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# Annual Spring Meeting

## **Dead Ends and Detours: When the Best-Laid Plans Collapse**

*Hosted by the Health Care and Unsecured Trade Creditors Committees*

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## **Dead Ends and Detours:** When the Best-Laid Plans Collapse



## Learning Objectives

Anticipating and Mitigating Risks in Bankruptcy Cases  
Evaluating “Plan B” Alternatives from the Operator’s Perspective  
Understanding the Toolkit of Other Key Stakeholders in Bankruptcy



## Panelists

Megan Preusker  
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## Continuing Legal Education (CLE) Materials: ABI Spring Meeting 2025

### **Introduction**

These Continuing Legal Education (CLE) materials provide an in-depth analysis of various restructuring options available to businesses facing financial distress. The options discussed include Chapter 7 liquidation, Chapter 11 reorganization, 363 sales, freefall bankruptcies, pre-negotiated bankruptcies, pre-packaged bankruptcies, structured dismissals, and out-of-court restructurings. Each section will cover the process, advantages, disadvantages, and potential legal implications of these restructuring methods.

### **Chapter 7 Liquidation**

#### Overview

Chapter 7 liquidation involves the complete dissolution of a business, where its assets are sold off to pay creditors. This process is governed by the U.S. Bankruptcy Code and is typically used when a company cannot continue operations.

#### Process

1. Filing a petition with the bankruptcy court.
2. Appointment of a trustee to oversee asset liquidation.
3. Distribution of proceeds to creditors according to the priority established by the Bankruptcy Code.

#### Advantages

- Provides a definitive end to the business's financial obligations.
- Allows for the orderly distribution of assets to creditors.

#### Disadvantages

- Results in the cessation of business operations.
- Creditors may not receive full repayment.

#### Legal Implications

- Directors and officers may face scrutiny regarding their management leading up to the bankruptcy.
- Potential for litigation if asset transfers are deemed fraudulent.

## **Chapter 11 Reorganization**

### Overview

Chapter 11 reorganization allows a business to restructure its debts and continue operations. It provides a framework for the company to negotiate with creditors and develop a reorganization plan.

### Process

1. Filing a petition with the bankruptcy court.
2. Debtor remains in possession and operates the business as a “debtor in possession.”
3. Development and court approval of a reorganization plan.

### Advantages

- Enables the business to continue operations.
- Provides an opportunity to renegotiate debts and contracts.

### Disadvantages

- Can be costly and time-consuming.
- Requires court approval, which can be uncertain.

### Legal Implications

- Increased oversight by the court and creditors.
- Potential for disputes over the reorganization plan.

## **363 Sales**

### Overview

A 363 sale refers to the sale of a debtor’s assets under Section 363 of the Bankruptcy Code. It allows for the sale of assets free and clear of liens and encumbrances.

### Process

1. Filing a motion with the bankruptcy court to approve the sale.
2. Conducting an auction process to maximize asset value.
3. Court approval of the sale to the highest bidder.

### Advantages

- Provides a quick and efficient method to sell assets.
- Can maximize the value of assets for creditors.

### Disadvantages

- May not provide a solution for the entire business.
- Potential for lower recovery if assets are undervalued.

### Legal Implications

- Requires court approval, which can involve complex legal proceedings.
- Potential for objections from creditors or other stakeholders.

## **Freefall Bankruptcies**

### Overview

Freefall bankruptcies occur when a company files for bankruptcy without a pre-arranged plan or agreement with creditors. This approach is often used when negotiations have failed.

### Process

1. Filing a bankruptcy petition without a pre-negotiated plan.
2. Developing a reorganization or liquidation plan during the bankruptcy process.
3. Court approval of the plan.

### Advantages

- Provides flexibility to develop a plan during the bankruptcy process.
- Allows for court protection while negotiating with creditors.

### Disadvantages

- Can lead to prolonged and contentious proceedings.
- Increased uncertainty for the business and creditors.

### Legal Implications

- Greater involvement of the court and creditors in the restructuring process.
- Potential for litigation over the terms of the plan.

## **Pre-Negotiated Bankruptcies**

### Overview

Pre-negotiated bankruptcies involve filing for bankruptcy with a plan that has been negotiated with key creditors. This approach aims to streamline the bankruptcy process.

### Process

1. Negotiating a plan with major creditors before filing.
2. Filing the bankruptcy petition with the pre-negotiated plan.
3. Court approval of the plan.

### Advantages

- Reduces the time and cost of the bankruptcy process.
- Provides greater certainty for the business and creditors.

#### Disadvantages

- Requires successful negotiations with creditors before filing.
- May not address all creditor concerns.

#### Legal Implications

- Potential for expedited court proceedings.
- Reduced risk of litigation compared to freefall bankruptcies.

### **Pre-Packaged Bankruptcies**

#### Overview

Pre-packaged bankruptcies involve filing for bankruptcy with a plan that has been fully negotiated and voted on by creditors before filing. This method is designed to minimize disruption.

#### Process

1. Developing and soliciting votes on a reorganization plan before filing.
2. Filing the bankruptcy petition with the pre-packaged plan.
3. Court approval of the plan.

#### Advantages

- Significantly reduces the time spent in bankruptcy.
- Provides certainty and stability for the business.

#### Disadvantages

- Requires extensive pre-filing negotiations and creditor approval.
- Limited flexibility to modify the plan once filed.

#### Legal Implications

- Streamlined court proceedings with reduced litigation risk.
- Potential challenges if creditor approval is not obtained.

### **Structured Dismissals**

#### Overview

Structured dismissals involve dismissing a bankruptcy case with specific terms and conditions agreed upon by the parties, often used as an alternative to traditional bankruptcy resolutions.

#### Advantages

- Provides a flexible and negotiated resolution to bankruptcy cases.

- Allows for tailored outcomes that address specific creditor concerns.
- Can preserve value and minimize litigation.

#### Disadvantages

- Requires consensus among key stakeholders.
- Limited precedent and potential for legal challenges.
- May not provide the same level of finality as a confirmed plan.

#### Legal Implications

- Involves court approval of the structured dismissal terms.
- Requires compliance with bankruptcy laws and procedures.
- Potential for disputes over the fairness and legality of the dismissal terms.

### **Out-of-Court Restructurings**

#### Overview

Out-of-court restructurings involve negotiating directly with creditors to restructure debts without formal bankruptcy proceedings. This approach is often preferred to avoid the costs and publicity of bankruptcy.

#### Process

1. Engaging in negotiations with creditors to restructure debts.
2. Reaching an agreement on new terms for debt repayment.
3. Implementing the restructuring agreement.

#### Advantages

- Avoids the costs and stigma of bankruptcy.
- Provides flexibility in negotiating terms with creditors.

#### Disadvantages

- Requires creditor cooperation and agreement.
- May not be feasible if creditors are unwilling to negotiate.

#### Legal Implications

- Reduced legal oversight compared to formal bankruptcy.
- Potential for disputes if agreements are not honored.



**Conclusion**

Understanding the various restructuring options is crucial for legal professionals advising businesses in financial distress. Each option presents unique processes, advantages, disadvantages, and legal implications. By carefully considering these factors, businesses can select the most appropriate restructuring method to address their financial challenges.

## More than 100 Long Island seniors face uncertainty as The Harborside's future remains

unclear

By

Carolyn Gusoff

Updated on: October 15, 2024 / 12:11 PM EDT / CBS New York

**PORT WASHINGTON, N.Y.** - Residents of a senior community on Long Island are pleading with New York state to save their homes, and life savings.

The Harborside, formerly known as The Amsterdam, is an independent and assisted living facility and is in bankruptcy. Its purchase was just rejected by state regulators.

**"It's awful. There is no other way to describe it."**

Constance Miceli, 95, and Joyce Shapiro, 93, are in limbo, along with 180 other elderly residents. They are bracing for eviction.

"It's been horrible because we don't know what's going to happen to us," Shapiro said. "There you are, out on the street, and everybody doesn't have a family to move in with."

"It's awful. There is no other way to describe it. Awful. We are not sleeping nights," Miceli said.

The video player is currently playing an ad.

It's the third time in a decade the facility has been in bankruptcy court, and it has had financial woes from the start. Half of the 330 units are empty.

The sale of life care company LCS was abruptly denied days ago, with the [New York state Health Department citing "severe critical issues," including a lack of required financial transparency](#). LCS called the ruling deeply disappointing, and said "nothing could be further from the truth."

The blame game has left the residents in the middle.

"I paid over \$850,000 to live here, which will be lost," Miceli said.

Residents sold their homes to buy into the facility. They're writing letters to Gov. Kathy Hochul begging for negotiations to continue.

"The state will work with the families to make sure their loved ones have a place to go -- they will be given options. We are committed to ensuring that everyone gets the care that they need and deserve," a spokesperson said.

"We don't need their help, where to go, we need their help to stay here," Miceli said. "They don't seem to have a feel for what the people are going through here. It's a catastrophic situation for our residents," Miceli said.

"It's horrendous and the state just washed its hands of it, and the governor could change it," Shapiro said.

**"There is no Plan B"**

State Senator Jack Martins suspects the state killed the deal because it's a for-profit company.

"There is no Plan B. Plan B is the building gets handed over to the bondholders, gets sold, gets redeveloped for profit, and these 180 people... will be left with nothing. It's an absolute disgrace," Martins said.

With the future so uncertain, residents say the facility is also losing employees. If the sale doesn't go through, it will run out of money by year's end.

LCS released the following statement about the matter:

*Since 2022, LCS has been working to purchase the Harborside out of bankruptcy and restore it to a thriving senior living option for current and future residents. Ten months ago, after a complex and contentious process, we received approval from the bankruptcy court to buy the Harborside as part of a transaction designed to stabilize the Harborside's tumultuous financial history. Since then, we have diligently pursued finalizing the purchase of this community with state regulators and invested significant resources, including providing operating funds to the Harborside, in good faith to keep this community open for residents and employees.*

*Despite a robust plan that included significant renovations, expanded employment opportunities, and a commitment to honor resident refund obligations, state regulators failed to provide the necessary approvals in a timely manner, even with LCS granting multiple extensions of the outside date in the purchase agreement. As of the start of October, we were still no closer to an approval or commitment to a path forward with the New York State Department of Health than we were when we submitted our applications in January. As a result, we can no longer continue our pursuit of the Harborside.*

*The Department of Health has had multiple chances to engage with us and navigate the approval process on time to keep this community open for residents and employees. Now that the purchase agreement has expired, the Department is looking to shift blame through a false narrative about incomplete applications and refusals to provide information- nothing could be further from the truth. Instead, the DOH has failed the residents of the Harborside who now face an uncertain future. We are deeply disappointed by this result as we looked forward to improving this community for the residents, employees, and the greater Nassau County community.*

We heard from the state Department of Health about the matter on Tuesday.

"In keeping with its regulatory responsibility, the Department protected vulnerable residents by denying an applicant who was unwilling to comply with instructions on how to bring the application in compliance with State law. As regulator, we'll continue working with the existing operator to ensure that the needs and concerns of residents and their families are addressed."

## Court approves sale of Iowa City's Mercy Hospital to University of Iowa

By: [Clark Kauffman](#) - November 6, 2023 5:09 pm

A bankruptcy judge has approved the sale of Mercy Hospital-Iowa City, located at 500 E. Market St. in Iowa City, to the University of Iowa. (Photo via Google Earth)

A bankruptcy court has approved the sale of Iowa City's Mercy Hospital to the University of Iowa for \$28 million.

The financially struggling hospital successfully fought off an attempt by one of its primary creditors, Preston Hollow Community Capital, to purchase the 150-year-old medical center.

"At a time when many hospitals nationwide are experiencing significant financial challenges, we are heartened to begin the planning to bring Mercy Iowa City into UI Health Care," UI President Barbara Wilson, UI Vice President for Medical Affairs Denise Jamieson, Mercy President and CEO Tom Clancy, and Mercy Chief Restructuring Officer Mark Toney said in a joint written statement. "Together, we will preserve and enhance access to quality health care and jobs for those throughout our region."

They said the university has made a commitment to offer employment to all Mercy-Iowa City employees who are in good standing. Community medical providers who are not directly employed by UI Health Care will be allowed to continue practicing at Mercy under an "open medical staff" model, they added.

The two entities plan to officially join as one in early 2024, the university said, adding that there will be no immediate changes for patients, employees, or physicians during the interim.

The sale brings to an end [a contentious battle for control](#) of the 234-bed, acute care hospital. Bondholder Preston Hollow was initially believed to have been the winning bidder for Mercy at an Oct. 10 auction. The sale was scrapped after Preston Hollow indicated it expected \$10 million from Mercy's foundation to cover operating losses through November, and Mercy said that arrangement was not part the deal.

The dispute resulted in the auction being reopened and UI being selected the winning bidder. Court records indicate Preston Hollow didn't object to the sale on Monday.

Days before Mercy filed for bankruptcy in August, [Preston Hollow claimed Mercy was in "a financial freefall."](#) The specialty finance company went to court asking a judge to appoint a receiver who could take control of the hospital's assets, claiming the hospital was incurring "unsustainable financial losses" and arguing that a receiver was needed to avoid a shutdown of the hospital.

Mercy sought to have that case dismissed, calling Preston Hollow's actions a "pretextual power play by an investment fund that puts the medical team, employees, patients and larger community at risk."

According to Preston Hollow's petition, Mercy's liquidity had declined by \$40 million, or 51%, over the past nine months and the hospital had a negative cash flow of roughly \$2.6 million per month.

### Bankrupt Steward Health approved to sell six Massachusetts hospitals at a loss

By [Dietrich Knauth](#)

September 4, 2024 5:04 PM EDT Updated 7 months ago

NEW YORK, Sept 4 (Reuters) - Steward Health Care, the largest private hospital operator in the U.S., received a bankruptcy judge's approval on Wednesday to sell six Massachusetts hospitals, despite taking no profit from the \$343 million sale.

U.S. Bankruptcy Judge Christopher Lopez approved the sales as "the best deal that's on the table," at a court hearing in Houston, Texas.

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The sale will allow Steward to stem its losses and minimize the disruption to patients, even though the company won't make any money from the sale, Steward's attorney Candace Arthur told Lopez.

Most of the money from the sales will be paid to acquire the hospital real estate, which is owned by [Medical Properties Trust \(MPW.N\)](#), [opens new tab](#) and Macquarie. Steward's other liabilities exceed the modest amount that buyers agreed to pay for its hospital operations and separate assets, Arthur said.

Steward previously sold its Massachusetts real estate in a 2016 transaction that has been [criticized](#) by Massachusetts politicians and U.S. Senators.

Massachusetts supported the sale, agreeing to provide \$42 million in funding to the hospitals for September. Massachusetts had previously provided a [\\$30 million lifeline](#) to the hospitals.

Under the approved sale agreements, Rhode Island-based Lifespan Health System will acquire Saint Anne's Hospital in Fall River and Morton Hospital in Taunton for \$175 million; Boston Medical Center will acquire Good Samaritan Medical Center in Brockton and St. Elizabeth's Medical Center in Boston for \$140 million; and Lawrence General Hospital will acquire Holy Family Hospitals in Methuen and Haverhill for \$28 million.

Steward previously announced the closure of two other [hospitals in Massachusetts](#) and [two hospitals in Ohio](#).

Dallas-based Steward [filed for bankruptcy](#) protection in May, attempting to sell all its hospitals to address \$9 billion in debt. Before the announced closures, Steward operated 31 hospitals in eight states.

# Faculty

**Morris Alhale, CIRA** is a senior director with Portage Point Partners in New York and has more than a decade of experience in guiding senior management teams, lending institutions and business owners through complex restructurings. He works with companies and creditors in periods of extremely tight liquidity to help them develop and implement strategic imperatives, recapitalize balance sheets and manage cash flow. Mr. Alhale has advisory experience specializing in liquidity management, business planning, creditor recovery analysis, contingency planning and evaluating strategic alternatives. He has industry experience in health care, retail, media and entertainment, and consumer goods and services. Mr. Alhale co-authored an article in the *Journal of Corporate Renewal* titled, “Maximizing Value Amid Uncertainty in the Healthcare Industry.” He is a member of both the Turnaround Management Association and the Association of Insolvency & Restructuring Advisors. Mr. Alhale is 2022 ABI “40 Under 40.” honoree. He received his B.S.B.A. in finance and accounting *cum laude* from Boston University’s School of Management.

**David H. Botter** is a partner in the New York office of Cleary Gottlieb Steen & Hamilton LLP, where his practice focuses on large, complex restructuring cases, both out of court and in chapter 11, across a variety of industries. He frequently handles multijurisdictional and cross-border matters for both distressed companies and major creditors, with an emphasis on creditors’ committees and bondholder committees. Mr. Botter also represents bondholders as part of his creditor-side practice, and he has experience representing institutional investors, hedge funds, debtors-in-possession, post-petition lenders, and acquirors of distressed assets in the health care, transportation and energy sectors, among others. Previously, he was a partner at another major international law firm. Mr. Botter was listed in *Chambers USA* as a Leading Practitioner, Bankruptcy/Restructuring from 2010-24, and he has been listed in *The Legal 500 U.S.* as a Leading Lawyer for Finance: Restructuring (Including Bankruptcy): Corporate. He received his B.A. in 1986 from Syracuse University and his J.D. *cum laude* in 1989 from Boston University School of Law.

**Megan M. Preusker** is an attorney with Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. in New York, where her practice focuses on complex restructuring and insolvency matters and enforcement of creditor rights and remedies. She routinely represents institutional investors and indenture trustees in distressed municipal debt matters, including corporate and municipal bankruptcies and out-of-court restructurings. Ms. Preusker’s work spans a variety of industries, with an emphasis on health care, senior living, retail, charter schools and higher education. From 2021-24, *The Best Lawyers in America* featured her on its “Ones to Watch” list for Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law, Corporate Law. Prior to joining Mintz, Ms. Preusker was a partner in the Chicago office of a large, international law firm. Prior to that, she clerked for Hon. Jeff Bohm of the U.S. Bankruptcy Court for the Southern District of Texas in Houston. She also served as a judicial extern for Hon. Bruce W. Black of the U.S. Bankruptcy Court for the Northern District of Illinois and as a legal extern for the U.S. Trustee Program. Ms. Preusker has served as a volunteer judge for the Chicago Urban Debate League and as a team coach for John Marshall Law School in the ABI/St. John’s University School of Law Duberstein Bankruptcy Moot Court Competition, and she is a member of NFMA’s New Member Advancement Committee. She received her B.A. *magna*

*cum laude* from the University of Illinois and her J.D. *summa cum laude* from the John Marshall Law School, where she served as executive student publications editor of the *John Marshall Law Review*.

**Daniel M. Simon** is a partner in the Atlanta office of McDermott Will & Emery, where he represents public and private companies, secured and unsecured creditors, acquirers of distressed assets, and investors in all aspects of corporate restructuring transactions. He represents a diverse range of clients spanning numerous industries in complex and contentious bankruptcy cases. Mr. Simon regularly helps clients navigate large-scale, complex, corporate bankruptcies, cross-border restructurings and a variety of special distressed transactions across industries. He also regularly lectures and publishes articles on restructuring topics, and has led several seminars held by leading industry organizations, including the Turnaround Management Association. Mr. Simon has been recognized as a Recommended Lawyer in 2022 in *Legal 500 USA*, and he received the Chapter 11 Reorganization of the Year in 2019 by The M&A Advisor for his work on ExGen Texas Power and the divestment of Handley Power to Exelon, and The M&A Advisor's Emerging Leaders Award in 2017. Mr. Simon is admitted to practice in Illinois and Georgia. He received his B.A. in 2005 from Vanderbilt University and his J.D. in 2008 from Duke University School of Law, where he served on the *Duke Law Journal*.

**Caryn Wang** is an associate in the Bankruptcy and Restructuring group at Polsinelli in Atlanta, where she focuses on corporate restructuring, distressed-asset sales, bankruptcy litigation and other insolvency matters. She represents debtors, trustees, lenders and other parties-in-interest in chapter 11 reorganizations. She also represents various parties-in-interest in chapter 7 liquidations, chapter 9 debt-adjustments and state court receiverships. Prior to joining Polsinelli, Ms. Wang served as a legal extern to Hon. Mary Grace Diehl in the U.S. Bankruptcy Court for the Northern District of Georgia. She received her B.S. *magna cum laude* in 2009 from Vanderbilt University and her J.D. with high honors from Emory University School of Law in 2017, where she was admitted to the Order of the Coif and served as executive notes and comments editor for the *Emory Law Journal*.