

'No Legitimate Basis' For New Opioid Trial, NY AG Insists

By **Hailey Konnath**

Law360 (May 9, 2022, 11:25 PM EDT) -- Teva Pharmaceuticals has offered up "no legitimate basis" for tossing an Empire State jury's verdict finding it liable for the opioid crisis, New York Attorney General Letitia James argued Friday, urging the state court to reject the argument that a significant numbers error made by her office warrants a retrial.

James' office, as well as fellow plaintiffs Nassau and Suffolk counties, lodged a joint opposition to Teva's motion for judgment in its favor or a new trial. The parties spent months at trial last year, before a "carefully selected jury" found that Teva **contributed to the state's crisis of opioid abuse** in December, they said.

The opposition comes in the wake of the revelation earlier this year that the attorney general's estimate — that a Teva unit had pumped **150 billion narcotic pills into the state** — was wrong. The 12-figure error has led to charges of deliberate dishonesty and the campaign to erase the first-of-its-kind verdict.

But James' office and the counties said Friday that the gaffe didn't constitute an instruction to the jury nor was it improper.

"Counsel simply stated the correct figure — '1.162 billion pills, not 150 billion pills' — and that he hoped he was clarifying a fact by providing the correct number," they said. "Defendants cite no case and offer no explanation for how such an innocuous statement of uncontested fact constitutes an instruction, let alone warrants a new trial."

Teva and its subsidiaries are asking the court to "usurp" the jury's fact-finding authority and hand them the result they wanted but couldn't achieve, according to the opposition. And not for the first time — the pharmaceutical companies filed multiple motions for a mistrial throughout the trial, the attorney general's office and counties said.

The companies "provide no legitimate basis for tossing the jury's verdict or subjecting the court, its staff, plaintiffs and the community to a complete do-over," the plaintiffs said. The companies' motion hinges on arguments already rejected by the court, they said.

"Indeed, defendants fail to raise any post-trial substantive arguments at all, let alone establish that the jury's decision was 'utterly irrational,'" they said.

"Ultimately, there is no basis in law or fact for the court to set aside the verdict and order a new trial, and much less to enter a directed verdict in favor of defendants," the plaintiffs continued. "The ... motion should be denied in full, and the parties should proceed to the adjudication of the second half of their bifurcated public nuisance claim at the earliest juncture."

James and the counties alleged that Teva created an oversupply of opioids, contributing to the epidemic. In its December decision, the Suffolk County jury found that Teva was responsible for creating a public nuisance in Suffolk and Nassau counties. Still, it found that New York bore 10% of the responsibility for the crisis. The jury also found that drug distributor Anda Inc., which is owned by Teva, contributed to the crisis in the counties; the state did not name Anda in its suit.

It was the second verdict from a jury in extensive opioid crisis litigation across the country. Teva could be on the hook for billions of dollars in damages — far more than the amounts paid by other drug companies that settled with New York before or during the trial.

In Friday's joint opposition, the attorney general's office and counties said Teva is arguing that the jury's apportionment of liability, which included a 0% finding of liability for Purdue Pharma, suggests the jury was either confused or inflamed.

"In reality, the finding reflects two things: 1) defendants elected to present virtually no evidence against other

manufacturers, including Purdue, and 2) the jury faithfully followed the court's instructions to consider only the evidence admitted at trial," according to the opposition.

The counties also filed an opposition to a similar retrial attempt from Anda, arguing that it was "certainly rational" for the jury to find that a public nuisance exists in the counties and the state, and that Anda's conduct — acts both of commission and omission — created, caused, contributed to or maintained the nuisance."

Salvatore Badala, counsel for Nassau County, told Law360 on Monday that after a long and extensive trial, the plaintiffs prevailed. Suffolk County Supreme Court Justice Jerry Garguilo conducted a fair trial, and Teva and Anda weren't prejudiced, he said.

"Teva and Anda even decided to try and blame their fellow defendants, only after they left the courtroom," Badala said. "But, that strategy proved futile when the jury found Teva (its subsidiaries) and Anda wholly responsible in Nassau and Suffolk counties."

"We hope we can have our second phase trial soon so that we can get the people in New York the help they need," he added.

Joseph Ciaccio, who's also representing Nassau County, added, "[W]e remain thankful that, after hearing around six months of evidence, the jury agreed that these companies should be held responsible, and we look forward to moving to the next phase of the case soon."

James' office, the pharmaceutical companies and counsel for Suffolk County didn't immediately respond to requests for comment late Monday.

Many of the pending cases in the sprawling opioid litigation in New York were recently placed under the direction of a New York City-area court in the hopes of speeding things along. In an April order, the state's Litigation Coordinating Panel **shifted supervision** of more than 100 cases from Suffolk County Supreme Court to Westchester County Supreme Court, finding that the latter location offers practical convenience that will accelerate long-running lawsuits against sellers of prescription narcotics.

In addition to geographic issues, Monday's order suggested that it would be unrealistic to ask Justice Garguilo to continue managing the mammoth litigation.

New York is represented by John Oleske, Monica Hanna, Andy Amer, Leo O'Toole, Diane Johnston, Jennifer Simcovitch and Eve Woodin of the Office of the New York State Attorney General.

Suffolk County is represented by Justin Presnal, Jayne Conroy, Thomas I. Sheridan III and Sarah S. Burns of Simmons Hanly Conroy LLC.

Nassau County is represented by Salvatore C. Badala and Joseph L. Ciaccio of Napoli Shkolnik PLLC.

Teva and its subsidiaries are represented by Harvey Bartle IV, Mark A. Fiore, Nancy L. Patterson, Martha A. Leibell, Brian M. Ercole, Pamela C. Holly, Randall M. Levine, Aislinn R. Klos and Evan A. Ormond of Morgan Lewis & Bockius LLP.

Anda is represented by Rachel E. Kramer, James W. Matthews, Ana M. Francisco and Katy E. Koski of Foley & Lardner LLP.

The cases are In re: Opioid Litigation, case number 400000/2017; County of Suffolk v. Purdue Pharma LP et al., case number 400001/2017; County of Nassau v. Purdue Pharma LP et al., case number 400008/2017; and State of New York v. Purdue Pharma LP et al., case number 400016/2018, all in the Supreme Court of the State of New York, County of Suffolk.

--Additional reporting by Jeff Overley and Emily Field. Editing by Jay Jackson Jr.