Articles + Publications | August 7, 2026

# NJ Bankruptcy Court Roll-Up Is Not a Payment and Offering May be Sharing


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In a recent decision in the bankruptcy case of Del Monte Foods, the U.S. Bankruptcy Court for the District of New Jersey interpreted a liability management exercise that was challenged through the prepetition term loan agreement's ratable sharing provision in the context of a debtor-in-possession financing and related roll-up, thereby providing the first actual market guidance on this issue. In *Certain Members of the Ad Hoc Group of Minority Secured Lenders v. Members of the Ad Hoc Term Lender Group*, No. 25-16984, 2026 WL 1326956 (Bankr. D.N.J. May 11, 2026) (the Del Monte adversary), Judge Michael B. Kaplan decided, on a motion to dismiss, that the post-petition financing roll-up did not constitute a "payment" or "reduction" of the prepetition loans as those terms are understood under the ratable sharing provision of the credit agreement; but declined to dismiss the request for declaratory relief noting that any subsequent payments on the rolled-up loans could be payments of the prepetition loans.

## DEL MONTE AND THE 2024 LME

In the period leading up to the 2024 LME, Del Monte faced persistent challenges, including shifting consumer preferences away from their core packaged food offerings, supply constraints and other macroeconomic shifts.By 2024, Del Monte was under heightened liquidity constraints precipitating its entry into a "drop-down" transaction that raised approximately $240 million in new capital (the drop-down LME).

The drop-down LME transferred substantially all of the company's assets through intermediate entities to a newly formed unrestricted subsidiary, Del Monte Foods Corporation II Inc. (DMFC). Similar to the now infamous J.Crew LME, the drop-down LME first contributed Del Monte's assets to a nonguarantor restricted subsidiary before being transferred to the unrestricted subsidiary.

Contemporaneously with the drop-down LME, DMFC entered into a new credit agreement providing for three tranches of term loans: $236 million First Out Term Loan; $468.8 million Second Out Term Loan; and $135 million third out term loan. The new credit agreement and accompanying intercreditor agreement included a ratable sharing provision requiring that, to the extent any lender received any "payment or reduction" of the loan greater than the proportion received by other lenders, such excess be shared ratably. What "payment or reduction" meant would be the subject of the minority lenders' suit in the *Del Monte* adversary.

In response to the drop-down LME, the nonparticipating lenders initiated litigation, as they were faced with the option of either accepting a diminished mix of debt at the new entity compared to the participating lenders or structural subordination as to the transferred assets post-LME. Del Monte settled that litigation by agreeing to pay the nonparticipating lenders their stub piece in full such that the legacy debt was extinguished, leaving only the debt created under the Drop-Down LME.

## THE CHAPTER 11 CASES AND THE ROLL-UP DIP FACILITY

On July 1, 2025, less than one year after the drop-down LME closed, Del Monte filed for Chapter 11 protection with a restructuring support agreement among an ad hoc term lender group composed of certain senior lenders. Del Monte sought approximately $912 million in debtor-in-possession financing comprising of a $500 million ABL revolver and a $412.5 million term loan. The term loan included $165 million of new money loans and $247.5 million of “roll-up” loans. The roll-up loans would convert the DIP lenders’ prepetition first-out term loans into DIP obligations with super-priority status, elevating them above the remaining prepetition debt. Importantly, all holders of the first-out term loans were offered to participate in the DIP loan and roll-up on the same terms. Approximately 5% of the LME prepetition term loan lenders (the minority holders) declined to participate in the post-petition financing and related roll-up loan and retained their prepetition term loans. Those minority lenders objected to the proposed DIP financing and argued that the roll-up was unnecessary and overly burdensome, giving participating lenders an impermissible advantage in the restructuring process. After considering the parties’ arguments, Kaplan ultimately approved the DIP financing package, concluding that no viable alternatives existed and that he was “not willing to gamble” with the debtors’ operations and the interests of their employees and trade creditors.

## THE ADVERSARY PROCEEDING AND THE ‘CASHLESS EXCHANGE’

In late January 2026, the minority holders initiated an adversary proceeding against members of the ad hoc term lender group to challenge the DIP roll-up. In their complaint, the minority holders: alleged that the roll-up constituted a “payment or reduction” of the prepetition first-out term loans, and that the participating lenders therefore breached the ratable sharing provision of the credit agreement by failing to share that payment ratably; argued that the roll-up breached the implied covenant of good faith and fair dealing; and sought a declaratory judgment that any amounts paid in the future on account of the rolled-up loans must be ratably shared with other first-out lenders.

On May 11, 2026, in resolving a motion to dismiss the adversary complaint, Kaplan dismissed the breach of contract claim. He found that the roll-up did not constitute a “payment” or “reduction” of the prepetition loans as those terms are understood under the ratable sharing provision. Rather, the bankruptcy court characterized the roll-up as a “cashless exchange” that elevated the priority of the prepetition loans into post-petition obligations and therefore did not involve the discharge of any debt or the transfer of any cash. Accordingly, as no prepetition debt was actually repaid or discharged, the ratable sharing provision under the credit agreement was not triggered and could not have been breached. The claim for breach of good faith and fair dealing fell with the ruling on the breach of contract claim.

Notably, the bankruptcy court rejected the minority holders’ reliance on In re *American Tire Distributors*, in which the Delaware bankruptcy court held that a DIP roll-up may have qualified as a breach of a credit agreement’s ratable sharing provision. In distinguishing *American Tire*, Kaplan noted that the Delaware court did not make a definitive ruling that a cashless roll-up, standing alone, violated the applicable ratable sharing provision.

Although the breach claims were dismissed, the bankruptcy court declined to dismiss the request for declaratory relief and found that the obligations in respect of the prepetition loans could “plausibly be understood to be merged into the rolled-up loans;” therefore, any subsequent payments on the rolled-up loans could be payments of the prepetition loans. That is, while the act of rolling up the debt was not itself a breach, future cash payments made on account of those rolled-up obligations could potentially trigger the ratable sharing requirement. However, the bankruptcy court did not determine whether payments on the rolled-up loans would actually be payments on a different loan agreement that memorialized the debtor in possession financing and therefore not subject to the pre-petition credit agreement’s ratable sharing provision. Moreover, Kaplan made note that it was important to the court that the debtor in possession financing and roll-up was offered to all term loan holders, which may be another ground for which the court could distinguish the treatment of the ratable sharing provision since the payment would have effectively been offered to all term loan holders.

## DEL MONTE’S IMPACT ON FUTURE LMES

The New Jersey bankruptcy court’s decision in the *Del Monte* adversary provides immediate judicial feedback to the market on future liability management exercises and their treatment in bankruptcy, particularly in the context of debtor in possession financing. It is also important to note that the bankruptcy court was able to provide the liquidity the debtor needed through a roll-up debtor in possession financing and approval of a sale and confirmation in the face of minority lender litigation, thus threading the needle to ensure the debtor’s restructuring was achieved.

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