When Will the Fool's Errand End? The U.S. Trustee's Continued Pursuit of the Destruction of Third-Party Releases in *Purdue Pharma*

Written by:
Thomas J. Salerno
Stinson LLP; Phoenix

"Fool's errand: (noun) a needless or profitless endeavor."
Merriam-Webster Dictionary

Like the cold sore that may disappear for a while but will always be back, the ongoing saga of legality of third party releases (TPRs) in bankruptcy cases continues to reappear in the legal landscape.[1] On July 18, the *Wall Street Journal* reported that a group of victims of the misdeeds of Purdue Pharma and the Sackler family are objecting to any further review by the Supreme Court of the Second Circuit's May 30, 2023, decision upholding the legality of TPRs in bankruptcy cases.[2] This latest act in the *Purdue Pharma* drama illustrates the dilemma of giving power with no responsibility, such as here where the U.S. Trustee (UST) pursues legal appeals whose results could be directly contrary to the economic interests of those with skin in the game, and where and none of whom want the appeal. In the words of a group representing "more than 60,000 individuals" who were victims of the Purdue Pharma opioid scourge, "Against the dire public health consequences of delay, [the federal government] advances objections that go not so much to Purdue's plan … but to abstract principles of bankruptcy law…. Those principles, whatever their importance, should not stand in the way of creditor distributions."[3]

Hence, the UST in *Purdue Pharma* is akin to a minister without portfolio with no real world consequences for their actions. While the UST's actions here may be an esoteric and academic exercise, for the victims who find the prospect of waiting "until the end of next year for a decision to be made, and even longer for funds to flow from the settlement,"[4] the delay can literally be a matter of life or death. To be blunt, the UST's actions here are in all respects a fool's errand in every sense of the word.

The context here is the current tug of war regarding the legality of TPRs as a mechanism for dealing with mass tort liability cases, and particularly as it arose in the *Purdue Pharma* chapter 11 case filed in September 2019 to deal with "thousands of lawsuits seeking trillions of dollars in damages."[5] The factual background is by now well reported,[6] with essentially all the victims of

[1] The issue of the legality of TPRs has been the subject of numerous articles and commentaries. *See, e.g.,* "In Defense of Third-Party Releases in Chapter 11 Cases (Part I): Let's Define the Battlefield!," *ABI Journal* at 32 (March 2022); "In Defense of Third-Party Releases in Chapter 11 Cases (Part II): Show Me the Money, and What's Wrong with the 'God Clause'?," *ABI Journal* at 30 (April 2022); and "In Defense of Third-Party Releases in Chapter 11 Cases (Part III): Four Proposed Legislative Fixes for the Third-Party-Release Mess!," *ABI Journal* at 5 (May 2022) (collectively "Salerno & Brady Articles"). The Salerno & Brady Articles were chosen for inclusion in the *Best of ABI 2022: The Year in Business Bankruptcy*, available for purchase at store.abi.org.
[2] *See* Alexander Saeedy, "Opioid Victims Object to Supreme Court Review of Purdue Pharma's $6 Billion Settlement," *Wall Street Journal* (July 18, 2023) (the "WSJ Article"). *See also* ABI Headlines (July 19, 2023).
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] The Salerno & Brady Articles provide a good overview of the facts of the negotiations leading up to the Second Circuit's decision in the case. *See* "In Defense of Third-Party Releases in Chapter 11 Cases (Part I): Let's Define the

Purdue Pharma/Sackler's opioid rampage, after intensive and extensive negotiations, agreeing to a "Deal" that economically will bring them money sooner (when it is actually needed) rather than later after what would be thermonuclear litigation. The cases are about to mark their four-year anniversary in the bankruptcy litigation frenzy that ultimately resulted in the Deal.

The Deal as finally structured had the Sacklers paying about $6 billion into a victims' trust and had the support of at least 60,000 opioid victims, state and municipal governments, and regulatory authorities (collectively, the "Victims"). Not surprisingly, a TPR is an integral and material part of the Deal. The bankruptcy court approved the new and improved Deal after an extensive evidentiary hearing. Despite the lack of opposition by those with actual skin in the game (*i.e.,* the Victims) because the Deal, as sweetened, was approved by the Victims, the UST still objected to the TPR, this time proceeding on its own without being joined by any of the Victim groups in that appeal (as was the case with respect to the first deal that got overturned by the SDNY on appeal).[7]

The approval of the improved Deal went up to the Second Circuit, which sat on it for over a year, then finally on May 30 issued a reasoned and anxiously awaited decision upholding (under defined circumstances) the legality of the TPR in the Deal.[8] Victims were relieved that their Deal would be honored and money could then start to finally flow to the Victims, who have been waiting for nearly four years for some resolution. But was this the end of story? Of course not.

Battlefield!," *ABI Journal* at 32 (March 2022); s*ee also* Hesse & Bender, "What Purdue Ch. 11 Means for Future of Third-Party Releases," *Law360* (June 23, 2023) ("Hesse Article").

[7] While the new Deal had not yet been negotiated at the time the Salerno & Brady Articles were published, they nonetheless predicted that the Second Circuit's ruling would not be the end of this issue. *See* Salerno & Brady, "In Defense of Third Party Releases in Chapter 11 Cases (Part I): Let's Define the Battlefield," *ABI Journal* at 33 (March 2022) ("[R]egardless of how the Second Circuit disposes of this pending appeal, it is a possibility that there is still a review by the Supreme Court…. Even [if the Second Circuit issues a narrowly applied decision], the U.S. Trustee may seek Supreme Court review, as this is clearly a policy-level issue for that office."). *Id* at 33 and n.13.

[8] *See* Hesse Article. The Second Circuit decision did not condone TPRs based on a simple request of a debtor or third party requesting one; far from it. The Second Circuit set out a rigorous process for judicial approval of TPRs. As set forth in the Hesse Article: "The Second Circuit outlined seven factors for lower courts to consider before allowing a nonconsensual third-party release:

- Whether there is an identity of interests between the debtors and released third parties, including indemnification relationships;
- Whether the claims against the debtor and nondebtor are factually and legally intertwined, including whether the debtors and the released parties share common defenses, insurance coverage or levels of culpability;
- Whether the scope of the releases is appropriate;
- Whether the releases are essential to the success of the reorganization in that the debtor needs the claims to be settled for its property to be allocated;
- Whether the nondebtor receiving the release contributed substantial assets to the debtor's reorganization;
- Whether the affected class of creditors overwhelmingly supports the plan with the releases, with a benchmark of 75% acceptance; and
- Whether the contributed sum permits the fair resolution of the enjoined claims, not necessarily full payment of the claims.

Consideration of each factor is required, and bankruptcy courts are required to make specific findings of fact to support each factor. The inquiry is very fact-intensive, and this decision should not be viewed as a road map for debtors to follow who desire to include a third-party release in a Chapter 11 plan."

The UST filed a petition for *certiorari* to the Supreme Court. The UST breathlessly described the horrors that await civilization as we know it should the Second Circuit's decision be allowed to stand, with such precedent having the possibility of creating "a roadmap for wealthy corporations and individuals who are not in financial distress to misuse the bankruptcy system to avoid mass tort liability. This is not what Congress enacted the Bankruptcy Code to accomplish."[9]

Except, of course, the roadmap used in *Purdue Pharma* was effectively the roadmap Congress did intend in asbestos mass tort liabilities, where TPRs are fine, which itself was pioneered by the *Johns-Manville* case over 30 years ago, under which asbestos victims continue to receive quarterly payoffs.[10] This author will, however, concede that clearly Congress never intended for the Bankruptcy Code to be a vehicle whereby well-represented parties in a judicially supervised environment based on full disclosures would be able, through the negotiation process, to creatively and consensually deal with trillions in mass tort liabilities by paying into an independently administered trust fund that controls the money and the claims-adjudication process. This author concedes this point because that sort of intent would require a business-like and real-world approach, and it is beyond reasonable dispute that Congress has never taken such an approach to any legislation in the history of this Republic. But I digress.

So on whose behalf exactly is the UST acting here? Certainly no one with any skin in the game — that much is certain. Is it to preserve the "integrity of the system?" The 60,000 Victims would vehemently argue that the "system" worked just fine in *Purdue*. Indeed, this author would argue that the damage to the "system" is the UST acting as a minister without portfolio, unburdened by any economic consequences for its actions.

If the UST "wins" (that is, gets the Supreme Court to reverse and declare TPRs unlawful), the *Purdue Pharma* Deal goes away, along with the $6 billion in funding. All-out war erupts while Victims chase the Sacklers and their international web of entities all over the face of the Earth in any forum where they can find personal jurisdiction and assets. Distributions to Victims are delayed by yet many more years. State and municipal governments will continue to shoulder the burden and continue to expend millions of taxpayers' dollars to deal with the opioid scourge, and join in the long line of litigation plaintiffs chasing the Sacklers. This scenario is a veritable feast for lawyers, but not so much for the Victims. The UST, unburdened by real-world economic consequences, will then look for the next battle it can pursue to defend some amorphous "integrity of the system" that the economic constituencies believe works just fine. The UST has power with no economic responsibility for the ultimate economic fallout. The UST's quest in *Purdue Pharma* is a solution in search of a problem.

This author has no particular beef with the UST Office. In chapter 11 cases where creditors' committees are yet to be formed, trustee candidates are to be identified and designated after a bankruptcy court determines cause exists, and during the retention and the fee application/review process, the UST serves a real purpose. It provides a voice where no other organized constituency has had time to do so or otherwise opts not to do so.

---

[9] Certainly a concern for those of us in the trenches watching this drama is that the Supreme Court has a spotty record at best in dealing with complex bankruptcy issues, an area of commercial law in which the Justices have little to no real-world experience and often remain oblivious as to the ramifications of their decisions. *See, e.g.,* Salerno, "'I Hear the Train a' Comin': End of Sovereign Immunity for State Agencies in Bankruptcies?," *ABI Exclusive Commentary* (June 20, 2023).

[10] For a discussion of the *Johns-Manville* pioneering of this type of TPR, and the economic results of such a mechanism, s*ee* "In Defense of Third-Party Releases in Chapter 11 Cases (Part II): Show Me the Money, and What's Wrong with the 'God Clause'?," *ABI Journal* at 30 (April 2022).

That is not the function the UST is serving in *Purdue Pharma*. The UST actions here are beyond economically wasteful; they are in this instance doing a direct societal and economic harm. While "Do no harm" is a medical oath, it should also apply to the UST's actions in a bankruptcy case. If the UST's pleadings are to be taken at their word, the motivation for this action is premised on the UST's concern of a hypothetical abuse of the law in future cases,[11] which is precisely what the judicial oversight is structured to deal with.[12] Heaven forbid there is a "roadmap" to deal with massive liabilities, after all.

Potential abuse of the law is a tale as old as time. Enact a law, and someone is looking for ways to abuse it before the ink is dry. The solution is not to stop enacting laws or advancing jurisprudence. It is undeniable that the Sacklers are a lightning rod in this context, and the audacity and scope of their misdeeds make them a horrible poster child for TPRs. That said, punishing the Sacklers with wide-reaching jurisprudence is not a fruitful exercise. Indeed, punishing the Sacklers punishes in equal (indeed, perhaps greater) measure the Victims, who will now be forced to wait for money and then only get it after exhausting legal remedies against the Sacklers for years through a ponderous legal system where delay is the rule, not the exception. There is no need to take my word for it. Look at what the 60,000 Victims themselves said.

It is time for the UST's fool's errand to end. Let the Victims get the benefit of their bargain. Do no harm, indeed.

[11] Ironically, in the case that pioneered this concept in the early 1980s, and before there was any Bankruptcy Code provision dealing with it at all, the UST expressed none of these reservations in the *Johns-Manville* case. It is also noteworthy that the UST is not saying the other provisions in the *Purdue* plan were an abuse of the system, so the purported "abuse" is not so much by this debtor — but others that may follow. Cue ominous music….

[12] *See* n.8, *supra*.

Involuntary Third-Party Releases: A Riposte

Written by:
Cliff White
Former Director of the U.S. Trustee Program;[1] *Washington, D.C.*

Last week, ABI published an essay by prominent bankruptcy practitioner **Thomas Salerno**, who defended involuntary third-party releases in the well-known *Purdue Pharma* case. In this piece, Mr. Salerno argues that the U.S. Trustee Program (USTP), which I headed for 17 years, is on a "fool's errand" as it seeks the "destruction of third-party releases."

The most recent USTP/Justice Department action that raised Mr. Salerno's ire was a request filed in the Second Circuit for a stay pending Supreme Court review. There was a fair amount of invective hurled throughout the article, reminding me of the old adage that "if the law is on your side, argue the law; if the facts are on your side, argue the facts; and if neither is on your side, pound the table."

Here are my takeaways from the Salerno article:

1. The Supreme Court just might rule in favor the U.S. Trustee Program. Mr. Salerno makes clear that he does not have much regard for the Supreme Court, commenting that "the Supreme Court has a spotty record at best in dealing with complex bankruptcy issues. . . ." I wonder if Mr. Salerno's line will be quoted in any of the upcoming Supreme Court briefs.

In a piece I wrote for the Creditor Rights Coalition's (CRC) online publication,[2] I predicted that the High Court would strike down the nonconsensual releases in *Purdue Pharma* by a vote of 9-0. Textualists will find no authority in the Bankruptcy Code for the releases, and those who take a more flexible approach to statutory interpretation will find no evidence of congressional purpose to allow bankruptcy judges to take away the rights of nondebtors in order to protect other non-debtors.

2. Congress is little better than the Supreme Court in rational decision-making. I could be off here in my interpretation of the author's intended point, but Mr. Salerno asserts that congressional intent to authorize involuntary third-party releases would require a "business-like and real-world approach" that "Congress has never taken." Nonetheless, he maintains that the *Purdue* releases should be upheld. While Congress might not always speak with perfect clarity, I think it is

---

[1] Cliff White headed the U.S. Trustee Program from 2005 until his retirement in 2022. He currently heads bankruptcy compliance for AIS, a financial technology company. The views expressed are those of the author only.

[2] I commented on the Second Circuit decision in *Purdue Pharma* in the CRC's on-line *Creditor Corner* weekly. https://creditorcoalition.org/cliff-white-speaks-on-the-purdue-pharma-decision/.

quite a stretch to assume that if Congress did not prohibit the releases in question, then they should be considered authorized.

3. As bad as the Judicial and Legislative Branches may be, the Executive Branch is even worse. Mr. Salerno condemns only the USTP for seeking *cert.*,[3] perhaps without realizing that the stay request and forthcoming petition for Supreme Court review required support from the top. The Attorney General himself has criticized *Purdue's* nonconsensual releases. The Solicitor General (SG) approves all Supreme Court filings after receiving input from internal Justice Department and other government stakeholders. The SG also routinely hears from opposing parties before deciding on its position before the Supreme Court.

According to the essay, the USTP has no "skin in the game" and thus has no right to interfere in the litigation. In fact, the Bankruptcy Code provides ample authority for the USTP to take enforcement and other actions, including in § 307 of title 11, which accords the USTP broad standing to raise and appear on any issue except that it may not file a chapter 11 plan.

In recognition of the multiplicity of competing parties in a bankruptcy case who may possess varying capacities to pursue their statutory rights, as well as the public interests at stake, the USTP was created as a *neutral party without a pecuniary interest in the outcome*. In complete contrast to Mr. Salerno's view, Congress empowered the USTP to litigate matters and file appeals *precisely because it has, to use Mr. Salerno's words, no "skin in the game."*

The USTP often brings issues in both consumer and business cases, even in mega-chapter 11 cases, that no one else can or will bring. I cannot tell you how many times parties, from *pro se* debtors to Big Law, urged my USTP colleagues and me to intervene on matters great and small because those parties lacked funding to pursue meritorious issues or because the internal dynamics of the case would create too much awkwardness for them to present the issues to the court.

Mr. Salerno derides the "amorphous 'integrity of the system'" arguments made by the USTP. To those in the USTP, the "integrity of the system" is what keeps the bankruptcy system vibrant, legitimate and able to achieve its purpose of protecting the rights of all stakeholders. The rule of law is not just a concept; it is the foundation of our system of government. That may sound corny, but it is nonetheless true.

4. Even though all three branches of the federal government are fatally flawed, no worries, because the lawyers will come to the rescue. Mr. Salerno argued that "the Deal" worked out between bankruptcy and tort lawyers should be

[3] In its filing in the Second Circuit, the government said it would seek *cert.* before the August deadline to do so. Mr. Salerno mistakenly said that the USTP already had "filed a petition for *certiorari*."

accepted without challenge from that pesky USTP. Under this view, the Bankruptcy Code should not be allowed to limit the contours of “the Deal.” Apparently, “the Deal” — and not the law — reigns supreme.

Mr. Salerno does not sufficiently recognize that there are alleged victims of the opioid crisis who want their day in court. Who is to say that the bankruptcy and tort lawyers who got together with the Sackler family to work out “the Deal” know what is best for the holdout creditor-victims?[4] And even if the elite professionals do know what is best, what right do they have to trample on minority rights?

5. The delay in final adjudication is depriving needy victims of the assistance they deserve. Finally, we agree on something. I find this argument sometimes misused, however, in light of the fact that “the Deal” gives the Sacklers many years to make payments, perhaps allowing returns on their investments to grow in size sufficient to pay the entirety of the amounts due. In other words, the Sacklers may be able to buy their discharge without eroding the principal in the Sackler Family fortune.

To be sure, individual victims will be eligible to get some money, with many of them probably receiving $3,000. But the biggest payouts will go to the state and local governments. It is also worth noting that criticism of delay has largely been confined to the USTP’s stay and appellate actions, while not one word of criticism was publicly uttered by the major parties during the Second Circuit’s delay of more than one year in deciding the case.

The legality and wisdom of involuntary third-party releases in bankruptcy merit continued discussion. The legal issues are important, and resolution of them will have an enormous impact on the proper role of the bankruptcy system in the future. Although I disagree with him, I am grateful to Tom Salerno for continuing to make his points. I respect him greatly. But I humbly suggest that he should do so next time with a tad less invective.

[4] I will not rehash other points made in the Salerno article and in the case briefs on the merits of the arguments or likely consequences of striking down “the Deal,” except to say that the majority of victim-creditors did not vote on “the Deal,” and many among the massive number of known and unknown alleged victims might not have read or understood the *Financial Times* notices or television announcements about the scope of the releases. After all, a Sackler witness said under oath that the release language was too confusing for him to understand.

AUGUST 1, 2023

Government Asks the Supreme Court to Halt Consummation of Purdue's Chapter 11 Plan

> Rebuffed in the Second Circuit, the Solicitor General is asking the Supreme Court to stay issuance of the mandate that would allow Purdue Pharma to consummate its chapter 11 plan.

The Second Circuit on July 25 denied the request of the government to stay issuance of the mandate pending the U.S. Solicitor General's petition for *certiorari* asking the Supreme Court to review the *Purdue* decision allowing the bankruptcy court to issue nonconsensual releases of creditors' direct claims against nondebtors.

The mandate from the Second Circuit is scheduled to issue today, allowing the Purdue debtor to consummate the chapter 11 plan originally confirmed by the bankruptcy court in New York in September 2021.

The government isn't giving up. The Solicitor General filed an application in the Supreme Court on July 28, asking the high court to stay issuance of the mandate pending disposition of the government's forthcoming *certiorari* petition. The Supreme Court immediately directed that responses be filed by noon on Friday, August 4.

The response deadline suggests that a grant or denial of a stay could come as early as Friday afternoon.

The Solicitor General's 31-page application for a stay reads like a petition for *certiorari*. In addition to laying out the 6/3 circuit split on nondebtor releases, the government said that allowing "the court of appeals' decision to stand would leave in place a roadmap for wealthy corporations and individuals to misuse the bankruptcy system to avoid mass tort liability."

The Solicitor General pledged to file a *certiorari* petition by August 28, two months before the deadline. Absent delays in the filing of responses, the government said that the justices could consider granting *certiorari* at their conference on October 27.

To make the case more appealing for Supreme Court review, the Solicitor General said that the case "raises serious constitutional questions by extinguishing without consent the property rights of nondebtors against individuals or entities not themselves debtors in bankruptcy" and "by extinguishing private property rights without providing an opportunity for the rights holders to opt in or out of the release."

Cognizant that consummating the plan soon after August 1 could allow the debtor to claim that further appeals are equitably moot, the Solicitor General said that "substantial consummation cannot occur in a matter or delays." By forestalling consummation of the plan, the government said that the Supreme Court can avoid tackling the validity of the doctrine of equitable mootness.

The Second Circuit's May 30 decision reversed the district court and reinstated the bankruptcy court's confirmation of the chapter 11 plan of Purdue Pharma LP. The New York-based court of appeals held that chapter 11 plans may include nonconsensual releases of creditors' direct claims against nondebtors. *Purdue Pharma LP v. City of Grand Prairie (In re Purdue Pharma LP)*, 69 F.4th (2d Cir. May 30, 2023). To read ABI's report, **click here**.

Asking the Court to stay issuance of the mandate or recall the mandate, if necessary, the Solicitor General said that "the Court may wish to construe this application as a petition for a writ of *certiorari* and grant *certiorari*." To read the government's application for a stay, **click here**.

Case Details

Case Citation	Purdue Pharma LP v. City of Grand Prairie (In re Purdue Pharma LP), 69 F.4th (2d Cir. May 30, 2023).
Case Name	Purdue Pharma LP v. City of Grand Prairie (In re Purdue Pharma LP)
Case Type	Business
Court	Supreme Court
Bankruptcy Tags	Claims Court Administration Practice and Procedure Business Reorganization Mass Torts

The Washington Post
Democracy Dies in Darkness

Opinion The Supreme Court should bless the Purdue Pharma settlement

By Anthony Casey and Edward Morrison
August 21, 2023 at 3:31 p.m. EDT

Anthony Casey is a law professor at the University of Chicago and director of the school's Center on Law and Finance. Edward Morrison is a law professor at Columbia University, a member of the National Bankruptcy Conference and a director of Columbia's Richman Center for Business, Law and Public Policy.

The Supreme Court recently announced that it will review Purdue Pharma's bankruptcy settlement, which would release the company's owners, the Sackler family, from future civil liability for the harms they imposed on millions of opioid victims. Some see this as an opportunity to vindicate victims and prevent abusive bankruptcy settlements. That is wrong.

The reality is that the Supreme Court's review comes at a major cost to opioid victims, potentially delaying compensation they would receive by months or even years. It might also cost the entire legal system. If the court rejects the settlement in this case, it would cripple our bankruptcy courts, which play a key role in remedying mistreatment of mass tort victims by our legal system.

The harm to victims is hard to overstate, as is the malignancy of Purdue's conduct. The company has twice pleaded guilty to criminal charges — first in 2007, for misleading the public about the safety of its products, and again in 2020, for defrauding the United States and violating the federal anti-kickback statute.

The Sacklers played a key role in these misdeeds, yet they never filed for bankruptcy, and victims never had an opportunity to pursue lawsuits against them in civil courts. Instead, Purdue commenced a bankruptcy case that brought all victims, governments and other injured parties into a single court. The Sacklers agreed to offer settlement money in exchange for a release from liability.

After injured parties pushed back, and after months of mediation, the Sacklers increased their offer from more than $4 billion to nearly $6 billion for a release. Today, more than 95 percent of victims who voted did so in favor of this settlement; so have nearly 80 percent of the states and territories and more than 96 percent of tribes and other non-state governments with claims against Purdue and the Sacklers.

The question for the Supreme Court is whether that is enough. As with all mass tort settlements, there are some victims who refuse to accept the deal. And the U.S. trustee's office (a bankruptcy watchdog) is now arguing that courts cannot force these holdouts to give up claims against the Sacklers, at least not unless the Sacklers themselves go through the painful process of bankruptcy. All victims, it is argued, must have their day in court.

Is the trustee's office right? We don't think so. The Sackler settlement preserves billions of dollars in relief that will burn if victims and governments are left to sue the company on their own.

Bankruptcy law corrects for the systematic failures elsewhere in our legal system in protecting victims, especially those of mass torts. Only bankruptcy proceedings can bring diverse victims, government agencies, insurance companies, employees, creditors and other stakeholders into a single court. The Sackler settlement is a case in point: There would have been no other way for all the family's victims to come together to hammer out a settlement of this size and scope and bring relief to people before they died.

It's also wrong to say victims were not given a day in court. More plaintiffs had a chance to be heard in court in the Purdue bankruptcy proceedings than in many non-bankruptcy proceedings. Moreover, upending the settlement wouldn't undo any of the harm caused by the Sacklers. It would only deprive victims of the nearly $6 billion that is now available.

Bankruptcy proceedings are often about compensating victims. That is the guiding principle that the Supreme Court must keep front and center. The bankruptcy system provides unique tools for compensating victims, which makes the Purdue bankruptcy as much about the future of our legal system as it is about the Sacklers.

As in the rest of life, compromises don't make everyone happy. But bankruptcy law is a system built on compromises. Objecting parties often must go along when an overwhelming majority of their peers reach a fair deal that is better than any alternative for the group.

The Sacklers have done enough harm. Blocking victims to spite the Sackler family would just add to their ignominious legacy. We urge the court to approve the Purdue settlement and, in doing so, affirm bankruptcy's essential coordinating role in making our legal systems more humane and just.

We also urge the Justice Department to closely monitor the agency asking for the Supreme Court to review this case. The agency is owed nothing and is making perfection the enemy of a settlement that victims want and need.

abiLIVE Faculty: SCOTUS Crossfire: Will Purdue Be the Last Mass Tort Bankruptcy?

William J. Rochelle, III is ABI's editor-at-large, based in New York. He joined ABI in 2015 and writes every day on developments in consumer and reorganization law. For the prior nine years, Mr. Rochelle was the bankruptcy columnist for Bloomberg News. Before turning to journalism, he practiced bankruptcy law for 35 years, including 17 years as a partner in the New York office of Fulbright & Jaworski LLP. In addition to writing, Mr. Rochelle travels the country for ABI, speaking to bar groups and professional organizations on hot topics in the turnaround community and trends in consumer bankruptcies. He earned his undergraduate and law degrees from Columbia University, where he was a Harlan Fiske Stone Scholar.

Prof. Anthony J. Casey is the Donald M. Ephraim Professor of Law and Economics at The University of Chicago Law School in Chicago. He is also the faculty director of the Law School's Center on Law and Finance. Prof. Casey is an expert on business law, finance and corporate bankruptcy, and he teaches courses and seminars in corporate governance, business law, bankruptcy and reorganization, finance, litigation strategy, civil procedure, and law and technology. His research — which has been published in the Yale Law Journal, the Columbia Law Review, the Supreme Court Review and the University of Chicago Law Review — examines the intersection of finance and law. He has also written about the role of intellectual property law in the organization and financing of creative projects, and about how technological innovation is changing the foundations of our legal system more generally. Before entering academics, Prof. Casey was a partner at Kirkland and Ellis, LLP and an associate at Wachtell, Lipton, Rosen & Katz. His legal practice focused on corporate bankruptcy, merger litigation, white-collar investigations, securities litigation and complex class actions. After law school, he clerked for Chief Judge Joel M. Flaum of the U.S. Court of Appeals for the Seventh Circuit. Prof. Casey was recognized in 2017 as one of ABI's inaugural "40 Under 40" honorees. He received his J.D. with high honors from The University of Chicago Law School, where he was awarded the John M. Olin Prize for outstanding student of law and economics.

Hon. Bruce A. Markell is a professor of bankruptcy law and practice at Northwestern University's Pritzker School of Law in Chicago. From 2013-15, he was the Jeffrey A. Stoops Professor of Law at Florida State University School of Law, and before that he was a U.S. Bankruptcy Judge for the District of Nevada, a position he had held since 2004. After law school, he clerked for then-judge Anthony M. Kennedy on the U.S. Court of Appeals for the Ninth Circuit. Before taking the bench, he practiced bankruptcy and business law in Los Angeles for 10 years (where he was a partner at Sidley & Austin) and was a law professor for 14. He is the author of numerous articles on bankruptcy and commercial law, and a co-author of four law school casebooks. Prof. Markell has been a visiting professor at, among other schools, Peking University School of Law in Beijing and Harvard Law School. He contributes to Collier on Bankruptcy, and is a member of Collier's editorial advisory board. He is a conferee of the National Bankruptcy Conference, a Fellow of the American College of Bankruptcy, a member of the International Insolvency Institute, and a member of the American Law Institute. In addition, he is a founding member of the NITA-trained faculty of the Advanced Consumer Bankruptcy Practice Institute. Prof. Markell consults with the International Monetary Fund on insolvency-related issues (having been part of the IMF's missions to Ireland, Bosnia, Belarus, Montenegro, Serbia, Georgia and Greece), and he was the primary drafter of Kosovo's current bankruptcy law. He is an associate editor of the Bankruptcy Law Letter and regularly contributes articles to that publication. In 2022, Prof. Markell received the Lawrence P. King Award from the Commercial Law League of America. He received his J.D. in 1980 from the University of California at Davis, where he was editor-in-chief of its law review and a recipient of the School of Law Medal.

Thomas J. Salerno is a partner in the Bankruptcy and Creditors' Rights practice at Stinson LLP in Phoenix, where he helps private and publicly traded companies in a broad range of industries continue operations as they negotiate restructuring plans. Mr. Salerno has advised lenders, distressed companies, committees and asset-acquirers in bankruptcies and out-of-court settlements. He works with a global roster of clients from an array of industries, including casinos, hotels, real estate, sports, tech, power-generation, agribusiness, construction, health care, manufacturing, airlines and franchising. He also is an adjunct professor and prolific author and lecturer, writing for both practitioners and corporate executives. Mr. Salerno has represented parties in insolvency proceedings in 30 states and five countries. He has been involved in restructurings in the U.S., U.K., Germany, France, Switzerland, and the Czech and Slovak Republics. In addition, Mr. Salerno taught comparative international insolvency at the University of Salzburg and Gray's Inn School of Law in London, and he has been a guest lecturer at the Eller MBA Program for the University of Arizona. Mr. Salerno has served as an expert witness on U.S. insolvency law in litigation in Germany, and represented Coyote Hockey LLC, the owners of the Phoenix Coyotes of the National Hockey League (NHL), in historic bankruptcy proceedings that resulted in an unprecedented solution: the NHL purchasing one of its own teams for the first time in the league's 90-year history. He also has served as restructuring counsel for a national drug store chain, a nationwide operator of nursing homes and assisted-living facilities, a publicly traded owner/operator of fire and ambulance services, and Industrias Nucleares do Brasil S/A, the Brazilian nuclear regulatory agency in the bankruptcies of Nuexco Exchange (U.S. and Switzerland). In addition to serving as an expert witness on U.S. insolvency law in litigation in Germany, Mr. Salerno has advised numerous foreign governments on revamping their laws, and he has taught comparative international insolvency at the University of Salzburg. A frequent writer, lecturer and presenter, he is active in ABI leadership and is a past chair of the Bankruptcy Section of the State Bar of Arizona. Mr. Salerno received his B.A. summa cum laude from Rutgers University and his J.D. cum laude from Notre Dame Law School, where he served as an editor of the Notre Dame Law Review.

Clifford J. White, III is managing director of Bankruptcy Compliance at AIS in Washington, D.C., where he assists clients in effectively administering their portfolios of default loans and implementing systems that meet the highest standards of excellence and legal compliance. He is a former director of the Executive Office for U.S. Trustees in Washington, D.C., where he led the U.S. Trustee Program (USTP) for 14 years, retiring in 2022. During his 42 years of public service, Mr. White served as deputy director of the USTP, as an Assistant U.S. Trustee, and in other positions. Among his accomplishments as director, the USTP implemented major provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, launched an enforcement campaign both to ensure compliance by debtors and to protect debtors against creditors and mortgage servicers that violate bankruptcy law, promulgated new attorney fee guidelines to eliminate premium billing and promote market-based billing practices, designed strategies to ensure greater accountability by management of corporations seeking to reorganize under chapter 11, and implemented the Small Business Reorganization Act of 2019. Mr. White is a frequent speaker at bankruptcy conferences and legal education programs across the country, and regularly contributes articles to national professional publications. He is an ex officio member of the ABI Commission on Consumer Bankruptcy and received two Presidential Rank Awards throughout his career: one from President Bush, and one from President Obama. Mr. White is an honors graduate of the George Washington University and of the George Washington University Law School.