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Bankruptcy Courts in Delaware and New York Approve Nonconsensual Third-Party Releases Related to Foreign Insolvency Proceedings

By Benjamin Mintz, Rosa J. Evergreen, Gregory Harrington, Christopher Willott, Charles A. Malloy and Gabby Ferreira*

In this article, the authors discuss two recent court opinions finding that a U.S. bankruptcy court acting under Chapter 15 may recognize and enter orders enforcing nonconsensual third-party releases approved by a foreign court in a foreign proceeding.

The U.S. Supreme Court ruled in *Harrington v. Purdue Pharma L.P.*[1] that the U.S. Bankruptcy Code does not permit a Chapter 11 plan to grant a release that discharges creditors' claims against third parties without the consent of affected claimants, that is, a nonconsensual third-party release.

Chapter 15 of the U.S. Bankruptcy Code governs recognition of foreign insolvency cases by U.S. bankruptcy courts. Among other things, Chapter 15 authorizes bankruptcy courts to recognize foreign proceedings, enter orders, and provide ancillary support in connection with such proceedings. As discussed below, certain foreign jurisdictions currently permit nonconsensual third-party releases.

Purdue Pharma implicates the question of whether a U.S. bankruptcy court acting under Chapter 15 may recognize and enter orders enforcing nonconsensual third-party releases approved by a foreign court in a foreign proceeding.

Two courts recently held that the answer is "yes."

In *In re Crédito Real SAB de CV, SOFOM E.N.R.*,[2] Judge Thomas Horan, Bankruptcy Judge for the District of Delaware, found that notwithstanding *Purdue Pharma*, a U.S. bankruptcy court may enforce a nonconsensual third-party release contained in a plan approved in a foreign proceeding.

A few weeks later, Judge Martin Glenn, Chief Bankruptcy Judge for the Southern District of New York, reached a similar result in *In re Odebrecht Engenharia e Construção S.A.-Em Recuperação Judicial, et al.*,[3] and went one step

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[1] Harrington v. Purdue Pharma L.P., 603 U.S. 204 (2024).

[2] In re Crédito Real SAB de CV, SOFOM E.N.R., No. 25-10208 (TMH) (Bankr. Del. Apr. 1, 2025).

[3] In re Odebrecht Engenharia e Construção S.A.-Em Recuperação Judicial, et al., No.

further by holding that the U.S. court's recognition order could authorize such a release even if that relief was not expressly set forth in a plan or order entered in the foreign proceeding.

These decisions represent a significant development in U.S. law on cross-border restructurings, and neither case is likely to be the last word on the issue.

CRÉDITO REAL

Crédito Real was one of Mexico's largest non-bank financial lending institutions when it began experiencing severe liquidity constraints due to the COVID-19 pandemic. In October 2023, Crédito Real filed a voluntary liquidation proceeding in the 52nd Civil State Court of Mexico City, Mexico. In the Mexican proceeding, Crédito Real presented a plan (the Concurso Plan) that, among other things, released certain third parties for acts or omissions during the restructuring process and at any time prior to the execution of the Concurso Plan (the Concurso Release). The Concurso Release extended to certain creditors, Crédito Real's officers, directors, managers, and the trustee for a series of bonds issued by Crédito Real. The Concurso Plan was ultimately approved by a majority of the unsecured claim holders. In August 2024, the Mexican court issued an order (the Concurso Order) finding that the Concurso Plan satisfied all requirements of the Mexican bankruptcy law and did not violate Mexican public policy.

Crédito Real's foreign representative subsequently commenced a Chapter 15 case in the U.S. Bankruptcy Court for the District of Delaware seeking recognition of the Mexican proceeding and enforcement of the Concurso Plan and Concurso Order. In the Chapter 15 case, the United States International Development Finance Corporation (DFC) objected to recognition of the Concurso Plan, arguing that, under *Purdue Pharma*, the plan was contrary to U.S. public policy and that the bankruptcy court lacked authority to recognize it under several sections of Chapter 15.

Specifically, DFC argued that Bankruptcy Code Sections 1507 and 1521(a), which respectively permit a court to grant a debtor's foreign representative "additional assistance" and "any appropriate relief" in a Chapter 15 case, do not encompass approval of nonconsensual third-party releases. In addition, DFC asserted that, in light of *Purdue Pharma*, a nonconsensual third-party release would be "manifestly contrary to the public policy of the United States" and therefore impermissible under Section 1506's public policy exception.

Judge Horan overruled DFC's objection. The court began by noting that Section 1501 encourages bankruptcy courts to be "guided by the main policy

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25-10482 (MG) (Bankr. S.D.N.Y. Apr. 21, 2025).

goals of chapter 15 – cooperation and comity with foreign courts and deference to those courts within the confines established by chapter 15."

The court then analyzed Sections 1521(a) and 1507 and concluded that they are sufficiently broad to support recognition of a nonconsensual third-party release granted in a foreign proceeding. With respect to Section 1521(a), the court determined, citing two pre-*Purdue Pharma* cases, that the relief enumerated in Section 1521(a) is "not a complete and exclusive list" and that enforcement of the Concurso Release was appropriate. The court also found that the Concurso Release was permissible "additional assistance" under Section 1507, based both on considerations of comity to the Mexican court and because the Mexican proceeding provided the procedural protections identified in Section 1507(b).

With respect to DFC's public policy argument, after first noting that the public policy exception in Section 1506 is narrowly construed, the court held that third-party releases are not manifestly contrary to U.S. public policy because similar releases are specifically authorized under the U.S. Bankruptcy Code in the context of Chapter 11 plans dealing with asbestos-related liabilities and, in any event, do not impinge on a constitutional or statutory right. The bankruptcy court further noted that the proposed releases are customary in Mexican settlement agreements and permissible under Mexican bankruptcy law.

NOVONOR (ODEBRECHT)

Novonor (formerly Odebrecht) is a Brazilian infrastructure development, engineering, and construction company. In June 2024, Novonor commenced a *recuperação judicial* (RJ) proceeding in Brazil to facilitate a comprehensive restructuring plan. Novonor's creditors ultimately approved the RJ plan, and the Brazilian court confirmed it. In March 2025, Novonor filed a Chapter 15 petition in the U.S. Bankruptcy Court for the Southern District of New York seeking recognition and enforcement of the RJ plan. The Office of the United States Trustee (the U.S. Trustee) objected to the foreign representative's proposed form of order granting U.S. recognition, which the U.S. Trustee asserted contained a third-party release that was prohibited by *Purdue Pharma* and otherwise did not constitute "appropriate relief" under Section 1521(a). Novonor's foreign representative disputed the U.S. Trustee's claim that the proposed order contained a third-party release, but argued that even if such a release were present, *Purdue Pharma* does not apply to Chapter 15 cases.

The court found that *Purdue Pharma* does not apply to Chapter 15 cases and entered the foreign representative's proposed order recognizing the RJ plan. In addressing the U.S. Trustee's objection, the court first noted that while there are limits to the relief a court can grant under Chapter 15, "additional assistance"

under Section 1507 and "appropriate relief" under Section 1521(a) are not circumscribed by the relief granted by the foreign court – in other words, a U.S. bankruptcy court acting under Chapter 15 may grant relief beyond that granted in the foreign proceeding.

Acknowledging that the purported third-party release that the U.S. Trustee objected to was contained only in the proposed U.S. Chapter 15 order and not in the RJ plan or order, the court posited that there is no meaningful difference between enforcing a release contained in a foreign plan via an order and enforcing a foreign plan pursuant to a U.S. order containing a third-party release. The court largely followed the reasoning of *Crédito Real* with respect to interpretation of Sections 1506, 1507, and 1521(a). The court further noted that persons who deal with a foreign corporation impliedly subject themselves to the laws of such corporation's foreign government, and a party may lose rights in a foreign proceeding that it would have had under U.S. law.

LOOKING FORWARD

The *Crédito Real* and *Odebrecht* (Novonor) decisions clearly state that *Purdue Pharma* is not an obstacle for parties seeking to obtain U.S. court approval of nonconsensual third-party releases in connection with recognition of foreign insolvency proceedings where the foreign proceeding would permit a nonconsensual third-party release.[4]

It is unlikely, however, that either case will be the last word on this issue. DFC has appealed the bankruptcy court's decision in *Crédito Real*, and the U.S. Trustee and other parties may continue to press objections to foreign nonconsensual third-party releases in other cases.

Moreover, some jurisdictions have declined to enforce similar third-party release provisions granted in foreign proceedings. For example, the U.S. Court of Appeals for the Fifth Circuit, in *In re Vitro S.A.B. de C.V.*,[5] found that such releases in a reorganization plan approved by a Mexican court were "manifestly contrary" to U.S. public policy.

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[4] Other jurisdictions that permit nonconsensual third-party releases include the United Kingdom and Canada. See In re Avanti Commc'ns Grp. PLC, 582 B.R. 603, 618 (Bankr. S.D.N.Y. 2018) (United Kingdom); In re Metcalfe & Mansfield Alternative Invs., 421 B.R. 685, 699 (Bankr. S.D.N.Y. 2010) (Canada).

[5] In re Vitro S.A.B. de C.V., 701 F.3d 1031 (5th Cir. 2012).