



Lowenstein Bankruptcy Lowdown Video 27 – Superpriority Status for Payments in Bankruptcy

By [Eric Chafetz](#) and [Colleen M. Restel](#)

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Eric Chafetz: Welcome to today's [Lowenstein Bankruptcy Lowdown](#). I'm Eric Chafetz.

Colleen M. Restel: I'm Colleen Restel, and we're part of Lowenstein Sandler's Bankruptcy & Restructuring Department.

Eric Chafetz: Bankruptcy has historically been a process that is supposed to benefit all of a debtor's creditors and not just secured creditors. For that reason, a secured creditor generally cannot use the bankruptcy court to foreclose on or liquidate their collateral if they do not provide any benefit to the debtors' other creditors.

Although all creditors are not required to receive a distribution in a case, especially unsecured creditors, courts oftentimes will require administrative claims such as claims for goods and services provided postpetition to be paid.

Consistent with this theme, courts have held that secured lenders cannot liquidate their collateral through a Section 363 sale unless they are willing to provide reasonable assurances of administrative solvency after the sale—a concept often referred to as "paying the freight."

The issue gets a bit trickier, and courts have reached conflicting conclusions when considering whether section 503 (b)(9) administrative claims that relate to goods received by a debtor within the 20-day period prior to a bankruptcy filing must be paid in full as part of the freight.

Colleen M. Restel: In a recent case in Delaware called *In re Ideanomics*, Judge Goldblatt was faced with a bid procedures motion where the pre-petition and DIP lender, that was also the stalking horse bidder, requested that any expenses incurred in connection with its stalking horse bid be granted super priority status, meaning that such expenses would be paid before all other administrative claims.

The Court expressed concerns about giving superpriority status to the expenses of the stalking horse bidder wearing multiple hats, reiterating that if there is a risk of administrative insolvency, the debtor does not belong in bankruptcy and because of that, any administrative insolvency risk cannot be passed along to holders of administrative claims.

Eric Chafetz: The Court further noted that because the debtor is operating under a budget approved by the DIP lender, who's also the stalking horse bidder and prepetition lender, no additional higher priority claim or protection was necessary for that party's expenses associated with the sale.

Colleen M. Restel: Based on the Court's comments, the stalking horse bidder agreed to forgo super priority status for his expense reimbursement. While here, the stalking horse purchaser wore multiple hats, it will be interesting to see if this issue arises in future situations where the DIP budget does not include all administrative claims, such as section 503 (b)(9) claims, or if the buyer does not wear as many hats as the stalking horse in *Ideanomics*.

Thank you for tuning in to the [Lowenstein Bankruptcy Lowdown](#).

We hope you'll join us again soon.