

Pharma CEO Asks Judge To Toss Opioid Trafficking Charge

By Jack Queen

Law360 (January 29, 2020, 7:37 PM EST) -- A New York federal judge on Wednesday grilled attorneys for a former pharmaceutical executive facing drug trafficking charges over his alleged role in the opioid crisis, questioning why the novelty of the narcotics case against him means the charge can't stand.

U.S. District Judge George B. Daniels pressed lawyers for Laurence F. Doud, who is accused of knowingly selling opioids to blacklisted pharmacies as CEO of Rochester Drug Co-Operative Inc., on their argument that prosecutors were twisting drug laws on their head during a hearing on Doud's bid to shake half the case against him.

"I haven't seen any case law that says you don't charge in these circumstances," Judge Daniels told Doud's attorney, Derrelle M. Janey. "That's what you're trying to get me to extrapolate from the fact that it's never been done."

The lack of precedent for the charges colored much of the hearing, underscoring the government's challenge in the milestone case as it seeks a conviction near the top of a web of manufacturers, distributors and pharmacies who allegedly flooded the country with hundreds of millions of opioid doses over the past decade.

Judge Daniels questioned whether Doud was trying to use his position at the top of the distribution chain as a "bubble" to avoid liability, asking if being "one step removed" from a criminal conspiracy was enough to avoid charges.

Janey argued the distinction was critical. He noted that only doctors and nurses had ever been similarly charged, meaning Doud couldn't know his business decisions might land him a drug trafficking indictment. The government's case was therefore unconstitutional under the doctrine of fair warning, which "bars courts from applying novel constructs that neither statute nor any judicial decision has ever applied in this scope," Janey said.

Doud became one of the first drug company executives to face trafficking charges last April, when prosecutors accused him of selling oxycodone and fentanyl to pharmacies he knew were peddling pills to patients who didn't need them. Another former Rochester executive, William Pietruszewski, was indicted the next day and later pled guilty to conspiracy charges.

According to the government's complaint, Rochester's annual orders for oxycodone surged by 37 million

between 2012 and 2016, while fentanyl sales jumped from 60,000 to 1.3 million a year. Doud was charged with one count of conspiracy to distribute narcotics and one count of conspiracy to defraud the U.S. Drug Enforcement Administration.

Doud argued in an October motion to dismiss that the narcotics charge should be tossed because it is premised on a law intended for “street-level” dealers, not executives at companies that distribute prescription drugs.

At Wednesday’s hearing, Judge Daniels probed the government’s centerpiece claim that Doud knew the pills were being distributed illegally. He asked if Doud was aiming to skirt that claim and instead paint the indictment as a case of inadequate reporting and investigation of suspicious sales.

Janey insisted that was not the case, arguing the government had brought the wrong charges against Doud by invoking Section 841 of the Controlled Substances Act.

Assistant U.S. Attorney Stephanie Lake countered that no court has ever struck down similar charges on that argument, because the Controlled Substances Act is an “incredibly broad statute that applies to anyone in any context.”

Judge Daniels then flipped the script on the government, saying he couldn’t tell if the charges were appropriate or not because this type of case had never been made.

“Precedent is usually a help,” he said to scattered chuckles.

Lake noted that narcotics charges against doctors and nurses were once novelties as well. If courts had applied Doud’s theory, doctors who trafficked prescription drugs could never have been charged, she argued.

“There always has to be a first case,” Lake said.

Judge Daniels took the matter under advisement.

Janey told Law360 after the hearing that the bottom line was the unconstitutionality of the drug trafficking charge.

“He asked fair questions all around,” Janey said of Judge Daniels. “I think he exposed some weaknesses in the government’s case.”

The Attorney’s Office for the Southern District of New York declined to comment Wednesday.

Doud is represented by Robert C. Gottlieb and Derrelle M. Janey of Gottlieb & Janey LLP.

The government is represented by Alexandra Rothman, Louis A. Pellegrino, Nicolas Roos, Stephanie L. Lake and Max C. Nicholas of the U.S. Attorney’s Office for the Southern District of New York.

The case is USA v. Doud, case number 1:19-cr-00285 in U.S. District Court for the Southern District of New York.

--Editing by Haylee Pearl. All Content © 2003-2020, Portfolio Media, Inc.