Settling for Less? An Analysis of the Use of Settlement Agreements to Mitigate Non-Communicable Diseases

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INTRODUCTION

There is a pressing need to address the rise of non-communicable diseases worldwide.[1] Non-communicable diseases (NCDs) are the number one cause of death in the United States and account for 71% of all deaths globally.[2] Some of the most common NCDs include heart disease, stroke, cancer, and diabetes.[3] The World Health Organization has identified four primary risk factors for NCDs including (1) tobacco use, (2) physical inactivity, (3) alcohol use, and (4) unhealthy diets.[4] NCDs have devastating health consequences for individuals as well as damaging non-health consequences worldwide. According to the World Economic Forum, NCDs present a severe threat to world development by "driving up healthcare costs, disabling workers, and imposing debilitating financial burdens on households."[5] Due to the significant harms posed by NCDs, it is imperative that there be action to alleviate their prevalence.

NCDs, as stated by David Peters, the Chair of International Health at Johns Hopkins Bloomberg School of Public Health, "once were considered diseases of the rich."[6] However, today, research shows that poverty increases the risk of death and disability from NCDs and that NCDs increase the risk of falling into poverty.[7] Industries known to perpetuate the rise in NCD rates include Big Alcohol, Big Tobacco, and Big Food.[8] In the United States, individuals living

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1. NCDs are a leading cause of death globally. *See* Melissa Mialon, *An Overview of the Commercial Determinants of Health*, 16 GLOBALIZATION AND HEALTH, no. 74, 2020, at 2.

2. *Id.*

3. *Noncommunicable Diseases*, WORLD HEALTH ORG., https://www.who.int/health-topics/noncommunicable-diseases [https://perma.cc/ZV58-YB2L] (last visited Apr. 1, 2022).

4. *Id.*

5. NICHOLAS FREUDENBERG, LETHAL BUT LEGAL: CORPORATIONS, CONSUMPTION, AND PROTECTING PUBLIC HEALTH 38 (2014).

6. NCDs were previously thought of as diseases of the rich because of their previous prominence in developed nations. *See Poverty Increases Risk of Non-Communicable Diseases in Lower Income Countries*, JOHNS HOPKINS BLOOMBERG SCH. PUB. HEALTH (Apr. 5, 2018), https://publichealth.jhu.edu/2018/poverty-increases-risk-of-non-communicable-diseases-in-lower-income-countries [https://perma.cc/NJ76-U8U2].

7. *Id.*

8. Mialon, *supra* note 1, at 1.

below the poverty line have higher rates of tobacco use than the general population[9] and individuals living in low income homes are more likely to purchase less healthful foods.[10] With the high prevalence of NCD risk factors among low-income individuals, it is clear that NCDs should no longer be thought of as diseases of the rich. Therefore, addressing the rise of NCDs is imperative to promote health equity.

I. ROADMAP

Throughout this Note, three prominent health settlement agreements will be analyzed to evaluate the efficacy of settlement agreements: the Tobacco Master Settlement Agreement of 1998, the Juul-North Carolina Settlement Agreement of 2021, and the Purdue Pharma Settlement Agreement of 2021.[11] These case studies provide the lessons that settlement agreements are beneficial because they can (1) provide funds for public programming, (2) include provisions that regulate corporate action, (3) publish corporate documents, and (4) create costs associated with negative corporate behavior.[12] Further, these case studies also showcase limitations in settlement agreements for combatting NCDs that need to be overcome including (1) the misuse of settlement funds by state legislatures, (2) lack of stakeholder involvement, (3) the possibility of coercion amongst plaintiffs involved in the lawsuits, and (4) misalignment of state regulations.[13]

However, the limitations of settlement agreements can be overcome by (1) earmarking settlement funds to ensure they are properly allocated, (2) consulting with public health experts and stakeholders when negotiating settlement agreements, (3) following strict attorney compliance with the Model Rules of

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9. *Cigarette Smoking and Tobacco Use Among People of Low Socioeconomic Status*, Ctrs. for Disease Control and Prevention, https://www.cdc.gov/tobacco/disparities/low-ses/index.htm [https://perma.cc/B69H-SPS2] (last visited Apr. 1, 2022).

10. Simone A. French, Christy C. Tangney, Melissa M. Crane, Yasmin Wang & Bradley M. Appelhans, *Nutrition Quality of Food Purchases Varies by Household Income: the SHoPPER Study*, 19 BMC PUBLIC HEALTH, no. 231, 2019, at 1.

11. *See* PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, THE MASTER SETTLEMENT AGREEMENT: AN OVERVIEW 4 (Jan. 2019), https://publichealthlawcenter.org/sites/default/files/resources/MSA-Overview-2019.pdf [https://perma.cc/D9LT-W3C8]**;** Jan Hoffman, *Purdue Pharma Is Dissolved and Sacklers Pay $4.5 Billion to Settle Opioid Claims*, N.Y. TIMES (Sept. 1, 2021), https://www.nytimes.com/2021/09/01/health/purdue-sacklers-opioids-settlement.html [https://perma.cc/49M6-C32F]; Sheila Kaplan, *Juul to Pay $40 Million to Settle N.C. Vaping Case*, N.Y. TIMES (June 28, 2021), https://www.nytimes.com/2021/06/28/health/juul-vaping-settlement-north-carolina.html [https://perma.cc/M793-HZ5H].

12. *See, e.g.*, PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 4–6; Hoffman, *supra* note 11; Kaplan, *supra* note 11.

13. *See A State-by-State Look at the 1998 Tobacco Settlement 22 Years Later*, CAMPAIGN FOR TOBACCO-FREE KIDS, https://www.tobaccofreekids.org/what-we-do/us/statereport [https://perma.cc/56CV-DT2V] (last visited Apr. 1, 2022); PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 4; Kaplan, *supra* note 11; *ONDCP Announces Model Law for States to Help Ensure Opioid Litigation Settlements Funds Address Addiction and Overdose*, THE WHITE HOUSE (Oct. 21, 2021), https://www.whitehouse.gov/ondcp/briefing-room/2021/10/21/ondcp-announces-model-law-for-states-to-help-ensure-opioid-litigation-settlements-funds-address-addiction-and-overdose/ [https://perma.cc/45FA-33GR].

Professional Conduct, and (4) including multiple states as parties to the agreement.[14] In conclusion, the shortcomings of settlement agreements can be overcome, and settlement agreements can be highly effective tools in combatting the rise in NCDs.

II. LEGAL TOOLS TO MITIGATE NCDS

Law will serve as an important and powerful tool for addressing global health concerns and mitigating the rise of NCDs. Commentators highlight "the crucial role of law in achieving global health with justice, through legal instruments, legal capacities, and institutional reforms, as well as a firm commitment to the rule of law."[15] Legal tools can be effective in creating standards that promote good health, creating strong healthcare systems, and holding actors accountable.[16]

Some of the main legal tools available to address NCDs include legislation, regulation, taxation, and litigation.[17] Legislation, regulation, taxation, and litigation cumulatively create health laws.[18] Health laws create "binding rules that govern the rights and responsibilities of governments, health workers, companies, civil society and a country's population."[19] Despite the importance of health law, the World Health Organization has listed "lack of political will, commitment, capacity, and action" as the number one obstacle for implementation of NCD intervention tools.[20] With regard to the rise of NCDs, "civil society voices are not yet sufficiently empowered."[21] This lack of civil society empowerment may lead to a lack of action from the political branches of government with regard to public health.[22]

In the United States, private enforcement, through litigation, is essential to mitigating the harm caused by NCDs. Notably, "[t]he United States harnesses private citizens, public regulatory bodies, nongovernmental organizations, and private

14. *See* CAMPAIGN FOR TOBACCO-FREE KIDS, *supra* note 13; PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 8; Kaplan, *supra* note 11; THE WHITE HOUSE, *supra* note 13; MODEL RULES OF PROF'L CONDUCT R. 1.2–1.5 (2018) [hereinafter MODEL RULES].

15. Lawrence O. Gostin, John T. Monahan, Jenny Kaldor, Mary DeBartolo, Eric A. Friedman, Katie Gottschalk, Susan C. Kim, Ala Alwan, Agnes Binagwaho, Gian Luca Burci, Luisa Cabal, Katherine DeLand, Timothy Grant Evans, Eri Goosby, Sara Hossain, Howard Koh, Gorik Oams, Mirta Roses Periago, Rodrigo Uprimny & Alicia Ely Yamin, *The Legal Determinants of Health: Harnessing the Power of Law for Global Health and Sustainable Development*, 393 LANCET COMMISSIONS 1857, 1857 (2019).

16. *Id.*

17. *Id.*

18. *Id.*

19. *Health Law*, WORLD HEALTH ORGANIZATION, https://www.who.int/health-topics/health-laws-and-universal-health-coverage#tab=tab_1 [https://perma.cc/46Y6-BZ58] (last visited Apr. 1, 2022).

20. WORLD HEALTH ORGANIZATION, TIME TO DELIVER: REPORT OF THE WHO INDEPENDENT HIGH-LEVEL COMMISSION ON NONCOMMUNICABLE DISEASES 12 (2018).

21. Gostin *et al*., *supra* note 15, at 1895.

22. Congress throughout the 1950's and 1960's failed to regulate Big Tobacco. *See* Allan Brandt, THE CIGARETTE CENTURY: THE RISE, FALL, AND DEADLY PERSISTENCE OF THE PRODUCT THAT DEFINED AMERICA 5 (2009).

market agents to regulate social harm."[23] Furthermore, there is a "functional need for enforcement by private parties to ensure reliable regulation of wrongdoing."[24] Litigation has been criticized as a limited tool for advancing equitable access to health because it is argued to be less effective and less uniform than other regulatory measures.[25] However, litigation presents the unique opportunity to hold industry actors accountable and create binding regulations on industry actors without relying on action from the political branches.[26] Criticism of health litigation stems from "Americans hav[ing] a great distrust of private regulation in general and of private litigation in particular," but "[r]egulation of wrongdoing by private parties . . . is often an institutional feature of our public law."[27] Therefore, while Americans may be apprehensive of private enforcement, private enforcement may be best accepted as a fundamental feature of the American legal system.[28]

Litigation is further criticized as costly and time consuming; however, contingent attorneys' fees can make the process more accessible to plaintiffs seeking justice who do not have the funds available to front litigation costs.[29] Finally, litigation does not need to be viewed as a substitute for any of the other legal tools available for NCD prevention advocates. Instead, litigation can be used to supplement the areas where legislation, regulation, and taxation are lacking.

III. USE OF SETTLEMENT

The use of settlement agreements has been criticized as a "highly problematic technique for streamlining dockets."[30] However, the benefits of settlement go far beyond docket streamlining. The Civil Justice Reform Act of 1990 promotes "arriving at a settlement in appropriate cases as early as possible or attempting to identify methods for resolving it as expeditiously and economically as possible."[31] Therefore, streamlining dockets is a benefit of settlement that has been expressly recognized. However, settlement agreements are argued to be favorable, beyond docket streamlining, for meeting the following goals: (1) party-

23. J. Maria Glover, *The Structural Role of Private Enforcement Mechanisms in Public Law*, 53 WM. & MARY L. REV. 1137, 1146 (2012).

24. *Id.*

25. Bryan Thomas & Lawrence O. Gostin, *Tackling the Global NCD Crisis: Innovation in Law and Governance*, 41 J.L. MED. & ETHICS 16, 16 (2013).

26. The Tobacco Master Settlement and Juul-North Carolina Settlement Agreement contain terms which regulate corporate behavior, without action from the legislative or executive branches. *See* PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 4; Kaplan, *supra* note 11.

27. Glover, *supra* note 23, at 1140–41.

28. *See id.*

29. *See* Shmuel Leshem, *Contingent Fees, Signaling and Settlement Authority*, 5 REV. L. & ECON. 435, 436 (2009).

30. Owen M. Fiss, *Against Settlement*, 93 YALE L.J. 1073, 1075 (1984).

31. Civil Justice Reform Act of 1990, 28 U.S.C. §§ 471–82 (2018).

preference, (2) cost-reduction, (3) superior-outcomes, and (4) superior general effects.[32]

Settlement agreements offer many promising opportunities, especially in the effort to combat NCDs, because settlement agreements can (1) provide funds for public programming, (2) include provisions that regulate corporate action, (3) publish corporate documents, and (4) create costs associated with negative corporate behavior.[33] The Tobacco Master Settlement Agreement, the Juul-North Carolina Settlement Agreement, and the Opioid Purdue Pharma-Sackler Family Settlement Agreement provide insight into the efficacy of the use of settlement agreements to combat the rising prevalence of NCDs.[34] These settlement agreements show the significant potential that settlement agreements have in reaching goals associated with NCD prevention, yet also provide many lessons for the future of crafting settlement agreements so that they are most beneficial to plaintiffs and their goals of pursuing justice.[35]

IV. CASE STUDY 1: TOBACCO MASTER SETTLEMENT AGREEMENT

A. OVERVIEW OF SETTLEMENT

The Tobacco Master Settlement Agreement is one of the most prominent health settlement agreements in U.S. history and provides many lessons for the future of settlement agreements addressing the rise in NCD rates across the United States. The Master Settlement Agreement ("MSA") was reached in 1998 to settle lawsuits brought by numerous U.S. states against the four largest cigarette manufacturers to recover costs incurred to treat cigarette smokers who were sick or dying.[36] The MSA requires that the tobacco industry pay billions of dollars annually to the settling states in perpetuity, and includes numerous regulatory provisions targeted at limiting tobacco use in the United States.[37] The parties to the MSA include forty-six U.S. states, four U.S. territories, the District of Columbia (collectively, the MSA States), and the country's four largest cigarette manufacturers: Phillip Morris Incorporated (now Phillip Morris USA Inc.), R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, and Lorillard Tobacco Company (collectively, the MSA Tobacco Manufacturers).[38]

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32. Marc Galanter & Mia Cahill, *Most Cases Settle: Judicial Promotion and Regulation of Settlements*, 46 STAN. L. REV. 1339, 1350–51 (1994).

33. *See* PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 4; Hoffman, *supra* note 11; Kaplan, *supra* note 11.

34. *See* PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 4; Hoffman, *supra* note 11; Kaplan, *supra* note 11.

35. *See* PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 4; Hoffman, *supra* note 11; Kaplan, *supra* note 11.

36. PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 1–2.

37. *Id.*

38. *Id.*

B. TERMS OF SETTLEMENT

MSA States were guaranteed three different types of payments through the MSA: initial, annual, and strategic contribution payments.[39] The initial payments required that the MSA Tobacco Manufacturers pay approximately $12.75 billion to the MSA States within the first five years of the MSA's execution date.[40] Annual payments are to be paid in perpetuity from the MSA Tobacco Manufacturers to the MSA States, which vary yearly based on calculations of national cigarette sales.[41] Lastly, MSA States may earn strategic contribution payments which serve as bonuses for states who invested resources in the litigation that led to the settlement agreement.[42] The MSA funds were intended to mitigate youth smoking and promote public health measures.[43] However, state legislatures are empowered to decide how the funds are spent, and there is no requirement that the funds are spent toward their intended purpose, resulting in a vast majority of the funds being spent on non-tobacco related matters.[44]

In addition to the payment of settlement funds, the MSA has four main regulatory provisions on restricting advertising, limiting lobbying, creating a national tobacco control foundation, and publishing non-privileged documents disclosed during the tobacco litigation discovery period.[45] Some of the most important restrictions on tobacco marketing and advertising established by the MSA include that the MSA:

> [1] Eliminates tobacco transit ads and billboards (except at retail outlets).
>
> [2] Prohibits the use of cartoon characters to promote tobacco products.
>
> [3] Prohibits tobacco brand name merchandise (e.g., hats, t-shirts), except at tobacco-sponsored events.
>
> [4] Prohibits tobacco brand-name sponsorship for concerts, events in which any contestants are under 18, or for football, baseball, soccer or hockey (except for Brown & Williamson's continued sponsorship of either the Kool Jazz Festival or the GPC Country Music Festival).
>
> [5] Limits other tobacco brand-name sponsorships to one event or series (such as the Winston cup race tour) annually per manufacturer.
>
> [6] Permits free tobacco-product distributions only at locations where children are not permitted.
>
> [7] Restricts offers of non-tobacco items or gifts based on proof of purchase to adults.

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39. *Id*. at 4–5.
40. *Id*.
41. *Id*.
42. *Id*.
43. *Id* at 3.
44. *Id*. at 8.
45. *Id*. at 5–6.

> [8] Prohibits the use of non-tobacco brand names (such as Harley Davidson Cigarettes) on tobacco products.
>
> [9] Reaffirms previously agreed upon prohibition on tobacco product placement in movies and on TV.[46]

In addition to these limitations on advertising and marketing, the settlement agreements established the American Legacy Foundation (now named the Truth Initiative) which is a public education program designed to mitigate youth smoking.[47] Further, the agreements dissolved the Tobacco Institute, the Council on Tobacco Research, and the Center for Indoor Air Research, which the tobacco industry used to push pro-industry research.[48]

The MSA settles lawsuits involving state and local governments; however, the MSA does not prevent class-action lawsuits or lawsuits brought by individuals, labor unions, or private health-care insurers who are impacted by the tobacco industry.[49]

C. RESPONSE TO SETTLEMENT

Parties to the MSA are reported to have actively sought the settlement agreement "to avoid the further expense, delay, inconvenience, burden, and uncertainty of continued litigation."[50] Additionally, the MSA States indicated satisfaction with the settlement to "reduce Youth smoking, to promote the public health and to secure monetary payments."[51] Yet, in years since the MSA agreement, its impact has been criticized as lackluster.[52] The MSA does not require the MSA States to apportion settlement revenues to tobacco prevention and cessation.[53] In the Fiscal Year 2022, the MSA States will collect an estimated $27 billion from the settlement and taxes.[54] However, an estimate of only 2.7% ($718.5 million) will be spent on tobacco prevention and cessation efforts.[55] The Centers for Disease Control and Prevention ("CDC") has created individualized recommendations for tobacco prevention spending for each state, yet only ten of the MSA States (Alaska, California, Delaware, Hawaii, Maine, North Dakota, Oklahoma, Oregon, Utah, and Wyoming) are spending 50% or more of the CDC recommendation

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46. CAMPAIGN FOR TOBACCO-FREE KIDS, SUMMARY OF THE MASTER SETTLEMENT AGREEMENT (MSA) 1 (Jul. 17, 2017), https://www.tobaccofreekids.org/assets/factsheets/0057.pdf [https://perma.cc/NNZ6-BLC6] [hereinafter MSA].

47. PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 1–2.

48. *Id.*

49. *Id.* at 3.

50. *Id.*

51. *Id.*

52. *See* MSA, *supra* note 46, at 6.

53. PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 8.

54. CAMPAIGN FOR TOBACCO-FREE KIDS, *supra* note 13.

55. *Id.*

in Fiscal Year 2022.[56] Connecticut has no reported spending from the MSA on tobacco prevention programming in Fiscal Year 2022.[57]

Allowing state legislatures to determine the use of MSA funds respects the autonomy of MSA States and grants them greater ability to regulate the health and welfare of their citizens based on their state's individualized needs. However, the data suggests that the autonomy has caused MSA States to lose sight of the MSA's intent to combat tobacco use.[58] State legislatures instead have "used tobacco settlement payments to cover budget shortfalls or address fiscal priorities in areas other than tobacco prevention and cessation. In fact, [in a] few states . . . tobacco control programs [are] the smallest state budget category to receive MSA funds."[59]

Furthermore, the regulatory provisions in the MSA have had mixed responses.[60] The establishment of the American Legacy Foundation (the Truth Initiative) has been praised for being successful in educational programming to prevent teen smoking.[61] Yet, the regulatory restrictions on marketing and advertising are criticized as underinclusive.[62] The Campaign for Tobacco-Free Kids argues that the marketing restrictions on the tobacco industry could be improved by restricting internet advertising, newspaper and magazine advertising, direct-mail advertising, signs fourteen square feet or smaller, and the use of human images in advertisements.[63] The changing methods of advertising, specifically the rise in internet advertising, likely could not have been anticipated in 1998 when the MSA was executed. Therefore, advertising restrictions which may be helpful today may not have been anticipated during settlement negotiations.

The MSA has been successful in securing annual funds for states, establishing regulatory provisions for advertising, creating an educational program to prevent teen smoking, and disbanding pro-industry research groups.[64] Yet, the MSA has failed in ensuring the settlement funds are used for their intended purpose and in regulating modern advertising means such as internet advertising.[65] The MSA provides numerous lessons for settlement agreements going forward, specifically the need to earmark funds to ensure they are being distributed for their intended use.

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56. *See id.*
57. *Id.*
58. *Id.*
59. PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 8.
60. *See* Cheryl Healton, *Who's Afraid of the Truth?*, 91 AM. J. PUB. HEALTH 554, 554 (2001); MSA, *supra* note 46, at 1–2.
61. Healton, *supra* note 60, at 554.
62. *See* MSA, *supra* note 46, at 1–2.
63. *Id.*
64. PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 1–2.
65. *See* MSA, *supra* note 46, at 1–2.

V. CASE STUDY 2: JUUL-NORTH CAROLINA SETTLEMENT AGREEMENT

A. OVERVIEW OF SETTLEMENT

The Juul-North Carolina Settlement Agreement, settled to address harms caused by the rise of e-cigarette addiction, represents a modern example of a health settlement agreement.[66] On June 28, 2021, Juul Labs, an electronic cigarette company, entered into a $40 million settlement agreement with the state of North Carolina.[67] The $40 million settlement will be paid over the course of six years and will be used to fund programs that help to both mitigate e-cigarette addiction and research the impact of e-cigarettes.[68] The settlement was reached in response to a lawsuit brought by North Carolina's Attorney General alleging that Juul's marketing techniques targeted young people and created health problems by addicting young people to high levels of nicotine.[69]

B. TERMS OF SETTLEMENT

The Juul-North Carolina settlement goes beyond monetary relief and includes several regulatory terms including the requirement that Juul makes the following business commitments:

> [1] No marketing that appeals to people under the age of 21.
>
> [2] No using most social media advertising, influencer advertising, outdoor advertising near schools, and sponsoring sporting events and concerts.
>
> [3] No claims that compare the health effects of using JUUL with the health effects of using combustible cigarettes in its marketing materials.
>
> [4] No online sales to anyone not age verified by an independent verification system and making sure third-party sales partners do the same.
>
> [5] No retail sales to anyone not age verified using a barcode scanner.
>
> [6] Ensure its products are sold behind counters so shoppers cannot access them without a shop employee's assistance.
>
> [7] Maintain a retailer compliance secret shopper program in North Carolina to ensure these measures are followed and hold accountable retailers that fail.
>
> [8] No new flavors or nicotine content levels without FDA authorization.[70]

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66. *See* Kaplan, *supra* note 11.

67. *Id.*

68. *Attorney General Stein Reaches Agreement with JUUL for $40 Million and Drastic Business Changes*, ATT'Y GEN. JOSH STEIN N.C. DEPT. OF JUST. (June 28, 2021), https://ncdoj.gov/attorney-general-stein-reaches-agreement-with-juul-for-40-million-and-drastic-business-changes/ [https://perma.cc/TE58-67WD].

69. Kaplan, *supra* note 11.

70. ATT'Y GEN. JOSH STEIN N.C. DEPT. OF JUST., *supra* note 68.

Finally, the settlement did not require Juul to admit to any of the allegations, a standard provision of settlement agreements.[71]

C. RESPONSE TO SETTLEMENT

Attorney General Josh Stein of North Carolina viewed the Juul settlement agreement as a huge victory for the state.[72] Attorney General Stein is reported saying, "This win will go a long way in keeping JUUL products out of kids' hands, keeping its chemical vapor out of their lungs, and keeping its nicotine from poisoning and addicting their brains. I'm incredibly proud of my team for their hard work on behalf of North Carolina families."[73] Additionally, Attorney General Stein noted that he will continue to prevent young people from becoming addicted to nicotine but did not explicitly state what his plans entail.[74]

Additionally, Juul Labs is reported as having "urgently sought the settlement", indicating its favorable view of the settlement agreement.[75] A company spokesman, Joshua Raffel, stated, "This settlement is consistent with our ongoing effort to reset our company and its relationship with our stakeholders, as we continue to combat underage usage and advance the opportunity for harm reduction for adult smokers."[76]

Further, public response to the Juul-North Carolina settlement has been largely positive. Matthew Myers, president of the Campaign for Tobacco-Free Kids, praised the settlement as a positive step toward placing Juul under the same or harsher marketing restrictions that are already placed on tobacco companies.[77] However, Myers indicates that action by the Food and Drug Administration is still necessary to fight the youth e-cigarette epidemic.[78]

In conclusion, response of the public and the parties to the settlement agreement has been overwhelmingly positive.[79] Importantly, the settlement agreement provides funding to mitigate e-cigarette addiction and extensively regulates Juul marketing and sales within North Carolina.[80] While it is too soon to evaluate the impact of the settlement agreement, a potential shortcoming may arise if North Carolina fails to use settlement funds for their intended purpose. Furthermore, unlike the Master Settlement Agreement, which had numerous states as parties to the agreement, North Carolina is the only state party to this settlement agreement. This lack of unified effort among states may limit the impact of the settlement agreement, as its terms are only applicable within the state of North Carolina.

71. Kaplan, *supra* note 11.
72. ATT'Y GEN. JOSH STEIN N.C. DEPT. OF JUST., *supra* note 68.
73. *Id.*
74. *Id.*
75. Kaplan, *supra* note 11.
76. *Id.*
77. *Id.*
78. *Id.*
79. *See* ATT'Y GEN. JOSH STEIN N.C. DEPT. OF JUST., *supra* note 68; Kaplan, *supra* note 11.
80. ATT'Y GEN. JOSH STEIN N.C. DEPT. OF JUST., *supra* note 68

The impacts of Juul marketing and sales outside of the state of North Carolina may continue to seep into North Carolina's border, which would limit the effectiveness of the Juul-North Carolina settlement agreement.

VI. CASE STUDY 3: PURDUE PHARMA-SACKLER FAMILY SETTLEMENT AGREEMENT

A. OVERVIEW OF SETTLEMENT

The Purdue Pharma-Sackler Family Settlement Agreement, which was previously approved by U.S. Bankruptcy Court Judge Robert Drain in September 2021, was overturned by U.S. District Judge Colleen McMahon in December 2021.[81]

The proposed settlement, which sought to address harms from the rise in opioid addiction in the United States, is another modern example of a health settlement agreement.[82] Addiction is a non-communicable disease, also referred to as a chronic disease.[83] The opioid epidemic is an ongoing epidemic in the United States, with approximately 500,000 individuals in the United States dying from an opioid overdose from 1999–2019.[84] In September 2019, Purdue Pharma was a named defendant in 2,900 lawsuits, and several Sackler family members, Purdue Pharma's owners, were named defendants in 628 lawsuits.[85]

On September 1, 2021, Purdue Pharma, which manufactured the highly addictive opioid OxyContin, was dissolved as part of the approval of a settlement in U. S. Bankruptcy Court.[86] The settlement agreement would have required Purdue Pharma's owners, the Sackler family, to pay $4.5 billion over a nine year period.[87] However, on December 16, 2021, the settlement agreement was overturned by U.S. District Judge Colleen McMahon for an improper provision that shielded members of the Sackler family from future opioid litigation.[88]

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81. Brendan Pierson, Mike Spector & Maria Chutchian, *U.S. Judge Tosses $4.5 Bln Deal Shielding Sacklers from Opioid Lawsuits*, REUTERS (Dec. 17, 2021), https://www.reuters.com/business/judge-tosses-deal-shielding-purdues-sackler-family-opioid-claims-2021-12-17/ [https://perma.cc/V2WF-Y3DD].

82. Hoffman, *supra* note 11.

83. *Drug Abuse and Addiction: One of America's Most Challenging Public Health Problems*, NAT'L INST. ON DRUG ABUSE (June 1, 2005) https://archives.drugabuse.gov/publications/drug-abuse-addiction-one-americas-most-challenging-public-health-problems [https://perma.cc/YAD2-2LQ2].

84. *Understanding the Opioid Overdose Epidemic*, CTRS. FOR DISEASE CONTROL, https://www.cdc.gov/opioids/basics/epidemic.html [https://perma.cc/VL43-LJPH] (last visited Apr. 1, 2022).

85. Hoffman, *supra* note 11; Joanna Walters, *House of Pain: Who are the Sacklers Under Fire in Lawsuits Over Opioids?*, THE GUARDIAN (Jul. 26, 2019), https://www.theguardian.com/us-news/2019/jul/26/sacklers-opioids-purdue-pharma-oxycontin-opioids [https://perma.cc/25BR-BYTP].

86. Hoffman, *supra* note 11.

87. *Id.*

88. Pierson *et al.*, *supra* note 81.

B. TERMS OF SETTLEMENT

The settlement agreement provided that the settlement funds would go to addiction treatment and prevention initiatives in the United States.[89] Further, the settlement agreement provided that over thirty million documents that may reveal opioid marketing strategies would have been made public.[90] In exchange for the settlement agreement, the Sacklers would have been released from liability from other pending civil lawsuits, and the Sacklers were not required to admit wrongdoing.[91] The Sacklers were not released from criminal wrongdoing or from wrongdoing from non-opioid related claims against Purdue Pharma.[92] This provision of the settlement agreement that shielded the Sacklers from future opioid related liability is what led to the settlement agreement being overturned.[93]

The settlement agreement provided that payments would be distributed both to states and directly to individuals.[94] A national opioid abatement trust would have distributed money to states, which would then have distributed funds to their localities.[95] Additionally, a separate fund would have been established to distribute money to Native American tribes.[96]

Over 138,000 individuals filed lawsuits against Purdue Pharma and the Sackler family for "death, expenses tied to their addiction or the birth of a child exposed to opioids during pregnancy [(neonatal abstinence syndrome)]."[97] A separate fund would have compensated 130,485 individuals for their injuries, with payments ranging from $3,500 to $40,000.[98] The maximum payment for a death would have been $40,000 while the maximum payment for neonatal abstinence syndrome would have been $10,000.[99]

C. RESPONSE TO SETTLEMENT

There was significant negative reaction to the Purdue Pharma-Sackler Family Settlement Agreement.[100] Judge Robert Drain, the U.S. Bankruptcy Court judge who approved the settlement, is on record stating "This is a bitter result. B-I-T-T-

89. Hoffman, *supra* note 11.

90. *Id.*

91. Brian Mann, *The Sacklers, Who Made Billions From OxyContin, Win Immunity From Opioid Lawsuits*, NPR (Sept. 1, 2021), https://www.npr.org/2021/09/01/1031053251/sackler-family-immunity-purdue-pharma-oxcyontin-opioid-epidemic [https://perma.cc/57J6-U6FD].

92. *Id.*

93. Pierson *et al*., *supra* note 81.

94. Hoffman, *supra* note 11.

95. *Id.*

96. *Id.*

97. Martha Bebinger, *The Purdue Pharma Deal Would Deliver Billions, But Individual Payouts will be Small*, NPR, (Sept. 28, 2021), https://www.npr.org/2021/09/28/1040447650/payouts-purdue-pharma-settlement-sackler [https://perma.cc/9GWW-7RM3].

98. Jan Hoffman, *supra* note 11.

99. Bebinger, *supra* note 97.

100. *See* Hoffman, *supra* note 11.

E-R."[101] Among the public, there was widespread frustration that the Sackler family was released from opioid-related civil liability and that the Sackler family, following the settlement agreement, would remain one of America's wealthiest families.[102] Dr. Joshua Sharfstein, a professor at the Johns Hopkins Bloomberg School of Public Health, stated, "I don't think anybody would say that justice has been done … But this is what the legal system is going to produce. So at this point, the question becomes, how can those resources be used as effectively as possible?"[103] Additionally, there was further frustration that the settlement amount was insufficient. One family that was supposed to receive funds directly from the settlement expressed frustration that, even before attorneys and administrative fees are subtracted, their personal settlement amount would have accounted for less than half of the care expenses they spent on their affected loved one.[104] Ultimately, the lack of redress for plaintiffs called into question if justice would have been truly served by the proposed Purdue Pharma-Sackler Family Settlement Agreement.

In conclusion, the Purdue Pharma-Sackler Family Settlement Agreement provided the benefits of securing funds for states in addiction treatment and prevention services as well as providing money directly to families who suffered injuries due to the opioid epidemic.[105] However, the settlement agreement failed to include regulatory provisions and is criticized for failing to provide sufficient funds for injured parties.[106] Furthermore, the release of the Sacklers from admitting wrongdoing left those harmed from the United States opioid epidemic lacking a sense of justice that the American court system seeks to provide.[107] Ultimately, the release of liability for the Sacklers was an impermissible provision of the settlement agreement and led to the proposed agreement being overturned.[108] This provides insight that while attorneys can craft creative terms into settlement agreement, the terms must still comply with applicable laws.

VII. ETHICS OF SETTLEMENT AGREEMENTS

The Model Rules of Professional Conduct are implicated in any attorney-client relationship.[109] The use of settlement, however, involves special consideration for legal ethics.[110] Model Rule 1.2 provides that "[a] lawyer shall abide by a client's decision whether to settle."[111] This is because "the client [has] the ultimate

101. *Id.*
102. *Id.*
103. *Id.*
104. Bebinger, *supra* note 97.
105. Hoffman, *supra* note 11.
106. *See id.*; Bebinger, *supra* note 97.
107. Hoffman, *supra* note 11.
108. Pierson *et al.*, *supra* note 81.
109. *See* MODEL RULES pmbl & scope.
110. *See id.* at R. 1.2.
111. *Id.*

authority to determine the purpose served by legal representation."[112] This authority granted to clients follows from the Model Rule Preamble which states that "A lawyer . . . is a representative of clients."[113] Importantly, as representatives of clients, attorneys are service providers to clients and should always represent both the client's decisions and best interests.[114]

Settlement has been regarded as a problematic tool because "consent is often coerced."[115] Importantly, it is an attorney's role to advise their client on the consequences of any decision surrounding litigation.[116] Of key concern when seeking settlement is for an attorney to be certain that the decision of whether to settle was the client's own decision.[117] An attorney may reasonably believe that a settlement will best serve the client's goals; however, it is still critical for the attorney to inform the client of other alternatives so that the client's decision is informed and uncoerced.[118] If a client decides that a settlement agreement is not in their best interest, an attorney is obligated to deny settlement per Model Rule 1.2.[119]

Further, when including regulatory provisions in settlement agreements, attorneys need to give special care to comply with client objectives. In health litigation, settlement agreements may serve the public interest by including terms that regulate corporate behavior broadly and are not specifically directed toward plaintiffs. These terms are permissible to be included, as evidenced by the Tobacco Master Settlement Agreement of 1998 and the Juul-North Carolina Settlement Agreement of 2021.[120] However, inclusion of these terms must be aligned with the client's litigation objectives. Attorneys involved in health litigation need to pay special attention that they are serving as representatives to their own clients and not to unnamed persons. If a client decides one of the client's objectives is to regulate greater corporate behavior, that is permissible. However, serving as a representative, the attorney does not have autonomy to take this discretion into the attorney's own hands.[121]

Under Model Rule 1.4, an attorney "shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."[122] A lawyer's reasonable compliance with Model Rule 1.4 will help mitigate the concern surrounding coerced consent in settlement agreements. To

112. *Id*. at R. 1.2 cmt. 1.
113. *Id*. at pmbl & scope.
114. *See id*.
115. Fiss, *supra* note 30, at 1075.
116. *See* MODEL RULES R. 1.2 cmt. 1.
117. *Id*.
118. *Id*.
119. *Id*. at R. 1.2.
120. The Tobacco Master Settlement Agreement and the Juul-North Carolina Settlement Agreement both include terms regulating corporate conduct broadly. *See* PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 4; Kaplan, *supra* note 11.
121. *See* MODEL RULES R. 1.2.
122. *Id*. at R. 1.4.

meet Model Rule 1.4's obligation, the attorney must inform the client of the shortcomings of settlement agreements.[123] In particular, the Tobacco Master Settlement Agreement has raised concerns surrounding the misuse of settlement funds, and the Purdue Pharma-Sackler Family Settlement Agreement raises concerns surrounding the sufficiency of settlement funds.[124] If a client's litigation objective is to secure funds for specified purposes, or to secure a specified amount of funds, it is imperative that the attorney discusses with clients the likelihood of these outcomes. Finally, many settlement agreements include no-fault provisions, which expressly disclaim the defendant from admitting any fault regarding the plaintiff's claims.[125] As evidenced by the response to the Purdue Pharma-Sackler Family Settlement Agreement, some plaintiffs find this to be unsettling and a miscarriage of justice.[126] Furthermore, these provisions may fail to comply with existing law. Attorneys should directly address these concerns with clients to comply with Model Rule 1.4.[127]

Finally, settlement agreements may raise ethical concerns involving contingent fee agreements.[128] Contingent fees may be utilized by plaintiffs in NCD litigation disputes to help mitigate plaintiffs' upfront expenses. Contingent fees provide a benefit to plaintiffs because plaintiffs do not have to pay their attorneys unless the case is handled successfully. According to Model Rule 1.5, contingent fees must be reasonable.[129] If the NCD litigation involves a contingent fee within the attorney-client relationship, the attorney may have an incentive to push the client toward settlement to ensure the attorney's own payment.[130] If the client does not accept a settlement and the client loses on the merits of the cases, the attorney is not awarded any income for the attorney's labor.[131] This contingent payment method, therefore, can make settlement a favorable outcome for attorneys.[132] It is essential that the attorney complies with Model Rule 1.2 surrounding the client's decision about settlement despite what the attorney's preference for the litigation outcome may be.[133]

It is imperative that attorneys involved in health litigation disputes strictly comply with Model Rule 1.2, Model Rule 1.4, and Model Rule 1.5 to mitigate

123. *Id*.
124. *See* PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 8; Hoffman, *supra* note 11.
125. *See* Hoffman, *supra* note 11.
126. *Id*.
127. *See* MODEL RULES R. 1.4.
128. *See id*. at R. 1.5.
129. *Id*.
130. Leshem, *supra* note 29, at 1.
131. *Id*.
132. *Id*.
133. *See* MODEL RULES R. 1.2.

ethical concerns.[134] Strict compliance with the *Model Rules* will help to prevent issues surrounding coerced consent in NCD litigation.[135]

VIII. ANALYSIS OF SETTLEMENT EFFICACY

Settlements have apparent strengths and weaknesses. While there are some substantial downsides to settlement agreements, these drawbacks can be effectively remedied with due care.

A. STRENGTHS OF SETTLEMENT AGREEMENTS

Settlement agreements are beneficial because they can (1) provide funds for public programming, (2) include provisions that regulate corporate action, (3) publish corporate documents, and (4) create costs associated with negative corporate behavior.[136]

1. PROVIDE FUNDS FOR PUBLIC PROGRAMMING

The Tobacco Master Settlement Agreement, the Juul-North Carolina Settlement Agreement, and the Purdue-Pharma-Sackler Family Settlement Agreement all purported to provide millions, or billions, of dollars in funding directly to aggrieved individuals, organizations, and states to both prevent and redress injuries.[137] State and federal budgets are approved through political processes in the United States.[138] Therefore, funding public programming combatting the rise in NCDs faces similar political barriers as instituting effective legislation because it relies on action from the political branches of government. The use of settlement agreements to provide funding for NCD prevention allows these funds to be secured with lessened involvement of the political process. Furthermore, funding political programming this way ensures that corporations causing harm are the ones facing the financial burden of their harm rather than taxing communities that are already burdened by the actions of corporations. Settlement agreements serve as a beneficial way to both hold corporate actors accountable and to secure funds desperately needed for public programming.

2. REGULATION OF CORPORATE ACTION

A unique benefit of settlement agreements is their ability to include terms which regulate corporate action without involvement of the political branches of government. Therefore, settlement agreements are highly beneficial in times

134. *See id*. at R. 1.2–1.5.

135. Leshem, *supra* note 29, at 1.

136. *See* PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 4; Hoffman, *supra* note 11; Kaplan, *supra* note 11.

137. *See* PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 4; Kaplan, *supra* note 11; Hoffman, *supra* note 11.

138. *See* PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 8.

when political will is insufficient to pressure legislators to act. Both the Tobacco Master Settlement and Juul-North Carolina Settlement agreements contain numerous provisions regulating corporate action, specifically about the use of advertisements.[139] The use of settlement agreements to regulate corporate action allows aggrieved individuals to play a direct role in the modification of corporate behavior and not force individuals to rely on the political branches to act. The inclusion of terms to regulate corporate action may provide many beneficial outcomes including satisfying a client's desire for justice and preventing future harms.

3. PUBLICATION OF CORPORATE DOCUMENTS

Both the Tobacco Master Settlement Agreement and the Purdue Pharma-Sackler Family Settlement Agreement purported to make previously private corporate documents public.[140] These documents are a valuable tool for legislators and regulators to use when further regulating corporations. Knowledge of valuable corporate information ultimately allows for the creation of effective regulations on recent data, rather than regulations created based on obsolete or speculative information.

4. CREATION OF COSTS ASSOCIATED WITH NEGATIVE CORPORATE BEHAVIOR

Litigation can serve as "[i]ndirect regulation . . . [because] litigation creates disincentives for businesses to make and sell unsafe or hazardous consumer products."[141] Therefore, while settlement agreements may regulate corporate behavior through their specific terms, the threat of litigation and settlement may itself regulate corporate behavior by serving as a deterrent of bad behavior. Corporations are incentivized to modify their behavior both to avoid costs of litigation and to avoid potential damages or settlement payments. Therefore, settlement agreements against one corporate actor may help to shape the behavior of other corporations.

B. LIMITATIONS OF SETTLEMENT AGREEMENT AND SOLUTIONS

Limitations in settlement agreements for combatting NCDs that need to be overcome include (1) misuse of settlement funds by state legislatures, (2) lack of stakeholder involvement, (3) possible coercion among plaintiffs involved in the suits, and (4) misalignment of state regulations.[142] Solutions to the limitations of

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139. *See* PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 5; Kaplan, *supra* note 11.

140. *See* PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 6; Hoffman, *supra* note 11.

141. Gostin *et al.*, *supra* note 15, at 1864.

142. *See* CAMPAIGN FOR TOBACCO-FREE KIDS, *supra* note 13; PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 8; Sheila Kaplan, *supra* note 11; THE WHITE HOUSE, *supra* note 13.

settlement agreements include (1) earmarking funds to ensure they are properly allocated, (2) consulting with public health experts and stakeholders, (3) following strict attorney compliance with the Model Rules of Professional Conduct, and (4) including multiple states as parties to the agreement.[143]

1. THE MISUSE OF SETTLEMENT FUNDS BY STATE LEGISLATURES

A primary benefit of settlement agreements is their ability to secure funding for public programming. The Master Settlement Agreement, however, provides insight into how settlement funds are misallocated. In Fiscal Year 2022, only 2.4% of the Master Settlement Agreement funds are estimated to be spent toward tobacco prevention or cessation efforts.[144] Therefore, while the agreement has been successful in securing billions of dollars for states annually from the tobacco industry, it has been unsuccessful in ensuring that the funds are being used for their intended purpose.[145] This demonstrates a large shortcoming of the Master Settlement Agreement and raises concerns about whether plaintiffs' litigations objectives were met by the relief provided.

The potential misuse of settlement funds by state legislatures can be overcome by earmarking settlement funds for specified uses and keeping them separate from the general state treasury. To combat concerns surrounding the proper use of future opioid settlement funds, the Office of National Drug Control Policy, in collaboration with the O'Neill Institute at Georgetown University Law Center, the Center for U.S. Policy, and Brown & Weinraub PLLC, released a model law, the Model Opioid Litigation Proceeds Act, for state legislatures to follow.[146] The model law suggests that states create "a dedicated Fund separate from the state's general treasury fund that is designated for targeted purposes" and "[e]nsure that proceeds deposited into the Fund remain separate from the state treasury's general fund."[147] Further, the model law recommends that "a council of diverse stakeholders be established to ensure robust and informed public involvement, accountability, and transparency in allocating and accounting for the monies in the Fund."[148] If states are to follow these parameters in opioid settlement agreements and subsequent health settlement agreements, issues surrounding the misuse of settlement funds may be effectively mitigated.

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143. *See* CAMPAIGN FOR TOBACCO-FREE KIDS, *supra* note 13; PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 8; Sheila Kaplan, *supra* note 11; THE WHITE HOUSE, *supra* note 13; MODEL RULES R. 1.2–1.5.

144. CAMPAIGN FOR TOBACCO-FREE KIDS, *supra* note 13.

145. *Id.*

146. THE WHITE HOUSE, *supra* note 13.

147. *Id.*

148. *Id.*

2. LACK OF STAKEHOLDER INVOLVEMENT

Another concern arising from the use of settlement agreements is that settlement agreements are not created by public officials or public health experts. Settlement agreements may not be as effective as legislation or regulations which rely prominently on research by experts in the health field. This lack of expert involvement may lead to issues of insufficient regulatory terms or terms which become obsolete after the agreement. The Master Settlement Agreement was created at a time when advertising was not dominated by the online market, and therefore, the regulatory provisions within do not cater specifically to modern advertising needs.[149] The Juul-North Carolina Settlement Agreement, as it was established in 2021, caters to the modern advertising need of regulating advertisements involving social media influencers.[150] The continued efficacy of settlement agreements is challenged by the rapid advancement of modern technology.

The Model Opioid Litigation Proceeds Act recommends that "a council of diverse stakeholders be established to ensure robust and informed public involvement, accountability, and transparency in allocating and accounting for the monies in the Fund."[151] The use of diverse stakeholders could also be implemented when negotiating the regulatory provisions of settlement agreements. This stakeholder involvement could help to ensure that regulatory provisions are as dynamic as possible and help prevent settlement terms that will soon become obsolete. Therefore, stakeholder involvement may directly help plaintiffs to meet their goals of justice and effective regulation.

3. COERCED CONSENT

The use of settlement agreements creates ethical concerns for attorneys representing clients. If attorneys are not complying with the *Model Rules of Professional Conduct*, there is a risk that attorneys may coerce clients to accept settlement agreements. Attorneys working under contingent fee plans may have a heightened incentive to push clients toward settlement to secure their own payment. However, it is critical that attorneys discuss with clients their litigation goals and the likelihood those goals will be achieved through settlement. Strict compliance with the *Model Rules of Professional Conduct*, specifically Model Rule 1.2, Model Rule 1.4, and Model Rule 1.5, will mitigate concerns surrounding coerced consent in settlement agreements.[152]

149. *See* MSA, *supra* note 46, at 1–2.
150. Kaplan, *supra* note 11.
151. THE WHITE HOUSE, *supra* note 13.
152. *See* MODEL RULES R. 1.2–1.5.

4. MISALIGNMENT OF STATE REGULATIONS

Finally, settlement agreements negotiated state by state may present efficacy issues. The Juul-North Carolina Settlement Agreement of 2021 regulates corporate action only within the state of North Carolina.[153] Settlement with a singular state party may be less effective than a settlement agreement, such as the MSA, with numerous state parties.[154] However, single state settlements may serve to deter bad behavior by non-parties who wish to avoid the costs of damages or settlement themselves.[155] Still, uniform regulations across the United States will be best suited to mitigate corporate harm on a grand scale. Therefore, settlement agreements should seek to be inclusive of as many state parties as possible to be most beneficial.

CONCLUSION

Unless there is an increased willingness of the political branches of government to address the rise in NCDs, legal tools other than legislation will be needed to mitigate this urgent issue. Settlement agreements provide a means to regulate corporate action without the need for action from the political branches. The Tobacco Master Settlement Agreement of 1998, the Juul-North Carolina Settlement Agreement of 2021, and the Purdue Pharma Settlement Agreement of 2021 provide insight into the potential of settlement agreements to combat NCDs and ways to overcome concerns surrounding their limitations. Importantly, settlement agreements can be used in concert with other legal tools and need not be viewed as a substitute for other forms of regulation of corporate behavior.

153. Sheila Kaplan, *supra* note 11.
154. *See* PUBLIC HEALTH LAW CENTER TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 11, at 1–2.
155. *See supra* text accompanying note 141.