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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.

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

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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]

[2] *Id.* at 2078.

[3] *Id.* at 2079.

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In the years leading up to the bankruptcy filing, the Sacklers initiated a "milking" program to distribute approximately $11 billion to themselves, significantly depleting Purdue's assets and weakening its financial state.[4] As part of Purdue's bankruptcy proceedings, the Sacklers proposed returning $4.3 billion to Purdue's bankruptcy estate. In exchange, they requested a judicial order absolving the family from all opioid-related claims and preventing future claims by victims against them.[5]

The bankruptcy court initially approved Purdue's proposed reorganization plan, which included provisions for the Sacklers' discharge. The court noted that Second Circuit precedent allowed for non-debtor releases if the release is "important" to the plan, the estate receives substantial consideration, the enjoined claims are channeled to a settlement fund, the released claims indirectly impact the debtor's reorganization, and the plan provides for full repayment of the enjoined claims.[6] Judge Drain believed that without the releases, Purdue's plan would "unravel" and claimants would likely receive less.[7] Thus, the non-consensual third-party releases in the plan were approved.

However, in 2021, a federal district court in New York reversed the decision, holding that the Bankruptcy Code does not authorize non-consensual third-party releases other than in asbestos cases. Purdue appealed this ruling to the Court of Appeals for the Second Circuit. During the appeal process, the Sacklers agreed to contribute an additional $1.675 billion to Purdue's bankruptcy estate.[8] In return, most objecting governmental entities withdrew their objections, but the U.S. Trustee did not.

[4] *Id.* at 2078-79.

[5] *Id.* at 2079.

[6] *In re Purdue Pharma L.P.*, 633 B.R. 53, 106 (Bankr. S.D.N.Y. 2021), *rev'd and remanded,* 69 F.4th 45 (2d Cir. 2023), *rev'd and remanded sub nom. Harrington v. Purdue Pharma L. P.*, 144 S. Ct. 2071 (2024).

[7] *Id.* at 107.

[8] *Harrington v. Purdue Pharma L. P.*, 144 S. Ct. at 2080 (2024).

In May 2023, the Second Circuit reversed the District Court's decision and reinstated the bankruptcy court's order approving the non-consensual third-party releases. The Second Circuit adopted a seven-factor test for approval of non-consensual releases of third parties, which included the degree to which the released claims and claims against the debtor are intertwined, the importance of the releases to the reorganization, the contributions made by the releasing parties to the debtor's estate, whether affected creditors "overwhelmingly" support the plan, and whether the plan provides for "fair payment of enjoined claims."[9] Applying these factors, the Second Circuit approved the non-consensual third-party releases. Following the Second Circuit's decision, the U.S. Trustee sought and was granted a writ of certiorari.

The Majority Decision

In a narrow 5-4 decision, led by Justice Gorsuch, the Supreme Court overturned the Second Circuit's interpretation that the Bankruptcy Code permits non-consensual third-party releases within Chapter 11 reorganization plans.[10] The Court based its decision on section 1123(b) of the Bankruptcy Code, which outlines what a reorganization plan "may" include. The Court explained that the first five paragraphs of section 1123(b) concern the rights and responsibilities of the debtor and its relationship with its creditors.[11] These provisions are followed by a catch-all provision, section 1123(b)(6), which states that a plan of reorganization may also "include any other appropriate provision not inconsistent with the applicable provisions of this title."[12] Because the first five paragraphs do not address the release of claims against non-debtors by third parties, the majority concluded that the catch-all provision does not authorize such releases.[13]

[9] *In Re Purdue Pharma L.P.*, 69 F.4th 45, 78-80 (2d Cir. 2023), *rev'd and remanded sub nom. Harrington v. Purdue Pharma L. P.*, 144 S. Ct. 2071 (2024).

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

[11] *Id.* at 2082.

[12] *Id.*

[13] *Id.* at 2082-83.

The plan proponents argued that section 1123(b)(6) allows any term not explicitly forbidden by the Code, provided a judge deems it "appropriate." They claimed that since the Sackler discharge is not explicitly prohibited, it should be permitted under section 1123(b)(6).[14] The majority rejected this argument, stating that catch-all phrases must be interpreted in context and should only include items similar in nature to the specific examples that precede them.[15] Applying the *ejusdem generis* principle, they determined that section 1123(b)(6) does not extend to third-party releases.[16] The preceding paragraphs deal with the rights and responsibilities of the debtor and permit a bankruptcy court to adjust claims without consent only if they pertain to the debtor. Accordingly, the majority concluded that while section 1123(b)(6) provides additional authority to a bankruptcy court, it does not allow the discharge of non-debtor debts without the consent of affected claimants.[17]

The majority provided several additional reasons for their ruling. First, they argued that interpreting Bankruptcy Code section 1123(b)(6) to include non-consensual non-debtor releases contradicts provisions that permit only a debtor to be discharged.[18] Second, a debtor must disclose virtually all assets to receive a discharge, which is limited to claims not based on "fraud" or "willful and malicious injury" and cannot affect any right to a jury trial for personal injury or wrongful death claims.[19] The proposed release would afford the Sacklers with a discharge of non-dischargeable claims, without requiring the Sacklers to pay a substantial portion of their assets or having to file for bankruptcy.[20] Third, section 524(g) allows courts to enjoin claims against third parties without their consent only in asbestos bankruptcy cases.[21] The majority suggested any policy change allowing non-consensual third-party releases should be addressed by Congress rather than the courts.[22]

At the end of its decision, however, the majority specified a number of open questions it was not deciding. First, it was not addressing the propriety of consensual releases as part of a bankruptcy plan.[23] Second, the decision does not address plans that provide for the full satisfaction of claims against non-debtor third parties.[24] Third, the majority's holding does not determine whether its decision should result in the unwinding of plans containing non-consensual non-debtor releases that went effective and were substantially consummated prior to the Court's decision.[25]

The Dissent

Justice Kavanaugh, joined by the Chief Justice and Justices Kagan and Sotomayor, authored a dissenting opinion. The dissent emphasized the longstanding acceptance of non-debtor releases as vital tools in bankruptcies, particularly in cases involving mass torts. It highlighted that the Purdue bankruptcy plan "was a shining example of the bankruptcy system at work."[26] Criticizing the majority's decision, the dissent labeled it as legally flawed and deeply detrimental to over 100,000 opioid victims and their families, characterizing it as a reinterpretation of the Bankruptcy Code.[27]

Justice Kavanaugh reasoned that section 1123(b) does not exclusively pertain to debtors, pointing out that section 1123(b)(3) specifically permits third-party claim

[14] *Id.* at 2082.

[15] *Id.* at 2083.

[16] *Id.* at 2083-84.

[17] *Id.* at 2084 ("the five paragraphs that precede the catch-all tell us that bankruptcy courts may have many powers, including the power to address certain collective-action problems when they implicate the debtor's rights and responsibilities. But those directions also indicate that a bankruptcy court's powers are not limitless and do not endow it with the power to extinguish without their consent claims held by non-debtors (here, the opioid victims) against other non-debtors (here, the Sacklers)").

[18] *Id.* at 2085.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.* at 2087 ("[I]n the end, we are the wrong audience for [this policy debate]. As the people's elected representatives, Members of Congress enjoy the power, consistent with the Constitution, to make policy judgments about the proper scope of a bankruptcy discharge. Someday, Congress may choose to add to the bankruptcy code special rules for opioid-related bankruptcies as it has for asbestos-related cases. Or it may choose not to do so. Either way, if a policy decision like that is to be made, it is for Congress to make.").

[23] *Id.* at 2087.

[24] *Id.* at 2088.

[25] *Id.*

[26] *Harrington v. Purdue Pharma L. P.*, 144 S. Ct. 2071, 2088 (2024) (Kavanaugh, J., dissenting).

[27] *Id.* at 2089-90.

settlements.[28] Additionally, the dissent emphasized that the term "appropriate provision" in section 1123(b)(6) grants bankruptcy courts "reasonable discretion."[29] Additionally, the dissent differentiated between third-party releases and debtor discharges, noting that releases lack the comprehensive protections of a discharge and are contingent upon settlement payments to the estate.[30] The dissent noted that "as a result, opioid victims are now deprived of the substantial monetary recovery that they long fought for and finally secured after years of litigation," urging Congress to amend the Bankruptcy Code to address the potential fallout from the Court's decision.[31]

CONSENSUAL THIRD-PARTY RELEASES

Although *Purdue* solved a long-standing issue of bankruptcy law, the overwhelming majority of bankruptcies will remain unaffected by its holding. Many plans simply do not involve third-party releases, non-consensual or otherwise. Likewise, non-consensual third-party releases remain available in asbestos bankruptcies, including talc cases, under section 524(g). The remaining cases involving third-party releases typically assert that the proposed releases are consensual. The issue of consent will almost certainly arrive at the Supreme Court for final resolution, absent action by Congress to address the issue legislatively.

Courts generally agree that third-party releases can be effectuated where given through affirmative agreement or consent with the third-party covered by the release.[32] The rationale for authorizing such consensual third-party releases is that it represents a quasi-contractual arrangement by which the third party is opting to release the covered claims in exchange for receiving payment under the proposed bankruptcy plan.[33] This rationale, however, may be subject to new challenges post-*Purdue*, given statements in the dissent.[34] Courts disagree about what constitutes consent and specifically whether voting in favor of a plan, or abstaining from voting and failing to return a ballot "opting out" of a release, constitutes consent to third-party releases. Historically, the question of consent was determined only after a fact-intensive inquiry into the notice provided by the plan proponent and the actions taken by the party granting the release.

Prior to *Purdue*, most bankruptcy plans involving non-consensual third-party releases involved releases that were classified as consensual by their plan proponents. These releases generally fell into one of two categories: opt-out releases or opt-in releases. As its name implies, opt-out releases are binding on parties unless they take steps to affirmatively opt-out of the proposed release, typically by checking a box on their ballot or completing a specific form. Likewise, opt-in releases are only binding on parties who affirmatively opt into the release. Bankruptcy courts are split over which procedure is appropriate to justify the release at issue, with no real dispute that an opt-in process provides greater due process to the proposed releasing party than an opt-out process.

Even within the same district, bankruptcy judges have disagreed on the appropriate standard. For example, in the District of Delaware, the majority of the judges have permitted third-party releases where the releasing party failed to opt-out.[35] Other judges have found that

[28] *Id.* at 2094-95.

[29] *Id.* at 2095.

[30] *Id.* at 2112-13.

[31] *Id.* at 2088.

[32] *See, e.g.*, *In re Cent. Jersey Airport Servs., LLC*, 282 B.R. 176, 182 (Bankr. D.N.J. 2002) (noting that voluntary consensual releases are permissible under the Bankruptcy Code); *In re Monroe Well Serv., Inc.*, 80 B.R. 324, 334-35 (Bankr. E.D. Pa. 1987) (same).

[33] *In re Coram Healthcare Corp.*, 315 B.R. 321, 336 (Bankr. D. Del. 2004) ("[A] Plan is a contract that may bind those who vote in favor of it.") (citation omitted); *In re Arrowmill Dev. Corp.*, 211 B.R. 497, 506 (Bankr. D.N.J. 1997) ("When a release of liability of a non-debtor is a consensual provision,

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however, agreed to by the effected [sic] creditor, it is no different from any other settlement or contract").

[34] *Harrington v. Purdue Pharma L. P.*, 144 S. Ct. 2071, 2108 (2024) (Kavanaugh, J., dissenting) ("Consensual releases are uncontroversial, but they are not expressly authorized by the Bankruptcy Code.").

[35] *See, e.g.*, *In re Indianapolis Downs, LLC*, 486 B.R. 286, 305-06 (Bankr. D. Del. 2013) (Judge Shannon finding releases consensual when (1) a creditor fails to vote and opt-out of release or (2) the creditor has an unimpaired claim and is deemed to accept the plan); *In re Mallinckrodt PLC*, 639 B.R. 837, 881 (Bankr. D. Del. 2022) (Judge Dorsey approving third-party releases as consensual where parties were given the opportunity to opt-out); *In re Abeinsa Holding, Inc.*, 562 B.R. 265, 285 (Bankr. D. Del. 2016) (former Judge Carey stating that "Courts in this jurisdiction have upheld plan provisions that provide for third-party non-debtors to release other non-debtors upon the consent of the party affected" and holding that "[o]f the 390 ballots submitted, 191 creditors voted to opt out

releasing parties can only be found to have consented to the proposed releases where they have explicitly opted into the proposed release.[36]

Given the prominence of consensual third-party releases in bankruptcy plans, the issue of what constitutes consent will almost certainly be resolved by the Supreme Court over the next few years, absent congressional intervention. Indeed, post-*Purdue*, at least two courts have concluded that a release can only be consensually granted using an opt-in mechanism.[37] However, Judge Kaplan, of the Bankruptcy Court for the District of New Jersey, reiterated his prior decisions on the subject in approving the opt-out mechanism in *Invitae*.[38] Whether the removal of the fallback option of permissible non-consensual releases (at least in some circuits) will cause judges across the country to reconsider their prior decisions on this subject remains to be seen, and likely will be fleshed out in the coming months. Courts could even seek to extend the section 1123(b)(6) rationale of *Purdue* to conclude that even consensual third-party releases are not permissible in bankruptcy, as implied by the dissent.[39]

OTHER OPEN ISSUES

Although not as significant as the determination of what constitutes consent, a number of other practical issues were left open by *Purdue* that will need to be decided by the lower courts, and possibly even the Supreme Court itself. Some of these issues were left open by the Court in its opinion, others have arisen or will arise separately. Each of these potential issues is discussed briefly below.

Full Satisfaction Releases

An issue that walks the line between consensual and non-consensual releases is whether a bankruptcy plan can provide for releases of third parties whose claims are satisfied in full under the plan. Even if these creditors do not consent to the proposed releases, they would be in a different position than the non-consensual releasing parties in *Purdue* and other mass tort cases because their claims are satisfied in full by the debtor under the plan. The so-called "single satisfaction rule" provides that a creditor cannot receive more than 100% of its damages from all applicable co-defendants.[40] Thus, if the creditor is, in fact, paid in full by the debtor, it would not be permitted to recover from third parties on account of the same claims asserted against the debtor, even if those claims are not released as part of the bankruptcy. Whether this legal distinction is enough to distinguish *Purdue* or not, the issue will only come up in truly unique situations, as very few debtors can pay creditors in full, even with funding from third parties.[41]

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of the third-party release, indicating that creditors understood the instructions.").

[36] *See, e.g., In re Emerge Energy Servs. LP*, No. 19-11563 (KBO), 2019 WL 7634308, at *18 (Bankr. D. Del. Dec. 5, 2019) (Judge Owens explaining that for the court to infer consent from nonresponsive creditors or equity holders, the debtors must show under basic contract principles that "(1) the creditors and equity holders accepted a benefit knowing that the Debtors, as offerors, expected compensation; (2) the Debtors gave the creditors and equity holders reason to understand that assent may be manifested by silence or inaction, and the creditors and equity holders remained silent and inactive intending to accept the offer; or (3) acceptance by the creditors and equity holders can be presumed due to previous dealings between the parties"); *In re Washington Mut., Inc.*, 442 B.R. 314, 355 (Bankr. D. Del. 2011) (Judge Walrath finding that "[f]ailing to return a ballot is not a sufficient manifestation of consent to a third-party release.").

[37] *See, e.g.*, Transcript of Oral Ruling, *In re Ebix, Inc.*, No. 23-80004 (SWE) (Bankr. N.D. Tex. Aug. 5, 2024), ECF No. 851 (finding that silence is not consent); Oral Ruling*, In re Red Lobster Mgmt. LLC*, No. 6:24-bk-02486-GER (Bankr. M.D. Fla. July 26, 2024) (finding that under New York law, silence is not consent and an opt-out mechanism was not appropriate under the circumstances).

[38] Transcript of Oral Ruling, *In re Invitae Corp.*, No. 24-11362 (MBK) (Bankr. D.N.J. July 24, 2024), ECF No. 869.

[39] *Harrington v. Purdue Pharma L. P.*, 144 S. Ct. 2071, 2108-10 (2024) (Kavanaugh, J., dissenting) (suggesting that taken to the extreme, the majority's reasoning would bar even consensual releases of non-debtor claims).

[40] *Attestor Cap. LLP v. Lehman Bros. Holdings Inc. (In re Lehman Bros. Holdings Inc.)*, 2019 WL 3852445, at *12 (S.D.N.Y. Aug. 16, 2019) ("Derived from Section 550 of the Bankruptcy Code, the single satisfaction rule is often used to prevent a single plaintiff from recovering its damages several times over from multiple defendants.") (citation omitted).

[41] *But see In re Boy Scouts of Am. & Del. BSA, LLC*, 642 B.R. 504 (Bankr. D. Del. 2022), *supplemented*, No. 20-10343 (LSS), 2022 WL 20541782 (Bankr. D. Del. Sept. 8, 2022), *aff'd*, 650 B.R. 87 (D. Del. 2023) (approving non-consensual third-party releases after finding that creditors' claims were being satisfied under the plan).

Effect on Substantially Consummated Plans

An even tougher problem arises when evaluating whether *Purdue* applies retroactively to invalidate plans containing non-consensual third-party releases that have already gone effective and are substantially consummated. Setting aside the due process question of applying changed law to an already resolved situation,[42] this scenario presents major "unscramble the egg" problems. The beneficiary of the release almost definitely paid significant value in exchange for the release it received under the plan, and those funds may have been distributed to creditors, often outside the jurisdiction of the bankruptcy court. Moreover, the creditors should have paid taxes on those distributions. Even if the bankruptcy court could exercise jurisdiction over this large body of creditors, require them to return their distributions to the estate, and refund those funds to the released parties, ordering the federal government to return tax revenue is likely something a bankruptcy judge would be unwilling to order.[43] Even if all these things were possible, in many circumstances, bankruptcy cases would need to be reopened to accomplish all these refunds,[44] and the plans would need to be modified and resolicited, this time paying creditors even less than they received the first time around due to the lack of funding from the former released parties. The debtor's ability to confirm a modified plan under this fact pattern would be significantly hampered, leading to even more administrative expenses and delay. On this question, all parties would be left in a substantially worse position than their current positions, and it would be hard for a bankruptcy court, as a court of equity, to order a retroactive application of *Purdue* when all parties would be left in a worse position. Despite these practical concerns, the potential retroactive application of *Purdue* to substantially consummated plans remains a possibility.

[42] *Off. of United States Tr. v. John Q. Hammons Fall 2006, LLC*, 144 S. Ct. 1588 (2024) (rejecting retroactive relief as a necessary remedy and noting that, "We cannot remedy an old constitutional problem by creating a new one, so due process and other constitutional protections undoubtedly will limit the possible remedies in many cases.").

[43] *See, e.g.*, *id.* at 1597 (refusing to order the US Trustee program to issue refunds to remedy a constitutional violation, which is more serious than the statutory interpretation issues found in *Purdue*).

[44] *Id.* (acknowledging that retroactive collection of United States Trustee fees would force the government "to extract fees from funds that might already be disbursed, inevitably prompting additional litigation and even the unwinding of closed cases").

Preliminary Injunctions

An issue that was not anticipated by the Court but has arisen multiple times in the month since *Purdue* was published is whether *Purdue* bars a court from issuing a preliminary injunction with respect to litigation involving third parties. This issue arose almost immediately on remand in *Purdue*, when certain parties sought to prevent a further preliminary injunction to allow the plan proponents to return to mediation to address the fallout from the Court's decision.[45] Judge Goldblatt, of the United States Bankruptcy Court for the District of Delaware, also raised the issue *sua sponte* in connection with a motion to extend the automatic stay to non-debtor defendants in pending pre-petition litigation.[46] That decision was followed a few days later by Judge Cox, of the United States Bankruptcy Court for the Northern District of Illinois, who granted the requested injunction.[47] The rationale of these cases is sound, but further development on this issue may be forthcoming now that multiple judges have raised it.

Gatekeeping

Another issue left open by *Purdue* is the issue of "gatekeeping." Gatekeeping arose out of the Fifth Circuit, where non-consensual third-party releases were already prohibited even prior to *Purdue*. The Fifth Circuit endorsed gatekeeping provisions in *Highland*, where it issued an injunction essentially providing that the bankruptcy court must first determine whether there is a "colorable claim" in a lawsuit against critical reorganization plan participants, to be adjudicated by the bankruptcy court or another court.[48] In effect, a litigant

[45] *In re Purdue Pharma L.P.*, No. 19-23649 (SHL) (Bankr. S.D.N.Y. July 10, 2024), ECF No. 6537 (order approving mediation and continuance of the preliminary injunction).

[46] *Parlement Technologies Inc.*, Case No. 24-10755, 2024 WL 3417084 (Bankr. D. Del. July 15, 2024) (holding that *Purdue* did not prohibit the issuance of a preliminary injunction against third parties who could not ultimately be released upon the conclusion of the bankruptcy but declining to issue the injunction on the facts).

[47] *Coast to Coast Leasing LLC v. M&T Equip. Fin. Corp.* (*In re Coast to Coast Leasing LLC*), Case No. 24-00172, 2024 WL 3454805 (Bankr. N.D. Ill. July 17, 2024) (finding that, notwithstanding *Purdue*, a preliminary injunction is available if the court concludes that management needs a breathing spell from other litigation or believes that the parties may be able to negotiate a plan with a consensual resolution of the claims against non-debtors).

[48] *Matter of Highland Capital Mgmt., L.P.*, 48 F.4th 419, 430 (5th Cir. 2022).

cannot prosecute a claim that would otherwise have been released if non-consensual third-party releases were permissible unless the litigant gets permission from the bankruptcy court to pursue the claim. The Fifth Circuit upheld the gatekeeping provision, stating that "[c]ourts have long recognized [that] bankruptcy courts can perform a gatekeeping function" under the *Barton* doctrine.[49]

Although the gatekeeping provision in *Highland* was an exculpation provision designed to prevent vexatious litigation by one particular litigant, it almost immediately emerged as an option to emulate a third-party release in jurisdictions where such releases were barred.[50] These provisions are becoming more common in plans both in and outside of the Fifth Circuit. Because they have been implemented as an alternative to non-consensual third-party releases, their potential use on a national stage post-*Purdue* is intriguing. *Purdue* unequivocally did not rule on the constitutionality of third-party releases, and gatekeeping provisions, at bottom, are injunctions that do not release any claims against third parties. While these provisions do not provide the complete protection of a third-party release, they do place additional hurdles, and their related expense, on third parties seeking to pursue claims against non-debtors. These protections are likely not enough to persuade a third party to fund settlement payments that they would otherwise be willing to fund in exchange for a release, but they provide a measure of flexibility to debtors and their professionals who are seeking to maximize their likelihood of the debtor's emergence from bankruptcy.

CONCLUSION

The Supreme Court's recent decision in *Purdue* outlawed non-consensual third-party releases in bankruptcy. Nevertheless, outside of mass tort bankruptcies, the holding will likely have minimal impact on the prosecution of most bankruptcy cases until the Supreme Court rules on the issue of what constitutes consent for purposes of granting a consensual non-debtor release. Without a doubt, there will be numerous decisions addressing the nuanced issues discussed herein as Courts try to put some guardrails around *Purdue*, and parties and courts will be called upon to brief these open issues and reconsider prior precedent in light of *Purdue*, but in the absence of congressional action, only the Supreme Court itself can finally bring closure to the longstanding question of what is required for a non-debtor to consent to a release of its claims against a non-debtor as part of a bankruptcy plan. ■

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[49] *Id.* at 439.

[50] *See, generally,* L. James Dickinson and Hugh M. Ray III, Gatekeeping Provisions May Provide an Alternative to Non-consensual Releases, 42 Am. Bankr. Inst. J. 12 (Dec. 2023), https://www.pillsburylaw.com/images/content/1/7/176847/edge-12-23-dickinson-ray.pdf.