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Late July and August 2026 produced several notable rulings from bankruptcy and district courts addressing the scope of the Bankruptcy Code's statutory mootness protection for debtor-in-possession financing, the availability and limits of chapter 11 plan exculpation provisions, and whether an oversecured creditor's prepetition fees, costs, and charges are subject to reasonableness review under section 506(b). These decisions have meaningful implications for DIP lenders and creditors seeking to challenge releases embedded in financing orders on appeal, debtors and plan participants relying on exculpation to implement post-confirmation transactions, and oversecured creditors seeking to collect contractual prepetition charges.

Section 364(e) Moots Appeal of DIP Order Releases+

On August 10, 2026, District Judge Jane J. Boyle of the United States District Court for the Northern District of Texas dismissed as moot an appeal challenging the releases embedded in the order authorizing debtor- in-possession financing in Genesis Healthcare, Inc.[1] (the "Final DIP Order"). The issue came before the court through an appeal taken by sixty tort claimants holding personal injury and wrongful death claims against Genesis and its affiliates. The Final DIP Order authorized the debtors to borrow up to $30 million. As part of the bargain, the debtors released claims against the prepetition lenders who agreed to provide the financing. The appellants did not challenge the validity of the financing, liens, or priorities granted under the order. They attacked only the releases, contending that they were defined too broadly, swept in "insiders" of Genesis, and potentially extinguished claims the appellants could have pursued outside of bankruptcy.

The court did not reach the merits of that challenge. Instead, Judge Boyle held that the appeal was statutorily moot under section 364(e) of the Bankruptcy Code. That section provides that the reversal or modification on appeal of an authorization to obtain credit or incur debt, or of a grant of a priority or lien, does not affect the validity of any debt, priority, or lien granted to an entity that extended credit in good faith, unless the authorization was stayed pending appeal. Because the Final DIP Order was not stayed, and because the appellants expressly declined to contest the lenders' good faith, the appeal turned on a single question: whether section 364(e) reached the Final DIP Order's releases of liability, or instead only the financing, liens, and priorities it approved.

Judge Boyle surveyed two competing approaches to the scope of section 364(e). Under the Ninth Circuit's decision in *In re Cooper Commons, LLC*, the provision broadly protects any obligation that a lender bargained for or that helped to motivate its extension of credit, on the theory that excising such a term would "affect the validity" of the loan. Under the Eleventh Circuit's decision in *In re Saybrook Manufacturing Co.*, by contrast, section 364(e) does not reach bankruptcy-court actions that were not actually authorized by section 364, meaning a reviewing court must first ask whether the challenged action was statutorily authorized. The court further considered Fifth Circuit precedent describing section 364(e) as a "stay requirement" that moots an appeal of an entire financing order regardless of the basis for the challenge and analogous precedent addressing the sale-mootness provision in section 363(m). The court concluded that the Fifth Circuit would likely adopt the *Cooper Commons* rule, subject to the commonsense requirement that the challenged provision at least be part of the bargain for the postpetition loan.

Applying that rule, the court determined that the releases were part of the bargain that induced the lenders to extend postpetition financing. Since modifying or reversing the releases would "affect the validity" of the approved loan, the Final DIP Order was not stayed and no party argued that the lenders acted in bad faith, section 364(e) barred the court from granting the requested relief. The appeal was therefore dismissed as moot.

The decision is a potent reminder of the protection section 364(e) affords good-faith DIP lenders, and of the narrow procedural window available to parties who wish to challenge the terms of an approved financing package. Where releases or other provisions are genuinely part of the bargained-for exchange in connection with a postpetition loan, an objector's failure to obtain a stay pending appeal may prove fatal, even where the objector contends that the bankruptcy court lacked authority to grant the relief in the first place. Parties who challenge provisions of a DIP order, including releases that may be granted by that order, should treat a stay as a practical prerequisite to meaningful appellate review and seek one promptly. Potential DIP lenders, in turn, should ensure that the course of negotiation and documentation of any DIP financing reflects the integral nature of each aspect of the bargained-for relief, including releases, to the agreement to extend credit.

District Court Vacates Voyager Exculpation Provision+

On August 4, 2026,[2] Chief Judge Laura Swain of the United States District Court for the Southern District of New York, considering an appeal by the United States Trustee, vacated the portion of the Bankruptcy Court for the Southern District of New York's order confirming the chapter 11 plan of Voyager Digital Holdings (together with its debtor affiliates, "Voyager" or the "Debtors") that exculpated certain plan participants from liability related to post-confirmation cryptocurrency transactions.

Voyager's plan required Voyager to complete an undefined number of "rebalancing" transactions before making distributions to holders of cryptocurrency accounts (who were creditors in Voyager's bankruptcy case). Debtors routinely effectuate transactions on or shortly after the effective date of a plan—for example, forming or dissolving entities or entering into exit financing—and they frequently obtain plan language exculpating involved parties from liability for participating in such transactions. However, unlike the transactions typically undertaken to implement a chapter 11 plan, Voyager's rebalancing transactions required Voyager and its professionals and employees to buy and sell cryptocurrency until Voyager achieved a specified cryptocurrency-to-dollar ratio.

Because the regulatory treatment surrounding the cryptocurrency industry is unsettled, the Bankruptcy Court approved a provision relieving certain plan participants—the Debtors, their professionals, certain employees, and the official creditors' committee, among others—of liability from executing the planned rebalancing transactions and distributing cryptocurrency to creditors. The Bankruptcy Court reasoned that because the parties would have no choice but to perform once the plan was confirmed, they should not be penalized for obeying the Bankruptcy Court's order. The Bankruptcy Court also found the exculpation provision permissible based on plan language preserving the government's ability to seek to stop any rebalancing transaction, the enforceability of a future order halting that activity, and the penalties for violating any such order.

The District Court disagreed. First, the District Court held that the Supreme Court's 2024 decision in *Harrington v. Purdue Pharma L.P.* striking down nonconsensual third-party releases did not dictate the result because the exculpation provision did not wholesale discharge all claims assertable against a nondebtor. Rather, those provisions relieved specific persons of liability for specific acts taken at the Bankruptcy Court's direction.

Having distinguished *Purdue*, the District Court's analysis nevertheless reflected the textualist principles animating the Supreme Court's decision in that case. Just as the Supreme Court found no explicit Bankruptcy Code authority for nonconsensual third-party releases, the District Court found no such authority for an exculpation provision that would "proactively insulate parties from exposure to consequences under nonbankruptcy law." After rejecting several proposed statutory bases, the District Court focused on section 1142(b), which permits a court to direct the debtor and "any other necessary party" to perform any act necessary to consummate the plan. However, Judge Swain ultimately held that an interpretation of section 1142(b) that is broad enough to justify the exculpation provision presented a host of policy issues, including (but not limited to) federalism and separation of powers concerns, as well as potentially violating the due process rights of transaction counterparties to the exculpated parties.

In one sense, the decision is limited: exculpation is not unlawful *per se*; rather, this specific exculpation provision (which covered transactions implicating the government's police and regulatory powers and, potentially, criminal exposure) could not be approved. However, the ruling may be interpreted more broadly. The District Court repeatedly emphasized the provision's prospective nature, suggesting that it sought to immunize future conduct rather than protect parties for actions already taken. Yet chapter 11 plans routinely exculpate plan participants for participating in restructuring transactions that take place on or shortly after the plan effective date. The rebalancing transactions at issue in *Voyager* were unusual not simply because they were prospective, but because they involved an open-ended series of cryptocurrency trades to be conducted over an indefinite period of time in a highly unsettled regulatory environment. Viewed in that light, the distinction may be one of degree rather than kind.

Ultimately, professionals and other parties seeking exculpation in chapter 11 plans should take note that their protection may be limited in the Second Circuit by the District Court's ruling.

Reasonableness Review Does Not Apply to Oversecured Creditor's Prepetition Charges+

On July 20, 2026, Judge Philip Bentley of the Bankruptcy Court for the Southern District of New York held that an oversecured creditor's prepetition fees, costs, and charges are not subject to an independent reasonableness review in the case *In re 1300 Desert Willow Road, LLC*. Departing from decisions of the Fifth and Eleventh Circuits, the court concluded that prepetition charges are governed by section 502(b) and applicable nonbankruptcy law, while section 506(b)'s reasonableness requirement applies only to postpetition amounts.

The debtor was a single-asset real estate entity that owned a light industrial manufacturing facility in New Mexico. In 2022, it refinanced the property through a $20 million loan from Romspen Investment, LP. After the debtor defaulted, the parties entered into several agreements under which Romspen refrained from exercising its remedies for more than two years. When the final forbearance agreement expired and foreclosure became imminent, the debtor filed chapter 11 in June 2025. Romspen asserted a claim of approximately $26 million, including approximately $6 million in interest and other charges.

The debtor objected to Romspen's default interest, late fees, and forbearance fees, arguing that the loan documents permitted only simple interest. Because the challenged amounts accrued both before and after the petition date, the court first considered whether section 506(b)'s requirement that an oversecured creditor's fees, costs, and charges be "reasonable" applies to prepetition amounts.

Judge Bentley found that section 506(b), when read together with section 502(b), is ambiguous. Section 502(b) determines the amount of a creditor's claim as of the petition date and generally permits recovery of prepetition obligations to the extent enforceable under applicable nonbankruptcy law. Section 506(b), in turn, permits an oversecured creditor to recover postpetition interest and "reasonable fees, costs, or charges" provided for by agreement or statute. Although section 506(b) contains no express temporal limitation, Judge Bentley concluded that extending its reasonableness requirement to prepetition amounts would conflict with section 502(b)'s treatment of prepetition claims.

The Fifth and Eleventh Circuits have taken a broader view. In *Welzel v. Advocate Realty Investments, LLC ("In re Welzel")*, the en banc Eleventh Circuit held that section 506(b) "does not draw a distinction between fees vested pre- or post-petition" and instead refers "blanketly to 'reasonable fees,' without differentiation based on the time the fees vested" – 275 F.3d 1308, 1314 (11th Cir. 2001) (en banc). The Fifth Circuit followed that approach in *Wells Fargo Bank, N.A. v. 804 Congress, L.L.C. ("In re 804 Congress, L.L.C.")*, concluding that the text of section 506(b) supplied no basis for treating prepetition and postpetition fees differently – 756 F.3d 368, 374-75 (5th Cir. 2014). Other courts, including the Bankruptcy Courts for the Eastern District of Pennsylvania, Eastern District of New York, and District of New Jersey, have concluded that section 506(b) governs only amounts accruing after the petition date.

Judge Bentley adopted the narrower interpretation for two reasons. First, it gives effect to both statutes by applying section 502(b) to the petition-date claim and section 506(b) to "the specific postpetition sums that section 506(b) adds to the creditor's section 502(b) claim." Second, the broader interpretation could treat an oversecured creditor less favorably than an otherwise identical undersecured creditor because only the former's prepetition charges would be reviewed for reasonableness. Judge Bentley described that outcome as "topsy-turvy" and concluded that Congress did not impose a general reasonableness requirement on the prepetition claims of either group.

The court applied section 506(b) to Romspen's postpetition charges, allowing interest at the contractual default rate to the extent Romspen ultimately proved oversecured but disallowing any postpetition late fees as duplicative of default interest. The court also held that the loan documents permitted only simple interest. Although one provision stated that interest "shall be compounded monthly," it provided that interest was calculated on the "principal sum" of the note, and the loan documents as a whole did not clearly authorize interest on unpaid interest. The court further allowed Romspen's forbearance fees, finding the debtor offered no evidence they were disproportionate to the risk of delaying enforcement of a defaulted $20 million loan for more than two years.

1300 Desert Willow provides significant authority for oversecured creditors opposing efforts to subject prepetition contractual charges to section 506(b)'s reasonableness requirement. Those charges remain subject to the terms of the parties' agreement, section 502, and applicable state-law defenses, including New York's prohibition against contractual penalties. The decision nevertheless preserves their secured treatment when enforceable under nonbankruptcy law, expressly rejecting the contrary approach applied by the Fifth and Eleventh Circuits.

1. The Genesis Healthcare cases have produced a number of notable rulings. A ruling by the Northern District of Texas addressing the extension of the automatic stay to nondebtors was addressed in the May 2026 issue of the Insolvency Insider, and the Bankruptcy Court's ruling on rights of first refusal in the enterprise-wide sale process was addressed in the July 2026 issue. ↩
2. As amended on August 6, 2026. ↩

John F. Ventola
Practice Chair, Finance & Restructuring

Douglas R. Gooding
Head of Restructuring & Bankruptcy

Kevin J. Simard
Partner

Jonathan D. Marshall
Head of Independent Director & Special Committees

Michael E. Comerford
Partner

Luke Barrett
Principal

Alexandra Thomas
Senior Associate

James B. Chapman III
Associate