

## Third-Party Releases Are Not Consistent with Bankruptcy Code: Creditors Can Still Maintain Direct Claims

By W. Glenn Jensen

A federal district court judge in New York has vacated a bankruptcy court's confirmation of the controversial Chapter 11 plan of Purdue Pharma, LP. The reorganization of Purdue Pharma sought to provide a release of all third party claims against the Sackler family based on their \$4.325 billion contribution to the reorganization plan. Purdue Pharma and the Sackler family had been facing a wave of lawsuits alleging that they were responsible for the opioid crisis in this country through their aggressive marketing and sale of OxyContin.

In filing for bankruptcy, Purdue Pharma put a stop to all the lawsuits filed against the company. However, because the Sackler family did not file for bankruptcy, the claims against them continued. To defeat the lawsuits filed against them, the Sackler family convinced the bankruptcy court to give them full releases from all creditor claims.

The federal district judge ruled that these third-party releases given to the Sackler family are not consistent with the Bankruptcy Code and that creditors could still maintain any direct claims they have against the Sackler family. Claims that are derivative of the Chapter 11 debtor would have been shielded. The decision also recognizes that there is a conflict in the circuits. The Sixth and Seventh Circuits are the ones recognizing that Sections 105(a) and 1123 (b)(6) give bankruptcy judges some "residual authority" to impose releases. The Fourth and Eleventh Circuits have concluded that Section 105(a) authorizes such releases. While the Fifth, Ninth and Tenth Circuits have rejected the notion that a bankruptcy court can authorize non-debtor releases outside of the asbestos context under Section 524(g).

While this ruling has very little precedential value as a district court decision, it is still an important decision for reaffirming the limitation of non-debtor releases in bankruptcy court. The case also highlights the dilemma for mass tort Chapter 11 cases where the parties use the bankruptcy process to shield non-debtor parties in exchange for some payment contribution under a Chapter 11 plan. The use of these non-debtor releases runs counter to congressional authority given under the Bankruptcy Code. If Congress wants to codify the usage of non-debtor releases, they could do that as they did with codifying the asbestos cases of *In re John-Manville Corp.* Using vague "equitable powers" by bankruptcy courts is a stretch that gives non-debtor parties the opportunity to use bankruptcy as a sword to defeat the lawsuits filed against them.

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