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Tough Pill to Swallow: Supreme Court Nixes Mass Torts Defendants' Addiction to Nonconsensual Third-Party Releases

By NallyAnn Scaturro *

In this article, the author first provides background information on Purdue Pharma and the Sackler family's role in exacerbating the opioid crisis for profit as well as their attempts to use the bankruptcy system to avoid mass tort and other liability. She then discusses the importance of the holding by the Supreme Court that non-consensual third-party releases are not permitted in the Bankruptcy Code. The author concludes by exploring what that means for the future of mass torts litigation and provides a possible roadmap for the future settlement of these bankruptcy claims.

The Opioid Crisis has fundamentally changed the social and economic landscape of America, ravaging vulnerable communities across the nation and leaving a wake of death and destruction in its path. This modern crisis was created and further exploited by Purdue Pharma, a company controlled by the oft described "most evil family in America,"[1] the Sacklers, who earned their fortune by gravely misrepresenting the dangers of Purdue's highly addictive pain medication OxyContin.

In 2019, claiming to be fearful of mounting litigation filed against it, Purdue declared Chapter 11 bankruptcy in the Southern District of New York and asked the court to enjoin all litigation related to OxyContin liability against both Purdue and the Sacklers. As part of its bankruptcy plan, the Sackler family attempted to contribute $4.3 billion in exchange for non-consensual third-party releases that would have granted them sweeping immunity from their civil culpability in exploiting the opioid crisis, attempting to secure even unprecedented releases from their negligence, fraud, and willful misconduct.

In response, the United States Supreme Court held bankruptcy courts are not permitted to approve releases that extinguish claims against non-debtors (like

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[1] See Joanna Walters, 'An evil family': Sacklers condemned as they refuse to apologize for role in opioid crisis, The Guardian (Dec. 17, 2020), available at https://www.theguardian.com/us-news/2020/dec/17/sackler-family-purdue-pharma-congressional-hearing-apology; David Smith, OxyContin and the story behind America's 'most evil' family, The Irish Examiner (Dec. 11 2021), available at https://www.irishexaminer.com/news/spotlight/arid-40763463.html; Saul Lelchuk, Are the Sacklers the Most Evil Family in American History?, The Bulwark (Sept. 2, 2021), available at https://www.thebulwark.com/p/are-the-sacklers-the-most-evil-family-in-american-history.

the Sacklers) without the consent of all the claimants whose suits would be permanently barred by those releases. This has restored some much-needed leverage to mass tort litigants as debtors now have increased incentive to negotiate consensual third-party releases for non-debtors on terms more favorable to victims. The recent case *In re Rockville Centre* provides a helpful framework for mass tort litigants in the wake of this decision.

PURDUE

In 1952 the Sackler brothers, Arthur, Mortimer, and Raymond purchased Purdue Frederick Company, which later became Purdue Pharma L.P. The Sackler family thereafter dominated Purdue; they were heavily involved in the firm's marketing strategies, pushing sales targets in an effort to maximize profit, and members of the family filled key roles at the company, such as president, chief executive officer, and seats on the board of directors until 2018.[2]

In 1996 Purdue introduced the groundbreaking oxycodone-based drug, OxyContin, which it billed as a nonaddictive pain medication that, due to its controlled release, was safe to prescribe for non-malignant chronic pain.[3] This was a departure from the persisting beliefs of the medical community at the time, which had relegated opioids as "drugs of last resort" because of their highly addictive nature, and thus were mostly prescribed in cancer-related pain scenarios and to ease pain at end of life.[4]

Purdue leaned on its sales executives to change public perception around the safety of opioids and had its employees falsely inform doctors that "fewer than 1 percent"[5] of OxyContin patients became addicted. In reality, OxyContin is twice as potent as its chemical cousin, morphine, and has an extremely high potential for abuse.[6] It also should be pointed out that the "controlled release" of OxyContin could easily be bypassed by grinding the pills up for snorting and injecting, which, despite fierce marketing of the alternative, Purdue knew carried significant risk of abuse.[7] Moreover, Purdue advised its sales executives to prey upon physicians who were uninformed about the true risks of opioids

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[2] Harrington v. Purdue Pharma L. P., 603 U.S. 204, 210(2024).

[3] See Patrick Radden Keefe, Empire of Pain: The Secret History of the Sackler Dynasty, 303-305 (2021).

[4] Harrington v. Purdue Pharma L. P., 603 U.S. 204, 209 (2024).

[5] See Keefe, supra note 3, at 347.

[6] Id. at 315.

[7] See Sally Satel, Opioids and Appalachia, National Affairs (Spring 2023), available at https://www.nationalaffairs.com/publications/detail/opioids-and-appalachia; see also Shraddha Chakradhar, The history of OxyContin, told through unsealed Purdue documents, STAT (Dec.

and provide them with research demonstrating OxyContin's safety that was said to be conducted by independent groups, but was actually funded by Purdue.[8]

Additionally, notwithstanding there being no clinical studies or evidence supporting this, the FDA approved OxyContin's label claiming "[d]elayed absorption as provided by OxyContin tablets, is believed to reduce the liability of a drug."[9] This too gave financially incentivized sales executives increased ammunition to encourage doctors to prescribe higher and higher doses. Unsurprisingly, investigations later revealed deep ties between Purdue and regulators, including an FDA official Curtis Wright who approved this label and eventually took a job at Purdue.[10]

Purdue's dubious marketing approach was extremely successful and OxyContin generated $2.8 billion in revenue within the first five years of its launch[11] and approximately $35 billion in revenue over its market lifespan.[12] Eventually, OxyContin became "the most prescribed brand-name narcotic medication" in the United States and its success made the Sacklers one of the wealthiest families in America, with an estimated network of $14 billion.[13] The Sackler's success, however, came at the price of a devastating public health crisis costing $1.5 trillion in 2020 alone, and hundreds of thousands of opioid overdose deaths.[14] Additionally, the opioid crisis exacerbated the related social issues of homelessness, poverty, unemployment, truancy, crime, and family disruption. For these reasons, some have claimed that "[t]he Sacklers have arguably caused more widespread harm to America's social fabric – and

3, 2019), available at https://www.statnews.com/2019/12/03/oxycontin-history-told-through-purdue-pharma-documents/.

[8] Id. at 355.

[9] See Caitlin Esch. How one sentence helped set off the opioid crisis, The Marketplace (Dec. 13, 2017) https://www.marketplace.org/2017/12/13/opioid/.

[10] See The Sackler Family and the Opioid Crisis: A Legacy of Wealth and Controversy, Times of Scotland (Feb. 9, 2025), available at https://timesofscotland.com/business/the-sackler-family-and-the-opioid-crisis-a-legacy-of-wealth-and-controversy/.

[11] Id.

[12] See Laura Strickler, Purdue Pharma Offers $10-12 Billion to Settle Opioid Claims, NBC NEWS (Aug. 27, 2019), available at https://www.nbcnews.com/new/us-news/purdue-pharma-offers-10-12-billion-settle-opioid-claims-n1046526.

[13] Harrington v. Purdue Pharma L. P., 603 U.S. 204, 210 (2024).

[14] See generally Joint Econ. Comm., 117th Cong., The Economic Toll Of The Opioid Crisis Reached Nearly $1.5 Trillion In 2020 (2022).

correspondingly more American deaths – than any other single family in American history."[15]

The Sacklers were well aware of the risks of opioid addiction and pursued marketing strategies to diminish the perceived risk of their dangerous product. In 1997 a Purdue sales representative raised concerns via email about the abuse potential of using OxyContin for chronic pain that made it up the chain to Richard Sackler. Sackler's response: We need to focus on "the chronic non-malignant pain patient, and his/her right to effective opioid treatment. . . . We may need to start a campaign to focus attention on the untreated patient in severe pain who is mobilized and given his life back by our products. . . . I think this is something that we should start this year."[16] To accomplish this goal Purdue created a website called "In the Face of Pain," which promoted OxyContin through the "personal stories" of OxyContin patients who had overcome their "concerns about addiction" and through OxyContin ended their lifelong struggles with debilitating pain.[17] However, these stories were allegedly written by Purdue consultants who were paid to promote the drug.[18]

When reports began to emerge of OxyContin abuse, overdose, and addiction Richard Sackler, Purdue's then president, shifted blame to addicts arguing they were responsible for their own deaths. As the New York Times reported in 2001, he emailed: "We have to hammer on abusers . . . they are the culprits and the problem. They are reckless criminals."

Finally, in 2007, Purdue faced its first legal battle and its affiliate, Purdue Frederick Company, pled guilty to a federal felony for misbranding OxyContin as a "less addictive" and "less subject to abuse than other pain medications."[19] The company was forced to pay a $634 million federal fine to resolve these accusations.[20] Soon, thousands of lawsuits were filed as individuals, families, hospitals, governments and others sought to hold Purdue and the Sacklers

[15] See Saul Lelchuk, Are the Sacklers the Most Evil Family in American History?, The Bulwark (Sept. 2, 2021), available at https://www.thebulwark.com/p/are-the-sacklers-the-most-evil-family-in-american-history.

[16] See Shraddha Chakradhar, The history of OxyContin, told through unsealed Purdue documents, STAT (Dec. 3, 2019), available at https://www.statnews.com/2019/12/03/oxycontin-history-told-through-purdue-pharma-documents/.

[17] In re Purdue Pharma, L.P., 635 B.R. 26, 42 (S.D.N.Y. 2021), rev'd and remanded sub nom. In Re Purdue Pharma L.P., 69 F.4th 45 (2d Cir. 2023), rev'd and remanded sub nom. Harrington v. Purdue Pharma L. P., 603 U.S. 204, 144 S. Ct. 2071, 219 L. Ed. 2d 721 (2024).

[18] Id.

[19] Id.

[20] See Rich Archer, Purdue Pharma Files New $7.4B Ch. 11 Plan Settlement, Law360 (Mar.

accountable for injuries caused by their deceptive marketing practices.[21] The Sacklers, fearful of losing their ill-gotten wealth panicked and looked for a way out. David Sackler emailed Jonathan and Richard Sackler expressing concern about the family's personal liability for their role in causing America's opioid crisis.[22] In that email, David asked "We're rich? For how long? Until suits get through to the family?"[23]

As scrutiny grew and the lawsuits mounted, the Sacklers, in what Jonathan Sackler termed a "milking program,"[24] "used a network of offshore shell companies to siphon over $11 billion (75% of its total assets) out of Purdue and directly into their pockets, leaving Purdue in a significantly weakened financial state."[25] Then, once the Sacklers finished draining it, the deteriorated Purdue filed for Chapter 11 Bankruptcy in September 2019.[26] Notably, the Sacklers did not.

IN RE PURDUE PHARMA

When a corporation files for bankruptcy in order to resolve mass tort liability and receives the automatic stay halting all litigation against it, the focus shifts away from the injured claimants and jury trials resulting in astronomical punitive damage awards, to the ways in which the business might restructure. Mass torts cases serve to impose consequences on bad actors and compensate victims of some of the most catastrophic situations. Bankruptcy, in stark contrast, is focused on efficiently allocating resources and does not seek to determine accountability or uphold the public values of transparency, law development, and educating the public. In fact, legal scholars have often argued that some mass torts defendants file for bankruptcy seeking to "bypass procedural justice and shut down discussion of their purported wrongdoings."[27]

Consider the difference between the language of the courts even: in mass torts there are "defendants," "plaintiffs" and "victims" – language charged with moral implications of wrongdoing, in bankruptcy there are simply "debtors"

19, 2025), available at https://www.law360.com/articles/2291295/purdue-pharma-files-new-7-4b-ch-11-plan-settlement.

[21] Purdue III, 69. F4th 45, 58 (2d Cir. 2023).

[22] Purdue II, 635 B.R. at 56.

[23] Purdue II, 635 B.R. at 56.

[24] Id.

[25] Purdue II, 635 B.R. at 57-59.

[26] Id.

[27] See Pamela Foohey & Christopher K. Odinet, Silencing Litigation Through Bankruptcy, 109 VA L. REV. 1261, 1266 (2023).

and "creditors." Similarly, as the power behind the language of the parties is diminished, so are the mass tort litigants' rights, such as their Seventh Amendment right to have their dispute heard by a jury of their peers as well as their counsel's ability to pursue meaningful discovery into the alleged harms (as discovery in bankruptcy is limited to the financial health of the debtor), thereby greatly reducing their leverage as well as reducing the possibility of meaningful reform. Additionally, the cramdown provision of Section 1129 of the Bankruptcy Code further reduces mass tort plaintiffs' leverage by allowing a debtor to confirm a plan even if it is not accepted by all classes if certain requirements are met.[28] This disruption of rights is significant as many of America's largest controversies, including sexual abuse cases, opioid lawsuits, product liability and fraud cases, are now being handled in the nation's bankruptcy courts. In essence, the bankruptcy filing creates a mandatory class action without the important safeguards of a true class action, all while allowing the corporation to stall tort claims for years, resulting in many mass tort litigants dying before finding justice.

After it had been stripped of many of its assets and was faced with thousands of claims alleging its product OxyContin exacerbated the opioid epidemic and bore responsibility for more than half a million overdose deaths in the United States over two decades, Purdue (though still solvent) filed for Chapter 11 bankruptcy. Purdue likely did this to avoid liability and attempt to quell the mounting cultural obsession with its alleged abuses.[29] Originally, this plan was approved, but the U.S. Trustee appealed, and the Supreme Court granted certiorari. As part of its plan, Purdue proposed to combine its assets with a contribution of $4.3 billion from the Sacklers to the bankruptcy estate in exchange for third-party releases that would have prevented victims and creditors from pursuing legal action against the Sacklers. A third-party release grants immunity to a non-debtor for both existing and future liability. While the $4.3 billion was heralded by Purdue as a generous contribution to address the opioid crisis the Sacklers played a key role in, it was actually a fraction of the family's substantial net worth and would have resulted in a mere pittance for individual tort victims with payments ranging from (a pre-deductions and attorney's fees) base amount of $3,500 to a ceiling of $48,000. Instead, this contribution was primarily offered as a thinly veiled attempt to purchase the Sacklers' immunity from any existing or future liability for their role in Purdue's

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[28] See 11 U.S.C. §1129(b).

[29] For example, the Purdue Pharma and Sackler's role in the opioid crisis has been explored in works such as HBO documentary "The Crime of the Century," Hulu series "Dopesick" and Netflix series "Painkiller."

willful promotion and sale of highly addictive opioids without the consent of the victims. As the Supreme Court explained:

> The release sought to void not just current opioid-related claims against the [Sacklers], but future ones as well. It sought to ban not just claims by creditors participating in the bankruptcy proceeding, but claims by anyone who might otherwise sue Purdue. It sought to extinguish not only claims for negligence, but also claims for fraud and willful misconduct. And it proposed to end all these lawsuits without the consent of the opioid victims who brought them.

These non-consensual third-party releases would have given the Sacklers broad legal immunity from a variety of claims against them without the Sacklers having to declare bankruptcy themselves. Thus, the Sacklers would have been allowed to walk away with one of the greatest gifts of bankruptcy, the release, without being forced to deal with the necessary encumbrances of bankruptcy, such as the requirement to put substantially all their assets on the line.

The U.S. Supreme Court held that non-consensual third-party releases in a bankruptcy reorganization plan are not permitted under the Bankruptcy Code[30] (other than in the specific carveout for asbestos litigation 11 U.S.C. § 524.)[31] Thus, bankruptcy courts are not permitted to approve releases that extinguish claims against non-debtors (like the Sacklers) without the consent of all the claimants whose suits would be permanently barred by those releases. Put simply, entities like the Sacklers can no longer ride the debtor's third-party release coattails absent consent of those affected. Intuitively, this decision makes sense, the Sacklers are not unlucky debtors in financial distress attempting to reorganize in good faith, they are members of the wealthy elite attempting to use their power and influence and some unorthodox legal maneuvering to prevent litigation against them and should be prohibited from doing so. The court, however, did not define what constitutes a "consensual release" and there is currently circuit split over what is required in order to meet the threshold, which is likely to play out in the mass torts arena in the coming years. Regardless, this decision may help restore some much-needed leverage to mass tort litigants as corporations now have incentive to negotiate consensual third-party releases for non-debtors on terms more favorable to victims.

The central purpose of the Bankruptcy Code is to give "the honest but unfortunate debtor a new opportunity in life and a clear field for future effort,

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[30] Purdue Pharma, 144 S. Ct. at 2078.

[31] 11 U.S.C. § 524 allows settling insurers, debtor affiliates, officers and directors and certain other persons to obtain global releases from asbestos tort claims and future demands against the debtor if certain requirements are met.

unhampered by the pressure and discouragement of preexisting debt,"[32] not to insulate wealthy individuals from the consequences of their despicable actions. Moreover, it is worth noting that the discharge sought by the Sacklers included releases greater than the code even allows for, including claims for "fraud" and "willful and malicious injury" which are purposefully *never* dischargeable when a person declares bankruptcy and seem to be indicative of serious wrongdoing by the members of the family. And to add insult to injury the Sacklers sought to purchase this immunity from their potentially criminal activity with a small portion of their outrageous wealth. Thus, the majority took pains to note:

> The Sacklers seek greater relief than a bankruptcy discharge normally affords, for they hope to extinguish even claims for wrongful death and fraud, and they seek to do so without putting anything close to all their assets on the table . . . nothing in the bankruptcy code contemplates (much less authorizes) it[33]

This language can empower mass tort litigants when fighting for greater contributions from third parties and larger pots of money. For these reasons, the decision will protect the bankruptcy system from an approach that could have provided corporations and the wealthy with an avenue to buy releases from their culpable conduct and to circumvent mass tort liability. This decision correctly affirms that bankruptcy is reserved for those who need its protection.

EFFECT ON MASS TORTS LITIGATION

For years systematic abuse of bankruptcy law has allowed mass tort defendants to deny hundreds of thousands of Americans the opportunity to seek restitution in a court of law for the grievous harms they have suffered. This decision will make it more difficult for companies to extinguish claims using the controversial bankruptcy maneuver known as the Texas Two Step, which involves a parent company spinning off a unit and transferring its tort liability to that unit, usually through Texas corporate law allowing divisional mergers.[34] The spinoff unit then declares bankruptcy and promptly asks the bankruptcy court to issue an injunction on lawsuits against the affiliated parent company and then eventually obtain releases for the parent company and other corporate

[32] Local Loan Co v. Hunt, 292 U.S. 234, 244 (1934).

[33] Purdue Pharma, 144 S. Ct. at 2078.

[34] For a more comprehensive discussion of the attempts of corporations to use the Texas Two Step to avoid liability while obtaining releases for the parent company see NallyAnn Scaturro, Third Circuit Steps Away from the Texas Two Step, 19 Pratt's J. Bankruptcy Law 118-123 (2023); see also NallyAnn Scaturro, LTL's Second Attempt at Bankruptcy Goes Up In Smoke, 19 Pratt's J. Bankruptcy Law 375-383 (2023).

affiliates that are not in bankruptcy. This essentially allows large corporations to create shell companies, formed almost exclusively, to manage and defend thousands of mass tort-related claims while shielding valuable assets from victims' reach and insulating the parent company from the burdens of bankruptcy court oversight.

This maneuver also allows the parent company to obtain an injunction, which once in place destroys any leverage mass torts plaintiffs possessed because now the tortfeasor has limited incentive to resolve the claims against it since as long as the bankruptcy continues the tortfeasor is isolated from liability without any pressure to exit. Effectively, this allows corporations not facing financial distress to abuse the bankruptcy process by enjoining litigation against their solvent corporate affiliates for years while victims receive nothing. The tide of public opinion already seems to be turning against this intolerable practice, but the *Purdue* decision has made the practice less attractive as it has made it more difficult for the corporate affiliates that are not in bankruptcy to obtain releases.

In *Purdue* the majority cracked down on unorthodox legal maneuvering and held that the bankruptcy code does not allow courts to force unwilling plaintiffs to release their claims against non-debtor parties. Here, the non-debtor parties in question were Sackler family members who tried to obtain personal litigation releases through Purdue's Chapter 11 bankruptcy. In the Texas Two Step model, the non-debtor party would be the healthy parent company seeking to gain the benefits of the bankruptcy system without subjecting itself to its limitations. Thus, this decision will serve to end one of the major advantages of the Texas Two Step, the cramdown of the nonconsensual third-party releases on mass tort plaintiffs for the parent company. Additionally, this decision has successfully redistributed some much-needed leverage back to mass tort creditors by requiring their consent to the release of such non-debtor third parties, which will lead to more equitable settlement offers in the future.

Mass torts defense lawyers have argued this decision will make it nearly impossible for insurance companies to get much needed third-party releases, however, this issue has already been resolved in the mass tort context outside of bankruptcy, where those who do not want to participate in an action must opt out. Additionally, positive effects have already been seen as defendants are forced to contribute enough money to win the consent of a majority of the claimants in order to receive the releases. Likewise, insurance companies may also decide it is worth contributing more generous funding to win over tort victims and receive that legal protection.

Following the Supreme Court's decision, the Sacklers and Purdue agreed to increase the Sackler settlement contribution to $6.5 billion and preserve the rights of plaintiffs to opt out of the settlement and pursue their own claims against the Sacklers. Under the revised plan creditors will be given the choice to opt in to the releases and receive a share of the full $7.4 billion settlement fund or to opt out and pursue their own individual claims separately, but they will only be eligible for a share of the $900 million contributed by Purdue itself.[35]

Currently, courts are split on whether consent can only be granted affirmatively or whether parties that remain silent or choose not to participate are tacitly providing consent. An opt-out means that a third-party release will be effective only for parties who submit a ballot and check the opt-out box.[36] Conversely, an opt-in provides that no party is deemed to have granted a third-party release unless that party submits a form that opts into said release, which is separate from the party's vote with respect to the plan.[37] Others believe that whether a release is consensual "should be addressed on a case-by-case basis given the particular circumstances . . . with adequate notice and satisfaction of due process remaining part of that analysis."[38] The current landscape is highly fact-specific and varies by jurisdiction: while some courts accept opt-out mechanisms under specific conditions, others require affirmative opt-in to establish consent.

THE NONCONSENSUS ON CONSENT: A ROADMAP FOR NAVIGATING THE MASS TORT BANKRUPTCY LANDSCAPE POST-PURDUE

Opt-In

Opt-in releases are generally favored by Bankruptcy courts[39] because they robustly demonstrate consent because creditors or interested parties must affirmatively accept to opt into the release. This puts creditors in a position of power to either accept or reject the opt-in depending on the strength of the payout and incentivizes third-party debtors to provide adequate funding to obtain the release, resulting in larger pots of money and more favorable results for mass tort litigants. However, critics state opt-in releases can be difficult to

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[35] See Rich Archer, Purdue Pharma Files New $7.4B Ch. 11 Plan Settlement, Law360 (Mar. 19, 2025), available at https://www.law360.com/articles/2291295/purdue-pharma-files-new-7-4b-ch-11-plan-settlement.

[36] In re Spirit Airlines, Inc., Bankr. S.D.N.Y. (Mar.7, 2025).

[37] Id.

[38] Id.

[39] See Jackson E. Fisher, The Validity of Consensual Third-Party Releases Post-Purdue Pharma, 129 N.C. Bankr. L. Rev. 516, 539 (2025).

implement due to the number of victims that hold potential claims in the mass tort context and the perceived difficulty of making all potential claimants aware of their rights.

Opt-Out

On the other hand, opt-out releases, though easier to implement in the mass torts bankruptcy context, are not without controversy and courts remain divided about whether consent can be inferred from inaction. This inquiry is highly fact-specific and varies by jurisdiction, but there are a number of factors that courts rely upon that favor acceptance of opt-out release. A helpful discussion of how some of these factors have been analyzed by courts in New York can be found in *In re Spirit* Airlines,[40] but some common factors are: the language of the release being prominently displayed on ballots and easily understood by even unsophisticated claim holders, notice published in national newspapers, adequate recovery for creditors, adequate consideration provided in exchange for release, volume of opt-out elections received, and persons who were not provided with adequate notice given the ability to later raise their claims.

Factors such as these serve to minimize fairness and notice requirement concerns as well as due process arguments that arise from inferring consent from nonresponsive mass tort victims. Additionally, some experts have claimed that opt-out provisions allow "claimants who are less sophisticated or far removed from bankruptcy" the ability "to reap the benefits of a carefully constructed plan where creditor representatives fight for their adequate recoveries" thus "ensuring the greatest good for the greatest number."[41] Mass tort defendants will likely push the view that opt-out releases meet the threshold for consent in the coming years.

Insurance Buybacks

Insurance policies are classified as an asset of a debtor's estate. For this reason mass tort claim settlements in the insurance context are often formulated as "buyback" transactions whereby the insurance company "buys back," and thus terminates, the insurance policy from the debtor. This is done pursuant to Section 363 which permits property of the debtor to be sold "free and clear" of other interests[42] and allows them to receive releases from the consequences and

[40] See In re Spirit Airlines (Bankr. S.D.N.Y. Mar. 7, 2025).

[41] Id.

[42] See Rich Archer, NY Diocese Gets OK For Ch. 11 Plan With Optional Releases, Law360 (Dec. 4, 2024), available at https://www.law360.com/articles/2269152/ny-diocese-gets-ok-for-ch-11-plan-with-optional-releases.

derivative consequences of their actions with the debtor. Following the decision in *Purdue*, these insurance buybacks are likely to take on a more prominent role in the context of mass tort Chapter 11 bankruptcies.

In re Diocese of Rockville Centre: The Hybrid Approach

In October 2020 the Roman Catholic Diocese of Rockville Centre filed for Chapter 11 bankruptcy to resolve over 500 sex abuse claims against it, and its affiliated parishes and insurers, triggered by the passage of New York State's Child Victims Act of 2019, which temporarily reopened the statute of limitations for these claims.[43] These abuses began coming to light over 40 years ago[44] but were quickly swept under the rug, denying some of the country's most vulnerable mass tort victims their chance at justice until the New York State's Child Victims Act of 2019 and Adult Survivors Act of 2022 gave these claimants a second chance by reopening the door to this litigation. Soon lawsuits poured in alleging that priests and other adults who worked for the diocese abused children in their care from the 1950s onward.[45] Lawsuits also were filed against parishes and Catholic schools, but these are separate legal entities, so when the diocese petitioned the bankruptcy court to have those cases stayed as well and brought into their bankruptcy, the order was denied.[46]

Although the individual parishes within the diocese did not file for bankruptcy themselves, they were prepared to negotiate and contribute to the settlement in exchange for obtaining third-party releases.[47] Additionally, parishes hoped to release their claims to insurance in return for an additional settlement payout by the insurers to the tort claimants. Similarly, despite raising their own defenses under the policies, insurers too were open to a comprehensive settlement.[48]

In 2024 the Bankruptcy Court for the Southern District of New York amended its guidelines to include a template for "rapid" prepackaged Chapter 11 cases.[49] A rapid prepackaged bankruptcy plan is a type of Chapter 11

[43] See Sean Piccoli, Long Island, New York, parishes forced to pay millions to settle sex abuse claims (Jan. 15, 2025), available at https://www.ncronline.org/news/long-island-new-york-parishes-forced-pay-millions-settle-sex-abuse-claims.

[44] Id.

[45] Id.

[46] Id.

[47] Id.

[48] Id.

[49] U.S. Bankruptcy Court Southern District of New York, Adoption of Amended Procedural Guidelines for Prepackaged Chapter 11 Cases (Jan. 22, 2024), available at https://www.nysb.

reorganization where the debtor negotiates the terms of its plan and secures approval from key creditors prior to filing for bankruptcy.[50] Prepackaged bankruptcies have been used for decades to reduce the time and costs often associated with traditional Chapter 11 bankruptcies.[51] Additionally, these prepackaged plans are exempted from the requirement of court approval of a disclosure statement prior to the solicitation of votes, but still require the consent of all affected parties for confirmation.[52]

These guidelines allowed the diocese to pursue a hybrid process under which it prepared a Chapter 11 plan for itself that anticipated future Chapter 11 filings by its parishes under the same plan, but, as the disclosure statement made clear, if and only if the joint plan received overwhelming support from abuse claimants.[53] This hybrid approach would serve to effect a discharge in bankruptcy for both the diocese and its parishes thus eliminating the need for third-party releases. Upon approval of the disclosure statement, the diocese then solicited votes from the diocese, parish, and school abuse claimants who overwhelmingly voted in favor of accepting the joint plan.[54] In this case it is important to note that there was continuous and considerable court supervision over the prepackaged plans as well as court approval of the disclosure statement, which helped garner support for the plan.

Additionally, following opposition from the U.S Trustee concerning the involuntary nature of the original insurance releases prohibited by *Purdue*,[55] the revised plan provided for insurance buybacks of $88 million to be contributed to the settlement trust and created a separate opt-in release that entitled abuse claimants to an enhanced distribution from insurance sale proceeds by electing

uscourts.gov/news/adoption-amended-procedural-guidelines-prepackaged-chapter-11-cases.

[50] See Courtney C. Carter, Saving Face in Southeast Asia: The Implementation of Prepackaged Plans of Reorganization in Thailand, Malaysia, and Indonesia, 17. Bankr. Dev. J. 295, 304-05 (2000).

[51] Id.

[52] See Adam J. Levitin, Judge Shopping in Chapter 11 Bankruptcy, 2023 U. Ill. L. Rev. 351, 389 (2023).

[53] See Archer, supra n. 42.

[54] See Archer, supra n. 42 ("Diocese counsel said the plan was approved by 99% of the approximately 75% of abuse claimants who returned ballots.").

[55] Under the settlement and insurance buyback as originally proposed, abuse claimants were required to release all direct claims against the insurers or policies in order to receive payments of the insurance sale proceeds, which the U.S. Trustee said was not sufficiently voluntary following Purdue's prohibition of involuntary third-party releases in Chapter 11 plans.

to release their claims against the settling insurers.[56] This was done by providing for a reserve in the settlement trust of $32 million for potential direct claims against settling insurers that was to be released for distribution by the settlement as abuse claimants submitted their releases of their direct claims, with all the funds being released once 616 claimants signed the insurance release.[57] Here, the decision in *Purdue* allowed mass tort litigants greater autonomy by giving them the ability to affirmatively opt in to release forms for the diocese and its affiliates and the insurers.

This hybrid approach provides a valuable model for resolving mass tort cases in the bankruptcy context because at its core it emphasizes consent. Here, no bankruptcy filings were commenced by related third parties until there was an approved disclosure statement and overwhelming support of the plan from mass tort victims. Additionally, the plan provided a mechanism to maximize the insurance assets available to victims while simultaneously obtaining consensual releases for insurers.

Moreover, one of the fundamental reasons victims sued was to hold perpetrators accountable in order to deter, punish and remedy the abusers' heinous conduct. Thus, an important outcome of the bankruptcy settlement was the public disclosure of the identities and personnel files of all known abusers who were credibly accused of child sex abuse while working under the diocese's supervision.[58] As mentioned earlier, bankruptcy often allows mass tort defendants to skirt responsibility by bypassing procedural justice and shutting down discussion of debtor's wrongdoings. Here, however, victims at least received an apology. In an open letter addressed to "all Survivors of Sexual Abuse" the bishop of the diocese of Rockville Centre, John Barres wrote "I am truly sorry for the evil done to you. I am sorry for the failures of the Church and her leaders in addressing these horrors."[59] He thanked survivors for having the courage to come forward to work for justice and the protection of children and promised lasting change in the form of "strict protocols, zero tolerance for abuse, careful screening, and training have all become the norm for those in ministry, employes and volunteers." [60] Although the damage is already done

[56] See Archer, supra n. 42.

[57] Id.

[58] See Sean Piccoli, Long Island, New York, parishes forced to pay millions to settle sex abuse claims (Jan. 15, 2025), available at https://www.ncronline.org/news/long-island-new-york-parishes-forced-pay-millions-settle-sex-abuse-claims.

[59] See John O. Barres, To All Survivors of Sexual Abuse, Diocese of Rockville Centre (Dec. 6, 2024), available at https://www.drvc.org/wp-content/uploads/Letter-to-Survivors-12.6.24.pdf.

[60] Id.

and for many the apology has come too late, as many victims as well as their abusers have already passed, at least there is an acknowledgement that the abuse occurred and that survivors are telling the truth.

The plan has, however, received some criticism from victims for not including an independent oversight board to monitor the diocese's abuse prevention measures to ensure the safety of the next generation of children.[61] Additionally, victims have stated they had hoped there would be money set aside in the plan to help them work through their traumatic experiences, and resulting mental health issues, in therapy.[62]

Though imperfect, *In re Diocese of Rockville Centre* serves to provide a helpful roadmap both for obtaining a comprehensive settlement that is agreeable to third parties and insurers alike post-Purdue as well as underscoring the importance of accountability and the prevention future harm through policy change that helps to provide mass torts victims justice.

CONCLUSION

In recent years, bankruptcy law has overstepped its traditional boundaries and come to play a more prominent role in mass tort litigation. What was once reserved for "the honest but unfortunate debtor" has become a warped institution that serves to protect, enable, and facilitate corporate exploitation, while undermining the interests and fundamental rights of mass tort victims who have suffered grievous harm, often due to a simple internal calculation that the pain suffered, and lives lost are better for the corporation's bottom line.

In 2001 Purdue's president mercilessly blamed addicts as bearing sole responsibility for their suffering, emailing: "We have to hammer on abusers . . . they are the culprits and the problem. They are reckless criminals." Now corporations and tortfeasors need to begin bearing responsibility for their own wrongdoing.

It is time to hammer on the abusers of the bankruptcy system. They are the culprits and the problem. And the prohibition against non-consensual third-party releases is a step in the right direction.

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61 Id.

62 Id.