

The Next Opioid Trial Could Be in New York, but Others Lined Up

By **Amanda Bronstad**

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The next trial over the opioid crisis could be in New York, but it might not be the only one coming up.

On Wednesday, a judge in Suffolk County Supreme Court set a Jan. 20 trial date for a case brought by the state of New York and two Long Island counties, Nassau and Suffolk. That makes the case most likely to be the next trial in the nationwide opioid crisis. So far, only one other case, between the state of Oklahoma and Johnson & Johnson, has gone to trial, ending with a \$572 million bench verdict.

Yet several other cities, counties and Native American tribes are preparing for trial in 2020, possibly in California, Florida, Illinois, Minnesota, Ohio, Oklahoma and West Virginia. They are all jockeying to be the first trial in the multidistrict litigation after the original case, involving two Ohio counties, reached a \$260 million settlement

(<https://www.law.com/2019/10/21/it-was-a-late-night-how-attorneys-reached-a-last-minute-260m-opioid-settlement>) just prior to opening statements Oct. 21. On Wednesday, U.S. District Judge Dan Polster of the Northern District of Ohio heard arguments about the “next steps” in the multidistrict litigation.

“When you look around the country at places where they’re resolving opioid cases, it’s only on the courthouse steps,” said Paul Napoli of Napoli Shkolnik, co-lead plaintiffs counsel in the New York case. His firm partner, Hunter Shkolnik, was on the plaintiffs’ planned trial team in Ohio.

The trial plans come after talks faltered over a potential global settlement last month between plaintiffs lawyers in the multidistrict litigation and several state attorneys general against five of the largest opioid companies, named in more than 2,600 lawsuits across the country. Pennsylvania Attorney General Joe Shapiro also announced a proposed \$48 billion agreement that included three other states, but acknowledged that he needed “to bring other states, counties, and cities on board.”

Several states, including New York, are hedging their bets on trial.

In his Wednesday order, Suffolk County Supreme Court Justice Jerry Garguilo showed great frustration about the slow pace of New York’s opioid case—which he called, a “thousand mile journey progressing inch by inch.”

“The court finds that prolixity is on the verge of becoming the only credible course unless it is addressed,” he wrote. “The opioid cases are becoming less navigable and as such the court must intervene.”

At a Nov. 1 hearing, for instance, he found himself dealing with 400 subpoenas, mostly focused on damages. That prompted him to move up the trial by two months, he wrote, but he bifurcated the trial so that only liability would go first, given that damages would entail a “veritable tsunami of discovery” and “present a Herculean and indecently costly chore.”

“After all these years of death and destruction, come January, the actions of the manufacturers and distributors of these deadly drugs will be presented in open court and laid bare for the American people,” New York Attorney General Letitia James said in a statement Thursday.

Defendants in the trial would include manufacturers Johnson & Johnson, Teva Pharmaceuticals and Endo Health Solutions, and distributors McKesson, Cardinal Health and AmerisourceBergen, as well as other companies, such as pharmacies CVS and Walgreens.

Garguilo, in his order, raised the prospect that Purdue Pharma, which filed for Chapter 11 bankruptcy, and its founders, the Sackler family, could end up as additional defendants. He suggested that lawyers could petition U.S. Bankruptcy Judge Robert Drain to exempt the case from an injunction that halted all the cases against Purdue and the Sacklers. On Wednesday, Drain extended that injunction order to April 8.

“It is a long shot, but I’m hopeful the judge will see it our way,” Napoli said. “If the judge allows us to lift the stay for a limited purpose pursuant to the Sacklers, we would be ready to go against the Sacklers and Purdue.”

An Opioid Trial Redux in Ohio?

Meanwhile, in Cleveland, Polster asked both sides to file position papers on what’s next in the multidistrict litigation. In a Tuesday filing, plaintiffs lawyers pushed for at least three trials in early 2020, one of which would involve the same two Ohio counties, Summit and Cuyahoga, but this time, against the pharmacies. Plaintiffs attorneys have filed motions to amend those complaints, but the pharmacies, in a separate position statement filed Tuesday, said that trial should not go forward.

Another possible trial could involve the cities of Cleveland and Akron, against AmerisourceBergen, Cardinal and McKesson (a Cleveland suburb, Lakewood, represented by Mikal Watts of Watts Guerra, filed a response Thursday to be included in that case, given that the suburbs “have sustained in many cases a disproportionate burden” of the opioid crisis). And, in West Virginia, Cabell County and the city of Huntington have a case against the same three distributors that plaintiffs’ attorneys want to go to trial.

Plaintiffs attorneys also suggested remanding certain cases for trial to their original courts. Those cases include Chicago, Cincinnati, San Francisco and San Francisco County and Hamilton County, Ohio. In the first potential trials involving Native American tribes, they also recommended the Cherokee Nation's case go back to Oklahoma for trial, and the Fond du Lac Band of Lake Superior Chippewa to Minnesota.

The defendants have opposed such early trial dates, insisting that they need more time for discovery. They also want Polster, who they previously insisted, in a failed motion for recusal, (<https://www.law.com/2019/10/10/in-opioid-cases-6th-circuit-us-appeals-court-rejects-petitions-to-delay-trial-recuse-judge>) has shown the appearance of bias against the defendants, to grant an immediate remand of a more limited set of cases for trial (They mentioned that there are eight to 10 additional trials planned in state courts in 2020).

“There is little or no efficiency to be gained by having this court supervise jurisdiction-specific discovery,” they wrote in a Tuesday position paper. “And local courts may be better positioned to decide issues that turn, in substantial part, on factors such as regional geography and the local government entities that will be the focus of discovery.”

Another possible trial could be in Florida, where an attorney for the West Boca Medical Center Inc. and the Seminole Tribe of Florida has requested remand of both opioid cases, against Cardinal Health, Walgreens and Abbott Laboratories, a manufacturer, for a potential bellwether case. In a Monday letter, plaintiffs attorney [Adam Moskowitz](#), of [The Moskowitz Law Firm](#) in Coral Gables, Florida, called South Florida the “epicenter of the opiate crisis.”

“With all parties able to present strong cases, this proposed bellwether will provide a strong data point for the MDL leadership to utilize in their global settlement negotiations,” he wrote.