

CHICAGO LAWYER®

CLIFFORD'S NOTES

Amid the terrible coronavirus numbers sits another, perhaps for some quieter, epidemic: opioid addiction. More than 400,000 people have died over the last 20 years from this epidemic that has gripped our nation, but it seems to rear its ugly head only when celebrities die as a result of over-prescribed pain medications.

The Clifford Tort Symposium examined this issue in a day-long seminar last May, bringing together the best academic minds to discuss the various facets of this complex issue. The problem remains the dark money of pharmaceutical companies that have deliberately funded the overuse of opioid drugs with a web that snared patients, health care professionals, patient advocacy groups, medical professional societies, medical research universities, public health agencies and elected officials at the state and federal levels.

What started as easing pain in cancer patients grew to a strategy of treating chronic or acute pain with increased dosages of opioids leading to a level of unaware addiction for too many cases. Families were, and remain, devastated before they even realized what had happened, and the pharmaceutical industry gave the justification to doctors for continuing prescriptions.

This was made possible in large part due to the U.S. Supreme Court's ruling in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), that loosened the rules for corporate political spending and allows nonprofit groups to engage in political activities without revealing funding sources or agendas. It has been well documented that pharmaceutical companies that made billions from opioid prescriptions made contributions to "Dark Money" groups that, in turn, made substantial contributions to lawmakers through Political Action Committees (PACs).

For example, the U.S. House Energy and Commerce Committee, a leader in responding to the crisis in drafting curative legislation, also has been a leader in accepting contributions from PACs with financial ties to the opioid industry. In a 2018 article in the *Journal of the American Medical Association (JAMA)*, it was reported that 49 of the 55 committee members received political contributions from at least one of the dozen PACs that received money from the companies that had a financial stake in opioid policy development. The median contribution amount was \$18,500.

The same was true in the Senate where 15 of the 23 members of the Health, Education, Labor



FOLLOW THE MONEY

PAC donations play major role in opioid crisis

By **BOB CLIFFORD**

and Pensions Committee that has addressed the crisis received PAC contributions with the median amount being \$18,500, according to JAMA.

In the meantime, the fight has moved to the courts for resolution of this ongoing crisis.

In a landmark eight-week opioid trial in Oklahoma in late 2019, Johnson & Johnson was ordered to reimburse the state \$465 million for overselling the benefits of painkillers. Although the amount fell far short of the \$17 billion judgment that Oklahoma had sought to pay for addiction treatment, drug courts and other services it said it would need over the next two decades to repair the damage done by the opioid epidemic, thousands of other cases remain in the pipeline.

In this first case against a drug manufacturer for causing a national public health disaster, Judge Thad Balkman wrote that Johnson & Johnson had promulgated "false, misleading, and dangerous marketing campaigns" that had "caused exponentially increasing rates of addiction, overdose deaths" and babies born exposed to opioids. His finding that Johnson & Johnson had breached the state's "public nuisance" law was a significant aspect of his order.

Many academics have said that early cases will provide a blueprint in adjudicating the thousands of outstanding claims so that there is consistency and certainty going forward. They also will provide

guidance on the future work of hospitals, health care workers and big pharma handling this public health delivery problem; however, experts warn there is no "cookie-cutter" solution because of the unique concerns of each stakeholder.

Following that decision, four companies that made or distributed prescription opioids, including Johnson & Johnson, reached a \$26 billion settlement on opioid litigation involving numerous states, counties and cities. Public officials contended that the opioid manufacturers, distributors and pharmacies knew or should have known that billions of the highly addictive pills were being siphoned off by fraudulent doctors, illegal pill mills and negligent pharmacies and given to patients who abused the drugs. The settlement money is expected to go to communities devastated by the addiction crisis and don't have the funds to address these needs. Judges in Ohio have postponed two major opioid trials against pharmaceutical distributors, one brought by the Ohio Attorney General's office, due to the pandemic.

Much is still left to be done to resolve this crisis, and it will take a lot of cooperation and accountability to try to right this wrong. CL

Bob Clifford is the founder of Clifford Law Offices. He practices personal injury and regularly handles complex damage cases.
rclifford@cliffordlaw.com