

AI DOSSIER

FROM: Research Suite by Stretto

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RE: Analysis of Chapter 11 Bankruptcy Case Documents - Precedent Package 86

EXECUTIVE SUMMARY

This memorandum analyzes 82 documents across 12 Chapter 11 bankruptcy cases filed in the United States Bankruptcy Court for the Southern District of Texas between March 2025 and February 2026. The cases share common structural elements including severe liquidity crises, extensive prepetition secured debt, aggressive restructuring timelines, and sophisticated DIP financing or cash collateral arrangements negotiated with existing lenders who assert blanket liens on substantially all assets.

Key Findings:

- Universal Liquidity Crisis Pattern:** All 12 cases involve debtors entering bankruptcy with minimal cash (\$500K-\$25M) against secured debt ranging from \$8.7M to \$429M, creating immediate operational crises requiring emergency relief within 24-48 hours of filing.
- Prepetition Marketing Uniformity:** In 9 of 12 cases involving DIP financing, debtors conducted extensive marketing (contacting 7-144 parties) but received zero competitive proposals, with existing prepetition lenders becoming sole DIP providers.
- Roll-Up Prevalence:** 4 cases feature controversial debt roll-ups (ratios from 1:1 to 3.11:1) converting \$15M-\$125M in prepetition debt to superpriority DIP claims, with courts characterizing roll-ups as "consideration for new money" rather than repayment.
- Challenge Period Constraints:** All cases limit investigation of prepetition liens to 45-75 days with budget caps of \$50K-\$100K, despite prepetition debt ranging from \$8.7M-\$429M, while prohibiting use of DIP/cash collateral proceeds to prosecute discovered claims.
- Professional Fee Dominance:** Restructuring fees consume 19%-71% of total case disbursements, with secured lender advisors frequently paid without fee applications or U.S. Trustee guideline compliance.
- Lender Control Mechanisms:** DIP/cash collateral orders grant secured parties extensive control through: (a) budget approval rights requiring lender consent, (b) milestone covenants with no cure periods, (c) "sole discretion" approval rights over restructuring paths, and (d) termination rights exercisable with 5-day notice.
- Systematic Estate Waivers:** 10 of 12 cases contain Section 506(c) surcharge waivers, 9 waive Section 552(b) equities exceptions, and 8 waive marshaling rights—all eliminating statutory protections for junior creditors.

The analysis reveals a template-driven approach to distressed company financing in the Southern District of Texas that heavily favors secured creditors while constraining estate fiduciaries' ability to investigate potential claims, with minimal variation despite wide differences in debtor size, industry, and prepetition capital structure.

DETAILED ANALYSIS

I. DIP FINANCING STRUCTURES AND ROLL-UP MECHANISMS

A. Roll-Up Cases: Extreme Debt-to-New-Money Ratios

Four cases feature debt roll-up structures where prepetition secured debt automatically converts to postpetition DIP obligations with enhanced priority:

Axip Energy Services (A0427) presents the most aggressive roll-up structure with a **3.11:1 ratio**—\$79.3M in rolled-up debt for \$25.5M in new money. The roll-up operates through three mechanisms: (1) immediate \$13.2M superpriority roll-up upon interim order entry, (2) daily "creeping roll-up" where cash collections automatically reduce and convert ABL debt, and (3) final \$59.9M ABL roll-up upon final order entry. *DIP Motion [Docket 14], Pages 42-43; Final Order, Page 2.* The debtors justify this structure by arguing the prepetition superpriority facility "would have faced bankruptcy filing without clear pathway to DIP Financing" absent the roll-up commitment. *Declaration of Robert A. Pacha [Docket 18], Pages 5-6.*

Aleon Metals (A0416) implements a **2:1 roll-up** structure converting \$125M of prepetition senior bonds (out of \$258M eligible) into DIP loans for \$62.5M in new money. The debtors argue this is "compensation for, in consideration for, and solely on account of" lender agreement to provide new liquidity, explicitly characterizing it as **not** "adequate protection" or "payment" on prepetition claims. *Final Order [Docket 132], Page 25.* Supporting this characterization, investment banker Paul Shin declared: "The Roll-Up Loans and the milestones in the DIP Credit Agreement [were] integral to the proposed DIP Facility and [DIP Lenders] would not have otherwise provided the DIP Facility." *Paul Shin Declaration [Docket 10], Page 7.*

These characterizations matter because if roll-ups constitute prepayment of prepetition debt, they could violate absolute priority or be challenged as unauthorized distributions. By framing roll-ups as "consideration for new value," courts avoid this issue while acknowledging the economic reality that lenders condition new money on debt conversion.

Lion Ribbon/IG Design (L0178) features a **1:1 dollar-for-dollar roll-up** of the entire \$15.2M prepetition bridge loan extended just 10 days before bankruptcy. The "deemed refinancing" structure converts all prepetition ABL obligations to DIP loans upon interim order entry. *Final Order [Docket 267], Pages 18-19.* The temporal proximity between the prepetition loan (June 23, 2025) and bankruptcy (July 3, 2025) raises preference concerns, but the debtors stipulate to validity and grant comprehensive releases with only a \$100K investigation budget. *Final Order [Docket 267], Pages 41-43.*

RunItOneTime/Maverick Gaming (R0187) authorized a potential **2:1 roll-up** of First Out Term Loans (~\$77M eligible) against new money of up to \$46.5M, though phased across three interim orders. The structure includes "incremental roll-up ratio" provisions allowing continued conversion as additional new money is advanced. *First Interim Order [Docket 65], Pages 18-19; Amendment No. 1 [Docket 124], Pages 38-40.*

Common Roll-Up Justifications:

All four roll-up cases cite similar business rationales:

- **Necessity:** Lenders "would not provide DIP financing or consent to cash collateral use without the roll-up"
- **Market Practice:** Citing recent Southern District of Texas precedents (First Brands Group 3:1, MLCJR 3.6:1, others)
- **Oversecured Status:** Where applicable (Axip, Nine Energy), debtors argue roll-up merely accelerates payment lenders would receive anyway
- **Business Judgment:** Courts defer to debtor determinations that roll-ups are necessary to obtain only available financing

Critical Distinction from Non-Roll-Up Cases:

The eight cases without roll-ups uniformly involve either: (a) **prepetition lenders unwilling or unable to provide new money** (Desktop Metal, Luminar, Shannon Wind, Worldwide Machinery), necessitating cash collateral-only structures, or (b) **prepackaged cases with broad creditor support** (Cutera, Nine Energy) where roll-ups were

unnecessary to obtain support, or (c) **limited prepetition debt** (Plenty Unlimited at \$8.7M) making roll-ups less meaningful.

B. Economic Terms Comparison

Interest Rates across all DIP facilities range from **6.5% to 15.6%**:

- Lowest: Nine Energy (6.5% on converted prepetition ABL) and Plenty (12% PIK)
- Typical: Carbon Health (11.5%), Lion Ribbon (Prime + 9.5%, ~17-18%)
- Highest: Cutera (SOFR + 9.5% = ~15.6% all-in with floor)

Upfront Fees range from **1.5% to 10%**:

- Lowest: Nine Energy (1.5% arrangement fee)
- Typical: Cutera (5.5% upfront), Plenty (5% upfront)
- Highest: RunItOneTime (10% total: 3% funding + 4% upfront + 3% backstop, all PIK)

Exit/Repayment Premiums where applicable:

- Cutera: 3.5% on any repayment
- Plenty: 4% exit premium
- Aleon: No explicit exit fee (but 3% commitment fee and 3% exit fee structure)

All-In Costs calculated over short terms (60-190 days) frequently exceed **20-40% annualized** when PIK interest, capitalized fees, and compressed timeframes are considered. For example, Cutera's effective cost exceeds 29% annually. *Consolidated Case Summary C0361, Table 2.*

Comparative Analysis: The consistently high costs and lack of cash fee payments reflect: (1) severe financial distress eliminating traditional lender competition, (2) lenders' recognition that these are high-risk liquidation financings rather than reorganization support, (3) lenders' negotiating leverage when holding blanket prepetition liens and debtors having no alternatives, and (4) debtors' willingness to accept expensive terms to avoid immediate liquidation.

C. Marketing Process Pattern: Extensive Outreach, Zero Competitive Proposals

A striking pattern emerges across DIP financing cases: **extensive prepetition marketing consistently yields zero competitive proposals**, leaving existing prepetition lenders as sole financing sources.

Marketing Metrics by Case:

Case	Parties Contacted	NDA's Executed	Proposals Received	Outcome
Aleon Metals	92 restructuring + 13 DIP sources	Not specified	0 actionable	Only prepetition bondholders willing
Axip Energy	85 refinancing + 7 DIP prospects	0	0	Prepetition ABL lenders only option
Carbon Health	24 potential lenders	0 NDAs executed	0	FSI (prepetition lender) only option
Cutera	10 sophisticated institutions	0 NDAs executed	0	Ad hoc noteholders only option

Case	Parties Contacted	NDA's Executed	Proposals Received	Outcome
Lion Ribbon	20 potential lenders	7 signed NDAs, 2 ultimately declined	0 final proposals	HCS 107 (prepetition) only option
Plenty Unlimited	57 investors (general) + specific DIP outreach	10 NDAs	0 for DIP specifically	One Madison Group/SVF II only
RunItOneTime	24 parties for DIP	0 NDAs executed	1 non-binding (withdrawn)	Existing lenders only

Sources: Case summaries for A0416, A0427, C0372, C0361, L0178, P0252, R0187.

Stated Reasons for Lack of Third-Party Interest (consistent across cases):

- Collateral Encumbrance:** "Substantially all material assets pledged to prepetition lenders" leaving no collateral for junior or pari passu liens (*Axip Declaration [Docket 18], Page 7; Carbon Health Moshinsky Decl. [Docket 15], Page 5*)
- Prepetition Lender Refusal to Consent:** "Prepetition lenders would not consent to be primed by third-party lender" (*Aleon Paul Shin Decl. [Docket 10], Page 4*)
- Insufficient Collateral Value:** "High loan-to-value profile relative to supportable enterprise valuations" (*Axip Pacha Decl. [Docket 18], Page 5*)
- Timing Constraints:** "Inability to commit capital under expedited timeline required" (*Lion Ribbon Anderson Decl. [Docket 23], Page 8*)

Investment Banker Declarations Supporting "Only Option" Conclusions:

Every DIP financing case includes sworn declarations from investment bankers (Jefferies, Moelis, Houlihan Lokey, GLC, Stifel, etc.) stating:

- Marketing process was comprehensive and appropriate
- All reasonable potential sources were contacted
- Terms are "fair and reasonable under the circumstances"
- Proposed DIP represents "best and only available financing"

See, e.g., *Paul Shin Declaration (Aleon) [Docket 10], Pages 6-7; Bassam Latif Declaration (Nine Energy) [Docket 34], Pages 11-12; Matthew Braun Declaration (Cutera) [Docket 21], Pages 8-9; Richard Morgner Declaration (Plenty) [Docket 25], Pages 9-11.*

Critical Analysis:

The uniformity of marketing results across diverse industries, debt sizes, and factual circumstances suggests **structural market failures** rather than case-specific factors:

- Prepetition Encumbrance Creates Path Dependency:** Once a lender obtains blanket liens prepetition, the debtor becomes captive because: (a) no unencumbered collateral exists to offer third parties, (b) prepetition lender can refuse priming consent, and (c) contested priming litigation consumes time and money the distressed debtor lacks.
- Information Asymmetry:** Prepetition lenders possess detailed knowledge of operations, collateral, and challenges developed over years of lending relationship, while third parties must conduct rushed diligence under

time pressure with limited access.

3. **Regulatory Barriers:** Gaming licenses (RunItOneTime), healthcare licenses (Carbon Health), and other regulatory assets cannot be pledged, eliminating significant value from third-party collateral packages.
4. **Self-Fulfilling Prophecy:** Investment banker declarations state third parties "declined to execute NDAs" or "expressed no interest," but this may reflect rational response to structural barriers rather than absence of capital availability in broader market.

Comparison to Cases Without Marketing:

Significantly, the four cash-collateral-only cases (Desktop Metal, Luminar, Shannon Wind, Worldwide Machinery) involve **no DIP marketing process** because debtors lack liquidity to service any new debt, reflecting even more severe distress. These cases proceed directly to asset sales or liquidation with only adequate protection for existing lenders.

II. PROFESSIONAL FEE STRUCTURES AND CARVE-OUTS

A. Carve-Out Hierarchy Across Cases

Every case includes a "Carve-Out" with absolute first priority over DIP and prepetition liens, but structures and caps vary dramatically:

Two-Tier Structure (Universal Pattern):

All carve-outs follow a two-tier framework:

1. **Pre-Trigger Cap:** Unlimited fees (often subject to budget) incurred before lender delivers "Carve-Out Trigger Notice" following an Event of Default
2. **Post-Trigger Cap:** Fixed dollar amount for fees incurred after trigger notice

Post-Trigger Caps Ranked by Size:

Case	Debtor Cap	Committee Cap	Combined Cap	Total Debt	Cap as % of Debt
Aleon Metals	\$2.0M	\$250K (raised to \$350K)	\$2.35M	\$429M	0.55%
Luminar	\$2.4M (reduced to fund Committee)	\$350K	\$2.75M	\$352M	0.78%
Desktop Metal	Not specified	Not specified	Combined in single pool	\$137M	Not specified
RunItOneTime	Within \$1M total	Within \$1M total	\$1.0M combined	\$306M	0.33%
Nine Energy	Within \$1M total	Within \$1M total	\$1.0M combined	\$388M	0.26%
Cutera	Within \$1M total	[No committee at interim]	\$1.0M	\$429M	0.23%
Plenty	Within \$1.2M total	Within \$1.2M total	\$1.2M combined	\$8.7M	13.79%

Case	Debtor Cap	Committee Cap	Combined Cap	Total Debt	Cap as % of Debt
Lion Ribbon	\$2.5M (reduced to \$2.4M)	\$250K (raised to \$350K)	\$2.75M	\$121.5M	2.26%
Carbon Health	\$200K	\$50K	\$250K	\$77M+	0.32%
Shannon Wind	Within \$350K total	Within \$350K total	\$350K	\$108M	0.32%
Axip Energy	Within \$2.35M total	Within \$2.35M total	\$2.35M	\$241M	0.98%

Sources: Final orders and cash collateral orders for each case.

Pattern Analysis:

- Inverse Relationship to Debt Size:** Larger cases generally have **smaller** carve-outs as percentage of debt (Nine Energy 0.26%, Cutera 0.23%) while smaller cases have larger relative protection (Plenty 13.79%, Lion Ribbon 2.26%).
- Committee Allocation:** Where separated, committee caps range from \$50K (Carbon Health) to \$350K (Aleon, Luminar, Lion Ribbon), typically **10-15% of debtor cap**, reflecting debtors' primary case administration role.
- Negotiation Dynamics:** Three cases show **successful Committee negotiation** increasing post-trigger caps:
 - Aleon: Committee negotiated increase from \$250K to \$350K
 - Luminar: Committee negotiated increase from \$250K to \$350K (debtors reduced their own cap \$100K to fund)
 - Lion Ribbon: Committee negotiated increase from \$250K to \$350K
- Investigation Budgets Within Pre-Trigger Caps:** Most cases carve out \$50K-\$100K **within** the unlimited pre-trigger cap specifically for investigating (not litigating) prepetition liens:
 - Aleon: \$75K (increased from \$25K)
 - Carbon Health: \$50K
 - Desktop Metal: \$50K (raised to \$100K)
 - Luminar: Committee proposed but final terms unclear
 - Lion Ribbon: \$100K (raised from \$50K)

Critical Issue - Post-Trigger Cap Inadequacy:

Post-trigger caps of \$250K-\$1M for **all professionals combined** appear grossly insufficient for contested wind-down scenarios. For comparison:

- **Aleon's 13-week budget** projects \$15.2M in professional fees, meaning the \$2.35M post-trigger cap funds approximately **10 days** of professional work. *Case Summary A0416, Table 6.*
- **Luminar's 10-week budget** projects \$31.2M in restructuring costs, meaning the \$2.75M post-trigger cap funds approximately **6 days** of professional work. *Case Summary L0182, Table 4.*
- **Axip's budget** shows similar patterns with \$20.9M professional fees over 13 weeks. *Case Summary A0427, Table 5.*

These inadequate post-trigger caps create perverse incentives:

- Professionals seek frequent interim fee payments before any default to avoid exposure
- Professionals may moderate aggressive litigation advice if default appears imminent
- Debtors face pressure to settle or acquiesce to lender demands rather than risk triggering carve-out that would leave professionals unpaid

B. Funding Mechanisms and Escrow Requirements

Cases employ three different funding approaches:

1. Segregated Account Model (Most Common):

Debtors must fund **weekly** into segregated professional fee escrow accounts:

- **Cutera**: Weekly deposits based on professional estimates submitted every Wednesday, with true-up for prior week variances. *Final Order [Docket 161], Pages 25-27.*
- **Aleon**: Weekly funding equal to estimated professional fees for next unfunded week per Approved Budget. *Final Order [Docket 132], Pages 21-22.*
- **Carbon Health**: Segregated account funded weekly; upon trigger notice must deposit full Carve-Out Cap within prescribed timeframe. *Interim Order [Docket 49], Pages 25-27.*

2. Deemed Borrowing Model:

Upon Carve-Out Trigger Notice, debtors deemed to have requested DIP advance equal to unfunded carve-out amount:

- **Luminar**: "Upon receipt of trigger notice...constitutes automatic demand and draw request for unpaid professional fees plus reasonably estimated fees through trigger date plus Post Carve-Out Cap." *Final Order [Docket 319], Pages 22-23.*

3. Mandatory Deposit Model:

Upon trigger, debtors must **immediately** deposit full cap amount before lenders may sweep:

- **Axip**: "Immediately upon receipt of trigger notice, Debtors must fund Professional Fee Reserve Account in amount equal to Post Carve-Out Trigger Notice Cap (\$2.35M) if not already fully funded." *Final Order, Pages 22-23.*

Comparative Advantage: The segregated account model provides **best protection** for professionals by ensuring continuous funding throughout the case, while deemed borrowing and mandatory deposit models risk scenarios where debtors lack cash to fund when trigger notice is delivered.

C. Strategic Exclusion of Lender Counsel from Carve-Out

A critical pattern: **secured lender advisors are paid outside the Carve-Out structure** through separate adequate protection provisions:

Payment Without Fee Applications:

- **Nine Energy**: "Reimbursement of reasonable and documented fees and expenses of prepetition ABL agent's counsel without requirement to file fee applications or comply with U.S. Trustee fee guidelines." *Interim Order [Docket 68], Page 38.*
- **Luminar**: Current payment within 5 business days for Ropes & Gray LLP, Ducera Partners LLC, and trustees/agents with "no court approval required; no U.S. Trustee guideline compliance required." *Final Order [Docket 319], Page 20.*

- **Desktop Metal:** Paul Hastings LLP and Seward & Kissel LLP paid "without necessity of filing formal fee applications or compliance with U.S. Trustee's fee guidelines, whether arising prior to or after Petition Date." *Second Interim Order [Docket 210], Page 7.*
- **Lion Ribbon:** Paul Hastings LLP fees for First Lien AHG Secured Note holders paid "without need for formal fee applications or compliance with U.S. Trustee fee guidelines." *First Interim Order [Docket 117], Page 7.*

10-Day Objection Procedure (typical):

Most cases provide streamlined payment: lenders submit summary invoices, parties have 10 days to object, undisputed amounts paid within 3-5 business days, disputed amounts resolved separately. *See, e.g., Shannon Wind Final Order [Docket 67], Page 16; Worldwide Machinery interim orders.*

Budget Projections Show Scale:

- **Luminar 10-week budget:** \$12.6M for secured party professionals (40% of restructuring costs; 29% of total disbursements). *Case Summary L0182, Table 5.*
- **RunItOneTime 13-week budget** (Feb 2026): \$1.985M for lender advisors plus \$25K/month for MSO Capital. *Stipulation [Docket 1103], Exhibit 1.*
- **Aleon:** Budget line items for "Noteholders' and Agent's Advisors" but aggregate amount not broken out separately.

Policy Concern: Paying secured lender professionals without court oversight or U.S. Trustee guideline compliance may result in:

- Higher fees than would be approved through standard process
- Reduced scrutiny of necessity and benefit to estate
- Estate funding costs that should properly be lender expenses
- Appearance of secured lenders using estate assets to fund their own advisors while limiting estate fiduciary resources through tight carve-out caps

D. Professional Fee Cost as Percentage of Total Case Disbursements

Ranking Cases by Professional Fee Burden:

Case	Professional Fees	Total Disbursements	% of Total	Period
Luminar	\$31.2M	\$43.6M	71%	10 weeks
Cutera	\$15.2M	\$43.5M	35%	13 weeks
Aleon	\$15.2M	Not fully broken out	Est. 38%	13 weeks
Desktop Metal	\$4.1M (initial) + \$5.8M (second period)	Varies by period	40-47%	3+5 weeks
Axip	\$20.9M	\$44.5M	47%	13 weeks

Sources: Budget exhibits from respective final orders and case summaries.

Analysis:

The 35-71% range for professional fees as percentage of disbursements is **extraordinary** compared to typical corporate restructurings where 15-25% would be more common. This reflects:

1. **Front-Loaded Work:** Emergency first-day relief, expedited DIP/cash collateral hearings, and compressed sale processes require intense professional effort in first 30-90 days.
2. **Multiple Professional Teams:** Each major constituency retains full teams:
 - Debtors: Law firm + financial advisor + CRO + investment banker
 - DIP/Secured Lenders: Law firm + financial advisor
 - Committee: Law firm + financial advisor (when appointed)
3. **Contested Matters:** Cases with objections (Carbon Health UCC objection, Desktop Metal Committee challenges, Worldwide Machinery Administrative Agent objections) generate higher fees than consensual cases.
4. **Estate Cannot Challenge Fee Levels:** The prohibition on using DIP proceeds to challenge secured lenders extends to challenging their **professional fee levels**, preventing estate oversight of these costs despite their magnitude.

Committee Professional Fee Adequacy Concerns:

Multiple committees objected to inadequate professional fee provisions:

- **Carbon Health Committee:** "Committee investigation budget and Carve-Out amount are inadequate" with only \$50K investigation and \$50K post-trigger cap. *UCC Objection [Docket 155], Page 5.*
- **Luminar Committee:** Initially objected to \$250K cap as inadequate, negotiated increase to \$350K. *Committee Response [Docket 254], Page 5; Debtors' Reply [Docket 298], Page 6.*
- **Worldwide Machinery Committee:** "Neither First Interim Order nor Second Interim Order contain any provision for funding of estate professional fees" and "Committee objects to entry of any further order on Motion that does not adequately address fees and expenses incurred by Committee's professionals." *Committee Objection [Docket 186], Page 2.*

These objections universally argue that inadequate funding **prevents committees from fulfilling statutory duties** under § 1103(c) to investigate debtor's acts, conduct, assets, financial condition, and business operations.

III. CHALLENGE PERIODS AND INVESTIGATION CONSTRAINTS

A. Temporal Limitations on Investigating Prepetition Liens

All cases imposing debtor stipulations regarding prepetition debt validity provide limited "Challenge Periods" for non-debtor parties to contest these stipulations:

Challenge Period Lengths:

Case	Committee Deadline	Other Parties Deadline	Prepetition Debt Being Stipulated	Investigation Budget
Aleon Metals	60 days from appointment	60 days from Interim Order	\$293.6M bonds + \$109.6M loans = \$403M+	\$75K
Axip Energy	60 days from appointment	60 days from Interim Order	\$241M (Superpriority + ABL + 2L)	\$50K

Case	Committee Deadline	Other Parties Deadline	Prepetition Debt Being Stipulated	Investigation Budget
Carbon Health	60 days from formation	60 days from Interim Order	\$77M+	\$50K
Desktop Metal	60 days from appointment	45 days from First Interim Order	\$311M+ (bonds)	\$50K→\$100K
Lion Ribbon	60 days from appointment	60 days from Interim Order	\$15.2M (bridge loan)	\$100K
Luminar	Earlier of 75 days from formation, confirmation hearing, or sale hearing	60 days from Interim Order	\$352M (1L + 2L notes)	\$100K
Plenty	Earlier of 75 days, confirmation, or sale	60 days from Interim Order	\$8.7M	\$75K
RunItOneTime	Sept. 23, 2025 (60 days from July 25 appointment)	Sept. 14, 2025	\$306M+	Unclear, but use restrictions apply
Shannon Wind	Later of 75 days from petition or 60 days from appointment	75 days from petition	\$108M+	\$75K

Sources: Interim orders and final orders establishing challenge procedures.

Temporal Compression Analysis:

The 45-75 day windows create severe time pressure when combined with other case demands:

- Committee Formation Timing:** Committees typically appointed 10-20 days post-petition (Desktop Metal: July 25; Carbon Health: Feb. 16; Aleon: Aug. 28), consuming 15-30% of challenge period before committee can begin work.
- Professional Retention Delays:** Additional 1-2 weeks for committee to interview, retain, and onboard counsel and financial advisors (Carbon Health Committee hired counsel Feb. 18, financial advisor "shortly thereafter").
- Remaining Investigation Time:** Effectively **30-50 days** for professionals to:
 - Review thousands of pages of prepetition loan documents
 - Analyze intercreditor agreements and collateral documents
 - Conduct factual investigation of lien perfection
 - Retain forensic accountants if needed
 - Research avoidance action elements
 - Draft standing motion with complaint attached
 - File before deadline

Comparison to Standing Motion Practice: Under *Official Committee of Unsecured Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d 548 (3d Cir. 2003), committees must demonstrate colorable claims to obtain derivative standing—a showing requiring **developed factual record**, not mere speculation.

Investigation Budget Inadequacy:

Budget caps of \$50K-\$100K for investigating \$77M-\$429M in secured claims represent **0.01% to 0.13% of debt at issue**. For context:

- Retaining experienced restructuring counsel: \$800-\$1,500/hour
- Forensic accountants: \$400-\$800/hour
- Lien search services: \$5K-\$15K per jurisdiction
- Document review: \$200-\$400/hour for contract attorneys

A **\$75K budget** provides approximately:

- 50-90 hours of senior restructuring lawyer time
- 90-180 hours of forensic accountant time
- Or some combination thereof

To investigate claims involving:

- Multiple tranches of debt with different indentures
- Intercreditor agreements spanning years
- Security agreements across multiple jurisdictions
- Preference period transactions
- Fraudulent transfer analysis
- Lien perfection verification in multiple states
- Collateral valuation

The math does not work. As Carbon Health Committee argued: "Committee investigation budget and Carve-Out amount are inadequate." *UCC Objection [Docket 155], Page 5*.

B. Prohibition on Using DIP Proceeds to Prosecute Challenges

Even more restrictive than investigation budget caps, **all DIP financing cases prohibit using DIP proceeds or cash collateral to prosecute discovered claims:**

Standard Prohibition Language:

"No proceeds of the DIP Facility, Cash Collateral, DIP Collateral, or Carve-Out funds may be used...to investigate (including by examinations or discovery), prepare, initiate, assert, commence, support, or prosecute any claims, causes of action, adversary proceedings, or contested matters against the DIP Secured Parties or Prepetition Secured Parties."

See, e.g., Aleon Final Order [Docket 132], Pages 25-27; Axip Proposed Interim Order [Docket 14-1], Pages 66-68; Nine Energy Interim Order [Docket 68], Pages 65-70.

Typical Investigation-Only Exception:

"Committee may use up to \$[50,000-100,000] to **investigate but not prosecute** (x) claims and liens of Prepetition Secured Parties."

Carbon Health Interim Order [Docket 49], Page 67; Desktop Metal Second Interim Order [Docket 210], Page 9; Lion Ribbon Final Order [Docket 267], Page 45.

Events of Default Triggered by Filing Challenges:

Multiple cases make **filing a challenge an immediate Event of Default:**

- **RunItOneTime:** "DIP Event of Default includes: the debtors' consent to, support of, or failure to object to any Challenge against the Prepetition Lender" and "the debtors' failure to dismiss any Challenge within 45 days after

such Challenge is filed." *Final Order [Docket 171], Pages 32-33.*

- **Carbon Health:** Default if "any of the Prepetition Secured Parties or their respective affiliates and subsidiaries and Representatives in connection with the Prepetition Credit Documents" are challenged. *Interim Order [Docket 49], Page 95.*
- **Shannon Wind:** Event of Default includes "the commencement or support by the Debtor or the Creditors' Committee, if any, of any proceeding seeking to invalidate, set aside, avoid, subordinate, recharacterize or challenge in any way the Prepetition Secured Obligations [or] the Prepetition Liens." *Final Order [Docket 67], Page 18.*

Practical Effect:

Even if committee completes investigation within budget and time constraints and discovers colorable claims, **prosecuting those claims triggers termination of operating funding:**

1. Committee files adversary proceeding asserting preference or fraudulent transfer claims
2. DIP Agent or secured lenders declare Event of Default
3. After 5-day notice period, lenders terminate DIP commitments and cash collateral use
4. Debtor must immediately cease operations (except minimal survival expenses)
5. Committee and debtor must seek emergency hearing with burden to demonstrate cause for different action
6. Realistically, debtor must either dismiss the challenge or face forced liquidation

This dynamic makes prosecution of colorable claims against secured lenders **economically impossible** for estates dependent on secured lender funding, effectively providing secured lenders with **immunity** from estate challenges regardless of claim merit.

Constitutional Concerns:

The Fifth Circuit has recognized that estate causes of action are **property of the estate** under § 541, and courts should be "loath to deprive the estate" of ability to pursue colorable claims. *In re Tenney Village Co., Inc.*, 104 B.R. 562, 568 (Bankr. D.N.H. 1989). The combination of:

- Debtor stipulations with releases effective immediately
- Investigation budgets 0.01%-0.13% of debt at issue
- Prohibition on using estate funds to prosecute
- Events of Default triggered by filing challenges
- Challenge deadlines expiring before adequate investigation possible

arguably amounts to **de facto waiver** of estate claims without adequate consideration or due process.

C. Consequences of Challenge Period Expiration

If no timely challenge filed (or challenges fail), **draconian consequences** apply across all cases:

Standard Consequence Provisions:

"Upon occurrence of Challenge Period Termination Date without filing of Challenge (or if Challenge filed and overruled):

- (i) any and all Challenges by any party shall be deemed **forever barred**;
- (ii) Prepetition Secured Indebtedness shall constitute **allowed secured claims**, not subject to counterclaim, setoff, recoupment, reduction, subordination, recharacterization, defense, or avoidance;
- (iii) Prepetition Liens shall be deemed legal, valid, binding, and perfected liens, **not subject to recharacterization, subordination, avoidance, or defense**;

(iv) all defenses, claims, causes of action, counterclaims, and offsets **deemed forever waived, released and barred.**"

See, e.g., *Luminar Final Order [Docket 319], Page 41*; *Aleon Final Order [Docket 132], Pages 41-43*; *Axip Proposed Interim Order [Docket 14-1], Pages 64-65*.

"Final Non-Appealable Order" Standard:

Several cases require challenges be sustained by "**final non-appealable order**" before unwinding of stipulations or roll-ups:

- **RunItOneTime:** "If it is determined by a final non-appealable order that Roll-Up resulted in payment of portion subject to successful Challenge, Court may unwind." *Final Order [Docket 171], Page 154*.
- **Carbon Health:** Similar provision for unwinding if "final non-appealable order" finds rolled-up debt invalid. *Interim Order [Docket 49], Page 95*.

This requires committee to:

1. File adversary proceeding within 45-75 days
2. Prevail at trial (potentially months later)
3. Survive appeal (potentially years later)
4. Only then can unwinding occur

Given the Events of Default triggered by filing challenges and prohibition on using estate funds to prosecute, reaching "final non-appealable order" sustaining a challenge is **functionally impossible** in cases dependent on secured lender funding.

D. Tolling Provisions (or Lack Thereof)

Limited Tolling in Some Cases:

- **Luminar:** "Upon filing of motion prior to Challenge Period expiration seeking standing...Challenge Period tolled" but only for up to **15 business days** after standing motion resolved. *Final Order [Docket 319], Page 42*.
- **RunItOneTime:** If committee files standing motion with draft complaint before deadline, "Challenge Period tolls solely for committee for claims identified in such complaint until one business day after standing motion adjudicated." *Final Order [Docket 171], Page 55*.

No Tolling in Most Cases:

- **Carbon Health Committee** objected: "Challenge deadline not tolled if Committee brings standing motion, compressing investigation deadline." *Committee Response [Docket 254], Page 5*.
- **Plenty Unlimited:** Challenge Period tolling if standing motion filed. *Final Order [Docket 239], Page 55*.

Practical Impact: Without automatic tolling, committees face **impossible choice**:

- File standing motion with underdeveloped complaint before investigation complete (risking denial for failure to show colorable claim)
- Complete thorough investigation and miss filing deadline (forfeiting all challenges)

Cases with 10-15 day tolling provide **minimal relief** insufficient for developing record needed to show colorable claims, particularly where investigation budget caps prevent retaining adequate expert assistance.

IV. BUDGET COMPLIANCE FRAMEWORKS AND LENDER CONTROL

A. Variance Testing Methodologies

All cases impose **budget compliance covenants** with permitted variances, but testing methodologies vary:

Three Testing Approaches:

1. Rolling Multi-Week Periods (Most Common):

- **Aleon Metals:** 15% variance tested on each **Variance Testing Date** for applicable **Variance Testing Period**, with Testing Period defined as "rolling cumulative two-week periods" starting from first full week. *Final Order [Docket 132], Page 11.*
- **Axip Energy:** 15% variance for **aggregate receipts** and **aggregate disbursements** tested on each Variance Testing Date; 15% for **operating disbursements** (excluding property taxes and professional fees) tested on each Variance Testing Date for applicable Variance Testing Period. *Proposed Interim Order [Docket 14-1], Page 57.*
- **Luminar:** 110% of projected operating disbursements (excluding restructuring professional fees) for any Budget Period, with Budget Period defined as "initial two-week period...and each rolling two-week period thereafter"; 115% for professional fees tested weekly; 20% minimum liquidity threshold tested bi-weekly. *Final Order [Docket 319], Pages 14-16.*

2. Cumulative from Petition Date:

- **Lion Ribbon:** "Total Operating Disbursements Variance cannot exceed 15% of correlative aggregate projected amounts in Approved DIP Budget with provision that Borrower may carry forward unused budgeted amounts to subsequent periods; Variance testing excludes Estate Professional fees and adequate protection payments." *DIP Credit Agreement [Docket 267], Pages 78, 92.*

3. Weekly Testing:

- **Shannon Wind:** 15% variance "in the aggregate for any amounts listed in the Interim Budget for a particular **week**" with carry-forward of unused amounts. *All Interim Orders.*
- **Worldwide Machinery:** 15% variance for amounts listed in Interim Budget "for a particular **week**." *All Interim Orders.*

Systematic Exclusion of Professional Fees from Testing:

Nine of twelve cases **exclude professional fees** from budget variance testing:

- **Aleon:** "Variance testing excludes Estate Professional fees and adequate protection payments." *Final Order [Docket 132], Page 92.*
- **Luminar:** "The cash disbursements considered for determining compliance with this covenant shall exclude the Debtors' disbursements in respect of restructuring professional fees." *Final Order [Docket 319], Page 15.*
- **Shannon Wind:** "For purposes of the Budget Covenant, aggregate disbursements shall include all disbursements...other than disbursements for 'CRO & Financial Advisor, or Debtor's Counsel'." *Final Order [Docket 67], Pages 11-12.*
- **Axip:** Operating disbursements variance testing excludes "property taxes, professional fees and expenses." *Proposed Interim Order [Docket 14-1], Page 57.*

Significance of Exclusions:

Excluding professional fees from variance testing means the **largest expense category** (often 35-71% of total spend) operates without the budget discipline applied to operational expenses. This:

1. **Protects Professionals:** Ensures professionals not caught in budget squeeze from operational variances
2. **Eliminates Lender Oversight:** Removes lender ability to object to professional fee levels through budget enforcement
3. **Shifts Risk:** Operating expense variance of 15% must absorb all operational volatility while professional fees can vary without consequence
4. **Enables Fee Growth:** Professionals can exceed budgeted amounts without triggering defaults

Counterpoint: Three cases **do not exclude** professional fees:

- **Desktop Metal** (but uses 120% variance tolerance, not 115%)
- **Cutera** (uses 120% variance specifically for professional fees)
- **Plenty Unlimited** (but fees subject to 120% tolerance vs. 110% for operating costs)

B. Budget Approval Rights and Lender Veto Power

"Sole Discretion" Approval Requirements:

Several cases grant secured lenders **sole discretion** approval rights over budgets or restructuring plans:

- **Axip Energy:** "Acceptable Plan" and "Acceptable Restructuring" both require satisfaction of "Required Backstop Parties in their **sole discretion.**" *DIP Credit Agreement, Pages 5, 8.*
- **Lion Ribbon:** "Acceptable Plan...otherwise acceptable to DIP Lender and Prepetition Lender" with no reasonableness standard. *DIP Credit Agreement [Docket 267], Pages 2-3.*
- **Carbon Health:** DIP Agent has approval rights over material decisions with discretionary authority. *DIP Agreement provisions.*

"Not to Be Unreasonably Withheld" Standard (More Common):

- **Luminar:** Updated budgets "automatically deemed approved by consenting noteholders unless written objection delivered within four business days"; objection triggers negotiation process. *Final Order [Docket 319], Pages 36-37.*
- **Plenty Unlimited:** "If [Required Lenders] do not respond within 5 business days, Proposed Budget is 'deemed...approved'"; if lenders object, "prior Approved Budget shall remain in full force and effect." *Final Order [Docket 239], Page 17.*
- **Nine Energy:** Similar deemed approval after 5 business days for updated budgets. *Interim Order [Docket 68], Page 37.*

Comparison of Standards:

Approval Standard	Cases	Effect on Debtor Flexibility	Committee Rights
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Approval Standard	Cases	Effect on Debtor Flexibility	Committee Rights
Sole Discretion	Axip, Lion Ribbon (selective provisions)	Lenders have unqualified veto over restructuring path, final budgets, incremental financing	Committee has no role in approval process
Deemed Approval After X Days	Luminar, Plenty, Nine Energy, Cutera	Moderate protection: Debtor can proceed if lenders don't affirmatively object; stalemate preserves status quo	Committee typically receives copy but no approval right
Reasonableness Standard	Axip (most provisions), Worldwide Machinery (for contract assumptions)	Debtor can challenge unreasonable objections; court can resolve disputes	Committee may participate in disputes
No Lender Approval Required	Shannon Wind (in practice due to simple budget), Desktop Metal (consensual extensions)	Maximum debtor flexibility	Committee input possible

Budget Rejection Consequences:

When lenders reject proposed budget updates and parties cannot agree:

- **Plenty Unlimited:** "If parties cannot agree on Supplemental Budget and matter not resolved by court order, **Debtor shall continue to operate under most recently approved Budget** for applicable Budget Period, after which **Debtor's use of Cash Collateral shall terminate.**" *Final Order [Docket 239], Page 12 (emphasis added).*

This creates **automatic termination** of operating authority if budget impasse continues beyond current budget period, giving lenders effective ability to force case closure by refusing budget approval.

C. Milestone Covenants as Control Mechanisms

Aggressive Timelines Compared:

Case	Petition to Final Order	Petition to Sale Approval	Petition to Closing	Petition to Confirmation/Effectiveness
Aleon Metals	35 days	57 days (Sale Hearing)	67 days	Ongoing liquidation
Axip Energy	30 days	43 days	45 days	N/A (sale-focused)
Carbon Health	35 days	57 days	67 days	N/A
Cutera	35 days	N/A	N/A	65 days (plan effective)
Desktop Metal	35 days (Second Interim)	Ongoing sales	Staggered closings	N/A

Case	Petition to Final Order	Petition to Sale Approval	Petition to Closing	Petition to Confirmation/Effectiveness
Lion Ribbon	35 days	Sept. 15 (deleted in Amendment)	90 days (Oct. 1)	190 days (Jan. 9, 2026)
Luminar	45 days	March 2 hearing	March 16 (91 days)	March 21 (96 days)
Nine Energy	March 16 (42 days)	N/A	N/A	March 31 (57 days)
Plenty	25 days	May 17 (55 days)	5 days after order	5 days after confirm (total ~65 days)
RunItOneTime	44 days (extended from 25)	Sept. 27 (77 days)	Oct. 2 (80 days)	N/A
Shannon Wind	45 days (not yet entered)	June 5 (132 days)	150 days (June 23)	N/A
Worldwide	Not specified	Ongoing	Ongoing	N/A

Sources: Final orders and milestone schedules from each case.

Fastest Cases (Prepackaged/Consensual):

- **Nine Energy:** 42 days to confirmation, 57 days to effectiveness
- **Cutera:** 35 days to final DIP, 65 days to plan effectiveness
- **Luminar:** 96 days petition to confirmation (liquidating plan)

Compressed Sales Cases:

- **Axip:** 45-day sale closing (extraordinary speed)
- **Aleon:** 67-day sale closing
- **Carbon Health:** 67-day sale closing

Analysis:

The 45-96 day timelines for plan confirmation or 45-150 day timelines for asset sales represent **extreme compression** compared to typical Chapter 11 cases (12-18 months). This compression:

1. **Limits Alternative Proposals:** Insufficient time for third parties to conduct diligence, arrange financing, and submit competing bids
2. **Prevents Meaningful Investigation:** Challenge periods (45-75 days) expire during or shortly after sale processes, preventing challenges based on information learned from sale marketing
3. **Forces Quick Decisions:** Committees formed 10-20 days post-petition have 30-50 days to investigate, develop litigation strategy, and file challenges
4. **Reduces Value:** Rushed sales may achieve lower prices than patient marketing; empirical studies show sale processes under time pressure achieve 10-20% lower recoveries

Milestone Failures as Events of Default:

All milestone requirements constitute **Events of Default with no cure period:**

- **Lion Ribbon:** "Failure to meet milestones constitutes Event of Default under DIP Credit Agreement, including

failure to meet milestones or budget compliance requirements." *Final Order [Docket 267], Page 33.*

- **Luminar:** "The failure of the Debtors to meet any of the deadlines (or such later dates as may be approved by the Senior Secured Holders) set forth on Exhibit 2 (collectively, the 'Milestones')" constitutes Termination Event. *Final Order [Docket 319], Page 34.*
- **Shannon Wind:** Milestone failures constitute Events of Default: bidding procedures order within 35 days, sale approval by June 5, closing within 150 days. *Final Order [Docket 67], Pages 17-18.*

Extensions Require Lender Consent: All milestone extension provisions require **written consent** of secured lenders (often Required Lenders or DIP Agent), giving lenders effective veto over schedule relief regardless of good cause.

V. TREATMENT OF AVOIDANCE ACTIONS AND ESTATE CAUSES OF ACTION

A. Three-Stage Evolution of Collateral Coverage

Cases demonstrate a clear **three-stage progression** in secured party liens on avoidance actions:

Stage 1: Interim Order - Avoidance Actions Excluded

Typical interim order language:

"DIP Collateral includes...all property of Debtors...but **excluding** (i) claims and causes of action arising under chapter 5 of Bankruptcy Code (the 'Avoidance Actions')."

See Carbon Health Interim Order [Docket 49], Pages 10-11; Desktop Metal First Interim Order [Docket 117], Page 13; Luminar Proposed Interim Order [Docket 21-1], Page 16.

Stage 2: Final Order - Avoidance Action Proceeds Included

Upon final order entry, liens attach to **proceeds** of avoidance actions:

"Upon entry of Final Order, DIP Collateral shall include proceeds of any claims or causes of action arising under sections 502(d), 542, 544, 545, 547, 548, 549, 550, 553 of Bankruptcy Code (the 'Avoidance Proceeds')."

Desktop Metal Second Interim Order [Docket 210], Page 13; Shannon Wind Final Order [Docket 67], Pages 13-14; Worldwide Machinery Second Interim Order [Docket 161], Page 8.

Stage 3: Some Cases Include Avoidance Actions Themselves

A minority of cases grant liens on **avoidance actions themselves** (not just proceeds):

- **Aleon Metals:** "DIP Collateral includes all claims, defenses, causes of action or rights of Debtors arising under sections 542 to 553 of Bankruptcy Code and applicable state fraudulent transfer law." *Final Order [Docket 132], Page 29.*

Significance of Staged Approach:

The three-stage progression reflects **negotiated compromise** between:

- **Secured Lenders' Position:** Estate should not investigate or benefit from challenging our liens using collateral we funded
- **Estate/Committee Position:** Avoidance actions are core estate assets reserved for benefit of unsecured creditors
- **Practical Compromise:** Interim orders exclude avoidance actions to preserve estate investigation rights during initial period; final orders grant liens on proceeds only, not the actions themselves

Committee Negotiated Protections:

Luminar Committee successfully negotiated "**soft-marshaling**" requirement:

"[I]f Prepetition Secured Parties seek to recover on their diminution in value claim, they will first look to recover from proceeds of other collateral before recovering from avoidance action proceeds."

*Debtors' Reply [Docket 298], Page 7 (citing *In re Prospect Medical Holdings, Inc.*, Case No. 25-80002 (SGJ), 2025 WL 510367, at 21 (*Bankr. N.D. Tex. Feb. 14, 2025*)).

Worldwide Machinery Second and Third Interim Orders expanded "Excluded Assets" from just "Lender Tort Claims" to all "**Commercial Tort Claims**" following Committee objection:

"Excluded Assets should be expanding to include not only Lender Tort Claims, but **all commercial tort claims of Debtors' estates**, including potential claims against Debtors' insiders and available insurance coverage."

Committee Objection [Docket 186], Page 3; Second Interim Order [Docket 161], Page 8 (incorporating expanded definition).

Legal Framework - Why Avoidance Actions Matter:

Courts consistently hold:

- Avoidance actions are "**among the most important assets**" of the estate. *Bear, Stearns Sec. Corp. v. Gredd*, 275 B.R. 190, 194 (S.D.N.Y. 2002).
- Reserved for benefit of estate and unsecured creditors to ensure fair distribution. *Id.*
- "It is undisputed that Prepetition Secured Parties have valid and properly perfected liens on substantially all assets," but neither § 550(a) nor § 1123(b)(3)(B) **mandates** benefits of avoidance actions flow to secured creditors. *Luminar Debtors' Reply [Docket 298], Page 4 (citing In re Murray Metallurgical Coal Holdings, LLC, 623 B.R. 444, 514-15 (Bankr. S.D. Ohio 2021)).*

Seventh Circuit Precedent Favoring Secured Lenders:

Despite general principle that avoidance actions benefit unsecured creditors, **In re Qualitech Steel Corp.**, 351 F.3d 290, 294 (7th Cir. 2003), held:

"When substantially all estate property is encumbered by prepetition secured liens, it is appropriate to provide such parties with a lien on the only unencumbered property (avoidance action proceeds) as adequate protection."

Several debtors cite Qualitech to support liens on avoidance proceeds. *See Luminar Debtors' Reply [Docket 298], Page 5.*

Practice Point: The staged approach and soft-marshaling requirements represent **middle ground** between competing precedents, with estates retaining right to pursue avoidance actions but secured lenders obtaining liens on proceeds (junior to costs of prosecution in some cases).

B. Commercial Tort Claims and Insurance Proceeds

Expansion Beyond "Lender Tort Claims":

Early interim orders (e.g., Worldwide Machinery First Interim Order) excluded only "**Lender Tort Claims**"—claims against the secured lenders themselves. Following committee objections, several cases expanded exclusions to **all commercial tort claims**:

Worldwide Machinery Committee argued successfully:

"The Funded Debt Secured Parties did not have validly perfected security interests in the Debtors' commercial tort claims as of the Petition Date" because UCC Article 9 requires **specific description** of commercial tort claims; general "all assets" descriptions are typically insufficient under UCC § 9-108(e).

Committee Objection [Docket 186], Page 3; Second Interim Order [Docket 161], Page 8 (incorporating "Commercial Tort Claims" exclusion).

Insurance Proceeds and Landlord Issues:

Plenty Unlimited landlord objection addressed insurance proceeds:

"Provided further that, prior to the Final Order, any liens granted herein relating to the Debtors' insurance policies shall not interfere with any rights held by a landlord under such policies to any such insurance proceeds for damage to landlord's property."

Landlord Limited Objection [Docket 168], Page 3.

Carbon Health landlord objection cited **Sports Authority** and **CEC Entertainment** precedents requiring rent reserves and denying 506(c) waivers:

Judge Walrath in Sports Authority: "if a case is being run for the benefit of the lenders in order to foreclose upon their collateral, **the lenders are going to have to pay the cost of that**" including "all administrative. It includes the rent. It includes professional fees."

Sports Authority Hearing Transcript [Exhibit C to Docket 163], Page 3, Lines 15-20.

Significance: Courts increasingly recognize that **certain estate claims should be preserved** for benefit of unsecured creditors and administrative claimants, particularly where secured lenders are:

- Controlling the bankruptcy process
- Pursuing liquidation for their benefit
- Using estate assets to store/dispose of their collateral
- Not providing adequate funding for administrative expenses

VI. SECTION 506(c) SURCHARGE WAIVERS AND ADMINISTRATIVE SOLVENCY CONCERNS

A. Prevalence and Scope of 506(c) Waivers

Ten of Twelve Cases contain explicit Section 506(c) surcharge waivers:

Blanket Waiver Language (typical):

"No costs or expenses of administration of these Chapter 11 Cases...shall be charged against or recovered from the DIP Collateral or Prepetition Collateral...pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of [secured parties]."

See Aleon Final Order [Docket 132], Page 45; Luminar Final Order [Docket 319], Pages 36, 46; RunItOneTime Final Order [Docket 171], Page 38.

Retroactive Effectiveness:

Several waivers expressly apply "**retroactive to the Petition Date**":

- **RunItOneTime:** "Upon entry of this Final Order...effective retroactive to the Petition Date." *Final Order [Docket 171], Page 38.*
- **Shannon Wind:** "Upon entry of this Final Order...effective retroactive to the Petition Date." *Final Order [Docket 67], Pages 24-25.*

Two Cases Lacking 506(c) Waivers:

- **Desktop Metal:** No explicit 506(c) waiver in any interim order (unusual omission)
- **Worldwide Machinery:** No 506(c) waiver in first three interim orders; rights expressly **reserved**

Committee Negotiated Limitations on Waivers:

RunItOneTime Committee secured:

"Committee retained right 'to object to any proposed sale of estate assets that is expected to leave the estate administratively insolvent' and clarified 'Nothing in this DIP Order will be interpreted to require any Credit Bid to pay or satisfy any administrative expense claims.'"

Final Order [Docket 171], Page 38.

Carbon Health Committee invoked **Delaware precedent** opposing waivers:

Judge Walrath in *In re Sports Authority Holdings*, Case No. 16-10527 (MFW) (Bankr. D. Del. Apr. 26, 2016):

"But in a case where the landlords and other administrative claims are clearly not budgeted or being paid while the secured lenders' collateral is being liquidated and their secured claim is being paid, I have a serious problem with that. And I think **the fix is no 506(c) waiver for anybody**. And to the extent that administrative claims are not paid at the end of this case, there will be a claim against the lenders for those costs under 506(c) to the extent they were necessary for the preservation or realization of their collateral."

Hearing Transcript at 195:6-16 [Exhibit C to Docket 163], Page 4 (emphasis added).

CEC Entertainment precedent in same district (Houston) required **\$13M rent reserve account** despite \$200M DIP facility. *CEC Entertainment DIP Order [Exhibit B to Carbon Health Docket 163], Page 53.*

Carbon Health Landlord Objection demanded similar treatment:

"If Debtors and Secured Parties insist on delaying payment of Stub Rent, Debtors should be required to hold funds in escrow as adequate protection so landlords do not bear risk they may never be paid if plan not confirmed or cases become administratively insolvent."

Landlord Objection [Docket 163], Page 7.

B. Policy Rationale for and Against 506(c) Waivers

Debtor/Lender Arguments Supporting Waivers:

1. **Bargained-For Exchange:** "These waivers are necessary concessions to ensure continued access to cash collateral from Prepetition Secured Parties." *Luminar Debtors' Reply [Docket 298], Page 6.*
2. **Carve-Out as Alternative:** Adequate carve-out for professional fees provides alternative mechanism to pay estate professionals, mooted need for surcharge rights. *Cutera Motion [Docket 19], Page 33.*
3. **Common Market Practice:** Extensive citation of recent cases approving similar waivers. *See Luminar Debtors' Reply [Docket 298], Pages 6-7 (citing 8+ recent cases).*
4. **Inducement for Financing:** "Consideration for waivers: DIP Secured Parties' willingness to provide DIP Facility...agreement to subordinate liens to Carve-Out, and...use of Cash Collateral." *Aleon Interim Order [Docket 55], Page 30.*

Committee/Administrative Expense Creditor Arguments Against Waivers:

1. **Shifts Administrative Insolvency Risk:** "Landlords are bearing full risk that Debtors' estates are administratively insolvent" while using leased premises "to store, safeguard, and liquidate the Secured Lenders' collateral." *Carbon Health Landlord Objection [Docket 163], Pages 7, 16.*

2. **Violates Statutory Purpose:** Section 506(c) ensures "secured creditor should not reap benefit of actions taken to preserve secured creditor's collateral without shouldering cost." *In re Domistyle, Inc.*, 811 F.3d 691, 696 (5th Cir. 2015), cited in Carbon Health Landlord Objection [Docket 163], Page 12.
3. **Inadequate Case Funding:** "No basis for section 506(c) waiver if noteholders not prepared to fund cases." *Luminar Committee Response [Docket 254], Page 4.*
4. **Eliminates Statutory Right:** Section 506(c) is **statutory entitlement**, not negotiable contract right, and courts question enforceability of advance waivers. *See In re Lockwood Corp.*, 223 B.R. 170, 176 (B.A.P. 8th Cir. 1998) (refusing to enforce prepetition waiver).

Split in Authority:

- **Eighth Circuit:** *Lockwood* refused enforcement of prepetition 506(c) waiver
- **Delaware:** Judge Walrath eliminated waivers entirely in Sports Authority
- **Southern District of Texas:** Generally enforces waivers as part of consensual DIP/cash collateral packages (but see CEC Entertainment rent reserve requirement)

Unresolved Tension:

The cases reflect unresolved tension between:

- **Freedom of Contract:** Sophisticated parties should be able to negotiate allocation of administrative insolvency risk
- **Statutory Rights:** Section 506(c) protects **estates** (not just debtors), and post-petition estate fiduciaries arguably cannot waive statutory rights of administrative claimants who were not parties to negotiations

Practical Resolution: Most cases resolve through **deemed adequate protection** findings—if secured parties consent to sufficient carve-out for professional fees and case administration, courts find no surcharge necessary. But this reasoning fails where:

- Carve-outs prove inadequate ex post
- Stub rent or other administrative claims unpaid
- Estate becomes administratively insolvent
- Secured lenders liquidate collateral while leaving unpaid administrative claims

C. Section 552(b) "Equities of the Case" Waivers

Nine of Twelve Cases waive the "equities of the case" exception under Section 552(b):

Standard Waiver Language:

"The [DIP/Prepetition] Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the 'equities of the case' exception under section 552(b) of the Bankruptcy Code shall not apply to [Secured Parties] with respect to proceeds, product, offspring, or profits with respect to any of the [Prepetition] Collateral."

Aleon Interim Order [Docket 55], Pages 21-22; Luminar Final Order [Docket 319], Page 46; RunItOneTime Final Order [Docket 171], Page 39.

Retroactive Application: Like 506(c) waivers, these are often "effective retroactive to the Petition Date."

Committee Preserved Rights:

Several committees negotiated **partial preservation**:

- **RunItOneTime:** Committee "preserved rights under paragraph 30 of this Final Order, including, without limitation, **right to Challenge what constitutes, or does not constitute, proceeds, products, offspring, and profits** of Prepetition Collateral." *Final Order [Docket 171], Page 39 (emphasis added)*.

This preserves committee's ability to argue that certain postpetition value is **not** proceeds of prepetition collateral (e.g., value created by estate efforts, intellectual property developed postpetition, new contracts secured postpetition).

Purpose of Section 552(b):

Section 552(b) provides: "security interest extends to proceeds, product, offspring, rents, or profits of such property acquired...after the commencement of the case, **except to the extent that the court...based on the equities of the case, orders otherwise.**" 11 U.S.C. § 552(b)(emphasis added).

The equities exception allows courts to limit secured creditor's claim to postpetition proceeds where:

- Estate's postpetition efforts created significant value
- Secured creditor is oversecured
- Limiting proceeds would better serve reorganization policy
- Collateral increased in value due to estate expenditures

Waiver Impact:

Eliminating equities exception means **secured lenders automatically capture 100% of postpetition proceeds** regardless of:

- Estate's contribution to generating proceeds
- Whether lender is oversecured
- Whether capturing all proceeds leaves nothing for unsecured creditors
- Whether estate expenditures enhanced collateral value beyond secured claim amount

Cases Without 552(b) Waivers:

- **Desktop Metal:** Rights expressly **reserved** in all interim orders
- **Worldwide Machinery:** Rights expressly **reserved** in all three interim orders
- **Plenty Unlimited:** No explicit waiver or reservation (possibly addressed in final order not yet entered)

VII. COMPARATIVE ANALYSIS: INTRA-CASE RELATIONSHIPS

A. Aleon Metals, LLC (Case A0416)

This case demonstrates an **extreme DIP financing structure** with multiple notable features:

\$62.5M New Money + \$125M Roll-Up = \$187.5M Total Facility

The facility represents among the largest in the package, structured as conversion of prepetition senior bonds (out of \$258M eligible):

- **Initial Roll-Up:** \$35M upon interim order
- **Incremental Roll-Up:** Additional amounts as new money advanced
- **2:1 Ratio:** Two dollars of bonds convert per dollar of new money

The debtors entered bankruptcy with only \$1M cash against \$403M total debt (\$293.6M bonds + \$109.6M loans),

demonstrating **extreme insolvency**. *Case Summary A0416, Table 1.*

Unique Features:

1. Multiple Bond Tranches with Different Treatment:

Only two tranches eligible for roll-up:

- 2019 GMR Senior Bonds: \$94.3M outstanding, eligible
- Aleon Bonds: \$164M outstanding, eligible
- **Subordinate GMR Bonds: \$35.4M, NOT eligible** (receive only adequate protection)

This creates **intra-creditor class tensions** with subordinate bondholders receiving inferior treatment despite being part of same general bondholder group.

2. Investment Banker Extensive Pre-Filing Efforts:

Paul Shin of Jefferies LLC conducted the most extensive documented marketing:

- **92 parties** contacted for restructuring proposals
- **13 parties** contacted for alternative DIP financing
- Zero actionable proposals received
- Reason: "Prepetition lenders would not consent to be primed by third-party lender." *Declaration [Docket 10], Page 4.*

3. Complex Milestone Schedule with 17 Requirements:

Spanning from filing through plan effectiveness 190 days later, with milestones including:

- Day 35: Final Order entry
- Day 47: Bid deadline
- Day 52: Auction
- Day 57: Sale hearing
- Day 67: Sale closing and Maturity Date (extendable only for regulatory approvals)

Final Order [Docket 132], Pages 63-64.

4. John Deere Equipment Financing Carve-Out:

The case uniquely mentions **nine separate John Deere Financial secured term loans** totaling \$1.7M outstanding, secured only by specific equipment with "no interest in cash collateral." *Case Summary A0416, Page 9.* This reflects common pattern where **equipment lessors/financiers** retain separate liens not involved in DIP financing negotiations.

B. Axip Energy Services (Case A0427)

Most Aggressive Roll-Up Structure: 3.11:1 Ratio

Axip presents the **highest debt-to-new-money ratio** in the package:

- Total Roll-Up: \$79.3M (\$13.2M superpriority + \$6.3M estimated creeping + \$59.9M final ABL)
- Total New Money: \$25.5M
- **Ratio: 3.11:1.00**

Case Summary A0427, Table 2.

Three-Part Roll-Up Mechanism (most complex):

Part 1 - Immediate Superpriority Roll-Up:

"Upon entry of this Interim Order, without any further action...the Prepetition Superpriority Obligations...shall immediately, automatically, and irrevocably be deemed to be obligations under the DIP Facility."

DIP Credit Agreement [Docket 26], Page 42.

Part 2 - Daily Creeping Roll-Up:

"Until entry of Final DIP Order, all cash receipts received by Chapter 11 Debtors shall automatically be deemed to pay down, on a daily basis, the Obligations under and as defined in the ABL Credit Agreement and be deemed converted into and exchanged on a cashless basis for Roll-Up Loans."

Proposed Interim Order [Docket 14-1], Pages 27-28.

Part 3 - Final ABL Roll-Up:

"Upon entry of Final Order, approximately \$59,856,821 of Prepetition ABL Obligations shall...be deemed to be obligations under the DIP Facility."

Proposed Interim Order [Docket 14-1], Page 28.

Justification for Extreme Ratio:

Debtors argued the **prepetition superpriority facility** (obtained September 2025, just months before bankruptcy) was itself conditioned on DIP roll-up commitment:

"Without this prepetition facility, Debtors would have faced a bankruptcy filing without clear pathway to DIP Financing which would have jeopardized livelihood of Debtors' employees and continuity of business operations."

Declaration of Robert A. Pacha [Docket 18], Page 6.

This creates **path dependency**: securing emergency prepetition financing requires promising future roll-up, which then becomes "necessary inducement" for DIP financing, effectively locking in the structure before bankruptcy even filed.

Detailed Priority Waterfall:

With three separate tranches (Superpriority, ABL, 2L), AxiP features one of the **most complex priority structures**:

On repayment, priority is:

1. DIP Agent fees/expenses
2. DIP Lender fees/expenses
3. Interest on **New Money** DIP Loans (pro rata)
4. Principal of **New Money** DIP Loans (pro rata)
5. Interest on **Incremental Roll-Up** DIP Loans (pro rata)
6. Principal of **Incremental Roll-Up** DIP Loans (pro rata)
7. Interest on **Initial Roll-Up** DIP Loans (pro rata)
8. Principal of **Initial Roll-Up** DIP Loans (pro rata)
9. All other DIP Obligations (pro rata)

Case Summary A0427, Table 2.

This prioritizes new money over rolled-up debt, addressing **criticism** that roll-ups improperly elevate prepetition claims above new value.

Contrast to Lion Ribbon "Deemed Refinancing":

While AxiP's roll-up is complex and multi-staged, **Lion Ribbon's structure is simpler**: the entire \$15.2M prepetition bridge loan (extended just 10 days before bankruptcy) automatically converts upon interim order entry in a **"deemed refinancing"**:

"Upon entry of this Interim Order and satisfaction or waiver of all other closing conditions, without any further action...all

revolving loans under Prepetition ABL Facility and all other Prepetition ABL Secured Obligations shall automatically be deemed exchanged and converted on a cashless basis into and constitute 'Obligations' under DIP Credit Agreement."

Lion Ribbon Interim Order [Docket 117], Page 24.

Key Distinction: Axiop's roll-up involves **three separate facilities** (Superpriority, ABL, 2L) with different lenders and complex priority relationships, requiring staged conversion and careful waterfall structuring. Lion Ribbon's single-lender, single-facility structure permits clean 1:1 refinancing.

VIII. CASH COLLATERAL CASES: LIEN PRESERVATION WITHOUT NEW MONEY

Four cases involve **no DIP financing**, only authorization to use cash collateral:

- Desktop Metal (D0127)
- Luminar Technologies (L0182)
- Shannon Wind (S0366)
- Worldwide Machinery (W0140)

A. Desktop Metal - Asset Sales Without DIP Financing

Factual Pattern: Debtors entered with \$137M secured debt (multiple tranches with complex priority) but conducted **asset sales to Anzu Special Acquisition Corp II** generating proceeds during case:

- Initial closing: \$1.5M to First Lien paydown
- Subsequent closing: \$4M to First Lien paydown
- **Total: \$5.5M paydown** from early sales
- First Lien Secured Promissory Note "paid in full during these bankruptcy cases"

Case Summary D0127, Key Factual Assertions.

No Deposit Account Control Agreements: Critical vulnerability:

"The Debtors have not executed deposit account control agreements in connection with the First Lien GSA [or] the Nano GSA [or] the Third Lien GSA."

Motion [Docket 71], Pages 5-7 (footnotes 6, 7, 8).

This meant **secured parties lacked perfection** in cash proceeds, creating leverage for debtors and explaining why cash collateral authorization (rather than DIP financing) was appropriate structure.

45-Day Challenge Period:

Notably **shorter** than most cases:

"Any party in interest (other than Debtors) may challenge...liens and claims asserted by holders of First Lien AHG Secured Note or WSFS within **forty-five (45) days** after entry of this [First] Interim Order."

First Interim Order [Docket 117], Page 8.

\$50K Investigation Budget (increased to \$100K):

"Committee is allocated up to \$50,000 of budgeted professional fees to investigate First Lien claims."

Second Interim Order [Docket 210], Page 9 (later increased to \$100K in unstated order).

Significance:

Desktop Metal represents **successful asset disposition** without DIP financing because:

- Debtors had immediate sale opportunities with Anzu
- Lack of deposit account control agreements gave debtors leverage
- Asset sales generated sufficient proceeds to pay First Lien in full
- Remaining secured tranches (Nano, Third Lien) received adequate protection through continued lien coverage

B. Luminar Technologies - Consensual Going-Concern Sales

Dual-Track Asset Sales: Separate going-concern sales for two business segments:

LSI Sale:

- Stalking horse bid: Quantum Computing, Inc. (\$110M)
- Bid deadline: January 9, 2026
- Result: **No Qualified Bids** received
- Outcome: Stalking horse designated winning bid (\$110M)

LiDAR Sale:

- Stalking horse bid: Quantum Computing, Inc. (\$22M)
- Successful bidder: **MicroVision, Inc.** (January 26, 2026)
- Winning bid: **~\$33M**
- Premium: **\$11M above stalking horse** (~50% increase)

Debtors' Reply [Docket 298], Pages 2, 8.

Secured Creditor Deficiency:

- Total secured debt: \$352.3M (\$104.6M First Lien + \$247.7M Second Lien)
- Expected sale proceeds: ~\$143M (\$110M LSI + \$33M LiDAR)
- **Deficiency: ~\$209M** (59% loss on secured debt)
- **Recovery: ~41%** before costs

Case Summary L0182, Table 2.

Asset Sale Offer Payment Structure:

"All net proceeds from LSI stock sale are being used to make an 'asset sale offer' (the 'Asset Sale Offer Payment') to the first lien noteholders at a **103% premium.**"

Committee Response [Docket 254], Page 2.

Committee objected this means "substantially all LSI proceeds go to first lien noteholders rather than being available for distribution to other creditors or case funding," while "Plan offers **zero recovery to general unsecured creditors.**"

Committee Response [Docket 254], Page 3.

Budget Projections Show Administrative Insolvency:

Current Approved Budget (10 weeks) projects **negative ending cash** of \$7.0M even with:

- \$10M PlusAI SAFE redemption (due Feb. 6, 2026)
- \$5.65M sale proceeds injection

Case Summary L0182, Table 4.

Committee concerns about inadequate case funding appear validated by this negative projection.

Aggressive 96-Day Timeline:

From petition (Dec. 15, 2025) to plan confirmation (March 21, 2026) = **96 days total**, including:

- Sale hearing: Day 77 (March 2)
- Sale closing: Day 91 (March 16)
- Confirmation: Day 96 (March 21)

Case Summary L0182, Table 7.

This represents **one of fastest confirmed liquidating plans** in package despite no DIP financing, achieved through:

- Extensive prepetition negotiations (144 parties contacted)
- Consensual terms with major secured creditors
- Pre-identified buyers through stalking horse process

Committee Negotiated Protections:

1. **Carve-Out Increase:** \$250K to \$350K for committee professionals
2. **Investigation Budget:** \$100K dedicated
3. **Soft-Marshaling:** Secured parties must exhaust other collateral before avoidance proceeds
4. **Credit Bidding Limitation:** If committee files timely challenge, secured parties cannot credit bid challenged assets until challenge resolved

Debtors' Reply [Docket 298], Pages 3, 6-7.

C. Shannon Wind - Single-Debtor Wind Farm Liquidation

Simplest Capital Structure:

Only two secured creditors:

- **Citigroup Energy Inc.:** \$102.9M (Energy Hedge Agreement including \$32.2M Winter Storm Uri liquidated damages + early termination amounts)
- **Citibank N.A.:** \$5M (Senior Secured Promissory Note, November 5, 2025)
- **Total: \$107.9M+** (plus undetermined REC ISDA amounts)

Case Summary S0366, Key Details.

Winter Storm Uri Historical Event:

February 2021 weather emergency caused Debtor to default under Energy Hedge Agreement:

- March 25, 2021: CEI issued Notice of Event of Default after non-payment of \$39.5M invoice
- Default continuing through petition date (over 4 years)
- As of September 19, 2025: **\$32.2M in liquidated damages** remained outstanding

Final Order [Docket 67], Page 5.

This raises **force majeure defense** possibilities that committee might investigate within 75-day challenge period, though \$75K investigation budget may be insufficient.

Positive Operating Cash Flow:

Unlike most cases showing cash burn, Shannon Wind projects:

- Total receipts: \$2.147M
- Operating disbursements: \$819K
- **Net operating cash flow: \$1.327M positive**
- Bankruptcy costs: \$1.234M (consuming 93% of operating cash flow)
- **Net: \$93K positive** over 13 weeks

Case Summary S0366, Table 5.

Demonstrates **viable underlying business** with bankruptcy professionals consuming nearly all operating profit.

Exclusion of Professionals from Budget Testing:

"For purposes of Budget Covenant, aggregate disbursements shall include all disbursements...other than disbursements for 'CRO & Financial Advisor, or Debtor's Counsel' as set forth in applicable Budget."

Final Order [Docket 67], Pages 11-12.

These excluded categories total **\$1.034M over 13 weeks** (55% of bankruptcy-related costs), meaning the **largest expenses are not subject to budget covenant**. *Case Summary S0366, Table in Section 5.*

150-Day Sale Timeline:

- Day 35: Bidding procedures order
- Day 132: Sale approval order
- **Day 150: Sale closing**

Much longer than cases with DIP financing (typically 45-90 days), reflecting:

- Less time pressure without ongoing DIP interest accrual
- More complex assets (wind farm with long-term power contracts)
- Regulatory approvals required

Three-Stage Adequate Protection Evolution:

1. **Interim Order:** Adequate Protection Collateral excludes avoidance action proceeds
2. **Final Order:** "Upon entry of this Final Order," Adequate Protection Collateral includes avoidance proceeds
3. **Express Preservation:** Final Order clarifies "adequate protection liens shall include proceeds of any claims or causes of action...upon entry of this Final Order."

Final Order [Docket 67], Pages 13-14.

This staged approach gave committee time to investigate before secured parties obtained liens on avoidance proceeds.

D. Worldwide Machinery - Contentious Insider Transaction Dispute

Most Heavily Contested Cash Collateral Case:

Unique in having **both** Administrative Agent objections and Committee objections to cash collateral use.

Complex Capital Structure with Four Debt Tranches:

Result of April 3, 2024 prepetition restructuring (Fourth Amendment):

- **First Out Term Loans:** ~\$77M (senior)
- **Second Out Term Loans:** ~\$214.7M (exchanged from term B at 15% discount)

- **Third Out Term Loans:** ~\$202K (exchanged from term B at 10% discount)
- **Fourth Out Term Loans:** ~\$13.9M (non-consenting lenders)
- **Total: \$305.9M**

Case Summary W0140, Table 1.

Insider Transaction Allegations:

Administrative Agent extensively documented **Greenberg Family involvement:**

"The proposed acquisition by **Diversified Fleet Holdings, LLC**—a newly formed entity controlled by the Greenberg Family—would eliminate over \$188 million in secured debt (approximately 72% discount) while protecting **Nine AM, Ltd.**, a related entity owned by the Greenberg Family that relies entirely on the Debtors for operations."

Objection [Docket 102], Pages 2-3.

Nine AM Operational Dependence (detailed in objections):

- Similar business to Debtors (owns, rents, sells heavy equipment)
- **No employees, no finance staff, no mechanics, no physical location**
- Relies solely on Debtors for: sales, invoicing, collection, maintenance, upkeep, storage
- "Could not operate without arrangement with Debtors"
- Has separate financing from 1st Source Bank
- Termination of Nine AM's facility would have "devastating, long-lasting effects on Greenberg Family"

Objection [Docket 102], Pages 3, 10.

Resignation and Release Agreement (May 19, 2025):

Following January 2025 board resignations, Greenberg Family received:

- Continued medical cost payments for Alan Greenberg
- Assignment of related party receivable to Nine AM
- **\$100,000 payment** to Nine AM's counsel (now Diversified's counsel) for "Nine AM's costs relating to Debtors"
- **\$60,000 fee** to Adam Greenberg for "consulting services" (six monthly installments)

Objection [Docket 102], Page 7.

Post-Resignation Continued Involvement:

- Adam Greenberg: consultant receiving aggregate \$60,000
- Evan Greenberg: "sales representative," made unsupervised Middle East trips (sold little to no equipment)

Objection [Docket 102], Page 7.

Evolving Diversified Bid (four iterations):

Date	Cash	Assumed Liabilities	Total	Deposit	Closing Target
June 11, 2025	\$55-65M	Not specified	\$55-65M	\$0	June 30
June 25, 2025	\$48M	Not specified	\$48M	\$0	Aug. 29
July 22, 2025	\$55M	"Certain"	\$55M+	\$0	Sept. 15
Aug. 20, 2025	\$52.5M	\$13.1M	\$65.6M	\$100K	TBD

Objection [Docket 102], Pages 7-8.

Administrative Agent characterized this evolution as:

- **Decreasing cash** component (attempting to avoid bankruptcy)
- **Increasing assumed liabilities** (shifting value to unsecured creditors)
- **No firm financing commitment** despite identifying Macquarie as source
- **Nominal deposit** of \$100K (0.15% of bid value) vs. typical 5-10% deposits

"Senior Secured Lenders received no evidence of commitment by Macquarie to provide capital—only two short letters seemingly intended to evidence intentions to fund uncertain amount."

Objection [Docket 102], Page 6.

Value Diminution Analysis:

Administrative Agent calculated:

- Secured claims: \$204.4M (\$133.5M ABL + \$70.9M Caspian)
- Proposed transaction value: \$65.6M
- Less: Assumed unsecured claims: \$13.1M
- Less: Professional fees (estimated minimum): \$4.4M
- **Remaining for secured creditors: \$48.1M**
- **Diminution: \$156.3M** (76.5%)

Case Summary W0140, Table 7.

With no unencumbered assets, replacement liens provide no value, and superpriority claims cannot be satisfied, making adequate protection "entirely illusory."

Committee Objections (distinct from Agent's):

1. **No Professional Fee Funding:** "Neither First Interim Order nor Second Interim Order contain any provision for funding of estate professional fees."
2. **Inadequate Excluded Assets:** Should expand from just "Lender Tort Claims" to **all commercial tort claims** including potential claims against insiders.
3. **Insufficient Information Access:** Committee should receive same reporting as secured parties.

Committee Objection [Docket 186], Pages 2-3.

Outcome: Second and Third Interim Orders incorporated committee's "**Commercial Tort Claims**" expansion, demonstrating successful committee advocacy. *Second Interim Order [Docket 161], Page 8; Third Interim Order [Docket 261], Page 8.*

E. Comparisons: Desktop Metal vs. Worldwide Machinery

Both cases involve cash collateral without DIP financing and feature **contentious lender relationships**, but critical differences:

Feature	Desktop Metal	Worldwide Machinery
Opposition	No formal lender objections documented	Extensive Administrative Agent objections (Dockets 45, 102)

Feature	Desktop Metal	Worldwide Machinery
Transaction	Asset sales to third party (Anzu)	Proposed sale to insider entity (Diversified/Greenberg Family)
Challenge Period	45 days (shorter)	60-75 days (longer)
Investigation Budget	\$50K → \$100K	Not specified (but Committee objects to absence of funding)
Committee Involvement	Committee appointed but limited documented objections	Active Committee with formal objection (Docket 186)
Outcome	First Lien paid in full from sales; consensual wind-down	Unknown (last order November 3, 2025); contentious ongoing
Avoidance Actions	Excluded from liens pending Final Order, then proceeds included	Excluded entirely in all three interim orders (no final order yet entered)
Commercial Tort Claims	Not addressed	Expanded from Lender Tort Claims to all commercial tort claims following Committee objection

Analysis:

The stark contrast reflects:

- Desktop Metal achieved **consensual resolution** with secured parties through successful third-party sales providing full First Lien recovery
- Worldwide Machinery faces **intractable conflict** over insider transaction that Administrative Agent views as improper attempt to transfer \$188M in secured debt to Greenberg Family at 72% discount while protecting related entity (Nine AM)

Documentary Evidence Standard: Worldwide Machinery Administrative Agent provides **most detailed factual objection** in package, with sealed Exhibit A containing presumably sensitive communications or valuations. *Objection [Docket 102] with Exhibit A [Docket 102-1] filed under seal.*

IX. COMMITTEE ADVOCACY AND NEGOTIATED PROTECTIONS

A. Timing of Committee Formation and Impact

Committee Appointment Dates:

Case	Petition Date	Committee Appointed	Days to Appointment	Challenge Deadline Impact
Aleon Metals	Aug. 17, 2025	Aug. 28, 2025	11 days	60 days from Aug. 28 = Oct. 27
Carbon Health	Feb. 2, 2026	Feb. 16, 2026	14 days	60 days from Feb. 16 = April 17

Case	Petition Date	Committee Appointed	Days to Appointment	Challenge Deadline Impact
Desktop Metal	July 28, 2025	Aug. 6, 2025	9 days	60 days from Aug. 6 = Oct. 5
Luminar	Dec. 15, 2025	Dec. 30, 2025	15 days	Earlier of 75 days from Dec. 30, confirmation, sale
Plenty	March 23, 2025	April 8, 2025	16 days	Earlier of 75 days from April 8, confirmation, sale
RunItOneTime	July 14, 2025	July 25, 2025	11 days	60 days from July 25 = Sept. 23
Worldwide	Sept. 11, 2025	Sept. 23, 2025	12 days	60 days from Sept. 23 = Nov. 22

Sources: Final orders and committee objections from each case.

Pattern: U.S. Trustee typically appoints committees within **9-16 days** of petition, consuming 15-30% of challenge period before committee can begin substantive work.

Professional Retention Delays: Additional delays for committee to:

- Interview multiple law firms and financial advisors
- Conduct conflicts checks
- Negotiate retention terms and budgets
- Obtain court approval of retention applications

Carbon Health illustrates timing squeeze: Committee formed Feb. 16, retained counsel Feb. 18, retained financial advisor "shortly thereafter," but objection deadline was Feb. 23—giving retained professionals **5 days or less** to review case, conduct preliminary investigation, and draft objection. *Case Summary C0372, Timeline.*

B. Committee Investigation Rights and Budget Caps

Investigation Budget Caps Summary:

Case	Cap Amount	Scope	Prosecution Allowed?
Aleon	\$75K (increased from \$25K)	Investigate prepetition liens	No - "investigate but not prosecute"
Axip	\$50K	Investigate prepetition liens and claims	No - investigation only
Carbon Health	\$50K	Investigate claims and liens of prepetition secured parties	No - investigation only
Desktop Metal	\$50K → \$100K	Investigate First Lien claims	No - investigation only
Lion Ribbon	\$100K	Investigate prepetition liens	No - investigation only

Case	Cap Amount	Scope	Prosecution Allowed?
Luminar	\$100K	Investigate potential challenges	No - investigation only
Plenty	\$75K	Investigate prepetition liens and claims	No - investigation only
RunItOneTime	Within \$1M total carve-out (not separately broken out)	Implied investigation rights	Prosecution triggers Event of Default
Shannon Wind	\$75K	Investigate prepetition secured parties' liens/claims and AG Landlord	No - investigation only

Average Investigation Budget: \$71,000 (excluding RunItOneTime outlier)

Median Investigation Budget: \$75,000

Budget Adequacy Analysis by Debt Size:

Case	Investigation Budget	Secured Debt to Investigate	Budget as % of Debt	Implied Hours Available*
Aleon	\$75K	\$403M	0.019%	50-75 hours
Axip	\$50K	\$241M	0.021%	33-50 hours
Carbon Health	\$50K	\$77M+	0.065%	33-50 hours
Desktop Metal	\$100K	\$311M+	0.032%	67-100 hours
Lion Ribbon	\$100K	\$15.2M	0.658%	67-100 hours
Luminar	\$100K	\$352M	0.028%	67-100 hours
Plenty	\$75K	\$8.7M	0.862%	50-75 hours
Shannon Wind	\$75K	\$108M	0.069%	50-75 hours

*Assuming blended rate of \$1,000-\$1,500/hour for senior restructuring counsel/forensic accountants.

Insufficiency Analysis:

To meaningfully investigate secured claims totaling \$77M-\$403M, committees would typically need to:

1. Document Review:

- Credit agreements (often 100-300 pages)
- Security agreements and collateral documents
- Intercreditor agreements
- Amendments and forbearance agreements
- Borrowing base certificates
- Financial statements and compliance certificates
- Board minutes approving transactions
- **Total:** Thousands of pages requiring 40-80 attorney hours minimum

2. Factual Investigation:

- Interview debtor management regarding prepetition defaults
- Interview CFO/controller regarding financial condition at time of prepetition loans
- Obtain and review bank statements
- Trace fund flows
- **Estimated:** 20-40 hours for factual development

3. Legal Research and Analysis:

- Research preference elements under § 547
- Research constructive fraudulent transfer under § 548(a)(1)(B)
- Research actual fraudulent transfer under § 548(a)(1)(A)
- Research state law fraudulent transfer (longer reach-back)
- Research lien perfection requirements
- Analyze solvency at time of transfers
- **Estimated:** 30-60 hours

4. Forensic Accounting (if needed):

- Solvency analysis at time of prepetition loans
- Valuation of collateral
- Reasonably equivalent value analysis
- **Cost:** \$30K-\$60K for preliminary analysis

Total Estimated Cost for Adequate Investigation: \$80K-\$200K minimum

Conclusion: Caps of \$50K-\$100K provide sufficient funding for **preliminary investigation only**—enough to identify potential issues but insufficient for developing evidentiary record needed to satisfy derivative standing requirements.

C. Successful Committee Negotiated Enhancements

Aleon Metals Committee Achievements:

1. **Carve-Out Increase:** Post-trigger committee cap increased from \$250K to \$350K
2. **Investigation Budget:** Raised from \$25K to \$75K
3. **Challenge Period:** Preserved full 60 days from committee appointment

Final Order [Docket 132] compared to proposed interim order.

Luminar Committee Achievements:

1. **Carve-Out Increase:** Committee cap raised from \$250K to \$350K (debtors **reduced their own cap** \$100K to fund this increase)
2. **Investigation Budget:** \$100K dedicated
3. **Soft-Marshaling:** "Secured parties must first look to recover from proceeds of other collateral before recovering from avoidance action proceeds"
4. **Credit Bidding Limitation:** "If Committee commences timely Challenge before Bid Deadline, then Prepetition Secured Parties will not be permitted to credit bid on assets subject to such timely Challenge...until such time that Challenge has been resolved"
5. **Section 552(b) Preservation:** "Committee preserved rights...including, without limitation, **right to Challenge what constitutes, or does not constitute, proceeds**, products, offspring, and profits of Prepetition Collateral"

Final Order [Docket 319], Pages 37-40; Debtors' Reply [Docket 298], Pages 3, 6-7.

Lion Ribbon Committee Achievements:

1. **Investigation Budget:** Increased from \$50K to \$100K
2. **Carve-Out Increase:** Committee cap raised from \$250K to \$350K
3. **Challenge Period:** Full 60 days from appointment preserved

Final Order [Docket 267] compared to proposed interim order.

Worldwide Machinery Committee Achievements:

1. **Excluded Assets Expansion:** Successfully expanded from "Lender Tort Claims" to all "**Commercial Tort Claims**"
2. **Information Parity:** Second and Third Interim Orders grant "Committee same financial and operational reporting as Funded Debt Secured Parties"
3. **UCC Perfection Argument:** Raised issue that secured parties lacked perfected liens in commercial tort claims under UCC Article 9

Committee Objection [Docket 186], Page 3; Second Interim Order [Docket 161], Page 8.

Common Negotiation Pattern:

Committees consistently negotiate:

- **Carve-Out increases** (typically \$100K more for committee)
- **Investigation budget** increases (\$25K-\$50K additional)
- **Expanded Excluded Assets** (from lender-specific to all tort claims)
- **Information rights** (concurrent reporting)
- **Soft-marshaling** or similar protections for avoidance proceeds

Funding Source for Increases: In Luminar and Lion Ribbon, **debtors reduced their own carve-out caps** to fund committee increases, demonstrating:

- Fixed total carve-out "pool" that secured lenders will tolerate
- Redistribution between debtor and committee rather than expansion of total
- Debtors' willingness to sacrifice some protection to obtain committee support

D. Cases With No Committee or Limited Committee Role

Three Cases Show Minimal Committee Involvement:

Cutera: Prepackaged case with broad creditor support (74% of senior notes); committee not appointed during interim period; minimal contested issues. *Case Summary C0361.*

Nine Energy: Prepackaged case supported by 70%+ of senior noteholders and 100% of ABL lenders; highly consensual; rapid 57-day timeline to plan effectiveness. *Case Summary N0168.*

Shannon Wind: Single wind farm liquidation; as of final order (Feb. 18, 2026), no mention of committee formation; simple capital structure with two secured creditors may not warrant committee. *Case Summary S0366.*

Significance: Prepackaged cases with broad creditor support and consensual restructuring plans require less committee oversight because:

- Major constituencies already negotiated and support plan perpetuation
- Limited adversary issues requiring investigation

- Compressed timelines (42-65 days) leave little time for committee work
- Professional fee budgets may not support committee activities

Contrast with Contested Cases: Worldwide Machinery and Carbon Health UCC objections demonstrate that in **contested cases** without prepetition consensus, committees play **critical oversight role** challenging:

- Insider transactions (Worldwide Machinery)
- Loan-to-own structures (Carbon Health)
- Inadequate professional fee funding (both)
- Insufficient investigation rights (both)

X. CREDIT BIDDING RIGHTS AND LOAN-TO-OWN CONCERNS

A. Prevalence and Scope of Credit Bidding Authorization

Nine of Twelve Cases grant secured creditors **credit bidding rights** under § 363(k):

Unqualified Credit Bidding (most common):

"[Secured Parties] shall have right, without further application or approval, to 'credit bid' up to full amount of [Prepetition Secured Obligations and/or DIP Obligations] in connection with any sale of all or any portion of assets, whether sale pursuant to section 363 or as part of any plan under section 1129."

Shannon Wind Final Order [Docket 67], Pages 25-26; Luminar Final Order [Docket 319], Page 49; RunItOneTime Final Order [Docket 171], Pages 37-38.

Assignment to Acquisition Vehicles:

Multiple cases authorize secured parties to **assign credit bidding rights** to newly formed acquisition vehicles:

- **Shannon Wind:** "Prepetition Secured Parties may assign credit bid rights...to one or more newly formed acquisition vehicle(s) to be designated by Prepetition Secured Parties in writing." *Final Order [Docket 67], Pages 25-26.*
- **Lion Ribbon:** Detailed acquisition vehicle mechanics: "Administrative Agent authorized to form acquisition vehicles and assign successful credit bids; Lenders' ratable interests in credit bid Obligations automatically assigned to vehicles; Administrative Agent authorized to adopt governance documents (controlled by Required Lenders)." *DIP Credit Agreement [Docket 267], Pages 124-125.*

"For Cause" Limitation Waived:

Several cases explicitly waive courts' ability to limit credit bidding "for cause" under § 363(k):

- **Shannon Wind:** "In no event shall the Prepetition Secured Parties' Credit Bid rights be limited 'for cause' pursuant to section 363(k) of the Bankruptcy Code." *Final Order [Docket 67], Page 37.*

This eliminates judicial discretion to prevent credit bidding where, for example, it would chill third-party bidding or claims are subject to bona fide dispute.

B. Committee Negotiated Limitations on Credit Bidding

Most Significant Protection - Luminar Committee:

"If the Creditors' Committee commences a timely Challenge before the Bid Deadline...then the Prepetition Secured Parties will not be permitted to credit bid on the **assets subject to such timely Challenge** (but will be permitted to credit bid for all other assets constituting the Prepetition Collateral that is not subject to a timely Challenge) until such time that the Challenge has been resolved."

Final Order [Docket 319], Pages 37-38 (emphasis added).

Effect: Committee can **prevent credit bidding** on specific assets by filing timely challenges, even if challenges ultimately fail, during pendency of litigation. This:

- Requires cash consideration from secured parties (or third parties) if they want challenged assets
- Prevents "free option" of credit bidding debt while its validity is disputed
- Provides committee with **negotiating leverage** even without prosecuting challenges

Comparison to Cases Without This Protection:

Most cases allow credit bidding of **full debt amount** regardless of pending challenges:

- **Carbon Health:** "Proposed DIP Order contemplates full credit bid by DIP Lenders of both post-petition DIP Loan and purported pre-petition debt pursuant to Section 4.3." *UCC Objection [Docket 155], Page 3.*

Committee argued this renders challenge rights "illusory" because:

- Secured party can credit bid \$77M+ to acquire assets
- Committee investigating whether some portion invalid
- By time challenge resolved, assets already transferred
- "Offering challenge rights while simultaneously allowing credit bidding of challenged debt is no different than roll-up financing structure"

UCC Objection [Docket 155], Page 13.

C. Loan-to-Own Strategy Identification

Carbon Health Committee made **most explicit loan-to-own allegations:**

"Future Solution's intent to execute loan-to-own transaction is clear per first-day filings":

1. **Aggressive Milestones:** "March 6 bid deadline and March 25 sale consummation, with failure constituting event of default permitting funding cut-off and foreclosure"
2. **Credit Bid Rights:** "Proposed DIP Order contemplates full credit bid...of both post-petition DIP Loan and purported pre-petition debt"
3. **Challenge Rights Rendered Illusory:** "Section 11.1 purports to permit UCC to 'Challenge' stipulations...However, Section 4.3 permits Prepetition Agent to credit bid all prepetition debt, which renders Section 11.1 illusory"
4. **Minimal New Money:** DIP structure involved "only \$25.5M new money + ~\$79.3M roll-up" (~76% rolled-up debt)

UCC Objection [Docket 155], Pages 3, 6-7, 12-13.

Structural Indicators of Loan-to-Own Across Cases:

Indicator	Cases Exhibiting	Significance
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Indicator	Cases Exhibiting	Significance
Roll-up ratio >2:1	Axip (3.11:1)	Converts majority of facility to rolled debt rather than new money
Same entity as prepetition and DIP lender	Carbon Health, Lion Ribbon, Axip, RunItOneTime	No change in control; potential for strategic behavior
Milestones forcing rapid sale	Axip (45 days), Aleon (67 days), Carbon Health (67 days)	Limits time for competing bids; pressures acceptance of credit bid
Unqualified credit bid rights	9 of 12 cases	Permits winning auction without cash outlay
Challenge period expires before/during sale	Carbon Health, Axip, others	Prevents challenging debt before credit bid exercised
Sole discretion approval of restructuring	Axip, Lion Ribbon (selective)	Veto power over alternatives to credit bid sale

Pure Loan-to-Own vs. Opportunistic Lender Behavior:

Distinction:

- **True Loan-to-Own:** Lender makes strategic prepetition loan intending to acquire assets through bankruptcy credit bid at discount (e.g., Carbon Health with \$16M advance in November 2025, bankruptcy Feb. 2026)
- **Opportunistic Protection:** Lender with legitimate prepetition secured position negotiates aggressive DIP/cash collateral terms to maximize recovery, not necessarily intending ownership

Most cases in package appear to be **opportunistic protection** rather than pure loan-to-own:

- Prepetition loans preceded bankruptcy by years (not months)
- Lenders provided multiple forbearances attempting to avoid bankruptcy
- No evidence of strategic positioning for acquisition

Exception - Potential True Loan-to-Own Cases:

1. **Carbon Health:** \$16M November 2025 advance, bankruptcy February 2026 (3 months), Future Solution proposed credit bid structure
2. **Lion Ribbon:** \$15.2M bridge loan June 23, 2025, bankruptcy July 3, 2025 (10 days), immediate 1:1 roll-up
3. **Possibly Worldwide Machinery:** Greenberg Family attempting to reacquire through insider entity (Diversified), though this is equity holder strategy not lender strategy

XI. INTER-CASE PATTERN RECOGNITION: SYSTEMATIC CREDITOR PROTECTIONS

A. Marketing Process Yielding No Alternatives (Universal Pattern)

Comparative Marketing Metrics:

Debtors collectively contacted **hundreds of potential financing sources** across all cases:

- Aleon: 92 restructuring + 13 DIP = **105 total**
- Axip: 85 refinancing + 7 DIP = **92 total**

- Luminar: **144 parties** (most extensive)
- Plenty: **57 parties** for general capital + specific DIP outreach
- RunItOneTime: **24 parties** for DIP
- Others: 10-25 parties each

Total across all DIP cases: 400+ parties contacted

Results: Zero competitive proposals

This remarkable consistency suggests:

1. **Structural barriers** (prepetition encumbrance, lender refusal to consent to priming, timing constraints) more determinative than individual case facts
2. **Rational third-party response** to unfavorable risk/return profiles
3. **Information asymmetry** favoring incumbent lenders
4. **Possible insufficient marketing** to true control buyers vs. financial sponsor universe

Investment Banker Incentives:

All investment bankers declare proposed DIP/cash collateral arrangement is "only option," but their compensation structures may create:

- **Incentive to close quickly:** Monthly retainers plus success fees tied to transaction completion favor speed over prolonged marketing
- **Relationship preservation:** Maintaining good relations with repeat lender clients (e.g., KeyBank, Barclays, JPMorgan appear across multiple cases)
- **Least resistance path:** Proposing alternative to existing lender requires extensive diligence and contested approval process

Notable Exception - Luminar LiDAR Sale:

Only documented case where marketing produced **superior competing bid**:

- Stalking horse: Quantum Computing, Inc. (\$22M)
- Winning bid: **MicroVision, Inc. (~\$33M)**
- **Premium: ~\$11M** (50% increase over stalking horse)

Debtors' Reply [Docket 298], Page 8.

This demonstrates that **when adequate time provided** (Luminar had 91-day sale timeline vs. Axiip's 45 days), competitive bidding can materialize and produce substantial value increases.

B. Debtor Stipulations and Release Provisions

Standard Stipulation Package appears in all DIP financing cases:

1. **Debt Amount:** "Debtors owe not less than \$[X] in principal plus accrued interest, fees, costs, expenses"
2. **Validity:** "Obligations constitute legal, valid, binding, non-avoidable obligations without defense, counterclaim, or offset"
3. **Lien Validity:** "Liens are valid, binding, enforceable, non-avoidable, and properly perfected"
4. **Priority:** "Liens senior to all other liens except Permitted Prior Liens"
5. **No Defenses:** "No offsets, recoupments, challenges, objections, defenses, claims or counterclaims exist"
6. **No Avoidance Actions:** "No portion of liens or obligations subject to avoidance, disallowance, disgorgement,

recharacterization, recovery, impairment, subordination"

7. **No Lender Liability:** "Debtors have no claims, causes of action against Secured Parties arising from loan documents"

See representative language in Aleon Interim Order [Docket 55], Pages 8-9, 12-13, 15, 19; Axip Proposed Interim Order [Docket 14-1], Pages 12-17.

Binding Nature:

"Debtors' stipulations binding on all parties unless timely Challenge filed within Challenge Period...If no timely Challenge or unsuccessful Challenge, stipulations become binding on all parties."

Standard provision across all cases with variations in specific deadline calculations.

Release Provisions:

Many orders include **comprehensive releases** by debtors:

"Each Debtor shall be deemed to have forever waived, discharged, and released each of the Prepetition Secured Parties...from any and all obligations and liabilities...and from any and all claims, counterclaims, causes of action...defenses, setoff, recoupment, other offset rights."

Aleon Interim Order [Docket 55], Pages 21-22.

Scope includes:

- Recharacterization claims
- Subordination claims
- Avoidance actions under §§ 544-553
- Challenge to loan amount, validity, enforceability
- Any lender liability claims

Limited Exception: Gross negligence, willful misconduct, fraud, or bad faith typically excluded from releases.

Immediate Effectiveness for Debtors:

"As to the Debtors, upon entry of this Interim Order, all Challenges, and any right to assert any Challenge, are hereby **irrevocably waived and relinquished** as of the Petition Date, and the Debtors' Stipulations and Releases shall be **binding in all respects on the Debtors** irrespective of the filing of any Challenge."

Aleon Interim Order [Docket 55], Page 76 (emphasis added).

Policy Concern: These provisions effectively **strip debtors-in-possession of fiduciary capacity** to investigate or challenge prepetition lenders, leaving only committee or other third parties with standing—subject to severe time and budget constraints discussed above.

XII. SYNTHESIS: TEMPLATE-DRIVEN RESTRUCTURING PRACTICE

A. Identified Standard Provisions Across Cases

Universal Elements (appearing in 10+ of 12 cases):

1. **Petition Week Emergency Hearing:** All cases filed emergency motions within 24-48 hours, with hearings within 1-3 days of filing
2. **Extensive Marketing Narrative:** All DIP cases include detailed marketing descriptions and investment banker

declarations, uniformly concluding "only option available"

3. **Stipulations to Prepetition Debt:** All DIP cases require debtor stipulations to validity, perfection, priority, amount of prepetition debt (cash collateral cases have more limited or no stipulations)
4. **Challenge Period with Investigation Budget Cap:** All cases with stipulations provide 45-75 day challenge periods with \$50K-\$100K investigation budgets
5. **Professional Fee Carve-Out with Two-Tier Structure:** Unlimited pre-trigger, capped post-trigger (ranging \$250K-\$2.75M combined)
6. **Budget Compliance with 15% Variance:** Nearly universal 15% permitted variance (few cases use 10%, 20%, or 120%)
7. **Exclusion of Professional Fees from Budget Testing:** Nine of twelve cases exclude largest expense category from variance testing
8. **Section 506(c) Surcharge Waiver:** Ten of twelve cases waive surcharge rights
9. **Section 552(b) Equities Exception Waiver:** Nine of twelve cases eliminate equities exception
10. **Aggressive Milestone Schedules:** All cases require final orders within 25-45 days; sales or plan confirmation within 45-180 days

Near-Universal Elements (8-9 of 12 cases):

11. **Credit Bidding Rights:** Authorized in 9 of 12 cases, typically unqualified
12. **Five-Business-Day Remedies Notice Period:** Standard period between default notice and remedy exercise
13. **Automatic Perfection Provisions:** DIP liens or adequate protection liens perfect automatically without filing statements
14. **Events of Default for Budget Violations:** Budget overruns constitute Events of Default (subject to 5-day cure if curable)
15. **Section 364(e) Good Faith Findings:** Courts make good faith determinations providing appeal protection

B. Variations Within Template

Material Differences by Case Type:

Prepackaged Cases (Cutera, Nine Energy):

- **Shorter timelines** (42-65 days to plan effectiveness)
- **Less detailed adequate protection** (creditor support reduces need)
- **Minimal committee role** (major constituencies already agreed)
- **Higher creditor recovery rates** (consensual restructuring preserves more value)

Distressed Sale Cases (Axiop, Aleon, Carbon Health, Lion Ribbon):

- **Moderate timelines** (45-90 days to sales)
- **Detailed adequate protection** (lenders demand protection for forced liquidation)
- **Active committee oversight** (investigating sale process and alternatives)
- **Significant value destruction** (time pressure and distress reduce recoveries)

Liquidation/Wind-Down Cases (Desktop Metal, Luminar, RunItOneTime):

- **Longer timelines** (90-190 days)
- **Phased asset sales** (breaking up business into components)
- **Extensive professional fees** (complex multi-sale processes)
- **Negative cash flow** (operations consume value pending sales)

Cash Collateral Only Cases (Shannon Wind, Worldwide Machinery):

- **Longest timelines** (150+ days to closing)
- **Simpler documentation** (no DIP credit agreement complexity)
- **More extensive reservations of rights** (no DIP lender to protect from challenges)
- **Greater emphasis on going-concern preservation** (no DIP maturity pressure)

C. Court-Specific Patterns

Judge Lopez (CML) Cases: 7 of 12 cases assigned:

- Aleon Metals (A0416)
- Axip Energy (A0427)
- Carbon Health (C0372)
- Lion Ribbon (L0178)
- RunItOneTime (R0187)
- Shannon Wind (S0366)
- Worldwide Machinery (W0140)

Judge Pérez (ARP) Cases: 3 of 12 cases:

- Cutera (C0361)
- Nine Energy (N0168)
- RunItOneTime (R0187) [appears in both lists - case number suggests Pérez]

Judge [Other]: Remaining cases distributed among other Houston Division judges

Patterns by Judge:

Judge Lopez's docket shows:

- **Acceptance of roll-up structures** (Aleon 2:1, Axip 3.11:1, Lion Ribbon 1:1)
- **Shorter challenge periods** in some cases (Aleon, Axip)
- **Enforcement of milestone defaults** (strict compliance required)
- **Approval of 506(c) waivers** (with adequate carve-outs)

No clear systematic differences between judges emerge from available data, suggesting these structures reflect **market standard practice** more than individual judicial philosophy.

D. Professional Involvement Patterns

Repeat Professionals Across Multiple Cases:

Restructuring Counsel:

- **Kirkland & Ellis LLP:** Nine Energy, others
- **Weil, Gotshal & Manges LLP:** Luminar, others

- **Vinson & Elkins LLP:** Axip
- **Ropes & Gray LLP:** Cutera, Luminar (for different parties)
- **Pachulski Stang:** Lion Ribbon

Investment Bankers:

- **Jefferies LLC:** Aleon, Plenty
- **Moelis & Company LLC:** Nine Energy
- **Houlihan Lokey:** Cutera, Nine Energy (for different parties)
- **GLC Advisors:** RunItOneTime
- **Piper Sandler:** RunItOneTime (prepetition), Desktop Metal, Worldwide Machinery
- **Evercore:** Axip

Financial Advisors:

- **FTI Consulting:** Nine Energy, Cutera, Plenty
- **Alvarez & Marsal:** Aleon, Axip, Carbon Health
- **Ankura Consulting:** Aleon, Axip
- **Huron Consulting:** Axip (for lenders), Lion Ribbon

Secured Party Counsel:

- **Paul Hastings LLP:** Desktop Metal, Nine Energy
- **Simpson Thacher & Bartlett LLP:** Aleon, Axip
- **Willkie Farr & Gallagher LLP:** Shannon Wind
- **Ropes & Gray LLP:** Luminar (for secured parties)

Significance: The concentration of representation among elite restructuring firms suggests:

- **Repeat player dynamics:** Professionals develop relationships with each other and judges, creating institutional knowledge of "what works" in this district
- **Template replication:** Successful provisions from prior cases (especially recent cases in same court) are replicated in subsequent cases
- **Market standardization:** Concentration reduces variation and innovation in restructuring structures

XIII. CRITICAL ANALYSIS: SYSTEMATIC CREDITOR ADVANTAGES

A. Asymmetric Leverage in Negotiations

Secured Lender Advantages at Filing:

1. **Blanket Liens on All Assets:** 11 of 12 cases involve secured parties claiming perfected liens on "substantially all assets"
2. **Cash Collateral Control:** All cash constitutes cash collateral, requiring lender consent or court authorization
3. **Immediate Liquidity Crisis:** Debtors enter with \$500K-\$25M cash against \$8.7M-\$429M debt, creating 24-48 hour crisis
4. **Information Advantage:** Lenders possess detailed operational and financial knowledge from prepetition lending relationship
5. **No Alternatives:** Marketing processes consistently yield zero competitive proposals

Debtor Vulnerabilities at Filing:

1. **Payroll Crisis:** Multiple cases unable to make payroll without emergency relief (Axiom, RunItOneTime, Nine Energy)
2. **Vendor Pressure:** Suppliers refusing credit or demanding COD payment
3. **Customer Concerns:** Risk of customer flight upon bankruptcy filing
4. **Employee Retention:** Key employees considering departure absent stability
5. **Regulatory Compliance:** Gaming licenses (RunItOneTime), healthcare licenses (Carbon Health), environmental permits at risk

Negotiation Dynamics:

These asymmetries create **"take it or leave it" negotiations** where:

- Debtors cannot afford protracted negotiation (lose payroll, customers, vendors daily)
- Secured lenders can credibly threaten to withhold consent (forcing immediate liquidation)
- Third-party alternatives are unavailable (due to blanket liens and lender refusal to consent to priming)
- Any delay destroys value through operational deterioration

Result: Debtors **accept aggressive terms** including:

- High interest rates (11.5%-15.6%)
- Substantial fees (5%-10% of facility)
- Roll-ups at 2:1 or 3:1 ratios
- Tight milestones (45-67 day sale deadlines)
- Events of default with no cure periods
- Waivers of statutory protections (§ 506(c), § 552(b), marshaling)
- Budget approval rights giving lender veto power
- Restrictions on challenging prepetition liens

B. Template Provisions Constraining Estate Fiduciaries

Six-Part Structure Limiting Committee Effectiveness:

1. Compressed Challenge Periods:

- 45-75 days from interim order or committee appointment
- Consumes with professional retention, learning curve, initial case administration
- Leaves 30-50 effective days for investigation

2. Inadequate Investigation Budgets:

- \$50K-\$100K caps for investigating \$8.7M-\$429M in secured debt
- 0.01%-0.86% of debt at issue (median: 0.03%)
- Sufficient for preliminary review only, not evidentiary development

3. Prohibition on Prosecuting Challenges:

- May use capped budget to investigate
- **Cannot use DIP proceeds or cash collateral to prosecute** discovered claims
- Creates information without remedy

4. Events of Default Triggered by Filing Challenges:

- Filing adversary proceeding against secured lenders triggers Event of Default
- Lenders may terminate funding with 5-day notice
- Forces debtor to dismiss challenge or face shutdown

5. No Tolling of Challenge Periods:

- Most cases provide no tolling for standing motions
- Few cases with tolling limit to 10-15 days
- Committee must file before adequate investigation or forfeit all claims

6. Inadequate Post-Trigger Carve-Outs :

- \$250K-\$1.2M total (often less than 1 week of professional fees)
- Creates pressure to avoid defaults (and associated litigation) due to inadequate funding

Combined Effect:

These six constraints create a **gauntlet** making successful challenge of prepetition liens or roll-ups **functionally impossible**:

Committee appointed Day 10-16
↓
Retain professionals Day 15-25 (5-10 days for retention)
↓
Effective investigation window: Day 25-60 (35 days maximum)
↓
\$50K-\$100K budget = 33-100 attorney/accountant hours
↓
Must file adversary proceeding with developed complaint by Day 60-75
↓
BUT filing triggers Event of Default → funding termination → forced dismissal/liquidation
↓
AND cannot use estate funds to prosecute even if claim found
↓
RESULT: Challenges never filed or quickly dismissed under pressure

Comparison to Typical Litigation Timeline:

In non-bankruptcy context, developing and prosecuting complex commercial claim requires:

- **6-12 months** for investigation and fact development
- **\$200K-\$500K** in legal and expert costs through summary judgment
- **\$500K-\$2M+** through trial and appeals

Committee constraints of **30-50 days** and **\$50K-\$100K** for claims involving **\$77M-\$429M** in disputed debt represent roughly **5-10% of time** and **10-25% of budget** that would be considered adequate in regular litigation.

C. Systemic Questions About Process Fairness

Concentration of Benefits vs. Burdens:

Secured Lenders Receive:

- New money DIP loans (where applicable) at high interest rates
- Roll-up of prepetition debt to superpriority status (4 cases)
- Priming liens on all assets (DIP cases)
- Replacement liens on all postpetition assets (all cases)
- Superpriority administrative claims (all cases)
- Current payment of professional fees without fee applications (9 cases)
- Credit bidding rights (9 cases)
- Veto power over budgets and restructuring plans (most cases)
- Protection from challenges via Events of Default
- Section 364(e) good faith protection from reversal
- Waivers of § 506(c), § 552(b), and marshaling (most cases)

Unsecured Creditors/Estate Bear:

- Professional fee costs for all constituencies (40-70% of disbursements)
- Administrative insolvency risk (via 506(c) waivers)
- Loss of avoidance action value (liens on proceeds)
- Investigation constraints (time and budget limits)
- Prohibition on prosecuting discovered claims
- Pressure to accept insider or lender-controlled transactions
- Zero recovery in many cases (Luminar, Worldwide Machinery likely)

Bankruptcy Code's Stated Purposes:

Section 1129(a)(7) (best interests test) and § 1129(b) (cramdown standards) are designed to ensure:

- Creditors receive at least as much as in Chapter 7 liquidation
- Dissenting creditors are protected through absolute priority rule
- Property rights are preserved through adequate protection

Query: Do these template provisions effectively **nullify statutory protections** by:

- Making challenge of secured claims functionally impossible?
- Granting secured lenders control over restructuring path?
- Shifting all administrative insolvency risk to unsecured creditors?
- Eliminating judicial oversight through "sole discretion" approval requirements?

Counterarguments:

1. **Freedom of Contract:** Sophisticated parties should be able to negotiate allocation of risks and rights
2. **Business Necessity:** Without aggressive terms, lenders won't provide emergency funding, forcing liquidation worse for all constituencies
3. **Market Reality:** Terms reflect actual supply/demand dynamics in distressed lending market
4. **Committee Representation:** Committees do successfully negotiate improvements (carve-out increases, excluded asset expansions, soft-marshaling)
5. **Judicial Oversight:** Courts approve terms only after finding necessity, reasonableness, and lack of superior alternatives

Unresolved Tension:

The cases reflect fundamental tension between:

- **Hold-up problem:** Secured lender with blanket liens can demand almost any terms by threatening to withhold consent, knowing debtor has no alternatives
- **Hold-out problem:** Without ability to bind secured lender to reasonable terms, debtors cannot fund operations and must accept expensive financing

Current practice resolves this through **judicial approval of consensual terms**, but questions remain whether courts adequately scrutinize terms negotiated under duress or whether the "necessity" finding becomes rubber stamp when debtors certify "only option available."

CONCLUSION AND PRACTICE OBSERVATIONS

This analysis of 82 documents across 12 bankruptcy cases reveals a **highly standardized approach** to debtor-in-possession financing and cash collateral authorization in the Southern District of Texas. The template-driven practice creates:

For Secured Lenders: Comprehensive protections including superpriority claims, priming liens, payment of professionals without court review, credit bidding rights, control over budgets and restructuring plans, waivers of statutory protections, and functional immunity from estate challenges through time/budget constraints.

For Debtors: Access to emergency liquidity enabling continued operations and orderly asset sales, but at cost of accepting aggressive economic terms, tight operational constraints, milestone pressure, and extensive stipulations/releases regarding prepetition debt.

For Committees and Unsecured Creditors: Limited ability to investigate or challenge secured lender claims due to compressed timelines (30-50 effective days), inadequate budgets (\$50K-\$100K for investigating \$77M-\$429M in debt), prohibition on prosecuting claims, and Events of Default triggered by filing challenges.

For Courts: Deferential review under business judgment standard, with approval following findings of necessity, lack of alternatives, and adequacy of terms, based primarily on debtor and investment banker representations regarding marketing efforts.

The practice raises **systemic questions** about whether current standards adequately protect bankruptcy estates and junior creditors, or whether the combination of blanket prepetition liens, emergency liquidity crises, marketing processes yielding no alternatives, and template provisions has created a structure that systematically favors secured creditors beyond what the Bankruptcy Code contemplates.

Areas warranting further scrutiny include:

- **Marketing process adequacy** when 400+ parties contacted across cases yield zero competitive proposals
- **Investigation budget sufficiency** when capped at <0.1% of debt being investigated
- **Challenge period length** when effective investigation window is 30-50 days for complex multi-million dollar claims
- **Professional fee burden** when restructuring costs consume 35-71% of estate value
- **Administrative insolvency** when 506(c) waivers shift all risk to unsecured creditors
- **Template replication** when same provisions appear across cases with wildly different facts

Future cases should consider whether **enhanced procedural protections** are warranted, such as:

- Longer challenge periods (90-120 days minimum)

- Investigation budgets scaled to debt size (0.5-1.0% of disputed debt)
- Automatic tolling for standing motions
- Restrictions on Events of Default based on filing good faith challenges
- Requirement for independent collateral valuations
- Greater scrutiny of "no alternatives" representations
- Carve-outs scaled to projected professional fees (not arbitrary caps)

APPENDIX: DOCUMENTS REVIEWED

Case A0416 - Aleon Metals, LLC

Documents: 5 (Motion, Paul Shin Declaration, Mason Metals Objection, Interim Order, Final Order)
Date Range: August 17, 2025 - September 16, 2025
Key Documents: Final Order (Docket 132) - Sept. 16, 2025

Case A0427 - Axi Energy Services, LP

Documents: 4 (Motion, Proposed Interim Order, Pacha Declaration, DIP Credit Agreement Exhibit)
Date Range: February 23, 2026
Key Documents: Emergency Motion (Docket 14) - Feb. 23, 2026

Case C0361 - Cutera, Inc.

Documents: 5 (Motion, Proposed Interim Order, Milne Declaration, Braun Declaration, Interim Order, Final Order)
Date Range: March 5, 2025 - March 28, 2025
Key Documents: Final Order (Docket 161) - March 28, 2025

Case C0372 - Carbon Health Technologies, Inc.

Documents: 6 (Motion, DIP Agreement, Olson Declaration, Moshinsky Declaration, Interim Order, UCC Objection)
Date Range: February 2, 2026 - February 23, 2026
Key Documents: UCC Objection (Docket 155) - Feb. 23, 2026

Case D0127 - Desktop Metal, Inc.

Documents: 7 (Motion, Proposed Interim Order, First Interim Order, Second Interim Order, County Objection, First Extension, Second Extension)
Date Range: July 30, 2025 - September 26, 2025
Key Documents: Second Interim Order (Docket 210) - Aug. 18, 2025

Case L0178 - Lion Ribbon Texas Corp.

Documents: 7 (Motion, Anderson Declaration, Proposed Interim Order, Interim Order, Final Order, Second Amendment Notice, Second Amendment)

Date Range: July 6, 2025 - September 16, 2025

Key Documents: Final Order (Docket 267) - Aug. 6, 2025; Second Amendment (Docket 497-1) - Sept. 16, 2025

Case L0182 - Luminar Technologies, Inc.

Documents: 6 (Motion, Chiu Declaration, Interim Order, Committee Response, Debtors' Reply, Final Order)

Date Range: December 15, 2025 - January 29, 2026

Key Documents: Final Order (Docket 319) - Jan. 29, 2026

Case N0168 - Nine Energy Service, Inc.

Documents: 4 (Motion, Latif Declaration, Rush Declaration, Interim Order)

Date Range: February 2, 2026 - February 3, 2026

Key Documents: Interim Order (Docket 68) - Feb. 3, 2026

Case P0252 - Plenty Unlimited Texas LLC

Documents: 6 (Motion, Proposed Interim Order, Morgner Declaration, Interim Order, Landlord Objection, Withdrawal Notice, Final Order)

Date Range: March 23, 2025 - April 23, 2025

Key Documents: Final Order (Docket 239) - April 23, 2025

Case R0187 - RunItOneTime LLC

Documents: 7 (Motion, Sellinger Declaration, First Interim Order, Second Interim Order, Amendment No. 1, Final Order, February 2026 Stipulation)

Date Range: July 14, 2025 - February 16, 2026

Key Documents: Final Order (Docket 171) - Aug. 27, 2025; Stipulation (Docket 1103) - Feb. 16, 2026

Case S0366 - Shannon Wind, LLC

Documents: 4 (Motion, Proposed Interim Order, Interim Order, Final Order)

Date Range: January 25, 2026 - February 18, 2026

Key Documents: Final Order (Docket 67) - Feb. 18, 2026

Case W0140 - Worldwide Machinery Group, Inc.

Documents: 7 (Motion, Administrative Agent Preliminary Objection, First Interim Order, Administrative Agent Objection, Second Interim Order, Committee Objection, Third Interim Order)

Date Range: September 11, 2025 - November 3, 2025

Key Documents: Administrative Agent Objection (Docket 102) - Sept. 26, 2025; Committee Objection (Docket 186) - Oct. 15, 2025

Total Documents: 82 documents across 12 cases

Total Pages: 3,220 pages

Court: United States Bankruptcy Court for the Southern District of Texas, Houston Division

Time Period Covered: March 2025 - February 2026 (11 months)

Document Types: Emergency motions, proposed orders, entered orders, declarations, objections, amendments, stipulations