

Supreme Court Ends Third-Party Releases in Bankruptcy

Harrington v. Purdue Pharma L.P., 144 S. Ct. 2017 (June 27, 2024)

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In a hotly contested 5-4 opinion, the U.S. Supreme Court overturned 40 years of bankruptcy precedent and disallowed the issuance of non-consensual third-party releases under Section 1123(b) of the Bankruptcy Code. Prior to *Harrington v. Purdue Pharma L.P.*, Chapter 11 plans in cases involving mass tort litigation or similar controversies included third-party releases to allow for the discharge of claims against non-debtor parties without the consent of the claimants, where such releases were integral to the Chapter 11 plan.

In *Purdue Pharma*, the Supreme Court evaluated whether the Sackler family could avoid civil liability for deceptive marketing practices stemming from their control of Purdue, the manufacturer of OxyContin. Under Purdue's Chapter 11 plan, the Sackler family would contribute approximately $5 billion to pay opioid claimants. In exchange for this payment, the Sackler family required that the plan include a release from liability to third parties asserting opioid claims. Purdue's Chapter 11 plan was approved by the bankruptcy court and then subsequently overturned on appeal to the district court. Subsequently, the U.S. Court of Appeals for the Second Circuit reversed this decision.

In its opinion, the Supreme Court ruled that the "catch all" provision of Section 1123(b)(6), which provides that a Chapter 11 plan may "include any other appropriate provision not inconsistent with the applicable provisions of this title," was not sufficient to support the allowance of nonconsensual third-party releases. The majority opinion focused on the surrounding subsections of Section 1123(b) and determined that these debtor-creditor relationship provisions did not support an interpretation authorizing the release of non-debtor parties without consent of the claimants themselves.

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Writing for the majority, Justice Gorsuch emphasized that a discharge that comes with a confirmed Chapter 11 plan "[g]enerally . . . operates only for the benefit of the debtor against its creditors and 'does not affect the liability of any other entity.'" Because the Sacklers have not filed their own bankruptcy proceedings, the release, according to the majority, "essentially amounts to a discharge."

To determine whether such extraordinary relief is permitted, the Supreme Court analyzed Section 1123. Section 1123(a) addresses the provisions that a Chapter 11 plan must contain in order to obtain court approval, whereas Section 1123(b) provides certain permissive components to a Chapter 11 plan. Section 1123(b)(1) through (5) state specific examples of what a plan may include. Section 1123(b)(6) is a catchall provision, stating that a Chapter 11 plan may "include any other appropriate provision not inconsistent with the appliable provisions of this title."

The majority held that this catchall provision must be read in context, which is the five enumerated permissive provisions that precede it. Each of those provisions, according to the majority, concerns "*the debtor*—its rights and responsibilities, and its relationship with its creditors." Thus, through the application of the interpretive canon of *ejusdem generis*, the Supreme Court "seeks to afford a statute the scope a reasonable reader would attribute to it." As such, the catchall provision must be used to seek approval of a plan provision that also relates to the debtor. Because third-party releases benefit *non-debtors* rather than debtors, they cannot, according to the majority, be approved based on this catchall provision.[1]

In a scathing dissent that is over twice as long as the majority opinion, Justice Kavanaugh disagreed with the majority's overturning of "longstanding precedents approving mass tort bankruptcy plans with non-debtor releases such as these." The dissent disagreed with the majority's statutory interpretation, noting that Section 1123(b)(1) through (5) *do* concern non-debtors, and in any event, Section 1123(b(6) is sufficiently broad to permit third-party releases. Further, the dissent decried the fact that without the third-party releases, a confirmable plan is virtually

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impossible. The result, in the dissent's view, is that opioid victims and their families will be deprived of "hard-won relief" and their communities deprived of "funding needed to help prevent and treat opioid addiction"—with the victims and creditors now being left with "the essential equivalent of a lottery ticket for a possible future recovery for (at most) a few of them."

Key Takeaways

- The parties will now attempt to renegotiate a Chapter 11 plan, but this decision to take non-debtor releases completely off the table will make it extremely difficult to confirm a Chapter 11 plan—in the *Purdue Pharma* case and future mass tort (and many other) cases.
- As noted by the majority, Congress can specifically authorize non-debtor releases in contexts other than for cases involving manufacturers of products containing asbestos. Constituents who believe it would be wise to expand that authority beyond that one category of cases may seek such a legislative solution.
- The majority's narrow analysis of the catchall provision of Section 1123(b)(6) could have applications in other cases involving statutory interpretation, both in bankruptcy and in other statutory contexts.

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[1] The Supreme Court noted that Congress has legislated a solution for cases involving manufacturers of products containing asbestos, in that Section 524(g) of the Bankruptcy Code specifically authorizes third party releases in the event that that provision is fully complied with. Currently, there are no other examples of provisions specifically authorizing non-debtor releases, other than

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the asbestos-related exception embedded in Section 524(g).

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