American Bankruptcy Institute
Southwest Bankruptcy Conference

Issue-Driven Venue Considerations/ Getting Around *Purdue*

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Presented by[1]

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Following the Supreme Court's decision in *Purdue*, practitioners have taken a variety of approaches to confirm plans that include releases or compromises with third parties. This presentation will address successful strategies on a circuit-by-circuit basis, including a discussion of compromises, consent via opt-ins or opt-outs, and full pay plans.

I. Consent

The Supreme Court in *Harrington v. Purdue Pharma L.P.*, held that "[n]othing in what we have said should be construed to call into question *consensual* third-party releases offered in connection with a bankruptcy reorganization plan[.]" 603 U.S. 204, 226, 144 S.Ct. 2071, 2087, 219 L.Ed.2d 721 (2024). Courts have consistently diverged on what constitutes consent for third-party releases in plans of reorganization. Since *Purdue*, many courts have held that third party releases are permissible if they can be deemed consensual through a well-defined opt-out mechanism that provides creditors with clear notice and a meaningful opportunity to choose not to participate in the releases, provided that due process requirements are met. *See In re Spirit Airlines, Inc.*, 668 B.R. 689 (Bankr. S.D.N.Y. 2025); *In re GOL Linhas Aereas Inteligentes, S.A.*, Case No. 24-10118 (MG), 2025 WL 1466055 (Bankr. S.D.N.Y. May 22, 2025); *In re Roman Cath. Diocese of Syracuse, New York*, 667 B.R. 628 (Bankr. N.D.N.Y. 2025); *In re Lavie Care Centers, LLC*, Case No. 24-55507-PMB, 2024 WL 4988600 (Bankr. N.D. Ga. Dec. 5, 2024); *In re Robertshaw U.S. Holdings Corp.*, 662 B.R. 300 (Bankr. S.D. Tex. 2024). Other courts have determined that third-party releases are only consensual if the creditor has taken some form of affirmative action to manifest its consent to the releases. *In re Smallhold, Inc.*, 665 F.R. 704 (Bankr. D. Del. 2024); *In re Tonawanda Coke Corp.*, 662 B.R. 220 (Bankr. W.D.N.Y. 2024); *In re Ebix, Inc.*, Case No. 23-80004-SWE11 (Bankr. N.D. Tex. Jul. 30, 2024) (oral bench ruling). Courts analyzing opt-in mechanisms for third-party releases have consistently held that such mechanisms demonstrate consent. *See In re F21 OpCo, LLC*, Case No. 25-10469-MFW (Bankr. D. Del. Jun.

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24, 2025); *In re Purdue Pharma, L.P.,* No. 19-23649 (SHL) (Bankr. S.D.N.Y. Jun. 20, 2025) (approving disclosure statement containing opt-in release mechanism for plan). Determinations of what constitutes consent may depend on whether state contract law or federal law is applied. *Compare In re GOL LInhas Aereas Intelegentes, S.A.*, Case No. 24-10118 (MG), 2025 WL 1466055 (Bankr. S.D.N.Y. May 22, 2025) (holding that federal, not state law, should apply to the analysis of consent to releases), *with In re Ebix, Inc.*, Case No. 23-80004-SWE11 (Bankr. N.D. Tex. Jul. 30, 2024) (applying Texas state contract law). Overall, the trend is that as long as creditors are adequately informed and given a real choice, opt-out releases may be deemed consensual.

II. Full Satisfaction of Claims

In *Purdue*, the majority explicitly stated that it "did not have occasion to express a view on … a plan that provides for the full satisfaction of claims against a third-party non-debtor." 603 U.S. at 226, 144 S.Ct. at 2088 (2024). In doing so, the Court left open the possibility that non-consensual third-party releases may still be permissible under section 1123(b)(6) of the Bankruptcy Code based upon the full satisfaction of that party's claims. Seizing upon this, the Third Circuit, in *In re Boy Scouts of America*, found that after *Purdue*, a clause in a reorganization plan seeking to extinguish claims was invalid unless the plan fully satisfied the affected claims and the non-debtor releasing parties were "compensated in full[.]" *In re Boy Scouts of America*, 137 F.4th 126, 168–69 (3d Cir. 2025). However, in a subchapter V case in Delaware, the bankruptcy court pointed out that even where creditors are to be paid in full and thus deemed to accept the plan, those parties cannot be deemed to consent to third party releases unless they have been separately given an opportunity to express their consent or objection via being solicited and provided with an opportunity to opt-out. *In re Smallhold, Inc.*, 665 B.R. 704, 723 (Bankr. D. Del. 2024). The District Court in *Wright v. Bird Global, Inc.*, recently upheld a bankruptcy plan on appeal which provided for an order barring tort claimants from bringing suit against certain non-debtor third-party municipalities, instead channeling tort claims into a trust, where the plan provided a guarantee of full satisfaction of those claims. No. 24-CV-23086-RAR, 2025 WL 1662962 at *9 (S.D. Fla. Jun. 11, 2025).

III. Temporary Injunction

The Supreme Court's holding in *Purdue* clarified that bankruptcy courts lack the authority to grant *permanent* injunctive relief that bars creditors from asserting claims against non-debtor third parties. 603 U.S. at 226, 144 S.Ct. at 2088 (2024). However, many courts have distinguished this holding, finding that consistent with prior precedent, bankruptcy courts have the authority to grant *temporary* injunctive relief against third-parties "where the assertion of those claims would interfere with the debtor's reorganization efforts." *In re Parlement Technologies, Inc.*, 661 B.R. 722, 728 (Bankr. D. Del. 2024). Some courts have similarly enjoined potential actions against third parties so that those parties could negotiate with debtors and creditors on a viable plan of reorganization that would include a consensual resolution of those claims. *See In re Purdue Pharma, L.P.*, No. 19-23649-SHL, 2024 WL 4894349 at *7 (S.D.N.Y. Nov. 26, 2024); *see also*

Hal Luftig Co., Inc., 667 B.R. 638 (Bankr. S.D.N.Y. 2025) (extending existing injunctions or stays to facilitate plan confirmation, then extending further through case closure, dismissal, or discharge). Separately, some courts have granted temporary injunctions barring actions against non-debtor third parties in order to give parties "an opportunity to reach a consensual resolution of the non-bankruptcy actions." *See, e.g., In re Genger*, No. 19-13895-JLG, 2025 WL 1727497 at *15 (Bankr. S.D.N.Y. Jun. 20, 2025) (discussing cases where this was appropriate, but denying such relief here, where movant failed to meet their burden).

IV. Narrowing *Purdue*

Overall, courts interpreting the Supreme Court's holding in *Purdue* seem to apply the ruling very narrowly. *See, e.g.*, *Mercy Health Network, Inc. v. Mercy Hosp.*, 2025 WL 1000782 (N.D. Iowa Mar. 3, 2025); *In re Credito Seal, S.A.B. de C.v., SOFOM, E.N.R.*, 2025 WL 977967 (Bankr. D. Del. Apr. 1, 2025); *In re KIDDE-FENWAL, Inc.*, 2025 WL 1693173 (Bankr. D. Del. June 16, 2025); *In re Commercial Express, Inc.*, 2025 WL 1483354 (Bankr. M.D. Fla. May 22, 2025). As the court summarized in *In re Lavie Care Ctrs., LLC*, "*Purdue* is as important for what it did not decide as for what it did." 2024 WL 4988600, at *8 (Bankr. N.D. Ga Dec. 5, 2024). Courts have consistently pointed out that the Supreme Court's ruling is specific to Chapter 11, and thus non-consensual third-party releases may be permissible in other chapters of the Bankruptcy Code. *See e.g.*, *In re Credito Seal, S.A.B. de C.v., SOFOM, E.N.R.*, 2025 WL 977967 (Bankr. D. Del. Apr. 1, 2025); *In re Commercial Express, Inc.*, 2025 WL 1483354 (Bankr. M.D. Fla. May 22, 2025). Some courts have also distinguished *Purdue* on a factual basis. *See, e.g.*, *Mercy Health Network, Inc.*, 2025 WL 1000782 at *9 (noting that unlike *Purdue*, the plan was already in effect/partially consummated, never stayed, and there was no pending litigation "forfeited by the third-party releases").

Other courts have focused on the Supreme Court's decision to specifically interpret section 1123, pointing out that courts may confirm a plan of reorganization that relies on a compromise or a sale, thus justifying non-consensual non-debtor releases through the use of a separate section of the Bankruptcy Code. For instance, in *In re Bird Global, Inc.*, the court confirmed a plan relying upon a compromise under Bankruptcy Rule 9019 and a sale under section 363 of the Bankruptcy Code. *See* 23-20514-CLC (Bankr. S.D. Fla. Aug. 2, 2024). By relying on these statutes, the bankruptcy court determined that the plan complied with *Purdue* because the Supreme Court's holding is limited to the bankruptcy court's authority pursuant to section 1123. *Id.* Additionally, the U.S. District Court in *Wright v. Bird Global, Inc.* stated that "the Supreme Court's decision is inapplicable given that the Confirmation Order approves a Plan that "provide[s] for the full satisfaction of claims against a third-party nondebtor." *Wright v. Bird Glob., Inc.*, No. 24-CV-23086-RAR, 2025 WL 1662962 at *8 (S.D. Fla. June 11, 2025). The district court specifically noted that the Supreme Court stated its holding in *Purdue* would not "justify unwinding reorganization plans that have already become effective and been substantially consummated." *Id.* (quoting *Harrington v. Purdue Pharma L. P.*, 603 U.S. 204 (2024)).

V. Summary and Conclusion:

The Supreme Court's decision in *Purdue* clarified that non-consensual third-party releases are impermissible under section 1123 of the Bankruptcy Code but left open the door for consensual releases and for plans that provide for the full satisfaction of claims. In practice, courts have diverged on what constitutes valid consent: some accept opt-out mechanisms where the language is clear and a claimant's notice and opportunity to object are sufficient to provide due process, whereas other courts require affirmative acts by releasing parties such as marking yes on an opt-in ballot. The legal standard for consent may depend on whether federal or state law is applied, and indeed there are sometimes differing opinions on these standards within the same district. The Supreme Court's *Purdue* decision also did not foreclose the possibility of non-consensual releases where such claims are fully or substantially satisfied, and some courts have upheld such releases when creditors are paid in full or claims are channeled into a trust with a guaranty of payment. While *Purdue* prohibits permanent injunctions barring claims against non-debtors, courts continue to allow temporary injunctions in order to facilitate reorganization or settlement negotiations. Most importantly, courts have generally interpreted the holding in *Purdue* very narrowly, often distinguishing their cases on factual or statutory grounds, and emphasizing that the Supreme Court only barred non-consensual third party releases under section 1123 of the Bankruptcy Code. For practitioners, this means that while non-consensual third party releases face significant hurdles post-*Purdue*, there remains flexibility for consensual releases especially with robust notice and opt-out procedures, for releases tied to full satisfaction of claims, and for temporary injunctive relief to support reorganization efforts.

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Case	Jurisdiction	Judge(s)	Date	Citation	Holding
I. CONSENT					
Acute, Inc. v. ECI Pharmaceuticals, LLC	S.D. Fla.	Ruiz, J.	6/18/2025	2025 WL 1731825	The district court noted the confirmation order in the case before it contained an opt-out provision, unlike the order in *Purdue* . The court explains that "in the wake of *Purdue Pharma* , federal courts around the country have split on whether its holding forbids the confirmation of a liquidation plan with an opt-out third-party release." The court denied ruling on the legality of the opt-out provision because the appellants failed to attend the Confirmation Hearing and timely object to the issue. The court stated that "although the application of *Purdue Pharma* to opt-out third-party releases may be an important issue of general impact, it would be a disservice to the issue to consider it on a record so poorly presented."
In re GOL Linhas Aereas Inteligentes S.A.	S.D.N.Y.	Cote, J.	6/5/2025	2025 WL 1591830	The court vacated its interim stay and denied the U.S. Trustee's motion for a stay of the third-party release and related injunction provisions pending appeal. In denying the injunction, the court stated that it would follow the lower court in saying that "the question of the legality of implied consent through an opt-out process "is a serious one" that has generated a split among courts and that deserved a decision from reviewing courts." However, since the other factors weighed in favor of not granting the injunction, the validity of the opt-out provision was not determinative.
In re F21 OpCo, LLC	Bankr. D. Del.	Walrath, J.	6/24/2025	25-10469-MFW	The court found in oral ruling that the proposed third party releases were consensual and consistent with *Purdue Pharma* based upon express opt-in structure and the fact that the terms were a component of the plan support agreement that was underlying and enabling a consensual confirmation.
In re Lavie Care Ctrs., LLC	Bankr. N.D. Ga.	Baisier, J.	12/5/2024	2024 WL 4988600	The court allows the plan to be confirmed because it has an opt-out provision for the third-party release, making it a consensual release and therefore permissible under *Purdue* . "[W]ith a consensual release, the creditor must be given some form of choice as to whether to give the release. This choice can take different forms." In "an 'opt out' release, all creditors (and sometimes interest-holders) are deemed to give the release unless they check a box to 'opt out'." Since the release was deemed consensual, the court held the plan permissible under *Purdue* stating, "The Plan . . . provides any creditor or interest-holder with the opportunity to opt out of the Release if they do not vote for the Plan and instead take affirmative action to either file an objection to the Release or check the opt-out box on their voting ballots or opt out form." The court states that in determining if opt-out provisions are truly consensual, some courts rely on state contract law to disapprove of opt-out releases, and other use federal bankruptcy law to approve them.
In re GOL Linhas Aereas Inteligentes S.A.	Bankr. S.D.N.Y.	Glenn, C.J.	5/22/2025	2025 WL 1466055	Consent to plan releases must be knowing and voluntary, and while it can sometimes be inferred from a creditor's inaction, this is only permissible if there has been constitutionally adequate service of process; otherwise, relying solely on opt-out language without proper notice would violate due process. In this case, the Court found that service was adequate because many creditors actively participated by voting and opting out, the release provisions were clearly disclosed, and no nonvoting, unimpaired creditors who receive nothing under the plan are bound by the releases, eliminating concerns about unfair surprise.
In re Spirit Airlines, Inc.	Bankr. S.D.N.Y.	Lane, J.	3/7/2025	668 B.R. 689	The court found third-party releases to be consensual under the proposed opt-out mechanism because the releases were clearly and prominently disclosed in all plan materials, there was a consistent and well-publicized history of notice regarding the releases, affected parties were incentivized to stay informed due to promised substantial recoveries, and no objections were raised by the Committee.

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In re Roman Cath. Diocese of Syracuse, New York	Bankr. N.D.N.Y.	Kinsella, J.	11/14/2025	667 B.R. 628	Bankruptcy Court permitted creditors to consent to third-party releases through an opt-out ballot procedure, relying on pre-*Purdue* precedent and emphasizing that the appropriateness of such releases should be determined on a case-by-case basis with adequate notice and due process. The court considered unique factors, including creditor representation, substantial additional consideration from released parties, and the risk of losing that consideration if an opt-in procedure were used. Ultimately, the court found the reasoning in the *LATAM* and *Avianca* cases persuasive in allowing the opt-out process, but required that notice and due process be demonstrated at confirmation.
In re Tonawanda Coke Corp.	Bankr. W.D.N.Y.	Bucki, C.J.	8/27/2024	662 B.R. 220	The Tonawanda court held that non-debtor releases in a bankruptcy plan require affirmative, written consent from creditors; merely deeming consent unless a creditor opts out is insufficient. Without a writing expressly agreeing to the release, creditors are not considered to have consented to releasing non-debtor parties.
In re Murray Energy Holdings Co.	Bankr. S.D. Ohio	Hoffman, J.	10/31/2024	665 B.R. 347	The Ohio District Court explained that *Purdue Pharma* was not relevant to its decision in this case as the releases were consensual. The releases contemplated here were consensual because all parties bound by it either voted to accept the Plan or affirmatively agreed to be a Releasing Party. Additionally, *Purdue* does not permit the unwinding of effective and consummated Chapter 11 Plans.
In re Red River Talc LLC	Bankr. S.D. Tex.	Lopez, J.	3/31/2025	2025 WL 1029302	Red River solicited votes on a pre-packaged plan prior to filing Chapter 11 bankruptcy. Red River stated that it would not file for bankruptcy before receiving at least 75% support of the Plan from its creditors. Red River's prepackaged plan, however, contained improper voting procedures. Additionally, the Court noted that the prepackaged plan contained improper nonconsensual third-party releases that go against the Supreme Court's precedent in *Purdue Pharma* as well as other previous fifth circuit precedent.
Mercy Health Network, Inc. v. Mercy Hosp. ,	N.D. Iowa	Williams, C.J.	3/3/2025	2025 WL 1000782	The court states that *Purdue* "was explicitly limited to the facts of that case" and the case before this court "involve[s] the exact circumstances the *Purdue* Court stated it was not addressing." Specifically, the court noted that, unlike *Purdue* , the plan was already in effect/partially consummated, never stayed, and there was no pending litigation "forfeited by the third-party releases." The court held that, even if *Purdue* were applicable, the plan was permissible under *Purdue Pharma* because the third-party release was considered consensual. The plan "contained a valid opt-out provision and . . . the voting class did not object to it" and the plan was approved by the UCC. "When a claim holder has a clear and prominent explanation of the issues and the opt-out procedure and is given the opportunity to opt out, the release is consensual."
In re Robertshaw US Holdings Corp.	Bankr. S.D. Tex.	Lopez, J.	8/16/2024	662 B.R. 300	The Court explained that the Plan in this case did not involve nonconsensual third-party releases. Instead, the Plan contained consensual releases. The Plan's opponents argued that opt-out provisions are improper. The Texas Bankruptcy Court, however, held that third-party consensual releases achieved through an opt-out provision are permitted. The Court further reasoned that the Plan was "appropriate, afforded affected parties constitutional due process, and a meaningful opportunity to opt out."

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In re Tommy's Fort Worth, LLC.	Bankr. N.D. Tex.	Morris, J.	7/18/2025	24-90000-ELM	The court held in an oral bench ruling that the third-party releases were permissible because they were consensual and were a necessary component of the settlement that enabled the plan to proceed. Rejecting the argument that state contract law governed consent, the court applied federal collective action principles and found that consent was established under the principles of due process through the opt-out mechanism because affected parties received clear notice, an opportunity to opt-out, and representation by the creditor's committee.
In re Tehum Care Services, Inc.	Bankr. S.D. Tex.	Lopez, J.	3/6/2025	23-90086-CML11	Based in part on its findings that the plan was the product of good faith, extensive negotiation, and collaboration among all major constituencies, including the debtor, creditor's committees, and tort claimants, the court ruled in an oral bench ruling that the third party releases approved as part of the plan were consensual under *Purdue Pharma* because the opt-out mechanism ensured that only those who affirmatively agreed would be bound by the releases. The court found that the plan provided adequate notice and due process.
In re Ebix, Inc.	Bankr. N.D. Tex.	Everett, J.	7/30/2024	23-80004-SWE11	Based in large part upon the holding in P*urdue Pharma* , the court ruled that the third-party releases could not be approved to the extent they were based solely on a creditor's silence or failure to opt out, as such silence does not constitute valid consent under applicable law, which the court determined to be Texas state contract law. Ruling that explicit consent is required for third-party releases, the Judge emphasized that the Bankruptcy Code does not authorize nonconsensual releases of claims against non-debtors.
In re Wesco Aircraft Holdings, Inc.	Bankr. S.D. Tex.	Isgur, J.	12/16/2024	23-90611	The court held in an oral bench ruling that based upon the fact that there were $418 million in opt-outs, it was obvious that the debtor's opt-out mechanism was effective in providing creditors with adequate notice and opportunity to object to the third-party releases. As such, the court ruled that the opt-out mechanism for third-party releases was effective and the releases should be effective to all those creditors who were "properly notified."
In re The Container Store Group, Inc.	Bankr. S.D. Tex.	Perez, J.	1/24/2025	24-90627	The court held in an oral bench ruling that *Purdue* was a narrow holding, which did not overrule prior 5th Circuit precedents establishing the necessary requirements for consensual releases. In this case, where the opt-out procedures utilized by the debtors in their pre-packaged plan complied with all prior 5th Circuit precedents on this topic, there was no cause, under *Purdue* , to halt confirmation. Thus, the court found that the third party releases requested in the plan were consensual.
In re Caremax, Inc.	Bankr. N.D. Tex.	Larson, J.	1/31/2025	24-80093	The court held in an oral bench ruling that the opt-out mechanism in the plan was effective based upon the standard in the Fifth Circuit allowing consent to be deemed where parties are afforded constitutional due process and a meaningful opportunity to opt out of the releases contemplated. Here, the court noted that ten percent of creditors who received opt-out forms together with their ballots chose to opt-out of the releases. Likewise, consideration was given to creditors for the releases contemplated under the plan.
In re Eiger BioPharmaceuticals, Inc.	Bankr. N.D. Tex.	Jernigan, J.	9/5/2024	24-80040	The court overruled the U.S. Trustee's opposition to an opt-out provision for third-party releases based on the fact that the opt-out was similar to those routinely used in class action cases and approved regularly by courts across the country. The opt-out mechanism in this case provided for service of an opt-out form to those classes who were deemed to accept the plan as well as those who had an opportunity to vote.

Case	Jurisdiction	Judge(s)	Date	Citation	Holding
II. FULL SATISFACTION OF CLAIMS					
In re Boy Scouts of America	3d. Cir.	Krause, J., Rendell, J.	5/15/2025	137 F.4th 126	The Third Circuit held that because certain non-settling insurers would not be fully compensated for extinguishing their claims, the confirmation order's "judgment reduction mechanism" was inadequate and should be stricken. Specifically, the court noted that full-satisfaction of claims is necessary, post-*Purdue,* outside of asbestos-related cases where section 524(g) provides authority for non-debtor releases. Separately, certain third-party releases were a form of consideration in an Insurance Policy Buyback, which the court categorized as a § 363(b) sale. The court found that the insurers were good-faith purchasers, the sale was closed on the Plan's effective date, and no stay was in effect during the appeal. As such, pursuant to section 363(m) of the Bankruptcy Code, appellate review of those releases was statutorily moot.
In re Smallhold, Inc.	Bankr. D. Del.	Goldblatt, J.	9/25/2024	665 B.R. 704	The court notes that "*Purdue* … left open the possibility that a nonconsensual third-party release might be appropriate in a 'paid-in-full plan,'" but in this case, the court refused to "deem" priority creditors to have consented to third party releases based on the fact that they were to be paid in full. Instead, the Court found that such creditors must have been solicited to vote in order to have validly consented to giving the third-party releases. The court based its holding on the fact that "[a]fter *Purdue Pharma* , a third-party release is no longer an ordinary plan provision that can properly be entered by 'default' in the absence of an objection." Because, inaction cannot be considered consent, the court further held that only opt-out provisions that require "some affirmative expression of the creditor's consent" are permissible. For instance, in this case, where class 2 creditors voted to accept or reject the plan, after receiving clear instructuion that doing so will manifest agreement to a third-party release unless the creditor checks a box to opt-out, was considered to be consensual.
In re Bird Glob., Inc.	Bankr. S.D. Fla.	Lopez-Castro, J.	8/2/2024	No. 23-20514-CLC	The Florida Bankruptcy Court confirmed an insurance settlement and bar order. The court reasoned that this action complied with *Purdue* as the settlement fully satisfied all tort claims. Additionally, the court noted that *Purdue* prohibited nonconsensual third-party releases under section 1123(b)(6). The settlement and bar order in this case, on the other hand, was completed pursuant to sections 105(a) and 363, as well as Rule 9019, therefore the court found that *Purdue* did not foreclose on the settlement or bar order.
Wright v. Bird Global, Inc.	S.D. Fla.	Ruiz, J.	6/11/2025	2025 WL 1662962	Upholding the bankruptcy court's decision on plan confirmation in *In re Bird Glob, Inc.* , the District Court held that the bar order and channeling injunction were critical in ensuring the "full and expeditious satisfaction" of the claims of tort claimants. Appeal was equitably moot because disrupting elements of the plan and the relief that the bankruptcy court ordered would not only prejudicially reverse elements of the plan that have been paid out to third parties but would also affect the ability of tort claimants to receive a payout for their tort claims.
III. TEMPORARY INJUNCTION					
In re Purdue Pharma L.P.	S.D.N.Y.	McMahon, J.	11/26/2024	2024 WL 4894349	This case can be distinguished from the Supreme Court's ruling in *Harrington v. Purdue* because the parties were seeking to temporarily enjoin potential actions against the third parties so that they could negotiate a viable plan of reorganization, one that would include a consensual resolution (and only a consensual resolution) of claims against certain non-debtors (notably, the Sacklers). Thus, a bankruptcy court retains the power to enjoin, in appropriate circumstances, third parties who may have assets or claims that could impact the *res* of the bankruptcy estate.

Case	Jurisdiction	Judge(s)	Date	Citation	Holding
In re Parlement Techs., Inc.	Bankr. D. Del.	Goldblatt, J.	7/15/2024	661 B.R. 722	The court denied a motion of preliminary injunction because the debtor did not prove it was necessary. The court held that while the *Purdue* decision does not prohibit granting of preliminary injunctions, it "does affect how courts should consider what is meant by 'likelihood of success on the merits' when applying the traditional four-factor test." The court explains that likelihood of success on the merits now should be based on whether "(a) providing the debtor's management a breathing spell from the distraction of other litigation is necessary to permit the debtor to focus on the reorganization of its business or (b) because it believes the parties may ultimately be able to negotiate a plan that includes a consensual resolution of the claims against the non-debtors." The court also emphasized that the *Purdue* decision was limited to the specific question presented.
In re Coast to Coast Leasing, LLC	Bankr. N.D. Ill.	Cox, J.	7/17/2024	661 B.R. 621	This court noted that the case before it could be distinguished from the facts in *Purdue* because "the guarantors are not seeking a release of claims against them, unlike in *Purdue Pharma*. The guarantors, nondebtor third parties, are seeking a temporary restraining order to enjoin creditors from bringing claims against them until August 13, 2024." The court cited *In re Parlement Techs., Inc.*, 661 B.R. 722 (Bankr. D. Del. 2024) in stating that "*Purdue Pharma* does not preclude bankruptcy courts from granting third parties the protection of a preliminary injunction." The court went on in citing the *Parlement Techs* case to explain that "'[a] preliminary injunction may still be granted if the Court concludes that (a) providing the debtor's management a breathing spell from the distraction of other litigation is necessary to permit the debtor to focus on the reorganization of its business or (b) because it believes the parties may ultimately be able to negotiate a plan that includes a consensual resolution of the claims against the non-debtors.'"
In re Hal Luftig Co., Inc.	Bankr. S.D.N.Y.	Mastando III, J.	2/24/2025	667 B.R. 638	After the District Court denied the initial plan and the Supreme Court issued its decision in *Purdue Pharma*, the Debtor filed a new plan on July 25, 2024, removing the original release provisions but extending all existing injunctions or stays until the Chapter 11 case concludes, later amending the plan to allow the stay extension to end upon case closure, dismissal, or discharge decision. Relying on *Purdue* and *Parlement Techs*, the Court confirmed the plan over creditor objections.
In re Genger	Bankr. S.D.N.Y.	Garrity, J.	6/20/2025	2025 WL 1727497	This court relied on the holding of the district court in *Maryland v. Purdue Pharma L.P. (In re Purdue)* which stated that "the extension of the Preliminary Injunction was appropriate because it gave the parties an opportunity to try to reach a consensual resolution of the non-bankruptcy actions." This court specifically mentioned that the court in *In re Purdue* the factors for meeting a preliminary injunction were met, but in the case before it, the preliminary injunctions factors were not met because there were no settlement discussions, no irreparable harm, and no public interest that would warrant issuing the injunction.
IV. NARROWING PURDUE					
In re Credito Seal, S.A.B. de C.v., SOFOM, E.N.R.	Bankr. D. Del.	Horan, J.	4/1/2025	2025 WL 977967	The court held that Chapter 15 of the bankruptcy code allows non-consensual third-party releases in foreign insolvency orders. The court explained that the decision in *Purdue* making third party releases impermissible under Chapter 11 did not affect the third-party releases under Chapter 15. "The DFC argues that the Supreme Court's analysis of Bankruptcy Code section 1123(b) in *Purdue* changes the way courts should interpret sections 1521(a) and 1507. It does not." The court instead focused on the plain language of the statute to determine that third-party releases were permissible and stated that third-party releases are not always against public policy.

Case	Jurisdiction	Judge(s)	Date	Citation	Holding
In re KIDDE-FENWAL, Inc.	Bankr. D. Del.	Silverstein, J.	6/16/2025	2025 WL 1693173	In the context of disclosure statement approval, the court explained that the holding in *Purdue* was extremely narrow, and did not abrogate *Emoral* or other such precedents dealing with whether released claims or settled causes of action are property of the estate. Understanding the "underlying question of whether the settled causes of action are property of the estate" is important because it can determine whether *Purdue* even applies.
In re Commercial Express, Inc.	Bankr. M.D. Fla.	Geyer, J.	5/22/2025	2025 WL 1483354	The court held that *Purdue* did not apply because the *Purdue* decision only addressed non-consensual third-party releases under Chapter 11, not Chapter 7. "[T]he Court is confident *Purdue* does not foreclose entry of a bar order when necessary to effectuate a sale of estate property free and clear of liens, claims, and encumbrances as requested here." The court went on to analyze whether *Purdue* implicitly overruled *Munford* (11th Circuit precedent). The court found that it did not because the *Purdue* decision did not expressly abrogate or directly conflict with *Munford*. Lastly, the court explains that even if *Purdue* was applicable, this case before them could be distinguished from it in that "[u]nlike § 1123(b)(6), neither § 105(a) nor § 704(a) are 'catchall' provisions tacked on to the end of statutory lists" and there were no "tortfeasors seeking to avoid liability for widespread addiction and death caused by their actions and product."
In re Odebrecht Egenharia e Construcao S.A. - EM Recupercao Judicial	Bankr. S.D.N.Y.	Glenn, C.J.	4/21/2025	669 B.R. 457	The Court held that it has the authority under section 1521 of Chapter 15 to issue orders granting nonconsensual third-party releases in support of a foreign proceeding, provided that the interests of creditors and other parties are sufficiently protected as required by section 1522(a). The Court determined that such relief is not manifestly contrary to U.S. public policy under section 1506, noting that the Supreme Court's *Purdue* decision did not hold that nonconsensual third-party releases are categorically barred by public policy. Therefore, based on the plain text of Chapter 15, relevant caselaw, and the facts of this case, the Court concluded it may grant nonconsensual third-party releases without needing to analyze section 1507.
In re Roman Cath. Diocese of Rockville Centre	Bankr. S.D.N.Y.	Glenn, C.J.	11/18/2024	665 B.R. 71	*Purdue* found to be inapplicable in the sale context outside of confirmation. Releases that would have been unconfirmable in such context were subject to court approval, even where sale would have to be approved as part of confirmation at a later date.
In re Genger	Bankr. S.D.N.Y.	Garrity, J.	10/5/2024	2024 WL 4438857	Nonconsensual non-debtor releases are inappropriate in a settlement agreement in a case under Chapter 7 of the Bankruptcy Court. This was true even before *Purdue Pharma* was issued.
In re Hopeman Bros., Inc.	Bankr. E.D. Va.	Phillips, J.	1/24/2025	667 B.R. 101	The court held that the imposition of bar orders as a necessary part of a settlement agreement may still be approved using Section 9019 of the Bankruptcy Code without running afoul of *Purdue*. This case involved an insurance buyback as a 363 sale. The court found that *Purdue*'s holding "does not alter the standard for settlement bar orders." *Purdue* was not intended to apply in the context of a section 363 sale or approval of a settlement under Rule 9019.
In re Munford, Inc.	11th Cir.	Hatchet, C.J.	October 10, 1996* Note: Decided before Purdue; however, was cited as supporting the result found in *Bird Global*.	97 F.3d 449	The 11th Circuit affirmed the confirmation of a bar order barring nonsettling defendants from asserting claims against a third party that issued a solvency opinion to the debtor. The Court held that Federal Rule of Civil Procedure 16 in conjunction with Section 105(a) of the Bankruptcy Code permitted the bankruptcy court's action. The Court reasoned that public policy, costly litigation, and a bar order's necessity to settlement also supported the bankruptcy court's grant of the bar order in this case.

Case	Jurisdiction	Judge(s)	Date	Citation	Holding
In re Stanford	11th Cir.	Brasher, J.	November 1, 2021* Note: Decided before Purdue; however, was cited as supporting the result found in *Bird Global*	17 F.4th 116	The court uses section 363 to find that the issue on appeal statutorily moot. The court quoted In re Charter Co., 829 F.2d 1054, in noting that "once a sale is approved by the bankruptcy court and consummated by the parties, the bankruptcy court's authorization of the sale cannot be effectively altered on appeal."
In re ClubX, LLC	Bankr. E.D. Va.	Kindred, J.	12/19/2024	2024 WL 5182335	In the context of a 9019 motion, the court stated that an objector's reliance on *Purdue* was "misplaced" because "*Purdue* did not deal with consensual releases of estate causes of action; instead, it dealt with nonconsensual releases of claims by third parties."

Faculty

Steven M. Berman is a partner in the Tampa, Fla., office of Shumaker, Loop & Kendrick, LLP, specializing in the firm's bankruptcy and creditors' rights practice group. He has more than 30 years of bankruptcy experience and focuses his practice on business bankruptcy litigation, representing creditors, investors, distressed-debt lenders, trustees, committees and business entities litigating disputes in bankruptcy court. Mr. Berman is Board Certified by the American Board of Certification in both Creditors' Rights Law and Business Bankruptcy Law, and he is a member of the Florida, California, District of Columbia, New York, Puerto Rico (Federal) and Texas bars. He is also admitted to practice before the Second and Eleventh Circuit Courts of Appeals and the U.S. Supreme Court. Mr. Berman serves on the boards of directors for ABI and serves on its Endowment Committee and its Task Force on Veterans and Servicemembers Affairs. He routinely volunteers and speaks at its seminars and other programs. On a local level, Mr. Berman is a member of the Tampa Bay Bankruptcy Bar Association, the Bankruptcy Bar Association of the Southern District of Florida, the Southwest Florida Bankruptcy Professionals Association and the San Diego Bankruptcy Forum. In addition, he guest lectures at the University of Florida College of Law and Stetson University College of Law in their advanced bankruptcy courses. Mr. Berman provides *pro bono* bankruptcy and insolvency services and training for U.S. Navy Judge Advocate General officers and staff, and represents servicemembers and their families in need. He is AV-rated by Martindale-Hubbell and was listed in *Florida Super Lawyers* from 2013-22. Mr. Berman received his B.S. in multinational business operations in 1987 from Florida State University and his J.D. in 1990 from the University of Florida Levin College of Law.

Hon. Bruce A. Harwood is a retired U.S. Bankruptcy Judge for the District of New Hampshire in Concord, appointed to the bench in March 2013, and currently resides in San Francisco. He also served as Chief Bankruptcy Judge prior to his retirement from the bench, and he served on the First Circuit's Bankruptcy Appellate Panel. Prior to his appointment to the bench, Judge Harwood chaired the Bankruptcy, Insolvency and Creditors' Rights Group at Sheehan Phinney Bass + Green in Manchester, N.H., representing business debtors, asset-purchasers, secured and unsecured creditors, creditors' committees, trustees in bankruptcy, and insurance and banking regulators in connection with the rehabilitation and liquidation of insolvent insurers and trust companies. He was a chapter 7 panel trustee in the District of New Hampshire and mediated insolvency-related disputes. Judge Harwood is ABI's President. He previously served as ABI's Secretary and Vice President-Communication, Information & Technology, as co-chair of ABI's Commercial Fraud Committee, as program co-chair and judicial chair of ABI's Northeast Bankruptcy Conference, and as Northeast Regional Chair of the ABI Endowment Fund's Development Committee. He also served on ABI's Civility Task Force. Judge Harwood is a Fellow in the American College of Bankruptcy and was consistently recognized in the bankruptcy law section of *The Best Lawyers in America*, in *New England SuperLawyers* and by *Chambers USA*. He received his B.A. from Northwestern University and his J.D. from Washington University School of Law.

Hon. Brendan Linehan Shannon is a U.S. Bankruptcy Judge for the District of Delaware in Wilmington, appointed in 2006 and reappointed on March 13, 2020. He manages a full chapter 11 docket and also handles all chapter 13 consumer bankruptcy cases filed in Delaware. He served as Chief

Judge from 2014-18. Prior to his appointment to the bench, Judge Shannon was a partner with Young Conaway Stargatt & Taylor, LLP in Wilmington, Del., where he primarily represented corporate debtors and official committees in chapter 11 cases. He was appointed by Chief Justice Roberts to serve on the Judicial Conference Committee for the Administration of the Bankruptcy System in 2015; his term ended in 2022. In 2023, Chief Justice Roberts appointed Judge Shannon to the Judicial Conference Committee on Court Administration and Case Management. He also serves as chair of the Third Circuit Judicial Council Committee on Bankruptcy. Judge Shannon has served on intercircuit assignment to the District of Puerto Rico since April 2022, when he was appointed the judicial mediator for the Puerto Rico Electric Power Company's Title III insolvency proceedings. He is an adjunct professor in the Bankruptcy L.L.M. Program at St. John's University School of Law in New York, and previously taught at Widener School of Law in Delaware. Judge Shannon serves on the board of editors of *Collier on Bankruptcy* (16th ed.) and is a contributing author for *Collier Forms*. He also serves on the advisory board for the *ABI Law Review*. Judge Shannon speaks frequently at bar education programs and judicial conferences, and he regularly serves as a faculty member in training programs for new chief judges organized by the Administrative Office of U.S. Courts. In 2011, he was selected to serve as a member of the National Bankruptcy Conference. He is a Fellow of the American College of Bankruptcy and a member of the Delaware State Bar Association, the American Bar Association, ABI and the Rodney Inns of Court. Judge Shannon received his undergraduate degree from Princeton University and his J.D. from the Marshall-Wythe School of Law at the College of William and Mary.

Lydia R. Webb is a corporate restructuring and bankruptcy partner in Gray Reed's Dallas office and focuses her practice on representing and advising debtors, creditors, committees and trustees in bankruptcy cases and other insolvency or restructuring scenarios. She has guided clients to successful results in complex cases before courts throughout Texas and many other states, including Oklahoma, Delaware and New York. Ms. Webb's cases span the oil and gas, health care, retail, manufacturing and restaurant businesses. She has been listed in *The Best Lawyers in America* in the fields of Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law since 2021 and in Bankruptcy Litigation for 2022-23, was selected to participate in the National Conference of Bankruptcy Judges Next Generation program in 2019, and has been named a "Rising Star" by *Texas Super Lawyers* since 2018. Ms. Webb is an ABI member and is social chair of the DFW Association of Young Bankruptcy Lawyers. She is also a member of the Dallas Bar Association's Bankruptcy Section, The Hon. John C. Ford American Inn of Court and the International Women's Insolvency & Restructuring Confederation. Ms. Webb was honored in 2021 as one of ABI's "40 Under 40." She received her B.B.A. *cum laude* in finance and economics from Baylor University in 2009 and her J.D. *cum laude* from Baylor University School of Law in 2012.