Liquidity Challenges in Chapter 11

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Program Summary

Overview: Liquidity Issues in Chapter 11

Liquidity is the central operational challenge in virtually every Chapter 11 case. From the moment a petition is filed, the debtor must secure and manage cash sufficient to fund ongoing operations, satisfy postpetition obligations, and advance the restructuring or sale process. The principal liquidity levers—and pressure points—include:

- **Cash Collateral and DIP Financing.** Whether the debtor can use cash collateral (typically with lender consent or court authorization under section 363) or obtain debtor-in-possession financing under section 364 determines the initial runway. The structure and covenants of DIP facilities must match the anticipated case trajectory—operating reorganizations, going-concern sales, and orderly liquidations each demand different borrowing-base assumptions, milestones, and covenant packages.
- **Administrative Solvency.** A debtor that cannot pay its postpetition administrative expenses in full as they come due—or as required by a plan under section 1129(a)(9)—faces potential dismissal, conversion, or the inability to confirm a plan. Continuous monitoring of administrative solvency is essential, particularly as sale proceeds disappoint or professional fees mount.
- **Budgeting and Cash Management.** Court-approved budgets, variance covenants, and weekly cash reporting create the framework for liquidity oversight. Unrealistic budgets or loose variance tolerances can mask deterioration until it is too late.
- **Vendor-Payment Strategy.** First-day motions authorizing critical-vendor, 503(b)(9), and other priority vendor payments can preserve the supply chain, but only if accompanied by forward trade commitments. Payments made without obtaining continuing trade credit may simply accelerate cash burn without corresponding benefit.
- **Sale Proceeds.** Section 363 sales and plan-based asset dispositions are often the primary source of distributable value. When sales underperform expectations, the resulting shortfall may leave insufficient funds to satisfy administrative and priority claims.
- **Professional Fees.** Fees of retained professionals constitute administrative expenses under section 330. In tight-liquidity cases, the aggregate professional-fee burden can itself become a barrier to plan confirmation or orderly wind-down.
- **Administrative-Claim Treatment.** When full payment of administrative claims is infeasible, debtors have increasingly turned to structured administrative claims programs—court-approved procedures offering creditors accelerated but discounted distributions in exchange for certainty, releases, and streamlined reconciliation.

The attached case materials focus particularly on two categories: (1) cases in which the court approved structured administrative claims programs to address potential or actual administrative insolvency, and (2) cases that confronted acute liquidity distress without the benefit of such a program. Together, they illustrate the range of tools available to practitioners and the consequences of inadequate liquidity planning.

Part I: Cases with Administrative Claims Programs

1. Southern Foods Group, LLC / Dean Foods (Case No. 19-36313, S.D. Tex.)

2. Sears Holdings Corporation (Case No. 18-23538, S.D.N.Y.)

3. Steward Health Care System LLC (Case No. 24-90213, S.D. Tex.)

4. New Rite Aid, LLC (Case No. 25-14861, D.N.J.)

5. Toys "R" Us, Inc. (Case No. 17-34665, E.D. Va.)

Part II: Csae Studies of Administratively Challenged Cases

The following four cases illustrate the consequences of acute liquidity distress in Chapter 11 when no structured administrative claims program was in place.

6. In re FSPH, Inc. (Case No. 22-10575 (CTG), D. Del.)

7. In re GST AutoLeather, Inc. (Case No. 17-12100 (LSS), D. Del.)

8. In re Sienna Biopharmaceuticals, Inc. (Case No. 19-12051 (MFW), D. Del.)

9. In re Heritage Home Group LLC (Case No. 18-11736 (KG), D. Del.)

<u>Bankruptcy Cases with Administrative Claims Programs</u>

Introduction

Below are five bankruptcy cases where a court approved an alternative administrative claim programs to address potential administrative insolvency.

Case-by-Case Summaries

1. Southern Foods Group, LLC / Dean Foods, Case No. 19-36313 (S.D. Tex)

Southern Foods used an Administrative Claims Consent Program under which administrative expense claims were allowed after reconciliation between the Debtors and the claimant and the filing of a Reconciliation Notice. The Debtors were to use commercially reasonable efforts to complete reconciliation within 30 days, subject to unresolved books-and-records disputes and delays in receiving requested supporting documentation.

Claimants could affirmatively opt in and receive accelerated cash distributions in exchange for reducing the Reconciled Claim to an 80% cash recovery. Opt-in claimants received an initial distribution equal to 30% of the settled payout, with further distributions to bring them to the full 80% settlement amount. Claimants that did not opt in retained their right to payment in full under a conforming plan, but payment was subordinated in timing until opt-in claimants received the settled payout. Distributions to opt-in claimants were not subject to disgorgement upon conversion to Chapter 7, and preference claims against opt-in claimants could be addressed through Preference Action Notices and potentially waived or settled on a case-by-case basis.

The Opt-In Form was due by the later of August 21, 2020 at 4:00 p.m. Central Time or 14 days after the Debtors sent the claimant a Preference Action Notice. Opt-In Forms could be submitted through Epiq's E-Forms Portal or by mail, overnight courier, or hand delivery, but not by fax or email. The Opt-In Form required the claimant to provide the amount of its administrative claim, elect to opt in, provide wiring information, and sign acknowledgments and certifications.

Practitioner Takeaway. The affirmative opt-in model gave claimants a clear incentive—accelerated payment—while preserving full-payment rights for those willing to wait. The disgorgement-protection and preference-notice mechanics added certainty for participating claimants and helped achieve broader buy-in.

2. Sears Holdings Corporation, Case No. 18-23538 (S.D.N.Y.)

Sears used a three-track Administrative Expense Claims Consent Program under which holders could affirmatively opt in, affirmatively opt out, or take no action and be treated as Non Opt-Out Settled Admin Claims.

Opt-in claimants received a pro rata share of a $21 million Initial Cash Pool on or about December 1, 2019, with total recovery capped at 75% of the Allowed Administrative Expense Claim. Claimants that did not opt out received a second-distribution structure capped at 80% of the Allowed Administrative Expense Claim, subject to minimum funding conditions. Opt-out claimants retained the right to receive 100% of the Allowed Administrative Expense Claim, but payment was delayed until the latest of the Effective Date, 30 days after allowance, or the next distribution date after allowance.

The program required expedited reconciliation of opt-in and non-opt-out claims, including issues under sections 503(b)(9) and 503(b)(1) and preference exposure, within 30 days of the relevant deadline or receipt of the relevant ballot. Holders received both an Opt-In Ballot and an Opt-Out Ballot, and ballots could be submitted electronically through Prime Clerk's E-Ballot portal or in paper form. Distributions to settled administrative claimants were protected from disgorgement upon conversion or dismissal. Preference issues could be waived or settled on a case-by-case basis.

Practitioner Takeaway. The three-track structure created layered incentives: early movers received the first distribution from a fixed pool; passive claimants still received discounted treatment; and only affirmative opt-outs preserved the right to full payment at the cost of delay. The tiered caps (75%/80%) and dual-ballot mechanics illustrate the evolution toward more aggressive deemed-consent frameworks.

3. Steward Health Care System LLC, Case No. 24-90213 (S.D. Tex.)

Steward had both an administrative-claim bar date procedure and a plan-level Administrative Expense Claims Consent Program.

The bar date procedure required parties with administrative claims to file Proofs of Administrative Claim for claims arising on or before November 15, 2024 by December 10, 2024 at 4:00 p.m. Central Time, and for later claims by 4:00 p.m. Central Time on the 30th day of the month after the quarter in which the claim arose. Each Proof of Administrative Claim had to be in English, state a U.S.-dollar amount, conform substantially to the Debtors' form, be signed, identify the applicable Debtor, identify the relevant hospital and time period, and include supporting documentation. Failure to file by the applicable deadline barred the claimant from asserting the claim or participating in distributions on account of it.

The later consent program used an opt-out model: holders were deemed to participate unless they timely and properly submitted a Consent Program Opt-Out Form. Opt-out administrative claimants would theoretically be paid in full under the Plan. However, full payment to the Opt Out administrative claimants would be paid out of a pot of litigation proceeds, which were contingent on successful litigation. Meanwhile, non-opt-out participants had their administrative expense claims deemed allowed at 50% of the Reconciled Amount and received accelerated payment from a $12.5 million cash pool, with any unpaid portion of the settled amount to be paid on the Effective Date under the Plan after the Opt-Out administrative claimants had been paid in full. The program required at least 75% participation by dollar amount unless the threshold was waived by the Debtors and Creditors' Committee. Ultimately, less than 75% of the administrative class did participate under the Plan but the 75% threshold was waived by the Debtors and Creditor Committee. The Plan was confirmed, the Non Opt-Out administrative creditors were paid their partial claim, and the Opt-Out administrative creditors are waiting to see if litigation proceeds will be sufficient to pay their claims, at which time the Plan would go effective.

Practitioner Takeaway. Steward illustrates the risks facing opt-out claimants: theoretically entitled to 100% recovery, their actual recovery depends entirely on contingent and uncertain litigation proceeds. The waiver of the 75% participation threshold shows that debtors and committees may retain flexibility to proceed even when formal conditions are not met, which practitioners should weigh when advising clients on election strategy.

4. New Rite Aid, LLC, Case No. 25-14861 (D.N.J.)

New Rite Aid used Administrative Claims Procedures that allowed administrative claimants to opt in, opt out, or be deemed to consent by inaction. The procedures applied to Administrative Claims arising on or before the July 31, 2025 Administrative Claims Record Date, subject to exclusions for post-petition lease obligations, ordinary-course vendor/supplier/service-provider claims, specified employee expenses, stub rent, sales and use taxes, and section 365 cure amounts.

The election deadline was September 16, 2025 at 5:00 p.m. Eastern Time. Opt-in claimants received a pro rata share of a $5 million Administrative Claims Distribution Pool, capped at 5% of the Recorded Amount or another agreed amount, after the participation condition was met or waived. Opt-out claimants retained their claims but received no distribution under the procedures. Claimants who made no election were deemed to consent to receiving their pro rata share of amounts remaining in the pool after the First Distribution, capped at the same 5% maximum settlement amount.

Election Forms could be submitted through Kroll's online portal or by mail, overnight courier, or hand delivery, but not by email or fax. Claimants that disputed the Recorded Amount could populate an alternate amount in the Election Form, but unresolved disputes before the Election Deadline could result in deemed opt-out treatment. The Debtors preserved setoff, recoupment, chapter 5, and other claims generally, but waived section 547 claims against opt-in claimants upon the First Distribution.

Practitioner Takeaway. The 5% recovery cap is notably the lowest among the surveyed programs, underscoring severe administrative insolvency. The deemed-opt-out consequence for unresolved amount disputes creates a practical trap for claimants who engage on quantum but fail to reach agreement before the deadline. The selective section 547 waiver for opt-in claimants is a meaningful incentive for creditors with potential preference exposure.

5. Toys "R" Us, Inc., Case No. 17-34665 (E.D. Va.)

Toys "R" Us used a two-stage administrative claims framework in connection with the wind-down of its U.S. operations. The March 22, 2018 U.S. Wind-Down Order required the Debtors, in consultation with the Creditors' Committee, to propose procedures for determining the allowance, disallowance, and payment of potential administrative claims. The Court later entered an Administrative Claims Bar Date Order establishing filing procedures for administrative expense claims, and the August 2018 Settlement Agreement created an Administrative Claims Distribution Pool for holders of Allowed Administrative Claims that did not opt out of the settlement.

The administrative-claim bar date applied broadly to claims against the Debtors that arose or were deemed to have arisen after the petition date, subject to stated exemptions. For administrative claims against the Toys-Delaware entities and Toys "R" Us, Inc. arising on or before June 30, 2018, Proofs of Administrative Claim were due by July 16, 2018 at 5:00 p.m. Eastern Time. For later claims, the deadline was the earlier of the 15th day of the month after the month in which the claim arose or 14 days after any hearing on a plan of liquidation, structured settlement, or other proposed resolution of the chapter 11 cases. Proofs of Administrative Claim had to be actually received by Prime Clerk, and the Debtors were authorized, but not required, to reconcile and allow claims without further court order if the Committee received seven business days' notice of the proposed allowed amount and did not object.

The Settlement Agreement used an opt-out model. Holders of Allowed Administrative Claims who did not opt out were eligible to participate in the Administrative Claims Distribution Pool, including merchandise vendors with unpaid administrative claims under sections 503(b)(1) and 503(b)(9), unpaid agreed critical vendor payments, and other unpaid Toys-Delaware administrative claims not otherwise accounted for in the Wind-Down Budget, excluding professional-fee and adequate-protection claims. The pool included $160 million funded by the B-4 Lenders before repayment of the Term DIP Facility, $20 million in recoveries from Toys-Delaware funded after repayment of the Term DIP Facility, and contingent recoveries tied to excess B-4 Lender recoveries and recoveries from the Non-Released Claims Trust, net of amounts used to fund the Non-Released Claims Trust and a substantial contribution claim. Administrative Claim Holders who opted out received no settlement distribution and did not receive the settlement releases, and if holders of more than 7.5% in value of such claims opted out, the B-4 Lenders and the Debtors had the option to terminate the settlement.

Practitioner Takeaway. The settlement-termination threshold (7.5% by value) created a collective-action dynamic: each claimant's opt-out decision affected every other claimant's access to the pool. The integration of avoidance-action releases for non-opt-out holders and the transfer of D&O claims to a Non-Released Claims Trust added significant structural complexity. This is the largest administrative claims pool among the surveyed cases and illustrates the scale of liquidity planning required in major retail wind-downs.

Comparative Table (Administrative Claims Programs)

Feature	Southern Foods / Dean Foods	Sears Holdings	Steward Health Care	New Rite Aid	Toys "R" Us
Case / Court	Case No. 19-36313, S.D. Tex.	Case No. 18-23538, S.D.N.Y.	Case No. 24-90213, S.D. Tex.	Case No. 25-14861, D.N.J.	Case No. 17-34665, E.D. Va.
Program / procedure type	Opt-in administrative claims consent program with reconciliation and accelerated payment.	Opt-in / opt-out / deemed-consent administrative expense claims consent program.	Administrative claim bar date procedure plus plan-level opt-out consent program.	Opt-in / opt-out / deemed-consent administrative claims procedures.	Administrative claim bar date procedures plus opt-out settlement distribution pool.
Election model	Affirmative opt-in required for accelerated 80% treatment.	Affirmative opt-in for initial distribution, affirmative opt-out to preserve 100% treatment, and deemed consent for non-opt-outs.	Opt-out model for consent program; non-opt-out holders deemed to participate.	Opt-in, opt-out, or deemed consent by failure to return an effective Election Form.	Opt-out settlement model; holders that did not opt out were deemed to participate and receive settlement benefits.
Eligibility / scope	Administrative Claimants holding section 503 claims, subject to exclusions for certain professionals, section 365 claims, and DFA absent further relief or consent.	Holders of Administrative Expense Claims, with the Ad Hoc Vendor Group deemed opt-in.	Bar date applied broadly to postpetition administrative claims, subject to stated exemptions; consent program applied to known identified administrative expense claims except excluded categories.	Administrative Claims arising on or before July 31, 2025, excluding specified lease, ordinary-course vendor, employee, stub rent, tax, and cure claims.	Bar date applied broadly to postpetition administrative claims, subject to exemptions; pool eligibility was limited to holders of Allowed Administrative Claims that did not opt out, including certain unpaid merchandise vendor, critical vendor, and other Toys-Delaware administrative claims.

Feature	Southern Foods / Dean Foods	Sears Holdings	Steward Health Care	New Rite Aid	Toys “R” Us
Maximum participant recovery	80% of Reconciled Claim.	75% for opt-in settled claims and 80% for non-opt-out settled claims.	50% of the Reconciled Amount for non-opt-out participants.	Pro rata share of $5 million, capped at 5% of Recorded Amount or agreed amount.	Pro rata share of Administrative Claims Distribution Pool; no fixed percentage cap identified.
Treatment of nonparticipants / opt-outs	Non-opt-in claimants kept the right to full payment under a conforming plan but were deferred until opt-in claimants were paid.	Opt-outs retained 100% Allowed claim treatment but were delayed until the latest of the Effective Date, 30 days after allowance, or the next distribution date after allowance.	Opt-outs retained treatment under the plan and, if allowed, were to be paid in full on the later of the Effective Date, 45 days after allowance, or the next plan distribution date.	Opt-outs retained rights to assert claims but received no recovery under the Administrative Claims Procedures.	Opt-outs received no settlement distribution or avoidance-action release; amounts allocable to opt-outs were paid to the Prepetition Secured Term Lenders.
Distribution pool / funding source	No fixed pool stated; distributions paid under the consent program mechanics.	$21 million Initial Cash Pool, plus second distributions after minimum conditions were satisfied.	$12.5 million Settled Administrative Expense Claims Cash Pool.	$5 million Administrative Claims Distribution Pool.	$180 million Administrative Claims Distribution Pool, plus contingent excess-asset and Non-Released Claims Trust recoveries, net of trust and substantial-contribution funding.
Key deadlines	Opt-In Deadline: later of August 21, 2020 at 4:00 p.m. CT or 14 days after Preference Action Notice.	Opt-In/Opt-Out Deadline: 33 days after service and 4:00 p.m. ET on the applicable date in the notice form.	Administrative claim bar dates: December 10, 2024 for claims through November 15, 2024; rolling quarterly bar date thereafter; consent opt-out deadline July 2, 2025 at 5:00 p.m. CT.	Election Deadline: September 16, 2025 at 5:00 p.m. ET.	Administrative claim bar date: July 16, 2018 at 5:00 p.m. ET for claims through June 30, 2018; later claims due by the earlier of the 15th day of the next month or 14 days after a plan, settlement, or resolution hearing; settlement opt-out deadline: August 24,

Feature	Southern Foods / Dean Foods	Sears Holdings	Steward Health Care	New Rite Aid	Toys "R" Us
					2018 at 4:00 p.m. ET; initial distribution contemplated by September 30, 2018.
Forms / documentation	Opt-In Form required claim amount, election, wiring information, acknowledgments, and certifications.	Opt-In and Opt-Out Ballots required asserted administrative expense claim amount, election, signature, and authority certifications.	Proof of Administrative Claim required English, U.S.-dollar amount, Debtor identification, hospital/time-period identification, signature, and supporting documentation.	Election Form required opt-in or opt-out election, Recorded Amount review, claimant identification, certifications, and signature.	Proof of Administrative Claim governed by court-approved form and procedures; electronic Opt-Out Form governed participation in settlement.
Claims agent / submission method	Epiq; E-Forms Portal, mail, overnight courier, or hand delivery; no fax or email.	Prime Clerk; E-Ballot portal or paper ballot by mail/courier/hand delivery.	Kroll; electronic filing through Kroll website or hard-copy submission to Kroll; no fax or email.	Kroll; online portal, mail, overnight courier, or hand delivery; no fax or email.	Prime Clerk/Kroll; Proofs of Administrative Claim filed through the claims process and opt-outs submitted through dedicated settlement opt-out website.
Reconciliation / objection mechanism	Debtors and claimant reconciled claim amount; committee consultation applied to certain large disputed claims.	Expedited reconciliation within 30 days for opt-in and non-opt-out claims, including sections 503(b)(9), 503(b)(1), and preference issues.	Formal Proof of Administrative Claim process and later consent-program reconciliation through Reconciled Amounts.	Claimants disputing Recorded Amount could propose an alternate amount; unresolved disputes before the Election Deadline could result in deemed opt-out treatment.	Debtors could reconcile and allow claims after Committee notice and no objection; unresolved disputes could be addressed by claim objection and Court resolution, with Claims Oversight Representative consultation.
Participation condition	No express minimum participation threshold identified in the cited materials.	No express global minimum participation condition identified in the cited program	75% minimum dollar participation threshold unless waived.	Sufficient consenting or deemed-consenting administrative claimants required, as	Settlement termination option if holders of more than 7.5% in

Feature	Southern Foods / Dean Foods	Sears Holdings	Steward Health Care	New Rite Aid	Toys “R” Us
		notice; distributions were subject to funding conditions for later distributions.		determined by Debtors and DIP Lenders in consultation with Committee.	value of administrative claims opted out.
Preference-action treatment	Debtors to send Preference Action Notices; preference claims could be waived or settled case-by-case for opt-in holders.	Preference issues included in expedited reconciliation; waiver or settlement could be considered case-by-case.	Debtors preserved setoff, recoupment, chapter 5, and other claims regardless of participation.	Debtors preserved setoff, recoupment, chapter 5, and other claims generally, but waived section 547 claims against opt-in claimants upon First Distribution.	Debtors released avoidance actions, including preference claims, against non-insider creditors and non-opt-out administrative claim holders; D&O claims were transferred to the Non-Released Claims Trust.
Disgorgement / recourse protection	Opt-in distributions not subject to disgorgement upon Chapter 7 conversion.	Settled-claim distributions not subject to disgorgement upon conversion or dismissal.	No express disgorgement protection identified in the cited consent-program materials.	Distributions under the procedures satisfied claims in full and final satisfaction, and claimants waived plan-treatment objections.	No separate disgorgement protection identified; non-opt-out holders received settlement benefits and releases, while opt-outs received no distribution or release benefits.

Analysis

The above five cases show claimant-facing consent or claims procedures designed to compromise or administer administrative-priority exposure while preserving a path for nonparticipants or opt-outs. *Southern Foods, Sears, Steward, New Rite Aid, and Toys-R-US* all used structured programs or procedures built around deadlines, claim reconciliation, election forms or ballots, and differentiated distribution treatment.

The recovery terms vary significantly across the five cases. *New Rite Aid* capped participating recoveries at 5% of the Recorded Amount. Steward used 50% of the Reconciled Amount for non-opt-out participants. Sears used 75% and 80% tiers. Southern Foods used 80%. Toys "R" Us used a pro rata Administrative Claims Distribution Pool funded by $180 million of fixed settlement consideration plus contingent recoveries, with no fixed percentage cap identified in the cited materials.

The election mechanics also show progression toward more aggressive deemed-consent structures in later cases. *Southern Foods* required affirmative opt-in. *Sears* used opt-in and opt-out ballots with silence binding the claimant but denying initial-distribution benefits. *Steward* used opt-out deemed participation. *New Rite Aid* used opt-in, opt-out, and deemed-consent treatment tied to a participation condition. likewise used an opt-out settlement model under which holders that did not opt out were treated as participating in the Settlement Agreement and received the related distribution and release benefits *Toys-R-Us*

Participation conditions appear most prominently in the later healthcare and retail cases and in *Toys-R-Us*. *Steward* required at least 75%-dollar participation unless waived, while *New Rite Aid* conditioned effectiveness on sufficient consenting or deemed-consenting administrative claimants as determined by the Debtors and DIP Lenders in consultation with the Committee. *Toys-R-Us* gave the B-4 Lenders and the Debtors an option to terminate the settlement if holders of more than 7.5% in value of administrative claims opted out. *Southern Foods* and *Sear*s relied more on payout sequencing and distribution incentives than an express minimum participation threshold in the cited materials.

Across the five cases, the most significant commonality is the use of centralized administration, prescribed forms or ballots, strict deadlines, and electronic or hard-copy submission channels that exclude email and fax in several programs. Key distinctions include the required election model, the size and form of the distribution incentive, the treatment of opt-outs or nonparticipants, whether preference-related issues were preserved, waived, or folded into claim reconciliation, and whether the settlement also created litigation-trust mechanics for non-released claims.

Case Studies in Administratively Challenged Cases

Introduction:

Below are four bankruptcy cases illustrating administrative insolvency, or the risk of it, in the absence of a court-approved administrative claims program

Case-by-Case Summaries

1. In re FSPH, Inc., Case No. 22-10575 (CTG) (D. Del.)

In re FSPH, Inc., Case No. 22-10575 (CTG) (Bankr. D. Del.), illustrates administrative insolvency without any claims-management mechanism in place. The case converted to chapter 7 roughly a month after filing, and the chapter 11 administrative claims do not appear to have been paid to date.

FSPH provided meals and co-packaged products from facilities in California (1), New York (1), and Georgia (3). FSPH filed as a result of liquidity problems caused by the loss of its largest customer and its inability, due to the pandemic, to secure new business.

Capital Structure:

- Senior secured: $6.25 million
- Junior secured: $2 million
- Unsecured: $10 million
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FSPH filed on June 29, 2022, with no cash and no financing in place. The senior lender declined to finance a restructuring, opting instead for liquidation. The Committee was formed on July 21, 2022; according to Committee members, FSPH's principal had used company funds for personal, non-business expenses. FSPH was unable to secure financing, and on August 1, 2022, at the joint request of FSPH and the Committee, the case converted to chapter 7.

2. In re GST AutoLeather, Inc., et al., Case No. 17-12100 (LSS) (D. Del.)

In re GST AutoLeather, Inc., et al., Case No. 17-12100 (LSS) (Bankr. D. Del.), illustrates how aggressive first-day vendor payments, made without securing forward trade commitments, can push a case to the edge of administrative insolvency even with no formal claims program in place. GST experienced acute postpetition liquidity problems within two months of filing before the case stabilized and ultimately confirmed a plan.

GST designed and manufactured automotive leather components. Selling price reductions and decrease of demand resulting from leather alternatives resulted in lower top line revenue. In 2016, GST had net sales of $540 million.

Capital Structure:

- Senior secured $164 million
- Mezzanine $32 million
- Factoring facility $10 million
- Supplier financing $4.1 million
- Unsecured $45 million

GST borrowed $40 million postpetition. For first-day relief, GST obtained authority to pay $21.6 million to foreign vendors, $0.5 million to shippers and warehouse claimants, $2.5 million to section 503(b)(9) claimants, and $6 million to critical vendors. The Debtors disbursed these funds without securing trade agreements or other commitments from vendors to continue extending trade credit. Within two months of the petition date, GST experienced significant postpetition liquidity issues — even vendors sitting on the Committee moved to COD payment terms. The case remained in a difficult position for several months before stabilizing. The chapter 11 case ultimately confirmed.

3. In re Sienna Biopharmaceuticals, Inc., Case No. 19-12051 (MFW) (D. Del.)

In re Sienna Biopharmaceuticals, Inc., Case No. 19-12051 (MFW) (Bankr. D. Del.), presents a narrower path to administrative insolvency: a sale that undershot expectations, followed by an unsuccessful attempt to close the gap through a fee reduction from a single professional. The case converted to chapter 7 just eight days after entry of the sale order.

Sienna, a clinical-stage biopharmaceutical and medical device company, ran into setbacks in FDA trials for its developmental treatment. Sienna did not monetize any of its assets and had an accumulated deficit of $184.1 million as of June 30, 2019.

Capital Structure:

- Secured $40 million
- Unsecured $20 million

Sienna had $11 million in cash collateral, which the lender permitted it to use to fund the chapter 11 case and the section 363 sale process. The sale generated $2 million in proceeds, and certain assets remained unsold. Case professionals were under budget, and the Debtors approached the investment banker to request a reduction of its minimum fee in light of the auction results. Had the banker agreed, there would have been sufficient funds to propose and confirm a plan of liquidation. Negotiations were brief but unsuccessful. Eight days after entry of the sale order, the Court converted the case to chapter 7.

4. Heritage Home Group LLC, et al., Ch. 11 Case No. 18-11736 (KG)

In re Heritage Home Group LLC, Case No. 18-11736 (BLS) (Bankr. D. Del.), shows administrative insolvency arising from postpetition financing structured for the wrong kind of case. Here, the Debtor entered into an ABL facility built for an operating borrower, not a liquidating one. HHG breached the facility repeatedly after its asset sale before the lender finally called default and the case converted to chapter 7.

Capital Structure:

- Secured ABL facility $83.4 million
- Prepetition term loan facility (from sponsor) $167.4 million
- Unsecured $27 million

The lender agreed to upsize the ABL facility postpetition to provide HHG with needed liquidity. Within a year of the petition date, HHG's sponsor contributed $15 million through a new subordinate tranche in the ABL facility; in approving that postpetition financing, the Committee preserved its right to challenge the tranche as an equity contribution rather than debt. The assets sold, but the sale did not generate sufficient returns. Post-sale, HHG repeatedly breached financial covenants under the ABL facility — which had been structured for an operating borrower, not a liquidating one. The lender waived these defaults several times before finally calling default, at which point the case immediately converted to chapter 7.

Synthesis and Conclusions: Key Practitioner Takeaways

1. **Align Financing with Case Trajectory.** The structure, covenants, and borrowing-base assumptions of DIP financing or cash-collateral orders must match the debtor's realistic path—whether reorganization, going-concern sale, or liquidation. Financing designed for an operating borrower will fail a liquidating estate (Heritage Home Group), and filing without any financing runway leads to rapid conversion (FSPH).
2. **Monitor Administrative Solvency Continuously.** Administrative insolvency can emerge quickly and unexpectedly. Sale-price shortfalls (Sienna), covenant breaches (Heritage Home Group), and uncontrolled cash burn (GST AutoLeather) can each independently render a case administratively insolvent. Ongoing, real-time monitoring—not periodic snapshots—is essential.
3. **Condition First-Day Payments on Continuing Trade Value.** First-day vendor payments that do not secure forward trade commitments may accelerate cash depletion without preserving the supply chain (GST AutoLeather). Practitioners should structure first-day relief to require enforceable trade agreements where possible.
4. **Use Administrative Claims Programs to Exchange Discount for Certainty.** Where administrative insolvency is likely, structured programs offer accelerated but discounted distributions in exchange for certainty, releases, and streamlined reconciliation. Recovery levels across the surveyed programs ranged from 5% (New Rite Aid) to 80% (Southern Foods / Dean Foods), with Sears at 75%/80%, Steward at 50%, and Toys "R" Us using a fixed pool without a stated percentage cap.
5. **Attend to Election Mechanics and Deadlines.** Program outcomes turn on procedural details: election models (opt-in, opt-out, or deemed consent), submission methods and deadlines, reconciliation timelines, participation thresholds (and whether they can be waived), deemed-opt-out triggers for unresolved disputes, and the availability of disgorgement protection.
6. **Evaluate Preference Treatment Carefully.** Programs handle preference exposure differently. Some waive section 547 claims for participants upon distribution (New Rite Aid); others preserve preference claims but allow case-by-case resolution (Southern Foods, Sears); and settlement structures may release avoidance actions for non-opt-out holders broadly (Toys "R" Us). The treatment of preference claims can materially affect a claimant's net recovery and should inform election decisions.
7. **Distinguish Court-Approved Procedures from Contested Merits Decisions.** The administrative claims programs summarized here reflect court-approved procedures—typically entered on consent or after limited objection—rather than contested merits rulings. Practitioners should not cite these procedures as judicial holdings on the

enforceability of specific program features without examining the procedural posture of each order.

8. **Assess Funding Sources and Contingencies.** The reliability of funding sources varies widely: fixed cash pools (Sears's $21 million; Steward's $12.5 million; New Rite Aid's $5 million) offer more certainty than contingent litigation proceeds (Steward opt-outs) or settlement pools that may be terminated (Toys "R" Us's 7.5% termination threshold). Practitioners should advise clients to weigh the certainty of accelerated payment against the risk-adjusted value of contingent full-payment rights.

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