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Granting a Stay for Non-Debtors

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Introduction

Under section 362 of title 11 of the United States Code (the "Bankruptcy Code"), the filing of a bankruptcy petition results in an automatic stay of actions against a debtor or its assets.<sup>1</sup> While the automatic stay is primarily for the benefit of the debtor, courts have generally extended the stay to non-debtors.<sup>2</sup> However, the Supreme Court disrupted this principle in *Purdue* by interpreting that the Bankruptcy Code does not authorize a release that effectively discharges a non-debtor's obligations.<sup>3</sup> Since then, courts have generally interpreted *Purdue* narrowly to avoid eliminating the ability to grant a stay for non-debtors.<sup>4</sup>

This article examines the court's ability, in the aftermath of *Purdue*, to grant a non-debtor stay. Part I elaborates on the automatic stay and how courts have applied it to non-debtors. Part II discusses the standard a court applies to grant a preliminary injunction. Part III describes the facts and history of *Purdue* and the reasoning behind the Supreme Court's holding. Part IV examines

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<sup>1</sup> *In re U Lock, Inc.*, 663 B.R. 30, 45-46 (Bankr. W.D. Pa. 2024); *see also In re Robinson*, 764 F.3d 554, 559 (6th Cir. 2014) (quoting H.R. Rep. No. 95-595, at 340 (1978)).

<sup>2</sup> *See McCartney v. Integra Nat'l Bank N.*, 106 F.3d 506, 510 (3d Cir. 1997) (quoting *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 999 (4th Cir. 1986)).

<sup>3</sup> *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 227 (2024) (citing *Celotex Corp. v. Edwards*, 514 U.S. 300, 310 (1995)).

<sup>4</sup> Douglas N. Candeub, *Getting (Approximately) to Yes on Nondebtor Releases in Mass Tort Cases After Purdue Pharma*, AM. BANKR. INST. J., October 2024, at 61.

various post-*Purdue* decisions and how the bankruptcy courts have granted non-debtor stays when the timeframe for the relief is temporary.

## **Discussion**

### **I. The Automatic Stay Under Section 362 of the Bankruptcy Code**

#### *A. The Purpose of the Automatic Stay in Bankruptcy*

The automatic stay under section 362 of the Bankruptcy Code generally enjoins claims against the debtor or its property during a bankruptcy case.<sup>5</sup> Courts broadly apply the automatic stay to furnish "an obvious benefit to the debtor: a 'breathing spell.'"<sup>6</sup> This breathing spell pauses any pending actions against the debtor, allowing the debtor to work on a repayment plan, reorganize finances, or alleviate the financial pressures that led to bankruptcy.<sup>7</sup> In effect, the injunction allows the court to protect the debtor from a disorganized rush of claims among concurrent creditors and ensure the assets at the end of the proceeding are distributed appropriately.<sup>8</sup> The automatic stay remains in place until the case is closed, dismissed, or discharged.<sup>9</sup> A discharge in particular, makes the temporary protections of the stay permanent, by completely enjoining creditors from going after discharged assets.<sup>10</sup>

#### *B. The Court's Ability to Enter Non-Debtor Stays*

Under the authority of sections 362(a) and 105 of the Bankruptcy Code, some courts have extended the automatic stay to a non-debtor.<sup>11</sup> This is especially true where claims against a non-

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<sup>5</sup> *In re U Lock, Inc.*, 663 B.R. at 45-46.

<sup>6</sup> *In re Iezzi*, 504 B.R. 777, 779 (Bankr. E.D. Pa. 2014) (quoting *Maritime Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir.1991)).

<sup>7</sup> *In re Robinson*, 764 F.3d at 559 (quoting H.R. Rep. No. 95-595, at 340 (1978)).

<sup>8</sup> *In re Cowin*, 864 F.3d 344, 352 (5th Cir. 2017).

<sup>9</sup> *In re Howes*, 246 B.R. 280, 290 (Bankr. W.D. Ky. 2000).

<sup>10</sup> *In re Eastlick*, 349 B.R. 216, 229 (Bankr. D. Idaho 2004).

<sup>11</sup> *In re Hal Luftig Co., Inc.*, No. 22-11617 (JPM), 2025 WL 586757, at \*13 (Bankr. S.D.N.Y. Feb. 24, 2025).

debtor have "an immediate adverse economic consequence for the debtor's estate,"<sup>12</sup> Such instances include when "the debtor [is the] real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor[]" or in situations where protecting the third party is essential to the debtor's reorganization plan.<sup>13</sup> Finally, bankruptcy courts have extended the stay to non-debtors where the actions, even among non-debtors, would affect the integrity or administration of the bankruptcy proceeding.<sup>14</sup>

## **II. The Standard for a Preliminary Injunction**

As opposed to the automatic stay, which is granted to a debtor upon the filing of a bankruptcy petition, a preliminary injunction is a discretionary remedy, which a court may order upon a movant's request.<sup>15</sup> The movant must demonstrate to the court that a preliminary injunction is warranted based on the following four factors:

(1) The likelihood that the plaintiff will prevail on the merits at a final hearing; (2) the extent to which the plaintiff is being irreparably harmed by the conduct complained of; (3) the extent to which the defendant will suffer irreparable harm if the preliminary injunction is granted; and (4) the public interest.<sup>16</sup>

Courts have complete discretion in crafting an injunction that maximizes the debtor's protection while minimizing prejudice to the creditors, which may require a showing of progress in the case, security for the creditor, or that the debtor agrees to restrictions on the transfer of their assets.<sup>17</sup> The application of the court's discretion to grant or deny a preliminary injunction will only be questioned where a court relied upon erroneous findings – of fact or law – or improperly

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<sup>12</sup> *Id.*

<sup>13</sup> McCartney, 106 F.3d at 510 (Quoting A.H. Robins Co., 788 F.2d at 999).

<sup>14</sup> Harrington, 603 U.S. at 275 (citing Celotex Corp. v. Edwards, 514 U.S. 300, 310 (1995)).

<sup>15</sup> Fed. R. Civ. P. 65(a).

<sup>16</sup> VeriFone, Inc. v. Poynt Co., 199 F. Supp. 3d 898, 905 (D. Del. 2016); *In re Am. Film Techs., Inc.*, 175 B.R. 847, 850 (Bankr. D. Del. 1994).

<sup>17</sup> *In re PTI Holding Corp.*, 346 B.R. 820, 827 (Bankr. D. Nev. 2006).

weighed the relevant factors.<sup>18</sup> As such, the preliminary injunction provides an alternative means of granting non-debtors a breathing spell within the bankruptcy case, without requiring an automatic stay.

### **III. *Purdue Pharma's Effect on the Permanent Stay***

In *Purdue Pharma*, the Supreme Court held that the Bankruptcy Code does not allow a release and injunction that "effectively seeks to discharge claims against a nondebtor without the consent of affected claimants."<sup>19</sup> The Sackler family owned and managed Purdue Pharma ("Purdue"), a pharmaceutical company.<sup>20</sup> In the mid-1990s, Purdue began to promote OxyContin by advertising that their novel formula reduced the risk of addiction and could be prescribed to a broader range of patients.<sup>21</sup> In 2007, as a response to investigations stemming from the opioid crisis, Purdue admitted to illegally misbranding OxyContin as less addictive.<sup>22</sup> This news set off numerous civil lawsuits against Purdue and the Sackler Family, which led to Purdue filing for bankruptcy.<sup>23</sup> The bankruptcy court accepted Purdue's proposed plan, which included granting the Sackler family a permanent injunction on any "existing and potential claims against them . . . ." <sup>24</sup> Despite objections from various creditors, the second circuit upheld the plan leading the U.S. Trustee to file a writ of certiorari.<sup>25</sup> The appeal to the Supreme Court specifically called for a reconsideration of the permanent injunction included within the plan.<sup>26</sup>

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<sup>18</sup> Bio-Tech. Gen. Corp. v. Genentech, Inc., 80 F.3d 1553, 1558 (Fed. Cir. 1996).

<sup>19</sup> *Harrington*, 603 U.S. at 227.

<sup>20</sup> *Id.* at 210.

<sup>21</sup> *Id.* at 209-10.

<sup>22</sup> *Id.* at 210.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 209-13.

<sup>25</sup> *Id.* at 213-14.

<sup>26</sup> *Id.* at 214.

On appeal, the Supreme Court asked "whether a court in bankruptcy may effectively extend to *nondebtors* the benefits of a Chapter 11 discharge usually reserved for *debtors*."<sup>27</sup> In a 5-4 decision the Court held that "the bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of affected claimants."<sup>28</sup> The Supreme Court's reasoning focused on two key provisions of the Bankruptcy Code.<sup>29</sup> First, under an analysis of section 1223(b)(6), the Court denied extending the catchall term of subsection (b)(6) to its broadest interpretations.<sup>30</sup> Acknowledging the additional powers conferred to the bankruptcy court under section 1223(b)(6), the Supreme Court limited the intent of the provision to focus on the rights and responsibilities of the debtor to the creditor.<sup>31</sup> Second, under section 1141 the Court noted that the injunction sought "generally reserves discharge for a debtor who places substantially all of their assets on the table."<sup>32</sup> Therefore, because the Sackler family themselves did not file for bankruptcy, section 1141 could not be read to grant the Sackler family the injunction sought.<sup>33</sup> Although the Sacklers were barred from obtaining a permanent injunction as third-party debtors, the Court reasoned that this does not preclude a consensual third-party release, but only that "the bankruptcy code does not authorize a release and injunction that . . . effectively seeks to discharge claims against a nondebtor without the consent of affected claimants."<sup>34</sup>

#### **IV. The Judicial Response to *Purdue Pharma***

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<sup>27</sup> *Id.* at 227.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 205, 218.

<sup>30</sup> *Id.* at 205.

<sup>31</sup> *Id.* at 218.

<sup>32</sup> *Id.* at 204.

<sup>33</sup> *Id.* at 205-06.

<sup>34</sup> *Id.* at 206-06.

In the wake of *Purdue Pharma*, several "bankruptcy courts have rendered decisions that construe *Purdue Pharma* narrowly in various other circumstances."<sup>35</sup>

*A. In Delaware, Purdue Pharma Changed how the Court Analyzes the First Prong to Granting Success on the Merits*

The United States Bankruptcy Court for the District of Delaware interpreted the holding of *Purdue* to be limited to whether a non-debtor is entitled to permanent injunctive relief.<sup>36</sup> By this, the Delaware court reasoned that temporary relief, such as the preliminary injunction, is still a viable means for the debtor to receive a breathing spell.<sup>37</sup> However, this was not the end of the Delaware court's analysis. While the typical basis for the first prong relied on the assumption that a party requesting an injunction may eventually receive permanent injunctive relief, the analysis needed to be modified now that non-debtors were barred from obtaining a non-consensual permanent injunction.<sup>38</sup> In redefining the meaning of success on the merits, the Delaware court elaborated that a non-debtor may still be entitled to a preliminary injunction where such an injunction is necessary to the reorganization.<sup>39</sup> Alternatively, the court noted that a preliminary injunction may be appropriate if there is a likelihood that the parties can negotiate a consensual release.<sup>40</sup> Circumstances that would entitle a preliminary injunction would be where the identity of the debtor and non-debtor are so interconnected that a holding against one is a holding against the other<sup>41</sup> or when the claim is a necessity "for the debtor's reorganization

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<sup>35</sup> Douglas N. Candeub, *Getting (Approximately) to Yes on Nondebtor Releases in Mass Tort Cases After Purdue Pharma*, Am. Bankr. Inst. J., October 2024, at 24, 61.

<sup>36</sup> *In re Parliament Techs., Inc.*, 661 B.R. 722, 728-29 (Bankr. D. Del. 2024).

<sup>37</sup> *Id.* at 724, 729.

<sup>38</sup> *Id.* at 726.

<sup>39</sup> *Id.* at 724, 729.

<sup>40</sup> *Id.*

<sup>41</sup> *McCartney*, 106 F.3d at 510 (quoting *A.H. Robins Co.*, 788 F.2d at 999).

efforts.<sup>42</sup> As such, the Delaware court saw fit to read *Purdue* narrowly to allow a court to exercise its continued discretion in matters involving preliminary injunctions. In doing so, the Delaware court had to recalibrate the criteria of what success on the merits meant to fit the new post-*Purdue* standard against permanent injunctive relief for a non-debtor.

*B. In New York, the Viability of the Non-debtor Automatic Stay was Upheld Where the Stay is Fair and Essential for the Reorganization Effort*

The Bankruptcy Court for the Southern District of New York held that should it be necessary for the reorganization plan, an automatic stay could be extended to a non-debtor even over the objection of the largest creditor.<sup>43</sup> In that instance, the debtor (a corporation that produces musicals) entered into bankruptcy following claims against the debtor.<sup>44</sup> A prior action against the non-debtor (president and sole shareholder of the debtor) was automatically stayed for 30 days, but upon the entry of the bankruptcy proceeding, the non-debtor sought to extend the automatic stay for the length of the 5-year reorganization plan.<sup>45</sup> Under the new standard for success on the merits established in *Parlement*, the New York bankruptcy court reasoned that due to the president's significant involvement in the debtor's activities, the extension of the stay to the non-debtor is necessary to the reorganization plan.<sup>46</sup> In contrast to *Parlement*, the New York bankruptcy court determined that sufficient factual ground existed to reason that continued action against the non-debtor would have an immediate adverse economic impact.<sup>47</sup> The court further noted how the duration of the stay – 5 years – did not necessarily render the extension of the automatic stay any more inequitable for the creditor than a preliminary injunction would.<sup>48</sup>

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<sup>42</sup> *Parlement Techs., Inc.*, 661 B.R. at 729.

<sup>43</sup> *In re Hal Luftig Co., Inc.*, No. 22-11617 (JPM), 2025 WL 586757, at \*1.

<sup>44</sup> *Id.* at \*3.

<sup>45</sup> *Id.* at \*4.

<sup>46</sup> *Id.* at \*3, 16.

<sup>47</sup> *Id.* at \*16.

<sup>48</sup> *Id.*



Finally, in narrowly reading the holding of *Purdue*, the court noted how even where the largest creditor in a bankruptcy proceeding would vote against the extension of a non-debtor stay, "nothing in [the requirements of Bankruptcy] Code § 1191(b) . . . suggests that an unsecured creditor's vote to reject a plan would automatically render the plan 'unfair and inequitable.'"<sup>49</sup> As such, the bankruptcy court for the Southern District of New York further distinguished the difference between *Purdue*'s holding over a non-debtor release and the court's ability to enter non-debtor stays.

*C. In Illinois, the Court Accepted Delaware's Interpretation for the Post-Purdue Preliminary Injunction Analysis*

Much like the Delaware and New York courts, the Bankruptcy Court for the Northern District of Illinois distinguished the holding in *Purdue* from a court's ability to enter a preliminary injunction for a nondebtor based on the fundamental requests in the case.<sup>50</sup> The Illinois court reasoned there that, unlike in *Purdue Pharma*, the nondebtors were "seeking a temporary restraining order to enjoin creditors from bringing claims against them . . . ." <sup>51</sup> Aside from the relief requested, the court based its support for the application of a non-debtor preliminary injunction off of other post-*Purdue* cases such as *In re Parlement Techs., Inc.*<sup>52</sup> Much like in *Hal Luftig Co., Inc.*, the Illinois court's reasoning was based on the underlying facts

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<sup>49</sup> *Id.* at \*19.

<sup>50</sup> *In re Coast to Coast Leasing, LLC*, 661 B.R. 621, 624 (Bankr. N.D. Ill. 2024).

<sup>51</sup> *Id.* (emphasis added).

<sup>52</sup> Adam C. Silverstein (FN1) et al., *Extending the Stay After Purdue Can Nondebtors Still Benefit from Injunctive Relief on Preliminary Basis in Chapter 11 Cases?*, Am. Bankr. Inst. J., January 2025, at 90.

that the management team sought a temporary injunction to facilitate the reorganization efforts.<sup>53</sup> Thus, the insiders demonstrated that the stay was necessary for the reorganization plan. *Id.*

## Conclusion

Post-*Purdue*, courts have effectively maintained the ability to enter a stay for non-debtors through a variety of means, but one factor remains relevant in each analysis; each non-debtor stay granted is limited in nature by a temporary status. In Delaware, the court has read the preliminary injunction as a means of extending a stay to non-debtors to maintain the breathing spell that such debtors may require in unusual circumstances. Likewise, the Southern District of New York has turned to narrowly reading *Purdue* to allow a temporarily non-debtor automatic stay for instances in which failing to do so could lead to immediate economic hardship for the debtor. Finally, Illinois has concurred with this general application for a stay by distinguishing the treatment of requests for a permanent non-debtor stay, from preliminary injunctions.

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<sup>53</sup> Hon. Meredith Jury, *Three Bankruptcy Courts Issue Opinions Analyzing Impact of Supreme Court's Purdue Ruling*, 2024-26 Comm. Fin. News. NL 50.