

David J. Tubiolo

Legislator, 14th District

Chair, Committee on Seniors & Constituents



Committee Assignments:

Budget & Appropriations

Public Works

Social Services

Parks, Planning & Economic Development

12146

MEMORANDUM

TO: Benjamin Boykin, Chair, Board of Legislators

FROM: David Tubiolo, Legislator – 14th District

DATE: August 27, 2019

RE: Article on the Opioid Crisis

Please add the attached article to the agenda of the September 15, 2019 Board of Legislators meeting for referral to the Public Safety Committee

RE: Article- bbc.com "Opioid crisis: Johnson & Johnson hit by landmark ruling"

<https://www.bbc.com/news/business-49452373>

Opioid crisis: Johnson & Johnson hit by landmark ruling

Date: August 26, 2019

By: Russell Hotten

Drugmaker Johnson & Johnson must pay \$572m (£468m) for its part in fuelling Oklahoma's opioid addiction crisis, a judge in the US state has ruled.

The company said immediately after the judgement that it would appeal.

The case was the first to go to trial out of thousands of lawsuits filed against opioid makers and distributors.

Opioids were involved in almost 400,000 overdose deaths in the US from 1999 to 2017, according to the US Centers for Disease Control and Prevention.

Since 2000, some 6,000 people in Oklahoma have died from opioid overdoses, according to the state's lawyers.

Earlier this year, Oklahoma settled with OxyContin maker Purdue Pharma for \$270m and Teva Pharmaceutical for \$85m, leaving Johnson & Johnson as the lone defendant.

What was the case against Johnson & Johnson?

During Oklahoma's seven-week non-jury trial, lawyers for the state argued that Johnson & Johnson carried out a years-long marketing campaign that minimised the addictive painkillers' risks and promoted their benefits.

The state's lawyers had called Johnson & Johnson an opioid "kingpin" and argued that its marketing efforts created a public nuisance as doctors over-prescribed the drugs, leading to a surge in overdose deaths in Oklahoma.

Johnson & Johnson vigorously denied wrongdoing, arguing that its marketing claims had scientific support and that its painkillers, Duragesic and Nucynta, made up a tiny fraction of opioids prescribed in Oklahoma.

Judge Thad Balkman, of Cleveland County District Court in Norman, Oklahoma, said prosecutors had demonstrated that Johnson & Johnson contributed to a "public nuisance" in its deceptive promotion of highly addictive prescription painkillers.

"Those actions compromised the health and safety of thousands of Oklahomans. The opioid crisis is an imminent danger and menace to Oklahomans," he said in his ruling.

The payment would be used for the care and treatment of opioid addicts, he said.

The outcome of the case is being closely watched by plaintiffs in about 2,000 opioid lawsuits due to go to trial in Ohio in October, unless the parties can reach a settlement.

How did Johnson & Johnson defend itself?

The state's case rested on a "radical" interpretation of the state's public nuisance law, Johnson & Johnson said.

The company said in a statement that since 2008, its painkillers had accounted for less than 1% of the US market, including generics.

"The decision in this case is flawed. The State failed to present evidence that the company's products or actions caused a public nuisance in Oklahoma," it said.

"This judgement is a misapplication of public nuisance law that has already been rejected by judges in other states."

Sabrina Strong, the lawyer representing Johnson & Johnson, said: "We have sympathy for all who suffer from substance abuse. but Johnson & Johnson did not cause the opioid abuse crisis here in Oklahoma, or anywhere in this country.

"We do not believe that the facts or the law supports the decision today. We have many strong grounds for appeal, and we intend to pursue those vigorously."

The company added that it wants the fine to be put on hold during its appeal process, which could last until 2021.

What reaction has there been to the verdict?

The Oklahoma case was brought by the state's Attorney General, Mike Hunter.

"Johnson & Johnson will finally be held accountable for thousands of deaths and addictions caused by their actions," he said after the ruling.

"There's no question in my mind that these companies knew what was going on at the highest level, they just couldn't quit making money from it and that's why they're responsible."

One Oklahoma state attorney, Reggie Whitten, told US reporters: "This is very personal to all of us. My partner lost a niece to this opioid epidemic. I lost my firstborn son to the opioid epidemic."

The company's share price rose following the ruling because investors had been expecting a much bigger fine, says BBC North America correspondent Peter Bowes.

Jared Holz, healthcare strategist for financial services company Jefferies, said: "The expectation was this was going to be a \$1.5bn to \$2bn fine, and \$572m is a much lower number than had been feared."