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SEPTEMBER 2024

EDITOR'S NOTE: THE SUPREME COURT RULES
Victoria Prussen Spears

U.S. SUPREME COURT RULES ON *PURDUE PHARMA* CHAPTER 11 PLAN: NO AUTHORIZATION FOR RELEASE OF NONCONSENSUAL CLAIMS AGAINST THIRD PARTIES
Douglas S. Mintz and Reuben E. Dizengoff

NON-SETTLING INSURERS NOW HAVE A SEAT AT THE BANKRUPTCY TABLE
David N. Crapo

REVOLUTIONIZING RECOVERY: RETHINKING BANKRUPTCY FOR MEXICO'S ECONOMIC RESURGENCE
Francisco Javier Garibay Guemez

DECODING ADJUDICATORY COMITY IN THE ABSENCE OF CHAPTER 15 RECOGNITION FOR FOREIGN INSOLVENCY PROCEEDINGS
David Z. Schwartz, Thomas Q. Lynch and Pablo Correa

HAVING PROPERTY IN THE UNITED STATES: A PREREQUISITE TO CHAPTER 15 RELIEF?
Rahman Connelly and Alana A. Lyman

UNDERSTANDING SUPPLIERS' RIGHTS AND REMEDIES IN RETAIL AND HOSPITALITY BANKRUPTCIES
M. Douglas Flahaut, Jay L. Halpern, Amal U. Dave and Sophia R. Wang

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VOLUME 20	NUMBER 6	September 2024

Editor's Note: The Supreme Court Rules
Victoria Prussen Spears 233

U.S. Supreme Court Rules on *Purdue Pharma* Chapter 11 Plan: No Authorization for Release of Nonconsensual Claims Against Third Parties
Douglas S. Mintz and Reuben E. Dizengoff 236

Non-Settling Insurers Now Have a Seat at the Bankruptcy Table
David N. Crapo 242

Revolutionizing Recovery: Rethinking Bankruptcy for Mexico's Economic Resurgence
Francisco Javier Garibay Guemez 246

Decoding Adjudicatory Comity in the Absence of Chapter 15 Recognition for Foreign Insolvency Proceedings
David Z. Schwartz, Thomas Q. Lynch and Pablo Correa 263

Having Property in the United States: A Prerequisite to Chapter 15 Relief?
Rahman Connelly and Alana A. Lyman 270

Understanding Suppliers' Rights and Remedies in Retail and Hospitality Bankruptcies
M. Douglas Flahaut, Jay L. Halpern, Amal U. Dave and Sophia R. Wang 274

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Library of Congress Card Number: 80-68780
ISBN: 978-0-7698-7846-1 (print)
ISBN: 978-0-7698-7988-8 (eBook)
ISSN: 1931-6992

Cite this publication as:

[author name], [*article title*], [vol. no.] PRATT'S JOURNAL OF BANKRUPTCY LAW [page number] ([year])

Example: Patrick E. Mears, *The Winds of Change Intensify over Europe: Recent European Union Actions Firmly Embrace the "Rescue and Recovery" Culture for Business Recovery*, 10 PRATT'S JOURNAL OF BANKRUPTCY LAW 349 (2014)

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230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
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(2024–Pub.4789)

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POSTMASTER: Send address changes to *Pratt's Journal of Bankruptcy Law*, LexisNexis Matthew Bender, 230 Park Ave. 7th Floor, New York NY 10169.

U.S. Supreme Court Rules on *Purdue Pharma* Chapter 11 Plan: No Authorization for Release of Nonconsensual Claims Against Third Parties

By Douglas S. Mintz and Reuben E. Dizengoff*

In this article, the authors examine what is likely the most significant bankruptcy ruling by the U.S. Supreme Court since at least 2011 – one that will impact the negotiation and confirmation of bankruptcy plans – particularly, but not exclusively, in cases involving mass tort claims.

In a highly anticipated ruling, the U.S. Supreme Court has ruled that the Bankruptcy Code does not authorize the release of claims against non-debtors without the consent of affected claimants in a ruling springing from the *Purdue Pharma* bankruptcy.

In the 5-4 decision in *Harrington v. Purdue Pharma L. P.*,[1] penned by Justice Gorsuch, the Supreme Court rejected confirmation of the *Purdue* Chapter 11 plan and remanded the matter back to Judge Sean Lane and the bankruptcy court for further proceedings consistent with the Court's opinion.

This is likely the most significant bankruptcy ruling by the Supreme Court since at least 2011 – one that will impact the negotiation and confirmation of bankruptcy plans – particularly, but not exclusively, in cases involving mass tort claims.

BACKGROUND

Purdue Pharma, a manufacturer of branded opioid medications, including OxyContin, faced thousands of lawsuits after an affiliate plead guilty to misbranding OxyContin as a less-addictive and less-abusable alternative to other pain medication. To avoid the consequences of the onslaught of litigation, the Sackler family, which owned and controlled Purdue Pharma, withdrew approximately 75 percent of Purdue's assets over a decade. Left in a significantly weakened financial state, Purdue filed for bankruptcy on September 15, 2019.

Purdue's original proposed Chapter 11 plan sought to resolve the opioid litigation by incorporating a settlement framework that included a release of

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[1] Harrington v. Purdue Pharma L. P., No. 23-124 (U.S. June 27, 2024).

claims, both current and future, against the Sackler family in exchange for a lump-sum settlement payment of $4.325 billion at the time of confirmation. The plan additionally sought to release negligence claims as well as claims for fraud and willful misconduct, and included releases of the family by both consenting and non-consenting creditors.

Most voting creditors supported the plan, although there were a number of other creditors that included opioid victims who voted against the plan. The bankruptcy court approved the plan and entered a confirmation order on September 17, 2021. Certain parties, including the U.S. Trustee, appealed the confirmation order.

Pending appeal to the Second Circuit, the Sacklers agreed to contribute an additional $1.175 to $1.675 billion to Purdue's estate if eight states and the District of Columbia withdrew their remaining objections to the plan. Those states and the District of Columbia eventually consented, increasing potential recovery to $6 billion.

The Second Circuit later affirmed the bankruptcy court's confirmation of the plan, allowing for it to contain nonconsensual releases of direct claims against the non-debtor Sackler family. After a subsequent appeal by the office of the U.S. Trustee, the U.S. Supreme Court granted certiorari.

THE MAJORITY OPINION

At the outset of its ruling, the Court made it clear that the Sacklers "ha[d] not filed for bankruptcy and ha[d] not placed virtually all their assets on the table for distribution to creditors, yet . . . [sought] what essentially amount[ed] to a discharge," something usually reserved for debtors. Thus, the question for the Court boiled down to whether a bankruptcy court may extend the benefits of a Chapter 11 discharge to non-debtors. The majority's decision approached this question in four ways, by:

(1) Conducting a textual/statutory interpretation analysis of Bankruptcy Code Section 1123(b);

(2) Looking at related and relevant provisions in the Bankruptcy Code to further interpret the meaning of Section 1123(b);

(3) Taking notice of the history of bankruptcy law; and

(4) analyzing the parties' policy arguments.

The Text of Section 1123(b)

Section 1123(b) sets out, in a list, what a Chapter 11 plan may contain. As the Court observed, that list concludes with Section 1123(b)(6) which states

that a plan may "include any other appropriate provision not inconsistent with the applicable provisions of this title." Proponents of the plan interpret Section 1123(b)(6) to allow "a debtor to include in its plan, and a court to order, *any* term not 'expressly forbid[den]' by the bankruptcy code as long as a bankruptcy judge deems it 'appropriate' and consistent with the broad 'purpose[s]' of bankruptcy." Thus, plan proponents believe that Section 1123(b)(6) allows the plan to include the nonconsensual release of claims against the Sackler family.

In its analysis, the Court applied the doctrine of ejusdem generis, a statutory interpretation method that sets out that a "catchall must be interpreted in light of its surrounding context and read to 'embrace only objects similar in nature' to the specific examples preceding it." More simply, ejusdem generis "seeks to afford a statute the scope a reasonable reader would attribute to it."

The Court held that the common thread among the five preceding paragraphs to Section 1123(b)(6) is that they all concern the debtor and authorize "a bankruptcy court to adjust claims without consent only to the extent such claims concern the debtor." The Court thus held that "a bankruptcy court's powers are not limitless and do not endow it with the power to extinguish without their consent claims held by nondebtors (here, the opioid victims) against other nondebtors (here, the Sacklers)."

Related Provisions

The Court next looked to various related statutory provisions for guidance.

First, the Court looked to Bankruptcy Code Section 1141 to determine "what is and who can earn a discharge." The Court noted that the Bankruptcy Code "reserves the benefit [of a discharge] 'to the debtor,'" and the plan proponents' interpretation of Section 1123(b)(6) would be contrary to the Bankruptcy Code by "affording to a nondebtor a discharge usually reserved for the debtor alone."

Second, the Court noted Sections 541, 523, and 1141 for the proposition that the Bankruptcy Code constrains both the debtor and the discharge of claims against the debtor. More specifically, the Court noted that (1) "[t]o win a discharge . . . the code generally requires the debtor to come forward with virtually all its assets," (2) a discharge "does not reach claims based on 'fraud' or those alleging 'willful and malicious injury,'" and (3) a discharge cannot "affect any right to trial by jury' a creditor may have 'with regard to a personal injury or wrongful death tort claim.'" The Court then held that the settlement provision of the plan transgresses the Bankruptcy Code's limitations.

Finally, the Court addressed Section 524(g) – a "notable exception to the code's general rules." Under Section 524(g), for asbestos-related bankruptcies

(and only for asbestos-related bankruptcies), "courts may issue 'an injunction . . . bar[ring] any action directed against a third party' under certain statutorily specified circumstances." The Court held that because "the code *does* authorize courts to enjoin claims against third parties without their consent, but does so in only *one* context, [it] makes it all the more unlikely that § 1123(b)(6) is best read to afford courts the same authority in *every* context."

According to the Court, plan proponents argued that the limits imposed on debtors and discharges are inapplicable because the Sacklers sought a release, not a discharge. Nonetheless, after looking to related Bankruptcy Code provisions, the Court held that no matter how the Sacklers' sought relief is classified, "nothing in the bankruptcy code contemplates (much less authorizes) it."

History

The third component critical to the Court's holding was that no party had directed them to a statute (including any prior versions of the Bankruptcy Code) or case "suggesting American courts in the past enjoyed the power in bankruptcy to discharge claims brought by nondebtors against other nondebtors, all without consent of the individuals affected." According to the Court, "if Congress had meant to reshape traditional practice so profoundly in the present bankruptcy code, extending to courts the capacious new power the plan proponents claim, one might have expected it to say so expressly 'somewhere in the [c]ode itself."

Policy

Lastly, the Court's opinion entertained both sides' policy arguments. Proponents of the plan argued that without the releases, there would be no "viable path" for victims to recover. In the Brief for the Petitioner, the U.S. Trustee disputed this, setting out that with the increased legal exposure resulting from potential lawsuits by individual victims, states, and other governmental entities, the Sacklers might be induced to negotiate consensual releases on more favorable terms.

Moreover, the U.S. Trustee argued that with the allowance of nonconsensual third-party releases, tortfeasors would be able to obtain immunity from claims that they normally could not discharge in bankruptcy, all the while failing to place "anything approaching all of their assets on the table." This, according to the U.S. Trustee, "would provide a 'roadmap for corporations to misuse the bankruptcy system' in future cases 'to avoid mass-tort liability.'"

Despite acknowledging these perspectives, the Court held that it was the wrong audience for the policy arguments, which are for Congress to address. To

further emphasize the limited nature of their ruling, the Court also explicitly stated that nothing in their decision should be "construed to call into question *consensual* third-party releases offered in connection with a bankruptcy reorganization plan," and the Court was not expressing a view on what qualified as a consensual release.

Finally, the Court set out that it would not address whether their reading of the Bankruptcy Code "would justify unwinding reorganization plans that have already become effective and been substantially consummated."

DISSENT

Writing for the dissent, Justice Kavanaugh emphasized that the Court's decision essentially rewrote the text of the Bankruptcy Code and restricted "the long-established authority of bankruptcy courts to fashion fair and equitable relief for mass-tort victims." Justice Kavanaugh also explained that because of a 2004 indemnification agreement where Purdue agreed to pay for the legal fees and liability expenses of its officers and directors, the non-debtor release provision would have protected the Purdue estate from being depleted by indemnification claims and would have ensured the victims receive compensation.

Justice Kavanaugh stated:

> Despite the broad term "appropriate" in the statutory text, despite the longstanding precedents approving mass-tort bankruptcy plans with non-debtor releases like these, despite 50 state Attorneys General signing on, and despite the pleas of the opioid victims, today's decision creates a new atextual restriction on the authority of bankruptcy courts to approve appropriate provisions.

According to Justice Kavanaugh, non-debtor releases are "absolutely critical" to achieving the bankruptcy system's overarching goal of fair and equitable relief for victims and creditors."

CONCLUSION

There are a few key takeaways and considerations following this landmark decision.

- While the opinion likely will have a profound impact on bankruptcy cases, including mass tort bankruptcies, the parameters of that impact are yet to be determined. Non-debtor affiliates of debtors will clearly not be able to receive the benefit of a full release from non-consenting parties. However, those non-debtor affiliates can still use the bankruptcy process to negotiate litigation settlements – with whatever

benefits or disadvantages a bankruptcy process could bring. Alternatively, those non-debtor entities can file for bankruptcy to take full advantage of the provisions of the Bankruptcy Code – including potential discharge or other debt resolution.

- The justices expressly avoided defining what constitutes a "consensual" release; future courts will have to make determinations on whether things like "opt-out" releases constitute consent.
- With respect to the *Purdue* bankruptcy itself, the debtors have asked the bankruptcy court to re-enter mediation.[2] It remains to be seen whether the parties will return to mediation and emerge with a new settlement or otherwise propose a new Chapter 11 plan.

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[2] In re Purdue Pharma L.P., et al., 19-23649 (Bkrtcy. Ct. SDNY, June 27, 2024), ECF Doc. 6498.