

## Liability Management Transactions



Selendy Gay is a leader in representing parties in lender-on-lender disputes, which have become increasingly common as borrowers (distressed or otherwise) employ such transactions to access new capital. We represent both groups of lenders excluded from such transactions, as well as companies and lenders seeking to mitigate litigation risk through structuring of the transactions. Notable matters include:

- **An ad hoc group of Robertshaw term lenders**, in New York Supreme Court and the Bankruptcy Court for the Southern District of Texas, alleging defendants Robertshaw, its equity sponsor, and several other lenders violated the governing credit agreements by issuing new senior debt and exchanging other lenders' debt with more senior debt, effectively demoting plaintiffs' first-lien and second-lien debt to sixth-lien and seventh-lien debt. Plaintiffs alleged that the transaction, which included an amendment of the credit agreements, was not permitted without plaintiffs' consent and that the transaction was detrimental to Robertshaw. Robertshaw filed for bankruptcy in February 2024, and a subset of the parties settled the case in March 2024, affording plaintiffs an opportunity to participate in their pro rata share of Robertshaw's Debtor-in-Possession financing and to receive reimbursement of their attorneys' fees.
- **An ad hoc group of Mitel term lenders**, in New York Supreme Court, alleging defendants Mitel, its equity sponsor, the lead arranger and collateral agent of the loans, and several of its other lenders violated the governing credit agreements by issuing new senior debt that effectively converted plaintiffs' first-lien and second-lien debt into fourth- and fifth-lien debt without inviting plaintiffs to participate. Plaintiffs alleged that the credit agreements did not allow defendants to amend them without their consent or to strip them of their pro rata and priority payment rights, and that, even if they did, defendants acted in bad faith by executing a transaction designed to strip plaintiffs of those rights.
- **Thebes Offshore Master Fund, LP** as intervenor plaintiff in litigation against Lions Gate for breaches of contract and the implied covenant of good faith and fair dealing in connection with a non-pro rata debt exchange scheme executed by Lions Gate and its favored noteholders as part of Lions Gate's effort to separate its studio business from the unprofitable STARZ business.
- **An ad hoc group of TriMark term lenders**, in New York Supreme Court, alleging defendants TriMark, its equity sponsors, and several of its other lenders violated the governing credit agreement by issuing new senior debt that effectively converted plaintiffs' first-lien debt into third-lien debt and by issuing new "super senior" debt without inviting plaintiffs to participate. Plaintiffs alleged that the credit agreement did not allow defendants to amend it without their consent or to strip them of their pro rata and priority payment rights. In August 2021, the Court rejected defendants' motions to dismiss plaintiffs' contract claims. In January 2022, the parties settled the case, with TriMark allowing the former first-lien lenders to exchange their debt for new "super senior" debt and to pay all lenders' attorneys' fees.

- **Cerberus Capital Management and Bayside Capital Inc.**, as lenders to the TPC Group, in its chapter 11 cases in the Bankruptcy Court for the District of Delaware. Cerberus and Bayside did not consent to a pre-bankruptcy debt priming transaction that favored another group of lenders and formed the basis for awarding that group additional priming debt and equity in the Chapter 11 proceedings. Our firm prevailed on four motions, obtained a significant ruling that an indenture’s “no-action” clause does not bar a suit by minority lenders to vindicate their individual consent rights, and obtained an administrative stay of the bankruptcy court’s adverse decision on two motions. The bankruptcy court ultimately ruled that the indenture did not preclude the priming transaction.