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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

NY AG's Trial Against Opioid Makers Scheduled For January

By **Emily Field**

Law360 (November 7, 2019, 10:18 PM EST) -- The New York attorney general and two Long Island counties will take their suit over the deadly opioid crisis before a jury in January in what could be the second state trial over the epidemic.

Judge Jerry Garguilo of the Suffolk County Supreme Court said the trial will start Jan. 20, when the claims by the state's top cop and Nassau and Suffolk counties against the drug makers, distributors and pharmacies that allegedly fueled the opioid crisis will play out. The trial will be split into two parts, with the first phase to decide on issues of liability and the second on damages, the judge said.

The judge noted the parties were on the cusp of trial on Oct. 21 in the multidistrict litigation in Ohio federal court before a \$260 million settlement was announced, suggesting the parties would be hard-pressed to explain why they wouldn't be ready to go to trial on issues of liability, the judge said.

"A trial limited to the issues of liability may have the effect of eliminating the veritable tsunami of discovery-related practice concerning damages," Judge Garguilo said. "It is the discovery issues related to damages placed before this court, causing the special masters and support staff to expend countless hours."

If the parties don't settle before January, it would be the second state trial in the U.S. over claims that drug companies fueled the opioid crisis. An Oklahoma state judge **in August** ruled that Johnson & Johnson created a public nuisance in the state by exaggerating the benefits of narcotic painkillers and downplaying their addiction risks, ordering the company to pay \$572 million.

A spokesman for J&J, which is named in the New York attorney general's suit, told Law360 Thursday that the company was reviewing the judge's order. A spokeswoman for drug distributor Cardinal Health declined comment.

"After all these years of death and destruction, come January, the actions of the manufacturers and distributors of these deadly drugs will be presented in open court and laid bare for the American people," New York Attorney General Letitia James said in a statement. "We are committed to holding those responsible for a role in the opioid crisis accountable and will not stop fighting for justice for victims."

Drug makers Mallinckrodt LLC, Endo Pharmaceuticals Inc. and Teva Pharmaceuticals USA are also named in the attorney general's suit, as well as drug distributors McKesson and AmerisourceBergen.

The state's claims against Purdue Pharma and its owners, the Sackler family, are in New York bankruptcy court. The judge overseeing that case **on Wednesday** issued a preliminary injunction putting thousands of suits against Purdue on hold until April 8.

Purdue filed for Chapter 11 protection Sept. 15, shortly after it reached a tentative settlement with states in which about 2,000 suits would be dropped in exchange for the Sackler family giving up its stake in the company.

Judge Garguilo said he would honor any stay from the bankruptcy court, although he anticipates

attorneys may ask the bankruptcy court for relief from the stay for the purpose of hearing motions on summary judgment and participating in the trial.

"Nassau County is excited for their day in court and they look forward to having these defendants in court starting on Jan. 20," Salvatore Badala of Napoli Shkolnik PLLC told Law360 on Thursday.

A Mallinckrodt spokesman declined comment. Representatives for the other parties didn't immediately respond to requests for comment on Thursday.

The state of New York is represented by David Nachman, John Oleske, Christopher Leung, Sara Mark, Elizabeth Chesler, Carol Hunt, Diane Johnston, Michael Reisman, Jennifer Simcovitch, Paulina Stamatelos, Lawrence Reina, Conor Duffy, David Payne, Cory Nugent and Lisa Landau of the New York Attorney General's Office.

The counties are represented by Simmons Hanly Conroy LLC and Napoli Shkolnik PLLC.

McKesson is represented by Covington & Burling LLP.

Cardinal Health is represented by Williams & Connolly LLP.

AmeriSourceBergen is represented by Reed Smith LLP and Gibbons PC.

Endo is represented by Arnold & Porter.

Mallinckrodt is represented by Ropes & Gray LLP.

Teva is represented by Morgan Lewis & Bockius LLP.

J&J is represented by O'Melveny & Myers LLP.

The case is In Re Opioid Litigation, case number 40000/2017, in the Supreme Court of New York, Suffolk County.

--Additional reporting by Rick Archer and Daniel Siegal. Editing by Amy Rowe.