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News/Columns

Lawyers in Opioid Suits Aim for MDL to Handle Dozens of Cases

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As more governments across the nation sue dozens of drug companies to claw back money spent battling opioid addiction, one lawyer has moved to transfer all the cases into a single federal court.

James Peterson of Hill, Peterson, Carper, Bee & Deitzler in Charleston, West Virginia, [moved](#) on Sept. 25 to coordinate at least 66 cases brought by cities, counties and even two states — New Hampshire and West Virginia — into multidistrict litigation. Peterson represents 46 cities, counties and other government agencies with opioid suits.

Peterson favors Ohio or Illinois as venues for the proposed MDL.

"While the effects are felt in hard-hit local communities, evidence and facts proving how this happened and who to blame are in significant part uniform," he wrote in his motion. "Consolidation in a multidistrict litigation proceeding is necessary to prevent inconsistent rulings, including on *Daubert* motions, and to allow efficient and coordinated adjudication of the burgeoning number of cases."

Peterson did not return a call for comment.

At least half a dozen states have sued opioid manufacturers and distributors contending that the drug companies failed to disclose the prescription medications' addictive nature and have created a public health problem. Many states, like [New Jersey](#), are considering filing suits, and a [coalition](#) of 41 state attorneys general has widened its investigation of several opioid manufacturers.

Many more cities and counties have brought cases, particularly in the past few months. Cities cited in Peterson's motion include Cincinnati; Birmingham, Alabama; Stockton, California; Tacoma, Washington; and Huntington, West Virginia. Governments in Illinois, Kentucky and Tennessee also were cited in the motion.

Many of the government plaintiffs have retained outside counsel, like Motley Rice and New York's Simmons Hanly Conroy, to bring the lawsuits. In some cases, [like New Hampshire's](#), the drug companies have unsuccessfully challenged those contingency fee arrangements.

The suits also name pharmacies and doctors as defendants.

Peterson's motion would only apply to those cases in federal court, not state courts. Many of the cases cited in the motion were recently removed to federal court.

"My cases in NY have no chance of ending up in the MDL because there is no federal diversity or subject matter jurisdiction," wrote Paul Hanly, a shareholder at Simmons Hanly. He is handling a case brought last month by [Waterbury, Connecticut](#), as well as several on behalf of New York cities and counties.

He also is co-lead counsel with Paul Napoli of Napoli Shkolnik in a litigation proceeding created in July that coordinated all the cases brought by governments in New York. On Wednesday, New York Supreme Court Judge Jerry Garguilo named both Hanly and Napoli co-leads over about 16 cases brought by New York counties.

Napoli said he predicted dozens more to be filed.

"A lot of counties have decided they're going to be involved in the litigation but are interviewing firms to determine which firms will represent them in the litigation," he said.

Avoiding the MDL gives plaintiffs lawyers a chance to pursue the cases with different evidentiary standards and New York juries. And it keeps the cases local, he said. "Our county constituents are going to make the determination of how this affected their community, and a local judge is going to make that determination, as opposed to a federal judge in some other part of the country."

He said being in an MDL might not be a bad thing, depending on the judge. "But seeking an MDL is always a huge gamble," he wrote.

Peterson has sought transfer to U.S. District Chief Judge Edmund Sargus of the Southern District of Ohio, who is overseeing at least 13 opioid cases, or U.S. District Judge Staci Yandle of the Southern District of Illinois.

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