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### CONTROLLED SUBSTANCES

[Mississippi and Alabama hospitals file class action against opioid manufacturers and wholesalers; allege false, deceptive, or unfair marketing, diversion, and RICO claims](#)

On November 30, the Southwest Mississippi Regional Medical Center and two Alabama hospitals filed a putative class action suit in federal court seeking monetary damages resulting from the impact of the opioid epidemic on their hospitals and all similarly situated hospitals in the US. Defendants include Purdue Pharma, Purdue Frederick, TEVA, Cephalon, Johnson & Johnson, Jansen, Noramco, Endo, Allergan/Actavis, Watson Laboratories, and Mallinckrodt. Also named are AmerisourceBergen, Cardinal, and McKesson.

Plaintiffs allege that the manufacturer defendants “aggressively pushed highly addictive, dangerous opioids, falsely representing to doctors that patients would only rarely succumb to drug addiction. These pharmaceutical companies aggressively advertised to and persuaded doctors to prescribe highly addictive, dangerous opioids, and turned patients into drug addicts for their own corporate profit. Such actions were unlawful.” As to the wholesaler defendants, plaintiffs aver that they “unlawfully breached their legal duties under federal law to monitor, detect, investigate, refuse, and report suspicious orders of prescription opiates.”

The complaint details an alleged scheme and conspiracy to establish through direct and indirect marketing, and use of opinion leaders and industry-supported organizations (“front groups”), a core message that “(1) downplayed the serious risk of addiction; (2) created and promoted the concept of ‘pseudoaddiction’ when the signs of actual addiction began appearing and advocated that the signs of addiction should be treated with more opioids; (3) exaggerated the effectiveness of screening tools to prevent addiction; (4) claimed that opioid dependence and withdrawal are easily managed; (5) denied the risks of higher opioid dosages; and (6) exaggerated the effectiveness of ‘abuse-deterrent’ opioid formulations to prevent abuse and addiction.” Plaintiffs also allege that the manufacturers “falsely touted the benefits of long-term opioid use, including the supposed ability of opioids to improve function and quality of life, even though there was no scientifically reliable evidence to support [their] claims.”

The gravamen of the plaintiff’s damages claim is that the opioid epidemic has forced otherwise unimpaired patients to seek care which is costly, more complicated, and

significantly under-reimbursed when provided: "Plaintiffs and the Class members incur partial monetary losses for patients with health insurance, and total monetary losses for uninsured patients, in the treatment of patients with opioid conditions. These patients would not have presented to Plaintiffs and the Class members, and would not have had opioid conditions, but for the opioid epidemic created and engineered by Defendants. Accordingly, Plaintiffs' and the Class members' aforesaid monetary losses are the direct and proximate result of Defendants' acts and omissions previously specified herein." Plaintiffs argue that it was foreseeable to the defendants that "the opioid epidemic would result in a corresponding epidemic of patients with opioid conditions at hospitals," as it was foreseeable that the plaintiffs would suffer the monetary losses claimed.

The claims were filed under the RICO statute. Plaintiffs allege the existence of an illegal "Opioid Diversion Enterprise," and a legal entity enterprise – the Health Distribution Alliance – in which each of the RICO defendants participated to further their scheme. They further allege that the defendants all participated in the Pain Care Forum which supports plaintiffs' allegations regarding the interrelationships among the defendants. In addition to their RICO claims, plaintiffs also assert claims sounding in negligence, "wantonness, recklessness, and gross negligence," and common law fraud.

In a report in the *Clarion Ledger* (Jackson, MS), several manufacturers were cited as denying the allegations and pointing to their own efforts to deal with the opioid crisis. A Janssen spokesperson said the "lawsuits are 'legally and factually unfounded' and that the company has acted in the best interest of patients, including warning labels on each product." Purdue "denied the lawsuit's allegations and [said] that the company is working to solve the opioid public health crisis." [Southwest Mississippi Regional Medical Center et al. v. AmerisourceBergen Drug Corp. et al., No. 5:17-CV-145-KS-MTP, W.D. Miss., filed November 30, 2017; Wolfe A. Opioid manufacturers face first-of-its kind lawsuit from Mississippi hospital. *Clarion Ledger* 2017 Nov 30; <http://on.thec-l.com/2nq1LiK>]