
Harrington v. Purdue Pharma L.P., No. 23-124

Today, the Supreme Court held 5-4 that the Bankruptcy Code does not allow a bankruptcy court to discharge claims against a non-debtor without the consent of affected claimants.

Background: Purdue Pharma developed and produced OxyContin, an opioid. In 2019, the company filed for bankruptcy, in part due to increased litigation exposure from the opioid crisis. The company's owners, members of the Sackler family, also faced personal lawsuits but did not themselves file for bankruptcy.

In 2021, the bankruptcy court overseeing Purdue's bankruptcy confirmed a proposed reorganization plan. The plan would set up trusts for compensation to victims that would be funded in part by the Sackler family. In return for those contributions, the Sackler family would receive releases for all opioid-related claims that Purdue's creditors may have against the family. About 95% of the voting opioid claimants approved the plan, but some claimants objected on the ground that the Sackler family should not get releases when they had not filed for bankruptcy.

The Second Circuit affirmed plan confirmation, holding that the bankruptcy court permissibly authorized the releases. The court relied on 11 U.S.C. § 1123(b)(6), which provides that a reorganization plan may include any "appropriate provision not inconsistent with the applicable provisions of this title."

Issue: Whether the Bankruptcy Code – specifically, 11 U.S.C. § 1123(b)(6) – authorizes a bankruptcy court to approve a reorganization plan that would release claims held by non-debtors against non-debtor third parties without the claimants' consent.

Court's Holding: In a decision authored by Justice Gorsuch and joined by Justices Thomas, Alito, Barrett, and Jackson, the Supreme Court held that the Bankruptcy Code does not authorize a bankruptcy court to confirm a reorganization plan that would release claims against a non-debtor without the consent of the claimants. The Court explained that 11 U.S.C. § 1123(b)(6) is restricted to provisions that touch upon the rights and responsibilities of the debtor, not of non-debtors. The Court further explained that permitting releases of claims against non-debtors would be inconsistent with the statutory scheme, which provides discharges for debtors that place substantially all of their assets on the table. The Sacklers, the Court said, were not debtors and were not contributing substantially all of their assets. The Court noted that its decision addressed only nonconsensual releases of claims against non-debtors, and that it was not expressing a view on plans that provide for consensual releases of claims against non-debtors or that provide for full satisfaction of those claims.

Justice Kavanaugh dissented, joined by Chief Justice Roberts and Justices Sotomayor and Kagan, taking the view that 11 U.S.C. § 1123(b)(6) authorizes the bankruptcy court to confirm the plan releasing the claims against the Sackler family.

Read the opinion [here](#).