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Unhappy AGs Have Options In Latest Purdue Ch. 11 Plan

By **Emily Field**

Law360 (March 16, 2021, 9:39 PM EDT) -- The worst fears of state attorneys general materialized on Tuesday when Purdue Pharma LP and the Sackler family revealed the details of the company's Chapter 11 bankruptcy plan, with many states immediately declaring their "disappointment" about accountability and remedies for the deadliest drug crisis in the nation's history.

Since the maker of OxyContin first filed for Chapter 11 in 2019 as part of a tentative deal reached with 24 states to end lawsuits over the opioid crisis, a bloc of state attorneys general have expressed worry over how to address the human toll of the epidemic.

The attorneys general were quick to **voice concerns** over the deal, under which Purdue will provide more than $10 billion in value to mitigate the damages caused by the crisis, and accused the Sacklers of attempting to avoid accountability. Under the latest iteration of the plan, the Sackler family — which owns the company — would increase its contributions to an opioid abatement trust fund from $3 billion to almost $4.3 billion.

"We are disappointed in this plan. While it contains improvements over the proposal that Purdue announced and we rejected in September 2019, it falls short of the accountability that families and survivors deserve," New York Attorney General Letitia James said in a statement on Tuesday.

As with the original proposal, the Sacklers will give up their ownership of Purdue Pharma, which will be reorganized into a public trust that will fund opioid abatement programs using revenue from the company's future operations.

"Today marks an important step toward providing help to those who suffer from addiction, and we hope this proposed resolution will signal the beginning of a far-reaching effort to deliver assistance where it is needed," the family said in a statement on Tuesday.

However, the Sacklers are widely seen as the public face of the addiction crisis, and Hunter

Shkolnik of Napoli Shkolnik PLLC, who represents local governments in litigation over the opioid crisis, told Law360 that he wasn't surprised by the instant outcry from attorneys general.

"There are some AGs that want a deal at all costs. There are other ones that want to extract a pound of flesh from the Sacklers," Shkolnik said. "Should they be allowed to walk away with the little bit of money they're paying? That's the real issue that's moving this."

But the attorneys general aren't without options.

"There's a lot they can do. They can oppose the deal. This deal will not win approval if they don't have the AGs on board," Shkolnik said.

The other wildcard is the plaintiffs executive committee in the opioid crisis multidistrict litigation, which is still evaluating the plan; the committee's clients, the local governments that have sued over the crisis, will vote on the deal.

"And I don't know if you have the [plaintiffs executive committee] on board yet," Shkolnik added.

The committee said in a statement that the latest proposal is a step toward progress, although there are "significant" issues with the deal. Separately, committee member Joe Rice of Motley Rice LLC said one of the issues is transparency around the cause of the opioid epidemic and indicated that there is still work to be done on the plan.

Shkolnik said he is cautiously optimistic about the deal, but that he needs to discuss the plan with his clients, the cities and counties suing over the crisis, and to look carefully at where the money is being allocated.

"I really want to get to drill down more on the financial aspects of it," Shkolnik said. "I need to see how it's going to be distributed to my clients and how the various states that were involved in are going to get their allocations."

Virginia Attorney General Mark R. Herring, joined by 23 other states, echoed James' disappointment in a statement and made specific recommendations for improving the proposal, including more money for creditors and states from the Sacklers, a prompt wind down of the company, and more transparency and protections for nonprofits.

Before Purdue can send the plan to creditors for a vote, U.S. Bankruptcy Judge Robert Drain will have to rule on the adequacy of the plan disclosure statement. There is a hearing set for April 21.

The opposing state attorneys general can also attempt to sway the judge into rejecting the proposal on the grounds that it fails to provide relief for their states, according to University of Richmond School of Law professor Carl Tobias.

"They might raise uncertainties about how various aspects, such as the public trust, will work and doubts about other facets, such as revenue from untested products," Tobias said. "If they cannot persuade the judge, I assume they can appeal, but that will cause more delay."

States can also continue pursuing their own suits against the Sacklers, which have been put on hold due to the bankruptcy. The family has denied having any role in creating the opioid crisis.

Still, there are **larger questions** of what amount of money, if any, could fully recompense for the lives lost due to the opioid crisis, which has only grown worse during the coronavirus pandemic.

"What do justice and fairness look like when the company profited so much from manufacturing and selling these drugs with the knowledge of the profound suffering that they were causing?" Harry Nelson of health care boutique Nelson Hardiman LLP said. "It doesn't seem like the public anger is anywhere near sufficiently addressed, given the legal cases that are still alive and putting the [Sackler] family at risk."

But it's impossible to squeeze blood from a stone, said Dave Aronberg, the Florida state attorney for Palm Beach County and a former assistant attorney general who led the state's probe of Purdue's opioid marketing practices in 2000.

In October, Purdue agreed to pay **$8 billion** and plead guilty to its role in America's opioid crisis, marking the second time the company has pled guilty to criminal charges related to its opioid marketing. But while states may be limited in how much money they can recoup, obtaining some acknowledgment of accountability from the Sacklers may be within their grasp, Aronberg said.

"Perhaps that's something that the attorneys general can get from them," Aronberg said. "I'm not sure how much more money they can get from them outside of this global settlement, but perhaps they can at least get an acknowledgement of responsibility."

The case is In re: Purdue Pharma LP et al., case number 7:19-bk-23649, in the U.S. Bankruptcy Court for the Southern District of New York.

--Additional reporting by Rick Archer. Editing by Breda Lund and Nicole Bleier.