

FRIDAY, APRIL 17, 2026

Opaque loans, inflated values and a lawsuit that could crack private credit

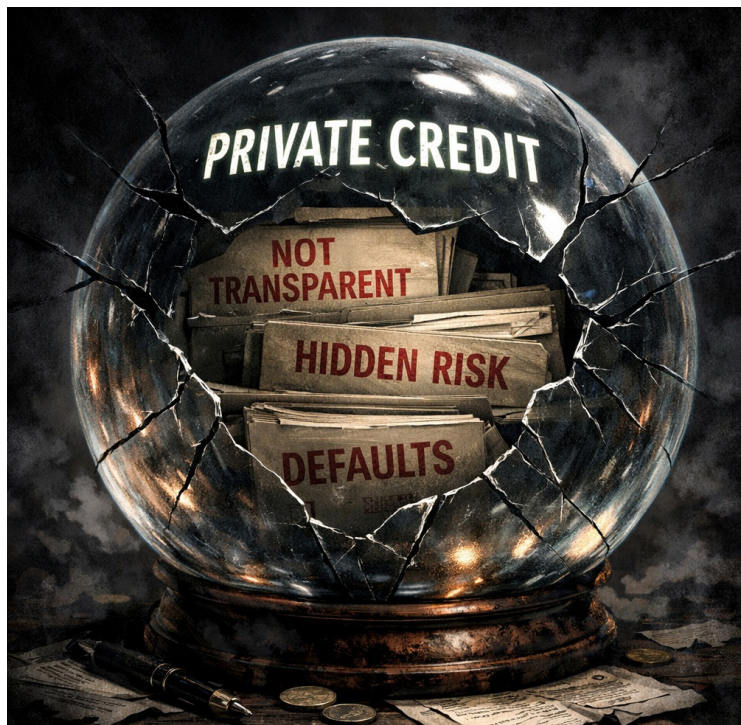
Amid mounting stress in the opaque private credit market, *Burnell v. BlackRock TCP Capital Corp.* spotlights investor claims that lenders inflated portfolio values—raising the specter of litigation reminiscent of the 2008 financial crisis.

By Daniel Barenbaum and Michael Dark

Many young litigators and businesspeople know the Great Financial Crisis of 2008 only as a chapter in a textbook. Driven in large part by high-risk lending in opaque and relatively unregulated corners of the financial market, a housing bubble burst when borrowers defaulted, spurring an international liquidity crisis and a wave of litigation against behemoths such as Bear Stearns and Countrywide. With warning signs of what may be a parallel financial crisis now starting to appear, securities class action litigators representing investors are paying close attention.

In the immediate aftermath of the 2008 Financial Crisis, stricter banking regulations made it more difficult for rapidly growing small and mid-sized private businesses to access capital. As a result, a new industry flourished to serve their needs: private credit. Private credit is, in essence, business lending from non-bank institutions funded by private equity firms and private credit funds to borrower businesses that are unable to obtain liquidity from the corporate bond markets.

This alternative to bank loans filled an important need for young capital-hungry businesses, but at a cost to borrowers, who typically paid a premium of several hundred basis points over public market



This art was created with the assistance of Shutterstock AI tools

debt. These high interest rates offered investors in private lending annual returns of 7-9%, a yield that attracted large swaths of investors who now hold more than one-third of all private credit fund assets. The industry has swelled from about \$300 billion in assets under management by 2010 to more than \$1.7 trillion by 2024, and is expected to keep growing—to as much as \$3.5 trillion by 2028.

The burgeoning industry quickly became intertwined with other critical pillars of the financial markets,

such as insurance companies and banks that backed the loans, but differed from conventional banking in its opacity. Since private lending falls outside the regulations governing conventional bank loans and requires neither lenders nor borrowers to make robust disclosures, investors and regulators alike have little access to information about loan portfolios and risk.

Because the loans themselves are generally negotiated privately, the risks, pricing and terms are usually not visible to investors in private

credit. While the lenders must assign a value to their portfolios of loans, the absence of a public market for the instruments means that the loans are valued using models with proprietary inputs that can introduce considerable subjectivity into portfolio valuation.

The potential defaults would likely not be isolated to specific struggling borrowers. During times of economic turmoil, institutions could be forced to act (or react) at the same time, turning into a vicious spiral. Declines in loan performance could trigger valuation resets, which in turn could ignite margin calls or other concerns for capital, which would be spread across multiple funds and investors simultaneously. Such a scenario could ignite quickly, creating stress beyond the private credit market, spilling into the broader markets.

And potential cracks are starting to appear. In 2025, two companies backed by private credit—auto parts supplier First Brands and car dealership Tricolor—both declared bankruptcy, triggering widespread concerns about risk management and due diligence in the private credit sector.

Further, in February of 2025, BlackRock TCP, a publicly traded private credit company that raises funds from investors to lend to small and mid-sized businesses, sent a chill down the spine of the markets with its fourth quarter and year-end financial results.

Critical among the financial metrics that BlackRock TCP reported was its net asset value (NAV): the value of its underlying assets less liabilities, a figure that turns on the company's ability to offer a fair value of the loan assets in its portfolio. The new quarterly reports startled observers. Last year, by Feb. 27, 2025, loan losses had increased 186%, and yet the company reported in a press release that day that the "vast majority" of its portfolio continued to perform well. But less than a year later, on Jan. 23, 2026, BlackRock TCP announced that its NAV was more than 23% less than it had reported the prior year, and nearly 19% less than it had reported the prior quarter.

Because the company was publicly traded, securities class action plaintiffs and their counsel sought to recover for shareholders. In a complaint filed in February in the Central District of California under the caption *Burnell v. BlackRock TCP Capital Corp. et al.*, No. 2:26-cv-01102, the plaintiffs alleged that BlackRock TCP and certain of its senior officers

had failed to disclose that its investments were not being timely and appropriately valued, and, as a result, that its NAV was overstated.

The plaintiffs' claims may well turn on the argument that, while loans may be valued using models that introduce considerable subjectivity, those loan values mean nothing if the models do not account for changes in the risk profile of the underlying portfolio and if they are not assessed often enough to capture changes in valuation (particularly those driven by market forces already apparent to observers).

While it is too early to assess the viability of these claims, the suit does outline a key avenue of recovery for some investors stung in an incipient private credit crisis. Private credit lenders that are publicly traded are subject to the federal securities laws, which assign liability to companies that knowingly or recklessly deceive investors regarding material information. And investors in non-public private lenders might alternatively seek to allege against man-

agers' causes of action grounded in breaches of fiduciary duty, violations of state Blue Sky laws, gross negligence, or fraud or negligent misrepresentation, focusing on claims of misrepresented portfolio quality and failure to disclose mounting defaults.

Because NAV is critical information to investors in private lenders,

it is safe to say that reporting of these figures will be under intense scrutiny by the securities bar as the borrowing companies come under increasing pressure during volatile economic times. Given the turbulent start to 2026, we are likely to be discussing many more such cases by years' end.

Daniel Barenbaum is a partner, and **Michael Dark** is of counsel at *Berman Tabacco*.

