

# Summary of Third-Party Releases

Under a Chapter 11 plan of reorganization, a “third-party release” refers to a court-approved release of a non-debtor party (e.g., affiliates, subsidiaries, employees) from liability to other parties. This release prevents parties from bringing future claims against the non-debtor for the same issue resolved in the Chapter 11 case.

Third-party releases are typically approved only in specific circumstances, when the reorganization plan has substantial claimant and creditor support and when the court determines that the releases are necessary to the reorganization and fair to the claimants. Accordingly, substantial contributions by the non-debtor released parties are generally required.

In addition, nearly three decades ago, Congress amended the U.S. Bankruptcy Code to include Section 524(g), which explicitly allows these types of releases in cases involving allegations of asbestos contamination, as in the current talc litigation.

**Third-party releases play an important role in achieving plans of reorganization that provide substantial recoveries to claimants and creditors, particularly in the mass tort context.**

*“There can be no debate over the proposition that a bankruptcy court can approve a plan that includes third-party releases.” Judge John Dorsey In re Mallinckrodt PLC, 20-12522 (JTD), 26 (Bankr. D. Del. Feb. 8, 2022)*

## **BENEFITS OF THIRD-PARTY RELEASES**

Third-party releases are often critical to maximizing recoveries by claimants and creditors. Typically, non-debtors who provide substantial contributions in connection with a bankruptcy plan of reorganization indicate that they would not do so without non-debtor releases. These non-debtors are willing to contribute more to the claims recovery pool because they are assured that they will not have to relitigate the same issues again in the future or potentially cover liabilities twice.

**As a result, under the appropriate circumstances, third-party releases actually increase claimant and creditor recovery amounts.**

## LEGAL SUPPORT FOR THIRD-PARTY RELEASES

Most courts have held that **bankruptcy courts have the authority to approve third-party releases** when certain factors are met.

Many courts, including those in the Third Circuit, look to the following list<sup>1</sup> of factors to assess whether a non-consensual, third-party release of non-debtors should be approved:

- Whether the non-debtor is contributing substantial assets to the reorganization;
- Whether a suit against the non-debtor is essentially a suit against the debtor or will deplete assets of the bankruptcy estate;
- The extent to which the injunction is necessary to the success of the plan;
- Whether there is agreement by a substantial majority of claimants and creditors to support the injunction, specifically if the impacted claimants and creditors "overwhelmingly" vote to accept the plan; and
- Provision in the plan for payment of all or substantially all of the class(es) affected by the injunction.

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<sup>1</sup> List is not exhaustive nor exclusive.