

Litigation Update as of November 12, 2024

As we've shared previously, the Supreme Court issued its decision this summer in the Purdue Pharma bankruptcy case, holding that the non-consensual third-party releases provided in the Purdue plan of reorganization were improper. While the BSA case is materially different from the Purdue case, the BSA plan also contains third-party releases the validity of which are being challenged by certain parties in an appeal from confirmation of the BSA plan.

A small number of claimants have appealed confirmation of the BSA plan of reorganization, as have a larger number of insurance companies that issued insurance policies to BSA and various Local Councils. That appeal is currently pending in the Third Circuit Court of Appeals. The Third Circuit heard oral arguments on the appeal on November 6, 2024. While we believe the Third Circuit will issue its decision as quickly as possible, it is hard to predict exactly when that will be. On average, it takes the Third Circuit 4-5 months from the date of oral argument to issue its decision.

While there could be several potential outcomes in the Third Circuit, the more likely ones include:

- The Third Circuit could dismiss the appeal on mootness grounds – meaning it's too late to stop the implementation of the BSA plan. In this circumstance, unless someone appeals further, the Confirmation Order will become final.
- The Third Circuit could consider the merits of the parties' arguments on appeal and conclude that the lower courts correctly confirmed the BSA. In this circumstance, unless someone appeals further, the Confirmation Order will become final.
- The Third Circuit could consider the merits of the parties' arguments on appeal and conclude that the lower courts should not have confirmed the BSA plan. In this circumstance, it is very difficult to predict what will happen next except that BSA will have to return to the Bankruptcy Court to figure out its next steps.

Importantly, while we wait for the Third Circuit's decision, the Trust will continue its work reviewing, determining, and making initial distributions on allowed claims.

As Trustee, Judge Houser also sued approximately 90 insurance companies in July 2023 in Federal District Court in the Northern District of Texas seeking to require those insurance companies to provide billions of dollars of coverage for abuse claims. At the request of the insurers, the Court stayed the lawsuit pending the decision of the Third Circuit in the appeal from confirmation of the BSA plan (discussed briefly above). We hope the stay will be lifted promptly following the Third Circuit's decision, but that will depend on what the Third Circuit decides.