

Pharmaceutical & Life Sciences News

Entire Opioid Supply Chain Faces First Test in New York Case (1)

By Valerie Bauman

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- All prior opioid lawsuits resulted in settlements
 - Jury trial delayed by coronavirus
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The first lawsuit putting the entire opioid supply chain on trial will begin pretrial hearings Friday in New York State Supreme Court in Suffolk County.

All prior cases, including an Oklahoma state lawsuit and federal multi-district litigation that started in Ohio, wound up taking to court a fraction of the companies that were initially sued. Most parties reached settlements in those cases before trials began.

This time, cities, counties, and New York state will make their case against all of the players, barring a last-minute settlement. The plaintiffs are suing pharmacies, drug distributors and manufacturers for their role in the opioid crisis. They're seeking massive financial payouts to go toward abating the epidemic in communities around New York state.

"This case is significant," said Harry Nelson, founder of the Los Angeles-based health-care firm Nelson Hardiman, who is following the case but not involved.

"It will be the first comprehensive case against not only the leading opioid manufacturers but also, for the first time, the major distributors, including McKesson, Cardinal Health, and AmerisourceBergen," he added. "The trial will give us a view of the evidence to support different theories of liability for the different roles played by distributors and manufacturers in enabling and fueling opioid deaths and other harm."

Plaintiffs' lawyers are eager to connect the dots between those major distributors and the big name pharmaceutical companies, including Johnson & Johnson, Teva, and Endo Pharmaceuticals Inc., as well as major pharmacies such as CVS and Walgreens.

"We're going to lay out the whole case for the court, for the public," said Hunter Shkolnik, who represents some of the plaintiff municipalities.

"This will be the first time the public hears the whole dirty story, the whole integration of the opioid sales chain, which is how it ended up flooding the market," he added.

Attorneys representing the various defendants didn't immediately respond to request for comment.

Potential Strategies

The key question for lawyers watching the trial is whether the various defendants will stick together or shift the blame for the opioid crisis onto each other.

Either way, it's a win-win for plaintiffs, said David Noll, a law professor at Rutgers University who follows the case.

If defendants point the finger at each other, "from a plaintiffs' perspective, that's wonderful, because you have a defendant doing your work for you," he said. "Everyone is conceding there's liability and the task of the court becomes determining who is liable—not if there's liability."

However, if the defendants unite, it will support the plaintiff's assertion that the defendants engaged in a broad conspiracy to flood the market with deadly, addictive drugs, Noll said.

Ultimately, defendants are likely to err on the side of sticking together, said Richard Ausness, a law professor at the University of Kentucky.

"If they can present a united front, they can pool information and resources," he said. "If they fall out, the plaintiffs can use the divide and conquer technique to maybe pick a few of them off."

Hiccups

The Covid-19 pandemic has delayed the New York trial for months.

The case was first filed in 2017 and is now limping toward a trial date, projected for this fall, depending on court rules around allowing jury selection during a pandemic.

The defendants have sought a jury trial, which is impossible for the moment due to the pandemic.

"The judge can't have a jury trial and the defendants objected to a bench trial, so the judge was kind of in limbo," Shkolnik said.

As a result, Justice Jerry Garguilo decided to move forward with the plaintiff's Frye hearings to keep the case moving forward, he said. A Frye hearing gives judges an opportunity to assess the admissibility of scientific evidence, including expert testimony.

It's a step that the plaintiffs' lawyers say they are ready for.

“Soon, the deadly scheme perpetrated by these companies will be presented in open court and laid bare before the American people, and no one will be able to deny the immoral actions that led us here,” New York Attorney General Letitia James said in a statement.

“We are committed to holding each of these companies responsible for their role in the opioid crisis,” she said.

Garguilo issued an order Aug. 10 saying that “meaningful public access” will be made possible for the trial and Frye hearings. The court is “exploring availability” of a live-stream link that would allow the media and general public to watch the case unfold.

Bloomberg Industry Group submitted a letter to the court requesting media access to the proceedings.

The case is In re Opioid Litigation, N.Y. Sup. Ct., Index No. 400000/2017, pretrial hearing scheduled 8/14/20.

(Adds details on video streaming of case in the 24th and 25th paragraphs.)

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