responsibility while establishing administrative teams to lead each facility in the future. Ms. Koenig has been an officer and director for several long-term-care-provider associations, and is an ABI Board member and co-chairs ABI's Health Care Committee. In addition, she is a member of the Global Turnaround Management Association's (TMA's) Board of Trustees and a member of the Negotiating Team Task Force in Arizona, designing and negotiating the contract between the state and counties for delivery of Indigent Health Services. Ms. Koenig is the only non-lawyer and non-Attorney General invited by the National Association of Attorney Generals to participate on a panel, "Patient Care Ombudsman," addressing the Patient Care Ombudsman's interaction with the states in their role as Patient Care Regulator, and she has testified before the House of Representatives as an industry expert in funding the long-term-care industry. She received her Bachelor of Social Work degree from the University of Illinois at Urbana-Champaign and her M.S. from Spertus College.

Charles Phiri is a director of insolvency with CP Advisers (PTY) LTD in Johannesburg, South Africa. He is an international restructuring expert and an insolvency practitioner with a wide range of expertise in bankruptcy law, business rescue and turnaround strategies, corporate debt restructuring, tax law, business advisory, cross-border insolvency and implementing of business rescue plans to distressed companies in line with Chapter 6 of Companies Act 71 of 2008 (South Africa). Mr. Phiri has in-depth knowledge of the PFMA Act, Insolvency Law Act, National Credit Act, Consumer Protection Act, Electronic Communications and Transactions Act, Protection of Personal Information Act and other related legislations. He is a member of ABI and the Turnaround Management Association of Southern Africa.

Robert M. Schechter is a principal of Porzio, Bromberg & Newman, P.C. in Morristown, N.J., and a member of the firm's Corporate and Commercial Departments. He concentrates his practice in organizational and financial structuring, business reorganization, bankruptcy and corporate compliance from a global business strategy perspective, with a focus on the casino and gaming, telecommunications, life sciences and chemical industries. Mr. Schechter's practice involves the representation of parties with both domestic and cross-border interests and investments, including stakeholders in both in-court and out-of-court business finance, bankruptcy, data privacy and cybersecurity, and corporate

compliance matters such as regional, national and international businesses, secured and unsecured creditors, creditors' committees, debtors, and sellers and purchasers of assets. Mr. Schechter is admitted to practice in New York and New Jersey. He received his B.A. in 1996 from Rutgers University and his J.D. *cum laude* in 2005 from New York Law School, where he was Executive Case Comments editor of the *New York Law School Law Review*, a member of the Center for Professional Values and Practices, and a Justice John Marshall Harlan Scholar.

John E. Thomas is a partner with Squire Patton Boggs in Washington, D.C., and leads the firm's Real Estate Practice, which is comprised of more than 150 lawyers globally. He has a diverse practice representing developers, lenders, institutional investors and tenants in all varieties of real estate transactions. Mr. Thomas's practice includes real estate lending, the acquisition and sale of real estate, leasing, development and the negotiation of joint venture agreements. He is a leader in the senior living finance industry, having represented lenders, investors and developers in financing transactions for more than 200 senior living communities, including acquisition and construction loans, tax-exempt bond financings, mezzanine loans, and private placements of debt and equity. His finance experience includes significant loan restructuring work as both debtor and creditor counsel. Mr. Thomas also has an active practice representing government entities and developers in the negotiation of public/private partnerships for the development of real estate assets, usually under a long-term ground lease, master lease or concession agreement. His clients include a number of offshore investors in U.S. real estate, representing them in acquisitions, sales and financing, and acting as investor partners in the development of a variety of real estate assets, including senior housing, office buildings, multifamily, student housing and data centers. Prior to joining the firm, Mr. Thomas acted as general counsel for Artery Properties, Inc. and worked in a nonlegal capacity for Washington, D.C.-area developers and managers of commercial real estate. He is licensed to practice in the District of Columbia, Virginia and Florida, and he has been recognized in *ConnectCRE* 2022 Lawyers in Real Estate Awards – National, *Connect* 2021's Lawyers in Real Estate Awards for Washington, DC and as one of Washington DC's Best Lawyers: Real Estate in *The Washingtonian* in January 2021. Mr. Thomas received his B.A. magna cum laude in 1982 and his M.B.A. in 1986 from Georgetown University, and his J.D. from Georgetown University Law Center.