

How Oklahoma's ruling against Johnson & Johnson in opioid case may impact Canada

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Published Tuesday, August 27, 2019 10:38AM EDT
Last Updated Tuesday, August 27, 2019 10:42AM EDT

Following a landmark ruling in Oklahoma that ordered pharmaceutical giant Johnson & Johnson and its subsidiaries to pay US\$572 million for its role in fuelling the state's opioid crisis, lawyers say the decision could have a profound effect on similar lawsuits in Canada.

On Monday, Cleveland County District Judge Thad Balkman sided with the state of Oklahoma in its argument that Johnson & Johnson and their subsidiaries created a public nuisance through aggressive advertising campaigns for painkillers that downplayed the risk of addiction. The lawsuit alleged the consumer goods company contributed to the state's devastating opioid crisis, which Oklahoma's attorney general Mike Hunter says killed 4,653 people in the state from 2007 to 2017.

The ruling is significant because it's the first state opioid case to make it to trial, paving the way for thousands of other lawsuits in the U.S. and in Canada. Oklahoma had earlier reached settlements worth less than half of what Johnson & Johnson was ordered to pay with two other pharmaceutical manufacturers, Purdue Pharma Inc. and Teva Pharmaceutical Industries Ltd.

PHOTOS



A judge in Oklahoma ordered pharmaceutical giant Johnson & Johnson and its subsidiaries to pay US\$572 million for its role in the state's opioid crisis.

"That's the message to other states: We did it in Oklahoma. You can do it elsewhere," Hunter said. "Johnson & Johnson will finally be held accountable for thousands of deaths and addictions caused by their activities."

Lawyers for Johnson & Johnson said they plan to appeal the ruling to the Oklahoma Supreme Court.

In British Columbia, which has borne the brunt of the opioid crisis in Canada, Attorney General David Eby applauded the decision rendered in Oklahoma.

Last year, the province filed a class-action lawsuit against dozens of pharmaceutical companies, including Purdue Pharma Inc., which makes the painkiller OxyContin, to recover costs associated with the public health crisis. The suit accuses the companies of falsely marketing the opioids as less addictive than other painkillers, leading to an overdose crisis that has killed thousands of people in the province since the drugs were introduced in the 1990s.

“The lawsuit we launched in 2018 holds pharmaceutical companies similarly accountable for the harm they have done to British Columbians and for the financial burdens they have placed on our health care system,” he said in a statement on Monday.

The Ontario government has said it plans to join the lawsuit.

There is also another proposed class-action lawsuit against large pharmaceutical companies, including Apotex, Bristol-Myers Squibb, Johnson & Johnson, and the Jean Coutu Group, filed in Ontario Superior Court on behalf of patients who have become addicted to opioids. The untested statement of claim is seeking more than \$1.1 billion in damages alleging the companies were negligent in how they researched, developed, and marketed the drugs.

None of the allegations in either claim have been proven in court.

Jasmine Daya, a Toronto-based lawyer who is not involved in any of the lawsuits, said the case in Oklahoma will be used as a basis for similar claims in Canada.

“I believe it’s going to have a lot of influence here in Canada because it has set the framework. It is a landmark decision,” she told CTV’s Your Morning. “In Canada, the provinces have not pursued pharmaceutical companies in the way that Oklahoma did just yesterday.”

Daya said it’s interesting that Oklahoma chose to pursue a public nuisance claim against Johnson & Johnson because it’s a strategy that is rarely ever used in Canada – and if it is, it’s usually in the context of property disputes.

“It has never been used, from what I know, in the context of pharmaceutical companies,” she said. “I think we would consider using negligence and product liability. We could consider public nuisance, but it’s just very rare.”

Reidar Mogerman, a class-action lawyer in B.C. who is also not involved in any of the lawsuits, agreed that Oklahoma’s case will influence what happens in the cases in Canada.

“It’s a big ruling,” he told CTV News Channel on Monday. “It’s a very positive step for states, provinces, cities that are trying to get the companies to take responsibility for the wrongdoing that’s caused this terrible crisis.”

While Daya said the lawsuit in Oklahoma moved through the court system relatively quickly since it was first launched in 2017, she said it’s unlikely there will be a resolution to the claims in Canada anytime soon.

“We have the rules of civil procedure, which means a lot of proceedings that must be followed and adhered to, we have to then follow all these steps before we can even have a trial date,”

she said. "If I went to the Toronto courthouse right now and said 'I've done every single step, it's taken the last few years,' they would give me a trial date today that is in 2021."

With files from The Canadian Press and The Associated Press

