

Canada's provinces have filed opioid-related claims totalling \$67.4-billion in U.S. court

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Canada's provincial governments have filed opioid-related claims totaling US\$67.4-billion in a U.S. court, revealing for the first time how much they have spent fighting an epidemic that has killed thousands of people and devastated communities across the country.

The provinces are attempting to recover public-health care costs associated with an addiction and overdose crisis that traces its roots to the introduction of OxyContin 24 years ago and has since spread to other, more hazardous drugs.

Their claims are among more than 600,000 processed by a U.S. bankruptcy court as of Nov. 5 against OxyContin maker Purdue Pharma. The claims for Canada's two most populous provinces alone are massive, totalling US\$26.1-billion for Ontario and US\$15.3-billion for Quebec.

How the provinces belatedly came to pursue dozens of opioid industry companies for "many billions of dollars" is laid bare in thousands of pages of court filings in Canada.

Just three years ago, the provinces were willing to accept \$2-million in compensation until Canadian court judges raised concerns that they had failed to protect the public purse. Purdue had offered \$20-million to settle a class-action lawsuit in Canada, with \$18-million earmarked for families whose loved ones became victims of the opioid crisis and the balance for the provinces.

The provinces' subsequent efforts to block the proposed settlement have dashed any hope of a resolution for the 1,600 members of the class action.

The court documents centre on the class action that has been winding its way through the courts since 2007. Despite the sheer size of the provinces' current opioid claims – \$85.5-billion in Canadian dollars, for everything from emergency medical care to overdose prevention sites and addiction treatment programs – they initially agreed to accept their \$2-million share of Purdue's settlement offer.

In their 11th-hour quest for a bigger payout, the provinces reversed course and withdrew their support, the documents show. The British Columbia government launched its own lawsuit in 2018 on behalf of all the provinces against more than 40 pharmaceutical firms and distributors, including Purdue, alleging they knew or should have known opioids were addictive and seeping into the illicit market.

Several provinces have also introduced copycat health care cost recovery legislation that takes direct aim at the class action – it contains a clause extinguishing any prior opioid-related agreements.

“The public interest in this case demands the steps that we are taking to pursue an appropriate recovery,” Reidar Mogerman, a Vancouver lawyer representing the B.C. government, told The Globe and Mail. “The cost implications of the crisis to the governments have been emerging and exploding.”

The class action has been in limbo since Purdue’s U.S.-based parent company sought Chapter 11 bankruptcy protection in September, 2019. All legal proceedings against Purdue, including its Canadian subsidiary, are temporarily on hold.

The provinces initially treated the class-action lawsuit against Purdue as an afterthought, the documents show. They participated in it through legislation that helps them recover costs associated with providing health care to individuals suing drug companies.

The lawsuit, now in its 13th year, reflects years of indifference by government leaders in Ottawa and the provinces to an escalating public-health crisis, one that has grown more deadly with an influx of illicit fentanyl. In 2018 alone, 4,588 Canadians died of opioid-related overdoses, representing an average of one death every two hours.

Unlike the United States, where Purdue paid US\$634.5-million in 2007 to settle criminal and civil charges for misbranding OxyContin as less addictive than other pain medications, no one in this country, including Health Canada, has ever investigated the company.

Wagners law firm launched the class action in Atlantic Canada in 2007 on behalf of individuals who got hooked on OxyContin after their doctors prescribed it, and later joined forces with firms in Ontario and Saskatchewan.

The provinces did not help pay for out-of-court costs, including hiring experts, leaving the class-action lawyers on their own fighting a pharmaceutical giant with deep pockets.

“We had zero help from the feds and the provinces,” said Ray Wagner, a lawyer at the Halifax law firm. “They should have been doing something about this tragedy and everybody was ignoring it.”

The legal standoff between the provinces and the class-action lawyers revolves around the terms of the proposed settlement, which would release Purdue from any further legal action in Canada and cap its liability at \$20-million.

The class-action lawyers argue that the provinces agreed to the settlement, the court documents show. The provinces counter that they did not give their informed consent. Lawyers for the Alberta government tried to get the class-action lawyers thrown off the case altogether.

Purdue initially offered \$19-million in 2016 to settle the case, including \$1-million for the provinces, the court documents show.

Purdue topped up its offer after a spokesman for the provinces said they would not sign off unless they received an additional \$1-million.

“So at my end we are good to go,” Peter Lawless, a B.C. government lawyer, said in an e-mail dated Jan. 10, 2017.

The settlement, which needed court approval in four provinces, was on its way to becoming a done deal after getting the nod in Ontario, Nova Scotia and Quebec in 2017.

But once it reached Saskatchewan, judges considered the role of the provinces for the first time and how they came to agree with their share of the compensation.

Under legislation governing the provinces' claims, a person suing for health care costs is required to seek costs on behalf of the provinces. If the case is settled, the class-action lawyers are required to negotiate on behalf of both the plaintiffs and the provinces.

Justice Dennis Ball of the Court of Queen's Bench for Saskatchewan rejected the proposed settlement in September, 2017, saying the court must be satisfied that the provinces gave their informed consent for a settlement amount that “seems paltry at best.”

Justice Brian Barrington-Foote in the same Saskatchewan court also rejected the proposed settlement in March, 2018, and asked the provinces why they had not quantified their health claims.

The provinces, he said, were “nowhere to be seen prior to the conclusion of the agreement. Who was protecting the public purse?”

At that point, the provinces revoked their prior consent. In an e-mail dated March 22, 2018, Mr. Lawless described the agreement as a “nullity.” He declined to comment to The Globe.

Purdue's lawyers accused the provinces of “abusive conduct and tactics” for reversing their position. It remains uncertain when another hearing in Saskatchewan might take place.

The provinces, meanwhile, are bracing for an epic, cross-border court legal battle.

Purdue filed for bankruptcy as part of a tentative settlement with local and state governments in the United States that would resolve thousands of lawsuits against the company.

Mr. Mogerman, the lawyer for the B.C. government, said if Purdue were to exclude Canada from a settlement with governments in the United States, the provinces will chase the company and the Sackler family who owns it “to the ends of the Earth.”

The news last month that Purdue will plead guilty to criminal charges, and admit to bribing doctors to prescribe OxyContin, as part of an US\$8.3-billion settlement with the U.S. Justice Department adds momentum to the provinces' claims, he said.

“This is a case that’s built on now admittedly criminal conduct in the United States. We say similar conduct occurred here.”

Purdue’s blockbuster drug generated US\$31-billion in worldwide revenue for the company, ranking the Sacklers among America’s richest families.

Dozens of letters buried in the Canadian class-action court documents contain vignettes of lives destroyed by OxyContin.

Valerie Rhodes’s son, Ryan Hicks, died in his sleep after overdosing. His doctor prescribed OxyContin to treat back pain from working as a blackjack dealer at a casino.

“My son, a beautiful soul, was 25 years old and trying desperately to quit taking this drug,” her letter says. “My own soul is demolished.”

In July, 2008, nine months before he died, Mr. Hicks moved to Calgary from Ajax, Ont., to earn more money. After his OxyContin ran out, he could not find a new doctor to refill his prescription. When the withdrawal symptoms became unbearable, he turned to the street to buy drugs, Ms. Rhodes said. Because he was no longer a daily user, his tolerance was low, causing the fatal overdose.

In her letter, Jayne Turner says her late husband, a lobster fisherman, got addicted to painkillers after he took part in a study sponsored by Purdue in the late 1990s. The study promoted OxyContin as a non-addictive, “miracle drug” for chronic back pain.

At first, her letter says, OxyContin dulled her husband’s pain from a degenerative disk, making it easier for him to haul his fishing gear. But he required stronger and stronger doses as time went on, and began lapsing into periods of deep fatigue.

The day John Turner lost his life at sea, he was working with his crewmen on his boat, the Slip Knot, off the shores of New Brunswick when he fell asleep and toppled overboard. He was 51.

Ms. Turner has filed a 20-page proof of claim form with the U.S. bankruptcy court, including receipts for her husband's OxyContin prescriptions totaling \$16,182.56 over eight years and the coroner's report, saying he had a fatal dose of opioids in his system when he drowned on April 30, 2012.

"There's got to be some accountability here," Ms. Turner said in an interview. "At this point, I don't think there ever will be."

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