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## County Says Mallinckrodt Shouldn't Get Separate Opioid Trial

By **Emily Field**

Law360 (April 30, 2020, 5:02 PM EDT) -- Nassau County on Wednesday told a New York judge that Mallinckrodt's bid for a separate opioid trial should be denied as its bankruptcy no longer appears to be imminent and it still has not struck a final deal to settle opioid cases.

Mallinckrodt has asked that the court delay ruling on its request for a separate trial until after a new date has been scheduled for the trial against a host of opioid companies, which has been put on **hold** indefinitely due to the COVID-19 pandemic, according to the filing. But that ignores the fact that the parties have been preparing for trial during this time and Mallinckrodt shouldn't be excused from continuing to prepare, Nassau County said.

"As conceded by Mallinckrodt, it still has not filed for bankruptcy nor has it reached a final deal to globally settle all opioid cases," the county said.

After Mallinckrodt asked for a separate trial, the U.K.-based company struck a deal with its lenders buying it five more years to repay a significant amount of its debt, according to Nassau County.

"The alleged crush of the impending debt restructuring was one basis for the need for the 'impending' bankruptcy," the county said. "Now, with the restructuring behind them, bankruptcy seems to no longer be imminent for Mallinckrodt."

Nassau County is one of multiple New York counties that had planned to go to trial March 20 against a host of companies in the opioid industry until the trial was postponed on March 10.

Right around the same time, Mallinckrodt said the proposed deal to exit opioid litigation had secured the **support** of New York Attorney General Letitia James. Under the proposal, Mallinckrodt would pay \$1.6 billion over eight years to end cases brought by a number of state and local governments.

However, the **state** on April 21 brought insurance fraud claims against the company alleging its misrepresentation of the risks of opioids resulted in medically unnecessary prescriptions.

These are the first charges filed in the state finance department's investigation into the opioid crisis, according to a statement from Gov. Andrew Cuomo.

The charges were not filed before New York Supreme Court Justice Jerry Garguilo, who is overseeing the state and counties' case, and a hearing is set for Aug. 20.

"The state of New York's new action against Mallinckrodt makes clear there is certainly some reason to believe that it does not wish to litigate claims against this defendant in this court alongside Suffolk and Nassau counties but would rather, for some unstated reason, prefer to litigate alone against it in an administrative proceeding," Nassau County said.

Representatives for Mallinckrodt and the state of New York declined to comment Thursday.

"When Mallinckrodt came to court and said we have a deal and will file bankruptcy at some unnamed time in the future, we knew it was a hollow threat and a negotiating tool," Hunter Shkolnik of Napoli

Shkolnik PLLC, counsel for Nassau County, told Law360 on Thursday. "We expect Mallinckrodt to be in trial and the court hearing the horrific story of how the company caused this epidemic."

Nassau County is represented by Napoli Shkolnik PLLC.

Mallinckrodt is represented by Latham & Watkins LLP, Ropes & Gray LLP and Wachtell Lipton Rosen & Katz.

The case is In re: Opioid Litigation, case number 400000/2017, in the Supreme Court of New York, Suffolk County.

--Additional reporting by Jeff Overley and Cara Salvatore. Editing by Janice Carter Brown.

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