

Click to print or Select 'Print' in your browser menu to print this document.

Page printed from: <https://www.law.com/newyorklawjournal/2018/07/17/ny-opioid-litigation-on-fast-track-as-judge-rules-counties-may-press-claims-against-distributors/>

NY Opioid Litigation on Fast Track as Judge Rules Counties May Press Claims Against Distributors

A New York judge presiding over the state courts' multicounty opioid litigation in Suffolk County brought on behalf of a coalition of New York counties, which is being closely watched by courts in other jurisdictions around the country, has refused to toss claims against drug distributors.

By Andrew Denney | July 17, 2018

A New York judge presiding over the state courts' multicounty opioid litigation in Suffolk County brought on behalf of a coalition of New York counties, which is being closely watched by courts in other jurisdictions around the country, has refused to toss claims against drug distributors.



Bottles of Purdue Pharma OxyContin, an opioid medication. Photo: George Frey/Bloomberg LP

The ruling, by Suffolk County Supreme Court Justice Jerry Garguilo, to deny motions to dismiss by pharmaceutical drug distributors named as defendants in the case comes one month after he refused to dismiss suits against a group of drug manufacturers.

The rulings were the “first of their kind” in the United States, said plaintiffs attorney Paul Napoli. He said the decisions place the New York litigation, brought on behalf of some 50 counties, at the head of the pack compared with the federal multidistrict litigation that’s playing out in Ohio and cases proceeding in courts in Pennsylvania, Tennessee and West Virginia.

“This is another major victory for New York in both this litigation and in its battle against the opioid epidemic,” Napoli said in a written statement. “The distributor defendants were entrusted to act as intermediaries between manufacturers and pharmacies, but instead they were integral to the scheme to expand the market for prescription opioids.”

Garguilo said that counties may proceed with claims that a group of distributors that includes McKesson Corp., Cardinal Health, Kinray and AmerisourceBergen Drug Corp., violated New York’s consumer fraud and false advertising laws.

The counties are also moving forward with public nuisance, negligence, unjust enrichment and fraud claims against the defendants.

“The plaintiffs allege that the defendants, acting in concert employed assiduously crafted, multipronged marketing strategies that targeted the general public through websites, print advertisements, and educational materials and publications as part of their scheme to change the perception of the risks associated with prescription opioids and to destigmatize and normalize the long-term use of opioids for chronic nonmalignant pain,” the judge said.

In June, Garguilo denied motions by Purdue Pharma, Endo Health Solutions, Teva Pharmaceuticals, Allergan, Johnson & Johnson's Janssen Pharmaceuticals Inc. and Insys Therapeutics Inc. to dismiss similar claims.

A spokeswoman for McKesson declined to comment, citing pending litigation, while spokespersons for the remaining distributor defendants did not respond to requests for comment.

The New York counties allege that opioid manufacturers and distributors, as well as individual physicians named in the case, worked together a scheme to promote the use of opioids to treat chronic pain by using deceptive marketing techniques on the public and the medical community, which gave rise to the opioid epidemic that is ravaging communities across the country.

The distributors' role in the scheme, the counties allege, was taking part in an "unbranded marketing campaign" in which the distributors provided funding to front groups such as the American Pain Foundation and the American Academy of Pain Medicine and "key opinion leaders" who disseminated deceptive messages about the dangers and benefits of prescription opioid use.

The counties also said the distributors worked as intermediaries between manufacturers and pharmacies, and were "integral" to the scheme by shipping suspicious orders and not taking steps to ensure that the counties were not being oversaturated with opioids.

In effect, the New York counties say they've been stuck with the bills for prescription costs for employees that may not have been paid out had the risks of opioids like OxyContin been widely known, as well as the costs of dealing with the fallout of the epidemic, like combating criminal activity associated with the opioid trade and distributing naloxone to first responders for trying to bring overdosing opioid users back from the brink.

Motions by distributors and manufacturers to dismiss the federal multidistrict litigation in Ohio district court are pending.

As for the New York case, Napoli said the plaintiffs hope to bring the case to trial by spring 2019 and will suggest that he choose four counties—two upstate, two downstate—to serve as bellwethers for the full group of plaintiffs.

Copyright 2018. ALM Media Properties, LLC. All rights reserved.