Cash Only? Bankruptcy Courts Offer Divergent Interpretations of "Payment" in Connection with Exchange Mechanics

Date: 07/29/26

External Link: Cash Only? Bankruptcy Courts Offer Divergent Interpretations of "Payment" in Connection with Exchange Mechanics

The *Serta* case has been widely followed by lenders, borrowers, and sponsors alike, with parties' risk calculations shifting as courts continue to weigh in on what were seen as customary pro rata sharing provisions, sacred rights, and assignment provisions.

Judge Lopez's latest ruling found that the participating lenders breached the credit agreement by accepting a non-pro rata cashless payment for their existing debt in the form of new priming loans without turning over the non-participating lenders' pro rata share. The decision departs from existing Third Circuit jurisprudence in *Del Monte* and adopts a stricter, more textual approach to interpreting credit agreements than the *Del Monte* decision.

Judge Lopez also awarded damages based on the underlying economics at the time of the breach, rather than at a later time after Serta had already benefited from the liquidity injection. The ruling may encourage excluded lender groups to pursue litigation, with the potential for significant recoveries outweighing the cost, uncertainty, and potential relationship damage of litigating sponsor-backed liability management transactions.

Read the full client alert below.

Attorneys

- Joel Moss
- Jordan Wishnew
- Jenny Warshafsky
- Lacey Nemergut
- Matthew Catone
- Tanner Bowen

Practices

- Bankruptcy & Restructuring
- Bankruptcy Litigation