

Wallingford opioid lawsuit going forward despite Purdue bankruptcy

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By Lauren Takores, Record-Journal staff

WALLINGFORD — The town is still pursuing its lawsuit addressing the opioid epidemic against drug manufacturers, which has been complicated by the bankruptcy of one of the largest defendants.

Attorney Judy Scolnick, of New York City-based Scott and Scott, is representing the town in the lawsuit. She gave an update on the town's case during this past Tuesday's Town Council meeting.

The opioid epidemic has its origin in the late 1990s, when drug manufacturers started aggressively pushing opioid medications while downplaying the risks of addiction. The U.S. Department of Health and Human Services declared the opioid epidemic a public health emergency in October 2017.

Governmental entities from state attorneys general to municipalities have filed thousands of lawsuits against opioid drug manufacturers including Purdue Pharma, the Stamford-based manufacturer of Oxycontin, claiming the companies contributed to the opioid epidemic.

Wallingford filed its lawsuit in April 2018 along with New London, New Haven and New Britain, naming some of the nation's largest pharmaceutical companies as defendants, including Purdue and Johnson & Johnson.

A different firm represented another group of municipalities, including Waterbury and Bridgeport.

A setback

Wallingford's lawsuit claims that the drug manufacturers and distributors contributed to the opioid epidemic by "intentionally, recklessly, and negligently (marketing) their opioid products through materially false and misleading statements," according to court documents.

Other defendants include international drug companies Teva Pharmaceuticals USA and Endo Health Solutions Inc. The lawsuit also names one individual, John Kapoor, founder of Insys Therapeutics, which manufactures an under-the-tongue fentanyl spray.

Wallingford, along with 36 other cities and towns, sought compensation for money spent on opioid-related emergency responses and other services.

The cases were consolidated in front of Hartford Superior Court Judge Thomas Moukawsher, who after several hearings, dismissed lawsuits of the 37 municipalities involved in January.

Moukawsher ruled that there are no statutes that grant municipalities a special authority to file the kind of civil suit that seeks compensation for indirect harm from an individual or entity.

A similar lawsuit filed by the state was not affected by Moukawsher's ruling.

Wallingford filed an appeal to the state Appellate Division, but the state Supreme Court intervened and the case was stayed when Purdue, the first named defendant, filed for bankruptcy protection in September.

Purdue's bankruptcy filing triggered an automatic stay of litigation across the country. Once the stay is lifted, the appeal can be pursued.

Despite Moukawsher's decision, Scolnick said, "we are fairly confident that the bulk of the authority in precedent is against him (Moukawsher), much more so than when he ruled."

Multiple opioid lawsuits

Purdue is owned by the Sackler family, and is currently operating under a trustee.

"Purdue, essentially, has very few assets left," Scolnick said. "They still sell Oxycontin, and they said that they have a value of about \$1.5 billion, but when you look at the trajectory, the sales are going straight down."

The Sacklers didn't file for bankruptcy, Purdue did, but the family has offered as a settlement \$3 billion to be divided among all plaintiffs nationwide. The Sacklers have been accused of funneling nearly \$1 billion into Swiss bank accounts, so their true worth is unknown.

"We took the view that maybe it's a great offer," Scolnick said, "but we have no idea what their assets are, so we want them to give us a financial statement and to put it under oath."

Connecticut's Attorney General William Tong is one of several state attorneys general that have sued Purdue and the Sacklers, arguing that the state is the most proper party, not the towns, to receive a settlement and then distribute the funds.

They used subpoena power to obtain documents, so they are in a position to settle cases, Scolnick said that states have argued.

While those negotiations are going on, Wallingford is trying to meet with Tong to work out an allocation plan, Scolnick said, so that towns actually receive funds, unlike what happened with tobacco lawsuits in the 1990s when the settlement money went to the state general fund.

It's why so many towns are suing on their own, Scolnick said.

Wallingford is also a plaintiff in a federal negotiation class lawsuit before U.S. District Judge Dan Polster in Cleveland, Ohio.

The thousands of federal opioid-related cases were moved to one court under a multi-district litigation procedure, Scolnick said. For about a year, Polster tried to work out a settlement, but scheduled a trial for Oct. 21, soon after which the defendants then settled one case for \$300 million.

Polster said he would form a new procedure for settlement, the negotiation class, of all the cases before him and all the government entities in every state court.

Wallingford is one of more than 4,000 members that have already filed. Other categories of plaintiffs include cities, state attorneys general, Native American tribes, neonatal babies and hospitals.

The class is expected to reach upwards of 10,000 claimants, Scolnick said. A settlement at that level would grant drug manufacturers a global release in exchange for their highest settlement figure.

Wallingford has until Nov. 22 to opt out of the negotiation class, which town councilors discussed in a closed-door executive session Tuesday. Councilors took no action when they reconvened after 45 minutes.

If a settlement is reached

Even before the opioid epidemic was declared in 2017, local residents had been organizing in the community to combat drug abuse and prevent overdose deaths.

The Coalition For a Better Wallingford was founded in early 2013 by Jennifer Short and Ken Welch, parents of 20-year-old Taylor Short, who died of an apparent overdose in New Haven in November 2012.

Welch, who attended Tuesday's meeting, said Friday that he's encouraged by the update and will continue to support the lawsuit, and hopes Wallingford sees some benefit from any future settlement.

He added that if the state receives a settlement, he hopes it doesn't take the same structure as the tobacco settlement, "because money just disappears."

"There's a pot of money out there, and people who are trying to jockey for some part of it," Welch said. "We worry that the money will get so divided that we won't see any of it."

If Wallingford receives any settlement money, Mayor William W. Dickinson Jr. said during Tuesday's meeting that he would turn to the town Health and Youth & Social Services departments for direction on how to use it.

Town Health Director Stephen Civitelli said Friday that while the litigation process is “interesting,” it will take a number of years before Wallingford would see any money.

His goal is to focus on prevention and what the health department can do now to educate and raise awareness among residents.

“There’s no one way to address it,” Civitelli said. “We’re still trying to figure out the methods that will be effective.”

Youth & Social Services Director Craig Turner didn’t return a call for comment.

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[Home](#)

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