Reorganization, Restructuring, Distressed Assets, and Bankruptcy in the Wake of COVID-19-Related Business Interruptions

The unprecedented public health orders across the Country mandating the closure of non-essential businesses has caused mass unemployment and business disruption. Unemployment estimates for the second quarter currently top **over 20% of the nation's active workforce** and even essential businesses have faced layoffs and furloughs given the 'stay-at-home' orders in place in many jurisdictions and falling demand even for health care services.

The federal and state governments have tried to offset some of this disruption by introducing massive liquidity in the banking system through the Federal Reserve Bank, and through the various congressional initiatives to provide funding to small and mid-sized businesses, health care providers, and impacted industries, through a variety of loans and grants.

Nevertheless, without regular functioning markets, the dislocations have been enormous. We see it in the headlines as Idaho farmers dump thousands of tons of potatoes while food banks in California and elsewhere struggle to provide meals for those in need. Milk producers in upstate New York were dumping millions of gallons of milk before the State stepped into to match them with cheese producing companies to try to ensure continuity of food stock.

Healthcare businesses have not been immune from dislocation. We see our largest California hospitals struggling; they deferred profitable elective and outpatient procedures and geared up for untold numbers of serious COVID-19 cases, only to realize 1/6th the volumes of patients initially predicted. While this is a thankful event from a public health management standpoint, it is devastating to the cash flows of the hospitals. We know many hospitals are considering furloughs and layoffs as this is being written.

While everyone hopes that business bounces back to prior levels once the social restrictions are relaxed, this hope may not be realized. Until a viable vaccine is available, there are concerns that consumer and patient activity will be greatly constrained. This could be for a period of many months or a year or two even as scientists race to develop the vaccine.

Understandably, not all businesses have the balance sheets or access to capital to survive these events and continue or reopen their business in a sensible and safe manner, and return to profitable cash flow. Pre-existing obligations, indebtedness, leases, accounts payable, all pressure the average business seeing greatly diminished revenues.

There will no doubt be a wave of business closures, ranging from simply shuttering the doors to full-on bankruptcy filings. Distressed businesses need to consider the options available to them. The current obligations of the business, its liquid assets, access to additional capital, the expense of continued operations, calculation of realistic revenue flows, the existing corporate structure, documentation of corporate separateness of entities, the status of personal guaranties, and the ability to work (or not) with key stakeholders, including suppliers, customers, employees, lenders, and landlords, all figure into an overall assessment of the best path forward. Critical to these assessments is the understanding of the bankruptcy, restructuring, reorganization, and receivership laws, and the ever-changing regulations governing lending and capital raising activities both within and outside of the bankruptcy process.

Nelson Hardiman possesses unique talents in the assessment and management of distressed health care businesses, and undertaking bankruptcies, reorganizations, capital raising, and lending activities. Among its partners are a former hospital chief restructuring officer and a distressed asset hedge fund operator, who both just happen to be experienced health care counsel. If your business is distressed, or you have concerns about the best path forward, Nelson Hardiman are available to consult on these serious issues.

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