

# Bagby, Maman and Hughes in Pratt's Journal of Bankruptcy Law: Artful Pleading Does Not Convert a Derivative Claim into a Direct One

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PRACTICES Derivatives, Restructuring

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Haynes Boone Partners [Ingrid Bagby](#), [Michele Maman](#) and [Patrick L. Hughes](#) authored an article for *Pratt's Journal of Bankruptcy Law* explaining why parties such as institutional sponsors or nondebtor affiliates securing releases and discharges as part of a chapter 11 process should pay close attention to the particular language of the provisions protecting them, and should be vigilant of parties trying to sidestep such protections after confirmation with clever labeling.

Read an excerpt below.

Bankruptcy courts have long policed the line between claims that belong to a debtor's estate (Derivative Claims) and claims that belong to individual creditors or stakeholders (Direct Claims). Bankruptcy Judge Alfredo Perez's recent opinion in a complex prison management chapter 11 case details how the distinction between Derivative Claims and Direct Claims asserted in a non-bankruptcy litigation matter can remain subject to releases and injunctions issued in the chapter 11 compromise and plan confirmation process. The decision also reinforces that broad plan releases and injunctions when drafted, disclosed, and approved correctly are enforceable to bar pursuit of these claims; mere clever relabeling of generalized harm as individualized injuries to a plaintiff will not suffice to sidestep such releases under the guise of comprising a direct claim.

In his scholarly opinion issued November 12, 2026 granting H.I.G. Capital LLC's (HIG) motion to enforce a confirmed plan's third-party release provisions in the *Wellpath SF Holdco, LLC* chapter 11 cases, Judge Perez provides a roadmap for assessing whether a claim is direct or derivative in the shadow of a confirmed plan, and what that means in the context of litigation that continues or initiated post-confirmation. His decision focuses on the *substance* of the claims alleged, not their presentation, and provides insight into how bankruptcy courts and practitioners may analyze a situation where litigants attempting to plead around plan releases and the discharge injunction end up entangled in the bar against proceeding on these claims.

Insolvency cases provide fertile ground for litigation claims between creditors and their debtors and related insider or affiliated parties. The nature of a claim for relief is often governed by state law. Derivative Claims arise from harm to the debtor (or the entity in which stakeholders hold an interest). These claims comprise property of the debtor's estate, are channeled through the bankruptcy process, and, after confirmation, are extinguished, released and discharged, or vested into a particular party for further prosecution according to the plan. Attempts by nondebtors to recast derivative theories—such as, for example, harm sustained as a result of mismanagement, value dilution, or diversion of corporate opportunities—as personal claims does not circumvent the discharge injunction protecting accused defendants when the alleged injury is fundamentally to the entity or stakeholders/creditors as a whole and not the result of direct wrongful conduct by the nondebtor defendant. And mere corporate affiliation between the debtor and nondebtor defendant alone is not enough to cause otherwise Derivative Claims to be Direct Claims.

In contrast, Direct Claims target a unique, personalized injury to the plaintiff litigant that is independent from harm allegedly caused by the debtor. They often involve individualized misrepresentations or breach of direct duties owed specifically to the litigant by the underlying defendants in the pending litigation, whether debtor or nondebtor. Even then, however, litigants must recognize that bankruptcy courts focus on looking into the substance of the allegations, and not merely the form.

In this manner, as the *Wellpath* opinion demonstrates, bankruptcy courts closely scrutinize the underlying pleadings describing the facts and basis for the claims against the nondebtor to determine whether the alleged wrongs and resulting injury are truly separate and attributable to the conduct or duties owed by the nondebtor, as distinct from the debtor. These are important considerations because claims against nondebtors can be affected by the chapter 11 plan of reorganization, including the releases applicable to nondebtor third parties and injunction provisions therein—all of which can interfere with claims against parties released under the plan.

All persons that are protected by plan releases are entitled to rely on the finality of plan confirmation and the protection of the discharge injunction.

To read the full article from *Pratt's Journal of Bankruptcy Law*, click [here](#).