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NY Judge Allows Opioid Claims to Go Forward Against Sacklers

Suffolk County Supreme Court Judge Jerry Garguilo found two cities and 31 counties could move forward on their claims against the Sacklers, who are current and former directors of opioid manufacturer Purdue Pharma.

By Amanda Bronstad | June 24, 2019

A New York judge has allowed a group of consolidated cases brought by several counties and cities in New York to pursue claims against the Sackler family in order to recoup millions of dollars in costs tied to the opioid crisis.

In a [ruling Friday](#).



Cheryl Juare of Marlborough, Mass., center, leads protesters near the Arthur M. Sackler Museum at Harvard University in Cambridge, Mass. Juare, whose son was addicted to opioids and died of a heroin overdose in 2011, led the demonstration

by parents who've lost children in the addiction epidemic.

(<https://images.law.com/contrib/content/uploads/documents/389/73407/Sackler-dismissal-ruling.pdf>), Suffolk County Supreme Court Justice Jerry Garguilo found two cities and 31 counties had alleged sufficient facts to move forward against the Sacklers on their claims, which include public nuisance, negligence, fraud and New York's consumer fraud and false advertising laws.

"Here, although the court recognizes that the allegations as to certain of the Sacklers are lacking in detail, the plaintiffs have made a sufficient start to warrant discovery on the limited issue of whether any of the Sacklers is a 'primary actor,'" the judge wrote.

The ruling is the first to address whether claims over the opioid crisis could continue against the Sacklers, as current and former directors of opioid manufacturer Purdue Pharma, according to Paul Napoli, co-lead plaintiffs counsel in the New York case.

"The judge has given the right to do jurisdictional discovery, which will be brought, and which will begin to tell the story of each of these individual Sacklers and their relationship to the conduct that's the underlying basis not only to our case but to the attorney general cases," said Napoli, of New York's Napoli Shkolnik. "So, we'll have that first bite of the apple."

In 2018, Garguilo refused to dismiss the claims against several opioid companies, including distributors (<https://www.law.com/newyorklawjournal/2018/07/17/ny-opioid-litigation-on-fast-track-as-judge-rules-counties-may-press-claims-against-distributors/>) and manufacturers (<https://www.law.com/newyorklawjournal/2018/06/18/judge-refuses-drugmakers-bid-to-dismiss-new-york-opioid-cases/>) like Purdue.

The counties later added the Sacklers as individual defendants, as have attorneys general in several states, like Connecticut (<https://www.law.com/ctlawtribune/2019/05/07/abusers-die-emails-allegedly-show-ex->

[purdue-pharma-chief-blaming-victims-of-opioid-crisis/](#)) and [New York \(https://www.law.com/newyorklawjournal/2019/03/28/ny-ag-announces-countrys-most-comprehensive-lawsuit-against-opioid-companies/\)](#), whose case is before the same judge. The Sacklers include former Purdue chairman and president Richard Sackler and seven other members of the Sackler family.

Neither Mary Jo White of Debevoise & Plimpton nor David Bernick, of Paul, Weiss, Rifkind, Wharton & Garrison, who both represent Sackler family members, responded to requests for comment.

According to Friday's ruling, the Sacklers had argued that they were not vicariously liable for the acts of Purdue's board of directors and that the cities and counties had failed to allege that any of them participated in making the alleged misstatements in the complaint. But Garguilo found that, under New York law, a director may be held individually liable for a company's tort action if he or she "directed, controlled, approved or ratified" the decision that led to the injuries. And the complaint alleged the Sacklers, as "controlling directors" of Purdue, oversaw the company's marketing and targeting of doctors, among other things.

As to public nuisance, he wrote, "the Sacklers have failed to establish why public health is not a right common to the general public." A public nuisance claim, he wrote, "may be an appropriate tool to address the consequential harm from the defendants' concerted efforts to market and promote their products for sale and distribution, particularly as such efforts are alleged to have created or contributed to a crisis of epidemic proportions."

He upheld all the other claims, including fraud and consumer fraud allegations under New York law, while refusing to dismiss them on statutes of limitations grounds.

