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Recognition of Nonconsensual Third-Party Releases in Ch. 15 After *Purdue*

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The U.S. Supreme Court's decision in *Harrington v. Purdue Pharma LP*[2] has, in many respects, changed the landscape for nonconsensual third-party releases in chapter 11 cases. What effect, if any, has *Purdue* had on the viability of such releases in chapter 15 cases? As two recent decisions suggest, perhaps not much, and those decisions provide far more flexibility for nonconsensual third-party releases in chapter 15 than the Supreme Court allows in chapter 11.

In *Crédito Real*[3] and *Odebrecht*,[4] the U.S. Bankruptcy Courts for the District of Delaware and the Southern District of New York, respectively, held that bankruptcy courts could enforce nonconsensual third-party releases in chapter 15 proceedings, notwithstanding *Purdue*. In each decision, the courts focused on the express underlying policy objectives of chapter 15 — to facilitate comity and cooperation with foreign courts — and how these goals differ from the goals of chapter 11.

These fundamental differences between chapters 11 and 15 are well-recognized in pre-*Purdue* jurisprudence, which has often led courts to conclude that certain limitations imposed in chapter 11 are not always applicable in chapter 15. The *Crédito Real* and *Odebrecht* decisions suggest that this analysis has remained largely unaffected by *Purdue*, which arguably only imposes an express limitation on a court's power within chapter 11 proceedings — that is, in proceedings where the authority for releases originates in the U.S. Bankruptcy Code.

In re Crédito Real: Recognition of Releases in a Foreign Plan

In *Crédito Real*, Hon. **Thomas M. Horan** recognized a foreign debtor's reorganization plan that contained nonconsensual third-party releases that had been approved by a Mexican court overseeing the debtor's foreign insolvency proceedings. The U.S. International Development Finance Corp. (DFC), an active participant and claimant in the Mexican proceeding, objected to recognition of the plan. The DFC argued that (1) the court should read the "catchall" provisions of §§ 1521(a)(7) and 1507 in the same way that the *Purdue* Court read § 1123(b)(6), and concluded that these are limiting provisions that do not provide authority to grant the releases; and (2) the releases were "manifestly contrary to the public policy" of the U.S. within the meaning of § 1506.[5]

In overruling this objection, the court began by noting the key policy objective of chapter 15: to encourage "cooperation and comity with foreign courts and deference to those courts within the confines established by chapter 15."[6] With that guiding principle in mind, the court turned to a textual analysis of the relevant provisions. Judge Horan declined to apply *Purdue*'s reasoning to the interpretation of §§ 1521(a) and 1507, finding that this was not supported by the plain language of the statutes, the legislative history or any canon of statutory interpretation.

With respect to the plain language, the court determined that §§ 1521(a) and 1507 were more expansive than § 1123(b), which was the statute at issue in *Purdue*. Section 1521(a) permits a court to grant "any appropriate relief" upon recognition, "including" six enumerated examples and a "catchall" for "any relief that may be available to a trustee," subject to certain specific exceptions.[7] Whereas the "catchall" provision of § 1521(a) provides an express list of what it does not permit (by cross references to specific Bankruptcy Code sections), § 1123(b)'s "catchall" directs courts to look to "other" Code provisions.[8] The court explained that "[b]y specifically enumerating relief that the court cannot grant under section 1521, Congress more concretely defined the outer bounds of what the court can grant, thus also more concretely defining what is included in what the court can grant, bearing in mind the guiding principles of comity and cooperation."[9] Section 1507 establishes that a court may provide "additional assistance to a foreign representative" once the court has recognized the proceeding.[10]

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2 603 U.S. 204 (2024).
3 *In re Crédito Real, S.A.B. de C.V., SOFOM, E.N.R.*, No. 25-10208 (TMH), 2025 WL 977967 (Bankr. D. Del. April 1, 2025).
4 *In re Odebrecht Engenharia e Construcao S.A. —Em Recuperacao Jud.*, 669 B.R. 457 (Bankr. S.D.N.Y. 2025).
5 *Crédito Real*, 2025 WL 977967, at *5.
6 *Id.* at *5-6.
7 *Id.* at *10.
8 *Id.*
9 *Id.*
10 *Id.*

The court also noted that the plain language of this provision suggests that this provision is even more expansive, as it implies that a court may grant relief under § 1507 even where it could not under § 1521.[11] Further, as with § 1521, § 1507 differs from § 1123(b) in that it enumerates its boundaries unambiguously.[12]

The court determined that the legislative history further supported this conclusion by highlighting chapter 15's purpose.[13] The court reasoned that "granting bankruptcy courts the authority to enforce nonconsensual third-party releases originating in foreign courts would promote chapter 15's goals of comity and providing assistance to foreign courts during foreign insolvency proceedings."[14] In addition, the court also considered the fact that nonconsensual third-party releases are widely accepted by foreign courts, and that Mexican law allows for such releases.[15]

The court agreed with the DFC that the statutes should be read within the greater context of the Code, pursuant to the canon of *ejusdem generis*, which requires that "the words of a statute must be read in their context and with a view to their place in the overall statutory scheme."[16] However, the court concluded that the DFC's analysis went astray because it "neglect[ed] the major differences between the contexts of chapters 11 and 15. Namely, chapter 15 exists to provide assistance to foreign courts by granting comity to their orders."[17]

Finally, Judge Horan also rejected the argument that granting the releases would be "manifestly contrary to public policy" under § 1506.[18] The court observed that this exception should only be applied very narrowly, and that the threshold requires a question as to the procedural fairness of the foreign proceedings, or that recognition would "impinge severely on a U.S. constitutional or statutory right."[19] The court noted that (1) the DFC did not argue a lack of fairness in the Mexican proceedings; (2) U.S. courts have frequently recognized the fairness of Mexican insolvency proceedings; and (3) the evidence at bar likewise indicated that the Mexican proceedings were fair.[20] The court also considered that the DFC had played an active role in those proceedings.[21]

The court determined that the releases at issue were similar to releases authorized under the Bankruptcy Code for asbestos cases. Because relief would be available in other contexts, the court concluded that it cannot be "manifestly contrary to public policy" and that, in any event, it would not impinge on constitutional or statutory rights.[22] The court specifically remarked that the "[l]ack of specific availability in U.S. courts does not equate to manifest contrariness to U.S. public policy, especially where, as here, the contested relief is available in other contexts and could be made available more broadly by a simple act of Congress."[23]

In re Odebrecht: Imposition of Releases Supplemental to a Foreign Plan

In *Odebrecht*, Hon. **Martin Glenn** considered a proposed recognition order for a plan that was approved in a Brazilian insolvency proceeding. Although the underlying plan and the order from the Brazilian court approving it did not contain nonconsensual third-party releases, the U.S. Trustee objected to the proposed recognition order, arguing that the proposed language created such a release, and that § 1521 did not provide authorization for issuing such an order.[24]

Judge Glenn expressed some skepticism that the language at issue created a nonconsensual third-party release, but explained that even if so, "courts can enforce nonconsensual third-party releases found in foreign plans of reorganization."[25] In so holding, the court largely adopted Judge Horan's reasoning from *Crédito Real* as to the interpretation of §§ 1521 and 1507,[26] although in a decision somewhat divorced from the Delaware case's underlying factual basis.

The court also provided additional reasoning in support of its conclusion, looking first to pre-Bankruptcy Code case law and noting that "[l]ongstanding precedent holds that bankruptcy courts can strip U.S. parties of rights they have under the laws of the United States," and a "battery of similar cases makes it clear that a party can lose rights in an ancillary proceeding [that] it otherwise would have had in a plenary case under the Bankruptcy Code."[27] Under this line of precedent, Judge Glenn concluded that "deference to the foreign court is appropriate [as] long as the foreign proceedings are procedurally fair and ... do not contravene the laws or public policy of the United States" and that "so long as these guidelines are respected ... bankruptcy courts may ... extinguish claims that would be available in plenary actions in the U.S. in the name of comity."[28]

The court then looked to pre-*Purdue* case law in the chapter 15 context, acknowledging that "ancillary cases are fundamentally different, and limitations that exist in plenary cases do not always carry over."[29] The logic of these cases "still holds after *Purdue*: *Purdue* only held that chapter 11 ... does not give courts the power to grant such releases, and did not say anything about limitations on the power of courts to act as ancillaries to foreign proceedings under chapter 15."[30]

Notably, in overruling the U.S. Trustee's objection, Judge Glenn determined that there was no distinction "between enforcing, via order, a foreign plan with a third-party release provision, and issuing an order enforcing a foreign plan, which order contains a third-party release which itself is not in the foreign plan," since either would result in an order that released claims subject to U.S. jurisdiction.[31] Accordingly, the *Odebrecht* ruling stands for the proposition that recognition orders containing nonconsensual third-party releases

11 *Id.* at *11.
12 *Id.* at *12.
13 *Id.*
14 *Id.* at *13.
15 *Id.*
16 *Id.* (quoting *United States v. Miller*, 145 S. Ct. 839 (2025)).
17 *Crédito Real*, 2025 WL 977967, at *13.
18 *Id.* at *14.
19 *Id.* at *14-15.
20 *Id.* at *15.
21 *Id.*
22 *Id.*
23 *Id.*

24 *Odebrecht*, 669 B.R. at 463-64.
25 *Id.* at 473.
26 *Id.*
27 *Id.* at 474-75.
28 *Id.* at 475-76.
29 *Id.* at 476.
30 *Id.*

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could be granted under chapter 15, regardless of the language of the underlying plan, thereby expanding on both the ruling and the premise of *Crédito Real*.

Context for These Cases Within Pre-*Purdue* Jurisprudence

As Judge Glenn noted in *Odebrecht*, pre-*Purdue* case law that considered whether limitations on a court's powers in plenary chapter 11 cases carried over to ancillary chapter 15 cases often arrived at the conclusion that they do not, because of the fundamental differences between these two types of cases. As an example, Judge Glenn looked back to his previous decision in *Metcalfe & Mansfield*, where the court considered jurisdictional limitations on the approval of third-party releases in a chapter 15.

In *Metcalfe*, Judge Glenn held that the only relevant limitation was whether principles of comity would counsel in favor of entering the order.[32] Considering that decision in *Odebrecht*, he reasoned that because *Purdue* only imposed an explicit limitation on chapter 11 powers, and did not speak to the specific powers of an ancillary court, it should not affect the limitations imposed in chapter 15 proceedings.

However, not all pre-*Purdue* decisions considering nonconsensual third-party releases in chapter 15 have approved them. Notably, the Fifth Circuit declined to enforce such releases in *In re Vitro S.A.B. de C.V.*[33] The court determined that § 1521(a) did not provide the authority to approve the releases, adopting a narrower interpretation than employed by the *Crédito Real* or *Odebrecht* courts. However, it left the door open to the possibility that § 1507 could "theoretically provide ... for the relief."[34] The court explicitly noted that § 1507's intent was "to provide relief not otherwise available under the Bankruptcy Code or [U.S.] law."[35]

The *Vitro* court informed its analysis with the principles of comity. It noted that the "closest factual analog" to the case at bar was *Metcalfe* but ultimately found certain key facts to be distinguishable — specifically, that the *Vitro* plan was approved as a result of a vote of mostly insiders holding intercompany debt, whereas in *Metcalfe*, the plan had received the support of a majority of creditors.[36] Because it had concluded that the relief was unavailable under § 1507 under the facts present in that case, the *Vitro* court likewise left open the question as to whether nonconsensual third-party releases were contrary to public policy under § 1506.[37]

While the Fifth Circuit's analysis of the statutory provisions of chapter 15, and in particular § 1521(a), was narrower than that used by other courts, there are nevertheless common analytical themes among *Vitro* and such later cases as *Crédito Real* and *Odebrecht*, particularly as to the consideration of the purpose and policies of chapter 15. The *Crédito Real* court acknowledged as much in citing *Vitro* as supporting the proposition that the lack of available relief in the U.S. or under other chapters of the Bankruptcy Code is not a bar to relief in chapter 15.[38] This commonality is unsurprising, given the explicit emphasis on comity and cooperation throughout the provisions of chapter 15 and chapter 15 jurisprudence.

Conclusion

The *Crédito Real* and *Odebrecht* decisions demonstrate that *Purdue* did not influence the outcome/result of the analysis of nonconsensual third-party releases in the context of chapter 15. The general directive that ancillary courts presiding over chapter 15 proceedings should be somewhat deferential to their foreign counterparts, in the spirit of cooperation and comity that pervades chapter 15, drives these outcomes. However, this remains a developing area of case law.

Notably, the DFC has filed an appeal of the *Crédito Real* decision, pending in the U.S. District Court for the District of Delaware. It seems likely that parties — both debtors and objectors — will continue to test the boundaries of nonconsensual third-party releases in chapter 15 cases, particularly in light of the potentially reduced availability of those releases in chapter 11 cases following *Purdue*. abi

31 *Id.*
32 *In re Metcalfe & Mansfeld Alternative Invs.*, 421 B.R. 685, 695-96 (Bankr. S.D.N.Y. 2010).
33 *In re Vitro S.A.B. de C.V.*, 701 F.3d 1031 (5th Cir. 2012).
34 *Id.* at 1060.
35 *Id.* at 1062.
36 *Id.* at 1067, 1069-70.
37 *Id.* at 1070.
38 *Crédito Real*, 2025 WL 977967, at *16.