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Key Decisions Shape Mass Tort Bankruptcy Landscape

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Courts continue to grapple with issues impacting the rights of debtors, creditors and insurers in Chapter 11 cases filed by companies facing mass tort liabilities. This article summarizes key takeaways from significant cases such as Red River Talc and Boy Scouts of America (BSA). We also review the fallout from last year's Supreme Court rulings in Purdue Pharma, barring nonconsensual third-party releases in reorganization plans, and Truck Insurance v. Kaiser Gypsum, endorsing broad standing for insurers in bankruptcy proceedings.

J&J's Third Attempt to Resolve Talc Liabilities in Chapter 11 Fails

Johnson & Johnson's multi-year effort to settle its talc liabilities by placing a special-purpose entity into Chapter 11 ended on March 31, when the U.S. Bankruptcy Court for the Southern District of Texas dismissed the Chapter 11 case of Red River Talc, LLC, a subsidiary that J&J created using the Texas divisional merger statute (called the "Texas Two-Step"). See In re Red River Talc, 2025 Bankr. LEXIS 863 (Bankr. S.D. Tex. Mar. 31, 2025).

After two previous bankruptcies were dismissed, J&J sought to ensure success in its third attempt by moving to a new forum and filing a prepackaged case, with the plan distributed and creditor votes solicited before the filing.

While many claimants supported the plan, dissident groups voted against it. That voting process became the principal reason the third case foundered. After a two-week trial, the court held that multiple irregularities in the voting process precluded it from certifying that 75% of the claimants had validly voted for the plan. Conflicting ballots were cast by two law firms on behalf of the same claimants, and proponents and objectors disputed whether other claimant attorneys had authority to vote on behalf of their clients based on general terms in engagement letters that did not refer to bankruptcy plan voting. The court praised one firm, however, whose engagement letter contained a specific durable power of attorney to vote on a client's behalf to accept or reject a bankruptcy plan. The voting issues were not the only defects in the Red River plan. The court also found that the plan impermissibly sought to bind claimants to nonconsensual third-party releases, and to discharge nonderivative liabilities of nondebtor entities. Because J&J was not willing to go forward without those provisions, the court determined that the best interest of the creditors was served by dismissing the case.

What Has Happened in the Wake of the Dismissal?

- J&J announced soon after the decision that it would not appeal or pursue another bankruptcy, but instead fight the claims in the tort system.
- Talc litigation is moving forward in multiple forums. A contentious MDL is proceeding in New Jersey. The Philadelphia Court of Common Pleas set up a new mass tort docket for J&J talc and has set two bellwether trials for 2026.

Major Takeaways

- Although the decision did not turn on use of the Texas divisional merger, and Judge Lopez found that the case had been filed in good faith, J&J's loss means that no mass tort defendant has yet successfully reorganized under Chapter 11 using the Texas Two-Step.
- The decision highlights the importance of clear client communications and carefully defined voting procedures in mass tort bankruptcies.
- Parties in at least one case have followed the Red River decision on the right way to solicit and tabulate votes. In the Chapter 11 case of Avon's former parent company, a Delaware bankruptcy judge expressed appreciation that the debtors and the Committee agreed "to incorporate expressly Judge Lopez's holding in Red River Talc — making plain that a standard engagement letter that does not contain an express power of attorney is insufficient to permit an attorney to cast a vote on behalf of a client." In re AIO US Inc., 2025 Bankr. LEXIS 1369, *34 (Bankr.D.Del. June 6, 2025) (Goldblatt, J.).

Courts Interpret Scope of Insurer Standing Under Supreme Court Ruling

Last year, the U.S. Supreme Court held in Truck Insurance Exchange v. Kaiser Gypsum, 602 U.S. 268, 272, 144 S. Ct. 1414 (2024) that an "insurer with financial responsibility for a bankruptcy claim is sufficiently concerned with, or affected by, the proceedings to be a 'party in interest' that can raise objections to a reorganization plan." The court held that the objecting insurers were "parties in interest" under Bankruptcy Code Section 1109(b).

The high court's decision appeared to resolve an issue that has long impacted insurer participation in the mass tort Chapter 11 process. However, issues about the breadth of the decision are percolating through the lower courts. The key dispute is over whether Truck means that being a "party in interest" under Bankruptcy Code Section 1109(b) is enough to confer standing, or whether parties also need to satisfy separate Article III constitutional and prudential standing requirements. Courts have reached different conclusions. In In re Roman Catholic Diocese of Syracuse, 665 B.R. 866, 875-882 (Bankr. N.D.N.Y. 2024), a New York bankruptcy court held that insurers must satisfy constitutional and prudential standing requirements. Applying the prudential standing test on an issue-by-issue basis, the court imposed some limitations on discovery by insurers. However, in the AIO (Avon) case, the Delaware bankruptcy court rejected that approach, holding that insurers only need to satisfy the Section 1109(b) party in interest test. The AIO court held that constitutional standing requirements applied only to the party seeking relief (the debtor), and prudential standing was "no longer a thing" under authorities that preceded Truck. See In re AIO US, supra, 2025 Bankr. LEXIS 1369, *17-18, 24-25.

Although Truck Insurance won the standing battle, ultimately it lost the war; on remand, the Fourth Circuit affirmed the order confirming Kaiser's plan. See Hanson Permanente Cement v. Kaiser Gypsum (In re Kaiser Gypsum), 135 F.4th 185 (4th Cir. 2025).

Purdue Pharma—Opt-Out Is In

In Harrington v. Purdue Pharma, 603 U.S. 204 (2024), the Supreme Court held that a bankruptcy plan could not bind creditors to non-consensual releases of non-debtor third parties. Although the high court stressed it had no quarrel with consensual releases, it did not define what constituted adequate evidence of consent.

The lower courts have quickly coalesced around the position that an opt-out mechanism is generally sufficient to satisfy the consent requirement. See In re Spirit Airlines, 668 B.R. 689 (Bankr. S.D.N.Y. 2025) (collecting cases). In one case, a bankruptcy court in New York ruled that state law should govern, and required affirmative written consent. See In re Tonawanda Coke, 662 B.R. 220 (Bankr. W.D.N.Y. 2024). However, other courts have not followed its lead.

As the court noted in Spirit, opt-out releases were approved in many courts before Purdue. As a result, Purdue has not led to quite as radical of a departure from previous practice as some may have expected.

BSA—Plan Confirmation Upheld Despite Nonconsensual Releases

BSA's bankruptcy—the largest Chapter 11 case arising out of sexual-abuse claims with 80,000 survivor claims, competing claimants, billions in assets and billions in insurance coverage—created a perfect storm for an expensive, contentious case.

After nearly three years of protracted court proceedings and mediations, the Bankruptcy Court confirmed a plan in September 2022. In re BSA, 2022 Bankr. LEXIS 3730 (Bankr.D.Del. Sept. 28, 2022), aff'd sub nom. National Union Fire Insurance v. BSA (In re BSA), 650 B.R. 87 (D. Del. 2023).
However, BSA's exit from bankruptcy was delayed by multiple appeals. Ultimately, on May 13, 2025, the Third Circuit Court of Appeals affirmed confirmation of over 90% of the plan. See In re BSA, 137 F.4th 126 (3d Cir. 2025).
The Third Circuit rejected three of the four appeals on mootness grounds. The court ruled that insurance policy buyback agreements were "sales" entitled to protection under Bankruptcy Code Section 363(m) from being undone on appeal. As a result, the plan was upheld despite the inclusion of non-consensual third-party releases held by the U.S. Supreme Court last year to be illegal in the Purdue case. The court found that the broad releases were a material part of the buyback settlements that could not be removed.

A limited appeal by the fourth group of appellants (non-settled insurers) succeeded because the Third Circuit held that the confirmation order's judgment reduction clause impermissibly blocks contribution and indemnity claims the appellants could otherwise assert against settling insurers.
In a nutshell, the Third Circuit dodged the key issue of non-consensual third-party releases by granting one limited appeal and dismissing the other three appeals on mootness grounds. Thus, the Third Circuit remains "open for business" for future mass-tort Chapter 11 cases—for the moment. A petition for rehearing en banc is pending, and SCOTUS review is likely.

Chapter 11 is an imperfect vehicle to address problems presented by mass tort litigation. As a result, mass tort cases will continue to test the boundaries of the Bankruptcy Code and lead to high-stakes litigation. Stay tuned.

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