All companies are subject to the challenges of maintaining good fiscal health. The performance of public companies, by their very nature, are more visible to all current and prospective stakeholders. We have been witness lately to some very high-profile flameouts—companies whose transition from IPO to the bankruptcy court, occurred in record time. What do we know about the financial obstacles that newly listed public companies can face? Did they file for an initial public offering too soon? Was it perhaps perceived as their only option for growth? Did the market turn against them or did investors just get cold feet? In distressed business situations, there are often more questions than answers.

At the M&A Advisor’s Annual Distressed Investing Summit in Palm Beach, Florida, earlier this year, Lorie Beers, managing director and head of special situations, Cowen & Company, chaired a Stalwarts Roundtable discussion titled “IPO to Bankruptcy: Boom to Bust in Record Time,” to discuss this subject. Beers was joined by the Honorable Kevin J. Carey, judge, Bankruptcy Court for the District of Delaware; Peter Gilhuly, partner, Latham & Watkins; Stuart Brown, managing partner, DLA Piper; and Eric Schwartz, partner, member of Business Reorganization and Restructuring Group, Morris Nichols Arsht & Tunnell, who shared their insights and reflections on high profile cases of IPO boom to bankruptcy bust.

In this report, we share the highlights of this dynamic roundtable panel session:
• Four IPOs – Four Bankruptcies
• Is Market Appetite at IPO a Predictor of the Future Business Value?
• Are Some Industries More Boom-Bust Prone?
• Sale or Bankruptcy? Why the Latter?
• Do Some Companies Go to IPO Too Quickly?
• Best Practice Recommendations for Distressed Public Companies

We hope that the insight is informative and proves valuable for you. We look forward to learning about your experience with boom to bust public companies.

David Fergusson
President and Co-Chief Executive Officer
The M&A Advisor
## Contents

- Executive Summary ........................................... 1
- Introduction ..................................................... 1
- Four IPOs – Four Bankruptcies ......................... 1
- Is Market Appetite at IPO a Predictor of the Future Business Value? 3
- Are Some Industries More Boom-Bust Prone? ........ 4
- Sale or Bankruptcy? Why the Latter? .................. 5
- Many Sources of Distress ..................................... 6
- Do Some Companies Go to IPO Too Quickly? ....... 6
- Best Practice Recommendations for Distressed Public Companies .... 8
- Case Studies: Hercules offshore; BIND Therapeutics, KaloBios Pharmaceuticals; and Xtera Communications ...... 9
- Video Interviews ................................................. 11
- Symposium Session Video ................................. 13
- Contributors' Profiles ....................................... 14
- About the Sponsor ............................................ 16
- About the Publisher .......................................... 17
Executive Summary

Four bankruptcy cases were examined by this Stalwarts Panel: Hercules Offshore, an oil and gas services company (2005–2015); the BIND Therapeutics sale to Pfizer Inc. (2013–2016); KalosBio Pharmaceuticals, Inc. (2013–2015); and the sale of Xtera Communications, Inc., to HIG European Capital Partners (2015–2016). The panel examined the similarities and differences of these cases. Did some of these companies go to IPO too quickly? Were they undercapitalized through the IPO process and thus doomed to financial distress? Are some industries—biotech, tech, consumer—more prone to early failure than others? Are appointed equity committees helpful in cases of publicly traded company bankruptcies? Should they be routinely appointed? Each case had unique characteristics, including, in one case, a CEO who was under indictment for financial fraud. Companies need a strategy for dealing with the media as well as debtors and creditors. The ability to anticipate the next developments in a distressed situation and to be creative in dealing with them are important best practices for the professionals involved.

Introduction

At the M&A Advisor’s Annual Distressed Investing Summit in Palm Beach, Florida, earlier this year, Lorie Beers, managing director and head of special situations, Cowen & Company, chaired a Stalwarts Roundtable discussion titled “IPO to Bankruptcy: Boom to Bust in Record Time.” The panelists were the following:

The Honorable Kevin J. Carey, Judge, Bankruptcy Court for the District of Delaware
Peter Gilihuly, Partner, Latham & Watkins
Stuart Brown, Managing Partner, DLA Piper
Eric Schwartz, Partner, Member of Business Reorganization and Restructuring Group, Morris Nichols Arsht & Tunnell

Four IPOs – Four Bankruptcies

The panel focused on four bankruptcy cases that that went from boom to bust in just a few years—Hercules Offshore, an oil and gas services company (2005–2015); the BIND Therapeutics sale to Pfizer Inc. (2013–2016); KalosBio Pharmaceuticals, Inc. (2013–2015); and the sale of Xtera Communications, Inc., to HIG European Capital Partners (2015–2016). Lorie Beers, managing director and head of special situations at Cowen & Company, presented a synopsis of each case and asked the panel members to discuss the cases. Each of the panelists was involved in one or more of the situations. Peter Gilihuly, partner at Latham & Watkins, represented debtors in the Bind Therapeutics case. Stuart Brown, managing partner at DLA Piper, represented Pfizer in the Bind case as well as Xtera Communications. The Honorable Kevin J. Carey, judge in the Bankruptcy Court for the District of Delaware, presided over two of the cases: Hercules and Xtera. Eric Schwartz, partner and member of the Business Reorganization and Restructuring Group at Morris Nichols Arsht & Tunnell, was involved in the Hercules and KalosBio cases. “Bankruptcies rarely occur in the first year after an initial public offering, but it turns they relatively evenly split out from years two to five,” Beers said. She asked Stuart Brown to discuss the challenges facing a company in its first one or two years after going public compared to later years.

“Bankruptcies rarely occur in the first year after an initial public offering, but it out turns they are relatively evenly split out in years two to five,” Beers said. She asked Stuart Brown to discuss the
challenges facing a company in its first one or two years after going public compared to later years.

“I think planning on how to spend the money is the greatest challenge,” Brown said. “Typically, in the sale process, the company advertises much broader and deeper dreams for its business and products.” In the Xtera case, he said the company captured a large market share immediately following its IPO. The new business involved multiyear projects. Xtera “spread the capital too thin among all the customers, and they were incapable of completing many of the projects. And then when the trade debt dried up, they were incapable of performing under their contracts,” he said.

Beers asked if bankruptcy risks are adequately disclosed prior to IPOs. “We’ve got four companies here, all of whom were spectacular flameouts relatively early on. Do you think there was generally adequate discussion of the bankruptcy option in conjunction with IPOs?” Judge Carey responded that “all the caveats are the same” in disclosure filings and “who reads them, I don’t know.” “That’s exactly right,” Gilhuly said. “We could have a laundry list of risks that everyone knows can happen but anyone going in an IPO is not thinking about bankruptcy in the next couple of years. And most of these cases have good reasons for what happened. Drastic market changes, right? The unavailability of finances. You could Monday morning quarterback, but really it’s not reasonable to think that it’s a significant risk that it’s going to end up in bankruptcy.”

Schwartz said the KaloBios case was probably unique among the four: “They were developing drugs and there was no expectation that they would ever make any revenue, and they still have not necessarily made revenue. So it was very possible that the company could go into bankruptcy, and I think people knew that, and the original disclosure said that. And we were very careful in our disclosure statement when we went through the plan process to make the same type of disclosures that, even when you got out of bankruptcy, it could still go back in.” Gilhuly interjected, “Isn’t that true with every biotech? You’re raising a bunch of money trying to develop the drug. It’s almost always going to take more capital, right?” Schwartz responded, “That’s the exact presentation we made to the judge. We weren’t going to have any revenue for a long time, and the only way we were going to survive was by borrowing money. And the expectation of creditors should be that they will hopefully get paid.”

Gilhuly said the BIND case illustrates his point perfectly. “BIND was a company that was trying to develop a drug, went IPO, and had a bunch of money. The secured lender got impatient and basically caused the bankruptcy,” he said. “There was weariness in the market in terms of continuing to fund.” Several firms bid for the company in an auction, and ultimately, it was sold to Pfizer. “We ended up sending a large premium to shareholders. So you can’t say that that was a risk that could have been disclosed any other way. It’s just one of those things where the company developed good drugs, but the biotech (industry) was really down. It was hard to get financing and investors got weary.”

Schwartz added that companies are required to make specific disclosures with the Securities and Exchange Commission (SEC) prior to an IPO. In the KaloBios case, he said, “we took those same disclosures and put them in our disclosure statement, which basically said, ‘Look, you’re buying into a company that may never be successful. You must have the expectation that something bad could
happen.’’ Brown observed, ‘’Those biotech cases depended in large part on Big Pharma support. If Big Pharma is not going to get behind the device or the molecule, it’s not ever going to take off.’’

Is Market Appetite at IPO a Predictor of the Future Business Value?
Beers Beers asked the panelists whether the market appetite for equity in a company at the time of the IPO affects whether the business will eventually file for bankruptcy. ‘’Do you think that when a company goes out to IPO, if there’s not robust investor appetite, that that is reflective of whether the company can actually make it? In the case of Xtera, for example, they started out with a plan to raise a hundred million dollars. They raised thirty million. Do you think that was an indicative factor?’’

‘’It absolutely was,’’ Brown responded. ‘’Because with the hundred million, they still may not have had enough money, but you would have had more people more committed to a follow-on investment than you did with a thirty-million-dollar investment. And the success of a thirty-million-dollar investment when you’re looking for a hundred, in my mind, is not a success at all. And there’s a question of whether you should close on that or go in a different direction.’’

Beers asked whether the lack of equity committees had a bearing on the four cases being discussed. Judge Carey pointed out that there was an organized equity group in the Hercules case, which involved two bankruptcy filings. ‘’The company went in and out and back in again so quickly, the equity said, ‘Wait a minute, this can’t be right. What about your projections you made to the bankruptcy court when you got your first prepack confirmed?’ ‘Well they changed,’’ Carey said. ‘’There are more equity committees now for that very reason, because value is so up in the air.’’

Beers asked whether bankruptcies involving public companies ought to have equity committees appointed as a matter of course. ‘’In the case of BIND, we returned money to public equity and there was no equity committee, but there are others where equity is just completely out of the money. Nobody speaks for them.’’ Gilhuly said that in the BIND case, ‘’the auction was so successful that we only realized that equity was in the money pretty late in the case. It was so late then that we opposed an equity committee because, at that point, we sold all the assets. It was a pile of money you’re sending to shareholders. And the equity committee just wanted to look at selling the public shell and doing subsidiary things, and we didn’t think that made sense.’’

Gilhuly asked Judge Carey whether he thought equity committees should be required in cases involving public companies.

Carey referred to a discussion from another Stalwarts Panel at The M&A Advisor’s Distressed Investing Summit (“Art of Dealmaking in the New Economic Order”). ‘’One of the slides from the prior panel showed the factors that courts look at to make that determination if the US trustee hasn’t initially appointed a committee,’’ he said. ‘’Of course, these aren’t full evaluation hearings, they’re ‘back-of-the-envelope’-type exercises early in the case and you can be wrong, but you don’t know that. The downside to [appointing a committee] when it looks like equity is out of the money is that you’re giving—as others have discussed—‘terrorists’ a free hand”

“The success of a 30-million-dollar investment when you’re looking for a hundred, in my mind, is not a success at all. And there’s a question of whether you should close on that, or go in a different direction.”
- Stuart Brown
with the state funds . . . . But the notion that management is supposed to be looking out for that [equity] interest is a principle that I think many really don’t accept, although that’s what the company will continually say if they’re opposing an equity committee appointment. Our interests are aligned and others will say, ‘Well, no, they’re really not.’”

Gilhuly took a position against routinely appointing equity committees. “In BIND, for weird reasons, we had no creditor committee and no equity committee, and I think it saved a fortune for shareholders because we sold everything. We did it very efficiently. There weren’t a lot of costs. And we sent all the money to the shareholders. And really, my perception of the agenda of the equity committee was not that it was going to bring value. It was really going to pay professionals. That’s really what it was about, so I don’t think that can be a policy overall.” In response to a question from Judge Carey, Gilhuly said that some of BIND’s management went to Pfizer and others went to new jobs in the industry.

Brown opined that the BIND case was unique “because you had Pfizer as a partner developing the medical device, and so essentially you could view BIND as an outsourcer to Pfizer. And they had to buy it. You don’t have that in many cases where you have one constituent in a case that must see the success of the enterprise go forward. One of the things we ask clients the first time we meet them is, ‘Is there a reason you need to exist?’ If the answer is ‘we don’t know’ or ‘no,’ then it’s going to be one of those cases. I think BIND, however, was a case where you would say absolutely this company needs to exist and here are at least one or two formulas that are going to support it into the future.”

Are Some Industries More Boom-Bust Prone?

Beers said there seemed to be an industry trend among the four cases under discussion. Two were biotech and one was a tech company that went from boom to bust in a hurry. “Consumer is another (area) where you’ve got IPOs and then bankruptcy within a relatively short time. Are there other industries that we think are susceptible to this trend?”

Schwartz pointed out that “there are not a lot of biotech companies that have gone through bankruptcy, and the reason for that is because they generally just liquidate.” He said regarding BIND and KaloBios, “It’s been demonstrated that you can successfully use a bankruptcy to help out the company. And like Peter said in KaloBios, we had no equity committee, we had no creditors committee; in fact, we had no management. We just had a board and they were operating the company and they had to do it for everybody’s best interest. Now, initially, the US trustee did not like that and they filed a motion to have a trustee appointed. And we explained to them, and ultimately had to explain to the court, that a board can manage a company, and we were successfully able to stave off that motion, but I absolutely agree with Peter that in the biotech industry, you’ll probably see more filings, and because of the type of case you’re dealing with, an equity committee or a creditors committee may not be necessary.”

Judge Carey said that in Chapter 11 bankruptcy cases, management stays in place. “Fine. But when there’s no adversary to point out the weaknesses and what the debtor and its allies want to do, it leaves a vacuum that has to be filled. Now in KaloBios, you had an active objecting group
Schwartz agreed, “Very active.” They objected to everything. So the court does, in that exercise, even in the absence of committees, get a diverse view about what might or might not be right. So that’s generally a good thing.” But, Carey added, “I will agree that the committees can drive up costs considerably.”

“I think some of these cases are just unicorns,” Gilhuly added. “I mean, I would not think it’s very helpful to have [routinely appointed equity committees]. Sometimes it’s just a sale. That’s all that’s happening. And if you had decent fiduciaries, it can be OK. But often committees are very helpful.”

Sale or Bankruptcy? Why the Latter?

Beers recalled that in the Xtera case, Judge Carey asked the parties on the first day of the case, “What are we doing here?” She said if a company is just trying to sell itself, “Why are we running this through a bankruptcy? Is there a reason for a biotech company, or a tech company, to go into bankruptcy when a sale is the logical outcome?”

Carey replied, “Well, that’s what bankruptcy has turned into, in a lot of ways. And it started a long time ago, as we all know—moving away from classic reorganizations.” He said from a lender’s standpoint, foreclosure is an option, “but if you have a company that’s got its collateral scattered around, it’s easier to do it in one forum. It’s also protection for the board, right? Because once you get the bankruptcy court order approving the sale, the board has done what it’s supposed to do responsibly. It’s had the judicial blessing. Maybe there are lawsuits that come later, but at least they can look back and say, ‘OK, we did the right thing.’”

When companies headed for bankruptcy try to find their market value prior to filing, “the value tends to circle the drain and find its lowest point because until you file, you can’t build a competitive tension,” Beers pointed out. “Everybody knows you’re going to file, so they’re just going to wait until you get there before they show up at the table.” Gilhuly agreed and added that in the BIND case, “we were all assuming it’s just a sale and maybe we Monday morning quarterbacks can see that. But you know that people were talking about a reorganization in there. It gives you the flexibility to go in and figure out what you’re going to do. And we know a lot of them will end up being sales. For that rare case that’s actually a good reorganization, you want to have the flexibility. And you didn’t know, as BIND, until you market that to folks, right?”

Beers asked whether panelists thought that companies with lower market capitalizations had fewer options to reorganize and whether that were a driver toward a sale rather than bankruptcy.

“KaloBios was a really small company relative to the matters everybody here works on,” Schwartz observed. “I think that actually was an advantage for us because we didn’t need as much money.”

“I think that the other options are greatly limited,” Gilhuly said. “If you look at the true reorganizations, it’s odd how few we really have, but they’re all generally very large cases. I mean, that’s the vast majority, I think.”

Brown observed, “I think it goes to what the prior panel [‘Art of Dealmaking’] spoke to investors with dry powder to reinvest, and those are the cases that you see have reorganization opportunities.

“When there’s no adversary to point out the weaknesses and what the debtor and its allies want to do, it leaves a vacuum that has to be filled.”

- The Honorable Kevin J. Carey
In the smaller cases, most people are tapped out. If it were an IPO, usually there aren’t too many controlling interests there. And most people, I think, where they have a small investment, are hesitant to take a follow-on to make another small investment that may go down the same drain.”

Many Sources of Distress
Beers noted that in the four cases under discussion, the debt-to-capital ratio was less than 25 percent, “so it doesn’t appear to be a capitalization issue. What do we think is the trouble in these cases? Is it excess spending, lack of growth, brand, increasing debt overhang? Why did these companies find themselves in a bunch of trouble?”

“Right now, with the oil and gas stuff, the answer is easy,” Judge Carey said. “Commodity prices just have not recovered. And in Hercules’s situation, which is a company that owned and leased rigs, what would happen is commodity prices would drop and the producers were making less money. They go to companies like Hercules and say, ‘OK, we have to renegotiate your lease.’ So the lease prices they initially entered into just kept dropping. And that really is something that is beyond their control.”

“I think this is capital weariness,” Gilhuly said. “A lot of these companies we’re talking about are equity financed, not debt financed, and they simply can’t go back to the market. The market is not going to finance them.”

“Unless they have a good story to tell,” Schwartz said. “That’s the key. Is it really a good story and really perceived value that can be garnered in the future from this business? That’s going to drive whether a dollar’s put in, a hundred million dollars, or not.”

“In the biotech,” Brown added, “if you get through the second or third trial phase, you have a markup evaluation. It’s usually the first or second phase where you see failure, and that’s when the companies tend to disappear.”

Do Some Companies Go to IPO Too Quickly?
Beers asked whether companies tend to go public too quickly and at inappropriate valuations.

Gilhuly said, “They go public when they think the market will finance it, and I don’t know whether we have any other system that’s going to be better than that. It doesn’t mean that the market’s not often wrong, Biotech was really hot when BIND went public.”

“And often, when they file for bankruptcy, it’s because the markets are unavailable to them,” Beers added. “They would always go back to the market to refinance as opposed to raise debt. Let’s look at the public companies that were able to recover and exit Chapter 11. What were the successful strategies that they employed?”

Judge Carey said the notable thing about Xtera’s bankruptcy and sale was that it occurred shortly before a recent US Supreme Court ruling (Czyzewski v. Jevic Holding Corporation, March 22, 2017) that held that bankruptcy courts may not approve structured dismissals that provide for distributions that run afoul of the bankruptcy code’s priority rules without the consent of affected creditors. “I was a bit surprised that, after the [Xtera] sale, they didn’t look for a structured dismissal .... You don’t have to
disclose your strategy, but it was shocking, really. I can’t remember the last time a Chapter 11 converted right after a sale. Usually they hang around at least for a little bit to see whether they can put a plan together or not or try a structured dismissal, which is now not an option that’s available.”

Beers asked about listing and delisting requirements on stock exchanges. “Do they play a role in the context of the bankruptcy? Obviously, once filed, the company often gets a notice of delisting or it happens earlier, prior to the filing, in relation to how long its stock has traded sub the requirements.”

“Delisting is a huge problem,” Gilhuly said. “I’ve had a number of these public companies. Delisting is actually the biggest event. It’s often bigger than a default or something because they are equity-financed companies and they are no longer able to go to the market. That’s a huge, huge problem. It’s also the disclosure and the message it sends to the market.”

“The goal in KaloBios—and the goal still—is to get relisted,” Schwartz said. “It got delisted before it filed [bankruptcy]. Literally a week ago, they filed a subscription agreement, getting the stock properly before the SEC. The next goal is to demonstrate a track record so they can get relisted because in the biotech industry, the way you survive is you go to the markets and you ask for money until you develop the drug that is going to generate revenue. That can take years.”

Beers added, “In BIND, we got a delisting notice, and we appeared in front of the [exchange] panel. One of the things that was interesting, at least for me, was the panel was very interested in what the company’s exit from Chapter 11 would be. If the company was going to reorganize, and since we had a bidder who wanted to fund a plan, the panel was willing to suspend their decision on the delisting pending the outcome of the case. If it was going to go into a sale, it would obviously be delisted, but they preserved the option for us, which I thought was interesting. It does have a relative impact on the outcome of the case if the company wants to be public after Chapter 11.”

Gilhuly added that he believed BIND’s products were interesting to Delaware district bankruptcy judge Brendan L. Shannon, the judge in the case. “I’ve never seen Judge Shannon have a conversation with the CEO as a first-day declarant—on and on—about the technology, which he thought was fascinating.”

Beers asked the panelists what role the media has played in conjunction with public company bankruptcies. “Public companies obviously have a lot of media coverage. They’ve got analyst coverage and the like. How did that work out in KaloBios?” she asked Schwartz.

“It worked out well,” Schwartz said. “It was a huge issue for us because we were a public company. We’re also in the public light because of the facts that surrounded what happened in this particular case.”

“You mean the CEO going to jail?” Beers asked. “He’s been indicted; he hasn’t gone to jail,” Schwartz said, referring to Martin Shkreli, who was dismissed as CEO of KaloBios after he was arrested for fraud relating to his tenure with Retrophin, Inc., and MSMB Capital Management. “Up front, we developed a media strategy,” Schwartz continued. “We developed who was going to deal with the media. We went from being passive to being active and trying to deal with certain members of the media to tell our story. That was key, I think, ultimately, with this company because its ultimate goal is to become a listed public company again.” Beers added that Shkreli remained a shareholder.
Best Practice Recommendations for Distressed Public Companies

Beers asked the panel whether they could recommend any best practices legal and investment advisors should be thinking about when dealing with public company bankruptcies.

“We had a new experience that Judge Shannon also said he’s never seen before,” Gilhuly said. “We had this auction that ran up and put equity very significantly in the money. We knew essentially while we were in the auction that there was a[n information] leak, and literally the stock literally went up to the exact point of the implied value. The company’s still public; we’ve sold all our assets. Now, I actually wanted to get delisted because the problem we had was we had to file a disclosure statement and plan. We wanted to say, ‘We want to distribute money on this date.’ We wanted a record date. I’ve just gotten a lawsuit by one of the shareholders who’s suing FINRA [the Financial Industry Regulatory Authority], who was responsible under the NASDAQ rules to set an ex-dividend date. We had this terrible problem where these shareholders were all buying and selling, thinking that they could sell to some fool for some money and get the recovery or buy and get the recovery. The price didn’t reflect that.” Gilhuly said that because of this experience, “one of the things I have on my list is to make sure, if you have a public company and you sell it, that you get the ex-dividend date.”

Schwartz said a best practice would be “you have to really anticipate, and you have to be creative. Two of the things we did in KaloBios were, upfront, we realized we were going to have real issues as to credibility, and we’re in the public market, so we set up a dream board. We had an ex-bankruptcy judge on there. We got the CEO and the chairman to be on the board, and he was renowned in the industry. By having this dream board, it got the court comfortable and it got a lot of other parties comfortable too. Going forward, we were actually going to look out for everybody’s interests.” Another unique part of the KaloBios case, he added, was that the majority of the debt was expected to convert to equity upon confirmation of the plan. “That was something that had not been done before. That was the way for us to get somebody to actually invest in the company,” he said.

Returning to the issue of media scrutiny, Judge Carey said one of the main challenges is that “there’s a reporter or more sitting in the back of the courtroom; there’s somebody on the phone, real time, sending information to whoever’s on their subscriber list. By the time the hearing’s over, you may have to explain something. You’re dealing with the media influence, it seems to me, hourly.”

Brown said a best practice in dealing with the media “is to act decisively and act quickly, and not let things labor while the company is headed downward.”

“A best practice in dealing with the media is to act decisively and act quickly, and not let things labor while the company is headed downward.”

- Stuart Brown

Following up on Schwartz’s description of forming a “dream board” for KaloBios, Beers asked whether he had trouble getting people onto a board that was preparing for a bankruptcy filing. “Absolutely,” he responded. “There were a number of people, including myself and others of the company, who had to convince the board members that they were not going to get sued and that they had coverage if they were sued and that if they came on board that their own credibility and reputation wouldn’t be ruined. There was risk for them and they took it on, and so far, it’s worked out well. It’s not easy to do.”
Case Studies

**Case Study: Hercules Offshore, Inc. Plan of Reorganization - Liquidation**

**Company Overview**
- Provides shallow-water drilling and marine services to the oil and natural gas exploration and production industry worldwide
- It offers oil and gas exploration and development drilling, well services, platform inspection, maintenance, and decommissioning services in various shallow-water provinces
- Founded in 2004
- Based in Houston, Texas

**Transaction Background and Highlights**
- **IPO:** The Company IPO’d on October 27, 2005, using the proceeds to repay debt, and refurbish and acquire additional rigs and lift boats
- **Prepackaged Bankruptcy, Converting Debt to Equity:** On August 13, 2015, the Company executed a prepackaged reorganization plan that (i) swapped $1.2bn in senior unsecured notes for equity and (ii) secured a $450mm first lien term loan facility to fund its ongoing operations
- **New Equity Begins Trading:** On November 09, 2015, after exiting bankruptcy, the recapitalized Company’s equity began trading on the Nasdaq
- **File for Chapter 22:** On June 5, 2016, the Company filed for Chapter 22 again with the plan to shut down its business and sell its U.S. assets
- **Judge Confirms Plan Overruling Equity Objections:** On November 01, 2016, a judge confirmed a Chapter 22 plan for Hercules Offshore to liquidate assets despite objections from the equity committee arguing that the lenders were catching the lenders off guard and forcing the Company into a premature liquidation

Source: Debtwire

**Case Study: Sale of BIND Therapeutics, Inc. to Pfizer Inc.**

**Company Overview**
- A biotechnology company developing novel targeted therapeutics, primarily for the treatment of cancer
- Develops Accurins, a nano-medicine with specific pharmaceutical properties intended to target tumors at tissue, cellular, and molecular levels
- Founded in 2006
- Based in Cambridge, Massachusetts

**Transaction Background and Highlights**
- **IPO:** The Company IPO’d on September 20, 2013, with the goal of further developing their lead drug candidate Bind-014, an Accurin containing docetaxel designed to treat non-small cell lung cancer
- **Disappointing Phase 2 Results:** In April 2016, BIND announced negative Phase-2 topline data and would no longer develop Bind-014
- **Debtholders Claim Default:** In April 2016, the Company’s senior lender Hercules Technology III, L.P issued a notice of default on its senior secured credit facility due to the retirement of Bind-014
- **Chapter 11 Filing:** On May 2, 2016, BIND filed for Chapter 11 bankruptcy protection and initiated a Section 363 sale of its assets
- **Sale in Robust Auction with Payout to Equity:** On July 26, 2016, Pfizer, the stalking horse, was declared the highest and best bidder in a competitive auction which included two other qualified bidders. Sale price of $42mm allowed BIND to repay its creditors in full and return a distribution to equity holders in an amount greater than the trading price of the stock immediately prior to the auction
Case Study: KaloBios Pharmaceuticals, Inc. Plan of Reorganization

**Company Overview**
- Develops monoclonal antibody therapeutics for the treatment of cancer in the United States
- Lead product candidate is benzimidazole for the treatment of Chagas disease, a parasitic illness that can lead to long-term heart, intestinal, and neurological problems
- Founded in 2000
- Based in Brisbane, California

**Transaction Background and Highlights**
- **IPO**: The Company IPO'd on January 31, 2013, with proceeds used to develop and advance drug candidates through clinical trials
- **CEO Arrested**: On December 17, 2015, Martin Shkreli was dismissed as CEO of the Company after he was arrested for fraud relating to his tenure with Retrophin Inc. and MSMB Capital Management
- **Files for Chapter 11 to Protect Assets**: On December 29, 2015, KaloBios filed for voluntary Chapter 11 bankruptcy protection because it “perceived an imminent threat” due to the Shkreli investigation and believed “a significant portion of its liquid assets were at risk”\(^{(1)}\)
- **Chapter 11 Filing with DIP Financing**: Cheval Holdings Limited (“Cheval”), Nomis Bay Ltd (“Nomis Bay”) and Black Horse Capital LP (“Black Horse”)) provided KaloBios with DIP financing in exit financing along with a Securities Purchase Agreement
- **Exit Chapter 11 with a Plan of Reorganization**: On May 9, 2016, a judge approve the disclosure statement for KaloBios enabling lenders to convert their credit bid for 64% of the reorganized stock and existing equity holders split the remaining shares

\(^{(1)}\) KaloBios motion to pay employee wages, Docket No. 2

Case Study: Sale of Xtera Communications, Inc. to HIG European Capital Partners

**Company Overview**
- A leading provider of high-capacity, cost-effective optical transport solutions, supporting the high growth in global demand for bandwidth
- The Company was founded in 1998
- Based in Allen, Texas

**Transaction Background and Highlights**
- **IPO**: The Company IPOd on November 12, 2015, however due to market constraints they were unable to raise enough capital to address near-term payables
- **Payables Struggles**: Unable to address the payables, the company struggled to complete projects or grow the business
- **Default on Debt**: On January 31, 2016, two months after the IPO, Xtera defaulted on its senior debt with Square 1 Bank by failing to maintain financial covenants
- **Covenants Waived to Complete a Sale**: On April 27, 2016, the Company and Square 1 reached an agreement to waive the financial covenants if Xtera completed a sale or refinancing by July 31
- **Extensions Provided**: Square 1 later agreed to extend the deadline to complete a transaction to October 1
- **Chapter 11 with Stalking Horse**: Unable to complete a transaction, on November 15, 2016, Xtera filed for Chapter 11 protection with a $10mm stalking horse bid and $7.4mm DIP Facility from HIG European Capital Partners (“HIG”)
- **In-Court Sale to Financial Sponsor**: On January 30, 2017, Xtera’s assets were sold to HIG for ~$10mm
Video Interviews

To watch exclusive M&A Advisor interviews with these industry experts on “IPO to Bankruptcy: Boom to Bust In Record Time,” click on the following images:

Stuart Brown
Managing Partner
DLA Piper

The Honorable Kevin J. Carey
Judge
Bankruptcy Court for The District of Delaware

Peter Gilhuly
Partner
Latham & Watkins
Eric Schwartz
Partner, Member of Business Reorganization & Restructuring Group
Morris Nichols Arsht & Tunnell
Symposium Session Video

To watch the Stalwarts Roundtable discussion titled “IPO to Bankruptcy: Boom to Bust In Record Time” click on the image below:
Contributors’ Profiles

**Lorie R. Beers** is a Managing Director and Head of Special Situations at Cowen Group, Inc. She has also served as the Managing Director and Co-Head of Global Restructuring and Investment Banking at Seabury Group LLC. Ms. Beers served as Managing Director for special Situations Advisory Group at KPMG Corporate Finance LLC since January 2007 and served as its Managing Partner. She served as Director of Business Development of Gordian Group LLC, where she was responsible for its client acquisition, marketing activities and relationship management. Ms. Beers served as the Chief Operating Officer of STC Associates and was a Partner in the bankruptcy and insolvency practice at Kasowitz, Benson, Torres and Friedman LLP. She has 19 years of experience in the insolvency and restructuring arena covering a wide range of industry sectors. She has been a Director of American Bankruptcy Institute, Inc. since April, 2009. Ms. Beers developed the Complex Financial Restructuring Program for American Bankruptcy Institute (ABI). Ms. Beers has authored and been quoted in various national and regional publications. She is a Member of the ABI and the TMA.

**Stuart Brown** is a Managing Partner at DLA Piper. An accomplished bankruptcy lawyer, Stuart Brown’s practice encompasses the representation of institutional lenders, investors and business enterprises in diverse matters, including general business, transactions with bankruptcy estates, anti-bankruptcy transactional consultation, bankruptcy litigation, substantive non-consolidation, securitization and servicing and bankruptcy fraud. He also represents traditional and non-traditional funding sources with respect to workouts, claim realization and asset recovery. The American Board of Certification recognizes Stuart as a specialist in the area of Business Bankruptcy.

**The Honorable Kevin J. Carey** has served on the Bankruptcy Court for the District of Delaware since December 9, 2005 (as chief judge from 2008 to 2011), having first been appointed as a bankruptcy judge for the Eastern District of Pennsylvania on January 25, 2001. Judge Carey is on the Board of Directors of the American Bankruptcy Institute, is a past Global Chairman of the Turnaround Management Association, and a member of the National Conference of Bankruptcy Judges. Judge Carey is the Third Circuit representative on the Administrative Office’s Bankruptcy Judges Advisory Group and a member of the Third Circuit Judicial Council’s Facilities and Security Committee. He is a contributing author to Collier on Bankruptcy and Collier Forms Manual. Judge Carey is also a part-time adjunct professor in the LL.M. in Bankruptcy program at St. John’s University School of Law in New York City, New York and at Temple University’s Beasley School of Law in Philadelphia, Pennsylvania. He began his legal career in 1979 as law clerk to Bankruptcy Judge Thomas M. Twardowski, and then served as Clerk of Court of the Bankruptcy Court for the Eastern District of Pennsylvania. Judge Carey received his J.D. in 1979 from the Villanova University School of Law and his B.A. in 1976 from The Pennsylvania State University.
Peter M. Gilhuly is a corporate restructuring and bankruptcy Partner in Latham & Watkins’ Los Angeles office. Mr. Gilhuly is global Co-chair of the firm’s Restructuring, Insolvency & Workouts Practice and head of the firm’s West Coast Insolvency Practice. Mr. Gilhuly represents debtors, buyers, hedge funds, private equity funds, first and second lien holders, creditors’ committees and boards of directors. From 2009 to 2013, Mr. Gilhuly has spoken at Stanford Engineering, Harvard Business and UCLA Business and UCLA Law Schools. In 2010, at the invitation of the French Ministry of Justice, Mr. Gilhuly made a presentation on Chapter 11 in Paris to international insolvency groups. Mr. Gilhuly is a frequent speaker at ABI and similar conferences. Mr. Gilhuly is Chair of Latham’s Client Credit Counsel Committee.

Eric Schwartz is a Partner and Member of the Business Reorganization & Restructuring Group at Morris Nichols Arsht & Tunnell. Prior to his career as an attorney, he was an investment banker for several years. Eric has more than 20 years of experience representing debtors and creditors in insolvency cases and out-of-court restructurings. His substantial experience includes assisting clients with complex operational, corporate governance, financial, real estate, pension, intellectual property, tax, labor, purchase/sale and litigation issues. His practice focuses on business restructurings, including representing distressed enterprises, advising fiduciaries and managers for distressed enterprises, distressed acquisitions and transactions, distressed financings, debtor and committee representations, representation of large secured and unsecured creditors and related litigation. He is active internationally in the Insolvency/Bankruptcy Practice Group for TerraLex, and served as a Director on the American Bankruptcy Institute’s (ABI) International Committee. He has been recognized as a leading Delaware Bankruptcy/Restructuring attorney by Chambers USA.
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TRI Conference: Special Situations & Turnaround and TRI Awards Gala – London, UK – October 18, 2017
M&A Advisor Summit and Awards Gala – New York, NY – November 13-14, 2017
Corporate Growth Forum and Corporate Development Awards Gala – London, UK – February 28, 2018
Distressed Investing Summit and Awards Gala – Palm Beach, FL – March 2018
International Financial Forum and Awards Gala – New York, NY – June 2018
Emerging Leaders Forum and Awards Gala – London, UK – September, 2018
Emerging Leaders Awards Gala – New York, NY – September, 2018

For additional information about The M&A Advisor’s leadership services, contact Liuda Pisareva at lpisareva@maadvisor.com.