



Here, There, and Everywhere Opioid Manufacturers and Distributors Under a Brighter Spotlight

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In June 2017, a bipartisan group of state attorneys general announced that they were jointly investigating the marketing and sales practices of opioid manufacturers. While the group initially did not identify any targets of the investigation,¹ it was subsequently announced that the investigation had originally “focused exclusively” on Purdue Pharma.² On September 19, 2017, however, the coalition, consisting of attorneys general from forty-one states, announced that they had issued subpoenas to five opioid manufacturers, and document demands to three distributors, as part of their expanded investigation into whether any illegal conduct by the opioid manufacturers or distributors contributed to “creating or prolonging th[e] opioid epidemic.”³

Opioid drug makers, Endo International plc, Janssen Pharmaceuticals, Teva Pharmaceutical Industries Ltd, and Allergan, Inc., all received subpoenas, with a supplemental subpoena issued to Purdue Pharma LP. Distributors, McKesson Corp., Cardinal Health Inc., and AmerisourceBergen Corp., which together account for about 90% of the country’s national drug distribution, were served with demands for information. The subpoenas to the drug makers seek information and documents to determine whether the companies have misled doctors and patients about the effectiveness of opioid drugs and the risk of addiction.⁴ The information and documents sought from the distributors will be used to ascertain whether these companies properly tracked and reported suspicious orders of controlled substances.⁵

AGG Observations

Even among the volume of lawsuits and investigations that have been launched against the opioid industry, the bipartisan investigation announced by the states is noteworthy in several respects. First, while the effort has justly been compared to the successful litigation strategy employed by the states and municipalities against the tobacco industry in the 1990’s, it appears to be more extensive, more coordinated, and more targeted than the tobacco investigations and litigation. This may reflect, in part, the correlation between prescription opioids and heroin use,⁶ the blurring between legal prescriptions and illegal drug trafficking, and the spiraling costs of addressing what has become an “opioid crisis.”

Second, it is worth noting that seven of the nine states that reportedly are not among the forty-one states participating in the coalition – Oklahoma, Missouri, Ohio, Mississippi, New Hampshire, New Mexico, and South Carolina – have already filed their own lawsuits against pharmaceutical manufacturers and distributors. Moreover, on September 28, 2017, the State of Washington, which had been part of the forty-one member coalition, announced that it had filed its own lawsuit charging Purdue Pharma with fueling the opioid crisis in Washington through a massive deceptive marketing scheme.⁷ The State issued a joint announcement with the City of Seattle which also filed a lawsuit

1 <http://www.mass.gov/ago/news-and-updates/press-releases/2017/2017-06-15-investigation-marketing-sale-opioids.html>

2 <http://www.mass.gov/ago/news-and-updates/press-releases/2017/2017-09-19-opioid-investigation.html>

3 <http://www.mass.gov/ago/news-and-updates/press-releases/2017/2017-09-19-opioid-investigation.html>

4 <http://www.npr.org/sections/thetwo-way/2017/09/19/552135830/41-states-to-investigate-pharmaceutical-companies-over-opioids>

5 <http://www.mass.gov/ago/news-and-updates/press-releases/2017/2017-09-19-opioid-investigation.html>

6 <http://www.cnn.com/2017/09/19/health/state-ag-investigation-opioids-subpoenas/index.html>

7 <http://www.atg.wa.gov/news/news-releases/ag-ferguson-sues-one-nation-s-largest-opioid-manufacturers-over-state-s-opioid>

against Purdue.⁸

Third, the addition of the distributors in the demands for information is particularly significant, since it suggests that the states may be seeking to impose *indirect*, as well as direct, liability for the crisis. The issue of whether the distributors can be held accountable for the larger crisis based on an effective failure to track or report orders that appear suspicious raises critical questions for the industry as a whole.

⁸ Id.

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