

# Assessing Potential Legal Claims From Private Credit Turmoil

By **Javier Bleichmar, Evan Kubota and Brandon Slotkin** (March 26, 2026)

Private credit markets are in turmoil. In February, Market Financial Solutions, a U.K. mortgage company, entered into bankruptcy after creditors accused it of fraud and double-pledging assets.[1] MFS had significant debt from private credit, and its collapse left private credit investors with hundreds of millions of dollars in losses.[2]

Just a few months earlier, First Brands Group was similarly accused of fraud and double-pledging assets, again leaving private credit investors with substantial losses.[3]

And on Feb. 24 in *Eugenia II Investment Holdings Ltd. v. Leucadia Asset Management LLC*, investors sued Jefferies Financial Group Inc. affiliates — which allegedly facilitated the plaintiffs' doomed investments in First Brands — in the Supreme Court of the State of New York, County of New York, for negligent misrepresentation, fraud and breaches of fiduciary duties.[4]

These high-profile alleged frauds may only be the tip of the iceberg. Private credit borrowers are defaulting at an increasing rate.

Fitch Ratings' private credit default rate rose to 5.8% in January 2026 — the highest it has ever tracked.[5] Specifically, Fitch recorded nearly twice as many default events in January 2026 compared to the 2025 average.[6] Similarly, the default rate in the consumer products space more than doubled over the last year — from 6.1% in January 2025 to 12.8% in January 2026.[7]

Investors are now fleeing private credit as the sector comes under increasing stress. A technology-focused Blue Owl Capital Inc. fund allowed investors to redeem 15% of net assets, while a different Blue Owl fund halted quarterly redemptions and started selling assets to return capital to investors.[8] Blackstone Inc. will allow record redemptions from its flagship private credit fund this quarter — requiring the firm and its employees to pitch in capital to meet the redemption requests.[9]

These negative trends in private credit highlight the need for continued investor vigilance. While the facts are continuing to develop — and it is not yet possible to determine the full extent of any misconduct — First Brands provides an important case study for investors to help minimize future losses and maximize any potential recovery in the event of a private credit default.

## Lessons From First Brands

First Brands was a privately owned automotive parts conglomerate that pursued an aggressive M&A strategy funded by term loans and supply chain financing. Since 2018, First Brands completed over 20 acquisitions for over \$4 billion — several of which were led by Jefferies, one of First Brands' primary investment bankers.[10]



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By summer 2025, however, First Brands was struggling with its heavy debt load, and in June 2025, Jefferies made a final, failed attempt to refinance First Brands' debt.[11] After First Brands failed to provide a requested quality-of-earnings report, the company filed for bankruptcy on Sept. 28.

First Brands' rapid collapse illustrates the convergence of private credit's high risk, opacity, and potential for conflicts of interest and fraud.

### ***High Credit Risk and Opacity***

Private credit investors should be cognizant of their outsized counterparty risk. Private credit borrowers typically have low credit ratings and limited or no access to public markets.[12] These factors raise the risk of default, especially given the high interest rates on private loans. Private credit borrowers may also present a higher potential for fraud, particularly for companies owned or controlled by single individuals.

As for First Brands, its equity was 100% owned by one individual, Patrick James, who had faced multiple prior fraud accusations — including claims from a 2011 case that he had created a "web of companies" to transfer funds "in an attempt to defraud" creditors, and 2009 claims that he had made "misrepresentations and omissions relating" to a bank lender's collateral.[13]

First Brands' debt was far larger than widely understood. The bankruptcy exposed First Brands' extensive use of off-balance-sheet debt through a complex web of special purpose vehicles with actual liabilities reportedly over \$11.6 billion — nearly double the \$5.9 billion Jefferies claimed.[14] Further, First Brands heavily relied on factoring — the sale of its accounts receivable to third parties at a discount to raise cash.

On Jan. 27, the U.S. Department of Justice brought criminal charges against James and his brother in the U.S. District Court for the Southern District of New York for allegedly double-pledging these assets to various lenders and other accounts receivable manipulations.[15]

Similarly, First Brands' new management sued James on Nov. 3 in the U.S. Bankruptcy Court for the Southern District of Texas, alleging that he "fraudulently secured billions of dollars of financing for First Brands," including through "non-existent or doctored invoices" and "double-pledging collateral," "only to turn around and enrich himself and his family by misappropriating hundreds of millions (if not billions) of dollars." [16]

These events illustrate the credit risk of private companies that provide limited financial information.

### ***Concentration Risk***

Competition in the private credit sector may also increase risk by lowering standards.

As private credit's dry powder for new investments has increased,[17] without a corresponding increase in safe lending opportunities, private credit funds are likely to pursue increasingly risky options to fully deploy their capital. As Neuberger Berman's chief investment officer stated in October: "In a period of ready capital, it's inevitable that greater risk will enter the system in the form of more aggressive and sometimes unscrupulous operators." [18]

First Brands demonstrates the point. A Jefferies-operated fund, Point Bonita Capital,

invested \$715 million, or 24% of its \$3 billion trade finance portfolio, in First Brands' receivables.[19]

To make matters worse, First Brands allegedly used an especially risky type of factoring where customers paid First Brands instead of paying investors directly — exposing Point Bonita investors to the risk that First Brands could misappropriate the funds.[20] First Brands reportedly misappropriated at least \$1.9 billion in cash with respect to factored receivables.[21]

### ***Potential Conflicts of Interest***

Investors also face the risk of potential misconduct by fund managers. While investors rely on private credit managers to perform due diligence, monitor loans and accurately report the value of investments, managers — who are largely investing outside investors' money — may be incentivized to take outsized risks.

For example, Point Bonita's unusually large exposure to First Brands is notable given Jefferies' long-term investment banking relationship with First Brands. That relationship — and the lucrative investment banking fees it generated — may have provided Jefferies with an incentive to conceal the unusual size and risk of the First Brands investment, while using investors' money to buy receivables and keep First Brands afloat.

### ***Potential Misstatements and Fraud***

The opaque nature of private credit investments exposes investors to misstatements and omissions.

As indicated above, Jefferies reportedly concealed nearly half of First Brands' debt from investors. Further, Point Bonita reportedly concealed the First Brands investment itself, instead telling investors that Point Bonita's largest exposure was the commodities firm Glencore at 12.1% of total assets — while omitting the First Brands position, which was over twice as large.[22]

### ***Potential Legal Claims***

As defaults and redemptions increase, investors may pursue legal claims to recover losses. The Eugenia action is an instructive case study for certain claims, while the facts of the First Brands collapse indicate other potential avenues for recovery.

#### ***Tort Claims***

Breach of fiduciary duty and negligence claims may exist where the fund manager violates its duties of oversight, loyalty and care.

For example, the Eugenia action brings breach of fiduciary duty claims — under Cayman law — for the defendants' alleged failure to maintain so-called cash dominion over First Brands' trade finance transactions, which would have ensured that First Brands' trade finance counterparties paid the defendants directly, instead of First Brands itself, and limited First Brands' ability to double-pledge its assets.[23]

#### ***Disclosure-Based Claims***

False or misleading statements about the fund's investments, valuation, strategy, risk and

diligence, among other issues, may support disclosure-based claims, such as fraud and negligent misrepresentation, against fund managers and other relevant parties. For instance, the Eugenia action alleged that the defendants committed fraud by falsely representing that they would maintain cash dominion.[24]

Such claims may arise under the law of various jurisdictions, including federal statutes, state statutes, common law and foreign law. The Eugenia action, as an example, asserts claims under Cayman law. Investors should pay close attention to choice-of-law provisions in their investments' governing documents and potential claims under those laws.

### ***Contractual Claims***

Investors may also pursue contract-based claims, including for breaches of the fund's investment guidelines. While the Eugenia action does not assert breach of contract claims, investors should evaluate subscription and other investment agreements to determine whether such claims are available.

Importantly, contract-based claims typically allow investors to recover damages regardless of whether the manager acted in bad faith.

### **Conclusion**

Over the last few years, private credit's high returns have attracted investors and fueled rapid growth in the sector. However, as the economy enters a period of significant uncertainty, the recent increase in alleged misconduct highlights key risks of private credit investments.

These risks include lending to high-risk entities, overconcentration in risky investments, and the potential for fraud and conflicts of interest — all magnified by the sector's opacity. Investors should be vigilant of increased counterparty, transparency, diligence and allocation risks.

Investors should also ensure that they can protect their rights and recover any losses resulting from misconduct. Investors should consider investigating tort, disclosure-based and contract claims, among other claims that may be available in the specific circumstances of a private credit investment.

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