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Louisiana governments, lawyers file lawsuits against drug companies for rise of opioid cases

BY TYLER BRIDGES | TBRIDGES@THEADVOCATE.COM JAN 27, 2018 - 6:24 PM



This Tuesday, Aug. 15, 2017 photo shows an arrangement of pills of the opioid oxycodone-acetaminophen in New York. (AP Photo/Patrick Sison)

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Governments throughout Louisiana — led by the state Department of Health and the cities of Baton Rouge and Covington — are joining a national stampede to file civil lawsuits alleging that drug companies have saddled taxpayers with huge medical and law enforcement costs by recklessly creating opioid addicts.

Thirteen sheriffs, mostly from rural parishes, have also filed suits against opioid manufacturers and distributors.

Besides the sheriffs, representatives of practically every governmental entity in Louisiana — mayors, parish presidents, police juries, district attorneys, state agencies and the like — are deciding whether to go to court.

Plaintiffs' attorneys, meanwhile, are racing across the state to sign them up as clients with the potential of huge fees, usually at a 25 percent contingency rate, in the offing.

"In addition to the seriousness of the issue, everybody is looking to get any dollars they can get," said Pete Adams, executive director of the Louisiana District Attorneys Association, which in the next month will receive presentations from trial lawyers on whether its members ought to sue.

In short, billions of dollars are at stake for everyone involved in a gold rush that analysts liken to the 1990s lawsuits against Big Tobacco. Those historic suits resulted in colossal payouts to state governments across the country and helped lead to a dramatic reduction in smoking rates. They also made a number of lawyers extremely wealthy.

The action in Louisiana includes a Mississippi attorney who played a key role in initiating those lawsuits in 1994. His name is Mike Moore, and he was the attorney general of Mississippi at the time. These days, Moore is a trial lawyer. He said he'll be working for an hourly rate of about \$400 per hour but said the potential of a bonanza is not what moves him.

"I'm involved to try to find a solution to the opioid epidemic," Moore said. More than 42,000 people lost their lives in 2016 from opioid overdoses, the federal Centers for Disease Control and Prevention reported in December, the most ever and 1,000 more than died from breast cancer.

Louisiana has ranked among the top 10 states for opioid prescriptions on a per capita basis in recent years, according to the state's lawsuit, and has spent \$677 million since 2007 "for treatment of opioid use and dependence."

Any money the Department of Health collects in the opioid lawsuit would go to the state Medicaid program, said Matthew Block, the governor's executive counsel.

Louisiana is one of 14 states that have filed suits so far, Moore said, adding that he expects the number to reach 30 by year's end.

Attorney General Jeff Landry has hired Moore to represent Louisiana in its lawsuit. But Moore remains on the sidelines for now because Gov. John Bel Edwards wants to control the potentially lucrative case. He has instead hired a politically active New Orleans law firm, Sher Garner Cahill Richter Klein & Hilbert, to represent the Department of Health.

The governor and the attorney general tried to resolve their dispute through private talks but failed, and they are now battling it out in court. In the meantime, Landry has sidelined the Sher Garner law firm by

refusing to authorize its contract. The Attorney General's Office did not respond to requests for information.

Political irony

The latest legal standoff has created a delicious irony: Landry, a sharply partisan Republican, wants to hire Moore, a Democrat, while Edwards, a Democrat, wants to hire attorney James Garner, a Republican who during the 2015 governor's race served as the sharp-elbowed attorney for then-U.S. Sen. David Vitter, Edwards' Republican opponent.

It should be noted that Garner quickly made up with Edwards after the election by raising \$15,000 for his transition team and tens of thousands more for a major fundraising dinner in September 2016 organized for Edwards' re-election campaign by lobbyist Dan Robin Sr. The Garner firm also hired Robin, who is perhaps Edwards' biggest fundraiser, to represent its clients' interests in Baton Rouge.

Garner declined to discuss the opioid lawsuit, instead referring questions to Block.

"The governor's not making any decisions based on whose side anybody is on," Block said in an interview. "He's making decisions based on who can get the best decisions for the state. Sher Garner is an experienced litigation firm that can get a great result for the Department of Health."



Louisiana governor's staff, attorney general spar over opioid suit at court hearing; judge will make ruling Feb. 20

Earlier this month, Garner won a state court ruling for his clients in a major case over who was at fault for the Bayou Corne sinkhole in Assumption Parish.

Garner struck out with Plaquemines Parish, however, when the Parish Council there last fall declined to authorize an opioid lawsuit sought by Parish President Amos Cormier III that Garner was to handle.

"We felt like it was a rush to judgment," said Kirk Lepine, a council member.

One political figure who did not strike out was state Rep. Ted James, D-Baton Rouge. He will serve as co-counsel in the lawsuit filed on Tuesday by East Baton Rouge Parish.

“I thought it was important that we have both diversity and a good lawyer who could help us with the local agencies getting the documents. That’s Ted’s role,” said Burton LeBlanc, the lead attorney, who heads the Baton Rouge office of Dallas-based Baron & Budd. LeBlanc, a former president of the Louisiana Association for Justice, the trial lawyers’ trade group, said he has gotten to know James through that entity.

James, who is an African-American ally of Mayor Sharon Weston Broome, did not return a phone call.

Among other big government entities, New Orleans Mayor Mitch Landrieu is trying to decide among three law firms that have been short-listed after the city in October requested proposals, said Craig Belden, a mayoral spokesman.

St. Tammany Parish is also weighing its options. “Our legal department is doing our due diligence on how we will proceed and whether we will file suit,” Pat Brister, the parish president, said in a statement.

Jefferson Parish Sheriff Joe Lopinto said he has had a few inquiries from law firms but has “not decided either way yet.”

Big payday possible

Trial lawyers don’t like to admit it, but a big payday could mean millions of dollars for individual attorneys.

“I’ve been inundated by lawyer friends who wanted to get involved,” said one government lawyer who was not authorized to speak publicly about the topic.

State law does not allow either Edwards or Landry to hire attorneys on a contingency basis without specific approval from the Legislature. Garner would work for \$225 per hour for the Department of Health, or about half the standard rate for attorneys at big New Orleans commercial law firms. The Legislature could authorize a bigger payday.

The dispute over which lawyers to hire mirrors another long-running argument between the two rivals: Edwards wants to hire a team of lawyers for a lawsuit against energy companies alleging their role in the loss of coastal wetlands — an effort Landry has blocked by refusing to authorize their contracts.

In the opioid lawsuits, attorneys representing other governmental entities — such as parishes and cities — can work on a contingency fee, which, trial lawyers note, means they can incur huge costs that they have to absorb if they don’t win money in court or through a settlement.

“There’s a risk-reward situation,” said Joel Friedman, a Tulane law school professor.

Melissa Landry heads the Louisiana Lawsuit Abuse Watch and is typically quick to criticize trial lawyers, who she believes benefit from what she sees as overly friendly state laws that prove costly to the businesses they sue.

But with the opioid lawsuits, Landry was more measured in her words, though she isn’t exactly a fan of the suits.

“If it is regulations that have enabled these drugs to exist in the market and perhaps have unintentionally allowed this situation to develop, it is at least fair to question whether we should look first at the regulations,” she said. “It is certainly fair to acknowledge that there is a significant financial incentive for the personal-injury lawyers involved in these lawsuits.”

National phenomenon

What’s happening with the opioid lawsuits in Louisiana appears to mimic what’s happening nationally.

Case after case throughout the country – 313 and counting – is being consolidated under what’s called a multi-district litigation, to be handled by a federal judge in Cleveland. It’s similar to what has occurred in other huge cases involving mass torts against companies accused of causing harm.

While many compare the opioid lawsuits to the cases against Big Tobacco, others say the more apt comparison is with the profusion of lawsuits against BP following the 2010 Deepwater Horizon oil spill off the coast of Louisiana. That case prompted lawsuits by local government entities, labor unions and healthcare networks, along with state governments.

Walter Leger Jr., whose son Walt represents New Orleans in the state House, was among the trial attorneys who sued both Big Tobacco and BP, and he has a piece of the opioid lawsuits as well, teaming with the Laborde Earles law firm in Lafayette. Leger, David Laborde and Derrick Earles made a pitch to sheriffs at a meeting of the Louisiana Sheriffs Association in September in Monroe.

It went well. So far, sheriffs from 13 parishes have signed up with Laborde Earles. They are from Allen, Avoyelles, Calcasieu, East Carroll, Evangeline, Jefferson Davis, Lafayette, Ouachita, Rapides, Sabine, Vernon, Washington and West Carroll parishes.

Laborde expects also to represent Indian tribes in Louisiana, which he noted are sovereign entities.

“The litigation is in infancy, but a lot is happening,” Laborde said. “There’s a huge burden on public entities. There is a cost of medical care for both employees of public entities and pre-trial detainees who are detained because of opioid abuse. There’s a high insurance cost for the public employees to cover opioid abuse and medication, which we believe should have never occurred. There’s a huge cost on law enforcement dealing with the opioid epidemic. There’s an unfunded rehab liability that society has to bear that we believe was solely caused by the defendants we’ve sued.”

Distributors of the pain reliever medicine say they are not to blame.

“As distributors, we understand the tragic impact the opioid epidemic has on communities across the country,” John Parker, senior vice president of the Healthcare Distribution Alliance, said in a statement. “We are deeply engaged in the issue and are taking our own steps to be part of the solution — but we aren’t willing to be scapegoats.

“Distributors are logistics companies that arrange for the safe and secure storage, transport and delivery of medicines from manufacturers to pharmacies, hospitals, long-term care facilities and others based on prescriptions from licensed physicians. We don’t make medicines, market medicines, prescribe medicines or dispense them to consumers.”

Leger said he hopes for a quick resolution to the opioid cases.

“You could smoke for 15 to 30 years before getting a tobacco-related disease and die,” he said. “With this, some people are dying instantly. They’ll rehab, relapse and suffer from an overdose. It’s an epidemic affecting every level of society.”

Covington Mayor Mike Cooper said he decided to move quickly after two law firms pitched him during the holidays. He recommended the firm of Porteous, Hainkel & Johnson. The City Council authorized the hire, with local partner William Lozes to represent the town.

“We want to try to recover costs from our medical and law enforcement response,” said Cooper, who added that Lozes would receive a 20 percent contingency fee.



Covington hires law firm to take on Big Pharma over costs from opioid crisis

Lea Anne Batson, the city-parish attorney for Baton Rouge, recommended Baron & Budd because, as she wrote in an email to council members, “They are one of the largest national firms with the resources to handle

what is certain to be expensive and protracted litigation.”

In his filing, LeBlanc said 92.1 opioid prescriptions were dispensed in 2016 in East Baton Rouge Parish for every 100 people, compared with the national average of 66.5 prescriptions per 100 people. The 2015 rate was even higher at 96.1 prescriptions per 100 people.



Baton Rouge files lawsuit against opioid manufacturers, says they spurred addiction crisis

“We’d love to see an income stream dedicated to addiction,” LeBlanc said in an interview. “We can’t arrest our way out of this problem.”

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