

LONG ISLAND / SUFFOLK**Suffolk judge rules counties' suit against opioid makers can go forward**

The manufacturers and distributors of opioids have argued that they can't be held liable for selling a legal product that is regulated and approved by the Food and Drug Administration.

By Andrew Smith

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A Suffolk judge ruled this week that opioid manufacturers and distributors have shown no reason why dozens of suits against them by counties and municipalities from across New York State should be dismissed.

Similar suits from around the state, including those filed by Nassau and Suffolk counties, were consolidated into one action before state Supreme Court Justice Jerry Garguilo in Central Islip, who is hearing Suffolk suit. After he resolves all pretrial issues, the suits will return to their home jurisdictions for trial.

The suits claim the businesses fueled the opioid epidemic through a fraudulent marketing campaign that misrepresented the drugs' safety and effectiveness. They seek compensation for the governmental costs of dealing with opioid addiction, which include higher expenditures on Medicaid, rehabilitation programs, law enforcement and even a greater number of autopsies.

The manufacturers and distributors have argued that they can't be held liable for selling a legal product that is regulated and approved by the Food and Drug Administration, a federal agency charged with protecting public health.

"The FDA has approved the ... opioids at issue in this case as safe and effective for long-term use in treating chronic, non-cancer pain," according to the defendants' motion asking Garguilo to dismiss the lawsuits. They also argued that the cases should be dismissed because generally governments aren't allowed to sue to recoup the cost of providing services and that the counties haven't shown what "public right" was violated.

Garguilo wrote that the companies failed to explain "why public health is not a right common to the general public, nor why such continuing, deceptive conduct as alleged would not amount to interference" with that right.

"As to such legal use, it is at least arguable that the distributors ... were in a position to anticipate or prevent the claimed injuries; it does not seem unfair, therefore, to hold them potentially accountable," Garguilo wrote.

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Paul Napoli of Manhattan, one of the lead attorneys for the counties, said he hopes the trials can go forward as soon as next spring.

"This has had a significant financial impact on counties throughout the state," Napoli said, adding that there is considerable evidence that "these drug pushers" acted fraudulently in promoting the painkillers. "We're seeing more and more culpability," he said.

He said he was encouraged by Garguilo's decision and a similar one issued by the judge last month.

Attorneys for the drug companies did not respond to requests for comment. At least one company has appealed Garguilo's earlier decision declining to dismiss the suit.

The parties are expected in court Thursday to discuss the next steps in the case.

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