ALERT MEMORANDUM

LME Litigation in Focus

Contract Interpretation, Equal Treatment, Rollups, and Co-Op Agreement Challenges

July 7, 2026

Key Takeaways

- Recent appellate-level case law with respect to LME transactions affirms the centrality of contractual language when courts assess debt agreements in LME litigation. Courts' focus on the text of debt agreements highlights the need for careful drafting among "sophisticated parties."
- In-court LMEs, such as non-*pro rata* backstops and DIP rollups, are increasingly scrutinized for violating both "equal treatment" principles and pre-petition credit agreement language.
- Minority lenders and debtors are raising novel antitrust law challenges to traditional LME transaction structures, namely majority lender cooperative agreements.
- While courts increasingly require LME transactions comply with judicially-defined processes, such as "market tests," these definitions remain contested.
- Courts remain reluctant to support challenges to LME transactions grounded in violating the 'implied covenant of good faith.' The claims generally do not survive a motion for summary judgment (see *Serta* (2023), *Mitel* (2024)), although they have successfully survived motions to dismiss in isolated cases (i.e., *STG Logistics* (2026)).

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Contract Language in Credit Agreements

- Recent appellate decisions indicate that the plain text of debt instruments remains key to LME litigation outcomes.
  - The Fifth Circuit's *Serta* decision (Dec. 2024) rejected an uptier by finding that a privately negotiated debt exchange did not qualify as an "open market purchase."
  - However, because "open market purchase" was undefined in the underlying credit agreement, the Fifth Circuit looked toward industry custom and usage in defining an "open market."
- SDTX's recent *Wesco/Incora* decision (Dec. 2025) re-affirmed the importance of close contract reading in permitting an uptier based on credit agreement language.
  - The court rejected a more holistic reading of the transaction's impact, instead citing *Serta* as "underscor[ing] the importance of adhering to the precise language of indenture agreements."
- Other jurisdictions have also emphasized that the focus on the text of an agreement is especially appropriate in litigation among sophisticated parties who are often repeat players in LME transactions. The NY First Appellate Division in *Mitel* (Dec. 2024) rejected a minority lender challenge to an uptier on such grounds. The court found the minority lenders were "sophisticated parties" and had they "wanted to prohibit amendments such as those at issue here, they could have done so, but they did not."

Equal Treatment for Backstops

- SDTX in *ConvergeOne* raised the possibility that non-*pro rata* treatment in post-petition recoveries ('in court' LMEs) can be successfully challenged. The court held that the Restructuring Support Agreement (the "RSA") in a pre-pack violated the 'equal treatment' provision of the Bankruptcy Code (11 U.S.C. § 1123(a)(4)).
  - The RSA exclusively permitted majority lenders to receive discounted equity in a post-reorganization rights offering and to backstop the offering in exchange for a 10% premium.
  - Since the backstop was not an independent new money opportunity and there was no 'market test' or bidding process, the court found it violated the requirement to "provide the same treatment for each claim or interest of a particular class."
- This is an example of continued judicial scrutiny of exclusionary LMEs. It remains unclear whether the decision will influence future cases, and the court did not clarify what a valid 'market test' would look like.

Pro Rata Treatment in DIP Roll-ups

- Standard usage of non-*pro rata* DIP rollups may now need to align more closely with the express conditions of pre-petition debt documents.
  - In *American Tire* (Bk. D. Del, 2024), the court indicated it would reject a non-*pro rata* DIP rollup where the debt documents included a DIP exception in its *Serta* subordination blocker but not the non-*pro rata* payment blocker. The court viewed the rollup portion of the DIP as prohibited non-*pro rata* payment of pre-petition debt and thus a violation of the credit agreement.
- Impact of *American Tire* remains unclear, but new financings should ensure that debt documents include a DIP exception for non-*pro rata* and subordination blockers.
  - In January 2026, the excluded lenders challenged a non-*pro rata* DIP rollup in the Del Monte Foods Chapter 11 in New Jersey Bankruptcy Court, arguing the rollup violated their sacred rights under a non-*pro rata* payment blocker in the pre-petition credit agreement. The DIP lenders subsequently brought a motion to dismiss, arguing the rollup was a "cashless exchange" rather than a payment that violated the *pro rata* payment provisions of the credit agreement.
  - In a subsequent opinion issued on May 11, 2026, the Bankruptcy Court partially dismissed the excluded lenders' complaint on the same basis, but did not dismiss the complaint entirely since subsequent payments on the DIP rollup could still implicate violations of the *pro rata* payment provision.

Antitrust Challenges & Coop Agreements

- Co-op agreements are being challenged by both debtors and minority holders on antitrust grounds. Co-ops are generally entered into before an LME to either frustrate the debtor's proposed transaction ("defensive") or to maximize outcomes for majority holders ("offensive").
  - *October 2025*: Selecta holders excluded from an uptier using an offensive co-op filed antitrust and breach of contract claims against co-op participants. They subsequently filed an amended complaint in February 2026 alleging that that their notes were "worthless (or near worthless)" because the participating holders engaged in "uniquely unlawful 'creditor-on-creditor violence'".
  - *November 2025*: Optimum filed antitrust claims describing a defensive lender co-op as a "classic illegal cartel." The debtor argues the co-op allowed lenders to "price fix" new money terms and enact a "group boycott" on negotiations.
  - *February 2026*: Optimum co-op members filed a motion to dismiss arguing (1) antitrust claims are inapplicable in "renegotiations with the debtor", (2) the company failed to define a relevant market for showing anticompetitive effect, and (3) the lender co-op actually had the positive effect of defending against "hostile restructurings" and did not harm the market.
- These suits appear unlikely to prevail. They do not show how co-ops "control a market" for distressed credit and many facilitate mutually-beneficial refinancings.

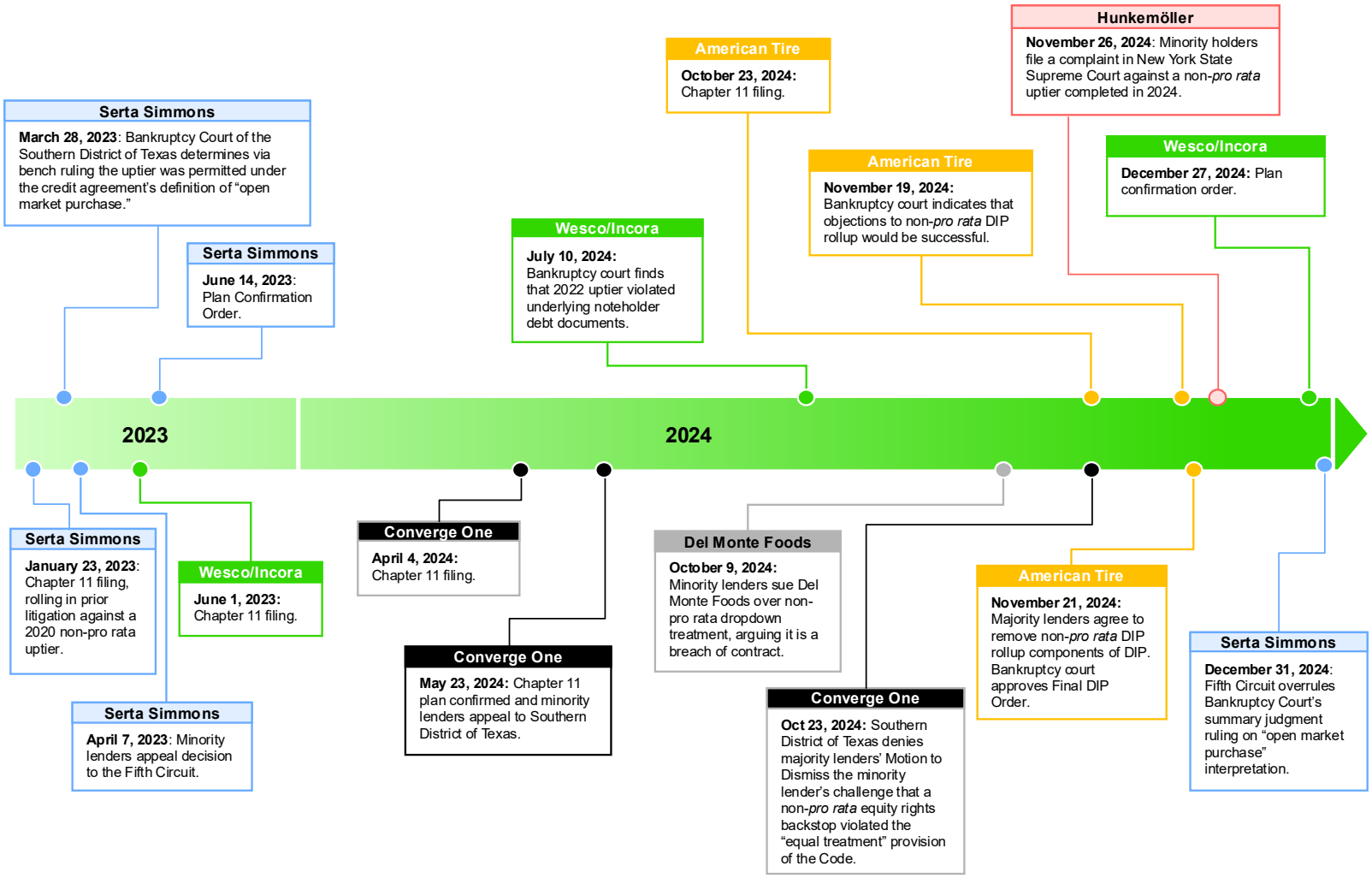
Continued Approval of Double Dips

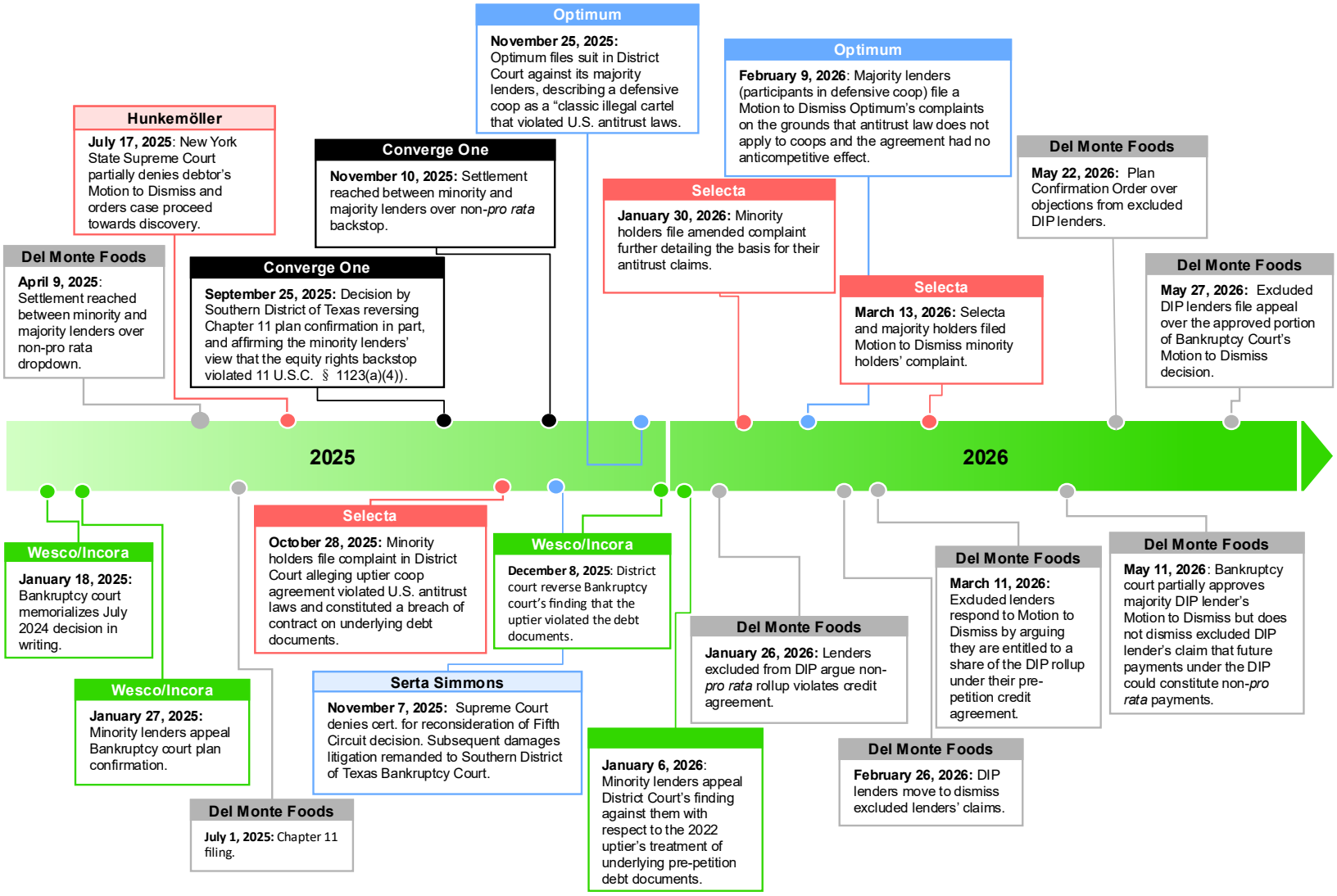
- In contrast with other LME transactions, double dips remain comparatively uncontested. A double dip occurs when a lender receives debt from an SPV that is also guaranteed by the OpCo parent (providing a double recovery opportunity in Chapter 11).
  - In *Latam Airlines* (SDNY, 2022), the UCC objected to a double dip on the grounds that the loan should instead be recharacterized as equity. The court rejected this recharacterization challenge and upheld the double dip structure.
  - Most other double dip challenges (i.e., in the Lehman Brothers or GM bankruptcies) resulted in similar holdings with respect to the double dip or settlement.

Implications for Market Actors

- *Drafting Tips*: Careful and narrowly tailored drafting is increasingly important for successful liability management, as courts increasingly emphasize the specific terms of underlying documents. This emphasis on textual analysis, however, does not preclude creative structuring and interpretation if permitted by the terms of a document.
- *Supporting Documents*: Parties participating in LMEs also need to be mindful of the impact of joining groups with other stakeholders and the underlying documentation with respect to such groups, including cooperation agreements and NDAs, as these agreements are the subject of increasingly tight drafting, rigorous negotiation, and, in the case of certain co-op agreements, post-transaction antitrust litigation challenges.
- *Litigation Exposure*: Lenders and debtors should continue to factor in litigation risk as part of liability management transactions. Minority lenders continue to bring, or threaten to bring, legal challenges to LMEs even when documents appear otherwise tight. New claims, such as the antitrust arguments brought in Selecta and Optimum, underline this perpetual risk.
- *Judicial Outcomes*: Despite the number of disputes that arise from LMEs, many end in settlement and courts generally continue to favor majority lender and debtor positions when documents are tightly drafted and negotiations proceed in a commercially reasonable fashion.

Appendix A: Timeline of Key LME Litigation




Optimum
November 25, 2025: Optimum files suit in District Court against its majority lenders, describing a defensive coop as a "classic illegal cartel that violated U.S. antitrust laws.
Optimum
February 9, 2026: Majority lenders (participants in defensive coop) file a Motion to Dismiss Optimum's complaints on the grounds that antitrust law does not apply to coops and the agreement had no anticompetitive effect.
Hunkemöller
July 17, 2025: New York State Supreme Court partially denies debtor's Motion to Dismiss and orders case proceed towards discovery.
Converge One
November 10, 2025: Settlement reached between minority and majority lenders over non-pro rata backstop.
Selecta
January 30, 2026: Minority holders file amended complaint further detailing the basis for their antitrust claims.
Del Monte Foods
May 22, 2026: Plan Confirmation Order over objections from excluded DIP lenders.
Del Monte Foods
April 9, 2025: Settlement reached between minority and majority lenders over non-pro rata dropdown.
Converge One
September 25, 2025: Decision by Southern District of Texas reversing Chapter 11 plan confirmation in part, and affirming the minority lenders' view that the equity rights backstop violated 11 U.S.C. § 1123(a)(4)).
Selecta
March 13, 2026: Selecta and majority holders filed Motion to Dismiss minority holders' complaint.
Del Monte Foods
May 27, 2026: Excluded DIP lenders file appeal over the approved portion of Bankruptcy Court's Motion to Dismiss decision.
2025
2026
Wesco/Incora
January 18, 2025: Bankruptcy court memorializes July 2024 decision in writing.
Selecta
October 28, 2025: Minority holders file complaint in District Court alleging uptier coop agreement violated U.S. antitrust laws and constituted a breach of contract on underlying debt documents.
Wesco/Incora
December 8, 2025: District court reverse Bankruptcy court's finding that the uptier violated the debt documents.
Del Monte Foods
May 11, 2026: Bankruptcy court partially approves majority DIP lender's Motion to Dismiss but does not dismiss excluded DIP lender's claim that future payments under the DIP could constitute non-pro rata payments.
Del Monte Foods
March 11, 2026: Excluded lenders respond to Motion to Dismiss by arguing they are entitled to a share of the DIP rollup under their pre-petition credit agreement.
Del Monte Foods
January 26, 2026: Lenders excluded from DIP argue non-pro rata rollup violates credit agreement.
Wesco/Incora
January 27, 2025: Minority lenders appeal Bankruptcy court plan confirmation.
Serta Simmons
November 7, 2025: Supreme Court denies cert. for reconsideration of Fifth Circuit decision. Subsequent damages litigation remanded to Southern District of Texas Bankruptcy Court.
Del Monte Foods
February 26, 2026: DIP lenders move to dismiss excluded lenders' claims.
Del Monte Foods
July 1, 2025: Chapter 11 filing.
January 6, 2026: Minority lenders appeal District Court's finding against them with respect to the 2022 uptier's treatment of underlying pre-petition debt documents.

Appendix B: Survey of Recent LME Litigation (2025 – 2026)

Case Name	Jurisdiction	LME Type	Current Case Posture	Principal Dispute
AMC Entertainment Holdings	New York Supreme Court	Non-*pro rata* dropdown.	June 2025: Excluded noteholders settled their dispute in exchange for a new financing that permitted them to uptier their notes.	• Excluded first lien noteholders alleged a breach of an intercreditor agreement provision that required that second lien notes remain junior to first lien notes. • Alleged that the drop down structurally elevated the second lien notes to same position as the excluded first lien notes, in breach of the intercreditor agreement.
Ardagh	Bankruptcy Court SDNY	Consensual out-of-court restructuring. Majority senior PIK notes exchanged holdings for 7.5% new equity.	May 2026: Luxembourg court approved restructuring plan over minority holder objections. In March, Bankruptcy Court granted Chapter 15 foreign main recognition of the Luxembourg insolvency proceeding over objections by minority holders, but reserved plan approval to allow for further objections by minority holders.	• Minority holders alleged majority PIK holders violated 90% 'sacred rights' voting requirement for exchange to occur under indenture. • Argued the majority holders and debtor manufactured a default to permit lien stripping and avoid indenture's voting requirement.
Converge One	Southern District of Texas	Non-*pro rata* equity rights offering.	November 10, 2025: Creditors excluded from the equity rights backstop fee settled with the majority lenders, who agreed to re-open the equity rights backstop to them.	• Majority lenders entered into an RSA with an exclusive equity-rights discount and 10% backstop premium. Minority lenders argued the backstop violated "same treatment" for claims in a class requirement under 11 U.S.C. § 1123(a)(4). • Court agreed with this argument and found the non-pro rata backstop was in violation of the equal treatment requirement of the Bankruptcy Code for plans because it was not "market tested" and was not a "new money opportunity."

Case Name	Jurisdiction	LME Type	Current Case Posture	Principal Dispute
Del Monte Foods	Bankruptcy Court D. NJ	Non-*pro rata* DIP rollup.	May 2026: Bankruptcy Court confirmed debtors' liquidation plan, and excluded minority lenders appealed the approval of a motion to dismiss their claims against the non-*pro rata* DIP rollup. In early June, the District Court urged parties to solve the dispute through mediation.	• DIP rollup violated excluded lenders' "sacred rights" under their credit agreement, which included a *pro rata* sharing provision without a DIP financing exception. Excluded lenders argue they should receive pro rata distributions on roll up amounts. • Court partially approved majority participant's motion to dismiss the claim that the DIP rollup violated the pre-petition credit agreement. However, the court did not dismiss the excluded lender's claim that future payments under the DIP rollup constituted a non-*pro rata* payment violating the pre-petition credit agreement.
Del Monte Foods	Delaware Chancery Court	Non-*pro rata* dropdown.	April 9, 2025: Minority holders settled their disputes with company and majority holders just before company filed for Chapter 11.	• Minority holders sued the agent and debtor for breach of contract and tortious interference. • Minority holders settled claims with company, who agreed to purchase back excluded holdings, which was financed by a super-priority loan from majority holders. The settlement has since been ratified after Del Monte filed for Chapter 11.
Hunkemöller	NY State Supreme Court	Non-*pro rata* uptier.	Decision pending after debtor's motion to dismiss was rejected in July 2025. Claims also filed in Dutch court (April 2025) and London High Court (October 2025).	• Minority holders allege issuing of uptiered notes to majority holders was a "payment for consent" to amend the indenture, in violation of the requirement for *pro rata* distributions of such payments.
Optimum	Southern District of New York	Defensive coop (against potential LME).	February 9, 2026: Majority lenders filed a motion to dismiss Optimum's complaint, prompting a series of response and opposition filings. July 6, 2026: As part of an internal corporate	• Company alleges that majority lender coop constituted an "illegal cartel" in an anticompetitive effort to keep the company from fairly refinancing its debts.

Case Name	Jurisdiction	LME Type	Current Case Posture	Principal Dispute
			restructuring, Optimum completed a $246.6M tender offer for Class A Shares.	
Robertshaw	Southern District of Texas	Non-*pro rata* uptier.	July 2, 2026: District Court rejected minority holders' appeal from Bankruptcy Court on claims classification grounds.	• Holders whose debt was subordinated by a super senior loan to an SPV argued they were victims of a "sham transaction" that violated debt documents. • Excluded holders appealed the Bankruptcy Court's decision to recognize the violation of their contractual rights but simultaneously categorize those claims as general unsecured debt (as opposed to their former senior secured status) in Chapter 11 plan confirmation. District Court rejected the argument that the claims were incorrectly categorized as general unsecured.
Selecta	Southern District of New York	Non-*pro rata* uptier.	March 13, 2026: Selecta and majority holders filed motion to dismiss minority holder's compliant. Parallel proceedings are ongoing in Netherlands Commercial Court and in the United Kingdom. The U.K. cases in particular are likely to bring to the forefront the debate over the minority protection principle first articulated in Assénagon.	• In addition to standard breach of contract claims, minority holders allege the offensive coop used in a non-*pro rata* uptier violated federal and state antitrust law.
Serta Simmons	Bankruptcy Court SDTX	Non-*pro rata* uptier.	November 2025: Supreme Court denied cert. of Fifth Circuit's decision against the debtor's uptier transaction. Remanded to SDTX Bankruptcy Court where damages suit remains ongoing.	• Minority holders seeking to collect on breach of contract claims against debtor and majority holders following Fifth Circuit's ruling that the uptier was impermissible since it did not fall within "open market purchase" exception in pre-petition debt documents.
STG Logistics	New York State	Non-*pro rata* dropdown.	January 2026: NY Court denied majority holder and debtor attempts to dismiss	• Minority lenders alleged that the majority holders who participated in a drop down de facto violated the

Case Name	Jurisdiction	LME Type	Current Case Posture	Principal Dispute
	Supreme Court		minority suits and maintained violation of 'good faith' claims. April 27, 2026: STG settled LME litigation for $12M in Bankruptcy Court mediation, following a Chapter 11 filing in D. NJ in January 2026. Plan was confirmed on May 18, 2026. May 18, 2026: Court confirmed debtor's plan of reorganization.	credit agreements' 'sacred rights' provisions by amending the documents. • Similar to *Wesco/Incora*, the minority lenders argued that, while the dropdown amendments did not technically modify sacred rights provisions directly, such amendments had the effect of materially modifying/impacting the minority lenders' sacred rights.
Trinseo plc	Bankruptcy Court SDTX	Non-pro rata double dip and *pari plus* transactions.	May 27, 2026: Minority lenders filed complaint one day after debtor entered Chapter 11 via pre-pack. Complaint opposes the prepackaged plan and challenges both the double dip and *pari plus* transactions as invalid, sparking a series of response and reply briefs.	• Minority lenders filed objections to the pre-pack Chapter 11 plan on June 3, 2026. Minority lenders describe the earlier LMEs as laying "the groundwork for the chapter 11 plan of reorganization now before this Court—a plan that would transfer control of the Debtors." • Minority lenders also challenged both the double dip and pari plus transactions as invalidate examples of "financial engineering."
Wesco/Incora	Southern District of Texas	Non-*pro rata* uptier.	January 6, 2026: Minority holders appealed to Fifth Circuit to challenge SDTX's rejection of their breach of contract claims.	• SDTX rejected Bankruptcy Court's ruling for minority holders that held a series of "domino" transactions violated the debt documents when read holistically. SDTX instead dismissed the minority holders' underlying breach of contract claims.

Appendix C: Further Reading on LMEs

- **A Transatlantic Test Case for Liability Management: Hunkemöller Bondholders Challenge Distressed Disposal in the English High Court** (February 26, 2026)
- **Considerations for U.S. Boards when Contemplating a Liability Management Transaction** (January 15, 2026)
- **District Court Reverses Bankruptcy Court in Wesco/Incora LME; Finds No Domino Effect in 2022 Uptier Transaction** (January 8, 2026)
- **The Intercreditor Drag as a Restructuring Tool – Considerations and Challenges** (January 2026)
- **Cooperation, Not a Cartel – Why Lender Co-Op Agreements Should Generally Withstand Antitrust Scrutiny** (December 18, 2025)
- **Defense Against the Dark Arts? A Guide to Liability Management Blockers in the US Loan Market** (October 31, 2025)
- **U.S. District Court Finds that Exclusive Backstop Agreement Violates Equal Treatment in Converge One** (October 1, 2025)
- **The Fifth Circuit Pushes Back on Uptier Transactions in Serta** (January 6, 2025)
- **Serta Debt Ruling Lobs 'Grenade' Into Restructuring Strategies** (January 3, 2025)

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