

Lessons from *Purdue*: Nondebtor Preliminary Injunctions May Be Here to Stay

The Supreme Court in *Harrington v. Purdue Pharma L.P.*¹ held that bankruptcy courts lack the authority to issue nonconsensual, permanent releases and injunctions against third parties in connection with a chapter 11 plan. Among its many other potential ramifications, the ruling threw into question so-called “extending the stay” injunctions—temporary injunctions that halt suits against third parties while a bankruptcy case proceeds. If bankruptcy courts cannot *permanently* enjoin nondebtor claims without claimant consent after *Purdue*, what authority could they possibly have to *preliminarily* enjoin those claims over claimants’ objections?

A handful of courts have held that contested nondebtor preliminary injunctions are nevertheless permitted as long as they are critical to reorganization efforts, reasoning that the “likelihood of success” necessary to win a temporary injunction refers to a successful reorganization—and *not* to successfully obtaining the permanent releases now forbidden by *Purdue*. Although these cases attempt to reason around one potential *Purdue* hurdle (*i.e.*, the post-*Purdue* application of the “likelihood of success” element of the preliminary injunction standard), these nondebtor remedies were difficult to justify before *Purdue*, and may become even more so afterward. This update first provides a brief background on *Purdue* and then summarizes the developments with respect to nondebtor temporary injunctions following the Supreme Court’s decision.²

The Purdue Pharma Ruling

Purdue’s holding—that bankruptcy courts cannot release and enjoin nondebtors suits without the consent of the impacted creditor—was itself a significant one, nullifying a power that bankruptcy courts have used in several high-profile mass tort cases. More generally, however, the Court’s broadside attack on bankruptcy courts’ authority, and its skeptical view of the statutes bestowing that authority, have caused concern about the case’s potential ramifications.

In *Purdue*, members of the Sackler family, which had long operated the pharmaceutical giant, sought permanent releases and injunctions barring suits related to the company’s role in the opioid epidemic.³ Unlike the company itself, the Sacklers had not filed bankruptcy.⁴ The bankruptcy court, however, approved a plan that would have offered them a global release against opioid-related claims in exchange for a payment of approximately \$5 to \$6 billion.⁵ The district court reversed the confirmation order, reasoning that the bankruptcy court did not possess

¹ 603 U.S. ---, 144 S.Ct. 2071 (2024).

² This case update is being provided for general informational purposes and does not reflect the view or position of any particular KTBS client, any KTBS attorney, or KTBS generally.

³ *Id.* at 2078–79.

⁴ *Id.* at 2081.

⁵ *Id.* at 2079–80.

this authority—but the Second Circuit reinstated the bankruptcy court’s ruling.⁶ The Supreme Court granted certiorari.⁷

The Court characterized the question as whether the Bankruptcy Code allows “*nondebtors* the benefits of a Chapter 11 discharge usually reserved for *debtors*.”⁸ The Court held that this power was not authorized by Bankruptcy Code section 105(a)—which provides for “any order, process, or judgment to carry out the provisions of” the Code—because that provision “serves only to ‘carry out’ authorities expressly conferred elsewhere in the code.”⁹ The only possible authority for this power, then, would be section 1123(b), which lists certain provisions a reorganization plan may include.¹⁰ Subsection (b)(6) provides that a plan can also “include any other appropriate provision not inconsistent with the applicable provisions of” the Bankruptcy Code.¹¹ The Court held that this catch-all language should not be given its broadest possible interpretation; rather, it should be construed in light of the other specific examples of permissible plan terms in section 1123(b), “all of which concern the *debtor*—its rights and responsibilities, and its relationship with its creditors.”¹² It therefore held 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 nondebtors (here, the opioid victims) against other nondebtors (here, the Sacklers).”¹³

Along the way, the Court rejected many of the arguments often used to justify a broader view of bankruptcy courts’ authority. For one, it rejected the argument by four dissenting justices (and the plan proponents) that the bankruptcy courts’ authority over nondebtors can broadly be justified by the “‘purpose of bankruptcy law’ in ‘solving collective action problem[s]’”:

So, yes, bankruptcy law may serve to address some collective-action problems, but no one (save perhaps the dissent) thinks it provides a bankruptcy court with a roving commission to resolve all such problems that happen its way, blind to the role other mechanisms (legislation, class actions, multi-district litigation, consensual settlements, among others) play in addressing them.¹⁴

The Court also viewed the bankruptcy courts’ role as limited given the “historical practice” of bankruptcy law, reasoning that “discharge”—what it characterized the Sacklers as getting under the bankruptcy plan—is “reserved” only to “the debtor who offered a ‘fair and full surrender of

⁶ *Id.* at 2080.

⁷ *Id.*

⁸ *Id.* at 2081.

⁹ *Id.* at 2082 n.2 (citation and internal quotation marks omitted).

¹⁰ *Id.* at 2081–82.

¹¹ *Id.* (quoting 11 U.S.C. § 1123(b)(6)).

¹² *Id.* at 2083.

¹³ *Id.* at 2084.

¹⁴ *Id.* (alteration in original) (quoting *Purdue*, 144 S.Ct. at 2090 (Kavanaugh, J., dissenting)).

[its] property.”¹⁵ The Sacklers, “without placing anything approaching all of their assets on the table,” were not entitled to that relief.¹⁶

Preliminary Injunctions Against Nondebtor Suits

Purdue’s logic could be read to support barring *temporary* nondebtor injunctions as well. Just as the Supreme Court found Bankruptcy Code section 105(a) was insufficient as a statutory foothold for nonconsensual nondebtor releases, it may also be insufficient to support temporary nondebtor injunctions. Similarly, just as section 1123(b) “concern[s] the *debtor*—its rights and responsibilities, and its relationship with its creditors,”¹⁷ and therefore does not authorize relief against nondebtors, a court relying on *Purdue* might reason that section 362 stays actions only against the debtor, and therefore, likewise, should not be used to protect nondebtors.

Nevertheless, a handful of courts in the wake of *Purdue* have held that, under certain limited circumstances, the automatic stay can be “extended” to nondebtors.¹⁸ The first of those cases, *In re Parlement Technologies, Inc.*, involved the company behind the conservative social media site Parler. The debtor in that case sought to pause a state court suit against its former officers.¹⁹ The Bankruptcy Court for the District of Delaware explained that in a bankruptcy case, “success on the merits”—typically, the most critical factor in determining whether a preliminary injunction should issue—does not necessarily mean winning a permanent nondebtor injunction, which (absent consent) may be forbidden by *Purdue*. Instead, “success on the merits” would be “the debtor’s successful confirmation of a plan of reorganization,” meaning courts can still pause third party claims “where the assertion of those claims would interfere with the debtor’s reorganization efforts.”²⁰ The court held, however, that nondebtor temporary injunctions “are not entered lightly” but rather are “an extraordinary remedy, which should be granted only in limited circumstances.”²¹ With respect to the *Parlement* debtor, the court explained, all it had alleged was that the litigation would be distracting and expensive, and the defendants were indemnified—commonplace circumstances that did not justify this “extraordinary” relief.²²

¹⁵ *Id.* at 2086 (alteration in original) (quoting *Sturges v. Crowninshield*, 17 U.S. 122, 176 (1819)).

¹⁶ *Id.* at 2087.

¹⁷ *Purdue*, 144 S.Ct. at 2083.

¹⁸ Although cases and practitioners refer to “extending” the automatic stay, the relief at issue is more accurately described as a preliminary injunction rather than an “extension” of the stay.

¹⁹ 661 B.R. 722, 724 (Bankr. D. Del. 2024).

²⁰ *Id.* at 727–28.

²¹ *Id.* at 728.

²² *Id.* at 729–31.

Still, at least two bankruptcy courts since *Purdue* have extended the stay to nondebtor defendants.²³ Put together, these cases suggest that, as they were before *Purdue*, nondebtor preliminary injunctions are unusual remedies that must meet an exacting standard, even if they are theoretically possible. Nondebtor preliminary injunctions faced a high bar even before *Purdue*; for example, some courts required an “identity of interest between the debtor and nondebtor,”²⁴ while others required “extraordinary circumstances,” holding that the fact that a preliminary injunction would “provide [the debtor] with additional leverage to negotiate a global settlement” was not enough to justify that relief.²⁵ After *Purdue*, debtors will be faced with the additional obstacle of explaining how they are likely to achieve a reorganization without the possibility of obtaining a permanent, nonconsensual release and injunction. In other words, even if still possible, nondebtor preliminary injunctions may become more difficult to obtain.

Conclusion

Notwithstanding *Purdue*, some bankruptcy courts have found that contested preliminary injunctions “extending the stay” to protect nondebtors remain permissible post-*Purdue* in appropriate circumstances. The debtor must show that enjoining nondebtor suits is critical to the reorganization process—although, at least according to the *Parlement* case, merely stating that the suit will be time-consuming and expensive and that the nondebtors are indemnified is not enough. Moreover, injunctions “extending the stay” were and remain extraordinary remedies that some courts may hesitate to grant, an effect that *Purdue* may yet amplify.

More broadly, these recent rulings permitting preliminary injunctions post-*Purdue* may signal a desire and willingness by courts to avoid the most dramatic potential impacts of *Purdue*, either by cabining that case’s implications to nonconsensual, nondebtor releases or reasoning around the *Purdue* problem. It remains to be seen whether and how this *Purdue* minimalism will extend to other areas—like opt-out plans and nonconsensual “paid in full” releases.

²³ *In re Coast to Coast Leasing LLC*, 661 B.R. 621, 624–26 (Bankr. N.D. Ill. 2024); *Viahart, LLC v. Creative Kids Online, LLC*, 2024 WL 3761704, at *1–2 (S.D.N.Y. July 3, 2024); see also *Ampla, LLC v. Burke Decor LLC*, 2024 WL 3495346, at *2 (N.D. Ohio July 22, 2024) (declining to pause suits against businesses after their owner filed bankruptcy, but stating that, “[s]hould the bankruptcy court extend the stay to the corporate [defendants] in the future, [the debtor] may give notice to this Court”).

²⁴ *In re Divine Ripe, L.L.C.*, 538 B.R. 300, 311 (Bankr. S.D. Tex. 2015) (denying nondebtor preliminary injunction).

²⁵ *In re Aearo Techs. LLC*, 642 B.R. 891, 911–12 (Bankr. S.D. Ind. 2022),