

In Purdue Pharma, Supreme Court Rules That Nonconsensual Releases Are A Nonstarter

June 27, 2024

On June 27, 2024, the United States Supreme Court issued its long-awaited opinion in *Harrington v. Purdue Pharma L. P.*, holding that the Bankruptcy Code does not permit nonconsensual releases of nondebtors.

As a refresher, Purdue marketed OxyContin as a less addictive opioid because of its novel time release formula. Purdue realized billions of dollars in profits from this drug. As the effects of OxyContin became apparent, however, thousands of lawsuits were filed. The owners of Purdue, the Sackler family, transferred approximately \$11 billion from Purdue to themselves. Much of this money was placed into overseas trusts. When Purdue filed for bankruptcy protection, the Sacklers offered to return over \$4 billion to the estate in exchange for personal releases from liability for themselves and related parties. Purdue accepted these terms and incorporated them into its plan. Most creditors who returned ballots voted to accept this plan. Numerous creditors objected, however, along with the United States Trustee, eight states, the District of Columbia, various U.S. and Canadian municipalities, and various Native American tribes.

The Bankruptcy Court approved the plan over these objections and confirmed the plan. The District Court vacated this decision, finding that the nonconsensual releases provided were not authorized under the Bankruptcy Code without the consent of each affected opioid victim claimant. While the matter was on appeal to the Second Circuit, the Sacklers increased their offer by over \$1 billion, settling with the eight states and the District of Columbia. But others, including the United States Trustee, persisted in their objections. Ultimately, the Second Circuit reversed the District Court, siding with the Bankruptcy Court.

The Supreme Court reversed. It found that the Bankruptcy Code authorizes a discharge for a debtor who files for bankruptcy protection and places all of its "assets on the table for distribution to creditors." The Sacklers sought such protection without filing their own bankruptcy cases and making all of their assets available. Moreover, the releases under the plan would have released debts that a debtor in bankruptcy might not be able to discharge, such as liability for fraud. Based on the language of the Bankruptcy Code, the scope of the releases sought, and the history of bankruptcy law in the United States, the Supreme Court found these nondebtor releases impermissible.

Justice Kavanaugh penned a lengthy dissent, joined by Justices Roberts, Sotomayor, and Kagan. In essence, the dissent noted that the plan likely represented the most practical way for opioid victims to realize any relief on their claims. Bankruptcy is designed to efficiently resolve the claims of many parties all at once. The dissent felt that denying the ability of bankruptcy estates to provide nonconsensual releases hampers this purpose. They stated that today's decision deprives opioid victims of their clearest path to relief and will make it difficult or impossible to resolve large and complex cases in the future.

Notably, the Supreme Court limited its holding to the narrow issue of whether nonconsensual releases to nondebtors are permissible in bankruptcy. The Court expressly left open the question of whether *consensual* releases to nondebtors are permissible or what would qualify as a consensual nondebtor release in a bankruptcy setting. Nor did the Court discuss whether a plan that was improperly confirmed (because it contained nonconsensual nondebtor releases) would need to be unwound after it has been substantially consummated. These questions remain unanswered and, because the Court expressly flagged them as open questions, will likely become topics of interest in future cases.

Continued

Miller Canfield regularly assists clients in navigating the Bankruptcy Code and protecting their rights under it. Should you have any questions or need any assistance, please feel free to contact us.