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Lender 'Collective Action' Doctrine Provokes Controversy

Acting on a Syndicate's Behalf Over an Objecting Minority

Editor's Note: *Our main authors here address the overall collective action doctrine and then split up to take sides on the controversy; their separate "For" and "Against" essays accompany this article.*

BY MARC ABRAMS, RACHEL C. STRICKLAND AND KEITH H. WOFFORD

ARE SOME LENDERS more equal than others? That is a question many lenders are now asking themselves in light of recent decisions authorizing agent banks to act on behalf of their syndicates over the objection of the syndicate's minority. In short, does the principle of "collective action" really work, and is it legal?

Lender collective action allows an agent to act (or forbear) at the direction of some, but not all, of the members of its lending syndicate, thereby effectively overruling any dissenters. It derives from both contract law principles and practical considerations.

Collective action can now be considered a judicial trend towards interpreting credit documents to permit administrative or collateral agents acting on behalf of a majority of lenders to exercise exclusive control over credit decisions whether or not all lenders agree. When asked to analyze inconsistent loan document terms, courts supporting collective action have relied heavily on predetermined voting regimens, even where other contract provisions might suggest that unanimous consent is required or unilateral action is permissible.

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Collective action cases allow a "majority" (a concept typically determined based on the total dollar value of the outstanding loans) to dictate a course of action or inaction for the entire syndicate. These decisions may force a dissenting lender to surrender rights or participate in a borrower's restructuring actions against its will to the exclusion of contractual or statutory rights that are reserved for individual creditors. Is this right? Should minority lender groups retain the right to take unilateral action in disregard of the wishes of the majority?

Collective action case law tends to focus on the terms of the governing credit documents, which are often subject to differing yet rational interpretations. On one hand, the provisions could signal an intent for all lenders to act as a single unit represented by a designated agent.

Such provisions include a delegation of authority to the agent to act at the direction of a specified lender "majority," and a statement as to the binding effect of the agent's actions on all syndicate members, including those who disagree with the proposed course of action. Under this view, absent an express right in the governing agreements, an individual lender cannot take unilateral action without the affirmative consent of the "majority."

On the other hand, loan documents almost always contain provisions that preserve lender autonomy. For example, almost all loans require 100 percent lender consent for certain amendments to the credit agreement (e.g., to extend a maturity date). According to this alternative view, in such instances, each lender may pursue its own interests and exercise a veto, even in the face of overwhelming support for a course of action.

Under this approach, so long as there is any dissenting syndicate member, a group of lenders, no matter how large in number or how much of the borrower's debt they hold, cannot impose its will on the entire syndicate.

Furthermore, credit documents sometimes expressly authorize individual lenders to take action,

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irrespective of overwhelming syndicate support for a different course of action.

Supporters of collective action explain the tension between these arguably incompatible provisions by emphasizing that credit agreement terms generally permit collective action except in the limited circumstances where either a specific veto right or a "right to proceed independently and directly"[1] was contracted for in advance.

Opponents, however, cite the decision of each lender to join a syndicate based on its understanding of the rights and protections it will be afforded under the loan documents as a basis to support unilateral action and preclude efforts to drag minority lenders against their will. In particular, concerned lenders point to the slippery slope that could result from allowing a "majority," which at times could consist of a few large lenders, to control decision-making at the expense of other minority lenders who believe they have both a contractual and statutory right to act in their own self-interest.

Case Law

In recent years, a number of factors have produced disputes over the propriety of collective action.

First, the private fund community has grown increasingly focused on "loan to own" investment strategies, a more patient investment model (detractors call it "opportunistic," or worse) that resembles the investment thesis of the private equity sector.

Second, and relatedly, the contraction in sources of capital for both debtor in possession and exit financing have increased the frequency and importance of §363 sales as an alternative to "stand-alone" Chapter 11 plans of reorganization, under which assets remain in place while ownership shifts hands as debt is equitized under a balance sheet deleveraging. As discussed below, these trends have elevated "credit bidding" to the forefront of many restructuring cases.

Last, the great economic calamity of 2008–2009 has injected greater uncertainty into the restructuring process, adding stress to the circumstances in which collective action is invoked and tested.[2]

Though there is limited case law on collective action, recent decisions have embraced the doctrine at both the state[3] and federal[4] level. In particular, the use of collective action this year in two prominent bankruptcy cases, *Chrysler* and *Delphi*, indicates judicial acceptance of the doctrine in the restructuring context.

While collective action has only recently gained prominence, it is not an entirely new phenomenon. Since 1985, New York courts have relied on credit documents to allow a syndicate to force its decisions upon a lender minority.[5] But despite the trend in favor of collective action, its acceptance is not universal.[6]

Lender collective action disputes are common when secured lenders attempt to credit bid under §363(k) of the Bankruptcy Code.[7] Other collective action contexts include the enforcement or waiver of rights and remedies under the credit documents, including agreements to forbear or release liens securing collateral to facilitate a borrower-sponsored (and more recently, government-funded) sale of assets.

In each of these contexts, collective action is used to defeat one lender or a small group of lenders that seek to block action supported by a majority of the syndicate. Although cynics believe that dissenters are often motivated by a desire to extract concessions from the majority, others believe that objecting lenders are merely exercising their right to act in accordance with their own economic self-interest.

Credit Agreement Terms

Although courts have authorized collective action, it is not explicitly provided for under customary credit agreement provisions. Rather, whether the loan documents support collective action hinges on whether they evidence an "unequivocal collective design."

Put differently, courts have adopted a holistic, contextual approach that places less weight on isolated provisions. Analysis of whether collective action is permissible therefore tends to focus on a case-by-case inquiry into the type of act at issue and whether that act (either directly or through the force of analogy) may be taken by the majority under the terms of the credit documents.

While collective action case law has focused on certain types of key phrases and terms, this fact-specific determination turns largely on an integrated reading of particular contractual language and the type of action that the majority seeks to take.

Beal Savings Bank v. Sommer is an example of the fact-specific nature of the collective action inquiry. It is frequently cited as a leading decision supporting lender collective action.

In *Beal*, the debtor's credit facility was guaranteed by its non-debtor parent pursuant to a "Keep-Well Agreement." Upon the debtor's default, 36 of the 37 syndicate members, holding 95.5 percent of the outstanding debt under the credit agreements, agreed to forbear from enforcing the guarantee clause. A single lender sought to enforce it in contravention of the wishes of the overwhelming majority.

The majority argued that the lone dissenter lacked standing to sue to enforce the guarantee under the terms of the loan documents, while the holdout sought to retain the authority to act unilaterally. In concluding that collective action was permissible under the loan agreements, the New York Court of Appeals held that "[t]he specific, unambiguous language of several provisions, read in the context of the agreement as a whole, convinces us that, in this instance, the lenders intended to act collectively in the event of the borrower's default and to preclude an individual lender from disrupting the scheme of the agreements at issue."[8]

No Definite Test So Far

It is premature to announce any bright-line test or specific standard when determining whether a court might find that collective action is warranted.

Nonetheless, lenders, borrowers and stakeholders in complex restructurings all have a vested interest in the outcome of this emerging body of jurisprudence. Whether this is a matter of a lender getting the benefit of its bargain or a syndicate facilitating a consensual solution for the greater good remains subject to debate.

Whether the courts will have the final say is also open to debate, at least looking ahead. As a threshold matter, the meaning of syndicated loan documents is in the hands of the contract parties. Given recent experience, efforts to solidify or weaken the ability of syndicates to act collectively will be a function of contractual drafting as influenced by the impact of commercial expectations and the marketability of debt instruments, at syndication and in the secondary market.

However, according to Debtwire North America, there is approximately $438 billion in outstanding "distressed" debt under its articulated criteria.[9] Because a substantial portion of that amount consists of syndicated loan debt, it is clear that the collective action controversy will receive ongoing judicial attention well into the future.

1. See *Credit Francais Int'l, S.A. v. Sociedad Financiera de Comercio, C.A.*, 490 N.Y.S.2d 670, 683 (N.Y. Sup. Ct. 1985).
2. Many recent cases addressing collective action have involved the intervention of the U.S. Treasury as the lender of last resort in the restructuring process. These cases involve a non-traditional source of funds and influence in a process that heretofore unfolded in an exclusively judicial setting.
3. See, e.g., *Beal Savings Bank v. Sommer*, 8 N.Y.3d 318 (N.Y. 2007).
4. See, e.g., *In re Chrysler LLC*, 405 B.R. 84 (Bankr. S.D.N.Y. 2009), aff'd 576 F.3d 108 (2d Cir. 2009); *In re Delphi Corp.*, 2009 WL 2482146 (Bankr. S.D.N.Y. 2009). The District of Delaware also recently recognized the collective action principle. See *In re GWLS Holdings Inc.*, 2009 WL 453110 (Bankr. D. Del. Feb. 23, 2009).
5. See *Credit Francais*, 490 N.Y.S.2d 670.
6. See *In re Electroglas Inc.*, No 09-12416 (Docket No. 263) (Bankr. D. Del. Sept. 23, 2009); *Federated Strategic Income Fund v. Mechala Group Jamaica Ltd.*, 1999 US LEXIS 16996 (S.D.N.Y. 1999).
7. 11 U.S.C. §363(k).
8. 8 N.Y.3d 318, 321 (N.Y. 2007).
9. See Debtwire North America, http://www.debtwire.com (last visited Nov. 24, 2009).

For:

A Consensual Solution For the Greater Good

BY MARC ABRAMS
AND RACHEL C. STRICKLAND

THE RECENT financial crisis of 2007–2009 has left corporate America in turmoil. Management teams and their advisors are struggling to unravel unwieldy and unsustainable capital structures that were engineered in an era characterized by excessive valuations and risk taking. While rationalizing these capital structures, distressed companies seek consensual resolutions with competing stakeholders to avoid costly and protracted Chapter 11 cases. Collective action is one tool that furthers this goal without doing violence to lender expectations.

To some, collective action may seem too strong a medicine. However, the courts have made clear that group decision-making is a proper and lawful means of proceeding under most forms of syndicated loan documents.

Lender collective action is based on principles of contract interpretation. These principles require that an agreement be read as a whole, that contract terms be given their plain meaning and that all terms be given effect. Courts give little weight to isolated terms that otherwise could be read out of context to confer veto powers on individual lenders.

Courts embracing collective action rely on three common elements found in most loan documents.

First, there must be a delegation of authority by the syndicate to an agent to act on behalf of the lenders.

Second, while the agent may be given the authority to enforce rights and exercise remedies at its discretion, it must also be obligated to do so at the direction of the specified lender "majority."

Finally, the syndicate members must agree to be bound by the agent's exercise of such powers.

When combined, these provisions manifest an "unequivocal collective design"[1] implicit in the applicable credit documents, and signal an intent among the lenders to subject themselves to the will of the "majority" and to bind themselves to such decisions. The absence of any one of these terms may therefore prove fatal.[2]

It is true that credit documents frequently require unanimous approval for modifications that forgive principal, extend maturities or release collateral. Contrary to the protestations of detractors, however, courts are not enabling lender majorities to run roughshod over individual lenders' inviolate rights. Instead, opinions endorsing collective action have involved majority-directed decisions over modest opposition in circumstances where the operative documents demonstrated a clear entitlement of the majority to act and a less than persuasive showing by the opposition that fundamental rights were in fact implicated.

Collective action is anticipatable. Syndicated debt is held by a variety of highly sophisticated lenders.

Whether such parties contracted at the loan's inception (when it is fair to assume that prospective lenders review and approve the proposed governance terms) or are part of the sophisticated secondary market for distressed bank debt; none are forced to transact blindly and all can give careful attention to the relevant documents when evaluating an investment opportunity. The mere fact that at some future date majority rule proves inconvenient or frustrating because it stifles individual decision-making is simply an example of "buyer's remorse."

> Syndicated debt is held by a variety of **highly sophisticated** lenders. The mere fact that at some future date majority rule proves **inconvenient** or **frustrating** is simply an example of 'buyer's remorse.'

Collective action's justifications are not limited to contract interpretation principles. A number of practical considerations also weigh in its favor.

Collective action helps achieve efficient outcomes by reserving the authority to exercise rights and remedies to a single party—the authorized agent. In virtually every circumstance, this avoids unnecessary chaos and ensures that the credit facility remains functional (e.g., a borrower need not have separate negotiations with numerous and often transitory members).

But ease of administration comes with a price. Individual lenders are precluded from pursuing self interests to the detriment of the "majority." Any other outcome could produce a "multiplicity of suits by individual [lenders] working at cross purposes for their own individual benefit," undermining judicial economy and burdening syndicate and/or case administration.[3]

Furthermore, lender collective action based upon a majority vote produces fair outcomes. It recognizes the fact that lenders regularly contract for material decisions to be made by the holder or holders of over 51 percent of the outstanding debt, a lower threshold than the amount required for a class of creditors to approve a Chapter 11 plan; two-thirds in amount and one half in number. This decision-making framework fundamentally resembles its statutory analogue by giving effect to the will of the majority while protecting each lender's right to express alternative views.

It also serves to acknowledge the difficulty inherent in getting a multitude of parties with differing interests to agree on a single course of action. In the age of activist funds, each lender has different expectations as to its rate of return, the form of currency utilized to repay its debt, and may be subject to other influences, such as the desire to maximize other positions held in a borrower's capital structure. Collective action recognizes that it would be impossible for a consortium to accomplish anything if each lender could unilaterally act without restraint absent clear-cut veto powers.

Particularly Appropriate

Lender collective action is particularly appropriate in a number of general contexts. The first is credit bidding, a procedure by which the debtor's secured creditors bid for the collateral at a sale conducted pursuant to §363 of the Bankruptcy Code and offset their secured claim against the purchase price of the property.[4]

Credit bidding is understood as an exercise of remedies because it enables the secured party to obtain the collateral in satisfaction of all or a portion of the secured debt in lieu of foreclosure. Under §363(k) of the Bankruptcy Code, a secured lender can credit bid the face amount of the debt, not merely the actual economic value of its claim.[5] Through collective action, the full value of the entire syndicate's debt holdings may be bid by the "majority," even if not all lenders support the use of their debt for such purposes.

While some will argue that credit bidding fellow syndicate members' debt is confiscatory, the practice draws vitality through a powerful analogy to customary credit agreement provisions that

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address the invocation of remedies. As part of the general grants of power to the agent, many credit agreements empower the agent to exercise powers that are "reasonably incidental" to those expressly delegated to it. Courts interpreting this clause have concluded that submitting a credit bid falls within the scope of such powers.[6]

Loan documents customarily authorize the agent to exercise any and all rights and remedies available under "applicable law." That phrase has been construed to include both the Bankruptcy Code in general and credit bidding in particular.

Finally, the terms of related collateral agreements tend to reinforce the propriety of group-directed credit bids. The totality of these provisions establishes a firm contractual basis for a "majority"-led credit bid.

Grounds for Inaction Also

Collective action use may also serve as grounds for inaction.

First, because loan documents often designate the agent as the exclusive party authorized to exercise remedies, individual lenders are implicitly prohibited from doing so unilaterally absent terms expressly reserving individual self-help remedies.[7] As credit agreements customarily mandate that the syndicate agent act at the direction of the lenders, there is no logical basis upon which to distinguish between lender demands to act and lender demands to refrain from acting.

Based upon these types of provisions, courts have upheld lender syndicate decisions to forbear from enforcing remedies,[8] enter into settlement agreements,[9] grant waivers and releases of guarantees,[10] consent to §363 sales and the release of liens under §363(f)[11] despite opposition by one or more disgruntled holdouts.

While understandably no lender wants to be compelled to pursue a course of action it deems improper, any lender would be hard-pressed to argue against the utility of collective action, at least in the abstract. While at times collective action may appear to bulldoze the wishes of individual lenders, it is a necessary evil, for its alternatives—requiring unanimous consent, or allowing individual lenders to unilaterally act—would produce far worse consequences.

A disgruntled lender is not without recourse when it finds the group dynamic intolerable. It may opt to enhance its position and gain voting control directly or through alliances, or it may elect to sell out completely and exit the restructuring.

1. *Beal*, 8 N.Y.3d at 326.
2. See *Electroglas*, No 09-12416 (Docket No. 263) (Bankr. D. Del. Sept. 23, 2009).
3. *Credit Francais*, 490 N.Y.S.2d at 682.
4. 11 U.S.C. §363(k). Importantly, the cases addressing collective action and credit bidding have yet to encounter minority opposition of a substantial magnitude in either number or dollar amount, and it is difficult to handicap whether a court, or the applicable agent, would be influenced if only a bare majority sought to credit bid.
5. See *In re Submicron Systems Corp.*, 432 F.3d 448, 459 (3d Cir. 2006).
6. See *Delphi*, 2009 WL 2482146 at *8; GWLS, 2009 WL 453110 at * 3.
7. See *Credit Francais*, 490 N.Y.S.2d at 682-83.
8. See Transcript of Oral Argument at 152-53, *In re Delphi Corp.*, No. 05-44481 (Bankr. S.D.N.Y. Dec. 1, 2008). Collective as opposed to individual enforcement is also bolstered by the equal and ratable sharing clauses found in most credit agreements.
9. See *In re Delta Air Lines Inc.*, 370 B.R. 537 (Bankr. S.D.N.Y. 2009).
10. See *Beal*, 8 N.Y.3d 318.
11. See *Chrysler*, 405 B.R. 84 (Bankr. S.D.N.Y. 2009).

Against:

A Violation of New York Law and Good Policy

BY KEITH H. WOFFORD

THE COLLECTIVE action doctrine runs afoul of New York law (as embodied in the parties' contracts) and good policy when it interprets majority governance in a manner that overrides the terms of basic loan entitlements promised to individual lenders.

Syndicated loan agreements, in reality, combine principles of majority rule and individual rights. The entitlements traditionally reserved as the exclusive domain of individual lenders, namely, the right to obtain repayment of principal at maturity, the right to receive payment of interest at the agreed rate and at agreed intervals, and the right to bar releases of all or substantially all loan collateral and guarantees,[1] legally cannot and should not be denied by means of "collective action" doctrine.

Collective action cases really fall into two categories: those where fundamental rights are abrogated, and those where fundamental rights are left undisturbed. The cases in the first category are the most troubling, and it would not be surprising if these precedents do not endure. In the second category of cases, collective action doctrine raises fewer concerns and, in certain instances, is expected or even necessary.

The expansion of the collective action doctrine in the wake of *Beal Savings Bank v. Sommer* raises particular concerns in the current investment market, where syndicate members' interests may not be completely aligned.

Collective action allows large and liquid market players to use the enhanced powers of the majority, potentially at the expense of the fundamental rights of their fellow lenders, solely to advance the larger players' interests in other portions of the capital structure or to implement their "loan to own" strategies. And no matter how efficient, the lower threshold for majority action in a credit agreement (50 percent in amount), when compared with the statutory requirements to approve a Chapter 11 plan (two-thirds in amount and majority in number), makes the collective action doctrine an inappropriate shortcut to reorganization.

The collective action doctrine has sanctioned an extension of certain collective aspects of credit agreements to fundamental rights that are not properly susceptible to collective action.

The *Beal* Court took the position that, even where a credit agreement accords rights to individual lenders or provides that certain acts require unanimous lender consent, those provisions should be read narrowly (even to the point of having no meaning), in order that the collective design of the credit agreement may prevail. With respect to fundamental rights, it is not clear that there is a "collective" design at all. Credit agreements explicitly require unanimous support to amend or waive fundamental rights; thus it is untrue to say that lenders agreed to surrender these rights to the will of the majority.

Few credit agreements (if any) expressly foreclose the right of a lender to sue for payment of principal upon maturity. Further, to bar individual actions by lenders is inconsistent with common credit agreement provisions that:

(i) state explicitly that each lender is owed an independent debt obligation that each lender has a right to collect,

(ii) call for issuance of (or the right to request issuance of) separate notes representing that lender's debt, and

(iii) state clearly that, when an individual lender proceeds on its own and obtains a recovery on its debt, such individual lender recoveries must be shared pro rata with the other members of the syndicate.

Beal should be read in this context. Although the New York Court of Appeals held that the imputed collective design of the credit agreement nullified the contract provisions preserving each lender's individual rights with respect to the Keep Well Agreement, the *Beal* Court appears to have anticipated the potential problems its decision might create. While lauding the "unequivocal collective design" of the loan documents at

issue, the Court attempted to circumscribe its precedential impact on the majority of credit agreements, where the "collective design" is not so "unequivocal."

To wit, the *Beal* Court distinguished cases where the credit agreements contained language clearly entitling individual lenders to sue upon their debt and where courts would therefore not permit the collective (majority) to silence individual lenders seeking to enforce payment.[2]

'Beal' Progeny's Expansion

Beal's progeny have expanded collective action to its current troubling status. The most notable such case is *Delphi*, where the court permitted a majority of lenders to extend a stated maturity, over the objection of the minority, by means of a "forbearance."

Allowing collective action to override the most fundamental right, namely, to sue for repayment at maturity, is incorrect for numerous reasons. As noted above, the *Beal* Court itself would not have reached this result if the credit agreement expressly permitted suits by individual lenders.

Delphi's outcome also disregards precedent defending the ability of lenders to vindicate their payment rights individually without reliance on the collective.[3] "Forbearance" of a maturity date also ignores the fundamental precept in contract interpretation that provisions of a contract should not be read as to make portions of the contract meaningless.[4]

Taken to its logical extent (as many majority lenders seek to do), the majority might "forbear" (and thereby extend or eliminate) a maturity,[5] re-write the pro rata sharing provision of a credit agreement, change a payment currency (or change the form of payment to equity, which is not a currency at all), bar or compel assignments of individual lenders' debt,[6] or add obligations (e.g., indemnities) to a credit agreement.

While each of these foregoing results is mandated by the current "collective action" doctrine, this is clearly not the law of New York,[7] nor can it be credibly asserted to be the intent of lenders party to most credit agreements.

Effect on Credit Bidding

Where does this view of the proper limits of "collective action" (that the majority cannot cut off fundamental rights) leave credit bidding by syndicated lending groups?

While the foregoing analytical framework is useful, it does not resolve the complexities of credit bidding, which occupies a doctrinal middle ground. While a credit bid is typically viewed to be within the scope of secured creditor remedies (an area where collective action is favored), credit bids may clash with fundamental rights reserved to individual lenders. A credit bid is legally nothing more than paying the purchase price in a foreclosure or 363 sale with debt that is secured by the assets being sold.[8] A credit bid is not an act to take the collateral, it is an offer to pay for it.

Thus, credit bids by loan agents raise a paradox. Since the agent, in such capacity, usually holds few or no loan obligations; the agent literally pays the purchase price with currency it does not own. Even when directed by the majority lenders, it is plain that 51 percent of the lenders do not own 100 percent of the debt. Nor could 51 percent of the lenders compel the remaining 49 percent of the syndicate to sell their loans at a price selected by the majority.

> Collective action allows **large, liquid** market players to use the **enhanced powers** of the **majority** solely to advance their interests in other portions of the capital structure or to implement their 'loan to own' strategies.

So even where the majority of lenders directs the agent, the "spending" of 100 percent of the debt as purchase price in a foreclosure or 363 sale is inconsistent with fundamental rights of the minority. Thus, credit bids by an agent should only be permitted where explicitly authorized by the credit documents (and each lender truly delegated this right) and the agent's rights to bid should be viewed as non-exclusive (i.e., individual lenders can bid).[9]

There is a critical interplay for lenders between the credit bidding provisions of the credit documents and the pro rata sharing provisions. These mechanics may break down in two areas.

First, sharing provisions differ in whether they apply to credit bids and the assets obtained thereby. Sharing provisions that apply to "reductions of debt, whether by means of setoff or otherwise" will cover credit bids, but less broad provisions referring only to "payments" might not apply to a credit bid.

Second, sharing provisions generally have a gap, in that they do not provide a framework for determining how to bridge the potential value difference between majority and minority equity in the kind of privately held vehicle commonly used in lender credit bids. This gap exists because it was never intended that lenders could be forced to take equity rather than cash outside of a Chapter 11 plan process.

1. Such rights shall be collectively referred to herein as "fundamental rights."
2. See *Beal Savings Bank v. Sommer*, 8 N.Y.3d 318 (N.Y. 2007), at 331 (distinguishing *A.I. Credit Corp. v. Gov't. of Jamaica*, 666 F.Supp. 629, 631 (S.D.N.Y. 1987)).
3. See e.g., id.; *Citadel Equity Fund Ltd. v. Aquila Inc.*, 371 F.Supp. 2d 510 (S.D.N.Y. 2005) (holding that majority lenders cannot amend credit agreement to postpone maturity without unanimous consent of lenders).
4. See, e.g., *God's Battalion of Prayer Pentecostal Church Inc. v Miele Assoc., LLP*, 6 NY3d 371, 374 (2006).
5. See, e.g., *Delphi*.
6. See, e.g., *Fidelity Summer Street Trust v. Toronto Dominion (Texas) Inc.*, 2002 US Dist LEXIS 15276 (D. Mass. 2002) (upholding amendment barring debt assignments unless made with majority lenders' consent).
7. See, e.g., *Federated Strategic Income Fund v. Mechala Group Jamaica Ltd.*, 1999 US LEXIS 16996 (S.D.N.Y. 1999) at *20 (holding, in granting a motion for preliminary injunction, that an amendment "that impairs or affects, by its effect and not necessarily by its terms, a holder's right to sue and recover payment could in certain circumstances constitute a violation [of the contract].")
8. See, 11 U.S.C. §363(k) (secured claim holder "may offset [its] claim against the purchase price for…property").
9. This creates a possibility that the majority could direct an agent not to bid but take the assets for themselves. This is an issue for the pro rata sharing provision to rectify (or not).

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