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Client Alert: First Brands Chapter 11 Filing: Check Engine Light on for Banks, Private Credit and Vendors

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After the Chapter 11 filing of Cleveland-based First Brands Group LLC (Tier 1 automotive supplier) in the Southern District of Texas on September 28, 2025, various private credit executives (including from Apollo, Ares and Blackstone) appeared before the House of Lords in the UK Parliament to defend the private credit industry. This was in response to the House of Lords Financial Services Regulation Committee's inquiry into the growth of the private credit market and comparisons between the 2008 financial crisis and current private equity credit practices.

According to the December 17, 2025 edition of the *London Financial Times*, such executives hit back on the "misinformation" about the private credit industry. However, the *Financial Times* reports that JP Morgan Chase's Jamie Dimon disagrees, describing a "huge arbitrage taking place" as lending moves from the banking sector into more lightly regulated private credit rivals. Dimon warned there were more "cockroaches" to scuttle out after the private credit boom.

Credit intelligence company Octus reported that the Federal Reserve's October FOMC (Federal Open Market Committee) meeting minutes of October 28-29, 2025 revealed discussions about recent failures in nonbank credit activity and concerns over private credit sector risks, including loan quality, funding practices, and potential impacts on the real economy. The minutes also noted recent bankruptcies raised concerns about credit quality and hidden leverage. Federal Reserve Chair Jerome Powell mentioned that significant losses in automobile credit institutions appear to be isolated events, not indicating a broader credit issue.

Octus also reported that U.S. Senators Elizabeth Warren and Jack Reed have urged U.S. banking regulators to take immediate action to strengthen the resilience of the banking system amid emerging cracks in credit markets, particularly private credit markets. The senators expressed concerns over the interconnectedness of banks and nonbank lenders, which could exacerbate credit risks, and urged for enhanced capital requirements and limitations on executive compensation.

The First Brands Chapter 11 filing shines a “check engine” light on the increased concerns of the House of Lords, the Federal Reserve and U.S. Senators.

Upon filing, the public record reflects a capital structure that included approximately $5.5 billion in term loans, an asset-based lending facility with committed capacity of up to $250 million, and extensive off-balance-sheet obligations, estimated to include $2.3 billion of third-party factoring and $800 million of unsecured supply-chain finance.

After the disclosure of off-balance-sheet financing obligations, factoring creditor Raistone Capital and several affiliates filed an emergency motion for the appointment of an independent examiner under Section 1104 of the Bankruptcy Code to investigate the disappearance of up to $2.3 billion in funds from factored accounts receivable and third-party factoring irregularities. These concerns were initially flagged in the first-day declarations of First Brands’ appointed Chief Restructuring Officer Charles Moore of Alvarez & Marsal.

The appointment of an examiner is an unusual remedy in U.S. Chapter 11 cases, giving a third-party examiner broad powers to investigate and report to the Bankruptcy Court and stakeholders on questionable pre-petition transactions and activities.

The grounds for an examiner in the First Brands Chapter 11 case include:

- The magnitude of off-balance-sheet arrangements. The debtors disclosed an unpaid balance of roughly $2.3 billion under multiple factoring programs where proceeds of accounts receivable were received but not remitted to factors. Related assertions include the accounts receivable were factored more than once, altered or non-existent invoices, and an inability to clearly trade cash.
- Inventory pledged to certain financing parties, including lenders to special-purpose vehicles and equipment lessors, appears to have remained in the borrowing base of the debtors’ ABL and other facilities, creating a dispute about which entity(ies) have valid first priority security interests in the assets.

On November 18, 2025, the Bankruptcy Court approved the appointment of an examiner, and Martin De Luca of Boies Schiller was confirmed as examiner on December 16, 2025.

In addition to the appointment of an examiner, on October 31, 2025, inventory lender Evolution Credit Opportunity Master Fund II-B filed a declaratory judgment adversary proceeding seeking to determine it has a perfected first-priority security to interest in collateral that was transferred from First Brands entities to SPV First Brands affiliates, where the same assets were re-pledged as collateral to other lenders.

On November 14, 2025, Aequum Capital and UMB Bank, as administrative agents under the revolving credit facilities with First Brands, moved to intervene as plaintiffs in Evolution’s declaratory judgment action, to protect their collateral for loans to the First Brands Debtors from competing claims of Evolution and other creditors.

The record reflects the following competing collateral claimants:

- Onset Financial, $1.9 billion of equipment and inventory financing.
- Evolution Credit, approximately $230 million of inventory-based loans.

- Aequum Capital, with an approximately $45 million inventory-backed collateral facility.
- Bank of America, as agent for an ABL facility, up to $250 million.
- Accounts receivables backed facilities including Katsumi for $1.75 billion and a Leucadia/Jefferies facility of approximately $715 million.
- First Brands disclosed third-party factoring obligations of $2.3 billion and supply-chain finance obligations of $800 million.

The Examiner investigation and the declaratory judgment proceeding are in early stages, and will undoubtedly percolate well into 2026 for the ultimate outcome on entitlement to various First Brands assets as collateral.

Aside from the First Brands ongoing litigation, the Chapter 11 “reorganization” is fraught with “check engine” warnings.

First Brands is facing significant financial challenges due to concerns about its cash position and liquidity needs. First Brands reported a cash balance of nearly $210 million at the end of October, and a net cash outflow of $268 million. Also, Alvarez & Marsal reported discrepancies between invoices and corresponding cash receipts of approximately $2.5 billion.

First Brands has also experienced a decline in the trading prices for its DIP A and DIP B loans, indicating concerns about First Brands’ financial condition. The company will no doubt require exit financing to support confirmation of any Chapter 11 Plan. It would not be surprising if First Brands ultimately engages in a sales process to sell assets including its valuable brands, including FRAM, Trico, Raybestos, Autolite, Luber-finer and Cardone.

The DIP financing “Milestones” require that First Brands (1) produce a go-forward business plan by January 31, 2026, (2) enter into a restructuring support agreement by March 28, 2026 and launch a sales process by March 28, 2026.

Stay tuned to the First Brands Chapter 11 for the outcome of competing claims of creditors on First Brands’ assets, the findings of the Chapter 11 examiner, potential future litigation, and whether First Brands has a chance of restructuring its business. I predict the overwhelming and competing debt claims and their attendant litigation will ultimately derail any realistic opportunity for a restructuring of the existing First Brands business. Rather, the assets and the brands will be sold free and clear of liens under Section 363 of the Bankruptcy Code, with all the claims attaching to proceeds of sale(s). This strategy will likely allow First Brands to obtain maximum sales values and avoid a likely erosion in values due to operating losses. Creditor claims will be resolved by lengthy litigation over the respective priorities of claimants’ positions in the proceeds of sales.

For more information, please contact David Conaway.