

***PE Pathways: Carried Away Series — Trickle-Down Carry*****Speakers: Jeremy Levy, Chris Rossi, and Josh Gelfand****Recorded 5/19/26****Aired: 6/23/26****Jeremy Levy (00:05):**

Welcome to *PE Pathways*, our podcast series where experienced deal makers share their thoughts on current private equity and M&A trends and developments. My name is Jeremy Levy, a partner in Troutman Pepper Locke's Private Equity Practice and I'm excited to continue our multi-episode miniseries entitled *Carried Away*. This is a focused podcast series on the economics of private funds, management fees, carry, GP co-investment, and the tax rules that sit behind them. Each episode brings together Troutman lawyers to explore what's really happening in the market. Listeners will hear candid discussion of current GP fee and carry norms, the ways GPs are sharing economics with anchor LPs and strategic partners, how firms are using carry to recruit and retain talent across the organization and how recent and pending court decisions are reshaping tax planning for management fees. Our first episode covered the current trends we are seeing in GP economics and the second episode continued the conversation by focusing on how today's GPs are navigating a complex, highly negotiated fee landscape.

**Jeremy Levy (01:11):**

Today we're going to explore how carry isn't just for partners at the top. We're going to discuss how PE firms structure carry pools for junior and mid-level employees, how vesting and clawback provisions create loyalty and sometimes resentment and whether carry is still the incentive it once was in a competitive talent market. Joining me today are my fellow PE Partner, Chris Rossi, and Josh Gelfand, a partner in our Employee Benefits and Executive Compensation Practice. Chris, Josh, welcome.

**Josh Gelfand (01:39):**

Thank you.

**Chris Rossi (01:40):**

Thanks. Looking forward to it.

**Jeremy Levy (01:42):**

To set the table for our discussion, let's start by describing which members of the team are given the opportunity to share in the carry at the GP.

---

**Chris Rossi (01:50):**

Generally speaking, everyone involved in the investment team is given some allocations of carry, including significant folks that are in the operational or the administrative side. So your chief compliance officer types, chief financial officer types are allocated carry across the funds. The question is how deep into the carry folks that are not say the fund's principles or the fund managers are, but we typically see carry pools of somewhere in the 25 to 30% range for people that are working on the team and you usually see there are different structures for how it's done, but we typically see it widely held amongst the investment team members.

**Josh Gelfand (02:36):**

I agree with that. I think a few things from the compensation side to be aware of is that a carry is going to be a profits interest for tax purposes, which we'll get into a little bit later on. But one of the requirements for that is that it's provided in consideration for services that are provided for the benefit of the underlying partnership. And so you want to make sure that there is a nexus between the carrier recipient and the work done. So oftentimes, obviously if you're sitting on the actual team, that's very clear. Sometimes when you've got shared service employees or senior people, people that provide services to multiple platforms, it gets a little grayer, but usually you can get over that hub and get comfortable with that.

**Jeremy Levy (03:18):**

Chris, you mentioned size of a pool as far as a directional sense of what we're talking about for how this is split. Can you go into some more detail about how the sharing is typically broken down between the different team members at the fund?

**Chris Rossi (03:32):**

Yeah. So a lot of times you'll have call it 75% held by what I'll say are the founders of the firm. I'm thinking about a more typical middle market private equity firm that has five or six people that are the larger fund founders, if you will. And there's even some hierarchy within them that retain most of the carry and many times they may have a separate vehicle through which their carry is held so that entity is itself an owner in the general partner so that the other 25% holders don't necessarily see what the deal is amongst those founders and the like. And then that 25% gets allocated—again, it just depends upon the role—so, the more senior the employee involved in the team, so somebody who might be at a managing director level that's not quite at the full partner level yet, you may see them have more carry than those that may have more recently joined the firm.

**Chris Rossi (04:37):**

And you usually within that 25% see perhaps more people participating in it because they have smaller shares of it, but they may get shares of it in multiple different funds. Again, different groups do it different ways. Some fund complexes have different products, if you will. They might have equity funds where there are team members that focus on those and there are team members that may say focus on credit funds. While they all may share in the carry of each

product line, perhaps those that focus more on the equity side would see higher carry allocations on the equity side and those that participate more in the investment underwriting on the credit side would receive more there. But I see ranges from a half a percent to three or four percent in that part of the pool, the 25% part.

**Jeremy Levy (05:28):**

Are the allocations that you're talking about, how do they get negotiated? How is it established or determined how that is whacked up? Is it just from the top down the fund just has their rules that they lay out for the younger team members, or is there some sort of a negotiation that goes back and forth?

**Chris Rossi (05:45):**

I don't see a whole lot of negotiation, particularly on the junior side of the equation. I think sometimes you get into, it's just like any other business—you got people that are being promoted from within. There's a market. What are other people getting? It's a package. It's part of what's my salary, what's my bonus, what's my upside, my carry participation. So I don't see a whole lot of negotiation in the junior side. It's pretty much, this is what you're getting. And we'll get into the tax issues associated with multiple issuances of carry, but I have seen instances where somebody who may be fairly junior gets a smaller slog upfront, but when the fund's not yet quote unquote in the carry and they've been there a little bit longer, maybe as part of their promotion and their incentive, the founders, the people that make all those decisions actually allocate them a little bit more.

**Josh Gelfand (06:41):**

I agree. I think sometimes what managers need to be mindful of too is whether their arrangement is structured as a tontine. So last man standing kind of concept, which is generally—sometimes you see that, but generally it can probably create more problems than it's worth because you may end up in a situation like Chris was describing where you have some junior person who's the last person left at the fund and just by virtue of that nature, now suddenly they're getting a disproportionately large percentage of the allocation, which was probably not the intention. So people need to be mindful of that kind of a structure as well to make sure they're not unintentionally creating a problem down the road.

**Jeremy Levy (07:19):**

So let's talk a little bit more about that topic. So I'm thinking about vesting and forfeiture and repurchase terms. What sort of terms are you seeing in that vein and as it obviously relates to when folks are leaving one fund and jumping to another?

**Josh Gelfand (07:33):**

It depends, but I think generally speaking, you look at what the intent is and the goal is to align people's incentives who are managers with the firm and then to drive value for the LP investors. And so a lot of that, when you look at that, I think in the market a lot of it is keyed off of the initial

closing of the fund and a lot of the heavy lifting is done in the fundraise aspect. And so people view it as adding value and making sure to reward folks for that. So a lot of it that I've seen, although it can vary by deal, is going to be service-based vesting over a course of years keyed off of a start date, an investing start date of the initial closing of the fund. And depending on the type of arrangement and the type of platform, it can run somewhere between probably five to eight or nine, maybe ten years is within market.

**Josh Gelfand (08:26):**

And oftentimes there's a preference, though not always, but oftentimes there's a preference to hold back a portion of the vesting until final liquidation of the last investment in the fund. And so that's common. And then you get into different negotiations and different business approaches around how you're going to deal with unvested amounts, right? If you forfeit, does that get reallocated to the team? Is it held back and go back to the general partner and then eventually they have a discretion to do so? How are you going to deal with distributions in respect of unvested amounts? So do you pay full distributions and then really what you have as a forfeiture provision or do you hold back the unvested distributions until they vest? So all those are business terms that you see negotiated and it really varies by platform and by manager.

**Chris Rossi (09:16):**

Yeah. At the end of the day, I always tell clients—so I represent a lot of groups that may be starting their first fund and they're looking for advice in that regard. They may have worked at another place before and I try to get them to stop thinking like an employee and to start thinking like an owner in terms of the carry. So if somebody works for your typical startup business, there's a lot of times it's five year vesting, sometimes it's a one year cliff and then it's quarterly, sometimes it's annual. There's a variety of ways, but they're not usually longer than five year vests for your typical person. In a fund, these funds are typically created to be born to live a life and then to die. And the end of the fund's life is anywhere from 10 to 15 years depending upon the type of fund and the exit strategies.

**Chris Rossi (10:12):**

So a lot of people do think about, they think, well, it's a five year investment period. So of course we would invest everything in five years. And yes, it's very complex and there's a lot of work to do to construct the portfolio, but how about realizing the investment? Sometimes things go sideways and you work a lot harder on the exit side of the fund's life than on the construction side of the fund's life. So there's a balance between making people feel like they have earned something that they get to keep and incented versus, "Hey, I got mine. I'm out of here and everyone who stays is now working for those who left." So I typically advise clients to have longer vestings. I do agree that you typically see a vesting at closing of the fund. There's a lot of work there to get your first fund launched and you're finding that even the case with second and third funds is tough.

**Chris Rossi (11:07):**

It's a tough fundraising environment out there. So you want people to have some vesting at closing and I do see that and a lot of times I see about 25% vested at closing. And then that's

the date, as Josh was saying, that keys off of other things. So then you have a variety of things. You can have quarterly, you can have annual overtime so long as you're still around, but beyond that five year period going into year seven and eight with a holdback toward the end of maybe 10%, 15% is what we typically see, but that all gets measured in light of, well, what are the terms? So for example, if the fund is in carry and there's a distribution to be made, do you make distributions on unvested carry? Many funds do. They make that distribution so people get that cash and then the question is, all right, do they get to keep it and subject to there not being enough carry at the end of the day, are they only subject to that clawback provision or do they have to give back that which they received that was unvested?

**Chris Rossi (12:10):**

I can flip a coin there where I see those. Sometimes I see them, sometimes I don't. And if I don't see those, sometimes you see an ability to make disproportionate allocations in the future so that you get to the place where you would have been or as close as you got as you would have gotten had the person only gotten an issuance of their vested carry. So there's a myriad of alternatives in how to structure those things, but the key is carry is an incentive. You want people to work hard, make good decisions, but you also want them to stick around to see the benefit of those decisions that have been made.

**Josh Gelfand (12:47):**

One other nuance that I think a lot of the conversation we're talking about deals with closed ended funds. Sometimes if you've got open-ended funds, it can get more complicated because it might not make sense to have hold back till the end of the last fund because there's not going to be that. And sometimes you see folks try to get more creative in terms of how vesting might work where maybe you're not really vested or you once you leave, you get some sort of a tail period where you continue to receive distributions. There's different approaches to how that can work, but it could also raise additional complexities from a tax perspective because there's questions that the IRS looks at as to whether you've actually had a transfer of equity in a situation where in all cases you'll be giving back the equity once you depart. Those are nuances that need to be thought through depending on what the structure of the fund is and what the goals are for the manager.

**Chris Rossi (13:40):**

I've also seen vesting that's not just purely time-based. I've seen vesting, particularly in buyout funds where the vesting is in a proportion to exits relative to invested dollars. So for example, if there's an exit and a lot of times you want your waterfalls to match one another. So what kind of waterfall do you have in your fund versus what the payout is at the GP level, but sometimes you'll see a vesting of a percentage that bears the same proportion that the exited cost basis of the investment that was realized bears to the remaining aggregate cost basis of investment. So it's time based in the sense that if you're there when the exit happens, you're going to be vested in the proportion that that investment bears to all the investments. So there's a little bit of event base there too. I see that sometimes as well.

**Jeremy Levy (14:36):**

Chris, you've used the phrase a couple times "in the carry." Can we double click on that a little bit? What does it mean specifically to be in the carry? And I guess Josh, what are the tax consequences to recipients if they are receiving new interests when the fund is, so to speak, in the carry?

**Chris Rossi (14:53):**

In the carry means where are you within the waterfall at the fund that would enable the GP to receive a portion of the income allocations and the distributions attributable to the economics that the LPs have. So for example, if you have a European style waterfall, which is a waterfall where the investors get all their money back first. Sometimes there's a preferred return. Venture funds, I can again flip a coin. Some of them have preferred returns, many of them don't. And then once you reach that level, now the general partner gets to share in the profits. Usually there's a catch up and the GP gets 20% of basically the profits up till that point and then they split on an 80/20 basis. In an American waterfall or a deal by deal waterfall subject to various nuances, the GP is entitled to receive carry once all the realized investment on the real capital's returned on realized investments plus maybe the cost basis of written off investments or written down investments.

**Chris Rossi (16:03):**

So it's at what point in the fund's waterfall is the GP entitled to share in the profits? That's what it means by being the GP is in the carry and then in the upper tier that has implications for issuances of people's entitlement to share in that carry, whether or not the fund is so-called in the carry or not.

**Josh Gelfand (16:25):**

What's really important to be aware of and be mindful of this, we're talking about carried interest. Sometimes you'll hear people refer to profits interests. What we're talking about now is grants of incentive equity to individuals for the services that they're providing. And there's a special nuance under the tax rules. There's a safe harbor where the IRS says, if you do it a certain way, if you structure your interest a certain way, then we will allow you to not take income any amounts on grants or on vesting of the award. And if it's eligible for capital gains, you'll be eligible for capital gains down the road. And that's called a profits interest if we have that. And if you have a profits interest, then you can get this favorable tax treatment. And in order to fit within the safe harbor that the IRS has put out for qualification, there's a few things you need to do.

**Josh Gelfand (17:16):**

And the most significant for purposes of what we're talking about now is that the award has to be granted with a liquidation value of zero undated grant, which means that when you get your award, if you were to liquidate the fund and you would sell all the assets for their fair market value, pay out all the debts and run the rest through the waterfall, once you get through the

waterfall, you, the recipient, have to get nothing. And so if you're not in the carry, let's say you're behind the investment capital plus a preferred return and on the date you're granted the award, you're not there yet. Usually there'll be a mark that they'll set it to regardless, but you're not in the carry yet. So you can get that award because on grant it's worth zero on a liquidation basis. If you're already in the carry, well, then you have to set a different hurdle for this profits interest and say that you do not participate in any distributions until this hurdle has been met and that is necessary to qualify and fit within this safe harbor for the beneficial tax treatment.

**Josh Gelfand (18:22):**

Otherwise, if you don't, you run the risk that this will be viewed as what we'll call a capital interest, meaning just a general interest in the capital of the company, of the fund or the investment entity. And that would mean that the grant or vesting, depending on which you're at, would be a taxable event and then the taxation would be ordinary income to the person investing, which is obviously not a preferred outcome for anybody. That's why it's very important. And I'll say one other bit on this is even though you can fit within the safe harbor and most, if not everyone tries to do that, typically what's a common practice will still be to make what's called a protective section 83B election, which is the section of the tax code for property transfers that allows you to take amounts of income before vesting. So without getting too in the weeds on it, what people will typically do and what's advisable on these profits interest is to say, even though if we fit within the safe harbor, vesting and grant is a non-tax event, we're still going to make this election as if we're not in the safe harbor just in case something happens that pushes us out of it.

**Josh Gelfand (19:34):**

So people will typically do that because there's no cost to you because the amount you're taking into income by relying on the safe harbor is still \$0. It's a little bit in the weeds on that piece, but I know people love hearing about tax law, so I'll go on about it.

**Jeremy Levy (19:47):**

Let's talk about another incentive tool that you hear a lot about in the marketplace, synthetic carry. Can you explain the differences between quote real carry and synthetic carry? Why do folks use or implement synthetic carry?

**Josh Gelfand (20:03):**

Sure, sure. There's a few different reasons why people may want to use synthetic instead of what I'll call real carry, but I think just to take a step back, what synthetic carry is, is simply a bonus arrangement between the employing entity and the employee in this entity. And the reason why it's called synthetic or phantom, sometimes shadow carry, it's all kind of interchangeable. The idea is we're not giving you an actual property interest. We're not transferring an actual ownership interest in the fund or whatever the carry vehicle is we're using. Instead, the employing entity is going to grant, enter into a bonus arrangement with the employee and we'll pay based on a formula that will as closely as possible approximate what they would have received had they held a real carried interest in the fund. And so it's basically

just a formula says, "I'll pay you a bonus and you'll get it based on whatever terms and investing conditions we can set out" and you try to approximate it as closely as possible.

**Josh Gelfand (21:01):**

The obvious main distinction is that because it's a compensatory bonus arrangement and not a property grant, it's not eligible for any type of capital gains treatment that a real carry award might be. And so you're always going to be subject to ordinary income on any distributions or any payments that are made in respect of a synthetic carry grant. The other nuance for U.S. taxpayers is that because it's a bonus arrangement, it needs to be structured to be either exempt from or compliant with IRS code section 409A. And 409A, that could be its own 10 podcast series, but the 30,000 foot view is that 409A regulates the timing and form of payment of non-qualified deferred compensation, which you could think of as just any compensatory payments that are vested or could be vested in one year and could be payable in its subsequent tax year. And so if you've got that type of a structure, it has to be compliant with 409A and 409A only allows you to make payments on certain prefixed non-discretionary times.

**Josh Gelfand (22:16):**

And so the important thing here, if you go back to the carry is we say the carry is going to vest over time, you're going to keep it if you leave, and then we'll pay you whenever we make a distribution. That works if it's a real property interest because you can run it through the waterfall and it's not compensatory once you've gotten the property. With a bonus award, it doesn't work or it might not work because if we're saying you're vested over time, so when you leave, you'll still keep the payments. We can't under 409A say, "And we'll pay you whenever we make distributions." That's not permissible. So if you're going to be giving a synthetic award to a U.S. taxpayer, and that can be someone who's outside the U.S. but subject to U.S. taxation. If you're going to do that, you need to set it up in a way that it's either exempt from 409A or compliant.

**Josh Gelfand (23:05):**

The exempt approach would be to say, "We're going to make this not deferred compensation," which would mean that you have to make it so that they don't vest in the awards. You have to be employed on the payment date to get the payment. Well, that obviously gives the benefit of getting you outside of 409A, but it's not the same business deal that the people may be expecting. So there's trade off there. And on the flip side, there are ways you can design and structure your awards to allow for vesting and to pay on a permissible 409A payment date, but it often would require you to push out the payment to a fixed non-discretionary date in the future. So yeah, then you get to vest, but you may have to sit and wait for your payment for years, whereas everyone else is getting them today.

**Josh Gelfand (23:52):**

So there's no perfect alignment, but there are ways that we try to design it to be as close as you can get to that. And so you might want to know people like, "Oh, why would we ever do that? That seems like a lousy deal." For U.S. taxpayers, perhaps the person's not an accredited investor, let's say you're going very deep in the structure, you don't want to make them a partner in the partnership, that might be a reason. Sometimes people, and we'll get into this in a little bit,

---

real carry interests can have or generate phantom income. They can generate dry income, which is where you have a tax charge, but you haven't yet received cash. People don't always like that. And if people are concerned about that, phantom equity, synthetic equity is a way to kind of address that thing is you don't generate a tax charge earlier, although the tradeoff is you have to deal with these other rules.

**Josh Gelfand (24:38):**

Those are reasons why. Another reason, which not to get too deep into it is a lot of times if you're giving carry or you want to give an incentive to someone outside the U.S. who's subject to tax rules outside the U.S., they oftentimes don't respect this profits interest structure and so you need to give them a phantom equity award because you can't give them real carry. Now, if they're not with U.S. taxation, 409A goes out the window, you don't have to worry about that, but whatever the local jurisdiction is, you have to be worried about that. So there's all different nuances, different things you have to be factoring in and different reasons why you may or may not want to consider synthetic equity.

**Jeremy Levy (25:14):**

You mentioned dry income or phantom income. Let's quickly cover that as well. I know that's a key concern relating to the administration of carry positions. How do folks deal with dry income and phantom income issues?

**Josh Gelfand (25:27):**

Generally speaking, dry income, phantom income comes up as an issue because you're given a partnership interest, a carrier or profits interest is still a partnership interest and a partnership is a pass through entity for tax purposes, which means that the individual partners are allocated the gains and losses and their share of that, of the partnership. And so you can get into situations where you may not be making distributions yet. However, you're allocated income for tax purposes. So you're a partner, you get allocated income, you're going to have to pay tax on that income even though a distribution has not been made yet. And so that's the issue that people are dealing with or need to deal with with a real carry interest. And the way in which it's typically addressed is that the documents allow for partnership for tax distributions, which are essentially, you can think of it like an advanced distribution that's paid up the chain in order to cover people's tax expenses.

**Josh Gelfand (26:27):**

And so that's typically how it's provided for in different ... The GP might want that as well. There might be reasons why they don't, but that's how it's typically addressed. But the risk there also still is that there needs to be cash in the system to make those payments. So people receiving carried interests needs to be aware of the risk that they might end up with a dry income charge and no cash to pay it from the fund. So it's a risk that people need to bear and be aware of.

**Chris Rossi (26:52):**

And that's an important thing that I think people don't appreciate. They think that if there's a European waterfall, for example, that they're not going to have any allocations of income because while the LPs have to get all their money back, there has to be a preferred hurdle potentially and therefore I'm not going to get any dry income. That's not necessarily true. I think it's important to include in your fund documents tax distribution provisions, including those that allow for disproportionate distributions to be made to the GP to cover any tax liabilities they may have at least insofar as allocations attributable to the carry interest is concerned because you could be in a place in a waterfall where the GP's not entitled to carry yet but has income allocations. And so you need this exception, which would of course be treated as an advance and then it goes all into the clawback provisions of the documents.

**Chris Rossi (27:55):**

Don't overlook that. Some people are surprised to know that they have phantom income when they're not even at a place. They're not quote unquote in the carry yet.

**Jeremy Levy (28:05):**

So we've spent a good amount of time talking about how carry impacts the sort of younger members of the team that's been the focus of our podcast today. So stepping back and thinking about the proliferation of private equity funds that we've seen over the past many years since I guess the concept of carry was created, would you say that at this point are private equity funds or are clients of the opinion that participation in carry on its own is enough to retain top talent and get the right people feeding into their funds or are firms having to get more creative with different compensation structures at this point?

**Chris Rossi (28:44):**

I think at the end of the day in terms of recruiting top talent, it's an entire package of compensation. So just like in any other business, if it was say an operating company, a startup business, there would be a salary component, potentially a bonus component and an equity incentive component. For new employees, that's going to typically take the form of an option for higher level people. It may take the form of a restricted stock grant. Well, just analogize it to the business of making investments in other businesses. So I think that if you're starting, you're probably not getting a carry on day one, but if you've been there for a year or so, you may begin seeing some carry allocated to you. It just gives you a reason to feel invested in the business of the firm with which you are working. I think that allocating carry and trying to retain the incentives to row the boat in the same direction for all deals, not just your deals, I think it's important to not just allocate carry based upon your deals versus other people's deals that creates conflicts.

**Chris Rossi (29:56):**

And I think struggles within the organization, I know there's different views on that, but I do think that it's one component of many, and probably at a certain point if you're not getting it, then

you're probably just not being compensated properly within the industry generally and you're likely to go look elsewhere, but I think it's an entire package.

**Josh Gelfand (30:19):**

Yeah, I tend to agree with that. I think that looking at it from the exec comp perspective, as Chris had mentioned, is really three buckets of compensation people get. There's base comp, which is your guaranteed arrangement, there's short term incentives, which is going to be your annual bonus, which typically you have to stick around for and you get that on a year over year basis. Then there's the long-term incentive, which is for a portfolio company in private equity is going to be options, profits, interests, RSUs, restricted stockings, something in the ownership of the company that drives value towards an exit. In the fund space, it's going to be an equity value or something valued by reference to the equity of the funds and the investments in which you manage. And so I think carry is the most common approach for that and still makes the most sense.

**Josh Gelfand (31:06):**

You certainly see—depending there's always bespoke packages and arrangements that may have different, more creative structures that people come up with—but I think as a general practice, those are the three buckets and then everything fits within those. And usually it's weighted much more and the more senior you are, the more it's weighted toward the long-term incentive package because that's intended to align your interests and incentives with those of the firm as well as with those of the outside LPs. That's what they want to see as well.

**Jeremy Levy (31:39):**

Well, thank you, Josh. Thank you, Chris. This has been a great discussion. I'm looking forward to future installments in our Carried Away series. Thank you to our audience as well for listening today. Please keep your eyes open for future episodes of *PE Pathways*, where we bring experienced deal makers on to share their thoughts on current private equity and M&A trends and developments. You can find the latest episodes of *PE Pathways* wherever you get your podcasts.

Copyright, Troutman Pepper Locke LLP. These recorded materials are designed for educational purposes only. This podcast is not legal advice and does not create an attorney-client relationship. The views and opinions expressed in this podcast are solely those of the individual participants. Troutman does not make any representations or warranties, express or implied, regarding the contents of this podcast. Information on previous case results does not guarantee a similar future result. Users of this podcast may save and use the podcast only for personal or other non-commercial, educational purposes. No other use, including, without limitation, reproduction, retransmission or editing of this podcast may be made without the prior written permission of Troutman Pepper Locke. If you have any questions, please contact us at [troutman.com](http://troutman.com).

---

*DISCLAIMER: This transcript was generated using artificial intelligence technology and may contain inaccuracies or errors. The transcript is provided "as is," with no warranty as to the accuracy or reliability. Please listen to the podcast for complete and accurate content. You may [contact us](#) to ask questions or to provide feedback if you believe that something is inaccurately transcribed.*