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U.S. Supreme Court Allows Boy Scouts' Chapter 11 Plan to Move Forward

*By Christopher F. Graham and Michael Ingrassia**

In this article, the authors discuss the implications of a decision by the U.S. Supreme Court declining to stay the implementation of the Boy Scouts of America's confirmed Chapter 11 plan.

The U.S. Supreme Court made a significant decision by declining to stay implementation of the Boy Scouts of America's (BSA) confirmed Chapter 11 plan pending appeal, which will strip thousands of survivor claimants of their ability to assert claims outside the plan's contours.¹

The request for the stay, brought by a group of 144 individuals who alleged that they suffered childhood sexual abuse (out of the approximately 82,000 who filed claims in the Chapter 11 case), was sought on the basis that implementation of the \$2.4 billion BSA plan should be paused until the Supreme Court decides whether, and to what extent, non-consensual third-party releases are permissible under the U.S. Bankruptcy Code.

The Supreme Court is currently reviewing that very issue in connection with the Chapter 11 plan of *Purdue Pharma*.²

Taken in tandem with *Purdue Pharma*, the denial of the application for a stay of BSA's plan may signal that a decision from the Supreme Court on the jurisdictional limitations of the U.S. Bankruptcy Code and the bankruptcy courts is imminent.

THE COURT'S ORDER

In a terse order dated February 22, 2024, the Supreme Court, without explanation or dissent, vacated the stay order issued by Associate Justice Alito less than a week earlier. Justice Alito, notably, was highly engaged during the December 5, 2023, *Purdue Pharma* oral argument about the impact of the Supreme Court's decision on other bankruptcy cases. The issuance of civil stays by the Supreme Court is exceedingly rare.³

During the two hours of oral argument on the *Purdue Pharma* Chapter 11 plan, the Justices' far-ranging queries exceeded the issues on appeal. It is possible

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¹ See *Lujan Claimants et al. v. Boy Scouts of America et al*, Case No. 23A741 (U.S.).

² See *In re Purdue Pharma L.P.*, 69 F.4th 45 (2d. Cir. 2023).

³ See *Ind. State Police Pension Trust v. Chrysler LLC*, 128 S. Ct. 2275 (2009); *In re Purdue*.

that the Supreme Court does not anticipate that its *Purdue* decision will also govern the result in BSA. A stay would have maintained the status quo and could have avoided another Supreme Court appeal on the same issue of non-consensual third-party releases.

If nonconsensual third-party releases are not permissible, one could only wonder why the Supreme Court would permit the BSA plan to proceed prior to the issuance of the Supreme Court's decision on the issue. Does the denial of the BSA stay signal that the Supreme Court will allow such releases? Certainly spectators, bankruptcy practitioners and claimants alike are eagerly awaiting the Supreme Court's *Purdue Pharma* decision.

PURDUE PHARMA

Notably, in *Purdue Pharma*, the U.S. Bankruptcy Court for the Southern District of New York approved a Chapter 11 plan that included nonconsensual third-party releases.⁴ The U.S. District Court for the Southern District of New York reversed that decision, holding that such releases were impermissible under the Bankruptcy Code.⁵ Ultimately, the U.S. Court of Appeals for the Second Circuit reversed the district court decision, holding that such nonconsensual third-party releases were permissible.⁶ The Supreme Court stayed implementation of the plan pending oral argument and issuance of its final decision.

The now-vacated stay of the BSA plan was issued the same day that was to be the deadline for survivor claimants to pay a nonrefundable \$10,000 initial fee as a requirement of obtaining an exhaustive review of their abuse claims. According to the settlement trust's website, with the stay vacated, the trust has "resumed all operations, including processing and paying claims."

The BSA's Chapter 11 plan was approved by Delaware Bankruptcy Judge Laurie Selber Silverstein on September 8, 2022, after a three-week trial in early 2022. On March 28, 2023, the U.S. District Court for the District of Delaware affirmed the confirmation order and the effective date of the plan occurred on April 19, 2023. Although certain insurers and claimants asked the U.S. Court of Appeals for the Third Circuit to stay the Chapter 11 plan pending the Supreme Court's decision on the nonconsensual releases in the *Purdue Pharma*, on November 2, 2023, the Third Circuit denied the request without explanation.

⁴ In re *Purdue Pharma, L.P.*, 633 B.R. 53 (Bankr. S.D.N.Y. 2021).

⁵ In re *Purdue Pharma, L.P.*, 635 B.R. 26 (S.D.N.Y. 2021).

⁶ In re *Purdue Pharma L.P.*, 69 F.4th 45 (2d. Cir. 2023).

CONCLUSION

This is a very intense time for a lot of people involved in the BSA case.

Over 82,000 survivors filed claims in the BSA Chapter 11 cases. Over 5,000 sponsoring charter organizations, hundreds of insurance carriers and thousands of professionals participated in the nearly two-year mediation process that ultimately resulted in the plan. Voting on the plan was contentious and close. BSA is one of the most expensive Chapter 11 cases in history with approved professional fees of over \$274 million.

Although it is impossible to predict how the Supreme Court will rule on these thorny bankruptcy legal and policy questions, clearly the justices are fully engaged in the heavy task.