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 FOR ELLEN ISAACS AS RESPONDENT SUPPORTING PETITIONER

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RESPONDENT ELLEN ISAACS

Ellen Isaacs is an individual victim of the Sacklers. In the bankruptcy, she filed claims on behalf of herself and her deceased son, whom she found dead from an overdose on her bathroom floor. In the court of appeals, she appeared as an appellee supporting the decision of the district court. In this Court, she appears as a respondent in support of petitioner, William K. Harrington, U.S. Trustee, arguing that the decision of the court of appeals should be reversed.

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SUMMARY OF THE ARGUMENT

Twenty years ago, when Richard Sackler was President of Purdue, his friend wrote to him: "I hate to say this, but you could become the Pablo Escobar of the new millennium."[1] Escobar was a billionaire Colombian drug lord and one of the most notorious criminals of the twentieth century. When the Colombian government finally made a show of enforcement against Escobar, that country's judiciary oversaw a special arrangement, in which the drug dealer was given his own private prison, specially built on a hill overlooking his hometown. The compound was so opulent that the citizens of Colombia named it *La Catedral*.[2]

Unless the Supreme Court stops it, this bankruptcy will be the Sacklers' cathedral.

ARGUMENT

I. The Bankruptcy Statute Should Not Protect the Sacklers

The purpose of the Bankruptcy Code is to grant a fresh start to the "honest but unfortunate debtor." *Marrama v. Citizens Bank*, 549 U.S. 365, 367 (2007). The Sacklers are neither honest nor unfortunate. They are not debtors. Instead, they are the billionaire masterminds behind a criminal enterprise that caused a national tragedy. They must be held accountable.

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[1] *See* Patrick Radden Keefe, Empire of Pain: The Secret History of the Sackler Dynasty (2021) at 257.

[2] *See* Roberto Escobar and David Fisher, Escobar: The Inside Story of Pablo Escobar, the World's Most Powerful Criminal, As Told By His Brother Roberto Escobar (2009) at 192-211.

A. No Special Protection for Billionaires

The first question the Supreme Court should answer is:

> *Should the law give special protection to billionaires?*

The Sackler releases are special protection for billionaires. That ugly fact is true. First, the Sackler releases are special protection. The Solicitor General of the United States pointed out to the Court that the Sacklers got "a release from liability that is of exceptional and unprecedented breadth."[3] The Sacklers got the protection of bankruptcy without being bankrupt. And that's not all. The Sacklers got more protection than they could in personal bankruptcy: immunity even from "claims based on fraud and other forms of willful misconduct that could not be discharged if the Sacklers filed for bankruptcy."[4] The fact that the protection for the Sacklers is special, and not ordinary, is the reason why this case is in this Court.

Second, the Sacklers got special protection because they're billionaires. That fact is so ugly that people sometimes deny it. When one Second Circuit Judge asked counsel what justified the special protection for the Sacklers, another Judge interrupted:

> "For heaven's sake … Please don't shoot yourself in the foot by saying it's the contribution of the Sacklers that makes this plan lawful. Don't do that!"[5]

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[3] Solicitor General's application (23A87) for a stay, submitted to Justice Sotomayor (filed Jul. 28, 2023), at 2.

[4] *Id.*

[5] Audio of oral argument, In re: Purdue Pharma L.P., (22-110), at minute 43 (Apr. 29, 2022).

But of course the Sacklers got their special protection because of their billions. Sometimes, people say the quiet part aloud. At the end of the same argument, Purdue's counsel exclaimed:

> "Are claims for fraud released? Yes! That's what they're paying five and a half to six billion dollars …"[6]

If the Sacklers had only a million dollars, or even a hundred million, they would not get this special protection, and the Court would not have this case.

Equal justice is the threshold issue in this case. The Court should uphold the principle of equal justice and reject special protections for billionaires.

B. Don't Let The Sacklers Pick Their Judge

If you dig into how the Sacklers got special protection, the story gets worse. Letting the Sacklers buy immunity in bankruptcy meant letting the Sacklers pick their judge.

Six months before this bankruptcy, Purdue changed its legal address to White Plains, New York. *See* J.A. 1-3.

> ☒ **The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is changed to read in its entirety as follows:**
> **c/o United Corporate Services, Inc.**
> **10 Bank Street, Suite 560**
> **White Plains, NY 10605**

As far as respondent has been able to learn, Purdue had no employees, assets, or business there. But that change-of-address form allowed the bankruptcy to be

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[6] *Id.* at 1 hour and 46 minutes.

decided where the Sacklers knew exactly which judge would handle the case – because there was only one Judge in the court.[7]

That one judge shut down every case against the Sacklers in front of every other judge and jury in the nation. That order by one person short-circuited the resilience of the American system. As a Justice of this Court said nearly a century ago, our federalism means that "a single courageous State may, if its citizens choose, serve as a laboratory" of democracy. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). A courageous State – California, Connecticut, Massachusetts, Minnesota, New York, or Virginia – would allow claims against the Sacklers to proceed in its courts. Judges chosen through the lawful process in the States would hear those cases. And, because of the protection enshrined by the Nation in the Seventh Amendment, citizen juries – who could not be pre-picked by the perpetrators – would decide the Sacklers' fate.[8]

Since the Founding, Americans have agreed that juries are the way that ordinary people "are enabled to stand as the guardians of each others' rights, and to restrain, by regular and legal measures, those who

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[7] *See* Patrick Radden Keefe, Empire of Pain: The Secret History of the Sackler Dynasty (2021) at 400-05, 415-18; Renae Merle and Lenny Bernstein, "Purdue's Choice of NY Bankruptcy Court Part of Common Forum Shopping Strategy, Experts Say," Wash. Post, Oct. 10, 2019 ("The White Plains court has a single judge, who has issued a ruling favoring third parties seeking to stay lawsuits against them.").

[8] *See* 28 U.S.C. 1411 ("this chapter and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim").

otherwise might infringe upon them."[9] The Founding generation might not have guessed that evil billionaires would infringe the rights of millions of families by selling addictive poison that makes people stop breathing and die. But the generation that ratified the Bill of Rights knew from experience that their rights should not be entrusted to a single official and instead should be guarded by their peers.

When decisions about millions of families are taken by one official, there is a grave risk that powerful interests turn the game to their advantage. The Sackler saga teaches this lesson from start to finish. At the beginning: an assessment by the U.S. Department of Justice concluded that the FDA's approval of OxyContin was tainted with "criminal intent," and emphasized that the official who approved the drug retired from the government and went to work for more money at Purdue. *See* J.A. at 11-13.[10]

At the end: the same month that he approved the Sackler releases, the bankruptcy judge in this case announced his retirement from the government.[11] Before this case had even been decided by the Second

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[9] Letters from the Federal Farmer, letter XV (Jan. 18, 1788), in 2 The Complete Anti-Federalist at 320 (Herbert J. Storing ed., 1981).

[10] U.S. Department of Justice Internal memorandum (Oct. 6, 2006) (Bankr. Ct. Doc. 1911-2, Ex. B) (filed Nov. 10, 2020) ("Questions have been raised about Dr. Wright's dealings with Purdue … a year after he left the FDA, Purdue offered Dr. Wright a job as Executive Medical Director, with a first year compensation package of at least $379,000.").

[11] Press Release, U.S. Bankruptcy Court, S.D.N.Y., Distinguished Bankruptcy Judge to Retire from Southern District Bench (Sept. 28, 2021).

Circuit, he announced that he'd taken a new job at the law firm that led the defense of Purdue.[12]

If the law allows non-bankrupt billionaires to buy releases in bankruptcy, it will weaken the safeguards that Americans have handed down for generations.

C. Don't Let A Company Pursue Releases For Its Owners

In addition to picking the judge, the Sacklers picked the crucial party in the proceeding that gave them immunity – their own company. One of the distressing features of this case for this respondent has been hearing Purdue's lawyers assert that they are vessels for the Sacklers' victims and they should be trusted to resolve victims' claims. Ms. Isaacs did not ask Purdue to represent her and she does not want them to. Ms. Isaacs does not trust Purdue.

She has good reason not to trust them. Even after Purdue entered bankruptcy, the company had a secret joint defense agreement with the Sacklers. *See* J.A. at 15. (The Joint Defense Agreement signed by Mary Jo White, Sheila Birnbaum, Patrick Fitzgerald, Senator Luther Strange, and Reginald Brown). The U.S. Department of Justice found that the law firms defending Purdue and the Sacklers:

> "failed to adequately disclose a Joint Defense and Common Interest Agreement (the Agreement) between Purdue and the Sackler families that created obligations for the Firms to the Sacklers related to the defense against hundreds of lawsuits involving

[12] *See* Justin Wise, "*Purdue Pharma Law Firm Builds 'Ethical Wall' to Shield Ex-Judge*," Bloomberg Law, Apr. 21, 2023 ("It's not a great look …").

> potentially billions of dollars of liability related to the manufacture, sale, and distribution of the prescription pain medication OxyContin. During the course of the bankruptcy cases, Purdue invoked the Agreement to avoid turning over documents to the official committee of unsecured creditors as it conducted its review of the debtors' conduct."[13]

The U.S. Trustees Program said: "These disclosure violations are particularly concerning because a central question in these cases has been the independence of Purdue from the Sackler families."[14] The law firms settled the claims for $1 million.[15]

The Sackler alliance with Purdue to avoid a trial exemplifies the abuse built into the mistaken doctrine below. The court of appeals would allow non-debtor releases when "claims against the debtor and nondebtor are factually and legally intertwined" and "debtors and the released parties share common defenses." J.A. at 888. That's exactly when wrongdoers inside and outside the company (including billionaires who are not bankrupt) use Chapter 11 as the ultimate common defense: when they've all done something terrible together. Acting in their self-interest, the perpetrators file in White Plains and build releases into their plan. The losers are the victims and the rule of law.

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[13] Press Release, U.S. Department of Justice, Law Firms Representing Purdue Pharma Agree to Relinquish $1 Million in Settlement with U.S. Trustee Program (Apr. 29, 2021).

[14] *Id.*

[15] *Id.*

Indeed, while Purdue was purportedly writing a plan on behalf of victims in the bankruptcy, it was simultaneously negotiating federal charges against the company for its crimes. A company defending itself against criminal charges cannot be trusted to advance the interest of the victims of those same crimes. In the 2020 criminal settlement, those lawyers working jointly for Purdue and the Sacklers guaranteed that the victims would lose their claims against the Sacklers and their lieutenants by conditioning Purdue's guilty plea on the confirmation of its preferred bankruptcy plan.[16]

D. Don't Prop Up a Zombie Criminal Enterprise

There is another pathology in this case. Special releases for the Sacklers are not part of a general law that gives non-consensual releases in big cases. There is no such law. Instead, the releases were given in Purdue's bankruptcy because of a loophole that the Second Circuit created only in Chapter 11. These special releases are allowed only in a Chapter 11 reorganization. To get this special treatment, you need a company going through reorganization. The need for that prop created more perversions.

Advocates for the Sackler releases say the releases are a necessary tool to reorganize Purdue.[17] The reality is the opposite: the reorganization of Purdue is

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[16] *United States v. Purdue Pharma Inc.*, Criminal Plea Agreement (D.N.J. 2020), at 5 ("Purdue may withdraw its pleas of guilty if … the Bankruptcy Court rejects, or otherwise declines to confirm, a Plan of Reorganization proposed by Purdue").

[17] *See* Purdue's Response in Opposition to Application for a Stay (filed Aug. 4, 2023), at 48 ("Without the releases, there would be no plan").

being pursued in this case as a tool to protect the Sacklers. The Sacklers want protection to avoid accountability; and others want to cash in on selling that special protection to them. Purdue is being kept alive as a zombie to give special protections to the Sacklers long after it should have been shut down. If Purdue went out of business, then the prop that's being used to enable this scheme would vanish, and the Sacklers would have to face their victims in court.

And Purdue should be out of business. In 1977, Congress enacted a law requiring that doctors who commit healthcare crimes must be excluded from Medicare and Medicaid.[18] In 1981, Congress expanded the law to exclude from government healthcare programs both individuals and corporations that commit healthcare crimes.[19] The government's website lists thousands of companies excluded from federal healthcare.[20] In addition to federal law, many states also exclude from government healthcare programs individuals and companies that are convicted of healthcare crimes.[21] These laws should protect the government and the public from doing business with Purdue.

Purdue has been a criminal enterprise for decades. *See, e.g.*, J.A. at 4. Its most recent admission of

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[18] Pub. L. 95-142 (1977), Medicare-Medicaid Anti-Fraud and Abuse Amendments.

[19] Pub. L. 97-35 (1981), Civil Monetary Penalties Law (CMPL).

[20] Exclusions Program, Office of Inspector General, U.S. Dep't of Health and Human Services.

[21] Cal. Welf. & Inst. Code § 14043.61; 130 Mass. Code Regs. 450.224; Miss. Code Ann. § 43-13-121(7); N.Y. Comp. Codes R. & Regs. Tit. 18, §§ 504.5, 504.7; 55 Pa. Code § 1101.76; Ohio Admin. Code § 5160-1-17.6(F); S.C. Code Ann. Regs. 126-400; 1 Tex. Admin. Code § 371.1705(a); Wash. Admin. Code 182-502-0030.

multiple felonies came in 2020, admitting to fraud and bribery.[22] Hundreds of companies have shut down for less. But Purdue's Chapter 11 plan allows it to escape the law by changing to a new name. "Knoa Pharma" takes over the zombie body to get around the rule that bars criminal companies from Medicare. Why? Because the company must survive to justify the Sackler releases.

On the day that Purdue filed for bankruptcy, the company was dead and deserved to be. But the company was needed as a prop for the Sackler releases, so hundreds of millions of dollars have been spent to keep the zombie company going. The latest report reveals that Purdue paid its own corporate insiders more than $179 million during bankruptcy.[23] Even on top of their salaries, Purdue pays its executives millions of dollars of bonuses – while admitting to felonies and while in bankruptcy – so it can keep going through the motions of corporate life.[24] Meanwhile, courts ruled that Purdue's patents were invalid,[25] Purdue sold off business lines that could find buyers,[26] and any real need for Purdue to exist dwindled away.

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[22] Press Release, U.S. Department of Justice, Opioid Manufacturer Purdue Pharma Pleads Guilty to Fraud and Kickback Conspiracies (Nov. 24, 2020).

[23] Monthly Operating Report (Bankr. Ct. Doc. 5838) (filed Aug. 23, 2023).

[24] *See, e.g.,* Press Release, U.S. Senator Joe Manchin, Manchin Urges Court to Reject $3.5 Million Bonus for Purdue Pharma CEO (Sept. 21, 2020).

[25] *See* Monthly Operating Report (Bankr. Ct. Doc. 5838) (filed Aug. 23, 2023) at 17-18.

[26] *See* Dietrich Knauth, *"Purdue Pharma To Sell Consumer Business for $397 Million,"* Reuters, May 23, 2023 ("U.S. Bankruptcy Judge Sean Lane approved Purdue's sale of Avrio

Plenty of indicators confirm that the tail (Sackler releases) wags the dog (reorganizing Purdue) in this case. Purdue's latest motion for court-approved bonuses says Purdue employs approximately 454 people, and so far the fees paid by Purdue in this bankruptcy have been $770 million.[27] A Chapter 11 system with a rational interest in saving jobs does not pay bankruptcy professionals $1.7 million (so far and still increasing!) for each job saved. Instead, the rational system admits that some companies should die. Purdue's latest report claims a cumulative profit of $30 million during nearly four years in bankruptcy.[28] For rational corporate actors, it would've been far better to put the company's $1.4 billion bank balance in a money market fund, which would pay far better and safer returns than Purdue.[29] But keeping up the charade of reorganization is required to trigger the Sackler releases and the big money they bring.

In the end, it will come out that this reorganization was a sham. Purdue will not be in business in 2030, or even in 2025. Once the Sacklers get their protection, there'll be no need for this company anymore.[30] The Court should reject the loophole that encourages this charade.

Health at a hearing in White Plains, New York, allowing Purdue to begin liquidating its assets …").

[27] *See* Motion to Authorize Bonuses (Bankr. Ct. Doc. 5579) (filed May 2, 2023) at ¶ 40; Monthly Operating Report (Bankr. Ct. Doc. 5838) (filed Aug. 23, 2023) at 23 (professional fees).

[28] *See* Monthly Operating Report (Bankr. Ct. Doc. 5838) (filed Aug. 23, 2023) at 4 ($12.308 billion loss, which would be a $30 million profit without $12.336 billion settlement expense).

[29] *See id.* at 3 (account balance of $1,442,208,989).

[30] *See, e.g.*, Dietrich Knauth, *"Drugmaker Mallinckrodt files for second bankruptcy in US,"* Reuters, Aug. 28, 2023 (Mallinckrodt

If non-debtor releases are ever allowed, the national rule set by this Court should be that they are not available when the bankruptcy is caused in substantial part by the company's crimes – as in this case, where the largest claim by a creditor against Purdue is the claim by the Justice Department for felonies.

E. There Is No Consensus To Protect The Sacklers

Purdue peddles the illusion that everyone wants to protect the Sacklers. But no one had a choice about the Sackler releases until now. From the date in March 2019 when Purdue changed its address to White Plains, Purdue wanted releases for the Sacklers, and no one had the power to stop them. In the first month of the bankruptcy, Purdue filed a term sheet offering the Sacklers releases, including, apparently, even releases for federal crimes ("all potential federal liability arising from or related to opioid-related activities").[31] When the bankruptcy judge learned that the Justice Department objected to non-debtor releases in another case, he urged Purdue to file an amicus brief to make sure releases remained available for the Sacklers.[32] That was always the plan.

There is a world of difference between getting steamrolled in a bankruptcy where the judge insists Sackler releases are legal, and wanting the Supreme

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executives got non-consensual third-party releases in that opioid company's reorganization in 2022; the reorganization failed, and the company returned to bankruptcy, but the executives keep their immunity).

[31] Bankr. Ct. Doc. 257 (filed Oct. 8, 2019), at ¶ 10.

[32] Transcript of hearing (Feb. 21, 2020) at 39:10 - 41:13.

Court to make the Sacklers billionaires forever. The Attorney General of California, for example, stated on the same day of the Second Circuit decision that it is "not consistent with the law."[33] The Attorney General of Rhode Island: "I fought hard for the principle that third-party releases for the Sacklers, who aren't bankrupt and yet want the benefits and protections of the bankruptcy process, are unlawful."[34] The Attorney General of Connecticut: "non-consensual third-party releases are wrong, and should not be abused in bankruptcy court to enable the worst offenders to cram settlements down the mouths of dissenting victims."[35] Likewise: Idaho, Massachusetts, and Vermont.[36] The fact that Purdue carved the United States as a litigant out of the Sackler releases[37] does not show the releases are right; instead, it's a tell that Purdue did not want to be challenged by an authority with nationwide interest in the rule of law.

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[33] Press Release, California Department of Justice Office of the Attorney General, Attorney General Bonta Issues Statement on Federal Appeals Court Decision Allowing $6 Billion Purdue Pharma Settlement to Move Forward (May 30, 2023).

[34] Press Release, State of Rhode Island Attorney General Peter F. Neronha, Attorney General Settlement of at least $5.5 billion with Purdue Pharma and Sackler Family (Mar. 3, 2022).

[35] Press Release, Office of the Attorney General of Connecticut, Attorney General Tong Statement on Supreme Court Stay of Purdue Settlement (Aug. 10, 2023).

[36] "The SACKLER Act and Other Policies To Promote Accountability for the Sackler Family's Role in the Opioid Epidemic," Hearing Before the Committee on Oversight and Reform, U.S. House of Representatives; Press Release, Office of the Vermont Attorney General, AG Donovan Announces National Settlement in Principle with Purdue Pharma and Sacklers of Up To $6 Billion (Mar. 3, 2022).

[37] *Id.*

When the Justice Department stands up against the Sacklers, it is disappointing that Purdue's counsel name-calls the public servants as "bizarre" and "rogue."[38] In Purdue's sick worldview, the principles of the Solicitor General and U.S. Trustee don't matter, because they lack "a financial stake" in the case.[39] A financial stake is all that mattered to the Sacklers, and their blindness shows in their arguments even now.

F. Justice Is About More Than Money

This is a case where people's children died. The perpetrators owe the victims and the nation more than money. The justice system owes us more than a forced settlement.

Because money hangs over this case, it's important to be clear about how money relates to justice. When a victim agrees to a settlement of her own free will, that advances justice. When perpetrators forfeit the fruits of their fraud, that advances justice. In a case where so many lost everything priceless, including their lives, justice is served when the villains keep nothing at all. But justice is not served by forcing victims, against their will, into a deal that leaves the Sacklers billionaires.

In another case, the musician Taylor Swift prompted discussion about how we seek justice. Swift was assaulted, the perpetrator lied about it, she sued him for a dollar, exercised her constitutional right to go to trial before a jury, and won. As a member of this Court put it, "What Taylor Swift wanted was, you know, vindication of the moral right, the legal right, that

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[38] *See* Purdue's Response in Opposition to Application for a Stay (Aug. 4, 2023), at 32.

[39] *Id.* at 33.

sexual assault is reprehensible and wrong."[40] Swift reflected on "the day that the jury sided in my favor and said that they believed me," and said: "I just think about all the people that weren't believed, and the people who haven't been believed, or the people who are afraid to speak up because they're afraid that they won't be believed … and I don't know what turn my life would have taken if people hadn't believed me."[41] From the start and continuing today, the Sacklers stigmatized their victims with the lie that victims "are the culprits and the problem."[42] Our nation should not tolerate that any more. Richard Sackler deserves to face juries across America for his reprehensible conduct just as surely as Swift's assailant did.

The Sacklers should get no special protection. Our justice system should seek justice and deliver it.

II. Recipients Of Non-Debtor Releases Should Not Profit From Misconduct

In the alternative, if the Court allows non-debtor releases, it should require as a mandatory element in all cases that recipients of non-debtor releases cannot profit from misconduct.

The recipient of a non-debtor release gets a benefit from the public legal system of the United States at the expense of members of the public. That benefit is not required by any law, and it should be awarded, if at all, only in a manner that does not harm the public. Specifically, any court that authorizes a non-

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[40] Adam Liptak, *"Citing Taylor Swift, Supreme Court Seems Set to Back Nominal Damages Suits,"* N.Y. Times, Jan. 12, 2021.

[41] Netflix, *Miss Americana* (2020) at minutes 55-59.

[42] Jan Hoffman, *"Richard Sackler Says Family and Purdue Bear No Responsibility for Opioid Crisis,"* N.Y. Times, Aug. 18, 2021.

debtor release should be required to find as a matter of fact that each recipient will not retain any profit from misconduct. Protecting the public and the rule of law requires that much.

The Sacklers defrauded the world about whether OxyContin was addictive, and then kept using fraud and bribery for two decades to get more people on opioids, at higher doses, for longer periods of time. Purdue even bribed an electronic medical records company to prompt doctors to prescribe more opioids.[43] As a result, the Sacklers became billionaires and thousands of Americans were killed. They may have hurt more people than Escobar.

The Sackler architects of the opioid epidemic always saw America as territory to bury in prescriptions, like a depraved wargame. Their 1986 brochure shows Richard Sackler with his color-coded map of opioid $ per salesperson. The State of Florida – where Ellen Isaacs's son would grow up, become addicted, and die alone in a bathroom – already stands out in the most profitable shade on the Sacklers' map: green like money.[44]

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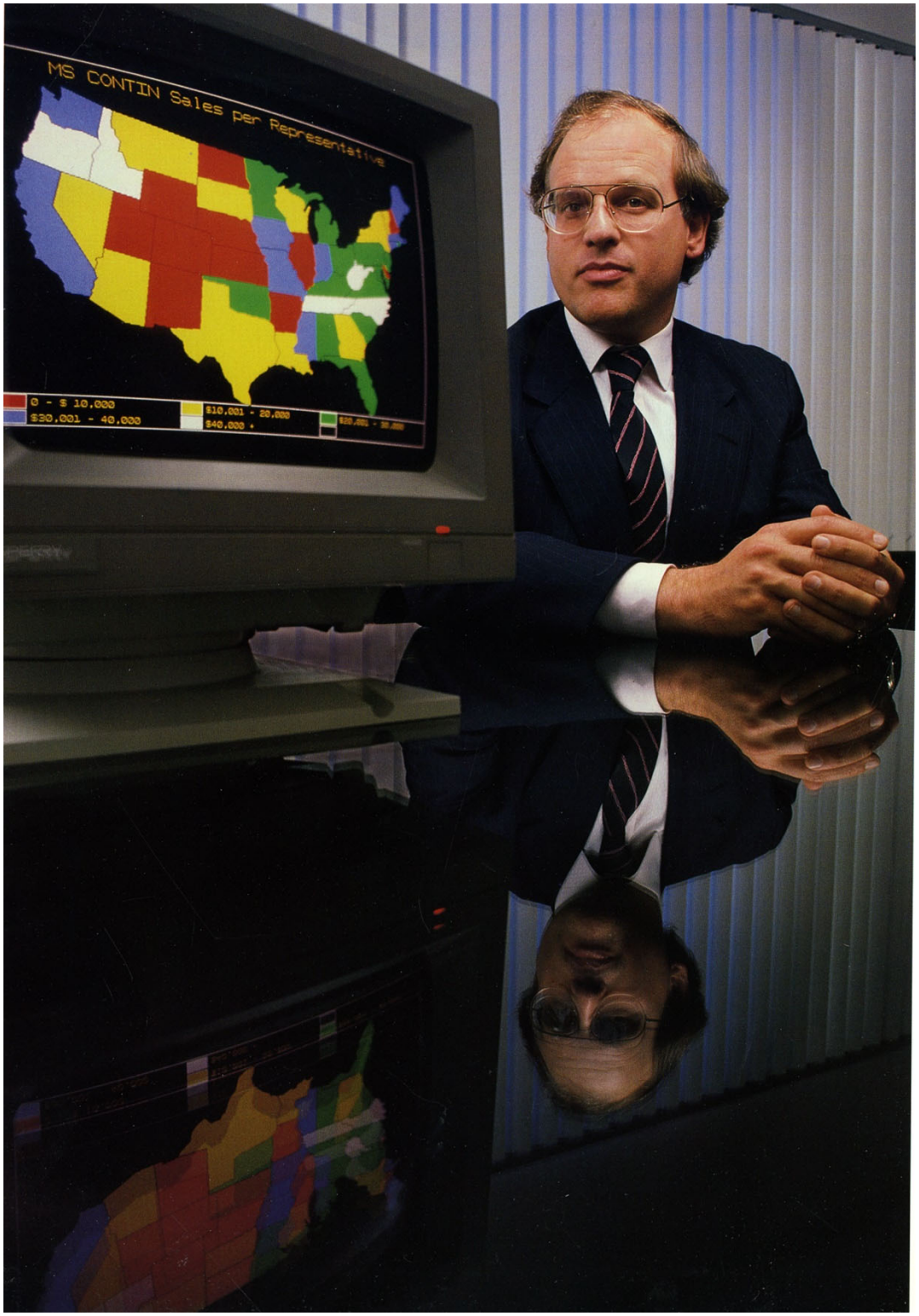
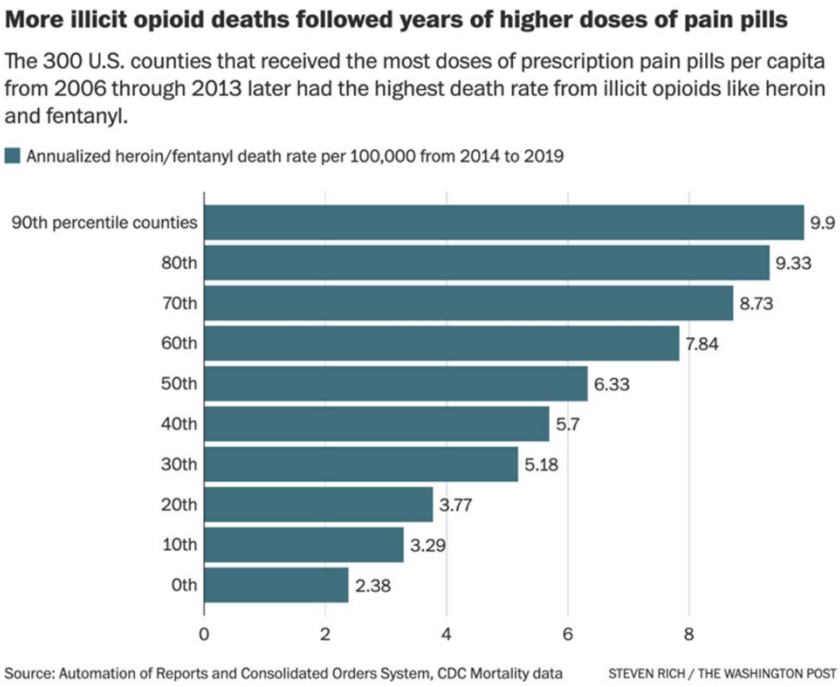
[43] Press Release, U.S. Department of Justice, Justice Department Announces Resolution of Criminal and Civil Investigations with Opioid Manufacturer Purdue Pharma and Civil Settlement with Members of the Sackler Family (Oct. 21, 2020) ("Purdue made payments to Practice Fusion Inc., an electronic health records company, in exchange for referring, recommending, and arranging for the ordering of Purdue's extended release opioid products – OxyContin, Butrans, and Hysingla").

[44] The Purdue Frederick Company at pg. 22, © 1986, still life photography by Jerry Sarapochiello, location photography by Gabe Palmer, design by Jack Hough Associates Inc.


MS CONTIN Sales per Representative
0 - $ 10,000
$10,001 - 20,000
$30,001 - 40,000
$40,000 +

This month, the Washington Post published more data on how addiction engineered by the Sacklers continues to kill thousands of Americans:[45]



Counties with the highest average doses of legal pain pills per person from 2006 to 2013 suffered the highest death rates in the nation over the subsequent six years.

The misconduct in this case involves violations of law alleged by every Attorney General in the nation, as well as violations of the legal rights of many thousands of people, including Ellen Isaacs and her son.

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[45] Steven Rich and David Ovalle, *"The Opioid Files,"* Wash. Post, Sept. 12, 2023; *see also* Patrick Radden Keefe, Empire of Pain, at 406-408 (describing evidence that "the introduction and marketing of OxyContin explain a substantial share of overdose deaths over the last two decades").

A lot of people are wealthier today because of the terrible things the Sacklers did: every member of the Sackler family, their employees at Purdue, their consultants at McKinsey, and their lawyers too. No one should get the benefit of a non-debtor release while keeping even a single dollar of profit from misconduct.

The releases in this case fail this test. The courts below did not conduct the fact-finding that would be necessary to identify and reveal to the public exactly what misconduct occurred. Neither did the court determine how much money each of the release recipients got from that misconduct. Before this kind of special protection is given to anyone, those key facts should be proven on the public record. In this case, that test would provide a reckoning of who broke the law and violated people's rights and who profited from it. The Sacklers would be forced to prove in court that the resolution leaves them worse off as a result of the terrible things they did.

In the context of a non-debtor release, U.S. courts should never tolerate the loophole, advanced by the Sacklers, that money they reaped from wrongdoing does not count because they stashed it in trusts or overseas. That excuse encourages misconduct. If a U.S. court ever gives a non-debtor the extraordinary protection of a court-ordered release, it should require fact-finding that the non-debtor does not retain profit from misconduct anywhere.

Likewise, no court issuing a non-debtor release should allow the recipient to hold the profits of misconduct for years to reap investment returns. No one who collected more than $6 billion from misconduct from 1995-2018 should be permitted to pay back $6 billion in 2023 and call the slate clean.

No non-debtor receiving a release should ever be given a perpetrator-friendly payment schedule extending 18 years into the future.

The seven factors proposed by the Second Circuit are not sufficient to ensure that recipients of non-debtor releases never profit from misconduct. *See* J.A. at 839. The Sacklers could show an identity of interest with Purdue (factor #1) and intertwined legal issues (factor #2) while keeping billions from breaking the law. *See id.* at 891-92 The scope of the non-debtor releases (factor #3) might be necessary to the plan Purdue chose to propose (factor #4), but still allow the Sacklers to profit from wrongdoing. Indeed, that's what Purdue engineered in this case. The Sacklers might make a substantial payment (factor #5) that induces many creditors participating in the bankruptcy to vote yes (factor #6), while still keeping billions of dollars accrued from fraud. Finally, the decision below shows that the last factor – "fair payment of enjoined claims" (factor #7) – doesn't stop perpetrators from profiting from fraud. *See id.* at 895-96. Indeed, Richard Sackler testified that he's not sure whether the bankruptcy plan requires him to pay anything from his assets at all.[46] The courts below deemed it fair for the Sacklers to get court-sanctioned immunity and remain billionaires without ever testing their liability in a trial. That is inadequate protection for the public. The personal legal rights that Americans hold against violations like wrongful death and fraud are important to deter

[46] Jan Hoffman, *"Richard Sackler Says Family and Purdue Bear No Responsibility for Opioid Crisis,"* N.Y. Times, Aug. 18, 2021 ("Are you going to be personally contributing any of your own assets to the settlement payments over the next nine or 10 years?" Dr. Sackler was asked. "I don't know," he replied. "I don't believe that's been decided yet.").

dangerous, evil behavior. A court should not bar victims from enforcing their rights while allowing perpetrators to profit from wrongdoing.

Respondent makes this argument *in the alternative* because it would safeguard the nation from a terrible loophole in the law.

The best answer is the simple answer that the benefits of bankruptcy are indeed restricted to the "honest but unfortunate debtor," *Marrama v. Citizens Bank*, 549 U.S. at 367, which means no protection for the Sacklers at all.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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