[University of Richmond Law Review](https://scholarship.richmond.edu/lawreview)

Volume 57
Issue 3 *Overlooked America: Addressing Legal Issues Facing Rural United States*

Article 9

4-1-2023

# Duped by Dope: The Sackler Family's Attempt to Escape Opioid Liability and the Need to Close the Non-Debtor Release Loophole

Bryson T. Strachan
*University of Richmond School of Law*

# COMMENT

## DUPED BY DOPE: THE SACKLER FAMILY'S ATTEMPT TO ESCAPE OPIOID LIABILITY AND THE NEED TO CLOSE THE NON-DEBTOR RELEASE LOOPHOLE

TABLE OF CONTENTS

## INTRODUCTION

The opioid epidemic continues to rage on in the United States, ravaging its rural populations.[1] One of its main causes? OxyContin. Purdue Pharma ("Purdue"), the maker of OxyContin,[2] aggressively marketed opioids to the American public while racking up a fortune of over $13 billion dollars for its owners,[3] the Sackler family.[4] As a result, roughly 3,000 lawsuits were filed against Purdue and members of the Sackler family.[5] Generally, the lawsuits alleged that Purdue and members of the Sackler family knew OxyContin was highly addictive yet aggressively marketed high dosages of the drug and misrepresented the drug as nonaddictive and without side effects.[6] Facing thousands of lawsuits with damages in the trillions,[7] Purdue soon filed for Chapter 11 bankruptcy to halt litigation.[8] Though Purdue and its executives have twice pleaded guilty to perpetuating the opioid epidemic in litigation

1. *See Opioid Misuse in Rural America*, U.S. DEPARTMENT OF Agric., https://www.usda.gov/topics/opioids [https://perma.cc/MW62-PVRH] ; Quinn Owen, *Overdose Deaths Cost US $1 Trillion Annually, Bipartisan Report Finds*, ABC NEWS (Feb. 8, 2022, 12:01 AM), https://abcnews.go.com/ amp/Politics/overdose-deaths-cost-us-trillion-annually-bipartisan-report/story?id=8272694 1 [https://perma.cc/SGU9-65C8].

2. *See Purdue Products*, PURDUE, https://www.purduepharma.com/healthcare-professionals/products/ [https://perma.cc/Q6FZ-SEQQ].

3. Katie Benner, *Purdue Pharma Pleads Guilty to Role in Opioid Crisis as Part of Deal With Justice Dept.*, N.Y. TIMES, https://www.nytimes.com/2020/11/24/us/politics/purdue-pharma-opioids-guilty-settlement.html [https://perma.cc/5U8K-ZK34] (July 20, 2021).

4. Roni Caryn Rabin, *New York Sues Sackler Family Members and Drug Distributors*, N.Y. TIMES (Mar. 28, 2019), https://www.nytimes.com/2019/03/28/health/new-york-lawsuit-opioids-sacklers-distributors.html [https://perma.cc/S729-E98D].

5. Brendan Pierson, Mike Spector & Maria Chutchian, *U.S. Judge Tosses $4.5 Bln Deal Shielding Sacklers from Opioid Lawsuits*, REUTERS (Dec. 17, 2021, 5:27 AM), https://www.reuters.com/business/judge-tosses-deal-shielding-purdues-sackler-family-opioid-claims-2021-12-17/ [https://perma.cc/CZ8U-63WZ].

6. *See* Jan Hoffman & Mary Williams Walsh, *Purdue Pharma Offers Plan to End Sackler Control and Mounting Lawsuits*, N.Y. TIMES, https://www.nytimes.com/2021/03/16/health/purdue-sacklers-bankruptcy-opioids.html [https://perma.cc/W2J5-C5CH] (Aug. 18, 2021); *see, e.g.*, First Amended Complaint and Jury Demand ¶¶ 1–3, Commonwealth v. Purdue Pharma L.P., 2019 Mass. Super. LEXIS 10 (Jan. 31, 2019) (No. 1884-cv-01808) [hereinafter Mass. Complaint].

7. Jeremy Hill, *Purdue's $40 Trillion of Opioid Claims Top Size of U.S. Economy*, BNN BLOOMBERG (Mar. 19, 2021, 8:26 AM), https://www.bnnbloomberg.ca/purdue-s-40-trillion-of-opioid-claims-top-size-of-u-s-economy-1.1579424 [https://perma.cc/SHD7-XKZN].

8. Hoffman & Walsh, *supra* note 6; Jan Hoffman & Mary Williams Walsh, *Purdue Pharma, Maker of OxyContin, Files for Bankruptcy*, N.Y. TIMES [hereinafter *Purdue Pharma, Maker of OxyContin, Files for Bankruptcy*], https://www.nytimes.com/2019/09/15/health/purdue-pharma-bankruptcy-opioids-settlement.html [https://perma.cc/8TGB-9CAA] (Nov. 24, 2020).

with the federal government,[9] the Sackler family has yet to be held liable for their involvement.[10]

To escape civil liability and legal accountability for their part in orchestrating the opioid epidemic, the Sackler family quickly took advantage of Purdue's Chapter 11 bankruptcy, utilizing a corporate bankruptcy loophole.[11] This loophole is called a "non-debtor release." In short, a non-debtor release allows a third-party that *has yet to file for bankruptcy themselves* to reap the benefits of the bankruptcy process and discharge the related civil liability under a reorganization plan.[12] Though the legal system is divided over the use of the measure,[13] as it stands, the bankruptcy court that the Purdue bankruptcy proceeding sits in is inclined to grant sweeping immunity to the Sackler family.[14] Approval of the reorganization plan would broadly release the Sackler family from all current and future civil claims relating to the opioid epidemic, even though they *themselves* grossly profited from the opioid epidemic and are *themselves* not financially bankrupt.[15] This prospect led members of Congress to introduce two bills to close the loophole, which has allowed the Sackler family, and those like them, to unjustly escape liability.[16]

House Bill 2096 or The SACKLER Act and House Bill 4777 or the Nondebtor Release Prohibition Act of 2021 (the "Nondebtor Release Act"), were pending legislation that intend to address and

---

9. In May 2007, Purdue pleaded guilty to felony charges of misbranding OxyContin by misrepresenting its risk of addiction and abuse. *See* Press Release, John L. Brownlee, U.S. Att'y & Heidi Coy, Pub. Affs. Specialist, U.S. Att'y's Off. W.D. Va., The Purdue Frederick Company, Inc. and Top Executives Plead Guilty to Misbranding OxyContin; Will Pay Over $600 Million (May 10, 2007) https://media.defense.gov/2007/May/10/2001711223/-1/-1/1/purdue_frederick_1.pdf [https://perma.cc/9SV3-6655]. In November 2020, as part of an extensive Department of Justice investigation, Purdue, pleaded guilty to criminal charges "that it misled the federal government about sales of" OxyContin. Benner, *supra* note 3.

10. *See infra* notes 123–31 and accompanying text.

11. Jan Hoffman, *Purdue Pharma Warns That Sackler Family May Walk from Opioid Deal*, N.Y. TIMES, https://www.nytimes.com/2019/09/19/health/purdue-sackler-opioid-settlement.html [https://perma.cc/5BV5-SRZY] (Aug. 18, 2021).

12. *See infra* notes 205–13 and accompanying text.

13. *See infra* Section II.C.

14. Dietrich Knauth & Tom Hals, *Purdue Pharma Judge Overrules DOJ to Approve $6 bln Opioid Settlement*, REUTERS (Mar. 9, 2022, 6:54 PM), https://www.reuters.com/legal/transactional/purdue-seeks-approval-6-billion-opioid-settlement-over-state-doj-objections-2022-03-09/ [https://perma.cc/L39J-CV3G].

15. *See infra* Section V.A.1.

16. *See* SACKLER Act, H.R. 2096, 117th Cong. (2021); Nondebtor Release Prohibition Act, H.R. 4777, 117th Cong. (2021) (as referred to H.R. Comm. on the Judiciary, July 18, 2021).

close the bankruptcy loophole used by the Sacklers to avoid opioid liability.[17] Though important differences exist in the application of the bills, they have the same goal. Specifically, the legislation would prevent non-debtor individuals who have not filed for bankruptcy, like members of the Sackler family, from obtaining releases from individual liability through bankruptcy proceedings.[18] Through this Comment, I argue that Congress should pass the Nondebtor Release Act to prevent further injustice in our legal system.

Part I of this Comment discusses the background and current state of the opioid epidemic and how the Sacklers led the United States to an epidemic level. Next, it focuses on Purdue's actions in precipitating the opioid epidemic. Finally, this Part provides evidence outlining how the Sackler family pulled the strings and personally directed Purdue's actions in precipitating the opioid epidemic.

Part II puts forth an outline of the lawsuits filed against Purdue and the Sackler family for their illegal actions throughout the opioid epidemic.

Part III provides an outline of Chapter 11 bankruptcy proceedings and how corporations and non-debtors may discharge liability. First, it gives a general overview of the structure and purpose of Chapter 11 bankruptcy proceedings. From there, it explains how a debtor corporation might use Chapter 11 bankruptcy to discharge obligations from associated litigation. Then, to wrap up the Part, it provides information on the use of the non-debtor release loophole and the circuit split over the use of this bankruptcy measure.

Part IV details the Purdue bankruptcy process. First, it walks through the timeline and major developments from the Purdue Chapter 11 proceeding. Next, it outlines the Sackler family's role in the bankruptcy proceedings and their attempt to obtain immunity from litigation through non-debtor release.

---

17. Press Release, H. Comm. on Oversight & Reform, Warren, Nadler, Durbin, Blumenthal, Maloney Announce Legislation to Eliminate Non-Debtor Releases, Prevent Corporations and Private Entities From Escaping Accountability in Bankruptcy Proceedings (July 28, 2021) [hereinafter July 28 Press Release], https://www.warren.senate.gov/newsroom/press-releases/warren-nadler-durbin-blumenthal-maloney-announce-legislation-to-eliminate-non-debtor-releases-prevent-corporations-and-private-entities-from-escaping-accountability-in-bankruptcy-proceedings [https://perma.cc/JD54-GKV9].

18. *See* SACKLER Act, H.R. 2096, 117th Cong. (2021); Nondebtor Release Act, H.R. 4777, 117th Cong. (2021).

Part V outlines the two bills that would close the non-debtor release loophole. First, it discusses the SACKLER Act and how it will close the loophole. Then, it details the Nondebtor Release Act and how it aims to close the loophole.

Part VI of this Comment argues that the non-debtor loophole should be closed and explains how it should be closed. Specifically, it argues that the non-debtor loophole should be closed because: (1) our legal system must hold individuals like the Sacklers accountable; (2) the loophole prevents individual victims from recovering just compensation; (3) non-debtor releases are unconstitutional; and (4) non-debtor releases encourage improper forum shopping. Consequently, the Author proposes that the Nondebtor Release Act is the proper measure to close the non-debtor loophole and should be passed by Congress now.

## I. THE OPIOID EPIDEMIC

### A. *The Emergence of the Opioid Epidemic*

"Opioids are a class of drugs that . . . work in the brain to produce a variety of effects, including pain relief."[19] They are either prescription medications like OxyContin, Vicodin, and Fentanyl, or street drugs such as heroin.[20] Opioids can be highly addictive due to the creation of a euphoric feeling or intense high for users, in addition to the treatment of moderate to severe pain.[21] Unfortunately, opioid addiction too often leads to overdose and death.[22] In the United States, opioid addiction and death is not an uncommon occurrence: it is a full blown epidemic. In a twelve-month period alone, from April 2020 to April 2021, approximately 75,673 Americans died from opioid-induced overdose.[23] This was a significant increase over previous years. Though the U.S. Department of Health and Human Services ("HHS") and the National Institutes

19. *Opioids*, JOHNS HOPKINS MED., https://www.hopkinsmedicine.org/opioids/what-are-opioids.html [https://perma.cc/XY8V-ZYZP].

20. *Id.*

21. *Id.*

22. *See What is the U.S. Opioid Epidemic?*, U.S. DEP'T OF HEALTH AND HUM. SERVS. (Oct. 27, 2021), https://www.hhs.gov/opioids/about-the-epidemic/index.html [https://perma.cc/4VYJ-3W7M].

23. *Drug Overdose Deaths in the U.S. Top 100,000 Annually*, CDC: NAT'L CTR. FOR HEALTH STAT. (Nov. 17, 2021), https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2021/20211117.htm [http://perma.cc/2N5L-269V].

of Health ("NIH") are working to stem the opioid epidemic, it appears we are on track for more addiction, overdose, and death.[24] But how did we get here?[25]

It started with good intentions. Doctors began seeking new ways to improve pain control and reduce patient suffering, and opioids provided an easy solution. In the 1980s, multiple flawed and misleading studies came out arguing that opioids could be a safe way to treat chronic pain with a low addiction development rate.[26] During the same period, the World Health Organization, physicians, and other pain organizations began advocating for the more liberal use of opioids to help make up for a previous under-treatment of pain.[27] As a consequence, opioids were more and more widely used to treat chronic pain.[28]

Alongside the evolving public attitude towards opioids, the American Pain Society introduced the "pain as the fifth vital sign" campaign in 1995, with the Veteran's Health Administration lending support in 1999 and the Joint Commission, the entity responsible for certifying hospitals to receive Medicare payments, joining in 2001.[29] The campaign meant to encourage proper, standardized evaluation and treatment of pain symptoms but resulted in the overemphasizing of pain as a quantifiable vital sign measure.[30] As a result, providers became incentivized to find ways to reduce or eliminate pain.[31] By 1996, "the American Academy of Pain Medicine and the American Pain Society issued a consensus statement that opioids should have a role in the treatment of patients with chronic noncancer pain."[32] Subsequently, states removed restrictive measures against the use of opioids and the Drug Enforcement

24. *See Overdose Death Rates*, NAT'L INST. ON DRUG ABUSE (Jan. 20, 2022), https://nida.nih.gov/drug-topics/trends-statistics/overdose-death-rates [https://perma.cc/9BU6-22QG].

25. *See* Mark R. Jones et al., *A Brief History of the Opioid Epidemic and Strategies for Pain Medicine*, 7 PAIN THER. 13, 15 (Apr. 24, 2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5993682/ [https://perma.cc/DDF7-739P].

26. Teresa A. Rummans, M. Caroline Burton & Nancy L. Dawson, *How Good Intentions Contributed to Bad Outcomes: The Opioid Crisis*, 93 MAYO CLINIC PROC. 344, 344–45 (2018); Stephen A. Bernard, Paul R. Chelminski, Timothy J. Ives & Shabbar I. Ranapurwala, *Management of Pain in the United States—A Brief History and Implications for the Opioid Epidemic*, 11 HEALTH SERVS. INSIGHTS, Dec. 26, 2018, at 2.

27. Jones et al., *supra* note 25, at 15–16; Rummans et al., *supra* note 26, at 345–46.

28. *See* Rummans et al., *supra* note 26, at 346.

29. Jones et al., *supra* note 25, at 15–16.

30. *Id.*; *see also* Bernard et al., *supra* note 26, at 1–2.

31. *See* Jones et al., *supra* note 25, at 16; Bernard et al., *supra* note 26, at 1–2.

32. Rummans et al., *supra* note 26, at 345.

Administration ("DEA") promised less regulatory scrutiny, opening the door to the prescription of long-term opioid therapy.[33] The stage was now set for the American opioid epidemic.

From 1990 to 1995, prescriptions of opioids increased from one million to three million per year.[34] Then, in 1995, the U.S. Food and Drug Administration ("FDA") approved the use of Purdue's OxyContin.[35] Starting in 1998, Purdue began aggressively marketing OxyContin as a treatment for chronic pain to primary care physicians.[36] As part of their aggressive marketing campaign, Purdue heavily promoted OxyContin as a non-addictive treatment for long-term chronic pain.[37]

The aggressive marketing of OxyContin as "safe" and "nonaddictive," combined with the medical community's push to prescribe opioids to treat chronic pain, caused the number of total opioid prescriptions to increase dramatically.[38] Between 1996 and 2020, the total number of opioid prescriptions increased from $8 million a year[39] to 142 million a year, with a peak of 255 million opioid prescriptions a year in 2012.[40] With the increase in prescriptions came an increase in dependence, and when this occurred, "patients sought more in the form of opioid prescriptions from providers or from illegal sources."[41] This period would coincide with nearly 841,000 deaths due to drug overdose[42] and an increase in the overdose death rate in the United States from 6.1 deaths per 100,000 in 1999 to 28.3 deaths per 100,000 in 2020.[43] That is a 463% increase.[44] In 2018 alone, an estimated 10.3 million Americans over

33. *Id.* at 345–46; Jones et al., *supra* note 25, at 16.

34. Rummans et al., *supra* note 26, at 346.

35. *Id.*

36. *Id.*

37. Bernard et al., *supra* note 26, at 2.

38. Rummans et al., *supra* note 26, at 346.

39. *Id.*

40. *U.S. Opioid Dispensing Rate Maps*, CTRS. FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/drugoverdose/rxrate-maps/index.html [https://perma.cc/KB9K-PLCG] (Nov. 10, 2021).

41. Rummans et al., *supra* note 26, at 344.

42. *Death Rate Maps & Graphs*, CDC: DRUG OVERDOSE, https://www.cdc.gov/drugoverdose/deaths/index.html [https://perma.cc/ZUR8-BQNF].

43. Rhea Farberman & Amy Shields, *U.S. Drug Overdose Deaths Increased by 31 Percent in 2020; Up 56 Percent for Synthetic Opioids*, TRUST FOR AM.'S HEALTH (Jan. 4, 2022), https://www.tfah.org/article/u-s-drug-overdose-deaths-increased-by-31-percent-in-2020-up-56-percent-for-synthetic-opioids/ [https://perma.cc/J65Q-PUP3].

44. *Id.*

the age of twelve misused opioids, including 9.9 million prescription opioid abusers.[45]

These overdose statistics alone do not properly communicate the scale of pain the opioid epidemic has sown. In addition to death, the consequences of the opioid epidemic include an increase in substance abuse disorders related to prescription opioids, an increase in prevalence of neonatal abstinence syndrome,[46] increased spread of infectious diseases like HIV and hepatitis C, and an increase in overall "economic burden" based on associated healthcare costs, lost productivity, addiction treatment, and criminal justice involvement.[47] "Substance misuse disorder in the United States costs $442 billion a year in health care, criminal justice costs, and lost productivity. The opioid crisis alone skyrocketed to [a cost of] more than $78 billion a year."[48] Unfortunately, the opioid epidemic rages on today, worsening as overdose deaths continue to reach record highs throughout the COVID-19 pandemic.[49]

### B. *Prescribing the Epidemic: Purdue Pharma's Role*

As introduced in the previous Part, Purdue played a major role in precipitating the current opioid epidemic.[50] By the 1990s, the general attitude toward opioids had begun to shift.[51] As part of this shift, the American Pain Society and other influential medical groups developed new guidelines for pain treatment that focused on pharmaceutical-based approaches.[52] At a time when the

45. SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., KEY SUBSTANCE USE AND MENTAL HEALTH INDICATORS IN THE UNITED STATES: RESULTS FROM THE 2018 NATIONAL SURVEY ON DRUG USE AND HEALTH 1 (2019), https://www.samhsa.gov/data/report/2018-nsduh-annual-national-report [https://perma.cc/PHE7-ES67].

46. For more information see *Dramatic Increases in Maternal Opioid Use and Neonatal Abstinence Syndrome,* NAT'L INST. ON DRUG ABUSE, https://archives.drugabuse.gov/trends-statistics/dramatic-increases-in-maternal-opioid-use-neonatal-abstinence-syndrome [https://perma.cc/Y57P-9VCZ] (Jan. 2019).

47. *Overdose Death Rates*, *supra* note 24.

48. Rummans et al., *supra* note 26, at 345.

49. *See Overdose Deaths Accelerating During COVID-19*, CTRS. FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/media/releases/2020/p1218-overdose-deaths-covid-19.html [https://perma.cc/9VMXW4AG] (Dec. 18, 2020); Hilary Swift & Abby Goodnough, *'The Drug Became His Friend': Pandemic Drives Hike in Opioid Deaths*, N.Y. TIMES, https://www.nytimes.com/2020/09/29/health/coronavirus-opioids-addiction.html [https://per ma.cc/WDQ9-697V] (Sept. 17, 2021); Roni Caryn Rabin, *Overdose Deaths Reached Record High as the Pandemic Spread*, N.Y. TIMES (Nov. 17, 2021), [https://per ma.cc/B6PJ-636U].

50. *See supra* notes 35–49 and accompanying text.

51. *See supra* notes 26–37 and accompanying text.

52. Bernard et al., *supra* note 26, at 2, 4.

prescription of opioids had already begun its exponential increase, in 1995, the FDA granted Purdue approval for the opioid OxyContin.[53] When the FDA approved OxyContin, it allowed Purdue to make "a unique claim for it—that its long-acting formulation was 'believed to reduce' its appeal to drug users compared with shorter-acting painkillers."[54] The FDA decision was based on no more than a "theory" that lacked clinical support.[55] The FDA-approved claim would become Purdue's principle selling tool for OxyContin.[56]

"OxyContin, a trade name for oxycodone, is a time-release painkiller that can be highly addictive. Designed to be swallowed whole and digested over twelve hours, the pills can produce a heroin-like high if crushed and then swallowed, snorted or injected."[57] This fact, however, was intentionally concealed from the public to great consequence, and in the face of this knowledge, Purdue would proceed to heavily promote OxyContin as non-addictive.[58]

"Purdue learned from focus groups with physicians in 1995 that doctors were worried about the abuse potential of OxyContin. The company then gave false information to its sales representatives that the drug had less potential for addiction and abuse than other painkillers."[59] Department of Justice ("DOJ") reports further show

---

53. Rummans et al., *supra* note 26, at 346.

54. Barry Meier, *Origins of an Epidemic: Purdue Knew Its Opioids Were Widely Abused*, N.Y. TIMES (May 29, 2018), https://www.nytimes.com/2018/05/29/health/purdue-opioids-oxycontin.html [https://perma.cc/NB46-HBC4]. The Department of Justice later found that the FDA approval process for OxyContin included "significant impropriety." Patrick Radden Keefe, *The Sackler Family's Plan to Keep Its Billions*, NEW YORKER (Oct. 4, 2020), https://www.newyorker. com/news/news-desk/the-sackler-familys-plan-to-keep-its-billions [https://perma.cc/V43E-9 R9C].

> [S]ome of the more shocking passages in the prosecution memo involve previously unreported details about the FDA official in charge of issuing that approval, Dr. Curtis Wright. Prosecutors discovered significant impropriety in the way that Wright shepherded the OxyContin application through the FDA, describing his relationship with the company as conspicuously 'informal in nature.' Not long after Wright approved the drug for sale, he stepped down from his position. A year later, he took a job at Purdue. According to the prosecution memo, his first-year compensation package was at least three hundred and seventy-nine thousand dollars—roughly three times his previous salary.

*Id.*

55. Meier, *supra* note 54.

56. *Id.*

57. Associated Press, *Purdue Pharma, Execs to Pay $634.5 Million Fine in OxyContin Case*, CNBC, https://www.cnbc.com/id/18591525 [https://perma.cc/XY44-4RK3] (Aug. 5, 2010, 4:38 PM).

58. *See* Bernard et al., *supra* note 26, at 4.

59. Associated Press, *supra* note 57.

that in the first years after the drug's commercial introduction in 1996, Purdue knew about significant abuse of OxyContin and hid that information from the public.[60] Specifically, "[c]ompany officials had received reports that the pills were being crushed and snorted; stolen from pharmacies; and that some doctors were being charged with selling prescriptions."[61] In one case, Purdue executives "learned of a call to a pharmacy describing 'OxyContin as the hottest thing on the street.'"[62] In another case, Purdue's general counsel, Howard R. Udell ("Udell"), communicated to another company official in 1999 that they "have in fact picked up references to abuse of our opioid products on the internet."[63] Additionally, prosecutors would find that Purdue "sales representatives used the words 'street value,' 'crush,' or 'snort' in 117 internal notes recording their visits to doctors or other medical professionals from 1997 through 1999."[64] Rather than address the risks of addiction to OxyContin, Purdue would hide incriminating data and largely ignore or attempt to alleviate the legitimate concerns of physicians.[65]

By 1998, faced with information of its abuse, Purdue began its aggressive marketing of OxyContin.[66] Purdue encouraged a focus on primary care physicians as a means for prescription by promoting OxyContin as a non-addictive way to treat chronic pain.[67] The company specifically focused on doctors like general practitioners, "who had often had little training in the treatment of serious pain or in recognizing signs of drug abuse in patients."[68] One example of this is the creation of the video tape titled, "I Got My Life Back."[69] The video tape utilized six patients treated with OxyContin to encourage physicians to prescribe the opioid as an ongoing treatment for chronic pain while highlighting the claim that the

60. Meier, *supra* note 54.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *See* Press Release, U.S. Dep't of Just., Opioid Manufacturer Purdue Pharma Pleads Guilty to Fraud and Kickback Conspiracies (Nov. 24, 2020) [hereinafter Nov. 24 Press Release], https://www.justice.gov/opa/pr/opioid-manufacturer-purdue-pharma-pleads-guilty-fraud-and-kickback-conspiracies [https://perma.cc/5C9L-A28S].

66. *See* Rummans et al., *supra* note 26, at 346.

67. *Id.; see also* Bernard et al., *supra* note 26, at 4.

68. Barry Meier, *In Guilty Plea, OxyContin Maker to Pay $600 Million*, N.Y. TIMES (May 10, 2007), https://www.nytimes.com/2007/05/10/business/11drug-web.html [https://perma.cc/8HNR-WYV3].

69. Rummans et al., *supra* note 26, at 346.

treatment lacked side effects.[70] Over 16,000 copies of Purdue videos would be disseminated to physician offices across the United States.[71]

As one might expect, not all physicians were buying the pitch. To reassure physicians and alleviate concerns, Purdue pushed its representatives to claim that "only 1 in 10,000 opioid-treated patients would become addicted if treated by a physician."[72] This claim was not supported by any scientific data.[73] In another case, Purdue handed out thousands of copies of a brochure titled "OxyContin: A Guide to Your New Pain Medicine."[74] The brochure emphasized consumer power and authority in pain treatment while avoiding addiction concerns by stating that the fear of addiction "should not stand in the way of relief from your pain."[75] "The goal: 'convince patients and their families to actively pursue effective pain treatment. The importance of the patient assessing their own *pain* and communicating the status to the health care giver will be stressed.'"[76] "Subsequently, the annual number of prescriptions for OxyContin increased from 670,000 to 6.2 million between 1997 and 2002, and the total number of opioid prescriptions increased by 45 million."[77] By 2000, the United States, and particularly rural areas, saw skyrocketing rates of addiction and crime related to the use of OxyContin.[78] Purdue would not drop its fraudulent claims of OxyContin's "nonaddictive" nature until mid-2001.[79] Between 1995 and 2001, through OxyContin, Purdue brought in $2.8 billion in revenue.[80]

Starting around 2003, federal prosecutors began investigating Purdue, culminating in a 120-page report outlining Purdue's direct

---

70. *Id.*

71. Fred Schulte, *Purdue Pharma's Sales Pitch Downplayed Risks of Opioid Addiction*, KHN (Aug. 17, 2018), https://khn.org/news/purdue-pharma-sales-pitch-downplayed-risks-of-opioid-addiction/ [https://perma.cc/V3P3-WUJB].

72. Bernard et al., *supra* note 26, at 4.

73. *Id.*

74. *See* Partners Against Pain, *Information on OxyContin: A Guide to Your New Pain Medicine and How to Become A Partner Against Pain*, https://s3.documentcloud.org/documents/4762285/Partners-Against-Pain2.pdf [https://perma.cc/H3RC-KH4H]; Schulte, *supra* note 71.

75. Partners Against Pain, *supra* note 74.

76. Schulte, *supra* note 71 (internal quotations omitted).

77. Rummans et al., *supra* note 26, at 346.

78. Meier, *supra* note 68.

79. *Id.*

80. *Id.*

knowledge of OxyContin's addictive nature.[81] Prosecutors involved with the investigation recommended the three top Purdue executives be indicted on felony charges, including conspiracy to defraud the United States, which involved prison time.[82] However, top DOJ officials in the Bush administration did not support this move, instead leading to a settlement.[83] In May 2007, Purdue plead guilty to a felony charge of misbranding OxyContin by misrepresenting its risk of addiction and abuse.[84] Further, three current and former Purdue executives plead guilty to misdemeanor charges of misleading the public about OxyContin's risk of addiction.[85] Specifically, Purdue; Purdue's president, Michael Friedman ("Friedman"); top lawyer, Udell; and former chief medical officer, Paul Goldenheim ("Goldenheim"), were fined $634.5 million for claiming that OxyContin "was less addictive and less subject to abuse than other pain medications."[86] The guilty pleas solely held the three Purdue executives liable as the responsible executives but did not accuse them of any wrongdoing.[87]

As part of the plea deal, Purdue "agreed to pay $19.5 million to twenty-six states and the District of Columbia to settle complaints that it encouraged" the over prescription and misinformation of OxyContin.[88] In court proceedings, Purdue acknowledged "that 'with the intent to defraud or mislead,' it marketed and promoted

81. *See* Meier, *supra* note 54; Edward Helmore, *Purdue Pharma Escaped Serious Charges Over Opioid in 2006*, *Memo Shows*, GUARDIAN (Aug. 19, 2020), https://www.theguardian.com/us-news/2020/aug/19/purdue-pharma-OxyContin-justice-department-memo-opioid [http://perma.cc/SF5Y-N7HQ]. Though acquired and released in excerpts by the New York Times and the Guardian, the full 120-page DOJ memo has not been released despite calls for the release of the full report. *See* Press Release, H. Comm. on Oversight and Reform, DeSaulnier and Cummings Call on AG Sessions to Produce DOJ Report Showing Purdue Pharma Concealed Knowledge of OxyContin Abuses (June 12, 2018), https://oversight.house.gov/news/press-releases/desaulnier-and-cummings-call-on-ag-sessions-to-produce-doj-report-showing-purdue [http://perma.cc/4QVN-M6BW]; Press Release, Maggie Hassan, U.S. Senator, Senators Hassan, Whitehouse Press Justice Department for 2006 Purdue Pharma Prosecution Memo (Sept. 19, 2019) (on file at https://www.hassan.senate.gov/news/press-releases/senators-hassan-whitehouse-press-justice-department-for-200 6-purdue-pharma-prosecution-memo [http://perma.cc/28DU-TUFF]). *But see JUST UN-SEALED: 2006 Dept of Justice Memo That Recommended CRIMINAL Charges Against PURDUE PHARMA*, GERALD POSNER (Aug. 19, 2020), https://www.posner.com/geraldposner/2020/08/just-un-sealed-2006-doj-memo [http://perma.cc/24ND-67MK].

82. Meier, *supra* note 54.

83. *Id.*

84. *Id.*; Associated Press, *supra* note 57.

85. Meier, *supra* note 54; ASSOCIATED PRESS, *supra* note 57.

86. Associated Press, *supra* note 57.

87. Meier, *supra* note 54.

88. Associated Press, *supra* note 57.

OxyContin as a drug that was less addictive, less subject to abuse and less likely to cause other narcotic side effects than other pain medications."[89] At the time, the U.S. Attorney involved with the case claimed that "[f]or [their] misrepresentations and crimes, Purdue and its executives have been brought to justice."[90] In a press release, Purdue claimed that they had "implemented changes to [their] internal training, compliance and monitoring systems that seek to assure that similar events do not occur again."[91] This punishment, however, was not enough to deter future wrongdoing.

Though at the time the DOJ "hailed the settlement as a victory," several former government officials voiced that "the decision not to bring more serious charges and air the evidence prosecutors had gathered meant that a critical chance to slow the trajectory of the opioid epidemic was lost."[92] In the aftermath, "drug companies continued to flood areas rife with drug abuse with more opioids."[93] In West Virginia, over the five-year period after the 2007 settlement, enough pain pills were supplied to provide every man, woman, and child with 433 opiate pills.[94] Purdue would continue to market and sell opioids through 2019.[95]

Approximately thirteen years after the 2007 settlement, in November 2020, as part of an extensive DOJ investigation, Purdue pled guilty to criminal charges "that it misled the federal government about sales of" OxyContin.[96] Purdue admitted: (1) that it marketed and sold its dangerous opioid product to healthcare providers, even though it had reason to believe those providers were diverting them to abusers; (2) from May 2007 through at least

89. Meier, *supra* note 68.

90. Associated Press, *supra* note 57.

91. *Id.*

92. Meier, *supra* note 54.

93. *Id.*

94. Eric Eyre, *Drug Firms Poured 780M Painkillers into WV Amid Rise of Overdoses*, CHARLESTON GAZETTE-MAIL, https://www.wvgazettemail.com/news/legal_affairs/drug-firms-poured-m-painkillers-into-wv-amid-rise-of/article_99026dad-8ed5-5075-90fa-adb906a36214.html [https://perma.cc/2UQB-LF9H] (Dec. 27, 2017).

95. *See* Joanna Walters, *What Does Purdue Pharma's Bankruptcy Filing Actually Mean?*, GUARDIAN (Sept. 19, 2019) https://www.theguardian.com/us-news/2019/sep/19/purdue-pharma-bankrupt-what-does-it-mean-opioids-crisis [https://perma.cc/Q3EB-QD8C]; Renae Merle & Lenny Bernstein, *Purdue Pharma's Bankruptcy Plan Includes Special Protection for the Sackler Family Fortune*, WASH. POST (Sept. 18, 2019), https://www.washingtonpost.com/business/2019/09/18/purdue-pharmas-bankruptcy-plan-includes-special-protection-sackler-family-fortune/ [https://perma.cc/QNB5-LZSU] ("[OxyContin] generated $790 million [in 2018], according to documents received by *The Washington Post*.").

96. Benner, *supra* note 3.

March 2017, it conspired to defraud the United States by impeding the lawful function of the DEA; and (3) it conspired to violate the Anti-Kickback Statute.[97] Specifically, Purdue admitted that it misled the DEA by claiming that it had created a program to prevent OxyContin sales on the black market while it actually continued marketing the drug to over 100 doctors that were suspected of illegally prescribing the drug, and paid illegal kickbacks to doctors and an electronic health records company that encouraged increased OxyContin prescription.[98] Under the plea agreement, Purdue agreed to pay a criminal fine of $3.544 billion, $2 billion in criminal forfeiture, and $2.8 billion to resolve civil liability.[99] Neither of these settlements resolved claims that states had against Purdue or members of the Sackler family, nor did they impede the debtors' ability to recover any fraudulent transfers.[100]

Purdue's involvement in the precipitation of the opioid epidemic over the last two decades is clear and pervasive. With OxyContin, Purdue knowingly "unleashed a highly abusable, addictive, and potentially dangerous drug on an unsuspecting and unknowing public."[101] Between 1999 and 2020, nearly 932,000 people died from a drug overdose with over 263,000 of those deaths involving prescription opioids.[102] Though many of these drug overdose deaths are not the direct result of prescription opioid use, they are the result of illicit opiates obtained after access to prescription opioids like OxyContin dried up or become financially unsustainable.[103] In that

97. Nov. 24 Press Release, *supra* note 65.

98. Benner, *supra* note 3.

99. Nov. 24 Press Release, *supra* note 65.

100. Press Release, U.S. Dep't of Just., Justice Department Announces Global Resolution of Criminal and Civil Investigations with Opioid Manufacturer Purdue Pharma and Civil Settlement with Members of the Sackler Family [hereinafter Oct. 21 Press Release], https://www.justice.gov/opa/pr/justice-department-announces-global-resolution-criminal-and-civil-investigations-opioid [https://perma.cc/E97S-YWRK] (Apr. 21, 2021).

101. Associated Press, *supra* note 57 (quoting JOHN BROWNLEE, U.S. DEP'T OF JUST., STATEMENT OF UNITED STATES ATTORNEY JOHN BROWNLEE ON THE GUILTY PLEA OF THE PURDUE FREDERICK COMPANY AND ITS EXECUTIVES FOR ILLEGALLY MISBRANDING OXYCONTIN 2 (2007)).

102. *Heroin and Opioid Awareness*, U.S. ATT'Y'S OFF. DIST. OF NEV., https://www.justice.gov/usao-nv/heroin-and-opioid-awareness [https://perma.cc/C9HP-SP3W] (Aug. 2, 2022); *Death Rate Maps & Graphs*, *supra* note 42.

103. *See How Opioid Addiction Occurs*, MAYO CLINIC (Apr. 12, 2022), https://www.mayoclinic.org/diseases-conditions/prescription-drug-abuse/in-depth/how-opioid-addiction-occurs/art-20360372 [https://perma.cc/ZL77-ACK5]; NAT'L ACADS. OF SCIS., ENG'G, AND MED., PAIN MANAGEMENT AND THE OPIOID EPIDEMIC: BALANCING SOCIETAL AND INDIVIDUAL BENEFITS AND RISKS OF PRESCRIPTION OPIOID USE ch. 5 (Richard J. Bonnie, Morgan A. Ford & Jonathan K. Phillips eds., 2017) (ebook).

time, overdose deaths involving prescription opioids increased more than 400%.[104] In 2020, approximately 96,800 people died from a drug overdose with about 70% of overdose deaths in 2020 involving opioids.[105] To put this all in perspective, as of 2018 "[o]verdoses [had] passed car crashes and gun violence to become the leading cause of death for Americans under 55. The epidemic [had] killed more people than H.I.V. at the peak of that disease, and its death toll exceeds those of the wars in Vietnam and Iraq combined."[106] In 2018, "every 11 minutes, another life [was] lost" in the opioid epidemic.[107]

### C. *Pulling the Strings: The Sackler Family's Role*

But who directed Purdue's actions that precipitated the opioid epidemic? Purdue is a privately, or closely, held American pharmaceutical company.[108] The Sackler family are the sole owners and founders of Purdue.[109] By 2018 at least eight members of the Sackler family sat on the Board of Directors of Purdue, including Dr. Richard Sackler, David Sackler, Mortimer D.A. Sackler, Dr. Kathe Sackler, Jonathan Sackler, Beverly Sackler and Theresa Sackler, as well as Ilene Sackler Lefcourt (collectively, the "Board").[110] Since the 1990s, members of this group of Sacklers have held the controlling majority of the Board, "[giving] them full power over both Purdue Pharma Inc. and Purdue Pharma L.P."[111] At all relevant times, the Sackler family held complete control over the activities of

---

104. *Heroin and Opioid Awareness*, *supra* note 102.

105. *Drug Overdose Death Rates*, NAT'L CTR. FOR DRUG ABUSE STAT., https://drugabuse statistics.org/drug-overdose-deaths/ [https://perma.cc/UBD5-BM9E]; *Data Overview*, CDC: OPIOIDS, https://www.cdc.gov/opioids/data/index.html [perma.cc/RDX9-P622] (June 1, 2021).

106. Shreeya Sinha, Zach Lieberman & Leslye Davis, *A Visual Journey Through Addiction*, N.Y. TIMES (Dec. 18, 2018), https://www.nytimes.com/interactive/2018/us/addiction-he roin-opioids.html [https://perm a.cc/7FGB-9VQE].

107. *Id.*

108. Taleed El-Sabawi & Leo Beletsky, *Purdue's Demise Could Be a New Beginning for the Pharmaceutical Industry*, HEALTH AFFS. (Dec. 18, 2020), https://www.healthaffairs.or g/do/10.1377/forefront.20201211.617504/full/ [https://perma.cc/DG59-US7H]; Walters, *supra* note 95.

109. Rabin, *supra* note 4; Oct. 21 Press Release, *supra* note 100.

110. Paul Schott, *Sacklers Quit Purdue Pharma Board Amid Shifts for OxyContin Maker*, STAMFORD ADVOC., https://www.stamfordadvocate.com/business/article/Sacklers-qu it-Purdue-Pharma-board-signaling-13742946.php [https://perma.cc/Q4NL-AWHB] (Nov. 4. 2019).

111. Mass. Complaint, *supra* note 6, ¶ 8.

Purdue Pharma, Inc. and Purdue Pharma L.P. through the Board.[112] Additionally, Richard Sackler exerted extensive control over Purdue as its President and CEO.[113] Though the Sackler family has continued to distance themselves from Purdue's role in the opioid epidemic and maintain that they are "blameless", the Sackler family was far from detached from its company.[114] Instead, the Sacklers largely "micromanaged"[115] Purdue and "directed years of efforts to mislead doctors and patients about the dangers of [OxyContin]."[116]

Excerpts from the 2006 DOJ memo show that the three executives previously mentioned,[117] Friedman, Udell, and Goldenheim, reported directly to "The Family"[118] from the advent of, and all throughout, the opioid epidemic.[119] As a result, the Sacklers shared in the same information and actions taken by Purdue executives in the aggressive marketing, misrepresentation, and over-prescription of OxyContin.[120] As part of the same memo, prosecutors found extensive evidence that the Sackler family received reports about problems with the company's drugs early on.[121] For example, the memo found that in 1997, Dr. Richard Sackler pushed Friedman and Goldenheim "to start a campaign to focus attention on the untreated patient in severe pain" in response to "concerns raised about the abuse potential."[122] Prosecutors also found that in 1999, Friedman forwarded an email to Dr. Richard Sackler, then president of Purdue, and Goldenheim containing details of discussion in

112. First Amended Complaint at ¶ 40, *In re* Opioid Litig., 2020 Misc. LEXIS 10975 (N.Y. Sup. Ct. 2020) (No. 400016/2018).

113. Bill of Complaint ¶ 47, Arizona v. Richard Sackler et al., 2019 U.S. LEXIS 7425 (2019) (No. 151).

114. Keefe, *supra* note 54.

115. *Family Behind OxyContin Maker Engineered Opioid Crisis, Massachusetts AG Says*, CBS NEWS (Jan. 24, 2019, 7:37 AM), https://www.cbsnews.com/news/purdue-pharma-lawsuit-massachusetts-attorney-general-blames-sackler-family-for-creating-opioid-crisis-OxyContin/ [https://perma.cc/H7ZL-DQAV].

116. Barry Meier, *Sacklers Directed Efforts to Mislead Public About OxyContin, Court Filing Claims*, N.Y. TIMES (Jan. 15, 2019), https://www.nytimes.com/2019/01/15/health/sacklers-purdue-OxyContin-opioids.html [https://perma.cc/2DXX-N8YW].

117. *See supra* note 86 and accompanying text.

118. Keefe, *supra* note 54.

119. Meier, *supra* note 54.

120. Keefe, *supra* note 54; *see* discussion *supra* Section I.B.

121. The Weekly, *Episode 10: 'The Memo"*, N.Y. TIMES (Aug. 16, 2019), https://www.nytimes.com/2019/08/16/the-weekly/a-secret-opioid-memo-that-could-have-slowed-an-epidemic.html [https://perma.cc/PL53-7XF5].

122. *Id.*

internet chat rooms describing the abuse of OxyContin by crushing and snorting the drug.[123]

The report also found that other Sackler family members, "including Raymond and Mortimer Sackler, the drug maker's founders, were sent [long] reports about the abuse of OxyContin's predecessor drug," MS Contin.[124] In fact, five months after the 1995 FDA approval of OxyContin, Richard Sackler and Mr. Udell were sent a medical journal article describing the ease of abusing MS Contin.[125] A Purdue scientist researched this issue and sent findings on the discussion of MS Contin's abuse to Mortimer Sackler, Raymond Sackler, Richard Sackler, Kathe Sackler, Jonathan Sackler, and Mortimer D.A. Sackler.[126] The researcher would find MS Contin mentioned in "the internet underground drug culture scene" with "[m]ost of it [] mentioned in the context of MS Contin as a morphine source."[127] Within the year, the Sacklers learned of MS Contin's abuse by drug addicts in Australia and New Zealand, receiving an article from American Family Physician showing "the ease of extracting morphine from MS Contin."[128] In the early days of its 1998 commercial release, the Sackler family would also directly receive reports about the similar abuse of OxyContin, including a medical journal study undercutting the claim that the drug had less appeal to drug abusers.[129] "In an accompanying editorial, a Canadian physician, Dr. Brian Goldman, wrote that the findings turned thinking about the supposed safety of long-acting opioids like OxyContin on its head by showing that drug abusers 'coveted' such drugs."[130] Rather than reporting these studies to the FDA, they instructed sales representatives to use older surveys "that had concluded that drug abusers were not attracted to time-release opioids" like OxyContin.[131] As OxyContin's abuse became public in 2000, Purdue's vice president of marketing noted in an email to

---

123. *Id.*; Meier, *supra* note 54.

124. Meier, *supra* note 54.

125. *Id.*

126. *See id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*; *see also* Brian Goldman, *The News on the Street: Prescription Drugs on the Black Market*, 159 CANADIAN MED. ASS'N J. 149, 149 (1998).

131. Meier, *supra* note 54.

Friedman, that he "was reminded of what he had seen earlier managing MS Contin sales in the Midwest."[132]

In December 2020, members of the Sackler family testified before the House Committee on Oversight and Reform (the "Committee") as to their role in fueling the opioid epidemic.[133] Representative Carolyn B. Maloney, the Chairwoman of the Committee, issued a memo describing how documents obtained showed that, starting in 2012, the Sackler family had used OxyContin to stretch Purdue's financial targets and increase earnings by recapturing lost sales and increasing OxyContin's share of the opioid market.[134] The documents further revealed how Sackler family members pressured Purdue executives to achieve this by targeting high-volume prescribers and pushing higher strength doses of the addictive opioid through a marketing program called "Evolve to Excellence."[135] These documents were later released to the public to promote transparency.[136] At the hearing, Anne Andrews, a lawyer representing recovering victims and relatives affected by opioid use, criticized the Sacklers' for painting the victims of the opioid epidemic as "slime, addicts, . . . low lifes, and that it was their fault they were addicted."[137] Specifically, in 2001, Dr. Sackler infamously said, "We have to hammer on the abusers in every way possible. They are the culprits and the problem. They are reckless criminals."[138]

---

132. *Id.*

133. *The Role of Purdue Pharma and The Sackler Family in the Opioid Epidemic: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. (2020) 2.

134. Memorandum from Carolyn B. Maloney to the H. Comm. on Oversight & Reform (Dec. 14, 2020), at https://oversight.house.gov/sites/democrats.oversight.house.gov/fil es/2020-12-14.SUPPLEMENTAL%20MEMO%20for%20the%2012-17%20Full%20Cmte.%20Purdue-Sackler%20Hearing.pdf [https://perma.cc/53EB-GA7P]; *see* Barry Meier, *Sackler Scion's Email Reveals Push for High-Dose OxyContin, New Lawsuit Disclosures Claim*, N.Y. TIMES (Jan. 31, 2019), https://www.nytimes.com/2019/01/31/health/opioids-purdue-pharma-sackler.html [https://perma.cc/Z4N2-SP5E].

135. Memorandum from Carolyn B. Maloney to the H. Comm. on Oversight & Reform, *supra* note 134.

136. *Committee Makes Purdue Documents Public to Promote Transparency*, HOUSE COMM. ON OVERSIGHT & REFORM, https://oversight.house.gov/purdue-sackler-documents [https://perma.cc/58G2-DXSG] (Apr. 29, 2021).

137. Jan Hoffman, *'You Murdered My Daughter': Relatives of OxyContin Victims Confront the Sacklers*, N.Y. TIMES (Mar. 10, 2022), https://www.nytimes.com/2022/03/10/health/sacklers-opioids-victims.html [https://perma.cc/RKD7-57PW]; *see The Role of Purdue Pharma and the Sackler Family in the Opioid Epidemic: Hearing Before the H. Comm. on Oversight & Reform*, *supra* note 133.

138. Hoffman, *supra* note 137.

During the 2007 settlement litigation, the Sackler family would remain unaccused of wrongdoing and criminal charges.[139] During the 2020 settlement litigation, as a result of the conduct of "Dr. Richard Sackler, David Sackler, Mortimer D.A. Sackler, Dr. Kathe Sackler, and Jonathan Sackler (the Named Sacklers),"[140] the Sackler family agreed to pay $225 million in civil penalties but did not face criminal charges.[141] "Except to the extent of Purdue's admissions as part of its criminal resolution, the claims resolved by the civil settlements are allegations only. There has been no determination of liability in the civil matters."[142] The 2020 deal, however, did not close the door to claims by state and territorial governments, local governments, or individual victims.[143]

Since 1996, Purdue has generated more than 35 billion dollars in revenue from OxyContin[144] and the Sackler family has withdrawn over 11 billion dollars in revenue from the company into personal holdings.[145] In total, the sales of OxyContin are estimated to have helped the Sacklers build a fortune of 13 billion dollars.[146] The Sackler family has yet to be officially charged with any personal wrongdoing related to the opioid epidemic. Faced with a mountain of evidence to the contrary, Purdue has maintained that it did not learn of OxyContin's growing abuse until early 2000.[147] "The three executives, who prosecutors described as reporting directly to the Sacklers, have always asserted they ha[ve] done nothing wrong and ha[ve] moved quickly to address the drug's growing

139. Meier, *supra* note 54; *see also supra* Section I.B.

140. Oct. 21 Press Release, *supra* note 100.

141. Benner, *supra* note 3.

142. Oct. 21 Press Release, *supra* note 100.

143. *See* Nov. 24 Press Release, *supra* note 65.

144. Courtney Vinopal, *The Sackler Family May Still Be Held Accountable for Their Role in the Opioid Crisis*, QUARTZ (Dec. 17, 2021), https://qz.com/2103602/a-us-judge-overturns-the-sackler-familys-immunity-from-law-suits/ [https://perma.cc/ZU3Q-L8SS].

145. Press Release, Wash. State Off. of the Att'y Gen., As a Result of AG Ferguson's Challenge to Sacklers, Purdue Settlement, Wash. Will Receive an Additional $113 Million to Address the Opioid Crisis (Mar. 3, 2022) [hereinafter Mar. 3 Press Release], https://www.atg.wa.gov/news/news-releases/result-ag-ferguson-s-challenge-sacklers-purdue-settlement-washington-will-receive [https://perma.cc/LX2X-P6KV].

146. Benner, *supra* note 3.

147. Meier, *supra* note 54.

abuse after they became aware of it in 2000."[148] The Sackler family maintains that they lack responsibility for the opioid epidemic.[149]

## II. OPIOID LAWSUITS

### A. *Lawsuits Against Purdue*

By 2021, at least 2,700 lawsuits from forty-eight states, five U.S. territories, local governments, tribes, hospitals, individuals, and infants born with opioid withdrawal have been filed against Purdue for its part in the opioid epidemic.[150] In total, about 614,000 claims were filed against Purdue.[151] Generally, the lawsuits allege that Purdue knew that OxyContin was highly addictive yet aggressively marketed high dosages of the drug, and deceived the public with misrepresentations of the drug and claims that it was nonaddictive and lacked side effects.[152] The states pursuing lawsuits against Purdue proceeded on claims of civil liability, and sought civil penalties, abatement of the epidemic, and monetary relief among other remedies.[153] By one measure, based on court documents, Purdue faced legal claims totaling over forty trillion dollars,

148. *Id.*

149. Keefe, *supra* note 54; Jan Hoffman, *Sacklers and Purdue Pharma Reach New Deal with States over Opioid*s, N.Y. TIMES (Mar. 3, 2022), https://www.nytimes.com/2022/03/03/health/sacklers-purdue-oxycontin-settlement.html [https://perma.cc/3T7P-B697].

150. Jan Hoffman, *Sacklers Threaten to Pull Out of Opioid Settlement Without Broad Legal Immunity*, N.Y. TIMES, https://www.nytimes.com/2021/08/17/health/sacklers-purdue-opioids-settlement.html [https://perma.cc/M4J7-5TGF] (Sept. 16, 2021); *see also* Michael Forsythe & Walt Bogdanich, *McKinsey Settles for Nearly $600 Million Over Role in Opioid Crisis*, N.Y. TIMES, https://www.nytimes.com/2021/02/03/business/mckinsey-opioids-settlement.html [https://perma.cc/3Q6P-CP3S] (Nov. 5, 2021).

151. Jan Hoffman, *What to Know: Purdue Pharma Settlement*, N.Y. TIMES (Sept. 2, 2021), https://www.nytimes.com/interactive/2021/09/03/health/purdue-opioids-settlement.html [https://perma.cc/YZ98-PYVU].

152. *See* Hoffman & Walsh, *supra* note 6; News Release, *Attorney General Formella Announces up to $6 Billion National Settlement with Purdue Pharma and Sacklers; New Hampshire to Receive $46 Million if Agreement Approved*, N. H. DEPT. OF JUST. (Mar. 3, 2022), https://www.doj.nh.gov/news/2022/20220303-settlement-purdue-pharma-sacklers.htm [https://perma.cc/RLG2-3FSA]; *see, e.g.*, Mass. Complaint, *supra* note 6, ¶¶ 38–42.

153. *See, e.g.*, First Amended Complaint & Jury Demand at 179–206, State v. Purdue Pharma, L.P., No. 18cv33300 (Colo. Dist. Ct. July 12, 2019) (alleging violation of the Colorado Consumer Protection Act, public nuisance violations, negligence, fraudulent misrepresentation, fraudulent concealment, and violation of the Colorado Organized Crime Control Act); First Amended Complaint, State v. Purdue Pharma L.P., No. 27-cv-18-10788 (Minn. 4th Jud. Dist. Aug. 5, 2019) [hereinafter Minn. Complaint] (alleging consumer fraud violations, deceptive trade practices, false statements in advertising, deceptive acts perpetrated against senior citizens and disabled persons, unlawful trade practices, unjust enrichment, undertaking of special duty, public nuisance, and False Claims Act).

with at least two trillion dollars of that requested by states and cities.[154] Facing thousands of lawsuits worth a mountainous sum,[155] Purdue would soon file bankruptcy to halt litigation.[156]

In September 2019, twenty-three states, as well as plaintiffs in more than 2,000 consolidated cases from cities, counties, and individuals, reached a tentative settlement with Purdue.[157] As part of the settlement, Purdue proposed their declaration of bankruptcy.[158] The filing of bankruptcy became the focal point in resolving the thousands of lawsuits against the company and Sackler family.[159] However, the "[t]wenty-four states that rejected Purdue's settlement offer" continued with suits against Purdue and "members of the Sackler family for their role in deceiving doctors and the public about [OxyContin]."[160]

### B. *Lawsuits Against the Sackler Family*

In January 2019, as part of a new court filing, the Commonwealth of Massachusetts released dozens of internal Purdue documents outlining the Sackler family's involvement in perpetuating the opioid epidemic.[161] The evidence showed that the Sacklers themselves directed Purdue's efforts to mislead doctors and aggressively market OxyContin.[162] Subsequently, twenty-four other states would amend previously-filed complaints to include the Sackler family as defendants or file new lawsuits directly against

---

154. Hill, *supra* note 7.

155. *Id.*

156. Hoffman & Walsh, *supra* note 6; *Purdue Pharma, Maker of OxyContin, Files for Bankruptcy*, *supra* note 8.

157. Lenny Bernstein, Aaron C. Davis, Joel Achenbach & Scott Higham, *Purdue Pharma Reaches Tentative Deal in Federal, State Opioid Lawsuits*, WASH. POST (Sept. 11, 2019, 1:50 PM), https://www.washingtonpost.com/health/purdue-pharma-reaches-tentative-settlement-in-federal-lawsuit-and-some-state-litigation/2019/09/11/ce6cb942-d4b8-11e9-9343-40db57cf6abd_story.html [https://perma.cc/C6PG-2V7K].

158. *Id.*

159. Hoffman, *supra* note 11.

160. For more information on the lawsuits see attached PDF files at *State Lawsuits Against Sackler Family*, MASS.GOV (2022), https://www.mass.gov/lists/state-lawsuits-against-sackler-family [https://perma.cc/M4LN-532C].

161. *See, e.g.*, The Commonwealth's Pre-Hearing Memorandum for the Hearing Set for January 25, 2019, Commonwealth v. Purdue Pharma L.P., No. 1884-cv-01808 (Mass. Dist. Ct. Jan. 15, 2019), https://int.nyt.com/data/documenthelper/569-purdue-pharma-documents/abbd666f51f9fae8bd7a/optimized/full.pdf#page=1 [https://perma.cc/VWY2-GP77]; Meier, *supra* note 54.

162. Meier, *supra* note 54.

members of the Sackler family.[163] The lawsuits brought by these states specifically name eight members of the Sackler family: Kathe Sackler, Mortimer Sackler, Richard Sackler, Jonathan Sackler, Ilene Sackler Lefcourt, Theresa Sackler, Beverly Sackler, and David Sackler.[164] The claims against the Sackler family are based on theories of civil liability.[165] The lawsuits include various causes of action,[166] but they primarily focus on two main issues.

First, the lawsuits allege that the Sackler family knew of OxyContin's addictive nature and were personally involved in the aggressive and misleading marketing and sale of OxyContin despite that knowledge.[167] The lawsuits seek monetary relief and civil penalties from the Sackler family, in addition to other forms of relief like disgorgement of profits and abatement of the opioid epidemic.[168]

Second, numerous state lawsuits allege that the Sackler family intentionally transferred Purdue profits into personal holdings and trusts to shield them from litigation, in what amounts to a fraudulent conveyance.[169] A fraudulent conveyance is when property, in this case, monetary assets, is transferred for the specific purpose of putting it beyond the reach of creditors.[170] Specifically, the states allege that starting in 2007, the Sackler family began the systematic transfer of billions of dollars from the company into a network of "surrogate companies and foundations . . . to keep the money away from the scrutiny of potential litigants."[171] Later,

---

163. *State Lawsuits Against Sackler Family*, *supra* note 160.

164. *See, e.g.*, Complaint at 1, State v. Sackler, No. 19cv012596 (N.C. Super. Ct. Sept. 17, 2019), https://ncdoj.gov/wp-content/uploads/2019/09/SKM_558e19091712020.pdf [https://perma.cc/CR3G-2B3W].

165. *See, e.g.*, *id.*

166. *See, e.g.*, *id.* (alleging violations of the North Carolina Unfair or Deceptive Practices Act); Minn. Complaint, *supra* note 153, ¶ 336, at 102 to ¶ 426, at 121 (alleging causes of action against the Sacklers for Consumer Fraud violations, Deceptive Trade Practices, False Statements in Advertising, Deceptive Acts Perpetrated Against Senior Citizens and Disabled Persons, Unlawful Trade Practices, Unjust Enrichment, Undertaking of Special Duty, Public Nuisance, and False Claims Act).

167. *See, e.g.*, Complaint, *supra* note 164, at 3–4.

168. *See, e.g.*, *id.* at 53–54; Minn. Complaint, *supra* note 153, ¶ 1, at 121 to ¶ 14, at 123.

169. *See, e.g.*, First Amended Complaint ¶ 885, at 245 to ¶ 895, at 247, State v. Purdue Pharma L.P., No. 400016/2018 (N.Y. App. Div. Mar. 28, 2019) [hereinafter N.Y. Complaint], https://int.nyt.com/data/documenthelper/722-new-york-vs-purdue-pharma-et/c9a1e4f5a0a00bd8507c/optimized/full.pdf [https://perma.cc/59UL-Z4QR].

170. *Fraudulent Conveyance*, BLACK'S LAW DICTIONARY (11th ed. 2019).

171. *See* Roni Caryn Rabin, *New York Subpoenas Banks and Financial Advisers for Sackler Records*, N.Y. TIMES (Aug. 15, 2019), https://www.nytimes.com/2019/08/15/health/sacklers-finances-purdue.html [https://perma.cc/ZH2X-Z4QR]; *see also* Merle & Bern-

Judge Colleen McMahon would note that Purdue "paid $10 billion in dividends to the Sacklers in the decade leading up to the bankruptcy filing, taking away funds that could have been used for the deal."[172] Generally, litigants seek the return of the billions of dollars in transferred funds and to restrain the Sacklers from further disposing of property in the face of civil liability.[173]

## III. BANKRUPTCY AS A SOLUTION TO LAWSUITS

### A. *The Chapter 11 Bankruptcy Process*

Federal bankruptcy laws under Title 11 govern how companies go out of business or recover from crippling debt. U.S. bankruptcy law has two central aims: (1) to help provide debtors with a fresh start[174] and (2) to "preserve the countervailing interests of creditors and other stakeholders by maximizing total creditor return on debts in an orderly and efficient fashion."[175] Bankruptcy judges preside over this process: reviewing and ruling upon filings submitted by participants; resolving certain types of disputes between parties; and performing other duties to carry out the central aims of the bankruptcy code.[176] Other key players in the bankruptcy process include debtors, creditors, and U.S. Trustees.[177] The debtors are the party "who seeks relief from debts he cannot repay."[178] The creditors are the parties "who seek to promptly and efficiently collect as much of their debts as they can."[179] The U.S. Trustees oversee bankruptcy proceedings "to prevent fraud, dishonesty, and

---

stein, *supra* note 95 ("Massachusetts claims the Sacklers transferred more than $4 billion from the company to personal accounts between 2008 and 2016. Oregon asserts the family may have taken as much as $10 billion out of the company" and the New York attorney general, Letitia James, claims that her office "had found wire transfers of nearly $1 billion by the Sackler family that suggested attempts to shield their money from litigation."). Further, Massachusetts' January 2019 lawsuit included a chart showing that the Sacklers voted to pay themselves large sums of money between 2008 and 2016. *Id.* This chart showed that "payments were generally made every few months in amounts that ranged from $50 million in April 2008 to more than $350 million for all of 2013." *Id.*

172. Vinopal, *supra* note 144.

173. *See, e.g.*, Rabin, *supra* note 171; N.Y. Complaint, *supra* note 169, at 246:888, 247:895.

174. KEVIN LEWIS, CONG. RSCH. SERV., R45137, BANKRUPTCY BASICS: A PRIMER (2022).

175. *Id.*

176. *Id.* at 4.

177. *Id.* at 4–5.

178. *Id.* at 3.

179. *Id.*

overreaching in the bankruptcy system"[180] as well as carry out other administrative duties.[181]

The bankruptcy process begins, and bankruptcy is effectively declared, once a debtor files a bankruptcy "petition" with the proper bankruptcy court.[182] In addition to the petition, debtors typically must "file a schedule of the debtor's assets and liabilities; a schedule of the debtor's current income and expenditures; a statement of the debtor's financial affairs; and other required documents."[183] Filing requirements are designed with the goal of ensuring that adequate information is provided to "facilitate the fair and efficient distribution of the debtor's" assets to creditors.[184]

Once a bankruptcy petition is filed, all non-bankruptcy litigation against the debtor is stayed without requiring a court order.[185] This is called the "automatic stay."[186] The stay "precludes creditors from undertaking 'any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case'; and, with certain exceptions, prohibits creditors from taking almost any action 'against the debtor.'"[187] The stay usually remains in place "until the bankruptcy court closes the case, dismisses the case, or grants the debtor a discharge."[188] The policy behind the automatic stay is twofold. The stay acts to protect the debtor's assets from "wasteful depletion . . . [because of] uncoordinated and possibly conflicting litigation," while also protecting creditors by precluding certain creditors from unilaterally obtaining "payment from [the] debtor to the detriment of other creditors."[189] The most common exception to the automatic stay is the "right of a governmental unit to enforce its police and regulatory power."[190] It is important to

180. *In re* Wash. Mfg. Co., 123 B.R. 272, 275 (Bankr. M.D. Tenn. 1991) (quoting H.R. REP. NO. 95-595, 95th Cong., 1st Sess., 88 (1977)).

181. *See* 28 U.S.C. § 586(a).

182. 11 U.S.C. § 301(a); Fed. R. Bankr. P. 1002(a), 1005; Official Bankruptcy Forms B 101 & B 201.

183. LEWIS, *supra* note 174, at 5.

184. *Id.*

185. *Id.* at 6.

186. 11 U.S.C. § 362. Chapter 11 is "intended primarily for the use of business debtors" such as corporations. Toibb v. Radloff, 501 U.S. 157, 166 (1991).

187. LEWIS, *supra* note 174, at 6.

188. *Id.* at 7.

189. *Id.*

190. John D. Ayer, Michael Bernstein & Jonathan Friedland, *An Overview of the Automatic Stay*, AM. BANKR. INST. J. (2004).

note that an automatic stay only applies to the debtor, not related third-parties that have not filed for bankruptcy themselves.[191]

A bankrupt company, the "debtor," might use Chapter 11 of the Bankruptcy Code to "reorganize" its business and try to become profitable again.[192] The underlying view is that the "continuation of the debtor's business will create more value than will dismemberment and piecemeal sale of the assets."[193] "The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with [the] attendant loss of jobs and possible misuse of economic resources."[194] The primary goal of a Chapter 11 bankruptcy is to formulate a reorganization plan.[195]

The reorganization plan "adjusts 'the rights and obligations among the debtor and its debt- and equityholders . . . to render the reorganized debtor a viable economic entity.'"[196] Important requirements of the plan include the identification of which creditors will have their claims "impaired" by the plan and to "specify how the plan will alter the claims belonging to the impaired" creditors.[197] A claim is impaired if there has been "any alteration of a creditor's rights, no matter how minor."[198] Impaired claims include legal claims against the creditor.[199] After a plan is proposed, impaired creditors vote on the certification.[200] If the creditors accept

---

191. Pitts v. Unarco Indus., 689 F.2d 313, 314 (1983); *see also* Hoffman, supra note 11; Renae Merle, *Judge in Purdue Pharma Bankruptcy Case Extends Lawsuit Protection to Sacklers*, WASH. POST: BUS. (Nov. 6, 2019, 6:04 PM), https://www.washingtonpost.com/business/2019/11/06/judge-purdue-pharma-bankruptcy-extends-lawsuit-protection-sacklers/ [https://perma.cc/RSR2-LBE4].

192. LEWIS, *supra* note 174, at 12–13; *see* GEORGE M. TREISTER, J. RONALD TROST, LEON S. FORMAN, KENNETH N. KLEE & RICHARD B. LEVIN, FUNDAMENTALS OF BANKRUPTCY LAW 427 (John B. Spitzer ed., 6th ed. 2006).

193. LEWIS, *supra* note 174, at 12.

194. NLRB v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984).

195. LEWIS, *supra* note 174, at 13.

196. *Id.*

197. *Id.* at 15 & n.170 (citing 11 U.S.C. § 1123(a)(3) (requiring the plan to "specify the treatment of any class of claims or interests that is impaired under the plan")).

198. *In re* Woodbrook Assocs., 19 F.3d 312, 321 n. 10 (7th Cir. 1994) (quoting *In re* Windsor on the River Assocs., Ltd., 7 F.3d 127, 130 (8th Cir. 1993)).

199. *See In re* Armstrong World Indus., Inc., 432 F.3d 507, 511 n. 2 (3d Cir. 2005) ("A class is impaired if its legal, equitable, or contractual rights are altered under the reorganization plan").

200. Typically plans are proposed by debtors as a result of negotiation. LEWIS, *supra* note 174, at 14–16 & n.180.

the plan,[201] the bankruptcy court then holds a hearing to decide whether to confirm the plan.[202] Certification of a reorganization plan under Chapter 11 "becomes a binding contract between" debtors and creditors (including creditors who did not vote in favor of the plan) and "governs their rights and obligations."[203] Thus, the reorganization plan generally discharges and substitutes the debtors prior obligations. Ideally, a reorganization plan is a "product of negotiation" between debtors and creditors through the bankruptcy process.[204]

## B. *Using Bankruptcy to Discharge Corporate Obligations*

The confirmation of a Chapter 11 reorganization plan "generally discharges the debtor from its pre-confirmation debt and substitutes the obligations of the plan for the debtor's prior indebtedness."[205] The "discharge" of corporate obligations "operates as an injunction" which, "with some exceptions, prohibits creditors from 'commenc[ing] or continu[ing] an action, employ[ing] process, or act[ing], to collect, recover, or offset any debt that was subject to discharge.'"[206] Creditors that violate this injunction are potentially open to civil liability for contempt.[207] Thus, in effect, confirmation of a reorganization plan discharges a debtor corporation's obligations and legally releases them from all liability in related lawsuits.[208]

## C. *Using the Bankruptcy Process to Obtain Non-Debtor Releases*

A non-debtor, usually shareholders, corporate officers, and directors in a Chapter 11 bankruptcy proceeding, is a third-party

---

201. "A class of creditors has accepted—that is, voted in favor of—a proposed plan if 'creditors . . . that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class' have voted in favor of the plan." *Id.* at 16.

202. *Id.*

203. *Id.* at 13 (quoting *In re* Nylon Net Co., 225 B.R. 404, 406 (Bankr. W.D. Tenn. 1998)).

204. *Id.* at 14.

205. *Id.* at 18 (quoting *In re* Lacy, 304 B.R. 439, 443–44 (D. Colo. 2004)).

206. *Id.* (quoting *In re* Bahary, 528 B.R. 763, 767–68, 769, 772–73 (Bankr. N.D. Ill. 2015)).

207. *Id.*

208. *See* 11 U.S.C. § 524(a)(1)–(3) (stating that a Chapter 11 discharge "[v]oids any judgment . . . to the extent that such judgment is a determination of the personal liability of the debtor with respect to" the discharged debt and "[o]perates as an injunction against the commencement or continuation of" any "action" or "act to collect or recover" the discharged debt.).

that shares an identity of interest[209] with a debtor, usually a corporation.[210] A non-debtor or third-party release is the "extinguishing of a creditor's claims against a non-debtor over the creditor's objection,"[211] or more simply, the prevention of plaintiffs from prosecuting claims against non-debtors.[212] This means that if a court grants a non-debtor release, the outstanding claims made by plaintiff creditors, current or future, will be permanently prohibited from going forward against non-debtor parties. It is important to note that the non-debtor obtains this benefit on behalf of the debtor, even though they have not themselves filed for bankruptcy.[213] Thus, non-debtor releases have been referred to as "escaping personal liability," a "legal shield," and a "release from civil liability," among other things.[214]

There are three basic forms of non-debtor release. First, the court provides a section in a Chapter 11 plan that requires "that certain claims against third parties are 'released.'"[215] Second, "a permanent injunction . . . forever prohibiting a creditor from prosecuting its claims against a non-debtor" is either inserted in the Chapter 11 plan or issued by the court.[216] And third, the court provides "both a release and a permanent injunction barring the creditor from attempting to collect from the released party on the

209. Identity of interest means:

> any relationship (generally based on family ties or financial interests) between (a) the seller and purchaser (prospective owner), (b) the owner and/or general contractor and the subcontractor, material supplier or equipment lessor, or (c) the owner and the lender, which would reasonably give rise to a presumption that the parties to the transaction may operate in collusion in establishing the purchase price of the property, the cost of the rehabilitation work, or the terms of the financing.

U.S. DEP'T. OF HOUS. & URB. DEV., No. 7420.3, app. 35, IDENTITY OF INTEREST TRANSACTIONS IN THE SECTION 8 MODERATE REHABILITATION PROGRAM (2022).

210. *See* U.S. DEP'T. OF JUST., CIV. RES. MANUAL § 48(b)(2)(a) (1996) (citing FED. R. BANKR. P. 9001(5)).

211. Joshua M. Silverstein, *Overlooking Tort Claimants' Best Interests: Non-Debtor Releases in Asbestos Bankruptcies*, 78 UMKC L. REV. 1, 20 (2009).

212. Elizabeth D. Lauzon, Annotation, *Validity of Non-Debtor Releases in Bankruptcy Restructuring Plans*, 18 A.L.R. Fed. 3d § 2 (2022).

213. *See id.*

214. *See infra* Section IV.A.

215. Silverstein, *supra* note 211.

216. *Id.*

extinguished claim."[217] Regardless of the course taken, the outcome is the same: the liability of the non-debtor party is discharged.[218]

Federal circuit courts have long been divided over the permissibility of bankruptcy courts releasing the claims of non-debtors like the Sacklers.[219] The split focuses on three statutory provisions: 11 U.S.C. §§ 105(a), 1123(b)(6), and 524(e). Section 105(a) provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."[220] Section 1123(b)(6) permits a Chapter 11 plan to "include any . . . appropriate provision not inconsistent with the applicable provisions of this title."[221] And section 524(e) limits the bankruptcy court's power, providing that "[e]xcept as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt."[222] Together, these provisions control the bankruptcy court's exercise of power in formulating and reaching a reorganization plan.

The majority, which includes the First, Second, Third, Fourth, Sixth, Seventh, Eleventh, and D.C. Circuits,[223] generally argue that under 11 U.S.C. §§ 105(a)[224] and 1123(b)(6) the bankruptcy court's general equitable powers grant them the power to release claims against non-debtors depending on the factual findings and circumstances of the bankruptcy.[225] In contrast, the minority,

---

217. *Id.* at 20–21.

218. *See In re* W. Real Est. Fund, 922 F.2d 592, 600 (10th Cir. 1990) ("By permanently enjoining [the creditor's] action[s] against [the non-debtor], the bankruptcy court, in essence, discharged [the non-debtor's] liability. . . .").

219. For a detailed review of the split over non-debtor releases *see* Joshua M. Silverstein*, Hiding in Plain View: A Neglected Supreme Court Decision Resolves the Debate Over Non-Debtor Releases in Chapter 11 Reorganizations,* 23 EMORY BANKR. DEVS. J. 13, 44–90 (2006).

220. 11 U.S.C. § 105(a).

221. 11 U.S.C. § 1123(b)(6).

222. 11 U.S.C. § 524(e).

223. *In re* Purdue Pharma, L.P., 633 B.R. 53, 100 (Bankr. S.D.N.Y. 2021).

224. *See* Johnson v. Home State Bank, 501 U.S. 78, 88 (1991) ("In addition, the bankruptcy court retains its broad equitable power to 'issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Code.]'"); Omni Mfg., Inc. v. Smith (*In re* Smith, 21 F.3d 660, 665 (5th Cir. 1994) ("From . . . section [105(a)] emanate[s] the general equitable powers of bankruptcy courts.")); *In re* G.S.F. Corp., 938 F.2d 1467, 1474 (1st Cir. 1991) (observing that § 105(a) grants bankruptcy courts broad equitable powers).

225. *See, e.g.,* Class Five Nev. Claimants v. Dow Corning Corp. (*In re* Dow Corning Corp.), 280 F.3d 648, 656–58 (6th Cir. 2002) (explaining that non-debtor releases are permissible pursuant to §§ 105(a) and 1123(b)(6)); Menard-Sanford v. Mabey (*In re* A.H. Robins

which includes the Fifth, Ninth, and Tenth Circuits,[226] contends that "[s]ection 524(e) of the Bankruptcy Code preclude[s] the grant of any such release in the context of a settlement"[227] and "that even if [section] 524(e) is not an obstacle, [sections] 105(a) and 1123(b)(6) simply do not grant sufficient equitable power to permit the release of claims against non-debtors."[228] There is no current indication that the Supreme Court of the United States will resolve this disagreement over non-debtor release.

## IV. THE PURDUE BANKRUPTCY PROCESS

### A. *The Purdue Chapter 11 Bankruptcy Settlement*

In September 2019, Purdue filed for Chapter 11 bankruptcy with the United States Bankruptcy Court for the Southern District of New York.[229] Important to note, under this filing the Sackler family has not filed for bankruptcy *themselves*.[230] The Honorable Robert D. Drain is presiding over the ongoing case in White Plains, New York.[231] The initial details of the settlement proposal by Purdue were reported to include: (1) the Sacklers giving up ownership

---

Co.), 880 F.2d 694, 701 (4th Cir. 1989) (holding that bankruptcy courts may grant a non-debtor release under § 105(a)).

226. *See*, *e.g.*, Resorts Int'l, Inc. v. Lowenschuss (*In re* Lowenschuss), 67 F.3d 1394, 1401 (9th Cir. 1995) (§ 524(e) prohibits non-debtor releases); *In re* W. Real Est. Fund, Inc., 922 F.2d 592, 601–02 (10th Cir. 1990) (holding that § 524(e) prohibits any permanent injunction "extended post-confirmation . . . that effectively relieves the non-debtor from its own liability to the creditor" and thus § 105(a) may not be used to provide such relief"); *see also* Silverstein, *supra* note 219, at 47–49 n.194 (containing an extensive list of federal courts and commentators adopting this view). It is well-established that [section] 105(a) may not be used in a manner that is inconsistent with another section of the Bankruptcy Code. Noonan v. Sec'y of Health & Hum. Servs. (*In re* Ludlow Hosp. Soc'y, Inc.), 124 F.3d 22, 28 (1st Cir. 1997) ("The bankruptcy court may not utilize section 105(a) if another, more particularized Code provision . . . impedes the requested exercise of equitable power.").

227. *In re* Purdue Pharma, L.P., 635 B.R. 26, 74 (Bankr. S.D.N.Y. 2021).

228. *Silverstein*, *supra* note 211, at 24; see*, e.g., In re* Dow Corning Corp., 244 B.R. 721, 742 (Bankr. E.D. Mich. 1999) (holding that because § 105(a) must be used in conjunction with other Code provisions, the statute does not give bankruptcy courts the power to issue non-debtor releases); *see also* Silverstein, supra note 219, at 106–19 (explaining why the anti-release courts' argument is invalid).

229. Ryan Hampton, *What Americans Don't Know About the Purdue Pharma Bankruptcy Hurts All of Us*, TIME (Oct. 6, 2021, 12:45 PM), https://time.com/6104495/purdue-pharma-bankruptcy-victims/ [https://perma.cc/K5F9-SQFG].

230. Keefe, *supra* note 54.

231. Jeremy Hill & Steven Church, *Judge Robert Drain, Overseer of Mega Bankruptcies, to Retire*, BLOOMBERG, https://www.bloomberg.com/news/articles/2021-09-28/u-s-bankruptcy-judge-robert-drain-to-retire-next-year [https://perma.cc/6GYX-QPUG] (Sept. 28, 2021, 4:50 PM).

of Purdue; (2) Purdue paying $3 billion cash to plaintiffs[232] over seven years; and (3) the Sacklers selling their Britain-based drug company, Mundipharma.[233] As part of this deal, Purdue would be restructured into a public benefit trust with the revenue becoming the source of payment for plaintiffs and abating the addiction epidemic, rather than the Sackler's themselves.[234] The filing of bankruptcy has since been the centerpiece of the Sackler family strategy to settle over 2,600 state and federal lawsuits against themselves and Purdue for their role in the opioid epidemic.[235]

From the start, the Sackler family has been focused on one thing: escaping personal liability. Days after Purdue filed for bankruptcy, the Sackler family threatened to withdraw their pledge to pay $3 billion unless Judge Drain blocked outstanding state lawsuits against them.[236] Judge Drain agreed early on to halt all litigation against the Sackler family, who had not filed for Chapter 11 protection themselves, in addition to Purdue.[237] Judge Drain reasoned that "it was necessary to preserve the company resources needed for the settlement"[238] and to preserve "any reasonable prospect of success" for a future reorganization plan.[239] As mentioned above, once a company files Chapter 11 bankruptcy, all civil lawsuits against it are automatically stayed.[240] However, the automatic stay only applies to the company, not related parties that have not filed for bankruptcy themselves.[241] It became clear that pursuant to a final bankruptcy plan, Judge Drain would allow not only Purdue to be released from all civil litigation outside of the automatic stay,

232. Plaintiffs include "individual plaintiffs, like families whose relatives overdosed or guardians of infants born with neonatal abstinence syndrome, as well as hospitals and insurers . . . and . . . for state and local governments." Hoffman & Walsh, *supra* note 6.

233. *Purdue Pharma, Maker of OxyContin, Files for Bankruptcy*, *supra* note 8.

234. *Id.*; Hoffman & Walsh, *supra* note 6.

235. *Purdue Pharma, Maker of OxyContin, Files for Bankruptcy*, *supra* note 8.

236. Hoffman, *supra* note 11.

237. Pierson et al., *supra* note 5; *Judge in Purdue Pharma Bankruptcy*, *supra* note 191.

238. *Judge in Purdue Pharma Bankruptcy*, *supra* note 191. Judge Drain would continue to extend the injunction on lawsuits against the Sackler family throughout the bankruptcy process, claiming litigation would "irreparably harm the ability to conclude these negotiations." Brian Mann, *Judge Blocks Lawsuits Against Sackler Family as OxyContin Bankruptcy Talks Continue*, NPR, https://www.npr.org/2021/03/24/980842719/judge-blocks-lawsuits-against-sackler-family-as-OxyContin-bankruptcy-talks-conti [https://perma.cc/2NGN-BQF7] (Mar. 24, 2021, 4:25 PM).

239. Dunaway v. Purdue Pharma., L.P. (*In re* Purdue Pharma., L.P.), 619 B.R. 38, 45–46 (Bankr. S.D.N.Y. 2020).

240. *See* LEWIS, *supra* note 174, at 6–7; Hoffman, *supra* note 11.

241. Ayer, *supra* note 190; Hoffman, *supra* note 11; Merle, *supra* note 191.

but also members of the Sackler family.[242] This would be the start of a long and contentious bankruptcy process.

In September 2019, thousands of cities and counties, twenty-four states, and five United States territories accepted a tentative settlement agreement posed by Purdue.[243] "The [twenty-four] states that [] signed onto the deal, including Tennessee, Florida, West Virginia[,] and Texas, as well as the municipal plaintiffs in nearly 2,300 cases consolidated in federal court, [] said they wanted to secure guaranteed money from a bankruptcy that seemed inevitable."[244] However, a group of twenty-four states and the District of Columbia led by Massachusetts and New York "denounced it, arguing that the process would foreclose their ability to pursue legal action directly against individual Sackler family members, whose contributions, they contend, are insufficient."[245] Almost uniformly, the states opposing the settlement plan have or are going to file suit specifically against members of the Sackler family.[246]

The bankruptcy plan went through multiple iterations but retained the same key provisions: (1) the Sacklers relinquish ownership of Purdue; (2) Purdue pays billions in cash to plaintiffs involved in opioid lawsuits; and (3) the Sacklers must sell Mundipharma.[247] The main contentions between creditors and the Sacklers remained the settlement value to plaintiff creditors, and again, the Sackler's insistent request for releases from all current and future civil liability associated with the opioid epidemic.[248] On September 1, 2021, Judge Drain approved a new bankruptcy plan that

---

242. Jan Hoffman, *Purdue Pharma Is Dissolved and Sacklers Pay $4.5 Billion to Settle Opioid Claims*, N.Y. TIMES, https://www.nytimes.com/2021/09/01/health/purdue-sacklers-opioids-settlement.html [https://perma.cc/LYL4-KW8L] (Sept. 17, 2021).

243. *Purdue Pharma, Maker of OxyContin, Files for Bankruptcy*, *supra* note 8.

244. *Id.*

245. Hoffman & Walsh, *supra* note 6; *Purdue Pharma, Maker of OxyContin, Files for Bankruptcy*, *supra* note 8.

246. *Purdue Pharma, Maker of OxyContin, Files for Bankruptcy*, *supra* note 8.

247. *See id.*; Brian Mann & Martha Bebinger, *Purdue Pharma, Sacklers Reach $6 Billion Deal with State Attorneys General*, NPR (Mar. 3, 2022, 1:43 PM), https://www.npr.org/2022/03/03/1084163626/purdue-sacklers-OxyContin-settlement?live=1 [https://perma.cc/LXZ2-M6UL]; Brian Mann, *The Sacklers, Who Made Billions from OxyContin, Win Immunity from Opioid Lawsuits,* NPR, https://www.npr.org/2021/09/01/1031053251/sackler-family-immunity-purdue-pharma-oxcyontin-opioid-epidemic [https://perma.cc/7QDW-EPDR] (Sept. 1, 2021, 7:33 PM); Hoffman & Walsh, *supra* note 6.

248. Mann & Bebinger, *supra* note 247; *Purdue Pharma, Maker of OxyContin, Files for Bankruptcy*, *supra* note 8; Hoffman, *supra* note 11 (the Sackler family members have insisted upon the non-debtor releases for nearly three years.).

would require Purdue to pay approximately $4.5 billion over nine to ten years in exchange for a sweeping release from liability for the Sackler family.[249] Again, a group of state attorney generals and a division of the DOJ would challenge and appeal the decis-ion.[250] "Washington State's attorney general, Bob Ferguson, called the plan 'morally and legally bankrupt,' because, he said, 'it allows the Sacklers to walk away as billionaires with a lifetime legal shield.'"[251]

In December 2021, U.S. District Judge McMahon of the Southern District of New York overturned the $4.5 billion settlement agreement that would legally shield the Sackler family from opioid related lawsuits.[252] In her opinion, Judge McMahon stated that the U.S. bankruptcy court "did not have authority to grant the Sacklers the legal protection from future opioid litigation."[253] Judge McMahon reasoned that no provision of the Bankruptcy Code authorizes "a bankruptcy court to order the non-consensual release of third-party claims against non-debtors" and, thus, the Sackler family was not eligible for a release from liability as they were not personally declaring bankruptcy.[254] The Sackler family again threatened to walk away from the settlement pledges absent the broad releases from civil liability.[255] Purdue and the Sacklers appealed the decision to the U.S. Second Circuit Court of Appeals.[256] Oral arguments occurred in late April 2022.[257]

In early March 2022, while the McMahon decision was still pending appeal, nine additional attorneys general agreed to drop

249. Mann & Bebinger, *supra* note 247; Hoffman, *supra* note 151.

250. Steve Inskeep & Brian Mann, *Judge Rejects Purdue Pharma's Opioid Settlement that Would Protect Sackler Family*, NPR (Dec. 17, 2021), https://www.npr.org/2021/12/17/1065083175/judge-rejects-purdue-pharmas-opioid-settlement-that-would-protect-sackler-family [https://perma.cc/DPG8-AY4D].

251. Hoffman, *supra* note 242.

252. Pierson et. al, *supra* note 5.

253. *Id.*; Decision and Order on Appeal at 80, *In re* Purdue Pharma, L.P., No. 7:21-cv-07585 (Bankr. S.D.N.Y. 2021).

254. Decision and Order on Appeal, *supra* note 253, at 73.

255. Pierson et. al, *supra* note 5; Hoffman, *supra* note 242.

256. Dietrich Knauth, *Purdue Pharma Bankruptcy Mediator Says Sacklers, US States Closer to Deal over Opioid Claims*, REUTERS (Feb. 8, 2022, 5:09 PM), https://www.reuters.com/business/healthcare-pharmaceuticals/mediator-purdue-pharma-bankruptcy-seeks-extend-talks-feb-16-2022-02-08/ [https://perma.cc/PNA3-RUF2].

257. "A hearing on the case before the Second Circuit Court of Appeals is scheduled for April, but it is expected to be canceled if all the parties withdraw their objections." Mann & Bebinger, *supra* note 247.

their objections to the releases from civil liability.[258] Additionally, they agreed to drop their opposition to the appeal of the 2021 District Court ruling vacating the original bankruptcy plan.[259] In exchange, the Sackler family agreed to increase the amount paid from personal holdings from $4.5 billion to $6 billion in the settlement.[260] The new agreement would require members of the Sackler family to pay an additional $1 billion in personal funds.[261] In total, members of the Sackler family would actually pay about $3 billion in the settlement.[262] Under the plan, Purdue would be restructured into a public benefit trust called "Knoa Pharmacy" with the revenue becoming the source of payment for plaintiffs and abating the opioid epidemic.[263] Additionally, the plan requires the Sackler family to: (1) place in a public repository millions of confidential documents that detail lobbying, public relations, and marketing activities; (2) allow the removal of their family name from medical centers, and art and educational institutions; (3) release a public statement of regret for their role in the opioid epidemic; (4) attend a March 2022 hearing that allowed members of the public affected by the opioid epidemic to directly address members of the Sackler family;[264] and (5) permanently refrain from the opioid business.[265] As of March 2022, Judge Drain approved the new settlement deal; however, at the time of the writing of this Comment, hurdles for its final confirmation remain.[266] The new deal must still be written into the reorganization plan before receiving final approval,[267] and more importantly, the Second Circuit, where the appeal remains pending, must first decide whether the Sackler family can receive

---

258. *Id.*

259. Mar. 3 Press Release, *supra* note 145.

260. Mann & Bebinger, *supra* note 247.

261. Hoffman, *supra* note 149.

262. *Sackler Family*, FORBES (Dec. 16, 2020), https://www.forbes.com/profile/sackler/?sh=12182dbb5d63 [http://perma.cc/TQP7-RFG9].

263. Hoffman, *supra* note 149.

264. *Id.*; News Release, *supra* note 152.

265. *AG Ellison Announces Resolution with Purdue Pharma and Sackler Family for Their Role in the Opioid Crisis*, OFF. OF MINN. ATT'Y GEN. (July 8, 2021), https://www.ag.state.mn.us/Office/Communications/2021/07/08_Purdue.asp [http://perma.cc/W2DT-NWZR].

266. Jeremy Hill, *Purdue Pharma Judge Approves a $6 Billion Opioid Settlement*, BLOOMBERG (Mar. 9, 2022, 5:46 PM), https://www.bloomberg.com/news/articles/2022-03-09/purdue-pharma-judge-approves-a-6-billion-opioid-settlement [https://perma.cc/Q64B-AUWZ]; Knauth & Hals, *supra* note 14.

267. *Chapter 11 - Bankruptcy Basics*, U.S. COURTS, https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics [https://perma.cc/E9QF-M424].

a sweeping non-debtor release from civil liability as part of the plan.[268]

### B. *The Non-Debtor Sackler Bankruptcy Settlement*

In the ongoing Purdue bankruptcy proceeding, the Sackler family appears poised to obtain a release that would "end . . . all current and future civil claims against them over the company's prescription opioid business."[269] The release from civil liability means that the Sacklers "would be forever immunized from any current and future lawsuits worldwide related not only directly to Purdue's opioids but to other drugs the company makes, including drugs for addiction reversal, high cholesterol and even constipation as a result of taking prescription opioids."[270] According to a disclosure statement filed on behalf of Purdue, the "immunity would extend to dozens of family members, more than 160 financial trusts, and at least 170 companies, consultants and other entities associated with the Sacklers,"[271] thus forming the basis for the "Sackler Loophole." The success of the Sackler family obtaining this release, however, is contingent on the outcome of the appeal in the Second Circuit.[272]

Currently, the Second Circuit, in which Judge McMahon sits, allows for a bankruptcy court to grant non-debtor releases "when truly unusual circumstances exist, the release itself is important

---

268. Knauth & Hals, *supra* note 14; Josh Russell, *Second Circuit Looks Askance at $6 Billion OxyContin Settlement*, COURTHOUSE NEWS SERV. (Apr. 29, 2022), https://www.courthousenews.com/second-circuit-looks-askance-at-6-billion-OxyContin-settlement/ [https://perma.cc/WFZ6-8RPX]; Steven Abramowitz et al., *Another Delaware Bankruptcy Court Approves Third-Party Releases and Opt-Out Mechanisms Amidst Disagreements With Other Circuits*, JDSUPRA (Aug. 29, 2022), https://www.jdsupra.com/legalnews/another-delaware-bankruptcy-court-2228329/ [https://perma.cc/8FP5-FRRB].

269. Hoffman, *supra* note 149; Jan Hoffman, *Richard Sackler Says Family and Purdue Bear No Responsibility for Opioid Crisis*, N.Y. TIMES [hereinafter *Richard Sackler Says*], https://www.nytimes.com/2021/08/18/health/richard-sackler-purdue-testimony.html [https://perma.cc/9QU5-XS5L] (Sept. 17, 2021).

270. Hoffman, *supra* note 150.

271. *See* Brian Mann, *Sackler Family Empire Poised to Win Immunity from Opioid Lawsuits*, NPR (June 2, 2021, 7:39 PM), https://www.npr.org/2021/06/02/1002085031/sackler-family-empire-poised-to-win-immunity-from-opioid-lawsuits [https://perma.cc/5CFH-UNX2]; Disclosure Statement for Fifth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. & Its Affiliated Debtors 22, 32–34, *In re* Purdue Pharma L.P., 632 B.R. 34 (Bankr. S.D.N.Y. 2021) (No. 19-23649).

272. Hill, *supra* note 266; *see* discussion *supra* notes 252–57.

to the plan, and the scope of the release is necessary to the plan."[273] But, broadly speaking and as outlined above, the issue is unsettled.[274] If the Second Circuit overrules Judge McMahon's ruling on the Sackler family non-debtor release, it would join the majority of jurisdictions by reasserting the legitimacy of non-debtor releases. However, it would also effectively allow the Sackler family to shirk liability and deny justice to countless Americans they affected. In short, the Sackler Loophole in the bankruptcy code would allow a family that profited in an excessive way off the pain of others to ignore accountability. The prospect of the Sacklers avoiding liability and accountability has led members of Congress to introduce two bills that would prevent the use of the Sackler Loophole by those in similar situations.[275]

## V. LEGISLATION TO CLOSE THE NON-DEBTOR LOOPHOLE

Two bills were introduced in Congress to address the use of non-consensual, non-debtor releases in both private claims and in those brought by the government.[276] Generally, both bills aimed to do the same thing: eliminate the ability of a bankruptcy court to grant non-consensual, non-debtor releases from liability.[277] Their focus: close the Sackler Loophole that has been used by "bad actors who have not filed for bankruptcy [but] escape personal accountability for their actions by shielding themselves through a bankruptcy proceeding of another corporation or entity."[278] Still, there are slight, yet important, differences between the bills that would affect their application in practice.

---

273. Lauzon, *supra* note 212 (citing *In re* Metromedia Fiber Network, Inc., 416 F.3d 136, 141–43 (2d Cir. 2005)).

274. *See* discussion *supra* Section IV.C.

275. *See* SACKLER Act, H.R. 2096 § 2(a)(1)–(2), 117th Cong. (1st Sess. 2021); Nondebtor Release Prohibition Act of 2021, H.R. 4777 § 113, 117th Cong. (1st Sess. 2021).

276. *See* July 28 Press Release, *supra* note 17; Press Release, H. Comm. on Oversight & Reform, Maloney, DeSaulnier Introduce SACKLER Act to Prevent Bad Actors from Evading Responsibility Through Bankruptcy Proceedings (Mar. 19, 2021) [hereinafter Mar. 19 Press Release], https://oversight.house.gov/news/press-releases/maloney-desaulnier-introduce-sackler-act-to-prevent-bad-actors-from-evading [https://perma.cc/7G4V-A2H4].

277. July 28 Press Release, *supra* note 17; Mar. 19 Press Release, *supra* note 276.

278. July 28 Press Release, *supra* note 17.

## A. *The SACKLER Act*

The first bill introduced was House Bill 2096, also known as the SACKLER Act or the Stop Shielding Assets from Corporate Known Liability by Eliminating Non-Debtor Releases Act.[279] The SACKLER Act and its identical bill in the Senate, Senate Bill 2472, both were introduced in their respective chambers and were referred committee.[280] The SACKLER Act "closes a loophole in bankruptcy law by preventing individuals who have not filed for bankruptcy, like members of the Sackler family, from obtaining releases from lawsuits brought by states, Tribes, municipalities, or the U.S. government in bankruptcy."[281] The relevant section of the SACKLER Act reads as follows:

> (a) Prohibition On Certain Non-Debtor Releases.—Section 105(b) of title 11, United States Code, is amended by striking "a court may not" and all that follows, and inserting the following: a court may not—
>
> > (1) appoint a receiver in a case under this title; or
> > (2) 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.[282]

There are two important things to note about the bill. First, the bill focused on amending 11 U.S.C. § 105 to limit the equitable powers granted to the bankruptcy court.[283] This focused on cutting off the crux of the majority circuit argument justifying the use of non-debtor releases.[284] Second, the bill would have prevented a bankruptcy court from granting a non-debtor release for claims by a State, municipality, federally recognized tribe, or the United States.[285] It would not have prevented the application of non-

---

279. The SACKLER Act was introduced in the House of Representatives in March 2021. Mar. 19 Press Release, *supra* note 276.

280. House Bill 2096 was referred to the House Judiciary Subcommittee on Antitrust, Commercial, and Administrative Law on October 19, 2021. *H.R.2019 – SACKLER Act*, CONGRESS.GOV, https://www.Congress.gov/bill/117th-Congress/house-bill/2096/committees https://perma.cc/3EY4-7ZBV]. Senate Bill 2472 was referred to the Senate Committee on the Judiciary on July 26, 2021. *S.2472 – SACKLER Act*, CONGRESS.GOV, https://www.Congress.gov /bill/117th-Congress/senate-bill/2472/committees [https://perma.cc/M4V2-S9AS].

281. Mar. 19 Press Release, *supra* note 276.

282. SACKLER Act, H.R. 2096 § 2(a), 117th Cong. (1st Sess. 2021).

283. *See* 11 U.S.C. § 105(a). Section 105(a) provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." *Id.*

284. *See* discussion *supra* Section III.C.

285. H.R. 2096 § 2(a).

debtor releases in individual claims.[286] Practically, the bill would have the desired outcome of stopping bankruptcy courts from using non-debtor releases and patch up the bankruptcy loophole that the Sackler family aims to use.

## B. *The Nondebtor Release Act of 2021*

The second bill introduced was House Bill 4777, the Nondebtor Release Act.[287] The Nondebtor Release Act and its identical bill in the Senate, Senate Bill 2497, have both been introduced in their respective chambers and the House version was voted on and accepted (reported)[288] by the House Judiciary Committee.[289] The Nondebtor Release Prohibition Act expands on the SACKLER Act by "virtually eliminat[ing] the use of non-consensual, non-debtor releases in private claims and those brought by the government."[290] The key portion of the bill is as follows:

> (a) Except as provided in subsection (b) of this section, subsection (a)(3), (g), (h), or (i) of section 524, section 1201, and section 1301, the court may not—
>
> > (1) with respect to the liability of an entity other than the debtor or the estate on, or the liability of property of an entity other than the debtor or the estate for, a claim or cause of action of an entity other than the debtor or the estate—
> >
> > > (A) approve any provision, in a plan of reorganization or otherwise, for the discharge, release, termination, or modification of such liability; or
> > > (B) order the discharge, release, termination, or modification of such liability; or

---

286. *See id.*

287. The Nondebtor Release Act was introduced in the House of Representatives in July 2021. July 28 Press Release, *supra* note 17.

288. "If the committee votes to report a bill, the Committee Report is written. This report describes the purpose and scope of the measure and the reasons for recommended approval." *In Committee: Consideration by Committee*, U.S. HOUSE OF REPRESENTATIVES, https://www.house.gov/the-house-explained/the-legislative-process/in-committee [https://perma.cc/WG7E-XC89].

289. House Bill 4777 has been referred to the House Committee on the Judiciary and has been ordered to be Reported (Amended) by a majority of the Committee and Senate Bill 2497 has been referred to the Senate Committee on the Judiciary. *H.R.4777 – Nondebtor Release Prohibition Act of 2021*, CONGRESS.GOV, https://www.Congress.gov/bill/117th-Congress/house-bill/4777/all-actions?overview=closed#tabs [https://perma.cc/SJ2L-C2GD]; *S.2497 – Nondebtor Release Prohibition Act of 2021*, CONGRESS.GOV, https://www.Congress.gov/bill/117th-Congress/senate-bill/2497/all-actions?overview=closed#tabs [https://perma.cc/A8XF-MB GR].

290. July 28 Press Release, *supra* note 17.

> (2) with respect to a claim or cause of action of an entity other than the debtor or the estate against an entity other than the debtor or the estate, or against property of an entity other than the debtor or the estate, enjoin—
>
> > (A) the commencement or continuation (including the issuance or employment of process) of a judicial, administrative, or other action or proceeding to assert, assess, collect, recover, offset, recoup, or otherwise enforce such claim or cause of action; or
> > (B) any act to assert, assess, collect, recover, offset, recoup, or otherwise enforce such claim or cause of action.[291]

This bill would also amend Chapter 11 of the U.S. Code to statutorily prohibit an interpretation allowing for bankruptcy judges to utilize non-debtor releases in practice.[292] The main differences between the SACKLER Act and the Nondebtor Release Act are: (1) the Nondebtor Release Act would create a new section in Chapter 11, section 113, to specifically focus on non-debtor releases rather than simply amending section 105; and (2) the Nondebtor Release Act does not leave out claims from individuals in its prohibition of non-debtor releases.[293]

## VI. ANALYSIS

### A. *Why Should the Sackler Loophole be Closed?*

#### 1. Our Legal System Must Hold Individuals Like the Sacklers Accountable

Holding the individuals responsible for corporate wrongdoing accountable is important because it: (1) deters future illegal activity; (2) incentivizes changes in corporate behavior; (3) ensures that the proper parties are held responsible for their actions; (4) promotes the public's confidence in the justice system; and (5) allows those harmed to recover.[294] Allowing the Sackler family, and those in

---

291. Nondebtor Release Prohibition Act of 2021, H.R. 4777 § 113(a), 117th Cong. (1st Sess. 2021)

292. *See id.*

293. *Compare* H.R. 4777, *with* SACKLER Act, H.R. 2096, 117th Cong. (1st Sess. 2021).

294. *See* Memorandum from Sally Quillian Yates, Deputy Att'y Gen., on Individual Accountability for Corporate Wrongdoing to All U.S. Att'ys (Sept. 9, 2015) https://www.justice.gov/archives/dag/file/769036/download [https://perma.cc/C4AB-EV7T].

similar positions, to utilize non-debtor releases runs counter to all of these stated goals.

Congressional actors have explained the need to close the loophole by stating, "[t]he bankruptcy process is supposed to provide a fresh start, not a license for the powerful—from the Sackler family to Harvey Weinstein to the people who enabled years of abuse of Olympic gymnasts, boy scouts, and young parishioners—to prey on ordinary Americans."[295] "The Sacklers, who bear a significant responsibility for the opioid crisis, are solvent, non-debtor parties who are abusing the bankruptcy system to avoid accountability for their actions."[296] Not only are the Sacklers solvent, but they have accumulated excessive wealth as a direct result of their actions at issue in pending litigation.

Similar to the Sacklers, the Boy Scouts of America ("BSA") and USA Gymnastics are attempting to obtain non-debtor releases in their respective bankruptcy proceedings, arguing they are "critical to [their] reorganization plan."[297] In the BSA case, more than 82,000 child sex abuse claims have been made against the organization.[298] Though the bankruptcy filing is for BSA alone, it seeks to obtain non-debtor releases for local BSA councils and troop sponsoring organizations, including Catholic Church officials.[299] Opponents stated "the BSA made a decision to shun and silence survivors of child sexual assault for decades and did not report their perpetrators for decades" and now they seek to strip survivors of the right to pursue claims against potentially liable third-parties.[300] Allowing actors in similar situations to the Sackler family to use non-debtor releases promotes future illegal activity, disincentivizes changes in corporate behavior, and prevents the proper parties from being held responsible for their actions.

295. July 28 Press Release, *supra* note 17 (quoting Congressman Nadler, Chairman of the House Judiciary Committee).

296. Letter from Eizabeth Warren, Richard Blumenthal, Carolyn B. Maloney & Mark DeSaulnier to the Honorable Merrick Garland, Att'y Gen., U.S. Dep't of Just. (Aug. 6, 2021) https://www.warren.senate.gov/imo/media/doc/Letter%20to%20AG%20Garland%20re%20Purdue%20Bankruptcy%20-%208.5.21%20-%20FINAL.pdf [https://perma.cc/EZF 3-CK6E].

297. CBS DFW Staff, *Lawyers Argue for Liability Releases in Boy Scouts Bankruptcy*, CBS NEWS: DFW (Apr. 13, 2022, 8:34 AM), https://www.cbsnews.com/dfw/news/future-liability-releases-at-center-of-boy-scouts-bankruptcy/ [https://perma.cc/W2BT-LM2P].

298. *Id.*

299. *Id.*

300. *Id.*

As a result of the sale of OxyContin, the Sackler family is worth an estimated $11 billion.[301] The bankruptcy settlement plan, as it stands, would allow the Sacklers' to largely retain—and potentially grow—their fortune.[302] The plan does in fact provide state and local governments with billions to address the ongoing damage of the opioid epidemic. However, "[t]hey fall far short of the more than $1 trillion the opioid crisis costs the U.S. every year, according to the Centers for Disease and Control."[303] The prospect of non-debtor releases pushed the Sacklers to file bankruptcy for Purdue in a favorable court to protect their own assets and avoid accountability for their actions.[304] If the plan is passed as is, it will provide a shining example to other companies similar to Purdue, and owners like the Sacklers, to ignore the prospect of accountability with knowledge that picking the right bankruptcy judge will release them from liability for their illegal activity. As a result, our legal system will fail to (1) deter future illegal activity; (2) incentivize changes in corporate behavior; (3) hold the proper parties responsible for their actions; and (4) promote public confidence.[305]

### 2. The Loophole Prevents Individual Victims from Recovering Just Compensation

"More than 140,000 people have filed legal claims against Purdue" but most of the public attention has instead been on the aggregated lawsuits of states, tribes, and local governments.[306] Unfortunately, throughout the bankruptcy settlement process, the individual victims and those directly injured by the use of OxyContin have found it challenging to obtain a "seat at the table" and instead have "been largely sidelined."[307] As a result, individual victims of the opioid epidemic are slated to get far less from the bankruptcy plan. Under the current plan victims and their surviving

301. Jeremy Hill, Sophie Alexander, Jef Feeley & Riley Griffin, *Sacklers to Exit from Complex Purdue Bankruptcy with Billions*, BLOOMBERG, https://www.bloomberg.com/news/features/2021-09-01/sackler-family-exits-bankruptcy-trial-over-purdue-pharma-s-oxycont in [https://perma.cc/MZC5-NG7P] (Sept. 2, 2021, 8:56 AM).

302. *Id.*

303. Mann & Bebinger, *supra* note 247.

304. Alex Wolf, *Purdue Pharma Bankruptcy Spotlights Venue Shopping Battle (1)*, BLOOMBERG LAW, https://news.bloomberglaw.com/bankruptcy-law/purdue-pharma-bank ru ptcy-spotlights-court-venue-shopping-battle [https://perma.cc/5EAU-5JAM] (Aug. 2, 2021, 11:33 AM).

305. *See* Memorandum from Sally Quillian Yates to All U.S. Att'ys, *supra* note 294.

306. Hoffman, *supra* note 137.

307. *Id.*

relatives "can apply for compensation from a fund of up to $750 million and would be able to collect amounts ranging from $3,500 to $48,000."[308] The people directly affected by Purdue's actions deserve the ability to not only have their day in court, but to recover just compensation for what they have suffered. It is also crucial that our legal system allow victims to decide how their cases are handled and that access to justice is ensured. Specifically, individuals who have been harmed by Purdue's actions should not be forced to abide by the non-debtor releases that they directly opposed. Allowing for the continued use of non-debtor releases will only perpetuate the cycle of victims being left behind and out of the room when settlement talks begin and binding them to the result.[309] Closing the loophole will "ensure that victims get to decide how they want their cases handled and [will] expand access to justice for those harmed by bad actors."[310]

### 3. Non-Debtor Releases Are Constitutionally Dubious

Non-debtor releases create concerns regarding the protection of constitutional rights. In July 2021, the DOJ filed a statement outlining its opposition and fundamental concerns with the non-debtor releases included in the Purdue bankruptcy plan.[311] In the statement, the DOJ argues that involuntary non-debtor releases violate due process rights.[312] Due process requires that "reasonable notice and an opportunity to be heard" be granted before a party is forced to forfeit a property interest, and the opportunity to be heard must be "at a meaningful time and in a meaningful manner."[313] The argument focuses on two main points: (1) non-debtor releases deny sufficient notice; and (2) non-debtor releases deny sufficient opportunity to be heard.[314] The DOJ is correct in its assessment.

308. *Id.*; *see also* Hoffman, *supra* note 151 ("About 130,485 people who can prove they were harmed by OxyContin will each get between $3,500 and $48,000. Guardians of 6,550 children born with symptoms of opioid withdrawal will receive about $7,000.").

309. In massive class actions cases against USA Gymnastics and BSA, victims of sexual assault and abuse are poised to again be left out of the room due to bankruptcy proceedings and non-debtor releases. July 28 Press Release, *supra* note 17.

310. *Id.*

311. Statement of the U.S. Regarding the S'holder Release at i, 1–2, *In re* Purdue L.P., 632 B.R. 34 (Bankr. S.D.N.Y 2021) (No. 19-23649).

312. *Id.* at 3.

313. Karpova v. Snow, 497 F.3d 262, 270 (2d Cir. 2007).

314. Statement of the U.S. Regarding the S'holder Release, *supra* note 311, at i.

Non-debtor releases deny sufficient notice. Under the current proposed plan, the proposed set of "Releasing Parties" and the scope of released liabilities are as broad as possible, covering any and every individual, organization, and governmental unit and "[a]ny and all [civil] [c]laims."[315] Further, the list of entities to be covered "includes a 24-page-long list of names and entities" without explanation as to why they deserve release under the bankruptcy plan or how they plan to contribute to the bankruptcy estate.[316] This list also likely includes thousands of separate parties that are referenced in large categories encompassing a broad range of professionals just because they have been compensated for their service to the Sackler family.[317] As a result, it is impossible to expect that each creditor plaintiff has received notice of each claim that the plan would release or could realistically determine the scope of the proposed releases. Of particular concern, those that have yet to file suit are unwittingly left without notice and without a remedy to recover. Thus, the broad release of non-debtors from current and future legal action does not provide constitutionally adequate notice.

Non-debtor releases also deny litigants a sufficient opportunity to be heard. Under non-debtor releases, the plaintiff creditors cannot litigate their claims to a ruling on the merits and they will have no other manner to be heard and present their claims.[318] In conjunction with this, claimants will be prevented from determining the extent of their damages through the typical discovery process and the resulting hearing and adjudication of the claim. Because of this, the releases prevent the creditor plaintiffs from ascertaining their damages resulting from the released claims[319] and makes it impossible to determine whether the creditor plaintiff will receive appropriate compensation.[320] Additionally, courts have ruled an opportunity to opt out is guaranteed by due process rights,

315. *Id.* at 4.

316. *Id.* at 5.

317. *Id.* at 5–6.

318. *See, e.g.,* Boddie v. Connecticut, 401 U.S. 371, 378 (1971) (stating that the Due Process Clause does not require a hearing on the merits in every civil case, but it does mandate "an opportunity . . . granted at a meaningful time and in a meaningful manner . . . for [a] hearing appropriate to the nature of the case").

319. *See, e.g.,* Barrett v. United States, 689 F.2d 324, 332 (2d Cir. 1982) (finding that the "[s]tatutory or common law entitlement to be fully compensated through a lawsuit for one's injuries" is a "species of property" protected by the Due Process Clause).

320. *In re* Aegean Marine Petroleum Network, Inc., 599 B.R. 717, 723–27 (Bankr. S.D.N.Y. 2019).

contradicting the practice of forced settlements through non-debtor releases.[321] Most importantly, the use of non-debtor releases as is fashioned under a plan like the Sackler plan,[322] imposes a final judgment on nonconsenting parties without ever ensuring the court has either personal or subject matter jurisdiction over each of the claims that will be forcibly released. Article III of the Constitution requires subject matter jurisdiction be established while the Due Process Clause requires that personal jurisdiction be established.[323]

As a result of both the denial of sufficient notice and the denial of sufficient opportunity to be heard, the use of non-debtor releases clearly violates the due process rights of plaintiff creditors involved in forced bankruptcy settlements, just like the one faced by the parties in the *Purdue* proceeding.

4. Non-Debtor Releases Encourage Judge Shopping

Non-debtor releases should be prohibited because they encourage corrupt judge shopping practices. Such practices not only undermine the procedural integrity of the bankruptcy system but upset the vital balance between debtor and creditor rights.

The bankruptcy venue statute provides debtors with "tremendous leeway" in picking where to file bankruptcies.[324] Venue is important because it can directly affect the outcome of a case by: (1) affecting the law that applies; (2) changing the judge that applies the law; and (3) affecting the ability of parties to participate in the case.[325] The resulting practice has become the commonplace filing of Chapter 11 corporate bankruptcies in venues with little connection to the debtor.[326] This has allowed debtors to not only pick a district with favorable precedents but also has allowed the debtor

321. *See* Lindsay v. Gov't Emps. Ins. Co., 448 F.3d 416, 420 (D.C. Cir. 2006) ("Because members of a class seeking substantial monetary damages may have divergent interests, due process requires that putative class members receive notice and an opportunity to opt out." (citing *In re* Veneman, 309 F.3d 789, 792 (D.C. Cir. 2002)); Robinson v. Metro-N. Commuter R.R., 267 F.3d 147, 166 (2d Cir. 2001).

322. *See* discussion *supra* notes 263–70.

323. *See In re Aegean*, 599 B.R. at 723–24; Ins. Corp. of Ir., v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 (1982).

324. Adam J. Levitin, Purdue's *Poison Pill: The Breakdown of Chapter 11's Checks and Balances*, 100 TEX. L. REV. 1079, 1129 (2022); *see* 28 U.S.C. § 1408.

325. Levitin, *supra* note 324, at 1128.

326. *Id.* at 1129.

to pick the specific judge that they know or believe will be inclined to side with them on key issues.[327] Particularly problematic is the practice of judges attempting to attract "megacases" to their courtroom. Importantly, "[t]he perception that a judge wants to attract megacases gives the debtor assurance that the judge will go along with the restructuring contemplated by the debtor and not transfer the case based on improper venue or rule against the debtor on significant issues."[328] In the case of non-debtor releases, this means that parties can easily select a forum and judge that they know will support the inclusion of non-debtor releases in the final bankruptcy plan at the expense of creditors.[329]

Here, Purdue was seemingly able to handpick Judge Drain to oversee their bankruptcy proceedings. Judge Drain is known for his desire to hear megacases in his courtroom while also having a favorable view towards debtors on key issues such as the use of non-debtor releases in bankruptcy proceedings.[330] Stamford, Connecticut-based, Purdue accordingly judge shopped for Judge Drain and chose to file its bankruptcy case in the Southern District of New York's White Plains location.[331] Peculiar local rules allowed for case assignment to ensure Judge Drain would oversee their bankruptcy, even though Purdue has a thin connection to New York.[332] As a result, the Sacklers were all but assured preferential treatment in the Purdue bankruptcy proceeding.[333]

"'The whole thing assumes an honest system, and it's not an honest system. The Sacklers [chose] their court,' one that is more likely to go along with a potential third-party release," says Professor Lynn M. LoPucki.[334] The result: tort victims, like those in the Purdue proceeding, and creditor parties alike are put at an unfair disadvantage in bankruptcy proceedings, harming the fairness of our rule of law.

327. *Id.* at 1150.

328. *Id.* at 1130.

329. *See id.* at 1131.

330. *Id.* at 1136 ("Under Judge Drain, White Plains transformed from a sleepy backwater venue into a go-to location for Chapter 11 [megacase] filings . . . .").

331. Wolf, *supra* note 304.

332. Levitin, *supra* note 324, at 1132–33.

333. Wolf, *supra* note 304.

334. Merle & Bernstein, *supra* note 95.

### B. *How Should the Sackler Loophole be Closed?*

The Sackler Loophole needs to be closed, but what is the best way to do so? Because non-debtor releases: (1) prevent bad actors from being properly held accountable, (2) prevent individual victims from obtaining just compensation for injuries; (3) are unconstitutional; and (4) encourage corrupt judge shopping practices,[335] the bill needs to close the Sackler Loophole in a way that deters future illegal corporate activity, incentivizes changes in corporate behavior, ensures that the proper parties are held responsible for their actions, promotes the public's confidence in the justice system, allows individual victims to recover just compensation, and prevents an unconstitutional overreach by federal bankruptcy courts.[336] House Bill 4777, the Nondebtor Release Act provides the best option for closing the Sackler Loophole and achieving these goals. Comparing the practical results of the Nondebtor Release Act with the SACKLER Act, the former's effectiveness quickly becomes clear.

The main shortcoming of the SACKLER Act is that it only "enjoin[s] or release[s] a claim against a non-debtor by a State, municipality, federally recognized Tribe, or the United States."[337] This entirely leaves out the individual victims, who are the ones most likely to be without a seat at the table during settlement negotiations, and end up losing out the most as a result of the released claims.[338] In comparison, the Nondebtor Release Act broadly covers all parties involved.[339] Notably,

> [t]he bill generally prohibits a bankruptcy court from (1) releasing or modifying a non-debtor's liability through the approval of a bankruptcy plan or through an order, or (2) enjoining a judicial proceeding or other act to collect or otherwise enforce such a claim or cause of action against a non-debtor.[340]

335. *See supra* Section VI.A.
336. *See supra* Section II.A.
337. SACKLER Act, H.R. 2096 § 2(a)(2), 117th Cong. (1st Sess. 2021).
338. *See supra* Section VI.A.ii.
339. *See* Nondebtor Release Prohibition Act of 2021, H.R. 4777 § 113(a)(1), 117th Cong. (2021).
340. *Summary: H.R. 4777 – 117th Congress (2021-2022)*, CONGRESS.GOV, https://www.Congress.gov/bill/117th-Congress/house-bill/4777#:~:text=The%20bill%20generally%20prohibits%20a,action%20against%20a%20non%2Ddebtor [https://perma.cc/6RJW-NKX3].

Further, the SACKLER Act aims only to amend a specific part of 11 U.S.C. § 105.[341] The majority of Circuits have ruled that bankruptcy courts' general equitable powers grant them the power to release claims against non-debtors under 11 U.S.C. §§ 105(a) and 1123(b)(6).[342] Though the SACKLER Act directly addresses limiting the courts powers through section 105(a), the Nondebtor Release Act amends title 11 of the United States Code by adding an entirely new section, section 113, that is dedicated to the prohibition of non-debtor releases, thus leaving no doubt that non-debtor releases are broadly prohibited in the bankruptcy code. [343]

The Nondebtor Release Act is properly tailored to address the Sackler Loophole while not overreaching. The Nondebtor Release Act would (1) "[p]rohibit[] the court from discharging, releasing, terminating or modifying the liability of and claim or cause of action against any entity other than the debtor or estate;" and (2) "[p]rohibit[] the court from permanently enjoining the commencement or continuation of any action with respect to an entity other than the debtor or estate."[344] This focus would prevent individuals who have not filed for bankruptcy from obtaining a release from any potential releasing party including private parties, states, tribes, municipalities, and the U.S. government while ensuring that it does not accidentally diminish the power of a bankruptcy judge to properly carry out their duties as the overseer of bankruptcy proceedings and reach a mutual agreement with debtors.[345] The legislation has also been endorsed by the National Consumer Law Center.[346]

Finally, the Nondebtor Release Act shares wide support from congressmen and congresswomen, bolstered by the representative

---

341. H.R. 2096 § 2(a).

342. *See supra* notes 223–25.

343. *See* H.R. 4777 § 113.

> Nothing in this Act, or the amendments made by this Act, shall be construed to independently grant the court authority to issue nondebtor releases, injunctions, or stays in connection with an order for relief under chapter 11 of title 11, United States Code, or in connection with an order confirming a plan of reorganization, nor shall anything in this Act or such amendments be construed to imply that any other provision of title 11 of such Code or of nonbankruptcy law grants such authority.

*Id.* at § 5.

344. July 28 Press Release, *supra* note 17.

345. *See* H.R. 4777 § 113(a)(1)(A)–(B).

346. July 28 Press Release, *supra* note 17.

that first submitted the SACKLER Act.[347] The bill has also received bipartisan support from congressmembers and state attorneys general alike.[348]

## CONCLUSION

Unfortunately, the opioid epidemic rages on in the United States, destroying countless lives in its wake.[349] Purdue and members of the Sackler family knew that OxyContin was highly addictive, yet aggressively marketed high dosages of the drug and deceived the public with misrepresentations of the drug by assuring that it was nonaddictive and lacked side effects.[350] Facing thousands of lawsuits worth a mountainous sum,[351] Purdue filed bankruptcy to halt litigation.[352]

The Sackler family took advantage of the Chapter 11 bankruptcy process and utilized non-debtor releases in an attempt to escape civil liability and accountability for their part in orchestrating the opioid epidemic.[353] Approval will broadly release the Sackler family from all current and future civil claims relating to the opioid epidemic, even though they *themselves* grossly profited off the opioid epidemic and are *themselves* not bankrupt.[354]

House Bill 4777, or the Nondebtor Release Prohibition Act of 2021, would prevent non-debtor individuals who have not filed for bankruptcy, like members of the Sackler family, from obtaining releases from individual liability through bankruptcy proceedings.[355] Closing this loophole is vital to: (1) hold bad actors accountable, (2) allow individual victims to obtain just compensation for injuries; (3) prevent an unconstitutional overreach by bankruptcy judges; and (4) prevent unfair judge shopping practices. Due to the nature of the crimes committed by the Sackler family and the havoc they

347. *Id.*

348. *The SACKLER Act and Other Policies to Promote Accountability for the SACKLER Family's Role in the Opioid Epidemic: Hearing Before the H. Comm. on Oversight & Reform*, 117th Cong. (2021).

349. *See Opioid Misuse in Rural America, supra* note 1; Owen, *supra* note 1.

350. *See* Hoffman & Walsh, *supra* note 6; Mass. Complaint, *supra* note 6.

351. *See* Hill, *supra* note 7.

352. *See Purdue Pharma, Maker of OxyContin, Files for Bankruptcy*, *supra* note 8.

353. Hoffman, *supra* note 11.

354. *See* discussion *supra* Section III.B.

355. *See* Nondebtor Release Prohibition Act of 2021, H.R. 4777, 117th Cong. (2021).

have wreaked on the United States, it is of the utmost importance that Congress passes this bill or a similar bill in a future session.

*Bryson T. Strachan* *

* J.D., 2023, University of Richmond School of Law; B.A., 2019, University of Texas at Austin. I wish to thank Professor Rachel Suddarth, whose support and advisement were vital to this Comment's completion. Thank you to the staff and leadership of the *University of Richmond Law Review* for their precise editing of this Comment, and for choosing to publish it. Many thanks to the following Symposium panelists who have dedicated much of their careers to exposing the pharmaceutical industry's contribution to the opioid epidemic, and for being constant advocates for their communities: Paul Farrell, Jr.; Rick Mountcastle; Eric Eyre; and Professor Patrick McGinley. Finally, to Kelly Boppe, thank you for your constant support and encouragement throughout this process and believing in me even when I did not. I could not have found my way without you.