# Supreme Court Rejects Non-Consensual Third-Party Releases for Sacklers in Purdue Pharma Bankruptcy, Reversing Second Circuit

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*Justices reject a deal in which the Sacklers would receive blanket releases of opioid liability in exchange for a contribution of up to $6 billion for creditor recoveries.*

On June 27, 2024, the United States Supreme Court ruled in favor of the United States Trustee, who had objected to Purdue's plan of reorganization that granted releases of third party claims to members of the Sackler family in exchange for their contribution of up to $6 billion to the Purdue bankruptcy estate.

Justice Neil Gorsuch, writing for the majority, found that the type of relief being granted to the Sacklers (*i.e.,* a blanket shield from all existing or potential liability relating to the opioid crisis) represented the kind of "discharge" only available to debtors who have "placed all their assets on the table."[1]

## Procedural History

Purdue filed for chapter 11 reorganization in 2019 in the Southern District of New York.[2] As part of the original plan of reorganization, the Sacklers proposed to contribute $4.35 billion to the estate (having withdrawn $11 billion over previous years) through a decade-long series of payments in exchange for (i) extinguishing any claims the bankruptcy estate might have against Sackler family members and (ii) a full release of claims of all current and future opioid victims. Bankruptcy Judge Robert D. Drain approved the plan over the objection of the U.S. Trustee, eight States, the District of Columbia, the City of Seattle, and various Canadian municipalities and Tribes, each of which wanted to preserve its own claims against the Sacklers.

The District Court vacated the Bankruptcy Court's confirmation order, finding no basis for extinguishing claims against the Sacklers without the consent of the claimants.

During the pendency of their appeal to the Second Circuit, the Sacklers agreed to increase their contribution up to $6 billion in exchange for the withdrawal of the objections from the eight States and the District of Columbia, which proposal was accepted. The Second Circuit reversed the District Court and reinstated the confirmation of the modified plan including the $6 billion contribution.

The U.S. Trustee appealed the Second Circuit's decision to the Supreme Court, which also granted a stay on implementation of the Purdue plan while it considered the issue.

## The Decision

As conceived by the majority, the problem at issue was "whether a court in bankruptcy may effectively extend to nondebtors the benefits of a Chapter 11 discharge usually reserved for debtors."[3] The Court equated the release of third party claims against the Sacklers to the type of clean slate a debtor receives at the culmination of its bankruptcy case, after a distribution of its assets has been made to its creditors. Unlike a debtor in bankruptcy, the Sacklers did not submit themselves to the comprehensive process of a bankruptcy, while obtaining its chief benefit of a fresh start.

Section 1123(b) of the Bankruptcy Code addresses the kinds of provisions that may be included in a Chapter 11 plan. That section contains five specific paragraphs, followed by a catchall provision. The first five paragraphs all concern the debtor's rights and responsibilities, as well as its relationship with its creditors. The catchall provides that a plan "may" also "include any other appropriate provision[s] not inconsistent with the applicable provisions of this title."[4] The first five paragraphs of Section 1123(b) did not authorize the Sackler discharge. The Second Circuit believed that paragraph (6) broadly permits any term not expressly forbidden by the Bankruptcy Code so long as a judge deems it

"appropriate."[5] The Supreme Court disagreed, deciding that the catch-all clause of section 1123(b)(6) does not allow bankruptcy courts broad authority to order any form of relief not expressly forbidden by the Bankruptcy Code.[6]

The Court concluded that the provisions governing what a debtor may put in a plan of reorganization did not include authorization to "extinguish claims against third parties, like the Sacklers, without the consent of the affected claimants, like the opioid victims."[7]

In addition to statutory interpretation, the Court looked to the history of the Bankruptcy Code and its predecessors, concluding that an absolute shield from liability is something that is only made available to parties who offer up substantially all of their assets to creditors for distribution.[8] The Sacklers, by contrast, would have retained a significant portion of the wealth they derived from Purdue while being let off the hook of billions of dollars in potential liability for opioid claims.

## Impact of the Supreme Court's Decision

How this decision affects plans of reorganization that have already become effective or been substantially consummated remains an open question. The Court explicitly declined to address the applicability of its decision to anything other than a stayed reorganization plan (*i.e.,* a plan of reorganization that has been confirmed by a Bankruptcy Court but has been stayed from being implemented or consummated).[9] The Court further emphasized that its holding was limited to **non-consensual** releases of claims against third parties.[10] The holding was very narrow, as the Court did not elaborate as to what constitutes a consensual release.

Going forward, bankruptcy courts will have to pay close attention to plan provisions that purport to provide releases or injunctions to third parties. On the other side, objectors to plans of reorganization may now have an additional basis for those objections. In addition, although the Court expressly limited its opinion to those plans of reorganization subject to a stay, it remains to be seen whether parties will seek to undo plans of reorganization that have become effective on the basis of the Court's decision, and whether bankruptcy judges will entertain such challenges.

For bankruptcy practitioners, this decision may have an impact on their ability to negotiate and implement broad settlements with the prior equity owners, directors and/or officers of companies in bankruptcy in exchange for meaningful contributions to creditors. If lawyers can no longer use releases as a bargaining chip, any claims against such parties may not be resolved as part of the bankruptcy case, which could result in lower initial recoveries for creditors and necessitating that such claims be litigated by a liquidating trustee or plan administrator following confirmation. In addition to the inevitable delay in creditor recoveries this would create, creditors might also need to obtain funding in order to litigate such claims, which could leave them worse off than if the claims had been settled as part of the plan negotiation process.

## For More Information

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1 *Harrington v. Purdue Pharma L.P.*, 603 U.S. ___ (2024).

2 *In re Purdue Pharma L.P.*, Case No. 19-23649 (Bankr. S.D.N.Y.).

3 *Harrington*, 603 U.S. at 8.

4 11 U.S.C. § 1123(b)(6).

5 *In re Purdue Pharma L.P.*, 69 F.4th 45,73 (2d Cir. 2023).

6 *Harrington*, 603 U.S. at 10.

7 *Id*. at 9.

8 *Id*. at 16-17.

9 *Id*. at 19.

10 *Id*.

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