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CONNECTICUT

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**Prepared Statement of Connecticut Attorney General William Tong
Before the Subcommittee on Antitrust, Commercial and Administrative Law
Judiciary Committee
United States House of Representatives
Oversight of the Bankruptcy Code, Part 1: Confronting Abuses of the Chapter 11 System
Washington, D.C.
July 28, 2021**

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Thank you Subcommittee Chairman Cicilline, Ranking Member Buck, Committee Chairman Nadler and Ranking Member Jordan for the honor of testifying before this Subcommittee on needed reform to curb abuses of the Chapter 11 bankruptcy system.

In the shadow of the COVID-19 pandemic, the opioid epidemic has raged on, ravaging Connecticut and the country. Connecticut loses over 1,000 people a year to opioid-related overdoses at an economic cost of over \$10 billion annually and growing. Nationally, opioid deaths numbered almost 93,000 in 2020—a 30% increase from 2019.

CONNECTICUT'S CLAIMS

In 2018, Connecticut sued Purdue Pharma and certain members of the Sackler family in state court alleging violations of the Connecticut Unfair Trade Practices Act and the fraudulent transfer of assets from Purdue to the Sacklers in violation of state law.

The basis of Connecticut's claims, and those of its sister states and thousands of victims and their families, are well known to many: Purdue and the Sacklers ignored all human cost while pushing deadly opioids in blind pursuit of profit. Purdue and the Sacklers pushed opioid sales in doctors' offices, clinics, pharmacies, and hospitals, intentionally deceiving doctors and patients about the risk of addiction and death. And while that was going on, members of the Sackler family extracted billions of dollars in opioid profits from Purdue to their own family-held shell companies. During the same period, Purdue's attorney and chief financial officer admitted in records obtained by Connecticut that claims against Purdue by the states would subject Purdue to the "billions" faced by "Big Tobacco in the 1990s."

As this conduct occurred, Richard Sackler was sending abhorrent victim-blaming messages like the 2001 exchange we included in our amended complaint.

In one 2001 email, an acquaintance of Richard Sackler states: "Abusers die, well that is the choice they made, I doubt a single one didn't know of the risks." Richard Sackler responds: "Abusers aren't victims; they are the victimizers."

Also, in 2001, Richard Sackler corresponded with the same acquaintance. The acquaintance wrote: "You know what the general ignorant public will say, do away with the drug!! Blame the manufactures (sic), Drs., pharmacist, but NEVER THE CRIMINAL, HE/SHE, (to be politically correct) is never to blame. Give me a break, lest I THROW UP! The whole thing is a sham and if people die because they abuse it then good riddance." Richard Sackler responds: "Unfortunately, when I'm ambushed by 60 Minutes, I can't easily get this concept across. Calling drug addicts 'scum of the earth' will guarantee that I become the poster child for liberals who want to do just want (sic) to distribute the blame to someone else, as you say."

As a result of years of gross misconduct, Purdue and senior executives pleaded guilty to charges of misbranding OxyContin and paid about \$600 million in penalties in 2007. In 2020, Purdue pleaded guilty to three felony offenses: one count of dual-object conspiracy to defraud the United States and to violate the Food, Drug and Cosmetic Act, and two counts of conspiracy to violate the Federal Anti-Kickback Statute.

Through their illegal efforts to turbocharge sales of OxyContin and move as much of this highly addictive opioid as they could into the market, the Sacklers played a central role in causing the opioid and addiction crisis. It is clear the Sacklers started this fire, and they could have helped the states put it out. Instead, they poured gasoline on it with their pervasive and targeted campaign to mislead prescribers and patients into believing their opioids were safe enough to treat even minor pain. Purdue and the Sacklers knew people were dying but they continued to push their opioids in blind pursuit of profit. And at every turn, the Sacklers worked to shield their wealth from the justice and accountability they knew was coming.

THE SACKLERS ARE NOT BANKRUPT

Before a court could hear our claims against Purdue and the Sacklers, Purdue filed for bankruptcy under Chapter 11. Through this process, Purdue Pharma has asked the bankruptcy court to protect the company as it seeks to reorganize and discharge its debts to creditors.

But the Sacklers did not file for bankruptcy and they cannot possibly claim to be broke. They are not debtors. They have made at least \$11 billion in profits from producing and deceptively marketing opioids, and are growing wealthier by the minute. No one believes for a second that the Sacklers are bankrupt because they obviously are not.

Nonetheless, without ever filing for bankruptcy themselves, the non-debtor Sacklers are seeking to use the bankruptcy of Purdue to stop states like Connecticut from pursuing our legitimate claims against the Sacklers personally and as individuals. The Sacklers convinced the bankruptcy court to freeze Connecticut's lawsuit against them and the suits of other states. Now, they want the bankruptcy court to force states like Connecticut to accept a settlement payment to which we object, and compel us to release our claims against them forever.

To allow non-debtor individuals like the Sacklers to use the bankruptcy of a company to escape claims against them personally is an abuse and an outrage. Purdue's proposed bankruptcy plan would allow the Sackler family to pay \$4.3 billion over nine years to numerous public and private plaintiffs and get a release of all claims against them, including the states' claims. But this \$4.3 billion stretched out over nine years is minuscule in context: on an annual basis, the Sacklers will pay less than 5% on the billions and billions they took out of the company. No doubt they will easily cover that 5% every year with the investment income they accumulate in their offshore accounts.

By the time they are finished paying this settlement, the Sacklers will be wealthier than they were when they started.

THIS ABUSE OF BANKRUPTCY LAW MUST STOP

The plan represents an abuse of the bankruptcy system – an unprecedented legal maneuver to try to cut off states' claims against the Sacklers, in spite of the fact that the Sacklers are not even parties to the bankruptcy proceeding. The Sacklers are not debtors, and they have not submitted themselves and their enormous fortunes to the control the bankruptcy court. If they were debtors, the bankruptcy court could distribute all of the Sacklers' billions to the states, victims and families that so desperately need help.

That is why last week, I joined attorneys general from Washington, California, Delaware, Maryland, Oregon, Rhode Island, Vermont, and the District of Columbia who filed or joined formal [objections](#) to an inadequate and insufficient Purdue bankruptcy plan that would grant a lifetime legal shield to the Sackler family. A bankruptcy court should not have the authority to thwart attorneys general from enforcing state consumer protection laws. And the bankruptcy court should not issue a federal injunction that shields the Sacklers' multi-billion-dollar fortune forever.

Recently, the U.S. Trustee, an arm of the Department of Justice, which serves as a national watchdog over the federal bankruptcy system, said the proposed bankruptcy plan is unconstitutional and illegal and the U.S. Attorney for the Southern District of New York said the plan violated the constitutional right to due process. To date, there has been disagreement among the federal appeals courts as to whether non-debtor releases in these types of cases are permissible. We feel confident that they are not permissible for state claimants and ask the Congress to ban them against private claims as well.

In sum, bankruptcy laws are intended to discharge debt and allow corporations to reorganize, redeploy valuable assets and save jobs. Forcing plaintiffs to release the liabilities of non-parties inappropriately immunizes responsible parties from legal liability for their wrongful acts. We cannot allow wrongdoers to misuse the bankruptcy code to shield their wealth from justice.

I strongly support closing the loophole currently being abused by the Sacklers – which is exactly what has been proposed by the SACKLER Act – as well as legislation to ban nonconsensual non-debtor releases across the board. Congress must not permit their escape from accountability with their jewelry, art, and vacation homes untouched while countless victims of their depraved misconduct suffer and grieve.

I urge Congress to act and act quickly to prevent the Sacklers and others like them from abusing the bankruptcy system. These efforts have my full support, and I thank those in Congress for seeking to expose and reform the glaring holes in our bankruptcy system. I welcome your questions and stand ready to support your efforts in promoting greater accountability in this area of the law.