



## LOWENSTEIN BANKRUPTCY LOWDOWN

### Lowenstein Bankruptcy Lowdown

#### Video 3- Breaking Down the Latest Decision in the Purdue Pharma Case

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**Andrew Behlmann:** Last Thursday, Judge McMahon of the Southern District of New York entered a 142-page written opinion, vacating confirmation of the Purdue Pharma chapter 11 plan of reorganization. What Judge McMahon ultimately found was that the bankruptcy court lacked statutory authority, lacked authorization under the Bankruptcy Code to approve a third-party release that was contained in the plan for the benefit of the Sackler family that previously controlled Purdue. Third-party releases have been around in one form or another for over 30 years. However, because third-party releases are a judicially created concept--they're a doctrine that was created by courts--there is no one unifying standard across the country for what types of third-party releases can be approved or what the standards are for approval of a third-party release in a particular case. The type of release that can be approved and the standards for approval can vary depending on what circuit you're in, what district you're in, and sometimes even by what judge you're in front of, in a particular district. That's part of the problem that Judge McMahon ultimately found. Not necessarily the alphabet soup of third-party release jurisprudence, but the fact that third-party releases were created by courts in the first place, what Judge McMahon ultimately found was that the Bankruptcy Code only authorizes bankruptcy courts to approve releases of claims of non-debtors against other non-debtors in one circumstance. And that's an asbestos case governed by section 524(g) of the Bankruptcy Code. Outside of that context, she found that there is no statutory authority for a bankruptcy court to release non-debtors claims against other non-debtors.

That's an argument that's been advanced by a number of parties over the years, most notably the United States Trustee's office, without a whole lot of success at the bankruptcy court level. However, what Judge McMahon seems to have done is tied up that issue to go up to the second circuit where it can be considered at a higher appellate level.

And indeed Purdue has indicated that they intend to appeal to the second circuit, and given all of the scrutiny, both public scrutiny, as well as scrutiny politically now of the Purdue Pharma case, as well as third-party releases as result of the Purdue Pharma case, we can expect that whichever party loses at the second circuit is going to take this issue up to the Supreme Court and give the Supreme Court an opportunity to weigh in. Stay tuned.