IN-DEPTH

Restructuring

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Restructuring

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In-Depth: Restructuring (formerly The Restructuring Review) is an insightful guide to help general counsel, government agencies and private practice lawyers understand the prevailing conditions in the global restructuring market. It examines the most significant recent legal and commercial developments and provides an overview of the restructuring and insolvency legal framework in each jurisdiction.

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Summary

Introduction

This chapter provides an overview of restructuring and insolvency law in the United States. The first section provides an analysis of recent restructuring trends and related economic developments. The following section describes the federal statutory regime governing bankruptcy filings in the United States. The following sections include overviews of major recent bankruptcy case law developments, trends in the recognition of foreign restructuring transactions in the United States and a forecast of expected future developments.

Year in review

Economic overview

The US economy entered 2025 with momentum but ended the year in a fragile position. In spite of the resilient headline growth, persistent inflation, cooling labour conditions and tariff-related uncertainty weighed on the market. Real GDP contracted in the first quarter amid a surge of imports ahead of anticipated tariff increases, before rebounding in the second and third quarter.[1] The OECD projected full-year growth of 2% – down from 2.8% in 2024 – characterising conditions as "fairly resilient" with the effective tariff rate on US imports rising from 2.5% to 14% and inflation projected to remain above the Federal Reserve's 2% target through mid-2026.[2]

Interest-rate policy remained central to the 2025 narrative. The Federal Reserve held its benchmark rate through the first half before resuming easing in September and October with two 25-basis-point cuts, bringing the federal funds target to 3.75–4% by year-end. S&P Global Ratings expected additional cuts before year-end and a further 50 basis points of easing in 2026, projecting the 10-year Treasury yield near 4%.[3] Some asset managers estimate that 40% to 50% of tariff-related costs were passed through to consumers, lifting core inflation by 0.4 to 0.5 percentage points and complicating further easing.[4] Despite multiple rate cuts, borrowing costs remained relatively high and were unlikely to materially assist overleveraged borrowers.[5]

US equity markets proved volatile but ultimately resilient. The S&P 500 Index ended at 6,216 for the year, up from 5,428 in 2024 – a 25% year-over-year return. Much of this overperformance was powered by AI-related investment whose wealth effects helped sustain consumer spending even as real household labour income growth fell below 1%.[6] Market leadership was historically narrow as only around 17% of S&P 500 constituents outperformed the index and the average stock experienced a maximum drawdown of 21% during the year.[7]

The labour market settled into a "low-hire, low-fire" mode: payroll growth slowed to 0.2% year over year, and the unemployment rate rose to 4.6% by November – its highest since September 2021.[8] Consumer spending remained resilient overall (up 1.3% year over year) but increasingly bifurcated – higher-income households saw 4% after-tax wage growth and held roughly 87% of directly held equities, while median mortgage payments rose 6% and small-business hiring payments fell more than 4% from 2024.

The Federal Reserve's 2025 Survey of Household Economics and Decision-making found that while 73% of adults reported "doing okay" financially, concerns about "finding or keeping a job" rose to 42% from 37% the prior year, and only about one-quarter rated the national economy as "good" or "excellent" – down 24 percentage points from 2019.-[9] Market observers describe 2025 as exhibiting a "K-shaped" consumer environment in which lower- and middle-income spending grew increasingly strained, continuing to pressure highly leveraged, consumer-facing companies.[10]

M&A activity improved from depressed 2024 levels – deal value rising 15% and volume 7% year over year – but remained around US$3.5 trillion, consistent with the mid-2010s rather than a full rebound. Corporate M&A rose 12% in value while financial investor deal value increased 29% as lower rates revived private equity interest; deals aimed at scaling business operations accounted for the largest share of strategic transactions in nearly a decade. Still, M&A as a percentage of nominal GDP remained near 30-year lows.[11]

Private credit remained both a critical financing source and a potential vulnerability. The Financial Stability Board estimated the market at US$1.5–2 trillion, cautioning that its leverage, borrower credit quality, liquidity mismatches and interconnectedness with banks, insurers and private equity firms have not been tested through a severe downturn.[12-] Market commentary has noted the rising leveraged loan defaults and increasing use of payment-in-kind toggles, with "true" default rates – including selective defaults and liability management exercises – approaching 5%, more than double headline figures.

Heading to 2026, the US economy is projected to grow modestly at 1.7%.[13] Affordability is expected to be a top concern, in addition to uncertainty surrounding the tariffs, AI and geopolitical conflicts in Ukraine and Iran.

Restructuring trends

2025 ranked among the most active years for bankruptcy filings since the Great Recession. Total US filings reached 565,759, an 11% increase from 508,953 in 2024; commercial filings rose 5% to 31,810, commercial Chapter 11 filings rose 1% to 7,940, and subchapter V elections rose 11% to 2,446.[14]

Larger corporate cases also reached decade-high levels: S&P Global Market Intelligence recorded 371 corporate bankruptcy filings in the first half of 2025, the highest first-half total since 2010, and Chapter 11 filings with liabilities of at least US$10 million rose to 552 for the full year, a 10-year high.[15] Filings by companies with assets or liabilities exceeding US$1 billion fell to 32 in 2025 from 42 in 2024, yet overall Chapter 11 filings of 8,952 remained 38.5% above the 2018–2019 pre-pandemic average of 6,465 – suggesting the activity is likely structural rather than cyclical.[16] Approximately 61.2% of first-half filings sought to restructure rather than liquidate, extending a trend of reorganisation dominance since mid-2024.[17] Repeat, or "Chapter 22", filings – including Spirit Airlines, Forever 21 and Claire's – illustrated the limits of prior restructurings that did not resolve underlying operational or financial problems.[18]

According to PwC, filings increased for a fourth consecutive year, with activity primed to continue into 2026.[19] The domestic increase mirrored a global pattern: Allianz Research's

Global Insolvency Index rose 10% in 2024 and was projected to rise 6% in 2025 and 3% in 2026, with US business insolvencies projected to rise 11% in 2025 to 25,580 cases; a full-fledged trade war was projected to push global insolvencies up by approximately 7.8% in 2025.[20]

Sector-specific distress remained pronounced. Real estate, consumer goods and energy/industrial companies accounted for approximately 80% of Chapter 11 filings with liabilities of at least US$10 million, while industrial and consumer discretionary companies accounted for 107 of the 371 first-half filings – nearly as many as all other sectors combined.[21] Healthcare distress remained acute, reflecting labour-cost, reimbursement and government-funding pressures expected to persist into 2026, particularly for rural hospitals and senior-living facilities amid Medicaid uncertainty.[22]

Venue trends stayed broadly consistent with prior years, though 2025 saw meaningful movement among large cases. Delaware and the Southern District of Texas remained the busiest venues for large business bankruptcies, accounting for 40% and 24%, respectively, of cases over US$100 million in assets from July 2024 through June 2025.[23] The Northern District of Texas became the third-most active court over the same period – its first top-three ranking since 2012 – accounting for 7% of such cases and surpassing the Southern District of New York and the District of New Jersey (4% each).[24]

The restructuring market also continues to be more international. In 2025, 183 Chapter 15 petitions were filed for foreign debtors.[25]

Legal framework

Statutory overview

Title 11 of the United States Code (ie, the Bankruptcy Code) governs bankruptcy cases filed in the United States.[26] The Bankruptcy Code is premised on the principle that an honest debtor deserves a fresh financial start and thus relief from its unsecured debts. The Bankruptcy Code endeavors to allow for this fresh start while at the same time balancing the rights of the debtor's various constituents as fairly and equitably as possible.

The filing of a petition by a debtor (for business entities, this is usually a petition for relief under either Chapter 7 or Chapter 11 of the Bankruptcy Code) commences a bankruptcy case. There is no requirement that a debtor be insolvent to commence a voluntary bankruptcy case. Rather, case law requires only that a petition be filed in good faith (though a showing of financial distress may be required to satisfy this good faith filing requirement).[27] Immediately on filing a petition, a debtor obtains the benefit of an automatic stay. The stay prohibits most creditors from taking actions against the debtor and its property on account of pre-petition liabilities or agreements without express authorisation from the bankruptcy court.[28] Thus, the stay gives the debtor the necessary breathing space to complete its reorganisation or orderly liquidation consistent with the terms of the Bankruptcy Code.

A company hoping to reorganise or liquidate with its management in place will file a petition under Chapter 11; a company with no option but to liquidate will commence a

Chapter 7 case. Unlike many insolvency regimes in other countries, in a Chapter 11 case, the debtor's management and directors generally remain in place and continue to manage the business and guide the restructuring (the filing entity is referred to as a DIP).[29] A trustee is rarely appointed to oversee a Chapter 11 debtor's operations except in extreme circumstances such as fraud or mismanagement.[30] By contrast, in a Chapter 7 case, a trustee is appointed to manage the liquidation.

The bankruptcy judge is typically heavily involved in the bankruptcy case. Indeed, many of the debtor's activities (eg, financing, major asset sales and plan of reorganisation) must be brought to the bankruptcy court judge for approval. In a Chapter 11 case, the DIP's actions will often be subject to scrutiny by one or more official committees appointed by the Office of the United States Trustee (the US Trustee), a governmental bankruptcy watchdog.[31] The US Trustee handles the appointment of official committees to represent the interests of similarly situated stakeholders in the case. The most common official committee is one composed of unsecured creditors. The committee typically retains its own professionals (including counsel) to represent the unsecured creditors' interests, and the debtor's estate pays for the cost of these professionals.

The goal of a debtor in commencing a Chapter 11 case is to confirm and consummate a Chapter 11 reorganisation plan. Before a debtor can solicit votes on its reorganisation plan, it must provide creditors with a disclosure statement (generally, one that has been approved, which may be on a conditional basis, by the bankruptcy court). Following approval of the adequacy of the disclosure statement, the debtor may solicit votes from creditors and equity holders entitled to vote on the plan.[32] If the requisite votes are received, the debtor will seek confirmation or approval, of the plan by the bankruptcy court.

Aside from the required votes, the most critical requirement of the Bankruptcy Code for the plan is the "best interests of creditors test". This test requires that each impaired (ie, affected) creditor and equity holder either accept the plan or receive under the plan a distribution at least as much as it would receive if the debtor were to liquidate rather than reorganise.[33]

Another critical requirement is that at least one class of claims votes for a plan if there is a class of impaired – or affected – claims. A class will be deemed to accept the plan if two-thirds in amount and more than 50% in number of voting creditor class members vote in favor of it. In the event that equity security holders are proposed to receive a distribution, classes of equity security holders must vote for the plan by at least two-thirds in amount.-[34]

Usually, at least one class will either affirmatively reject or be deemed to have rejected the plan because that class is not slated to receive a distribution under the plan. In those cases, the debtor can confirm its plan by cramming down these creditors or equity security holders. Cramdown generally requires the debtor to prove that the plan follows the absolute priority rule, as outlined below, and that it does not unfairly discriminate against creditors of equal priority (ie, provide materially different treatment under a proposed plan without adequate justification for doing so).

Confirmation of a reorganisation plan provides a reorganising Chapter 11 debtor with a discharge enjoining creditors and equity security holders from looking to the debtor for satisfaction of claims owed to them prior to the commencement of the Chapter 11 case. Their sole source of recovery is the distribution proposed to be made to them under the plan.

Absolute priority rule

A basic premise under the Bankruptcy Code is that, in the absence of consent (obtained through the votes of classes of claims and interests), distributions to creditors must follow the absolute priority rule.[35] In applying this rule, lower-priority creditors may not receive a distribution unless the Chapter 11 plan provides that each holder of a claim in a dissenting senior class is paid in full. Secured creditors are first in the priority scheme. Secured claims typically include pre-petition collateralised loans. Administrative expense claims are second in priority. Included in this bucket are claims relating to the post-petition operations of the debtor. Next in order of priority come priority claims, which include certain pre-petition wages, commissions and taxes.

General unsecured claims, in terms of priority, come after secured claims, administrative expense claims and priority claims, but before subordinated debt claims.[36] Equity interests (including equity-related damage claims that are treated as equity) are lowest on the distribution waterfall and, as a result, equity holders rarely receive a bankruptcy distribution. As mentioned above, if a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan must accept the plan for it to be confirmed by the bankruptcy court (determined without including any acceptance of the plan by any insider).[37]

Cramdown

As discussed above, the Bankruptcy Code provides for a mechanism to cram down a plan of reorganisation over non-consenting creditors, including both secured and unsecured creditors, or interest holders if certain criteria are met. Specifically, if any impaired class of creditors or interest holders rejects the plan, it may still be confirmed over the objection of such a class if the debtor can show that the plan does not discriminate unfairly against any impaired, non-consenting class and the plan is fair and equitable. In respect of impaired, non-consenting secured creditors, a plan is fair and equitable if each secured creditor either: (1) retains the lien securing its claim and receives deferred cash payments totaling at least the allowed amount of its secured claim (eg, in effect, “take-back paper” – a new secured note in a principal amount equal to the total value of its claim, secured by the same collateral package as the original debt); (2) receives the ‘indubitable equivalent’ of the value of its claim; or (3) receives a lien on the proceeds of a sale of its collateral (free and clear of its lien) subject to its right to purchase the property by credit bidding its secured claim against the purchase price under section 363(k) of the Bankruptcy Code.

Satisfying the fair and equitable test under the first option, whereby the creditor receives deferred cash payments, requires valuation of the creditor’s interest in the collateral[38] and a determination of the proper interest or discount rate to be applied.[39] These issues have been addressed extensively in case law and there remain splits among the circuit courts as to the proper methodology in respect of each. Under the indubitable equivalence option, courts have generally interpreted ‘indubitable equivalence’ to mean a substitute benefit that is equal in value to the original collateral, which can be satisfied by, among other things: (1) the debtor returning all of the collateral to the secured creditor;[40] (2) third-party equity securities with stable value and a sufficient margin between the securities’ value and the amount of the creditor's claim;[41] (3) a lien on substitute collateral;[42] or (4) a negative amortisation plan.[43]

In respect of unsecured creditors and equity interest holders, a plan is fair and equitable if the plan provides that either: (1) for unsecured creditors, deferred cash payments are to be made, or, for interest holders, each holder generally receives or retains property having a present value equal to the greatest of the allowed dollar amount of the value of the equity interest; or (2) it follows the absolute priority rule (ie, senior classes are paid in full before any distributions are made to junior classes). To determine whether deferred cash payments to unsecured creditors satisfy the first option, the same type of present value analysis applicable to secured creditors receiving deferred cash payments under a cramdown is required. Regarding the second option requiring satisfaction of the absolute priority rule, certain courts have noted a 'gifting' exception, whereby senior creditors may "gift" a portion of their recovery to junior creditors, as long as such a gift does not constitute estate property.[44]

Regarding cramdown of equity interest holders, if the debtor is insolvent, cramdown is permitted without paying anything to the equity interest holder, as the equity interest would have no value. Regarding the second prong and satisfaction of the absolute priority rule, certain courts have found that there is a "new value" exception to the absolute priority rule for interest holders to retain some or all of their interests in exchange for making a substantial new capital contribution to the reorganised debtor.[45]

Duties of directors

In the United States, the duties of directors are defined by state law. In particular, Delaware is the most common state of organisation. Businesses can take a number of forms, including a corporation (which is under the control of a board of directors), a partnership or a limited liability company (which shares the characteristics of both a corporation and a partnership and can be managed either by the owner – member managed – or by a manager or board of managers – manager managed).

The seminal ruling in *North American Catholic Educational Programming Foundation, Inc v Gheewalla*, issued by the Supreme Court of Delaware in 2007,[46] explained that, for Delaware corporations, "[i]t is well established that the directors owe their fiduciary obligations to the corporation and its shareholders". Shareholders rely on directors acting as fiduciaries, whereas creditors are protected by legal mechanisms including contract law (and the terms of their contracts), security interests, clawback actions and bankruptcy law. For a solvent corporation, the focus of directors is to "discharge their fiduciary duties to the corporation and its shareholders by exercising their business judgment in the best interests of the corporation for the benefit of its shareholder owners".[47]

In accordance with *Gheewalla*, the fiduciary duties of the directors to the corporation do not change because of the corporation's insolvency. However, the creditors "take the place of the shareholders as the residual beneficiaries of any increase in value".[48] Therefore, creditors become able to sue the directors "derivatively" (ie, on behalf of the corporation) – but not "directly" (on their own behalf) – for alleged breaches of fiduciary duties.

The goal of the fiduciary is to maximise long-term corporate value, rather than, for example, balancing that interest with the interests of employees or other constituents, or furthering social or environmental considerations.[49]

Treatment of contracts in bankruptcy

A debtor generally has the power to determine those executory contracts and unexpired leases by which it will continue to be bound following its reorganisation. If the debtor chooses to assume (or keep) a contract, it will be bound under all the terms of the agreement. Alternatively, if the debtor no longer seeks to be bound by the agreement, it will reject it. On rejection of a contract, the debtor is no longer required to perform and the contract is deemed breached as of the date the bankruptcy commenced. Damages resulting from such a breach are referred to as rejection damages and are generally given low status in the sequence of priority of payments (ie, prepetition general unsecured claims). Under certain circumstances, a debtor may be able to assign its interest in a contract or lease to a third party.[50] In the event that a debtor does not assume an agreement, the default option under the Bankruptcy Code is rejection.[51]

Security interests

In the United States, article 9 of the Uniform Commercial Code (UCC), as adopted by each of the 50 states, generally applies to any security interest created by contract in personal property and fixtures to secure payment or other performance of an obligation.[52] There are three components to the creation and enforcement of a security interest under article 9: attachment, perfection and priority. Under article 9, a security interest attaches to collateral at the moment when the security interest becomes enforceable against the debtor. Perfection is the process by which a secured party gives public notice of its security interest in collateral. State law, generally uniform throughout the United States, will dictate the method for perfecting a consensual security interest.

In many cases, two or more creditors might have security interests in the same collateral. In such cases, article 9 provides general rules as to the ranking of security interests (ie, which security interest takes priority over the others). As a general rule, an earlier-secured party will prevail over later-secured creditors.

Article 9 has a critical interplay with the Bankruptcy Code. On the bankruptcy filing, the debtor steps into the role of a hypothetical lien creditor.[53] This means, in general, that it may void any unperfected security interest.

Clawback actions

The Bankruptcy Code gives a debtor certain avoidance powers to recover property transferred by the debtor to third parties before the petition date. Generally, these avoidance actions fall into two categories: transfers having the effect of preferring one creditor over others, or transfers made for the purpose of hindering, delaying or defrauding creditors from collecting on their claims.

The most common voidable transfer is referred to as a preference. Preferences are those payments that a debtor makes to a pre-petition creditor on the eve of the bankruptcy filing-[54] that allow such a creditor to receive more on account of its claim than it would have received had it received its distribution in a hypothetical liquidation of the debtor. The amount that the creditor received in connection with the transfer will be voidable, subject to certain defenses, such as receipt of the transfer in the ordinary course of business.

Fraudulent transfers also may be recovered if made (1) with the actual intent to hinder, delay or defraud creditors (known as actual fraud or intentional fraud), or (2) for inadequate consideration when the debtor (transferor) was insolvent, undercapitalised or unable to pay its debts as they became due (known as constructive fraud). Appropriate capitalisation is key to the "Texas two-step" mechanism, which is discussed in further detail below.

Significant transactions, key developments and most active industries

Recent legal developments

The past year produced significant developments in three areas restructuring practitioners have been focusing on: third-party releases after the Supreme Court's decision in *Harrington v Purdue Pharma*;[55] continued "lender-on-lender" warfare over liability management exercises (LMEs); and the emergence of antitrust theories challenging creditor cooperation agreements. Meanwhile, Chapter 15 remains a powerful, though increasingly scrutinised, tool for importing foreign restructuring relief into the United States.

Third-party releases after Purdue Pharma

The Supreme Court's 2024 decision in *Harrington v Purdue Pharma* barred non-consensual releases of non-debtor claims in Chapter 11 plans absent full payment of affected claims. This left unresolved how much process is required for a release to be treated as consensual.[56] In December 2025, Judge Denise Cotes of the U.S. District Court for the Southern District of New York struck an "opt-out" release provision from the confirmed Chapter 11 plan of Brazilian airline *Gol Linhas*, holding that "consent cannot be implied from silence" under either federal or New York law – the first district court decision since *Purdue* to invalidate an opt-out mechanism.[57] At the time of this writing, the debtors have appealed the district court's ruling to the U.S. Court of Appeals for the Second District.

Seventeen days after Judge Cotes' decision, another Southern District of New York bankruptcy judge reached the opposite conclusion, confirming a narrower opt-out release for Brazilian carrier *Azul* that excluded a low-value "convenience" claims class, leaving practitioners with a live split over the process required to bind silent creditors.[58] The Fifth Circuit added a further constraint in *Highland Capital*, holding that exculpation and "gatekeeping" provisions in a Chapter 11 plan cannot be used to shield non-debtors who are not otherwise entitled to a release, even though such provisions are not identical to plan releases.[59]

As discussed in a later section, the *Purdue* decision, the perceived efficiency of foreign proceedings and the availability of favorable relief in foreign jurisdictions, among other things, have accelerated interest in the "international two-step", under which a foreign proceeding delivers relief unavailable in Chapter 11 and Chapter 15 recognition enforces it domestically in the United States.[60] Delaware and New York bankruptcy courts enforced non-consensual releases granted in foreign proceedings in *Crédito Real* and *Odebrecht*, and in *Mega NewCo*, a newly formed English subsidiary of a Mexican company used an English scheme of arrangement to bind holdout noteholders and secure releases for its parent, which the court enforced after finding no evidence that creditor expectations had been thwarted.[61] *Fossil Group's* 2025 restructuring – which re-papered notes under English law to access a UK scheme and secure third-party releases – confirmed that even US-listed issuers are willing to pursue the strategy.[62]

In the *NFE Global Holdings Limited* Chapter 15, Chief Judge Martin Glenn of the US Bankruptcy Court for the Southern District of New York recognised restructuring plans under Part 26A of the UK Companies Act 2006 releasing non-debtor guarantors of US$5.7 billion in debt and exculpating various parties, acknowledging that English restructuring plans and schemes of arrangement "often include releases of non-debtor affiliate guarantees of the original debt, as well as broad exculpation protection for the parties involved in the restructuring proceedings".[63] A common thread to US courts' willingness to recognise foreign proceedings under Chapter 15 is the fundamental fairness of foreign process to ensure that creditor expectations have not been thwarted and are "sufficiently protected".[64] US courts will continue to apply "cautionary principles" in analysing recognition requests as foreign proceedings continue to evolve.

Notable liability management exercises

Serta

On 31 December 2024, the Fifth Circuit reversed the bankruptcy court's approval of *Serta's* June 2020 uptier transaction.[65] In that transaction, a majority of *Serta's* first- and second-lien lenders provided US$200 million of new superpriority financing and exchanged US$1.2 billion of existing loans for approximately US$875 million of second-out superpriority debt, relying on the 2016 credit agreement's exception permitting non-pro rata "open market purchases".[66] The Fifth Circuit held that an "open market purchase" must occur on the market relevant to the product being purchased – there, the secondary market for syndicated loans – so that *Serta's* privately negotiated exchange did not qualify, reasoning that a contrary reading would render the agreement's separate Dutch-auction exception superfluous and rejecting *Serta's* course-of-performance and industry-usage arguments.[67]

The New York Appellate Division reached the opposite result the same day in the *Mitel* case, upholding a similar uptier because *Mitel's* credit agreement permitted the borrower to "purchase by way of assignment" at any time without an "open market" qualifier, underscoring that outcomes in this space continue to turn on precise contractual language rather than a uniform rule.[68]

Serta also had substantial implications for confirmed Chapter 11 plans. The Fifth Circuit excised the plan's indemnity for participating lenders, holding that section 502(e)(1)(B)'s disallowance of contingent reimbursement claims could not be revived through a plan settlement under section 1123(b)(3)(A) and that, independent of that defect, the indemnity violated section 1123(a)(4)'s equal-treatment requirement because its value varied sharply depending on whether a class member had participated in the uptier.[69] In a notable aside, the court called the equitable mootness doctrine a "judicial anomaly" to be wielded "with a scalpel rather than an axe", declining to shield the indemnity from review merely because the plan had been substantially consummated – reasoning later invoked by the *ConvergeOne* court to permit surgical post-confirmation relief without unwinding a plan.[70]

On remand, the excluded lenders' breach-of-contract counterclaims proceeded to a bankruptcy trial that began in March 2026, with excluded lenders seeking approximately US$400 million in damages.[71]

On 7 July 2026, Judge Christopher Lopez of the U.S. Bankruptcy Court for the Southern District of Texas entered judgment for the remaining excluded lenders. The court held that the participating lenders breached their credit documents by receiving "payment" on their first-lien debt without purchasing participations in the excluded lenders' loans as required.-[72] Judge Lopez ruled that the transaction violated the pro rata sharing requirements because the participating lenders recovered a greater proportion of their loans while the excluded lenders received nothing.[73] Since the open-market-purchase exception did not apply, no unanimous consent existed to alter these sacred rights.[74] The court further held that the excluded lenders are entitled to damages for this breach, imposing several liability on each remaining defendant.[75]

ConvergeOne

On 25 September 2025, the US District Court for the Southern District of Texas reversed key aspects of the bankruptcy court's confirmation order for *ConvergeOne's* prepackaged plan, holding that exclusive backstop and equity subscription rights granted to a subset of first-lien creditors violated section 1123(a)(4).[76] Under the plan, majority first-lien lenders holding approximately 81% of first-lien claims received take-back debt and the exclusive right to purchase discounted equity through a US$245 million rights offering, plus additional equity as a backstop commitment fee, together yielding recoveries approximately 30% higher than those available to minority lenders holding roughly US$164 million in claims who were excluded from the negotiations.[77]

Drawing on *Serta*'s admonition to look "below the surface" of formal plan symmetry and on the Supreme Court's *LaSalle* decision, the district court held that an exclusive, value-bearing opportunity tied to claim ownership must either be offered to all similarly situated class members or validated through a genuine market test, and found neither condition satisfied because the backstop cohort was selected in a closed prepetition process and the minority lenders' post-filing alternative proposals came only after "the train had already left the station".[78]

The court distinguished *Peabody Energy*, where all class members could qualify for a similar private placement by furnishing equivalent consideration, and left the contours of an adequate "market test" deliberately open.[79] By contrast, *ConvergeOne* involved a prepackaged plan for which such market test was not performed. *ConvergeOne* is likely to affect the structuring of backstopped rights offerings, prepackaged plans and restructuring support agreements. Market participants may respond with classwide participation rights, subscription vehicles, more robust market testing and clearer process records to withstand challenge. Expect non-participating lenders to cite the *ConvergeOne* decision in the DIP context when minority lenders are not allowed to participate in the same benefits as participating lenders (eg, backstop fees). Further appellate guidance may clarify how far *Serta's* equal-treatment analysis extends to backstop commitments and new-money economics outside the plan confirmation context.

Wesco

Wesco, also known as *Incora* following Platinum Equity's 2020 combination of Wesco Aircraft Holdings and Pattonair into a single aerospace supply-chain platform, illustrates the continued importance of transaction-specific drafting and sequencing in uptier litigation.[80] Facing pandemic-era supply-chain disruption and a capital structure it could not service, Wesco and a majority noteholder group provided US$250 million in new money and exchanged its existing 2024 and 2026 notes for new super-senior notes, while amendments stripped the liens and covenants supporting the notes held by an excluded minority group.[81] To clear the two-thirds voting threshold needed to release those liens, *Wesco* first issued the majority group US$250 million of additional 2026 notes under an amendment requiring only majority consent, then used the resulting supermajority position to approve the lien and covenant strip.[82]

After minority noteholders sued in New York state court, *Wesco* commenced Chapter 11 proceedings in the Southern District of Texas in June 2023 carrying approximately US$3.16 billion in funded debt, and that litigation was stayed and continued instead as an adversary proceeding before the bankruptcy court.[83] Following the trial, Judge Isgur's analysis centered on a "falling dominoes" theory of integration.[84] Because the issuance of the additional 2026 notes served only as the necessary predicate for the subsequent lien release, Judge Isgur found the two steps constituted a single integrated transaction with the effect of releasing the collateral.[85] Accordingly, the sequenced amendments triggered the two-thirds consent requirements that the majority group had not satisfied at the outset, and the majority group was not authorised to release the collateral.[86]

However, on 8 December 2025, Chief District Judge Randy Crane of the US District Court for the Southern District of Texas reversed, holding that the transaction was "proper, appropriate, lawful, and consistent" with the indentures because each amendment complied with its own express voting threshold when executed, and rejecting the view that the initial note issuance was inevitably bound up with the later lien release.[87]

The district court declined to read an implied "sacred right" into the indentures – reasoning that sophisticated noteholders who wanted greater protection against dilution of their voting power could have bargained for it but did not – and held that, even assuming a breach, the minority group's remedy would be limited to money damages rather than reinstatement of the stripped liens.[88] Commentators have cautioned that the decision, read broadly, could invite majority groups to manufacture voting thresholds through sequential amendments and embolden vote-rigging in future multi-step transactions.[89]

Read together, *Serta*, *ConvergeOne* and *Wesco* confirm that liability management litigation is moving along two related but distinct tracks. Where the dispute is governed by contract, courts continue to focus closely on the exact language of loan agreements and indentures, including whether "open market purchase", "purchase by assignment" or "effect of" formulations clearly authorise the challenged transaction – a divide that has already prompted drafting suggestions such as broader "Serta protection", priming-debt restrictions and tighter buy-back mechanics in new credit documents.[90] Where the transaction is implemented or protected through Chapter 11, courts are testing whether plan economics provide equality of opportunity and equality of treatment among creditors within the same class, and the now decided *Serta* and *ConvergeOne* likely to further define the remedies available when they do not.[91] As litigation over LMEs has shown with these decisions, the premium on careful drafting, transparent process, market checks and broader participation mechanics will become even more significant focal points.-[92] Settlements among several *Serta* participating lenders, together with debtors' and creditors' continued forum-related maneuvering, suggest that even where courts find an LME unlawful, sophisticated parties increasingly prefer negotiated resolutions and favorable venues to protracted, uncertain litigation.[93] Practitioners will be on the lookout for further appeals.

Good forum shopping

Beyond the discussion above, 2025 also crystallised a broader concept that primarily English courts and some commentators have termed "good forum shopping": the deliberate selection of a restructuring regime suited to a company's capital structure, even if doing so requires creating a jurisdictional connection that would not otherwise exist. This is the opposite of the traditional fact pattern where foreign companies file in the US to, among other things, seek the relief of the automatic stay and the reliability of the US bankruptcy courts. In terms of "good forum shopping", *Mega NewCo* remains the leading illustration of the concept.[94] The US Bankruptcy Court for the Southern District of New York recognised the English scheme even though the Mexican parent's subsidiary had been formed for the sole purpose of accessing the English scheme of arrangement process, relying heavily on the fact that more than 75% of the noteholders who voted approved the scheme and that no party appeared to contest either the English proceeding or the ensuing Chapter 15 recognition.[95] Commentary on the decision has suggested that such center-of-main-interests (COMI) engineering is not per se improper, and may even be viewed as a "laudable" objective, so long as creditors' rights and legitimate expectations are not thwarted.

In November 2025, the US Bankruptcy Court for the Southern District of Texas recognised an English Part 26A restructuring plan for Fossil Group, a Texas-based public company that amended the governing law of its notes to English law and incorporated a UK subsidiary to access the English court's flexibility.[96] *Fossil's* own expert, a retired US bankruptcy judge, expressly invoked *Mega NewCo* and characterised the transaction as a further example of "good forum shopping", underscoring that the concept first tested in the *Mega NewCo* case is now being extended even to debt issued by public US companies.[97]

In June 2026, Chief Judge Glenn of the US Bankruptcy Court for the Southern District of New York similarly recognised English Part 26A restructuring plans for two affiliates of *New Fortress Energy*.[98] The court articulated the framework courts should apply when evaluating COMI for a subsidiary of a US parent company – emphasising that "the interests of creditors and other interested entities, including the debtor, [should be] sufficiently protected".[99]

Taken together, these decisions suggest that forum selection will remain a central strategic tool in 2026, one that continues to depend heavily on creditor support, transparency and the availability of sufficient protections afforded to creditors and interested parties.[100]

Creditor cooperation agreements and the emergence of antitrust challenges

A third major development has been the emergence of antitrust litigation challenging creditor cooperation agreements. *Selecta* presented one of the first prominent tests of these agreements in the LME context. In October 2025, minority creditors sued *Selecta*, its affiliates and certain majority creditor-group members in the Southern District of New York, alleging that a cooperation agreement and related restructuring steps violated section 1 of the Sherman Act and New York's Donnelly Act, along with related state and federal antitrust law.[101] The plaintiffs alleged that favored noteholders used the cooperation agreement to vote as a bloc, exclude minority first-lien noteholders, subordinate the minority's debt, strip protections under the governing indenture and consolidate control over *Selecta* and its assets.[102] *Selecta's* restructuring reduced debt by approximately €1.1 billion, provided approximately €330 million of new money and transferred ownership from KKR to a creditor-controlled structure implemented through Dutch share pledge enforcement.[103]

The *Selecta* transaction also demonstrates how European restructuring tools and US-law debt instruments can produce litigation in US courts. The restructuring was implemented through enforcement of a Dutch-law share pledge, with a private sale approved by the Netherlands Commercial Court, while the plaintiffs invoked New York forum-selection and governing-law provisions in the first-lien indenture to support jurisdiction in the Southern District of New York.[104] The plaintiffs alleged that first-lien creditors initially received third-out notes worth 85% of face value and equity, but could later swap into first-out notes at par only by giving up claims and protections.[105] Several minority creditors have separately appealed the Netherlands Commercial Court's approval of the share-pledge enforcement to the Netherlands Commercial Court of Appeal, contending that the foreclosure was part of a heavily engineered cross-border restructuring designed to benefit the ad hoc group. Both the appeal and the New York antitrust claims remain pending as of mid-2026.

Optimum has raised a related but broader set of antitrust issues. In November 2025, Optimum Communications, formerly Altice USA, sued major creditor institutions, alleging that their cooperation agreement unlawfully restrained *Optimum's* ability to refinance or restructure its approximately US$26 billion debt load. *Optimum* alleged that the creditor cooperative barred individual creditors from dealing with or even negotiating with *Optimum* unless a supermajority of competing creditors approved, thereby functioning as a per se illegal group boycott and price-fixing arrangement under Section 1 of the Sherman Act and analogous New York law.[106] The complaint asserted that the cooperative controlled nearly all of *Optimum's* outstanding loans and bonds and a substantial share of the relevant leveraged-finance market, while the defendants argued that creditor cooperation is a permissible response to borrower-side liability management tactics.[107] *Optimum* later amended its complaint to allege that certain creditors pressured *Optimum's* transaction counsel to withdraw, an allegation the creditors denied.[108] In April 2026, *Optimum* opposed the defendants' motion to dismiss, arguing that the cooperation agreement had inflicted significant anticompetitive harm by cutting off its access to the credit markets and the court has allowed discovery to proceed while that motion remains pending.
Optimum

differs from
Selecta

in both scope and theory.
Selecta's

antitrust allegations focus on the market for *Selecta's* first-lien debt and on minority-creditor exclusion from a particular restructuring, while *Optimum* asserts broader harm to the leveraged-finance market and to the market for *Optimum's* outstanding debt. [109] *Optimum's* complaint also attempts to address likely defenses by defining relevant markets, describing antitrust injury and distinguishing creditor-collection precedents such as *United Airlines* and *Sharon Steel* [110]

Together, *Selecta* and *Optimum* mark a notable turn in restructuring litigation: agreements once viewed principally as defensive creditor coordination devices are now being tested as potential restraints on competition. [111]

Because neither dispute has yet been resolved on the merits, market participants have described the litigation as a potential watershed for how cooperation and framework agreements are negotiated, drafted and enforced in future liability management transactions.

Outlook and conclusions

Restructuring activity in the US market is likely to remain elevated in 2026. Although headline growth remained positive in 2025, tariff-related cost pressure, relatively high borrowing costs, a cooling labour market and a more bifurcated consumer economy continued to weigh on highly leveraged and consumer-facing companies.

At the same time, recent decisions and disputes are likely to shape how distressed companies choose between in-court and out-of-court options. *Serta*, *ConvergeOne* and *Wesco* place a premium on precise credit-document drafting, broader creditor participation and defensible market processes, while *Selecta* and *Optimum* suggest that creditor cooperation agreements may face heightened antitrust scrutiny. [112]

Chapter 15 is also expected to remain important for cross-border restructurings, subject to scrutiny of creditor support, transparency and COMI issues. [113]

As a result, borrowers, creditors and sponsors should expect continued innovation but heightened execution risk, with the market likely to favour early planning, broader consensus where available and structures that address operational challenges rather than simply extend maturities.

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