

# Everett's opioid lawsuit joined to other cases in federal court

## Dozens of other court actions

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*The Everett Herald*

EVERETT, Wash. — Everett likely will face a longer, slower path as it attempts to prove that the maker of the powerful pain medication OxyContin chased profits while knowingly supplying drug traffickers and others who set up a thriving illicit market for its pills.

The city sued Purdue Pharma nearly a year ago, accusing the company of laying the foundation for the community's opioid woes by allowing its product to find its way into "pill mills" and drug rings.

Attorneys representing the city this fall beat back a concerted attempt by the drug maker to have the case dismissed without trial. That should have cleared the way for the discovery phase of the litigation in U.S. District Court in Seattle, including demands for records and depositions with key company figures.

But an early December decision by a federal judicial panel means big changes for the case.

The U.S. Judicial Panel on Multidistrict Litigation has ordered the Everett case joined with more than five dozen of other similar civil actions pending in federal courts around the country, including Kentucky, West Virginia, Alabama, Illinois, California and Ohio. It has assigned them all to Judge Dan A. Polster of the U.S. District Court for northern Ohio, based in Cleveland.

Everett argued that its case raises unique claims, that it should remain in Washington state, and barring that option, the other lawsuits should have been sent here. U.S. District Court Chief Judge Ricardo Martinez spent much of the year addressing the legal issues raised by the city's allegations, Seattle-based attorney Christopher Huck wrote in court papers filed on the city's behalf.

Combining cases now "would essentially place Everett's action on hold" while the other litigants spar over unrelated pretrial matters, and "unfairly delay Everett the badly-needed relief sought in its lawsuit (perhaps for years)," Huck wrote.

The judicial panel said it is convinced the benefits in efficiency outweigh other concerns.

"All of the actions can be expected to implicate common fact questions as to the allegedly improper marketing and widespread diversion of prescription opiates into states, counties and cities across the nation, and discovery likely will be voluminous," the transfer order reads. "Although individualized factual issues may arise in each action, such issues do not — especially at this early stage of litigation — negate the inefficiencies to be gained by centralization."

The transfer order also applies to the lawsuit Tacoma filed against Purdue in September.

Seattle and Washington state Attorney General Bob Ferguson are pursuing their claims in state court. Ferguson's suit accuses the drug maker and affiliated companies of deceptive marketing.

"This public lawsuit is unique because Purdue aggressively marketed what was essentially an uncontrolled experiment on the American public," the state's lawsuit alleges. "There was, and is, no reliable evidence that opioids are effective at relieving chronic pain in the long term."

### Others may join

Snohomish County may join the legal fray.

In December, the County Council authorized hiring the same law firm as Everett to explore legal action. The county hasn't committed to a lawsuit at this point, but will explore the possibility.

"The opioid epidemic has devastated our communities, whether urban, suburban, or rural," County Executive Dave Somers said. "It is costing us in human life, in resources, and in suffering. This step will

allow us to explore whether we can recover damages and hold accountable those most responsible for the epidemic. We will do all we can to protect our residents and look out for their interests."

Snohomish County saw 30 opioid-related deaths during the first half of 2017. In the preceding decade, prescription drugs have caused the most overdose deaths year over year. The share of the deaths from heroin overdoses increased dramatically in recent years. Both Everett and the state's lawsuits allege that many addicts started out abusing OxyContin, only to switch to heroin to feed their habit.

The Snohomish Health District recorded 37 opioid over-



doses during a single week in July, three of them fatal.

In November, public health, law enforcement and other local officials launched a coordinated response to the

threat. Any legal action would be another part of that multi-pronged approach.

"The criminal justice system isn't designed or equipped to deal with the opioid epi-

dem and using the jail as the county's largest de facto detox center isn't a solution," Sheriff Ty Trenary said. "It's time to go upstream to address the problem and hold big pharma — the largest suppliers of opioids — responsible."

If the county goes to court, it could follow the same legal path against Purdue as state and local agencies. Or it could try an entirely different approach, naming other drug makers or distributors.

The county prosecuting attorney's office lacks the in-house expertise to pursue the complicated and time-consuming case.

"This action demonstrates the commitment by the county's elected officials to tackle

the opioid epidemic head-on, whether it be in the streets or in the courtroom," said Jason Cummings, the county's chief civil deputy prosecutor.

### Huge windfall

While the suits may serve the public interest, they also promise a huge windfall for the trial bar as they take on the deep-pocketed pharmaceutical industry.

The county's contract will pay Seattle-based Kelley, Goldfarb, Huck, Roth & Riojas, PLLC a 20 percent fee of any damages awarded, up to \$10 million. The percentage would decline slightly for amounts above \$10 million. Attorney fees are capped at \$30 million.

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