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SCOTUS Curtails Third-Party Releases, Prospectively Derails Mass Tort Chapter 11 Plans

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In perhaps the most significant Supreme Court bankruptcy ruling since *Stern v. Marshall*, the Supreme Court today—by a 5-4 majority—overruled the Second Circuit's approval of the Purdue Pharma Chapter 11 plan and its controversial nonconsensual third-party releases of non-debtors–most notably members of the Sackler family, which owned the bankrupt drug company and profited from the widespread sale of opioids. *Harrington v. Purdue Pharma L.P.*, 603 U.S. __ (2024). Today's ruling not only resolves a circuit split around the permissible scope of third-party releases in Chapter 11 plans, but also vindicates the United States Trustee's decades-long crusade to rein in such releases.

Justice Gorsuch penned the 5-4 opinion which was joined by Justices Jackson, Barrett, Thomas and Kagan–an unusual combination. Justice Kavanaugh offered a passionate dissent on the premise that many people will receive nothing from the opioid (and similar mass torts) if Chapter 11 plans cannot readily accommodate such claims and make payments on them relatively quickly.

As Justice Kavanaugh despairingly noted about the grim opioid victim situation: "[s]o for the victims and other creditors [of Purdue] to have any hope of meaningful recovery, Purdue's bankruptcy estate needed more funds. Where to find those funds? The Sacklers' assets were the answer." *Id.* at 29 (Kavanaugh, J., dissenting). The Justice also noted that "more than 95 percent approved of the plan" of the victims and creditors that voted. *Id.*

The Court held that "[t]he bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seek to discharge claims against a non-debtor without the consent of affected claimants." The nonconsensual releases at issue in the plan of reorganization, were given in exchange for the Sackler family's $6 billion payment to the bankruptcy estate. In striking down the releases, the Court's decision could expose the Sackler family to potential personal liability exposure for their role in the opioid crisis.

The Court specifically limited the reach of its decision, intending it to apply prospectively while leaving open the question of how its ruling would impact other cases where nonconsensual third-party releases were court-approved. See *Lujan Claimants et al. v. Boy Scouts of America et al*, Case No. 23A741 (Supreme Court declining to stay implementation of the Boy Scouts of America's ("BSA") confirmed Chapter 11 plan pending appeal per the requests of survivor claimants who wanted the ability to assert claims outside the plan's contours.) Specifically, the Court provided that "because [Purdue Pharma] involves only a stayed reorganization plan, the Court does not address whether its reading of the bankruptcy code would justify unwinding reorganization plans that have already become effective and been substantially consummated."

Previously, the United States Bankruptcy Court for the Southern District of New York approved a Chapter 11 plan that included the nonconsensual third-party releases. *In re Purdue Pharma, L.P.*, 633 B.R. 53 (Bankr. S.D.N.Y. 2021). The District Court for the Southern District of New York reversed that decision, holding that such releases were impermissible under the Bankruptcy Code. *In re Purdue Pharma, L.P.*, 635 B.R. 26 (S.D.N.Y. 2021). Ultimately, the Second Circuit Court of Appeals reversed the District Court decision, holding that such nonconsensual third-party releases were permissible. *In re Purdue Pharma L.P.*, 69 F.4th 45 (2d. Cir. 2023).

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