Lessons from Voyager: Navigating the Limits of Chapter 11 Exculpation

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Exculpation provisions are common features of chapter 11 plans that often receive less attention than their corollary release provisions. Typically, exculpation provisions insulate estate fiduciaries, including the debtor's officers and directors, and other stakeholders, such as estate and committee professionals, from most claims related to their official conduct during the bankruptcy case.

In a recent decision, the District Court for the Southern District of New York vacated the Bankruptcy Court's approval of an exculpation provision in the chapter 11 plan of Voyager Digital Holdings, Inc. (the "Voyager Exculpation").[1] The Voyager Exculpation was not limited to claims arising prior to the plan effective date, rather it also sought to insulate parties from actions taken to implement the confirmed chapter 11 plan after the effective date. The District Court rejected each of the statutory grounds offered in support of the broad Voyager Exculpation and found several constitutional grounds for invalidation.

While the Voyager Exculpation was tailored to address a specific set of circumstances regarding the regulatory environment of cryptocurrency transactions, the District Court's reasoning may have larger implications on the limits of prospective exculpation provisions aiming to protect parties tasked with implementing chapter 11 plans. With the assistance of AI, we reviewed exculpation provisions from several recently confirmed chapter 11 plans and identified best practices in light of the *Voyager* decision for ensuring that plan exculpations hold up in court and adequately protect plan participants.

Exculpation Provisions in Chapter 11 Plans, Generally

An exculpation provision establishes a heightened standard of liability under the Bankruptcy Code (generally requiring proof of willful misconduct or gross negligence)

1 *In re Voyager Digital Holdings, Inc.*, No. 23-CV-2171 (LTS), 2026 WL 2354660 (S.D.N.Y. Aug. 6, 2026) (the "Voyager Opinion").

for claims against applicable exculpated parties based upon actions or omissions taken during the bankruptcy case or in connection with the confirmed plan.[2] Unlike a release or injunction, courts have generally found that exculpation provisions protect applicable parties but do not affect their underlying liability.[3] As one court described, "Exculpation provisions are frequently included in chapter 11 plans because stakeholders all too often blame others for failures to get the recoveries they desire; seek vengeance against other parties; or simply wish to second guess the decisionmakers in the chapter 11 case."[4] Courts evaluate the appropriateness of plan exculpation provisions based on a number of factors, including whether the plan was proposed in good faith, whether liability is limited, and whether the exculpation provision was necessary for plan negotiations.[5] While courts generally approve some form of exculpation provisions in chapter 11 plans, the most common area of debate is who qualifies for exculpation.

At issue in *Voyager* was a separate but equally important question that receives less attention during the plan process: the temporal scope of the exculpation provision and what conduct qualifies for exculpation?

Voyager's Prospective Exculpation

On July 5, 2022, cryptocurrency firm Voyager Digital Holdings, Inc. and two debtor affiliates filed for chapter 11 protection in the Southern District of New York amid a broader downturn in the cryptocurrency industry.[6] Following a contentious multi-day confirmation hearing, the Bankruptcy Court confirmed Voyager's chapter 11 plan in March 2023.[7] The plan provided for in-kind distributions of cryptocurrency to the debtors' customers. To facilitate these distributions, the plan authorized a series of "rebalancing transactions" aimed at addressing the debtors' cryptocurrency coin shortfalls by executing any necessary cryptocurrency transactions to comply with the plan's distributions. Notably, the plan authorized the debtors, their personnel and their

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2 *See Patterson v. Mahwah Bergen Retail Grp., Inc*., 636 B.R. 641, 700 (E.D. Va. 2022) ("Exculpation provisions do not release parties, but instead raise the liability standard of fiduciaries for their conduct during their case.") (citing *In re Health Diagnostic Lab. Inc*., 551 B.R. 218, 232 (Bankr. E.D. Va. 2016)).

3 *See In re PWS Holding Corp*., 228 F.3d 224, 247 (3d Cir. 2000); *see also* Voyager Opinion at pp. 15–16 ("The Exculpation Provision does not give third parties protection from liability for prior conduct unrelated to implementation of the Plan. Thus, unlike a third-party release granted to a nondebtor, the Exculpation Provision does not disrupt the fundamental assets-for-discharge exchange underlying bankruptcy relief.").

4 *In re DBSD N. Am., Inc*., 419 B.R. 179, 217 (Bankr. S.D.N.Y. 2009), *aff'd*, 2010 WL 1223109 (S.D.N.Y. Mar. 24, 2010), *aff'd in part, rev'd in part*, 627 F.3d 496 (2d Cir. 2010).

5 *See In re Azul S.A*., 676 B.R. 277, 287–89 (Bankr. S.D.N.Y. 2026).

6 *In re Voyager Digital Holdings, Inc*., No. 22-10943 (MEW) (Bankr. S.D.N.Y. filed July 5, 2022).

7 Confirmation Order, *In re Voyager Digital Holdings, Inc*., No. 22-10943 (MEW), ECF No. 1166.

representatives to carry out the rebalancing transactions without further Bankruptcy Court oversight.

The Voyager Exculpation explicitly sought to insulate "exculpated parties"[8] tasked with executing the rebalancing transactions under the plan from future criminal and civil liability. Specifically, the Voyager Exculpation provided that: "no Exculpated Party shall have or incur, and each Exculpated Party is hereby exculpated from, any liability for damages based on the negotiation, execution and implementation of any transactions or actions approved by the Bankruptcy Court in the Chapter 11 Cases, except for Causes of Action related to any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, or gross negligence."[9] The Voyager Exculpation also was not limited to claims arising from conduct during the chapter 11 case through the plan effective date. Rather, the exculpated parties were also shielded from claims "based on their execution and completion of the rebalancing transactions and the distribution of cryptocurrencies to creditors in the manner provided in the Plan."[10]

In approving the Voyager Exculpation over the objections of several governmental authorities, including the U.S. Trustee, the U.S. Attorney and the S.E.C., the Bankruptcy Court found that, "The persons and entities who will carry out specific activities that are not only approved by my confirmation order, but also are required by that Order by virtue of section 1142 of the Bankruptcy Code, are entitled to know that they will not incur liability just for doing what I have approved and required."[11] The government parties appealed the Bankruptcy Court's approval of the Voyager Exculpation.

The Voyager Holding

On appeal, the District Court found that the Bankruptcy Court did not have statutory or constitutional authority to grant the prospective protection against liability and criminal responsibility or to constrain future exercises of governmental prosecutorial or

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8 "Exculpated Parties" under the Voyager plan included the debtors, their directors, officers and senior managers, as well as other estate fiduciaries and professionals, including the plan administrator and distribution agent tasked with implementation of the chapter 11 plan.

9 Confirmation Order p. 7.

10 Confirmation Order p. 8.

11 *In re Voyager Digital Holdings, Inc.*, No. 22-10943 (MEW), 2023 WL 2470938, at *16 (Bankr. S.D.N.Y. Mar. 11, 2023); *see also id.* at *18 ("I am not by any means preventing the enforcement of any law or regulation. I am not stopping any regulatory body from stepping in and attempting to enjoin any act or transaction on any applicable regulatory ground. I am simply saying that until such time as some regulatory or court order says that the parties should stop what they are doing, the parties who do what the confirmation order requires them to do should not be held liable for having done so.").

regulatory authority in connection with the implementation of the confirmed chapter 11 plan. The District Court vacated the confirmation order solely with respect to the Voyager Exculpation and remanded the matter to the Bankruptcy Court.

Interpreting Supreme Court precedent, the District Court first held that an explicit statutory basis was required to uphold the Voyager Exculpation.[12] The District Court then considered and rejected each of the Bankruptcy Code provisions asserted in support of the prospective relief, including sections 105(a), 1123(b)(6), 1129(a)(3), 1142(a) and 1142(b).

The District Court further held that the prospective nature of the Voyager Exculpation was unlawful based upon several constitutional grounds. First, the Voyager Exculpation threatened to violate separation of powers principles by imposing a standard of liability (actual fraud, willful misconduct, and gross negligence) that could preempt standards enacted by Congress in federal statutes and by immunizing conduct that had not yet occurred. The Voyager Exculpation may also infringe upon the government's due process rights, as the government would not have an opportunity to be heard on specific claims it could bring in the future. Finally, the District Court noted that the Voyager Exculpation could intrude upon the government's sovereign immunity because it "effectively awards relief against the United States by protecting the Exculpated Parties from future legal action by the Government."[13]

The plan proponents promptly appealed the District Court decision, leaving the issue subject to further appellate review.

Review of Recent Exculpation Provisions

Following the *Voyager* Opinion, we reviewed exculpation provisions in recently confirmed chapter 11 plans to consider market variations when compared to the Voyager Exculpation.

The clearest trend that emerged was the variability across confirmed plans, underscoring the need to carefully review each plan on its own terms and to give great care when negotiating and drafting exculpation clauses.

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12 *See Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451 (2017); *Law v. Siegel*, 571 U.S. 415 (2014); and *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639 (2012).

13 Voyager Opinion at p. 30.

Below are other noteworthy observations from our review:

- **Exculpation of conduct related to plan implementation.** Every plan contained an exculpatory provision, and all of the exculpation provisions covered conduct related to the administration and implementation of the chapter 11 plan, including the issuance of securities and the distribution of property pursuant to the plan.[14]

- **Preservation of governmental authority**. Approximately 75% of plans and confirmation orders contained language that specifically preserved the government's ability to pursue regulatory or police action. And over 50% of these provisions expressly preserved the government's ability to pursue criminal actions.

- **Clear temporal limitations.** Approximately 75% of plans and confirmation orders expressly limited exculpation to conduct arising between the commencement of the cases and the plan effective date. Furthermore, of the remaining approximately 25% that did not include a temporal limitation, all but one contained express language preserving the government's ability to pursue regulatory, criminal or police action.

- **Breadth of exculpated parties**. Unsurprisingly, there were significant differences in the scope of parties that qualified for exculpation. However, over 50% of the provisions were considered limited in scope—covering the debtors, their directors, other estate fiduciaries, official committees, their members and their professionals during the cases. The remaining cases included coverage for non-estate fiduciaries, including purchasers, plan sponsors, indenture trustees and secured creditors in certain circumstances.[15]

- **Separate terms regarding the disbursing agent.** A small minority of plans contained standalone protections for disbursing agents tasked with executing the creditor distributions under the plan. Each of these provisions applied to a limited range of conduct taken pursuant to the plan and explicitly excluded criminal liability and liability for actual fraud, willful misconduct and gross negligence.

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[14] Section 1125(e) of the Bankruptcy Code provides a limited exculpation for parties' that participate in soliciting, and issuing securities, under a plan in good faith.

[15] *See, e.g., In re Aegean Marine Petroleum Network Inc*., 599 B.R. 717, 721 (Bankr. S.D.N.Y. 2019) ("[A] proper exculpation provision is a protection not only of court-supervised fiduciaries, but also of court-supervised and court-approved transactions.").

Takeaways and Considerations

The *Voyager* Court's invalidation of the prospective exculpation provision, even when limited to conduct taken while implementing the confirmed plan, may cause plan proponents to closely review exculpation provisions and consider additional language that may bolster the likelihood of enforcement and provide the greatest degree of protection possible.

Because of the District Court's primary focus on the post-effective date scope of the Voyager Exculpation, one option may be to include a temporal limit on the scope of exculpated conduct while also broadly defining covered conduct to include plan implementation and the distribution of property under the plan. Another alternative may be the insertion of a separate plan provision tailored to address the liabilities of the reorganized debtors and their agents for certain actions taken pursuant to the plan after the effective date. Alternatively, in certain cases reorganized debtors have sought additional exculpatory relief later on in the case, such as in the proposed case closing order and other post-confirmation motions.

Furthermore, individuals who may serve in the role of estate fiduciaries should clearly understand their obligations during chapter 11 cases and consult with their own counsel if questions arise in relation to such obligations. Depending on the circumstances, such individuals may need to consider the availability of and need for additional sources of protection, such as indemnities or insurance.

Finally, counsel should anticipate scrutiny of exculpation provisions and, when possible, work closely with governmental authorities to negotiate suitable language in advance of plan confirmation.

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Please do not hesitate to contact us with any questions.

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