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Will the Third Party Releases be Sacked?: Leave to Appeal Granted in Perdue Case

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On May 7, 2021, we issued a legal alert regarding third-party releases as part of the plan of reorganization in the Perdue Pharma case. [Purdue Pharma: Is Protection of Third Parties by the Automatic Stay an Oxymoron?] The order confirming that plan was appealed and our subsequent legal alert dated December 21, 2021 discussed the decision by Judge Colleen McMahon of the U.S. District Court for the Southern District of New York which effectively blocked the part of the restructuring plan approved by the bankruptcy court in September. [Purdue Pharma Restructuring Plan Effectively Blocked…For Now]

Judge McMahon's decision vacating the bankruptcy court's order confirming the Perdue plan of reorganization is deemed "interlocutory". Designating an order as interlocutory means that the judge has concluded that a controlling question of law is in doubt and that the immediate resolution of that issue is imperative to the progression of the case and is necessary to advance the ultimate resolution of the action. Once deemed interlocutory, the Court of Appeals has discretion to review the order and any decision they issue is final and unappealable.

In the interest of expediting the process, Judge McMahon issued an order on January 7 authorizing an interlocutory appeal conditioned upon the appellants' requesting the Second Circuit Court of Appeals to expedite the appeal in the interest of resolving the case in a timely manner.

The implications of this case can be far reaching in so far as it may set precedent with regard to whether third party non-debtors may or may not be released from tort claims against them.

We will continue to monitor developments in this matter.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions regarding these provisions, or any other aspect of bankruptcy law, please contact Michael H. Traison at 312.860.4230 or Jocelyn E. Lupetin at 516.296.9109.

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