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## NORTH CAROLINA: An Introduction to Bankruptcy/Restructuring

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For the bankruptcy outlook in North Carolina, we are currently in a holding pattern with a warning that there are storms ahead. Across the country bankruptcy filings have fallen to their lowest level in fifteen years. According to New Generation Research, Inc.'s [BankruptcyData.com](#), there were only 6,691 commercial bankruptcy filings in 2021, compared to 11,375 in 2020. Even though the pandemic has dramatically impacted the retail, tourism and restaurant industries, government stimulus programs have created a safe haven for many companies and individuals. Additionally, the Federal Reserve stimulus programs have provided capital and liquidity both to distressed institutions and financial institutions which allowed parties to restructure commercial obligations by removing covenants and reducing debt load for the near term. Both the CDC eviction moratorium and state programs have assisted tenants stay in place for 2021.

All that being said, the 2022 outlook is evolving due to unfavorable market conditions. According to the March 2022 inflation report from the Bureau of Labor Statistics, inflation is now 8.5%, which means it has risen faster in 2021-2022 than in the past 40 years. As a result, the Federal Reserve has indicated that it will wind down current stimulus programs and start raising interest rates, thus reducing the supply of liquidity in the market and increasing

debt obligations for consumers and businesses alike. Additionally, supply chain shortages are likely to occur both from China shutting down major cities to fight COVID as well as high oil and gas prices affecting the transportation industry. Pandemic support programs such as PPP loans and other small business loans are no longer available. Due to staffing shortages, many companies have had to raise their wages to a level that is unsustainable. However, even those wage increases are no match for the higher costs households are facing on rent, food, electricity and gasoline. Finally, The Housing Opportunities and Prevention of Evictions Program (HOPE) program in North Carolina which was meant to

help with individuals' rent relief closed its applications on 17 December 2021. As a result, landlords are able to evict both residential and commercial tenants again.

As the funds from the stimulus programs end and are consumed, many companies are just shutting down and turning the keys over to lenders and landlords. The cost of filing bankruptcy can be high and if there is no foreseeable revenue in the future, it often is easier to just walk away and hopefully make a deal with the lender. There are many shuttered businesses across the state. Individuals are facing the same problem. On 10 February 2022 WRAL reported that monthly foreclosure filings are up nearly 85% year over year for North Carolina. According to WRAL, one in every 8,175 housing units in North Carolina is currently in a foreclosure process.

In terms of the out-of-court/restructuring world, we have continued to see strong liquidity in the capital markets, enabling refinancing or restructuring transactions that have enabled full-payout transactions. Due to pressure to put capital to work, funds, banks and other financial institutions have been willing to amend or refinance current facilities to loosen financial covenants, keep interest rates low and extend maturities, all of which has allowed healthy companies (and many unhealthy companies) to survive the pandemic and avoid bankruptcy. However, between continuing supply chain challenges, rising energy costs, and rising interest intended to combat inflation, restructuring professionals expect to be busier in Q3 and Q4 of 2022 and into 2023. Certainly, those "dead-man-walking" businesses that were not otherwise healthy heading into the pandemic - but have survived with federally injected stimulus funds - will face serious headwinds as those funding sources dry up.

Also in North Carolina, the new receivership law provides lenders another, less expensive avenue than bankruptcy filing. The North Carolina Commercial Receivership Act went into effect in early 2021. There is now the option for a general receivership and a limited receivership. The limited receivership is similar to the one

that has historically been in place. Alternatively, the new general receivership mimics a Chapter 11 reorganization in bankruptcy and has incorporated many similar provisions. A general receiver can enter into contracts, pursue litigation, marshal assets and sell businesses free and clear of all liens just as permitted in a Chapter 11 bankruptcy case. There is an automatic stay in place which prevents creditors from pursuing litigation against the company. However, unlike the bankruptcy court, there is no creditors' committee whose advisers are paid by the company in the bankruptcy. As well as this, the professional fees and expenses are dramatically less. There are numerous filing fees and

administrative fees in bankruptcy that are not in the receivership action. As a result, there has been a number of rising receiverships: notable examples include the Northlake Mall and Epicentre near Charlotte.

That is not to say all of the bankruptcy courts have been slow as well. In the Western District of North Carolina Bankruptcy Court there are numerous mass tort cases. There have been cases with Kaiser Gypsum Company, Inc.; Hanson Permanente Cement, Inc.; Bestwall, LLC; DBMP, LLC; Aldrich Pump LLC and Murray Boiler LLC who sought to restructure their asbestos liabilities in the Bankruptcy Court. Johnson & Johnson initially filed its affiliate LTL Management LLC in the Bankruptcy Court, but it was moved to New Jersey after a venue challenge. While keeping the Bankruptcy Court busy with novel issues regarding asbestos litigation and bankruptcy restructuring, these cases do not have an impact on the North Carolina economy as a whole. Because of the successful venue challenge in Johnson and Johnson, there may not be as many tort bankruptcies in North Carolina in the future, but it remains the venue of choice for many companies facing such tort litigation.

In conclusion, while at the moment the level of activity in the bankruptcy and restructure world is relatively low, the world as we know it is likely to change in the near future.

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