



Portland opioid lawsuit may end up in Ohio federal court

By David Harry | July 30, 2018

PORTLAND — The city’s lawsuit over costs associated with opioid addiction has expanded to include retail pharmacy chains.

But where the suit will be heard is in play after defendants moved to shift the case from Cumberland County Superior Court to the U.S. District Court of Northern Ohio.

On July 20, Pierce Atwood attorney Joshua Dunlap, representing AmerisourceBergen Drug Corp., or ABDC, filed a Notice of Removal with the U.S. District of Maine court.

The notice is a legal request defendants in civil suits are entitled to make when they are out of state or if the case involves federal laws.

Dunlap on July 27 filed a motion to stay any federal judicial action until the Judicial Panel on Multidistrict Litigation decides on whether the city’s case should shift to Ohio.

According to defense motions, Judge Dan Polster of the Cleveland-based court will already be hearing “a multidistrict litigation” that includes more than 1,000 separate suits. More than 30 of those suits were filed by municipal plaintiffs in New England.

On July 24, attorney James E. Belleau of Trafton, Matzen, Belleau & Frenette in Auburn, and attorney Paul J. Napoli of Napoli Shkolnik in New York City filed a motion to remand, or return the case to Cumberland County Superior Court.

“If this case is transferred to Ohio, the residents of Portland will suffer. It means that the City of Portland’s case will be at the end of approximately 900 already filed cases which could delay its day in court for years,” Belleau and Napoli said in a joint statement July 26.

If the stay is granted in U.S. District Court in Maine, the motion to remand the case back to Cumberland County Superior Court would be decided by Polster.

Noting Polster has declined to act on remand orders, Belleau and Napoli asked Judge Nancy Torreson for an expedited decision.

The notice of removal says the city’s case poses a “substantial federal question,” specifically centered on the Controlled Substances Act and whether distributors knowingly shipped illegal quantities of opioids to local retailers.

“The Defendants had a duty to notice suspicious or alarming orders of opioid pharmaceuticals and to report suspicious orders to the proper authorities and governing bodies including the DEA, Maine Board of Pharmacy and the Maine Department of Health and Human Services,” the suit alleges.

In the notice of removal, ABDC said the suit failed to mention any state laws requiring that shipments be reported and halted.

The city first filed on April 18, and amended its complaint on June 18, adding CVS, Walgreens, Walmart and Rite Aid to the suit as retailers of the prescription opioids it says have resulted in public health problems that have cost the city in terms of public health, social services and law enforcement.

The suit alleges pharmaceutical companies including Purdue, Teva, Cephalon, Janssen, Endo, Allergan, Actavis, and Watson – as well as distributors and five physicians and the retailers – engaged in practices that misled patients about the potential risks of addiction to prescription opioids while also promoting their use unnecessarily.

Suits have been filed throughout the country by Napoli Shkolnik, which is working with local attorneys. Trafton, Matzen, Belleau & Frenette is handling the suit for the city on a contingency basis.

In Maine, Biddeford and Augusta have also sued.

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