

# OUR PRACTICE

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## Health Care Bankruptcy and Distress

**Backed by a nationally ranked health law practice, the Baker Donelson Health Care Bankruptcy and Distress Team has more than 25 professionals with active health care distress experience. Our bankruptcy and creditor and debtor rights practice is ranked nationally in the 2023 U.S. News – Best Lawyers® "Best Law Firms" list.**

Our team includes professionals in the bankruptcy, health care, real estate, regulatory, litigation and tax arenas. Together, we offer clients the kind of deep experience that's necessary in the midst of a defaulted loan or other financial difficulty. In addition, the team is supported by one of the nation's most recognized health law practice groups.

We oversee all aspects of lender representation in health care defaults, which includes documenting loan modification and restructuring, addressing regulatory and survey issues, addressing intercreditor issues with working capital lender, dealing with reimbursement problems, and resolving various title issues with real estate. We routinely litigate in bankruptcy, receivership, foreclosure and lender liability, in actions involving health care facilities across the country.

We also routinely represent acquirers of distressed health care entities through note purchase, 363 bankruptcy sales, Chapter 11 confirmed plans and orchestrated foreclosure sales.

### Representative Matters

- Counsel for secured lender in connection with \$70+ million in aggregate credit facilities (including bank-held bonds and credit support for bonds) secured by nursing homes located in Maryland, from initial legal review to ongoing monitoring through regular document amendments and interaction with bond counsel, subordinated debt and property management players. Issues involved non-taxability of certain bonds and the effect of modifications, regular covenant negotiations, negotiations with other bond holders, pari passu and otherwise, renewals of letters of credit and extensions of bond expiration dates, periodic issuance of notices, waivers, reservations of rights and other administrative matters.
- Represented secured lender in connection with \$52 million in aggregate credit facilities secured by LTAC and SNF facilities located in Washington, D.C., from initial referral to special assets group through Wilmington, Delaware and Washington, D.C., bankruptcy courts. Issues included unpaid federal tax liens, state tax liens, guarantor and management misconduct, vendor trouble, CMS reimbursement difficulties and related dealings with U.S. Department of Justice, fighting off an attempt to approve a "priming DIP" facility, a transfer of bankruptcy venue, and finally resolution through loan sale.
- Administrative agent and counsel for secured lender in connection with \$58 million letter of credit used as credit support for bond issue secured by CCRC campus in Maryland. Guided client from initial legal document review through four years of serial workout/forbearance agreements, then through negotiation of affiliation agreement with property manager and subsequent resolution. Issues included CCRC-specific covenant negotiations, agent-participant negotiations, and relations and negotiations with local authorities and subordinated debt holders.
- Counsel for secured lender on \$11.5 million loan secured by a skilled nursing home and rehabilitation center located in St. Petersburg, Florida, where CMS terminated the operator's provider agreement and operator sought to keep it in place by filing bankruptcy. Ensured lender's ongoing payments

under cash collateral order and ultimate payoff of loan as debtor. Litigated appeals to the Eleventh Circuit and had certification denied at Supreme Court in its effort to confer jurisdiction on the bankruptcy court and remain open.

- Represented secured lender in connection with \$19 million in aggregate credit facilities secured by real estate, accounts receivable and "rental pool" of durable medical equipment. Guided client from initial legal review through nine forbearance agreements and a CRO to the initial stages of enforcement of rights and remedies. Issues included significant False Claims Act qui tam action against borrower, post-default execution of business associate agreement to allow review of accounts receivable records, requirement for court order directing Medicare Administrative Contractor to issue CMS payments directly to secured lender and government offset rights.
- Represented the Official Unsecured Creditors Committee in the bankruptcy of one of the largest pediatric dental chains in the United States. Our efforts yielded a nearly 100 percent recovery for claimants holding general, unsecured claim as well as a \$45 million settlement on behalf of minors treated at many of the clinics prior to bankruptcy filing. The latter recovery represents the largest mass tort settlement in the history of the United States Bankruptcy Court for the Middle District of Tennessee.
- Guided a multi-facility, multi-state nursing home owner/operator through its successful reorganization under Chapter 11. Our primary representation centered on the resolution of significant government-initiated, bet-the-company false claims litigation that precipitated the bankruptcy filing. The Firm's representation, and the ensuing claims litigation, resulted in a favorable resolution of these matters as well as other tort-based claims during the bankruptcy process, allowing the company to emerge from Chapter 11 as a streamlined, profitable business.
- Represented 30 nursing home debtors throughout the United States in their consolidated bankruptcy proceeding. Confirmed a plan of reorganization relating to \$35 million in undisputed secured and unsecured debt, as well as more than \$50 million of disputed debt. A substantial portion of the dispute debt consisted of personal injury claims.
- Represented the largest landlord in the bankruptcy filing of the United States' largest free-standing emergency room operator. Our client owned 50 properties valued at more than \$500 million. We negotiated and secured full assumption of facility matter leases and related agreements, and payment of all cure amounts by the reorganized debtor.
- Counsel for lender holding \$11 million secured by a long-term acute care hospital (LTAC) in Lafayette, Louisiana. Litigated fraudulent conveyance claims against the owners of a reorganization opposition to substantive consolidation and Chapter 11 plan. Negotiated and implemented consensual plan, including lender providing exit financing of \$23 million secured by multiple LTAC hospitals, across the Southeast and Midwest.
- Represented the lender of an \$89 million loan secured by a Continuing Care Retirement Community (CCRC) in Fort Lauderdale, Florida. We negotiated various regulatory issues with the State of Florida and negotiated a restructure agreement with the borrower that provided for the consensual sale of the facility as a going concern. We also analyzed the receivership strategy and coordinated with the Office of Insurance Regulations (OIR) restrictions regarding the property.
- Represented the lender of a \$70 million loan secured by ten long term care facilities in Virginia. In order to avoid a Chapter 11 bankruptcy filing, we negotiated the restructure of the loan obligations and loan documents and analyzed potential condemnation issues, Medicare fraud issues and state licensing issues.
- Counsel for the lender of a \$30.5 million loan secured by transitional living facility for individuals with traumatic brain injury, including skilled nursing and assisted living components. We pursued recovery of assets through a Chapter 11 bankruptcy case, including appointment of Chapter 11 trustee and competing plan of reorganization to sell the business as a going concern.
- Secured lender representation \$160 million loan secured by four long term care facilities located in Germany. Recovered deficiency claim on sale of German collateral, through implementation of

liquidity trust of 20 properties located across the United States and Canada to secure deficiency. Coordinated negotiations on behalf of lender group with borrowers' United States parent. Negotiated and implemented loan restructure, including creation of collateral trust, guaranteed minimum distributions from sale of new collateral and remainder notes.

- Represented secured lender holding \$50 million loan secured by six long term care facilities located in Pennsylvania, including CCRC campus. Secured confessed judgment and commenced foreclosure proceedings. Negotiated the restructure of both securitized and non-securitized loan obligations with borrower to avoid Chapter 11 bankruptcy filing; documented loan restructure including take-out of bond holders, extended maturity dates and variable rate terms; collapsed securitized trust; oversaw take-out of working capital lender and ultimate payoff of loans.
- Defended financial institution in Texas bankruptcy court against breach of fiduciary duty claims, and pursued and collected full payoff of \$15 million loan obligation secured by long term care facilities.
- Counsel for debtor in the Chapter 11 case for Saint Mary Hospital (which was founded in 1864 and operated by the Franciscan Health System in Philadelphia); the hospital property was sold, cleared of asbestos, subdivided and converted into low-income apartments for seniors and an adult day health care center.
- Represented secured lender holding \$47.9 million bonds secured by a hospital in Alabama. Implemented restructure of bond obligations, including extensive negotiations with health care authority and creditors to preserve lender position and financial viability of hospital.
- Represented purchaser of a CCRC campus in Chapter 11 bankruptcy auction in Toledo, Ohio. Negotiated and litigated bid procedures and auction structure pre-bankruptcy due to bondholders' inability to organize sale outside of bankruptcy. Prepared and finalized stalking horse asset purchase agreement. Represented purchaser at auction, and negotiated with third-party payors and licensing agency regarding purchase, change and closing of transaction.
- Represented secured lender on \$12 million loan secured by four long term care facilities in Chapter 11 bankruptcy pending in Austin, Texas. Litigated cash collateral issues, unauthorized merger of subsidiaries into parent, and priority dispute with working capital lender; prepared competing plan of reorganization to ensure sale of facilities through bankruptcy auction; negotiated subsequent joint plan; auction to secure payment of principal balance; and litigated with guarantor regarding deficiency and exemptions.
- Represented secured lender holding \$3.2 million loan secured by long term care facility in Chicago, Illinois. Secured appointment of receiver; litigated guarantor liability; and negotiated sale of property at receiver-led foreclosure sale of assets.
- Represented note purchaser of a \$17.8 million defaulted loan secured by CCRC located in Seattle, Washington. Coordinated negotiation with note seller on purchase; restructured loan documents with borrower; and handled governmental approvals to facilitate purchase.
- Represented a lender holding \$11 million secured by a long-term acute care hospital (LTAC) in Lafayette, Louisiana. Litigated fraudulent conveyance claims against owners of reorganization opposition to substantive consolidation and Chapter 11 plan. Negotiated and implemented \$23 million secured by multiple LTAC hospitals, across the Southeast and Midwest.
- Led a team assisting one of the largest creditors in the Adeptus Health bankruptcy in Dallas, Texas. As of the petition date, Adeptus operated 99 free-standing emergency rooms in three states, plus four full-service hospitals. Our client's investment risk was approximately \$500 million. Our team negotiated the full assumption of all of the leases with Adeptus' plan sponsor, who paid our client's cure amount in full.