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Late August and September 2026 produced several notable rulings from bankruptcy and appellate courts addressing the weight courts should give to venue contacts created in anticipation of a bankruptcy filing, whether opt-out procedures can establish creditor consent to third-party releases, and whether a creditor must file a proof of claim to preserve defensive setoff rights. These decisions have meaningful implications for debtors and creditors litigating the forum in which a case will be administered, plan proponents relying on opt-out solicitation to implement releases and exculpation, and holders of setoff rights.

Manufactured Venue Discounted, Administrative Center Controls

On August 24, 2026, Judge Peter D. Russin of the Bankruptcy Court for the Southern District of Florida transferred the involuntary chapter 7 case of 777 Partners LLC ("777" or the "Debtor") to the Northern District of Texas.[1] The Court gave little independent weight to the Debtor's deliberately created Texas contacts, but transferred the case nonetheless because the enterprise's present financial administration is centered in Texas.

777 was founded in Miami and, at its height, allegedly comprised more than 500 entities that had invested over $10 billion in assets such as structured settlements, consumer finance, and litigation funding. After the enterprise encountered severe financial and legal distress and its founders resigned from management in May 2024, GlassRatner Advisory & Capital Group LLC assumed operational responsibility and commenced an extended winddown that produced more than thirty asset sales, foreclosures, consensual surrenders, and foreign insolvency proceedings, with a liquidating chapter 11 plan as the contemplated final step. Approximately six months before the petitions were filed, the Debtors formed Signal National LLC as a Texas entity and established Texas operating and payment accounts in order to permit a Texas bankruptcy filing.

On July 16, 2026, three New York-based investment funds holding a $26 million New York consent judgment filed an involuntary chapter 7 petition against 777 in Florida. Three weeks after the involuntary petition was filed, and two days before the Debtor's response deadline, 777 and twenty-two affiliates filed voluntary chapter 11 cases in the Northern District of Texas. The proposed debtor-in-possession facility made it a default if the Debtors failed to file a motion within two days of the voluntary filing seeking to transfer venue or otherwise failed to obtain transfer or another lender-satisfactory resolution of the Florida case within thirty days. For purposes of its ruling, however, the Court assumed that any financing approved in Texas would remain available if the cases proceeded in Florida. It therefore did not consider the default under the proposed financing as a factor in the venue analysis.

Evaluating the transfer request, the Court considered the convenience of each venue for the parties by applying the six factors identified in *Commonwealth Oil Refining Co.* ("CORCO"), a 1979 decision of the former Fifth Circuit that is binding precedent in the Eleventh Circuit: (i) creditor proximity; (ii) debtor proximity; (iii) witness proximity; (iv) the location of assets; (v) the economic administration of the estate; and (vi) the need for ancillary administration if liquidation results. Creditor proximity weighed only slightly toward Texas by dollar amount. Debtor proximity favored Texas because, although 777's historical business was in Miami, its current affairs were managed from Texas. Witness proximity was genuinely split between witnesses to the historical business and the personnel administering the estates. Assets and records favored neither forum because the remaining assets were primarily intangible, and the records were largely electronic. The decisive factor was economic and efficient administration, which CORCO identifies as the most important consideration. Because the financial winddown had been directed principally from Texas for many months, and because the work that remained was financial rather than operational, that factor materially favored Texas.

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The Court separately addressed which venue best served the interest of justice. Drawing on *In re Patriot Coal Corp.*, the Court gave the recently formed Texas entity and accounts little independent weight and recognized that Florida, where 777 was founded and operated for years and was the state the Debtor continued to identify as its principal office in an April 2026 annual report, was not a manufactured forum. The Court nevertheless declined to find bad faith in the chosen forum for the voluntary filing. The Court reasoned that using financing terms and litigation timing to press for a preferred outcome is meaningfully different from inventing the underlying connection to the forum. The Court further recognized that the financial winddown had been directed from Texas even before the creation of the new Texas entity, creating an administrative basis that exceeded the manufactured grounds. The Court therefore held that the interest of justice did not independently support transfer, but that convenience alone was sufficient. The Court cautioned, however, that a restructuring adviser cannot manufacture venue merely by opening an office or accepting a management title; the result turned on evidence that GlassRatner had actually displaced former management and directed the winddown from Texas for a substantial period of time.

While the Court in *777 Partners* ultimately transferred the case to Texas, it did so because of the Debtor's genuine administrative presence there rather than the newly created Texas entity. The opinion signals that, at least within the Eleventh Circuit, venue contacts created to facilitate a filing will receive little independent weight.[2] Because CORCO remains binding in the Eleventh Circuit and treats economic and efficient administration as the most important convenience factor, parties choosing venue for a debtor with links to Florida or the Eleventh Circuit more broadly should expect courts to look past formal venue predicates to where the people administering the estate actually perform their work.

Puerto Rico Court Approves Opt-Out Third-Party Releases

On August 24, 2026, Judge Enrique S. Lamoutte of the Bankruptcy Court for the District of Puerto Rico overruled the United States Trustee's objection to the consolidated chapter 11 plan of liquidation of Grupo Hima San Pablo, Inc. and its affiliated debtors, holding that third-party releases implemented through an opt-out mechanism were consensual.[3] The Court determined that consent is a question of federal law and that a creditor who receives clear notice and a meaningful opportunity to reject third-party releases may consent by inaction.

The release provisions were litigated across three rounds of disclosure statement objections. The debtors' initial plan provided for automatic releases subject to an opt-out form; a later version adopted a hybrid structure under which represented parties were required to opt out while unrepresented parties were required to opt in; and the operative plan eliminated the opt-in feature and applied opt-out procedures to all creditors other than those voting to accept the plan, who were deemed to consent to the releases and could not opt out. The U.S. Trustee objected throughout, arguing that consent must be assessed under Puerto Rico law, and that silence cannot constitute acceptance absent a duty to speak. The U.S. Trustee separately asserted that (i) creditors were being asked to grant releases without consideration because opting out did not affect their distributions and (ii) the exculpation provisions were impermissibly broad.

The Court framed the issue as twofold: whether state or federal law governs the determination of consent, and whether the plan's opt-out mechanism constitutes valid consent under the applicable law. On the first question, the Court held that federal law controls. Relying on the principle that federal interests may require the application of federal law where state law might otherwise govern, the Court reasoned that a bankruptcy court's authority to approve consensual releases derives from sections 105 and 1123 of the Bankruptcy Code and therefore raises questions of federal law, including what it means to agree. The Court found support in recent decisions applying federal law to the consent inquiry, including *In re Container Store Group, Inc.*, decided by the District Court for the Southern District of Texas in 2026, and *In re Pat McGrath Cosmetics LLC*, decided by the Bankruptcy Court for the Southern District of Florida in 2026.

On the question of whether the opt-out mechanism constituted valid consent, the Court emphasized that bankruptcy law routinely recognizes implied consent through inaction where adequate notice is given. Due process principles reinforced that conclusion: where satisfactory notice is provided, a failure to respond reflects a meaningful choice rather than mere inaction. The Court further noted that the result would be the same under Puerto Rico law, citing a First Circuit decision that applied Puerto Rico law (relying in part on the Restatement (Second) of Contracts because the Puerto Rico Supreme Court had not addressed the specific question) and held that silence may constitute acceptance where the circumstances create a reasonable expectation that a person would speak if they did not agree.

Applying that framework, the Court found the record sufficient. The releases bound only creditors who (i) had appeared, (ii) were represented by counsel, or (iii) had received the plan and solicitation materials and either voted to accept the plan or failed to opt out. No creditor objected to the releases at confirmation, and all impaired voting classes accepted the plan. The Court also enforced the plan's terms strictly: of the thirty-three opt-out elections received, it treated four as invalid because they were submitted by creditors that had voted to accept the plan, and accepting creditors could not opt out.

Grupo HIMA San Pablo deepens the divide over what qualifies as consent after the Supreme Court's decision in *Harrington v. Purdue Pharma L.P.* and does so in a circuit whose court of appeals has not addressed the question. The decision is a counterpoint to, among others, the Bankruptcy Court for the Western District of New York's ruling in *Diocese of Buffalo*, which held that consent is governed by state law and that silence cannot establish it.[4] Plan proponents in the First Circuit now have persuasive bankruptcy court authority supporting opt-out solicitation, although the Court was careful to note that its holding rests on the clarity and prominence of the disclosures, the simplicity of the opt-out mechanism, and the overall context of creditor engagement, and should not be read as a rule of general applicability. Practitioners should accordingly continue to build a record on notice, ballot design, and creditor participation rather than relying solely on the mechanism of consent itself.

No Proof of Claim Required: Defensive Setoff Rights Are Not Claims

On September 9, 2026, the United States Court of Appeals for the Second Circuit affirmed an order of the Bankruptcy Court for the Southern District of New York sustaining the Federal Deposit Insurance Corporation's objection to the reorganization plan of SVB Financial Group ("SVB Financial"). The Second Circuit held that the purely defensive setoff rights the FDIC asserted under California law are not "claims" within the meaning of section 101(5)(A) of the Bankruptcy Code and that the FDIC was therefore not required to file a proof of claim to preserve them.[5]

SVB Financial filed its chapter 11 petition on March 17, 2023, and the Bankruptcy Court entered a bar date order directing all entities asserting a "claim, as defined in [section] 101(5) of the Bankruptcy Code," to file proofs of claim. The FDIC never filed one. Meanwhile, SVB Financial sued the FDIC in the Northern District of California (a forum dictated by the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA")) to recover its deposits at Silicon Valley Bank. The FDIC, as receiver, asserted setoff rights in that action as an affirmative defense based on SVB Financial's alleged mismanagement of the bank. SVB Financial's proposed plan provided that no person or entity would be entitled to set off any claim unless it had filed a proof of claim preserving the setoff and obtained a final order authorizing it. The FDIC objected, and the Bankruptcy Court sustained the objection, ruling that the FDIC's defensive setoff rights are not claims and, on an alternative ground, that the setoffs satisfied section 553 and were not forfeited. The district court certified the order for direct appeal.

The Second Circuit began from the premise that the bar date order reached only "claims" as defined by section 101(5); accordingly, the appeal turned entirely on whether a defensive setoff right is a right to payment. The Court of Appeals emphasized that the nonbankruptcy law giving rise to the asserted right determines whether the claimant holds a right to payment at all. Because the Bankruptcy Code creates no federal right of setoff and section 553 merely preserves whatever right exists outside bankruptcy, California law governed. Under section 431.70 of the California Code of Civil Procedure, as construed by the California Supreme Court, a defendant may assert setoff only to defeat the plaintiff's claim in whole or in part and may not obtain affirmative relief. The FDIC's rights were accordingly an affirmative defense contingent on SVB Financial prevailing in the California action, not a right to collect from the estate.

Relying on its prior decisions in *In re Villarie* and *In re Chateaugay Corp.*, the Court held that a creditor who could never sue the debtor under the governing nonbankruptcy law holds no right to payment and therefore no claim. The Court also rejected SVB Financial's other structural arguments premised on sections 362(a)(7), 553(a), 553(a)(1), and 506(a)(1), reasoning that those provisions describe the consequences of the claims allowance process for creditors who do hold claims and do not transform a defense into one. Finally, the Court rejected the policy argument that its holding undermines the debtor's fresh start, noting that the FDIC sought no recovery from the estate. The Court also stressed that FIRREA required SVB Financial to sue the FDIC outside the bankruptcy court, observing that in cases not involving the FDIC, a debtor can ordinarily commence an adversary proceeding in which the bankruptcy court would address the creditor's setoff defense. The Court expressly declined to reach the FDIC's alternative arguments under section 553 and FIRREA, and left open whether the FDIC could affirmatively sue on the claims underlying its setoff and whether asserting the setoff violated the automatic stay.

SVB Financial confirms that, in the Second Circuit, the line between a claim and a defense is drawn by nonbankruptcy law rather than by the practical economics of an offset. The practical stakes were substantial: in August 2026, the Northern District of California ordered a complete setoff of SVB Financial's $1.71 billion claim against the FDIC. Plan proponents should not assume that broadly worded setoff-bar provisions will extinguish defenses asserted in litigation the debtor itself commenced, and counsel drafting such provisions should expect objections where the targeted rights are defensive only. Creditors, for their part, should confirm that the governing state law permits no affirmative recovery before electing not to file, because a setoff right capable of supporting affirmative relief remains a claim subject to the bar date.

Creditors, however, should not read the decision too broadly. The holding is limited, and a setoff right that supports affirmative recovery, or an underlying claim on which the creditor could sue, may still be a claim subject to the bar date. Filing a protective proof of claim remains the conservative course, although the consequences of filing such a claim (such as submitting to the jurisdiction of the bankruptcy court) must also be taken into consideration.

[1] *In re 777 Partners LLC*, Case No. 26-19312-PDR (Bankr. S.D. Fla. Aug. 24, 2026).

[2] By contrast, the decision of the Bankruptcy Court for the District of New Jersey approving a manufactured venue was discussed in the March 2026 issue of the Insolvency Insider.

[3] *In re Grupo Hima San Pablo, Inc.*, Case No. 23-02510 (ESL) (Bankr. D.P.R. Aug. 24, 2026).

[4]The Bankruptcy Court for the Western District of New York's decision rejecting opt-out releases was discussed in the March 2026 issue of the Insolvency Insider.

[5] *In re SVB Fin. Grp.*, No. 25-567-bk (2d Cir. Sept. 9, 2026).

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