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## Big Part of OxyContin Profit Was Consumed by Penalties

By [BARRY MEIER](#)

The \$634.5 million in penalties and fines that the maker of the painkiller [OxyContin](#) and some of its executives agreed to pay to resolve a false marketing charge represents 90 percent of the profits it initially made from the drug, according to court documents filed by federal prosecutors.

The company, Purdue Pharma, agreed to the penalty, one of the largest ever paid by a drug company in such a case, after an affiliate, Purdue Frederick, and three current and former executives pleaded guilty last month to criminal charges that it had misled doctors and patients when it claimed the drug was less likely to be abused than traditional narcotics.

In another aspect of the case, the lead prosecutor said in a recent interview that former Mayor [Rudolph W. Giuliani](#) of New York, who is now seeking the Republican presidential nomination, played the central role on behalf of the company in the negotiations that led to its felony plea.

It was already known that Mr. Giuliani had participated in those talks on behalf of Purdue Pharma, which is a client of Bracewell & Giuliani, a law firm in Houston in which Mr. Giuliani is a principal.

But in a recent interview, John L. Brownlee, the United States attorney for the Western District of Virginia, described Mr. Giuliani as playing the central role in talks with federal prosecutors.

“When we had meetings, he was the lead counsel and the lead spokesman for the company,” Mr. Brownlee said.

OxyContin is a powerful narcotic that provides relief of serious pain for up to 12 hours. Soon after its introduction, it also became a popular drug of abuse among both drug addicts and novices, including teenagers.

After the pleas from the company and its executives, Judge James P. Jones of Federal District Court in Abingdon, Va., who is presiding over the matter, directed a series of questions to both federal prosecutors and lawyers for Purdue Pharma, which is based in Stamford, Conn.

Judge Jones is expected to decide at a hearing next month whether to accept the company’s guilty plea to a felony charge as well as misdemeanor pleas by the three company officials, who agreed to pay a total of \$34.5 million in fines.

In their response to Judge Jones’s questions, prosecutors, along with disclosing the 90 percent figure, explained why they had agreed not to recommend incarceration for the executives.

They stated that they believed that the conviction of the officials would serve as a deterrent to other pharmaceutical industry executives. And they noted that the individuals’ deals were part of the overall agreement with the company.

“Each corporate official will bear the stigma of being a convicted criminal,” Mr. Brownlee stated in that filing.

The three men are Michael Friedman, the company’s president; Howard R. Udell, its top lawyer; and Dr. Paul D. Goldenheim, its former medical director.

Some parents of teenagers and young adults who became addicted to OxyContin or died in overdoses in which it was a factor are expected to urge Judge Jones to reject the plea deal, saying they believe that the executives should go to prison.

After last month’s pleas, some drug industry critics also said the amounts to be paid by Purdue Pharma were too low, given the profit the company made from OxyContin. From late 1995 to mid-2001, when the company dropped its “reduced risk” claims, the drug produced \$2.8 billion in revenue for Purdue Pharma.

OxyContin’s biggest selling years, however, occurred after mid-2001, the period when prosecutors said the crimes ended.

Purdue Frederick will make \$600 million in payments, including \$470 million in fines and payments to a variety of federal and state agencies. The company also agreed to pay \$130 million to settle civil lawsuits. The company’s filing shows that nearly that entire amount has already been paid.

Mr. Brownlee said that Mr. Giuliani was closely involved in talks with prosecutors on Purdue’s behalf beginning early last summer, when prosecutors made clear to the drug company that it faced the prospect of indictment, until late October, when the basic terms of the company’s guilty plea were reached.

Last month, a spokeswoman for Bracewell & Giuliani said that Mr. Giuliani had not done any legal work for the drug company for “several months.”

Mr. Giuliani did not announce his candidacy for the Republican presidential nomination until this year. But during the same four-month period that he represented Purdue Pharma in talks with federal prosecutors, he was apparently gearing up for that bid by giving policy speeches and appearing at fund-raisers for [Republican Party](#) candidates.

Mr. Giuliani, before legally representing Purdue Pharma, also worked for the drug company through Giuliani Partners, a consulting firm in which he has been a principal. Among other things, Mr. Giuliani worked on company-sponsored programs aimed at stemming OxyContin's abuse and met with officials of the [Drug Enforcement Administration](#) when that agency was investigating Purdue Pharma.

Sunny Mindel, a spokeswoman for Giuliani Partners, did not respond to two recent e-mail messages or return a telephone call seeking to determine whether Mr. Giuliani or any entities with which he was involved still worked for Purdue Pharma and, if not, when those relationships had ended.

In a brief written statement, James Heins, a spokesman for Purdue Pharma, said that the company "will not comment on the specific roles and activities of our outside legal counsel."

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