



AMERICAN
BANKRUPTCY
INSTITUTE

New York City Bankruptcy Conference

Reshaping America: Examining the Recent Wave of Hospital and Retail Bankruptcies

Jeremy R. Johnson, Moderator
Polsinelli

Luke Andrews
Getzler Henrich & Associates LLC

Harold J. Bordwin
Keen Summit Capital Partners LLC

Richelle Kalnit
Hilco Streambank

Samuel S. Kohn
Dorsey & Whitney LLP

Hon. Nancy Hershey Lord
U.S. Bankruptcy Court (E.D.N.Y.) | Brooklyn

Barbra R. Parlin
Holland & Knight LLP

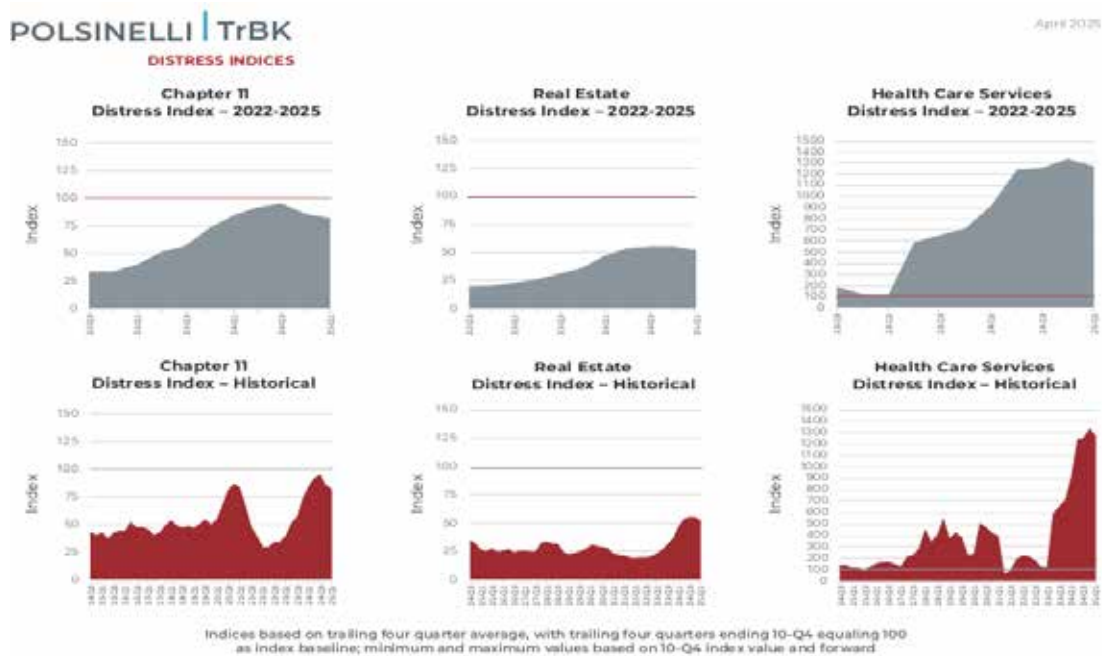
Reshaping America: Examining the Recent Wave of Health Care and Retail Bankruptcies

Introducing the Panel

- Honorable Sean Lane, U.S. Bankruptcy Court (S.D.N.Y)
- Honorable Jil Mazer-Marino, U.S. Bankruptcy Court (E.D.N.Y)
- Luke Andrews, Getzler Henrich & Associates, LLC
- Harold J. Bordwin, Keen Summit Capital Partners LLC
- Richelle Kalnit, Hilco Streambank
- Barbra Parlin, Holland & Knight LLP
- Sam Kohn, Dosey & Whitney LLP
- Jeremy Johnson, Polsinelli PC

Panel Roadmap

- How Big is the Problem?
- Causes of Distress
- Impact of Private Capital Investment (or Alternative Lenders)
- Case Studies and Examples of What Worked, and What Didn't...



Retail Apocalypse – Past, Present or Future?

- Vacancy Rates as a measure of distress
- Did it resolve itself?
- Drivers of Retail Demand
- Retail Resilience

Causes of Distress – Both Sectors

- Causes of Distress in both Retail and Healthcare
 - Overexpansion or Bad Mergers
 - Tariffs and Economic Uncertainty
 - Geography and Changing Demographics
 - Labor Costs
 - Overleveraging

Causes of Distress - Retail

- The “Usual Suspects”
 - capital structure
 - failure to adopt an omnichannel strategy
 - retail leases
- Rise of E-commerce
- Evolution of “Brands”
- Experiences v. Goods

Causes of Distress – Health Care

- Regulatory Actions
 - Enforcement action
 - Financial Penalties
- Reimbursement Rates
 - Private and Public Payor Rates
 - Cuts to Programs
- Tort Litigation
 - Targeted litigation
 - Overall exposure

Private Capital Investment - Retail

- Impact on capital structure
- Impact on timing of an eventual bankruptcy
 - Fresh capital in the market → impact on capital structure
 - Moving beyond amend and extend
- Motivations
 - Bank lenders typically not “in it to win it”. Are private credit lenders different?

Private Capital Investment - Retail

- LME, then chapter 11 restructuring (debt for equity swap) and, if neither of those are “successful,” a chapter 22 as a sale or liquidation
 - Are retail chapter 11 sales/liquidations necessarily preceded by “something else” such as an LME and/or debt for equity swap?
 - Bed Bath (no LME or restructuring, but it got “meme stock” financing)
 - Party City (chapter 11 restructuring + chapter 22 liquidation)
 - Forever 21 (chapter 11 sale, followed by chapter 11 liquidation of debtor Opco ((non-debtor IPCo))
 - For ecommerce only “retailers” (i.e., no brick and mortar), an Article 9 foreclosure is increasingly an option

Private Capital Investment – Healthcare

- Controversial Topic
 - 2024 Estimated deal value \$115 billion globally
 - Traditional Private Equity Goals v. Health Care Goals
- Areas of Focus
 - physician practices
 - hospital systems
 - senior living
- Reaction by Regulators
- Implications of Investment

Private Capital Investment – Healthcare

- Implications of PE Investment
 - Decision Making
 - Financial pressure from debt/dividend recaps

Health Care Bankruptcy Issues

- For Profit v. Not for Profit Healthcare Bankruptcy Cases
 - Fiduciary Duties
 - Absolute Priority Rule
 - Highest and Best Determination
 - Regulatory Impact
- Patient Care Ombudsman
- Impact of Patient Care v. Financial Pressures

Case Study – Christmas Trees

- Overview: Boutique store grew through acquisition to 82 stores; \$42mm in secure debt, \$81 million in unsecured debt
- Why filed?
- What happened?
 - \$45mm DIP loan secured by tangible assets
 - Hired banker to run traditional sale process
 - DIP default led to store closing and liquidation

Case Study – Christmas Trees

- Lessons Learned:
 - Monitor carefully, case was announced as a reorganization or sale process, 6-8 weeks later was a liquidation
 - Sharpen your pencil – store by store profitability analysis at the right time could have prevented full liquidation
 - Act expeditiously – window for sale proposals
 - Liquidators acting as DIP lenders

Case Study – Amsterdam House CCRC

- Overview: Entrance Fee CCRC with municipal bond debt of \$173mm; \$90mm in refund obligations owed to residents and former resident families
- Why filed?
- What Happened? Sale Case with Competing Bids:
 - Credit bid of \$173mm in bond debt that would wipe out \$90mm in refund obligations, closure of community and conversion to housing
 - Asset bid of \$63mm in cash plus \$41mm from former sponsor, assumed \$90mm in refund obligations, continued as CCRC
 - Debtor and Committee picked for profit operator to keep as CCRC

Case Study – Amsterdam House CCRC

- Court denied the sale motion but provided a framework a transaction with similar economics as the \$63mm asset bid with operating as a going concern.
- Lessons Learned:
 - Cognizant of regulatory issues, pre-approval from regulators
 - Impact of charitable mission as a sale factor
 - Impact of prior Chapter 11 bankruptcy
 - No appraisal that showed fair value worth more than highest cash bid

Case Study – Petersen Healthcare

- Overview: 90+ SNFs with \$166mm in secured debt and \$131mm in unsecured debt; state infusion
- Why filed?
- Case:
 - Priming lien on all assets from new lender addressing unique financing issues with HUD lenders
 - Sale process with purchaser for \$118mm
 - Liquidating Plan confirmed June 10, 2025

Case Study – Steward Healthcare

- Overview: Largest physician owned hospital network in US with over \$9 billion in total debt; operated over 30 hospitals. Formerly owned by private equity.
- Why filed?
- Case Status:
 - Still ongoing, but five have permanently closed, two paused services.
 - One regulator seized a hospital and forced a transition to another buyer.
 - Multiple sale processes, very few competing buyers.
- Poster child for dangers of private equity in healthcare.

Faculty

Luke Andrews is a senior director with Getzler Henrich & Associates LLC in New York and specializes in financial and cash-flow modeling, quantitative and statistical data analyses, and efficiency improvements through business-tool development. Since joining the firm in 2015, he has been involved in more than 25 engagements in such industries as health care, retail, fashion, real estate, construction, manufacturing, distribution, asset-management, professional services, apparel and food, among others. He also has advised management teams through financial and managerial crises, complex operational and financial restructurings, and both micro and macro strategic planning. Prior to joining Getzler Henrich, Mr. Andrews worked in the alternative investment group of a Swiss private bank and as a member of the investment team at a New York-based multi-family office. His previous experience included financial modeling, research and data analyses, as well as both quantitative and qualitative evaluations of investment opportunity, performance and risk. Mr. Andrews is proficient in multiple programming languages, including Python, Javascript, Stata, R and VBA, and he is a member of the Turnaround Management Association's New York Chapter, having served on its NextGen Committee for three years. He received his Bachelor's degree in economics from Washington and Lee University in Lexington, Va.

Harold J. Bordwin is a principal and managing director of Keen-Summit Capital Partners LLC in New York, where he focuses on developing and implementing strategic real estate and corporate finance plans for his clients. Those plans involve real estate analysis, real estate acquisitions and dispositions, lease modifications and terminations, and corporate finance and capital markets services. He also is a receiver and provides fiduciary services to his clients. Mr. Bordwin has more than 33 years of real estate advisory and transactional experience, with particular expertise in workouts and restructurings and other special situations. He has represented financial, corporate and retail clients. Mr. Bordwin has testified on real estate restructuring issues before the Judiciary Committee of the United States House of Representatives. He also has been interviewed and quoted in numerous articles for *The Wall Street Journal*, *The New York Times*, *USA Today* and various trade publications. Mr. Bordwin previously was a principal with KPMG LLP and CEO of Keen Consultants. He is a member of ABI, the American and California Bar Associations, the International Council of Shopping Centers and the Turnaround Management Association, and he holds Series 7, 24, 63 and 79 licenses. Mr. Bordwin received the 2023 Commercial Real Estate Visionary award from the *NY Real Estate Journal* the 2021 ABI Asset Sale of the Year award for his work in the *Lighthouse* case, and the 2021 ALIS – Single Asset Transaction of the Year over \$25M award and Turnaround Atlas Awards for Hospitality & Real Estate Restructuring of the Year for his work on the *L'Ermitage* case. He received his undergraduate degree in government from Wesleyan University in 1982 and his J.D. from Georgetown University Law Center in 1985, where he was a staff member of *Law & Policy in International Business* and published articles in the *Ecology Law Quarterly* of the University of California at Berkeley Boalt Hall School of Law.

Jeremy R. Johnson is a shareholder with Polsinelli PC in New York and Chicago, and represents distressed companies and other stakeholders in the insolvency process. Although his restructuring and insolvency practice spans various business sectors from retail to manufacturing, he has experience representing distressed health care businesses or participants in distressed M&A processes. Mr.

Johnson's recent engagements in health care include senior living owners and operators (including continuing care retirement communities and skilled-nursing providers) and acute, post-acute and behavioral health providers. Working closely with Polsinelli's health care and corporate teams, he helps provide complete solutions for companies experiencing financial distress. In the last 15 years, Mr. Johnson has led several large company-side engagements and helped managed distressed situations for clients. In addition to company-side and distressed M&A representations, he represents other stakeholders in the restructuring space, including landlords, committees, individual creditors, trustees and other parties in interest. Mr. Johnson received his B.A. in 1996 from the University of Iowa and his J.D. in 1999 from Boston University School of Law, where he served as editor-in-chief of the *American Journal of Law & Medicine*.

Richelle Kalnit is chief commercial officer and senior vice president at Hilco Streambank in New York. She advises companies, lenders and stakeholders on matters related to intangible assets, including brands, software, patent portfolios, digital assets and marketplace accounts, as well as how artificial intelligence (AI) can impact the utilization of these assets. Ms. Kalnit's services often take the form of sell-side mandates, where she brings to bear nearly 20 years of legal and M&A deal experience managing the nuances and unique aspects of the sale of these types of assets. She is responsible for developing an unmatched commercially reasonable sale process product under Article 9 of the Uniform Commercial Code for intangible assets and is adept at managing and leveraging the dynamics surrounding those processes. Ms. Kalnit is a frequent panelist and contributor related to asset sales and intangible assets and how artificial intelligence (AI) may impact the value of intangible assets. Prior to joining Hilco Streambank, she was a member of the bankruptcy and restructuring group of Cooley LLP, where she managed M&A transactions for several of the nation's most prominent retailers, consumer product companies, hotels and restaurants. She began her career at the law firm King & Spalding LLP. Ms. Kalnit received her B.A. *cum laude* from the University of Pennsylvania and her J.D. *cum laude* from Benjamin N. Cardozo School of Law.

Samuel S. Kohn is a partner in the New York office of Dorsey & Whitney LLP and practices in the area of business reorganizations, including complex chapter 11 cases and out-of-court restructurings. He represents large corporate debtors, creditors' committees, secured lenders, distressed-asset-acquirers, investment funds and banks. His experience spans a broad range of industries, including airlines, municipalities, health care, retail, real estate, food, financial services, energy, telecommunications, entertainment, manufacturing and shipping. Mr. Kohn has been involved in virtually every major municipal restructuring in recent memory, both in and out of court, including the chapter 9 cases of Detroit and Jefferson County, Ala. In addition, he has represented major creditors in out-of-court restructurings of municipalities, including municipal debt issued by Harrisburg, Pa., Scranton, Pa., Atlantic City, N.J., and Hartford, Conn. Mr. Kohn has authored numerous articles and is a frequent panelist on issues relating to municipal restructurings. Prior to becoming a lawyer, he was a Certified Public Accountant in the State of New York and founded and managed his own accounting firm. Mr. Kohn received his B.A. from City University of New York, Queens College and his J.D. *cum laude* from Brooklyn Law School.

Hon. Nancy Hershey Lord is a U.S. Bankruptcy Judge in the Eastern District of New York in Brooklyn, sworn in on Feb. 29, 2012, and has nearly 50 years of experience in bankruptcy law. Prior to her appointment to the bench, she was an assistant attorney general with the New York State Office of the

Attorney General for more than 12 years, where she launched and headed up a separate Bankruptcy Unit in the Office's Litigation Bureau, following a stint as section chief of the General Recoveries Unit of the Civil Recoveries Bureau. In this role, Judge Lord acted on behalf of the state, protecting its interests as creditor, regulator, watchdog and contract vendee in bankruptcy and insolvency matters. During her tenure at the Attorney General's Office, she provided bankruptcy representation to New York State, protecting its interests as creditor, regulator, watchdog and contract vendee in the realm of bankruptcy and insolvency. She generated substantial revenue for the State arising from her active representation of state agencies and other state entities as creditors in bankruptcy cases. She also played a prominent role in several large retail bankruptcy cases, protecting consumers in connection with going out of business sales and addressing early issues of data privacy protection. Prior to joining the Attorney General's Office, Judge Lord was a member of the Manhattan firm of Herzfeld & Rubin, P.C., where she specialized in all aspects of commercial bankruptcy, creditors' rights and debtor-creditor bankruptcy litigation. She also served as a chapter 7 panel trustee for consumer and corporate bankruptcy estates in Poughkeepsie, N.Y., from 1992-95. Judge Lord is a graduate of the State University of New York at Stony Brook and Brooklyn Law School. She served as a legal intern to U.S. Bankruptcy Judge Joseph V. Costa while in law school and upon graduation was a clerk for Bankruptcy Judge Saul Seidman in the Eastern District of New York. From 1981-1983, she was the first law clerk for Bankruptcy Judge Conrad B. Duberstein, for whom the courthouse in which she now sits is named.

Barbra R. Parlin is an attorney in Holland & Knight LLP's New York office and a member of its Litigation Section. Her practice focuses on advising parties involved in complex commercial insolvency and restructuring proceedings, related litigation and transactional matters, as well as structuring transactions in anticipation of insolvency events. Ms. Parlin represents U.S.-based and foreign companies, court-appointed liquidators, indenture trustees, secured and unsecured lenders, asset-buyers, landlords, licensors, parties to pre-petition contracts and leases, and litigants in adversary proceedings in connection with domestic and cross-border insolvency cases, out-of-court restructurings and wind-down proceedings. In addition, she advises clients on the business aspects of bankruptcy and workouts such as pre-bankruptcy planning, transaction review, claims, distressed-asset and claims sales, lending and investment strategies. Ms. Parlin's experience crosses a broad array of industries, including corporate and structured finance, aviation, securities, manufacturing, transportation, construction, real estate, higher education, energy, technology, telecommunications, retail, health care, resort and hospitality, leasing, professional firms and maritime. She appears on behalf of clients in matters pending in bankruptcy courts around the country, as well as in other state and federal courts. Ms. Parlin also has broad experience in matters concerning corporate governance and fiduciary duties, director and officer liability, derivative actions, securities and common law fraud litigation and investigations, and other commercial litigation. She has advised boards of directors with respect to their fiduciary obligations and has managed a broad range of litigation matters, including bankruptcy and avoidance litigation, securities fraud, shareholder derivative litigation, U.S. Securities and Exchange Commission (SEC) investigations, mergers and acquisitions (M&A) litigation, corporate governance actions, construction litigation, directors' and officers' insurance issues, and other general commercial litigation. In addition to her legal practice, Ms. Parlin has served as the Holland & Knight New York office recruiting partner, chair of the New York office diversity committee, and as partner-coordinator of the New York office Women's Initiative. She currently is a member of the New York office's operations committee, a member of the advisory board for ABI's New York City Bankruptcy Conference and co-chair of the Practising Law Institute's (PLI) Current Developments in Bankruptcy

program. Ms. Parlin received her B.A. *magna cum laude* in religious studies from Yale University and her J.D. *cum laude* from New York University School of Law.