

Teva, Others Dodge Chicago's Suit Over Painkiller Marketing

By **Lance Duroni**

Law360, Chicago (May 11, 2015, 2:11 PM ET) -- An Illinois federal judge on Friday threw out the city of Chicago's lawsuit targeting Teva Pharmaceutical Industries Inc. and three other drugmakers for their alleged dishonest marketing of opioid painkillers, leaving Purdue Pharma LP as the sole remaining defendant in the once-sprawling case.

U.S. District Judge Jorge L. Alonso dismissed the city's claims against Teva, Johnson & Johnson unit Janssen Pharmaceuticals Inc., Endo Health Solutions Inc. and Actavis PLC, finding that the city failed to cite specific instances where the companies misled doctors or the public. However, the judge gave the city 30 days to amend the complaint and potentially salvage those claims.

"If the city fails to do so, the court will dismiss those claims with prejudice," Judge Alonso wrote in a 34-page order.

As for Purdue, maker of the popular painkiller Oxycontin, the judge said that many of the city's claims against it suffered from the "same flaws." But allegedly misleading information about painkillers posted on the company's website beginning in 2005 was enough to keep a pair of claims against the Stamford, Connecticut-based drugmaker alive, according to the order.

Chicago filed its 122-page complaint in Illinois state court last June, claiming the defendants launched a coordinated campaign beginning in the 1990s to expand the market for prescription opioids by lying about the drugs' effectiveness and risks to support their use to treat "chronic pain." The case was removed to federal court a short time later.

The city alleges the drugmakers knew all along that opioids were "too addictive and too debilitating" to treat common aches and pains like arthritis or headaches, as opposed to cancer pain. But they ignored the risks in pursuit of profits, spending millions of dollars to fund "front groups" and convince doctors that the painkillers were safe, according to the suit.

In a statement on Monday, the Chicago Law Department touted the fact that Judge Alonso's ruling rejected the defendants' claim that only the U.S. Food and Drug Administration has jurisdiction over their conduct, along with his separate finding that the city can rely on its consumer fraud ordinance to police the alleged deceptive marketing at issue.

The city also stressed that its consumer fraud and false claims counts against Purdue were upheld, saying that the company "played a dominant role" in expanding the market for painkillers.

“We are evaluating the court’s opinion and its option as to other defendants,” spokesman John Holden said. “In the interim, the Department of Law looks forward to pursuing its claims against Purdue Pharma.”

Purdue responded in a Monday statement that it was pleased the judge “substantially narrowed” the case, noting that nine of the 11 claims against it were dismissed.

In Friday’s order, Judge Alonso faulted the city for only vaguely outlining the alleged deceptive marketing campaigns as to each defendant.

For example, regarding Actavis, the judge wrote: “What the city does not allege, however, is the name of any Chicago doctor or consumer to whom any Actavis entity made an alleged misrepresentation, when the misrepresentation was made, or how. Absent that information, the city has not stated claims against the Actavis entities.”

The city of Chicago is represented by Stephen R. Patton, Michael Dolesh and Fiona A. Burke of the city’s law department and Linda Singer, Jeanne Markey and Eric Harrington of Cohen Milstein Sellers & Toll PLLC.

Janssen and Johnson & Johnson are represented by Charles C. Lifland and Carolyn J. Kubota of O’Melveny & Myers LLP and Michael P. Doss and Scott D. Stein of Sidley Austin LLP.

Purdue is represented by R. Ryan Stoll and Patrick J. Fitzgerald of Skadden Arps Slate Meagher & Flom LLP.

Teva is represented by Tinos Diamantatos of Morgan Lewis & Bockius LLP.

Endo is represented by Peter V. Baugher and Kristen E. Hudson of Schopf & Weiss LLP.

Actavis is represented by Nicholas M. Marietti of K&L Gates LLP.

The case is City of Chicago v. Purdue Pharma LP, et al., case number 1:14-cv-04361, in the U.S. District Court for the Northern District of Illinois.

--Editing by Christine Chun.