In re Purdue Pharma LP, et al.

Joseph Hage Aaronson LLC

Counsel to Raymond Sackler Family ("Side B")

Defense Presentation Part 4: Fraudulent Transfer

April 27, 2021

Distributions To The Sackler Families Were Not Fraudulent Transfers

Two Types of Fraudulent Transfer

1. **Actual-intent fraudulent transfer:**

   New York Debtor & Creditor Law ("DCL") §276

   "Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors."

2. **Constructive fraudulent transfer — Claimant must prove transfers were made without fair consideration while the transferor:**
   - **Was insolvent** (DCL §§271, 273)
   - **Was undercapitalized** (DCL §274), or
   - **Believed or intended to incur debts beyond the transferor's ability to pay as the debts mature** (DCL §275)

Four Insurmountable Problems

1. There was no intent to defraud — Purdue did not in fact perceive a threat from opioid litigation before 2017 and did not face meaningful litigation until 2017

2. When the avalanche of litigation hit in 2017, the Board immediately ceased distributions

3. Purdue was not insolvent when the distributions were made — its sales were in the billions, and the Board left enormous amounts of cash in Purdue every year *after* distributions

4. Purdue's — and other opioid manufacturers' — experience with opioid litigation and access to capital markets shows why Purdue did not anticipate liabilities beyond its ability to pay

Overwhelming Evidence Vitiates Any Claim of Actual Or Constructive Fraudulent Transfer

- Over 2/3 of all distributions — $6.9 of $10.3 billion — were made in 2008-12, when a federal monitor was overseeing Purdue and assuring the Board that Purdue was operating in compliance with its Corporate Integrity Agreement
- The Board kept enormous amounts of cash in Purdue at all times that distributions were made — over $1 billion a year from 2014 on
- Far from stripping Purdue of assets, the Board invested over a billion dollars in Purdue research and development
- Before 2017, management's detailed reports and projections consistently advised the Board that the risk of opioid litigation was low and declining

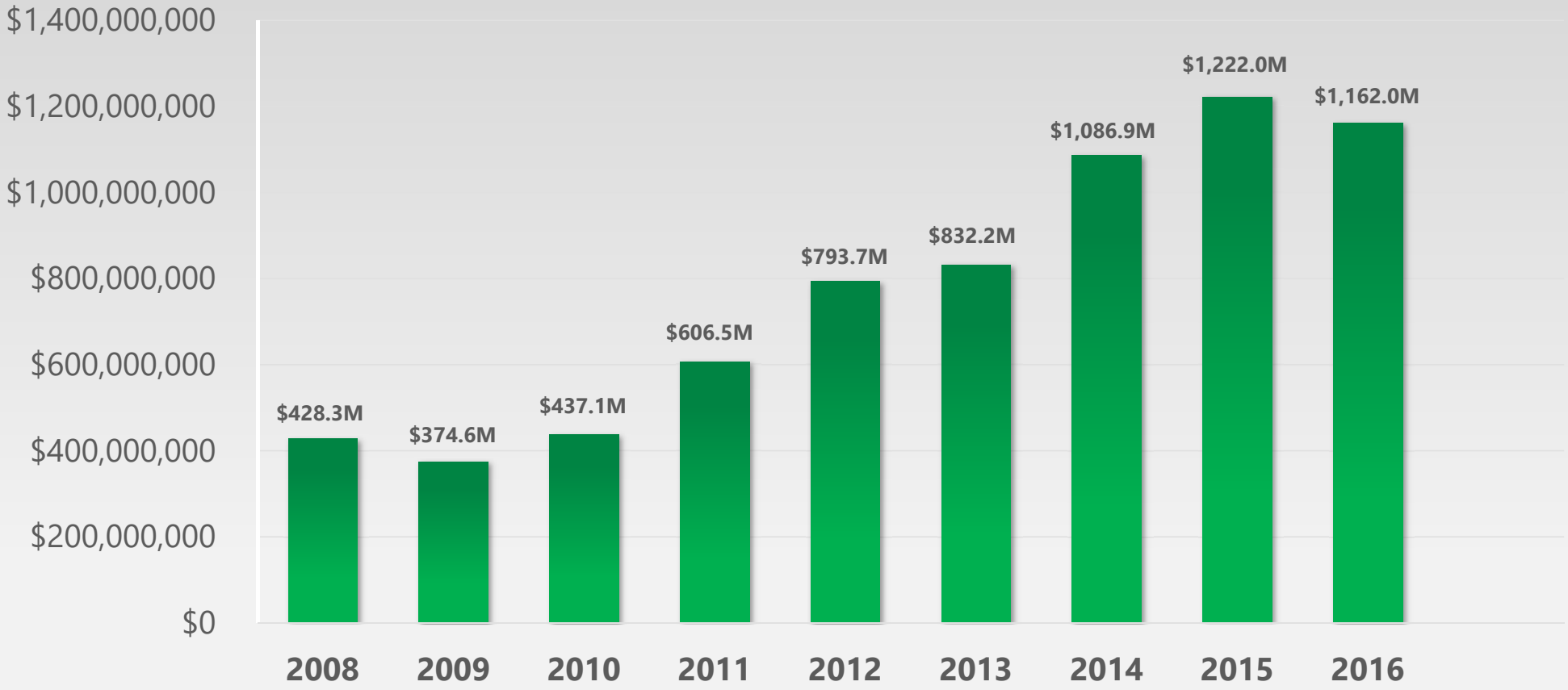
Overwhelming Evidence Vitiates Any Claim of Actual Or Constructive Fraudulent Transfer

- None of the litigations that led to bankruptcy began until 2014; there were only 5 cases before 2017; and distributions ended when hundreds of cases hit in 2017
- Nothing in other opioid manufacturers' litigation experience indicated a litigation risk for Purdue when the distributions were made
- Sophisticated financial parties — JPMorgan in 2014, Moody's and S&P in 2016 — found Purdue creditworthy and did not foresee the avalanche of litigation that descended on Purdue in 2017
- Other opioid manufacturers' access to capital markets confirms that sophisticated financial parties did not see material opioid litigation risk for the industry at the time distributions were made

Overwhelming Evidence Vitiates Any Claim of Actual Or Constructive Fraudulent Transfer

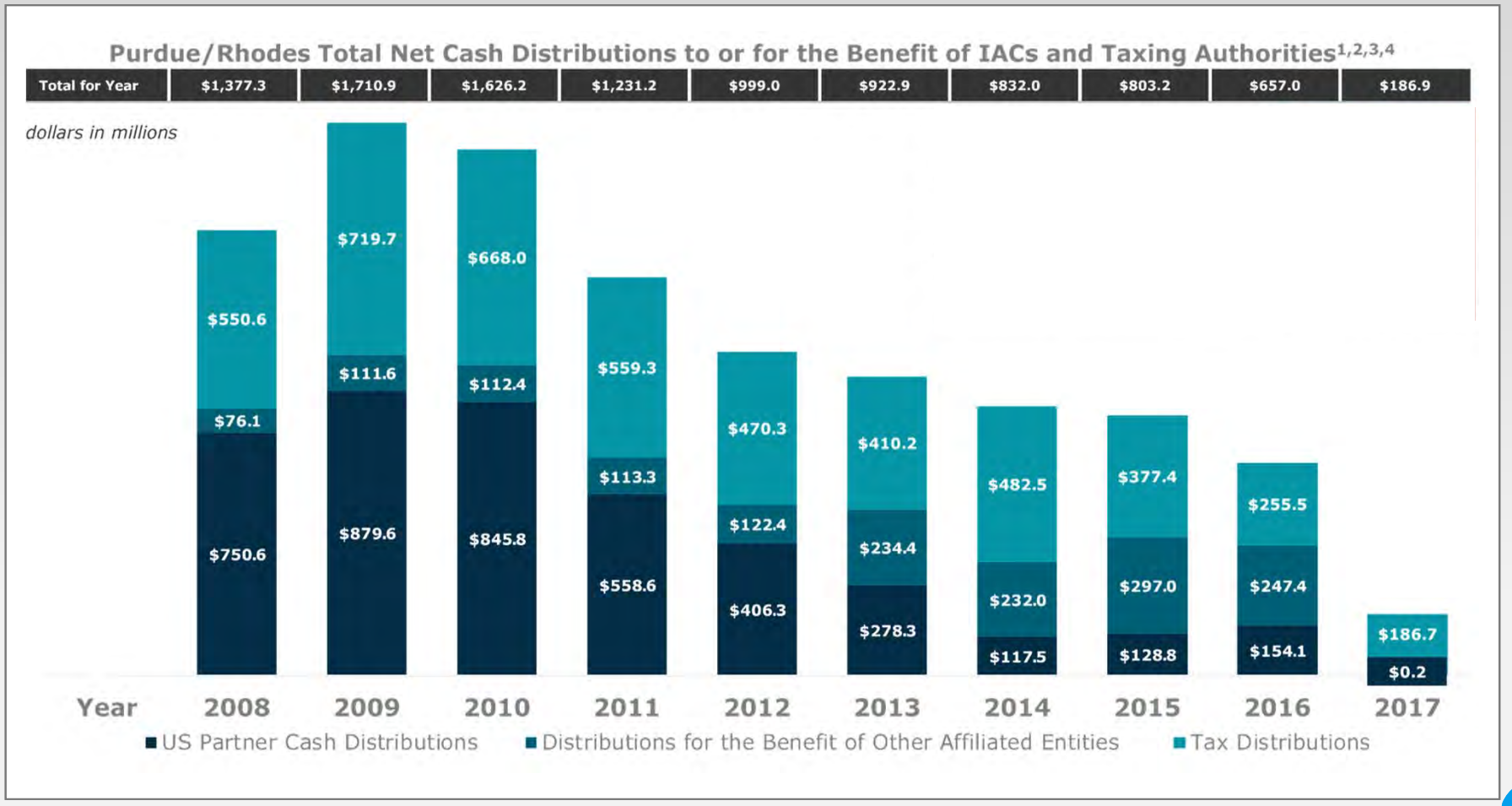
- **The Board was proactive in implementing a strict compliance regimen at Purdue, requiring all 7 elements of an effective compliance program as determined by the OIG of HHS and the Sentencing Guidelines** (Defense Presentation Part 1)
- **The Board monitored Purdue's implementation of all elements of the compliance program** (Defense Presentation Parts 1 and 3)
- **The Board incentivized compliance by incorporating it into bonus calculations** (Defense Presentation Part 1)

The Board Left Enormous Amounts of Unrestricted Cash In Purdue After Distributions



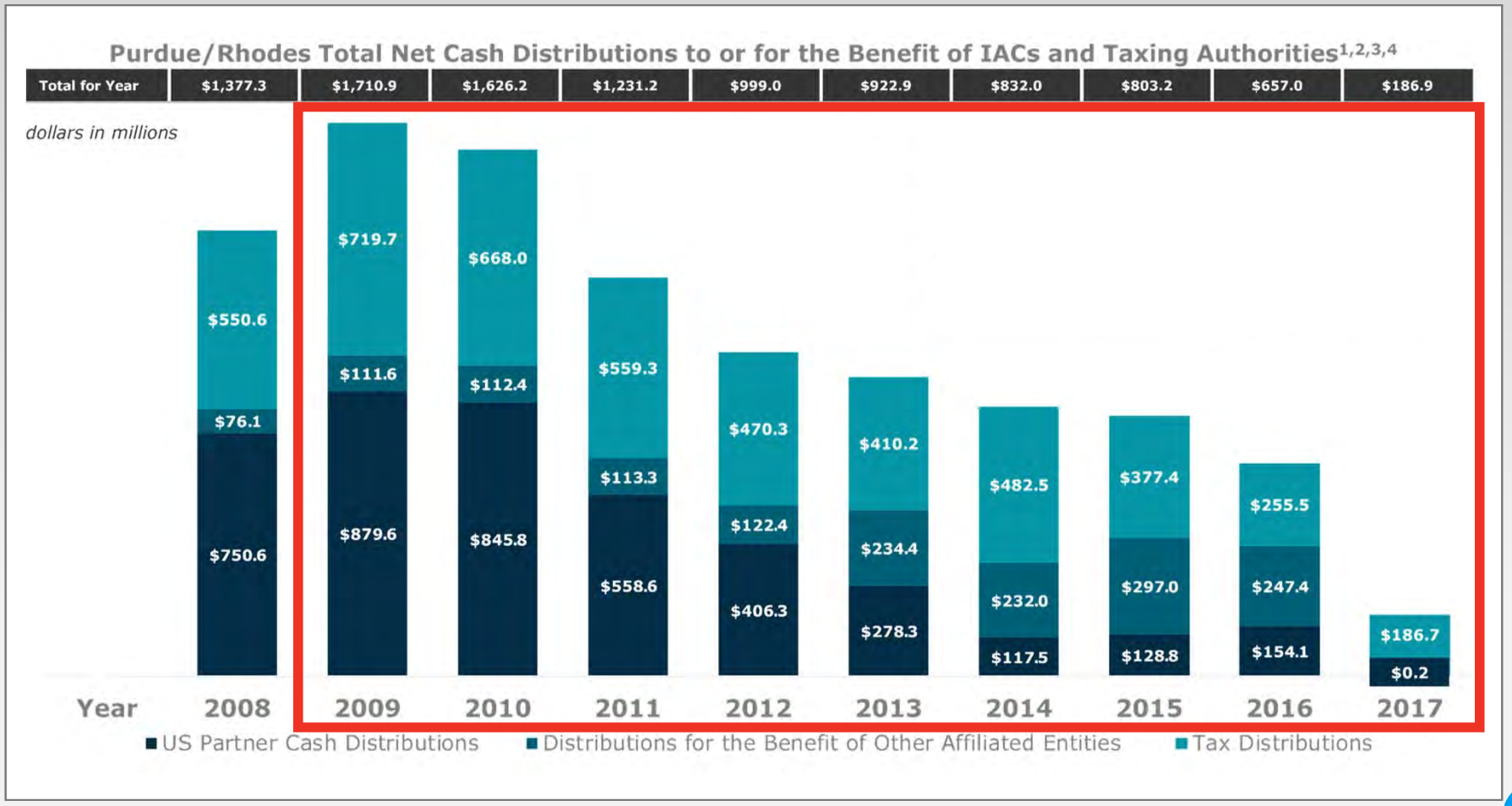
Sources: PPLPC031001244649 (2008-12); PPLPC051000265076 (2013-14); PPLPC045000018249 (2015); PPLPC032000398822 (2016)

The Board Shrank Distributions As It Increased Cash In Purdue



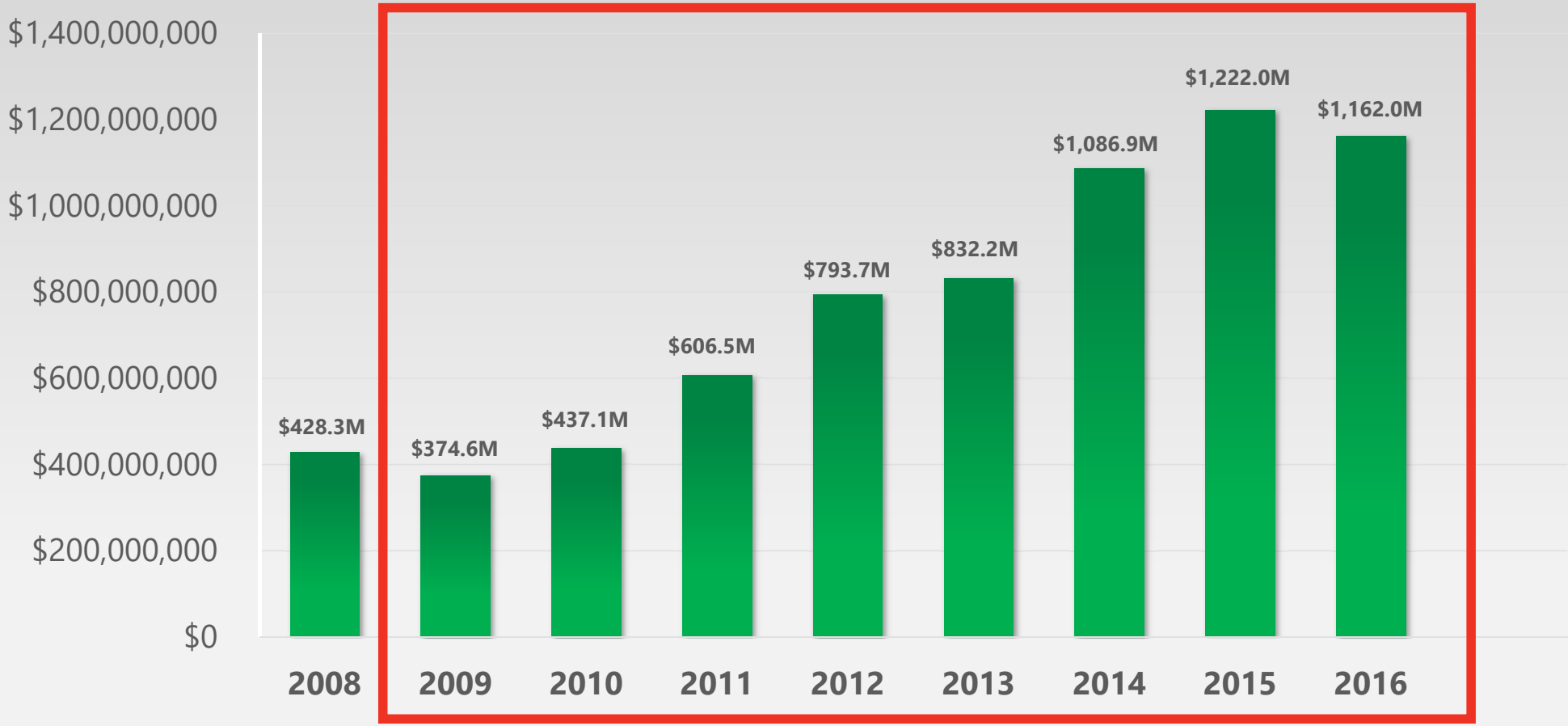
AlixPartners Cash Transfers of Value Report (12/16/2019) at Slide 11 (SDNY (Bankr.) No. 19-23649-rdd Doc 654-1)

The Board Shrank Distributions As It Increased Cash In Purdue



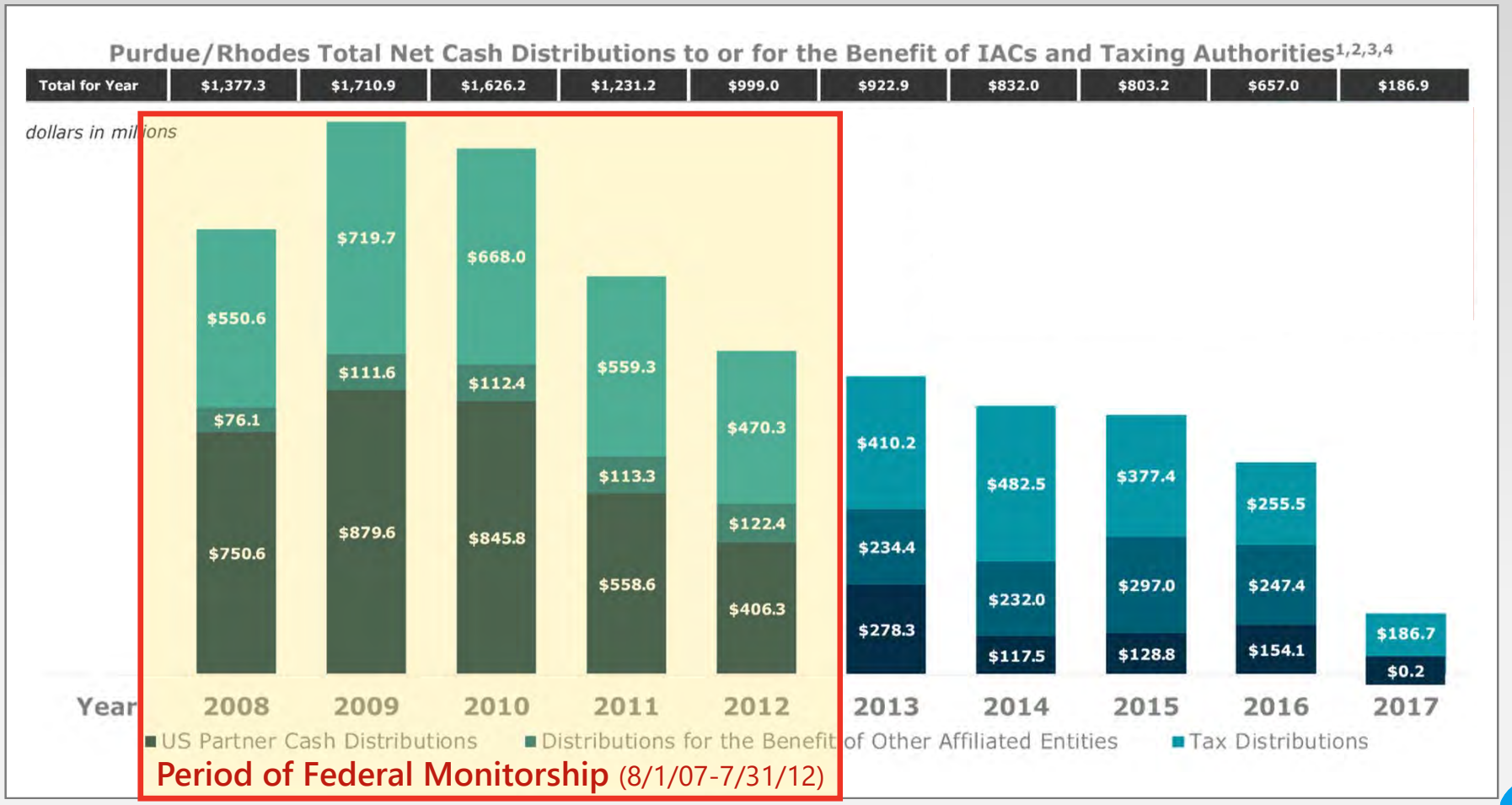
AlixPartners Cash Transfers of Value Report (12/16/2019) at Slide 11 (SDNY (Bankr.) No. 19-23649-rdd Doc 654-1)

The Board Left Enormous Amounts of Unrestricted Cash In Purdue After Distributions



Sources: PPLPC031001244649 (2008-12); PPLPC051000265076 (2013-14); PPLPC045000018249 (2015); PPLPC032000398822 (2016)

Over 2/3 of Distributions Were Made While the Federal Monitor Was Assuring the Board Purdue Was in Compliance with Its CIA

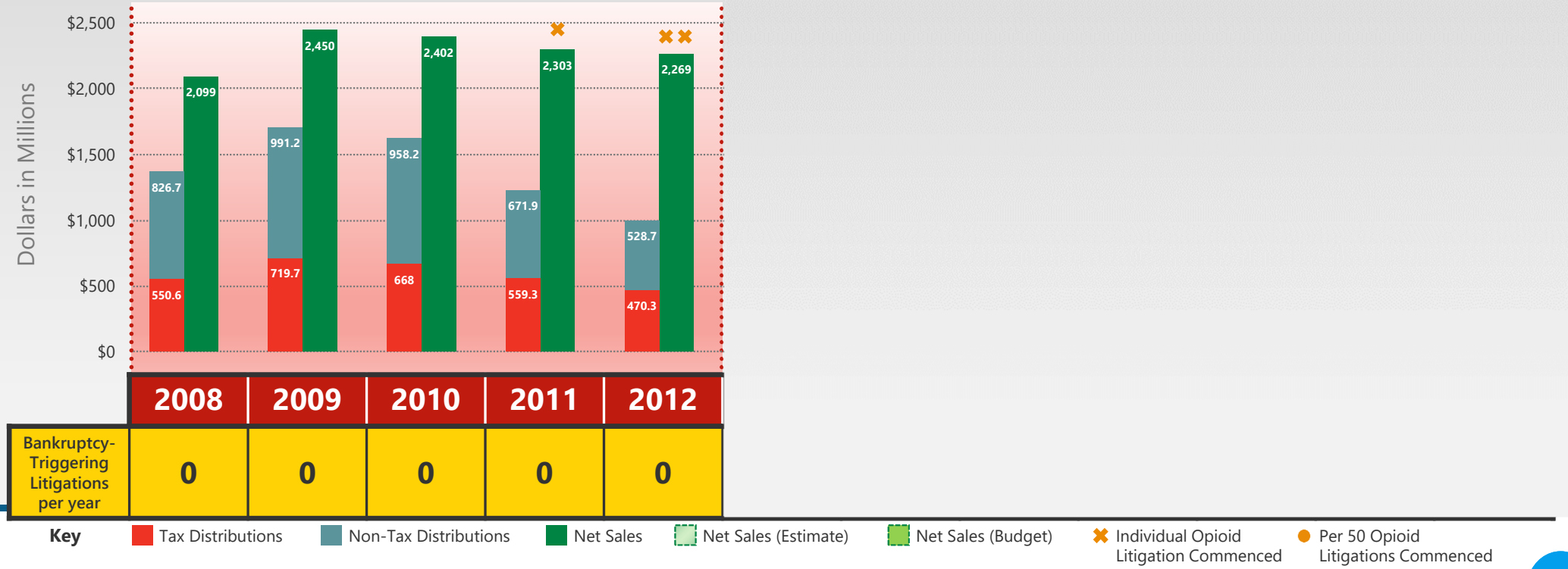


AlixPartners Cash Transfers of Value Report (12/16/2019) at Slide 11 (SDNY (Bankr.) No. 19-23649-rdd Doc 654-1)

Purdue Did Not Face Meaningful Litigation Until 2017 — And Then Immediately Ceased Distributions

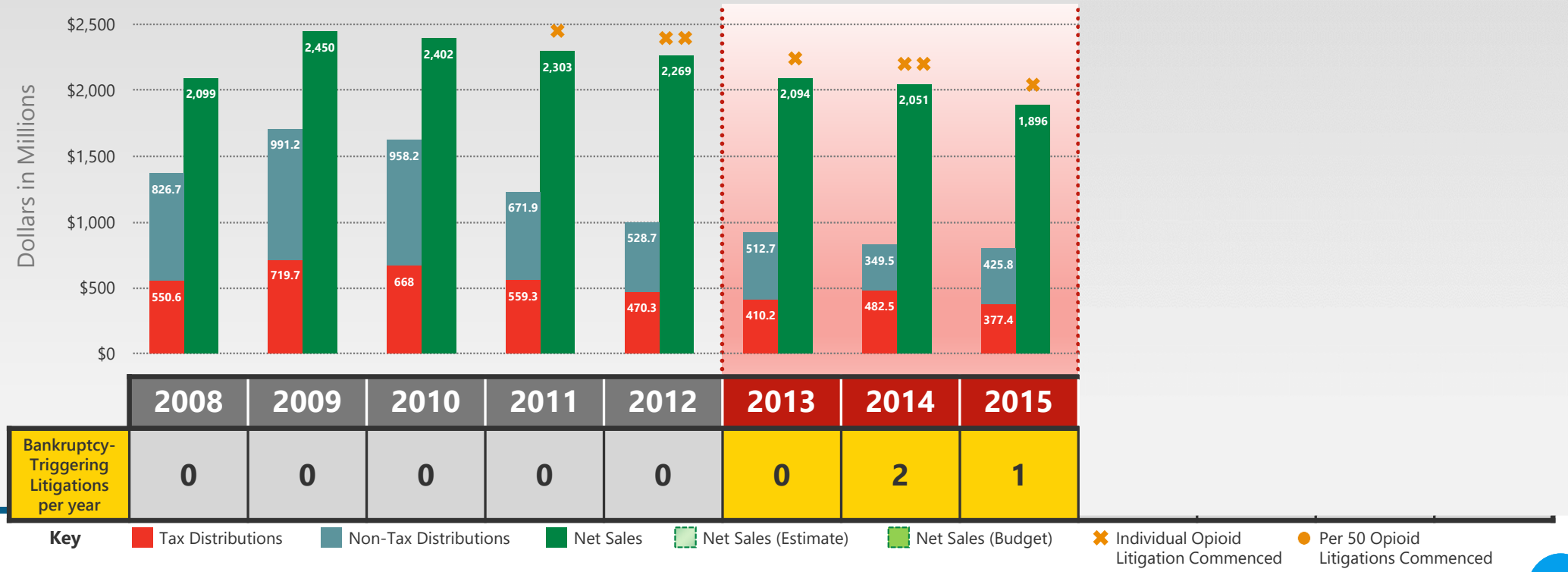
2008–2012: $6,944,600 in Distributions — No New Cases in 5 Years

- By mid-2007, Purdue had settled Federal and State claims, all well within its ability to pay
- Purdue was subject to a federal monitor through July 2012 to ensure compliance with its CIA
- None of the cases that ultimately triggered bankruptcy were filed in these years



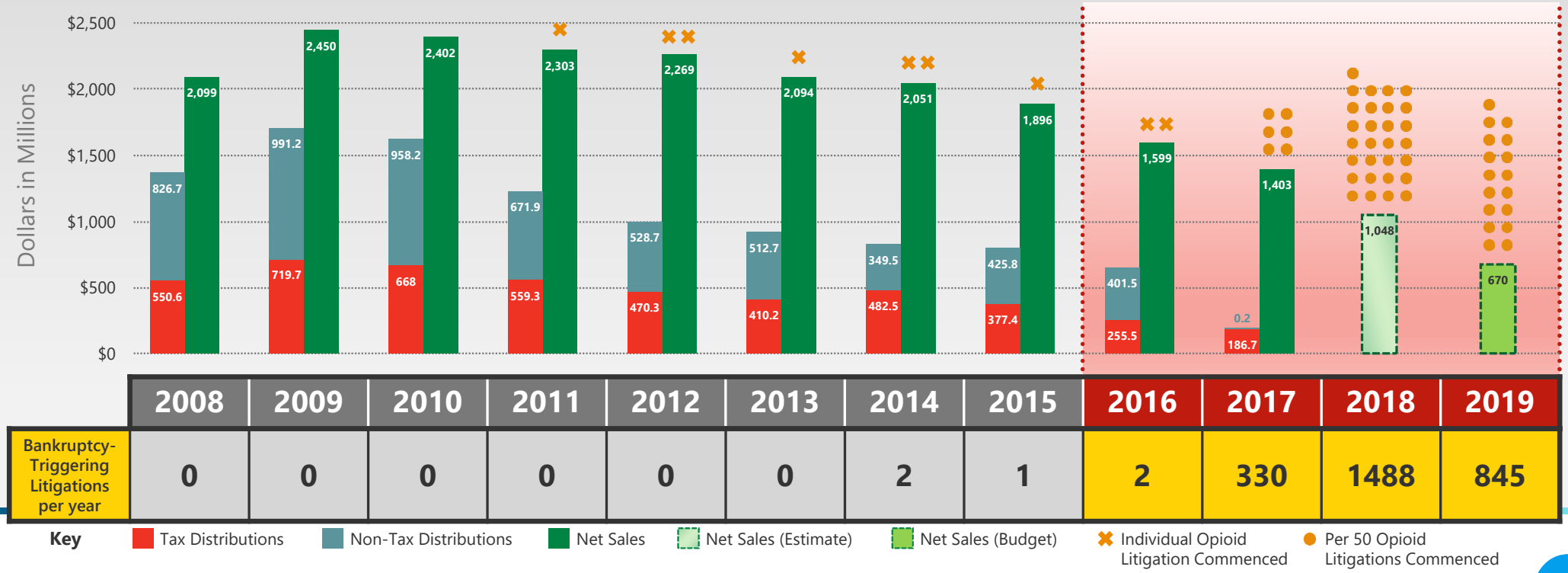
2013–2015: $2,588,100,000 In Distributions — 3 New Cases in 3 Years

- Purdue began receiving requests for information and subpoenas related to marketing of opioids
- In 2015, Purdue settled New York's investigation paying $75,000, and a longstanding Kentucky litigation for $24 million over 8 years



2016: $657,000,000 In Distributions – 2 New Cases

- Only 2 more governmental litigations filed
- No reason to believe governmental investigations/litigations could not be resolved at or below Kentucky payment, which was inflated due to a procedural default



After 2007, Management Consistently Advised The Board That Litigation Risk Was Low And Declining

In January 2008, Management Advised the Board That All OxyContin Litigation Could Be Closed Out for $200 Million

January 11, 2008 Board Agenda Book:

Funds Available for Investment

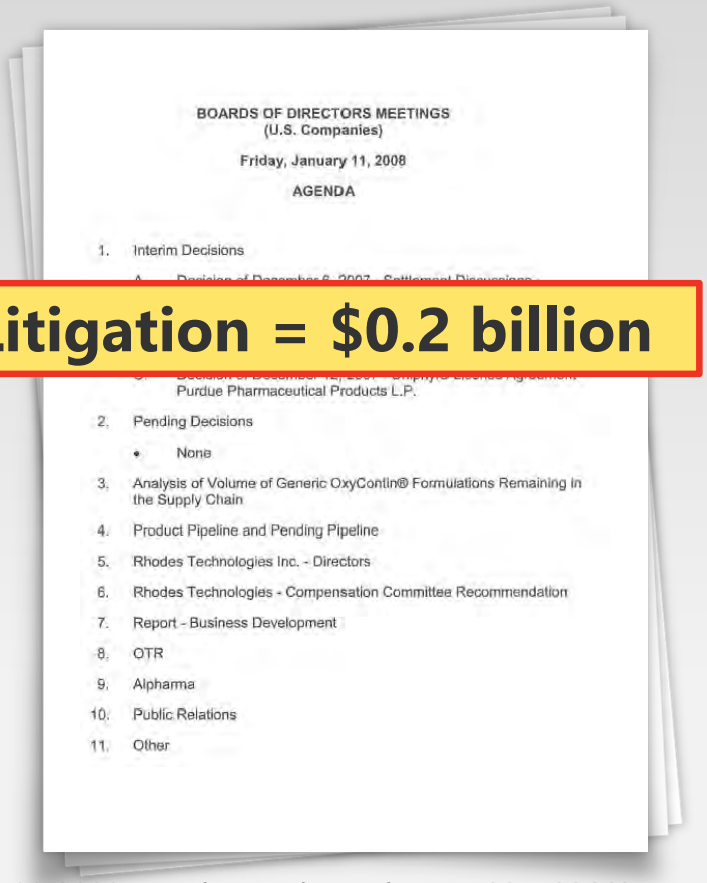
- Given the recent Stein decision Purdue will have significant funds to deploy.
- Thoughts:
  - Looking forward to 2009 and assuming more favorable developments this could grow to over $2 billion.
  - The $1.2 billion end 2008 balance could be allocated, for example, as follows:
    - Working Capital (at 2 months sales) = $0.3 billion
    - Restricted Cash for insurance, lease etc = $0.1 billion
    - Possible Reserve for Closing Out OxyContin Litigation = $0.2 billion
    - Reserve to fund POA & other internal products into say 201X =
    - Distributions (tax distributions already funded) =
    - New products not already funded =

    } $0.5 billion
  - If exclusivity is maintained even into 2009 the investment funds would increase.

PURDUE

7

- **Possible Reserve for Closing Out OxyContin Litigation = $0.2 billion**



BOARDS OF DIRECTORS MEETINGS
(U.S. Companies)

Friday, January 11, 2008

AGENDA

1. Interim Decisions
   - Purdue Pharmaceutical Products L.P.
2. Pending Decisions
   - None
3. Analysis of Volume of Generic OxyContin® Formulations Remaining in the Supply Chain
4. Product Pipeline and Pending Pipeline
5. Rhodes Technologies Inc. - Directors
6. Rhodes Technologies - Compensation Committee Recommendation
7. Report - Business Development
8. OTR
9. Alpharma
10. Public Relations
11. Other

1/11/2008 Board Agenda Book (PPLP004400663)

In 2009, Management Projected Shrinking Legal Fees

November 3, 2009 Board Agenda Book:

Legal Fees

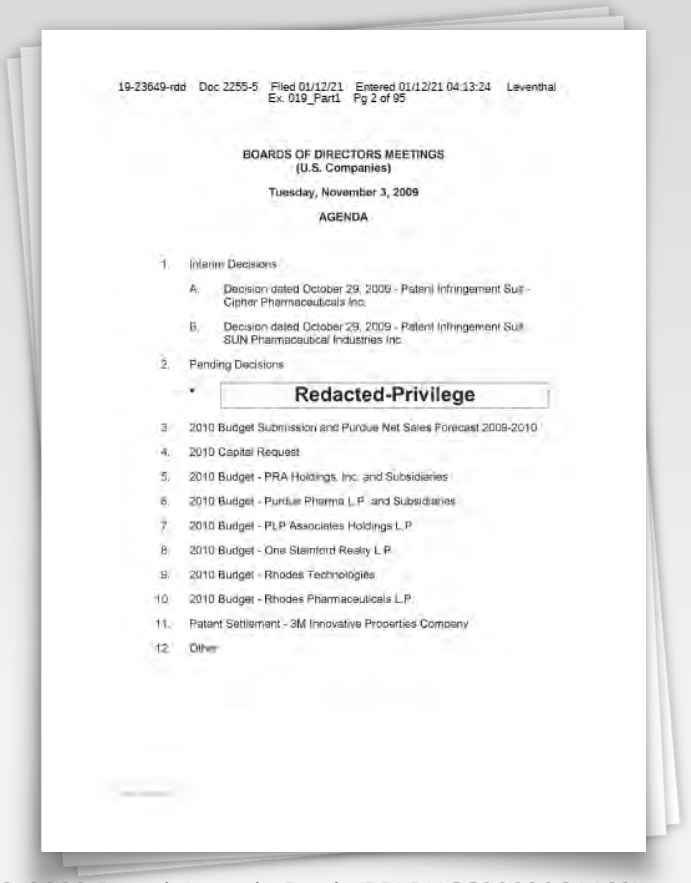
$MMs	2005 Actual	...	2008 Actual	2009 Budget	2009 Latest Estimate	2010 Budget Proposal	Variance - '10 vs. '09 Favorable/ (Unfavorable)
Product Litigation[1]	**$74.7**		**$18.6**	**$20.0**	**$15.0**	**$10.0**	**$5.0**
Antitrust	**0.8**		**0.5**	**6.0**	**1.4**	**2.4**	**(1.0)**
Government Related Litigation	**9.1**		**3.5**	**3.0**	**2.5**	**2.0**	**0.5**
Oxy Patent - U.S.	0.7		1.8	6.5	2.0	3.6	(1.6)
Oxy Patent - ex. U.S.	4.1		13.9	5.3	7.0	7.5	(0.5)
Tramadol	-		11.8	1.0	10.9	1.7	9.2
Tramadol Cost Recoveries	-		(6.1)	(0.7)	(6.4)	(0.7)	(5.7)
Other Patent Litigation	1.9		2.0	1.5	1.5	4.0	(2.5)
Total Patent Litigation	**6.7**		**23.3**	**13.6**	**15.0**	**16.1**	**(1.1)**
Patent Prosecution	10.9		15.4	12.3	15.6	15.3	0.3
Patent Due Diligence	0.3		0.7	1.1	1.4	1.4	0.0
Total Patent Prosecution	**11.2**		**16.1**	**13.4**	**17.1**	**16.7**	**0.4**
All Other Legal Fees[2]	24.4		16.1	13.4	12.5	13.7	(1.3)
TOTAL LEGAL FEES	**$126.8**		**$78.0**	**$69.3**	**$63.5**	**$61.0**	**$2.5**

Footnotes:

1. Insurance recoveries collected to date total $337 mm ($134 mm for settlements, $203 mm for legal fees).
2. All Other includes insurance coverage, corporate litigation & non-litigation, employment litigation and Chadbourne corporate fees. Chadbourne's fee budget on this line is $7.7 mm, consistent with prior years. In addition, the product litigation budget includes $1.2 mm in Chadbourne fees.

PURDUE

20



19-23649-rdd Doc 2255-5 Filed 01/12/21 Entered 01/12/21 04:13:24 Leventhal Ex. 019_Part1 Pg 2 of 95

BOARDS OF DIRECTORS MEETINGS
(U.S. Companies)

Tuesday, November 3, 2009

AGENDA

1. Interim Decisions
   - A. Decision dated October 29, 2009 - Patent Infringement Suit - Cipher Pharmaceuticals Inc.
   - B. Decision dated October 29, 2009 - Patent Infringement Suit - SUN Pharmaceutical Industries Inc.
2. Pending Decisions
   - Redacted-Privilege
3. 2010 Budget Submission and Purdue Net Sales Forecast 2009-2010
4. 2010 Capital Request
5. 2010 Budget - PRA Holdings, Inc. and Subsidiaries
6. 2010 Budget - Purdue Pharma L.P. and Subsidiaries
7. 2010 Budget - PLP Associates Holdings L.P.
8. 2010 Budget - One Stamford Realty L.P.
9. 2010 Budget - Rhodes Technologies
10. 2010 Budget - Rhodes Pharmaceuticals L.P.
11. Patent Settlement - 3M Innovative Properties Company
12. Other

11/3/2009 Board Agenda Book (PPLPUCC9002964468)

By 2010, Products Liability Litigation Against Purdue Was Almost Nonexistent

Year	Number of Products Liability Suits Pending Against Purdue	Number Being Actively Litigated
2010-11	24	3
2011-12	21	3
2012-13	21	3
2013-14	19	1
2014-15	18	0
2015-16	19	0

Lev. Opp. Exhs. 40 at -574; 47 at -208; 62 at -655; 74 at -570; 77 at-304 (Ernst & Young-Audited Combined Financial Statements of Purdue Pharma LP and Certain Associated Companies)) PPLPMDL0040000537, PPLPC029000544175, POK003285615, PPLPC011000090527, PPLPC021000890262)

By 2013, Management Projected Almost a 20% Reduction in Legal Fees over the Next Four Years

2013 10-Year Plan: Legal Fees Projected for All Litigation ($ millions)

2013	2014	2015	2016	2017
51	49.9	48.2	44.1	42.2

6/21/2011 Purdue 10-Year Plan (PPLPC042000023888); May 9, 2013 10-Year Plan (PPLPC063000003584)

By 2013, Future Governmental Litigation Was Expected to be De Minimis

2013 10-Year Plan: Legal Fees Projected for Government Litigation ($ millions)

2013	2014	2015	2016	2017	2018	2019
1.5	1.0	1.0	1.1	1.2	1.2	1.3

May 9, 2013 10-Year Plan (PPLPC063000003584)

In 2014, The Board Was Advised That Legal Fees Were Expected to Decline by Almost 70% over the Next Decade

May 15, 2014 Board Agenda Book:

Operating Expenses – G&A and Legal Fees

	2013A	2014LE	2015	2016	2017	2018	2019	2020	2021	2022	2023
G&A	152	132	110	107	104	102	100	99	80	50	40
as % of net sales	7%	9%	10%	10%	10%	10%	9%	9%	13%	17%	22%
Legal Fees	69	45	43	43	42	42	42	43	22	22	22
as % of net sales	3%	3%	4%	4%	4%	4%	4%	4%	4%	7%	12%

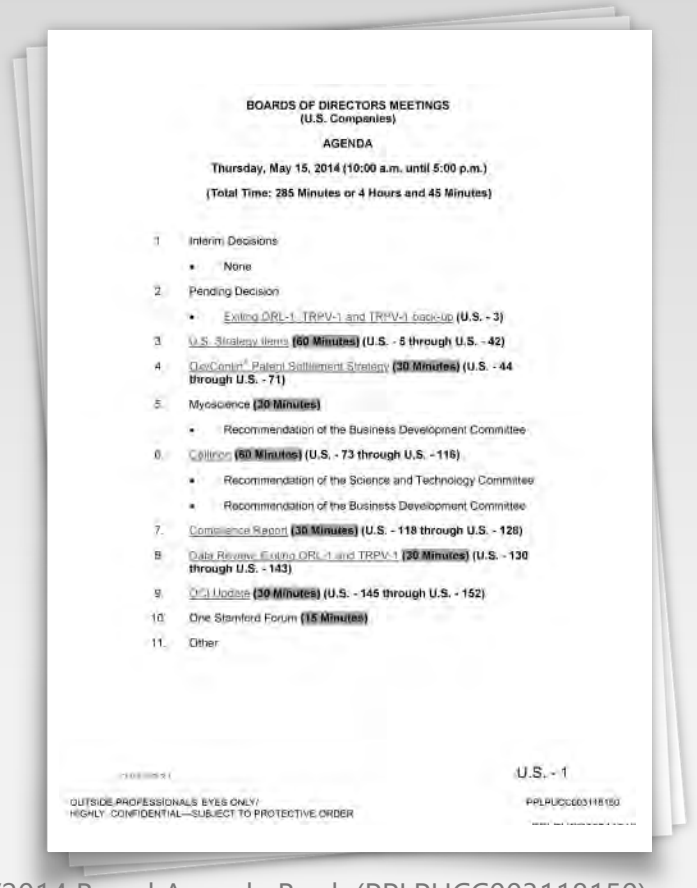
Key Assumptions

G&A
- Assume headcount to decrease by 20 in 2014.
- Assume 0% increase for G&A through 2020 due to implementation of offsetting efficiencies including further headcount reductions.
- Project Slim and Strategic Savings included in forecast, including the subletting of the 4th and 5th floors of One Stamford Forum.
- Post-2020, assume G&A flexed to net sales.

Redacted For Privilege

5/2014 Purdue: Funds Available for Growth PURDUE CONFIDENTIAL

U.S. - 8



BOARDS OF DIRECTORS MEETINGS
(U.S. Companies)

AGENDA

Thursday, May 15, 2014 (10:00 a.m. until 5:00 p.m.)

(Total Time: 285 Minutes or 4 Hours and 45 Minutes)

1. Interim Decisions
   - None
2. Pending Decision
   - Exiting ORL-1, TRPV-1 and TRPV-1 back-up (U.S. - 3)
3. U.S. Strategy Items (60 Minutes) (U.S. - 5 through U.S. - 42)
4. OxyContin® Patent Settlement Strategy (30 Minutes) (U.S. - 44 through U.S. - 71)
5. Mycoscience (30 Minutes)
   - Recommendation of the Business Development Committee
6. Celltrion (60 Minutes) (U.S. - 73 through U.S. - 116)
   - Recommendation of the Science and Technology Committee
   - Recommendation of the Business Development Committee
7. Compliance Report (30 Minutes) (U.S. - 118 through U.S. - 128)
8. Data Review: Exiting ORL-1 and TRPV-1 (30 Minutes) (U.S. - 130 through U.S. - 143)
9. OPI Update (30 Minutes) (U.S. - 145 through U.S. - 152)
10. One Stamford Forum (15 Minutes)
11. Other

U.S. - 1

OUTSIDE PROFESSIONALS EYES ONLY/
HIGHLY CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER

PPLPUCC003118150

5/15/2014 Board Agenda Book (PPLPUCC003118150)

In 2016, The Board Was Advised That Purdue's Litigation Risk Was Low

January 15, 2016 Board Agenda Book:

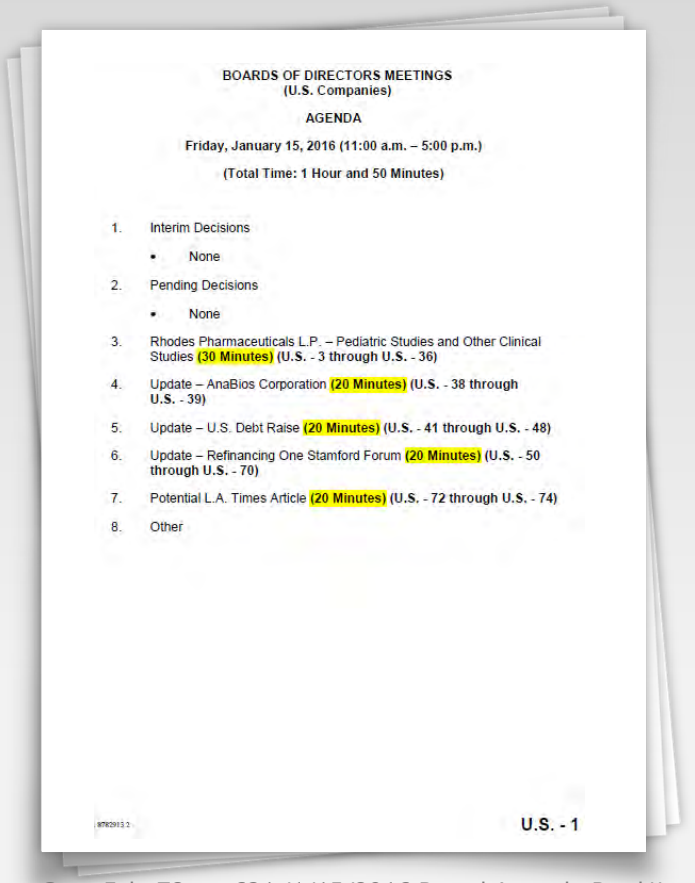
Major Potential Risks to the current cash flow outlook

	Risks
Coventry	• Aptensio's commercial potential (high) • Further delays in FDA Approvals (high)
Purdue	• Redacted • Litigations (low) • Redacted

Coventry lean operating structure limits their ability to offset financially its commercial risks

CONFIDENTIAL 5

U.S. - 46



BOARDS OF DIRECTORS MEETINGS
(U.S. Companies)

AGENDA

Friday, January 15, 2016 (11:00 a.m. – 5:00 p.m.)

(Total Time: 1 Hour and 50 Minutes)

1. Interim Decisions
   - None
2. Pending Decisions
   - None
3. Rhodes Pharmaceuticals L.P. – Pediatric Studies and Other Clinical Studies (30 Minutes) (U.S. - 3 through U.S. - 36)
4. Update – AnaBios Corporation (20 Minutes) (U.S. - 38 through U.S. - 39)
5. Update – U.S. Debt Raise (20 Minutes) (U.S. - 41 through U.S. - 48)
6. Update – Refinancing One Stamford Forum (20 Minutes) (U.S. - 50 through U.S. - 70)
7. Potential L.A. Times Article (20 Minutes) (U.S. - 72 through U.S. - 74)
8. Other

U.S. - 1

Lev. Opp. Exh. 72 at -631 (1/15/2016 Board Agenda Book))

In 2016, Management Projected A 25% Drop in Legal Fees over the Next 4 Years

Historical and Projected Legal Fees as of March 11, 2016 (in millions)

2014	2015	2016E	2017E	2018E	2019E	2020E
47	48	51	47	46	41	38

Purdue's Mar. 11, 2016 Rating Agency Presentation (RSF00075228))

In 2016, Board Was Advised That Outside Counsel Reviewed Purdue's Commercial Compliance Program And Gave It A Positive Review

Bottom Line

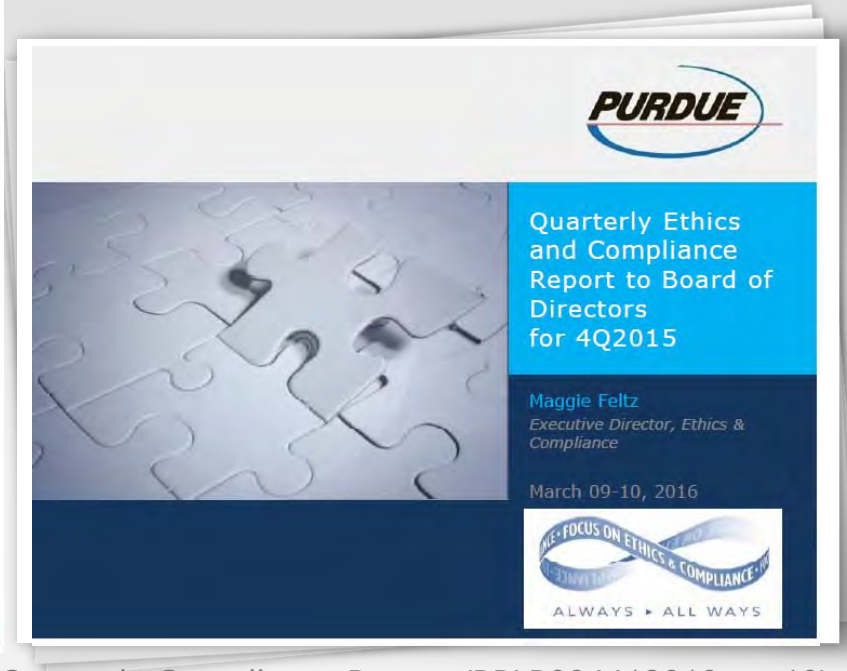
Purdue continues to have strong systems and processes in place to prevent and detect violations of law, regulations, and Company policies, and to remediate issues before they become significant problems.

There have been no significant compliance issues in the 4th quarter, 2015.

This report focuses on:

- Positive review of Commercial Compliance program by outside counsel
- 2016 Ethics & Compliance Program Priorities
- Summary of Investigations
- Sunshine Act Update

PURDUE CONFIDENTIAL | 2



4Q 2015 Quarterly Compliance Report (PPLP004412818 at -19)

The Family Board Members Did Not Know Or Expect That Purdue Would Face Judgments It Could Not Pay

- The families frequently discussed the future of Purdue
- In their extensive email traffic about distributions, neither side expressed any concern about litigation risk
- Jon Sackler compared the differing views of the A and B Sides to the difference between the Buffet approach to investing and a hedge fund/activist approach
- The B Side urged lower distributions
- It offered to put its distributions back into Purdue as subordinated debt, exposing it to all risks the Company faced

The Family Board Members Did Not Know Or Expect That Purdue Would Face Judgments It Could Not Pay

- **November 15, 2014 email from Jon Sackler to Board:**

Recently, a difference of opinion has emerged on what constitutes good financial management of our businesses. . . . .

One point of view seems to be inspired by the current "activist" hedge fund playbook as practiced by people like Carl Icahn and Dan Loeb. It typically involves pulling cash out of operations. . . .

In contrast to the activists, a different point of view, espoused by people like Buffett and Munger, takes a generally more positive view of managements and boards and the protection of investments that underpin long-term wealth creation. . . . Buffett and Munger love cash on the balance sheet. . . .

Given all of the above, and cognizant of the fact that we have already distributed $105 million this year (well in excess of industry peer group norms), at this time the Raymond family prefers to leave the remaining cash in the business for the purpose of maximizing the likelihood that we can execute successfully on our stated strategy.

RS0599001

Side B Board Members Proposed Lending Side B Distributions Back To Purdue in Return for Subordinated Debt

- **June 28, 2015 email from Steve Ives to Richard, Jon and David Sackler RE: Discussions with Jonathan White**

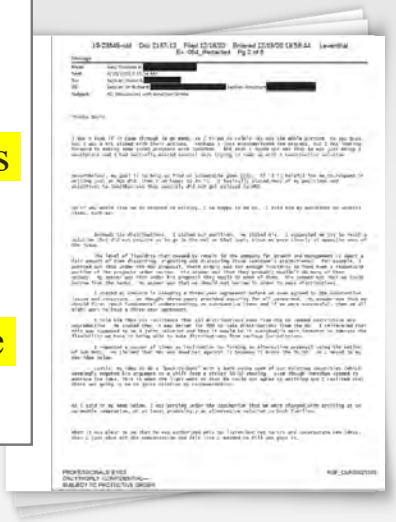
1. I strongly entertained the notion that my hope was to reach a satisfactory proposal that resulted in the lowest acceptable amount of cash coming out of the company. ***

4. Further to #1 above I queried why the sub debt notion would not be acceptable. ***

So, in summary what messages did I leave with JW?

1. My concern over the needs of the business; cash distributions should be tempered at this time for the good of the business. ***

4. I continued to push the notion of sub debt as a means of putting both families on equal footing as to their fundamental desires (cash distributions on one hand and strengthening the business on the other). ***



RS0599103

Side B Board Members Worked Up Terms for the Subordinated Debt That Side B Offered To Take

- **Aug. 13, 2015 David Sackler email to Richard and Jonathan Sackler and Steve Ives RE: Sub debt proposal**

. . . 3 month T bill plus 700 BP . . . .

For all future distributions our family has the option to take our 50% share in additional principal of THIS note. So if it's got 5 years of term left, our distribution share creates more debt at a 5 year term . It's just adding principal. . . . (This provision is subject to revision pending a senior lender's covenants. . . .)

Should we chose NOT to add to the principal future distributions need to be split
25% to the Mortimer family
25% to the Raymond family
50% to loan pay down. . . .

. . . The company can choose to prepay at any time without penalty, subject to any conditions in the senior credit agreement. . . .

Lev. Opp. Exh. 66 (RSF OLK00021534)

Side B Board Members Analyzed Comparable Companies in Assessing Distributions — And Urged Lower Distributions

- **October 27, 2014 email from David Sackler to Richard and Jonathan Sackler, Ralph Snyderman, Peter Boer, Ake Wikstrom, Paulo Costa:**

> Paulo asked me to try my hand at creating an index [of comparable companies] that most closely mirrored our business. . . .
>
> [W]hen we talk about distributions, I think this is the most powerful data I've seen....
>
> I realize I'm preaching to the choir, but any distribution from this point isn't supported by comparable companies. . . . From a comp[a]rables or business point of view, it makes no sense.

RSNY1500355

The UCC's 10 Dated, Distorted, Non-Probative Documents

10 Dated, Distorted, Non-Probative Documents

- Against all of this evidence, the Unsecured Creditors Committee ("UCC") points to 10 documents — out of 90 million — to try to show actual fraud
- The 10 documents have 4 things in common:
  1. They are old, dating from 2006-2008
  2. To the extent any of them reflects a concern about litigation risk, that risk was eliminated not long after the document was written
  3. None of the 10 reflects any concern about litigation at the time the distributions were made, in 2008-16
  4. They are unrelated to any of the criminal conduct Purdue pled to in 2020

1. November 20, 2006 Email from Jonathan to Richard Sackler re: "Pharma Issues" (Hurley Ex. 62/Leventhal Ex. 2)

- The first is a November 2006 email in which Jonathan Sackler wrote that "***contingent liabilities hover over the business***"
- That was true in November 2006
  - The validity of the OxyContin patent was under attack — in litigation largely won by January 2008 (PDD9316304986; PPLPC012000111357-58; PPLPC012000144630-33; PPLPMDL0040000413; PPLPC012000270692)
  - PPLP's CEO wrote, on December 21, 2006, that DOJ investigation "remains the single most significant legal risk we face" — it settled in May 2007 (12/21/06 Year-End Business Update (PPLPUCC003920061 at -63))
  - The state consumer protection and Medicaid matters were hovering until the 76 state settlements were entered in mid-2007 *(Id.)*
  - More than 1,000 products liability lawsuits were hovering — Purdue settled or disposed of substantially all of them between December 2006 and May 2007 (PPLPC012000372436 at slide 3; PPLPUCC003920061 at -63; PPLPC012000111351; PPLPC012000144629)

PPLPC057000003694

1. November 20, 2006 Email from Jonathan to Richard Sackler re: "Pharma Issues" (Hurley Ex. 62/Leventhal Ex. 2)

- The sentence stating that "***contingent liabilities hover over the business***" continues: "***and there's a great need to protect the company by maximizing free cash***"
  - That is, keep cash in Purdue — which is exactly what the Board did in 2006
  - Only $1 million in non-tax distributions were made in 2006 (UCC-prepared Baker Ex. 14)
- The UCC quotes the sentence saying that "***the industry is … a permanent whipping boy for the politicians, regulators, and trial bar***" —
  — but ignores the next sentence: "***Against that headwind, valuable innovations are still generally well rewarded***."
- This 2006 email does not show that the risk of litigation was a concern in 2008-16, when the distributions were made — and all of the contemporaneous documents from 2008-16 shows that it was not

PPLPC057000003694

2. February 27, 2007, Stuart Baker Email to Richard Sackler (Hurley Ex. 65)

- This email is 2 sentences long and says nothing about litigation
- The subject is "David Board Membership"
- Stuart Baker wrote:

> "All you need to do is tell me that Raymond, Beverly, and Jon agree, and I will prepare the necessary papers. Please be sure to tell them (including David) that I recommend against David becoming a Director at this time."

- David was 26 years old, worked at a hedge fund and had no experience at Purdue
- Nothing in this email mentions litigation or intimates it had anything to do with Baker's recommendation
- On the UCC's logic, since Baker did not object when David joined the Board in 2012, there was obviously no concern about litigation risk in 2012

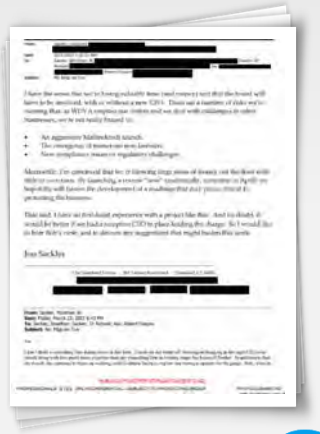
PPLPUCC000555709

3. March 25, 2007, Jonathan Sackler Email to Mortimer and Richard Sackler and Robert Shapiro (Preis Ex. 187)

- Jonathan Sackler writes that he wants Purdue to hire a consulting firm to advise on the questions: "*What opportunities should Purdue pursue, what is the appropriate infrastructure to support it, and what should it cost?*"
- He identifies three risks:

> - An aggressive Mallinckrodt launch.
> - The emergence of numerous new lawsuits.
> - New compliance issues or regulatory challenges.

- Purdue had not yet settled with the federal government or the states
- Products liability lawsuits were expected and filed after the federal plea and settlement
  - The Board was informed in January 2008 they could be closed out with a $200 million reserve (1/11/2008 Board Agenda Book (PPLP004400663)



PPLPUCC004057767

3. March 25, 2007, Jonathan Sackler Email to Mortimer and Richard Sackler and Robert Shapiro (Preis Ex. 187)

- The products liability suits were settled for manageable amounts, dismissed or became almost entirely dormant between 2008-11

  (PPLPUCC003920061 at -63; PPLPMDL0040000406; PPLPC012000221199; PPLPC012000270690;PPLPC012000323983-84; (PPLPMDL0040000574))

- Mallinckrodt was one of the competitors suing to invalidate the OxyContin patent
  - The crowning patent victory — a finding of no "inequitable conduct" — was won in January 2008 against Mallinckrodt and 2 others

    (PDD9316304986; PPLPC012000144630-33, PPLPMDL0040000412; PPLPC012000270692)

- This 2007 email is not evidence of any concern about opioid litigation when the distributions were made in 2008-2016

PPLPUCC004057767

4. March 22, 2007, Email from Jonathan Sackler to Kathe and Richard Sackler and Robert Shapiro (Preis Ex. 209)

- Jonathan Sackler again writes that he wants Purdue to hire a consulting firm "to review strategic options for the business, like a McKinsey," in light of 4 issues:
  1. "The ongoing risks created by the WDVA (in other words, if there's a future perception that Purdue has screwed up on compliance, we could get murdered)"
  2. "An uncertain contingent liabilities picture"
  3. "An uncertain exclusivity asset"
  4. "Unexploited generics opportunities"
- Nos. 1 and 4 are business risks
- Nos. 2 and 3 are the same litigation risks discussed in his 3/25/07 email that were resolved not long after the email was written
- This 2007 email is not evidence of any concern about opioid litigation when the distributions were made in 2008-2016

PPLPUCC900482494

5. May 13, 2007, email from Richard Sackler to Elon Kohlbert re: "News Coverage" (Hurley Ex. 63)

- The UCC falsely states that this email is talking about "liability related to the opioid crisis" (UCC Exceptions Motion ¶20)
- The subject of the email is **Subject:** RE: news coverage — the media — not litigation
- The UCC points to the sentence: *"I'm not confident that this is something that will blow over. My sense is that it may get a lot worse in the coming weeks"*
- The UCC ignores that — in the next email in the same chain — Richard writes two days later:

> "The good news is that things simmered down very quickly, and the story doesn't seem to have excited the masses. We've received a lot of support from the medical community, and so my fears seem to be for naught. I'm very much relieved, and now we are planning on how to handle the future for the business."

- This email does not reflect any concern about litigation at all

PWG004474511

6. May 17, 2007, Email from David Sackler to Jonathan and Richard Sackler and Steve Ives re "Idea" (Hurley Ex. 64)

David: "We're rich? For how long? Until which suits get through to the family?"

Jon: "[R]est assured that there is no basis to sue 'the family'"

David: "[A]sk yourself how long it will take these lawyers to figure out that we might settle with them if they can freeze our assets and threaten us."

- David Sackler was 26 years old, worked at a hedge fund and had no involvement at Purdue
- He was apprehensive that the family would be sued in the wake of Purdue's 2007 guilty plea, which had been entered one week earlier
- Jonathan Sackler, who was a Purdue director, was right
- None of the hundreds of suits filed in the wake of Purdue's 2007 guilty plea named the family — and all were settled, dismissed or dormant within a few years

PPLPUCC002683256

6. May 17, 2007, Email from David Sackler to Jonathan and Richard Sackler and Steve Ives re "Idea" (Hurley Ex. 64)

- In 2012, 5 years after writing this email, David Sackler joined the PPI Board — the last thing anyone expecting a flood of opioid litigation would have done
- In 2015, 8 years after writing this email, he (together with Richard and Jonathan Sackler) proposed that Side B lend its distributions back to Purdue in return for subordinated debt
  - That would expose Side B to all of Purdue's litigation risk
  - It is inexplicable if any of them anticipated major opioid litigation
- This 2007 email does not show any concern about litigation in 2008-2016, when the distributions were made — and all of the evidence from 2008-2016 shows that there was no concern about litigation then

PPLPUCC002683256

7. June 22, 2007, Email from David Sackler to Jonathan, Mortimer, Richard and Kathe Sackler re: SEPR (Hurley Ex. 68)

- This is another email by 26 year-old David Sackler — to two cousins, his father and uncle, all of whom are Purdue directors
- The UCC falsely states that in this email "*David worried that Purdue's 'future liabilities' could 'decimate' a merger.*" (UCC Exceptions Motion ¶23)
- He was actually concerned that negative publicity (Purdue had just pled guilty) could decimate a merger because "analysts could very well start saying crazy things about future liabilities"

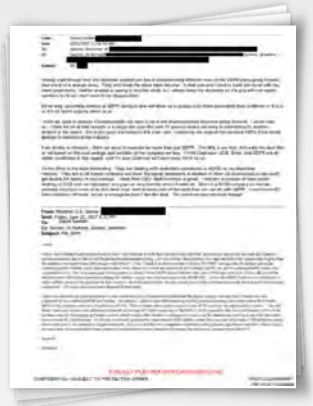
> "**[W]e have absolutely no idea how our negative publicity will play with investors. It may be that we're tainted and the negative press around Oxy will decimate a smaller company's stock price**.... If we merge with a company like SEPR the **analysts could very well start saying crazy things about future liabilities** and we could see the value of our investment seriously diminished....

PWG004473999

- This 2007 email is not probative of any concern about litigation risk — and certainly not in 2008-16, when the distributions were made

8. June 25, 2007, Email from David Sackler to Jonathan, Mortimer and Richard Sackler re: SEPR (Hurley Ex. 66)

- Another email by 26 year-old Purdue-outsider David Sackler, to his cousin, father and uncle, all of whom were Purdue directors
- The subject is a potential merger with Sepracor, Inc (SEPR)
- David asks whether the family really wants to be in the pharmaceutical business
- He also says he will "support the decision 100%" if his cousin, father and uncle want to stay in the industry
- This 2007 email is not probative of any concern about litigation risk at any time



PWG0044 73999

9. July 24, 2007, Memo from Peter Boer to Jon Sackler About a Potential Sale of All of the Families' Pharmaceutical Assets (Hurley Ex. 69)

- Peter Boer was a former W.R. Grace executive who later served as an outside director of PPI
- He talks about his experience at Grace, which had asbestos liability
- Writing in the wake of Purdue's 2007 guilty plea, he says that legal liabilities will impact the sale value of Purdue "until interest in litigation has died down"
  - All of the litigation filed after the federal plea was settled or dormant by 2010-2011
- The UCC falsely states that the memo "recommend[ed] the Sacklers take 'defensive measures'"
- He did not recommend that the family take defensive measures, and no one took any defensive measures.

PPLPUCC90000491386

9. July 24, 2007, Memo from Peter Boer to Jon Sackler About a Potential Sale of All of the Families' Pharmaceutical Assets (Hurley Ex. 69)

- Mr. Boer wrote:

> "[I]t may be that overseas assets with limited transparency and jurisdictional shielding from U.S judgments will be less attractive to litigants than domestic assets. Obviously, this factor depends on how the ownership is structured, and I presume the family has taken most of the appropriate defensive measures."

- He had no idea what the organizational structure of the family's holdings was
- The B side's ownership of the IACs has always been based in the US
- The B side trusts that own Purdue were settled in 1974 and 1989 — years before OxyContin was launched
- This 2007 email — written by a non-family member, which generated no action by the family — does not show any concern about litigation in 2008-2016, when the distributions were made

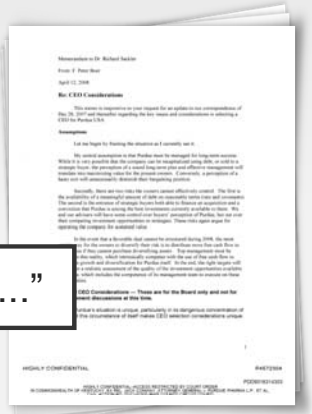
PPLPUCC90000491386

10. April 12, 2008 Memo Re: CEO Considerations (Hurley Ex. 70)

- The subject of this email is CEO loyalty in context of possible sale or recapitalization of Purdue
- The UCC deceptively states that this memo "***lamented Purdue's dangerous concentration of risk***." (UCC Exceptions Motion ¶25)
- The memo identified the risk it is discussing 3 times — and it is not opioid litigation
- It was Purdue's "***period of [patent] exclusivity [for OxyContin], currently estimated to be through 2013***" (Memo at pp. 2 (first para. under Priority 1), 3, 4)
- The memo says nothing about opioid litigation and emphasizes the importance of compliance with law:

> "[Major risks must be avoided, especially non-compliance with the Corporate Integrity Agreement…."

- This memo does not evince any concern about opioid litigation risk



4/08 CEO Considerations Memo, p. 2 (PDD9316314304)

"Badges of Fraud" Do Not Evidence Actual Intent

"Badges of Fraud" Do Not Evidence Actual Intent

The badges of fraud operate as **circumstantial evidence** of fraudulent intent.

Direct evidence establishes that Purdue made the distributions in good faith and without reason to believe it would face insurmountable opioid-related litigation.

Prepetition complaints asserting fraudulent transfer did not plead, and the facts do not reflect, the presence of most of the traditional badges of fraud.

In re Chin, 492 B.R. 117, 132 (Bankr. E.D.N.Y. 2013)

"The availability of badges of fraud as circumstantial evidence fulfills an important function, but the utility of a checklist can only go so far."

In re Stanton, 457 B.R. 80, 94 (Bankr. D. Nev. 2011)

"Because they are only evidence of the likelihood of fraud, badges of fraud are not given equal weight; and sometimes the circumstances indicate they should be given no weight at all."

All Distributions Were Made In The Ordinary Course Of Business

- **The distributions occurred regularly, after formal approval by PPI's Board of Directors.**
- **This is the opposite of a suspect strategy to evade an anticipated debt.**

Lippe v. Bairnco Corp., 249 F. Supp. 2d 357, 384 (S.D.N.Y. 2003) *aff'd*, 99 F. App'x 274 (2d Cir. 2004)

No reasonable jury could conclude that quarterly dividends paid over ten-year period were intended *"to keep the assets away from asbestos creditors."*

Distributions Were Not A Secret

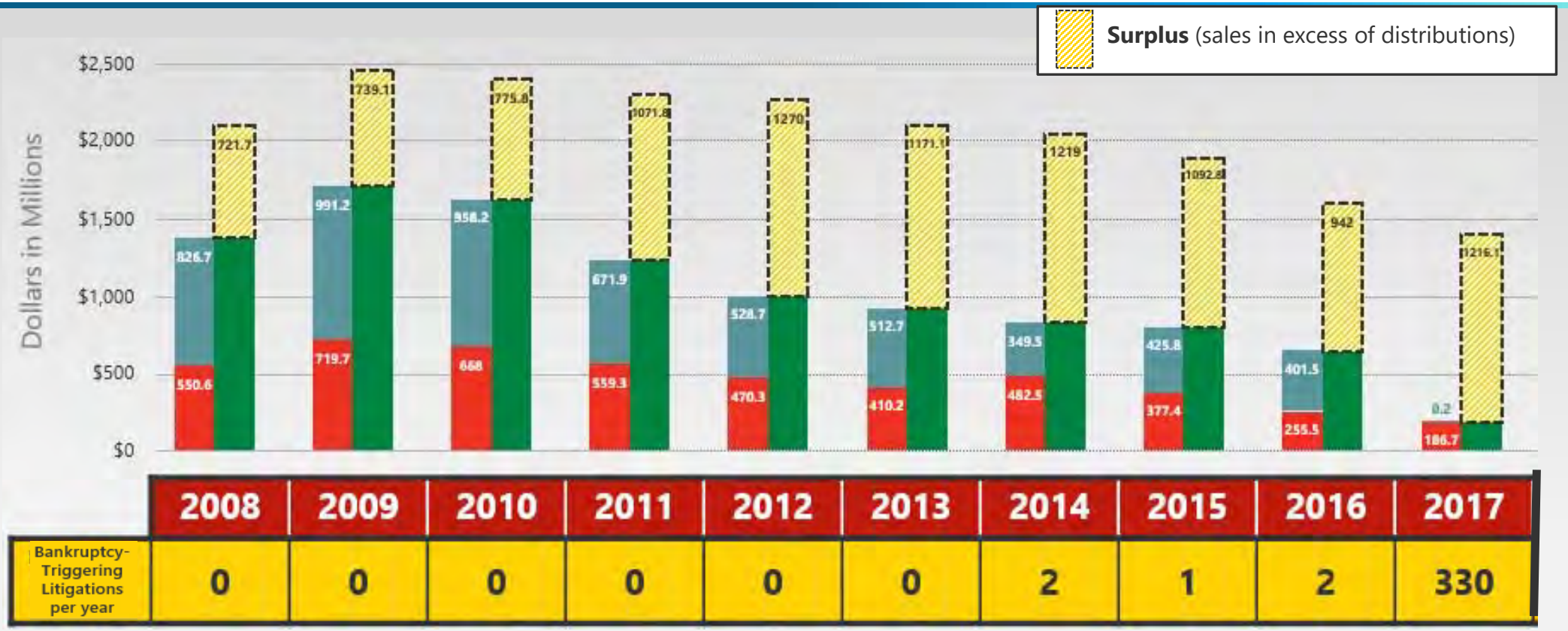
- Publicly reported
- Many paid in taxes to governmental Claimants

Forbes

> Forbes estimates that the combined value of the drug operations, as well as accumulated dividends over the years, puts the Sackler family's net worth at a conservative $14 billion.

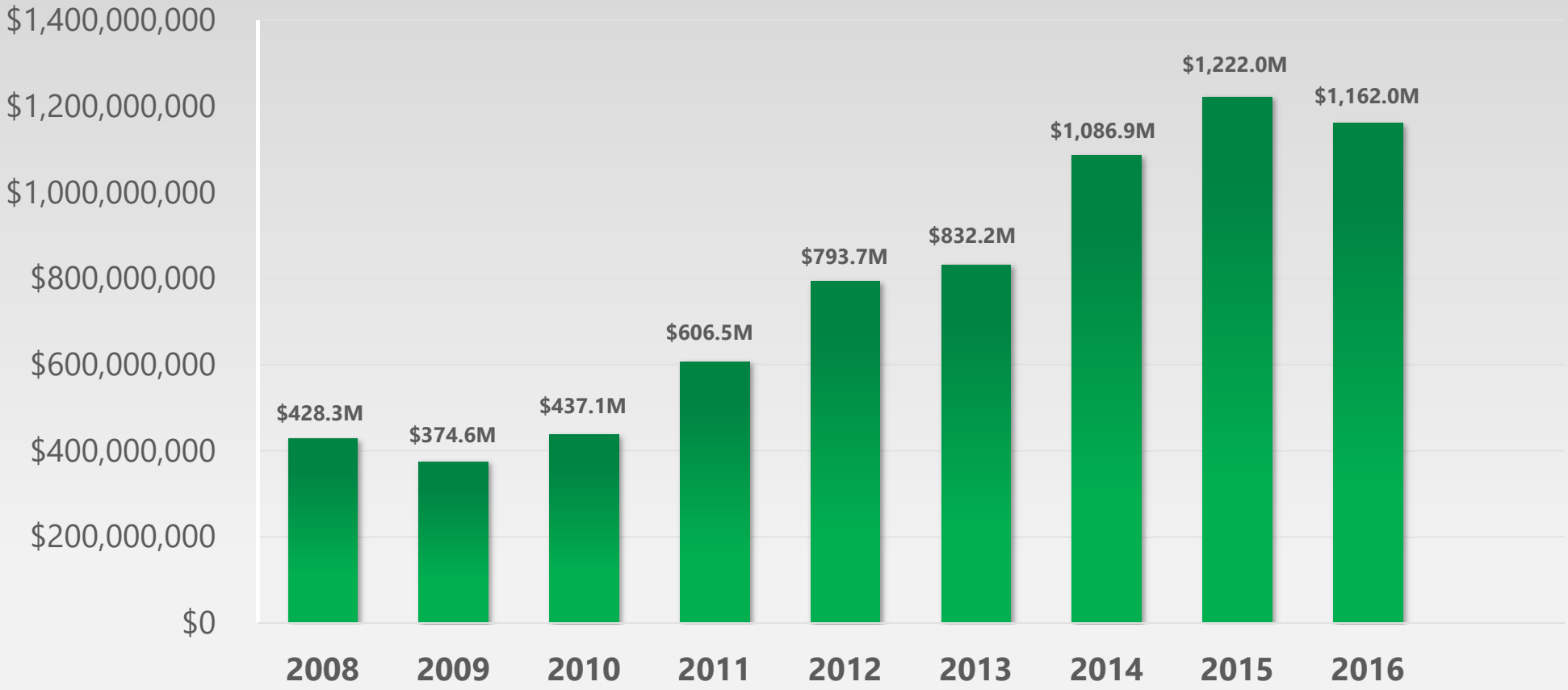
Alex Morrell, The OxyContin Clan: The $14 Billion Newcomer to Forbes 2015 List of Richest U.S. Families, FORBES (Jul. 1, 2015), https://www.forbes.com/sites/alexmorrell/2015/07/01/the-oxycontin-clan-the-14-billion-newcomer-to-forbes-2015-list-of-richest-u-s-families/#2b664fa475e0 (cited in NY AG FAC ¶420)

Distributions Were Always A Fraction Of Net Sales



	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Bankruptcy-Triggering Litigations per year	0	0	0	0	0	0	2	1	2	330

The Board Left Enormous Amounts of Unrestricted Cash In Purdue After Distributions



Sources: PPLPC031001244649 (2008-12); PPLPC051000265076 (2013-14); PPLPC045000018249 (2015); PPLPC032000398822 (2016)

Constructive Fraudulent Transfer

Claimants Must Prove Transfers Were Made Without Fair Consideration While The Transferor:

1. **Was insolvent** (DCL §§271, 273)
2. **Was undercapitalized** (DCL §274) **or**
3. **Believed or intended to incur debts beyond the transferor's ability to pay as the debts mature** (DCL §275)

Claimants Cannot Make Any of These Showings

- **Purdue was profitable when distributions were made and did not have meaningful funded or trade debt**
- **It had billions in annual sales and enormous amounts of unrestricted cash**
- **It had no significant litigation**
- **Its only material potential liabilities today are the disputed and unliquidated litigation claims that emerged after the last of the distributions**

Purdue Was Not Insolvent When The Transfers Were Made

New York Debtor & Creditor Law: §271

*"A person is insolvent when the present fair salable value of his assets is less than the amount that will be required to pay his **probable** liability on his existing debts as they become absolute and matured."*

- **Purdue was not insolvent unless, at the time of each distribution, it was "probable" it would face insurmountable opioid-related litigation and judgments**
- **Claimants bear the burden of proving insolvency**

McCarthy v. Estate of McCarthy, 145 F. Supp. 3d 278, 286 (S.D.N.Y. 2015)

Hindsight Cannot Guide The Analysis

FSP, Inc. v. Societe Generale, 2005 WL 475986, at *15 (S.D.N.Y. Feb. 28, 2005)

Whether transferor was solvent *"must be gauged at the time of the transfer and not with the benefit of hindsight."*

In re Trinsum Group, Inc., 460 B.R. 379, 392 (Bankr. S.D.N.Y. 2011)

"[I]nsolvency of the transferor… cannot be presumed from subsequent insolvency at a later point in time."

Speculative Liabilities Are Not "Probable"

FSP, Inc. v. Societe Generale, 2005 WL 475986, at *15 (S.D.N.Y. Feb. 28, 2005)

> *"The hypothetical existence of liabilities, from future tort claims … is not considered for purposes of a fraudulent conveyance analysis. … [Plaintiff]'s fraudulent conveyance counterclaim is, therefore, legally insufficient because it is premised on the [defendant]'s lack of sufficient assets to pay its debtor creditors as a result of future potential tort claims of an unknown monetary amount."*

Speculative Liabilities Are Not "Probable"

Shelly v. Doe, 249 A.D.2d 756, 757 (3d Dep't 1998)

"***In our view the amount of his probable debt to respondent should not be considered as it was entirely speculative in 1993***. *Therefore, we find that respondent did not establish that Shelly was rendered insolvent by the transfer of the firearms, thereby precluding respondent's utilization of Debtor and Creditor Law §273.*"

Tae H. Kim v. Ji Sung Yoo, 311 F. Supp. 3d 598, 616 (S.D.N.Y. 2018)

"***[I]t cannot be said that Ji Sung had probable liability in the context of the DOL on those debts at the time of the Condo's conveyance***. *It took the DOL investigating and assessing penalties and the FLSA Action entering a judgment to get Ji Sung to pay lawful wages; the evidence has not established that there was probability he would have been 'required to pay' that liability absent those actions occurring.*"

Speculative Liabilities Are Not "Probable"

In re Edgewater Med. Ctr., 373 B.R. 845, 855 (N.D. Ill. Bankr. 2007)

"***To reach a finding of insolvency … the court would have to disregard the large amounts of cash the debtor had on hand and speculate on what the Department of Human Services would have done if it had discovered the Medicare fraud***. *The court declines to engage in that type of speculation and finds and concludes that the plaintiff has not met its burden of proving insolvency.*"

Mere Existence of Uncertain and Disputed Claims Is Insufficient

McCarthy v. Estate of McCarthy, 145 F. Supp. 3d 278, 286 (S.D.N.Y. 2015)

> *"'Claims that are inchoate, uncertain, and contested have no present value and cannot be considered an asset of the [transferor].'"*

Lippe v. Bairnco Corp.

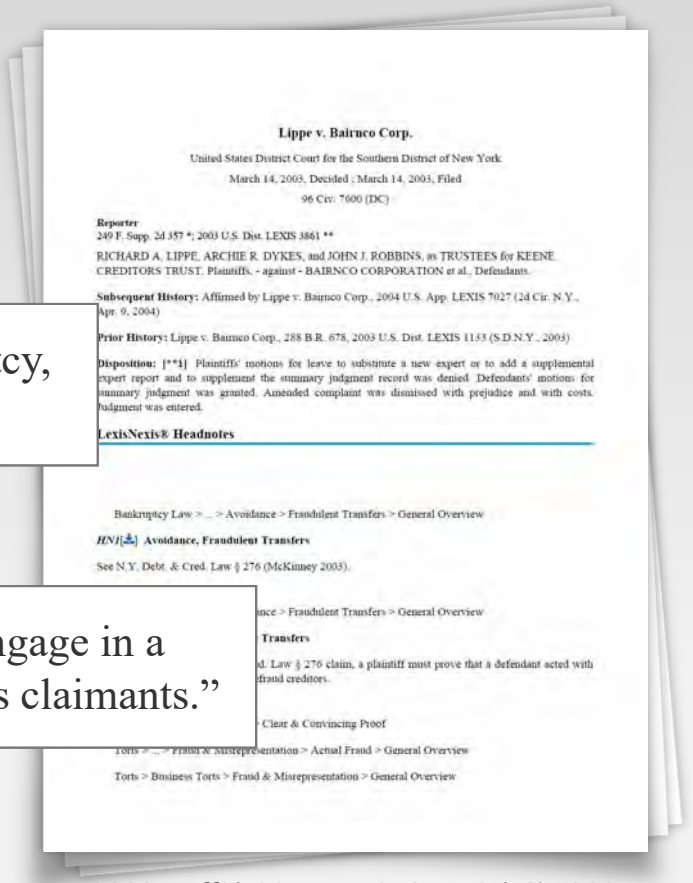
Lippe v. Bairnco is the leading case on how disputed and unliquidated mass-tort liability factors into the fraudulent transfer analysis.

The plaintiffs contended that Keene, which had manufactured asbestos products:

> "knew in the early 1980s, more than a decade before it went into bankruptcy, that someday it would be overrun by asbestos personal injury cases"

And that:

> "Keene and its management consequently concocted a grand scheme to engage in a series of corporate transactions to hide Keene's assets from future asbestos claimants."



Lippe v. Bairnco Corp.

United States District Court for the Southern District of New York

March 14, 2003, Decided ; March 14, 2003, Filed

96 Civ. 7600 (DC)

Reporter
249 F. Supp. 2d 357 *; 2003 U.S. Dist. LEXIS 3861 **

RICHARD A. LIPPE, ARCHIE R. DYKES, and JOHN J. ROBBINS, as TRUSTEES for KEENE CREDITORS TRUST, Plaintiffs, - against - BAIRNCO CORPORATION et al., Defendants.

Subsequent History: Affirmed by Lippe v. Bairnco Corp., 2004 U.S. App. LEXIS 7027 (2d Cir. N.Y., Apr. 9, 2004)

Prior History: Lippe v. Bairnco Corp., 288 B.R. 678, 2003 U.S. Dist. LEXIS 1133 (S.D.N.Y., 2003)

Disposition: [**1] Plaintiffs' motions for leave to substitute a new expert or to add a supplemental expert report and to supplement the summary judgment record was denied. Defendants' motions for summary judgment was granted. Amended complaint was dismissed with prejudice and with costs. Judgment was entered.

LexisNexis® Headnotes

Bankruptcy Law > ... > Avoidance > Fraudulent Transfers > General Overview

HN1[] **Avoidance, Fraudulent Transfers**

See N.Y. Debt. & Cred. Law § 276 (McKinney 2003).

...ince > Fraudulent Transfers > General Overview

Transfers

...d. Law § 276 claim, a plaintiff must prove that a defendant acted with ...fraud creditors.

...Clear & Convincing Proof

Torts > ... > Fraud & Misrepresentation > Actual Fraud > General Overview

Torts > Business Torts > Fraud & Misrepresentation > General Overview

Lippe v. Bairnco Corp., 249 F. Supp. 2d 357, 360 (S.D.N.Y. 2003), *aff'd*, 99 F. App'x 274 (2d Cir. 2004)

Lippe v. Bairnco Corp.

In evaluating Keene's solvency, the court stated that

> … no one could predict the future…

Id. at 379-80

and focused on the debtor's **actual experience** with asbestos lawsuits.

To determine whether, at the time of each transfer, it was reasonable to infer that Keene was insolvent, the court considered:

- The actual number of cases filed and predicted to be filed against Keene;
- Cases filed against Manville, another major asbestos manufacturer; and
- Keene's success in defending against liability or settling cases for manageable sums or within existing insurance limits.

Lippe v. Bairnco Corp.

United States District Court for the Southern District of New York

March 14, 2003, Decided ; March 14, 2003, Filed

96 Civ. 7600 (DC)

Reporter
249 F. Supp. 2d 357 *; 2003 U.S. Dist. LEXIS 3861 **

RICHARD A. LIPPE, ARCHIE R. DYKES, and JOHN J. ROBBINS, as TRUSTEES for KEENE CREDITORS TRUST, Plaintiffs, - against - BAIRNCO CORPORATION et al., Defendants.

Subsequent History: Affirmed by Lippe v. Bairnco Corp., 2004 U.S. App. LEXIS 7027 (2d Cir. N.Y., Apr. 9, 2004)

Prior History: Lippe v. Bairnco Corp., 288 B.R. 678, 2003 U.S. Dist. LEXIS 1133 (S.D.N.Y., 2003)

Disposition: [**1] Plaintiffs' motions for leave to substitute a new expert or to add a supplemental expert report and to supplement the summary judgment record was denied. Defendants' motions for summary judgment was granted. Amended complaint was dismissed with prejudice and with costs. Judgment was entered.

LexisNexis® Headnotes

Bankruptcy Law > ... > Avoidance > Fraudulent Transfers > General Overview

HN1[] **Avoidance, Fraudulent Transfers**

See N.Y. Debt. & Cred. Law § 276 (McKinney 2003).

Bankruptcy Law > ... > Avoidance > Fraudulent Transfers > General Overview

HN2[] **Avoidance, Fraudulent Transfers**

To prevail on a N.Y. Debt. & Cred. Law § 276 claim, a plaintiff must prove that a defendant acted with actual intent to hinder, delay, or defraud creditors.

Evidence > Burdens of Proof > Clear & Convincing Proof

Torts > ... > Fraud & Misrepresentation > Actual Fraud > General Overview

Torts > Business Torts > Fraud & Misrepresentation > General Overview

Lippe Ruled Keene Was Not Insolvent

Keene was hotly contesting many of these cases and it believed that many of the cases were meritless and that the amounts sought were exaggerated.

249 F. Supp. 2d at 380

From 1984 through 1990, it won 97% of the cases that went to verdict, and lost only a total of $192,143 in the cases in which there were adverse verdicts.

Id.

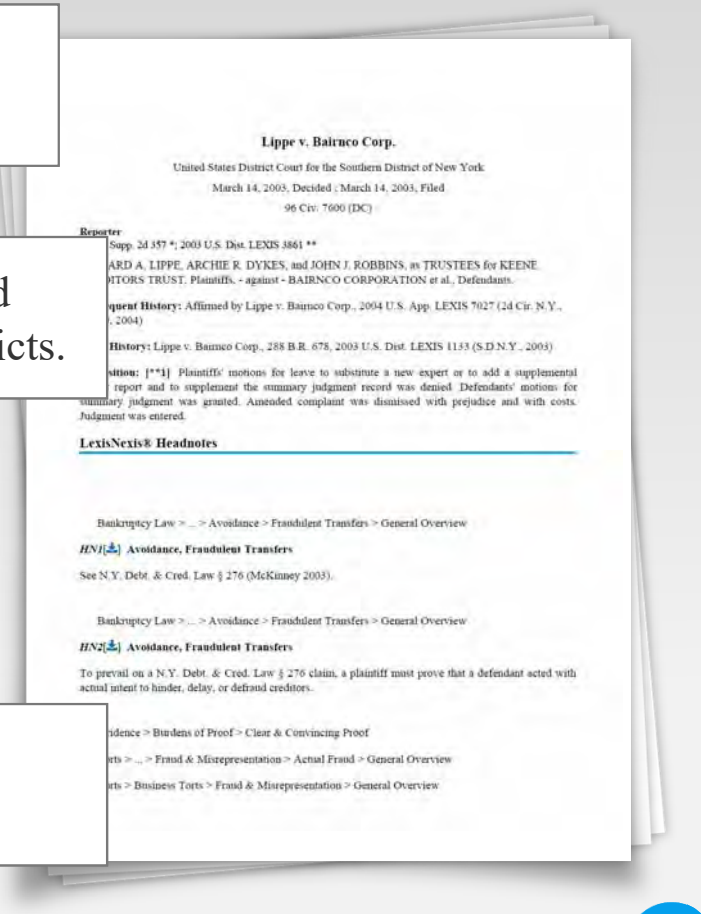
While

Keene believed the asbestos problem to be a serious one…

Id. at 381

this

…does not constitute evidence that Keene knew that someday it would be overwhelmed by the asbestos cases.



Lippe v. Bairnco Corp.

United States District Court for the Southern District of New York

March 14, 2003, Decided ; March 14, 2003, Filed

96 Civ. 7600 (DC)

Reporter

Supp. 2d 357 *; 2003 U.S. Dist. LEXIS 3861 **

ARD A. LIPPE, ARCHIE R. DYKES, and JOHN J. ROBBINS, as TRUSTEES for KEENE ITORS TRUST, Plaintiffs, - against - BAIRNCO CORPORATION et al., Defendants.

quent History: Affirmed by Lippe v. Bairnco Corp., 2004 U.S. App. LEXIS 7027 (2d Cir. N.Y., , 2004)

History: Lippe v. Bairnco Corp., 288 B.R. 678, 2003 U.S. Dist. LEXIS 1133 (S.D.N.Y., 2003)

sition: [**1] Plaintiffs' motions for leave to substitute a new expert or to add a supplemental report and to supplement the summary judgment record was denied. Defendants' motions for summary judgment was granted. Amended complaint was dismissed with prejudice and with costs. Judgment was entered.

LexisNexis® Headnotes

Bankruptcy Law > ... > Avoidance > Fraudulent Transfers > General Overview

HN1[] **Avoidance, Fraudulent Transfers**

See N.Y. Debt. & Cred. Law § 276 (McKinney 2003).

Bankruptcy Law > ... > Avoidance > Fraudulent Transfers > General Overview

HN2[] **Avoidance, Fraudulent Transfers**

To prevail on a N.Y. Debt. & Cred. Law § 276 claim, a plaintiff must prove that a defendant acted with actual intent to hinder, delay, or defraud creditors.

idence > Burdens of Proof > Clear & Convincing Proof

rts > ... > Fraud & Misrepresentation > Actual Fraud > General Overview

rts > Business Torts > Fraud & Misrepresentation > General Overview

Application of *Lippe* Factors to Purdue

- The **actual number of cases** filed and predicted to be filed against Purdue.
  - Minimal until 2017.
- **Purdue's success in defending against liability** or **settling cases for manageable sums** or within existing insurance limits.
  - All within Purdue's ability to pay.

Purdue's 2020 Guilty Plea and Civil Settlement Do Not Establish Its Insolvency As Against Its Owners

Purdue's 2020 Guilty Plea and Civil Settlement Do Not Establish Its Insolvency As Against Its Owners

- In its guilty plea, Purdue agreed to accept a criminal fine of $3.544 billion and entry of a forfeiture judgment of $2 billion
  - Purdue was required to pay only $225 million, in partial satisfaction of the forfeiture
  - The entirety of the $3.544 billion criminal fine will be treated as an allowed, unsubordinated, general unsecured claim in the bankruptcy
  - The remaining $1.775 billion of the forfeiture will be satisfied by the first $1.775 billion in value that Purdue confers on state, tribal and local governments under the Plan of Reorganization
- In its civil settlement Purdue paid nothing — it agreed that the US will have an allowed, unsubordinated, general unsecured claim of $2.8 billion

Purdue's 2020 Guilty Plea and Civil Settlement Do Not Establish Its Insolvency As Against Its Owners

- Purdue's plea and settlement have no collateral estoppel effect against former directors who had no control over Purdue when it agreed to enter into them

  Stichting Ter Behartiging Van de Belangen Van Oudaandeelhouders In Het Kapitaal Van Saybolt Int'l B.V. v. Schreiber, 327 F.3d 173, 184, 186 (2d Cir. 2003)

- Nothing was litigated
- Purdue had no motivation to litigate
  - It had a motivation to settle with DOJ to get out of bankruptcy and become a public benefit company
- Purdue had no motivation to minimize dollars it was not paying
  - It had a motivation to minimize out-of-pocket dollars to maximize payments to victims

Purdue's 2020 Guilty Plea and Civil Settlement Do Not Establish Its Insolvency As Against Its Owners

- The merits of DOJ's claims were not litigated when the Bankruptcy Court approved Purdue's entry into the plea agreement and settlement
- The Court did not find that any of the facts admitted or denied by Purdue in the plea or settlement was true
- A debtor cannot settle itself into insolvency for purposes of establishing its own fraudulent transfer claim against its owners
- Insolvency must be judged at the time of each challenged transfer, not in hindsight
- The plea and settlement do not allege the dates when the financial liabilities Purdue agreed to were incurred
  - They allege only that Purdue's misconduct occurred over a span of eleven years, from 2007-2018

Purdue's 2020 Guilty Plea and Civil Settlement Do Not Establish Its Insolvency As Against Its Owners

- Purdue's insolvency at the time of each alleged transfer is a question of fact, and the evidence proves that Purdue was not insolvent when distributions were made

Purdue Was Adequately Capitalized And Did Not Intend To Incur Debts Beyond Its Ability To Pay

Purdue Was Adequately Capitalized

- Purdue was **profitable** at all relevant times and had **billions** in annual sales.
- Purdue had **huge amounts of unrestricted cash** on hand, more than a billion dollars a year — every year — from 2014 on.
- Purdue had **no meaningful financial or trade debt**.
- Purdue **survived for over a decade after the first challenged transfers** and at least two years after the last challenged transfer in 2017.

MFS/Sun Life Trust-High Yield Series v. Van Dusen Airport Servs. Co., 910 F. Supp. 913, 944 (S.D.N.Y. 1995)

(collecting cases that find adequate capitalization where the company paid their creditors for at least 10 to 12 months after the transfer)

> *"That the company remained viable so long after the LBO strongly suggests that its ultimate failure cannot be attributed to inadequacy of capital as of the date of the buyout."*

Purdue Did Not Intend To Incur Debts Beyond Its Ability To Pay

In re Nirvana Rest., 337 B.R. 495, 509 (Bankr. S.D.N.Y. 2006)

"Section 275 requires proof of ***the debtor's subjective intent*** or belief that it will incur debts beyond its ability to pay as they mature."

(citing *MFS/Sun Life Trust-High Yield Series v. Van Dusen Airport Servs. Co.*, 910 F. Supp. 913, 943 (S.D.N.Y. 1995))

To the extent Delaware or Connecticut law applies and imposes a "reasonably should have believed" standard, Purdue's distributions were not fraudulent because future judgments were not probable when the distributions were made.

Contemporaneous Market Data Shows That Sophisticated Market Participants Did Not Foresee The Flood Of Litigation Against Purdue Or Other Manufacturers

The Importance Of Contemporaneous Market Data

In re Iridium Operating LLC, 373 B.R. 283, 346-351 (Bankr. S.D.N.Y. 2007)

Courts view "*traditional valuation techniques and contemporaneous market evidence*," including a company's stock prices and "*assessments [by] market analysts*" as "*critical piece[s] of information in valuing a company*."

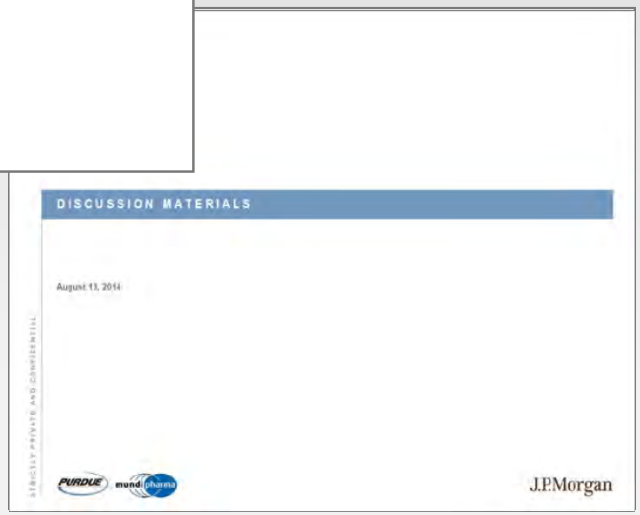
In 2014, JPMorgan Opined That Purdue Could Borrow $1 to $1.5 Billion

2014 JPMorgan Debt Capacity Analysis

Purdue retained JPMorgan to prepare a "comprehensive valuation and debt capacity analysis" in connection with a potential capital raise

- **J.P. Morgan opined that "the Company can raise approximately $1-$1.5bn" in debt financing**

JPMorgan Debt Capacity Presentation (8/13/14) at Slide 41



In 2016, S&P Found Purdue Creditworthy With Minimal Financial Risk

2016 Indicative Credit Ratings — Standard & Poor's

	Current Ratings	Scenario 1
Corporate Credit Rating	N/A	BB
Outlook	N/A	Stable
Senior Secured/Recovery	N/A	BBB-/1

- A historically conservative financial policy (this is the first debt placement) and very low leverage metrics support our "minimal" financial risk assessment.

April 7, 2016 S&P Indicative Ratings Letter

In 2016, Moody's Found Purdue Creditworthy With A Stable Outlook

2016 Indicative Credit Ratings — Moody's

Indicative Ratings

Moody's has assigned the below Indicative Ratings:

Corporate Family Rating at Ba3
Probability of Default Rating at Ba3-PD
$100million Senior Secured Revolving Credit Facility at Ba3 (LGD 3)
$400 million Senior Secured Term Loan at Ba3 (LGD 3)

Outlook: Stable

The Ba3 indicative Corporate Family Rating is supported by Purdue's low financial leverage… This will allow the company to absorb considerable operating or legal setbacks with minimal risk of debt impairment.

March 30, 2016 Moody's Indicative Ratings Letter

Comparable Opioid Manufacturers' Access To Capital Markets Shows Why Purdue Did Not Foresee Liabilities Beyond Its Ability to Pay Before 2017

Market Data Confirms The Absence Of Any Perceived Risk from Opioid Litigation Before 2017

Comparable companies' access to capital markets and credit ratings confirm that — at the time the distributions were made —

- **Sophisticated participants in the debt markets did not perceive substantial credit risk to opioid manufacturers, and**
- **Rating agencies did not view opioid litigation as a basis for a downgrade**

Comparable companies : **Mallinckrodt, Endo, Teva, and Amneal — all defendants in the MDL** (*In re: National Prescription Opiate Litigation*, Case No. 17-mdl-2804)

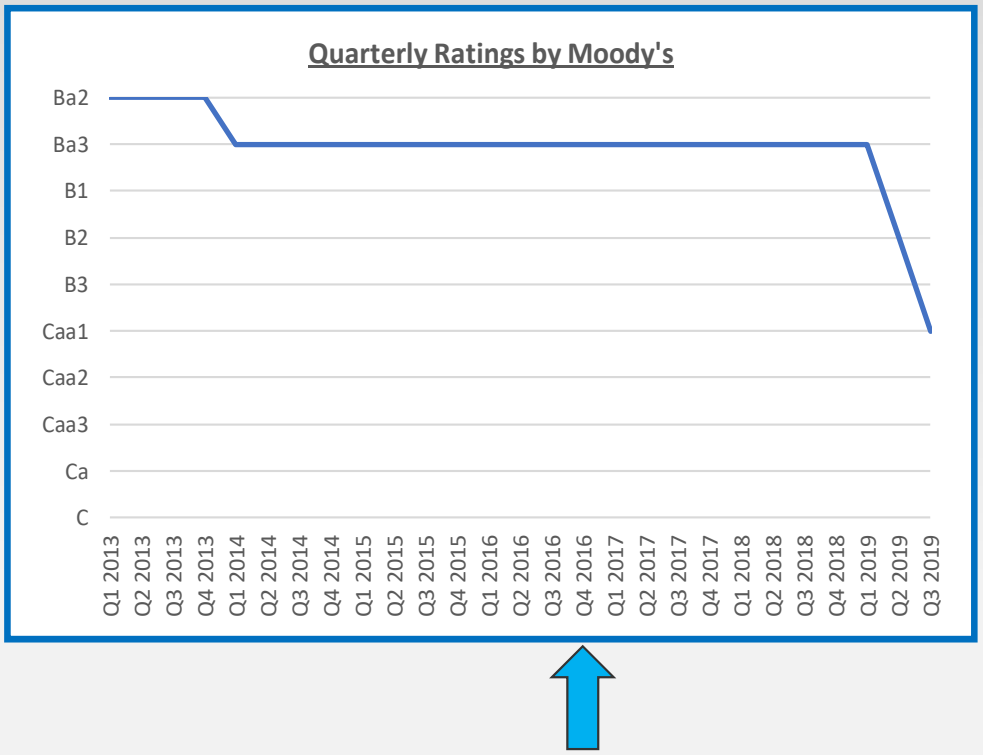
Comparable Opioid Manufacturers' Accessed Capital Markets And Raised New Bond Financing During And After The Time Distributions Were Made

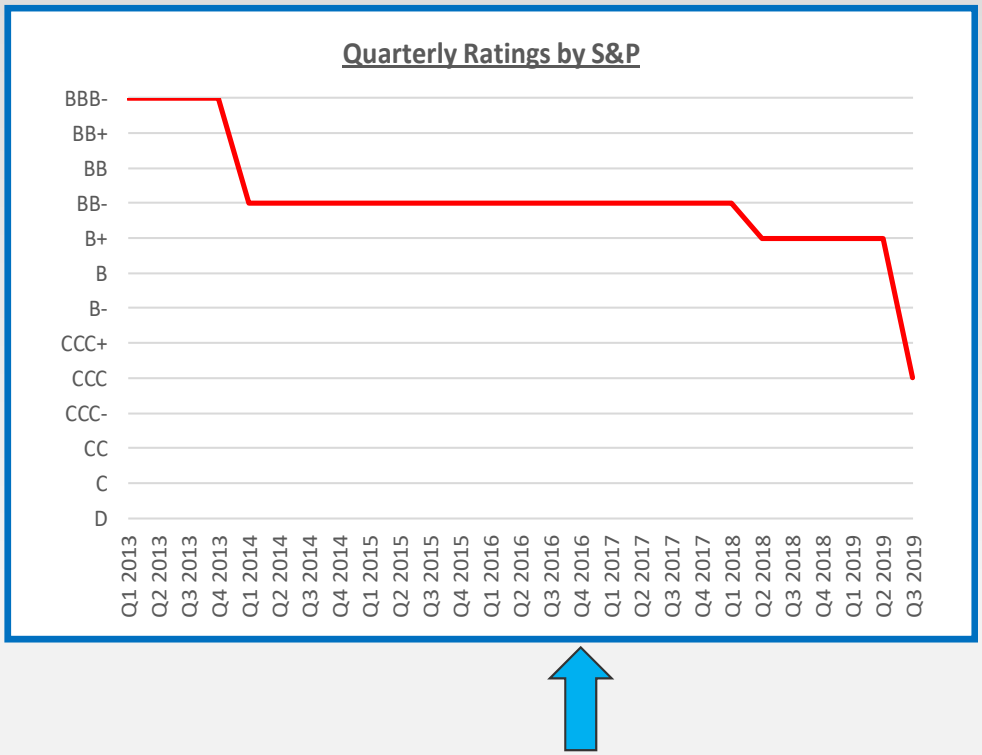
1. Mallinckrodt: 2014 and 2015
2. Endo: 2013, 2014, 2015, 2017 and 2019
3. Teva: 2011, 2012, 2015, 2016 and 2018
4. Amneal: 2018

See In re Iridium Operating LLC, 373 B.R. 283, 349 (Bankr. S.D.N.Y. 2007) (*ability to raise debt financing in the capital markets "is an indication of both solvency and capital adequacy"*)

Credit Ratings Of Comparable Opioid Manufacturers — Mallinckrodt

Mallinckrodt

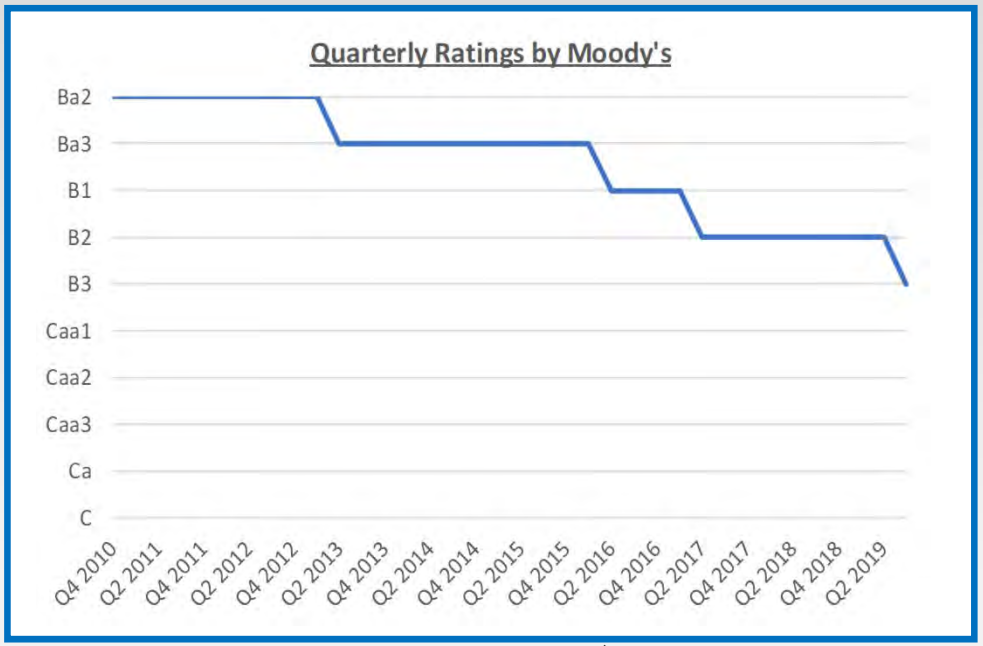


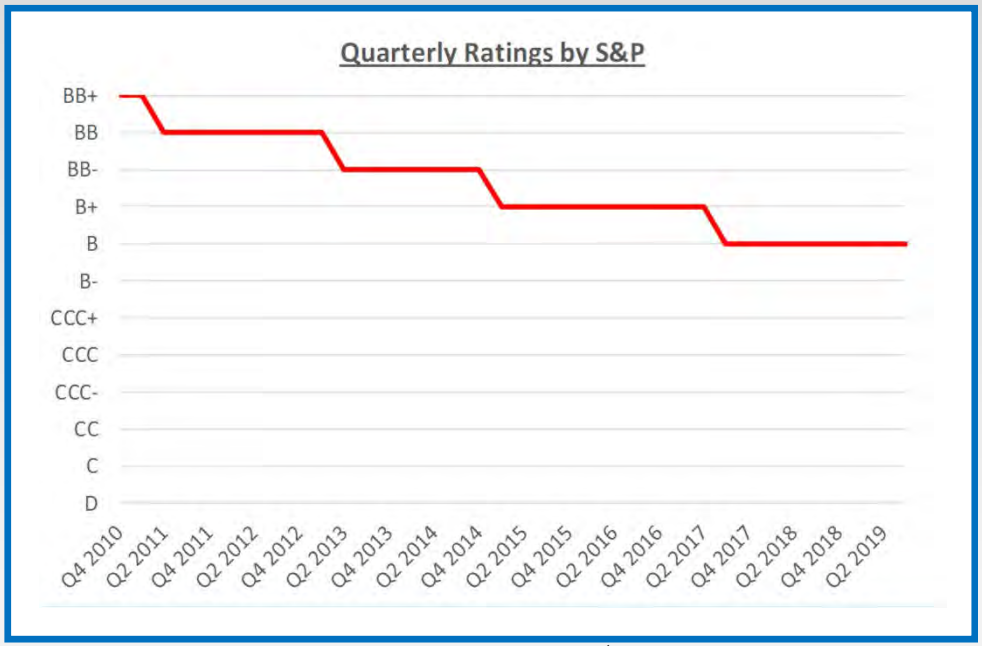


Source: Moodys.com (Rating Reports: March 2013 – September 2019), Bloomberg

Credit Ratings Of Comparable Opioid Manufacturers — Endo

Endo International

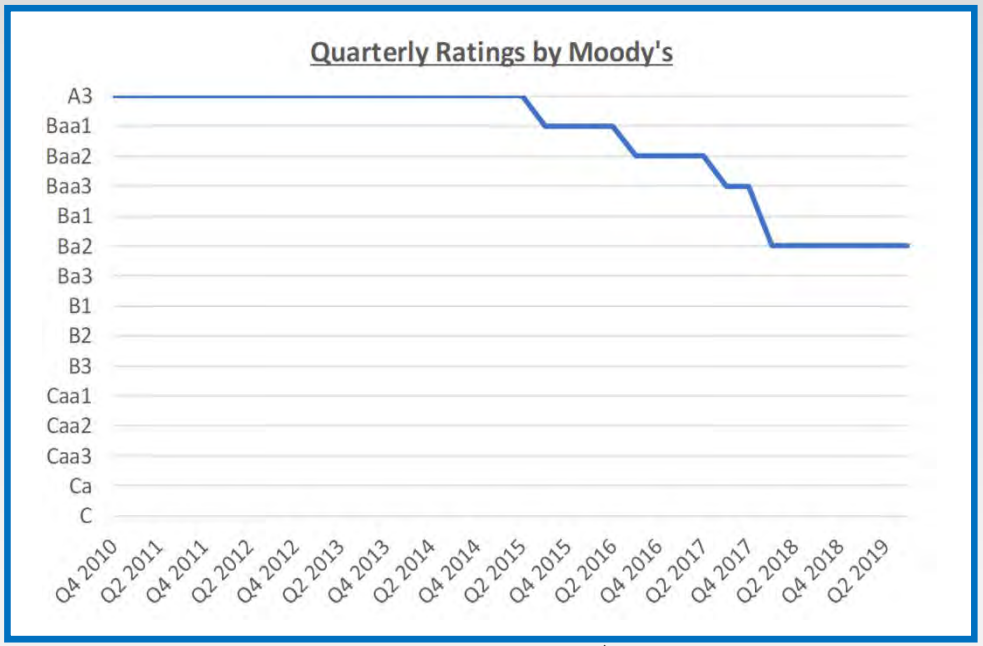


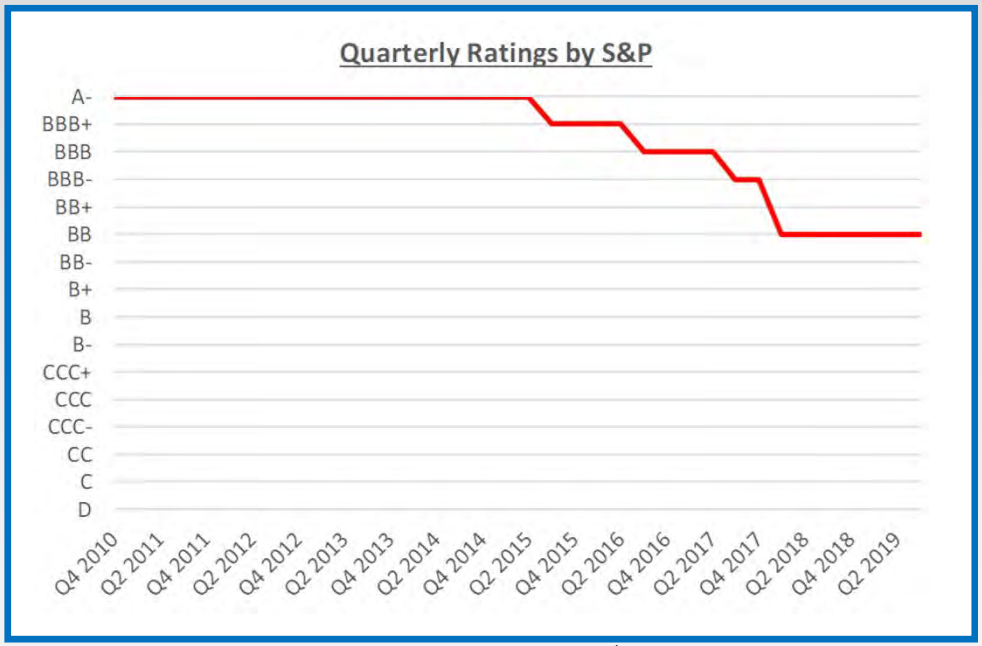


Source: Moodys.com (Rating Reports June 2013 – July 2019), Bloomberg

Credit Ratings Of Comparable Opioid Manufacturers — Teva

Teva Pharmaceuticals

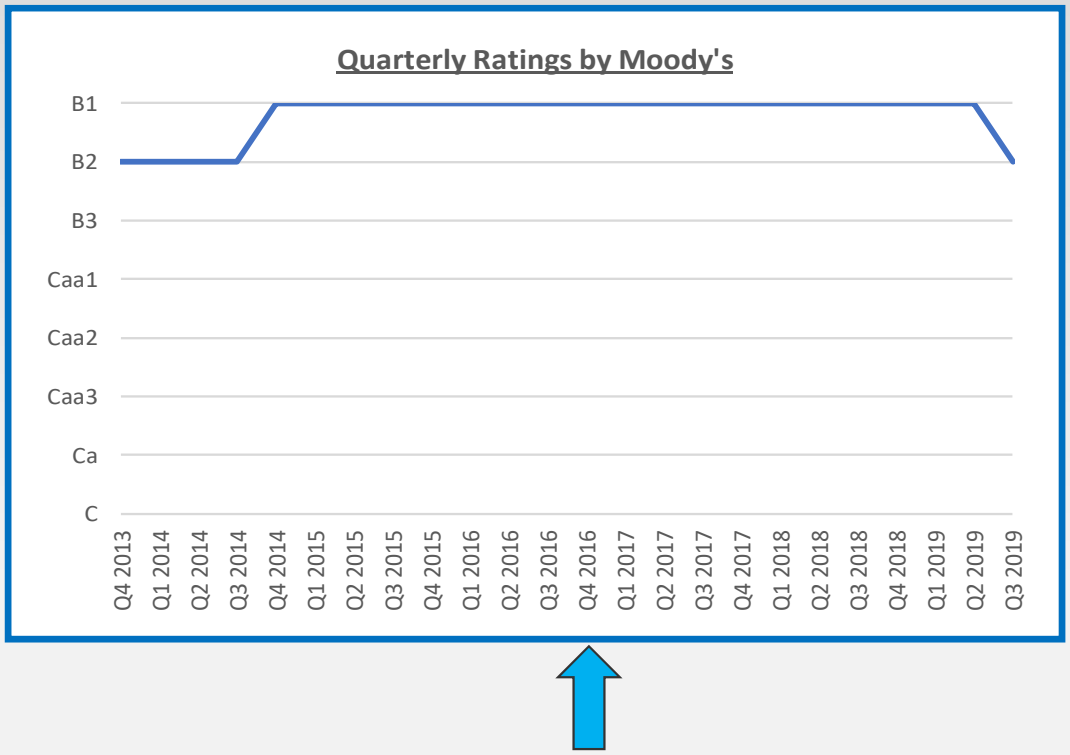




Source: Moodys.com (Rating Reports January 2010 – August 2019), Bloomberg

Credit Ratings Of Comparable Opioid Manufacturers — Amneal

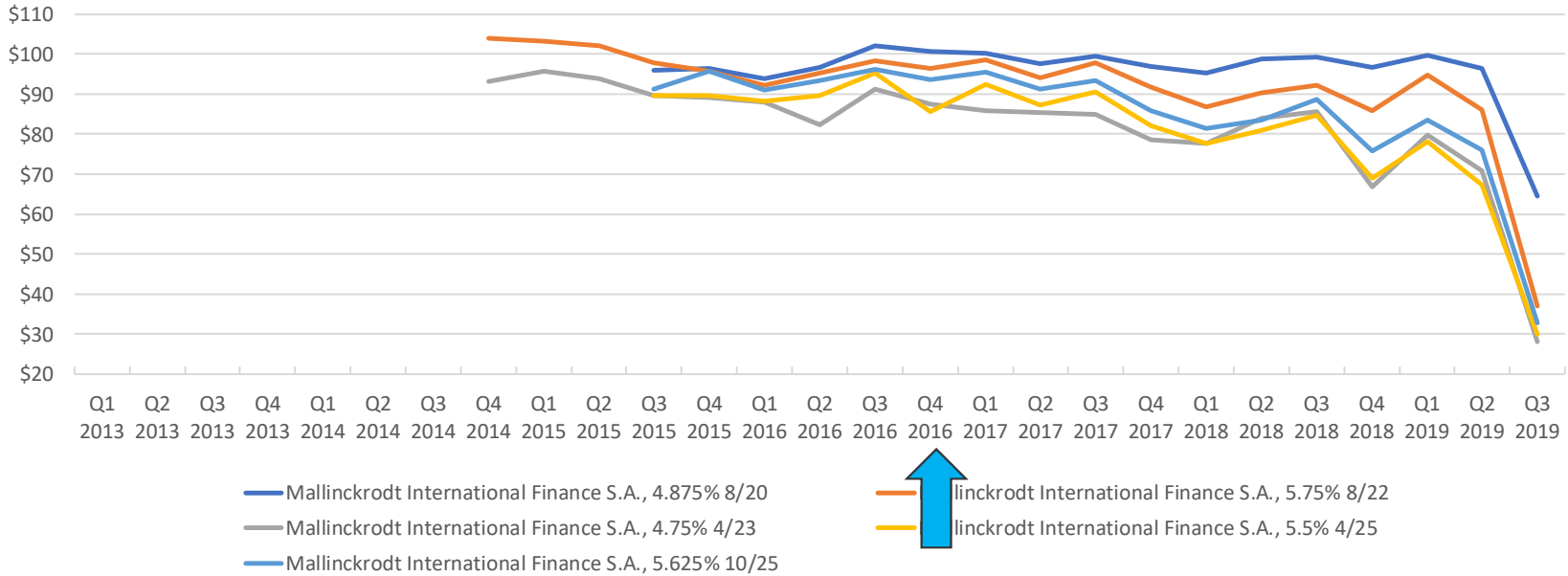
Amneal Pharmaceuticals



Source: Moodys.com (Rating Reports October 2013 – November 2019), Bloomberg

Bond Prices of Comparable Opioid Manufacturers Confirm No Perceived Credit Risk from Opioid Litigation Until 2018/2019 — Mallinckrodt

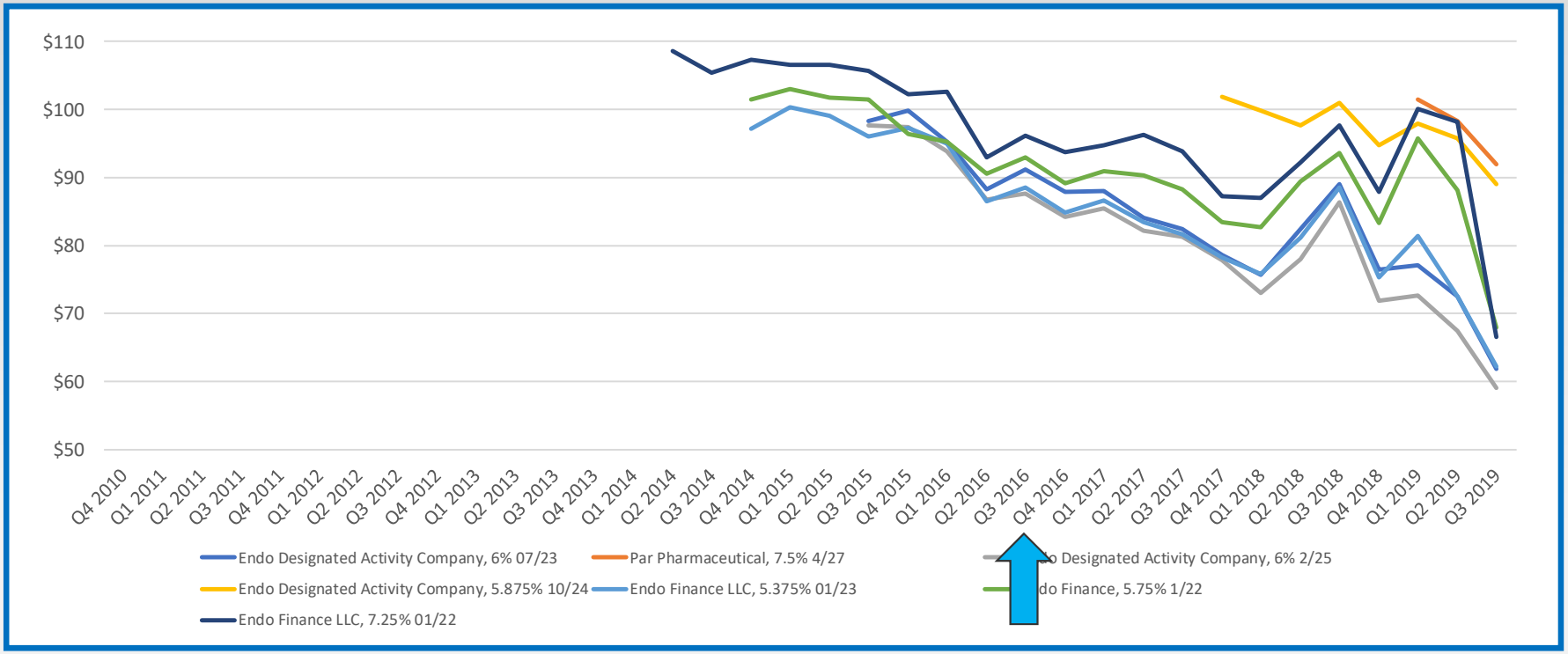
Mallinckrodt



Source: Bloomberg, Excludes Ludlow Corp, 8.0% 3/25 issued in 1993 as the bond is issued by a separate entity

Bond Prices of Comparable Opioid Manufacturers Confirm No Perceived Credit Risk from Opioid Litigation Until 2018/2019 — Endo

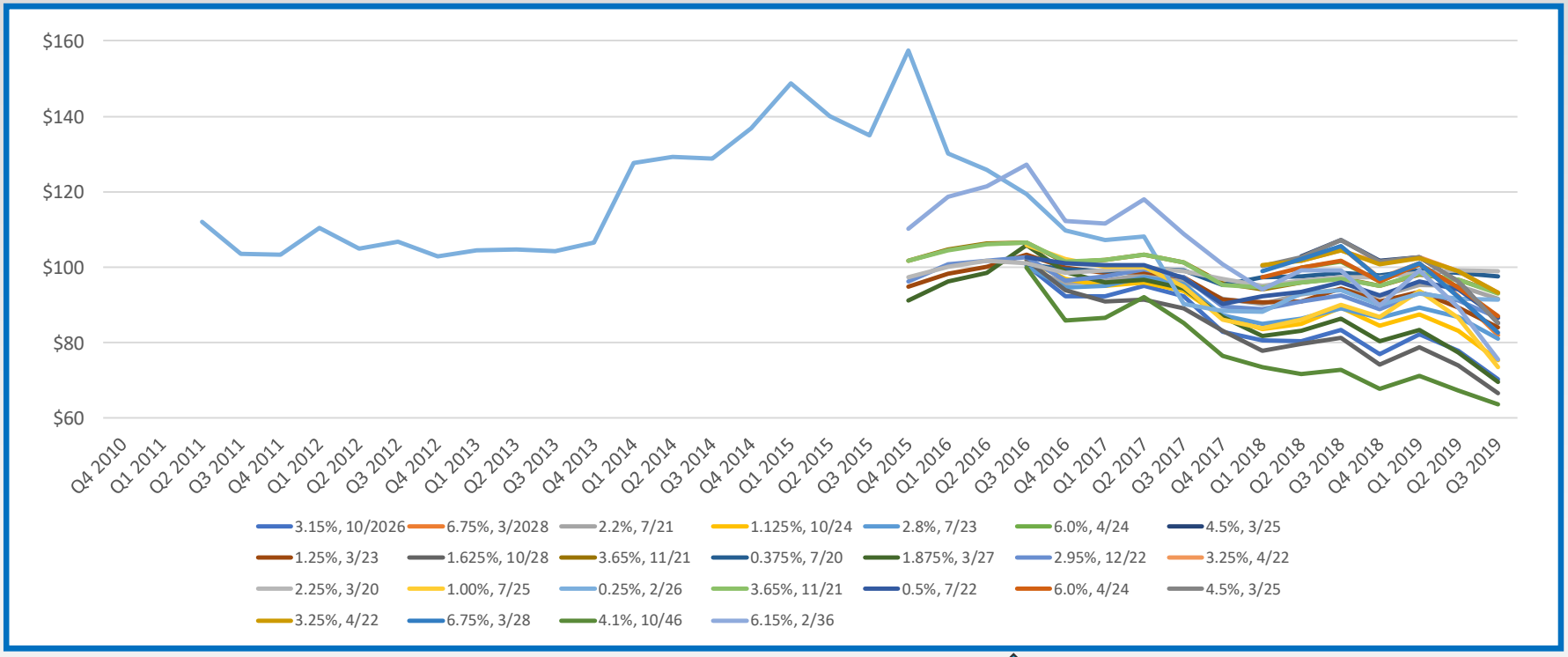
Endo International



Source: Bloomberg

Bond Prices of Comparable Opioid Manufacturers Confirm No Perceived Credit Risk from Opioid Litigation Until 2018/2019 — Teva

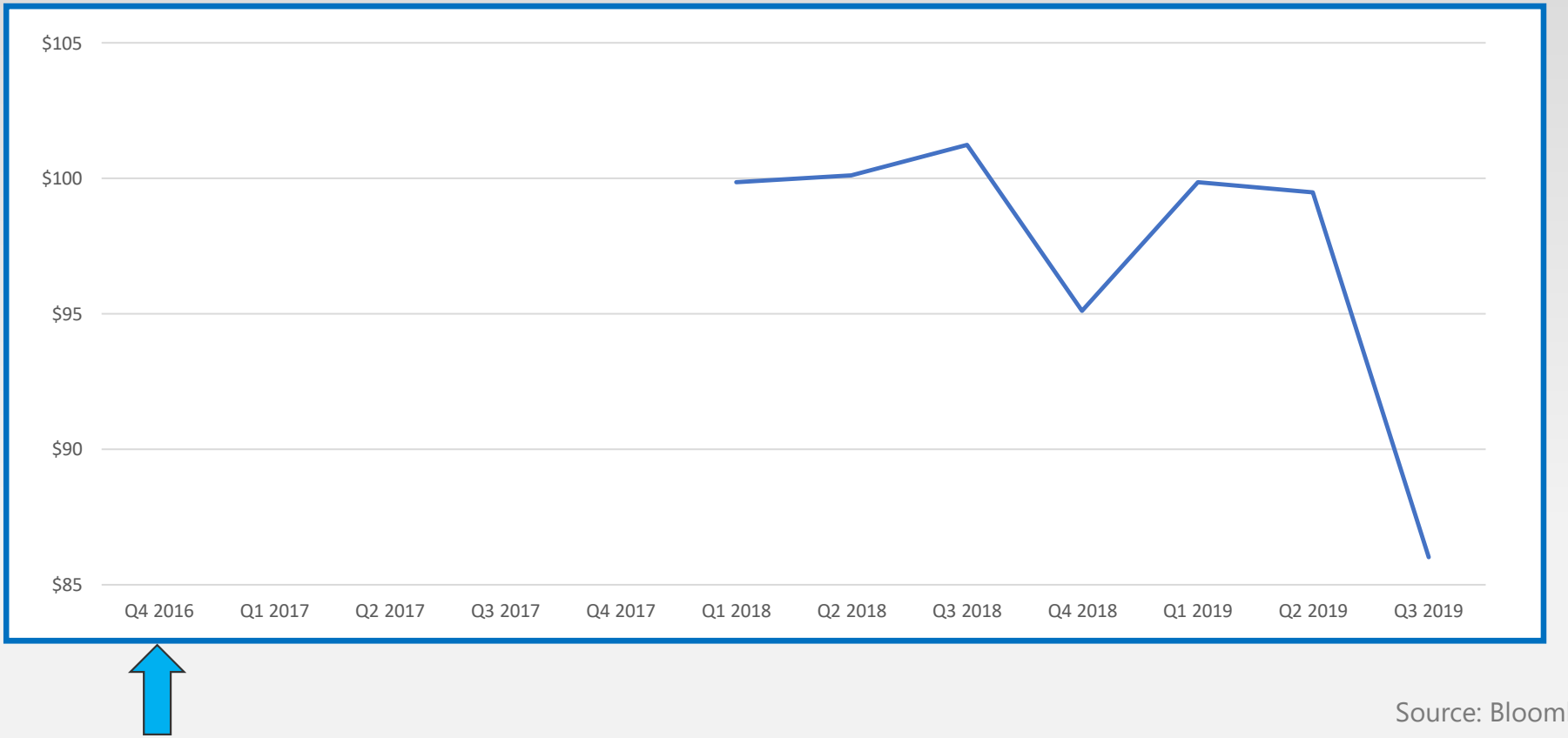
Teva Pharmaceuticals



Source: Bloomberg

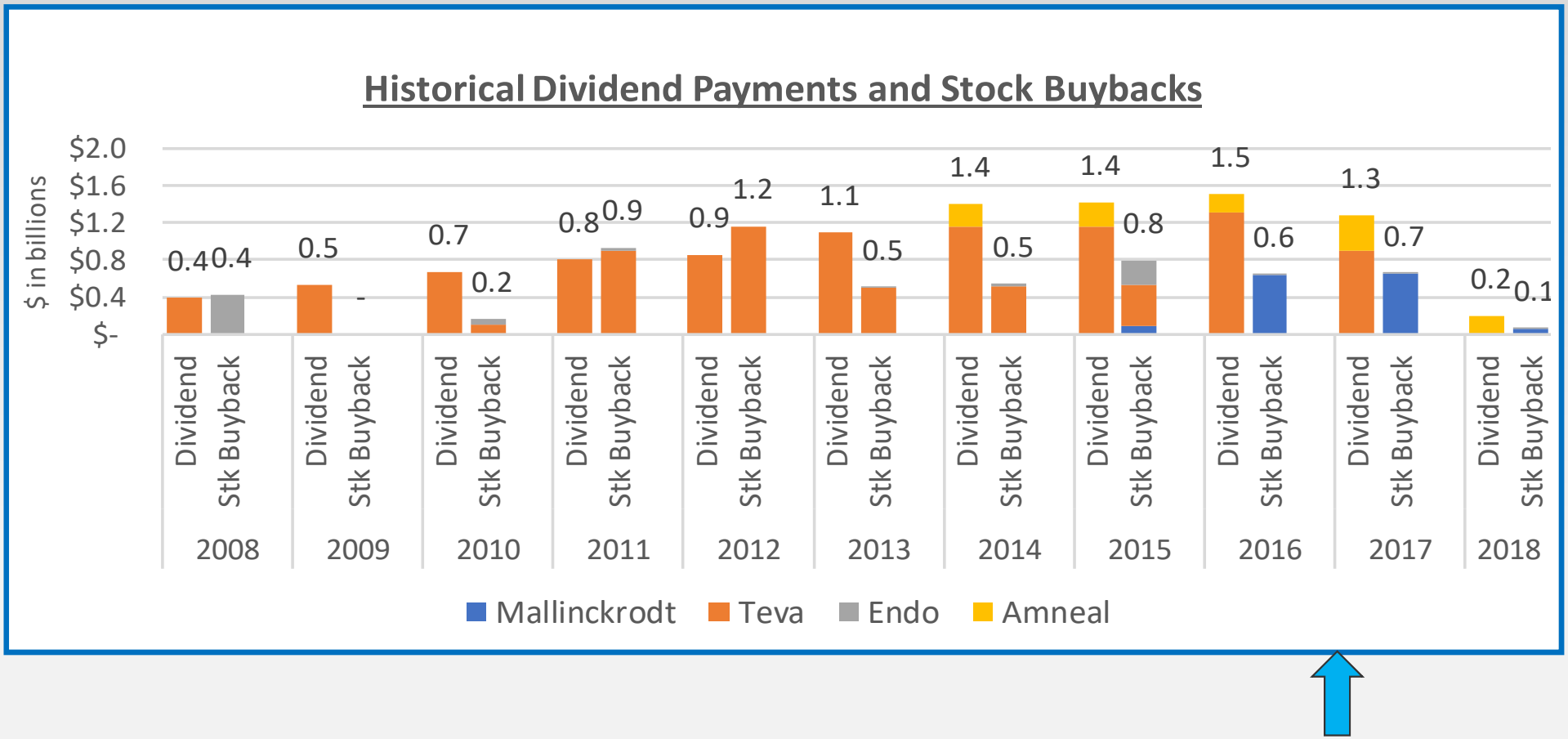
Bond Prices of Comparable Opioid Manufacturers Confirm No Perceived Credit Risk from Opioid Litigation Until 2018/2019 — Amneal

Amneal Pharmaceuticals



Source: Bloomberg

Dividend And Stock Buy-Back Activity of Comparable Opioid Manufacturers Confirm They Perceived Themselves As Healthy Until 2018



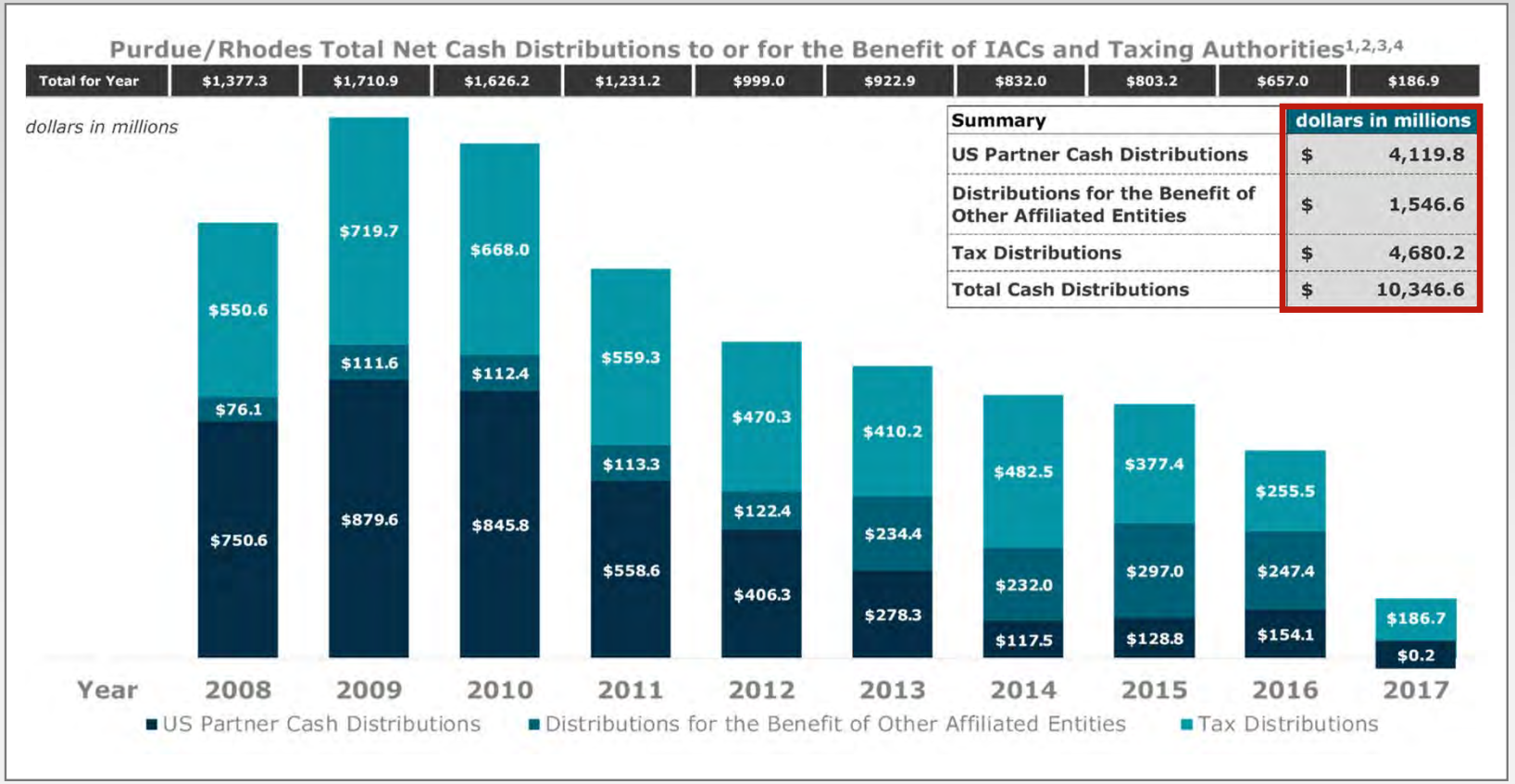
Comparable Manufacturers' Experience with Opioid Litigation Shows Why Purdue Did Not Foresee Liabilities Beyond Its Ability to Pay Before 2017

No Public Disclosures Of Opioid Litigation By Comparable Opioid Manufacturers Until 2018 — After Distributions Ended

Number Of Opioid-Litigation Disclosures in 10-K				
Year Disclosed	**MNK**	**ENDP**	**TEVA**	**AMRX**
2013	*0*	*No 10K*	*No 10K*	*No 10K*
2014	*0*	*No 10K*	*No 10K*	*No 10K*
2015	*0*	*0*	*No 10K*	*No 10K*
2016	*0*	*0*	*No 10K*	*No 10K*
2017	*0*	*0*	*No 10K*	*No 10K*
2018	*1*	*1*	*0*	*No 10K*
2019	*2*	*4*	*1*	*1*

Tax Distributions

Almost Half of All Distributions Were Tax Distributions: The Governmental Claimants Already Received These



dollars in millions	
$	4,119.8
$	1,546.6
$	4,680.2
$	10,346.6

AlixPartners Cash Transfers of Value Report (12/16/2019) at Slide 11 (SDNY (Bankr.) No. 19-23649-rdd Doc 654-1)

Distributions Fall Into Three Categories: US Partner Distributions

1. "US Partner Distributions"

- Transfers to the limited partners of Purdue Pharma L.P.
- Eventually transferred to trusts of which certain Sackler family members are beneficiaries

	Summary	dollars in millions	
1.	US Partner Cash Distributions	$	4,119.8
	Distributions for the Benefit of Other Affiliated Entities	$	1,546.6
	Tax Distributions	$	4,680.2
	Total Cash Distributions	$	10,346.6

AlixPartners Cash Transfers of Value Report (12/16/2019) at Slide 11

Distributions Fall Into Three Categories: Ex-US Distributions

2. "Ex-US Distributions"

- Distributions made to Pharmaceutical Research Associates L.P. ("PRA")
- Reinvested in affiliates of PRA

Summary	dollars in millions	
US Partner Cash Distributions	$	4,119.8
2. **Distributions for the Benefit of Other Affiliated Entities**	$	1,546.6
Tax Distributions	$	4,680.2
Total Cash Distributions	$	10,346.6

AlixPartners Cash Transfers of Value Report (12/16/2019) at Slide 11

Distributions Fall Into Three Categories: Tax Distributions

3. "Tax Distributions"

- Distributions made by PPLP to BR Holdings, or Beacon and Rosebay, for taxes associated with Purdue's income
- Approximately 90% actually paid for taxes

Summary	dollars in millions	
US Partner Cash Distributions	$	4,119.8
Distributions for the Benefit of Other Affiliated Entities	$	1,546.6
3. Tax Distributions	$	4,680.2
Total Cash Distributions	$	10,346.6

AlixPartners Cash Transfers of Value Report (12/16/2019) at Slide 11

Tax Distributions Were Used For Legitimate Business Purposes

Tax Distributions were made and predominantly (≅ 90%) used for the legitimate purpose of satisfying tax liabilities associated with Purdue's business

In re Sunbeam Corp., 284 B.R. 355, 371 (Bankr. S.D.N.Y. 2002)

"Where the funds are ultimately used for legitimate corporate purposes, then the transfer is not fraudulent[.]"

Purdue Received Reasonably Equivalent Value For Tax Distributions

- **Purdue's payments of Tax Distributions were offset by Purdue's right not to incur tax liabilities itself**

  In re Northlake Foods, Inc., 715 F.3d 1251, 1256 (11th Cir. 2013)

  Tax distributions by pass-through entity to owners not avoidable because debtor received benefit *"of freeing up cash that otherwise would have been dedicated to paying [its] tax liability."*

- **Expert evidence will show that the amount of Tax Distributions is roughly equivalent to the amount of tax Purdue would have paid if PPLP had been a corporation**

Avoiding Distributions Used To Pay Taxes Would Be Punitive

In re Tronox Inc., 464 B.R. 606, 618 (Bankr. S.D.N.Y. 2012)

"[C]ourts have recognized that the purpose of fraudulent conveyance law is remedial rather than punitive."

- **Tax Distributions were used to pay taxes satisfied legitimate liabilities that otherwise would have been Purdue's**
- **The family members and their trusts do not have those funds**
- **Tax Distributions already have been paid to the ***same governmental entities*** that have asserted claims against the families**

Fraudulent Transfer Claims Seeking Ex-US Distributions Cannot Succeed Against The Individuals Or Trusts

Distributions Can Be Recovered Only From:

1. **Initial transferees**
2. **The entity for whose benefit the initial transfer was made or**
3. **Subsequent transferees**

11 U.S.C. 550(a);
In re Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey,
130 F.3d 52, 56 (2d Cir. 1997)

Family Members and Trusts Are Not Transferees of Ex-US Distributions

- **The Sackler family members and trusts never received the funds**
- **The funds must be recovered from the Ex-US entities that actually received them**

In re Finley, 130 F.3d 52, 57 (2d Cir. 1997)

"[T]he minimum requirement of status as a 'transferee' is dominion over the money or other asset."

Mack v. Newton, 737 F.2d 1343, 1360 (5th Cir. 1984)

Transfers invested by transferee and not received by owner of transferee cannot be recovered from owner.

Ownership of Transferee Entities Is Insufficient

In re Delta Phones, Inc., 2005 WL 3542667 (Bankr. N.D. Ill. Dec. 23, 2005)

"[T]hat a shareholder holds some ownership interest in a corporation does not somehow mean that all transfers made to the corporation or by it are automatically made for the benefit of the shareholder under section 550(a)(1)."

Id. at *6

Any benefit they received did not *"derive directly from the [initial] transfer"* but instead derived from the *"use to which it [was] put by the transferee"* – this is insufficient to impose "beneficiary" liability

Id. at *5

Timeliness Defenses

Section 548(a): 2-Year Limitations Period

Section 548(a) of the Bankruptcy Code permits the estate to avoid transfers that occurred within 2 years before the petition date (September 15, 2019).

The only distribution from Purdue that occurred within that period was a Tax Distribution of $35 million on December 21, 2017.

Section 544(b)(1): The Limitations Period of "Other Applicable Law"

Delaware Law: 6 DEL. CODE §17-607(c)

- ***Three years from date of transfer, without exception***.

New York Law: Rev. L.P. Act § 121.607(c)

- *Three years from date of transfer, without exception.*

Connecticut Law: Conn. Gen. Stat. §52-552j

- *Four-years from date of transfer; or*
- *One-year discovery period for actual-intent fraud.*

New York Law: CPLR §213 (1), (8)

- *Six-year limitations period; or*
- *Two years from the date of discovery for actual-intent fraud.*

Delaware's 3-Year Statute of Repose Limits Any Potential Fraudulent Transfer Recovery

- The Bankruptcy Court, sitting in New York, applies New York choice-of-law rules to determine which state's law determines the statute of limitations
- Under New York law, the law of the state in which a partnership (PPLP) is organized determines the liability of its limited partners (N.Y. Rev. L.P.A. §121-901)
- Therefore, Delaware's 3-year statute of repose (6 Del. Code § 17-607(c)) limits any potential fraudulent transfer recovery to amounts transferred three years before the first fraudulent transfer claim was asserted

The 6-Year Limitations Period of the Federal Debt Collection Procedures Act Does Not Apply Under § 544(b) For 2 Independent Reasons

1. 28 U.S.C. §3003(c) provides that the FDCPA "shall not be construed to supersede or modify the operation of" the Bankruptcy Code
   - "[T]reating the FDCPA as applicable law under 544(b) would impermissibly modify" the Bankruptcy Code (*In re Mirant*, 675 F.3d 530, 535 (5th Cir. 2012))
2. The United States did not have a ripe FDCPA claim as of the petition date — it had only a "claim for a debt" under 28 U.S.C. §3001(a)(2), not a "debt" within §3002(3)
   - Therefore, the U.S. cannot serve as a triggering creditor under 11 U.S.C. §544(b)

The Doctrine of *Nullum Tempus* Does Not Extend the Look-Back Period

- A bankruptcy estate cannot invoke a sovereign's limitations period, like *nullum tempus*, for the benefit of private creditors

Ultima Homes, Inc. (In re Vaughan Co., Realtors), 498 B.R. 297 (Bankr. D. N.M. 2013)

> *"Because the IRS is only permitted to use a ten-year look back period in order* ***to perform a government function****, the Trustee is likewise limited under Section 544(b)."*

- Because the Uniform Voidable Transactions Act ("UVTA") provision extinguishing claims more than 4-years post-transfer expressly applies to governmental entities (UVTA §1(4) & (11), § 9), it operates as a waiver of *nullum tempus* by all states that have adopted it

- The official commentary to the UVTA and its predecessor, the Uniform Fraudulent Transfer Act, states that the purpose of the 4-year statute of repose was to overrule a case applying *nullum tempus* to actions brought by a sovereign creditor.

(UVTA § 9, Comment 1)

Discovery Rule Is Inapplicable

Distributions were not concealed.

- **Billions took the form of tax distributions paid to the Claimants**
- **States have been conducting investigations into Purdue, in which they have sought and obtained information concerning distributions, since at least 2014**
- **States have had the right to documents and information on demand since 2007**
- **Intense media coverage has reported for years that the Sackler families' wealth is derived from Purdue**

Forbes

> Forbes estimates that the combined value of the drug operations, as well as accumulated dividends over the years, puts the Sackler family's net worth at a conservative $14 billion.

Alex Morrell, The OxyContin Clan: The $14 Billion Newcomer to Forbes 2015 List of Richest U.S. Families, FORBES (Jul. 1, 2015), https://www.forbes.com/sites/alexmorrell/2015/07/01/the-oxycontin-clan-the-14-billion-newcomer-to-forbes-2015-list-of-richest-u-s-families/#2b664fa475e0 (cited in NY AG FAC ¶420)

Distributions Within 6 Years Of NY Complaint (At Most)

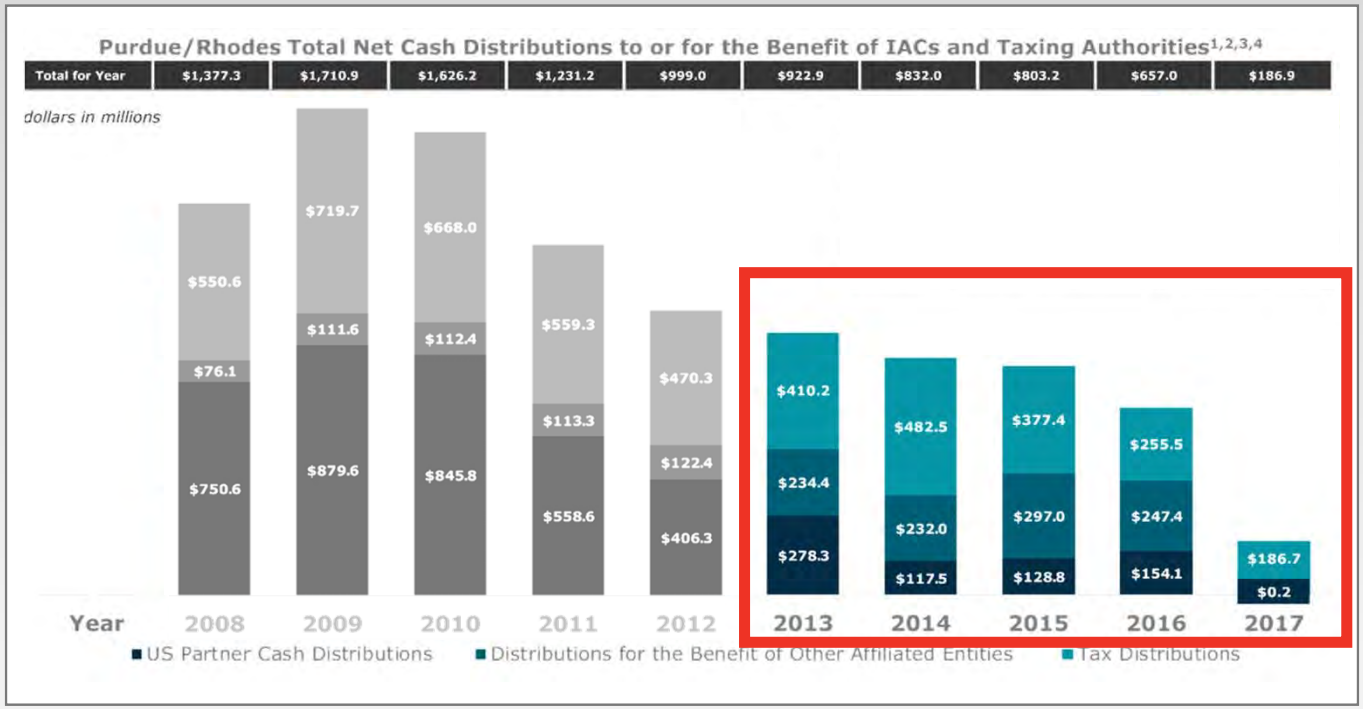
Partner Distributions:
$678,900,000

Tax Distributions:
$1,712,300,000

Ex-US Distributions:
$1,010,800,000

Total:
$3,402,000,000

Amounts include transfers made in the period of January 1 to March 28, 2013.



AlixPartners Cash Transfers of Value Report (12/16/2019) at Slide 11

Distributions Within 4 Years Of NY Complaint (At Most)

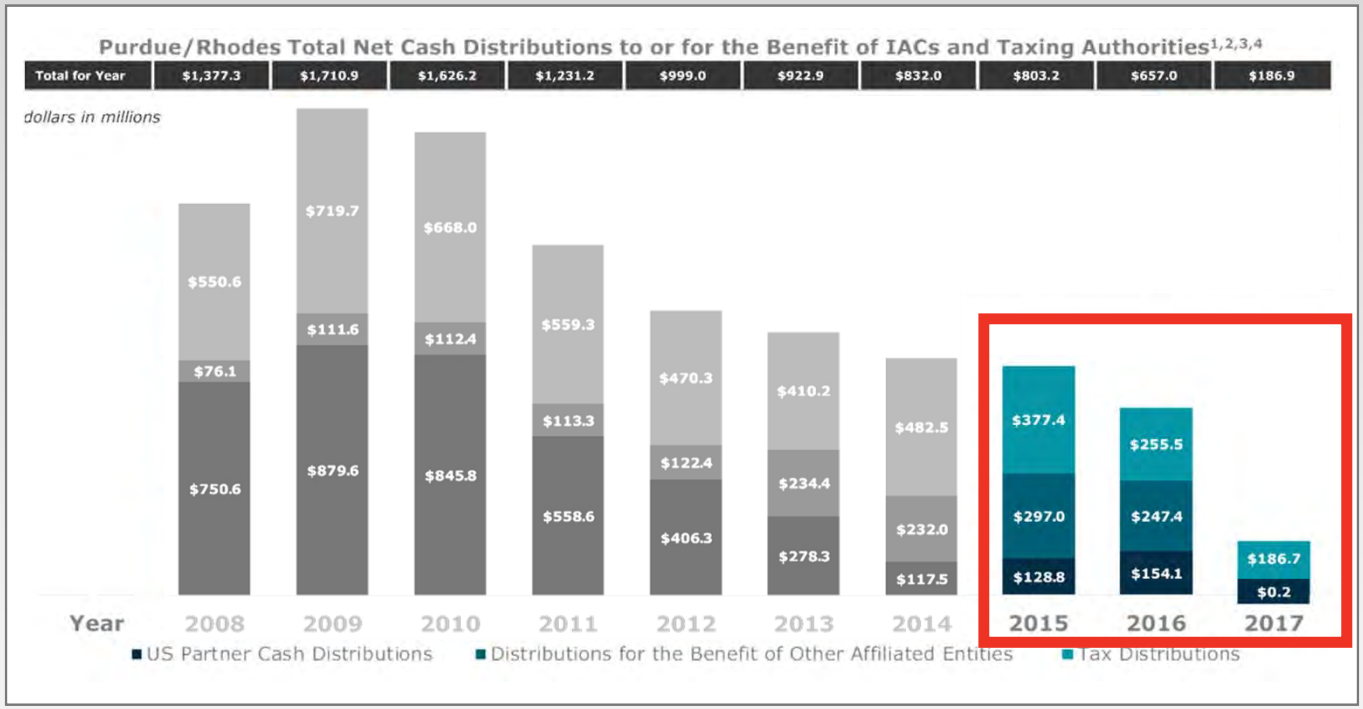
Partner Distributions:
$283,100,000

Tax Distributions:
$819,600,000

Ex-US Distributions:
$544,400,000

Total:
$1,647,100,000

Amounts include transfers made in the period of January 1 to March 28, 2015.



AlixPartners Cash Transfers of Value Report (12/16/2019) at Slide 11

Distributions Within 3 Years Of NY Complaint (At Most)

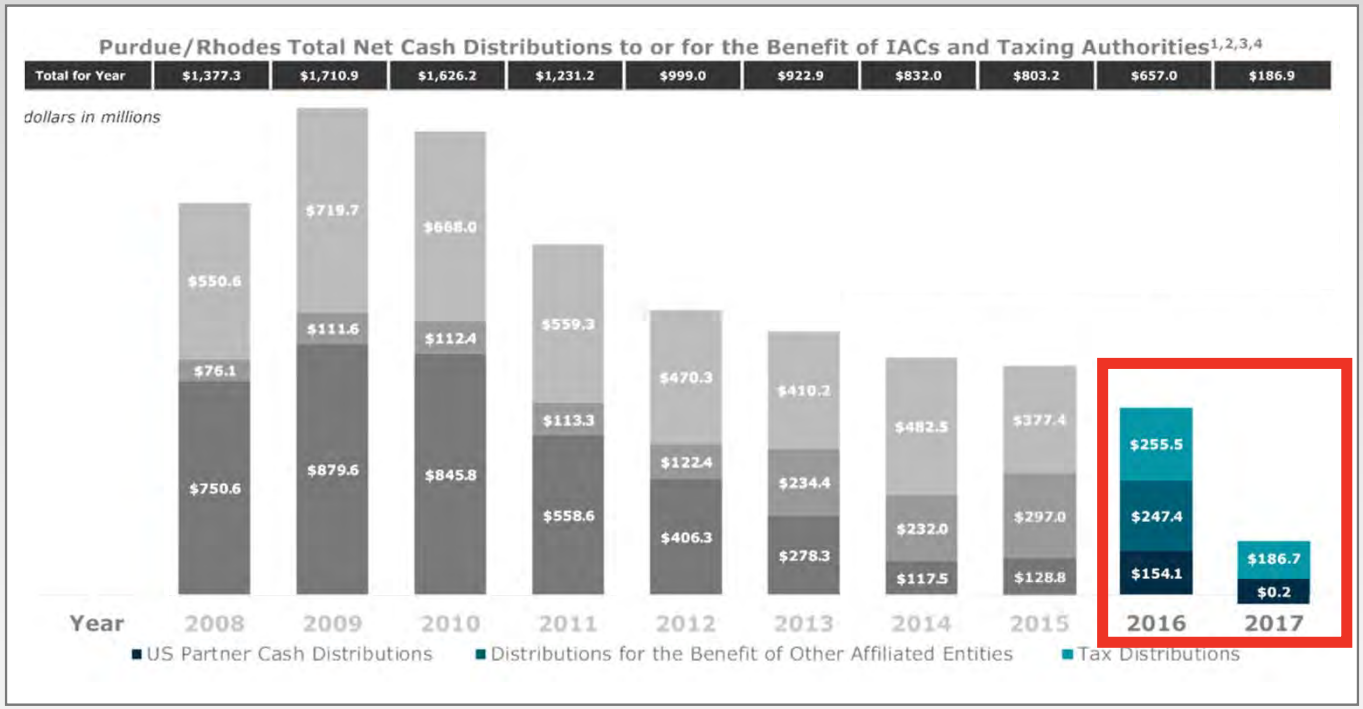
Partner Distributions:
$154,300,000

Tax Distributions:
$442,200,000

Ex-US Distributions:
$247,400,000

Total:
$843,900,000

Amounts include transfers made in the period of January 1 to March 28, 2016.



AlixPartners Cash Transfers of Value Report (12/16/2019) at Slide 11

Four Insurmountable Fraudulent Transfer Problems

1. There was no intent to defraud — Purdue did not in fact perceive a threat from opioid litigation before 2017 and did not face meaningful litigation until 2017

2. When the avalanche of litigation hit in 2017, the Board immediately ceased distributions

3. Purdue was not insolvent when the distributions were made — its sales were in the billions, and the Board left enormous amounts of cash in Purdue every year *after* distributions

4. Purdue's — and other opioid manufacturers' — experience with opioid litigation and access to capital markets shows why Purdue did not anticipate liabilities beyond its ability to pay

Alter Ego Claims

Claimants Must Pierce Each Intermediate Entity Between PPLP And The Assets They Seek

- No evidence of requisite "domination and control"
  - Indirect ownership does not establish control
  - Evidence of involvement in Purdue's business shows only proper board oversight
- No evidence Purdue's business form was a sham and used to commit a wrong
  - Tort allegations are not enough
  - Purdue was a legitimate business selling FDA-approved medications
  - No evidence Purdue was established for fraudulent purposes
  - Distributions to owners were made in accordance with corporate formalities
  - No evidence of "siphoning" — "the improper taking of funds that the owner was not legally entitled to receive" (*Martin Hilti Family Tr. v. Knoedler Gallery, LLC*, 386 F. Supp. 3d 319, 361 (S.D.N.Y. 2019))

Alter Ego Claims Regarding PPLP Fail Under Delaware Law

- **Because PPLP is a Delaware limited partnership, Delaware law governs alter ego claims to disregard its separateness**
- **Limited partnerships do not have "corporate veils" to be pierced**

In re Heritage Organization LLC, 413 B.R. 438, 514 n. 64 (Bankr. N.D. Tex. 2009)

"[T]he alter ego theory cannot be used to attempt to pierce the entity veil of [Delaware limited partnerships] to reach their respective limited partners" (Delaware law)

Pinebrook Props. Ltd. v. Brookhaven Lake Prop. Owners Ass'n., 77 S.W.3d. 487, 499 (Tex. App. 2002)

"[T]he theory of alter ego, or piercing the corporate veil, is inapplicable to partnerships" (rejecting alter ego theory for limited partnerships) (Texas law)

Delaware's Limited Partnership Statute Dictates When Another Person Can Be Held Liable For Debts Of The Limited Partnership

6 Del. C. §17-403(b)

*"**[A] general partner of a limited partnership has the liabilities of a partner in a partnership** . . . to persons other than the partnership and the other partners"*

See also In re LJM2 Co-Inv., L.P., 866 A.2d. 762, 772 (Del. Ch. 2004)

6 Del. C. §17-303(a)

*"**A limited partner is not liable for the obligations of a limited partnership unless he or she is also a general partner or**, in addition to the exercise of the rights and powers of a limited partner, he or she **participates in the control of the business**"*

Delaware's Limited Partnership Statute Dictates When Another Person Can Be Held Liable For Debts Of The Limited Partnership

6 Del. C. §17-303(a)

A limited partner is liable for participation only when "***persons who transact business with the limited partnership [do so] reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner***."

In re LJM2 Co-Inv., L.P., 866 A.2d 762, 772 (Del. Ch. 2004)

"The basic premise of limited partnership law is that general partners are personally liable for partnership obligations . . . ***if the limited partner does participate in the control of the business, he or she is only liable to persons who transact business with the limited partnership reasonably believing … that the limited partner is a general partner."***

Alter Ego Claims Regarding PPLP Fail Under Delaware Law

- The limited partner of PPLP is PRA, a Delaware limited partnership
- No evidence that PRA—or its ultimate owners, Sackler family members—were sufficiently involved in the business of PPLP to be liable for the partnership's debts
- Delaware's partnership statute provides that participating in the control of the business, for purposes of imposing partnership liability, does ***not*** include:
  - Consulting with or advising employees
  - Causing someone to take or approve any action with respect to the business
  - Voting shares with respect to a matter involving a conflict of interest, or
  - Serving as an officer or director of any person having a business relationship with the partnership (6 DEL. C. §17-303(b))

Alter Ego Claims Regarding PPLP Fail Under Delaware Law

- No claimant has alleged facts that rise to the level required to impose liability under the statute, and there are none
- In its motion to dismiss briefing, Oregon abandoned its effort to disregard PPLP's separateness, tacitly conceding the point

Plaintiff's Opposition to Individual Former Directors' Motion to Dismiss at 20, *State v. Purdue Pharma L.P., et al.*, No. 19-CV-22185 (Or. Cir. Ct. Sept. 11, 2019)

- PPI is liable as general partner of PPLP
- The relevant question is therefore whether PPI can be pierced

Alter Ego Claims Regarding PPI Fail Under New York Law

- **Because PPI is a New York corporation, New York law governs claims alter ego claims to disregard its separateness**

  Matter of Morris v. New York State Dep't of Taxation & Fin., 82 N.Y.2d 135, 141–42 (1993)

  New York law requires proof that *"(1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff, which resulted in plaintiff's injury."*

  "The party seeking to pierce the corporate veil must establish that the owners, through their domination, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against that party such that a court in equity will intervene."

- **Because there is no conflict between New York and Delaware veil-piercing law, cases from both states are instructive**

  Hamlen v. Gateway Energy Servs. Corp, 2017 WL 6398729, *11 (S.D.N.Y. Dec. 8, 2017)

  "New York and Delaware veil-piercing law do not materially differ."

Purdue's Corporate Form Was Not Used To Perpetrate A Fraud Or Injustice

- ***<u>It is not enough to show that the corporation engaged in tortious activity</u>***
- **The Claimant must show *<u>additional</u>* wrongdoing, amounting to abuse of the corporate form that injured the Claimant**

Medi-Tec of Egypt Corp. v. Bausch & Lomb Surgical,
2004 WL 415251, at *4 (Del. Ch. Mar. 4, 2004)

To satisfy the ***"fraud or injustice"*** element, a plaintiff must show that "***the corporate form in and of itself*** *operates to serve some* ***fraud or injustice***."

McAnaney v. Astoria Fin. Corp.,
665 F. Supp. 132, 143 (E.D.N.Y. 2009)

"Two elements must be shown in order to pierce the corporate veil: (i) that the owner exercised ***complete dominion over the corporation with respect to the transaction*** *at issue; and (ii) that* ***such domination was used to commit a fraud or wrong that injured the party seeking to pierce*** *the veil"*

Purdue's Corporate Form Was Not Used To Perpetrate A Fraud Or Injustice

TNS Holdings, Inc. v. MKI Sec. Corp., 92 N.Y.2d. 335, 339–40 (1998)

"An inference of abuse does not arise . . . where a corporation was formed for legal purposes or is engaged in legitimate business."

Walnut Hous. Assoc. 2003 L.P., v. MCAP Walnut Hous. LLC, 136 A.D.3d. 403, 404 (1st Dep't 2016)

A plaintiff must establish facts ***"supporting an inference that a corporation, through its alter ego, has created a sham entity designed to defraud investors and creditors."***

(*Citing Crosse v. BCBSD, Inc.*, 836 A.2d. 492 (Del. 2003))

Claimants Bear A Heavy Burden To Pierce PPI

Pauley Petroleum Inc. v. Cont'l Oil Co., 239 A.2d. 629, 633 (Del. 1968)

A court will pierce a corporation's veil only in an exceptional case.

Trevino v. Merscorp, Inc., 583 F.Supp.2d 521, 525 (D. Del. 2008)

Courts recognize that *"limiting one's personal liability is a traditional reason for a corporation,"* and absent the *"specific intent to escape liability for a specific tort . . . the cause of justice does not require disregarding the corporate entity."*

ICT Pharms., Inc. v. Boehringer Ingelheim Pharms., Inc., 147 F.Supp.2d 268, 274 (D. Del. 2001)

Piercing the corporate veil is an "*extraordinary remedy*"

No Evidence Sackler Family Members "Dominated And Controlled" PPI

Skouras v. Admiralty Enterprises, Inc., 386 A.2d. 674, 681 (Del. Ch. 1978)

*"Mere control and **even total ownership** of one corporation by another **is not sufficient to warrant the disregard of a separate corporate entity**."*

National Gear & Piston, Inc. v. Cummins Power, 975 F. Supp. 2d 392, 404 (S.D.N.Y. 2013)

*"[A]llegations of… a parent's ownership and operation of a subsidiary **– even exclusively for the parent's gain –** do not merit piercing the corporate veil."*

No "Domination And Control" of PPI

Factors evidencing domination and control are absent:

- Undercapitalization
- Failure to observe corporate formalities
- Nonpayment of dividends
- The insolvency of the corporation at the relevant time
- "Siphoning" by the dominant stockholder
- Absence of corporate records
- That the corporation is merely a facade for the operations of the dominant stockholder

See MAG Portfolio Consult, GMBH v. Merlin Biomed Group LLC, 268 F.3d 58, 63 (2d Cir. 2001)

Purdue Observed Corporate Formalities

Board meeting minutes, quarterly reports, and financial update presentations for the Board were rigorously maintained.

PURDUE PHARMA INC.

Minutes of a Meeting of the Board of Directors

February 14, 2008

PURDUE PHARMA INC.

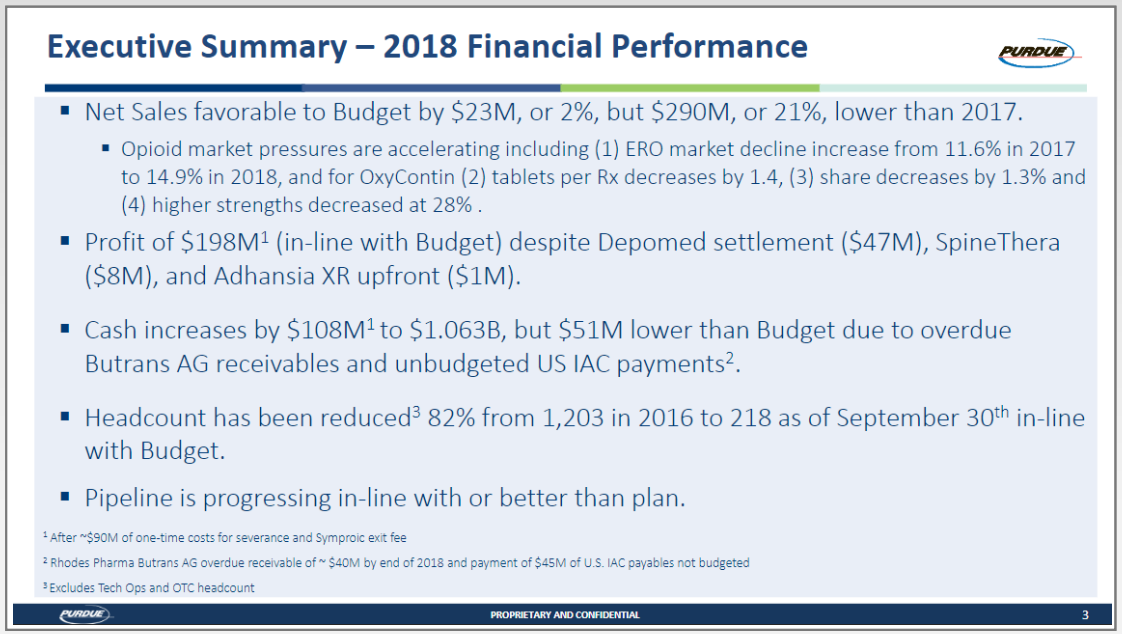
Minutes of a Meeting of the Board of Directors

November 6, 2008

PURDUE PHARMA INC.

Minutes of a Meeting of the Board of Directors

September 23, 2009



Executive Summary – 2018 Financial Performance

- Net Sales favorable to Budget by $23M, or 2%, but $290M, or 21%, lower than 2017.
  - Opioid market pressures are accelerating including (1) ERO market decline increase from 11.6% in 2017 to 14.9% in 2018, and for OxyContin (2) tablets per Rx decreases by 1.4, (3) share decreases by 1.3% and (4) higher strengths decreased at 28% .
- Profit of $198M[1] (in-line with Budget) despite Depomed settlement ($47M), SpineThera ($8M), and Adhansia XR upfront ($1M).
- Cash increases by $108M[1] to $1.063B, but $51M lower than Budget due to overdue Butrans AG receivables and unbudgeted US IAC payments[2].
- Headcount has been reduced[3] 82% from 1,203 in 2016 to 218 as of September 30th in-line with Budget.
- Pipeline is progressing in-line with or better than plan.

[1] After ~$90M of one-time costs for severance and Symproic exit fee

[2] Rhodes Pharma Butrans AG overdue receivable of ~ $40M by end of 2018 and payment of $45M of U.S. IAC payables not budgeted

[3] Excludes Tech Ops and OTC headcount

PROPRIETARY AND CONFIDENTIAL 3

See e.g., Minutes of a Meeting of its Board of Directors, Purdue Pharma Inc., Nov. 6, 2008 (PPLP004415441); Minutes of a Meeting of the Board of Directors, Purdue Pharma Inc., Feb. 14, 2008 (PPLP004415351); Minutes of a Meeting of the Board of Directors, Purdue Pharma Inc., Sept. 23, 2009 (PPLP004415581)

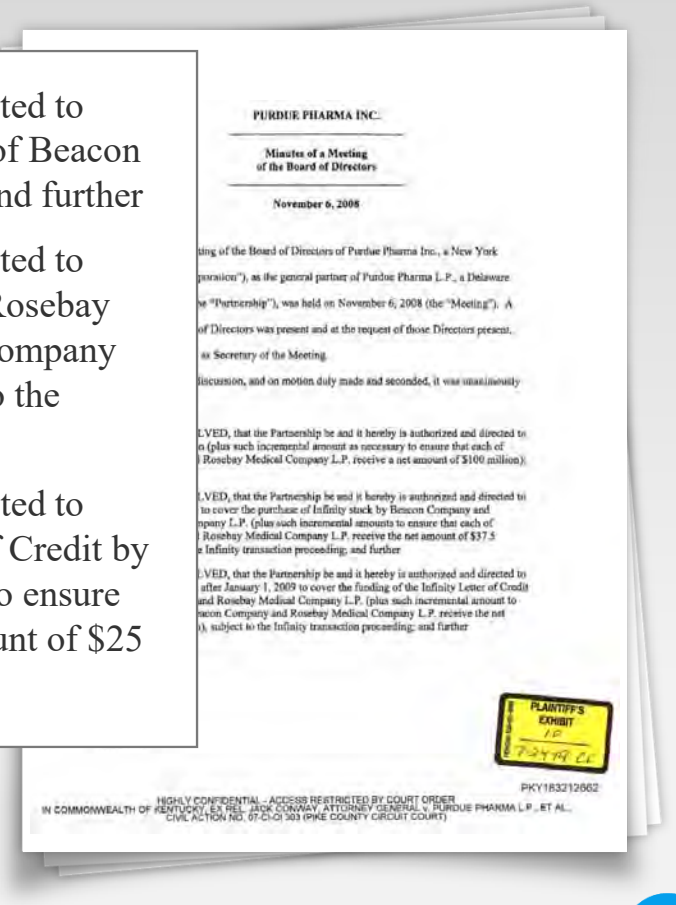
See e.g., Finance Update and 2019 Budget Proposal

Purdue Paid Dividends Only After Formal Board Approval

RESOLVED, that the Partnership be and it hereby is authorized and directed to distribute $200 million (plus such incremental amount as necessary to ensure that each of Beacon Company and Rosebay Medical Company L,P. receive a net amount of $100 million); and further

RESOLVED, that the Partnership be and it hereby is authorized and directed to distribute $75 million to cover the purchase of Infinity stock by Beacon Company and Rosebay Medical Company L.P. (plus such incremental amounts to ensure that each of Beacon Company and Rosebay Medical Company L.P. receive the net amount of $37.5 million), subject to the Infinity transaction proceeding; and further

RESOLVED, that the Partnership be and it hereby is authorized and directed to distribute $50 million after January 1, 2009 to cover the funding of the Infinity Letter of Credit by Beacon Company and Rosebay Medical Company L.P. (plus such incremental amount to ensure that each of Beacon Company and Rosebay Medical Company L.P. receive the net amount of $25 million), subject to the Infinity transaction proceeding;


PURDUE PHARMA INC.

Minutes of a Meeting
of the Board of Directors

November 6, 2008

PLAINTIFF'S EXHIBIT

PKY183212662

HIGHLY CONFIDENTIAL - ACCESS RESTRICTED BY COURT ORDER
IN COMMONWEALTH OF KENTUCKY, EX REL. JACK CONWAY, ATTORNEY GENERAL v. PURDUE PHARMA L.P., ET AL.,
CIVIL ACTION NO. 07-CI-01303 (PIKE COUNTY CIRCUIT COURT)

See e.g. Minutes of a Meeting of the Board of Directors, Purdue Pharma Inc., Nov. 6, 2008 (PPLP004415441); Minutes of a Meeting of the Board of Directors, Purdue Pharma Inc., Sept. 23, 2009 (PPLP004415581)

Claimants' Purported "Siphoning" Allegations Do Not Establish Domination And Control Of PPI

- The entity that made the challenged distributions was PPLP, not PPI
- Therefore, the fact of the distributions does not establish "domination and control" over PPI, the entity whose separateness must be disregarded
- To disregard PPLP's separateness, it is not enough that family members sat on the Board of PPI and approved distributions from PPLP that benefitted them
- Distributions were a regular occurrence and always board-approved

Deering Milliken, Inc. v. Clark Estates, Inc., 43 N.Y.2d. 545, 551 (1978)

Dividends are not siphoning when they are predictable and regular.

In re The Heritage Org., L.L.C., 413 B.R. 438, 517 n.69 (Bankr. N.D. Tex. 2009)

"[S]iphoning funds is different than making distributions . . . that are permitted by law"
(Applying Delaware law)

All Dividends Were Board-Approved

The payment of regular dividends following formal board approval shows that the shareholders followed corporate formalities and treated the business as a *distinct entity*.

United States v. Pisani, 646 F.2d 83, 88 (3d Cir. 1981)

Corporate formalities were **not observed** where, among other things, **dividends were not paid**.

Schoenberg v. Romike Props., 251 Cal. App. 2d 154, 167 (1967)

Failure to pay dividends was evidence of controlling shareholder's use of corporate funds as if they were his own.

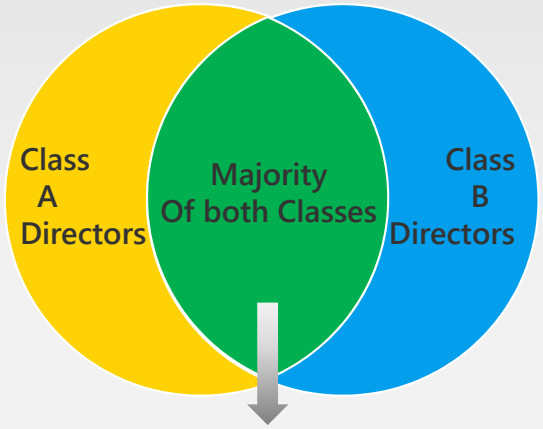
All Dividends Were Board-Approved

- The Board included distinguished outside directors from prominent institutions
- At the relevant times — when distributions were made — it was not "probable" that Purdue would face liabilities beyond its ability to pay
- Purdue had consistently been able to resolve litigations and investigations for manageable amounts
- Its sales were in the billions and it had enormous amounts of unrestricted cash on hand — more than a billion dollars a year from 2014 on
- Its internal forecasts consistently saw the risk of litigation as low and declining
- It had a comprehensive internal compliance program and relied on prominent law firms for outside compliance advice

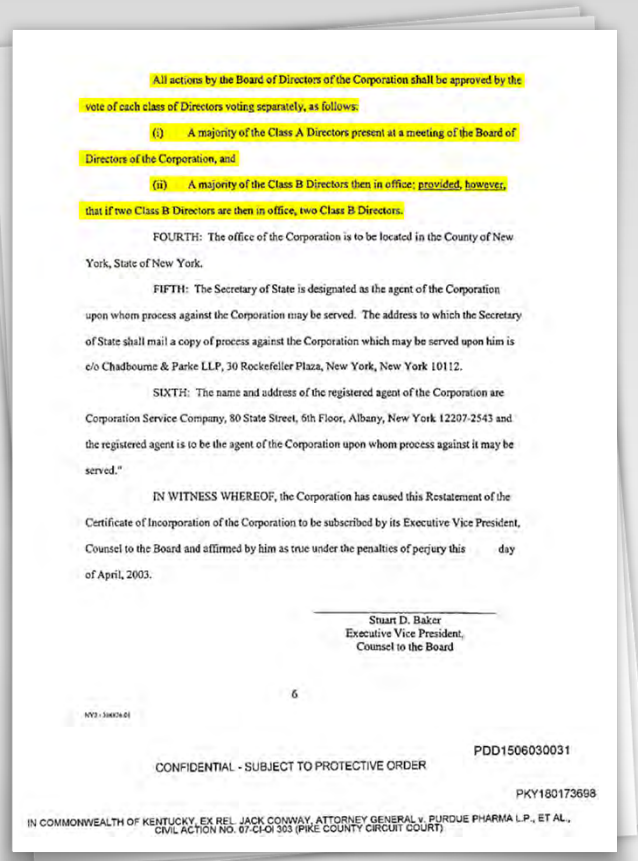
Allegations Insufficient To Show "Domination And Control"

- **Under PPI's governing documents, the A Side and the B Side directors had to jointly agree on all decisions:**

> All actions by the Board … shall be approved by … A majority of the Class A Directors … [and] A majority of the Class B Directors.



Approval Required for Board Actions



All actions by the Board of Directors of the Corporation shall be approved by the vote of each class of Directors voting separately, as follows:

(i) A majority of the Class A Directors present at a meeting of the Board of Directors of the Corporation, and

(ii) A majority of the Class B Directors then in office; provided, however, that if two Class B Directors are then in office, two Class B Directors.

FOURTH: The office of the Corporation is to be located in the County of New York, State of New York.

FIFTH: The Secretary of State is designated as the agent of the Corporation upon whom process against the Corporation may be served. The address to which the Secretary of State shall mail a copy of process against the Corporation which may be served upon him is c/o Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, New York 10112.

SIXTH: The name and address of the registered agent of the Corporation are Corporation Service Company, 80 State Street, 6th Floor, Albany, New York 12207-2543 and the registered agent is to be the agent of the Corporation upon whom process against it may be served."

IN WITNESS WHEREOF, the Corporation has caused this Restatement of the Certificate of Incorporation of the Corporation to be subscribed by its Executive Vice President, Counsel to the Board and affirmed by him as true under the penalties of perjury this day of April, 2003.

Stuart D. Baker
Executive Vice President,
Counsel to the Board

6

PDD1506030031

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

PKY180173698

IN COMMONWEALTH OF KENTUCKY, EX REL. JACK CONWAY, ATTORNEY GENERAL v. PURDUE PHARMA L.P., ET AL., CIVIL ACTION NO. 07-CI-01303 (PIKE COUNTY CIRCUIT COURT)

Restated Certificate of Incorporation of PPI as of March 4, 2003 art. III (PKY180173691, —698); Amendment of Certificate of Incorporation §3, amending art. III (PPLP004415886, —889)

Allegations Insufficient To Show "Domination And Control"

Because ***no one member*** of the family had a controlling equity stake or sufficient voting power to control the Board:

- This is ***unlike*** the typical veil-piercing case, where the corporation has a single or majority shareholder.
- Neither ***side*** of the family has a controlling equity stake.
- To say that all owners, together, have control is to say that 100% of the shares controls the corporation.
- That is always the case and provides no basis to disregard the corporate form.

Allegations Insufficient To Show "Domination And Control"

- A seat on the board does not confer the ability or power to exercise control over the corporation.
- Only a shareholder with sufficient shares to elect a majority of the directors of a corporation is considered to have effective control of a corporation.

The Evidence Undercuts Any Inference Of Control By Richard Sackler

- Claimants admit that Purdue's management ***resented and resisted*** Richard Sackler's interactions with executives — as did other directors, both A and B Side

OR Complaint ¶136:

> In a January 2010 email to Richard, Purdue's then-CEO, John Stewart, pushed back on Richard's insistence on unreasonable rates of growth in Purdue's budget:

January 7, 2010 Email from CEO John Stewart to Richard Sackler:

From: Stewart, John H. (US)
Sent: Thursday, January 07, 2010 7:41 PM
To: Sackler, Dr Richard
Subject: FW: 2010 Budget w/att.

However, increasing the assumed prescription growth rate isn't the way to do it, since it will be obvious to many that the 8% is simply an arbitrary figure – and it will be interpreted as an imposition as opposed to an action that will stimulate the type of business building behaviors we want to encourage.

(PURDUE-COR-00026762)

The Evidence Undercuts Any Inference Of Control By Richard Sackler

March 7, 2012 email from Russell Gasdia to John Stewart

Anything you can do to reduce the direct contact of Richard into the organization is appreciated. I realize he has a right to know and is highly analytical, but diving into the organization isn't always productive (PPLPC012000368569)

See 1 WM. E. KNEPPER & DAN A. BAILEY, LIABILITY OF CORPORATE OFFICERS AND DIRECTORS §1.03 (8th ed. 2019) :

"The oversight function of a board of directors at times creates friction between the board and management with respect to the appropriate degree to which the board becomes involved in management's activities."

Sackler Family Members Did Not Function As A Single Unit

- Evidence demonstrates that family members frequently disagreed
- Oregon alleged in its prepetition complaint only that they "are united by common ownership and control" of Purdue and together held a majority of Board seats
- This is not a plausible theory of domination
- **All shareholders of every company are "united by common ownership," and jointly have the power to appoint Board members and control the company**

The Members of The Sackler Family Often Disagreed — Examples

- In May 2009, Richard Sackler wanted to make an investment that Mortimer Sackler rejected:

On 5/19/09 5:26 PM, "Sackler, Dr Richard" wrote:

PCI is basically worth its cash.

What about buying out this company for its cash and small possibility that Remoxy profit stream will be of some value in the future?

Richard,

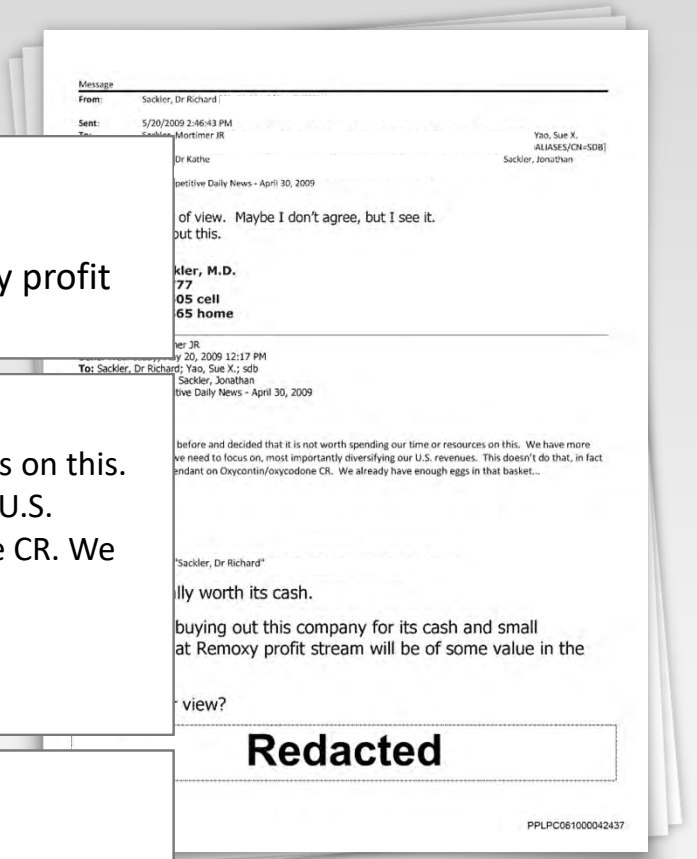
We went through this before and decided that it is not worth spending our time or resources on this. We have more important areas that we need to focus on, most importantly diversifying our U.S. revenues. This doesn't do that, in fact it makes us more dependent on Oxycontin/ocycodone CR. We already have enough eggs in that basket…

Regards,

Mortimer

I see your point of view. Maybe I don't agree, but I see it. Enough said about this.

Richard S. Sackler, M.D.

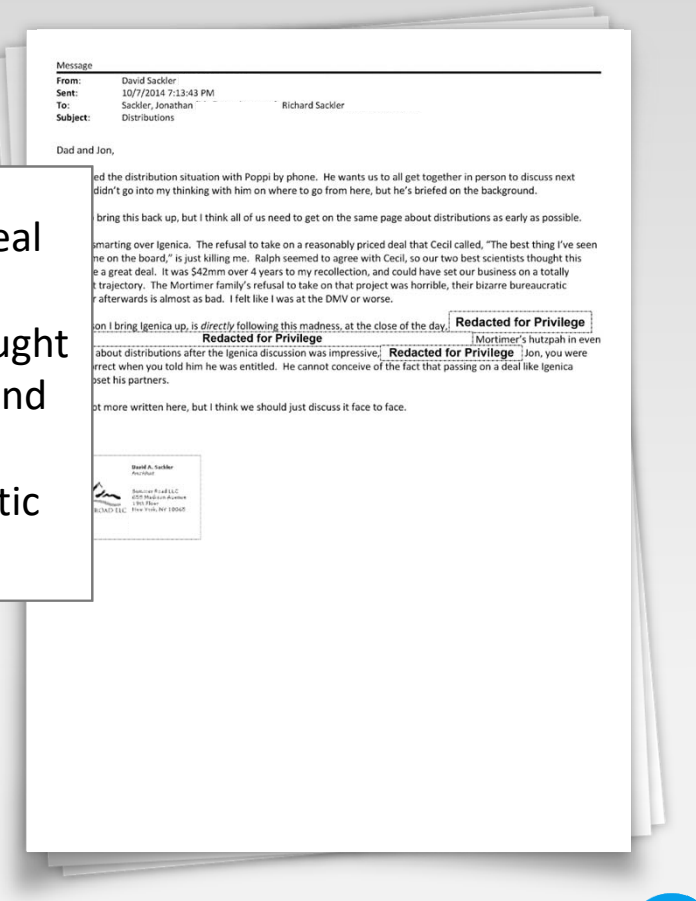


5/19/09 Email From R. Sackler (PLPC061000042437)

The Members of The Sackler Family Often Disagreed — Examples

- In 2014, Side A rejected an investment the B Side supported

I'm still smarting over Igenica. The refusal to take on a reasonably priced deal that Cecil called, "The best thing I've seen in my time on the board," is just killing me. Ralph seemed to agree with Cecil, so our two best scientists thought this would be a great deal. It was $42mm over 4 years to my recollection, and could have set our business on a totally different trajectory. The Mortimer family's refusal to take on that project was horrible, their bizarre bureaucratic behavior afterwards is almost as bad. I felt like I was at the DMV or worse.



Message

From: David Sackler
Sent: 10/7/2014 7:13:43 PM
To: Sackler, Jonathan Richard Sackler
Subject: Distributions

Dad and Jon,

ed the distribution situation with Poppi by phone. He wants us to all get together in person to discuss next
didn't go into my thinking with him on where to go from here, but he's briefed on the background.

bring this back up, but I think all of us need to get on the same page about distributions as early as possible.

marting over Igenica. The refusal to take on a reasonably priced deal that Cecil called, "The best thing I've seen
ne on the board," is just killing me. Ralph seemed to agree with Cecil, so our two best scientists thought this
e a great deal. It was $42mm over 4 years to my recollection, and could have set our business on a totally
trajectory. The Mortimer family's refusal to take on that project was horrible, their bizarre bureaucratic
afterwards is almost as bad. I felt like I was at the DMV or worse.

on I bring Igenica up, is *directly* following this madness, at the close of the day. Redacted for Privilege
Redacted for Privilege Mortimer's hutzpah in even
about distributions after the Igenica discussion was impressive. Redacted for Privilege Jon, you were
rrect when you told him he was entitled. He cannot conceive of the fact that passing on a deal like Igenica
set his partners.

t more written here, but I think we should just discuss it face to face.

- Other examples:
  - B Side's subordinated debt proposals
  - Amounts of distributions

Even Majority Shareholder Status Would Not Suffice To Show Domination And Control

General Star Nat. Ins. Co. v. Adminsitra Asigurarilor de Stat,
713 F. Supp. 2d 267, 279 (S.D.N.Y 2010)

"[T]he exercise of power incidental to majority stock ownership cannot form the basis for disregarding the corporate form . . . . Control over the board of directors by means of shareholder voting rights is a prerogative of any majority shareholder."

Capmark Fin. Group Inc. v. Goldman Sachs Credit Partners L.P.,
491 B.R. 335, 349–350 (S.D.N.Y. 2013)

"[A]llegations do not allege facts beyond relationships 'typical of a majority shareholder or parent corporation'" where the funds were not commingled, the entities were not inadequately capitalized, and all other corporate formalities were observed.

Tycoons Worldwide Group Public Co. Ltd. v. JBL Supply Inc.,
721 F. Supp. 2d 194, 205 (S.D.N.Y. 2010)

"The fact that [the individual] is the majority shareholder and an officer of [the corporation] is not in itself, a basis for piercing the corporate veil."

Distributions Do Not Warrant Disregarding The Corporate Form

- The distributions preceded the avalanche of litigation — and immediately stopped when the litigations hit
- Purdue satisfied its debts, its net sales vastly exceeded total distributions each year, and it had huge amounts of unrestricted cash on hand at all times

Justus v. Miller, 47 Misc.3d. 1210(A), at 3-4 (N.Y. Sup. Ct. Nassau Cnty. 2015)

"Given the temporal degree to which the challenged asset transfers antedate the commencement of Action 1 and . . . the Judgment . . . the Court finds there has been an inadequate showing that any corporate domination . . . was employed so as to defraud the Plaintiffs and deprive them of an opportunity to satisfy their outstanding monetary claims."

See also Deering Milliken, Inc. v. Clark Estates, Inc., 43 N.Y.2d 545, 551 (1978)

Hambleton Bros. Lumber Co. v. Balkin Enters., Inc., 397 F.3d 1217, 1231 (9th Cir. 2005)

Rejecting veil-piercing claim where plaintiff did not make sufficient showing of a *"causal connection between the alleged 'milking' of distributions and [the creditor's] injury."*

Distributions Do Not Warrant Disregarding The Corporate Form

- Purdue was not facing probable liabilities at the time it made the distributions
- A hypothetical future damages claim does not warrant piercing the corporate veil

Sahu v. Union Carbide Corp., 2012 WL 2422757, at *19 (S.D.N.Y. June 26, 2012)

A corporation's *"economic viability is not important for the purpose of looking into the future to see if [the corporation] can pay a specific dollar amount of damages"* — instead, a corporation's *"financial status is material to the extent it sheds light on [its] legitimacy as a corporation."*

Distributions Do Not Warrant Disregarding The Corporate Form

Even if Purdue were unable to meet its debts, that alone would be insufficient to warrant piercing

Art Capital Bermuda Ltd. v. Bank of N.T. Butterfield & Son Ltd., 169 A.D.3d 426, 427 (1st Dep't 2019)

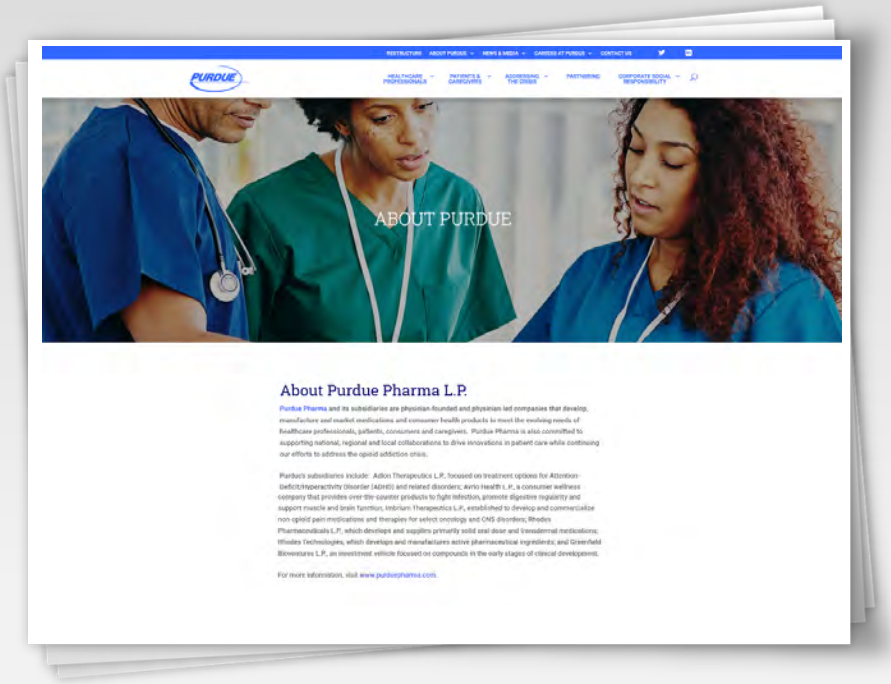
"The fact that Art Capital and Bluefin might not have sufficient assets to satisfy the judgment that the Bank might obtain against them does not warrant piercing the corporate veil."

Kleinman v. Blue Ridge Foods, LLC, 2011 WL 2899428, at *10 (N.Y. Sup. Ct. July 7, 2011)

"[T]he corporate form may not be disregarded merely because the assets of the corporation are insufficient to assure plaintiff the recovery he seeks."

Purdue Was Created For Legitimate Purposes

- Purdue's predecessor antedates the Sackler families' ownership
- Arthur, Mortimer, and Raymond Sackler purchased the company in 1952
- No evidence Purdue was designed for fraudulent purposes or erected as a sham
- Purdue develops, manufactures, and markets FDA-approved medications



See Purdue Pharma Website, purduepharma.com/patients-caregivers/medicines-from-purdue/

Numerous Intermediate Entities Stand Between Purdue And The Sacklers

- To reach the Sackler family members or trusts, Claimants must pierce numerous intermediate entities

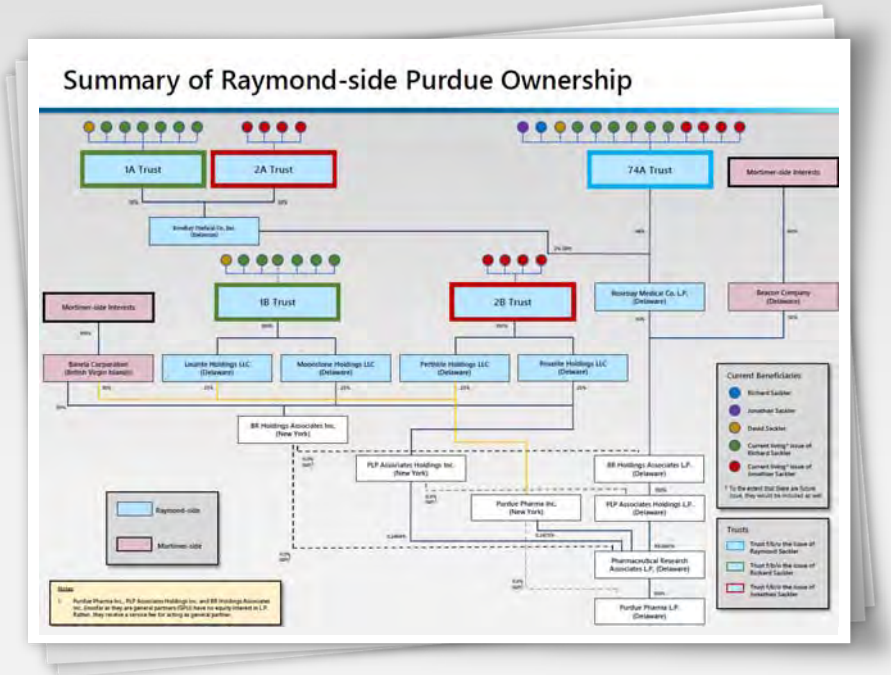
In re Gulf Fleet Holdings, Inc., 491 B.R. 747, 790 (Bankr. W.D. La. 2013)

Where a plaintiff seeks to establish liability for all members of a corporate structure, it must "***establish alter ego liability with respect to each one of the entities***" in that structure.

In re Heritage Org. LLC, 413 B.R. 438, 514 (Bankr. N.D. Tex. 2009)

No "***global application***" of alter-ego theory permitted, unless plaintiff can establish veil piercing at "***each level or layer of ownership … within the multifaceted entity structure***."

See also Gillen v. 397 Properties, L.L.C., 2002 WL 259953, at *1 (Del. Ch. Feb. 15, 2002)



Raymond-side Informational Presentation (November 22, 2019), Supplemental Materials at page 2

Veil-Piercing Has Been Rejected In Similar Cases

Port Chester Elec. Const. Co. v. Atlas, 40 N.Y.2d 652, 657 (1976)

- In *Port Chester Elec. Const.* Co., the New York Court of Appeals rejected a veil piercing claim where the "***external indicia of separate corporate entities [were] at all times maintained***."
- **Although the shareholder served as the *"controlling principal of [the corporations],"* this alone was *"insufficient to justify disregarding the corporate form"* since the shareholder *"respected the separate identities of the corporations"* and *"each of the corporation[s] was pursuing its separate corporate business*."**
- ***"The determinative factor is whether the corporation is a 'dummy' for its individual stockholders who are in reality carrying on the business in their personal capacities for purely personal rather than corporate ends*."**

Claimants' 4 Insurmountable Alter Ego Problems

1. No evidence of the requisite domination and control
   - Indirect ownership does not establish control
   - Evidence of involvement in Purdue's business is not enough
2. No evidence Purdue's business form was a sham or used to commit a wrong
   - Tort allegations are not enough
   - Purdue was a legitimate business selling FDA-approved medications
   - No evidence Purdue was established for fraudulent purposes
   - Distributions to owners were made in accordance with corporate formalities
   - No evidence of siphoning
3. Claimants must pierce each intermediate entity between PPLP and assets they seek
4. Limited partnerships do not have "corporate veils" to be pierced

In re Purdue Pharma LP, et al.

Joseph Hage Aaronson LLC

Counsel to Raymond Sackler Family ("Side B")

Defense Presentation Part 4: Fraudulent Transfer

April 27, 2021