EXHIBIT D

Washington County Attorney Pete Orput has been "kind of the inspiration" for Minnesota's suits, said Hennepin County Attorney Mike Freeman, whose own role in organizing and recruiting private firms for the joint effort also has been pivotal. (Staff photo: Kevin Featherly)

Meet the 'catalyst' behind the opioid lawsuits

Kevin Featherly//December 11, 2017//

Washington County Attorney Pete Orput is being called the "emotional energy" behind what ultimately could be more than 20 Minnesota lawsuits against opioid manufacturers and distributors.

The suits seek to force the industry to halt deceptive marketing in Minnesota and to mitigate the "public nuisance" caused by rapidly accelerating addiction to both pills and — when physicians cut patients off prescriptions — street heroin. The suits ask Minnesota's U.S. District Court to force companies to pay to help clean up the mess. Any settlement would be divvied up among participating counties.

Orput has been “kind of the inspiration” for Minnesota’s suits, said Hennepin County Attorney Mike Freeman, whose own role in organizing and recruiting private firms for the joint effort also has been pivotal.

“Catalyst is a great word,” Freeman said. “Pete is kind of the emotional energy behind all of this.”

Ramsey County Attorney John Choi agrees. “Pete was the first county attorney in the state who was talking about the culpability of the industry in this whole crisis,” Choi said. “He knew a lot about this issue.”

That knowledge came at the price of many tears and sleepless nights, according to Orput. The crisis became a focal point for him in 2014, after he met Lori Lewis at a public speaking event.

The Oakdale woman lost her son, 23-year-old musician and artist Ryan Lewis, to an overdose after she had back surgery. Ryan found and started taking her leftover pills, leading to fatal abuse. Orput says he cried the entire drive home from that meeting.

Since then, Orput routinely has requested that county investigators inform him whenever they learn of a death not obviously from natural causes. Too many in recent years, he said, were caused by painkillers and street opiates.

Statistics support that. There were two opioid deaths in the Washington County in 2007, according to the Washington County lawsuit. The year that Lori Lewis’ son died, there were 13. In Ramsey County, the story is similar. There were 12 opioid and heroin deaths in 2007. In 2015, there were 32.

Statewide, Minnesota had 60 opioid deaths in 1999, according to the Washington County suit. By 2014, the number swelled to 319, a 500 percent increase.

At a Nov. 30 press conference, Orput — a Vietnam War veteran — told reporters that the late-night calls he gets from investigators trigger post-traumatic stress.

“It’s just a feeling of powerlessness,” Orput said in a Dec. 5 interview. “My first and overwhelming response these days, if the phone rings at 1 or 2 in the morning, is I brace myself. And then when I get the call, I lie in bed and I go, ‘How did this happen, God?’”

He hasn’t been content to wonder.

Orput dug into the research, consumed media reports and for years forwarded it all in emails to his colleagues. There were abortive talks two or three years ago about following Chicago’s lead by filing county lawsuits against distributors and manufacturers. For various reasons, not the least of which was initial reluctance by county commissioners, they didn’t immediately come together.

But Orput wouldn’t let it go. “He would kind of keep this issue alive for all of us,” Choi said. “I think Pete was very critical in that.”

In subsequent years, around 160 opioid-related lawsuits were filed by counties and cities in at least seven states nationally. Several months ago, it became clear that Orput would file one, with or without his colleagues’ participation.

“He told everybody that Washington County was moving forward,” Choi said. “I think it was a good impetus for all of us then to say, ‘OK, now is the time to reevaluate.’”

Freeman and Dakota County Attorney Jim Backstrom separately hosted meetings and conference calls with county attorneys together to discuss the issue. They also invited private Minnesota law firms to make their pitch for assisting counties on a contingency basis.

Before long, a consensus emerged for coordinated but separate legal action to fight the epidemic.

“The world has changed in the last six months,” said Freeman. “We all said, ‘We need to do something.’”

Common charges

Three nearly identical federal lawsuits have been filed in Minnesota so far — in Washington, Mower and Ramsey counties. St. Louis County Attorney Mark Rubin said he hopes to file his by the end of the year, either in state District Court or federal court, and possibly both. Freeman has a conference call scheduled this week to discuss whether to file in state or federal court. Others are expected to follow.

Two Minneapolis firms — Lockridge Grindal Nauen P.L.L.P. (in partnership with Gustafson Gluek PLLC) and Briol & Benson PLLC (in partnership with Linda Singer of South Carolina-based Motley Rice) — rose to the top as candidates. Lockridge is working with Mower, Washington and Ramsey. Briol & Benson will work with Hennepin County, Freeman said.

While most counties likely will choose one of those two firms, it’s possible others could sign on with other counties going forward, Freeman said.

The three suits filed so far accuse the pharmaceutical industry of using deceptive marketing techniques and negligent pill distribution to knowingly allow a public health crisis to erupt, all in the name of profits.

The suits charge that the industry “pushed” highly addictive opioid drugs onto the public while falsely representing to doctors that patients would “only rarely succumb” to addiction. Orput says that when it became clear patients were becoming addicted, marketers assured doctors the condition was a mere “pseudo-addiction,” for which the answer was higher doses.

“These pharmaceutical companies … turned patients into drug addicts for their own corporate profit,” the three suits say.

The documents also accuse wholesale distributors like McKesson Corp., Cardinal Health and AmerisourceBergen of failing to monitor, detect and report instances of illegal diversion — the practice, for example, of allowing suspiciously large opiate orders to ship to small pharmacies without investigation.

“What’s the difference between a guy selling pills on a corner and McKesson diverting 2 million pills?” Orput said. “One is more egregious than the other, but it is the same concept.”

Companies deny all the allegations. While the Healthcare Distribution Alliance never responded to Minnesota Lawyer’s query, a statement attributed to the group’s spokesman, John E. Parker, has been published in newspapers around the country where lawsuits have popped up.

“We aren’t willing to be scapegoats,” it says. “We are ready to have a serious conversation about solving a complex problem and are eager to work with political leaders and all stakeholders in finding forward-looking solutions.”

One of the 10 or so manufacturers named in the suits did respond to a query. William Foster, spokesperson for Janssen Pharmaceuticals Inc., said in an email that the allegations are “both legally and factually unfounded.”

Foster said that, when “responsibly used,” pain medications give doctors and patients important choices for managing debilitating pain. But he acknowledges there is a problem.

”Addressing opioid abuse will require collaboration among many stakeholders and we will continue to work with federal, state and local officials to support solutions,” the written statement said.

Executive efforts

Courts are not the only center of activity on the Minnesota opioid front.

On Nov. 3, Lt. Gov. Tina Smith and Minnesota Department of Human Services Commissioner Emily Piper announced that the state would offer $16.6 million in grants to more than 30 county and tribal governments and community organizations, to combat the crisis.

On Nov. 30, Smith unveiled new draft guidelines to help Minnesota doctors and other providers decide how to prescribe pain killers and monitor their use. At the same time, she announced that the federal government had awarded the Minnesota Bureau of Criminal Apprehension $1.4 million to address unlawful opioid distribution.

Gov. Mark Dayton, at a Dec. 4 press conference, said the lawsuits — while filed by counties independent of the state — dovetail with his administration's efforts to quell the epidemic.

"We need to attack this as aggressively as we can, every which way," he said. He also urged the industry to support his penny-a-pill tax on pharmaceutical companies, "so that we can have the funding to attack this at all levels."

Opioid suit consolidation will affect Minnesota cases

A federal judicial panel's decision to consolidate 64 opioid suits from nine federal court districts will impact Minnesota's efforts on that front.

In a Dec. 5 opinion, the U.S. Judicial Panel on Multidistrict Litigation ruled that the 64 suits filed in seven states will be transferred to the U.S. District Court's northern Ohio district for consolidated pretrial proceedings.

The opinion states that since plaintiffs filed the motion for consolidation, the panel was informed that there could be as many as 115 "potentially related

actions." All involve charges of improper marketing and inappropriate distribution of prescription opiates.

Three Minnesota counties have filed similar suits against opioid manufacturers and distributors, and perhaps 20 more are expected to follow, county officials have said.

While Minnesota gets no mention in the JPML's opinion, attorney Yvonne M. Flaherty of the law firm Lockridge Grindal Nauen confirmed that Minnesota's federal suits also will be subject to consolidated proceedings in Ohio.

"The Minnesota cases are not listed on the order, but the order does apply to the Minnesota cases as well as any future cases that are filed on behalf of county or city governments in federal court," Flaherty said in an email Wednesday. Her firm represents Washington, Mower and Ramsey counties, the three that have thus far filed lawsuits against the industry.

The panel ruled that centralization in Ohio's Northern District will "serve the convenience of the parties and witnesses, and promote the just and efficient conduct of the litigation." It also will allow a single transferee judge to coordinate the numerous cases pending in state courts.

Some parties to various lawsuits opposed the consolidation motion, the panel noted, but justices found their arguments unpersuasive. "Although individualized factual issues may arise in each action, such issues do not — especially at this early stage of litigation — negate the efficiencies to be gained by centralization," the opinion states.

St. Louis County attorney Mark Rubin and Hennepin County attorney Mike Freeman, who are mulling whether to file their cases in state or federal court, both said the opinion will not materially affect their decisions.