

Ex-Drug Distributor CEO Slated For January Opioid Trial

By **Stewart Bishop**

Law360, New York (September 1, 2021, 9:13 PM EDT) -- A New York federal judge on Wednesday set an early 2022 trial date for former pharmaceutical CEO Laurence F. Doud, who's facing drug trafficking charges stemming from a purported scheme to funnel opioids to suspect pharmacies.

At a morning hearing in Manhattan, U.S. District Judge George Daniels tentatively scheduled the estimated three-week-long trial to begin Jan. 24, with the usual pandemic-related caveats that COVID-19 conditions and the availability of suitable courtrooms outfitted for coronavirus mitigation may delay the proceeding.

Doud, the former head of Rochester Drug Co-Operative Inc. — which was one of the 10 largest pharmaceutical distributors before it went bankrupt last year — is charged with narcotics conspiracy and conspiracy to defraud the U.S. for allegedly directing RDC to supply large quantities of oxycodone, fentanyl and other opioids to pharmacies the company suspected were dispensing to people with no medical need for those drugs.

RDC's former chief compliance officer, William Pietruszewski, has pled guilty for his role in the purported scheme and is cooperating with prosecutors.

Judge Daniels on Wednesday also heard arguments over Doud's latest motion to dismiss the charges against him, which rests on the theory that prosecutors can't charge Doud for actions determined to be regulatory violations that were not criminal acts during the time period covered by the indictment.

Doud's argument is tied to the U.S. Supreme Court's 1985 decision in *Dowling v. U.S.*, in which the high court found that an alleged copyright infringer couldn't be prosecuted for the more severe crime of interstate transportation of stolen property.

The defense contends this stand for the proposition that the government can't criminally prosecute someone for actions that have already been determined not to warrant criminal penalties.

An attorney for Doud, Paul Townsend of Gottlieb & Associates PLLC, told Judge Daniels that the holding in *Dowling* means that the government can't attach conduct to a criminal charge that doesn't apply when there is a specific law that is applicable.

"*Dowling* says that in a situation like that you have to choose the statute which covers that conduct," Townsend said.

Assistant U.S. Attorney Nicolas Roos told Judge Daniels that courts have routinely held that a registrant under the Controlled Substances Act who may have violated regulations can also be prosecuted for a more serious offense.

Roos cited the Supreme Court's 1975 decision in *U.S. v. Moore*, a case involving a physician who was convicted of knowing and unlawful distribution of a controlled substance.

In that case, the government contends that the high court considered the same objection that Doud now makes. In *Moore*, the court concluded that it was immaterial that the defendant could also have been prosecuted for a relatively minor offense regarding the issuing of prescriptions, since there is nothing in the statutory scheme or legislative history that supports the notion that someone who could be prosecuted by a regulatory section of the CSA is exempt from prosecution for a significantly greater offense of acting as "a drug pusher."

Doud also has another motion to dismiss the narcotics conspiracy charge that is still pending. In that motion, Doud contends that charge is unconstitutionally vague as applied to him.

Given that he had no requisite notice that his alleged conduct violated the statutes at issue, Doud argues that the prosecution runs afoul of Supreme Court holdings that the Fifth Amendment requires that a statute must make it reasonably clear at the relevant time that the defendant's conduct was criminal.

When the case was charged in April 2019, then-Manhattan U.S. Attorney Geoffrey Berman said it was the first case of its kind against a drug distributor and its executives.

RDC entered into a deferred prosecution deal with the government and agreed to forfeit \$20 million.

Judge Daniels said he planned to decide both motions in the coming weeks.

The government is represented by Alexandra Rothman and Nicolas Roos of the U.S. Attorney's Office for the Southern District of New York.

Doud is represented by Robert Gottlieb and Paul Townsend of Robert C. Gottlieb Associates PLLC and Derelle Janey of The Janey Law Firm LLP.

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

--Additional reporting by Jack Queen. Editing by Andrew Cohen.