LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

Case Law Monitor

June 2020

Each issue of Case Law Monitor highlights unique cases from around the United States in the areas of public health and safety, substance use disorders, and the criminal justice system. Every other month, LAPPA will update you on cases that you may have missed but are important to the field. We hope you find the Case Law Monitor helpful, and please feel free to provide feedback at info@thelappa.org.

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USE OF MEDICAL MARIJUANA AS A VIOLATION OF PROBATION

***Melissa Gass, et al. v. 52nd Judicial District, Lebanon County*, Supreme Court of Pennsylvania, Case No. 118 MM 2019 (suit filed October 8, 2019).** For a summary of the facts and previous updates on this case, please refer to the December 2019 (Volume 1, Issue 1) and April 2020 issues of the LAPPA *Case Law Monitor*. On May 19, 2020, the Supreme Court of Pennsylvania remotely heard arguments in the lawsuit challenging Lebanon County's policy prohibiting the use of medical marijuana by people who are under community supervision. According to the ACLU of Pennsylvania, several other Pennsylvania counties have similar policies. Should the court rule in favor of the petitioners, it will likely allow individuals under court supervision throughout Pennsylvania to use marijuana for medicinal purposes.

STATE HOSPITAL PATIENT CHARGED WITH DISTRIBUTING FENTANYL THAT RESULTED IN A FATAL OVERDOSE

***Commonwealth of Massachusetts v. Kevin Malette*, Superior Court of Massachusetts, Plymouth County, Case No. 2083CR00026 (indictment returned January 31, 2020).** A patient being held at the Bridgewater State Hospital in Massachusetts for determination of mental competence to stand trial pled not guilty on April 2, 2020 to the charge of distributing fentanyl and cocaine that led to another patient's fatal overdose. The defendant, Kevin Malette, now faces one count of manslaughter and twelve other charges related to the possession and distribution of narcotics in a correctional institute or jail. According to the commonwealth, in September 2019 the victim traded four bags containing more than $100 worth of food and coffee from the hospital's canteen to Malette for narcotics. A grand jury indicted Malette in January 2020 for supplying the victim with the narcotics on which he eventually overdosed. The next scheduled event in the court case is a motions hearing on June 4, 2020.

FEDERAL COURT ALLOWS DISABILITY DISCRIMINATION CLAIMS TO PROCEED AGAINST ALABAMA COMPANY THAT REVOKED JOB OFFER TO AN INDIVIDUAL PRESCRIBED METHADONE

***Jody Lisby v. Tarkett Alabama, Inc.*, U.S. District Court for the Northern District of Alabama, Case No. 3:16-cv-01835-MHH (suit filed November 11, 2016).** Plaintiff Jody Lisby filed a suit against Tarkett Alabama, Inc. (Tarkett) in November 2016 alleging the company violated the Americans with Disabilities Act (ADA) when it revoked his conditional job offer. Lisby has ADHD, severe anxiety, and chronic lower back pain and takes Adderall, benzodiazepines, and methadone to manage his conditions. Prior to applying for the job at Tarkett, Lisby worked at another job where he operated heavy machinery. While employed at his former job, Lisby had two work-related truck accidents. After both accidents, Dr. Gary Daniel, an occupational physician, noted a safety concern about Lisby's driving due to his history of taking methadone. Lisby was fired from this job in June 2013 and subsequently filed an EEOC charge alleging discrimination against the organization, which involved Dr. Daniel. In May 2015, Lisby applied for a position at Tarkett and was offered the job conditioned upon him passing a drug test and physical examination. Lisby asked Tarkett's human resource generalist, Ms. Burchell, if he could visit a doctor other than Dr. Daniel for his preemployment drug test and physical because he had an ongoing dispute with Dr. Daniel. Burchell said that she did not think that would be a problem, but she would have to find out. However, Lisby ended up going to Dr. Daniel's office for his drug test and physical. During the day of Lisby's appointment, a person from Tarkett's human resources department faxed to Dr. Daniel's office a job description for the position. The job description did not mention forklift work. Lisby tested positive for his prescribed amphetamine and methadone, and Dr. Daniel's office informed Tarkett that Lisby passed the drug test. A few days later, Tarkett faxed to Dr. Daniel's office a second job description that was different from the first one in that it included driving a forklift as part of the job duties. Upon receiving the second job description, Dr. Daniel called Burchell and told her that Lisby could not safely perform the position because of the position's "safety sensitive duties," and that he believed Lisby could not operate a forklift because of the effects of methadone. While Lisby was attending the orientation session for the job, Burchell informed him in front of others that Dr. Daniel would not permit him to work because he tested positive for amphetamines and methadone. Lisby now brings forth four ADA claims against Tarkett: (1) disability discrimination; (2) unlawful medical inquiry; (3) failure to accommodate; and (4) retaliation. Tarkett filed a motion for summary

judgment for all four claims asserting that there was no discrimination and it was reasonable for the company not to hire Lisby because the methadone makes him unable to perform safety sensitive work. In an opinion issued March 31, 2020, the federal court denied Tarkett's motion for summary judgment, concluding that a reasonable jury could find that the company's reason for not hiring Lisby is a pretext for discrimination. The court also determined that Lisby may proceed with claims that Tarkett: (1) violated his confidentiality by discussing his drug test in front of others; (2) failed to accommodate his request to see a different doctor; and (3) acted in retaliation because the company knew of his prior EEOC complaint because he told human resources about the ongoing dispute over the doctor's evaluation. A jury trial for this case is scheduled for August 24, 2020.

RITE AID AGREES TO PAY $4.75 MILLION TO RESOLVE ALLEGATIONS IT VIOLATED FEDERAL LAW CONCERNING SALES OF METHAMPHETAMINE PRECURSORS (SETTLED APRIL 8, 2020)

The large retail pharmacy chain, Rite Aid, agreed in April 2020 to pay a $4.75 million penalty to the United States to resolve allegations that its employees violated the Controlled Substances Act by recording false or incomplete information about customers who purchased tens of thousands of pseudoephedrine products. The investigation involved the U.S. Attorneys for the Northern and Eastern Districts of New York as well as the U.S. Drug Enforcement Administration (DEA). In the settlement agreement, Rite Aid admitted that between August 2009 and January 2014, certain employees entered inaccurate or incomplete customer name and address information into Rite Aid's pseudoephedrine logbook. According to the DEA, shortly after the United States brought the violations to Rite Aid's attention, the company voluntarily devised and implemented changes to its process for sales of pseudoephedrine products to better ensure compliance with federal law.

FEDERAL COURT ORDERS COLORADO TO TURN PDMP INFORMATION OVER TO THE DEA

***United States Department of Justice v. State of Colorado Board of Pharmacy, et al.*, U.S. District Court for the District of Colorado, Case No. 1:19-mc-00105-RM (petition granted April 21, 2020).** A federal court has ordered the state of Colorado to turn over information from its Prescription Drug Monitoring Program (PDMP) to the U.S. Drug Enforcement Administration (DEA). This case arose out of the DEA filing a petition for an order directing Colorado to comply with two DEA administrative subpoenas seeking data regarding the controlled substances dispensed by two Colorado pharmacies under investigation. In response, the state told the DEA that it would not disclose any patient-identifying data included in the records, such as name, date of birth, and address, because disclosing that information would violate the patients' Fourth Amendment rights to privacy. As an alternative, the state offered: (1) to provide de-identified pseudonymized records; and (2) to respond to follow-up requests for particularized patient information when the DEA identified individualized targets of investigation from its analysis of the produced data. The DEA rejected the offer, asserting that the patient-identifying data is critical to its investigation. Under U.S. Supreme Court precedent, the constitutional requirements for a valid administrative subpoena are that the subpoena is sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance is not unreasonably burdensome. The Colorado federal court determined that the DEA has valid reasons for requiring patient-identifying information in the investigation and that the state did not establish that it would be an administrative burden to comply with the subpoenas. Accordingly, the court granted the DEA's petition and required all data requested by the DEA to be produced on or before May 15, 2020.

FEDERAL COURT AFFIRMS RULING THAT PATIENTS ARE NOT OWED WAGES FOR WORK PERFORMED AS PART OF COURT ORDERED REHABILITATION

***Mark Vaughn v. Phoenix House New York, et al.*, U.S. Court of Appeals for the Second Circuit, Case No. 19-00517 (case decided April 22, 2020).** In an opinion issued April 22, 2020, the U.S. Court of Appeals for the Second Circuit held that a person subject to a court-ordered drug or alcohol rehabilitation program who performs work for, or on behalf of, the program during the course of treatment is not an employee of that program for the purposes of the Federal Labor Standards Act (FLSA). In July 2009, Mark Vaughn entered a program at the Phoenix House, a residential drug and alcohol treatment facility, pursuant to a state court-approved agreement to participate in a rehabilitation program instead of incarceration. As part of the program, Vaughn had required work duties, which he performed full-time from April 2011 to January 2012. In May 2014, Vaughn sued Phoenix House under the FLSA alleging that he was not paid for the work he performed. Phoenix House moved to dismiss the complaint, and the federal district court granted the dismissal. The district court concluded that Vaughn acted as an unpaid intern as opposed to a formal employee. The court used the "primary beneficiary test" to determine whether an unpaid intern qualifies as an employee entitled to compensation under the FLSA. Under the primary beneficiary test, if the unpaid intern is the "primary beneficiary" of the work arrangement, then he or she is not an employee under the FLSA. The district court held that Vaughn benefited significantly from working for Phoenix House because it allowed him to avoid jail and receive "food, a place to live, therapy, vocational training, and jobs that kept him busy and off drugs." Due to these benefits, Vaughn could not be considered an employee of Phoenix House and, therefore, could not state a claim under the FLSA. The Second Circuit affirmed the decision of the district court.

SIXTH CIRCUIT HOLDS "BUT FOR" CAUSATION IS THE PROPER STANDARD FOR "DEATH RESULTS" ENHANCEMENT TO FEDERAL CONTROLLED SUBSTANCE VIOLATION

***United States v. Jurmaine Jeffries*, U.S. Court of Appeals for the Sixth Circuit, Case No. 18-4081 (case decided May 8, 2020).** In April 2018, a jury convicted Jurmaine Jeffries in Ohio federal court of one count of possessing fentanyl with the intent to distribute and one count of distributing fentanyl, the use of which resulted in death (under 21 U.S.C. § 841(a)(1) and (b)(1)(C), respectively). During the jury trial, Jeffries asked the district court to instruct the jury that in order to impose § 841(b)(1)(C)'s "death results" sentencing enhancement, the U.S. government must demonstrate proximate cause, which would "prove beyond a reasonable doubt that the death of the victim was the natural and foreseeable result of the defendant's actions." The district court, however, rejected Jeffries's proposed jury instruction and used a "but for" causation standard instead, where the government must prove only "beyond a reasonable doubt that but for the use of the drugs the defendant distributed, [the victim] would not have died." Jefferies filed a motion for a new trial, alleging substantial legal error by the court. In October 2018, the district court held that it had made a substantial legal error by failing to include the proximate-cause jury instruction and granted Jeffries's motion for a new trial. The United States appealed the district court's judgment. On appeal, the U.S. Court of Appeals for the Sixth Circuit reversed the decision and remanded the case for sentencing. In a split 2-1 decision issued May 8, 2020, the court majority held that it is always foreseeable that a violation of § 841(a)(1) will involve an ultimate user of the substance and that death or injury may result from that use. Because death or injury from the use of the substance is inherently foreseeable, there is no need to require the government to prove reasonable foreseeability to the defendant. It therefore makes sense to require the government to prove only "but for" causation for the enhanced penalty. In contrast, the dissenting judge concluded that the "death results" enhancement in § 841(b)(1)(C) is ambiguous, and thus the interpretation most favorable to the defendant should be used. Jefferies has until June 22, 2020 to file a petition for a rehearing before all Sixth Circuit judges.

PENNSYLVANIA COUNTY SUED AFTER PRETRIAL DETAINEE DIES FROM OPIOID WITHDRAWAL

***Nina Harbaugh v. Bucks County, et al.*, U.S. District Court for the Eastern District of Pennsylvania, Case No. 2:20-cv-01685-MMB (suit filed March 31, 2020).** The Plaintiff, Nina Harbaugh, filed a wrongful death suit as the administrator of her sister's estate. Brittany Ann Harbaugh was a 28-year-old mother of three, who died from complications of heroin withdrawal at the Bucks County Correctional Facility (BCCF). On September 26, 2018, authorities took Harbaugh to BCCF as a pretrial detainee. During the medical screening upon her admittance, Harbaugh informed a nurse that she had opioid use disorder and used heroin seven days a week. To manage her withdrawal from heroin, Harbaugh was prescribed medications to treat high blood pressure, pain, and nausea. Following her initial intake, BCCF placed Harbaugh on medical watch. Per BCCF protocol, inmates on medical watch must be observed and evaluated every 15 minutes. The suit alleges, however, that the individuals tasked with performing these medical checks on Harbaugh were not trained to monitor individuals with medical issues or symptoms of opioid withdrawal. Over the next few days, the suit alleges, Harbaugh's condition worsened, and she experienced tachycardia, weakness, dizziness, and diarrhea, but was never seen by a physician. The complaint also alleges that there were several occasions when Harbaugh was marked as "not present" for her medications, but there was no explanation in her medical record as to why she missed her medications. On October 1, 2018, Harbaugh collapsed in front of a guard and was taken to the hospital where she died. Harbaugh's sister sued both Bucks County and a medical provider under the state's wrongful death act. In addition, the complaint asserts that defendants violated Harbaugh's rights under the Eighth and Fourteenth Amendments of the U.S. Constitution due to their deliberate indifference to her serious medical needs. The plaintiff also brings forth a claim of medical negligence. The defendants' answer is due by June 12, 2020.

MASSACHUSETTS INMATES FILE CLASS ACTION SUIT TO BE RELEASED EARLY DUE TO COVID-19

***Stephen Foster, et al. v. Carol Mici, et al.*, Supreme Judicial Court for Suffolk County, Massachusetts, Case No. SJ-2020-0212 (suit filed April 17, 2020).** In April 2020, the Prisoners Legal Service of Massachusetts filed a class action lawsuit on behalf of individuals in correctional facilities in Massachusetts seeking to reduce the number of people because of COVID-19. The suit focuses on two subclasses of individuals: (1) prisoners who are at high risk for serious complications or death caused by COVID-19 due to an underlying medical condition or age; and (2) prisoners involuntarily committed to a correctional facility under Massachusetts law (M.G.L.A. 123 § 35) for treatment of an alcohol or substance use disorder. The complaint alleges that conditions in Massachusetts prisons and jails expose prisoners to a serious risk of contracting COVID-19. These alleged conditions include the inability to socially distance; limited access to soap, hand sanitizer, hot water, and other hygiene items; and lack of access to timely, quality medical care. The plaintiffs believe that reducing the prison population is the only meaningful way to prevent the harm caused by COVID-19. Additionally, the plaintiffs assert that involuntary commitment under M.G.L.A. 123 § 35 for the treatment of alcohol and substance use disorders is not justified because the facilities are unsafe and have ceased to offer the requisite treatment. By incarcerating the plaintiffs under conditions that put them at risk for contracting COVID-19, the complaint alleges that the commonwealth violates plaintiffs' rights guaranteed by Articles 1, 10, 12, and 26 of the Massachusetts Declaration of Rights, the Eighth and Fourteenth Amendments of the U.S. Constitution, and substantive due process. The plaintiffs ask the court to order defendants to immediately reduce the number of people confined in prisons and jails by at least a sufficient number to ensure compliance with COVID-19 safety standards.

WEST VIRGINIA SETTLES OPIOID USE BIAS CLAIM IN CHILD WELFARE CASE (SETTLED APRIL 22, 2020; OCR TRANSACTION NUMBER 18-306552).

West Virginia agreed to update its nondiscrimination policies and create a new training program for staff to emphasize protections for people with substance use disorders after reaching an agreement with the U.S. Department of Health and Human Services' Office for Civil Rights (OCR). In April 2020, the West Virginia Bureau of Children and Families Programs entered into a voluntary agreement resolving a complaint that it declined to place two children with their aunt and uncle because of the uncle's history of taking Suboxone as part of his medication-assisted treatment for opioid use disorder. According to the complaint, the uncle had not tested positive for use of illegal drugs during his treatment and eventually stopped using Suboxone. In the OCR's view, the investigation uncovered "systemic deficiencies" in West Virginia's disability rights policies and practices that would ensure the rights of people recovering from opioid use disorder in the state's child welfare system. According to the agreement, OCR will monitor the state for compliance with disability laws and the terms of the agreement. In addition, the family court hearing the custody case must be notified of the agreement and the aunt and uncle's allegations before any final determination is made.

FORMER INSYS THERAPEUTICS CFO AGREES TO SETTLEMENT IN FEDERAL CLASS ACTION

***Di Donato, et al. v. Insys Therapeutics Inc., et al.*, U.S. District Court for the District of Arizona, Case No. 16-cv-00302 (settled May 26, 2020).** Insys Therapeutics' former Chief Financial Officer, Darryl Baker, agreed to pay $2 million to resolve shareholder class action claims against him alleging he helped conceal from investors the extent to which sales of Insys' fentanyl spray, Subsys, was driven by fraud and kickbacks to doctors. Baker did not admit any wrongdoing as part of the settlement. The settlement, which is subject to court approval, did not resolve related claims against Insys' founder, John Kapoor, or former Chief Executive Officer, Michael Babich. The case against the remaining defendants is set for trial on August 17, 2020.

WEST VIRGINIA PHARMACY AGREES TO PAY PENALTY TO RESOLVE ALLEGED VIOLATIONS OF THE CONTROLLED SUBSTANCE ACT (SETTLED MAY 6, 2020).

In May 2020, Adkins Pharmacy, Inc. (API), a pharmacy located in Mingo County, West Virginia, agreed to pay the United States a civil penalty of $88,086 to resolve allegations that the pharmacy violated federal controlled substances law by filling illegitimate prescriptions between January 1, 2014 and December 31, 2015. According to federal investigators, during this time, API filled compound opioid prescriptions issued by physicians affiliated with Hitech Opioid Pharmachovigilance Expertise Clinic, PLLC (HOPE Clinic), even though API "knew or should have known that said prescriptions were not issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his/her professional practice." API also entered into a three-year compliance agreement with the DEA that imposes heightened reporting and oversight requirements and sanctions for non-compliance.

NEW YORK COURT GRANTS SUMMARY JUDGMENT FOR ONE OF THE PHARMACY DEFENDANTS' PUBLIC NUISANCE CLAIMS

***In Re: Opioid Litigation*, Supreme Court of the State of New York, Suffolk County, Index No. 40000/2017.** Nassau and Suffolk Counties sued several large pharmacy chains alleging that each acted as a public nuisance in their respective capacities as dispensers and distributors of prescription opioids. These cases are now a part of a large consolidated opioid-related action in Suffolk County. With respect to the pharmacy defendants, plaintiffs assert that the responsibility for dispensing opioids is not limited to individual pharmacists, pharmacies, or holders of DEA dispensing registrations. Instead, the corporate parents of these subsidiaries are vicariously liable for their actions. The defendant corporate parents moved for summary judgment on the public nuisance claims with respect to both their alleged capacity as distributors and dispensers. In an opinion issued April 9, 2020, the trial court granted the motion in part, with respect to the defendants' capacities as dispensers only. The court stated that under New York precedent, a parent corporation, by mere virtue of its stock ownership of a subsidiary corporation, is not liable for the torts of its subsidiary. Additionally, there is a "presumption of separateness" between a parent and subsidiary corporation. To rebut the presumption, plaintiffs must show not only that the subsidiary is a "mere instrumentality" of the parent but that the subsidiary "is being used by the parent corporation in order to commit or conceal a fraud." The court found that the plaintiffs presented no evidence which would rebut the presumption of separateness and warrant the "piercing of the corporate veil" of the pharmacy defendants in their capacities as dispensers of prescription opioids. However, the court denied the pharmacy defendants' motion for summary judgment for the public nuisance cause of action in their capacity as distributors due to triable issues of fact. The trial in the consolidated litigation, previously set for March 2020 but delayed due to COVID-19, remains pending. In April 2020, the court deemed the litigation "essential," lifting restrictions on filings and conferences.

MISSOURI HOSPITALS FILE SUIT AGAINST OPIOID MANUFACTURERS, DISTRIBUTORS, AND RETAILERS

***Lester E. Cox Medical Center, et al. v. Amneal Pharmaceutical, et al.*, Greene County Circuit Court, Missouri, Case No. 2031-CC00459 (suit filed April 14, 2020).** In April 2020, a group of 12 Missouri hospitals filed suit in state court against manufacturers, distributors, and retailers of opioid-based drugs. The suit alleges that the defendants are responsible for the opioid crisis in the state and the health care costs associated with treating patients with opioid-related health conditions. Additionally, the hospitals assert that the drug manufacturers used deceptive marketing techniques and falsely claimed that there was a low risk of dependence associated with using opioids to treat chronic pain.

CVS HEALTH SUBSIDIARY OMNICARE AGREES TO PAY PENALTY TO RESOLVE FEDERAL OPIOID INVESTIGATION (SETTLED MAY 6, 2020).

In May 2020, CVS Health subsidiary, Omnicare Inc., agreed to pay a $15.3 million penalty to resolve allegations it violated federal law by allowing opioids and other controlled substances to be dispensed without a valid prescription. Omnicare makes daily deliveries of prescription medications to residents in long-term care facilities (LTCFs) and also supplies limited stockpiles of controlled substances at LTCFs for "emergency kits." Federal investigators alleged that Omnicare violated the federal Controlled Substances Act in its handling of emergency prescriptions, its controls over the emergency kits, and its processing of written prescriptions that lacked required elements such as the prescriber's signature or DEA number. The investigation also found that Omnicare failed to control emergency kits by improperly permitting LTCFs to remove opioids and other controlled substances from them days before doctors provided a valid prescription.

In addition to the monetary penalty, Omnicare entered into a Memorandum of Agreement with the DEA that requires Omnicare to increase the auditing and monitoring of emergency kits placed at LTCFs.

PENDING OPIOID LITIGATION FILED BY ARKANSAS HOSPITALS REMANDED TO STATE COURT

***Fayetteville Arkansas Hospital Company, LLC., et al v. Amneal Pharmaceuticals, LLC.*, et al, U.S. District Court for the Western District of Arkansas, Case No. 5:20-cv-05036-TLB (remanded to state court May 18, 2020).** In May 2020, the U.S. District Court for the Western District of Arkansas remanded an opioid-related case involving Arkansas hospitals against numerous opioid manufacturers, distributors, and retailers. The hospitals originally filed suit in the Circuit Court of Washington County, Arkansas in January 2020 alleging claims of negligence, nuisance, unjust enrichment, fraud and deceit, civil conspiracy, and violations of the Arkansas Deceptive Trade Practices Act. Defendant Cardinal Health removed the case to federal court asserting that its liability, as alleged by the hospitals, arose out of violations of the federal Controlled Substance Act. Plaintiffs sought remand of the case back to state court. At the same time, several defendants asked the court to stay the proceedings pending a final decision by the Judicial Panel on Multi-District Litigation (JPML) on transferring the case to the consolidated opioid litigation presently before the Northern District of Ohio (MDL-2804). The court granted the hospitals' request for remand because the complaint states claims based solely on Arkansas statutory and common law. Although the JPML's decision is pending, the court concluded that the interests of judicial economy and efficiency weigh against implementing a stay.

OPIOID DISTRIBUTOR SEEKS DISMISSAL OF FEDERAL CRIMINAL CASE

***United States v. Rattini, et al.*, U.S. District Court for the Southern District of Ohio, Case No. 1:19-cr-00081-MWM (indictment returned July 17, 2019).** In July 2019, a federal grand jury charged an Ohio-based pharmaceutical distributor, Miami-Luken Inc., two of the company's former officials, Anthony Rattini and James Barclay, and two pharmacists, Devonna Miller-West and Samuel Ballengee, with conspiring to distribute controlled substances. According to the indictment, Rattini, Barclay, and Miami-Luken sought to enrich themselves by distributing millions of painkillers to doctors and pharmacies in rural Appalachia. The distributor and its officials allegedly continued to distribute the drugs to pharmacies even after being advised by the DEA of their responsibilities as a wholesaler to ensure that drugs were not being diverted and to report suspicious orders. It is further alleged that Miami-Luken filled suspicious orders placed by Miller-West, Ballengee, and others. Each of the defendants, including Miami-Luken, is charged with conspiring to illegally distribute controlled substances, a crime punishable by up to 20 years in prison. On April 30, 2020, defendants Miami-Luken, Rattini, and Barclay filed motions to dismiss the case asserting the government fails to state a crime against which the company defendants could be charged. Oral arguments on the motions to dismiss are scheduled for August 3, 2020.

NOTEWORTHY UPDATES IN THE NATIONAL OPIOID LITIGATION

***In re: National Prescription Opiate Litigation*, U.S. District Court for the Northern District of Ohio, Case No. 17-MD-2804.**

- An April 3, 2020 ruling by Judge Polster gives hospital plaintiffs the green light to pursue claims against marketers, distributors, and pharmacies for their alleged role in the opioid epidemic. The court ruled that hospital claims made under the Racketeering Influenced Corrupt Organizations Act ("RICO"), as well as claims for nuisance, negligence, and wanton negligence, can proceed.
- On April 30, 2020, Judge Polster added claims made against pharmacies by two Ohio counties, Lake and Trumbull, to the bellwether case to be tried in Cleveland in May 2021.

- Oklahoma Attorney General Mike Hunter refiled lawsuits on May 1, 2020 against three opioid distributors. The lawsuit, which was a part of the multidistrict litigation, is now three separate cases in Bryan County, Oklahoma against AmerisourceBergen Corp., Cardinal Health, and McKesson.
- Lake and Trumbull Counties filed a 209-page complaint on May 27, 2020 asserting that certain pharmacies, including CVS, Rite Aid, Walgreens, and Giant Eagle as well as those operated by Walmart, are as complicit in perpetuating the opioid crisis as the manufacturers and distributors of the drugs. The complaint alleges that the retailers sold millions of pills in tiny communities, offered bonuses for high-volume pharmacists, and worked directly with drug manufacturers to promote opioids as safe and effective.

ABOUT LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

The Legislative Analysis and Public Policy Association (LAPPA) is a 501(c)(3) nonprofit organization whose mission is to conduct legal and legislative research and analysis and draft legislation on effective law and policy in the areas of public safety and health, substance use disorders, and the criminal justice system.

LAPPA produces up-to-the-minute comparative analyses, publications, educational brochures, and other tools ranging from podcasts to model laws and policies that can be used by national, state, and local criminal justice and substance use disorder practitioners who want the latest comprehensive information on law and policy. Examples of topics on which LAPPA has assisted stakeholders include naloxone laws, law enforcement/community engagement, alternatives to incarceration for those with substance use disorders, medication-assisted treatment in prisons, and the involuntary commitment and guardianship of individuals with alcohol or substance use disorders.

For more information about LAPPA, please visit: https://legislativeanalysis.org/.