

Highlights to 2025 Edition

In 2024, commercial bankruptcy jurisprudence saw significant developments, with courts addressing pivotal issues in Chapter 11 reorganizations, the treatment of executory contracts, and lender liability. A key trend was the judicial scrutiny of “Texas Two-Step” bankruptcies, where entities attempt to isolate liabilities in separate entities before filing for bankruptcy. Several courts rejected these strategies as impermissible bad-faith filings, reinforcing the need for equitable treatment of creditors (and two bankruptcy bills were reintroduced in the Senate immediately before this book went to press that would further limit the power of such bankruptcies).

The treatment of third-party releases in Chapter 11 plans continued to be a contentious issue. While some courts upheld releases as essential to restructuring efforts, others narrowly interpreted their scope, emphasizing creditor consent and statutory limitations under the Bankruptcy Code. On June 27, 2024, the United States Supreme rendered a 5-4 opinion in *Harrington v. Purdue Pharma, L.P.* holding that “the [B]ankruptcy [C]ode does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of affected claimants.” The 2025 edition, of course, addresses *Purdue* and its implications.

Courts continued to be called on to address the intersection of intellectual property and bankruptcy as the U.S. continues its long drive inside an information economy. That’s not to suggest the tech sector stood out in terms of the number of bankruptcies. That distinction belongs to the services, manufacturing, finance, real estate, and retail sectors.

These are just a sampling of the myriad issues subject to evolving case law in 2024 that this book addresses. Anecdotally, I’d be remiss if I didn’t note the increasing use of non-bankruptcy alternatives I have seen across the board. This is a trend that is more than 20 years old now, and I see it only accelerating, both from my vantage point as a working lawyer and from that as the publisher of *DailyDAC* and *The National Law Review*.