



Lowenstein Bankruptcy Lowdown Video 28 -Non-Consensual Third-Party Releases Post-Purdue – Creative Approaches Broad Consensus

By [Colleen M. Restel](#) and [Brent Weisenberg](#)

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Colleen M. Restel:

Thank you for joining us. My name is Colleen Restel. I'm a partner in [Lowenstein's Bankruptcy & Restructuring](#) group. I'm here today with my colleague, Brent Weisenberg, and we're going to talk about the state of third-party releases following the Supreme Court's decision in *Purdue*.

Brent, as you know, the Supreme Court in *Purdue* found that nonconsensual third-party releases are not permissible under Section 1123 of the Bankruptcy Code. There, the Sackler family were denied releases under that section. What have you seen courts do following the *Purdue* ruling?

Brent Weisenberg:

So, as you well know, *Purdue* is about nonconsensual third-party releases. So, the question becomes: what does consent mean?

And we've talked about opt-in versus opt-out. But I think based upon what you and I have been talking about, the more interesting perspective is what some practitioners have done to get to the same result, albeit in a different way.

So, in Rockville Center, the insurers bought back their policies, and by doing so essentially received a release because no third party now can assert a claim against the insurers, given that they own their policies.

And so, the question becomes, well, if you can do that indirectly—but you can't do it directly—doesn't that seem odd? What do you think, Colleen?

Colleen M. Restel:

It's actually something that the Third Circuit recently discussed in the *Boy Scouts* case during oral argument where the insurers were seeking policy buybacks under Section 363 of the Bankruptcy Code.

The Third Circuit actually raised the question to counsel: in *Purdue*, should the Sacklers have just bought back the fraudulent transfers and gotten these releases under Section 363?

The Third Circuit expressed some skepticism, it seemed, saying it seems to leave some room for mischief.

So, it will be interesting to see, with creative lawyering, what the Third Circuit and what courts across the country do with the possibility of getting releases under Section 363 of the code.

Brent Weisenberg:

I like that—one party's mischief is another party's creativity. And I think that's where all the action is going to be.

And so, we're going to keep our eyes on that area of the law. Until then, we'll see you soon.