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Health

Sacklers could hold on to most of personal fortune in proposed Purdue settlement

Purdue Pharma introduced OxyContin, a blockbuster narcotic, in 1996. (Toby Talbot/AP)

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The Sackler family, which grew into one of the nation's wealthiest dynasties through sales of the widely abused painkiller OxyContin, could emerge from a legal settlement under negotiation with its personal fortunes largely intact, according to an analysis reviewed by The Washington Post and people familiar with the discussions.

Under a novel plan to relinquish control of their company, Purdue Pharma, and resurrect it as a trust whose main purpose would be to combat the opioid epidemic, the Sacklers could raise most, if not all, of their personal share of the $10 billion to $12 billion agreement by selling their international drug conglomerate, Mundipharma, according to the documents and those close to the talks.

Yet the proposed settlement — built on the projected value of drugs not yet on the market — offers gains for both sides if the company and more than 2,000 cities, counties, states and others that have sued Purdue and the family can craft a deal.

Purdue would produce millions of doses of badly needed anti-addiction medication and overdose antidotes for the public, free of charge; the company would also contribute hundreds of millions of dollars in cash and insurance policies that could be worth more; what's left of the company, including its North Carolina production facility and other assets, would change hands.

Much of the benefit to the public would be funded by the continued sales of the powerful narcotic OxyContin, the abuse of which is blamed for contributing to the prescription opioid crisis that has killed more than 200,000 people since 1999.

The Stamford-Conn.-based Purdue Pharma would go into bankruptcy, and the Sacklers would be out of the drug business. They would be required to contribute $3 billion and possibly more, depending on the sale price of Mundipharma, their international drug company, over seven years.

But they would still retain much of their wealth. In fact, they might be able to keep billions of dollars that state attorneys general allege they pulled out of the company.

"No one is going to be happy after this," said Adam J. Levitin, a Georgetown Law School professor who studies bankruptcy. "People are going to be mad that the Sacklers aren't going to jail, that they will have money left."

The Washington Post reviewed a detailed analysis of the settlement plan that has been valued at $10 billion to $12 billion. The plan has been at the heart of negotiations among the parties for many months. The material was confirmed by three people close to the discussions who spoke on the condition of anonymity because of the sensitivity of the negotiations.

If no deal is reached, Purdue is likely to declare bankruptcy in coming weeks, according to people familiar with the company's strategy. A huge civil trial against Purdue and as many as two dozen drug companies is scheduled to begin in Cleveland on Oct. 21.

The assumptions that undergird the $12 billion figure reveal why some of the plaintiffs are uncomfortable with aspects of the deal and why some have pledged flatly to oppose it. Some plaintiffs do not trust the valuations provided by Purdue and the Sacklers.

But the documents also indicate that if settlement talks fail and the Sacklers vote to send Purdue into Chapter 11 bankruptcy, the plaintiffs might get as little as $1.2 billion from an auction of the business's components.

In that scenario, plaintiffs would probably have to jockey for rights to Purdue's assets. The process could generate enormous legal bills, possibly further reducing any payout to them.

Purdue appears to be betting that this reality, coupled with continued pressure for a settlement from U.S. District Judge Dan Aaron Polster, who oversees the case, will push the agreement over the finish line. But attorneys general in Massachusetts, New York, Connecticut and New Jersey are balking.

Connecticut Attorney General William Tong declined in a written statement to comment on the proposed agreement but said Purdue should be "broken up and shut down," its assets liquidated and the Sacklers forced to pay.

"Connecticut demands that the Sacklers and Purdue management be forced completely out of the opioid business, domestically and internationally, and that they never be allowed to return," Tong said.

The Post sought comment on the proposed settlement from plaintiffs' attorneys, a Purdue spokeswoman and representatives of the three branches of the Sackler family. All declined to comment or did not return emails and phone calls requesting comment. Polster has imposed a gag order on all parties in the negotiation under his jurisdiction.

Purdue reiterated its position in a statement issued Saturday morning. "Purdue Pharma believes a settlement that benefits the American public now is a far better path than years of wasteful litigation and appeals," it said. "While the company is prepared to defend itself vigorously in the opioid litigation, Purdue has made clear that it prefers a constructive global resolution. We are actively working with state attorneys general and other plaintiffs on solutions that have the potential to save tens of thousands of lives and deliver billions of dollars to the communities affected by the opioid abuse crisis."

The Post also contacted several state attorneys general who were said to be involved in an Aug. 20 meeting with Polster to discuss a settlement. Other than Tong, who released a statement, none would publicly discuss the matter.

More than 40 states have sued Purdue or other drug companies in their own courts. But the company has said it wants any deal to cover those lawsuits as well as the consolidated federal case so that it will no longer face litigation.

Public resentment of Purdue and the Sacklers has smoldered in recent years. In 2007, the company and three of its executives pleaded guilty to federal criminal charges of misleading doctors and the public about the safety and effectiveness of its drugs. They paid a $635 million fine but served no jail time.

This year, public demonstrations of outrage erupted after Massachusetts and other states released internal emails in legal documents that depicted former president Richard Sackler's and Purdue's effort to drive up profits by persuading doctors to prescribe OxyContin to more people, more often and in higher doses.

Massachusetts produced records of Purdue board meetings where the Sacklers voted to move hundreds of millions of dollars from Purdue. Between 2008 and 2016, the family paid itself more than $4.3 billion, the lawsuit claimed. On Friday, Oregon's attorney general, Ellen Rosenblum, said the family had taken $11 billion out of the company.

In their own court filing, the Sacklers said Massachusetts Attorney General Maura Healey's lawsuit contained "misleading and inflammatory allegations" and took company emails out of context in assigning blame for the epidemic to the Sacklers. They asked a state court to dismiss the lawsuit.

Now, as the trial date approaches and Polster ratchets up pressure to settle, negotiations are intensifying. They became public Tuesday, when NBC News first revealed the outline of the deal.

The analysis reviewed by The Post offers previously undisclosed information about the proposed settlement.

Its most novel idea is to send the company to bankruptcy court with a prospective agreement, which would encourage a bankruptcy judge to temporarily halt the lawsuits. Then Purdue would be resurrected as a for-profit trust that would be under the control of trustees appointed by the judge.

The trust would produce and provide addiction and overdose medications, which are still in the pipeline, free of charge. But to calculate their value for the agreement, the analysis estimates their worth at $4.4 billion over 10 years. The bulk of that is derived from two drugs.

Nearly $2.2 billion is assigned to the nine years worth of nalmefene, an older drug that Purdue is developing for first responders as an antidote to overdoses of the powerful street drug fentanyl.

The value is not based on a potential market price of the drug, however. It was calculated by comparing its potential lifesaving effects to naloxone, a weaker nasal spray for overdoses that is in wide use, according to documents and the people familiar with the proposal.

In instances when medical personnel now need to use multiple doses of naloxone — for example when fentanyl is involved — the cost per emergency response can run up to $300. That figure was used as a comparison for the cost of a nalmefene treatment.

Nalmefene's potential advantages have not been proved in actual clinical trials, which began this summer. The Food and Drug Administration has fast-tracked a review of the drug, but the agency has not approved it for use.

A second drug — an over-the- counter version of naloxone nasal spray, which accounts for $1.9 billion of the settlement — also lacks FDA approval, according to the documents reviewed by The Post. The Purdue nasal spray would be given away free, without a prescription. The proposed settlement puts a value on that drug by assuming average sales of more than $200 million a year.

Any new drug would face competition from the only naloxone drug available, Narcan. Other companies are also working on generic competitors.

Ironically, the new public trust would largely pay for the millions of doses of the antidote drugs by continuing to sell OxyContin to pain patients, according to the documents.

Purdue holds patents for tamper-resistant versions of the 25-year-old drug, which generated $790 million in revenue last year, according to the documents. But those patents will run out over the 10-year settlement, drastically cutting revenue and therefore the money available to combat the drug epidemic.

Within 10 years, the annual revenue from OxyContin would shrivel to just tens of millions of dollars annually, according to the documents reviewed by The Post.

Purdue hopes to plug that growing gap with new drugs, including one approved by the FDA this year, Adhancia, which treats attention-deficit/hyperactivity disorder, the documents show.

The plaintiffs also would net relatively little from Purdue's existing balance sheet. Although OxyContin has generated an estimated $35 billion in revenue since it hit the market, Purdue had $500 million cash on hand earlier this year, according to the documents.

The company's single biggest current asset appears to be a collection of insurance policies, which could be worth $725 million, according to the documents. But two individuals familiar with the negotiations said the actual value of those policies could be hundreds of millions of dollars less after negotiations with insurance companies.

The settlement estimates that the new public benefit trust would continue to make money, ending the 10 years with perhaps $800 million in the bank. Further, it estimates that the value of the company's production facilities, patents and other residual assets would total an additional $800 million.

The document did not give a full breakdown of the company's current assets, however, including a drug manufacturing facility in North Carolina.

Critics question the proposed benefits.

"We do not believe the company is worth what the family and Purdue says it is, and we do not believe the rescue drugs are worth anywhere close to what they project. I mean, they haven't even been approved by the FDA yet," said one person familiar with the negotiations, who spoke on the condition of anonymity because of Polster's admonition not to discuss them.

Plaintiffs have moved off an initial position that the Sackler family should kick in $6 billion, but the family, the individual said, has been reluctant to commit to more than $3 billion.

"The family knew $3 billion was the price of admission for a conversation about a settlement and they have been unwilling to move beyond that," the person said. "It's very disappointing."

David Herzberg, a University of Buffalo history professor who has researched the marketing of opioids, suggested another approach. "Why not take that idea, and use their money to build another organization that isn't already tainted, already steeped in all the worst possible elements of for-profit pharma?" he said.

But some attorneys general support the deal, preferring a bird-in-the-hand approach to bankruptcy without a deal or litigation.

As for the Sackler family itself, the current proposal demands they pay $500 million in the first year of the deal, $300 million annually in years two through six and $1 billion in the seventh year, for a total of $3 billion, according to one person familiar with the deal.

They could do that by selling off their international drug conglomerate, Mundipharma, or reaching into the trusts and investments where much of their money has been reported to be located. The Sacklers' wealth has been valued at $13.5 billion by Bloomberg News, which would make them one of the richest families in the United States.

At one point, Mundipharma's website said the company was valued at $7 billion. Whether the company could fetch even half that now, and how quickly it could be sold off, are central issues in the negotiations. According to one person close to the negotiations, the family has expressed confidence in negotiations that it could get at least $3 billion from the sale.

If Mundipharma sells for more than that, 90 percent of the next $1.5 billion would go to plaintiffs, according to people close to the negotiations. If the sale price is higher than $4.5 billion, the plaintiffs and the family would split the rest of the proceeds equally.

That could leave untouched the family's fortune in trusts, limited liability corporations, and investment funds that control extensive stock holdings, real estate and even ski resorts.

But the conglomerate's value could be reduced by concerns that it, too, could be scrutinized over its opioid promotion practices.

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