

Drugmaker's Opioid Settlement Offer Gains Ground With States



Opioid makers and distributors who proposed paying almost \$50 billion to resolve U.S. lawsuits over the addictive drugs are drawing more support from states, including California and New York, as pressure mounts for a deal before a trial starts next month, people with knowledge of the talks said.

But nearly two dozen states and most of the cities and counties suing to hold the industry responsible for the havoc and high costs of the opioid epidemic say the terms still aren't good enough.

A Feb. 22 vote by the members of the National Association of Attorneys General found that 35 states and U.S. territories — representing about 70% of the U.S. population — back offers by Johnson & Johnson, McKesson Corp. and other opioid companies, people familiar with the results said. The proposal includes more than \$23 billion in cash as well as donations of drugs and other services valued at more than \$26 billion over nearly two decades.

That's a pickup of seven states plus one U.S. territory since the offer was unveiled in October, according to the people, who asked not to be identified because they weren't authorized to speak publicly. The pro-settlement state attorneys general are pushing the deal to resolve more than 2,500 lawsuits seeking to recover billions spent on drug treatment, police services and the like. More than 400,000 Americans have died of opioid overdoses over two decades.

Shares of McKesson rose more than 2.4% on news of the additional support for the settlement before declining along with much of the

market. AmerisourceBergen Corp. rose more than 1.8% on the news before giving up its gains.

Another 19 states plus Puerto Rico, along with a majority of the suing cities and counties, say the current offer doesn't provide enough money fast enough. Although the companies want to strike a deal before next month's state trial in New York, their lawyers have said they won't move forward with the deal unless a "critical mass" of states, cities and counties support it, the people said.

It's unclear what they consider a critical mass. Richard Ausness, a University of Kentucky law professor who has been tracking the opioid suits, said no matter how many states sign on, the companies won't be interested until almost all the states, cities and counties are willing to drop their suits.

"I'm sure the companies would like to pay out this settlement once rather than two or three different times to accommodate different groups of states and local governments," Ausness said. "But to get this off their plate, they might be willing to do it piecemeal."

The municipalities say a recent offer by McKesson, Cardinal Health Inc. and AmerisourceBergen to kick in more than \$1 billion to cover some of their legal fees didn't sweeten the proposal enough to get them on board.

"As it stands with communities, the deal with the additional \$1.2 billion over 18 years is not workable," plaintiffs' lawyers Joe Rice, Paul Hanly and Paul Farrell said in an emailed statement. They are leading the charge for the cities and counties.

AmerisourceBergen spokeswoman Kate Traynor declined to comment on the vote. McKesson spokesman David Matthews, Cardinal Health spokeswoman Erica Lewis and Teva Pharmaceutical Industries Ltd. spokeswoman Kelly Dougherty didn't immediately return calls and emails seeking comment. Jake Sargent, a J&J spokesman, couldn't immediately comment on the vote.

The companies deny wrongdoing and say they were making and distributing a product that was approved by regulators and plays an important role in pain management, despite the abuses.

State and local governments are waging a litigation battle to force the industry to pay what some analysts say may be \$100 billion to compensate them for tax dollars eaten up by the crisis. The suits have been consolidated before a federal judge in Cleveland.

Oklahoma last year won a \$465 million award against J&J in the first opioid case to go to trial. A federal jury was set to hear claims against McKesson and other distributors in October when that case settled for \$260 million. In connection with that accord, the opioid makers and distributors announced their roughly \$50 billion settlement offer. The New York case was the third to be set for trial.

Drugmakers are accused of pushing opioid prescriptions on doctors across the U.S. and downplaying the risks of addiction, while distributors and

pharmacies are accused of turning a blind eye to suspicious orders and failing to meet government requirements on the painkillers.

Lawsuits have swamped some manufacturers, including OxyContin maker Purdue Pharma LP, which sought bankruptcy court protection from creditors in September. Mallinckrodt Plc announced Tuesday that it had reached a \$1.6 billion settlement that will be handled through a Chapter 11 filing. The deal was reported earlier by the Wall Street Journal.

Mallinckrodt, which was named as a defendant in the New York trial, has asked to be dropped from the case while it readies its bankruptcy filing, according to Hunter Shkolnik, one of the local governments' lawyers. That request was denied, he said.

Mallinckrodt spokesman Michael Freitag said the company had no comment on the matter.

Among the states that have recently thrown their support behind the settlement are California and New York, the people said. That may put New York Attorney General Letitia James in an uncomfortable position, they noted. James's lawyers, along with private plaintiffs' attorneys representing two New York counties, are slated to start presenting their cases against McKesson and the other distributors March 23.

James said Monday that while her lawyers continue to prepare for the trial, she's backing the current offer to get funds to areas of the state hard hit by the opioid crisis.

The consolidated case is In Re National Prescription Opioid Litigation, 17-md-2804, U.S. District Court, Northern District of Ohio (Cleveland).