

# Anchorage Capital — Senior Associate Interview Prep

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## Restructuring Desk · Pat McGrath

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**Candidate:** Max Nides **Target seat:** Senior Associate, Restructuring, Anchorage Capital Advisors

**Interviewer:** Pat McGrath — Partner, Global Head of Restructuring, ACO IC voting member **Document version:** 2026-05-20

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### [▲ Data-verification protocol — read this first](#)

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This document was assembled from public reporting (Bloomberg, Reorg/Octus, 9fin, S&P/Moody's actions, PRNewswire/BusinessWire, court filings where applicable) by AI-assisted research. **Before any interview, re-verify every specific number** — participation rates, cap-structure sizes, secondary marks, dates of LME closes, and rating actions — through your Bloomberg terminal, Reorg/Octus, or Davis Polk / Evercore's internal databases. The numbers in this doc are *directionally* reliable but anything cited as a specific percentage, dollar figure, or precise date should be confirmed against a primary source before being asserted to Pat.

**Where the doc says "[unverified]"** — that's a real flag. Don't repeat the number under interrogation without checking it.

**Where the doc gives an IRR or MTM trajectory** (e.g. "55¢ → 75¢ in 24 months ≈ 22% IRR") — these are *illustrative hypothetical* trajectories built from the LME term structure, not historical observation. Frame them as "my underwrite would have targeted X assuming Y mark-up path" rather than "the paper went from X to Y." Pat will respect the hedge; he will spot fake precision instantly.

**Where the doc gives specific Pat quotes** — only the three quotes in Part IV §4.7 marked as verified are directly attributed. The "40 of them" line and the "1+1+1>3" mantra are widely paraphrased but not transcript-verified. Paraphrase the substance; don't quote verbatim.

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## How to use this document

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This is not an advisory primer. You already have that. This document teaches you to **answer questions from the seat Pat sits in** — a principal with \$200M of P&L exposure deciding whether to commit drawdown capital to a name.

The single biggest risk in this interview is sounding like a Davis Polk associate who learned to model LMEs at Evercore. Pat has met that person a hundred times. He hires the candidate who, when asked "would you have bought it at 70?", reaches for an enterprise value, a fulcrum, and a hold period — **not** a basket cite.

Read Part I until the mental model is automatic. Read Part II until the deal facts and the answer scripts are muscle memory. Read Part III the morning of.

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## **PART I — THE DISTRESSED CREDIT INVESTOR'S MENTAL MODEL**

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### **1.1 How Pat Actually Approaches a New Distressed Opportunity**

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#### **The first 20 minutes on a new name**

When a name first lands on Pat's desk — an indication from the trading desk that a 1L term loan is being shopped at 72, an early read from a restructuring banker on a sponsor in a covenant cure conversation, a Bloomberg headline about a maturity push — he is running four questions in parallel. They are not legal questions. They are investment questions.

#### **Question 1: What is the enterprise value, and what is the confidence interval around that number?**

Not "what does the company say EBITDA is." Not "what does Bloomberg show for net debt." Not "what's the latest model from the company's banker." The question is: if I had to commit \$100M to a fulcrum trade today, what TEV do I underwrite, and across what range?

The confidence interval matters more than the point estimate. A business at  $8.5x \pm 1.0x$  is a different trade than a business at  $8.5x \pm 3.0x$  even though the central tendency is identical. The narrower the band, the more aggressively you can lever your conviction; the wider the band, the smaller the position and the more you need optionality in the structure.

What drives the band? Earnings visibility (recurring revenue good, project revenue bad), customer concentration (top-5 over 40% = +1.5x of band), end-market beta (housing or autos = wider, food retail = narrower), management credibility on the forecast, and recent comp multiple compression. You will hear Pat ask "what's the **range**" more than "what's the **number**." Answer in ranges.

### Question 2: Where does value break in the capital structure?

This is the fulcrum question, and it is the one question Pat is most likely to ask you to walk through on the whiteboard. The fulcrum security is the tranche that absorbs the first dollar of impairment in your base case — i.e., the most junior security that you still expect to receive full recovery at, with the next tranche below taking the loss.

The fulcrum is not a static concept. It moves as TEV moves. In the bull case, the fulcrum might be the unsecured notes (they get partial recovery, equity gets some optionality). In the base case, the fulcrum might be the 2L (they get partial recovery, unsecured wipes out). In the bear case, the fulcrum is the 1L (they take a haircut, everyone below is gone). **A real fulcrum analysis shows you the fulcrum at three TEV levels and tells you which one you're underwriting.**

Pat will trap you on this. He will ask "what's the fulcrum" and then, when you give him the base case, he will say "and at 4.5x?" Have the bear case answer ready before he asks.

### Question 3: What is the path from here to resolution, and how long does it take?

There are three resolution paths and they are not equivalent:

- **Operational recovery + refinance.** The business stabilizes, EBITDA recovers, the market reopens for the credit, the company A&Es the maturity or refinances into a new structure. You collect coupon and exit at par or a small premium. IRR depends on duration; MOIC is capped at ~1.1–1.2x.
- **Out-of-court LME or restructuring.** A non-binding amendment, an uptier exchange, a drop-down, an A&E with new money. You either participate (and get new economics on a senior position) or hold out (and accept priming risk). IRR depends on the structural improvement; MOIC depends on whether you participated and at what discount.
- **Chapter 11.** Either pre-arranged (RSA filed at the petition), pre-pack ( $\leq 45$  days), or free-fall. You drive value through DIP financing, plan negotiation, equity conversion, and post-emergence equity exit. This is where DIP-to-equity lives. MOIC can be 1.5–3x+ but duration is 12–36 months.

**Pat's framework:** every distressed investment is a probability-weighted bet across these three paths. Price the bet. If you're paying 70 and the probability-weighted recovery across paths is 85 with a 24-month duration, you have a roughly 10.5% IRR — and that's before liquidity and information-edge considerations. Pat does this math in his head and you should too.

### Question 4: What do I need to be right about, and what happens if I'm wrong?

The discipline of credit is **avoiding permanent impairment**, not maximizing upside. Equity investors get full upside and capped downside (the option). Credit investors get capped upside (par + coupon + any equity kicker) and full downside. Asymmetry is reversed. So the question is not "what's the upside case" but "what's the worst case that I can stomach, and what's my mark-to-market path to get there?"

The "what do I need to be right about" question is a discipline test. If your thesis requires three things to go right (EBITDA recovery + LME execution + favorable Serta-style ruling), that's a worse trade than one that requires one thing to go right (1L recovery at any TEV above \$X). Pat will respect a candidate who shrinks the required-rightness to one or two things.

### **The credit-investor return geometry**

A 2-year hold to par on paper bought at 75 = ~15.5% IRR / 1.33x MOIC (assuming coupon). A 4-year hold to par on paper bought at 60 = ~13.6% IRR / 1.67x MOIC.

**Same downside profile, different shape.** In a drawdown fund (ACO IX), the LP measures IRR — duration kills you. Pat will weigh both: a 2-year 15% with high conviction is often better than a 4-year 18% with medium conviction in a drawdown fund context, even though the dollar-return ranking might be the opposite.

Where this gets interesting: the same dollar of recovery looks different depending on whether you bought 1L at 75 expecting par-back via refinance (the IRR trade) or bought 2L at 30 expecting equity recovery in Ch11 (the MOIC trade). **Anchorage runs both kinds of positions in the same fund.** When Pat asks about your trade, lead with which kind of trade you're proposing.

### **Hold-period discipline: when to be patient vs. when to exit**

There are four reasons to exit a distressed position before resolution:

1. **The thesis broke.** The business deteriorated faster than your bear case, the trade is now equity-like risk at a credit price, get out.
2. **The market priced in your view.** The information edge is gone, the paper has rallied from 65 to 88, you're now competing with index buyers at IRR you can't beat. Take the MOIC, redeploy.
3. **The opportunity cost crossed your hurdle.** You have a new name at 18% / 18-month that you'd rather own than the existing position at 12% / 30-month. Recycle capital. Pat says this often — "the right question is what should we own from here, not what we paid."
4. **The structural picture changed.** A new lender entered with priming-quality docs, your fulcrum-security recovery just dropped 15 points, and the deterioration is mechanical (basket capacity, not operations). Get ahead of the LME by exiting before the announcement.

The reasons NOT to exit: - Anchoring on entry price ("we paid 72, I won't sell at 68"). Wrong frame. Cost basis is irrelevant; expected recovery from here is what matters. - Tax considerations. Anchorage is a U.S. partnership; tax shouldn't drive the investment decision. - "We're already involved in the AHC, we should see it through." Sunk-cost. The seat at the table is only valuable if it improves your forward return.

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## 1.2 Capital Structure Analysis — Reading a Credit Agreement Like Pat

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### The hierarchy of what actually matters

A 350-page credit agreement contains hundreds of negotiated provisions. The distressed investor reads them in a specific order, looking for a specific subset of things, because most of the document is irrelevant to the investment thesis. The hierarchy:

#### Priority 1 — Basket architecture (where the LME lives or doesn't)

This is the section that determines whether the company can do an LME at all, what kind, and who gets primed. Every distressed investor reads basket capacity within the first 30 minutes of a new name.

**The Investments basket.** "Permitted Investments" defines what the company can transfer to subsidiaries and unrestricted affiliates. The drop-down LME (J.Crew, PetSmart/Chewy, Revlon-style) lives here. Components to identify:

- **The Builder basket.** A grow-over-time basket sized at some percentage of EBITDA or net income (typically 50% of CNI since closing or last A&E reset). When the company is profitable, this basket grows. When it's distressed, it can be massive on paper — and that's where the value-leakage threat sits.
- **The Available Amount basket.** Often a parallel basket capturing equity contributions and unused capacity from the Restricted Payments basket.
- **The Ratio-based General basket.** A basket sized at a multiple of EBITDA (1.0x, 2.0x), usable for any permitted investment.
- **The Investment in Unrestricted Subs basket.** A specific dollar carve-out for transfers to unrestricted subsidiaries. If this exists and is large, your collateral can leave the box.

**The Restricted Payments basket.** Can the company upstream cash to a HoldCo or unrestricted sub, where it sits outside the lender's collateral pool? The RP basket has a similar Builder/Available Amount/General structure. The **Chewy carve-out** sits here: a specific provision permitting investment in subsidiaries that are not "Loan Parties" (i.e., not guarantors). Read what counts as a Loan Party and what doesn't.

**The Debt basket.** Can the company layer new senior debt on top of existing 1L? Components: - **Incremental facilities** (the "free and clear" tranche, the "ratio incremental" tranche above a leverage test, the "MFN" yield protection sunset). - **Ratio debt** that can be issued so long as the company is below a pro forma leverage test. - **General debt basket** sized at \$X or Y% of EBITDA. - **Refinancing debt** carve-out.

The **MFN sunset** is critical: original docs had perpetual MFN at 50bps; modern docs often have an 18-month sunset and a 100bps cushion. If MFN has sunset and the pricing-grid permits, you can be primed at any rate without yield protection on your existing tranche.

**Unrestricted subsidiary designation.** What does it take to designate a sub as unrestricted? In old docs, just a board resolution. In new docs, often a ratio test plus capacity in the Investments basket. The designation moves the sub outside the guarantee structure and outside the negative covenants — value can move there freely. **The J.Crew trade was a drop-down of the trademarks into an unrestricted sub.**

**The "J.Crew blocker."** Post-2017, lenders started inserting language preventing material IP from being transferred to unrestricted subs. Original J.Crew blockers are narrow (IP only). "Enhanced J.Crew blockers" extend to all material assets and require a "fair value" exchange. **Read the specific language.** Pat will ask which kind of blocker the deal had.

**The "Chewy/going-concern" carve-out.** Permits transfers to non-guarantor subs in the ordinary course. The fight in litigation is what "ordinary course" means when you're moving a \$4B brand portfolio offshore.

## Priority 2 — Voting thresholds (what you need to block vs. control)

This is the math you absolutely must have automatic. The vote thresholds drive your blocking-position sizing and your AHC strategy.

Threshold	Typical Provisions	What you can do at this level
<b>Required Lenders / 50.1%</b>	Most amendments, waivers, default declarations	Approve/block ordinary amendments
<b>Supermajority / 66.7%</b>	Maturity extensions on specific provisions, certain collateral releases, MFN modifications	Approve/block elevated amendments
<b>Sacred rights / 100%</b>	Maturity extension (the universal one), principal reduction, interest rate reduction, pro rata sharing modification, all-or-substantially-all collateral release	Each holder has a veto

**The pro-rata sharing provision** is the heart of the uptier debate. Standard language: "Each Lender shall share pro rata in any payment received from the Borrower in respect of the Loans." Then comes the exception:

"**except for any payments made pursuant to an open-market purchase.**" This is the language Serta interpreted (5th Cir 2024 — yes, open-market purchases by the Borrower can include negotiated uptier exchanges) and Mitel interpreted differently (1st Dept Dec 2024 — no, "open market" requires arm's-length, non-coordinated trading).

### The blocking math:

- **33.4% blocks a supermajority.** If a deal needs 2/3 vote, owning 33.4% means you have a veto on that subset of amendments.
- **49.9% blocks 50.1%-required amendments.** If the deal only requires Required Lenders, ~50% is the block.
- **Any one holder blocks a sacred right.** A single dissenting lender blocks a pro-rata-sharing modification, maturity extension on principal, etc. — but cannot block a transaction structured to avoid those classifications.

### Position-sizing tradeoffs:

Size	What you get	What you give up
<b>Toehold (~1–5%)</b>	Information rights via 13G-equivalent disclosures if applicable, ability to attend lender calls, informal voice	No real leverage
<b>AHC-eligible (~10–25%)</b>	Seat at the AHC table, joint counsel, joint FA	Coordination friction, RSA-style lockup risk
<b>Blocking position (~33.4%)</b>	Veto on supermajority items, structural leverage	Larger commitment, harder exit
<b>Control (~50%+)</b>	Can drive amendments unilaterally	Concentration risk, regulator scrutiny in some sectors

### Priority 3 — Intercreditor agreement (ICA) architecture

The ICA governs what 1L and 2L can do to each other. The provisions distressed investors care about:

- **Payment waterfall.** When does junior debt get paid anything? In default, all 1L principal + interest + premiums + fees + expenses come first, then 2L starts collecting.
- **The 179-day standstill.** A 2L lender cannot exercise remedies (acceleration, foreclosure, sale-of-collateral lawsuits) for the first 179 days after a default — to give the 1L control of enforcement. This means in a fast-moving distress, the 1L holder has unilateral control of the early innings.
- **First-lien controls.** What can the 1L do unilaterally without 2L consent: sell collateral in foreclosure, release liens on individual collateral items, consent to a DIP that primes the 2L, accept a credit bid.

- **Buy-out right.** Most ICAs give the 2L the right to purchase the 1L claim at par + accrued + expenses upon an enforcement event. **Important caveat:** the "buy-out price" is usually par, not market — so a 2L holder who triggered a buy-out when the 1L was trading at 60 has to pay 100 + accrued. Rarely exercised in distressed-debt practice. Read the specific buy-out language because newer ICAs limit it.
- **Permitted dispositions fight.** What collateral can the 1L approve being sold/transferred without 2L consent? The double-dip and pari-plus structures live here.

## Priority 4 — Collateral package

- **What's collateral?** Substantially all assets of the Loan Parties, typically: U.S. assets, equity of subsidiaries, IP. **Foreign-sub equity often capped at 65%** (CFC concerns under Section 956 pre-TCJA, still used in docs).
- **Guarantor structure.** Which subsidiaries guarantee? The "Loan Party" definition. Non-guarantor subs and unrestricted subs sit outside the collateral pool.
- **"Substantially all assets."** A defined term that matters for sacred-right protection on collateral release. Anything less than "substantially all" can be released by Required Lenders or even the Administrative Agent in some cases.
- **The trapdoor.** Most credit agreements have one or more "out doors" for assets — permitted dispositions, the unrestricted-sub designation, the Chewy carve-out, the J.Crew-style IP-licensing arrangement.

## Bond indenture vs. loan credit agreement — the key differences

Provision	Loan Credit Agreement	Bond Indenture
<b>Sacred-rights protection</b>	Contract-based (pro rata sharing, etc.)	Trust Indenture Act §316(b) — federal statute
<b>Holder action against issuer</b>	Lenders sue directly, subject to "no-action" carve-outs	Trustee must act; bondholders generally need 25% to direct
<b>Voting unit</b>	Per facility, by principal amount	Per CUSIP, by principal amount
<b>Exit consent mechanic</b>	Limited (loans have less covenant heritage to strip)	Powerful — strip covenants from non-tendering bonds
<b>Make-whole</b>	Less common, narrower	Common in HY notes, enforceable subject to Mmentive/EFH
<b>Acceleration mechanics</b>	Required Lenders or Agent	Trustee + 25% holders typically

**§316(b) of the TIA.** Federal statute: no majority can impair the right of a non-consenting holder to "receive payment of principal or interest" on its bonds. This is what makes bond uptier exchanges procedurally harder than loan uptiers. **The exit consent workaround:** the bondholders who tender into the new exchange bonds vote (as outgoing holders) to strip covenants from the old bonds, leaving the holdouts with naked, covenant-stripped paper that has no protection except principal/interest payment rights. Marblegate (2d Cir 2017) tested whether covenant-stripping itself constitutes a §316(b) violation — held no, only the express payment-modification right is sacred.

**Momentive (SDNY 2014) and Energy Future Holdings.** Make-whole premiums in bankruptcy: Momentive held that automatic acceleration triggered by Ch11 extinguishes the make-whole right unless the indenture has specific "Applicable Premium" language designed to survive acceleration. EFH (3d Cir 2016) confirmed and extended. **Practical implication:** when you're buying HY notes near filing, check the make-whole language — a "true" make-whole that survives acceleration is worth real money in a DIP-to-equity scenario; a make-whole that extinguishes on acceleration is window dressing.

## The 5-minute credit agreement scan

When you have 5 minutes on a new name and a 350-page credit agreement:

1. **Open to the definitions** (usually pages 1–80). Find: EBITDA, Consolidated Net Income, Available Amount, Builder Basket, Loan Party, Unrestricted Subsidiary, Investment, Refinancing Indebtedness.
2. **Jump to §7 Negative Covenants.** Read 7.02 (Investments), 7.03 (Indebtedness), 7.06 (Restricted Payments), 7.08 (Asset Sales), 7.13 (Negative Pledge).
3. **Jump to §10 Amendments & Waivers.** Read the "Sacred Rights" / "Affected Lender Consent" provisions.
4. **Jump to the J.Crew blocker.** Search for the words "material intellectual property" or "specified intellectual property" in §7.02.
5. **Pull the most recent amendment.** Companies in stress usually amend within 12 months; the amendment package often expands baskets and shows you where the company has been pressing.

You will not understand 100% of the doc in 5 minutes. You don't need to. You need to know whether a drop-down is geometrically possible and whether an uptier is contractually permitted. Five minutes gives you that.

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## 1.3 Valuation for Distressed — What the Textbook Gets Wrong

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### EBITDA quality

The company's reported EBITDA is almost always wrong, in a specific direction: too high. The distressed investor's job is to discount the addbacks and arrive at a defensible normalized EBITDA. The taxonomy of addbacks:

Addback	Treat how
<b>Unrealized cost savings</b> ("Project Phoenix will save \$40M annually")	Eliminate fully unless contractually committed and timed. The longer the deal has been "almost done", the more aggressive the discount.
<b>Unrealized synergies</b> from M&A	Discount 50% on signed deals, 100% on hypothetical
<b>One-time charges that recur</b> (restructuring expense year-after-year)	Add back into EBITDA — i.e., treat as opex
<b>Stock-based compensation</b>	Add back into EBITDA — it's real economic cost (cash-equivalent)
<b>Capitalized R&amp;D / software</b>	Bring above the line if the company is amortizing aggressively
<b>Inventory writedowns</b>	Treat as opex if recurring
<b>Litigation reserves</b>	Treat as opex; in distressed the reserves are usually under-stated
<b>Lease accounting (ASC 842) adjustments</b>	Be careful — operating leases under ASC 842 create EBITDA addbacks that materially inflate metrics for retail/restaurant credits

**LTM vs. NTM.** In a declining business, the LTM number is overstated relative to the run-rate. Use the most recent quarter annualized as a sanity check. A business with EBITDA of \$200M LTM but Q4 annualized at \$140M is a \$140M business going into the LME, not a \$200M business.

**Normalized vs. stressed EBITDA.** Through-the-cycle EBITDA is the right number for an enterprise-value multiple. In housing, R&R, or auto-cycle businesses, this means averaging across the cycle, not picking the peak. **Cabinetworks at peak 2021 EBITDA looks like a 5x business; Cabinetworks at trough 2024 looks like an 8.5x business. The truth is somewhere closer to the trough multiple on the through-cycle EBITDA.**

**Liquidity runway.** Three numbers tell you how much road the company has left: - Cash burn rate (or cash generation if positive) - Revolver availability (net of LCs and any unused commitments expiring) - Maintenance covenant headroom (springing or test-bases)

Add scheduled debt amortization and any near-term maturity. The result is months of runway. **A company with 4 months of runway has a clock; a company with 14 months has flexibility.** Position size and structural strategy depend on this.

## EV methodologies and when each applies

**Trading comps.** Most useful when (a) the business is sufficiently stable to be compared to public peers and (b) the multiple is informative. Least useful in (a) freefall, (b) end-of-cycle situations where comps themselves are about to compress.

In distressed, the comp multiple has three adjustments: - **Cycle-position discount.** If comps are trading at peak multiples (autos in 2021, housing in 2022), discount them. - **Size-and-liquidity discount.** Private distressed companies trade at a discount to public peers — typically 1.0–2.0x on EBITDA multiple. - **Distress-itself discount.** A company in stress trades at lower multiples than healthy peers — but **the post-LME or post-emergence multiple should not include this discount** because you're underwriting the clean balance sheet.

**Transaction comps.** Use precedent distressed M&A multiples. Sources: Reorg's transactional database, S&P's LCD restructuring database, the Houlihan/Lazard published comp sheets. **The "distressed transaction discount" runs 1.5–3.0x below strategic M&A** depending on competitive process intensity.

**Sum-of-the-parts.** Useful when the business has distinct segments with different multiples (e.g., Newfold's domain-only revenue vs. hosting vs. SaaS-like Constant Contact; Cabinetworks' wholesale vs. dealer; gaming OpCo vs. PropCo). SoTP is also useful when one segment can be sold while another reorganizes — gives you optionality value.

**DCF.** Almost never the primary methodology in distressed. Why: the terminal value drives 60–80% of the answer, and in distressed the terminal value uncertainty is wider than the DCF can usefully model. **Use DCF as a sanity check** — if your TEV multiple implies a perpetuity growth rate above 3%, the multiple is too high.

**Liquidation analysis.** Always run it as the floor. Recovery rates by asset class (industry-tested):

Asset Class	Orderly (12–18 mo)	Forced (3–6 mo)
Accounts receivable	70–85%	50–70%
Inventory — raw materials	50–70%	30–50%
Inventory — finished goods	60–75%	40–60%
PP&E — general manufacturing	30–50%	15–30%
PP&E — specialized/single-purpose	10–20%	5–15%
Real property	80–100% appraised	65–85%
IP (trademarks, customer lists)	0–50% of book	highly variable
<b>Gaming licenses, telecom spectrum</b>	<b>~0% liquidation, significant going-concern</b>	<b>0%</b>

The gaming-license dynamic is critical for Tropicana-type cases: the license has near-zero liquidation value (you cannot sell it without regulator approval, and the regulator generally will not approve a fire sale), but significant going-concern value. **The gap between liquidation and going-concern is where regulator-controlled-license restructurings are won and lost — and it's why DIP financing in gaming is often the only path to capturing the going-concern premium.**

### **Building a recovery waterfall — the technical components most advisors miss**

Most Davis Polk / Evercore waterfalls overstate creditor recoveries because they understate the priority claims and admin costs that come off the top. The full waterfall:

**Step 1 — Establish TEV (in 3 cases).** - Bear: stressed EBITDA × low-multiple (5.0x for industrial, 6.0x for tech/services) - Base: normalized EBITDA × mid-multiple - Bull: normalized EBITDA × upper-end comp multiple

**Step 2 — Map the capital structure.** Each tranche, principal + accrued + reinstated coupon. Note governing law and the ICA.

### **Step 3 — Deduct priority claims, in order:**

1. **DIP claim.** Superpriority admin. Size = (cash burn during case) + (professional fees) + (cure costs) + (contingency). Typical case duration assumption: 9–14 months for a free-fall, 4–6 months for pre-pack/pre-arranged, 14–24+ months for a contested case. **A DIP for a \$1.5B revenue manufacturing business with 6-month case duration is typically \$100–250M.**
2. **Adequate protection payments.** Secured creditors who were receiving cash interest pre-petition continue to receive adequate protection during the case to compensate for diminution in collateral value. These accrue as administrative claims if the security turns out undersecured. **Sized at the pre-petition non-default rate times the case duration.**
3. **Professional fees.** In a complex Ch11: debtor's counsel (\$20–50M), debtor's FA (\$10–25M), debtor's IB (\$5–25M plus success fee), UCC counsel/FA/IB (\$15–40M total), AHC counsel/FA/IB (\$15–35M), DIP lender counsel (\$5–10M), claims agent (\$2–8M), tax/IP/regulatory specialty counsel (\$5–15M). **\$60–200M total range for \$1B+ cases is standard; complex cross-border or multi-AHC cases can hit \$300M+.**
4. **Section 503(b)(9) administrative claims.** Goods delivered in the 20 days before filing get administrative priority. **In manufacturing and retail this is real money — \$20–100M+ depending on supplier mix.**
5. **Cure costs for assumed executory contracts.** Pre-petition arrears on leases the debtor is assuming. For a multi-site retail or restaurant, \$10–80M.
6. **Priority claims (\$507).** Wages capped at \$15,150 per employee (2025 cap, adjusts), employee benefits, certain taxes, regulatory obligations. Typically \$5–30M.

#### Step 4 — Distribute remaining TEV.

For each tranche, recovery % =  $\max(0, \min(\text{claim\_amount}, \text{TEV\_remaining\_after\_priority\_above}) / \text{claim\_amount})$ . The fulcrum is identified at the tranche where TEV\_remaining\_after\_priority\_above first crosses below 100% of claim.

#### Step 5 — Identify the equity-conversion mechanism.

The fulcrum tranche typically receives equity in the reorganized company. The conversion is at "plan value" — i.e., the bankruptcy court's stated TEV at confirmation, divided by claim amount. The plan value is negotiated, not given — and a good DIP lender (or AHC) can push the plan value 1.0–2.0x of EBITDA either direction depending on the credibility of competing valuation evidence.

**The DIP-to-equity step.** If Anchorage is the DIP lender, the DIP is structured to convert into equity at plan confirmation at a stated conversion ratio. The "price" Anchorage pays for the equity is the DIP balance (cash deployed) — but the implied multiple is enterprise value  $\div$  post-emergence EBITDA. **A well-structured DIP-to-equity gets the equity at 3.5–4.5x post-emergence EBITDA when the public market would pay 8–10x for the same clean business 18 months later.** That's the trade.

### What advisors systematically get wrong about valuation

Five recurring mistakes Davis Polk / Evercore / Houlihan / Lazard analysts make in their first month on the buy-side:

1. **Anchoring on the company's investment-banker pitch deck.** The banker is paid to maximize TEV — the addbacks are pumped, the comps are cherry-picked. Strip the deck back to actuals.
2. **Using the most recent funding round as the valuation anchor.** Pre-distressed equity rounds are reference-class irrelevant; the world has changed.
3. **Treating the "going concern" multiple as the recovery multiple.** Post-emergence businesses trade at a discount for 12–18 months due to overhang, low float, and credit-event memory. Discount the comp multiple 1.5–2.5x for the immediate post-emergence period.
4. **Forgetting the cash burn during the case.** A 9-month free-fall case with \$40M monthly burn destroys \$360M of TEV unless the DIP is sized to fund it (which it usually isn't fully).
5. **Modeling EBITDA growth in the bear case.** If you have a bear case where EBITDA grows, you don't have a bear case. The bear case has EBITDA flat or down.

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# PART III — INTERVIEW SYNTHESIS: HOW TO SHOW UP AS PAT'S CANDIDATE

This section is the morning-of distillation. If you read nothing else on the train, read this.

## 3.1 The advisor-to-investor language shift

Pat's ear is trained for the difference between an advisor describing a deal and a principal owning a position. The vocabulary tells him which one you are within 30 seconds. Train yourself out of the left column and into the right column.

× Advisor phrase	Investor phrase	Why it matters to Pat
"We advised the company on..."	"I was looking at this trade at..."	You owned the view; you weren't sitting next to it
"The deal was well-structured legally"	"The risk/reward worked at our entry price because..."	Structure is a means; return is the end
"We successfully executed the exchange"	"We deployed capital at X cents with Y path to recovery"	Execution is table stakes
"The docs allowed for the uptier"	"The docs gave the participating creditors optionality on Y baskets"	Docs are a source of value, not a constraint
"We avoided litigation"	"We sized the litigation risk at X% and structured around it"	Litigation is a priced input, not an absolute bad
"The client was happy"	"The position returned 1.8x MOIC / 22% IRR"	LPs measure return, not satisfaction
"We did the LME because it was the best option"	"The LME was the right trade if you underwrote the post-LME equity at Y multiple"	Always come back to the security and the recovery
"The fulcrum was the 1L"	"At base-case TEV of \$X, the 1L was the fulcrum; at bear-case TEV of \$Y, the 2L was gone and the 1L took a 15-point haircut"	Fulcrum is dynamic, not static
"We negotiated favorable terms"	"We extracted Z bps of premium and a Y% equity kicker that priced the participation right"	Terms have a quantifiable value

× Advisor phrase	Investor phrase	Why it matters to Pat
"The sponsor agreed to contribute equity"	"The sponsor's equity contribution implied an enterprise value of \$X, which underwrote our recovery to Y%"	Sponsor behavior is information

## 3.2 The phrases that signal "I'm one of you"

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You don't recite Pat's lines back at him — that reads as flattery. But the substance below should be woven into your answers naturally:

- **"I start with the business, not the structure."** Lead every deal walk-through with the business — what it does, what its key metrics are, what its trajectory looks like — *before* you touch the cap structure or the LME mechanics.
- **"The incumbency premium has to be earned, not assumed."** Use this when discussing whether to participate in an LME. Reject the notion that "we held the paper, so we participated."
- **"I think of the DIP as a control-acquisition cost, not a yield instrument."** This is the J.Crew / At Home framing.
- **"The four-part deal-away test is necessary but not sufficient."** Subtle move — don't recite Pat's test, layer on top of it.
- **"I'd rather sit out a deal than participate in a bad business."** Discipline credentialing.
- **"Reputation is a multi-deal asset — one bad LME poisons the next 40."** Reflects Pat's "40 LMEs" line without parroting it.
- **"The fulcrum is where the optionality lives."** Investor's framing for why fulcrum-security ownership matters more than senior-secured comfort.
- **"I underwrite the recovery first, then I look at the entry price."** The order matters. Pat says this on the FICC podcast.

## 3.3 What to volunteer before being asked

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You will have ~45 minutes with Pat. The conversation will mostly be his questions. But there are 3–4 things you should find a way to volunteer because they signal that you've done the homework and you think like he does:

1. **Your independent valuation work on the three deals.** "When I was working on Newfold, I built my own desk-side model alongside the company's deck — I wanted to see what the 1L recovery looked like at a stressed 5.5x multiple, not the 7.5x the company was running." This signals you were already half-investor as an advisor.

2. **The Roe & Rotaru paper.** "The recent Yale paper on LME re-default rates was useful — the empirical finding that something like half of LME-restructured credits default again within 24–36 months reinforces the discipline of underwriting the business first." Don't overstate the citation if you haven't read it; do read the SSRN abstract before the interview.
3. **The At Home outcome.** "I was watching the At Home DIP-to-equity conversion last fall — the implied multiple Anchorage paid for the equity was striking, well below where home-decor public comps were marked." This signals you follow Anchorage's deals in real time.
4. **A view on Serta vs. Mitel.** "I think the more interesting question is not which court was right but which governing-law jurisdiction will dominate going forward — most large credit agreements are NY-governed, and the First Department's Mitel ruling is arguably more important to docs being drafted today than the Fifth Circuit's Serta ruling, even though Serta got the headlines."

### 3.4 The 5 questions Pat is most likely to ask, and the answer shape

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(Synthesized from trifecta consensus + Pat's published philosophy. Memorize the answer shapes.)

**Q1: "Walk me through Newfold. You advised on the LME. Did you actually underwrite the business or just the deal mechanics?"**

**The trap:** describing exchange mechanics, consent solicitation, basket language without ever touching the business.

**The answer shape (30 seconds):** - Open on the business: SMB hosting + domain + email + e-commerce; ARR-based, sticky on domains, churn-exposed on hosting, ARPU compressed by GoDaddy/Squarespace. - EBITDA trajectory: peak/trough, what was happening to margins, the marketing-payback math. - The LME was a maturity push enabled by [the specific basket]; the investment-relevant question was whether the post-LME structure left enough runway for a turnaround at the new effective EBITDA. - *What I focused on as an investor would: what's the fulcrum at 5.5x, 7.0x, 8.5x normalized?*

**Q2: "Of the three deals you advised on, which had the weakest case for the incumbency premium?"**

**The trap:** defending all three or saying "it depends."

**The answer shape:** - Pick one (likely Tropicana given secular decline framing or Cabinetworks given cyclical exposure depending on research findings). - Be intellectually honest: "The incumbency premium was real but the underlying business didn't support the post-LME recovery thesis." - Demonstrate the framework: incumbency premium = value of (a) skipping the competitive process + (b) avoiding deal-away risk + (c)

execution speed. Calculate it. If <200–300bps of yield improvement, it's not worth participating in a marginal business.

### **Q3: "You're a lawyer by training. How do you stop yourself from thinking like one?"**

**The trap:** defending the legal background ("it's an advantage because I read the docs faster").

**The answer shape:** - Acknowledge the bias: "The lawyer's instinct is to start with what the documents permit. The investor's instinct is to start with what the business is worth." - Show the discipline: "I force myself to write a one-paragraph business thesis before I open the credit agreement. If the business thesis doesn't survive, the docs don't matter." - Constraint, not thesis: "Docs are the constraints inside which I price the trade — they're not what I'm betting on."

### **Q4: "What's your framework for deciding whether to participate in an LME as a lender?"**

**The trap:** parroting Pat's four-part test verbatim.

**The answer shape (use your own scaffolding, anchor on his test):** 1. Underwrite the business: can I see a recovery in the post-LME structure? 2. Apply the deal-away test: severable assets, alt lenders, permissive docs, calculable capacity. *This determines whether the incumbency premium even exists.* 3. Quantify the premium: what bps am I getting paid vs. holding? What equity-like upside (kicker, warrants, structural priority)? 4. Compare to the holdout case: what is my recovery if priming holds vs. if it's challenged? 5. Position-sizing constraint: AHC-eligible? Blocking position? Just toehold? Each implies a different participation calculus.

### **Q5: "If you were holding [Newfold/Cabinetworks/Tropicana] paper at 70 cents when the LME term sheet landed, what would you have done?"**

**The trap:** advisor answer ("we'd analyze the term sheet and discuss with the client").

**The answer shape (always lead with TEV):** - Where was the paper before the term sheet — what was the market pricing in? - What's my TEV underwrite — bear/base/bull — and what's the recovery at each? - At 70 cents, what IRR does that imply across the participation and non-participation scenarios? - Is there a litigation option (post-Serta, post-Mitel)? Who's NY-law? Who's TX? - Decision: participate / hold out / litigate / exit.

**Pick one with the math behind it.**

## **3.5 The traps Pat will set**

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(From trifecta consensus + Pat's interview patterns.)

## Trap 1 — "Tell me about a deal that didn't work out. What was the mistake?"

**What he's checking:** accountability. Will you blame the lawyers / the market / the sponsor / your bosses, or will you own the decision?

**How to avoid:** name a deal, name the *investment* mistake (not the *advisory* mistake), draw the *lesson learned* in investor terms.

**Worked example — Tropicana:** *"Tropicana is the cleanest example. The May 2025 LME bought participating lenders 36 months of runway on a business with a multi-decade structural demand decline and a commodity input shock that wasn't going to mean-revert quickly. If I'd been advising a participating lender at the time, I'd have pushed hard for the 91-cent in-group economics — and I would have thought I was right because the participation premium looked attractive vs. the 70-cent out-group treatment. But the deeper investor question — does this business support the post-LME balance sheet at any reasonable multiple — has a hard 'no' answer. The Roe-Rotaru paper makes the case empirically: a majority of LME firms double-default. Tropicana looks like exactly that pattern. The lesson I'd carry forward: the in-group/out-group differential is a real economic premium, but it doesn't change whether the underlying credit deserves to be owned. I'd want to be the holder who participated and exited within 6 months rather than the holder who participated and held into year two."*

**Worked example — Cabinetworks:** *"Cabinetworks is more nuanced. The May 2026 LME mechanics were efficient — secured exchange, maturity extension, modest new money — but the underlying issue is that ~\$1.95B of secured debt sits against probably \$200M of normalized EBITDA, which is 10x leverage. The investor mistake I'd want to avoid is treating the LME participation as the resolution. It's the trade, not the thesis. If I'd been making the call, I would have participated in the exchange — the math was clearly positive vs. the holdout case — but I would have planned the exit before the next maturity wall, not held the new third-out notes into 2030."*

**The framework for either:** specific deal → specific *investment* error (not *advisory*) → quantified lesson → behavioral change going forward. Avoid generic "I underestimated secular decline" platitudes; tie the mistake to a number or a structural feature.

## Trap 2 — "If you could redo Newfold, what would you change?"

**What he's checking:** would you propose a different *structure* (advisor trap) or a different *investment decision* (investor answer).

**How to avoid:** "I wouldn't change the structure — the LME mechanics were efficient. What I'd change is the *terms* I'd have negotiated as a participating lender: more equity kicker for the participation premium, tighter covenants on the post-LME credit agreement to police re-leveraging, more aggressive MFN protection on the new paper."

### Trap 3 — "Tell me about a time you disagreed with a client."

**What he's checking:** conviction + ability to push back + the difference between advising and investing.

**How to avoid:** "On [deal], the company / AHC wanted [a broader / narrower participation group / a different new-money tranche / etc.]. I argued [the specific investor-aligned position]. We ended up at [the compromise]. The lesson: in investing, you have to be willing to be the dissenting voice when the consensus is wrong."

### Trap 4 — "What's wrong with [Anchorage's recent deal]?"

**What he's checking:** intellectual independence. Will you flatter or critique?

**How to avoid:** lead with a specific positive, then offer one substantive critique. "The DIP-to-equity at At Home looked right at the time given the home-decor cyclical trough; what I'd watch for is post-emergence operational execution — specifically whether the SG&A reductions stick into the recovery period. A lot of these emerge with cost structures that creep back."

### Trap 5 — The pricing-grid trap

**What he's checking:** can you do the math under pressure.

**Setup:** Pat gives you a quick hypothetical with numbers (e.g., the DIP-to-equity hypothetical: \$500M DIP, 15% OID, SOFR+800, 20% equity kicker, \$150M post-EBITDA, what's your return). The trap is doing the math wrong under pressure.

**How to avoid:** *slow down*, write the numbers, walk through OID first, interest second, equity third, post-emergence multiple, and arrive at the IRR. The candidate who pauses to write the math and arrives at the right answer wins over the candidate who blurts a fast wrong number. **Critical insight to volunteer:** "The math also depends on whether I can credit-bid the DIP at confirmation to take 100% equity, vs. just getting my 20% kicker. The difference is enormous — it's the entire trade."

## 3.6 Pat-specific anchors to invoke (deploy ~3 of these naturally)

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- **J.Crew 2020 DIP-to-equity** — when discussing DIP strategy. Signal: you understand DIP as control acquisition.
- **At Home Group October 2025 emergence** — when discussing fulcrum analysis or DIP pricing. Signal: you follow current Anchorage deals.
- **Roe & Rotaru Yale paper** — when discussing incumbency premium or LME re-default rates. Signal: academic literacy.

- **Serta 5th Cir vs. Mitel 1st Dept** — when discussing LME litigation risk. Signal: you understand precedent-setting matters.
- **Bloomberg FICC Mar 5 2025 / Wharton WRDIC Feb 21 2025** — when discussing investment philosophy. Signal: you've done the homework on Pat. Don't quote him verbatim — paraphrase the substance.

### 3.7 The fulcrum drill — Pat's signature question chain

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If Pat asks you to walk through the fulcrum on a deal, expect this 5-step chain:

1. **"What's the fulcrum security?"** (Base case answer)
2. **"At what TEV does it shift?"** (Sensitivity — give him two cases above and below)
3. **"What's the recovery at each class in base/bull/bear?"** (The waterfall — show the math)
4. **"If the DIP primes another \$200M on top, how does that change?"** (Stress test for new senior debt)
5. **"What does owning the fulcrum get you that owning the next tranche down doesn't?"** (The optionality answer — fulcrum holders drive plan negotiation, get equity, sit on the AHC.)

**Prepare this five-step chain for all three deals before the interview.**

### 3.8 The DIP-to-equity drill

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This is the highest-probability technical question Pat asks. Anchorage's signature.

**Standard setup:** "Company X has \$500M DIP need. Pre-EBITDA \$200M, post-restructuring expected \$150M. DIP priced at SOFR+800, 15% OID, 20% warrant. Walk me through whether you'd invest."

**Good answer:** does the math.  $\$500\text{M face} \times 15\% \text{ OID} = \$425\text{M cash deployed}$ . Interest at  $\sim 10\%$  all-in for 12 months  $\approx \$50\text{M}$ . Total cost basis:  $\$475\text{M}$ . Post-emergence  $5x \times \$150\text{M} = \$750\text{M EV}$ . After  $\$500\text{M DIP}$  repayment, equity value =  $\$250\text{M}$ . Your 20% warrant =  $\$50\text{M}$ . Return:  $\$50\text{M on } \$475\text{M} = \sim 10.5\% \text{ gross}$ .

**Great answer:** challenges the assumptions and reframes. - *"Is 5x the right multiple post-emergence for this business? If it's 6.5x (which would be normal for an industrial reorganized off a clean cap structure), EV = \$975M, equity = \$475M, your 20% = \$95M, return = 20% gross."* - *"More importantly — am I really stuck at 20%, or can I credit-bid the DIP at confirmation? If I can convert the DIP to 100% equity for the \$475M cost basis at \$975M post-EV, I get a \$500M MOIC on \$475M = 1.05x in 12 months on top of the equity. The whole trade is whether I can force conversion."* - *"The conditions for credit-bid feasibility are (a) DIP terms providing for credit-bid or DIP-to-equity option, (b) lender consent or a structurally subordinated unsecured*

*class that can't object, (c) plan-confirmation value support — I'd run a valuation litigation budget into the cost basis."*

The great candidate questions the assumption set and reframes the trade. That's the Anchorage-style answer.

### 3.9 The biggest single risk for Max in this interview

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**Sounding like you're describing what *the client did*, not what you would have done with capital.** The advisor instinct is to present the deal as a *fait accompli* — "here's what happened, here's what the company decided." The investor instinct is to present the deal as a decision tree — "here were the three paths the holder of the 1L was facing, here's what I would have done, here's what the math showed."

When in doubt, *switch from third-person passive to first-person decision-active*. "The company exchanged their 1L into a new super-senior tranche" becomes "if I'd been holding the 1L, I would have participated at a price target of [X cents], targeting [Y] IRR, and here's why."

### 3.10 The single best question to ask Pat at the end

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Three good options, in order of preference:

1. **"Given the 'investment-first' principle, what's the area of distressed where you think the market is most consistently mispricing risk or opportunity right now — and how does Anchorage capitalize on that?"**
2. *Why this works:* it positions you as the investor, references Pat's stated philosophy, opens the door for him to share current portfolio thinking, and forces him to give you a real answer (not a recruiting platitude).
3. **"You've said there are 40 LMEs to deal with, not one. How do you think about portfolio-level risk when you're the same group of creditors sitting across the table from the same advisors in 40 different deals?"**
4. *Why this works:* it engages his "reputation as a multi-deal asset" framework, and the answer he gives will tell you a lot about how Anchorage manages relationship capital.
5. **"Post-Serta and Mitel, has the document landscape actually shifted, or are we three years away from the next J.Crew-shaped trade in a new basket no one is looking at?"**
6. *Why this works:* signals legal-doc literacy without being preachy, anchors to Pat's published views on Serta-as-execution-attack-not-substance, and lets him hold forth on docs.

**Pick #1 if the interview has gone well and Pat is engaged.** Pick #2 if the conversation has been more philosophical / less technical. Pick #3 only if there's been substantive doc / litigation discussion already.

### 3.11 Mistakes to avoid in the first 5 minutes

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- **Do not lead with the Bar admission or the JD.** Pat is not a lawyer; you do not credential into Anchorage on legal training. Lead with the deal exposure (Newfold, Cabinetworks, Tropicana) and the LME-side experience at Evercore.
- **Do not say "we" when you mean "the firm I worked at."** Say "I" when you owned the work; say "Davis Polk" or "Evercore" when crediting the institution. Pat will notice.
- **Do not name-drop senior bankers at Evercore unless they are directly relevant.** The reference matters; the relationship Pat doesn't care about.
- **Do not over-prepare a single answer.** Pat will steer the conversation; if you have one perfect script you're trying to deliver, you'll telegraph it.
- **Do not pretend to know something you don't.** If he asks about a deal you haven't researched, say "I don't have a view on that one in real time — I'd want to look at [specific things] before pricing it." Then offer to follow up.

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## PART II — THE THREE DEALS, ADVISOR-TO-INVESTOR REFRAME

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For each deal: (A) the setup an investor would have seen 6–12 months before the LME; (B) the LME decision — participate, hold out, or litigate; (C) the Chapter 11 hypothetical if the LME fails or the company files post-LME; (D) the Investor Lens — five Q&A scripts in Pat's voice.

### How to read the IRR / MOIC math in this section

The specific return trajectories cited (e.g. "55¢ → 75¢ in 24 months ≈ 22% IRR" or "+42% MTM on the Cabinetworks notes") are **illustrative underwriting outputs**, not historical observation. They're built by combining (a) the documented LME term-sheet structure, (b) reasonable secondary-market mark-up assumptions for newly-secured paper, and (c) standard credit-investor IRR mechanics. **In an interview, frame them as your underwrite:** *"my underwrite would have targeted ~22% IRR assuming the new secured paper"*

marks up to ~75 within 12-18 months" — not "the paper went from 55 to 75." Pat respects the hedge. He spots fake precision instantly.

Where a specific market level is referenced as observed (e.g., the August 2024 Cabinetworks notes print at 48-49¢, or the Newfold 11.75% notes' Public.com bid yield), the cite is sourced from research; verify before asserting.

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## DEAL 1 — NEWFOLD DIGITAL

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### (A) The Setup — 6–12 months before the December 2025 LME

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#### Industry and competitive position

Newfold Digital is the Clearlake + Siris-owned roll-up that sits at the unsexy end of the SMB internet-services stack: shared web hosting (Bluehost, HostGator), domain registration (Network Solutions, Web.com, Register.com), and a smattering of WordPress / SEO bolt-ons (Yoast). The company was formed in February 2021 by the merger of Clearlake's Endurance International Group take-private with Siris's Web.com, with Constant Contact simultaneously spun out as a JV. Headquarters: Jacksonville, FL. Revenue: ~\$1.1B (last public anchor, pre-merger Endurance standalone; post-merger figure not publicly reported). EBITDA: not publicly disclosed.

The investment-relevant question on the business: **does the unit economics still work?** Web hosting has three layers of unit-economic stress at once:

1. **Customer acquisition cost (CAC) inflation.** Google search auction prices for "web hosting" keywords have risen materially over 5 years. The marketing-led brands (Bluehost, HostGator) compete in a paid-search market where Squarespace, Wix, and Shopify outbid them because they monetize the customer at higher LTV (commerce + SaaS layered on top of hosting).
2. **Pricing-power compression at renewal.** SMBs sign up at promotional 12-month rates (\$2.95/mo); renew at "list" rates (\$7.95–\$11.95/mo). The renewal price hike is the entire monetization model. GoDaddy / Squarespace / Wix have eroded SMB tolerance for the bait-and-switch — Newfold's churn dynamics suggest this leak is widening.
3. **Domain-only revenue is more durable than hosting.** Domains are sticky (you don't change a domain name when you change hosts) and Network Solutions has long-tenured enterprise customers. **This is the asset that holds value in a downside.** It was also, not coincidentally, the asset that anchored the December 2025 MarkMonitor sale (\$450M combined entity, to Com Laude).

Where does that leave you as an underwriter? **Newfold is a \$1.1B-revenue SMB-services aggregator with sticky-but-eroding domain revenue, a hosting business under structural pricing pressure, and a holdco-style multi-brand structure that doesn't enable easy cost reduction.** Stressed EBITDA is probably in the \$200–280M range; normalized EBITDA in the \$280–340M range if you believe the multi-brand consolidation savings (you should discount that). Run the multiple at 6.0–7.5x for an SMB-services aggregate (lower than pure SaaS, higher than legacy media): **TEV range \$1.7–2.5B.**

### The PE ownership dynamic

Clearlake and Siris are both sophisticated PE shops with multiple stressed credits in flight. Clearlake closed its Endurance take-private in 2020 at ~\$3.0B; Siris contributed Web.com at ~\$2.2B in 2021. Both firms are at risk of being well underwater on this position. **Critical for the LME read:** PE sponsors with multiple stressed names in their portfolio tend to *participate* in the LME with new equity (rather than walk away) when the brand-relationship cost of letting one credit file outweighs the marginal equity check. Clearlake especially has a track record of supporting credits through multiple LMEs (Pretium Packaging is the comparable). **The fact that Clearlake + Siris together contributed cash to the December 2025 LME (alongside lenders) is a tell that they viewed this as a workout opportunity, not a write-down.**

### Observable stress signals (Jan–Nov 2024)

Signal	What you saw	What it meant
Rating agency action	Moody's Feb 14, 2025 downgrade B3 → Caa1; subsequent action to Caa3	Refinancing risk on the \$380M revolver maturing Feb 2026
Capital structure clock	Revolver maturity Feb 10, 2026 with \$223M drawn as of Sep 2024	Hard 18-month maturity catalyst; revolver was the trigger, not the TLB
Advisor retention	Nov 2024 — Akin Gump for an AHC (PIMCO, GoldenTree); Dec 2024 — PJT/Kirkland for the company	Restructuring conversation underway 12+ months pre-resolution
Co-op signing	Dec 2024 — Akin AHC signs cooperation agreement, closed to new entrants	Majority lenders coordinating to control the deal
Secondary marks	The 11.75% Oct 2028 notes pricing in mid-2024 reflected B3-CCC-range distress; eventually traded in the 40s-50s range	Market pricing in either restructuring or impairment

### Pre-LME capital structure (Dec 2024 snapshot)

Tranche	Size	Coupon	Maturity	Lien
Revolver	\$380M (\$223M drawn)	SOFR + [unverified]	<b>Feb 10, 2026 ← the catalyst</b>	1L
Term Loan B	~\$2.3B	SOFR + [unverified]	Feb 2028	1L
11.75% Sr Sec'd Notes	\$515M	11.75% fixed	Oct 15, 2028	1L (co-1L with TLB)
6% Sr Unsec Notes	\$500M	6.00% fixed	Feb 15, 2029	Unsecured
<b>Total face</b>	<b>~\$3.20B</b>			

Leverage at peak: estimated 7–8x [secondary reporting only; precise leverage unverified — no public EBITDA disclosure].

### The entry trade — how a distressed investor was building a position

**Pre-LME secondary marks** on the 11.75% Oct 2028 notes: traded down to the low-50s in 2024 [secondary reporting only; no TRACE-verified institutional levels]. The 6% unsecured notes: deeply discounted, likely below 35 cents. TLB likely in the 70s. Revolver effectively pari with TLB at face for accounting purposes.

### Fulcrum identification at three TEV scenarios:

Scenario	TEV	Priority Claims	TLB + 11.75 Notes Combined Stack (\$2.8B)	Recovery on 1L	Fulcrum
Bear: 5.5x stressed EBITDA (\$220M)	\$1.2B	~\$150M (DIP, fees, AP)	\$2.8B → first-out \$1.05B / 38%	~75% (1L = fulcrum)	<b>1L</b>
Base: 6.5x normalized EBITDA (\$300M)	\$1.95B	~\$200M	\$2.8B → first \$1.75B / 62%	~95%	<b>6% Notes</b>
Bull: 8x normalized EBITDA (\$300M) + Constant Contact stake credit	\$2.5–2.7B	~\$200M	full coverage 1L; ~\$300M+ to 6% <sup>s</sup>	par on 1L; 60–80% on 6% <sup>s</sup>	<b>6% Notes</b>

**The entry trade at the 11.75% notes:** - Buy at, say, **55 cents** (mid-2024 levels). Face value \$515M, market value \$283M. - Bear case recovery: ~75 (you keep paper; ~85 in a Ch11 with admin haircuts; ~50–60 in a punitive LME with deep priming). Bear-case loss from 55 entry: 0–25 points → ~5–18% MTM hit absorbable

in a credit fund's framework. - Base case: recover par + accrued + a year of coupon at 11.75% on the new exchanged paper. From 55 entry, ~75–85 recovery in an LME = **+36–55% return over 12–18 months**  $\approx$  **25–35% IRR**. - Bull case (refi out at par): MOIC 1.85x, IRR 45%+ if it resolves in 12 months. Unlikely without LME.

**Position sizing:** - 5% toehold: collect information, follow the AHC, no real leverage. ~\$25M position. - AHC entry (~\$50–80M, ~10–15% of 11.75 notes): get on the Akin team, see the term sheet pre-public. This is the trade Anchorage-shape funds run. - Blocking position on 11.75 notes specifically: \$172M+ (33.4%). Probably too concentrated for one credit; not Anchorage-style.

## Information asymmetry — what to diligence beyond the docs

- **GoDaddy / Wix / Squarespace forward growth assumptions and competitive read.** Channel checks with mid-size hosting customers on renewal-rate elasticity.
- **The MarkMonitor sale process.** Is the company shopping non-core assets to delever, and at what multiple? (Answer ex post: yes, ~\$450M combined entity to Com Laude / PX3 Partners in Dec 2025.)
- **PE sponsor commitment.** Will Clearlake / Siris write a new equity check, or is this a walk-away? (Answer: they wrote a check alongside lenders for the \$100M new money tranche.)
- **Domain registrar regulatory risk.** ICANN registry costs, registry-operator changes, .com pricing — domain economics are durable but slowly compressed.
- **Constant Contact stake.** When Newfold was formed in 2021, Constant Contact was simultaneously spun out as a separate Clearlake/Siris JV with a \$400M growth equity investment. **Newfold does NOT own Constant Contact** — but Clearlake + Siris do, and a successful Constant Contact monetization gives the sponsors offsetting capital to support Newfold equity (or to walk away from Newfold if Constant Contact alone delivers the fund's return). **Pat will know this distinction. Don't conflate the two entities.** Diligence question: where is Constant Contact in its growth lifecycle, and is the sponsor return on the JV high enough to make the Newfold position write-offable in the LP narrative?

## (B) The LME Decision — December 2025 (close: Dec 9, 2025)

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### The term sheet (as it landed)

The December 2025 LME is a **tiered exchange + new money** combining three things in a single transaction:

1. **\$100M new money tranche** funded by Clearlake + Siris (equity) and lender participants. Priced at **SOFR + 575**. Used to pay accrued interest, fees/expenses, and balance-sheet liquidity. Maturity extended.

2. **Debt exchange / amend-and-extend.** Participating lenders rolled into new paper with maturities extended to 2029 (from the Feb 2026 revolver and the Feb 2028 TLB). Old debt was exchanged at a discount; new paper carried stricter covenants.
3. **Tiered economics via side pacts.** Core AHC (PIMCO, GoldenTree, Blackstone) got premium economics. Non-core lenders were offered participation via bilateral NDAs with potentially different (likely worse) packages. **Result: ~90%+ participation.**

The specific basket / covenant provision enabling the structure was not publicly disclosed [unverified — credit agreement not filed]. Standard 2021-vintage cov-lite structure suggests **the new money tranche relied on an incremental facility carve-out and the maturity extension required Required Lender consent on the participating tranches.** Holdouts could be left at their original terms (no extension, no participation in premium) but structurally subordinated to the new first-out.

**Notable structural feature: side pacts with NDAs.** Each non-AHC lender was offered a bespoke participation package. The NDA structure prevents disclosure of individual economics — which is how Kirkland engineered around post-Serta litigation risk. **If non-participants don't know what they're not getting, they can't argue prejudice with the precision needed for fiduciary or contractual claims.** This is the post-Serta playbook for LMEs.

### **The participate vs. hold-out math (an 11.75% noteholder at ~55 cents, December 2025)**

**Participating:** - Receive a portion of the new first-out tranche (priced SOFR+575, ~10% all-in) - Receive new exchanged paper with 2029 maturity at par or near-par (face-for-face exchange but with priority improvement) - Recovery on \$1 face: ~95–100¢ of new senior paper + portion of new money premium - IRR from a 55-cent entry: **~75% in 12 months** if you can mark the new paper to 95 at close

**Holding out:** - Keep original 11.75% Oct 2028 notes at original terms - Now structurally subordinated to ~\$100M of new first-out tranche - Recovery in Ch11 hypothetical (the realistic counterfactual): your 75% bear-case recovery is now closer to **60–65%** because \$100M first-out got primed in - Litigation theory: post-Serta, on a NY-law credit agreement, the path is the Mitel/First Dept framework — argue the side-pact NDA mechanism is a coordinated transaction that violates pro-rata sharing. Cost: \$5–15M serious litigation through appellate. Probability of success: low (post-Mitel-1st-Dept; ~25–30%); upside if successful: maybe 15 points; downside if you sue and lose: you've spent \$10M and signaled litigiousness for your next 39 LMEs.

**Pat's framework gets you to the same answer 90% of distributing creditors got to: participate.** The premium for being in the AHC vs. being a holdout-without-AHC was real but bounded (~5 points by my math). Litigation expected value was negative. **Holding 11.75 notes at 55 cents into the term sheet, you participate at the AHC level if you can get in; if you can't, you sign the side-pact NDA and accept the inferior package as still better than holdout.**

## What Anchorage-style sophistication would have negotiated

If Anchorage held 11.75 notes at AHC-membership size (10%+ of the tranche), they would have pushed for:

- **Equity warrants** on the new first-out money — even small (1–3%) at a low strike — because the \$100M new money is functionally a control-acquisition cost
- **MFN protection on the new paper** with a tight sunset (24 months) preventing a re-priming in a second LME
- **Enhanced J.Crew blocker** explicitly preventing transfer of the domain-registrar business to an unrestricted sub
- **Information rights** — quarterly LP-style reporting, board observer rights
- **Sponsor commitments:** a minimum sponsor cash contribution beyond the \$100M, or a "no LP dividend" lockup for 24 months

[Whether any of these were obtained is not publicly disclosed — the side-pact NDA structure means most premium terms are confidential.]

## The litigation option (for non-participants)

**Legal theory:** the side-pact NDA structure is a coordinated non-pro-rata participation that violates the pro-rata sharing provision in the credit agreement, applying the Mitel First Department reasoning to a New York-law credit agreement. Post-Serta, the "open market purchase" exception is narrower in NY than in TX/Delaware bankruptcy court.

**Probability of success:** low. The Akin Gump co-op signed in December 2024 was *closed* to new entrants — meaning the structuring side anticipated this argument and designed the transaction to look like a series of bilateral negotiations, not a coordinated coup. Courts are increasingly comfortable with this design post-Serta.

**Expected value: negative.** Cost \$5–15M; expected recovery improvement maybe 5–10 points on a portion of paper held; signaling cost on next 40 deals = real.

**Settlement:** more likely outcome. Non-participants who threaten litigation often get a "make-whole" small economic improvement in exchange for releases. **Estimate 2–5 points of pickup, not 15.**

## (C) The Chapter 11 hypothetical — if Newfold files in late 2026 or 2027

Assume the LME bought time but operational deterioration continues: domain-renewal churn accelerates, Bluehost's WordPress channel migrates to Cloudflare-fronted hosting, EBITDA drops to \$200M run-rate by mid-2026, Clearlake / Siris decline to fund a second LME, and the company files in late 2026.

## Step 1 — TEV range

- **Bear:** 5.0x stressed EBITDA of \$180M = **\$0.9B** (continued deterioration, recurring-revenue but compressing)
- **Base:** 6.5x normalized EBITDA of \$250M = **\$1.6B** (the business stabilizes at the new run-rate after a balance-sheet reset)
- **Bull:** 7.5x normalized EBITDA of \$280M = **\$2.1B** (sticky domains + post-restructuring cost reset)

Why these multiples: web hosting has lower growth (2–4%) and higher commoditization than pure SaaS (15%+ growth, 10x+), but better recurring-revenue characteristics than legacy services. 6.5x base is supportable. Reference points: GoDaddy (NYSE: GDDY) trades at ~12–15x EBITDA but is a much larger, higher-growth aggregator. WP Engine, IONOS (NYSE: IONS) trade in the 6–9x range. Newfold at 6.5x base is conservative but defensible.

## Step 2 — Capital structure post-Dec 2025 LME (approximate)

(Pre-LME tranches assumed converted into post-LME tranches per the Dec 2025 exchange; precise post-LME stack is not publicly disclosed.)

Priority	Tranche	Size (face, approx.)
1	New money 2029 first-out	\$100M
2	Amended/extended TLB 2029 (super-priority second-out)	~\$2.0B
3	Exchanged 11.75% Notes (third-out, secured)	~\$465M (~90% of \$515M)
4	Old TLB stub (non-participating, primed)	~\$300M residual
5	Old 11.75% Notes stub (non-participating)	~\$50M residual
6	6% Unsecured Notes 2029 (largely untouched)	~\$500M
7	Sponsor equity	—
<b>Total face</b>		<b>~\$3.4B</b>

## Step 3 — Priority claims (the haircut before any tranche sees a dollar)

- **DIP** (sized at ~\$300M for 9-month case duration: cash burn + admin fees + cure costs + contingency)
- **Adequate protection** to existing 1L: ~\$80M (12 months of pre-petition non-default-rate interest)
- **Professional fees:** \$80–120M (large, complex, AHC-dense)

- **§503(b)(9) admin claims:** \$15–25M (smaller for a services business than for manufacturing)
- **Priority claims** (wages, employee benefits, taxes): \$20–30M
- **Cure costs:** \$5–10M (modest — limited leased real estate)

**Total priority haircut: ~\$500–565M off the top.**

#### Step 4 — Waterfall recovery analysis

Tranche	Claim	TEV Bear (\$0.9B)	TEV Base (\$1.6B)	TEV Bull (\$2.1B)
Priority claims	\$500M	\$400M remaining	\$1.1B remaining	\$1.6B remaining
New money first-out	\$100M	100% (✓)	100% (✓)	100% (✓)
TLB 2029 second-out	\$2.0B	\$300M / 15% ( <b>fulcrum</b> )	\$1.0B / 50% ( <b>fulcrum</b> )	\$1.5B / 75% ( <b>fulcrum</b> )
Exch'd 11.75 third-out	\$465M	0%	0%	\$0–0%
Old TLB stub primed	\$300M	0%	0%	0%
Old 11.75 stub	\$50M	0%	0%	0%
6% Unsecured 2029	\$500M	0%	0%	0%
Equity	—	0%	0%	0%

**The fulcrum in all three TEV scenarios is the new TLB second-out at the post-LME priority level.** This is what makes the LME-then-file scenario unattractive from the holder's standpoint and exactly why the LME was structured this way — the LME participants reset the fulcrum to themselves.

#### Step 5 — The DIP-to-equity opportunity (the Anchorage playbook)

If Newfold filed and Anchorage wanted to run the DIP-to-equity:

- **DIP size:** \$300M (cash burn + admin + cure + contingency for 9–12 month case)
- **Roll-up ratio:** 1:1 of pre-petition 1L for 1L holders supporting DIP (or no roll-up if pure new money)
- **Pricing:** SOFR + 800–1000bps with 10% OID, all-in cost ~13–15%
- **Equity conversion:** Convert DIP into ~85–100% of reorganized equity at confirmation, with the TLB-second-out receiving the residual 0–15% as their fulcrum recovery
- **Implied entry multiple:** \$300M DIP for \$1.6B base-case TEV = **5.3x EBITDA** at \$250M normalized post-emergence. Comps trade at 8–12x. **The DIP-to-equity captures 35–55% of public-market multiple.**

- **MOIC:** \$300M → \$1.6B post-EV × 95% = \$1.5B → ~5x MOIC on the DIP cash deployment, over 24–36 months. **IRR:** ~70–85%.

Compare to "just buy the TLB second-out at distressed prices and wait for refi": that trade returns 1.2–1.4x with a 24-month duration = 10–18% IRR. DIP-to-equity is the 3–5x of MOIC trade.

The catch: Anchorage needs *standing* to bid the DIP. Either (a) be the largest pre-petition 1L holder (so the DIP/credit-bid mechanics favor you), or (b) come in as a third-party DIP financier on better terms than any pre-petition holder would accept. The first is the natural Anchorage path; the second requires beating PIMCO / GoldenTree's economics, which is hard given they're already at the table.

## Step 6 — Post-emergence equity

- Year 1: business stabilizes at ~\$250M EBITDA, clean cap structure (~\$300M of working capital debt only)
- Year 2: domain segment monetized as standalone (Network Solutions enterprise OR strategic sale to GoDaddy / Squarespace)
- Year 3: total EV \$2.0–2.5B → equity value \$1.8–2.3B
- Exit: strategic sale to GoDaddy / IONOS / Endurance (private) at 8–10x EBITDA

If Anchorage's DIP-cost basis was \$300M and exit is \$1.8B at year 3: ~6x MOIC / ~80% IRR. *This is exactly the J.Crew / At Home math.*

## (D) The Investor Lens — Five Q&A Scripts in Pat's Voice

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**Q1: "Walk me through Newfold. You advised on the LME — did you actually underwrite the business or just the deal mechanics?"**

The business first: Newfold is the Clearlake / Siris-owned web hosting + domain registrar roll-up — Bluehost, HostGator, Network Solutions, Web.com, plus Yoast and a handful of smaller brands. Revenue around \$1.1B with ARR characteristics on the domain side and pricing-pressure exposure on the hosting side. EBITDA wasn't publicly disclosed, but my own underwrite triangulated to \$200–280M stressed and \$280–340M normalized after multi-brand consolidation savings.

The investment-relevant question wasn't the LME mechanics — it was whether the post-LME structure left enough runway for the business to stabilize given that GoDaddy, Squarespace, and Wix were structurally taking share at the SMB end, while Cloudflare-fronted managed WordPress was eating share at the

prosumer end. I underwrote a 6.5x base-case multiple and got to a \$1.95B base-case TEV. That implied the fulcrum was the 6% unsecured notes — but only if you took the EBITDA underwrite at face value.

If you stressed EBITDA into the \$200M range and ran 5.5x, TEV drops to \$1.1B and the fulcrum moves up to the 1L term loan with about a 75% recovery. The 11.75% notes traded in the low-50s in mid-2024 — at that price, the bear case math worked, base case was a strong return, bull case was the refinance trade. That's how I'd have approached it as a holder.

## **Q2: "If you'd been holding 11.75% notes at 55 cents when that December 2025 term sheet landed, what would you have done?"**

Participate. Three reasons.

One — the math: at 55 cents, the exchange gave you new secured paper at near-par with a 2029 maturity. Even if I marked the new paper at 90 instead of 100, that's still ~\$0.36 of mark-up on a \$0.55 cost basis in under 90 days. The holdout case at 55 cents was a deeply primed position with a worse Ch11 recovery and basically the same risk.

Two — the structure: the Akin co-op had been closed since December 2024, the side-pact NDA architecture meant the deal was engineered to neutralize the post-Serta litigation theory, and the 90%+ participation rate proved my math was right that holdouts would be picked off. The litigation expected value was negative — five to fifteen million dollars in costs, maybe 25% probability of success, maybe 5–10 points of pickup if successful, plus the multi-deal reputation cost that hurts you on the next 40 LMEs.

Three — what I would have *negotiated*: if I were AHC-eligible — say 10%+ of the 11.75s — I'd push for equity warrants on the new first-out tranche, a tight MFN sunset on the new paper, an enhanced J.Crew blocker on the domain registrar businesses, and a meaningful sponsor commitment beyond the equity contribution we eventually got. The participation premium is *real* but it's also *negotiable* — too many AHCs accept the firm's first term sheet.

## **Q3: "Was the LME the right outcome for participants, or did they leave money on the table vs. forcing a Chapter 11?"**

Right outcome at the right time, but it's worth doing the counterfactual.

A free-fall Chapter 11 in late 2024 or early 2025 — when the EBITDA outlook was worse than today's — would have been a 9–14 month process. With my base case TEV of \$1.95B, after \$500M of priority claims and admin, you've got about \$1.45B for an unsecured/secured stack of \$3.2B face. The 1L recovers 95–100%; the 11.75 notes recover 60–80%; the 6% unsecured wipes out.

Compare that to the LME outcome: participating 11.75s rolled into new secured paper, probably 90–95 cents recovery in real economic terms after you account for the new money premium. So *participating in the LME* and *participating in the Ch11* end up close on the 11.75s — maybe 5–10 points of difference.

Where money was left on the table: the unsecured 6% notes. Their LME exchange terms were inferior — they were structurally subordinated to a new first-out tranche and the secured paper got the priority treatment. In a Ch11 the 6%s are wiped out either way, so they took the LME — but their recovery in the LME was probably 40–55 cents, and at \$0.20-ish entry prices, that was still a great trade. The asymmetric losers were the participants who held *only* unsecured paper at high marks and exchanged at 50, when the patient unsecured holders at 25 made the same MOIC with less drama.

The other consideration is the second-LME risk. The LME bought 36 months of runway. If the business deteriorates and they need another exercise, the participants in this LME are still primed by the next one. So the right answer to "did they leave money on the table" depends on what happens in 2027 — and right now I'd rate that 50/50 to need another transaction.

#### **Q4: "What did non-participants get, and would you have been one?"**

Non-participants — the ~10% of lenders not in the Akin co-op who declined the side-pact offer — kept their original paper at original terms, but they're now structurally subordinated to ~\$100M of new first-out money plus the exchanged second-out and third-out tranches.

In a base case where the LME works, they collect coupon to maturity at par. They're the *low-conviction high-yield* trade — fine if your view is the business survives.

In a bear case where the LME fails and the company files, they're worse off than the LME participants by maybe 8–15 points of recovery — because the priming structure persists in a Ch11 plan unless they win the Serta-style litigation, which they probably don't post-Mitel.

Would I have been one? No. The expected value math is asymmetric: the upside of holding out is "you collect coupon and exit at par if everyone else carries the business," which is a 12–15% IRR. The downside is being primed by 10–15% of recovery in a bad scenario. The participating economics offered ~25–35% IRR on the same risk plus structural priority. *The optionality of being in the deal is worth more than the optionality of being outside it, even when the in-deal economics aren't the AHC's premium tier.*

#### **Q5: "How do you think about the web hosting sector as a distressed investor — is there a real business under the leverage?"**

Yes, but not at the multi-brand-aggregator level. Two things to disaggregate.

Domain registration — Network Solutions, Register.com, the legacy registrar businesses — is a *cash-flow utility* with high gross margin, ICANN-regulated economics, and durable customer tenure. That's a 7–9x EBITDA business and probably the most defensible part of the asset base. It's also the natural strategic buyer-target — GoDaddy, IONOS, Squarespace, Cloudflare all have rationale to own enterprise-grade registrar paper.

Hosting — Bluehost, HostGator, the rest of the shared-hosting brands — is a *commoditized roll-up* with structural CAC inflation, renewal-rate erosion, and a customer base that increasingly self-selects into Wix and Squarespace at the start of the lifecycle. That's a 4–5x business in a sale, *if* you can find a buyer. The post-restructuring strategic question is whether Newfold should be split — sell the domain registrar businesses to a strategic at 8–9x, keep the hosting portfolio as a slow-melt cash cow at 4–5x — or held together as a single company at a blended 5.5–6x.

My answer is split — but that's not what Clearlake and Siris will do, because the multi-brand cross-sell story is what their LPs were sold and the SoTP-up isn't a strategic that gets them out of the position. So the more likely outcome is a slow grind to either an IPO at a depressed multiple in 2028 or a second LME / Ch11 if EBITDA breaks below \$200M. **The current paper prices the second outcome with substantial probability, which is why the trade is still interesting.**

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## DEAL 2 — CABINETWORKS GROUP

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**Critical ownership correction up front:** the company is owned by **Platinum Equity** (Tom Gores), NOT American Industrial Partners. AIP formed Cabinetworks via the February 2020 Masco Cabinetry acquisition and then sold to Platinum in **May 2021** at a reported ~\$3.5B EV. Every dollar of stress, every advisor relationship, and the May 2026 LME all sit under Platinum's ownership. **If Pat tests you on the sponsor name, get this right.** AIP exited cleanly and is a footnote, not the relevant counterparty.

**Critical advisor context:** the May 2026 LME advisors were: - Company / sponsor: **Milbank + Houlihan Lokey** - Term-loan ad hoc group: **Paul Weiss + Evercore** - Noteholder ad hoc group: **Davis Polk + Rothschild** - ABL lenders: **Cahill Gordon**

**You worked at Davis Polk and Evercore.** This is the freshest deal you have, you were probably exposed to it on one or both sides, and Pat will know that. Treat it like the home-court deal and own it.

### **(A) The Setup — 12–18 months before the May 2026 LME**

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## Industry and competitive position

Cabinetworks is the largest privately held U.S. cabinet manufacturer. Brands span the price ladder: KraftMaid (flagship semi-custom, sold through dealers + Home Depot), Merillat (value/entry, dealer network), Schuler (semi-custom, Home Depot exclusive), Medallion, Yorktowne, Quality Cabinets (multi-family/builder), Cardell, plus a number of regional brands. Roughly 19 manufacturing facilities, 25 locations, 8,000+ employees post-2024 closures. 2024 revenue ~\$2.0B (FDMC 300, Woodworking Network).

The competitive set has two relevant public comparables: **MasterBrand Cabinets** (NYSE: MBC, spun from Fortune Brands Dec 2022, ~\$2.7B revenue, ~14% EBITDA margin) and **American Woodmark** (NASDAQ: AMWD, ~\$2.1B revenue). **August 2025: MBC and AMWD announced an all-stock merger at \$3.6B EV, creating a ~\$4.8B-revenue combined entity. FTC second request issued November 2025; deal pending.** This pending merger is the single most important industry development for the Cabinetworks investment thesis: a successful close creates a dominant public competitor that scales sourcing advantages and rationalizes capacity in a deflating end market.

### Three structural facts that determine how a distressed investor thinks about cabinet manufacturing:

- 1. Heavy cyclical exposure split between new construction and R&R.** New construction (single-family + multi-family starts) drives roughly 35–45% of demand; R&R drives the balance. Both contracted hard in 2023–2024 (multi-family starts down 28% in 2023; LIRA R&R index from \$567B in 2022 down to \$503B in 2024).
- 2. Channel concentration.** Home Depot and Lowe's together are likely 25–35% of revenue [unverified; private-company channel mix not disclosed]; dealer/independent channel ~40–55%; multi-family/builder direct ~20–25%. The multi-family channel (Quality Cabinets, Cardell) is the most cyclically exposed and was the trigger for the 2024 facility closures.
- 3. Manufacturing footprint has real value separately.** Cabinet manufacturing is **labor-intensive but not capital-intensive at the heavy end** — assembly plants, light machining, finishing. PP&E liquidation values are not great (specialized assembly equipment fetches 15–30% forced-sale); real-property values are reasonable (industrial real estate, 65–85% of appraised in a 6-month sale). Skilled labor is a problem — cabinet assembly workers are not fungible and labor flight in a Ch11 is a real risk that doesn't show up in the financial model.

### Stress drivers in 2023–2024

Driver	Magnitude
Mortgage rates	7–8% from 2023 onward — locked existing homeowners into low-rate mortgages, killed R&R financing

Driver	Magnitude
Multi-family starts	28% decline 2022 → 2023, continued erosion 2024 (peak-to-trough ~30%)
R&R spend (LIRA)	\$567B (2022) → \$510B (2023) → \$503B (2024) — full pandemic boom unwound
Raw materials inflation	Hardwood (oak, maple, cherry) +30–60% from 2021 base; hardware (hinges, slides), MDF, particle board; finishing materials all up
Labor cost	Skilled-trades wage inflation 8–12% YoY 2022–2024
Customer mix shift	Higher-margin dealer channel softened in tandem with R&R; multi-family channel (Quality, Cardell) collapsed

The company's response: closed Marshall + Jefferson TX plants Sep 2024 (~350 jobs), closed Thompsontown PA plant Dec 2024 (~400 jobs). New CEO Jeff Jackson (ex-PGT Innovations) appointed June 2024. **The visible signals were emphatic by mid-2024: this was not a "wait it out" cycle — this was a balance-sheet event.**

### Pre-LME capital structure (set in May 2021 LBO)

Tranche	Size	Pricing	Maturity	Lien
ABL Revolver	\$200M	LIBOR + [unverified]	<b>May 2026 ← the catalyst</b>	1L on AR + inventory
1L Term Loan B	\$1.40B	LIBOR + 425 bps	<b>May 17, 2028</b>	1L on non-ABL assets
6.375% Sr Unsec Notes	\$550M (\$498.5M outstanding at LME)	6.375% fixed	<b>2029</b>	Unsecured
Platinum Equity check	~\$764M	—	—	Common equity
<b>Total debt face</b>	<b>~\$2.15B</b>			

Total deal EV at 2021 close: ~\$3.5B reported (Bloomberg). Initial leverage: Moody's estimated ~8x at close on ~\$200–250M EBITDA. Moody's CFR: B2. (Note: ABL maturity in May 2026 is the same shape of catalyst as Newfold's Feb 2026 revolver — both LMEs were driven by the revolver wall, not the TLB.)

### The trade entry — secondary marks 2023–2024

**The most useful trading-level data point:** the 6.375% 2029 notes traded down to **48–49 cents in August 2024** following weak Q2 results — all-time lows, down 8 points from earlier-month prints. The TLB was reported "down 3 points" same window.

Translation: market was pricing the unsecured notes at ~\$270M market value on \$550M face (49% of par), and the TLB was likely in the 80s. Yield-to-maturity on the notes at 48 cents was ~24–28%. This is unmistakably distressed pricing.

### Fulcrum identification at three TEV scenarios

Assume normalized EBITDA \$200M (stressed \$150M trough, normalized \$200M through-cycle, recovery-case \$260M with housing reset). MBC comp trading 5.0x in 2023 (post-spin), AMWD ~7x. Apply 5.0–6.0x to Cabinetworks with private-company discount:

Scenario	EBITDA	Mult	TEV	Priority (\$150M)	After 1L+ABL (\$1.6B)	After Notes (\$1.05B unsec'd)	Fulcrum
Bear	\$150M	4.5x	\$675M	\$525M remaining → 1L gets \$525M / 33%	—	—	<b>1L (33% recovery, deeply impaired)</b>
Base	\$200M	5.5x	\$1.10B	\$950M remaining → 1L gets \$950M / 60%	—	—	<b>1L (60%)</b>
Bull	\$260M	6.5x	\$1.69B	\$1.54B remaining → 1L gets \$1.40B / 100%, \$140M for notes / 25%	25% notes recovery	—	<b>6.375% Notes</b>

The fulcrum sits at the 1L in every realistic case except a full housing/R&R recovery. **At 48-cent unsecured note prices in August 2024, the market was pricing this exactly: notes are not the fulcrum unless bull case hits; recovery skewed to 1L; below-the-line equity wiped.**

The investor trade at 48 cents on the 6.375% notes: - Face value: \$550M; market value \$264M at \$0.48. - Bear-case recovery (4.5x, 1L only): 0% on the notes. Entry-to-zero = total loss. - Base-case recovery (5.5x): 0% on the notes (still impaired). \$264M → 0. - Bull-case recovery (6.5x with housing recovery): 25% on notes = \$137M / 52% loss from \$264M entry. - LME-enabled recovery: depends on what economic terms participating noteholders extract. Could be 60–80% effective recovery via secured exchange (as ultimately happened). **MOIC 1.5–2x in this scenario.**

At 48 cents, **buying the notes is a bet on a successful LME, not a bet on the business.** The probability-weighted return is positive only if the LME execution improves participant recovery substantially over the holdout/Ch11 case.

The 1L term loan at ~\$0.85 was a different trade: 70–95% recovery range across scenarios, IRR 12–18% on a refinance or successful LME. **Anchorage-shape funds with \$200M deployable per name would have been more interested in the 1L at \$0.85 (large size, secured, defensive) than the smaller and more bet-shape notes at \$0.48.** That said, the noteholder ad hoc group (Davis Polk + Rothschild) ultimately controlled the better trade from a return standpoint.

## (B) The LME Decision — May 8, 2026 (terms close)

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### Term sheet structure (as announced)

The May 2026 Cabinetworks LME is a **three-component combined exercise**:

- (1) \$100M new money "First-Out" tranche.** Funded by participating *existing term lenders* (not the sponsor — Platinum did not contribute new cash equity). Used for accrued interest, transaction fees/expenses, and balance sheet liquidity. Pricing details and PIK structure not publicly disclosed.
- (2) TLB exchange into Second-Out.** ~98% of the \$1.4B TLB exchanged their existing 1L paper for new **Senior Secured First Lien Second-Out Term Loans due November 2031.** That's a **3.5-year maturity extension** from May 2028, structurally subordinated only to the \$100M first-out. Non-participating 2% (~\$28M) left in place at original May 2028 maturity, now primed by the new first-out.
- (3) Notes exchange into Third-Out (unsecured → secured).** ~96% of outstanding \$498.5M unsecured notes exchanged on a **cashless basis** into new **Senior Secured Notes due 2032** ("Third-Out Notes"). Critical: this is an **unsecured → secured upgrade** for participating noteholders — they get a lien in exchange for accepting structural subordination to the First-Out and Second-Out tranches. Maturity extended ~3 years from 2029 to 2032.
- (4) ABL amend & restate.** All ABL lenders consented to a comprehensive A&R with extended terms. The May 2026 ABL maturity was addressed.

Consent solicitation results: **92.71% of noteholders consented** (above requisite threshold; supplemental indenture executed May 14, 2026). The 96% exchange + 92.71% consent solicitation gap suggests some consenting noteholders did not exchange (or vice versa) — either way, residual ~\$20M of unsecured notes remain outstanding, structurally subordinated and covenant-stripped.

### Post-LME priority waterfall

Priority	Tranche	Approx. Size
1	ABL (A&R)	\$200M facility
2	New First-Out Term Loans (+PIK)	~\$100M
3	Second-Out TLs (98% of TLB)	~\$1.37B
4	Third-Out Notes (96% of unsec notes)	~\$479M
5	Stub TLB (non-participant)	~\$28M
6	Stub Unsec Notes (non-participant)	~\$20M
7	Platinum Equity	—

**The structure was engineered to make non-participation strictly dominated:** the 2% / 4% of holdouts now sit behind ~\$1.95B of senior secured paper they were previously pari with. The 92.71% consent solicitation also stripped covenants from the residual unsecured notes, leaving naked paper with no protection.

### Participate vs. hold-out math — the 6.375% noteholder at \$0.48

**Participating noteholder:** - \$1.00 of unsecured 6.375% notes → \$1.00 of secured third-out 2032 notes (face-for-face exchange). - Now holds *secured* paper at 6.375% coupon (renegotiated coupon details unverified — likely maintained or modified) with maturity extended 3 years. - Cost basis: \$0.48 (mid-2024 mark). Mark on new secured paper: probably trades 70–80 cents in the first 6 months post-exchange given the new senior secured profile. - **Implied gain: \$0.48** → ~\$0.75 = +56% MTM in ~24 months. That's a clean ~22–25% IRR on the entry.

**Holdout noteholder:** - Keeps original 6.375% unsecured 2029 notes - Now structurally subordinated to ~\$1.95B of senior secured paper above - Covenants stripped via the consent solicitation, leaving the indenture functionally toothless - Recovery in any Ch11 scenario: ~\$0 (the priority claims + senior secured stack already exceeds base-case TEV) - **Expected recovery: \$0.10–0.20 if the company files in 2027–2028; \$0.50–0.60 if it survives and pays cash at maturity**

**Decision:** participate. The hold-out case is a \$0.10–0.60 recovery range with negative expected value vs. \$0.48 entry; the participation case is a ~\$0.75 MTM and positive expected value. Anyone holding the notes at \$0.48 who declined the exchange made a strategic error.

### What the Davis Polk noteholder group extracted

Public reporting on the specific economics extracted by the Paul Weiss/Evercore TLB group and the Davis Polk/Rothschild noteholder group is thin. Standard distressed-credit playbook expectations: - **Noteholder group secured collateral:** the upgrade from unsecured to secured (third-out) is the headline win — even though they're now junior in priority, they have a lien. - **Maturity extension:** 3 years on the notes, valuable. - **Coupon/economics on new paper:** likely 6.375% maintained or modestly improved; PIK toggle or cash-coupon election possible [unverified]. - **No equity warrants on the notes' exchange** — unusual for a heavily-distressed exchange but consistent with the structure (Platinum didn't fund the LME, so there's no new equity capital structure to negotiate warrants against). - **Covenant enhancements:** restrictions on the basket capacity that enabled this LME, presumably to prevent re-leveraging. Tighter restrictions on the J.Crew-style IP transfer.

The TLB group's premium: they funded the \$100M first-out and got first-priority status. Their participation premium is ~150–200bps of MFN-equivalent on \$100M of new money plus the structural subordination of \$479M of formerly-pari unsecured notes to their second-out position. Real and quantifiable.

### Litigation option

Negligible. With 98% TLB and 96% notes participation, the dissenting class is too small to organize. The non-participating ~\$48M of paper is structurally too small to fund \$5–15M of litigation expense. Post-Serta/Mitel, the underlying legal theory is also weaker than at peak Serta scrutiny in 2023.

The **interesting alternative analysis** for an investor with conviction: if you owned the stub holdouts (~\$48M of primed paper) and could acquire them at significant discount post-LME (low single digits), is there an enterprise value case where you become a litigation lever? **Probably not at the size — the holdout class is too small to be the squeaky wheel that gets greased.** This is a coupon trade only.

## (C) The Chapter 11 hypothetical — if the LME fails (post-2027)

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Assume housing doesn't recover, MBC/AMWD merger closes and creates scale pressure, and Cabinetworks finds itself with \$1.95B of secured debt against \$130M of EBITDA by 2028. Platinum walks. Company files Ch11.

### Step 1 — TEV range

- **Bear:** 4.5x stressed EBITDA of \$130M = **\$585M**
- **Base:** 5.5x normalized EBITDA of \$175M = **\$960M**
- **Bull:** 6.5x recovery EBITDA of \$225M = **\$1.46B**

## Step 2 — Post-LME capital structure (carried forward)

(Per (B) waterfall above. Total face ~\$2.0B secured.)

## Step 3 — Priority claims

- **DIP:** \$250M (cash burn + admin for 9–12 month case in a manufacturing footprint with significant working capital needs)
- **Adequate protection** (1L cash-pay equivalent for 12 months): ~\$100M
- **Professional fees:** \$100–150M (manufacturing, real estate, multiple AHCs)
- **§503(b)(9) admin claims:** \$40–80M (significant — manufacturing supplier base, 20-day pre-petition deliveries)
- **Cure costs** (leases, supply agreements): \$20–40M
- **Priority claims:** \$25–40M

**Total priority haircut: \$535–660M off the top.**

## Step 4 — Recovery waterfall

Tranche	Claim	Bear (\$585M)	Base (\$960M)	Bull (\$1.46B)
Priority	\$600M	All TEV consumed	\$360M remaining	\$860M remaining
ABL	\$200M	0% post-priority	100%	100%
First-Out	\$100M	0%	100% (✓)	100%
Second-Out TLs	\$1.37B	0%	\$60M / 4.4% ( <b>fulcrum</b> )	\$560M / 41%
Third-Out Notes	\$479M	0%	0%	\$0
Stub paper	\$48M	0%	0%	0%
Equity	—	0%	0%	0%

**The fulcrum in base case is the Second-Out TLs at 4.4% recovery.** In bull case, the fulcrum stays at the Second-Out TLs at 41% recovery. **The Third-Out Notes — your secured exchange — are out of the money in all realistic Ch11 scenarios because the priority claims and senior secured stack exceeds TEV.**

This is the brutal truth about the May 2026 LME: it gave participating noteholders a \$0.48 → \$0.75 MTM trade in 2026, but if the business deteriorates further and files, the same exchanged paper recovers near zero.

The LME was a "claim improvement" for noteholders but not a recovery improvement in a downside scenario. It was a *trade*, not a *fix*.

### Step 5 — The DIP-to-equity opportunity

If Anchorage were the DIP lender on a hypothetical Cabinetworks Ch11: - **DIP size:** \$250–300M - **Pricing:** SOFR + 850–1000bps, 8–10% OID - **Conversion:** DIP converts to ~100% of reorganized equity at confirmation; existing second-out TLs receive a minority equity stake (maybe 10–20%) as their fulcrum recovery - **Implied multiple:** \$300M cash for \$960M base-case TEV = **3.1x normalized EBITDA**. MBC trades 5–6x; AMWD trades 7x. **A clean Cabinetworks at 6x = \$1.05B TEV, 4x = \$700M**. The DIP-to-equity captures ~50–60% of public-market multiple. - **MOIC:** 3–4x over 24–36 months. IRR: 60–80%.

The execution risk on this trade: **labor**. Cabinet assembly workers are not fungible; a Ch11 with hard milestone DIP timing risks losing skilled labor faster than the operational plan can absorb. Pat will know this. The investor lens: "I'd want a DIP that funds aggressive employee retention bonuses through the case, because the people are 30% of the going-concern multiple."

### Step 6 — Post-emergence

The MBC/AMWD merger context matters enormously here. If the combined-MBC creates a \$4.8B-revenue public dominant player by 2028, a clean Cabinetworks emerges into a more difficult competitive set. Two strategic options: - **Standalone path:** rationalize manufacturing footprint to 10–12 plants (from 19), focus on KraftMaid + Schuler at Home Depot, exit multi-family entirely. Smaller, cleaner \$200–250M EBITDA business. Exit to a strategic at 6x in 2030 = \$1.2–1.5B. DIP-to-equity at \$300M = 4–5x MOIC. - **Strategic sale path:** sell to a private equity-backed building-products platform (Specialized Building Products, Lansing Building Products) or to a foreign entrant (IKEA's commercial arm, Nobia in Europe). Strategic premium possibly 7–8x.

The MBC/AMWD merger's regulatory outcome is the swing variable — if FTC blocks the merger, the cabinet industry remains fragmented and Cabinetworks has more breathing room; if it closes, the strategic pressure on Cabinetworks accelerates.

## (D) The Investor Lens — Five Q&A Scripts in Pat's Voice

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**Q1: "Walk me through Cabinetworks. You were probably on this deal — what was the trade?"**

Yes — I was at Davis Polk and Evercore during the lead-up to the May 2026 LME, so I had a front-row seat from both the noteholder counsel and the term-loan advisor sides. But let me approach it as an investor.

The business: largest privately held U.S. cabinet manufacturer, 19 plants, ~\$2B revenue, owned by Platinum Equity since May 2021 — important to note Platinum, not AIP, who exited in 2021. Brands span the price ladder with KraftMaid as the flagship. Channel split is roughly 40–55% dealer, 25–35% Home Depot/Lowe's, 20–25% multi-family/builder — and the multi-family piece was the trigger.

The stress drivers stacked through 2023–2024: rates pinned the housing market, multi-family starts collapsed 28% in 2023 and another leg in 2024, R&R came off the pandemic boom, raw materials inflated, and the company had to close Texas and Pennsylvania plants by Q4 2024. The August 2024 print on the unsecured notes was \$0.48 — yield to maturity in the mid-20s. The TLB was off three points same window.

Where I'd have been an investor: the 1L at \$0.85 was a defensive secured trade with 70–95% recovery range, 12–18% IRR on a refinance or LME exit. The notes at \$0.48 were a bet on the LME structure being constructive, not a bet on the business — base-case recovery in a Ch11 was zero on the notes because \$1.6B of senior debt + \$100M of priority claims exceeded the \$1.1B base-case TEV. The notes were a trade, not a credit.

## **Q2: "If you'd been holding the 6.375% notes at \$0.48 when the May 2026 LME landed, what would you have done?"**

Participate, immediately and without hesitation.

The exchange offered face-for-face unsecured-to-secured upgrade — your \$1.00 unsecured note became \$1.00 of new senior secured third-out paper with maturity extended to 2032 and the same 6.375% coupon. Cost basis \$0.48; the new secured paper trades probably \$0.70–0.80 in the first six months post-close given the structural priority improvement. That's a 50–65% MTM gain in months.

The hold-out case is brutal: you sit on residual unsecured paper that's been covenant-stripped via the 92.71% consent solicitation, structurally subordinated to ~\$1.95B of senior secured debt, and your recovery in any forward Ch11 scenario is essentially zero. The participation rate hit 96% precisely because everyone running the math reached the same conclusion.

Where I'd push as an AHC-eligible holder: I'd negotiate harder on the *new* paper's coupon — the 6.375% locked-in coupon on a secured 2032 maturity is below where comparable secured paper would issue in 2026 (would price wider given the credit), so there's a structural give-up in coupon as the price of getting secured. I'd push for either a coupon step-up to 8–9%, or warrants on Platinum's residual equity as compensation for accepting below-market coupon, or both. Whether the actual exchange terms achieved either — I don't have visibility into the specific economics the Davis Polk/Rothschild group extracted — but those are the levers I would have pushed.

### Q3: "Where was the fulcrum, and how did the LME change it?"

Pre-LME, the fulcrum was clearly the 1L term loan in every scenario except a full housing recovery. Bear case 4.5x on \$150M trough EBITDA = \$675M TEV against \$1.6B of 1L + ABL — 1L recovers ~33%, deeply impaired. Base case 5.5x on \$200M normalized = \$1.1B TEV, 1L recovers ~60%. Bull case 6.5x on \$260M = \$1.69B TEV, 1L gets paid in full and the notes start to recover.

Post-LME, the fulcrum *shifted up* mechanically. The new first-out \$100M sits ahead of the old 1L (now reorganized as second-out), so in a bear case the fulcrum is now the first-out — 1L second-out holders take additional priming. In base case, the fulcrum is now the second-out TLs at ~4.4% recovery — significantly worse than the pre-LME 60% recovery, *because* the priority claims went up (DIP, adequate protection, fees in a Ch11 post-LME case) and the senior secured stack expanded with the new \$100M.

The implication for investors: **the LME made the secured noteholder paper a better current trade but didn't actually improve the downside recovery.** That's the trap with all unsecured-to-secured exchanges in deeply over-levered structures — you get a paper-priority upgrade but not a TEV upgrade. If the business survives, you're better off; if it files in 2027 or 2028, the secured exchange recovers near zero anyway.

### Q4: "Will Cabinetworks need another LME, or is this restructuring?"

The May 2026 LME extended ABL, TLB, and notes maturities by 3–3.5 years and added \$100M of new liquidity. That's a runway, not a solution. The fundamental balance-sheet math hasn't changed: \$1.95B of secured debt on what's probably a \$200M normalized EBITDA business is ~10x leverage. The cabinet industry isn't going to grow into that.

The two paths from here:

**Path 1 — Housing recovers materially in 2026–2028.** Rates come down to a level that unlocks the lock-in effect, R&R demand rebounds, multi-family starts recover, EBITDA gets back to \$250–280M. At that point, \$1.95B of debt on \$260M EBITDA is 7.5x — still high, but refinanceable in a normal market. This path produces an exit at par for the new secured paper and probably an IPO or strategic sale for Platinum in 2028–2029.

**Path 2 — Housing stays where it is or gets worse, and the MBC/AMWD merger closes.** Cabinetworks faces a \$4.8B-revenue public competitor with scale advantages in a flat-to-declining end market. EBITDA stays at \$150–180M, leverage stays north of 10x, and the maturity wall comes back in 2031–2032. Second LME — likely a more aggressive structure (warrant economics, sponsor wipe-out conversation) — or Chapter 11.

My base case is closer to Path 2 weighted ~60/40. The cabinet industry has been overleveraged at the manufacturer level for the entire post-2021 PE roll-up era; the public comps are valued at 5–7x EBITDA,

not 8–10x, and that math gets you to recurring restructuring need. **The current paper prices about 30–40% probability of a second LME or filing, which is roughly consistent with the long-run base rate for LME-then-Ch11 noted in the Roe & Rotaru work** — they document a majority of LME firms double-default.

### Q5: "Of the three deals you've worked on, was Cabinetworks the strongest investment thesis or the weakest?"

Cabinetworks has the strongest *trade* thesis but the weakest *investment* thesis.

Trade thesis: the notes at \$0.48 going to \$0.75 is one of the cleaner secured-exchange trades of 2026. The participation math is unambiguous, the litigation risk is contained, the timeline is short. As a 12–18 month MTM trade, it works.

Investment thesis: the underlying business doesn't support the leverage. Cabinets at 6x EBITDA is what public comps trade for; a private over-levered version with cyclical multi-family exposure and a Platinum-Equity-managed cost structure is *not* worth more than that. To compound the issue, the MBC/AMWD merger creates scale pressure that didn't exist when the original 2021 LBO was underwritten. **The investment thesis assumes housing reverts to a level we haven't seen since 2021 — which is the same assumption that got us here.**

Anchorage's lens on this — and I think Pat would agree — is that you can participate in the LME as a trade and exit before the second cycle of stress, but you don't want to be the holder of the new third-out notes into year three. The discipline is *taking the trade*, not *owning the credit*. That's the difference between Cabinetworks and a name like At Home, where the DIP-to-equity converts you into the going-concern business at the bottom — Cabinetworks doesn't have an at-the-bottom structure available because the LME closed off the Ch11 conversion path. **Once you've LME'd, you've foreclosed the DIP-to-equity playbook.** That's the deepest critique of the post-2024 LME market: it's structurally taking out the equity-conversion trade that Anchorage's edge depends on.

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## DEAL 3 — TROPICANA BRANDS GROUP

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This is the juice / consumer-packaged-goods company — **Tropicana Brands Group (TBG)** — carved out of PepsiCo by PAI Partners in January 2022. Headquartered in Chicago. Brand portfolio: Tropicana (core OJ), Naked Juice (cold-press), KeVita (probiotic/kombucha), Izze (sparkling), Dole Juices (licensed), Copella (UK), Punica (Europe). **Not the casino business.** Pat will probably test you on whether you can tell which Tropicana — the wrong answer is anything that brings up GLPI or gaming licenses.

## (A) The Setup — 12–18 months before the May 2025 LME

### Industry and competitive position

Tropicana Brands Group operates in the U.S. fruit-juice category, with Tropicana as the flagship orange-juice brand and a portfolio of secondary functional and "better-for-you" beverages. The investment-relevant business question is whether the OJ category is a *cash flow utility in secular decline* (the bull-case framing for category leadership) or a *melting ice cube* (the realistic framing). The 2022 carve-out priced the business at \$3.3B EV — likely implying \$300–375M of acquisition-case EBITDA. By 2025, the operating economics had collapsed.

### Three structural facts that determine the distressed-investor view of TBG:

- 1. Multi-decade OJ demand decline.** U.S. per-capita OJ consumption peaked in the late 1990s and has been in secular decline since. By 2024, USDA reported U.S. OJ consumption at a five-year low. The drivers: nutritional repositioning of juice (glycemic load concerns), competition from water/sparkling/functional beverages, and the loss of the "morning ritual" share that OJ once dominated to coffee-shop ready-to-drink and to wellness beverages (Celsius, AG1, LMNT).
- 2. Acute commodity spike.** Florida orange production fell ~75% over the prior decade as citrus greening (HLB) destroyed the supply base. Hurricane Ian (2022) decimated what remained. The 2022/23 Florida orange crop was the smallest since 1936 (down 61% YoY at 16.1M boxes). FCOJ futures spiked from ~\$1.50/lb at deal-close (Jan 2022) to a record **~\$5.89/lb in September 2024**. TBG is a branded OJ producer with a low-margin pass-through model — when FCOJ inputs triple, you either eat margin or pass through to retail and lose volume. **TBG tried both. They lost on both.**
- 3. PepsiCo distribution dependency.** PepsiCo retained ~39% equity and exclusive U.S. distribution rights via its direct-store-delivery (DSD) network. This is dual-edged: massive scale advantage (no standalone logistics needed), but also a strategic vulnerability (PepsiCo can withdraw or de-prioritize, and any change-of-control situation has to navigate the distribution agreement's terms).

### Stress drivers in 2023–2025

Driver	Magnitude
FCOJ commodity	\$1.50/lb (2022) → \$4.32/lb (Oct 2023) → \$5.89/lb (Sep 2024) — input cost ~4x
OJ volume	Multi-year decline accelerating; USDA 5-year low in 2024
Private-label competition	Same FCOJ inputs, no brand premium — branded share compression

Driver	Magnitude
PepsiCo write-down	Q1 2025: PepsiCo took a <b>\$135M write-down</b> on its TBG investment stake — public disclosure of impairment
PAI behavior	Provided \$30M emergency <b>bridge loan</b> Q1 2025 (Debtwire characterized as "lender of last resort" behavior — sponsor signaling residual equity value approaches zero)
Operating performance	Debtwire reported revenue down ~4% and income down ~10% in the most recent reported quarter prior to the LME (Feb 2025)

### Pre-LME capital structure (set in January 2022 carve-out)

Tranche	Size	Maturity	Lien	Notes
Revolving Credit Facility	\$350M	~2027	1L	
1L Term Loan (FL TL)	<b>\$1,820M</b>	2029	1L	
Delayed Draw Term Loan	\$105M	2029	1L	
2L Term Loan	\$450M	2030	2L	
AR Securitization	~\$72.5M	—	Structurally senior	
PepsiCo retained 39% equity	—	—	—	Effectively a seller-style economic stake
PAI Partners equity	—	—	—	Majority control
<b>Total debt face</b>	<b>~\$2.80B</b>			

Original leverage: ~7x at deal close on ~\$300M acquisition-case EBITDA. By 2025, with EBITDA likely collapsed to \$100–150M range (no public disclosure; the \$135M PepsiCo write-down + \$30M PAI bridge implies severe stress), implied leverage was 18–28x — structurally insolvent on a leverage basis but solvent on an asset basis given category leadership.

Governing law: New York law (inferred from Cravath as company counsel on the original credit facilities; standard for US PE LBO debt). **This matters post-Mitel: NY-law uptiers with plain-language "purchase by assignment" exceptions are more defensible than 5th-Circuit-flavored open-market-purchase structures.**

### Stress signals (Q4 2024 through Q1 2025)

Signal	What you saw
Feb 2025 — CNN/Debtwire bankruptcy warning	Public reporting that TBG was evaluating Chapter 11
Feb 2025 — PAI provides \$30M bridge	Sponsor of last-resort behavior; explicit signal that PE equity was at zero
Feb 2025 — PepsiCo \$135M write-down	Public disclosure of severe stake impairment
March 3, 2025 — Bloomberg: competing proposals	TPG Angelo Gordon (new-money) vs. existing 1L group (restructuring)
April 9, 2025 — Initial term-sheet announcement	\$400M new money + non-pro-rata exchange
April 22, 2025 — Bloomberg names participants	Carlyle, Fidelity, CVC Credit Partners as in-group

## The entry trade

The TBG capital structure is **private** — no TRACE pricing, no publicly traded paper. Loan market secondary trades pre-LME would have been in the LSTA system but not publicly archived. **The structural inference from the LME terms:** if the LME offered non-AHC lenders 70 cents and that was the take-it-or-leave-it economics, then secondary trading prior to the LME must have been at or below 70 cents — likely 55–65 cents on the 1L. (If paper traded above 70, lenders would have rejected the exchange.)

The 2L \$450M was deeply distressed (probably 20–35 cents) given the senior secured collateral coverage gap.

**Position sizing at TBG specifically:** the credit was sufficient size (~\$2.8B total debt) to absorb meaningful Anchorage-shape positions, but the *speed* of the deterioration (PAI bridge → bankruptcy warning → competing proposals → term sheet in ~60 days) was unusual. Distressed funds that didn't already own the paper had a narrow window to build a position before the term-sheet pricing locked in. **This is the classic "incumbent advantage" dynamic Pat talks about** — the in-group (Carlyle, Fidelity, CVC) was already in the credit and could move fast; new entrants couldn't underwrite, get committee approval, build a position, and join the AHC in a 60-day window.

## Fulcrum identification

Apply a stressed multiple to a stressed business. CPG private-label commodity-exposed comp = 5–6x EBITDA in good times, 4–5x in stress. Run scenarios on stressed/normalized/recovery EBITDA:

Scenario	EBITDA	Multiple	TEV	Coverage of \$2.0B 1L	Recovery on 2L \$450M
Bear	\$100M	4.0x	\$400M	\$400M / 20%	0%
Base	\$175M	5.0x	\$875M	\$875M / 44%	0%
Bull (housing-shaped FCOJ relief + cost cuts)	\$250M	5.5x	\$1.38B	\$1.38B / 69%	0%
Refi-out shape (full normalization)	\$300M	6.0x	\$1.80B	\$1.80B / 90%	0%

**The fulcrum is the 1L term loan in every scenario.** The 2L \$450M wipes out in any realistic recovery case; PepsiCo's 39% equity is a write-off (which they recognized via the Q1 2025 charge); PAI's equity is gone. The investor trade isn't picking the fulcrum — it's *price discovery on the 1L and deciding whether to be in the AHC or out of it.*

## (B) The LME Decision — May 13, 2025 (close)

### The term sheet (April 2025 announcement)

This is one of the most aggressive non-pro-rata exchanges of the cycle. The mechanics:

**Ad Hoc Group (in-group) — Carlyle, Fidelity, CVC Credit:** - Provided **\$400M new first-out money** (priming) - Exchanged existing \$1.0 of 1L paper at **~91 cents blended** (10¢ into first-out / 81¢ into second-out) - New structural priority: senior to remaining lenders

**Non-AHC (out-group) — everyone else:** - Offered to exchange existing 1L at **70 cents** (half into the new second-out, half into a new \$750M **third-out** tranche) - **Transfer restriction:** non-participating lenders were *blocked from selling their paper to third parties* — engineered by the company/AHC to prevent holdout-funded litigation aggregation

**Differential:** ~21 cents of par-value loss for not being in the AHC. **This is the single largest documented intra-class differential in a recent LME** and was specifically called out by Bloomberg as "dividing creditors into winners and losers."

**Post-LME structure:** | Priority | Tranche | Size | Notes | ---|---|---|---| | AR Facility (upsized) | \$155M | Structurally senior | | First-Out (new \$) | \$400M | Priming; pari with AHC roll | | Second-Out (rolled 1L: in-group + out-group portion) | ~\$1.42B | Bulk of legacy 1L | | Third-Out (out-group penalty) | ~\$750M | Subordinated 1L paper | | RCF (extended) | \$350M | To Dec 2028 | | 2L Term Loan | \$450M | Unchanged, deeply subordinated | | PAI / PepsiCo equity | — | Wiped on PepsiCo book; PAI residual at zero |

**\$360M of nominal debt reduction** through the exchange discount — i.e., lenders collectively absorbed a \$360M face haircut as the price of avoiding Chapter 11.

**Participation:** ~"near-unanimous consent" per TBG press release. The transfer restriction was probably the most important coercive feature — it removed the optionality of selling out-group paper to a litigation-seeking distressed fund.

### **The participate vs. hold-out math (1L term lender)**

**In-group (Carlyle / Fidelity / CVC) at ~\$0.60 cost basis:** - \$1.00 face → \$0.10 first-out + \$0.81 second-out = \$0.91 effective new paper - Cost basis \$0.60; new paper marks ~\$0.85 (priority position + new money) = +42% MTM - IRR on 12-month hold: ~40%+

**Out-group ("everyone else") who participated at \$0.60 cost basis:** - \$1.00 face → \$0.35 second-out + \$0.35 third-out = \$0.70 effective new paper - Cost basis \$0.60; new paper marks ~\$0.55–0.65 (third-out is worth less than second-out) - IRR on 12-month hold: ~0–10% - **Out-group participation was a 21-point haircut vs. in-group participation, and a low-IRR trade overall.**

**Holdout case (declined participation):** - Keep original 1L paper at original maturity (2029) - Now structurally subordinated to \$400M new first-out + the in-group's second-out + the in-group's exchanged paper - Transfer restriction: cannot sell the paper. Locked in. - Recovery in any forward Ch11: probably 5–20% (the senior secured stack of ~\$1.8B + priority claims exceeds base-case TEV) - **Holdout was strictly dominated.**

### **The "should you have been in the AHC" question**

The single most important decision for a Tropicana 1L holder was being in the AHC ad hoc group — not the participation decision itself.

**In the AHC:** - 91 cents blended recovery on rolled paper - Share of \$400M new money premium economics - Pari position with Carlyle/Fidelity/CVC

**Outside the AHC:** - 70 cents blended recovery - No new money allocation - Third-out subordination on half your roll

**The 21-cent differential is the *incumbency premium* Pat talks about, made manifest.** It is the value of being inside the room when the structure is engineered, not outside the room as a price-taker.

How do you get in the AHC? Three answers: 1. **Own enough paper before the discussions start.** Carlyle / Fidelity / CVC presumably had organized 1L positions of at least 5–10% of the facility well before April 2025. 2. **Be acceptable to the existing AHC.** Co-ops are typically closed to entrants after some initial gathering period. Anchorage-style sophisticated holders who didn't already own paper had to *convince* the existing AHC

to admit them. 3. **Sign onto the co-op early.** The Akin Gump / Paul Weiss / Davis Polk-led co-ops are tight contracts — once they're locked, new members typically aren't added.

If you owned TBG 1L paper at \$0.60 and weren't in the AHC by mid-March 2025, you were going to get the 70-cent participation. **There is no scenario where you should have held out and accepted the transfer restriction.**

## Litigation analysis

The transfer restriction is the headline aggressive feature of the TBG LME and the most legally vulnerable. Theory: a restriction that prevents lenders from transferring their paper, in the context of a coercive exchange, may violate the implied covenant of good faith and fair dealing under New York law. Possibly also a violation of the assignment provisions of the credit agreement, which typically permit transfer to "Eligible Assignees" without borrower consent.

**Practical assessment:** the transfer restriction is the feature that, if challenged, has the best legal theory. But the AHC's structural protection is the consent solicitation that achieved "near-unanimous" approval — which means the holdouts willing to sue are a small class with limited resources. Standard distressed practice: settle for modest economic improvements (1–3 points) in exchange for releases. No public reports of significant litigation through May 2026.

## (C) The Chapter 11 hypothetical — if TBG files in 2026 or 2027

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Assume FCOJ moderates from peak (already begun — late 2024/early 2025 prices retreated from \$5.89 highs) but volume continues to decline as branded OJ loses share, and the May 2025 LME proves insufficient. TBG files 2026.

### Step 1 — TEV range

- **Bear:** 4.0x stressed EBITDA \$80M = **\$320M** (continued category collapse, brand impairment)
- **Base:** 5.0x normalized EBITDA \$150M = **\$750M** (FCOJ moderates, cost cuts stick, category at floor)
- **Bull:** 5.5x recovery EBITDA \$225M = **\$1.24B** (Tropicana brand premium reasserts, mix shift to non-OJ functionals)

### Step 2 — Post-LME capital structure (carried forward)

(Per (B) waterfall above. Total face ~\$3.4B + 2L \$450M = \$3.85B claim against \$320M–\$1.24B TEV.)

### Step 3 — Priority claims

- **DIP:** \$200M (smaller than Newfold or Cabinetworks — CPG with significant working capital but less operationally complex)
- **Adequate protection:** \$50–80M
- **Professional fees:** \$60–100M
- **§503(b)(9) admin claims:** \$40–80M (CPG with 20-day supplier deliveries — meaningful)
- **Cure costs:** \$10–30M (PepsiCo distribution agreement is the big one — assumption is virtually required)
- **Priority claims:** \$15–25M

**Total priority haircut: \$375–515M off the top.**

### Step 4 — Recovery waterfall

Tranche	Claim	Bear (\$320M)	Base (\$750M)	Bull (\$1.24B)
Priority	\$400M	All TEV consumed	\$350M remaining	\$840M remaining
AR Facility	\$155M	0%	100%	100%
First-Out	\$400M	0%	50% ( <b>fulcrum</b> )	100%
Second-Out	\$1.42B	0%	0%	24% ( <b>fulcrum</b> )
Third-Out (out-group)	\$750M	0%	0%	0%
2L Term Loan	\$450M	0%	0%	0%
Equity	—	0%	0%	0%

**Even in bull case, the out-group's third-out paper recovers zero.** The May 2025 LME's third-out tranche is functionally pre-positioned to wipe out in any forward Ch11. *This is why the 21-cent in-group / out-group differential matters so much — the out-group paper, even after participation, is junior debt with bear/base-case zero recovery.*

In a base-case Ch11, the **fulcrum is the new first-out tranche at 50% recovery** — held jointly by the in-group + the new \$400M of fresh money. In bull case, the **fulcrum moves to the second-out at 24% recovery** — still impaired but no longer wiped.

### Step 5 — The DIP-to-equity opportunity

A Ch11 filing post-LME would create an interesting DIP-to-equity setup, but with structural complexity around the PepsiCo distribution agreement (§365 election, change-of-control restrictions).

- **DIP size:** \$250M (cash burn during case + admin + supplier-stabilization cure costs)
- **Pricing:** SOFR+800–1000bps, 8–10% OID
- **Conversion:** DIP-to-equity at confirmation; existing first-out plus second-out tranches share fulcrum equity
- **The PepsiCo angle:** under §365, the PepsiCo distribution agreement is a critical executory contract. PepsiCo could threaten withdrawal absent acceptable assumption terms — *but* PepsiCo also took the \$135M write-down, has limited remaining commercial interest in TBG's success, and would face its own reputational issues if it abandoned the brand portfolio.
- **Plan economics:** \$250M DIP, \$750M base-case TEV, ~\$400M priority + AR, \$350M for 1L stack → DIP becomes effective owner of 70–90% of reorganized equity at \$750M TEV less \$250M DIP = \$500M equity = ~3x MOIC on DIP cash. With 24-month hold, IRR ~50–60%.
- **The brand-equity question:** Tropicana is a Top-3 CPG brand by U.S. household penetration. Naked Juice has growth in cold-press. KeVita is a real probiotic franchise. A clean balance-sheet TBG with mix-shifted product portfolio at 6–7x EBITDA = \$1.0–1.3B exit value vs. \$250M DIP entry = 4–5x MOIC over 3 years.

## Step 6 — Strategic exit pathway

The post-emergence TBG would have three buyer types: 1. **Strategic CPG:** Coca-Cola (would absorb Naked / KeVita); Keurig Dr Pepper (would slot into CPG portfolio); Constellation Brands; large beverage conglomerates 2. **Strategic with juice scale:** Lassonde Industries, Florida's Natural cooperative, refresco 3. **PE secondary:** another sponsor (Advent, KKR, BC Partners) at lower entry multiple

The PepsiCo distribution agreement is the swing factor. A clean buyer wants to take over distribution; Pepsi wants to either re-buy the brands (unlikely; rationale for divesting hasn't changed) or get out of the distribution arrangement. The Ch11 process is the venue where this gets resolved.

## (D) The Investor Lens — Five Q&A Scripts in Pat's Voice

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### Q1: "Walk me through Tropicana. The juice business — what was the trade?"

Tropicana Brands Group was carved out of PepsiCo by PAI Partners in January 2022 at \$3.3B EV — Tropicana, Naked Juice, KeVita, Izze, Dole licensed, plus the European brands. PAI took 61%; PepsiCo kept 39% and the U.S. distribution agreement through its DSD network.

The business hit two simultaneous shocks. The structural one was the multi-decade decline in U.S. OJ consumption — by 2024 we were at a five-year low and the category was losing share to coffee, water, and functional beverages. The acute one was the FCOJ supply collapse — Florida orange production fell 75% over a decade, and FCOJ futures went from \$1.50/lb at deal-close to \$5.89/lb at the September 2024 peak. Branded OJ is a low-margin pass-through model — when inputs go up 4x, you either eat the margin and watch EBITDA collapse, or pass through to retail and lose volume. TBG did both, lost on both.

By Q1 2025, PAI was providing a \$30M emergency bridge — that's "lender of last resort" behavior, sponsor signaling the residual equity is at zero. PepsiCo took a \$135M write-down on the stake same quarter. CNN/Debtwire was reporting bankruptcy was being evaluated. The 1L term loan was probably trading in the high-50s to low-60s based on what the eventual LME terms tell us. **My investor lens at that point: this is a fulcrum-1L credit, the question isn't recovery on the 2L or unsecured (they're wiped) — it's who's in the AHC and who isn't.**

## Q2: "Which had the weaker case for the incumbency premium — Newfold, Cabinetworks, or Tropicana?"

Tropicana. By a meaningful margin, and I'll tell you why.

The incumbency premium has to be paid for by future value. In Newfold and Cabinetworks, you can underwrite a *post-restructuring* business that's worth more than the priority claims plus the new senior debt — there's a forward fulcrum trade. In Tropicana, the underlying *business is in secular decline*. OJ consumption has been falling for 25 years. Florida citrus is structurally impaired by HLB. The PepsiCo distribution agreement is dual-edged, the private-label competition has the same FCOJ inputs without the brand premium needing to be funded. **The business doesn't support the post-LME balance sheet at any reasonable multiple.**

So what was the incumbency premium *paying for*? Time, mostly. The May 2025 LME bought TBG runway to 2028–2029 on the second-out, 2030 on the third-out, 2028 on the extended RCF. If FCOJ retraces and management can mix-shift the portfolio toward non-OJ functionals (Naked, KeVita), there's a path. But it's a structurally low-conviction path, and the in-group is paid in incumbency-premium economics that imply they think the path is viable. *I would not have bid for an AHC seat at TBG even though the participation premium was 21 cents — because the underlying credit is too weak to support multi-year secured paper.*

The Roe & Rotaru finding is most directly applicable here. The paper documents that a majority of LME firms double-default. Tropicana looks like exactly that case: an LME that bought 36 months of runway to a business that hasn't structurally improved. **I'd give Tropicana a 50%+ probability of either a second LME or Ch11 by 2028.** That's the weakest of the three deals on the deal-away credibility test that Pat lays out.

### Q3: "The transfer restriction — was that legal? Should the out-group have sued?"

The transfer restriction is the single most aggressive coercive feature of the cycle in 2024–2025. It's the structural innovation that lets you pick off out-group lenders without letting them aggregate into a litigation-funded position.

Legal theory for a challenge: New York implied covenant of good faith and fair dealing, plus violation of the assignment provisions of the credit agreement (which typically permit transfer to Eligible Assignees without borrower consent). A second theory: the restriction operates as a *de facto* tying of consent solicitation — you can only assign if you accept the exchange, which is functionally identical to coercing votes via collateral lockup.

Should they have sued? I'd say no, and here's why. **The cost-benefit is brutal.** Probability of success in NY First Department post-Mitel: maybe 15–25%, since courts are increasingly comfortable with engineered exchange mechanics. Cost: \$5–10M for serious litigation through trial. Expected economic improvement if successful: maybe 8–15 points on the out-group's third-out paper, on probably \$300M of out-group paper = maybe \$30–40M of value. Multiply by 20% probability = \$6–8M expected — barely positive on a \$10M cost basis, and the reputational cost on the next 40 LMEs is real.

The right move was *forcing yourself into the AHC*. That's the entire game. The incumbency premium isn't earned by litigation after the term sheet drops — it's earned by being *in the room* when the term sheet is being engineered. Out-group lenders who got the 70-cent exchange and felt they were treated unfairly should have been organizing 60 days earlier.

### Q4: "Walk me through what a TBG Chapter 11 looks like — would it be a clean DIP-to-equity for Anchorage?"

Yes, in principle, but with one structural complication: the PepsiCo distribution agreement.

A TBG Ch11 in 2026 or 2027 has a DIP need around \$250M — cash burn during a 9-month case, professional fees, supplier-stabilization, §503(b)(9) admin claims of \$40–80M because CPG has significant 20-day pre-petition supplier deliveries. The DIP would convert to equity at confirmation; existing first-out and second-out tranches share fulcrum recovery.

The DIP economics work: \$250M cash for ~\$750M base-case TEV, less \$400M of priority and AR, leaves \$350M of TEV against the new senior-secured stack. DIP becomes effective owner of 70–90% of reorganized equity. Three-year hold to a clean exit at \$1.0–1.3B = 4–5x MOIC.

The complication: PepsiCo's distribution agreement is an executory contract under §365. The debtor has to assume or reject. PepsiCo could try to extract a higher rent rate or new terms as the price of assumption, exploiting the leverage. Counter-leverage: PepsiCo already took the \$135M write-down, doesn't have a

strategic interest in killing TBG, and would face its own brand-portfolio reputational issues if it walked. **The negotiation around the distribution agreement is itself a \$50–100M value driver in the Ch11.**

The cleaner DIP-to-equity playbook is At Home or J. Crew — branded retail with no critical third-party operating partner. TBG has a layer of structural complexity. But the *return profile is similar*: 3–5x MOIC over 24–36 months. **This is exactly the kind of deal that Anchorage's drawdown structure enables and most hedge funds can't run.**

#### Q5: "What's the read on PAI Partners and PepsiCo in the LME — could either have supported a different outcome?"

Both behaviors are tells.

PAI provided \$30M of bridge financing in Q1 2025. That's a tiny check by PE standards — under 1% of the original \$3.3B EV. The signal: PAI evaluated whether to write a meaningful equity contribution to support a deeper deleveraging (or a sponsor-led restructuring with more skin in the game) and decided not to.

Compare to Clearlake/Siris at Newfold, who put in roughly \$100M of new equity money alongside lenders — that's a sponsor saying "we believe the post-LME business is worth our investment." PAI saying "\$30M is what we'll put in" is a sponsor saying "*this is approaching zero from our standpoint.*"

PepsiCo took the \$135M write-down publicly in Q1 2025. That's PepsiCo telling its own equity holders that the 39% stake in TBG is impaired and the seller-economics from the carve-out are not going to be earned back. PepsiCo could in principle have funded a new-money tranche to support the LME — PepsiCo has the balance sheet. They chose not to. That decision implicitly transfers the going-concern risk fully onto the lender group.

Both behaviors tell you the same thing: **the existing equity holders evaluated the post-LME enterprise value and concluded they weren't getting a return on incremental capital.** That's structurally the same story as the Roe-Rotaru double-default finding — sponsors who walk away in an LME tend to be predicting forward distress. *The LME existed because lenders had no choice; equity refused to fund.*

If I'd been at the table — say AHC-eligible at Carlyle / Fidelity / CVC's seat — I would have pushed harder for **operational covenants and a sponsor giveback.** Even a token PIK preferred from PAI subordinated to the new lender paper would have been valuable as a forward equity capture mechanism if the business outperforms. The 21-cent in-group / out-group premium is real, but it's not the maximum extractable. *Sophisticated AHCs leave money on the table when they don't squeeze the sponsor.* That's the deepest critique of the LME-era distressed market — lenders have organizational power they're not yet using fully.

# PART IV — THE LME LEGAL LANDSCAPE & ANCHORAGE PORTFOLIO CONTEXT

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This section covers the macro context that frames how Pat is thinking about the market and what Anchorage is doing right now. Read this as the *prior conditioning* on every question Pat asks — when he probes a deal, he is implicitly comparing it to the recent legal and market environment outlined here.

## 4.1 Serta vs. Mitel — Decided the Same Day, Opposite Outcomes

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### **Serta Simmons Bedding (5th Cir., December 31, 2024)**

**Background:** In June 2020, Serta executed a non-pro-rata "uptier" — a majority coalition of first- and second-lien lenders exchanged existing debt for new \$1.2B super-priority "first-out" debt, cutting out the minority (the "Excluded Lenders"). Serta's defense relied on the "open market purchase" exception to the credit agreement's ratable sharing covenant.

**Holding (Fifth Circuit reversal):** 1. "Open market purchase" does not cover privately negotiated uptiers. "Open market" requires the secondary loan market — bilateral exchanges with a select pre-existing lender group are *not* open market within the plain meaning. 2. **Pro rata sharing was violated.** Issuing super-priority debt only to participants while leaving the Excluded Lenders without ratable participation breached the foundational sharing obligation. 3. **Equitable mootness does not bar appellate review of "sharp or unauthorized practices."** Confirmation does not immunize a plan from contractual challenge. Major doctrinal point — limits the "we already closed" defense. 4. **Plan indemnification provision excised.** The bargained-for indemnification of participants against Excluded-Lender claims was struck. **Participants are personally exposed to damages.**

**SCOTUS cert denied November 10, 2025.** Fifth Circuit ruling is final law in the circuit.

**Damages remand status (May 2026):** Trial completed; closing arguments March 2026. Ruling expected summer 2026. Excluded Lenders' September 2025 motion to freeze ~\$340M in participating-lender assets was denied. **Active damages exposure outstanding.**

### **Mitel Networks (NY 1st Dept, December 31, 2024)**

**Same day. Opposite outcome.**

**Background:** October 2022 uptier under New York-law credit agreement. Plain language permitted the borrower to "purchase [loans] by way of assignment and become an Assignee." No "open market" qualifier.

**Holding (First Department):** 1. The plain "purchase by assignment" language has no open-market requirement. New York contract law reads text narrowly. No basis to import an open-market qualifier the parties did not include. 2. **Non-consenting lender claims dismissed in full.** Trial-court denial reversed; motions to dismiss granted.

**Subsequent status:** Excluded lenders sought NY Court of Appeals review. **Settlement reached** shortly before Mitel filed pre-pack Ch11 (March 10, 2025, S.D. Tex.). Plan confirmed April 2025. **No live Court of Appeals review** — the case was mooted.

### Why this matters for Pat's worldview

**Mitel arguably matters more than Serta.** Most large credit agreements are NY-law governed. The First Department's blessing of the "purchase by assignment" mechanism is the operative precedent for NY-law deals. Serta's death-knell to "open market purchase" applies only to docs that used that specific language and to deals litigated in 5th-Circuit jurisdictions.

**The practical lesson:** LME viability is document-by-document. Drafting determines outcomes more than circuit court rhetoric. **A pre-2020 credit agreement with "open market purchase" language has been killed. A post-2020 credit agreement with "purchase by assignment" language is alive and well in New York.**

**Pat's investment-first instinct on this:** the legal frontier doesn't change *whether* LMEs happen — it changes *which structures get used* and *which jurisdictions get filed*. The market response has been (a) more documents drafted with Mitel-style assignment language, (b) more pre-pack filings in S.D. Tex. or D. Del. with engineered RSAs that avoid contestable plan provisions, and (c) more aggressive coercive features at the deal level (transfer restrictions, NDAs, side pacts) that don't depend on a single contestable contract provision.

## 4.2 Other Key LME-Related Litigation 2024–2026

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### Wesco Aircraft / Incora (S.D. Tex. Bankr., July 2024 → District Ct. reversal)

October 2022 uptier. Bankruptcy court ruled the cumulative effect of related amendments triggered sacred-rights collateral-release protections via an "integrated transaction" / "domino effect" doctrine. **District Court reversed** on the integrated-transaction theory but left monetary damages open. Incora emerged from Ch11 January 31, 2025. Important holding: courts are *not* universally willing to apply integrated-transaction reasoning — each amendment is analyzed individually.

### Robertshaw (S.D. Tex. Bankr., June 2024)

Judge Lopez ruled Robertshaw's LME violated the credit agreement via improper subsidiary issuance — a technical structural arbitrage that wasn't permitted. Plan confirmed October 2024. **The lesson:** even post-Mitel, deals that *fail their own contractual mechanics* don't survive litigation. The structural engineering has to work, not just have plausible NY-law cover.

### Wheel Pros / Hoonigan (D. Del., December 2024)

LME September 2023. Insufficient runway. Filed Ch11 September 2024. Emerged December 2024 with \$1.2B debt eliminated, owned by Strategic Value Partners + Nut Tree Capital. **The canonical "double default" — LME, then Chapter 11 within 12 months.** This is the case Roe & Rotaru cite as the prototype.

### Cumulus Media (filed March 2026)

Radio company executed exchange transactions in 2024 extending maturities. Persistent revenue decline rendered the LME insufficient. Pre-pack Ch11 March 2026 with ~72% secured lender RSA support, proposing ~\$592M debt reduction. **Another double-default example, freshly filed.**

### Lumen Technologies (LME executed Jan 2024)

Major multi-tranche exchange of unsecured notes for new first-lien and second-lien notes at Level 3 subsidiary. Lumen continues operating but is closely watched. **Active credit; not yet a double-default but on the watch list.**

### Pluralsight (private credit LME, 2024)

Vista-backed ed-tech company executed J.Crew-style LME moving IP to a non-guarantor restricted subsidiary. This deal generated the "**Pluralsight blocker**" — language now standard in post-2024 documents preventing IP transfers from loan parties to non-loan parties. **Notable as the first major private-credit LME — direct-lender docs were less protected than syndicated docs, and that gap is now closing.**

## 4.3 The Roe & Rotaru Yale Paper

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**Citation:** Mark J. Roe (Harvard Law School) and Vasile Rotaru, "*Liability Management's Limited Runway: Corporate Restructuring Today*," forthcoming **136 Yale Law Journal** (\_\_\_). SSRN posted May 11, 2026. Featured on the Harvard Bankruptcy Roundtable February 24, 2026.

**Note on author names:** the original prep prompt referenced "Andrei Rotaru" — the published co-author is **Vasile Rotaru**. Use Vasile.

## Headline empirical findings

1. **The double-default rate is a majority.** A majority of firms that undergo coercive, non-pro-rata LMEs ultimately file for Chapter 11 anyway. The LME extends runway but does not resolve the underlying business or balance sheet problem in most cases.
2. **Pro-LME claims are not pervasively supported.** Proponents argue LMEs avoid bankruptcy friction, preserve enterprise value, and deliver better outcomes than Chapter 11. Roe-Rotaru cannot find these claims supported across the population.
3. **Post-LME recoveries for non-participants are worse than Ch11.** Excluded lenders subordinated or stripped of collateral via LME receive worse recoveries than comparable Ch11 creditors at similar capital-structure positions.
4. **Policy proposals:** mandatory minimum pro-rata treatment; heightened judicial scrutiny of LME transactions in subsequent bankruptcies; potentially automatic appointment of an independent director or fiduciary on material LMEs. Current doc-based defenses are insufficient because they're negotiated asymmetrically at origination.

## How to weave this into your interview

**Don't quote Roe verbatim.** Reference the empirical finding when relevant: "The Roe-Rotaru work makes the double-default risk more rigorous than market intuition had it — and that should reweight how we think about LME participation premiums vs. just buying the fulcrum and waiting for Ch11."

**Specifically applicable to:** Tropicana (high probability of double-default), Cabinetworks (medium), Newfold (lower — has more sticky revenue + sponsor support).

**Pat's likely view:** The paper validates what he's been saying on the FICC podcast — LMEs are an execution attack on basket holes that doesn't address the root cause (a bad business). His DIP-to-equity playbook *thrives* on the double-default rate because the double-default cases convert into clean DIP entry opportunities.

*Anchorage isn't anti-LME; Anchorage is positioned to harvest the cases where LMEs fail.*

## 4.4 Current Distressed Market Data (May 2026)

Metric	Value	Comparison
Leveraged loan distress ratio (% <80¢)	7.23%	vs. Dec 2022 peak 7.36% — still near-cycle highs

Metric	Value	Comparison
Loan payment default rate (LTM par-weighted)	1.44%	vs. 0.82% year-ago — doubled
LME share of LTM default count	~59% (Mar 2026)	Down from 73% peak July 2025 — but still majority
HY distressed exchange share of S&P defaults (2024)	54%	2025 YTD ~52%
First-lien average recovery (par-weighted, 2024)	<b>39%</b>	vs. 76% (2022), 51% (2023) — <b>down by half in two years</b>
Loan maturities 2026–2027 (remaining)	\$59B	Heavily addressed by LMEs
Loan maturities 2028	<b>\$301B</b>	The wall — most consequential year
HY bond maturities 2026–2027	~\$160B each	
HY bond maturities 2028	~\$229B	
Private debt share of LBO financing (2024)	77%	Significant — private credit is the dominant LBO debt source
Direct lending takeouts of BSL (2025)	\$34.1B	Record

### The 39% first-lien recovery — the single most alarming data point

First-lien recoveries collapsed from 76% (2022) → 51% (2023) → **39% (2024)**. This is the structural consequence of LME-then-Chapter-11: when LMEs prime out 1L lenders before the filing, the 1L lenders enter Ch11 already subordinated. Their recovery doesn't decline because the business got worse — it declines because the *seniority got worse*.

**Implication for Anchorage's strategy:** sit higher in the capital structure than the apparent fulcrum, or own pre-LME paper before priming occurs. Anchorage's at-origination incumbent positions (per Pat's "investment-first" / incumbency-advantage framework) protect against this exact dynamic.

**Implication for the interview:** when discussing recovery analysis on any deal, *cite the 39% number* as the contemporary base rate. The textbook 75% 1L recovery is dead. The textbook 0% unsecured wipeout still holds — but the previous comfort that 1L was "safe" is structurally undermined by the LME era.

## 4.5 Document Trends Post-Serta — The 2025-2026 Drafting Frontier

## The blocker taxonomy

### Established (now expected in BSL docs):

Blocker	Targets	Standard language
<b>J.Crew blocker</b>	IP drop-down to unrestricted sub	"Material intellectual property" cannot be transferred to non-Loan Party
<b>Chewy blocker</b>	Non-wholly-owned guarantor release	Guarantees not released solely because a guarantor becomes non-wholly owned, except in bona fide arm's-length transactions
<b>Serta blocker</b>	"Open market purchase" uptier	Explicit carve-out: "open market" does NOT include privately negotiated exchanges

### Next-generation (post-2024 deals):

Blocker	Targets
<b>Pluralsight blocker</b>	IP transfers to non-guarantor restricted subs
<b>Envision blocker</b>	EmCare-style restricted subsidiary financing
<b>At Home blocker</b>	Lien-stripping and collateral manipulation
<b>Wesco/Incora blocker</b>	Integrated-transaction collateral release
<b>General LME blocker</b>	Catch-all: non-ratable treatment of same-class lenders
<b>Anti-double-dip language</b>	Prevents subsidiary structures that hold debt + benefit from guarantees
<b>Sacred-right pro rata extensions</b>	Maturity-extension offers must be made to all lenders

## Cooperation agreements — the lender's offensive tool

Co-ops are contracts among creditors only (borrower not party). Standard structure: - Commitment to vote together - Information sharing among members - Blocking obligations (no separate negotiation, no transfer outside co-op, no acceptance of unapproved LME) - Supermajority governance (usually ~66.7% of co-op debt)

**Anchorage as confirmed co-op participant:** Altice France 2024-2025 (90%+ of secured creditors, 94% of debt). The co-op is the primary defensive tool against borrower divide-and-conquer.

**Antitrust challenges:** Optimum Communications (2024-2025) challenged its co-op as price-fixing / market allocation. Courts rejected, finding that creditors have a common interest in maximizing recoveries and

coordination is legally distinct from market-allocation cartels. **Co-ops survive legal challenge so far** — but the antitrust angle remains live.

## 4.6 Anchorage Portfolio Context — Knowing the Active Names

### The fund: ACO IX

Parameter	Detail
Final close	August 19, 2025
Fund size	\$1.5B (exceeded \$1.25B hard cap)
LPs	>70% reup from prior vintages
Co-PMs	Thibault Gournay and James Frost
Structure	Traditional drawdown
Strategy	Stressed/distressed credit, special situations, structured credit; US + Europe; smaller capital structures with idiosyncratic complexity
Total firm AUM	~\$27.1B across CLOs, drawdown funds, co-investments, evergreen funds (Nov 2025)
Total drawdown raised since 2022	>\$4.5B

### Anchorage's signature deals — investor-eye summary

**J.Crew (2020) — Pat's flagship case study.** - Anchorage + GSO + Davidson Kempner provided **\$400M DIP** - Emerged September 2020 with ~\$1.65B secured debt equitized - **Anchorage emerged as the largest equity holder** alongside GSO/Davidson Kempner and other 1L term lenders. (Whether "majority" owner depends on how you count — the post-emergence equity was distributed among the DIP lenders + 1L roll-up; Anchorage was the largest single holder but a precise majority claim is contested in public reporting. **Don't say "Anchorage owned all of J.Crew" — say "Anchorage led the DIP and became the largest equity holder."**) - Anchorage led **\$800M exit financing** at emergence - *The defining DIP-to-equity transaction of Pat's tenure. Talk about this when asked about DIP-to-equity. Reference: "the J.Crew model — DIP priced as control-acquisition cost, conversion at confirmation, equity hold through stabilization."* - Madewell was the "hidden asset" thesis — separating it as a standalone brand was part of the value-creation plan post-emergence.

**At Home Group (2025) — fresh, active.** - Filed Chapter 11 June 16, 2025 (D. Del.) - \$600M DIP from Anchorage + Redwood Capital + Farallon - 96% 1L RSA - Emerged October 24, 2025 — **4.5-month case** (very fast) - ~\$2B debt eliminated - **DIP converted to 98% of reorganized equity**, owned by Anchorage/Redwood/Farallon - 229 stores across 39 states post-emergence - Status (May 2026): operating privately under new lender-owners, continuing rationalization - *Cite as recent execution proof of the DIP-to-equity model in retail. The 4.5-month case length is itself a credibility marker — pre-negotiated, RSA-locked, no contested confirmation.*

**Altice France (2024-2025) — Anchorage as co-op leader.** - €24B gross restructuring - Anchorage named major secured bondholder alongside Elliott, PIMCO, BlackRock, Fidelity - **Co-op signed September 2024** — 90%+ secured creditors, 94% of debt - Closed October 2025 with ~€8.6B term debt eliminated - Consolidated net debt down to €15.5B - *Cite as proof Anchorage operates in Europe and as a co-op participant. The co-op model is exactly what's missing from many of the deals Max will be discussing — a defensive structure against borrower coercion.*

**Diamond Sports Group / Main Street Sports Group (2023-2025).** - \$8.8B pre-petition funded debt - Filed March 2023, S.D. Tex. - Ad Hoc Crossholder Group (Paul Hastings + PJT) — Anchorage participation **not publicly confirmed** but plausible - Confirmed November 14, 2024 - Emerged January 2, 2025 as Main Street Sports Group - Debt reduced from ~\$9B to ~\$200M - Equity to PGIM, Hein Park, Hudson Bay, Alta Fundamental, and others - *If Pat references Diamond Sports / RSN bankruptcies, acknowledge you've followed the case but don't claim Anchorage was definitely in the AHC unless you can verify.*

**Carvana (2023 out-of-court exchange).** - August-September 2023 exchange - Up to \$4.275B in three tranches of new senior secured notes with PIK/cash toggle - 9%/12% Cash/PIK 2028; 11%/13% Cash/PIK 2030; 9%/14% Cash/PIK 2031 - Supported by AHC representing >90% of outstanding notes - **Anchorage participation widely discussed but not publicly confirmed** - *A useful "PIK toggle structure" reference if Pat probes on creative exchange structures. Notes the difference between Carvana's distressed-but-improving credit and the stressed-and-failing TBG/Cabinetworks credits.*

**Hertz (2020-2021).** - Filed May 2020 - Anchorage active participant - Famous "surprising equity recovery" outcome via NADA / used-car-price inflation in 2021 - *Reference if Pat asks about contested cases or unexpected recoveries. The Hertz case is the canonical example of how operating-environment changes during a case can radically change recovery outcomes.*

## 4.7 Things Pat Has Actually Said (Bloomberg FICC Focus, March 5, 2025)

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Direct or near-direct attribution where verified:

**"Even if we hear rumblings that NDAs are out there with third parties and private lenders are looking at assets... we're still in a position where — why wouldn't they come back to us — because we**

**have more to give."**

**"I can probably provide the money a little bit cheaper and I can give them certainty as opposed to them saying I'm going to finance the business away."**

**"If we can't underwrite to the recovery of the business, at least through that security, then I'd be highly circumspect of getting into that type of investment."**

[Lines about the "40 of them" / "1+1+1>3" mantra are widely attributed in industry summaries of the podcast but **not independently verifiable from a transcript** as of this prep date — paraphrase the substance rather than quoting.]

### **Themes from the WRDIC panel (February 21, 2025)**

Panel framing of LMEs as a **trilemma**: discount, maturity extension, new capital — borrowers can typically achieve at most two of three simultaneously. McGrath argued the investor's perspective on *when LMEs create legitimate value versus when they're merely value-transfers from excluded creditors*.

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## **PART V — ONE-PAGE CHEAT SHEET (FOR THE MORNING OF)**

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Print this. Read it on the train. Internalize, don't memorize.

### **The 4 questions in the first 20 minutes**

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1. **TEV range** — bear / base / bull, with confidence bands
2. **Fulcrum** — where does value break, and how does it shift across TEV scenarios
3. **Resolution path** — operational/refi vs. LME vs. Ch11; probability-weighted; duration
4. **What do I need to be right about, and what happens if I'm wrong**

### **The 3 deals — one-line frame**

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Deal	One-line investor frame
<b>Newfold Digital</b>	"Sticky-but-eroding domain revenue under a hosting business with structural pricing pressure; Dec 2025 LME bought 36 months on the revolver but the EBITDA outlook is still down; participation was right, holdout was wrong, and the second-LME probability is 30-40%."
<b>Cabinetworks Group</b>	"Largest private US cabinet manufacturer, Platinum Equity owned, May 2026 LME just closed — secured exchange that made noteholders feel better without solving leverage; ~10x post-LME leverage on a cyclical end market that hasn't recovered; the trade was the participation, the credit is the problem."
<b>Tropicana Brands Group</b>	"PAI Partners' juice carve-out; structural OJ demand decline + FCOJ commodity shock + PepsiCo distribution constraint; May 2025 LME was the most aggressive intra-class differential of the cycle (in-group 91¢ / out-group 70¢ + transfer restriction); double-default candidate per Roe-Rotaru."

## The advisor-to-investor switch (memorize)

Don't say	Say instead
"We advised the company"	"I was looking at this trade at X cents"
"The deal was well-structured legally"	"The risk/reward worked at our entry price because..."
"The docs allowed for the uptier"	"The docs gave participating creditors optionality on Y baskets"
"We avoided litigation"	"We sized the litigation risk at X% and structured around it"

## Anchors to weave in (use 2-3)

- **J.Crew 2020 DIP-to-equity** — when discussing DIP strategy
- **At Home October 2025 emergence** — when discussing current Anchorage execution
- **Roe & Rotaru Yale paper** — when discussing incumbency premium or LME re-default rates
- **Serta 5th Cir / Mitel 1st Dept** — when discussing litigation risk; "drafting matters more than circuit"
- **39% first-lien recovery in 2024** — the headline market-deterioration number
- **Bloomberg FICC podcast March 5, 2025** — when discussing Pat's investment philosophy (paraphrase, don't quote verbatim)

## The DIP-to-equity sample math (be ready to do this on the whiteboard)

"\$500M DIP at 15% OID = \$425M cash deployed. Interest 10% all-in  $\times$  12 mo  $\approx$  \$50M. Total cost basis: \$475M. Post-emergence:  $5x \times$  \$150M EBITDA = \$750M EV. After \$500M DIP repayment, \$250M equity. Your 20% kicker = \$50M. Return: \$50M on \$475M =  $\sim$ 10.5% — *not great as just a yield trade*. BUT — if I can credit-bid the DIP to take 100% equity at confirmation: \$475M cost  $\rightarrow$  \$750M EV  $\rightarrow$  effectively own the business at 3.17x EBITDA. Public comps at 8-10x = \$1.2-1.5B EV in 18-24 months  $\rightarrow$  2.5-3.0x MOIC. The trade is whether I can force conversion — DIP terms, lender consents, valuation litigation budget."

## Pat's traps — answers in 10 words or less

Trap	Answer
"What went wrong on a deal?"	Own it. Investment mistake, not advisory mistake.
"If you redid Newfold, what would you change?"	Terms negotiated, not structure. Equity kicker, MFN.
"Time you disagreed with a client?"	Specific, conviction, lesson learned.
"What's wrong with [Anchorage deal]?"	One specific positive + one substantive critique.
The pricing-grid math hypothetical	Slow down. Write the math. Question assumptions.

## The 5-step fulcrum drill chain (rehearse for each deal)

1. What's the fulcrum security?
2. At what TEV does it shift?
3. Recovery at each class in base/bull/bear?
4. If DIP primes \$X on top, what changes?
5. What does owning the fulcrum give you that the next tranche down doesn't? (Equity, AHC seat, plan negotiation power.)

## The end-of-interview question

**Lead with:** *"Given the 'investment-first' principle, what's the area of distressed where you think the market is most consistently mispricing risk or opportunity right now — and how does Anchorage capitalize on that?"*

Backup if conversation was philosophical: *"You've said there are 40 LMEs to deal with, not one. How do you think about portfolio-level risk when you're the same group of creditors sitting across the table from the same advisors in 40 different deals?"*

Backup if conversation was doc-heavy: "*Post-Serta and Mitel, has the document landscape actually shifted, or are we three years away from the next J.Crew-shaped trade in a basket no one is looking at?*"

## The single biggest risk

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You sound like the advisor describing what happened, not the investor describing what you would have done.

**Switch to first-person decision-active.** Lead every deal walkthrough with the business, not the structure.

When in doubt about whether to volunteer something, lean toward saying it — Pat values intellectual engagement over deference.

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## PART VI — TECHNICALS DRILL SHEET

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This is the dedicated technicals section. The mental model in Part I builds the *framework*; this section drills the *mechanics* an associate at Anchorage gets quizzed on. Read it as a flashcard set — be able to do every calculation on the whiteboard.

### 6.1 Chapter 11 mechanics — the code provisions Pat will probe

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#### The petition and the early case

- **The petition** (§301): voluntary; filing creates the bankruptcy estate (§541) which captures all property of the debtor as of the petition date.
- **The automatic stay** (§362): operates upon filing; halts collection, foreclosure, lien perfection, lawsuits. Critical for the debtor's breathing room. Lifted only by motion for cause (§362(d)) — typically for under-secured creditors lacking adequate protection or where stay impairs reorganization value.
- **First-day motions** filed contemporaneously with petition: cash management, employee wages, taxes, utilities (§366), insurance, DIP financing (§364), critical vendors. **Cash collateral motion is the first big fight** if no DIP is yet in place.

#### DIP financing — §364

- **§364(a)**: unsecured credit in the ordinary course — administrative priority. (Trivial — limited use.)
- **§364(b)**: unsecured credit *outside* ordinary course — admin priority, requires notice + hearing.

- **§364(c):** secured credit when unsecured unavailable — three options: (1) administrative claim with super-priority over other admin claims; (2) lien on unencumbered property; (3) junior lien on encumbered property.
- **§364(d):** the priming DIP — senior lien on already-encumbered collateral. Requires the pre-petition secured creditor's consent OR a finding that the debtor cannot obtain credit otherwise *and* the pre-petition secured creditor is adequately protected. **This is the technical hook for DIP-to-equity priming.**
- **Adequate protection** under §361: cash payments, replacement liens, "indubitable equivalent." Negotiated heavily.
- **Roll-up DIPs:** pre-petition debt "rolled into" the DIP at par — typically converts pre-petition 1L into post-petition super-priority. Common; usually 1:1 or 2:1 (new money : roll-up).

### §363 sales — going-concern or piecemeal

- **§363(b):** sale outside ordinary course, requires notice + hearing.
- **§363(f):** sale **free and clear of liens, claims and interests** — the foundational technology for distressed M&A. Liens attach to proceeds. Requires (1) consent, (2) right under non-bankruptcy law to sell free and clear, (3) sale price > sum of liens, (4) lien is in bona fide dispute, or (5) creditor could be compelled to accept a money satisfaction.
- **§363(k) — credit bid right:** a secured creditor can bid using its claim as currency rather than cash. **The single most important provision for DIP-to-equity execution.** Can be limited "for cause" but courts rarely deny.
- **Stalking horse / breakup fees:** typical structure is a stalking-horse bid, court-approved bidding procedures, auction, sale hearing. Breakup fees in 1-3% range standard.
- **§365 of executory contracts** moves with the §363 sale — debtor must assume, assign, and cure pre-petition arrears.

### Plan confirmation — §1129

The 16 requirements (memorize the ones Pat actually asks about):

- **§1129(a)(7) — Best-interests-of-creditors test.** Every impaired creditor in every impaired class must receive at least as much as it would receive in a Chapter 7 liquidation. **This is the floor for any plan distribution.**
- **§1129(a)(8) — Acceptance by all impaired classes.** Each impaired class must accept the plan (more than ½ in number AND at least 2/3 in dollar amount voting). If a class doesn't accept, you cramdown under §1129(b).
- **§1129(a)(11) — Feasibility test.** The plan must not be likely to be followed by liquidation or further reorganization. **Forecast-driven; valuation litigation often plays here.**

- **§1129(b) — Cramdown.** A plan can be confirmed over the objection of an impaired class if (a) the plan is *fair and equitable* and (b) does not unfairly discriminate. "Fair and equitable" requires that no junior class receives anything unless the dissenting senior class is paid in full — **the absolute priority rule**.
- **§1129(a)(10) — At least one impaired class accepts.** Anti-deadlock. Means even in cramdown, you need at least one consenting impaired class to confirm.

### Absolute priority rule (APR)

- Secured creditors first (to value of collateral), then unsecured creditors (priority then general), then equity.
- **Within a class, claims are paid pari passu unless the class agrees otherwise.**
- The "new value" exception: equity can retain interest if it contributes "new value" that is (a) substantial, (b) money or money's worth, (c) necessary for the reorganization, (d) reasonably equivalent to the value retained. *Bank of America v. 203 N. LaSalle* (S. Ct. 1999) requires market test (auction-type process).
- **Strict-priority cramdowns** are rare in practice — most plans negotiate "gifting" structures where senior creditors voluntarily transfer some value to equity in exchange for plan support.

### Equitable subordination (§510(c))

The court can subordinate a claim if the claimant engaged in inequitable conduct that resulted in injury to creditors. **Bankers/insiders most exposed.** Pat may probe this on sponsor behavior — e.g., a sponsor that pre-petition stripped collateral or favored insiders could see its claims (or claims of affiliated lenders) subordinated. **In LME contexts, this is the residual theory for non-participating lenders post-Mitel** — argue the participating lenders engaged in inequitable conduct.

### Recharacterization vs. equitable subordination

- **Recharacterization:** a "loan" is actually equity in substance. Eliminates the claim entirely; equity treatment.
- **Equitable subordination:** the claim is real but is subordinated to other claims due to misconduct.
- Both are §510 doctrines. Recharacterization is harder to win (requires substance-over-form analysis).

### Substantive consolidation

Pooling separate-entity assets and liabilities of related debtors into one estate. Two-prong test (varies by circuit): (1) creditors dealt with the debtors as a single economic unit; (2) entanglement of affairs makes separate accounting prohibitive. **Increasingly disfavored** but still appears in complex multi-entity cases.

## 6.2 DIP financing math — drill until automatic

### The DIP-to-equity sample math (re-stated, more detailed)

**Setup:** company in Ch11. Pre-petition cap structure: \$1.0B 1L + \$300M 2L + \$200M unsecured. Pre-petition EBITDA \$200M, expected post-emergence \$150M. You're considering offering a DIP.

**DIP terms you propose:** - Size: \$400M (new money \$200M + \$200M roll-up of pre-petition 1L) - Pricing: SOFR + 800bps, 8% OID, 5% upfront fee, PIK toggle - Conversion: at confirmation, DIP converts to \_\_\_ % of new equity (negotiated) - Milestones: RSA filed by day 30, plan filed by day 90, confirmation by day 270

### Cost basis math (12-month case):

Component	Amount
Face value of new money	\$200M
OID @ 8%	(\$16M)
Upfront fee 5%	(\$10M)
Cash deployed for new money	<b>\$174M</b>
Roll-up at par	\$200M (no incremental cash, but converts pre-petition exposure to DIP priority)
12-month interest @ SOFR+800 $\approx$ 13% (PIK toggle in distress: $\sim$ half-PIK assumed)	+\$22M PIK
<b>Total DIP claim at confirmation</b>	<b><math>\sim</math>\$422M</b> (\$400M face + \$22M PIK accrual)
<b>Cash-equivalent cost basis on new money</b>	<b><math>\sim</math>\$174M</b>

### Equity conversion math:

Assume base-case post-emergence TEV:  $5.5x \times \$150M = \mathbf{\$825M}$  After admin claims & priority (\$150M): **\$675M for distribution** Existing 1L (post-roll-up: \$800M remaining): could receive \$675M as cash +  $\sim$ \$0M equity. **Fulcrum is 1L.**

If DIP converts to 80% of new equity (negotiated, with 1L receiving the residual 20% as their fulcrum recovery): - DIP value at conversion:  $\$675M \times 80\% = \mathbf{\$540M}$  of equity - Cash deployed: \$174M new money - Roll-up converted: \$200M pre-petition exposure  $\rightarrow$  now 80% of equity (counts as previously-impaired

exposure) - **MOIC on new money:**  $\$540\text{M} / \$174\text{M} = 3.1\text{x}$  - **IRR over 24 months** (12-month case + 12-month hold to validation): ~75%

### Sensitivity to TEV:

Post-emergence TEV multiple	TEV at \$150M EBITDA	Equity value (post-priority)	DIP @ 80%	MOIC on new money \$174M
4.0x (bear)	\$600M	\$450M	\$360M	2.1x
5.5x (base)	\$825M	\$675M	\$540M	3.1x
7.0x (bull)	\$1.05B	\$900M	\$720M	4.1x

**The Anchorage trade:** at base-case underwrite, the DIP returns ~3x MOIC vs. ~10-12% IRR on a "buy the 1L at distressed price and wait for refi." The DIP captures the **multiple expansion from distressed-secured to clean-public-comp** — typically 200-400bps of multiple difference.

### Make-whole premium analysis

- **Standard make-whole:** present value of remaining coupons + principal at maturity, discounted at Treasury + 50bps. Triggered by voluntary prepayment.
- **Acceleration question:** does the make-whole survive bankruptcy acceleration?
- **Momentive (SDNY 2014):** automatic acceleration upon filing extinguishes the make-whole unless the indenture has "Applicable Premium" language designed to survive acceleration.
- **Energy Future Holdings (3d Cir. 2016):** confirmed Momentive in a context where the indenture had a more nuanced "Applicable Premium" provision — held that **specific language requiring the make-whole to be payable "upon acceleration of the obligation" or on a "Redemption" defined to include any "repayment" survives** acceleration.
- **Investor takeaway:** when buying HY notes near filing, **read the make-whole language carefully.** Survivor make-whole = real money in DIP-to-equity. Extinguished make-whole = window dressing.

### Adequate protection — practical math

Pre-petition 1L principal \$500M, 6% coupon, expected case duration 12 months: - Cash adequate protection payments =  $\$500\text{M} \times 6\% \times 12\text{mo} = \$30\text{M}$  **cash out of estate during case** - These accrue as admin claims if security turns out to be under-secured (i.e., the collateral declined in value during the case) - Adequate protection liens (replacement liens on post-petition collateral) cushion the diminution argument

In a §363(k) credit bid context, accrued adequate protection counts as part of the bid currency.

## 6.3 Recovery waterfall arithmetic (the standard set-up)

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Pat's whiteboard drill: given a cap structure and TEV scenarios, build the waterfall in 5 minutes. Practice this until automatic.

### Step-by-step methodology

**Step 1: Pin down TEV.** Bear / Base / Bull. Use EBITDA  $\times$  multiple. State assumptions out loud.

**Step 2: Deduct priority claims, in order:**

1. DIP claim (super-priority): typically \$200-500M depending on size
2. Adequate protection accrued (admin priority if under-secured): typically 4-8% of secured stack annualized  $\times$  case duration
3. Professional fees (§503(b)): typically \$80-200M for complex cases
4. §503(b)(9) admin claims (20-day pre-petition trade deliveries): manufacturing/retail \$20-100M; services much less
5. Cure costs on assumed executory contracts: \$5-50M depending on lease/contract count
6. §507(a) priority claims: wages capped at ~\$15K/employee, employee benefits, taxes — \$10-50M total

**Step 3: Distribute remaining TEV to capital structure in order:**

- Working-capital facility (ABL) — typically 100% covered by AR + inventory under §363(k) credit bid math
- 1L Term loan / 1L Notes (secured by all non-ABL assets)
- 2L Term loan / 2L Notes
- Unsecured notes (typically pari with trade and rejection-damage claims)
- Subordinated debt (HoldCo, mezzanine, structurally subordinate notes)
- Preferred equity
- Common equity

**Step 4: Identify the fulcrum.** The tranche where the running TEV total first crosses below 100% of cumulative claim is the fulcrum. In a base case it gets impaired; in bear it wipes; in bull it's made whole and the fulcrum moves down.

**The worked Cabinetworks (May 2026 post-LME) waterfall — practice with these numbers**

Post-LME cap structure: \$200M ABL, \$100M First-Out, \$1.37B Second-Out TLs, \$479M Third-Out Notes, \$48M stub paper, equity.

Base case:  $5.5x \times \$175M$  normalized EBITDA = **\$960M TEV**. Priority claims: \$600M (DIP \$250M + adequate protection \$100M + fees \$130M + 503(b)(9) \$60M + cure \$30M + priority \$30M). **TEV after priority: \$360M.**

Tranche	Claim	Cumulative Claim	TEV Remaining	Recovery
ABL	\$200M	\$200M	\$160M	100% (over-collateralized by AR/inventory)
First-Out	\$100M	\$300M	\$60M	<b>100%</b> (\$60M from remaining + AR overflow)
Second-Out	\$1.37B	\$1.67B	\$0	<b>0–4% fulcrum</b>
Third-Out Notes	\$479M	\$2.15B	\$0	0%
Stub paper	\$48M	\$2.20B	\$0	0%
Equity	—	—	\$0	0%

(The base case shows the Second-Out as the **fulcrum at 0–4% recovery** — value just barely covers priority + First-Out.)

### The fulcrum-shift drill

Pat asks: "what if the DIP comes in \$200M bigger?" Recalculate quickly:

- Priority claims rise to \$800M (DIP now \$450M)
- TEV after priority: \$160M
- ABL: still 100% (AR coverage)
- First-Out: \$100M → only \$60M available → **60% recovery**
- Second-Out: 0%

**The fulcrum just shifted up to the First-Out from the Second-Out.** This kind of "DIP-grew-and-primed-me" math is what Pat will test on.

## 6.4 Valuation drill — what to ground each method in

## Comparable companies — the right multiples for each sector

Sector	EBITDA multiple range	When higher / lower
<b>Industrials (manufacturing)</b>	5.0–7.0x	Higher: durable end-market, recurring service revenue. Lower: cyclical, capex-intensive
<b>Consumer staples (food/bev, household goods)</b>	8.0–12.0x	Higher: brand premium, recurring purchase. Lower: private label, commodity input
<b>Consumer discretionary (retail, apparel)</b>	4.0–7.0x	Higher: digital-native, recurring. Lower: mall-based, fashion risk
<b>Tech / SaaS</b>	8.0–18.0x (or revenue-based for high-growth)	Higher: growth + recurring. Lower: declining ARR, churn
<b>Healthcare services</b>	7.0–10.0x	Higher: scaled, payor diversified. Lower: payor concentration
<b>Gaming / leisure</b>	5.0–8.0x EBITDAR	EBITDAR for lease-burdened; lower for cyclical regional
<b>Media (legacy)</b>	4.0–6.0x	Lower for radio/print/RSNs (declining); higher for streaming/IP
<b>Real estate (specialty)</b>	12.0–18.0x FFO	Cap rate-driven; depends on lease term and credit

**Distress discount on top:** typically 1.0–2.5x of multiple below the healthy-comp range. *Post-emergence* multiple should price *back* to the healthy comp range over 12-18 months — the immediate post-emergence period trades at a discount.

## EBITDA addback discipline

Addback type	Discount
Restructuring expense (recurring)	100% (it's opex)
Stock-based comp	100% (real economic cost)
Unrealized cost savings, "Project X synergies"	50-100% depending on credibility
One-time legal / litigation reserves	50% (under-reserved bias)
Impairment charges	100% addback OK (truly non-cash)

Addback type	Discount
Deferred revenue / unearned revenue swings	Look at cash collections, not GAAP revenue recognition
ASC 842 operating lease adjustments	Add back to EBITDAR not EBITDA for retail/restaurant analysis
Inventory write-downs (recurring)	100% (it's opex in a deteriorating business)
FX and hedge gains/losses	Typically below the line; check if recurring

## DCF — the sanity check

In distressed, the DCF is a *sanity check*, not the primary methodology. The terminal value drives 60-80% of the answer; in distressed, the terminal value uncertainty band is wider than DCF can usefully model.

**Use DCF to:** verify that your TEV multiple implies a reasonable perpetuity growth rate (< 3%) and check that the implied WACC is sensible (10-14% range for distressed credits).

**Don't use DCF to:** drive valuation conclusions, support cramdown valuation litigation, or justify recovery analyses.

## Liquidation analysis — the floor

Always run liquidation as the §1129(a)(7) floor (best-interests-of-creditors test). Recovery rates by asset class are in Part I §1.3.

**Crucial nuance:** orderly vs. forced. The §1129(a)(7) test assumes a **hypothetical Chapter 7 trustee** liquidating in roughly a 6-9 month timeframe — which is closer to "forced" than "orderly." Use the forced-sale column.

**Special asset types:** - **Gaming licenses, telecom spectrum:** near-zero liquidation value but significant going-concern. The §1129(a)(7) floor underweights these substantially. - **IP and brand value:** highly variable. A premium brand might fetch 40-70% of historical revenue in an auction; commodity IP often goes for 5-15%. - **Customer lists and data:** in healthcare, 50-90%; in retail/CPG, 20-50%; in industrials, near zero.

## 6.5 IRR / MOIC / yield math — the cocktail-napkin shortcuts

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### IRR-to-MOIC conversion (mental math shortcuts)

Hold period	MOIC for ~20% IRR	MOIC for ~30% IRR	MOIC for ~50% IRR
1 year	1.20x	1.30x	1.50x
2 years	1.44x	1.69x	2.25x
3 years	1.73x	2.20x	3.38x
4 years	2.07x	2.86x	5.06x
5 years	2.49x	3.71x	7.59x

**Heuristic:** for short holds ( $\leq 2$  years), IRR-and-MOIC track each other closely. For longer holds ( $\geq 3$  years), MOIC matters more for the dollar return; IRR matters more for fund metrics. **Anchorage cares about both because ACO IX is a drawdown — but if forced to pick, MOIC > IRR for the equity-conversion trades.**

### Distressed-debt return math

**Setup:** buy a \$1 face note at \$0.60. Coupon 7%. Hold 2 years to recovery.

Scenario	Recovery	Coupon collected	Total return	IRR
Par recovery	\$1.00	\$0.14	\$0.54	41%
80% recovery	\$0.80	\$0.14	\$0.34	27%
50% recovery	\$0.50	\$0.07 (partial)	-\$0.03	-3%
25% recovery	\$0.25	\$0.0 (default early)	-\$0.35	-23%

**Expected return** =  $P(\text{par}) \times 41\% + P(80\%) \times 27\% + P(50\%) \times -3\% + P(25\%) \times -23\%$

If you put 30% / 40% / 20% / 10% probabilities:  $12\% + 11\% - 1\% - 2\% = 20\%$  **IRR expected.**

This is the kind of probability-weighted return math Pat will do in his head.

### Yield-to-maturity vs. yield-to-worst

- **YTM:** assume the bond is paid at maturity at par. Useful when bond is performing.
- **YTW (yield-to-worst):** assume the bond is called or otherwise redeemed at the worst price (lowest yield from buyer's perspective). Useful for callable bonds with redemption schedules.
- **Yield-to-event:** in distressed, the relevant yield is to the *expected resolution event* — par at refi, par-equivalent at LME exit, or recovery at Ch11 confirmation. Custom calculation.

## 6.6 Credit-doc technicals — the specific language Pat may probe

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### The pro rata sharing clause — what it actually says

Standard language (NY-law credit agreement):

"Each Lender shall share pro rata in any payment received by the Administrative Agent from the Borrower in respect of the Loans hereunder, **except for any payments made pursuant to the open market purchase or assignment of any Loan to the Borrower, in which case such payments shall be applied to the purchased or assigned Loan.**"

The exception clause is what Serta and Mitel litigated. Two sub-questions: 1. **What is an "open market purchase"?** Serta 5th Cir: requires open secondary market access. Mitel 1st Dept: plain meaning, no open-market requirement if the language doesn't explicitly require it. 2. **What is an "assignment"?** Assignment to whom? "To the Borrower" is the typical limit. Post-Serta, drafts started carving out "to the Borrower or its affiliates" to enable the structures.

### The MFN provision

Standard language:

"If any incremental term loan facility is incurred by Borrower priced at more than 50 basis points above the existing Term Loans, the existing Term Loans shall be repriced upward to the new incremental rate, less 50 basis points."

**MFN sunset:** original docs had perpetual MFN; modern docs typically have an 18-24 month sunset (after which MFN expires). The sunset is the structural enabler for in-place subordination via new pricier debt.

### The sacred rights

Items requiring affected-Lender (often 100%) consent:

- Maturity extension on principal
- Principal amount reduction
- Interest rate reduction
- Pro rata sharing modification (in best-drafted docs)
- Release of all or substantially all collateral
- Release of substantially all guarantors
- Modification of the sacred-rights list itself

## The "open market purchase" workaround — and the post-Mitel drafting

Post-Mitel, the active drafting question: how do you write a "purchase by assignment" clause that gives you uptier optionality without inviting Serta-style attack?

The modern approach: - "Purchase by assignment **from one or more existing Lenders** [with the borrower's affiliate]" - Distinguishing the purchase from the credit-agreement amendment that creates the new-money tranche (so each step is independently permitted) - Adding language that "the parties acknowledge that nothing in this Section shall be interpreted to require the borrower to make pro rata offers" - Using "Non-Loan Party" subsidiary structures to issue the new debt outside the immediate credit-agreement chain

## Intercreditor agreement (ICA) — provisions to know cold

- **The 179-day standstill:** 2L cannot exercise remedies (acceleration, foreclosure, suit to enforce) for 179 days after default, allowing 1L unilateral control of enforcement.
- **First-lien enforcement controls:** what the 1L can do without 2L consent — sell collateral in foreclosure, release liens on individual items, consent to a DIP, accept a credit bid.
- **Buy-out right:** typically gives 2L the right to purchase the 1L at par + accrued + expenses on enforcement. **Caveat:** the price is par, not market — rarely exercised at distressed prices. Newer ICAs restrict the right.
- **"Permitted Dispositions":** what the 1L can release without 2L consent. The double-dip and pari-plus structures exploit this.

## The negative-pledge clause

Standard language: borrower (and Loan Parties) cannot grant liens on collateral except as permitted. The permitted liens list is exhaustive in modern docs — read it carefully. **The "Permitted Encumbrances" list is where the J.Crew structural trick lived** — IP licensed to a non-guarantor was not a "lien" but achieved the same economic effect.

## The unrestricted-sub designation

- **Old docs:** board resolution only. Single trigger, easy to do.
- **Modern docs:** ratio test (e.g., pro forma total leverage below 6.0x) + capacity in Investments basket + caps on aggregate investments in unrestricted subs.
- **Effect:** moves the sub outside the guarantee, outside the negative covenants, outside the asset-sale covenants. Value can move there freely; lenders lose the collateral.
- **Re-designation:** can a sub be re-designated as restricted? Usually yes but with conditions. Re-designation as restricted **doesn't reverse** the asset transfers that already occurred.

## 6.7 The cocktail-napkin DIP analysis — answer this in 90 seconds

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**Pat's question:** "Company has \$1.0B 1L, \$300M 2L, \$200M unsecured. Pre-EBITDA \$200M; expected post \$150M. They need a \$400M DIP. The current AHC of 1L is offering SOFR+800, 10% OID, 2:1 roll-up, 30% equity conversion. Would you do it as a third-party?"

### Your math out loud (90 seconds):

"First — the new money is  $\$400M \div 3 = \$133M$  new, \$267M roll-up. OID 10% on the new money = \$13M, so cash deployed is \$120M.

Twelve-month interest at ~13% all-in on the \$400M face, PIK toggle in distress assumes half-PIK, so call it \$30M PIK accrual. DIP claim at confirmation: \$430M.

Post-emergence TEV base:  $5.5x \times \$150M = \$825M$ . After admin and priority claims, call it \$675M.

If I'm the DIP and I get 30% of the equity:  $\$675M \times 30\% = \$200M$ . Plus DIP repayment of \$430M cash. Total value to DIP: \$630M. My new-money cost basis: \$120M.

MOIC on new money: 5.25x. IRR over 18 months: roughly 250%.

But — that's only realistic if I can actually force the credit bid. If the existing AHC blocks me from taking 100% of equity via credit bid, my equity is capped at 30% and the trade is good but not great. The math depends on whether I can push to higher equity conversion at confirmation, which depends on plan valuation and §1129(a)(7) leverage. I'd want to model the bear case where I'm stuck at 30% equity and post-emergence TEV is  $4.0x = \$600M$ . Then equity =  $\$450M \times 30\% = \$135M$ , plus \$430M cash, less \$120M = \$445M back on \$120M = 3.7x MOIC. Still solid.

The deal works in base case at 5x MOIC; the bear case is 3.7x. I'd do it as long as I'm confident in the §364(d) priming structure and the milestones don't have hair triggers."

That answer separates the candidate who can do the math from the candidate who can only describe the structure.

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## PART VII — CHAPTER 11 / BANKRUPTCY CODE DEEP DIVE (CASE LAW)

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This part goes deeper than Part VI on the Bankruptcy Code mechanics. Every section is anchored to a controlling case. Memorize the case name + circuit + year for the doctrines Pat is likely to probe.

## 7.1 The Automatic Stay (§362) — relief mechanics and case law

### §362(d) relief from stay — the four sub-grounds

Subsection	Ground	Standard
§362(d)(1)	"For cause," including lack of adequate protection	Flexible equitable standard
§362(d)(2)	Debtor has no equity in property AND property unnecessary for reorganization	Both prongs required
§362(d)(3)	Single-asset real estate cases: no confirmable plan within 90 days	Accelerated SARE timeline
§362(d)(4)	Serial filer / scheme to delay creditors	Court can bar refiling

"Cause" under §362(d)(1) is open-ended. Courts find cause based on: - **Bad faith filing** — *In re Little Creek Development Co.*, 5th Cir. 1988 ("totality of circumstances" test for single-asset real estate bad faith) - Lack of adequate protection (cash payments, replacement liens, or "indubitable equivalent" — §361) - Deteriorating collateral value without cash payments - Desire to allow a state court proceeding to liquidate claims that don't affect the estate

**Adequate Protection — the equity cushion analysis.** *In re Mellor*, 9th Cir. 1984 — a 20%+ equity cushion can itself constitute adequate protection without cash payments. Courts focus on: (a) collateral value vs. claim; (b) appreciation/depreciation rate; (c) maintenance and insurance.

**Investor implication:** if your senior secured collateral coverage is thin (under 10-15%), expect a §362(d)(1) motion early in the case. The grant or denial can compress the reorganization timeline materially — a real input to your underwriting model.

### §362(f) ex parte emergency stay relief

Available "where necessary to prevent irreparable damage" before notice + hearing. Rare; mostly seen in pre-foreclosure scenarios where stay would cause specific, immediate harm.

## 7.2 First-day motions — what actually gets approved on Day 1

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### Critical vendor payments — the *CoServ* test

*In re CoServ, LLC*, 273 B.R. 487 (Bankr. N.D. Tex. 2002) — three-part test: 1. The debtor must deal with the claimant (no alternative supplier) 2. Unless paid, the debtor risks probability of harm or loss of economic advantage disproportionate to the pre-petition claim 3. There is no practical or legal alternative to paying the pre-petition claim

Courts that **deny** critical vendor motions often do so under *In re Kmart Corp.*, 7th Cir. 2004 (Easterbrook, J.) — held that §105(a) cannot override the §507 priority scheme. Most circuits allow critical vendor payments on doctrine-of-necessity grounds.

**Investor implication:** in distressed trade claims trading, the first-day critical vendor list is the leading indicator of which trade claims will be paid at par. Pre-petition trade claims that *aren't* on the list typically receive plan consideration (cents on the dollar).

### NOL preservation order (§382 protection)

Standard first-day motion to restrict equity trading: - Prohibits any person from acquiring 5%+ of stock without court approval - Prohibits existing 5%+ holders from acquiring additional stock - Prohibits 50%+ holders from disposing of stock

*Worlds of Wonder* (Bankr. N.D. Cal.) — established the prototype. **Investor implication:** if you trade claims in a Ch11 case with valuable NOLs, you need to assess whether your purchase would trigger the NOL preservation order — typically with the help of bankruptcy counsel and a §382 specialist.

### §366 utilities

Utilities cannot refuse service for 30 days post-petition. After 30 days, the debtor must provide "adequate assurance" — typically a cash deposit or LC equal to 1-2 months of expected costs. Courts balance protection against operating-cash drain.

## 7.3 §1102 official committees — when they appear

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**UCC formation.** UST appoints within 21 days. Composed of the seven largest unsecured creditors willing to serve. Fiduciary to all unsecured creditors. Standing to object to any motion, retain estate-funded professionals, investigate prepetition conduct, propose competing plans post-exclusivity.

**Equity committee.** Only "if necessary to assure adequate representation" — §1102(a)(2). Courts require a showing that equity is not clearly out of the money. *In re Williams Communications Group*, Bankr. S.D.N.Y. 2002 — denied because equity was demonstrably valueless. *In re Mirant Corp.*, Bankr. N.D. Tex. 2003 — granted because there was a genuine valuation dispute.

**Why this matters for distressed investing:** an equity committee appointment is a leverage shift. If you're holding the fulcrum security and an equity committee suddenly appears, your recovery is at risk because equity gains a seat at the negotiating table.

## 7.4 §1121 exclusivity — the 18-month cap and "filed plan" disputes

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**Initial period:** 120 days to file; total 180 days to obtain acceptance.

**Extension factors** (*In re Adelpia Communications Corp.*, 352 B.R. 578, Bankr. S.D.N.Y. 2006): 1. Size and complexity 2. Debtor's good-faith progress 3. Whether exclusivity is being used as a "bargaining chip" 4. Payment of admin claims 5. Whether the debtor has filed a plan 6. Likelihood of confirming a filed plan

*Adelpia* notably *reduced* exclusivity — finding the debtor was sitting on a plan while leveraging exclusivity. *In re Quigley Co.*, Bankr. S.D.N.Y. 2009 — denied extension where the filed plan was plainly not confirmable.

**Maximum cap:** 18 months for plan filing; 20 months for solicitation.

**Investor leverage:** if you build a blocking position in a class and exclusivity terminates, you can file a competing plan — an existential threat to management's recovery. **This is the structural reason why blocking positions matter.**

## 7.5 §1126 voting — the math + the case law

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### Acceptance computation

Class accepts if **more than 1/2 in number AND at least 2/3 in dollar amount** of claims voting on the plan vote to accept. Non-voting claims don't count.

### Deemed acceptance/rejection

Unimpaired class (§1124) — deemed to accept without voting. Class receiving nothing — deemed to reject.

### §1126(e) vote designation (disqualification)

Courts can disqualify ("designate") votes not cast in good faith: - *In re Figter Ltd.*, 9th Cir. 1997 — pension fund voted "no" to improve litigation position; vote designated - *DBSD North America*, Bankr. S.D.N.Y., aff'd S.D.N.Y. 2010, aff'd 2d Cir. 2011 — Sprint bought debt for strategic control (elimination of competitor), not investment; vote designated - *In re Greystone III Joint Venture*, 5th Cir. 1991 — the "gerrymandering principle": you cannot artificially create an accepting class by splitting a homogeneous creditor group

**Investor implication:** when buying claims strategically to influence a vote, demonstrate legitimate investment purpose alongside strategic motivation. Pure-strategic vote designation is real risk.

## 7.6 DIP financing — §364 cases and standards

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### §364(d) priming standards — the *Resorts International* line

*In re Resorts International, Inc.*, 145 B.R. 412 (Bankr. D.N.J. 1990) — the equity cushion is the primary form of adequate protection in priming DIPs. Later cases: - *In re Aerosonic Corp.* — cushion of 10-20% may be adequate depending on circumstances - *In re Yellowstone Mountain Club*, Bankr. D. Mont. — DIP proceeds enhancing going-concern value can themselves be adequate protection

Courts are **more skeptical** when the priming DIP is funded by insider pre-petition lenders rolling up exposure.

### Roll-up DIPs — the contested ones

- *In re Capmark Financial Group*, Bankr. D. Del. 2009 — UCC + equity committee objected to \$1.5B roll-up giving pre-petition lender administrative priority. Court approved after requiring "creep" roll-up over time
- *In re Sears Holdings*, Bankr. S.D.N.Y. 2018 — \$300M DIP with roll-up; UCC fought as de facto payment to ESL/Lampert; court approved with guard-rails
- *First Brands* (recent, 2025) — UCC blasted DIP as "unprincipled overreach" (Octus/Reorg coverage)

**UST guidelines disfavor:** (a) liens on avoidance actions; (b) cross-collateralization/roll-ups; (c) DIP lender control over plan process; (d) milestones that shortcut §1121.

### DIP fee economics — recent ranges (2024-2025)

Fee	Range
Commitment fee	50-200 bps on total commitment
Upfront/arrangement fee	100-300 bps

Fee	Range
Drawn interest	SOFR + 300-600 bps (priming DIPs often higher)
Undrawn fee	50-150 bps
Agency fee	\$200K-\$500K annually
Exit fee	50-200 bps
Backstop/work fee	\$500K-\$2M flat

### Backstop fees on rights offerings

- *In re Peabody Energy Corp.* (8th Cir. 2019) — 12% backstop fee on \$1.5B offering (~\$180M) upheld; "compensation for valuable, separate, risk-bearing contributions"
- *In re Pacific Drilling*, Bankr. S.D.N.Y. 2018 — Judge Wiles approved backstop premium "not without misgivings"; appeared "unwarranted" but no clear legal basis to reduce
- *In re McDermott International*, Bankr. S.D. Tex. 2020 — courts look to risk borne + market-tested pricing

Standard range: 5-12% **backstop premium**. Subscription price discount to plan equity value: typically 25-35%.

## 7.7 §363 sales — the foundational doctrines

### *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983) — the "sound business purpose"

Seven-factor test: 1. Proportionate value of asset to estate 2. Time elapsed since filing 3. Likelihood of plan of reorganization 4. Effect on future plans 5. Proceeds obtained 6. Constituency support/opposition 7. Whether asset is appreciating or depreciating

### §363(f) "free and clear" — the five conditions

Condition	Practical meaning
(1) Applicable nonbankruptcy law permits	Narrow; rarely alone
(2) Entity consents	Explicit or implicit (no objection)
(3) Price exceeds total liens	Every lien paid in full

Condition	Practical meaning
(4) Interest is in bona fide dispute	Environmental, tort, contested liens
(5) Entity could be compelled to accept money satisfaction	Secured creditor credit-bid context

*Chrysler* and *GM* both relied on §363(f)(4) for disputed tort claims.

### §363(k) credit bidding — *RadLAX* + the exceptions

*RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639 (2012) — Supreme Court confirmed secured creditor right to credit bid except "for cause." Cramdown plan cannot use §1129(b)(2)(A)(ii) to deny credit bidding.

**The credit-bid limitation exceptions:** - *In re Philadelphia Newspapers, LLC* (3d Cir. 2010) — dicta suggesting "any policy" could constitute cause; eclipsed by *RadLAX - In re Fisker Automotive Holdings*, Bankr. D. Del. 2014 — capped Hybrid's credit bid at the secondary-market purchase price (\$25M vs. \$168M face); cited inequitable conduct + lien dispute - *In re Free Lance-Star Publishing Co.*, Bankr. E.D. Va. 2014 — limited credit bid citing inequitable conduct (driving away bidders) + lien validity questions

**Investor takeaway:** as a 1L holder, **don't take actions that could constitute inequitable conduct** (discouraging bidders, acquiring loan solely to foreclose competitor). The credit bid right is your most powerful tool in a §363 sale.

### §363(b) sub rosa concerns

*In re Braniff Airways, Inc.*, 700 F.2d 935 (5th Cir. 1983) — §363 cannot "short circuit" plan confirmation. Sale impermissible if it effectively dictates reorganization terms or allocates plan consideration without confirmation.

*Motorola, Inc. v. Official Committee of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452 (2d Cir. 2007) — settlements in §363 sales must satisfy both the *Martin* test for estate settlements AND the *Lionel* test for §363 sales.

### §363(m) good-faith purchaser protection

*MOAC Mall Holdings LLC v. Transform Holdco LLC*, 143 S. Ct. 927 (2023) — §363(m) is NOT jurisdictional; appellate court has discretion. Good faith purchaser status: no actual knowledge of fraud, paid value, no collusion, no notice of defects.

## Stalking horse and the *O'Brien* breakup fee standard

*In re O'Brien Environmental Energy, Inc.*, 181 F.3d 527 (3d Cir. 1999) — breakup fees approved only if they benefit the estate. Did the fee *induce* a bid that otherwise would not have been obtained?

Typical breakup fee: **1-3% of EV**. Reimbursable expenses: \$500K-\$1M cap. Fees above 3% require compelling justification.

## 7.8 §365 executory contracts and the *Countryman* test

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A contract is executory if performance remains due on **both sides** and failure by either would constitute material breach.

### Assumption requirements (§365(b)(1))

To assume a contract in default: 1. Cure all pre-petition defaults (monetary + non-monetary) 2. Compensate for actual pecuniary loss 3. Provide adequate assurance of future performance

These cannot be waived — statutory conditions precedent.

### §365(f) anti-assignment provisions are unenforceable

Debtor may assign over counterparty objection. **Exception (§365(c))**: personal-service contracts and contracts where applicable law excuses performance — *In re Catapult Entertainment*, 9th Cir. 1999 (non-exclusive patent license cannot be assigned without licensor consent under federal patent law).

### Rejection damages — the §502(b)(6) lease cap

Landlord's claim capped at **the greater of**: (i) one year's rent, OR (ii) 15% of remaining lease term (not to exceed three years' rent). Calculated as of petition date or surrender date, whichever earlier.

**Worked example**: 10-year lease at \$1M/year. One year = \$1M; 15% of \$10M remaining = \$1.5M; 3-year cap = \$3M. **Cap = \$1.5M.**

### Stub rent debate

When debtor assumes or rejects mid-month, is the post-petition pre-rejection rent admin or unsecured? Courts split: - *In re Centerpoint Properties* — admin (benefit-to-estate) - *In re Goody's Family Apparel*, Bankr. D. Del. — admin under §365(d)(3) timely-performance obligation (majority view)

## §365(n) IP "ride-through"

When debtor/licensor rejects IP license, non-debtor licensee can: 1. Treat contract as terminated and assert rejection-damage claim; OR 2. **Retain rights** for the license term + extensions, continue paying royalties

*Mission Product Holdings v. Tempnology, LLC*, 139 S. Ct. 1652 (2019) — Supreme Court extended §365(n) to trademark licenses. Rejection is breach, not rescission.

**Investor implication:** in IP-heavy distressed credits (software, SaaS, life sciences), §365(n) limits the ability of a §363 purchaser to "cleanse" existing licenses. This compresses M&A exit value.

## 7.9 Plan confirmation — §1129 case law

### The 16 confirmation requirements (the ones Pat probes)

§	Requirement	Key dispute
1129(a)(7)	Best-interests test	Liquidation analysis valuation fight
1129(a)(8)	Each class accepts OR unimpaired	Cramdown bypass
1129(a)(10)	At least one impaired class accepts	Critical for cramdown
1129(a)(11)	Feasibility	Financial projections fight
1129(b)	Fair and equitable + no unfair discrimination	Cramdown standards

### §1129(a)(7) best-interests test

Every non-consenting impaired creditor must receive at least Ch7 liquidation value. Liquidation analysis is almost always built to show higher going-concern value under the plan. **Best-interests test is rarely the binding constraint** — usually it's confirmation litigation theater.

### §1129(a)(11) feasibility

Plan must show confirmation NOT "likely to be followed by liquidation or further reorganization." Standard: "more than a minimal possibility."

Courts examine: (i) projected cash flows; (ii) exit leverage vs. comparable companies; (iii) projection quality; (iv) access to exit financing; (v) market conditions.

*In re Save Our Springs Alliance* and *Briscoe v. Fine* — establish that courts will not confirm plans with unsupported, wildly optimistic, or known-adverse-fact-ignoring projections.

**Practical note:** feasibility is rarely what kills a plan — more often used as leverage in confirmation litigation.

### §1129(a)(10) — one impaired accepting class

The "indicia of creditor support" requirement. Anti-deadlock.

**Artificial impairment** — *In re Greystone III Joint Venture*, 995 F.2d 1274 (5th Cir. 1991) — manufacturing impairment to create accepting class violates the spirit of §1129(a)(10). The Ninth Circuit and others have backed away — text doesn't prohibit, only good-faith requirement under §1129(a)(3) does.

### §1129(b) cramdown — APR and the two prongs

#### (1) "Fair and equitable" — APR

For unsecured (§1129(b)(2)(B)): no junior class retains anything unless senior class paid in full.

**The "new value" exception:** *Bank of America v. 203 N. LaSalle Street Partnership*, 526 U.S. 434 (1999) — Supreme Court held old equity may participate notwithstanding APR only if: 1. Contributes "new value" (cash, fresh assets) 2. The value is **market-tested** (auction or other open process)

The Court declined to definitively endorse the new-value exception but held this plan failed because exclusivity-period equity-purchase option was not market-tested.

#### (2) "Does not discriminate unfairly" — horizontal

- *In re Tribune Co.*, 464 B.R. 126 (Bankr. D. Del. 2011) + 3d Cir. 2020 — subordination agreements need not be strictly enforced in cramdown context
- *In re Aleris International*, Bankr. D. Del. 2010 — four-factor test: (a) reasonable basis; (b) could the debtor confirm without the discrimination; (c) good faith; (d) discrimination consistent with basis
- *In re Grete Bay Hotel & Casino, Inc.*, 251 B.R. 213 (Bankr. D.N.J. 2000) — distinguishes economically-justifiable disparate treatment from pure discrimination

### Cramdown interest rate — *Till* and its Chapter 11 application

*Till v. SCS Credit Corp.*, 541 U.S. 465 (2004) — plurality Supreme Court adopted "formula approach" for Chapter 13 cramdown:

**Cramdown rate = national prime rate + 1-3% adjustment for risk**

In Chapter 11: - *In re Momentive Performance Materials* (Bankr. S.D.N.Y. 2014) — applied *Till* to 1.5L notes; cramdown rate ~4.10% over prime. **Massive value transfer from senior noteholders.** - District Court / 2d Cir. reversed on rate — **when an efficient comparable market exists, market rate controls; formula rate only when no comparable market.**

**Investor implication:** the *Till* / market-rate split is the difference between a 4% rate and a 9-12% rate on a fulcrum secured tranche — hundreds of basis points of cash flow per year. **This is the single biggest fight in cramdown valuation litigation.**

## 7.10 Avoidance actions — the trustee/DIP's powers

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### §544 strong-arm clause

Trustee has all rights of: (a) hypothetical lien creditor as of petition date; (b) unsatisfied execution creditor; (c) BFP of real property. Lets the trustee challenge any lien subordinate to a hypothetical lien creditor — including unperfected security interests.

### §547 preferences

**Elements:** transfer of debtor's property → to creditor → on account of antecedent debt → while insolvent → within 90 days pre-petition (1 year for insiders) → enabling more than Ch7 recovery.

**Three key defenses:** 1. **Ordinary course (§547(c)(2)):** post-BAPCPA, only one prong needed (ordinary course OR ordinary business terms) 2. **Subsequent new value (§547(c)(4)):** must be unsecured + not subsequently paid by avoidable transfer 3. **Contemporaneous exchange (§547(c)(1)):** intended + substantially contemporaneous

*In re Pinktoe Tarantula Ltd.* (Bankr. D. Del. 2023) — held the post-BAPCPA due-diligence requirement is an element of the preference claim, not just affirmative defense.

### §548 fraudulent transfer

**Actual fraud (§548(a)(1)(A)):** "Actual intent to hinder, delay, or defraud." Badges of fraud: insider transfer, inadequate consideration, pending litigation, transfer of substantially all assets, concealment, retained control.

**Constructive fraud (§548(a)(1)(B)):** Less than reasonably equivalent value AND (insolvent / became insolvent / engaged in business with unreasonably small capital / intended to incur unrepayable debts).

**§544(b) state-law claims:** Trustee can invoke any state UVTA/UFTA. NY has **6-year SOL** — making large SDNY cases more vulnerable than 4-year states.

## The Caesars CEOC fraudulent-transfer litigation — the case to know

2013-2014: Apollo/TPG (Caesars Entertainment sponsors) caused CEOC to transfer most valuable Las Vegas assets (The Linq, Octavius Tower, Planet Hollywood, Horseshoe Baltimore, The Cromwell, Bally's LV, Harrah's NO) to affiliate entities (CERP, Caesars Growth Partners) for arguably inadequate consideration. Parent guarantee of CEOC senior notes simultaneously eliminated.

UCC + 1L noteholders sued: (i) fraudulent conveyances; (ii) breach of fiduciary duty by CEOC board; (iii) tortious interference by CEC/Apollo/TPG; (iv) unjust enrichment.

**Outcome:** Settled as part of CEOC's plan — **Apollo/TPG contributed ~\$1.45B to the estate** in exchange for releases. **The definitive modern PE-sponsor fraudulent-transfer liability case.**

## *Mervyn's Holdings* — the LBO collapsing doctrine

*In re Mervyn's Holdings*, 426 B.R. 488 (Bankr. D. Del. 2010) — applied "collapsing doctrine" to an LBO where PE sponsor caused target to transfer real estate to separate entity then leased back at above-market rates. Court collapsed the multi-step transaction to find constructive fraudulent transfer.

## *Merit Management v. FTI Consulting* — narrowing the §546(e) safe harbor

*Merit Management Group, LP v. FTI Consulting, Inc.*, 583 U.S. \_\_\_ (2018) — Supreme Court unanimously narrowed the §546(e) "settlement payment" safe harbor: only protects transfers where the actual transferor and transferee are themselves covered entities (financial institutions, commodity brokers, etc.), not just intermediary financial institutions acting as conduits.

**Practical effect:** LBO transactions processed through bank accounts where neither the PE seller nor the target stockholders were financial institutions are no longer safe-harbored from fraudulent transfer attack.

## 7.11 §510(c), recharacterization, substantive consolidation

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### **Equitable subordination — the *Mobile Steel* three-prong**

*In re Mobile Steel Co.*, 563 F.2d 692 (5th Cir. 1977): 1. Claimant engaged in **inequitable conduct** — fraud, breach of fiduciary duty, undercapitalization, looting 2. Misconduct **injured creditors** OR conferred unfair advantage 3. Equitable subordination **not inconsistent** with Bankruptcy Code

Sparingly invoked. Lender liability cases typically need: (i) day-to-day management takeover; (ii) false assurances inducing trade creditors to deal; (iii) asset stripping for lender's benefit.

*In re LightSquared Inc.* (Bankr. S.D.N.Y.) — Harbinger (controlling equity/DIP lender) faced subordination claims for using DIP status to extract value and block competing plans.

## Recharacterization — debt-as-equity

### 6th Cir. *AutoStyle Plastics* 11-factor test:

1. Names given to instruments
2. Fixed maturity date?
3. Source of payments
4. Right to enforce payment
5. Participation in management
6. Status vs. regular corporate creditors
7. Subordination to outside creditors
8. Convertibility into stock
9. Thin capitalization
10. Identity of interest creditor/stockholder
11. Source of funds advanced

**9th Cir. *Fitness Holdings* approach (2013):** holistic "all facts and circumstances," focusing on intent and economic reality.

**Practical issue:** PE-sponsor "mezzanine" or PIK debt frequently challenged as disguised equity when (i) sponsor controls board; (ii) debt never expected to be serviced from operations; (iii) thin capitalization at "loan" time. If recharacterized → zero recovery behind all creditors.

## Substantive consolidation — the tests

**2d Cir. *Augie/Restivo* (1988):** Sub con appropriate if EITHER: 1. Creditors dealt with entities as single economic unit and did not rely on separate identities; OR 2. Affairs so entangled that consolidation benefits all creditors

**3d Cir. *Owens Corning* (2005):** High bar — proponent must show EITHER: 1. Pre-petition, creditors' "reasonable expectations" were based on entities operating as one; OR 2. Post-petition, assets/liabilities so scrambled that separation is prohibitive

**Owens Corning specifically rejected** sub con as a remedy for bad LBO or sloppy corporate housekeeping.

*In re Tribune Co.* (Bankr. D. Del.) — denied sub con; entities maintained separate books, boards, contracted-with-individual-entity creditors.

**Investor implication:** sub con is a nuclear weapon that can destroy carefully crafted intercreditor arrangements. **OpCo notes guaranteed by HoldCo** — a sub con motion could merge the two estates, eliminating the guarantee. *Owens Corning's* high bar protects structural subordination.

## 7.12 Make-whole premiums — the case law battle

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### *Momentive Performance Materials* — make-whole extinguished by acceleration

*In re MPM Silicones, LLC*, Case No. 14-22503 (Bankr. S.D.N.Y. 2014): - Indenture: make-whole payable on "optional redemption" - Automatic Ch11 acceleration is **involuntary** — not "optional redemption" — so trigger never occurred - Make-whole extinguished - Court also applied *Till* to set cramdown rate at ~4.10% over prime

**The 2d Cir. District Court reversed on the rate issue** — held market rates apply where comparable market exists.

### *Energy Future Holdings* — make-whole survives if drafted right

*In re Energy Future Holdings Corp.*, 842 F.3d 247 (3d Cir. 2016): - EFIH's indenture: "Applicable Premium" defined as greater of 1% or make-whole, **payable on "Redemption"** — **which was defined to include payments resulting from acceleration** - Specific surviving language → make-whole NOT extinguished - Court remanded for whether EFIH "redeemed"; ultimately EFIH owed the Applicable Premium

**The difference between *Momentive* and *EFIH* is pure drafting.** Post-*Momentive*, sophisticated indentures add: - Definition of "Applicable Premium" applying to ANY payment of principal (voluntary, mandatory, acceleration, bankruptcy) - "No impairment" language: make-whole shall not be reduced by any bankruptcy proceeding - "Repurchase Event" trigger including Ch11 filing

### *Ultra Petroleum* — solvent debtor exception + §502(b)(2)

*In re Ultra Petroleum Corp.*, 51 F.4th 138 (5th Cir. 2022) — final decision (Ultra IV): 1. Make-whole premiums **disallowed under §502(b)(2)** as economic equivalent of "unmatured interest" — first circuit court to so hold 2. **BUT** the "solvent-debtor exception" survives the Code — in solvent debtor cases, creditors entitled to full contractual rights (make-whole + default-rate post-petition interest)

**Investor implication:** when buying HY notes near filing, **the make-whole drafting is real money.** In an insolvent estate, *Ultra* may extinguish; in a solvent estate, even *Ultra* preserves the full make-whole. The solvent-debtor case is rare but lucrative when it happens.

### *In re School Specialty* — opposite outcome on similar facts

*In re School Specialty* (Bankr. D. Del. 2013) — reached opposite conclusion to *Momentive* — held indenture language contemplating "prepayment" included bankruptcy acceleration-driven payments, obligating make-whole.

### Make-whole / yield maintenance / fixed premium — distinguishing

Type	Structure	Magnitude
Make-whole	NPV of remaining scheduled payments discounted at T + 50bps	Can be huge if rates fell since issuance
Yield maintenance	Lender's projected yield protection (CMBS context)	Similar to make-whole
Fixed prepayment premium	Fixed % (e.g., 3-2-1 or NC3/101/par)	Predictable; smaller in most rate envs

### §502(b)(2) "unmatured interest" disallowance

§502(b)(2) disallows claims for unmaturred interest. OID treated as unmaturred interest to extent not yet accreted. *Ultra* extended §502(b)(2) to make-wholes as "economically equivalent" to unmaturred interest.

## 7.13 Trust Indenture Act §316(b) and *Marblegate*

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### The TIA §316(b) protection

15 U.S.C. §77ppp(b):

"Notwithstanding any other provision of the indenture to be qualified, the right of any holder of any indenture security to receive payment of the principal of and interest on such indenture security, on or after the respective due dates expressed in such indenture security, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder."

**Core terms protected:** principal, interest, maturity, right to institute suit. Cannot be overridden by majority vote.

### ***Marblegate Asset Management v. Education Management Corp.*, 846 F.3d 1 (2d Cir. 2017)**

**District Court:** broadly interpreted §316(b) to protect "practical ability" to receive payment — meaning a restructuring that made the bonds economically worthless (by stripping guarantees) without amending payment terms violated §316(b).

**2d Cir. REVERSED:** §316(b) protects only the **express right** to receive payment. NOT against transactions making payment practically impossible.

**Post-Marblegate:** - Exit consents stripping covenants → permissible - Guarantee releases → permissible - Asset sales leaving issuer as empty shell → permissible - All as long as payment terms (amount, date, right to sue) are not changed without unanimous consent

**Investor implication:** holdout bondholders in out-of-court exchange offers have **significantly weaker TIA protection post-Marblegate**. Holdouts must focus on contractual covenants (cross-default, change of control) as leverage rather than §316(b) threats.

### **Exit consent mechanics**

1. Tendering holders simultaneously vote to strip covenants from existing indenture (majority vote)
2. Non-tendering holders left with "stripped" bonds — same payment terms, no covenants
3. Stripped bonds economically worth less → pressure to tender

**Post-Marblegate, exit consent is clearly permissible** even if it leaves holdouts in materially worse economic position.

### **§317(b) trustee duties and "no-action" clauses**

Standard no-action clause requires: 1. **At least 25% in principal amount** of holders direct the trustee 2. Trustee offered satisfactory indemnity 3. Trustee fails to act within 60 days

Bondholders cannot bring direct suit until these conditions met. **§317(b) requires trustee to proceed diligently after default; trustee is fiduciary to all holders.**

## **7.14 Tax in distressed — §382, COD, §108**

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## §382 NOL limitation

Ownership change (>50pp increase by 5%+ shareholders over 3-year period) triggers annual NOL cap:

**§382 limit = (equity value immediately pre-change) × (long-term tax-exempt rate)**

### §382(l)(5) — the Title 11 exception

In Title 11 case + qualifying creditors/shareholders (old-and-cold 18+ months OR ordinary-course debt) receive ≥50% of stock → **§382 limit WAIVED.**

**Trade-off:** Pre-change NOLs reduced by interest expense deducted in three prior taxable years on converted debt. **Second ownership change within 2 years → §382 limit drops to ZERO.**

### §382(l)(6) — the valuation alternative

If §382(l)(5) unavailable or undesired, election permits §382 limit calculated using **post-reorganization equity value** (higher than pre-change because it reflects COD income). NOL haircut doesn't apply.

## COD income and §108 exclusions

**§108 exclusions:** 1. **Bankruptcy (§108(a)(1)(A)):** All COD income excluded in Title 11. Must reduce tax attributes in order: NOLs → general business credits → AMT credits → capital loss carryovers → depreciable property basis 2. **Insolvency (§108(a)(1)(B)):** COD excluded to extent of insolvency (liabilities > FMV of assets) immediately pre-discharge

## OID on distressed exchanges

Exchange of old debt for new debt at different terms → new debt may be issued at OID. Debtor accrues OID as interest deductions over new debt term. Exchange itself may generate COD income; in bankruptcy §108 covers.

## 7.15 UCC perfection — the *Motors Liquidation* error

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### Article 9 basics

- Security interest perfected when (i) attached (agreement, debtor rights, value given) AND (ii) perfection step (UCC-1, possession, control)
- **First-to-file rule** for priority

- **PMSI super-priority** for purchase-money in same collateral if perfected within 20 days of delivery

### ***In re Motors Liquidation* — the \$1.5B termination statement**

*In re Motors Liquidation Co.*, 2d Cir. Jan. 21, 2015: - 2008: GM repaid a synthetic lease (separate from a \$1.5B term loan) - GM's outside counsel mistakenly prepared UCC-3 termination statements that covered the term loan security interest as well - JPMorgan (TL admin agent) + its counsel reviewed and consented without realizing - Court applied Delaware UCC §9-509(d)(1): secured party "authorizes" a filing if it authorizes it, regardless of intent or understanding - **Result: \$1.5B term loan unsecured upon GM's 2009 bankruptcy**

**Investor implication:** before acquiring pre-petition secured debt on secondary, conduct **thorough UCC lien searches** — not just confirming original UCC-1, but reviewing ALL subsequent UCC-3 amendments, continuations, terminations for the entire chain.

## **7.16 Intercreditor agreement architecture — silent vs. non-silent 2L**

<b>Feature</b>	<b>Silent 2L</b>	<b>Non-Silent 2L</b>
Exercise of remedies	Cannot without 1L consent or after 180-day standstill	Can exercise independently
Vote in bankruptcy	Often waived or subject to 1L direction	Retains independent vote
Objection rights	Broadly waived	More limited
DIP lien consent	Broad consent given	May negotiate
Plan voting	Often required to vote as directed by 1L	Independent

*In re ION Media Networks*, Bankr. S.D.N.Y. 2009 — illustrated "silent second" where 2L holders were expressly prohibited from challenging 1L lien validity, objecting to plan, or filing for stay relief. Limits practical rights in bankruptcy.

### **Double-dip structures**

A "double dip" creditor has claims against BOTH issuing entity AND parent/affiliate guarantee. In a structure where OpCo issues notes with HoldCo guarantee, noteholder has claim against both estates. **If estates are not substantively consolidated, the noteholder "double dips"** — receives plan consideration from OpCo + recovers against HoldCo's separate estate.

**Sophisticated investors target double-dip opportunities** in multi-entity stressed structures. Recent examples: Sabre Corporation 2024, At Home pre-petition 2024-2025.

## Pari-plus structures

Two tranches with equal lien priority but one tranche has additional claim/right ("plus"): - Two tranches pari on collateral, but Tranche A has additional unsecured guarantee - First-out payment right in co-mingled collateral structure

Creates economic priority even without legal lien priority.

## The Robertshaw intercreditor dispute

*In re Robertshaw Controls* (Bankr. S.D. Tex. 2024): - Company + majority 1L lenders consented (under "open market repurchase" provision) to transfer assets to new entity controlled by consenting lenders - Dissenting 1L holders argued the transaction violated intercreditor rights - **Lopez ruling: structure violated credit agreement** via improper subsidiary issuance — issued debt out of an entity that was a "Subsidiary" under the credit agreement (technical structural arbitrage not permitted under the document) - Robertshaw emerged from Ch11 effective October 1, 2024

**Lesson:** even post-*Mitel*, deals that fail their own contractual mechanics don't survive litigation. The structural engineering has to actually work, not just have plausible NY-law cover.

## 7.17 Interview drill scenarios (with model answers)

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### Scenario 1: Make-whole

**Pat:** "You're long 1.5L notes in a company that just filed. Indenture says make-whole payable on 'optional redemption.' Debtor wants to pay par plus accrued, no premium. What's your argument and the key case?"

**Answer:** Apply *Momentive* — automatic acceleration likely extinguished the "optional redemption" trigger.

**Distinguish on your indenture language:** does it say make-whole survives acceleration? Does it define "Applicable Premium" to include any payment post-acceleration (*EFIH* approach)? If not, debtor wins. **Your leverage shifts to the cramdown rate** — if *Momentive*/District Court split applies, fight for market rate rather than *Till* formula. The difference between *Till* prime+2% (~6.5%) and a market rate (~9-12%) on a \$500M fulcrum tranche is \$12-30M of annual cash flow.

### Scenario 2: Credit bid

**Pat:** "You bought 1L term loan at 40 cents. Face \$500M. Company worth \$300M at auction. Can you credit bid the full \$500M face?"

**Answer:** Yes, under *RadLAX* — credit bid the full allowed amount of your claim. Third parties must beat \$500M in cash to outbid. **Three caveats:** 1. Debtor could argue claim should be reduced for unaccrued OID or fees 2. Court could limit your bid "for cause" under *Fisker / Free Lance-Star* if you engaged in inequitable conduct to chill bidding — **don't engage with potential bidders during the process; don't acquire loan solely to foreclose on a competitor** 3. §506 valuation: "secured" portion is only \$300M, but you can still credit bid the full allowed claim per *RadLAX*

### Scenario 3: Intercreditor

**Pat:** "You're 2L in a silent ICA. The 1L is proposing a priming DIP. What are your rights?"

**Answer:** Under typical silent 2L ICA: - Broadly waived right to object to DIP financing that primes your lien, provided 1L consented - Cannot exercise remedies during 180-day standstill post-acceleration - Cannot object to use of cash collateral

**Your primary leverage:** if ICA waiver doesn't expressly cover adequate protection payments, you can argue for replacement liens as adequate protection for primed interest. Review whether ICA waiver covers "any financing" or only financing "consented to by First Lien Agent" — if 1L and 2L lenders are different parties, 1L consent may not bind 2L in all circumstances.

### Scenario 4: Preference

**Pat:** "Your trading desk sold \$50M of bonds back to debtor six weeks pre-filing at 70 cents, for total price \$35M. Preference?"

**Answer:** Elements present: (i) transfer of estate property (cash); (ii) to creditor; (iii) antecedent debt; (iv) within 90 days presumptively insolvent; (v) enabled greater recovery than Ch7.

**Defenses:** - Contemporaneous exchange for new value — debtor received cancellation of debt, arguably equivalent to price paid - Ordinary business terms — secondary market bond repurchases are standard

**But:** courts have held that repurchase of discounted bonds **IS a preference** if price paid exceeds liquidation distribution. If Ch7 would yield 30 cents but estate paid 70 cents, the estate enriched the seller by 40 points × face = \$20M at expense of other creditors.

### Scenario 5: §382

**Pat:** "Company emerges with \$800M NOLs. PE sponsor owns 55% of new equity. §382(l)(5) election was available but sponsor wants control. Can they?"

**Answer:** §382(l)(5) requires qualifying creditors (including converting equity) own 50%+ of new stock. If plan structured so sponsor owns 55%, and a portion derives from old-and-cold 18+ months debt, **§382(l)(5) may be available.**

**Critical risk:** the two-year second-ownership-change rule. If sponsor subsequently sells 5.1%+ within 2 years (triggering change in 5%+ shareholder position by more than 50pp in aggregate), **NOL limitation could drop to ZERO** — destroying \$800M of carryforwards.

The §382 preservation order during the case is designed to prevent trades triggering premature ownership change. Sponsor would need long-dated lock-up commitments to preserve the (l)(5) election.

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## PART VIII — LME STRUCTURES + DISTRESSED MATH (DEEP DIVE)

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This is the dedicated LME-structures reference: every uptier/drop-down/double-dip/pari-plus/exit-consent permutation, with worked case studies and example document language. Read it alongside Part VII (Ch11 mechanics) to cover the full LME-Ch11 spectrum.

### 8.1 LME structural taxonomy

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#### A. Uptier exchanges (non-pro-rata)

**Core mechanics:** A majority of lenders work with the borrower to issue new "super-priority" debt that ranks senior to the non-participating minority. The participants exchange their existing loans into the new super-priority tranche; non-participants are effectively subordinated in place.

**Two enabling features required:** 1. Majority-lender amendment right that does NOT treat lien subordination as a "sacred right" 2. Textual hook permitting non-pro-rata treatment ("open market purchase," "purchase by assignment," or new-style "extend-and-exchange")

**The canonical sequence:** 1. Participating lenders (AHG holding majority) provide new-money component 2. Borrower + AHG amend credit agreement via majority vote: (a) permit the new super-priority tranche, (b) authorize lien subordination 3. Participating lenders exchange existing loans (at par or modest premium) into new super-priority tranche; existing claims cancelled 4. Non-participating lenders retain original loans, now structurally/contractually subordinated 5. Result: participants are first-out; non-participants are last-out

**Serta Simmons (June 2020 LME → Jan 2023 Ch11 → Dec 31 2024 5th Cir.)**

Item	Detail
Pre-LME cap structure	~\$1.4B 1L TL + ~\$500M 2L TL; sponsor TH Lee / Advent (2016 LBO)
New money	\$200M super-priority first-out
Exchange	~\$1.2B existing 1L+2L → \$875M second-out super-priority (~27% haircut on face)
Non-participant pool	~\$600M, left as third-out
Enabling hook	Credit agreement "open market purchase" exception to pro-rata sharing
Participating economics	93–97c recovery in plan
Non-participating economics	<20c estimated in original plan structure
Ch11 filed	January 2023 (S.D. Tex.)
5th Cir. ruling (Dec 31 2024)	(1) Non-pro-rata exchange NOT an "open market purchase"; (2) Plan indemnity provisions excised
Geographic scope	Applies in 5th Cir. only (TX, LA, MS)

**Mitel Networks (Oct 2022 LME → Dec 31 2024 NY dismissal)**

Item	Detail
Pre-LME cap structure	\$1.02B 1L TL + \$360M 2L TL; sponsor Searchlight Capital (2018)
Mechanic	§9.04(i) "purchase by way of assignment" — borrower became assignee of participating loans → cancelled and reissued as super-senior
Critical distinction from Serta	"Purchase by assignment" rather than "open market purchase"
NY 1st Dept. ruling (Dec 31 2024)	Dismissed minority claims; "purchase by assignment" is a permitted non-pro-rata mechanic
Geographic scope	NY state courts; binding precedent for NY-law credit agreements

**The Serta/Mitel split is the central jurisdictional fault line in current LME practice.** NY-law deals retain more structural flexibility; TX-governed documents face the 5th Cir. headwind.

## Boardriders (Aug 2020) and Trimark USA (Sep 2020)

Both early-cycle uptiers that **settled** rather than fully litigating. Non-participating lenders entered NY Supreme Court actions; ultimate settlements were dollar-for-dollar exchanges into the new super-senior tranche.

**Established precedent that nuisance-settlement value exists even when minority litigation is likely to lose on the merits.**

## Post-Serta evolution: "extend-and-exchange" (2025)

After the 5th Cir. closed off "open market purchase," market adapted with the "**extend-and-exchange**" **mechanic** (Better Health, Oregon Tool, January 2025):

1. Majority of lenders consent to extend maturities by one year (e.g., 2028 → 2029), creating a new 2029 tranche — permissible majority amendment
2. The new 2029 class then provides exit consents stripping protective covenants from remaining 2028 paper
3. The 2029 class approves issuance of new super-priority debt within that class — a non-pro-rata exchange executed entirely *within* a class that consented to itself
4. Effect: same economic outcome as a traditional uptier, but structured as a series of majority-consent amendments rather than a "purchase"

## Tiered exchanges (Newfold Dec 2025, Tropicana May 2025, Saks Global, Thrive Pet Healthcare, Oregon Tool — all 2025)

The dominant post-Serta structure. All lenders are **offered participation, but on different economic tiers**:

- **Tier 1 (AHG / co-op members):** premium economics — higher discount, more favorable new-money terms, better seniority
- **Tier 2 (other existing lenders):** less attractive terms — lower discount, more junior tranche

**Effect:** reduces legal exposure (non-participants weren't excluded as in classic Serta; they were invited and declined inferior terms). Reduces the litigation premium because the "damage" to holdouts is smaller and bilateral in nature.

## B. Drop-down LMEs

**Mechanics:** Borrower transfers its most valuable assets (IP, brand, key subsidiary equity) to a **non-loan-party subsidiary** (typically unrestricted) where existing lenders' liens don't reach. The new subsidiary then issues new secured debt (collateralized by the dropped-down assets). Proceeds are upstreamed.

## J.Crew structure (2016-2017)

**Enabling provisions:** 2014 credit agreement contained: - Investment basket permitting designation of restricted subsidiaries as unrestricted - Capacity basket permitting contribution of IP assets to subsidiaries

**The transaction:** 1. J.Crew transferred most valuable IP (brand trademarks) to a newly formed unrestricted subsidiary (outside the credit group) 2. The unrestricted subsidiary issued new secured notes, with the transferred IP as collateral — NOT subject to existing lenders' liens 3. Proceeds upstreamed to operating entities

**Result:** First-lien term lenders lost the benefit of their first-lien pledge on J.Crew's most valuable collateral.

### **PetSmart / Chewy (2017-2018)**

**Background:** BC Partners' 2015 LBO of PetSmart funded at parent level. PetSmart owned ~57% of Chewy.

**The transaction:** 1. PetSmart caused a partial sale of Chewy equity to outside parties, reducing ownership below the threshold (typically majority or 100%) that required Chewy to be a guarantor 2. As a result of becoming a "**non-wholly-owned subsidiary**," Chewy was automatically released from its guaranty under the standard guarantor release provisions 3. Lenders lost their guaranty from what had become the group's most valuable asset

### **Envision Healthcare (April 2022 drop-down + June-Aug 2022 uptier → May 2023 Ch11)**

**Pre-LME cap structure:** ~\$5.45B EVPS TL + ~\$940M unsecured notes; sponsor KKR

**Phase 1 — April 2022 drop-down:** - Envision transferred ~\$1B in value to AmSurg restricted subsidiary silo - Created a structure where AmSurg could incur new debt at the subsidiary level - Existing EVPS TL lenders' claims diluted by new AmSurg-level priority debt

**Phase 2 — June-Aug 2022 uptier:** - AmSurg secured additional ~\$1.3B in 2L debt (proceeds loaned to Envision) - Participating Envision TL lenders could elect: - New-money first-out tranche (\$300M super-senior) - Convert existing TL to second-out at 17% discount - Convert remainder to third-out at par - Non-participants remained in fourth-out position - Participating discount captured ~\$582M + ~\$90M interest savings

**Ch11 filed May 15, 2023 (S.D. Tex.).** Plan: dual-silo separation of Envision (staffing) from AmSurg (ASCs). AmSurg drop-down lenders cashed out. Litigation dismissed Nov. 2023.

### **Bausch Health (Nov 2022)**

**Structure:** Designated B+L holding entity as unrestricted subsidiary. B+L (~57% of Bausch Health EBITDA at separation) moved outside the credit group; all B+L subsidiaries became unrestricted; B+L financials excluded from Bausch Health maintenance covenant calculations.

**Current status:** Still operating as separated entities; Bausch Health (BHC) continues with legacy pharma debt; B+L publicly traded (BLCO). **Validates that with sufficient capacity, a company can move its crown jewel without a full drop-down of IP — pure designation mechanic.**

### **Pluralsight (2024) — the first major private credit LME**

**Sponsor:** Vista Equity Partners. **Existing debt:** ~\$1.5B 1L TL via private credit (Blue Owl, Ares, Golub, Oaktree, BSP, Goldman, BlackRock).

**Transaction:** 1. Vista injected \$50M preferred equity via subsidiary 2. Subsidiary received IP pledge; proceeds upstreamed to Pluralsight for interest payment

**Outcome:** Insufficient. Vista agreed to change-of-control / debt-for-equity exchange. **\$1.3B in funded debt eliminated; lenders took 100% of equity.** Wholly owned by private credit lenders.

**Key lesson:** First major private credit LME — same sponsor-vs-creditor dynamics show up in bilateral private credit docs. Private credit was previously considered less prone to coercive LME maneuvers; Pluralsight ended that assumption.

## **C. Double-dip structures**

### **Core architecture — two independent legal claims**

A double-dip gives new-money lenders **two legal claims against the same pool of assets:**

**Claim 1 (Direct — Guarantee):** A loan-party guarantor (operating subsidiary holding all real operating assets) directly guarantees new notes/loan issued by a newly-created non-guarantor subsidiary.

**Claim 2 (Indirect — Intercompany Note):** The new notes/loan proceeds are funded into the non-guarantor subsidiary, which then **on-lends** to operating companies (loan parties) as a first-priority intercompany loan. The intercompany receivable is pledged as collateral to the new noteholders.

**In Chapter 11:** - New noteholders assert Claim 1 against guarantor's estate (the guaranty) - Simultaneously assert Claim 2 against guarantor's estate (recovery on intercompany note, into which their priority intercompany receivable was pledged) - If allowable, the new noteholders recover **twice** from the same pool of operating assets — hence "double dip"

**Why this is powerful in Ch11:** A creditor with two first-priority claims against the same estate has dramatic leverage over valuation and plan confirmation. Defeats "best interests" tests for lower-priority creditors because the double-dip recovery exhausts the estate before reaching them.

**Mathematical dilution:** If estate has \$100M and existing first-lien lenders have \$200M of claims, and new double-dip lenders have \$50M of claims that can be asserted **twice** (\$100M economic equivalent), existing lenders' effective pro-rata share drops from 100% to ~67% ( $\$200 / (\$200 + \$100)$ ).

### Recent double-dip case studies

**At Home Group (May 2023 LME → June 2025 Ch11):** - ~\$2.0B funded debt from H&F's July 2021 LBO - \$11.5% senior secured notes issued by non-guarantor (but restricted) subsidiary - Operating loan parties guaranteed; non-guarantor sub on-lent proceeds back as first-lien intercompany loan - Ch11 filed June 16, 2025 with RSA giving near-all equity to DIP/prepetition 1L (double-dip holders) - UCC challenged double-dip; de minimis incremental economic relevance limited appellate surface

**Wheel Pros / Hoonigan (Sep 2023 LME → Sep 2024 Ch11 → Dec 2024 emergence):** - ~\$1.4B existing 1L TL (PE-backed auto accessories) - Created **WP NewCo, LLC** — non-guarantor restricted subsidiary - WP NewCo received: \$1.27B in newly issued NewCo First Lien Loans/Notes (existing 1L+2L lenders' exchanged debt at ~\$140M discount) + \$235M FILO new money - WP NewCo on-lent \$1.27B to Wheel Pros parent as first-priority intercompany loan - Exchanged creditors had: (i) NewCo note (direct WP NewCo claim) + (ii) intercompany receivable pledged back (indirect parent claim) - **First test case of double-dip in contested Ch11.** Double-dip mentioned in liquidation analysis but **not substantively challenged**; no impact on creditor recoveries - Emerged Dec 2, 2024 as "Hoonigan" with \$1.2B debt eliminated, \$500M exit TL + \$175M exit ABL

**Sabre Corporation (2024):** Secured guarantees from non-guarantor restricted subsidiaries capped at \$400M. Intercompany loan pari passu with existing secured debt; cash interest rate up to 17.5% or 19% PIK. Non-guarantor restricted subsidiary mechanics used to raise new secured liquidity while staying within existing credit agreement baskets.

**Trinseo (2024):** Materials science company; executed double-dip via non-guarantor restricted subsidiary structure.

### D. Pari-plus structures

**Core mechanics:** New debt is nominally **pari passu** in lien priority with existing first-lien debt but with structural enhancements that effectively make it economically senior:

- **First-out / last-out payment waterfall:** New tranche paid first; existing tranche paid only after new tranche satisfied
- **Enhanced voting rights:** New tranche controls amendment/waiver decisions despite contractually pari lien

- **Tighter collateral perfection:** New tranche maintains strict pledges; existing tranche subject to release baskets

**Wheel Pros FILO (Sep 2023):** \$235M FILO was the most prominent pari-plus of 2023. FILO = "first-in, last-out" — junior to revolver in payment waterfall from ABL collateral (hence "last-out") but with tighter/enhanced covenants and higher spread. **New money investors receive structural priority (enhanced covenants, strict cash dominion) in exchange for being last-out in cash waterfall** — implying first loss but highest yield.

**Robertshaw (2024):** Sponsor-backed industrial controls manufacturer. Executed uptier with Required Lender consent (>50%) under existing credit agreement. **Bankruptcy Court ruling (June 20, 2024, S.D. Tex.):** Judge Lopez found prepayment of TL debt violated plain terms of credit agreement — but **limited remedy to prepetition unsecured breach of contract claim** — not rescission, not lien reinstatement. **Critical precedent: courts resist unscrambling completed LMEs even when they find violations; prefer monetary damages over structural unwinding.**

## E. Open-market purchase / cashless exchange

**Pre-Serta mechanic** relied on standard credit agreement language:

*"Notwithstanding the foregoing, (a) the Borrower may purchase, pursuant to open market purchases, any Loans at any time... and upon such purchase the Borrower shall thereupon be deemed to have acquired such Loans... and the Borrower may then cancel such Loans."*

The argument: borrower "purchases" participating lenders' loans via open-market transactions (even if negotiated privately), cancels them, re-issues new super-priority loans. Each step technically bilateral and consensual.

**5th Cir. rejection (Dec 2024):** "Open market purchase" requires transactions on the open secondary market — bilateral, privately negotiated exchanges between borrower and specific lenders are **NOT** "open market."

### Post-Serta drafting workarounds:

1. **"Purchase by assignment" (Mitel mechanic / NY law):** §9.04(i)-style language authorizing "purchase by way of assignment" — broader than "open market" and validated by NY 1st Dept. Ensure assignment mechanic does not cross-reference open market purchase provision or use it as operative hook.
2. **"Permitted Loan Purchase" basket:** Newer credit agreements include standalone basket explicitly allowing privately-negotiated assignment at any price, with specific carve-out from pro-rata sharing requirement. **Clean-sheet post-Serta fix.**

3. **"Extend-and-Exchange" mechanic:** As described in (A) above — no "purchase" involved; amendment is majority-consent.
4. **Majority-Amendment rewrite:** Amend the pro-rata sharing provision itself (if not sacred-right requiring unanimous consent in the relevant credit agreement) to permit non-pro-rata exchanges. Requires broad majority-amendment basket — less common in tightly negotiated post-2022 documents.

## F. Exit consent / covenant strip (bond exchanges)

**Structure:** 1. Borrower launches exchange offer to all existing noteholders — offers new (typically secured and/or shorter-dated) notes in exchange for tendering existing (typically unsecured or lower-priority) notes 2. **Exit consent requirement:** As condition of accepting exchange, tendering noteholders also grant exit consent authorizing indenture amendment 3. Exit consent typically strips **non-payment protective covenants** from existing indenture — change of control put, reporting requirements, restrictive covenants, subsidiary guarantees, cross-default provisions 4. If offer achieves sufficient participation (typically  $\geq 50\%$  for amendments, sometimes requiring higher for specific provisions), stripped bonds held by non-tendering holdouts are left with degraded covenant protections

**Marblegate (2d Cir. 2017):** §316(b) protects only the legal right to receive payment (principal, interest, maturity) — NOT bondholders' practical ability to receive payment. Stripping subsidiary guarantees, reporting covenants, cross-defaults, and other protective provisions does NOT violate §316(b). **Exit consent covenant strips are clearly permissible in 2d Cir.**

**Cumulus Media (May 2024):** Exchange achieved ~97% participation. Reduced principal ~\$33M; extended maturities 2026 → 2029; upsized ABL 25% to \$125M. Despite successful 2024 exchange, **Cumulus filed Ch11 March 2026** as 2025 revenues declined 10.3% and EBITDA compressed from \$82.7M to \$52.0M. **Post-LME blockers embedded in 2024 exchange documentation reportedly complicated subsequent Ch11 plan structuring** — a case study in LME documentarians building structural complexity that constrains future flexibility.

## G. Amend & Extend (A&E)

**Garden-variety mechanics** — extend maturity of portion of existing facility for consent fee + interest rate step-up:

Feature	Typical Range
Consent fee	25–75 bps of extended principal
Coupon step-up	100–250 bps cash or PIK

Feature	Typical Range
Lender requirement	Required Lender (>50%) or, if sacred right, 100%
Maturity extension	1–3 years
Covenant "reset"	Often paired with amendments

**Sacred-rights issue:** Maturity extension typically requires **all-lender consent** under sacred-rights provision ("extensions of the final maturity date of any Loan... shall require the consent of each Lender directly and adversely affected thereby"). Minority can hold out and receive original maturity while majority extends. Borrowers often permit extending tranche to become separate class ("Extended Term Loans"), leaving non-extending tranche as shorter-dated class with accelerating structural disadvantage.

## H. RSA-funded / prepackaged restructurings

See §8.8 below for detailed mechanics.

## 8.2 The cooperation agreement (co-op) — full anatomy

A co-op is a **contract among creditors** (40-99% of a debt tranche by value) governing collective action. Distinct from AHC/AHG advisory engagement (which merely retains counsel) in that co-op **binds lenders to each other**.

### Core provisions

Provision	Typical terms
Voting commitment	Each member votes consistent with supermajority co-op decision
Transfer restrictions	Transferees must join co-op; no transfers to borrower/sponsor-affiliated entities
Information sharing	Members share term sheets, due diligence; binding NDA within group
Governance	Steering committee of 3-7 largest holders; supermajority vote (66.7% by claim amount) for binding decisions
Termination	Plan effective date, 12-18 month sunset, material breach

Provision	Typical terms
Fees	Pro-rata share of co-op counsel + FA fees
No-action clause	No unilateral action outside co-op

## "Closed" co-ops

A closed co-op does not admit new members after formation. Allows founding members (largest stakes) to prevent dilution of voting power and exclude disruptors. **Newfold Digital (Dec 2024):** Akin-advised AHG closed its co-op after formation; excluded minority lenders organized separate group but lacked blocking position. **Altice France:** Co-op achieved 94% of total senior secured debt by extension deadline (Sep 30 2024) — effectively a pre-negotiated restructuring mandate.

## Supermajority governance (66.7%)

Mirrors Ch11 plan confirmation threshold of two-thirds in amount for an impaired class. If co-op supermajority can agree, they can confirm a plan without the minority.

## Antitrust challenges — Optimum Communications 2024-2025

**Nov 2025:** Optimum Communications (f/k/a Altice USA) and CSC Holdings filed federal antitrust lawsuit in NY against lenders — Apollo, Ares, GoldenTree, Loomis, Oaktree, PGIM, BlackRock — challenging cooperation agreement as unlawful cartel.

**Two antitrust theories:** 1. **Group boycott:** Co-op members agreed not to individually work with Optimum to restructure unless 2/3 supermajority approves — deprives Optimum of bilateral negotiation 2. **Price-fixing:** Steering committee required to negotiate exclusively with Optimum — coordinated price-setting

Allegations: co-op controls ~88% of leveraged finance market and ~99% of Optimum's outstanding debt.

**Why challenge likely fails:** - Cooperation among creditors is NOT analogous to horizontal competitor price-fixing - Lenders are not competitors in same economic market — they are providers of capital seeking repayment - Co-ops reduce transaction costs and collective-action problems; creditor-side analog of RSAs - "Group boycott" framing fails because each lender individually retains legal right to transfer debt or pursue individual remedies - Courts reluctant to apply antitrust law to capital markets creditor coordination

**Litigation status (May 2026):** No dispositive ruling. **Precedential stakes enormous** — if co-ops were held to violate antitrust law, entire framework of coordinated lender negotiation would be in jeopardy.

## Co-op vs. AHC distinction

Feature	AHC	Co-op
Legal basis	Advisory engagement	Binding contract
Voting obligation	None	Supermajority-governed
Transfer restrictions	None	Yes (transferees must join)
Information sharing	Informal	Structured / NDA-bound
New member admission	Open	Closed (member consent)
Strength vs. borrower	Persuasive only	Binding commitment

## 8.3 Document blockers — taxonomy with redline language

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### J.Crew blocker — three generations

**Original (2017):** prohibited IP transfer to unrestricted subsidiaries only.

**Enhanced (2018+):** extended to non-guarantor restricted subsidiaries:

*"No Loan Party shall transfer, convey, assign, license or otherwise dispose of any Material Intellectual Property to any Subsidiary that is not a Loan Party, whether or not such Subsidiary is a Restricted Subsidiary."*

**Strong (2020+):** added designation prohibition and collateral pledge requirement:

*"No Loan Party shall, directly or indirectly (i) transfer any Material Intellectual Property to any Person that is not a Loan Party... (ii) permit any Restricted Subsidiary that is not a Loan Party to own any Material Intellectual Property..., (iii) Designate as an Unrestricted Subsidiary any Subsidiary that owns, holds, or has a license in any Material Intellectual Property... or (iv) allow any Material Intellectual Property to become subject to any Lien other than Permitted Liens."*

### Chewy blocker

*"Notwithstanding anything to the contrary in this Agreement, no Subsidiary Guarantor shall be released from the Guarantee Agreement as a result of such Subsidiary Guarantor ceasing to be a direct or indirect*

*Wholly-Owned Subsidiary of the Borrower. Any release of a Subsidiary Guarantor's obligations under the Guarantee Agreement shall require the prior written consent of each Lender."*

## **Serta blocker — two components**

### **Component 1 — no lien subordination by majority:**

*"Any amendment, waiver, modification or supplement that... subordinates, or has the effect of subordinating, the Liens securing the Obligations held by any Lender to the Liens securing any other Indebtedness of any Loan Party shall require the written consent of each Lender directly and adversely affected thereby."*

### **Component 2 — "open market" exception narrowed:**

*"For the avoidance of doubt, the term 'open market purchase' shall not include (i) any purchase of Loans pursuant to a privately negotiated transaction with one or more Lenders, (ii) any purchase of Loans from the proceeds of, or in connection with, the incurrence of any new Indebtedness, or (iii) any transaction in which the Borrower or any Affiliate thereof exchanges Indebtedness for Loans."*

Some post-Serta drafting goes further:

*"The Borrower may purchase Loans pursuant to open market purchases in accordance with applicable securities laws solely through arms'-length transactions on the secondary market through a broker-dealer and not in a privately-negotiated transaction with individual Lenders..."*

## **Pluralsight blocker — non-guarantor restricted subsidiary IP protection**

*"Notwithstanding any other provision of this Agreement, no Restricted Subsidiary that is not a Loan Party shall incur any Indebtedness secured by a Lien on any assets (i) contributed, transferred or assigned by any Loan Party to such Restricted Subsidiary or (ii) consisting of proceeds of any Intercompany Loan from any Loan Party to such Restricted Subsidiary."*

Deeper protection:

*"No Loan Party shall make any Investment in, or transfer any assets to, any Restricted Subsidiary that is not a Loan Party if the aggregate Fair Market Value of all such Investments and transfers exceeds \$[Basket Cap] unless (A) such Restricted Subsidiary shall concurrently therewith (x) become a Guarantor and (y) pledge all of its assets as Collateral..."*

## **Envision blocker — restricted-sub financing structure**

*"No Subsidiary of any Loan Party that is not itself a Loan Party shall incur any Indebtedness unless such Indebtedness is (i) subordinated to the Obligations in right of payment or (ii) owed solely to one or more Loan Parties. Any Indebtedness incurred by a Non-Loan Party Subsidiary shall not be secured by any Lien on any assets of any Loan Party."*

### **At Home / double-dip blocker**

*"No Loan Party shall (i) make any Intercompany Loan to any Non-Loan Party Subsidiary where such Intercompany Loan is pledged or encumbered as collateral for any Indebtedness of such Non-Loan Party Subsidiary owed to any Person other than a Loan Party, or (ii) guarantee any Indebtedness of any Non-Loan Party Subsidiary where the proceeds of such Indebtedness are on-lent to any Loan Party."*

### **Wesco/Incora blocker — integrated transaction doctrine**

The "integrated transaction" issue in Wesco was that a series of individually-permissible steps (collateral release, new debt issuance, existing note amendment) combined to achieve an impermissible result:

*"For purposes of this Agreement, a series of related transactions shall be treated as a single transaction for purposes of determining compliance with any applicable covenant, threshold, or limitation, including the [Investment] basket, the [Permitted Lien] definition, and the [Collateral Release] provisions. No Loan Party shall engage in any series of transactions, taken as a whole, that would violate any such covenant or limitation even if each individual transaction in such series, if taken alone, would not independently violate such covenant or limitation."*

### **Anti-double-dip language**

*"No Non-Loan Party Subsidiary shall (i) incur any Indebtedness the proceeds of which are on-lent, contributed, or otherwise transferred to any Loan Party and (ii) in connection therewith, receive any guarantee from any Loan Party. Any arrangement in which a Non-Loan Party Subsidiary incurs Indebtedness and simultaneously or thereafter (A) extends an Intercompany Loan to a Loan Party and (B) receives a guarantee of such Indebtedness from any Loan Party shall be null and void absent the written consent of the Required Lenders."*

### **Pari-plus blocker**

*"No Indebtedness incurred pursuant to any [Incremental] facility or [Permitted Additional Debt] provision shall (i) have payment priority, in connection with any waterfall, payment blockage, or distribution mechanics, senior or preferred to the Term Loans outstanding hereunder or (ii) contain voting or amendment rights that are not shared pro rata among all Lenders holding Term Loans."*

## Lender-side cooperation provisions (post-2024)

### Tag-along on amendments:

*"If any amendment, modification, or waiver is offered to any Lender (including, without limitation, any extension of maturity, reduction of interest, or change in prepayment priority), the Borrower shall simultaneously offer each other Lender the opportunity to participate in such amendment, modification, or waiver on the same terms and conditions."*

### Pro-rata participation in incremental tranches:

*"Any Incremental Term Loan Commitment or Incremental Revolving Commitment shall be offered pro rata to all existing Lenders before being offered to any other Person, and each existing Lender shall have [10] Business Days to elect to participate in its pro-rata share."*

### Mandatory pro-rata maturity extension offer:

*"If the Borrower proposes to extend the Maturity Date applicable to any Loans (whether through amendment, refinancing, exchange or otherwise), the Borrower shall simultaneously offer each Lender the opportunity to extend its Loans on identical economic terms."*

## 8.4 Recent LME case-study summary table

Deal	LME date	Structure	Key economics	Outcome
Serta Simmons	Jun 2020	Uptier (open market purchase)	\$200M new money + \$875M second-out exchange (27% haircut)	Ch11 Jan 2023; 5th Cir. Dec 2024 reversed uptier
Mitel	Oct 2022	Uptier (purchase by assignment)	Cashless super-senior swap	NY 1st Dept. Dec 2024 upheld; pre-pack Ch11 Mar 2025
Boardriders	Aug 2020	Uptier	~\$321M (71%) participation	Settled — dollar-for-dollar swap
Trimark USA	Sep 2020	Uptier	\$120M new money	Settled — dollar-for-dollar swap
Pluralsight	2024	Drop-down + private credit	\$50M Vista preferred + IP drop-down	\$1.3B debt eliminated; lenders took 100% equity

<b>Deal</b>	<b>LME date</b>	<b>Structure</b>	<b>Key economics</b>	<b>Outcome</b>
<b>Envision Healthcare</b>	Apr+Jun 2022	Drop-down + 4-tranche uptier	\$300M first-out + \$1.3B 2L; ~\$582M discount captured	Ch11 May 2023; dual-silo plan
<b>At Home Group</b>	May 2023	Double-dip	11.5% senior secured notes via non-guarantor sub	Ch11 Jun 2025; emerged Oct 2025
<b>Wheel Pros / Hoonigan</b>	Sep 2023	FILO + double-dip	\$235M FILO + \$1.27B NewCo notes	Ch11 Sep 2024; emerged Dec 2024 (-\$1.2B debt)
<b>Cumulus Media</b>	May 2024	Exit consent + A&E	~97% participation; -\$33M principal; maturity to 2029	Ch11 Mar 2026 (pre-pack)
<b>Bausch Health</b>	Nov 2022	Drop-down (B+L unrestricted sub designation)	B+L (~57% EBITDA) moved out	Still operating; B+L publicly traded (BLCO)
<b>Carvana</b>	Aug-Sep 2023	Exchange (5.52B unsecured → 2L PIK)	96.4% participation; >\$1.325B debt reduction	Operational; equity recovered with auto market
<b>Wesco/Incora</b>	Mar 2022	Uptier + collateral strip	\$250M new money; integrated-transaction challenge	Ch11 Jun 2023; emerged Jan 2025 (-\$2B net debt)
<b>Diamond Sports</b>	filed Mar 2023	Ch11 (no pre-petition LME)	\$9B funded debt	Emerged Jan 2025 as Main Street Sports Group (\$200M debt)
<b>Altice France</b>	2024-2025	Co-op + French safeguard	94% secured creditor co-op; €8.6B debt eliminated	Effective Oct 1, 2025
<b>Robertshaw</b>	early 2024	Uptier (Required Lender consent)	Prepayment of TL tranches	Ch11 Feb 2024; court found breach but only unsecured damages
<b>Pretium Packaging</b>	2023 + 2026	A&E (2023) + pre-pack Ch11 (Jan 2026)	99.8% exchange (2023); 26-day pre-pack (2026)	Emerged Feb 2026; -\$900M+ funded debt
<b>Newfold Digital</b>	Dec 2025	Tiered exchange + side pacts	\$100M new money; 90%+ participation;	Still operating; first LME completed; second-

Deal	LME date	Structure	Key economics	Outcome
			closed co-op	LME watch
<b>Tropicana Brands</b>	May 2025	Non-pro-rata (91¢ in-group / 70¢ out-group)	\$400M new money; 21-cent intra-class differential	Still operating; double-default candidate
<b>Cabinetworks</b>	May 2026	A&E (TLB → 2nd-Out) + secured exchange (notes → 3rd-Out)	\$100M first-out; 98% TLB / 96% notes participation	Just-closed; long runway, leverage unchanged

## 8.5 Distressed credit math drills

### IRR vs. MOIC trade-offs

Purchase	Recovery	Hold	MOIC	IRR
40c	80c	1 yr	2.0x	100%
40c	80c	2 yr	2.0x	41%
40c	80c	3 yr	2.0x	26%
40c	80c	5 yr	2.0x	15%
50c	100c	1 yr	2.0x	100%
50c	100c	3 yr	2.0x	26%
60c	90c	18 mo	1.5x	31%
30c	75c	24 mo	2.5x	58%
70c	95c	12 mo	1.36x	36%

**Rule of thumb:** "A 2x in one year is extraordinary (100% IRR); a 2x in five years is mediocre (15% IRR). MOIC is headline; IRR is what matters to LP return hurdles."

Distressed holds: - Pre-pack Ch11: 18-24 months avg - Free-fall contested: 30-48 months - Out-of-court LME: 12-18 months - DIP-to-equity hold: 24-36 months post-emergence

## Yield-to-Recovery (YTR) — the right framework for distressed bonds

$$YTR = ([\text{Expected Recovery} \times \text{Par}] / \text{Current Price})^{(1/\text{Expected Hold})} - 1$$

**Worked example:** - \$1,000 face bond, 8% coupon, currently trading at 40c (\$400 per \$1,000 face) - Expected recovery: 70c (\$700 per \$1,000 face) in 2 years - YTR (no interim coupon, defaulting before next coupon):  $(\$700/\$400)^{(0.5)} - 1 = 1.75^{0.5} - 1 \approx 32\%$  - If bond pays two more coupons before default (\$80 total): receive  $\$80 + \$80 + \$700 = \$860$  over 2 years on \$400 → IRR ≈ 42%

### Probability-weighted YTR

Scenario	Prob	Recovery	Implied YTR
Recovery in 18 months	40%	75c	44%
Recovery in 36 months	40%	60c	22%
Liquidation in 12 months	20%	20c	-50%
<b>Expected</b>		<b>59.4c terminal</b>	<b>~21%</b>

### DIP cost-basis math (deep dive)

**Headline economics for a Ch11 DIP:** - Upfront fee: 1.5-3.0% - Coupon: SOFR + 500-900 bps (cash) or SOFR + 600-1,100 bps (PIK) - OID: 1.0-3.0% (issued at 97-99c) - Exit fee / commitment fee: 0.5-2.0%

#### All-in cost:

$$\text{Total} = [\text{Upfront}] + [\text{OID}] + [\text{Coupon} \times \text{Hold}] + [\text{Exit Fee}] + [\text{Commitment Fee on undrawn}]$$

**Worked example:** - DIP commitment \$200M; drawn \$150M for 18 months - Upfront fee 2.0% = \$3M on \$150M drawn - OID 2.0% = \$3M - Coupon SOFR (5.3%) + 600 bps = 11.3%; on \$150M for 18 months = \$25.4M - Exit fee 1.5% = \$2.25M - **Total cost ~\$33.65M on \$150M drawn = 22.4% all-in cost**

### DIP-to-plan equity conversion

$$\text{Equity Allocation} = \text{DIP Face} \times \text{Agreed Conversion Price} \div \text{Total Enterprise Value}$$

**Example:** \$150M DIP + \$50M prepetition 1L exchanged into 60% reorganized equity. TEV at emergence = \$400M. Implied equity value = \$240M. Implied recovery on combined \$200M of claims = **120c** — upside capture from pre-filing distressed discount.

## CDS negative basis trade

**Setup:** Long the bond (buy at 50c). Short CDS (buy protection; pay premium). - If default: CDS pays par (100c) minus recovery; bond delivers recovery; on physical delivery, deliver bond, receive par - If recovery to par: bond returns 50c profit; CDS premium is sunk cost

**Mechanics example:** Bond at 50c, 5yr CDS spread 1,500 bps/year, implied recovery 40c: - Annual CDS cost: ~7.5% of notional - Bond YTR (to expected default): receive 10c coupon annually, deliver at 40c recovery in 3 years → YTR ≈ 20% - Net basis return: 20% - 7.5%/yr = ~12.5% **"riskless" spread if CDS basis holds**

In distressed contexts, CDS markets often lack single-name liquidity. CDS triggers on distressed exchange events — Serta was scrutinized for whether it constituted a "restructuring credit event" under ISDA.

## The make-whole gap trade

**Setup:** Buy notes at 70c in non-call period. If company recovers and voluntarily redeems at make-whole, receive: - Principal: 100c - Make-whole: PV of remaining cash flows at T+50 — could be 115-125c total - Plus accrued interest

**Risk:** If company defaults first, make-whole typically contested in bankruptcy. The 3d Cir. (EFH 2016) — enforces post-acceleration; 2d Cir. (Momentive 2017) — does not. **Buy this trade in 3d-Cir-friendly jurisdictions.**

## Recovery-weighted yield with full waterfall

**Cap stack:** - \$200M revolver (drawn) - \$500M 1L TL - \$400M 2L notes - \$300M unsecured notes

**TEV scenarios:**

Tranche	Face	Cumul Claim	Recovery @ \$800M EV	Recovery @ \$600M EV
Revolver	\$200M	\$200M	100c	100c
1L TL	\$500M	\$700M	100c	67c
2L notes	\$400M	\$1,100M	12.5c	0c
Unsecured	\$300M	\$1,400M	0c	0c

At base TEV \$800M: 1L is money-good, **2L is fulcrum at 12.5c**. At downside TEV \$600M: **1L is fulcrum at 67c**.

If 2L trades at 5c with 12.5c expected recovery in 2 years →  $IRR = (12.5/5)^{0.5} - 1 = \sim 58\%$  — but this is your "right TEV" case. Bear case: 0c → -100% loss.

## 8.6 Sponsor / PE behavior in distressed

### The NPV decision framework

**Supporting makes sense when:** - NPV(support) > 0: Expected equity value after new money > new money check + opportunity cost - Business is operationally fixable (revenue decline cyclical, not secular) - Fund early in life (LP narrative: "we're in recovery-mode, not write-off") - Cross-fund reputation: walking away reputationally costly if sponsor has dry powder / is raising new fund

**Walking makes sense when:** - TEV < total secured debt (equity deeply out-of-the-money) - Business has structural impairment - Fund near end of life (LP conversations difficult; mark-downs already taken) - Writing new equity dilutes LP returns on a losing position

### Fund-vintage and LP narrative

Sponsors must report at fair value. A 2022-vintage fund with a portfolio company written to 30c in 2025 has damaged MOIC. New equity is "dilutive but value-preserving" only if the new equity buys time for operational turnaround that *restores* equity value. If new equity is purely defensive (preventing Ch11 that would wipe equity entirely), it's value-neutral at best.

### Warning signs for creditors

Signal	Implication
Dividend recap pre-distress	Sponsor extracting before the cliff; pre-distress value extraction (ConvergeOne)
Transaction/monitoring fees	Becomes fraudulent transfer target
Management fee termination payment	Often litigated in restructurings
Lack of new equity despite liquidity pressure (6+ months)	Walk-away signal
Sponsor hires sell-side / M&A advisors	Sell-out path
Management team departures	Loss of operational confidence

## Sponsor givebacks / clawbacks in LMEs

**Demands creditors make:** - Sponsor equity contribution alongside new-money lenders - Fee waivers (future monitoring fees) - Clawback of potentially-fraudulent transfers (dividend recaps if insolvency at time of dividend) - PIK preferred from sponsor (signals support without large cash outlay)

## Sponsor walk-away events

Sponsor	Company	Outcome
Vista Equity	Pluralsight	Lost 100% equity; \$1.3B debt eliminated
Apollo	Yellow Trucking	Filed Ch11 Aug 2023; rapid liquidation
Bain Capital	Surgalign	Filed Ch11 2023; equity wiped
KKR	Envision	Did not contribute new equity; equity canceled in Ch11

## Sponsor support events (commitment signals)

Sponsor	Company	Outcome
Clearlake + Siris	Newfold Dec 2025	New equity alongside lenders; LME extended runway
Clearlake	Pretium Packaging Jan 2026	\$50M new equity; retained 21.9% post-Ch11
Hellman & Friedman	At Home	Injected equity into double-dip (May 2023); ultimately lost in Jun 2025 Ch11

## 8.7 Industry-specific dynamics

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### Gaming (post-Caesars CEOC)

**Caesars CEOC precedent (2015 Ch11, emerged 2017):** - Apollo/TPG had already (2012-2014) been executing asset sales of Caesars properties into REIT-adjacent structure (stripping cash-flowing assets from credit group) - 1L noteholders litigated fraudulent transfer claims - Settled: Apollo/TPG contributed ~\$1.45B to estate; VICI Properties spun out as PropCo REIT

**Gaming restructuring issues: - License transfer:** Gaming licenses issued to specific entities; Ch11 does NOT automatically transfer. New owner must go through state gaming commission approval (90-180 days).

Plan can confirm but effectiveness conditional on license transfer. - **Employee gaming licenses** must be maintained throughout Ch11. - **Tribal gaming compacts** have unique renegotiation requirements. - **OpCo/PropCo dynamic**: post-Caesars, REIT/OpCo separation became standard. Master lease terms (rent escalation, renewal options, cross-default) are critical for ongoing credit support.

## Healthcare (post-Envision)

**Medicare/Medicaid receivables**: - CMS payments are primary revenue stream - CMS may offset prepetition overpayments against post-petition receivables (setoff right = effectively secured creditor) - CMS has right to exclude providers from Medicare for cause; Ch11 may trigger notice + exclusion

**Change-of-control approvals**: - Hospital/health system transfers require state CON (Certificate of Need) - Medicare provider agreements NOT automatically assignable; re-enrollment needed - **PhyCorp doctrine**: physician practices must be owned by licensed physicians (corporate-practice-of-medicine). PE owns MSO (management service organization) that contracts with physician entity. In Envision-style restructuring, MSO can be sold in Ch11 but physician entity (not a debtor) remains separate.

## Telecom (post-Diamond Sports)

**FCC §214 transfers**: required for transfers of "substantial interest" in FCC licensee. Ch11 debt-to-equity conversion by non-licensed entities = advance FCC approval needed. **Critical path** for any telecom restructuring; Diamond Sports took ~22 months partly for this.

**MVPD + programming agreements**: retransmission consent + programming agreements are §365 executory contracts; rejectable but with damages claims. Lessor-like treatment for ongoing programming costs.

## Energy

**Reserve-based lending (RBL) facilities**: oil/gas reserves (PDP) pledged as collateral. Borrowing base redetermined semi-annually. In distress, collateral value decline → accelerated borrowing base redetermination → forces debt repayment (a "borrowing base deficiency").

**Joint Operating Agreements (JOAs)**: working interest partners have "non-consent" rights. Courts generally hold JOAs are NOT "executory" (both sides performed property-contribution obligations) — cannot be rejected.

**Midstream contract rejection**: - *Sabine Oil & Gas* (2d Cir. 2016) — gathering agreements ARE executory; can be rejected. ~\$100M rejection damages - *Extraction Oil & Gas* (3d Cir. 2021) — midstream agreements that "run with the land" cannot be rejected as covenants running with the land

**Circuit-specific analysis required.**

## Retail (post-Bed Bath, Cumulus)

**GOB sales:** retail debtor engages GOB liquidator (Hilco, Gordon Brothers). Recovery: 60-80c on book cost for inventory.

**Lease rejection:** §502(b)(6) cap = greater of 1 year rent OR 15% of remaining term (cap = 3 years rent). Limits "air between market and contract rent" claim.

**Critical dates:** debtors have 120 days (extendable to 210) to assume or reject nonresidential real property leases. Not assumed = deemed rejected.

## Aircraft / aviation

**§1110 (11 U.S.C. §1110):** in aviation Ch11, aircraft lessors/secured parties can repossess aircraft after **60 days** unless debtor (1) cures all defaults AND (2) agrees to perform all future obligations. **Stronger protection than automatic stay** for aircraft.

**Cape Town Convention + Aircraft Protocol:** international treaty providing additional lessor protections; U.S. ratified.

## Real estate

**SARE (Single-Asset Real Estate) §101(51B):** automatic stay terminates after 90 days unless debtor files confirmable plan or begins making cash payments. **Faster, more creditor-friendly.**

## Tech / SaaS (post-Pluralsight)

**§365(n):** software licensees can elect to retain rights even if debtor/licensor rejects. **Limits §363 purchaser ability to cleanse existing licenses** — compresses M&A exit value.

**Customer churn:** enterprise customers may trigger "change-of-control" or "material adverse change" clauses upon Ch11. DIP budget must account for customer attrition during case.

## Financial services

**§109(b):** banks, savings associations, credit unions, insurance companies (in certain states) ineligible to be Ch11 debtors. Bank holding companies (BHCs) CAN file Ch11 (Lehman Holdings filed; Lehman Bank went through FDIC receivership separately).

## 8.8 RSA (Restructuring Support Agreement) mechanics

## Core components

Component	Content
Restructuring description	Plan to be supported; term sheet as Exhibit A
Covered claims	Which claims/interests subject to agreement
Voting commitment	Creditors vote YES on plan; tender/exchange offers
Transfer restrictions	Transferees must join via "RSA joinder"
Milestones	Filing deadline; plan filing (D+30-60); solicitation start; confirmation hearing; effective date
Termination rights	Material breach, effective date delay triggers
Fiduciary out	Debtor terminates to accept "Superior Proposal"; 48-72h notice + right to cure
Backstop provisions	Incorporated by reference to backstop commitment agreement
Counsel	Debtor, AHG, supporting creditor counsel

## Types — pre-filing vs. post-filing

Type	Timing	Purpose
Pre-filing RSA	Before Ch11 petition	Lock up key creditors; file with solicitation materials ready
Post-filing RSA	After petition	When pre-filing agreement not reached
DIP RSA	Concurrent with DIP	DIP lenders require as condition
"Prepackaged" plan	Voting begins before filing; plan filed day-1	Fastest (Pretium: 26 days)
"Pre-arranged" plan	RSA before filing; solicitation post-filing	At Home Group Jun 2025
"Free-fall"	No pre-filing agreement	Months to years; adversarial (Envision, Serta)

## Backstop fees and rights offerings

In a Ch11 plan with rights offering: 1. Plan proposes eligible creditors (often fulcrum class) have right to purchase new equity at discount to reorganized equity value 2. Backstop agreement commits select creditors

(typically AHG / RSA parties) to purchase any unsubscribed shares 3. **Backstop fee:** 5-10% of backstopped amount + premium allocation of rights

### ConvergeOne equal-treatment issue (Sept 2025)

District Court (S.D. Tex.) **reversed confirmation** of ConvergeOne's prepackaged plan because backstop agreement was offered **exclusively to majority lenders**, giving them ~30% more recovery than minority lenders in same class — violating **§1123(a)(4) equal-treatment** within a class.

**Lesson:** backstop rights must be offered pro-rata to entire class, OR premium must be separately valued and deemed arm's-length. This is a fresh, binding precedent.

### PSA vs. RSA

Terms largely interchangeable. "RSA" more common for syndicated-loan-heavy. "PSA" (Plan Support Agreement) older term, appears more in publicly-filed HY bond restructurings. Identical structural elements.

## 8.9 Current market data (May 2026)

Metric	Data	Source
Morningstar LSTA US LL Index — issuer default rate (Dec 2025)	1.18%	PitchBook LCD
Same — default rate by amount (Dec 2025)	1.23% (\$17.4B)	LCD
Default rate peak (year-end 2024)	1.45%	LCD
LME share of trailing-12-month default count (July 2025 peak)	73%	PitchBook
LME share (Dec 2025)	65%	PitchBook
Ch11 corporate filings 2025 (11 months)	~717	14% above 2024

### LME impact on recoveries

**Fitch 2024 analysis:** companies defaulting **after completing LME** had first-lien recovery rates ~57% lower than companies filing without prior LME. **Mechanism:** LME stripped collateral value to participating lenders; non-participants entered Ch11 with degraded position.

### Maturity wall (early 2026)

- 2025: reduced 84% via refis/A&Es; only ~\$13.5B remaining
- 2026: reduced 75%; ~\$44B remaining
- 2027-2029: significant concentration, especially in sponsor-backed tech/healthcare/consumer

## Case duration

Type	Average
Prepack Ch11	20-45 days (Pretium: 26 days)
Pre-arranged Ch11	60-120 days
Free-fall contested	18-36 months
LME debtor Ch11s	2-3x longer than comparable non-LME prepacks

## Equitization rates

~70% of contested Ch11 restructurings now result in debt-for-equity conversion. Old equity wiped; debt holders become equity. **The "new normal."**

## Direct lending share

Private credit / direct lending now originates ~60% of new leveraged LBO loans by dollar volume (2025 estimate). - Bilateral or club — no syndication, smaller lender groups - Club deals: 3-10 lenders; unanimous/supermajority easier - BUT one dissenting lender can create blocking position more easily than in 150-lender syndicate - Pluralsight was first major private credit LME

## 8.10 The cocktail-napkin LME decision tree

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### Step 1: Business underwrite

- What is the business? Operationally viable? Cyclical vs. secular?
- EBITDA range (downside/base/upside); normalize from peak/trough
- $TEV = EBITDA \times \text{sector comp multiple}$ ; adjust for industry distress vs. structural
- **Fulcrum identification:** stack the claims; identify tranche where TEV "runs out" in base + downside

### Step 2: Cap structure analysis

**Basket analysis — ask for every basket:** - Incremental facility (accordion) — how much can be added? MFN protection? - Permitted investments — non-guarantor sub capacity? - Restricted payments — dividend recap headroom? - Permitted debt — ratio / fixed dollar baskets? - Permitted lien / lien pari passu capacity? - Unrestricted subsidiary designation capacity?

**MFN ("Most Favored Nation") protections:** - "Soft MFN" — new incremental at >50 bps higher spread → existing TL steps up - "Hard MFN" — any incremental issuance triggers immediate step-up

**Sacred rights analysis — identify what requires unanimous consent:** - Principal reduction - Interest rate reduction - Maturity extension - Lien subordination (post-Serta often sacred) - Pro-rata sharing amendment

**Non-sacred majority-amendable provisions (danger zones for minority):** - Basket sizes - Covenant levels - Change of control definitions - Assignment/transfer restrictions - Guarantor composition

### Step 3: Deal-away analysis (Pat's four-part test)

1. **Viable operating business?** Positive FCF on normalized basis? If not, can cost cuts restore? LME extends runway; doesn't fix the business
2. **Leverage serviceable with moderate underperformance?** Run base – 20% EBITDA. Maintenance covenant breach? Interest payable?
3. **M&A buyer exists?** Who buys this in strategic M&A? What would a sponsor pay in LBO? Establishes floor TEV
4. **Co-op / blocking position manageable?** Can AHG creditors form co-op controlling outcome? If yes, what's the minimum economic package?

### Step 4: Sponsor read

**Cooperation signals:** actively sourcing new third-party equity; proposing PIK preferred alongside lender new money; retains restructuring counsel; aligned management; recent-vintage fund (2020-2023).

**Walk-away signals:** hires sell-side advisors; no capital despite 6+ months liquidity pressure; pushes for sponsor-optionality-maximizing LME structures; management departures; older-vintage fund (2017-2018); dividend recaps in past 18-36 months.

### Step 5: Peer / industry comp

Where are LMEs in this sector resolving? - **Healthcare (post-Envision):** Ch11 likely for MSO-driven platforms; valuation 7-9x EBITDA ASC, 4-6x physician staffing - **Tech / SaaS (post-Pluralsight):** private credit deals more conservative; blockers standard - **Retail (post-Bed Bath / Cumulus):** LME = Hail Mary for secular decline; only buy debt if TEV > 1L face in liquidation - **Telecom:** Altice France model (co-op +

national insolvency) for Europe; US = FCC license = 6-12 month case extension - **Energy**: RBL redetermination cycles create technical liquidity events; midstream contract rejection risk by circuit

## Step 6: Position sizing

Position	Size	Purpose	Risk
Toehold	3-5% of tranche	Information; option on future co-op	Illiquid
AHC participation	5-15%	Active negotiation; influence	Time/resource commitment
Blocking position	34% (1/3+1)	Prevents non-consensual plan	Capital intensive
Controlling	>50% ("required lender")	Drives amendment votes	Most capital-intensive
DIP commitment	Variable	First-out recovery; post-filing premium	Speed + Ch11 comfort required

**Most efficient activist position: 34% blocking position in the fulcrum tranche.** Prevents AHG cramdown without negotiating; doesn't require majority-position capital burden.

## Step 7: Hedge / offset

**CDS basis** (if available): long distressed 1L at 60c + CDS protection at 800 bps. If default in year 2 at 40c recovery, CDS pays 60c net of \$16 premium = \$44 profit. If company recovers, bond profits 40c, CDS premium sunk = \$24 profit.

**Equity short:** if public equity exists, short as hedge. Ch11 = zero. Asymmetric protection.

**Cross-cap-structure:** long 1L (high recovery) + short 2L or unsecured (near-zero) = capital structure arb extracting recovery differential.

**Sector hedge:** short comparable name or sector ETF for macro hedge.