IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	CASE NO: 24-90052
ROBERTSHAW US HOLDING CORP.,	§	
et al.,	§	
Debtors.	§	Jointly Administered
		CHAPTER 11

ORDER ON INVESCO'S AMENDED PROOF OF CLAIM
(RE: ECF NOS. 792, 796, 799)

From the start of these chapter 11 cases, Robertshaw and its affiliates ("**Robertshaw**"), its equity sponsor, an ad hoc group of lenders, and Invesco Senior Secured Management, Inc. and certain related funds ("**Invesco**") have been litigating about a prepetition liability management transaction. The Court recently presided over an adversary proceeding and found that Robertshaw breached a mandatory prepayment provision under a credit agreement. The Court permitted Invesco to file a proof of claim in the main bankruptcy case for any alleged damages arising from the breach. Invesco filed a proof of claim and then amended it. Robertshaw and other parties objected based on the applicable provisions of the credit agreement and New York law. The Court conducted an evidentiary hearing and took the matter under advisement. This is the Court's decision.[1]

Jurisdiction and Venue

The Court has jurisdiction under 28 U.S.C. § 1334(b). Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B). The Court has constitutional authority to enter final orders and judgments. *Stern v. Marshall*, 564 U.S. 462, 486–87 (2011).

Background

Below is a brief background about important matters in these chapter 11 cases that relate to Invesco's proof of claim. Much of the background about prepetition litigation and a significant adversary proceeding ("**Adversary Proceeding**") giving rise to the proof of claim are detailed in the Court's June 2024 decision in Adv. No. 24-03024 ("**Adversary Decision**"). The Record includes the

[1] This Order constitutes the Court's findings of fact and conclusions of law under Bankruptcy Rule 7052, made applicable here under Bankruptcy Rule 9014. Factual and legal conclusions will be treated as such; however they are labeled.

Adversary Decision and all documents admitted in the Adversary Proceeding.[2] Many important facts in the Adversary Decision are repeated below to provide a thorough description.

Robertshaw's Prepetition Liability Management Transactions and Related History with Prepetition Lenders

In 2018, an affiliate of One Rock Capital Partners, LLC ("**One Rock**") acquired Robertshaw from its prior sponsor.[3] The purchase was financed with $510 million in first-lien term loans under a First-Lien Credit Agreement, $110 million in second-lien term loans under a Second-Lien Credit Agreement (together, the "**Original Credit Agreements**"), and about $260 million of equity.[4] To finance operations, Robertshaw entered a separate asset-based revolving facility maturing in December 2023 ("**ABL Facility**").[5]

I. The May 2023 Uptier Transaction

In May 2023, Robertshaw negotiated a liability management transaction with Bain Capital Credit, LP on behalf of certain of its managed funds ("**Bain Capital**"), Canyon Capital Advisors LLC on behalf of certain of its managed funds ("**Canyon Capital**"), Eaton Vance Management on behalf of certain of its managed funds ("**Eaton Vance**") (collectively, the "**Ad Hoc Group**"), and Invesco under the Original Credit Agreements.[6] Invesco and the Ad Hoc Group formed an ad hoc group to reach "Required Lender" status. The lenders proposed a transaction through which the parties would amend the Original Credit Agreements to (i) execute a new Super-Priority Credit Agreement ("**SPCA**"), (ii) provide $95 million of new First-Out New Money Term Loans, and (iii) allow participating lenders to exchange their existing first- and second-lien loans under the Original Credit Agreements for Second-Out and Third-Out Term Loans under the SPCA ("**May Transactions**").[7] This type of liability management transaction is often called an uptier. It was realized through a series of transactions in a short time

[2] Footnotes 2 through 78 are citations to documents in Adversary Proceeding Case No. 24-03024, which were admitted under the witness and exhibit list filed at ECF No. 833-38 in Case No. 24-90052. Trial transcripts from the Adversary Proceeding are referenced throughout this decision as Tr.2 (ECF No. 325), Tr.3 (ECF No. 340), Tr.4 (ECF No. 336), Tr.5 (ECF No. 339), and Tr.6 (ECF No. 346).
[3] Tr.3 10:2–11.
[4] Tr.3 10:2–11.
[5] ABL Credit Agreement, Joint Exhibit 1, ECF No. 250-11.
[6] Tr.4 65:4–22, 407:2–14.
[7] Super-Priority Credit Agreement at Recitals, ECF No. 250-1.

span, the steps of which were laid out in advance.[8] The SPCA is governed by New York law.[9]

The SPCA adopted much of the same (or similar) language as the Original Credit Agreements, while making some changes thought prudent by the participating lenders then to try to protect their position.[10] This included adding blockers to protect against some future lender-on-lender type actions, but not all.[11] Matthew Brooks, a managing director at Invesco, testified that they "*limited* the ability to do another uptier" but outright "*eliminated* the ability to do any sort of dropdown transactions."[12] The SPCA did not materially change the definition of "Required Lender." Required Lender status, as the parties understood it, was designed to be fungible—whichever party or group meets the status may fluctuate from time to time as debt is bought or traded or ad hoc groups form and dissemble.[13] The dispositive authority on which party or group holds enough debt to be Required Lender is a register maintained by an Administrative Agent.[14]

The SPCA defines "Required Lender" to mean "[l]enders having Loans representing more than 50.0% of the sum of the total First-Out New Money Term Loans and Second-Out Term Loans at such time."[15] Section 9.02 of the SPCA allows Required Lenders to amend the SPCA, subject to enumerated exceptions (commonly referred to as "sacred rights").[16] Required Lender status gives lenders the right to, among other things, (i) agree with Robertshaw, as "Borrower," to incur additional "Indebtedness," including, but not limited to, the issuance of more term loans under the SPCA; (ii) consent to or waive any breaches, defaults, or "Events of Default"; and (iii) direct the Administrative Agent to pursue remedies in the event of a breach, default, or Event of Default.[17]

Around July 2023, Invesco acquired more than 50% of the total First-Out and Second-Out Term Loans issued in connection with the May Transactions and obtained Required Lender status.[18] The Ad Hoc Group did not know about this change.[19] Invesco met the Required Lender criteria because it owned a majority of

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[8] Tr.4 306:3–307:18.
[9] Super-Priority Credit Agreement, § 9.10, Joint Exhibit 1, ECF No. 250-1.
[10] Tr.4 256:13–258:21, 409:22–410:15.
[11] Tr.4 409:22–410:15.
[12] Tr.4 409:22—410:15.
[13] Tr.4 256:13—260:15.
[14] Super-Priority Credit Agreement, § 9.05(b)(iv), Joint Exhibit 1, ECF No. 250-1; Tr.4 25:22–25.
[15] Super-Priority Credit Agreement, § 1.01 "Required Lender," Joint Exhibit 1, ECF No. 250-1.
[16] Super-Priority Credit Agreement, § 9.02(b)(A), Joint Exhibit 1, ECF No. 250-1.
[17] Super-Priority Credit Agreement, § 9.02, Joint Exhibit 1, ECF No. 250-1.
[18] Tr.4 321:6–10.
[19] Tr.4 167:5–23, 322:1–23.

the First-Out Term Loans but not the Second-Out Loans.[20] So the status was arguably fragile. Another lender (or group of lenders) could buy up the majority of the Second-Out Term Loans and Robertshaw could pay down some of the First-Out Term Loans. In that case, Invesco would cease to be a Required Lender.

II. Invesco Led Amendment Nos. 1-4

Robertshaw faced another liquidity crunch in the Fall of 2023, despite its efforts to implement a turnaround plan supported by the company's advisors and One Rock.[21] A key component of this plan involved improving its customer relationships and contracts.[22] To address its liquidity issues and continue forward, it was close to entering into the "**Brigade Deal**," which would have refinanced the ABL facility set to mature in December 2023 and provided a cash infusion to Robertshaw to make interest payments due under the SPCA.[23]

Invesco found it troubling that, though it was Required Lender, the company sought financing from an outside source it believed to be a historically "difficult counterparty."[24] Invesco reached out through joint counsel to the ad hoc group that participated in the May Transactions to inform Robertshaw that it would not support the Brigade Deal.[25] Invesco also believed the ad hoc group of lenders disbanded once the SPCA was effective.[26] So it did not inform the other lenders that it had retained separate counsel to start working on amendments to the SPCA because Robertshaw had missed an interest payment, and the grace period was almost up.[27]

Invesco and Robertshaw entered into Amendment No. 1 on October 5, 2023.[28] It extended Robertshaw's grace period to make the missed interest payment due at the end of September to October 13.[29] Without this amendment, failure to make the payment by October 6, 2023 would have resulted in an "Event of Default."[30]

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[20] Tr.4 15:19–16:3, 322:2–23; Plaintiff Exhibit 78 at 2786, ECF No. 243-29.
[21] Tr.3 32:22–34:23.
[22] Tr.3 32:22–34:23.
[23] Tr.6 10:1–11:25, 12:6–19.
[24] Tr.4 54:8–55:21, 335:7–336:13.
[25] Tr.4 336:22–347:5.
[26] Tr.4 68:6–69:22, 320:3–16.
[27] Tr.4 74:22–75:4, 77:1–17, 164:24–165:7, 168:20–169:8.
[28] Amendment No. 1 To Super-Priority Credit Agreement at Preamble, Plaintiff Exhibit 1, ECF No. 242-1.
[29] Amendment No. 1 To Super-Priority Credit Agreement, §3, Plaintiff Exhibit 1, ECF No. 242-1.
[30] Amendment No. 1 To Super-Priority Credit Agreement at Preamble, Plaintiff Exhibit 1, ECF No. 242-1.

At the same time, the parties discussed a proposal for Robertshaw to enter into a new ABL facility. Invesco offered Robertshaw a bridge loan of $17 million in the form of additional First-Out Term Loans in exchange for Robertshaw's agreement to negotiate two other financing transactions with Invesco, including (i) a new $40 million "delayed draw term loan facility" conditioned upon Robertshaw's agreement to "repurchase" (i.e., uptier)[31] "100% of the Invesco owned Third-Out Term Loans at par" through "open market purchases" and (ii) a new $73.4 million ABL facility under which Invesco would exchange its Third-Out Term Loans for "New ABL Loans."[32] The Ad Hoc Group was not informed about this Amendment, the missed interest payment which necessitated the Amendment, or the financing proposal.[33]

Invesco and Robertshaw failed to negotiate the terms of Invesco's financing proposal. On October 13, 2023, Invesco and Robertshaw executed Amendment No. 2.[34] Invesco agreed to provide Robertshaw with the $17 million bridge loan in the form of new incremental First-Out Term Loans to make the missed interest payment. Mr. Brooks from Invesco testified that Invesco understood that Required Lenders could amend § 6.01 of the SPCA to allow for additional "Indebtedness"—which is permitted in Amendment No. 2.[35] To the extent this new "Indebtedness" could breach the terms of the SPCA, Invesco waived all potential defaults.[36] Invesco also committed to provide an additional $40 million term loan if certain conditions were met, but it set a November 8 deadline for Robertshaw to refinance the ABL Facility. It also included the potential for a new liability management transaction for Invesco's Third-Out Loans. The Ad Hoc Group were not informed about this Amendment.

Robertshaw and Invesco failed to reach agreement on the terms of a new ABL facility, and the December 2023 existing ABL Facility maturity loomed. So the parties executed Amendment No. 3, which extended the November 8 deadline to November 10. The Ad Hoc Group were not informed about this Amendment.

Invesco and Robertshaw then signed Amendment No. 4 in November 2023. In exchange primarily for an extension of the time to declare an Event of Default under the SPCA until December 13, Robertshaw would start a chapter 11 bankruptcy case by no later than January 2, 2024 and, as a debtor in possession, to:

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[31] Plaintiff Exhibit 323 at 3, ECF No. 248-35; Tr.4 283:9–284:21.
[32] Plaintiff Exhibit No. 61, ECF No. 243-11.
[33] Plaintiff Exhibit 64, ECF No. 243-14; Plaintiff Exhibit 62, ECF No. 243-12; Tr.4 348:16—351:21; Tr.4 359:3–361:23.
[34] Tr.4 362:5–363:8.
[35] Tr.4 268:5–22.
[36] Amendment No. 2 To Super-Priority Credit Agreement, §7, Plaintiff Exhibit 2, ECF No. 242-2.

- Negotiate, in good faith, a debtor in possession financing facility, a restructuring support agreement, and a stalking horse purchase agreement with Invesco.[37]

- Confirm that the board of its parent had directed their professionals to begin the above negotiations.[38]

- Deliver to Invesco a wind-down budget following the close of the stalking-horse sale, a list of critical vendors to be paid by the debtor in possession financing along with justifications for those payments, a summary of Robertshaw's executory contracts along with recommendations regarding their treatment.[39]

Amendment No. 4 also required Robertshaw to appoint an "Independent Director" to the Board of Directors of Robertshaw's parent company. It gave the "Independent Director" sole authority to negotiate the terms of the bankruptcy milestones laid out in the Amendment.[40] Invesco selected Neal Goldman.[41] The Ad Hoc Group were not informed about this Amendment.

Invesco was aware of Robertshaw's aversion to filing on January 2, which would have interfered with its existing turnaround plan—particularly the customer relations component.[42] There were discussions of a non-bankruptcy path.[43] Invesco ultimately declined to a discuss out-of-court alternatives until Robertshaw signed Amendment No. 4.[44] Taking his fiduciary duty as independent director seriously, Mr. Goldman instructed Robertshaw's advisors to look for alternative solutions.[45]

Invesco directed the administrative agent in writing not to post any of these amendments.[46] Based on conversations with Mr. Brooks, advisors for Robertshaw believed it would jeopardize negotiations around an out-of-court deal with Invesco if Robertshaw posted the amendments.[47] Around November 15, the Ad Hoc Group

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[37] Amendment No. 4 To Super-Priority Credit Agreement, §7(e), Plaintiff Exhibit 4, ECF No. 242-4.
[38] Amendment No. 4 To Super-Priority Credit Agreement, §7(f)(i), Plaintiff Exhibit 4, ECF No. 242-4.
[39] Amendment No. 4 To Super-Priority Credit Agreement, §7(f)(v), Plaintiff Exhibit 4, ECF No. 242-4.
[40] Amendment No. 4 To Super-Priority Credit Agreement, §7(f)(iv)(2), Plaintiff Exhibit 4, ECF No. 242-4.
[41] Tr.2 10:11–12:12.
[42] Tr.2 20:20–21:19; Tr.3 37:1–41:14.
[43] Tr.3 37:1–41:14; Joint Exhibit 25, ECF No. 250-29; Plaintiff Exhibit 91, ECF No. 243-43.
[44] Plaintiff Exhibit 91, ECF No. 243-43.
[45] Tr.2 11:3–12, 14:2–15:17.
[46] Tr.5 246:23–247:7; Deposition Testimony of Administrative Agent (Jennifer Anderson), ECF No. 312-1 at 4.
[47] Tr.6 63:7–24.

learned about the amendments when a third party casually mentioned them to an employee at Bain Capital.[48] Counsel for the Ad Hoc Group then reached out to the Administrative Agent on November 16 demanding that the amendments be posted. Amendment Nos. 1–4 were posted later that day.

III. The December Transactions and Amendment No. 5

After discovering the Invesco-led Amendments and looming bankruptcy, the Ad Hoc Group started working with Robertshaw and One Rock on alternative financing solutions and ultimately submitted a proposal.[49] The board's advisors presented an analysis of the relative benefits of a liability management transaction ("**December Transactions**") compared to filing for bankruptcy on January 2. The record is undisputed that the company desperately needed the additional liquidity and runway provided by the December Transactions. Based on that analysis, the board, including Mr. Goldman, voted to approve the transactions.[50] The December Transactions consisted of six sequential steps:

> *First*, Range Parent's ("**Holdings**")[51] parent, Range Investor LLC, formed RS Funding Holdings, LLC ("**RS Funding**").[52] Holdings is Robertshaw's parent. Range Investor holds 100% of the voting interest in RS Funding.[53] Robertshaw holds 100% of the economic interest in RS Funding.[54]
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> *Second*, on December 11, the Ad Hoc Group and One Rock loaned $228.3 million to RS Funding ("**RS Funding Credit Agreement**").[55]
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> *Third*, exercising its power as 100% voting interest owner, Holdings instructed RS Funding to distribute the proceeds of the $228.3 million loan to Robertshaw.[56]
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> *Fourth*, Robertshaw used the funds from RS Funding to (i) pay off the outstanding $30 million ABL Facility in full;

[48] Tr.4 172:2–173:3, 378:20–379:25.
[49] Plaintiff Exhibit 148, ECF No. 244-51.
[50] Tr.2 15:25–20:14, 166:8–23; Plaintiff Exhibit 247, ECF No. 246-47.
[51] Super-Priority Credit Agreement at Preamble, Joint Exhibit 1, ECF No. 250-1.
[52] Plaintiff Exhibit 148 at 7, ECF No. 244-51.
[53] Plaintiff Exhibit 148 at 7, ECF No. 244-51.
[54] Plaintiff Exhibit 148 at 7, ECF No. 244-51.
[55] Plaintiff Exhibit 148 at 5, ECF No. 244-51.
[56] Plaintiff Exhibit 148 at 7, ECF No. 244-51.

> (ii) voluntarily prepay $117.6 million of the outstanding First-Out Term Loans; and (iii) pay an additional $30.7 million in required make-whole payments to the holders of First-Out Term Loans.[57] The prepayment was made to the Administrative Agent, who, in turn, disbursed the funds to the appropriate First-Out Term Loan Lenders and recorded the prepayment in the register.[58] After the prepayment, the register maintained by the Administrative Agent reflected that the Invesco no longer owned more than 50% of the combined First- and Second-Out Term Loans needed to maintain Required Lender status.[59] The Ad Hoc Group now held Required Lender status.[60]
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> *Fifth*, the Ad Hoc Group, as Required Lenders, executed Amendment No. 5 to the SCPA.[61] This Amendment authorized Robertshaw to issue $228 million in incremental debt.[62]
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> *Sixth*, once the conditions precedent to Amendment No. 5 were either met or waived, Robertshaw issued $218 million in new First-Out and Second-Out Loans.[63] Robertshaw returned an equivalent amount to RS Funding, which repaid the loan under the RS Funding Credit Agreement.[64]

Invesco received over $90 million. It tried to reject the prepayment (and now holds the funds in protest in escrow).[65] But the Administrative Agent, tasked with disbursing funds in accordance with the register, disbursed the funds to Invesco.[66] Invesco sent notice of an Event of Default under the SCPA to Robertshaw based on this allegation on December 11, 2023.[67]

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[57] Plaintiff Exhibit 148 at 7, ECF No. 244-51.
[58] Tr.4 315:17–317:1.
[59] Plaintiff Exhibit 16, ECF No. 242-20.
[60] Plaintiff Exhibit 16, ECF No. 242-20.
[61] Plaintiff Exhibit 148 at 7, ECF No. 244-51.
[62] Amendment No. 5 To Super-Priority Credit Agreement, Plaintiff Exhibit 5, ECF No. 242-5.
[63] Plaintiff Exhibit 148 at 7, ECF No. 244-51.
[64] Plaintiff Exhibit 148 at 7, ECF No. 244-51.
[65] Tr.4 315:17–317:1; Tr.5 15:16–21.
[66] Tr.4 315:17–317:1.
[67] Plaintiff Exhibit 348, ECF No. 248-67.

Invesco challenged the prepayment as violating the SPCA because not all the proceeds were used to pay off existing indebtedness, and they were not distributed pro rata among all tranches of debt. Instead, a portion of the RS Funding cash distribution was added to Robertshaw's balance sheet, and some was used to pay off the ABL. Only the First-Out Term Loans received a prepayment. This allegedly violated § 2.11(b)(iii) and (vi) of the SPCA.

IV. Invesco Files Suit in New York State Court

Less than two weeks after the execution of Amendment No. 5, Invesco filed a complaint in the Supreme Court of the State of New York, asserting claims for (i) breach of the SPCA against Robertshaw and the Ad Hoc Group; (ii) breach of the covenant of good faith and fair dealing against Robertshaw and the Ad Hoc Group; (iii) tortious interference with contract against One Rock; and (iv) intentional and constructive fraudulent transfer against the Ad Hoc Group and One Rock. Invesco also sought a preliminary injunction "(i) enjoining any transactions or arrangements purportedly requiring only the consent or direction of the Ad Hoc Group and/or One Rock, including but not limited to those in Amendment No. 5, (ii) enjoining the execution of Amendment No. 5 by the Administrative Agent, and (iii) reinstating of Amendment No. 4."[68]

The New York State Court did not rule on Invesco's motion before the petition date in these bankruptcy cases. This litigation is currently stayed.

Robertshaw Starts Bankruptcy Cases and the Adversary Proceeding

Robertshaw started these bankruptcy cases on February 15, 2024. Robertshaw, One Rock, and the Ad Hoc Group started Adversary No. 24-03024 on the same day, seeking a declaration that the transactions, including Amendment No. 5, were valid and enforceable and that neither the Ad Hoc Group nor Robertshaw breached the SPCA by entering into them. One Rock also sought a declaration that it did not tortiously interfere with the SPCA under New York law.

Invesco filed two counterclaims seeking declaratory judgment against Robertshaw that it breached the SPCA and that Invesco was still Required Lender.[69]

After a full evidentiary trial, the Court issued the Adversary Decision.[70] The Court found that the members of the Ad Hoc Group and One Rock were the

[68] Plaintiff Exhibit 170, ECF No. 245-20.
[69] Invesco's Answer, Affirmative Defenses, and Counterclaims at 39, ECF No. 45.
[70] Invesco's Witness and Exhibit List, Adversary Proceeding, ECF No. 833-2.

Required Lenders under the SPCA.[71] And the Court found that the SPCA as amended by Amendment No. 5 was valid and enforceable.[72] The Court also held that the Ad Hoc Group did not breach the SPCA, there was no breach of the implied duty of good faith and fair dealing under New York law, and that One Rock did not tortiously interfere with the SPCA under New York law.[73] The Court also rejected Invesco's theory of damages that attempted to place Invesco in the position it would have been if it retained "Required Lender" status and if Robertshaw would have started a bankruptcy case in January 2024.[74] The Court found that this theory of damages was based on pure speculation.[75]

The Court, however, did find that Robertshaw breached § 2.11(b)(iii) of the SPCA by failing to remit 100% of the "Net Proceeds" of the loan from One Rock and the Ad Hoc Group to RS Funding.[76] This breach constituted the only breach of the SPCA.[77]

The Court authorized Invesco to file a proof of claim in the main bankruptcy case for any alleged monetary damages arising out the breach.[78]

Invesco's Claim

On June 27, 2024, Robertshaw, Invesco, One Rock, and the Ad Hoc Group entered into and filed a Stipulation Regarding Invesco Claim.[79] The parties agreed to a July 12 deadline for Invesco to file its proof of claim based on the Adversary Decision, a response deadline of July 23, a reply deadline of July 29, and a hearing date of August 1, 2024.[80]

On July 12, Robertshaw and Invesco entered into and filed a second Stipulation Regarding Invesco Claim permitting Invesco to file a single consolidated proof of claim against Robertshaw.[81] Invesco filed the consolidated claim on the same day.[82] On July 23, the Court approved an agreed stipulation authorizing the

[71] Adversary Decision at 23.
[72] Adversary Decision at 19.
[73] Adversary Decision at 21.
[74] Adversary Decision at 16.
[75] Adversary Decision at 16.
[76] Adversary Decision at 15.
[77] Adversary Decision at 15.
[78] Adversary Decision at 23.
[79] Stipulation Regarding Invesco Claim, ECF No. 710.
[80] Stipulation Regarding Invesco Claim, ECF No. 710.
[81] Stipulation Regarding Invesco Claim, ECF No. 750.
[82] The First Consolidated Proof of Claim is listed as Claim No. 911, filed July 12, 2024, on the Official Claims Register.

consolidated proof of claim.[83] On July 24, Invesco moved to file an amended consolidated claim.[84] The Court conducted a hearing and granted the motion.[85] The consolidated amended claim is the "**Claim**" the Court considered in this Order.

Invesco asserts: (i) $39.4 million in damages from Robertshaw's failure to use 100% of the Net Proceeds of the RS Funding loan to prepay Invesco's First-Out New Money Term Loans and Second-Out Term Loans ("**Prepayment Damages**"); (ii) $66.6 to $102.5 million in damages representing the value of the equity interests and/or takeback debt that Invesco would have received in a restructuring of Robertshaw that complied with the SPCA and accomplished the avowed purpose of the December Transactions ("**Debt & Equity Damages**"); (iii) $12.48 million in professional fees and other costs incurred in connection with "**Litigation Expenses**"; and (iv) prejudgment interest of $5.5 to $7.4 million.[86]

Robertshaw, the Ad Hoc Group, and One Rock objected to the Claim.[87] Invesco filed a response and reiterated its right to all damages requested in the Claim.[88]

Plan Confirmation

On August 2, 2024, the Court conducted an evidentiary hearing on Robertshaw's First Amended Joint Plan of Liquidation. Under the Plan, Invesco's damages claims are classified as Class 6 Funded Debt Deficiency Claims. On August 16, 2024, the Court entered a *Memorandum Decision on Plan Confirmation* and an order confirming the Plan.[89]

Hearing on the Claim

The Court conducted a hearing on the objections to the Claim. The record ("**Record** ") includes:

- All documents identified on Invesco's Witness and Exhibit List (ECF No. 833);

- All documents identified on Robertshaw's Amended Witness and Exhibit List (ECF Nos. 866);

[83] Stipulation Regarding Invesco Claim, ECF No. 790.
[84] Emergency Motion for Leave to Amend Proof of Claim, ECF No. 806.
[85] Order Granting Emergency Motion to File Amended Proof of Claim, ECF No. 897.
[86] Invesco's Witness and Exhibit List, Amended Proof of Claim, ECF No. 833-2.
[87] Robertshaw's Obj. ECF No. 797; Ad Hoc Group's Obj. ECF No. 792; One Rock's Obj. ECF No. 796.
[88] Invesco's Rep. ECF No. 818.
[89] ECF Nos. 959, 960.

- All documents identified on the Ad Hoc Group's Witness and Exhibit List (ECF No. 822); and

- All documents identified on the One Rock's Witness and Exhibit List (ECF No. 823).

Surprisingly, Invesco offered little testimony in support of the Claim at the hearing. Bankruptcy Local Rule 9013-2(c) in this District requires parties to file witness and exhibit lists two days before a hearing.[90] Witness lists must also identify whether a witness will be called as a fact or expert witness.[91] If no delineation is made, the witness will be allowed only to testify as a fact witness unless otherwise ordered by the Court.[92] If a witness is designated to testify as an expert, then expert reports must be delivered to opposing counsel no later than the day the witness and exhibit list is filed.[93] Invesco timely filed a witness and exhibit list.[94] Neil Augustine, the co-head of the Financing, Advisory, and Restructuring Practice at Greenhill, was listed as a witness with no fact or expert designation.[95] Thus, according to the Local Rules he was permitted to testify at the hearing as a fact witness only.

Invesco called Augustine to testify at the hearing.[96] Before he was sworn in, counsel for One Rock objected to the extent that Augustine would be asked to offer expert testimony.[97] The Court asked Invesco's counsel whether Augustine would testify as a fact or expert witness.[98] Counsel confirmed he was a fact witness.[99] But mid-way through direct examination, Invesco's counsel moved to designate Augustine as an expert.[100] The Court denied this request and did not permit Augustine to offer expert opinions.[101]

Invesco's counsel also stated for the first time that he understood the hearing on the Claim was a continuation of the Adversary Proceeding, where Augustine was designated as an expert.[102] The Court rejected that characterization at the hearing

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[90] BLR 9013-2(c).
[91] BLR 9013-2(c).
[92] BLR 9013-2(c).
[93] BLR 9013-2(g).
[94] Invesco's Witness and Exhibit List, ECF No. 833-1.
[95] Invesco's Witness and Exhibit List, ECF No. 833-1.
[96] August 1, 2024 Tr. 39:14–25, ECF No. 940.
[97] August 1, 2024 Tr. 36:2–37:1.
[98] August 1, 2024 Tr. 38:17.
[99] August 1, 2024 Tr. 38:18–22.
[100] August 1, 2024 Tr. 72:12–14.
[101] August 1, 2024 Tr. 89:1–4.
[102] August 1, 2024 Tr. 74:9–13. To be clear, Greenhill was never designated as an expert based on damages alleged in the Claim, which was filed after the Court issued the Adversary Decision.

and reiterates it here.[103] The Adversary Decision permitted Invesco to file a proof of claim.[104] The hearing on the claim objection was occurring in the main case, not the Adversary Proceeding, and all parties knew that. Indeed, about one month before the hearing on the Claim, Invesco filed a motion in the Adversary Proceeding confirming this:

> The process for filing and ultimately determining a proof of claim exists outside of the immediate Adversary Proceeding as part of the broader bankruptcy process applicable to all creditors that are not party to adversary proceedings . . . Seeing as the Order instructs that any pursuit of damages for breach occur outside the confines of the Adversary Proceeding, the Order is a final order as to the Adversary Proceeding . . . [105]

Invesco also appealed the Adversary Decision about one month before the hearing on the Claim.[106] The appeal divested this Court of jurisdiction over the Adversary Proceeding. *See, e.g.*, *In re Fort Worth Chamber of Commerce*, 100 F.4th 528 (5th Cir. 2024). The objections to the Claim, Invesco's response, and all witness and exhibit lists were filed in the main case.[107] And, as noted above, Invesco entered into two stipulations with Robertshaw about the Claim in the main case.[108] The first scheduled a deadline to file a proof of claim, set an objection deadline, and set a hearing date in the main case.[109] The second stipulation permitted Invesco to file a consolidated proof of claim.[110] The Court then approved an agreed order on the consolidated proof of claim.[111] Invesco also moved to amend its original July 2024 proof of claim based on the Adversary Decision in the main case.[112] Thus, resolving objections to the Claim are contested matters in the main case. Augustine was not designated to testify as an expert before the hearing so he was permitted to testify as a fact witness only. Strict adherence to procedure sometimes leads to harsh consequences. But procedural guidelines ensure fairness to all parties.

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[103] August 1, 2024 Tr. 87:9–23.
[104] Adversary Decision at 23, Adv. No. 24-03024, ECF No. 351.
[105] Motion to Confirm Finality of, or in the Alternative, For Leave to Appeal Adv. No. 23-03024, at ¶ 36, ECF No. 384-1.
[106] Notice of Appeal Adv. No. 23-03024, ECF No. 382.
[107] *See, e.g.*, Invesco's Reply, ECF No. 818.
[108] Stipulation Regarding Invesco Claim, ECF No. 710; Stipulation Regarding Invesco Claim, ECF No. 750; Agreed Order Approving Stipulation Regarding Invesco Claim, ECF No. 790.
[109] Stipulation Regarding Invesco Claim, ECF No. 710.
[110] Stipulation Regarding Invesco Claim, ECF No. 750.
[111] Agreed Order Regarding Invesco Claim, ECF No. 790.
[112] *See* Emergency Motion for Leave to Amend Proof of Claim, ECF No. 806.

Analysis

A proof of claim executed and filed in accordance with the Bankruptcy Rules is prima facie evidence of the validity and the amount of that claim. *See* Fed. R. Bankr. P. 3001(f). If a party objects and presents evidence sufficient to overcome the claim's prima facie validity, then the claimant bears the burden of proof and must establish the validity of the claim by a preponderance of the evidence. *McGee v. O'Connor* (*In re O'Connor*), 153 F.3d 258, 260 (5th Cir. 1998); *California State Bd. of Equalization v. Off. Unsecured Creditors' Comm.* (*In re Fidelity Holding Co.*), 837 F.2d 696, 698 (5th Cir. 1988) (the validity must be established by a preponderance of the evidence). The objecting parties provided sufficient evidence in the Record at the hearing to overcome prima facie validity. So Invesco bore the burden of proving the validity of the damages requested in the Claim.

I. The Ad Hoc Group Did Not Waive Invesco's Right to Seek Damages Based on the Prepayment Breach

The objectors argue that Invesco has no viable claim because the Ad Hoc Group waived any breach by Robertshaw based on the prepayment breach under Amendment No. 5 to the SPCA. Required Lender status under the SPCA gives lenders the right to, among other things, (i) consent to or waive any breaches, defaults, or "Events of Default," and (ii) direct the Administrative Agent to pursue remedies in the event of a breach, default, or Event of Default.[113] The Ad Hoc Group did waive all defaults under the SPCA in Amendment No. 5.[114] It is also true that when Invesco was Required Lender it waived all potential defaults to potential incurrence of "Indebtedness" in Amendment No. 2.[115] So, according to objectors, Invesco has no basis to object to the waiver under Amendment No. 5. The Court disagrees.

Robertshaw breached the SPCA by not distributing all "Net Proceeds" received from RS Funding before the Ad Hoc Group and One Rock became Required Lenders and before Amendment No. 5. Amendment No. 5 authorized Robertshaw to issue new debt that is not the basis of the mandatory prepayment breach under the SPCA. The waiver under Amendment No. 5 may excuse breaches incurred with that new debt or prospective matters specifically addressed in that Amendment. But it does not preclude Invesco from seeking damages based on the breach of mandatory prepayment provisions under § 2.11 of the SPCA.[116] The Court does not read the SPCA, specifically § 9.02, to preclude Invesco from seeking repayment based on a

[113] Super-Priority Credit Agreement, § 9.02(b), ECF No. 833-12.
[114] Amendment No. 5 To Super-Priority Credit Agreement, ECF No. 868-9.
[115] Amendment No. 2 To Super-Priority Credit Agreement, ECF No. 868-9.
[116] This Court did not have the occasion to consider the legal effect of any waivers under Amendment Nos. 1-4 to the SPCA and expresses no opinion here.

breach that occurred before the Required Lenders under Amendment No. 5 even became the Required Lenders.

II. Invesco is Entitled to Prepayment Damages

The Prepayment Damages analysis is straightforward. No party disputes the following:

- Robertshaw received $228,300,670.67 from RS Funding;[117]
- Robertshaw used the funds from RS Funding to (i) pay off the outstanding $30,500,000 ABL Facility in full; (ii) and voluntarily prepay $148,300,670.67 of the existing first out facility;[118] and
- Robertshaw left over $40 million on its books.

Section 2.11(b)(iii) of the SPCA says:

> In the event that . . . any Subsidiaries . . . receive Net Proceeds from the issuance or incurrence of Indebtedness of . . . any Subsidiaries (other than with respect to Indebtedness permitted under Section 6.01), the Borrowers shall, substantially simultaneously with . . . the receipt of such Net Proceeds by such Borrower or such Subsidiary, apply an amount equal to 100% of such Net Proceeds to prepay outstanding Term Loans.[119]

Section 2.11(b)(vi) further provides that, as to mandatory prepayments:

> [a]ll accepted prepayments under this Section 2.11(b) shall be applied against the remaining scheduled installments of principal due in respect of the Initial Term Loans to the remaining scheduled amortization payments in respect of the Term Loans in direct order of maturity, and each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentage.[120]

[117] August 1, 2024 Tr. 60:3–14, 63:14–16.
[118] August 1, 2024 Tr. 63:1–19, 62:20–25.
[119] Super-Priority Credit Agreement, § 2.11(b)(iii), ECF No. 833-12.
[120] Super-Priority Credit Agreement, § 2.11(b)(vi), ECF No. 833-12.

Invesco believes that the $30.5 million used to pay off the ABL was not a proper mandatory prepayment. Invesco is correct. In the Adversary Decision, the Court found that RS Funding incurred "Indebtedness" in violation of § 6.01, which triggered the mandatory prepayment under § 2.11. The $30.5 million ABL payment was not a mandatory prepayment under § 2.11(b)(vi). Excluding the ABL repayment, the total amount of improperly or unapplied Indebtedness is $80 million.[121]

Robertshaw also argues the Prepayment Damages should be reduced by $6.7 million for transaction and professional fees and $8 million for payments Robertshaw made to Invesco in December 2023 and January 2024 using the liquidity on its balance sheet raised as part of the December Transactions.[122] The Court rejects these arguments. There is no credible evidence in the Record proving $6.7 million in fees directly relates to the RS Funding loan or that such amounts would be warranted in any way here. Second, any amounts that were not applied strictly in accordance with § 2.11(b)(vi) do not apply, and that includes any December and January interest payments made to Invesco.

Based on the Record, including Augustine's testimony, if Robertshaw had applied $80 million in Net Proceeds as mandated under § 2.11, Invesco would have received $39,408,199.17—an additional $76,473.77 on account of its First-Out New Money Term Loan holdings and $39,331,725.40 on account of its Second-Out Term Loan holdings.[123] Thus, Invesco has an allowed claim for $39,408,199.17.

III. The Debt & Equity Damages are Disallowed

The Debt & Equity Damages are disallowed. Invesco's theory of damages goes like this:

- Had Robertshaw applied the unused $80 million as required mandatory prepayments; *then*
- The Ad Hoc Group and/or One Rock would have been required to provide an addition $80 million of financing to fulfill the stated purpose of the December Transactions of increasing liquidity and adding cash to the balance sheet (*there is no evidence in the Record they would have done this*).
- All such new funding would be required as incremental Second Out Loans; *then*

[121] August 1, 2024 Tr. 64:11–22, 97:1–9.
[122] *See* Robertshaw's Obj. ¶¶ 59–60, ECF No. 797.
[123] August 1, 2024 Tr. 99:7–24.

- If Robertshaw filed for bankruptcy at some later point;
  - and the unknown judge in that case approved debtor in possession financing in the same amount as approved by this Court, then Invesco would have been offered an opportunity to participate *pro rata* with other lenders;
  - and then if Robertshaw elected to pursue another 363 sale,
  - and if a stalking horse credit bid was submitted and the bid was approved by the judge, then Invesco would have received a 23.9% equity interest in the stalking horse purchasing entity; and
  - Invesco would have also received 23.9% of any takeback debt allocated to claims that were credit bid.[124]

Invesco estimates "direct" damages of between $66.6 and $102.5 million.[125] The objectors argue these damages should be disallowed because they are consequential damages and therefore waived under § 9.04 of the SPCA.[126] And these damages are too speculative.[127] The Court agrees.

Section 9.04 provides that each party to the SPCA:

> waives, any claim against any other party hereto . . . on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement….except, the Borrowers shall remain liable to the extent such damages would otherwise be subject to indemnification pursuant to the terms of Section 9.03.[128]

Invesco's Debt & Equity Damages are permissible only if they are direct general damages. General damages "are the natural and probable consequence of the breach" of a contract. *Biotronik A.G. v. Conor Medsystems Ireland, Ltd.*, 22 N.Y.3d 799, 806 (2014) (citation omitted). In contrast, consequential damages do not "directly flow from the breach." *Id.*

New York law does not recognize damages for lost profits that require "the court to accept too many speculative assumptions." *Wathne Imports, Ltd. v. PRL USA, Inc.*, 953 N.Y.S.2d 7, 11 (App. Div. 2012) (citing *Ashland Mgt. v. Janien*, 82

[124] Amended Proof of Claim ¶ 12–13, ECF No. 833-2.
[125] Amended Proof of Claim ¶ 12–13, ECF No. 833-2.
[126] Robertshaw's Obj. ¶51, ECF No. 797; Ad Hoc Group's Obj. ¶15, ECF No. 792.
[127] Robertshaw's Obj. ¶57, ECF No. 797; Ad Hoc Group's Obj. ¶20, ECF No. 792.
[128] Super-Priority Credit Agreement, § 9.02(b), ECF No. 833-12.

N.Y.2d 395, 405–06 (N.Y. 1993)). Lost profits may be classified as either general or consequential damages. *Biotronik A.G.*, 22 N.Y.3d at 806. But a court will only determine that lost profits are general damages if the parties "bargained" for the lost profits and if such damages are "the direct and immediate fruits of the contract" *Id.* (citations omitted).

When lost profits are considered consequential damages, a party may only recover them when: "(1) it is demonstrated with certainty that the damages have been caused by the breach, (2) the extent of the loss is capable of proof with reasonable certainty, and (3) it is established that the damages were fairly within the contemplation of the parties." *Kenford Co. v. Erie County*, 67 N.Y.2d 257, 261 (N.Y. 1986).

In the Adversary Proceeding, the Ad Hoc Group and One Rock argued the mandatory prepayment provision did not apply to the December Transactions and nothing in the Record suggests that any party would have agreed to provide $80 million in additional liquidity. There is also no evidence about what would happen after any such liquidity would have been provided. And there is no evidence about what Robertshaw, an official committee of unsecured creditors, or a bankruptcy judge would do if any of the facts before this Court changed. The Court reiterates its statements in the Adversary Decision:

> A lender cannot force a company to sign bankruptcy petitions. And, assuming a filing, no one can be certain what would have happened in a bankruptcy case filed on January 2. All requests for relief are subject to bankruptcy court approval after the presentation of sufficient evidence to warrant relief and consideration of applicable law.[129]

The cases that Invesco relies on for general propositions, such as that there must only be an "adequate" basis for calculating lost profit damages, directly contradict Invesco's broader position.[130] Invesco's theories on what would have happened had Robertshaw used the $80 million of the Net Proceeds to make the prepayments, and what parties would have done on the occurrence of that hypothetical condition, are not only speculative, but they are also textbook consequential damages claims. The damages here are based on one assumption after another, none of which were proven to have been reasonably likely, much less reasonably certain, to have occurred. Nor is there any evidence that the Debt & Equity Damages were fairly contemplated by the parties as required by New York

[129] Adversary Decision at 16.

[130] *See, e.g.*, *In re Lehman Bros. Holdings Inc.*, 544 B.R. 62, 72–75 (Bankr. S.D.N.Y. 2015) (holding that lost profits were consequential damages and barred by a credit agreement's consequential damages waiver).

law. In sum, the Debt & Equity Damages are speculative and therefore unrecoverable. And § 9.04 provides that each lender—including Invesco—waives consequential damages. The Debt & Equity Damages are disallowed in their entirety.

IV. Invesco is Not Entitled to Indemnification Under Section 9.03(b)

Invesco's also seeks indemnification for the Prepayment Damages, Debt & Equity Damages, and Litigation Expenses under § 9.03(b) resulting from Robertshaw's performance under the SPCA and litigation relating to such performance. Invesco seeks to have these damages indemnified because § 2.18(b)(ii) provides that a narrow class of indemnities have priority over all other secured claims—including potentially the Ad Hoc Group and One Rock's claims used to credit bid for Robertshaw's assets.[131] The objectors argue that Invesco's damages and litigation expense claims are not permitted indemnity claims under § 9.03(b).[132] The objectors are right. The text of § 9.03(b), structure of the SPCA, and appliable New York law do not support Invesco's indemnification claim.[133]

Section 9.03(b) states:

> The Borrowers shall indemnify . . . each Lender, and each Related Party of any of the foregoing persons (each such Person called an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all actual losses, claims, damages, liabilities and expenses. . . incurred by . . . any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, **the performance by the parties hereto of their respective obligations thereunder** or the consummation of the Transactions or any other transactions contemplated hereby or thereby, (ii) the use of the proceeds of the Loans, (iii) **any actual or prospective claim, litigation, investigation or proceeding . . . relating to any of the foregoing, whether based on contract, tort or any other theory . . . (and regardless of whether such matter is initiated by or against a third party or by or against the Borrowers, any other**

[131] Super-Priority Credit Agreement, § 9.02(b), ECF No. 833-12.
[132] Robertshaw's Obj. ¶ 33, ECF No. 797; Ad Hoc Group's Obj. ¶ 5, ECF No. 792; One Rock's Obj. ¶ 5, ECF No. 796.
[133] The text of § 9.03(b) does not support indemnification of damages arising out of Robertshaw's breach of the SPCA and the waiver of consequential damages in § 9.04 precludes indemnification of Debt & Equity Damages.

Loan Party, any Lender or any of their respective Affiliates).

Under New York law, a "contractual provision that is clear on its face must be enforced according to the plain meaning of its terms." *Bank of N.Y. Mellon v. WMC Mortg., LLC*, 136 A.D.3d 1, 6 (1st Dept. 2015) (citation omitted). Courts may not "add or excise terms, nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing." *Id.* (citation omitted). This is especially so "in commercial contracts negotiated at arm's length by sophisticated, counseled business people." *Id.* (citation omitted). And "[i]n interpreting a contract, the intent of the parties governs," and therefore "[a] contract should be construed so as to give full meaning and effect to all of its provisions." *Am. Express Bank Ltd. v. Uniroyal*, Inc., 164 A.D.2d 275, 277, 562 N.Y.S.2d 613, 614 (1st Dep't 1990) (citations omitted).

New York law also provides that indemnity provisions must be "strictly construed." *Lebedev v. Blavatnik*, 193 A.D.3d 175, 186 (1st Dep't 2021); *Hooper Assocs., Ltd. v. AGS Computs., Inc.*, 74 N.Y. 2d 487, 491 (1989). The purpose of this rule of construction is to "avoid the creation of a duty which the parties did not intend to assume." *Lebedev*, 193 A.D.3d at 186. A promise to indemnify another "should not be found unless it can be clearly implied from the language and purpose of the entire agreement and surrounding facts and circumstances. " *Hooper Assocs.*, 74 N.Y. 2d at 491.

Invesco argues that it is entitled to indemnification from Robertshaw (a) for losses and damages arising out of, in connection with, or as a result of (b) the "performance" by the parties (Robertshaw and the Ad Hoc Group) of their obligations under the SPCA, and (c) actual and prospective litigation relating to such performance.[134] "Performance" is undefined within the SPCA, so the Court applies its plain meaning. "Performance" means the fulfilment of an obligation and the execution of an action.[135] The meaning of performance here is consistent with how it is used in other sections of the SPCA. *See, e.g.*, §§ 2.24(b); 7.01; 9.15; 10.03. Analyzing the use of "performance" throughout the SPCA—which appears over 50 times—shows that "performance" does not equate to non-performance or breach.

For example:

- Section 2.24(b): "If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms

[134] Invesco's Rep. ¶ 29, ECF No. 818.
[135] *Performance*, MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary/performance (last visited Aug. 21, 2024).

thereof, then in each such event, the other Borrowers will make such payment with respect to, or perform, such Obligation."

- Section 7.01(b) describes "Failure of any Loan Party" to pay principal or interest, "breach or default by any Loan Party", and "nonperformance of obligations."

- Section 9.15: "respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder."

- Section 10.03(c)(v): "the obligations of any Loan Guarantor hereunder are not discharged or impaired or otherwise affected by . . . any default, failure or delay . . . in the payment or performance of any of the Guaranteed Obligations."

Invesco's damages claims are based on Robertshaw's breach of the SPCA by failing to apply the Net Proceeds in accordance with § 2.11(b) of the SPCA. Invesco has a breach of contract claim based on a failure to perform (failure to prepay using all the Net Proceeds), not an indemnity claim based on performance. The SPCA's use of the term "performance" in § 9.03(b) and language related to breach and failure to perform in other provisions "indicates that the parties knew how to cover suits between the parties—and how to write a narrower provision—if they wanted to do so." *In re Refco Sec. Litig.*, 890 F. Supp. 2d 332, 345 (S.D.N.Y. 2012). Invesco's reading of 9.03(b) is not "clearly implied from the language and purpose of the entire agreement and surrounding facts and circumstances" *Hooper Assocs.*, 74 N.Y. 2d at 491. And if there is no indemnity based on a failure to perform, there is no indemnity for any actual or prospective litigation relating to non-performance.

Moreover, New York courts are especially cautious when interpreting an indemnity clause to award attorney's fees to a contracting party. *See, e.g.*, *Adesso Cafe Bar & Grill, Inc. v. Burton*, 904 N.Y.S.2d 490, 491 (2010); *Sage Sys., Inc. v. Liss*, 198 N.E.3d 768, 770 (2022). New York courts have long held that "the court should not infer a party's intention to waive the benefit of the [American Rule] unless the intention to do so is *unmistakably clear* from the language of the promise." *Id.* (quoting *Hooper Assocs., Ltd.*, 74 N.Y. 2d at 492) (emphasis added). This standard creates a "presumption" against a finding of indemnification of attorney's fees for intra-party litigation. *In re Refco Sec. Litig.*, 890 F. Supp. 2d at 341.

Section 9.03(b) does not unambiguously indicate Invesco is entitled to indemnification for damages or attorney's fees based on a breach of contract due to a failure to perform or litigation relating to such non-performance.[136] In accordance with New York law and the plain language of the SPCA, the Court will not read-in a duty of indemnification when no such duty is present.

Invesco is not entitled to indemnification under § 9.03(b) for Prepayment Damages, Debt & Equity Damages, or Litigation Expenses.

V. Invesco's Claim for Litigation Expenses Under Section 9.03(a)

Invesco also seeks reimbursement for Litigation Expenses under § 9.03(a):

> The Borrowers shall pay . . . (ii) ***all reasonable and documented out-of-pocket expenses incurred by*** the Administrative Agent or ***the Lenders and each of their respective Affiliates***, including (but limited, in the case of legal fees and expenses, to the reasonable and documented out-of-pocket fees, disbursements and other charges of one firm of outside counsel to all such persons taken as a whole and, solely in the case of an actual conflict of interest, one additional outside counsel to all such persons taken as a whole, and, if necessary, of one local counsel in any relevant jurisdiction to such persons, taken as a whole and, solely in the case of an actual conflict of interest, one additional local counsel in such relevant jurisdiction to all such persons taken as a whole) . . . ***in connection with the enforcement, collection or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made hereunder***.

Reimbursement payments under § 9.03(a) are not entitled to the same priority under § 2.18 as provided under § 9.03(b). These reimbursements are paid after principal, interest, make-whole payments relating to the term loans under the SPCA.[137]

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[136] In its Reply, Invesco asserts that it is entitled to indemnification under the SPCA because Ad Hoc Group and One Rock are judicially estopped from taking a contrary position. Invesco's Rep. ¶ 40, ECF No. 818. Invesco's argument conflates judicial estoppel with a claim for damages being established as a matter of law. Regardless of whether an objecting party is judicially estopped from *arguing* against indemnification, Invesco still failed to establish that the SPCA's language is sufficient, under New York law, to establish a right to indemnification.

[137] Super-Priority Credit Agreement, § 2.18(b)(iii), ECF No. 833-12.

The text supports Invesco's right to reimbursement for litigation expenses *incurred* in enforcing, collecting, and enforcing its right to payment for Robertshaw's breach of the mandatory prepayment required under the SPCA.[138] The Court rejects the objecting parties' arguments to the contrary. The text of the SPCA is clear on this point.

Section 9.03(a) requires reimbursable expenses to be "reasonable" and "documented"[139] New York law requires the Court to analyze the fees request here and determine whether they are reasonable. *See, e.g.*, *Miller Realty Assoc. v. Amendola*, 51 AD3d 987, 990–91 (2008). Analyzing reasonableness requires the moving party to demonstrate reasonableness based, among other factors, on:

> (1) the time and labor required, the difficulty of the questions involved, the skill required to handle the problems presented; (2) the lawyer's experience, ability, and reputation; (3) the amount involved and benefit resulting to the client from the services; (4) the customary fee charged for similar services; (5) the contingency or certainty of compensation; (6) the results obtained; and (7) the responsibility involved. *RMP Cap. Corp. v. Victory Jet, LLC*, 139 A.D.3d 836, 839 (2016).

Invesco seeks reimbursement of the following professional fees.[140]

Firm/Advisor	Fees
Glenn Agre Bergman & Fuentes LLP	$10,599,122.50
Holland & Knight LLP	$321,888.60
Stikeman Elliott LLP	$75,146.90
Galicia Abogados. S.C.	$44,357.50
Greenhill & Co. LLC	$942,514.48[141]
Riveron RTS, LLC	$69,299.65
TOTAL	**$12,052,329.63**

[138] Super-Priority Credit Agreement, § 9.03(a), ECF No. 833-12.
[139] Super-Priority Credit Agreement, § 9.03(a), ECF No. 833-12.
[140] Invesco's Witness and Exhibit List, Amended Proof of Claim, ECF No. 833-2.
[141] This amount does not include a $3.5 million completion fee payable upon settlement or other award to Invesco.

The Claim includes a similar summary chart of the fees listed above without any supporting documentation.[142] Failing to include such evidence was not fatal to Invesco's claim because the Court conducted an evidentiary hearing that provided Invesco an opportunity to "prove-up" its claim. But Invesco failed to do so in several ways.[143]

Invesco offered no live witness testimony or declaration in support of any fees. And there is no invoice or backup documentation in the Record about the Stikeman Elliot, Galicia Abogados, or Riveron RTS fees. The Court has no way to determine whether these fees are reimbursable under § 9.03(a). Thus, these fees and expenses are disallowed.

Invesco submitted an invoice summary schedule for Greenhill that says fees are based on Greenhill's engagement letter with Invesco.[144] But neither the engagement letter nor any back-up documentation are in the Record. This Court has no documentation or means to determine the work Greenhill performed, whether it relates to reimbursable matters under § 9.03(a), or whether any such work was reasonable. Surprisingly, Augustine, the co-head of the Financing, Advisory, and Restructuring Practice at Greenhill, testified at the hearing about certain damages alleged in the Claim, but he was not asked any questions about his firm's fees. For these reasons, the Court finds that Greenhill's fees are not reimbursable under § 9.03(a) either.

Section 9.03(a) permits reimbursement of fees and expenses for one primary counsel and one local counsel to all parties taken as a whole.[145] The Court also construes this section to permit Invesco to retain its own counsel in connection with an intra-lender dispute. That is true, especially here, where Invesco was a plaintiff in the New York litigation and a defendant in the Adversary Proceeding.

The Court reviewed the relevant documentation and finds that Holland & Knight's fees and expenses, as local counsel, totaling $321,888.60 are reasonable, documented, and reimbursable under § 9.03(a). The Court also reviewed and finds Glenn Agre's fees, as primary counsel, totaling $10,599,122.50, to be reasonable, documented, and reimbursable under § 9.03(a).

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[142] *See* Invesco's Witness and Exhibit List, Amended Proof of Claim, ECF No. 833-2.
[143] Invesco's counsel expressed that it may be the norm for parties to submit fees without evidentiary support. *See* August 1, 2024 Tr. 32:10–33:7; 128:3–21. The Court strongly disagrees. Evidence always matters, especially in contested matters. The objecting parties argue that Invesco failed to provide supporting documentation or prove that the requested fees are reasonable. Invesco bore the burden of proof on its proof of claim and that requires evidence.
[144] Invesco's Witness and Exhibit List, Greenhill Invoice Ledger, ECF No. 833-37.
[145] Super-Priority Credit Agreement, § 9.03(a), ECF No. 833-12.

In sum, Invesco has an allowed claim under § 9.03(a) for reimbursement of attorney's fees and expenses for Holland & Knight LLP and Glenn Agre Bergman & Fuentes LLP totaling $10,921,011.10.

VI. Prejudgment Interest

Under New York law, "a plaintiff who prevails on a claim for breach of contract is entitled to prejudgment interest as a matter of right." *U.S. Naval Inst. v. Charter Commc'ns, Inc.*, 936 F.2d 692, 698 (2d Cir. 1991). The New York Statutory Judgment rate is 9.00%. Invesco is entitled to prejudgment interest from December 11, 2023 (the date of the December Transactions) through February 15, 2024 (the petition date) based on the Prepayment Damages.[146]

Conclusion

For the reasons stated above, it is:

ORDERED that Invesco has an allowed Class 6 Funded Debt Claim for $50,329,210.27; consisting of $39,408,199.17 Prepayment Damages and $10,921,011.10 attorney's fees and expenses under § 9.03(a), plus prejudgment interest on Prepayment Damages from December 11, 2023 through February 15, 2024; it is further

ORDERED that the Claim will be treated in accordance with Robertshaw's confirmed chapter 11 plan and the orders confirming the chapter 11 plan (ECF Nos. 959, 960); it is further

ORDERED that Kroll Restructuring Administration LLC, Robertshaw's claims and noticing agent, is authorized and directed to update the claims register maintained in these chapter 11 to reflect the relief granted in this Order; it is further

ORDERED that the Court retains exclusive jurisdiction over all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: August 21, 2024

Christopher Lopez
United States Bankruptcy Judge

[146] Unsecured creditors are not entitled to postpetition interest based on prepetition claims. 11 U.S.C. § 502(b). And there can be no prejudgment interest for reimbursement claims awarded here under § 9.03(a).