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NY Counties in State Opioid Litigation Allowed Discovery

Attorneys for a group of New York counties that are suing opioid manufacturers and distributors in state court are being allowed to proceed with discovery despite a pending motion to dismiss filed by the defendants.

By Andrew Denney | January 16, 2018

Attorneys for a group of New York counties that are suing opioid manufacturers and distributors in state court are being allowed to proceed with discovery despite a pending motion to dismiss filed by the defendants, which plaintiffs say will help them fight opioid abuse while the case moves forward.

In New York, discovery is automatically stayed while a motion to dismiss is pending, but Suffolk County Supreme Court Justice Jerry Garguilo took the



<https://images.law.com/contrib/content/uploads/documents/389/17599/Garguilo-opioid-ruling.pdf>) uncommon step of allowing discovery to proceed while the defendants' motions to dismiss are set to proceed to oral arguments.

Plaintiffs are taking on opioid manufacturers and distributors on multiple fronts, with governmental units such as the state of New Jersey and the city of Seattle filing in state courts, while others have joined in federal [multidistrict litigation](https://www.law.com/newyorklawjournal/sites/nationallawjournal/2018/01/09/judge-orders-opioid-lawyers-to-come-up-with-a-settlement-plan/?back=law) (<https://www.law.com/newyorklawjournal/sites/nationallawjournal/2018/01/09/judge-orders-opioid-lawyers-to-come-up-with-a-settlement-plan/?back=law>).

In the New York case, in which several counties' suits have been consolidated in a Suffolk County Supreme Court, the plaintiff counties seek supply-chain data on prescription opioid distribution in New York, which they say could help communities impacted by opioid abuse take swift action while the litigation progresses.

In a letter to Garguilo, plaintiffs attorney Paul Napoli of Napoli Shkolnik [argued that](https://images.law.com/contrib/content/uploads/documents/389/17599/Napoli-opioid-letter.pdf) (<https://images.law.com/contrib/content/uploads/documents/389/17599/Napoli-opioid-letter.pdf>) the requested materials are needed not only to help them prepare their case, but also that the information could "save lives" and give the counties a "much-needed lifeline" to control the flow of opioids within their borders.

"The opioid crisis is getting worse and this type of information can assist plaintiffs in controlling this epidemic," Napoli wrote.

According to the New York State Department of Health, there were 1,478 overdose deaths involving prescription opioids and fentanyl in New York, excluding the five counties located within New York City, in 2016.

Pushing back against the request, the [defendants argued](https://images.law.com/contrib/content/uploads/documents/389/17599/Neil-Roman-letter.pdf) (<https://images.law.com/contrib/content/uploads/documents/389/17599/Neil-Roman-letter.pdf>) that the discovery request was "overbroad" and would place an unwarranted burden on the defendant.

In a letter to Garguilo asking him to deny the plaintiffs' request, Neil Roman of Covington & Burling, which represents distributor McKesson Corp., wrote that the plaintiffs' argument that the requested discovery materials are needed to save lives was "vague, unsupported and demonstrably false."

In a brief order issued on Jan. 12 granting a lift of the stay, Garguilo said he concurred with U.S. District Judge Dan Polster of the Northern District of Ohio, who presides over the federal multidistrict litigation, that people are not interested in trials, discovery or "figuring out the answer to interesting legal questions like pre-emptions and learned intermediary" and that issues raised by all sides in the case should be put on a "fast track."

In an interview, Napoli said Garguilo's ruling was a major victory for the plaintiffs and that in his 25 years in practice, he had never seen a judge take the extra step of lifting a stay discovery with dismissal motions pending.

"It's a means to an end of this problem," Napoli said.

The attorney for defendants in the case declined to comment or did not respond to requests for comment.

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