

Thomas J. Salerno and Clarissa Brady Analyze Third-Party Releases in Chapter 11 Cases for American Bankruptcy Institute

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Stinson attorneys [Thomas J. Salerno](#) and Clarissa Brady recently authored a three-part series for the American Bankruptcy Institute titled "In Defense of Third-Party Releases in Chapter 11 Cases," that details the current debate over propriety of pre-bankruptcy conduct releases in bankruptcy cases.

"Opponents of prebankruptcy conduct releases are quick to point out that there is no express statutory authorization in the Bankruptcy Code for these releases (asbestos claims excepted), and that bankruptcy courts are left to rely on the equitable powers granted to bankruptcy courts under the amorphous provisions of § 105," said Salerno and Brady in Part II. "In the words of one commentator, 'Section 105 (a) [is] sometimes referred to as the 'God clause,' which allows judges to exercise their equitable powers to issue any orders necessary or appropriate to carry out a bankruptcy plan."

The articles also examine why some pre-bankruptcy conduct releases are less objectionable than others and explains the importance of timely economic returns to constituents in Chapter 11 bankruptcy cases. Part I of this bankruptcy series published in March 2022 and Part III will be published by the American Bankruptcy Institute in a later issue.

Salerno helps private and publicly-traded companies in a broad range of industries continue operations as they negotiate restructuring plans. He has advised lenders, distressed companies, committees and asset acquirers in bankruptcies and out-of-court settlements. Salerno works with a global roster of clients from an array of industries, including casinos, hotels, real estate, sports, tech, power generation, agribusiness, construction, health care, manufacturing, airlines and franchising.

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Bringing experience from the U.S. Bankruptcy Appellate Panel for the First Circuit, Brady represents unsecured creditor committees, corporate debtors, trustees, and banks. She has assisted with defending and prosecuting companies and individuals in disputes involving fraudulent transfer, preference, and breach of fiduciary duty, across multiple jurisdictions.

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