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HARRINGTON V. PURDUE PHARMA: AN OPENING SALVO ON THIRD-PARTY RELEASES

Third-party releases in bankruptcy proceedings have existed for over 40 years with very little guidance from Congress or the Supreme Court regarding the permissibility of those releases. That changed with the Supreme Court's recent decision in Purdue*, where the Supreme Court ruled that non-consensual releases of non-debtors by other non-debtors are not permissible. That decision, however, left open a bevy of unresolved issues, many of which may need to be resolved by the Supreme Court in future decisions absent Congressional action in the interim. This article addresses many of those open issues and how lower courts have already begun to address them following the Supreme Court's decision.*

By R. Stephen McNeill *

In the much-anticipated decision in *Harrington v. Purdue Pharm L.P.*, the United States Supreme Court held that "the bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a non-debtor without the consent of affected claimants."[1] Yet, the practical ramifications of that decision are likely to be minimal outside the context of mass tort bankruptcies. Indeed, the majority opinion expressly left open a number of critical issues that will need to be resolved in future cases, at least one of which will likely be decided in a future Supreme Court decision.

THE CASE

In 1996, Purdue Pharma, owned by the Sackler Family, introduced OxyContin, an opioid marketed as a pain reliever but later found to be highly addictive. In 2007, a Purdue affiliate pleaded guilty to a federal felony for misbranding OxyContin as less addictive than other pain medications.[2] Subsequently, thousands of civil lawsuits alleging deceptive marketing practices followed. As a result, Purdue Pharma filed for Chapter 11 bankruptcy in 2019.[3]

[1] *Harrington v. Purdue Pharma L. P.*, 144 S. Ct. 2071, 2088 (2024).

[2] *Id.* at 2078.

[3] *Id.* at 2079.

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