

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

WELLPATH HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-90533 (ARP)

(Joint Administration Requested)

**OBJECTION OF KRISTIN ALLRED, VICTORIA KLEIN AND MIKE DOYLE
TO APPROVAL OF DISCLOSURE STATEMENT FOR THE JOINT
CHAPTER 11 PLAN OF WELLPATH HOLDINGS, INC. AND
CERTAIN OF ITS DEBTOR AFFILIATES
(Relates to the Disclosure Statement filed at ECF No. 566)**

Kristin Allred, Victoria Klein and Mike Doyle (collectively, the “Objectors”), creditors and parties-in-interest in the above-captioned chapter 11 cases, hereby file this objection (the “Objection”) to the approval of the *Disclosure Statement for the Joint Chapter 11 Plan of Wellpath Holdings, Inc. and Certain of its Debtor Affiliates* (the “Disclosure Statement”) [ECF No. 566].

1. The Objectors respectfully submit that the Disclosure Statement should not be approved at this time for at least two separate reasons. *First*, the Debtors’ *Joint Chapter 11 Plan of Reorganization of Wellpath Holdings, Inc. and Certain of its Debtor Affiliates* (the “Plan”) [ECF No. 564] is patently unconfirmable under the Bankruptcy Code as it is currently written because it provides non-consensual releases, exculpations, and injunctions to or in favor of third parties in blatant violation of the Supreme Court’s holding in *Harrington v. Purdue Pharma L.P.*, 603 U.S.

¹ A complete list of the Debtors (as defined below) in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/Wellpath>. The Debtors’ service address for these chapter 11 cases is 3340 Perimeter Hill Drive, Nashville, Tennessee 37211.

204 (2024) that such practice is illegal under the Bankruptcy Code. *Second*, neither the Plan or the Disclosure Statement provides any information concerning the status of certain executory contracts to which the Objectors and the Debtors are parties. Without this basic yet critical information, the Objectors are deprived of the right to have the necessary “adequate information” under the Bankruptcy Code to evaluate the Plan. The Disclosure Statement therefore fails its basic purpose of providing necessary information to the Objectors.

OBJECTION

I. The Debtors Must Remove Third-Party Releases in the Plan that Blatantly Violate *Purdue*

2. The Supreme Court held in *Purdue* that the ability to obtain a discharge through the Bankruptcy Code is, as a statutory textual matter, as a matter of context and as a matter of historical practice, reserved solely for debtors who file for relief under the Bankruptcy Code and subject themselves to the requirements of the bankruptcy process. 603 U.S. at 215-26. The Court conclusively determined that there is no reason to extend a key benefit of bankruptcy, the discharge, to non-debtors to permit them to extinguish their potential liability for third-party claims. *Id.* As a result of *Purdue*, a bankruptcy court no longer has the authority to impose non-consensual third party releases, no matter how critical such involuntary releases may be to the success of the plan.

3. The Objectors agree with the well-reasoned position of the United States Trustee (“UST”) that consistent with *Purdue*, the required consent to third party releases must be knowing, clear, voluntary and unequivocal. The Objectors join in full the thoughtful and comprehensive objection filed by the UST [ECF No. 1271] regarding the Plan’s serious *Purdue* violations. As the UST explained in his Objection, consistent with the Supreme Court’s reading of the Bankruptcy Code in *Purdue*, silence, acquiescence, abstention, failure to vote, or failure to affirmatively opt-

out of the release provisions of a plan when voting to accept or reject does not confer the required consent to a third party release under the Bankruptcy Code.

4. The Objectors submit that the prevailing law in the Fifth Circuit would not have permitted the relevant third-party release provisions of the Plan even before *Purdue*. Now that the Supreme Court has spoken and definitely resolved any disagreements on this point at the national level, there is no excuse for the Debtors to have proposed Plan provisions that do not withstand *Purdue* scrutiny. It is a waste of estate and judicial resources for the Debtors to attempt to circumvent *Purdue* in this manner. The Objectors further agree with the UST that the exculpation provision of the Plan is not permitted under controlling Fifth Circuit law. The Objectors further agree that the proposed injunction in the Plan to enforce the proposed nonconsensual releases (which are themselves illegal under *Purdue*) violates both existing Fifth Circuit law and *Purdue*. Simply put, the Debtors cannot violate *Purdue* so brazenly.

5. This nonconsensual third-party release issue is critical to the Objectors because the Debtors owe the Objectors at least \$18 million under certain executory contracts. The Objectors have a good-faith basis to believe that they have potential meritorious claims in connection with this debt against certain non-debtor third parties that they intend to vigorously investigate and pursue. They cannot be precluded from exercising this right and pursuing rights and remedies by the proposed provisions in the Plan that violate *Purdue*. The Objectors strongly oppose the third-party release provisions in the Plan that are inconsistent with *Purdue* and render the Plan patently or inherently unconfirmable as a matter of law under Section 1129(a)(1) of the Bankruptcy Code. For the avoidance of doubt, the Objectors do not consent to release any of their claims against a third party.

6. It is settled practice in the bankruptcy court that when a proposed plan cannot on its face be confirmed, the court shall not approve the disclosure statement because doing so would be an exercise in futility. Here, the Debtors must be required to work with all the parties in interest to remove all the *Purdue* taints from the Plan. The Plan must be revised in a manner that fully complies with the letter and spirit of *Purdue* and provides for only truly consensual third-party releases. Without these amendments, the Court cannot approve the Disclosure Statement and permit the Debtors to solicit for acceptance of the Plan.

II. The Objectors Must Be Apprised of the Status of Certain Executory Contracts.

7. The Objectors also respectfully submit that the Court should not approve the Disclosure Statement because the Debtors so far have refused to indicate through the Disclosure Statement, the proposed Plan or otherwise the status of certain executory contracts that the Objectors entered with the Debtors before the commencement of these chapter 11 cases. Despite the Objectors' best efforts, the Debtors have so far failed to engage with the Objectors in a good faith conversation concerning what they plan to do with those contracts, including (without limitation) the Equity Purchase Agreement and the Settlement Agreement.

8. The Objectors under the Bankruptcy Code are entitled to have "adequate information" which is defined to mean "information of a kind, and in sufficient details that would enable a hypothetical investor to make an informed judgment about the plan." 11 U.S.C. § 1125(a)(1). Any reasonable investor would want to know the Debtors' intended disposition of these executory contracts.

9. Without this information, the Objectors do not have the necessary information they are entitled to by law to evaluate the Plan to protect their legal and economic interests. *In re J. D.*

Mfg., Inc., No. 07-36751, 2008 Bankr. LEXIS 2719 (Bankr. S.D. Tex. Oct. 2, 2008) (“no information is not adequate information”). The Disclosure Statement is deficient for this reason.

RESERVATION OF RIGHTS

10. The Objectors expressly reserve the right to amend, modify, or supplement the Objection. The Objectors reserve their respective rights to object to any further amendments or modifications proposed to Disclosure Statement, based upon any new information provided by Debtors or any other party or upon any different relief requested by Debtors.

CONCLUSION

11. This Court should not approve the Disclosure Statement and proposed solicitation procedures because they embody a proposed Plan that blatantly violates the Bankruptcy Code under the Supreme Court’s controlling and directly on-point decision in *Purdue*. The Debtors also fail to give the Objectors adequate information concerning the status of certain executory contracts which renders the Disclosure Statement non-approvable.

WHEREFORE, the Objectors respectfully request this Court deny approval of the Disclosure Statement, as written, and its related solicitation materials and grant such other and further relief as it may deem just and proper.

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