



# MPW – Prospecting for Shit

Prospect is in breach of its asset purchase agreement, which Yale now seeks to void. Connecticut hospitals are operationally non-compliant and functionally insolvent. Communities face a healthcare emergency because MPW and Prospect will not come to the table.

## PLEASE READ IMPORTANT DISCLAIMER – PAGE 17

**October 25, 2024** – Yale New Haven published its proposed amended complaint against the Prospect group on October 22, 2024. The complaint details that Prospect is in equally bad shape, if not worse, than Steward. So dire is the situation that Prospect’s Waterbury Hospital’s neonatal unit was unable to test for jaundice on-site.

The docket is attached to this report and includes the proposed amended filing.

## Background

MPW announced in October 2022 that it had entered into definitive agreements for the sale of three Connecticut hospitals to Prospect Medical, who in turn would sell the hospitals and their operations to Yale New Haven Health (YNHH). MPW claimed at the time that this transaction “further validates MPT’s underwriting of these properties”. We generally agree that this disaster validates MPW’s destructive business practices.

### Medical Properties Trust Announces Agreement to Sell Connecticut Hospitals

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*Total Expected Consideration of Approximately \$457 Million*

BIRMINGHAM, AL--(BUSINESS WIRE)--Oct. 6, 2022-- Medical Properties Trust, Inc. (the “Company” or “MPT”) (NYSE: MPW) today announced that it has entered into definitive agreements for the sale of three Connecticut hospitals to Prospect Medical Holdings (“Prospect”), the current lessee. Separately, Yale New Haven Health (“Yale”) has agreed to acquire the hospital operations from Prospect in a contemporaneous transaction.

Terms of the agreements establish an aggregate sale price of approximately \$457 million, the approximate amount MPT paid for the hospitals in August 2019; the Prospect lessees have since made timely payments of all rent required under the leases to MPT totaling approximately \$104 million. The strong interest of Yale in the Connecticut facilities further validates MPT’s underwriting of these properties as essential hospital infrastructure due to their physical quality, local demographics, reimbursement sources and other key underwriting criteria. The transaction is expected to close in 2023 subject to certain regulatory approvals and is further conditioned upon the completion of Yale’s acquisition from Prospect of the hospital operations.

*Figure 1 – Medical Properties Trust Announces Agreement to Sell Connecticut Hospitals<sup>1</sup>*

Shortly after the announcement it was revealed by MPW that Prospect was unable to meet its rent obligations.

136. Defendants’ failure to timely pay the Businesses’ liabilities also extended to their rent payment obligations.

137. On February 23, 2023, MPT stated during its own earnings call that Prospect had not paid the rent that it owed to MPT in connection with the Prospect Hospitals in January or February 2023.<sup>44</sup> Defendants had not notified Yale New Haven Health of this failure to pay rent, despite their obligation under Section 5.3(e) of the APA to do so, and Yale New Haven Health learned of the unpaid rent for the first time during this earnings call.

138. By May 2023, Prospect owed MPT \$56 million in accrued rent and interest, in addition to nearly \$400 million more in loans that MPT had extended to Prospect.<sup>45</sup>

*Figure 2 – YNHH Proposed Amended Complaint*

<sup>1</sup> <https://www.medicalpropertystrust.com/press-release?page=https://medicalpropertystrust.gcs-web.com/news-releases/news-release-details/medical-properties-trust-announces-agreement-sell-connecticut>



It is now apparent that Prospect was effectively bankrupt at this time, and this sale going through was necessary for both MPW and Prospect.

139. Prospect negotiated a restructuring of its Master Agreement with MPT under which, “in lieu of cash payment for \$573 million of loans, unpaid rent and interest, and other amounts owed”, MPT would receive equity in PHP Holdings, LLC, which controls Prospect.<sup>46</sup> Specifically, Prospect promised to pay MPT \$355 million out of the closing proceeds from the Yale New Haven Health deal and give MPT a \$103 million equity stake in PHP Holdings. In exchange, MPT would reduce Prospect’s rent obligations to \$0.00 per month through October 31, 2023. This arrangement was finalized in May 2023.<sup>47</sup>

140. Prospect induced Yale New Haven Health to consent to this arrangement by representing that the restructuring would provide Prospect’s hospital operations with liquidity and capitalize its managed care business for continued growth. Prospect also indicated that the restructuring and recapitalization agreement would prevent Prospect from receiving a “going concern” qualification in future audits. Indeed, Prospect made clear that its external auditors would be able to issue an unqualified audit opinion for FY 2022 only if Prospect were able to close the extraordinary MPT restructuring and recapitalization deal.

Figures 3 & 4 – YNHH Proposed Amended Complaint

YNHH has since sought to pull out of the deal given the appalling physical and financial state of the hospitals, and assert that the Prospect has not satisfied the APA’s closing conditions.

16. Rather than attempt any steps to rectify the breaches and satisfy the closing conditions, Defendants’ only response has been to seek to delay the outside closing date under the APA. It is now clear that Prospect and the Selling Entities have not satisfied—and cannot satisfy—the APA’s closing conditions.

Figure 5 – YNHH Proposed Amended Complaint

YNHH indicated that it would be seeking purchase price adjustments since “fall 2023”; MPW did not think it was material to share any this with its investors.

181. As early as fall 2023, Yale New Haven Health made public statements indicating that it would be seeking a purchase price adjustment. And throughout January and

Edward K. Aldag

Chairman, President & Chief Executive Officer, Medical Properties Trust, Inc.

Yeah. With the ongoing discussions between the state, Yale and Prospect, we’re just not going to comment on that right now.

A

Figures 6 & 7 – YNHH Proposed Amended Complaint & Q2 2024 MPW earnings call transcript



## The Amended Complaint

In summary, YNHH assert that Prospect have failed to operate the hospitals in the ordinary course of business as required under the asset purchase agreement:

- State and federal regulators have issued notices that Prospect's regulatory violations posed an immediate jeopardy to the health and safety of patients.
- Federal regulators have threatened "at least one" of Prospect's hospitals with termination of its Medicare contract.
- Prospect has failed to protect health information of patients.
- Prospect has defaulted on payment to medical staff & vendors.
- Numerous medical providers and vendors have terminated services with Prospect.
- Prospect has stopped paying rent.
- Prospect has stopped paying taxes.
- Creditors have registered liens against the property & the business.

### **B. Prospect Ceases Ordinary Course Operation of the Businesses.**

59. Shortly after the APA was executed, Prospect and the Selling Entities ceased operating the Businesses in the Ordinary Course. Among other things, state and federal regulators have issued notices that the Prospect Hospitals' regulatory violations pose an immediate jeopardy to the health and safety of patients. (*Infra* ¶¶ 60-81.) Federal regulators have threatened at least one of the Prospect Hospitals with termination of its Medicare contract due to the hospital's failure to comply with federal regulations. (*Infra* ¶ 71.) Defendants have failed to protect health information and personally identifiable information as they have failed to prepare for and remediate adequately a ransomware matter and system compromise. (*Infra* ¶¶ 82-108.) Defendants defaulted on payments to medical staff, physician groups and third-party vendors. (*Infra* ¶¶ 109-126.) As a result, numerous medical providers and vendors have terminated their services with the Businesses, the facilities have not been properly maintained and the quality of care and patient safety at the Prospect Hospitals have suffered. (*Infra* ¶¶ 127-35.) Defendants stopped paying rent. (*Infra* ¶¶ 136-42.) Defendants stopped paying taxes. (*Infra* ¶¶ 143-50.) And impermissible liens have been perfected against the Businesses. (*Infra* ¶¶ 151-64.)

*Figures 8 & 9 – YNHH Proposed Amended Complaint*

Examples of these failures are documented below. Given the enormous, critical failures by Prospect, we do not believe this transaction can be consummated. Prospect has apparently already engaged Alvarez & Marsal.





## Failure to Comply with Government Regulations

YNHH asserts that Prospect “repeatedly failed to comply with governing regulations regarding facility cleanliness and operability, patient safety, and quality of patient care”.

- The Connecticut Department of Health (**DPH**) and the Centers for Medicare & Medicaid Services (**CMS**) issued numerous notices of non-compliance to Prospect. Waterbury Hospital received notice that if it fails to achieve compliance the CMS may initiate steps to terminate their Medicare agreement. The noncompliance letter lists the following issues:

71. In a January 26, 2024 notice to Waterbury Hospital, CMS reported that it found continued substantial noncompliance with Conditions of Participation related to “Patient Rights” (in violation of 42 CFR § 482.13), the “Quality Assessment and Performance Improvement Program” (in violation of 42 CFR § 482.21), “Nursing Service” (in violation of 42 CFR § 482.23) and “Anesthesia Service” (in violation of 42 CFR § 482.52). As a result, Waterbury Hospital no longer met the Conditions of Participation in Medicare and was placed under the jurisdiction of the state survey agency. If Waterbury Hospital fails to achieve compliance, CMS may initiate steps to terminate Waterbury Hospital’s Medicare agreement. While CMS verified that the conditions of Immediate Jeopardy have been abated, it has also indicated that substantial noncompliance remains, demonstrating that Prospect still cannot meet the closing conditions of APA Section 6.6 (“Immediate Jeopardy Matters”).

Figures 10 & 11 – YNHH Proposed Amended Complaint

- Manchester Memorial Hospital’s HVAC system failed in January 2024 because staff neglected to ensure breakers feeding power to the system were replaced in a timely manner because the vendor “was not on the Prospect Holding approved vendor list”. Patients endured the summer without air conditioning and operating rooms were not usable. Prospect has **yet to fix this issue**.

70. A January 3, 2024 notice of noncompliance issued to Manchester Memorial Hospital identified a violation of Section 19-13-D3 based on the hospital’s **failure to maintain certain electrical equipment**. Specifically, on or around August 1, 2023, the HVAC system at Manchester Memorial Hospital failed because Defendants had neglected to ensure that the breakers feeding electrical power to the system were replaced in a timely manner because “the vendor was not on the Prospect Holding approved vend[o]r list”.<sup>10</sup> Rather than pay to have the system repaired promptly, Defendants allowed it to remain inoperable for over five months<sup>11</sup>—meaning that patients and staff at Manchester Memorial Hospital had to endure the summer heat without air conditioning. The HVAC failure also led to the inability to maintain acceptable humidity and temperature levels in the operating rooms, which in turn led to the **cancellation of surgeries and a full diversion of certain Emergency Department services**.<sup>12</sup> On information and belief, this violation has yet to be cured.

Figure 12 – YNHH Proposed Amended Complaint



- The DPH issued a notice of non-compliance to Waterbury Hospital that remains unabated, including the Emergency Department’s failure to analyze a patient’s troponin level which resulted in the patient’s death.

64. On September 7, 2023, DPH issued yet another notice of noncompliance to Waterbury Hospital, identifying six additional violations of Section 19-13-D3 that remain unabated, including the Emergency Department’s failure to timely analyze a patient’s troponin level that was followed by the patient’s death.

Figure 13 – YNHH Proposed Amended Complaint

- CMS issued a notice of immediate jeopardy to Manchester Hospital following Prospect’s failure to investigate a registered nurse’s alleged inappropriate relations with patents.

65. On October 11, 2023, CMS issued a notice of immediate jeopardy to Manchester Memorial Hospital based on the hospital’s failure to investigate a registered nurse’s alleged inappropriate physical interactions with patients. The nurse was allegedly having intimate relations with patients—including in patient rooms—both while they were admitted at the hospital and after discharge. In violation of the hospital’s abuse policy, that nurse was neither removed from patient care areas nor placed on administrative leave, and was permitted to continue working with patients for a period of four months. CMS concluded that this placed patients at serious risk.<sup>9</sup>

68. That same day, CMS also issued a notice to Manchester Memorial Hospital identifying violations of numerous regulations based on allegations that the above-described nurse (*supra* ¶ 64) had intimate relations with patients (including a patient who had been admitted for psychotic symptoms), was sending money to former patients and had inappropriate relations in patient rooms. The hospital conducted a brief investigation but did not place the nurse on administrative leave, as required by hospital policy. While Yale New Haven

Figures 14 & 15 – YNHH Proposed Amended Complaint

- CMS issued a notice of non-compliance to Waterbury Hospital Laboratory regarding laboratory conditions. The Connecticut Department of Public Health subsequently found that a patient had died in the emergency department after the lab failed to timely and properly process the patient’s bloodwork.

61. On June 16, 2023, the CMS issued a notice of noncompliance to Waterbury Hospital Laboratory (“Waterbury Lab”). That notice indicated that the lab was not in compliance with nine of the conditions required for certification under the Clinical Laboratory Improvement Amendments of 1988 (“CLIA”) program and that the deficient practices posed immense risk to patient health and safety. Indeed, the Connecticut Department of Public Health (“DPH”) surveys in June 2023 uncovered that a patient had died in the emergency department in December 2022 after Waterbury Lab failed to timely and properly process the patient’s bloodwork.<sup>8</sup>

Figure 16 – YNHH Proposed Amended Complaint



- Waterbury's nurses' union took a vote of no confidence in Waterbury's Chief Nursing Officer. The officer was found to have violated hospital staffing laws numerous times, putting patients at risk.

73. On September 27, 2024, the Waterbury Hospital nurses' union, Connecticut Health Care Associates District 1199 Waterbury Hospital, took a vote of no-confidence in Waterbury's Chief Nursing Officer. By a 96% vote, the nurses' union called for the Waterbury Chief Nursing Officer's dismissal due to what they described as staff shortages and ineffective leadership. The union concluded that the Chief Nursing Officer has violated Connecticut's hospital staffing law numerous times—that law requires hospitals to adhere to the specific nursing-to-patient ratios and assistive staffing-to-patient ratios established in the hospitals' nurse staffing plans—and a related complaint has been filed both with the U.S. Inspector General's Office and DPH. Any related investigation by the U.S. Inspector General's Office or DPH would mean that Prospect and the Selling Entities would be unable to make the representation in Section 3.6(b) of the APA that Prospect and the Selling Entities are not "under investigation with respect to, any applicable material Law". Staffing shortages have gotten so bad that the union has reported that nurses have been "stripped down to a skeleton crew", which is putting "patients at risk".<sup>13</sup>

Figure 17 – YNHH Proposed Amended Complaint

- The Connecticut AG, the DOJ, and the Connecticut Commissioner of Consumer Protection issued Civil Investigative Demands to Prospect, none of which have been resolved.

78. On April 19, 2023, the Connecticut Attorney General issued to Prospect a Civil Investigative Demand ("CID") in connection with Prospect's hospital funding practices that may constitute unfair or deceptive acts or practices in violation of the provisions of the Connecticut Unfair Trade Practices Act.

79. On November 3, 2023, the U.S. Department of Justice ("DOJ") issued to Prospect a Civil Investigative Demand ("DOJ CID") concerning allegations that Prospect violated the False Claims Act by upcoding certain secondary diagnoses on claims for inpatient care that were submitted to federal healthcare programs.

80. On January 12, 2024, the Connecticut Commissioner of Consumer Protection issued to Prospect and the Selling Entities a CID in connection with the August 2023 Cybersecurity Matter, defined and discussed below in Section B.2.

81. None of these investigations have been resolved, which renders

Figures 18 & 19 – YNHH Proposed Amended Complaint





## Failure to Prepare for & Remediate Cybersecurity Matter

Approximately 110,000 patients and employees have had their protected health information and/or personally identifiable information compromised because of a cybersecurity breach.

83. In the early morning hours of August 1, 2023, Prospect and the Selling Entities became aware of a ransomware matter and system compromise affecting all three Prospect Hospitals (the “Cybersecurity Matter”).<sup>14</sup> An unauthorized party had gained access to Prospect’s and the Selling Entities’ electronic environments via Waterbury Hospital’s Citrix platform and accessed and/or acquired files that contained private and sensitive patient and employee information. *Approximately 110,000 patients and employees have had their protected health information and/or personally identifiable information compromised* as a result of the Cybersecurity Matter.<sup>15</sup>

Figure 20 – YNHH Proposed Amended Complaint

Prospect put their hospitals on “full diversion” (taking no patients). State officials were only advised anonymously on August 6, 2023 that the hospital was being run in unsafe conditions following a hack.

93. For the first 24 hours following the Cybersecurity Matter, the Prospect Hospitals were on “full diversion”, taking no patients.<sup>17</sup>

94. On August 6, 2023, an anonymous grievance regarding Waterbury Hospital alerted state officials that the Cybersecurity Matter was adversely impacting patient safety and quality of care. According to the complaining party, the “Hospital is being run in unsafe conditions after computers being hacked. There is poor communication between healthcare providers and mistakes are being made that are affecting the welfare and safety of patients. There is insufficient information and history available due to no access to electronic records. Pharmacy is not verifying new medication orders before medications are administered putting patients at further risk.”<sup>18</sup>

95. On August 7, 2023, DPH officials observed “issues related to medical administration” and learned that patients at Waterbury Hospital had missed their medication.<sup>19</sup>

Figure 21 – YNHH Proposed Amended Complaint

The issue appears to have been preventable, and Prospect have made no effort at patching cybersecurity holes.

85. In the months leading up to the ransomware matter and system compromise, Prospect and the Selling Entities also systematically underinvested in the Prospect Hospitals’ cybersecurity programs and tooling.

Figure 22 – YNHH Proposed Amended Complaint



88. Prospect and the Selling Entities also had an utter lack of asset management with respect to their IT systems. Prospect and the Selling Entities failed to appropriately patch or upgrade the Businesses' IT systems. And in conversations with Yale New Haven Health and its advisors following the execution of the APA, Prospect acknowledged that it was unfamiliar with Waterbury Hospital's system and did not even know that the hospital had

the outdated version of the Citrix platform that it did—the very platform that allowed the unauthorized actor to gain access to Prospect's and the and the Selling Entities' systems in the Cybersecurity Matter—despite having owned the hospital for nearly seven years.

92. Prior to the Cybersecurity Matter, Prospect's Chief Information Security Officer ("CISO") resigned. Prospect did not immediately fill that position. In fact, to date,

Prospect has failed to hire a new CISO. The resulting lack of leadership of Prospect's information security team exacerbated Prospect's inadequate response to the Cybersecurity Matter.

*Figures 23, 24, & 25 – YNHH Proposed Amended Complaint*

Other hospitals became so overwhelmed that state officials considered activating the Medical Reserve Corps.

98. Waterbury Hospital's emergency department diverted so many patients to Saint Mary's Hospital that Saint Mary's emergency department became overrun, with patients sitting on the floor and waiting on gurneys in hallways for days before being admitted.<sup>22</sup>

99. During the six weeks following the breach, the Prospect Hospitals were forced to cancel nearly half of their elective procedures and at times could not process X-rays or CT scans that were vital to providing proper treatment to potential stroke or heart attack victims.<sup>23</sup>

100. The Prospect Hospitals were also short-staffed. Prospect asked DPH to provide temporary pharmacists and pharmacy technicians. State officials were so concerned about staffing issues at Waterbury Hospital that they considered activating the volunteer Medical Reserve Corps.<sup>24</sup>

*Figure 26 – YNHH Proposed Amended Complaint*

The situation at an MPW tenant is now deserving of the attention of a group usually deployed in natural disasters.





## Failure to Pay Vendors and Suppliers

YNHH asserts that Prospect cannot provide adequate care due to its non-payment of staff, suppliers and vendors. These suppliers have cut or reduced services to the hospitals, placed them on credit holds, repossessed equipment, and/or reported Prospect's conduct to the regulators, including:

- The Anesthesia Associates of Willimantic, the sole provider of anesthesia for ECHN, and American Partners in Anesthesia

110. In a September 13, 2023 email to Yale New Haven Health, the Chair of the Department of Anesthesiology at ECHN and the Managing Partner of Anesthesia Associates of Willimantic ("AAW")—the sole provider of anesthesia services for ECHN—stated that ECHN was "months behind in payments despite multiple invoice reminders, in-person meetings with the CEO, emails, and . . . corporate attorney involvement." AAW indicated it would be reducing the services it provides due to lack of payment and that, together with other hospital specialty groups that had also not been paid, planned to detail their concerns to the Connecticut Attorney General. In addition to violating the Ordinary Course covenant (APA § 5.3(b)),

117. On December 18, 2023, a Connecticut Superior Court entered an order finding probable cause to conclude that Waterbury Hospital had failed to pay North American Partners in Anesthesia (Connecticut) for anesthesia services, and ordered it to either post a bond in the amount of \$1.9 million or to file an affidavit disclosing its assets within 45 days. *North American Partners in Anesthesia (Connecticut) v. Prospect Waterbury, Inc. D/B/A Waterbury Hospital*, UWY-CV22-6065813-S (Super. Ct. Waterbury). Prospect failed to disclose this lawsuit in Schedule 3.15(a), which required Prospect to identify "all material Actions with respect to the Business that are pending . . . in which the amount claimed exceeds Five Hundred Thousand Dollars". A prejudgment remedy in the amount of \$1,919,778 was granted in this

Figures 27 & 28 – YNHH Proposed Amended Complaint

- Neonatal vendors for Waterbury's neonatal ICU, who were unable to test on-site for jaundice in newborns.

112. Beginning on or before September 23, 2023, the Waterbury Hospital Neonatal Intensive Care Unit and Well Baby Nursery/Postpartum Unit were unable to provide patients with on-site bilirubin testing due to a lack of laboratory testing supplies. The fact that Waterbury Hospital, which has a dedicated Family Birthing Center and a Level III neonatal intensive care unit, was unable to administer such a routine and necessary procedure to newborns/neonates (which is a particularly vulnerable patient population) for a period of time demonstrates a lack of quality patient care and is detrimental to the hospital's reputation.

Figure 29 – YNHH Proposed Amended Complaint



- Medical staff including nurses, physicians and orthopedic and surgical specialists.

116. On November 13, 2023, nurses and physicians from all three Prospect Hospitals rallied at the State Capitol, complaining that, among other things, they were not getting paid for their services. During that rally, cardiologist and president of the medical staff at ECHN, Dushynt Gandhi, publicly stated: “Cardiologists, general surgeons, vascular surgeons are making phone calls—they are not getting paid for their services, including myself. And we are not talking about only delayed or delinquent payments. In some situations, [it’s] no payment.” Dr. Gandhi also stated that staff and doctors were considering leaving and that one of his colleagues had said that they “probably will not take calls . . . and the reason is nonpayment”.

118. Further, the entire Waterbury Hospital emergency room physician group was changed over in March 2024 because the previous group was deemed too expensive. Additional cuts have also been recommended to multiple services. One of two hospitalist service groups has not been paid and will be leaving, and certain subspecialists in orthopedic and other surgical specialties are refusing to provide care at Waterbury Hospital due to the hospital’s refusal to pay for important services such as call coverage.

*Figures 30 & 31 – YNHH Proposed Amended Complaint*

- General equipment providers including those of thermometers and vital sign machines.

113. Since at least November 27, 2023, doctors have reported instances of being unable to use required materials due to supply shortages and at times are forced to use lower-quality materials associated with slower healing and increased reports of pain. By way of example, some surgeons have been unable to obtain their preferred surgical mesh. More recently, it has been reported that basic equipment such as vital sign machines and many thermometers do not work at Waterbury Hospital. Instead of relying on the hospital-provided faulty thermometers, one nurse reported that nurses “are using Dollar Tree thermometers” to treat patients.<sup>30</sup>

114. On November 30, 2023, the CT Mirror reported that “[s]urgeries have been postponed because health care providers don’t have the needed resources.”<sup>31</sup> Additionally, surgeons are no longer performing certain spine and vascular surgeries at Waterbury Hospital and are instead taking those surgeries to competing hospitals because vendors will no longer provide certain supplies necessary for such surgeries. Indeed, because the Prospect Hospitals were not paying physicians, “[m]any of them are planning to leave”.<sup>32</sup>

115. In November 2023, it was reported that ECHN owed \$5.9 million to local vendors and \$5.18 million of unpaid compensation to physicians.<sup>33</sup>

*Figure 32 – YNHH Proposed Amended Complaint*



- Elevator operators and services, leading medical staff needing to carry patients up and down stairs.

122. Defendants also failed to pay the Waterbury Hospital and Manchester Memorial elevator supplier, Otis, and, thus, have been unable to maintain operable elevators at both hospitals. As a result, staff has been forced to carry patients up and down the stairs, posing a clear and substantial risk to patient (and employee) safety.

Figure 33 – YNHH Proposed Amended Complaint

Executives of Prospect hospitals informed the Governor and legislators that the hospitals faced financial ruin, and were in dire condition

111. During a September 26, 2023 meeting, executives from Waterbury Hospital and ECHN informed Governor Lamont and legislators that all three of the Prospect Hospitals faced financial ruin if the transaction with Yale New Haven Health were not expedited. Describing the Prospect Hospitals' financial condition as "dire", the executives admitted that the Prospect Hospitals were struggling to pay their vendors and contracted physicians, that "there have been limitations on lab equipment and chemicals used in labs" and that they were even "having difficulty paying for bed linens, things like that".<sup>29</sup>

Figure 34 – YNHH Proposed Amended Complaint

### Default on Rent

Prospect has failed to pay rent to MPW and has relied on MPW's willingness to turn a blind eye and "proven underwriting practices" to temporarily stay afloat.

138. By May 2023, Prospect owed MPT \$56 million in accrued rent and interest, in addition to nearly \$400 million more in loans that MPT had extended to Prospect.<sup>45</sup>

139. Prospect negotiated a restructuring of its Master Agreement with MPT under which, "in lieu of cash payment for \$573 million of loans, unpaid rent and interest, and other amounts owed", MPT would receive equity in PHP Holdings, LLC, which controls Prospect.<sup>46</sup> Specifically, Prospect promised to pay MPT \$355 million out of the closing proceeds from the Yale New Haven Health deal and give MPT a \$103 million equity stake in PHP Holdings. In exchange, MPT would reduce Prospect's rent obligations to \$0.00 per month through October 31, 2023. This arrangement was finalized in May 2023.<sup>47</sup>

Figure 35 – YNHH Proposed Amended Complaint





140. Prospect induced Yale New Haven Health to consent to this arrangement by representing that the restructuring would provide Prospect's hospital operations with liquidity and capitalize its managed care business for continued growth. Prospect also indicated that the restructuring and recapitalization agreement would prevent Prospect from receiving a "going concern" qualification in future audits. Indeed, Prospect made clear that its external auditors would be able to issue an unqualified audit opinion for FY 2022 only if Prospect were able to close the extraordinary MPT restructuring and recapitalization deal.

141. While the MPT restructuring provided for a rent holiday only through October 2023, Prospect was late in payment rent for several months in 2024.

142. Defendants' ongoing failure to timely satisfy their rent obligations directly violates Section 5.3(b) of the APA, which required Prospect and the Selling Entities to pay "all bills and invoices for . . . leasing of real property" in the Ordinary Course, "and in any event before delinquency".

Figure 36 – YNHH Proposed Amended Complaint

#### Default on Tax Liabilities

Prospect's hospitals and businesses have been in default on taxes since early 2023. This includes land tax, which is payable by Prospect under MPW's triple-net leases. MPW's properties have accumulated \$15m of unpaid property taxes, while Priory has accumulated a further \$85m of unpaid personal property taxes.

147. State provider taxes were not the only taxes that Prospect and the Selling Entities have failed to pay. According to public tax records, Prospect and the Selling Entities owe outstanding real property and personal property taxes plus interest in the following amounts:

- Real property taxes plus interest for Waterbury Hospital in the amount of \$13,740,231.80;
- Personal property taxes plus interest for Waterbury Hospital in the amount of \$2,301,929.25;
- Real property taxes plus interest for Manchester Memorial Hospital in the amount of \$1,057,804.42;
- Personal property taxes plus interest for Manchester Memorial Hospital in the amount of \$347,013.57;
- Real property taxes plus interest for Rockville General Hospital in the amount of \$266,286.51; and
- Personal property taxes plus interest for Rockville General Hospital in the amount of \$81,396.37.

148. Under Prospect's lease agreement with MPT, Prospect and the Selling Entities are responsible for paying these taxes.

Figure 37 – YNHH Proposed Amended Complaint



## Default on Pension Plan Payments

Prospect has defaulted on its pension plan contributions. The Pension Benefit Guaranty Corporation has issued liens against Prospect's business

154. Contributions of around \$16 million due to the Prospect Pension Plans for the 2023 plan year were due on September 15, 2024. Defendants failed to make those contributions.

155. Due to the failure to make the required contributions for the 2023 plan year, on September 17, 2024, the PBGC perfected liens under 26 U.S.C. § 430(k) on assets of the Businesses.

156. According to publicly filed notices of lien, examples of which are attached as Appendix A, the PBGC's lien on Prospect's and the Selling Entities' assets arising from Eastern Connecticut Health Network, Inc. Pension Plan totals \$4,002,055 (which names as debtors Prospect ECHN, Inc., Prospect Waterbury, Inc. and Prospect CT Medical Foundation, Inc., among other Prospect entities), and the PBGC's lien on Prospect's and the Selling Entities' assets arising from the Crozer-Keystone Health System Employees Retirement Plan totals \$11,991,908 (which names as debtors Prospect Waterbury, Inc., Prospect Waterbury Ambulatory Surgery, LLC, Prospect CT Medical Foundation, Inc., and Prospect Crozer Ambulatory Surgery, LLC, among other Prospect entities). Prospect and the Selling Entities have also failed to [REDACTED]

Figure 38 – YNHH Proposed Amended Complaint



## Deepening Operational Losses

Prospect has been functionally insolvent since at least early 2023. It is only from rent-holidays from MPW that Prospect was able to stay liquid (i.e. still operate and somehow manage to not pay its creditors). The only way Prospect avoided a going-concern qualification in their audit is because of the looming YNHH deal, which YNHH indicated over a year ago was in breach of the APA and that they would be seeking a reduced purchase price.

Prospect's operating deficit in 2023 was ~\$100m, it's not difficult to imagine how much more cash Prospect must have burnt in 2024.

168. Although the Businesses had a reported adjusted EBITDAR of positive \$6.0 million for the trailing 12 months ended the Balance Sheet Date (February 28, 2022), by October 2023—a year after the APA was executed and 20 months after the Balance Sheet Date—that figure declined to negative \$55.1 million. By December 2023—14 months after the APA was executed and 22 months after the Balance Sheet Date—the Businesses' reported adjusted EBITDAR declined to negative \$65.0 million.

169. Similarly, the Businesses' operating income deficit increased from negative \$13.0 million for the trailing 12 months ended the Balance Sheet Date to negative \$98.5 million for the trailing 12 months ended October 2023. By December 2023—14 months after the APA was executed and 22 months after the Balance Sheet Date—the operating income deficit further increased to negative \$107.3 million. That is, the Businesses' operating income deficit increased more than 725 percent between the Balance Sheet Date and December 2023.

Figure 39 – YNHH Proposed Amended Complaint

Prospect has engaged Alvarez & Marsal to consult in a "restructuring plan". This is the canary in the coal mine in financial markets.

175. Essentially acknowledging that the Businesses are in extreme financial distress, Defendants resorted to attempting to implement "turnaround" plans for the approximate time period of June 2023 to December 2023 for each of Waterbury Hospital, Manchester Memorial Hospital and Rockville General Hospital. And when internal turnaround plans could not be implemented, Defendants engaged consulting firm Alvarez and Marsal ("A&M"), which specializes in bankruptcy and restructuring, to assist with turnaround plans for each of Waterbury Hospital and ECHN—plans for which they never sought Yale New Haven Health's approval, in violation of Sections 5.3 and 5.4 of the APA. Not only are these turnaround plans a far cry from operating in the Ordinary Course, as required under Section 5.3 of the APA, but Defendants have provided no report or other evidence to Yale New Haven Health of the plans' efficacy. To the contrary, as the Businesses' financials demonstrate, the Prospect Hospitals continue to see increasingly negative financial performance.

Figure 40 – YNHH Proposed Amended Complaint





Prospect had already engaged in a restructuring plan with MPW for its wider business in May 2023, at which time Prospect was overdue on ~12 months of rent, along with hundreds of millions in loans.

<b><u>EXHIBIT A</u></b>	
<b><u>OUTSTANDING OBLIGATIONS</u></b>	
<b>Phase I Obligations</b>	<b>Amount</b>
Tranche 1 Advance (Foothill Mortgage Loan)	\$ 51,266,700.00
Tranche 2 Advance (Foothill Mortgage Loan)	\$ 100,000,000.00
Tranche 2 Additional Interest (Foothill Mortgage Loan)	\$9,137,500.00
Accrued Base Interest -- Foothill Mortgage	\$6,433,187.69
TRS Note – Principal	\$ 112,937,204.00
Accrued Base Interest – TRS Note	\$4,936,603.11
MPT Advance Convertible Note - Principal	\$50,000,000.00
Accrued Base Interest – MPT Advance Convertible Note	\$588,888.89
Deferred Amounts	\$182,605,385.16
Agreed Pennsylvania Shortfall Amount	\$100,000,000.00
Agreed Connecticut Shortfall Amount	\$102,942,998.00
2020/2021 & 2021/2022 Outstanding Property Insurance Premium	\$783,708.00
<b>TOTAL:</b>	<b>\$721,632,174.85</b>

Figure 41 – Prospect Master Restructuring Agreement – California DMHC

Two months prior, MPW’s CEO Ed Aldag claimed on their Q4 2023 conference call that Prospect was paid-up to January 2024. This was a lie, or a lie of omission.

Turning to Prospect. Importantly in California, Prospect is current on all rent and interest due through January 2024, though they have not yet paid February's rent. Prospect's EBITDARM has improved year-over-year driven by increased admission volumes, higher Medi-Cal reimbursement rate and lower supplies cost. We are encouraged by their most recent December trailing 12-month rent coverage, which was above 1 times. While we do not have a meaningful update to share today on the sale of Prospect's three Connecticut hospitals to Yale New Haven, as a reminder, our \$2 billion of targeted liquidity transactions does not include this expected transaction or the expected recovery of our investment in PHP Holdings.

Figure 42 – MPW Q4 2023 Conference Call – Ed Aldag



## Public Health Crisis

We urge the HELP committee, union representatives, state regulators, and local representatives to take a proactive approach in protecting the interests of the public and their members and block this transaction and arrange alternative operations for these hospitals.

Two years ago, Viceroy correctly advised regulators that Prospect was heading for bankruptcy. This public health crisis was entirely avoidable. Our MPW investigations can be found [here](#).

We urge the DOJ and HELP committee to investigate Prospect and MPW's conduct further. Like Steward, Prospect's private equity owners stripped it of \$400m from the business at a time when it couldn't pay for medical supplies or gas for ambulances.



Figure 43 – Investors Extracted \$400 Million From a Hospital Chain That Sometimes Couldn't Pay for Medical Supplies or Gas for Ambulances – ProPublica<sup>2</sup>

Prospect refuses to engage in realistic market prices to sell these hospitals. Prospect has accrued so much debt that it will not see a dime from these hospital sales even if this deal does go through. The only party holding out for cash from this deal is MPW. This is only harming patients.

<sup>2</sup> <https://www.propublica.org/article/investors-extracted-400-million-from-a-hospital-chain-that-sometimes-couldnt-pay-for-medical-supplies-or-gas-for-ambulances>



### **Attention: Whistleblowers**

Viceroy encourage any parties with information pertaining to misconduct within Medical Properties Trust, its affiliates, or any other entity to file a report with the appropriate regulatory body.

We also understand first-hand the retaliation whistleblowers sometimes face for championing these issues. Where possible, Viceroy is happy act as intermediaries in providing information to regulators and reporting information in the public interest in order to protect the identities of whistleblowers.

You can contact the Viceroy team via email on [viceroy@viceroyresearch.com](mailto:viceroy@viceroyresearch.com).

### **About Viceroy**

Viceroy Research are an investigative financial research group. As global markets become increasingly opaque and complex – and traditional gatekeepers and safeguards often compromised – investors and shareholders are at greater risk than ever of being misled or uninformed by public companies and their promoters and sponsors. Our mission is to sift fact from fiction and encourage greater management accountability through transparency in reporting and disclosure by public companies and overall improve the quality of global capital markets.

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