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Walgreens liable for San Francisco opioid crisis, judge rules

The case is one of four bellwether opioid litigations across the nation and attorneys said the detailed 112-page order by U.S. District Judge Charles Breyer will be useful to plaintiffs in other cases.

Walgreens violated federal and state law by over-distributing opioids within San Francisco, substantially contributing to the city's opioid epidemic, a federal judge ruled Wednesday in what the plaintiff called "the first bench trial to decide in plaintiff's favor in the national opioid litigation."

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Breyer held Walgreens Co. liable for costs to abate the public nuisance caused by the overuse of opioids by city residents. A future trial will determine the amount of money and medical aid Walgreens will have to furnish to the plaintiff, the City of San Francisco. *City and County of San Francisco et al. v. Purdue Pharma LP et al.*, 3:18-cv-07591, (N.D. Cal., filed Dec. 18, 2018).

There is no timetable for when the abatement trial will start, City Attorney David Chiu said at a news conference. “This is the first bench trial to decide in plaintiff’s favor in the national opioid litigation and the first bench trial to find Walgreens liable,” he stated in a separate news release.

Fraser Engerman, senior director of external relations for Walgreens, expressed the company’s frustration’s with the decision and stated that Walgreens will address its issues on appeal. “We are disappointed with this outcome,” he wrote in an email. “The facts and the law do not support the court’s decision. As we have said throughout this process, we never manufactured or marketed opioids, nor did we distribute them to the ‘pill mills’ and internet pharmacies that fueled this crisis.”

The city attorney’s strategy in the case was to sue a chain of defendants, from pharmacies all the way up to the companies’ marketing teams. Walgreens was the last remaining defendant after AbbVie Inc’s Allergan, Teva Pharmaceuticals and Endo International each settled separately with the city during the trial for a total of \$120 million in cash and medical aid.

“The plaintiff’s attempt to resolve the opioid crisis with an unprecedented expansion of public nuisance law is misguided and unsustainable,” stated Engerman. “We look forward to the opportunity to address these issues on appeal.”

Chiu said in his news release, “This crisis did not come out of nowhere. It was created by the opioid industry, and local jurisdictions like San Francisco have had to shoulder the burden for far too long. We are grateful the court heard our arguments and held Walgreens responsible for the damage they caused.”

Engerman responded, “We stand behind the professionalism and integrity of our pharmacists, dedicated health care professionals who live in the communities they serve. The plaintiff’s attempt to resolve the opioid crisis with an unprecedented expansion of public nuisance law is misguided and unsustainable. We look forward to the opportunity to address these issues on appeal.”

The nearly two-month long bellwether trial arose from the City of San Francisco’s assertion in the original complaint that the four original defendants caused the city’s opioid epidemic by callous over-dispensing of the drugs to city residents and misrepresenting the danger of opioids to the public.

The San Francisco litigation was designated as one of four bellwether trials throughout the country in December 2021 by U.S. District Judge Dan Polster in Cleveland, who is overseeing the multidistrict litigation filed by states and municipalities against pharmaceutical companies that make the pain-relieving drugs often prescribed after surgeries. *In re: National Prescription Opiate Litigation*, 1:17-MD-2804, (N.D. Ohio filed Dec. 12, 2017).

Attorneys who worked on the case took particular note of Breyer's 112-page order that detailed the evidence presented at trial and put into context the extent of damage opioid overuse has caused in San Francisco and nationwide.

Paul Geller, founding partner for Robbins Geller Rudman & Dowd LLP and one of the attorneys who worked alongside the city's trial team to reach settlements with Teva, Endo and Allergan, emphasized the importance Breyer's order will have on the status of other opioid litigation.

Geller, a member of the Plaintiffs Executive Committee created by Polster to oversee the nearly 3,000 states and municipalities that have sued pharmaceutical companies on similar claims, said in a phone interview, "This is not an ordinary order from a judge. It is meticulously written and I think it should be required reading for all big pharma companies along the supply chain."

Geller added, "Breyer's order is really a compelling summary of the proof and of the impact of this crisis and of the harm that it's caused. Walgreens is just one of the responsible parties."

Aelish Baig, a partner at Robbins Geller's San Francisco office and lead trial counsel for the city, agreed about the unique nature of Breyer's order in Chiu's news release: "We're especially grateful that the court opened the trial online to the public and issued such a comprehensive, detailed opinion because it's critical for our communities to collectively understand how this crisis unfolded."

In a phone interview Baig, a Bay Area resident, noted that this trial was particularly cumbersome due to the amount of evidence to be produced as well as the severity of the crisis in San Francisco.

"I think the differentiator for this case is the magnitude," Baig said. "The defendant acted with such a callous disregard not only for the law, but also the despair and the loss of life that comes along with the epidemic that was unfolding. They refused to put in place systems needed to curb the crisis."

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