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# Priming DIPs on a Going-Concern Theory: Trendsetting or Troublemaking?

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## Overview



## Courts Are The “Gatekeeper”

Courts often hold that Rule 702 imposes a trilogy of requirements:

- Expert must be qualified
- Methodology must be reliable
- Opinion must be relevant (fit)

See *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993).

- The qualifications bar is not overly exacting
  - It is OK to be a first-time **testifying** expert, so long as you have the requisite qualifications (*i.e.*, you really are an expert **outside of court**)
- **\*\*In recent years, commentators are placing renewed emphasis on Rule 702’s fourth requirement—that experts base testimony on “sufficient facts or data”**



## Rule 702 Amendments (2023)

- The **burden rests with the proponent** of the expert **to prove admissibility** by a preponderance of the evidence
  - This was already the law, but the rule recently was clarified because courts were treating almost all challenges to the bases and sources of expert opinion as questions of weight rather than admissibility
  - Many courts still are reluctant to exclude experts on a bases-and-sources challenge
- “[E]ach **expert opinion must stay within the bounds of** what can be concluded from a **reliable application of . . .basis and methodology**”
  - The new language in Rule 702(d) was designed to discourage experts from testifying to a level of certainty not actually warranted by their methodology

*Fed. R. Evid. 702, Advisory Committee Notes (2023)*



## Reliability

- In *Daubert*, the Supreme Court identified a series of flexible, nonexclusive factors for determining whether the expert’s opinion is sufficiently reliable:
  - **Testability:** Whether the expert’s technique or theory can be tested and assessed for reliability
  - **Peer Review:** Whether the technique or theory has been subject to peer review and publication
  - **Error Rate:** The known or potential rate of error of the technique or theory
  - **Standards and Controls:** The existence and maintenance of standards and controls
  - **\*\*General Acceptance:** Whether the technique or theory has been generally accepted in the scientific community



## Reliability: Experience-Based Testimony

- Many courts have held that the *Daubert* factors do not directly apply to expert testimony that is based on experience
  - Valuation testimony has many elements (e.g., methodologies) which can be evaluated under the *Daubert* factors, but also has elements of experience
- Experts, especially those testifying based on experience, should be prepared to:
  - Expect to be cross-examined based on their prior reports, testimony, prior orders striking opinions, etc.
  - Justify differences from past methodologies, and
  - Explain any instances of past exclusion of testimony
- “Lack of **reliability**, either on its own or in combination with other factors, has consistently been the **main reason for financial expert witness exclusions** over the course of our study.”<sup>1</sup>

PwC, *Daubert Challenges to Financial Experts: A Yearly Study of Trends and Outcomes* (2022), at 5.



## Obtaining Admission



### Meeting the Burden to Prove Admissibility

- The admissibility of all expert testimony is governed by Rule 104(a)
  - “The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.”
- Under Rule 702 the proponent of expert testimony has the burden of establishing admissibility by a preponderance of the evidence
- Courts may hold a *Daubert* hearing pre-trial
- Parties and courts also might may examine witness on qualifications at trial



## Meeting the Burden to Prove Admissibility

- *H&M Oil & Gas, LLC* (Bankr. N.D. Tex. 2014):
  - Expert witness was not present at *Daubert* hearing, and was **almost excluded** on the basis that his report had not been proven up
  - Court ultimately found that the expert did not need to be present at the hearing because formal evidence rules did not apply at a *Daubert* hearing under Rule 104(a)
  - But the Court **still excluded** the opinions as unreliable because there was no evidence at the *Daubert* hearing to support the reliability of the underlying reserve report on which the valuation expert had relied
  - **Key Takeaway**: Ensure that there will be evidence sufficient to show admissibility at the *Daubert* hearing, whether live or otherwise



## Common Grounds for Exclusion



## Common Grounds for Exclusion

- **Applying a standard or premise of value not appropriate to the situation**
  - *CARBO Ceramics, Inc.* (Bankr. S.D. Tex. 2020): well-qualified expert used synergistic value instead of fair market value in the plan context; struck on voir dire as irrelevant at a disclosure statement hearing
  - *Schwinn Bicycle* (Bankr. N.D. Ill. 1996): Liquidation valuation is required for purposes of assessing solvency when the debtor is “on its financial deathbed” given the lower potential value of the debtor and its assets
    - Note: Going Concern Valuation is typically applicable when the debtor is not “on its financial deathbed” given the potential for greater value of debtor’s continued operation vs. liquidation



## Common Grounds for Exclusion

- **Valuing the company or its assets as of the incorrect/irrelevant date**
  - *Prangle v. Cokinos* (D. Md. 2014): The court found the opinion of the debtor’s expert, who expressed an opinion on the fair market value of debtor’s property 16 days after the petition date, irrelevant because under the Bankruptcy Code “value” means fair market value as of the petition date.
    - Note, however, that the result expressly may have been different if there were evidence that the values as of the two dates were unlikely to change.
  - *Sabine Oil & Gas Corp.* (Bankr. S.D.N.Y. 2016): Court focused on experts’ use of commodity strip pricing as of various dates, and found that pricing as of the date closest to the forecasted effective date was most relevant, but considered data as of other dates as well given that strip pricing frequently changes.



## Common Grounds for Exclusion

- **Offering a valuation based on information that would not have been known or knowable** as of the effective date of the valuation
  - AICPA SSVS No. 1, .43: “**Generally, the valuation analyst should consider only circumstances existing at the valuation date and events occurring up to the valuation date.** An event that could affect the value may occur subsequent to the valuation date; such an occurrence is referred to as a subsequent event. **Subsequent events are indicative of conditions that were not known or knowable** at the valuation date, including conditions that arose subsequent to the valuation date. The valuation would not be updated to reflect those events or conditions. Moreover, **the valuation report would typically not include a discussion of those events or conditions because a valuation is performed as of a point in time**—the valuation date—and the events described in this subparagraph, occurring subsequent to that date, are not relevant to the value determined as of that date.”
  - *In re Levesque* (Bankr. D. S.C. 2024): Expert struck for violation of known or knowable rule
  - *But see In re Strickland* (Bankr. E.D. Va. 1999): Explaining that some courts allow “retrojection” which looks at valuation on dates before and after a transfer to find whether a company was solvent on the date of the transfer
  - *But see UCC v. CalPERS* (D. Maine 2020): Expert allowed to consider subsequent information for purposes of corroboration of valuation as of a specific date



## Common Grounds for Exclusion

- **Testifying about topics that that are outside the scope of expertise or otherwise speculative**
  - *Harrison v. Taft* (5th Cir. 2010): Expert conceded it would be speculation to testify about how a “best efforts” clause would have changed another party’s behavior
  - *Stanley v. Novartis Pharms. Corp.*, (C.D. Cal. 2014) (“[T]he opinions of [expert] witnesses on the intent, motives, or states of mind of corporations, regulatory agencies and others have no basis in any relevant body of knowledge or expertise.”) (citation omitted)
  - *Texas Capital Bank v. Dallas Roadster, Ltd. (In re Dallas Roadster, Ltd.)* (E.D. Tex. 2015): Magistrate Judge struck expert for speculative testimony about lost business value where there was no evidence in the record to support the expert’s assumptions; District Court found that the criticisms went to the weight to of the testimony rather than its admissibility
  - *In re Blackjewel L.L.C.* (Bankr. S.D. W. Va. 2022): Court found that the expert’s conclusions were unreliable where the expert relied only on his experience and expertise but did not link his opinion to any recognized valuation methodology
  - *UGI Sunbury LLC v. A Permanent Easement for 1.7575 Acres* (3d Cir. 2020): Court found expert’s conclusions were unreliable where the expert conceded that his theories “can’t be proven” and were not based on any quantifiable data to explain or clarify his assumptions



## Common Grounds for Exclusion

### ➤ Relying on techniques that are not accepted by experts in the field

- *In re Nellson Nutraceutical, Inc.* (Bankr. D. Del. 2006): Court found that using EBITDA minus CapEx to determine a company's value using DCF analysis was unprecedented and not a generally accepted method of valuation; expert struck
- *In re Young Broadcasting Inc.* (Bankr. S.D.N.Y. 2010): Use of "Levered DCF" was not a recognized valuation method. The court found that the method was untested, not peer reviewed, and not the product of reliable principles and methodologies; expert struck



## Common Grounds for Exclusion

### ➤ Double-counting damages for lost profits and lost business value over the same period of time

- *Protectors Ins. v. US Fidelity* (10th Cir. 1998): Court vacated lost profits award because it represented an impermissible double recovery when combined with lost business value



## Common Grounds for Exclusion

### ➤ Testimony of a business owner as a lay witness (Rule 701) versus expert witness (Rule 702)

- *Chicago Joe's Tea Room, LLC v. Village of Broadview* (7th Cir. 2024): To prove lost profits, a business offered what it called lay opinion testimony from its owner, who had general business experience as well. The business did not disclose the owner as an expert witness.
  - The Seventh Circuit affirmed the district court's ruling that under **FRE 701**, the owner's lay opinion testimony had to be limited to opinions based on his own **personal knowledge**, as opposed to specialized knowledge or expertise under Rule 702
  - The Seventh Circuit further indicated: "[t]he line between expert and lay testimony is not always sharp."



## Common Grounds for Exclusion

### ➤ Testifying about damages that are contractually barred

- *Texas Capital Bank v. Dallas Roadster, Ltd. (In re Dallas Roadster, Ltd.)* (E.D. Tex. 2015): Magistrate Judge struck experts who offered testimony about consequential damages as irrelevant, because the contract barred consequential damages; District Judge disagreed and said he must see the evidence at trial to decide what is consequential and what is direct



## Common Grounds for Exclusion

### ➤ Failing to use data reasonably related to the business being evaluated

- *Med Diversified* (Bankr. E.D.N.Y. 2006): Expert excluded for biased selection of inputs for valuation analysis (public vs. private companies, assumptions in valuation analysis, etc.)
- *Davidson Surface Air v. NHL* (E.D. Mo. 2024): Expert witness had insufficient facts and data upon which to render an expert opinion as to the damages caused by a storm because the invoices did not show the work performed
- *Eastman Kodak* (Bankr. S.D.N.Y. 2013): Proposed equity committee experts used revenue information that was significantly out of date. The court noted these issues amounted to using faulty assumptions that made the testimony unreliable, and excluded the experts
- *Body Transit* (Bankr. E.D. Pa. 2020). Court criticized expert for not adequately taking into account the economic conditions in the fitness industry arising from the COVID-19 economic shutdown in its valuation of the debtor's gym business, but did not exclude the testimony



## Common Grounds for Exclusion

### ➤ Veering into the lane of a fact witness

- Background sections of expert reports should make clear that they are a disclosure of the facts or data on which an expert's opinion is based
- But unless an expert has personal knowledge—which most retained experts do not—experts should not testify to the truth or falsity of facts in the case
- *Cf. Fed. R. Evid. 703* (experts may rely on inadmissible evidence *if reliable*, but may only disclose it to a jury if the probative value substantially exceeds its prejudicial effect – experts may not be used as a mere conduit for hearsay)



## Common Grounds for Exclusion

- **Failing to timely disclose expert opinion to opposing side**
  - Ask retaining counsel for all scheduling order and rules-driven deadlines
  - Timely supplement opinions when allowed or required
  - Do not sandbag testimony in a deposition, or you may be precluded from offering it at trial



## Common Grounds for Exclusion

- **Relying on materials not available to the opposing party**
  - *Leap Wireless* (Bankr. S.D. Cal. 2003): Expert's reliance on confidential transactions that could not be disclosed made it impossible to verify or test, and therefore, expert's opinion had to be struck because it was *ipse dixit* ("I say so")
  - *Christus Spohn Hospital Kleberg* (Tex. 2007): Privileged documents revealed to expert typically cannot be "snapped-back"



## (Not So) Common

### ➤ Misrepresenting access to documents to Court

- *Guardant Health, Inc. v. Natera Inc.* (N.D. Cal. 2025): Misrepresentations by counsel and expert, claiming expert had only received the relevant documents recently—made to justify late introduction of evidence, reopening discovery, and delay trial—resulted in award of approximately \$3 million in attorney fees to opposing party incurred after discovery was reopened and the scope of the trial expanded; opposing party currently is seeking another \$1.2 million in compensatory sanctions

### ➤ Inflating Resume

- *WRT Energy Corp.* (W.D. La. 2001): Misrepresentation that expert had attended a particular school caused court to ascribe zero weight to the expert's testimony. Expert also was found unreliable for ignoring valuation information from recent sales of interests in the same properties.



## Conflicts of Interest



## Conflicts of Interest

- An adversary may move to disqualify an expert based on a “prior relationship” where (1) the adversary had a “confidential relationship” with the expert; (2) the adversary “disclosed confidential information” to the expert; and (3) that confidential information is “relevant to the current litigation.” *Hewlett-Packard Co. v. EMC Corp.* (N.D. Cal. 2004).
  - **Confidential Relationship:** A court will consider several factors, including the “length of the relationship,” “number of meetings,” whether the expert was “retained to assist in litigation,” where there was a “formal confidentiality agreement,” whether the expert was “paid a fee,” and whether the expert “derived any of his specific ideas from work done under the direction of the retaining party.” *Chan v. ArcSoft, Inc.* (N.D. Cal. 2023).
  - **Confidential Information:** Information of “particular significance” or that can be readily identified as falling within the scope of “work product” or “attorney-client” protections. *Vineyard Investig. v. E. & J. Gallo Winery* (E.D. Cal. 2024).
  - **Relevance:** Some courts take a broader view of relevance, while others employ a more restrictive approach. *Compare McCoy v. DePuy Orthopaedics, Inc.* (S.D. Cal. 2023) (broad view that information may be relevant if it has some relation to the underlying case), *with Life Techs. Corp. v. Biosearch Techs., Inc.* (N.D. Cal. 2012) (noting that disqualification may be inappropriate if “no evidence show[s] an overlap in the technical subject matter at issue in the litigation”).



## Conflicts of Interest

- **Waiver & Timing Considerations**
  - When facing a motion to disqualify, consider if the adversary has waived its right to seek disqualification; in determining that question, a court will consider the date the adversary “first became aware” of the “existence off ground[s] for disqualification” to the date the “motion [is] filed with [the] court.” *Hinterberger v. Cath. Health Sys.*, (W.D.N.Y. 2013).
    - It is not necessarily sufficient to preserve the right of disqualification if the adversary only informs the expert, and not the court or opposing counsel, of the potential conflict. *See id.*
  - Waiver is a fact-specific inquiry, however, and depends on various circumstances. In some contexts, such as when there are expedited proceedings (TROs, Pls, etc.), waiver may be found to have occurred from delays of only a few weeks to a month. *See, e.g., Chartwell Staffing Servs. Inc. v. Am. Int’l Indus. Inc.* (C.D. Cal. 2021).



## Takeaways



- Most of the time, experts are excluded for preventable reasons:
  - Opining on the **wrong topic** or **wrong timing**, making the opinion **irrelevant**;
  - Committing an **error** or using **methodology** that is not generally accepted or a court otherwise finds **unreliable**;
  - **Ignoring facts or data** harmful to the interests of the party who retained them; or
  - **Failing** to satisfy **a technical requirement** like disclosure of documents relied upon or provision of timely expert report



## How to Avoid Being Struck

- **Always tell the truth**
- **Ask questions**
  - Do the relevant contracts bar certain types of damages?
  - Am I valuing the company/assets on the correct/appropriate date
  - What evidence will the other side use to undermine me and my assumptions?
  - How were the projections generated, and is an opposing party likely to criticize them?
  - Are all the documents I am receiving being tracked? Have they been shared with opposing parties?
- **Treat the engagement with the same degree of rigor as you would outside court**
  - Ensure—and affirmatively opine—that the materials you rely on are of the type that an expert in your field would rely on outside court
  - Consider both favorable and unfavorable evidence
  - Ensure that the methodology used is of the same type you would use outside court
- **Do not let lawyers or clients pressure you to change opinions**
- **Stay in your lane**



# Introduction



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## Overview of Priming Lien and Adequate Protection

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## Priming Liens:

- 11 U.S.C. § 364(d)(1):
  - After notice and a hearing, debt that is secured by a senior or equal lien on property of the estate only if –
    - (1) the debtor is unable to obtain such credit otherwise; and
    - (2) there is adequate protection of the interest of the prior lien holder
- 11 U.S.C. § 364(d)(2):
  - Burden of proof on the issue of adequate protection is on the debtor

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## Adequate Protection

- Protects a pre-petition secured lender from erosion of the value of its collateral
- Purpose: Ensures that creditors are not “deprived of the benefit of their bargain.” H.R. Rep. No. 95-595 (1977)
- Undefined by the Bankruptcy Code
  - *In re Alyucan Interstate Corp.*, 12 B.R. 803 (Bankr. D. Utah 1981) (the omission of the definition for adequate protection was probably deliberate to provide flexibility)

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Court Interpretations of the Purpose of Adequate Protection:

- *United Sav. Ass'n v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 370 (1988) (adequate protection is intended to protect a secured party's constitutional right to have the value of its interest in collateral as it existed on the petition date)
- *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (adequate protection is determined by assessing how it compensates a secured creditor for diminished value caused by the debtor's use, sale, or lease of collateral)
- *In re O'Connor*, 808 F.2d 1393 (10<sup>th</sup> Cir. 1987) (adequate protection should be viewed in light of the value of the collateral and the risks associated with the debtor's proposed use of it)

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- 11 U.S.C. § 361 – Adequate Protection May Be Provided by:
  - Periodic Cash Payments
  - Additional or Replacement Liens
  - Other relief that gives the “indubitable equivalent” of the creditor’s collateral interests
- Examples are illustrative and not exclusive
- Flexible, fact-specific, value-based concept rooted in the Fifth Amendment's protection of property interests
- What is Indubitable Equivalence - *Arnold v. Baker*, 85 F.3d 1415, 1421 (9<sup>th</sup> Cir. B.A.P. 1994) (“indubitable” means “too evident to be doubted”)

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# Case Study: Prospect Medical

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## Company Overview

Prospect Medical Holdings, Inc. (“Prospect,” or the “Company”) operated a network of 16 hospitals and affiliated medical groups in California, Connecticut, Pennsylvania & Rhode Island

<b>Ownership History</b>	<ul style="list-style-type: none"> <li>• Founded in 1996 as physician-owned hospital system</li> <li>• Majority ownership sold to Leonard Green &amp; Partners in 2010</li> <li>• Management buyout in 2021</li> </ul>
<b>Business Lines</b>	<ul style="list-style-type: none"> <li>• <b>PhysicianCo:</b> Managed care, physician related business (Non-Debtor), and</li> <li>• <b>HospitalCo:</b> Hospital operator (Debtor). Provided IT, revenue cycle, and admin. support to PhysicianCo</li> </ul>
<b>Critical Healthcare Provider in Suburbs</b>	<ul style="list-style-type: none"> <li>• Where acute-care alternatives were limited</li> </ul>
<b>Business &amp; Patients at Risk</b>	<ul style="list-style-type: none"> <li>• Cash flow and liquidity constraints given operational challenges and levered capital structure                             <ul style="list-style-type: none"> <li>– ~2,500 patients and +12,000 employees at risk</li> </ul> </li> </ul>
<b>Prepetition Capital Structure</b>	<ul style="list-style-type: none"> <li>• \$2.3bn in total funded obligations<sup>(1)</sup></li> </ul>
<b>Key Prepetition Creditors</b>	<ul style="list-style-type: none"> <li>• <b>PhysicianCo:</b> Blue Torch and Centerbridge</li> <li>• <b>HospitalCo:</b> Medical Properties Trust (“MPT”) and eCapital (ABL lender)</li> </ul>

(1) Reflects obligations as of petition date (Jan. 11, 2025). Includes non-debtor obligations.

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**Case Summary: Introduction**

Case Data	
Date Filed	• Jan. 11, 2025
Confirmation Date	• Dec. 15, 2025
Effective Date	• Mar. 6, 2026
Court	• Texas Northern Bankruptcy Court (the "Court")
Judge	• Stacey G.C. Jernigan

Events Leading up to Bankruptcy
<ul style="list-style-type: none"> <li>• <b>Background:</b> Levered capital structure, post-pandemic operating pressures, and rising labor and supply-chain costs weighed on cash flow and liquidity</li> <li>• <b>Operational Disruptions:</b> Cybersecurity incident compromised systems and resulted in loss of revenue and delayed collections</li> <li>• <b>Turnaround &amp; Sale Processes:</b> Company pursued turnaround effort and pre-petition sale processes for individual hospitals that did not materialize</li> <li>• <b>Financing Process Failed:</b> Company pursued financing to fund business and sale process, including with existing creditors, which did not materialize</li> <li>• <b>Liquidity Shortfall:</b> Bankruptcy filing precipitated by liquidity shortfall, including difficulty making payroll without access to DIP financing</li> </ul>

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**Case Summary: Outcome**

Case Outcome
<ul style="list-style-type: none"> <li>• <b>Chapter 11 filing (Free-Fall):</b> Company entered Ch. 11 with ~\$3.4mm cash on hand, and structured around a liquidation plan premised on selling hospital assets</li> <li>• <b>DIP Financing:</b> Company raised two DIP facilities: (i) ABL from prepetition ABL lender and (ii) third-party priming DIP TL (discussed further herein)</li> <li>• <b>363 Asset Sales:</b> Executed geographically segmented 363 sales, resulting in total consideration of \$1.6bn+. Facilities without viable buyers were closed</li> <li>• <b>Global Settlement &amp; Claims Recovery Waterfall:</b> <ul style="list-style-type: none"> <li>• Global Settlement with MPT and UCC established claims waterfall</li> <li>• Contemplated 100% recovery for administrative and priority claims, and established GUC Trust to pursue residual value</li> </ul> </li> </ul>

Summary of Assets Sold			
Asset Group	Total Consideration	Buyer/Counterparty	Closing Month
PhysicianCo	• \$745mm <sup>(1)</sup>	• Astrana Health	• Jul-25
California	• \$600mm	• NOR Healthcare	• Dec-25
Connecticut	• ECHN <sup>(2)</sup> : \$86mm • Waterbury: \$35mm	• Hartford HealthCare • UConn Health	• Dec-25 • Mar-26
Rhode Island	• \$80mm	• The Centurion Foundation	• Mar-26
Pennsylvania	• \$63mm <sup>(3)</sup>	• Various <sup>(3)</sup>	• Aug-25 – Mar-26

Note: All capitalized terms have the meanings ascribed to them in the relevant court filings.  
 (1) \$699mm after purchase price adjustments.  
 (2) Eastern Connecticut Hospital Network.  
 (3) Reflects the aggregate consideration for multiple individual sales with different buyers, including ChristianaCare, Chariot Allaire, KQT Aikens, and Upper Darby School District.

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**DIP Financing: Pre-Petition Process & Initial DIP Hearing**

<b>Prepetition DIP Process</b>	<ul style="list-style-type: none"> <li>Company conducted DIP financing process involving pre-petition creditors and third-parties</li> <li>No actionable financing materialled from prepetition creditors, other than DIP ABL from existing ABL lender</li> <li>Therefore, Company secured third-party DIP to supplement ABL</li> </ul>	
<b>Initial DIP Request</b>	<b>Overview</b>	<ul style="list-style-type: none"> <li>Initially proposed \$190mm of DIP financing ("Initial DIP")</li> </ul>
	<b>DIP ABL (\$90mm)</b>	<ul style="list-style-type: none"> <li>From pre-petition ABL lender eCapital via creeping roll-up and discreet collateral</li> </ul>
	<b>DIP TL (\$100mm)</b>	<ul style="list-style-type: none"> <li>From third-party lender (JMB Capital)                             <ul style="list-style-type: none"> <li>Primed existing secured claims (junior only to DIP ABL on ABL collateral) and provided replacement liens as adequate protection</li> </ul> </li> </ul>
<b>Initial DIP Hearing</b>	<b>Debtors' Position</b>	<ul style="list-style-type: none"> <li>Engaged extensively with pre-petition creditors while all financing proposals were non-actionable</li> <li>DIP necessary to avoid immediate hospital shutdowns and preserve going-concern value, which serves as adequate protection ("AP")</li> <li>Debtors put multiple valuation markers into the record, citing bid amounts for certain hospitals as part of prepetition sale processes</li> </ul>
	<b>MPT Objection</b>	<ul style="list-style-type: none"> <li>Cited (i) lack of pre-petition notice, (ii) insufficient AP (no equity cushion or cash), (iii) replacement liens providing no incremental value, and (iv) reliance on going-concern preservation alone as inadequate under Section 364</li> </ul>
	<b>Court Decision</b>	<ul style="list-style-type: none"> <li>Approved Initial DIP on interim basis, overruling MPT's objection, on Jan. 14, 2025</li> <li>Finding preserved going concern value is AP                             <ul style="list-style-type: none"> <li>Judge Jernigan reserved rights to change decision on final basis</li> </ul> </li> </ul>

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**DIP Financing: Final DIP Hearing & Global Settlement**

<b>Final DIP Hearing</b>	<ul style="list-style-type: none"> <li>Debtors reached resolution with objecting parties, allowing eCapital and JMB DIP facilities to proceed                             <ul style="list-style-type: none"> <li>Debtors provided additional adequate protection to obtain DIP support</li> </ul> </li> <li>Court approved eCapital and JMB DIP facilities on Feb. 12, 2025, finding requirements of Section 364(d) were satisfied<sup>(1)</sup></li> </ul>	
<b>Global Settlement</b>	<b>Overview</b>	<ul style="list-style-type: none"> <li>Court approved under Rule 9019 on March 19, 2025</li> </ul>
	<b>MPT Junior DIP</b>	<ul style="list-style-type: none"> <li>Added \$25mm new-money junior DIP from MPT ("MPT Junior DIP")</li> </ul>
	<b>MPT Enhanced Adequate Protection</b>	<ul style="list-style-type: none"> <li>Superpriority administrative expense claims</li> <li>Professional fee payment up to \$1.25mm per month</li> <li>Junior DIP accrual of \$5mm per month (in addition to \$25mm junior DIP)</li> </ul>
	<b>Claims Recovery Waterfall</b>	<ul style="list-style-type: none"> <li>Established to govern priority and distributions along with GUC Trust to pursue residual estate value</li> </ul>

Subsequent to final DIP hearing, JMB upsized DIP to \$130mm. MPT eventually refinanced entire JMB DIP with upsized DIP facility

<sup>(1)</sup> DIP approval subject to limited wordsmithing related to claw-back of adequate protection for MPT, in case of MPT lease deemed not recharacterized, and resolution of professional fee budget mechanics, to address the UCC's objection. The order was entered on Feb. 14, 2025, with the Court finding adequate protection had been provided and statutory requirements met, notwithstanding UCC reservations of rights

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# Historical DIP Analysis

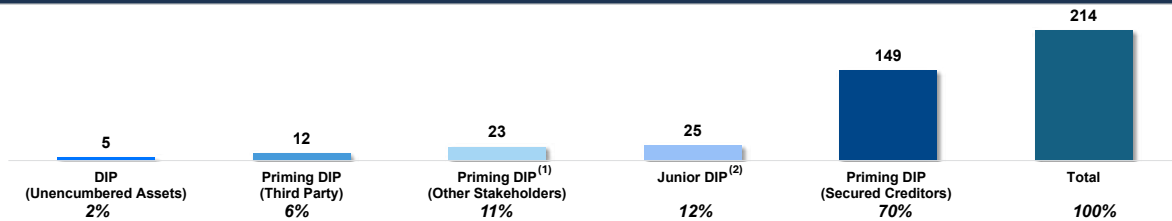
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## Historical DIP Facilities

- **Dataset Criteria:**
  - Chapter 11 cases filed over last 5 years
  - Pre-petition funded debt of \$200mm or higher
- **Dataset:** 214 DIP facilities
- **Takeaways:**
  - Pre-petition snr secured creditors provide most priming DIPs (~70%) or allow consensual priming DIPs from other stakeholders (~11%)
  - Third-party priming DIPs are less common (6%)

Summary of DIP Facilities



Source(s): Octus Credit Cloud.  
 (1) Includes junior creditors, shareholders, and other stakeholders with no prepetition debt, and purchasers (including stalking horse bidders). Also includes ad hoc groups comprising both pre-petition secured creditors and unsecured creditors.  
 (2) Includes 1 DIP facility which is pari passu.

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### Third-Party Priming DIP Analysis

Company	Petition Date	Industry	Jurisdiction	Pre-Petition Debt	DIP Facility	Valuation Put Forth for AP <sup>(1)</sup>	Basis for Approval		Consensual or Creditor Arguments
							Debtor	Judge	
	6/24/25	Professional Services	Delaware	\$361mm	Term Loan \$20mm	No	<ul style="list-style-type: none"> <li>Replacement liens</li> <li>Superpriority admin. Exp. claims</li> <li>Consent fees; % of sale proceeds</li> </ul>	<ul style="list-style-type: none"> <li>Critical need</li> <li>Uncontested hearing</li> </ul>	<ul style="list-style-type: none"> <li>Consensual priming</li> </ul>
	1/11/25	Healthcare	Texas Northern	\$1.086mm	Term Loan \$130mm	No	<ul style="list-style-type: none"> <li>No viable alternative DIP</li> <li>Significant harm to patients and the estate w/o DIP</li> <li>Critical for ongoing sale processes</li> <li>AP: preserve going-concern value</li> <li>Replacement liens</li> <li>Superpriority admin. Exp. claims</li> </ul>	<ul style="list-style-type: none"> <li>Critical liquidity need, maintaining going-concern value serves as adequate protection</li> <li>Additional, proper adequate protection provided following extensive negotiations</li> </ul>	<p><i>Initial Objection:</i></p> <ul style="list-style-type: none"> <li>Lack of adequate protection through equity cushion, replacement liens, or cash</li> <li>Preserving going-concern value is not adequate protection</li> </ul> <p><i>Final Consent:</i> Global Settlement</p>
	12/22/24	Specialty Retail	Texas Southern	\$243mm	ABL RCF \$140mm	No	<ul style="list-style-type: none"> <li>ABL capacity needed</li> <li>Refinance pre-petition ABL</li> </ul>	<ul style="list-style-type: none"> <li>No contested priming</li> </ul>	<ul style="list-style-type: none"> <li>Consensual priming</li> </ul>
	4/2/24	Packaged Foods & Meats	Idaho	\$339mm	Term Loan \$45mm	Yes	<ul style="list-style-type: none"> <li>DIP needed for payroll / vendor pmts and maintaining livestock</li> <li>Replacement liens</li> <li>Interest payments</li> <li>Equity cushion</li> </ul>	<ul style="list-style-type: none"> <li>DIP necessary to avoid damage</li> <li>Sufficient adequate protection package including equity cushion</li> </ul>	<ul style="list-style-type: none"> <li>No evidence priming necessary</li> <li>Expensive financing</li> <li>Diminution of collateral value</li> <li>No realistic plan for repayment</li> </ul>
	2/21/24	Hotels, Restaurants & Leisure	Texas Southern	\$1.153mm	Term Loan \$300mm	No	<ul style="list-style-type: none"> <li>Replace existing prepetition superpriority obligation (primed other prepetition debt)</li> </ul>	<ul style="list-style-type: none"> <li>Refinancing rather than priming</li> <li>The refinancing preserved value by preventing business collapse</li> </ul>	<ul style="list-style-type: none"> <li>Consensual priming</li> </ul>
	8/6/23	Ground Transportation	Delaware	\$1.223mm	Term Loan \$143mm	No	<ul style="list-style-type: none"> <li>No alternative financing</li> <li>Fund business</li> <li>Maximize going-concern value</li> <li>Replacement liens</li> </ul>	<ul style="list-style-type: none"> <li>Liquidity need</li> <li>No alternative financing available</li> <li>Sufficient protections, including cash interest and weekly reporting</li> </ul>	<ul style="list-style-type: none"> <li>Consensual priming</li> </ul>

Source(s): Octus Credit Cloud.  
 (1) Excludes any plan valuation published through disclosure statements as part of pre-packaged or pre-arranged filings.



### Third-Party Priming DIP Analysis (Cont'd)

Company	Petition Date	Industry	Jurisdiction	Pre-Petition Debt	DIP Facility	Valuation Put Forth for AP <sup>(1)</sup>	Basis for Approval		Consensual or Creditor Arguments
							Debtor	Judge	
	1/23/23	Household Durables	Texas Southern	\$1,889mm	ABL RCF \$125mm	No	<ul style="list-style-type: none"> <li>No alternative financing available</li> <li>Operational necessity</li> <li>Refinance pre-petition ABL</li> </ul>	<ul style="list-style-type: none"> <li>Treated as consensual refinancing</li> </ul>	<ul style="list-style-type: none"> <li>Consensual priming</li> </ul>
	6/1/22	Chemicals	Delaware	\$1,241mm	ABL RCF \$200mm	No	<ul style="list-style-type: none"> <li>No better alternative</li> <li>Needed to stabilize business</li> <li>Refinancing of prepetition ABL</li> </ul>	<ul style="list-style-type: none"> <li>Treated as consensual refinancing</li> </ul>	<ul style="list-style-type: none"> <li>Consensual priming</li> </ul>
	4/20/22	Insurance	Texas Southern	\$2,009mm	TL \$564mm, RCF \$40mm (Replacement DIP)	No	<ul style="list-style-type: none"> <li>No alternative junior financing</li> <li>Maximize going-concern value</li> <li>Replacement liens</li> <li>Superpriority admin. Exp. claims</li> </ul>	<ul style="list-style-type: none"> <li>Essential to preserve portfolio and maximize recoveries</li> <li>Sufficient adequate protection</li> <li>Market tested</li> </ul>	<ul style="list-style-type: none"> <li>Replacement liens and superpriority claims not covering diminution in value</li> <li>No demonstrated equity cushion</li> </ul>
	4/20/22	Insurance	Texas Southern	\$2,009mm	DDTL \$75mm (Initial DIP)	No	<ul style="list-style-type: none"> <li>No alternative financing available</li> <li>Preservation of portfolio value</li> <li>Replacement liens</li> <li>Superpriority admin. exp. claims</li> </ul>	<ul style="list-style-type: none"> <li>Immediate need</li> <li>Avoidance value-destroying liquidation</li> <li>Temporary in nature</li> </ul>	<ul style="list-style-type: none"> <li>Consensual priming</li> </ul>
	7/29/21	Consumer Discretionary	New York Southern	\$238mm	DDTL \$16mm	No	<ul style="list-style-type: none"> <li>Best and only reasonably available financing</li> <li>Replacement liens</li> </ul>	<ul style="list-style-type: none"> <li>Preserve going-concern value</li> <li>Maximized recoveries for stakeholders vs. liquidation</li> </ul>	<ul style="list-style-type: none"> <li>Consensual priming</li> </ul>
	7/12/21	Energy	Texas Southern	\$1,954mm	Term Loan \$25mm	No	<ul style="list-style-type: none"> <li>No alternative financing available</li> <li>Destruction of going-concern value without the proposed DIP</li> <li>Replacement liens, superpriority admin. expense claims</li> </ul>	<ul style="list-style-type: none"> <li>Lack of clear alternatives</li> <li>Value destruction from shutdown</li> <li>Replacement liens, Superpriority admin. Exp. claims</li> <li>PIK &amp; cash interest</li> </ul>	<ul style="list-style-type: none"> <li>Insufficient adequate protection</li> <li>lack of demonstrated collateral value / equity cushion</li> </ul>

Source(s): Octus Credit Cloud.  
 (1) Excludes any plan valuation published through disclosure statements as part of pre-packaged or pre-arranged filings.



# Appendix: Prospect Medical Additional Information

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## DIP Commitments Overview

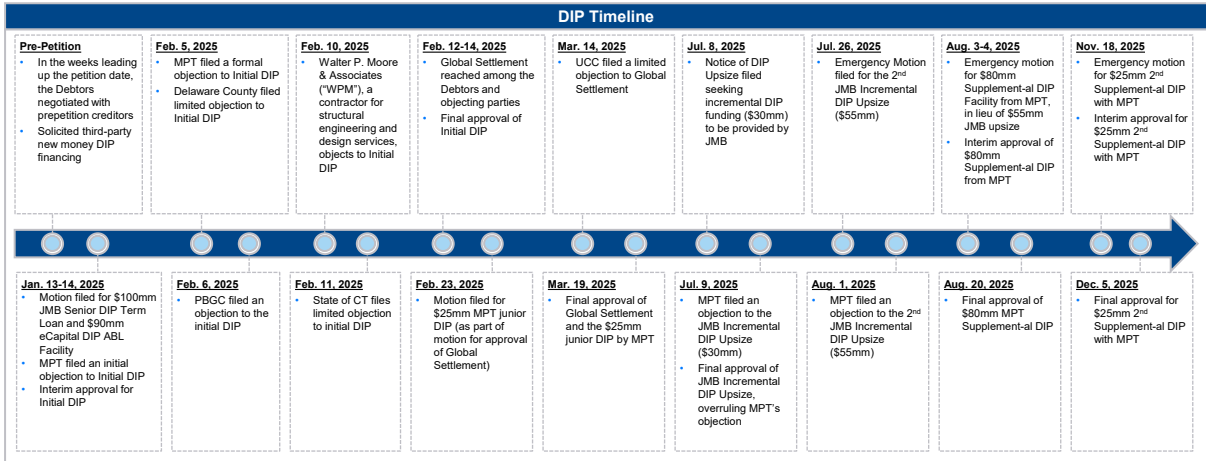
- [eCapital DIP](#): \$90mm ABL facility (final approval on Feb. 14, 2025)
- [JMB DIP Term Loan](#): \$100mm term loan facility (final approval on Feb. 14, 2025)
- [MPT Junior DIP Term Loan](#): \$25mm junior DIP term loan (final approval on Mar. 19, 2025)
- [JMB Incremental DIP Term Loan](#): \$30mm upside for the JMB DIP term loan facility (final approval on Jul. 9, 2025)
  - JMB's total new money DIP commitment increased from \$100mm to \$130mm
- [MPT Supplemental DIP Term Loan](#): \$80mm upside for MPT Junior DIP (final approval on Aug. 20, 2025)
  - MPT's total new money DIP commitment increased from \$25mm to \$105mm
  - \$25mm of proceeds was used to pay off remaining balance of the JMB DIP which was previously partially repaid using proceeds from Astrana sale
    - As such, the MPT Junior DIP effectively became the most senior claim subject to eCapital ABL DIP on specific ABL collateral
- [MPT Second Supplemental DIP Term Loan](#): \$25mm incremental upside for MPT Junior DIP (final approval on Dec. 5, 2025)
  - MPT's total new money DIP commitment increased from \$105mm to \$130mm, excluding backstop commitment for an exit facility

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# VALCON 2026



## DIP Financing Timeline



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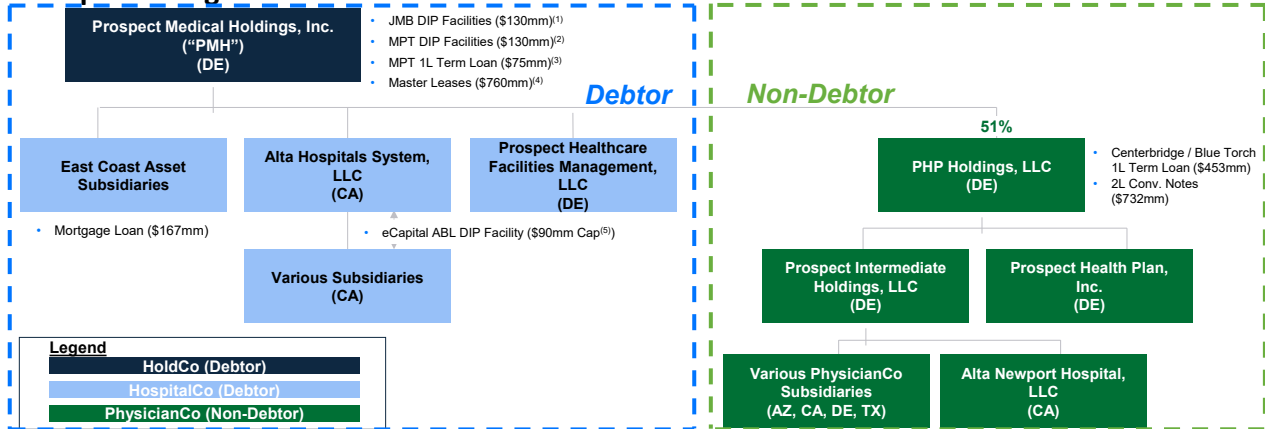
## Pre-Petition Capitalization Overview

Capitalization as of Petition Date \$ in Millions	Prepetition	Lender	Collateral/Ranking
<b>Debtors: Prospect Medical Holdings, Inc. ("PMH") and Subsidiaries ("HospitalCo")</b>			
\$90mm ABL Facility	\$84	eCapital	Secured 1L on ABL Collateral (CA hospital A/R)
Term Loan Facility	75	MPT	Secured 1L on PMH/HospitalCo assets
Mortgage Loan	167	MPT	Secured on PA hospitals
<b>Total HospitalCo Secured Funded Debt</b>	<b>\$326</b>		
Lease Obligations	760	MPT	
<b>Total HospitalCo Obligations</b>	<b>\$1,086</b>		
<b>Non-Debtors: PHP Holdings, LLC ("PhysicianCo")</b>			
Term Loan Facility	\$453	Centerbridge / Blue Torch	Secured 1L on PHP assets
Convertible Notes	\$732	MPT	Secured 2L on equity in PHP subsidiaries
<b>Total PhysicianCo Debt</b>	<b>\$1,185</b>		
<b>Total 1L Secured Debt</b>	<b>\$779</b>		
<b>Total Obligations</b>	<b>\$2,271</b>		
<b>Memo: Other Liabilities</b>			
Underfunded Pension	\$312		
CARES Act	\$33		

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Simplified Organizational Structure



(1) \$130mm reflects the total approved commitment, which was subsequently refinanced by MPT DIP financing. Recovery is subject to tranche 1a priority per recovery waterfall as part of Global Settlement, structurally junior to eCapital lien priority on ABL assets.  
 (2) \$130mm reflects the total approved commitment, which excludes any roll-up amount and \$30mm of backstop facility. MPT initially provided a \$25mm junior DIP facility approved on March 19, 2025, and subsequently provided incremental \$80.3mm, approved on August 20, 2025, of which \$25.3mm was used to pay off the remaining JMB DIP facility. MPT additionally provided 2<sup>nd</sup> Supplemental DIP financing for another \$25mm in December 2025. Recovery is subject to tranche 2 priority per recovery waterfall as part of Global Settlement, priming all pre-petition secured claims but junior to JMB DIP facilities and eCapital ABL DIP facility.  
 (3) Rolled up as part of MPT's initial \$25mm junior DIP facility. Recovery is subject to tranche 2 priority per recovery waterfall as part of Global Settlement.  
 (4) Recovery is subject to tranche 7 priority per recovery waterfall as part of Global Settlement.  
 (5) \$84mm funded prepetition.



# Faculty

**Ericka F. Johnson** is a director at Bayard, P.A. and chairs its business bankruptcy and restructuring practice in Wilmington, Del. She advises companies and creditors to maximize the value of assets/recoveries, whether it is through an in-court or out-of-court financial restructuring or dissolution. She also helps buyers navigate the purchase of distressed assets and directors and officers in understanding fiduciary duties in an insolvency setting. Ms. Johnson is a top advocate with a diverse practice spanning a wide range of industries. She has represented debtors in large and small chapter 11 and chapter 7 cases both inside and outside Delaware. She also regularly litigates contested matters, including involuntary bankruptcies, motions for the appointment of chapter 11 trustees, claim objections, plan-confirmation objections and dismissal/conversion motions, as well as bankruptcy adversary matters, including preference, fraudulent transfer, turnover, and breaches of contract and fiduciary duty actions. Ms. Johnson formerly worked for a leading bank holding company, where she managed consumer finance operations and internal risk assessments and audits from the U.S. Office of the Comptroller of the currency. She is an at-large director on ABI's Executive Committee and she is a member of the International Women's Insolvency & Restructuring Confederation (IWIRC), for which she chairs its Delaware Network. Ms. Johnson is a published author and a frequent speaker on issues and developments in bankruptcy and insolvency law, and she is listed in *The Best Lawyers in America* for Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law for 2025 and 2026. She received her B.A. from the University of Delaware and her J.D. from Delaware Law School, where she was a member of the Phi Kappa Phi Honor Society, president of the Moot Court Honor Society and a member of the *Delaware Journal of Corporate Law*, and received the Outstanding Service Award.

**Jeremy Matican** is a managing director in the Debt Advisory and Restructuring Group at Jefferies in New York, where he advises on a variety of out-of-court and in-court restructuring and special-situation assignments for companies, creditors and other stakeholders, with experience across several industries. He joined Jefferies in 2020 from Evercore, where he was a managing director in its Restructuring and Debt Advisory Group. He also has held positions as a turnaround and restructuring consultant with Zolfo Cooper (prior to its acquisition by AlixPartners) and an accountant with Arthur Andersen. Mr. Matican received his B.S.B.A. with a dual concentration in financing and accounting from the Boston University School of Management.

**Jeffrey N. Rothleder** is partner in Squire Patton Boggs (US) LLP's Restructuring and Insolvency practice group in the firm's Washington, D.C., office, where his practice focuses on financial restructuring, corporate trust matters and workout proceedings on behalf of financially distressed companies or their creditors, including the representation of debtors, indenture trustees, creditors and creditors' committees, investors and purchasers in in-court and out-of-court restructurings. Mr. Rothleder represents a wide variety of clients in the enforcement of the entire spectrum of creditors' rights involving secured, unsecured, public or private, and taxable and tax-exempt debt through his work with indenture trustees, lenders, individual creditors and official committees in chapter 11 cases. He also has experience representing debtors, including the restructuring of large companies through the chapter 11 process or conducting the orderly liquidating and comprehensive asset sales for a diverse group of companies. Mr. Rothleder received his B.A. from the University of Michigan in 1999 and

his J.D. from the University of Maryland School of Law in 2002 with honors, where he was a member of the Order of the Coif.

**Mark Shapiro, CPA** is a senior managing director with GlassRatner Advisory & Capital Group, LLC, which he joined in 2016 to help found the firm's Dallas office. He has more than 25 years of strategy, finance and turnaround experience gained from holding corporate management roles and from advising companies in need. Mr. Shapiro is one of the leaders of the firm's Due Diligence practice, and he has transactional experience helping companies diligence, execute and integrate corporate transactions. He has functioned in executive leadership, interim management and advisory positions for publicly held, privately owned and equity-sponsored entities — both domestic and international — with revenues ranging from \$15 million to \$15 billion. Industries served include health care, retail, distribution, commercial and financial services, metals and manufacturing, consumer products and telecommunications. He has also helped a number of founder-led companies (public and private) through unique, transitional situations. Mr. Shapiro began his career with Ernst & Young in New York. He received his B.S. in Accounting from The Ohio State University.