CreditSights
a FitchSolutions Company

Research
CovenantReview
LevFinInsights

MARKET ALERT:
NEW LANGUAGE ON INTEGRATED TRANSACTIONS COULD GIVE BORROWERS SIGNIFICANT FLEXIBILITY IN LITIGATION CHALLENGING LMTS

Kevin Grondahl: Covenant Analyst, *Covenant Review*

2026

Research Date: January 16, 2026

Market Alert: New Language on Integrated Transactions Could Give Borrowers Significant Flexibility in Litigation Challenging LMTs

The Bottom Line™:

- New language seen recently in a credit agreement would allow the borrower to determine whether substantially concurrent transactions should be evaluated as a series of transactions in a specified order or a single integrated transaction.
- This language could give borrowers significant flexibility in structuring liability management transactions.

Overview

A recent transaction in the broadly syndicated term loan market included language that could give the borrower significant leverage in any litigation regarding a liability management transaction ("an "LMT"). The issue is whether a series of transactions that are completed substantially concurrently constitute a separate series of transactions or a single "integrated" transaction for purposes of analyzing compliance with covenants in credit agreements and other debt documents. This has been a key issue in some recent LMT litigation and will likely arise again as courts continue to work through the aggressive LMT transactions seen recently in the market.

Integrated transaction doctrine

The importance of integrated transaction doctrine in LMT litigation cannot be overstated. Many LMTs involve a series of transactions that occur substantially concurrently. In determining whether the LMT was permitted under the credit agreement and other loan documents, a critical question is often whether the transactions should be considered separately and in a specified order or whether the transactions should be considered a single transaction. Courts have taken different approaches to integration transaction doctrine, as seen recently in *Wesco Aircraft Holdings, Inc. et. al. vs. SSD Investments LTD, et. al. (S.D.Tex 2025)* (commonly known as the "Incora LMT") and *Axos Fin., Inc. et al* v. *Reception Purchaser, LLC et al*, *Civ. Case No. 650108/2025 (Sup. Ct. N.Y. County 2026)* (commonly known as the "STG Logistics LMT").

The recent decision by Judge Randy Crane of the United States District Court for the Southern District of Texas ("SDT") in the Incora LMT (the "Incora Decision")[1] held that the Incora LMT did not breach the terms of the bond indentures, thereby overruling the bankruptcy court judge's (Judge Marvin Isgur) recommendation to the contrary. The Incora LMT had a first step (issuing additional notes to the majority group) that required majority lender consent and a second step (releasing the liens) that required $66^{2/3}$% lender consent. The $66^{2/3}$% lender consent threshold for the second step could only be achieved after the first step of issuing additional notes was completed. The bankruptcy

[1] The Incora Decision is available here.

ANALYST CONTACT:
Kevin Grondahl
+1 (212) 716-5780
Email: kgrondahl@covenantreview.com

court applied integrated transaction doctrine to hold that the transactions, when taken as a single transaction did not have the requisite lender consent, as 66$^{2/3}$% would have been required for all steps. The SDT overruled the bankruptcy court and ruled in the Incora Decision that each step of the Incora LMT complied with the terms of the indentures if considered in the order that they were taken. Judge Crane primarily accomplishes this by asserting that amendments must be viewed with respect to their "*immediate* effect" (rather than "effect" generally). Thus, Judge Crane assessed requisite consent requirements by interpreting each individual step of the Incora LMT by its immediate effect (which could be justified by the terms of the underlying indenture).[2] Even the fact that the transactions occurred on the same day was not persuasive, with Judge Crane noting that "the fact that the [transactions constituting the Incora LMT] closed and were executed over the course of a single day is not unusual, and does not make them inconsistent with Wesco's indentures."[3]

A different approach was taken in the recent ruling on the motion for dismissal (the "STG Logistics Ruling") in the STG Logistics LMT.[4] In the STG Logistics Ruling, Judge Anar Patel of the Supreme Court of the State of New York, New York County[5] found that the transactions in the STG Logistics LMT could be found to be a single integrated transaction (for purposes of a motion to dismiss ruling). The STG Logistics LMT involved an amendment to the credit agreement by majority consent and then subsequent transactions that the plaintiffs allege would have required consent of each affected lender. If read as an integrated transaction, and the plaintiffs' allegations that the subsequent steps required affected lender consent are found to be valid, this could lead to the conclusion that the initial amendment was unenforceable.

It should be noted that the Incora Decision was a ruling on the merits of the case and the STG Logistics Ruling was a ruling on a motion to dismiss, so it is not exactly an apples-to-apples comparison. But it is clear that courts are taking different approaches on integrated transaction doctrine. Additionally, we note that the Incora Decision arises from the SDT's interpretation of New York law, which is not necessarily dispositive precedent for purposes of New York State courts (or Federal Courts in the Second Circuit, which covers New York).

New credit agreement language

In a recent transaction, Covenant Review observed language in the credit agreement that appears to be intended to take this decision out of the hands of courts and instead give the borrower the ability to decide whether a transaction is integrated or not. The language states:

> "For purposes of testing compliance with the provisions of the Loan Documents (including availability under any "basket" and any determination on a Pro Forma Basis) with respect to multiple transactions (including Specified Transactions) that occur on the same date or substantially concurrently, regardless of whether such transactions are related to each other, such transactions shall, at the election of the Borrower, (x) be deemed to occur concurrently and giving effect to all such transactions collectively on a Pro Forma Basis or (y) be treated as separate transactions occurring in steps in an order elected by the Borrower (including, by

[2] See, pages 21 - 26 of the Incora Decision.
[3] Page 16 of the Incora Decision.
[4] See our report on the STG Logistics Ruling here.
[5] The "Supreme Court" in New York State is the trial level of courts.

> classifying a portion of any transaction as occurring in one step and the remaining portion of such transaction as occurring in other steps)."

This language is the worst of both worlds from a lender perspective. The borrower can decide for any series of concurrent transactions whether it is a single integrated transaction or a series of transactions in steps ordered as determined by the borrower. It does not require that the borrower make this determination consistently across transactions, the borrower can pick and choose when it wants each treatment. And to add insult to injury, the borrower can deem which order the transactions occurred without any requirement that the transactions occurred in that order. This flexibility essentially gives the borrower carte blanche to treat concurrently occurring transactions in whatever manner best suits the borrower at that time.

It remains to be seen whether a court would give this language any deference in determining whether a series of transactions was integrated or not. Nevertheless, aggressive sponsors are trying their best to cut off this common lender argument before it can even be made.

Conclusion

The new credit agreement language on integrated transactions has the potential to significantly alter the state of play in LMTs and related litigation. Lenders should resist it. Covenant Review will continue to monitor this situation as it develops.

— Covenant Review

Disclosures

This report is the product of Covenant Review. Covenant Review is an affiliate of Fitch Group, which also owns Fitch Ratings. Covenant Review is solely responsible for the content of this report, which was produced independently from Fitch Ratings.