New York Opioid Litigation Won't Be Stayed; Lawyers Seeking 1,000 More County-Plaintiffs

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A New York judge has refused to stay lawsuits by a number of New York counties against opioid manufacturers and distributors, rejecting arguments that the Food and Drug Administration hasn't yet determined whether narcotic painkillers are unnecessarily dangerous - a central question in any litigation.

In a two-page order issued March 14, Judge Jerry Garguilo of the Suffolk County Supreme Court said he found "no compelling reason to impose a stay of proceedings" until the FDA completes its own review of the benefits and risks of opioids. The lawsuits by most of the counties in New York, which have been consolidated in Garguilo's court, are "backward-looking" toward allegedly fraudulent marketing materials and tactics the drug companies used to convince doctors and patients their products had low risk of addiction.

The decision increases the pressure on manufacturers and wholesalers to either win dismissal of these cases or prepare for an accelerated trial schedule. Under New York law, municipal plaintiffs have priority in setting their cases for trial, said Paul Napoli of Napoli Shkolnik, the private law firm representing many of the counties under contingency fee contracts.

"The judge has done what judges around the country have consistently done," Napoli said. "The first hurdle the drug companies are seeking — a stay — is not appropriate for these circumstances and unwarranted."

Napoli said at least 500 of the nation's 3,200 counties have sued and plaintiff lawyers hope to soon get that number to 1,500, which some lawyers consider critical mass for a settlement.

"It's our belief the only way we can get a resolution is to set the matter for trial," Napoli said.

Judge Garguilo hears arguments on motions to dismiss the New York cases on Monday, Napoli said. The defendant companies argue they can't be held liable for selling a legal product sold only with a doctor's prescription whose distribution was controlled and overseen, from manufacturing to retail sales, by federal and state regulators.

The plaintiffs argue manufacturers used a variety of tactics, including misleading marketing materials and highly paid physician-influencers, to convince prescribing physicians their products were safe for treating chronic pain when, in fact, they were highly addictive.

In the order, Judge Garguilo rejected the defendants' claim that the FDA has exclusive authority to determine whether, in effect, opioids should be sold for anything other than relieving the pain of terminal illness. Regardless of what the FDA determines, the judge said, the municipal plaintiffs have the right to seek redress for their costs associated with addiction.

"Because the focus of this lawsuit is on the state of scientific knowledge that existed when the defendants made their marketing claims, there is no risk of inconsistent rulings, and none of the current studies will have any bearing on whether the defendants' representations were misleading when made," the judge wrote. The court isn't being asked to decide the risks and benefits of opioids but whether the defendants misrepresented those risks and benefits, he added.

In case the defendants didn't grasp the judge's ultimate goal, the judge restated his "previously expressed desire" for a "prompt resolution of this matter." The federal judge overseeing multidistrict litigation in Ohio, Judge Dan Aaron Polster, has similarly urged defendants to engage in settlement talks, although a global resolution of the litigation could prove difficult to negotiate.

In addition to hundreds of cases consolidated in federal court, the defendants face a wave of litigation in state court, like the New York cases, as well as lawsuits and investigations by state attorneys general and the federal government. Any settlement would have to protect the defendant companies from future lawsuits over the same issue and that may be difficult to negotiate given all the concurrent litigation in different courts.

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