AMERICAN BANKRUPTCY INSTITUTE

Real Estate Committee Webinar Panel

Workout and Real Estate Strategies for Private and For-Profit Colleges, Universities, and Schools

June 1st, 2022

CLE Materials and Speaker Biographies

Moderator: Charles Malloy, Arnold & Porter Kaye Scholer LLP

Panelist:
John Monaghan, Partner, Holland & Knight
Edward Sanz, Managing Partner, ABTV
Laura Marcero, Managing Director, Huron Consulting Group
Matthew Bordwin, Principal and Co-President, Keen-Summit Capital Partners

Huron’s Perspective on Strategic Partnerships in Higher Education

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U.S. Higher Education Trends

1	**Overall higher education enrollment, the size of college-aged U.S. population, and number of institutions are shrinking.**	• Public four-year institution enrollment market share grew to 45.2% of the overall higher education market in 2020 (from 35.9% in 2010), while 2-year and for-profit enrollments declined. • The number of students enrolled exclusively in distance education grew at a 4.7% CAGR from 2015 to 2019 to 3.5 million students. • Traditional institutions are increasingly evolving their modes of delivery and other key aspects of the student experience to stay competitive in a highly challenged environment.
2	**EdTech is gaining traction due to demand for online courses and increased available funding during the pandemic; but concerns over student engagement and low graduation rates remain.**	• The number of EdTech companies in the U.S. increased significantly in recent years, while investment funding reached \$5.5 billion in 2021 (vs. \$1.1 billion in 2016). • Emerging technologies (e.g., AI and VR) are beginning to make a mark in the education sector to enhance the learner experience. • Despite increasing adoption, limited interaction and engagement in purely online courses has led to dissatisfaction among students and parents who question program effectiveness, particularly as graduation rates in traditional institutions are ~3x that of online colleges.
3	**For-profit higher education is experiencing decreasing student enrollment due to strict regulations and evolving sentiment toward the value proposition.**	• Enrollment in for-profit Title IV-eligible institutions declined by over 50% from 1.7 million in 2010 to 0.8 million in 2020. • Graduation rates at for-profit institutions averaged just 26% in 2019 compared to >60% for all other institutions. • The for-profit education industry is highly concentrated with the nine top institutions comprising 69% of total U.S. for-profit enrollments. • There appears to be a role for meeting the needs of nontraditional students and for providing alternative means of education within the landscape.
4	**Corporate–higher education partnerships can take several forms and provide benefits to employers and employees.**	• Employee retention, tax benefits, and workforce development are key objectives of corporate–higher education partnerships, which can also provide employees with improved career opportunities. • Public-private partnerships aid in reskilling and developing capabilities of employees and there is increasing focus on technology deployment.
5	**Experts expect continued investment, consolidation, and evolution across the higher education ecosystem as both traditional and nontraditional institutions experience increased competitive pressures from new technologies, changing student expectations, and increasing scrutiny on the overall student cost-value proposition.**	

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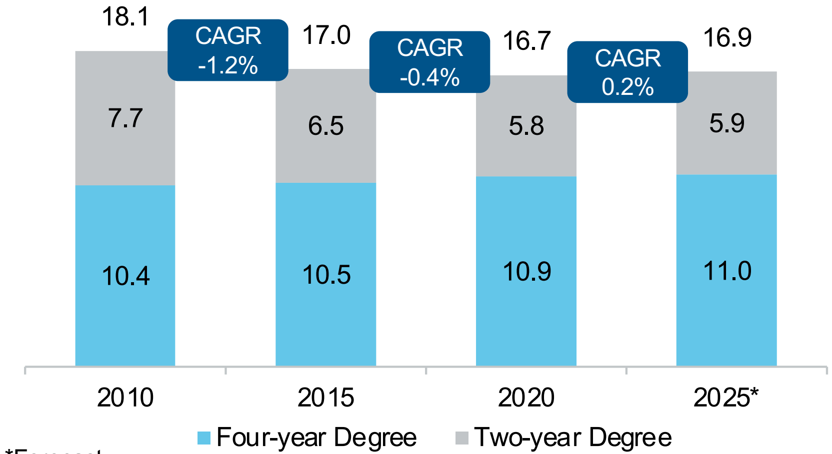
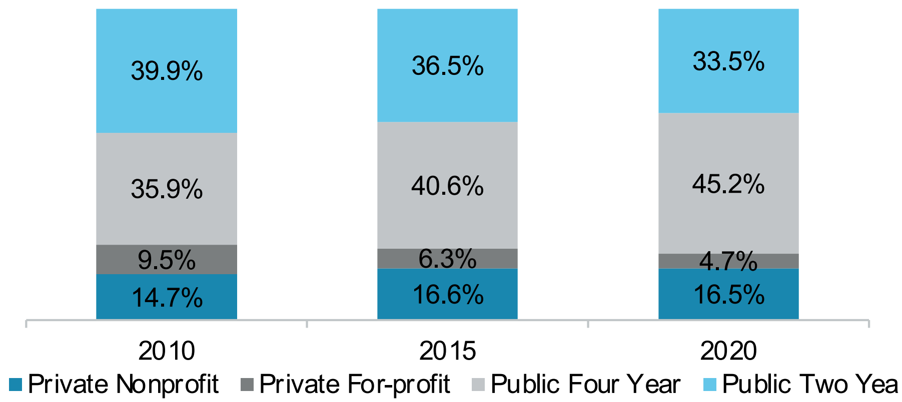
Shifts in Total Enrollment

Undergraduate Enrollments: By Type of Degree (in millions)



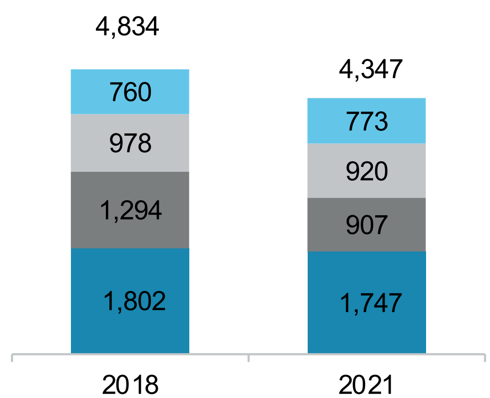
*Forecast

Undergraduate Enrollments: By Type of Institution



- During 2010-2020, total enrollments in postsecondary degree programs dropped at a CAGR of 0.8%, due to declines in the number of high school graduates choosing higher education programs versus those opting for career training and other employment opportunities.
  - In 2020, 62.7% of high school graduates enrolled in colleges or universities, as opposed to 66.2% in 2019 and 68.1% in 2010.
  - The number of U.S. high school graduates is expected to peak in the mid-2020s before entering a period of modest decline through the mid-2030s.
- Degree-seeking students increasingly prefer nonprofit institutions over for-profit institutions, primarily due to lower costs and higher probability of employment post-graduation, leading to a decline in enrollments and closures of for-profit institutions.
  - Total enrollments in for-profit institutions fell from 9.5% of total enrollment in 2010 to 4.7% in 2020.

Number of Postsecondary Institutions* in the U.S.



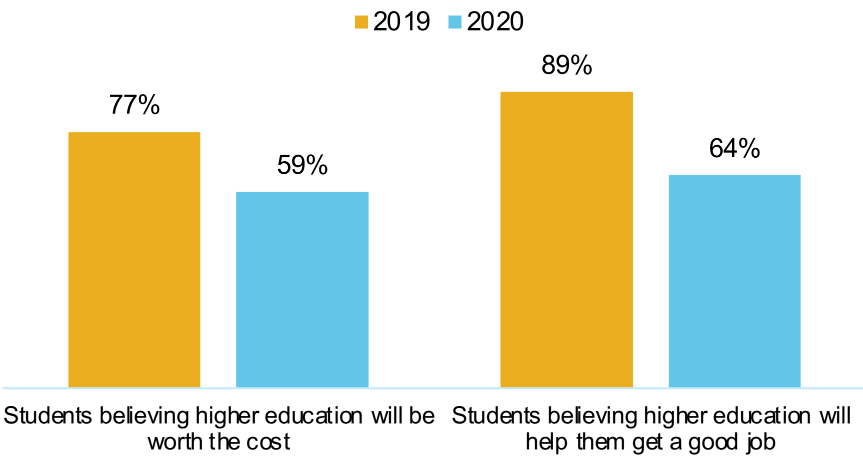
Institutions	CAGR
Public Four Year	0.6%
Public Two Year	-2.0%
Private For-profit	-11.2%
Private Nonprofit	-1.0%

** Excludes nondegree postsecondary institutions*

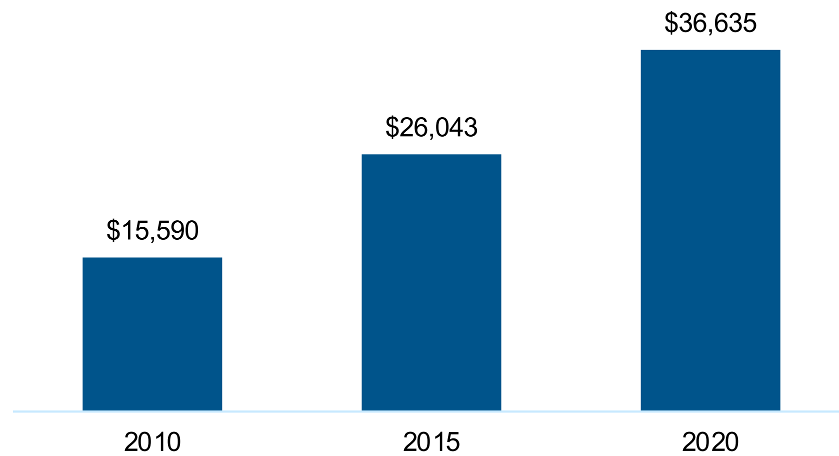
Source: NCES, Brooking.edu, National Student Clearinghouse Research Center, IIE.org, US News, NCES, NCES, NCES, Inside Higher Ed, NCES, NCES, WICHE, BLS.gov

Changing Perceptions and Rising Cost Burden

Views of Aspiring Students on Higher Education: 2019 vs. 2020

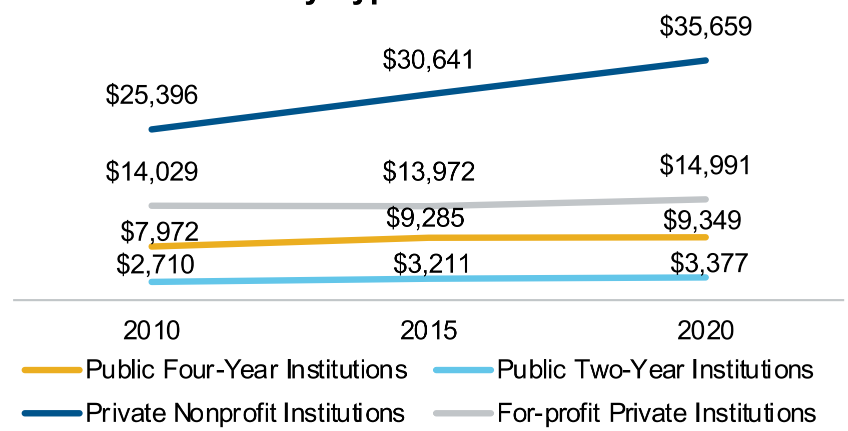


Average Student Loan Debt for Undergraduate Programs ($ per borrower)



- From 2010 to 2020, private nonprofit institution tuition rate increased more than 40%, while other institution tuition rates grew less than 25%.
- 45 million Americans (about 14% of the total population) have student loans—including more than 2 million student loan borrowers that have been repaying for more than 20 years.
- Many families greatly underestimate the true cost. According to a Fidelity study, 25% of parents and 38% of students believe the full sticker price for one year of college will be $5,000 or less.
- Government grants have not maintained pace with college costs, shifting more of the burden to students. The maximum Pell Grant (federal aid grant program for low-income students) covered only 25% of average college costs in the 2018-2019 educational year, compared to 68% of costs in 1975.

Average Tuition and Fees* per Year: By Type of Institution



Includes only tuition and other required fees.

Source: Forbes, Inside Higher Ed, Financial Times, Education Data, NCES, T74, CNBC, NCES; Fidelity Investments; Forbes

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Higher Education Outlook

Longstanding Trends	Present Crises	Lasting Outcomes
• Demographic declines • Rising discount rates • Declining NTR • Cost reduction efforts • Shared services • Portfolio optimization • Delivery innovation • Diversity, equity, inclusion • Consolidation/M&A	• Executive pay cuts • Furloughs and layoffs • Room and board refunds • Enrollment risk • Remote instruction • Remote work • Pricing discounts • Reduced athletics • Reputational risk	• Organizational restructuring • Work from home • Classroom optimization • HyFlex delivery • Academic quality • Pricing innovation • Growth strategy • Geographic reach • Competitive positioning

Negative

Moody's, S&P, and Fitch Ratings Sector Outlooks

650+

institutions with enrollment declines of 5% or more in the five years prior to the pandemic

5-10%

operating revenue declines[1] in fiscal 2021 due primarily to tuition and auxiliary impacts

1 – 700 four-year institutions experienced enrollment declines of 5% of more from Fall 2015 to Fall 2019 (before COVID); per IPEDS data. 6.6% decline in total undergraduate enrollment between Fall 2019 and Fall 2021; per National Student Clearinghouse Research Center.

Higher Education Insights

Amid continuous, disruptive change, higher education leaders are seeking to transform their institutions to meet shifting public expectations, overcome financial pressures and combat new competition.

FOUR TRANSFORMATION-READINESS DIMENSIONS

EMPOWERING AND PROMOTING SHARED LEADERSHIP

To foster a culture of transformation readiness, higher education institutions should invest in a shared leadership model that leverages individual expertise and enterprise-wide collaboration. When key decision makers share accountability for outcomes and work together to reach strategic goals, the entire organization benefits.

PLANNING DIFFERENTLY FOR THE IMMEDIATE AND LONG TERM

Traditional thinking and risk aversion combined with legacy accreditation timelines and leadership renewal cycles contribute to higher education institutions' reliance on short-term strategic plans. To move beyond these pitfalls, leaders should focus on intentionally linking plans to specific student needs or jobs to be done.

PURSUING DATA-DRIVEN PERFORMANCE MANAGEMENT

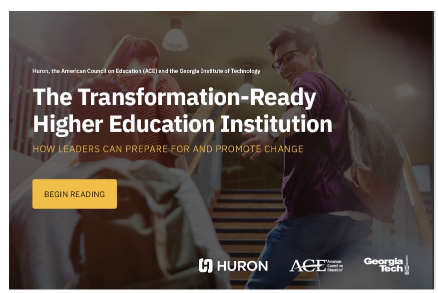
In today's fast-paced higher education landscape, true transformation can only be achieved when technology and data are integrated across the institution — and paired with training that empowers faculty and staff to make informed decisions.

CREATING STUDENT-FIRST ENGINES TO MEET NEW DEMAND

Leaders should think of technology as a conduit to engage a diverse range of students and a platform for creating distinctive offerings that attract target populations.

Huron surveyed 495 higher education leaders about the industry's greatest challenges and the steps they are taking to future-proof their institutions. Read more.

To learn more about Huron's Higher Education insights, click on the tiles or visit **huronconsultinggroup.com**



Spectrum and Examples of Strategic Partnerships

Strategic partnerships, such as mergers and acquisitions, consist of a wide spectrum of scenarios including those shown below.

Third-Party Academic Services	Shared or Managed Services	P3 Public-Private Partnerships	Joint Ventures and Alliances	Partial Acquisition or Combination	System Consolidations	Complete Merger or Acquisition
Includes online program management (OPM) organizations like **2U, Academic Partnerships, Bisk Education, Pearson Learning, and Wiley Education**	Claremont Colleges (formerly **Claremont University Consortium**) includes Pomona, Harvey Mudd, Scripps, and 4 others in a consortium that shares a central library, campus safety, health services, and other resources	Washington D.C. public-private partnership with University Health Services Inc. and **George Washington University** to establish two new hospitals at St. Elizabeths in Southeast D.C. and **Howard University** (2020)	**Seton Hall and Hackensack Meridian Health** joint venture for a new medical school (2015) **Goodwin University, Sacred Heart, and Paier College of Art** to acquire Bridgeport and create a "University Park" (2020)	**Fairfield University** acquired the Bridgeport Engineering Institute to form its current School of Engineering (1994) **Cleveland State and University of Akron** exploring a joint law school operating model (2020)	**University of Wisconsin System** merger of its 13 two-year campuses with seven of its four-year colleges (2018) **Pennsylvania State System** integrating three pairs of universities (2020)	**University of Arizona** acquiring **Ashford** (2020) **Delaware State** acquiring **Wesley College** (2020) **Boston College** acquired **Pine Manor** (2020) **Boston University** acquired **Wheelock** (2017-2018)

Education 101: A Crash Course on Turnarounds for Higher Education Institutions

Panel:

Moderator: Noel Boeke, Partner, Holland & Knight

Dr. Jeffrey Senese, President, St. Leo University

Dr. Ruediger Mueller, CTP, Founding Partner, TCMI

Ed Sanz, CTP, Partner ABTV

TCMI
MANAGEMENT CONSULTING FOR CORPORATE RENEWAL

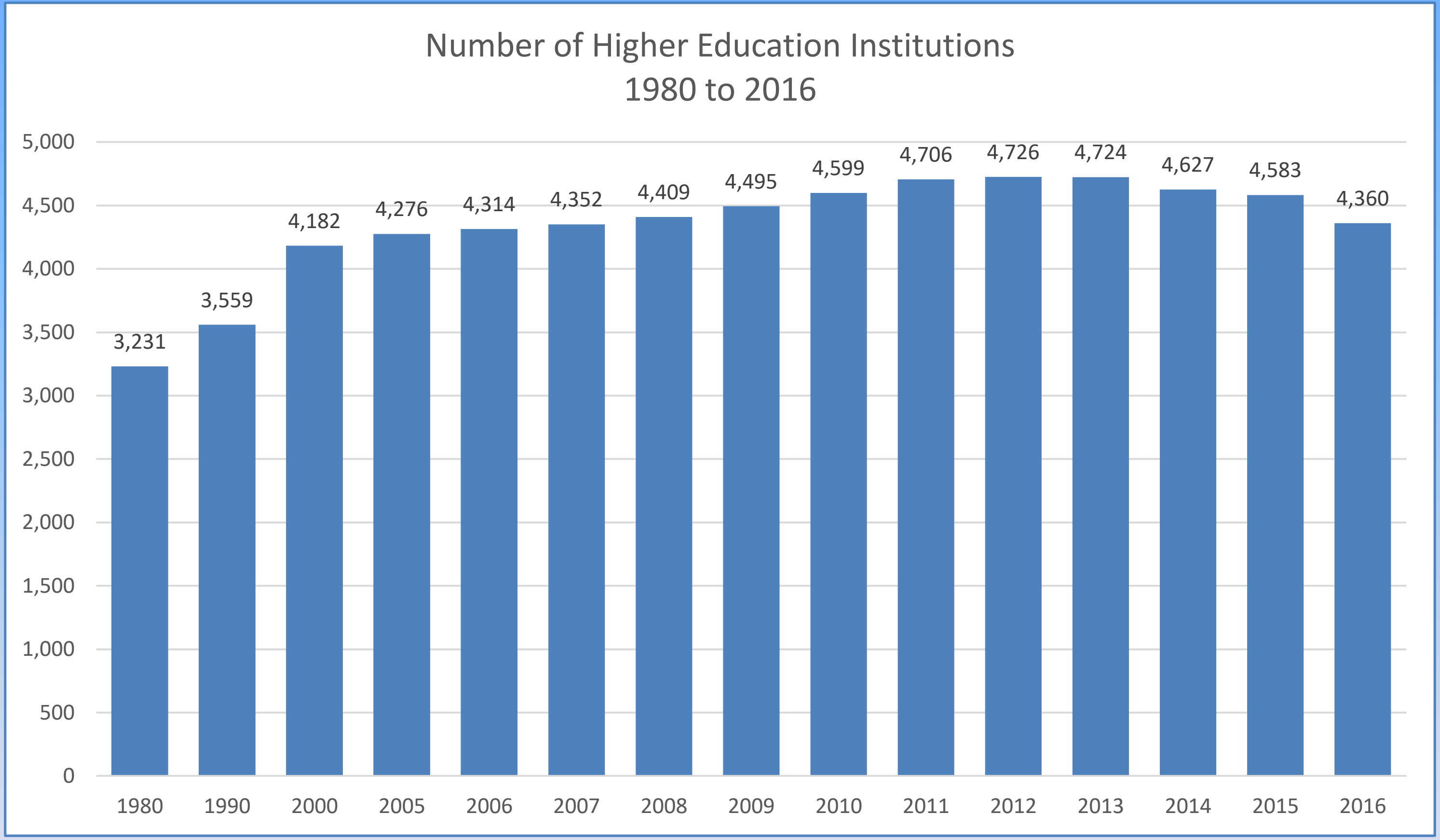
The Issue

According to Harvard Business School Professor Clayton Christensen and Michael Horn, an education contributor to Forbes and other magazines a large number of colleges and universities, by some accounts 25% or more, will close or go bankrupt in the next decade

Current Environment

- The tuition discount rate for full time freshman in the 2017-2018 academic year was on average 49.9%
- According to Moody's at least 25% of private colleges are running deficits.
- According to the Washington Post, high school graduates will decline 9% between 2026 and 2031 and remain largely flat until then, resulting in a loss of 280,000 students for 4-year undergraduate programs.
- 52% of private and 44% of public colleges did not meet their enrollment objectives in the fall of 2017.
- Based on Education Dive, more than 100 for profit and career colleges closed between the 2016-17 and 2017-18 academic years alone.

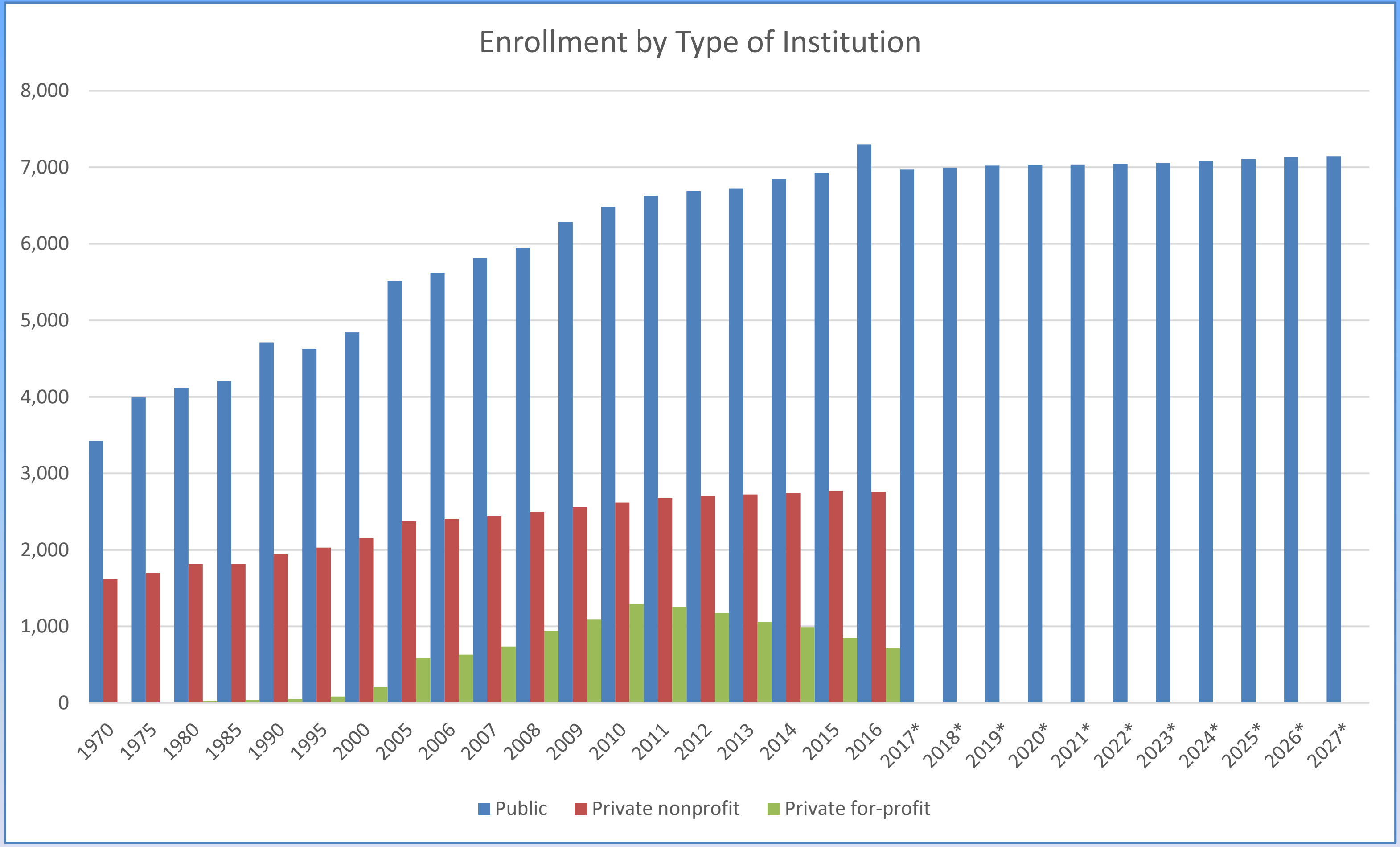
Institutions



Source: Statistical Abstract of the United States 2019, page 191

MANAGEMENT CONSULTING FOR CORPORATE RENEWAL

Enrollment Trends



Source: Digest of Education Statistics 2017, table 303.70

Today's Agenda

- **Unique Factors in Educational Distress**
- **Causes of Distress**
- **Strategies and Effective Responses**

Higher Ed And Fiduciary Duties

The Risks To Not-For-Profit Officers and Trustees

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Holland & Knight

The Cause Of The Problem

Higher Ed Is Faced With A Dramatic Demographic Shift

- Between 2011 and 2016 the total number of enrolled college students nationwide fell every fall
  - National Student Clearing House research center statistics indicate that post-secondary school enrollment has declined in each year since at least 2013
    - Fall 2013: -1.5%
    - Fall 2014: -1.3%
    - Fall 2015: -1.7%
    - Fall 2016 -1.3%
    - Fall 2017 -1%
    - Fall 2018 -1.7%
      - Total -10.5% over a 6 year period
- The trend is predicted to continue through the next decade
  - Demographics and the Demand For Higher Education author Nathan Grawe of Carlton University projects a 10.5% decrease in college applicant aged people nationwide through 2029.
    - In the Northeast the projected decrease is greater than 15%.

The Impact

» Five New England Colleges Have Ceased Operations Or Announced An Intention To Cease Operations Since March, 2018

- Mount Ida College
  - Private tuition dependent not-for-profit college in Newton, Massachusetts
  - Enrollment of approximately 1400
  - Endowment in 2016 of $1.9 million
  - Closed May, 2018
- Newbury College
  - Closing May, 2019
- Green Mountain College
  - Private tuition dependent not-for-profit college in Poultney, Vermont
  - Enrollment of approximately 450
  - Endowment in 2017 of approximately $3.7 million
  - Closing May, 2019
- Southern Vermont College
  - Private tuition dependent not-for-profit college in Bennington, Vermont
  - Enrollment of approximately 200
  - Endowment in 2016 of approximately $2.9 million
  - Closing May, 2019
- College Of St. Joseph
  - Closing May, 2019

The Financials In The Public Record

» Mount Ida College Balance Sheet

	2016	2015
ASSETS		
Cash and Cash Equivalents	$ 4,001,764	$ 1,871,611
Accounts Receivable, Net of Allowance for Doubtful Accounts of $620,000 in 2016 and $386,420 in 2015	488,317	1,027,212
Contributions Receivable	51,148	72,879
Prepaid and Deferred Expenses	502,935	214,038
Investments	23,526,670	15,952,578
Property, Plant, and Equipment, Net of Accumulated Depreciation	54,006,033	55,793,878
Deferred Financing Costs, Net of Accumulated Amortization	658,573	523,094
Total Assets	$ 83,235,440	$ 75,455,290
LIABILITIES AND NET ASSETS		
LIABILITIES		
Note Payable - Bank	$ 5,500,000	$ 5,500,000
Accounts Payable	780,466	1,394,918
Accrued Payroll and Payroll Taxes	2,006,845	1,494,888
Accrued Expenses and Deposits	856,470	275,726
Deferred Revenues	5,265,449	6,532,773
Annuity Payment Liability	21,312	22,811
Deferred Compensation	528,744	764,275
Capital Leases Payable	223,351	329,338
Financing Obligation	241,773	399,761
Notes Payable	7,018,376	27,133
Bonds Payable	39,353,139	40,287,823
Accrued Pension Liability	5,006,629	4,122,176
Total Liabilities	66,802,554	61,151,622
NET ASSETS		
Unrestricted	14,527,692	12,870,527
Temporarily Restricted	628,349	519,296
Permanently Restricted	1,276,845	913,845
Total Net Assets	16,432,886	14,303,668
Total Liabilities and Net Assets	$ 83,235,440	$ 75,455,290

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The Financials In The Public Record

» Mount Ida College Statement of Activities

	2016	2015
OPERATING ACTIVITIES		
Revenues:		
Tuition	$ 38,913,349	$ 35,260,994
Room and Board	10,105,379	8,951,444
Comprehensive Fee	1,522,083	1,183,067
Less Financial Aid	(18,645,121)	(14,886,112)
Net Tuition, Room and Board Revenues	31,895,690	30,509,393
Fees and Other	213,408	129,835
Government Contracts	80,222	580,101
Auxiliary Enterprises	911,207	1,410,552
Private Gifts and Grants	8,114,300	60,558
Investment Interest and Dividends	6,167	162,682
Net Realized and Unrealized Gains on Investments Used for Operations	452,000	594,000
Other Investment Income	-	35
Total Operating Revenues	41,672,994	33,447,156
NET ASSETS RELEASED FROM RESTRICTIONS		
Satisfaction of Program Restrictions	60,646	281,940
Satisfaction of Property and Equipment Acquisition Restrictions	9,160	17,908
Total Net Assets Released from Restrictions	69,806	299,848
Total Operating Revenues, Gains, and Other Support	41,742,800	33,747,004
Expenses:		
Instruction	12,636,220	11,442,047
Academic Support	3,925,256	3,437,024
Student Services	9,006,119	8,028,549
Institutional Support	9,170,306	7,374,456
Fundraising and Advancement	887,494	569,793
Auxiliary Enterprises	7,605,677	8,919,393
Total Expenses	43,231,072	39,771,262
CHANGE IN UNRESTRICTED NET ASSETS FROM OPERATING ACTIVITIES	(1,488,272)	(6,024,258)
NONOPERATING ACTIVITIES		
Net Gain on Disposal of Property, Plant, and Equipment	2,500	9,960
Net Realized Gains on Investments	3,273	126,223
Net Unrealized Gains on Investments	4,602,035	3,926,668
Lease Termination Payment	(300,000)	-
Used for Operations	(452,000)	(594,000)
Change in Accrued Pension Liability	(710,371)	(1,513,531)
CHANGE IN UNRESTRICTED NET ASSETS FROM NONOPERATING ACTIVITIES	3,145,437	1,955,320
CHANGE IN UNRESTRICTED NET ASSETS	$ 1,657,165	$ (4,068,938)

The Litigation—Mount Ida Class Action

- Squeri et al. v. Mount Ida College et al.
  - United States District Court for the District of Massachusetts
  - Putative class action for and on behalf of the former students of Mount Ida College
  - Causes of action include breach of fiduciary duty, fraud, fraud in the inducement, breach of contract as well as statutory and common law consumer projection theories
  - Primary fiduciary duty assertion is that the failure of the college, its administration and its trustees to notify students and prospective students of the college's financial condition when known breached a fiduciary duty to students
  - Motion to dismiss with prejudice as to all counts granted
    - Trustees' fiduciary duties owed to the college itself, not to the students
      - "To the extent that a fiduciary duty was imposed on defendants, it was owed to Mount Ida as a corporate entity."
    - College has no fiduciary duty to students.
      - "Massachusetts courts have consistently held that no fiduciary relationship exists between a student and his or her college."

The Litigation—Mount Ida Civil Investigative Demand

» In re Mount Ida College
  - Massachusetts Superior Court
  - A proceeding filed by the Massachusetts Attorney General in accordance with M.G.L. c. 12, § 8H
  - The basis for the requested issuance was that "review of the requested information is necessary to determine whether charitable funds have been applied to charitable purposes or if breaches of trust have been committed in the administration of" Mount Ida
  - The CID was opposed, primarily on the basis that "the Attorney General lacks the predicate belief that charitable funds have been misappropriated or that breaches of trust were committed."
  - The parties suspended the CID proceeding and agreed to a consensual production of documents and information.
  - The CID was terminated without the commencement of civil or criminal proceedings.

The Litigation—Southern Vermont College Receivership Action

» Poses v. The Corporation of Southern Vermont College, Inc.

- Vermont Superior Court
- Poses, a second lien lender, sought recovery of a $2 million claim secured by the main campus assets of the college.
- In connection with the action, he sought prejudgment attachments and appointment of a receiver
- The causes of action alleged include breach of contract, avoidance of fraudulent transfers and breach of fiduciary duty
- The fiduciary duty count asserts that SVC, because insolvent, owes fiduciary duties to creditors including the plaintiff and that those fiduciary duties were breached when SVC received a working capital loan from members of the board of trustees and secured its obligations under that loan with liens on substantially all of SVC's assets.
- The College has opposed the prejudgment relief sought. A hearing has been scheduled.

The Law—Fiduciary Duties In Nonprofit Entities Generally

» Statutory

- A director, officer or incorporator of a corporation shall perform his duties as such, including, in the case of a director, his duties as a member of a committee of the board upon which he may serve, in good faith and in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position with respect to a similar corporation organized under this chapter would use under similar circumstances. In performing his duties, a director, officer or incorporator shall be entitled to rely on information, opinions, reports or records, including financial statements, books of account and other financial records, in each case presented by or prepared by or under the supervision of (1) one or more officers or employees of the corporation whom the director, officer or incorporator reasonably believes to be reliable and competent in the matters presented, or (2) counsel, public accountants or other persons as to matters which the director, officer or incorporator reasonably believes to be within such person's professional or expert competence, or (3) in the case of a director, a duly constituted committee of the board upon which he does not serve, as to matters within its delegated authority, which committee the director reasonably believes to merit confidence, but he shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A director, officer or incorporator of a corporation shall not be liable for the performance of his duties if he acts in compliance with this section. M.G.L. c. 180, § 6C

» Decisional Law

- "Directors of a corporation stand in a fiduciary relationship **to that corporation** and have a duty to protect its interests '**above every other obligation**.'" *Estate of Moulton v. Puopolo*,467 Mass. 478, 492-93 (2014) (emphasis added) (quoting *American Discount Corp. v. Katz*, 348 Mass. 706, 711 (1965)). The codification of this long-standing common law precept imposes upon a trustee of a not-for-profit entity the obligation to act in "good faith and in a manner [she] reasonably believes to be in **the best interest of the corporation**." M.G.L. ch. 180, § 6C. (emphasis added).

The Law—The Fiduciary Duties

- **Fiduciary Duties Of Not-For-Profit Officers/Trustees and Directors**
  - The duty of due care
    - The duties of a not-for-profit corporation's board members are measured by a standard that is virtually indistinguishable from the SJC's definition of the private business judgment rule. *Rockwell v. Trustees of Berkshire Museum*, No. 1776-cv-00253, 2017 WL 6940932 (Mass. Sup. Ct. Nov. 7, 2017).
  - The duty of loyalty
    - The duty of loyalty obligates directors to act in good faith, in the best interests of the corporation and to refrain from self-dealing or other acts that would confer an improper personal benefit from the directors' relationship with the corporation. *Trenwick America Litigation Trust v. Ernst & Young LLP*, 906 A.2d 168 (Del. 2011).
    - Duty of loyalty claims are tested on an "entire fairness" standard.
      - Fair process
      - Fair price
      - *Weinberger v. UOP, Inc.*, 457 A.2d 701 (Del. 1983)
  - The duty to mission/of obedience
    - Not for profit officers and directors have an additional duty—the duty of obedience. Hazen and Hazenns, Duties of Nonprofit Corporate Directors—Emphasizing Oversight Responsibilities, 90 NCLR 1845 (Sept. 2012).
    - This duty requires that the board cause the corporation to adhere to the mission stated in its governing documents.
    - This duty has been described as a remnant from another time when for-profit directors were also considered to have a duty of obedience.

The Law—Who Is Owed The Duties And Who Enforces Them

» **"Directors of a corporation stand in a fiduciary relationship to that corporation, and have a duty to protect its interests 'above every other obligation."** ***Estate of Moulton v. Puopolo*, 467 Mass. 478 (2014).**

- The duty, therefore, is owed to the college itself, and not to any particular constituency of the college.
- There is no separate duty owed to students—the "student-college relationship is essentially contractual in nature." *Mangala v. Brown University*, 135 F. 3d 80 (1st Cir. 1998).

- **"[I]t is the exclusive function of the Attorney General to correct abuses in the administration of a public charity by the institution of proper proceedings."** ***Lopez v. Medford Cmty. Ctr., Inc.*, 384 Mass 163 (1981).**
  - M.G.L. 12, § 8. The attorney general shall enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof.
  - "The law has provided a suitable officer to represent those entitle to the beneficial interest in a public charity. It has not left it to individuals to assume this duty, or even to the court to select a person for its performance." *Weaver v. Wood*, 425 Mass. 270 (1997)

The Law—Protections Afforded Board Members

- The Federal Volunteer Protection Act—42 U.S.C. § 14501 *et seq*.
  - "[N]o volunteer of a nonprofit organization … shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if … the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission …."
  - Expressly stated Congressional purpose—"[T]o promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs, nonprofit organizations, and governmental entities that depend on volunteer contributions by reforming the laws to provide certain protections from liability abuses related to volunteers serving nonprofit organizations and government entities."
- State Law Adjuncts—M.G.L. c.231, § 85K
  - "No person who serves as a director, officer or trustee of an educational institution which is, or at the time the cause of action arose was, a charitable organization, … who is not compensated for such services … shall be liable solely by reason of such services … for any act or omission resulting in damage or injury to another, if such person was acting in good faith and within the scope of his official functions and duties, unless such damage or injury was caused by willful or wanton misconduct."

Local Decisional Law Of Note

- *Estate of Moulton v. Puopolo*, 467 Mass. 478, 492-93 (2014)
  - Fiduciary duties are owed to the corporation itself,
- *Rockwell v. Trustees of Berkshire Museum*, No. 1776-cv-00253, 2017 WL 6940932 *10 (Mass. Sup. Ct. Nov. 7, 2017)
  - Not-for-profit directors owe a duty to the corporation that is virtually indistinguishable from the business judgment rule.
- *Calixto v. Coughlin*, 481 Mass. 157, 113 N.E.3d 329, 335 (2018)
  - Individual creditors have no right to assert direct claims for breach of fiduciary duties against corporate directors.
- *Lopez v. Medford Cmty. Ctr., Inc.*, 384 Mass. 163, 167 (1981)
  - It is the exclusive function of the attorney general to correct abuses in the administration of a public charity.
- *Weaver v. Wood*, 425 Mass. 270, 275 (1997)
  - The rule that the attorney general has the exclusive authority to represent "those entitled to the beneficial interests in a public charity" leaves no room for others, or "to the court to select a person … however honorable their intentions might be."
- *Harvard Climate Justice Coal. v. President & Fellows of Harvard Coll.*, 90 Mass. App. Ct. 444, 446, *review denied sub nom Harvard Climate Justice Coal. v. President*, 476 Mass. 1105 (2016)
  - Parties other than the attorney general may invoke the "special standing doctrine" to enforce "a personal right that directly effects the individual member of a charitable organization."

Turning Colleges Around May Take an Impartial Outsider

Tweet 0

Thursday, October 18, 2012

Source: Ed Sanz

In 2009, I was called upon to help Greensboro College, a small, 174-year-old private liberal arts college in North Carolina, which was experiencing a whole range of problems typical of many institutions of higher education in recent years. In the booming economy of the early 2000s, the college had made some big real-estate purchases. It had started a football program, graduate programs and a marching band. But as the economy started to sour in 2008, its bankers got worried, and the college found itself placed in the Special Assets department. The bankers gave an ultimatum: Hire a chief restructuring officer and use much of the endowment to secure the college's debt, or face very stringent terms for renewing its credit facility.

In addition, the college's accreditation was under threat because of its financial problems.

The college's food services had been delivered the same way for 50 years and the facilities were outdated. It had graduated one French major, on average, every five years, yet the department maintained five full-time faculty members. Its fundraising practices were not working to produce the income the college needed. Sound familiar?

Many colleges are experiencing similar problems. They range from big public institutions such as the City College of San Francisco, California's largest college, which is facing possible closure, to the prestigious University of Virginia – my alma mater – to traditionally-black Morris Brown College in Atlanta, which recently filed for Chapter 11 bankruptcy protection.

As a turnaround professional, I've seen these problems from the inside, and although these institutions face some unique challenges, they suffer from a range of pathologies that are similar across all troubled businesses.

University leaders are rarely lacking in commitment – but that commitment doesn't help keep the books, maintain infrastructure, or communicate with important stakeholders. They still need to meet a payroll and make hard choices about how to allocate resources in tough economic times. And like other businesses, they often face internal challenges: generational tensions when old ways of doing business become obsolete; entrenched cultural norms; myopic management.

But in some ways, colleges and universities are *not* like other businesses. A for-profit business has many constituencies, but one rises above the rest: its shareholders. A college or university has many additional stakeholders: alumni, donors, its governing body, its faculty, its student body, its accrediting body and parents. Government agencies may also control research budgets.

In addition, large universities are answerable to the myriad professions with an interest in how students at its graduate and professional schools are educated. Without maintaining the goodwill of all these groups, it's hard for a college to fulfill its mission. Yet many of them have competing – and not always compatible – agendas.

For public universities such as UVa., the picture is complicated further by the addition of politicians, with their own competing and sometimes contradictory agendas, expecting that students should be educated at a reasonable price, while the college simultaneously cuts costs and manages to retain top faculty members and attract talented students. Scary.

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In the case of UVa., Rector Helen Dragas, a real-estate developer, found that her corporate experience had not prepared her for academia. Dissatisfied with the speed at which President Teresa Sullivan was moving to cut costs, she forced Sullivan to resign. The university community – alumni, students, faculty – were outraged, and fought back with weapons that would have been irrelevant in a corporate coup. The opinions of the university's many constituencies did matter, after all. Eventually, and humiliatingly, Dragas had to back down. Sullivan was reinstated.

Given these competing constituencies, and adding into the mix the challenges of a recession and a looming student debt crisis, we may soon see more colleges succumbing to internal strife, external pressures, or both.

Clash of Cultures

Much of my work involves understanding these competing sets of concerns. But the problem goes beyond the simple self-interest of each group. In fact, there are competing cultures, with different values, different assumptions about a university's role in the world, and different ways of doing business.

A gentle reality check on the idealistic academics from a neutral party – backed up with data and a practical plan – can accomplish more than hectoring and threats from an impatient board member. And the reality check can go in the opposite direction, as well. A business-minded board member may want to ditch any academic exercise that's not producing tangible benefits for the institution. But maybe the inclusion of classics, say, in the curriculum, is what keeps two or three important donors engaged; or maybe it forms a part of the institution's longstanding identity.

Now add a recession. For a private college, the three main sources of income are tuition, donations and investment income. All three of those things suffer in a financial downturn. Many of these colleges also have public debt. If their debt is downgraded, it's just part of a cascade of problems that now includes increased scrutiny from their bank or frightening off prospective students or donors.

For public colleges, sources of funding dry up as taxpayers demand restraint and governments at all levels look for ways to cut costs. At Greensboro College (N.C.), I worked with the senior management team, including a new board chair, interim president and new VP of finance. In 2010, I helped bring in a new permanent president, Dr. Lawrence Czarda, and together we did a thorough analysis of its resources, its infrastructure and its finances. We found a range of issues, from an insecure IT system, to antiquated food services, to unsustainable academic majors.

Working with Dr. Czarda and his team, I was able to implement the needed changes quickly and with a minimum of trauma. Dr. Czarda reflected later that, as president, he alone could not have confronted obsolete practices, or pointed out too-cozy relationships between a board member and administration. I pointed the college to resources they would not have known about: fundraising consultants with experience in similar institutions; debt restructuring consultants who focus on higher education.

The college sold off non-critical real estate, restructured its capital campaign, upgraded and secured its IT systems, eliminated some under-enrolled majors, outsourced food services, found creative ways to boost enrollment and retention, and used part-time faculty, assistant professors and teaching assistants to teach some courses and sections. With these innovations at work, I negotiated with bankers to create some breathing room, allowing the college enough time to get its finances back on track.

My work with the college ended in early 2011 and I'm happy to report that they continue to make strong progress on returning to financial stability.

The Future

The worst of the recession may have passed, but many colleges are still vulnerable. The looming student loan bubble will complicate the landscape for years to come. More students will need financial aid, and colleges struggling with falling enrollment will feel pressure to lower admission standards to meet enrollment goals.

Colleges and universities at all levels will need to get very disciplined with their finances. They will have to make sure that what they're offering is what's in demand – from the constituencies that matter.

Like any struggling business, colleges facing tough times may benefit from the experience of a dispassionate outsider who can look at the entire picture and help with the hard choices – before a public crisis erupts.

Bottom line: As in other businesses, it sometimes takes an impartial outsider to sift through the data and the concerns of various constituencies, speak truths that insiders may know but fear expressing, track down important resources, challenge entrenched practices and get antagonistic groups talking to each other. It can make all the difference.

Ed Sanz is a Certified Turnaround Professional with the North Carolina-based firm Anderson Bauman Tourtellot Vos.


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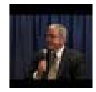
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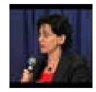
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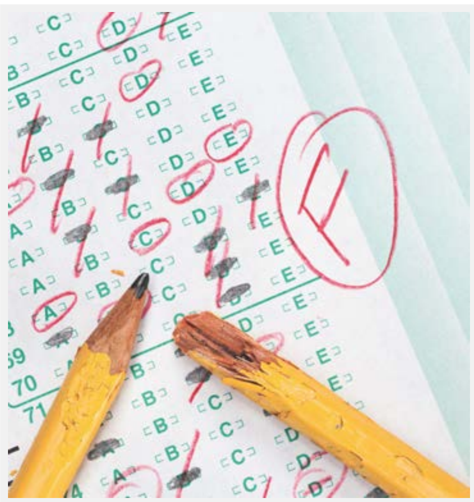
Increasing Numbers of Colleges, Universities Are Failing to Make the Grade

What Turnaround Professionals Need to Know

By Dr. Ruediger Mueller, CTP, President, TCMI & Edward J. Sanz, CTP, Managing Partner, ABTV



The Conference included a panel discussion of turnarounds in higher education, a sector where significant distress has occurred and is expected to continue over the next decade. As if to punctuate the point, shortly after the conference Argosy University abruptly closed the doors of its 22 locations throughout the U.S.

Argosy and others, however, may only portend a tsunami of closures to come. Harvard Business School Professor Clayton Christensen estimates that over the next decade, 25 percent of colleges and universities will fail.[1] This dire prediction is supported by some emerging trends:

- At least 25 percent of private colleges are running deficits.[2]
- Fifty-two percent of private and 44 percent of public colleges and universities did not meet their enrollment objectives in the fall of 2017.[3]
- More than 100 for-profit and career colleges closed between 2016 and 2018 alone.[4]
- During the 2017-18 academic year, the average tuition discount rate for entering freshman rose to 49.9 percent.[5] This rate represents the share of gross tuition and fees that schools give their students as unfunded scholarships.

These statistics are exacerbated by population trends. The number of high school graduates is expected to remain steady between now and 2025 but then decline by 9 percent between 2026 and 2031.[6] This translates into a loss of 280,000 students for four-year undergraduate programs.

However, colleges and universities are not monolithic. For the sake of this discussion, they should be divided into three groups:

- Public colleges and universities

- Private, nonprofit colleges and universities

- Private, for-profit colleges and universities

Each group faces unique challenges, and each offers opportunities for turnaround practitioners. Coverage of all types of colleges and universities would be beyond the scope of this article. Instead, the focus is on the unique challenges of private, nonprofit colleges. At roughly 2,300 institutions, they account for the majority of the 4,600 colleges and universities in the country.[7] Furthermore, unlike their public counterparts, they typically do not have the option for government funding.

While best practices of sound turnaround and restructuring management also apply to educational institutions, several factors set them apart from typical for-profit organizations and can make a successful turnaround exceptionally difficult.

Cash Flow

Cash flow and financing are top concerns for educational institutions, just as they are for corporations. However, there are significant differences. Private, nonprofit colleges and universities experience two major cash events per year, at the beginning of the spring and fall semesters, when students enroll and pay their tuition. Cash flow during the remainder of the year can be much lower and more unpredictable, arising largely from donations, merchandise sales, and non-core operations, such as revenue from educational events offered to non-students.

These unusual revenue cycles offer significant challenges to even the most experienced turnaround professionals. The situation is slightly better in online environments, where courses last typically for eight weeks and are taught in six cycles throughout the year, for nontraditional, part-time students already in the labor force.

Title IV

Title IV of the Higher Education Act of 1965 governs federal and state student loans and grants, which represent the bulk of tuition funding for schools. A significant aspect of Title IV is that an institution loses its eligibility for these funds if it enters Chapter 11. Thus, bankruptcy is not a realistic option for a distressed institution that intends to continue operating. Out-of-court solutions must be used to allow for the survival of the organization. Also, once a school receives Title IV funds, courses must be delivered or the institution and its officers and directors face the prospect of having to reimburse any Title IV funding received.

Fundraising

Private, nonprofit colleges and universities have the option to turn to alumni and the general public for funding. Such fundraising may help these institutions build endowments that can subsidize tuition and operations, and additional campus amenities. The size of endowments vary significantly from institution to institution. At more than $37 billion,
Harvard University has the world's largest academic endowment. However, the vast majority of private, nonprofit colleges and universities enjoy much smaller endowments.

While representing a valuable resource for schools, these contributions can often have unintended undesirable consequences. Many are restricted to specific uses by their donors, such as for a building or a specific curriculum program that may not fit the institution's strategic plan. Also, these donations may increase the ongoing fixed cost structure of an institution. Buildings are a typical example: while a donation may cover the cost of construction, ongoing expenses related to its operation and upkeep may not have been provided for by the gift, despite the permanent increase to the school's fixed operating burden it brings.

Institutions often rely on fundraising to fill operating budget deficits, which can create problems due to the unpredictable nature of donations and the risk of creating donor fatigue among valuable supporters. Many schools are gaining access to previously restricted funds by asking donors to release the restrictions on their gifts. While this may offer an expedient source of funding, it is not a healthy or sustainable long-term strategy.

Personnel

Staffing at educational institutions typically represents the largest expense category and differs in at least one important way from typical for-profit corporations. In public and nonprofit private institutions, personnel can typically be grouped into three distinct segments:

- Operational personnel, who handle the maintenance of facilities and similar functions. They do not differ significantly from their counterparts in typical business organizations.

- Administrative staff, typically a robust group due to the complexities of record-keeping related to Title IV.

- Faculty, the costliest and often the most challenging of the groups. The vast majority of public and private, nonprofit universities have a tenure system in place that makes it difficult to fire faculty members, even in the face of underperformance. As a result, it is not uncommon to find departments that are overstaffed despite low demand for a topic, resulting in financially unsustainable faculty-to-student ratios.

There is a national trend toward reducing the number of tenured faculty and replacing those positions with non-tenure track and contract faculty. However, this strategy can have negative consequences if the quality of contract faculty is not maintained and academic standards are compromised. Ideally, a combination of tenured, non-tenure track, and competent contract faculty can provide a balance of academic and real-world perspectives and offer a high-quality education within an economically sustainable model.

Even with non-tenured faculty, it can be difficult to implement headcount reductions quickly due to notification requirements, which may mandate that an institution give a professor up to a year's notice for termination.

In addition to reducing faculty costs, administrative headcount can be reduced by sharing functions within departments and outsourcing certain functions, such as student dining, facilities maintenance, bookstore operations, and student housing. Even elements of student recruiting, such as telemarketing, can be outsourced.

Curriculum

Faculty changes and reductions should be made in concert with curriculum modifications to help the institution run more cost effectively and efficiently. An analysis of curriculums can be conducted in much the same way that a for-profit corporation can assess profitability by product or customer. Revenues and profitability can be calculated by course, section, major, and professor, resulting in a realignment of professors and their workloads. Tenured and non-tenured professors can increase their teaching loads, course sections can be combined to create larger classes, and unpopular or poorly attended classes or majors can be eliminated. Over time the reduction in the number tenured faculty positions through attrition will also contribute to a reduction in long-term fixed costs.

In institutions where faculty are expected to conduct research and publish, research faculty that meet certain publication requirements can be granted smaller teaching loads than faculty members who do not publish. A combination of both tenure tracks, emphasizing either teaching or research, can be effective and has been used at some institutions.

The push to deliver curriculum through online channels has grown significantly. Once the domain of for-profit institutions, this channel provides a low-cost delivery option to broaden a school's reach to new nontraditional students.

It is imperative that a school evaluate its curriculum to ensure that it is offering classes and degrees that are in demand and relevant in today's changing economy. This includes the addition of coursework in healthcare, allied health, kinesiology, criminal justice, business, and computer science, while eliminating unpopular courses and majors or reducing some areas of the traditional liberal arts curriculum. Certificate programs that address specific industry needs offer an additional opportunity.

Accreditation

To be eligible for Title IV funding, colleges and universities must be certified by accreditation agencies approved by the U.S. Department of Education. Accreditation goes hand-in-hand with student quality and ultimately the reputation of an institution, which in turn impacts its prospects for intermediate and long-term survivability.

A turnaround practitioner needs to keep a close watch on accreditation. Accreditation agencies closely monitor schools and their educational content, financial condition, graduation rates, student loan default rates, and other indicators. These agencies can place an institution on probation, temporarily suspend accreditation, or even revoke accreditation altogether, which normally represents the death knell for a school, as it would immediately disqualify the institution from receiving any further Article IV funding.

Distressed institutions often experience hits to their quality standards from lowering admission standards to fill seats and generate desperately needed cash flow. A practitioner has to immediately assess whether such actions pose any threat to accreditation and take appropriate action where necessary to avoid having an institution placed on academic probation or encountering other issues.

Many private, nonprofit colleges and universities are religiously affiliated, thus limiting the number of potential M&A candidates they are willing to consider.

In addition to regional/national accreditation through Department of Education approved agencies, schools have the option to seek accreditation by discipline-specific agencies, such as the Association to Advance Collegiate Schools of Business (AACSB) and the Accreditation Council for Business Schools and Programs (ACBSP). While not immediately relevant for Title IV finding, these accreditations are an important quality indicator and, in some disciplines, are effectively required for successful job placements. Therefore, these accreditations also have to be closely monitored.

Marketing

More competition for a dwindling applicant pool is driving the need for increased spending on marketing and recruitment. This includes not only general marketing, especially by for-profit schools, but also targeted spending for recruitment that includes detailed prospect mailing lists and additional recruiting personnel. Admissions have also been boosted through a focus on students in rural areas or transfers from junior/community colleges, as well as international students or joint programs with international institutions.

Students, or even parents, are commonly considered a school's true customers. However, in light of an institution's role in preparing students for careers, the ultimate customers for any college and university are the organizations that are willing to hire their graduates. If an institution lowers its admissions standards to compensate for falling enrollment, the result can be a deterioration in the quality of graduates. Lower student quality leads to reduced career opportunities, which in turn can lead to further reductions in enrollment and a downward spiral in revenues. The curriculum and student experience must remain relevant and effective to avoid this outcome, and those priorities must inform all decisions during the turnaround process.

Facilities

Real estate typically represents a significant cost factor for colleges and universities. The sale of unused, underutilized, or non-core landholdings and buildings can generate immediate cash for a struggling institution. The sale/leaseback of facilities can also provide liquidity. Both options can provide additional time to develop and execute a turnaround plan. However, given the special-purpose nature of many of these facilities and the remote locations of many smaller colleges and universities, this may not always be an option.

Better utilization of real estate can often provide an income stream that provides little disruption to ongoing operations. Renting idle facilities during the summer to organizations for seminars, camps, and retreats can generate additional cash flow. Limited rentals are possible even during semesters, as many classrooms, auditoriums, and other facilities tend to be idle during evenings and on weekends.

Mergers, Acquisitions, and Liquidations

For colleges and universities that cannot survive on their own, mergers or acquisitions can offer a lifeline. Combining similar or complementary institutions can provide significant economies of scale and reductions in administrative expenses. Academic efficiency can also increase through the consolidation of low-enrollment courses and reductions in faculty staffing through contract buyouts or longer-term attrition.

There are potential obstacles to mergers and acquisitions, however. Many private, nonprofit colleges and universities are religiously affiliated, thus limiting the number of potential M&A candidates they are willing to consider. Even when successful in reducing costs and improving an institution's educational offering, a merger or acquisition may not resolve all of the institution's problems. Other fundamental issues related to governance, strategy, and operations that may have contributed to the distress must be resolved as well. This can prove difficult where the governing trustees of both organizations need to agree on a common path forward despite often differing missions and preferences.

In more extreme cases, liquidation may be the only alternative. Assets of the institution, and especially real estate in remote locations, may be hard to liquidate at reasonable values. The liquidation of a college or university can cause extreme hardships for enrolled students, so, if possible, arrangements should be made to allow a "teach out" that enables every enrolled student to graduate or enroll in another institution to finish their studies. The penalty for not navigating a soft landing can be harsh. If students are not able to finish their education, their student loans can be discharged by the Department of Education, but the liability is then transferred to the institution and its trustees and officers.

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7. *Forbes*, op. cit.

About The Authors

Dr. Ruediger Mueller, CTP, is a senior director with Florida-based TCMI. He has more than 30 years of experience in mergers, acquisitions, divestitures, corporate finance, general management, market expansion, and franchising, including serving as CRO, CEO, and COO. He has advised and managed companies in a number of industries, assisting with financing strategies and funding, strategic management, operational restructuring, optimization, information technology innovation, and acquisition activities. Mueller is also a recognized leadership expert who has worked with major U.S. and international organizations. He has served on TMA Global's Certification Oversight Committee (COC) and the COC Standards Subcommittee. Mueller holds graduate degrees from U.S. and German universities, including a doctoral degree focused on strategic planning and control systems.

Edward J. Sanz, CTP, is managing partner of ABTV. He has served as a CFO and financial consultant to business owners, boards of directors, and senior management for more than 25 years in the U.S. and abroad. An accomplished finance manager, he focuses on stabilizing and turning around troubled companies in a wide range of industries by improving cash flow, restructuring debt, and returning the businesses to sustainable profitability. Sanz has also provided strategic advice related to corporate governance, succession planning, mergers and acquisitions, and other related transition issues. He is a Chartered Financial Analyst (CFA) and holds a bachelor's degree in commerce from the University of Virginia and an MBA with honors from Emory University. He has worked with several colleges as an advisor and chief restructuring officer (CRO).

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Credentials

Education

JD, Vanderbilt University Law School, 2001

BA, George Washington University, 1998

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District of Columbia

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Activities

American Bankruptcy Institute, Newsletter Director, Real Estate Committee

Charles Malloy represents clients in commercial and bankruptcy litigation and restructuring transactions. He advises parties in both in-court and out-of-court workouts and restructurings, as well as in the planning and negotiation of prepackaged or pre-arranged bankruptcy filings. Mr. Malloy has a broad-based litigation practice with an emphasis on representing clients in commercial and bankruptcy-related litigation, as well as in breach of duty, contract, and products liability matters. His experience in bankruptcy litigation includes disputes concerning ownership and title of property, lien priority, fraudulent transfers and preferences, equitable subordination and recharacterization claims, and in litigation related to the termination and close-out of swaps and other derivative contracts. He has litigated bankruptcy appeals involving fraudulent transfers, enforcement of a unilateral option to obtain financing, and on the reaches of bankruptcy court jurisdiction. He also advises asset purchasers, lenders, landlords, and strategic investors on structuring and documenting transactions to mitigate insolvency-related risk.

Mr. Malloy also has a background in healthcare bankruptcy and restructuring, having represented facility owners, lessors, vendors, and suppliers on the creditor side, and hospitals on the debtor side. He has advised on issues at the intersection of labor law and bankruptcy, including litigation and appeals from the rejection of collective bargaining agreements and modification of retiree benefits.

Experience

Bankruptcy and Corporate Restructuring

Ad hoc lender group in the Chapter 11 restructuring of *The Hertz Corporation* (Bankr. D. Del. 20-11218) and in a related adversary proceeding concerning the avoidance of certain transfers.

Ministry of Finance of the Republic of Colombia in the Chapter 11 case of *Avianca Holdings S.A.* (Bankr. S.D.N.Y. 20-11133).

Landlord in the Chapter 11 bankruptcy of *Cosi Inc.* (Bankr. D. Del. 20-10417).

Tiffany and Company in the Chapter 11 of *Miami Metals I, Inc.* (Bankr. S.D.N.Y. 18-13359) and in related litigation.

Ad hoc lender group in the Chapter 11 case of *Cumulus Media Inc.* (Bankr. S.D.N.Y. 17-13381).

Creditors in the Chapter 7 bankruptcy case of *Zetta Jet USA, Inc.* (Bankr. C.D. Cal. 17-21386).

Secured lender group in the Chapter 11 liquidation of Forest Capital, LLC (Bankr. D. Md. 16-13850).

The Police and Fire Retirement System of the City of Detroit and the *General Retirement System of the City of Detroit* in the Chapter 9 bankruptcy of the City of Detroit, Michigan (Bankr. E.D. Mich. 13-53846).

Defendant in adversary proceeding alleging fiduciary duty claims brought in the Chapter 11 case of *ASHINC Corp*. (Bankr. D. Del. 12-11564).

Quebecor World (USA) Inc. and its affiliated debtors-in-possession as debtors' counsel in their successful Chapter 11 reorganization (Bankr. S.D.N.Y. 08-10152).

Foreign financial institution in litigation arising out of the close-out and termination of swaps in the *Lehman Brothers* Chapter 11 case.

US Airways Inc. and its affiliated debtors-in-possession in their successful Chapter 11 reorganization -- *In re U.S. Airways Inc.* (04-13819) in the Eastern District of Virginia.

Real estate investment trust as landlord and secured lender in health care bankruptcy cases in the District of Delaware, the District of Columbia, Connecticut and the Northern District of Indiana, among others.

Private equity and other investment funds in bankruptcy, workout and related litigation matters in bankruptcy and other courts throughout the United States.

Court appointed receiver in a federal receivership case in the United States District Court for the District of Puerto Rico.

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Ms. Marcero has nearly 25 years' experience in complex general business matters, restructuring, transformational efforts and M&A transactions in a variety of industries, including but not limited to institutions undergoing dramatic change: automotive, industrial manufacturing, metals, municipalities, healthcare, transportation, retail franchising, pharmaceuticals, higher education, consumer products, and publishing. Throughout her career, she has excelled at advising clients managing evolution and external challenges and is recognized for creative solutions that preserve and facilitate improved outcomes for all constituents. Her work for and viewpoints on the automotive supplier community served as a basis by which requests were made to Secretary of Treasury Timothy Geithner and the U.S. government for funding to the automotive supplier community in 2009.

Awards, Boards of Directors and Community Service:

- In 2013, Ms. Marcero was selected as a recipient for M&A Advisor's 40 under 40 award. In 2011, Ms. Marcero was selected as a recipient for Crain's Detroit 40 under 40 award.
- Ms. Marcero was appointed in 2014, by Governor Rick Snyder, to serve on the Michigan Board of Osteopathic Medicine & Surgery.
- Ms. Marcero also served as an Officer (Treasurer) on the Board of Directors for the Detroit Symphony Orchestra, as the Finance Committee Chairperson and, also served on the Nominating & Governance committee.
- Ms. Marcero is a past Co-Chairperson on the Board of Directors for Michigan International Women in Restructuring.

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Representative examples of Ms. Marcero's engagement experience include:

- Served as financial advisor to Purdue University in its operating agreement with Kaplan University. Duties included comprehensive due diligence, financial forecasting, assisting in the negotiation of the operating agreement, and presentation of Board materials.
- Served as financial advisor to several mid tier higher education institutions. Duties included managing cashflow, identifying opportunities for cost reduction, identifying strategic partners, and negotiating with constituents.
- Serving as Chief Restructuring Advisor to a publicly traded global clean energy manufacturer and service provider. Duties include managing cashflow and identifying cost reductions and negotiating with the secured lenders and preferred equity holders.
- Served as Deputy Chief Restructuring Officer of a $500M diversified automotive supplier. Duties included the operational restructuring, negotiating with key constituents, and sale of multiple entities, including a cross border sale. Prepared over 15 Quality of Earnings reports.
- Global advisor to OEMs and Tier I automotive suppliers, including development of supplier risk program, negotiation of accommodation agreements, development of customer strategy, and implementation of resourcing plans.
- Served as Chief Restructuring Officer to Lee Steel. Duties included financial and operational oversight, and negotiation with key constituents. Company was successfully sold in bankruptcy and was selected as M&A Advisor's Restructuring Deal of the Year.
- Served as advisor to the State of Michigan regarding a distressed municipality. Duties included evaluation of financial viability and of management candidates and crafting of 100 Day Plan.
- Served as financial advisor to the Receiver at Arcadia Holdings, a national nonskilled home healthcare entity. Duties included cost reduction implementation, improvement of sales and overall EBITDA profitability, financial reporting, and negotiations with major constituents. Huron also sold the entity and achieved a value over twice that of the offers generated by the previous investment banker.
- Served as Chief Restructuring Officer of the second largest Kentucky Fried Chicken franchisee in the United States. Duties included: evaluation of store portfolio, restructuring of financial and operational infrastructure, sale of real estate, and transition of business. The transaction was selected as Crain's M&A Deal of the Year in 2013.

Education and Certification

- Bachelor of Business Administration, Ross School of Business, University of Michigan, Ann Arbor, MI
- Northwestern University – Kellogg School of Management, Executive Women's Board of Director Training
- Certified Public Accountant, Michigan
- Certified Insolvency & Restructuring Advisor

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Mr. Sanz is a senior finance and restructuring professional with over thirty years of experience as a CFO, interim manager, and financial consultant to business owners, boards of directors and senior management in the U.S. and abroad. He has provided services including interim crisis management, board of director services, financing/refinancing services, company assessments, operational/profitability improvement, and middle market lending. He also has extensive experience in both out-of-court and state and bankruptcy court proceedings, serving in court-appointed roles including Chief Restructuring Officer, Financial Advisor, Receiver, Trustee, and Expert Witness.

Mr. Sanz has collaborated successfully with both debtors and creditors in a variety of industries, including retail, manufacturing, distribution, restaurant, food services, higher education, printing, media, energy, construction, nonprofit, service, agricultural, healthcare, telecom, real estate, pharmaceutical, transportation, software/technology, professional services and aviation.

Mr. Sanz began his career as a commercial lender with a large regional bank after completing its formal one-year credit training program. As a consultant at a Big Four accounting firm, he performed detailed valuations of public and private companies in connection with mergers/acquisitions, recapitalizations, litigation support, and tax cases. He then led the analysis for an RBOC's CFO of the company's Latin American cellular investments with combined revenues of $350 million in five countries. He was the expatriate CFO of an international textile manufacturer in Mexico and was the CFO of a private equity-owned manufacturer of specialty yarns. He was also a project manager leading cross-functional teams on post-merger integration projects for a major money center bank. Mr. Sanz has worked in the turnaround and restructuring industry since 2005 with two middle-market advisory firms before joining ABTV in 2011.

Select assignments and experience include:

- CRO of a 180-year-old private college, leading the school through a severe cash and leadership crisis and resulting in a highly successful turnaround that put the college on sounder footing.

- Financial Advisor to a 192-year old private college experiencing significant losses and financial instability. Performed a comprehensive assessment of the college's finances and existing initiatives and identified additional opportunities for improvement.

- CRO and Receiver for a $35 million (revenue) multi-location drug treatment and rehabilitation operation. Managed the company through stabilization and ultimately a liquidation.

ABTV

- Financial Advisor to an operator of twenty-five casual dining steakhouse restaurants in four states. Provided recommendations for improvements in cash flows, operations, and financial reporting.

- CRO of a 96-year-old chemical manufacturer transitioning to a brand management/licensor strategy while winding down and managing legacy liabilities.

- Receiver for a pre-cast concrete contractor in Georgia that was ultimately liquidated in a wind down.

- Financial Advisor for a $600 million (revenue) multi-location textile manufacturer, leading a successful out-of-court liquidation process that resulted in full recovery for the secured lender and significant recovery for unsecured creditors.

- Estate Executive and advisor for a rural hospital that was sold through a Chapter 11 process to a large regional healthcare company.

- CRO for an $80 million biorefinery facility in Chapter 11.

- Financial Advisor for a $45 million (revenue) multi-location textile manufacturer, leading a successful refinancing and coordinating a strategic sale with management and outside advisors.

- Expatriate CFO of an international $90 million (revenue) joint-venture textile manufacturer, representing a $130 million greenfield investment, which included administering and navigating a complex $74 million international credit facility through the Mexican peso crisis.

- Expert Witness in a Chapter 11 bankruptcy case in the Western District of North Carolina regarding the setting of an interest rate on the impaired secured claim of a senior secured lender.

- Post-confirmation Trustee for a Creditors Trust created under the confirmation plan for a large packaging manufacturer that emerged from Chapter 11.

- CFO of a $50 million (revenue) NC-based, multi-location textile manufacturing company, including coordination of project to move significant production to a start-up Mexican facility.

Mr. Sanz graduated from the University of Virginia with a Bachelor of Science in Commerce and received his Master's in Business Administration with honors from Emory University. He holds Certified Turnaround Professional (CTP) and Chartered Financial Analyst (CFA) designations.

Mr. Sanz has authored articles for industry journals and chapters of the Turnaround Management Association's Body of Knowledge. He has also spoken on various topics, including distressed healthcare, employment issues in Chapter 11, the hospitality industry, and distressed non-profits. He currently serves on the Board of the Carolinas Chapter of the Turnaround Management Association (TMA) where he was also a past President. He also served on the Board of Trustees of TMA Global, where he chaired the Certification Oversight Committee which oversees the administration of the Certified Turnaround Professional (CTP) designation. He is a member of the TMA, American Bankruptcy Institute, Commercial Finance Association, CFA Institute, CFA North Carolina Society, and the Association for Corporate Growth.

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PRACTICES
Bankruptcy, Restructuring and Creditors' Rights |
Litigation and Dispute Resolution | Energy Restructuring | Education |
Corporate Governance | Maritime | Hospitality, Resort and Timeshare |
Distressed Mergers and Acquisitions

John J. Monaghan is an attorney in Holland & Knight's Boston office and serves as the co-national practice group leader of the firm's Bankruptcy, Restructuring and Creditors' Rights Practice Group. Mr. Monaghan is particularly focused on representing major case participants in complex commercial insolvency and restructuring matters, with a particular focus on Chapter 11 cases. He represents both U.S.-based companies and non-U.S. companies in both in-court and out-of-court domestic and cross-border insolvency proceedings. Mr. Monaghan's creditor representations focus on matters involving senior lenders, both in syndicated and bilateral deals. He also has extensive experience representing creditors' committees, equity committees, purchasers of assets, landlords, licensors, trustees, parties to prepetition contracts and leases, litigants in adversary proceedings and unsecured creditors. His experience crosses a broad array of industries, including finance, manufacturing, construction, real estate, higher education, energy, technology, telecommunications, retail, healthcare, resort and hospitality, franchise, food service, leasing, maritime and aviation. He advises clients on the business aspects of bankruptcy and workouts, and represents clients in matters in bankruptcy court, as well as in other state and federal courts.

Mr. Monaghan has extensive experience advising for-profit and not-for-profit boards in connection with governance issues, as well as in litigating director and officer fiduciary duty issues for estate representatives and for directors and officers. Mr. Monaghan's litigation experience also includes defending and prosecuting fraudulent transfer and other avoidance actions.

Matters in which Mr. Monaghan has been lead counsel have resulted in the issuance of more than 30 published opinions on topics ranging from the impact of rights of first refusal on sales under a plan of reorganization to the constitutional authority of bankruptcy courts to enter final monetary judgments in fraud cases. He has been named as a top bankruptcy lawyer by numerous ranking publications, and in 2008, Mr. Monaghan was inducted as a fellow in the American College of Bankruptcy (ACB) – a professional, educational and honorary association whose membership is limited to those in the profession who exemplify the highest standards of professional and ethical standards. In 2010, he was named as a fellow of the American Bar Foundation (ABF). Mr. Monaghan was also named to the International Insolvency Institute (III) in 2016, an invitation-only institution consisting of the top cross-border financial industry professionals in the world.

A frequent lecturer on bankruptcy issues, Mr. Monaghan has presented seminars on the Bankruptcy Code safe harbors for financial industry transactions, the fiduciary duties of not-for-profit officers and directors in higher education, litigating contested plan confirmation proceedings, the purchaser's perspective in transactions with a

Chapter 11 debtor, cross-border issues in energy industry insolvencies, and maritime insolvency issues for organizations, including the American Bankruptcy Institute (ABI), the National Conference of Bankruptcy Judges (NCBJ), the International Bar Association (IBA), Marine Money and the Association of Insolvency and Restructuring Advisors (AIRA).

Representative Experience

Debtor Representation

- Represented a sand mining company in restructuring of $40 million senior secured debt facility and of $110 million in railcar lease obligations
- Represented an international airline in obtaining order enforcing discharge provisions of German order confirming restructuring plan and enjoining pursuit of U.S.-based litigation, including putative national class action
- Counsel to eight financially challenged, not-for-profit tuition-dependent colleges and universities in three states
- Counsel to a 200-year-old iconic silver manufacturer in its Chapter 11 reorganization, resulting in a confirmed plan yielding a substantial dividend to all creditor classes
- Represented the parent and multiple subsidiaries of a systems-design build company involved in projects such as the construction of the Washington Nationals Stadium, the Kennedy Center for the Performing Arts and the Charlotte International Airport in an out-of-court restructuring
- Represented a transportation industry technology company in Chapter 11 proceedings involving a sale of substantially all assets to a syndicate of senior debt holders
- Counsel to an international tour and travel company, including its international subsidiaries located in seven countries across Europe and Asia
- Represented a 2,000-acre residential golf and resort development in Chapter 11 proceedings

Lender Representations

- Represented a non-bank lender in connection with Chapter 11 case of a borrower engaged in the design and installation of naval sonar systems, including negotiation and documentation of debtor-in-possession financing establishing benchmarks for pursuing and closing a Section 363 sale and a full rollup of prepetition debt
- Represented a collateral agent in connection with a 14-bank syndicate holding more than $140 million in aggregate debt secured by a fleet of barges flagged in the United States and Mexico
- Represented the agent bank and lender steering committee as lead counsel to the syndicated lender group under a $1.1 billion credit facility in the Chapter 11 case of an international dry bulk maritime company and its ship-owning subsidiaries
- Counsel to the lender in bilateral loan that funded construction of and was secured by one phase of a multiphase project, with each phase funded by separately documented and secured bilateral loans relating to a failed luxury hotel in Chapter 11 proceedings
- Represented a private credit fund lender in connection with post-default realization on a collateral package consisting largely of a spectrum license for outer space communications and associated intellectual property and equipment
- Represented the asset-based lending affiliate of a large international hedge fund in the receivership case of a regional printing company

Committee Representations

- Represented the official committee of unsecured creditors in a Chapter 11 case involving a designer and manufacturer of inverters used in the solar power industry
- Counsel to an ad hoc committee of retail tenants in the Chapter 11 cases of one of the largest mall owners in the world
- Represented the official committee of unsecured creditors in the Chapter 11 case of a company that designed and installed fiber optic compression technology

Asset Acquirer Representations

- Represented a large publicly traded protein production company in connection with the $450 million acquisition of the debtor's pork assets as stalking horse bidder and ultimately acquirer through a Section 363 sale
- Represented a publicly traded strategic acquirer of substantially all assets of an institutional subcontract pharmacy services provider
- Counsel to an international manufacturing conglomerate as stalking horse bidder in the acquisition through a Section 363 sale of substantially all assets of a fiberglass manufacturing company

Litigation and Adversary Proceeding Representations

- Counsel to the trustee in an adversary proceeding seeking damages for breach of fiduciary duty by officers and directors of a medical billing company
- Defended officers and trustees of a small tuition-dependent, not-for-profit college in a class action brought by former students of the college alleging breach of fiduciary duty and violation of consumer protection and privacy laws
- Represented equity holders in both civil fraudulent transfer litigation and a federal indictment centered on alleged involvement in a compounding company's production and sale of non-sterile injectable steroids

Credentials

Education

- Boston University School of Law, J.D., *cum laude*
- Middlebury College, B.A., *cum laude*

Bar Admissions/Licenses

- Massachusetts

Court Admissions

- U.S. District Court for the District of Massachusetts
- U.S. District Court for the Eastern District of Michigan
- U.S. Court of Appeals for the First Circuit
- U.S. Supreme Court
- U.S. District Court for the Southern District of California

Matthew Bordwin

Matthew Bordwin

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EDUCATION, LICENSES, & CERTIFICATES

- BA, Tufts University
- JD, Fordham University School of Law
- New York Bar Association
- Licensed Real Estate Broker
- General Securities Representative (Series 7)
- Registered Principal (Series 24)
- Securities Agent (Series 63)
- Investment Banking Representative (Series 79)

REPRESENTATIVE CLIENTS

FINANCIAL & PRIVATE EQUITY

- Bank of America
- Citibank
- JP Morgan Chase
- Balmoral Funds
- Karp Reilly
- Silverpoint
- Versa

CORPORATE CLIENTS

- Arthur Anderson
- Cable & Wireless
- Family Golf Centers
- Fleming
- Marriott
- The Club at Cordillera

RETAIL

- Blockbuster
- Dollar General
- Esprit
- Payless ShoeSource
- Things Remembered
- U-Haul Bondholders

Matt is a skilled negotiator and real estate broker, investment banker and consultant along with being an expert strategist. Matt specializes in the marketing and sale of businesses along with the valuation, marketing, and disposition of real estate portfolios for healthy and distressed companies with a track record of closing deals. Clients appreciate his ability to listen and focus on their issues and create and execute plans to accomplish desired results. He is especially proficient in workout and restructuring situations when time and options are limited. Matt is sought out as a trusted advisor by clients and colleagues. Matt is the recipient of the 2016 Transaction of the Year Award by the TMA.

PROFESSIONAL AND INDUSTRY EXPERIENCE:

- Matt's negotiations and sales technique have resulted in multi-million dollar transactions with clients such as Blockbuster Video, Huffman Koos, Arthur Andersen, Fruit of the Loom, and Montgomery Ward.

- Matt handled lease restructuring/termination negotiations on a leasehold obligation in excess of $110 million enabling a successful law firm merger. Matt has also run one of the largest lease restructuring projects in retail history.

- Matt is a former member of both the National Board of Directors of the American Bankruptcy Institute (ABI) and National Board of Trustees of the Turnaround Management Association.

- Matt is a frequent speaker on industry topics including recent panels for the ABI and American Bar Association and has written an article published in Real Estate Weekly, has been featured in articles in Fortune magazine and National Real Estate Investor magazine, and has been quoted numerous times as an expert in the real estate industry by numerous national publications