

MASS TORTS UPDATE

Expert Analysis

Opioid, Sexual Abuse, Weed Killer and IUD Litigation Developments

In our last quarterly update, we discussed the Purdue bankruptcy, University of Michigan sexual abuse, the Paraquat MDL, the Paragard MDL, and Pornhub and MindGeek sexual abuse. This edition discusses the Purdue bankruptcy, the Boy Scouts of America bankruptcy, the Phillips Respironics CPAPs recall, and Tony Lazzaro sexual abuse.

Purdue Bankruptcy Court Approves Proposed Plan of Reorganization

On Sept. 1, 2021, Judge Robert Drain verbally approved Purdue's Proposed Plan of Reorganization. The plan is valued at approximately \$10 billion, including approximately \$750 million earmarked for individual opioid users. The plan is controversial.

Opponents of the plan argue that the Sackler Family is giving too little to the plan and getting too much from it in return. The Sacklers founded Purdue and benefitted immensely from Purdue's sale of opioids over the last 25 years. Under the plan, the Sacklers will relinquish control of Purdue and contribute more than \$4.5 billion to the bankruptcy estate. But in exchange, the Sacklers will receive broad releases from civil liability



By
**Edward E.
Neiger**



And
**David
Stern**

for their role in the opioid crisis. The plan does not require the Sacklers to formally admit wrongdoing. And the Sacklers remain one of the world's wealthiest families, with offshore accounts of more than \$11 billion.

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Proponents of the plan argue that although it is imperfect, the alternative—protracted litigation—would keep settlement money out of the hands of former opioid users who need help now. They acknowledge that the U.S. government has few tools to force the Sacklers to contribute additional personal funds to the settlement because most of the Sacklers' wealth is stored outside the reach of the U.S. government, in offshore accounts.

The court will begin valuing individual claims within the next year. *In re Purdue Pharma L.P.*, No. 19-23649-rdd (S.D.N.Y.).

Boy Scouts Bankruptcy: Proposed Plan of Reorganization and Voting

On Sept. 14, 2021, the Boy Scouts of America (BSA) filed a new Proposed Plan of Reorganization, offering to directly contribute \$250 million to the bankruptcy estate, and offering that an ad hoc committee of BSA Local Councils would contribute \$600 million. The plan also includes an offer for Hartford Accident and Indemnity Company (Hartford) to contribute \$787 million, and for the Church of Jesus Christ of Latter Day Saints (LDS Church) to contribute \$250 million. Hartford's new offer supersedes its previous \$650 million agreement with BSA, made in April 2021. The BSA bankruptcy estate will provide compensation to more than 84,000 BSA sexual abuse survivors. The current total proposed contributions to the BSA bankruptcy estate are valued at nearly \$2 billion.

Judge Laurie Selber Silverstein heard oral arguments regarding whether the Proposed Plan's Disclosure Statement contains adequate details to allow claimants to make an informed decision about the plan on Sept. 21, 2021. If Judge Silverstein concludes that "yes,"

the Disclosure Statement is adequately detailed, then the next step will be for claimants to vote on whether they want Judge Silverstein to approve the plan. *In re Boy Scouts of America and Delaware BSA*, No. 20-10343-LSS (D. Del.).

Philips's Ventilators, BiPAPs and CPAPs: Are You Being Poisoned in Your Sleep?

Philips Respironics (Philips) is a medical device manufacturer specializing in machines that improve respiratory function. On June 14, 2021, Philips issued a nationwide recall of several models of ventilators, BiPAP and CPAP machines due to potential health risks. The FDA has identified this as a Class I recall, the most serious type of recall. Use of the devices in a Class I recall may cause serious injuries or death.

The interior of many Philips devices include foam to reduce sound and vibrations. This foam is the reason Philips is now recalling many devices. The foam is made of polyester-based polyurethane (PE-PUR). If the PE-PUR foam breaks down, black debris from the foam or certain chemicals may be released into the device's air pathway, where they can be inhaled or swallowed by the device's user. Exposure to the PE-PUR foam debris or chemicals could cause serious injury including irritation (skin, eye, and respiratory tract), inflammation, headache, asthma, hypersensitivity, nausea, vomiting, adverse effects to other organs (e.g., kidneys and liver), and toxic carcinogenic effects.

There have already been more than 1,200 complaints and more than 100 injuries reported due to the PE-PUR foam exposure from Philips's devices. And this may only be the tip of the iceberg as an estimated 3 to 4 million devices are included in this recall.

Users of the recalled Philips devices are already filing lawsuits against Philips

across the country, including in federal court in Delaware, Florida, Georgia, Massachusetts, and Pennsylvania. There is not currently a Philips multidistrict litigation (MDL), but that outcome seems likely sooner rather than later. The Judicial Panel on Multidistrict Litigation (JPML)—which decides when cases are consolidated into MDLs and where those MDLs are adjudicated—is scheduled to hear oral arguments on Sept. 30, 2021, in St. Louis, Mo. Notice of Hearing Session at 1, 5, Case MDL No. 2151 (J.P.M.L. 2021). One of the plaintiffs has requested that the potential Philips MDL be centralized in the Eastern District of Pennsylvania. Motion for Transfer and Coordination at 1, 4, Case MDL No. 3014 (J.P.M.L. 2021). Philips agreed that the cases should be consolidated but called for the litigation to take place in the District of Massachusetts. Response to Motion for Transfer and Coordination at 1, 7-9, Case MDL No. 3014 (J.P.M.L. 2021).

Tony Lazzaro Sex Trafficking Claims

Anton "Tony" Lazzaro is a 30-year-old entrepreneur and political activist. Authorities arrested Lazzaro on Aug. 12, 2021. Lazzaro is charged with 10 federal sex trafficking crimes for allegedly recruiting six minors to engage in commercial sex acts. Lazzaro is accused of paying minors with vape pens, alcohol, and money, in exchange for sexual acts. Lazzaro reportedly had a dedicated page on the adult site "Pornhub" which mentioned teens, and an account on at least one other website.

The FBI raided Lazzaro's condo inside the upscale Hotel Ivy in Minneapolis, Minn. in December 2020, seizing \$370,000 in cash, money in 10 foreign currencies, nearly \$1 million in precious metals, a Ferrari, and more than a dozen cellphones.

Authorities contend that Lazzaro did not act alone. Gisela Castro Medina is

a 19-year-old former student at the University of St. Thomas in St. Paul, Minn., where she was also the chairperson of the Minnesota College Republicans University of St. Thomas Chapter. Authorities allege that Castro Medina recruited underage sex trafficking victims for Lazzaro. Castro Medina is charged with one count of conspiracy to commit trafficking of minors, five counts of sex trafficking of minors, and one count of obstruction.

Lazzaro was involved in Minnesota politics, so his arrest sent shockwaves through Minnesota's GOP political establishment. Lazzaro donated more than \$100,000 to Minnesota Republicans since 2014. Lazzaro's website shows pictures of him posing with former President Donald Trump and former Vice President Mike Pence. Lazzaro had close political ties with former Minnesota Republican Chairperson Jennifer Carnahan. Lazzaro and Carnahan hosted a podcast together and were often seen together socially. Carnahan resigned as Minnesota Republican Chairwoman on Aug. 19, 2021. Multiple Minnesota Republicans have pledged to donate all money they received from Lazzaro to charity.

As of the writing of this article, Lazzaro and Castro Medina both face criminal charges. Lazzaro also faces a civil lawsuit alleging sex trafficking, obstruction and conspiracy. Castro Medina does not yet face any civil charges. *U.S. v. Lazzaro*, No. 0:21-cr-00173-WMW-DTS (D. Minn.); *Doe 1 v. Lazzaro*, No. 0:21-cv-01985-WMW-JFD (D. Minn.).