SERTA AFTER REMAND

What Judge Lopez’s Serta opinion means for Del Monte and Chapter 11

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BACKGROUND

How the litigation arrived back before Judge Lopez

The Fifth Circuit had already closed the open-market-purchase door.

2020	DEC. 2024	2025	MAR.–JUL. 2026
Uptier closes	Fifth Circuit reverses	Supreme Court denies review	Trial and remand opinion

Six years after the transaction that became the prototype for a generation of LMEs, the remaining question was no longer whether the deal qualified as an open market purchase. It was what consequences followed once the Fifth Circuit said it did not.

Judge Lopez was deciding consequences on remand, not revisiting the threshold validity of the uptier.

CORE THESIS

“Payment” opens the door; the remedy creates the leverage

PAYMENT	RATABLE SHARING	FACE-VALUE REMEDY

Serta moves the fight from whether the uptier was an open market purchase to what counts as a payment, and what follows if that payment violated a sacred right.

The Chapter 11 question is whether a DIP roll-up is the same kind of payment or a distinct financing transaction.

“Payment” is broader than cash

Judge Lopez read the sharing provision functionally, not mechanically.

PARTICIPATING LENDERS

Payment means dollars moving through the borrower-agent payment mechanics.

JUDGE LOPEZ

Payment includes consideration in any form received in respect of principal.

SETOFF • “OR OTHERWISE” • NON-CASH CARVE-OUTS • SURPLUSAGE

If consideration is received on account of principal, no cash transfer is required.

HOLDING TWO

The contractual remedy has teeth

The economic consequence may matter more than the definition itself.

$261.13m

DAMAGES

9% prejudgment interest from June 22, 2020

CONTRACT MECHANISM

Favored lenders had to buy participations for cash at face value until the benefit was shared ratably.

Judge Lopez treated that remedy as the bargain the lenders accepted, not a damages theory to soften because the loans were distressed.

Payment creates the claim. The face-value participation mechanism creates the leverage.

Serta does not automatically decide a Chapter 11 DIP dispute

SERTA SETTING

01 Prepetition exchange

02 Excluded lender group

03 Contract allocation after emergence

DIP SETTING

01 Live debtor needs liquidity

02 Court is approving financing

03 Claims may be preserved for later

The same words appear under different courtroom weather: contract enforcement versus financing necessity.

Del Monte is the closest live test

The opinions diverge on the initial conversion, but the remaining cash-payment claim survives.

SERTA

Debt-for-debt exchange treated as a payment in respect of old principal.

EXCLUDED GROUP

DEL MONTE

DIP roll-up treated as a cashless conversion tied to new-money financing.

ALL LENDERS OFFERED PARTICIPATION

Remaining issue: future cash payments on rolled-up DIP obligations

Serta puts pressure on the idea that the conversion is not a payment until cash is later distributed.

Three judicial models are emerging

A spectrum from immediate contract enforcement to financing approval with preserved claims.

SERTA

Enforce the contract

Find the breach and apply the prescribed remedy.

DEL MONTE

Distinguish the DIP

Treat the roll-up as part of a separate financing relationship.

AMERICAN TIRE

Preserve litigation risk

Approve needed financing without immunizing the lenders.

American Tire may be the most portable compromise between liquidity and contract enforcement.

Practical consequences for pending Chapter 11 cases

01	**SACRED-RIGHTS SCRUTINY**	Was old debt retired, canceled, reduced or exchanged for value?
02	**PARTICIPATION RIGHTS**	Was the offer genuinely ratable, or did a steering group receive superior economics?
03	**DRAFTING RESPONSE**	Future agreements will address roll-ups, cashless conversions, priming and DIP carve-outs expressly.
04	**SETTLEMENT LEVERAGE**	Serta-sized downside may push disputes toward mediation before appellate answers arrive.

Serta will not end roll-ups, but it will change diligence, drafting, pricing and negotiating leverage.

The post-Serta question is not whether DIP roll-ups are dead

It is how a court characterizes the transaction in front of it.

NOT

Are DIP roll-ups dead?

BUT

Is this roll-up a distinct, genuinely ratable bankruptcy financing, or a payment on old debt wearing a DIP label?

Payment opens the door. The face-value participation remedy makes walking through it dangerous.

The fight is whether Serta's reasoning crosses the bankruptcy boundary.