

Opioid Trial Client Alert: Defense Verdict for Distributors

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A Georgia state court jury rejected the claims of opioid addicts and their families suing distributors of the dangerous drugs.

On Wednesday, March 1, 2023, a jury in Glynn County, Georgia returned a verdict in favor of opioid distributors, Cardinal Health, Inc., J.M. Smith Corporation and McKesson Corporation, in a first-in-the-nation trial where family members of opioid addicts sued distributors for damages caused by the opioid epidemic. Most civil cases filed in connection with the opioid epidemic have been filed by state and local governments and asserting public nuisance or deceptive marketing claims. Here, the plaintiffs in *Poppell, et al. v. Cardinal Health, Inc., et al.* were alleged individual victims of the opioid epidemic, e.g., spouses, siblings, and children of addicts. Their primary cause of action was asserted under Georgia's Drug Dealer Liability Act (the "DDLA"), Ga. Code. Ann. § 51-1-46.

Under the DDLA, an individual adversely impacted by the addicted drug abuser can bring an action for damages against a person (including corporations) who participated in the illegal marketing of the controlled substance used by the drug abuser. "Participated in illegal marketing," in this context, means, in part: "Manufacturing, distributing, or delivering or attempting or conspiring to manufacture, distribute, or deliver a controlled substance" in violation of state or federal law. § 51-1-46(c)(9)(A). This is the first trial where a corporate distributor was sought to be held liable under a statute targeting illegal drug dealers.

Despite pursuing claims under the DDLA, violations of which must be shown by clear and convincing evidence, the evidence presented by the plaintiffs in *Poppell* was largely similar to the evidence presented in the numerous public nuisance trials around the country—namely, that the defendants were responsible for massive increases in the supply of prescription opioids while at the same time failing to guard against diversion¹. For example, the plaintiffs in *Poppell* introduced evidence that, in 2011, Cardinal Health, Inc. sold 290,000 oxycodone pills to a pharmacy in Darien, Georgia, a city with a population of 1,700 people, while ignoring red flags, e.g., prescriptions written by out-of-state doctors 100 miles away, pharmacy parking lots filled with people swapping pill bags, and prescriptions for a combination of drugs known as "trinity" prescriptions, such as OxyContin, Xanax, and muscle relaxers.

For their part, the defendants also followed a similar strategy to the defendants in the public nuisance cases, arguing that they were simply filling orders in accordance with DEA thresholds and the prevailing standard of care and that they could not know if any prescriptions were suspicious because they were unable to view individual prescriptions. A key difference, however, was the defendants' ability to introduce evidence about the individual plaintiffs' own patterns of dysfunction, including generational substance abuse, domestic violence, and

¹ Diversion is the illegal distribution or abuse of prescription drugs or their use for purposes not intended by the prescriber.

mental health disorders. While it is unclear what effect, if any, this evidence may have had on the jury's decision, it is worth noting given that such evidence is not typical in trials stemming from the opioid epidemic.

Given the fact Georgia is one of at least 24 states with drug dealer liability laws, the verdict in this case will garner national attention. Plaintiffs' attorneys should be more hesitant to file civil cases premised on a state's drug dealer liability acts when the defendants are corporations engaged in the manufacture and distribution of addictive and dangerous narcotics. Those commercial, pharmaceutical defendants may be more likely sued under general negligence theories, e.g., failure to warn, as well as state public nuisance laws. But, at least for now, the drug dealer liability acts seem to be too much of a legal reach to grab commercial distributors.