June 15, 2026 (III Montreal)

BEST LAID PLANS –

WHEN GOOD RESTRUCTURINGS GO WRONG

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Best Laid Plans: When Good Restructurings Go Bad

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AGENDA

1. What are LME's and Pre-Packs?
2. What is the state of the art around the globe – use of these processes and do they work?
3. Representative Case Law and Experience in the US, Canada and Europe
4. Q&A

“THE BEST-LAID PLANS OF MICE AND MEN OFT’ GO AWRY.”

Robert Burns, *to a mouse*, 1785.

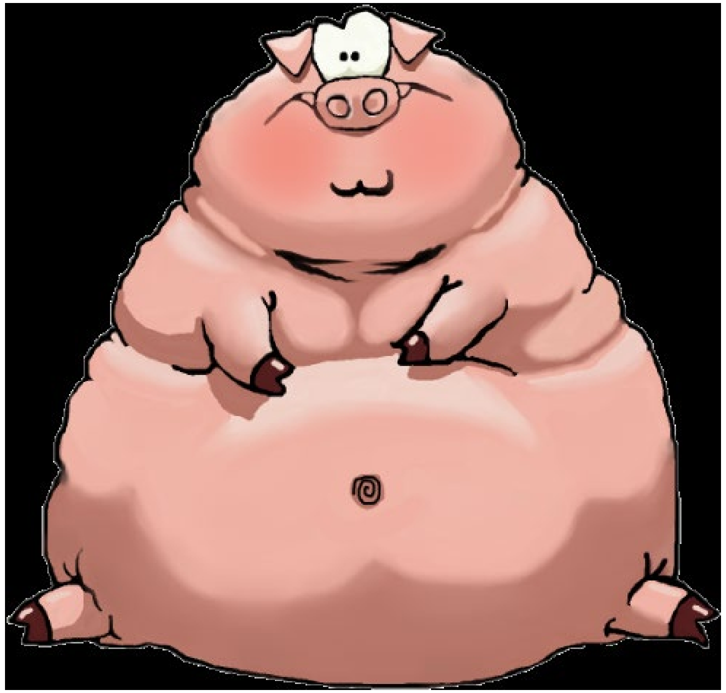
What is an LME?

Liability Management Exercises (LMEs) are a form of debt restructuring used by companies ahead of upcoming maturities to reduce or manage their overall debt burden through tender offers (or debt buybacks) and exchange offers, allowing certain creditors to exchange their existing instruments for instruments with longer dated maturities and/or other amended terms.

What is a Pre-Pack?

A prepackaged bankruptcy (or "prepack") is a restructuring plan that a distressed company negotiates and gets approved by its creditors before filing for bankruptcy. It acts as a rapid, consensual process to reduce debt—often confirmed in weeks rather than months—allowing the company to emerge quickly while minimizing business disruption.

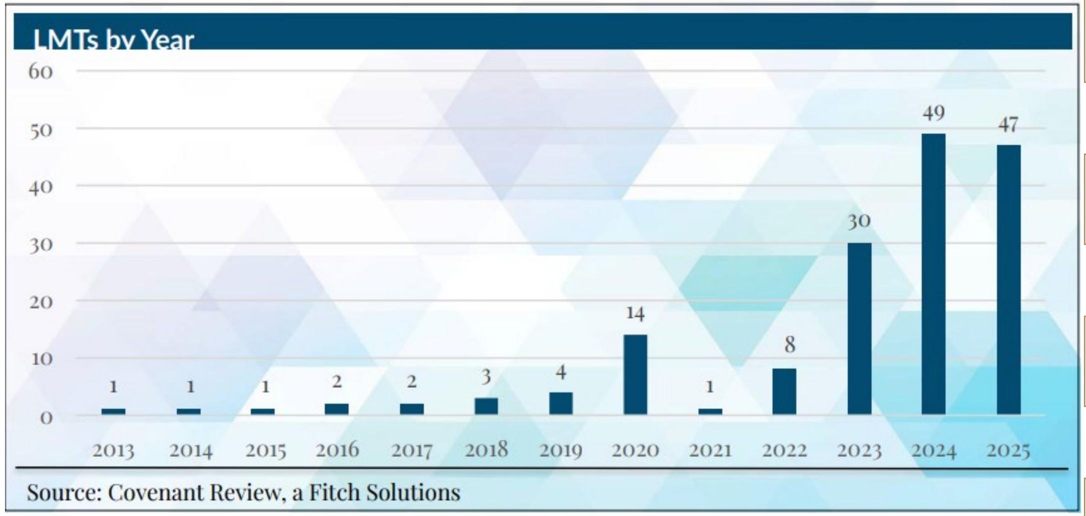
Do LMEs work?



- How do we measure success?
  - Balance Sheet vs. Operational Issues
  - Pigs get fat – LME as a bridge to recovery
  - Hogs get slaughtered
    - Litigation
    - Insolvency Proceedings
- Who manages the LME process?
- Who benefits from the LME? Sponsor? Management? Creditors?

THE US EXPERIENCE

LME's IN THE U.S.



- Not New
- Pro rata vs non pro rata transactions
- Creditor on creditor violence
- Mostly sponsor driver
- Consensual or "deal away"
- Co-ops and co-op groups

What are the main LME tools?

- Uptiers
- Dropdowns
- Rollups
- Double DIPs
- Make Wholes

Liability Management Weapons of Mass Destruction

	2013 - 2019	2020-2021	2022	2023	2024	2025
Priming Uptier Exchanges	Shutterfly, Murray Energy Corporation	TriMark, Boardriders, Serta	Mitel, DSG, Wesco Aircraft, Diebold Nixdorf	Travelport, Rodan + Fields, Robertshaw, Pretium	Alkegen	FXI, employbridge, Trinseo, BetterHealth, Saks Fifth Avenue, Oregon Tool, selecta, Quest, ivanti
Dropdowns	Shutterfly, J.Crew, iHeartRadio, Neiman Marcus, Caesars	claire's, Travelport, Hornblower, Party City, Revlon, cineworld	Bausch Health, Envision Physician Services, AMSURG, Wesco Aircraft	Shutterfly, Carvana, U.S. Renal Care, Instant Brands	dish, amc Theatres, STG Logistics, Del Monte	Liberty Latin America, Quest, Bausch Health, altice, Oregon Tool, Trinseo
Double Dips			AMSURG	Rayonier, Sabre, Trinseo, at home, Wheel Pros	Hawaiian Airlines, Ardagh Group	Trinseo, ivanti, Sabre, Oregon Tool, Quest
Bankruptcy Makewholes	***Too many to count***					
Guarantee Release	PetSmart, Caesars					selecta, Trinseo
Entry Consent	windstream	Revlon, TPC Group	Wesco Aircraft			Anchor Glass, ivanti, selecta, Trinseo

J.P.Morgan

Sources: 9fin, J.P. Morgan, Octus

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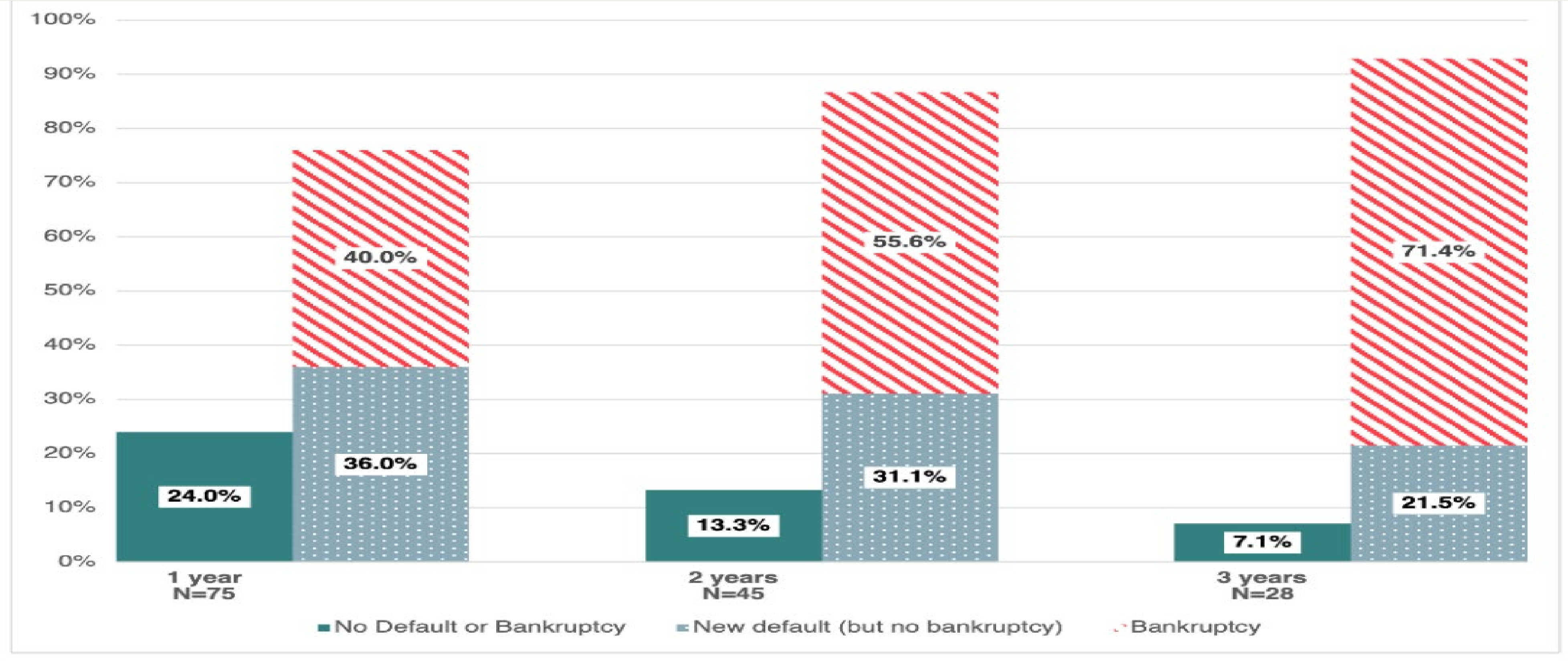
HARVARD LAW PROFESSOR MARK ROE ON LMES

- Coercive LME transactions are more likely to extend distress than resolve it, with the majority re-defaulting or filing for Chapter 11 within two years
  - Only ~22% avoid default/bankruptcy after 2 years
- There has been a shift toward out-of-court restructurings
  - Technology & Healthcare sectors dominate LME activity
- LMEs are used to manage maturity walls and capital structure pressures
  - LMEs rarely reduce leverage; they typically increase capital structure complexity
  - LME activity has become dominated by distressed exchanges and uptier transactions; Distressed exchanges accounted for 54% of defaults in the loan market in 2024
- Cost savings vs. bankruptcy is overstated
- 40% of 2025 defaults had prior LMEs

LME SUCCESS RATE



Source: **Liability Management's Limited Runway: Corporate Restructuring Today**
Mark J. Roe and Vasile Rotaru (February 9, 2026)

US CASE LAW

In re Serta Simmons Bedding, L.L.C., 125 F.4th 555 (5th Cir. 2024)

The Fifth Circuit held that (a) Serta's 2020 up tier exchange was not an open market purchase under the Company's First Lien Term Loan Credit Agreement and (b) an indemnity in favor of lenders participating in the up-tier transaction contained in Serta's confirmed chapter 11 bankruptcy plan must be excised.

The transaction had been the subject of significant pre-bankruptcy litigation, which continued into the chapter 11. The Bankruptcy Court had approved the plan which validated the transactions, but the Fifth Circuit reversed, creating significant costs and uncertainty as to the restructuring.

In re ConvergeOne Holdings, Inc., 2025 WL 4700341 (S.D. Tex. Sept. 25, 2025)

ConvergeOne filed for Chapter 11 bankruptcy in April 2024 to reduce its $1.8 billion debt by $1.6 billion, handing control to its lenders. The Bankruptcy Court initially approved the plan, but the district court reversed the plan's confirmation, ruling that its exclusive equity deals for majority lenders violated equal treatment rules.

US CASE LAW

Ocean Trails CLO VII v. MLN Topco Ltd., 233 AD 3d 614, 225 NYS 3d 192 (N.Y. App. Div., 1st Dep’t. 2024).

On the same day as issuance of the Serta decision, the New York Supreme Court’s First Appellate Division ruled on a similarly structured up-tier reaching a different conclusion based on some distinguishing facts. In contrast to the Serta Credit Agreement which hinged on the phrase “open market purchase" without further definition, the Mitel credit agreement permitted Mitel to "purchase" loans "at any time" as an exception to the prohibition on non-pro rata payments among lenders of the same class. The Mitel credit agreement did not have the "open market" qualifier, the importance of which was highlighted by the Fifth Circuit in Serta.

Ultimately, the Mitel Court held that there was nothing in the Mitel credit agreement to suggest a refinancing or exchange could not be a "purchase" and thus the cashless debt exchange involving some, but not all, of the lenders was permitted under the terms of the Mitel credit agreement.

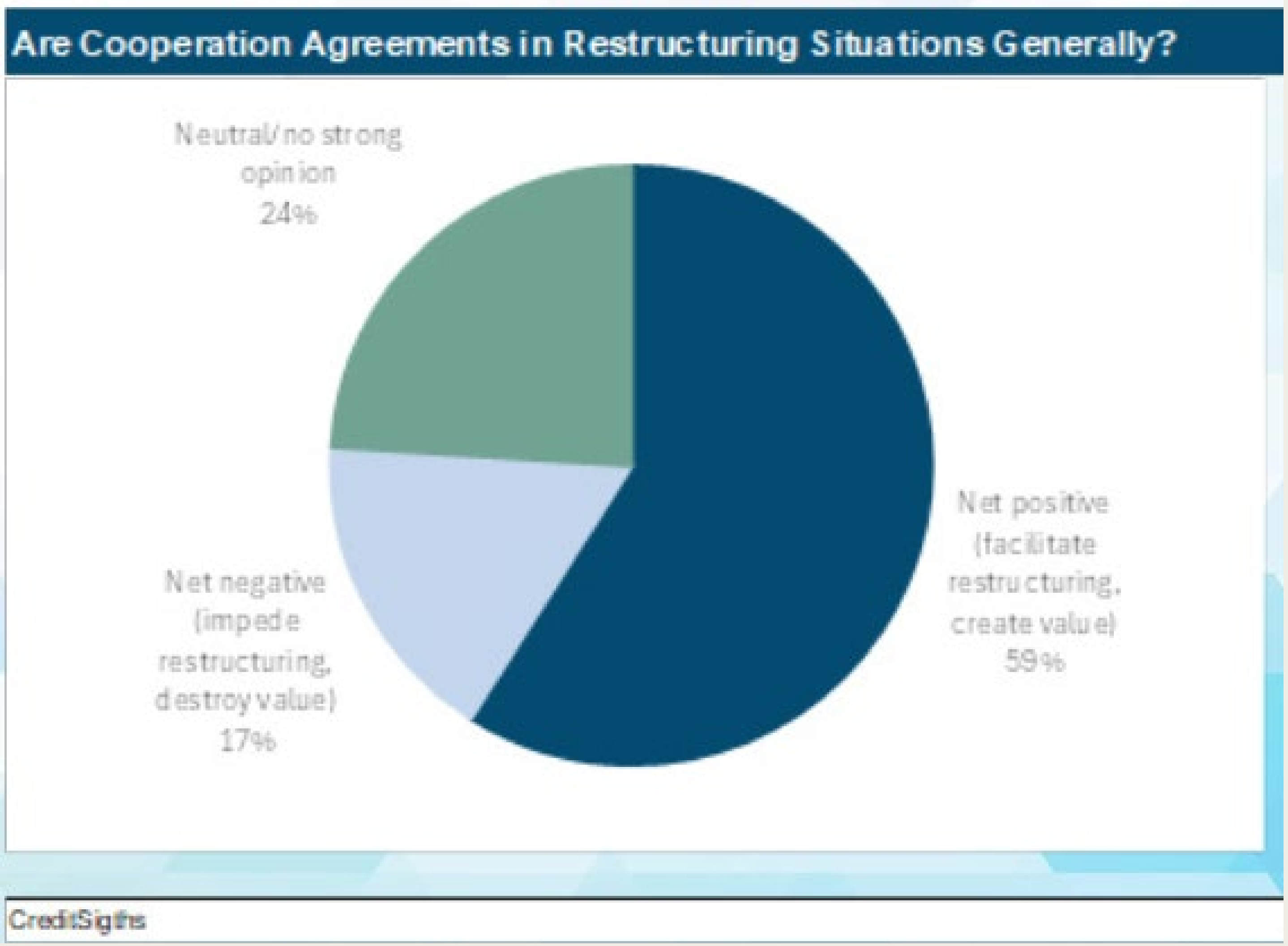
The Mitel Court also found that the debt exchange did not violate the "sacred rights" of the non-participating lenders because the Mitel credit agreement required consent of only those lenders "directly adversely affected" by a modification to the Mitel credit agreement and, therefore, the debt exchange by the participating lenders into superpriority debt, which subordinated the nonparticipating lenders, only "indirectly" affected the non-participating lenders. More importantly, the Mitel Court found that, in any event, the debt exchange (i.e., participating lenders assigning their loans to the borrower, with loans were then canceled and replaced with new loans without any amendment to the Mitel credit agreement) was not in fact an agreement to waive, amend or modify the Mitel credit agreement, and thus the amendment rules around the sacred rights were not even implicated.

HOW LENDERS SHOULD APPROACH LME TRANSACTIONS

Choices Presented to Lenders	Participate and accept coerced economics
	Decline and risk subordination
	Compressed timelines and asymmetric information
Runway Rarely Helps the Underlying Business	Liquidity extensions are short-lived
	Leverage remains unchanged
	Refinancing risks persist
	Bankruptcy still occurs – often worse
Why are there so many repeat LME Offenders?	Same sponsors and issuers
	Multiple cycles of LMEs
	Declining recoveries each round
	Litigation risk compounds

Challenges to LMEs?

1. Co-op agreements
2. Anti co-op language
   a. Disqualified lenders / blacklists
   b. Disqualified counsel
   c. Concentration / voting caps
3. Antitrust
4. Blockers



LME blockers

Blocker	Description	Common Issues
J. Crew / Pluralsight	Prohibits transfer of certain assets to non-guarantor subsidiaries and unrestricted subsidiaries;	Only prohibits transfer of certain assets (usually material IP, regardless of the relevance of IP to the business) Only prohibits transfers by or to a limited subset of parties May apply only at the time of "designation" of the unrestricted subsidiary and not subsequent transfers
Serta	Heightened consent to acquiesce to subordination (often "affected" or unanimous creditor consent)	Material exceptions (especially for DIPs and ROFRs) Collateral subordination limited to only all or substantially all collateral / material portion of collateral Subordination if otherwise permitted by debt documentation Heightened consent for certain types of subordination (e.g., only payment subordination or only lien subordination but not both)
Chewy	Requires that a guarantor that becomes non-wholly owned can only be released if certain conditions are met	Subjective—i.e., the company is typically the entity that determines (in its discretion) whether the conditions for release are met Limited conditions (e.g., only investments compliance)

LME blockers

Blocker	Description	Common weaknesses
Double-dip / "At Home"	Typically requires any intercompany debt owed by the borrower or guarantor to a non-guarantor to be subordinated in right of payment and/or collateral, which effectively shuts off the secondary claim	Sometimes limited only to specific baskets rather than as a general override
Vote rigging / "Incora"	Generally prohibits incremental creditors (e.g., add-on lenders under a credit agreement's accordion) from being counted in voting thresholds for any concurrently sought amendment	Language is often subjective and tied to the "primary purpose" of the underlying debt incurrence
Omnibus	Any provision or covenant that broadly prohibits "Liability Management Transactions" or similar language	The term "Liability Management Transaction" may be defined in an overly narrow manner (or not defined at all), introducing ambiguity into interpreting such provisions

PREPACKS – What They Were Meant to Be

Key Aspects of a Prepackaged Chapter 11:

1. **Pre-negotiation**: The debtor and major creditors agree to the terms of reorganization (e.g., debt-for-equity swaps) before officially filing for bankruptcy. Unsecured creditors “rode through” or accommodations were made.
2. **Pre-solicitation**: Votes for the plan are solicited from shareholders and creditors prior to the bankruptcy filing. Efforts made to comply with SEC or Chapter 11 solicitation rules.
3. **Rapid Court Approval**: Because the plan has already been accepted, the court process usually focuses on confirming the pre-arranged deal, with cases sometimes closing in just a few days or weeks.
4. **Efficiency**: Prepacks save significant costs, time, and reputational damage compared to traditional "free fall" bankruptcies. Pre-cut deals made litigation unlikely.

PREPACKS – What They Have Become

Most "Prepacks" in the US Today are PINOs – Prepacks in Name Only.

1. **Pre-negotiation**: Senior lenders and "favored" cross-holders negotiate transaction amongst themselves, with newly appointed "independent directors" and often the equity sponsor, entering into a plan support agreement that is binding on all – including the company who is given a narrow "fiduciary out" which gives all the predetermined value of the company to the PSA participants. Usually includes pre-negotiated DIP Financing by PSA lender group.
2. **Pre-solicitation**: None. The votes of the PSA participants are locked up to meet the voting thresholds on the PSA structured plan that is filed on the first day of the Chapter 11, with a combined disclosure statement and confirmation hearing set within 30 days or less, before any Unsecured Creditors Committee can be appointed.
3. **Rapid Court Approval**: Rapid approval is sought but notwithstanding milestones, courts generally grant some delay to accommodate appointment of a UCC.
4. **Efficiency**: Time and money eaten up by litigation with the Committee and often the debtholders who were excluded from the PSA.

THE CANADIAN EXPERIENCE

Recent Canadian LME Experience

Canadian LMEs remains relatively limited, but recent notable Canadian and cross-border examples include:

1. **Cirque du Soleil Entertainment Group**
2. **Conuma Resources Ltd.**
3. **Mitel Networks Corporation**
4. **Telesat Corporation**

CIRQUE DU SOLEIL ENTERTAINMENT GROUP

- One of the earliest examples of an LME involving a Canadian borrow.
- After COVID-19 shutdowns caused liquidity concerns in March 2020, Cirque's sponsors implemented an IP **drop-down transaction**, transferring certain trademarks and intellectual property to an unrestricted subsidiary they controlled in exchange for a US$50 million emergency loan.
- First-lien lenders objected, claiming that the sponsors were trying to jump from being an equity investor to a creditor position and that the movement of assets had specific restrictions.

Outcome

- In June 2020, Cirque obtained CCAA protection in Canada and Chapter 15 recognition in the U.S. The initial sponsor-backed stalking horse bid was ultimately unsuccessful.
- Cirque was acquired by its secured lender group, led by Catalyst Capital Group, through a bid valued at approximately US$1.2 billion, including US$375 million of new capital to support Cirque's relaunch.

CONUMA RESOURCES LTD.

- Conuma is a privately owned Canadian metallurgical coal supplier and reportedly one of the first Canadian businesses with primarily Canadian operations to implement an LME.
- In April 2025, it implemented a **non-pro-rata uptier** of its senior bonds with majority noteholder support.
- Amendments to notes increased Conuma's priority lien debt capacity and removed anti-layering protections, enabling majority holders to exchange about US$140 million of existing notes into new priming notes. Additionally, Conuma issued US$50 million of new priority notes and raised US$25 million from its financial sponsors through preferred shares, with the sponsors committing a further US$25 million if liquidity falls below C$40 million.

Outcome

- Credit rating agencies initially viewed the deal as distressed and tantamount to default as a significant portion of existing noteholders were primed through the transaction and the exchange occurred against the backdrop of Conuma's deteriorated liquidity position, weak cash flow generation, and a challenging metallurgical coal price environment.
- Ratings were later restored to CCC+ after near-term liquidity improved. However, liquidity was expected to become strained beyond 12 months absent additional capital.

MITEL NETWORKS CORPORATION

- An Ottawa-based telecommunications company, part of the global Mitel Group, pursued an **uptier transaction** in October 2022.
- Participating lenders holding a majority of Mitel's first and second lien term loans provided $156 million of new superpriority financing and simultaneously exchanged and uptiered (a) their existing first lien loans into new superpriority second-out loans at a 5% discount to par and (b) their existing second lien loans into new superpriority third-out loans at an 18% discount to par.
- Excluded lenders were not offered the opportunity to participate, and their loans were subordinated.

Outcome

- Certain excluded lenders sued in New York, alleging the non-pro rata exchange breached the credit agreement. The New York appellate court ruled in Mitel's favour; further litigation was ultimately resolved through Mitel's Chapter 11 restructuring.
- In 2025, Mitel entered a cross-border restructuring through Chapter 11 proceedings in Texas and CCAA recognition in Ontario, ultimately reducing debt by over US$1.15 billion, raising about US$125 million in new funding, and resolving the LME litigation.

TELESAT CORPORATION

- The Canadian satellite communications company headquartered in Ottawa announced its implementation of a transaction in September 2025.
- The transaction involved the distribution of 62% of the equity of Telesat LEO Holdings Inc., which holds the Telesat Lightspeed business, to an indirect subsidiary of Telesat that is a non-guarantor under Telesat's debt documents.

Outcome

- On January 21, 2026, term lenders filed lawsuits against Telesat in New York and Ontario alleging that Telesat is unable to pay its debt and improperly attempted to transfer its "crown jewel" asset beyond creditors' reach.
- These claims arise against the backdrop of Telesat's upcoming debt maturities, including more than US$1.7 billion due in December 2026 and US$450 million due next year.
- Telesat intends to defend the claims, which it considers to be without merit, on the basis that the equity distribution at issue followed a robust governance process and was completed in strict accordance with the relevant debt agreements and applicable law.

Canadian Experience – Bottom Line

1. **Cirque -** LME lead to a formal insolvency filing with a successful (non-liquidation) outcome
2. **Conuma -** LME did not generate litigation and did not result in an insolvency filing- success so far
3. **Mitel -** LME generated litigation and lead to a formal insolvency filing with a successful outcome
4. **Telesat -** LME generated litigation with outcome TBD

Summary: So far; so good.

THE EUROPEAN EXPERIENCE

Liability management exercises (LMEs) are reshaping European restructurings by delivering targeted, out-of-court capital structure solutions while avoiding the expense and lengthy timescales of court processes.

As US-style techniques proliferate, parties must adapt structures to European jurisdictional constraints including diverse local directors’ duties and insolvency regimes, and where English law-governed documents are present, the Assénagon abuse of power principle.

Recent transactions illustrate emerging market norms and potential litigation flashpoints.

In response, creditors are seeking to tighten documentation through LME blockers and deploying co-operation agreements, even as antitrust and enforceability challenges test their limits.

LOCAL LAW CONSTRAINTS & EVOLVING PRACTICE

- **Rise of Hybrid LMEs**: Unlike the US, European LMEs often require a "two-step" structure, such as a Dutch share pledge enforcement followed by an exchange offer. This approach is used to enhance compliance and provide the optics of judicial oversight and blessing.

- **Key Legal Challenges**:
  - Directors' Duties: In some jurisdictions, local directors are exposed to personal liability for wrongful trading, making them cautious of "oppressive" transactions that prioritize one group of creditors over another.
  - Assénagon Abuse Principle: A significant legal risk is the Assénagon principle, which restricts votes that are used to abusively eliminate minority creditor rights.
  - Insolvency Regimes: While the EU Preventive Restructuring Directive provides some harmonization, nuances in local law (like in France or Germany) remain critical for claw back claims.

EVOLVING MARKET TACTICS

"Stapled" Processes: LMEs are frequently "stapled" to formal processes, like the Dutch Scheme or English Schemes of Arrangement, allowing for potential "cramdown" of dissenters.

Uptiering Trends: While *Victoria PLC* shows the growing use of up-tiering in Europe, these are becoming more inclusive rather than strictly binary winners/losers.

Creditor Protections: In response, investors are demanding "LME blockers" in new documentation to prevent being stripped of rights.

TAKEAWAYS FOR EUROPE

The European LME market is moving toward more consensual, "managed inequality" compared to the adversarial US model, largely to navigate stricter legal constraints and avoid litigation

CONCLUSION

Returning to the Pigs -- Why Do LMEs and Prepacks Fail

No Operational Turnaround: LMEs often only provide a temporary liquidity boost, failing to address the core business underperformance. RSA controlled by lenders have the same issues.

Distorted Capital Structures: Aggressive lender on lender violence creates "cram-down" scenarios, where certain creditors are favored over others, leaving a more complex and unsustainable debt structure.

High Costs: Companies that fail after an LME often spend twice as long in bankruptcy proceedings compared to those that did not use these methods. Costs are eaten up by litigation with the disfavored lenders. Once the bankruptcy is filed, a second front is opened with the creditors' committee. Similarly, prepack RSAs that do not address the needs of unsecured creditors result in delays and added costs.