

# Distressed Debt Legal Insights: Special Edition: 2025 Takeaways and 2026 Outlook

Welcome to a special edition of Distressed Debt Legal Insights, Ropes & Gray's source of timely insights for professionals navigating the complex world of liability management and special situations finance. In this issue, we identify five key takeaways from 2025 and outline five predictions that we expect will shape the liability management landscape in 2026.

## Five Takeaways from 2025

Even as the pace of liability management transactions slowed in 2025 relative to 2024, these transactions continued to mature, transitioning from once-novel strategies into mainstream components of the corporate finance toolkit.

### 1. Liability Management Expanded to Europe

Liability management had primarily been an American tool prior to 2025, but last year Europe meaningfully closed the gap. Notable European transactions include Victoria plc's uptier exchange offer, which launched in July; Fossil Group's UK restructuring plan, which was approved in mid-November; and Altice International's asset drop-down, announced on November 28. Together, these transactions signal a growing willingness among European issuers and creditors to deploy more aggressive liability management techniques traditionally associated with the U.S. market, a trend that is likely to continue as European capital structures face increasing stress.

### 2. Non-Pro-Rata DIP Rollups Face Scrutiny

Sometimes referred to—oxymoronically—as an “in-court LME,” the non-pro rata DIP rollup emerged as a flashpoint in 2025. In December 2024 in *American Tire*, the Delaware bankruptcy court suggested

that non-pro rata DIP rollups are permitted by the Bankruptcy Code but might violate the underlying prepetition credit agreement. In response, the DIP lenders abandoned the rollup.

DIP lender capitulation appears to be the trend for challenges to this mechanic. Take *Anthology* as an example. On October 27, a revolving lender that was excluded from the rollup filed an objection to Anthology's proposed \$100 million DIP financing. The parties resolved the objection the night before the hearing, with an amended DIP order that permitted the objecting lender to participate in the DIP on a pro rata basis.

### 3. Uptiers Continue to Dominate

2025 began with two major judicial decisions on uptiers: *Serta* from the Fifth Circuit and *Mitel* from a New York state appellate court. The market wondered if the *Serta* decision, in particular, signaled the end of uptier transactions. The answer was no. Uptiers dominated 2025 as the most common type of liability management exercise, with *Covenant Review* reporting that of the 47 tracked LMEs in 2025, 37 involved an uptier element. Rather than curbing activity, these decisions appear to have prompted market participants to refine deal structures and documentation, reinforcing the continued viability of uptiers as a restructuring tool.

#### 4. Private Credit's Expanding Role in LMEs

Private credit providers increasingly underwrote bespoke liability management transactions in 2025, stepping in where broadly syndicated markets were less flexible and using documentation agility to facilitate uptiers, exchange offers, and new-money priming solutions. This trend aligns with the prior observation that uptiers and other liability management transactions continued to dominate and that deal structures were refined rather than curtailed in 2025, reinforcing the importance of negotiated solutions over courtroom outcomes. It also complements the shift of sophisticated techniques into Europe, where sponsor-led and private capital solutions helped accelerate adoption of U.S.-style playbooks. Private credit providers tend to shy less away from what are more aggressive financing solutions unlike the syndicated markets.

#### 5. Documentation Pushback and "Trapdoor" Hardening.

Lender drafting responses in 2025 focused on narrowing definitions (for example, "open market purchases"), tightening asset transfer and dropdown capacity, and strengthening pro rata and MFN protections to mitigate the very techniques that proliferated last cycle. This is a natural reaction to the sustained dominance of uptiers and the market's continued willingness to innovate around credit agreement flexibility. The increased European uptake of aggressive strategies also spurred cross-border documentation learning and harmonization pressures through the year.

## Five Predictions for 2026

Looking toward 2026, we expect a shift from purely defensive liquidity moves to proactive, AI-integrated capital structure optimization, albeit against a backdrop of tightening legal scrutiny and evolving credit documentation.

### 1. AI Creates Better Predictive Modeling

As AI improves and becomes more widely adopted, it is likely to become a tool for predicting liability management activity by identifying covenant stress and liquidity shortfalls before they materialize. Earlier identification of distressed companies, combined with data-driven restructuring strategies, may reshape how (and when) market participants respond to and price financial distress. Intervening earlier will allow companies and creditors to structure more proactive solutions, which dovetails with our next prediction.

### 2. Liability Management Becomes More Proactive and Less Defensive

Much has been said and written about the upcoming maturity wall, and while it is likely to be a factor in 2026, we expect that operational restructuring will also take center stage. Instead of focusing primarily on short-term liquidity preservation, deals will emphasize capital structure optimization. As companies move beyond short-term balance-sheet fixes executed during prior cycles, liability management exercises are likely to be paired with deeper operational initiatives aimed at improving profitability and long-term sustainability. In this environment, LMEs may increasingly function as a bridge to broader restructuring outcomes, rather than as standalone solutions, with stakeholders placing greater weight on governance, business performance, and alignment among creditor constituencies.

### 3. Litigation Yields Few Clear Answers Amid Conflicting Rulings

Any lingering optimism that litigation challenging liability management transactions will yield definitive answers should, by now, be fully extinguished. We enter 2026 with the district court's reversal of the bankruptcy court's decision in *Wesco* pending appeal before the Fifth Circuit, and with the first liability management-related judicial opinion of the year—*STG Logistics* on January 3—rendered largely academic by the company's subsequent chapter 11 filing. Rather than converging toward clarity, the case law continues to fragment, offering market participants little in the way of durable or broadly applicable guidance.

In practice, each liability management transaction remains sufficiently bespoke to generate its own legal uncertainty, suggesting that 2026 will be shaped less by judicial precedent and more by documentation, structuring discipline, and parties' appetite for litigation risk.<sup>1</sup> As a result, courts are unlikely to be the primary drivers of market behavior in the coming year; instead, outcomes will continue to be negotiated deal by deal.

### 4. In court Tools Return as Structured Backstops to LMEs

Expect greater use of prepackaged Chapter 11s, UK restructuring plans, and European proceedings such as the Dutch WHOA, to run in parallel with, or as pressure valves for, out of court exchanges and uptiers, especially where documentation is tighter or creditor classes are fragmented. The persistence of conflicting rulings and case specific outcomes further incentivizes hybrid strategies that combine court certainty with out of court speed.

### 5. Sector-specific stress drives bespoke capital structure solutions.

We anticipate pronounced restructuring activity in sectors already exhibiting cash flow volatility and covenant pressure—such as consumer discretionary, health care services, and pockets of TMT—prompting issuers and sponsors to adopt more proactive, AI-informed planning of liability management and operational turnarounds. In an environment where litigation yields few universal answers, sector dynamics will further tilt outcomes toward documentation-driven, tailored solutions.

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