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Legal Sidebar

Harrington v. Purdue Pharma: Supreme Court Holds That a Chapter 11 Reorganization Plan Cannot Include a Nonconsensual Release of Claims Against Non-Debtors

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On June 27, 2024, the Supreme Court held in *Harrington v. Purdue Pharma* that the U.S. Bankruptcy Code does not permit a Chapter 11 reorganization plan to include a release of legal claims against non-debtors—third-parties who have not filed for bankruptcy—without the consent of the claimants, except when specifically authorized by Congress. This Legal Sidebar discusses the factual and legal background of *Purdue Pharma*, the opinions in the case, implications of the Court's holding for the bankruptcy system, and considerations for Congress.

Factual and Procedural Background

Pharmaceutical manufacturer Purdue Pharma filed for Chapter 11 bankruptcy in 2019 in the face of a rising tide of lawsuits alleging that its marketing of the drug OxyContin contributed to the opioid epidemic. As part of its Chapter 11 reorganization plan, Purdue Pharma proposed a release and injunction barring opioid victims from pursuing all current and future opioid-related legal claims against members of the Sackler family. The Sacklers had owned and controlled Purdue Pharma for decades, but none of the family members had declared bankruptcy themselves.

Under the proposed release and injunction, the Sackler family agreed to contribute billions of dollars to Purdue Pharma's bankruptcy estate to be used to fund settlements with private litigants and governments at various levels and to establish opioid education and abatement efforts. Thousands of opioid victims with claims against Purdue Pharma objected to the release of their claims. The U.S. Trustee, which seeks to promote the integrity of the bankruptcy system, joined those objections and filed suit to block the plan.

The U.S. Bankruptcy Court for the Southern District of New York rejected the objections and approved the reorganization plan. On appeal, the U.S. District Court for the Southern District of New York vacated the plan on the ground that there was no basis in the Bankruptcy Code for the bankruptcy court to extinguish all claims against the Sacklers without the consent of the opioid victims holding those claims.

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A divided panel of the U.S. Court of Appeals for the Second Circuit reversed the district court and restored Purdue Pharma's reorganization plan. The U.S. Trustee then filed an application with the Supreme Court seeking a stay of the Second Circuit's judgment. The Supreme Court treated the application as a petition for a writ of certiorari, granted review of the Second Circuit's judgment on the merits, and reversed.

Legal Background and Question Presented

Filing for bankruptcy creates an "estate" comprising virtually all the debtor's assets. "Under Chapter 11, the debtor can work with its creditors to develop a reorganization plan governing the distribution of the estate's assets; it must then present that plan to the bankruptcy court and win its approval." Once the bankruptcy court approves—or confirms—the plan, the debtor and its creditors are bound by it, even if the creditors did not agree to it. The Bankruptcy Code provides that the court's order confirming the plan "discharges the debtor from any debt that arose before the date of such confirmation" so that the debt is void and creditors are prohibited from collecting it.

At issue in *Purdue Pharma* was a provision in the Bankruptcy Code—the "catchall" provision—that allows a plan to "include any other appropriate provision not inconsistent with the applicable provisions of this title." In this case, the Court considered whether the catchall provision allows a bankruptcy court to confirm a plan that releases claims against non-debtors (the Sacklers, who did not file for bankruptcy) without the consent of the claimants (the opioid victims). The Supreme Court held that it does not.

The Court's Opinion

Justice Gorsuch authored the opinion of the Court, joined by Justices Thomas, Alito, Barrett, and Jackson. The Court's opinion states that a "simple bargain" underlies the bankruptcy process, namely, that in order to obtain a discharge of debts, a debtor makes virtually all of its assets available for distribution to creditors. In the Court's view, the Sacklers sought a release and injunction that essentially amounted to a discharge, without subjecting all of their assets to the bankruptcy process. The Court held that the Bankruptcy Code does not generally authorize the inclusion of such releases of claims against a non-debtor in a Chapter 11 reorganization plan without the consent of the affected claimants.

The Court grounded its reasoning in the Bankruptcy Code's text, context, and history. Section 1123 of the Bankruptcy Code sets out required elements of a Chapter 11 plan and, in subsection (b), a list of further elements that may be included. The proponents of the Purdue Pharma plan argued that the catchall provision in Section 1123(b)(6) authorized the release in favor of the Sacklers. The Court disagreed, applying the *ejusdem generis* canon, which provides that such catchall provisions in a list should be interpreted in the context of preceding list entries. Here, the Court reasoned, the first five paragraphs in subsection (b) all concern the power to adjust claims involving the debtor. The Court held that a plan provision extinguishing claims to which the debtor is not a party, as in the case of the Sacklers, is different in kind and thus not an "appropriate provision" under Section 1123(b)(6). In a footnote, the Court also rejected the Sacklers' reliance on 11 U.S.C. § 105(a), stating that, as Purdue Pharma conceded, the broad language in that provision only permits bankruptcy courts to carry out authorities expressly granted elsewhere in the Bankruptcy Code.

Turning to statutory context, the Court identified incongruities between nonconsensual, non-debtor releases and principles elsewhere in the Bankruptcy Code, including provisions reserving discharge for debtors and limiting the scope of discharge. The Court also interpreted Congress's specific provision for nonconsensual third-party releases in asbestos-related bankruptcies in 11 U.S.C. § 524(g) as cutting against interpreting the catchall provision of Section 1123(b)(6) to allow such releases in every context.

Finally, the Court looked to historical practice preceding the enactment of the present Bankruptcy Code in 1978. The Court found no evidence of nonconsensual, non-debtor releases. Given that history, the Court deemed it unlikely that Congress would have intended to introduce such an innovation without an express statement.

The Court emphasized the limits of its holding. It declined to weigh policy arguments urged by the plan proponents and the dissent, concluding such arguments are properly directed toward Congress. It also explained that it did not intend to call into question *consensual* non-debtor releases, without expressing a view on what qualifies as a consensual release. The Court further declined to express any view on whether its holding would justify unwinding reorganization plans that include nonconsensual, non-debtor releases but have already become effective and been substantially consummated.

Justice Kavanaugh's Dissent

Justice Kavanaugh, joined by Chief Justice Roberts and Justices Sotomayor and Kagan, wrote a dissenting opinion. The dissenters would have kept Purdue Pharma's plan in place based on the breadth of the word "appropriate" in the catchall provision and the post-1978 history of bankruptcy practice approving non-debtor releases.

The dissent focuses substantially on the bankruptcy system's role in addressing the "collective-action problem" of "[o]ne or a few successful creditors [recovering] substantial funds, deplet[ing] the assets, and driv[ing] the company under—leaving other creditors with nothing." Justice Kavanaugh stressed that the "bankruptcy system works to preserve a bankrupt company's limited assets and to then fairly and equitably distribute those assets among the creditors," including tort victims. To achieve that aim, the dissent asserts, the Bankruptcy Code should be read to give bankruptcy courts broad discretion to approve reorganization plans under the catchall provision.

Justice Kavanaugh characterized the Purdue Pharma plan as "guarantee[ing] substantial and equitable compensation to Purdue's many victims and creditors, including more than 100,000 individual opioid victims." Justice Kavanaugh described non-debtor releases as "a critical tool for bankruptcy courts to manage mass-tort bankruptcies like this one." In this case, "without the non-debtor releases, there is no good reason to believe that any of the victims or state or local governments will ever recover anything," because indemnification of the Sacklers by Purdue Pharma for liability and litigation costs would deplete the bankruptcy estate. Additionally, the non-debtor releases increased the amount in the bankruptcy estate available to victims and creditors because the Sacklers agreed to contribute to the estate as part of the plan. Justice Kavanaugh suggested that hostility toward the Sacklers drives opposition to the release of claims against them rather than optimization of recovery for the opioid victims.

Legal Implications

The *Purdue Pharma* decision dramatically alters the course of the Purdue Pharma bankruptcy, and the Court's legal conclusions implicate both mass-tort bankruptcy and broader bankruptcy practice. The effects are complex and dependent on future litigation over questions explicitly left unanswered by the Court, including what procedural mechanisms might suffice to create consensual releases.

In the Purdue Pharma bankruptcy, the parties are likely to explore scenarios in which the Sacklers contribute some amount to the Purdue Pharma estate and receive only consensual releases. Given the high rate of claimant nonparticipation in prior confirmation voting, any such path may involve further litigation over the requirements for consent. Alternatively, the threat of opt-out litigation may drive the Sacklers to reduce or refuse settlement contributions. Opioid claimants would then need to both establish liability against members of the Sackler family and locate recoverable funds, through costly litigation.

These questions of liability, indemnification, and asset recovery, along with the complexity of the family, make it unlikely that members of the Sackler family will themselves file for individual bankruptcy, at least in the near term. Commentators offer divergent views on what type of outcome is most probable.

The *Purdue Pharma* result may prompt changes in other ongoing bankruptcies. It also gives creditors additional leverage, which may reduce the attractiveness to debtors and related non-debtors of bankruptcy as a resolution mechanism for mass tort claims. Commentators have presented policy arguments both for and against such a shift. Beyond non-debtor releases, the Court's relatively narrow reading of the catchall provision may prompt bankruptcy courts and other lower courts to be more circumspect in approving any other plan provisions that are not explicitly provided for in the Bankruptcy Code.

Considerations for Congress

Although the Court concluded that the current Bankruptcy Code does not generally allow for a nonconsensual release of legal claim against non-debtors, the Court's opinion suggests that Congress could choose to provide for such a release by amending the statute if it so chose. This type of release is currently provided for in asbestos-related bankruptcies, although some commentators have questioned whether the releases in asbestos cases are constitutional. Notwithstanding the constitutionality question, if Congress were to amend the statute to include such a release, it might consider using the statute on asbestos-related bankruptcies as a model for provisions authorizing nonconsensual releases against non-debtors in other situations, such as opioid-related bankruptcies. As the Court explains,

> As the people's elected representatives, Members of Congress enjoy the power, consistent with the Constitution, to make policy judgments about the proper scope of a bankruptcy discharge. Someday, Congress may choose to add to the bankruptcy code special rules for opioid-related bankruptcies as it has for asbestos-related cases. Or it may choose not to do so. Either way, if a policy decision like that is to be made, it is for Congress to make.

Congress could also assess the broader landscape of legal mechanisms used in mass tort and other complex cases, including bankruptcy, multi-district litigation, and class actions. Congress could consider whether the policy issues raised in the *Purdue Pharma* case are adequately addressed by them or whether legal innovations are needed.

The Court's opinion also explains principles of statutory interpretation used to interpret catchall provisions in bankruptcy and other statutory contexts. Congress might consider these principles when writing future catchall provisions. In its holding, the Court explained that the term "appropriate" as it is used in a catchall provision is context dependent and can draw meaning from its surrounding provisions. The Court noted that if Congress had wanted the catchall provision in *Purdue Pharma* to be more encompassing and less context dependent, it could have written the provision to allow that "everything not expressly prohibited is permitted." Alternatively, Congress could specifically provide the context in which "appropriate" is to be interpreted so that it is as narrow or broad as Congress intends.

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