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When “Pro Rata” May Not Mean Pro Rata: Practical Takeaways After the Del Monte Decision

In May 2026, the bankruptcy court overseeing the *Del Monte Foods* chapter 11 cases ruled that a group of lenders did not breach their credit agreement’s pro rata sharing provision when they “rolled up” \$247.5 million of their existing loans into super-priority DIP loans in exchange for providing \$165 million of new financing to the company. Minority lenders who had declined an offer to participate in the DIP argued that the roll-up was, in substance, a payment on the participating lenders’ loans that had to be shared ratably with the entire lender group. The court disagreed: no loans were actually repaid or discharged. Instead, the court viewed the existing pre-petition debt as simply being exchanged into new, higher-priority obligations and, as such, the pro rata sharing provision was never triggered.

Why should lenders care? Non-pro rata roll-ups and lender-versus-lender positioning have become familiar features of the large institutional term loan and bond markets, where ad hoc lender groups have repeatedly used flexibility in their documentation to secure favorable treatment in bankruptcy cases. Syndicated bank and private credit transactions have generally been viewed as insulated from these tactics for two primary reasons: first, these transactions are governed by tighter documentation and, second, the long-standing relationship norms among a small group of relationship lenders.

Del Monte calls the first point into question. The sharing provision the court analyzed used the conventional “payment or reduction” formulation that appears in most syndicated credit agreements. If that language does not capture a roll-up, then in a distressed credit there may be nothing in the documents that prevents a subset of lenders from partnering with the borrower to move their exposure to the front of the line, leaving the remaining lenders holding debt that is suddenly junior in practical effect.

Three features of the decision deserve particular attention. First, the participating lenders did not need to amend the credit agreement or obtain anyone’s consent. That means the customary protections lenders rely on, such as unanimous consent requirements for changes to pro rata provisions, never came into play. Instead, any protection needs to live in the words of the sharing provision itself. Second, the court leaned on the fact that every similarly situated lender was offered the opportunity to join the DIP on equal terms, distinguishing a 2024 ruling in the *American Tire* bankruptcy in which a closed roll-up offered only to a select group was found likely to violate a similar sharing provision. *Del Monte* is therefore best read as blessing open roll-ups, not exclusionary ones. Third, the story is not over: the court allowed the minority lenders’ claim to proceed on the question of whether future repayments of the roll-up loans must ultimately be shared. In other words, a roll-up may be permissible going in, but participating lenders could still face sharing obligations (and litigation) when those loans are paid off.

The decision is already reverberating beyond New Jersey. Within days of the ruling, the participating lenders in the long-running *Serta Simmons* uptier litigation cited *Del Monte* to the Texas bankruptcy court, arguing that the pro rata sharing provision in their credit agreement likewise reaches only cash payments and not debt-for-debt exchanges. Expect both sides of future lender-on-lender disputes to invoke this decision.

Practical takeaways. For banks and private credit lenders, the implications fall into four areas.

1. In existing facilities, review your pro rata sharing provisions and know whether they would capture cashless exchanges, roll-ups, and other priority-enhancing transactions. Most legacy language was not written with these structures in mind, and many credit agreements amended after *Serta* to give lenders a right to participate in priming transactions contain an express exception for DIP financings.

2. In new deals and amendments, consider express language treating such transactions as “payments” subject to sharing, a right for all lenders to participate ratably in any DIP financing, or a requirement that any roll-up capture all pre-petition exposure ratably.
3. In distressed situations, engage early. Positioning around a DIP financing happens quickly, often before any bankruptcy filing, and under *Del Monte* the decision whether to participate carries real consequences: the minority lenders who passed on the DIP are now litigating from behind.
4. Pay attention to your lender group and holders of participation interests and consider whether the expected relationship norms will hold under pressure from opportunistic investors. Lender-on-lender dynamics are increasingly migrating from the broadly syndicated world into bank-led structures, and *Del Monte* is a timely prompt for bank and private credit lenders to confirm that “pro rata” in their documents means what they think it means.

Our team is actively advising clients on these issues and would welcome the opportunity to review your facilities or discuss the decision in more detail.

For an in-depth analysis of the Del Monte decision prepared by Choate’s restructuring team, please click [here](#).

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