# THIRD-PARTY RELEASES IN INTERNATIONAL BANKRUPTCY: LESSONS FROM *PURDUE PHARMA*

*Madelyn C. Demchick**

## I. INTRODUCTION

As businesses globalize and transcend borders, bankruptcy and restructuring have become "part of the daily routine" of industry actors.[1] Simultaneously, corporate actors are increasingly relying on bankruptcy to resolve mass tort liability.[2] The convergence of transnational bankruptcy and mass tort bankruptcy raises numerous questions of international insolvency and how to reconcile these ostensibly conflicting topics.[3]

The Supreme Court's decision in *Harrington v. Purdue Pharma L.P.* (hereinafter, "*Purdue Pharma*")[4], rejected a Chapter 11 reorganization plan that sought to grant a nonconsensual release to the Sackler family, who did not file for bankruptcy themselves.[5] The Court analyzed Section 1123(b)(6) of the U.S. Bankruptcy Code[6] to find that the provision did not authorize a release of pending and future claims against the Sacklers.[7] With this decision, the Supreme Court effectively restricted the use of nonconsensual releases for companies seeking to use bankruptcy to resolve mass tort claims.[8] For companies, this provided two

* J.D. Candidate, Temple University Beasley School of Law, 2026; B.A., Political Science and International Studies, University of Wisconsin-Madison, 2022. Thank you to my advisor, Professor Jonathan C. Lipson, who introduced me to the field of bankruptcy and helped refine my writing from its inception as just an idea into this final piece. Thank you to The Honorable Craig T. Goldblatt of the United States Bankruptcy Court for the District of Delaware, who provided thoughtful comments on my piece, as well as all of my friends and family who supported me throughout the process of writing this Comment.

1. Jay Lawrence Westbrook, *Global Insolvency for a Global Market: The Universalist System and the Choice of a Central Court*, 96 TEX. L. REV. 1473, 1473 (2018).

2. *See* Anthony J. Casey & Joshua C. Macey, *In Defense of Chapter 11 for Mass Torts*, 90 UNIV. CHI. L. REV. 973 (2023) (arguing that use of bankruptcy proceedings in mass tort cases helps resolve the "race to the courthouse" that often occurs in mass tort proceedings).

3. *See* Douglas G. Smith, *Resolution of Mass Tort Claims in the Bankruptcy System*, 41 U.C. DAVIS L. REV. 1613, 1615–16 (2008) (examining how bankruptcy courts can administer and resolve mass tort liabilities through centralized procedures).

4. Harrington v. Purdue Pharma L.P., 603 U.S. 204 (2024).

5. *See id.* at 209 ("The debtor in this case, Purdue Pharma L.P., filed for bankruptcy after facing a wave of litigation for its role in the opioid epidemic. Purdue's long-time owners, members of the Sackler family, confronted a growing number of suits too. But instead of declaring bankruptcy, they chose a different path.").

6. See 11 U.S.C. § 1123(b)(6) (specifying that a Chapter 11 bankruptcy plan may "include any other appropriate provision not inconsistent with the applicable provisions of this title.").

7. *Purdue Pharma*, 603 U.S. at 218.

8. Jeffrey C. Toole, *Wither Mass Tort Bankruptcies?: The Supreme Court Rejects "Non-Consensual" Releases of Nondebtors in Chapter 11 Plans: Broader Implications and Possible*

divergent paths: a company facing mass tort liability could face its liability head on, knowing that it would be unable to use such nonconsensual releases as part of its plan of reorganization.[9] Alternatively, a company could circumvent the decision, identifying an international jurisdiction that allows for nonconsensual releases, and then relying on the international bankruptcy framework to get these releases approved in a United States court.

This Article examines international bankruptcy law and its efficacy for international companies in the wake of *Purdue Pharma*. To do this, I propose a hypothetical scenario where the Sackler-owned international pharmaceutical company, Mundipharma, files for bankruptcy to examine the role of law in transnational bankruptcy. Specifically, I examine the future of third-party releases in international mass tort bankruptcies. A hypothetical Mundipharma bankruptcy illustrates the uncertainties that exist for international companies facing mass tort litigation where a company attempts to use bankruptcy to restructure and efficiently reach settlements with victims and creditors. I argue that under the current international bankruptcy framework, courts may reach decisions relating to foreign bankruptcy cases by considering factors unique to mass tort litigation. The Sackler family and Purdue Pharma serve as a poignant example illustrating this trend.

Further, this Article proposes that while third-party releases will not disappear entirely from bankruptcy, the likelihood of use in international mass tort bankruptcies will significantly diminish following *Purdue Pharma*. The lack of binding enforcement mechanisms on foreign jurisdictions, especially concerning mass tort litigation, creates incentives for judges to make rulings not on legal precedent or frameworks, but on external factors. This may lead to differential outcomes depending on the facts of each case, resulting in tremendous unpredictability for international companies.

Part II of this paper provides an overview of current bankruptcy law, specifically examining the U.S., European Union (hereinafter, "EU"), and Singapore because of the high volume of companies incorporated in these regions and the popularity of these forums for bankruptcy reorganization. Part III discusses transnational bankruptcy and mass tort reorganization, with background on three leading international bankruptcy law theories—universalism,[10] cooperative territorialism,[11] and contractualism.[12] Part III also contains case law relevant to

*Workarounds*, CLEV. METRO BAR ASS'N (Sept. 9, 2024), https://www.clemetrobar.org/?pg=CMBABlog&blAction=showEntry&blogEntry=112661.

9. *See Purdue Pharma*, 603 U.S. at 206 ("Today's decision is a narrow one. Nothing in the opinion should be construed to call into question consensual third-party releases offered in connection with a bankruptcy reorganization plan. Nor does the Court express a view on what qualifies as a consensual release or pass upon a plan that provides for the full satisfaction of claims against a third-party nondebtor.").

10. Jay Lawrence Westbrook, *A Global Solution to Multinational Default*, 98 MICH. L. REV. 2276, 2277 (2000).

11. Lynn M. LoPucki, *The Case for Cooperative Territoriality in International Bankruptcy*, 98 MICH. L. REV. 2216, 2218 (2000).

12. Robert K. Rasmussen, *Resolving Transnational Insolvencies Through Private*

international bankruptcy and third-party releases. Part IV summarizes the Supreme Court's decision in *Purdue Pharma* and the problematic reorganization plan, and the transnational implications of the decision due to the existence of Mundipharma and its role in the international opioid market. Finally, Part V presents a hypothetical Mundipharma bankruptcy, emphasizing the international law and mass tort bankruptcy issues that the case presents, including the role of values and recommendations for rectifying the unpredictability the current system has created for international companies and foreign judiciaries.

## II. BANKRUPTCY IN THE INTERNATIONAL ORDER

Because of the complexity of multinational bankruptcy cases, a discussion regarding international bankruptcy law in the United States, European Union, and Singapore is necessary to provide background on how international bankruptcies operate. The most prominent legislation in this area is the UNCITRAL Model Law on Insolvency (hereinafter, the "Model Law"), adopted by countries in whole or in part.[13] Using the Model Law as a starting point, Part II further explores the influence of the Model Law in the U.S., European Union, and Singapore, and how these jurisdictions approach international bankruptcy law and, more specifically, third-party releases.

### *A. UNCITRAL Model Law on Insolvency*

The growth of international trade and business is necessarily dependent on the ability of multinational enterprises to thrive in a global market, including restructuring if necessary, rather than forcing liquidation of struggling businesses.[14] In response to domestic reforms concerning bankruptcy law, the United Nations Commission on International Trade Law promulgated a Model Law on Transnational Insolvencies.[15] The Model Law does not provide substantive bankruptcy rules, but a "system of cooperation among the courts" that have jurisdiction over individual parts of a multinational enterprise.[16] The Model Law was created to address situations where assets of an insolvent debtor exist in more than one country and where creditors are located outside the jurisdiction where bankruptcy proceedings are taking place.[17]

The Model Law adopts the concept of the "center of main interests,"

---

*Ordering*, 98 MICH. L. REV. 2252, 2254 (2000).

13. U.N. Comm'n on Int'l Trade L., *UNCITRAL Model Law on Cross-Border Insolvency (1997)*, https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency [hereinafter UNCITRAL Model Law].

14. *See* Evan J. Zucker & Rick Antonoff, *UNCITRAL's Model Law on Recognition and Enforcement of Insolvency-Related Judgments – A Universalist Approach to Cross-Border Insolvency*, INSOL. INT'L (Mar. 2019), https://www.blankrome.com/sites/default/files/2019-03/uncitralmodellaw-antonoffzucker2019.pdf.

15. U.N. Comm'n on Int'l Trade L., *UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation*, U.N. Sales No. E.14.V.2 (2014) [hereinafter UNCITRAL Guide].

16. Westbrook, *supra* note 10 at 2279.

17. UNCITRAL Model Law.

(hereinafter, "COMI") which is central to the theory of universalism.[18] The Model Law provides a presumption that the COMI for a multinational company is the country where the company's registered office is located.[19] Scholars critique the Model Law based on this presumption, noting the malleability of the COMI concept.[20] Further, the lack of guidance for cases where a determination of a company's COMI is unclear has led to situations where different national courts have interpreted the same issue in conflicting ways.[21]

Relevant to this paper is Article 6 of the Model Law, which states, "[n]othing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of this State."[22] Additionally, the Model Law includes a Guide to Enactment and Interpretation (hereinafter, the "Guide"), which states that this public policy exception should be used sparingly, yet provides no explicit definition or guidance on what constitutes public policy, leaving interpretations up to each individual country.[23] However, the Guide does state that differences between two countries' insolvency laws alone do not justify use of the public policy exception.[24]

The public policy exception seeks to codify the legal concept of comity—a common law principle where U.S. courts give deference to foreign judgments.[25] Public policy has always been understood as a narrowly construed exception to the principle; however, it is not enough that a foreign judgment reflects a different approach; instead, it must be repugnant to what U.S. public policy considers fair and just.[26] In codifying this narrow exception, drafters of the Model Law expressly note how the public policy exception should be "interpreted restrictively," and is only meant to be "invoked under exceptional circumstances concerning matters of fundamental importance for the enacting State."[27]

### *B. Third-Party Release Approval in Foreign Jurisdictions*

There is tremendous variation among insolvency laws in different countries.[28]

18. *See, e.g.*, Westbrook, *supra* note, 1, at 1474; Adeline Chong, *Recognition of Foreign Judgments and Cross-Border Insolvencies*, LLYOD'S MAR. & COM. L. Q., 241, 252 (2014); *see* discussion *infra* Section II.A.1.

19. UNCITRAL Model Law, *supra* note 13, at art. 16.

20. Chong, *supra* note 18.

21. *See id.* (providing rhetorical questions that would complicate a determination of a company's COMI under Model Law guidance) (citing Bob Wessels, *COMI: Past, Present and Future*, 24 INSOLVENCY INT'L 17 (2011)).

22. UNCITRAL Model Law, *supra* note 13, at art. 6.

23. UNCITRAL Guide, *supra* note 15.

24. *Id.*

25. *In re* Neeves, 570 B.R. 420, 426 (Bankr. S.D. Fla. 2017).

26. Jonathan H. Pittman, *The Public Policy Exception to the Recognition of Foreign Judgments*, 22 VAND. J. TRANSNAT'L L. 969, 982 (1989) (quoting *Tahan v. Hodgson*, 662 F.2d 862, 866 (D.C. Cir. 1981)).

27. U.N. Comm'n on Int'l Trade Law, *Digest of Case Law on the UNCITRAL Model Law on Cross-Border Insolvency*, 20 (2021), https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/20-06293_uncitral_mlcbi_digest_e.pdf.

28. *See* Stijn Claessens & Leora F. Klapper, *Bankruptcy Around the World: Explanations*

One significant difference is evident between economically advanced and developing countries, where the former tend to have more sophisticated bankruptcy laws, reflecting the more sophisticated markets that exist in these places.[29] Because there is not one unified set of international bankruptcy laws, numerous factors lead to varying domestic laws, including whether the end goal is restructuring or liquidation, policy judgments about which parties should be favored, and how a country views tort victims vis-à-vis other creditors.[30]

### 1. The Structure and Scope of Third-Party Releases

In practice, third-party releases, sometimes called non-debtor releases, release third parties from liability who share some connection with the debtor.[31] In the United States, these third parties are often officers or directors of a corporate debtor in Chapter 11.[32] This differs from case law concerning foreign third-party releases, which center less on corporate officers and directors and more frequently on guarantors of funded debt.[33] The distinction between the two types of third-party releases—consensual and nonconsensual—regards the ability of claimants to approve or reject the release.[34] Consensual third-party releases are generally allowed under the notion that parties may freely contract with one another.[35] Prior to the Supreme Court's decision in *Purdue Pharma*, appellate courts in the U.S. were divided regarding the permissibility of nonconsensual third-party releases.[36]

The majority opinion in *Purdue Pharma*, written by Justice Gorsuch and joined by Justices Thomas, Alito, Barrett, and Jackson, grounded their disallowance of a third-party release to the Sackler family in two main arguments.[37] First, the majority used statutory interpretation to determine that Section 1123(b)(6) of the Bankruptcy Code could not be read to grant

---

*of Its Relative Use*, 7 AM. L. & ECON. REV. 253, 254 (2005) ("Different objectives and constraints have led to insolvency and collateral regimes with many features varying across countries.").

29. *See* Simeon Djankov & Eva (Yiwen) Zhang, *Divergence in Bankruptcy Law Across Advanced and Developing Countries*, VOXEU (CENTRE FOR ECON. POLICY RES.) (July 9, 2021), https://cepr.org/voxeu/columns/divergence-bankruptcy-law-across-advanced-and-developing-economies (finding that post-Covid-19, differences in reorganization outcomes between advanced and developing economies has increased).

30. Rasmussen, *supra* note 12, at 2253.

31. Ashraf Mokbel, *The Permissibility of Chapter 11 Non-Debtor Release Provisions*, 7 ST. JOHN'S BANKR. RSCH. LIBR. NO. 16, 1 (2015).

32. *Id.*

33. *See In re* Avanti Commc'ns Grp. PLC, 582 B.R. 603, 618 (Bankr. S.D.N.Y. 2018) ("The Court concludes that schemes of arrangements sanctioned under UK law that provide third-party non-debtor guarantor releases should be recognized and enforced under chapter 15 of the Bankruptcy Code.").

34. Tyler Layne, *Constitutionality of Non-Consensual Third-Party Releases in Bankruptcy Reorganization*, BLOOMBERG L. (Nov. 2021), https://www.bloomberglaw.com/external/document/X42S2V68000000/bankruptcy-professional-perspective-constitutionality-of-non-con.

35. *See id.*

36. Mokbel, *supra* note 31.

37. *Purdue Pharma*, 603 U.S. at 227.

nonconsensual discharges to non-debtors.[38] Second, the majority distinguished between instances where third-party releases are allowed under the Bankruptcy Code,[39] and the situation at bar, in which the Sacklers sought broader protections than the debtor itself (Purdue Pharma) without first contributing any value into the bankruptcy estate.[40]

### *a. United States*

In the U.S., cross-border bankruptcy cases are governed by Chapter 15 of the Bankruptcy Code.[41] There are two types of Chapter 15 cases: (1) cases ancillary to primary cases brought in other countries; and (2) separate Chapter 7 or 11 cases permitted to be brought in the U.S. because the assets located in the U.S. are sufficient to necessitate a domestic bankruptcy.[42] The first type of proceedings, known as "foreign main proceedings,"[43] are the subject of this Article. Once a court in the U.S. recognizes a foreign main proceeding, this recognition triggers numerous domestic bankruptcy provisions; notably, the automatic stay on property located within the U.S., allowance of transactions in the debtor's ordinary course of business, and provisions relating to prepetition and post-petition liens on encumbered property and cash.[44]

If enumerated requirements are met, Chapter 15 requires the recognition of a foreign proceeding, subject to Section 1506.[45] Section 1506 provides that, "[n]othing in [Chapter 15] prevents the court from refusing to take an action . . . if the action would be manifestly contrary to the public policy of the United States."[46] Congress made clear in enacting this Section that it be construed narrowly such that the word "manifestly"[47] restricts the exception to the "most fundamental policies of the U.S."[48] Scholarship on Section 1506 distinguishes cases where courts found no public policy exception, predicated on procedures and laws of foreign jurisdictions, and situations where courts determined there to be a violation of U.S. public policy as focusing on the behavior of the foreign party seeking relief.[49]

*Purdue Pharma* was not the first time in the U.S. where nonconsensual third-

---

38. *Id.*

39. *See* 11 U.S.C. § 524(g) (2022) (providing for non-debtor releases in asbestos-related mass tort bankruptcies claims).

40. *Purdue Pharma*, 603 U.S. at 209.

41. 11 U.S.C. § 1501 (2022).

42. 11 U.S.C. § 1504 (2022).

43. *See* 11 U.S.C. § 1502(4) (2022) ("foreign main proceeding" means a foreign proceeding pending in the country where the debtor has the center of its main interests.").

44. 11 U.S.C. § 1520 (2022).

45. 11 U.S.C. § 1517 (2022).

46. 11 U.S.C. § 1506 (2022).

47. *Id.*

48. H.R. Rep. No. 109-31, pt. 1, at 109 (2005).

49. Omer Shahid, *The Public Policy Exception: Has § 1506 Been a Significant Obstacle in Aiding Foreign Bankruptcy Proceedings?*, 9 J. INT'L BUS. & L. 175, 200 (2010).

party releases were denied in a Chapter 11 proceeding.[50] However, following the enactment of Chapter 15 of the Bankruptcy Code in 2005, distressed companies undergoing restructuring in foreign jurisdictions found that in some circumstances, bankruptcy courts in the U.S. were willing to recognize nonconsensual third-party releases as integral to a restructuring scheme.[51] In one Chapter 15 case, the presiding judge emphasized the uniqueness of the case, noting factors that led to favorable recognition of the scheme that included third-party releases.[52]

#### *b. The European Union*

For a long time, European bankruptcy law was "merciless" toward corporate debtors, leading to a high likelihood of debtors' dissolution and liquidation of assets.[53] Following the 2008 financial crisis, corporate insolvency increased; thereafter, EU. Member States acknowledged the necessity of promoting restructuring as an option for financially distressed, but viable, In 2014, the EU published a Recommendation stating the need to balance protecting creditors against preventive restructuring procedures.[54] A 2016 Directive on preventive restructuring frameworks in the EU focused on more efficient discharges of debt and fresh starts for debtors, encouraging early restructuring, more centralized debtor-in-possession procedures, and an overall reduction in court formalities.[55]

Despite determined attempts to create more centralized procedures, restructuring laws in the EU represent a "diversity of approaches," even among countries with similar economic and legal systems.[56] Accompanying the EU

---

50. *See* Dorothy Coco, *Third-Party Releases: An Analysis of Consent Through the Lenses of Due Process and Contract Law*, 88 FORDHAM L. REV. 231, 233 (2019) ("Courts generally approve nondebtor third-party releases as binding on creditors in Chapter 11 cases when there is obvious affirmative consent . . . however, in situations without explicit creditor consent, approval occurs only in limited or extraordinary circumstances.") (citing William P. Weintraub, *Permissibility of Third-Party Releases in Non-Asbestos Cases*, 32 REV. BANKING & FIN. SERVS. 137, 137 (2016)).

51. American Bankruptcy Institute, *Chapter 15 Recognition of Third-Party Releases in Cross-Border Restructuring*, AM. BANKR. INST., https://www.abi.org/feed-item/chapter-15-recognition-of-third-party-releases-in-cross-border-restructurings (last visited Feb. 4, 2026) (citing *In re* Avanti Commc'ns Grp. PLC, 582 B.R. 603 (Bankr. S.D.N.Y. 2018)).

52. *See id.* ("Although principles of comity were integral to Judge Glenn's decision, the specific facts of the *Avanti* favored third-party releases. First, no objections were filed in the Bankruptcy Court against the Scheme and it had near-unanimous support from voting-impaired creditors. Second, the U.K. procedure proceeded in accordance with U.S. due process concepts, strengthening the argument for recognition . . . . Further, third-party releases are not categorically prohibited and, therefore, are not contrary to public policy in the U.S. [u]nder § 1521 of the Bankruptcy Code . . . ").

53. David Christoph Ehmke et al., *The European Union Preventive Restructuring Framework: A Hole in One?*, 28 INT'L INSOLVENCY REV. 184, 184-85 (2019).

54. *Id.* at 186.

55. *Commission Proposal for a Directive of the European Parliament and of the Council on Preventive Restructuring Frameworks, Second Chance and Measures to Increase the Efficiency of Restructuring, Insolvency, and Discharge Procedures and Amending Directive 2012/30/EU*, COM (2016) 723 final (Nov. 22, 2016).

56. *See* Ehmke et al., *supra* note 53, at 203 (highlighting differences between restructuring law and practice in Denmark, France, Germany, the Netherlands, and the United Kingdom).

Recommendation was an impact assessment, which "acknowledged third-party releases [as] a useful tool" to increase the possibility of successful restructurings of multinational corporate enterprises.[57] However, insolvency practitioners and financial institutions pushed back, concerned with how increased use of third-party releases may coincide with increased cost of credit.[58] This pushback bolstered the view that from the EU's perspective, third-party releases are about funded debt rather than mass torts.[59] As multinational businesses grow, this is a legitimate concern for creditors as regular allowances of third-party releases may make it more difficult for lenders to recover debts in bankruptcy cases, prompting higher interest rates or fees to compensate for increased risks.[60] After considering all arguments, various EU Member States have opted to address the use of third-party releases differently.[61]

Presently, transnational bankruptcy law in the EU presents a regional example of the theory of bankruptcy universalism.[62] Under the regulation governing proceedings, the main proceedings are to take place in the EU Member State where the COMI is located.[63] Ancillary insolvency proceedings are allowed in other Member States where a debtor maintains assets, but are considered secondary proceedings.[64] However, so long as an EU Member State meets the requirements as a legitimate jurisdiction for a proceeding, any primary or secondary insolvency proceeding decisions by a court of one Member State must be recognized by all Member States.[65] This approach supersedes a long-standing practice of reciprocal recognition between EU Member States based not on mandate, but on individual conventions and treaties.[66]

---

57. *Commission Staff Working Document Impact Assessment Accompanying the Document Proposal for a Directive of the European Parliament and of the Council on Preventive Restructuring Frameworks, Second Chance and Measures to Increase the Efficiency of Restructuring, Insolvency and Discharge Procedures and Amending Directive 2012/30/EU*, COM (2016) 723 final (Nov. 22, 2016).

58. Ilya Kokorin, *Third-Party Releases in Insolvency of Multinational Enterprise Groups*, 18 EUR. CO. & FIN. L. REV. 107, 109-10 (2021); *see* discussion *supra* Section II.B.1.

59. *Id.*

60. Peter M. Boyle, *Non-Debtor Liability in Chapter 11: Validity of Third-Party Discharge in Bankruptcy*, 61 FORDHAM L. REV. 421, 443 (1992).

61. *See* Kokorin, *supra* note 59, at 110 (demonstrating U.K.'s allowance of third-party releases and Dutch and German legislation which allows for use of third-party releases as an option for restructuring businesses).

62. Consolidated Version of Regulation 2015/848, of the European Parliament and of the Council of May 20, 2015 on Insolvency Proceedings, 2015 O.J. (L 141).

63. *See id.* at art. 3, section 1 ("The courts of the Member States within the territory in which the centre of the debtor's main interests is situated shall have jurisdiction to open insolvency proceedings . . . The centre of main interests shall be the place where the debtor conducts the administration of its interests on a regular basis").

64. *Id* at art. 3, section 3.

65. *Id* at ch. II, art. 19, section 1.

66. *See id*. at art. 85 (listing multiple conventions and treaties between various Member States recognizing insolvency decisions on a reciprocal basis).

### *c. Singapore*

In 2017, the Companies (Amendment) Act 2017 (hereinafter, the "Companies Act") was passed in Singapore, providing substantial changes to Singapore's bankruptcy laws.[67] Among the changes, the Companies Act adopted the Model Law[68] and altered existing law relating to the abilities of foreign lawyers to appear before the Singapore International Commercial Court (hereinafter, "SICC").[69] Singapore's adoption of the Model Law adopted the public policy exception, allowing Singapore to deny recognition of a foreign decision if the SICC determines the decision to be "manifestly contrary to the public policy . . . of [the] State."[70] These amendments to Singapore's bankruptcy legal framework empowered the SICC to hear and adjudicate cases with an international element.[71] For companies incorporated in Singapore, conversely, the High Court of Singapore has jurisdiction for insolvency-related matters.[72]

The SICC decided its first international insolvency case in January 2024, which involved the restructuring of PT Garuda, the state-owned national airline of Indonesia.[73] Unlike Singapore, Indonesia has not adopted some version of the Model Law, nor any international treaty that would require courts in Indonesia to enforce foreign insolvency decisions.[74] Instead, Indonesia follows an insolvency-regime grounded in the concept of territoriality.[75] Unlike universalism, which proposes bankruptcy proceedings in a multinational debtor's COMI, territoriality

---

67. *Companies (Amendment) Act 2017*, ACCT. & CORP. REGUL. AUTH. (last visited Nov. 15, 2025), https://www.acra.gov.sg/legislation/legislation-under-acra-purview/companies-(amendment)-act-2017.

68. Aedit Abdullah, *Celebrating and Reflecting on 25 Years of the Model Law on Cross Border Insolvency: The Newbie's Take – Singapore and the Model Law* (last visited Feb. 5, 2026), https://doi.org/10.13140/RG.2.2.20662.36164.

69. *See* Swee Siang Boey & Suchitra Kumar, *Adaptations to Singapore's Insolvency Regime in the Post-Pandemic Era*, GLOB. RESTRUCTURING REV. (Sept. 15, 2023), https://globalrestructuringreview.com/review/asia-pacific-restructuring-review/2024/article/adaptations-singapores-insolvency-regime-in-the-post-pandemic-era ("Foreign lawyers may now be given permission to appear before the SICC and submit on factual matters and matters of foreign law. This was previously restricted to local lawyers only, and foreign law had to be proven as a matter of fact.").

70. UNCITRAL Model Law, *supra* note 13, at art. 6.

71. Suresh Nair et al., *Singapore's Insolvency Law in 2023: Navigating New Frontiers from the SICC to Cryptocurrency*, GLOB. RESTRUCTURING REV. (Jan. 17, 2024), https://globalrestructuringreview.com/review/asia-pacific-restructuring-review/2024/article/singapores-insolvency-law-in-2023-navigating-new-frontiers-the-sicc-cryptocurrency.

72. *General Information on Bankruptcy,* MINISTRY OF LAW, INSOLVENCY OFFICE, SINGAPORE, https://io.mlaw.gov.sg/bankruptcy/permalink/.

73. Sushman Jobanputra et al., *Singapore International Commercial Court Issues First Decision on Recognition of Cross-Border Bankruptcy Cases under Model Law*, JONES DAY (March 2024), https://www.jonesday.com/en/insights/2024/03/singapore-international-commercial-court-issues-first-decision-on-recognition-of-crossborder-bankruptcy-cases-under-mode.

74. *Id.*

75. *Id.; see generally* LoPucki, *supra* note 11 (explaining the concept of territoriality within international bankruptcy).

means that "the bankruptcy courts of a country have jurisdiction over those portions of the company that are within its borders . . . ."[76] The case came in front of the SICC because of PT Garuda's registration as a foreign company in Singapore, its Singapore-based office, and aircraft assets and bank accounts registered in Singapore.[77]

The SICC determined that the Indonesian proceeding should be recognized as a foreign main proceeding under Singapore law.[78] Writing for the three-judge SICC panel, former U.S. Bankruptcy Judge Christopher S. Sontchi explained that Singapore's insolvency law "gives effect to the principle of modified universalism,"[79] and that while the insolvency laws and procedures of each nation may differ, "such differences should not stand in the way of the recognition of foreign insolvency proceedings."[80] Judge Sontchi emphasized the benefits that a proceeding should have on creditors as a collective through a "global effort" to distribute assets amidst cross-border financial collapses.[81]

The Indonesian decision approved by the SICC included a third-party release of non-debtor Garuda France, the French subsidiary of PT Garuda.[82] The SICC dismissed objections that the third-party release was contrary to Singapore's public policy.[83] Above all, the SICC's recognition of the Indonesian plan represents the restrictive nature of application of the public policy exception under Singapore's foreign insolvency framework.[84]

## III. TRANSNATIONAL BANKRUPTCY AND MASS TORT REORGANIZATION

### *A. The Current Theoretical Landscape of Transnational Bankruptcy Law*

The field of international bankruptcy law involves a patchwork of individual legal systems attempting to resolve financial crises of corporate actors.[85] Over time, three competing theories of international bankruptcy law have emerged—

76. LoPucki, *supra* note 11, at 2218.

77. Jobanputra et al., *supra* note 74.

78. *Id.*

79. *Re PT Garuda Indonedia (Persero) Tbk and another matter*, [2024] SGHC(I) 1 (Sing.) at 25.

80. *Id.* at 26.

81. *Id.*

82. Jobanputra et al., *supra* note 74.

83. *Id.*

84. *Id.*

85. The closest approach that has been made to the crafting of a "global" set of laws concerning insolvency is the promulgation by the United Nations Commission on International Trade Law ("UNCITRAL") of a Model Law on Cross-Border Insolvency in 1997. See Wai Y. Wan & Gerard McCormack, Implementing Strategies for the Model Law on Cross-Border Insolvency: The Divergence in Asia-Pacific and Lessons for UNCITRAL, 36 Emory Bankr. Dev. J. 59, 61-63 (2020); see also G.A. Res. A/RES/52/158, Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law (Dec. 15, 1997). More recently, the UNCITRAL adopted the Model Law on Recognition and Enforcement of Insolvency-Related Judgements in 2018; see G.A. Res. A/Res/73/200, Model Law on Recognition and Enforcement of Insolvency-Related Judgements (Dec. 20, 2018).

universalism, cooperative territorialism, and contractualism.[86] Universalism[87] demonstrates that the most efficient way to handle transnational insolvency is through the application of one main insolvency proceeding.[88] Those opposing universalism tend to argue in favor of cooperative territoriality,[89] which involves the application of multiple countries' laws during an international bankruptcy.[90] The third approach is contractualism,[91] which proposes that international companies may include a forum selection clause in a company's charter documents that determines which jurisdiction's bankruptcy laws should govern a hypothetical bankruptcy.[92] To complicate the matter,[93] answering the question of how to handle mass tort bankruptcies, which themselves implicate questions of tremendous social value,[94] for companies that create victims worldwide,[95] requires further understanding of the overlapping and competing interests of corporate actors, victims, and foreign governments.[96]

In 1997, the United Nations Commission on International Trade Law (hereinafter, "UNCITRAL") adopted the Model Law on Cross-Border Insolvency.[97] The Model Law provides a set of procedures for cross-border bankruptcies, providing an elaborate scheme to enhance cooperation between international courts.[98]

#### 1. Universalism

In 2000, the American Law Institute's Transnational Insolvency Project was completed,[99] representing a global "willingness . . . to achieve reform in the field

86. Westbrook, *supra* note 10, at 2277; LoPucki, *supra* note 11, at 2218; Rasmussen, *supra* note 12, at 2254.

87. *See generally* Westbrook, *supra* note 10, at 2277.

88. *See* Jay Lawrence Westbrook, *International Arbitration and Multinational Insolvency*, 29 PENN STATE INT'L L. REV. 635, 649 (2011).

89. LoPucki, *supra* note 11, at 2216–18.

90. Lynn M. LoPucki, *Cooperation in International Bankruptcy: A Post-Universalist Approach*, 84 CORNELL L. REV. 696, 742 (1999).

91. Rasmussen, *supra* note 12, at 2254.

92. *Id.*

93. LoPucki, *supra* note 11, at 2225–26.

94. *See* Jonathan C. Lipson & Pamela Foohey, *The End(s) of Bankruptcy Exceptionalism: Purdue Pharma and the Problem of Social Debt*, 46 CARDOZO L. REV. 861, 870 (2025) ("Social debt bankruptcies are a subset of mass tort reorganizations involving serious misconduct, as opposed to mere negligence. The defining features are moral gravity, scale, and public spillovers: intentional (e.g., criminal) misconduct that harms many people has social dimensions for which the bankruptcy system is an awkward and incomplete solution.").

95. *See* Rasmussen, *supra* note 12, at 2268.

96. Westbrook, *supra* note 10, at 2283.

97. Sefa M. Franken, *Cross-Border Insolvency Law: A Comparative Analysis*, 34 OXFORD J. LEGAL STUD. 97, 99 (2014).

98. *Id.* at 120; *see also* discussion *supra* Section II.A (providing an overview of the Model Law).

99. Jay Lawrence Westbrook, *The Transnational Insolvency Project of the American Law Institute*, 17 CONN. J. INT'L L. 99, 99 (2001).

of multinational insolvency."[100] Underlying the theory of universalism is the concept of market symmetry, requiring that systems in a legal regime "be symmetrical with the market."[101] Bankruptcy is a collective legal mechanism that encompasses numerous interests.[102] As a result, each country has developed domestic bankruptcy laws that align with its individual and unique national market.[103] Universalists argue that to effectively adjudicate a transnational bankruptcy, there must be movement toward a single-court, single-law system.[104] To achieve this goal, the law of a debtor's home country, its "center of main interests," (hereinafter, "COMI") should apply wherever else in the world the debtor owns property.[105]

Numerous "control countries"[106] underwent significant bankruptcy reform over the past twenty-five years that parallel the theory of universalism.[107] However, obstacles exist to the creation and implementation of a truly uniform and consolidated approach, including variations in national values, treatment of corporate groups, and professional resistance to centralization.[108] Global variation in values is important because of the nature of mass tort litigation, which often involves issues of significant social weight.[109] Additionally, the growth of transnational subsidiaries of global corporations creates additional intricacies for the implementation of international bankruptcy laws aligning with the theory of universalism.[110] Finally, centralized proceedings may be thwarted by professionals[111] that resist coordination mechanisms that may leave them, and their paychecks, outside of these centralized proceedings.[112]

To illustrate the concept of universalism, imagine a transnational company called "X Machinery," that is incorporated in Delaware, U.S., with factories,

---

100. Westbrook, *supra* note 10, at 2279.

101. *Id.* at 2283.

102. *Id* at 2284.

103. *Id.*

104. *See id.* at 2301 (comparing "modified universalism" to territorialism, whereby " . . . a conviction that local creditors have vested rights in whatever assets can be seized by their courts when insolvency looms.").

105. Dolan D. Bortner, *Mind the Gap: Fighting Forum Shopping in Transnational Bankruptcies Under Chapter 15*, 98 AM. BANKR. L. J. 416, 422 (2024) (quoting 11 U.S.C. § 1517(b)(1)).

106. *See generally* Westbrook, *supra* note 1, at 1480 (defining a control country as one where issuing courts are in countries "in which a number of major international creditors do substantial business and therefore are subject to the personal jurisdiction of that court").

107. *See, e.g.*, 11 U.S.C. § 1504 (recognizing petitions for foreign insolvency proceedings); The Law Library, Act on Recognition of and Assistance for Foreign Insolvency Proceedings (Japan) (Createspace Independent Publishing Platform ed., 2018 ed. 2018); *European Union Regulation on Insolvency Proceedings*, OFF. J. EUROPEAN CMTYS. 160 (June 30, 2000); Nair et al., *supra* note 72.

108. Westbrook, *supra* note 1, at 1488.

109. Lipson & Foohey, *supra* note 95, at 870.

110. Westbrook, *supra* note 1, at 1489.

111. *Id.*

112. *Id.* at 1489–90.

storefronts, and suppliers throughout Europe, Asia, and Africa. X Machinery is headquartered in Austin, Texas. To fund its operation, X Machinery has sought out lenders globally. Under the theory of universalism, X Machinery's COMI would be the U.S., because that is where it is incorporated and headquartered. This means that all the assets not in the U.S., and lenders (now creditors under bankruptcy), would be governed by U.S. bankruptcy law. This requires each foreign jurisdiction to recognize U.S. decisions made during X Machinery's bankruptcy proceedings.

**2. Cooperative Territorialism**

Grounded in the international theory of territoriality,[113] cooperative territorialism[114] says that a country's bankruptcy courts have jurisdiction only over the assets of a company located within its borders, excluding assets situated elsewhere.[115] For transnational corporations that enter bankruptcy, parallel proceedings occur in each country where the company holds substantial assets.[116] For each individual proceeding a representative is appointed, and various representatives work to reach individual bankruptcy agreements.[117]

While proponents of cooperative territorialism tout its protection against corporate forum shopping,[118] critics of the theory note that because courts treat local and foreign creditors similarly, the only beneficiaries of the approach are those that incidentally file locally, representing a minority of creditors.[119] Additionally, critics cite problems of efficiency and fairness,[120] that will be exacerbated as companies continue to globalize.[121] These problems stem from a mismatch between the reach of bankruptcy law and the market in which it operates.[122] If an international bankruptcy proceeding is to be successful, the legal systems must be able to effectively govern the interests of all involved, and this is not possible if one bankruptcy requires the integration of numerous, and potentially conflicting, legal systems.[123]

Using the X Machinery example, the theory of cooperative territorialism would mean that instead of U.S. bankruptcy law being applied to the entire

113. LoPucki, *supra* note 11, at 2218 ("Territoriality – the idea that each country has the exclusive right to govern within its borders – is such a basic principle of international law that often goes unnoticed.") (citing IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 105-22 (5th ed. 1998); MARK W. JANIS, INTRODUCTION TO INTERNATIONAL LAW 322-23 (3d ed. 1999)).

114. *Id.*

115. *Id.* at 2219.

116. *Id.*

117. *Id.*

118. *See* LYNN M. LOPUCKI, COURTING FAILURE: HOW COMPETITION FOR BIG CASES IS CORRUPTING THE BANKRUPTCY COURTS 254 (2005).

119. Jay Lawrence Westbook, *Multinational Financial Distress: The Last Hurrah of Territorialism*, 41 TEX. INT'L L. J. 321, 336 (2006).

120. *Id.* at 324.

121. *Id.*

122. *Id.*

123. Westbrook, *supra* note 10, at 2283–84.

proceeding, each country where substantial assets are located would be governed by the applicable bankruptcy law of that jurisdiction. If X Machinery had a European headquarters in Brussels, Belgium, then this would mean there would be one proceeding for the assets held in the U.S., and a parallel proceeding in Brussels, governed by Belgian bankruptcy law. This would apply to every country where assets are located, leading to the potential for different domestic law to be applied to assets of equal value.

#### 3. Contractualism

The theory of contractualism allows corporate entities to decide which jurisdiction's laws will govern future bankruptcy proceedings.[124] The designation is to be made in the corporate charter documents, and a transnational company may opt for a universalist, territorialist, or mixed approach.[125] One major argument in favor of contractualism is efficiency.[126] Because different transnational companies may benefit from one single proceeding or multiple proceedings, it is in the best interest of all transnational companies to make this decision ex ante, prior to any potential financial distress.[127]

One critique of the theory concerns the difficulty in striking the proper balance between granting appropriate flexibility for corporations while ensuring restrictions against "opportunistic amendment[s]."[128] Proponents provide two solutions to this problem: (1) proposing a requirement for a "lag time" between an amendment's creation and its effective time; and (2) allowing creditors to include terms in a lending agreement that state any changes made to the original corporate decision regarding forum would result in default of the loan.[129]

Another critique of contractualism is that allowing for bankruptcy selection clauses may result in the creation of "debtor havens."[130] The intersection between mass tort litigation and bankruptcy selection clauses further exacerbates this potential issue.[131] Furthermore, bankruptcy selection clauses "are problematic because they disadvantage 'nonadjusting creditors.'"[132] Nonadjusting creditors fall

---

124. Rasmussen, *supra* note 12, at 2254.

125. *See id.* ("It could even adopt a mixed approach under which a subset of the firm's entities would be administered in one jurisdiction while the remainder would be handled where they were incorporated.").

126. *Id.* at 2255.

127. *Id.*

128. *Id.* at 2264.

129. *Id.* ("First, one can require a lag time between when an amendment is made and when it becomes effective. This simple rule guards against selection changes driven by imminent financial distress. Second, creditors can put a term in their lending agreement declaring changes to be a default. This term would give the lender the opportunity to terminate or renegotiate its relationship with the debtor if it believes that the change adversely affects its loan.").

130. *Id.*

131. *See* LoPucki, *supra* note 91, at 739 ("One easily can imagine tort-prone U.S. firms scouring the world for jurisdictions in which personal injury verdicts are low, tort theories are undeveloped, procedures are hostile to tort plaintiffs, or plaintiff's attorneys are unavailable.").

132. *See generally* Andrew T. Guzman, *International Bankruptcy: In Defense of Universalism*, 98 MICH. L. REV. 2177, 2181-82 (2000) ("The category of 'nonadjusting creditors'

prey to information imbalances inherent between corporate debtors and creditors who have the ability to access information regarding a corporation's bankruptcy selection clause.[133] In cases of mass tort bankruptcies, the classic example of a nonadjusting creditor is a tort victim.[134] As for tort liability, proponents of contractualism argue that transnational firms do not face much tort liability, and when they do, there is adequate insurance to cover any tort claims, even during a bankruptcy proceeding.[135] While this may hold true for many transnational corporations, the trend toward using bankruptcy as a tool to mitigate tort liability refutes this point.[136]

Based on the theory of contractualism, X Machinery would be able to decide which jurisdiction's bankruptcy law would govern as part of its corporate charter documents. X Machinery may decide that the U.S. would be the best forum to litigate a potential bankruptcy proceeding, and then U.S. law would apply to assets held in Europe, Asia, and Africa, similar to the universalist approach. Conversely, had X Machinery opted to include in their charter documents a territorialist or mixed approach regarding the administration of proceedings for specific assets, that would be acceptable, and potential bankruptcy proceedings would follow such terms.

### *B. Mass Tort Litigation and Bankruptcy Case Law*

For many decades, large businesses and nonprofit entities have initiated bankruptcy proceedings amidst claims of mass tort liability.[137] Among critics of this practice, the most fervent opponents focus on the use of third-party releases and the way actors who have not filed for bankruptcy become entitled to bankruptcy protections without consent from individual victims.[138] Two proponents of the use of Chapter 11 for mass tort litigation argue that third-party

---

includes any creditors that cannot, or will not, adjust the terms of their loans on a case-by-case basis in order to take into account the risks associated with the loan, including the risk of nonpayment.").

133. *See* Rasmussen, *supra* note 12, at 2266 ("The optimal regime for an individual debtor thus does not transfer value from a fully adjusting creditor, but does expropriate value from weakly adjusting creditors.").

134. Guzman, *supra* note 133, at 2183 ("Tort creditors become creditors as a result of injury or accident without negotiation and without control of the terms of their lending.").

135. Rasmussen, *supra* note 12, at 2269 ("When a firm files for bankruptcy, the proceeds of insurance policies go directly to the injured claimants, despite their nominal status as unsecured creditors.") (citing ROBERT E. KEETON & ALAN L. WIDISS, INSURANCE LAW 378 (1988)).

136. Casey & Macey, *supra* note 2, at 974.

137. *See id.* at 980 (listing USA Gymnastics, Johnson & Johnson, Purdue Pharma, and 3M as examples of large businesses and nonprofit firms initiating chapter 11 bankruptcy proceedings); *see also* Mark D. Plevin et al., *Where Are They Now, Part Seven: An Update On Developments In Asbestos-Related Bankruptcy Cases*, 13 MEALEY'S ASBESTOS BANKR. REP. 1 (2014).

138. *See* Ralph Brubaker, *Mandatory Aggregation of Mass Tort Litigation in Bankruptcy*, 131 YALE L. J. 960, 1004 (2002) ("Nonconsensual nondebtor release practice is illegitimate and unconstitutional substantive lawmaking by the federal courts, which the Supreme Court should put an end to.").

releases are not only appropriate for mass tort litigation, but may help "reduce . . . costs and preserve value for all claimants."[139] When large companies are facing hundreds—if not thousands—of claims, a collective action problem may arise as creditors "race to the courthouse," to collect from a financially distressed company.[140] This problem is compounded when mass tort victims are involved,[141] and the "tools" often associated with bankruptcy— " rules . . . and treatment of unpaid claims"—fill gaps that conventional class actions or multidistrict litigation leave.[142] Similarly, the consolidation of mass tort claims reduces high administrative costs of complex bankruptcies, resulting in higher overall recoveries for victims and creditors.[143]

*Harrington v. Purdue Pharma L.P.* is a highly unique case, representing the intersection between mass tort litigation and bankruptcy in the wake of tremendous litigation costs and alleged liability.[144] Because of its novelty,[145] there is not a line of cases from which it directly follows; therefore, a presentation of cases that are relevant to various principles underlying the Purdue Pharma bankruptcy is necessary.[146]

### 1. The Johns-Manville Bankruptcy

Much of the literature on the use of Chapter 11 in mass tort litigation covers asbestos litigation that began in the 1970s and 1980s.[147] As more manufacturers entered bankruptcy, plaintiffs began bringing claims against other companies who had "attenuated connection[s]" to products linked to asbestos.[148] One leading manufacturer of asbestos products, the Johns-Manville Corporation (hereinafter, "Johns-Manville"), was involved in the first reported mass tort case where third-party releases were used as part of a corporate debtor's reorganization plan.[149]

---

139. Casey & Macey, *supra* note 2, at 976.

140. *Id.*

141. *See id.* at 999 ("The race to the courthouse is especially problematic in the tort context because some tort harms may manifest more quickly than others.").

*Id.* at 976-77.

143. *See id.* at 1000 ("Without a mechanism like bankruptcy to force claimants into a single tribunal, separate courts will engage in redundant discovery, different plaintiffs will hire multiple attorneys to handle similar claims in various geographic regions, and courts and attorneys will have to educate themselves about different tort regimes.").

144. *See* Harrington v. Purdue Pharma L.P., 603 U.S. 209 (2024).

145. *See* Brian Mann, *A Landmark Appeals Court Ruling Clears Way for Purdue Pharma-Sackler Bankruptcy Deal*, NPR (May 30, 2023, 1:11 PM), https://www.npr.org/2023/05/30/1178850879/sackler-family-purdue-pharma-immunity-lawsuits-oxycontin-opioid (stating that ruling at appellate level was a "landmark" ruling).

146. *See e.g.*, MacArthur Co. v. Johns-Manville Corp., 837 F.2d 89, 89 (2d Cir. 1988) (confirming ch. 11 reorganization for asbestos manufacturer that included non-debtor releases); *In re* Endo International PLC, 2022 WL 16640880, at *1 (Bankr. S.D.N.Y. Nov. 2, 2022) (relating to ch. 11 reorganization of international pharmaceutical company alleged to play a major role in U.S. opioid epidemic); *In re* Odebrecht Engenharia E Construção S.A., 669 B.R. 457 (Bankr. S.D.N.Y. 2025); *In re* Crédito Real, 670 B.R. 150 (Bankr. D. Del. 2025).

147. Casey & Macey, *supra* note 2, at 999.

148. Smith, *supra* note 3, at 1622.

149. Lindsey D. Simon, *Bankruptcy Grifters*, 131 YALE L.J. 1154, 1172 (2022).

Johns-Manville used other novel bankruptcy tools in addition to third-party releases.[150] Following confirmation of the reorganization plan, other asbestos manufacturers facing high litigation costs sought relief by filing bankruptcy, using the Johns-Manville plan as a blueprint for their companies, including the use of third-party releases.[151] While the Johns-Manville plan "'pave[d] the way'"[152] for more widespread uses of third-party releases, the use of the releases in the Johns-Manville bankruptcy centered mainly on Johns-Manville's liability insurers.[153]

While Johns-Manville differs from *Purdue Pharma*, where the Sacklers sought third-party releases as the private owners of Purdue, the trajectory of asbestos litigation following the Johns-Manville bankruptcy sheds light on legislative implications of the use of bankruptcy reorganization by companies facing mass tort liability.[154] Section 524(g) of the Bankruptcy Code allows a bankruptcy court to "issue an injunction" that shields specific third parties from current and future asbestos-related claims.[155] Since the enactment of Section 524(g), "virtually all" asbestos bankruptcies have contained third-party releases, prohibiting claims not just against insurers, but non-debtor parent and affiliate companies, directors, and officers.[156] Section 524(g)'s application has since expanded to releases that are ostensibly outside the scope of statutory language, including attempts to extinguish all "Third Party Claims."[157]

**2. The Endo International Bankruptcy**

In August 2022, Irish pharmaceutical manufacturer Endo International (hereinafter, "Endo") filed for bankruptcy in the Southern District of New York amidst growing lawsuits and debt due to its alleged role in the U.S. opioid epidemic.[158] Similar to Purdue, Endo sought bankruptcy as an enticing option following a guilty plea for criminal misbranding, but differed from Purdue by

150. *See id.* (stating that Johns-Manville reorganization plan created litigation trusts to fund different types of claims, including asbestos-related claims).

151. *Id.* at 1173 (citing Lloyd Dixon et al., *Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts*, RAND INST. FOR CIV. JUST. (2010), https://www.rand.org/content/dam/rand/pubs/technical_reports/2010/RAND_TR872.pdf).

152. Joshua M. Silverstein, *Overlooking Tort Claimants' Best Interests: Non-Debtor Releases in Asbestos Bankruptcies*, 78 UMKC L. REV. 1, 20 (2009) (quoting Ralph Brubaker, *Bankruptcy Inunctions and Complex Litigation: A Critical Reappraisal of Non-Debtor Releases in Chapter 11 Reorganization*, 1997 UNIV. ILL. L. REV. 959, 962 (1997)).

153. *Id.* (citing Kane v. Johns-Manville Corp., 843 F.2d 636, 649 (2d Cir. 1988)).

154. *See id.* at 55 (describing Congress's motivations for and goals of § 524(g)).

155. Id. at 57 (citing 11 U.S.C. § 524(g)(3)–(5)).

156. Id. at 66–67.

157. *See id*. at 67 (quoting Third Amended Plan of Reorganization of A.P.I. Inc. (Nov. 21, 2005) as Modified at Confirmation at 30–31, *In re* A.P.I. Inc., No. 05-30073 (Bankr. D. Minn. Dec. 6, 2006)) (defining term "third party claims" as one including "every claim 'based upon, relating to, arising out of, or in any way connected with, asbestos claims against the debtor.").

158. Dietrich Knauth, *Drugmaker Endo Reaches $465 Mln Bankruptcy Settlement with US*, REUTERS (Feb. 29, 2024, 1:48 PM), https://www.reuters.com/business/healthcare-pharmaceuticals/drugmaker-endo-reaches-465-mln-bankruptcy-settlement-with-us-government-2024-02-.

withdrawing its misbranded product from the market in 2017.[159]

As an international corporation incorporated in Ireland, Endo and its subsidiaries additionally faced litigation and held assets in Ireland before filing for bankruptcy in the U.S. [160] Because Ireland is not party to the Model Law,[161] nor has an analogue to Chapter 15 of the U.S. Bankruptcy Code, Endo's bankruptcy proceedings in Ireland required an alternative avenue for enforcement of the U.S. bankruptcy plan in Ireland.[162] Endo proposed a plan where, following the confirmation of a reorganization plan in the U.S., the parent company, Endo Parent, would pursue a scheme under Part 9 of the Companies Act 2014 of Ireland (hereinafter, "Irish Companies Act").[163] Under the Irish Companies Act, if enough creditors approved the plan, it would be confirmed by the High Court of Ireland.[164]

Unlike in the U.S., where bankrupt multi-entity enterprises jointly propose plans of reorganization, Irish law requires that one entity act as the "proponent" of the scheme.[165] This single-entity scheme includes provisions for settling claims of creditors across all group entities through third-party releases, making the scheme binding on all creditors involved.[166] While a scheme under the Irish Companies Act may reach the same result as the Model Law, the extra steps required in this case demonstrate the inefficiency that is compounded when two countries have contrasting approaches to administering bankruptcy proceedings.[167]

### 3. The Crédito Real and Odebrecht Bankruptcies

Following a period of uncertainty, two post-*Purdue Pharma* decisions have affirmed the availability of nonconsensual third-party releases through enforcement of foreign bankruptcy proceedings under Chapter 15 of the Bankruptcy Code.[168]

---

159. Press Release, U.S. Dep't of Just. Off. of Pub. Aff., Opioid Manufacturer Endo Health Solutions Inc. Agrees to Global Resolution of Criminal and Civil Investigations into Sales and Marketing of Branded Opioid Drug (Feb. 29, 2024), https://www.justice.gov/opa/pr/opioid-manufacturer-endo-health-solutions-inc-agrees-global-resolution-criminal-and-civil.

160. Debtors' Motion for an Order Authorizing Endo International PLC to Enter into the Deed of Indemnity and Contribution at 9, *In re* Endo International plc, et al., 666 B.R. 221 (2024), (No. 22-22549) [hereinafter Endo Debtors' Motion].

161. *See Status: UNCITRAL Model Law on Cross-Border Insolvency (1997),* U.N. COMM'N ON INT'L TRADE LAW https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status (last visited Feb. 7, 2026).

162. *See* Endo Debtors' Motion, *supra* note 161, at 2 ("Relevant to this Motion, the Debtors have substantial operations and creditors in Ireland. Accordingly, the Debtors similarly wish to ensure that the terms of the Proposed Plan are enforceable in Ireland and against its Irish creditors over whom this Court may not have personal jurisdiction.").

163. *Id.*

164. *Id.* at 3.

165. *Id.* at 3–4.

166. *Id.* at 4.

167. *See* Westbrook, *supra* note 10, at 2286 ("To the extent that a debtor's affairs are governed by a single legal regime, predictability, and therefore efficiency, will be enhanced.").

168. *See In re* Odebrecht Engenharia E Construção S.A., 669 B.R. 457 (Bankr. S.D.N.Y. 2025); *In re* Crédito Real, 670 B.R. 150 (Bankr. D. Del. 2025).

*Crédito Real* concerned the bankruptcy of a Mexican non-bank lender and included a prepackaged proceeding (hereinafter, the "Concurso Plan").[169] The Concurso Plan contained nonconsensual third-party releases, to which the United States International Development Finance Corporation (hereinafter, the "DFC") objected, arguing that the releases were manifestly contrary to the public policy of the United States.[170] Specifically, the DFC argued that two Chapter 15 catchall provisions—Sections 1527 and 1507—are analogous to Section 1123(b)(6), which was found to not allow nonconsensual third-party releases in *Purdue Pharma*.[171]

Rejecting the DFC's argument, the Delaware bankruptcy court held that the Chapter 15 sections emphasize the principle of comity; therefore, relief granted by foreign courts, to be recognized by a U.S. court, "does not have to be identical to relief that might be available in a U.S. proceeding."[172] Furthermore, the court held that the inclusion of the release was not manifestly contrary to the public policy of the United States, relying on the allowance of such releases under Section 524(g) in the context of asbestos cases.[173] The court succinctly concluded:

> [I]f permitting third-party releases is a policy decision that Congress can and has made, it cannot also be true that enforcing such releases where principles of cooperation and comity so require in chapter 15 would be 'manifestly contrary to the public policy of the United States.' The simple fact that a U.S. court could not grant such releases in a typical chapter 11 plan does not make them manifestly contrary to U.S. public policy so as to require this Court to prohibit enforcement of the Release in this chapter 15 case.[174]

In another recent Chapter 15 case, Odebrecht—a Brazilian international construction company—turned to bankruptcy amidst financial pressure following the COVID-19 pandemic.[175] Despite all parties agreeing during the Chapter 15 recognition hearing that the plan did not contain a nonconsensual third-party release, the U.S. Trustee objected, asserting an impermissible release.[176] The Southern District of New York bankruptcy court in *Odebrecht* stated that whether there was a third-party release in this case was immaterial in light of *Purdue Pharma*, because the *Purdue Pharma* decision only held that chapter 11 precludes nonconsensual third-party releases.[177] *Purdue Pharma* "did not say anything"

169. James J. Mazza, Jr., & Justin M. Winerman, Nonconsensual Third-Party Releases Are Alive and Well in Chapter 15 Despite Purdue, SKADDEN (July 9, 2025), https://www.skadden.com/-/media/files/publications/2025/07/nonconsensual_thirdparty_releases_are_alive_and_well_in_chapter_15_despite_purdue.pdf?rev=31854a61fbef4000b41b9222dc81fdc2.

170. *Crédito Real*, 670 B.R. 150 at 155.

171. *Id.* at 159.

172. *Id*. at 162–63.

173. *Id.* at 173.

174. *Id.* at 174.

175. Mazza & Winerman, *supra* note 170, at 6.

176. *Id.*

177. *In re* Odebrecht Engenharia E Construção S.A., 669 B.R. 457, 476 (Bankr. S.D.N.Y. 2025).

about enforcement of foreign proceedings under Chapter 15.[178] Despite the scarcity of the post-*Purdue Pharma* Chapter 15 cases, these decisions illustrate the possibility of "strategic filings" of non-U.S. proceedings with Chapter 15 enforcement of nonconsensual third-party releases that are no longer proper under a Chapter 11 plan.[179] However, it remains unclear how mass tort liability may intersect with these decisions, as the releases in *Crédito Real* and *Odebrecht* did not necessarily concern the same level of mass tort liability as seen in the *Purdue Pharma*.[180]

## IV. PURDUE PHARMA SUPREME COURT DECISION AND THE THIRD-PARTY RELEASE

In *Harrington v. Purdue Pharma, L.P.*, the Supreme Court rejected Purdue Pharma's reorganization plan, holding that the plan's inclusion of third-party releases for the Sackler family was not expressly authorized by the Bankruptcy Code.[181] Applying the principle of *ejusdem generis*,[182] the majority reasoned that while the Bankruptcy Code gives some latitude to courts, "it cannot be read . . . to endow a bankruptcy court with the 'radically different' power to discharge the debts of a nondebtor without the consent of affected claimants."[183]

The dissenting opinion had more emotional undertones, focusing not just on the legal ramifications of the decision, but on what the decision meant for the victims of Purdue's misconduct.[184] To bolster the argument in favor of third-party releases in the mass tort context, Justice Kavanaugh relied on previous uses of the "well-established tool in mass-tort bankruptcies"[185] outside of asbestos cases, which are covered by a specific provision in the Bankruptcy Code that allows nonconsensual third-party releases in designated instances.[186]

---

178. *Id.*

179. Mazza & Winerman, *supra* note 170, at 7.

180. *Id*. at 5–7.

181. Harrington v. Purdue Pharma, 603 U.S. 204, 227 (2024) (reasoning that a non-debtor release is not authorized by 11 U.S.C. § 1123(b)(6), which states that a reorganization plan may "include any other appropriate provision not inconsistent with the applicable provisions of this title.").

182. *See id.* at 217 ("When faced with a catchall phrase . . . courts do not necessarily afford it the broadest possible construction it can bear. Instead, we generally appreciate that the catchall must be interpreted in light of its surrounding context and read to 'embrace only objects similar in nature' to the specific examples preceding it." (quoting Epic Systems Corp. v. Lewis, 584 U.S. 497, 512 (2018))).

183. *Id*. at 218 (quoting Epic Systems Corp. v. Lewis, 584 U.S. 497, 513 (2018)).

184. *See id.* at 278 (Kavanaugh, J., dissenting) ("Opioid victims and other future victims of mass torts will suffer greatly in the wake of today's unfortunate and destabilizing decision.").

185. *Id*. at 236.

186. *See* 11 U.S.C. § 524(g)(4)(A)(ii) ("Notwithstanding the provisions of section 524(e), such an injunction may bar any action directed against a third party who is identifiable from the terms of such injunction (by name or as part of an identifiable group) and is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor . . . ").

### *A. The Purdue Reorganization Plan*

The Purdue Reorganization Plan (hereinafter "Plan"), was the product of years of "arduous" negotiations among many interested parties.[187] Pertinent terms of the Plan included Purdue's reorganization as a "public benefit" company,[188] individuals victims receiving between $3,500 and $48,000 in damages, and an equitable distribution of the bankruptcy estate's assets to creditors.[189] Notably, the Plan included the Sackler family making a payment of $5.5–6 billion into the bankruptcy estate.[190] However, this contribution was grossly modest, compared to the amount of money "milked" out of the company by the Sackler family.[191]

At issue in *Harrington v. Purdue Pharma L.P.*, was the inclusion of third-party releases for the Sackler family themselves.[192] Generally, in Chapter 11 cases, the confirmation of a plan releases the debtor from certain claims or obligations that arose prior to the confirmation date.[193] Here, the Sacklers themselves had not filed for bankruptcy, but still sought a release from claims against them.[194] This release would include ongoing litigation against members of the Sackler family, and future litigation as well.[195] For the Sacklers, the releases were vital to their contribution to the bankruptcy estate, because by the time Purdue filed for bankruptcy in 2019, Purdue faced nearly 3,000 lawsuits, with the Sacklers individually named in 628 of these cases.[196]

#### 1. The History and Structure of Purdue Pharma

In 1952, brothers Mortimer, Raymond, and Arthur Sackler bought the small pharmaceutical company Purdue Frederick and developed the company over the following decades into the corporation known today as Purdue Pharma.[197] Arthur Sackler, the eldest brother, emerged as a leader in the advertising industry, and

187. *Plan of Reorganization of Purdue Pharma L.P. Receives Bankruptcy Court Approval*, PURDUE PHARMA: BLOG, (Sept. 1, 2021), https://www.purduepharma.com/news/2021/09/01/plan-of-reorganization-of-purdue-pharma-l-p-receives-bankruptcy-court-approval/.

188. *Purdue Pharma*, 603 U.S. at 212 (quoting 633 B.R. 53, 74 (Bankr. Ct. SDNY 2021)).

189. *Id.*

190. *See* Brief for Mortimer-Side Initial Covered Sackler Respondents at 11, Harrington v. Purdue Pharma L.P., 603 U.S. 204 (2024) (No. 23-124).

191. *Purdue Pharma*, 603 U.S. at 210 (citing *In re* Purdue Pharma L.P., 635 B.R. 26, 57 (Bankr. S.D.N.Y. 2021)).

192. *Id.* at 209.

193. *Id.* at 214–215 (quoting U.S.C. § 1141(d)(1)(A)).

194. *Id.*

195. *See id.* ("They hope to win a judicial order releasing pending claims against them brought by opioid victims. They seek an injunction 'permanently and forever' foreclosing similar suits in the future.").

196. Jan Hoffman, *Purdue Pharma Is Dissolved and Sacklers Pay $4.5 Billion to Settle Opioid Claims*, N.Y. TIMES, (Sept. 17, 2021), https://www.nytimes.com/2021/09/01/health/purdue-sacklers-opioids-settlement.html.

197. Patrick Radden Keefe, *The Family That Built an Empire of Pain*, NEW YORKER (Oct. 23, 2017), https://www.newyorker.com/magazine/2017/10/30/the-family-that-built-an-empire-of-pain?_sp=fa39dc70-5bde-4886-a382-7c0a6cb1d846.1730165371381.

despite controlling one-third of Purdue Pharma, took a more passive role as his brothers acted as co-CEOs.[198] Arthur Sackler died in 1987, and his descendants sold their share of the company thereafter.[199] Throughout Purdue Pharma's history, the Sacklers ensured that numerous seats on the Board of Directors (hereinafter, the "Board") remained within the family.[200] However, as the company prepared to file for bankruptcy in 2019, Sackler family members began to resign from the Board.[201] This effort to distance themselves from Purdue Pharma reflects a broader strategy by the Sackler family to obscure their involvement in the production and marketing of OxyContin, Purdue's golden goose.[202] At the same time, they continued to associate their name with universities and museums, ensuring it remained visible in more prestigious contexts.[203]

**2. "Milking" Purdue Pharma Assets**

From 2008–2018, the Sacklers took annual distributions of Purdue assets, funneling these funds into offshore accounts.[204] During this period, the Sacklers withdrew approximately $10.7 billion from Purdue. [205] Because of the terms of the Plan, where the Sacklers agreed to contribute between $5–6 billion, critics have emphasized the staggeringly low amount compared to the funds taken.[206] This practice of "milking," mentioned in at least one 2014 email from Jonathan Sackler,[207] depleted Purdue's assets by 75% and the company's "solvency

198. *Id.*

199. Geoff Muvlihill, *The Legal Odyssey for OxyContin Maker Purdue Pharma and its Owners is Complex. Here's What to Know*, ASSOCIATED PRESS (Jun. 27, 2024), https://apnews.com/article/opioid-crisis-purdue-pharma-oxycontin-sackler-d468e436c6a9a129c5498f90e4526004.

200. Keefe, *supra* note 198.

201. Muvlihill, *supra* note 200.

202. *See* Geoff Muvlihill, *Who are the Sacklers, the Family Behind Maker of OxyContin?,* ASSOCIATED PRESS (Sep. 19, 2019), https://apnews.com/article/museums-lawsuits-us-news-business-opioids-f69d14706030450da26dd6b0f5466eb8 (showing that the Sackler family resigned from the board following the buildup of litigation in order to distance themselves from the company's operations).

203. *Id.*

204. Press Release, Off. of the Conn. Att'y Gen., Att'y Gen. Tong Argues Sackler Family "Milked" Purdue in Calculated Strategy to Use Co. Bankr. as "Haven" for Wrongdoing (Dec. 7, 2021), https://portal.ct.gov/ag/press-releases/2021-press-releases/ag-tong-argues-sackler-family-milked-purdue-to-use-company-bankruptcy-as-haven-for-wrongdoing.

205. *See* Colin Dwyer, *Sacklers Withdrew Nearly $11 Billion From Purdue as Opioid Crisis Mounted*, NPR (Dec. 17, 2019, 11:43 AM), https://www.npr.org/2019/12/17/788783876/sacklers-withdrew-nearly-11-billion-from-purdue-as-opioid-crisis-mounted (discussing an audit commissioned by Purdue that revealed withdrawal of roughly $10.7 billion from company).

206. *Id.*

207. *See* Joanna Walters, *Meet the Sacklers: the Family Feuding over Blame for the Opioid Crisis*, THE GUARDIAN (Feb. 13, 2018), https://www.theguardian.com/us-news/2018/feb/13/meet-the-sacklers-the-family-feuding-over-blame-for-the-opioid-crisis (Jonathan Sackler, now deceased, was the second eldest son of Raymond Sackler, one of the three original Sackler brothers who founded Purdue Pharma).

cushion" by 82%.[208] By milking Purdue's assets, the Sacklers departed from the industry norm of reinvesting profits back into the company, and instead enriched themselves during a period where opioid related lawsuits steadily rose.[209]

The family-owned corporate structure of Purdue Pharma allowed the company to more easily depart from industry norms.[210] Unlike public corporations, the Sackler family privately owned Purdue Pharma, and therefore, the company existed in a "negative feedback loop" whereby the "most unethical" executives were rewarded for their conduct.[211] For the Sacklers, OxyContin was incredibly profitable, and as the family vehemently maintained, they were not to blame for the opioid crisis.[212] These factors contributed to the belief that "milking" Purdue in the face of mounting litigation would provide leverage in a looming bankruptcy.[213] In bankruptcy, the Sackler family believed they could use these assets in negotiations of a reorganization plan that might shield them from personal liability from opioid victims' rights to sue the Sacklers for their opioid-related injuries.[214] Outside of bankruptcy, the right to sue on these "fraudulent conveyances"[215] belongs to creditors.[216] However, after filing for bankruptcy, Purdue Pharma, as debtor-in-possession, would have the ability to settle the "milking" claims against the Sacklers without necessitating a third-party release.[217]

### *B. The Transnational Implications of the Sackler Release*

While the Supreme Court's decision in *Purdue Pharma* undoubtedly has tremendous implications for bankruptcies in the U.S.,[218] the international

---

208. *In re* Purdue Pharma, 635 B.R. 26, 57 (Bankr. S.D.N.Y. 2021).

209. *See id.* ("Richard Sackler later acknowledged in an email in 2014 that, "in the years when the business was producing massive amounts of cash, the shareholders departed from the practice of our industry peers and took the money out of the business."); *see also* Hoffman, *supra* note 197 (providing a figure for number of lawsuits naming Sacklers individually as defendants).

210. Jacob Hedgpeth, *The Bankruptcy of Purdue Pharma in the Wake of Big Tobacco*, 94 UNIV. COLO. L. REV. F. 33, 51 (2023).

211. *Id.* at 52.

212. *See* Keefe, *supra* note 198.

213. *See generally* Jonathan Lipson, *The Rule of the Deal: Bankruptcy Bargains and Other Misnomers*, 97 AM. BANKR. L.J. 41 (2023) (arguing that the stripping of assets by the Sackler family before bankruptcy were used as a bargaining chip during bankruptcy negotiations).

214. *See* Hedgpeth, *supra* note 211, at 53 ("Long before settlement negotiations, the Sacklers were already using their executive power to pay themselves outsized profits from the company's previous revenues. And when the company was pushed into bankruptcy, the Sacklers had already taken as much out of the company as was legally possible. For these reasons, the Sacklers could not be forced into a settlement . . . .").

215. *See* 11 U.S.C. § 548 (clarifying that the right to sue on fraudulent transfers normally belongs to creditors).

216. *See* R. Stephen McNeill, *Harrington v. Purdue Pharma: An Opening Salvo on Third-Party Releases*, 40 REV. BANKING & FIN. SERVICES 121, 122 (Dec. 2024) (describing how certain claims could be "channeled to a settlement fund.").

217. *Id.*

218. Jonathan C. Lipson & Pamela Foohey, *[Purdue Pharma Bankruptcy Series] The End(s) of Bankruptcy Exceptionalism: The Future of Mass Tort Reorganization After Purdue Pharma*, HARV. L. SCH.: BANKR. ROUNDTABLE (July 17, 2024),

implications are more difficult to conceptualize.[219] Part IV.B will use Purdue Pharma's international counterpart, Mundipharma, to illustrate the importance of studying the effects of *Purdue Pharma*.[220]

### 1. Mundipharma

Mundipharma's international presence illustrates the effects of the decision in *Purdue Pharma*.[221] Mundipharma is an international pharmaceutical company comprised of a network of international entities owned by the Sacklers, operating throughout Africa, Asia, North America, Europe, Latin America and the Middle East.[222] Unlike other multinational corporations that are made up of regional subsidiaries under one holding company, Mundipharma is comprised of 170 independent associated companies with no discernible holding company at the top of the enterprise.[223] The Sacklers agreed to use proceeds from the sale of Mundipharma, valued at approximately $1.5 billion, as part of their contribution to the Purdue bankruptcy estate.[224]

In 2007, Purdue Pharma and three of its executives pled guilty to criminal misbranding of narcotic OxyContin.[225] Purdue Pharma agreed to pay $600 million in fines, and anti-Purdue advocates believed the end of the corporate giant's harmful advertising and marketing tactics was near.[226] However, Mundipharma's establishment created a new corporate entity to engage in the same practices—declared illegal in the U.S.—to be used abroad in countries with less restrictive drug laws.[227]

---

https://bankruptcyroundtable.law.harvard.edu/2024/07/17/the-ends-of-bankruptcy-exceptionalism-the-future-of-mass-tort-reorganization-after-purdue-pharma/.

219. Michelle McGreal et al., *Purdue Pharma Bankruptcy Ruling Sidesteps Chapter 15 Implications*, BLOOMBERG L. (July 10, 2024, 10:05 AM), https://news.bloomberglaw.com/us-law-week/purdue-pharma-bankruptcy-ruling-sidesteps-chapter-15-implications.

220. Harriet Ryan et al., *OxyContin goes global – "We're only just getting started,"* L.A. TIMES (Dec. 18, 2016), https://www.latimes.com/projects/la-me-oxycontin-part3/.

221. *Id.*

222. *Id.*

223. Malia Politzer & Simon Bowers, *Revealed: How the Sackler Family's Opioid Empire Continues to Make Hundreds of Millions of Dollars in Profits Around the World*, FIN. UNCOVERED (Sept. 17, 2024), https://www.financeuncovered.org/stories/mundipharma-profits-worldwide-financial-analysis-sacklers.

224. Kane Wu & Roxanne Liu, *Drugmaker Mundipharma restarts China unit sale in over $1 bln deal - sources*, REUTERS (Jan. 31, 2024, 5:25 ET), https://www.reuters.com/markets/deals/drugmaker-mundipharma-restarts-china-unit-sale-over-1-bln-deal-sources-2024-01-31/.

225. Barry Meier, *Narcotic Maker Guilty of Deceit Over Marketing*, N.Y. TIMES (May 11, 2007), https://www.nytimes.com/2007/05/11/business/11drug.html.

226. *See* John L. Brownlee, U.S. Att'y., W. Dist. of Va., *Statement on the Guilty Plea of the Purdue Frederick Company and Its Executives for Illegally Misbranding OxyContin* (May 10, 2007) (transcript available at http://psych-history.weill.cornell.edu/pdf/2007_Case_Settlement_Docs.pdf) ("The conviction of Purdue and its executives will end the misbranding and fraudulent marketing of OxyContin, deter other companies from committing like crimes, and provide desperately needed resources . . . .").

227. Ryan et al., *supra* note 221.

One prominent example of the detrimental effects of Mundipharma's practices abroad occurred in Italy in 2019.[228] In the "first known case outside" the U.S. involving allegations of criminal conduct by Mundipharma, Dr. Guido Fanelli, the chief of anesthesiology and pain therapy at Maggiore Hospital in Parma, received payments from an alliance of pharmaceutical managers to help counter Italian government warnings that "opioid consumption was spiking and that physicians should be cautioned."[229] Following almost an identical playbook to Purdue Pharma in the U.S., Dr. Fanelli attempted to create a "business of pain," focusing on prescribing opioids to treat chronic pain, while ignoring any potential for abuse of the drugs or their addictive properties.[230] In a hypothetical scenario where the Supreme Court affirmed the Sackler release, one result would be the sale of Mundipharma.[231] Instead, the Supreme Court's decision has now created a situation where the future of Mundipharma remains unclear, giving Mundipharma more time to continue its practices abroad.[232]

**2. Mundipharma and International Opioid Use**

As of the most recent U.N. World Drug Report, approximately 60 million people globally used opioids in 2022.[233] While this does not mean that 60 million people used opioids manufactured by Mundipharma, this high level of usage represents a global increase in opioid use over time.[234] The same study noted a decrease in consumption during the period in the U.S.,[235] which coincides with a concerted effort to address the opioid crisis allegedly created by pharmaceutical giants, particularly Purdue Pharma.[236]

Despite the risks associated with opioid use, the Sackler family has long asserted that OxyContin "unexpectedly became part of the opioid crisis" since it first entered the market in 1996.[237] While maintaining the family's innocence,

228. Claire Galofaro & Frances D'Emilio, *Purdue Pharma's 'Pain League' allegedly pushed opioids in Italy*, TIMES ISR. (May 29, 2019), https://www.timesofisrael.com/purdue-pharmas-pain-league-allegedly-pushed-opioids-in-italy/.

229. *Id.*

230. *Id.*

231. Wu & Liu, *supra* note 225.

232. Ryan et al., *supra* note 221.

233. U.N. OFF. ON DRUGS AND CRIME, 2024 WORLD DRUG REPORT, SPECIAL POINTS OF INTEREST 23, https://www.unodc.org/documents/data-and analysis/WDR_2024/WDR_2024_SPI.pdf.

234. *See* Chengsheng Ju et al., *Global, regional, and national trends in opioid analgesic consumption from 2015 to 2019: a longitudinal study*, 7 LANCET PUB. HEALTH 335, 335 (2022), https://www.thelancet.com/action/showPdf?pii=S2468-2667%2822%2900013-5 (discussing trends in opioid consumption in 66 countries or regions).

235. *Id.* at 339.

236. Off. of Assistant Sec'y for Plan. and Evaluation, *Opioid Abuse in the U.S. and HHS Actions to Address Opioid-Drug Related Overdoses and Death*, U.S. DEP'T. OF HEALTH AND HUM. SERVS. (Mar. 25, 2015), https://aspe.hhs.gov/reports/opioid-abuse-us-hhs-actions-address-opioid-drug-related-overdoses-deaths-0.

237. *See* Politzer & Bowers, *supra* note 224 (quoting the Sackler family statement that OxyContin "unexpectedly became part of the opioid crisis").

Mundipharma's profits totaled $531 million between 2020–2022.[238] The most recent data available indicates that as of 2016, the largest markets for OxyContin sold by Mundipharma were Canada, China, Japan, and the United Kingdom.[239] Mundipharma's rising profits stand in stark contrast to Purdue Pharma's standing in the U.S., where the company opted to declare bankruptcy in 2019 to halt the thousands of proceedings against the company and the Sackler family.[240]

## V. A HYPOTHETICAL MUNDIPHARMA BANKRUPTCY AND TRANSNATIONAL LEGAL FRAMEWORK

To illustrate my argument articulated in Part IV.B.1, I propose a hypothetical scenario, where Sackler-owned Mundipharma files for bankruptcy to illustrate the potentially problematic use of bankruptcy for mass tort litigation following the U.S. Supreme Court's decision in *Harrington v. Purdue Pharma L.P.* (hereinafter "*Purdue Pharma*").[241] Purdue Pharma is not an international enterprise, but the existence of Mundipharma, which follows almost an identical model to that of Purdue Pharma prior to its 2007 guilty plea for criminal misbranding,[242] lends itself to the hypothetical I propose, because it is an international enterprise.[243]

A hypothetical Mundipharma bankruptcy also illustrates the complexity that financially distressed companies now face following the *Purdue Pharma* decision.[244] While the U.S. tends to be the favored forum for mass tort litigation,[245] the Court's decision in *Purdue Pharma* may result in transnational bankruptcies involving mass tort liability being initially adjudicated elsewhere.[246] In the past, third-party releases were viewed as necessary to reorganize U.S. businesses because plaintiffs' lawyers would sue not only the corporate entity that may be the principal tortfeasor, but also its directors, officers, and affiliates.[247] Therefore, in

238. *See id.* ("Among the findings, the analysis showed that Mundipharma made $531 million in profits from just nine of its 170-plus companies between 2020 and 2022. Profits for the entire Mundipharma empire, including companies sitting in secretive tax havens, are almost certainly much higher.").

239. *See id.* (listing France, Austria, Germany, and Italy as four largest markets).

240. Hoffman, *supra* note 197.

241. Harrington v. Purdue Pharma L.P., 603 U.S. 204 (2024).

242. *See* John L. Brownlee, *supra* note 227.

243. Ryan et al., *supra* note 221.

244. Anthony Casey et al., *[Purdue Pharma Bankruptcy Series] What Happens After the Supreme Court's Debacle in Purdue Pharma?*, HARV. L. SCH. BANKRUPTCY ROUNDTABLE (July 18, 2024), https://bankruptcyroundtable.law.harvard.edu/2024/07/18/what-happens-after-the-supreme-courts-debacle-in-purdue-pharma/.

245. *See generally* Richard J. Peltz-Steele, *Wrongs, Rights, and Remedies: A Yankee Romp in Recent European Tort Law*, 26, IND. INT'L & COMP. L. REV. 102 (2016) (comparing U.S. tort law from approaches in various European jurisdictions).

246. Mark Craggs & Sue Ann Gan, *Singapore – The New Jurisdiction of Choice for Cross-Border Restructuring?*, NORTON ROSE FULBRIGHT (July 2017), https://www.nortonrosefulbright.com/en-zw/knowledge/publications/217d13aa/singapore---the-new-jurisdiction-of-choice-for-cross-border-restructuring.

247. *See In re* Dow Corning Corp., 280 F.3d 648,656–57 (6th Cir. 2002), *abrogated by*, Purdue Pharma, 603 U.S. 204 (2024).

order to confirm a plan of reorganization, each class of claims had to be resolved, necessitating the releases for the nondebtor third parties in the name of efficiency.[248] This may differ greatly from other jurisdictions, where tort systems are very different, contributing to even more complex cases involving international mass tort questions and claims.[249] Despite the existence of Chapter 15 as an alternative avenue for third-party releases to be approved,[250] the Court's disapproval of the practice in *Purdue Pharma* may provide insight into future disparate treatment of third-party releases for purely financial bankruptcies versus those involving mass torts, such as in *Purdue Pharma*.

### *A. A Hypothetical Mundipharma Bankruptcy*

Mundipharma's operations span twenty-nine countries,[251] and its products are distributed across six continents.[252] Because of Mundipharma's international reach, a hypothetical bankruptcy would involve many State and private actors, necessitating cooperation from countries that may or may not have adopted some form of the UNCITRAL Model Law (hereinafter "Model Law").[253] Additionally, a hypothetical Mundipharma bankruptcy would plausibly involve tort claims because of the pharmaceutical industry that the company operates in and because of the marketing tactics used by Mundipharma.[254]

#### 1. Potential International Bankruptcy Law Issues

Based on Mundipharma's wide reach in where product sells and how it is marketed,[255] a Mundipharma bankruptcy would involve claims from individuals in numerous countries across multiple continents.[256] Because Mundipharma is headquartered in the United Kingdom (hereinafter the "U.K."), the first issue to consider is what U.K. bankruptcy law specifies concerning domestic bankruptcies of corporate entities.[257] As Mundipharma's "center of main interests" (hereinafter

---

248. Janger, *infra* note 322.

249. *See generally* Roger P. Alford, *Human Rights After Kiobel: Choice of Law and the Rise of Transnational Tort Litigation*, 63 EMORY L.J. 1089 (2014) (demonstrating how different substantive and conflicts rules complicate international mass tort cases).

250. *See* discussion *supra* Section III.B.3.

251. *See Our Offices*, MUNDIPHARMA, https://www.mundipharma.com/ouroffices (last visited, Dec. 14, 2024) (providing comprehensive list of twenty-nine Mundipharma office locations).

252. *At a Glance*, MUNDIPHARMA, https://www.mundipharma.com/sites/mundi-pharma/files/2024-09/mundipharma-at-a-glance.pdf (last visited, Dec. 14, 2024).

253. *See* Frederick Tung, *Is International Bankruptcy Possible?*, 23 MICH. J. INT'L L. 32, 32 (2001) ("The failure of a multinational firm therefore raises difficult questions of conflict and cooperation among national bankruptcy laws.").

254. *See Therapeutical Areas*, MUNDIPHARMA, https://mundipharma.com/therapeutic-areas (last visited, Dec. 14, 2024) (listing the various medicines and remedies Mundipharma offers which could all be liable to tort claims); Ryan et al., *supra* note 221.

255. *Id.*

256. *Our Offices*, *supra* note 252.

257. *See* Susan Kelly et al., *A Practical Guide to UK Insolvency Proceedings*, SQUIRE PATTON BOGGS 1,1 (last visited, Dec. 18, 2024),

"COMI"),[258] a restructuring plan in the U.K would be what foreign bankruptcy courts that have adopted some version of the Model Law would decide to approve or reject as a foreign main proceeding.[259]

As noted above, because of Mundipharma's transnational presence, there will be many foreign bankruptcy courts that must decide whether to approve or reject a U.K restructuring plan.[260] At present, sixty countries—"in a total of sixty-three jurisdictions"—have passed legislation "based on or influenced by the Model Law."[261] Of the twenty-nine countries where Mundipharma operates, only twelve have adopted some form of the Model Law, leaving seventeen countries to rely on individualized domestic rules where recognition may be sought.[262] While the European Union (hereinafter, the "EU") requires automatic recognition of proceedings of Member States, Brexit had a monumental effect on cross-border insolvencies between the U.K. and EU Member States.[263]

The process of a hypothetical Mundipharma bankruptcy would be complicated because of the scattered assets of the company across jurisdictions.[264] Additionally, the complex web that defines Mundipharma's corporate structure indicates that among Mundipharma's most profitable subsidiaries, seven countries are represented as states of incorporation.[265] On a global scale, this might mean multiple domestic bankruptcy proceedings that must be recognized in other jurisdictions as foreign proceedings designed to grant relief to potential victims of Mundipharma's products and marketing. This approach more closely resembles the theory of cooperative territorialism, whereby each individual country has

---

https://www.squirepattonboggs.com/~/media/files/insights/publications/2011/04/a-practical-guide-to-uk-insolvency-proceedings/files/eur6182-girr--squire-sanders/fileattachment/eur6182-girr--squire-sanders.pdf (describing administration approach to bankruptcy as "the most analogous to a Chapter 11 proceeding in the U.S.").

258. Bortner, *supra* note 106.

259. *See* UNCITRAL Model Law, *supra* note 13 at art. 17 (enumerating requirements for when foreign proceedings shall be recognized).

260. *Our Offices*, *supra* note 252.

261. *Status: UNCITRAL Model Law on Cross-Border Insolvency (1997)*, U.N. COMM'N ON INT'L TRADE L. (last visited, Dec. 18, 2024), https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status.

262. *See Our Offices*, *supra* note 252; *Id.* (explaining that the twelve countries that have some form of the Model Law include Australia, Brazil, Canada, Japan, Mexico, United Arab Emirates, New Zealand, the Philippines, Saudi Arabia, Singapore, South Africa, and the United Kingdom. The seventeen countries that have not adopted the Model Law include Austria, Belgium, China, Denmark, Finland, France, Germany, Ireland, Italy, South Korea, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and Taiwan.).

263. *Recognition of Restructuring and Insolvency Proceedings*, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP & AFFILIATES (Mar. 2, 2021), https://www.skadden.com/insights/publications/2021/02/insights-special-edition-brexit/recognition-of-restructuring.

264. *See* Politzer & Bowers, *supra* note 224 (providing Mundipharma financial data including dividends to different network companies, sales figures of network companies, and network companies' profits).

265. *See id.* (demonstrating that Mundipharma network companies are incorporated in Italy, France, Spain, U.K, Germany, Netherlands, and Australia).

jurisdiction over the assets of the company that are located within a country's borders.[266] In either instance, a hypothetical bankruptcy of Mundipharma represents the complicated procedural and statutory nature of transnational bankruptcy.

**2. Potential Mass Tort Bankruptcy Issues**

While current data is unavailable regarding OxyContin sales, the most recent figures suggest that outside of the U.S., Mundipharma is still actively marketing and profiting off the drug.[267] Based on this activity, a hypothetical bankruptcy would likely involve tort claims mirroring those from the Purdue Pharma bankruptcy in the U.S., but on a much larger scale.[268] In *Purdue Pharma*, there were thousands of claims from individuals, U.S. state governments, cities, Native American tribes, and other more traditional creditors, all of whom were negatively impacted by Purdue's role in the opioid crisis.[269] Hypothetically, Mundipharma—and the Sacklers—could face claims from any individual located within any country where its products are sold, the governments of those countries, and smaller regions within such countries as well.[270] Not only would this be financially detrimental to Mundipharma but would leave any named Sackler defendants involved in international litigation for the foreseeable future.[271]

In a case with such wide scope, if members of the Sackler family were individually named in these lawsuits against Mundipharma, the aggregate of such tort claims could be equivalent to hundreds of trillions of dollars.[272] Therefore, any named Sackler defendants would likely seek a third-party release as part of the U.K. restructuring plan, as was done by the Sackler family in *Purdue Pharma*.[273] As articulated above, I argue that while individual jurisdictions may allow for

266. *See* LoPucki, *supra* note 91, at 701 ("In each case, each country's bankruptcy court would decide whether to participate in a transnational effort at reorganization or liquidation or to conduct a local reorganization or liquidation according to local law.").

267. *See* Politzer & Bowers, *supra* note 224 ("The document shows that Purdue received a total of $36 million for the licensing of OxyContin sales around the world in 2016, implying international sales of the controversial drug outside American of *$355 million*, according to Finance Uncovered's analysis.") (emphasis added).

268. Ryan et al., *supra* note 221.

269. Jan Hoffman & Mary Williams Walsh, *Purdue Pharma, Maker of OxyContin, Files for Bankruptcy*, N.Y. TIMES (Sept. 15, 2019), https://www.nytimes.com/2019/09/15/health/purdue-pharma-bankruptcy-opioids-settlement.html.

270. *At a Glance*, *supra* note 253.

271. *See* David Ovalle, *Sacklers Lay Out Strategy for Defending Opioid-Related Lawsuits*, WASH. POST (Oct. 14, 2024), https://www.washingtonpost.com/health/2024/10/14/sackler-family-opioids-legal-strategy-lawsuits/ (describing Sackler family's intention to defend lawsuits and strategies family intends to use to do this).

272. *See* Gregory Germain, *Professor Gregory Germain Writes: What's Next for the Sackler Family and for Creditors in Other Cases After Supreme Court Eliminates Third Party Releases in Bankruptcy Cases?*, SYRACUSE UNIV. COLLEGE OF L. (June 27, 2024) ("Purdue's bankruptcy plan sought to release the non-debtor Sackler family from $40 trillion (yes trillion) in tort claims by Purdue Pharma's Creditors.").

273. Harrington v. Purdue Pharma L.P., 603 U.S. 204, 211–12.

third-party releases in some cases, a third-party release for the Sacklers in a hypothetical Mundipharma bankruptcy would not be approved for two reasons. First, unlike in purely financial bankruptcies, mass tort bankruptcies invoke feelings and values that transcend purely quantitative metrics about the creditors and debtors involved, and the facts of the case.[274] Second, because of the broad and ambiguous language of the public policy exception contained within the Model Law,[275] courts are afforded tremendous latitude to shield rejection of a foreign mass tort bankruptcy decision in statutory language.

### *B. The Role of Values*

Rising synthetic opioid manufacturing and use presents a global challenge.[276] However, great variation exists between countries in the ways these drugs are used,[277] marketed,[278] and governed.[279] Evidence from the U.S. suggests that the opioid epidemic is not only devastating to individuals touched by it but has the ability to ravage local and domestic economies.[280] The economic burden on individual countries due to opioid abuse includes loss of tax revenue, required contributions to opioid-related healthcare costs, and other expenditures made to the criminal justice system, human services, and education for those affected by the crisis.[281] For any government, money spent in one area means less toward other initiatives,[282] which necessarily leads to resentment toward individuals or institutions creating these increased expenditures.[283] One area of agreement

274. Lipson & Foohey, *supra* note 95.

275. *See* UNCITRAL Model Law, *supra* note 13 at art. 6 ("Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of this State.").

276. *Opioids: A New Drug Threat for Europe*, EUR. COUNCIL EUR. UNION (July 11, 2024), https://www.consilium.europa.eu/en/policies/opioids-drugs-heroin/.

277. Ju et al., *supra* note 235, at 337–38.

278. Ryan et al., *supra* note 221.

279. *See* Georgia C. Richards et al., *Global, Regional, and National Consumption of Controlled Opioids: A Cross-Sectional Study of 214 Countries and Non-Metropolitan Territories*, 16 BRIT. J. PAIN 34, 35 (2022) ("Since 1961, most opioids have been internationally controlled under the United Nations (U.N.) Single Convention on Narcotic Drugs, amended by the 1972 Protocol. Countries and territories that sign the treaty commit to implementing the drug control measures while ensuring access for medical and scientific purposes. The International Narcotics Control Broad (INCB), an independent body of the UN, is responsible for monitoring implementation and compliance with international drug control treaties, which requires governments to report annual statistics on narcotic consumption relating to controlled drugs."); *see also* U.N. Single Convention on Narcotic Drugs, Mar. 30, 1961, 520 U.N.T.S. 151 (listing States Parties to Convention and States Parties' specific reservations and declarations).

280. Press Release, Congressman Don Beyer, JEC Analysis Finds Opioid Epidemic Cost U.S. Nearly $1.5 Trillion in 2020 (Sept. 28, 2022), https://beyer.house.gov/news/documentsingle.aspx?DocumentID=5684.

281. *Opioid Data: Financial Impact*, VA. DEP'T HEALTH (last visited, Dec. 21, 2024), https://costofaddictionvirginia.com/.

282. Patrick Carroll, *Why Government Spending is Bad for the Economy*, FOUND. ECON. FREEDOM (June 30, 2023), https://fee.org/articles/why-government-spending-is-bad-for-the-economy/.

283. *See* Edward Helmore, *'Purdue and the Sacklers Must Be Shut Down Completely':*

between different countries may be holding accountable individuals and institutions that have led to the decreased economic productivity due to public health crises.[284]

In contrast, there are individuals that firmly believe that opioids are effective, not unusually addictive, and designed with safeguards in place to protect against abuse and addiction.[285] However, the credibility of these views may be questioned because of the way the organizations promoting them are funded.[286] Regardless, different countries have faced opioid abuse and addiction in varying degrees, leading to different economic consequences in different areas.[287] Similarly, feelings toward opioids and other drugs may be reflected in a country's legal framework concerning the promotion of such drugs.[288] Arguably, concern of future opioid crises will be most important in countries with emerging markets,[289] because these are countries where large pharmaceutical companies like Mundipharma target as new profit centers.[290]

Throughout the world, there is great divergence in values between countries.[291] This division is most stark for values relating to tolerance and

---

*Critics Slam Opioids Settlement*, THE GUARDIAN (Sept. 12, 2019), https://www.theguardian.com/us-news/2019/sep/12/opioids-settlement-purdue-sackler-states ([CT Attorney General] "Tong accused the Sacklers, who are valued at around $13bn, and Purdue of failing 'to take an opportunity to make this right and to begin to meet their obligation to fund vital investments in addiction science, treatment, and prevention, because they started this fire, and they poured gasoline on it.").

284. *Id.*

285. Madlen Davies et al., *In the US, Opioid-Maker Purdue is Bankrupt. Its Global Counterparts Make Millions*, THE EXAMINATION (Sept. 17, 2024, 6:55 a.m. EST), https://www.theexamination.org/articles/in-the-us-opioid-maker-purdue-is-bankrupt-its-global-counterparts-make-millions.

286. *See id.* (discussing a Mundipharma-funded patient support and advocacy grouped called German Pain League, which stated that opioids are well tolerated and not necessarily causally connection to addiction and overdose).

287. Richards et al., *supra* note 280, at 38.

288. *See, e.g.*, Grant Castle et al., *EU Pharma Legislation Review Series: Advertising Updates Reflect Evolution Rather Than Revolution*, COVINGTON (May 3, 2023), https://www.insideeulifesciences.com/2023/05/03/eu-pharma-legislation-review-series-advertising-updates-reflect-evolution-rather-than-revolution (stating that current EU law prohibits advertising prescription-only medicine to the general public); *Advertisements and Promotions of Therapeutic Products*, HEALTH SCIS. AUTH. (last visited, Dec. 21, 2024), https://www.hsa.gov.sg/therapeutic-products/advertisements (outlining pharmaceutical advertising law in Singapore); Hye-Jin Paek et al., *Pharmaceutical Advertising in Korea, Japan, Hong Kong, Australia and the US: Current Conditions and Future Directions*, 3 HEALTH COMMC'N RSCH. 1 (2011) (providing overview of pharmaceutical advertising in a survey of countries).

289. *See* Maya Tannoury & Zouhair Attieh, *The Influence of Emerging Markets on the Pharmaceutical Industry*, 86 CURRENT THERAPEUTIC RSCH. 19, 19 (2017) (citing Jonathan Wheatley, *Q&A: What is an Emerging Market*, FIN. TIMES (Aug. 3, 2015), https://www.ft.com/content/8a393522-39bf-11e5-bbd1-b37bc06f590c) ("Today, the *Financial Times* defines emerging market as a developing country in which investment is estimated to lead to high income but with great risk.").

290. *Id.*

291. Joshua Conrad Jackson & Danila Medvedev, *Worldwide Divergence of Values*,

openness due to increased differences "between high-income Western countries and the rest of the world."[292] The growing divide between Western countries and others provides insight into a hypothetical Mundipharma bankruptcy and how judicial bodies may view third-party releases for individual members of the Sackler family.

At their peak, the Sacklers symbolized profound Western power and wealth.[293] As the Sackler's role in the opioid epidemic became clearer, the future of Purdue Pharma became relatively unknown.[294] Soon, international institutions joined a movement to remove the Sackler name from institutions that received donations from the family in the past.[295] While these institutions did not explicitly cite negative sentiment toward the Sacklers as the reason for removal, the actions appeared less than coincidental.[296]

As litigation continued in the U.S., Mundipharma filled the void left by Purdue Pharma, continuing to employ illicit marketing tactics abroad.[297] With the creation of each manufacturing plant, international office, and consumer base, Mundipharma proliferated the Western ideals and practices used by the Sacklers in the U.S. in other parts of the world.[298] At the same time, the advent of media and ease of following international current events demonstrates the likelihood that foreign governments are acutely aware of the tremendous negative effects the opioid crisis had in the U.S.[299]

Taken together, these factors indicate that an international court's decision whether to approve or reject a hypothetical Mundipharma restructuring plan would be dependent on the following factors: (1) sentiment toward the Sackler family, (2) divergence between Western values and those of other countries, (3) feelings toward opioid use and addiction; and (4) economic effects of opioid use and addiction weighed against the economic effects of new industry. This leads to the prediction that countries that have faced significant opioid misuse and addiction would likely vote against a third-party Sackler release, as would countries with predominantly Western values. Conversely, countries that would hypothetically approve a third-party Sackler release may more likely than not be countries with emerging or underdeveloped markets that greatly benefit—at least initially—from

---

NATURE COMM'NS (Apr. 9, 2024), https://doi.org/10.1038/s41467-024-46581-5.

292. *Id.*

293. *See* Keefe, *supra* note 198 (describing Sackler family philanthropic endeavors and motivations behind actions).

294. *See id.* (discussing potential impact individual lawsuits against Purdue Pharma would have on company and how this could lead to bankruptcy being filed).

295. *University of Oxford Drops Sackler Name from Buildings*, BBC (May 16, 2023), https://www.bbc.com/news/uk-65613128.

296. *Id.*

297. Ryan et al., *supra* note 221.

298. *Id.*

299. Claire Galofaro & Frances D'Emilio, *AP: Purdue Foreign Arm Caught Up in Opioid Probe in Europe*, ASSOCIATED PRESS (May 29, 2019, 3:58 PM), https://apnews.com/article/lawsuits-ct-state-wire-ma-state-wire-united-states-north-america-d384c975e039474e8b93e11b9ace18e0 (describing letter US Congressmembers sent to WHO to raise awareness about dangers of addiction among other countries).

a new and profitable industry entering its domestic economy.

### *C. Implications for International Bankruptcy Law and Transnational Companies*

The future of international mass tort bankruptcies is inextricably linked to the development of the UNCITRAL Model Law and Guide to Enactment.[300] Furthermore, the future of third-party releases in mass tort bankruptcies is dependent on how countries interpret the public policy exception contained in the Model Law.[301] As more companies turn to bankruptcy in the face of allegations of mass tort violations, it is vital to the international community that the UNCITRAL public policy exception be further defined to avoid instances where one country in an international bankruptcy approves a restructuring plan while another does not. Additionally, as companies continue to expand, even more countries may become part of one international bankruptcy, further compounding the issue.[302] As values diverge globally,[303] it is difficult to predict how a foreign judiciary will vote on a plan, and if, or how, this may affect how companies do business in the future.[304] This complexity indicates that the future of third-party releases in international bankruptcies under the current system may become dependent on the type of bankruptcy at issue.

#### 1. UNCITRAL's Public Policy Exception

The public policy exception contained in the UNCITRAL Model Law is quite broad and allows for a foreign judiciary to deny enforcement of a foreign bankruptcy order if it would be manifestly contrary to the country's public policy.[305] However, the Model Law contains no explicit definition for what this provision means, nor does the accompanying Guide.[306] Instead, the Guide emphasizes the flexibility of the provision, noting the different ways a country's court may interpret the meaning of "public policy."[307] Without an explicit

---

300. *See* UNCITRAL Model Law, *supra* note 13 ("The Model Law is designed to assist States to equip their insolvency laws with a modern legal framework to more effectively address cross-border insolvency proceedings"); *see also* UNCITRAL Guide, *supra* note 15.

301. UNCITRAL Model Law, *supra* note 13 at art. 6.

302. *See* Press Release, Santander Trade Barometer, Int'l Expansion is a Key Growth Driver for Bus., Reveals Trade Barometer (Spring 2024), https://www.santander.com/en/press-room/press-releases/2024/04/international-expansion-is-a-key-growth-driver-for-businesses-reveals-trade-barometer.

303. Jackson & Medvedev, *supra* note 292.

304. *See* Rasmussen, *supra* note 12, at 2260 (discussing multinational firms choosing specific jurisdictions based on a hypothetical bankruptcy for company).

305. UNCITRAL Model Law, *supra* note 13 at art. 6.

306. UNCITRAL Guide, *supra* note 15.

307. *See id.* ("In some States the expression "public policy" may be given a broad meaning in that it might relate in principle to any mandatory rule of national law. In many States, however, the public policy exception is construed as being restricted to fundamental principles of law, in particular constitutional guarantees; in those States, public policy would only be used to refuse the application of foreign law, or the recognition of a foreign judicial decision or arbitral award, when that would contravene those fundamental principles.").

definition, this provision demonstrates the potential for foreign judiciaries to deny enforcement of foreign plans of reorganization by ruling that a plan contains terms that are in contravention to a country's public policy without providing any further explanation.

While case law concerning the application of the public policy exception is sparse, when courts have considered the issue, concealment of assets and allowing assets to be placed beyond the reach of creditors may be one example of something manifestly contrary to U.S.—and presumably other countries'—public policies.[308] Per the Mundipharma example, this notion is illustrative of a potential argument to be made against recognition of a foreign judgment concerning approval of a bankruptcy plan if the Sacklers followed the same practice of "milking" Mundipharma as they did of Purdue Pharma.[309]

One way forward is for more comprehensive guidance for countries enacting the UNCITRAL Model Law on how and when the public policy exception shall apply. Without guardrails, the public policy exception may become the largest obstacle in place for international entities that file for bankruptcy, further complicating an already intricate process.[310]

#### 2. Mass Tort Bankruptcies: An International Framework

In addition to reform targeting the public policy exception, an international working group should be established to craft legislation regarding the applicability and enforceability of third-party releases in international bankruptcies, with a portion dedicated to procedures for cases involving mass tort claims. Legislation may be modeled off the U.S. Bankruptcy Code's Section 524(g), which allows for third-party releases in asbestos litigation,[311] third-party releases may not be allowed at all, or these releases may be employed in specific instances. Certainly, if bankruptcy is going to increasingly be used to rectify mass tort allegations, the practice of using third-party releases must be addressed to aid foreign judiciaries moving forward.

## VI. CONCLUSION

As described above, a hypothetical Mundipharma bankruptcy demonstrates that the interplay of values and the UNCITRAL Model Law's public policy exception may lead to foreign judicial decisions based not on the best outcome for victims and creditors but on feelings toward the parties.[312] In cases of mass tort bankruptcies, there are often not just traditional creditors, but tort victims, adding an extra layer of complexity to denying a restructuring plan that offers some relief

308. *See In re* Millard, 501 B.R. 644, 652 (Bankr. S.D.N.Y. 2013).

309. See discussion *supra* Section IV.A.2.

310. Tung, *supra* note 254, at 98.

311. 11 U.S.C. § 524(g)(2)(B)(i)(I).

312. *See* Brook E. Gotberg, *The Market for Bankruptcy Courts: Case for Regulation, Not Obliteration*, 49 BYU L. REV. 647, 685 (2024) ("Significant literature has considered evidence that the personnel associated with a particular case can affect the case outcome, independent of jurisdictional differences.").

to these individuals.[313] The bankruptcy model employed by the Sackler family during the ongoing Purdue Pharma bankruptcy that included third-party releases is one that may be replicated despite the U.S. Supreme Court's decision.[314] The Supreme Court's intentional omission of the option for debtors to use Chapter 15—or international equivalents—to employ nonconsensual third-party releases signals that in the absence of legislative authority, these releases are not entirely obsolete.[315]

Nonetheless, the global campaign against opioid misuse and addiction simultaneously shows the potential shortfalls of using bankruptcy in cases of mass tort litigation.[316] More than anything else, the statutory scheme available to international companies, especially the public policy exception contained in the UNCITRAL Model Law,[317] indicates the possibility for different outcomes that help some creditors and victims in one country, leaving those located elsewhere without recourse. Now in its fifth year of litigation, the Purdue Pharma bankruptcy demonstrates the inefficiency that may come with a complex restructuring plan for a company facing mass tort liability.[318]

Mundipharma, as Purdue's international replica, continues to operate throughout the globe, employing the same illegal marketing practices used by Purdue.[319] Should Mundipharma ever file for bankruptcy, this action would trigger an international mechanism whereby creditors and victims would not be dependent on just one court, but on judges and courts with potentially divergent views on the company, industry, and the Sackler family. Without an addendum to the UNCITRAL Model Law that further defines the public policy exception or a provision specifically on the applicability of third-party releases, the future of international mass tort bankruptcy is unclear. Only through comprehensive reform and a unified approach to transnational bankruptcy can fairness prevail, and history be prevented from repeating itself on a global scale.

---

313. *See* Harrington v. Purdue Pharm, L.P., 603 U.S 204, 226 (Kavanaugh, J., dissenting) ("As a result, opioid victims are now deprived of the substantial monetary recovery that they long fought for and finally secured after years of litigation.").

314. *Id.* at 229 (Kavanaugh, J., dissenting) (discussing other cases where similar bankruptcy tools were used).

315. *See id.* at 226–27 (emphasizing the narrow holding); *see also In re* Odebrecht Engenharia E Construção S.A., 669 B.R. 457 (Bankr. S.D.N.Y. 2025); *In re* Crédito Real, 670 B.R. 150 (Bankr. D. Del. 2025).

316. *See* Edward J. Janger, *Aggregation and Abuse: Mass Torts in Bankruptcy*, 91 FORDHAM L. REV. 362, 362 (2022) ("Although these innovations may help parties reach a global settlement, insufficient attention has been paid to when, and even whether, such relief is appropriate, and courts have frequently let crucial process protections give way to pragmatism.").

317. UNCITRAL Model Law, *supra* note 13 at art. 6.

318. *See* Lipson & Foohey, *supra* note 95, at 882 ("Purdue Pharma commenced its chapter 11 case in the Bankruptcy Court for the Southern District of New York in September 15, 2019.").

319. Meier, *supra* note 226.