CADWALADER


# Happy Halloween From Scooby Boo!!

# October 30, 2025

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# The Power of a Simple Notice

**October 30, 2025**

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New York Real Property Law § 291-f provides that where a recorded mortgage, or an instrument relating to such mortgage, contains an agreement referring to § 291-f and restricting the mortgagor's right, without the mortgagee's consent, to cancel, abridge or otherwise modify tenancies, subtenancies, leases or subleases in existence at the time of the agreement, or to accept prepayments of rent due thereunder, such restrictions become binding on tenants and subtenants only after they have been provided with written notice of the agreement accompanied by a copy of the relevant text. Any cancellation, modification or prepayment made by a tenant or subtenant after receipt of such notice, without the mortgagee's consent, is voidable at the option of the mortgagee.

The statute further provides that for tenants or subtenants who acquire their leasehold interest by assignment after July 1, 1960, the recording of the mortgage or related instrument itself constitutes sufficient notice of the restrictive agreement. Accordingly, an assignee of an existing leasehold estate takes subject to the mortgage restrictions by virtue of the recording, without the need for separate written notice. The statute also contains two express carveouts: 1) it does not apply to leasehold estates primarily for the residential purposes of the tenant; and 2) it does not apply to leasehold estates with an unexpired term of less than five years at the time of the restrictive agreement.

In commercial real estate finance practice, loan documents frequently incorporate these statutory requirements by obligating the borrower to deliver § 291-f notices to tenants promptly after or simultaneously with the relevant closing. The purpose is to ensure that tenants are formally bound by the mortgage's lease-related covenants, so that any subsequent lease modification, termination or rent prepayment made without the lender's consent will be ineffective as the lender. Borrowers are often required to provide evidence of delivery, and lenders typically reserve the right to send the notices directly if the borrower fails to do so. In some transactions, delivery of § 291-f notices is a condition precedent to funding.

The statute thus operates as the bridge between the mortgage covenants negotiated in loan documents and their enforceability against tenants. By requiring written notice to existing tenants, and by deeming recording sufficient notice to later assignees, § 291-f ensures that lenders' consent rights over lease modifications and rent prepayments are preserved, while also providing tenants with clarity as to the restrictions that govern their leases.

# District Court in Houston Further Clarifies "Equal Treatment" Rule, Supporting "Minority" Creditors in ConvergeOne Bankruptcy

**October 30, 2025**


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On September 25, 2025, the U.S. District Court for the Southern District of Texas overturned the Bankruptcy Court's confirmation of ConvergeOne's chapter 11 plan for violating the Bankruptcy Code's "equal-treatment" rule. The Court held that a plan cannot provide unequal treatment to similarly situated creditors, and that the plan erred by offering some, but not all, lenders equity and backstop rights. The *ConvergeOne* opinion relies heavily on the Fifth Circuit Court of Appeals' *Serta* decision, and provides the latest guidance on how the Southern District of Texas courts will view transactions that favor some creditors over others. *In re ConvergeOne Holdings, Inc.*, No. 4:24-CV-02001 (S.D. Tex. Oct. 23, 2024).

## The ConvergeOne Chapter 11 Case

In December 2024, ConvergeOne, a leading provider of information technology services, reached a Restructuring Support Agreement with the holders of over 80% of its first and second lien debt. In April 2025, ConvergeOne and its affiliates filed for chapter 11 bankruptcy protection with a proposed plan based on the agreed-upon RSA.

The terms of the plan included: (1) a $245 million equity rights offering, which gave first lien creditors the opportunity to exchange debt for equity in the reorganized company at a 35% discount to the reorganized company's stipulated value under the plan, and (2) a commitment from certain first lien creditors to purchase up to $159.25 million of equity interests in the reorganized company at the same 35% discount while earning a 10% "backstop" fee on the entire amount of the equity rights offering. The backstop opportunity was available only to a select group of preferred first lien lenders, and the RSA included a "no-shop" provision. In total, the Court concluded that the preferred lenders likely received a 30% greater recovery than their excluded fellow lenders. Excluded lenders (about 19% of the lenders) objected and the Bankruptcy Court confirmed the plan over their objections. The excluded lenders then appealed to the District Court, arguing that the plan improperly treated the first lien lenders unequally, violating the Bankruptcy Code.

## Applicable Law

Section 1123(a)(4) of the Bankruptcy Code enshrines the "equal-treatment rule," which states that, to be confirmable, "a plan shall... provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."

To understand the meaning of "equality," the *Serta* case is illustrative. In *Serta*, the Fifth Circuit Court of Appeals looked "below the surface" of the Chapter 11 plan provisions to make a holistic determination of whether distributions to certain classes "were in fact equal in value." *In re Serta Simmons Bedding, L.L.C.*, 125 F.4th 555, 591-2 (5th Cir. 2024), as revised (Jan. 21, 2025), as revised (Feb. 14, 2025). Equality may be "proximate," it is not required to be absolute. *ConvergeOne*, No. 4:24-CV-02001, No. 54 at 12. However, at a minimum, plans must offer equality of opportunity, even if equality of recovery does not necessarily result.

The meaning of "treatment" can be inferred from the Bankruptcy Code's "absolute priority rule." Pursuant to Section 1129(b)(2)—which codifies the rule—a plan must be "fair and equitable" with respect to a class of claims or interests that is impaired under, and has not accepted, the plan. To be "fair and equitable" to a class of creditors, a plan must

not grant “property” to holders of junior claims or interests “on account of” those claims unless all holders of more senior claims are fully paid or consent to such treatment.

In *LaSalle*, the Supreme Court held that an exclusive opportunity to obtain equity in a reorganized entity, without market valuation or competition, is a property interest “extended on account of” a claim or interest for purposes of Section 1129(b)(2). *In re 203 N. LaSalle St. P’ship*, 526 U.S. 434 at 456 (1999). Sections 1123 and 1129 set parameters that parties must observe when distributing assets from the debtor’s estate.

## Analysis

Guided by the Fifth Circuit’s ruling in *Serta*, the District Court in *ConvergeOne* determined that the plan did not treat the excluded lenders equally with their fellow lenders, especially with respect to the backstop.

The Court in *ConvergeOne* drew on both the *Serta* court’s analysis of Section 1123(a)(4) and the Supreme Court’s ruling in *N. LaSalle* with respect to Section 1129(b). Citing to *Serta,* the Court noted several factors considered by the Fifth Circuit in determining whether treatment of creditors was “equal” for purposes of satisfying Section 1123(a)(4).

In discussing these factors against the backdrop of the Supreme Court’s analysis of Section 1129(b) in *LaSalle*, Judge Hanen found the *ConvergeOne* plan wanting. First, he noted that the parties were treated unequally from a process standpoint—the debtors never offered the backstop opportunity to the excluded lenders. Moreover, he was not persuaded by the majority lenders’ argument that the excluded lenders “were not *really* excluded from the proposal” because they could have offered a competing deal after the plan had been filed. Judge Hanen found that at no point were the excluded lenders ever given any opportunity to participate in the backstop.

Judge Hanen also expressed concern that the Debtors made no effort to market test the value of the backstop, *e.g.* by soliciting real competing offers.

Guided by *Serta,* Judge Hanen also looked closely at the facts to assess the equivalence of the distributions. First, he held that the variance in recovery amongst the first lien creditors went “far beyond approximate equality.” The financial impact of the backstop in particular “involve[d] the reallocation of an eight-figure sum and the availability of discounted equity to some class members but not those who were excluded from the backstopping opportunity.”

Second, Judge Hanen examined the “inequality in both opportunity and result.” The backstop opportunity “was offered to the subclass of creditors without any exchange of value *for the opportunity*” to participate.” The case was therefore “more straightforward” than *Serta*, where facially, lenders who had not participated in the challenged uptier transaction received the same indemnity against related liabilities as lenders who had participated, with the difference in “treatment” consisting in the fact that the indemnity had no value to lenders who had not participated in the transaction. Here, the treatment was not even facially equal. There was simply no opportunity for the excluded lenders to participate in the backstop—and thus their resulting recovery would be lower than that of the backstop parties. Moreover, “[t]he fact that the unequal treatment happened before the bankruptcy petition was even filed does not insulate the Plan from the requirements of §1123(a)(4).” To the contrary, courts have long held that prepackaged plans must satisfy section 1123(a)(4).

Finally, the Debtors argued that they could offer the backstop to a subset of lenders so long as the Debtors received consideration in return. The Court held that “this argument, however, is already foreclosed by *LaSalle*. Rather than relying on the backstopping as consideration for the access to discounted equity, [the] Debtors would have to show consideration for the *opportunity* to backstop the equity-rights offering to justify the exclusive opportunity.” Here, the backstop lenders never provided this consideration.

Read together, the *Serta* and *ConvergeOne* holdings support the view that the equal-treatment rule may be used by minority lenders and creditors in a bankruptcy case to challenge plans and transactions that make distributions available only to certain preferred lenders. Majority lenders should consider ensuring that all lenders with similar claims have the opportunity to participate in any proposal they make. They should also consider looping minority lenders into any negotiations in a timely manner to ensure the minority lenders have some opportunity to participate.

## A Note on Wesco Aircraft

The *ConvergeOne* ruling comes at an interesting time—approximately a week after U.S. District Court Judge Randy Crane surprised observers by indicating from the bench, that he is prepared to overturn a 2024 Bankruptcy Court decision favoring minority noteholders in the *Wesco Aircraft* case. That decision by the Bankruptcy Court for the

Southern District of Texas, Houston Division held that Wesco's 2022 uptiering transactions were not authorized under the applicable indenture. Judge Crane said he will reverse that decision and find that the underlying indenture permitted the uptiering transaction. Judge Crane indicated that he did not view this outcome as being inconsistent with *Serta*, because the transaction at issue in *Serta* had violated the non-consenting lenders' "sacred rights" under the applicable loan documents, whereas the transaction at issue in *Wesco* had not violated any "sacred rights." To date, Judge Crane has not issued a formal opinion.

*Wesco Aircraft* and *ConvergeOne*, two seemingly divergent opinions, each purport to ground themselves in *Serta*. The parties may appeal the courts' opinions, in which case, we expect greater clarity from the Fifth Circuit on the significance of *Serta*—including whether the Fifth Circuit intended to rule that creditors under the same loan agreement must generally be treated equally in and out of bankruptcy.

# Cadwalader Hosts 9th Annual Finance Forum

**October 30, 2025**


Over 800 financial industry leaders and professionals from around the country participated in Cadwalader's ninth annual Finance Forum in Charlotte this week!

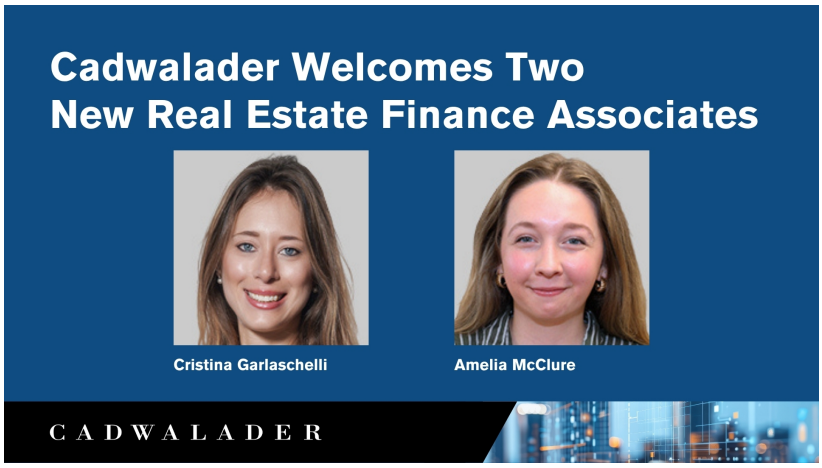
It was great to meet all together for a day of networking and insightful discussions on the latest market trends and opportunities across various sectors, including commercial real estate, fund finance, leveraged finance, middle market lending, private credit, securitization and structured finance.

We are grateful to our speakers, clients and all attendees who took the time to participate in the event's many dynamic discussions and networking.

The next *Real Estate Finance News & Views* will include more coverage of the Finance Forum. In the meantime, please enjoy these photos!

# Cadwalader Welcomes Two New Associates to the Real Estate Finance Team

**October 30, 2025**



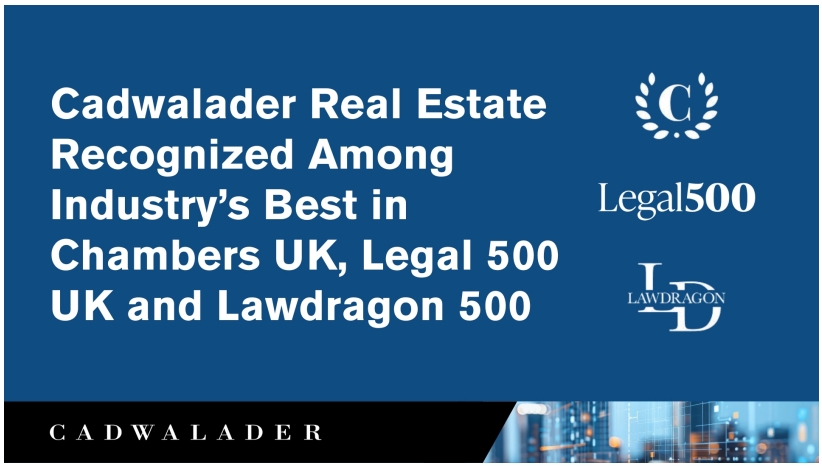

Please join us in welcoming **Cristina Garlaschelli** and **Amelia McClure** to Cadwalader.

**Cristina Garlaschelli** joins the Real Estate team as an associate in London and comes to Cadwalader from a global law firm. She assists private equity funds, pension funds, developers, asset managers and other international investors in complex local and cross border real estate transactions involving joint ventures, acquisitions, disposals, letting and/or development of single assets and real estate portfolios. She has experience with a wide range of asset classes including hotels, logistics, data centers, residential, offices and retail. She earned her Master in Law at the University of Milan.

**Amelia McClure** joins the Real Estate Finance team as an associate in Charlotte. Her practice is focused on real estate finance. Amelia received her J.D. from Wake Forest University School of Law where she was Symposium Editor of the Wake Forest Journal of Law and Policy, and her B.A. in Economics, magna cum laude, from Wake Forest University.

# Cadwalader Real Estate Recognized in Chambers UK, Legal 500 UK and Lawdragon

**October 30, 2025**




Cadwalader's real estate lawyers and practice groups received top recognition in multiple 2026 legal guides, underscoring the firm's leadership in real estate law and finance.

**Chambers UK Guide**

- **Jack Kelly** – Investment Funds: Closed-ended Listed Funds (UK-wide)
- **Matthew Peters** – Hotels & Leisure (UK-wide), Real Estate £150 Million and Above (London Firms)

View a full list of the firm's 2026 Chambers UK results **here**.

**Legal 500 UK Guide**

The firm is ranked in:

- Commercial Property: Investment
- Real Estate Funds

**Leading Associates**

- Matthew Peters, Commercial Property: Investment

**Key Lawyers**

- Jack Kelly, Listed Funds; Real Estate Funds; Social Housing: Finance
- Matthew Peters, Property Finance

See a full list of the firm's 2026 Legal 500 UK rankings **here**.

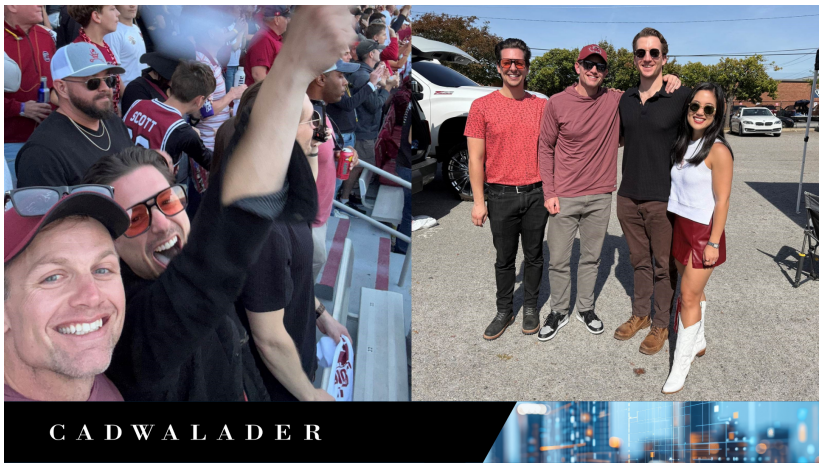
**Lawdragon 500 Leading Dealmakers in America**

- **Holly Chamberlain**, Real Estate
- **Chris Dickson**, Real Estate

See a full list of the firm's 2026 Lawdragon 500 Leading Dealmakers in America recognitions **here**.

# Charlotte Team Hits the Road for South Carolina–Alabama Game

**October 30, 2025**




Last weekend, members of the Charlotte Real Estate team headed south for the South Carolina vs. Alabama football game — a true SEC showdown that kept fans on the edge of their seats.

Despite a strong showing, South Carolina fell just short after two late scoring drives by Alabama in the fourth quarter.

A great weekend of camaraderie, competition and college football spirit!

## What We're Reading

**October 30, 2025**

Here is a look at what we're reading:

**Buffet: The Making of an American Capitalist**, by journalist Roger Lowenstein, draws on three years of unprecedented access to Warren Buffett's family, friends, and colleagues to provide the first definitive, inside account of the life and career of this American original. The book explains Buffett's investment strategy— a long-term philosophy grounded in buying stock in companies that are undervalued on the market and hanging on until their worth invariably surfaces— and shows how it is a reflection of his inner self. Learn more **here**.

**Apple in China**, by journalist Patrick McGee, draws on more than two hundred interviews with former executives and engineers, supplementing their stories with unreported meetings held by Steve Jobs, emails between top executives, and internal memos regarding Chinese competitors. The book highlights the unknown characters who were instrumental in Apple's ascent and who tried to forge a different path. Apple was sending thousands of engineers across the Pacific, training millions of workers and spending hundreds of billions of dollars to build the 21st century's most iconic products— in staggering volume and for enormous profit. Learn more **here**.

## Recent Transactions

**October 30, 2025**

Recent transactional highlights include Cadwalader representing:

- Administrative agent and lenders in origination of a $1.85 billion loan secured by a portfolio of 98 industrial, warehouse and manufacturing properties located across nine states
- Lenders in origination of a $820 million CMBS loan secured by a portfolio of 46 shallow-bay industrial properties located across six states
- Lender in the $465 million refinancing of two office towers with ground floor retail space at the Hub on Causeway, which is a unique mixed-use development in Boston, Massachusetts, home to innovative companies, retail and entertainment spaces, a boutique hotel and a luxury residential tower
- Lender in a $475 million SASB for two university-owned life sciences buildings, one in Philadelphia and the other in Pittsburgh
- Lender in connection with the $128 million financing of an acquisition of 17 industrial properties located in Florida and Pennsylvania