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TRENDS IN LIABILITY MANAGEMENT TRANSACTIONS AND THIRD-PARTY RELEASES

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BIO

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Kelly is an active member of the International Insolvency Institute and a frequent speaker at global seminars. Beyond her commercial practice, she is a dedicated pro bono advocate, representing the N.Y. Police and Fire Widows' & Children's Benefit Fund and assisting military veterans.

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BIO

David J. Cohen is the Co-Managing Partner of Weil's Miami office and a Partner in the Restructuring Department. Based in New York and Miami, he advises debtors, creditors, sponsors, and bondholders in complex U.S. and cross-border corporate restructurings, with expertise spanning Chapter 11 and Chapter 15 proceedings, international insolvencies, liability management, and distressed M&A.

David is widely recognized for his impact on the global restructuring landscape. He was named Dealmaker of the Year by *The American Lawyer* for his role as lead counsel to Steward Health Care, the largest healthcare bankruptcy in U.S. History. He is also a finalist for Florida Dealmaker of the Year by the *Daily Business Review*. He is consistently featured among Lawdragon's 500 Leading Global Bankruptcy & Restructuring Lawyers and has been recognized as a *Law360* "Rising Star" in Bankruptcy, an "Outstanding Young Restructuring Lawyer" by Turnarounds & Workouts, and an "Emerging Leader" by The *M&A Advisor*.

A frequent speaker on international insolvency panels, David has served as a guest lecturer at the University of Miami and University of Florida Colleges of Law.

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This article highlights recent trends in both the liability management and chapter 11 transaction contexts. In both areas, a common theme has emerged: courts are confronting fundamental questions about form versus substance. In the liability management context, courts must decide whether to evaluate multi-step transactions as a sequence of independent, formally compliant acts or as a single integrated transaction judged by its collective effect. In the chapter 11 release context, courts must determine whether formal mechanisms — such as opt-out procedures — are sufficient to establish the consent required after Purdue Pharma, or whether something more affirmative is needed. These parallel tensions reflect a broader debate in restructuring law about mechanical execution versus the actual impact on affected parties. In both areas, courts continue to apply varying approaches and developing case law should be closely watched.

> “In recent liability management cases like Wesco and STG Logistics, U.S. courts are grappling with whether to review multi-step transactions as isolated formal steps or as a single integrated transaction judged by its overall effect.

Step-by-Step versus Holistic Review of Liability Management Transactions

The legal landscape for liability management transactions continues to shift as courts consider challenges to new, creative tactics. In recent decisions, including in Wesco and STG Logistics, courts have considered whether multi-step liability management transactions—and their practical effects on minority lenders—should be viewed holistically as an integrated transaction, which may put the transaction outside of what is permitted by the relevant debt documents. The issuers and participating creditors in both cases relied on arguments that, instead, each carefully sequenced step of the transaction should be reviewed on its own terms. As explained below, the courts in Wesco and STG Logistics arrived at different conclusions, with both decisions providing useful guidance to issuers and lenders/noteholders when structuring liability management transactions.

Wesco

Following a series of liquidity events in the second half of 2021, a noteholder group (the “**Majority Group**”) began accumulating two tranches of notes issued by Wesco Aircraft Holdings, Inc. (“**Wesco**”), and proposed a “Serta-type” uptier transaction before year end.[1] By February 2022, the Majority Group held two-thirds of Wesco’s outstanding 2024 Secured Notes, but only approximately 60% of the 2026 Secured Notes.[2] The shortfall mattered because the 2026 Secured Notes indenture required a 66⅔% supermajority vote to release liens on collateral. To bridge the gap, the Majority Group executed a multi-step transaction: it first consented to a majority-vote amendment (the “**Third Supplemental Amendment**”) permitting the issuance of additional 2026 Notes, then purchased $250 million of those new notes—diluting minority holders and achieving the 66⅔% threshold. With the requisite holdings in place, the Majority Group that same day executed a follow-on amendment releasing the liens securing the remaining notes held by non-participating minority lenders and exchanging their own notes for new super-senior first-lien notes.[3]

The central question was whether the Third Supplemental Amendment—which only required majority consent—should be evaluated in isolation, or whether its role as the enabling step in a broader lien-release transaction meant it effectively required a supermajority vote. The 2026 Secured Notes indenture provided that no amendment could “have the effect of” releasing all or substantially all collateral without 66 2/3% consent.

In its Report and Recommendation to the District Court, the Bankruptcy Court recommended a finding that Wesco breached the indenture by adopting the Third Supplemental Amendment.[4] Relying on the “effect of” language, the Bankruptcy Court determined that entry into the amendment was the first “domino” that made the subsequent lien release inevitable, and thus itself required supermajority consent.[5]

1. In re Wesco Aircraft Holdings, Inc., 2025 WL 354816, at *3 (Bankr. S.D. Tex. Jan. 17, 2025).
2. Id. at *9.
3. Id. at *3–9.
4. Id. at *18.
5. Id. at *16.

The District Court for the Southern District of Texas declined to follow the Bankruptcy Court's recommendations. The District Court reasoned that, although the amendments were executed concurrently, each separate agreement was independent and not conditioned on the others.[6] Because each amendment—viewed separately—complied with the indenture's terms, the uptier was found to be proper. The District Court also pointed to the parties' sophistication: they imposed a supermajority requirement for releasing liens, but specifically not for issuing additional notes.[7] Further, the Court noted the uncertainty that would arise from considering the consequences of an undefined universe of agreements executed after the Third Supplemental Amendment.[8] On January 6, 2026, the minority noteholders filed an appeal, seeking Circuit Court review of Judge Crane's opinion. As of April 2026, that appeal is still pending.

STG Logistics

In the STG Logistics litigation, the Supreme Court of the State of New York considered similar issues in the context of a dropdown "double dip" transaction. In October 2024, a majority lender group (the "**STG Majority Group**") implemented a liability management transaction through a series of "integrated, mutually dependent" agreements (the "**Transaction Documents**"), including a Sixth Amendment to the existing credit agreement (the "**SAA**").[9] As an initial step, the STG Majority Group consented to amendments in the SAA that permitted the borrower to designate unrestricted subsidiaries and removed restrictions on assigning assets to such subsidiaries.[10] Then, through the other Transaction Documents, STG's assets were transferred to a new unrestricted subsidiary ("**UnSub**"), the STG Majority Group exchanged its existing loans for new loans issued to UnSub (secured by the transferred collateral and a guarantee by STG), and the loan proceeds were lent upstream from UnSub to STG, with the new loans receiving a lien on the intercompany loan.

Minority lenders argued that their various "sacred" rights—provisions in credit agreements that typically require unanimous or affected-lender consent to modify—had been directly or indirectly implicated and impermissibly modified without their consent.[11] Taken as a whole, the minority lenders contended, the transactions prepaid the loans held by the STG Majority Group and granted those lenders priority in collateral transferred from the existing collateral package to UnSub.

Similar to Wesco, the New York Supreme Court's ruling on the STG Majority Group's motion to dismiss turned on whether the SAA should be reviewed separately from the other Transaction Documents. The court determined the Transaction Documents were appropriately viewed as one instrument implementing a single transaction.[12] Unlike Wesco, the STG court held the "primary standard" for determining whether contracts are severable is the parties' manifested intent, viewed in light of the surrounding circumstances.[13] The court reasoned that the intent was clear in the circumstances because the documents were executed concurrently and were mutually dependent; if any one agreement was ineffective, the transaction as a whole fell apart.[14] From that perspective, the various sacred rights implicated— including the transfer of collateral to UnSub, structural subordination of loans, and prepayment in a non-pro rata exchange—were reviewed no differently than a credit agreement amendment seeking to take such actions directly.

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> In the STG Logistics case, the New York Supreme Court viewed the multi-step liability management transaction as a single integrated instrument, unlike the Wesco court which treated each amendment separately.

6. See Wesco Aircraft Holdings, Inc v. SSD Invs. Ltd, 2025 WL 3514358, at *5 (S.D. Tex. Dec. 8, 2025).
7. Id. at *8.
8. Id. at *11.
9. See Axos Fin., Inc. v. Reception Purchaser, LLC et al., 246 N.Y.S.3d 915, 16 (NY Sup. Ct.).
10. See Amended Complaint ¶¶ 88, 91 [Docket No. 14].
11. See id. ¶ 15.
12. Axos Fin., Inc., 246 N.Y.S.3d at 36.
13. Axos Fin., Inc., 246 N.Y.S.3d at 17.
14. Id.

STG subsequently filed for chapter 11 in the Bankruptcy Court for the District of New Jersey on January 12, 2026, which automatically stayed the New York litigation. The debtors' proposed chapter 11 plan included a condition to effectiveness requiring a favorable result "reasonably acceptable" to the participating lenders with respect to the litigation claims. The litigation is proceeding under the Bankruptcy Court's supervision pursuant to an agreed-upon litigation schedule, with a final hearing and plan confirmation hearing currently scheduled for May 18, 2026.

Implications for Practitioners

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> Post-Purdue, courts are split on whether 'consent' to third-party releases in Chapter 11 plans requires an affirmative opt-in or whether an opt-out mechanism is sufficient.

Wesco and STG Logistics reflect fundamentally different approaches to evaluating multi-step liability management transactions. The court in Wesco grounds its analysis in the plain language of the indenture and the parties' rights at each step in the sequence, while the court in STG Logistics explicitly looks past form to the intent of the transaction proponents.

Outcomes in liability management transactions vary depending on contract terms and the particular facts and circumstances. Because courts have taken divergent views on analyzing multi-step liability management transactions, until there is more clarity, parties who desire to execute a multi-step transaction without having it viewed on a consolidated basis should consider and "pressure test" their strategy under both analytical paths. State of "Consent" to Third-Party Releases Post-Purdue.

Following the Supreme Court's decision in Purdue Pharma barring nonconsensual third-party releases, lower courts and practitioners have focused on defining the contours of "consent" in the context of non-debtor releases in chapter 11 plans.[15] Purdue left this question open, declining to define "what qualifies as a consensual release." Two related issues have been central in the developing case law post-Purdue: courts must both determine the appropriate source of authority for interpreting consensual releases—federal due process principles or state contract law principles — and the conduct necessary by a proposed releasing party to establish consent.

These frameworks stem from pre-Purdue case law.[16] In fact, some judges have explicitly recognized that Purdue did not alter their prior approach. For example, in In re Smallhold Inc., Judge Goldblatt observed that non-consensual releases had only ever been granted in the most exceptional circumstances, and noted that judges were already split over a contract-based and due process-based approach to consent.[17]

Post-Purdue, three broad approaches to consent have emerged.

Strict Contract Approach

Under a strict contract law-based approach, a third-party release is treated as a contract between the debtor and its creditors, requiring an affirmative manifestation of assent. Inaction cannot establish consent, and opt-out releases are generally impermissible.

In Tonawanda, the Bankruptcy Court for the Western District of New York adopted this strict contractual analysis. The court rejected proposed opt-out releases, reasoning that a proposal for third parties to grant a release is an ancillary offer that becomes a contract only upon acceptance by the third party.[18] Under this framework, each party to be bound—whether voting or non-voting—must affirmatively sign a writing expressly agreeing to discharge the non-debtor parties. Absent such writing, the release is a mere proposal that no one can enforce. At least one other post-Purdue decision applied a similar analysis.[19]

15. See Harrington v. Purdue Pharma L.P., 603 U.S. 204 (2024).
16. See In re Washington Mutual, Inc., 442 B.R. 314, 352 (Bankr. D. Del. 2011) and In re Emerge Energy Services, L.P., No. 19-11563 (KBO), 2019 WL 7634308, at *18 (Bankr. D. Del. Dec. 5, 2019) (using a contract-like approach to determine that non-consensual releases are not permitted and that consent could not be inferred from silence); but see In re DBSD North America, Inc., 419 B.R. 179 (Bankr. S.D.N.Y. 2009) (holding that silence in the face of adequate notice and a meaningful opportunity to opt-out can allow an inference of consent). See also In re Arsenal Intermediate Holdings, L.L.C., No. 23-10097 (CTG), 2023 WL 2655592, at *6–8 (Bankr. D. Del. Mar. 27, 2023); Cole v. Nabors Corp. Servs., Inc. (In re CJ Holding Co.), 597 B.R. 597, 608–09 (S.D. Tex. 2019).
17. In re Smallhold, Inc., Case No. 24-10267 (Bankr. D. Del. Sept. 25, 2024), Docket No. 28.
18. In re Tonawanda Coke Corp., Case No. 18-12156 (Bankr. W.D.N.Y. Aug. 27, 2024).
19. See In re Ebix, Inc., Case No. 23-80004 (Bankr. N.D. Tex. Aug. 2, 2024), Docket No. 851.

The District Court in GOL likewise held that opt-out releases are insufficient to establish consent. Under the GOL chapter 11 plan, voting creditors were deemed to agree to third-party releases if they either voted to accept without opting out, or if they failed to vote or voted to reject but failed to submit a separate opt-out form. The Bankruptcy Court approved the releases, but the District Court reversed holding that "affirmative action" is required to express consent, and that consent cannot be inferred from silence where creditors had no obligation to participate in the opt-out process.[20]

The court rejected the debtors' position that the failure to act should be treated as consent, relying in part on New York contract law, and made clear that voting on the plan without a separate manifestation of assent to the release is insufficient to establish consent.[21] GOL does not go as far as Tonawanda's signed-writing requirement, but likewise rejects opt-out mechanisms as a standalone basis for establishing consent.

Opt-Out Permissive Approach

At the other end of the spectrum, under a due process-based approach, consent requires clear notice and a meaningful opportunity for parties to take some action, such as electing to opt out. This approach requires courts to conduct a fact-specific analysis of the debtor's notice and opt-out procedure, as well as the circumstances of affected parties.

In the *Spirit Airlines* case, the Bankruptcy Court for the Southern District of New York found opt-out releases were consensual as to both voting and non-voting creditors.[22] The court considered a number of factors, including whether the affected parties were provided with a clear and prominent explanation of the opt-out procedure and whether the proposed release was clearly and consistently presented.

Hybrid / Affirmative Participation Approach

Between these poles, a growing number of courts have adopted a hybrid approach that ties consent to some form of affirmative participation—such as voting on a plan or expressly opting in—while calibrating the required conduct differently for voting and non-voting creditors.

The evolution of this approach is well illustrated by the Southern District of New York's response to GOL, as evidenced in Azul. In Azul, the debtors initially proposed an opt-out structure similar to GOL but modified their plan—apparently in direct reaction to the GOL District Court decision—to provide that, with respect to voting creditors, releases would be granted only by creditors that both returned a ballot and did not elect to opt out, regardless of whether they voted to accept or reject. Non-voting creditors were required to affirmatively opt in to the release. Judge Lane approved this construct, finding that voting creditors who returned a ballot and remained silent on the opt-out had expressed an intent to accept the release.[23]

> Post-Purdue Chapter 11 cases reveal three emerging approaches to consent for third-party releases: strict opt-in contract requirements, permissive opt-out based on due process, and hybrid models requiring affirmative participation from voting creditors.

This hybrid model has gained traction across jurisdictions. In Container Store, Judge Rosenthal in the Southern District of Texas largely upheld confirmation of a plan with opt-out releases, carving out only non-voting classes of subordinated claims and existing equity interests.[24] In PosiGen, Southern District of Texas Bankruptcy Judge Lopez expressly followed the Container Store framework, and later confirmed a plan in Luminar over the U.S. Trustee's objection on similar grounds.[25] The U.S. trustee has appealed the district court's Container Store decision to the Fifth Circuit, whose ruling should clarify whether this hybrid opt-out framework will continue as the standard approach to third-party releases in the circuit.

20. In re Gol Linhas Aéreas Inteligentes S.A., Case No. 25-4610 (Bankr. S.D.N.Y. Dec. 1, 2025).
21. Id. at *14.
22. In re Spirit Airlines, Inc., Case No. 24-11988 (Bankr. S.D.N.Y. Mar. 7, 2025), Docket No. 520.
23. In re Azul S.A., 2026 WL 40912 (Bankr. S.D.N.Y. Jan. 6, 2026).
24. In re The Container Store Grp., Inc., 2026 WL 395898 (S.D. Tex. Feb. 12, 2026).
25. In re PosiGen, PBC., Case No. 25-90787 (Bankr. S.D. Tex. Feb. 24, 2026); In re Luminar Technologies, Inc., Case No. 25-90807 (Bankr. S.D. Tex. Dec. 15, 2025).

In the District of Delaware, the picture is mixed—some judges have endorsed the strict contract model, while others have adopted hybrid mechanisms, as reflected in FTX Trading and Lumio Holdings, respectively.[26] Most recently, Judge Silverstein agreed to grant interim approval to the disclosure statement in Salt House (In re Food2, Inc.), overruling the bankruptcy watchdog's arguments about the use of opt-out releases on the ballots.[27] In the District of New Jersey, Judge Kaplan recently confirmed *Multi-Color* over the U.S. Trustee's objection, referencing the Container Store framework in approving "properly tailored" opt-out third party releases.[28]

Implications for Plan Proponents

> Since Purdue Pharma, courts remain divided on what constitutes 'consent' to third-party releases in Chapter 11 plans, leading practitioners to adopt conservative mechanisms that satisfy both strict contract and hybrid approaches.

In the two years since Purdue, jurists have found different sources of authority for consensual third-party releases and have not agreed on the conduct required to establish consent. The landscape remains fractured, with open questions surfacing most recently in Aleon Metals, where the U.S. Trustee has objected to confirmation on account of the plans' third-party release provisions.

For plan proponents, the most conservative course would be to design release mechanisms that can survive scrutiny under any of the prevailing approaches. That would include requiring affirmative ballot submission (not mere silence) to establish consent for voting creditors; building in an express opt-in mechanism for non-voting creditors; and ensuring that notice of the release and opt-out or opt-in procedures is clear, prominent, and consistent across all solicitation materials. Practitioners should also be attentive to jurisdiction-specific preferences, as the emerging trend lines in the Southern District of New York, the Southern District of Texas, and the District of Delaware are not uniform. Unless and until higher courts and ultimately the Supreme Court provide further guidance, these jurisdictional preferences may continue to diverge.

26. In re FTX Trading Ltd., Case No. 22-11068 (Bankr. D. Del. June 26, 2024); In re Lumio Holdings, Inc., Case No. 24-11916 (Bankr. D. Del. Jan. 3, 2025).
27. In re Food2, Inc., Case No. 25-12277 (Bankr. D. Del. Dec. 29, 2025).
28. In re Multi-Color Corp., et al., Case No. 26-10910 (Bankr. D. NJ. April. 16, 2026).

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