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THIRD-PARTY RELEASES—WHERE DO WE STAND?

*By Brett M. Amron and Ethan Katz**

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INTRODUCTION

It wasn't long ago that bankruptcy courts in the Second[1] and Fourth Circuits,[2] among others, routinely granted requests for third-party releases in Chapter 11 cases, without much pause. Courts approved third-party releases in reorganization plans as long as the debtor satisfied certain criteria, such as the non-debtor's contribution of "substantial assets," or that the third-party releases were "essential" to the reorganization. Circuits that allow such releases have developed elaborate frameworks for analyzing whether the releases were warranted, following the general principle that they would only be approved under extraordinary or unique circumstances.[3] The circuits in which third-party releases are permitted have evolved to focus on when and to what extent third-party releases should be approved. This presents a stark contrast to the circuits in which such releases are not permitted, which seem to focus on the gatekeeping issue of whether the Bankruptcy Code authorizes the releases in the first place. Recent opinions from district courts in the Second and Fourth Circuits can be read to put the horse back in front of the cart, focusing on the issue whether the Bankruptcy Code actually allows third-party releases.

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THIRD-PARTY RELEASES GENERALLY

One of the defining benefits of a Chapter 11 bankruptcy case is the discharge received by the debtor upon confirmation of the plan. The discharge releases the debtor from any debt that arose prior to confirmation of the plan.[4] A third-party release, also known as a non-debtor release, extends this protection to a non-debtor that is affiliated with the debtor. A common example of this practice can be seen when a reorganization plan or settlement seeks to release the debtor's principals, directors, officers or insurers from liability arising due to the non-party's relationship with the debtor.

Opponents of third-party releases contend that they are not expressly authorized by the Bankruptcy Code and exceed constitutional limits on bankruptcy power. Opponents argue that third-party releases provide non-debtors with the benefits of a Chapter 11 bankruptcy, without the commitments, obligations and responsibilities required by that process. On the other hand, proponents of third-party releases argue that they incentivize non-debtors to contribute to reorganization plans, allow for greater distributions to creditors, and often serve to facilitate a viable reorganization plan that otherwise would not exist. In sum, those in favor see releases as furthering the general purpose of bankruptcy itself: to provide a recovery for creditors and a fresh start for debtors.

The recent case that brought the issue to the forefront, *In re Purdue Pharma, L.P*,[5] illustrates in stark detail the benefits and detriments of third-party releases. In *Purdue*, the debtors were owned by the Sackler family and generated $34 billion in revenue between 1996 and 2019, most of which came from the sale of highly addictive painkillers.[6] In the decade preceding the debtors' bankruptcy filing, the Sackler family received nearly $11 billion from the debtor entities.[7] Individual Sackler family members faced allegations of misconduct related to their marketing and sale of painkillers, which coincided with a rise in overdose deaths linked to the pills.[8] The debtors proposed a plan in which the Sackler family would contribute in excess of $4 billion to a fund that would be used to resolve both private and public claims, fund opioid relief and education programs, and generally benefit the public at large.[9] In exchange for this contribution to the plan, dozens of members of the Sackler family, along with their related entities, would be granted broad releases from the civil claims that could otherwise be brought against them.[10] The bankruptcy judge made a point of noting how difficult it would be to actually collect any judgments that might be obtained against the Sacklers in the event the settlement was not approved, due to the Sacklers' use of spendthrift trusts to shield their assets.[11] This low likelihood of actually collecting judgments, coupled with the fact that the debtors' going concern value was only $1.8 billion, made the plan centered around the Sackler's $4.3 billion contribution seem like a highly compelling option. On the other side, many viewed it as unjust to allow the Sackler family to escape civil liability for their alleged misdeeds by paying a fraction of their net worth and of what they had received from the debtors in the years before the bankruptcy, especially considering the role the Sackler family played in

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fueling the opioid crisis that has been linked to more than 500,000 deaths in the United States over the past two decades.[12] Though the issue whether third-party releases are allowed under the Bankruptcy Code is ultimately an issue of statutory interpretation, controversial and emotionally-charged cases like *Purdue* highlight the differences of opinion and the split in the circuits.

Federal circuits are currently split on whether bankruptcy courts have statutory authority to grant third-party releases, with varying degrees of analysis in the reported decisions. The Fifth,[13] Ninth,[14] and Tenth[15] Circuits have definitively held that courts are not authorized to grant third-party releases. The sole exception to this rule comes in the context of asbestos cases, in which these circuits find that courts are explicitly authorized by § 524(g) of the Code to enjoin third-party claims against non-debtors. These three circuits are united in their reasoning, explaining that "section 524(e) precludes bankruptcy courts from discharging the liabilities of non-debtors."[16] Additionally, in *Lowenschuss*, the Ninth Circuit rejected the argument that a bankruptcy court could rely upon the broad equitable powers created by § 105(a) to release non-debtors from liability.[17]

The consistency of logic among the circuits that reject third-party releases is not evident in the decisions by the numerically larger group of circuits that has held that such releases are authorized by the Code. The seminal Third Circuit case, *Gillman v. Continental Airlines (In re Continental Airlines)*,[18] is controversial, with only some other circuits reading the case to allow non-debtor releases.[19] In allowing third-party releases, the Fourth and Eleventh Circuits rely upon § 105(a), finding that "the power to authorize non-debtor releases is rooted in a bankruptcy court's equitable authority."[20] The Sixth and Seventh Circuits have held that third-party releases are authorized by the "residual authority" of bankruptcy courts created pursuant to § 105(a) in conjunction with § 1123(b)(6).[21] In *Dow Corning*, the Sixth Circuit held that this residual authority gives bankruptcy courts "substantial power to reorder creditor-debtor relations needed to achieve a successful reorganization."[22] The Second Circuit's stance on the issue could be described as unclear, though it appeared to approve of the use of third-party releases. The last case to address the issue, *In re Metromedia Fiber Network, Inc.*, questioned the authority of bankruptcy courts to enter non-debtor releases, while also stating that such releases can be granted if "unique" circumstances render the release important to the success of the plan.[23] The inconsistent treatment of this issue across circuits, coupled with the fact that non-debtor releases have been characterized as lending themselves to abuse, shows why "the time to resolve this question once and for all is now[.]"[24]

PURDUE AND *ASCENA*: BRINGING THE ISSUE TO THE FOREFRONT

In *Purdue*, the district court sent shockwaves through the bankruptcy world by making the emphatic statement that "[t]he Bankruptcy Code does not authorize a bankruptcy court to order the non-consensual release of third-party claims against non-debtors in connection with the confirmation of Chapter 11 bankruptcy plan."[25] In *Ascena*, the other recent high-profile case to bring attention to the matter, the district court took issue with the process employed in that district when considering approval of third-party releases. While acknowledging that the Fourth Circuit permits third party releases, the court in *Ascena*, citing to *Purdue*, questioned whether that was appropriate.[26]

PURDUE

Purdue largely dealt with the gatekeeping issues associated with non-debtor releases. Before addressing the dispositive issue of whether the releases were authorized by the Bankruptcy Code, the district court first answered whether the bankruptcy court possessed subject matter jurisdiction to impose a release of non-debtor claims. Starting from 28 U.S.C.A. § 157(a), the district court explained that Congress set forth three types of proceedings in which a bankruptcy court has subject matter jurisdiction. The first two are proceedings that (1) "arise under" title 11 and (2) those that "arise in" a title 11 case. These are known as "core" proceedings. This distinction is key, as bankruptcy courts possess the constitutional authority to enter final judgments which dispose of core proceedings.[27] The third type are proceedings "related to" a case under title 11.[28] These are known as "non-core" proceedings. For matters in which a bankruptcy court only has "related to" jurisdiction, the court may not enter a final judgment. The court retains subject matter jurisdiction to hear these proceedings, but instead of entering a final judgment, the bankruptcy judge "shall submit proposed findings of facts and conclusions of law to the district court" for review.[29] This was reinforced by the landmark case of *Stern v. Marshall*, in which the United States Supreme Court held that a bankruptcy court lacked jurisdiction to enter a final judgment on a debtor's counterclaim that existed prior to, and independent of, the debtor's bankruptcy case.[30]

The district court in *Purdue* was faced with the task of assigning the claims that would be released under the plan to one of the three categories laid out by 28 U.S.C.A. § 157. The bankruptcy court had concluded that it had authority to enter a final judgment on the released claims, as they arose in the context of confirming a reorganization plan—which the bankruptcy court described as the most "core" matter of all bankruptcy proceedings and a fundamental aspect of a Chapter 11 case.[31] In contrast, according to the district court, the question the bankruptcy court should have asked was whether the released claims against non-debtors stemmed from the bankruptcy itself or would have been resolved as part of the claims allowance process.[32] In the case of the third-party claims at issue in *Purdue*, the district court determined that the answer to both of those questions was "no." Because the released non-debtor claims were non-core, the district court in *Purdue* found that the bankruptcy court lacked authority to enter a final judgment on the claims.[33]

But the jurisdiction inquiry did not end there. The district court also had to address the debtors' argument that the release of the claims against non-debtors was not a final judgment. The district court did not give much credence to this argument, holding that there is "no dispute" that an order enjoining litigation of a non-core claim finally determines the claim and serves as the functional equivalent of a dismissal of the claim.[34] With all key concepts defined, the district court was able to reach the conclusion that the bankruptcy court had exceeded its authority by approving the non-debtor releases. Wrapping up this portion of the analysis, the district court held that because the released claims against Sackler family members were "deeply connected" to the bankruptcy case, the bankruptcy court did have "related to" jurisdiction to consider the releases.[35] While this jurisdiction analysis may seem like a lengthy undercard fight, it set the stage for the main event: the question of statutory authorization.

The district court then turned to the dispositive question that has long been hanging over bankruptcy courts: whether there is statutory authority for bankruptcy courts to release claims against non-debtors. In approving the releases, the bankruptcy court in *Purdue* primarily relied upon §§ 105(a), 1123(a)(5), and 1123(b)(6) of the Bankruptcy Code, in conjunction with "residual authority." These Code provisions were stated to support the releases because they generally provide authority for bankruptcy courts to take "necessary or appropriate" steps to carry out other provisions of the Bankruptcy Code. But notably, each of these sections gives a bankruptcy judge power to act only if tethered to a specific, substantive grant of authority located elsewhere in the Bankruptcy Code.[36] The district court found that the bankruptcy court failed to identify a provision of the Bankruptcy Code that provided authority for the releases, and instead depended on broader concepts like "equitable authority" or "residual authority." The district court characterized this as an effort to assert a right that does not exist in the Bankruptcy Code to achieve one of the broad objectives of the bankruptcy process. The district court quickly dispelled the concept of "residual authority." Not only did the district court conclude that this authority "simply does not exist," it also explained that even if residual authority did exist, it would still be bound by the provisions of the Bankruptcy Code.[37] The fault with reliance on residual authority was illustrated by the district court's analysis of the bankruptcy court's reliance on § 1123(b)(6).

Section 1123(b)(6) of the Bankruptcy Code provides that a plan may "include any other appropriate provision not inconsistent with the applicable provisions of this title."[38] As explained by the district court, this provision could not support the non-debtor releases at play in *Purdue* because § 523 of the Bankruptcy Code states that claims for fraud or willful and malicious conduct cannot be discharged in bankruptcy.[39] The non-debtor releases did not carve out or exempt claims for fraud or willful misconduct, meaning that the plan sought to have the non-debtors released from claims that even the debtor itself could not discharge.[40] Additionally, the district court explained that application of § 523 meant that the claims which the plan would release could not be discharged even if the Sackler family members had themselves filed personal bankruptcy.

The debtors also made the argument that the bankruptcy court was statutorily authorized to approve the releases because no provision of the Bankruptcy Code expressly prohibits them.[41] This argument also had a glaring defect: Congress did in fact speak on this topic by enacting §§ 524(g) and 524(h) of the Code. Section 524(g) authorizes third-party releases, but only in the asbestos context.[42] The district court then turned the debtors' argument against the debtors: the silence that truly speaks volumes was Congress' decision not to extend the exception made for asbestos cases to other types of cases.[43] After disposing of all of the debtor's arguments, the district court reached the ultimate conclusion that the Bankruptcy Code does not authorize non-consensual releases of third-party claims against non-debtors. The district court seemed to lament the fact that it had to invalidate the releases, and acknowledged the challenges that abandoning the reorganization plan would cause. The breadth of the fallout from the decision is highlighted by the fact that 120,000 votes were cast on the plan, and an overwhelming 95% voted in favor of confirmation.[44]

ASCENA

Ascena also devoted a large portion of its analysis to subject matter jurisdiction and statutory authorization, much of which was duplicative of the analysis in *Purdue*. *Ascena* deviated from *Purdue* by emphasizing the bankruptcy court's failure to follow the proper evidentiary procedures or apply the Fourth Circuit test for approving non-debtor releases. The debtors, Ascena Retail Group, were women's apparel retailers that operated nearly 3,000 stores throughout the U.S., Canada, and Puerto Rico. Many of the brands held by the debtors are household names such as Ann Taylor, LOFT, and Lane Bryant. The debtors were forced to close stores during the COVID pandemic, eventually resulting in a bankruptcy filing. But instead of reorganizing, the debtors liquidated their businesses through an amended Chapter 11 plan.[45]

The *Ascena* district court began its analysis by expressing a general view on third-party releases, which shaped the way the court tackled each specific issue in its decision. The court noted that third-party releases inherently lend themselves to abuse and are disfavored. This is generally consistent with the Fourth Circuit's view on the issue, having explained that third-party releases should be granted "cautiously and infrequently."[46] The court also cited a Third Circuit case for the proposition that releases should be granted with "the utmost care" and a thorough explanation of why they are justified.[47] The district judge expressed discontent that approval of third-party releases has become commonplace, commencing a campaign to reinstate the stricter standards preferred by the Fourth Circuit.

The court's two main issues with the releases in *Ascena* involved the breadth of the releases, and the bankruptcy court's failure to properly determine whether the releases satisfied established tests. The plan in *Ascena* sought to release the claims of hundreds of thousands of potential plaintiffs not involved in the bankruptcy. The expansive nature of the releases led the district court to describe them as "shocking" and without bounds.[48] As discussed above, the distinction whether the claims being released are core or non-core determines whether the bankruptcy court has jurisdiction to dispose of the claim. *Stern v. Marshall* requires a bankruptcy court to perform a content-based analysis of each claim subject to release to make this determination. The district court made it clear that this analysis must be made with "exacting caution and detailed findings," as opposed to a cursory review.[49] Due to the nature of the releases in *Ascena*, performing this analysis would have been quite the undertaking. But the district court explained that "the enormity of the task does not absolve the bankruptcy court of its responsibility to properly identify the content of the claims before it and ensure that it has jurisdiction to rule on each of them."[50] Had the bankruptcy court performed what the district court described as the required analysis of the content of the released claims, the district court found that it would have become clear that many of the claims being released had absolutely no bearing on the restructuring. Due to the failure to review the claims, as well as the lack of relation of the claims to the plan itself, the district court ruled that the bankruptcy court exceeded the constitutional limits of its authority by releasing, and thereby adjudicating, the claims.[51]

Because the Fourth Circuit does permit non-debtor releases, albeit "cautiously" and infrequently, the district court in *Ascena* did not take issue that non-debtor releases were included in the plan. However, the district court made it clear that the bankruptcy court did not subject the releases to the proper 7-part test adopted by the Fourth Circuit, known as the *Behrmann* test. By following this test and making specific findings of fact, a bankruptcy court can determine whether it is justified in approving the drastic and extraordinary remedy of non-debtor releases. Instead, the district court in *Ascena* found that the bankruptcy court failed to make those findings of fact as to whether the releases were supported by unique circumstances, and merely concluded that the releases were "integral" to the plan. The extent of the bankruptcy court's *Behrmann* analysis was a footnote that stated that the releases would have passed the *Behrmann* test had it been applied. But the district court's actual application of the *Behrmann* test demonstrated to the contrary.

In *Behrmann*, the Fourth Circuit adopted the test the Sixth Circuit used for approving non-debtor releases in *In re Dow Corning Corp.* The first factor of the *Behrmann* test asks whether there is an identity of interests between the debtor and the released parties, such that a suit against the non-debtor would risk depleting the assets of the estate. A common example of this identity of interests would be if the debtor was required to indemnify the non-debtor. In *Ascena*, the debtors claimed that they had to indemnify the released parties, but this obligation was uncertain since the debtors had already liquidated.[52]

The second factor of the *Behrmann* test requires the debtor to demonstrate that the released parties have made a substantial contribution of assets to the debtor's reorganization. In *Ascena*, the released parties made no financial contribution to the plan, and, per the district court, the releases were not integral to the reorganization. Therefore, analysis of this factor "weigh[ed] heavily against granting the release."[53]

The third factor requires the non-debtor release to be essential to the debtor's reorganization, such that the reorganization hinges on the debtor being free from indemnification claims brought by the non-debtor. As stated with respect to the first prong, because the debtors were liquidated instead of reorganized, indemnification was not a major concern. This factor also weighed against granting the release.[54]

The fourth factor requires the debtor to prove that the classes affected by the release overwhelmingly voted in favor of the plan. In *Ascena*, the class members received nothing under the plan, and were therefore deemed to reject the plan as a matter of law. This also weighed against granting the releases.[55]

The fifth factor contemplates whether the debtor's plan provides a mechanism to provide consideration to all or substantially all classes affected by the non-debtor release. In *Ascena*, the plan did not create a fund to pay the released claims. The district court held that the plan essentially extinguished the claims without providing any value to the holders of the claims. This obviously weighed against granting the releases.[56]

The sixth factor asks whether the plan provides an opportunity for those who choose not to settle to recover in full. In *Ascena*, there was an opportunity to opt out of the release and pursue claims, but, according to the district court, claim holders were not given sufficient notice to do so.

The seventh factor asks whether the bankruptcy court made a record of specific factual findings that support the conclusions with respect to factors one through six. In *Ascena*, the district court made it clear that the answer to this question was "no." From this analysis the district court held that the third-party releases must be voided and rendered unenforceable.[57]

ASCENA AND *PURDUE*: THE BIG PICTURE

A flyover of the *Purdue* and *Ascena* district court decisions would group the cases together as challenging the validity of third-party releases; but the reality is far more nuanced. *Purdue* stands for an outright prohibition of third-party releases, based on the lack of a substantive section of the Bankruptcy Code that provides explicit authorization for such releases. To reach this holding, the *Purdue* court appeared to nudge the Second Circuit in the direction of the Fifth, Ninth, and Tenth Circuits, which already prohibit third-party releases. *Ascena* stands for a different proposition. The district court in *Ascena* took issue that the bankruptcy court seemingly rubber-stamped the releases without following necessary procedures. Given the due-process implications of third-party releases, this makes sense. The district court found that the *Ascena* releases "close[d] the courthouse doors" on thousands of potential plaintiffs without giving them anything in exchange. With these stakes in mind, the court laid out the deficiencies of the bankruptcy court's approach, and outlined the steps that should have been taken to determine whether to approve the releases. According to the district court, the bankruptcy court should have (1) conducted a detailed review of the claims being released, as mandated by the United Stated Supreme Court in *Stern*; and (2) analyzed the releases themselves under the seven applicable prongs, as mandated by the Fourth Circuit in *Behrmann*. The district court reiterated that both of these analyses should be accompanied by detailed findings of fact explaining why the court has jurisdiction to approve the releases, and if so, why the grant of such extraordinary relief was warranted.

The *Ascena* court made it clear that the shortcomings of the bankruptcy court's analysis were more than a one-off. The judge expressed displeasure that releases have become so commonplace in Virginia bankruptcy courts, in direct contravention of the Fourth Circuit's holding that they should be granted infrequently and after careful consideration. Almost all courts that have addressed the issue have expressed a view that if third-party releases are allowed, they should only be approved in unique, rare, or unusual circumstances.[58] However, as stated in *Purdue* and quoted in *Ascena*, "[w]hen every case is unique, none is unique."[59]

The proliferation of third-party releases in bankruptcy courts located in a certain district in Virginia, according to the district court in *Ascena*, is all the evidence needed to show that these courts have strayed from the caselaw requiring that third-party releases only be approved in rare circumstances. So, while some may read *Ascena* as eliminating or limiting authority for third-party releases, that is a superficial take on the decision. Instead of a massive shift, it is more likely that *Ascena* spurs a recommitment to pre-existing standards, tests, and best practices that govern the approval of non-debtor releases. By doing this, the non-debtor releases that are granted will likely be warranted and equitable in light of underlying facts. Additionally, the *Stern* jurisdiction discussion contained in both *Purdue* and *Ascena* points towards a future in which only district courts have authority to approve non-debtor releases, and thereby enter a final order on the released claims.

Ironically enough, the releases in *Purdue* probably would satisfy the *Behrmann* factors. The "identity of interests" prong would favor the *Purdue* releases, as litigation over indemnification and contribution of Sackler family members would burden the assets of the debtors' estate.[60] Whereas the released parties made no financial contribution in *Ascena*, the exact opposite is true in *Purdue*. The Sackler family initially committed to contribute upwards of $4 billion to the plan, but that number has, as of the submission of this article, risen to $6 billion. This sum would be considered "substantial" under any definition of the word. Moving onto the fourth *Behrmann* factor, the *Purdue* plan received overwhelming support among the 120,000 votes cast. The fifth factor of the *Behrmann* test would also weigh in favor of the *Purdue* releases, as the money contributed by the Sackler family would be used to fund both public and private civil claims, settlements with states and the federal government, and programs to counter opioid addiction. Additionally, the *Purdue* bankruptcy court's opinion included "extensive findings of fact"[61] in stark contrast to the *Ascena* bankruptcy court's opinion. Analyzing the *Purdue* releases under the factors used in the Second Circuit also supports approval.[62]

To tie this up, the facts associated with the *Purdue* releases were highly favorable, but this was a moot point as the district court held that the Bankruptcy Code did not authorize the releases. The inverse was true in *Ascena*—the district court did not hold that non-debtor releases are prohibited, but stated that the bankruptcy court's failure to follow applicable procedures and the unconvincing facts would not support the releases. It is also possible that the emotionally charged and controversial nature of providing a release to Sackler family members played a role in the invalidation of the *Purdue* plan, but that is a story for a different article. While the future of third-party releases is unclear, what is clear is that some type of change is coming. Whether this will be congressional action, a supreme court ruling, or a less seismic shift remains to be seen.

ENDNOTES:

[1]*In re Purdue Pharma, L.P.*, 635 B.R. 26, 37 (S.D.N.Y. 2021), *certificate of appealability granted*, No. 21 CV 7532 (CM), 2022 WL 121393 (S.D.N.Y. Jan. 7, 2022) (citing *In re Aegean Marine Petroleum Network Inc.*, 599 B.R. 717, 726 (S.D.N.Y. 2019) ("Almost every proposed Chapter 11 Plan that I receive includes proposed releases.")).

[2]*Patterson v. Mahwah Bergen Retail Group, Inc.*, 636 B.R. 641, 691 (E.D. Va. 2022) ("the Bankruptcy Court grants such non-debtor releases as a matter of course, rather than 'cautiously and infrequently' ").

[3]*Class Five Nevada Claimants v. Dow Corning Corp. (In re Dow Corning Corp.)*, 280 F.3d 648, 658 (6th Cir. 2002) ("enjoining a non-consenting creditor's claim is only appropriate in 'unusual circumstances.' ").

[4]11 U.S.C.A. § 1141.

[5]*In re Purdue Pharma, L.P.*, 635 B.R. at 37.

[6]*In re Purdue Pharma, L.P.*, 635 B.R. at 39.

[7]*In re Purdue Pharma, L.P.*, 635 B.R. at 70.

[8]*In re Purdue Pharma, L.P.*, 635 B.R. at 49-53.

[9]*In re Purdue Pharma, L.P.*, 635 B.R. at 70.

[10]*In re Purdue Pharma, L.P.*, 635 B.R. at 70.

[11]*In re Purdue Pharma, L.P.*, 635 B.R. at 71.

[12]*Sackler family agrees to pay $6 billion in new opioid settlement between Purdue Pharma and states*, CNBC (Mar. 3, 2022), https://www.cnbc.com/2022/03/03/purdue-pharma-us-states-agree-to-new-opioid-settlement.html.

[13]*See Bank of N.Y. Trust Co., NA v. Official Unsecured Creditors' Comm. (In re Pacific Lumber Co.)*, 584 F.3d 229, 252 (5th Cir. 2009).

[14]*See Resorts Int'l, Inc. v. Lowenschuss (In re Lowenschuss)*, 67 F.3d 1394, 1401-02 (9th Cir. 1995).

[15]*See Landsing Diversified Props-II v. First Nat'l Bank & Trust of Tulsa (In re W. Real Estate Fund)*, 922 F.2d 592, 600 (10th Cir. 1990).

[16]*In re Lowenschuss*, 67 F.3d at 1401.

[17]*In re Lowenschuss*, 67 F.3d at 1401.

[18]*Gillman v. Continental Airlines (In re Continental Airlines)*, 203 F.3d 203, 214 (3d Cir. 2000).

[19]*SE Prop. Holdings, LLC v. Seaside Eng'g & Surveying, Inc. (In re Seaside Eng'g & Surveying, Inc.)*, 780 F.3d 1070, 1078 (11th Cir. 2015).

[20]*National Heritage Found., Inc. v. Highbourne Found.*, 760 F.3d 344, 350 (4th Cir. 2014); *see also In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d at 1078.

[21]*In re Purdue Pharma, L.P.*, 635 B.R. at 105.

[22]*Class Five Nevada Claimants v. Dow Corning Corp. (In re Dow Corning Corp.)*, 280 F.3d 648, 656 (6th Cir. 2002).

[23]*Deutsche Bank v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network Inc.),* 416 F.3d 136, 143 (2d Cir. 2005).

[24]*In re Purdue Pharma, L.P.*, 635 B.R. at 115.

[25]*In re Purdue Pharma, L.P.*, 635 B.R. at 78.

[26]*Patterson v. Mahwah Bergen Retail Group, Inc.*, No. 3:21cv167 (DJN), c, at *26 (E.D. Va. Jan. 13, 2022).

[27]*In re Purdue Pharma, L.P.*, 635 B.R. at 79-80.

[28]28 U.S.C.A. § 157(c)(1).

[29]28 U.S.C.A. § 157(c)(2).

[30]*Stern v. Marshall*, 564 U.S. 462, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011).

[31]*In re Purdue Pharma, L.P.*, 635 B.R. at 79.

[32]*In re Purdue Pharma, L.P.*, 635 B.R. at 79.

[33]*In re Purdue Pharma, L.P.*, 635 B.R. at 79.

[34]*In re Purdue Pharma, L.P.*, 635 B.R. at 81-2.

[35]*In re Purdue Pharma, L.P.*, 635 B.R. at 89.

[36] *In re Purdue Pharma, L.P.*, 635 B.R. at 106.

[37] *In re Purdue Pharma, L.P.*, 635 B.R. at 113.

[38] 11 U.S.C.A. § 1123(b)(6).

[39] 11 U.S.C.A. § 523.

[40] *In re Purdue Pharma, L.P.*, 635 B.R. at 106.

[41] *In re Purdue Pharma, L.P.*, 635 B.R. at 109-10.

[42] *In re Purdue Pharma, L.P.*, 635 B.R. at 110-12.

[43] *In re Purdue Pharma, L.P.*, 635 B.R. at 111.

[44] *In re Purdue Pharma, L.P.*, 635 B.R. at 71.

[45] *Patterson v. Mahwah Bergen Retail Group, Inc.*, 636 B.R. at 656.

[46] *Behrmann v. National Heritage Found.*, 663 F.3d 704, 712 (4th Cir. 2011).

[47] *In re Millennium Lab Holdings II, LLC*, 945 F.3d 126, 139 (3d Cir. 2019).

[48] *Patterson v. Mahwah Bergen Retail Group, Inc.*, 636 B.R. at 655.

[49] *Patterson v. Mahwah Bergen Retail Group, Inc.*, 636 B.R. at 682.

[50] *Patterson v. Mahwah Bergen Retail Group, Inc.*, 636 B.R. at 689.

[51] *Patterson v. Mahwah Bergen Retail Group, Inc.*, 636 B.R. at 670-71.

[52] *Patterson v. Mahwah Bergen Retail Group, Inc.*, 636 B.R. at 689-90.

[53] *Patterson v. Mahwah Bergen Retail Group, Inc.*, 636 B.R. at 690.

[54] *Patterson v. Mahwah Bergen Retail Group, Inc.*, 636 B.R. at 690.

[55] *Patterson v. Mahwah Bergen Retail Group, Inc.*, 636 B.R. at 690.

[56] *Patterson v. Mahwah Bergen Retail Group, Inc.*, 636 B.R. at 690-91.

[57] *Patterson v. Mahwah Bergen Retail Group, Inc.*, 636 B.R. at 691.

[58] *In re Dow Corning Corp.*, 280 F.3d at 658; *In re Metromedia Fiber Network, Inc.*, 416 F.3d at 143; *In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d at 1078; *Patterson v. Mahwah Bergen Retail Gr*oup, Inc., 636 B.R. at 691.

[59] *In re Purdue Pharma, L.P.*, 635 B.R. at 37.

[60] *In re Purdue Pharma, L.P.*, 635 B.R. at 87.

[61] *In re Purdue Pharma, L.P.*, 635 B.R. at 68.

[62] The factors viewed by the second circuit, as established in *Metromedia*, are highly similar to the *Behrmann* factors. These include: (1) whether the release is important to the plan, (2) whether the enjoined claims would be channeled to a settlement fund rather than extinguished, (3) whether the estate receives substantial consideration in return, (4) whether the released claims would otherwise indirectly impact the debtors' reorganization by way of indemnity or contribution, and (5) whether the plan otherwise provided for the full payment of the enjoined claims. *In re Metromedia Fiber Network, Inc.*, 416 F.3d at 142.