

## TREATMENT OF NON-DEBTORS IN BANKRUPTCY

### Third Party Releases

Injunctions or other releases that would bar the holders of claims against non-Debtors from seeking to enforce their guarantees or rights are not permitted by the Bankruptcy Code

See *In re Metromedia Fiber Network, Inc.* 416 F. 3d 136 (2nd Cir. 2005), in which the Second Circuit stated that non-debtor releases may be "tolerated" only in "unique" circumstances. Moreover, *Metromedia* made it clear that as a minimal requirement for obtaining a non-debtor release, the plan must, among other matters, provide for payment of the claims that are the subject of the release:

Courts have approved nondebtor releases when:

the estate received substantial consideration (e.g. *Drexel Burnham*, 960 F. 2d at 293

the enjoined claims were "channeled" to a settlement fund rather than extinguished, as in *MacArthur Co. v. Johns-Manville Corp.* (*In re Johns-Manville Corp.*), 837 F. 2d 89, 93-94 (2d Cir. 1988) and also in *Menard-Sanford v. Mabey* (*In re A.H. Robins Co.*), 880 F. 2d 694, 701 (4th Cir. 1989)

*the enjoined claims would indirectly impact the debtor's reorganization "by way of indemnity or contribution", id.*

*and the plan otherwise provided for the full payment of the enjoined claims, id.*

Nondebtor releases may also be tolerated if the affected creditors consent. See *In re Specialty Equip. Cos.*, 3 F. 3d 1043, 1047 (7th Cir. 1993)