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In This Issue:

[STG Logistics: The Implied Covenant in an LME](#)

[Epiq Takes on DIP Financing Agent Role in Saks Global](#)

 Click on a title below to jump to that section 

Research Report:

[Who's Who in Multi-Color Corporation](#)

Page 4 →

Research Report:

[Who's Who in Avenger Flight Group, LLC](#)

Page 10 →

Special Report:

[Major Trade Claim Purchasers](#)

Page 12 →

Worth Reading:

[The Logic and Limits of Bankruptcy Law](#)

Page 14 →

Special Report:

[Top Internet Bankruptcy Resources](#)

Page 15 →

Implied Covenant Claims Get Boost

By Elizabeth Plowman and Timothy Whitteaker

In a recent litigation involving STG Logistics, Inc. (*Axos Fin., Inc. v. Reception Purchaser, LLC*, 88 Misc. 3d 1203(A) (Sup. Ct. N.Y. Cnty. 2026)), New York's Commercial Division upheld a claim (against a motion to dismiss) for alleged breach of the implied covenant of good faith and fair dealing during a liability management exercise (LME). Following this decision, certain borrower-defendants (STG) filed for Chapter 11 in the U.S. Bankruptcy Court for the District of New Jersey (*In re STG Logistics, Inc.*, No. 26-10258-MEH (Bankr. D.N.J. 2026)). Given the Chapter 11 filing, the LME litigation was moved to an adversary proceeding before the bankruptcy court. That adversary proceeding, including the post-MTD implied covenant claim, was scheduled to be heard this May, but recently settled.

The Implied Covenant

Under New York law, the general contours of the implied covenant of good faith and fair dealing are well established. The covenant exists in all contracts, reinforces

[Continue on page 2 →](#)

Epiq Assists in Loan Syndication

By Stella Maris Bangis

Epiq Corporate Restructuring LLC, widely recognized for its administrative and case-management services in corporate bankruptcies, assumed the role of Debtor-in-Possession Financing Agent in the Chapter 11 cases of Saks Global Enterprises LLC. In this capacity, Epiq was responsible for overseeing the administration and mechanics of Saks' post-petition financing as the luxury retailer advances through its large-scale restructuring that began earlier this year.

Saks Global's DIP Financing

Saks oversees a portfolio of luxury retail businesses centered on the Saks Fifth Avenue and Saks Off 5th brands, supported by extensive e-commerce operations. Saks and several affiliated entities filed for bankruptcy protection

[Continue on page 8 →](#)

STG Logistics, from page 1

the parties' reasonable expectations, and bars each party from destroying or injuring another party's right to receive the "fruits of the contract." But the implied covenant cannot be used to override express contract terms or to create new, non-existing obligations. And an implied covenant claim must be based on distinct conduct than an express breach of contract claim, to avoid dismissal on duplication-of-claim grounds.

While the general framework is understood, defining what conduct is and is not permissible under the implied covenant—particularly in the context of a complex, syndicated credit agreement—is more opaque.

The Commercial Division's MTD Decision

In simplified terms, *STG Logistics* involved a double-dip drop-down LME executed by a simple majority of STG's syndicated lenders. The LME was consummated through three integrated, majority-lender approved agreements—an amendment to the existing credit agreement, a new dropdown credit agreement, and a new intercreditor agreement. The credit agreement amendment removed (i) recently added LME blockers and (ii) other lender protections (like negative and affirmative covenants, and mandatory pre-maturity interest payments). By removing the LME blockers, the amendment allowed STG to move substantially all its assets to new, unrestricted subsidiaries (the UnSubs). The majority lenders alone were then allowed to exchange

their existing loans at a premium to their market trading prices, while they simultaneously issued new loans to the UnSubs (which were then lent upstream to STG). These new loans were backed by collateral and guarantees of STG and the UnSubs.

After this was completed, the excluded (minority) lenders were then given a choice. They could exchange their now structurally subordinated loans for new loans (still inferior to those held by the majority lenders), while releasing all claims related to the LME. Or they could continue holding their pre-LME debt while maintaining their ability to challenge the LME. All excluded lenders but two elected to exchange their debt. The other two (Axos and Siemens) chose to litigate, asserting various tort and contract claims (express and implied covenant) against the LME participants (the majority lenders, STG, and the administrative agent) (*Axos Fin., Inc. v. Reception Purchaser, LLC*, 88 Misc. 3d 1203(A) (Sup. Ct. N.Y. Cnty. 2026)). Among other things, the excluded lender plaintiffs argued that the LME violated their sacred rights and was impermissibly planned and executed in secret, pursuant to an NDA, and through a credit agreement amendment that removed recently agreed-to LME blockers. The plaintiffs further alleged that, while the LME was being planned and negotiated, they struggled to get responses to their information requests about the credit.

Defendants moved to dismiss on various grounds, including for failing to state a claim. This past January, in a 22-page, single spaced

decision, the Commercial Division mostly denied the motions to dismiss, including with respect to the implied covenant claim. In its implied covenant analysis, the court focused on the plaintiffs' allegations that the LME was planned and executed in secret and was consummated (in part) through a credit agreement amendment that removed previously negotiated lender protections (the LME blockers). To the court, the secrecy of the LME constituted facts and conduct distinct from the alleged express contract breaches, and the pre-LME credit agreement terms (which barred an LME) reflected the lenders' reasonable expectations.

The Commercial Division's decision cited other New York cases—including *ICG Global Loan Fund I DAC v. Boardriders, Inc.*, 2022 WL 10085886 (N.Y. Sup. Ct. Oct. 17, 2022)—where implied covenant claims survived motions to dismiss based on excluded lenders' allegations that the LME was conducted in secret, without their knowledge. The Commercial Division also contrasted the *STG Logistics*' LME to *Mitel*, where "the parties did not specifically negotiate amendments to prohibit the contested transaction."

Other Implied Covenant Claims on a Motion to Dismiss

With respect to the secrecy allegations, other courts and decisions (including ones from the Commercial Division) appear to implicitly disagree that the alleged secrecy of an LME is sufficient to plead a violation of the implied covenant of good faith and

STG Logistics, from page 2

fair dealing. Just this March, the Commercial Division dismissed an implied covenant claim related to an uptier (one type of LME), despite allegations that the participating noteholders had conspired with a third party to receive non-pro rata benefits (*CPPIB Credit Invs. II Inc. v. Lions Gate Ent. Corp.*, No. 654398/2024, Slip Op. at 37-38 (Sup. Ct. N.Y. Cnty. Mar. 17, 2026)). These decisions—like *Mitel* (First Department) and *Trimark* (Commercial Division)—appear to focus on the express contract terms, which “end[ed] the story” for the implied covenant claims. These courts also highlighted the excluded parties’ sophistication and their ability to bargain for additional contractual protections pre-LME.

Upcoming LME Decisions

A week after the Commercial Division’s ruling in *STG Logistics*, Defendant *STG Logistics, Inc.* and certain affiliates filed for chapter 11 in the Bankruptcy Court of the District of New Jersey (*In re STG Logistics, Inc.*, No. 26-10258-MEH (Bankr. D.N.J. Jan. 12, 2026)). This triggered an automatic stay of the Commercial Division litigation. So, the minority lenders’ claims were moved to an adversary proceeding before the bankruptcy court. The adversary proceeding, including the implied covenant claim, was scheduled to be heard this May. Although attempted mediation was initially unsuccessful, the parties ultimately settled the LME adversary proceeding, which paved the way for a primarily consensual

confirmation hearing for the *STG* debtors (and their now-confirmed reorganization plan).

Beyond *STG Logistics*, the implied covenant’s application in the LME context may be further illuminated by several pending cases, including in *Optimum Commc’ns, Inc. v. Apollo Cap. Mgmt., L.P.*, No. 1:25-cv-09785-JAV (S.D.N.Y. Feb. 25, 2026), and *In re Del Monte Foods Corporation II, Inc.*, No. 26-01018-MBK (Bankr. D.N.J. Jan. 23, 2026).

Takeaways

To us, some takeaways from *STG Logistics*, and other recent cases, include that:

- Case law has not yet developed a consensus on what conduct is (or is not) permissible under the implied covenant, in the context of a non-pro rata LME. Some cases (like *Boardriders* and *STG Logistics*) support that claims involving an allegedly secret LME can survive a motion to dismiss. But others do not, with these cases instead focusing on factors like the parties’ sophistication and the absence of additional contractual protections (like LME blockers and intercreditor disclosure obligations).
- It will be interesting to see how post-motion to dismiss case law on the implied covenant (and other claims) develops in LME litigations. Perhaps post-MTD decisions will include evidence (like industry standards) that could rebut or minimize the secrecy allegations. Or trials, among other things, may focus

on alleged damages (or the lack thereof), or failure to mitigate arguments (like *Serta*, with respect to express breach of contract claims).

- Finally, it seems likely that the implied covenant case law will (and should) evolve over time, in response to changing industry customs and contractual norms for LMEs.

About the Authors



Elizabeth Plowman is a partner in the Restructuring & Finance Litigation Department at Herrick, Feinstein LLP. She focuses her practice on complex commercial litigation, bankruptcy and financial restructuring.



Timothy Whitteaker is an associate in Herrick’s Restructuring & Finance Litigation Department where he focuses on complex commercial litigation, restructuring and bankruptcy matters. □