

HOLDING THE PHARMACEUTICAL INDUSTRY ACCOUNTABLE FOR ITS ROLE IN THE OPIOID EPIDEMIC: A LOOK AT CURRENT LITIGATION

by Chuck Jennes

According to XIIRD Research, “between 1992 and 2016, annual U.S. opioid sales skyrocketed from \$1.1 billion to \$8.1 billion. As sales spiked, so did the death toll. Between 1999 and 2015, 183,000 people died in the U.S. from overdoses related to prescription opioids. In addition, from 2010 to 2016, heroin overdose deaths quadrupled as prescription-pill addicts sought cheaper, more powerful opioids. Last year alone, more Americans died of drug overdoses than died in the entirety of the Vietnam War.”

Despite significant and long-standing evidence that the American opioid crisis was caused by pharmaceutical industry negligence and malfeasance, the manufacturers, distributors and prescribers that comprise the opioid supply chain have largely gone unpunished. By all appearances, that is changing,

With respect to related opioid litigation, 2019 will be a milestone year. In this segment of the Opioid Epidemic Accountability Conference, you will gain perspective about opioid litigation that is unfolding along three primary tracks.

- **Multi District Litigation – or MDL:** What are MDLs? How do they work? Where did they first originate? We will also explore the opioid MDL. Who are its key players? How many plaintiffs are involved? How is this form of litigation anticipated to unfold during the coming months?
- **Coalition of Attorneys General:** A second level of opioid litigation is being developed by a coalition of 41 state attorneys general. These attorneys general represent states that have paid a hefty price because of the industry’s lack of transparency and its ruthless pursuit for profits. Our presentation will spotlight the coalition. Attendees will learn which states are participating in the coalition? Which states are leading it? What is its current status? And what are the benefits of this kind of coordination?
- **State Suits:** These suits are filed by individual states. How many state suits are there? Which states are in leading the charge? Why are their suits important? How is the pharmaceutical industry responding to them?

Given these three central categories of opioid litigation, it is anticipated that settlements will be reached. Because these settlements will be negotiated by law firms – which stand to gain from quick, lucrative agreements – representing states that frequently have significant budget shortfalls, the question becomes, how can we best insure that these settlements will provide the effective treatment, prevention, and education services that are so desperately needed by an American public which is caught in the middle of this out of control and growing epidemic?

THE OPIOID SPOON PROJECT

Link: theopioidspoonproject.com

PART 1: INTRO

Understanding the epidemic

Impact

Source: CDC

Link: <https://www.cdc.gov/drugoverdose/epidemic/index.html>

Costs

Source: MarketWatch, August 16, 2018

Link: <https://www.marketwatch.com/story/how-much-the-opioid-epidemic-costs-the-us-2017-10-27>

PART 2: THE EARLY SUITS

Article: Are Pharmaceutical Companies to Blame for the Opioid Epidemic (Who is to blame? How difficult will it be to prosecute?)

Source: The Atlantic, June 2, 2017

Author: Alana Semuels

Link: <https://www.theatlantic.com/business/archive/2017/06/lawsuit-pharmaceutical-companies-opioids/529020/>

Article: The Family that Built an Empire on Pain (In-depth reporting on the history of the Sacklers as stalwarts of the pharmaceutical industry)

Source: The New Yorker, October 30, 2017

Author: Patrick Radden Keefe

Link: <https://www.newyorker.com/magazine/2017/10/30/the-family-that-built-an-empire-of-pain>

Article: In Guilty Plea, OxyContin Maker to Pay \$600 Million (New York Times coverage of the 2007 Virginia settlement)

Source: The New York Times, May 10, 2007

Author: Barry Meier

Link: <https://www.nytimes.com/2007/05/10/business/11drug-web.html>

Article: Kentucky settles lawsuit with OxyContin maker for \$24 million (2015 CBS/AP report on the Kentucky settlement)

Source: CBS News/Associated Press, Updated on December 23, 2015

Link: <https://www.cbsnews.com/news/kentucky-settles-lawsuit-with-oxycontin-maker-for-24-million/>

Article: Kentucky judge orders release of secret OxyContin records sought by STAT (Important developments with respect to court records from the Kentucky suit)

Source: STAT, May 11, 2016

Author: David Armstrong

Link: <https://www.statnews.com/2016/05/11/oxycontin-records-sought-stat-ordered-unsealed-kentucky-judge/>

PART 3: THE MDL

The Filing – MDL 2804 (National Prescription Opiate Litigation)

Source: United States District Court/Northern District of Ohio

Link: <https://www.ohnd.uscourts.gov/mdl-2804>

The MDL Docket – MDL 2804

Source: DocketBird (A record of ongoing events with respect to MDL 2804)

Link: <https://www.docketbird.com/court-cases/In-re-National-Prescription-Opiate-Litigation/ohnd-1:2017-md-02804>

LITIGATION BIBLIOGRAPHY – Source Material & Recommended Readings

Article: *As the opioid epidemic rages, the fight against addiction moves to an Ohio courtroom (Insightful report on the MDL: What it is and what it means.)*

Source: The Washington Post, April 7, 2018

Author: Katie Zezima

Link: https://www.washingtonpost.com/national/as-the-opioid-epidemic-rages-the-fight-against-addiction-moves-to-an-ohio-courtroom/2018/04/07/97b82b84-2636-11e8-874b-d517e912f125_story.html?utm_term=.1635f46e1a01

Article: *Cleveland court is Big Pharma's battleground for opioid liability (More insight on the MDL with additional reporting on what it means to Cleveland)*

Source: Crain's Cleveland Business, December 8, 2018

Author: Jeremy Nobile

Link: <https://www.craigslist.com/legal/cleveland-court-big-pharmas-battleground-opioid-liability>

Article: *Justice for Opioid Communities Means Massive Payday for Their Lawyers (About the municipalities joining the MDL & the lawyers representing them)*

Source: Bloomberg, July 25, 2018

Authors: Andrew Harris, Jared Hopkins, and Hannah Recht

Link: <https://www.bloomberg.com/graphics/2018-opioid-lawsuits/>

Article: *Opioid Lawsuit News: MDL Bellwether Trial Set, DEA Ordered to Turn Over Information (Insight on the bellwether trials – practice runs for the larger MDL)*

Source: The Ahearne Law Firm (State & Federal Trial Counsel), April 19, 2018

Author: The Ahearne Law Firm

Link: <https://www.ahearnelaw.com/blog/2018/april/opioid-lawsuit-news-mdl-bellwether-trial-set-dea/>

PART 4: THE STATE AG COALITION

Article: *41 States To Investigate Pharmaceutical Companies Over Opioids (A good introduction to the coalition of state attorneys general)*

Source: NPR/America, September 19, 2017

Author: Yuki Noguchi

Link: <https://www.npr.org/sections/thetwo-way/2017/09/19/552135830/41-states-to-investigate-pharmaceutical-companies-over-opioids>

PART 5 – INDIVIDUAL (STATE) SUITS

Article: *The Lawyer Who Beat Big Tobacco Takes on the Opioid Industry (In-depth profile of attorney Mike Moore and the Ohio state suit that he is leading)*

Source: Bloomberg Businessweek, October 5, 2017

Authors: Esme E. Deprez & Paul Barrett

Link: <https://www.bloomberg.com/news/features/2017-10-05/the-lawyer-who-beat-big-tobacco-takes-on-the-opioid-industry>

Article: *Ohio AG Clears Hurdle with Key Decision in Opioid Litigation (About Judge Scott Nusbaum's refusal to dismiss any charges in the Ohio state suit. Includes links to other comparable refusals to dismiss)*

Source: The National Law Journal, August 30, 2018

Author: Amanda Bronstad

Link: <https://www.law.com/nationallawjournal/2018/08/30/ohio-ag-clears-hurdle-with-key-decision-in-opioid-litigation/>

Article: *Opioid lawsuit targets rich family behind drug that fueled US crisis (About the MA state suit, the first state suit to name Purdue executives in its filing)*

Source: The Guardian, June 12, 2018

Author: Joanna Walters

Link: <https://www.theguardian.com/us-news/2018/jun/12/massachusetts-opioid-lawsuit-sackler-family-oxycotin>

LITIGATION BIBLIOGRAPHY – Source Material & Recommended Readings

Filing: Commonwealth of Massachusetts vs. The Defendants

Link: <https://www.mass.gov/files/documents/2018/06/12/Purdue%20Complaint%20FILED.pdf>

Filing: State of Ohio ex.rel. Mike DeWine, Ohio Attorney General v. The Defendants (Manufacturers)

Link: <https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/Consumer-Protection/2017-05-31-Final-Complaint-with-Sig-Page.aspx>

Filing: State of Ohio ex.rel. Mike DeWine, Ohio Attorney General v. The Defendants (Distributors)

Link: <https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/Consumer-Protection/Ohio-Opioid-Distributor-Complaint-Feb-26-2018.aspx>

Article: Updated lawsuit teases new details against OxyContin maker

Source: The Associated Press, December 23, 2018

Author: AP

Link: <https://apnews.com/d49d2fbe887744e694137fa46eb5b420>

PART 6 – CLOSING/ SETTLEMENT & ACCOUNTABILITY

Article: Up In Smoke: What Happened to the Tobacco MSA Money?

Source: Citizens Against Government Waste, December 12, 2017

Author: Spencer Chretien

Link: <https://www.cagw.org/thewastewatcher/smoke-what-happened-tobacco-master-settlement-agreement-money>

Article: How the Big Tobacco Deal Went Bad

Source: New York Times (Opinion), October 6, 2014

Author: Jim Estes

Link: https://www.nytimes.com/2014/10/07/opinion/how-the-big-tobacco-deal-went-bad.html?_r=0

OTHER RECOMMENDED READINGS

Article: The people vs. the opioid industrial complex. (Why the claims are valid)

Source: 13D Research, October 20, 2017

Author: 13D Research

Link: <https://latest.13d.com/people-vs-the-opioid-industrial-complex-worst-epidemic-american-history-pharmaceutical-industry-f0f235c49883>

Article: Origins of an Epidemic: Purdue Pharma Knew its Opioids Were Widely Abused (In-depth reporting)

Source: The New York Times, May 29, 2018

Author: Barry Meier

Link: <https://www.nytimes.com/2018/05/29/health/purdue-opioids-oxycotin.html>

Article: The Pain Hustlers (In-depth expose on Insys Therapeutics)

Source: The New York Times, May 2, 2018

Author: Evan Hughes

Link: <https://www.nytimes.com/interactive/2018/05/02/magazine/money-issue-insys-opioids-kickbacks.html>

Series: Full Coverage: OxyContin Investigation (Ground-breaking reporting on the opioid epidemic and the industry that caused it)

Source: Los Angeles Times

Article 1: Senator calls for investigation of Purdue Pharma following Times story on OxyContin, May 27, 2016, Harriet Ryan

Article 2: Purdue Pharma rejects request from New Hampshire attorney general for information on suspected diversion of OxyContin, August 26, 2016, Harriet Ryan

Article 3: CA representatives call for congressional investigation into Purdue Pharma and other opioid makers, August 29, 2016, Harriet Ryan

Article 4: U.S. surgeon general issues ‘a new call to action’ on addiction, November 17, 2016, H. Ryan

Link: <https://www.latimes.com/projects/la-me-oxycotin-full-coverage/>