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Liability Management Exercises and the Courts in 2025

2025 proved to be a blockbuster year for Liability Management Exercises (LMEs) in court. The lodestar for courts continues to be straightforward: text, text, text. Creative structures that find footing in the text will generally survive; structures that rely on expansive readings of narrow exceptions or on equitable glosses are at risk. This piece briefly discusses the decisions in *Serta*, *Mitel*, *Wesco*, and *ConvergeOne* for lessons to consider, and looks at disputes that are set to further shape the landscape in 2026.[1]

Serta: The Fifth Circuit Rules on the Meaning of "Open Market Purchase"

2025 began with a New Year's Eve decision from the Fifth Circuit in the *Serta* litigation.[2] *Serta* centers on a 2020 uptier exchange in which the borrower and a majority of lenders amended the credit agreement to create new superpriority debt while exchanging participating lenders' existing loans for additional priming debt.[3] The restructuring was defended principally as an "open market purchase," which the credit documents permitted could be done without ratable sharing.[4] As part of plan confirmation, Serta indemnified Class 3 and 4 creditors—which included the participating lenders—for any lenders in those classes that participated in the 2020 uptier.[5]

The Fifth Circuit, in the first part of the decision, rejected the participating lenders' reading of "open market purchase," holding that the term did not sweep in a bespoke, privately negotiated exchange that reordered a capital structure.[6] The court's reasoning leaned on contractual construction: undefined terms take their common and contextual meaning. Dictionaries and industry usage matter, as do canons of construction.[7]

Serta underscores the primacy of the contractual language in litigating LMEs. In that sense, the interpretive approach applied by the Fifth Circuit in *Serta* is similar to how courts interpret statutes. But the opinion is also notable for its analysis of course of performance, industry usage, and custom, which can sometimes allow courts (and parties) to venture a bit beyond the plain language.[8]

Serta part two concerned the indemnity.[9] There, the Fifth Circuit similarly took a plain language approach to 11 U.S.C. § 1123(a)(4) and its requirement of "equal treatment" for those within the same class of interest. Because the indemnity was potentially highly valuable to the participating lenders—but worthless to those within the same class who had not partaken in the 2020 uptier—it was unequal, and therefore violated the statute.[10] And with a head nod to equitable mootness—that is, to avoid upsetting the confirmation applecart—the Fifth Circuit simply excised the indemnity from the confirmation order.[11]

Mitel: New York's First Department Provides a Narrow Reading of Consent Rights and Indirect Effects

New Year's Eve was busy. The same day that Serta came down, the New York Appellate Division issued its ruling in *Ocean Trails CLO VII v. MLN Topco Ltd.* ("*Mitel*"),[12] rejecting a challenge to Mitel's liability management transaction. In Mitel, minority lenders challenged an uptiering that elevated a new tranche ahead of their loans under the terms of the loan agreement. The appellate court disagreed that the transaction violated the various loan agreements, holding that the relevant consent provisions were not implicated because the plaintiffs' own instruments were not amended, waived, or modified, and because the uptier constituted a "purchase," which under the terms of the loan agreements did not require pro rata treatment.

In rejecting the contractual challenges, the Court also upheld the dismissal of the implied covenant claim, explaining, "[t]he agreements, which were negotiated by sophisticated parties, contain specific, detailed provisions regarding when plaintiffs are entitled to pro rata treatment and when they are not. Although the agreements contain limitations on the acquisition of new debt, they also allow the borrower to purchase loans 'at any time' and permit amendments by majority consent with enumerated exceptions. Had the parties wanted to prohibit amendments such as those at issue here, they could have done so, but they did not." [13]

Finally, the court also upheld the dismissal of the tortious interference claims against the sponsor and the revolving lender on the ground that there was no breach of contract and that, even had there been, both would be protected by the economic interest defense as "Searchlight sought to enhance the borrower's prospects by raising money to buy another company and pay down debt" and "Credit Suisse sought to protect its interest as a lender."[14]

Wesco: A Plain Reading of "Have the Effect Of"

After *Serta* and *Mitel*, 2025 remained busy on the LME litigation front. In *Wesco Aircraft Holdings, Inc., v. SSD Invs. Ltd.*,[15] a minority group of lenders disputed the propriety of several transactions and indenture amendments that infused new money through an "uptier" exercise whereby a majority group infused the company with new money and exchanged their bonds for new, first lien debt. While the Bankruptcy Court held that the transactions violated the indentures, the District Court reversed that decision, finding the transactions "proper, appropriate, lawful, and consistent with the terms of the 2024 and 2026 Indentures." [16]

As part of the transactions, the company and majority group first entered into a transaction whereby the majority group amended the relevant indentures and purchased an additional $250 million of new debt. With that purchase, the majority group held over two-thirds of each of the relevant indentures, allowing it to consent to the release of the liens before exchanging its bonds for new first lien debt. Central to the dispute was whether the first amendment "ha[d] the effect" of releasing the collateral.

The Bankruptcy Court concluded that it did, finding that it "must consider the environment in which the Third Supplemental Indenture was executed" and that because each of the transactions and amendments "would occur in a planned but automatic sequence," the first amendment had the effect of releasing the collateral.[17] The District Court disagreed, explaining that the adoption of an amendment which on its face did not release capital did not "have the effect" of releasing capital. Instead, the release occurred pursuant to the second amendment. The first amendment therefore did not require a two-thirds majority vote, and when the second amendment was adopted, Wesco could rely upon the votes of the notes issued under the first amendment. (The District Court also ruled that even had there been a breach, the correct remedy for any breach of contract would have been damages.)[18]

Lastly, both the Bankruptcy Court and the District Court rejected the minority group's theories based on the implied covenant of good faith and fair dealing and tortious liability. The implied duties were held to be prohibited by contract language and duplicative of the breach of contract claims.[19] The tortious interference claim was dismissed because of the economic interest defense under New York law.[20]

ConvergeOne: Limitations Under the Bankruptcy Code

While many pre-bankruptcy LMEs are addressed either outside of bankruptcy court (as in *Mitel*) or in the context of adversary proceedings (as in *Serta* and *Wesco*), the ConvergeOne bankruptcy illustrated a challenge to a prepackaged chapter 11 plan under the Bankruptcy Code.

In September of this year, the District Court for the Southern District of Texas reversed in part the confirmation of ConvergeOne's prepackaged chapter 11 plan, holding the contemplated equity rights offering violated the equal-treatment rule under 11 U.S.C. § 1123(a)(4).[21]

ConvergeOne's prepackaged plan incorporated a restructuring support agreement ("RSA") with over 80% of its first and second-lien noteholders, which sought to eliminate $1.6 billion of secured debt. Per the RSA, the majority of the first-lien creditors (the "Majority Lenders") agreed to exchange their debt for the right to purchase discounted equity in the reorganized company through an equity rights offering, and to backstop the entire equity rights offering for a 10% fee. The minority first-lien creditors (the "Minority Lenders") were not included in the equity rights offering and backstop; they proffered alternative deals, which the debtors rejected.

The Minority Lenders objected to plan confirmation, arguing the plan violates Bankruptcy Code section 1123(a)(4) because it does not "provide the same treatment for each claim or interest of a particular class."[22] The bankruptcy court affirmed the plan over this objection, and the Minority Lenders appealed.

On appeal, the District Court reversed, holding that the exclusive backstopping *opportunity* constituted treatment for a claim and allowed for some creditors to receive higher recoveries than others in the same class. Relying primarily on the reasoning set forth in *LaSalle* and *Serta*, the District Court found the backstopping opportunity improper under 1123(a)(4) because the backstopping opportunity (1) was exclusive, (2) was not market-tested, (3) essentially foreclosed competing alternatives given the planned prepack, and (4) lacked consideration.[23]

Takeaways from 2025: Contractual Primacy and Reluctance to Innovate Liability

This year's decisions provide some takeaways as parties continue to consider LMEs.

First, and perhaps unsurprisingly, in considering breach of contract claims, textual fidelity governed various courts' approaches. Both the federal and state courts focused their primary analysis on the language of credit agreements—definitions, amendment provisions, sacred rights, and carve-outs. Undefined terms were read in light of market usage and context (as in *Serta*'s treatment of "open market purchase"), but not expanded to swallow clearly delineated rights: where agreements enumerated consent rights with precision, courts enforced that precision and did not read in broader protections.

Second, extra-contractual theories did not move the needle. Plaintiffs in *Serta*, *Mitel*, and *Wesco* advanced implied covenant, tortious interference, and fiduciary-duty-adjacent theories; courts consistently rebuffed them where the conduct tracked the contractual allocation of rights. The implied covenant could not override bargained-for amendment and exchange frameworks, and tort theories foundered in the face of arm's-length, sophisticated-party contracts.

Third, substance governed over form when it came to confirming post-LME reorganization plans. *Serta* excised the plan indemnity because it delivered class uneven value—even though, formally speaking, all members of the class were provided the indemnity. Applying the same functional, value-centric lens, *ConvergeOne* reversed confirmation in part where an exclusive, non market tested rights offering and backstop—unsupported by separate consideration—afforded superior economics to certain first lien creditors. The upshot is that courts may increasingly look through form and instead assess whether a feature skews value or risk within a class.

Looking Ahead: *Optimum Communications* and *Selecta*

As we move into 2026, we'll continue to watch for challenges to LMEs as their structures evolve. We'll also be keeping an eye on *Optimum Communications v. Apollo Capital Management*, No. 25-cv-9785 (S.D.N.Y.) and *Deltroit Directional Opportunities Master Fund Limited et al v. Selecta Group B.V. et al.*, No. 25-cv-08956 (S.D.N.Y.). These cases present antitrust challenges to creditor cooperation agreements, primarily on group boycott and price fixing grounds. The complaint in *Optimum*, for example, claims the co-op agreement has locked up 88% of the leveraged finance market. While there has been recent discussion regarding potential antitrust challenges to cooperation agreements, *Optimum* and *Selecta* will be the guinea pigs. The courts' approaches (whether they apply a *per se* or rule-of-reason analysis) and, of course, any outcome on the merits, will be instructive and potentially shape creditor-borrower dynamics.

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[1] This article does not represent the views, positions, or opinions of any client, past or present.

[2] *In re Serta Simmons Bedding, L.L.C.*, 125 F.4th 555 (5th Cir. 2024), as revised (Feb. 14, 2025).

[3] *Id.* at 568–69.

[4] *Id*. at 567–68.

[5] *Id*. at 570–71.

[6] *Id*. at 579–81.

[7] *Id*. at 579–584.

[8] *Id*. at 582–84.

[9] *See id*. at 584–92.

[10] *Id*. at 591–92.

[11] *Id*. at 593.

[12] *Ocean Trails CLO VII v. MLN Topco Ltd.*, 233 A.D.3d 614 (1st Dep't, Dec. 31, 2024).

[13] *Id*. at 616–17.

[14] *Id*. at 617.

[15] *Wesco Aircraft Holdings, Inc.,v SSD Invs. Ltd.*, 2025 WL 3514358 (S.D. Tex. 2025).

[16] *Id*. at *8.

[17] *See In re Wesco Aircraft Holdings, Inc.*, 2025 WL 354816, at *16 (Bankr. S.D. Tex. Jan. 17, 2025).

[18] *Wesco Aircraft Holdings*, 2025 WL 3514358 at *15-17.

[19] *Id*. at *18.

[20] *See Wesco Aircraft Holdings*, Mem. Order, Dkt. No. 120, 25-cv-00202 (S.D.Tex., Dec. 8, 2025); *see also In re Wesco Aircraft Holdings, Inc.*, 2025 WL 602989, (Bankr. S.D. Tex. Feb. 19, 2025) (same).

[21] *See In re ConvergeOne Holdings, Inc.*, Case No. 24-02001 (S.D. Tex. Sept. 25, 2025).

[22] 11 U.S.C. § 1123(a)(4).

[23] *See Bank of Am. Nat. Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434 (1999); *In re Serta Simmons Bedding, LLC*, 125 F.4th 555 (5th Cir. 2024).