

THE PURNELL LAW FIRM
and
PHIPPS ANDERSON DEACON LLP

11/6
CMT
attorneys



The Opioid Epidemic:

An Evaluation of Potential Causes of Action and Recoverable Damages for Nueces County and the City of Corpus Christi

Fall 2017

This memorandum is a confidential communication authored for the exclusive review of the intended recipient and shall not be disseminated without the express written consent of the

PURNELL LAW FIRM and PHIPPS ANDERSON DEACON LLP

Contact:

Simon Purnell
THE PURNELL LAW FIRM
711 N. Carancahua, Ste. 512
Corpus Christi, Texas 78401
Cell: (361) 500-2804
Telephone: (210) 340-9877
Facsimile: (210) 340-9899
spurnell@phippсандersondeacon.com

Martin J. Phipps
PHIPPS ANDERSON DEACON LLP
THE PHIPPS
102 9th Street
San Antonio, Texas 78215
Telephone: (210) 340-9877
Facsimile: (210) 340-9899
mhipps@phippсандersondeacon.com

This memorandum is a confidential communication authored for the exclusive review of the intended recipient and shall not be disseminated without the express written consent of the PURNELL LAW FIRM and PHIPPS ANDERSON DEACON LLP.

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
INDEX OF FIGURES AND TABLES	xiv
A. INTRODUCTION	1
B. THE NATIONWIDE OPIOID EPIDEMIC.....	2
1. "The Fifth Vital Sign"	2
2. OxyContin and the Rise of Prescription Opioids	4
3. The Fight Against Opioid Abuse	9
C. THE OPIOID EPIDEMIC IN NUECES COUNTY AND CORPUS CHRISTI.....	11
1. Determining the Extent of the Opioid Crisis in Nueces County Through Available Data	11
2. The Opioid-Related Death Rate in Nueces County	12
3. Neonatal Abstinence Syndrome in Texas and Nueces County.....	13
4. The Costs of the Opioid Crisis to Texas and Nueces County.....	16
D. THE WRONGDOERS.....	19
1. The Pharmaceutical Companies.....	19
2. The Distributor Companies.....	20
3. Pharmacies, Prescribers and Local Distributors	23
E. THE PHARMACEUTICAL COMPANIES' UNLAWFUL ACTS.....	25
1. Aggressive and Unethical Marketing Tactics	25
2. "Pseudoaddiction" and the Push to Treat Addiction with More Opioids	26
3. False Claims that Opioid Addiction is Easily Treated	27
4. Approval and Endorsement of Higher Dosages for Opioid-Tolerant Patients	28
5. Misrepresentations About the Benefits of Long-Term Opioid Abuse.....	28
6. Illegal Efforts to Increase Sales	29
F. THE DISTRIBUTOR COMPANIES' UNLAWFUL ACTS	30
G. OVERVIEW OF OPIOID LITIGATION.....	31
1. Precedent for Liability	31
2. Suits Filed by Counties and Cities	32
3. Multidistrict Litigation.....	35

TABLE OF CONTENTS (CONT'D)

H. CAUSES OF ACTION	36
1. Deceptive Trade Practices and Consumer Protection Act (DTPA)	36
2. Common Law Public Nuisance	38
3. Statutory Common Nuisance	40
4. Common Law Negligence/Gross Negligence.....	40
5. Negligence Per Se	43
6. Misrepresentation.....	44
7. Common Law Fraud	44
8. Racketeer Influenced and Corrupt Organizations Act (RICO).....	46
I. FEDERAL PREEMPTION	48
J. VENUE	50
1. Diversity of Citizenship	50
2. Federal Question	50
3. Removal and Remand	51
K. STATUTES OF LIMITATION	53
L. DAMAGES	56
1. Loss of Productivity	56
2. Health Care Costs	57
3. Social Programs/Substance Abuse Treatment Services.....	59
4. Criminal Justice Costs.....	60
M. OUR TEAM	64
1. Scope of the Project	64
2. Conflict of Interest Information	66
3. The PHIPPS ANDERSON DEACON LLP Litigation Team	66
APPENDIX A: List of Filed Municipal Opioid Lawsuits	
APPENDIX B: Curriculum Vitae	

TABLE OF AUTHORITIES

CASES

<i>Addison v. Dall. Indep. Sch. Dist.</i> , 632 S.W.2d 771 (Tex. App.—Dallas 1982).....	38
<i>Agency Holding Corp. v. Malley-Duff & Associates, Inc.</i> , 483 U.S. 143 (1987).....	54
<i>Alm v. Aluminum Co. of Am.</i> , 717 S.W.2d 588 (Tex. 1986).....	42
<i>Aquaplex Inc. v. Rancho La Valencia, Inc.</i> , 297 S.W.3d 768 (Tex. 2009).....	45
<i>Bankers Trust Co. v. Rhoades</i> , 859 F.2d 1096 (2d Cir. 1988).....	55
<i>Buchanan v. Rose</i> , 159 S.W.2d 109 (1942).....	42
<i>Carnegie-Mellon Univ. v. Cohill</i> , 484 U.S. 343 (1988).....	51
<i>Cherokee Nation v. McKesson</i> , No. CV-2017-203 (Dist. Ct. Cherokee Nation Apr. 20, 2017).....	33
<i>City of Chi. v. International Coll. Of Surgeons</i> , 522 U.S. 156 (1997).....	51
<i>City of Chicago v. Purdue Pharma L.P.</i> , No. 14 C 4361, 2015 U.S. Dist. LEXIS 60587 (N.D. Ill. 2015).....	58
<i>City of Chicago v. Purdue Pharma LP</i> , No. 1:14-cv-04361 (N.D. Ill. Sep. 29, 2016).....	34
<i>City of Chicago v. Purdue Pharma, LP</i> , 211 F. Supp. 3d 1058 (N.D. Ill. 2016).....	44, 48
<i>City of Cincinnati v. Beretta U.S.A. Corp.</i> , 68 N.E.2d 1136 (Ohio 2001).....	39
<i>City of Everett v. Purdue Pharma LP</i> , No. 17-2-00469-31 (Snohomish Cty. Superior Ct. Jan. 19, 2017).....	34

TABLE OF AUTHORITIES (CONT'D)

<i>City of Everett v. Purdue Pharma LP</i> , No. 2:17-cv-00209-RSM (W.D. Wash. Sep. 25, 2017) (Dkt. No. 27).	34
<i>City of Everett v. Purdue Pharma LP</i> , No. 2:17-cv-209, 2017 U.S. Dist. LEXIS 156653 (W.D. Wash. Sep. 25, 2017).	34, 41, 42, 54
<i>Cornerstones Mun. Utility Dist. v. Monsanto Co.</i> , 889 S.W.2d 570 (Tex. App.—Houston [14th Dist.] Nov. 10, 1994, pet. denied).	53
<i>Crossman v. City of Galveston</i> , 247 S.W. 810 (Tex. 1923).	39
<i>Crosstex N. Tex. Pipeline, L.P. v. Gardiner</i> , 505 S.W.3d 580 (Tex. 2016).	39
<i>EDCO Prod., Inc. v. Hernandez</i> , 794 S.W.2d 69 (Tex. App.—San Antonio 1990).	42
<i>El Chico Corp. v. Poole</i> , 732 S.W.2d 306 (Tex. 1987).	42
<i>First General Realty Corp. v. Maryland Cas. Co.</i> , 981 S.W.2d 495 (Tex. App.—Austin Nov. 30, 1998, pet. denied).	54
<i>Gulf Offshore Co. v. Mobil Oil Corp.</i> , 453 U.S. 473 (1981).	51
<i>In re Bextra & Celebrex Mktg. Sales Practices & Prod. Liab. Litig.</i> , 2006 U.S. Dist. LEXIS 95500 (N.D. Cal. Aug. 16, 2006).	49
<i>In re Haynes & Boone</i> , 376 S.W.3d 839 (Tex. App.—Houston [1st Dist.] Jul. 26, 2012).	51
<i>In re Horizon Organic Milk Plus DHA Omega—3 Mktg. & Sales Practice Litig.</i> , 955 F. Supp. 2d 1311 (S.D. Fla. 2013).	48
<i>Inge v. Walker</i> , No. 3:16-CV-0042-B, 2016 U.S. Dist. LEXIS 125272 (N.D. Tex. Sep. 15, 2016).	51
<i>Jae Kim v. State</i> , 451 S.W.3d 557 (Tex. App.—Houston [1st Dist.] 2014, pet. denied).	38

TABLE OF AUTHORITIES (CONT'D)

<i>Jamail v. Stoneledge Condo. Owners Ass'n</i> , 9 70 S.W.2d 673 (Tex. App.—Austin 1998, no pet.).	38
<i>Kampmann v. Rothwell</i> , 109 S.W. 1089 (Tex. 1908).	39
<i>Knebel v. Capital Nat'l Bank</i> , 518 S.W.2d 795 (Tex. 1974).	42
<i>Laurents v. Arcadian Corp.</i> , No. 94-41183, 1995 U.S. App. LEXIS 44049 (5th Cir. 1994).	52
<i>Love v. National Medical Enterprises</i> , 230 F.3d 765 (5th Cir. 2000).	54
<i>Marshall v. Maropco, Inc.</i> , 223 F. Supp.3d 562 (N.D. Tex. Feb. 22, 2017).	52
<i>Moor v. Alameda County</i> , 411 U.S. 693 (1973).	50
<i>Moreno v. Sterling Drug, Inc.</i> , 787 S.W.2d 348 (Tex. 1990).	53
<i>Ohler v. Purdue Pharma, L.P.</i> , 2002 U.S. Dist. LEXIS 2368 (E.D. La. 2002).	49
<i>Perry v. S.N.</i> , 973 S.W.2d 301 (Tex. 1998).	43
<i>Quanah Acme & Pac. Ry. v. Swearingen</i> , 4 S.W.2d 136 (Tex. App.—Amarillo 1927, writ ref'd).	39
<i>Roberston v. Neuromedical Center</i> , 161 F.3d 292 (5th Cir. 1998).	52
<i>Rotella v. Wood</i> , 147 F.3d 438 (5th Cir. 1998), <i>aff'd</i> , 528 U.S. 549 (2000).	54
<i>Stoughton v. City of Fort Worth</i> , 277 S.W.2d 150 (Tex. App.—Fort Worth 1955, no writ).	38
<i>Tafflin v. Levitt</i> , 493 U.S. 455 (1990).	51

TABLE OF AUTHORITIES (CONT'D)

<i>Tex. Ass'n of Bus. v. Tex. Air Control Bd.</i> , 852 S.W.2d 440 (Tex. 1993).....	50
<i>Texas v. American Tobacco Co.</i> , No. 5:96-cv-00091-DF-HWM (E.D. Tex. Mar. 28, 1996).	31
<i>Tony Gullo Motors I, L.P. v. Chapa</i> , 212 S.W.3d 299 (Tex. 2006).....	45
<i>U-Haul Int'l v. Waldrip</i> , 380 S.W.3d 118 (Tex. 2012).....	43
<i>United Mine Workers v. Gibbs</i> , 383 U.S. 715 (1966).....	51
<i>Walker v. Texas Elec. Serv.</i> , 499 S.W.2d 20 (Tex. App.—Fort Worth 1973, no writ).	38
<i>Zorilla v. Aypco Constr. II, LLC</i> , 469 S.W.3d 143 (Tex. 2015).....	44

CODES, STATUTES, REGULATIONS AND TREATISES

1 TEX. ADMIN. CODE § 354.1877.....	43
18 U.S.C. § 1946(c).	51
18 U.S.C. § 1961(1)(B).....	47
18 U.S.C. § 1962(c).	46
18 U.S.C. § 1961, <i>et seq.</i>	46
21 C.F.R. § 1301.74(b).	44
21 C.F.R. § 1308.	2
21 U.S.C. § 801, <i>et seq.</i>	2
21 U.S.C. § 823(b)(1).	43
22 TEX. ADMIN. CODE § 195.1.....	43
22 TEX. ADMIN. CODE § 195.3.....	43

TABLE OF AUTHORITIES (CONT'D)

22 TEX. ADMIN. CODE § 195.4.....	43
22 TEX. ADMIN. CODE § 291.33.....	43
28 U.S.C. § 1331.....	50
28 U.S.C. § 1332.....	50
28 U.S.C. § 1367(c).	52
28 U.S.C. § 1441(a).	51
28 U.S.C. § 1441(c).	51
RESTATEMENT (SECOND) OF TORTS § 302B.....	41
RESTATEMENT (SECOND) OF TORTS § 321.....	42
RESTATEMENT (SECOND) OF TORTS § 388.	42
RESTATEMENT (SECOND) OF TORTS §821B(2)(c).....	38
TEX. BUS. & COM. CODE § 17.41, <i>et seq.</i>	36
TEX. BUS. & COM. CODE § 17.46(a) and (b).....	37
TEX. BUS. & COMM. CODE § 17.565.	53
TEX. CIV. PRAC. & REM. CODE § 125.0015(a).	40
TEX. CIV. PRAC. & REM. CODE § 16.003.	53
TEX. CIV. PRAC. & REM. CODE § 16.004(a)(4).	53
TEX. CIV. PRAC. & REM. CODE § 16.061.	53
TEX. CIV. PRAC. & REM. CODE § 41.001(11).....	43
TEX. CIV. PRAC. & REM. CODE § 41.001(6).....	45
TEX. CIV. PRAC. & REM. CODE § 41.003(a)(1).....	45
TEX. CIV. PRAC. & REM. CODE. § 125.0015(a)(3) and (4).....	40
TEX. CIV. PRAC. & REM. CODE. § 16.061.	53
TEX. CIV. PRAC. REM. CODE § 125.002.	40

TABLE OF AUTHORITIES (CONT'D)

TEX. CIV. PRAC. REM. CODE § 125.047.	40
TEX. CONST. art XI, § 5.	36
TEX. CONST. art. V, § 8.	50
TEX. GOV'T CODE ANN. § 531.073.	43
TEX. HEALTH & SAFETY CODE ANN. § 481.074.	43
TEX. HEALTH & SAFETY CODE ANN. § 481.0771(d).	43
TEX. HEALTH & SAFETY CODE ANN. § 481.129.	43
TEX. HEALTH & SAFETY CODE ANN. §§ 481.001, <i>et seq.</i>	43
TEX. HEALTH & SAFETY CODE ANN. 481.074.	43
TEX. HUM. RES. CODE ANN. § 32.024.	43
TEX. LOC. GOV'T CODE § 217.042.	38
TEX. OCC. CODE ANN. § 168.001.	43
TEX. OCC. CODE ANN. § 168.053.	43
TEX. OCC. CODE ANN. § 168.102(a).	43
TEX. OCC. CODE ANN. § 562.054.	43
TEX. OCC. CODE ANN. § 168.201.	43

BOOKS AND JOURNAL ARTICLES

Art Van Zee, <i>The Promotion and Marketing of OxyContin: Commercial Triumph, Public Health Tragedy</i> , 99 AM. J. PUB. HEALTH 2 (2009).	4, 5, 26
Gary Oderda, <i>Economic Burden of Prescription Opioid Abuse: A Systematic Overview</i> ; 29 J. PAIN PALLIAT. CARE PHARMACOTHER., 388-400 (2015).	16
Howard Birnbaum, et al., <i>Societal Costs of Prescription Opioid Abuse, Dependence, and Misuse in the United States</i> , 12(4) J. Pain Med. 657-67 (2011).	18

TABLE OF AUTHORITIES (CONT'D)

Jane Porter, et al., <i>Addiction Rare in Patients Treated with Narcotics</i> , 302 NEW ENG. J. MED. 2 (1980).	3
John Temple, <i>American Pain: How a Young Felon and His Ring of Doctors Unleashed America's Deadliest Drug Epidemic</i> , ROWMAN & LITTLEFIELD (2015).	6
Pamela T. M. Leund, et al., <i>A 1980 Letter on the Risk of Opioid Addiction</i> , 22 N ENG. J. MED. 376 (2017).	9
R.N. Hansen, et al., <i>Economic costs of nonmedical use of prescription opioids</i> , 27 CLIN J PAIN 194-202 (2011).	57
Russell K. Portenoy, et al., <i>Chronic Use of Opioid Analgesics in Non-Malignant Pain: Report of 38 Cases</i> , 25 PAIN 171-86 (1986).	3
Scott E. Hadland, et al., <i>Industry Payments to Physicians for Opioid Products, 2013-2015</i> , 107(9) AM. J. PUB. H. 1493-95 (2017).	24

AGENCY REPORTS AND PUBLICATIONS

CDC, NAT'L CENTER FOR INJURY PREVENTION AND CONTROL, <i>Annual Surveillance Report of Drug-Related Risks and Outcomes — United States, 2017</i> , Aug. 31, 2017 < https://www.cdc.gov/drugoverdose/pdf/pubs/2017-cdc-drug-surveillance-report.pdf >.	1
GENERAL ACCOUNTING OFFICE, <i>Prescription Drugs: OxyContin Abuse and Diversion and Efforts to Address the Problem</i> , Pub. GAO-04-110 (2013).	25
MATRIX GLOBAL ADVISORS, <i>Health Care Costs from Opioid Abuse: A State-by-State Analysis</i> , LLC, Apr. 2015 < https://drugfree.org/wpcontent/uploads/2015/04/Matrix_OpioidAbuse_040415.pdf >.	17
OFFICE OF INSPECTOR GENERAL, TEX. HEALTH AND HUMAN SERVS. COMM., <i>Opioid Drug Utilization Inspection: Texas Medicaid Efforts to Reduce Prescription Opioid Abuse and Overutilization</i> , IG Report No. INS-16-003 (2017).	17
TEX. HEALTH & HUMAN SERVS. COMM., <i>State Targeted Response to the Opioid Crisis Grants Funding Opportunity Announcement (FOA)</i> , No. TI-17-014, < http://casestudies.txhealthsteps.com/stepsQuickCourses/opioid/assets/Texas_Targeted_Opioid_Response_program_narrative.pdf >.	16



TABLE OF AUTHORITIES (CONT'D)

TEX. DEP'T OF HEALTH SERVS., <i>Neonatal Abstinence Syndrome (NAS)</i> , May 16, 2017 < http://www.dshs.texas.gov/sa/nas/ >	14, 15
TEX. DEP'T OF STATE HEALTH SERVS., <i>Drug Manufacturers and Distributors</i> , last updated Sep. 13, 2017 < https://www.dshs.texas.gov/drugs/ >	23
TEX. DEP'T OF STATE HEALTH SERVS., <i>Exceptional Item 6(b) Neonatal Abstinence Syndrome (NAS) Prevention Pilot</i> , Spring 2015	15
TEX. DEP'T OF STATE HEALTH SERVS., <i>List of Political Subdivisions that Received a Payment in the 2016 Distribution</i> < https://www.dshs.texas.gov/tobaccosettlement/pay2016.aspx >	32
TEX. DEP'T OF STATE HEALTH SERVS., <i>Narcotic Treatment Programs—Nueces County</i> , < https://vo.ras.dshs.state.tx.us/datamart/listTXRAS.do?anchor=ae62a5e.0 >	60
TEX. DEP'T OF STATE HEALTH SERVS., <i>Opioid Dependency in Pregnancy and Efforts to Reduce Severity of Neonatal Abstinence Syndrome in Texas</i> , 2014 < https://hhs.texas.gov/sites/default/files/documents/about-hhs/process- improvement/quality-efficiency-improvement/Efforts-to-reduce-NAS-in-TX- DSHS-120915.pdf >	14
TEX. DEP'T OF STATE HEALTH SERVS., <i>Tobacco Settlement Information</i> , May 4, 2017 < https://www.dshs.texas.gov/tobacco/settlement.shtm >	31, 32
U.S. DEP'T OF JUSTICE, DRUG ENFORCEMENT ADMIN., <i>2016 National Drug Threat Assessment Summary</i> , DEA-DCT-DIR-001-17, Nov. 2016 < https://www.dea.gov/ resource-center/2016%20NDTA%20Summary.pdf >	2, 23, 60, 61
U.S. DEP'T OF JUSTICE, DRUG ENFORCEMENT ADMIN., <i>2017 National Drug Threat Assessment</i> , No. DEA-DCT-DIR-040-17, Oct. 2017 < https://www.dea.gov/docs/DIR-040-17_2017-NDTA.pdf >	18
U. S. DEP'T OF JUSTICE, DRUG ENFORCEMENT ADMIN., NFLIS, <i>2016 Annual Report</i> , Sep. 2017 < https://www.nflis.deadiversion.usdoj.gov/DesktopModules/Report Downloads/Reports/NFLIS2016AR.pdf >	7
U.S. DEP'T OF JUSTICE, OFFICE OF PUBLIC AFFAIRS, <i>Cardinal Health Agrees to \$44 Million Settlement for Alleged Violations of Controlled Substances Act</i> , Dec. 23, 2016 < https://www.justice.gov/usao-md/pr/cardinal-health-agrees-44-million-settlement- alleged-violations-controlled-substances-act >	21

TABLE OF AUTHORITIES (CONT'D)

U.S. DEP'T OF JUSTICE, OFFICE OF PUBLIC AFFAIRS, <i>Founder and Owner of Pharmaceutical Company Insys Arrested and Charged with Racketeering</i> , Oct. 26, 2017 < https://www.justice.gov/opa/pr/founder-and-owner-pharmaceutical-company-insys-arrested-and-charged-racketeering >.....	30
U.S. DEP'T OF JUSTICE, OFFICE OF PUBLIC AFFAIRS, <i>Mallinckrodt Agrees to Pay Record \$35 Million Settlement for Failure to Report Suspicious Orders of Pharmaceutical Drugs and for Recordkeeping Violations</i> , Jul. 11, 2017 < https://www.justice.gov/opa/pr/mallinckrodt-agrees-pay-record-35-million-settlement-failure-report-suspicious-orders >.....	29
U.S. DEP'T OF JUSTICE, OFFICE OF PUBLIC AFFAIRS, <i>McKesson Agrees to Pay Record \$150 Million Settlement for Failure to Report Suspicious Orders of Pharmaceutical Drugs</i> , Jan. 17, 2017 < https://www.justice.gov/opa/pr/mckesson-agrees-pay-record-150-million-settlement-failure-report-suspicious-orders >.....	22
U.S. DRUG ENFORCEMENT ADMIN., <i>DEA Programs: High Intensity Drug Trafficking Areas (HIDTAs)</i> , Feb. 2017 < https://www.dea.gov/ops/hidta.shtml >.....	60

ONLINE DATABASES

CDC, NAT'L CENTER FOR INJURY PREVENTION AND CONTROL, <i>Drug Overdose Death Data</i> , Dec. 16, 2016 < https://www.cdc.gov/drugoverdose/data/statedeaths.html >.....	1
CDC, NAT'L CENTER FOR INJURY PREVENTION AND CONTROL, <i>Opioid Overdose – Data Overview</i> , Jul. 18, 2017 < https://www.cdc.gov/drugoverdose/data/index.html >.....	7
CDC, NAT'L CENTER FOR INJURY PREVENTION AND CONTROL, <i>Prescription Opioid Overdose Data</i> , Aug. 1, 2017 < https://www.cdc.gov/drugoverdose/data/overdose.html >.	1
CDC NAT'L CENTER FOR INJURY PREVENTION AND CONTROL, <i>U.S. Prescribing Rate Maps</i> , Jul. 31, 2017 < https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html >.	13
PROPUBLICA, <i>Dollars for Docs</i> , Dec. 13, 2016 < https://projects.propublica.org/docdollars/ >.....	24
TEX. INDIGENT DEFENSE COMM., <i>Nueces County Indigent Defense Data, 2016</i> < http://tidc.tamu.edu/Public.Net/ >.	62
<i>Texas Opioid Epidemic, Opioid & Health Indicators Database</i> , AMFAR.ORG < http://opioid.amfar.org/TX#data-explorer >.....	12, 13, 16



TABLE OF AUTHORITIES (CONT'D)

NEWS ARTICLES

Catan, Thomas, et al., <i>A Pain-Drug Champion Has Second Thoughts</i> , WALL STREET J., Dec. 17, 2012 < https://www.wsj.com/articles/SB10001424127887324478304578173342657044604 >	4
Eyre, Eric, <i>2 drug distributors to pay \$36M to settle WV painkiller lawsuits</i> , CHARLESTON GAZETTE-MAIL, Jan. 9, 2017 < http://www.wvgazettemail.com/news-cops-and-courts/20170109/2-drug-distributors-to-pay-36m-to-settle-wv-painkiller-lawsuits >	22
Fei, Fan, <i>What Percentage of Doctors at Your Hospital Take Drug, Device Payments</i> , PROPUBLICA, Jun. 29, 2016 < https://projects.propublica.org/graphics/d4d-hospital-lookup >	24
Form 10-K, <i>2016 SEC Annual Report</i> , MALLINCKRODT PLC < http://www.mallinckrodt.com/investors/annual-reports >	20
Ghose, Carrie, <i>Cardinal Health to pay West Virginia \$20M to settle opiates lawsuit</i> , AM. CITY BUS. J., Jan. 9, 2017 < https://www.bizjournals.com/columbus/news/2017/01/09/cardinal-health-to-pay-west-virginia-20m-to-settle.html >	21
Glover, Scott, et al., <i>OxyContin maker closely guards its list of suspect doctors</i> , LOS ANGELES TIMES, Aug. 11, 2013 < http://articles.latimes.com/2013/aug/11/local/la-me-rx-purdue-20130811 >	26
Malewitz, Jim, <i>East Texas county sues drug companies, alleges role in opioid crisis</i> , THE TEXAS TRIBUNE, Oct. 4, 2017 < https://www.texastribune.org/2017/10/04/east-texas-county-sues-drug-companies-alleging-role-opioid-crisis/ >	33
Martin, Brittney, <i>Bexar County highest in state for babies going through drug withdrawal</i> , SAN ANTONIO EXPRESS-NEWS, May 31, 2017 < http://www.expressnews.com/news/local/article/Bexar-County-highest-in-state-for-babies-going-11186935.php >	13
Maxwell, Jane, <i>Prescription Drug Epidemic in the United States and Texas: A Look at the Numbers</i> , CENTER FOR SOCIAL WORK RESEARCH, UNIV. TEXAS AT AUSTIN < https://prescriptiondrugsummit.com/Documents/ >	1, 12
McCullough, Jolie, et al., <i>Texas wages a war on drugs at the border. That might be the wrong place</i> , THE TEXAS TRIBUNE, Dec. 13, 2016 < https://www.texastribune.org/2016/12/13/addiction-treatment-texas/ >	62

TABLE OF AUTHORITIES (CONT'D)

Morrell, Alex, <i>The OxyContin Clan: The \$14 Billion Newcomer to Forbes 2015 List of Rich Families</i> , 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/#1bc725ae75e0 >.....	5
Norton, Amy, <i>Medical Costs Soar for U.S. Babies Born Addicted to Opioids</i> , CORPUS CHRISTI CANCER CENTER, HEALTHDAY NEWS, Jun. 15, 2017 < https://ccradiationoncology.com/hl/?/news/NRCN723710/medical-costs-soar-for-u-s-babies-born-addicted-to-opioids >.....	13
Ornstein, Charles, et al., <i>Now There's Proof: Docs Who Get Company Cash Tend to Prescribe More Brand-Name Meds</i> , PROPUBLICA, Mar. 17, 2016 < https://www.propublica.org/article/doctors-who-take-company-cash-tend-to-prescribe-more-brand-name-drugs >.....	24
<i>Pharmacy Crime: A look at pharmacy burglary and robbery in the United States and the strategies and tactics needed to manage the problem</i> , PHARM. MUT. INS. CO., 2015 < https://www.phmic.com/wp-content/uploads/2016/07/PMC_CrimeReport.pdf >.....	18
Roby, John R., <i>Opioids by the Numbers</i> , DEMOCRAT & CHRONICLE, Dec. 16, 2016 < http://www.democratandchronicle.com/story/news/2016/12/16/opioids-numbers/95514184/ >.....	11
Saraiva, Catarina, <i>The opioid crisis spills into the workplace</i> , MYSANANTONIO.COM, Sep. 23, 2017 < http://www.mysanantonio.com/news/article/The-opioid-crisis-spills-into-the-workplace-12222852.php >.....	57
Simpson, Andrew G., <i>Employers Pay As 32% of Opioid Prescriptions Are Abused: Report</i> , INSURANCE JOURNAL, Apr. 21, 2016 < http://www.insurancejournal.com/news/national/2016/04/21/406047.htm >.....	57
Taft, Isabelle, <i>Addiction Programs Hoping for Boost in Federal Funds</i> , THE TEXAS TRIBUNE, Jul. 24, 2016 < https://www.texastribune.org/2016/07/24/texas-addiction-specialists-await-final-opioid-leg/ >.....	16
<i>White House Recognizes Nueces County, Texas Drug Divert Court on the Celebration of its Third Anniversary</i> , GUIDRYNEWS.COM, Mar. 6, 2007 < http://www.guidrynews.com/story.aspx?id=1000000996 >.....	63



INDEX OF FIGURES AND TABLES

FIGURES

Figure 1. Overdose Deaths Involving Opioids, United States, 2000-2015.	7
Figure 2. Distribution of Narcotic Analgesic Reports Within Region, 2016	8
Figure 3. Number of Texas Medicaid Newborns Diagnosed with NAS, 2011-2015	14
Figure 4. Percentage of Clients in State Funded Treatment for Opioid Use Disorder in Texas Receiving Medication Assisted Treatment (MAT), 2010-2016.....	17
Figure 5. Top Ten States: Total Health Care Costs from Opioid Abuse.....	18
Figure 6. Source Where Prescription Opioids Were Obtained for Most Recent Nonmedical Use Among Past Year Users Aged 12 or Older, 2012-2013.....	23
Figure 7. DEA High Intensity Drug Trafficking Areas (HIDTAs) as of February 2017.....	61
Figure 8. DEA Cartel Presence in Texas—Areas of Influence of Major Mexican Transnational Criminal Organizations.....	61

TABLES

Table 1. Narcotic Analgesics. Number and Percentage of Narcotic Analgesic Reports in the United States, 2016.	8
Table 2. Drug and Opioid Related Death Rate, 2015	12
Table 3. Texas Medicaid NAS Claims, Percentage by County, 2011-2015	14
Table 4. Texas Medicaid Newborn Medical Cost and Length of Stay, 2011-2015.....	15
Table 5. Total Pharmaceutical Company Payments Made to Physicians Related to Opioid Products from August 2013 to December 2015.....	24

A. INTRODUCTION

Prescription opioid abuse has become a major health concern in the United States and the statistics are alarming. Every day over 1,000 people are treated in emergency rooms across the U.S. for abuse of prescription opioids.¹ In 2016, prescribers wrote 66.5 opioid prescriptions for every 100 Americans.² The Centers for Disease Control and Prevention (CDC) reports that from 1999 to 2015, more than 183,000 people died from overdose related to opioid medication.³ Opioids were involved in 33,091 deaths in 2015—63.1 percent of all drug-related deaths in the U.S.—and opioid overdoses have *quadrupled* since 1999.⁴

In 2015, there were 1,186 opioid-related deaths in the State of Texas alone.⁵ Nueces County and the City of Corpus Christi are not immune to this crisis. In fact, CDC data show that Nueces County had the highest per-capita opioid-related overdose death rate in the State of Texas for counties reporting reliable data.⁶ This deadly trend has been fueled in no small part by Pharmaceutical and Distributor Companies (collectively, the “Wrongdoers”) through their aggressive and misleading marketing campaigns. The Wrongdoers targeted physicians, medical communities and the public with false information and convinced them that opioids were non-addictive and safe for long-term use at high dosages and unleashed a massive opioid epidemic that has far-reaching financial, social, and health consequences for Texas and Nueces County.

¹ CDC, NAT'L CENTER FOR INJURY PREVENTION AND CONTROL, *Prescription Opioid Overdose Data*, Aug. 1, 2017 <<https://www.cdc.gov/drugoverdose/data/overdose.html>> [last visited Oct. 24, 2017].

² CDC, NAT'L CENTER FOR INJURY PREVENTION AND CONTROL, *Annual Surveillance Report of Drug-Related Risks and Outcomes — United States, 2017*, Aug. 31, 2017 <<https://www.cdc.gov/drugoverdose/pdf/pubs/2017-cdc-drug-surveillance-report.pdf>> [last visited Oct. 24, 2017].

³ *Prescription Opioid Overdose Data*, *supra*.

⁴ CDC, NAT'L CENTER FOR INJURY PREVENTION AND CONTROL, *Drug Overdose Death Data*, Dec. 16, 2016 <<https://www.cdc.gov/drugoverdose/data/statedeaths.html>> [last visited Oct. 24, 2017].

⁵ *Id.*

⁶ Maxwell, Jane, *Prescription Drug Epidemic in the United States and Texas: A Look at the Numbers*, UNIV. TEXAS AT AUSTIN <<https://prescriptiondrugsummit.com/Documents/>> [last visited Oct. 24, 2017].



B. THE NATIONWIDE OPIOID EPIDEMIC

Historically, prescription opioids have been prescribed to patients following surgery, trauma or for pain related to terminal conditions, such as cancer. They have been regulated as controlled substances since 1970.⁷ However, since the mid-1990s, there has been a dramatic increase in the acceptance and use of prescription opioids for the treatment of chronic, non-cancer pain, despite serious risks and the lack of evidence about their long-term effectiveness.

Through sustained marketing campaigns and front organizations that targeted doctors with systematic misinformation, Pharmaceutical Companies increased sales of the opioid products they produced on an unprecedented scale. The Wrongdoers successfully persuaded doctors and patients that opioids are *not* addictive drugs, that they are safe for long-term use, and that the compassionate treatment of pain *required* opioids. As a result, the number of deaths attributed to controlled prescription drugs now surpasses those for cocaine and heroin combined.⁸

1. "The Fifth Vital Sign"

In January 1980, Jane Porter and Hershel Jick, two researchers at Boston University Medical Center, published a short letter to the editor in January 1980's edition of the New England Journal of Medicine (NEJM):

⁷ THE CONTROLLED SUBSTANCES ACT (CSA), 21 U.S.C. § 801, *et seq.*; *see also* 21 CFR § 1308.

⁸ U.S. DEP'T OF JUSTICE, DRUG ENFORCEMENT ADMIN., *2016 National Drug Threat Assessment Summary*, DEA-DCT-DIR-001-17, Nov. 2016 <<https://www.dea.gov/resource-center/2016%20NDTA%20Summary.pdf>> [last visited Oct. 24, 2017].

ADDICTION RARE IN PATIENTS TREATED WITH NARCOTICS

To the Editor: Recently, we examined our current files to determine the incidence of narcotic addiction in 39,946 hospitalized medical patients¹ who were monitored consecutively. Although there were 11,882 patients who received at least one narcotic preparation, there were only four cases of reasonably well documented addiction in patients who had no history of addiction. The addiction was considered major in only one instance. The drugs implicated were meperidine in two patients,² Percodan in one, and hydromorphone in one. We conclude that despite widespread use of narcotic drugs in hospitals, the development of addiction is rare in medical patients with no history of addiction.

JANE PORTER
HERSHEL JICK, M.D.
Boston Collaborative Drug
Surveillance Program
Boston University Medical Center
Waltham, MA 02154

1. Jick H, Meitinen OS, Shapiro S, Lewis GP, Siskind V, Stone D. Comprehensive drug surveillance. JAMA. 1970; 213:1455-60.
2. Miller RR, Jick H. Clinical effects of meperidine in hospitalized medical patients. J Clin Pharmacol. 1978; 18:180-8.

Jane Porter, et al., *Addiction Rare in Patients Treated with Narcotics*, 302 NEW ENG. J. MED. 2 (1980).

This 100-word letter describes the incidence of narcotic addiction in nearly 40,000 hospitalized medical patients. Porter and Jick reported only four cases of "reasonably well documented addiction" in their patient population, with only one "major" addiction and concluded that "despite widespread use of narcotic drugs in hospitals, the development of addiction is rare in medical patients with no history of addiction." *Id.*

In 1986, Dr. Russell Portenoy, a New York City pain specialist, co-wrote a seminal paper arguing that opioids could be taken for months or years by people who were suffering from chronic pain.⁹ Dr. Portenoy's paper was based on a limited study of 38 patient cases, and yet it opened the door to much broader prescribing of opioids for more common complaints such as nerve or back pain. Throughout the 1990s, Dr. Portenoy received research support, consulting fees and honoraria

⁹ Russell K. Portenoy, et al., *Chronic Use of Opioid Analgesics in Non-Malignant Pain: Report of 38 Cases*, 25 PAIN 171-86 (1986).

from Purdue, Cephalon, Endo and Janssen while he advocated chronic opioid therapy.¹⁰ Dr. Portenoy and his followers asserted that less than 1 percent of opioid users became addicted, relying on the poorly-supported 1980 NEJM letter. Dr. Portenoy later admitted that the claim was not based on sound scientific evidence. “I gave innumerable lectures in the late 1980s and ‘90s about addiction that weren’t true,” Dr. Portenoy said in a 2010 videotaped interview with a fellow doctor.¹¹

In 1996, the American Pain Society, of which Dr. Portenoy was also president, infamously endorsed the concept of pain as “the Fifth Vital Sign” that doctors should monitor alongside blood pressure, temperature, heartbeat and breathing.¹² From this the idea took hold that America was needlessly undertreating pain. Dr. Portenoy’s ideas quickly reached into mainstream medicine. With misinformation from the medical community, drug companies, distributors, American hospitals and medical professionals were steered toward the over treatment of acute and chronic pain.

2. OxyContin and the Rise of Prescription Opioids

In 1996 Purdue released OxyContin, a form of oxycodone in a patented, time-release form. Recognizing that cancer patients provided only a limited market, Purdue decided to use modern marketing techniques to expand sales.¹³ Purdue sponsored non-profit foundations and studies that purportedly “exposed” the problem of patients with untreated chronic pain. Soon, articles were appearing in newspapers and magazines suggesting that the problem of untreated chronic pain was epidemic. Purdue organized all-expenses-paid pain-management and speaker-training conferences

¹⁰ Catan, Thomas, et al., *A Pain-Drug Champion Has Second Thoughts*, WALL STREET J., Dec. 17, 2012 <<https://www.wsj.com/articles/SB10001424127887324478304578173342657044604>> [last visited Oct. 24, 2017].

¹¹ *Id.*

¹² *Id.*

¹³ Art Van Zee, *The Promotion and Marketing of OxyContin: Commercial Triumph, Public Health Tragedy*, 99 AM. J. PUB. HEALTH 2 (2009) (the non-cancer-related pain market constituted 86 percent of the total opioid market in 1999).

that were attended by more than 5,000 physicians, nurses and pharmacists, many of whom were recruited to serve on Purdue's speakers' bureau.¹⁴ One group known as the Pain & Policy Studies Group received \$2.5 million from pharmaceutical companies to promote opioid use and discourage the passing of regulations against opioid use in medical practice.¹⁵ With Purdue as its largest benefactor, the Pain & Policy Studies Group played a pivotal role in the company's OxyContin marketing push.

Purdue also used a lucrative bonus system to incentivize its pharmaceutical representatives to increase OxyContin sales.¹⁶ The average bonus exceeded the representatives' annual salaries. Sales of OxyContin grew from \$48 million in 1996 to almost \$1.1 billion in 2000. Its marketing was misleading enough that Purdue pleaded guilty in 2007 to a federal criminal count of misbranding the drug "with intent to defraud and mislead the public." Three top Purdue executives paid \$34 million in fines and the company paid \$635 million in penalties.¹⁷ But this did little to curb sales. By 2009, physicians wrote more than six million prescriptions for OxyContin and retail sales reached \$3 billion per year.¹⁸ By 2012 OxyContin represented about 30 percent of the overall painkiller market.¹⁹ In 2015, Forbes estimated that OxyContin sales earned Purdue a total of \$35 billion.²⁰ The Sackler family, which owns Purdue, was included in Forbes 2015 richest list, coming in at No. 16 with an estimated wealth of \$14 billion dollars.²¹

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Morrell, Alex, *The OxyContin Clan: The \$14 Billion Newcomer to Forbes 2015 List of Rich 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/#1bc725ae75e0>> [last visited Oct. 24, 2017].

²¹ *Id.*

Purdue was not alone in marketing its opioid products in this way. Taking a page from the tobacco industry's play book (which had created and used front groups to proclaim tobacco was not harmful) other pharmaceutical companies harnessed medical organizations to disseminate their deceptive messages with the expectation that these messages would influence the conduct of prescribing physicians. Like Purdue, Janssen aggressively promoted Ultracet for "chronic neuropathic pain," even though the drug was approved by the FDA for treatment of short-term pain only.²² Cephalon promoted its narcotic lollipop, Actiq (fentanyl) for migraine pain instead of the cancer pain for which it had received FDA approval.²³ In 2008, Cephalon pleaded guilty to a criminal violation of the Federal Food, Drug and Cosmetic Act (FDCA) for its misleading promotion of Actiq and two other drugs and agreed to pay \$425 million in fines, damages and penalties.

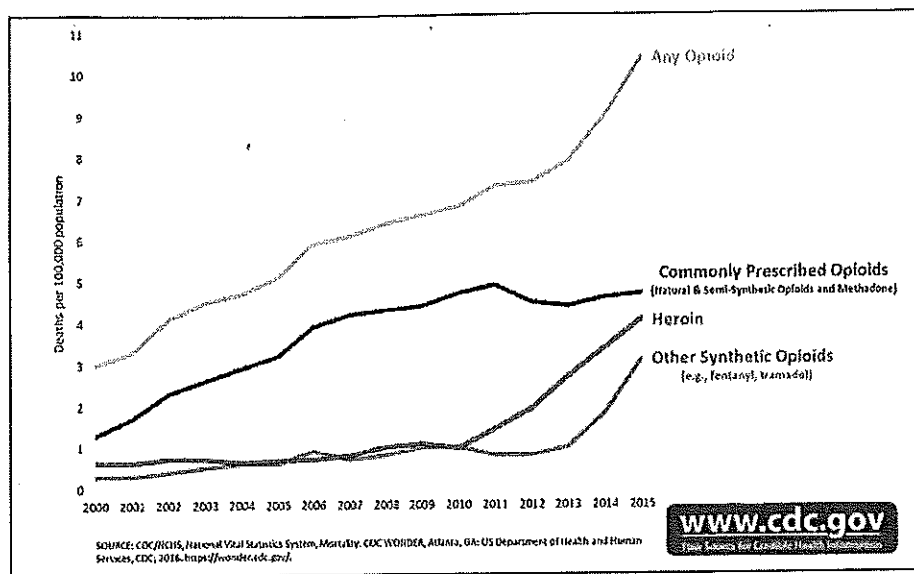
The Wrongdoers made widespread use of lobbyist groups in their efforts to encourage opioid prescribing practices. These front organizations appeared to be legitimate scientific and patient advocacy organizations when in fact the information was false and paid for by the Wrongdoers to create a vast market for the use of opioids for chronic pain. Opioids are highly addictive and easily abused by crushing and inhaling or injecting them. With prescription opioids flooding the market, opioid analgesic-related deaths began to increase. *See Figure 1, below.*

²² John Temple, *American Pain: How a Young Felon and His Ring of Doctors Unleashed America's Deadliest Drug Epidemic*, ROWMAN & LITTLEFIELD (2015), at p. 49.

²³ *Id.*



Figure 1. Overdose Deaths Involving Opioids, United States, 2000-2015.²⁴



The enormity of the problem has compelled local laboratories to begin identifying the specific opioid involved each overdose death. The National Forensic Laboratory Information System (NFLIS) is a program of the Drug Enforcement Administration (DEA), Diversion Control Division, which systematically collects drug identification results from drug cases submitted to and analyzed by Federal, State, and local forensic laboratories.²⁵ In its 2016 Annual Report, NFLIS identified 145,918 narcotic analgesic (opioid) reports by participating laboratories across the U.S. See Table 1, below. Oxycodone (26%), fentanyl (23%), and hydrocodone (17%) accounted for most of the narcotic analgesic reports in the U.S.²⁶ In comparison with reports from other regions of the country, the South (which includes Texas) reported higher percentages of oxycodone (29%) and hydrocodone (23%).²⁷ See Figure 2, below.

²⁴ CDC, NAT'L CENTER FOR INJURY PREVENTION AND CONTROL, *Opioid Overdose – Data Overview*, Jul. 18, 2017 <<https://www.cdc.gov/drugoverdose/data/index.html>> [last visited Oct. 24, 2017].

²⁵ U. S. DEP'T OF JUSTICE, DRUG ENFORCEMENT ADMIN., NFLIS, *2016 Annual Report*, Sep. 2017 <<https://www.nflis.deadiversion.usdoj.gov/DesktopModules/ReportDownloads/Reports/NFLIS2016AR.pdf>> [last visited Oct. 26, 2017].

²⁶ *Id.*

²⁷ *Id.*

Table 1.

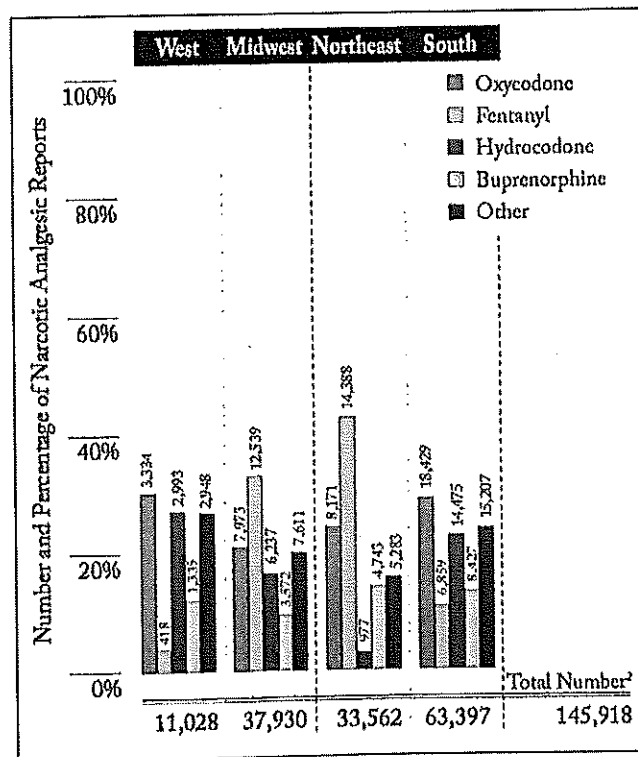
Narcotic Analgesics. Number and Percentage of Narcotic Analgesic Reports in the United States, 2016.

Narcotic Analgesic Reports	Number	Percent
Oxycodone	37,906	25.98%
Fentanyl	34,204	23.44%
Hydrocodone	24,682	16.91%
Buprenorphine	18,078	12.39%
Morphine	6,201	4.25%
Tramadol	5,675	3.89%
Methadone	4,231	2.90%
Hydromorphone	3,524	2.42%
Codeine	3,332	2.28%
Furanyl fentanyl	2,273	1.56%
Oxymorphone	2,120	1.45%
Acetyl fentanyl	1,669	1.14%
U-47700	533	0.37%
3-Methylfentanyl	427	0.29%
Mitragynine	257	0.18%
Other narcotic analgesics	807	0.55%
<i>Total Narcotic Analgesic Reports²</i>	145,918	100.00%
<i>Total Drug Reports</i>	1,552,604	

Source: DEA, 2016 NFLIS Annual Report.

Figure 2.

Distribution of Narcotic Analgesic Reports Within Region, 2016.



Source: DEA, 2016 NFLIS Annual Report.

But fatalities are only one dimension of a problem whose insidious reach affects local economies and health care costs, incites crime, and destroys families through addiction, rehab stints, and prison sentences.

3. The Fight Against Opioid Abuse

In June of 2017, the NEJM published a letter to the editor decrying the “heavily and uncritically cited” one-paragraph 1980 letter.²⁸ Since its publication, the 1980 NEJM letter has been cited nearly a thousand times, including by Dr. Portenoy, Purdue and other pharmaceutical companies, as a way to downplay the addictive potential of pain medication.²⁹ The 2017 letter concluded that “this citation pattern contributed to the North American opioid crisis by helping to shape a narrative that allayed prescribers’ concerns about the risk of addiction associated with long-term opioid therapy.”³⁰

On August 26, 2016, Dr. Vivek H. Murthy, former Surgeon General of the United States, sent a letter to physicians imploring them to help fight the opioid epidemic facing the country. The letter read, in part:

I am asking for your help to solve an urgent health crisis facing America: the opioid epidemic. Everywhere I travel, I see communities devastated by opioid overdoses. I meet families too ashamed to seek treatment for addiction. And I will never forget my own patient whose opioid use disorder began with a course of morphine after a routine procedure.

It is important to recognize that we arrived at this place on a path paved with good intentions. Nearly two decades ago, we were encouraged to be more aggressive about treating pain, often without enough training and support to do so safely. This coincided with heavy marketing of opioids to doctors. Many of us were even taught—incorrectly—that opioids are not addictive when prescribed for legitimate pain.

The results have been devastating. Since 1999, opioid overdose deaths have quadrupled and opioid prescriptions have increased markedly — almost enough for

²⁸ Pamela T. M. Leund, et al., *A 1980 Letter on the Risk of Opioid Addiction*, 22 N.ENG. J. MED. 376 (2017).

²⁹ *Id.*

³⁰ *Id.*

every adult in America to have a bottle of pills. Yet, the amount of pain reported by Americans has not changed. Now, nearly 2 million people in America have a prescription opioid use disorder, contributing to increased heroin use and the spread of HIV and hepatitis C.³¹

The CDC estimates the total economic burden of prescription opioid misuse alone in the United States is \$78.5 billion a year. That figure includes the costs of healthcare, lost productivity, addiction treatment, and criminal justice involvement. The enormity of the current crisis inevitably leads to questions regarding who caused the problem and how society can hold the Wrongdoers responsible for the harm they caused.

³¹ Murthy, Vivek H., *Letter from the Surgeon General*, Aug. 26, 2016 <<http://turnthetidex.org/>> [last visited Oct. 24, 2017] (emphasis added).

C. THE OPIOID EPIDEMIC IN NUECES COUNTY AND CORPUS CHRISTI

The opioid epidemic is affecting the entire nation, but not in the same way or to the same extent in every region. The State of Texas—Nueces County in particular—has suffered substantial human and economic losses as a result of the opioid crisis. Nueces County sits on the Gulf Coast halfway between Houston and the Mexican border, astride drug trafficking corridors headed from Mexico to the central and eastern United States. Drug offenses were the single leading reason people appeared in felony court in Nueces County over the past decade. The City of Corpus Christi has always cracked down heavily on illegal drug trafficking and narcotics dealing. However, this new addiction crisis presents a unique problem: citizens are becoming addicted to legal, attainable, allowed, inexpensive, and accepted prescription drugs. From 2007 to 2015, the rate of prescription opioid distribution in the City of Corpus Christi saw one of the sharpest increases in the U.S.³² Prescription drug addiction has reached epidemic levels in Corpus Christi.

1. Determining the Extent of the Opioid Crisis in Nueces County Through Available Data

While statistics from the CDC and Texas Department of Health and Human Services (HHC) are helpful to understand the scope of the problem, it is important to note that they only tell part of the story. According to the CDC, Texas doctors prescribe fewer opioids and have fewer opioid-related hospitalizations and deaths than other states. State and county officials caution that these statistics are likely a product of unintentional underreporting. For one, drug overdose deaths are hard to categorize and many rural counties lack physicians working as medical examiners. In 2013, only 622 deaths in Texas were specifically blamed on opioids, mostly painkillers, according to the health services department. But city newspapers tallied 798 prescription-drug related deaths

³² Roby, John R., *Opioids by the Numbers*, DEMOCRAT & CHRONICLE, Dec. 16, 2016 <<http://www.democratandchronicle.com/story/news/2016/12/16/opioids-numbers/95514184/>> [last visited Oct. 24, 2017].

recorded by local medical examiners that year in just 17 of the state's 254 counties. Moreover, out of the state's 254 counties, more than half—140—did not report any deaths at all. In many cases multiple drugs are present and it is difficult to identify which drug or drugs caused the death. In approximately 1 in 5 drug overdose deaths, no specific drug is listed on the death certificate. Also, Texas has the highest overall uninsured rates. The low opioid prescription and hospitalization rate is attributable, at least in part, to lack of access to healthcare. Further, there are not many facilities to treat opioid addiction in Texas, so patients receive treatment in an outpatient or non-hospital setting.

2. The Opioid-Related Death Rate in Nueces County

Available CDC data show that prescription opioids represent a large number of substance abuse cases and are responsible for a significant number of deaths in Texas. In 2015, out of the 20 most populated counties in Texas reporting reliable data, Nueces County had the highest rates of drug-related and opioid-related deaths in the State.³³

Table 2. Drug and Opioid Related Death Rate, 2015.

	DRUG-RELATED DEATHS ³³	DRUG-RELATED DEATH RATE ³⁵	OPIOID-RELATED DEATH RATE ³⁶
U.S.	52,404	16.33	10.4
Texas	2,588	9.4	4.7
Nueces County	67	18.6	10.6

³³ *Texas Opioid Epidemic, Opioid & Health Indicators Database*, AMFAR.ORG <<http://opioid.amfar.org/TX#data-explorer>> [last visited Oct. 24, 2017].

³⁴ *Id.*

³⁵ *Id.* (age-adjusted, per 100,000).

³⁶ Maxwell, Jane, *Prescription Drug Epidemic in the United States and Texas: A Look at the Numbers*, Center for Social Work Research, UNIV. TEXAS AT AUSTIN <<https://prescriptiondrugsummit.com/Documents/>> [last visited Oct. 24, 2017] (Table: "2015 Overdose Death Rates Per 100,000 in Texas Counties Due to Heroin, Other Opiates, Other Synthetic Opiates, Methadone & Benzodiazepines").



Nueces County also has one of the highest prescription opioid prescribing rates in the State. In fact, Nueces County issues 83.4 opioid prescriptions for every 100 people, which is 22.6 more than the Texas rate of 59.8 prescriptions per 100 people and 13.7 more than the national rate of 70.6 prescriptions per 100 people.³⁷ Compounding the burden on public finances, Nueces County exceeds the national rate of people without health insurance (19.1 percent as of 2015, compared to the national rate of 13.01 percent) and by 2016 estimates, at least 95.43 percent of Nueces County citizens who need addiction treatment are not receiving those services or other healthcare.³⁸

3. Neonatal Abstinence Syndrome in Texas and Nueces County

The number of U.S. newborns hospitalized for opioid withdrawal—a condition known as “neonatal abstinence syndrome” (NAS)—has spiked sharply in recent years and so has the cost of treating those infants. Babies born dependent on opioids quickly develop withdrawal symptoms.³⁹ That can mean a host of problems, from tremors and seizures, to breathing difficulty, to diarrhea and poor feeding.

Reflective of increasing maternal opioid use, the incidence of NAS has increased sharply over the last ten years. The CDC reports a 400 percent nationwide increase in reported incidence of NAS between 2000 and 2012. Following national trends, the number of Texas NAS Medicaid claims has also risen significantly, increasing at least 60 percent statewide from 2010 to 2015.⁴⁰

³⁷ CDC NAT'L CENTER FOR INJURY PREVENTION AND CONTROL, *U.S. Prescribing Rate Maps*, Jul. 31, 2017, <<https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html>> [last visited Oct. 24, 2017].

³⁸ *Texas Opioid Epidemic, Opioid & Health Indicators Database*, AMFAR.ORG, *supra*.

³⁹ Norton, Amy, *Medical Costs Soar for U.S. Babies Born Addicted to Opioids*, CORPUS CHRISTI CANCER CENTER, HEALTHDAY NEWS, Jun. 15, 2017 <<https://ccradiationoncology.com/hl/?/news/NRCN723710/medical-costs-soar-for-u-s-babies-born-addicted-to-opioids>> [last visited Oct. 24, 2017].

⁴⁰ Martin, Brittney, *Bexar County highest in state for babies going through drug withdrawal*, SAN ANTONIO EXPRESS-NEWS, May 31, 2017 <<http://www.expressnews.com/news/local/article/Bexar-County-highest-in-state-for-babies-going-11186935.php>> [last visited Oct. 24, 2017] (citing Texas Health and Human Services Commission).



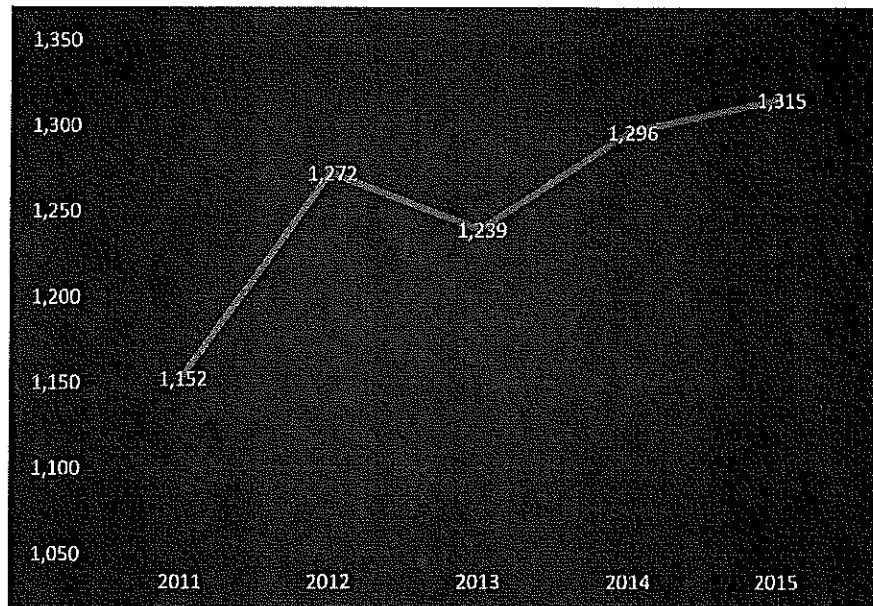
Table 3. Texas Medicaid NAS Claims, Percentage by County, 2011-2015.⁴¹

COUNTY	2011	2012	2013	2014	2015
Bexar	32%	33%	30%	26%	29%
Dallas	9%	12%	14%	14%	13%
Tarrant	9%	10%	10%	10%	10%
Harris	12%	13%	9%	7%	6%
Nueces	5%	4%	5%	7%	5%

Source: Texas Department of Health Services.

Nueces County is one of the top five counties in the State for reported cases of NAS, accounting for at least 5 percent of the 1,315 NAS Medicaid claims in 2015.⁴² See Table 3. The Texas Department of Health Services reported at least 1,315 NAS Medicaid claims were made in 2015. See Figure 3. Importantly, Texas only tracks NAS cases covered by Medicaid, which means the number of babies born addicted to opioids is vastly undercounted in this State.

Figure 3. Number of Texas Medicaid Newborns Diagnosed with NAS, 2011-2015.



Source: Texas Department of Health Services.

⁴¹ TEX. DEP'T OF HEALTH SERVS., *Neonatal Abstinence Syndrome (NAS)*, last updated May 16, 2017 <<http://www.dshs.texas.gov/sa/nas/>> [last visited Oct. 24, 2017].

⁴² TEX. DEP'T OF STATE HEALTH SERVS., *Opioid Dependency in Pregnancy and Efforts to Reduce Severity of Neonatal Abstinence Syndrome in Texas, 2014* <<https://hhs.texas.gov/sites/default/files/documents/about-hhs/process-improvement/quality-efficiency-improvement/Efforts-to-reduce-NAS-in-TX-DSHS-120915.pdf>> [last visited Oct. 24, 2017].

NAS imposes astronomical costs on the State of Texas and Nueces County in particular. Newborn babies with NAS need longer hospital stays than newborns hospitalized for other reasons—almost 20.5 days, on average, versus five days. According to the most recently-available statistics, hospital costs averaged \$28,710 per baby born with NAS in 2015.⁴³ See Table 4. The average cost for a baby who does not have the syndrome was about 10 times less expensive.⁴⁴ The cost of all medical care—inpatient hospitalization, outpatient hospitalization, professional services and medications—for the first year of life averages \$56,725,839.⁴⁵

Table 4. Texas Medicaid Newborn Medical Cost and Length of Stay (LOS), 2011-2015.⁴⁶

	2011	2012	2013	2014	2015
Total LOS	18,017	20,989	21,317	19,122	20,549
Average LOS	26.7	27.2	26.7	22.1	20.5
Total Cost	\$ 27,355,270	\$ 27,754,286	\$ 29,277,317	\$ 28,189,276	\$ 28,767,722
Average Cost	\$ 40,586	\$ 35,998	\$ 36,642	\$ 32,589	\$ 28,710
All Medical Care for 1st Year of Life	\$ 44,317,050	\$ 45,436,583	\$ 43,286,768	\$ 48,161,891	\$ 56,725,839

Source: Texas Department of Health Services.

NAS also results in increased costs to the Child Welfare System through investigations, removals, and placement in foster care. For example, the cost of providing foster care for one child is approximately \$25,281 per year and kinship care for children placed with family is \$1,500 per year.⁴⁷

⁴³ TEX. DEP'T OF HEALTH SERVS., *Neonatal Abstinence Syndrome (NAS)*, last updated May 16, 2017 <<http://www.dshs.texas.gov/sa/nas/>> [last visited Oct. 24, 2017].

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ TEX. DEP'T OF STATE HEALTH SERVS., *Exceptional Item 6(b) Neonatal Abstinence Syndrome (NAS) Prevention Pilot*, (2015).

4. The Costs of the Opioid Crisis to Texas and Nueces County

Texas and Nueces County bear a number of other costs as a result of the opioid epidemic. Texas opioid deaths have risen 80 percent in the last two decades, however per capita spending on substance abuse treatment programs is substantially below the national average.⁴⁸ Roughly 6.39 percent of Texans in need of addiction treatment actually receive those services, compared to 11.11 percent nationally.⁴⁹ The rate is even lower for Nueces County, with a reported 4.57 percent of individuals with a drug addiction receiving treatment.⁵⁰ Nueces County simply does not have the financial resources and addiction treatment options to serve the population. At Charlie's Place Recovery Center in Corpus Christi, which serves mostly people in south Texas, the wait for one of the 60 beds set aside for people receiving state funding for treatment is generally between six to eight weeks, sometimes stretching up to 12.⁵¹

Without appropriate treatment, the risks associated with opioid withdrawal increase, particularly for the poor and indigent population of Texas. In June of 2016 an inmate arrested on a misdemeanor trespassing charge died in a Nueces county jail due to opioid withdrawal.⁵² Medication Assisted Treatment (MAT) is not commonly provided in Texas county jails, and people at risk for incarceration choose to continue to use short acting opioids such as heroin instead of MAT to avoid severe withdrawal in jail.⁵³ For those who do receive state funded MAT in Texas, the most commonly reported primary diagnosis is opioid use disorder. See Figure 4, below.

⁴⁸ Taft, Isabelle, *Addiction Programs Hoping for Boost in Federal Funds*, THE TEXAS TRIBUNE, Jul. 24, 2016 <<https://www.texastribune.org/2016/07/24/texas-addiction-specialists-await-final-opioid-leg/>> [last visited Oct. 24, 2017].

⁴⁹ *Texas Opioid Epidemic, Opioid & Health Indicators Database*, AMFAR.ORG, *supra*.

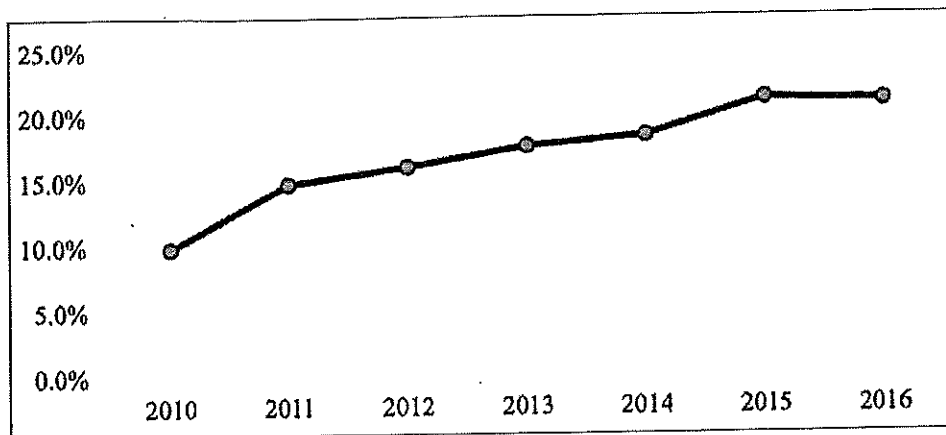
⁵⁰ *Id.*

⁵¹ Taft, Isabelle, *Addiction Programs Hoping for Boost in Federal Funds*, *supra*.

⁵² TEX. HEALTH & HUMAN SERVS. COMM., *State Targeted Response to the Opioid Crisis Grants Funding Opportunity Announcement* (FOA), No. TI-17-014, <http://casestudies.txhealthsteps.com/stepsQuickCourses/opioid/assets/Texas_Targeted_Opioid_Response_program_narrative.pdf> [last visited Oct. 24, 2017] (discussing Texas Targeted Opioid Response program).

⁵³ *Id.*

Figure 4. Percentage of Clients in State Funded Treatment for Opioid Use Disorder in Texas Receiving Medication Assisted Treatment (MAT), 2010-2016



Source: HHSC Decision Support, 2017. Average monthly counts of clients with an opioid primary substance.

The economic burden of prescription opioid abuse is substantial. A 2009 systematic review found that the total cost of prescription opioid abuse in 2001 in the United States was approximately \$8.6 billion and medical expenses were estimated to be \$15,884 for opioid abusers and \$1,830 for nonabusers.⁵⁴ More recent estimates place the cost of opioid abuse in the U.S. in excess of \$50 billion per year.⁵⁵ A Washington, DC-based economic policy firm estimates that the State of Texas paid at least \$1,963,623,647 in health care costs from opioid abuse in 2007.⁵⁶ In 2015, Texas Medicaid paid over \$33.3 million to fill opioid prescriptions for more than 426,000 Medicaid patients.⁵⁷ As of 2015, Texas had the second highest total health care costs from opioid abuse in the nation. See Figure 5, below.

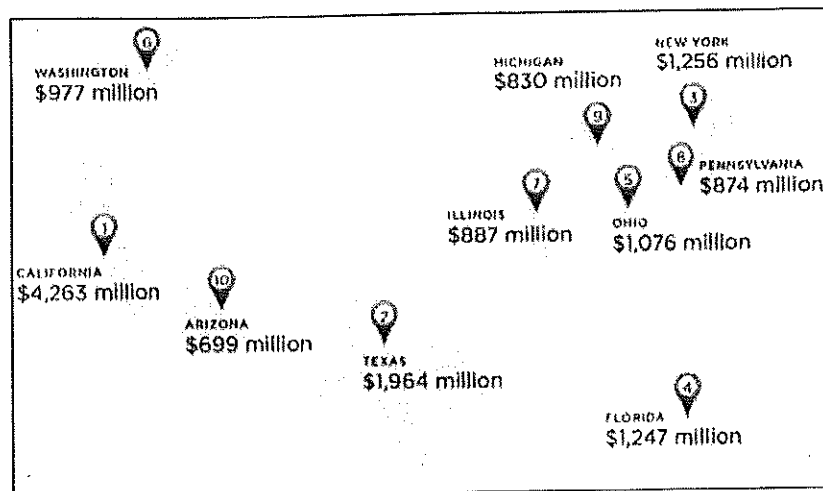
⁵⁴ Gary M. Oderda, et al. *Economic Burden of Prescription Opioid and Abuse: A Systematic Overview*, 29 J. PAIN PALLIAT. CARE PHARMACOTHER. 388-400 (2015).

⁵⁵ *Id.*

⁵⁶ MATRIX GLOBAL ADVISORS, LLC, *Health Care Costs from Opioid Abuse: A State-by-State Analysis*, Apr. 2015 <https://drugfree.org/wp-content/uploads/2015/04/Matrix_OpioidAbuse_040415.pdf> [last visited Oct. 24, 2017].

⁵⁷ OFFICE OF INSPECTOR GENERAL, TEX. HEALTH AND HUMAN SERVS. COMM., *Opioid Drug Utilization Inspection: Texas Medicaid Efforts to Reduce Prescription Opioid Abuse and Overutilization*, IG Report No. INS-16-003 (2017).

Figure 5. Top Ten States: Total Health Care Costs from Opioid Abuse.



Source: Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Behavioral Health Statistics and Quality.

Beyond health care costs, other significant economic burdens are associated with opioid abuse. These include costs related to criminal justice, estimated at \$5 billion nationally, and lost workplace productivity, estimated at \$25.5 billion.⁵⁸ In total, opioid abuse imposes an estimated \$55 billion in societal costs annually.⁵⁹ Prescription opioid abuse also affects the safety and security of Texas citizens and their property. For example, while Texas ranks lower than the many of the other states in terms of opioid related deaths, it ranks as one of the highest in pharmacy break-ins related to the theft of opioids to be sold on the street.⁶⁰ Since 2011 there have been 239 pharmacy burglaries in Texas, or 30 percent of the national total.⁶¹

⁵⁸ Howard Birnbaum, et al., *Societal Costs of Prescription Opioid Abuse, Dependence, and Misuse in the United States*, 12(4) J. PAIN MED. 657-67 (2011).

⁵⁹ *Id.*

⁶⁰ *Pharmacy Crime: A look at pharmacy burglary and robbery in the United States and the strategies and tactics needed to manage the problem*, PHARMACISTS MUT. INS. CO., 2015 <https://www.phmic.com/wp-content/uploads/2016/07/PMC_CrimeReport.pdf> [last visited Oct. 24, 2017].





⁶¹ U.S. DEP'T OF JUSTICE, DRUG ENFORCEMENT ADMIN., *2017 National Drug Threat Assessment*, No. DEA-DCT-DIR-040-17, Oct. 2017 <https://www.dea.gov/docs/DIR-040-17_2017-NDTA.pdf> [last visited Oct. 26, 2017].

D. THE WRONGDOERS

The Wrongdoers fall into three major categories:



1. The Pharmaceutical Companies

The Pharmaceutical Companies are companies that manufacture, market, and sell prescription opioids. Over the course of two decades, these companies paved the way for opioids to become the go-to pain treatment medication using a wide range of marketing and advertising tactics. They include the following entities:

PHARMACEUTICAL COMPANY	ENTITIES	STATE	HQ	OPIOID PRODUCTS	ANNUAL COMPANY REVENUE, 2016
	Purdue Pharma L.P.	DE	CT	OxyContin MS Contin Dilaudid Butrans Hysingla ER	\$3 billion
	Purdue Pharma, Inc.	NY	CT		
	Purdue Frederick Company, Inc.	DE	CT		
	Janssen Pharmaceuticals, Inc.	PA	NJ	Durogesic Nucynta ⁶² Nucynta ER Ultram Ultram ER	\$74 billion
	Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc.	PA	NJ		
	Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.	PA	NJ		
	Johnson & Johnson	NJ	NJ		
	Cephalon, Inc.	DE	PA	Actiq Fentora	\$21.9 billion
	Teva Pharmaceuticals USA, Inc.	DE	PA		
	Teva Pharmaceutical Industries, Ltd.	Israel			
	Insys Therapeutics, Inc.	DE	AZ	Subsys ⁶³	\$242 million

⁶² In 2015, Depomed, Inc. acquired the rights to Nucynta and Nucynta ER from Janssen.

⁶³ Insys made over \$215 million in profits from the sale of Subsys®, the only fentanyl spray on the market.

PHARMACEUTICAL COMPANY	ENTITIES	STATE	HQ	OPIOID PRODUCTS	ANNUAL COMPANY REVENUE, 2016
	Actavis Pharma, Inc. f/k/a Actavis, Inc.	DE	NJ	Kadian Norco	\$14.6 billion
	Actavis, LLC	DE	NJ		
	Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc. n/k/a Allergan Finance, LLC	NV	NJ		
	Actavis PLC	Ireland			
	Allergan PLC	Ireland			
	Watson Laboratories, Inc.	NV	NJ		
 Mallinckrodt Pharmaceuticals	Mallinckrodt, LLC	DE	MO	Exalgo Roxicodone Xartemis XR oxycodone ⁶⁴ hydrocodone	\$829 million
	Mallinckrodt Brand Pharmaceuticals, Inc.	DE	MO		
	Mallinckrodt PLC	England			

2. The Distributor Companies




The Distributor Companies distribute prescription opioids to retail pharmacies and institutional providers. These wholesale distributors control the majority of drug distribution nationwide. The Distributor Companies all recently reached multimillion-dollar settlements with the U.S. Department of Justice and West Virginia in opioid-related litigation for failing to alert the U.S. Drug Enforcement Administration (DEA) of suspicious opioids purchases, such as orders of unusual size, frequency or pattern in violation of the Federal Controlled Substances Act (CSA). The CSA requires distributors of pharmaceuticals to identify and report suspicious orders of controlled substances, such as orders of unusual size, unusual frequency or those that substantially

⁶⁴ Mallinckrodt is one of the largest distributors of generic opioids, including hydrocodone and oxycodone, in the U.S. In 2015, Mallinckrodt manufactured approximately 25 percent of the total DEA quota for controlled substances introduced to the U.S. market. See Form 10-K, 2016 SEC Annual Report, MALLINCKRODT PLC, at p. 7 <<http://www.mallinckrodt.com/investors/annual-reports>> [last visited Oct. 26, 2017].



deviate from a normal pattern. If the distributor fails to report suspicious orders to the DEA, civil penalties can be imposed against the distributor.

The Distributor Companies include the following entities:

DISTRIBUTOR COMPANY	ENTITIES	STATE	HQ	ANNUAL COMPANY REVENUE, 2016	FINES & JUDGMENTS FOR CSA VIOLATIONS
 Cardinal Health	Cardinal Health, Inc.	OH	OH	\$121.5 billion	\$44 million (2016) \$20 million (2017)
 McKesson	McKesson Corporation	DE	CA	\$190.9 billion	\$13.25 million (2008) \$150 million (2017)
 AmerisourceBergen	AmerisourceBergen Corporation	DE	PA	\$147 billion	\$16 million (2017)

- Cardinal Health Inc. (“**Cardinal**”) services more than 24,000 pharmacies and more than 85 percent of U.S. hospitals.
 - In December 2016, Cardinal agreed to pay \$44 million to the U.S. government to settle allegations that it violated the CSA.⁶⁵
 - In January 2017, Cardinal agreed to pay \$20 million to settle a lawsuit brought by West Virginia’s attorney general.⁶⁶
 - West Virginia agreed to drop legal actions against Cardinal, however, a separate lawsuit remains pending by commissioners of McDowell County, West Virginia, which has the state’s highest rate of death from prescription drug abuse.
 - Cardinal and other wholesalers in a six-year period sent 780 million hydrocodone and oxycodone pills to West Virginia—433 per state resident. In that time, there

⁶⁵ U.S. DEP’T OF JUSTICE, OFFICE OF PUBLIC AFFAIRS, *Cardinal Health Agrees to \$44 Million Settlement for Alleged Violations of Controlled Substances Act*, Dec. 23, 2016 <<https://www.justice.gov/usao-md/pr/cardinal-health-agrees-44-million-settlement-alleged-violations-controlled-substances-act>> [last visited Oct. 24, 2017].

⁶⁶ Ghose, Carrie, *Cardinal Health to pay West Virginia \$20M to settle opiates lawsuit*, AM. CITY BUS. J., Jan. 9, 2017 <<https://www.bizjournals.com/columbus/news/2017/01/09/cardinal-health-to-pay-west-virginia-20m-to-settle.html>> [last visited Oct. 24, 2017].



were 1,728 fatal overdoses from the addictive painkillers.

- McKesson Corporation (“McKesson”) is the largest pharmaceutical distributor in the United States and delivers one-third of all pharmaceuticals used in North America.
 - In January of 2017, McKesson agreed to pay a record \$150 million civil penalty for alleged violations of the CSA.⁶⁷
 - The nationwide settlement required McKesson to suspend sales of controlled substances from distribution centers in Colorado, Ohio, Michigan, and Florida for multiple years. These suspensions are among the most severe sanctions ever agreed to by a DEA registered distributor.
 - The settlement also imposes new and enhanced compliance obligations on McKesson’s distribution system.
 - In 2008, McKesson agreed to a \$13.25 million civil penalty and administrative agreement for similar violations. In this case, the government alleged again that McKesson failed to design and implement an effective system to detect and report “suspicious orders” for controlled substances distributed to its independent and small chain pharmacy customers.
 - From 2008 to 2013, McKesson supplied U.S. pharmacies an increasing amount of oxycodone and hydrocodone pills.
 - Even after designing a compliance program after the 2008 settlement, McKesson did not fully implement or adhere to its own program. In Colorado, for example, McKesson processed more than 1.6 million order for controlled substances from June 2008 through May 2013, but reported just 16 orders as suspicious, all connected to one instance related to a recently terminated customer.
- AmerisourceBergen Corporation (“AmerisourceBergen”) is the third largest pharmaceutical distributor and provides 20 percent of all pharmaceuticals sold in the United States.
 - In January 2017, AmerisourceBergen agreed to pay \$16 million to settle a lawsuit brought by West Virginia’s attorney general for failing to submit reports of suspicious pharmacy orders as required by law.⁶⁸

⁶⁷ U.S. DEP’T OF JUSTICE, OFFICE OF PUBLIC AFFAIRS, *McKesson Agrees to Pay Record \$150 Million Settlement for Failure to Report Suspicious Orders of Pharmaceutical Drugs*, Jan. 17, 2017 <<https://www.justice.gov/opa/pr/mckesson-agrees-pay-record-150-million-settlement-failure-report-suspicious-orders>> [last visited Oct. 24, 2017].

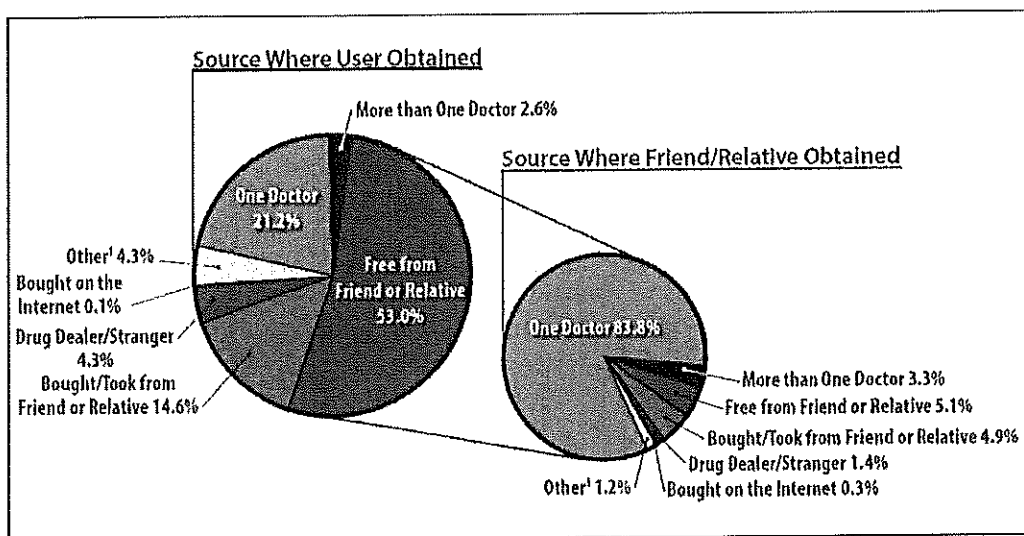
⁶⁸ Eyre, Eric, *2 drug distributors to pay \$36M to settle WV painkiller lawsuits*, CHARLESTON GAZETTE-MAIL, Jan. 9, 2017 <<http://www.wvgazettemail.com/news-cops-and-courts/20170109/2-drug-distributors-to-pay-36m-to-settle-wv-painkiller-lawsuits>> [last visited Oct. 24, 2017].

3. Local Distributors, Pharmacies and Prescribers

The nature of the opioid crisis varies from county to county. While Cardinal, McKesson and AmerisourceBergen account for 85 to 90 percent of all revenues from drug distribution in the U.S. (estimated in 2015 to be \$378 billion), several municipal entities have filed lawsuits against local distributors that flood their cities and counties with opioids to a disproportionately high extent. There are at least 742 licensed prescription drug wholesalers and distributors operating in the State of Texas alone.⁶⁹

Local prescribers, particularly those who have been prosecuted for operating pill mills, play a key role in fueling the opioid epidemic at a local level. Texas “pill mill” operations are rampant in Nueces County and throughout South Texas. The DEA reports that the primary source where prescription opioids are obtained for non-medical use is physicians.⁷⁰ See Figure 6.

Figure 6. Source Where Prescription Opioids Were Obtained for Most Recent Nonmedical Use Among Past Year Users Aged 12 or Older, 2012-2013.



Source: DEA.

⁶⁹ TEX. DEP'T OF STATE HEALTH SERVS., *Drug Manufacturers and Distributors*, last updated Sep. 13, 2017 < <https://www.dshs.texas.gov/drugs/> > [last visited Oct. 26, 2017].

⁷⁰ DEA, *2016 National Drug Threat Assessment Summary*, *supra*.

The flood of medically unnecessary prescription opioids is fueled by physicians who, in many cases, are paid by pharmaceutical companies to prescribe their products. According to a study published by the American Journal of Public Health, 1 in 12 doctors receive payments from opioid manufacturers and between 2012 and 2015, more than 68,000 physicians received more than \$46 million in non-research payments from opioid manufacturers.⁷¹ Pharmaceutical companies pay physicians millions of dollars to prescribe their opioid products. See Table 5, below. A ProPublica analysis found that doctors who receive payments from the medical industry prescribe a higher percentage of brand name drugs than those who do not accept payments.⁷² At least 73 percent of hospital-affiliated doctors in Texas take payments from drug companies.⁷³

Table 5. Total Pharmaceutical Company Payments Made to Physicians Related to Opioid Products from August 2013 to December 2015.⁷⁴

Company	Opioid Product	Doctors Receiving Payments	Payment Totals
Insys	Subsys	10,659	\$ 16.3 million
Purdue	Hysingla ER	20,495	\$ 5.77 million
Purdue	Butrans	33,844	\$ 5.23 million
Janssen	Nucynta	12,686	\$ 4.29 million
Purdue	OxyContin	32,349	\$ 2.89 million
Cephalon	Fentora	3,471	\$ 2.85 million
Mallinckrodt	Xartemis XR	16,080	\$ 1.23 million

Source: ProPublica, Dollars for Docs.

⁷¹ Scott E. Hadland, et al., *Industry Payments to Physicians for Opioid Products, 2013-2015*, 107(9) AM. J. PUB. H. 1493-95 (2017).

⁷² Ornstein, Charles, et al., *Now There's Proof: Docs Who Get Company Cash Tend to Prescribe More Brand-Name Meds*, PROPUBLICA, Mar. 17, 2016 < <https://www.propublica.org/article/doctors-who-take-company-cash-tend-to-prescribe-more-brand-name-drugs> > [last visited Oct. 26, 2017].

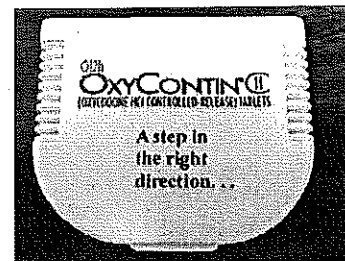
⁷³ Fei, Fan, *What Percentage of Doctors at Your Hospital Take Drug, Device Payments*, PROPUBLICA, Jun. 29, 2016 < <https://projects.propublica.org/graphics/d4d-hospital-lookup> > [last visited Oct. 27, 2017].

⁷⁴ PROPUBLICA, *Dollars for Docs*, Dec. 13, 2016 < <https://projects.propublica.org/docdollars/> > [last visited Oct. 26, 2017].



E. THE PHARMACEUTICAL COMPANIES' UNLAWFUL ACTS

The Pharmaceutical Companies engaged in a profit-maximizing scheme in which they routinely misrepresented the safety, risks, benefits, and efficacy of long-term opioid use. To effectuate their plan, these massive corporations employed a multi-pronged strategy that included the use of Continuing Medical Education/Seminars ("CME"), branded and unbranded advertisements specifically targeting opioid prescribers, and branded advertisements aimed at consumers. Front Groups such as the American Academy of Pain Management, American Pain Foundation ("APF"), and The Federation of State Medical Boards were used to disseminate the misleading message that long-term prescription opioid use was safe and effective.



1. Aggressive and Unethical Marketing Tactics

The Pharmaceutical Companies engaged in a multitude of deceptive marketing tactics knowing that their statements regarding the risks, benefits and superiority of opioids for chronic pain were untrue and unproven. The DEA stated that the distribution to health care professionals of prescription opioid promotional items like pens, fanny packs, coffee mugs, fishing hats, plush toys, and music CDs was unprecedented for a schedule II drug.⁷⁵ The Pharmaceutical Companies publicized their illegitimate message by:

- Training their sales representatives to misrepresent to individual prescribers the risk of addiction;
- Rewarding their sales representatives for high sales with luxury trips, lucrative annual bonuses and incentive programs;
- Compiling profiles of doctors and their prescribing habits into databases to pinpoint the doctors prescribing the most pain medication and targeting them for a marketing

⁷⁵ GENERAL ACCOUNTING OFFICE, *Prescription Drugs: OxyContin Abuse and Diversion and Efforts to Address the Problem*, Publication GAO-04-110 (2013).

onslaught⁷⁶ (Purdue);

- Issuing patient starter coupons for free limited-time prescriptions of OxyContin⁷⁷;
- Sponsoring the publication of false medical literature that stated prescription opioid addiction is rare;
- Currying the favor of doctors in private practice with gifts, free trips and paid speaking engagements;
- Launching websites that promote the safety of opioids for chronic use;
- Disseminating pamphlets and patient education brochures that downplay the risk of addiction;
- Targeting children as young as 12 as potential opioid users through organizational policy guides;
- Sponsoring webinars that claimed screening tools, urine tests, and patient agreements prevent overuse of prescriptions and overdose deaths; and
- Blaming “bad apple patients”—not opioids—for the addiction crisis and positing that once the “bad apple patients” are identified, doctors can freely prescribe without risk of addiction.



2. “Pseudoaddiction” and the Push to Treat Addiction with More Opioids

The Pharmaceutical Companies claimed that the signs of addiction were signs of untreated pain, and they described this condition as “pseudoaddiction.” To keep doctors prescribing their products, the Pharmaceutical Companies told physicians to treat this “pseudoaddiction” with more opioids. These corporations perpetuated this fake affliction through a variety of means, including:

⁷⁶ Glover, Scott, et al., *OxyContin maker closely guards its list of suspect doctors*, LOS ANGELES TIMES, Aug. 11, 2013 <<http://articles.latimes.com/2013/aug/11/local/la-me-rx-purdue-20130811>> [last visited Oct. 24, 2017].

⁷⁷ Art Van Zee, *The Promotion and Marketing of OxyContin*, supra (by 2001, when the program was ended, approximately 34,000 coupons had been redeemed nationally).

- Websites

- Janssen sponsored, funded, and provided content for the “Let’s Talk Pain” website, which stated in part: “Pseudoaddiction . . . refers to patient behaviors that may occur when pain is under-treated . . . Pseudoaddiction is different from true addiction because such behaviors can be resolved with effective pain management;”

- Patient Pamphlets

- Purdue published and disseminated “Providing Relief, Preventing Abuse,” which described pseudoaddiction as a concept that “emerged in the literature” to describe the inaccurate interpretation of [drug-seeking behaviors] in patients who have pain that has not been effectively treated;”

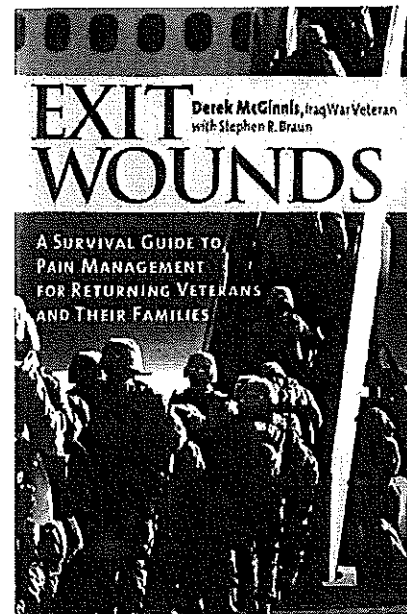
- CME Programs

- Purdue sponsored “Path of the Patient, Managing Chronic Pain in Younger Adults at Risk for Abuse.” Through role playing, the CME taught physicians that the doctor should not assume the patient is addicted, even if he/she persistently asks for a specific drug, seems desperate, hoards medicine, or overindulges in unapproved escalating dosages;

- Cephalon and Purdue sponsored “Responsible Opioid Prescribing,” which taught physicians that common addiction behaviors like requesting drugs by name, exhibiting demanding or manipulative behavior, doctor shopping, and hoarding are signs of pseudoaddiction rather than real addiction; and

- Books

- *Exit Wounds*, a book sponsored by Purdue and distributed by the APF with grants from Janssen and Endo in 2009, was written as a personal narrative of one veteran. However, the book was not actually written by a war veteran, it is pure marketing by Purdue, Janssen and Endo that describes opioids as “underused” and the “gold standard of pain medications.”



3. False Claims that Opioid Addiction is Easily Treated

The Pharmaceutical Companies sought to assure physicians that the risk of starting patients on opioids was minimal by claiming that opioid dependence, in the rare instances where it



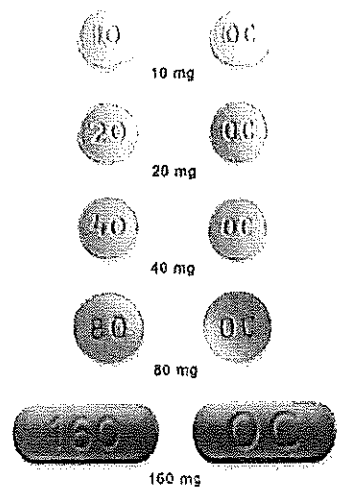
occurred, could be easily treated:

- Purdue's "A Policymaker's Guide to Understanding Pain & Its Management" CME claimed that symptoms of physical dependence can often be ameliorated by gradually decreasing the dose of medication during discontinuation.

4. Approval and Endorsement of Higher Dosages for Opioid-Tolerant Patients

With patients quickly building tolerances for opioids, the lower doses failed to provide any relief. In those cases, the use of opioids may have been abandoned by prescribers but for the Pharmaceutical Companies' claim that opioid dosages could be indefinitely increased without added risk:

- Actavis created a patient brochure that stated, "Over time, your body may become tolerant of your current dose. You may require a dose adjustment to get the right amount of pain relief. This is not addiction;"
- Cephalon and Purdue sponsored APF's "Treatment Options: A Guide for People Living with Pain" and claimed that some patients need a larger dose of an opioid, regardless of the dose currently prescribed. The guide stated that opioids have "no ceiling dose" and are therefore the most appropriate treatment for severe pain;
- Janssen's patient education guide "Finding Relief: Pain Management for Older Adults" listed dosage limitations as disadvantages of *other* pain medicines;
- Purdue encouraged patients to find another doctor if their current doctor refused to prescribe a sufficient dosage of opioids; and
- Purdue taught that dosage escalations are "sometimes necessary," even unlimited ones.



OxyContin® Tablets
(oxycodone hydrochloride controlled-release)

5. Misrepresentations about the Benefits of Long-Term Opioid Use

The Pharmaceutical Companies misrepresented the benefits of pain relief provided by long-term prescription opioid use by falsely stating that:

- Long-term opioid use would result in pain reduction and an increased quality of life for patients;

- The use of their products for chronic pain would allow patients to perform demanding tasks like construction work;
- Opioids make it easier for people to live normally and improve quality of life;
- Chronic opioid therapy has been shown to reduce pain and improve depressive symptoms and cognitive functioning; and
- Multiple clinical studies have shown that opioids are effective in improving daily function, psychological health, and health related quality of life for chronic pain patients.



The Pharmaceutical Companies' conduct and false representations about the benefits and risks of long-term opioid use created a situation where long-term opioid prescriptions flourished. The unchecked escalation of prescription opioid use has resulted in abuse, addiction, overdose, injuries and death.

6. Illegal Efforts to Increase Sales

The Pharmaceutical Companies repeatedly violated state and federal laws in their efforts to increase sales of their highly addictive products. Specifically,

- Mallinckrodt's business practices resulted in millions of oxycodone pills sold on the street. On July 11, 2017, the Justice Department announced that Mallinckrodt agreed to pay a record \$35 million settlement for repeated violations of the CSA;⁷⁸ and
- On October 26, 2017, the founder and majority owner of Insys was arrested and charged with racketeering and other felonies including federal RICO violations and conspiracy to violate the Anti-Kickback Law for his role in the marketing of Subsys, a powerful fentanyl spray.⁷⁹

⁷⁸ U.S. DEP'T OF JUSTICE, OFFICE OF PUBLIC AFFAIRS, *Mallinckrodt Agrees to Pay Record \$35 Million Settlement for Failure to Report Suspicious Orders of Pharmaceutical Drugs and for Recordkeeping Violations*, Jul. 11, 2017 <<https://www.justice.gov/opa/pr/mallinckrodt-agrees-pay-record-35-million-settlement-failure-report-suspicious-orders>> [last visited Oct. 26, 2017].

⁷⁹ U.S. DEP'T OF JUSTICE, OFFICE OF PUBLIC AFFAIRS, *Founder and Owner of Pharmaceutical Company Insys Arrested and Charged with Racketeering*, Oct. 26, 2017 <<https://www.justice.gov/opa/pr/founder-and-owner-pharmaceutical-company-insys-arrested-and-charged-racketeering>> [last visited Oct. 26, 2017].



F. THE DISTRIBUTOR COMPANIES' UNLAWFUL ACTS

The Distributor Companies repeatedly failed to monitor, identify, halt and report “suspicious orders” of controlled substances pursuant to state and federal law. *See* 21 C.F.R. § 1301.74. According to the DEA, diversion of hydrocodone products and pseudoephedrine continues to be a problem in Texas. The Distributors Companies’ conduct directly resulted in the presence of an inordinately large volume of prescription opioids in local communities. Specifically, the Distributor Companies:

- Acknowledged and affirmed their duties to report suspicious prescription opioid orders;
- Failed to maintain effective controls to prevent the diversion of prescription opioids for nonmedical purposes;
- Purposefully concealed their conduct by falsely assuring the public and regulators that they were undertaking efforts to comply with state and federal laws; and
- Were motivated by profit—the sheer volume of prescription opioids distributed to pharmacies was excessive for the medical need of the community and facially suspicious, or so obvious that no one who engages in the legitimate distribution of controlled substances could reasonably claim ignorance of them.

The Distributor Companies’ failures to maintain effective controls against diversion of dangerously addictive prescription opioids for non-medical use and abuses has created an abundance of drugs available for criminal use and fueled a new wave of addiction, abuse, and injury.



G. OVERVIEW OF OPIOID LITIGATION

Litigation, both civil and criminal, is a valuable tool in the war against prescription drug abuse. Some attorneys general and advocates are now asking courts whether the Pharmaceutical Companies who marketed the drugs and downplayed their addictive nature and the Distributor Companies who aggressively sold the drugs can be held legally responsible for—and made to pay for the consequences of—the opioid crisis. To be clear, this is not a pharmaceutical case. This case concerns false, misleading and dangerous statements regarding the safety of prescription opioids and misconduct that resulted in the over-prescribing and diversion of addictive opioid drugs.

1. Precedent for Liability

There is good precedent for liability. In 1996, Texas filed a federal lawsuit accusing the tobacco industry of violating conspiracy, racketeering, consumer protection, and other provisions of state and federal law.⁸⁰ The state sought to recover billions of tax dollars it had spent to treat tobacco-related illnesses. Other state attorneys general sued tobacco companies, arguing that the companies should take up the burden of paying for the costs of treating smoking-related diseases.

In 1998, the tobacco industry, 46 states, and six other jurisdictions settled with the tobacco industry for \$246 billion, the largest civil-litigation settlement agreement in U.S. history.⁸¹ In the settlement, which left the tobacco industry immune from future state and federal suits, the companies agreed to make annual payments to the states, in perpetuity, to fund public-health programs and anti-smoking campaigns.⁸² The Texas Legislature created the Tobacco Settlement Permanent Trust Account to provide local health departments and hospital districts a portion of

⁸⁰ *Texas v. American Tobacco Co., et al.*, No. 5:96-cv-00091-DF-HWM (E.D. Tex. Mar. 28, 1996).

⁸¹ TEXAS DEP'T OF STATE HEALTH SERVS., *Tobacco Settlement Information*, May 4, 2017 <<https://www.dshs.texas.gov/tobacco/settlement.shtm>> [last visited Oct. 24, 2017].

⁸² *Id.*

the payments from tobacco settlement funds.⁸³ These funds are used by counties and hospital districts to offset dollars they have dedicated to indigent health care for tobacco-related illnesses. In 2016, the Nueces County Hospital District received \$533,277.40 in tobacco settlement distribution payments.⁸⁴ In addition to the Tobacco Settlement Distribution Program, the Texas Legislature used tobacco settlement funds to create several permanent funds that provide community-level interventions and services related to tobacco-related education, prevention, and other health programs across the State of Texas.⁸⁵

Similar to the tobacco companies, the pharmaceutical companies aggressively lobbied doctors to influence their opinions about the safety of opioids. Now, as this public-health crisis ravages the U.S., several states, counties, cities, and municipalities are taking a page from the tobacco litigation playbook and filing lawsuits against pharmaceutical companies, distributors and others for their roles in perpetuating the opioid epidemic.

2. Suits Filed by Counties and Cities

A number of cities and municipalities across the U.S. are currently pursuing litigation against Pharmaceutical Companies and Wholesale Distributors for their medical, public health, and law enforcement costs related to opioid abuse. See Appendix A, List of States and Municipalities that have Filed Lawsuits Against Prescription Opioid Manufacturers, Distributors, Pharmacies and Physicians for their Roles in Creating the Opioid Crisis (as of October 27, 2017). While only two counties in the State of Texas have filed suit against pharmaceutical companies

⁸³ *Id.*

⁸⁴ TEXAS DEP'T OF STATE HEALTH SERVS., *List of Political Subdivisions that Received a Payment in the 2016 Distribution*, Apr. 26, 2017 <<https://www.dshs.texas.gov/tobaccosettlement/pay2016.aspx>> [last visited Oct. 24, 2017].

⁸⁵ *Tobacco Settlement Information*, *supra*.

for recovery of damages related to the opioid epidemic, more suits are likely to follow.⁸⁶ These cases generally allege that the opioid epidemic stems from the Pharmaceutical Companies' aggressive promotion and sales of prescription opioid medications.

Some lawsuits also bring claims against Wholesale Distributors for failure to report suspicious bulk opioid orders as required by state and federal laws. In April of 2017, the Cherokee Nation filed a lawsuit against pharmaceutical companies, distributors and other prescription drug sellers like Wal-Mart and CVS in tribal court over the opioid epidemic.⁸⁷ By filing lawsuits, governments are seeking to hold Pharmaceutical Companies and Wholesale Distributors and others responsible for the increased costs of health care, criminal justice and victimization costs, lost productivity costs, and addiction treatment programs.

At least 41 states, including Texas, have joined a bipartisan coalition of attorney generals from across the country to conduct a multistate investigation into the opioid crisis. The attorneys general have served subpoenas on Purdue Pharma, Endo, Janssen, Teva, Cephalon, Allergan, AmerisourceBergen, Cardinal Health and McKesson to obtain documents and information regarding their prescription opioid marketing and distribution practices.

At least 14 attorneys general have filed opioid lawsuits on behalf of their states and more states are expected to follow. Additionally, opioid lawsuits have been filed on behalf of municipalities and counties in state and federal courts in at least 27 jurisdictions, including:

Alabama	Kentucky	Mississippi	Oklahoma	Washington
Arizona	Louisiana	New Hampshire	Oregon	West Virginia
California	Massachusetts	New Jersey	Pennsylvania	Cherokee Nation
Connecticut	Maryland	New Mexico	South Carolina	
Georgia	Michigan	New York	Tennessee	
Illinois	Missouri	Ohio	Texas	

⁸⁶ Malewitz, Jim, *East Texas county sues drug companies, alleges role in opioid crisis*, THE TEXAS TRIBUNE, Oct. 4, 2017 <<https://www.texastribune.org/2017/10/04/east-texas-county-sues-drug-companies-alleging-role-opioid-crisis/>> [last visited Oct. 24, 2017].

⁸⁷ *Cherokee Nation v. McKesson, et al.*, No. CV-2017-203 (Dist. Ct. Cherokee Nation, Apr. 20, 2017).



See Appendix A. New municipal opioid lawsuits are filed every day, and many more states, cities and counties have announced their intent to file lawsuits against the manufacturers and distributors of prescription opioids within the next few months.

While litigation is in its early stages, courts across the U.S. have been unwilling to dispose of all claims brought by governments against the Wrongdoers. In 2014, the City of Chicago sued Purdue, Teva and other pharmaceutical companies claiming these entities misled doctors and the public about the addictive nature of opiates and pushed prescriptions despite known dangers of addiction.⁸⁸ On September 29, 2016, the U.S. District Court for the Northern District of Illinois issued an order upholding the City of Chicago's claims for deceptive trade practices under Illinois' Consumer Fraud Act and common law misrepresentation.⁸⁹ The Court determined that the City met the heightened pleading standard by identifying Chicago-area prescribers who received deceptive messages and wrote opioid prescriptions for which the City subsequently issued payment.⁹⁰

In January of this year the City of Everett, Washington, filed a lawsuit against Purdue alleging that the company knew OxyContin was being funneled into the black market but did nothing to stop it.⁹¹ In ruling on Purdue's motion to dismiss on September 25, 2017, the U.S. District Court for the Western District of Washington upheld the majority of the City of Everett's claims, including negligence, gross negligence, violations of Washington's consumer protection statute, and unjust enrichment and granted the City leave to amend its public nuisance claim.⁹²

⁸⁸ See *City of Chicago v. Purdue Pharma, et al.*, No. 1:14-cv-04361 (N.D. Ill. Jun. 11, 2014).

⁸⁹ *City of Chicago v. Purdue Pharma, et al.*, No. 1:14-cv-04361 (N.D. Ill. Sep. 29, 2016).

⁹⁰ *Id.*

⁹¹ *City of Everett v. Purdue Pharma, et al.*, No. 17-2-00469-31 (Snohomish Cty. Superior Ct. Jan. 19, 2017).

⁹² *City of Everett v. Purdue Pharma, et al.*, No. 2:17-cv-00209-RSM (W.D. Wash. Sep. 25, 2017) (Dkt. No.

Each of these lawsuits seek recovery on differing theories of liability against varying defendants, however they all seek to hold the industry accountable for the social and economic burden that has been shouldered by state and local governments. The purpose of these lawsuits is not to ban prescription opioids for people that need them; it is to get opioid makers to change their marketing tactics and bear some of the costs of the widespread opioid addiction that they created.

3. Multidistrict Litigation

On September 25, 2017, a motion to consolidate and transfer more than 70 opioid cases brought by cities in 11 states was filed with the United States Judicial Panel on Multidistrict Litigation.⁹³ The motion seeks coordination of these actions for pretrial purposes. A hearing on consolidation of these opioid lawsuits is currently set for November 30, 2017.

⁹³ IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION, MDL No. 2804.



H. CAUSES OF ACTION

Nueces County and the City of Corpus Christi are responsible for the public health, safety and welfare of its citizens and has standing to bring a lawsuit against the Wrongdoers for all available remedies at law or in equity.⁹⁴ A lawsuit brought by Nueces County and/or the City would seek to restore to their respective treasuries those funds spent for opioid-attributable costs, and recover funds expended to provide medical treatment to citizens suffering from opioid-related injuries and to seek appropriate injunctive relief against the Wrongdoers' continuing illegal conduct. While the particular claims brought on behalf of Nueces County and/or Corpus Christi will depend on a more detailed analysis of the losses sustained, the following causes of action are feasible under Texas law and the general facts of the case.

1. Deceptive Trade Practices and Consumer Protection Act (DTPA)

A claim for violation of the Texas Deceptive Trade Practices and Consumer Protection Act (DTPA) is based on unfair and/or deceptive representations about the use of opioids to treat chronic, non-cancer related pain. These alleged misrepresentations caused governmental entities, such as Nueces County, to pay significant sums of money for prescription opioids and for programs and resources to combat the direct effects of the opioid crisis. The Wrongdoers, in the conduct of trade or commerce in the State of Texas, knowingly engaged in and continued to engage in, false, misleading or deceptive acts or practices which are declared unlawful and violate the DTPA. TEX. BUS. & COM. CODE § 17.41, *et seq.* The Wrongdoers' violations are the producing causes of injury and damages to Nueces County and its citizens.

Further, the Wrongdoers, through their control of third parties, engaged in deceptive practices when they made and disseminated untrue, false, and misleading statements to Nueces

⁹⁴ See TEX. CONST. art XI, § 5.

County prescribers and consumers to promote the sale and use of opioids to treat chronic pain. The misleading statements, listed supra, were disseminated through an array of marketing techniques including in person detailing, speaker events, continuing medical education, journal articles, and advertisements. The Wrongdoers assisted key opinion leaders and front groups to develop, promote, and disseminate these misstatements.

The Wrongdoers also (1) unfairly promoted opioids to the elderly and veterans to treat chronic pain in the face of known, heightened risks of opioid use to those populations; (2) engaged in untrue, false, and misleading marketing with third parties; (3) promoted advantages of opioid products in violation of FDA regulations; (4) failed to present a balance of benefit and risk information posed by opioids in violation of FDA regulations; (5) deliberately used unbranded marketing to evade FDA oversight; and (6) promoted opioids for off-label use. The Wrongdoers provided front groups and key opinion leaders with funding and technical support for the shared purpose of issuing unfair pro-opioid messaging and targeted their marketing to non-specialist physicians and non-physician prescribers who lacked the time and expertise to independently evaluate their claims.

The Wrongdoers' false, misleading or deceptive acts and practices misrepresent that opioids have characteristics, ingredients, uses or benefits which they do not have and cause, and have caused, consumer confusion or misunderstanding as to the source, sponsorship, approval or certification of Wrongdoers' opioid products in violation of DTPA §§ 17.46(a) and 17.46(b)(2) and (b)(5). The Wrongdoers knowingly concealed information regarding the serious dangers of chronic opioid use and misled Nueces County and consumers regarding the risks of using opioids with the intent that Nueces County would allow Defendants to continue to sell these products and Nueces County citizens would continue to purchase their drugs.



2. Common Law Public Nuisance

By producing, promoting and marketing opioids in communities, the Wrongdoers have intentionally interfered with the public's right to be free from unwarranted injury and death and have caused damage to the public health, the public safety and the general welfare of the citizens of Texas. The massive public health crisis caused by the Wrongdoers constitutes a public nuisance under Texas common law. Pursuant to its inherent police powers, Nueces County is entitled to abate the public nuisance and to obtain damages occasioned by the public nuisance.⁹⁵

As a general rule, suits for public nuisance are brought by public entities, not by private individuals. *See Jae Kim v. State*, 451 S.W.3d 557, 561-62 (Tex. App.—Houston [1st Dist] 2014, pet. denied). In Texas, a public nuisance is a condition that amounts to an unreasonable interference with a right common to all members of the general public. *Jamail v. Stoneledge Condo. Owners Ass'n*, 970 S.W.2d 673, 676 (Tex. App.—Austin 1998, no pet.). A defendant's conduct is unreasonable if it involves an act or condition that subverts public health or public order or that constitutes an obstruction of public rights. *Stoughton v. City of Fort Worth*, 277 S.W.2d 150, 153 (Tex. App.—Fort Worth 1955, no writ). The defendant's conduct is also unreasonable if it is continuing in nature or produces a permanent or long-lasting effect that the defendant knew or should have known would have a significant effect on a public right. RESTATEMENT (2D) OF TORTS §821B(2)(c). The conduct must adversely affect all or a considerable part of the community. *Walker v. Texas Elec. Serv.*, 499 S.W.2d 20, 27 (Tex. App.—Fort Worth 1973, no

⁹⁵ *See* TEX. LOC. GOV'T CODE § 217.042; *see also Addison v. Dall. Indep. Sch. Dist.*, 632 S.W.2d 771 (Tex. App.—Dallas 1982) (A municipality may declare that to be a nuisance which is a nuisance per se or at common law, or those things which may constitute a nuisance but as to which there may be honest differences of opinion in impartial minds; the category of nuisances not subject to ordinance, despite former TEX. REV. CIV. STAT. ANN. art. 1175 § 19 (1980-81), but rather require a judicial determination, are nuisances per accidents; activities not by nature nuisances, but which may become so by reason of locality, surroundings, or the manner in which they may be conducted or managed).



writ). Whether the defendant's conduct was a public nuisance is a question of fact. *Crossman v. City of Galveston*, 247 S.W. 810, 815 (Tex. 1923).

The Wrongdoers' conduct has resulted in substantial and unreasonable interference with the public rights of Nueces County's citizens, including loss of life, serious physical and psychological injuries, disruption of peace through increased crime, and a depletion of Nueces County's financial resources.⁹⁶ Under a claim for public nuisance, a plaintiff may seek actual damages against a person creating a public nuisance to the extent the damages sought will compensate the plaintiff for some special injury. *Quanah Acme & Pac. Ry. v. Swearingen*, 4 S.W.2d 136, 139 (Tex. App.—Amarillo 1927, writ ref'd). A plaintiff may also recover exemplary damages in a public nuisance suit. *Crossman v. City of Galveston*, 247 S.W. at 815. Equitable relief is available to a plaintiff under a public nuisance claim, including temporary and/or permanent injunctive relief to abate the nuisance. *Crosstex N. Tex. Pipeline, L.P. v. Gardiner*, 505 S.W.3d 580 (Tex. 2016). While a party may recover court costs for a common law public nuisance suit, attorney fees are not recoverable unless there is some equitable ground for them. *Kampmann v. Rothwell*, 109 S.W. 1089, 1090 (Tex. 1908). Nueces County may seek recovery for its own harm and is entitled to recoupment of governmental costs flowing from an ongoing and persistent public nuisance, and actual damages including expenses for police, emergency, health, prosecution, corrections and other services.

⁹⁶ See *City of Cincinnati v. Beretta U.S.A. Corp.*, 768 N.E.2d 1136, 1141 (Ohio 2001) (plaintiff stated public nuisance claim by alleging that defendant firearm manufacturers knew or reasonably should have known that their marketing and distribution practices would cause handguns to be used and possessed illegally and that such conduct constitutes an ongoing public nuisance that has a detrimental effect on the public health, safety, and welfare of the residents).



3. Statutory Common Nuisance

The Texas Legislature has authorized an action for common nuisance against “a person who maintains a place to which persons habitually go for the following purposes and who knowing tolerates the activities and furthermore fails to make reasonable attempts to abate the activity[.]” TEX. CIV. PRAC. & REM. CODE § 125.0015(a). Such activities include “engaging in organized criminal activity as a member of a combination as prohibited by the Penal Code,” “delivery, possession, manufacture or use of a controlled substance in violation of Chapter 481, Health and Safety Code.” TEX. CIV. PRAC. & REM. CODE. § 125.0015(a)(3) and (4). “A suit to enjoin and abate a common nuisance may be brought by an individual, by the attorney general, or by a district, county, or city attorney.” TEX. CIV. PRAC. REM. CODE § 125.002. “The suit must be brought in the county in which it is alleged to exist against the person who is maintaining or about to maintain the nuisance.” *Id.* Any money award to the County or City under this chapter will be placed into a “nuisance abatement fund” and used only for the purpose of ongoing nuisance abatement. TEX. CIV. PRAC. REM. CODE § 125.047.

4. Common Law Negligence/Gross Negligence

Companies that produce and distribute opioids owe a duty to take reasonable steps to prevent misuse and over-prescription of the drugs. The Pharmaceutical Companies have a duty to exercise reasonable care in the design, manufacture, marketing and distribution of their products. By falsely minimizing the risk of addiction, deceptively marketing “abuse-deterrent” technology, and claiming that people with signs of “pseudoaddiction” just need more opioids, the Pharmaceutical Companies violated their duty of care to Nueces County. As a foreseeable and proximate result of the Pharmaceutical Companies’ breach of duty, citizens of Nueces County became addicted to opioid products, sustained opioid-related injuries and required medical care,



rehabilitation, social services, and other County-provided care.

The Distributor Companies have a duty to exercise ordinary care in the distribution of opioids, and they breached this duty by failing to take action to prevent or reduce the distribution of illicitly prescribed opioids. Distributor Companies were negligent in, among other conduct, failing to disclose suspicious orders for opioids pursuant to federal law and Texas prescription monitoring laws. Distributor Companies' acts and omissions posed an unreasonable risk of harm to others. As a proximate result, Distributor Companies and their agents have caused Nueces County to incur grossly excessive costs related to diagnosis, treatment, and cure of addiction or risk of addiction to opioids.

The U.S. Court for the Western District of Washington recently considered whether Purdue Pharma owed the City of Everett a duty under Section 302B of the Restatement (Second) of Torts. *City of Everett v. Purdue Pharma LP*, No. C17-209RSM, 2017 U.S. Dist. LEXIS 156653 (W.D. Wash. Sep. 25, 2017). Section 302B, adopted by Washington (and Texas), provides:

An act or an omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm, even though such conduct is criminal.

Purdue Pharma argued that it did not owe a duty to the City of Everett because manufacturers have a duty only to the consumer for the foreseeable harm from the use of a product and the City did not allege affirmative misconduct, "misfeasance" as opposed to an omission, or "nonfeasance." *Id.* at *10. However, the court noted that the City of Everett alleges much more than Purdue Pharma's failure to report diverted OxyContin, that the complaint is replete with allegations that Purdue Pharma supplied OxyContin to obviously suspicious pharmacies, enabled the illegal diversion, aided criminal activity, and disseminated massive quantities of OxyContin into the black market. *Id.* at *10. The court found that Everett adequately pled that Purdue Pharma



engaged in an affirmative act which created or exposed the City to a high degree of risk of harm and, if the City is able to prove its allegations, a legal duty under Section 302B is triggered. *Id.* at *11.

The same holds true under Texas law. Everyone owes a duty to prevent injury to others if it reasonably appears or should appear that in the exercise of their lawful rights others may be injured by a dangerous condition that was created by the individual. RESTATEMENT (2D) OF TORTS § 321; *Buchanan v. Rose*, 159 S.W.2d 109, 110 (1942). There is a duty to exercise reasonable care to avoid a foreseeable risk of injury to others. *El Chico Corp. v. Poole*, 732 S.W.2d 306, 311 (Tex. 1987). There is also a duty to take affirmative action to control or avoid increasing the danger from a condition that has been at least partially created by the individual's conduct. *Id.*

A manufacturer of a product has a duty to use ordinary care in warning foreseeable end users of products about dangers inherent in products that are known or should be known to the manufacturer and are not readily apparent to the end user. RESTATEMENT (2D) OF TORTS § 388; *Alm v. Aluminum Co. of Am.*, 717 S.W.2d 588, 591 (Tex. 1986). There is also a duty to use ordinary care in making representations and in ascertaining the accuracy of information given to others. *Id.* at § 311; *EDCO Prod., Inc. v. Hernandez*, 794 S.W.2d 69, 76-77 (Tex. App.—San Antonio 1990).

In a suit for common law negligence, a plaintiff can recover actual damages, including damages for personal injury, injury to personal property, injury to real property, and damages for economic injury. Exemplary damages are also available. Interest and court costs are also recoverable. Attorney fees are not recoverable under a negligence claim unless provided for by statute or contract, or under equity. *See Knebel v. Capital Nat'l Bank*, 518 S.W.2d 795, 799 (Tex. 1974) (allowing for recovery of attorney fees under equity). A plaintiff can recover exemplary damages for harm that results from gross negligence. An act is grossly negligent when viewed

objectively from the defendant's standpoint at the time it occurred involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. *U-Haul Int'l v. Waldrip*, 380 S.W.3d 118, 137 (Tex. 2012); TEX. CIV. PRAC. & REM. CODE § 41.001(11).

5. Negligence Per Se

Civil and criminal statutes, administrative rules, and city ordinances can all be the basis for imposing a duty recognized in tort. *Perry v. S.N.*, 973 S.W.2d 301, 306-07 (Tex. 1998). The adoption of a statute into tort law is a matter of judicial discretion. *Id.* at 304 n.4. In most cases, a defendant will be held to the standard of ordinary care under the circumstances presented. In Texas, prescription drug manufacturers and distributors have duties proscribed by law. A number of statutes and codes set the standard of care in Texas for the prescription of opioid drugs,⁹⁷ pain clinic management,⁹⁸ the identification of prescription drugs,⁹⁹ and the reporting of suspicious drug orders to state and federal law enforcement agencies.¹⁰⁰ Under the Texas Controlled Substances Act, a prescription drug "wholesaler who, with reckless disregard for the duty to report," fails to report suspicious drug orders, is subject to "disciplinary action[.]" TEX. HEALTH & SAFETY CODE ANN. § 481.0771(d). The Texas Legislature set forth the standard of care by which prescription drug manufacturers and distributors are required to conduct business in the State of Texas. *See* TEX. HEALTH & SAFETY CODE ANN. §§ 481.001, *et seq.* State and Federal laws impose a clear duty upon the Wrongdoers to maintain effective controls against diversion of prescription opioids into other than legitimate medical, scientific, and industrial channels. *See* 21 U.S.C. §823(b)(1)

⁹⁷ *See* TEX. HEALTH & SAFETY CODE ANN. § 481.074; TEX. HUM. RES. CODE ANN. § 32.024; TEX. OCC. CODE ANN. § 562.054; TEX. GOV'T CODE ANN. § 531.073; 22 TEX. ADMIN. CODE § 291.33; and 1 TEX. ADMIN. CODE § 354.1877.

⁹⁸ *See* 22 TEX. ADMIN. CODE § 195.1; TEX. OCC. CODE ANN. § 168.001; 22 TEX. ADMIN. CODE § 195.3; TEX. OCC. CODE ANN. § 168.053; TEX. OCC. CODE ANN. § 168.102(a); TEX. OCC. CODE ANN. § 168.201; and 22 TEX. ADMIN. CODE § 195.4.

⁹⁹ *See* TEX. HEALTH & SAFETY CODE ANN. 481.074.

¹⁰⁰ *See* TEX. HEALTH & SAFETY CODE ANN. § 481.129.



and 21 C.F.R. § 1301.74(b).

6. Misrepresentation

Directly and through their control of third parties, the Wrongdoers knowingly made and disseminated deceptions and misrepresentations to promote the sale and use of opioids to treat chronic pain. Additionally, the Wrongdoers engaged in fraudulent behavior by acting in concert with third-party front groups and key opinion leaders to make false statements about the use of opioids in treating chronic pain. *See City of Chicago v. Purdue Pharma, LP*, 211 F. Supp. 3d 1058, 1076 (N.D. Ill. 2016) (upholding the City's misrepresentation claim and finding that the City "need not allege causation or injury to allege a claim for misrepresentation" and concluding that the City "has alleged, with enough particularity to meet Rule 9(b)'s requirements, misrepresentations that each defendant made to Chicago-area prescribers about their particular opioids.").

7. Common Law Fraud

In Texas, the elements for a cause of action for common-law fraud are the following: (1) the defendant made a representation to the plaintiff; (2) the representation was material; (3) the representation was false; (4) when the defendant made the representation, the defendant (a) knew the representation was false or (b) made the representation recklessly, as a positive assertion, and without knowledge of its truth; (5) the defendant made the representation with the intent that the plaintiff act on it; (6) the plaintiff relied on the representation; and (7) the representation caused the plaintiff's injury. *Zorilla v. Aypco Constr. II, LLC*, 469 S.W.3d 143, 153 (Tex. 2015).

The statements and representations made and promotional schemes used by the Wrongdoers were deceptive, false, incomplete, misleading and untrue. The Wrongdoers knew of the hazards of using prescription opioids but intentionally suppressed material facts about the hazards of chronic use and the risk of addiction and the Wrongdoers had an economic interest in



making such statements. Through their illegal and deceptive promotion of opioids, the Wrongdoers knowingly caused false claims to be made to Nueces County's health plans, which are self-insured, and knowingly obtained or caused to be obtained through deception the property of the Nueces County in payments for those false claims. The Wrongdoers' scheme caused doctors to write prescriptions for opioids to treat chronic non-cancer pain that were presented to Nueces County's health plans, which cover Nueces County employees and retirees, for payment. Many of the prescriptions written by physicians and/or authorized by the health plans, and submitted to Nueces County were for uses that were not approved by the FDA and, therefore, were not medically necessary. As described above, the Wrongdoers knowingly made, used, or caused to be made false claims with the intent to induce Nueces County to approve and pay such false and fraudulent claims. The Wrongdoers purposefully and intentionally engaged in these activities, and continue to do so, with knowledge that the County would be obligated to, and would, provide health care and other necessary facilities and services for certain of the County's citizens and that the County itself would be harmed.

In an action for common law fraud, the plaintiff can recover actual damages, including damages for economic injury such as out-of-pocket damages and expectancy damages. *Aquaplex Inc. v. Rancho La Valencia, Inc.*, 297 S.W.3d 768, 755 (Tex. 2009). Damages for personal injury, including mental anguish, are also recoverable. *Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 304 (Tex. 2006). A plaintiff may recover exemplary damages. TEX. CIV. PRAC. & REM. CODE § 41.003(a)(1). Proving fraud for exemplary damages requires proof by clear and convincing evidence, while proving fraud for actual damages requires proof only by a preponderance of the evidence. *Id.*; see also *Tony Gullo Motors*, 212 S.W.3d at 306 & n.26. When an action for fraud is based on constructive fraud, it cannot support exemplary damages. TEX. CIV.



PRAC. & REM. CODE § 41.001(6).

8. Racketeer Influenced and Corrupt Organizations Act (RICO)

The Racketeer Influenced and Corrupt Organizations Act (RICO) 18 U.S.C. §§ 1961, *et seq.* provides a civil cause of action for acts performed as part of an ongoing criminal organization. Under the Act, Nueces County is a “person” who can bring an action for violation of section 1962. Section 1962(c) makes it “unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity ...” 18 U.S.C. § 1962(c). A civil RICO action can be filed in state or federal court. The Act permits recovery of actual damages, treble damages, equitable relief, a civil penalty of up to one hundred thousand dollars, attorney fees and costs and/or pre- and post-judgment interest. To recover under RICO, the City must prove the existence of an “enterprise.” Here, members of the alleged RICO enterprises include the drug manufacturers, the “front groups” (such as the American Pain Association, which promoted widespread opioid use on behalf of the drug manufacturers), wholesale distributors, and pharmacies.

Here, the Wrongdoers conducted or participated in an “Opioids Diversion Enterprise” through commission of criminal offenses that constitute a pattern of racketeering activity. The Opioids Diversion Enterprise is an ongoing and continuing business organization that created and maintained systematic links for a common purpose: to profit from the sale of prescription opioids. Each Wrongdoer conducted this enterprise in violation of state and federal law constituting an unlawful diversion of a dangerous controlled substance. These corporations see greater profits when prescription opioids are sold at higher volumes. Wholesale Companies acquire opioids from manufacturers at an established wholesale acquisition cost. Discounts and rebates may be offered



by the manufacturers based on market share and volume. Therefore, Wholesale Companies are incentivized to order greater amounts so that they can decrease the cost per pill. As a result, Wholesale Companies are financially motivated to increase opioid use and addiction.

Each Wrongdoer knowingly engaged in racketeering activity, which includes thousands of separate instances of use of the United States Mail or interstate wire facilities in furtherance of each Distributor Companies' unlawful Opioids Diversion Enterprise. Any violation of the mail or wire fraud statutes is defined as "racketeering activity." 18 U.S.C. § 1961(1)(B).



I. FEDERAL PREEMPTION

The Pharmaceutical Companies may raise the defense that tort claims regarding any warnings accompanying their products are preempted by federal labeling regulations promulgated by the Federal Food and Drug Administration (FDA). The FDA labels accompanying prescription opioids at issue warn about the risks of addiction, abuse, severe injury and death,¹⁰¹ however, in this case, a preemption argument is not persuasive for a number of reasons.

For one, this is not a pharmaceutical/products liability case. This is not a case about whether opioids are appropriate for the treatment of chronic, non-cancer pain or whether the Pharmaceutical Companies' drugs' labels are accurate. This case concerns direct-to-consumer advertising and other communications that contained false, misleading and dangerous statements regarding the safety and use of prescription opioids and resulted in widespread addiction, injury and death. Such communications, while subject to some FDA regulation,¹⁰² are not pre-approved before deployment and do not reflect the same risk-benefit balancing efforts that apply to package inserts or other FDA labeling. Moreover, the Pharmaceutical Companies' public statements and marketing tactics contradict and wholly undermine any package insert warning.

This case is about whether the Pharmaceutical Companies deliberately misrepresented the risks, benefits, and superiority of opioids when marketing them to treat chronic pain, contrary to scientific evidence and their own labels. See *City of Chicago v. Purdue Pharma, LP*, 211 F. Supp. 3d 1058, 1065 (N.D. Ill. 2016). As noted by the District Court for the Northern District of Illinois, "Courts are equipped to adjudicate such claims." *Id.*; see also *In re Horizon Organic Milk Plus*

¹⁰¹ See, e.g., *OxyContin® (oxycodone HCL controlled release) Tablets*, FDA Label, rev. Sep. 7, 2007, <https://www.accessdata.fda.gov/drugsatfda_docs/label/2008/020553s0591bl.pdf> [last visited Oct. 25, 2017] and *Kadian® CII (morphine sulfate extended release) Capsules*, FDA Label, rev. Mar. 2007, <https://www.accessdata.fda.gov/drugsatfda_docs/label/2007/020616s0251bl.pdf> [last visited Oct. 25, 2017].

¹⁰² See, e.g. 37 C.F.R. § 202.1 (2010).

DHA Omega—3 Mktg. & Sales Practice Litig., 955 F. Supp. 2d 1311, 1349 (S.D. Fla. 2013) (“Plaintiffs’ claims rest on the determination of whether WhiteWave’s brain health representations on its products’ labeling, in its advertisements, and on its website are false and/or misleading and whether customers purchased WhiteWave’s products in reliance on these representations. . . This is not a technical area in which the FDA has greater technical expertise than the courts—as every day courts decide whether conduct is misleading.”); *In re Bextra & Celebrex Mktg. Sales Practices & Prod. Liab. Litig.*, No. M: 05-1699 CRB, 2006 U.S. Dist. LEXIS 95500, 2006 WL 2374742, at *12 (N.D. Cal. Aug. 16, 2006) (“The issue is not whether Celebrex has fewer GI complications than other over-counter NSAIDs; the FDA has already determined that it does not. The issue is whether contrary to the FDA’s findings, Pfizer nonetheless falsely claimed that Celebrex was superior. Courts and juries frequently decide similar false advertising claims.”).

The District Court for the Eastern District of Louisiana also considered whether the plaintiffs’ claims arising from Purdue Pharma’s conduct in the manufacturing, marketing, promoting, selling and/or distributing of OxyContin were preempted under federal laws. *Ohler v. Purdue Pharma, L.P.*, 2002 U.S. Dist. LEXIS 2368, at *5 (E.D. La. 2002). The court held that:

There is no express preemption under either the FDCA or the control and enforcement provisions of the Uniform Controlled Substances Act. Nearly every State in the United States, along with the Virgin Islands and Puerto Rico, have adopted either the 1970, 1990, or 1994 Version of the Federal Uniform Controlled Substances Act, or some combination thereof. Clearly, the various States have statutes, laws, or regulations effecting control, enforcement and punishment of wrongful or illegal distribution or trafficking of Schedule II narcotic drug controlled substances, including OxyContin. These state laws coexist and operate in tandem with and as an adjunct to the federal criminal provisions. These state and federal laws or regulations have operated in tandem for decades, and permit the conduct of operations jointly on a case-by-case basis. *Id.* at *39-41.

In sum, the nature of the claims at issue do not concern federal laws or regulations such that they face preemption.



J. VENUE

The opioid epidemic affects Nueces County and the City of Corpus Christi differently than other parts of the State. The issues raised implicate local issues and involve local parties. A Texas state court is a proper forum for the proposed lawsuit. Texas courts are courts of general jurisdiction, and hold all the “judicial power of the state.” TEX. CONST. ART. V, § 8; *see Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 471 (Tex. 1993). Federal courts, however, have limited jurisdiction, and may only hear diversity of citizenship cases and actions arising under federal law. 28 U.S.C. §§ 1331, 1332. Whereas “a federal court must affirmatively ascertain jurisdiction over parties appearing before it, a Texas court’s jurisdiction is presumed until proven lacking by a contesting party.” *Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d at 471.

1. Diversity of Citizenship

Nueces County, as a political subdivision of the state, is a citizen of Texas for diversity purposes. *Moor v. Alameda County*, 411 U.S. 693, 718 (1973). This proposed lawsuit involves defendants who are citizens of several states, including Texas. Because this is a local issue involving local players, Texas-based distributors, pharmacies and/or physicians are necessary parties in this action. An analysis of the local supply chain must be undertaken to identify all culpable parties. Accordingly, complete diversity would not exist to grant a federal court diversity jurisdiction.

2. Federal Question

The claims at issue potentially include state tort claims, claims for violation of the Texas DTPA, and claims for violation of the federal RICO statute. As a general rule, Texas courts have concurrent jurisdiction over a federal cause of action absent a provision by Congress providing that the federal courts have exclusive jurisdiction, or disabling incompatibility between the federal

claim and state-court adjudication. *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 (1981); *In re Haynes & Boone*, 376 S.W.3d 839, 845 (Tex. App.—Houston [1st Dist.] Jul. 26, 2012). When jurisdiction is concurrent, an action can be pursued in either state or federal court.

The U.S. Supreme Court has asserted it has “full faith in the ability of state courts to handle the complexities of civil RICO actions, particularly since many RICO cases involve asserted violations of state law, such as state fraud claims, over which state courts presumably have greater expertise.” *Tafflin v. Levitt*, 493 U.S. 455, 465 (1990). Although federal courts have original jurisdiction over RICO claims, it is not exclusive. Texas state courts hold concurrent jurisdiction over RICO claims, and they may be brought in either a federal or state court. *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990); *see* 18 U.S.C. § 1946(c).

Any civil action that falls within the original jurisdiction of federal district courts is subject to removal. 28 U.S.C. § 1441(a). Federal court jurisdiction exists over an entire action, including state law claims, when the federal and state law claims “‘derive from a common nucleus of operative fact’ and are ‘such that [a plaintiff] would ordinarily be expected to try them all in one judicial proceeding.’” *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 349 (1988) (quoting *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966)). As such, a federal RICO claim may be removed, and a federal court would be authorized to exercise jurisdiction over state law claims if they form part of the same case or controversy. *City of Chi. v. International Coll. Of Surgeons*, 522 U.S. 156, 167 (1997).

3. Removal & Remand

A plaintiff can seek to remand a case by challenging federal jurisdiction. 28 U.S.C. § 1441(c). Both federal and state claims may be subject to remand. However, the Fifth Circuit has held that district courts lack authority to remand claims that confer jurisdiction. *See Inge v. Walker*,

No. 3:16-CV-0042-B, 2016 U.S. Dist. LEXIS 125272 at *10 (N.D. Tex. Sept. 15, 2016) (citing *Laurents v. Arcadian Corp.*, No. 94-41183, 1995 U.S. App. LEXIS 44049 (5th Cir. 1994) (providing federal RICO claim could not be remanded where it conferred removal jurisdiction).

Federal courts exercise discretion in conferring supplemental jurisdiction over related state law claims; they consider common law factors of “judicial economy, convenience, fairness, and comity, as well as the statutory factors set forth in 28 U.S.C. § 1367(c), including whether (1) the claims raise novel or complex issues of state law; (2) the claims substantially predominate over the claim or claims over which the district court has original jurisdiction; (3) the district court has dismissed all claims over which it has original jurisdiction; or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.” *Marshall v. Maropco, Inc.*, 223 F. Supp.3d 562, 572 (N.D. Tex. Feb. 22, 2017) (internal citations omitted). The factors are weighed and considered together, and no one factor is dispositive. *Inge v. Walker*, 2016 U.S. Dist. LEXIS 125272 at *16. A federal district court has “wide discretion” to remand remaining state law claims. *Roberston v. Neuromedical Center*, 161 F.3d 292, 296 (5th Cir. 1998).

K. STATUTES OF LIMITATION

Nueces County is immune from the statute of limitations under Texas law because it is a municipality acting in a sovereign capacity. The proposed lawsuit against the Pharmaceutical Companies, Distributors, and others is not barred by any statute of limitation. A number of statutory and common law tools provide exemption from, or tolling of limitations periods applicable to Nueces County's causes of action. Namely, Section 16.061 of the Texas Civil Practice and Remedies Code grants a general limitations exemption to various governmental entities, including counties. TEX. CIV. PRAC. & REM. CODE. § 16.061. Through the statute, Nueces County is immune from the two and four-year limitations periods applicable to their negligence, nuisance, and fraud causes of action. TEX. CIV. PRAC. & REM. CODE §§ 16.003, 16.004(a)(4), 16.061.

In addition to application of Section 16.061, the Continuing Tort doctrine and the Discovery Rule provide additional grounds for avoiding limitations. The discovery rule tolls the running of the statute of limitations until the plaintiff discovers, or through the exercise of reasonable care and diligence should discover, the nature of his injury. *Moreno v. Sterling Drug, Inc.*, 787 S.W.2d 348, 351 (Tex. 1990); see *Cornerstones Mun. Utility Dist. v. Monsanto Co.*, 889 S.W.2d 570, 576 (Tex. App.—Houston [14th Dist.] Nov. 10, 1994, pet. denied) (considering the discovery rule as applied to negligence, strict liability, fraud, and DTPA claims). The DTPA has a discovery rule built in to its limiting statute. TEX. BUS. & COMM. CODE § 17.565 (providing all actions brought under the DTPA must be commenced within two years or within two years after the consumer discovered or in the exercise of reasonable diligence should have discovered the occurrence of the false, misleading, or deceptive act or practice). Accordingly, limitations on Nueces County's claims (if applicable) do not begin to run until the County discovered or could



have discovered them through the exercise of reasonable diligence. When the District Court for the Western District of Washington considered whether the City's claims against Purdue Pharma were barred by the statute of limitations, the court declined to rule on the issue on a motion to dismiss as the question of when the City discovered Purdue Pharma's negligence was a question of fact. *See City of Everett v. Purdue Pharma LP*, No. C17-209RSM, 2017 U.S. Dist. LEXIS 156653 (W.D. Wash. Sep. 25, 2017).

The Continuing Tort doctrine provides an exception to the Discovery Rule; a continuing tort involves wrongful conduct inflicted over a period of time that is repeated until desisted, and each day creates a separate cause of action. *First General Realty Corp. v. Maryland Cas. Co.*, 981 S.W.2d 495, 501 (Tex. App.—Austin Nov. 30, 1998, pet denied). A cause of action for a continuing tort does not accrue until the defendant's tortious act ceases. *Id.* Through application of the Continuing Tort doctrine, any applicable limitations periods for torts alleged would be tolled until the last act of intentional infliction occurs.

Although no limitations period is articulated in RICO for either civil or criminal actions, the Supreme Court has held that the statute of limitations for a civil RICO action is four years. *Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, 483 U.S. 143, 156 (1987). The "injury discovery" rule is the prevailing rule for determining when the limitations period for a civil RICO claim begins to run. *See Rotella v. Wood*, 147 F.3d 438, 440 (5th Cir. 1998), *aff'd*, 528 U.S. 549 (2000). Under the rule, a civil RICO limitations period begins to run when a plaintiff knew or should have known of the injury that underlies his cause of action. A variant to the injury discovery rule, "separate accrual rule," provides that a new claim, and consequently a new four-year limitations period, accrues each time a "new and independent injury" is incurred from the same RICO violation. *See e.g. Love v. National Medical Enterprises*, 230 F.3d 765, 773 (5th Cir. 2000)

(citing *Bankers Trust Co. v. Rhoades*, 859 F.2d 1096, 1102 (2d Cir. 1988) (providing a variant of the injury discovery rule, the “separate accrual” rule, applies to RICO causes of action, and “[w]hen a pattern of RICO activity causes a continuing series of separate injuries, the ‘separate accrual’ rule allows a civil RICO claim to accrue for each injury when the plaintiff discovers, or should have discovered that injury.”)).

L. DAMAGES

Nueces County has incurred and continues to incur costs related to opioid addiction and abuse, including, health care costs, criminal justice and victimization costs, social service expenses, and loss of productivity from disability, death, and withdrawals from the workforce. Restitution, remediation and abatement are remedies available under Texas tort law. Abatement, for example, is a broad form of relief designed to stop, fix and clean up the problem that the Wrongdoers created.

Accordingly, Nueces County may seek recovery of damages for opioid-related costs associated with (1) loss of productivity, (2) medical care, (3) criminal justice, and (4) substance abuse treatment programming and training. Defining the extent of the problem and identifying the resources needed to fix the problem will be a substantial undertaking. Experts are central to determination of the damages incurred by Nueces County and Corpus Christi as a result of the opioid epidemic. An economist is needed to project lost revenue and an epidemiologist is needed to project an incidence rate per capita. Much of the work in developing damage models has already been done by government agencies, non-profit organizations, and think tanks. However, actual financial records from the County and City are the best tools to support actual damages and project future costs.

1. Loss of Productivity

The County has lost the value of productive and healthy employees due to the opioid epidemic. A National Safety Council survey found that 29 percent of employers reported impaired job performance due to prescription-painkiller use, while 15 percent cited an injury or near miss



that they attributed to the drugs.¹⁰³ The economic cost of nonmedical use of prescription opioids in the United States totals more than \$50 billion annually; lost productivity and crime account for the vast majority (94 percent) of these costs.¹⁰⁴ While a number of studies and have been undertaken to determine the extent of productivity losses directly attributable to opioid use, to date, reliable data for Nueces County has yet to be quantified. It may be possible to use statistical models to derive a prescription opioid-attributable percentage of productivity costs. This method of damage calculation was undertaken and considered by courts in the tobacco litigation. Expert testimony will be needed to develop a reliable methodology for calculating the dollar cost of the opioid epidemic to Nueces County.

2. Health Care Costs

The extent to which medical and prescription drug costs for indigent and uninsured Nueces County residents are funded by the County requires access to more detailed County financial records and an understanding of the organizational structure of the County and its services. Nationally, opioid abusers cost employers nearly twice as much (\$19,450) in medical expenses on average annually as non-abusers (\$10,853).¹⁰⁵ Costs for operating treatment programs and providing health care services are known or knowable. Other healthcare costs may include:

County and/or City Health Insurance

The extent to which the Nueces County and/or the City of Corpus Christi funds their own insurance plans for their employees is an important damages factor to be determined. Some cities

¹⁰³ Saraiva, Catarina, *The opioid crisis spills into the workplace*, MYSANANTONIO.COM, Sep. 23, 2017 <<http://www.mysanantonio.com/news/article/The-opioid-crisis-spills-into-the-workplace-12222852.php>> [last visited Oct. 24, 2017].

¹⁰⁴ R.N. Hansen, et al., *Economic costs of nonmedical use of prescription opioids*, 27 CLIN J PAIN 194-202 (2011).

¹⁰⁵ Simpson, Andrew G., *Employers Pay As 32% of Opioid Prescriptions Are Abused: Report*, INSURANCE JOURNAL, Apr. 21, 2016 < <http://www.insurancejournal.com/news/national/2016/04/21/406047.htm>> [last visited Oct. 24, 2017].

and/or counties provide prescription drug coverage to their employees and retirees under various health plans that the city and/or county self-insures. Typically, the municipalities' applicable health plans provide benefits for all medically necessary services associated with opioids, including treatment related to any adverse outcomes from chronic opioid therapy, such as overdose or addiction treatment. Some counties and cities pay directly for prescription drugs under their plans. Drugs that are not medically necessary or are prescribed for a purpose not approved by the FDA are excluded from coverage under the plans.

The Wrongdoers' conduct caused doctors and pharmacies to submit, and the County and/or City to pay, claims to its health plans that were false or not medically necessary. It also caused patients covered by the County and/or City's insurance to incur additional injuries from overdoses and addiction, which caused additional costs.

Worker's Compensation Costs

The County and/or City worker's compensation program may cover costs associated with opioids, including prescription drug coverage, treatment related to any adverse outcomes from chronic opioid therapy, such as addiction treatment, through a self-insured program. If that is the case, the County and/or City may seek damages resulting from false workers' compensation claims. *See, e.g., City of Chi. v. Purdue Pharma L.P.*, No. 14 C 4361, 2015 U.S. Dist. LEXIS 60587, at *9 (N.D. Ill. 2015).

Nueces County Hospital District Costs

The Nueces County Hospital District (NCHD) is a political subdivision of the State of Texas and component unit of Nueces County, Texas.¹⁰⁶ NCHD funds and administers an indigent health care program known as the Nueces Aid Program which provides State-mandated health care

¹⁰⁶ NUCES COUNTY HOSPITAL DISTRICT <<http://www.nchdcc.org>> [last visited Oct. 24, 2017].



services for qualified low-income and low-resource Nueces County residents who meet Program eligibility criteria. The NCHD expends significant resources to the treatment of opioid addiction and overdose in its indigent patients and should be reimbursed opioid-related costs.

Community Health Center and Public Health District Operational Costs

County operated community health centers provide mental health, substance abuse, and other rehabilitative services. The sole community health center located in Nueces County is the Amistad Community Health Center. The Corpus Christi Nueces County Health District provides services “to prevent disease, disability, and premature death; promote healthy lifestyles; and protect the health & quality of the environment for all residents of Nueces County.”¹⁰⁷

Emergency Services/EMT Call Outs & Life-Saving Naloxone Doses

The life-saving drug naloxone (brand name Narcan®) blocks or reverses the effects of opioids, such as extreme drowsiness, slowed breathing, and loss of consciousness. Naloxone is used to treat opioid overdose in an emergency situation and costs \$36.21 per dose. The Corpus Christi Police Department and Fire Department/EMS are trained to administer naloxone to individuals suffering from opioid overdose. Emergency efforts to prevent overdose death are costly to Nueces County and Corpus Christi.

3. Social Programs/Substance Abuse Treatment Services

Who Funds Opioid Treatment Services in Nueces County?

- The City of Corpus Christi
- Nueces County
- State Health Services (DSHS) (Medicaid, through 2010 Substance Use Disorder Benefit)
- Federal Substance Abuse and Mental Health Administration (SAMHSA)

¹⁰⁷ CORPUS CHRISTI NUECES COUNTY PUBLIC HEALTH DISTRICT
<<http://www.cotexas.com/departments/health-district>> [last visited Oct. 24, 2017].



While additional funding is made available through private contracts and grants, these resources are not able to meet the growing demand for treatment. There are 3 licensed narcotic treatment programs currently operating in Nueces County.¹⁰⁸ Additional research is needed to determine to what extent these programs are funded by the County and/or the City. Without sufficient funding, Nueces County presumably picks up a significant portion of the costs attributed to maintaining substance abuse treatment programs, including homeless programs, foster care, job placement and unemployment services, education and community outreach programs.

4. Criminal Justice Costs

The supply of illicit opioids is a key driver of the opioid crisis, particularly given the increasing prevalence of fentanyl, tramadol and other synthetic opioids in illegal markets. Synthetic opioids were responsible for 5,544 drug poisoning deaths in 2014.¹⁰⁹ The U.S. Drug Enforcement Administration (DEA) considers Nueces County to be a key center of illegal drug production, manufacturing, importation or distribution and has designated the County and surrounding counties as a “High Intensity Drug Trafficking Area” (HIDTA).¹¹⁰ See Figure 7. The DEA also reports a significant drug cartel presence in Corpus Christi, particularly the Gulf Cartel.¹¹¹ See Figure 8.

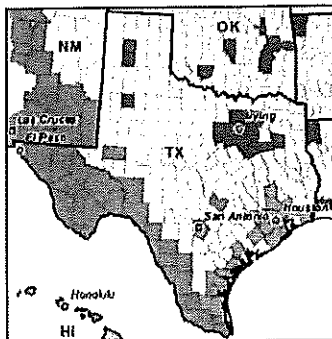
¹⁰⁸ TEX. HEALTH AND HUMAN SERVS., *Narcotic Treatment Programs—Nueces County*, <<https://vo.ras.dshs.state.tx.us/datamart/listTXRAS.do?anchor=ae62a5e.0>> [last visited Oct. 24, 2017].

¹⁰⁹ DEA, *2016 National Drug Threat Assessment Summary*, *supra*.

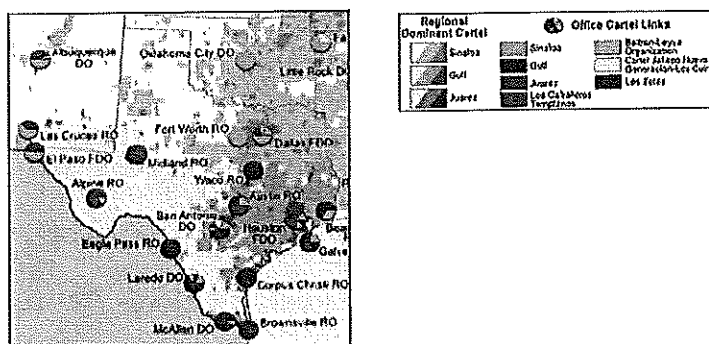
¹¹⁰ DEA Programs: *High Intensity Drug Trafficking Areas (HIDTAs)*, U.S. DRUG ENFORCEMENT ADMIN., Feb. 2017 <<https://www.dea.gov/ops/hidta.shtml>> [last visited Oct. 24, 2017].

¹¹¹ DEA, *2016 National Drug Threat Assessment Summary*, *supra*.



2017.¹¹²

Transnational Criminal Organizations



¹¹² *Id.*
¹¹³ *Id.*
¹¹⁴ *Id.*

Opioid trafficking contributes to violent crime and increases the availability of opioids, subsequently leading to increased negative outcomes and deaths. Law enforcement plays a critical role in addressing opioid trafficking and impacting the supply of illicit opioids. Inadequate funding has an impact on not just the drug users in need of treatment, but also on the County and its residents as a whole. The National Institute of Justice reports that those in the grips of substance abuse are 75 percent more likely to fall into the criminal justice system, 60 – 80 percent more likely to abuse or neglect their children and 50 – 70 percent more likely to engage in theft or property damage.

The Texas Department of Public Safety reported more than 117,000 people were arrested on drug possession charges alone in 2015, and in September, almost 9,000 whose only offense was possession sat in prisons or state jails without treatment.¹¹⁵ According to the Texas Indigent Defense Commission, in 2016 the Nueces County Jail population totaled 361,320 and incurred \$3,358,504.53 in indigent defense costs.¹¹⁶ As a result of opioid-related criminal activities, Nueces County has incurred increased costs for its police force, in addition to costs related to prosecuting, incarcerating and rehabilitating drug offenders.

Nueces County Divert Drug Court

Since its inception in 2004, the Nueces County, Texas Drug Divert Court has served over 200 individual participants, with a success rate of 88 percent.¹¹⁷ Drug Courts, like the Nueces County, Texas Drug Divert Court, provide an alternative to the traditional criminal justice system,

¹¹⁵ McCullough, Jolie, et al., *Texas wages a war on drugs at the border. That might be the wrong place*, THE TEXAS TRIBUNE, Dec. 13, 2016 <<https://www.texastribune.org/2016/12/13/addiction-treatment-texas/>> [last visited Oct. 24, 2017].

¹¹⁶ TEX. INDIGENT DEFENSE COMM., *Nueces County Indigent Defense Data, 2016*, <<http://tfdc.tamu.edu/Public.Net/>> [last visited Oct. 24, 2017].

¹¹⁷ *White House Recognizes Nueces County, Texas Drug Divert Court on the Celebration of its Third Anniversary*, GUIDRYNEWS.COM, Mar. 6, 2007 <<http://www.guidrynews.com/story.aspx?id=1000000996>> [last visited Oct. 24, 2017].



and present non-violent drug offenders an incentives-based program to receive the treatment they need, to end their cycle of addiction and corresponding criminal behavior. This program, along with Nueces County drug courts and probation programs, exacts substantial costs on the local government.

In sum, PHIPPS ANDERSON DEACON LLP will conduct a thorough assessment of the economic and social costs that Nueces County and/or Corpus Christi has likely incurred and continues to incur as a result of the opioid epidemic caused by the Wrongdoers.



M. OUR TEAM

THE PURNELL LAW FIRM and PHIPPS ANDERSON DEACON LLP (both, the "Firm") are pleased to submit this proposal to provide legal services for Nueces County and Corpus Christi to help fight the growing opioid epidemic in our State. The Firm has substantial experience in handling complex litigation, from prosecuting multi-million-dollar damage claims on behalf of corporations and individuals to defending insurance companies in first party lawsuits. Our team possesses the facilities, resources, knowledge, and skills to protect the interests of Nueces County and Corpus Christi and its citizens. The Firm currently employs over 150 individuals who are familiar with Texas procedure, tort and consumer protection laws. Additionally, because the opioid epidemic is a nationwide issue, PHIPPS ANDERSON DEACON LLP has partnered with law firms and attorneys in Texas and across the country who are currently investigating and/or pursuing claims against pharmaceutical companies and distributors of prescription opioids. This network of legal alliances brings together extensive experience and expertise in civil litigation.

1. Scope of the Project

The goal of any litigation brought by Nueces County is not to cut off the flow of necessary medications to people that truly need them. The goals are to (1) stop or significantly reduce the offending conduct and (2) obtain the funding and resources needed by Nueces County and Corpus Christi to save lives and protect their citizens. This means that the Wrongdoers should be made to pay for the astronomical costs associated with cleaning up the mess they created. They should be compelled to follow the laws of the State of Texas—to identify suspicious orders, prevent diversion of prescription opioids for non-medical use, and report irregularities to the required authorities. These billion-dollar corporations should shoulder some of the costs that have been borne by the County in its efforts to prevent the further spread of the opioid crisis. Such efforts



may include an increase in police force and administration of new or expanded criminal justice programs, or additional funding to provide medical treatment and recovery services to those afflicted. Nueces County should be compensated for the costs of programs and resources needed to prevent prescription-opioid related deaths.

Given the untested nature of the proposed claims against the pharmaceutical companies and distributors, it is not possible to predict the duration of the project or the precise parameters for what issues will arise and what will need to be addressed. However, upon appointment by Nueces County, necessary work (subject to client direction) may include:

Pre-Litigation

- Investigation and review of Nueces County records related to opioid treatment and opioid-related programs;
- Research and analysis of public records regarding the various pharmaceutical companies and distributors identified herein;
- Developing a litigation strategy for the success of Nueces County;
- Establishing communication protocols with representatives of Nueces County;
- Drafting a petition for damages against pharmaceutical companies and distributors for alleged harm caused by unethical and aggressive marketing and distribution of prescription opioids;

Litigation

- Drafting and responding to pleadings motions and other communications from defendants' counsel;
- Drafting and serving information and document discovery requests to the parties;
- Reviewing, coding, summarizing the defendants' document production;
- Retaining experts and preparing damage models;
- Deposing and presenting witnesses; and
- Consulting with counsel in other jurisdictions on litigation tactics and coordinating



settlement efforts, if appropriate.

2. Conflict of Interest Information

THE PURNELL LAW FIRM and PHIPPS ANDERSON DEACON LLP disclose that it has been retained by Bexar County to investigate and pursue similar claims against pharmaceutical companies and distributors for harm suffered by the County as a result of these companies' conduct. The Firm knows of no current or potential conflicts of interest that would prevent representation of Nueces County and the City of Corpus Christi in this matter. Further, the Firm and its attorneys are familiar with the Texas Disciplinary Rules of Professional Conduct. Should Nueces County and/or the City of Corpus Christi retain THE PURNELL LAW FIRM and PHIPPS ANDERSON DEACON LLP for this project, the Firm understands that it has a continuing obligation to disclose any actual or potential conflicts and refrain from disclosing any confidential information learned or received during the course of its representation.

3. The PHIPPS ANDERSON DEACON LLP Litigation Team

The PHIPPS ANDERSON DEACON LLP Litigation Team will lead and guide the Firm's engagement with Nueces County.



PHIPPS ANDERSON DEACON LLP Litigation Attorneys.

Litigation Attorneys

Attached hereto as **Appendix B** are current CVs for each attorney member of the PHIPPS ANDERSON DEACON LLP Litigation Team.



THE PURNELL LAW FIRM and PHIPPS ANDERSON DEACON LLP have entered into a joint venture agreement for this project. Simon Purnell of THE PURNELL LAW FIRM is the local attorney and primary contact for Nueces County. Martin J. Phipps of PHIPPS ANDERSON DEACON LLP is the Managing Attorney and proposed supervisor of this project. He is the principal responsible for all aspects of project management. The Managing Attorney will directly oversee the Litigation Attorneys, Accounting Department, Lead Paralegal, and Government Liaison/Client Services. There are 13 Litigation Attorneys working on this project, including: Simon Purnell, Martin Phipps, Barry Deacon, Jason Milne, John Plant, Meagan Talafuse, Brennan Jenkins, Ryan Delgado, Gabe Ortiz, Blayne Fisher, Trey Lewis, Jenna Zwang, and Diego Bernal (of counsel). The Litigation Attorneys will execute project work plans to meet changing needs and requirements of the project.

Paralegals and Support Staff

The Lead Paralegal, Kim Knox, manages a team of Legal Support Staff, responsible for file maintenance, calendaring and other administrative tasks. The Government Liaison Services Section, headed by J.R. Reichl, will maintain an awareness of issues and opportunities of likely import to Nueces County throughout this litigation. This will be accomplished by monitoring the various communications from the client and ensuring that open dialogue is reliably maintained.

The firm is prepared to work in close coordination with representatives of Nueces County to assist the investigation of this issue and potential litigation. The Firm employs capable, trained, experienced and qualified attorneys, support staff, and consultants who utilize efficient and effective management practices to ensure all project requirements are fulfilled in a professional and timely manner. Our team will continuously review and refine our work processes to ensure Nueces County receives the most efficient and effective legal services possible.



APPENDIX A

List of States and Municipalities that have Filed Lawsuits Against Prescription Opioid Manufacturers, Distributors, Pharmacies, and Physicians for their Roles in Creating the Opioid Crisis (as of October 27, 2017).

State	Municipality	Date Filed	Court Pending ¹
AL	City of Birmingham	08/14/17	N.D. Ala.
AL	City of Gadsden	10/25/17	N.D. Ala.
AZ	State of Arizona	08/31/17	D. Ariz.
CA	State of California	05/21/14	C.D. Cal.
CA	City of Stockton	06/16/17	E.D. Cal.
CA	Montezuma Fire Protection Dist.	06/16/17	E.D. Cal.
CA	Orange County	05/21/14	C.D. Cal.
CA	San Joaquin County	06/16/17	E.D. Cal.
CA	Santa Clara County	05/21/14	C.D. Cal.
CT	City of Waterbury	08/31/17	Waterbury Super. Ct.
GA	Fulton County	10/23/17	Fulton Cty.
IL	State of Illinois	08/25/16	Cir. Ct. Cook Cty.
IL	Alexander County	08/17/17	S.D. Ill.
IL	City of Chicago	06/02/14	N.D. Ill.
IL	Jersey County	08/11/17	S.D. Ill.
IL	Kankakee County	09/27/17	21st Jud. Dist.
IL	St. Clair County	04/19/17	S.D. Ill.
IN	Scott County	09/13/17	S.D. Ind.
KY	State of Kentucky	10/04/07	Cir. Ct. Pike Cty.
KY	Anderson County	09/12/17	E.D. Ky.
KY	Bell County	09/12/17	E.D. Ky.
KY	Boone County	09/12/17	E.D. Ky.
KY	Boyd County	09/25/17	E.D. Ky.
KY	Boyle County	09/12/17	E.D. Ky.
KY	Campbell County	09/20/17	E.D. Ky.
KY	Carlisle County	09/12/17	W.D. Ky.
KY	Christian County	09/25/17	W.D. Ky.
KY	Clay County	09/20/17	E.D. Ky.
KY	Cumberland County	09/20/17	W.D. Ky.
KY	Fleming County	09/12/17	E.D. Ky.
KY	Franklin County	09/12/17	E.D. Ky.
KY	Garrard County	09/12/17	E.D. Ky.
KY	Greenup County	09/25/17	E.D. Ky.

¹ While some cases were filed directly in federal courts, a significant number of lawsuits were filed in state courts and subsequently removed to federal district courts. Briefing on motions to remand has not been completed for recently-filed cases. The courts listed in Table 4 refer to the court in which the case is currently pending, subject to the federal courts' decisions on various motions to remand.

State	Municipality	Date Filed	Court Pending
KY	Harlan County	09/12/17	E.D. Ky.
KY	Henderson County	09/29/17	W.D. Ky.
KY	Henry County	09/13/17	E.D. Ky.
KY	Knox County	09/12/17	E.D. Ky.
KY	Laurel County	09/29/17	E.D. Ky.
KY	Leslie County	09/12/17	E.D. Ky.
KY	Lincoln County	09/12/17	E.D. Ky.
KY	Louisville/Jefferson County Metro Govt	08/21/17	W.D. Ky.
KY	Madison County	09/12/17	E.D. Ky.
KY	Marshall County	09/25/17	W.D. Ky.
KY	Nicholas County	09/13/17	E.D. Ky.
KY	Oldham County	09/25/17	W.D. Ky.
KY	Pendleton County	09/13/17	E.D. Ky.
KY	Perry County	09/25/17	E.D. Ky.
KY	Pulaski County	09/25/17	E.D. Ky.
KY	Shelby County	09/13/17	E.D. Ky.
KY	Spencer County	09/13/17	W.D. Ky.
KY	Union County	09/13/17	W.D. Ky.
KY	Whitley County	09/13/17	E.D. Ky.
LA	Louisiana Dep't of Health	09/27/17	19th Jud. Dist. Ct.
LA	Avoyelles Parish Sheriff Doug Anderson	09/18/17	12th Jud. Dist. Ct.
LA	Calcasieu Parish Sheriff Tony Mancuso	10/05/17	14th Jud. Dist. Ct.
LA	Jefferson Davis Parish Sheriff Ivy Woods	09/18/17	31st Jud. Dist. Ct.
LA	Lafayette Parish Sheriff Mark Garber	09/18/17	15th Jud. Dist. Ct.
LA	Ouachita Parish Sheriff Jay Russell	10/12/17	4th Jud. Dist. Ct.
LA	Rapides Parish Sheriff Earl Hilton	09/18/17	9th Jud. Dist. Ct.
LA	Sabine Parish Sheriff Ronny Richardson	10/06/17	11th Jud. Dist. Ct.
LA	Vernon Parish Sheriff Sam Craft	09/23/17	30th Jud. Dist. Ct.
LA	Washington Parish Sheriff Randy Seal	10/05/17	22nd Jud. Dist. Ct.
MA	State of Massachusetts	05/25/15	D. Mass.
MD	Anne Arundel County	09/06/17	Cir. Ct. Anne Arundel Cty.
MI	Oakland County	10/12/17	E.D. Mich.
MI	Wayne County	10/12/17	E.D. Mich.
MO	State of Missouri	06/21/17	Cir. Ct. St. Louis Cty.
MS	State of Mississippi	03/10/17	Hinds Cty. Chancery Ct.
NH	State of New Hampshire	08/09/17	D. N.H.
NH	City of Manchester	09/01/17	D. N.H.
NJ	State of New Jersey	10/05/17	Super. Ct. N.J. Chancery Div.

Appendix A-2

Confidential & Privileged Attorney Work Product

PHIPPS ANDERSON DEACON LLP

State	Municipality	Date Filed	Court Pending
NJ	City of Newark	10/05/17	Super. Ct. N.J. Essex Cty.
NJ	City of Paterson	10/24/17	Super. Ct. Passiac Cty.
NM	State of New Mexico	09/07/17	1st Jud. Dist. Santa Fe Cty.
NM	Mora County	08/28/17	D. N.M.
NY	Broome County	02/01/17	NY Sup. Ct. Suffolk Cty.
NY	Dutchess County	06/07/17	NY Sup. Ct. Suffolk Cty.
NY	Erie County	02/01/17	NY Sup. Ct. Suffolk Cty.
NY	Nassau County	06/12/17	NY Sup. Ct. Suffolk Cty.
NY	Orange County	05/15/17	NY Sup. Ct. Suffolk Cty.
NY	Schenectady County	06/15/17	NY Sup. Ct. Suffolk Cty.
NY	Seneca County	06/07/17	NY Sup. Ct. Suffolk Cty.
NY	Suffolk County	08/31/16	NY Sup. Ct. Suffolk Cty.
NY	Sullivan County	06/07/17	NY Sup. Ct. Suffolk Cty.
OH	State of Ohio	05/31/17	Ct. Common Pleas Ross Cty.
OH	Adams County	10/13/17	S.D. Ohio
OH	Belmont County	07/28/17	S.D. Ohio
OH	Brown County	07/28/17	S.D. Ohio
OH	City of Cincinnati	08/15/17	S.D. Ohio
OH	City of Dayton	06/05/17	S.D. Ohio
OH	City of Lorain	06/30/17	N.D. Ohio
OH	City of Parma	08/09/17	N.D. Ohio
OH	City of Portsmouth	08/16/17	S.D. Ohio
OH	Clermont County	07/28/17	S.D. Ohio
OH	Columbiana County	10/10/17	S.D. Ohio
OH	Cuyahoga County	10/27/17	Ct. Common Pleas Cuyahoga Cty.
OH	Erie County	10/20/17	S.D. Ohio
OH	Gallia County	08/31/17	S.D. Ohio
OH	Guernsey County	10/11/17	S.D. Ohio
OH	Hocking County	08/31/17	S.D. Ohio
OH	Huron County	10/12/17	S.D. Ohio
OH	Jackson County	08/02/17	S.D. Ohio
OH	Lawrence County	08/31/17	S.D. Ohio
OH	Licking County	10/18/17	S.D. Ohio
OH	Local No. 38 IBEW Health & Welfare Fund	10/13/17	N.D. Ohio
OH	Pike County	08/18/17	S.D. Ohio
OH	Richland County Children's Servs.	09/12/17	N.D. Ohio
OH	Ross County	08/11/17	S.D. Ohio
OH	Scioto County	08/03/17	S.D. Ohio
OH	Vinton County	07/28/17	S.D. Ohio
OK	State of Oklahoma	06/30/17	Cleveland Cty. Dist. Ct.
OR	Multnomah County	08/03/17	Cir. Ct. Multnomah Cty.
PA	Beaver County	10/15/17	Ct. Common Pleas Beaver Cty.

Appendix A-3

Confidential & Privileged Attorney Work Product

PHIPPS ANDERSON DEACON LLP

State	Municipality	Date Filed	Court Pending
PA	Delaware County	09/21/17	Ct. Common Pleas Delaware Cty.
PA	Lackawanna County	09/25/17	Ct. Common Pleas Lackawanna Cty.
PA	Philadelphia Teachers Health & Welfare Fund	10/23/17	E.D. Pa.
SC	State of South Carolina	08/15/17	Ct. Common Pleas Richmond Cty.
TN	First Judicial District, TN	06/13/17	Cir. Ct. Sullivan Cty.
TN	Second Judicial District, TN	06/13/17	Cir. Ct. Sullivan Cty.
TN	Third Judicial District, TN	06/13/17	Cir. Ct. Sullivan Cty.
Tribal	The Cherokee Nation	04/20/17	Dist. Ct. Cherokee Nation
TX	Bowie County	10/02/17	E.D. Tex.
TX	Upshur County	09/29/17	E.D. Tex.
WA	State of Washington	09/28/17	Super. Ct. King Cty.
WA	City of Everett	01/19/17	W.D. Wash.
WA	City of Seattle	09/28/17	W.D. Wash.
WA	City of Tacoma	09/13/17	W.D. Wash.
WV	State of West Virginia	01/08/16	S.D. W.Va.
WV	Boone County	03/27/17	S.D. W.Va.
WV	Cabell County	03/09/17	S.D. W.Va.
WV	City of Hamlin	02/06/17	S.D. W.Va.
WV	City of Huntington	01/19/17	S.D. W.Va.
WV	City of Kermit	01/31/17	S.D. W.Va.
WV	City of Princeton	09/12/17	S.D. W.Va.
WV	City of Richwood	01/31/17	S.D. W.Va.
WV	City of Webster Springs	03/01/17	S.D. W.Va.
WV	City of Welch	05/19/17	S.D. W.Va.
WV	City of West Hamlin	02/06/17	S.D. W.Va.
WV	City of Williamson	06/05/17	S.D. W.Va.
WV	Fayette County	03/21/17	S.D. W.Va.
WV	Kanawha County	03/19/17	S.D. W.Va.
WV	Lincoln County	05/18/17	S.D. W.Va.
WV	Logan County	04/11/17	S.D. W.Va.
WV	McDowell County	12/23/16	S.D. W.Va.
WV	Mercer County	07/28/17	S.D. W.Va.
WV	Mingo County	01/31/17	S.D. W.Va.
WV	Town of Chapmanville	06/07/17	S.D. W.Va.
WV	Town of Gilbert	05/15/17	S.D. W.Va.
WV	Town of Kermit	05/10/17	S.D. W.Va.
WV	Wayne County	03/21/17	S.D. W.Va.
WV	Wyoming County	04/12/17	S.D. W.Va.

Appendix A-4

Confidential & Privileged Attorney Work Product

PHIPPS ANDERSON DEACON LLP

APPENDIX B

PURNELL LAW FIRM
Curriculum Vitae

Simon Purnell.....*Partner and Owner*

The **PHIPPS ANDERSON DEACON LLP** Litigation Team
Curriculum Vitae

Martin J. Phipps.....*Trial Lawyer, Founder & Managing Partner*

Barry Deacon.....*Partner*

Diego Bernal.....*Of Counsel*

Ryan Delgado*Associate*

Blayne Fisher.....*Associate*

Brennan Jenkins*Associate*

Charles "Trey" Lewis III.....*Associate*

Jason Milne.....*Associate*

Gabe Ortiz*Associate*

John Plant*Associate*

Meagan Talafuse*Associate*

Jenna Zwang.....*Associate*

Appendix B

Confidential & Privileged Attorney Work Product



PHIPPS ANDERSON DEACON LLP



Simon Purnell

Partner, THE PURNELL LAW FIRM

OVERVIEW OF EXPERIENCE

Simon Purnell is a litigator with vast experience in criminal and civil litigation at state and federal levels. He began his legal career as a prosecutor at the Harris County District Attorney's Office in Houston, Texas and later served as Assistant District Attorney.

In 1999, he joined the firm BRIN AND BRIN, PC in Corpus Christi, Texas as a litigation attorney focusing on pharmaceutical, asbestos, medical malpractice, general liability insurance and commercial litigation. He achieved equity partnership level within five years, acting as first-chair for numerous multi-party trials and appeals at the state and federal levels.

From 2007 to 2010, Simon was a litigation partner at Corpus Christi-based plaintiffs' firm ANTHONY, PETERSON & PURNELL, LLP, where he developed his expertise in the areas of product liability, general liability, pharmaceutical litigation and commercial disputes.

He founded THE PURNELL LAW FIRM in 2010, focusing on state and federal criminal defense law and handling complex criminal cases including white collar crimes, money laundering and fraud.

Simon has joined forces with PHIPPS ANDERSON DEACON LLP to focus on opioid litigation and help bring a stop to the financial and social expense the opioid crisis has on the Nueces County. With offices in Corpus Christi, and with the resources of PHIPPS ANDERSON DEACON LLP, Simon can provide Nueces County with the attention and representation the County deserves in the opioid litigation.

CONTACT

THE PURNELL LAW FIRM
711 N. Carancahua, Suite 512
Corpus Christi, Texas 78401
P: (361) 500-2804
F: (361) 288-8932

spurnell@phippsandersondeacon.com

EDUCATION

University of Houston, B.S.
South Texas College of Law, J.D.

COURTS OF ADMITTANCE

Texas
New York
Illinois
Missouri



Martin J. Phipps

Trial Lawyer, Founder & Managing Partner

OVERVIEW OF EXPERIENCE

Trial Lawyer. I am first and foremost a trial lawyer. I believe that cases must be tried. I am passionate in protecting my clients so I am a hands-on lawyer – that means I like doing the work. I have handled and tried complex litigation ranging from hundreds of thousands of dollars to hundreds of millions of dollars in damage(s) for both individuals and large corporations. The more difficult or complex the case, the more at risk, the more I love it. Part of what I do is manage the lawyers, clients and over 150 employees of my law firm **PHIPPS ANDERSON DEACON LLP** here in San Antonio, Texas. I literally built the firm and our building from the ground up. My offices are located in my building located on our beautiful River Walk.

Texas. I grew up in small town rural Texas as part of what I can easily describe as a working-class family. My father worked in hospital administration and my mother was a nurse. Being the oldest of 6 children, I began working at the age of 12 to help my family. I have either worked hard or scraped for everything I have including every penny of my college and law school education. Nothing has come easy in my life.

San Antonio. This is my home. My entire legal career has been in San Antonio. After graduating from St. Mary's University School of Law, I began my legal career with **DAVIS ADAMI CEDILLO INC.** I tried cases all over South Texas and the Valley. I handled cases on behalf of many San Antonio businesses and SAHA.

In 1996, my firm was local counsel for the Chicago law firm of BARTLIT BECK in a case titled *Chromalloy v. Pratt & Whitney*. It was a billion dollar anti-trust lawsuit with the best lawyers in the country on both sides. I was a young associate sitting in the back of the courtroom but I realized that even a small-town kid had the ability to compete with the best. I restored one of Texas' oldest homes at 303 King William Street where both of my children were born. In 2013, I built my law office building on the Riverwalk Expansion at 102 9th Street where I employ almost 200 people.

St. Mary's. Because of my deep love and drive to be the best trial lawyer, I taught and coached trial advocacy at St. Mary's University School of Law for 10 years creating the External Advocacy Program. I did this every day at night easily extending my workweek to sometimes over 100 hours a week that resulted in us winning many national and regional titles. But it was not work for me, it was who I have always been.

CONTACT

PHIPPS ANDERSON DEACON LLP
THE PHIPPS
102 9th Street
San Antonio, Texas 78215

P: (210) 340-9877
F: (210) 340-9899
C: (210) 387-6655

mphipps@phippsandersondeacon.com

WEBSITE

www.phippsandersondeacon.com

EDUCATION

Texas Tech University, B.A., Political
Science, Lubbock, Texas, 1991

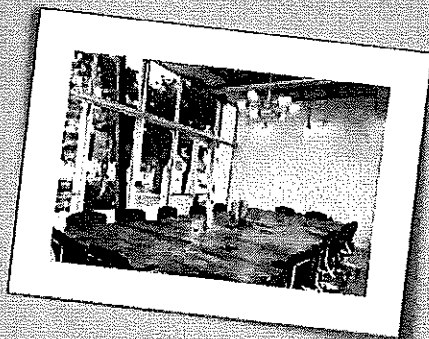
St. Mary's University School of Law,
J.D., San Antonio, Texas, 1994

COURTS OF ADMITTANCE

Texas
Arkansas



"I am first and foremost a trial lawyer..."



"I was the lead trial lawyer for two of the Arkansas state court verdicts on behalf of farmers in the Bayer Genetically Modified Rice Litigation..."

Nationally. Not only have tried cases against many of the best Texas law firms, I have also handled, tried and won cases against many of the best law firms from across the United States including BARTLIT BECK and KIRKLAND ELLIS. In August 2006, my law practice started to grow into a national practice as I began to representing clients from across the United States. I began representing United States long grain rice farmers suing Bayer CropScience for their economic damages for the loss of the European rice market (the *Bayer Genetically Modified Rice Litigation*).

I was the Lead Arkansas State Court Trial lawyer for thousands of clients in the *Bayer Genetically Modified Rice Litigation*. I took every single deposition across the United States, Europe and Asia as part of the state court discovery. I then tried the first state court case in the nation in Augusta, Woodruff County, Arkansas on behalf of a small rice farmer, Lenny Joe Kyle. In the Winter of 2010, I obtained the highest per acre damages award by a jury in the U.S., the only jury finding that Bayer CropScience acted intentionally in contaminating the long grain rice supply and the first punitive damages award in the nation against Bayer.

In the same litigation, I filed and managed lawsuits on behalf of nearly 14,000 rice farmers, landlords, entities and producers against Bayer CropScience. I was set for trial every 3 to 4 months in Arkansas state courts until February 2011 when Bayer settled all of my farmer cases under the same terms of the national settlement that were offered to all other for a total of \$750,000,000 – Largest Agricultural Settlement in United States history with my clients receiving \$50 million more than any other lawyer or law firms.

I am currently Co-Lead Counsel and Lead Trial Counsel for the State of Illinois representing tens of thousands of clients in over 34 states in the *Syngenta Corn Litigation*. This litigation centers on the economic losses of corn producers due to the loss of the Chinese market. The damages are in the billions of dollars.

I am currently Lead Trial Counsel in Iowa, Michigan, Ohio, South Dakota and North Dakota on behalf of ethanol industry clients for economic losses they suffered as part of the *Syngenta Corn Litigation*.

I am Lead Trial Counsel in Texas, Oklahoma and Arkansas for cases of minors or individuals with catastrophic brain damage who consumed "synthetic" marijuana marketed and sold in gas stations throughout the United States.

I am also Lead Trial Counsel on behalf of thousands of individuals and businesses in First Party Litigation for damages to their property that their insurers refuse to pay. These cases are filed through Texas but I have also handled cases across the United States.

My hobbies are my two children and the law.



PHIPPS ANDERSON DEACON LLP



Barry Deacon

Partner, PHIPPS ANDERSON DEACON LLP

OVERVIEW OF EXPERIENCE

I am a partner at **PHIPPS ANDERSON DEACON LLP** and concentrate my practice on complex civil litigation. Over the past ten years, my practice has predominantly focused on agricultural litigation involving genetically modified crops. In addition to agriculture litigation, I have a multitude of experience handling complex business disputes, mass torts, product liability and railroad litigation. I have been a courtroom trial lawyer for 40 years and have handled civil cases of all types in State and Federal Courts.

Since 2006, the vast majority of my time involved litigating the genetically modified rice litigation that was prosecuted in both Arkansas state courts and in the MDL. See *In Re: Genetically Modified Rice Litigation*, 4:06-md-01811 in the United States District Court for the Eastern District of Missouri. My representation was multi-faceted; it included: (1) successfully prosecuting claims for hundreds of Arkansas and Missouri rice producers; (2) successfully defending hundreds of lawsuits brought by thousands of farmers and non-producers against, Riceland Foods, Inc., the world's largest rice miller and marketer; and (3) successfully pursuing Riceland's affirmative claims for relief against Bayer CropScience for GMO rice contamination.

I was the lead trial attorney for Riceland who was a party in three of the eight Bellwether trials that proceeded against Bayer in this litigation. We were successful in defending Riceland in two jury trials receiving a defense verdict in one and a directed verdict in another. The last jury trial proceeded with Riceland as the plaintiff on its affirmative claims against Bayer. The jury returned a verdict in Riceland's favor for \$136.8 million. This was the largest jury verdict against Bayer in the genetically modified rice litigation and was reported as the largest jury verdict in Arkansas history.

As the lead attorney for Riceland, during the genetically modified rice litigation I had extensive involvement working with both plaintiff and defense counsel. My experience representing both a defendant in the rice litigation and representing plaintiffs, Arkansas rice producers, gave me invaluable insight into all aspects and strategy in this very specialized litigation.

CONTACT

PHIPPS ANDERSON DEACON LLP
THE PHIPPS
102 9th Street
San Antonio, Texas 78215
P: (210) 340-9877
F: (210) 340-9899

bdeacon@phippsandersondeacon.com

WEBSITE

www.phippsandersondeacon.com

EDUCATION

University of Arkansas, B.S.,
Fayetteville, AR, 1972

University of Arkansas, Robert Leflar
School of Law, J.D.,
Fayetteville, AR 1975

COURTS OF ADMITTANCE

Arkansas
Texas

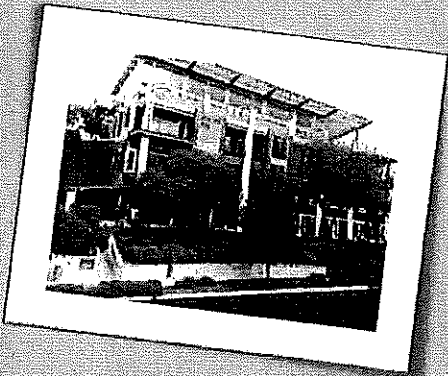
RECOGNITIONS



I have earned the respect among both my colleagues and clients. I received the "Exceptional Service Award" at Riceland's annual meeting in 2011 for my leadership in representing Riceland in these lawsuits. I have a Martindale Hubbell rating of AV Preeminent, the highest rating an individual attorney can receive. I am consistently listed on Best Lawyers in America and Super Lawyers for commercial litigation.

I have served in leadership positions in various bar organizations, including: as President of the Arkansas Bar Foundation. As an example of respect from both sides of the bar, I received the Outstanding Defense Attorney Award for Arkansas given by the Arkansas Defense Association in 2005.

I have been appointed by both the state and federal judiciary to leadership positions at various times in my career. I was appointed by the Arkansas Supreme Court to serve on the Arkansas Committee on Professional Conduct serving as Chair in 2012. I was also appointed by Judge Leon Holmes, the past presiding Senior Judge of the Eastern District of Arkansas, as a member of the Federal Court Practice Committee.



PHIPPS ANDERSON DEACON LLP



Diego Bernal

Of Counsel, PHIPPS ANDERSON DEACON LLP

OVERVIEW OF EXPERIENCE

Diego Bernal is an attorney of counsel at **PHIPPS ANDERSON DEACON LLP**. Diego's legal background is in plaintiff-side civil litigation in both federal and state courts. His experience as a social worker and former San Antonio City Councilman for District 1 (center city, downtown) make him a valuable member of our team. Diego is currently the State Representative for Texas House District 123. This native to San Antonio fights for public education and enjoys spending time serving his community and being a DJ at local events.

CONTACT

PHIPPS ANDERSON DEACON LLP
THE PHIPPS
102 9th Street
San Antonio, Texas 78215

P: (210) 340-9877
F: (210) 340-9899

dbernal@phippsandersondeacon.com

WEBSITE

www.phippsandersondeacon.com

EDUCATION

University of Michigan School of Social
Work, MSW

University of Michigan Law School, JD

COURTS OF ADMITTANCE

Texas

U.S. District Courts for the Northern,
Western and Southern Districts of Texas

Michigan



PHIPPS ANDERSON DEACON LLP



Ryan Delgado

PHIPPS ANDERSON DEACON LLP

OVERVIEW OF EXPERIENCE

Born and raised in McAllen, Texas, Mr. Delgado ventured to New York to attain his bachelors in political science from Columbia University. He returned to Texas to attain his doctorate of jurisprudence from The University of Texas School of Law, where he was a Staff Editor for the "American Journal of Criminal Law." His passion for political science and the law lead him to work as a legislative aide at the Texas Capitol. Mr. Delgado's national experience with first party insurance litigation, mass tort cases, complex commercial litigation, personal injury litigation and products liability makes him a versatile member of the Phipps Family.

CONTACT

PHIPPS ANDERSON DEACON LLP
THE PHIPPS
102 9th Street
San Antonio, Texas 78215
P: (210) 340-9877
F: (210) 340-9899

rdelgado@phippsllp.com

WEBSITE

www.phippsandersondeacon.com

EDUCATION

Columbia University, B.A.,
Political Science

University of Texas School of Law, J.D.

COURTS OF ADMITTANCE

Texas



PHIPPS ANDERSON DEACON LLP



Blayne Fisher

PHIPPS ANDERSON DEACON LLP

OVERVIEW OF EXPERIENCE

Ms. Fisher joined the Phipps LLP team in 2011 while still attending law school at St. Mary's University, burning the candle at both ends to graduate at the top of her class. With the Phipps team, her experience varies from mass tort agricultural law to first party claim insurance litigation. Ms. Fisher shares, "I've been a part of this law firm since the rice case, and it feels great to be able to help people." While she spends the majority of her time fighting insurance companies, she enjoys free time watching movies and relaxing with family.

CONTACT

PHIPPS ANDERSON DEACON LLP
THE PHIPPS
102 9th Street
San Antonio, Texas 78215
P: (210) 340-9877
F: (210) 340-9899

bfisher@phippsllp.com

WEBSITE

www.phippsandersondeacon.com

EDUCATION

Texas A&M University, B.B.A., Finance
St. Mary's University School of Law, J.D.

COURTS OF ADMITTANCE

Texas



PHIPPS ANDERSON DEACON LLP



Brennan Jenkins

PHIPPS ANDERSON DEACON LLP

OVERVIEW OF EXPERIENCE

Mr. Jenkins practices in the first-party insurance litigation section of the firm and has been with **PHIPPS ANDERSON DEACON LLP** since 2014. Before joining the firm, he was an intellectual property intern at the University of Texas at San Antonio's technology transfer office, assisting with patent prosecution, and was a research fellow for the Center for Terrorism Law at St. Mary's University School of Law. Prior to law school, Mr. Jenkins received a Bachelor's degree in Molecular Biology from Texas Lutheran University and worked in the medical industry.

CONTACT

PHIPPS ANDERSON DEACON LLP
THE PHIPPS
102 9th Street
San Antonio, Texas 78215
P: (210) 340-9877
F: (210) 340-9899

bjenkins@phippsllp.com

WEBSITE

www.phippsandersondeacon.com

EDUCATION

Texas Lutheran University
St. Mary's University School of Law, J.D.

COURTS OF ADMITTANCE

Texas



PHIPPS ANDERSON DEACON LLP



Charles "Trey" Lewis III

PHIPPS ANDERSON DEACON LLP

OVERVIEW OF EXPERIENCE

Charles "Trey" Lewis III concentrates his practice on complex civil litigation, including wrongful death cases and has represented clients on both sides of the bar. He was raised in Harlingen located in deep South Texas, but spent several years of his youth in Europe as his father was the legal advisor to the U.S. Embassy in Bucharest, Romania. While watching his father argue in Federal Court, he knew he wanted to become an attorney.

While in law school, Trey interned for Judge Melinda Harmon (S.D. Tex). In law school, he began working for Filemon Vela and was his associate attorney prior to his election to the U.S. Congress (TX 34th District). In Washington, D.C., Trey served as Congressman Vela's Deputy Chief of Staff and energy policy advisor where he coordinated legislative and communication strategies with multiple congressional offices and assisted constituents and local public entities interact with federal agencies.

Trey returned to South Texas where he worked as an associate at ROYSTON, RAYZOR, VICKERY & WILLIAMS, LLP—a firm in operation since 1892. There, he practiced insurance defense law and assisted large industrial clients with regulatory issues at the state and federal levels. Trey joined **PHIPPS ANDERSON DEACON LLP** in 2015, where he works on plaintiffs' cases, primarily personal injury and other torts.

In his free time, Trey enjoys exploring San Antonio with his wife, Ingrid, and hunting whitetail deer. He is also an avid Longhorn and Houston Astro fan.

CONTACT

PHIPPS ANDERSON DEACON LLP
THE PHIPPS
102 9th Street
San Antonio, Texas 78215
P: (210) 340-9877
F: (210) 340-9899

tlewis@phippsandersondeacon.com

WEBSITE

www.phippsandersondeacon.com

EDUCATION

University of Texas at Austin, B.A.
Government

University of Houston School of Law,
J.D.

COURTS OF ADMITTANCE

Texas

U.S. District Court, Southern District of
Texas



PHIPPS ANDERSON DEACON LLP



Jason M. Milne

PHIPPS ANDERSON DEACON LLP

OVERVIEW OF EXPERIENCE

Jason M. Milne graduated with magna cum laude honors from the University of Utah, Salt Lake City, UT in 2002. He received his juris doctorate from the University of Arkansas, Robert Leflar School of Law, Fayetteville, AR in 2005, again, graduating with magna cum laude honors. This educational background has given Mr. Milne the foundation to help clients in a number of complex legal issues.

His experience includes helping victims of serious negligence as well as working on the team of trial attorneys that litigated genetically modified rice contamination claims for farmers and farming entities. Mr. Milne's other practice areas include: business litigation, personal injury, medical malpractice, wrongful death, product liability, commercial litigation, agricultural/agribusiness law, railroad law, drug and pharmaceutical litigation, debtor and creditor law, and garnishment.

He is a member of the Craighead County Bar Association, the American Bar Association, and the Arkansas Bar Association, House of Delegates.

CONTACT

PHIPPS ANDERSON DEACON LLP
THE PHIPPS
102 9th Street
San Antonio, Texas 78215
P: (210) 340-9877
F: (210) 340-9899

jmilne@phippsandersondeacon.com

WEBSITE

www.phippsandersondeacon.com

EDUCATION

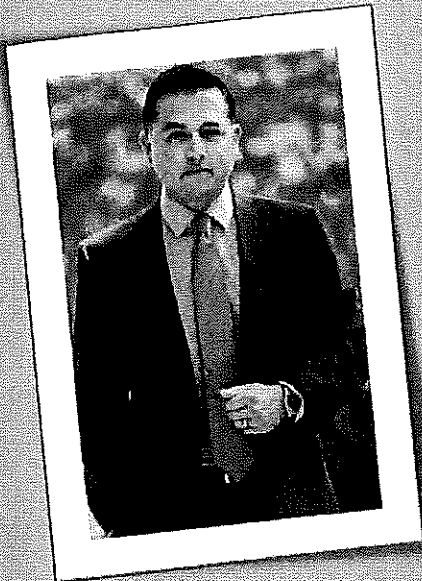
University of Utah
University of Arkansas, Robert Leflar
School of Law, J.D.

COURTS OF ADMITTANCE

Arkansas
Texas



PHIPPS ANDERSON DEACON LLP



Gabe Ortiz

PHIPPS ANDERSON DEACON LLP

OVERVIEW OF EXPERIENCE

Growing up in South Texas, Gabe Ortiz has a unique understanding of its people and culture. It gives him great fulfillment to represent individuals who would otherwise not have a voice. Whether injured through the negligence of another, or taken advantage of by their own insurance company, Gabe welcomes the challenge of fighting for these hardworking people in order to secure for them what is just.

Having already established a successful career in the media industry with iHeart (Clear Channel) media, in which he became one of the youngest Producers for a top 30 radio market, and was heard on the air by over 200,000 listeners in both San Antonio and the Rio Grande Valley, Gabe embarked upon a legal career. Gabe worked his way through law school, maintaining a full-time job while attending evening classes. He was awarded a Dean's Scholarship and was active on the St. Mary's Mock Trial team.

Gabe now applies this same relentless work ethic and determination to his legal practice. He has first-chaired numerous trials in which a positive verdict was obtained for his client.

He has served on the staff of a former San Antonio City Councilman, as well as on the board of his neighborhood association. Additionally, Gabe was a former Executive Board Member, and now Advisory Board Member, for Urban Soccer Leadership Academy, a program that serves underprivileged inner-city youth in San Antonio.

Gabe acknowledges that life doesn't always deal a fair hand and circumstances beyond a person's control can sometimes place him in precarious situations that he doesn't know how to deal with. Gabe is honored to help those who find themselves in these situations and be their advocate.

CONTACT

PHIPPS ANDERSON DEACON LLP
THE PHIPPS
102 9th Street
San Antonio, Texas 78215
P: (210) 340-9877
F: (210) 340-9899

goritz@phippsllp.com

WEBSITE

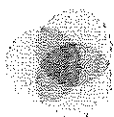
www.phippsandersondeacon.com

EDUCATION

Our Lady of the Lake University
St. Mary's University School of Law, J.D.

COURTS OF ADMITTANCE

Texas
U.S. District Court, Western District of
Texas



PHIPPS ANDERSON DEACON LLP



John Plant

PHIPPS ANDERSON DEACON LLP

OVERVIEW OF EXPERIENCE

Joining **PHIPPS ANDERSON DEACON LLP** in January 2016, John has spent the majority of his time at the firm devoted to the Syngenta Corn Litigation. Whether touring the corn-belt holding hundreds of town hall meetings answering questions from corn farmers and clients, or being back in the San Antonio office coordinating the gathering of thousands of the necessary farming operation documents for clients, his practice is committed to client service. In addition to this essential client communication, John also spends a significant amount of time facilitating the firm's communication with its hundreds of referral attorneys, making sure this necessary contact stays strong for the benefit of the clients.

In addition to the above, John currently assists the firm with in-depth investigation and trial preparation for the firm's complex personal injury cases, including the firm's tragic cases of minors and individuals who suffered catastrophic brain damage after consuming "synthetic" marijuana purchased from gas stations.

Prior to joining the firm, John gained invaluable trial experience as a Dallas County Assistant District Attorney. After starting a family, John took his competitive and investigative nature and practice to the securities industry, where he worked as a FINRA licensed principal as a legal and compliance officer for registered broker-dealers. John continued this regulatory practice in the energy field, as in-house counsel for exploration and salt water disposal companies, where he handled numerous complex transactions, as well as managed the licensing and environmental issues with federal and state agencies.

As his children grew, John believed the time was right to return to litigation. Not only did he miss the adversarial nature of litigation, more importantly he wanted to make a difference for others with his practice. John is grateful that the firm's practice focuses on helping the "underdogs" and he is hopeful this will be the legacy he will leave for his children.

CONTACT

PHIPPS ANDERSON DEACON LLP
THE PHIPPS
102 9th Street
San Antonio, Texas 78215
P: (210) 340-9877
F: (210) 340-9899

jplant@phippsandersondeacon.com

WEBSITE

www.phippsandersondeacon.com

EDUCATION

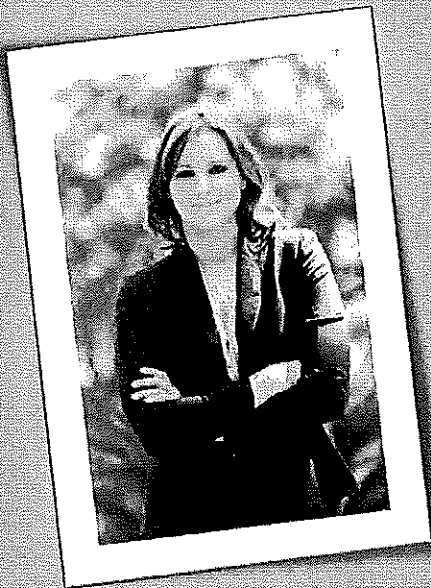
Southwest Texas State University
Temple University, J.D.

COURTS OF ADMITTANCE

Texas



PHIPPS ANDERSON DEACON LLP



Meagan Talafuse

PHIPPS ANDERSON DEACON LLP

OVERVIEW OF EXPERIENCE

A native Texan, Meagan earned her B.S. in Communications from the University of Texas at Austin in 2006. After receiving her undergraduate degree, she worked as a legal assistant at FULBRIGHT & JAWORSKI in Dallas, gaining valuable experience in the areas of pharmaceutical litigation and mass torts. During that time, she also volunteered for the Dallas Court Appointed Special Advocates (CASA) for children, helping abused and neglected Texas children get out of foster care and into safe, permanent homes. With ambitions to become a stronger advocate for the most vulnerable members of the community, she attended St. Mary's University School of Law in San Antonio, Texas. Throughout law school, she worked multiple jobs, seized every internship opportunity, traveled the world and volunteered at legal clinics.

She started as a law clerk with the PHIPPS team during her second year of law school, working with former clients and assisting the Firm's retained experts in the development of individual damage models in the Bayer Genetically Modified Rice Litigation. After receiving her J.D., she was hired as an associate. A skilled legal researcher and writer, Meagan quickly expanded her practice experience in a wide variety of areas, including: mass torts, personal injury, medical malpractice, commercial litigation, agricultural law, product liability, and appellate law.

Meagan also enjoys attending concerts, getting lost in museums, riding her bike and spending time with her dogs.

CONTACT

PHIPPS ANDERSON DEACON LLP
THE PHIPPS
102 9th Street
San Antonio, Texas 78215
P: (210) 340-9877
F: (210) 340-9899

mtalafuse@phippsandersondeacon.com

WEBSITE

www.phippsandersondeacon.com

EDUCATION

University of Texas at Austin,
B.S., Communications

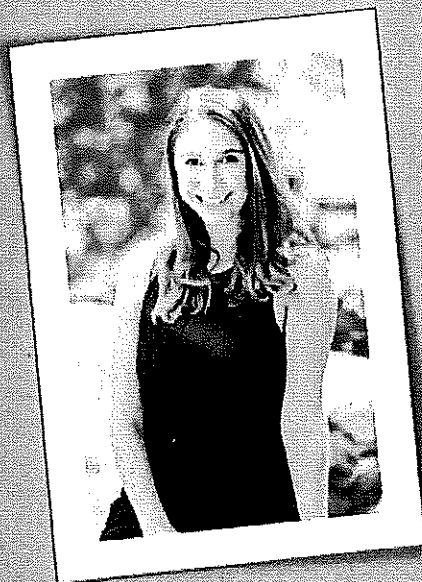
St. Mary's University
School of Law, J.D.

COURTS OF ADMITTANCE

Texas



PHIPPS ANDERSON DEACON LLP



Jenna Zwang

PHIPPS ANDERSON DEACON LLP

OVERVIEW OF EXPERIENCE

Jenna Zwang, a Seattle native, received her undergraduate degree from the University of Southern California, Annenberg School for Communication. A former journalist, Jenna reported on congressional politics for the Atlantic Media Group in Washington, D.C. before deciding her passion lay with the law. She received her juris doctorate from the University of Washington School of Law, earning recognitions for her oral advocacy. Jenna won her regional American Association for Justice trial advocacy competition and was a member of the University of Washington School of Law's Moot Court Honor Board. Her work has also been published in the Washington Journal of Environmental Law and Policy.

Before relocating to San Antonio, Jenna worked in the legal departments at Amazon and the Washington State House of Representatives. She joined **PHIPPS ANDERSON DEACON LLP** in January 2016 as a member of the complex litigation team. She devotes most of her time to mass tort cases, including the Syngenta case and hospital lien litigation, but also handles a variety of cases involving product liability, commercial litigation, and other civil disputes.

When not in the office, Jenna enjoys spending time with her fiancé, and her dog, Hops. She fiercely roots for the Seattle Seahawks.

CONTACT

PHIPPS ANDERSON DEACON LLP
THE PHIPPS
102 9th Street
San Antonio, Texas 78215
P: (210) 340-9877
F: (210) 340-9899

jzwang@phippsandersondeacon.com

WEBSITE

www.phippsandersondeacon.com

EDUCATION

University of Southern California, B.A.,
Broadcast Journalism

University of Washington
School of Law, J.D.

COURTS OF ADMITTANCE

Texas



PHIPPS ANDERSON DEACON LLP