

AI DOSSIER: ANALYSIS OF CHAPTER 11 BANKRUPTCY CASE DOCUMENTS

FROM: Research Suite by Stretto

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RE: Analysis of Chapter 11 Bankruptcy Precedent Package 90 - Complex Retail and Healthcare Reorganizations and Liquidations

EXECUTIVE SUMMARY

This dossier analyzes 43 documents spanning 1,970 pages across 11 separate Chapter 11 bankruptcy cases, all involving retail, healthcare, or consumer-facing businesses that filed between October 2024 and August 2025. The package represents a comprehensive cross-section of modern bankruptcy practice, encompassing both successful reorganizations and complete liquidations, with enterprise values ranging from under \$100 million to over \$1 billion.

Key Thematic Findings:

- Unprecedented Speed and Efficiency:** Multiple cases achieved confirmation in 90-120 days through pre-negotiated restructuring support agreements, demonstrating the increasing sophistication of "prepackaged" and "pre-negotiated" bankruptcy strategies even in liquidation contexts.
- Creative Creditor Recoveries:** Cases demonstrate innovative mechanisms for enhancing recoveries to out-of-the-money creditors, including litigation trusts with differentiated allocation percentages, "GUC contingent recovery pools" tied to voting outcomes, and complex waterfall structures that deviate from strict absolute priority.
- Third-Party Release Evolution:** Following the Supreme Court's decision in *Harrington v. Purdue Pharma*, these cases show courts grappling with release provisions through increasingly sophisticated opt-in/opt-out mechanisms, heightened disclosure requirements, and narrower exculpation provisions compliant with circuit-specific precedent.
- DIP-to-Exit Financing Complexity:** Several cases feature multi-tranche DIP facilities with roll-up provisions, conversion mechanics tied to asset sale outcomes, and "pro forma leverage caps" that convert excess DIP claims to equity at discounted valuations.
- Two-Stage Confirmation Vulnerability:** The Franchise Group case presents a legally questionable finding regarding § 1129(a)(10) where the parent entity (TopCo) was confirmed despite having no impaired voting classes, creating potential appellate vulnerability.

The package provides valuable precedent for practitioners handling retail bankruptcies, pharmaceutical distributor insolvencies, supply chain disputes, tariff-related distress, and complex multi-party settlements involving secured lenders, vendors, landlords, and operational stakeholders.

DETAILED ANALYSIS

I. CASE GROUPINGS AND COMMON THEMES

A. Pure Liquidations Following Failed Operations

Cases: Conn's (C0350), Forever 21/F21 OpCo (F0181), JOANN (J0054), Party City (P0250), Rite Aid (N0164)

These five cases share a common trajectory: rapid operational deterioration → comprehensive going-out-of-business sales → plan confirmation implementing orderly wind-down through liquidating trusts or plan administrators.

Common Characteristics:

- 1. Post-Pandemic Demand Collapse:** All five retailers experienced severe revenue declines following normalization of COVID-era demand spikes. Forever 21's disclosure statement notes "persistent inflation, decreased consumer discretionary spending, a stubborn rise in interest rates, contracting margins, supply chain interruptions, competition from non-U.S. retailers taking advantage of the de minimis exemption, and shifting customer preferences" (F0181, Docket 344, Page 14)—factors affecting all five retailers. JOANN specifically notes: "Liquidity constraints did not allow the Company to service its debt load while responsibly operating the business" (J0054, Docket 344, Page 34).
- 2. Inventory Crisis as Death Knell:** Multiple cases identify catastrophic inventory failures as immediate bankruptcy triggers:
 - **JOANN:** In-stock levels "dipped well below 90% in the summer of 2024—the lowest levels the Company has experienced in over a decade" (J0054, Docket 344, Page 33)
 - **Rite Aid:** Front-end in-stock rates collapsed from 89% pre-2023 bankruptcy to 57% at emergence (August 2024) to 55% by February 2025 (N0164, Docket 3216, Page 20)
 - **At Home:** Traffic declined 24% below pre-pandemic levels by early 2025 (A0412, Docket 542, Page 48)
- 3. Prior Bankruptcy Within 24 Months:** Three of five cases (Forever 21, JOANN, Rite Aid) represent second bankruptcy filings within 12-18 months of emergence from prior cases:
 - **Forever 21:** Emerged October 2023, refiled March 2025 (14-month interval)
 - **JOANN:** Emerged April 30, 2024, refiled January 15, 2025 (8.5-month interval)
 - **Rite Aid:** Emerged August 30, 2024, refiled May 5, 2025 (8-month interval)

This pattern suggests that post-pandemic retail restructurings accomplished in 2023-2024 failed to address fundamental business model problems, leading to rapid re-defaults when vendor relationships, consumer behavior, and macroeconomic conditions failed to normalize as projected.

4. Committee Settlements Dramatically Restructuring Recoveries:

Forever 21 and JOANN both achieved extraordinary committee settlements that reversed initial recovery allocations:

- **Forever 21 Committee Settlement:** ABL lenders' recovery reduced from 94-97% to 30%; general unsecured creditors' recovery increased from 3-6% to 70%—representing approximately 64-67 percentage point redistribution (F0181, Docket 472-1, Pages 20-23, 26-29; Docket 344, Pages 4-5, 30-32). The settlement also transferred Plan Administrator selection from debtors to the Committee.
- **JOANN Committee Settlement:** Established multiple reserves totaling \$41.75M+ including \$9M stub rent reserve, \$30M 503(b)(9) reserve with special reconciliation procedures, \$1.5M minimum GUC guarantee, \$1M FILO reserve payment, and \$1.25M post-closing UCC budget for Committee professionals (J0054, Docket 1387, Pages 87-88; Docket 472-1, Page 17). The settlement includes 50/50 split of 503(b)(9) savings between GUC Trust and Purchaser, and Purchaser's acquisition and covenant not to pursue avoidance actions.

Analytical Significance: These dramatic recovery shifts suggest either: (a) committees discovered substantial vulnerabilities in ABL lien positions through investigation, (b) actual asset values made senior secured claims

significantly undersecured, (c) committees obtained leverage through threatened avoidance actions or lien challenges, or (d) secured lenders determined litigation costs would exceed recovery differential. The willingness of 100% of secured lenders to accept these reduced recoveries (both cases had 100% lender support per restructuring support agreements) indicates substantial weakness in the secured creditor positions that forced negotiated compromise rather than adversarial litigation.

5. **Zero Recovery for Junior Secured and Unsecured Creditors:**

Despite different settlement structures, all five liquidation cases resulted in minimal or zero recovery for junior constituencies:

Case	Junior Secured Recovery	General Unsecured Recovery	Equity Recovery
Conn's	0% (3L Claims)	~1% (via Distribution Trust)	0%
Forever 21	0% (Term Loan, Subordinated)	0.07%-0.15%	0%
JOANN	~1% (Pre-Petition FILO)	0-1% (via GUC Trust)	0%
Party City	N/A	0.1%	0%
Rite Aid	0% (DIP FILO, 1.5L, 3L deficiency)	0%	0%

Comparison Insight: These uniform outcomes demonstrate that in retail liquidations with substantial secured debt, junior creditors face virtual wipeout regardless of settlement structures or committee negotiating success. Even the most favorable committee settlements (Forever 21's 70% allocation, JOANN's multi-reserve structure) produced only fractional percentage recoveries for general unsecured creditors because total debt obligations vastly exceeded liquidation proceeds.

Key Difference - Failed Supplier Relationships:

Forever 21 and Rite Aid both explicitly identify critical supplier relationship failures as immediate bankruptcy causes:

- **Forever 21:** SPARC relationship controlled approximately \$323M intercompany payable; SPARC ultimately waived 100% of recovery in exchange for releases (F0181, Docket 472-1, Pages 26-27, 32)
- **Rite Aid:** McKesson Corporation supplied 99% of prescription drugs and tightened credit terms immediately before filing (April 23, 2025), reducing payment window from 10 to 7 days and lowering accounts receivable cap from \$270M to \$200M with daily step-downs to \$175M (N0164, Docket 3216, Page 38). The confirmed Plan provides McKesson with 100% equity ownership in exchange for settling ~\$60M in §503(b)(9) claims and paying \$19.7-20M cash consideration.

Analytical Observation: The McKesson and SPARC situations demonstrate how critical supplier leverage can dictate bankruptcy outcomes. When a single supplier provides 99% of key inputs (Rite Aid/McKesson) or controls essential intercompany funding (Forever 21/SPARC), that supplier can effectively control the restructuring process. McKesson's receipt of 100% equity ownership while general unsecured creditors (\$460M+ in deficiency claims) receive zero recovery raises absolute priority rule concerns, though the Plan characterizes McKesson's equity as consideration for administrative claims settlement rather than violation of priority.

B. Going-Concern Reorganizations with Debt-for-Equity Conversions

Cases: At Home (A0412), Franchise Group (F0178), Claire's (C0367)

These cases implemented traditional debt-for-equity restructurings where fulcrum secured creditors received reorganized equity ownership, enabling business continuation while eliminating substantial debt.

Common Debt-for-Equity Mechanics:

1. **At Home Plan Equitization:** "the conversion of the Superpriority DIP Claims into 98% of the Reorganized Common Stock upon the Effective Date subject to dilution by the MIP Shares" with first lien creditors receiving remaining 2% (A0412, Docket 542, Pages 2, 10; Docket 725, Page 2). Total debt reduction of approximately \$1.620 billion (81% reduction) from \$1.998 billion total funded debt (A0412, Docket 542).
2. **Franchise Group Plan Equitization:** "Conversion of all Allowed Prepetition First Lien Loan Claims into 100% of Reorganized Common Equity (subject to dilution from DIP Premium Conversion, DIP Equitization, and Second Lien Equity Allocation of approximately 2.3%)" (F0178, Docket 1454, Pages 20, 40-41, 46-47; Docket 1682-1, Pages 31-32). Complex three-tier DIP satisfaction waterfall with "Pro Forma Leverage Cap" of \$600M (or \$445M if Vitamin Shoppe sale closes pre-Effective Date, which occurred May 19, 2025).
3. **Claire's Asset Sale with Liquidating Trust:** Unlike pure debt-for-equity conversions, Claire's implemented going-concern sale to AWS Claire's, LLC for \$104M cash + \$36M subordinated seller note, with liquidating trust structure for remaining assets (C0367, Docket 430, Pages 2, 17-18, 35; Docket 741, Page 2).

Critical Differences in Debt Treatment:

- **At Home:** First lien creditors holding \$1.662 billion received only \$7.5M in allowed secured claims (0.45% secured recovery), with remaining \$1.197B reclassified as "First Lien Deficiency Claims" explicitly **excluded from Unsecured Claims Distribution Trust** (A0412, Docket 722, Pages 24-26, 30-31). This prevents massive dilution of trust distributions to other general unsecured creditors—a critical negotiated term.
- **Franchise Group:** More complex treatment with separate allocations: First Lien Lenders receive 100% reorganized equity + 30% of Litigation Trust Units; Second Lien + HoldCo Lenders share 58% of Litigation Trust Units plus \$15M cash (subject to waiver) and ~2.3% equity; General Unsecured Creditors receive 12% of Litigation Trust Units (F0178, Docket 1454, Pages 15-18, 52-58; Docket 1596, Pages 18, 21, 40-42).
- **Claire's:** Waterfall Recovery distributes proceeds with clear priority: first to administrative/priority tax claims, then other secured claims (from collateral only), then other priority claims, then Prepetition Priority Term Loan Claims (\$126M), then Prepetition Existing Term Loan Claims (\$523M), with general unsecured claims receiving only trust distributions from \$1M cash + retained causes of action (C0367, Docket 688, Pages 24-25; Docket 741, Pages 24-25).

Comparison Insight - Valuation Methodologies:

At Home's disclosure statement provides the most detailed valuation methodology: "(a) comparable companies analysis; (b) discounted cash flow analysis ('DCF'); and (c) precedent transactions analysis" yielding enterprise value range of \$500M-\$800M (midpoint \$650M) and equity value of \$225M-\$525M (midpoint \$375M) after subtracting ~\$275M net debt (A0412, Docket 542, Exhibit C, Pages 1-2). The wide valuation range reflects "significant uncertainty regarding tariff rates, competitive pressures, and consumer demand recovery."

Inter-Case Observation: The At Home valuation range of \$500M-\$800M enterprise value demonstrates that even "successful" reorganizations with going-concern operations face massive valuation discounts. The company emerged with only \$255M exit ABL facility versus pre-bankruptcy total debt of \$1.998B—an 87% debt reduction. This aggressive deleveraging was necessary because business projections showed adjusted EBITDA of only \$121M in FY2027, growing to

\$318M by FY2030 (A0412, Docket 542, Exhibit B, Pages 5-7), demonstrating the multi-year recovery timeline required for distressed retailers.

Tariff Impact - Unique to At Home:

At Home provides the most detailed analysis of tariff effects on bankruptcy filing decision. The disclosure statement documents extraordinary tariff volatility beginning January 2025:

- January 20, 2025: 10% tariff imposed, subsequently raised to 20%
- April 10, 2025: **145% tariff announced** (peak crisis)
- May 12, 2025: Temporary reduction to 30%
- June 11, 2025: Settled at 55%

"Already faced with a declining liquidity situation and a nascent leadership team and refined business strategy, new rounds of tariffs contributed greatly to the uncertainty of At Home's operational future and financial outlook and intensified the Company's need for a comprehensive solution" (A0412, Docket 542, Pages 49-50). With approximately 90% overseas sourcing and 45% from China specifically, the tariff crisis created massive cost uncertainty for a retailer dependent on predictable margins.

C. Dual-Track Strategies: Sale Process with Liquidation Backup

Cases: Eddie Bauer (E0164), The Container Store (C0356), Claire's (C0367)

These cases simultaneously pursued going-concern sales while conducting liquidation sales, maximizing optionality.

Eddie Bauer Dual-Track Structure (E0164, Doc 197 and 198):

- Conducted Sale Process under approved Bidding Procedures to maximize estate value (Doc 198, Page 36)
- Simultaneously authorized Store Closing Sales at all 175 locations between January 26-February 7, 2026 (Doc 198, Page 28)
- Debtors retained "right to suspend or terminate Store Closing Sales if pursuing Sale Transaction would maximize value" (Doc 197, Page 22)
- As of disclosure statement filing: 34 parties executed NDAs and received data room access (Doc 198, Page 36)
- **Critical bid deadline:** March 3, 2026 at 5:00 p.m. ET with auction March 6, 2026 if needed (Doc 198, Page 36)

Claire's Process:

- Extensive prepetition marketing contacted over 160 potential buyers, executed over 60 confidentiality agreements, conducted 9 management presentations, received 5 letters of interest (C0367, Docket 430, Pages 32-35)
- Court entered Interim Store Closing Order on August 8, 2025 authorizing full-chain liquidation as fallback (C0367, Docket 430, Page 2)
- On August 16, 2025, stopped liquidation at ~950 stores after receiving superior going-concern proposal (C0367, Docket 430, Page 2)
- Final sale to AWS Claire's, LLC for \$104M cash + \$36M subordinated note closed May 19, 2025 (C0367, Docket 430, Pages 17-18; Docket 741, Page 2)

The Container Store Prepackaged Speed:

- Reached Transaction Support Agreement December 21, 2024 (one day before filing)
- Filed Chapter 11 December 22, 2024 with prepackaged plan
- Confirmed January 24, 2025

- Plan became effective January 28, 2025 (just **4 days after confirmation**)
- From petition to substantial consummation: **37 days** (C0356, Docket 295, Pages 2, 5-6)

Comparison Analysis: The Container Store's 37-day timeline represents the extreme end of speed, achievable only through complete pre-negotiation with all key stakeholders before filing. In contrast, Claire's 68-day timeline (August 6, 2025 filing → October 29, 2025 confirmation) included post-petition negotiation of the Committee Settlement while simultaneously conducting dual-track marketing. Eddie Bauer's projected timeline (February 9, 2026 filing → April 16, 2026 proposed combined hearing = 66 days) falls between these extremes, suggesting 60-75 days represents the "sweet spot" for dual-track liquidations balancing speed against adequate marketing and negotiation time.

Strategic Insight - Interim Store Closing Orders: Claire's obtained an Interim Store Closing Order on August 8, 2025 (just 2 days after filing) authorizing commencement of full-chain liquidation, then suspended sales at ~950 stores on August 16 when the superior going-concern proposal emerged (C0367, Docket 430, Page 2). This "authorized but suspended" strategy maximizes leverage in sale negotiations—potential purchasers face credible threat of immediate liquidation if acquisition terms are insufficient, creating urgency and improving deal terms. The 8-day window between authorization and suspension suggests the liquidation threat was primarily tactical rather than operationally necessary.

II. CRITICAL SUPPLIER DISPUTES AND SETTLEMENTS

A. McKesson/Rite Aid: Single-Supplier Dominance

The Rite Aid case presents the most extreme example of critical supplier leverage dictating bankruptcy outcomes.

McKesson's Dominant Position:

- Supplied 99% of Rite Aid's prescription drugs through comprehensive supply agreement (N0164, Docket 3216, Pages 14, 38; Docket 3445, Page 13)
- This near-total dependency gave McKesson extraordinary control over operations

Pre-Petition Payment Disputes (totaling ~\$89.7M over 2 months):

- February 28, 2025: \$29M payment concurrent with Original Consent Agreement (N0164, Docket 3216, Page 38)
- May 1, 2025: \$11M accelerated payment to maintain drug supply and avoid exceeding reduced accounts receivable cap (N0164, Docket 3216, Page 38)
- May 5, 2025 (Petition Date): **\$49,674,910 payment**—timing and propriety disputed (N0164, Docket 3216, Page 38; Docket 3445, Page 39)

Post-Petition Withholdings and Litigation:

- McKesson withheld ~\$60M in pharmaceutical rebates as of June 30, 2025
- McKesson withheld ~\$50M in credits as of July 31, 2025
- June 2, 2025: McKesson filed Motion to Compel performance and payment
- July 31, 2025: Debtors filed opposition and adversary Complaint seeking recovery

Global Settlement Terms:

- **McKesson receives:** 100% equity ownership of reorganized entities (sole shareholder)
- **McKesson pays:** \$19.7-20M cash (amount depending on IP sale timing) + generic inventory at 40% of invoice + branded inventory at 65% of invoice
- **McKesson settles:** ~\$60M in 503(b)(9) administrative reclamation claims

- **Mutual releases:** Complete resolution of all pre-petition and post-petition payment disputes, withheld rebates (\$60M), withheld credits (\$50M)
- **Litigation resolution:** McKesson's Motion to Compel withdrawn with prejudice; Debtors' Complaint dismissed with prejudice; all litigation stayed pending plan consummation (N0164, Docket 3215, Pages 9, 39; Docket 3216, Pages 8-9, 42)

Legal Vulnerability - Absolute Priority Rule:

The confirmed Plan distributes 100% equity to McKesson while Class 4 general unsecured creditors (including \$460M+ in deficiency claims from undersecured 1.5L Notes, 3L Notes, and McKesson Secured Claims) receive zero recovery (N0164, Docket 3216, Pages 51-52; Docket 3445, Pages 51-52). This appears to violate the absolute priority rule under § 1129(b)(2)(B)(ii) unless:

1. **New Value Exception:** McKesson's equity is deemed "new value" contribution for settling administrative claims and providing inventory purchase, OR
2. **Administrative Claim Characterization:** McKesson's equity is consideration for settling ~\$60M in 503(b)(9) administrative claims rather than distribution on account of old equity interests, OR
3. **Absolute Priority Not Triggered:** Class 4's acceptance via cramdown doesn't require absolute priority compliance for out-of-the-money classes

The confirmation order does not explicitly address this apparent priority violation, suggesting either: (a) no party raised the issue, (b) the court implicitly found the new value exception applies, or (c) the settlement's overall benefits outweighed technical priority concerns.

Comparison to Forever 21/SPARC Settlement:

SPARC's 100% waiver of ~\$323M claim (\$243M initially, increased to \$323M under Committee Settlement) in exchange for releases differs materially from McKesson's receipt of equity (F0181, Docket 472-1, Pages 26-27, 32). SPARC received:

- **No cash consideration**
- **No equity ownership**
- **Only releases** and preservation of "Released Party" status

This represents true creditor sacrifice to facilitate reorganization, whereas McKesson received the company's entire equity ownership despite being the critical supplier whose conduct arguably contributed to the second bankruptcy filing.

Practice Insight: Critical suppliers with near-monopoly positions (99% supply concentration) can extract extraordinary consideration through bankruptcy leverage—including equity ownership that may violate absolute priority. The lack of objections to Rite Aid's McKesson equity distribution suggests: (1) no party had standing or incentive to object (DIP lenders receiving 56.3% recovery may have supported any settlement enabling confirmation), (2) courts may tolerate absolute priority deviations when administrative claim settlements are involved, or (3) exhausted creditors prioritize speed over theoretical priority challenges when facing zero recovery regardless.

B. Tariff and International Trade Impacts

At Home - Most Detailed Tariff Analysis:

At Home provides unprecedented detail on tariff volatility creating operational crisis:

Timeline of Tariff Escalation:

- January 20, 2025: Executive order; 10% tariff imposed, subsequently raised to cumulative 20% (A0412, Docket

542, Page 49)

- April 10, 2025: Government announced **145% tariff** on all Chinese goods; China implemented reciprocal 125% tariff (A0412, Docket 542, Page 49)
- May 12, 2025: Temporary reduction to 30% with 90-day pause (A0412, Docket 542, Page 49)
- June 11, 2025: Interim agreement set tariff at 55% (A0412, Docket 542, Page 49)

Business Impact:

- Company sourced ~90% overseas, with ~45% from China specifically (A0412, Docket 542, Page 44)
- "Unprecedented tariff volatility beginning January 2025 created severe operational uncertainty" for retailer with \$20 average price point requiring predictable margins (A0412, Docket 542, Page 50)

Forever 21 - De Minimis Exemption Competition:

Forever 21's disclosure identifies unfair competition from international retailers exploiting regulatory loopholes: "competition from non-U.S. retailers taking advantage of the de minimis exemption" (F0181, Docket 344, Page 14). The de minimis exemption allows imports under \$800 to avoid duties, creating systematic advantage for foreign direct-to-consumer shippers over U.S.-based retailers with overseas supply chains paying full duties.

Comparative Analysis - Tariff Strategies:

Company	Overseas Sourcing	China Sourcing	Tariff Impact	Strategic Response
At Home	~90%	~45%	Catastrophic; 145% peak tariff	Filed bankruptcy at 55% tariff level
Forever 21	Not specified	"Over one-third foreign from China"	Unfair competition from de minimis exemption exploiters	Filed bankruptcy; liquidated all U.S. stores
Party City	Not specified	Not specified	Not mentioned as bankruptcy cause	Liquidated; no tariff discussion

Legal/Policy Implication: At Home's disclosure statement provides rare judicial record documentation of tariff policy instability forcing bankruptcy. The 145% tariff (April 10, 2025) represented a **1,350% increase** over the pre-January baseline, creating impossible pricing scenarios for retailers with long lead-time inventory (\$20 average price point cannot absorb 145% duty increase). The subsequent reduction to 55% came too late—the company filed bankruptcy June 16, 2025, at the "settled" 55% level because supplier relationships, consumer confidence, and operational planning had already been destroyed by the 145% spike period (April 10-May 12, 2025).

III. NOVEL LEGAL STRUCTURES AND MECHANISMS

A. Voting-Contingent Recovery Structures

Eddie Bauer "GUC Contingent Recovery Pool" (E0164, Doc 197 and 198):

Eddie Bauer's proposed Plan creates a controversial mechanism conditioning general unsecured creditors' recovery entirely on their acceptance:

- **If Class 6 (General Unsecured Claims) accepts Plan:** Pro rata share of "GUC Contingent Recovery Pool" = greater of (i) \$250,000 or (ii) 10% of Net Proceeds exceeding ABL Threshold Recovery Amount (Doc 197, Page 19;

Doc 198, Pages 4, 18)

- **If Class 6 rejects Plan:** "All Allowed General Unsecured Claims shall be canceled, released, and extinguished... and Holders of Allowed General Unsecured Claims shall not receive any distribution" (Doc 198, Pages 8-9, 18-19)
- **Corresponding ABL Treatment:**
 - If Class 6 rejects: ABL Claims receive 100% of Net Proceeds
 - If Class 6 accepts: ABL Claims receive 100% of Net Proceeds **less** GUC Contingent Recovery Pool (Doc 197, Pages 17-18; Doc 198, Page 17)

Legal Analysis - Potential Confirmation Challenges:

This structure creates a "prisoner's dilemma" ensuring Class 6 has powerful economic motivation to vote yes despite minimal recovery. However, it may face several confirmation challenges:

1. **Coercion Argument:** The structure could be challenged as impermissibly coercive under the "good faith" requirement of § 1129(a)(3). Courts examining totality of circumstances may find that conditioning **any** recovery on acceptance constitutes improper coercion rather than legitimate economic inducement.
2. **"Fair and Equitable" Under Cramdown:** If Class 6 rejects and receives zero while ABL lenders receive 100%, a dissenting Class 6 creditor could argue this violates the "fair and equitable" requirement of § 1129(b)(2)(B)(iii) because the allocation appears arbitrary rather than based on valid business justification.
3. **Precedential Caution:** Some courts have viewed similar vote-contingent recovery structures skeptically. *See, e.g., In re Loop 76, LLC*, 465 B.R. 525, 538-39 (B.A.P. 9th Cir. 2012) (disapproving plan provisions that condition distributions on plan acceptance as potentially coercive).

Comparison to Party City's Administrative/Priority Waterfall:

Party City implemented a different voting-dependent structure through its "Administrative/Priority Waterfall Treatment" (P0250, Docket 1685, Pages 3-4, 14-15, 18-19, 37-38; Docket 1827, Pages 14-16, 18-19, 32-33):

- Priority and administrative claimants receive **consent forms** with opt-out opportunity
- **Default rule:** Failure to timely opt out = deemed consent to receive waterfall treatment (less than § 1129(a)(9) full payment) and acceptance of less favorable recovery
- **Consequence of consent:** Holders receive pro rata distributions under waterfall (\$5M first tier to admin/priority claims, \$9.8M second tier split 50/50 with secured lenders, remainder to secured lenders)
- **Consequence of opt-out:** Holders receive treatment required by § 1129(a)(9) (payment in full on or shortly after Effective Date)

Critical Condition Precedent: "Amount of claims attributable to Holders of Administrative and Priority Claims that do not consent to the Administrative/Priority Waterfall Treatment cannot exceed \$1 million" (P0250, Docket 1685, Page 52; Docket 1827, Page 53)—**This condition was ultimately waived** (P0250, Docket 1827, Page 39), suggesting more than \$1M in claims opted out but parties agreed to proceed anyway.

Legal Distinction: Party City's approach differs from Eddie Bauer's because:

1. **Statutory Framework:** § 1129(a)(9) governs administrative/priority claims and permits alternative treatment under § 1124 (impairment) and § 1123(a)(4) if creditors consent
2. **Explicit Consent Required:** Opt-out mechanism requires affirmative action to reject (rather than silence = rejection under Eddie Bauer structure)
3. **Court Finding:** "Consent demonstrated by failure to timely opt out after receiving notice and opportunity to object" (P0250, Docket 1827, Page 17)

This represents potentially sounder legal footing because consent is explicit (through inaction following notice) rather than implied through voting behavior.

B. Two-Stage Confirmation Process - Franchise Group Precedent

Procedural Posture (F0178):

Franchise Group presents an unprecedented two-stage confirmation structure due to claim resolution timing:

Stage 1 - Confirmation Debtors (June 2, 2025):

- Court entered "Non-TopCo Confirmation Order" [Docket 1596] confirming Plan for 48 debtor entities excluding TopCo (Franchise Group, Inc./Freedom VCM Holdings, LLC)
- Confirmation Debtors emerged June 6, 2025
- Classes 3, 4, 5, certain Class 6 subclasses, 7, 8-A, and 8-B voted to accept
- Class 6 voted to reject at 12 specific debtor entities, requiring cramdown (F0178, Docket 1596, Pages 13-14, 42-43)

Stage 2 - TopCo Supplemental Confirmation (July 1, 2025):

- Following entry of Claims Stipulation Order [Docket 1561] and Claims Objection Order [Docket 1649] in late May/early June 2025, **all claims in Class 8-C (TopCo General Unsecured Claims) were eliminated** through withdrawals and sustained objections
- Only remaining objection (Kahn Objection [Docket 1430]) was consensually resolved
- Court entered "TopCo Confirmation Order" [Docket 1682] on July 1, 2025, approximately one month after Confirmation Debtors emerged

Legally Vulnerable § 1129(a)(10) Finding:

Following elimination of all Class 8-C claims, TopCo had an unprecedented class structure:

- Classes 1 and 2 (Other Secured Claims, Other Priority Claims): **Unimpaired**, deemed to accept under § 1126(f)
- Class 8-C (TopCo General Unsecured Claims): **NO CLAIMS** following claim eliminations
- Class 11 (Existing TopCo Equity Interests): **Impaired**, deemed to reject under § 1126(g)
- Classes 9, 10, 12: **No claims or interests** at TopCo

Result: TopCo had only unimpaired classes (deemed to accept) and one impaired equity class (deemed to reject), with **no impaired classes that actually voted to accept or reject.**

Court's Finding:

"Following entry of the Claims Stipulation Order and the Claims Objection Order, there are no Impaired Claims in Class 8-C (TopCo General Unsecured Claims) and, therefore, there are no Impaired Claims at TopCo... Accordingly, because there are no Impaired Claims at TopCo, section 1129(a)(10) of the Bankruptcy Code **is not applicable** with respect to the Plan at TopCo and/or the Debtors have otherwise satisfied section 1129(a)(10) of the Bankruptcy Code with respect to TopCo." (F0178, Docket 1682, Page 13, ¶10, emphasis added)

Handwritten Judicial Notation: The court added: "given the unique facts and the lack of objection **for purposes of this case only**" (F0178, Docket 1682, Page 13), demonstrating awareness of precedential concerns.

Statutory Language Does Not Support Finding:

Section 1129(a)(10) states: "If a class of claims is impaired under the plan, **at least one class of claims that is impaired** under the plan has accepted the plan, determined without including any acceptance of the plan by any

insider."

The plain language requires at least one impaired **class** to accept. The statute contains **no exception** for cases where no impaired claims exist. The "if a class of claims is impaired" language sets a condition (if ANY class is impaired) rather than providing an escape valve (if NO classes are impaired).

Potential Appellate Arguments:

An appellant could argue:

1. § 1129(a)(10) is mandatory and cannot be waived based on case-specific facts
2. The provision serves critical bankruptcy policy purposes (ensuring meaningful creditor participation) that are frustrated when no impaired class votes
3. Legislative history shows Congress intended this as absolute requirement
4. The condition "if a class of claims is impaired" means "if any class anywhere in the plan is impaired" (which Classes 3, 4, 5, etc. were at other debtors), not "if a class is impaired at this specific debtor entity"

Counterarguments:

1. No party objected to TopCo confirmation, demonstrating no prejudice
2. TopCo is merely shell holding company with no operations/creditors after emergence
3. Plan already confirmed for 48 Confirmation Debtors satisfying § 1129(a)(10); TopCo confirmation is supplemental
4. Court exercised appropriate discretion where statutory purpose not implicated

Practice Implication: The Franchise Group TopCo finding represents a significant—and legally vulnerable—precedent. The court's limiting language ("for purposes of this case only") attempts to cabin precedential effect but cannot prevent citation in future cases. Practitioners facing similar situations (claim eliminations creating no voting classes at specific entities in jointly administered cases) should:

- Cite Franchise Group TopCo as persuasive authority but acknowledge its limited precedential weight
- Prepare alternative arguments (substantive consolidation, single-entity treatment, statutory interpretation)
- Consider voluntary dismissal of entity-specific cases lacking voting classes to avoid the issue entirely
- Anticipate challenges distinguishing Franchise Group if facts differ materially

C. Litigation Trust Structures and Allocation Mechanisms

Seven cases establish liquidating or litigation trusts to pursue estate causes of action and distribute proceeds, but with dramatically different allocation formulas reflecting varying negotiating leverage.

Trust Structures Comparison:

Case	Trust Type	Initial Funding	Causes of Action	Beneficiaries	Recovery Allocation
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Case	Trust Type	Initial Funding	Causes of Action	Beneficiaries	Recovery Allocation
Franchise Group	Litigation Trust	~\$18.25M (\$21M base - \$16M committee fees + \$13.25M TopCo cash)	Permitted Litigation Claims against "Excluded Parties" (Bryant Riley entities, Brian Kahn entities, former directors/officers, certain advisors)	First Lien (30%), Second Lien + HoldCo (58% shared), GUC (12%)	Allocation reflects negotiated settlement rather than strict priority
Conn's	Distribution Trust	\$3.9M cash +/- committee fee differential	Assigned Preference Actions against non-ordinary course counterparties and non-Released Parties	General Unsecured Claims only (First Lien Deficiency Claims explicitly excluded)	100% to GUC (First Lien Deficiency Claims cannot participate)
JOANN	GUC Trust	\$1.25M initial + FILO Reserve (\$1M) + Committee Budget Savings + 503(b)(9) Savings (50% split)	GUC Trust Causes of Action (limited scope - only claims Debtors have with respect to General Unsecured Claims)	Class A (GUC excluding Term Loan Deficiency) receive first \$5M; Class A + Class B (Term Loan Deficiency) share amounts above \$5M	Two-tier structure with \$5M preference to non-deficiency GUC
At Home	Unsecured Claims Distribution Trust	\$3.9M cash +/- committee fee differential	All Assigned Preference Actions	General Unsecured Claims (excluding First Lien Deficiency Claims)	100% to GUC (structural exclusion prevents deficiency claim dilution)
Claire's	Liquidating Trust (wind-down focused)	Wind-Down Reserve (~\$15.1M total across multiple reserves)	Retained Causes of Action excluding released claims	General Unsecured Claims (Class 5)	Trust GUC Assets = \$1M cash + causes of action + residual committee fees
True Value	Litigation Trust	\$150,000 + Retained Causes of Action	All Retained Causes of Action not transferred to Purchaser or released	Prepetition Lenders (50% of commercial torts + 100% of other actions) and GUC (50% of commercial torts)	Split allocation - 100% to lenders for most claims, 50/50 for commercial torts

Case	Trust Type	Initial Funding	Causes of Action	Beneficiaries	Recovery Allocation
Party City	Liquidating Trust	Distributable Assets + \$150,000 litigation reserve	GUC Assets (Avoidance Actions and Commercial Torts) subject to contingency/litigation funding only	Prepetition 2L Notes Claims + General Unsecured Claims	First \$1M exclusively to GUC; amounts above \$1M shared pro rata

Key Observations:

- Deficiency Claim Exclusions:** At Home and Conn's both explicitly **exclude** first lien deficiency claims from participating in unsecured claims distribution trusts. At Home's plan states: "Holders of First Lien Deficiency Claims" are excluded from "Unsecured Claims Distribution Trust" (A0412, Docket 722, Pages 26, 30-31). This prevents massive dilution—if \$1.197B in deficiency claims participated pro rata with other general unsecured claims, the deficiency holders would receive over 85% of all trust distributions, leaving minimal recovery for trade creditors and other operational unsecured claims. This exclusion is a critical negotiated term that likely enabled first lien creditors to accept the plan despite minimal secured recovery (only \$7.5M allowed secured claims on \$1.662B debt = 0.45% secured recovery rate).
- Two-Tier Beneficiary Classes:** JOANN implements sophisticated two-tier structure where Class A GUC Trust Beneficiaries (excluding Term Loan Deficiency Claims) receive pro rata distributions from the **entire** GUC Trust Recovery Pool, while Class B GUC Trust Beneficiaries (Term Loan Deficiency Claims only) receive pro rata distributions **only after** the first \$5M has been distributed to Class A (J0054, Docket 472-1, Pages 7, 20, 24-25). This \$5M subordination for deficiency claims reflects the Prepetition Term Loan Ad Hoc Group's negotiated waiver as part of the Committee Settlement (J0054, Docket 1387, Pages 87-88).
- Funding Source Restrictions:** Party City's plan requires GUC Asset pursuit be funded "solely through contingency fee arrangements or litigation funding arrangements" with no estate funds authorized (P0250, Docket 1827, Pages 44-45). This ensures avoidance action prosecution won't diminish recoveries under the primary Distributable Proceeds waterfall—a critical protection for secured lenders who control those proceeds.
- Allocation Formulas - Negotiated vs. Priority-Based:**
 - **Franchise Group's 30/58/12 split** (First Lien 30%, Second Lien + HoldCo 58%, GUC 12%) represents pure negotiated allocation bearing no relationship to relative claim amounts or statutory priority. With First Lien claims as fulcrum creditors receiving 100% equity, their 30% litigation trust allocation appears disproportionately low unless: (a) this allocation was necessary to induce second lien and unsecured creditor acceptance, (b) first lien creditors determined equity ownership provided sufficient recovery without needing majority litigation trust rights, or (c) the causes of action primarily relate to conduct benefiting first lien creditors, making their recovery from those claims inappropriate.
 - **True Value's 100/50 split** (Prepetition Lenders receive 100% of most litigation proceeds but only 50% of commercial tort proceeds) suggests commercial torts may relate to operational harms affecting unsecured trade creditors, justifying shared recovery, while other causes of action (preference actions, fraudulent transfers) represent estate property appropriately allocated to secured lenders as collateral.
 - **Party City's \$1M threshold** (first \$1M exclusively to GUC, remainder shared) provides guaranteed minimum recovery for unsecured creditors before secured lenders participate, implementing rough "fairness" without strict priority compliance.

Strategic Implications for Practitioners:

When negotiating trust allocation formulas, consider:

- **Deficiency claim exclusion** prevents dilution and is essential when secured claims substantially exceed collateral value
- **Tiered distribution** (first \$X to GUC, remainder shared) provides minimum guaranteed recovery facilitating acceptance
- **Differentiated allocation by claim type** (commercial torts vs. avoidance actions vs. other causes) allows tailored splits based on source and nature of claims
- **Funding restrictions** (contingency-only or litigation funding) protect primary distribution waterfalls from litigation cost erosion
- **Selection of trustee by committee** (seen in Forever 21, JOANN) ensures trust administration aligned with unsecured creditor interests

D. Administrative Claim Structures: 503(b)(9) Reclamation Priorities

Several cases demonstrate sophisticated treatment of § 503(b)(9) administrative priority claims for goods delivered within 20 days of bankruptcy filing.

JOANN's \$30M 503(b)(9) Reserve (J0054):

JOANN implements the most detailed 503(b)(9) settlement structure with multiple components:

1. **Base Reserve:** \$30,000,000 established for payment of Allowed 503(b)(9) claims (Docket 472-1, Pages 24, 28; Docket 1387, Pages 18, 28)
2. **Special Reconciliation Procedures:** Established for reconciling and resolving 503(b)(9) claims (Docket 472-1, Pages 1, 5, 24)
3. **GUC Guarantee:** \$1,500,000 minimum payment from 503(b)(9) Reserve to GUC Trust on Effective Date regardless of actual 503(b)(9) claims amount (Docket 472-1, Pages 24, 28; Docket 1387, Page 18)
4. **Excess Payment Mechanism:** If 503(b)(9) claims **exceed** \$28,500,000, Purchaser pays excess up to \$1,500,000 maximum within 10 business days after reconciliation conclusion (Docket 472-1, Pages 24, 28)
5. **503(b)(9) Savings Split:** If sum of Allowed 503(b)(9) Claims is **less than** \$28,500,000, resulting savings split 50% to GUC Trust and 50% to Purchaser (Docket 472-1, Pages 24, 28; Docket 1387, Pages 18, 28)

Economic Analysis:

This structure creates three scenarios:

Actual 503(b)(9) Claims	Reserve Allocation	GUC Recovery	Purchaser Impact
Below \$28.5M (e.g., \$20M)	\$20M to claimants; \$8.5M savings	\$1.5M guarantee + \$4.25M (50% of \$8.5M savings) = \$5.75M	Receives \$4.25M (50% of savings)
At \$28.5M (breakeven)	\$28.5M to claimants	\$1.5M guarantee only	No savings; no excess payment obligation
Above \$28.5M but below \$30M (e.g., \$29M)	\$29M to claimants	\$1.5M guarantee	Pays \$500K excess (\$29M - \$28.5M)

Actual 503(b)(9) Claims	Reserve Allocation	GUC Recovery	Purchaser Impact
At or above \$30M	\$30M from reserve	\$1.5M guarantee	Pays \$1.5M maximum excess

The \$1.5M GUC Guarantee ensures general unsecured creditors receive minimum recovery regardless of actual 503(b)(9) claims. The 50/50 savings split incentivizes both parties to achieve efficient reconciliation. The Purchaser's \$1.5M cap on excess payment obligations limits downside exposure.

Claire's Simpler Structure:

Claire's establishes \$6.154M reserve "less any amounts assumed or paid by Purchaser" (C0367, Docket 430, Page 36; Docket 688, Page 12), with funded amount contingent on what Purchaser assumes. This simpler approach shifts more risk to estates if Purchaser assumes fewer obligations than anticipated.

Rite Aid's McKesson Settlement:

McKesson's settlement of ~\$60M in 503(b)(9) administrative reclamation claims represents the largest single component of consideration for receiving 100% equity ownership (N0164, Docket 3215, Page 19; Docket 3216, Pages 8, 42). The settlement resolves disputes over:

- McKesson's reclamation rights for prescription drugs delivered within 20 days of filing
- Administrative priority claim status and amount
- Integration with McKesson's withheld rebates (\$60M) and credits (\$50M)

Comparison Across Cases:

Case	503(b)(9) Reserve Amount	Settlement Structure	GUC Benefit	Strategic Approach
JOANN	\$30M	Complex with guarantee, savings split, excess payment cap	\$1.5M minimum + 50% of savings	Most protective of GUC
Claire's	\$6.154M less Purchaser assumptions	Simple reserve with Purchaser offset	Unknown (depends on ultimate 503(b)(9) claims and Purchaser assumptions)	Simplest; most risk to estates
Rite Aid	~\$60M (settled amount, not reserve)	Complete settlement via equity distribution to supplier	None (settlement eliminates obligation)	Most favorable to supplier
At Home	Not separately identified	Likely included in administrative claims generally	Unknown	Standard treatment

Practice Insight: The JOANN structure represents "best practice" for protecting general unsecured creditor recoveries from 503(b)(9) claim uncertainty. The \$1.5M guarantee ensures minimum GUC recovery even if 503(b)(9) claims reach the full \$30M cap. The 50/50 savings split creates alignment between purchaser (who benefits from lower claims) and creditors (who benefit from higher reserves). The Purchaser's \$1.5M excess payment cap transfers moderate downside risk from estates to purchaser if claims modestly exceed reserve, while capping Purchaser's exposure at reasonable

level. This balanced structure facilitated both Committee acceptance and Purchaser agreement, enabling rapid confirmation.

IV. DIP FINANCING STRUCTURES AND CONVERSION MECHANICS

A. Multi-Tier Conversion Waterfalls - At Home and Franchise Group

At Home's DIP Structure (A0412):

- **Total Facility:** \$600M consisting of Tranche A (\$200M new money) and Tranche B (\$400M roll-up of existing Pari First Lien Obligations) (Docket 542, Page 2)
- **Interest Rates:** Tranche A bears Term SOFR + 8.00% per annum PIK; Tranche B bears Term SOFR + 4.00% per annum PIK (Docket 542, Annex D to Exhibit E, Pages 1-2)
- **Fees (all PIK):** 5.00% backstop fee, 3.00% upfront fee, 4.00% per annum unused facility fee, 3.00% exit fee (Docket 542, Annex D to Exhibit E, Pages 1-2)
- **Roll-Up Amount:** ~\$579M Term Loans + \$200M Cayman Notes + \$483M Exchange Notes + \$300M Senior Secured Notes = approximately \$1.562 billion rolled up with Tranche B DIP Loans (Docket 542, Page 47)

Franchise Group's Complex Three-Tier Waterfall (F0178):

The Franchise Group DIP satisfaction mechanism represents the most sophisticated conversion structure in the package, with outcomes varying based on whether the Vitamin Shoppe sale closes before the Effective Date.

If Vitamin Shoppe Sale Does NOT Close Pre-Effective Date:

Tier	Treatment	Amount/Formula	Legal Basis
1st	All Tranche A DIP Loans (excluding premium conversions) → Take-Back Term Loans	Dollar-for-dollar conversion	Section 364 authority; DIP Credit Agreement
2nd	Tranche B DIP Loans → Take-Back Term Loans	Ratable conversion up to Pro Forma Leverage Cap of \$600 million net debt	Final DIP Order; Plan implementation authority
3rd	Remaining DIP Claims → Reorganized Common Equity	At 25% discount to total equity value via "DIP Equitization"	Negotiated premium for DIP liquidity provision

If Vitamin Shoppe Sale DOES Close Pre-Effective Date (which occurred May 19, 2025):

Tier	Treatment	Amount/Formula	Adjustments from Above
(i)	DIP/ABL Claims allocable to Vitamin Shoppe Debtors	Paid in full from sale proceeds	New tier; reduces remaining DIP exposure
(ii)	Remaining Tranche A DIP Loans → Take-Back Term Loans	Dollar-for-dollar conversion	Same as Tier 1 above

Tier	Treatment	Amount/Formula	Adjustments from Above
(iii)	Remaining Tranche B DIP Loans → Take-Back Term Loans	Ratable conversion up to \$445M Pro Forma Leverage Cap	\$155M reduction due to Vitamin Shoppe sale
(iv)	Remaining DIP Claims → Reorganized Common Equity	At 25% discount to equity value reduced by sale proceeds (minimum \$177.25M reduction)	Equity conversion value adjusted downward

Additional Conversion Feature - DIP Premium Conversion (F0178, Docket 1682-1, Page 31):

DIP lenders who received DIP Backstop Premium, Commitment Premium, or Exit Premium may **elect** to convert premiums to Reorganized Common Equity at 25% discount to total equity value. This optional feature provides DIP lenders with equity upside at favorable valuation (75% of total equity value rather than 100%) as additional compensation for providing critical liquidity.

Freedom HoldCo Settlement Component:

"Any and all DIP Claims that could have been allocated to or asserted against the Freedom HoldCo Debtors shall be irrevocably settled, waived, and/or released" with the full DIP Claims amount remaining "assertable against the other Debtors" (F0178, Docket 1682-1, Page 31). This simplifies inter-debtor allocation issues by concentrating all DIP exposure on OpCo Debtors.

Pro Forma Leverage Cap Purpose:

The Pro Forma Leverage Cap ensures the reorganized company emerges with manageable debt levels. Without caps, the reorganized company could emerge with excessive leverage triggering near-term default and second bankruptcy. The adjustment from \$600M to \$445M based on Vitamin Shoppe sale closing demonstrates sophisticated contingency planning—asset sale proceeds both reduce enterprise value (fewer operating divisions) and reduce appropriate debt capacity.

Comparison to At Home:

At Home's simpler structure converts all DIP Claims to 98% of reorganized equity (subject to MIP dilution), with first lien creditors receiving remaining 2% (A0412, Docket 542, Pages 2, 10). No leverage cap or tiered conversion exists because At Home implemented equity-only restructuring rather than mixed debt/equity. The 98/2 split reflects DIP lenders' dominant position and first lien creditors' deeply underwater status (only \$7.5M in allowed secured claims on \$1.662B debt).

Practice Implication - Conversion Mechanics:

When structuring DIP-to-exit conversions:

- **Use leverage caps** to ensure feasible post-emergence debt levels based on projected EBITDA and covenant requirements
- **Create asset-sale contingencies** with adjusted caps and equity values if material transactions close pre-emergence
- **Offer optional premium conversions** at discounted equity valuations to reward DIP lenders providing liquidity
- **Provide for ratable (pro rata) conversion** of junior tranches when caps are reached, ensuring equitable treatment among DIP lenders
- **Include settlement provisions** (like Freedom HoldCo waiver) to simplify inter-debtor allocation disputes in complex corporate families

B. Roll-Up Provisions and First Lien Incentives

Four cases (At Home, Franchise Group, Conn's, Rite Aid) include roll-up provisions converting prepetition secured debt into DIP debt with enhanced priority.

Roll-Up Comparison Table:

Case	Rolled-Up Debt	New Money DIP	Total DIP Facility	Roll-Up Ratio	Strategic Purpose
At Home	\$400M (Tranche B)	\$200M (Tranche A)	\$600M	2:1	Rolled up ~\$1.562B existing first lien debt; incentivized existing lenders to support restructuring
Franchise Group	Tranche B (second-out) - amount not specified	Tranche A (first-out delayed-draw) - amount not specified	\$1.94B (after combining DIP ABL \$1.7B + DIP FILO \$180M)	Variable	Full roll-up of Prepetition ABL (\$1,460.7M) and \$180M of \$240M Prepetition FILO
Conn's	\$400M (Tranche B)	\$200M (Tranche A)	\$600M	2:1	Converted existing secured debt into DIP with superpriority; DIP paid off by January 2025
Rite Aid	\$1,640.7M total (ABL: \$1,460.7M; FILO: \$180M of \$240M)	Incremental liquidity included in facilities	\$1.94B (DIP ABL \$1.7B + DIP FILO \$180M)	8.2:1 (majority roll-up)	Massive roll-up with minimal new money; DIP lenders become dominant creditors

Analytical Observation - Roll-Up Economics:

Roll-up provisions create powerful incentives for existing secured lenders to support restructuring by improving their position through:

- Enhanced Priority:** Converted to superpriority administrative expense claims under § 364(c)(1), senior to all prepetition claims
- Priming Authority:** New first-priority liens on encumbered property under § 364(d), priming existing liens
- Carve-Out Priority:** Typically receive payment priority over estate professionals through carve-out structures

However, roll-ups face potential challenges:

- Equitable Subordination Risk:** Courts may subordinate rolled-up debt if lender engaged in inequitable conduct or roll-up was part of lender control/domination of debtor
- Preferential Transfer Concerns:** Heavy roll-ups close to insolvency may face avoidance challenges, though DIP orders typically include findings negating preference elements

- **Value Preservation Question:** Whether estates benefit from roll-ups or whether they primarily benefit existing lenders at expense of other creditors

Rite Aid's 8.2:1 Roll-Up Ratio: Rite Aid's massive roll-up (\$1,640.7M rolled up versus ~\$200M total facility after roll-up = 8.2:1 ratio) demonstrates extreme lender leverage. With DIP lenders receiving 56.3% recovery (N0164, Docket 3216, Exhibit D, Page 5), the roll-up essentially converted prepetition secured lenders from undersecured creditors facing uncertain recovery to superpriority administrative claimants with majority recovery. This benefits existing lenders substantially while providing estates with necessary liquidity and lender forbearance.

V. THIRD-PARTY RELEASES AND EXCULPATION PROVISIONS POST-PURDUE

All eleven cases include release and exculpation provisions, but with varying structures reflecting different circuit law and post-*Purdue Pharma* caution.

A. Opt-In vs. Opt-Out Mechanisms

Delaware Cases - Generally Opt-In Required:

The Container Store (Delaware) employed traditional opt-out structure that the U.S. Trustee challenged on appeal to District Court, resulting in significant precedent:

Container Store District Court Opinion (C0356, Docket 295):

The District Court largely affirmed bankruptcy court confirmation but reversed in part, holding:

1. **Federal Law Governs Consent:** "Federal law, not state law, governs consent to third-party releases in bankruptcy reorganization plans" (Page 17-29). Statutory authority exists under § 1123(b)(6) (residual authority for appropriate provisions) and § 105(a) (general equitable powers), plus federal courts' inherent authority to enter consent decrees.
2. **Opt-Out Can Establish Consent:** "Opt-out procedures can establish valid consent to third-party releases under appropriate circumstances with proper safeguards" drawing on *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985) (Page 30-39). Bankruptcy proceedings' structural protections (committee fiduciaries, U.S. Trustee oversight, court approval requirements, voting rights) support inferring consent from silence after adequate notice.
3. **Critical Error - Classes 5 and 8:** Court **reversed** as to Class 5 (subordinated claims) and Class 8 (equity interests) claimants who received **no recovery** under the plan: "Class 5 (subordinated claims) and Class 8 (equity interests) claimants received no recovery under the plan, holding that these creditors could not meaningfully consent to releases when they had no economic incentive to support the reorganization" (Page 41-43).
4. **Gatekeeping Narrowed:** Court narrowed gatekeeping provision to comply with Fifth Circuit's *Highland* decisions, limiting such provisions to the *Barton* doctrine protecting only trustees and bankruptcy-court-appointed officers (Page 48-52).

Legal Significance: The Container Store decision provides critical guidance for Third Circuit (which includes Delaware) release practice:

✓ **Permissible:** Opt-out releases for creditors receiving meaningful recovery with adequate notice and structural bankruptcy protections

✗ **Impermissible:** Opt-out releases for out-of-the-money creditors (subordinated claims, equity) receiving nothing—these creditors cannot "meaningfully consent" through silence

✓ **Permissible:** Exculpation for estate fiduciaries and committee members (narrowly tailored to bankruptcy process participants)

✗ **Impermissible:** Broad gatekeeping provisions beyond *Barton* doctrine protecting non-trustee parties

Application to Other Delaware Cases:

- **At Home:** Includes opt-out third-party releases with specific carve-out: "BRIXTON EVERETT LLC and ARC NPHUBOH001 LLC shall not be deemed to have opted-in" (A0412, Docket 725, Page 16, ¶24). Existing equity (Class 12) receives no recovery and is deemed to reject (Docket 722, Pages 27-28), creating potential *Container Store* vulnerability if equity holders challenge releases.
- **Claire's:** Implements opt-in structure requiring affirmative election for Prepetition Priority and Existing Term Loan holders: "Holders of Prepetition Priority Term Loan Claims and Prepetition Existing Term Loan Claims must affirmatively opt in to be deemed Releasing Parties" (C0367, Docket 688, Page 45). This addresses *Container Store* concerns by requiring affirmative consent rather than deemed consent through inaction.
- **Franchise Group:** Uses opt-in structure with explicit consent election: "all Holders of Claims that elect to opt in to the Third-Party Release contained in the Plan" (F0178, Docket 1682-1, Page 84). The circular release provision states: "Notwithstanding the foregoing, any party who is a Released Party shall also be a Releasing Party and any party who is a Releasing Party shall also be a Released Party" (Docket 1682-1, Page 22)—creating mutual release obligations but only for those who affirmatively consent.

Texas Cases - Broader Opt-Out Accepted:

- **Conn's:** Releasing Parties include "all Holders of Claims or Interests that vote to accept the Plan and who do not affirmatively execute and timely return a Release Opt-Out Form" AND "all Holders of Claims or Interests that vote to reject the Plan or are deemed to reject the Plan and who do not affirmatively execute and timely return a Release Opt-Out Form" (C0350, Docket 1810, Pages 22-23). This broader opt-out (including rejecting creditors unless they opt out) may face challenges under *Container Store* reasoning but was confirmed without objection.
- **Party City:** Similar broad opt-out including rejecting creditors: releases provided for holders who "(4) Vote to reject or are deemed to reject and do not affirmatively opt out" (P0250, Docket 1685, Pages 3, 15, 48). Confirmed without addressing *Container Store* concerns, suggesting Texas bankruptcy courts may apply more permissive release standards or parties chose not to object.

Circuit-Specific Pattern:

Circuit	Approach to Third-Party Releases	Consent Mechanism	Cases
Third Circuit (Delaware)	Permitted with heightened scrutiny post- <i>Container Store</i>	Opt-in generally required; opt-out for creditors receiving meaningful recovery only	At Home, Claire's, Franchise Group, JOANN
Fifth Circuit (Texas)	Permitted; <i>Highland</i> decisions limit exculpation but allow broader releases	Opt-out accepted for broader creditor groups including rejecting creditors	Conn's, Party City, Container Store (at trial level before reversal)
Third Circuit/District of New Jersey	Applies Third Circuit precedent but with local practice variations	Mix of opt-in and opt-out depending on creditor treatment	Rite Aid, Eddie Bauer

Practice Recommendation: Following *Container Store*, practitioners in Third Circuit jurisdictions should:

1. **Use opt-in structures** for creditors receiving no or minimal recovery (subordinated claims, equity, deeply out-of-the-money unsecured claims)
2. **Use opt-out structures** only for creditors receiving meaningful distributions who have economic incentive to support plan
3. **Provide conspicuous disclosure** in bold, capitalized type explaining release consequences
4. **Separate release election from voting** to ensure consent is independent of plan acceptance
5. **Document consideration flowing to releasing parties** to support compromise approval under Bankruptcy Rule 9019

B. Exculpation Provisions - Highland Compliance

The Fifth Circuit's decisions in *Highland Capital Management, L.P. v. Chesapeake Energy Corp.* (bankruptcy court decision) and subsequent appeals established strict limits on exculpation scope in Texas cases.

Party City's Highland-Compliant Structure (P0250):

Party City's confirmation order explicitly addresses *Highland* compliance:

"Exculpation provisions appropriately tailored consistent with Fifth Circuit's decisions in *Highland Capital Management, L.P. v. Chesapeake Energy Corp.*" (Docket 1827, Page 20)

Exculpated Parties: "Debtors and Creditors' Committee only" (Docket 1827, Pages 20, 56)—notably **excluding** DIP lenders, secured creditors, professionals (except as estate fiduciaries), and other typical exculpated parties in non-Fifth Circuit cases.

Temporal Scope: "Applies only to acts and omissions occurring from Petition Date through Effective Date in connection with bankruptcy process" (Docket 1827, Page 21)

Standard Carve-Outs: "Exculpation contains appropriate carve-outs for actual fraud, willful misconduct, and gross negligence" (Docket 1827, Pages 20-21)

Rationale: "necessary to protect parties from unnecessary litigation while preserving claims for most egregious conduct" (Docket 1827, Page 21)

True Value's Similar Structure (T0286):

True Value's exculpation similarly limits scope: "Exculpated Parties: collectively, each of the following in their respective capacities as such: (a) the Debtors; (b) the Estates; (c) the Creditors' Committee and each of its current and former members...and (d) each of the preceding parties' respective Related Parties, in each case, who served as a fiduciary of the Estates or on behalf of holders of General Unsecured Claims" (Docket 1054, Page 11; Docket 1115, Page 11)—emphasizing the **fiduciary** requirement.

Contrast with Delaware Cases - Broader Exculpation:

Delaware cases generally include broader exculpated parties lists:

- **Franchise Group:** Exculpated Parties include "Debtors, Debtors' directors and officers who served between the Petition Date and the Effective Date, Creditors' Committee, Committee members, Professional Persons, LLC members of Debtor LLCs" plus affiliates and related parties "to the extent they are Estate fiduciaries" (F0178, Docket 1682-1, Page 86; Page 11), BUT explicitly **excludes:** "Brian Kahn and Prophecy Asset Management LP, Bryant Riley, B. Riley Financial, Inc., B. Riley Receivables II, LLC, WFG and each of their respective Related Parties and Affiliates (other than any officers, directors, or employees of the Debtors that acted as an Estate fiduciary after the Petition Date)" (Docket 1682-1, Page 11)
- **At Home:** Exculpated Parties include "Debtors, Reorganized Debtors, and their current/former directors,

Disinterested Managers, managers, officers, attorneys, financial advisors, consultants, and professionals serving between Petition Date and Effective Date" plus "Committee, Committee members, Professional Persons" (A0412, Docket 725, Page 18, 51)

Circuit Divergence Explanation:

The narrower Fifth Circuit exculpation reflects the *Highland* court's concerns about:

1. Protecting non-fiduciaries who lack estate duties and loyalty obligations
2. Avoiding blanket immunity for parties whose conduct should remain subject to scrutiny
3. Ensuring exculpation protects bankruptcy process participation rather than broader pre-petition conduct

The Third Circuit's more permissive approach (Delaware) allows broader exculpation when supported by findings that:

1. Exculpated parties made significant contributions to restructuring
2. Exculpation was material inducement to participate in process
3. Appropriate carve-outs preserve claims for most egregious conduct
4. Exculpation essential to obtaining stakeholder participation

Practice Alert: Practitioners must carefully tailor exculpation provisions to circuit-specific precedent. Using Delaware-style broad exculpation in Fifth Circuit jurisdictions invites reversal; using Fifth Circuit narrow exculpation in Delaware may unnecessarily limit protection available to parties who contributed to successful restructuring.

VI. INDEPENDENT INVESTIGATIONS AND INSIDER CLAIMS

A. Disinterested Director Investigations

Eight cases document formal independent investigations of potential insider claims, demonstrating best practices for supporting release provisions through business judgment findings.

Most Comprehensive Investigation - At Home:

At Home's investigation provides the most detailed process description:

Timeline and Structure:

- March 4, 2025: Jill Frizzley appointed as disinterested director (Docket 542, Page 51)
- March 28, 2025: Elizabeth Abrams appointed; Special Committee formed comprising Ms. Frizzley, Ms. Abrams, and John Butcher (Docket 542, Page 51)
- May 2025 through July 7, 2025: Investigation period (Docket 542, Pages 51, 60)

Investigation Scope and Methodology:

- Document review (Docket 542, Page 60)
- Interviews with Company executives, board members, and advisors (Docket 542, Page 60)
- Examined May 2023 liability management transaction (Docket 542, Page 61)
- Analyzed prepetition restructuring negotiations (Docket 542, Page 60)
- Examined Consenting Sponsor's role (Docket 542, Page 62)

Key Findings:

- **May 2023 Transaction:** "The Investigation helped to confirm that the liability management transaction was not

only at arm's-length but that there were effectively no other realistic financing alternatives available to the Company, a fact confirmed by the absence of interest in other potential lenders who were contacted during a follow-on 60-day go-shop period" (Docket 542, Page 61)

- **Sponsor Conduct:** "What emerged from that analysis was that the Consenting Sponsor did not receive management fees, did not receive director fees for its appointees to the board, and contributed considerable manpower, resources, and expertise, even at a time when it became apparent that its capital investment of more than \$1 billion would ultimately need to be written off" (Docket 542, Page 62)
- **Ultimate Conclusion:** "Based on the analysis presented by the Disinterested Directors, the board determined that the Company did not have any colorable or valuable claims and/or causes of action against the Company's Insiders relating to any prepetition conduct of such parties" (Docket 542, Page 62)

Comparison to Other Investigations:

Case	Investigation Duration	Documents Reviewed	Interviews Conducted	Key Findings	Investigator
At Home	~2 months (May-July 2025)	Not specified	Multiple (executives, board, advisors)	No colorable/valuable insider claims	Special Committee (Frizzley, Abrams, Butcher) + Young Conaway
Claire's	~1.5 months (July 23 - Sept 2025)	Over 1,000 documents	7 formal interviews (current/former directors, officers, advisors)	Sale Releases reasonable and in estates' best interests	Special Committee + Katten Muchin Rosenman LLP
Forever 21	~2 months (January-March 2025)	~700 documents	11 interviews (officers, advisors, SPARC, Simon, ABG reps)	No colorable/valuable claims against insiders	Independent Directors (Paul Aronzon, Scott Coulombe) + Young Conaway
JOANN	~2 months (investigation period not precisely specified)	Over 24,000 documents	Numerous interviews with officers and business leaders	No actionable claims precluding GA Transaction or Plan approval	Special Committee
Franchise Group	Investigation period not specified	Over 2,000 documents (~39,500 pages)	Not specified	Claims against Released Parties settled; claims against Excluded Parties preserved	Disinterested Managers (Jeffrey Stein, Anthony Horton)
Eddie Bauer	Ongoing as of filing	Over 2,000 documents (~39,500 pages)	Not specified	Investigation ongoing; Debtor Release "subject to results"	Disinterested Managers (Jeffrey Stein, Anthony Horton)

Pattern Observation:

Investigations spanning 1.5-2 months reviewing 700-24,000 documents and conducting 7-11 interviews represent the

"standard" scope for supporting release provisions. The Forever 21 investigation's review of only ~700 documents contrasts sharply with JOANN's 24,000+ documents, suggesting investigation scope varies based on:

- Corporate complexity (Forever 21 is simpler single-brand retailer; JOANN has multiple business lines and longer operating history)
- Transaction complexity (fewer documents needed if investigating single sponsor relationship vs. multiple insider transactions)
- Time constraints (investigations compressed when rapid confirmation is critical)

"Colorable or Valuable" Standard:

Multiple cases use this two-part formulation: "no colorable or valuable claims and/or causes of action" (At Home, Docket 542, Page 62; Forever 21, Docket 344, Page 18). This standard requires showing:

1. **"Colorable"**: Claims lack sufficient legal and factual basis to survive motion to dismiss or summary judgment
2. **"Valuable"**: Even if colorable, claims would not generate recovery exceeding litigation costs or would not provide greater value than releases obtain through facilitation of reorganization

Practice Guidance: This dual standard is critical for supporting release provisions—even if potential claims exist (colorable), releases may be justified if claims lack economic value or litigation would consume estate resources better allocated to creditor distributions. The investigation conclusion should address both prongs explicitly.

B. Excluded Parties and Preserved Claims

Several cases demonstrate sophisticated preservation strategies identifying specific parties excluded from releases for targeted litigation.

Franchise Group's "Excluded Parties" Structure (F0178):

Released Parties definition explicitly excludes five categories:

"(i) former directors of the Debtors, other than those terminated without cause between February 3, 2025 and the Effective Date; (ii) former employees, including officers of the Debtors other than those terminated without cause between February 3, 2025 and the Effective Date; (iii) Bryant Riley, B. Riley Financial, Inc., B. Riley Receivables II, LLC, and each of their respective Affiliates and Related Parties...; (iv) Brian Kahn, Lauren Kahn, Vintage Capital Management LLC, Prophecy Asset Management LP, and each of their respective Affiliates and Related Parties...; and (v) any advisors previously retained by the Debtors that are not retained as of the Confirmation Date (including, without limitation, (A) WFG, (B) Troutman Pepper Locke LLP, (C) Wachtell, Lipton, Rosen & Katz, and (D) Jefferies, LLC..." (Docket 1682-1, Pages 23-24)

Permitted Litigation Claims Against Excluded Parties:

"The Freedom HoldCo Debtor Litigation Trust Claims and the OpCo Debtor Litigation Trust Claims, including, for the avoidance of doubt, any Claims and Causes of Action belonging to the OpCo Debtors and the Freedom HoldCo Debtors against the Excluded Parties. For the avoidance of doubt, the Permitted Litigation Claims shall not include any Claims and Causes of Actions identified in the Freedom HoldCo Independent Director Report as actionable against any Released Party" (Docket 1682-1, Page 20)

Allocation: 30% First Lien, 58% Second Lien + HoldCo (shared), 12% GUC (Docket 1682-1, Pages 52-53)

Strategic Purpose: This structure resolves all claims against parties who cooperated with restructuring (Released Parties) while preserving claims against parties who may have engaged in wrongdoing (Excluded Parties). The "Freedom HoldCo Independent Director Report" (filed as Exhibit J to prior Plan Supplement) presumably identified which claims

should be released vs. preserved based on investigation findings.

Claire's "Former Officers" Preservation (C0367):

Claire's similarly carves out former officers from releases but with important limitation:

"Former Officers (those appointed by board resolution) explicitly excluded from Released Parties and Exculpated Parties definitions" (Docket 430, Pages 32-33; Docket 688, Pages 11, 32-33)

Critical Limitation: "Any recovery by the Liquidating Trust on account of any Non-Released Former Officer Claim...shall be satisfied solely by and to the extent of the proceeds of the Debtors' available D&O Liability Insurance Policies" after payment of defense costs (Docket 741, Page 46)

No personal liability: "No personal liability or judgment may be recorded against Former Officers; no collection from their personal assets permitted" (Docket 741, Page 46)

Comparison Insight:

Case	Preserved Claims Against	Recovery Source	Personal Liability?	Strategic Purpose
Franchise Group	Bryant Riley entities, Brian Kahn entities, former directors/officers (with date exceptions), certain advisors	Litigation Trust assets (no source restriction)	Yes (no personal liability limitation)	Full preservation for potential wrongdoing claims
Claire's	Former Officers appointed by board resolution	D&O insurance only (after defense costs)	No (explicitly prohibited)	Preserve claims but limit estate exposure to insurance proceeds
Forever 21	Not specified (investigation concluded no colorable claims)	N/A	N/A	Complete settlement via releases
At Home	Not specified (investigation concluded no colorable claims)	N/A	N/A	Complete settlement via releases

Practice Implication: Claire's "D&O insurance only" limitation represents middle-ground approach—preserving claims to satisfy committee and creditor concerns about insider accountability while limiting estate's downside exposure if claims fail. This structure:

- Eliminates risk of protracted litigation depleting estate assets
- Preserves potential recovery if D&O insurance proceeds available
- Avoids personal liability exposure that might prompt former officers to finance vigorous defense
- May reduce settlement value (defendants more willing to litigate when personal assets not at risk)

Franchise Group's full preservation without insurance limitation reflects greater concern about potential insider misconduct and committee insistence on meaningful claim prosecution rights.

VII. EMPLOYEE BENEFIT PLAN TERMINATIONS

A. Pension Plan Terminations - PBGC Involvement

Rite Aid Involuntary Termination (N0164):

Rite Aid presents the only case with involuntary pension termination by PBGC:

Timeline:

- July 31, 2025: PBGC established termination date for pension plan
- August 4, 2025: PBGC involuntarily terminated pension plan (effective date)
- PBGC assumed all pension obligations; Reorganized Debtors have **no residual liability** (Docket 3216, Page 37; Docket 3445, Pages 40-41)

PBGC Settlement:

- \$225,000 cash payment by Debtors/Reorganized Debtors
- Full release of "Termination Premium Claim" under 29 U.S.C. § 1306(a)(7)
- **Critical Preservation:** PBGC claims against EIC (non-Debtor) expressly preserved (Docket 3445, Page 69)

Legal Significance: The preservation of PBGC claims against non-debtor EIC (Elixir Insurance Company) demonstrates PBGC's strategy of settling against bankrupt entities for nominal amounts while preserving substantial claims against solvent non-debtor guarantors or controlled group members. The \$225,000 settlement likely represents small fraction of actual termination premium claim, with PBGC viewing this as acceptable loss on insolvent entity to preserve full recovery rights against EIC.

401(k) Plan Freeze:

- July 13, 2025: Employer matching contributions frozen (Docket 3216, Page 37; Docket 3445, Page 41)
- August 8, 2025: Employee salary deferrals frozen (Docket 3216, Page 37; Docket 3445, Page 41)
- Complete plan termination anticipated over approximately one-year period (Docket 3216, Page 37)
- **Special Entity Created:** "New Rite Aid Plan Sponsor Entity created specifically to act as sponsor of Rite Aid 401(k) Plans on and after Effective Date" (N0164, Docket 3215, Page 38)

JOANN's Section 1114 Process (J0054):

JOANN's plan conditions require extensive employee benefit terminations:

"All compensation and benefits programs terminated or rejected as of Effective Date except Retiree Plans and Rite Aid 401(k) Plans" (Docket 1387, Page 56)

"All Debtor Employee Benefit Plans terminated on Effective Date or as soon as practicable thereafter, with all withdrawal liability deemed triggered on such date" (Docket 1387, Page 56)

"Reorganized Debtors' obligations in respect of any Retiree Plans satisfied as of Effective Date through third-party insurance buyout or settlement" (Docket 1387, Page 56)

True Value's Retiree Settlement (T0286):

True Value achieved consensual resolution without PBGC involvement through Amended Retiree Settlement:

Settlement Terms:

- \$743,000 trust established to settle all future obligations under "Ongoing Retiree Plans" (post-employment medical and death benefits under Servistar Plan) (Docket 1054, Page 77; Docket 1115, Page 77)

- "Non-Ongoing Retiree Plans" (dental, vision, medical reimbursement, life insurance) may be terminated post-Effective Date under non-bankruptcy law (Docket 1054, Page 77; Docket 1115, Page 77)
- Retiree Trust established on Effective Date with Fiduciary James P. Carroll as trustee (Docket 1054, Page 39; Docket 1115, Pages 39, 79)
- Fiduciary compensation capped at \$20,000 for negotiating settlement (Docket 1054, Pages 77-78; Docket 1115, Pages 77-78)

Section 1114 Findings: Court found that in absence of settlement, Debtors satisfied § 1114 burden to demonstrate termination necessary to permit reorganization (Docket 1115, Page 29)

Alternative Finding: Court determined that "in absence of settlement, Debtors would have satisfied §1114 burden to demonstrate termination of retiree benefit obligations necessary to permit reorganization" (T0286, Docket 1115, Page 29)—providing important backup legal basis if settlement fails or is challenged.

Comparative Analysis - Settlement vs. Litigation Approach:

Case	Approach	Settlement Amount	PBGC Involved?	Outcome
True Value	Consensual settlement with retiree representative	\$743,000 trust for ongoing benefits	No	Ongoing retiree plans preserved; non-ongoing plans terminated
Rite Aid	PBGC involuntary termination	\$225,000 to settle termination premium claim	Yes	PBGC assumed all obligations; reorganized debtors have no residual liability
JOANN	Plan-mandated termination with buyout	Third-party insurance buyout or settlement (amount not specified)	Not mentioned	All retiree obligations satisfied through insurance/settlement

Practice Insight: True Value's consensual \$743,000 settlement avoided PBGC involvement, preserved some benefits for retirees, and cost less than JOANN's full buyout or termination approach. However, this required:

1. Court-appointed Fiduciary (James P. Carroll) with authority to negotiate on behalf of dispersed retiree group
2. Splitting benefits into "ongoing" (medical, death—essential) vs. "non-ongoing" (dental, vision—ancillary) to reduce settlement cost
3. Retiree trust structure ensuring funds dedicated solely to covered benefits
4. Careful § 1114 findings establishing legal basis for termination if settlement failed

The alternative approach (PBGC termination) transfers all future liability to federal government but requires showing pension plan was severely underfunded and company insolvency prevents continued funding—higher burden but complete resolution.

B. Collective Bargaining Agreement Treatment

Rite Aid's Effects Agreements (N0164):

Rite Aid negotiated "Effects Agreements" with unions significantly reducing severance obligations while terminating

substantially all CBAs:

- Approximately 7,500 unionized employees under 7 collective bargaining agreements at Petition Date (Docket 3216, Pages 36-38; Docket 3445, Pages 36-38)
- Effects Agreements negotiated with unions significantly reducing severance (Docket 3216, Page 36)
- By August 11, 2025, total workforce reduced to ~6,000+ employees (Docket 3216, Page 18)
- **Only one CBA remains in effect** as of disclosure statement filing (Docket 3216, Page 36)
- All CBAs except Local 1776 Agreement with Rite Aid of New Jersey terminate by Plan Effective Date (Docket 3215, Page 36)
- **Local 1776 Agreement assumed and assigned** to Reorganized Rite Aid of New Jersey (Docket 3215, Pages 38-39)

Strategic Value: Effects Agreements provided Rite Aid with:

1. Union acquiescence to CBA termination without protracted § 1113 litigation
2. Reduced severance obligations (original CBA terms likely required substantial WARN-equivalent severance; negotiated reduction saved estate cash)
3. Certainty regarding timing and costs of workforce reductions
4. Avoided work stoppages or disruptions during critical wind-down period

WARN Act Litigation Risk (N0164):

Despite Effects Agreements, Rite Aid faces WARN Act exposure:

- Gordon v. Rite Aid Corporation class action filed May 16, 2025
- Alleges violations of Worker Adjustment and Retraining Notification (WARN) Act
- Claims Debtors failed to provide required 60-day advance notice of mass layoffs and plant closings
- Seeks damages, penalties, attorneys' fees on behalf of affected employees
- **Interim Class Counsel estimates maximum liability:** \$6 million exclusive of attorneys' fees (Docket 3216, Page 16)
- Debtors dispute estimate and assert WARN Act defenses (Docket 3216, Page 16)

Party City's WARN Act Exposure (P0250):

Party City faces similar litigation:

- WARN Act adversary proceedings filed alleging violations of federal and New Jersey WARN Acts (Docket 1685, Pages 15-16)
- **Interim Class Counsel estimates maximum liability:** \$6 million exclusive of attorneys' fees (Docket 1685, Page 16)
- Debtors dispute estimate and assert defenses (Docket 1685, Page 16)

Comparison Insight: Both Rite Aid and Party City face **identical \$6 million estimated WARN Act exposure**, suggesting either: (a) interim counsel used same methodology/assumptions, (b) the cases involve similar workforce sizes and closure timing creating comparable liability, or (c) \$6M represents counsel's standard estimate for retail bankruptcy WARN exposure. The fact that both debtors "dispute alleged estimate and assert defenses" using identical language may indicate defense counsel coordination or simply reflect standard debtor responses to WARN claims in retail liquidations.

Effects Agreement Strategy: Rite Aid's Effects Agreements may provide defense against WARN Act claims by showing:

1. Union representatives consented to closure timeline and severance terms
2. Negotiated severance under Effects Agreements substitutes for WARN Act statutory severance
3. Unions waived WARN Act notice requirements through agreement
4. Company provided "adequate alternative" notice through union negotiation process

However, WARN Act's non-waivable nature may limit effectiveness of this defense.

VIII. LANDLORD ISSUES AND RENT RESERVES

A. Stub Rent Reserves - Administrative Rent Claim Management

Multiple cases establish dedicated reserves for "stub rent" (post-petition, pre-rejection rent obligations), demonstrating sophisticated landlord management strategies.

Comparative Reserve Structures:

Case	Stub Rent Reserve Amount	Funding Source	Coverage Period	Reconciliation Process
JOANN	\$9,000,000	Wind-Down Budget	Petition Date through rejection	Funded contemporaneously with ABL payoff; unused amounts return to Other Wind-Down Budget items
Rite Aid	\$23,000,000 (approximate)	DIP Facility proceeds	Post-petition through rejection	Funded from DIP as "Stub Rent Escrow"
Claire's	\$8,100,000	Wind-Down Reserve	Petition Date through August 31, 2025	Funded contemporaneously with ABL facility payoff from Sale Proceeds

JOANN's Reconciliation Process (J0054, Docket 472-1, Pages 24, 28):

- \$9M established in Wind-Down Budget
- Purpose: "Payment of Allowed Stub Rent Claims to landlords"
- **Unused amounts return to Other Wind-Down Budget items** (not to secured lenders)—protecting landlords through dedicated reserve

Claire's Coverage Period Specificity (C0367):

Claire's defines stub rent with precision: "The postpetition, prerejection portion of regularly accruing monthly rent, expenses, and charges under the terms of the Debtors' non-residential real property leases that are due for the period from and including the Petition Date through and including August 31, 2025" (Docket 688, Page 13).

The specific August 31, 2025 end date (filed in plan dated October 21, 2025) indicates substantially all lease rejections completed by that date, allowing precise reserve calculation rather than estimation.

Strategic Advantages:

Dedicated stub rent reserves provide multiple benefits:

1. **Landlord Cooperation:** Reduces landlord objections to cash collateral usage, DIP financing, and plan confirmation when landlords see dedicated protection
2. **Administrative Claim Priority Certainty:** Removes stub rent from general administrative claims pool subject to pro rata distribution risk
3. **Reconciliation Efficiency:** Allows focused reconciliation process with landlords rather than competing with other administrative claimants
4. **Secured Lender Agreement:** Secured lenders typically consent to stub rent reserves because: (a) § 365(d)(3) requires payment anyway, (b) reserves prevent court-ordered adequate protection payments draining general cash, (c) unused reserve amounts typically revert to secured lenders after reconciliation

Rite Aid's \$23M Reserve Scale: Rite Aid's substantial \$23M stub rent reserve (larger than JOANN's \$9M and Claire's \$8.1M) reflects:

- Larger store count (1,277 stores vs. JOANN's ~800, Claire's 354)
- Longer average lease rejection timeline
- Higher average rent per location
- More aggressive adequate protection demands from landlords given second bankruptcy filing

B. Unresolved Landlord Objections and Status Procedures

At Home - Multiple Landlord Groups (A0412):

At Home's confirmation order documents extensive unresolved landlord disputes with detailed status procedures:

Landlord Groups with Ongoing Disputes:

1. **Oracle America, Inc.:** Rights fully reserved regarding cure objection and reservation of rights [Docket 632] (Docket 725, Page 10)
2. **KDW Landlords:** Five major retail property groups (5Rivers CRE LLC, Brixmor Property Group Inc., Benderson Development Company LLC, Brookfield Properties Retail Inc., Kite Realty Group, NNN REIT Inc., Realty Income Corporation, SITE Centers Corp., Petty Partners LLC, TLM Realty Holdings LLC) reserved rights regarding adequate assurance and cure amounts [Dockets 640, 650] (Docket 725, Pages 10-11)
3. **Barclay Landlords:** Four landlord entities (DLC Management Corp., North River Village GEC LLC, Pyramid Management Group LLC, Rivercrest Realty Associates LLC, Urban Edge Properties) reserved rights **solely regarding cure amounts** (Docket 725, Page 11)
4. **Ballard Landlords:** Eight landlord entities (Boulevard at Box Hill 5 LLC, Broadstone Home NC LLC, Broadstone Home Texas LLC, FR Huntington Square LLC, RR Town Center Associates LLC, Seritage SRC Finance LLC, STORE Master Funding III LLC, Yavapai-Prescott Indian Tribe) rights **fully reserved until consensual resolution** (Docket 725, Pages 11-12)

Status Update Procedures:

- October 20, 2025: Debtors must file status updates regarding unexpired leases with Objection Landlords (Docket 725, Page 9)
- October 23, 2025 at 1:00 p.m. ET: Status hearing for update on open Assumption Objections (Docket 725, Page 9)
- **November 2025 or later:** November Hearing to address outstanding Assumption Objections (Docket 725, Pages 9-10)

Transform Landlord Resolution (A0412, Docket 725, Pages 67-68):

At Home consensually resolved disputes with Transform entities through specific allowed amounts:

Administrative Priority Claims (totaling \$359,985.05):

- Store No. 295 Bronx, NY: \$184,294.54
- Store No. 330 Pasadena, CA: \$91,231.51
- Store No. 229 Long Beach, CA: \$84,459.00

Cure Amounts (totaling \$667,303.50):

- Store No. 262 Bohemia, NY: \$12,501.13
- Store No. 316 Rancho Cucamonga, CA: \$123,552.64
- Store No. 358 Miami, FL: \$132,579.57
- Store No. 109 Clive, IA: \$77,083.34
- Store No. 106 O'Fallon, MO: \$59,469.32
- Store No. 318 Tustin, CA: \$121,525.80
- Store No. 265 Costa Mesa, CA: \$140,591.70

Total Resolution Value: \$1,027,288.55 across 10 locations

Practice Observation: The Transform consensual resolution demonstrates value of settling individual landlord disputes before confirmation hearing. The detailed store-by-store breakdown (with administrative claims for three stores and cure amounts for seven stores) suggests:

- Administrative claims likely represent unpaid post-petition rent through rejection date
- Cure amounts represent prepetition defaults requiring cure for assumption
- Settlement avoided potentially contentious adequate assurance litigation
- Specific dollar amounts indicate detailed accounting reconciliation and negotiation

Comparison to Conn's Deferred Deadline Contracts:

Conn's took different approach, extending numerous lease assumption/rejection deadlines to October 31, 2025 (effective November 30, 2025) rather than resolving pre-confirmation (C0350, Docket 1810, Pages 68-71). This deferral strategy:

- Allowed confirmation to proceed despite unresolved lease disputes
- Provided additional time for Debtors to evaluate which locations to retain
- Created risk of post-confirmation lease rejection damage claims
- Preserved flexibility but extended case administration period

Strategic Choice: At Home's approach (resolve major landlord groups consensually, defer only truly disputed matters to November hearing) versus Conn's approach (defer substantially all lease decisions to post-confirmation) reflects different strategic priorities—At Home prioritized clean confirmation and rapid emergence, while Conn's prioritized optionality regarding lease portfolio during liquidation process.

IX. TAX TREATMENT AND § 1146 EXEMPTION PROVISIONS

All eleven cases include § 1146(a) transfer tax exemption provisions, but with varying specificity regarding scope and government official obligations.

Standard Language Comparison:

Most Comprehensive - True Value (T0286, Docket 1054, Pages 33-34, 50; Docket 1115, Pages 33-34, 50):

"any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment" (emphasis added)

Key Elements:

1. **Exemption scope:** 9+ specific tax categories enumerated
2. **Government official directive:** Confirmation Order "shall direct" officials to forego collection and accept filings without payment
3. **Mechanism:** State/local officials must accept documents without assessing/collecting taxes

JOANN's Enhanced Protection (J0054, Docket 1387, Page 31, 40-41):

JOANN adds specific directive language: "State/local officials must accept filings without payment of such taxes" with court order providing "Confirmation Order will constitute approval under both Section 1123 and Section 363 of Bankruptcy Code" (Docket 1387, Pages 31, 40-41).

Rite Aid's Broader Scope (N0164):

Rite Aid's exemption explicitly covers: "the issuance, transfer, or exchange of any debt or equity securities of the Debtors or the Reorganized Debtors; the creation or recording of any mortgage, deed of trust, or other security interest; the making, assignment, or recording of any lease or sublease; the making or delivery of any deed, instrument of transfer; [and] any other Restructuring Transaction including the McKesson Equity Distribution and transfers to the Liquidating Trust" (Docket 3445, Pages 30-31, 84-85)

Practice Implication - Government Compliance:

The specific directive language ("shall direct the appropriate...officials...to forego collection" and "to accept for filing...without payment") creates enforceable obligation on recording officials. However, practitioners should be aware:

1. **Local Practice Variations:** Some recording jurisdictions may dispute federal bankruptcy court authority to compel acceptance without payment, requiring motion practice to enforce
2. **Supporting Documentation:** Recording officials often require certified copy of confirmation order, opinion of debtor's counsel, and specific reference to § 1146(a) exemption
3. **Exemption Scope Disputes:** States may dispute whether specific transaction qualifies as "transfer...under the plan" versus independent transaction merely facilitated by plan
4. **Sales Tax vs. Transfer Tax:** § 1146(a) exempts transfer/stamp/recording taxes but generally does NOT exempt sales or use taxes on asset transfers (though some courts have extended exemption to use taxes in appropriate circumstances)

At Home's Texas Taxing Authority Carve-Out:

At Home includes special provision for Texas ad valorem taxing authorities:

"Tax Claims classified as Class 1 (Other Secured Claims)... paid within 10 days of Effective Date or when due under non-bankruptcy law" with "**Tax Liens expressly retained and not primed by exit financing**" (A0412, Docket 725, Pages 76-77, emphasis added)

Additionally, "Authorities may amend proofs of claim once current year taxes assessed" (Docket 725, Page 77), accommodating Texas property tax assessment cycle that may not align with bankruptcy confirmation timing.

Legal Significance: The explicit preservation that "Tax Liens expressly retained and not primed by exit financing" addresses Texas constitutional and statutory protections for ad valorem tax liens, which receive special priority under Texas law. This carve-out likely was condition of Texas taxing authorities' non-objection to confirmation, as challenging exit financing lien priority could have substantially delayed or prevented emergence.

X. CORPORATE GOVERNANCE - POST-EMERGENCE BOARD STRUCTURES

The reorganization cases (At Home, Franchise Group) demonstrate creditor control through board designation rights, while liquidation cases implement single plan administrators or liquidating trustees.

A. Creditor-Controlled Boards - Reorganizations

At Home New Board Structure (A0412, Docket 542, Pages 2, 6; Docket 725, Page 24):

Board Seat	Selection Authority	Notes
Seat 1	Chief Executive Officer	Ex officio; management representative
Seats 2-5 (4 directors)	Redwood Capital Management, LLC	In consultation with CEO; majority control
Seat 6	Anchorage Capital Advisors, L.P.	In consultation with CEO
Seat 7	Farallon Capital Advisors, L.L.C.	In consultation with CEO

Total: 7 Directors (6 creditor-selected + 1 management)

Franchise Group New Board (F0178, Docket 1682-1, Page 36):

Similar structure: "Seven directors total... (a) the CEO; and (b) six directors selected as follows, in each case, in consultation with the CEO, (i) four directors selected by Redwood Capital Management, LLC, (ii) one director selected by Anchorage Capital Advisors, L.P., and (iii) one director selected by Farallon Capital Advisors, L.L.C."

Parallel Structure Significance:

Both At Home and Franchise Group give **Redwood Capital Management** majority board control (4 of 7 directors), with Anchorage Capital and Farallon Capital each receiving one seat. This identical structure across two unrelated retail bankruptcies suggests:

- Common Investor Base:** Redwood, Anchorage, and Farallon appear as DIP lenders and/or first lien creditors in both cases, indicating these firms specialize in retail distressed debt
- Standard Negotiated Formula:** 4/1/1 split may represent market standard for board allocation when three major creditor groups participate
- Consultation Requirement:** The "in consultation with CEO" language provides management with input but not veto power over director selection

Management Incentive Plans:

- At Home:** "Up to 10% of Reorganized Equity (on fully diluted basis) reserved for management and New Board; to be approved by New Board on or within 90 days of Effective Date" (Docket 542, Pages 15, 36, 38)
- Franchise Group:** "New Board to 'adopt and implement one or more Management Incentive Plans'" (Docket

1682-1, Page 78), with similar equity reserve

Governance Implication: The 90-day post-emergence deadline for MIP approval ensures creditor-controlled boards determine management compensation rather than pre-emergence management setting their own packages. This timing protects creditors receiving equity from excessive dilution through management grants while providing new board with tool to incentivize key employees.

B. Plan Administrators and Liquidating Trustees - Single-Person Control

Forever 21's Committee-Selected Administrator (F0181):

Forever 21 demonstrates dramatic governance transformation through Committee Settlement:

Original Proposal: "Plan Administrator selected by Debtors" (implied from redlined changes)

Amended Proposal: "'Plan Administrator' means that person or Entity selected by the Committee, in its sole discretion" (Docket 472-1, Page 10, 34)

Powers Include:

- "(vi) Pursuing, prosecuting, resolving, compromising, settling retained Causes of Action without Bankruptcy Court notice or approval"
- "(vii) Objecting to Claims"
- "(xi) Winding down, liquidating, dissolving post-Effective Date Debtors and non-Debtor Company Parties without further actions or payments" (Docket 472-1, Pages 34-35)

Non-Limitation Clause: "The enumeration of the foregoing powers shall not be considered in any way to limit or control the power and authority of the Plan Administrator to act as specifically authorized by any other provision of this Plan, the Plan Administration Agreement, and/or any applicable law" (Docket 472-1, Page 30)

Strategic Significance: The shift from debtor-selection to committee-selection fundamentally changes who controls liquidation process. Committee-selected administrators:

- Align with unsecured creditor interests rather than secured creditor or insider preferences
- May pursue avoidance actions more aggressively
- Bring independent judgment to disputed claim resolution
- Ensure liquidation maximizes unsecured creditor recoveries

The authority to prosecute causes of action "without Bankruptcy Court notice or approval" is particularly significant—prevents targets from learning of potential claims in advance and avoids costly motion practice for each settlement. This unilateral settlement authority could generate substantial recoveries but also concentrates enormous discretion without oversight.

JOANN's Dual Structure (J0054):

JOANN splits responsibilities between Plan Administrator and GUC Trustee:

Plan Administrator: "Appointed on Effective Date as sole officer, director, and manager of Wind-Down Debtors" with authority over administrative claims, other secured claims, priority claims, and Class 5 (Prepetition 3L Secured Claims) (Docket 1387, Pages 46-47)

GUC Trustee: "Selected by Committee" with "exclusive authority over Class 6 claims reconciliation and status as representative of estates under §1123(b)(3)(B)" (Docket 1387, Pages 14-15, 41-42). Steven Balasiano through MHR

Advisory Group, LLC appointed (Docket 1387, Page 45).

Division of Labor:

- Plan Administrator handles senior claims where secured lenders have interest
- GUC Trustee handles general unsecured claims where creditor committee negotiated protections
- Collaborative procedure for Administrative Claims: "Plan Administrator must provide 5 business days' notice to Distribution Trustee before settling Administrative Claims" with GUC Trustee able to "elect to assume primary responsibility if disagrees with settlement" (Docket 1387, Pages 46-47)

Comparison Insight: JOANN's dual structure provides checks and balances—neither party has complete control, requiring cooperation and notice. This contrasts with Forever 21's single Plan Administrator model where Committee's appointee has unilateral authority. The dual structure may:

- **Benefit:** Prevents unilateral decisions adverse to either secured or unsecured creditors; creates negotiation/compromise dynamic
- **Cost:** Requires coordination and may slow decision-making; potential for disputes between administrators

XI. SECTION 1129(A)(10) COMPLIANCE STRATEGIES

Seven cases provide detailed analysis of § 1129(a)(10) compliance, revealing various strategies for satisfying the "at least one impaired accepting class" requirement.

Standard Compliance - Multiple Voting Classes

Most Common Pattern (9 of 11 cases):

Cases with multiple impaired voting classes achieving acceptance:

- **At Home:** Classes 4-9 (six voting classes) all voted to accept, eliminating need for cramdown for these classes (Docket 725, Page 14, ¶21)
- **Franchise Group:** Classes 3, 4, 5, certain Class 6 subclasses, 7, 8-A, and 8-B voted to accept (Docket 1596, Pages 13-14)
- **Claire's:** Classes 3 (Priority Term Loan) and 4 (Existing Term Loan) both accepted (Docket 741, Page 10)
- **JOANN:** Classes 3 (Prepetition Term Loan) and 4 (General Unsecured) both accepted (Docket 1387, Pages 8-10)
- **True Value:** Classes 3 (Prepetition Lender) and 4 (General Unsecured) both accepted (Docket 1115, Pages 22-23)
- **Party City:** Classes 1 (Priority Claims) and 3 (Prepetition 2L Notes) both accepted (Docket 1827, Pages 16-17)
- **Conn's:** Classes 4, 5, and 6 all voted to accept (Docket 1810, Page 14, ¶21)

Rite Aid's Single Voting Class (N0164):

Rite Aid represents opposite extreme with only one impaired voting class:

"Class 3 (Prepetition FILO Claims) is impaired and entitled to vote" receiving only 1% recovery (\$600,000 on \$67M claims) (Docket 3216, Page 51; Docket 3445, Page 51)

All other classes either:

- Unimpaired (Classes 1, 2) - presumed to accept
- Impaired but deemed to reject (Classes 4, 7, 8) - not entitled to vote

Strategic Purpose: The nominal \$600,000 distribution to Class 3 (representing ~1% recovery) was specifically

calibrated to be:

- Large enough to potentially induce acceptance (something > nothing for secured creditors facing 0% in alternative scenarios)
- Small enough to preserve maximum value for DIP lenders receiving 56.3% recovery
- Sufficient to satisfy § 1129(a)(10) if Class 3 accepts

Critical Condition: "It is a condition precedent to the effectiveness of the Plan that at least one impaired class acceptance required" (N0164, Docket 3216, Page 54). If Class 3 rejected, Plan could not be confirmed absent modification because:

- No other impaired class was entitled to vote
- Classes 4, 7, 8 deemed to reject (receiving nothing)
- Cramdown under § 1129(b) requires § 1129(a)(10) satisfaction first

Eddie Bauer's Similar Single-Class Structure (E0164):

Eddie Bauer's proposed plan similarly relies on single impaired voting class:

- Class 3 (ABL Claims): Impaired and entitled to vote
- Class 6 (General Unsecured Claims): Impaired and entitled to vote

Both classes necessary for § 1129(a)(10), but Class 6's "GUC Contingent Recovery Pool" structure (conditioning recovery on acceptance) creates strong voting pressure.

Franchise Group TopCo - The § 1129(a)(10) Exception Problem

Factual Predicate (F0178, Docket 1682, Pages 8, 10-13):

Following Claims Stipulation Order [Docket 1561] and Claims Objection Order [Docket 1649]:

- All claims in Class 8-C (TopCo General Unsecured Claims) eliminated through withdrawals and sustained objections
- Kahn Objection (only remaining objection) consensually resolved
- **Result:** TopCo had only unimpaired classes (deemed to accept) and one impaired equity class (deemed to reject)
- **No impaired classes voted to accept or reject**

Court's Finding:

"Following entry of the Claims Stipulation Order and the Claims Objection Order, there are no Impaired Claims in Class 8-C (TopCo General Unsecured Claims) and, therefore, there are no Impaired Claims at TopCo... Accordingly, because there are no Impaired Claims at TopCo, section 1129(a)(10) of the Bankruptcy Code **is not applicable** with respect to the Plan at TopCo and/or the Debtors have otherwise satisfied section 1129(a)(10) of the Bankruptcy Code with respect to TopCo." (Docket 1682, Page 13, ¶10, emphasis added)

With handwritten notation: "given the unique facts and the lack of objection for purposes of this case only"

Statutory Language Analysis:

Section 1129(a)(10) states: "If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider."

The court's "not applicable" finding cannot be reconciled with statutory text because:

1. **Condition is Global:** "If a class of claims is impaired" refers to ANY class ANYWHERE in the plan, not just classes at TopCo specifically
2. **No Exception Exists:** Statute contains no exception for cases/entities where no impaired claims exist at a particular debtor
3. **"Has Accepted" is Affirmative:** Requires actual acceptance vote, not mere absence of rejection
4. **Policy Underlying:** Ensures meaningful creditor participation in reorganization; frustrated when no impaired class votes

Potential Alternative Theories (not articulated in order):

The court could have reached same result through:

1. **Single Entity Treatment:** Treat jointly administered cases as single entity for § 1129(a)(10) purposes, with acceptance by Classes 3-4-5 at other debtors satisfying requirement for entire plan including TopCo
2. **Substantive Consolidation:** Deem estates substantively consolidated solely for § 1129(a)(10) analysis (though plan explicitly states no substantive consolidation)
3. **Statutory Interpretation:** Interpret "if a class of claims is impaired" as creating conditional rather than absolute requirement—if NO impaired classes exist, requirement does not apply (though this contradicts plain meaning)
4. **Implied Exception:** Find implied exception for holding company shells with no creditors where § 1129(a)(10)'s purposes (creditor participation, preventing insider manipulation) are not implicated

Appellate Vulnerability Assessment:

Factor	Favors Affirmance	Favors Reversal
Plain Language		✓ Statute contains no exception
Legislative History		✓ Congress intended mandatory requirement
Policy Purposes	✓ TopCo had no creditors to participate	✓ Requirement ensures creditor voice regardless
Prejudice	✓ No party objected; no creditors harmed	✓ Statutory rights not waivable by consent
Precedent	✓ Novel situation; no controlling authority	✓ Statutory requirements apply absent express exception
Practical Effect	✓ Supplemental confirmation of shell entity	✓ Mandatory requirements cannot be judicially waived

Conclusion: The TopCo finding likely would not survive appellate review if challenged. However, the 14-day appeal deadline under Bankruptcy Rule 8002 has expired with no appeal filed, making the order final. The court's limiting notation ("for purposes of this case only") demonstrates judicial awareness of precedential problems and attempt to prevent citation in future cases.

Practice Recommendation: Practitioners facing similar situations should:

- **Avoid reliance** on Franchise Group TopCo as precedent unless facts are truly identical
- **Plan for alternative approaches** if claim eliminations may create no-voting-class situation:
 - Voluntary dismissal of entity-specific case

- Creating minimal claims (\$1,000) to preserve voting class
- Substantive consolidation for voting purposes
- Administrative consolidation argument
- **Obtain waivers** from all parties with potential standing before proceeding with confirmation lacking § 1129(a)(10) compliance
- **Include limitation language** if court permits confirmation, explicitly noting decision is case-specific and creates no precedent

XII. SPECIFIC CREDITOR CARVE-OUTS AND SPECIAL TREATMENTS

A. Texas Taxing Authorities - Uniform Provisions

Four cases with Texas operations (At Home, Conn's, Party City, True Value) include nearly identical Texas taxing authority carve-outs:

Standard Language (representative from At Home):

"Texas Taxing Authorities include all ad valorem taxing jurisdictions represented by [specified Texas tax collection firms], encompassing numerous Texas counties, school districts, and municipalities" with:

- "Tax Claims classified as Class 1 (Other Secured Claims)"
- "Payment: Later of (a) within 10 days of Effective Date or (b) when due under non-bankruptcy law"
- **"Tax Liens expressly retained and not primed by exit financing"**
- "Authorities may amend proofs of claim once current year taxes assessed" (A0412, Docket 725, Pages 76-77, emphasis added)

Legal Necessity: Texas constitutional provisions (Art. VIII, Sec. 15; Art. XI, Sec. 9) and Texas Tax Code provisions create special protections for ad valorem tax liens that:

1. Prime most other liens by operation of state law
2. Cannot be avoided as preferential or fraudulent transfers
3. Receive special priority even in bankruptcy
4. May not be primed by DIP or exit financing without taxing authority consent

The uniform carve-out language reflects standard form negotiated between bankruptcy practitioners and Texas taxing authorities (represented by specialized tax collection firms), ensuring ad valorem tax treatment complies with Texas constitutional requirements while allowing bankruptcy case to proceed.

Party City's Texas Comptroller Resolution (P0250):

Party City includes more detailed Texas Comptroller provisions:

- "Texas Comptroller opts out of Administrative/Priority Waterfall Treatment" (Docket 1827, Page 47)
- "Retains all setoff rights under Section 553 of Bankruptcy Code and applicable state law" (Docket 1827, Page 47)
- "Entitled to statutory interest under Texas Tax Code Section 111.060 on any allowed claims" (Docket 1827, Page 47)
- "All allowed claims to be paid within 60 months of Petition Date consistent with statutory requirements" (Docket 1827, Pages 47-48)

Comparison Observation: The Texas Comptroller's explicit opt-out from waterfall treatment demonstrates that

governmental units frequently reject alternative treatment mechanisms (like Party City's Administrative/Priority Waterfall requiring consent to less than full payment) and insist on statutory treatment. The 60-month payment deadline reflects § 1129(a)(9)(C) maximum period for priority tax claims paid in installments.

B. Insurance Company Resolutions - Complex Policy Assumption Issues

True Value's Tiered Insurance Treatment (T0286):

True Value's confirmation order establishes most complex insurance resolution with three distinct categories:

Category 1 - AIG Assumed Insurance Contracts:

- Three specific policies (General Liability 203-92-72, Workers Comp 080-88-0709, Auto Liability 028-40-2821)
- Effective January 1, 2025 through July 1, 2025
- **Purchaser (Do it Best) responsible** for these policies including credit/collateral support for renewals (Docket 1115, Pages 41-42, 46)

Category 2 - Remaining AIG Insurance Contracts:

- All other AIG policies not in Category 1
- Subject to separate treatment provisions with specific notice requirements to AIG entities (Docket 1115, Pages 35, 48)

Category 3 - Chubb Insurance Contracts:

- Subject to detailed provisions addressing assumption, cure, and adequate assurance (Docket 1115, Pages 35, 48-50)

D&O Policies - Universal Protection:

- Must be maintained for **six years post-Effective Date** with runoff/tail coverage
- Costs and premiums constitute administrative expenses with **priority over other administrative expenses** (except statutory fees)
(Docket 1054, Page 42; Docket 1115, Pages 42, 46-48)

Party City's Travelers Resolution (P0250):

Party City's Travelers resolution demonstrates sophisticated multi-claim treatment:

Claim Type	Amount	Security/Priority	Treatment
Effective Date Travelers Administrative Claim	\$582,000	Administrative priority	Reserved for determination; subject to Plan waterfall
Effective Date Travelers Secured Claim	\$450,254	Secured by cash collateral	Travelers may apply cash collateral immediately after confirmation
Travelers Unsecured Claim	Unliquidated	General unsecured	Subject to Class 4 treatment
Letter of Credit Proceeds Rights	\$16,977,000	Contractual rights preserved	Travelers may draw; Debtors/Liquidating Trust may assert surplus claims

Avoidance Actions: "All avoidance actions against Travelers released and deemed waived" (Docket 1827, Page 50)

Strategic Carve-Outs: Debtors/Liquidating Trust retain rights to:

- Object to Travelers' claims on contractual or other non-avoidance grounds
- Assert claims to surplus Letter of Credit Proceeds beyond Travelers' allowed claims

Practice Insight: The Travelers resolution balances multiple competing interests through:

1. Immediate access to \$450,254 cash collateral (satisfies Travelers' secured position)
2. Preservation of \$16,977,000 letter of credit draw rights (protects Travelers' ongoing obligations)
3. Waiver of avoidance actions (eliminates preference/fraudulent transfer exposure)
4. Preservation of surplus claim rights (protects estate from paying more than ultimately determined necessary)

This "surgical" approach releases specific litigation exposure (avoidance actions that would be costly to defend) while preserving contract-based defenses to overliquidated claims—demonstrates sophisticated negotiation achieving settlement on favorable terms to both parties.

XIII. PROFESSIONAL FEE STRUCTURES AND CAPS

A. Committee Professional Fee Reserves and Caps

Franchise Group's \$21M Committee Reserve (F0178):

Franchise Group establishes most detailed committee professional fee structure:

Reserve Amount: "\$21 million" base amount (Docket 1682-1, Page 17)

Target Cap: "Committee professionals' fees 'shall take commercially reasonable efforts to ensure that the Professional Fee Claims of the Professional Persons of the Creditors' Committee do not exceed \$16 million in total fees and expenses'" (Docket 1682-1, Page 17)

Litigation Trust Funding Formula:

Litigation Trust Escrow Amount =
\$21,000,000 (base)
- \$X (actual committee professional fees, target \$16M)
+ \$13,250,000 (TopCo Cash Allocation)
= Approximately \$18,250,000 (if fees reach \$16M target)

Incentive Structure: The more committee professionals charge (up to \$21M cap), the less funding goes to Litigation Trust that benefits unsecured creditors the committee represents. This creates appropriate fee discipline incentives while ensuring professionals are compensated.

Contrast with JOANN:

JOANN does not establish similar cap but includes "Post-Closing UCC Budget" of \$1,250,000 for Committee professionals' fees after GA Transaction closing, with "Committee Budget Savings" (any unused amounts) contributed to GUC Trust (Docket 1387, Pages 8, 25, 29).

True Value's Post-Confirmation Committee Fee Limitation (T0286):

"Wind-Down Debtors and Liquidating Trust not responsible for paying fees or expenses incurred by members or advisors

to Creditors' Committee after Effective Date" with exception for "Reasonable and documented fees and expenses incurred by Creditors' Committee's Professionals in connection with preparation and prosecution of final fee applications paid by Liquidating Trust in ordinary course without approval by Bankruptcy Court" (Docket 1115, Page 26; Docket 1054, Page 7)

Practice Insight - Fee Cap Negotiation:

Committee professional fee caps/targets represent critical negotiation points between:

- **Committees:** Want maximum budget for investigation, litigation support, and negotiation
- **Secured Lenders:** Want to minimize professional fee erosion of collateral
- **Debtors:** Want adequate professional support without excessive cost

The Franchise Group structure (\$21M cap with \$16M target and "commercially reasonable efforts" language) represents sophisticated compromise:

- **\$21M cap** protects lenders from uncapped exposure
- **\$16M target** creates goal without absolute limitation
- **"Commercially reasonable efforts"** provides flexibility if complex issues require additional work
- **Direct linkage to trust funding** aligns committee incentives (unused amounts benefit unsecured creditors directly)

Post-Confirmation Fee Restriction: True Value's prohibition on post-Effective Date committee professional fees (except for prosecuting final fee applications) is common in liquidation plans—once plan confirmed and committee's core work complete, committee dissolves and ongoing fees become wasteful. Exception for "final fee application preparation" ensures professionals can properly document and justify fees incurred through confirmation without requiring free work.

B. Professional Fee Escrow Timing and Funding

Three Distinct Approaches:

Approach 1 - Estimate 3-5 Days Before Effective Date:

- **JOANN:** "Professionals must estimate unpaid fees 3 business days before Effective Date" (Docket 1387, Page 17)
- **Rite Aid:** "Professionals must provide fee estimates 5 days before anticipated Effective Date" (Docket 3445, Page 17)
- **At Home:** Not specified in summaries but likely similar
- **True Value:** "5 days before anticipated Effective Date" (Docket 1115, Page 17)

Approach 2 - Estimate at Confirmation:

- **Franchise Group:** "Professionals must estimate unpaid fees/expenses by 2 business days before Confirmation Date" (Docket 1596, Page 27)

Approach 3 - Aggregate Budget Amount:

- **Forever 21:** Professional Fee Escrow Amount defined as "aggregate amount of Professional Fee Claims and other unpaid fees and expenses that the Professionals estimate they have incurred or will incur" with timing "3 days before Effective Date" (Docket 472-1, Pages 22-23)

Application Deadlines After Effective Date:

Case	Final Application Deadline	Rationale
Most Cases	45 days after Effective Date	Standard Bankruptcy Rule 2016(a) timeframe
Party City	30 days after Effective Date (modified from Plan's 45-day deadline)	Confirmation Order modification; accelerated timeline
Franchise Group	45 days after Effective Date	Standard

Party City's 30-Day Modification: The Confirmation Order modified the Plan's 45-day deadline to 30 days (P0250, Docket 1827, Page 37), representing more aggressive timeline requiring professionals to finalize billing immediately post-confirmation. This benefits estates by:

- Accelerating release of Professional Fee Escrow excess amounts for distribution
- Reducing period of uncertainty regarding reserve adequacy
- Forcing prompt completion of timekeeping and billing reconciliation

However, 30-day deadline creates risks:

- Insufficient time for detailed review of time entries and expense documentation
- May result in understated applications if professionals rush to meet deadline
- Compressed timeframe for objections (typically 21 days after filing) creates parallel pressure on fee examiners and objecting parties

Practice Recommendation: 45-day deadline represents better balance between prompt fee resolution and adequate time for preparation. If courts insist on shorter deadlines, practitioners should:

- Begin fee application preparation well before Effective Date
- Maintain contemporaneous detailed time records
- Pre-negotiate fee parameters with major stakeholders to reduce objection likelihood
- Include "estimation" language allowing revision if errors discovered post-filing

XIV. SPECIFIC TRANSACTION STRUCTURES

A. Credit Bids and Take-Back Debt

Claire's Sale Structure (C0367):

Asset Purchase Agreement with AWS Claire's, LLC provides:

- **Cash consideration:** \$104 million (subject to working capital adjustments)
- **Subordinated seller note:** \$36 million (fully subordinated to Purchaser's lender regarding both lien priority and payment priority following certain defaults)
- **Additional consideration:** Aggregate Cure Costs of all Assigned Contracts
- **Assumption of liabilities:** Employee-related liabilities at acquired locations (Docket 430, Pages 17-18; Docket 688, Page 6)

Acquired Assets:

- Leases for 795-975 retail locations and distribution centers
- All inventory and tangible personal property at Go-Forward Stores
- All intellectual property (trademarks, trade names, domains)
- Designated contracts, permits, books/records
- Transferred free and clear under § 363(f)
(Docket 430, Pages 17-18)

Subordinated Note Terms: The \$36M seller note is "fully subordinated to all senior interests of Purchaser's lender with respect to both lien priority and payment priority following certain events of default" (Docket 430, Page 17)—making its value highly contingent on:

- Purchaser's success in operating acquired business
- Purchaser's ability to service senior debt
- Absence of senior lender defaults triggering payment subordination

Valuation Impact: The subordinated nature significantly reduces note's present value compared to \$36M face amount. Liquidation analysis should discount note value by 30-70% depending on Purchaser's projected credit quality.

True Value Credit Bid (T0286):

True Value's purchaser (Do it Best Corp.) used different structure:

- No upfront cash consideration specified
- Prepetition Lender Claims of \$238.2M partially satisfied through transaction
- Remaining Prepetition Lender Claims receive cash distributions from retained reserves on specific schedules
- Transaction closed November 22, 2024 (39 days after October 14 petition date)
(Docket 1054, Pages 6-7, 22-23; Docket 1115, Pages 22-23)

Rite Aid Credit Bid (N0164):

Rite Aid does not involve traditional "credit bid" but effectively accomplishes similar economics through:

- McKesson purchases generic inventory at 40% of invoice, branded inventory at 65% of invoice
- McKesson settles ~\$60M in 503(b)(9) administrative claims
- McKesson pays \$19.7-20M cash (depending on IP sale timing)
- **McKesson receives 100% equity ownership** as consideration
(Docket 3216, Pages 7-8, 42)

Comparison - Credit Bid vs. Cash Transaction:

Structure	Advantages	Disadvantages	When Appropriate
Credit Bid (True Value implied)	Eliminates refinancing requirement; provides certainty of debt satisfaction; may avoid fraudulent transfer concerns	May undervalue assets if credit bid amount below fair market value; limits competitive bidding if stalking horse credit bid too high	When secured lenders want to control outcome; when market for assets limited
Cash + Subordinated Note (Claire's)	Provides immediate cash for administrative/priority claims; note preserves upside for selling estate	Subordinated note value uncertain; requires Purchaser to obtain senior financing; creates contingent receivable	When immediate liquidity critical; when buyer needs leverage for operational growth

Structure	Advantages	Disadvantages	When Appropriate
Supplier Takeover (Rite Aid/McKesson)	Resolves critical supplier disputes; maintains business continuity; settles administrative claims efficiently	May violate absolute priority; requires extraordinary supplier leverage; limits other buyer participation	When single supplier has monopoly/dominant position; when supplier administrative claims exceed equity value

B. DIP Lender Fees and Premiums

At Home DIP Fee Structure (A0412):

All fees paid-in-kind (PIK) rather than cash:

- **Backstop fee:** 5.00% of commitment (on entire \$600M = \$30M)
- **Upfront fee:** 3.00% of commitment (\$18M)
- **Unused fee:** 4.00% per annum on undrawn amounts
- **Exit fee:** 3.00% of funded amount
- **Default rate:** +4.00% upon Event of Default (Docket 542, Annex D to Exhibit E, Pages 1-2)

Total Fee Load: Approximately \$48M in upfront fees alone (backstop + upfront = \$30M + \$18M), representing **8% of total commitment**—extraordinarily expensive DIP financing reflecting:

1. Retail sector distress and lender risk aversion
2. Tariff uncertainty creating unpredictable collateral values
3. Second-lien status of some rolled-up debt requiring premium to induce participation
4. Competitive dynamics where limited lenders willing to provide retail DIP financing

PIK Structure Implications:

Paying fees through PIK (adding to principal) rather than cash:

- **Preserves liquidity** for operations during bankruptcy case
- **Increases total debt** at emergence (fees compound over time)
- **Benefits DIP lenders** through higher ultimate recovery if successful
- **Increases risk** of failing to meet Pro Forma Leverage Caps if case extends

Franchise Group DIP Premium Conversion (F0178):

"Certain DIP lenders who received DIP Backstop Premium, Commitment Premium, or Exit Premium may elect 'DIP Premium Conversion' to convert their premiums to Reorganized Common Equity at a 25% discount to total equity value" (Docket 1682-1, Page 31)

Economic Analysis:

If total equity value is \$1 billion (Franchise Group's implied enterprise value), DIP lender with \$10M in premiums converting at 25% discount receives equity valued at:

$$\begin{aligned} & \$10M / (1 - 0.25) = \$10M / 0.75 = \$13.33M \text{ equity value} \\ & = \$3.33M \text{ gain from conversion vs. cash payment} \end{aligned}$$

The 25% discount (or conversely, 33% premium to cash value) incentivizes DIP lenders to take equity rather than cash, aligning their interests with reorganized company success while reducing cash drain at emergence.

Practice Observation: DIP premium conversion features are increasingly common in sponsored reorganizations where DIP lenders are sophisticated financial institutions willing to accept equity exposure. Key considerations:

- **Discount percentage:** 15-30% common; larger discounts (deeper discounts from equity value) increase lender incentive
- **Valuation methodology:** Must establish clear equity valuation methodology (enterprise value, comparable companies, DCF)
- **Election timing:** Typically made before Effective Date with binding effect
- **Dilution impact:** Conversion dilutes other equity recipients; must be disclosed in plan

XV. SYNTHESIZED PRACTICE RECOMMENDATIONS

Based on comprehensive analysis of all eleven cases, the following practice recommendations emerge:

For Retail Bankruptcy Representations:

1. **Inventory Management is Critical:** JOANN's "below 90% in-stock levels" and Rite Aid's "55% in-stock rates" demonstrate that inventory failures trigger rapid liquidation spirals in retail. Counsel should:
 - Identify in-stock levels in first-day declarations
 - Obtain detailed supplier commitment letters for post-petition supply
 - Structure DIP facilities with inventory maintenance covenants
 - Monitor weekly inventory reports for early warning of supply chain collapse
2. **Second Bankruptcy Risk Requires Conservative Projections:** Three cases (Forever 21, JOANN, Rite Aid) filed second bankruptcies within 12-18 months of emergence, suggesting 2023-2024 post-pandemic retail restructurings used overly optimistic projections. When evaluating reorganization feasibility:
 - Apply 30-50% "stress case" reductions to management revenue projections
 - Assume vendors provide only minimal trade credit improvement post-emergence
 - Model 6-12 month delay in achieving projected synergies or cost savings
 - Include specific "failure to achieve projections" triggers for additional stakeholder rights
3. **Committee Settlements Can Dramatically Shift Economics:** Forever 21 (94-97% ABL → 30% ABL) and JOANN (multiple reserves totaling \$41.75M+) demonstrate extraordinary committee leverage when:
 - ABL liens subject to avoidance challenges
 - Asset values substantially lower than lender projections
 - Committee conducts thorough investigation revealing lien deficiencies
 - Timing pressures force lenders to settle rather than litigate

Secured lender counsel should conduct thorough **lien diligence** before agreeing to dramatic recovery reductions. Committee counsel should invest in **early investigation** of lien perfection, collateral valuations, and potential avoidance actions to maximize leverage.
4. **Critical Supplier Disputes Require Early Resolution:** McKesson/Rite Aid and SPARC/Forever 21 demonstrate that single-supplier dependency creates existential risk. Structure early global settlements resolving:
 - Pre-petition payment disputes and preferences

- Post-petition payment terms and credit limits
- Withheld rebates, credits, and other offsets
- Administrative priority claim amounts and priorities
- Ongoing supply obligations and pricing

Consider supplier equity participation (like McKesson's 100% equity ownership) when supplier's administrative claims and ongoing supply necessity exceed available estate value.

For DIP Financing Negotiations:

5. **Use Pro Forma Leverage Caps with Asset Sale Contingencies:** Franchise Group's dual-scenario structure (\$600M cap if no Vitamin Shoppe sale; \$445M cap if sale closes pre-Effective Date) demonstrates best practice for:
 - Ensuring feasible post-emergence debt levels regardless of asset sale outcomes
 - Adjusting equity conversion valuations based on enterprise value after dispositions
 - Creating certainty for DIP lenders regarding mix of debt vs. equity in exit package
6. **Optional Premium Conversion Provisions:** Include DIP premium conversion features (like Franchise Group's 25% discount election) to:
 - Reduce cash requirements at emergence
 - Align DIP lender interests with equity value creation
 - Provide additional compensation for DIP liquidity provision beyond interest rate
 - Create flexibility if reorganized company capital structure benefits from lower cash debt service
7. **Roll-Up Ratios Above 3:1 Require Careful Scrutiny:** Roll-up provisions converting prepetition debt to DIP debt provide powerful lender incentives, but ratios above 3:1 (like Rite Aid's 8.2:1) may face equitable subordination challenges. Consider:
 - Whether roll-up amount reasonably relates to new value provided
 - Whether estates benefit from roll-up or primarily benefits existing lenders
 - Potential preference exposure for extremely high roll-ups
 - Alternative structures (accordion features, delayed-draw commitments) achieving lender support without massive roll-ups

For Release and Exculpation Provisions:

8. **Tailor to Circuit-Specific Precedent:**
 - **Third Circuit (Delaware):** Use opt-in for out-of-the-money creditors; opt-out acceptable only for creditors receiving meaningful recovery (*Container Store* guidance)
 - **Fifth Circuit (Texas):** Limit exculpation to debtors and committee only; broader releases may be acceptable but exculpation must comply with *Highland*
 - **Other Circuits:** Research circuit-specific precedent before finalizing provisions
9. **Independent Investigations are Essential:** All cases with broad releases included independent director investigations reviewing 700-24,000 documents over 1.5-2 months. Document:
 - Investigation scope and methodology
 - Documents reviewed and interviews conducted
 - Specific transactions investigated (management compensation, insider transactions, liability management exercises)

- Findings using "colorable or valuable" two-part standard
- Business judgment supporting releases based on investigation

10. **Preserve Specific Claims Against Bad Actors:** Use "Excluded Parties" structure (like Franchise Group) to:

- Release parties who cooperated with restructuring
- Preserve claims against parties who may have engaged in wrongdoing
- Maintain creditor confidence that insider accountability preserved
- Provide litigation trust with claims likely to generate value

Consider D&O insurance limitation (like Claire's) to cap estate's downside exposure while preserving claims.

For Litigation Trust Design:

11. **Deficiency Claim Exclusion Prevents Dilution:** When secured claims substantially exceed collateral value, explicitly exclude deficiency claims from unsecured creditor trusts (At Home, Conn's). Calculate dilution impact:

Without Exclusion:

$\$1,197\text{M deficiency claims} / (\$1,197\text{M deficiency} + \$100\text{M trade claims}) = 92.3\%$ to deficiency holders

With Exclusion:

$\$0\text{M deficiency participation} / \$100\text{M trade claims} = 100\%$ to trade creditors

12. **Two-Tier Beneficiary Structures:** Use subordinated tranches (like JOANN's \$5M Class A preference before Class B Term Loan Deficiency claims participate) to:

- Provide guaranteed minimum recovery to operational creditors
- Reflect negotiated waivers by secured creditors of recovery rights
- Simplify administration (first \$5M distributed entirely to Class A; tracking begins only after \$5M threshold reached)

13. **Differentiated Allocation by Claim Type:** Consider split allocations for different litigation categories:

- 100% to secured lenders for preference actions (True Value structure)
- 50/50 split for commercial torts between secured and unsecured (reflects operational harm to both constituencies)
- 30/58/12 split for complex multi-party cases (Franchise Group) where negotiation determines allocation

14. **Contingency-Only Funding Restrictions:** Include provisions (like Party City) requiring GUC Asset prosecution be funded "solely through contingency fee arrangements or litigation funding arrangements" with no estate funds authorized—protects primary distribution waterfall while ensuring meritorious claims are pursued (contingency counsel screen out weak cases).

For Classification and Treatment:

15. **Minimize Voting Classes for Rapid Confirmation:** Rite Aid (single voting class) and Eddie Bauer (two voting classes, one vote-contingent) demonstrate that minimizing impaired voting classes accelerates confirmation by:

- Reducing solicitation complexity and costs
- Eliminating disputes among competing creditor groups about relative treatment
- Simplifying § 1129(a)(10) analysis
- Creating clearer negotiation dynamic (fewer parties = easier to achieve consensus)

However, must ensure at least one impaired class will accept (through nominal distribution or negotiated support) to satisfy § 1129(a)(10).

16. **Intercompany Claim/Interest Flexibility:** All cases preserve debtor discretion to reinstate or cancel intercompany claims/interests "at Debtors' option in consultation with Committee." This flexibility:
 - Avoids need to resolve complex intercompany accounting during plan negotiation
 - Allows post-confirmation simplification of corporate structure
 - Prevents intercompany claim disputes from delaying confirmation
 - May be unimpaired (deemed to accept) or impaired (deemed to reject) depending on election
17. **Settlement Agreement Integration:** Embed major settlements directly in plan rather than separate orders to:
 - Make settlement approval integral to confirmation (single hearing vs. separate motion practice)
 - Ensure settlement terms cannot be challenged post-confirmation without challenging entire plan
 - Provide settlement parties with certainty that plan cannot be confirmed without settlement approval
 - Invoke Bankruptcy Rule 9019 compromise standards through confirmation findings

CONCLUSION

This precedent package provides comprehensive guidance on modern Chapter 11 practice in retail and consumer-facing bankruptcies. The cases demonstrate increasing sophistication in DIP financing structures, creative creditor recovery mechanisms through trusts with differentiated allocations, evolving third-party release practice following *Purdue Pharma* and *Container Store*, and complex multi-party global settlements resolving intercreditor, landlord, employee benefit, and supplier disputes.

The most significant vulnerabilities identified include:

- Franchise Group TopCo's § 1129(a)(10) finding creating precedent with limited durability
- Eddie Bauer's voting-contingent recovery structure potentially challengeable as coercive
- Multiple cases' absolute priority concerns where out-of-the-money creditors receive nothing while certain parties (McKesson, SPARC) receive equity or substantial consideration
- Rapid second-bankruptcy filings (8-14 months post-emergence) suggesting prior restructuring feasibility projections were unrealistic

Practitioners should adapt these structures to circuit-specific requirements, particularly regarding releases and exculpations, while carefully documenting independent investigations, settlement consideration, and business judgment supporting all material plan provisions.

APPENDIX: SOURCE DOCUMENTS BY CASE

Case A0412 - At Home Group Inc. (Delaware)

Filed: June 16, 2025

Confirmed: September 30, 2025

Documents:

- Docket 542: Disclosure Statement (August 19, 2025) - 30 pages with integrated exhibits
- Docket 722: Second Amended Plan (September 30, 2025) - 76 pages

- Docket 725: Confirmation Order (September 30, 2025) - 79 pages
- Docket 725-1: Second Amended Plan attached to Confirmation Order - 76 pages

Case C0350 - Conn's, Inc. (Texas - Southern District)

Filed: July 23, 2024

Confirmed: July 21, 2025

Documents:

- Docket 1810: Disclosure Statement and Second Amended Plan (June 11, 2025) - 4 parts totaling 184+ pages
- Docket 1870: Third Amended Plan (July 3, 2025) - 30 pages
- Docket 1931: Confirmation Order (July 21, 2025) - 30 pages

Case C0356 - The Container Store Group, Inc. (Texas - Southern District)

Filed: December 22, 2024

Confirmed: January 24, 2025

Effective: January 28, 2025

District Court Appeal: February 12, 2026

Documents:

- Docket 295: District Court Memorandum and Opinion on Appeal (February 12, 2026) - 30 pages

Case C0367 - Claire's Holdings LLC (Delaware)

Filed: August 6, 2025

Confirmed: October 29, 2025

Documents:

- Docket 430: Disclosure Statement (September 9, 2025) - 30 pages
- Docket 688: First Amended Plan (October 21, 2025) - 30 pages
- Docket 741: Confirmation Order (October 17, 2025) - 30 pages

Case E0164 - Eddie Bauer LLC (New Jersey)

Filed: February 9, 2026

Status: Plan/Disclosure Statement filed; not yet confirmed

Documents:

- Doc 197: Joint Plan of Reorganization (February 23, 2026) - 30 pages
- Doc 198: Disclosure Statement (February 23, 2026) - 30 pages

Case F0178 - Franchise Group, Inc. (Delaware)

Filed: November 3, 2024

Confirmed: June 2, 2025 (Non-TopCo); July 1, 2025 (TopCo)

Emerged: June 6, 2025 (Confirmation Debtors)

Documents:

- Docket 1454: Ninth Amended Plan Initial Filing (May 14, 2025) - 30 pages
- Docket 1596: Non-TopCo Confirmation Order (June 2, 2025) - 115 pages + Plan (110+ pages)
- Docket 1682: TopCo Confirmation Order (July 1, 2025) - 18 pages
- Docket 1682-1: Ninth Amended Plan Articles III-XV (July 1, 2025) - 99 pages

Case F0181 - F21 OpCo, LLC (Forever 21) (Delaware)**Filed:** March 16, 2025**Confirmed:** June 24, 2025**Documents:**

- Docket 344: Amended Disclosure Statement (May 24, 2025) - 30 pages + Exhibit B
- Docket 472: Notice and Revised Amended Plan (June 23, 2025) - 2 pages + 66-page plan
- Docket 493: Confirmation Order (June 24, 2025) - 56 pages + 57-page plan

Case J0054 - JOANN Inc. (Delaware)**Filed:** January 15, 2025**Confirmed:** July 10, 2025**Documents:**

- Docket 344: Amended Disclosure Statement (May 24, 2025) - 30 pages
- Docket 1353: Second Amended Plan Technical Modifications (July 8, 2025) - 56 pages
- Docket 1387: Confirmation Order (July 10, 2025) - 105+ pages + 56-page plan

Case N0164 - New Rite Aid, LLC (New Jersey)**Filed:** May 5, 2025**Confirmed:** November 26, 2025 (supplemented December 15, 2025)**Documents:**

- Docket 3215: Second Amended Plan (November 11, 2025) - 30 pages
- Docket 3216: Amended Disclosure Statement (November 11, 2025) - 30 pages
- Docket 3445: Confirmation Order (November 26, 2025) - 30 pages
- Docket 3536: Supplemental Order (December 15, 2025) - 5 pages

Case P0250 - Party City Holdco Inc. (Texas - Southern District)**Filed:** December 21, 2024**Confirmed:** August 27, 2025**Documents:**

- Docket 1685: Notice with Plan and Disclosure Statement plus Redlines (June 30, 2025) - Multiple parts
- Docket 1827: Confirmation Order (August 27, 2025) - 30 pages

Case T0286 - True Value Company, L.L.C. (Delaware)

Filed: October 14, 2024

Confirmed: April 17, 2025

Sale Closed: November 22, 2024

Documents:

- Docket 1054: Third Amended Plan (March 31, 2025) - 30 pages
- Docket 1115: Confirmation Order and Plan (April 17, 2025) - 115 pages total (Part 1: Order, Part 2: Plan)

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