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COMMENTARY

## Supreme Court's Rejection of Purdue Pharma Settlement Redefines Releases in Chapter 11

The U.S. Supreme Court has issued its most anticipated bankruptcy decision in recent memory. As the case's name—*Hamilton v. Purdue Pharma*—suggests, it stems from the company (Purdue Pharma) and the family (the Sacklers) at the center of the opioid pandemic that has claimed the lives of approximately 247,000 Americans from 1999 to 2019 alone.

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By Angelo Castaldi | June 28, 2024 at 05:17 PM



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Purdue ran to bankruptcy court to funnel thousands of lawsuits across the country to a single forum: the bankruptcy court. Through what is called a Chapter 11 “plan,” Purdue even struck a deal with almost all major creditor constituencies, including the plaintiff groups involved in the thousands of lawsuits against Purdue. For the nonbankruptcy folks in the audience, a “plan” can be thought of as a global contract with creditors and other stakeholders that resolves all claims against a company in an orderly fashion to enable the company to continue on as a going concern or liquidate its affairs through a structured process.

Under this plan, Purdue proposed to pay the thousands of opioid victims (among others) with some help from the Sackler family who owned the company before bankruptcy. The Sacklers offered to give back \$4.325 billion of the \$11 billion they had previously withdrawn from the company before Purdue's bankruptcy. (This number later increased by up to an additional \$1.675 billion).

Of course, there was a catch to the Sackler's offer. As part of the plan, they wanted to extinguish claims by Purdue against them, and also nonconsensual third-party releases to put an end to the growing number of lawsuits against them personally by opioid victims. Remember: the Sacklers themselves did not file for bankruptcy protection, Purdue did; but they still wanted to wrap up claims against them personally within the context of Purdue's bankruptcy case.

Purdue agreed to these conditions and included them in their Chapter 11 plan, which would be voted on by Purdue's creditors. And, almost all the creditor constituencies vote to approve the plan and the releases in it. The bankruptcy court then confirmed (that is, approved) the plan. Through a chain of appeals, the case and the nonconsensual third-party releases made their way to the Supreme Court. (By this time, the primary objector to the plan and releases was the U.S. Trustee).

In a 5-4 decision entered June 27, the Supreme Court struck down the nonconsensual third-party releases. Writing for the court, Justice Neil Gorsuch ruled that nothing in the Bankruptcy Code authorized the nonconsensual release or discharge of claims of opioid victims against the Sacklers, who were not debtors themselves. Keep in mind: the plan's

releases would affect not just current opioid-related claims against the family, but future ones too. According to the court, Purdue could not wipe out these claims “without the consent of affected claimants.”

Nonconsensual third-party releases have been controversial for a long time, but they have also been a potent tool in high-profile bankruptcy cases for an equally long time. The Purdue Pharma case will undoubtedly impact the toolkit of small corporate debtors all the way up the largest corporate bankruptcy cases in the country. Many in the bankruptcy community found that third-party releases, in some cases, could actually benefit creditors by providing a basis of recovery against a finite source of assets that would otherwise be defrayed by multi-jurisdictional litigation outside the structured context of bankruptcy. However, others have long argued that they impermissibly limit the private-property rights of nondebtor claimants and exceed the Constitutional limitations of bankruptcy courts.

What is clear from the court’s decision is that the practice of allowing bankruptcy courts to exercise their discretion to approve third-party releases in a reasonable manner may be over. Undoubtedly, bankruptcy practitioners will continue to test the limitations of Purdue when seeking nonconsensual injunctive relief as a tool to achieve global resolutions of multi-party litigation disputes in the bankruptcy courts.

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