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Liability Management Transactions, Episode 1: Overview and Uptiering

October 22, 2025

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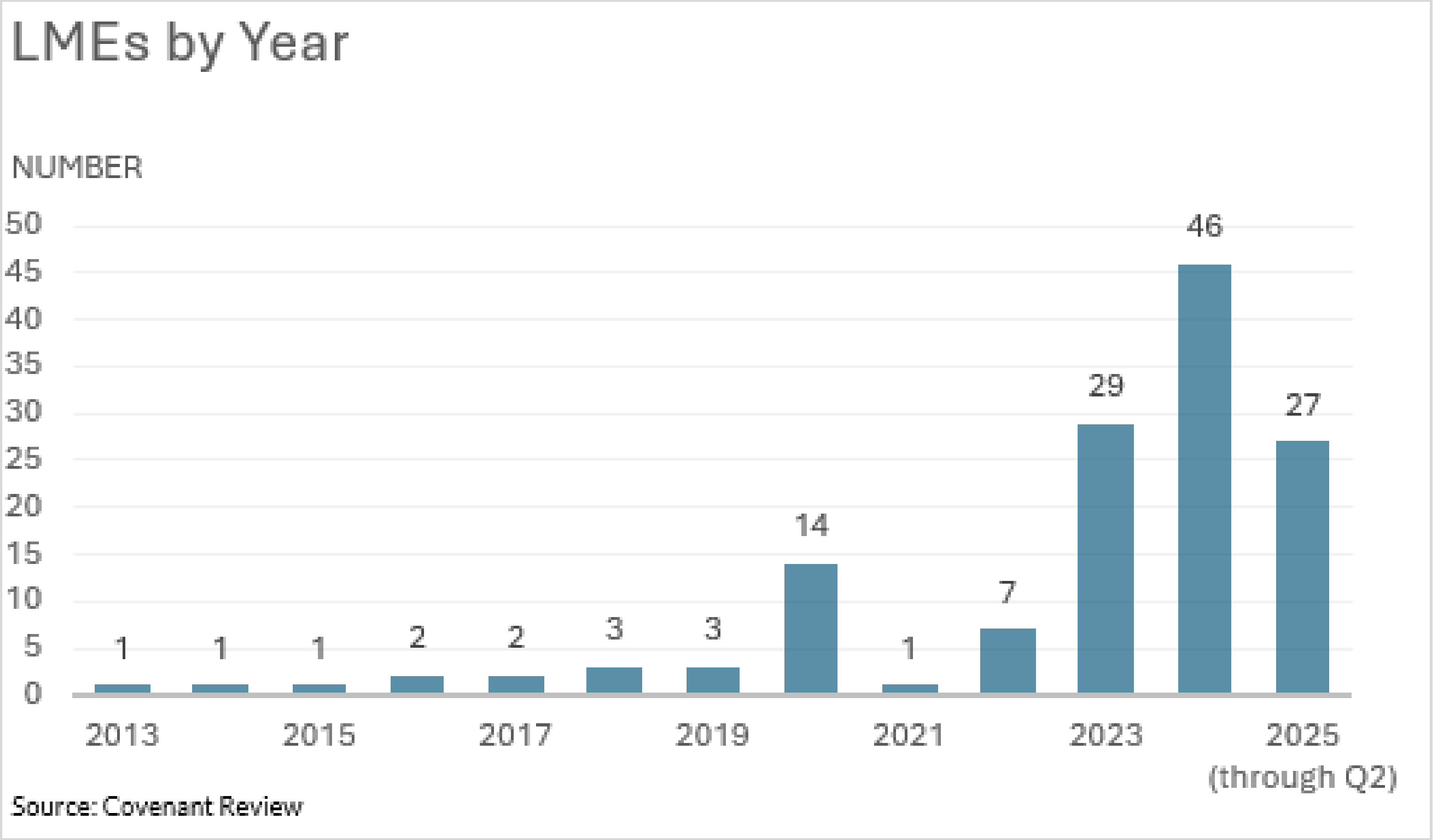
What is a Liability Management Transaction (LMT)?

- A 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.
- Can significantly affect creditor rights, collateral pools, and recovery values.
- No formal definition.



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Common Types of Liability Management Techniques

- Uptier Transactions (“Serta”)
- Drop-down Transactions (“J. Crew”)
- Double-Dip / Pari Plus Transactions (“At Home”)
- Miscellaneous: Combination of the above, as well as other structures

Uptier Transactions - Overview

- Participating lenders typically exchange their old debt or provide new money for a "super-priority" tranche of loans, which sits above the claims of the non-participating lenders.

- Enabling provisions
  - Debt / Liens covenants (unsecured / junior secured debt)
  - Amendment / waiver provisions
  - Non-pro rata buyback flexibility (secured loans)
  - Absence of a Payments for Consent covenant (bonds)
  - Absence of Restricted Payments / Junior Debt Prepayments covenant restrictions on repurchasing senior unsecured debt (junior secured debt)

- Impact on recoveries: Subordinates non-participating creditors to existing or new super-priority tranches. Non-participating lenders no longer have first-priority recourse against existing collateral assets.

- Other consequences for non-participating creditors:
  - Covenant strips
  - Cash to PIK
  - Involuntary waivers

Uptier Transactions - The Serta Paradigm

Pre-Uptier Serta Capital Structure:

~$1.9 billion of existing first lien term loans, secured by first liens on substantially all fixed assets

Majority or "favored" lenders (i.e., >50%)

Minority or "excluded" lenders (i.e., <50%)

~$427 million of existing second lien term loans, secured by second liens on substantially all fixed assets:

Majority or "favored" lenders (i.e., >50%)

Minority or "excluded" lenders (i.e., <50%)

Uptier Transactions Occur:

Serta enters into uptier transactions via amendments to covenants to permit incurrence of priming debt and utilizing "open market" buyback provisions under existing credit agreements

Post-Uptier Serta Capital Structure:

$200 million of new money superpriority first-out term loans provided by favored lenders

$875 million of superpriority second-out term loans issued to favored first and second lien lenders

Additional third-out term loans for subsequent exchanges

~$895 million of non-exchanged existing first lien term loans held by excluded lenders

$128 million of non-exchanged existing second lien term loans held by excluded lenders

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Uptier Transactions - LME 1.0 vs LME 2.0

- "Friendlier" Uptiers with Subsequent Offers to Non-AHG Lenders

- Often the result of weak or poor Serta blocker language

- Litigation waivers and discount capture

- "Consensus at gunpoint"
  - Covenant strips
  - Cash to PIK
  - Deep subordination even with Serta blocker language

RECENT LITIGATION

***Serta*:**

- On December 31, 2024, the Fifth Circuit held that "open market purchase" language *is* ambiguous and found that privately negotiated uptiers do not constitute open market purchases; remanded case to Bankruptcy Court for further consideration of the excluded lenders' breach of contract claims against Serta and prevailing lenders

***Mitel*:**

- Also on December 31, 2024, New York appellate court dismissed claims against Mitel, SearchLight, and defendant lenders
- Credit Agreement provided that the Borrower "may purchase" loans
- **Key distinction from Serta**: The broader buyback provision in Mitel's credit agreements did not use the term "open market purchase"

***Incora*:**

- On January 15, 2025, U.S. Bankruptcy Court for the Southern District of Texas ruled against Incora and Platinum
- Indenture provided that the Issuer may purchase bonds "through open market or privately negotiated transactions with third parties or pursuant to one or more tender or exchange offers or otherwise"
- The court ruled that "privately negotiated transactions with third parties" did not include transactions with the sponsor
- In September 2025, the District Court for the Southern District of Texas indicated in a minute entry that it would vacate important parts of the ruling and the court is now considering what order it will enter to effectuate its ruling.

POST-*SERTA* WORLD – A NEW PARADIGM

1. New issue documents ensure new debt expressly permits non-pro rata buybacks via "privately negotiated transactions" (or does not reference "open market purchases")

2. Extend and Exchanges (*Better Health; Oregon Tool*): AHG extends into separate class prior to uptier (no non-pro rata treatment)

3. Add-on and Exchange (*Confluence*): AHG incurs separate class of debt prior to uptier (no non-pro rata treatment)

4. Bootstrapping: Amend OMP language to include private negotiations at same time as uptier ("pro rata treatment" not a sacred right)

Generally requires weak or no "Serta blocker" provisions to work correctly

Market Responses

Response	Description	Weaknesses
"Serta" blocker	Require supermajority, affected, or unanimous creditor consent to subordinate	Material exceptions (DIPs, ROFRs, ABLs, and others) Lien subordination limited to "all or substantially all" Applies only to payment <u>or</u> lien priority Subordination with majority consent if "otherwise permitted" in credit documents Usually no "effect of" language
Buyback limitations	Explicitly require cash consideration Explicitly prohibit exchanges or privately negotiated transactions Limit buybacks only to "Dutch" auctions	Low uptake in BSL market Usually not relevant in HY market

Uptier Transactions - Additional Examples

Better Health (2025): Better Health structured an uptiering LMT for its leveraged loans using a three-step transaction that was designed to bypass the recent Serta decision with respect to pro rata purchases.

iHeart (2024): iHeart completed a comprehensive uptiering LMT for its leveraged loans and outstanding bonds after floating the idea of doing an alternative drop-down transaction involving Unrestricted Subsidiaries.

Lumen/Level 3 (2024): Lumen/Level 3 completed a refinancing LMT that included certain existing Level 3 unsecured bondholders exchanging their debt for new second lien bonds at Level 3 (which new second lien bonds also receive credit support from Lumen).

Incora (2022): Incora completed a refinancing LMT that included certain existing unsecured bondholders exchanging their debt for new 1.25 lien bonds.

Bausch Health (2022): Bausch Health completed a refinancing LMT involving multiple series of BHC's unsecured bondholders exchanging into a package of first lien BHC bonds and second lien BHC bonds. This LMT contained drop-down elements as well, as it also included debt of an Unrestricted Subsidiary.

Boardriders (2020): Boardriders engaged in a Serta-style set of uptiering transactions, resulting in a group of existing term loan lenders being subordinated to debt under new money and existing term loan debt.

TriMark (2020): TriMark also engaged in a Serta-style set of uptiering transactions, resulting in a group of existing term loan lenders being subordinated to debt under new money and existing term loan debt.

Q&A

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