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U.S. Liability Management Transactions: Quarterly Update Through Q3 2025

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The Bottom Line™:

- In this regularly released report, we provide a summary of key Liability Management Transaction (LMT) trends in the third quarter of 2025.
- For this quarter, the report analyzes evolving sponsor tactics and process-control provisions that will dictate future LMT negotiations.
- We also provide brief descriptions of the most common structures of LMTs, along with visual representations of these structures. We also comment on related "blocker" provisions.
- We discuss ongoing litigation and bankruptcy matters relating to LMTs.
- Finally, we provide a list of LMTs that have been tracked by Covenant Review and LFI since 2013 through the third quarter of 2025.

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Overview

Whether called "creditor-on-creditor violence," "distressed exchanges," or "out-of-court restructurings," Liability Management Transactions (LMTs) have hosted an ever-escalating arms race of gamesmanship between and among creditors and borrowers. Indeed, over the course of the past several years, distressed companies have demonstrably proved a willingness to pursue alternatives to capital restructuring outside of the traditional bankruptcy mechanisms. The number of LMTs in the United States has increased dramatically, particularly since 2020—with 2024 representing a new high watermark in many respects. While the start of 2025 continued this trend, the number of reported LMTs in Q2 and Q3 has ticked down somewhat since Q1's fast start (though restructuring advisors are still on track to exceed 2024's numbers).

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This report is a compendium of LMTs tracked by Covenant Review and sister company LevFin Insights since 2013, including both public and known private transactions, through September 2025.

This report is updated on a quarterly basis and is primarily focused on transactions with a material US nexus. For research on the state of European LMTs, see European Liability Management: 2025 Update.

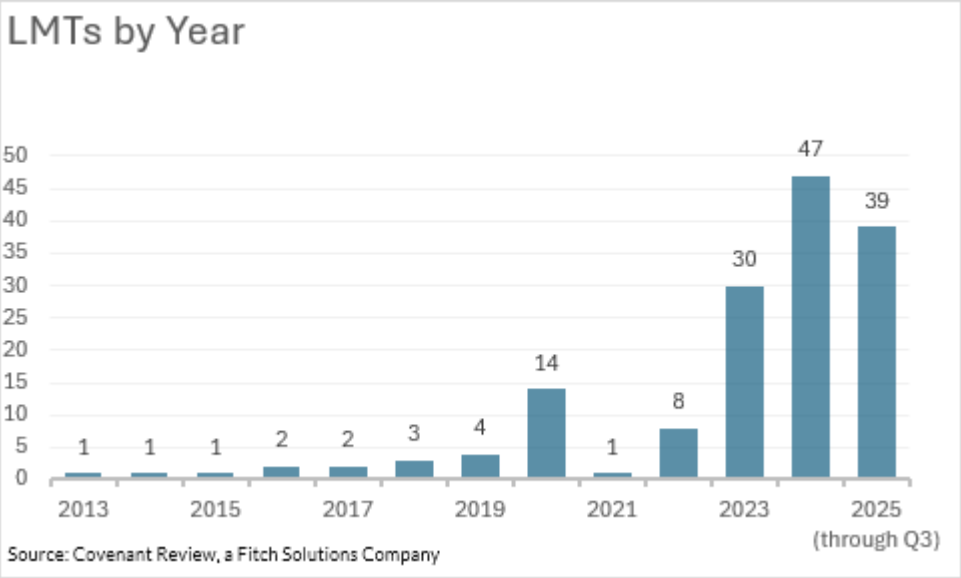


Figure 1

LMT Trends through Q3 2025

Covenant Review and LFI tracked at least 12 LMTs that were announced or completed over the course of the third quarter of 2025; compared to 11 transactions in Q2 and Q1's 16 tracked LMTs. We comment on a few salient points on the state of LMTs through Q3:

- Uptiering continues to dominate as the preferred path towards restructuring. Nine of the 12 tracked LMTs featured some uptiering element.
- As noted in our report, CR Trendlines Topical Report: LMT facilities vs pre-LMT loans, by the numbers, LMTs are driven largely by covenant flexibility—with that flexibility often significantly reined in once the initial LMT has been completed. In post-LMT documentation, investments and debt capacity is often limited (with the ability to create unrestricted subsidiaries constrained if not outright absent) and blockers are both more robust and more numerous (see LMT Blocker Provisions). Thus, companies that continue to underperform may find themselves with limited options for additional out-of-court restructuring. In Q3, we tracked only two subsequent LMTs (AMC Entertainment and Quest Software). It is also worth noting, however, that tighter protections may not extend to all tranches in the new debt (as deftly illustrated by the new fifth lien to "3.5 lien"

exchange in Quest Software). The importance of being seated at the cool kids' table (and the risks of being on the outside of an ad hoc group looking in) has never been more obvious.

- Efforts by companies and sponsors to control as many aspects of the LMT process continued to draw scrutiny from creditors in the third quarter, particularly as deviations from traditional norms become more pronounced. See below for a more detailed discussion of these provisions, including anti-cooperation and anti-law firm language.
- Even as LMTs continue to dominate the restructuring conversation, surprises can still happen. First Brands seemingly overnight collapse into a free-fall Chapter 11 reflected how quickly the situation moved in that case. In short, there was simply no time for the usual LMT negotiations to occur.

We caveat that the foregoing (and our curated list of LMTs more generally) is primarily based on publicly available sources; as additional information comes to light regarding these transactions, our categorization of various LMTs (and the descriptions themselves) may change.

Post-LMT bankruptcies

A trio of bankruptcy filings in Q2 2025 arose from firms that had previously conducted LMTs (four, if we count Altice France's Chapter 15 filing in June), with another three bankruptcies filed in Q3. These are as follow:

Firm	LMT date (circa)	Bankruptcy filing date
Mitel	Oct-22	1-Mar-25
Del Monte Foods	Apr-24	1-Jul-25
At Home	May-23	16-Jun-25
Ascend Performance Materials	Mar-25	21-Apr-25
Altice France (Chapter 15)	May-24	17-Jun-25
LifeScan	May-23	15-Jul-25
Modivcare	Jan-25	20-Aug-25
Anthology	Apr-24	30-Sep-25

To date, Covenant Review and LFI have tracked 33 bankruptcies ultimately resulting from 148 LMTs (without double counting those companies that conducted more than one LMT before filing), representing 22.2%.

Process control provisions	Market prevalence	Description
Anti-cooperation	Rare	Prohibits creditors from forming groups to negotiate with obligors
Anti-law firm / lawyer-on-lawyer violence	Rare	Prohibits engagement of certain counsel by lenders and/or veto right with respect to indemnification
Absolute block on distressed investors	Increasingly prevalent	Company has right to block any assignment to distressed investors
Retroactive disqualification	Rare	Borrower allowed to force out existing lenders by designating them on the blacklist; traditionally not permitted
Assignment / voting "caps"	Rare	Prohibit creditors holding > threshold of debt from voting excess amounts / giving company absolute right to block assignments to lenders that would result in such lenders holding > threshold of total class
Net short disenfranchisement	Common	Creditors (or their affiliates) that hold a "net short" position relative to subject debt prohibited from voting on amendments

Divide and conquer

Cooperation agreements have become a popular response by creditors in the past few years to LMTs. While in theory dampening "creditor-on-creditor" tendencies, such agreements can also have the opposite effect of emboldening certain parties to engage in more "rough and tumble" negotiations, depending on how such arrangements are structured (with some agreements intended to encompass as much of the creditor pool as possible, while others seeking input from only a bare majority so as to diminish minority holders). This is especially true in the United States, where "tiered co-ops" have become a regular way occurrence, with different groups of creditors party to the co-ops benefitting from different economics.

Anti-cooperation language, on the other hand, effectively prohibits creditors from entering into cooperation agreements. Such language was first seen in November 2024 in the Stepstone transaction out of Europe (though only at the "early bird" phase—the language was withdrawn prior to the launch of general syndication[1]). This was followed by a pair of US deals in Q1 2025 with similar provisions, though in both cases, the language was also flexed out after a vociferous rejection by the buy-side. In Q2 and Q3, sponsors were reasonably quiet on this front, though anti-cooperation language did make a surprise appearance in an IG consent solicitation for Warner Brothers Discovery.[2] The language there, however, was narrower in its formulation than in BSL variants, as it only prohibited the entering into of cooperation agreements (referred to in the

[1] See US/EMEA Pipeline: Stepstone prepares to launch ~€1.9bn-equiv. euro/dollar term loan, without proposed co-op consent requirement.
[2] See Warner Bros. Discovery Exchange: The "Non-Boycott" Covenant.

indenture as “Boycott Agreements”) which restrict purchases of “any newly-issued debt or securities issued by the company” or “making any loans in cash to the company.”[3]

While anti-cooperation has laid low for the most part, we imagine that such provisions are unlikely to disappear completely, especially given that key restructuring attorneys at Kirkland & Ellis (a major sponsor-side restructuring advisor) have taken the view that cooperation groups in general are “anticompetitive.”[4]

(Enter stage left): Lawyer-on-lawyer violence

With anti-cooperation quiet in Q3, borrower-side law firms did not sleep on innovations. As reported during the summer, certain investors began to discover “anti-law firm” provisions in some of their debt agreements. This technology may have evolved from earlier (and less controversial) provisions that limit which legal expenses creditors can seek indemnification and/or expense reimbursement from the issuer. However, the language reported over the summer goes a step further by broadly prohibiting creditors from engaging any law firms on a specific blacklist. These provisions could give companies the ability to block creditors from engaging with lawyers that have proven most adept at negotiating LMTs.

Both anti-cooperation and anti-law firm provisions are part of a broader move towards controlling how LMTs play out. And, like anti-cooperation, there is some question as to whether such provisions are even enforceable. From our perspective, the implications of anti-cooperation and anti-law firm language are largely behavioral. They are intended to chill lenders’ enthusiasm during LMT negotiations by injecting just enough legal uncertainty and friction to deter cooperation and engagement. Enforceability of such provisions (or indeed the practicality of monitoring compliance) is a valid question; but whether any lender will actually test such questions in court is another. Borrowers count on that hesitation.

Syndicate / voting control

As the market focuses on the egregiousness of anti-cooperation and anti-law firm provisions, syndicate / voting control provisions are both more common and potentially more insidious as a means of controlling LMT negotiations. These provisions have taken on a number of forms over the past few years, including, but not limited to: (1) absolute borrower consent rights over assignments to “distressed investors” (i.e., withholding consent to certain types of institutions as are “deemed reasonable”), (2) absolute consent over assignments that would allow a single lender (including affiliates) to exceed a negotiated cap (e.g., 20% of outstanding term loans), (3) caps on lender voting rights in excess of a threshold amount, (4) net short disenfranchisement (excluding lenders who hold, or who have affiliates who hold, a “net short” position in the CDS market relative to the loan), and (5) in rare cases, retroactive disqualification of existing lenders—enabling a forced “yank”

[3] See https://www.sec.gov/Archives/edgar/data/1437107/000143710725000151/a2025-06x16ex41dclindentur.htm.
[4] See *Kirkland & Ellis Debt Architect Sees Creditor Pacts as ‘Anticompetitive’* (Bloomberg, June 11, 2025).

and reassignment to more cooperative holders. These provisions often do not bar lender action outright but instead give the borrower or issuer decisive influence over who falls within the ad hoc group. Indeed, a company may even *want* a small group of lenders to wield outsized influence—so long as the company picks who those lenders are.

Because syndicate and voting constraints often fly under the radar during fast-paced marketing processes, they are proliferating with little pushback within the BSL and HY spaces. This could cause unintended consequences for the market at large. If creditors fear that they may be forced to sell their debt at a discount or be boxed out ex post, they may hesitate or even abstain from investing, reducing syndicate depth. For BSL loans, the trajectory of syndicate control could, if unchecked, also move toward European-style limited "whitelists" for assignability.

Outlook for Q4 and beyond

While the absolute number of LMTs has quieted (relative to Q4 '24 and Q1 '25), news reports of potential LMTs in the offing abound. As reported by LFI, potential LMTs are anticipated for Altice USA, Pretium Packaging, Anastasia Beverly Hills, Rinchem, Multi-color, Apex Tool Group, RSA, B&G Foods, United Site Services, Xerox, and others. We therefore may be looking down the barrel of a busy end of the year for LMT activity. This would mirror a similar trend in 2024, where we tracked nine LMTs in Q3 2024, before recording a whopping 19 transactions in Q4.

Please see LFI's US Special Situations: LFI Restructuring Runway Report - October 2025 for a curated list of distressed issuers with potential LMTs in the near term.

As always, facilitating the LMT process is overall weak covenant terms across the high yield and BSL markets. Per CR Trendlines, for the BSL market, covenant protections have steadily declined over the past decade. (see Figure 2 below.) During Q3 '25, the covenant score average stood at 3.86, little changed from 3.85 in the second quarter. For PE-driven loans, the average moved slightly toward borrowers at 4.10 in the Q3 '25 from 4.05 in the second quarter.[5]

[5] See CR TrendLines Topical Report: BSL Market Conditions Were Up and Down in September as CLO Issuance Cooled.

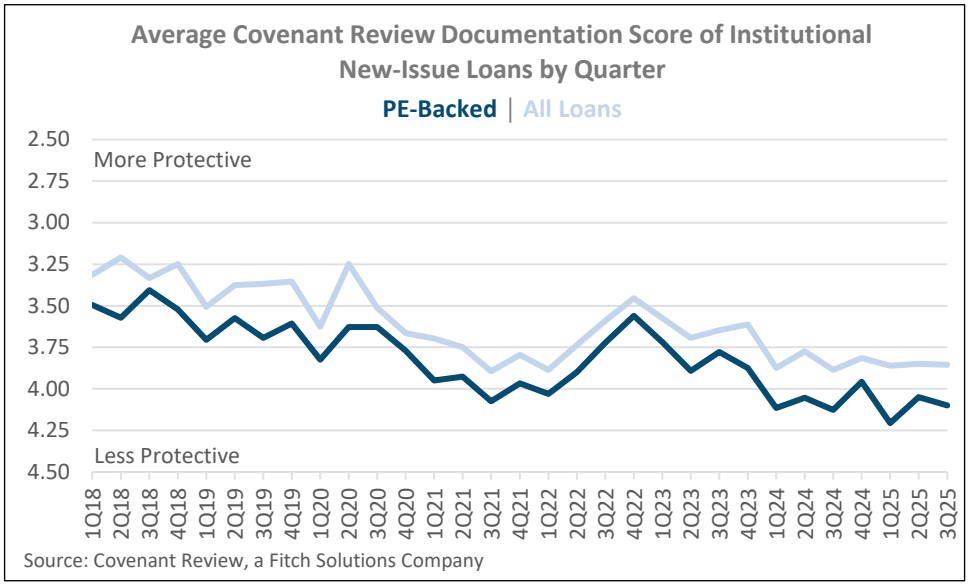


Figure 2

Types of LMTs

Categorizing LMTs is often more art than science, and like art, it can occasionally be difficult to discern definitional parameters. That said, Covenant Review considers an LMT to be any transaction by a distressed borrower or issuer which utilizes existing or amended contract terms to manage long-term corporate debt liabilities with creative out-of-court solutions. To this end, LMTs will often feature one or more of the following elements: (1) a change in relative priorities among creditors (in right of payment or collateral, or even temporally) via refinancing or through new money financing, (2) a transfer of value within, or out of, the restricted group,[6] (3) coercive elements (including, but not limited to, stratified tranches, "first come, first serve" structures, collateral dilution, covenant or collateral stripping, or other economic "sticks" against non-consenting creditors), (4) utilization of flexibility at non-guarantor subsidiaries (including unrestricted subsidiaries), and/or (5) aspects of "creditor-on-creditor" violence (i.e., where different creditor groups actively oppose one another). As a general rule, we do not characterize court-facilitated transactions or debt-for-equity swaps as LMTs, though these may be treated as distressed debt exchanges by one or more rating agencies.

In terms of taxonomy, Covenant Review groups LMTs into four broad categories: double-dips, drop-downs, uptiers, and miscellaneous. We provide a brief description of the features of each of these transactions, though we note that each transaction is driven by the business's specific capital structure and covenant requirements. Accordingly, there are variations within each of the foregoing prototypical LMTs. We also note that the leveraged finance markets have completed several

[6] I.e., the entities generally subject to covenant limitations and restrictions.

transactions that incorporate multiple LMT structures, often in the same deal.

Double-dip and pari-plus LMTs

Double-dips involve the potential enhancement of claims against existing collateral assets. This usually occurs via the following structure: (1) incurrence of a new debt facility at a non-guarantor subsidiary of the existing borrower / issuer, either within or outside of the restricted group and (2) on-lending the proceeds of the new debt facility to the existing borrower / issuer via an intercompany debt facility, with the new non-guarantor subsidiary borrower as the lender. The facility incurred under step one is usually guaranteed and secured by the existing guarantors and collateral assets that provide credit support for the existing first lien debt obligations. On top of that, the intercompany debt facility is also guaranteed and secured by the same guarantors and collateral. In this way, the secured claims of the new third-party creditors include both of the facilities incurred under clauses (1) and (2), as the intercompany loan facility provides the third-party creditors with an indirect claim against the guarantors / collateral assets. This is because the intercompany loan itself is an asset of the non-guarantor subsidiary borrower / issuer, which is also pledged for the benefit of the third-party creditors. In other words, for each $100 of new money, the new lenders now have $200 of claims—hence, a “double dip.”

Similar to the above, Pari-Plus LMTs involve the provision of additional credit support to one group of creditors by using an intercompany note structure borrowed from plain vanilla double-dips. In the 2023 Sabre transaction, this included (1) the incurrence of a new money term loan facility by an unrestricted subsidiary, (2) guarantees by non-guarantor restricted foreign subsidiaries of the unrestricted subsidiary obligations under the new term loan, and (3) the subsequent on-lending of the new term loan proceeds to the existing guarantor group via a secured intercompany loan. As with generic double-dip LMTs, the intercompany loan incurred in this last step is usually pledged for the benefit of the new money creditors (ranking equal to the existing parent-level first lien obligations).

Double-dip and pari-plus transactions are usually facilitated by the following covenant provisions:

- **Debt and Liens covenant capacity:**
    - The related credit agreements and/or indentures must have sufficient debt and liens capacity to allow both the debt incurrence by the applicable non-guarantor subsidiary (the “New Money Debt”) and the subsequent intercompany debt facility incurrence of the on-lent proceeds of the New Money Debt. Depending on the use of proceeds of the New Money Debt, this could potentially qualify as “refinancing debt” (rather than incremental debt) in respect of existing pari passu secured obligations (as was the case in Sabre and some of the other transactions we have covered).
    - The debt agreements must also include sufficient capacity for the guarantees (and collateral support, if any) provided by the existing credit parties in respect of the New Money Debt obligations incurred by the non-guarantor subsidiary.

- **Investments covenant capacity:**

    - As the provision of a guarantee is also normally an "Investment," capacity under the Investments / Restricted Payments covenants is usually required as well. Often, however, the Investments / Restricted Payments covenants include a generic cross-reference permitting any debt that is permitted to be incurred by the Debt covenant. As such, if the Debt covenant provides sufficient capacity, this will be sufficient to justify the Investment portion of the double-dip.

- **Other potentially relevant provisions:**

    - There also must not be any requirement that intercompany debt for borrowed money and guarantees be subordinated to other obligations; this is a common limitation but often only applies to intercompany debt using a dedicated intercompany debt basket (rather than a "global" requirement that overrides all existing debt and liens baskets).

    - To the extent an unrestricted subsidiary is the obligor under the New Money Debt, there must also be no limitation on credit support provided by the restricted group in respect of unrestricted subsidiary debt obligations.

Despite increased usage by distressed entities, the ultimate enforceability of double-dip structures in bankruptcy remains an open question. As of the date of this writing, we are not aware of any precedent directly addressing whether an intentionally engineered double dip structure will afford new debt creditors two allowed secured bankruptcy claims against what is, for all intents and purposes, the same collateral (and At Home's soon to be completed bankruptcy does not seem likely to change this). But even if a court were to otherwise bless this structure, aggrieved creditors might be able to raise other issues if supported by the facts—for example, they may claim that the double dip was a fraudulent transfer (assuming insolvency), that the obligors should be substantively consolidated, or that the double dip claim should be equitably subordinated. In practice, however, and particularly in the absence of caselaw precedent, we think the real advantage to the double dip creditors is negotiating leverage in a formal restructuring. Even though the double dip doesn't result in more than a full recovery on the bankruptcy claim itself, it allows access to additional collateral support ranging from 1x to 2x. In many bankruptcy proceedings, such as Lehman Brothers where a double dip issue was raised, a negotiated resolution is common and typically results in a recovery for double dip creditors that benefits from this extra collateral support, which enables such creditors to achieve higher recoveries than similarly situated creditors in the capital structure.[7]

See Annex I below for a visual representation of a prototypical double-dip LMT and Annex II below for a portrayal of a pari-plus double-dip LMT.

[7] See generally Double Dip Analysis Under High Yield Indentures.

Triple Dips

If there are double dips, could there also be "triple dips"? The short answer is yes, at least in theory. To date, the only known instance of creditors claiming a "triple dip" was in the Spirit Airlines 2024 bankruptcy.[8] A group of Spirit Airlines' 8% secured bondholders (organized with Akin Gump and Evercore) argued they were entitled to three additional sources of value beyond their original collateral, via (1) an intercompany Loan ($1.1bn) to Spirit parent from the loyalty bond issuer, (2) a parent guarantee (for the full $1.1bn value), and (3) damages (~$600mn) from potential termination of the brand IP license agreement, calculated as the present value of future licensing fees (assumed at $45mn annually).

The argument was predicated on a highly complex—and atypical for leveraged finance—loyalty program IP financing and generally withered on the vine during the bankruptcy proceedings. Accordingly, we think it relatively difficult for distressed debtholders to recreate a triple dip structure. That said, the argument *is* out in the wild, awaiting clever restructuring advisors to utilize in future scenarios.

Drop-down LMTs

At their core, drop-downs (also known as J. Crew transactions, or even more colorfully, as getting "J. Screwed"[9]) involve the transfer of assets from entities that provide credit support for existing debt to non-guarantor subsidiaries or other non-guarantor persons. Drop-down LMTs generally take one of two flavors: those utilizing unrestricted subsidiaries and those utilizing non-guarantor restricted subsidiaries. Drop-down capacity is largely dictated by flexibility within existing debt documents' Investments / Restricted Payments covenants (and, to a lesser extent, the Asset Sales and Affiliate Transactions covenants).

- Drop-downs utilizing unrestricted subsidiaries: These transactions—exemplified by the J. Crew 2016 LMT—typically involve the transfer of one or more assets of the relevant borrower / issuer or other guarantors to one or more unrestricted subsidiaries, which are not subject to the covenants. That unrestricted subsidiary can then incur debt that is structurally senior in respect of the transferred asset(s) or, alternatively, sell the asset(s) (or be sold itself), which typically then results in the net cash proceeds of any such asset sale not being subject to the original debt's asset sale prepayment requirements (if any). In some deals, it may also be possible to spin such unrestricted subsidiaries to the equity-holders.

[8] See US Special Situations: Spirit Airlines 'Triple Dip' Analysis — LFI Research for a more detailed dive here.

[9] See *Lenders can still get J. Screwed* (Financial Times, February 12, 2024).

- Drop-downs utilizing restricted non-guarantor subsidiaries: These transactions, which are somewhat less common, typically involve the transfer of one or more assets within the restricted group from a guarantor to a non-guarantor restricted subsidiary, as permitted by the Investments or Restricted Payments covenants. That entity, in turn, can incur debt to the extent permitted by the Debt covenant, and that new debt (even if unsecured) will also be structurally senior to the claims of the existing credit agreement lenders.

- Securitizations: Though not often thought of as LMTs, an asset-based securitization (ABS) or receivables financing—particularly when conducted by distressed borrowers and issuers—is also, at its core, a type of drop-down financing. Indeed, such debt is typically issued out of a bankruptcy remote SPV (a non-guarantor) and is often structurally senior to parent debt with respect to the transferred assets. Moreover, at least in the BSL and HY space, such financings are often permitted without cap throughout the negative covenants (usually to the extent such debt is non-recourse to the obligors under existing corporate debt). Recent securitization financings from distressed companies like Zayo, Frontier Communications, and TeamHealth exemplify this trend.

Drop-downs can be particularly worrisome to secured creditors, since assets transferred from guarantors to non-guarantors (restricted or unrestricted) are usually released from the collateral pool, if not automatically, then with the explicit requirement of collateral agents to execute necessary release documentation. Collateral, it should be reiterated, is neither static nor sacred.[10]

See Annex III below for a visual representation of a drop-down LMT.

Subject assets

Drop-downs are most commonly viewed as an LMT relating to the transfer of IP assets, in part because of the J. Crew 2016 LMT (often considered the archetypical drop-down). However, while IP is often a target of drop-downs due to the relative ease of transferability[11] (including in 11 out of the 30 transactions in the survey below, or roughly one in three transactions), any asset can in theory be dropped into a non-guarantor entity for LMT purposes. The following is a summary of known drop-downs transactions, and the types of assets transferred if known (excluding receivables financings and/or securitization-type transactions and also excluding the PetSmart / Chewy transaction, discussed below).

[10] See Revisiting the Trapdoor: Five Lessons Learned from J. Crew.
[11] From a documentation and legal standpoint.

Date (circa)	Company	Subject asset
25-Sep	Liberty Puerto Rico	Specified assets
25-Jul	Rinchem	Specified assets
25-May	Ivanti	Specified assets
25-May	Anastasia Beverly Hills	IP
25-Jan	Trinseo	Business / subsidiary
25-Jan	Pabst Brewing	IP / specified assets
24-Nov	Astound Broadband	Business / subsidiary
24-Nov	Empire Today	IP
24-Oct	STG Logistics	Business / subsidiary
24-Aug	Del Monte Foods	Business / subsidiary
24-Aug	Trellix	IP
24-Jun	Pluralsight	IP
24-Jun	Sonrava Health	Business / subsidiary
24-May	Altice France	Business / subsidiary
24-Apr	City Brewing	Specified assets
24-Jan	EchoStar / Dish Network	Specified assets
23-Dec	Michaels	Business / subsidiary
23-Jun	Shutterfly	IP
23-May	U.S. Renal Care	Specified assets
23-Feb	Corelle Brands	Specified assets
22-Sep	Bausch Healthcare	Business / subsidiary
22-Aug	Envision Health	Business / subsidiary
20-Oct	Hornblower	Specified assets
20-Jun	Party City	Business / subsidiary
20-Jun	Travelport	IP
20-May	Cirque du Soleil	IP
20-Apr	Fertitta Entertainment (Golden Nugget)	Business / subsidiary
19-Aug	Revlon	IP
18-Sep	Neiman Marcus	Real property
16-Dec	J. Crew	IP

PetSmart / Chewy variant

The PetSmart / Chewy LMT in 2018 involved (in part) the release of a restricted subsidiary guarantor from its obligations under the existing PetSmart credit agreement due to the transfer of a portion of equity of Chewy to an unrestricted subsidiary, as well as the spin-off of another portion of Chewy equity to PetSmart's sponsor. This allowed PetSmart to automatically release Chewy from

providing credit support because—as a newly minted non-wholly owned subsidiary—it was no longer required to do so and the underlying credit agreement permitted such release without additional lender input (Chewy itself remained a restricted, but non-wholly owned and non-guarantor, subsidiary). Functionally, this transaction was similar to a drop-down of Chewy to a non-guarantor restricted subsidiary, though the legal mechanics were different. In response to the Chewy maneuver, the market responded with a bevy of "Chewy blocker" provisions, which seek to address this flaw in a myriad of ways—mainly by requiring additional conditions to be met before such a release can occur.

Chewy LMTs remain a relatively rare occurrence, even in this day and age of creative LMTs, in part because the released guarantor usually remains a restricted subsidiary (that is still subject to the limitations and restrictions of the covenants). Indeed, a drop-down involving an unrestricted subsidiary is almost always preferable (to the company) to a Chewy LMT because the former provides significantly greater flexibility for the borrower or issuer.

Uptier LMTs

Uptier LMTs at their heart refer to the re-shuffling of relative payment or lien priorities within a debt stack. This is typically accomplished by amending an existing credit agreement or indenture with the consent of a requisite subset of the existing creditor group to permit the incurrence of a senior priority debt tranche and/or the non-pro rata exchange of some or all of the existing consenting creditor debt into the new priority tranche. Uptiers may consist solely of a "new money" debt commitment or may involve a combination of new debt and the exchange of preexisting debt. Unlike double-dip or drop-down LMTs, documentation flexibility for uptier LMTs is mostly determined on the basis of the amendments and assignments provisions (rather than the negative covenants).

Although Serta was not the first borrower to conduct an uptier LMT, it is synonymous with the maneuver. At the height of the COVID pandemic, these transactions (including Serta itself) tended to take a scorched-earth approach (with subordinated creditors often not learning of the subordination until after the fact). In contrast, uptier LMTs throughout 2023, 2024, and into 2025 have moved towards more "consensual" exchange transactions, with most (if not all) affected creditors given at least an opportunity to participate in priming debt.

Of course, offers to participate do not always translate into "fair" transactions, with uptiers resulting in significant deltas between the "haves" (those in the steering group) and "have-nots" (everyone else). Indeed, left-out creditors are often offered less than ideal economics compared to their ad hoc group counterparts, including in respect of PIK interest, lower positions in a waterfall, and/or significant haircuts. Prospects for those who do not participate can be even more dire, with such creditors being even further subordinated and/or economically punished (e.g., shutting off of cash interest payments and/or being stripping of existing covenant protection or some portion of credit support). The rise of such voluntary exchanges can be tied to a number of factors, including (1) the growing prevalence of "Serta blockers" (which often include a ROFR exception—i.e., allowing majority consent to subordinate if the priming paper is offered to affected lenders), (2) an attempt by

distressed borrowers and issuers to litigation-proof their LMTs (via broad waiver language, particularly in loans), and (3) economic expediency (including the capturing of discounts).

More than any form of LMT, uptiering has been the subject of significant scrutiny from the courts. The legal issues around Serta are twofold: whether the subordination is permitted with less than unanimous consent and whether the resulting non-pro rata exchanges of existing holders into priming debt is otherwise permitted. In respect of the former, courts have been largely willing to defer the issue to the specific contract language (see, e.g., the Delaware Bankruptcy Court's decision in *In re TPC Group Inc.* (2022)). To wit, if the underlying debt document does not expressly treat subordination as a sacred right, the courts are not going to read such sacred rights into the agreement. In respect of the latter issue, the courts have primarily focused on whether uptier exchanges can be conducted as an "open market purchase." Some initial uncertainty on this point was created due to court rulings in the *Serta* and *Boardriders* litigations, particularly following Judge Jones's 2023 ruling in the *Serta* Chapter 11 litigation that dismissed most of the relevant minority lender claims in part because, according to Judge Jones, the term "open market purchase" clearly and unambiguously encompassed non-ratable exchanges.[12] Since then, however, the general viewpoint has shifted that the term "open market purchase" by itself does not justify non-pro rata exchanges—a position crystallized by the Fifth Circuit's rejection of Judge Jones's position in a decision delivered on the last day of 2024.

The impact of the Serta decision

After three quarters, the impact of the Fifth Circuit's decision has proven surprisingly muted, at least as far as *preventing* uptier LMTs is concerned (as noted above, uptiers continue to represent a majority of LMT activity in Q3 2025). Instead, it appears that most distressed borrowers and issuers have simply incorporated an additional step of "Serta avoidance" into their restructuring proposals. Indeed, the market perhaps underestimated how easy it would be to bypass the Fifth Circuit's opinion via additional structuring or maneuvering. We have identified at least four such approaches to avoid the limitations imposed by the *Serta* decision that have arisen over the past few months:

- In the Better Health LMT, an uptiering was accomplished by creation of a new class for the ad hoc group. This was reportedly accomplished by having the ad hoc lenders first agreeing to extend their maturities (such changes generally only require the consent of the extending lenders).[13] In doing so, the extending lenders bootstrapped themselves into a separate class relative to the non-ad hoc group lenders. At that point, the ad hoc group lenders (which presumably represented a majority of all lenders) were able to exchange their extended class into priming debt since doing so did not represent non-ratable treatment of *that* particular class of lenders. Post-exchange, the company offered non-ad

[12] See Initial Reactions to Serta Bankruptcy Litigation Decision.
[13] This was notably not conducted via a traditional amend-to-extend, which traditionally must be offered to all lenders on a pro rata basis.

hoc group lenders an opportunity to participate in the new financing.[14] Oregon Tool also reportedly followed this approach in its LMT in Q1.

- In the Confluence LMT, the priming exchange was reportedly accomplished by utilizing the accordion to first incur a $60mn incremental term loan (presumably non-fungible with existing term loan debt) before exchanging the new debt into a superpriority position. The underlying principle here is assumed to be the same as in Better Health: the exchange of the incremental class into a priming position was pro rata *within* that class (meaning there was no non-ratable treatment that would have implicated an "open market purchase" discussion).
- As a general matter, changes to "open market purchase" language often are not expressly set forth in the sacred rights of the amendment provisions. It is therefore at least possible for changes to these provisions to occur with just majority lender consent, subject to specific limitations of individual agreements.
- Some transactions have simply opted to avoid the open market purchase trap entirely by using pro rata mechanisms (including Dutch auctions) or other more esoteric structures ("downtiering" via holdco debt issuances for example).

Even without such machinations, the impact of the Fifth Circuit's opinion was arguably overstated in the first place. As we noted in our prior report, "we do not believe the decision has sounded a death knell for uptier LMTs as a whole, as the relevant portions of the opinion were largely limited to discussions of open market purchases as an exception to pro rata sharing and payment rules (and we note that the Fifth Circuit did not opine on the validity of subordination via majority consent)."

Further, and as also noted in our prior report, the Serta opinion may have a limited effect on the high yield bond market, since many indentures expressly permit negotiated transactions (in addition to open market purchases), many OMs include a disclosure that issuers may engage in such transactions, and such negotiated purchases are arguably an established market practice. Lastly, we cautioned that the Fifth Circuit's decision—while undoubtedly influential—is not dispositive precedent for all other courts in the United States, including New York state courts and the Second Circuit.

Where *Serta* appears to have had the biggest impact is on new loan issuances rather than distressed debt. In Q3 2025 35% of new issue loans in the BSL market incorporated language designed to bypass the Fifth Circuit's opinion (35% YTD), typically by explicitly permitting buybacks via privately negotiated transactions on a non-pro rata basis or by omitting reference to "open market purchases" entirely. Compare this to L4Q 2024 where 23% of new issue loans included such language (for the first three quarters of 2024, the percentage was also 23%).

[14] For additional analysis into this approach, see: Market Alert: Better Health LMT Structured to Potentially Bypass the Recent Serta Decision.

Period	Percentage of deals allowing privately negotiated buybacks / not using "open market purchase" language
1Q24	20%
2Q24	23%
3Q24	27%
4Q24	23%
1Q25	35%
2Q25	34%
3Q25	35%

Source: Covenant Review, A Fitch Solutions Company

See Annex IV below for a visual representation of a paradigmatic (Serta) uptier LMT.

Miscellaneous LMTs

In the final category, we include any other out-of-court restructuring that includes significant elements of our LMT definition but does not necessarily fall cleanly into the categories of double-dips, drop-downs, or uptiers. Additionally, more traditional "liability management," such as amend-to-extends or par exchanges, can also be categorized here if such transactions include significant coercive elements, enhanced credit support, or creative liberties with document protections.

Litigation Updates

A summary of the most notable ongoing matters through Q3 2025 follows:

Incora (S.D. Tex): The Incora litigation derives from a March 2022 uptier LMT in which the issuer released collateral on existing secured bonds, which collateral was then offered to secure $250mn of new money as well as new bonds (issued in an exchange open only to participating holders). Non-participating bondholders were left with newly unsecured bonds at the bottom of the capital structure. The transaction depended in large part on a "vote rigging" tactic, whereby tack-on bonds were issued (with just majority consent) to meet the supermajority 66 2/3% consent threshold to release collateral (via a separate agreement). During Incora's subsequent bankruptcy proceedings, presiding Judge Marvin Isgur delivered an oral decision voiding a portion of the March 2022 transaction, which was followed by a series of "Report and Recommendations" in which he wrote that the two-part transaction was functionally one due to the "automaticity of the closing events." While this would seem to inhibit future "vote rigging" transactions, Isgur's holding has now come into question with District Court Judge Randy Crane (SD Tex) entering a docket text minute entry vacating key portions of the second Report and Recommendation and ruling that the 2022 transaction was in fact "proper and appropriate." The court then invited 1L bondholders to draft a

proposed order detailing the court's reasoning (for all intents and purposes, a draft opinion[15]), which was filed on September 25, 2025. Parties have until October 16, 2025, to object to the 1L bondholders' proposed order, following which Judge Crane will enter a final order after addressing any objections.

STG Logistics (NY Sup. Ct, County of New York): STG Logistics' fall 2024 LMT ran the gamut of LMT structures, and included drop-down, uptiering, and double dip components. Despite closing with roughly 93% participation from existing creditors, two holdouts, Audax and Siemens Financial, brought suit against the company, participating lenders, and Antares (as agent) alleging a variety of breach of contract claims, as well as claiming a violation of New York's fraudulent transfer law (the Uniform Voidable Transactions Act), and a breach of the implied covenant of good faith and fair dealing. Defendants filed motions to dismiss in spring 2025 (including on the basis that the plaintiff lack standing due to the credit agreement's no action clause) and oral arguments were held before Judge Anar Patel of the Supreme Court of New York in August 2025. A decision is pending as of the date of this writing, which will be closely watched by market participants as it touches on numerous elements of current LMT practice. See also Five Notable Arguments Worth Paying Attention to in STG Logistics' LMT Litigation.

Hunkemöller (NY Sup. Ct, County of New York): In July 2024, the European company Hunkemöller engaged in a rare European LMT with the issuance of a new €50mn term loan that primed bondholders. In response, the subordinated bondholders filed suit in New York state court in November 2024 against the issuer as well as Redwood Capital (the majority holder of the notes and also the provider of the priming debt) and BNY Mellon (as trustee) alleging, among other things, violation of "sacred rights" for pro rata treatment of noteholders. The complaint noted that the issuer had removed the "payments for consent" provision (which requires that the issuer offer consent fees to all bondholders, rather than select bondholders) prior to the uptiering.[16] Junior creditors have also filed legal action in both Dutch and English courts seeking to unwind the transaction.[17] The case is ongoing as of the date of this report, with the plaintiffs surviving a motion to dismiss under Judge Patel (the same judge presiding over STG Logistics) in mid-July 2025. Notably, the claim for the breach of the payments for consent covenant survived dismissal. though with Judge Patel suggesting that the allegations were nevertheless somewhat "light."

[15] See http://pacermonitor.com/view/MISJWPQ/Wesco_Aircraft_Holdings_Inc_et_v_SSD_Investments_Ltd_et__txsdce-25-00202__0097.1.pdf?mcid=tGMYTS.
[16] See European Liability Management: Hunkemöller Uptiering Transaction Leads to Litigation and Hunkemöller: Reviewing the Motion to Dismiss the Uptiering Lawsuit for additional discussion and commentary of this ongoing case.
[17] See US/EMEA Special Situations: Hunkemoeller bondholders file legal action in English and Dutch courts to challenge Redwood takeover.

Serta (Bankr. S.D. Tex): In *Excluded Lenders v. Serta Simmons Bedding, LLC (In re Serta Simmons Bedding, LLC)*, the Fifth Circuit court took a hammer to Judge Jones's holding that the term "open market purchases" was clear and unambiguous enough to encompass one-on-one negotiated exchanges between a borrower and specific lenders. In its decision, the Fifth Circuit made clear that "open market purchases" necessarily requires that buybacks be conducted *through an open market* (the market in this instance being the BSL market), which does not include privately negotiated transactions between the borrower and specific lenders. Accordingly, the open market purchase mechanism in Serta's prepetition credit facilities *did not* justify the LMT. The Fifth Circuit remanded the case back to the bankruptcy court (now being managed by Judge Lopez—replacing Judge Jones) to address non-consenting lenders' breach of contract claims. A trial is now scheduled for early 2026 for the re-litigation of these claims, though Judge Lopez has encouraged the parties to enter mediation in the interim.[18] That said, as noted above, the impact of the *Serta* decision has been somewhat muted given various methodologies adopted by parties to bypass the Fifth Circuit's opinion.

Lionsgate (NY Sup. Ct, County of New York): Lionsgate's LMT in May 2024 involved the exchange of $383mn of its $715mn outstanding 5.5% senior unsecured notes due 2029 (issued out of the struggling STARZ business) into the new 6% notes issued by the more profitable Lions Gate studios business. Certain bondholders left holding the STARZ notes filed suit against Lionsgate in August 2024, alleging violations of the 5.5% senior unsecured notes' indenture's "sacred rights" provisions. Claiming that the exchange did not garner *actual* required bondholder consent, the plaintiffs are seeking the payment of all amounts owed under the notes, among other remedies. The case is pending as of the date of this report.

Robertshaw (S.D. Tex): Robertshaw involved two separate sets of LMTs entered into over the course of 2023. Aggrieved lenders filed various lawsuits, and on June 20, 2024, a decision was issued in one of these cases, *In re Robertshaw US Holding Corp*. In the opinion, Judge Lopez of the Southern District of Texas Bankruptcy Court ruled that Robertshaw and certain of the lenders violated the credit agreement when they structured a portion of an LMT by issuing new debt out of an entity that was a "Subsidiary" in the meaning of the credit agreement. However, Judge Lopez also ruled that the remedy for this contractual breach would be limited to money damages and not an equitable remedy. A summary of the ruling written by LFI is available here. Robertshaw has since emerged from Chapter 11 bankruptcy protection, with an effective date of October 1, 2024. Invesco, which was a plaintiff in the above-mentioned adversary litigation and was granted an unsecured funded debt claim in the reorganization plan, appealed Judge Lopez's opinion to the U.S. District Court of the Southern District of Texas. That appeal is still pending.

[18] See US Post Petition: Serta Simmons, with 2020 uptier transaction back in dispute, gears up for February bankruptcy court trial.

Post-LMT Recovery Rates

Our colleagues at the Leveraged Finance team at Fitch Ratings have undertaken an analysis of recovery rates following a Chapter 11 restructuring process for issuers that have conducted one or more LMTs prior to filing for bankruptcy protection. Their data, which is based on post-emergence expected recoveries pursuant to the approved restructuring plan in the related bankruptcy, illustrates that there is a divergence in overall and relative recoveries for first lien creditors between issuers that have and have not conducted LMTs prior to a bankruptcy filing. Overall, data is tabulated through July 2025.[19]

- Issuers that had conducted LMTs prior to filing for bankruptcy have achieved lower recoveries on first-lien debt in the first half of 2025. The par-weighted average recovery for issuers who had executed an LMT prior to bankruptcy is just over 9% for those issuers that emerged in 2025 through July, compared to 58% for the cohort of issuers that had not gone through an LMT prior to filing.

- The 9% recovery is driven by Mitel Networks and Diamond Sports Group, which are the only issuers that previously conducted LMTs that have emerged from bankruptcy as of July 2025. Par-weighted recoveries on the first-lien debt for both issuers are far below average at just over 10% and 2%, respectively. In both cases, challenges facing the issuers were more impactful on recoveries than the additional debt incurred as part of the LMTs.

- For issuers emerging in 2024, those that executed LMTs prior to bankruptcy experienced par-weighted average (i.e., blended) recovery for first lien tranches of 44% on their original first lien claims. This compares to a 48% average for issuers who had not executed LMTs prior to filing.

- For issuers emerging since 2024 that executed one or more LMTs prior to a filing, there was also a material divergence in recovery rates for “in-group” versus “out-group” lenders. The most notable examples of these were the following:

    - Mitel Networks: Lenders recovered an estimated 9.8% on the new money priority-lien term loan due 2027. Recoveries on both the priming second lien term loan (which consisted of a roll up of the legacy first lien term loan), as well as the stub of the original first lien term loan that was primed by the uptiering transaction were both less than 1%.

    - Diamond Sports: Expected recoveries for Diamond Sports’ non-participating lenders were a mere 3.5%; in contrast, participating first-out lenders are expected to have been made whole.

    - Casa Systems: The debtor, which filed in April 2024 and exited in June 2024, had previously executed an uptiering transaction involving the exchange of existing term loans for a superpriority loan. Under the plan, first lien creditors agreed to a pari passu recovery, with lenders who exchanged into the superpriority term loan as well as those holding the stub of the original term loan recovering an estimated 18%.

[19] No additional updates to this data are currently available for Q2 2025.

- Hornblower: Hornblower emerged in June of 2024, with prepetition super priority term loan lenders recovering an estimated 100%, while the non-participating first lien term loan lenders recovered approximately 15.5%.

- Robertshaw: Robertshaw's exit ultimately saw a blended recovery of just 29%, but this was heavily weighted in favor of super priority first-out term loans (recovering 100%) versus a mere 3% recovery for second-out term loan holders. The remainder, including a legacy sixth-out tranche, notably recovered nothing.

- Wheel Pros: Wheel Pros, which filed in September 2024, had previously executed a double-dip LMT. Under the plan of reorganization, the first lien creditors agreed to a pari passu recovery, with first lien lenders expecting to recover 61% (100% recovery for FILO loans but only 52% recovery for legacy first lien loans and newco loan holders).

Further details can be found here: U.S. Leveraged Finance First-Lien Ultimate Recoveries Monitor: 1H25

LMT Blocker Provisions

The buy-side market's reaction to LMTs has been likened to a game of "whack-a-mole." Each successive LMT has garnered its own blocker provision, which is ostensibly designed to prevent future iterations of the particular LMT in question. In practice, however, blocker provisions are heavily negotiated and rarely provide ironclad protection.

Blocker	Description	Common weaknesses	Common locations in debt documents
Common new issue blockers			
J. Crew / Pluralsight	Prohibits transfer of certain assets to non-guarantor subsidiaries and, in particular, unrestricted subsidiaries; blockers to non-guarantor restricted subsidiaries are sometimes referred to as "Pluralsight" blockers after the June 2024 private credit LMT	Only prohibits transfer of certain assets (usually material IP) Only prohibits transfers by or to a limited subset of parties May apply only at the time of "designation" of the unrestricted subsidiary and not subsequent transfers[20]	Definition of "Unrestricted Subsidiary" Designation of Unrestricted Subsidiary covenant Override in RP, Investments, and/or Asset Sale covenants Separate covenant

[20] See Market Alert: Punching Holes in the J. Crew Blocker in US Leveraged Loan Credit Agreements.

Serta	Most commonly takes the form of requiring heightened consent to acquiesce to subordination (often "affected" creditor consent)	Often subject to material exceptions (especially for DIPs and ROFRs) Collateral subordination sometimes limited to only all or substantially all collateral May allow subordination if otherwise permitted by debt documentation Heightened consent for only certain types of subordination	Amendment and waiver provision
Chewy	Either establishes that existing guarantors cannot be released unless they cease to be a subsidiary (a "true" blocker) or requires that a guarantor that becomes non-wholly owned can only be released if certain conditions are met (a "qualified" blocker); conditions can include having sufficient investments capacity and whether the underlying transaction had a bona fide purpose	Qualified Chewy blockers are usually subjective—i.e., the company is typically the entity that determines (in its discretion) whether the conditions for release are met	Agent authorization provision Specific guarantee / collateral release provision(s) "Excluded Subsidiary" definition Amendment and waiver provision
Envision	Given the hybrid nature of the Envision LMT, we generally define Envision blockers to be the presence of a J. Crew blocker, Serta blocker, and capacity for investments in unrestricted subsidiaries being less than 1.5x EBITDA	See above for J. Crew and Serta blocker weaknesses	See above for J. Crew and Serta blocker; Investments covenant
Common post-LMT blockers			
Double-dip / "At Home"	Typically requires any intercompany debt owed by the borrower or guarantor to a non-guarantor to be subordinated in right of payment and/or collateral, which effectively shuts off the secondary claim	Sometimes limited only to specific baskets rather than as a general override	Debt covenant override
Vote rigging / "Incora"	Prohibits incremental creditors (e.g., add-on lenders under a credit agreement's accordion) from being counted in voting thresholds for any concurrently sought amendment	Often subjective and tied to the "primary purpose" of the underlying debt incurrence	Accordion Amendment and waiver provision

Omnibus	Any provision or covenant that broadly prohibits "Liability Management Transactions" or similar language	The term "Liability Management Transaction" may be defined in an overly narrow manner (or not defined at all), introducing ambiguity into interpreting such provisions Sometimes limited to specific covenants	Separate covenant

While Chewy, J. Crew, and Serta blockers (and, to a lesser extent, Envision blockers) have become de rigueur buy-side asks for new issuances,[21] other blocker provisions tend to only appear in post-LMT financings or in more bespoke / challenging financing arrangements.

In more tightly drafted agreements, the blocker language may go one step further by establishing that a change to the blocker provision itself is also treated as a "sacred right" (requiring affected, unanimous, or some variant on supermajority consent) ensuring that a lower threshold of creditors (e.g., majority lenders in most BSL credit agreements) cannot weaken or remove such provisions in advance of a more expansive LMT. This kind of backstop LMT protection is rare in the new issue market, however.

Serta blocker efficacy

Efficacy of blockers is sometimes questionable at best, as sponsors and their counsel continue to implement purposefully ambiguous or flawed provisions. For example, given that most LMTs in 2025 continue to predominantly utilize uptiering components, market participants rightfully have started to question how effective Serta blockers actually are in a distressed scenario (particularly since such blockers are in a majority of loans in the JP Morgan index).

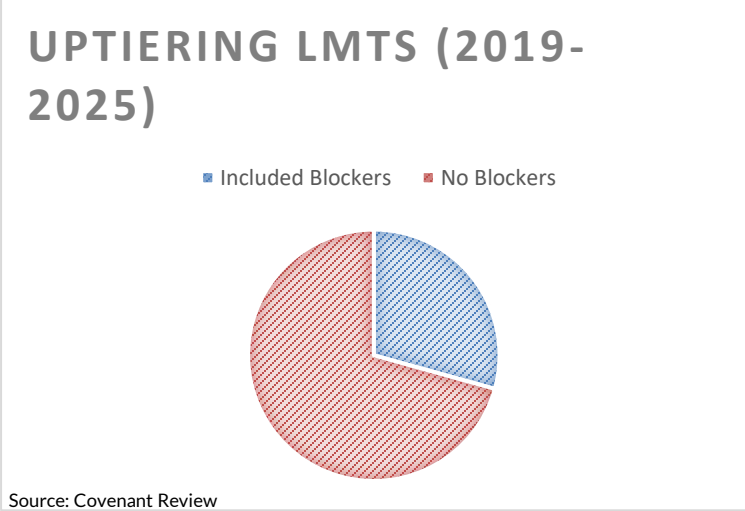


Figure 3

Based on Covenant Review data, out of a sample of 58 uptier LMTs (among the broadly syndicated loan market), approximately 41 (or ~71%) lacked *any* blocker language. Thus, at the very least, it would appear that uptier LMTs are more likely than not to occur where underlying documentation lacked blocker language.[22] That said, we caveat that the quality of the Serta blocker language still matters in how an LMT might be structured, most recently illustrated by the Saks

[21] See CR Trendlines: Lens on Loopholes 3Q25 Update: Share of Index Loans with J. Crew / Serta / Chewy (Full & Qualified) / Envision / Pick-Your-Poison Loopholes Across the Index.
[22] See Serta Blockers in US Leveraged Loans: Paper Tiger or Guardian Angel?

LMT.[23] Moreover, the choice of LMT will also depend on other ancillary factors beyond just the presence or absence of specific "blocker" language.

A brief note on omnibus blockers

The market has increased its focus on omnibus blockers in recent quarters as a potential panacea to the onslaught of LMTs. Such blockers broadly prohibit (in theory) borrowers and issuers from entering into any future liability management transactions. Assuming that changes to the omnibus blocker are also treated as a "sacred right" matter, omnibus blockers could stand as nearly inviolable protection for creditors. Of course, the actual protection afforded by such blockers will depend on how broadly or narrowly the blocker defines what a "liability management transaction" is (which, as we discussed above, is a difficult exercise in itself). Further, any omnibus blockers will also need to overcome the countervailing incentive of those creditors who may wish to preserve the company's restructuring flexibility, particularly if they expect to be on the "winning" side of subsequent creditor-on-creditor conflicts.

While omnibus blockers have appeared in some post restructuring deals, they remain relatively rare, even in the post-LMT landscape. As such, debating the protections of omnibus blockers is primarily an exercise in the fantastic, at least in the current market.

See below for examples of omnibus blockers from Spirit Airlines' exit financing and Commscope's December 2024 restructuring documentation:

Spirit Airlines:[24]

Section 4.35 Liability Management Transactions

Spirit shall not, and Spirit shall not permit any of its Subsidiaries to, enter into any Liability Management Transaction (as defined below); provided that Spirit and/or its Subsidiaries shall be permitted to enter into a Liability Management Transaction so long as each Holder is offered a bona fide right to participate in such Liability Management Transaction, on a pro rata basis, on not less than ten (10) Business Days' notice prior to the deadline established by Spirit or the Co-Issuers for the Holders to elect to participate in such Liability Management Transaction.

As used herein, the term "Liability Management Transaction" means:

(i) any exchange (or any transaction primarily designed to circumvent the restrictions set forth in this Article IV or contemporaneously achieve the same effect as an exchange) of any existing Indebtedness of Spirit or any of its Subsidiaries or Affiliates (the "Existing LMT Debt") with any other Indebtedness and/or preferred Equity Interests of Spirit or any of its Subsidiaries or Affiliates (the "New LMT Debt") in a transaction that is not primarily for a bona fide business purpose and instead would be senior to the Existing LMT Debt in

[23] See Saks: The Serta Blocker That Didn't Work for a recent instance of where poorly drafted Serta blocker language may have allowed uptiering.
[24] See https://www.sec.gov/Archives/edgar/data/1498710/000095010325003365/dp226079_ex0401.htm.

respect of payment or Liens or is issued by an entity that is not an Obligor under the Existing LMT Debt on a non-pro rata basis into such New LMT Debt;

(ii) any Investment, asset sale, transfer, conveyance or other disposition of assets (including by way of division) to an Affiliate of Spirit or any of its Subsidiaries, in each case, that is not an Obligor (including any non-Obligor Subsidiary, Affiliate that is not an Obligor or "unrestricted subsidiary"), in each case, to (a) facilitate a new capital raise or financing of Indebtedness and/or any preferred Equity Interests incurred by such Person (including a debtor-in-possession financing) or (b) to guarantee existing Indebtedness; or

(iii) any transaction whereby an obligation owed to an Affiliate of an Obligor (other than another Obligor) would directly or indirectly be pari passu or senior (in right of payment or security) to the Notes.

Commscope:[25]

7.12 Anti-Liability Management. Neither Holdings nor the Borrower will, and the Borrower will not permit any of its Subsidiaries to (a) directly or indirectly Incur any Indebtedness, Capital Stock or Lien that is contractually, structurally or otherwise senior in right of payment and/or Lien priority to the Obligations or that has the effect of materially and adversely affecting any Lender's rights to receive mandatory prepayments of the Initial Term Loans hereunder (except (x) as otherwise permitted under this Agreement as in effect on the Closing Date (or, subject to the requirements set forth in Section 10.01(m), as amended, restated, amended and restated, supplemented or otherwise modified after the Closing Date) or (y) in connection with a "debtor in possession" financing (or any similar financing arrangement in an insolvency proceeding in a non-U.S. jurisdiction) that is consented to by the Required Lenders) (such Indebtedness, "Senior Financing") or (b) (i) issue any Capital Stock, (ii) create, incur, assume or permit or suffer to exist any Lien on or with respect to any property of any kind owned by it, whether now owned or hereafter acquired, or any income or profits therefrom, (iii) make or own any Investment in, or make any Restricted Payment to, any other Person, (iv) enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve themselves (or suffer any liquidation or dissolution), or make any disposition of assets or (v) otherwise engage in any other activity, in each case of this clause (b), that is undertaken with the intent to (A) permit the Incurrence by any Loan Party or by Holdings, the Borrower or any Subsidiary of any Senior Financing or (B) materially and adversely affect the Lenders' Collateral and Guaranties or stripping the Lenders of the covenants set forth herein, in each case of this Section 7.12, unless each materially and adversely affected Lender under the applicable Facility has been (or will be) offered an opportunity to fund or otherwise provide or acquire its pro rata share of such Senior Financing on the same economic terms received by the Lenders (or their Affiliates) providing such Senior Financing; provided that such economic terms shall not include bona fide backstop and similar fees (including fees paid to Lenders as compensation for backstopping debt or equity rights offering) incurred, and the reimbursement of counsel fees and other expenses incurred, in connection with such Senior Financing or the negotiation of the transactions in connection with which the Senior Financing is to be (or was) incurred.

[25] See https://www.sec.gov/Archives/edgar/data/1517228/000119312524280519/d664485dex101.htm.

LMT Transactions Tracker

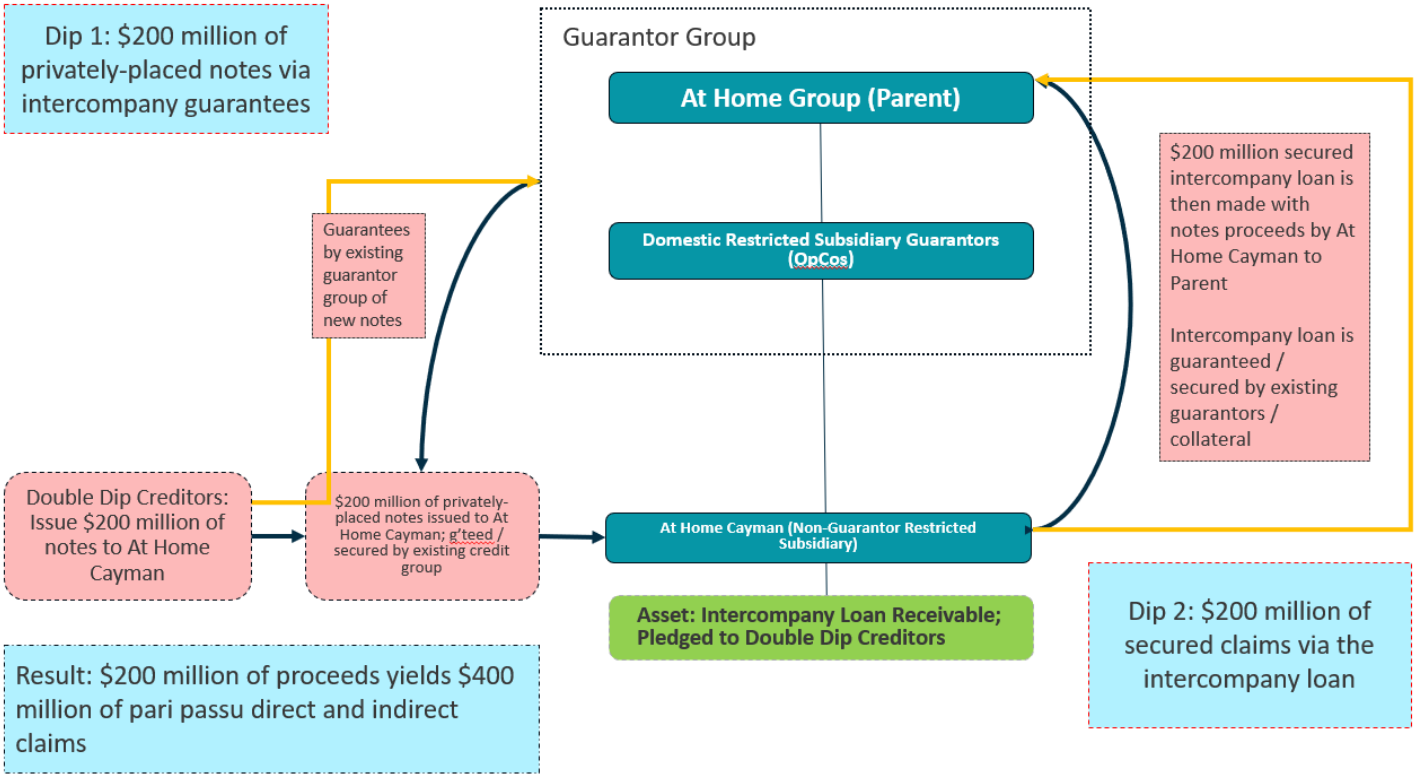
See the associated file (see Figure 4 below) for a description of LMTs dating back to as early as 2013, together with the sponsor (if any) that drove the transaction, a brief description of what happened in the transaction, and the ultimate transaction outcome (if known).

Figure 4

— Covenant Review

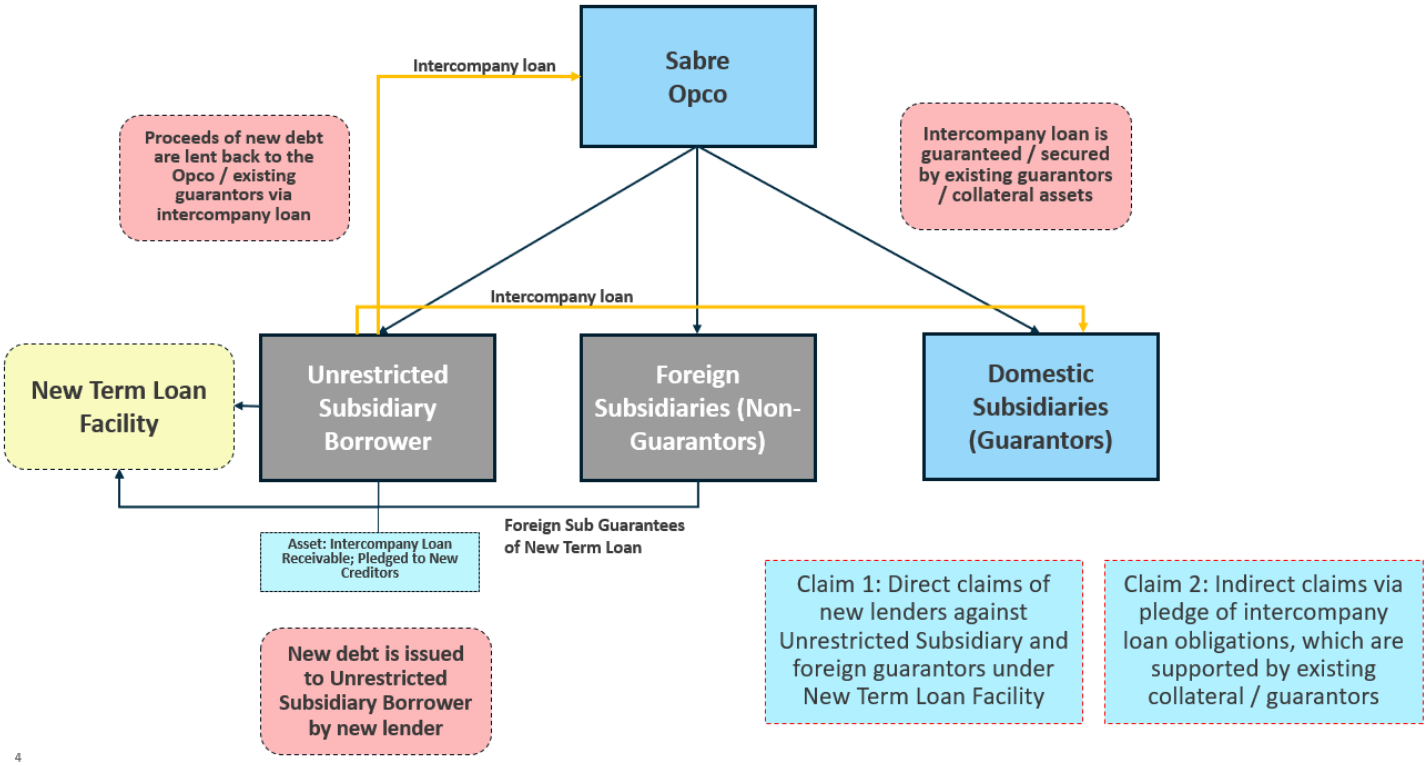
Annex I

Double-Dip LMT Representative Structure (At Home)



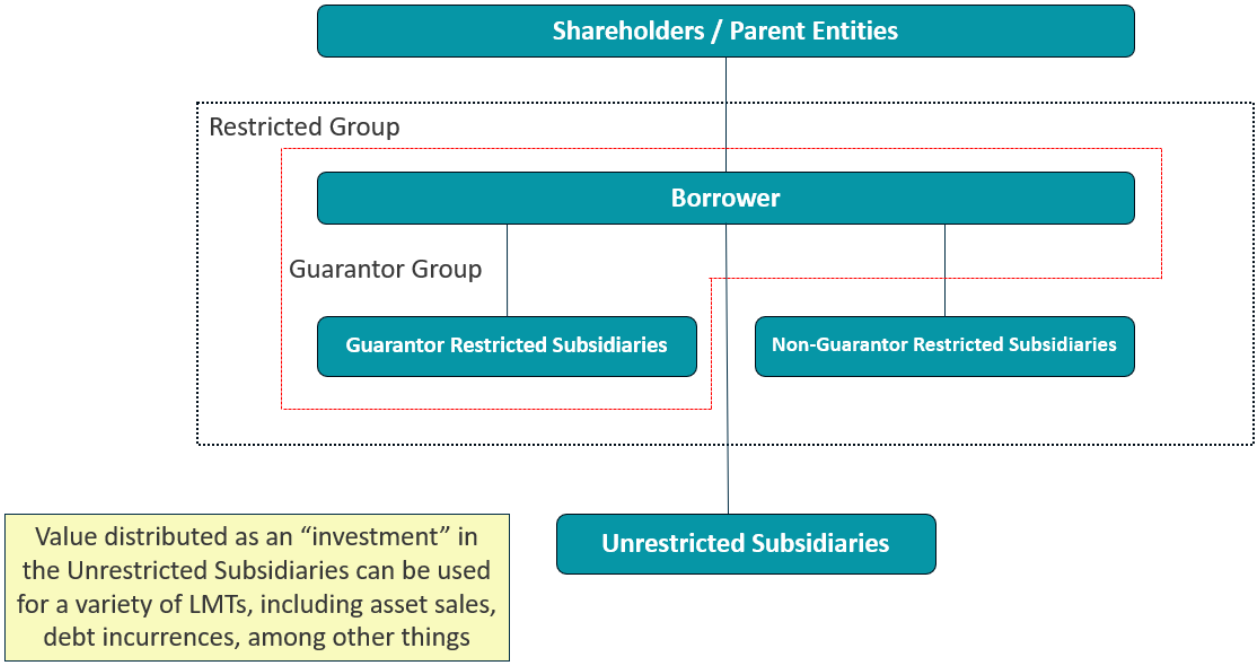
Annex II

Pari-Plus LMT Representative Structure (Sabre)



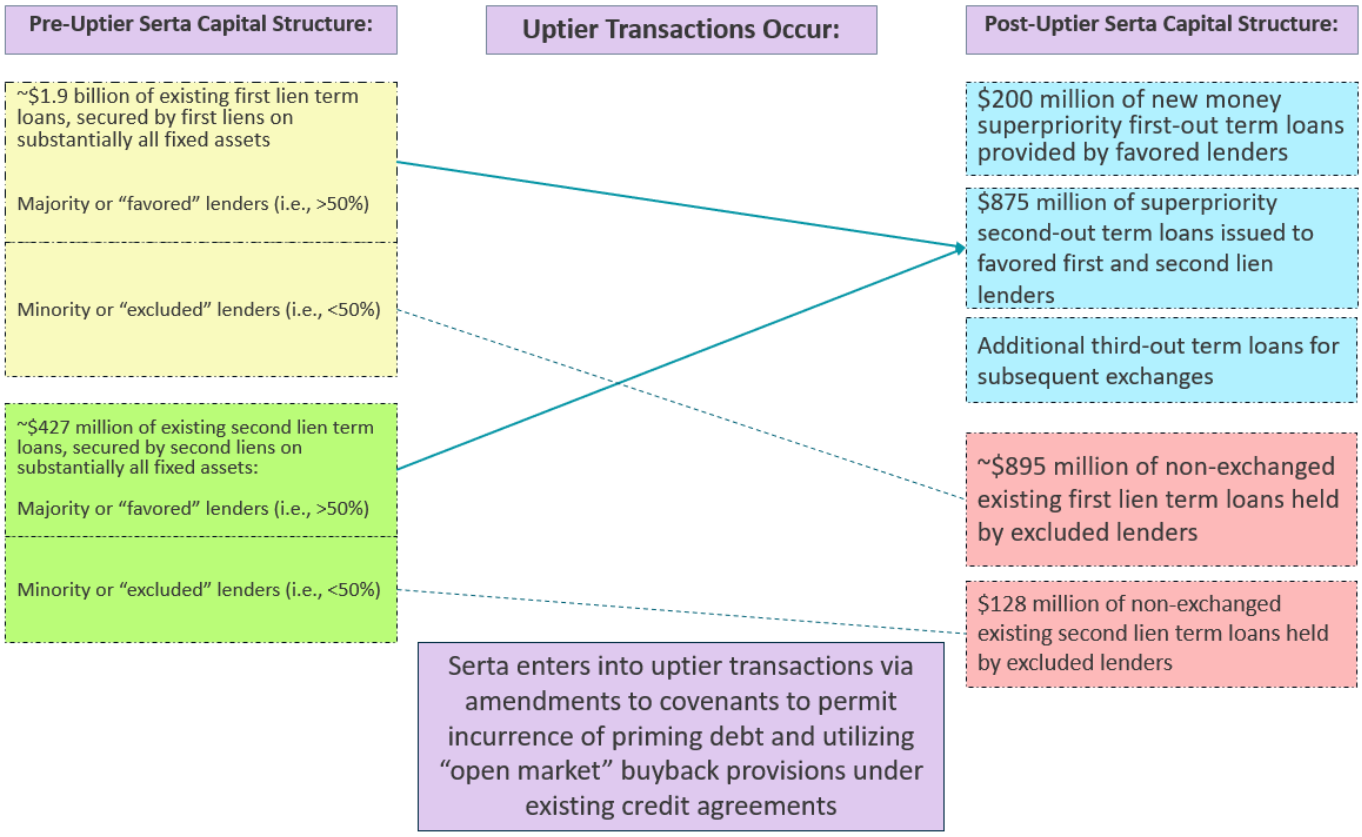
Annex III

Drop-Down LMT Representative Structure



Annex IV

Uptier LMT Representative Structure (Serta)



U.S. Liability Management Transactions: Quarterly Update Through Q3 2025

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