Delaware Bankruptcy Inn of Court

January 20, 2026

5:00 p.m.

Important Cases from 2025 and Quizzo

Consumer Group: Erin Brignola, Team Co-Leader; Chase Miller

Commercial Group: Bruce Grohsgal, Team Co-Leader; John Demmy; Edward Kosmowski; and Gabriel J. Washel

Consumer Cases:

1. *In re Bramber,* 23-11642 (Bankr. D. Del. Feb. 4, 2025)

Relevant Provisions: 11 U.S.C. § 1329

Judge Shannon in his letter opinion solidified that the Debtor may modify the plan to cure post-petition mortgage arrears, over the objection by the mortgage company, under 11 U.S.C. section 1329, and in response to 11 U.S.C. Section 362 relief. The creditor would only allow a stipulation to cure the arrears over 12 months, and Debtor's modified plan provided the cure spread over the life of the plan. NOTE: This is a reiteration of the same decision by Judge Balick, years ago, *In re Grim (for which I don't remember the cite but it was EKB case—and Judge Fitzgerald also continued this policy).*

2. ***In re In re Trott,* 17-10985 (Bankr. D. Del. May 12, 2025)**

Relevant Provisions: 11 U.S.C. 105; Rule 3002.1

Judge Shannon in his letter opinion used his powers under 11 U.S.C. section 105 and under Rule 3002.1 to adjudicate and establish the mortgage claim over the scant testimony of the creditor-mortgagee's witness, and in favor of the Debtor. to deem the mortgage current overruling the accounting provided in Creditor's Response to the Notice of Final Cure. NOTE: New rules in effect as of December 1, 2025 tighten the Rule 3002.1 disclosures and forms to determine the status of the mortgage claim not only at the end of the plan, but at any time during the life of the plan for transparency, enforcement and fees, and creditor's requirements regarding statements and the inclusion of mandatory information. (This was also an 84-month plan –due to Covid relief that has sunsetted).

3. ***In re In re Emerson*, 24-12789 (Bankr. D. Del. May 12, 2025)**

Relevant Provisions: 11 U.S.C. 1325(a)(5)

Judge Shannon in his letter opinion sustained the Homeowners Association ("HOA") objection to the plan confirmation establishing that the HOA had standing as a secured creditor *in rem*, pursuant to the Delaware Uniform Common Interest Ownership Act (DUCIOA) and the deed declarations, and that 11 U.S.C. section 1325(a)(5) provides that only three alternatives are available: consent, surrender, or retention of lien with payments. NOTE: review further of case law and deed restriction may be applicable for priority payments, and security interest on case-by-case basis.

Commercial Cases:

4. ***United States v. Miller*, 604 U.S. ___, 145 S. Ct. 839 (2025) (Gabriel J. Washel) – Chapter 7 Trustee's Avoidance Action against IRS; Appeal by the IRS on the Scope of Sovereign Immunity Waiver and Abrogation under § 106(a) in a § 544(b) Claim**

Relevant Provisions: 11 U.S.C. §§ 106(a), 544(a), 544(b) of the Bankruptcy Code

The United States Supreme Court considered whether § 106(a) of the Bankruptcy Code waives and abrogates the federal government's sovereign immunity, allowing a Chapter 7 Trustee to use §544(b) to pursue a Utah state law avoidance action against the Internal Revenue Service (IRS).

A Chapter 7 Trustee brought an avoidance action against the IRS seeking to avoid $145,000 in payments the corporate Debtor had made to the IRS while the company was insolvent, for which the company received no value in return. These payments were made to satisfy the personal tax liabilities of two of the Debtor's principals. The collapse of the Debtor came three years after the

principals began misappropriating company funds for personal use. The Trustee brought the action under Utah's state fraudulent transfer statute as made applicable to the bankruptcy case under § 544(b). The state statute allows a Trustee to void Debtor's transfer of assets if the Debtor was insolvent at the time of the transfer, and received less than reasonably equivalent value in return. The IRS filed a motion for summary judgment in the action, arguing that it had sovereign immunity against the Trustees claim. The bankruptcy court, district court, and Tenth Circuit all ruled in favor of the Trustee. However, the Supreme Court reversed.

The Supreme Court held that § 106(a) of the Bankruptcy Code abrogates sovereign immunity with respect to a Bankruptcy Code provision itself. While this waives sovereign immunity with respect to a federal cause of action under § 544 (and by extension under § 548), it does not extend the waiver to the underlying applicable state fraudulent transfer law. Section 544(b) requires the Trustee to step into the shoes of a "creditor holding an unsecured claim" that would otherwise be able to avoid the transfer under applicable state law. However, virtually no unsecured creditor could have brought the claim against the IRS outside of a bankruptcy case due to the sovereign immunity the U.S. Government enjoys. Therefore, the Trustee could not satisfy § 544(b)'s actual creditor requirement.

The Court emphasized the distinction between § 544(b), which incorporates state law and defenses into the Bankruptcy Code, and § 544(a), which allows the Trustee to act as a hypothetical lien creditor.

In his Dissent, Justice Gorsuch noted that the Trustee's claim satisfied the three conditions of Utah's fraudulent transfer law, making the transfers voidable under state law. In his view, § 544(b)(1) empowers a Trustee to invoke the rights of any "creditor holding an unsecured claim," and once § 106(a)(1) abrogated the sovereign immunity, the IRS could not rely on that defense in bankruptcy court. In essence, once 106(a)(1) removes the defense of sovereign immunity, the Trustee should be able to proceed. Gorsuch stated: "The Federal Government can defeat the claim by raising the affirmative defense of sovereign immunity with respect to a private creditor pursuing relief in state court, but not with respect to the Trustee pursuing relief in a federal bankruptcy proceeding thanks to § 106(a)(1)."

5. *In re ESML Holdings Inc*, 135 F.4th 80 (3rd Cir. 2025) (Bruce Grohsgal) – Is the public right of access in bankruptcy proceedings governed by common law or by statute? The Third Circuit held that statute, specifically 11 U.S.C. § 107, is controlling.

Relevant provisions: 11 U.S.C. § 107

ESML Holdings, Inc. and an affiliate (collectively, "Mesabi") successfully emerged from Chapter 11 bankruptcy in 2016. During the pendency of the bankruptcy case, Mesabi sued Cleveland-Cliffs, Inc., alleging tortious interference with contract, federal and state antitrust violations, automatic stay violations, and civil conspiracy the purpose of which was to prevent Mesabi from completing an iron ore pellet production facility in northern Minnesota.

The parties entered into a protective order in connection with the litigation, which the bankruptcy court approved by the bankruptcy. The protective order permitted either party to designate a document as confidential if it believed in good faith that the document constituted or contained trade secrets, confidential or proprietary information, information that invaded the privacy of an individual, or other sensitive commercial or financial information that was not publicly available. The other party could challenge any designation, in which event the producing party had the burden of showing that such designation was appropriate.

At the close of discovery, Mesabi moved for an injunction to prevent Cleveland-Cliffs from acquiring several mineral leases that Minnesota had awarded to Mesabi but then terminated and awarded to Cleveland-Cliffs. In support, Mesabi filed under seal documents designated as confidential by Cleveland-Cliffs. The bankruptcy court denied the motion.

Mesabi then petitioned a Minnesota state court for a writ of mandamus to reverse the state's award of the leases to Cleveland-Cliffs. Because it sought to use in the state court proceeding the documents it filed under seal in the bankruptcy court, it moved the bankruptcy court to unseal the documents. Mesabi relied on "the common law right of access to court filings – which carries a presumption of openness for judicial records." Cleveland-Cliffs opposed the unsealing, arguing that Mesabi was judicially estopped from moving to unseal the documents, which the Third Circuit rejected including because the bankruptcy court had made no factual or legal conclusions in connection with its entry of the stipulated protective order. Cleveland-Cliffs also argued that, in any event, section 107 of the Bankruptcy Code and not the common law applied.

The Third Circuit began by considering the common law right of access to judicial proceedings and judicial records, which it explained antedates the Constitution and promotes public confidence in the judicial system. The common law right of access, the court continued, reflects the important right of the public to inspect and copy public records and documents, including judicial and documents. The common law right of access is distinct from the First Amendment right of access, with which it is often confused. The First Amendment right of access "is even more robust," and protects the public's right of "access to information" about what occurs "in the halls of justice," "not only by witnessing a proceeding firsthand, but also learning about it through a secondary source." It thus requires a much higher showing than the common law right before a judicial proceeding can be sealed.

Against the backdrop of the longstanding common law and First Amendment presumption of public access, Congress also has passed legislation on the subject, including section 107 of the Bankruptcy Code. Section 107 provides that papers filed in a bankruptcy court case are public records and open to examination, but that on "request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may" "(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed" in a bankruptcy case. 11 U.S.C. § 107(a), (b).

The Third Circuit noted that the common law yields to statute, if the statute speaks directly to the question addressed by the common law. Absent such specificity in the enactment, it is presumed that the common law still governs. Section 107 specifically governs the sealing of information

and documents filed in a bankruptcy case and, thus, speaks directly to whether and under what circumstances judicial records may be sealed – the question addressed by the common law right of access.

The Third Circuit held, accordingly, that Code section 107 displaces the common law right of access in two major respects.

First, section 107(b)(1) permits sealing of "a trade secret or confidential research, development, or commercial information." "Such information is broader than the information that could be protected under the common law doctrine, which requires the proponent of sealing to show not only a protected category of information – which would include trade secrets or other confidential commercial information – but also that the disclosure of this information 'will work a clearly defined and serious injury to the party seeking closure.'"

Second, section 107(b) uses the mandatory term "shall" to direct bankruptcy courts to protect certain categories of information, meaning the bankruptcy court under section 107(b) (as opposed to the common law) lacks discretion to decline to protect covered information.

Given these differences, the court held that section 107 "differs from and displaces the common law standard for sealing judicial records in bankruptcy cases." The court noted that other circuits (the First and Eighth) had reach similar conclusions. With this holding, we join our sister circuits that have reached similar conclusions.

The court would "not go so far as to accept," and "emphatically reject[d]," Cleveland-Cliffs' subsidiary argument that section 107 permits sealing of records whose disclosure "would work no harm at all." Rather, for such parts of the judicial record to be protected, it must be shown that disclosure will "cause 'an unfair advantage to competitors.'"

The Third Circuit remanded the case to the bankruptcy court to determine whether the confidential information met the trade secret definition of "a formula, process, device, or other business information that is kept confidential to maintain an advantage over competitors." If it did, then it should be kept sealed pursuant to section 107.

6. *In re Boy Scouts of America*, 137 F. 4th 126 (3rd Cir. 2025) (John Demmy) – appeal from confirmation of Chapter 11 plan containing non-consensual third-party releases, prohibited by *Purdue Pharma*, statutorily moot under section 363(m); other appeals equitably moot or not moot

Relevant Provisions: 11 U.S.C. §§ 363(m), § 524(e) and (g), § 1123(b)(6); equitable mootness

Must a non-consensual release given by one non-debtor to another under a confirmed Chapter 11 plan in a non-asbestos case be stricken on appeal after the Supreme Court in *Harrington v. Purdue Pharma, L.P.*, 144 S. Ct. 2071 (2024) ruled that such a release is not authorized by the Bankruptcy Code? The Third Circuit recently ruled, "no," relying on the statutory mootness provision of the Code section 363(m).

Bankruptcy settlements made in conjunction Chapter 11 plans increasingly have been used in recent years to obtain releases or permanent injunctions for non-debtors. Code section 524(g) specifically authorizes such releases and permanent injunctions for asbestos cases, but makes no mention of any other kind of case in which they may be granted. These releases and/or permanent injunctions in favor of non-debtors typically are given in exchange for the non-debtors' substantial contributions made to the plan in the form of cash, insurance policies, and/or other assets. The non-debtors who are released by the plan can include the debtor's owners, directors, officers and employees, against whom serious allegations of wrongdoing may have been made, such as for child sex-abuse or the deceptive marketing of addictive drugs. Prior to the Supreme Court's decision in *Purdue Pharma*, the more controversial of these settlements under the terms of a confirmed Chapter 11 plan bound not only consenting creditors and other parties in interest, but also bound those who had *not* agreed to settle, who nonetheless had their claims against the non-debtors barred by the plan confirmation order.

These Chapter 11 plan settlements that included non-consensual releases arguably solved the hold-out problems that impeded reaching settlements in mass tort cases outside of bankruptcy, and thus facilitated the released parties' agreeing to make substantial plan contributions for their part of the settlement. The contributions made by the non-debtor releasees enabled reorganizations, increased distributions to victims and other creditors, and in some cases were used to abate the present and future harms allegedly caused by those making the contributions. But these non-consensual releases also were strongly criticized, including because they deprived the non-consenting releasing parties of their day in court and of due process, enabling the releasee-wrongdoers, by some accounts, to escape liability. The Supreme Court in *Purdue Pharma* brought an end to most non-consensual releases by one non-debtor of another pursuant to a Chapter 11 plan, holding that the Code does not authorize them except in asbestos cases pursuant to section 524(g).

The Chapter 11 plan in *In re Boy Scouts of America* arose from what the Third Circuit called "the horrific history of sexual abuse in the Boy Scouts of America's ranks" that continued for decades, ranging from single instances of harassment to serial offenses of sexual penetration. In recent years, the court continued, "more and more brave victims of this abuse" had come forward and sued in the tort system to recover for the harm they suffered, prompting the Boy Scouts of America and the Delaware BSA, LLC to file for Chapter 11 bankruptcy. Years of negotiations followed, with claimants, insurers, and other interested parties towards a global resolution for the thousands of tort claims against the debtors and related persons.

The *Boy Scouts*' Chapter 11 plan was confirmed, and became effective in 2023, prior to the Supreme Court's *Purdue Pharma* decision. The plan provided for the creation of a Settlement Trust to pay distributions to abuse claimants, funded primarily by the proceeds of the insurance companies' buying back the debtors' insurance policies and the debtors' sale of other assets, and by contributions from the debtors and related non-debtors.

Groups of abuse victims appealed, seeking to reverse the confirmation order and throw out the debtors' plan in its entirety, on the ground that the plan included "so-called 'nonconsensual third-party releases,'" which by the time of the determination of the appeal the Supreme Court had

held in *Purdue Pharma* were impermissible. Groups of insurers also appealed, seeking rulings that they retained their rights and defenses under assigned insurance policies and the rights they would have had outside of bankruptcy to collect on their defense costs and excess liability claims, though now only from the proceeds in the Settlement Trust.

Section 363(m) gives finality to a sale in bankruptcy, by providing that the reversal or modification of the bankruptcy court's sale order cannot affect the validity of the sale if the purchase was made in good faith and the sale was not stayed. The abuse claimants raised "a bevy of arguments" against statutory mootness. None persuaded the court.

First, they argued that section 363(m) did not apply because the insurance policy buyback was not a sale "outside a plan of reorganization" nor was it even a sale. The court rejected this argument, holding that the confirmation order, which authorized the sale of the insurance policies back to the insurers, in exchange for their payment of the sale proceeds that partially funded the Settlement Trust, "equally serve[d] as an 'authorization ... of a sale' under § 363(m)."

Second, the court rejected the claimants' argument that the settling insurers were not good faith purchasers because they bought back the policies despite the abuse claimants' asserting rights in and against those policies and with the knowledge that those claimants intended to challenge the plan on appeal. The court rejected this argument also, deferring to the bankruptcy court's unequivocal good faith finding, and noting that section 363(m) expressly provides that the finality afforded is not affected by a purchaser's knowledge of an appeal.

Third, the claimants contended that they did not seek to upset the insurance policy buyback, but rather only took issue with the nonconsensual third-party releases. But the court found that because the releases were part of the consideration for the buyback, removing them from the transaction would change the purchase price, which "would plainly affect the validity of the sale."

Emphasizing that the relief sought would send the debtors "and over 82,000 abuse claimants back to square one and would almost certainly unleash years of litigation in the wake of the vacated Plan," the court held that section 363(m) barred both invalidating the sale and dismantling the plan, in addition to the more limited relief suggested by the abuse claimants.

The Third Circuit emphasized that § 363(m) did not immunize all facets of a plan from appellate review whenever a section 363(b) sale is involved. Section 363(m) does not "countenance the use of § 363(b) during the course of bankruptcy proceedings to effectuate a *sub rosa* plan" (e.g., a sale that dictates the terms of a plan to follow). Nor does it protect against a challenge that is "collateral" to the sale or would not otherwise "affect the validity of the sale." These fall "outside the ambit of § 363(m)."

The Third Circuit characterized the insurers' appeals as falling within the latter category and thus not statutorily moot. The court thus reached the question of whether the relief sought by the insurers was barred by the doctrine of equitable mootness. The court held that, in light of the limited relief sought by the insurers, the success of their appeals did "not threaten to fatally scramble the Plan." Thus the doctrine of equitable mootness did not prevent the court from reaching the merits of the insurers' claims. As to one group of insurers, the court held that the

confirmation order and plan already preserved their rights and defenses under their policies, so no further remedy was required. As to the other insurers, the court held that they were entitled to relief because the confirmation order impermissibly released their claims under their policies. Finding that the record was inadequate to decide the issue raised by the latter group, the court remanded that issue for further findings and determinations.

Judge Rendell concurred, but considered the court's opinion fatally flawed. Rendell would have held that the appeal was equitably moot but not statutorily moot.

Some of the appellants sought certiorari by the Supreme Court. The Court denied the writ on January 12, 2026.

7. *In re MTE Holdings LLC*, 136 F.4th 506 (3rd Cir. 2025) (Bruce Grohsgal) – magistrate has authority to enter final judgment on a bankruptcy appeal if there is consent of the parties and a referral by a district court

Relevant Provisions: 28 U.S.C. §§ 157(c), 636(c)(1)

Neither U.S. Bankruptcy Judges nor U.S. Magistrates have lifetime tenure under Article III of the Constitution. Because of this, both are often referred to as "Article I" judges, because their existence comes from Congress and is not specifically provided for in Article III of the Constitution. The 14-year term for bankruptcy judges has resulted in two constitutional crises regarding their authority to enter final orders on some matters authorized by Congress, which the Supreme Court has held can only be entered by an Article III judge. The first of these crises, precipitated by *Northern Pipeline* (1982), was resolved by enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984 (BAFJA). BAFJA affirmed that the bankruptcy courts' ultimate authority and jurisdiction was in the district court of which it was a part, and authorized each of those district courts to enter a standing order referring the bankruptcy cases to the bankruptcy court in that district. Standing orders of reference presently are in effect in all 94 federal court districts. The second crisis, brought about by *Stern v. Marshall* (2011) was resolved largely by *Wellness Int'l Network* (2015), in which the Court ruled that the parties can consent to the bankruptcy court's authority and jurisdiction.

A similar issue of authority and jurisdiction exists for U.S. Magistrates, who also do not have lifetime tenure. The Third Circuit, in *In re MTE Holdings LLC*, emphasized that the question – as for the bankruptcy courts – is one of both statutory law and constitutional law.

The holder, in *MTE Holdings*, of a royalty interest in a mineral estate commenced an adversary proceeding in the bankruptcy court against the operator of the mining site, alleging trespass and that the operator had wrongly withheld royalties. The Delaware bankruptcy court granted summary judgment to the operator. The royalty interest holder appealed to the district court, where the parties consented to the magistrate judge's determining all matters, including entering final judgment. The magistrate judge affirmed the bankruptcy court's judgment, and the royalty interest holder appealed again.

The Third Circuit noted that, forty years earlier in *In re Morrissey*, it had held that a magistrate judge lacked jurisdiction, under the bankruptcy and magisterial statutes then in effect, to issue a final order in a bankruptcy appeal, even if the parties had consented.

But Congress changed the law when it enacted the Federal Magistrate Act of 1979 (FMA), which included a broad consent provision, 28 U.S.C. § 636(c)(1), which expanded the authority of magistrate judges, "[n]otwithstanding any provision of law to the contrary," to encompass "any or all proceedings in a jury or nonjury civil matter." Five years later, with the enactment of BAFJA in 1984, Congress amended the authority and jurisdiction of the bankruptcy courts.

The court held that, upon consent of the parties and with referral by a district court, a magistrate judge may enter final judgment in a bankruptcy appeal. Several considerations led to this conclusion.

First, the holding comported with "the breadth of a magistrate judge's authority under the FMA with party consent." Statutory changes post-*Morrisey*, also supported the court's conclusion. Since 1984, when BAFJA repealed an express statutory prohibition, there had been "no barrier to magistrate judges' authority to enter final judgments in bankruptcy appeals pursuant to section 636(c) with the consent of the parties." The court noted that two other circuits had held otherwise, and a third had suggested otherwise in dicta. Those courts had reasoned that "if Congress had wanted district courts to have the power to refer appeals to magistrates, Congress would have specifically so provided." But the Third Circuit could not agree, including because of the express repeal of the express prohibition, and section 636(c)'s express grant of consent authority to magistrate judges "[n]otwithstanding any provision of law to the contrary."

The court further reasoned that its decision accorded "with the reality that magistrate judges function as part of a district court," appointed by its judges, and subject to dismissal by them. And because of the parties' consent, Article III was not violated. The consensual referral of bankruptcy appeals to magistrate judges thus was consistent with district courts' authority under 28 U.S.C. § 158(a) to hear bankruptcy appeals.

Finally, the court stressed that its decision comported with separation-of-powers principles. The right to trial by an Article III judge was "a personal right that is subject to waiver." Though Article III also "serves as an inseparable element of the constitutional system of checks and balances," "allowing Article I adjudicators to decide claims submitted to them by consent does not offend the separation of powers so long as Article III courts retain supervisory authority over the process." "Moreover, when a magistrate judge enters a final order in a bankruptcy appeal, the non-prevailing party can appeal as of right to a Court of Appeals and obtain review there by Article III adjudicators. 28 U.S.C. § 158(c)(2). In these ways, separation of powers is respected."

The court concluded that "a magistrate judge may enter final judgment in a bankruptcy appeal with consent of the parties and a referral by the district court." Thus, in the case before it, the magistrate judge was authorized to enter the final judgment, and the Third Circuit proceeded to determine the appeal.

8. *In re Aquilino,* 135 F.4th 119 (3d Cir. 2025) (Gabriel J. Washel) – Third Circuit confirmed that bankruptcy courts have both jurisdiction and equitable authority to sanction Debtor's counsel for failing to comply with the fee-disclosure obligations of Code § 329 and Rule 2016(b)

Relevant Provisions: 11 U.S.C. § 329(a) of the Bankruptcy Code; Fed. R. Bankr. P. 2016(b); U.S. Const. amend. VII

The Third Circuit addressed whether a bankruptcy court may sanction Debtors' counsel under § 329 of the Bankruptcy Code for failure to disclose a post-petition fee agreement, and whether such sanctions conflict with counsel's Seventh Amendment right to a jury trial in a separate collection.

The case arose in a Chapter 7 case in which Debtors and their counsel agreed to a $3,500 flat fee. Counsel disclosed the fee agreement to the bankruptcy court on the petition date in a form completed by the firm.

The case later became complex, and counsel was required to perform significant post-petition work. The parties agreed to the much larger amount of $113,000 to be paid from non-estate property. However, the parties did not disclose the agreement to the court, as required by § 329 and Rule 2016(b). Debtors later failed to pay, leading counsel to bring an action in the district court seeking a jury trial to collect the unpaid fees. The Debtors sought to transfer the matter to the bankruptcy court, and counsel objected.

The bankruptcy court held that it had "core" subject matter jurisdiction, and that counsel willfully violated the rules for disclosure found in § 329 and Rule 2016(b). It ordered disgorgement of the flat fee and barred collection under the undisclosed fee agreement. Counsel appealed to the district court, which reversed, holding that the bankruptcy court infringed upon counsel's Seventh Amendment right to a jury trial. The dispute eventually reached the Court of Appeals for the Third Circuit.

On appeal, the Third Circuit disagreed with the district court. The Third Circuit explained that the fee-disclosure review under § 329 "arises under" the Bankruptcy Code, and falls within the core jurisdiction of the bankruptcy court, regardless of the source of the payments. The court further stated that the remedies for the violation of § 329, including disgorgement and cancellation, are equitable in nature and designed to restore the status quo. As such, these remedies do not trigger the Seventh Amendment right to a jury trial. The Third Circuit noted that disclosure obligations extend to all agreements for compensation "in connection with" the case, regardless of timing or funding source. Counsel's failure to disclose the agreement thus violated the plain language of the statute. The court reversed the judgment of the district court and reinstated the sanctions issued by the bankruptcy court. Lastly, the court emphasized that allowing Debtors' counsel to essentially evade a § 329 review by asserting a right to a jury trial would substantially undermine the bankruptcy court's ability to enforce transparency and administer cases effectively.

9. *In re ONH AFC CS Investors, LLC*, 2025 WL 1353850 (Bankr. D. Del. 2025) (Gabriel J. Washel) – A Trustee may avoid prepetition transfers for the benefit of equity holders but only if creditors are first paid in full, and those equity holders would have a claim to those funds outside of bankruptcy.

Relevant Provisions: 11 U.S.C. § 510

ONH AFC, formed in 2022 by Elchonon Schwartz, was a commercial real estate investment fund managed by One Night, another entity owned by Schwartz. ONH AFC raised equity to fund the

purchase of a piece of real estate, the Atlanta Financial Center, through CrowdStreet, an online brokerage platform. Additionally, the firm found funding through other large investors, other Schwartz entities, and senior secured lenders. The CrowdStreet investors were informed that all CrowdStreet funds were from the ONH offerings to be used for the purchase, lease, reposition, and renovation of the Atlanta Financial Center. The CrowdStreet funds were also to be held in a segregated account until the purchase closed. If the deal failed to close, the funds would be returned to investors.

Later, ONH AFC and other Schwartz entities filed for bankruptcy, and confirmed a plan establishing a post-confirmation liquidating trust. The Trustee of the liquidating trust filed an adversary complaint alleging that even though the contemplated Atlanta Financial Center transaction did not close, yet funds raised were nonetheless kept from investors. The Trustee alleged that ONH AFC and Schwartz made material misstatements and omissions in connection with the offering, and that investor funds were subsequently diverted and dissipated through fraudulent prepetition transfers, including payments for which the Debtor received no value. The most concerning transfer was a $5 million payment made to Josmic 2 LLC and Josmic Holdings LLC (together, Josmic), made to pay off a personal loan of the Debtor's principal, Schwartz. The other four transfers, totaling approximately $2 million, were alleged to have been made for the benefit of Josmic as well, with the Debtor again receiving no value.

Josmic moved to dismiss the adversary complaint for failure to state a claim, or to stay the case pending the outcome of the Trustee's effort to recover the funds from Schwartz. Josmic argued that under *In re DSI Renal Holdings, LLC,* No. 14-50356, 2020 WL 550 (Bankr. D. Del. Feb. 4, 2020), fraudulent conveyance claims can only be asserted when the beneficiaries of said claims will be creditors. Given that the Trustee was close to recovering sufficient funds from other sources to pay the creditors in full, Josmic argued that there would be no benefit to creditors from the avoidance of payments made to Josmic.

The court agreed with the core reasoning of *DSI Renal*. The avoidance of a fraudulent transfer is a remedy for creditors. It would thus not make sense to allow the Trustee to assert a fraudulent conveyance claim for the benefit of an entity that could not otherwise assert such a claim. However, though the interests of investors who have been defrauded are treated as equity interests and subordinated for distribution purposes in a bankruptcy case pursuant to Code section 510(b), they would be creditors with fraud claims outside of bankruptcy. The reasoning in *DSI Renal* focused on whether the beneficiaries of the fraudulent conveyance action would have the right to assert those claims outside of the bankruptcy case. *DSI Renal* ensures that a Trustee does not have greater rights to recovery against a fraudulent conveyance than a regular creditor would have outside of bankruptcy. Here, the Trustee was still acting within his capacity to make creditors whole or as close to whole as possible. Therefore, the Trustee could assert the fraudulent conveyance claim for the benefit of defrauded investors.

10. *In re Crédito Real, S.A.B. de C.V., SOFOM, E.N.R.*, 670 B.R. 150 (Bankr. D. Del. 2025) (Bruce Grohsgal) - non-consensual third-party releases permitted in Chapter 15 case post-*Purdue Pharma*, including because not manifestly contrary to U.S. public policy

Relevant Provisions: 11 U.S.C. §§ 524(e), 1123(b), 1506, 1507, and 1521

Though the Supreme Court has determined that Chapter 11 does not authorize non-consensual third party releases in a Chapter 11 plan in a non-asbestos case, the rule appears different in a Chapter 15 cross-border insolvency. This is because, if such release is permitted by the foreign law that applies to the foreign main proceeding (in this case Mexico), then it is enforceable under U.S. bankruptcy law unless it is "manifestly contrary" to the public policy of the U.S. Such releases are not "manifestly contrary" to U.S. public policy, it follows, since they are permitted in Chapter 11 asbestos cases and Congress could at any time permit them in other kinds of bankruptcy cases as well.

A liquidation proceeding was commenced in Mexico against *Crédito Real*. The debtor later obtained court approval in Mexico of its Concurso Plan. The plan released, exculpated and shielded from claims certain non-debtor parties who had played roles in the negotiation and implementation of the Chapter 15 restructuring process, including an ad hoc group of creditors, the Mexican liquidator, the Chapter 15 debtor's former directors and officers, the Indenture Trustee, and other related parties. The release was customary in Mexican settlement agreements and was permitted under Mexican bankruptcy law.

The foreign representative of the Mexican proceeding then filed a verified petition in the Delaware bankruptcy court, commencing the Chapter 15 case and seeking entry of an order recognizing the Mexican main proceeding and enforcing the Concurso Plan and the order approving it. A creditor, DFC, objected, arguing that Code section 1521(a) "does not include third-party releases as relief available to a foreign debtor," and that *Purdue Pharma* prohibited non-consensual third-party releases under U.S. bankruptcy law.

The court began its analysis by noting that Chapter 15 is different, requiring comity or cooperation with a foreign representative of a cross-border bankruptcy case the main proceeding of which is in a foreign country. The purpose of Chapter 15, the court continued – expressly set forth in the statute – is to achieve cross-border reorganizations by cooperation and comity with foreign courts and deference to those courts within the confines established by Chapter 15.

Code sections 1507 and 1521 give the bankruptcy court broad discretion in achieving that goal and in the relief that the U.S. court can provide. That discretion is limited primarily by section 1506, which provides that the U.S. court may "refus[e] to take an action governed by [chapter 15] if the action would be manifestly contrary to the public policy of the United States." Refusing to take such action, the court in *Crédito Real* continued, is an extraordinary act, and that section must be "narrowly interpreted, as the word 'manifestly' in international usage restricts the public policy exception to the most fundamental policies of the United States." As a consequence, the court stated, "that authority rarely is exercised."

Analyzing the statutory provisions at issue, the court held that Code sections 1507 and 1521(a) authorized releases such as the ones in the Concurso Plan, notwithstanding *Purdue Pharma*. Section 1507 authorizes the U.S. court to provide "additional assistance" to the foreign representative, on the principal of comity, so long it is extended in connection the fundamental purposes of bankruptcy including procedurally fair treatment of U.S. creditors, orderly

distributions on account of claims, and a fresh start for the debtor. The Mexican proceeding satisfied these requirements. Section 1521 begins with the statement that the court may grant "any" appropriate relief to the foreign representative, and then expressly excludes specific relief that a U.S. court cannot grant. Applying the interpretive canon of *expressio unius est exclusio alterius* – which stands for the proposition that the expression of one thing means the exclusion of another – the court held that section 1521 did not exclude the releases.

Turning to section 1506, the court determined that the non-consensual third-party releases were not manifestly contrary to U.S. public policy. "Simply put, if permitting third-party releases is a policy decision that Congress can and has made" – whereby such releases are available in an asbestos case but not in a non-asbestos case – "it cannot also be true that enforcing such releases where principles of cooperation and comity so require in chapter 15 would be 'manifestly contrary to the public policy of the United States.'"

Chapter 15, the court concluded, authorized it to enforce a nonconsensual third party release ordered by foreign courts, under the broad discretion given to it by sections 1507 and 1521(a) "to aid foreign courts in accordance with principles of comity." Nothing in the plain language of the Code, its legislative history, or the canons of construction indicated "that Congress intended to diverge from this policy of comity to prohibit enforcing releases entered by foreign courts." Because the Mexican proceeding was fair, and the Concurso Plan and the Concurso Order were not manifestly contrary to U.S. public policy, the court enforced both in their entirety.

11. *Smallhold, Inc. v. Mountain Meadow Mushroom Farms, Inc. (In re Smallhold, Inc.)* 2025 WL 2147260 (Bankr. D. Del. 2025) (John Demmy)

Does a bankruptcy court have subject matter jurisdiction over a post-plan effective date breach of a post-petition contract?

Relevant Provisions: 28 U.S.C. § 1334; 11 U.S.C. §§ 501, 502, 503

The Delaware Bankruptcy Court considered two fundamental issues in this case: (1) whether it had subject matter jurisdiction over a claim for breach of a contract entered into by the Debtor after commencement of its bankruptcy case for an alleged breach occurring after the effective date of the Debtor's confirmed plan, and (2) most importantly for resolution of the jurisdiction issue, when the breach of contract claim arose.

Smallhold, Inc. ("Smallhold" or "Debtor") commenced a bankruptcy case under Subchapter V of Chapter 11 of the Bankruptcy Code. Thereafter Mountain Meadow Mushroom Farms, Inc. ("Mountain Meadow") and the Debtor entered a long-term contract for Debtor to buy mushrooms from Mountain Meadow. The Bankruptcy Court confirmed the Debtor's Subchapter V plan, pursuant to which Smallhold succeeded to all rights and obligations under the Mountain Meadow contract. Thereafter, Mountain Meadow asserted that Smallhold breached its post-effective date obligations under the contract by refusing to buy mushrooms. Mountain Meadow sued in California state court (the "California Action") for breach of contract and for fraudulent

inducement. Smallhold removed the California Action to federal court which court then transferred the matter to the Delaware Bankruptcy Court.

Debtor argued the Bankruptcy Court had jurisdiction over the claims asserted by Mountain Meadow in the California Action because they were post-petition, pre-confirmation claims. Mountain Meadow argued that the Bankruptcy Court lacked jurisdiction because the breach of contract claim arose from post-effective date conduct and the Debtor had failed to establish a close nexus between the California Action and the confirmed plan. Parenthetically, the Bankruptcy Court ultimately did rule that it had jurisdiction over Mountain Meadow's claim for fraudulent inducement because such claim arose when the contract was entered into prior to confirmation (but Mountain Meadow indicated in the litigation that it would not be pursuing such claim either in the California Action or in the bankruptcy case).

The Bankruptcy Court, in analyzing the issue before it, cited to the Third Circuit's holdings in *In re Resorts Int'l, Inc.*, 372 F.3d 154 (3d Cir. 2004) ("*Resorts International*"). The *Resorts International* court held that after a debtor's emergence from bankruptcy a bankruptcy court's "related to" jurisdiction narrows sharply, and that post-confirmation jurisdiction exists only with respect to matters having a "close nexus" to the confirmed plan (*i.e.*, matters that affect the interpretation, implementation, consummation, execution, or administration of a confirmed plan or implicate the integrity of the bankruptcy process). The rationale for such narrowing is that a company that has emerged from bankruptcy conducts its business without the protections afforded by, or the scrutiny of, the bankruptcy process. Accordingly, when Mountain Meadow's breach of contract claim accrued was the key issue in this analysis. As the Bankruptcy Court stated, if the breach of contract claim arose during the bankruptcy case prior to confirmation the Bankruptcy Court would have jurisdiction but if such claim arose post-confirmation, it would not.

Debtor argued that the breach of contract claim arose when the parties entered the contract during the pendency of the bankruptcy case, citing to the Third Circuit's decision in *In re Mallinckrodt PLC*, 99 F.4th 617 (3rd Cir. 2024) ("*Mallinckrodt*"). The Mallinckrodt decision, involving a pre-petition contract, provided some fodder for Debtor's position that the accrual of a claim for a breach of contract arises when the contract was entered into. However, *Mallinckrodt* was distinguishable because the contract at issue there, unlike the Smallhold/Mountain Meadow contract, was an outright sale and not a long-term executory contract which contemplated performance after confirmation. Thus, the Bankruptcy Court rejected Debtor's argument and held Mountain Meadow's breach of contract claim arose post-confirmation when Smallhold at such time allegedly refused to buy mushrooms thereunder.

The Bankruptcy Court thus determined that because Smallhold's alleged breach occurred because of post-effective date conduct and because such claim did not impact the enforcement of Debtor's confirmed plan and did not otherwise have a "close nexus" to the plan, subject-matter jurisdiction did not exist with the Bankruptcy Court. The Bankruptcy Court also held, in connection with the Debtor's related adversary proceeding, that Mountain Meadow had not by

filing the California Action violated the automatic stay, the confirmation order or the plan injunction.

The Bankruptcy Court also cited to *Resorts International* for the proposition that there is no "traditional" related to jurisdiction after plan confirmation because the estate terminates. This was a Subchapter V case, and because confirmation of the plan was not consensual, the Debtor had not yet received a discharge. However, the plan and confirmation order made clear that all assets would vest in Smallhold upon confirmation. Thus, when the breach occurred, there was no estate, and under *Resorts International*, the very limited jurisdiction hooks applicable in such circumstances were not present.

12. *In re Nu Ride Inc.*, 2025 WL 1600566 (Bankr. D. Del. 2025) (Bruce Grohsgal) – bankruptcy court does not have jurisdiction after effective date of confirmed Chapter 11 plan to determine insurance coverage suit because suit did not have a substantial nexus to the plan and estate

Relevant Provisions: 28 U.S.C. §§ 157, 1334(b)

The bankruptcy court in *In re Nu Rid*e considered the difficult problem of determining whether it still had jurisdiction over a suit commenced after confirmation of a Chapter 11 plan. The suit was brought by the reorganized debtor seeking a determination that certain claims were covered by the debtors' directors and officers (d+ o) liability insurance policy.

The court began its opinion by noting that bankruptcy jurisdiction extends to four categories (the examples in parentheses are the author's): (1) "cases under title 11" (i.e., the bankruptcy proceeding itself); (2) "proceedings arising under title 11" (i.e., an action arising only under the statute, such as an action to avoid a preference); (3) "proceedings arising in a case under title 11" (generally, those in connection with the administration of the estate, such as turnover of estate property or claims allowance or disallowance); and (4) proceedings "related to a case under title 11" (e.g., a suit between two non-debtors that may affect the estate). These four, the court continued, can be separated into two: "core" matters, consisting of the first three, and "non-core" matters consisting of the fourth.

Under this fourth kind, "related to" jurisdiction, the bankruptcy court can hear cases that are not core matters, but only if there is a sufficient nexus between the related proceeding and the bankruptcy case. "The test for 'related to' jurisdiction is whether the 'outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.'" The court emphasized that, after confirmation of a Chapter 11 plan, the test for the bankruptcy court's "related to" jurisdiction "is more stringent. Since there is no longer a bankruptcy estate that can be affected post-confirmation, the bankruptcy court will only exercise jurisdiction where a claim has 'a close nexus to the bankruptcy plan or proceeding' and the matter at issue 'affects the interpretation, implementation, consummation, execution, or administration of a confirmed plan or incorporated litigation trust agreement.'"

The debtors in the case, Lordstown Motors Corp. and its affiliates, were manufacturers of a line of electric vehicle (EV) trucks. In 2021, shareholders commenced multiple lawsuits against the

debtors and their former directors and officers, alleging stock manipulation, breach of fiduciary duty in stock sales, misrepresentation, and depreciation of stock. The U.S. Securities and Exchange Commission (SEC) and the U.S. Department of Justice (DOJ) also commenced investigations of the debtors regarding statements and representations made by the debtors in their SEC filings. In 2023, the debtors filed their Chapter 11 petitions.

In March, 2024, the bankruptcy court confirmed the debtors' Chapter 11 plan, which became effective later that month. In October of that year, the reorganized debtor filed a complaint against its insurers at Lloyd's, London, seeking a declaratory judgment that the insurers were obligated under the d + o policy to provide defense coverage and pay fees and costs incurred by the debtors and the reorganized debtor in connection with the shareholder litigation and the investigations. The coverage dispute turned on whether the relevant conduct fell within the policy coverage period.

The insurers moved to dismiss the coverage suit, asserting that the court lacked subject matter jurisdiction. The reorganized debtor opposed the motion, arguing: (1) that the court expressly retained jurisdiction over the action pursuant to provisions of the plan and confirmation order; and (2) that the coverage action had a close nexus to the estate and creditors because it was critical to any recovery by creditors under the plan.

The court found that plan's schedule of "Retained Causes of Action" generally included the reorganized debtor's complaint as one of its "Claims Related to Insurance Policies," but neither the plan nor its schedules explicitly referred to the coverage action, "perhaps because the lawsuit had not been filed at the time." Even if the coverage suit had been explicitly described, though, that alone would not confer post-confirmation jurisdiction. The suit also needed to have a substantial nexus to the plan and estate.

The court did not find a sufficiently close nexus between the coverage suit and the plan. For example, the claims at issue did not affect "the interpretation, implementation, consummation, execution, or administration" of the plan. The court characterized the claims as "simply a means by which some creditors may get an additional recovery, which alone is an insufficient nexus." The evidence, moreover, did not support a finding that the coverage suit was the "lynchpin" of the plan. Instead, it was "only one dispute among numerous other insurance-related matters" that were retained under the terms of the plan. The general reference to "Claims Related to Insurance Policies" stood in "sharp contrast" to the list of other Retained Causes of Action which went "into much greater detail (including names of adversaries and some description of the Debtors' claims)." The "Claims Related to Insurance Policies" were also one of eight categories of "generally described retained claims," which were listed in addition to other, specifically identified causes of action. If the coverage suit was "so crucial" to the debtors' plan, "it would have been given a more prominent place and description" in the debtors' plan and disclosure statement.

The court concluded that, because there was no close nexus between the coverage suit and its underlying claims and the plan, it did not have subject matter jurisdiction over the coverage action.

13. *FI Liquidating Trust v. C.H. Robinson Co. (In re Fred's Inc.)*, 2025 WL 208536 (Bankr. D. Del. 2025) (Bruce Grohsgal) – the ordinary course defense to preferential transfer actions does not apply when a creditor applied credit pressure on the debtor to obtain pre-petition payments.

Relevant Provisions: 11 U.S.C. § 547(c)

Fred's Inc. operated a chain of general merchandise retail stores. Prepetition, Fred's entered into a contract with C.H. Robinson Co. as its lead logistics provider, under which C.H. Robinson would provide transportation brokerage services. The contract initially required Fred's to pay 30 days after invoice, with an aggregate initial credit limit of $3 million.

Fred's became financially distressed and C.H. Robinson tightened its credit terms under the contract. In June 2019, in response to Fred's announcement of store closings, C.H. Robinson reduced Fred's credit limit to $1.75 million. A month later, it changed the date for payment to 14 days after invoice and further reduced the credit limit to $1.0 million. The purpose, as shown by emails between the parties, was to pressure Fred's to pay down the balance of its debt to C.H. Robinson. One email informed Fred's that it was on a "credit hold" and C.H. Robinson would not ship any of Fred's goods until it paid $300,000 to C.H. Robinson. Fred's complied, including the $300,000 in an $800,00 wire transfer made the next day.

Fred's filed its chapter 11 petition in September 2019. It confirmed its liquidating plan in June 2020, which among other things established the FI Liquidating Trust. The plan vested all chapter 5 avoidance actions, including preference claims, in the Liquidating Trust. The Trustee of the Liquidating Trust brought a preference action against C.H. Robinson seeking to avoid $3.4 million of payments made by Fred's to C.H. Robinson during the preference period.

The Trustee moved for summary judgment, identifying allegedly preferential transfers totaling $3.4 million, while acknowledging new value of $1.9 million under section 547(c)(4). C.H. Robinson offered a declaration of its credit manager that its reducing the credit cap due to Fred's store closures and poor financial performance and outlook was a standard practice, both of C.H. Robinson (the subjective test) and within the transportation and logistics industry (the objective test). Thus, it argued, the payments were not avoidable because they were made in the ordinary course of business under section 547(c)(2)(B).

The bankruptcy court noted that Third Circuit precedent holds that "transfers may be avoided only if they are 'so idiosyncratic as to fall outside the broad range' of practices customary to the creditor's industry." But the legislative history of section 547 also "makes clear" that the point of the ordinary course defense is "to leave undisturbed normal financial relations and to discourage 'unusual actions,' such as the imposition of credit pressure, that might destabilize a debtor nearing bankruptcy." The ordinary course defense thus encourages vendors to continue to do business with a distressed company on ordinary terms, because they lose the defense if they tighten those terms in response to the distress.

The bankruptcy court, citing *In re Hechinger Inv. of Delaware, Inc.* (3rd Cir. 2007), observed that the Third Circuit's refusal to recognize the ordinary course defense to payments made in response to terms imposed by a creditor exerting credit pressure, whether the subjective test or the objective test applies, better accords with the underlying congressional purpose of the defense. Accordingly, the ordinary course defense was not available to C.H. Robinson.

14. *In re Christmas Tree Shops, LLC*, 2025 WL 3510820 (Bankr. D. Del. 2025) (Bruce Grohsgal) – preference action pleading standard

Relevant Provisions: 11 U.S.C. § 547

The chapter 7 trustee in *In re Christmas Tree Shops, LLC* sued to avoid allegedly preferential transfers made to Prestige Patio Co. Ltd. The defendant moved to dismiss under Bankruptcy Rule 7012 for failure to statement a claim to relief that is plausible on its face.

The bankruptcy court determined that the complaint did not satisfy the due diligence pleading requirement of Bankruptcy Code section 547(b), citing its previous determination that: "To satisfy § 547(b), the plaintiff only needs to allege that it conducted reasonable due diligence into the defendant's known or reasonably knowable affirmative defenses."

The court rejected the trustee's contention that "he satisfied this condition precedent when he alleged that '[a]lthough it is possible that some Transfers might be subject in whole or in part to defenses under 11 U.S.C. § 547(c), Defendant bears the burden of proof pursuant to 11 U.S.C. § 547(g) to establish any defense(s) under 11 U.S.C. § 547(c).'" Rather, the court reasoned, the plaintiff in a preference action "is required to plead that he performed due diligence and has taken into account known or reasonably knowable affirmative defenses." The trustee, the court found, had done neither.

The court dismissed. It also denied the trustee's request for leave to amend the complaint, because an amended complaint had not been submitted to the court, which Third Circuit precedent required "so that the court may determine if amendment would be futile." The dismissal, though, was without prejudice to the trustee's refiling a complaint. The court acknowledged that it was "possible" that the trustee could "re-plead and satisfy the due diligence condition precedent."

15. *In re Mallinckrodt PLCD*, 2025 WL 3267606 (Bankr. D. Del. 2025) (Gabriel J. Washel) – Whether a fraudulent transfer claim arising from a prepetition corporate spinoff was barred by the § 546(e) securities safe harbor, and whether related state law claims survive.

Related Provisions: 11 U.S.C §§ 546(e), 548(a), 544(b), 550

Mallinckrodt PLC was formerly a subsidiary of Covidien PLC. In 2013, Covidien completed a complex, multi-step corporate spinoff separating Mallinckrodt into an independent company. The transaction was governed by a comprehensive agreement outlining separation and distribution., The agreement involved multiple steps including the distribution of Mallinckrodt stock, the

assumption of debt and indemnity obligations by Mallinckrodt, and hundreds of millions of dollars in cash transfers to Covidien. After the spinoff, Mallinckrodt experienced significant opioid-related liabilities, leading to its petition for Chapter 11 relief.

Following confirmation of Mallinckrodt's plan, the Opioid Master Disbursement Trust brought an adversary proceeding asserting fraudulent transfer claims under §§ 544(b) and 548(a), seeking to avoid and recover transfers made in connection with the Debtors spinoff from Covidien. The Trust alleged that Mallinckrodt did not receive reasonably equivalent value for the obligations it assumed. The trust further alleged that the spinoff left Mallinckrodt insolvent and undercapitalized. The defendants moved for summary judgment, arguing that the claims were barred by the § 546(e) securities safe harbor.

The bankruptcy court held that the spinoff constituted a transaction made in connection with a securities contract. This holding brought most of the transactions under the protection of § 546(e). The court emphasized the breadth of the Bankruptcy Code's definition of a "securities contract," and rejected the proposed "transaction-by-transaction" approach. Instead, the court viewed the spinoff holistically, as a coordinated series of transfers required by the transactional agreements. As a result, many of the Trusts fraudulent conveyance claims were barred.

However, the court rejected an unlimited application of the safe harbor provisions. The court held that not all defendants qualified as "financial participants" under the Code, and that certain alleged tax and indemnity payments required further factual development. It stated that § 546(e) does not preempt independent state law claims, which are not avoidance actions under the Bankruptcy Code. Accordingly, summary judgment was granted in part and denied in part.

The court underscored that, while § 546(e) provides broad protections for securities related transactions, it does not act as a blanket immunizing shield. Courts must closely examine the participant status, the legal connection between specific transfers and the securities contract, and whether the asserted claims arise under the Bankruptcy Code or independent state law.