

Supreme Court Hits the Brakes on Boy Scouts Chapter 11 Plan

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In a terse last-minute order, the United States Supreme Court stayed implementation of the Boy Scouts of America's ("BSA") confirmed Chapter 11 plan, which would have stripped thousands of survivor claimants of their ability to assert claims outside the plan's contours. See *Lujan Claimants et al. v. Boy Scouts of America et al*, Case No. 23A741. Taken in tandem with the Court's review of the Chapter 11 plan of Purdue Pharma (see *In re Purdue Pharma L.P.*, 69 F.4th 45 (2d. Cir. 2023)), the stay of BSA's plan suggests that a decision from the High Court on the jurisdictional limitations of the United States Bankruptcy Code and the United States Bankruptcy Courts is imminent.

The stay order was issued by Associate Justice Alito, who was also highly engaged during the December 5, 2023, Purdue Pharma oral argument about the impact of the Court's decision on other bankruptcy cases. The issuance of civil stays by the Supreme Court is exceedingly rare. See also *Ind. State Police Pension Trust v. Chrysler LLC*, 128 S. Ct. 2275 (2009); *In re Purdue*.

Barely two months ago, the Supreme Court heard two hours of oral argument on the Purdue Pharma Chapter 11 plan, during which the Justices' far-ranging queries exceeded the issues on appeal. The High Court may anticipate that its Purdue decision will also govern the result in BSA. The stay maintains the status quo and may avoid another SCOTUS appeal on the same issue of non-consensual third-party releases. Such course would favor judicial economy. After his engaged questioning of the U.S. Trustee in the Purdue Pharma argument and this current stay of the BSA plan, Justice Alito is obviously taking a prominent—if not leading role—in the third-party release cases. Although the Justice who will actually draft the decision ultimately will be left to Chief Justice Roberts' discretion.

Justice Alito's order is even shorter than the Purdue Pharma stay order from last August.

Notably, in *Purdue Pharma*, the United States Bankruptcy Court for the Southern District of New York approved a Chapter 11 plan that included nonconsensual third-party releases. *In re Purdue Pharma, L.P.*, 633 B.R. 53 (Bankr. S.D.N.Y. 2021). The District Court for the Southern District of New York reversed that decision, holding that such releases were impermissible under the Bankruptcy Code. *In re Purdue Pharma, L.P.*, 635 B.R. 26 (S.D.N.Y. 2021). Ultimately, the Second Circuit Court of Appeals reversed the District Court decision, holding that such nonconsensual third-party releases were permissible. *In re Purdue Pharma L.P.*, 69 F.4th 45 (2d. Cir. 2023). The Supreme Court stayed implementation of the plan pending their decision.

Significantly, the 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 if they want the Boy Scouts' settlement trust to conduct an exhaustive review of their abuse claims. The Chapter 11 plan in BSA 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 United States 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 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.

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

Over 80,000 survivors filed claims in the BSA Chapter 11 cases. Over 5000 sponsoring charter organizations and 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.

For a copy of the Boy Scouts stay order please see this link. Please also see our Purdue Pharma client alert issued August 11, 2023.

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