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The Insolvency Insider: Updates in Restructuring

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April and May 2026 produced several notable rulings from bankruptcy and district courts addressing successor liability settlements, the application of prepetition pro rata sharing provisions to DIP roll-ups, derivative standing to surcharge secured collateral under section 506(c), and procedural requirements for extending automatic stay protections to non-debtors. These decisions address questions that are consequential for debtors seeking to leverage independent directors, secured lenders negotiating roll-up DIP facilities, and parties seeking temporary non-debtor injunctions.

Independent Director Key to Debtors' Settlement of Successor Liability Claims

On April 28, 2026, Bankruptcy Judge Wendy A. Kinsella of the Northern District of New York held that "successor liability" claims against Vanderbilt Minerals, LLC ("Minerals" or "Debtor") and its non-debtor affiliates arising out of Minerals' predecessor's asbestos liability, could be resolved in bankruptcy pursuant to an intercompany settlement (the "Settlement"). The testimony of the Debtor's independent director, who conducted a thorough investigation of the released claims, played a critical role in obtaining the Court's approval of the Settlement.

Minerals' predecessor-in-interest, R.T. Vanderbilt Company ("RTVC"), operated talc mines that were allegedly contaminated with asbestos. Decades prior to the bankruptcy filing, RTVC consummated a corporate restructuring that separated its chemicals and mining businesses into separate legal entities and resulted, among other things, in the creation of the Debtor entity. The Debtor is the legal successor to RTVC and operates RTVC's historic mining business. In connection with the restructuring, certain of RTVC's assets were distributed to several affiliates of Minerals (collectively, the "Vanderbilt Affiliates").

The Settlement released a variety of intercompany claims, including asbestos claims asserted against Minerals and the Vanderbilt Affiliates by virtue of their status as successors in interest to RTVC (the "Successor Liability Claims"). In exchange for the release, the Vanderbilt Affiliates contributed valuable assets to Minerals' estate (which were, in turn, sold to a third-party purchaser).

The Debtor sought court approval of the Settlement and the Official Committee of Unsecured Creditors (the "Committee") objected. Judge Kinsella sided with the Debtor. Relying on *In re Kwok*,[1] she held that the Successor Liability Claims were "general" claims and thus property of the Debtor's estate. Accordingly, the Debtor could release the Successor Liability Claims under the Settlement.

The Committee argued that the Settlement was an improper end-run around the Supreme Court's decision in *Purdue Pharma*, which prohibits nonconsensual releases of claims against non-debtor third parties. Judge Kinsella disagreed, emphasizing that any direct claims by talc/asbestos claimants against the parties to the Settlement are not released – only Successor Liability Claims are released. In analyzing the merits, Judge Kinsella found that the Settlement satisfied the heightened standard applicable to transactions that benefit insiders of the Debtor, relying heavily on the investigation conducted by the Debtor's independent director, Mr. Pickering. In the course of his investigation, Mr. Pickering analyzed the potential success of litigating the Successor Liability Claims and other intercompany claims and concluded that the Settlement's benefits outweighed any possibility of success in litigation.

The Committee appealed Judge Kinsella's order approving the Settlement; however, both the Bankruptcy Court and the U.S. District Court for the Northern District of New York denied the Committee's motions to obtain a stay pending appeal. As of this writing, the Committee's appeal remains pending.

Minerals' success in obtaining approval of the Settlement and defending against a stay of the Settlement's implementation may lead to similar settlements from other companies that enter bankruptcy seeking to release or settle significant encumbrances or liabilities that can be characterized as "alter ego," "veil-piercing," or "successor liability" claims (for example, derivative securities fraud claims).

Debtors seeking similar relief should be mindful of the importance of an independent director. Judge Kinsella relied heavily on Mr. Pickering's investigation when approving the Settlement. Without the benefit of an independent director, it would likely be much more difficult for a debtor to gain court approval of any similarly structured intercompany settlement under the heightened insider transaction standard.

DIP Roll-Ups Do Not Trigger Pro Rata Sharing Provisions

On May 11, 2026, Bankruptcy Judge Michael B. Kaplan of the District of New Jersey issued an unpublished memorandum decision granting in part and denying in part a motion to dismiss an adversary proceeding. Although unpublished, the decision will likely carry significant weight in the restructuring community given the substantial docket of large chapter 11 cases presided over by Judge Kaplan and other New Jersey bankruptcy judges. The adversary proceeding addressed whether roll-up debtor-in-possession ("DIP") financing triggered pro rata sharing provisions in a prepetition credit agreement ("Loan Agreement") in the *Del Monte Foods Corporation II, Inc.* chapter 11 cases. Minority secured lenders alleged that participating lenders breached the Loan Agreement's "ratable sharing" provision when they negotiated a DIP facility that rolled up $247.5 million of prepetition debt into super-priority DIP obligations ("Roll-Up") in exchange for extending $165 million in new money. The minority lenders, who declined to participate in the DIP financing, contended they were entitled to share ratably in any "payment or reduction" of debt received by participating lenders. Judge Kaplan dismissed the breach of contract claim with prejudice, holding that the Roll-Up did not constitute a "payment" or "reduction" under the Loan Agreement.

Judge Kaplan grounded his analysis in New York contract law and the plain language of the Loan Agreement's ratable sharing provision. That provision required lenders receiving disproportionate "payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing" to purchase participations in other lenders' claims so that all recoveries would be shared ratably. The court held that neither the debtors' new postpetition loan obligations nor the improved treatment of participating lenders' prepetition loans through the Roll-Up constituted a "payment" or "reduction" of debt, as the transactions did not involve the discharge of any debt. Judge Kaplan concluded that the debtors and participating lenders engaged in a cashless exchange that secured additional financing through new post-petition obligations and improved treatment of prepetition claims without resulting in any payment, satisfaction, or reduction of amounts due under the Loan Agreement.

The court rejected the minority lenders' reliance on economic substance arguments, holding that other provisions of the Loan Agreement supported its conclusion that "payment" required an exchange of dollars or cash equivalents. Judge Kaplan emphasized that the Loan Agreement contained no express provision establishing that a roll-up would constitute "payment" or "reduction" of debt or give rise to obligations under the sharing provision. The court further noted that had the parties intended to prohibit roll-up arrangements or treat them as payment of prepetition debt, they could have stated so expressly.

Judge Kaplan then dismissed the minority lenders' claims for breach of the implied covenant of good faith and fair dealing, finding them duplicative of the breach of contract claims and noting that: (i) all similarly situated creditors were offered the right to participate in the Roll-Up loans on equal terms and (ii) the court had expressly found in its DIP order that the agreement was negotiated in good faith and at arm's length.

However, Judge Kaplan allowed the minority lenders' declaratory judgment claim to proceed, holding that a substantial controversy exists regarding whether future payments on the Roll-Up loans must be shared ratably. The court found that resolution requires determining the economic value attributable to the roll-up feature and whether such value should be shared with non-participating lenders.

While unpublished, the decision nonetheless provides important guidance that the mere negotiation and entry into roll-up DIP financing does not, without more, trigger prepetition ratable sharing provisions absent express contractual language to that effect. However, DIP lenders should exercise caution in light of Judge Kaplan's recognition that the eventual satisfaction of the obligations created by DIP financing and Roll-Up Loans may have to be shared to some extent.

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Derivative Standing to Surcharge Collateral Under Section 506(c) Denied

On May 8, 2026, Bankruptcy Judge Gary Spraker of the District of Alaska denied a motion from former counsel to the Debtors seeking derivative standing to surcharge a secured creditor's collateral under section 506(c) of the Bankruptcy Code in the *Whittier Seafood* chapter 11 cases. The Debtors had confirmed a plan of liquidation premised on asset sales expected to pay all creditors in full and provide a return to equity. Post-confirmation sales, however, generated insufficient proceeds to pay even the largest secured creditor in full. Following confirmation, the Debtors terminated their bankruptcy counsel, who were left unpaid on over half a million dollars in allowed fees and expenses. The Debtors' former counsel sought derivative standing to pursue a surcharge against the secured lender's collateral for the amount counsel was owed.

Judge Spraker grounded his analysis in Supreme Court and Ninth Circuit precedent that has strictly limited the scope of parties granted standing to pursue section 506(c) surcharges. In *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, the Supreme Court unequivocally held that section 506(c) does not provide administrative claimants an independent right to seek payment of their claims through surcharge. While the Supreme Court left open the narrow question of whether a bankruptcy court could allow other parties to act in the trustee's stead, Judge Spraker noted that subsequent Ninth Circuit decisions have consistently rejected requests for derivative standing, and no court has ever granted derivative standing for 506(c) purposes.

Following decisions from bankruptcy courts in California, Arizona, and Louisiana, Judge Spraker held that the purpose of section 506(c) is to compensate the estate when it expends funds to protect and preserve a secured party's collateral. Courts have generally declined to grant derivative standing where recovery would benefit only individual administrative claimants rather than the estate as a whole.

The decision further reinforces the standard that only the debtor or a trustee may seek to surcharge a secured lender's collateral under section 506(c). Judge Spraker adds to a litany of decisions making clear that an individual creditor should not be allowed to stand in a debtor's shoes to assert a claim for that creditor's own benefit.

Non-debtor Stay Extension Set Aside for Procedural Deficiencies

On May 1, 2026, District Judge Jane J. Boyle of the Northern District of Texas vacated an injunction extending the automatic stay to non-debtors in the *Genesis Healthcare, Inc.* ("Genesis") chapter 11 cases. The bankruptcy court had entered an order in October 2025 temporarily enjoining tort claimants from pursuing personal injury, negligence, and wrongful death claims against Genesis affiliates, including employees, officers, directors, independent physicians, staffing service providers, and landlords entitled to indemnification. Three groups of tort claimants appealed, challenging both the procedural and substantive propriety of the non-debtor injunction.

Judge Boyle's decision rested primarily on procedural grounds rather than the merits of the stay extension. Applying the Fifth Circuit's decision in *Feld v. Zale Corp. (In re Zale Corp.)*, Judge Boyle held that the bankruptcy court erred by failing to conduct an adversary proceeding before temporarily enjoining claims against non-debtors. The Court noted that while the bankruptcy court had conducted a robust all-day hearing with witness testimony and extensive exhibits, the bankruptcy court's failure to require the debtor-movants to commence an actual adversary proceeding (where appellants had not waived their rights to such an adversary proceeding) constituted reversible error.

The opinion also took issue with substantive deficiencies in the bankruptcy court's analysis of the preliminary injunction factors required under *Zale*. Judge Boyle found that the bankruptcy court had not properly defined what "success on the merits" meant in the bankruptcy context and had failed to properly weigh the harm to tort claimants prevented from pursuing their claims against the benefits to Genesis' reorganization, noting that the bankruptcy court appeared to consider only Genesis' ability to continue operations without adequately accounting for the ongoing injury to claimants denied access to relief.

The Court vacated the stay extension and remanded to the bankruptcy court for further proceedings, while allowing the stay extension to remain effective for fourteen days to permit the bankruptcy court to consider entering a temporary restraining order in a proper adversary proceeding.

The decision serves as a reminder that, at least in some courts, if a debtor seeks to temporarily enjoin claims against non-debtors, they must either obtain a waiver from any objecting parties or strictly comply with adversary proceeding requirements, regardless of how thorough the contested hearing was.

1. In the April 2026 issue of the Insolvency Insider, we discussed the Second Circuit's April 6, 2026 opinion concluding that HK International Funds Investments (USA) Limited, LLC ("HK") was the alter ego of debtor Ho Wan Kwok and that HK's assets therefore belonged to Kwok's bankruptcy estate. *Kwok* reaffirmed Second Circuit authority holding that section 544(a) of the Bankruptcy Code permits a debtor or trustee to assert "generalized" claims that are not dependent on "particularized injuries". The April 2026 issue of the Insolvency Insider can be found at https://www.choate.com/insights/the-insolvency-insider-updates-in-restructuring-issue-no-3/.

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