

From Purdue to Pat McGrath: Are Opt-Out Third-Party Releases Truly Consensual?

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Judge Laurel Isicoff's April 21, 2026, decision confirming the Chapter 11 plan of Pat McGrath Cosmetics LLC answers in the affirmative the question left open by *Harrington v. Purdue Pharma*: whether third-party releases imposed through an opt-out mechanism can be truly consensual. Once valued at more than \$1 billion following a 2018 private-equity investment, the company struggled with chronic inventory shortages and mounting debt, ultimately filing for Chapter 11 in January 2026 to restructure its capital stack and preserve the brand's core value.

Emphasizing that *Purdue* addressed only nonconsensual third-party releases and expressly left open the legality of consensual releases, the court held that an opt-out mechanism may constitute consent where creditors receive clear, conspicuous notice, understand the consequences of inaction, and are afforded a meaningful opportunity to decline the release. Drawing analogies to class actions and core bankruptcy voting rules, the court emphasized that the Bankruptcy Code routinely binds parties based on inaction after adequate notice, and that *Purdue* deliberately declined to define the contours of "consent." Creditors who voted to reject the plan, or were deemed to reject, could not be bound absent affirmative consent—underscoring that opt-out is not a one-size-fits-all solution.

The question of whether opt-out releases are consensual is soon going to be reviewed at the Circuit level. In the Second Circuit, Chief Bankruptcy Judge Carl L. Bucki of the Western District of New York found that opt-out releases are not consensual and therefore prohibited by *Purdue*. *In re Diocese of Buffalo, N.Y.*, 2026 WL 585099 (Bankr. W.D.N.Y. Feb. 27, 2026). Recognizing the absence of a controlling authority and the issue's "public importance," Judge Bucki certified a direct appeal to the Second Circuit under 28 U.S.C. § 158(d)(2), explicitly citing the growing inter- and intra-circuit split. At the end of 2025, District Judge Denise Cote of the Southern District of New York reversed confirmation of an opt-out plan, holding that the ability to opt out does not itself establish consent to release claims against non-debtors in *In re GOL Linhas Aéreas Inteligentes S.A.*, 675 B.R. 125 (S.D.N.Y. Dec. 1, 2025). The GOL debtor has appealed, with briefing now headed to the Second Circuit. Meanwhile, the Fifth Circuit is confronting the same question from the opposite direction. In *Container Store*, District Judge Lee Rosenthal upheld confirmation of an opt-out plan, concluding that the opportunity to opt out rendered the releases consensual and therefore permissible after *Purdue*. 676 B.R. 356 (S.D. Tex. Feb. 12, 2026). The U.S. Trustee appealed on April 10, teeing up appellate review.

The Path McGrath decision adds momentum to a growing body of post-*Purdue* case law confirming that consensual third-party releases remain viable and that opt-out mechanisms, when properly structured, can satisfy both due process and the Bankruptcy Code. Whether opt-out releases will remain viable is a question now destined for the Second Circuit and Fifth Circuit, and possibly back to the Supreme Court itself.