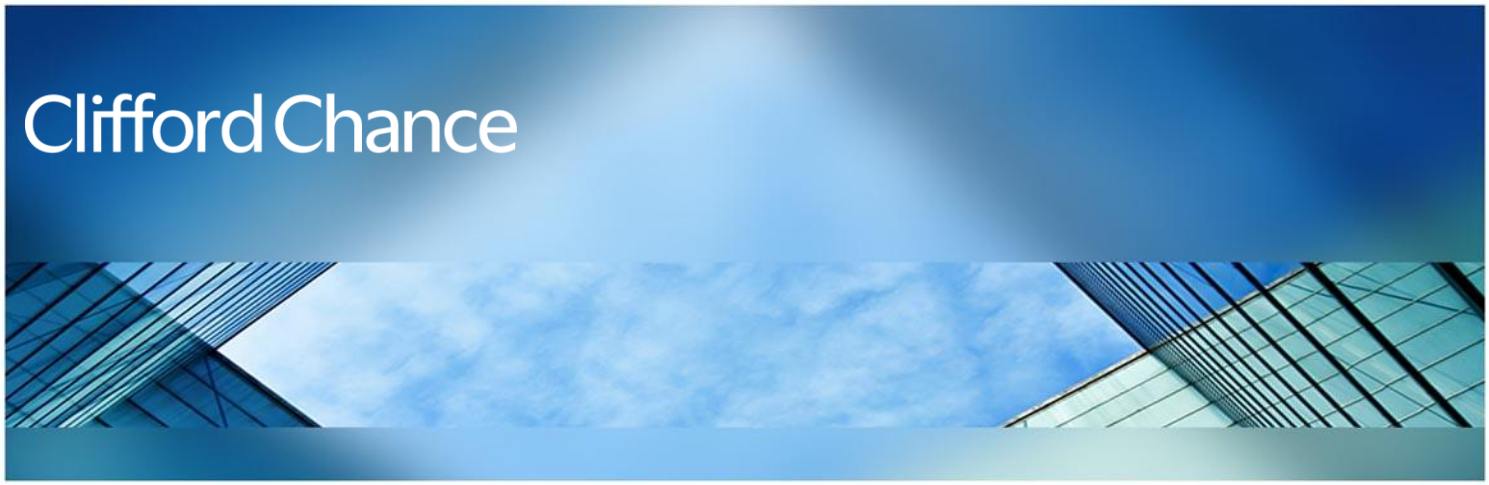

CONVERGEONE: EXCLUSIVE BACKSTOP OPPORTUNITY IS TREATMENT FOR A CLAIM RESULTING IN UNEQUAL TREATMENT UNDER SECTION 1123(A)(4)

On September 25, 2025, the United States District Court for the Southern District of Texas (the "**District Court**") reversed the bankruptcy court's confirmation of ConvergeOne Holdings, Inc.'s prepackaged plan of reorganization (the "**Plan**"). The District Court found:

- The exclusive backstopping opportunity offered to certain creditors of a class was treatment for a claim—and not merely compensation for their new financial obligations. The District Court distinguished the Eighth Circuit decision in *Peabody*, which held that the right of certain creditors to participate in a private placement under a chapter 11 plan was *not* treatment on account of their prepetition claim.
- The Plan violated the Bankruptcy Code's section 1123(a)(4) "equal treatment" requirement to provide the same treatment for each claim or interest of a particular class by (i) giving certain creditors exclusive investment opportunities that resulted in them receiving higher recoveries than other similarly situated creditors and (ii) failing to market test the exclusive investment opportunities.
- Unless offered to each class member, an exclusive backstop opportunity requires a market test—and merely considering alternative plans was not sufficient to satisfy any such test, especially where the only ability to propose alternatives was after a prepackaged plan had already been filed and effectively completed.
- An exclusive opportunity to backstop an equity rights offering requires consideration – beyond the backstop—for the *opportunity* itself.

Key Issue

- District Court reverses Bankruptcy Court's approval of ConvergeOne debtors' prepackaged chapter 11 plan because it violated the Bankruptcy Code's requirement to provide the same treatment for each claim or interest of a particular class by giving certain creditors exclusive investment opportunities, without subjecting such opportunities to a market test, that resulted in them receiving higher recoveries than other similarly situated creditors.

BACKGROUND

ConvergeOne Holdings, Inc. (the "**Debtor**" or the "**Company**"), a Minnesota-based information technology company, and certain subsidiaries commenced chapter 11 cases in the United States Bankruptcy Court for the Southern District of Texas (the "**Bankruptcy Court**") in April 2024. Prior to the chapter 11 filing, the Debtors negotiated and entered into a restructuring support agreement ("**RSA**") with approximately 81% of their first and second lien holders which formed the basis of the Plan designed to eliminate US$1.6 billion in secured debt.

Under the Plan and pursuant to the RSA, the Debtors' majority first lien holders (the "**Majority Lenders**") agreed to backstop the Debtors' $245 million reorganized equity rights offering, which was offered at a 35% discount to plan value. Although the Plan provided all holders of first lien claims the opportunity to purchase $159 million of the discounted reorganized equity (the "**Open Equity Allocation**") on a *pro rata* basis, in exchange for their commitment to backstop the equity rights offering, the Majority Lenders received the exclusive right to purchase the remaining $86 million of the discounted reorganized equity, a fee equal to 10% of the total equity raised, and the right to purchase any unpurchased equity from the Open Equity Allocation. The Company analyzed the reasonableness of the backstop consideration, but did not market test the backstop. Certain of the first lien holders (the "**Minority Lenders**") were not provided with an opportunity to participate in the negotiations or discussions that culminated in the Plan and RSA or the opportunity to participate in the backstop. Although the Minority Lenders proposed two alternatives to the equity rights offering, both were rejected by the Company.

The Minority Lenders objected to confirmation of the Plan, arguing primarily that their exclusion violated the equal treatment requirements of section 1123(a)(4) of the Bankruptcy Code, which requires a plan to "provide the same treatment for each claim or interest of a particular class." The Plan classified all holders of first lien claims against the Debtors—including the Majority Lenders and the Minority Lenders—as members of Class 3. The Majority Lenders, however, received preferential treatment on their claims relative to the other Class 3 members through the backstop rights, which the Minority Lenders argued allowed the Majority Lenders to receive, on average, a 30% higher recovery for their claims through exclusive means not available to other class members. The Minority Lenders argued that the Plan should have either (i) offered the backstop opportunity to *all* class members or (ii) subjected the exclusive opportunity to a market test.

The Bankruptcy Court overruled the objection and confirmed the Plan, finding the backstop necessary and reasonable and the result of arms'-length negotiations. Critically, the Bankruptcy Court found that the Plan did not violate section 1123(a)(4) as the "exclusive investment opportunities" offered to the Majority Lenders were not distributions on account of their prepetition claims that had to be shared with the Minority Lenders but was compensation for the Majority Lenders' new financial obligations, namely their postpetition backstop commitment. The Bankruptcy Court also held that a market test for financing opportunities like the backstop at issue was not required.

DISTRICT COURT DECISION

On appeal, the District Court was asked to determine whether (exclusively) offering an opportunity to participate in a backstop to certain creditors within a class to the exclusion of others was unequal treatment in violation of section 1123(a)(4). The District Court held it is.

This conclusion was based on the District Court's finding that the *exclusive* backstopping opportunity constituted treatment for a prepetition claim—rather than compensation for the Majority Lender's backstop commitment—and allowed

certain members of the class “to receive higher recoveries than others in the same class” in violation of section 1123(a)(4) of the Bankruptcy Code.

Exclusive Rights Must be Either Made Available to All Claimholders in a Class or Market Tested

A central aspect of the District Court's decision was the absence of a market test for the backstop. The District Court relied heavily on the Supreme Court's decision in *LaSalle*.[1] In *LaSalle*, the Supreme Court rejected a cramdown chapter 11 plan that gave a debtor's prepetition equity holders the exclusive opportunity to invest in the equity of the reorganized debtor, finding that the exclusive opportunity was "a property interest extended 'on account of'" the equity holders' prepetition equity interests and, as such, a violation of the absolute priority rule (since not all creditors were paid in full). The Supreme Court found particularly troubling that (i) prioritized equity holders paid nothing for the opportunity to invest new money in the reorganized debtor's equity and (ii) the debtor did not consider either alternative ways to raise capital or market test the plan. Ultimately, the Supreme Court concluded that an exclusive opportunity to obtain equity in a reorganized equity *without* the benefit of market valuation constitutes a property interest received *on account of* the prepetition claim or interest in violation of the Bankruptcy Code.

Guided by *LaSalle*, due to the similarity of the Bankruptcy Code's cramdown and equal treatment provisions, the District Court considered whether the exclusive backstop rights were market tested, and concluded they were not.[2] It was undisputed that the Debtors made no attempt to put the backstop opportunity into the open-market, seek third-party input or otherwise test the fair market value of the exclusive opportunity. The Debtors considered two alternative plans proposed by the Minority Lenders after the RSA had been executed and the pre-packaged bankruptcy cases filed—but by then, the "train had already left the station." In such circumstances, the District Court found that even if a market test only required the consideration of alternative plans, there was no real opportunity for Minority Lenders to propose an alternative that would receive genuine consideration since it would require convincing the majority of creditors who had already voted in favor of the Plan to take less so the Minority Lenders could recover more.

Equality Must be Examined Both in Opportunity and Result--Here, Neither Were Equal for All Similarly Situated Creditors

The District Court found that the Minority Lenders were "intentionally restricted from participating" in the backstop and were given "no real opportunity" to access the backstop. The District Court noted the terms of the RSA and Plan were negotiated between the Majority Lenders and the Debtors without the involvement of the Minority Lenders—despite the Minority Lenders consistently seeking to be involved—make it "undisputable that [the backstop] was an ***exclusive*** opportunity given to a subset of class members without giving the Minority Lenders the ***chance*** for inclusion."

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[1] *Bank of Am. Nat’l Trust & Sav. Ass’n v. 203 N. LaSalle St. P’ship*, 526 U.S. 434 (1999).

[2] While *LaSalle* did not define what a market test means, the District Court found persuasive the market test utilized by the Seventh Circuit requiring competition rather than the mere opportunity to propose a competing plan.

For these reasons, the District Court found that the Plan was distinguishable from *Peabody*, where the Eighth Circuit analyzed a plan that included "an exclusive sale of discounted preferred stock to qualifying creditors" and determined that it did not provide unequal treatment in violation of section 1123(a)(4).[3] The District Court reasoned that in *Peabody* each creditor in a class had the opportunity to participate in the equity purchase and provided "adequate consideration" for such opportunity whereas here the Majority Lenders were provided with the exclusive opportunity to participate in the backstop without having any up-front value in exchange for the opportunity.[4]

The District Court acknowledged the Majority Lenders provided the backstopping funds which served as the consideration for the Majority Lenders to participate in the backstop. However, according to the District Court, the Fifth Circuit's recent decision in *Serta* requires looking beyond appearances to assess whether distributions are genuinely equal in value, and to consider disparities not only in outcome but also in the *opportunity* afforded to creditors.[5] In *Serta*, the class claimants were given the same treatment but only some could benefit from indemnification claims. In ConvergeOne, the conclusion was even simpler—there was no equal treatment to begin with, let alone an equal result. The District Court found that access to the backstop—which enabled the Majority Lenders to receive discounted share purchases and substantially greater recoveries—was reserved for select creditors, with no consideration given (to the estate) for the exclusive opportunity.

[3] *In re Peabody Energy Corp.,* 933 F.3d 918 (8th Cir. 2019).

[4] The District Court's decision does not discuss what would be considered "adequate consideration" under the present facts nor does it discuss what constituted adequate consideration in *Peabody* outside of requirements in *Peabody* that lenders "(1) buy a set amount of preferred stock; (2) agree to backstop (i.e., purchase shares of common and preferred stock that did not sell) both sales [of common and preferred stock]; and (3) support the plan in the confirmation process."

[5] *In re Serta Simmons Bedding, LLC*, 125 F.4th 555 (5th Cir. 2024).

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