

CVS, Walgreens Offer \$10B To End Nationwide Opioid Suits

By **Jeff Overley**

Law360 (November 2, 2022, 8:41 AM EDT) -- CVS Pharmacy and Walgreens, the nation's two largest drugstore retailers, have preliminarily struck deals worth \$10 billion to end thousands of lawsuits targeting their sales of prescription narcotics, the corporations and plaintiffs counsel said Wednesday.



CVS Pharmacy and Walgreens said Wednesday they have preliminarily struck deals worth \$10 billion to end lawsuits targeting their sales of prescription narcotics. (Photo by Tim Boyle/Getty Images)

The two pharmacy chains, which collectively operate nearly 20,000 brick-and-mortar stores, disclosed separate agreements worth roughly \$5 billion apiece in securities filings Wednesday morning. A statement from plaintiffs attorneys in multidistrict opioid litigation confirmed the \$10 billion value and hailed the "landmark agreements-in-principle."

A source familiar with opioid litigation, speaking with Law360 on the condition of anonymity, also confirmed Wednesday that Walmart — which runs the country's third-largest pharmacy network — is expected to settle its nationwide opioid docket for "a little more than \$3 billion."

"I know they don't want to talk about it yet," the source said in an interview.

A Walmart spokesperson declined to comment late Tuesday on any possible settlement, and the statement from MDL attorneys didn't address a potential deal with the big box retailer.

In a quarterly earnings report, CVS said that it entered mediation with state attorneys general and MDL

lawyers in mid-October and has tentatively agreed to pay \$4.9 billion to states, cities and counties, as well as \$130 million to Native American tribes, over the course of 10 years.

In another filing with the Securities and Exchange Commission, Walgreens described resolutions that would send \$4.8 billion to states and almost \$155 million to tribes over a 15-year period. Those resolutions also "provide for the payment of up to approximately \$753.5 million in attorneys' fees and costs over six years beginning in year two of the settlement frameworks," Walgreens said, for a total payout of \$5.7 billion.

"These landmark agreements-in-principle reached with CVS and Walgreens on economic terms totaling more than \$10 billion are an important step in our efforts to hold pharmacy defendants accountable for their role in the opioid epidemic that continues to devastate individual lives, as well as entire cities and states," the MDL's top plaintiffs lawyers said in a Wednesday morning statement.

The pair of 10-figure deals, with payments spread over many years, would only put small dents in the balance sheets of CVS and Walgreens, which are among the wealthiest corporations in America. In conjunction with Wednesday's settlement news, for example, CVS announced that its revenue through the first nine months of 2022 approached \$240 billion.

Like other drug companies, however, CVS and Walgreens have mounted aggressive legal defenses since nationwide opioid litigation commenced roughly five years ago. The litigation threatened drugmakers, wholesalers and pharmacies with damages in the tens of billions of dollars, and individual cases continue to carry the specter of gargantuan verdicts. Several opioid sellers — including Purdue Pharma LP, Mallinckrodt PLC and Endo Pharmaceuticals — have entered bankruptcy amid the onslaught of lawsuits.

Communities nationwide have reeled for years from economic decline and rising crime linked to abuse of heroin, illicit fentanyl and prescription pills, chiefly oxycodone and hydrocodone. Opioid settlements are envisioned as stabilizing forces, enabling government officials to bankroll drug treatment programs that typically carry enormous price tags.

Wednesday's settlements are also expected to include changes to business practices surrounding sales of controlled substances. CVS and Walgreens "have committed to making significant improvements to their dispensing practices to help reduce addiction moving forward," according to the statement from MDL attorneys at Simmons Hanly Conroy, Farrell & Fuller Law LLC, Motley Rice LLC, Baron & Budd PC, Loeff Cabraser Heimann & Bernstein LLP, Robbins Geller Rudman & Dowd LLP, Levin Papantonio Rafferty, Seeger Weiss LLP, Napoli Shkolnik PLLC and Skikos Crawford Skikos & Joseph LLP.

Details on possible changes to dispensing practices weren't immediately available. CVS said in its SEC filing that the settlement's "non-monetary terms are subject to ongoing negotiations." Walgreens' filing cited "certain injunctive terms still subject to negotiation."

The settlements still require states and local governments to sign on, mirroring the opt-in structures of prior nationwide deals in opioid litigation. Those deals have included agreements worth \$26 billion, including attorney fees, with Johnson & Johnson, AmerisourceBergen Corp., Cardinal Health Inc. and McKesson Corp. More recently, Teva Pharmaceuticals and Allergan have also proposed **multibillion-dollar opioid settlements**.

CVS and Walgreens, as well as Walmart, are the main pharmacy defendants in litigation over the nation's devastating opioid epidemic, which has claimed hundreds of thousands of lives over the past two decades and now mainly involves illicit street narcotics. Lawsuits have accused the companies of two types of misconduct: filling vast numbers of opioid prescriptions that obviously weren't for legitimate medical needs, and distributing egregiously excessive amounts of controlled substances to their own stores.

The three companies lost a key trial in Ohio federal court, where the MDL is centered, and were ordered to **pay \$650 million**. Walgreens also **lost another trial** in San Francisco federal court. The defeats led to speculation that the companies **would seek to settle**.

Thomas Moriarty, general counsel of CVS, said in a Wednesday statement that the company is "pleased to resolve these longstanding claims" and that "putting them behind us is in the best interest of all parties."

CVS isn't admitting wrongdoing, and it "will continue to defend against any litigation that the final agreement does not resolve," the company said in its statement.

After its SEC filing became public, Walgreens said in a statement that "this settlement framework ... is in the best interest of the company and our stakeholders at this time." The company added that its pharmacists would "continue playing a critical role in providing education and resources to help combat opioid misuse and abuse."

State attorneys general had little immediate reaction to the settlement news Wednesday. But Texas Attorney General Ken Paxton issued a statement about the CVS deal and said that he "worked closely on these negotiations with the attorneys general of California, Colorado, Connecticut, Delaware, Georgia, Louisiana, Massachusetts, New York, North Carolina, Ohio, Pennsylvania and Tennessee."

The MDL is In re: National Prescription Opiate Litigation, case number 1:17-md-02804, in the U.S. District Court for the Northern District of Ohio.

--Editing by Alyssa Miller.

Update: This story has been updated with more details and with a comment from Texas' attorney general.