

Pa. Judge Greenlights State's 1st Opioid Marketing Case

By [Matt Fair](#)

Law360 (July 25, 2019, 5:11 PM EDT) -- A state judge has cleared the way for Philadelphia's top prosecutor to move forward with a first-of-its-kind lawsuit in Pennsylvania accusing drugmakers and distributors including [Purdue Pharma LP](#) and [McKesson Corp.](#) of driving the nation's addiction crisis through illegal marketing and sales of opioid painkillers.

Judge Barry Dozier, who is presiding over a string of consolidated cases brought by county and local governments over costs borne as a result of the opioid epidemic, rejected arguments from drugmakers on Tuesday that District Attorney Larry Krasner was required to show a clear connection between their conduct and the district attorney's alleged injuries in order to bring claims under the state's Unfair Trade Practices and Consumer Protection Law.

"The plain language of [the statute] contains no requirement that the ... district attorney plead or prove proximate cause in order to establish [a] right to relief," the judge said.

Purdue and a string of other opioid manufacturers, including [Endo Pharmaceuticals Inc.](#) and [Johnson & Johnson](#), are facing claims from the district attorney's office that their efforts to market and sell powerful painkillers such as OxyContin misled doctors into thinking the medication was safe to prescribe for treatment of chronic pain.

The district attorney's lawsuit is one of two cases tapped as first to move forward in a litigation program in the Delaware County Court of Common Pleas to consolidate some 50 different cases brought by government entities and other parties.

Krasner accuses the drugmakers and distributors of violating the UTPCPL's ban on fraudulent or deceptive conduct on the part of companies, which "creates a likelihood of confusion or misunderstanding."

But the defendants fired back by saying they could not be held liable because any allegedly deceptive conduct on their part was simply too far removed from the types of injuries, including the increased costs of emergency and social services, for which the district attorney's office is seeking to recover damages.

Judge Dozier, however, pointed to a section of the statute authorizing county district attorneys or the state's Office of Attorney General to "bring an action in the name of the commonwealth" over any conduct — without mention of a causative link — that could be deemed in violation of the law.

Preliminary objections in a second test case, that one brought by a union benefit fund, are scheduled to be argued before Judge Dozier in September.

Kransner spokeswoman Jane Roh praised the decision in a statement to Law360.

“The district attorney’s office is gratified by the court’s decision allowing our lawsuit against these opioid companies to proceed to discovery,” she said. “The scores of people who’ve been harmed by the addiction crisis deserve to know the full truth about Big Pharma’s marketing and distribution efforts. The DAO looks forward to uncovering the truth about the inner workings of the opioid industry and holding them accountable for the opioid crisis.”

An attorney for the defendants did not immediately return a message seeking comment.

The district attorney's office is represented by Jennifer Connolly, Burton LeBlanc and Christine Mansour of [Baron & Budd PC](#), Gregory Heller of [Young Ricchiuti Caldwell & Heller LLC](#), Thomas Biemer and Jerry DeSiderato of [Dilworth Paxson LLP](#), Stephen Sheller and Lauren Sheller of [Sheller PC](#), and Andrew Sacks and John Weston of [Sacks Weston Diamond LLC](#).

Liason counsel for the plaintiffs is Carmen Bellefonte of [Saltz Mongeluzzi Barrett & Bendesky PC](#).

Liason counsel for the defendants is Rocco Imperatrice III of Imperatrice Amarant & Bell PC, and the defendants' leadership team includes attorneys from [Dechert](#), [Drinker Biddle & Reath LLP](#), [Reed Smith LLP](#), and [Jones Day](#).

The case is Commonwealth of Pennsylvania etc. v. Purdue Pharma LP, case number [2018-00310](#), coordinated under Delaware County et al. v. Purdue Pharma LP, case number [2017-008095](#), both before the Delaware County Court of Common Pleas.

--Editing by Stephen Berg.

Update: This story has been updated to include a comment from a spokeswoman for the DA's office.

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