

Co-Lead Counsel and Plaintiffs' Executive Committee,  
*In re: National Prescription Opiate Litigation*, MDL 2804  
purdue@pecmdl2804.com

June 22, 2021

TO ALL COUNSEL FOR ANY  
GOVERNMENTAL ENTITY IN THE OPIOID  
MDL WHO FILED PROOFS OF CLAIM IN  
CONNECTION WITH *In Re Purdue Pharma,  
L.P., et al.*, Case No. 19-23649 (RDD) (Bankr.  
S.D.N.Y.)

**RE: PEC Support for Chapter 11 Plan of Reorganization In Connection With *In Re Purdue  
Pharma, L.P., et al.*, Case No. 19-23649 (RDD) (Bankr. S.D.N.Y.)**

Dear Counsel:

Please review this letter if you or your client have litigation consolidated in MDL 2804 and filed a proof of claim in connection with the bankruptcy cases of Purdue Pharma and its affiliates (as captioned above) and are eligible to vote on approval of Purdue's proposed plan of restructuring (the "Plan").<sup>1</sup>

We are co-lead counsel and members of the Plaintiffs' Executive Committee (together, referred to as the "PEC") in *In re National Prescription Opiate Litigation*, Case No. 17-md-02804, MDL No. 2804, multidistrict litigation (the "MDL") against opioid manufacturers, distributors, and retailers before Judge Dan A. Polster in the District Court for the Northern District of Ohio. The PEC is a member of the ad hoc committee of governmental and other contingent litigation claimants (collectively, the "Ad Hoc Committee"),<sup>2</sup> which played an instrumental role in Purdue's bankruptcy cases and negotiation of the Plan. As you may recall, we previously communicated with you concerning the ability to file a consolidated claim on behalf of non-federal local governments and provided guidance on the master-ballot voting procedures regarding the Plan.

The purpose of this letter is to explain the terms and structure of the Plan and the reasons the PEC supports the plan ahead of the voting deadline of: July 14, 2021 (the "Voting Deadline"). **We ask that you and your clients review the Disclosure Statement and Plan closely prior to voting on the Plan.**

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<sup>1</sup> The Plan [Docket No. 2982] and Disclosure Statement [Docket No. 2983] and all related filings are accessible on the noticing agent's website: <https://restructuring.primeclerk.com/purduepharma/Home-DocketInfo>.

<sup>2</sup> The Ad Hoc Committee is composed of: (1) Broward County, FL; (2) City of Chicago, Ill.; (3) Huntington/Cabell County; (4) King County, WA; (5) Muscogee (Creek) Nation; (6) the PEC; (7) the City of Philadelphia, Pa.; (8) Santa Clara County, Ca.; (9) State of Florida; (10) State of Georgia; (11) State of Louisiana; (12) State of Michigan; (13) State of Mississippi; (14) State of New Mexico; (15) State of Ohio; (16) State of Tennessee; (17) State of Texas; and (18) State of Utah.

## I. Executive Summary.

Purdue Pharma, the company which developed and aggressively marketed Oxycontin, a powerful and addictive opioid painkiller, filed for bankruptcy in September 2019 after being named as a defendant in thousands of civil lawsuits seeking damages for asserted opioid-related injuries to governments (state, local, and tribal), hospitals, individuals, insurers, and others. The Plan seeks to resolve the bankruptcy cases by settlement and is the culmination of over two years of negotiations and work among the PEC, certain of the States' Attorneys' Generals, the United States Government, the Debtors and their shareholders (the "Sackler Families"), and various other opioid creditor representatives, including, during the bankruptcy cases, the Official Committee of Opioid Creditors. Not to mention the tremendous cost of the bankruptcy which is now over \$200 million.

That settlement is now before the bankruptcy court for final confirmation. As part of the process, all creditors who filed a "proof of claim" against the bankruptcy estate are being asked to vote on the proposed restructuring plan that emerged from the settlement negotiations. In broad terms, the restructuring plan provides for the assets of the Purdue corporation to be transferred to a new "corporation" that will be indirectly owned by the "public creditors" of Purdue—all state, local and tribal governments. The continued operation of the company and then its ultimate sale may generate \$1-2 billion in assets. These operating and sales revenues, along with certain insurance proceeds and other assets, will be combined with a contribution of \$4.275 billion (over a series of years) to be made by members of the Sackler family, who are the shareholders of Purdue (and who will make this contribution in exchange for receiving releases from civil liability, thus shielding themselves from civil litigation).

The combined assets of the bankruptcy estate will be used to pay various groups of private creditors—insurers, hospitals, individual personal injury plaintiffs—and the residual amount, which may be approximately \$5 billion will be allocated among state, local and tribal governments. The Tribes in aggregate will receive approximately 3% of these public funds and the aggregate allocation of funds to Tribes will be distributed to individual Tribes based on an allocation matrix that takes into account the population of each Tribe along with certain metrics that go to the severity of the opioid problem in tribal areas. The funds received by all creditors (other than personal injury victims and children suffering from NAS) **will be restricted to be used for abatement of the opioid problem in their communities.**

## II. Background.

In the 1990's, Purdue Pharma—a Connecticut-based pharmaceutical manufacturer owned by members of the Sackler family—developed a powerful new opioid painkiller, Oxycontin. Purdue engaged in aggressive marketing of the drug, denying its highly addictive properties and promoting it not just for end-of-life palliative care (such as for cancer patients), but also to treat chronic pain of all varieties (such as back pain). The result of this effort was to greatly expand the market for opioid medications and greatly expand the number of people using opioids. Not surprisingly, there followed a dramatic increase in the number of people who became addicted to opioids, leading to death, incapacitation, family dysfunction, crime and social problems. These consequences were devastating not only to the individuals involved, but also to all levels of government, which had to bear increasing costs of health care and social services provided to their

citizens who became addicted to opioids and subsequently, in many cases, to heroin, fentanyl and other similar opiates.

In many ways, Purdue's development and marketing of Oxycontin was ground zero for the nationwide opioid epidemic that has been ravaging communities across the country for 20 years. Hundreds of thousands of people died from opioid-related overdoses and illness. As a consequence, more than 2,900 civil lawsuits have been filed against Purdue, primarily by state, local and tribal governments, seeking hundreds of billions of dollars in damages. Most of the cases were consolidated in the Opioid MDL before Judge Polster, although state governments brought suits in their state courts. In response to this tidal wave of litigation, Purdue and the Sackler Families pursued global settlement negotiations with the PEC and state governments. As discussed below, those negotiations bore fruit and in order to act on the settlement in principle, Purdue filed a petition for bankruptcy in September 2019 in the federal bankruptcy court in the Southern District of New York. The effect of the bankruptcy filing was to automatically stay all pending litigation against the company.

### **III. The Initial Settlement Framework (Pre-Bankruptcy).**

After years of litigation and the looming CT1 bellwether cases, in September 2019, (i) the PEC and 24 state attorneys general, and analogous officials from five U.S. territories; (ii) Purdue; and (iii) Purdue's ultimate owners (trusts for the benefit of members of the Sackler Families (the "Sackler Families" or the "Sacklers")) announced an agreement in principal to resolve the opioid litigation against Purdue and the Sackler Families in a global fashion (the "Initial Settlement Framework").<sup>3</sup> The Initial Settlement Framework, to be implemented through a bankruptcy filing, had two primary components.

First, Purdue itself—the company in bankruptcy—would emerge from the bankruptcy as a "corporation" that would be indirectly owned by governments and be operated for some period of time under strict standards to serve public interest goals. These goals would be to (1) continue production of opioid medications as necessary to serve legitimate medical interests (i.e., for use in appropriate palliative care circumstances), (2) to produce medications (such as Naloxone) to reverse adverse reactions to opioids and to treat overdoses, and (3) to produce revenues that would be distributed to state, local and tribal governments to be used to abate the effects of the opioid crisis.

Second, members of the Sackler family would make a cash contribution of \$3 billion (which theoretically could be increased to approximately \$4.2 billion if the sales of the Sackler Families' ex-US pharmaceutical businesses were particularly successful) to a settlement fund that would be used to pay creditors of Purdue, including governmental creditors, who would use the money to abate the opioid epidemic. (The amount of this payment by the Sacklers was expected to be subject to renegotiation and, as discussed below, would subsequently be substantially increased).

While the Sacklers are the shareholder owners of Purdue, it is Purdue, the company, that is in bankruptcy, not the Sacklers themselves. Nonetheless, the Sacklers sought to take advantage of a rarely used power of bankruptcy courts to grant releases to "third parties," i.e., to release from

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<sup>3</sup> See, e.g., Complaint for Injunctive Relief [Docket No. 1], *Purdue Pharma L.P. v. Commonwealth of Mass.* (*In re Purdue Pharma L.P.*), Adv. Pro. No. 19-08289 (describing the Initial Settlement Framework).

liability someone other than the person or company seeking bankruptcy protection, in exchange for value contributed by the third party. Here, the Sacklers themselves, as individuals, have been named as defendants, along with Purdue, in many opioid-related lawsuits which seek to recover damages to be paid by the Sacklers from their personal wealth. In the framework agreement, the Sacklers agreed to make a payment of up to \$4.2 billion, depending on the value of their non-US pharma business, to a settlement fund in the bankruptcy court in exchange for releases from civil liability to be granted by the bankruptcy court. The payment would be no less than \$3 billion.

#### **IV. The Bankruptcy Proceedings.**

When Purdue filed for bankruptcy in September 2019, it also submitted the Initial Settlement Framework to the bankruptcy court and said the framework would be the basis for conducting negotiations with creditor groups with a goal of forging broad agreement among all creditors on a restructuring plan. For nearly two years since that agreement in principle, the PEC (as part of the Ad Hoc Committee) worked with other stakeholders and the Debtors to form and finalize a plan of reorganization that would aim to improve and implement the Initial Settlement Framework. The Plan reflects major accomplishments by the Ad Hoc Committee and other key stakeholders during three phases of mediation.

##### **A. The Non-Consenting States.**

The Initial Settlement Framework was immediately controversial. About half of the states supported the framework agreement negotiated by the Ad Hoc Committee and the other half of the states strongly opposed the agreement and formed their own committee that was recognized by the bankruptcy court: the “Non-Consenting State Group” (the NCSG).

The NCSG expressed two objections to the framework agreement. First, the NCSG argued that a Sackler contribution of \$3 billion was far too little, given the wealth they amassed from selling opioids. Second, some (though not all) of the NCSG members thought it was inappropriate for governments, even indirectly, to own and profit from the continued operations of Purdue as it emerges from the bankruptcy. Instead, they favored selling Purdue to another company as part of the bankruptcy reorganization (or, if that could not be done, selling off piecemeal the various assets of Purdue, *i.e.*, its factories and intellectual property). There are risks to NCSG’s preferred approach, including that such piecemeal or immediate sales generate significantly less in distributable value to governments than the current Plan.

With regard to the first point, the amount of the Sackler payment was renegotiated over the course of the bankruptcy proceeding. Both the NCSG and the Ad Hoc Committee were involved in these negotiations, as well as the Justice Department. The Sacklers have now agreed to increase their contribution to the settlement fund from \$3 billion to \$4.275 billion. They are, in addition, paying a \$225 million civil penalty to the United States, making their overall payment a total of \$4.5 billion. These payments are to take place pursuant to a payment schedule that extends over a period of 8 to 9 years. (The payment schedule is tied to the sale of foreign pharmaceutical companies owned by the Sackler family; that is, the payments to the settlement fund could be accelerated depending on the pace of those foreign company sales.<sup>4</sup>)

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<sup>4</sup> If the sales of the foreign companies do not generate sufficient revenues, the Sacklers have guaranteed the payment of the full amount from other personal assets. Again, such guarantees are subject to risks themselves discussed further in the disclosure statement.

The increased Sackler contribution has still not satisfied all of the non-consenting states. Although that payment amount—\$4.275 billion—is contained in the proposed Plan, negotiations over the amount of the Sackler payment continue, and it may increase. The court has appointed a mediator to try to work out a deal between the Sacklers and all non-consenting states before the voting on the Plan concludes in mid-July.

As a concession to the views of the non-consenting states, the proposed restructuring Plan has a deadline that the new company will be sold by 2024. Thus, the period of time during which the governments will indirectly own and operate Purdue is limited.

At present, the NCSG continues to oppose the proposed restructuring Plan. It is not known whether the mediation process with the Sackler family will result in material improvements to the Plan. At the moment, however, it is expected that at least some states will vote against confirming the restructuring Plan.

## **B. Private Creditors.**

The Initial Settlement Framework contemplated that the “public creditors”—the states, local governments and tribes—would assume control over all of the assets of the bankruptcy proceeding (*i.e.*, that the corporate assets of Purdue Pharma would be turned over to the public creditors and that they would also control disposition of the Sackler contribution to the settlement fund), that the public creditors would negotiate amounts to be paid to “private creditors” from those assets, and they would then allocate the remaining amounts among the various governments to be used to pay for opioid addiction abatement services.

During the bankruptcy proceedings, the Ad Hoc Committee was the lead group negotiating with the private creditors. Negotiations, led by two mediators, were conducted during the latter half of 2020 and early part of 2021 with several major groups of private creditors consisting of: (i) personal injury claimants, including guardian claimants asserting claims on behalf of minors with NAS due to exposure to opioids in utero, (ii) claimants comprising a putative class of NAS children seeking medical monitoring funding, (iii) hospitals, (iv) private health insurance carrier plaintiffs and third-party payors and (v) purchasers of private health insurance. All private creditors (with the exception of PI claimants) agreed to accept distributions exclusively in the form of funding for programs designed to abate the opioid crisis (the “Private Creditor Trusts”). In each case, agreement was reached on a lump sum amount to be paid to the Private Creditor Trusts over a period of years, as follows:

Personal Injury Trust:	\$700 million to \$750 million <sup>5</sup>
Third Party Payors Trust:	\$365 million
Hospitals Trust:	\$250 million
NAS Monitoring Trust:	\$60 million

Each of the Private Creditor Trusts will assume all liability for and administer Claims in the applicable Class and make distributions or award grants for authorized abatement purposes pursuant to an agreed upon “Trust Distribution Procedure” for each creditor group.

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<sup>5</sup> The final amount will depend on the amount of recoveries received from insurance policies held by Purdue, against which claims will be made.

### C. Public Creditors.

As noted above, the “public creditors” are all state, local and tribal governments. After payments are made to the private creditors, the balance of the value of the bankruptcy estate, including the Sackler contribution, will be allocated among the public creditors. The ultimate value of the bankruptcy estate is unknown because it depends in part on the profitability of the corporation that emerges from the bankruptcy, and on the revenues that are ultimately realized from the sale of those corporate assets. In general, approximately \$5 billion will be provided to public and private trusts with a mission to fund abatement of the opioid crisis.

#### 1. The State and Local Government Deals.

The first stage of mediation<sup>6</sup> in the cases concluded in the first nationwide agreement between states, local governments and tribes on a default allocation of proceeds from opioid litigation. As part of the protracted negotiations, highlighted by many months long mediation, the PEC, along with the other six (6) cities and counties on the Ad Hoc Committee and a group representing nearly 1,300 cities and counties that filed actions in state court (the “MSGC”), negotiated with all fifty (50) U.S. states to reach a default sharing mechanism for allocation of abatement funds intra-state (as incorporated in the Plan, the “NOAT TDP”).<sup>7</sup> Subject to limited exceptions, including the establishment of an attorneys’ fees and costs funds that will be subject to court-approval (see §5.8 of the Plan, attached hereto as **Exhibit A**), all recoveries by non-federal governmental entities from the proceeds of the operation of the company post-emergence, as well as proceeds from the settlement with the shareholders, and other consideration provided in the Plan, will flow through the NOAT TDP and be used to fund approved abatement uses.

The NOAT TDP gives deference to a qualifying “Statewide Abatement Agreement” between a state and its local governments concerning allocation of abatement funds. In other words, if a state has agreed with its subdivisions on a process for sharing and allocating opioid recoveries within the State (and such agreement meets the endorsement criteria in the NOAT TDP), then that Statewide Abatement Agreement will control allocation of funds. In the event that a state does not have a Statewide Abatement Agreement with its local governments, the NOAT TDP provides the following default allocation method:

- Abatement funds will be distributed to local governments through *Regional Apportionment* or *Non-Regional Apportionment* (each as described below), subject to a sliding scale based on the amount of total available abatement funds to be dispersed under the Plan to non-federal governmental creditors:

	<b>Regional Apprt.</b>	<b>Non-Regional Apprt.</b>
<b>First \$1 billion</b>	70%	30%
<b>\$1-2.5 billion</b>	64%	36%
<b>\$2.5-\$3.5 billion</b>	60%	40%
<b>Above \$3.5 billion</b>	50%	50%

<sup>6</sup> This “mediation” between non-federal governmental entities took place and succeeded without the formal use of a mediator.

<sup>7</sup> The NOAT TDP was filed with the Debtors’ Sixth Plan Supplement [Docket No. 2977, Ex. G], available at: <https://restructuring.primeclerk.com/purduepharma/Home-DocketInfo>.

- Any county, parish, or city that has a population of 400,000 (750,000 for CA) or more shall receive its “Proportionate Share of Regional Apportionment” as a block grant, pursuant to an allocation model;
- *Regional Apportionment* funds not disbursed as block grants shall be expended on the local governments that did not meet the population threshold to qualify for a block grant, subject to a “Government Participation Mechanism” to be developed by each state and its local governments; and
- States will have discretion to expend their *Non-Regional Apportionment* funds only on Approved Uses, which encapsulates many facets of opioid abatement and ancillary treatment services.

Again, if a state and its subdivisions (by consent over a threshold described in the NOAT TDP) agree to an alternative Statewide Abatement Agreement, that agreement will be honored and utilized to allocate abatement funds received from these bankruptcy cases among the state and its local governments. Each state and its local governments will have fourteen (14) days after the Plan’s Effective Date to file such an agreement with the bankruptcy court. The trust agreements governing the flow of funds to states and communities include various reporting requirements that are designed to ensure compliance with the NOAT TDP and abatement-only distribution schemes. The amount that each state will receive from NOAT to distribute to local governments through Regional and Non-Regional Apportionment is based on a weighted formula, which yields the following percentage allocation:

State	Final Percentage Division of Funds
Alabama	1.6579015983%
Alaska	0.2681241169%
American Samoa*	0.0175102976%
Arizona	2.3755949882%
Arkansas	0.9779907816%
California	9.9213830698%
Colorado	1.6616291219%
Connecticut	1.3490069542%
Delaware	0.5061239962%
District of Columbia	0.2129072934%
Florida	7.0259134409%
Georgia	2.7882080114%
Guam*	0.0518835714%
Hawaii	0.3476670198%
Idaho	0.5364838684%
Illinois	3.3263363702%
Indiana	2.2168933059%
Iowa	0.7639415424%
Kansas	0.8114241462%
Kentucky	1.5963344879%
Louisiana	1.5326855153%
Maine	0.5725492304%

Maryland	2.1106090494%
Massachusetts	2.3035761083%
Michigan	3.4020234989%
Minnesota	1.2972597706%
Mississippi	0.8994318052%
Missouri	2.0056475170%
Montana	0.3517745904%
N. Mariana Islands*	0.0191942445%
Nebraska	0.4335719578%
Nevada	1.2651495115%
New Hampshire	0.6419355371%
New Jersey	2.7551354545%
New Mexico	0.8749406830%
New York	5.3903813405%
North Carolina	3.2502525994%
North Dakota	0.1910712849%
Ohio	4.3567051408%
Oklahoma	0.6073894708%
Oregon	1.4405383452%
Pennsylvania	4.5882419559%
Puerto Rico**	0.7324076274%
Rhode Island	0.5040770915%
South Carolina	1.5989037696%
South Dakota	0.2231552882%
Tennessee	2.6881474977%
Texas	6.2932157196%
Utah	1.2039654451%
Vermont	0.2945952769%
Virgin Islands*	0.0348486384%
Virginia	2.2801150757%
Washington	2.3189040182%
West Virginia	1.1614558107%
Wisconsin	1.7582560561%
Wyoming	0.2046300910%
* Allocations for American Samoa, Guam, N. Mariana Islands, and Virgin Islands are 100% based on population because of lack of available information for the other metrics.	
** Allocations for Puerto Rico are 25% based on MMEs and 75% based on population because of lack of available information for the other metrics.	

## 2. Allocation to the Tribes.

Of the amount available to all public creditors, approximately 3% will be allocated to Tribes. Thus, assuming the total amount for the public creditors will be \$5 billion, the Tribes collectively will receive approximately \$150 million.<sup>8</sup> This amount will be disbursed to the Tribes

<sup>8</sup> This amount will be reduced to contribute to an attorney fee fund that will pay fees and costs to counsel for public creditors. Additionally, the Tribe Trust will (i) collect an initial distribution of \$50 million from the company and further required payments pursuant to the Master Disbursement Trust and NewCo/TopCo;



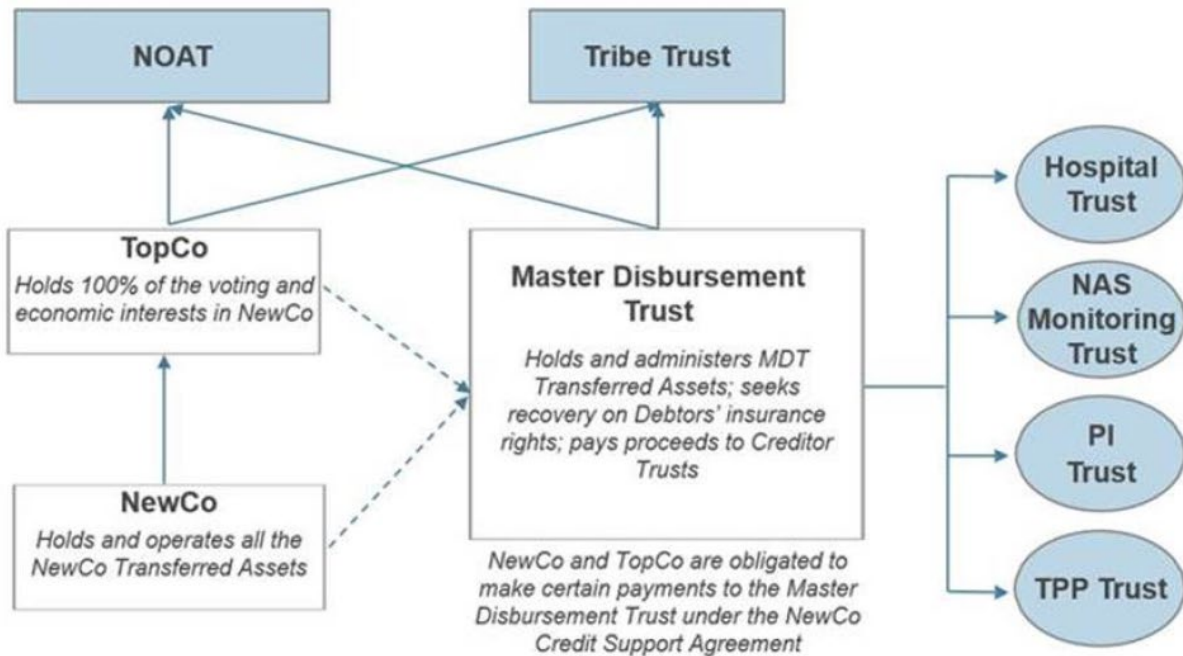
over a period of 8 to 9 years (*i.e.*, the same period over which the payments by the Sacklers will be made to the settlement fund).

The 3% amount allocated to Tribes from the pool of public funds was arrived at through a two-day mediation conducted by former Judge Layn Phillips and Kenneth Feinberg in the summer of 2020. The Tribes were represented in the mediation by the Tribal Leadership Committee (TLC), a group appointed by the MDL court to coordinate all Tribal opioid litigation. The state and local governments were the counter-parties. The amount paid to the Tribes in aggregate will be allocated among the Tribes pursuant to an allocation matrix that has been developed by the TLC.

**V. The Structure of the Plan.**

**A. Overall Structure.**

The Plan provides that the company’s businesses be transferred to a new entity for the benefit of claimants, subject to the control and indirect ownership of the NOAT (the National Opioid Abatement Trust, which is the Trust that oversees abatement distributions for States and Local Governments) and the Tribe Trust. The chart below shows the structure that will be established if the proposed Plan is approved by the bankruptcy court:



(ii) assume all liability and administration for the Tribe Claims; and (iii) will make distributions consistent with the Approved Tribal Opioid Abatement Uses.

NewCo will be the operating entity of Purdue Pharma that emerges from the bankruptcy, which will hold and operate the company's transferred assets consisting of \$200 million in cash and non-cash assets (such as insurance proceeds and certain causes of action). "TopCo", will be established, and will hold 100% of the voting and economic interest of NewCo.<sup>9</sup> The management selection process for NewCo and TopCo embodies an equally collaborative process that must be reasonably acceptable to the Ad Hoc Committee. It will continue to produce pharmaceuticals, including both opioid and opioid rescue medications, and will operate under a strict injunction that will govern its sales and marketing practices.

The Master Disbursement Trust (MDT) will be a trust entity that will oversee distributions of payments to various creditor groups. The MDT will receive payments from members of the Sackler family, as well as proceeds from insurance claims, from other claims held by Purdue and from payments of operating profits from NewCo and TopCo. From these sources of funding, the MDT will disburse payments to the various Private Creditor Trusts—the Hospital Trust, the NAS Monitoring Trust, the PI Trust and the TPP Trust. As discussed above, each of those trusts will have its own TDP (trust distribution procedure) to govern who receives payments from the trust and in what amounts.

Excess cash from the MDT and from NewCo/TopCo will be paid to the two governmental trusts: the National Opioid Abatement Trust (NOAT) and the Tribal Abatement Fund Trust (TAFT or Tribe Trust). The payments as between the two trusts will be determined by the formula discussed above, with the NOAT receiving approximately 97% of the total and Tribe Trust receiving approximately 3% of the total. Attached hereto as **Exhibit B** is a graphic illustration of the anticipated distributable value (on annual basis) under the Plan's proposed structure post-emergence.

## **B. The Enhanced Sackler Families Contribution.**

During mediation, the case parties successfully engaged the Sackler Families to resolve potential causes of action that resulted in material improvement to the Initial Settlement Framework. This improved settlement requires the Sackler Parties to pay \$4.275 billion over nine (9) years (or ten years if certain amounts are paid ahead of schedule in the first six years) (the "Sackler Settlement Payments") and bars certain of the Sackler Entities from ever engaging in the manufacturing or sale of opioids in the U.S., among other terms (as incorporated in the Plan, the "Shareholder Settlement Agreement"). The Sackler Settlement Payments are secured by all of the Sackler Parties' equity interests in certain foreign independent associated companies ("IACs"), which the Sackler Parties are further required to liquidate and must deposit the cash proceeds for the benefit of the Master Distribution Trust. The Sackler Settlement Payments are also collateralized by certain of the Sackler Parties' interest in cash deposit accounts and cash equivalents, equity interests in holding companies that directly or indirectly own investment and security assets, real estate and/or other assets. As consideration for such payments required under the Shareholder Settlement Agreement, the Sackler Parties and certain other persons and/or individuals to be agreed will receive the benefit of releases and injunctions provided under Article 1F of the Plan, which in effect conclusively and irrevocably release the Sackler Families of any

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<sup>9</sup> NewCo will be owned by TopCo, a holding company, whose board of directors will also be appointed by the governmental committees. TopCo will oversee the operations of NewCo.

actual or potential claims or causes of actions relating to Purdue and its opioid-related activities. Any Sackler Settlements Payments to be made on June 30, 2024 or later may be placed in escrow, paused, or terminated depending on whether the Plan Confirmation Order has been appealed and has not been finally dismissed by that date.

## **VI. Plan Confirmation.**

Voting on the Plan by all creditors who filed a proof-of-claim will be open through July 14. Approximately 600,000 creditors filed claims, including about 6,000 local government claims. Claimants are divided into 18 different classes, in order to group similar claims together. Claimants vote by class. In order to accept the Plan, a majority in a class by number and two-thirds by dollar amount of claims in a class must vote to approve the Plan. For purposes of this proceeding, all governmental claims are each valued at \$1 for voting purposes, which may effectively establish a requirement that two-thirds of the members of each class must vote to approve the Plan in order for such class to be deemed an “accepting” class.

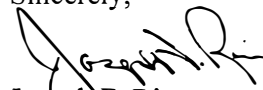
The court is scheduled to hold a hearing on confirmation of the Plan beginning August 9. The number of claimants who will object to the Plan, and the grounds for the objections, are not currently known. It is expected that the court will issue a decision on whether to confirm the Plan in September or early October. If the Plan is confirmed, there will be one to two months of work to set up the various trusts and other entities necessary to implement the Plan. If that schedule holds, the “effective date” of the Plan could be in November or December 2021.

## **VII. PEC Supports The Plan.**

The PEC believes that the Plan represents a fair and equitable resolution of opioid-related claims against Purdue as the vast majority of creditor recoveries distributed under the Plan were negotiated in good faith and are exclusively dedicated to programs designed to abate the opioid crisis (other than to fund administration of the programs themselves and to pay fees and costs). The alternative is to engage in risky, expensive and value-destroying civil litigation that will take years to fully litigate and which will result in delayed and inequitable recoveries among potential claimants. And perhaps most importantly, even if judgments are obtained, it could take years of additional litigation to collect on those judgments because many of the assets of the Sackler Families are in various family trusts located in foreign countries. Meanwhile, local government and other public creditors, including Class 4 (Non-Federal Domestic Government Claims) and Class 5 (Tribes Claims) claimholders, will have received no resources that can be put to immediate use to abate the ongoing problems.

**THE FOREGOING IS NOT INTENDED AS A SUBSTITUTE FOR THE DISCLOSURE STATEMENT. THE PEC URGES YOU TO READ THE PLAN AND DISCLOSURE STATEMENT CAREFULLY.**

As we are,  
Sincerely,



Joseph F. Rice  
Paul Farrell  
Paul Hanley

Co-Leads, MDL 2804

## EXHIBIT A

Creditor Trust to the extent deemed necessary by such Creditor Trustee to satisfy and pay estimated future Creditor Trust Operating Expenses in accordance with the Creditor Trust Documents.

(l) **U.S. Federal Income Tax Matters Relating to the Creditor Trusts.**

Each Creditor Trust (other than any Tribe Trust entity that is formed as a legal entity other than a trust) is intended to be treated, and shall be reported, as a “qualified settlement fund” for U.S. federal income tax purposes and shall be treated consistently for state and local tax purposes to the extent applicable. All parties (including, without limitation, Holders of Claims against or Interests in the Debtors, the Related Parties of such Holders, the Debtors, the Creditor Trustees, TopCo and the Master Disbursement Trust) will be required to report consistently with the foregoing for all applicable tax reporting purposes. A Creditor Trustee from each relevant Creditor Trust shall be the “administrator” within the meaning of Treasury Regulations section 1.468B-2(k)(3) of the applicable Creditor Trust. The administrator of each such Creditor Trust shall be responsible for filing all tax returns of the applicable Creditor Trust and the payment, out of the assets of such Creditor Trust, of any taxes due by or imposed on such Creditor Trust. Each Creditor Trustee may request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for all tax returns filed by or on behalf of the applicable Creditor Trust for all taxable periods through the dissolution of such Creditor Trust. Nothing in this Section 5.7(l) shall be deemed to determine, expand or contract the jurisdiction of the Bankruptcy Court under section 505 of the Bankruptcy Code. Subject to guidance from the IRS, it is intended that NOAT’s income shall be treated as exempt from U.S. federal income tax pursuant to IRC section 115, and shall be treated consistently for state and local tax purposes to the extent applicable.

(m) **Exculpation and Indemnification of the Creditor Trustees.**

To the maximum extent permitted by applicable law, each of the Creditor Trustees shall not have or incur any liability for actions taken or omitted in his or her capacity as a Creditor Trustee, or on behalf of the applicable Creditor Trust, except those acts found by Final Order to be arising out of his or her willful misconduct, bad faith, gross negligence or fraud, and shall be entitled to indemnification and reimbursement for reasonable fees and expenses in defending any and all of his or her actions or inactions in his or her capacity as a Creditor Trustee, or on behalf of the applicable Creditor Trusts, except for any actions or inactions found by Final Order to be arising out of his or her willful misconduct, bad faith, gross negligence or fraud. Any valid indemnification claim of any of the Creditor Trustees shall be satisfied from the respective Creditor Trusts.

(n) **Dissolution of the Creditor Trusts.**

Each Creditor Trust shall be dissolved and the applicable Creditor Trustee shall be discharged from its duties with respect to such Creditor Trust upon completion of its duties and the satisfaction of the purposes of the Creditor Trust as set forth in this Plan and the applicable Creditor Trust Documents; provided, however, that the PI Futures Trust shall be dissolved and the Creditor Trustee of the PI Futures Trust shall be discharged of his or her duties with respect to the PI Futures Trust reasonably promptly following the earlier of (i) the distribution of all monies from the PI Futures Trust and (ii) the resolution of all Future PI Channeled Claims asserted against the PI Futures Trust on or before the sixth (6th) anniversary of the Effective Date and the payment of all Creditor Trust Operating Expenses of the PI Futures Trust.

**5.8 Attorneys’ Fees and Costs.**

(a) **Local Government and Tribe Costs and Expenses.**

On the Effective Date, the Local Government and Tribe Costs and Expenses Fund shall be established for the payment of costs and expenses (including attorneys’ fees) of Holders of Non-Federal Domestic Governmental Channeled Claims (other than States) and Holders of Tribe Channeled Claims (including any ad hoc group consisting of any of the foregoing), other than amounts paid pursuant to the AHC Reimbursement Agreement Assumption Order and MSGE Group Reimbursement Order. The Local Government and Tribe

Costs and Expenses Fund shall be funded in an aggregate amount not to exceed \$275 million from periodic distributions of 5.5% of each Public Creditor Trust Distribution. Payments from the Local Government and Tribe Costs and Expenses Fund shall be the exclusive means of payment from the Creditor Trusts for costs and expenses (including attorneys' fees) of any Holder of a Non-Federal Domestic Governmental Channeled Claim (other than a State) or a Holder of a Tribe Channeled Claim (or any ad hoc group consisting of any of the foregoing) or any attorney therefor, other than amounts paid in accordance with the order of the MDL Court establishing the Common Benefit Fund. Except as otherwise agreed in writing by the MSGE Group and the MDL Plaintiffs' Executive Committee the MSGE Fee Allocation Agreement shall be and remain fully enforceable and shall apply to the Local Government and Tribe Costs and Expenses Fund; *provided* that the costs associated with the arbitration process contemplated under the MSGE Fee Allocation Agreement shall not be paid by the Debtors, their Estates or any Creditor Trust. All modifications of the Local Government and Tribe Costs and Expenses Fund that directly impacts reimbursement of costs and expenses of Holders of Tribe Channeled Claims shall be reasonably acceptable to the Native American Tribe Group.

(b) **State Costs and Expenses.** On the Effective Date, the State Costs and Expenses Fund shall be established for the payment of costs and expenses (including attorneys' fees) of the States (including any ad hoc group thereof), other than amounts paid pursuant to the AHC Reimbursement Agreement Assumption Order. The State Costs and Expenses Fund shall be funded in an aggregate amount not to exceed \$225 million from periodic distributions of 4.5% of each Public Creditor Trust Distribution. Payments from the State Costs and Expenses Fund shall be the exclusive means of payment from the Creditor Trusts for costs and expenses (including attorneys' fees) of any State (or any ad hoc group thereof) or any attorney therefor, other than amounts paid in accordance with the order of the MDL Court establishing the Common Benefit Fund.

(c) **Common Benefit Fund Assessments.** On the Effective Date, a Common Benefit Escrow shall be established and funded by assessments of 5% of each Distribution made by the Private Creditor Trusts and 5% of the Truth Initiative Contribution. Such assessments will be paid by each Private Creditor Trust in respect of Distributions made by such Private Creditor Trust and by the Debtors in respect of the Truth Initiative Contribution, in each case, to the Common Benefit Escrow and then, upon its establishment, directly to the Common Benefit Fund established by the MDL Court, on periodic schedules for each Private Creditor Trust acceptable to the Governmental Consent Parties, the Ad Hoc Group of Hospitals, the Third-Party Payor Group, the NAS Committee and the Ad Hoc Group of Individual Victims, as applicable. The amounts in the Common Benefit Escrow shall be held in escrow until an order is entered by the MDL Court establishing a Common Benefit Fund, at which time the amounts held by the Common Benefit Escrow and all subsequent assessments of 5% of each Distribution made by the Private Creditor Trusts shall be transferred to and distributed in accordance with the order of the MDL Court establishing the Common Benefit Fund. To the extent a Holder of a Hospital Channeled Claim, a Third-Party Payor Channeled Claim, an NAS Monitoring Channeled Claim, an NAS PI Channeled Claim or a Non-NAS PI Channeled Claim (or any ad hoc group consisting of Holders of any of the foregoing) has retained counsel through a contingency fee arrangement, any contingency fees owed to such contingency counsel payable from Distributions under the Plan shall be reduced by the full amount payable under this Section 5.8(c).<sup>5</sup> However, the applicable Holder and its counsel, in their sole discretion, may agree that an amount up to but not exceeding 40% of the amount payable under this Section 5.8(c) may be applied to the reimbursement of actual costs and expenses incurred by such Holder's counsel, in which case such agreed

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<sup>5</sup> For the avoidance of doubt, any amount payable to counsel to the Ad Hoc Group of Individual Victims on an hourly basis (including incremental amounts in consideration of deferring payment of hourly fees) shall not constitute a "contingency fee," and the agreement in respect thereof shall not constitute a "contingency fee arrangement," in each case for purposes of Section 5.8 of the Plan.

cost-reimbursement amount shall not reduce the contingency fee amounts payable to such counsel. For the avoidance of doubt, if the Debtors, the Ad Hoc Committee or the MSGE Group agrees to any reduced or less restrictive terms concerning the 5% Common Benefit Fund assessment (or its implementation) provided under any portion of this Section 5.8(c) (or any portion of Section 5.8) for any of the Ad Hoc Group of Hospitals, the Third-Party Payor Group, the NAS Committee or the Ad Hoc Group of Individual Victims, then such modification shall apply to each of such groups, *mutatis mutandis*.

(d) **Hospital Costs and Expenses.** On the Effective Date, the Hospital Attorney Fee Fund shall be established for the payment of attorneys' fees and costs of the Ad Hoc Group of Hospitals with respect to Hospital Channeled Claims. The Hospital Attorney Fee Fund shall be funded with (i) 20% of each Abatement Distribution made by the Hospital Trust to Holders of Hospital Channeled Claims that have not retained (or are not part of an ad hoc group that has retained), on or before the General Bar Date as reflected in a timely filed Proof of Claim or representation to the Hospital Trust in accordance with the Hospital TDP, separate counsel through an individual contingency fee arrangement *less* (ii) the amount of such Distributions payable to the Common Benefit Escrow and the Common Benefit Fund under Section 5.8(c). The Hospital Attorney Fee Fund shall be administered by the Hospital Trust on terms acceptable to the Ad Hoc Group of Hospitals.

(e) **NAS Monitoring Claimant Costs and Expenses.** On the Effective Date, the NAS Monitoring Attorney Fee Fund shall be established for the payment of attorneys' fees and costs of the NAS Committee with respect to NAS Monitoring Channeled Claims. The NAS Monitoring Attorney Fee Fund shall be funded with (i) 20% of each Abatement Distribution made by the NAS Monitoring Trust *less* (ii) the amount of such Distributions payable to the Common Benefit Escrow and the Common Benefit Fund under Section 5.8(c). Reasonable expert costs incurred by the NAS Committee in the formation of the abatement plan for the NAS Monitoring Trust shall also be paid by the NAS Monitoring Trust, and, for the avoidance of doubt, (x) there shall be no amounts payable to the Common Benefit Escrow or the Common Benefit Fund on account of such cost reimbursements and (y) the 20% limitation on attorneys' fees shall not apply to the foregoing reasonable expert costs. The NAS Monitoring Attorney Fee Fund shall be administered by the NAS Monitoring Trust on terms acceptable to the NAS Committee.

(f) **Ratepayer Costs and Expenses.** On the Effective Date, the attorneys' fees of the Ratepayer Mediation Participants shall be paid from (i) 20% of the Truth Initiative Contribution *less* (ii) the amount of the Truth Initiative Contribution payable to the Common Benefit Escrow under Section 5.8(c).

(g) **PI Claimant Costs and Expenses.** The Creditor Trustee of the PI Trust shall pay or reimburse, as applicable, the compensation, costs and fees of professionals that represented or advised the Ad Hoc Group of Individual Victims and the NAS Committee in connection with the Chapter 11 Cases, as and to the extent provided in the PI Trust Agreement. Such compensation, costs and fees paid or reimbursed, as applicable, by the PI Trust shall be deducted from Distributions from (i) the PI Trust NAS Fund to Holders of Allowed NAS PI Channeled Claims and (ii) the PI Trust Non-NAS Fund to Holders of Allowed Non-NAS PI Channeled Claims, in each case pursuant to the PI Trust Documents. Nothing in this Section 5.8 shall impair or otherwise affect any fee contract that is not a contingency fee contract between the Ad Hoc Group of Individual Victims and its professionals, or between the NAS Committee and its professionals.

(h) **No Impairment of Contingency Fee Contracts; No Further Assessment.** Except as expressly set forth in this Section 5.8, nothing in the Plan shall impair or otherwise affect any contingency fee contract between any Holder of a Claim (or any ad hoc group of Holders of Claims) and such Holder's (or ad hoc group's) counsel. In this regard, the payment of the assessments described in this Section 5.8 shall be the only payment that such Holders (or their counsel) shall ever have

to make to the Common Benefit Fund with respect to amounts distributed under this Plan, and shall not be subject to any further or other common benefit or similar assessments with respect to amounts distributed pursuant to the Plan or payments to attorneys in respect thereof.

**5.9 Transferability of Distribution Rights.**

Any right to receive a Distribution or other payment from the Plan Administration Trust (including any PAT Distribution Account or PAT Reserve), a Creditor Trust or the Master Disbursement Trust (including the MDT Claims Reserve) shall not be evidenced by any certificate, security, receipt or in any other form or manner whatsoever, except on the books and records of the Plan Administration Trust (as maintained by the Plan Administration Trustee), the applicable Creditor Trust (as maintained by the applicable Creditor Trustees) or the Master Disbursement Trust (as maintained by the MDT Trustees), as applicable. Further, any right to receive a Distribution or other payment from the Plan Administration Trust (including any PAT Distribution Account or PAT Reserve), a Creditor Trust or the Master Disbursement Trust (including the MDT Claims Reserve) shall be nontransferable and nonassignable except by will, intestate, succession or operation of law. Any rights to receive a Distribution or other payment from the Plan Administration Trust (including any PAT Distribution Account or PAT Reserve), a Creditor Trust or the Master Disbursement Trust (including the MDT Claims Reserve) shall not constitute “securities” and shall not be registered pursuant to the Securities Act. If it is determined that such rights constitute “securities,” the exemption provisions of section 1145(a)(1) of the Bankruptcy Code would be satisfied and such securities would be exempt from registration.

**5.10 Insurance Neutrality.**

Nothing in the Plan, the Plan Documents or the Confirmation Order, including any provision that purports to be preemptory or supervening, shall in any way relate to, or have the effect of, impairing, altering, supplementing, changing, expanding, decreasing or modifying (a) the rights or obligations of any of the Insurance Companies or (b) any rights or obligations of the Debtors arising out of or under any Purdue Insurance Policy.

**5.11 Transfer of Books and Records; Cooperation; Privilege.**

(a) **Transfer of Books and Records to NewCo and the Plan Administration Trust.** Except with respect to Excluded Assets, all documents, books and records of the Debtors shall be transferred and assigned to NewCo on or prior to the Effective Date pursuant to the NewCo Transfer Agreement; *provided* that, from and after the date of such transfer, the Plan Administration Trustee shall have the right to retain copies of all transferred documents, books and records and NewCo shall permit the Plan Administration Trustee and its counsel and representatives to have full access to such transferred documents, books and records. All documents, books and records of the Debtors that are Excluded Assets shall be transferred and assigned to the Plan Administration Trust; *provided* that, except for the Excluded Privileged Materials, NewCo shall receive copies of all documents, books and records of the Debtors that are Excluded Assets. Any documents transferred under this Section 5.11(a) that are documents that were produced to the Debtors by Shareholder Released Parties in connection with Purdue Legal Matters shall continue to remain subject to the terms of the Protective Order and any order of the Bankruptcy Court or provision of this Plan affording confidentiality protections to such documents, unless such documents are included in the Public Document Repository in accordance with the Plan and the Shareholder Settlement Agreement.

(b) **Cooperation with the Master Disbursement Trust and the Creditor Trusts.** On the Effective Date or as soon as reasonably practicable thereafter, the Debtors shall transfer and assign, or cause to be transferred and assigned, (i) to the MDT Trustees, (A) copies of all MDT Insurance Policies, (B) information and copies of documents, including books and records of the Debtors that



**EXHIBIT B**

# Sackler Contribution vs. Privates and DOJ Settlements

The following schedule compares the minimum negotiated Sackler Contribution payment schedule to the private settlements and the DOJ settlement.

Net Distributable Value to MDT (\$ in millions)	Emerg.	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	Total
Sackler Contribution	300	350	350	350	350	300	1,000	475	425	375	-	4,275
MDT Distributable Value	\$ 300	\$ 350	\$ 350	\$ 350	\$ 350	\$ 300	\$ 1,000	\$ 475	\$ 425	\$ 375	\$ -	\$ 4,275
<u>Private Settlements</u>												
Hospitals	(25)	(35)	(45)	(45)	(50)	(50)	-	-	-	-	-	(250)
Third Party Payors	(1)	(121)	(121)	(122)	-	-	-	-	-	-	-	(365)
Ratepayers	(7)	-	-	-	-	-	-	-	-	-	-	(7)
NAS	(1)	(24)	(35)	-	-	-	-	-	-	-	-	(60)
Personal Injury Claimants (Minimum Payments) <sup>(1)</sup>	(300)	-	-	(200)	(100)	(100)	-	-	-	-	-	(700)
Total Private Settlements	\$ (334)	\$ (180)	\$ (201)	\$ (367)	\$ (150)	\$ (150)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (1,382)
DOJ Unsecured Claim	(25)	(10)	(10)	(5)	-	-	-	-	-	-	-	(50)
Total Private Settlements & DOJ Settlement	\$ (359)	\$ (190)	\$ (211)	\$ (372)	\$ (150)	\$ (150)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (1,432)
Remaining MDT Distributable Value, net Settlements	\$ (59)	\$ 160	\$ 139	\$ (22)	\$ 200	\$ 150	\$ 1,000	\$ 475	\$ 425	\$ 375	\$ -	\$ 2,843
NewCo MDT Shortfall Funding	59	-	-	-	-	-	-	-	-	-	-	59
Remaining MDT Distributable Value for the Publics	\$ -	\$ 160	\$ 139	\$ (22)	\$ 200	\$ 150	\$ 1,000	\$ 475	\$ 425	\$ 375	\$ -	\$ 2,902

1. Reflects the minimum amount due to the PIs excluding insurance proceeds.

Notwithstanding that funds from insurance proceeds and/or NewCo operations are projected to be available to fund the potential \$22 million shortfall in 2024, to address potential Plan feasibility issues, the Plan provides that the MDT Trustees will have the discretion to hold back and reserve MDT Distributable Value (up to no more than \$25 million, and only to the extent of their determined need) if they determine they may need it in 2024.

— The above chart excludes estimated MDT operating costs, which may increase the projected shortfall in 2024.