



September 14, 2023

Hon. Scott S. Harris, Clerk of the Court
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

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

Dear Mr. Harris:

The States of California, Connecticut, and Oregon (collectively, “the States”), are respondents in this Court by operation of Rule 12.6 because they were parties to the proceeding in the court of appeals. Each of the States has asserted civil law enforcement claims under state law in state court against Purdue Pharma, its affiliates, and nondebtor individual members of the Sackler family for their role in the opioid crisis. Accordingly, the States participated in bankruptcy court proceedings as creditors and parties in interest, and argued (as relevant here) that the Bankruptcy Code does not authorize releases that extinguish claims held by nondebtors against nondebtor third parties without the claimants’ consent. No. 19-23649 (Bankr. S.D.N.Y.), ECF No. 3270 at 20-30 (July 19, 2021); ECF No. 3274 at 2 (July 19, 2021); ECF No. 3276 at 6-25 (July 19, 2021). The bankruptcy court rejected that argument and issued an order confirming a reorganization plan (the “Plan”) for the Purdue entities containing such releases for members of the Sackler family. *In re Purdue Pharma L.P.*, 633 B.R. 53, 100-114 (Bankr. S.D.N.Y. 2021).

The States appealed that order to the district court, where they continued to assert that “nonconsensual third-party releases are not authorized by the Bankruptcy Code, except in very narrow circumstances related to asbestos claims only.” No. 21-cv-7532 (S.D.N.Y.), ECF No. 95 at 7 (Oct. 25, 2021); *see also* ECF No. 101 at 11-39 (Oct. 26, 2021); ECF No. 99 at 1 (Oct. 26, 2021). In addition to joining in the United States Trustee’s arguments, California argued that nonconsensual third-party releases create “unfair negotiating leverage” for nondebtor third parties and produce inefficient results, allowing individual nondebtors to obtain “protections from liability that far exceed what they would have obtained had they gone through bankruptcy themselves.” ECF No. 95 at 9. The district court held that the Bankruptcy Code does not permit the releases for nondebtor members of the Sackler family. *In re Purdue Pharma, L.P.*, 635 B.R. 26, 89-115 (S.D.N.Y. 2021).

The Purdue entities and the Sacklers sought review of that judgment in the court of appeals. While that appeal was pending, and in light of the district court’s order, the Sacklers and the States reached a settlement under which the Sacklers agreed to pay as much as an additional \$1.675 billion and to provide other non-monetary consideration, and the States agreed (among other things) to be consensually bound by the nondebtor releases in the Plan if the Plan were subsequently confirmed and the States’ settlement with the Sacklers becomes effective.

September 14, 2023

Page 2

See No. 22-110 (2d Cir.), ECF Nos. 552, 559 (Mar. 11, 2022); No. 19-23649 (Bankr. S.D.N.Y.), ECF No. 4410 (Mar. 3, 2022). Pursuant to the settlement, and subject to its terms and conditions, the States withdrew their objections to the Plan; the States' claims against the Sacklers are no longer subject to nonconsensual releases under the Plan. No. 19-23649 (Bankr. S.D.N.Y.), ECF No. 4410 (Mar. 3, 2022), Ex. B at 31. The States further agreed that they would "not . . . file a party brief at the merits stage in the Supreme Court should the Supreme Court grant certiorari." *Id.* The bankruptcy court entered an order approving the settlement in relevant part. No. 19-23649 (Bankr. S.D.N.Y.), ECF No. 4503 (Mar. 10, 2022). The court of appeals later affirmed the bankruptcy court's approval of the Plan. *In re Purdue Pharma L.P.*, 69 F.4th 45, 57 (2d Cir. 2023).

In light of those circumstances, while the States' view of the law has not changed since their filings in the lower courts, and while they continue to share the concerns expressed below by the United States Trustee, the States will not be filing a brief in their capacity as respondents in this Court.

We would appreciate if you could distribute this letter to the Members of the Court.

Sincerely,

/s/ Joshua Patashnik

JOSHUA PATASHNIK
Deputy Solicitor General

BERNARD A. ESKANDARI
Supervising Deputy Attorney General

For ROB BONTA
Attorney General of California

WILLIAM TONG
Attorney General of Connecticut

ELLEN F. ROSENBLUM
Attorney General of Oregon