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Attys Relaunch Bid For 'Opioid Babies' Track In MDL

By **Emily Field**

Law360 (August 21, 2018, 9:59 PM EDT) -- Attorneys representing babies born to mothers who took prescription narcotics while pregnant renewed their push Tuesday for a separate track in the opioid multidistrict litigation, telling an Ohio federal judge that they're being stonewalled by the plaintiffs' executive committee.

The attorneys are seeking to file a new motion for a separate track in the litigation, saying that the current plaintiffs' committee still has no dedicated representative for the babies born with neonatal abstinence syndrome and that it's composed exclusively of attorneys for local governments and institutions whose interests clash with those of the babies. And while discovery is underway, the committee has officially refused to inform the babies' attorneys if it involves or relates to any of their claims, the attorneys said.

Since the MDL was formed in December, tracks have been created for third-party payors and Native American tribes, the attorneys said. Like the local governments, the parties generally allege that opioid makers and distributors fueled the opioid crisis by downplaying the risks of opioids and failing to report suspicious orders.

"The court created the Native American track so that they would not be marginalized," the attorneys said. "Here the [neonatal abstinence syndrome] babies are currently marginalized completely."

Neonatal abstinence syndrome can result in low birth weight, short-term withdrawal symptoms such as seizures and longer-term cognitive difficulties. There have been seven proposed class actions representing NAS babies transferred to the MDL, according to the filing.

Since the attorneys first requested a separate track for the babies in May, more than 5,000 babies were born with NAS, according to the filing. U.S. District Judge Dan Polster in late June **turned down** the request in a text order.

"Judge Polster considered most if not all of the arguments made by the representatives when they made their original motion," plaintiffs' executive committee member Paul Hanly of Simmons Hanly Conroy LLC told Law360 on Tuesday. "The PEC believes that his decision not to create a separate track or add PEC members was and remains correct, but it is the Court's decision, not that of the PEC."

The attorneys for the babies said that right now, the babies are the largest category of plaintiffs and are "undisputedly free of fault and critically the most vulnerable in this litigation due to their inability to speak for themselves."

When the attorneys first sought a separate track, they argued that a trust should be created to fund treatment and research related to the syndrome. They also argued that there was a need for the victims to be directly compensated, some of it relating to out-of-pocket costs for opioid-weaning treatment after babies are born.

"Voiceless children deserve to have separate counsel and these NAS babies deserve to be heard and represented in this opioid crisis," Scott Bickford of Martzell Bickford & Centola, one of attorneys representing the babies, told Law360.

"Despite thousands of NAS babies being born each year, the states and local governments have done little to address this epidemic or the life long issues which follow these children.," Bickford said. "We are hoping the court reconsiders its position, recognizes the plight of these children and allows them a clear voice in the multidistrict litigation."

Counsel for the drug distributors and manufacturers didn't immediately respond to requests for comment on Tuesday.

The case is In re: National Prescription Opiate Litigation, case number 1:17-md-02804, in the U.S. District Court for the Northern District of Ohio.

--Additional reporting by Dave Simpson. Editing by Breda Lund.

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