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Chapter 11 Bankruptcy: The Get Out of Jail Free Card for Big Pharma That May Not Work

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Chapter 11 Bankruptcy: The Get Out of Jail Free Card for Big Pharma That May Not Work

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Purdue Pharma LP, a privately held pharmaceutical company that has generated over \$35 billion in revenue since it launched in 1996, filed for Chapter 11 bankruptcy in September 2019 in an effort to relieve the company, its subsidiaries, and the Purdue family from the wrath of over 2,600 lawsuits.[2] ([applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_edn2](#)) The company's filing was preceded by its choice to enter into settlement regarding its "alleged role" in the current opioid crisis across the United States of America.[3] ([applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_edn3](#)) Purdue Pharma is charged with contributing to the massive crisis in the U.S. by allocating "inappropriately high volumes of opioid painkillers in the market, and failing to block suspicious transactions." [4]

([applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_edn4](#)) The settlement is aimed at settling litigation with over "2,000 local governments", "24 state attorney generals, and two other major drug wholesalers." [5] ([applewebdata://265CB96E-6030-444F-](#)

Chapter 11, created within the Bankruptcy Reform Act of 1978[6] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_edn6), was implemented in order to allow a business, following a claim of bankruptcy, to restructure and “continue to operate, provide its employees with jobs, pay its creditors, and produce a return for its stockholders.”[7] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_edn7) This is in opposition to complete liquidation of the company.[8] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_edn8) This bankruptcy claim will be used to help fund a settlement that could amount to over \$12 billion dollars.[9] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_edn9)

An additional benefit to filing for bankruptcy for Purdue Pharma is the creation of an automatic stay.[10] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_edn10) This automatic stay begins immediately upon filing for bankruptcy and halts any actions by creditors, including “collecting, assessing, or recovering a claim against the debtor.”[11] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_edn11) This aspect of a bankruptcy claim gives Purdue Pharma a chance to organize its funds and create a plan for settlement. It places a great deal of control in the hands of Purdue Pharma.

Unfortunately, more recently, twenty-one of the states involved in the group litigation rejected the wholesalers’ offer of \$18 billion dollars. [12] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_edn12) It is clear that the dissenting states crave a much larger amount of money.[13] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_edn13) Some of the states also demand that the sum be paid to them over a shorter period of time, and not the proposed 18 years.[14] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_edn14) This reaction from the states may prove Purdue Pharma’s bankruptcy actions to be unfruitful.

The fruitfulness of Purdue Pharma’s Chapter 11 bankruptcy claim and its ability to restructure itself following the lawsuit against them seems unlikely due to the states rejection of the preliminary settlement offer. However, by strategically filing under Chapter 11, the company may still have a chance to fully recover. It seems that the states have the power to control Purdue Pharma’s future.

[1] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_ednref1) J.D. Expected May 2021

[2] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_ednref2) Jared S. Hopkins, *At Purdue Pharma, Business Slumps as Opioid Lawsuits Mount*, Wall Street Journal, June 30, 2019, <https://www.wsj.com/articles/purdue-pharma-grapples-with-internal-challenges-as-opioid-lawsuits-mount-11561887120>; Bobby Allyn, *Purdue Pharma, Accused of Fueling Opioid Crisis, Files for Chapter 11*, NPR, Sept. 16, 2019, <https://www.npr.org/2019/09/16/761107097/purdue-pharma-accused-of-fueling-opioid-crisis-files-for-chapter-11>; <https://www.nytimes.com/2019/09/15/health/purdue-pharma-bankruptcy-opioids-settlement.html>.

[3] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_ednref3) Allyn, *supra* note 2.

[4] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_ednref4) Phil Taylor, *US states reject drug distributors’ opioid settlement*, PMLiVE, Feb. 17, 2020, https://www.pmlive.com/pharma_news/us_states_reject_drug_distributors_opioid_settlement_1326130.

[5] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_ednref5) Allyn, *supra* note 2.

[6] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_ednref6) 92 Stat. at 2549.

[7] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_ednref7) H.R. Rep. No. 595, 95th Cong., 1st Sess. 220 (1978).

[8] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_ednref8) *Id.*

[9] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_ednref9) Jan Hill, *Is Chapter 11 Bankruptcy a Way Out for Lawsuit-Ridden Corporations*, Pacer Monitor, Sept. 23, 2019, <https://www.pacermonitor.com/articles/2019/09/23/is-chapter-11->

bankruptcy-a-way-out-for-lawsuit-ridden-corporations/.

[10] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_ednref10) 11 U.S.C. § 362 (2019).

[11] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_ednref11) National Bankruptcy Forum, *What Is The Automatic Stay?*, Jan. 22, 2018, <https://www.natlbankruptcy.com/automatic-stay-explained/>.

[12] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_ednref12) Jared S. Hopkins, *21 States Reject \$18 Billion Offer From Wholesalers to Settle Opioid Litigation*, Wall Street Journal, Feb. 14, 2020, <https://www.wsj.com/articles/21-states-reject-18-billion-offer-from-drug-wholesalers-to-settle-opioid-litigation-11581692527?mod=searchresults&page=1&pos=2>.

[13] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_ednref13) *Id.*

[14] (applewebdata://265CB96E-6030-444F-AB4B-3FFBBE08AA28#_ednref14) *Id.*

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