

# **Bond Case Briefs**

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## **Opioid Costs Push Struggling States to Dust Off Tobacco Strategy.**

- **Governments weigh legal approach as drug-abuse costs mount**
- **Cigarette-case lawyers circle, but strategy faces challenges**

State and local leaders fighting a worsening opioid-abuse epidemic are studying tactics used in the tobacco lawsuits of the 1990s, as they try to claw back billions from the companies who make and sell the powerful painkillers.

More than 20 U.S. states, counties and cities have sued firms including Johnson & Johnson, Purdue Pharma Inc., and McKesson Corp. in the past year, claiming they fueled a public-health crisis with misleading marketing and aggressive distribution of opioids. Attorneys general in Alaska and Tennessee are also considering lawsuits as their health and legal budgets are stretched to a breaking point by the surge in addictions, overdoses and crime.

It's a strategy cigarette manufacturers will recognize: Two decades ago, they faced similar allegations as states and local governments sued, saying they'd shouldered huge costs for treating diseases blamed on tobacco.

Last month, Ohio sued five drugmakers, alleging they made false and deceptive statements about the risks and benefits of prescription opioids. And Nassau County, New York, this week sued drugmakers, distributors and doctors, saying it has had to increase spending on health care and law enforcement as a result of the epidemic.

"The costs of this opioid crisis are more severe for governmental entities than those posed by tobacco," said Steve Berman, a plaintiffs' lawyer aiding the states, who helped negotiate the \$246 billion tobacco settlement in 1998. "States and cities are getting slammed with opioid-dependence costs that are a much more immediate threat than long-term illnesses tied to tobacco."

It's difficult to say how successful such legal action will be. The companies who make and distribute opioids defend the drugs' safety and say they work actively to keep them from being abused.

Janssen, the J&J unit that sells opioids, has acted "appropriately, responsibly and in the best interests of patients," said Jessica Castles Smith, a spokeswoman. Purdue Pharma said it's concerned about the crisis and is working toward solutions. McKesson said that it doesn't comment on pending litigation. The Healthcare Distribution Alliance — a trade group that includes McKesson — called attempts to target the industry "misguided and unsupported by the facts."

### **Unexpected Burden**

There were 33,000 overdose deaths in the U.S. in 2015, up from 19,000 in 2014, according to the Centers for Disease Control and Prevention. Costs related to opioid abuse, including spending on treatment and policing as well as lost economic output, amount to tens of billions of dollars per year, according to a study by Wolters Kluwer Health in the journal *Medical Care* last year.

In Lorain, Ohio, about 30 miles (50 kilometers) west of Cleveland, Mayor Chase Ritenauer says that the epidemic is wearing out his fleet of police cars. A 25 percent jump in overdose-response calls is putting so much strain on the department's Ford Explorers and Tauruses that some are breaking down.

"We had to have one towed after it just shut down during a call," he said.

Ritenauer says he may have to put off replacing the roof on the police headquarters or fixing the jail's elevator to come up with enough money to buy new cruisers.

"All these unexpected costs are crashing down on cities and leaving them scrambling to shift money around to keep things going," said Hunter Shkolnik, a plaintiff's lawyer who sued pharma makers and sellers on the city of Lorain's behalf.

## **Critical Mass**

Alaska Attorney General Jahna Lindemuth has asked law firms involved in the tobacco battle to pitch a possible opioid suit after Governor Bill Walker declared a state of disaster in February and ordered statewide distribution of naloxone, a drug that can reverse overdoses. There were at least 95 opioid-overdoses deaths in Alaska last year, up from 86 in 2015, and a cluster of nine deaths linked to fentanyl in Anchorage this year, said Jay Butler, the state's chief medical officer.

"We saw that other states were gaining some traction with these suits and thought we should look at whether we have a shot at offsetting some of these opioid costs," said Clyde "Ed" Sniffen, Lindemuth's deputy. He said the state wants to hire an outside lawyer by August.

Tennessee lawmakers have encouraged Herbert Slattery, the state's attorney general, to consider suing drugmakers to recoup opioid costs.

"We're moving toward a critical mass" of states and municipalities suing pharma makers over their handling of opioids, "but we aren't there yet," said Joe Rice, a plaintiffs' lawyer who helped New York and other states in the tobacco fight and who has sued drugmakers on behalf of cities such as Chicago and Los Angeles.

## **Best Defense**

The opioid lawsuits will be different in substance from the tobacco cases, said University of Kentucky law professor Richard Ausness. States went after tobacco giants over costs tied to an unregulated product being used as intended, he said. The drug lawsuits center on the misuse of regulated products, which may make it harder for juries to blame drugmakers and distributors, Ausness said.

"The companies' best defense is going to be that the FDA approved the manufacture and sale of these painkillers along with the addiction warnings," the professor said. "They can maintain they had no duty to investigate further into the misuse of their products."

The ultimate cost for the companies involved would depend on how many states and private plaintiffs' law firms join in and how aggressively they pursue the lawsuits, said law professor David Logan of Roger Williams University law school in Bristol, Rhode Island. States can pursue consumer protection, fraud or other claims, many with statutory fines for each inappropriate prescription, Logan said.

The U.S. Food and Drug Administration has taken a tougher stance on opioids, asking Endo

International Plc last week to pull its Opana ER abuse-resistant opioid from shelves. The drug has been linked to an outbreak of HIV and hepatitis C infections among addicts injecting it with shared needles, the agency said. The cost of treating such outbreaks can fall to state or local governments.

The FDA has approved 10 opioids designed to thwart addicts who crush or liquefy medications to snort or inject. Endo said last week that it is confident in the benefits of Opana ER when it is used as intended.

### **Immeasurable Cost**

In West Virginia, lawyers for Cabell County and other local governments have sued drug sellers including McKesson, Cardinal Health Inc. and AmerisourceBergen Corp., alleging they reaped \$17 billion while creating a public-health hazard by flooding the state with drugs. In Cabell County, the companies sold 40 million doses of prescription opioids from 2007 to 2012 in a county with a population of 96,000, according to their lawsuit.

AmerisourceBergen and Cardinal Health said that they play no role in prescribing opioids and work diligently to stop diversion of drugs for inappropriate uses. AmerisourceBergen said it intends to defend itself vigorously and Cardinal called the suits “misguided.”

As the numbers of emergency overdose calls mount, Huntington, a city of about 49,000 people in the southwest corner of West Virginia, laid off 18 firefighters and police officers amid an opioid-related budget squeeze, city officials say.

“It’s going to bankrupt the country,” said Jan Rader, Huntington’s fire chief and a member of a local opioid task force.

### **Bloomberg**

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