

Opioid lawsuits may become a trend for local governments

Calhoun County hasn't discussed idea, but has been contacted

By Tim Lockette, Staff Writer for *The Anniston Star*

Two days after Etowah County officials announced they would sue drug distributors to recoup their costs from the opioid epidemic, the district attorney in neighboring Calhoun County got a letter from a law firm in New York.

"Napoli Shkolnik has been retained by over 30 municipalities across the country to investigate and file a lawsuit on their behalf against the manufacturers and distributors of opioid pain medications," read the letter, from lawyer Paul Napoli to DA Brian McVeigh.

The letter is one more sign of what seems to be a legal trend. As governments grow more alarmed about the effects of opioid abuse, a growing number are taking drug companies to court. The result could be a big payoff for cities and counties struggling with a drug crisis. Or local governments could walk away with nothing.

"I'm not surprised at these suits, but I don't know how successful they're going to be," said Jill Elysa Evans, a law professor who teaches torts at the Cumberland School of Law.

Few public officials dispute the notion that addiction to opioids — a family of painkillers that includes heroin and many prescription painkillers — has burgeoned over the past two decades, or that the problem was avoidable. Opioid prescriptions tripled between 1999 and 2015, and overdose deaths topped 52,000 in 2015, outpacing car crashes and homicides as a cause of death. Local governments have felt the strain.

"It's cost us a ton of money," said McVeigh, Calhoun County's DA. "From the coroner's office to the county jail."

Governments now seem to be striking back on multiple fronts. Kentucky won a \$24 million settlement in 2015 against Purdue Pharma, a maker of OxyContin, on a claim the company misled customers about the drug's addictive properties. Alabama last month joined 40 other states in sending subpoenas to other companies, possibly in preparation for a similar legal challenge.

Smaller governments from Eau Claire County, Wis., to the Cherokee Nation in Oklahoma have sued distributors or retailers of drugs, hoping to recoup their costs. Etowah County and Gadsden officials Monday said they would sue drug distributors McKesson, Americasource Bergen and Cardinal Health.

"This is a way to make the people who are putting drugs on our streets accountable and make them pay for what we're having to do," Etowah County Sheriff Todd Entrekin said Monday, according to the Gadsden Times.

Attempts to reach McKesson, Amerisource and Cardinal for comment Wednesday were all unsuccessful. The details of the legal arguments aren't clear: Attempts to reach Entrekin and the local governments' lawyers, Donald Rhea and Emily Hawk Mills, were all unsuccessful, though a staffer at Mills' law firm said the suit had not yet been filed.

When the city of Birmingham sued the same three companies in August, the city accused them of circumventing Drug Enforcement Agency requirements to monitor "suspicious orders" that might indicate someone is overprescribing the drugs.

Lawyer Joe Ciaccio makes a similar case against the distributors. He works for Napoli Shkolnik, the firm that pitched the idea of a lawsuit to the Calhoun County DA this week.

"It goes beyond health costs," Ciaccio said of the impact of the drugs. "There are social costs, law enforcement costs, coroner's costs and foster care."

Ciaccio said Wednesday that there are actually 50 local governments now involved in his company's lawsuit.

In Calhoun County, officials had yet to really discuss whether they want to be plaintiff No. 51.

"Legal action isn't something we've discussed," said Melissia Wood, acting county administrator. McVeigh said the same. Both said the costs of opioid abuse came up often, though.

It's not the first time governments have joined in waves of lawsuits against private companies to recoup their losses, said Evans, the law professor. Most notably, officials sued tobacco companies, winning large settlements to recoup health costs.

Not every set of lawsuits fared as well, Evans said. Suits over lead poisoning in paint or gun-related violence haven't yielded much for plaintiffs so far, she said. Suits against restaurant chains and food processors, over obesity, produced political backlash in some states.

Evans said the challenge for the local governments is to establish causation — proving that distributors and manufacturers are to blame when doctors and pharmacists also have a hand in deciding who gets drugs.

"Drug companies could argue that pharmacists should never have filled those prescriptions, or that doctors should never have written them," she said.

