

NATIONAL TRIBAL OPIOID LITIGATION

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OVERVIEW OF TRIBAL LITIGATION & SETTLEMENTS

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SCOPE OF THE PROBLEM

False advertising & aggressive marketing created a nationwide prescription opioid addiction crisis

- **45,000 prescription opioid deaths per year**
- **80% of heroin users started with prescription opioids**
- **2 babies born addicted to prescription opioids every hour (neonatal abstinence syndrome)**
- **2020 was the worst year on record for fatal overdoses**
- **Every 9 minutes another American dies of an opioid overdose**
- **1 million deaths since 1999**



SCOPE OF THE PROBLEM IN NATIVE COMMUNITIES

- **American Indian & Alaska Native (AI/AN) communities suffer the highest per capita rate of opioid overdoses in the country**
- **Prescription opioid use among AI/AN youth is 60% higher than among white youth**
 - **By the mid-2010s, 13% of Indian & Alaska Native teens had used OxyContin**
- **Pregnant AI/AN women are 9 times more likely than other groups to be diagnosed with opioid dependency/abuse**
- **Doc 1 (Q&A)**



WHAT THE PHARMA DEFENDANTS DID

- **Aggressive advertising premised on false statements:**
 - Addiction risk is low
 - OxyContin provides 12 hours of pain relief
 - Long-term opioid use improves functioning
 - Opioid dosages can be increased without limit or increased risks
 - Long-acting opioid formulations deter drug abuse
 - Patients who experience withdrawal between doses are receiving insufficient doses
- **Targeted marketing to high-prescribing physicians to use ever-higher doses**



MAJOR DEFENDANTS

- **Manufacturers**

- Purdue
- Johnson & Johnson
- Mallinckrodt
- Endo
- Allergan
- Teva

- **Consultants**

- McKinsey

- **Distributors**

- McKesson
- Cardinal Health
- AmerisourceBergen

- **Pharmacies**

- Walgreens
- Walmart
- CVS



PRIOR JUSTICE DEPARTMENT ACTIONS

Penalties & Pleas

Purdue	2007 & 2017 2020	\$720 Million \$8.3 Billion
Cardinal Health	2008 & 2016-17	\$98 Million
McKesson	2008 & 2017	\$163 Million
AmerisourceBergen	2017	\$16 Million
Walgreens	2013	\$80 Million
CVS	2013 & 2016	\$40 Million
Sackler Family	2020	\$225 Million



HISTORY OF THE LITIGATION

- **2000s**: Beginning of litigation vs. Purdue & others
- **2017** : 70 federal cases + 12 State AG cases
 - By then, over \$1B in Gov't fines
- **2017** : MDL 2804 -- Ohio (Judge Dan Polster)
- **2021** : MDL 2996 – San Fran. (Judge Charles Breyer)
 - McKinsey
- **Totals**: over 3,000 cases & 40+ State AG cases
 - Majority filed by cities & counties (+ TPP + NAS, etc.)
 - Gov't suits seek damages for past and future costs of addressing the impacts of opioid addiction



TRIBAL CASES

- **Feb. 2017:** *Cherokee Nation v. McKesson* (tribal court) & *McKesson v Todd Hembree* (ND Okla.) (**Jan 2018:** Judge Kern grants prelim. injunction blocking tribal court proceeding)
- **June 2018:** Judge Polster creates tribal track for “test cases” and selects 2 bellwether Tribes: Muscogee (Creek) Nation; Blackfeet
- **June 2019:** Judge Polster upholds tribal bellwether cases against multiple MTDs (448 Tribal Amici) [Docs. 3, 4 & 5]
- **Sept. 2019:** Purdue bankruptcy
- **Jan. 2020:** 180 tribal cases on behalf of 400+ tribes/80% I. C.
- **Feb. 2020:** *Cherokee Nation* remanded to E.D. Okla. for trial vs. Distributors & Pharmacies; **2021** to state court vs. Pharmacies



TRIBAL CLAIMS THAT SURVIVED MTDs

- **RICO Enterprise Liability**
 - Opioid marketing enterprise
 - Opioid supply chain enterprise
- **Public Nuisance**
- **Negligence**
- **Unjust Enrichment**
- **Civil Conspiracy**

Some claims vs. all defendants; others vs. marketing manufacturer defendants (including generics), diversion manufacturer defendants, drug distributors & pharmacies (as distributors and as retailers)



TRIBAL DAMAGES (current & future)

- **Tribal Services**
 - Medical care/EMS
 - Law enforcement/public safety
 - Tribal courts
 - Child welfare services
 - Coordination with state agencies
- **Other costs**
 - Lost productivity
 - Damage from crime
 - Burial costs
- **Addiction Treatment**
 - Traditional behavioral health services
 - Medically Assisted Treatment (MAT)
 - Counseling and rehabilitation



PURDUE BANKRUPTCY

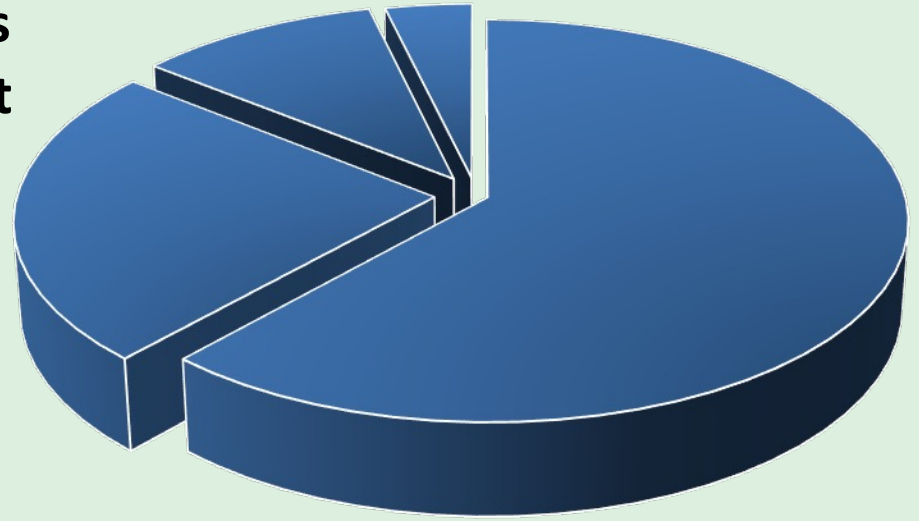


- **Sept 2019** Purdue files for bankruptcy
- Muscogee Creek Nation appointed to Ad-Hoc Committee of Consenting Governments (one of the creditor committees)
- **Sept 2021** bankruptcy court approves Reorg. Plan
 - **Dec 2021** S.D.N.Y. decision overturns Plan (appeal pending)
 - Issue: Involuntary release of Sacklers from States' claims in return for \$4.3 billion Sackler contribution to bankruptcy estate. (**Mar 2022**: new settlement increases Sackler \$\$ to \$5.5B)
- Gov't entities projected to receive ~\$5B (of the ~\$7B estate)
 - Tribal share is ~3% of all gov't funds = ~**\$160M** of the \$5B
- Most payments made over 8-9 years
- Gov't funds restricted to opioid abatement/remediation uses

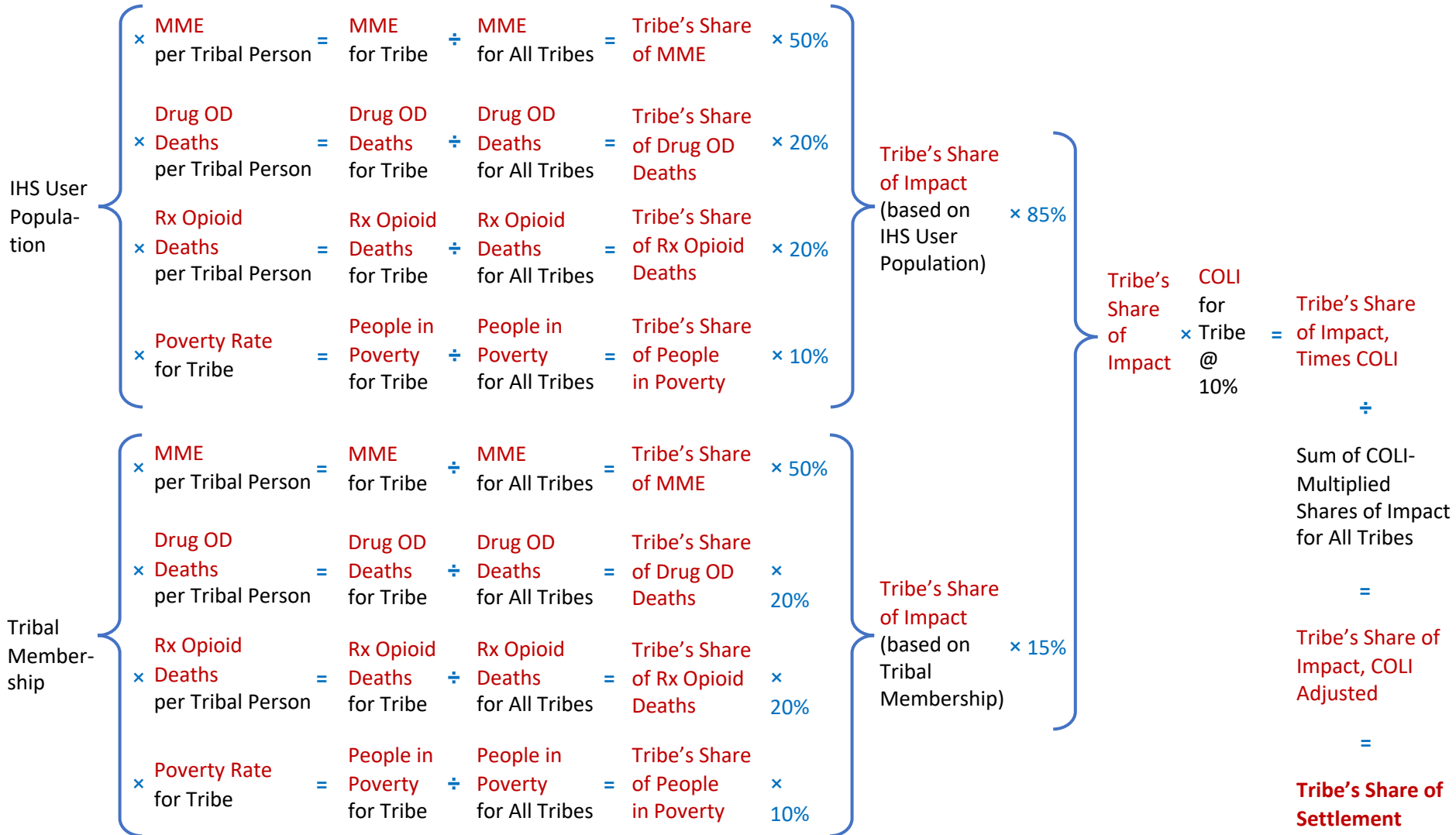


PURDUE INTERTRIBAL ALLOCATION

- Inter-tribal allocation based on impact/harm: MMEs, ODs, RxODs [90%]; relative poverty [10%]; cost of living;
- 85/15 = user pop/citizen pop
- Goal: focus funds to areas of greater harm
- The “Purdue Intertribal Allocation” [Doc. 18]
 - https://www.tribalopioidsettlements.com/Documents/Distributor/Purdue_Allocation.pdf



The Purdue Allocation Formula



PURDUE TRIBAL ABATEMENT FUND TRUST (TAFT I) and MALLINCKRODT TRIBAL ABATEMENT FUND TRUST (TAFT II)

- TAFT I appoints 3 Trust Directors
 - Former Assistant Secretary for Indian Affairs **Kevin Washburn** (Chickasaw), former IHS Director and ABA President-elect **Mary Smith** (Cherokee), and former KPMG partner (and current NMAI Chair) **Kathy Hannan** (Ho-Chunk) will share lead responsibility for implementing the settlement under the supervision of court-appointed Trust Administrator (and Special Master) **David Cohen**
- Trust Administrator David Cohen supervises Trustees
 - Appointed by Judge Dan Polster as Special Master in the MDL Opioid Litigation
- “Trust Protector” is ASU Law Dean **Stacy Leeds** (Cherokee)

https://www.tribalopioidsettlements.com/Documents/Purdue/Tribal_Abatement_Fund_Trust_Agreement.pdf



FIRST COMPLETED TRIBAL NON-BANKRUPTCY OPIOID SETTLEMENTS

- **2021-2022: Nationwide Tribal settlements concluded with Johnson & Johnson (\$150M) and with Distributors McKesson, Cardinal Health & Amerisource Bergen (\$515M combined) = \$665M**
 - <https://www.tribalopioidsettlements.com/> for additional info.
 - Tribes' settlement followed State/local settlements
 - July 2021: State AGs settle for \$26B
 - Distributors: \$21B over 18 years
 - Johnson & Johnson: \$5B over 5 years
 - Participation Rate achieved in January 2022
 - <https://nationalopioidsettlement.com/>



DISTRIBUTOR SETTLEMENT KEY ELEMENTS (Docs. 6 & 15)

- **\$439,964,500M** paid in 7 installments over 6 ½ years
 - **\$515,000,000** less \$75,035,500 in settlement of *Cherokee Nation v. McKesson*
 - **\$62,852,071.43** each payment
- **First two Distributor payments (\$125,704,142.86)** occur **Jan 24, 2022** (Oct 25 MSA signed + 60 days to effective date + 30 days to pay't date)
 - Third and subsequent annual payments begin July 15, 2023
- **Litigating Tribes and non-litigating Tribes have a right to participate in the settlement.**



DISTRIBUTOR SETTLEMENT KEY ELEMENTS

- **Settlement conditional on**
 - at least 95% of the litigating tribes (as measured by their allocable shares of the settlement) agreeing to the settlement (**100% agreed**), and
 - at least 14 of the 17 the non-litigating tribes with populations exceeding 5,000 tribal members agreeing to the settlement (**all 17 agreed**).
- **15% of the settlement funds are set aside for payment of attorneys' fees.**
- **85% to Tribes to abate/address the opioid crisis, including drug treatment and related abatement programs**
 - Docs 7 & 13; includes traditional healing.
- **Funds are “compensatory restitution” per IRS Code**



DISTRIBUTOR SETTLEMENT KEY ELEMENTS

- **Shares of non-litigating Tribes that do not settle within 4 years are reallocated among settling Tribes, up to a maximum \$20 million**
 - a 67% “reversion” threshold won’t be triggered
- **Intertribal Allocation under Special Master Cohen/Mediator Phillips**
- **Tribal Reporting on uses of settlement funds**
- **Administration by TAFT III (Tribal Abatement Fund Trust)**
 - **Doc. 11**



ADDITIONAL KEY TERMS OF **JOHNSON & JOHNSON** (J&J) SETTLEMENT

- **\$150,000,000M** paid in **2** equal installments of \$75,000,000
- Shares of non-settling plaintiffs are held in **escrow for 3 years** pending agreement to participate in the settlement.
- All unclaimed shares are reallocated among settling tribes (no cap)
- 14% of the settlement funds are set aside for payment of attorneys' fees
- **86%** of funds paid to tribes for abatement/restitution
- Administration by **TAFT IV** (Tribal Abatement Fund Trust)



SETTLEMENT IMPLEMENTATION

- **Execution of Tribal Participation Form**
 - Doc 10
 - https://www.tribalopioidsettlements.com/Documents/Janssen/Janssen_Participation_Agreement.pdf
 - https://www.tribalopioidsettlements.com/Documents/Distributor/Distributor_Participation_Agreement.pdf
- **Adoption of Resolution by Tribal Governing Body where required under tribal law.**



DISTRIBUTOR & J&J SETTLEMENT ALLOCATION

- **Intertribal Allocation**

- The intertribal allocation formula and data collection developed in the Purdue Bankruptcy is the starting point for distribution of the settlement. Doc. 18
- Special Master **David Cohen** and Mediator (and former federal judge) **Layn Phillips** will determine the final allocation.
- Letters to All Tribes dated Sept 12 (Doc 16) & Oct 3, 2022 (Doc 17) requesting comment on the intertribal allocation:
 - https://www.tribalopioidsettlements.com/Documents/Allocation_Letter_to_Counsel.pdf
 - https://www.tribalopioidsettlements.com/Documents/Inter_Tribal_Allocation_Submissions_Deadline_Extension.pdf
 - Process closes December 5, 2022



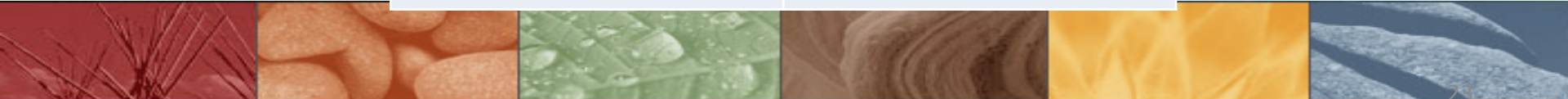
McKINSEY MDL 2996 (N.D. CA.)

- **Plaintiffs claim McKinsey coordinated with Purdue & others**
 - i.e., “Project Turbocharge”
- **States settle for \$604M in early 2021; law suits commence**
- **Court-appointed Plaintiffs’ Leadership Committee includes L. Miller as tribal rep.; E. Cabraser lead counsel.**
- **Oct. 2022 local gov’ts settle with McKinsey (amt. undisclosed)**
- **44 Tribal Suits = >250 tribes -- 56% of Indian Country. Master Tribal Complaint filed Dec 2021**
- **Other plaintiffs: TPP, NAS**
- **Nov 2022 J. Breyer rejects MTDs on personal jurisdiction**
- **Discovery underway**



TOTAL COMPLETED AND UNCOMPLETED TRIBAL OPIOID SETTLEMENTS

Company	Amount
Purdue	\$160M
Mallinckrodt	32M
Endo	[XXX]
McKesson, CH, ABC	515M
JnJ	150M
Teva	119M
Allergan	[XXX]
Walgreens	173M
CVS	150M
Walmart	88M
Other	[XXX]
TOTAL	~\$1,500,000,000



ADDITIONAL INFORMATION - RESOURCES

1. Court website for MDL 2804 (N.D. Ohio): <https://www.ohnd.uscourts.gov/mdl-2804>
2. Websites maintained by plaintiffs' counsel in MDL 2804: <https://www.tribalopioidsettlements.com/Index> and <https://nationalprescriptionopiatemdl.com/> (see tabs at top of pages for court orders, transcripts, and other relevant documents);
3. Washington Post coverage of the opioid crisis and the litigation: https://www.washingtonpost.com/health/drug-industry-and-ravaged-communities-are-seeking-an-opioids-deal-that-wont-come-easy--or-end-the-crisis/2019/10/30/51bbb564-f773-11e9-a285-882a8e386a96_story.html (see "The Opioid Files" at top of page for additional related coverage)
4. Indian Health Service opioid resource website: <https://www.ihs.gov/opioids/>
5. NCAI opioid resource website: <http://www.ncai.org/initiatives/partnerships-initiatives/ncai-opioid-initiative>
6. SAMHSA National Tribal Behavioral Health Agenda: <https://store.samhsa.gov/system/files/pep16-ntbh-agenda.pdf>
7. SAMHSA treatment resources: <https://www.samhsa.gov/find-treatment>



QUESTIONS?

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