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FROM PURDUE PHARMA TO RULE 41: KEY LESSONS IN BANKRUPTCY AND APPELLATE PRACTICE

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Bar against non-consensual third party releases in Purdue Pharma does not preclude bankruptcy courts from issuing temporary injunctions in Subchapter V plan in favor of non-debtor principal.

In *In re Engineering Recruiting Experts, LLC*, No. 3:24-bk-03292-BAJ, 2025 WL 2506031 (Bankr. M.D. Fla. Sept. 2, 2026), a bankruptcy court held that the bar against non-consensual third party releases as part of a Chapter 11 plan in *Harrington v. Purdue Pharma*, L.P., 603 U.S. 204 (2024), did not preclude issuance of a temporary third-party injunction in a Subchapter V plan in favor of the debtor's founder, managing member, sold shareholder and business generator. After distinguishing the Supreme Court's decision in *Purdue Pharma* , and noting its "narrow" holding, the bankruptcy court noted other decisions rejecting the proposition that it precluded issuance of temporary injunctions. The bankruptcy court applied a two-factor test adopted by the Fifth Circuit: when the (i) non-debtor and debtor share an identity of interest that the suit against the non-debtor is essentially a suit against the debtor; and (ii) third-party's suit will impair the debtor's ability to reorganize its financial affairs. Focusing on the facts that the debtor's principal was the debtor's sole business generator and the injunction was temporary (i.e., it would expire after the 5-year plan term concluded), the bankruptcy court found that the two-part test (as well as the standard four-part test for issuance of injunctions) had been met and, therefore, it overruled the U.S. Trustee's objection to confirmation of the debtor's Subchapter V plan.

Absent a Rule 54(b) certification, the Eleventh Circuit lacks subject matter jurisdiction over partial summary judgment order, and Rule 41 dismissal of remaining claims was ineffective to vest jurisdiction because it applies to actions, not claims.

In *CMYK Enterprises, Inc. v. Advanced Print Technologies, LLC, et al.,* No. 24-13776, 2025 WL 2626837 (11th Cir. Sept. 12, 2025), the Eleventh Circuit held that it lacked subject matter jurisdiction over a putative appeal from a district court's partial summary judgment order. The court explained that the parties' agreed motion seeking dismissal of the remaining claims under Federal Rule of Civil Procedure 41 was ineffective because that Rule only applies to entire causes of actions and not individual claims (although there are exceptions to that rule). The Eleventh Circuit further explained that the district court did not certify its partial summary judgment order as a final order under Federal Rule of Civil Procedure 54(b), and noted there was no request for it to do so. Finally, the court set out alternate courses of action that could have been taken to eliminate the remaining claims and ensure appellate jurisdiction in the appellate court, including moving to amend the operative complaint to remove the remaining claims, invoking Rule 54(b) to request a certification before filing their Rule 41 motion, or severing the remaining claims under Rule 21 which would have resulted in those claims proceeding as a separate lawsuit. A litigant who finds itself on the wrong end of a partial summary judgment order entered by a federal district court in the Eleventh Circuit and seeks to appeal should take note of these alternatives offered up by the court.

Eleventh Circuit precedent that 30-day period to appeal a dismissal order with leave to amend commences when plaintiff must file its amended complaint remains good law despite Supreme Court's decision in *Jung v. J. & D. Mining Co.*

In *Burt v. President of University of Florida*, No. 23-12616 (11th Cir. Aug. 20, 2025), the Eleventh Circuit reaffirmed its holding in *Schuurman v. Motor* Vessel Betty KV, 798 F.2d 442, 445 (11th Cir. 1986), that the 30-day period to appeal an order dismissing an action with leave to amend starts the day the plaintiff must file its amended complaint. The Eleventh Circuit reaffirmed the holding in *Schuurman* despite it being in conflict with the Supreme Court's prior decision in *Jung v. J. & D. Mining Co.*, 356 U.S. 335 (1958). There, the Supreme Court held that an order dismissing a complaint, but granting plaintiff leave to file an amended complaint, was not a final judgment for purposes of appeal such that the trial court had to enter a separate judgment. The Eleventh Circuit determined that it was bound by Schuurman under its prior precedent rule. That rule requires subsequent panels of the court to follow precedent of the first panel to address an issue "unless and until the first panel's holding is overruled by the Court sitting en banc or by the Supreme Court." *Smith v. GTE Corp.*, 236 F.3d 1292, 1300 n.8 (11th Cir. 2001). Based on Schuurman, the Eleventh Circuit dismissed the appeal before it because the plaintiff failed to file his notice of appeal of the dismissal order within 30 days of the deadline for him to file an amended complaint (which he had not done). The teaching point is that a litigant in the Eleventh Circuit whose complaint is dismissed with leave to amend who wishes to appeal instead of filing an amended complaint must file its notice of appeal within 30 days of the deadline to amend or the court of appeals cannot hear the appeal.

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