



## Opioid Litigation Status Update

Last Updated: May 3, 2021

States, cities, counties, tribes, hospitals, and insurance companies throughout the country are filing suit against pharmaceutical manufacturers, distributors and pharmacies to hold them accountable for the overdose crisis. Claims have been filed in state and federal court under a variety of legal theories, including anti-trust, consumer protection, and public nuisance. Currently, there are more than 2,000 city, county, and tribal governments participating in a [multi-district litigation](#) (MDL) in the U.S. District Court for the Northern District of Ohio. The United States federal government has also indicted several pharmaceutical manufacturers, distributors, and pharmacies, alleging violations of the Controlled Substances Act (CSA) and criminally fraudulent advertising practices. Additionally, [every state except for Nebraska](#) has filed a civil suit in state court against at least one pharmaceutical manufacturer, distributor, or pharmacy. This litigation tracker highlights developments in these cases.

Help CUSP keep this information current.  
Email us at [info@c4usp.org](mailto:info@c4usp.org) with updates.

© 2020-2021 Center for U.S. Policy. All rights reserved.

### Federal Cases

#### Civil Cases

#### **Walmart v. Department of Justice (2020) | United States District Court for the Eastern District of Texas**

- Status: Ongoing
- On October 22, 2020, Walmart [sued](#) the Department of Justice seeking a court declaration that pharmacies are only liable under the Controlled Substances Act when they knowingly or recklessly fill a prescription that was not issued for a legitimate medical purpose. Furthermore, Walmart seeks to clarify that pharmacists are not required to second-guess a prescriber's decision or refuse to fill entire classes of prescriptions without regard to individual facts and circumstances. Walmart also seeks clarity on distributors' obligations to report suspicious orders.
- On February 4, 2021, the court [dismissed](#) the case, citing the government's sovereign immunity. On February 9, Walmart [announced](#) it would appeal this decision, and filed its [appeal](#) March 10, 2021 with the Fifth Circuit.

#### **United States v. Walmart, Inc. (2020) | United States District Court for the District of Delaware**

- Status: Ongoing
- On December 22, 2020, the United States [sued](#) Walmart for purported violations of the Controlled Substances Act. The United States alleges that Walmart violated its obligations as a pharmacy and a distributor, and contributed to the overdose epidemic. The United States claims that Walmart dispensed and distributed drugs that were not for a legitimate medical purpose, and failed to disclose to the Drug Enforcement Administration suspicious orders.

Center for U.S. Policy

1455 Pennsylvania Ave, NW · Suite 400 · Washington, DC 20004 · 202-525-6719 · [c4usp.org](http://c4usp.org)

### In re [McKesson Corporation Derivative Litigation](#) (2020) | United States District Court for the Northern District of California

- Status: Settled
- Beginning in April 2017, a series of shareholders [sued](#) McKesson's board of directors for a breach of their duties to the corporation and the shareholders. Plaintiff shareholders alleged that McKesson's officers and directors breached their duties by failing to provide oversight of McKesson's compliance with the Controlled Substances Act, culminating in a \$150 million fine in a 2017 settlement with the Department of Justice. These cases were consolidated in the Northern District of California.
- On January 23, 2020, McKesson [announced](#) a \$175 million settlement with the plaintiffs, which will be returned from the director's insurance policy back into the company's control. Furthermore, company executives also agreed to enhance their corporate governance protections and toughen bonus claw-back policies for officials who fail to perform their duties. This settlement was finalized on April 22, 2020.

### [Mallinckrodt](#) (2020) | United States Bankruptcy Court for the District of Delaware

- Status: Ongoing
- On October 12, 2020, Mallinckrodt filed for Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the District of Delaware. The company aims to implement a restructuring support agreement allowing for future opioid claims settlements and financial restructuring. The restructuring plan, presented to the bankruptcy court on October 12, 2020, would resolve claims arising from opioid manufacturing, and other pending lawsuits, including intellectual property and contract claims.

### [Purdue Pharma](#) (2019) | United States Bankruptcy Court for the Southern District of New York

- Status: Ongoing
- On September 15, 2019, Purdue Pharma and its subsidiaries filed for Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the Southern District of New York.
- In November 2020, the company received the bankruptcy court's approval of the settlement with the United States Department of Justice. Purdue will pay fines and forfeitures exceeding \$8 billion, with \$225 million paid to the federal government and the remainder going toward thousands of state and local governments and other entities. The settlement also requires Purdue to restructure as a public benefit company aimed at providing discounts or donations of overdose rescue drugs to communities.
- On March 15, 2021, Purdue [filed](#) a Chapter 11 plan of reorganization aimed at resolving the bankruptcy proceedings. The plan would create the National Opioid Abatement Trust, as required by prior settlements, and would make more than \$10 billion in value available for abatement programs across the country. Purdue would dissolve and transfer 100% of its assets to a new company dedicated to addressing the opioid crisis. The Sackler family would have no involvement in the new company or any pharmaceutical businesses, and would contribute \$4.5 billion to the global settlement. The plan may face [opposition](#) from several states and territories, and could be challenged in court by those that do not accept the plan.

### **[Insys Therapeutics](#) (2019) | United States Bankruptcy Court for the District of Delaware**

- Status: Ongoing
- On June 10, 2019, Insys Therapeutics filed for Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the District of Delaware. Insys cited the Department of Justice settlement of \$243 million as its largest debt. As part of the restructuring, Insys sold its main opioid product to BTcP Pharma, LLC in September 2019. The bankruptcy court approved the company's bankruptcy plan, and Insys will form two trusts: one to sell its assets and one to resolve victims' claims.

### **[United States, et al., v. McKesson Corp.](#) (2019) | United States District Court for the Northern District of California**

- Status: Ongoing
- On April 24, 2019, two whistleblowers brought a claim against McKesson Corporation on behalf of the United States government, alleging that they witnessed lax security at McKesson distribution centers. The claim, brought under the False Claims Act, is centered on McKesson's alleged failure to disclose violations of the Controlled Substances Act, and argues that McKesson's violations mean it submitted false or fraudulent claims to the government for payment.
- On August 18, 2020, the court granted McKesson's motion to dismiss, finding that the whistleblowers did not adequately allege McKesson violated the False Claims Act. The whistleblowers filed an amended complaint on September 8, 2020.
- On February 16, 2021, the court dismissed the complaint without opportunity to amend. The court found that McKesson did not misrepresent its compliance in any claims, as requiring compliance as part of the contract does not entail requiring certification with each claim. The whistleblowers are appealing to the Ninth Circuit.

### **[In re: National Prescription Opiate Litigation](#) (2019) | United States District Court for the Northern District of Ohio**

- Status: Ongoing; The track three trial is [scheduled](#) to begin on October 4, 2021; the track one-B trial, most recently scheduled for November 9, 2020, has been [delayed](#) indefinitely.
- Beginning in 2016, Purdue Pharma, Johnson & Johnson, and other manufacturers and distributors of opioid products have been named in an [MDL suit](#) brought by local governments for their role in the overdose crisis.
- There are more than [2,400 plaintiffs in the MDL](#), representing a wide swath of city, county, and tribal governments.
- Plaintiffs allege that the manufacturers of prescription opioids grossly misrepresented the risks of long-term use of those drugs for persons with chronic pain, and distributors failed to properly monitor suspicious orders of those prescription drugs.
- On August 20, 2019, [Endo International settled](#), agreeing to pay \$10 million. On August 30, 2019, [Allergan](#) reached a \$5 million settlement agreement.
- On September 15, 2019, Purdue Pharma [filed for bankruptcy](#) as part of a [proposed settlement agreement](#), prompting a [stay](#) on all of the pending litigation against the pharmaceutical company. The stay on litigation [has been extended](#) until March 2021.

- As of September 2019, Purdue had [tentative agreements](#) with 23 states, three U.S. territories, and thousands of the city and county governments involved in the MDL.
- On August 30, 2019, the Ohio Attorney General filed a [Petition for Writ of Mandamus](#), asking the court to stop the Ohio Opioid MDL trial. He argued that the case was inappropriate because only the attorney general is vested with the authority to prosecute claims that affect the health and comfort of people across the state. On October 10, 2019, the court [denied](#) this petition.
- On October 1, 2019, Purdue Pharma and Johnson & Johnson reached a [\\$20.4 million settlement](#) with two Ohio counties. Then on October 21, 2019, AmerisourceBergen, Cardinal Health, and McKesson agreed to a [\\$215 million settlement](#), just before the trial was set to begin that day. Teva Pharmaceuticals also agreed to contribute \$20 million plus \$25 million worth of buprenorphine for the treatment of OUD.
- On November 19, 2019, the federal judge overseeing the MDL issued a [suggestion for remand](#) of three cases. The Court explained that the MDL is extremely complex due, in part, to the multitude of both plaintiffs and defendants in the MDL. As such, it recommended that these three cases be remanded to streamline the litigation process. These cases were:
  - *City of Chicago v. Purdue Pharma L.P. et al*, in which the transferor court had overseen substantial discovery and motion practice before the case was transferred to the MDL;
  - *Cherokee Nation v. McKesson Corporation et al*, which it found included distinctly Tribal issues; and
  - *City and County of San Francisco, et al v. Purdue Pharma L.P. et al*, in which defendants had nearly completed discovery before the case was transferred to the MDL.
- On November 20, 2019, the United States Judicial Panel on Multidistrict Litigation issued a [conditional remand order](#) that would remand *City of Chicago v. Purdue Pharma L.P. et al*; *Cherokee Nation v. McKesson Corporation et al*; and *City and County of San Francisco, et al v. Purdue Pharma L.P. et al*, as long as none of the parties to any of these suits file a Notice of Opposition. Defendants in *Cherokee Nation* and *City and County of San Francisco* [filed notices of opposition](#) on November 27, 2019. The parties of *City of Chicago* did not file a Notice of Opposition. The United States Judicial Panel [finalized](#) the Remand Order for City of Chicago on December 2, 2019.
- On December 10, 2019, the court [ordered](#) the pharmacy defendants to provide “transactional dispensing data for the entire United States from 1996 forward” in discovery. The defendants challenged this order in a [motion](#) filed December 20, 2019, citing patient privacy and the burden of producing the requested data due to the sizable geographic and temporal scope of the request, among other concerns. On December 30, 2019, the court issued an [order](#) granting defendants’ motion in part, altering the temporal scope to 2006 forward.
- On January 6, 2020, CVS, Walmart, Rite Aid, and several other pharmacy chains [filed a third-party complaint](#) against 500 licensed doctors and other health care practitioners in Cuyahoga County, Ohio who wrote or authorized the opioid prescriptions that pharmacists at the plaintiff pharmacies allegedly should not have filled. The complaint

alleges liability for the opioid crisis on theories of negligent misrepresentation, common law negligence, intentional fraud, and indemnification.

- On January 7, 2020, a group of guardians caring for hundreds of thousands of children diagnosed with opioid-related neonatal abstinence syndrome (NAS) filed a [motion for class certification](#). If the motion is granted, it would add the class to the list of plaintiffs in the MDL.
- On February 5, 2020, the United States Judicial Panel on Multidistrict Litigation issued a [remand order](#), sending the *Cherokee Nation v. McKesson Corporation et al* back to the Eastern District of Oklahoma and *City and County of San Francisco, et al v. Purdue Pharma L.P. et al* back to the Northern District of California, deferring to the [suggestion](#) of the federal judge overseeing the MDL.
- On February 14, 2020, 13 attorneys general filed a bipartisan [amicus brief](#) requesting that the U.S. Court of Appeals for the Sixth Circuit reverse the district court's certification of the negotiation class. Notably, the brief argues that the district court infringed on state sovereignty in certifying the class by allowing for political subdivisions, such as cities, counties, and other local governments to exercise powers that are reserved to the states, including the capacity to sue to protect their citizens' interests.
- On February 25, 2020, Mallinckrodt reached a \$1.6 billion [settlement agreement](#) that would resolve all of the opioid-related claims against the company.
- On March 31, 2020, U.S. District Court [dismissed](#) the third-party complaint filed by the pharmacy companies in January to shift liability for the opioid epidemic to physicians and practitioners in Cuyahoga and Summit Counties. The court ruled that the counties' lawsuits were not tied to prescribing practices, and that adding claims against prescribers would significantly delay the start of the trial.
- On April 10, 2020, pharmaceutical companies [urged](#) the Sixth Circuit to reverse the district court's certification of the negotiation class created to help resolve the MDL, arguing that the certification is not authorized by the federal rules for class action.
- On September 24, 2020, the Sixth Circuit [reversed](#) the district court's certification of the negotiation class, as the novel form used was inappropriate under Federal Rules of Civil Procedure Rule 23. The Sixth Circuit held that certification of a class under the rule may only occur after a settlement has been proposed. The plaintiffs have [sought](#) review of the decision.
- On November 3, 2020, McKesson Corporation announced that a proposed settlement by the state attorneys general would result in McKesson and its competitors, AmerisourceBergen and Cardinal Health, paying a total of \$21 billion to resolve the claims.
- On March 23, 2021, the California Department of Justice was ordered to produce datasets from the state's prescription drug monitoring program in one of the bellwether cases, *City and County of San Francisco v. Purdue Pharma L.P.* The court found that disclosure of the data was necessary to Walgreens' defense, even though California's DOJ is not a party to the lawsuit. Walgreens will pay up to \$2,000 for production costs, and will be limited in its use due to privacy concerns.
- On April 8, 2021, U.S. District Court Judge Dan Polster, who is supervising the multidistrict opioid litigation, [announced](#) five new bellwether cases, allowing the following plaintiffs to start trials in their respective districts: (1) Durham County, North Carolina, (2) Tarrant County, Texas, (3) Montgomery County, Ohio, (4) Santa Fe County, New

Mexico, and (5) Cobb County, Georgia. The cases include claims against the nation's four biggest pharmacy retailers: CVS Health Corp., Walgreen Co., Walmart Inc., and Rite Aid Corp., but may include other retailers as well.

#### **Arizona v. Sackler, et. al. (2019) | Supreme Court of the United States**

- Status: Concluded
- On July 31, 2019, the State of Arizona filed a Bill of Complaint in the U.S. Supreme Court against Purdue Pharma and members of the Sackler family, claiming that the Court had original jurisdiction under [Article III of the U.S. Constitution](#), which grants the Supreme Court jurisdiction to decide cases “between a state and citizens of another state.”
- The [Bill of Complaint](#) claimed that the Sacklers violated fraudulent transfer laws through recent cash transfers out of Purdue Pharma while the company was under scrutiny for its alleged role in the overdose crisis.
- On December 9, 2019, the U.S. Supreme Court [declined](#) to hear the State of Arizona's case.

#### **Wisconsin, et. al. v. Indivior Inc. et. al. (2019) | United States District Court for the Eastern District of Pennsylvania**

- Status: Ongoing; Summary judgment motions are due by February 11, 2021, with responses due no later than March 11, 2021.
- In 2016, 35 states and the District of Columbia filed suit against Indivior in the Eastern District of Pennsylvania. Plaintiffs [alleged](#) that Indivior tried to prevent or delay less expensive generic versions of its branded buprenorphine product from entering the market in order to preserve their profits and engaged in anticompetitive and unlawful behavior to lower the market share of these products.
- Currently, [41 states and the District of Columbia](#) have joined the lawsuit.

#### **City of Huntington, West Virginia v. AmerisourceBergen Drug Corp. et al. (2017) | United States District Court for the Southern District of West Virginia**

- Status: Ongoing; trial is [set](#) to begin May 3, 2021.
- In 2017, the City of Huntington and Cabell County brought suit against AmerisourceBergen Drug Corporation, Cardinal Health, Inc., and McKesson Corporation, alleging that the distributors created a public nuisance by ignoring the signs of prescription opioid diversion and misuse while continuing to distribute opioids, creating a public health crisis.
- Huntington and Cabell County sought abatement and an injunction, and brought their complaints outside of West Virginia's [settlements](#) with the distributors. Huntington and Cabell County expressed [concern](#) that the previous settlements would fail to provide enough funds to respond to the crisis in the state, and seek more than \$1 billion to deal with the crisis locally.
- In April 2021, Judge David A. Faber denied a series of motions for summary judgments filed by the distributors, clearing the way for trial to begin May 3, 2021.

## Criminal Cases

### [Purdue Pharma Settlement \(2020\)](#)

- Status: Settled
- On October 21, 2020, Purdue Pharma and the Sackler family agreed to a settlement exceeding \$8 billion to resolve criminal and civil investigations into the company and a civil resolution into individual shareholders within the Sackler family for violating certain provisions of the federal CSA. The government alleged Purdue Pharma engaged in a conspiracy to defraud the United States, violate the Food, Drug, and Cosmetic Act, and violate the Federal Anti-Kickback Statute. As part of the settlement, Purdue admitted that it conspired to defraud the United States by impeding the lawful function of the Drug Enforcement Administration (DEA). In particular, Purdue admitted that it
  - Represented that it maintained an effective anti-diversion program when the company continued to market its opioid products to more than 100 health care providers whom the company had good reason to believe were diverting opioids;
  - Reported misleading information; and
  - Made payments to two doctors to induce the doctors to write more prescriptions of Purdue's opioid products.
- The criminal pleas resulted in a total of \$5.5 billion in fines and criminal forfeitures.
- Purdue also agreed to a \$2.8 billion civil fine to resolve allegations that the company caused false claims to be submitted to federal health care programs. This resolution included claims surrounding marketing to providers known to be prescribing opioids in an unsafe manner and kickback schemes aimed at inducing the sale of their opioids.
- Members of the Sackler family also agreed to pay \$225 million to resolve allegations that they induced Purdue to increase their sales despite health care providers beginning to prescribe fewer opioids. These actions allegedly led to the adoption of a marketing program aimed at health care practitioners who were prescribing opioids in unsafe, ineffective, and medically unnecessary manners.
- Finally, Purdue will be restructured as a public benefit company, with an emphasis on providing prescription drugs in a safe manner. Proceeds will be directed to state and local opioid abatement programs. Purdue will also provide overdose rescue drugs to communities at little to no cost.

### [Miami-Luken Indictment \(2019\)](#) | United States District Court for the Southern District of Ohio, Western Division

- Status: Ongoing
- On July 18, 2019, a federal grand jury charged Miami-Luken, a former pharmaceutical distributor; two of its former officials; and two pharmacists with conspiring to unlawfully distribute controlled substances in an indictment.
- The indicted entity and individuals allegedly sought to enrich themselves by distributing millions of opioid analgesics to health care practitioners and pharmacies in rural Appalachia.
- Defendants [argue](#) that the alleged misconduct was not prohibited under the CSA. As of September 30, 2020, the court is considering a motion to dismiss.

## **U.S. v. Indivior Inc. et. al. (2019) | United States District Court for the Western District of Virginia**

- Status: Closed; A guilty plea was [accepted](#) by the court on July 24, 2020, and sentencing took place on November 12, 2020.
- On April 9, 2019, Indivior was indicted on criminal fraud charges for alleged misrepresentations designed to increase prescriptions of branded buprenorphine.
- On November 14, 2019, a U.S. District Court for the Western District of Virginia, Abingdon Division, [denied Indivior's Motion to Dismiss](#) and rejected its request for a further inquiry into the Grand Jury proceeding.
- On November 12, 2020, the court [sentenced](#) Indivior as part of its plea deal for its role in the deceptive marketing of its branded buprenorphine product. Indivior will pay \$600 million to resolve its civil and criminal liabilities, and certain officers who also pleaded guilty will face incarceration and fines.

## **Mallinckrodt Settlement (2017)**

- Status: Settled
- On July 11, 2017, Mallinckrodt agreed to a [\\$35 million settlement](#) for allegedly violating certain provisions of the CSA. The government alleged that the manufacturer failed to implement an effective system to detect and report suspicious orders of controlled substances, and that between 2008 and 2011, Mallinckrodt supplied distributors with an increasing supply of oxycodone pills without notifying the DEA.
- The government also alleged that Mallinckrodt violated the CSA's record-keeping requirements at one of its manufacturing facilities in New York, failing to accurately report the number of pills manufactured there.
- As part of the settlement, Mallinckrodt also entered into an agreement with the DEA to utilize data from the supply chain to identify suspicious orders.

## **Costco Wholesale Settlement (2017)**

- Status: Settled
- On January 19, 2017, Costco Wholesale agreed to pay [\\$17.5 million to settle allegations](#) that its pharmacies improperly filled suspicious prescriptions in violation of the CSA. The government also alleged that Costco failed to accurately maintain records of controlled substances.
- Under the settlement, Costco acknowledged that it improperly filled prescriptions from practitioners who lacked a valid DEA number, prescriptions that fell outside of the scope of the prescriber's DEA registration, and prescriptions that lacked some required information, among other violations of the CSA.
- The settlement allowed the DEA to conduct unannounced inspections of all Costco pharmacy locations over the following three years.

## **McKesson Settlement (2017)**

- Status: Settled
- On January 17, 2017, McKesson agreed to [a \\$150 million settlement](#) with the United States for alleged violations of the CSA. The settlement required McKesson to suspend



sales of controlled substances from its distribution centers in Florida, Michigan, Colorado, and Ohio. Under the settlement, McKesson also agreed to enhanced compliance mechanisms over the next five years, including the use of an independent monitor.

- In 2008, McKesson entered a [\\$13.25 million settlement](#) over similar allegations, including that the distributor failed to detect and report suspicious orders. As part of that settlement, McKesson designed a new compliance program, but the 2017 government investigation found that McKesson failed to fully implement or adhere to its program.

### **Cardinal Health Settlement (2016)**

- Status: Settled
- On December 23, 2016, Cardinal Health agreed to a [\\$44 million settlement](#) with the United States for allegedly violating the CSA. The government alleged that Cardinal Health failed to report suspicious orders of controlled substances made by pharmacies in Florida and Maryland between 2009 and 2012. Cardinal Health also entered into a settlement with the Western District of Washington over alleged violations of CSA record-keeping requirements, as well as a separate settlement with the Southern District of New York over allegations that one of its subsidiaries failed to report suspicious orders.
- In addition, under the settlement, Cardinal Health acknowledged that it failed to adequately maintain controls against diversion.

### Cases in State Courts

#### **State of Arkansas v. Walgreen Company (2021) | Circuit Court of Pulaski County, Arkansas**

- Status: Ongoing.
- On March 15, 2021, Arkansas's Attorney General sued Walgreens Pharmacy for its contributions to the opioid crisis in the state. The lawsuit alleges that Walgreens sold, distributed, and dispensed "[far greater quantities of prescription opioids than it knows could be necessary for legitimate uses](#)," and failed to report suspicious orders. The state is seeking an injunction and civil penalties for violations of the state's consumer protection laws.

#### **State of Tennessee v. Food City Supermarkets, LLC (2021) | Circuit Court of Knox County, Tennessee**

- Status: Ongoing.
- On February 4, 2021, Tennessee's Attorney General sued Food City Supermarkets alleging the chain's pharmacies intentionally profited from the opioid epidemic with large sales of opioids that routinely raised red flags. The complaint also asserts that Food City pressured employees to increase opioid sales and fill suspicious prescriptions, and created a prescription savings card program that reduced the price of opioids for customers. The state alleges that the chain failed to maintain effective controls against diversion and misuse, arguing that the pharmacies' actions created a public nuisance by endangering the health of residents and harming the marketplace. Tennessee also brought claims under its consumer protection law.

### **McKinsey & Co. (2021) | Nationwide Settlements**

- Status: Settled with 49 states, the District of Columbia, and five U.S. territories. Pending with Nevada.
- On February 4, 2021, consulting firm McKinsey & Co [agreed](#) to pay nearly \$600 million to resolve complaints from states and territories that its work for opioid manufacturers accelerated sales of drugs and contributed to the epidemic. Two states received individual settlements, with Washington and West Virginia receiving \$13.5 million and \$10 million respectively. The remaining \$573 million will be split among 47 states, the District of Columbia, and five U.S. territories.
- [Most of the funding](#) will go to state programs for addiction treatment and recovery services.
- Nevada's Office of the Attorney General [announced](#) a separate \$45 million settlement on March 22, 2021.
- Local governments and tribes are starting to file lawsuits against McKinsey in New York, Illinois, Florida, West Virginia, and Oklahoma. Namely, the city of Pembroke Pines, Florida, [filed](#) a class action lawsuit alleging that McKinsey's actions helped to drive the opioid addiction crisis.

### **Lebanon County Employees' Retirement Fund v. AmerisourceBergen Corporation (2020)** **| Delaware Court of Chancery**

- Status: Ongoing
- On May 21, 2019, the Lebanon County Employees' Retirement Fund requested to inspect AmerisourceBergen's books and records pursuant to Delaware General Corporation Law. As stockowners in AmerisourceBergen, the plaintiff sought to investigate whether the corporation was engaged in wrongdoing in connection with the distribution of opioids.
- AmerisourceBergen rejected the inspection request in its entirety, and plaintiffs filed suit on July 8, 2019 in the Delaware Court of Chancery.
- On January 13, 2020, the court ruled that the plaintiff, as a stockholder in AmerisourceBergen, was permitted to inspect the company's books and records for the purpose of investigating whether it had engaged in any wrongdoing in connection with the distribution of opioids.
- On December 10, 2020, the Delaware Supreme Court [affirmed](#) the Court of Chancery's decision ordering the production of documents.

### **Endo International Oklahoma Settlement (2020)**

- Status: Settled
- On January 10, 2020, Endo International reached an \$8.75 million settlement agreement with the Oklahoma government.
- Under the terms of the agreement, Oklahoma will not file suit against Endo for its alleged role in the drug overdose crisis. The agreement fully and finally resolves Oklahoma's investigation of the manufacturer's actions and includes no admission of wrongdoing by Endo.

### **In re: Opioid Litigation (2019) | Supreme Court of the State of New York, County of Suffolk**

- Status: Ongoing; [jury selection to begin](#) March 29, 2021.
- On March 28, 2019, the State of New York filed suit against Purdue Pharma and several other opioid manufacturers and distributors under theories of public nuisance, deceptive business practices, false advertising, violations of the CSA, unjust enrichment, and negligence. The [complaint](#) alleged that the defendants engaged in misleading and deceptive marketing practices that fueled and sustained the overdose epidemic.
- In March 2020, the trial, which had been scheduled to begin on March 20, was [postponed](#) due to the Coronavirus outbreak.
- On April 9, 2020, Suffolk County Supreme Court [dismissed](#) public nuisance claims against some pharmacy chains, including CVS Pharmacy Inc., Rite Aid, and Walgreen Co. He did not dismiss public nuisance claims against Endo Pharmaceuticals Inc. related to marketing of its discontinued opioid medication.
- On April 23, 2020, Suffolk County Supreme Court granted summary judgment for the defendants in their capacity as dispensers, but not in their capacity as distributors. The court ruled New York law insulated the defendants from liability for pharmacist dispensing decisions.
- The trial will [include](#) the claims brought by Suffolk and Nassau counties.

#### **[Oklahoma v. Purdue Pharma L.P., et. al. \(2019\) | The District Court of Cleveland County, State of Oklahoma](#)**

- Status: Stayed pending bankruptcy proceedings
- On June 30, 2017, the State of Oklahoma filed suit against Purdue Pharma, Actavis, Cephalon, Inc., and Janssen, as well as their subsidiaries. The [complaint](#) alleged that the defendants’ deceptive and misleading marketing practices for opioids caused a “devastating public health crisis” in and an “immense financial burden on” Oklahoma. It sued under the Oklahoma Medicaid False Claims Act, Medicaid Program Integrity Act, state Consumer Protection Act, and public nuisance law.
- Oklahoma had settled with Purdue in March for [\\$200 million](#) and Teva in May for [\\$85 million](#). The [Teva settlement](#) resolved claims against Teva, Cephalon, Watson Laboratories, and Actavis.
- On August 26, 2019, the court found in favor of Oklahoma, [ruling](#) that Johnson & Johnson had caused a public nuisance in contributing to the overdose crisis in the state. The court ordered Johnson & Johnson to pay over \$572 million to abate the public nuisance it caused.
- Johnson & Johnson [appealed](#) the decision to the Oklahoma Supreme Court on September 25, 2019.
- On November 15, 2019, the court [revised](#) its ruling, ordering Johnson & Johnson to pay \$465 million – \$107 million less than it had originally ordered.
- On December 16, 2019, the State of Oklahoma filed an [appeal](#) with the Oklahoma Supreme Court, which claimed that the \$465 million reward was insufficient to fully resolve the overdose crisis in Oklahoma. As of January 6, 2021, the Supreme Court has [stayed](#) proceedings due to the pending bankruptcy cases.

#### **[State of Delaware v. Purdue Pharma, L.P., et. al. \(2019\) | Superior Court of the State of Delaware](#)**

- Status: Ongoing
- The State of Delaware [filed suit](#) against Purdue Pharma, among other pharmaceutical manufacturers and distributors, on January 19, 2018 for their alleged role in the overdose crisis under theories of consumer fraud, nuisance, negligence, unjust enrichment, and civil conspiracy.
- On February 4, 2019, the court issued an [order](#) that denied the manufacturer and distributor defendants' motions to dismiss the negligence and consumer fraud claims and granted the pharmacy defendants' motions to dismiss the negligence and consumer fraud claims. It also dismissed all public nuisance, civil conspiracy, and unjust enrichment claims against all defendants.
- The State of Delaware filed an [amended complaint](#) on April 2, 2019 in an effort to establish Walgreens as a distributor-defendant in the suit under a theory of medical malpractice. On August 1, 2019, the court [found](#) that the State could not establish causation under a theory of medical malpractice and granted Walgreens' Motion to Dismiss.
- On November 12, 2019, the State appealed the August 1, 2019 decision. This request was [denied](#) by the Superior Court of Delaware on December 4, 2019 and by the Supreme Court of Delaware on December 11, 2019.

**[City of New Haven v. Purdue Pharma L.P., et. al. \(2019\) | Superior Court of Connecticut, Judicial District of New Haven](#)**

- Status: Dismissed
- In 2017, the City of New Haven, Connecticut and 37 other cities and municipalities in the state filed suit against Purdue Pharma and several other pharmaceutical manufacturers and distributors for their role in the overdose crisis under theories of public nuisance, consumer protection, and negligence.
- On January 8, 2019, the Superior Court for the Judicial District of Hartford [dismissed the case](#), stating that the local governments did not have authority to sue because they could not establish that the defendant manufacturers and distributors directly caused the alleged harms.

**[North Dakota v. Purdue Pharma L.P., et. al. \(2018\) | South Central Judicial District Court of North Dakota](#)**

- Status: Stayed pending bankruptcy proceedings
- On May 15, 2018, the State of North Dakota filed suit against Purdue Pharma in the North Dakota South Central Judicial District. The [complaint](#) alleged that Purdue Pharma engaged in deceptive and unconscionable practices under consumer fraud law and created a public nuisance in marketing its branded opioids that contributed to the overdose crisis in North Dakota.
- On May 10, 2019, the court [granted](#) Purdue Pharma's Motion to Dismiss, explaining that the state had failed to show causation under both fraud and public nuisance claims.
- North Dakota [appealed](#) the dismissal to the North Dakota Supreme Court. On October 4, 2019, the case was [stayed](#) pending Purdue's bankruptcy proceedings.

**[California v. Purdue Pharma, et al. \(2014\) | Orange County Superior Court, California](#)**

- Status: Ongoing; trial [began](#) on April 19, 2021.
- In May 2014, Santa Clara County and Orange County [sued](#) opioid manufacturers, including Johnson & Johnson, Teva, and Endo, alleging the defendants engaged in marketing campaigns that knowingly downplayed the risks of opioid misuse and addiction. The counties sought injunctive relief and damages for the public nuisance that allegedly arose from the defendants' actions.
- On July 11, 2014, the defendants removed the case to federal court, but the federal court [determined](#) that the state had a strong interest in enforcing its public nuisance laws, and thus remanded the case to state court on November 12, 2014.
- The City of Oakland and Los Angeles County [joined](#) the lawsuit in 2018.
- On March 12, 2021, Judge Peter Wilson [denied](#) the defendant manufacturers' motion for summary judgment, finding that the defendants' asserted defenses were insufficient to resolve the plaintiffs' claims. Furthermore, the plaintiffs' public nuisance claims sufficiently demonstrated causation to create a triable issue of fact and a "public nuisance" does not need to be a "discrete" or "concrete" condition. Next, the generic defendants had not sufficiently demonstrated that they engaged in no marketing or advertising, and there remained factual disputes that required a trial. The court also found that the defendants could not rely on legal doctrines requiring the plaintiffs be free of any responsibility for damages, but preserved issues of fairness for trial.

#### **[Kentucky v. Purdue Pharma LP, et. al. \(2007\) | Pike County Circuit Court, Commonwealth of Kentucky](#)**

- Status: Settled
- Kentucky [first filed](#) its lawsuit against Purdue Pharma in 2007, alleging that the company misled the public about the addictiveness of prescription opioid painkillers.
- In 2007, Purdue Pharma offered Kentucky \$500,000 to settle the lawsuit, but the state [refused](#).
- In 2015, Purdue [settled with Kentucky for \\$24 million](#), to be paid over the following eight years.
- On September 24, 2019, Kentucky Senate President Robert Stivers stated that he will call for a [special counsel investigation of the 2015 settlement](#) with Purdue Pharma, citing concern that the state was "short changed" in its \$24 million settlement.

Guides for Municipalities on Using Funds from Opioid Litigation Cases

#### **[Principles for the Use of Funds from the Opioid Litigation \(2021\) | Johns Hopkins Bloomberg School of Public Health](#)**

- A coalition of stake holders led by Johns Hopkins' Bloomberg School of Public Health released five guiding principles for municipalities to consider when determining how to spend funds from opioid litigation.
- Principle 1- Spend Money to Save Lives: Despite the impact of COVID-19 on jurisdictions' budgets, they should remain committed to using the funds to prevent and treat drug addiction. Significant gaps in treatment remain, with only 10% to 20% of people with opioid use disorder receiving any treatment. Furthermore, jurisdictions should spread out the funding to ensure programs can continue in the future.

- Principle 2- Use Evidence to Guide Spending: Jurisdictions should use the developing body of evidence of what works and what doesn't to guide spending decisions. Programs that have demonstrated success should be prioritized, and if it is unclear, funding should be dedicated to confirm the effectiveness of programs.
- Principle 3- Invest in Youth Prevention: Youth overdoses have increased steadily in the past decade, and substance misuse by children often persists into adulthood. Prevention efforts in early years can reduce the chance of long-term addiction and overdose. Youth prevention programs report returns on investment of up to \$18 for every \$1 spent.
- Principle 4- Focus on Racial Equity: The rate of opioid overdose deaths has been increasing more rapidly in Black populations than in white ones. Furthermore, minority populations are more likely to face criminal justice involvement for their drug use, and face significant barriers in accessing high-quality treatment and recovery support services. Funding should be spent to decrease and prevent racial inequalities.
- Principle 5- Develop a Fair and Transparent Process for Deciding Where to Spend the Funding: Funding determinations should include public health leaders as well as people and families with lived experience. Diverse and well-educated public input is necessary for efficient use of the funding.

Help CUSP keep this information current.  
Email us at [info@c4usp.org](mailto:info@c4usp.org) with updates.