



The Nuts & Bolts Of Bankruptcy Law (SERIES II)

The Nuts and Bolts of Third Party Releases

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David Stein



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Meet the Faculty

Panelists

[Matt Christensen](#) - Johnson May

[David Stein](#) - Wilentz, Goldman & Spitzer, P.A.

[Jonathan Friedland](#) - Much Shelist, P.C.

Moderator

[Matt Grimshaw](#) - Grimshaw Law Group, P.C.

About This Webinar

The Nuts & Bolts of Third Party Releases

- Third-party releases and exculpation provisions in Chapter 11 plans have long sparked controversy. The Supreme Court's recent ruling in Purdue Pharma, brought these issues to the forefront of bankruptcy law.
- In this timely and practical webinar, we break down the evolving legal landscape governing both non-debtor releases and exculpatory clauses. Attendees will gain a working understanding of:
 - When such provisions are permitted- and when they're not
 - How courts across the country diverge in their approaches.
 - How to draft these provisions strategically and defensibly
- We'll also explore the growing judicial scrutiny these provisions face and the ethical challenges they present. Whether you're a restructuring professional, litigator, or transactional lawyer brushing up on Chapter 11 fundamentals, this discussion will equip you with the tools you need to navigate this shifting and high-stakes area of bankruptcy law.

About This Series

The Nuts & Bolts Of Bankruptcy Law (SERIES II)

During the past few years, companies across a broad spectrum of industries have faced challenges stemming from the COVID-19 pandemic, supply chain interruptions, labor shortages, and inflation, among others things. Many businesses have been crippled by decreased revenues, increased debt, uncertain prospects and vaporized equity. Sometimes companies in distress cannot heal on their own and are forced to check into the hospital of Chapter 11 . . . or arrive at the door of the emergency room before negotiating a cure. If you need to understand Chapter 11 – whether to avoid it or learn how to harness its power – this program is for you. Designed for the corporate attorney, litigator, business consultant, executive and others not already experienced in Chapter 11, each episode in this Financial Poise webinar series takes a deep dive into one aspect of a Chapter 11 bankruptcy case at a level that can be understood by the non-expert.

Episodes In This Series

1. [The Nuts & Bolts of a 363 Motion](#)
Premiere date: 5/20/2025
2. [The Nuts & Bolts of Retention](#)
Premiere date: 6/24/2025
3. The Nuts and Bolts of Third Party Releases
Premiere date: 7/22/2025

#3: The Nuts and Bolts of Third Party Releases

Each Financial Poise Webinar is delivered in Plain English, understandable to investors, business owners, & executives without much background in these areas, yet is of primary value to attorneys, accountants, & other seasoned professionals. Each episode brings you into engaging, sometimes humorous, conversations designed to entertain as it teaches. Each episode in the series is designed to be viewed independently of the other episodes so that participants will enhance their knowledge of this area whether they attend one, some, or all episodes.

The Nuts & Bolts of Third-Party Releases in a Chapter 11 Plan

- For decades, courts have debated whether provisions of a Chapter 11 plan could provide a release to non-debtors. Some circuits allowed third-party releases, while others did not.
- Not surprisingly, the circuits that allowed third-party releases in Chapter 11 plans became havens for large Chapter 11 cases. In June 2024, the Supreme Court held that non-consensual third-party releases cannot be a part of a Chapter 11 plan.
- This webinar explains the rationale for the Supreme Court's ruling and provides ideas for crafting plans to comply with the ruling while still providing the protections sought by a third-party release.

Agenda / Roadmap

- Background on third-party releases
- The Purdue Pharma case
- Supreme Court ruling
- Implications & future of consensual releases
- Key Bankruptcy Code sections

Harrington v. Purdue Pharma L.P., 603 U.S. 204 (2024)

- Non-consensual third-party releases are not permitted
- Resolved circuit split regarding third-party releases
- Did not decide whether consensual third-party releases are permitted



Previous Circuit Split

- **Permissible:** Second, Third, Fourth, Sixth, Seventh, and Eleventh Circuits
- **Impermissible:** Fifth, Ninth, and Tenth Circuits
- **Undecided:** First, Eighth, and D.C. Circuits

Why the Circuit Split Mattered

- Jurisdiction shopping & venue selection
- Strategic plan structuring
- Pressure on SCOTUS to resolve ambiguity

Factual Summary of *Purdue Pharma*

- Centered on the opioid epidemic
- Purdue Pharma owned by the Sackler family
- Marketed OxyContin as “less addictive,” leading to lawsuits
- 2007: Federal felony guilty plea by affiliate for misbranding
- 2019 Chapter 11 filing
- Facing mass tort litigation
- Sackler proposal: \$6B return over 10 years in exchange for full release

Who Are the Sacklers and Why They Mattered

- Management role and control
- Significant financial gain from Purdue
- Focal point of public and legal scrutiny

Who Are the Sacklers and Why They Mattered *(cont'd)*

- Pre-2008: Sacklers received ~15% of annual revenue
- 2008-2016: ~\$11 billion in distributions (~75% of revenue)

Factual Summary of Purdue Pharma *(cont'd)*

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Procedural History of Purdue Pharma

- Bankruptcy court approved plan w/ Sackler release
- District court vacated approval
- Second Circuit reversed district court
- Supreme Court reversed Second Circuit

Amicus Briefs and Broader Interest in the Case

- DOJ, advocacy groups, scholars weighed in
- National impact on bankruptcy jurisprudence

Purdue Pharma: The Court's Reasoning

- Focused on §1123(b) plan provisions
- §1123(b)(1)-(5) concern claims/property of the estate
- §1123(b)(6) as catch-all, limited by ejusdem generis
- Non-consensual releases not related to debtor-creditor relationship

Ejusdem Generis – What It Means and How It Works

- Latin: “of the same kind”
- Interpretation principle limiting general terms
- Application: §1123(b)(6) must relate to debtor’s estate and creditor relations

Purdue Pharma: Justice Gorsuch's Final Paragraph

- Decision does *not* address:
 - Consensual third-party releases
 - What constitutes consent
 - Full satisfaction of third-party claims
 - Retroactive unwinding of consummated plans

What the Decision *Did Not* Do

- Left many questions unresolved
- Important areas left for lower courts or future rulings

Permissibility of Consensual Third-Party Releases

- Questionable under ejusdem generis logic
- May not modify debtor-creditor relationships
- Possibly enforceable under contract law

Drafting Around the Holding

- Use of settlement trusts
- Independent agreements
- Plan provisions with 100% payout for release

What Constitutes Consent?

- **Opt-in:** Likely valid (e.g., *In re Smallhold*)
- **Opt-out:** Less clear (e.g., *Ebix vs. Eiger*)
- **De facto consent:** Based on full payment or voluntary participation

Consent Matrix

Consent Type	Validity Post-Harrington	Case Examples
Explicit Opt-In	Generally valid	<i>Smallhold</i> (Bankr. D. Del.)
Opt-Out	Unclear / split	<i>Ebix, Eiger</i>
De Facto	Context-specific	TBD

Section 524(e)

- “Discharge of a debt of the debtor does not affect the liability of any other entity...”
- Historically limited the effect of discharge to the debtor
- Varied interpretations in circuit courts
- Interplay with §105(a)

Section 1123(b)

- Outlines what a Chapter 11 plan *may* include:
 - Class impairment or non-impairment
 - Executory contract treatment
 - Claim settlement or enforcement
 - Asset sales and distribution
 - Rights modification (secured/unsecured)
 - Catch-all provision

Policy Debate: Do Third-Party Releases Promote or Undermine Fairness?

- **Pro:** Encourages settlements; helps reorganize
- **Con:** Undermines due process; potential abuse by insiders

Section 105(a)

- Court may issue orders to carry out Code provisions
- Not a source of independent substantive rights

Key Takeaways and Practical Implications

- Non-consensual third-party releases are impermissible
- Consensual releases remain uncertain
- Drafters should tread carefully with opt-out mechanics
- Watch for future developments in legislation and lower court rulings

Questions or Comments?

If you have any questions about this webinar that you did not get to ask during the live premiere, or if you are watching this webinar [On Demand](#), please do not hesitate to email us at info@financialpoise.com with any questions or comments you may have. Please include the name of the webinar in your email & we will do our best to provide a timely response.

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Meet The Faculty

Matthew T. Christensen – mtc@johnsonmaylaw.com



Matt Christensen joined Angstman Johnson (now known as Johnson May) in 2008 as an associate attorney. Now the managing partner of the firm, Matt has a civil litigation practice involving commercial law (finance & secured transactions), bankruptcy, real property, & business matters. He also has a transactional practice involving real estate, finance, & business matters. Matt frequently represents bankruptcy trustees & other fiduciaries in recovering assets & administering estates. In addition to practicing law, Matt is an adjunct professor at the University of Idaho College of Law.

Matt earned his J.D. & LL.M in International & Comparative Law degrees from Duke University School of Law in 2005. In addition to practicing law & teaching, Matt also enjoys spending as much time as possible with his wife, five children & one grandchild & expanding his ever-growing library of books. [Read More](#)

Jonathan Friedland – jfriedland@muchlaw.com



Summary

- Corporate structuring and restructuring attorney with nearly 30 years of experience advising companies, boards of directors, owners, and other stakeholders in various contexts, including distressed, bankrupt, and special situations.
- Represented and advised clients in 150+ transactions and litigation across various industries.
- Serial entrepreneur who understands business from the business person's perspective.
- Consistently ranks as a top business law attorney in various surveys, holding the highest possible ratings from Martindale-Hubbell (AV® Preeminent™), AVVO (10/10), and Justia (10/10). Has repeatedly been recognized as a “Super Lawyer” in multiple practice areas, including Business/Corporate Law and Bankruptcy/Creditor/Debtor Rights, named a “Leading Lawyer” by Leading Lawyers Magazine several times, and selected for inclusion in The Best Lawyers in America® for exceptional work in Corporate Law.
- Admitted to the bars (each by exam) in New York, Illinois, Arizona, and New Jersey.

Thought Leadership Examples

- Principal Author and Editor-In-Chief, [Commercial Bankruptcy Litigation](#) & [Strategic Alternatives for and Against Distressed Businesses](#) (each published annually by Thomson Reuters)
- Author of 100+ articles and speaker at 100+ events. Examples here.

Academics

- Clayton Center for Entrepreneurial Law Visiting Professor at the University of Tennessee College of Law.
- Adjunct Professor of Strategic Management, University of Chicago Graduate School of Business (co-taught with Jamie Sprayregen).
- JD from the University of Pennsylvania, followed by a one-year federal court clerkship; B.S. in Business Administration (magna cum laude in three years) from Albany State University. [Read More](#)

Matt Grimshaw - matt@grimshawlawgroup.com



Matt represents parties in all aspects of bankruptcy matters, restructuring, and out of court workouts. He has 20 years of experience in litigation and advising clients on issues resulting from the debtor-creditor relationship, including the enforcement of notes and guarantees, writs of attachment, receiverships, wrongful foreclosures, mortgage elimination scams, and injunctions.

Education & Qualifications

Matt received his Bachelor of Arts in Economics from Brigham Young University. Following this, he attended Willamette University College of Law, where he graduated with honors. During his time there, he served as the Editor-In-Chief of the university's Journal of International Law and Dispute Resolution. [Read More](#)

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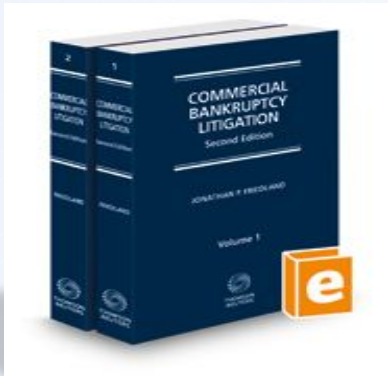
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[Strategic Alternatives For And Against Distressed Businesses, 2025 ed.](#) is one of a kind. It is the only resource that provides comprehensive state-by-state comparisons of assignments for the benefit of creditors & receiverships. This alone makes the book a must-have for every insolvency professional.