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

Purdue Says Ch. 11 Stay Can't Be Lifted For NY Opioid Trial

By **Emily Field**

Law360 (April 16, 2020, 8:24 PM EDT) -- Purdue Pharma LP on Wednesday asked a New York bankruptcy judge to reject a bid by pharmaceutical companies and pharmacies who are co-defendants in the New York opioid trial to include the OxyContin maker on the verdict form, saying that it could upset negotiations for a global settlement.

Purdue said that even the potential that it could share liability with the other opioid companies would likely disrupt or even "demoralize" efforts to reach a settlement in its reorganization plan. And if it is found to share fault, that may well impede efforts to build a global settlement, the company said.

"The debtors believe all parties to these discussions are working seriously and in good faith," Purdue said. "But it is hard to see how any allocation of proportionate fault to Purdue could do anything but frustrate these efforts."

Purdue filed for Chapter 11 protection on Sept. 15. Shortly before filing, the company reached a tentative settlement with states under which about 2,000 suits would be dropped, the Sacklers would give up their stake in the company and turn at least \$3 billion over to the estate, and the company would become a public beneficiary trust owned by the plaintiffs with its profits going toward addressing the opioid crisis.

On March 11, pharmaceutical companies and distributors — including Johnson & Johnson, Teva and AmerisourceBergen — asked the bankruptcy court to confirm that the automatic stay does not prevent Purdue from being included on the verdict form in the trial over the state of New York and two Long Island counties' opioid crisis claims.

The trial was scheduled to start March 20, but it has been put on hold indefinitely because of the **coronavirus** pandemic.

The companies argued that if Purdue isn't included, the jury's determination on liability will ignore a "key segment" and result in an unfair allocation of liability to them.

"The automatic stay does not prevent the jury from apportioning fault among all alleged tortfeasors and responsible third parties," the companies said.

On March 18, U.S. Bankruptcy Court Judge Robert Drain agreed to extend an injunction halting opioid lawsuits against Purdue for a further 180 days.

At a hearing, the judge was unpersuaded by arguments that allowing state and county lawsuits against the Sackler family would move Purdue's Chapter 11 case forward and create greater transparency, instead giving both the family and the company another six-month respite from litigation over the part they played in the opioid crisis.

"The manufacturers, chain pharmacies and distributors who were once Purdue's allies and co-conspirators are now desperately seeking any possible way to deflect blame from themselves for the opioid crisis," Hunter Shkolnik of Napoli Shkolnik PLLC told Law360 on Thursday. "Purdue is correct, this fight between them and the co-defendants should stay in bankruptcy court."

A spokeswoman for Purdue said that the company is not a party in the state court litigation, even though the defendants are seeking to add it to the verdict form.

"The Purdue litigation has been consolidated in a federal bankruptcy court where we are working toward a settlement that would be worth more than \$10 billion in value and would address the opioid crisis by, among other things, providing millions of doses of lifesaving opioid addiction treatment and overdose reversal medicines," the spokeswoman said. "Purdue's proposed settlement is designed to speed the delivery of resources and vital medicines that states and local communities can use to address and abate the opioid crisis during a time when resources are needed more than ever."

Counsel for J&J declined comment.

Representatives for the other parties didn't immediately respond to requests for comment 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 State Attorney General's Office.

Suffolk County is represented by Paul J. Hanly Jr., Jayne Conroy, Andrea Bierstein and Thomas I. Sheridan III of Simmons Hanly Conroy LLC.

Nassau County is represented by Hunter J. Shkolnik, Salvatore C. Badala and Joseph L. Ciaccio of Napoli Shkolnik PLLC.

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

Purdue is represented by Marshall S. Huebner, Benjamin S. Kaminetzky, Timothy Graulich, Christopher Robertson and Eli J. Vonnegut of Davis Polk & Wardwell LLP.

AmerisourceBergen is represented by Reed Smith LLP.

Teva is represented by Morgan Lewis & Bockius LLP.

The case is In re: Purdue Pharma LP, case number 19-bk-23649, in the U.S. Bankruptcy Court for the Southern District of New York.

--Additional reporting by Jeff Overley and Rick Archer. Editing by Amy Rowe.

--*This article has been updated with comment from Purdue.*