No. 23-124

In the
Supreme Court of the United States

WILLIAM K. HARRINGTON,
UNITED STATES TRUSTEE, REGION 2,

Petitioner,

v.

PURDUE PHARMA L.P., ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOINT MOTION OF THE DEBTORS AND CREDITORS FOR DIVIDED ARGUMENT

Pursuant to Supreme Court Rule 28, the Debtor Respondents, Purdue Pharma L.P., et al. (the "Debtors"), and the Creditor Respondents (the "Creditors")—Respondents Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants; Ad Hoc Group of Individual Victims of Purdue Pharma L.P., et al.; Multi-State Governmental Entities Group; and Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al. (the "Official Committee")—respectfully move for divided argument for Respondents. The Debtors and the Creditors propose that the Debtors be allocated 20 minutes and the Official Committee be allocated 10 minutes on behalf of the Creditors. Petitioner William K. Harrington, United States Trustee, Region 2 (the "Trustee"), and Respondents City of Grande Prairie, et al.; Ellen Isaacs; and Mortimer-Side Initial Covered Sacklers do not oppose this motion.

This case involves a challenge to third-party release provisions of a Chapter 11 reorganization plan in one of the biggest and most complex bankruptcies in U.S. history. The Debtors and separate creditor groups, assisted by some of the "best mediators . . . in the world," spent years negotiating this plan. JA339-40; *see, e.g.*, Debtors' Br. 6-7; Ad Hoc Comm. Br. 6-8. The plan is built around two primary goals—abating the opioid crisis that has devastated America and maximizing and equitably distributing compensation to victims. *See* Debtors' Br. 8. To those ends, the plan (1) contains many interrelated intercreditor agreements and settlements, (2) channels billions of dollars from the settlement of claims into creditor trusts for opioid abatement and victim compensation, (3) transfers the Debtors' operating assets to a new company dedicated to mitigating the opioid crisis, and (4) establishes a document repository to allow scholars and others to study the causes of the opioid crisis, among other things. *See id.*; Ad Hoc Grp. Br. 2-5; MSGE Br. 2-5. The many agreements among creditors "that are the bedrock of the [p]lan would not have been possible without the settlement reached with the Sacklers." MSGE Br. 3; *see* Debtors' Br. 6-7. The Sacklers owned the Debtors for decades and agreed to pay $5.5 to $6 billion into the plan as part of the settlement. *See* Debtors' Br. 4, 7 & n.1.

"In exchange" for those billions of dollars and other important non-monetary concessions, the Sacklers received releases of the bankruptcy estates' claims against them, which are by far the estates' most valuable asset. Trustee Br. 5; *see* JA365-66; Debtors' Br. 2, 7; Ad Hoc Comm. Br. 2. The Sacklers also received carefully tailored releases of certain claims that are directly held by the Debtors' creditors against the

Sacklers. *See* Debtors' Br. 8-10; Official Comm. Br. 10-11; Ad Hoc Comm. Br. 2. Those releases are limited in various ways, including to claims held by creditors that depend on the Debtors' own conduct. JA274-75. As a result, the claims subject to release overlap with claims held by or against the estates and, as the bankruptcy court found, "directly affect the *res* of the Debtors' estates, including insurance rights, the [Sacklers'] rights to indemnification and contribution, and the Debtors' ability to pursue the estates' own closely related, indeed fundamentally overlapping, claims." JA381; *see, e.g.*, Debtors' Br. 8-10; Ad Hoc Grp. Br. 32.

Resolving the direct claims subject to the releases is necessary to effectuate the settlement of the estates' claims against the Sacklers, to allow the Debtors to successfully reorganize, and to ensure that no creditor could recover disproportionately at the expense of other creditors or jeopardize the payments due from the Sacklers. *See, e.g.*, JA892-93. Indeed, for those reasons and others, the Debtors' creditors themselves "insisted on" binding releases of these direct claims and "voted overwhelmingly in favor" of the plan. Official Comm. Br. 17.

The question presented here is whether such third-party releases are *ever* authorized by the Bankruptcy Code as part of a Chapter 11 plan of reorganization. *See* Trustee Br. (I). As explained in their briefs, the Debtors and the Creditors uniformly believe that the answer to that question is yes. But they respectfully submit that, in answering that question, the Court would benefit from hearing argument from both the Debtors *and* a representative of the Creditors.

The Debtors are the statutory fiduciary for all stakeholders in the case, *see* 11 U.S.C. §§ 1106-1107, filed the plan at issue, and are well situated to answer the Court's questions on the plan, how the third-party releases in the plan affect the bankruptcy estates, and the statutory authorization for the releases.

At the same time, the plan at issue is very much the *creditors'* plan as well. As the bankruptcy court found, "these cases were driven as much, if not more, by the Official Unsecured Creditors Committee and the other creditors in these cases." JA348. Multiple creditor groups participated in the mediation and negotiation of the plan, insisted on the releases at issue as part of that plan, and overwhelmingly voted in favor of the plan. Moreover, as the bankruptcy court found, unsecured creditors "would probably recover nothing" without the releases. JA405.

Each of the creditor groups (including the four creditor groups that filed separate merits briefs in this Court) have a unique interest in the plan and the releases at issue. To limit the number of advocates, however, the Debtors and the Creditors propose that argument be divided between only two advocates, so that the Debtors would have 20 minutes and the Creditors would have 10 minutes. The Creditors' time would go to counsel for the Official Committee, which was appointed by the U.S. Trustee himself as the fiduciary body to represent the interests of all of the Debtors' unsecured creditors. *See* 11 U.S.C. § 1102(a)(1); Official Comm. Br. 7. The Official Committee is optimally situated to provide the creditors' distinct perspective on the releases, the plan, and the question presented.

The Debtors and the Creditors respectfully submit that the Court would benefit from both of their critical perspectives in resolving this case. Among other things, the Trustee has argued that the releases at issue do not affect the creditor-debtor relationship. The Debtors and the Creditors each bring unique perspectives to that contention. In addition, the Debtors are uniquely positioned to explain why the plan is necessary to avoid liquidation—a "fundamental purpose of reorganization," *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984)—and the Creditors are uniquely positioned to discuss the impact of invalidating the plan on creditors and victims who likely would receive *nothing* in that event, JA405. The Official Committee also has a unique perspective to offer in explaining why the Trustee lacks standing to act as a party in this case, in order to set aside a plan mediated, negotiated, and overwhelmingly approved by creditors. The Debtors and Creditors have each presented argument at previous stages of this case.

For these reasons, participation in oral argument by both the Debtors and the Official Committee would materially assist the Court in its resolution of the question presented. The Debtors and the Creditors therefore respectfully request that the Court allow divided argument for Respondents, with 20 minutes allocated to the Debtors and 10 minutes allocated to the Official Committee. This allocation of time will not require any enlargement of argument time.

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