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# *Crédito Real*: Nonconsensual third-party releases under Chapter 15 after *Purdue*

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While there are many reasons to file for Chapter 11, the main carrot for debtors to go through this often expensive and disruptive process is to obtain a discharge. The discharge gives the debtor a clean slate, free from its prior debts and liabilities.

Naturally, however, the debtor is not the only party interested in having its liabilities released. For years, third-party liability releases have been used to induce restructuring professionals, as well as the debtor's directors and officers, to help shepherd the debtor through bankruptcy.

Releases have also been powerful bargaining chips with non-debtors who face a risk of liability to substantively improve the debtor's and creditors' outcomes in bankruptcy, particularly in Chapter 11 proceedings arising from mass-tort cases. But federal courts were long split on whether Chapter 11 permitted courts to release liabilities for non-debtors over claimants' objections.

When the Supreme Court held in *Harrington v. Purdue Pharma L.P.*[1] that the Bankruptcy Code does not authorize nonconsensual third-party releases in a Chapter 11 plan, many practitioners assumed that the door had closed across the board. But creative restructuring lawyers have turned to a less-discussed area of the Bankruptcy Code to achieve the same outcome.

Chapter 15 authorizes U.S. courts to grant recognition to insolvency proceedings and orders in foreign countries, including those granting relief that would not otherwise be available under U.S. law. This thus provides a path for debtors to file restructuring proceedings in jurisdictions that permit nonconsensual third-party releases, and then seek Chapter 15 recognition to ensure those releases are enforceable in the United States.

To some practitioners' surprise, this strategy has had early success in U.S. bankruptcy courts. And it recently achieved a significant milestone when the District of Delaware in *In re Crédito Real S.A.B. de C.V., SOFOM, E.N.R.*,[2] became the first federal court sitting on appeal to approve a nonconsensual third-party release under Chapter 15 in the wake of *Purdue*.

This article begins with an overview of the Supreme Court's decision in *Purdue*, before examining the District of Delaware's decision in *Crédito Real* to understand why it and previous bankruptcy courts have thus far cabined *Purdue* to the context of Chapter 11, rather than extending it to Chapter 15.

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It then closes with a brief case study of the Fossil Group, which recently obtained Chapter 15 recognition of a UK restructuring plan containing nonconsensual third-party releases, and discusses implications and limitations for this strategy looking forward.

## Purdue

In *Purdue*, the Supreme Court picked an unusually hot-button set of facts on which to answer the question of whether the Bankruptcy Code authorizes nonconsensual third-party releases in Chapter 11.

The case arose from the Chapter 11 proceeding of Purdue Pharma L.P., which filed for bankruptcy after facing a tsunami of litigation from its role in the opioid crisis that claimed the lives of hundreds of thousands of victims.

Primarily, the claims concerned Purdue's aggressive and misleading marketing of OxyContin as less addictive than it was in reality. Purdue was owned and controlled by the Sackler family, which reaped many billions of dollars in profits from Purdue's opioid sales.

As public scrutiny into Purdue intensified, and the extent of its potential liability came into focus, the Sacklers began what they described as a "milking" program, in which the family members extracted approximately $11 billion, ~75% of Purdue's

total assets, and diverted it to overseas trusts and companies in their control before Purdue filed for Chapter 11 in 2019.

As part of negotiations for a global resolution, the Sacklers offered to return $4.325 billion of the extracted funds to the bankruptcy estate in exchange for full releases of their liability and an injunction against future claims. This was both a significant amount of money to be distributed to victims, while also being nowhere close to the full amount of the Sacklers' profits from opioid sales.

*The court held that allowing the Sacklers to obtain a full release would undermine the structure of Chapter 11 by functionally granting a discharge to a debtor who had not correspondingly put its assets up for distribution.*

The Sacklers later offered to include over a billion more for eight states and the District of Columbia to withdraw their objections to the plan. The plan containing these controversial releases was approved by the bankruptcy court, before being reversed by the district court, and then reinstated by a divided panel of the Second Circuit.

At the Supreme Court, Justice Gorsuch wrote for the 5-4 majority holding that the Bankruptcy Code does not authorize nonconsensual third-party releases, including the Sacklers', in Chapter 11 plans.

This holding followed from the majority's statutory interpretation of Section 1123, which addresses the mandatory and permissible contents of a reorganization plan. The Court narrowed in on Section 1123(b)(6), a catch-all that permits a plan to include "any other appropriate provision not inconsistent with the applicable provisions of this title."

To determine Section 1123(b)(6)'s scope, the Court applied the canon of *ejusdem generis*, by which courts read statutory language to encompass matters similar in kind to the preceding language.

It determined that Sections 1123(b)(1)–(5) all permitted a plan to address claims and property belonging to the *debtor* (or its estate). From there, the majority reasoned that 1123(b)(6) was intended to include only provisions governing the debtor's property, not the "radically different" power to discharge the liabilities of non-debtors.

Important to the court's reasoning in *Purdue* was the basic bargain of Chapter 11: In exchange for opening its books and offering "virtually all" of its assets for the Bankruptcy Court to distribute, the debtor receives a discharge from its debts. While Purdue had struck that bargain by filing for Chapter 11, the Sacklers had not.

The Court held that allowing the Sacklers to obtain a full release would undermine the structure of Chapter 11 by functionally granting a discharge to a debtor who had not correspondingly put its assets up for distribution. And the Court dismissed any argument that a "release" was different in kind from a "discharge" out of hand as "word games."

## *Crédito Real* and Chapter 15 as a backdoor

With *Purdue* closing off nonconsensual third-party releases in Chapter 11, some debtors turned to Chapter 15 as a workaround. While this approach is still nascent, it has found early success obtaining approval from bankruptcy courts, in some instances even over the objections of the U.S. Trustee.[3]

On March 31, 2026, Chief Judge Colm Connolly of the District of Delaware in *Crédito Real* affirmed the bankruptcy court's recognition of a foreign plan and, in doing so, became the first court sitting on appeal after *Purdue* to approve a nonconsensual third-party release under Chapter 15.

The debtor in *Crédito Real* was a lender that filed a liquidation proceeding in Mexico. The Mexican court approved a pre-packaged plan that contained "customary" releases under Mexican bankruptcy law for members of the ad hoc group of unsecured creditors and certain of the debtor's advisors, representatives, and stakeholders.

The debtor then applied for Chapter 15 recognition of the Mexican plan in the District of Delaware Bankruptcy Court, which, as discussed above, was granted.

On appeal to the district court, the U.S. International Development Finance Corporation ("DFC"), a claimant in the Mexican proceeding, objected to the Chapter 15 recognition on two grounds.

First, DFC argued that *Purdue* precluded the Bankruptcy Court from approving any nonconsensual third-party releases.

Second, DFC argued that the Bankruptcy Court abused its discretion in granting recognition because the releases were "manifestly contrary" to U.S. public policy under Section 1506 of the Bankruptcy Code, again citing *Purdue*.

The district court rejected DFC's first argument and held that *Purdue* did not strip the bankruptcy court of the power to recognize nonconsensual third-party releases under Chapter 15.

Section 1521(a) of the Bankruptcy Code authorizes a bankruptcy court to grant "any appropriate relief" necessary to effectuate the purposes of Chapter 15. Section 1507(a) separately authorizes the court to grant "additional assistance" to a foreign representative if Chapter 15 recognition is granted.

DFC attempted to analogize Sections 1521 and 1507 to Section 1123(b)(6) in *Purdue* on the basis that these were similarly "catch-all" provisions and thus not intended to encompass what *Purdue* described as the "radically different" relief of nonconsensual third-party releases.

As *Purdue* found the broader framework of Chapter 11 key to its interpretation of Section 1123(b)(6), *Crédito Real* similarly looked to the history of Chapter 15 but reached the opposite conclusion.

Unlike Chapter 11, Chapter 15 was not designed to strike a "bargain" with the debtor. Rather, Chapter 15 incorporates the Model Law on Cross-Border Insolvency, a framework designed by UNCITRAL to promote predictability, fairness, and efficiency in cross-border insolvencies.

The court explained that these underlying objectives demonstrate Congress's intent for Chapter 15 to be interpreted broadly to accommodate varying legal systems and restructuring mechanisms, and that bankruptcy courts should exercise their discretion under Chapter 15 consistent with principles of comity to foreign courts.

Thus, the court explained that the catch-all provisions in Sections 1521 and 1507 sit in a fundamentally different context than Section 1123(b)(6).

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While applying *ejusdem generis* to Section 1123(b)(6) limited that catch-all provision to actions of the debtor, the same inference does not arise for the catch-alls in Chapter 15. Instead, *Crédito Real* found that the proper interpretation was to permit bankruptcy courts to extend comity to foreign plans, even if those plans contain provisions that would not be available in U.S. proceedings.

In addition, *Crédito Real* noted that *Purdue*'s ruling was narrow and expressly limited to the context of Chapter 11, and thus should not be assumed to extend to Chapter 15.

The district court then rejected DFC's second argument that the releases in the Mexican plan were "manifestly contrary to the public policy of the United States," and thus that the bankruptcy court was obligated to refuse recognition under Section 1506.

The district court emphasized that *Purdue* did *not* hold that nonconsensual third-party releases violate U.S. public policy. *Purdue* merely held that Congress had not in fact authorized them in Chapter 11, though Congress could if it had intended to.

Instead, the district court explained that there is a high bar for Section 1506's public-policy exception, which typically applies only where the procedural fairness of the foreign proceeding is in doubt or where recognition "would impinge severely a U.S. constitutional or statutory right."

There was no allegation that the Mexican proceeding was procedurally unfair, and the only examples of courts disfavoring nonconsensual third-party releases under public policy cited by DFC arose in Chapter 11 proceedings. The district court thus affirmed the bankruptcy court's recognition of the Mexican plan, including the nonconsensual third-party releases.

## Case study: Fossil

*Crédito Real* provides strong confirmation of the greater flexibility available under Chapter 15 for debtors to shop for a forum where their preferred restructuring tools are available, and then have that tailored plan recognized under U.S. law.

*The Fossil "stapled exchange" was widely considered a success, and it provides a blueprint for debtors interested in shopping for a more permissive forum to obtain relief unavailable in Chapter 11.*

The recent restructuring of the Fossil Group illustrates how this method can be used, including to obtain nonconsensual third-party releases that would be unavailable in Chapter 11.

When Fossil needed to restructure $150 million of unsecured notes in 2025, it faced a challenge. The notes included "baby bonds," notes denominated in amounts as low as $25 more accessible to non-institutional, retail investors. Approximately 40% of the notes were held by smaller investors, while the remaining 60% were held by two institutional investors.

This distribution made it difficult to enact a prepackaged Chapter 11 plan. Under the Bankruptcy Code, the impaired class of Fossil's noteholders would need to approve the plan with two-thirds support in value and over one-half in number of votes ("numerosity").

Although the institutional holders held almost enough of the value, it was difficult to predict the number of retail voters who might vote against the plan. In that event, the institutional holders would be significantly outweighed in the numerosity requirement. A traditional Chapter 11 filing would also have had negative consequences on the company, including delisting from the Nasdaq.

Fossil instead turned to the UK to conduct what Weil Gotshal, Fossil's restructuring counsel, called a "stapled exchange."[4] This involved Fossil executing a Transaction Support Agreement with the two institutional holders that provided for the company to conduct an out-of-court exchange offer.

However, the exchange offer had a 90% participation threshold as a condition to effectiveness. If the threshold was not met, Fossil would seek to implement a restructuring plan under Part 26A of the UK's Companies Act of 2006.

Critically, Part 26A has no numerosity requirement, instead simply requiring 75% of the class by value to support the plan. Sure enough, the exchange offer received less than 90% participation, and Fossil commenced its Part 26A proceeding.

Relevant here, English law permitted the restructuring plan to include releases for Fossil's other corporate group members — even though only a newly created English entity was subject to the Part 26A proceeding — as well as its advisors and representatives. Weil has acknowledged that these releases would not be available in Chapter 11, and that filing in the UK allowed Fossil to avoid *Purdue*.

While the English proceeding was pending, Fossil filed a Chapter 15 proceeding in the Southern District of Texas Bankruptcy Court seeking recognition of the Part 26A filing as a foreign main proceeding. The English court approved the restructuring plan, and just two days later, Judge Christopher Lopez in the Bankruptcy Court recognized and enforced the restructuring plan in the United States under Chapter 15, including the releases.

The Fossil "stapled exchange" was widely considered a success, and it provides a blueprint for debtors interested in shopping for a more permissive forum to obtain relief unavailable in Chapter 11. *Credito Real* appears to confirm that so-called customary releases for professionals and representatives obtained in foreign proceedings will be recognized and respected under Chapter 15, in the absence of significant concerns about procedural fairness.

However, *Crédito Real* does not resolve the situation where a nonconsensual third-party release is specifically bargained for by a party allegedly engaged in fraud or intentional misconduct, like the Sacklers.

While *Crédito Real* emphasized that the design of Chapter 15 favors extending comity to foreign proceedings, the court was clear that relief under Sections 1521 and 1507 remain subject to the court's broad discretion, including under Section 1506's public-policy exception.

A debtor considering pursuing this strategy should thus consider how a Chapter 15 court may weigh its particular circumstances in exercising its discretion.

For example, if Purdue had attempted a similar maneuver to obtain releases for the Sacklers, it would be taking a significant risk as to whether the releases obtained in the foreign proceeding would ultimately be recognized by the Chapter 15 court. Thus, while *Crédito Real* provides meaningful support for Chapter 15 as a path to obtaining nonconsensual third-party releases, *Purdue* remains an obstacle for debtors wishing to use them as a bargaining chip.

## Notes:

[1] 603 U.S. 204 (2024).

[2] --- B.R. ---, 2026 WL 881444 (D. Del. Mar. 31, 2026).

[3] *See, e.g.*, *In re Odebrecht Engenharia e Construção S.A. – Em Recuperação Jud.*, 669 B.R. 457 (Bankr. S.D.N.Y. 2025); *In re Crédito Real, S.A.B. de C.V., SOFOM, E.N.R.*, 670 B.R. 150 (Bankr. D. Del. 2025).

[4] *Fossil Group Restructuring Gains U.S. & U.K. Approval; Weil Debuts Stapled Exchange* (Weil, Gotshal & Manges LLP Nov. 13, 2025), available at https://bit.ly/4un7kYJ (last visited May 8, 2026).

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