

Clients & Friends Memo

Del Monte Bankruptcy Court Dismisses Breach Claim Over DIP Roll-Up, But Allows Future *Pro Rata* Sharing Claim to Proceed

June 26, 2026

In May 2026, Judge Michael Kaplan of the U.S. Bankruptcy Court for the District of New Jersey issued a decision in an LME dispute arising in Del Monte Foods' chapter 11 case. That dispute—brought by a minority group of lenders—challenged a DIP financing, which provided for a roll-up of a select group of participating lenders' prepetition loans to the exclusion of the minority lenders.

In a mixed ruling, Judge Kaplan dismissed the minority lenders' claims that alleged that the DIP roll-up violated the credit agreement's *pro rata* sharing provision, finding that the roll-up did not itself qualify as a payment or reduction of the prepetition loans. However, the Court declined to dismiss the minority lenders' claim seeking a declaratory judgment that subsequent payments on the rolled-up portion of prepetition debt could trigger the *rata* sharing provision under the prepetition credit agreement. *See Certain Members of the Ad Hoc Grp. of Minority Secured Lenders v. Members of the Ad Hoc Term Lender Grp. (In re Del Monte Foods Corp. II, Inc.)*, Adv. Proc. No. 26-01018 (MBK), 2026 WL 1326956 (Bankr. D.N.J. May 11, 2026).

Background

The Prepetition Drop Down

Del Monte Foods is a food manufacturer, which experienced liquidity issues beginning in 2024. To address those issues, Del Monte entered into an out-of-court liability management exercise whereby the company transferred substantially all of its assets through intermediate entities to a newly formed unrestricted subsidiary called DMFC (Del Monte Foods Corporation II Inc.). This type of transaction is commonly referred to as a “drop down.”

Contemporaneously with the drop down, DMFC entered into a new credit agreement providing for three tranches of term loans: a \$236 million First Out Term Loan, a \$468.8 million Second Out Term Loan, and a \$135 million Third Out Term Loan. Non-participating lenders faced the options of either accepting a worse mix of debt at the new entity compared to participating lenders, or being structurally subordinated with respect to the transferred assets as a result of the drop down.

The credit agreement and intercreditor agreement each included waterfall provisions, which required that the first-out term loan lenders receive payments and collateral proceeds prior to their application to other term loans. The credit agreement also included a provision requiring ratable sharing among the lenders to the extent that any of them received any “payment or reduction” of the loan that is greater than the proportion received by any other lender.

A group of lenders challenged the drop-down transaction before settling with the borrowers. As a result of that settlement, the borrowers extinguished the legacy debt, leaving only the debt created under the drop-down transaction.

The DIP Dispute

Shortly after settling the prepetition LME litigation and extinguishing the legacy debt, Del Monte filed for bankruptcy. As part of the bankruptcy, the debtors sought approval of a DIP financing. The DIP lenders had also been lenders under the prepetition credit agreement. They provided \$165 million of new money loans and \$247.5 million of “roll up” loans. The roll-up loans would convert the DIP lenders’ prepetition debt into DIP loans and receive enhanced priority over the remaining prepetition debt. The DIP credit agreement provided that the roll-up would result in the exchange and discharge of first-out term loans for the roll-up loans, but that the roll up would not constitute a novation.

According to the Court, all lenders were given the opportunity to participate in the DIP financing on the stated terms. The minority lenders declined to participate in the DIP financing and instead retained their prepetition position.

On January 23, 2026, an ad hoc group of minority lenders filed an adversary complaint, which generally challenged the DIP roll-up. Among other things, plaintiffs asserted three counts:

- Count I alleged a breach of contract based on the theory that the roll-up disproportionately reduced the participating lenders’ first-out term loans in violation of the ratable sharing provision.
- Count II asserted a breach of the implied covenant of good faith and fair dealing based on defendants’ alleged attempts to “bypass” plaintiffs’ rights under the prepetition credit agreement.
- Count III sought a declaratory judgment that the defendants must share *pro rata* future payments received on the roll-up loans and that such future payments would constitute a payout on the prepetition loan that had been rolled up.

The Court's Decision

Count 1: Breach of Contract Claim Dismissed With Prejudice

The Court dismissed with prejudice plaintiffs' claims that alleged that the roll-up of prepetition loans breached the ratable sharing provision in the prepetition credit agreement. The Court found that it is well settled that a "mere promise to pay" does not "discharge a preexisting debt." Relying on that principle, the Court found that the roll-up DIP loans as well as the "resulting improved treatment of Defendants' prepetition loans" did not constitute a "payment" or "reduction" of the prepetition loans because the roll-up "did not involve the discharge of any debt."

In reaching this conclusion, the Court adopted a narrow view of what qualifies as a payment—namely, that absent express contractual language to the contrary, a payment refers only to cash payments. The Court found that the DIP transaction did not involve a cash payment on the prepetition loans. Rather, the roll-up DIP loans involved a "cashless exchange" in which defendants rolled their prepetition loans into new post-petition financing, resulting in "improved treatment of Defendants' prepetition claims." The Court held that the roll-up did not itself involve a payment or reduction on the prepetition loan.

The Court found support in the credit agreement for its view of what qualifies as a payment. Specifically, the credit agreement required the borrower to make payments "in Dollars," and required the administrative agent to distribute such payments to the lenders. The Court found the payment provision's requirement that payments be made in dollars demonstrated that the ratable sharing provision's reference to payments only referred to payments of cash or cash equivalents. Further, the Court noted that it would make little sense for the administrative agent to "distribute" the proceeds of a cashless transaction, such as a roll-up DIP loan. As such, the Court held that the DIP roll-up did not discharge a single dollar of the debtors' existing payment obligations to Defendants.

The Court also rejected the plaintiffs' reliance on *In re Am. Tire Distributors, Inc.*, 24-12391 (Bankr. D. Del. Nov. 12, 2024), where Judge Goldblatt expressed a view—but did not hold—that a DIP roll-up may have qualified as a breach of a credit agreement's *pro rata* sharing provision. The Court found that plaintiffs' reliance on that case was misplaced because the *American Tire* court did not make a definitive ruling that a cashless roll-up, standing alone, violated the applicable ratable sharing provision.

The Court took the view that adopting plaintiffs' interpretation of the ratable sharing provision would create an unreasonable result because the participating lenders would have to share value before knowing whether the DIP loan would ever be repaid. Recognizing that DIP fees and DIP roll-ups are offered to compensate DIP lenders for the risks associated with providing new money DIP

loans, the Court found that it would be unfair for non-participating lenders to receive the same guarantee of payment without undertaking the risk of providing any new money.

Count II: Implied Covenant Claim Dismissed Without Prejudice

In their second count, Plaintiffs argued that defendants violated the implied covenant of good faith and fair dealing by entering into a DIP financing allegedly designed to evade plaintiffs' rights under the prepetition credit agreement. The Court dismissed this claim without prejudice, finding that it was merely duplicative of plaintiffs' failed breach of contract claims. The Court did, however, leave open the possibility that the plaintiffs could refile a breach of covenant claim if the plaintiffs are ultimately able to identify a scheme or wrongful conduct separate from the alleged breach of contract.

Count III: Declaratory Judgment Claim Survives

Finally, the Court denied dismissal of Count III, which sought a declaratory judgment that any future payments or reductions received by the defendants had to be shared ratably with the other lenders. Although the Court held that the roll-up itself did not trigger a breach of the ratable sharing provision, it did not accept the defendants' position that their prepetition debt had necessarily disappeared for ratable sharing purposes. The Court found it plausible that the prepetition loans had been "merged into the Roll-Up Loans and arguably will be satisfied (in whole or part) through subsequent payment on the Roll-up Loans." The Court held that the resolution of Count III would depend on a determination of the "economic value attributable to the roll-up feature of the DIP Loans," and a determination of whether that value should be shared with non-participating lenders.

The Court did not equate the non-cash roll-up with an immediate cash payment, nor did it conclude that the transaction entirely sidestepped future *pro rata* sharing obligations. However, the Court determined that any future cash payments on the roll-up loans could be relevant for the ratable sharing provision. Because resolution of this issue would require further development and exploration of fact-intensive issues, the Court determined that dismissal was unwarranted at this juncture.

Key Takeaways and Conclusions

- **Restrictive View of the Sharing Provision.** The Court's analysis did not meaningfully address the *pro rata* sharing provision's requirement that any reduction of the prepetition loan is subject to the ratable sharing provision. In the Court's view, the DIP roll-up—which consisted of a debt exchange—did not result in any payment, satisfaction, or reduction of the exchanged prepetition loans. The Court did not meaningfully address the fact that the DIP credit agreement expressly provided that the first-out term loans were converted into the roll-up loans and that such

conversion shall “satisfy and discharge” the term loans “without constituting a novation.” DIP Credit Agreement § 2.1(b).

- Application of the Turnover and Payment Provisions to the DIP. Because the DIP credit agreement provided that the debt exchange did not constitute a novation, the Court found that it was plausible that the prepetition loans merged into the roll-up loans. As such, the Court found that any payments on the roll-up loans could qualify as a payment on the prepetition loans. However, as with Count I, the Court’s holding did not address the economic substance of the DIP roll-up. The prepetition credit agreement includes customary provisions governing payments and requiring turnover of certain payments to the agent. These provisions are applicable, however, to the loans issued under the credit agreement and not necessarily to later issued debt (such as the DIP loans). Moreover, it is unclear whether the Court will view Count III as viable if the roll-up loans are repaid in kind with exit financing.
- Post-Ruling Update: The debtors received court approval of their plan of liquidation on May 22, 2026. The minority lenders have since filed an appeal of the confirmation order and sought leave to file an interlocutory appeal of the decision dismissing certain counts of the adversary complaint. If the Court ultimately grants leave to file an interlocutory appeal, then the District Court (and ultimately the Third Circuit) may get the final word in this dispute.

* * *

If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

Douglas S. Mintz	+1 202 862 2420	douglas.mintz@cwt.com
Casey John Servais	+1 212 504 6193	casey.servais@cwt.com
Tom J. Curtin	+1 212 504 6063	thomas.curtin@cwt.com
Taylor S. Culver	+1 202 862 2213	taylor.culver@cwt.com
Raymond M. Navaro	+1 212 504 6651	raymond.navaro@cwt.com