



LOWENSTEIN BANKRUPTCY LOWDOWN

Lowenstein Bankruptcy Lowdown Video 22 – Navigating Third-Party Releases in a Post-Purdue Pharma World

By [Brent Weisenberg](#) and [Daniel B. Besikof](#)

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Brent Weisenberg: Hi, I'm Brent Weisenberg, and welcome to the [Lowenstein Bankruptcy Lowdown](#), where we break down hot topics in bankruptcy.

With me today is Dan Besikof, my much taller friend, University of Wisconsin alum, and partner.

Daniel B. Besikof: Today we're going to be talking about third-party releases in a post Purdue World.

Brent Weisenberg: Dan, we've heard a lot about releases and Purdue. Give me the ten-second summary of what it's all about.

Daniel B. Besikof: Third-party releases are releases granted pursuant to a Chapter 11 plan from holders of claims and interest to non-debtor third parties, usually equity holders, bond holders, lenders, plan sponsors, others that are kind of close to the restructuring process.

Brent Weisenberg: Right, and so the fallout has been swift. Not only has this decision impacted cases that are ongoing, but we're really seeing a permanent change in the landscape of cases. From our research, it looks like there's two ways you can go about answering what was left unanswered by the Supreme Court, which is: what is a consensual release?

Daniel B. Besikof: There are two camps on this. First, there's the opt-out camp, which is it's sufficient consent for someone not to opt out of the plan release. And that's usually done pursuant to a Chapter 11 plan ballot. Or even not voting is enough.

Then there's the opt-in camp, which requires affirmative opt in for consent to be effective. The opt-in creates a number of problems, though, it would seem to me.

Brent Weisenberg: Yeah, I think that's right. I think people need to focus on this issue, because if you are going to be a plan sponsor, if you're a co-defendant, you previously were able to buy global peace by putting some amount of money into a plan. That's not the case anymore. You may not be able to buy a global solution, which I think by definition means parties will be

willing to pay less than they would have because there's going to be future exposure, principally litigation exposure; right?

Daniel B. Besikof: I think that's absolutely right. I mean, how do you bind someone to a third-party release? How do you get someone to opt in if you don't even know who they are yet, for example?

Historically, people don't vote on plans in high numbers; how do you get those people to opt in to a release? And so while those people get to keep their claims in the context of no nonconsensual third-party releases, now those people also have to go bring those claims in some different forum, which has its own practical implications.

Brent Weisenberg: Yeah. I think it's safe to say that while we don't know what the future holds, we know bankruptcy practitioners are really creative. We've seen that already in gatekeeper type provisions, and I suspect we're going to see a lot more of that.

Daniel B. Besikof: I suspect we will, and I imagine one such way that bankruptcy practitioners will try to incentivize people to opt in is just provide them with greater recoveries if they do. We'll see how that works.

In any event, will be here to follow the issues.

Thank you for watching this edition of the [Lowenstein Bankruptcy Lowdown](#). We'll see you soon.