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In re The Container Store Group: Texas District Court Upholds Validity of Opt-Out Third-Party Release

March 10, 2026

On February 12, 2026, Judge Lee Rosenthal of the United States District Court for the Southern District of Texas upheld an opt-out third-party release provision contained in The Container Store Group, Inc.'s chapter 11 plan, which deemed those who did not affirmatively elect to preserve claims against non-debtors to have released those claims. However, the District Court found that parties that are ineligible to vote on a plan and are not receiving distributions could not have granted such a release despite the presence of an opt-out provision for those parties as well. Finally, the Court narrowed the so-called "gatekeeper" provision, which would have required parties to first seek bankruptcy court approval before pursuing claims against non-debtors.

Following the Supreme Court's landmark decision in *Purdue Pharma*, courts have debated what qualifies as a consensual third-party release. As the *Container Store Group* decision demonstrates, courts have differing views as to whether silence can qualify as consent to a third-party release, which is a question that *Purdue Pharma* left unanswered. *See In re The Container Store Group, Inc.*, 2026 WL 395898 (S.D. Tex. Feb. 12, 2026).

Background

The retail chain Container Store and certain of its affiliates filed for chapter 11 protection on December 22, 2024. The debtors filed a chapter 11 plan, which included multiple classes of claims. Some classes were entitled to vote on the plan, while other classes (such as classes for subordinated claims and existing equity interests) were not, because they would not receive any distributions.

The plan included a third-party release provision, which released all "known and unknown" claims against certain non-debtor third parties—provided that such claims arose from the debtors' operations and contractual arrangements. Under the plan's release provision, a creditor that failed to opt out of the third-party release would grant a release to all plan parties. To enforce the third-party release, the plan also included a "gatekeeper" provision, which precluded all entities from

asserting claims against the released and exculpated parties in any court without first obtaining Bankruptcy Court approval to pursue such claims.

The U.S. Trustee and the SEC objected to the third-party release provision, arguing that the "opt-out" procedure rendered the releases non-consensual and therefore was barred by the Supreme Court's decision in *Harrington v. Purdue Pharma* (which is discussed below). These parties also argued that the plan's gatekeeper provision was unauthorized under the Bankruptcy Code and violated Fifth Circuit precedent.

The Bankruptcy Court confirmed the debtors' chapter 11 plan, overruling the objections from the U.S. Trustee and SEC. The Bankruptcy Court held that the third-party release provisions were permitted under *Purdue Pharma* because the opt-out mechanism gave parties adequate time to opt out of the release provisions and therefore rendered the releases consensual.

The U.S. Trustee appealed the confirmation decision.

Discussion

Recent History of Third-Party Release Provisions

Section 1123 of the Bankruptcy Code governs the contents of a chapter 11 plan, and states that a plan may provide for the impairment or modification of claims. 11 U.S.C. § 1123(b). Section 1123(b)(6) provides that a plan may also "include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]." Prior to the Supreme Court's *Purdue Pharma* decision, courts relied on section 1123(b)(6) as the statutory authority for non-consensual third-party releases. *See In re Purdue Pharma LP*, 49 F.4th 45 (2d Cir. 2023).

However, in *Purdue Pharma*, the Supreme Court held that section 1123 of the Bankruptcy Code does not authorize a bankruptcy court (through confirmation of a chapter 11 plan) to release claims against a non-debtor without the consent of the affected claimants. *Harrington v. Purdue Pharma LP*, 603 U.S. 205 (2024). In particular, the Court found that section 1123(b)(6) was merely a "catchall" provision, which could not be "fairly read to endow a bankruptcy court with the radically different power to discharge debts of a non-debtor without the consent of affected non-debtor claimants." *Id.* However, the Supreme Court cautioned that its decision should not be "construed to call into question *consensual* third-party releases," which "pose different questions and may rest on different legal grounds than" non-consensual releases. The Supreme Court also emphasized that it did not express a view on what qualified as a consensual release.

Following the *Purdue Pharma* decision, courts have grappled with what qualifies as a consensual third-party release. Some courts have held that a third-party release is consensual where creditors are provided notice and an opportunity to "opt-out" of the release. *See, e.g.*, *In re Spirit Airlines,*

Inc., 668 B.R. 689, 707 (Bankr. S.D.N.Y. 2025); *In re Robertshaw US Holding Corp.*, 662 B.R. 300, 323 (Bankr. S.D. Tex. 2024); *In re Roman Cath. Diocese of Syracuse,* 667 B.R. 628, 631-35 (Bankr. N.D.N.Y. 2024). These courts have permitted "opt-out" forms where the forms clearly explain "that the ballot or opt-out form must be returned and the opt-out box checked if the party elects not to approve the third-party release." *In re Spirit Airlines*, *Inc.*, 668 B.R. at 703. In other words, if a creditor failed to affirmatively "opt-out" of the release, it would be deemed to have consented to a release of its claims against non-debtors.

By contrast, other courts have held that a consensual release could only be provided through an "opt-in" mechanism. *See, e.g.*, *In re Tonawanda Coke Corp.*, 662 B.R. 220, 223 (Bankr. W.D.N.Y. 2024); *In re Smallhold, Inc.*, 665 B.R. 704 (Bankr. D. Del. 2024). The "opt-in" mechanism provides that no party (even a party voting in favor of the proposed plan) would be deemed to have granted a third-party release unless that party "elected to submit a form that opted into a release, with that election being separate from that party's vote with respect to the plan." *In re Spirit Airlines*, *Inc.*, 668 B.R. at 703.

The differing views among courts stems from a disparate view of whether silence can qualify as consent to a third-party release. Some courts have held that "[i]naction is action under the appropriate circumstances," and as such, silence can operate as acceptance to a release. *See In re Avianca Holdings, S.A.*, 632 B.R. 124, 137 (Bankr. S.D.N.Y. 2021); *In re Spirit Airlines*, 668 B.R. at 720-21. However, other courts have held that silence does not qualify as consent and therefore have found that "opt-out" provisions do not render a third-party release consensual. *See, e.g.*, *In re Gol Linhas Aéreas Inteligentes, S.A.*, 675 B.R. 125 (S.D.N.Y. 2025); *In re Smallhold Inc.*, 665 B.R. at 719; *In re The Diocese of Buffalo, N.Y.,* Case No. 20-10322 CLB, 2026 WL 585099 (Bankr. W.D.N.Y. Feb. 27, 2026).

The Container Store Group Court Weighs In Opt-Out Releases. In *Container Store Group*, the U.S. Trustee argued that the opt-out mechanism was insufficient to procure consent under state law, "making the releases ineffective under *Purdue*." The Trustee reasoned that state law applied because the release provisions are separate agreements between non-debtors, and there is no Bankruptcy Code provision that preempts otherwise applicable state contract law. By contrast, the debtors argued that federal law governed the issue of consent, citing section 1123(b)(6) of the Bankruptcy Code and the inherent authority of federal courts to enter consent decrees in cases arising in equity.

The District Court agreed with the debtors, finding that federal law applied for two independent reasons. *First*, as noted, section 1123(b)(6) of the Bankruptcy Code authorizes a plan to include "any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]." According to the Court, this provision authorizes a bankruptcy court "to grant consensual third-party releases" by allowing the court to confirm a plan that includes "appropriate" provisions

that are not "inconsistent" with the Bankruptcy Code. The District Court further stated: *"Purdue* merely prevents a bankruptcy court from relying on § 1123(b)(6) to enter nonconsensual third-party releases and says nothing about a bankruptcy court's authority under this provision to approve other kinds of releases, such as consensual or full-satisfaction releases."

Second, the Court found that a bankruptcy court may approve consensual third-party releases based on a "federal court's inherent power to enter consent decrees resolving claims within their jurisdiction." According to the Court, a chapter 11 plan is akin to a consent decree, which is an "agreement among litigants" that can "sweep more broadly than other forms of court-ordered relief." The Court held that releases are within the general scope of a bankruptcy court's jurisdiction because they are related to the chapter 11 case and are necessary to the success of a reorganization plan. However, the Court found that any consent decree "cannot dispose of the valid claims of nonconsenting parties."

Applying federal law, the Court held that silence and inaction operate as a form of acceptance when the offeror has given the offeree reason to understand that assent may be procured through silence or inaction. The Court found that such reason may be inferred from the "totality of the circumstances" of the case, including the efficacy of the notice, the economic incentives, and the structural protections for the absent party. In any event, the Court noted that applicable state contract law (which here was Texas law) also recognizes that silence or inaction may indicate approval.

The Court rejected the Trustee's reliance on Judge Goldblatt's decision in *In re Smallhold,* which held that a third-party release could not be entered by default in the absence of a judgment. *See In re Smallhold, Inc.*, 665 B.R. 704, 719 (Bankr. D. Del. 2024) (finding that after *Purdue*, "the third-party release is no longer a potentially permissible plan provision"). The Court found *Smallhold* unpersuasive because even though the Fifth Circuit has not permitted non-consensual third-party release provisions, courts in the Fifth Circuit "have routinely allowed consensual releases using an opt-out mechanism" prior to *Purdue*. The Court found that *Purdue* "did not overturn" this practice of "using opt-outs."

The District Court held that the opt-out releases were effective and consensual for all but two of the creditor classes. The Court noted that for most of the classes, creditors either received sufficient notice or indicated consent by returning a ballot and failing to check the opt-out box. For creditors who failed to check the opt-out box, the Court found that voting against the plan was not a sufficient basis to infer that a creditor opposed the release: a "vote against the Plan may signal dissatisfaction with a creditor's individual treatment; a decision not to opt-out signals an overarching desire for a successful reorganization."

Non-Voting Classes Cannot Opt-Out. The Court found, however, that two of the classes "did not consent to the third-party releases:" the holders of subordinated claims and equity holders. These claimants were not allowed to vote, because they did not receive any distributions under the plan. According to the Court, there is "no basis to find" such claimants consented to the release because the notice of non-voting status informed those claimants that they would receive nothing and therefore they "had no incentive to accept the releases to help the reorganization." The Court therefore reversed the Bankruptcy Court's findings that these classes of claims consented to the third-party release.

The Gatekeeper Provision Cannot Cover Parties Other than Estate Fiduciaries. The Trustee also challenged the plan's gatekeeper provision, which required claimants to seek leave from the Bankruptcy Court to sue certain parties in any court. The Trustee argued that the gatekeeper provision was not authorized in light of the Fifth Circuit's recent decision in *Highland Capital*, which struck down a plan's similar gatekeeper provision to the extent it covered suits against parties other than estate fiduciaries. *See Matter of Highland Cap. Mgmt.*, 132 F.4th 353 (5th Cir. 2025).

The Court agreed with the Trustee that the gatekeeper provision was unauthorized. In *Highland*, the Fifth Circuit held that even though a bankruptcy court may retain some form of gatekeeping power over claims, it does not have unrestricted power to protect non-debtors from liability through a pre-filing injunction. Consequently, the Fifth Circuit held that a gatekeeper provision could only extend to estate fiduciaries, such as the debtor, official committee, and their respective members and officers.

The debtors argued that *Highland* did not preclude all gatekeeper provisions for non-debtor claims, noting that courts have the power to manage their own dockets, including to enjoin vexatious litigation. However, the District Court found that the Bankruptcy Court's power to manage its own docket did not justify the "worldwide gatekeeping provision at issue here," which broadly prohibited any "Person or Entity" from commencing certain claims without the Bankruptcy Court's permission.

Key Takeaways and Conclusions

- The *Container Store Group* decision highlights a key issue left unanswered by the Supreme Court's *Purdue Pharma* ruling: what constitutes consent for the purpose of granting a third-party release under a chapter 11 plan? Some courts have required affirmative releases of third parties, while other courts have permitted releases unless a creditor opts out of the releases.
- The *Container Store Group* court largely joined the latter camp, finding that section 1123(b)(6) authorizes "opt-out" third-party releases, provided that creditors receive adequate notice and have adequate incentives to accept the release.
- However, the *Container Store Group* decision makes clear that whether a release is consensual is fact-specific and limited its holding to exclude an "opt-out" release where a creditor has no

incentive to accept the release, as is the case with creditors or equity holders who are not entitled to vote and who will not receive distributions under a plan.

- The Fifth Circuit has not yet addressed the legality of opt-out third-party releases in the wake of the *Purdue Pharma* decision. The Fifth Circuit previously rejected non-consensual third-party releases, even prior to the Supreme Court's *Purdue Pharma* decision. *See In re Pacific Lumber Co.*, 584 F.3d 229, 252 (5th Cir. 2009). However, prior to *Purdue Pharma*, courts in the Fifth Circuit traditionally approved "opt-out" releases as consensual. If this issue is ultimately appealed to the Fifth Circuit, that court could apply renewed scrutiny to its traditional support for opt-out releases of third parties.
- The District Court also held that the plan's gatekeeper provision could not extend to parties other than estate fiduciaries. Although courts in the Fifth Circuit have rejected similar gatekeeper provisions, courts in other jurisdictions have confirmed plans that included these provisions, including in the *Spirit Airlines* bankruptcy.

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