



The Opioid Epidemic and Litigation in Illinois

Illinois Association of County Board Members
April 9, 2019

The Opioid Epidemic

The Centers for Disease Control and Prevention identifies three main types of opioids currently in use in the United States:



Prescription Painkillers

(Such as Hydrocodone and Vicodin)



Fentanyl



Heroin

Timeline *of the* Opioid Epidemic

1775

Opium

made its way to the US.

1800s
to
1900s

Opioids are widely used to treat pain, especially in soldiers (who eventually become addicted). **Sharp rise in opioid addiction** as Bayer brands begin selling heroin and other opioids for pain relief.

1920s
to
1950s

In an attempt to curb addiction, opioids are only prescribed to the dying and for acute pain, rather than for chronic pain.

1950s
to
1960s

Arthur Sackler revolutionizes drug advertising, buys Purdue Frederick, and makes Valium first \$100 million drug.

1980

The *New England Journal of Medicine* publishes a letter called "Addiction Rare in Patients treated with Narcotics". This was not a study, but rather an exploratory article that looked at incidences of addiction in a very specific set of hospitalized patients. This article would become widely cited by big pharma, including Purdue, as proof that opioids were a safe treatment for chronic pain.

1996

OxyContin

is released by Purdue and **aggressively marketed as a safe pain pill**.

1998

\$207m

Purdue Pharma spent \$207 million marketing OxyContin, enlisting “front groups” and “key opinion leaders” who oversold the drugs’ benefits and encouraged overprescribing.

2007

Purdue Fined \$634m

The federal government files criminal charges against Purdue Pharma for advertising OxyContin as a safer and less addictive alternative than other opioids. Purdue and a handful of executives plead guilty, and agree to pay \$634.5 million in criminal and civil fines.

2010

FDA approves a new formulation of OxyContin that is intended to curb abuse. It is still abused.

2015

DEA announces that it has arrested 280 people, including 22 doctors and pharmacists, after a comprehensive 15 month sting operation that focused on health care providers who dispensed large amounts of opioids. At the same time, the national record of opioid-related overdose deaths grow to 52,404 annually.

2016

The CDC publishes specific guidelines for prescribing opioids for patients with chronic pain. Recommendations include prescribing over the counter pain relievers like acetaminophen. Individuals who had previously managed their pain through an opioid prescription were now forced to find alternative methods of treatment, as many doctors would no longer prescribe them.

2017 -
present

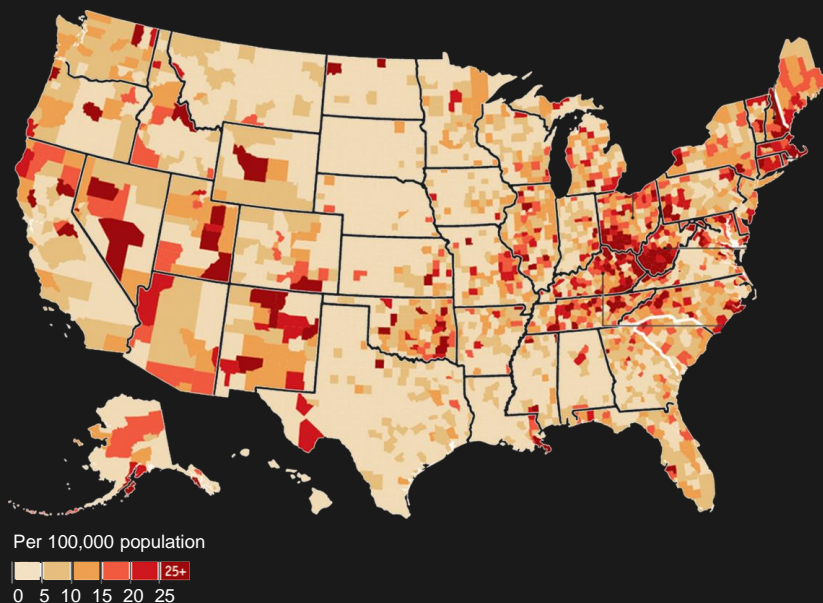
Epidemic

The President declares a national public health emergency to combat the opioid crisis. There are now over 142 overdose deaths per day in the US.

The Opioid Epidemic

Prescription opioids—like Oxycodone (OxyContin®) and Hydrocodone (Vicodin®)—are devastating the nation. An American dies from an opioid overdose every sixteen minutes. And prescription opioid overdose deaths in America now outnumber firearm homicides.

In addition to the pain caused to individuals and families affected by the epidemic, communities across the United States have shouldered real costs in trying to combat the epidemic.



United States, overdose deaths involving opioids, by county (2015)

47,000+

People died in 2017 from opioid overdoses

\$1 Trillion

Estimated economic cost of the opioid epidemic from 2001–2017

214M

Opioid prescriptions written in 2016 alone

\$500 Billion

Projected economic losses from 2018–2020 to combat the crisis

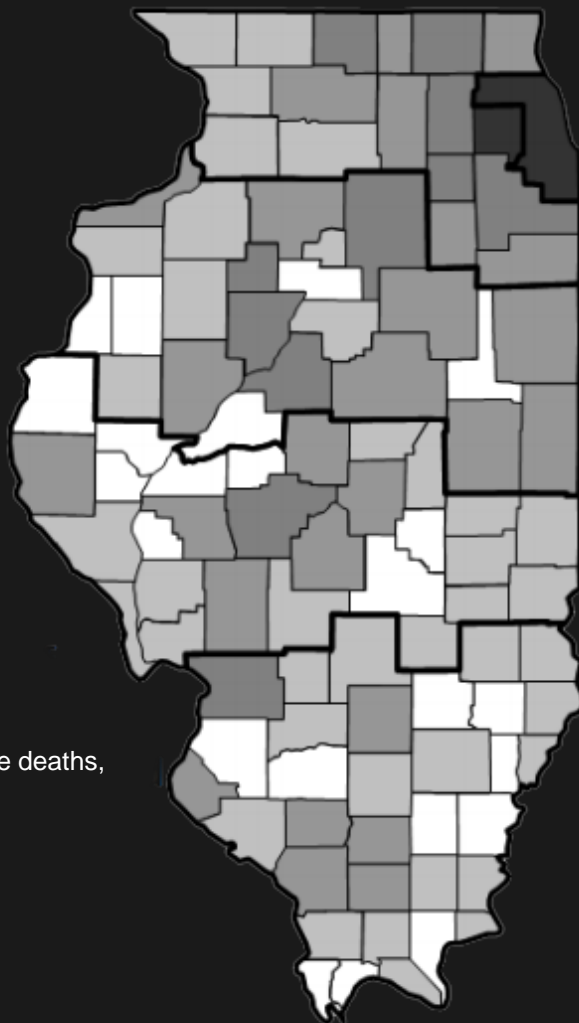
The Opioid Epidemic

A 2018 study from Altarum estimated that in 2017, the economic burden of prescription opioid abuse in the United States exceeded \$115 billion, consisting of:

- Lost Productivity \$66
Billion
 - Employee absenteeism and presenteeism
 - Employee assistance programs
 - Job placement and unemployment dropout prevention
- Increased Health Care Costs \$25
Billion
 - Prescription costs
 - Medical costs associated with treating addiction, including clinics
 - Treatments for children of opioid addicts
 - Administrative burden for processing opioid-related claims
- Increased Criminal Justice Costs \$9
Billion
 - Increase in policing opioid-related crimes
 - Opioid-related crimes clogging court dockets and operation of drug court
 - Increased police and fire calls for opioid overdoses
 - Drug testing and probation
 - First responder training, including on overdose reversal drugs
 - Overcrowding in jails
 - Substance abuse treatment for prisoners
- Child and Family Assistance Programs \$7
Billion
- Education Programs \$5
Billion
- Miscellaneous Unknown

The Impact on Illinois

According to the Illinois Department of Human Services, the opioid crisis has had a particularly devastating impact on Illinois. Opioid overdoses in Illinois now claim more lives than homicides and car accidents combined. In fact, opioid-related deaths went up 82% from 2013 through 2016.



2,202

In 2017, there were over 2,202 opioid overdose deaths in Illinois. (an increase from 1,946 in 2016).

11,000

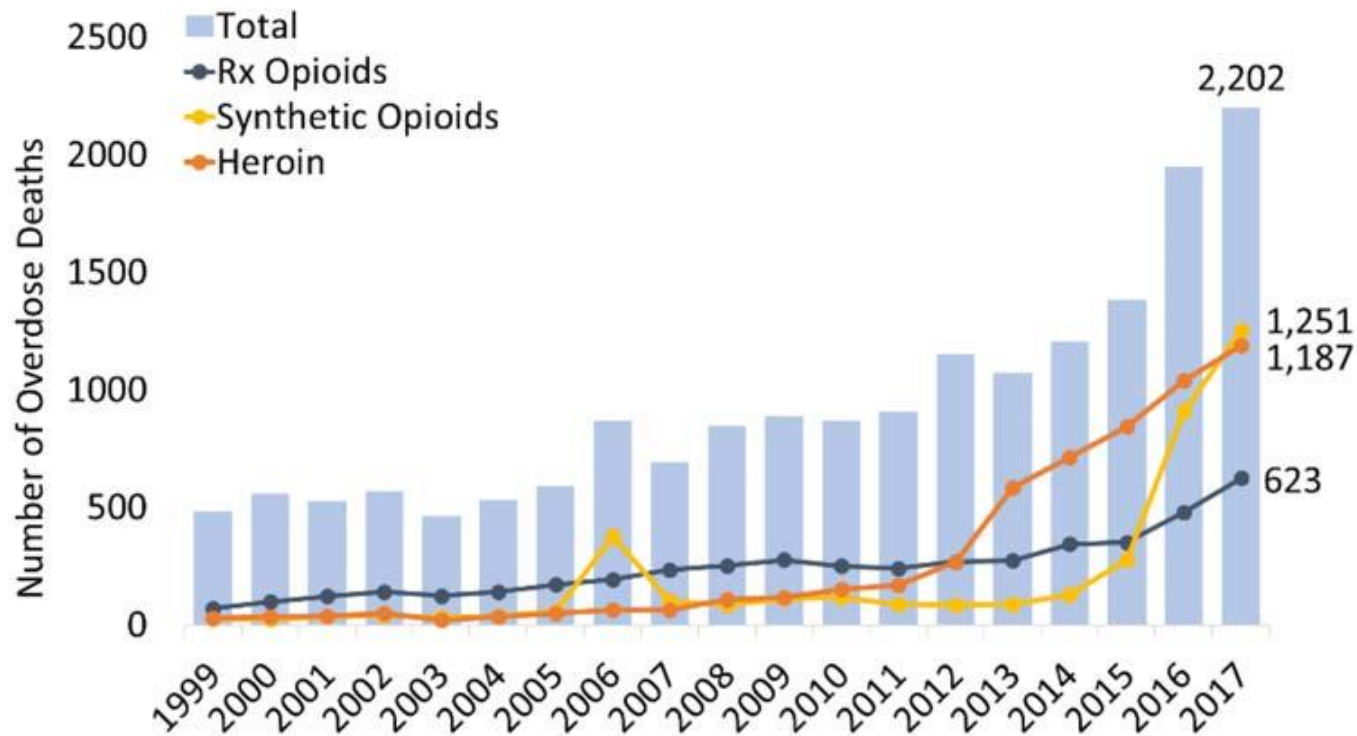
Over 11,000 Illinois residents have died from opioid-related causes since 2008, according to the Ill. Dept. of Public Health

11%

Illinois emergency rooms saw an 11-percent increase in opioid overdose visits between the beginning of 2017 and beginning of 2018 (Ill. Dept. of Pub. Health- Jan. 2, 2019)

The Impact on Illinois

Illinois' rate of drug overdoses involving opioids is 17.2 deaths per 100,000 persons, which is higher than the national rate of 14.6 deaths per 100,000 persons.



51.1

In 2017, Illinois providers wrote 51.1 prescriptions for every 100 persons

623

In 2017, there were over 623 deaths involving prescription opioids- nearly double the number of similar deaths in 2014

Comparing the Tobacco Litigation versus Opioid Litigation

- States sued tobacco producers to recoup Medicaid losses
- Tobacco Master Settlement Agreement reached in Nov. 1998 provided states with approx. \$246 billion during the first 25 years of the settlement, and payments continue into perpetuity thereafter
- No specific language requires states to use proceeds for tobacco-related or public health purposes
- Only a small percentage of settlement funds have been used to encourage smoking cessation or otherwise address public health priorities
- Only 3.5% of funds used for tobacco control

Opioids

- Although many states have filed suit to recover under state and federal laws, cities and counties often bear the brunt of actual damages related to the opioid crisis (criminal justice, first responder services and training, rehabilitation services, insurance payments for employees/beneficiaries, lost worker productivity, etc.)
- Opioid litigation seeks redress of actual costs incurred to fight the crisis, reasonably foreseeable costs to continue services/treatment
- If a county files an opioid suit through their State's Attorney's office, Illinois Consumer Fraud Act allows for recovery of civil penalties
- Communities that recover will have control dissemination and use of funds

The Corporations Accountable for the Opioid Epidemic

The following are the four primary categories of entities involved:



Manufacturers

Liable for lying about the safety, efficacy, and addictive nature of prescription opioids



Pharmacies

Liable for systematically filling invalid opioid prescriptions



Distributors

Liable for pumping excess opioids into Illinois communities



“Pill Mills”

Liable for prescribing opioids for non-medical or unapproved purposes

The Corporations Accountable for the Opioid Epidemic

Common Manufacturers

Purdue Pharma

- Principal place of business in Stamford, Connecticut
- Engaged in the manufacture, promotion, and distribution of OxyContin, MS Contin, Dilaudid, Dilaudid HP, Butrans, Hysingla ER, and Targiniq ER

Janssen Pharmaceuticals (Johnson & Johnson)

- Pennsylvania corporation
- Principal place of business in Titusville, New Jersey
- Manufactures, sells, and distributes opioids, including Duragesic (fentanyl), Nucynta, and Nucynta ER

Teva Pharmaceuticals (Cephalon)

- Delaware corporation
- Principal place of business in Frazer, Pennsylvania
- Manufactures, sells, and distributes opioids, including Actiq and Fentora

Allergan PLC

- Public limited company
- Principal place of business in Dublin, Ireland
- Markets and sells opioids, including branded Kadian and Norco, and generic Duragesic and Opana

Mallinckrodt PLC

- Public limited company
- Headquartered in the U.K. and St. Louis, Missouri
- Mallinckrodt LLC is a Delaware limited liability company
- Manufactures and sells generic Oxycodone

Endo Health Solutions

- Delaware corporation
- Principal place of business in Malvern, Pennsylvania
- Manufactures, sells, and distributes opioids, including Opana ER, Opana, Percoden, and Percocet

The Corporations Accountable for the Opioid Epidemic

Common Distributors

McKesson Corporation

- Delaware corporation
- Principal place of business in San Francisco, California
- 2016 revenues of \$190 billion

Cardinal Health Inc.

- Ohio corporation
- Principal place of business in Dublin, Ohio
- 2016 revenues of \$130 billion

AmerisourceBergen Corporation

- Delaware corporation
- Principal place of business in Chesterbrook, Pennsylvania
- 2016 revenues of \$135 billion

The Corporations Accountable for the Opioid Epidemic

Common Pharmacies

CVS Health

- Delaware corporation
- Headquartered in Woonsocket, Rhode Island
- 2016 revenues of \$177 billion

Walgreens

- Illinois corporation
- Principal place of business in Deerfield, Illinois
- 2016 revenues of \$117 billion

Rite Aid

- Delaware corporation
- Principal place of business in Camp Hill, Pennsylvania
- 2016 revenues of \$30 billion

Walmart

- Public limited company
- Headquartered in Bentonville, Arkansas
- 2016 (pharmacy) revenues of \$18.8 billion

The Opioid Litigation

In an effort to clamp down on the epidemic, hundreds of lawsuits have been filed against opioid manufacturers and distributors, seeking to hold them responsible for the costs incurred by communities nationwide.

While different cases have taken different approaches, the general facts and allegations are similar and fall into two broad categories of claims:



- Manufacturers have engaged in fraudulent and deceptive practices that have caused excessive opioid prescription rates
- Distributors have engaged in negligent and/or intentional conduct leading to vast amounts of diversion (*i.e.*, non-prescription sale and consumption) in the opioid supply chain

The Opioid Litigation

Specific causes of action vary by case and by defendant category, but generally include:

- Violations of consumer protection statutes;
- Public nuisance claims;
- Negligence;
- Common law fraud;
- Unjust enrichment; and
- Violations of Medicaid Program Integrity laws.

In addition to counties, municipalities, and tribal entities, at least 15 states have separately filed suits in different jurisdictions.

THE MAJOR MANUFACTURERS

Purdue Pharma L.P.

Allergan, PLC (Watson Pharma)

Teva Pharmaceuticals Industries
Ltd. (Cephalon)

Johnson & Johnson (Janssen
Pharmaceuticals)

Endo Health Solutions

Mallinckrodt PLC

THE MAJOR DISTRIBUTORS

McKesson Corporation

Cardinal Health, Inc.

AmeriSource Bergen Corp.

The Opioid Litigation

All of the pending federal actions were consolidated into an MDL in the Northern District of Ohio.

- In the federal courts, a petition to consolidate 66 cases—almost all of them government cases—into an MDL was granted by the Judicial Panel on Multidistrict Litigation on December 5, 2017. The case was captioned *In re National Prescription Opiate Litigation*, MDL No. 2804, and transferred to the Northern District of Ohio.
- Over 2,000 additional cases have since been identified as potential tag-along actions.
- The MDL Court has been pushing the parties to reach a quick settlement. But for a variety of reasons—including the scale of the damages at issue, the level of human tragedy involved, and the wide variety of plaintiffs (*e.g.*, state, county, municipal), defendants (*e.g.*, distributors, manufacturers, pharmacies), substantive laws, and damages theories—we believe that the MDL is unlikely to lead to any quick resolutions. And reports from the parties' initial settlement conference, the institution of a "litigation track" in the MDL, and public haggling over access to critical opioid sales data from the DEA seem to confirm that belief.
- As of today, a trial date is currently set for October 21, 2019 the first "bellwether" group of plaintiffs.

13 The federal court is probably the least likely branch
14 of government to try and tackle this, but candidly, the
15 other branches of government, federal and state, have
16 punted. So it's here.
17 So I don't think anyone in the country is interested
18 in a whole lot of finger-pointing at this point, and I'm not
19 either. People aren't interested in depositions, and
20 discovery, and trials. People aren't interested in figuring
21 out the answer to interesting legal questions like
22 preemption and learned intermediary, or unravelling
23 complicated conspiracy theories.

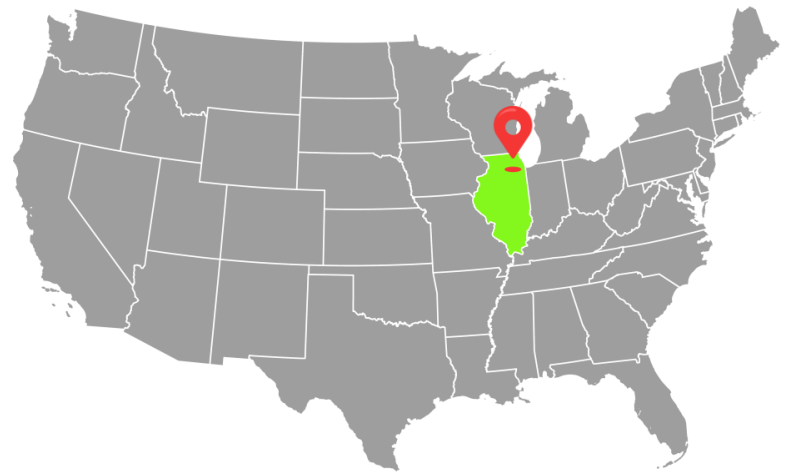
The Opioid Litigation

To date, thousands of opioid cases have been filed in state and federal courts throughout the country.

Federal vs. State Court



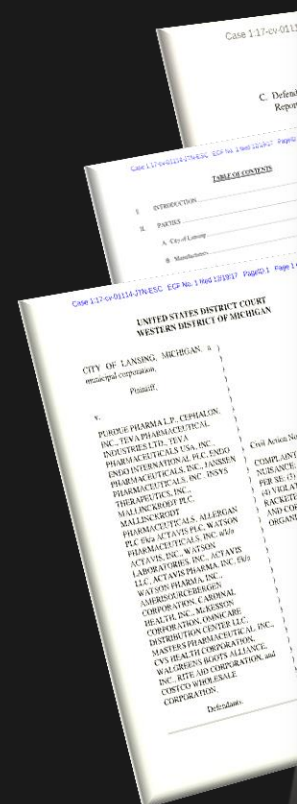
MDL



State-Court

The Federal Approach

Most of the governments involved in the MDL are pursuing all their claims through the MDL and are now “parked,” sitting alongside hundreds of other communities.



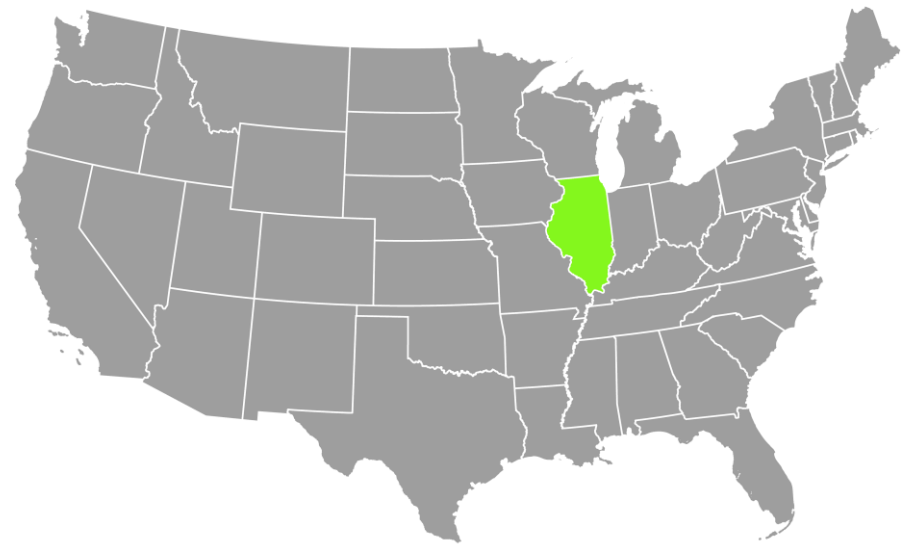
PURDUE PHARMA L.P., CEPHALON, INC., TEVA PHARMACEUTICAL INDUSTRIES LTD., TEVA PHARMACEUTICALS USA, INC., ENDO INTERNATIONAL PLC, ENDO PHARMACEUTICALS, INC., JANSSEN PHARMACEUTICALS, INC., INSYS THERAPEUTICS, INC., MALLINCKRODT PLC, MALLINCKRODT PHARMACEUTICALS, ALLERGAN PLC f/k/a ACTAVIS PLC, WATSON PHARMACEUTICALS, INC. n/k/a ACTAVIS, INC., WATSON LABORATORIES, INC., ACTAVIS LLC, ACTAVIS PHARMA, INC. f/k/a WATSON PHARMA, INC., AMERISOURCEBERGEN CORPORATION, CARDINAL HEALTH, INC., McKESSON CORPORATION, OMNICARE DISTRIBUTION CENTER LLC, MASTERS PHARMACEUTICAL, INC., CVS HEALTH CORPORATION, WALGREENS BOOTS ALLIANCE, INC., RITE AID CORPORATION, and COSTCO WHOLESALE CORPORATION,

Defendants.

The State Court Approach

Several cases on behalf of Illinois municipalities were filed in state court, but have been subsequently removed to federal court and transferred to the MDL.

- Although cases have been removed to federal court, the plaintiffs continue the fight to return the cases to state court.
- This strategy includes having state issues resolved by state judges, and not a federal tribunal.
- Staying out of the MDL potentially increases bargaining power during settlement negotiations with defendants.



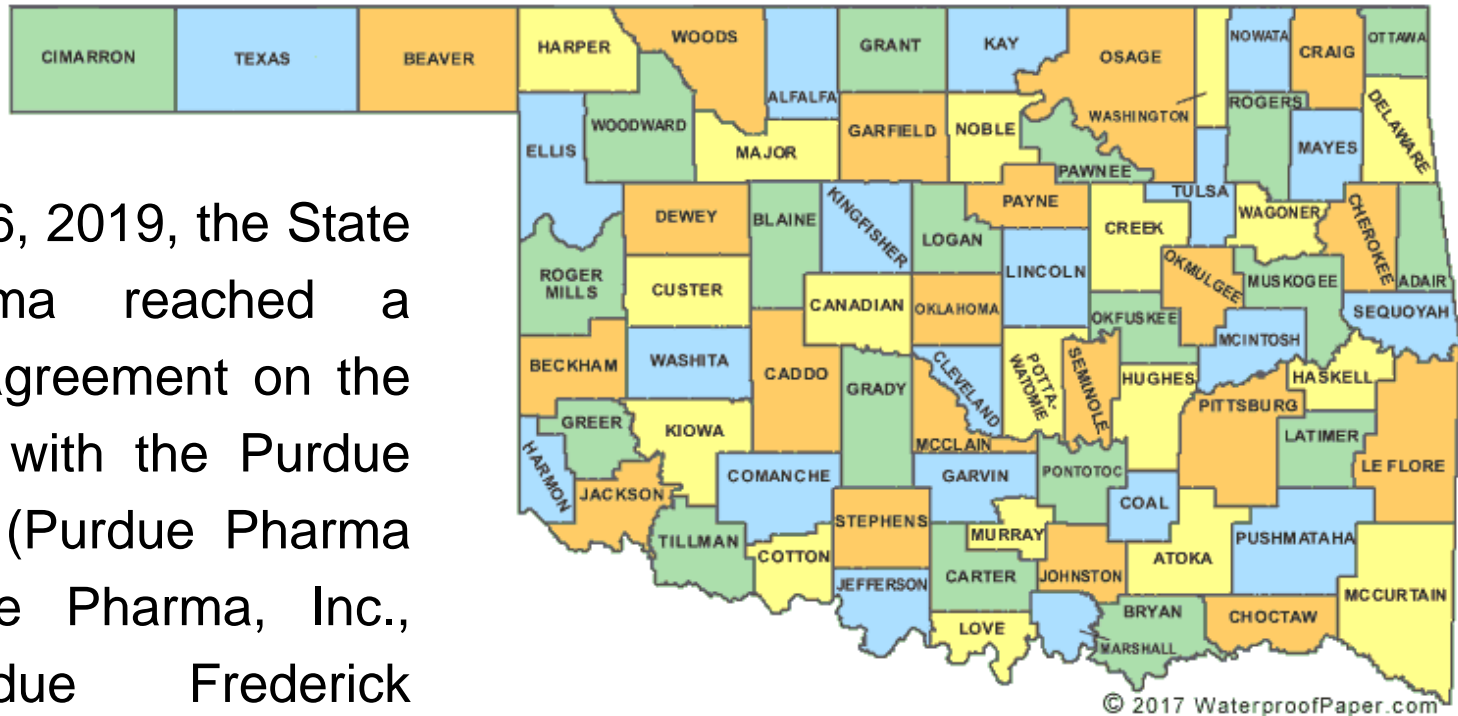
The Opioid Litigation in Illinois

- Over 30 counties, and many other Illinois municipalities, have filed suit in state and federal court.
 - Just yesterday, the State of Illinois sued Purdue.
- Claims against the defendants mirror national trend:
 - Illinois Consumer Fraud and Deceptive Business Practices Act claims (815 ILCS 505/2, *et seq.*)
 - Federal Controlled Substances Act claims (21 U.S.C. § 801, *et seq.*)
 - Public Nuisance
 - Negligence
 - Fraudulent Misrepresentation
 - Insurance Fraud (720 ILCS 5/17-10, *et seq.*)
 - Unjust enrichment
 - Civil Conspiracy
- Damages and Remedies sought:
 - Actual damages
 - Restitution
 - Punitive damages
 - Civil penalties, if available

The Oklahoma Settlement

On March 26, 2019, the State of Oklahoma reached a settlement agreement on the eve of trial with the Purdue Defendants (Purdue Pharma L.P., Purdue Pharma, Inc., and Purdue Frederick Company) totaling over \$270 million.

- Provides \$12.5 million for distribution to Oklahoma municipalities.
- The Sackler family (which owns Purdue) will contribute \$75 million of the total settlement, even though the Sackler family was not named in the suit.
- Arguably, shows Purdue did not want to take this case to trial, which is scheduled to begin on May 28, 2019 against the remaining defendants.





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