

IN THE
Supreme Court of the United States

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

Applicant,

v.

PURDUE PHARMA L.P., *et al.*,

Respondents.

ON APPLICATION FOR A STAY OF THE MANDATE OF THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT TO ASSOCIATE JUSTICE SONIA SOTOMAYOR

**OPPOSITION OF THE AD HOC GROUP OF INDIVIDUAL VICTIMS TO
THE U.S. TRUSTEE'S APPLICATION FOR A STAY OF THE MANDATE**

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The Ad Hoc Group of Individual Victims (“**Ad Hoc Group**”) of Purdue Pharma L.P., *et al.* (“**Debtors**” or “**Purdue**”), is comprised of over 60,000 individuals who were injured by direct exposure to Purdue opioid products and who have filed personal injury claims in the Debtors’ chapter 11 cases (“**Cases**”). Together, they make up over half of all individuals who filed personal injury claims in the Cases (“**Personal Injury Victims**”) and approximately 50% of Purdue’s total voting creditor body. The Ad Hoc Group opposes the Solicitor General’s application on behalf of United States Trustee William K. Harrington (“**U.S. Trustee**”) to stay the issuance of the mandate of the United States Court of Appeals for the Second Circuit (“**Application**”).¹ If the Court treats the Application as a petition for a writ of certiorari, the Ad Hoc Group joins the Official Committee of Unsecured Creditors (“**UCC**”) and the Debtors in opposing the petition.

For decades now, the U.S. opioid victim community has implored federal and state governments, regulators, district and U.S. attorneys, and courts to put an end to the global opioid epidemic. These efforts have largely been undertaken at the grassroots level by not-for-profit organizations, mothers and fathers on behalf of their deceased children, and victims themselves who have spoken of the devastating effects of prescription opioids on their lives. With few exceptions, governmental authorities accomplished nothing. Instead, in the last decade, deaths from opioid overdoses in the United States have continued to escalate, with approximately 80,000 deaths in the last year.

In late 2019, Purdue filed for bankruptcy. Through diligent collective action, lengthy mediation and chapter 11 plan processes, and the self-funded efforts of the Ad Hoc Group, the opioid victim community achieved a remarkable settlement. That settlement provides up to \$750 million dollars for direct injury reimbursements to Personal Injury Victims, over \$6 billion dollars

¹ Capitalized terms not otherwise defined have the meanings ascribed to them in the Application.

specifically allocated for abatement of the opioid crisis, the disclosure of millions of documents that will provide unparalleled transparency as to how Purdue was able to operate as it did for over a decade after pleading guilty to federal and state crimes (including privileged documents that could not be obtained through regular litigation discovery), and the removal of Sackler Family² members, who had owned and operated Purdue for decades, from the prescription opioid business. Special Appendix, at 3, *In re Purdue Pharma L.P.*, 69 F.4th 45 (2d Cir. 2023) (No. 22-110) [Dkt. Nos. 323-332] [hereinafter “SPA”].

Despite the many promised benefits to the personal injury community, the U.S. Trustee has waged a (nearly) solo campaign against this settlement because it contains third-party releases that the U.S. Trustee opposes as a matter of legal policy. Not content to advance its own agenda, the U.S. Trustee does so purportedly on behalf of “tens of thousands of personal injury claimants” whose direct claims against the Sackler Family members – as the U.S. Trustee incorrectly contends – are being released without compensation.³ Appl. at 18. The notion that the U.S. Trustee speaks on behalf of Personal Injury Victims could not be further from the truth. The U.S. Trustee has no ties to the opioid crisis, no economic stake in the outcome of the Cases, and never identified a single claimant, let alone tens of thousands, who authorized the U.S. Trustee to vindicate his or

² “Sackler Family” refers to the Mortimer D. Sackler Family (also known as ‘Side A’ of the Sackler family) and the Raymond D. Sackler Family (also known as ‘Side B’ of the Sackler family).

³ As the party that devised the trust distribution procedures through which Personal Injury Victims will be compensated (“PI TDP”), the Ad Hoc Group has explained repeatedly that Purdue’s chapter 11 plan (“Plan”) compensates Personal Injury Victims for claims against Sackler Family members. Recognizing that claims against Purdue based on Purdue’s aggressive marketing of OxyContin overlap significantly (if not totally) with claims against the Sackler Family members for their role in that marketing, the PI TDP streamlines the claims allowance and evaluation process so as not to require separate, cumbersome, and expensive evidentiary submissions and separate valuation of each claim held by the same Personal Injury Victim for the same injury. *See* The Ad Hoc Group of Individual Victims’ (I) Appellee Brief and (II) Joinder to the Appellee Briefs of the Debtors and the Official Committee of Unsecured Creditors, pp. 5-15, *In re Purdue Pharma L.P.*, No. 21 CV 7532 (CM), 2022 WL 121393 (S.D.N.Y. Jan. 7, 2022) [Dkt. No. 157].

her constitutional rights. At no point during the plan negotiation – which lasted over a year – did the U.S. Trustee intervene on the Personal Injury Victims’ behalf to assist in their litigation or settlement efforts or even advocate for more compensation or a better deal. To the contrary, the U.S. Trustee’s pursuit of its policy goals continues to harm Personal Injury Victims every day.

In contrast, the Ad Hoc Group, which speaks for over 60,000 actual people (including those whose rights the U.S. Trustee purports to assert), actively and vociferously supports the Plan, including the third-party releases of Sackler Family members. As a group, Personal Injury Victims voted overwhelmingly in favor of the Plan, with less than 4% of the estimated class voting “No.” They did not do so lightly or to benefit the Sackler Family. Nobody has suffered more than Personal Injury Victims from the Sackler Family members’ actions in driving Purdue’s misleading and aggressive marketing of OxyContin. But because all of Purdue’s creditors could assert that they were injured by the Sackler Family members, allowing only certain creditors to pursue individual claims against them would be unfair and could permit a double recovery: *first* from the settlement funds distributed under the Plan, and *second* from separate litigation of any purported direct claims against the Sackler Family members. Personal Injury Victims recognized that the third-party releases are necessary to a global settlement that delivers critical value to all opioid-affected communities in America through direct payments to those injured and billions of dollars of abatement funds to prevent further injuries.

Regardless of how one feels about the role of the Sackler Family in the creation and escalation of the opioid crisis, the fact remains that the billions of dollars in abatement and victim compensation funds hinge on confirmation and consummation of the *existing* Plan. These funds, which the Sackler Family members are providing in exchange for releases, are critically needed now. The opioid epidemic continues to wreak havoc in the United States. Tens of thousands

continue to die every year of opioid overdoses.⁴ Organizations serving opioid victims and their communities struggle to stay afloat for lack of funding.⁵ The existing Plan helps to address this desperate need with over a billion dollars that will begin to flow on the effective date of the Plan. By contrast, if the Plan fails, the Personal Injury Victims whose rights the U.S. Trustee purports to vindicate would return to the status quo ante: with no financial recovery, no abatement funds for their communities, no document depository, and no exclusion of the Sackler Family members from the opioid business. The U.S. Trustee has offered no solution to this problem, offering nothing in lieu of the existing Plan. Instead, the U.S. Trustee speculates without any record evidence that another deal would be possible without third-party releases. Given what is at stake, the Ad Hoc Group does not have the luxury of the same assumption.

The Ad Hoc Group implores this Court to put a stop to the U.S. Trustee's campaign and deny its dual request for a stay and a writ of certiorari.

As to the stay request, the U.S. Trustee wants this Court to make Personal Injury Victims wait at least another year for critically needed relief so that it can use these Cases as a vehicle to

⁴ The Center for Disease Control and Prevention reports that, based on provisional data for the 12-month period ending February 2023 alone, there were 79,644 reported opioid overdose deaths in the United States., averaging out to 6,637 deaths per month. *See* Center for Disease Control: National Center for Health Statistics, *Provisional Drug Overdose Death Counts*, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> (last updated Feb. 15, 2023).

⁵ As one member of the UCC eloquently testified in opposition to the U.S. Trustee's prior request for a stay: "Perhaps if these Appellants [including the U.S. Trustee] had to tell people suffering from OUD [Opioid Use Disorder] that there simply is no transportation to get them to a treatment center because the Appellants want more time to bring their appeals . . . or watched two different community organizations in Kalamazoo, each of which was established to provide different necessary services, like counseling, close in the last 90 days, they would rethink their position. Or perhaps if they were the ones who saw another organization . . . be abruptly displaced and forced to establish a GoFund Me in order to continue providing services, including harm reduction, peer support, naloxone, and clean syringes, they would feel differently . . ." Joint Appendix-1345-53, ¶¶ 15-16, *In re Purdue Pharma L.P.*, 69 F.4th 45 (2d Cir. 2023) (No. 22-110).

foster its goal of eliminating nonconsensual third-party releases in bankruptcy cases. The Court should deny this request. In granting a stay, this Court may typically protect the non-moving party by requiring the posting of a bond. In these Cases, the U.S. Trustee has repeatedly contended that it cannot be required to do so.⁶ It has also refused to post a bond voluntarily – even though nothing prevents the U.S. Trustee from doing so. Thus, the U.S. Trustee offers nothing to Personal Injury Victims to compensate for the very real harms they stand to suffer if this Court were to grant a writ of certiorari and affirm the Second Circuit. Instead, the U.S. Trustee suggests that the harm is insignificant because the Sackler are only required to pay \$300 million on the effective date. Appl. at 30. For Personal Injury Victims, the speedy distribution of \$300 million is a matter of great urgency. Many of the Ad Hoc Group’s members live on the edge of poverty, facing various risks, such as eviction or repossession of their cars. For them, any delay in Plan distributions has very real consequences. Unlike the U.S. Trustee, they cannot afford to wait any longer. This Court should not give the U.S. Trustee a free pass to harm Personal Injury Victims for another year.

As to the application for a writ of certiorari, this Court should not grant a writ in these Cases, where billions of dollars of opioid abatement funding, millions of dollars of victim compensation, and the opportunity for unparalleled access to Purdue and Sackler records are all at stake. Non-consensual, third-party releases have been permitted in most circuits for decades. The Ad Hoc Group is mystified as to why the U.S. Trustee chose these Cases as its vehicle to try to strike them down. If this Court is inclined to take up the issue of third-party releases (despite declining to do so in the past), the Ad Hoc Group respectfully requests that it choose another case, preferably one in which lives do not hang in the balance.

⁶ See Reply in Support of United States Trustee’s Amended Expedited Motion for a Stay of Confirmation Order and Related Orders Pending Appeal Pursuant to Federal Rule of Bankruptcy Procedure 8007, p. 45, *In re Purdue Pharma*, 633 B.R. 53 (No. 19-23649 (RDD) [Dkt. No. 4050].

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