

No. 23-124

**In The
Supreme Court of the United States**

WILLIAM K. HARRINGTON, UNITED STATES TRUSTEE,
REGION 2,

Petitioner,

v.

PURDUE PHARMA L.P., ET AL.

Respondents.

*On Writ of Certiorari to the United States Court of
Appeals for the Second Circuit*

**BRIEF OF CHERYL JUAIRE, TIFFINEE
SCOTT, DEDE YODER, KATHLEEN
SCARPONE, STEPHANIE LUBINSKI, LYNN
WENCUS, GARY CARTER, WENDY
PETROWSKY, KARA TRAINOR, KATHLEEN
STRAIN, LINDSEY ARRINGTON, SHANNIE
JENKINS, KERRI MORALES, C.R. FOSTER,
AND ROBERT PROCHNO AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICI CURIAE*¹

Amici Curiae Cheryl Juairé, Tiffinee Scott, Dede Yoder, Kathleen Scarpone, Stephanie Lubinski, Lynn Wencus, Gary Carter, Wendy Petrowsky, Kara Trainor, Kathy Strain, Lindsey Arrington, Shannie Jenkins, Kerri Morales, C.R. Foster, and Robert Prochno (“**Individual Victims**”) are individuals who are themselves (or whose loved ones are or sadly were) victims of Purdue Pharma L.P.’s (“**Purdue**”) opioid products and each may be entitled to receive compensation under the Chapter 11 plan at issue in this case. Thus, the Individual Victims have a strong interest in this case and the Chapter 11 plan that was confirmed and approved below.

¹ Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION & SUMMARY OF THE ARGUMENT

The opioid epidemic has had devastating consequences for individuals and communities across the country. In assessing the propriety of the bankruptcy plan at issue here, parties on both sides of this case have invoked the interests of opioid victims. Those interests should indeed be taken into account, as they bear on a number of factors germane to the legal inquiry before the Court. Like any real-world solution to a complex and difficult problem, the settlement approved by the bankruptcy court in this case is not perfect. From the perspective of victims, however, it is far better than the alternative. As a practical matter, the choice is clear: The bankruptcy plan approved by the court of appeals supplies the only viable mechanism for affording victims the aid they need—and need *now*.

This brief draws on *amici*'s real-world stories and life experiences to explain why individual victims of the opioid crisis overwhelmingly support the plan—with a particular focus on why victims urgently need access to the funds at issue. This Court can and should take those interests into account in determining whether the challenged releases constitute an appropriate exercise of the bankruptcy court's statutory and equitable powers.

ARGUMENT**I. INDIVIDUAL VICTIMS' INTERESTS SHOULD BE TAKEN INTO ACCOUNT IN ASSESSING THE PROPRIETY OF THE CHALLENGED RELEASES.**

Parties on both sides of this case have invoked—and even stressed—the interests of individual victims. *E.g.*, Pet. Br. 5, 14, 44-46; Br. for The Official Committee of Unsecured Creditors of Purdue Pharma L.P. 3-4, 17, 50-51. And for good reason. Those interests bear on several factors germane to the legal issue before this Court.

A major issue in this case, for example, is whether certain provisions of the Bankruptcy Code authorized the bankruptcy court to approve, as part of a plan of reorganization under Chapter 11, the challenged releases. Subject to certain enumerated exceptions, those provisions authorize a bankruptcy court to include “appropriate” releases not otherwise inconsistent with other provisions of the Code. *See* 11 U.S.C. § 1123(b)(6) (“Subject to subsection (a) of this section, a plan may ... include any other appropriate provision not inconsistent with the applicable provisions of this title.”); 11 U.S.C. § 105(a) (“The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”).

In assessing whether the challenged releases are “appropriate,” one issue raised by the parties is whether the plan at issue effectuates “the core bankruptcy goal of facilitating the fair allocation of the

estates' value." OCUC Br. 4. Whether the plan provides for fair and timely compensation of victims is relevant to that inquiry.

Broader equitable considerations also permit consideration of victims' rights and interests. In the proceeding below, for example, the Court of Appeals recognized that, "as with any term in a bankruptcy plan, a provision imposing releases of claims like that at issue here must be imposed against a backdrop of equity." J.A. 890 (citing *United States v. Energy Resources Co.*, 495 U.S. 545, 549 (1990); *Adelphia Bus. Sols., Inc. v. Abnos*, 482 F.3d 602, 609 (2d Cir. 2007)). Pertinent equitable factors include, *inter alia*, "the interests of the creditors, including the degree to which creditors support the proposed settlement," and "whether other interested parties support the settlement." J.A. 855.

In light of those and other factors, the Court of Appeals properly considered the interests of victims in addressing the propriety of the challenged releases. J.A. 892. "Without the Plan," the Second Circuit concluded, "the government would recover its \$2 billion first, thereby depleting the *res* completely. As a result, many victims of the opioid crisis would go without any assistance and face an uphill battle of litigation (in which a single claimant might disproportionately recover) without fair distribution." *Id.*

In short, the parties and the courts below agreed that victims' interests can and should be taken into account in assessing the propriety of the plan here at issue. Based on their real-world experience, the

Individual Victims are in a good position to shed light on that important consideration.

II. REAL-WORLD STORIES SHOW WHY VICTIMS NEED PROMPT ACCESS TO THE FUNDS THE PLAN WOULD MAKE AVAILABLE.

Through collective action and self-funded efforts, the opioid-victim community emerged from the mediation having achieved a remarkable result: the allocation of up to \$750 million for direct injury compensation; billions of dollars specifically allocated for abatement of the opioid crisis; and the public disclosure of millions of documents to build a record that will assist society in avoiding similar catastrophes.

Almost two years after Purdue filed for bankruptcy, the Bankruptcy Court confirmed the reorganization plan that fully incorporated the settlement achieved in the mediation. The reorganization plan garnered the support of 96% of the personal injury victims who voted. J.A. 359.

That overwhelming support was not just happenstance. The Individual Victims here seek to draw on their own stories to show why the victims support the plan—and why individual victims so desperately need to obtain funds for direct victim compensation and opioid abatement programs. The facts set forth are drawn from signed letters executed by each of the Individual Victims, which describe in

greater detail their own experiences.² From these letters, there are four reasons underlying their support of the plan that warrant particular mention.

First, the plan provides support for family members left behind after the victims' deaths. Victim narratives tend to depict death as the end of an individual victim's story. All too often, however, the death of a victim due to an opioid overdose marks the start of a new—and potentially much longer—phase of hardship and suffering for family and loved ones. And in many cases, the victim leaves behind young children that the family continues to care for after the victim's death.

Tiffinee Scott is one of those people. Tiffinee has lost two of her daughters to opioid overdoses. Her oldest daughter suffered from sickle cell disease and was prescribed OxyContin for her pain. Once she started on OxyContin, she became addicted and later died of an overdose at age 28. Their youngest daughter never recovered from the loss of her older sister and, shortly thereafter, also died due to an overdose. The youngest daughter left behind two children. Tiffinee and her wife continue to care for their daughter's children and hope to become the children's permanent guardians.

Shannie Jenkins has a similar experience. Her son struggled with opioid addiction for ten years. He first started taking OxyContin after one of his friends

² The letters are on file with undersigned counsel, and may also be obtained at the following link: <https://perma.cc/8G7S-W99P>

found it in his grandfather's medicine cabinet. After years of battling his addiction, Shannie's son had finally achieved sobriety and was beginning to start his new family. Six months before his son was born, however, Shannie's son relapsed and died of an overdose. He never got to meet his son.

Kathy Strain has lost numerous family members to the opioid crisis, and she raised the two children left behind as her own. Unfortunately, this is a common occurrence. As Kathy has explained, she hears from "many grandparents who are living on fixed incomes, raising children that their own children left behind." The plan would provide much-needed money to help support these families while they struggle not only with the loss of their family member but with raising the young children left behind.

Second, the plan helps both victims and the victims' families financially recover from the cost of addiction and treatment.

Dede Yoder, a single mom, spent over \$150,000 from her retirement savings to help her only child recover from his opioid addiction. Her son's opioid addiction started at the age of 14 after a doctor prescribed him opioids for his sports injury. She paid for eight different rehabilitation programs, but in the end, he still lost his battle with his addiction. Now, in her late sixties, she is facing the harsh reality of utilizing her retirement funds—she is unable to retire.

Stephanie Lubinski is faced with a similar financial loss. Stephanie Lubinski lost her home due to her husband's opioid addiction, and now is faced

with the difficult situation of not being able to afford her own cancer treatments.

Lindsey Arrington, a survivor of opioid addiction, had her first experience with opioids at 12-years-old when a doctor prescribed her hydrocodone for her neck pain. At the age of 17, she was given OxyContin by one of her friend's dad to help with her emotional pain. She then started to buy OxyContin on the streets. After she gave birth to her oldest son, she continued to use OxyContin. She lost her job, condo, and custody of her son over the span of three months. In April 2011, she entered into a recovery program and has been sober ever since. She now has custody of her son again, but continues to carry the financial burden from her past addiction.

Finally, Kara Trainor, another survivor of opioid addiction, gave birth to her son while she was on methadone. Her son was diagnosed with neonatal opioid withdrawal and spent six weeks in the intensive care unit. Now, as a twelve-year-old boy, her son is severely autistic and requires around the clock care.

In these and countless other cases, the promise of future money is not enough; victims and their loved ones are in dire financial situations now. The money from the plan would help provide instant relief and allow the families to continue to heal financially after their exposure to Purdue's opioid products.

Third, the plan affords much needed funding for education about the opioid crisis. After the loss of their sons to their opioid addiction, Cheryl Juare and Kay Scarpone helped organize a group called "Team

Sharing.” Team Sharing was designed as a way for grieving parents to connect and mourn the loss of their children together. The group has now expanded to all fifty states and is working with other groups to raise awareness about the devastation that opioids have caused for communities across the nation. Gary Carter, who lost his son to his opioid addiction, is an active member of Team Sharing, volunteering with their trailer, Hope’s Room, to create a mock bedroom to help educate other parents on the signs of opioid addiction in children.

Lindsey Arrington, a survivor of opioid addiction herself, founded the nonprofit Hope Soldiers to bring public awareness to the opioid crisis and to bring hope to those suffering from opioid addiction in Washington state. Over the past ten years, she has held community events that were attended by over 1,000 people, taught people how to obtain state-funded treatment, and provided ongoing peer support for addicts. The plan would help continue to fund these on-going education initiatives as well as provide opportunities to expand these education initiatives (and more) moving forward.

Fourth, the plan provides substantial resources for treatment and prevention. Wendy Petrowsky, who lost two sons to opioid drug overdoses, also worked as a nurse at an inner city hospital in Camden, NJ. As a nurse, she was able to see the true horrors of addiction. She recounted how newborn infants would scream as they were experiencing opioid withdrawal. From her experience alone, it is clear how desperately more funding for treatment and prevention is needed.

In addition to caring for her son who was diagnosed with neonatal opioid withdrawal, Kara Trainor also has seen firsthand the trials facing those who wish to seek treatment now. Kara works as a Certified Peer Recovery Coach and is a part of the Opioid Overdose Response Program. As part of her position, she works with two local hospitals to provide a connection between treatment centers and other resources for any individual seeking help with substance use disorder. She has seen countless individuals struggle with this disease, but the program cannot afford to help each one. It continues to haunt her every time she has to turn someone away who wants to get help because transportation to the treatment center is not covered.

Kerri Morales, who has lost her daughter to an opioid overdose, continues to watch her son struggle with his addiction. Lynn Wencus also lost her son after a decade-long struggle with his substance abuse disorder. Watching their children struggle with opioid addictions, they have both personally seen the value that additional resources for harm reduction and recovery would provide to families that are also going through these same issues.

C.R. Foster, a survivor of substance use disorder, also has seen many friends die from their addiction after not being able to get the help that they desperately needed. Similarly, Robert Prochno, a 73-year-old veteran who still remains addicted to opioids, has witnessed countless other veterans struggle with their opioid addiction without any resources to help them.

In all these cases, increased resources for treatment and for prevention will help to stem the tide on the opioid crisis. The plan does just that. With the dedicated billions of dollars to help provide resources for treatment and prevention, it will afford other families and communities the opportunity to help prevent others from suffering the same fate as the Individual Victims. Given the large number of new victims who get caught in the web of opioid addiction each and every day, any additional delay in funding treatment and prevention efforts has the inevitable consequence of consigning more families and communities to needless and often irreversible suffering.

* * *

No amount of money can bring back a beloved family member lost to addiction or undo the traumas routinely caused by opioid addiction. The confirmed reorganization plan, however, is needed—and needed now—to provide monetary relief to long-suffering victims of the opioid epidemic—and also to prevent more families and communities from suffering the same fate. Accordingly, the Individual Victims support the final reorganization plan that provides up to \$750 million for direct injury compensation and billions of dollars allocated for abatement of the opioid crisis.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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October 27, 2023