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Immunity Through Bankruptcy for the Sackler Family

Daniel G. Aaron

S.J. Quinney College of Law, University of Utah; Harvard Law School

Michael S. Sinha

Saint Louis University - School of Law, michael.sinha@slu.edu

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Daniel G. Aaron

S.J. Quinney College of Law, University of Utah; Harvard Law School

Michael S. Sinha

Saint Louis University-School of Law

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Daniel G. Aaron

S.J. Quinney College of Law, University of Utah; Harvard Law School

Michael S. Sinha

Saint Louis University – School of Law

Abstract

In August 2023, the U.S. Supreme Court temporarily blocked one of the largest public health settlements in history: that of Purdue Pharma, L.P., reached in bankruptcy court. The negotiated bankruptcy settlement approved by the court would give a golden parachute to the very people thought to have ignited the opioid crisis: the Sackler family. As the Supreme Court considers the propriety of immunity through bankruptcy, the case has raised fundamental questions about whether bankruptcy is a proper refuge from tort liability and whether law checks power or law serves power.

Of course, bankruptcy courts often limit liability against a distressed company, but here, the Sacklers did not themselves declare bankruptcy. Instead, they added about \$6 billion to the pot—compared with \$600 billion in annual costs from the opioid crisis, by some estimates—and are allowed to keep any remaining profits. The bankruptcy court justified immunity on the grounds that the Sacklers' money was protected in offshore accounts and trusts and therefore could not be reached through tort liability—all the better to have them participate voluntarily. In other words, the Sacklers laid the groundwork for their own immunity by sheltering the money they withdrew from Purdue.

We have doubts that a single court should have the enormous power of shielding the Sackler Family from all future civil liability for the opioid crisis, simply to enlarge a settlement. Public health litigation has the power to address root causes of public health crises by disincentivizing unscrupulous actors. Granting these actors immunity may insulate them from public criticism while undermining the important role of courts as an avenue of recourse. Upholding immunity for the Sackler family would lay the groundwork for future executives to ride a company into the ground, at the expense of public health, golden parachute ready and waiting.

Keywords: Bankruptcy, Immunity, Opioid Litigation, Sacklers, Drugs, Overdose, Tort Law, Torts, Public Health Law, Health Law

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