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District Court Rejects Exclusive Backstop in Chapter 11 Plan

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A Texas district court ruling late last week could reshape the landscape of Chapter 11 restructurings by striking down exclusive backstop agreements as violating the Bankruptcy Code's equal-treatment rule.

On September 25, 2025, the U.S. District Court for the Southern District of Texas reversed confirmation of ConvergeOne Holdings' Chapter 11 plan. The plan had granted a select group of creditors the exclusive right to purchase discounted equity in the reorganized debtor as part of a lucrative equity backstop arrangement.

The district court found that the plan ran afoul of Section 1123(a)(4) of the Bankruptcy Code, which requires creditors in the same class to receive equal treatment. By limiting the backstop opportunity to a favored subset of creditors, the plan effectively conferred a significant financial advantage on those creditors for no consideration, leaving others in the class with much lower recoveries.

Importantly, the court relied on the Supreme Court's decision in *Bank of America Nat'l Trust & Sav. Ass'n v. 203 North LaSalle St. P'ship*, 526 U.S. 434 (1999), to conclude that exclusive investment opportunities must be offered to all creditors in the same class or exposed to "a genuine test of market valuation." The court rejected the argument that the backstopping opportunity was merely a separate agreement that involved additional consideration for additional obligations (as opposed to claim treatment). The district court also found that because the restructuring support agreement incorporating the backstop was negotiated based on the exclusive opportunity offered only to favored creditors, "there is no definition of a market test that would be satisfied here." This is the first decision to hold that exclusive backstop arrangements as part of a Chapter 11 plan violate the equal-treatment mandate.

This ruling also echoes the Fifth Circuit's decision in *In re Serta Simmons Bedding, LLC,* 125 F.4th 555 (5th Cir. 2024), which the district court also relied on, which struck down preferential treatment for select lenders (in the form of an indemnity which had value to only a subset of creditors in the same class) as violating the same equal-treatment principle. Together, *Serta* and *ConvergeOne* mark a growing judicial willingness to police discriminatory plan features and side deals.

The ruling has potentially far-reaching implications for corporate restructurings:

- **Restructuring Practice:** Debtors can no longer assume that granting exclusive backstop rights to favored creditors will withstand judicial scrutiny.
- **Creditor Dynamics:** The decision may level the playing field among similarly situated creditors, reducing debtors' ability to "buy" plan support with exclusive backstop investment opportunities.
- **Plan Structuring:** Going forward, parties may need to explore non-discriminatory mechanisms to raise capital in Chapter 11, such as rights offerings and backstops open to all creditors in a class or exposing the investment opportunity to true market competition.

The *ConvergeOne* decision represents a turning point in Chapter 11 practice. It places significant limits on the use of exclusive backstop deals and may fundamentally alter negotiations between debtors and creditors and between majority and minority lenders in the same class.

Proskauer represents the minority lenders in *ConvergeOne*.

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