

Johnson & Johnson v. State of Oklahoma: How the courts are covering for Big Pharma

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On Monday, Oklahoma state Judge Thad Balkman delivered his decision from the bench in a landmark case between the state of Oklahoma and pharmaceutical company Johnson & Johnson over the company's role in the deadly opioid epidemic. The trial was the first case brought by a state government seeking to hold a drug maker directly responsible for the death and devastation caused by the epidemic.

In his ruling, Judge Balkman ordered Johnson & Johnson to pay \$572 million for its role in driving the epidemic, which has claimed the lives of more than 6,000 people in Oklahoma. The trial has been closely watched by other opioid makers, distributors and pharmacy chains, many of whom are awaiting trials on nearly 2,000 similar lawsuits.

The ruling is being cynically hailed by the mainstream media as a victory for the victims of the epidemic. This is a lie.

The final ruling in Oklahoma sent a clear signal to all the guilty parties: Business will stay open. The courts are on their side.

Wall Street celebrated the real victor, Johnson & Johnson, in after-hours trading on the stock market. The company's stock price surged more than four percent in response to the ruling. Shares of other drug makers also surged, including Mallinckrodt, Teva Pharmaceutical and Endo International, three of the largest drug makers in the world, all implicated in the opioid epidemic.

The toothless ruling follows a well-worn pattern in which giant corporations, after committing horrific social crimes, get off with a relatively small fine.

Johnson & Johnson made billions of dollars off opioid sales for over a decade. For the fiscal year 2017 alone, Johnson & Johnson reported overall earnings of \$15.3 billion, with an annual revenue of \$81.6 billion. Judge Balkman's ruling of \$572 million amounts to barely two weeks' profits for the company.

At the peak of the epidemic, other drug companies were bringing in anywhere from \$403 million (for opioids sold by Endo) to \$3.1 billion (in OxyContin sales by Purdue Pharma) in a single year.

In the recent trial, Oklahoma state was seeking \$17 billion to pay for its plan to combat the epidemic, which they noted includes "addiction treatment, drug courts and other services."

The state predicts it will need at least the next 20 years to repair the damage done by the opioid epidemic.

Despite the paltry amount of the damages awarded, the language of the ruling was unequivocal. Judge Balkman wrote, "Defendants caused an opioid crisis that is evidenced by increased rates of addiction, overdose deaths and neonatal abstinence syndrome in Oklahoma." He added:

The Defendants [Johnson & Johnson], acting in concert with others, embarked on a major campaign in which they used branded and unbranded marketing to disseminate the messages that pain was under-treated and 'there was a low risk of abuse and a low danger' of prescribing opioids ... A key element in Defendants' opioid marketing strategy to overcome barriers to liberal opioid prescribing was its promotion of the concept that chronic pain was under-treated (creating a problem) and increased opioid prescribing was the solution ... *False, misleading, and dangerous marketing campaigns have caused exponentially increasing rates of addiction, overdose deaths.*

Balkman went on to note that the company had been warned by its own advisory board of the dangerous marketing methods: "In 2001, Defendants were advised by Defendants' own hired scientific advisory board that many of the primary marketing messages Defendants used to promote opioids in general, and Duragesic [the company's high-strength drug] specifically, were misleading and should not be disseminated."

The ruling also admitted that the company had paid vast sums of money to "a variety of different pain advocacy groups and organizations that influences prescribing physicians and other healthcare professionals."

A recent report from the *Washington Post*, based on leaked emails, gives a partial glimpse into the corrupt relations that prevailed between drug manufacturers and distributors. One such exchange in January 2009 was between Victor Borelli, a national account manager for drug maker Mallinckrodt, and Steve Cochrane, the vice president of sales for KeySource Medical.

Borelli wrote "Keep 'em comin'!" in response to an email informing him that 1,200 bottles of oxycodone 30 mg tablets had been shipped. Cochrane responded. "Flyin' out of there. It's like people are addicted to these things or something. Oh, wait, people are..."

To which Borelli replied: “Just like Doritos keep eating. We’ll make more.”

Mallinckrodt, for whom Borelli works, is one of the companies whose stocks rose following the Oklahoma ruling.

No section of the ruling class that has any intention of bringing to justice those responsible for this massive social crime. To take on the pharmaceutical companies would require taking on the entire political establishment, with which Big Pharma is intimately intertwined.

A short list of those responsible for the creation of this epidemic includes:

- * The three companies who manufactured 88 percent of the opioids distributed during the height of the epidemic from 2003 to 2006: SpecGx, a subsidiary of Mallinckrodt; Actavis Pharma; and Par Pharmaceutical, a subsidiary of Endo Pharmaceuticals. The leading manufacturer was SpecGx, with nearly 28.9 billion pills, or nearly 38 percent of the market. These companies deliberately targeted the poorest regions of the country, above all Appalachia, with towns like Norton, Virginia ending up with enough to give 306 pills to each adult and child every year.

- * Purdue Pharma, which introduced the prescription painkiller OxyContin in 1996 and pioneered the no-holds-barred “sales tactics” based on lies, deception, and false data, making billions in the process. Purdue settled with the state of Oklahoma separately and is now seeking to achieve what is called a global settlement—an agreement by all parties that would end the lawsuits.

- * The three companies which distributed nearly half of the 76 billion opioid pills handed out between 2006 and 2012: McKesson (14.1 billion), Walgreens (12.6 billion) and Cardinal Health (10.7 billion).

- * The entire Congress, Democrats and Republicans alike, who quietly and unanimously passed a bill at the height of the opioid epidemic, in 2016, that virtually halted the Drug Enforcement Agency’s ability to crack down on drug manufacturers and distributors by stripping the Office of Diversion Control of the ability to halt drug shipments for unusually large and unexplained sales. The bill was written by Linden Barber, a former DEA employee who left his job as associate chief counsel of the DEA and within a month joined a law firm that lobbies Congress on behalf of drug companies.

- * Former President Barack Obama, who signed the bill, without the usual photo op, seven years after he oversaw the largest transfer of wealth from the poor to the rich in the history of the United States following the 2008 financial crash, devastating tens of millions of working people.

- * President Trump, who capitalized in the 2016 election on the social distress in areas like Appalachia, but like his predecessors is a down-the-line defender of the drug companies. He tried to appoint Representative Tom Marino, author of the 2016 bill putting the clamps on DEA enforcement, to be director of the DEA, a nomination that had to be

abandoned after widespread publicity about Marino’s role as a stooge of Big Pharma.

Johnson & Johnson has already indicated that it intends to fight the ruling. Sabrina Strong, a lawyer for Johnson & Johnson, stated immediately after the trial: “We have many strong grounds for appeal, and we intend to pursue those vigorously.” The company reportedly intends to fight the verdict based on the claim that blame for the epidemic could not fairly be placed on one company, whose drugs were approved and strictly regulated by state and federal agencies.

Even the most favorable of rulings will not fix the fundamental problem that allowed for such a situation to develop in the first place.

None of almost 218,000 people who died in the US from 1999 to 2017 from overdoses related to prescription opioids will be brought back to life. No amount of money—and there will be very little, once lawyers, state governments, and the drug bosses finish their deals—can assuage the grief of losing a loved one or alleviate the trauma for the children who lost a parent, a brother, a sister, or a friend, or for the thousands of nurses, doctors and social workers who are working on the front lines of this epidemic.

The suffering and loss will continue, not because there are not resources to deal with such a crisis, but because capitalism is a socio-economic system that will not allow for the resources allocated to meet social need.

The profit system turns everything into its opposite: Pharmaceutical companies, ostensibly in existence to relieve people of pain, turn people into drug addicts for profit; the government office, the DEA, supposedly set up to oversee these companies, functions to rubber stamp the operation; the judicial system, created to hold the guilty accountable, lets them all off the hook.

The opioid epidemic, like every other major issue facing the working class, is a systemic problem that requires a systemic solution. The drug companies and distributors should be nationalized and placed under democratic control, as part of the socialist transformation of society as a whole.



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