

Ex-Pharma CEO Wants Landmark Opioid Conviction Tossed

By Jack Queen

Law360 (February 16, 2022, 6:13 PM EST) -- The first corporate leader to be convicted of drug trafficking charges stemming from the opioid crisis is asking a Manhattan federal court to reject the verdict, arguing Wednesday that prosecutors didn't prove he schemed to boost revenue by selling to pill mills.

Attorneys for Laurence Doud, the former CEO of opioid distributor Rochester Drug Co-Operative Inc., said there was no proof that he conspired to break the law or knew customers were dispensing pills illegally.

"While there was testimony about red flags, and whether RDC employees may have suspected diversion of oxycodone and/or fentanyl occurring at RDC customer pharmacies, the government has failed to show that Mr. Doud actually knew that diversion was occurring," Doud said in his motion for acquittal or a new trial.

Doud's conviction endorsed the novel legal theory that drug laws typically applied to street dealers and gangs can pierce corporate boardrooms. The former executive, who was also convicted of scheming to defraud the U.S. by not reporting shady pharmacy customers to law enforcement, argues that prosecutors are criminalizing run-of-the-mill business activity and compliance lapses.

No witness credibly testified that Rochester executives struck unlawful agreements to divert drugs, Doud claims, calling this a "fatal blow" to the government's case.

"The most foreseeable way that Mr. Doud could have had knowledge of the underlying crimes was to receive that information from his compliance team. However, the evidence at trial clearly shows that no member of Rochester's compliance team itself had actual knowledge that diversion was occurring," he said.

Former Rochester compliance chief William Pietruszewski, who pled guilty to similar charges and served as the government's star witness, testified that he conspired with Doud to distribute narcotics and defraud the U.S. Drug Enforcement Administration. But Doud claims Pietruszewski contradicted this "self-serving" statement on cross-examination.

Asked if he didn't file suspicious activity reports with the DEA because he intended for pharmacies to divert opioids illegally, Pietruszewski responded: "I didn't want them to be, but they were diverted because we let them go, yes," according to the filing.

Jessica Bouck, a former Rochester compliance employee and alleged co-conspirator, also provided "absolutely no testimony to indicate that she had ever entered into an unlawful agreement," Doud claimed, adding that Bouck rarely interacted with him personally. Along with Pietruszewski, Bouck testified that "the culture at RDC was to work with their customers to grow the business — not to intentionally commit any crimes," Doud said.

The case hinges upon Doud's state of mind, as much of the evidence is circumstantial. Internal Rochester emails cut both ways, with Doud sometimes stressing compliance and other times going to bat for shady customers. Doud argued in his filing that a theory of "conscious avoidance" — when a defendant deliberately shields themselves from evidence of a crime — isn't enough to support allegations that he knowingly participated in a conspiracy.

Counsel for Doud and a spokesman for the U.S. attorney's office declined to comment.

During Doud's January trial, prosecutors told the jury that Doud knew full well that his company was selling hundreds of millions of dollars worth of highly addictive painkillers to pharmacies that were dispensing them illegally.

"The defendant put sales over safety. He didn't care about the responsibility that comes along with shipping dangerous drugs," prosecutor Thomas Burnett said. "He broke the rules. Why? Greed."

Doud earned millions of dollars in compensation as he oversaw an exponential increase in sales from 2012 to 2016, when Rochester's opioid revenues jumped from \$4.7 million to \$42.2 million, according to the government.

Rochester has paid a \$20 million penalty for the alleged lawbreaking. The company filed for Chapter 11 bankruptcy in March 2020, citing fines and soaring compliance costs stemming from the criminal case and other litigation. The company is now winding down, according to testimony at Doud's trial.

Doud is represented by Derrelle Janey of the Janey Law Firm LLP, and Robert Gottlieb and Paul Townsend of Robert C. Gottlieb Associates PLLC.

The government is represented by Thomas Burnett, Nicolas Roos and Alexandra Rothman 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 the U.S. District Court for the Southern District of New York.

--Additional reporting by Pete Brush. Editing by Orlando Lorenzo.