

E-FILE

SHORT FORM ORDER

INDEX No. 400000/2017

SUPREME COURT - STATE OF NEW YORK
NEW YORK STATE OPIOID LITIGATION PART 48 - SUFFOLK COUNTY

PRESENT:

Hon. JERRY GARGUILO
Justice of the Supreme Court

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IN RE OPIOID LITIGATION
-----X

MOTION DATE 1/17/18
ADJ. DATE 2/28/18
Mot. Seq. #006 - MD

Upon the reading and filing of the following papers in this matter: (1) Notice of Motion by the defendants, dated November 10, 2017, and supporting papers (including Memorandum of Law); (2) Affirmation in Opposition by the plaintiffs, dated January 19, 2018, and supporting papers (including Memorandum of Law); (3) Reply Affirmation by the defendants, dated February 20, 2018, and supporting papers (including Memorandum of Law); and (4) Letter from the plaintiffs' attorney to the court, dated February 27, 2018; it is

ORDERED that the motion by the defendants for an order staying all proceedings in this action is denied.

By way of this motion, the defendants seek a stay of this action pursuant to the primary jurisdiction doctrine and the court's inherent authority to stay proceedings.

In support of their motion, the defendants contend that the U.S. Food and Drug Administration (FDA) is currently investigating the benefits and risks of opioid medications and chronic opioid therapy, and that it would be premature to adjudicate claims that the defendants misrepresented those benefits and risks while FDA review remains ongoing. The defendants also contend that the FDA is uniquely qualified to resolve such matters relating to public health, and that imposition of a stay pending the outcome of its post-market studies will help ensure uniform and consistent application of the law in all the jurisdictions where similar litigation is taking place.

The plaintiffs, in opposition to the motion, argue that this litigation is backward-looking, not forward-looking; because the focus of this lawsuit is on the state of scientific knowledge that existed when the defendants made their marketing claims, there is no risk of inconsistent rulings, and none of the current studies will have any bearing on whether the defendants' representations were misleading when made. Similarly, the plaintiffs argue that the court is not being asked to determine the benefits and risks of opioid usage but rather whether the defendants misrepresented benefits and risks of opioids when marketing them, a matter outside the technical expertise of the

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FDA but well within the judicial sphere. The plaintiffs further argue that awaiting FDA action will needlessly delay this lawsuit without any corresponding benefit.

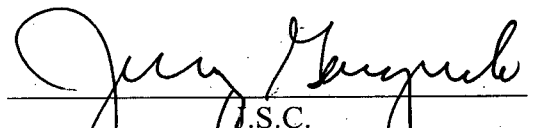
The court, for its part, has previously expressed its desire for and commitment to the prompt resolution of this matter, a position which it reiterates now.

“The doctrine of primary jurisdiction provides that where the courts and an administrative agency have concurrent jurisdiction over a dispute involving issues beyond the conventional experience of judges * * * the court will stay its hand until the agency has applied its expertise to the salient questions” (*Flacke v Onondaga Landfill Sys.*, 69 NY2d 355, 362, 514 NYS2d 689, 692 [1987] [internal quotation marks omitted]). The doctrine applies “where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body” (*Heller v Coca-Cola Co.*, 230 AD2d 768, 769, 646 NYS2d 524, 525, *lv dismissed in part, denied in part* 89 NY2d 856, 653 NYS2d 275 [1996] [internal quotation marks omitted]). “However, where the determination does not require the special competence of an administrative agency, the doctrine does not apply” (*Matter of Neumann v Wyandanch Union Free School Dist.*, 84 AD3d 816, 818, 922 NYS2d 196, 198 [2011]).

Having now reviewed the parties’ submissions, heard oral argument, and considered the relevant facts and applicable law, the court finds no compelling reason to impose a stay of proceedings. In so finding, the court recognizes that the FDA is generally responsible for ensuring that drugs marketed to the public are safe and effective, and assumes, for purposes of this determination, its expertise in evaluating pertinent scientific data. Here, however, the court will examine the state of scientific knowledge in the past and determine what data the defendants possessed to support their marketing claims when they were made—matters which the FDA will not address and which do not require its expertise but which, rather, routinely fall within the conventional experience of judges. The court is also constrained to express its concern that whatever value the studies might yield will be significantly outweighed, and justice defeated, by prejudice arising from the delays that inevitably accompany the agency process.

Accordingly, the motion is denied.

Dated: March 14, 2018


S.C.
HON. JERRY GARGUILO