

**BANKRUPTCY**

By: Keith A. Langley



## Fast and Furious

A federal judge's decision to unravel a settlement shielding members of the Sackler family from future opioid litigation could upend a controversial corner of U.S. bankruptcy law: protecting third parties who have not filed for Chapter 11 themselves. In a written opinion late Thursday, the federal district judge said federal law did "not authorize" so-called nondebtor releases granted in September to Sackler family members in the court restructuring of their company, OxyContin maker Purdue Pharma LP. Whether such releases are allowed represented the "great unsettled question" of the case, which has split federal appeals courts for decades.

Judges increasingly over the years have shielded nondebtors with releases when approving a reorganization plan, especially when those third parties contribute money to the restructuring. Indeed, absent releases, the Sacklers threatened to withdraw their \$4.5 billion contribution to Purdue's reorganization -- a settlement aimed at resolving thousands of opioid lawsuits by steering money to U.S. communities reeling from the epidemic. This decision, if it stands, will upend Chapter 11 practice, and it effectively takes nondebtor releases off the table.

Such releases, or the potential for their use, have sparked controversy not only in the Purdue case, but bankruptcy proceedings arising from litigation over sexual abuse involving the Boy Scouts and former USA Gymnastics doctor Larry Nassar.

Members of the bankruptcy bar who favor the releases contend they facilitate complex settlements, encouraging otherwise reluctant third parties to contribute funds toward reorganizations that rehabilitate businesses or resolve widespread litigation.



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In 1994, Congress authorized nondebtor releases specifically to help companies faced with monumental asbestos liabilities. Under the law, insurers would contribute to a trust to pay claims from people dying of mesothelioma and other asbestos-related illnesses. In return, those insurers received nondebtor releases to prevent asbestos victims from turning around and suing them after collecting from the trust.

We were intimately involved regarding asbestos bankruptcy issues in the KBR and DII cases involving parent company Halliburton. High stakes invoke large legal and factual issues. Bankruptcy is fast and furious, issues must be addressed early and often, fully aware negotiating is key.

The reality is that disputes and litigation can be long, costly, and contentious. Bankruptcy tools are often used to try to achieve resolutions that affect these issues. The involved parties need to know what the Bankruptcy Code provides, what Congress allows and provides for, and how to evaluate and present positions.

To "Go Green", our firm uses recyclable paper or ceramic cups and no longer uses Styrofoam cups. In addition, we have adopted a less-paper office environment.

We hope that these changes make big differences in the future.

*Well done is better than well said.*

- Benjamin Franklin



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