

**BEFORE THE UNITED STATES JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

**IN RE: INFANTS BORN OPIOID-DEPENDENT
PRODUCTS LIABILITY LITIGATION**

MDL-2872

Moore v. Purdue LLC, et al.
S.D. WV., C.A. 2:18-cv-01231

Rees v. McKesson Corporation, et al.
S.D. IL, C.A. #18-00511; MDL Case #1:18-OP-45252;

Wood v. Purdue Pharma L.P., et al.
E.D. MO, C.A. #18-00385; MDL Case #1:18-OP-45264;

Salmons v. Purdue Pharma L.P., et al.
S.D. WV, C.A. #18-00385; MDL Case #1:18-OP-45268;

Ambrosio v. Purdue Pharma L.P., et al.
C.D. CA, C.A. #18-02201; MDL Case #1:18-OP-45375;

Flanagan v. Purdue Pharma L.P., et al.
W.D. TN, C.A. #18-02194; MDL Case #1:18-OP-45405;

Hunt v. Purdue Pharma L.P., et al.
D. MD, C.A. #18-01349; MDL Case No. #1:18-OP-45681

**AMICUS CURIAE BRIEF BY THE MARCH OF DIMES, INC., IN SUPPORT OF
PLAINTIFFS' MOTION FOR TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C.
§1407 IN SUPPORT OF THE ESTABLISHMENT OF IN RE: CHILDREN BORN OPIOID
DEPENDENT PRODUCTS LIABILITY LITIGATION MDL-2872**

NOW COME the Amici, March of Dimes, Inc., by and through its undersigned counsel, Jonathan M. Shapiro, presents the following memorandum as a friend of the Court.

For over 80 years, March of Dimes has worked to prevent birth defects, premature birth and infant mortality and has fought for the health of all mothers and babies regardless of their socio-economic background or demographics. Through charitable work, March of Dimes has

helped millions of babies survive and thrive. The March of Dimes continues to pioneer research to find solutions to the biggest health threats to mothers and babies.

Opioids is one of the latest health threats facing our most vulnerable population—our babies. Over the last two decades, the US incidence of neonatal abstinence syndrome (“NAS”) has sharply increased from 1.19 per 1000 hospital births in 2000, to 5.63 in 2012.¹ During the same time period, the number of infants treated for the syndrome in US neonatal intensive care units increased five-fold.² In addition to rising prevalence rates of NAS, there exist significant urban-rural differences. For example, in incidence rates per 1,000 hospital births in 2013, NAS incidence was 0.7 in Hawaii contrasted by 33.4 in West Virginia. This striking difference has notable implications for the expected health care needs of a given population and may help focus primary prevention and treatment expansion efforts in areas most affected by this epidemic.³

A mother’s addiction to opioids may result in intrauterine growth retardation, premature birth and birth defects. Tens of thousands of babies are borne each year dependent on opioids. Following birth, these newborns suffer from NAS. NAS babies are more likely than all other hospital births to be born at low birthweight and to have respiratory complications, feeding difficulties and seizures.⁴ The initial assault on the developing brain can lead to long-term consequences, including vision problems, hearing disabilities, motor development, cognitive and learning issues and risk of future drug abuse. These health conditions are distinct from any of those suffered by the mother and others suffering from opioid addiction, and, thus, need to be

¹ Patrick SW, Davis MM, Lehman CU, Cooper WO. Increasing incidence and geographic distribution of neonatal abstinence syndrome: United States 2009 to 2012. *J Perinatol.* 2015;35(8):667 attached hereto as Exhibit A.

² Patrick SW, Schumacher RE, Benneyworth BD, Krans EE, McAllister JM, Davis MM. Neonatal abstinence syndrome and associated health care expenditures: United States, 2000-2009. *Jama.* 2012;307(18):1934–40.) attached hereto as Exhibit B.

³ Ko JY, Patrick SW, Tong VT, Patel R, Lind JN, Barfield WD. Incidence of Neonatal Abstinence Syndrome - 28 States, 1999-2013. *MMWR Morb Mortal Wkly Rep.* 2016;65(31):799–802.) attached hereto as Exhibit C.

⁴ Hudak ML et al. Neonatal drug withdrawal. *Pediatrics.* 2012; 129(2):e540-e560 attached hereto as Exhibit D.

addressed distinctly. Treatment of mothers during pregnancy with medication-assisted therapy (“MAT” - such as methadone and buprenorphine) is also increasing. However, the long-term consequences of such exposure to these pharmaceutical drugs in-utero for humans is largely unknown. All of these issues may result in an entire generation of Americans with unexplained medical and societal disorders.

Babies born with NAS may face unique, long-term challenges compared to the harm suffered by others battling the opioid epidemic. The March of Dimes recognizes the validity of the claims asserted by governments and hospitals seeking reimbursement for damages they suffered due to the opioid crisis. However, any recovery by these governments and hospitals to reimburse them for such damages will not address the ongoing care needs of these babies afflicted with NAS.

Due to these unique challenges, the March of Dimes believes that the affected babies need specific relief to have their own voice heard. Such relief will ensure that these babies receive the best possible start to their lives, and have resources available to secure the necessary treatment they will require to battle the long-term effects of NAS.

For all these reasons, the March of Dimes, as a friend of this Court, support the request for a litigation focusing solely on the unique issues facing our babies.

Respectfully submitted,

Dated: November 29, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below a copy of the foregoing was served by CMECF and/or mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Jonathan M. Shapiro _____
Jonathan M. Shapiro