

# Walmart Confirms \$3B Deal Over Pharmacies' Opioid Sales

By **Jeff Overley**

Law360 (November 15, 2022, 7:45 AM EST) -- Walmart officially revealed a \$3.1 billion offer Tuesday aimed at ending thousands of lawsuits accusing its nationwide pharmacy network of fueling America's deadly crisis of opioid abuse, echoing similar settlements involving CVS Pharmacy and Walgreens.

The 10-figure proposal from Walmart Inc. — the world's largest corporation and America's third-largest pharmacy business — seeks to extinguish more than 2,000 lawsuits brought by cities, counties, states and Native American tribes, as well as the potential legal claims of government entities that haven't yet sued. Details of the resolution were confirmed by the company as well as plaintiffs' counsel, state attorneys general and settlement papers spanning 238 pages.



Walmart said its settlement framework will "provide significant aid to communities across the country in the fight against the opioid crisis," and said the aid would reach state and local governments faster than any other nationwide opioid settlement. (AP Photo/Jae C. Hong, File)

In a Tuesday statement, Walmart said its settlement framework "will provide significant aid to communities across the country in the fight against the opioid crisis, with aid reaching state and local governments faster than any other nationwide opioid settlement to date, subject to satisfying all settlement requirements."

The company added that it "strongly disputes the allegations in these matters," isn't admitting

wrongdoing and "will continue to vigorously defend the company against any lawsuit not resolved through this settlement framework."

In a separate statement, attorneys for local governments in multidistrict litigation acknowledged that Walmart had dispensed fewer opioid pills than its fellow pharmacy chains with national networks. Nonetheless, "Walmart has agreed to expedite its payment so that our nation's communities can access the vast majority of these funds within one year of the agreement's effective date," they said.

The settlement papers indicated that Walmart's total payout will include \$2.4 billion for addiction treatment and related services, \$325 million in attorney fees and costs, and various credits for earlier opioid settlements, including a **\$215 million deal** with Florida.

Walmart on Tuesday pointed to provisions in national and state settlement agreements that specifically said its stores dispensed narcotic painkillers in smaller amounts than other major pharmacies. The national agreement, for example, cited "objective data metrics" as evidence that "Walmart dispensed on average materially fewer and less potent opioids per store than other major chain pharmacies and many independent pharmacies nationwide."

Tuesday's offer comes on the heels of **preliminary settlements** with CVS and Walgreens, which earlier this month said they would pay about \$5 billion apiece to resolve opioid cases. When those deals were announced, a source familiar with opioid litigation, speaking with Law360 on the condition of anonymity, confirmed that Walmart was expected to settle for "**slightly more than \$3 billion.**" But the big-box retailer did not publicly confirm a resolution until Tuesday.

The \$3 billion equates to less than two days of worldwide revenue at Walmart, which in its 2022 fiscal year reported income exceeding \$570 billion.

Most of the opioid suits against pharmacy chains are in multidistrict litigation in Ohio federal court that began in 2017. One of the MDL's bellwether trials tested allegations against Walmart, Walgreens and CVS in Ohio and ultimately produced a **\$650 million verdict** against the three companies, which are appealing at the Sixth Circuit.

The MDL has also targeted drug manufacturers and wholesale distributors, with the largest companies also having agreed to multibillion-dollar settlements. Agreements so far are collectively valued at \$50 billion, although some future payouts are clouded by the bankruptcies of smaller drugmakers.

Confirmed and proposed settlements have been announced with the three pharmacy corporations; wholesale distributors AmerisourceBergen Corp., Cardinal Health Inc. and McKesson Corp.; consulting firm McKinsey & Co.; and drugmakers Johnson & Johnson, Teva Pharmaceuticals Industries Ltd., Allergan PLC, Purdue Pharma LP, Endo Pharmaceuticals Inc., Insys Therapeutics Inc. and Mallinckrodt PLC. The latter four drugmakers have sought bankruptcy protection amid the crush of opioid cases.

With those deals in place, attention is shifting to other pharmacies and drug companies that have largely avoided the litigation spotlight so far. In a nod to that shifting focus, the MDL attorneys on Tuesday said that their work "is far from finished" and that they "will continue to work to hold all those responsible for this epidemic fully accountable and obtain some measure of justice for its catastrophic effects."

The lead MDL negotiators hail from Simmons Hanly Conroy LLC, Farrell & Fuller Law LLC, Motley Rice LLC, Baron & Budd PC, Lieff Cabraser Heimann & Bernstein LLP, Robbins Geller Rudman & Dowd LLP, Levin Papantonio Rafferty, Seeger Weiss LLP, Napoli Shkolnik PLLC and Skikos Crawford Skikos & Joseph LLP.

When the MDL began, the opioid epidemic was killing 50,000 people in the U.S. every year. Fatal overdoses became even more common amid COVID-19, and the latest federal data put the yearly death toll closer to 80,000. Although prescription narcotics were once implicated in a majority of opioid deaths, illegal fentanyl and heroin are now the chief causes.

Separately from the suits encompassed by its settlement offer, Walmart is fighting one of the U.S. Department of Justice's **most ambitious lawsuits** against a seller of narcotic painkillers. The **DOJ's complaint**, which asserts that "Walmart's failures helped to fuel a national opioid crisis," seeks penalties under the Controlled Substances Act. But the case has run into possible trouble following a U.S. Supreme Court decision requiring clear-cut proof of intentional wrongdoing in CSA cases.

As with previous accords to comprehensively conclude opioid litigation, Walmart's agreement Tuesday

contains elaborate provisions outlining minimum participation by states and other government entities. As an initial matter, the agreement calls for at least 43 states to sign on before 2023.

In a Tuesday announcement, New York Attorney General Letitia James said that she and other state attorneys general who led negotiations "are optimistic that the settlement will gain support of the required 43 states by the end of 2022, allowing local governments to join the deal during the first quarter of 2023."

In addition to James, state negotiators included the attorneys general of California, Colorado, Connecticut, Delaware, Illinois, Indiana, Iowa, Louisiana, Massachusetts, Nebraska, North Carolina, Ohio, Pennsylvania, Tennessee and Texas.

The MDL is In re: National Prescription Opiate Litigation, case number 1:17-md-02804, in the U.S. District Court for the Northern District of Ohio.

--Editing by Brian Baresch.