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Is Purdue's \$270M Deal Beginning Of End For Opioid Cases?

By **Jeff Overley**

Law360 (March 26, 2019, 9:22 PM EDT) -- One lawsuit down, thousands more to go. That's the upshot of Purdue Pharma's \$270 million settlement of opioid litigation brought by Oklahoma — it's a momentous event, but whether it sends legal dominoes falling all across the country remains to be seen.

The **nine-figure deal** announced Tuesday resolves Purdue's involvement in the most advanced of roughly 2,000 lawsuits blaming drug companies for an epidemic of overdoses that has helped drag down U.S. life expectancy.

Given Purdue's prominence as the manufacturer of OxyContin, its settlement immediately reverberated Tuesday in other cases, including the multidistrict litigation that features more than three-quarters of all the lawsuits filed nationwide against opioid sellers.

"We're hopeful that this is a sign that Purdue and hopefully other companies are serious about trying to do something to fix the problem," Paul Hanly of Simmons Hanly Conroy LLC, a lead attorney for the plaintiffs in the MDL, told Law360 on Tuesday.

"There have been settlement discussions, but I can't tell you any more than that," Hanly added, citing a longstanding gag order regarding the status of settlement talks in the MDL, which targets drug manufacturers, distributors and pharmacies.

But multiple sources, some speaking with Law360 on condition of anonymity, offered insights on where the MDL stands and what Purdue's deal means for settlement aspirations. The MDL is further along than most other cases aside from Oklahoma's, which is still scheduled for a May trial involving Johnson & Johnson and Teva Pharmaceuticals.

One source argued that Tuesday's deal shows Purdue will put real money on the table, if only the MDL plaintiffs back off their dreams of an industrywide settlement rivaling the roughly \$250 billion deal with tobacco companies two decades ago.

"What it says is that Purdue would like to resolve cases if the structure and the amounts are rational," the source said. "And if some of the plaintiffs lawyers don't have stars in their eyes and compare this to tobacco. This is not tobacco."

Another source, also speaking on condition of anonymity, said not to expect any "serious discussions" in the "near-term" on the resolution of the MDL. It's possible that the parties will wait for crucial rulings that are expected by the end of summer to decide summary judgment motions and what evidence will be allowed during the first bellwether trial, which is set for October.

"I suspect that both plaintiffs and defendants will want to see how some of the bellwether trials turn out before they get down to serious settlement negotiations," Richard Ausness, a University of Kentucky College of Law professor, said Tuesday.

But one source said that's not a certainty, arguing that a compromise on settlement terms could happen sooner rather than later.

"I don't think anybody needs to wait" for rulings on summary judgment and evidence, "as long as people are reasonable about their expectations," the source said, speaking on condition of anonymity.

Hunter Shkolnik of Napoli Shkolnik PLLC, a top plaintiffs lawyer in the MDL, cautioned on Tuesday that the Oklahoma case presents a "totally different dynamic" than the MDL, which involves more than 1,600 cases filed mostly by local governments.

"Purdue is negotiating with a state attorney general and no one else ... so there's a big difference between that and the MDL," Shkolnik told Law360.

It's also important that Purdue is more closely associated with the opioid crisis than perhaps any other corporation. The company's notoriety could give it a harder time with a jury, making it more eager to settle than its fellow defendants.

Adam Zimmerman, a Loyola Law School professor, noted on Tuesday that J&J and Teva recently filed briefs that voiced concerns about facing a joint trial in Oklahoma with Purdue.

"There's a good chance that the other defendants may still want to push ahead without Purdue in the trial," Zimmerman told Law360.

Representatives of J&J and Teva had no immediate comment on Tuesday.

Purdue, while immensely profitable, is also smaller than most of the other companies accused of recklessly selling prescription opioids and fostering widespread addiction. That's probably one reason it has reportedly started looking at seeking bankruptcy protection if its opioid liability grows too great.

Oklahoma Attorney General Mike Hunter on Tuesday said that the state's settlement is designed to be "bankruptcy proof." While that's a sensible move, observers told Law360 that bankruptcy still looks unlikely for Connecticut-based Purdue.

According to one source who requested anonymity, Purdue has sufficient resources to settle litigation "as long as people are rational and reasonable in what their expectations are."

It's also possible that Purdue, a privately held company controlled by the Sackler family, may be averse to the transparency and disclosure requirements that are inescapable in bankruptcy proceedings.

"There are very, very few secrets in bankruptcy," Lindsey Simon, an assistant professor at the University of Georgia School of Law, told Law360 on Tuesday.

Motley Rice LLC co-founder Joe Rice, a lead plaintiffs attorney in the MDL, penned a blog post late Tuesday that said Oklahoma's \$270 million settlement suggests that national liability for Purdue and the Sacklers would range from \$10 billion to \$20 billion.

"This was a good first step," Rice wrote, "but we still have a long way to go."

--Additional reporting by Emily Field. Editing by Emily Kokoll and Kelly Duncan.