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Gary Brackett

Eric Salama

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**PURDUE PHARMA L.P.: A BANKRUPTCY OF EPIDEMIC
PROPORTION**



BY: GARY BRACKETT & ERIC SALAMA

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Introduction

On September 15, 2019, Purdue Pharma L.P., along with its subsidiaries, declared Chapter 11 bankruptcy upon filing a voluntary petition with the United States Bankruptcy Court for the Southern District of New York.¹ This filing was spurred by the company's desire to consolidate and organize the tremendous number of lawsuits filed against it for its role in the opioid epidemic.² This paper briefly touches on the company's actions leading to its filing before focusing on the company's post-petition actions.

¹ Chapter 11 Voluntary Petition for Non-Individuals Filing for Bankruptcy, In re Purdue Pharma, Case No. 19-23549 (Bankr. S.D.N.Y. Sept. 15, 2019) <https://perma.cc/WK7A-JWLSJ>.

² Jan Hoffman & Mary Williams Walsh, *Purdue Pharma, Maker of OxyContin, Files for Bankruptcy*, N.Y. TIMES, Sept. 15, 2019, <https://perma.cc/6LTH-YENX>.

Pre-Petition History

Company History

Purdue Pharma L.P. arose from the Purdue Frederick Company, founded in 1892 by medical doctors John Purdue Gray and George Frederick Bingham.³ The Purdue Frederick Company began by selling earwax removers and laxatives, until it was sold to brothers and medical doctors Raymond Sackler and Mortimer Sackler in 1952.⁴ A third brother, medical doctor Arthur Sackler, held a one-third equity option in the company.⁵ Dr. Arthur Sackler was known for his advertising acumen, which at times were blatantly deceptive.⁶ Together, the Sackler brothers amassed a fortune through the production and advertising of pharmaceuticals.⁷

Eventually, the company headquartered in Stamford, Connecticut.⁸ Over the next several decades Purdue Pharma began making opioid pain medication such as hydrocodone, oxycodone, and fentanyl.⁹ In 1991, Purdue Pharma L.P. incorporated and focused its efforts towards the manufacture and marketing of pain management medications.¹⁰

³ Ronald Chow, *Purdue Pharma and OxyContin – A Commercial Success But Public Health Disaster*, HARVARD PUB. HEALTH (2020), <https://perma.cc/CV7A-JUTZ>.

⁴ *Id.*

⁵ Benjamin Sutton, *Elizabeth A. Sackler Supports Nan Goldin in Her Campaign Against OxyContin*, HYPERALLERGIC (Jan. 22, 2018), <https://perma.cc/3GRZ-TGYC>.

⁶ Patrick Radden Keefer, *The Family That Built An Empire of Pain*, THE NEW YORKER (Oct. 23, 2017), <https://perma.cc/UUJ5-3XRK>.

⁷ *Id.*

⁸ *Id.*

⁹ *Chow, supra note 3.*

¹⁰ *Id.*

Purdue's False Claims and Marketing regarding OxyContin

In 1995, Purdue Pharma introduced OxyContin to treat chronic pain.¹¹ OxyContin is a pain medication drug that contains oxycodone as its active ingredient.¹² In its marketing for OxyContin, Purdue Pharma made several false claims relating to its efficacy and addictive nature.

The company marketed OxyContin as a “wonder drug” due to its extended-release formula and non-addictive quality.¹³ The extended-release formulation was helpful as it precluded patients from having to wake up during the night or interrupt their day to take pain medication.¹⁴ Additionally, Purdue claimed OxyContin’s addictive potential was “small” or “less than 1%.”¹⁵

However, OxyContin’s twelve-hour relief claim did not hold true.¹⁶ Given that the medication’s effects was advertised to last twelve hours, patients were only intended to take the medicine twice a day. However, because OxyContin’s effects would often cease before the twelve-hour mark (as evidenced in Purdue’s own clinic trials), many patients being treated with the drug would often ask for medication prior to their next scheduled dose or supplement with other painkillers.¹⁷ Despite the company knowing the twelve-hour claim was false, Purdue Pharma sought FDA approval for OxyContin as a twelve-hour effective analgesic, eventually producing advertisements touting this duration.¹⁸

Purdue also trained its sales staff to represent that OxyContin’s risk of addiction was low, especially compared to other palliative medication.¹⁹ In reality, the risk for addiction among patients with chronic pain was as high as 50%, with many studies reporting abuse in up to 20-40% of

¹¹ *Id.*

¹² Similarities and Differences Between Oxycodone and Oxycontin, AMERICAN ADDICTION CENTERS, (last updated Jan. 11, 2021), <https://perma.cc/L4YG-W64C>.

¹³ Chow, *supra* note 3.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Chow, *supra* note 3.

¹⁹ *Id.*

patients.²⁰ These claims bolstered OxyContin's sales to generate \$2.8 billion in revenue for Purdue from 1995 and 2001, accounting for 90% of the company's sales at one point.²¹

²⁰ *Id.* See e.g., Chabal et al, *Prescription opiate abuse in chronic pain patients: clinic criteria, incidence, and predictors*, NAT'L LIBR. OF MED. (Jun. 1997) <https://perma.cc/9XMV-K7AD>.

²¹ Barry Meier, *In Guilty Plea, OxyContin Maker to Pay \$600 Million*, N.Y. TIMES (May 10, 2007), <https://perma.cc/AM4E-MRQY>.

The Opioid Crisis

Due to Purdue's (at the time unknown) fraudulent claims abouts OxyContin's risk for abuse, physicians began being prescribing the drug more readily.²² Additionally, patients discovered that the pills could be crushed to bypass the time release nature of OxyContin's casing and achieve a more instant effect, comparable to morphine.²³

With medical doctors (over-) willingness to prescribe the medication coupled with a growing demand for the drug, OxyContin abuse began to rise. The first trends of abuse were noticed regionally, in areas such as Maine, West Virginia, eastern Kentucky, southwestern Virginia, and Alabama.²⁴ In these areas between 1998-2000, non-OxyContin oxycodone was prescribed at 2.5 to 5 times the national average; by 2000, these areas were prescribing OxyContin at 5-6 times the national average.²⁵ Eventually, this trend spread nationally, between 2002 and 2004 lifetime nonmedical use of OxyContin increased from 1.9 million people to 3.1 million people.²⁶ This surge in OxyContin abuse spurred abuse of other opioids including fentanyl, morphine, and oxycodone.²⁷ Opioids became second only to marijuana for illicit drug abuse with overdose deaths climbing dramatically.²⁸ Opioid-related overdoses increased from approximately 17,500 in 2006 to 42,000 in 2016.²⁹

²² [Chow, *supra* note 3.](#)

²³ [Id.](#)

²⁴ Art Van Zee, MD, *The Promotion and Marketing of OxyContin: Commercial Triumph, Public Health Tragedy*, 99(2) AMERICAN J. PUB. HEALTH, 221-227 (Feb. 2009), <https://perma.cc/6FE4-T2WH>.

²⁵ [Id.](#)

²⁶ [Id.](#)

²⁷ [Id.](#)

²⁸ [Id.](#)

²⁹ Qiushi Chen, PhD et al., *Prevention of Prescription Opioid Misuse and Projected Overdose Deaths in the United States*, JAMA NETWORK OPEN (Feb. 1, 2019), <https://perma.cc/3WCV-RKCP>. Estimates about the actual death toll vary.

Government efforts to combat the opioid crisis began in the early 2000s when agencies noticed the alarming trend of OxyContin abuse. Health agencies began pushing tactics such as better addiction prevention, treatment, and recovery³⁰ while attorneys general pursued legal action.

³⁰ See e.g., *5-Point Strategy To Combat the Opioid Crisis*, U.S. DEPT² OF HEALTH AND HUMAN SERV., <https://perma.cc/ZBF7-XGSN> (last reviewed Jan. 21, 2021).

Events Leading to Bankruptcy

Litigation

In 2007, the attorney general of Connecticut commenced a twenty-six state lawsuit against Purdue on account of the company's fraudulent marketing.³¹ Purdue and three of its executives pleaded guilty to criminal charges of misleading regulators, doctors, and patients about OxyContin's risk of addiction and potential for abuse.³² The Company agreed to end some of its controversial drug marketing and pay \$600 million in fines and other payments, with three of its executives also paying a total of \$34.5 million in fines.³³

In May 2018, six states filed lawsuits against Purdue over misleading marketing tactics of OxyContin which fueled the opioid epidemic.³⁴ In June 2018, the Attorney General for Massachusetts personally named Purdue executives and directors, including members of the Sackler family, for their role in the marketing of OxyContin and its impact on the opioid epidemic.³⁵ Following this, many other states and hundreds of cities have brought suit against the Sacklers.³⁶

Eventually, more than 2,000 lawsuits were joined under the National Prescription Opiate Litigation, a multidistrict litigation proceeding.³⁷ In this litigation several states, cities, Native American tribes, and other parties allege that the manufacturers of prescription opioids (including

³¹ Keefe, *supra* note 6.

³² Meier, *supra* note 20.

³³ *Id.* See also Erk Ofgang, *Purdue Pharma and OxyContin: A Timeline*, CONN. MAG. (Oct. 24, 2019), <https://perma.cc/MDU5-9QN9> (estimating that by 2016 Purdue had earned more than \$36 billion in revenue from OxyContin).

³⁴ John C. Moritz, *6 states sue maker of OxyContin as they battle expenses, human costs of opioid crisis*, USA TODAY (May 15, 2018), <https://perma.cc/S752-5BF8> (Attorneys General representing Nevada, Texas, Florida, North Carolina, North Dakota, and Tennessee filed suit; Florida and North Dakota were not part of the 2007 settlement.).

³⁵ *Attorney General's Office Lawsuit Against Purdue Pharma and its Executives and Directors*, MASS.GOV, <https://perma.cc/S752-5BF8> (last visited Apr. 17, 2021).

³⁶ *Id.*

³⁷ *MDL 2804 Opiate Litigation*, U.S. DIST. CT. N. DIST. OF OHIO, <https://perma.cc/75EE-6EGF> (last visited Apr. 17, 2021).

Purdue) grossly misrepresented the risks of long-term use of those drugs for persons with chronic pain which, in part, contributed to the current opioid epidemic.³⁸

³⁸ [*Id.*](#)

Purdue files Bankruptcy

This massive wave of litigation prompted Purdue to seek relief in Chapter 11. In its Debtor's Information Brief, the Debtors point to the over two thousand lawsuits alleging it deceptively marketed OxyContin as non-addictive which helped create a national opioid addiction crisis.³⁹ Purdue hopes to consolidate these litigants into a single class of creditors, via Chapter 11, to adjudicate their claims and provide finality to its liability.⁴⁰

The Debtors emphasized that the thousands of lawsuits pending against it span dozens of state and federal jurisdictions, were brought by diverse plaintiffs, existed at various procedural stages, and hosted a wide array of claims and legal theories despite common legal and factual defenses.⁴¹ The Debtors illustrated that they had reached a tentative settlement with a critical mass of plaintiffs.⁴² However, in order to lump in the outlying plaintiffs and for the benefit of the estate—and its stakeholders—the debtors believed a bankruptcy was necessary to create a single class of litigants.⁴³

The Debtors contended that absent relief from the bankruptcy court, its estate would be eroded by litigants.⁴⁴ The Debtors claimed they spent approximately \$63 million for legal representation, expert fees, and other expenses related to defending the litigation through the first half of 2019.⁴⁵ The Debtors expected to spend approximately \$121 million by the end of 2019, and a total of \$263 million on legal and related professional costs to litigate these actions to conclusion.⁴⁶

³⁹ *Id.* at 4. Debtors emphasized that they lack significant debt or past due obligations that traditionally spur Chapter 11 Bankruptcy.

⁴⁰ *Id.* at 52.

⁴¹ *Id.* at 36-41. Debtors also highlight that the only case which has rendered a verdict was not held against them. *Id.* at 41-44.

⁴² *Id.* at 44.

⁴³ *Id.* at 44-45

⁴⁴ [*Id.* at 45.](#)

⁴⁵ [*Id.* 45-46.](#)

⁴⁶ [*Id.*](#)

Additionally, the Debtors pointed to the significant disruption the ongoing litigation was causing to the company's human capital.⁴⁷ Purdue Pharma eliminated approximately 67% of its employees since 2017 and the remaining employees' focus was pulled away from their main corporate responsibilities towards preparing for and participating in the ongoing litigation.⁴⁸

Finally, the Debtors contended that this litigation had caused or exacerbated operational challenges for its vendors, suppliers, and other entities necessary to its operations.⁴⁹ Further, the negative public sentiment garnered from the lawsuits discouraged vendors from partnering with the Debtors. Collectively, these challenges affected the Debtors' operations and degrades their ability to conduct business. The Debtors illustrated this degradation by pointing to its declined opioid sales from \$2.2 billion in 2010 to \$975 million by 2018.⁵⁰

⁴⁷ [Id. at 46.](#)

⁴⁸ [Id.](#)

⁴⁹ [Id. at 46-47.](#)

⁵⁰ [Id. at 47.](#)

Applications to Retain Professionals

Purdue Pharma applied for the authority to employ and retain Davis Polk & Wardwell (“Davis Polk”) as attorneys for the Debtors *nunc pro tunc* to the petition date.⁵¹ This means the Debtors were asking the court for the authority to retain Davis Polk’s services moving forward and also asking the court to retroactively approve of the Debtors’ employment of Davis Polk during the time between when the petition was filed and the application. Section 327(a) allows the Debtor in possession of the bankruptcy assets (the “DIP”) to employ attorneys and other professionals with the court’s approval.⁵² Rule 2014(a) requires the DIP to file an application to the court to employ professionals and Rule 2016(b) requires disclosure of the fees promised or paid to the professionals.⁵³

The Debtors sought to employ Davis Polk as lead restructuring counsel because of the firm’s “extensive experience and knowledge in both corporate transactional work and litigation,”⁵⁴ as well as its recent involvement in a wide variety of chapter 11 cases.⁵⁵ The Debtors asserted that Davis Polk was intimately familiar with its business and financial affairs, was well-qualified to represent the Debtors, and that retaining different restructuring counsel would result in undue prejudice and expense to the estate and all parties involved because new counsel would have needed extra time to catch up.⁵⁶ Davis Polk would provide legal services to the Debtors including preparing pleadings for the Debtors, counseling the Debtors in their rights and obligations as DIP, providing

⁵¹ Application of Debtors for Authority to Employ and Retain Davis Polk & Wardwell LLP as Attorneys for the Debtors Nunc Pro Tunc to the Petition Date 1.pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), [hereinafter “Application to Employ Davis Polk”], <https://perma.cc/S5D7-55XN>.

⁵² 11 U.S. Code §327(a).

⁵³ Fed. R. Bankr. P. 2014(a), 2016(b).

⁵⁴ Application to Employ Davis Polk at 3-4.

⁵⁵ See, e.g., *In re Southcross Energy Partners L.P.*, Case No. 19-10702 (MFW) (Bankr. D. Del. April 1, 2019); *In re Windstream Holdings, Inc.*, Case No. 19-22312 (RDD) (Bankr. S.D.N.Y. Feb. 25, 2019); *In re Pernix Sleep, Inc.*, Case No. 19-10323 (CSS) (Bankr. D. Del. Feb. 18, 2019); *In re FullBeauty Brands Holdings Corp.*, Case No. 19-22185 (RDD) (Bankr. S.D.N.Y. Feb. 3, 2019); *In re PG&E Corp.*, Case No. 19-30088 (DM) (Bankr. N.D. Cal. Jan. 29, 2019).

⁵⁶ Application to Employ Davis Polk at 5.

advice and documentation for transactions, taking necessary and appropriate actions to preserve the Debtors estates, taking necessary and appropriate actions in connection with the chapter 11 plan and performing any other legal services necessary in connection with the chapter 11 case.⁵⁷

Davis Polk's rates at the time of the petition were \$1,295 to \$1,645 per hour for partners, \$525 to \$1,075 per hour for associates and \$305 to \$425 per hour for paraprofessionals.⁵⁸ Davis Polk also regularly charged clients for expenses including travel, lodging, photocopying, postage, vendor charges, and delivery service.⁵⁹ In the year before the petition date, Davis Polk received a staggering \$37,352,542.59 for legal work on a variety of matters for the Debtors, including restructuring, litigation and corporate governance.⁶⁰ Davis Polk was not a creditor of the Debtors at the time the petition was filed, had no conflicts of interest, and was otherwise "disinterested" as required by §§327(a) and 328(c).⁶¹ The court granted the Debtor's application to retain Davis Polk as restructuring counsel *nunc pro tunc* pursuant to the terms in the application despite the objection of the U.S. trustee based on the ground that the firm's request to hold an evergreen retainer of \$5,115,859.35 throughout the duration of the case was impermissible.^{62,63}

Between September 15, 2019 and January 31, 2021 Davis Polk submitted 4 interim applications for professional compensation requesting a total of \$105,843,992.55 in compensation

⁵⁷ *Id.* at 6-7.

⁵⁸ Application to Employ Davis Polk, Exhibit A at 10.

⁵⁹ *Id.*

⁶⁰ *Id.* at 9.

⁶¹ *Id.*; 11 U.S. Code §§327(a) and 328(c).

⁶² Order Granting Debtors' Application for Authority to Employ and Retain Davis Polk & Wardwell LLP as Attorneys for the Debtors Nunc Pro Tunc to the Petition Date .pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), <https://perma.cc/CEL2-J9YK>.

⁶³ Objection of The United States Trustee to Entry of Orders Approving the Retentions of (1) Davis Polk & Wardwell, LLP, (2) Skadden Arps Slate Meagher & Flom, LLP and (3) Wilmer Cutler Pickering Hale and Dore LLP .pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), <https://perma.cc/76E5-UHVV>; *see also* Debtors' Reply to the Objection of United States Trustee to Debtors' Application for an Order Authorizing Employment and Retention of Davis Polk & Wardwell LLP, Skadden, Arps, Slate, Meagher & Flom LLP and Wilmer Cutler Pickering Hale And Dorr LLP As Attorneys For The Debtors Nunc Pro Tunc To The Petition Date .pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), <https://perma.cc/9VZK-G868>.

and reimbursement of \$759,739.83 in expenses.⁶⁴ Davis Polk professionals billed a total of 82,022.02 hours across a variety of practice areas including restructuring, litigation, corporate, intellectual property, executive compensation and benefits, and tax in order to provide “necessary services” to the Debtors.⁶⁵ The court awarded the full compensation and expenses requested in the first three applications and no order had been entered for the fourth at the time of this writing, but past conduct indicates that the fourth application will be granted.⁶⁶ Just like one man’s trash can be another man’s treasure, Purdue’s bankruptcy is Davis Polk’s fortune.

⁶⁴ First Interim Application of Davis Polk & Wardwell LLP for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Counsel to the Debtors and Debtors in Possession for the Period from September 15, 2019 Through January 31, 2020 Cover Sheet.pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), [hereinafter “First Application of Davis Polk for Compensation”], <https://perma.cc/96QQ-ZSYA>; Second Interim Application of Davis Polk & Wardwell LLP for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Counsel to the Debtors and Debtors in Possession for the Period from September 15, 2019 Through January 31, 2020 Cover Sheet.pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), [hereinafter “Second Application of Davis Polk for Compensation”], <https://perma.cc/SGN7-74W8>; Third Interim Application of Davis Polk & Wardwell LLP for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Counsel to the Debtors and Debtors in Possession for the Period From June 1, 2020 through September 30, 2020 Cover Sheet.pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), [hereinafter “Third Application of Davis Polk for Compensation”], <https://perma.cc/96W9-2QG2>; Fourth Interim Application of Davis Polk & Wardwell LLP for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Counsel to the Debtors and Debtors in Possession for the Period from September 15, 2019 Through January 31, 2020 Cover Sheet.pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), [hereinafter “Fourth Application of Davis Polk for Compensation”], <https://perma.cc/YA2S-KR3P>.

⁶⁵ First Application of Davis Polk for Compensation at 5; Second Application of Davis Polk for Compensation at 5; Third Application of Davis Polk for Compensation at 5; Fourth Application of Davis Polk at 5.

⁶⁶ Omnibus Order Granting First Interim Fee Applications of Professionals for Allowance and Payment of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses .pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), [hereinafter “Omnibus Order Granting First Interim Fee Applications”], <https://perma.cc/6MVJ-R7TR>; Omnibus Order Granting Second Interim Fee Applications of Professionals for Allowance and Payment of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses .pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), [hereinafter “Omnibus Order Granting Second Interim Fee Applications”], <https://perma.cc/T6SG-7JZ5>; Omnibus Order Granting Third Interim Fee Applications of Professionals for Allowance and Payment of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses .pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), [hereinafter Omnibus Order Granting Third Interim Fee Applications], <https://perma.cc/AJ9G-2SNN>.

AlixPartners

The Debtors applied to retain AlixPartners, LLP as its primary financial advisors *nunc pro tunc* to the petition date.⁶⁷ Section 327(a) also allows the DIP to employ non legal professionals with the court’s approval.⁶⁸ As with attorneys, rule 2014(a) requires the DIP to file an application to the court to employ professionals and rule 2016(b) requires disclosure of the fees promised or paid to the professionals.⁶⁹ The Debtors sought to employ AlixPartners to provide necessary financial advisory services in connection with the debtors chapter 11 cases because of its “wealth of experience”, reputation, and previous work in large complex chapter 11 cases.⁷⁰ Similar to the Debtors’ arguments for employing Davis Polk, the Debtors argued that AlixPartners should be retained because acquired significant knowledge of the Debtors, their financial affairs, debt structure, operations and other matters through their pre-petition work, which in turn would preserve the resources of the bankruptcy estate since AlixPartners was already up to speed.⁷¹ The Debtors asserted that AlixPartners’s financial services were necessary, would not be duplicated by any other professionals retained and that it was disinterested.⁷² AlixPartners hourly rates at the time of the application ranged from \$285 per hour for paraprofessionals to \$1,165 per hour for a managing director.⁷³ The Debtors also provided that AlixPartners would be reimbursed for reasonable and necessary expenses including transportation costs, lodgings, and meals.⁷⁴ As part of their

⁶⁷ Debtors’ Application for an Order Authorizing the Debtors to Retain and Employ AlixPartners, LLP as Financial Advisor *Nunc Pro Tunc* to the Petition Date .pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), [hereinafter “Application to Employ AlixPartners”], <https://perma.cc/SV6R-EF45>.

⁶⁸ 11 U.S. Code §327(a).

⁶⁹ Fed. R. Bankr. P. 2014(a), 2016(b).

⁷⁰ Application to Employ AlixPartners at 4. Alix Partners recent chapter 11 experience includes advising on the following cases: *In re Fullbeauty Brands Holdings Corp.*, Case No. 19-22185 (RDD) (Bankr. S.D.N.Y. March 8, 2019); *In re Ditech Holding Corporation*, Case No. 19-10412 (JLG) (Bankr. S.D.N.Y. March 25, 2019); *In re Pacific Drilling S.A.*, Case No. 17-13193 (MEW) (Bankr. S.D.N.Y. Dec. 14, 2017); *In re CGG Holdings (U.S.) Inc.*, Case No. 17-11637 (MG) (Bankr. S.D.N.Y. July 14, 2017).

⁷¹ Application to Employ AlixPartners at 7.

⁷² *Id.*

⁷³ *Id.* at 8.

⁷⁴ *Id.*

compensation, the Debtors also agreed to indemnify AlixPartners and its affiliates and employees from any claims, liabilities, losses etc. that arise from the engagement of AlixPartners in the chapter 11 case, only excluding losses caused by gross negligence, bad faith, or willful conduct.⁷⁵

The application was granted but the court modified the indemnity provisions to require that AlixPartners's requests for payment of indemnification must be made to the bankruptcy court and would be subject to the court's review.⁷⁶ AlixPartners was granted \$20,399,334.38 in fees and expenses between September 2019 and January 2021.⁷⁷

Other professionals employed by the Debtors include PJT Partners LP (financial) Cornerstone Research (litigation consulting), Arnold & Porter Kaye Scholer LLP (legal), King & Spalding LLP (legal) KPMG LLP (jointly retained with the Official Committee of Unsecured Creditors for accounting and consulting services) Jones Day (legal), Skadden, Arps, Slate, Meagher & Flom LLP (legal), Dechert LLP (legal), Wilmer Cutler Pickering Hale and Dorr LLP (legal), and Ernst & Young LLP (accounting).⁷⁸

Official Committee of Unsecured Creditors

The Official Committee of Unsecured Creditors (the "OCC") applied to retain Akin Gump Strauss Hauer & Feld LLP ("Akin Gump") as its lead counsel *nunc pro tunc* to 11 days after the petition date.⁷⁹ Section 328(a) allows appointed committees, such as the OCC, to employ

⁷⁵ *Id.* at 10.

⁷⁶ Order Authorizing Debtors to Retain and Employ AlixPartners, LLP as Financial Advisor *Nunc Pro Tunc* to the Petition Date .pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), <https://perma.cc/A3F7-57AH>.

⁷⁷ Omnibus Order Granting First Interim Fee Applications, Omnibus Order Granting Second Interim Fee Applications, Omnibus Order Granting Third Interim Fee Applications.

⁷⁸ Omnibus Order Granting Third Interim Fee Applications.

⁷⁹ Application of the Official Committee of Unsecured Creditors of Purdue Pharma L.P., *Et. Al* to Retain and Employ Akin Gump Strauss Hauer & Feld as Counsel *Nunc Pro Tunc* September 26 1.pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), [hereinafter "OCC Application to Employ Akin Gump"], <https://perma.cc/W9HY-SU9E>.

professionals on reasonable terms with court approval.⁸⁰ Section 1103(a) specifically authorizes members of an appointed committee, such as the OCC, to select and authorize the employment of attorneys and other professionals at a regularly scheduled meeting with a majority of the committee members present.⁸¹ Rule 2014(a) requires the OCC apply for an order authorizing the employment of such professionals.⁸² The OCC, made up of Blue Cross and Blue Shield Association, CVS Caremark Part D Services L.L.C. and Caremark PCS Health L.L.C, Cheryl Juare, Kara Trainor, LTS Lohman Therapy Systems Corporation, Pension Benefit Guaranty Corporation, Ryan Hampton, Walter Lee Salmons, and West Boca Medical Center, selected Akin Gump to serve as lead counsel on September 29, 2019.⁸³

The OCC asserted that employment of Akin Gump was necessary to advise and represent the committee throughout the chapter 11 case and that Akin Gump had extensive knowledge and expertise representing unsecured creditors' committees.⁸⁴ Section 330 allows the court to award compensation from a debtor's estate to a professional employed under §1103.⁸⁵ Section 503(b) allows the professional fees to be treated as administrative expenses after notice and a hearing.⁸⁶ Section 507(a)(2) provides that administrative expenses have priority over all unsecured claims

⁸⁰ 11 U.S. Code §328(a).

⁸¹ 11 U.S. Code §1103(a).

⁸² Fed. R. Bankr. P. 2014(a).

⁸³ OCUC Application to Employ Akin Gump at 6. The OCUC also selected Bayard, P.A. to serve as its "efficiency counsel," Province Inc. to serve as its financial advisor, and Jefferies Group LLC to serve as its investment banker on September 29, 2019. *Id.*

⁸⁴ *Id.* at 5. See *In re Vanguard Natural Resources, LLC*; *In re Insys Therapeutics, Inc.*; *In re Pernix Sleep, Inc.*; *In re Sears Holdings Corp.*; *In re Nine West Holdings, Inc.*; *In re iHeartMedia, Inc.*; *In re Cumulus Media Inc.*; *In re EMAS Chiyoda Subsea, Ltd.*; *In re Metals USA, Inc.*; *In re Emerald Oil, Inc.*; *In re Goodrich Petroleum Corp.*; *In re SandRidge Energy Inc.*; *In re Quiksilver, Inc.*; *In re Chassis Inc.*; *In re BPZ Resources, Inc.*; *In re Cal Dive International, Inc.*; *In re Swift Energy Co.*; *In re Excel Maritime Carriers LTD*; *In re Hawker Beechcraft, Inc.*; *In re Overseas Shipholding Group, Inc.*; *In re Edison Mission Energy, et al.*; *In re Dynegy Holdings, LLC*; *In re R.E. Loans, LLC*; *In re Delta Petroleum Corp.*; *In re Vitro America, LLC*; *In re Friendly Ice Cream Corporation*; *In re Seabank Drilling, Inc.*; *In re Saint Vincent's Catholic Medical Centers of New York*; *In re Chemtura Corp.*; *In re TOUSA, Inc.*; *In re Delta Air Lines, Inc.*; *In re ATA Holdings Corp.*

⁸⁵ 11 U.S. Code §330(a).

⁸⁶ 11 U.S. Code §503(a).

except domestic support obligations owed by the debtor as of the date of the petition.⁸⁷ The OCC requested that all fees and costs be paid as administrative expenses of the Debtors' estate pursuant to these sections.⁸⁸ The OCC listed the Akin Gump professionals who would primarily work on the case along with their rates ranging from \$1,550 per hour for the most expensive partner to \$660 to the cheapest associate on the case.⁸⁹ The OCC further argued that *nunc pro tunc* employment was appropriate under the circumstances because the committee needed counsel to work on important, time sensitive matters prior to the submission and approval of the application.⁹⁰

The court granted the application.⁹¹ In the time between September 26, 2019 and January 31, 2021 Akin Gump requested \$67,197,542.50 in professional fees.⁹² Akin Gump agreed to a total reduction of \$259,324.25 to allay the fee examiner's concerns through the first three applications.⁹³ The fourth fee application has not been ruled on at the time of this writing.

Other professionals employed by the OCC in this case include Jefferies LLC (financial), Kurtzman Carson Consultants LLC (legal), Province, LLC (financial), Bedell Cristin Jersey Partnership (legal), and Cole Schotz P.C. (legal).⁹⁴

⁸⁷ 11 U.S. Code §507(a)(2).

⁸⁸ OCUC Application to Employ Akin Gump at 6.

⁸⁹ *Id.* at 8.

⁹⁰ *Id.* at 10.

⁹¹ Order Authorizing the Official Committee of Unsecured Creditors of Purdue Pharma L.P., *Et Al* to Retain and Employ Akin Gump Strauss Hauer & Feld Llp as Counsel, *Nunc Pro Tunc* to September 26, 2019, 1.pdf, <https://perma.cc/TDU3-ZC4B>.

⁹² Omnibus Order Granting First Interim Fee Applications; Omnibus Order Granting Second Interim Fee Applications; Omnibus Order Granting Third Interim Fee Applications; Summary Cover Sheet to the Fourth Interim Fee Application of Akin Gump Strauss Hauer & Feld LLP As Counsel to the Official Committee of Unsecured Creditors of Purdue Pharma L.P., *Et Al*, for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred for the Period of October 1, 2020 Through and Including January 31, 2021, .pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), [hereinafter "Fourth Interim Fee Application of Akin Gump"], <https://perma.cc/S3FC-YEPD>.

⁹³ Omnibus Order Granting First Interim Fee Applications; Omnibus Order Granting Second Interim Fee Applications; Omnibus Order Granting Third Interim Fee Applications; Fourth Interim Fee Application of Akin Gump.

⁹⁴ Third Omnibus Order Granting Interim Fee Applications.

The Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants also employed various professionals including Brown Rudnick LLP (legal), Otterbourg, P.C. FTI Consulting (financial), Gilbert LLP (legal), Kramer Levin Naftalis & Frankel LLP (legal), Houlihan Lokey Capital, Inc. (financial), and Bielli & Klauder (legal).⁹⁵ Apparently it takes a village to reorganize a company. It is important to keep in mind the role of professionals in a chapter 11 reorganization. Unsecured creditors likely see professionals, especially those employed by the debtor as taking slices of the pie of the bankruptcy estate, resulting in lower recovery for the creditors. The professionals would likely respond that their services enlarge the pie, creating more value for everyone, and in reality, maximize creditor recovery. Like most polarizing issues, the truth is likely somewhere in the middle. Focusing in on the massive professional fees generated in a chapter 11 reorganization is certainly an eye-opening experience for many people who are not familiar with such proceedings.

⁹⁵ *Id.*

FIRST DAY MOTIONS

Filing of Chapter 11 Petition

On the Petition Date, the Debtors filed a number of first day motion and applications seeking authorization to maintain their operations in the ordinary course (collectively, the “First Day Motions”). Through these motions the Debtors sought to maintain their business operations and minimize any post-petition interruptions.⁹⁶

Joint Administration

First, the Debtors filed a motion for joint administration of Chapter 11 cases for it and its twenty-three affiliates.⁹⁷ Per Bank R. 1015(b) when “two or more petitions are pending in the same court by or against . . . and debtor and an affiliate, the court may order joint administration of the estates.”⁹⁸ The Debtors argued that given the corporate relationship amongst the parties joint administration is warranted to avoid duplicative notices, applications, and orders thereby saving the court, stakeholders, claimants, and the Debtors considerable time, expense, and resources.⁹⁹

No objections to this motion were filed and the court entered an order approving the relief shortly after.¹⁰⁰

⁹⁶ Plan Disclosure Statement, In re Purdue Pharma L.P. *et al.*, Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Mar. 15 2021), <https://perma.cc/MY7W-UNVR>.

⁹⁷ Motion of Debtors for Entry of an Order Directing Joint Administration of Chapter 11 Cases, In re Purdue Pharma L.P. *et al.*, Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Sept. 16, 2019), <https://perma.cc/Q8G6-53FG>.

⁹⁸ *Id.* at 7.

⁹⁹ *Id.* at 3-4.

¹⁰⁰ Order Granting Motion Directing Joint Administration of Chapter 11 Cases, In re Purdue Pharma L.P. *et al.*, Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Sept. 18, 2019), <https://perma.cc/CFF4-FD2E>.

Claims and Noticing Agent

Purdue next filed an application to appoint Prime Clerk LLC as the claims and noticing agent on its behalf.¹⁰¹ The Debtors sought Prime Clerk to assume full responsibility for the distributions of notices and the maintenance, processing and docketing of proofs of claim filed in the Debtors' bankruptcy.¹⁰² In its motion, the Debtors attested that selecting Prime Clerk to act as its claims and noticing agent satisfies the court's protocol for the employment of claims and noticing agents per 28 U.S.C. §156(c)¹⁰³ and Prime Clerk's rates are competitive.¹⁰⁴

No objections to this motion were filed and the court granted the relief shortly after.¹⁰⁵

Cash Management System

The Debtor sought permission from the court to continue to operate its cash management system, fund the operation of its subsidiaries, maintain its existing bank accounts (including opening new ones or closing existing ones), and maintain its business forms (e.g., letterhead, envelopes, purchase orders, invoices, sales order acknowledgements, etc.).¹⁰⁶ Through this the Debtors primarily sought to continue to fund its operations.¹⁰⁷

¹⁰¹ Application for an Order Appointing Prime Clerk LLC as Claims and Noticing Agent for the Debtors, In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Nov. 17, 2019), <https://perma.cc/A35D-9VSD>.

¹⁰² *Id.* at 3.

¹⁰³ 28 U.S.C. § 156 <https://perma.cc/XS93-TE46>.

¹⁰⁴ *Id.*

¹⁰⁵ Order Granting Application Authorizing Retention and Appointment of Prime Clerk LLC as Claims and Noticing Agent for the Debtors, In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Sept. 18, 2019), <https://perma.cc/HGP9-C2MW>.

¹⁰⁶ Motion of Debtors for Entry of Interim and Final Orders Authorizing (I) Debtors to Continue to Use Existing Cash Management Systems and Maintain Existing Bank Accounts and Business Forms and (II) Financial Institutions to Honor and Process Related Checks and Transfers, In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Sept. 16, 2019), <https://perma.cc/YE7D-6XNM>.

¹⁰⁷ *Id.* at 3.

No objections to this motion were filed and an interim order was entered shortly after.¹⁰⁸ A final order was entered on November 25, 2019.¹⁰⁹

Prepetition Employee Benefits

Next Debtors filed a motion for authorization to (in their sole discretion) continue meeting its pre-petition financial obligations to employees, retirees, and financial institutions.¹¹⁰ Chiefly, the Debtors sought authorization to pay pre-petition employee obligations for its approximately seven hundred employees.¹¹¹ These obligations included payroll, withholdings, business expenses, benefits including relocation and health and welfare, workers' compensation, savings plans, pension plans, and non-medical retirement obligations, severance, and bonuses.¹¹² The Debtors feared that without the ability to meet these prepetition obligations their key employees would abandon the company rendering it less able to compete upon reorganization.¹¹³

An interim order granting the relief was entered on September 18, 2019.¹¹⁴ However, objections to this motion were filed by the United States Trustee for Region 2,¹¹⁵ Nevada Counties

¹⁰⁸ Interim Order Granting Motion Authorizing (I) Debtors to Continue to Use Existing Cash Management Systems and Maintain Existing Bank Accounts and Business Forms and (II) Financial Institutions to Honor and Process Related Checks and Transfers, In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Sept. 18, 2019), <https://perma.cc/SJZ6-XERG>.

¹⁰⁹ Final Orders Granting Motion Authorizing (I) Debtors to Continue to Use Existing Cash Management Systems and Maintain Existing Bank Accounts and Business Forms and (II) Financial Institutions to Honor and Process Related Checks and Transfers, In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Nov. 25, 2019), <https://perma.cc/2H3E-GT9P>.

¹¹⁰ Motion of Debtors for Entry of an Order Authorizing (I) Debtors to (A) Pay Pre-Petition Wages, Salaries, Employee Benefits and Other Compensation and (B) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (II) Employees and Retirees to Proceed with Outstanding Workers' Compensation Claims and (III) Financial Institutions to Honor and Process Related Checks and Transfers, In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Sept. 16, 2019), <https://perma.cc/EKU3-KGTM>.

¹¹¹ *Id.*

¹¹² *Id.* at 4-22.

¹¹³ *Id.* at 22.

¹¹⁴ Interim Order Granting Motion Authorizing (I) Debtors to (A) Pay Pre-Petition Wages, Salaries, Employee Benefits and Other Compensation and (B) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (II) Employees and Retirees to Proceed with Outstanding Workers' Compensation Claims and (III) Financial Institutions to Honor and Process Related Checks and Transfers, In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Sept. 18, 2019), <https://perma.cc/N56L-KLRW>.

¹¹⁵ United States Trustee Objection to Motion For Order Authorizing (I) Debtors to (A) Pay Pre-Petition Wages, Salaries, Employee Benefits and Other Compensation and (B) Maintain Employee Benefits Programs and Pay Related

and Municipalities,¹¹⁶ the Commonwealth of Pennsylvania,¹¹⁷ and the Ad Hoc Group of Non-Consenting States,¹¹⁸ and the State of Arizona.¹¹⁹ The New York State Department of Financial Services also submitted an informal objection.¹²⁰ Chiefly, the objections focused on the \$38,000,000 in bonus and severance payments the Debtors sought for various employees.¹²¹ The United States Trustee argued that this type of payment is not typical of a first day wage motion which usually seek only to stabilize and continue operations after filing bankruptcy.¹²²

In a reply, the Debtors argued that the events prompting the bonus and severance payments (the shuttering of a manufacturing facility in North Carolina) were set in motion prior to its filing for bankruptcy and that these payments are a sound exercise of its business judgment.¹²³

Following a hearing, the Debtors' motion was granted.¹²⁴

Administrative Obligations, (II) Employees and Retirees to Proceed with Outstanding Workers' Compensation Claims and (III) Financial Institutions to Honor and Process Related Checks and Transfers, In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Sept. 27, 2019), <https://perma.cc/K6RP-USZE>.

¹¹⁶ Statement Nevada Counties and Municipalities' Joinder, In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 2, 2019), <https://perma.cc/H23Q-GJZD>.

¹¹⁷ Commonwealth of Pennsylvania Objection to Motion and Joinder to United States Trustee's Objection, In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 3, 2019), <https://perma.cc/8LKH-BTG7>.

¹¹⁸ Joinder/Objection by the Ad Hoc Group of Non-Consenting States, In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 3, 2019), <https://perma.cc/SEG7-TLWE>.

¹¹⁹ Joinder/Objection by the State of Arizona, In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 3, 2019), <https://perma.cc/KY54-4RME>.

¹²⁰ Letter, Filed on Behalf of New York State Department of Financial Services, In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Sept. 23, 2019), <https://perma.cc/82NK-XP8A>.

¹²¹ *Supra* note 33, at 1-3.

¹²² *Id.*

¹²³ Debtors' Omnibus Reply in Support of Motion of Debtors for Entry of an Order Authorizing (I) Debtors to (A) Pay Pre-Petition Wages, Salaries, Employee Benefits and Other Compensation and (B) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (II) Employees and Retirees to Proceed with Outstanding Workers' Compensation Claims and (III) Financial Institutions to Honor and Process Related Checks and Transfers, In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 8, 2019), <https://perma.cc/TCT6-H9SN>.

¹²⁴ Final Order Authorizing (I) Debtors to (A) Pay Pre-Petition Wages, Salaries, Employee Benefits and Other Compensation and (B) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (II) Employees and Retirees to Proceed with Outstanding Workers' Compensation Claims and (III) Financial Institutions to Honor and Process Related Checks and Transfers, In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 16, 2019), <https://perma.cc/H6WC-YAZ2>.

Utility Services

On September 16, 2019, the Debtors filed a motion seeking the court to prohibit its utilities from altering, refusing, or discontinuing services, to declare its utility providers are adequately assured of future performance, and to establish procedures for determining requests for additional adequate assurance.¹²⁵ Chiefly, Purdue was concerned that its utility providers would alter, refuse, or discontinue service due to prepetition amounts owed or fear of inability to pay.¹²⁶

An order granting the relief requested was entered on October 16, 2019.¹²⁷

Governmental Authorities

Purdue sought an order authorizing the payment of certain taxes and business licenses, compliance and regulatory fees to various federal, state, county and city (collectively referred to as Governmental Authorities), both pre- and post-petition.¹²⁸ The Debtors stated that in the ordinary course of business, they collect, withhold, and incur various taxes and fees. The Debtors claimed that they believe that many of the taxes and fees they collected prepetition are not property of the estate and they are holding these taxes and fees in trust for the applicable government entities.¹²⁹ The Debtors were seeking to pay these certain taxes to avoid any government interruptions of its

¹²⁵ Motion of Debtors for Entry of Interim and Final Orders (I) Prohibiting Utilities From Altering, Refusing or Discontinuing Service, (II) Deeming Utilities Adequately Assured of Future Performance and (III) Establishing Procedures for Determining Requests for Additional Adequate Assurance, Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Sept. 16, 2019), <https://perma.cc/B8L3-ECY4>.

¹²⁶ *Id.* at 3-4.

¹²⁷ Final Order (I) Prohibiting Utilities From Altering, Refusing or Discontinuing Service, (II) Deeming Utilities Adequately Assured of Future Performance and (III) Establishing Procedures for Determining Requests for Additional Adequate Assurance, Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 16, 2019), <https://perma.cc/F6BP-2TRU>.

¹²⁸ Motion of Debtors for Entry of Interim and Final Orders Authorizing (I) Debtors to Pay Certain Prepetition Taxes, Governmental Assessments and Fees and (II) Financial Institutions to Honor and Process Related Checks and Transfers, Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Nov. 17, 2019), <https://perma.cc/ZW3Y-469D>.

¹²⁹ *Id.* at 4.

reorganization. The Debtors also emphasized that the taxes and fees owed were entitled to priority status per § 507(a)(8).¹³⁰

An order granting this relief was entered on October 16, 2019.¹³¹

Critical Vendors

Purdue sought permission to pay all or a portion of their prepetition obligations accrued to critical vendors twenty (20) days prior to its petition; without this ability, Purdue feared its critical vendors would cease supply of goods and services essential to Debtor's viability post-petition.¹³² Purdue requested up to \$7.7 million be earmarked for such critical vendors.¹³³ These vendors include parties along its supply chain,¹³⁴ clinic trial vendors,¹³⁵ security and waste management services,¹³⁶ and foreign vendors.¹³⁷ Purdue sought the ability to condition its continued payments to the above vendors on an agreement that these vendors continue to supply goods or services for a term agreeable to the Debtor.¹³⁸

¹³⁰ *Id.* at 12; *see also* 11 U.S.C. § 507(a)(8) <https://perma.cc/J3LE-5M7Y>.

¹³¹ Final Order Authorizing (I) Debtors to Pay Certain Prepetition Taxes, Governmental Assessments and Fees and (II) Financial Institutions to Honor and Process Related Checks and Transfers, Purdue Pharma L.P. *et al.*, Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 16, 2019), <https://perma.cc/H874-Q9PX>.

¹³² Motion of Debtors for Entry of Interim and Final Orders Authorizing (I) Payment of Certain Pre-petition Claims of Critical Vendors and (II) Financial Institutions to Honor and Process Related Checks and Transfers, 1-3, Purdue Pharma L.P. *et al.*, Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Sept. 16, 2019), <https://perma.cc/34QN-TXWU>.

¹³³ *Id.* at 4.

¹³⁴ *Id.* at 5 (these vendors provide ingredients and equipment components, storage and distribution services, equipment servicing, batch release testing, monitoring, and manufacturing and packaging for its pharmaceutical products).

¹³⁵ *Id.* at 7 (these vendors conduct clinic trials to ensure compliance with FDA regulations governing labeling, packaging, storage, advertising, promotion, recordkeeping, and submission of safety data and other post-marketing data for the products).

¹³⁶ *Id.* at 8 (these vendors prevent theft, misuse, or unintended exposure to the Debtor's pharmaceutical products for their warehouses and transport vehicles).

¹³⁷ *Id.* at 8-9 (Here, Debtor was concerned that foreign vendors may consider themselves beyond the reach of the court's jurisdiction and cease doing business, disregard the automatic stay, or file actions in foreign jurisdictions).

¹³⁸ *Id.* 10-11.

No objections to this motion were filed and an order authorizing this relief was entered shortly after.¹³⁹

Insurance Policies

Under § 363(c)(1),¹⁴⁰ the Debtors sought an entry of an order authorizing them to maintain or purchase insurance policies in accordance with their prepetition practices and procedures.¹⁴¹ Purdue's insurance policies include liability, casualty, property, and other programs they deemed necessary through the course of ordinary business.¹⁴² The Debtors also sought permission to employ Marsha USA, and its affiliates, as an insurance broker.¹⁴³ The broker would receive a commission from the insurance premiums paid by the Debtors.¹⁴⁴ The Debtors' current aggregate insurance premiums, under all its insurance policies, totaled approximately \$3,200,000.¹⁴⁵

No objections to the motion were filed and an order granting the relief requested was entered on October 16, 2019.¹⁴⁶

¹³⁹ Final Order Authorizing (I) Payment of Certain Pre-petition Claims of Critical Vendors and (II) Financial Institutions to Honor and Process Related Checks and Transfers, In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 16, 2019), <https://perma.cc/5CA6-8SW5>.

¹⁴⁰ 11 U.S.C. § 363(c)(1) <https://perma.cc/2NG2-93YF>.

¹⁴¹ Motion of Debtors for Entry of Interim and Final Orders Authorizing (I) the Debtors to Continue and Renew Their Liability, Property, Casualty and Other Insurance Policies and Honor all Obligations in Respect Thereof and (II) Financial Institutions to Honor and Process Related Checks and Transfers, In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Sept. 16, 2019), <https://perma.cc/25HS-GACC>.

¹⁴² *Id.* at 4.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 5.

¹⁴⁵ *Id.*

¹⁴⁶ Final Order Authorizing (I) the Debtors to Continue and Renew Their Liability, Property, Casualty and Other Insurance Policies and Honor all Obligations in Respect Thereof and (II) Financial Institutions to Honor and Process Related Checks and Transfers, In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 16, 2019), <https://perma.cc/G3UP-K89W>.

Prepetition Obligations to Customers

Purdue filed a motion seeking an order to allow (but not require) them to honor certain prepetition obligations owed to customers under existing customer programs (the “Customer Programs”) and third-party service agreements (the “Third Party Service Agreements”).¹⁴⁷

The Customer Programs, per the Debtors, were integral to the sale of its product and to ensure continuity of product supply to patients.¹⁴⁸ This program includes its wholesalers which are its primary sales channel of its prescription products to retail drug stores, mass merchandisers, pharmacies, hospitals long-term care and other mail, retail and non-retail institutions.¹⁴⁹ It also included government programs, such as Medicaid¹⁵⁰ and Tricare.¹⁵¹

The Third-Party Service Agreements included third party service agreements where Debtor, Avrio Health L.P. (subsidiary) via Emerson Health LLC takes orders, issues invoices, collects cash, issues credit, and distributes non-prescription consumer health products.¹⁵² Following, Emerson sells the product to retailers and wholesalers, who then sell the product to retail drug stores, mass merchandisers, pharmacies, hospitals, long-term care and other mail, retail and non-retail institutions.¹⁵³

No objections to the motions were filed and an order granting the relief requested was entered on October 16, 2019.¹⁵⁴

¹⁴⁷ Motion of Debtors for Entry of Interim and Final Orders Authorizing (I) Debtors to Honor Prepetition Obligations to Customers and Related Third Parties and to Otherwise Continue Customer Programs (II) Relief from Stay to Permit Setoff in Connection with the Customers and Programs and (III) Financial Institutions to Honor and Process Related Checks and Transfers, Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Sept. 16, 2019), <https://perma.cc/W6SQ-DABE>.

¹⁴⁸ *Id.* at 4.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 9 (“Medicaid is a health program, jointly funded by state and federal governments and managed by the states, that assist low-income individuals and families in obtaining healthcare.”).

¹⁵¹ *Id.* at 13 (“Tricare is a federal program administered by the Defense Health Agency of the Department of Defense, which covers prescription products at pharmacies for military beneficiaries and their dependents.”).

¹⁵² *Id.* at 14.

¹⁵³ *Id.*

¹⁵⁴ Final Order Authorizing (I) Debtors to Honor Prepetition Obligations to Customers and Related Third Parties and to Otherwise Continue Customer Programs (II) Relief from Stay to Permit Setoff in Connection with the Customers and

Surety Bond Program

The Debtors moved to maintain, continue and renew, their surety bond program in their discretion in accordance with the same practices and procedures that were in effect before the petition date.¹⁵⁵ The Debtors' surety bond program consisted of providing surety bonds to third parties to secure the Debtors' payment or performance of obligations required by law, including obligations to state agencies to maintain licenses to sell or distribute pharmaceutical products.¹⁵⁶ The Debtors' surety bonds included indemnity agreements whereby the Debtors agreed to indemnify the issuers from any loss, damage, cost, or expense they may incur by reason of their execution of bonds on behalf of the debtors.¹⁵⁷ By their motion, the Debtors sought authorization to pay all amounts under the surety bond program due and payable after the petition date, to renew or obtain new surety bonds as needed in the ordinary course of business and to honor the indemnity agreements between the Debtors and the surety bond issuers.¹⁵⁸ The amounts of these surety bonds ranged from \$5,000 to \$100,000 for a total of \$896,508.61.¹⁵⁹

The Debtors asserted that they had the authority under § 363(c)(1) as Debtors in Possession ("DIP") to pay all post-petition amounts due under the surety bond program and renew or obtain new surety bonds.¹⁶⁰ § 363(c)(1) provides that "the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing,

Programs and (III) Financial Institutions to Honor and Process Related Checks and Transfers, Purdue Pharma L.P. et al., 1-3, Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Sept. 16, 2019), <https://perma.cc/9N1J-9E6H>.

¹⁵⁵ Motion of Debtors for Entry of Interim and Final Orders Authorizing the Debtors to Continue and Renew Surety Bond Program 3.pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), [hereinafter "Motion to Continue and Renew Surety Bond Program?"], <https://perma.cc/MQ4M-DR3V>.

¹⁵⁶ Motion to Continue and Renew Surety Bond Program at 3-4.

¹⁵⁷ *Id.* at 4-5.

¹⁵⁸ *Id.* Program at 3.

¹⁵⁹ *Id.*, Exhibit C.

¹⁶⁰ *Id.* at 6.

and may use property of the estate in the ordinary course of business without notice or a hearing.”¹⁶¹ The Debtors argued that maintenance of their surety bond program was within the ordinary course of the Debtors’ business since surety bonds were required for the Debtors to continue selling and distributing pharmaceutical products.¹⁶²

Furthermore the Debtors argued that § 364(c) permitted them to renew, replace, or enter into new surety bond facilities to the extent that is considered secured credit.¹⁶³ § 364(c) provides that “if the trustee is unable to obtain unsecured credit . . . as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt— (1) with priority over any or all administrative expenses . . . (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien.”¹⁶⁴ The Debtors argued that due to their current financial status it was unlikely the debtors would be able to renew or replace their surety bonds on an unsecured basis and therefore continuing the Debtors’ business operations throughout the reorganization process required a secured extension of credit to the extent that renewal, replacement or entry into a new surety bond is deemed a secured extension of credit.¹⁶⁵

The Debtors were careful to include language asking the court not to consider the continuation of the surety bond program as requested to constitute assumption of any executory contracts.¹⁶⁶ Section 365 of the bankruptcy code provides that the DIP may assume or reject any unexpired executory contract of the debtor.¹⁶⁷ The Debtors were essentially seeking to continue their

¹⁶¹ 11 U.S. Code § 363.

¹⁶² Motion to Continue and Renew Surety Bond Program at 6.

¹⁶³ *Id.*

¹⁶⁴ 11 U.S. Code § 364(c).

¹⁶⁵ Motion to Continue and Renew Surety Bond Program at 6.

¹⁶⁶ *Id.* at 6-7.

¹⁶⁷ 11 U.S. Code § 365.

prepetition surety bond program and receive the associated benefits such as maintaining their state licenses without binding themselves to the contracts and retaining the right to later reject the surety bond contracts. Although it seems like the Debtors were asking to “have their cake and eat it too,” no creditors objected to this arrangement. This is likely because the court and most of the creditors agreed with the Debtors’ argument that maintaining the Debtors’ state licenses was necessary to maximize the value of the bankruptcy estate and in turn provide maximum recovery to creditors.

Bankruptcy rule 6003(b) provides that the court shall not issue an order granting a motion “to incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” within 21 days after the filing of the petition unless the relief is necessary to prevent immediate and irreparable harm.¹⁶⁸ The Debtors argued that failure to grant relief would result in immediate and irreparable harm because failure to make payment of obligations under the surety bond program could result in the termination of their surety bonds or issuers refusal to renew their surety bonds which could trigger cancelation of the Debtor’s licenses to sell or distribute pharmaceutical products and jeopardize the Debtors’ ability to conduct their operations to the detriment of all parties in interest.¹⁶⁹

Bankruptcy rule 6004(h) provides that “an order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.”¹⁷⁰ 6004(a) requires notice of a proposed use sale or lease of property outside of the ordinary course of business.¹⁷¹ The Debtors argued that the motion should

¹⁶⁸ Fed. R. of Bankr. P. 6003.

¹⁶⁹ Motion to Continue and Renew Surety Bond Program at 5. It is interesting that the Debtors are essentially arguing that their ability to continue to manufacture and distribute pharmaceuticals is in the interest of parties who are suing the Debtors for the disastrous results of their sale and manufacture of pharmaceuticals.

¹⁷⁰ Fed. R. of Bankr. P. 6003.

¹⁷¹ Fed. R. of Bankr. P. 6004.

be considered notice under 6004(a) and the 6004(h) stay should be waived because the relief requested was necessary to avoid immediate and irreparable harm, to the extent that those provisions applied.¹⁷²

After an interim hearing the court entered an interim order granting the Debtors' motion before holding a final hearing and entering a final order granting the Debtors' motion.¹⁷³

Time to File Schedules and Statements of Financial Affairs

§521(a)(1) and bankruptcy rule 1007(b)(1) require a debtor to file (1) a schedule of assets and liabilities, (2) a schedule of current income and expenditures, (3) a statement of the debtor's financial affairs and (4) a schedule of executory contracts and unexpired leases, among other documents.¹⁷⁴

Bankruptcy rule 1007(c) provides that the required schedules and statements in a voluntary case must be filed within 14 days of the petition.¹⁷⁵ Bankruptcy rule 1007(c) further provides that an extension of the to file schedules, statements and other required documents can only be granted on motion for cause shown.¹⁷⁶

The Debtors' moved for a 30-day extension to the deadline for filing the schedules of assets and statements under 1007(c).¹⁷⁷ The Debtors' argued that cause existed to extend the deadline because (1) they had filed a list of creditors holding the three largest secured claims and 50 largest

¹⁷² Motion to Continue and Renew Surety Bond Program at 6.

¹⁷³ Interim Order Authorizing Debtors to Continue and Renew Surety Bond Program .pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), <https://perma.cc/MSZ8-4973>; Final Order Authorizing Debtors to Continue and Renew Surety Bond Program .pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), <https://perma.cc/YV69-RTL3>.

¹⁷⁴ 11 U.S. Code §521; Fed. R. of Bankr. P. 1007.

¹⁷⁵ Fed. R. of Bankr. P. 1007.

¹⁷⁶ Fed. R. of Bankr. P. 1007.

¹⁷⁷ Debtors' Motion for an Order Extending the Time to File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases and Statements of Financial Affairs pdf.3, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), [hereinafter "Motion to Extend Time to File Schedules and Statements of Financial Affairs"], <https://perma.cc/A72V-URCU>.

unsecured claims on the Debtors' consolidated estates¹⁷⁸, (2) that accurate completion of the required schedules and statements within the 14 day window due to the size and complexity of the Debtors' operations, the large amount of information required, and the onslaught of litigation,¹⁷⁹ and (3) because similar relief had been granted in other cases.¹⁸⁰ The court entered an order granting the Debtors' a 30 day extension from the end of the initial 14 day period and allowing the debtors to seek any further extensions by notice of presentment on five days' notice.¹⁸¹

Authorization to Act in a Foreign Country

Bankruptcy code §1505 provides that an entity may be authorized by the court to act in a foreign country in any way permitted by foreign law on behalf of the bankruptcy estate.¹⁸² In addition to the Debtors' extensive litigation in the United States, the Debtors were the subject of 10 class action lawsuits (with more proposed) in Canada at the time of the motion.¹⁸³ Canadian law allows a "foreign representative" authorized in a foreign proceeding to act as a representative on behalf of a debtor company in foreign proceedings to commence ancillary proceedings in Canadian courts.¹⁸⁴

Although the Debtors stated that Purdue Pharma L.P. already had the ability to act as the Debtors' representative based on its powers as DIP, the Debtor's moved for an order specifically

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 3-5.

¹⁸⁰ *Id.* at 5. The Debtors cited the following cases in support of their position: *In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. Feb. 28, 2019) (extending the time to file schedules by 30 days); *In re Synergy Pharmaceuticals Inc.*, Case No. 18-14010 (JLG) (Bankr. S.D.N.Y. Dec. 14, 2018) (extending the time to file schedules by 14 days); *In re Sears Holdings Corp.*, Case No. 18-23538 (RDD) (Bankr. S.D.N.Y. Oct. 16, 2018) (extending the time to file schedules by 45 days); *In re Tops Holding II Corp.*, Case No. 18-22279 (RDD) (Bankr. S.D.N.Y. Feb. 26, 2018) (extending the time to file schedules by 45 days); *In re Pac. Drilling S.A.*, Case No. 17-13193.

¹⁸¹ Motion of Debtors for Entry of an Order (I) Authorizing Purdue Pharma L.P. to Act as Foreign Representative and (II) Granting Related Relief 2.pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), <https://perma.cc/3E6F-HVCR>.

¹⁸² 11 U.S. Code §1505.

¹⁸³ Motion of Debtors for Entry of an Order (i) Authorizing Purdue Pharma L.P. to Act as Foreign Representative and (ii) Granting Related Relief 3-5.pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), [hereinafter "Motion for Authorization to Act in a Foreign Country"], <https://perma.cc/B6CD-87NU>

¹⁸⁴ R.S.C., 1985, c. C-36, 45(1) and 46.

authorizing PPLP to act as the Debtors' foreign representative for the purpose of commencing an ancillary proceeding in Canada seeking to have the Debtors' chapter 11 cases recognized by the Canadian court.¹⁸⁵ The Debtors argued that such an order was permitted under §1505, that such an order would avoid any confusion under Canadian law whether Purdue Pharma L.P. was permitted to act as the Debtor's foreign representative, that courts had granted similar relief in other cases where recognition of an ancillary proceeding in a foreign jurisdiction was sought,¹⁸⁶ and that such an order was appropriate and necessary because coordination of the Debtors' chapter 11 case and the Canadian lawsuits would maximize the value of the Debtors' estates.

The court granted the order and stated that it “requests the aid and assistance of the Canadian Court to recognize the Debtors' chapter 11 cases as a ‘foreign main proceeding’ and PPLP as a ‘foreign representative’ pursuant to the CCAA, and to recognize and give full force and effect in all provinces and territories of Canada to th[e] Order.” The foreign representative subsequently received a Canadian recognition order of the Debtors' US chapter 11 proceedings.¹⁸⁷ This initially resulted in a temporary stay of any Canadian litigation against the Debtors.¹⁸⁸ The Canadian courts' recognition of the Debtors US chapter 11 case eventually led to the plaintiff Provinces filing a claim

¹⁸⁵ Motion for Authorization to Act in a Foreign Country at 4-6.

¹⁸⁶ See, e.g., *In re Hollander Sleep Products, LLC*, No. 19-11608 (MEW) (Bankr. S.D.N.Y. May 22, 2019); *In re Aeropostale, Inc.*, No. 16-11275 (SHL) (Bankr. S.D.N.Y. May 6, 2016); *In re Chemtura Corporation*, No. 09-11233 (REG) (Bankr. S.D.N.Y. Aug. 9, 2010); *In re Payless Holdings LLC*, No. 17-42267 (KAS) (Bankr. E.D. Mo. Apr. 5, 2017); *In re CJ Holding Co.*, No. 16-33590 (DRJ) (Bankr. S.D. Tex. July 21, 2016); *In re Ultra Petroleum Corp.*, No. 16-32202 (MI) (Bankr. S.D. Tex. May 3, 2016).

¹⁸⁷ Foreign Recognition Order, Insolvency Insider, (September 19, 2019) <https://insolvencyinsider.ca/filing-type/foreign-recognition-order/>, <https://perma.cc/HGS7-5LN9>.

¹⁸⁸ Dylan Yan, *Litigation and the Opioid Crisis: Purdue's US Settlement in the Canadian Legal Context*, MCGILL JOURNAL OF LAW AND HEALTH, (December 13, 2020) <https://mjlh.mcgill.ca/2020/12/13/litigation-and-the-opioid-crisis-purdues-us-settlement-in-the-canadian-legal-context/>, <https://perma.cc/ZC57-LV56>.

for over \$67 billion against the Debtors in the US chapter 11 case, submitting their claims to be adjudicated and administered in the U.S. proceedings.¹⁸⁹

Waiving the requirement to file a list of creditors

Section 521(a)(1) of the bankruptcy code requires debtors to file a list of creditors.¹⁹⁰

Bankruptcy rule 1007(a)(1) further requires debtors who voluntarily file for bankruptcy to file a list containing the name and address of each creditor along with the debtor's petition.¹⁹¹ The Debtors argued that the requirement for the list of creditors should be waived because the debtors would be filing a schedule of assets and liabilities (for which an extension was requested in a separate motion)¹⁹² that would contain an extensive list of creditors and that filing a separate list of creditors for each entity would be excessive.¹⁹³ The Debtors asserted that the relief requested was within the court's equitable powers under §105 and provided citations to cases where similar relief was granted.¹⁹⁴ The court entered an order granting the Debtors motion provided that the waiver of the requirement file with the petitions a list containing the name and address of certain creditors, counterparties to executory contracts and unexpired leases and co-debtors "does not affect the

¹⁸⁹ Anne Bucher, *Oxycontin Maker Sued by Provinces Over Opioid Crisis*, Top Class Actions, (November 16, 2020) <https://ca.topclassactions.com/lawsuit-settlements/lawsuit-news/oxycontin-maker-sued-by-provinces-over-opioid-crisis/>, <https://perma.cc/AY27-ZHYR>.

¹⁹⁰ 11 U.S. Code §521(a)(1)

¹⁹¹ Fed. R. Bankr. P. 1007.

¹⁹² Motion to Extend Time to File Schedules and Statements of Financial Affairs.

¹⁹³ Debtor's Motion for an Order Waiving the Requirement to File List of Creditors at 4-5.

¹⁹⁴ *Id.* at 4-5; *See In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. Mar. 5, 2019) (authorizing the debtors to maintain a single, consolidated list of creditors in electronic format); *In re Sears Holdings Corp.*, No. 18-23538 (RDD) (Bankr. S.D.N.Y. Oct. 16, 2018) (same); *In re Republic Airways Holdings Inc.*, No. 16-10429 (SHL) (Bankr. S.D.N.Y. Feb. 29, 2016) (same); *In re NII Holdings, Inc.*, No. 14-12611 (SCC) (Bankr. S.D.N.Y. Sept. 16, 2014) (same); *In re AMR Corp.*, No. 11-15463 (SHL) (Bankr. S.D.N.Y. Nov. 30, 2011) (same).

Debtors' obligations to file schedules of executory contracts and unexpired leases and co-debtors pursuant to section 521 of the Bankruptcy Code or Bankruptcy Rule 1007."¹⁹⁵

Suppression of Personally Identifiable Information

Section 107(c)(1)(A) allows the court to protect disclosure of information that would “create an undue risk of identity theft or other unlawful injury.”¹⁹⁶ The Debtors argued that individual information should be suppressed because individuals may file claims containing medical or other sensitive information protected by HIPAA, that disclosing names and residential addresses of employees and individuals would pose an undue risk to the individuals privacy and personal safety and create an undue risk of identity theft and that disclosing personal information about their employees could hinder the Debtors' efforts to attract and retain the employees necessary to preserve the value of the Debtors' estates for the benefit of creditors and other parties in interest.¹⁹⁷ The Debtors asserted that the claims and noticing agent would serve these individuals at their home addresses, ensuring that each individual will receive the same notices as other creditors without the unnecessary public disclosure of the names and home address of such individuals.¹⁹⁸ The Debtors further asserted that similar relief had been granted by the court in similar circumstances.¹⁹⁹ The motion was granted.²⁰⁰

¹⁹⁵ Amended Order (i) Waiving Requirement to File List of Creditors, (ii) Authorizing the Debtors and the Claims and Noticing Agent to Suppress Personally Identifiable Information for Individuals, (iii) Authorizing the Debtors' Claims and Noticing Agent to Withhold Publication of Claims Filed by Individuals Until Further Order of the Court and (iv) Establishing Procedures for Notifying Creditors of the Commencement of the Debtors' Chapter 11 Cases, <https://perma.cc/4R2P-272D>.

¹⁹⁶ 11 U.S. Code §107(c)(1)(A).

¹⁹⁷ Debtor's Motion for an Order Waiving the Requirement to File List of Creditors at 6-7.

¹⁹⁸ *Id.* at 8.

¹⁹⁹ *See, e.g., In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. Mar. 5, 2019); *In re FULLBEAUTY Brands Holdings Corp.*, No. 19-22185 (RDD)(Bankr. S.D.N.Y. Feb. 7, 2019); *In re Nine West Holdings, Inc.*, No. 18-10947 (SCC) (Bankr. S.D.N.Y. Apr. 9, 2018); *In re Cenveo Inc.*, No. 18-22178 (RDD) (Bankr. S.D.N.Y.) Feb. 6, 2018); *In re Promise Healthcare Group, LLC*, Case No. 18-12491 (CSS) (Bankr. D. Del. Dec. 4, 2018); *In re L.K. Bennett U.S.A., Inc.*, Case No. 19-10760 (KG) (Bankr. D. Del. Apr. 9, 2019).

²⁰⁰ Amended Order (i) Waiving Requirement to File List of Creditors, (ii) Authorizing the Debtors and the Claims and Noticing Agent to Suppress Personally Identifiable Information for Individuals, (iii) Authorizing the Debtors' Claims

Withhold Publication of Claims Filed by Individuals Until Entry of the Bar Date Order or Other Order of the Court

As previously discussed, §107(c)(1)(A) allows the court to protect disclosure of personally identifiable information.²⁰¹ Local rules for the Southern District of New York require the claims and noticing agent to provide public access to the claims registers, including proofs of claims with attachments.²⁰² The Debtors moved for permission for the claims register agent to withhold publication of claims filed by individuals until a Bar Date Order was entered to approve an individual claim form and procedures to prevent the disclosure of sensitive information. The Debtors argued that failure to grant the motion would result in the claims and noticing agent being required to publish proofs of claims filed by individuals that would contain personally identifiable information as well as personal health information protected by HIPAA and that not publicizing these details would provide minimal prejudice to any parties.²⁰³ The motion was granted.²⁰⁴

Proposed Procedures for Service of Notice of Commencement

Bankruptcy Rule 2002 requires the court clerk or a person directed by the court to provide notice of an order for relief and of the date of the meeting of creditors to all creditors (among other parties) by mail.²⁰⁵ Rule 2002(l) allows the court to “order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice.”²⁰⁶ The Debtors sought to

and Noticing Agent to Withhold Publication of Claims Filed by Individuals Until Further Order of the Court and (iv) Establishing Procedures for Notifying Creditors of the Commencement of the Debtors’ Chapter 11 Cases.

²⁰¹ 11 U.S. Code §107(c)(1)(A)

²⁰² Local Rule 5075-1.

²⁰³ Debtor’s Motion for an Order Waiving the Requirement to File List of Creditors at 10-11.

²⁰⁴ Amended Order (i) Waiving Requirement to File List of Creditors, (ii) Authorizing the Debtors and the Claims and Noticing Agent to Suppress Personally Identifiable Information for Individuals, (iii) Authorizing the Debtors’ Claims and Noticing Agent to Withhold Publication of Claims Filed by Individuals Until Further Order of the Court and (iv) Establishing Procedures for Notifying Creditors of the Commencement of the Debtors’ Chapter 11 Cases.

²⁰⁵ See Fed. R. Bankr. P. 2002(a) and 2002(f).

²⁰⁶ Fed. R. Bankr. P. 2002(l).

have the claims and noticing agent to undertake those mailings to creditors.²⁰⁷ The Debtors also proposed publishing notice of commencement in to creditors in the wall street journal and the national edition of the New York Times and/or USA today and on the website to be established by the claims and noticing agent.²⁰⁸ The Debtors argued that publication of the notice would be a practical way to notify creditors that miss the notice by mail and an efficient use of estate resources.²⁰⁹ The Debtors asserted that this relief was within the court’s equitable powers under rule 105(a).²¹⁰ The motion was granted.²¹¹

Motion to Establish Certain Notice, Case Management and Administrative Procedures

The Debtors moved for authorization to “(a) establish requirements for the filing and service of notices, motions, applications, documents filed in support thereof and objections and responses thereto, delineate standards for notices of hearing and hearing agendas, (c) articulate mandatory guidelines for the scheduling of hearings and objection deadlines, (d) limit matters that are required to be heard by the Court and (e) authorize the Debtors to (i) schedule, in cooperation with the Court, periodic omnibus hearing dates and (ii) serve documents by email on certain parties in interest.”²¹² The Debtors argued that the requested relief (collectively the “case management procedures”) would benefit the court and all parties in interest by providing for omnibus hearings for the Court to consider “a. motions, pleadings, applications, objections and responses thereto; b. ensuring prompt and appropriate notice of matters affecting parties’ interests; c. allowing for

²⁰⁷ Debtor’s Motion for an Order Waiving the Requirement to File List of Creditors at 11.

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 12.

²¹⁰ *Id.*

²¹¹ Amended Order (i) Waiving Requirement to File List of Creditors, (ii) Authorizing the Debtors and the Claims and Noticing Agent to Suppress Personally Identifiable Information for Individuals, (iii) Authorizing the Debtors’ Claims and Noticing Agent to Withhold Publication of Claims Filed by Individuals Until Further Order of the Court and (iv) Establishing Procedures for Notifying Creditors of the Commencement of the Debtors’ Chapter 11 Cases.

²¹² Motion of Debtors for Entry of an Order Establishing Certain Notice, Case Management, and Administrative Procedures pdf. 3, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019) [hereinafter “Motion to Establish Case Management Procedures”], <https://perma.cc/TG78-2DN6>.

electronic notice pursuant to the Court’s electronic filing system; d. providing ample opportunity to parties in interest to prepare for and respond to matters before the Court; e. reducing the substantial administrative and financial burden that would otherwise be placed on the Debtors and other parties in interest who file documents in these chapter 11 cases; and f. reducing the administrative burdens on the Court and the clerk of the Court.”²¹³

The Debtors asserted that the court had the power to grant this motion under §105 of the bankruptcy code which gives bankruptcy courts broad equitable powers to “issue any order, process, or judgment that is necessary or appropriate” to carry out the provisions of the bankruptcy code.²¹⁴ Additionally, the Debtors stated that the court had the authority to grant the motion under bankruptcy rules 2002(m), 9007, 9036 and 1015(c).²¹⁵ These rules provide bankruptcy courts the power to determine the manner in which notices required by the bankruptcy code are provided and allow parties in interest to request electronic transmission of such notices and to enter orders as appropriate in jointly administered cases.²¹⁶ This authority was supplemented by local rules allowing the court to set appropriate notice requirements and a general order providing that issuance of an account on the Court’s electronic filing system constitutes waiver of conventional service for that

²¹³ *Id.* at 4.

²¹⁴ *Id.* at 5; 11 U.S. Code §105(a).

²¹⁵ Motion to Establish Case Management Procedures at 5.

²¹⁶ Fed. R. Bankr. P.2002(m); Fed R. Bankr. P.9007; Fed R. Bankr. P. 9036; Fed R. Bankr. P. 1015(c).

user.²¹⁷ The Debtors also provided the court with case law allowing similar Case Management Procedures.²¹⁸ The Debtors motion was granted.²¹⁹

²¹⁷ See Local Rule 9074-1(c)(3), (4); General Order M-399 at § II.B.1.

²¹⁸ See *In re Windstream Holdings, Inc.*, Case No. 19-22312 (RDD) (Bankr. S.D.N.Y. Feb. 28, 2019); *In re Synergy Pharmaceuticals Inc.*, Case No. 18-14010 (JLG) (Bankr. S.D.N.Y. Feb. 7, 2019); *In re Sears Holdings Corp.*, Case No. 18-23538 (RDD) (Bankr. S.D.N.Y. Nov. 1, 2018); *In re Cenveo, Inc.*, Case No. 18-22178 (RDD) (Bankr. S.D.N.Y. March, 15, 2018); *In re Tops Holding II Corp.*, Case No. 18-22279 (RDD) (Bankr. S.D.N.Y. Feb. 26, 2018); *In re 21st 69-23649-rdd Doc 16* Filed 09/16/19 Entered 09/16/19 03:31:34 Main Document Pg 7 of 33; *Century Oncology Holdings, Inc.*, Case No. 17-22770 (RDD) (Bankr. S.D.N.Y. June 20, 2017); *In re BCBG Max Azria Glob. Holdings, LLC*, Case No. 17-10466 (SCC) (Bankr. S.D.N.Y. Mar. 7, 2017); *In re Avaya Inc.*, Case No. 17-10089 (SMB) (Bankr.S.D.N.Y. Feb. 15, 2017); *In re Int'l Shipholding Corp.*, Case No. 16-12220 (SMB) (Bankr. S.D.N.Y. Sept. 16, 2016); *In re Aéropostale, Inc.*, Case No. 16-11275 (SHL) (Bankr. S.D.N.Y. June 03, 2016).

²¹⁹ Order Establishing Certain Notice, Case Management, and Administrative Procedures .pdf, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), <https://perma.cc/ECE6-E76Q>.

Schedules and Statement of Financial Affairs

Unique to Debtors' bankruptcy was its financial health. Mass tort litigation spurred the bankruptcy filing as opposed to more traditional causes such as balance sheet insolvency or cash flow insolvency. As such, Debtors' schedules and statement of financial affairs were not of major import to its reorganization beyond its compulsory filing. Despite this, per Fed. R. Bankr. P. 1007(b) a Debtor must file (1) a schedule of assets and liabilities; (2) a schedule of current income and expenditures; (3) a schedule of executory contracts and unexpired leases; and (4) a statement of financial affairs.²²⁰ We will explore these filings below.

Schedule of Assets and Liabilities

Schedule A/B

Schedule A/B requires a debtor to list their real and personal property. In its filing, Debtors listed their real and personal property (as of the petition date) including various bank accounts, accounts receivable, stock holdings, investments, depreciation, insurance policies, all known assets, rights to counter-claims, cross-claims, setoffs, and/or refunds with customers and suppliers, or potential warranty claims against their suppliers.²²¹

At the time of filing, Debtors had \$1,543,275,938 in total property (including cash, cash equivalents, and financial assets, deposits and prepayments, accounts receivable, investments, inventory, office furniture, fixtures, and equipment, machinery, real property).²²²

²²⁰ *Chapter 11 – Bankruptcy Basics*, U.S. COURTS, <https://perma.cc/HS99-4EQD> (last visited Apr. 21, 2021).

²²¹ Global Notes and Statements of Limitation, Methodology, and Disclaims Regarding the Debtors' Schedules of Assets and Liabilities and Statements of Financial Affairs, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 29, 2019) [<https://perma.cc/X9LM-647F>].

²²² *Id.* at 163.

Schedule D

Schedule D requires a debtor to list creditors who have claims secured by property.²²³ In its filing, the Debtors stated that they are not aware of any secured creditors holding claims against them, presumably because the Debtors were current on all their secured obligations.²²⁴ Despite this, the Debtors stated that they listed certain UCC-1 lienholders out of an abundance of caution and omitted realty lessors, utility companies, and other parties that might hold security deposits.²²⁵

At the time of filing, the Debtors listed five liens, each of an undetermined amount, all held by Ikon Financial Services of Macon, Georgia.²²⁶

Schedule E/F

Schedule E/F²²⁷ requires a debtor to list all creditors holding unsecured claims. In its filing, the Debtors stated that they used reasonable efforts to report all general unsecured claims, including claims potentially owed to various tax and regulatory authorities.²²⁸ The Debtors also disclosed information regarding pending litigation, but listed potential claim amounts as undetermined and marked them as contingent, unliquidated, and disputed.²²⁹

At the time of filing, the Debtors' nonpriority unsecured claims totaled \$14,250,045²³⁰ while its priority unsecured claims totaled \$1,627,548.²³¹

²²³ [Id. at 164-65.](#)

²²⁴ [Id. at 8.](#)

²²⁵ [Id. 8-9](#)

²²⁶ [Id. at 164-65.](#)

²²⁷ [See generally, id. 164-84.](#)

²²⁸ [Id. at 9.](#)

²²⁹ [Id. at 9-10.](#)

²³⁰ [Id. at 1160.](#)

²³¹ [Id. at 184.](#)

Schedule G

Schedule G requires a debtor to list all their executory contracts and unexpired leases. At the time of filing, the Debtors listed a total of 3,626 contracts.²³² These contracts included, but were not limited to, agreements with suppliers, staffing agencies, distributors, administrative service providers, research labs, banks, and consultants.²³³

Statement of Financial Affairs

On October 29, 2019, Debtor filed its Schedule of Assets and Liabilities and Statement of Financial Affairs.²³⁴ This document provides an overview of the Debtors' financial health and will be explored below.

Gross Revenue

From the beginning of the fiscal year (2019) to its Petition Date, the Debtors generated a total of \$999,694,017.44 in gross revenue; with a total of \$202, 212,170 of non-business revenue (from interest, dividends, royalties, or money collected from lawsuits) in that same time.²³⁵

Certain Payments or Transfers to Creditors Within 90 Days Before Filing

The Debtors listed each payment or transfer greater than \$6,425, other than regular employee compensation, within 90 days prior to its Petition Date.²³⁶ Totaling \$333,635,947,²³⁷ these payments were overwhelmingly for professional services, such as payment processing, legal advice, consulting, data processing, and other expenses typical in the day-to-day of a large corporation.²³⁸

²³² [Id. at 1579.](#)

²³³ [See generally, id. 1163-1579.](#)

²³⁴ Global Notes and Statements of Limitation, Methodology, and Disclaimers Regarding the Debtors' Schedules of Assets and Liabilities and Statements of Financial Affairs, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Oct. 29, 2019) [<https://perma.cc/5K4W-896W>].

²³⁵ [Id. at 15-16.](#)

²³⁶ [Id. at 33.](#)

²³⁷ [Id. at 35.](#)

²³⁸ [See generally, id. 17-152.](#)

Payments or Other Transfers of Property Made Within 1 Year

The Debtors listed each payment or transfer greater than \$6,425 made to an insider or guaranteed or consigned by an insider within one year prior to its Petition Date.²³⁹ These payments primarily included high-level employee compensation such as payments towards executive severance, officer/director indemnification, incentive plan payments, expense reimbursements, employee retirement plan contributions, and auto allowances.²⁴⁰ These payments also included amounts towards third party support services such as information technology, research and development services, manufacturing services support, and financial and tax services.²⁴¹ These payments totaled \$82,515,713.²⁴²

²³⁹ [*See generally*, id. 152-92.](#)

²⁴⁰ [*Id.*](#)

²⁴¹ [*Id.*](#)

²⁴² [*Id.* at 192.](#)

Payments Related to Bankruptcy

The Debtors listed each payment or transfer made within one year prior to its Petition Date to any person or entity that it consulted about debt consolidation, restructuring, or bankruptcy.²⁴³ Four companies were consulted prior to filing: Alix Partners LLP, Davis Polk and Wardwell LLP, PJT Partners LP, and Prime Clerk LLC, these payments totaled:²⁴⁴

ENTITY	DATE RANGE	TOTALS
Alix Partners LLP	3/17/19-9/13/19	\$11,671,063.00
Davis Polk and Wardwell LLP	2/19/19-9/11/19	\$37,347,524.00
PJT Partners LP	9/27/18 – 9/14/19	\$3,249,459.00
Prime Clerk LLC	3/15/19-8/8/19	\$1,328,931.00
	Total	\$53,596,977.00

²⁴³ [Id. at 498.](#)

²⁴⁴ [Id. 498-508.](#) These totals were aggregated by the authors.

DIP Financing

The Debtors' reorganization was spurred by mass tort litigation rather than balance sheet or equitable insolvency; given this, debtor-in-possession financing was unnecessary. The Company has been able to fund its reorganization without the need for post-petition financing and thus never filed any motions with the court to approve lenders.

Major Creditor Groups

Due to the numerous creditors in the Debtors' bankruptcy, including thousands of tort claimants, to expedite the reorganization, these creditors were separated into groups. These groups allowed the Debtors to negotiate with similarly situated creditors as a whole, rather than individually, expediting the reorganization process. How each creditor group is affected by the Debtors' Plan and their response to its proposal and confirmation is discussed in the Chapter 11 Plan section.

Official Committee of Unsecured Creditors and Certain Related Parties

Per § 1102(a),²⁴⁵ on September, 27, 2019, the United States Trustee for Region 2 appointed several unsecured creditors to serve on the Official Committee of Unsecured Creditors (the "OCC").²⁴⁶ These creditors include: (1) West Boca Medical Center, (2) CVS Caremark Park D Services L.L.C. and CaremarkPCS Health, L.L.C., (3) LTS Lohmann Therapy Systems Corporation, (4) Blue Cross and Blue Shield Association, (5) Pension Benefit Guaranty Corporation, (6) Kara Trainor, (7) Ryan Hampton, (8) Cheryl Juare, and (9) Walter Lee Salmons.²⁴⁷

West Boca Medical Center, in Boca Raton, Florida, was one of the first hospitals to argue in a lawsuit that it should not have to "bear the costs" of the care it continues to provide because of the opioid crisis.²⁴⁸

CVS Caremark Park D Services L.L.C. and Caremark PCS Health, L.L.C., are among the Debtors' fifty largest unsecured claim holders that are not insiders, they collectively hold over

²⁴⁵ 11 U.S.C. §1102(a) <https://perma.cc/QF5K-L5AT>.

²⁴⁶ Notice of Appointment of Official Committee of Unsecured Creditors, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Sept. 27, 2019), <https://perma.cc/C76W-3MFM>.

²⁴⁷ *Id.*

²⁴⁸ Alexandra Clough, *EXCLUSIVE: Sackler family company pays \$7 million for mansion near Boca Raton*, THE PALM BEACH POST, Oct. 25, 2019 (<https://perma.cc/F864-EWCN>).

\$24,320,906 in payer rebate claims.²⁴⁹ Payer rebate claims are drug price discounts from the manufacturer to lower the price of the drug to the company receiving the rebate.²⁵⁰

LTS Lohmann Therapy Systems Corporation is a trade creditor that manufactures a drug delivery system and has several contracts with the Debtors.²⁵¹

Blue Cross and BlueShield Association represent a network of Blue Cross Blue Shield companies that provide health care coverage. Its claim against Purdue ranged from approximately \$69 billion to \$79 billion for excess payments for prescription medications used by its health plan members and for having to cover the costs of illnesses, injuries, and addictions that would “would not have been incurred but for the actions of the Debtors.”²⁵²

Pension Benefit Guaranty Corporation is a wholly owned United States government corporation and agency whose claims arise under the Employee Retirement Income Security Act for unfunded benefit liabilities, unpaid minimum funding contributions, and unpaid Title IV insurance premiums.²⁵³

Unique to the OCC is the presence of four private citizens, Kara Trainor, Ryan Hampton, Cheryl Juaire, and Walter Lee Salmons, who are each victims of opioid addiction. Kara Trainor is the mother of a child born dependent on opioids. Ryan Hampton is a recovering opioid addict. Cheryl Juaire lost her son to a heroin overdose after he became addicted to prescription painkillers. Walter Lee Salmons is helping raise two opioid affected children.²⁵⁴

²⁴⁹ Purdue Pharma L.P. Voluntary Petition, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Sept. 15, 2019), <https://perma.cc/84CD-K3F6>.

²⁵⁰ *Prescription Drug Rebates, Explained*, KFF (Jul. 26, 2019), <https://perma.cc/5M5A-NPD7>.

²⁵¹ Verified Statement of the Official Committee of Unsecured Creditors, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Oct. 15, 2019), <https://perma.cc/7UUL-6U9A>.

²⁵² Carla K. Johnson & Geoff Mulvihill, *Victims gain a voice to help guide Purdue Pharma bankruptcy*, AP (Oct. 6, 2019), <https://perma.cc/BZS9-ZL2V>.

²⁵³ *Supra* note 62, at 5.

²⁵⁴ *Supra* note 63.

On October 9, 2019, several Native American Tribes filed a motion requesting entry of an order directing the U.S. Trustee to appoint an official committee of Native American affiliated creditors comprising Native American tribes, tribal members and/or support organizations, health organizations or clinics that serve Native American communities.²⁵⁵ Instead, the OCC invited the tribes to serve as an *ex officio* member of their committee, which they did upon withdrawing their motion.²⁵⁶

On October 21, 2019, the OCC granted a request by the Multi-State Government Entities group to join the OCC in an *ex officio* capacity, and they designated Cameron County, Texas to act as an *ex officio* member.²⁵⁷

On June 18, 2020, the OCC also invited certain public school districts (approximately 13,000 nationwide) to serve as an *ex officio* member. The public school districts accepted this invitation on June 19, 2020 and appointed Thornton Township High School District 205 to serve as an *ex officio* member of the OCC on the districts' behalf.²⁵⁸

²⁵⁵ Motion to Appoint Committee of Native American and Native American Affiliated Creditors, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Oct. 9, 2019), <https://perma.cc/C3PL-ASUH>.

²⁵⁶ Notice of Withdrawal of Motion Seeking Appointment an Official Committee of Native American and Native American Affiliated creditors, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Nov. 11, 2019), <https://perma.cc/Z2D2-HFTL>.

²⁵⁷ Second Amended Verified Statement of the Multi-State Governmental Entities Group, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Oct. 9, 2019), <https://perma.cc/6WRB-5JVA>.

²⁵⁸ Plan Disclosure Statement, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Mar. 15, 2021), <https://perma.cc/9EAC-HNTE> [hereinafter referred to as Plan Disclosure Statement].

Ad Hoc Committee of Government and Other Contingent Litigation Claimants

Prior to filing its petition, the Debtors reached an agreement-in-principle with twenty-four states, five U.S. territories, the plaintiffs' executive committee of *In re National Prescription Opiate Litigation*, Case No. 17-md-02804, MDL No. 2804 (N.D. Ohio), and certain U.S. cities and countries (the Settlement Group²⁵⁹). In September 2019, representatives of the Settlement Group formed the Ad Hoc Committee of Government and Other Contingent Litigation Claimants (the "Ad Hoc Committee").²⁵⁹ As representatives, the Ad Hoc Committee appointed: (1) the states of (a) Florida, (b) Georgia, (c) Louisiana, (d) Michigan, (e) Mississippi, (f) New Mexico, (g) Ohio, (h) Tennessee, (i) Texas, (j) Utah; (2) the counties of: (a) Broward (FL), (b) Santa Clara (CA), King (WA), Huntington/Cabell (WV); (3) the cities of: (a) Chicago and (b) Philadelphia; and (4) the Muscogee (Creek) Nation.²⁶⁰

²⁵⁹ Motion of the Debtors for an Order Approving Stipulation and Agreed Order Granting Joint Standing to Prosecute Claims and Causes of Action Related to the Debtors' Insurance Coverage to (1) The Official Committee of Unsecured Creditors and (2) the Ad Hoc Committee of Governmental and other Contingent Litigation Claimants, *In re Purdue Pharma L.P., et al.*, Case No. 19-19-23649 (Bankr. S.D.N.Y. Jan. 6, 2021), <https://perma.cc/9ZEE-HP8V>.

²⁶⁰ Ad Hoc Committee's Verified Statement, *In re Purdue Pharma L.P., et al.*, Case No. 19-19-23649 (Bankr. S.D.N.Y. Oct. 10, 2019), <https://perma.cc/4J3D-7KVD>.

Ad Hoc Group of Non-Consenting States

During the Debtors' negotiations with the federal government to resolve its civil and criminal investigations regarding its past opioid marketing practices, a group of states and the District of Columbia banded together to voice their dissatisfaction with the proposed settlement (the "Non-Consenting States").²⁶¹ The Non-Consenting States includes: California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Idaho, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin.²⁶²

Chiefly, the Non-Consenting States argue that the proposed settlement lacks any acknowledgement of wrongdoing on behalf of the Sackler family, does not require public disclosure of evidence, and does not enjoin the Sackler's from future misconduct.²⁶³

²⁶¹ The States' Coordinated Opposition to the Debtors' Motion for Preliminary Injunction of States' Law Enforcement Actions Against The Sacklers, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Oct. 4, 2019), <https://perma.cc/TX5Y-BBBW>.

²⁶² *Id.* at 1.

²⁶³ *Id.* at 9.

Ad Hoc Committee of NAS Babies

The Ad Hoc Committee of NAS (neonatal abstinence syndrome) Babies (“NAS Babies”) members are individual babies (and/or guardians of those babies) who were born opioid dependent because their mothers were either prescribed opioids during pregnancy or obtained opioids on the secondary market.²⁶⁴

²⁶⁴ Verified Statement of the Ad Hoc Committee of NAS Babies, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Oct. 22, 2019), <https://perma.cc/TF3J-2UCJ>.

Ad Hoc Group of Individual Victims

Formed in October 2019, the Ad Hoc Group of Individual Victims (the “Ad Hoc Group”) hold general unsecured claims against the Debtors.²⁶⁵ The Ad Hoc Group contains eight members who each hold an unliquidated unsecured claim of at least \$2.5 million arising from personal injury as a result of opioid addiction.²⁶⁶ Their backgrounds vary but each has either been personally affected by or had a loved one affected by opioid addiction.²⁶⁷

²⁶⁵ Verified Statement of the Ad Hoc Group of Individual Victims, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Oct. 25, 2019), <https://perma.cc/UPC2-KJ2G>.

²⁶⁶ *Id.* at 6.

²⁶⁷ *See generally id.* 1-4.

Multi-State Governmental Entities Group

The Multi-State Governmental Entities Group (the “MSGGE Group”) consists of approximately 1,317 entities: comprising 1,245 cities, counties, and other governmental entities, nine (9) tribal nations, thirteen (13) hospital districts, thirty-two (32) medical groups, and two (2) funds, across thirty-eight (38) states, all with claims against the Debtors.²⁶⁸ Collectively, the entities hold unliquidated claims in the billions of dollars against the Debtors’ estate arising from their role in the opioid crisis.²⁶⁹ This group is primarily comprised of non-federal public creditors and comprises the other major public group-claimant in negotiations with the Debtors regarding its reorganization.

²⁶⁸ Verified Statement of the Multi-State Governmental Entities Group, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Oct. 9, 2020), <https://perma.cc/W5H9-C47J>.

²⁶⁹ *Id.* at 2.

Ad Hoc Group of Self-Funded Health Plans

The Ad Hoc Group of Self-Funded Health Plans (the “SF Group”) consists of four self-funded union plans, which each hold unliquidated claims against the Debtors that it values in the billions, arising from its increased costs due to the opioid crisis.²⁷⁰

²⁷⁰ Statement of the Ad Hoc Group of Self-Funded Health Plans, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. June 6, 2020), <https://perma.cc/9V55-XB4A>.

Ad Hoc Committee on Accountability

The Ad Hoc Committee on Accountability (the “Committee on Accountability”) is not a committee as that term is used in § 1102,²⁷¹ but represents five members with unliquidated, unsecured claims based on wrongful death and the loss of consortium claims against the Debtor.²⁷² These creditors separated themselves from other similarly situated creditors due to their focus on accountability through the publication of all of Debtors’ internal documents, privileged and nonprivileged, as well as all communications between Debtors and the Sackler family.²⁷³

²⁷¹ 11 U.S.C. § 1102 <https://perma.cc/7LJK-E5KX>.

²⁷² Statement of the Ad Hoc Committee on Accountability, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. May, 28, 2020), <https://perma.cc/XE4C-3HHJ>.

²⁷³ Natasha Lennard, *The New Fight to Hold Purdue Pharma and the Sacklers Accountable for the Opioid Crisis*, THE INTERCEPT (July 20, 2020), <https://perma.cc/CHW9-A8TH>.

Ad Hoc Group of Hospitals

The Ad Hoc Group of Hospitals is a group of hundreds of hospitals across the United States (approximately 10% of all U.S. hospitals) that have each treated (and continue to) patients for conditions related to the use of opiates manufactured by the Debtors.²⁷⁴ The Ad Hoc Group of Hospitals claims it has incurred (and will continue to incur for the indefinite future) millions of dollars in damages associated with the expenses of treating opioid addiction; which are particularly debilitating for smaller hospitals in rural areas.²⁷⁵

²⁷⁴ Statement of Ad Hoc Group of Hospitals, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Dec. 3, 2019), <https://perma.cc/YX85-4CPQ>.

²⁷⁵ *Id.* 3-4.

Bankruptcy Transactions

Preliminary Injunction and Voluntary Injunction

On September 18, 2019, the Debtors filed a Motion for a Preliminary Injunction (the “Preliminary Injunction Motion”) to stay active litigation against the Debtors, their current or former owners (including any trusts and their respective trustees and beneficiaries), officers, directors, employees, and associated entities, arising out of the Debtors’ manufacture, distribution, and sale of prescription opioid medications.²⁷⁶ The Preliminary Injunction also sought entry of a voluntary injunction (the “Voluntary Injunction”) against the Debtors, enjoining them from promoting opioid products and providing financial support to third parties for the purpose of promoting opioids.²⁷⁷

On October 11, 2019, the court issued an order pursuant to 11 U.S.C. § 105(a) granting, in part, the Debtors’ motion for a preliminary injunction.²⁷⁸ The court ordered that the Governmental Defendants and the Private Defendants are prohibited from—primarily—the commencement or continuation of their actions or proceedings against the Debtors (or related parties) that were or could have been commenced before the commencement of the instant case related to the Debtors’ prescription opioid business.²⁷⁹ This injunction would last through November 6, 2019.²⁸⁰

This order was extended on November 6, 2019.²⁸¹ Notably, some entities were excluded from this order’s enjoinder, but they opted to abide by its term until December 19, 2019,

²⁷⁶ Plan Disclosure Statement at 40-41.

²⁷⁷ Plan Disclosure Statement at 41.

²⁷⁸ Order Pursuant to 11 U.S.C. § 105(a) Granting, In Part, Motion for a Preliminary Injunction, Purdue Pharma L.P., et al. v. Commonwealth of Massachusetts, et al., Adv. Pro. No. 19-08289 (RDD), In re Purdue Pharma L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 3, 2019) [<https://perma.cc/YKQ5-8ARQ>].

²⁷⁹ *Id.* at 5.

²⁸⁰ *Id.* at 4.

²⁸¹ Second Amended Order, Purdue Pharma L.P., et al. v. Commonwealth of Massachusetts, et al., Adv. Pro. No. 19-08289 (RDD), In re Purdue Pharma L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 3, 2019) [<https://perma.cc/R87Q-USSA>].

including: Arizona, the Ad Hoc Group of Non-Consenting States, and the Multi-State Governmental Entities Group (the “Potential Opt-Out Parties”).²⁸²

The Order was extended, again, on November 20, 2019.²⁸³ As in the second order, the Potential Opt-Out Parties opted to abide by the order’s injunction.²⁸⁴ This order allowed a Potential Opt-Out Party to opt out by filing a withdrawal notice with the court on either December 19, 2019 or February 21, 2020.²⁸⁵ If done, the exiting parties will then be bound by the same terms imposed on other parties by the November 6 order until April 8, 2020.²⁸⁶

The order was again extended on December 9, 2019.²⁸⁷ Here, the same terms of the injunction apply, and the Potential Opt-Out Parties agreed to abide by the terms of the second order granting preliminary injunction.²⁸⁸ The order was extended, in the same terms, several times—the most recent being on March 26, 2021.²⁸⁹

²⁸² *Id.* at 5.

²⁸³ Third Amended Order Granting Motion for a Preliminary Injunction, Purdue Pharma L.P., et al. v. Commonwealth of Massachusetts, et al., Adv. Pro. No. 19-08289 (RDD), In re Purdue Pharma L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 3, 2019) [<https://perma.cc/93R3-RA4Z>].

²⁸⁴ *Id.* at 5.

²⁸⁵ *Id.* at 6.

²⁸⁶ *Id.*

²⁸⁷ Fourth Amended Order Granting Motion for a Preliminary Injunction, Purdue Pharma L.P., et al. v. Commonwealth of Massachusetts, et al., Adv. Pro. No. 19-08289 (RDD), In re Purdue Pharma L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 3, 2019) [<https://perma.cc/4T6S-2Z6R>].

²⁸⁸ *Id.* at 6.

²⁸⁹ Sixteenth Amended Order Granting Motion for a Preliminary Injunction, Purdue Pharma L.P., et al. v. Commonwealth of Massachusetts, et al., Adv. Pro. No. 19-08289 (RDD), In re Purdue Pharma L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Mar. 26, 2021) [<https://perma.cc/DK3T-9D38>].

Monitor

In consult with the Official Committee, the Ad Hoc Group of Non-Consenting States, and the Ad Hoc Committee of Governmental Entities, the Debtors agreed to retain a monitor, to oversee its compliance with the Voluntary Injunction and issue reports of that compliance every ninety days.²⁹⁰ The Monitor produced four reports and found no issues with the Debtors' compliance.²⁹¹

²⁹⁰ Proposed Amended Preliminary Injunction, In re Purdue Pharma L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Nov. 6, 2019), <https://perma.cc/ETJ2-QNZ7>.

²⁹¹ Plan Disclosure Statement at 42.

Automatic Stay

Upon filing a Chapter 11 case, a stay is automatically imposed under § 362(b).²⁹² The automatic stay is intended to give the debtor breathing room by stopping all collection efforts, harassment, and foreclosure actions.²⁹³ The goal of the automatic stay is to allow the debtor to develop a reorganization plan outside of the pressure from creditors or claimants, such that the most effective plan may be created for the debtor and its estate.²⁹⁴ The stay may be lifted or modified, provided that the movant shows “cause” such as bad faith.²⁹⁵ The burden is on the movant to prove cause to lift the stay; if done, the burden is then shifted to the debtor to rebut the movant’s assertions.²⁹⁶

²⁹² 11 U.S.C. § 362 <https://perma.cc/GF76-8958>.

²⁹³ *In re Soares*, 107 F.3d 969, 977 (1st Cir. 1997).

²⁹⁴ 3 COLLIER ON BANKRUPTCY ¶ 362.03 (16th ed. 2019).

²⁹⁵ *In re Project Orange Associates, LLC*, 432 B.R. 89, 103 (Bankr. S.D.N.Y. July 1, 2010).

²⁹⁶ *In re Mosher*, 578 B.R. 765, 772 (Bankr. S.D. Tex. 2017); *see also* Cates, Nathan and Foody, Landon, "Drilling for Success: An Excavation of Sanchez Energy Corporation’s Ch. 11 Reorganization", 82 (2020). *Chapter 11 Bankruptcy Case Studies*, https://trace.tennessee.edu/utk_studlawbankruptcy/60, <https://perma.cc/JY5P-TSP2>.

Motions for Relief from Automatic Stay

TIG Motion

On December 30, 2019, Ironshore Specialty Insurance Company, formerly known as TIG Specialty Insurance Company (“TIG”), filed a motion for relief from the automatic stay.²⁹⁷ TIG argued that it is party to an arbitration proceeding with Purdue Pharma L.P. (and its other subsidiaries), in connection with the parties’ respective rights and obligations under an insurance policy; which, it claimed, is mandatory and non-core.²⁹⁸ Given this, TIG argued the automatic stay should be lifted and the arbitration should be allowed to proceed.²⁹⁹

In response, the Debtors argued that TIG failed to show that cause exists to lift the stay and that lifting the stay would impose unnecessary costs and distractions on the Debtors as well as frustrating its reorganization.³⁰⁰ Following this, the OCC filed in joinder to the Debtors’ motion, echoing their arguments that lifting the stay would frustrate the Debtors’ reorganization.³⁰¹ The Ad Hoc Committee also filed a statement in support of the Debtors’ objection.³⁰²

A hearing on this issue was scheduled for March 24, 2021 but was adjourned to a date to be determined; at the time of writing that date had not yet been set.³⁰³

²⁹⁷ Ironshore Specialty Insurance Company’s Notice of Motion and Hearing, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Dec. 30, 2019), <https://perma.cc/7K33-WHSN>.

²⁹⁸ *Id.* at 2.

²⁹⁹ *Id.*

³⁰⁰ Debtor’s Objection to TIG’s Motion for Relief From the Automatic Stay, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Jan. 17, 2020), <https://perma.cc/4C73-DP7Y>.

³⁰¹ Objection of the Official Committee of Unsecured Creditors to the Motion of Ironshore Specialty Insurance Company for Relief from the Automatic Stay and Joinder to the Debtors’ Objection to Such Motion, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Jan. 17, 2020), <https://perma.cc/5SP3-WJPW>.

³⁰² Ad Hoc Committees Statement in Support of Debtors Objection to TIGs Motion for Relief from the Automatic Stay, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Jan. 17, 2020), <https://perma.cc/G94X-BC7J>.

³⁰³ Notice of Adjournment of Hearing Regarding Ironshore Specialty Insurance Company, Formerly Known as TIG Specialty Insurance Company’s Motion or Relief from the Automatic Stay, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Mar. 22, 2021), <https://perma.cc/55G2-VSGM>.

Allergan Finance LLC

On March 11, 2020, Allergan Finance LLC (“Allergan”) filed a motion explaining that they (as Plaintiffs)—along with the Debtors (as Defendants)—are party to prescription opioid litigation in a New York State court claiming public nuisance.³⁰⁴ That litigation set a liability-only phase and Allergan asks the court to confirm that the automatic stay does not prohibit inclusion of the Debtors on the jury verdict form to apportion fault; or alternatively, to grant relief for this limited purpose.³⁰⁵

The People of the State of New York filed an opposition brief to Allergan’s motion,³⁰⁶ as did the Debtors,³⁰⁷ the Non-Consenting States,³⁰⁸ the OCC,³⁰⁹ and the Ad Hoc Committee.³¹⁰ In response, Allergan filed an Omnibus Reply arguing that none of the above briefs disclosed a case where the automatic stay prevented a debtor from being added to a verdict form for purposes of apportionment.³¹¹

At the time of writing, an order had yet to be issued.

³⁰⁴ Allergan Finance LLC’s Motion for Relief from Stay, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Mar. 11, 2020), <https://perma.cc/P94J-JFEE>.

³⁰⁵ *Id.*

³⁰⁶ Opposition of New York Plaintiffs to Defendants’ (Allergan) Motion for Relief from the Automatic Stay, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Mar. 24, 2020), <https://perma.cc/2Y5E-39SK>.

³⁰⁷ Debtors’ Objection to Co-Defendants’ Motion for Relief from the Automatic Stay, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. April 15, 2020), <https://perma.cc/962W-LXNB>.

³⁰⁸ Opposition of the Non-Consenting States to Opioid Defendants’ Motion for Relief from the Automatic Stay, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. April 15, 2020), <https://perma.cc/XT9C-MLVU>.

³⁰⁹ Objection of the Official Committee of Unsecured Creditors to the Motion for Relief from the Automatic Stay, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. April 15, 2020), <https://perma.cc/YCM9-8HYN>.

³¹⁰ Ad Hoc Committee’s Objection and Joinder in the Debtors’ Objection to Co-Defendants’ Motion for Relief from the Automatic Stay, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. April 15, 2020), <https://perma.cc/JKH9-D42B>.

³¹¹ Defendants’ Omnibus Reply in Support of Motion for Relief from the Automatic Stay, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. April 19, 2020), <https://perma.cc/PP2V-KAYE>.

Bar Date

Per Fed. R. Bankr. P. 3003(c)(2), all parties whose claims are “not scheduled or scheduled as disputed, contingent, or unliquidated” must file a proof of claim by the bar date in order to be “treated as a creditor.”³¹² The Debtors requested that the deadline for filing proofs of claim (the “General Bar Date”) be set as June 30, 2020 or thirty days after entry of any order authorizing the rejection of an executory contract or unexpired lease as the deadline for claimants to assert claims for such actions.³¹³ Next, the Debtors sought that the deadline for creditors with claims affected by the Debtors’ filing of its Schedule of Assets and Liabilities and/or Statement of Financial Affairs (collectively, the “Schedules”) to be the General Bar date or 30 days after being serviced.³¹⁴ This motion also set out the proposed procedures for filing proofs of claims,³¹⁵ notice of the Bar Dates publication notice for unknown claimants;³¹⁶ and proposed proof of claims forms for (1) Governmental Opioid Claimants, (2) Personal Injury Claimants, (3) General Opioid Claimants, and (4) Non-Opioid Claimants.³¹⁷

An order approving this motion was entered on February 3, 2020.³¹⁸

³¹² Debtors’ Motion for Entry of an Order (I) Establishing Deadlines for Filing Proofs of Claim and Procedures Relating Thereto, (II) Approving the Proof of Claim Forms, and (III) Approving the Form and Manner of Notice Thereof, In re Purdue Pharma L.P., et al., Case No. 19-19-23649, 5 (Bankr. S.D.N.Y. Jan. 3, 2020), <https://perma.cc/BP85-PC5E>.

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.* at 6.

³¹⁷ *Id.*

³¹⁸ Order Establishing (I) Deadlines for Filing Proofs of Claim and Procedures Relating Thereto, (II) Approving the Proof of Claim Forms, and (III) Approving the Form and Manner of Notice Thereof, In re Purdue Pharma L.P., et al., Case No. 19-19-23649, 5 (Bankr. S.D.N.Y. Feb. 3, 2020), <https://perma.cc/STV6-A4QN>.

Motion to Extend the Bar Date

In response to COVID-19, the Debtors filed a motion to extend the General Bar Date by 30 days to July 30, 2020.³¹⁹ The Debtors wanted to accommodate any potential delays in notice or response brought on by the Covid-19 pandemic.³²⁰ In their motion, the Debtors stated that they affirmed their commitment to resolving its cases as expeditiously as possible and, as such, were only asking for 30 days as opposed to 90; though even 30, it admitted, had been met with reluctance by its major creditor groups.³²¹

A series of filings were filed in response to this motion. The Ad Hoc Committee filed a limited objection to the 30-day extension, asking instead that the General Bar Date be extended by 90 days.³²² Likewise, the Non-Consenting States filed a limited objection asking the court to extend the bar date to until September 30 citing COVID-19 disruptions.³²³ Conversely, the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants argued that the bar date extension is costly and unlikely to benefit potential claimants.³²⁴

³¹⁹ Debtors' Motion for Entry of an Order (I) Extending the General Bar Date for a Limited period and (II) Approving Form and Manner of Notice Thereof, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. May 5, 2020), <https://perma.cc/973C-W9EE>.

³²⁰ *Id.* at 4-5.

³²¹ *Id.* at 5.

³²² Limited Objection of the Ad Hoc Committee on Accountability to the Debtors' Motion for an Order Extending General Bar Date, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. May 28, 2020), <https://perma.cc/8WJJ-RFZX>.

³²³ Limited Objection of the Non-Consenting States to Debtors' Motion, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. May 31, 2020), <https://perma.cc/P4PG-SAW8>.

³²⁴ Ad Hoc Committee's Objection to Requests to Extend the Bar Date, In re Purdue Pharma L.P., et al., Case No. 19-19-23649, 3-4 (Bankr. S.D.N.Y. May 31, 2020), <https://perma.cc/J89G-EBTQ>.

Several of the major creditor groups filed motions in support of the Debtors' motion, including the Multi-State Governmental Entities,³²⁵ the Ad Hoc Group of Individual Victims,³²⁶ and the OCC.³²⁷ On June 3, 2020, the court entered an order extending the bar date to July 30, 2020.³²⁸

³²⁵ Multi-State Governmental Entities Group Statement in Support of the Debtors' Motion for Entry of an order Extending the General Bar Date for a Limited Period and Approving the Form of Notice Thereof, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. May 28, 2020), <https://perma.cc/AAZ4-KKG3>.

³²⁶ Statement of the Ad Hoc Group of Individual Victims (I) in Support of the Debtors' Motion for Entry of an Order Extending the General Bar Date for a Limited Period and (II) Objecting to Requests for Entry of an Order Extending Bar Date by Ninety Days, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. May 31, 2020), <https://perma.cc/XYX5-T4TN>.

³²⁷ Statement of the Official Committee of Unsecured Creditors in Response to Letter Briefs Requesting Extension of Bar Date, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. May 31, 2020), <https://perma.cc/9JH9-8JPA>.

³²⁸ Order Granting Motion (I) Extending the General Bar Date for a Limited Period, and (II) Approving the Form and Manner of Notice Thereof, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. June 3, 2020), <https://perma.cc/UP9P-YPMB>.

Prepetition Reimbursement Agreement with Ad Hoc Committee

On October 29, 2019, the Debtors filed a motion to assume the Reimbursement Agreement of the Ad Hoc Committee.³²⁹ In it, the Debtors argued that the proposed settlement it was seeking for the pending litigation against it was only possible due to the prepetition organization of claimants, such as the Ad Hoc Committee.³³⁰ Further, the Debtors contend that the Professionals serving the Ad Hoc Committee were selected due to their knowledge of navigating large and complex restructurings.³³¹ Therefore, the Debtors argue, it is crucial that it be allowed to fund the payment of these professionals to facilitate the confirmation of a plan of reorganization, which is conditioned on reaching a settlement.³³² On December 20, 2019, the court entered an order authorizing the Debtors to assume the reimbursement agreement and pay the fees and expenses of the Ad Hoc Committee's professionals.³³³

³²⁹ Debtor's Motion to Assume the Prepetition Reimbursement Agreement with Ad Hoc Committee and to Pay the Fees and Expenses of the Ad Hoc Committee's Professionals, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Oct. 29, 2019), <https://perma.cc/W96P-J89M>

³³⁰ *Id.* at 2.

³³¹ *Id.* at 3-4.

³³² *Id.* at 2-5.

³³³ Order Authorizing the Debtors to Assume the Reimbursement Agreement and Pay the Fees and Expenses of the Ad Hoc Committee's Professionals, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Dec. 20, 2019), <https://perma.cc/Y59K-F6HC>.

Adversary Proceedings

Stacey Bridges and Creighton Boyd *et al.* v. Purdue Pharma L.P., *et al.*

On December 10, 2020, Attorneys Frank Ozment and Roderick Graham filed a class action on behalf of Plaintiffs Stacy Bridges and Creighton Boyd as well as others similarly situated against the Debtors.³³⁴ The plaintiffs sought to establish a trust for the victims of the Debtor's conduct in the opioid crisis to facilitate their recovery. The trust would be funded to provide subsidized access to therapeutic counseling and medicine assisted treatment for opioid addiction to facilitate their recovery.³³⁵ The plaintiffs referenced the settlement agreement between the Debtor and the United States, which at that point had received conditional approval from the Bankruptcy Court.³³⁶

The complaint alleged that the proposed settlement would be inadequate to treat people like Stacy Bridges, who personified the Debtor's typical victim in that she developed a heroin addiction, due to the settlement's reliance on "medicine assisted treatment" at the exclusion of "therapeutically focused counselling."³³⁷ For victims like Creighton Boyd, who managed to avoid a heroin addiction, medicine assisted treatment was also likely to be required for the foreseeable future. Mr. Boyd will have to pay out of pocket for this treatment, despite having medical insurance, while the settlement agreement does not require the Debtors to subsidize these costs for victims.³³⁸ Given this, the Plaintiffs sought to require the Debtors to establish a directed trust for the benefit of opioid addicted persons, such as Ms. Bridges and Mr. Boyd, who have filed a claim in the instant bankruptcy.³³⁹

³³⁴ Complaint against Purdue Pharma L.P., et al., filed by Frank Ozment on behalf of Stacy Bridges and Creighton Boyd et al., Adversary Case 20-07027, In re Purdue Pharma L.P., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Dec. 11, 2020) [<https://perma.cc/RMA6-77P2>].

³³⁵ *Id.* at 1.

³³⁶ *Id.* at 2.

³³⁷ *Id.*

³³⁸ *Id.* at 5.

³³⁹ *Id.* at 8. Later, this complaint was amended to include Creighton Boyd and Charles Fitch on behalf of themselves and others similarly situated to them as plaintiffs, as well as WalMart, Inc. and McKinsey & Co. as defendants for their contribution with Debtor in the marketing and distribution of opioids. Amended Adversary Proceeding Complaint,

Aviro Health L.P. *et al.* v. AIG Specialty Insurance Company (f/k/a American International Specialty Lines Insurance Company) *et al.*

Out of concern that the Debtors available coverage under its insurance policies would be dwarfed by the liability it faced related to the opioid mass tort claims, Debtors brought an action to give all parties in interest clarity about the scope of insurance coverage as well as the availability and amount of proceeds in its insurance policies.³⁴⁰ The Plaintiffs sought a declaration of the rights, duties, and liabilities of the insurer-Defendants under the Debtors' prepetition insurance contracts and to direct to the insurer-Defendants to indemnify the Debtors or pay damages arising out of the opioid claims.³⁴¹ These Plaintiffs included (1) certain Debtors in the bankruptcy, (2) the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases, and (3) the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants in the Chapter 11 Cases.

filed by James Franklin Ozment I on behalf of Charles Daniel Fitch, Bloyd Creighton, Others Similarly Situated, Adversary Proceeding No. 20-0727-rdd, In re Purdue Pharma, L.P., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Dec. 11, 2020) [<https://perma.cc/U7JC-8VWF>]. As of April 6, 2021, a second stipulation and agreed order was signed that extended the deadline for Defendants to answer or otherwise response to the amended complaint. The pre-trial conference is currently scheduled for June 16, 2021. Second Stipulation and Agreed Order signed on 4/2/2021 Extending the Deadline for Defendants to Answer or Otherwise Respond to the Amended Complaint, filed by Davis Polk & Wardell LLP, Case No. 19-23649 (RDD), In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Dec. 11, 2020) [<https://perma.cc/SM9G-URDPJ>].

³⁴⁰ Adversary case 21-07005. Complaint against AIG Specialty Insurance Company (f/k/a American International Specialty Lines Insurance Company), Allied World Assurance Company, Ltd., American Guarantee and Liability Insurance Company, American International Reinsurance Company (f/k/a Starr Excess Liability Insurance International Limited), Arch Reinsurance Ltd., Aspen American Insurance Company, Certain Member Companies of the International Underwriting Association of London Subscribing to Policy No. 823/KE0002108, Chubb Bermuda Insurance Ltd. (f/k/a ACE Bermuda Insurance Ltd.), Evanston Insurance Company, Gulf Underwriters Insurance Company, HDI Global SE (f/k/a Gerling-Konzern General Insurance Company), Ironshore Specialty Insurance Company (f/k/a TIG Specialty Insurance Company), Liberty Insurance Corporation, Liberty Mutual Fire Insurance Company, Liberty Mutual Insurance Company, Liberty Mutual Insurance Europe SE (f/k/a Liberty International Insurance Company), National Union Fire Insurance Company of Pittsburgh, PA, Navigators Specialty Insurance Company, North American Elite Insurance Company, St. Paul Fire and Marine Insurance Company, Steadfast Insurance Company, Swiss Re International S.E. (f/k/a SR International Business Insurance Company also f/k/a Zurich Reinsurance (London) Limited, Tenecom Limited (f/k/a Winterthur Swiss Insurance Company), XL Bermuda Ltd. (f/k/a XL Insurance Company, Ltd.), XL Insurance America, Inc. (Fee Amount \$ 350.). Nature(s) of Suit: (14 (Recovery of money/property - other)) Filed by Paul E. Breene on behalf of Avrio Health L.P., Purdue Pharma Inc., Purdue Pharma L.P., Purdue Pharma Manufacturing L.P., Purdue Pharmaceutical Products L.P., Purdue Pharma of Puerto Rico, Purdue Transdermal Technologies L.P., Rhodes Pharmaceuticals L.P., Rhodes Technologies, In re Purdue Pharma L.P. et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Dec. 11, 2020) [<https://perma.cc/C7J9-BQXFJ>].

³⁴¹ See generally *id.*

Plaintiffs claimed that such a declaration and understanding would enable all stakeholders to better negotiate regarding the structure and terms of a plan of reorganization, specifically allocation of creditor recoveries, as well as secure all insurance proceeds that Debtors are entitled arising from the opioid tort claims.

Following, Defendants Liberty Mutual Insurance Company, Liberty Mutual Fire Insurance Company, and Liberty Insurance Corporation filed a Motion to Withdraw the Reference of the Adversary Proceeding.³⁴² 28 U.S.C. § 157(b) permits matters that have been automatically referred to a bankruptcy court to be returned to and heard by the district court.³⁴³ Here, the Defendants argued that because Plaintiff-Debtors' claims are "non-core" because they do not depend on bankruptcy laws the court is prohibited from issuing a final judgement.³⁴⁴ Further, the Defendants claimed that these non-core claims are unnecessary to the Debtors' reorganization.³⁴⁵ Given this, they argued that the proceedings should be withdrawn to the district court for the Southern District of New York.³⁴⁶ Later, a host of the Debtor's other insurers would file a Joinder in Motion to Withdraw the Reference, joining the Motion to Withdraw the Reference filed by the above Defendants.³⁴⁷

³⁴² Motion to Withdraw the Reference of Adversary Proceeding, Liberty Insurance Corporation, Liberty Mutual Fire Insurance Company, Liberty Mutual Insurance Company, Adv. Proc. No. 21-07005 (RDD), In re Purdue Pharma L.P. et al, Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Mar. 22, 2021) [<https://perma.cc/46TJ-SJZN>].

³⁴³ 28 U.S.C. § 157 [<https://perma.cc/FL56-CQM6>].

³⁴⁴ *Id.*

³⁴⁵ *Id.* at 8-14.

³⁴⁶ Memorandum of Law in Support of Motion to Withdraw the Reference,), In re Purdue Pharma L.P. et al, Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Mar. 22, 2021), [<https://perma.cc/4PZP-CVHE>].

³⁴⁷ Specifically, these Defendants include SR International Business Company SE, formerly known as SR International Business Insurance Company Limited, Chubb European Group SE, formerly known as ACE Insurance S.A.-N.V, QBE UK Limited, formerly known as QBE International Insurance Company Limited, Darag Insurance UK Limited, formerly known as The Underwriter Insurance Company Limited, Zurich Specialties London Limited, formerly known as Zurich Reinsurance (London) Limited, XL Bermuda, Ltd., AIG Specialty Insurance Company, successor to American International Specialty Lines Insurance Company, New Hampshire Insurance Company, and American International Reinsurance Company, successor to Starr Excess Liability Insurance International Limited, North American Elite Insurance Company, Aspen American Insurance Company, XL Insurance America, Inc., and National Union Fire. *See* Notice of Certain Defendants' Joinder in Motion to Withdraw the Reference, Adv. Pro. No. 21-07005, In re Purdue Pharma L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. April 5, 2021) [<https://perma.cc/K86Q-Z3RW>]. Arch Reinsurance Ltd. would later file a Joint Motion to Withdraw the Reference of Adversary Proceeding As Against Movants in the Event That the Court Denies the Liberty Mutual Withdrawal Motion; *see* Joint Motion to Withdraw the

At the time of writing an order had not been issued regarding the motion to withdraw and the adversary proceeding is still ongoing.

Reference of Adversary Proceeding As Against Movants in the Event That the Court Denies the Liberty Mutual Withdrawal Motion, Adv. Case No. 21-07006-rdd, In re Purdue L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. April 5, 2021) [<https://perma.cc/HZ9U-78AF>].

Purdue Pharma L.P. *et al.* v. Commonwealth of Massachusetts *et al.*

The Debtors,³⁴⁸ under Rules 7001(7) and 7065 of the Federal Rules of Bankruptcy Procedure and section 105 of title 11 of the United States Code, brought this adversary proceeding to:³⁴⁹

- (1) enjoin governmental defendants³⁵⁰ from the commencement or continuation of their active proceedings against the Debtors that were or could have been commenced before the commencement of the instant case, as well as the commencement or continuation of any other actions against the Debtors alleging substantially similar facts or causes of actions, if not otherwise subject to the automatic stay, then at least for a period of 270 days from the issuance of the injunction, and
- (2) enjoin the governmental defendants and the private defendants³⁵¹ in the instant adversary proceeding from the commencement or continuation of their active judicial, administrative, or other actions or proceedings, and the commencement or continuation of other actions alleging substantially similar facts or causes of actions as those alleged in the actions against former or current (a) owners (including any trusts and their respective trustees and beneficiaries), (b) directors, (c) officers, (d) employees, and (e) associated entities of the Debtors that were or could have been commenced before the commencement of this case, if not otherwise subject to the automatic stay, then for period of 270 days from the issuance of the injunction.³⁵²

The Plaintiff-Debtors argued that without this relief, defending the pending actions will thwart the goals of the bankruptcy by draining the estate.³⁵³ The Debtors also contend that the pending actions, the vast majority of which are brought by governmental agencies, do not fall within

³⁴⁸ Plaintiff Debtors in this case include: Purdue Pharma, Inc., Purdue Transdermal Technologies L.P., Purdue Pharma Manufacturing L.P., Purdue Pharmaceuticals L.P., Purdue Pharma of Puerto Rico, Purdue Pharmaceutical Products, L.P., Rhodes Pharmaceuticals L.P., Rhodes Technologies, and Aviro Health L.P.

³⁴⁹ Complaint for Injunctive Relief, Purdue Pharma L.P. *et al.* v. Commonwealth of Massachusetts *et al.*, Adv. Pro. Case No. 19-08289 (RDD), In re Purdue Pharma L.P. *et al.*, Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Sept. 18, 2019) [<https://perma.cc/E7PY-FCWQ>].

³⁵⁰ *See* Exhibit A, Complaint for Injunctive Relief.

³⁵¹ *See* Exhibit B, Complaint for Injunctive Relief.

³⁵² *Supra* note 345, at 24-25.

³⁵³ *Id.* at 26.

the “police power” exception to the automatic stay contained in 11 U.S.C. § 362(b)(4).³⁵⁴ The Plaintiff-Debtors argued that there is a reasonable likelihood of a successful reorganization *only if* the 105(a) injunction is granted (even if the automatic stay does not apply).³⁵⁵

A consortium of some Massachusetts Municipalities, along with other governmental entities (the “Municipality Consortium”)³⁵⁶ filed a motion in opposition to the Sackler Family’s (non-Debtor) motion for a preliminary injunction.³⁵⁷ The Municipality Consortium argued that the injunction should be denied to the extent that it seeks to enjoin state court actions brought against the Sackler Family.³⁵⁸ The Municipality Consortium argued, among other things, that the bankruptcy court lacks (1) subject matter jurisdiction and (2) authority under Article III to enjoin their claims.³⁵⁹

³⁵⁴ *Id.* at 27.

³⁵⁵ *Id.*

³⁵⁶ This Opposition was filed on behalf of a series of cities and towns in Massachusetts and other states, as follows: City of Cambridge v. Purdue Pharma L.P., et al., No. 1984CV02854 (Dkt. #1) at 32-34, 96-97; Town of Canton v. Purdue Pharma L.P., et al., No. 1984CV01615 (Dkt. #1) at 30-31, 92-93; City of Chicopee v. Purdue Pharma L.P., et al., No. 1984CV01621 (Dkt. #1) at 30-31, 94-96; City of Framingham v. Purdue Pharma L.P., et al., No. 1984CV01487 (Dkt. #1) at 30-31, 92-93; City of Gloucester v. Purdue Pharma L.P., et al., No. 1984CV01351 (Dkt. #1) at 30-31, 91-92; City of Haverhill v. Purdue Pharma L.P., et al., No. 1984CV01311 (Dkt. #1) at 30-31, 92-93; Town of Lynnfield v. Purdue Pharma L.P., et al., No. 1984CV01330 (Dkt. #1) at 29-30, 92-93; Town of Natick v. Purdue Pharma L.P., et al., No. 1984CV02002 (Dkt. #1) at 30-31, 92-93; Town of Randolph v. Purdue Pharma L.P., et al., No. 1984CV02573 (Dkt. #1) at 33-34, 96-98; City of Salem v. Purdue Pharma L.P., et al., No. 1984CV01355 (Dkt. #1) at 30-31, 91-93; City of Springfield v. Purdue Pharma L.P., et al., No. 1984CV01733 (Dkt. #1) at 30-31, 92-93; City of Worcester v. Purdue Pharma, L.P., et al., No. 1984CV00543 (Dkt. #36); Town of Wakefield v. Purdue Pharma L.P., et al., No. 1984CV01499 (Dkt. #1) at 29-30, 92-93; City of Portsmouth v. Purdue Pharma L.P., et al., No. 740CL19000234-00 (Dkt. #1) at 31-33, 94-95; City of Trenton v. Purdue Pharma L.P., et al., No. MER-L-001167-19 (Trans ID: LCV20191046036) at 36-37, 139-40; City of Norwich v. Purdue Pharma L.P., et al., No. KNL-CV19-6040618-S, Complaint at 33-34, 96-97; Town of Wethersfield v. Purdue Pharma L.P., et al., No. HHD-CV-19-6112864-S, Complaint at 33-34, 95-97; City of Middletown v. Purdue Pharma L.P., et al., No. MMX-CV-19-6024949S, Complaint at 33-34, 95-97; and Town of Enfield v. Purdue Pharma L.P., et al., No. HHD-CV-19-6110751-S, Complaint at 33-34, 96-97.

³⁵⁷ Opposition by the Consortium of Some Massachusetts and Other Municipalities to the Motion for a Preliminary Injunction In Favor of the Sackler Family Non-Debtors, Purdue Pharma L.P., et al. v. Commonwealth of Massachusetts, et al., Adv. Pro. No. 19-08289 (RDD), In re Purdue Pharma L.P., et al. (Bankr. S.D.N.Y. Oct. 2, 2019) [<https://perma.cc/6Q4G-2YCL>].

³⁵⁸ *Id.* at 2.

³⁵⁹ *Id.* Nevada counties and municipalities also filed a motion in opposition to the Debtor’s Motion for Preliminary Injunction containing roughly the same argument as the Municipality Consortium; *see* Opposition of Nevada Counties and Municipalities to Motion for Preliminary Injunction, Purdue Pharma L.P., et al. v. Commonwealth of Massachusetts, et al., Adv. Pro. No. 19-08289 (RDD), In re Purdue Pharma L.P. et al., Case No. 1923649 (RDD) (Bankr. S.D.N.Y. Oct. 2, 2019) [<https://perma.cc/Z2QG-GFWY>].

This opposition was buttressed by an opposition filed by governmental entities across the country (the “Multi-State Governmental Entities Group”) who echoed the Municipality Consortium’s arguments.³⁶⁰ These plaintiffs argued that they were exercising their police powers through § 362(b)(4) thereby exempting their actions from the automatic stay.³⁶¹ The Multi-State Governmental Entities Group differentiated the Sackler family from the Debtors and argued that the Sacklers should not be granted preliminary injunction.³⁶² Several other governmental entities filed objections to Debtors’ preliminary injunction motion.³⁶³

In a reply, Debtors argued that the police power exception to the automatic stay does not limit application of § 105(a) to stay the governmental actions and that courts are empowered to stay actions not covered by the automatic stay.³⁶⁴ Additionally, the “Ad Hoc Committee” which consists of (i) ten states, (ii) six political subdivisions of States, and (iii) and a federally recognized American Indian Tribe filed a statement in support of a limited and conditional stay.³⁶⁵ The Ad Hoc Committee pressed that it had negotiated a settlement with the Debtors on behalf of a larger group of supporting governmental and other claimants. This settlement is threatened if the stay is lifted

³⁶⁰ The Multi-State Governmental Entities Group’s Opposition to Debtors’ Motion for a Preliminary Injunction, Purdue Pharma L.P., et al. v. Commonwealth of Massachusetts, et al., Adv. Pro. No. 19-08289 (RDD), In re Purdue Pharma L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 3, 2019) [<https://perma.cc/HU7S-R3QH>].

³⁶¹ *Id.* at 4.

³⁶² *Id.* at 6.

³⁶³ See, e.g., Limited Objection and Response of Arkansas and Tennessee Public Officials in Opposition to Debtors’ Motion for a Preliminary Injunction, Purdue Pharma L.P., et al. v. Commonwealth of Massachusetts, et al., Adv. Pro. No. 19-08289 (RDD), In re Purdue Pharma L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 3, 2019) [<https://perma.cc/Y984-Q7ES>]; The States’ Coordinated Opposition to the Debtors’ Motion for Preliminary Injunction of States’ Law Enforcement Actions Against the Sacklers, Purdue Pharma L.P., et al. v. Commonwealth of Massachusetts, et al., Adv. Pro. No. 19-08289 (RDD), In re Purdue Pharma L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 3, 2019) [<https://perma.cc/HB2M-KCAM>].

³⁶⁴ Plaintiff-Debtors’ Omnibus Reply to Motion for a Preliminary Injunction, Purdue Pharma L.P., et al. v. Commonwealth of Massachusetts, et al., Adv. Pro. No. 19-08289 (RDD), In re Purdue Pharma L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 3, 2019) [<https://perma.cc/A4KW-VK3H>].

³⁶⁵ The Ad Hoc Committee also included the court-appointed Plaintiffs’ Executive Committee (the “PEC”) in the federal multi-district litigation captioned In re National Prescription Opiate Litigation, Case No. 17-md-02804, MDL No. 2804 (N.D. Ohio). Ad Hoc Committee’s Statement in Support of a Limited and Conditional Stay, Purdue Pharma L.P., et al. v. Commonwealth of Massachusetts, et al., Adv. Pro. No. 19-08289 (RDD), In re Purdue Pharma L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 3, 2019) [<https://perma.cc/K56A-R357>].

and the estate exhausted. The Ad Hoc Committee argued that confirming a chapter 11 plan is the best option to maximize value for all creditors, including the public.³⁶⁶

The OCC filed a statement in support of Debtors' motion for a preliminary injunction.³⁶⁷ The Committee voiced its support for the temporary injunction as a tool to maximize the estate's assets, though it specified that it was not supporting the settlement proposed by the Ad Hoc Committee.³⁶⁸

On October 11, 2019, the court issued an order pursuant to 11 U.S.C. § 105(a) granting, in part, the Debtors' motion for a preliminary injunction.³⁶⁹ The court ordered that the Governmental Defendants and the Private Defendants are prohibited from—primarily—the commencement or continuation of their active actions or proceedings against the Debtors (or related parties) that were or could have been commenced before the commencement of the instant case related to the Debtors' prescription opioid business.³⁷⁰ This injunction would last through November 6, 2019.³⁷¹

This Order was extended on November 6, 2019.³⁷² Notably, some entities were excluded from this Order's enjoinder but they opted to abide by its term until December 19, 2019, including: Arizona, the Ad Hoc Group of Non-Consenting States, and the Multi-State Governmental Entities Group (the "Potential Opt-Out Parties").³⁷³

³⁶⁶ *Id.* at 2.

³⁶⁷ Official Committee of Unsecured Creditors' Statement in Support of Debtors' Motion for a Preliminary Injunction Pursuant to 11 U.S.C. § 105(a) and Statement in Support of Complaint for Injunctive Relief, Purdue Pharma L.P., et al. v. Commonwealth of Massachusetts, et al., Adv. Pro. No. 19-08289 (RDD), In re Purdue Pharma L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 3, 2019) [<https://perma.cc/JQE4-9F6V>].

³⁶⁸ *Id.* at 1-3.

³⁶⁹ Order Pursuant to 11 U.S.C. § 105(a) Granting, In Part, Motion for a Preliminary Injunction, Purdue Pharma L.P., et al. v. Commonwealth of Massachusetts, et al., Adv. Pro. No. 19-08289 (RDD), In re Purdue Pharma L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 3, 2019) [<https://perma.cc/YKQ5-8ARQ>].

³⁷⁰ *Id.* at 5.

³⁷¹ *Id.* at 4.

³⁷² Second Amended Order, Purdue Pharma L.P., et al. v. Commonwealth of Massachusetts, et al., Adv. Pro. No. 19-08289 (RDD), In re Purdue Pharma L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 3, 2019) [<https://perma.cc/R87Q-USSA>].

³⁷³ *Id.* at 5.

The Order was extended, again, on November 20, 2019.³⁷⁴ As in the second Order, the Potential Opt-Out Parties opted to abide by the Order's injunction.³⁷⁵ This Order allows an Opt-Out Party to opt out by filing a withdrawal notice with the court on either December 19, 2019 or February 21, 2020.³⁷⁶ If done, the exiting parties will then be bound by the same terms imposed on other parties by the November 6 order until April 8, 2020.³⁷⁷

The Order was again extended on December 9, 2019.³⁷⁸ Here, the same terms of the injunction apply and the Potential Opt-Out Parties agreed to abide by the terms of the second Order granting preliminary injunction.³⁷⁹ The order was again extended on December 9, 2019.³⁸⁰ Here, the same terms of the injunction apply, and the Potential Opt-Out Parties agreed to abide by the terms of the second order granting preliminary injunction.³⁸¹ The order was extended, in the same terms, several times—the most recent being on March 26, 2021.³⁸²

³⁷⁴ Third Amended Order Granting Motion for a Preliminary Injunction, Purdue Pharma L.P., et al. v. Commonwealth of Massachusetts, et al., Adv. Pro. No. 19-08289 (RDD), In re Purdue Pharma L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 3, 2019) [<https://perma.cc/93R3-RA4Z>].

³⁷⁵ *Id.* at 5.

³⁷⁶ *Id.* at 6.

³⁷⁷ *Id.*

³⁷⁸ Fourth Amended Order Granting Motion for a Preliminary Injunction, Purdue Pharma L.P., et al. v. Commonwealth of Massachusetts, et al., Adv. Pro. No. 19-08289 (RDD), In re Purdue Pharma L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 3, 2019) [<https://perma.cc/4T6S-2Z6R>].

³⁷⁹ *Id.* at 6.

³⁸⁰ Fourth Amended Order Granting Motion for a Preliminary Injunction, Purdue Pharma L.P., et al. v. Commonwealth of Massachusetts, et al., Adv. Pro. No. 19-08289 (RDD), In re Purdue Pharma L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Oct. 3, 2019) [<https://perma.cc/4T6S-2Z6R>].

³⁸¹ *Id.* at 6.

³⁸² Sixteenth Amended Order Granting Motion for a Preliminary Injunction, Purdue Pharma L.P., et al. v. Commonwealth of Massachusetts, et al., Adv. Pro. No. 19-08289 (RDD), In re Purdue Pharma L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Mar. 26, 2021) [<https://perma.cc/DK3T-9D38>].

State of Arizona v. Richard Sackler et al., No. 22O151

On July 31, 2019, the State of Arizona through its Attorney General Mark Broncivh filed an action against Purdue Pharma L.P. and the Sackler family³⁸³ in the original jurisdiction of the United States Supreme Court.³⁸⁴ Arizona claimed that the Court had original jurisdiction over the action under Article III, § 2, cl. 2 of the U.S. Constitution because it is a dispute in which “a State [is a] Party.”³⁸⁵

In its petition, Arizona asserted claims under its fraudulent transfer laws against Debtors’ and the above named Sackler’s.³⁸⁶ Arizona alleged that the Sackler family unlawfully transferred billions of dollars out of their company to avoid liability.³⁸⁷ Eventually, though, the Court declined to hear the case.³⁸⁸

³⁸³ Including Richard Sackler, Theresa Sackler, Kathe Sackler, Jonathan Sackler, Mortimer D.A. Sackler, Beverly Sackler, David Sackler, and Ilene Sackler Lefcourt. <https://perma.cc/2DKG-L3BJ>

³⁸⁴ Plaintiff’s Motion for Leave to File Bill of Complaint, State of Arizona v. Richard Sackler, et al., No. 22O151 (Aug. 6, 2019), *Id.*

³⁸⁵ *Id.* at 5.

³⁸⁶ *Id.* at 4-5.

³⁸⁷ *Id.*

³⁸⁸ Tucker Higgins, *Supreme Court refuses to hear unusual case brought by Arizona against Purdue Pharma’s Sacklers over the opioid epidemic*, CNBC (last updated Dec. 10, 2019), <https://www.cnbc.com/2019/12/09/opioid-crisis-supreme-court-refuses-to-hear-case-against-purdues-sacklers.html> [<https://perma.cc/7ELZ-4KCW>].

Executory Contracts

Section 365(a) of the Bankruptcy Code provides that a debtor in possession, subject to the court's approval, may assume or reject any executory contract or unexpired lease.³⁸⁹ Despite being financially healthy, apart from the mass tort litigation exposure, the Debtors still took advantage of the reorganization to reject leases it deemed burdensome or redundant and manage executory contracts for the benefits of its estate, as described below.

The Coventry Facility

Rhodes Technologies (a subsidiary of Purdue Pharma L.P.), owned and operated an active pharmaceutical Ingredient (“API”) manufacturing facility in Coventry, Rhode Island (the “Coventry Facility”) which manufactured APIs used by Purdue Pharma L.P.³⁹⁰ The facility originally manufactured oxycodone API for OxyContin, but the Debtors opted to outsource its API supply needs away from the Coventry Facility.³⁹¹

To avoid the costs associated with shutting down the plant, the Debtors conducted an extensive marketing and negotiation process to sell the plant.³⁹² Following a thorough search and competitive bidding process, Noramco Coventry LLC was selected as the purchaser (“Noramco”).³⁹³ As a condition to closing, the Debtors and Noramco agreed to enter into a supply agreement, for a minimum term of seven years, with two two-year renewals at the Debtors' option.³⁹⁴

³⁸⁹ 11 U.S.C. § 365(a) <https://perma.cc/GU7L-LJDJ>.

³⁹⁰ Notice of Hearing on Motion of the Debtors for an Order (I) Approving Sale of Debtors' Coventry Facility and Related Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (II) Approving Debtors' Entry Into a Long-Term API Supply Agreement, (III) Authorizing Assumption and Assignment or Assignment, as Applicable, of Executory Contracts and Unexpired Leases and (IV) Granting Related Relief, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Nov. 5, 2019), <https://perma.cc/7WVA-6ZDT>.

³⁹¹ [Id. at 4.](#)

³⁹² [Id.](#)

³⁹³ [Id.](#)

³⁹⁴ [Id. at 8.](#)

In connection with this sale, the Debtors sought authorization to assume and assign or assign, as applicable, all contracts or leases associated with the Coventry Facility (the “Assigned Contracts”)³⁹⁵ to the purchaser per § 365(b).³⁹⁶ The Assigned Contracts included all service contracts, supply agreements, and leases related to the Coventry Facility. Though Bankruptcy Rule 6006(f)(6) limits omnibus motions to assume or reject multiple executory contracts to one hundred, the Debtors argued that that should not apply here.³⁹⁷ The Debtors cited, among other reasons, judicial efficiency as reason to waive this limit.³⁹⁸

No objections to the motion were filed, and an order was entered authorizing the Debtors to enter the sale, enter the long-term API supply agreement, and authorize assumption and assignment or assignment of the Assigned Contracts.³⁹⁹

³⁹⁵ [Supra note 27, Exhibit B, pp. 321-24.](#)

³⁹⁶ [Id. at 15.](#)

³⁹⁷ [Id. 32-33.](#)

³⁹⁸ [Id. at 33.](#)

³⁹⁹ Order (I) Approving Sale of Debtors’ Coventry Facility and Related Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (II) Approving Debtors’ Entry into a Long-Term API Supply Agreement, (III) Authorizing Assumption and Assignment or Assignment, as Applicable, of Executory Contracts and Unexpired Leases and (IV) Granting Related Relief, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Oct. 1, 2020), <https://perma.cc/QJ39-23FV>.

Unexpired Leases

Deadline to Assume or Reject Unexpired Leases of Nonresidential Real Property

On December 5, 2019, the Debtors filed a motion to extend the deadline to assume or reject unexpired leases of nonresidential real property from January 13, 2020 to April 13, 2020.⁴⁰⁰ In the motion, the Debtors disclosed its unexpired leases, specifically: the Wrap Lease, the Aviro Health L.P. lease, a lease of administrative office space in Coventry, Rhode Island, and leases of offices in Washington, D.C. and Warren, Rhode Island that are utilized by certain of the Debtors' employees from time to time.⁴⁰¹ The Debtors stated that they were still evaluating the leases to determine which, if any, are burdensome or unnecessary and that it would be premature, at this time, to assume or reject any unexpired leases.⁴⁰² The Debtors claimed that any extension would not prejudice the lessors that are parties to their unexpired leases because they expect to perform all undisputed obligations arising from and after their petition date in a timely fashion, as required by § 365(d)(3).⁴⁰³

An order granting this extension was entered on December 20, 2020.⁴⁰⁴

⁴⁰⁰ Debtors' Motion For Entry of an Order Extending the Deadline to Assume or Reject Unexpired Leases of Nonresidential Real Property, In re Purdue Pharma L.P., et al., Case No. 19-19-23649, 5 (Bankr. S.D.N.Y. Dec. 5, 2019), <https://perma.cc/2MSC-5JNU>.

⁴⁰¹ *Id.*

⁴⁰² *Id.* 4-5.

⁴⁰³ *Id.* at 5. See also 11 U.S.C. § 365(d)(3), <https://perma.cc/UWY8-9ADW>.

⁴⁰⁴ Order Extending the Deadline to Assume or Reject Unexpired Leases of Nonresidential property, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Dec. 20, 2019), <https://perma.cc/ZT36-JRJT>.

Princeton Lease

The Debtors sought permission to reject a certain lease, effective September 26, 2019, dated March 15, 2017, by and between itself and Princeton Center Office, LLC (the “Princeton Lease”).⁴⁰⁵ The Debtors stated that due to staffing reductions, it had physically vacated the premises and, in its business judgment, no longer had need for the premises or its accompanying lease.

No objections to the motion were filed, and an order authorizing the Debtors to reject the Princeton lease was entered shortly after.⁴⁰⁶

⁴⁰⁵ Motion of Debtors for Entry of an Order (I) Authorizing the Rejection of Commercial Lease and (II) Granting Related Relief, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Sept. 14, 2020), <https://perma.cc/FCZ7-GMRN>.

⁴⁰⁶ Order Granting Motion (I) Authorizing the Rejection of Princeton Lease and (II) Granting Related Relief (Setting Bar Date for Rejection Claim), In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Nov. 21, 2019), <https://perma.cc/2Y4D-HLUF>.

Headquarters Lease

The Debtors' corporate headquarters is located at One Stamford Forum at 201 Tresser Blvd, Stamford, CT 06901 ("One Stamford Forum").⁴⁰⁷ One Stamford Forum is owned by One Stamford Realty L.P. ("OSR"), which is owned by the Debtors' existing shareholders.⁴⁰⁸ Debtor is the tenant under a certain lease, dated April 6, 2006, between Purdue Pharma L.P. ("PPLP") and OSR (the "Existing PPLP Lease").⁴⁰⁹ Debtors also has various subtenants in the building.⁴¹⁰ Debtors are also the tenant under a lease dated December 18, 2015 (the "Headquarters Wrap Lease") with OSR as landlord.⁴¹¹

The Debtors sought permission to (1) reject the Headquarters Wrap Lease, effective the same date the 2021 Headquarters Lease (defined below) becomes effective; (2) enter into a replacement lease with OSR and PPLP (the "2021 Headquarters Lease"); (3) assume (a) the Existing PPLP Lease and (b) a certain sublease, dated August 10, 2009, between the Debtors and UBS AG (the "Existing UBS Sublease"); and (4) enter into a surrender agreement between the Debtors and Pharmaceutical Research Associates (the "Surrender Agreement").⁴¹²

The Debtors point to a consistent reduction in its employees (67% employee reduction) as its primary motivation for rejecting the Headquarters Wrap Lease.⁴¹³ Given their staffing reductions, the Debtors no longer need the office space it negotiated for when the lease was signed in 2015.⁴¹⁴

⁴⁰⁷ [Id. at 4.](#)

⁴⁰⁸ [Id.](#)

⁴⁰⁹ [Id. at 3.](#)

⁴¹⁰ [Id. at 4.](#)

⁴¹¹ [Id.](#)

⁴¹² Notice of Hearing on Motion of Debtors for Entry of an Order (I) Authorizing the Rejection of Commercial Lease, (II) Authorizing Entry Into New Headquarters Lease, (III) Authorizing the Assumption of Commercial Leases, and (IV) Granting Related Relief, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Jan. 31, 2020) 3, <https://perma.cc/5U8M-6V5T>.

⁴¹³ [Id. at 5.](#)

⁴¹⁴ [Id.](#)

Additionally, the Debtors contend that subleasing the excessive office space would not be economical when compared to simply rejecting the lease.⁴¹⁵

At the same time, as a replacement for the Headquarters Wrap Lease, the Debtors sought permission to enter the 2021 Headquarters Lease, specifically to let the ninth and tenth floors of One Stamford Forum.⁴¹⁶ The total cost for the new lease would be \$16.7 million, for a term of three years, for only the ninth and tenth floors of the building.⁴¹⁷ The Debtors, at the time, sublet a portion of the ninth floor of One Stamford Forum to Pharmaceutical Research Associates L.P. (“PRA”), a director shareholder (the “PRA Sublease”). To enable the Debtors to fill out the entire ninth floor for the Headquarters Wrap Lease, the Debtors and PRA entered into a Surrender Agreement, in which PRA agreed to relinquish its rights under the PRA Sublease and vacate the subleased premises as of July 31, 2020.⁴¹⁸

Additionally, the Debtors sought to maintain the status quo through the end of 2020 by assuming the Existing PPLP lease and the UBS Sublease.⁴¹⁹ No cure costs would be incurred by the assumption of these leases as the Debtors were current on all their obligations under them.⁴²⁰

In response to this petition, the OCC expressed concern that this motion presupposes that a “public trust” model of corporate governance will emerge from the bankruptcy; but took no issue with the motion.⁴²¹ Shortly after, the court granted the motion.⁴²²

⁴¹⁵ [Id.](#)

⁴¹⁶ [Id. at 6.](#)

⁴¹⁷ [Id.](#)

⁴¹⁸ [Id. at 7.](#)

⁴¹⁹ [Id. 7-8.](#)

⁴²⁰ [Id.](#)

⁴²¹ Statement of the Official Committee of Unsecured Creditors With Respect to the Motion of Debtors for Entry of an Order (I) Authorizing the Rejection of Commercial Lease, (II) Authorizing Entry Into New Headquarters Lease, (III) Authorizing the Assumption of Commercial Leases and (IV) Granting Related Relief, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Feb. 17, 2020), <https://perma.cc/TBM8-3FNX>.

⁴²² Order (I) Authorizing the Rejection of Commercial Lease, (II) Authorizing Entry Into New Headquarters Lease, and (III) Granting Related Relief, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Feb. 24, 2020), <https://perma.cc/A8KG-URC6>.

The Aviro Lease

The Debtors sought permission to assume a lease, dated May 28, 2019, between 65 W 36 LLC (the “Aviro Lessor”) and Aviro Health L.P. (“Aviro”); and to extend the current § 365(b)(4) deadline with respect to certain extended deadlines leases (with the written consent of the lessors).⁴²³ Aviro is a wholly owned subsidiary of Purdue Pharma L.P. that engages in the marketing, sale, and distribution of over-the-counter products in the U.S.; Aviro maintains offices at 65 West 36th Street, New York, N.Y. 10018.⁴²⁴ The Debtors determined \$26,216.13 is the amount necessary to cure the Aviro Lease.

The Debtors are also lessees of various unexpired leases of nonresidential real property and believed that it is in the best interest of the estate to extend the § 365(d)(4) deadline.⁴²⁵ The Debtors feared that, absent an extension, they would be forced to make less than fully informed decisions regarding the assumption or rejection of its nonresidential real property to the detriment of its estate.⁴²⁶ The Debtors obtained written permission from its lessors to extend this deadline.⁴²⁷

No objections were filed to this motion and an order granting the relief requested was entered shortly after.⁴²⁸

⁴²³ Motion of Debtors for Entry of an Order (I) Authorizing the Assumption of a Certain Unexpired Lease and (II) Further Extending the Debtors’ Deadline to Assume or Reject Certain Unexpired Leases with the prior Written Consent of the Lessors, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Mar. 4, 2020), <https://perma.cc/KK2D-6E62>.

⁴²⁴ *Id.* at 4.

⁴²⁵ *Id.* at 5.

⁴²⁶ *Id.* at 5-6.

⁴²⁷ *Id.*

⁴²⁸ Order (I) Authorizing the Assumption of a Certain Unexpired Lease and (II) Further Extending the Debtors’ Deadline to Assume or Reject Certain Unexpired Leases with the Prior Written Consent of the Lessors Under Such Leases, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Mar. 18, 2020), <https://perma.cc/FT8Y-5JGE>.

Proposed Compensation Plans

The Debtors attended three separate hearings regarding their modified employee compensation programs including the 2019 Annual Incentive Plan implemented prior to the Chapter 11 petition, payments under the Debtors Long-Term Results Plan (the “LTRP”) due in 2020, and the Debtors’ Existing Non-Executive Retention Plan (collectively, the “2019 Payments”).⁴²⁹ The Debtors sought permission to maintain their historical compensation practices, adjusted to meet their current circumstances. The proposals (the “Proposed Compensation Plans”) sought to continue motivation, engagement, and retention of the workforce they deemed indispensable and thereby maximize the value of their estate.⁴³⁰ The Proposed Compensation Plans contained two components:

Key Employee Incentive Plan (“KEIP”)

This plan would apply to the Debtors’ eight current insider employees: (1) the CEO, (2) the CFO, (3) the General Counsel, (4) Senior Vice President, Intellectual Property Law & Public Health Initiatives, (5) Chief Technical Operations Officer, (6) President, Imbrium Therapeutics, (7) President, Rhodes Pharmaceuticals, and (8) President, Rhodes Technologies.⁴³¹ The Debtor’s

⁴²⁹ Debtors’ Motion for Entry of an Order Authorizing Implementation of a Key Employee Incentive Plan and a Key Employee Retention Plan, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Sept. 9, 2020), <https://perma.cc/CV8M-U8RY>. The 2019 Payments were approved in a combination of the following orders: the Final Order Granting Motion Authorizing (1) Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation and (B) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (II) Employees and Retirees to Proceed with Outstanding Workers’ Compensation Claims and (III) Financial Institutions to Honor and Process Related Checks and Transfers; Supplemental Final Order Authorizing (I) Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation and (B) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (II) Employees and Retirees to Proceed with Outstanding Workers’ Compensation Claims and; (III) Financial Institutions to Honor and Process Related Checks and Transfers; and the Second Supplemental Final Order Authorizing (I) Debtors to (a) Pay Certain Prepetition Wages, Salaries, Employee Benefits and Other Compensation and (b) Maintain Employee Benefits Programs and Pay Related Administrative obligations, (ii) Employees and Retirees to Proceed with Outstanding Workers Compensation Claims and (iii) Financial Institutions to Honor and Process Related Checks and Transfers.

⁴³⁰ *Id.* at 8.

⁴³¹ *Id.* at 10.

claimed that this senior management is essential to guiding it through their reorganization and maximizing the value of its estate.⁴³²

Payments under KEIP are contingent on the Debtors' achievement of certain performance metrics and institute a floor and ceiling for amounts, depending on the employees' performance with respect to those metrics.⁴³³ The KEIP range is laid out below:⁴³⁴

KEIP Participant	Payout Range = 75% to 100%	
	Threshold KEIP Award	Target KEIP Award
CEO	\$2,640,000	\$3,520,000
CFO	\$750,000	\$2,619,000
General Counsel and Corporate Secretary	\$1,964,000	\$2,619,000
Senior VP, Intellectual Property Law & Public Health Initiatives	\$508,000	\$678,000
Chief Technical Operations Officer	\$519,000	\$691,000
President, Imbrium Therapeutics	\$468,000	\$624,000
President, Rhodes Pharmaceuticals	\$279,000	\$372,000
President, Rhodes Technologies	\$272,000	\$362,000
Total	\$7,400,000	\$9,866,000

Key Employee Retention Plan ("KERP")

The Debtors sought to reward their KERP eligible employees for their efforts leading up to and during the reorganization. The Debtors pointed out that, using the same criteria used previously to

⁴³² [Id.](#)

⁴³³ [Id. at 11.](#)

⁴³⁴ [Id. 11-12.](#)

determine whether KEIP participants were insiders,⁴³⁵ no KERP participant was an insider.⁴³⁶ The participants are approximately 614 employees, seventeen (17) of which are Vice Presidents, while the remainder are middle management and professional employees such as scientific research and regulatory and compliance personnel.⁴³⁷

The KERP program is not subject to performance criteria like KEIP, as the KERP goal was to retain its participants given their challenging working conditions.⁴³⁸ The KERP award was to be paid out in two installments, in October 2020 and January 2021, with certain criteria designed to ensure employee retention.⁴³⁹ The total aggregate target (and maximum) payment under the KERP Award is approximately \$21,600,000.⁴⁴⁰

The Committee of Accountability filed a motion in opposition to the Debtors' motion for implementation of KEIP and KERP.⁴⁴¹ In its brief argument, the Committee of Accountability took issue with the Debtors' rationale for the bonuses: that Purdue Pharma L.P. (as an entity)—and thereby its employees—“is an asset in the fight against the opioid crisis.”⁴⁴² The Committee of Accountability argued that the company has been an obstacle to its victims' recovery and that the money should instead be directed towards their recovery.⁴⁴³

⁴³⁵ The Company categorized an employee as an insider if the employee met any one of the following five criteria. The employee: (1) is an officer appointed by the Board; (2) holds the title of Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, General Counsel or Senior Vice President; (3) reports to the Board; (4) has authority to make Company-wide or strategic decisions, including critical financial decisions; or (5) is in a position to determine his or her own compensation. Notably, no insider employee of the Debtors is in a position to determine his or her own compensation, which is the responsibility of the Compensation Committee and the Board. *Id.* at 23-24.

⁴³⁶ [Supra note 81, at 23.](#)

⁴³⁷ *Id.*

⁴³⁸ [Id. at 25.](#)

⁴³⁹ *Id.*

⁴⁴⁰ *Id.*

⁴⁴¹ Memorandum of Law in Support of Ad Hoc Committee on Accountability's Objection to Debtor's Motion to Pay Bonuses, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Sept. 22, 2020), <https://perma.cc/ZDG6-LU9C>.

⁴⁴² [Id. at 1](#); quoting *supra* note 81.

⁴⁴³ [Id. at 1-2.](#)

On October 1, 2020, the court entered an order authorizing the debtors to implement KERP as proposed while a hearing for KEIP was set for later that month.⁴⁴⁴ On September 22, 2020, the U.S. Trustee and the Ad Hoc Committee on Accountability filed objections to the motion, arguing chiefly that 503(c) prohibits insider transfers unless “necessary [to] preserv[e] the estate” which, they argued, the Debtors failed to show.⁴⁴⁵

On October 1, 2020, the court entered an order authorizing the Debtors to implement KERP.⁴⁴⁶ On October 28, 2020, the court entered the Order Authorizing the Debtors to Implement a Key Employee Incentive Plan, which granted the Debtors authority to implement KEIP modified with respect to (i) General Counsel; (ii) Chief Technical Operations Officer; (iii) President, Rhodes Pharmaceuticals; and (iv) President, Rhodes Technologies.⁴⁴⁷ On November 17, 2020, the court entered the Supplemental Order Authorizing the Debtors to Implement a Key Employee Incentive Plan, which granted the Debtors authority to implement the KEIP modified with respect to the CEO and CFO.⁴⁴⁸

⁴⁴⁴ Order Authorizing the Debtors to Implement a Key Employee Retention Plan, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Oct. 1, 2020), <https://perma.cc/VYV3-WFPL>.

⁴⁴⁵ Objection of the United States Trustee to Motion of Debtors for Order Authorizing Implementation of a Key Employee Incentive Plan and a Key Employee Retention Plan, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Sep. 22, 2020), <https://perma.cc/PG4Y-6WEX>; *see also* Memorandum of Law In Support of Ad Hoc Committee on Accountability’ Objection to Debtors’ Motion to Pay Bonuses, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Sept.22, 2020), <https://perma.cc/NZB3-2A9S>.

⁴⁴⁶ Order Authorizing the Debtors to Implement a Key Employee Retention Plan, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Oct. 1, 2020), <https://perma.cc/8NWN-GPP6>.

⁴⁴⁷ Order Authoring the Debtors to Implement a Key Employee Incentive Plan, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Oct. 8, 2020), <https://perma.cc/8Q7S-3RAZ>.

⁴⁴⁸ Supplemental Order Authorizing the Debtors to Implement a Key Employee Incentive Plan, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Nov. 18, 2020), <https://perma.cc/3J29-DN9V>.

Extension Period

§ 1121(b) provides for a period of 120 days after the commencement of a chapter 11 case during which time a debtor has the exclusive right to file a plan of reorganization (the “Exclusive Filing Period”). Additionally, § 1121(c)(3) provides that if a debtor files that plan within the Exclusive Filing Period, it shall have a period of 180 days after the petition date to obtain acceptance of such plan (the “Exclusive Solicitation Period”, collectively the “Exclusivity Periods”).⁴⁴⁹

The Debtors’ Exclusive Filing Period and Exclusive Solicitation Period originally was set to expire on January 13, 2020 and March 13, 2020, respectively.⁴⁵⁰ The Debtors filed multiple motions to extend the Exclusivity Periods, with the Exclusive Solicitation Period ultimately being extended to May 17, 2021⁴⁵¹ and the Exclusive Filing Period ultimately being extended to March 15, 2021.⁴⁵²

⁴⁴⁹ Plan Disclosure Statement at 51.

⁴⁵⁰ *Id.*

⁴⁵¹ Third Extension Order, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Dec. 16, 2020), <https://perma.cc/5FKW-7PN8>.

⁴⁵² Fifth Extension Order, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Mar. 1, 2021), <https://perma.cc/PVW7-BHWX>; *see also* Plan Disclosure Statement at 51.

Mediation

Though the Debtors sought to create an efficient method of adjudication of its claimants through this bankruptcy, it discovered that the various creditor groups had vastly different views on the various claims asserted as well as how value from the estate should be allocated between groups. This conflict prompted the Debtors to negotiate for mediation to navigate the resource allocation conflict. As such, on February 20, 2020, the Debtors filed a motion seeking an order appointing mediators.⁴⁵³ The Debtors identified three broad class of claimants that would vie for resources: (1) the federal government, (2) non-federal public claimants, and (3) private parties.⁴⁵⁴

Prior to filing, the Debtors were able to receive consent form many of the affected groups, including: the OCC, the Ad Hoc Group, the Non-Consenting States; the Multi-State Governmental Entities Group, the NAS Babies, and the Ad Hoc Group of Hospitals, the Ad Hoc Group of Individual Victims, and various insurance purchasers.⁴⁵⁵

An order granting this motion was entered shortly after the motion was filed.⁴⁵⁶ The order affirmed that no party was to be bound by the mediation unless it agreed to be bound.⁴⁵⁷

On March 23, 2021, the mediators issued their report disclosing the extent to which the mediation was successful.⁴⁵⁸ The mediators stated that the mediation's primary purpose—reaching a consensual agreement as to the estate allocation between and among the public and private creditor groups—was successfully achieved.⁴⁵⁹

⁴⁵³ Debtors' Motion for Entry of an Order Appointing Mediators, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Feb. 20, 2020), <https://perma.cc/TQW3-ZBLD>.

⁴⁵⁴ *Id.* at 7.

⁴⁵⁵ *Id.* at 5.

⁴⁵⁶ Order Appointing Mediators, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Mar. 4, 2020), <https://perma.cc/E9MM-GPNE>.

⁴⁵⁷ *Id.* at 7.

⁴⁵⁸ Mediators' Report, In re Purdue Pharma L.P., et al., Case No. 19-19-23649 (Bankr. S.D.N.Y. Mar. 23, 2021), <https://perma.cc/ADZ3-86VS>.

⁴⁵⁹ *Id.* at 8.

Chapter 11 Plan

Purdue Pharma submitted its plan of reorganization on March 15, 2021.⁴⁶⁰ The ostensible goal is of the plan is to turn over all of the Debtors' assets "for the benefit of the claimants and the American public, with the goal of directing as much of the value of their assets as possible to combatting the opioid crisis in this country."⁴⁶¹ Despite this benevolent goal statement, the real goal of the plan appears to be to use Chapter 11 bankruptcy to consolidate litigation and impose a settlement agreement that will allow Purdue's shareholders (primarily the Sackler family) to walk away from the company in exchange for the company's assets and a large cash payment. Before filing Purdue's petition and after multiple rounds of mediation, the Sackler family and a critical mass of plaintiffs agreed on the following general settlement framework: "(1) Purdue Pharma's existing shareholders would relinquish all of their equity interests in the Debtors and consent to the transfer of all of the Debtors' assets to a trust or similar post-emergence structure for the benefit of claimants and the U.S. public, 'free and clear' of liabilities to the fullest extent permitted by law; (2) Purdue Pharma's existing shareholders would engage in a sale process for their ex-U.S. pharmaceutical companies; and (3) Purdue Pharma's existing shareholders would contribute at least an additional \$3 billion over seven years (in addition to 100% of the value of all 24 Debtors), with the hope of substantial further contemplated contributions from the sales of their ex-U.S. pharmaceutical businesses."⁴⁶²

⁴⁶⁰ Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and its Affiliated Debtors, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), [hereinafter "Chapter 11 Plan"], <https://perma.cc/2U2V-NHJL>.

⁴⁶¹ Disclosure Statement for Chapter 11 Plan for Purdue Pharma L.P. and its Affiliated Debtors, *In re Purdue Pharma L.P.*, No. 19-23649 (Bankruptcy S.D.N.Y. filed Sept. 15, 2019), [hereinafter "Disclosure Statement"], <https://perma.cc/N48Y-RPLJ>.

⁴⁶² *Id.* at 3.

While Purdue's mediation with its civil plaintiff creditors was ongoing, Purdue entered into a criminal plea agreement with the United States Department of Justice, as well as a civil settlement agreement with the United States.⁴⁶³ Purdue pleaded guilty to one count of conspiring to defraud the United States and to violate the Food, Drug, and Cosmetic Act, and two counts of conspiracy to violate the Federal Anti-Kickback Statute.⁴⁶⁴ This plea was entered in the United States District Court for the District of New Jersey on November 24, 2020.⁴⁶⁵ The New Jersey District Court will consider the plea agreement at a sentencing hearing that will take place after confirmation of Purdue's chapter 11 plan.⁴⁶⁶ As part of this plea agreement Purdue and the United States agreed to a \$2 billion criminal forfeiture judgment with the status of an allowed super priority administrative claim expense.⁴⁶⁷ This judgment will not be entered until after the plan has been confirmed and the New Jersey District Court has approved of the settlement agreement.⁴⁶⁸ Importantly, the United States has agreed to allow Purdue a credit offsetting this judgment for up to \$1.775 billion if at least this amount in value is distributed to claims asserted by state, tribal, or local governmental entities and the plan provides for the creation of a public benefit company (among other terms).⁴⁶⁹ The DOJ's civil claim against Purdue was settled by a \$225 million payment by the Sackler family.⁴⁷⁰

⁴⁶³ Disclosure Statement at 5.

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.*

⁴⁶⁶ *Id.*

⁴⁶⁷ *Id.*

⁴⁶⁸ *Id.*

⁴⁶⁹ Disclosure Statement at 5.

⁴⁷⁰ *Id.* at 6.

Sackler Family

One of the major goals behind Purdue's bankruptcy is to obtain third-party releases for its beneficial owners, the Sackler family, in exchange for cash payments and all of Purdue's assets and interests. Essentially, the goal is for the Sackler's to give up the company and billions in cash in exchange for the chance to wash their hands of the opioid crisis they are largely responsible for creating, with the backing of United States law. Notably, the Sacklers are also trying to protect their remaining wealth, which Forbes estimated to be worth \$13 billion in 2015.⁴⁷¹ Under the plan as proposed, the Sackler family's cash contribution is \$4.5 billion, an increase from the \$3.0 billion figure initially negotiated with plaintiffs.⁴⁷² Whether this will be enough to get the Sackler family their coveted releases will depend on both the acceptance of the plan by Purdue's creditors, and the willingness of the court to grant releases to non-debtor parties.

Third-party releases are controversial and "arise where a debtor attempts to extend releases to certain affiliated non-debtor parties whose participation in or impact on the chapter 11 process will allegedly affect the debtor's ability to reorganize."⁴⁷³ Section 524(e) of the bankruptcy code provides that "discharge of a debt of the debtor does not affect the liability of any other entity . . . on such debt."⁴⁷⁴ This seems to provide an outright prohibition on third-party releases of the type that the Sackler family is pursuing through this reorganization. Despite this seemingly clear language, the Second, Third, Fourth, Sixth, and Eleventh Circuits all hold that §524 does not limit the bankruptcy court's broad §105 powers to "issue any order, process, or judgment that is necessary or

⁴⁷¹ Angel Au-Yeng, *Despite Years Of Litigation, The Sackler Family Behind OxyContin Is Still Worth Billions*, (Dec. 17, 2020), <https://perma.cc/QH28-XMME>.

⁴⁷² *Id.* at 2.

⁴⁷³ Michael S. Etkin and Nicole M. Brown, *Third-Party Releases? — Not So Fast!*, AIRA Journal (Vol. 29 – No. 3 2015), [hereinafter "Third Party Releases"], <https://perma.cc/X3DS-GM7L>.

⁴⁷⁴ 11 U.S. Code §524(e).

appropriate to carry out the provisions of this title.”⁴⁷⁵ Importantly, Purdue’s case is in the Southern District of New York, which sits in the Second Circuit. This means that the court may grant third-party releases to the Sackler family. Proponents of third-party releases, and the Debtors’ attorneys, will likely argue that granting these releases is the only way to get the Sacklers to make any contribution, and will end up creating more value overall for the creditors. Opponents will likely argue that third-party releases are inequitable on these facts given the Sackler family’s role in creating the devastating opioid crisis, that the Sacklers should be required to contribute more in light of their high net worth earned almost entirely through Purdue,⁴⁷⁶ or that §524(e) simply prohibits the court from granting this type of release.

The potential for third-party releases in this case has generated public outrage.⁴⁷⁷ U.S. legislators even introduced a bill to amend §105(b) to provide that “A court may not — . . . except as provided by section 524(g) of this title, enjoin or release a claim against a non-debtor by a State, municipality, federally recognized tribe, or the United States.”⁴⁷⁸ The lawmakers proposing the bill apparently found the specifically targeted language to be too subtle for their tastes and named the act the SACKLER Act, (short for “Stop Shielding Assets from Corporate Known Liability by Eliminating Non-Debtor Releases Act”), in order to avoid any confusion about the purpose of the proposed amendment.⁴⁷⁹ Purdue’s plan in its current form would provide third-party releases to the

⁴⁷⁵ 11 U.S. Code §105(a); Third Party Releases at 26; *see also In re Metromedia Fiber Network, Inc.*, 416 F.3d 136 (2d Cir. 2005), *In re Washington Mut., Inc.*, 442 B.R. 314, 352 (D. Del. 2011), *Nat’l Heritage Found., Inc. v. Highbourne Found.*, 760 F.3d 344 (4th Cir. 2014) cert. denied, 135 S. Ct. 961, 190 L. Ed. 2d 833 (2015), *In re Dow Corning Corp.*, 280 F.3d 648, 657-58 (6th Cir. 2002), *In re Airadigm Commc’ns, Inc.*, 519 F.3d 640, 656 (7th Cir. 2008), *In re Seaside Eng’g & Surveying, Inc.*, 780 F.3d 1070, 1078 (11th Cir. 2015).

⁴⁷⁶ Forbes estimated the Sackler family’s net worth in 2015 to be \$13 billion. Angel Au-Yeng, *Despite Years Of Litigation, The Sackler Family Behind OxyContin Is Still Worth Billions*, (Dec. 17, 2020), <https://perma.cc/QH28-XMME>.

⁴⁷⁷ *See, e.g.*, Libby Lewis, *The Sackler Family’s Bankruptcy Scheme*, *The American Prospect* (March 31, 2021), <https://perma.cc/9BKT-6GZM>.

⁴⁷⁸ Aaron Gavant, Samuel R. Rabuck, and Sean T. Scott, *Wither Non-Debtor Releases? Purdue Pharma and the Proposed SACKLER Act*, Mayer Brown – Real Bankruptcy Intel Blog (April 2, 2021), <https://perma.cc/QC6F-CEZY>.

⁴⁷⁹ *Id.*

Sackler family in exchange for Purdue itself and \$4.5 billion. Whether public and congressional outrage affects the plan's confirmation has yet to be determined.

Means for Implementation

One of the main features of Purdue’s chapter 11 plan is the creation of “NewCo”, a newly formed Delaware LLC.⁴⁸⁰ The Debtors’ will transfer substantially all of their non-cash assets to NewCo along with \$200 million of cash.⁴⁸¹ The only non-cash assets that will not be transferred to NewCo are certain causes of action and insurance rights.⁴⁸² NewCo will use the cash and non-cash assets to operate a business and in order to ensure this is done in a responsible and sustainable manner it will be required to balance: “(i) the interests of its stakeholders to fund and provide abatement of the opioid crisis; (ii) effective deployment of its assets to address the opioid crisis; and (iii) the interests of those materially affected by its conduct.”⁴⁸³ The plan provides that the net value generated by NewCo will be put towards mitigating the opiate crisis that was created in large part by the Debtors.⁴⁸⁴ NewCo will also guarantee the Master Disbursement Trust discussed below.⁴⁸⁵

NewCo is a manager-managed LLC, so NewCo will be controlled by managers, rather than a board of directors.⁴⁸⁶ The selection of managers will involve lots of input from interested parties, an understandable proposition considering the importance of NewCo to the Debtors’ plan and the worry that NewCo could engage in the same types of harmful business practices that landed the Debtors’ in this reorganization to begin with. NewCo will have seven managers, who must each have experience in one or more of the following areas: pharmaceuticals, public policy (including public health policy), law enforcement, ethics and compliance, finance, audit, general business and/or corporate governance issues.⁴⁸⁷ The managers will initially be selected by the Ad Hoc

⁴⁸⁰ Disclosure Statement at 6.

⁴⁸¹ *Id.*

⁴⁸² *Id.*

⁴⁸³ Disclosure Statement at 6.

⁴⁸⁴ *Id.*

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.*

⁴⁸⁷ Disclosure Statement at 63.

Committee but must be accepted by the Multi-State Governmental Entities Group.⁴⁸⁸ The OCC, as well as Purdue itself, will be consulted regarding the appointment of managers.⁴⁸⁹ Finally, the DOJ will have the right to observe this selection process.⁴⁹⁰ The plan requires that NewCo's managers be disinterested and independent.⁴⁹¹ Importantly, the Sackler family will have no involvement in any aspect of NewCo's governance, operations, or the selection of NewCo's managers.⁴⁹²

NewCo will have one member, TopCo. TopCo will also be a newly formed manager-managed Delaware LLC.⁴⁹³ As NewCo's sole member, TopCo will own all of the voting rights and equity in NewCo.⁴⁹⁴ TopCo will distribute its excess cash to the National Opioid Abatement Trust ("NOAT") and the Tribe Trust, TopCo's two members.⁴⁹⁵ TopCo will be controlled by three disinterested managers selected by the same process as NewCo's managers.⁴⁹⁶ This management should provide another layer of oversight to ensure that NewCo fulfills its public benefit goals and prevent malfeasance. In the event that NewCo's initial managers must be replaced, the managers of TopCo will choose the replacements.⁴⁹⁷

Trusts

Implementation of the plan also includes the creation of numerous trusts. The National Opioid Abatement Trust is a newly formed statutory trust that will hold all of the voting interest in TopCo, and a majority of the economic interest in TopCo.⁴⁹⁸ It will receive settlement payments for

⁴⁸⁸ *Id.* at 6.

⁴⁸⁹ *Id.*

⁴⁹⁰ *Id.*

⁴⁹¹ Disclosure Statement at 6.

⁴⁹² *Id.*

⁴⁹³ *See* Disclosure Statement at 65.

⁴⁹⁴ *Id.*

⁴⁹⁵ *Id.*

⁴⁹⁶ *Id.*

⁴⁹⁷ Disclosure Statement at 6.

⁴⁹⁸ Disclosure Statement at 65.

the benefit of non-federal domestic governmental claimants and assume liability for administering these claims.⁴⁹⁹ This trust will be funded with approximately \$4 billion in cash payments over time including distributions of excess cash from TopCo and the Master Disbursement Trust.⁵⁰⁰ Under the proposed plan it would be governed by creditor trustees selected by the Ad Hoc Committee in consultation with the Debtors.⁵⁰¹

A Tribe Trust will also be created to collect and distribute payments to native American tribe groups and assume all liability for native American tribe claims.⁵⁰² The tribe trust will hold the minority economic interest in TopCo not held by the NOAT and hold the interest of a residual beneficiary in the Master Disbursement Trust.⁵⁰³ This trust will initially be funded with \$50 million but is expected to be funded with a total of \$141 million over time.⁵⁰⁴ This trust will be governed by trustees chosen by the native American tribe group with the consent of the Debtors.⁵⁰⁵ It is interesting to note that the estimated total recovery for native American groups proposed under the plan (which may be higher than the number actually received) pales in comparison to the total amount of professional fees generated in this reorganization.

The Master Disbursement Trust is another key trust created pursuant to the chapter 11 plan. The main function of this trust will be to receive settlement payments and distribute them to various private creditor trusts.⁵⁰⁶ It will also hold the right to receive agreed settlement payments from the Sacklers and the ability to enforce these rights if necessary.⁵⁰⁷ Additionally, it will seek recovery

⁴⁹⁹ *Id.*

⁵⁰⁰ *Id.* at 11 and 65.

⁵⁰¹ *Id.* at 65.

⁵⁰² Disclosure Statement at 65.

⁵⁰³ *Id.*

⁵⁰⁴ *Id.* at 12, 65.

⁵⁰⁵ *Id.*

⁵⁰⁶ Disclosure Statement at 66.

⁵⁰⁷ *Id.*

under certain of the Debtors' insurance policies and pay the proceeds to various creditor trusts.⁵⁰⁸ Under the plan, the trust would be governed by three trustees.⁵⁰⁹ These trustees would be selected by the Ad Hoc committee and accepted by the Multi-State Governmental Entity Group.⁵¹⁰ The Debtors would be consulted regarding the appointments and the DOJ would have the right to approve the process.⁵¹¹ Finally, these trustees will select an executive director to carry out the trusts day to day operations.⁵¹² Like every other aspect of this plan, the trust involves multiple levels of governance and oversight, ostensibly to prevent malfeasance, but undeniably a generator of even more professional fees and costs to the bankruptcy estate.

The private creditor trusts that will hold beneficial interests in and receive distributions from the Master Disbursement Trust include the Personal Injury Trust, the Hospital Trust, the Third Party Payor Trust, and the NAS Monitoring Trust.⁵¹³ The Hospital Claims trust is established for the benefits of hospital claimants and will be funded with \$250 million.⁵¹⁴ The Third Party Payer Trust will be established for the benefit of claimants that reimburse and manage healthcare expenses and will be funded with \$365 million.⁵¹⁵ The NAS Monitoring Trust is established for the benefit of holders of claims against Purdue on behalf of children who have been diagnosed with medical, physical, cognitive, or emotional conditions resulting from intrauterine exposure to opioids or opioid addiction treatment medications.⁵¹⁶ The NAS Monitoring Trust will be funded with \$60

⁵⁰⁸ *Id.*

⁵⁰⁹ *Id.*

⁵¹⁰ *Id.*

⁵¹¹ *Id.*

⁵¹² Disclosure Statement at 66.

⁵¹³ *Id.*

⁵¹⁴ Disclosure Statement at 12.

⁵¹⁵ *Id.*

⁵¹⁶ Chapter 11 Plan at 13.

million.⁵¹⁷ The Personal Injury Trust is established for the benefit of personal injury claimants and will be funded with \$700 million to \$750 million.⁵¹⁸

Not to be forgotten, the plan also provides a vehicle for payments to professionals through the Plan Administration Trust.⁵¹⁹ This trust will maintain the professional fee escrow account.⁵²⁰ The funding for this trust will be determined based upon need.

The plan also provides for some creditor payments to be made without using trusts. The Debtors' will make a \$6.5 million truth initiative contribution for the benefit of ratepayer claimants.⁵²¹ An additional \$15 million will be set aside for general unsecured claim cash.⁵²²

Classification and Treatment of Claims and Interests

Under §1126(f) each holder of a claim or interest of a class that is not impaired by a plan is conclusively presumed to have accepted the plan and the debtor is not required to solicit acceptances from these classes of creditors.⁵²³ A class is impaired if the plan alters a party's legal, equitable, or contractual rights.⁵²⁴ Under Purdue's proposed plan, its secured creditors and other priority creditors are to receive payment in full in cash or other treatment that renders their claims unimpaired (such as reinstatement of secured claims under §1124).⁵²⁵ The class of "other priority creditors" consists of claims entitled to priority under §507(a), which include wages and commissions earned by individuals within the 180 days immediately preceding the filing of the

⁵¹⁷ Disclosure Statement at 12.

⁵¹⁸ *Id.*

⁵¹⁹ Disclosure Statement at 66-67.

⁵²⁰ *Id.*

⁵²¹ Disclosure Statement at 12.

⁵²² *Id.*

⁵²³ 11 U.S. Code §1126(f).

⁵²⁴ 11 U.S. Code §1124(1).

⁵²⁵ Chapter 11 Plan at 31-32.

petition and a variety of other claims.⁵²⁶ The general unsecured claims of Aldon Therapeutics L.P. and Avrio Health L.P. are also proposed to receive full cash payment, rendering them unimpaired.⁵²⁷ Holders of these claims are therefore not required to vote and are conclusively presumed to accept the plan.

Section 1126 generally provides that each holder of a claim or interest of a class that is impaired by a proposed plan may vote to accept or reject the plan.⁵²⁸ Impaired classes entitled to vote on Purdue's plan include Federal Government Unsecured claims,⁵²⁹ Non-Federal Domestic Governmental claims, Tribe claims, Hospital claims, Third-Party Payor claims, Ratepayer claims, NAS Monitoring claims,⁵³⁰ Personal Injury claims, and other general unsecured claims.⁵³¹ Intercompany claims and interests held by co-debtors or affiliates are either unimpaired or impaired with no distribution on account thereof and are either conclusively presumed to accept the plan under §1126(f) or conclusively presumed to reject the plan under §1126(g).

Section 1126(g) provides that holders of a class is deemed to reject a plan that does not provide the claim and interest holders with any property. Classes that will not receive anything under the Debtors proposed plan and are therefore presumed to reject the plan include co-defendant claims, claims subordinated under §§509(c) or 510 of the bankruptcy code,⁵³² and all equity holders of the Debtors.⁵³³

⁵²⁶ *Id.* at 17; 11 U.S. Code §507(a).

⁵²⁷ Chapter 11 Plan at 36.

⁵²⁸ 11 U.S. Code §1126.

⁵²⁹ These claims include the Department of Justice's civil claim for \$2.8 billion and the Department of Justice's criminal fine claim for \$3.544 billion.

⁵³⁰ These are non-personal injury claims held by or on behalf of children diagnosed with medical, physical, or emotional conditions resulting from intrauterine exposure to opioids.

⁵³¹ Chapter 11 Plan at 34-36.

⁵³² These include claims acquired by parties who have paid a debt jointly owed by Purdue through subrogation, contribution, or reimbursement, as well as claims subject to a subordination agreement.

⁵³³ Chapter 11 Plan at 37-39.

At the time of the plan's proposal, the Ad Hoc Committee, the Multi-State Governmental Entity Group, the Native American Tribes Group, the Ad Hoc Group of Individual Victims, the Ad Hoc Group of Hospitals, the Third-Party Payor Group, the Ratepayer mediation participants and the NAS Committee all supported confirmation of the plan.⁵³⁴ The DOJ has issued a statement confirming that the terms of the plan are consistent with its civil agreement and plea deal with Purdue and that the terms of the plan meet the two conditions precedent to realizing the \$1.775 billion judgment credit, creation of a public benefit company (NewCo) and distribution of \$1.775 billion in value to state, tribal, or local governmental entity claimants (facilitated by various trusts).⁵³⁵ The OCC states that it is generally supportive of the primary economic terms and allocations in the plan but identifies unresolved issues such as settlement guarantee mechanisms, governance of the Master Disbursement Trust, the scope of releases granted, among other issues, that prevent the committee from supporting the plan in its current form.⁵³⁶

⁵³⁴ Disclosure Statement at 7.

⁵³⁵ *Id.*

⁵³⁶ *Id.* at 7-8.

Road to Confirmation

The next step for Purdue is a hearing on its motion of an order approving the disclosure statement, soliciting and voting procedures, and forms of ballots and notices.⁵³⁷ If this motion is successful, Purdue will begin soliciting votes. Under §1129(a), Purdue will need to get at least one class of claims that is impaired under the plan to accept the plan.⁵³⁸ Purdue will also need to show that under the plan each creditor will receive more than they would in a chapter 7 liquidation.⁵³⁹ One other major step for confirmation will be to convince the court that the proposed reorganization is feasible, meaning Purdue will not need to engage in further liquidation or reorganization after confirmation of the plan.⁵⁴⁰ Achieving confirmation of the proposed plan would be a big win for Purdue, and achieve its main goals of consolidating litigation and imposing a settlement agreement that will allow the shareholders (primarily the Sackler family) to walk away from the company in exchange for the company's assets and a cash payment. The plan is far from confirmed at this point, however, and achieving confirmation will require lots of time, negotiations, and of course, professional fees. The confirmation process in this case should provide a fascinating case study.

⁵³⁷ See Debtors' Motion to Approve (I) The Adequacy of Information in the Disclosure Statement, (II) Solicitation and Voting Procedures, (III) Forms of Ballots, Notices and Notice Procedures in Connection Therewith, and (IV) Certain Dates with Respect Thereto, <https://perma.cc/X8UG-Q3C5>.

⁵³⁸ 11 U.S. Code §1129(a)(10).

⁵³⁹ 11 U.S. Code §1129(a)(7)(A).

⁵⁴⁰ See U.S. Code §1129(a)(11).

Conclusion

Purdue's reorganization has been both typical and unique thus far. Purdue's reorganization has been similar to other mass litigation driven bankruptcies as it seeks to consolidate litigation and collectively settle personal injury claims. The lack of debtor financing required by Purdue is also not unique among litigation driven bankruptcies, since many of these companies are profitable, the problem is the injuries caused by their methods of achieving profits. Similarly, the establishment of various trusts to pay out personal injury claimants is not unique among litigation driven reorganizations. The massive professional fees generated are also typical and are a frequent cause of criticism of the chapter 11 process.

This reorganization is unique, however, in the scope of its societal impact. The magnitude of the opioid crisis that has its roots in Purdue's marketing, manufacturing, and distribution of Oxycontin puts a spotlight on this reorganization. The level of culpability of the company is also unique, considering the criminal charges brought against Purdue by the United States Department of Justice and the fact that many of the tort claimants are governmental entities. The spotlight on this case will also subject the third-party releases sought by the Sackler family to intense scrutiny that may change the way third-party releases are handled in bankruptcy cases. Purdue has a long road ahead to complete its reorganization and it will be fascinating to watch how the reorganization proceeds and what long term effects it may have on bankruptcy law in the United States.