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The Insolvency Insider: Updates in Restructuring

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In February and March 2026, the Bankruptcy Courts for the Northern District of New Jersey and the Western District of New York issued two notable decisions addressing issues with broad implications for current restructurings: (i) what satisfies proper venue requirements in a chapter 11 case, and (ii) whether so-called "opt-out" procedures can establish consent to third-party releases.

Manufactured Venue Approved in New Jersey

On March 16, 2026, Judge Kaplan of the Bankruptcy Court for the Northern District of New Jersey denied motions to dismiss and/or transfer the chapter 11 cases of Multi-Color Corporation and its debtor affiliates (collectively, the "Debtors").

Proper venue in a bankruptcy case is governed by 28 U.S.C. § 1408, which permits a debtor to file in a district where, among other things, its principal place of business or principal assets were located during the 180-day period preceding the petition date (the "Venue Period"), or for a longer portion of that period than in any other district.

Sixteen days before filing for chapter 11 relief, debtor MCC-Norwood, LLC ("MCC-Norwood"), a wholly owned subsidiary of Multi-Color, opened two bank accounts in New Jersey (the "Norwood Accounts") and funded them with approximately $1.05 million and $1,000, respectively.

The Debtors argued that venue was proper in New Jersey because the Norwood Accounts constituted MCC-Norwood's principal assets for the requisite portion of the Venue Period. The U.S. Trustee and an ad hoc group of secured lenders argued that venue in New Jersey was inappropriate, contending that the Norwood Accounts could not support the cases filing there.

Judge Kaplan addressed two competing approaches to determining appropriate venue based on a debtor's "principal assets:" (1) the "Time-Based Approach," which determines the debtor's principal assets and their location on each day of the Venue Period; and (2) the "Asset-Based Approach," which first identifies the debtor's principal assets as of the petition date and then determines where those assets were located during the Venue Period. Judge Kaplan adopted the Asset-Based Approach.

Applying that framework, Judge Kaplan held that the Norwood Accounts constituted MCC-Norwood's principal assets notwithstanding the existence of other assets, including patents, intercompany balances, and shared D&O insurance policies. Because the Norwood Accounts were MCC-Norwood's principal assets and existed in New Jersey for 16 of the 180 days within the Venue Period, the Court concluded that venue was proper in New Jersey.

Judge Kaplan next considered whether the Court should transfer the cases to another district for the convenience of the parties. Ohio emerged as the primary competing jurisdiction, given that MCC-Norwood was incorporated there and was originally formed to acquire a manufacturing facility located in Ohio (which had since closed). Although Judge Kaplan acknowledged that "the manner in which the Debtors have employed the venue statute strikes many as being inconsistent with the 'interest of justice,'" he nevertheless declined to transfer venue. He emphasized that MCC-Norwood had no employees or customers and held only intangible assets, and that the Debtors' creditor base was global. On balance, the Court concluded that no alternative forum would prove more convenient.

In the course of his ruling, Judge Kaplan observed that the Bankruptcy Code's venue statute is "deliberately broad," and Congress has repeatedly declined to narrow it. In his view, concerns about manufactured venue present a policy question for Congress—not the courts—regardless of whether individual venue determinations "sit right" with the Court. Unless and until Congress acts, *Multi-Color* affords debtors significant flexibility to establish venue in the District of New Jersey if they so choose.

Opt-Out Releases Rejected for Buffalo Diocese

On February 27, 2026, Bankruptcy Judge Carl L. Bucki of the Bankruptcy Court for the Western District of New York ruled that the solicitation procedures proposed in the chapter 11 plan of The Diocese of Buffalo, New York (the "Diocese") improperly relied on "opt-out" mechanisms to obtain creditor consent to third-party releases.

In the wake of the Supreme Court's *Purdue* decision, which invalidated non-consensual third-party releases, bankruptcy courts have struggled to define when such releases qualify as consensual. Most chapter 11 plans addressing third-party releases rely on either: (i) "opt-out" procedures, under which creditors must affirmatively decline releases or be deemed to consent to such releases through silence; or (ii) "opt-in" procedures, which require affirmative consent from creditors for those creditors to be bound by releases. Courts uniformly accept opt-in procedures as consensual but have divided sharply on whether opt-out procedures satisfy the consent requirement.

In *Diocese of Buffalo*, the Diocese proposed a plan that would establish a $315 million settlement fund for sexual abuse claims and grant third-party releases to parishes and other entities affiliated with the Diocese. The Diocese sought judicial guidance regarding whether its proposed opt-out solicitation procedures establish consent.

Judge Bucki rejected the Diocese's opt-out procedures and articulated several key rulings. First, he held that the question of consent to third-party releases arises under state law, not federal common law, as the Diocese had argued.

Applying New York law, Judge Bucki emphasized that "the longstanding rule. . . is that silence does not constitute consent." He concluded that opt-out releases could qualify as consensual only under the doctrine of estoppel by silence, which requires: (i) a duty to speak, (ii) a failure to speak, and (iii) resulting harm. The Court rejected the Diocese's reliance on that doctrine, finding that the abuse claimants had no duty to speak, the Court had no authority to impose such a duty on the claimants, and that their silence caused no cognizable harm.

Judge Bucki also rejected the Diocese's argument—supported by the official committee of unsecured creditors (the "Committee")—that the Committee could supply surrogate consent on behalf of abuse claimants. In the Court's view, nothing in the Bankruptcy Code authorizes the Committee to exercise a power of attorney—or anything similar— for the creditor body at large.

Judge Bucki drew parallels to the Bankruptcy Code's requirements with respect to (i) voting on a chapter 11 plan or (ii) filing a proof of claim. In both instances, affirmative action is required, and silence alone is insufficient to bind the creditor. Judge Bucki therefore ruled that the Bankruptcy Code and state law mandate opt-in solicitation procedures. His ruling requires that the Diocese amend its plan to include opt-in procedures for any third-party releases.

Both the Diocese and the Committee subsequently filed motions for reconsideration. The Committee's motion for reconsideration also requested a direct appeal of Judge Bucki's ruling to the Second Circuit. On April 3, the Court denied the motions for reconsideration, but certified grounds for a direct appeal. Notably, the Second Circuit is concurrently considering a dispute concerning opt-in versus opt-out releases in connection with the *In re Gol Linhas Aéreas Inteligentes S.A.* cases (appeal pending at Case No. 26-49). In certifying the direct appeal Judge Bucki recognized that it could be beneficial for the Second Circuit to consider both *Gol* and *Diocese of Buffalo* simultaneously.

Judge Bucki's ruling diverges from a growing majority of bankruptcy courts that have found that opt-out procedures are sufficient to establish consent to third-party releases post-*Purdue*. Recently, bankruptcy judges in both the Northern and Southern Districts of New York addressing similar circumstances (*In re The Roman Catholic Diocese of Syracuse, New York* (Case No. 20-30663), *In re The Roman Catholic Diocese of Rockville Centre, New York* (Case No. 20-12345)) ruled that opt-out procedures were permissible under the Bankruptcy Code. Judge Bucki firmly disagreed with these rulings, adding another case in favor of the minority, opt-in approach. As the split of authority grows, District Courts and Circuit Courts alike will need to rule on this issue to provide debtors with clearer guidance on what the Bankruptcy Code requires.

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