

E X P E R T Q & A

*While liability management exercises have become dramatically more common over the last few years, taking a long-term view of a company's capital needs remains crucial to their success, say Latham & Watkins' John Sobolewski and Joe Zujkowski*



## The liability management market enters a new era

**Q** How would you characterise the liability management environment, and what key developments have shaped its recent evolution?

**John Sobolewski:** The liability management landscape is no longer in its first innings. While these transactions garnered significant attention at the beginning of this decade, more than five years later, they have become a well-established feature of the industry and are being explored and executed earlier in the life cycle of stressed and distressed loans.

These are no longer transactions that occur only when companies face sudden and dramatic losses in revenue,

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as we saw during the covid-19 shutdowns. Now, companies are using liability management tools, which are 'amend-and-extend' transactions when they face challenges accessing the capital markets.

**Q** What are the primary considerations for companies, sponsors and credit investors when evaluating whether - and when - a liability management transaction may be appropriate?

**JS:** The most important thing for any company is to anticipate future challenges and obligations. Liability management tools are most effective when a company has a sufficient runway of remaining maturity on significant funded debt. A company does not want to reach a point, for example, with just six months until a significant debt maturity, without a viable path to refinance the maturing debt through the capital markets and then attempt to execute a liability management transaction under time pressure.

Instead, companies should consider liability management exercises when they are still a couple of years out from maturity, when they can benefit from

greater optionality. New third-party lenders may come forward with viable financing solutions. And if companies have time, they have choices, such as cutting a deal with existing lenders, which may substantially reduce hold-out and litigation risk.

We advise companies to think holistically about their business needs, liquidity concerns, potential covenant issues, upcoming maturity walls and access to the capital markets when they have two-plus years of runway. That time horizon allows companies to evaluate all available alternatives and deploy the appropriate tools.

**Q What best practices should companies adopt for balance sheet hygiene, and how can firms proactively address potential financial distress before it materialises?**

**JS:** The best practice is all about thinking ahead. Consider a company with a revolver maturity approaching in a year and a big maturity wall of term loans and bonds a year or two further down the line. In the past, that company might have addressed the revolver first and waited to address the rest of the structure later.

Whenever a company faces pressure and uncertainty regarding access to the capital markets, it should think holistically about every step. For example, taking a step to address a revolver could have implications and remove existing document flexibility to restructure or refinance term loans or bonds.

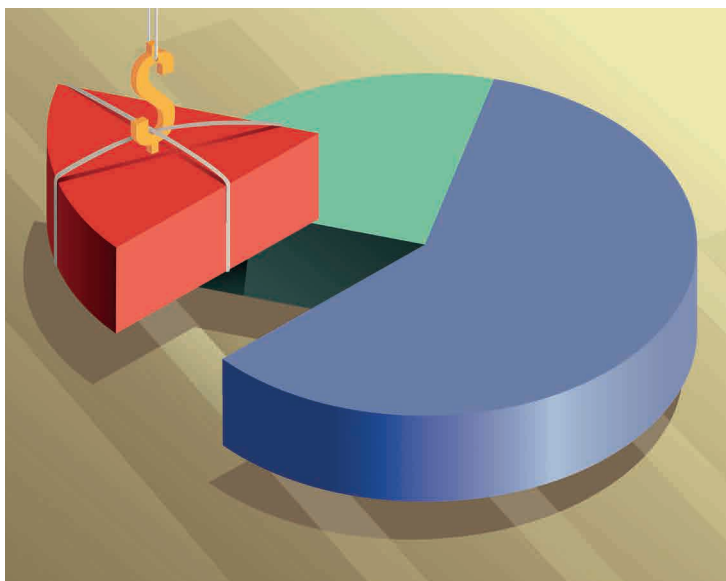
Thinking through every step requires experienced counsel who understands not only the nuances of liability management – which is wholly different from other types of financing – but who also understand how liability management compares with a full spectrum of other capital strategies that the company may be considering.

**Q How has the range of capital and restructuring options**

**Q Are there particular industries or business models that appear more susceptible to macroeconomic pressures, and how is that sensitivity influencing liability management activity?**

**JS:** Liability management activity is often busiest in economic sectors facing the most pressure at any given time. Right now, we're seeing considerable activity in the software sector, whereas office-related transactions dominated just a few years ago. The liability management toolkit becomes immediately valuable to any business experiencing macroeconomic pressures.

**Joe Zujkowski:** We see activity is driven far more by document flexibility than by industry sector. Dealflow may concentrate in particular sectors at times, but this pattern simply reflects which sectors face pressure during a given period.



**expanded in recent years, and how are management teams approaching those alternatives? What notable innovations are emerging with respect to capital strategies and solutions?**

**JS:** The range of capital and restructuring options available has expanded dramatically. In the past, companies had limited options: securities, high-yield bonds for non-investment grade businesses, leveraged loans, syndicated loans or bankruptcy. A company facing stress without ready access to capital

markets could only try to operate their way out of debt, hope for a market shift, or perhaps sell some assets before resorting to a restructuring.

Today, companies can draw on a full spectrum of options between traditional syndicated capital markets and formal restructuring. When syndicated markets prove inaccessible, private credit may offer a suitable alternative.

Companies may also consider hybrid credit solutions, which, while carrying higher costs, typically feature extended durations and may not

require cash interest payments. Such instruments can prove more constructive for operating businesses and more favourable for credit ratings if syndicated loans and conventional private credit are not options.

If hybrid instruments are not a viable solution, companies can turn to liability management – securing structurally senior financing, negotiating exchanges with existing holders, and employing transaction structures designed to minimise hold-outs. Only after exhausting the panoply of options currently available should a company consider formal restructuring.

**Joe Zujkowski:** On the restructuring side, the number of traditional in-court restructurings has been impacted by growing acceptance of liability management transactions. In 2020, liability management transactions – then characterised as ‘distressed’ exchanges – were few and far between. Today, market research shows that liability management exercises outnumber full restructurings in the US, reflecting a fundamental shift in a remarkably short timeframe.

### **Q How do creditor dynamics factor into contemporary liability management processes, and in what ways are those dynamics shaping deal outcomes?**

**JZ:** The largest shift in creditor activity in recent years has been early organisation. As companies have adopted increasingly aggressive liability management strategies, creditors have started to organise far earlier in a loan’s life cycle and retain advisers – particularly legal counsel – well in advance of any transaction.

These creditor groups frequently collaborate to build to a size substantial enough to try to force engagement with a company or sponsor, though market players have differing opinions on the effectiveness of this approach.

**JS:** Every repeat player in the credit markets is now aware of, and accustomed to executing, liability management transactions, which greatly streamlines processes and enables all parties to anticipate outcomes with greater clarity.

### **Q How do liability management approaches and tools differ across jurisdictions? What is the market like for liability management in Europe?**

**JS:** In the US, the numbers speak for themselves: liability management is now an established part of the market. In Europe, liability management arrived later, but we are seeing this as an increasingly mainstream capital strategy, particularly in the UK, France and elsewhere.

In Europe, liability management transactions are almost always transatlantic, and structured around New York law-governed credit documents.

Companies therefore need legal counsel familiar with New York law, who are also sophisticated corporate law, governance and restructuring advisers.

### **Q Looking ahead, what trends do you anticipate will shape the liability management market over the next 12 months, and how should companies, sponsors and credit investors prepare for what lies ahead?**

**JS:** There has been a steady evolution of the liability management market. The first generation of transactions were executed in 2020 amid the extreme circumstances of the covid-19 shutdowns, and resulted in significant litigation.

The market adapted rapidly thereafter: within a few years, companies began engaging in LMEs earlier and under less duress. Companies moved away from winner-takes-all structures and delivered more favourable outcomes for creditors, which led to a major decline in associated litigation. For example, the Tropicana Brands deal Latham advised on last year was the biggest liability management transaction of 2025, achieving nearly 100 percent creditor support with a wide range of outcomes.

What we see now reflects a continuation of these trends as transactions become more common and market participants grow increasingly comfortable with liability management tools. In my view, the market has not yet entered a ‘liability management 3.0’ era. I do not foresee any material near-term changes beyond continued deployment as the market matures and embraces liability management as an effective and established capital strategy in an increasingly sophisticated spectrum of options. ■

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**JOHN SOBOLEWSKI**

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