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# \$52B opioid trial ends with tense attorney-judge exchange

**“It took five times for the court to finally get an answer to its question, ‘Is there any evidence that any medically inappropriate prescriptions were written, based upon any statements made by any of the defendants?’”**

**Newport Beach defense attorney Michael Yoder of O’Melveny & Myers LLP said during his closing argument Friday.**

Closing arguments in a \$52 billion opioid bench trial came to a fiery end Friday in Orange County after lawyers representing drug manufacturers pounced on the fact that the judge had sharply questioned the state's counsel about evidence during her closing argument the day before.

In the final days of the first government-initiated action in the nation seeking to hold opioid manufacturers accountable for a role in creating the opioid epidemic, defense attorneys seized on the fact that Judge [Peter Wilson](#) had repeatedly asked the state's counsel to show evidence that drug companies had misleadingly marketed their painkillers.

"It took five times for the court to finally get an answer to its question, 'Is there any evidence that any medically inappropriate prescriptions were written, based upon any statements made by any of the defendants?'" Newport Beach defense attorney Michael Yoder of O'Melveny & Myers LLP said during his closing argument Friday. "Finally, counsel for the people had to agree, 'No.'"

Rhode Island attorney Fidelma L. Fitzpatrick of Motley Rice LLC, who represents the plaintiff

counties of Los Angeles, Orange and Santa Clara, and the city of Oakland, said if she sounded frustrated, "It's because I am," after listening to the drug companies' closing.

She said a court in a public nuisance case over lead paint, *People v. ConAgra*, rejected the concept that a public nuisance product should be categorized as "appropriate" or "inappropriate."

"What the court did, is it came back and said, 'No, all lead paint is a public nuisance,'" Fitzpatrick said, comparing lead paint to prescription opioids. *People of the State of California v. ConAgra Grocery Products Company*, 17 Cal. App. 5th 51 (2017).

The Orange County lawsuit under California's false advertising, unfair competition and public nuisance laws accuses Janssen Pharmaceuticals, Teva Pharmaceuticals, Endo Pharmaceuticals, and Allergan PLC of fueling an opioid crisis in the state by downplaying risks of addiction in their marketing.

Tensions boiled over when Wilson stopped Fitzpatrick in the middle of her closing to say she could not use letters from the Food and Drug Administration that warned the drug companies about their marketing.

"You had the opportunity during trial to argue about the content of the FDA letters. Their status today is not for the truth," Wilson said. "You can't have it both ways and I will not accept the argument both ways that although not admitted for the truth, I should nevertheless take their content into account as proving something."

Fitzpatrick responded that if the judge was looking for evidence about how the manufacturers had used misleading marketing, "That's what those letters are there for."

"Your honor, I appreciate that you say that you're not going to interrupt my closing. But ... so much has been said for hours upon hours upon hours from the defense counsel without interruption from the court," Fitzgerald said. "And I do believe your honor is asking me to abandon an argument that I think is very critical for what the people's case is."

Wilson, who is the sole trier of fact in the matter, will have the monumental task of making a \$52 billion decision as to whether the drug companies are liable. His decision could also influence some 3,000 opioid suits filed throughout the U.S.

At the end of the four month trial, Wilson said he could not offer a timeline as to when he would issue his decision but that he would later enter a tentative ruling for the parties to respond to.

Janssen's parent company, Johnson & Johnson, and three major drug distributors have already agreed to pay \$26 billion to settle thousands of government suits. The deal involves three major pharmaceutical distributors, McKesson Corp., Cardinal Health Inc. and AmerisourceBergen Corp.,

which would pay \$21 billion -- and Johnson & Johnson would pay an additional \$5 billion -- over the next 18 years to settle thousands of government filed lawsuits claiming the companies helped spread the nation's opioid crisis. Johnson & Johnson has not admitted any wrongdoing. Attorneys would receive \$1.95 billion, or roughly 7.5% of the total settlement.

The state is represented by the offices of the Santa Clara county counsel, the Orange County district attorney, the Los Angeles county counsel and the Oakland city attorney as well as by Motley Rice LLC, Skikos Crawford Skikos & Joseph LLP and Robinson Calcagnie Inc. *People v. Purdue Pharma et al.*, 14-00725287 (Orange Super. Ct., filed May 21, 2014).

#364507

## Blaise Scemama

Daily Journal Staff Writer

[blaise\\_scemama@dailyjournal.com](mailto:blaise_scemama@dailyjournal.com)

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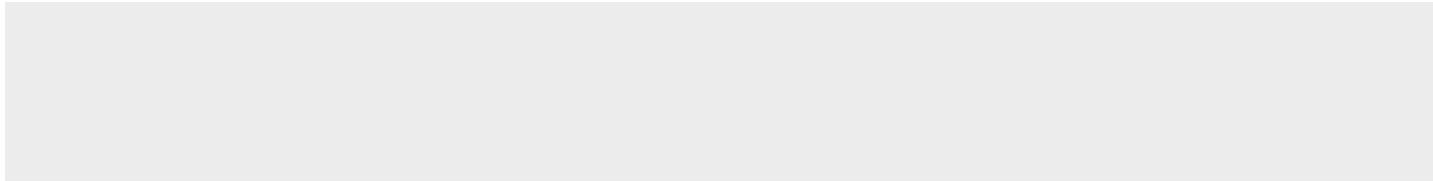
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