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Hillary Borker  Mar 14 5 min read

The Purdue Pharma Settlement: Should it have been overturned?

On December 16, 2021, Judge Colleen McMahon of the U.S. District Court for the Southern District of New York overturned the Purdue Pharma bankruptcy settlement.[1] Back in September of 2021, Judge Robert Drain of the U.S. Bankruptcy Court approved a settlement plan devised by the Sackler family that aimed to put the Oxycontin legal drama to rest. This settlement required the infamous Sackler Family to turn over 4.5 billion dollars to settle upwards of 2,600 lawsuits[2] filed against them and their company, Purdue Pharma, surrounding legal fallout stemming from their production of Oxycontin and alleged direct hand in the opioid epidemic.[3] Although the amount Purdue was willing to give up in the first bankruptcy settlement seems like a hefty sum, this settlement plan stipulated that the Sacklers would be permanently blocked from any future civil suits pertaining to the opioid epidemic and their connection to it.[4] This small detail of the settlement caused an uproar from those following Purdue's handling of settlement. The stipulation seems incredibly unfair, considering the opioid epidemic has taken at least 891,000 lives since 1999[5] and Oxycontin hit the market in 1996[6]. Judge McMahon attributed her decision primarily to what bankruptcy code allows and does not allow. Specifically, she said, the bankruptcy code does not give a judge the right to grant such releases.[7] However, she admits that while her decision is clear, the language of the code is on uncertain ground, and calls the permissibility of such a grant, "the great unsettled question." [8]

With a base knowledge of the evils committed by the shameless Sacklers, Judge McMahon's decision should be applauded. However, further insight into the details of the overturned settlement, the future plans of the "improved" settlement, and opinions from those most affected by Purdue Pharma, leave one to question whether or not Judge McMahon should have overturned the settlement.

A common thread throughout the entire Sackler/Purdue settlement deal is the urge to get money into communities and families harmed by Oxycontin as quickly as possible. Would the first settlement have achieved this? Opinions are split. In exchange for shielding the Sacklers from any direct civil claims, the family planned to pay 4.5 billion dollars.[9] This total would be paid in multiple sums over an approximately nine-year period. Although the settlement stated that a majority of the pool would go to treatment centers and prevention programs around the country,[10] compensation for individual claims would be miniscule.[11] Purdue had been using a point system to determine the worth of a life, and thus payout from the settlement.[12] Lynn Wencus filed a claim against Purdue Pharma after the 2017 death of her son to opioid addiction that began with Oxycontin.[13] Due to the point system, even though Wencus paid over 100,000 dollars in medical bills for her son's treatment, his death

according to the point chart would only lead to a payment between 20,000-40,000 dollars.[14] The outcome of the first settlement proved to be less than ideal for victim's families, such as Lynn Wencus, so overturning the decision would eradicate the Sackler protection clause and potentially give families like hers the opportunity to sue directly to receive adequate damages. When the bankruptcy settlement was released with the protection clause, many were angered by the decision. Maryland Attorney General Brian E. Frosh cheered Judge McMahon's decision as a restored opportunity to hold the Sackler family fully accountable.[15] William Tong, Attorney General of Connecticut, similarly heralded the decision, calling it a "seismic victory for justice." [16]

However, Judge McMahon's decision worried advocates who have been eager to get funds meant to repair the trail of hurt Oxycontin caused. Many families who dealt with the hurt from opioid-related deaths would rather keep the first plan and accept that 90% of the 4.5 billion in funds would be dispersed to treatment centers and intervention programs in order to mitigate any future harms and spare families from future hurt.[17] Ryan Hampton, who was a victim chair on the Creditor Committee and had two of her sons die from opioid addiction, supported the first settlement because of the proportion of funds going to treatment.[18] Purdue Chairman Steve Miller even stated that Judge McMahon's decision only acts to delay money that would be going to damaged communities.[19] There is no right answer as to whether or not Judge McMahon should have overturned the first settlement. The line between wanting accountability and wanting help is fine. Hopefully the next settlement will bring both.

[1] Jan Hoffman, *Judge Overturns Purdue Pharma's Opioid Settlement*, The N.Y. Times (Dec. 16, 2021), <https://www.nytimes.com/2021/12/16/health/purdue-pharma-opioid-settlement.html>.

[2] Dave Zucker, *Why Did Purdue Pharma File for Bankruptcy in Westchester County*, Westchester Magazine (Sept. 20, 2021), <https://westchestermagazine.com/life-style/business/why-did-purdue-pharma-file-for-bankruptcy-in-westchester-county/>.

[3] Jan Hoffman, *Purdue Pharma is Dissolved and Sacklers Set to Pay \$4.5 Billion to Settle Opioid Claims*, N.Y. Times (Sept. 1, 2021), <https://www.nytimes.com/2021/09/01/health/purdue-sacklers-opioids-settlement.html>.

[4] Jan Hoffman, *Purdue Pharma is Dissolved and Sacklers Set to Pay \$4.5 Billion to Settle Opioid Claims*, N.Y. Times (Sept. 1, 2021), <https://www.nytimes.com/2021/09/01/health/purdue-sacklers-opioids-settlement.html>.

[5] <https://www.washingtonpost.com/opinions/2022/01/12/do-no-block-settlement-with-purdue-pharma-sacklers/>

[6] Art Van Zee, M.D., *The Promotion and Marketing of OxyContin: Commercial Triumph, Public Health Tragedy*, Am J Public Health, Feb. 2009

[7] Jan Hoffman, *Judge Overturns Purdue Pharma's Opioid Settlement*, The N.Y. Times (Dec. 16, 2021), <https://www.nytimes.com/2021/12/16/health/purdue-pharma-opioid-settlement.html>.

[8] Jan Hoffman, *Judge Overturns Purdue Pharma's Opioid Settlement*, The N.Y. Times (Dec. 16, 2021), <https://www.nytimes.com/2021/12/16/health/purdue-pharma-opioid-settlement.html>.

- [9] Jan Hoffman, *Purdue Pharma is Dissolved and Sacklers Set to Pay \$4.5 Billion to Settle Opioid Claims*, N.Y. Times (Sept. 1, 2021), <https://www.nytimes.com/2021/09/01/health/purdue-sacklers-opioids-settlement.html>.
- [10] Jan Hoffman, *Purdue Pharma is Dissolved and Sacklers Set to Pay \$4.5 Billion to Settle Opioid Claims*, N.Y. Times (Sept. 1, 2021), <https://www.nytimes.com/2021/09/01/health/purdue-sacklers-opioids-settlement.html>.
- [11] Martha Bebinger, *The Purdue Pharma Deal Would Deliver Billions, But Individual Payouts Will Be Small*, National Public Radio (Sept. 28, 2021, 5:00 AM), <https://www.npr.org/2021/09/28/1040447650/payouts-purdue-pharma-settlement-sackler>.
- [12] Martha Bebinger, *The Purdue Pharma Deal Would Deliver Billions, But Individual Payouts Will Be Small*, National Public Radio (Sept. 28, 2021, 5:00 AM), <https://www.npr.org/2021/09/28/1040447650/payouts-purdue-pharma-settlement-sackler>. (A point system was used in order to allot payments for claims against Purdue Pharma and harms stemming from Oxycontin. Points were assigned based on if the victim had gotten addicted, had been hospitalized, and/or had died from taking Oxycontin.)
- [13] Martha Bebinger, *The Purdue Pharma Deal Would Deliver Billions, But Individual Payouts Will Be Small*, National Public Radio (Sept. 28, 2021, 5:00 AM), <https://www.npr.org/2021/09/28/1040447650/payouts-purdue-pharma-settlement-sackler>.
- [14] Martha Bebinger, *The Purdue Pharma Deal Would Deliver Billions, But Individual Payouts Will Be Small*, National Public Radio (Sept. 28, 2021, 5:00 AM), <https://www.npr.org/2021/09/28/1040447650/payouts-purdue-pharma-settlement-sackler>.
- [15] Jan Hoffman, *Judge Overturns Purdue Pharma's Opioid Settlement*, The N.Y. Times (Dec. 16, 2021), <https://www.nytimes.com/2021/12/16/health/purdue-pharma-opioid-settlement.html>
- [16] Jan Hoffman, *Judge Overturns Purdue Pharma's Opioid Settlement*, The N.Y. Times (Dec. 16, 2021), <https://www.nytimes.com/2021/12/16/health/purdue-pharma-opioid-settlement.html>
- [17] Cheryl Juare, *I lost two sons to opioids. But I don't want the Purdue Pharma settlement blocked.*, Washington Post (Jan. 12, 2022), <https://www.washingtonpost.com/opinions/2022/01/12/do-no-block-settlement-with-purdue-pharma-sacklers/>.
- [18] Cheryl Juare, *I lost two sons to opioids. But I don't want the Purdue Pharma settlement blocked.*, Washington Post (Jan. 12, 2022), <https://www.washingtonpost.com/opinions/2022/01/12/do-no-block-settlement-with-purdue-pharma-sacklers/>. (The Creditor Committee helped to shape the original Purdue Pharma settlement.)
- [19] Carmen McCrackin, *\$4.5 Billion Purdue Pharmaceutical Bankruptcy Settlement Overturned*, Addiction Center (Dec. 20, 2021) <https://www.addictioncenter.com/news/2021/12/purdue-bankruptcy-settlement-overturned/>.