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## Lawyers for Opioid-Addicted Babies Push For Separate Legal Proceedings (1)

By Julie Steinberg Sep 21, 2018

- Concerns include that potential settlements won't provide sufficient medical monitoring, treatment funds
- Attorneys for government-entity plaintiffs, defendant drugmakers, distributors in massive consolidated litigation have opposed separate track

Attorneys representing potentially thousands of opioid-addicted babies asked a federal panel in a new filing to set up a separate legal proceeding for their suits.

The babies' proposed class actions are currently either part of the massive consolidated opioid litigation in federal court in Ohio or slated to join that litigation.

The lawyers argued in a Sept. 20 filing that the class suits being brought on behalf of the children are significantly different from the hundreds of suits filed by local and state governments, hospitals and insurers against drugmakers and distributors.

Rather than the public nuisance and other claims being pursued by the large public and other entities that make up the bulk of the plaintiffs in the consolidated litigation, the suits filed on behalf of the babies are product liability claims asserted by individuals, Scott Bickford of Martzell, Bickford & Centola in New Orleans told Bloomberg Law Sept. 21.

The attorneys worry that funds from potential settlements stemming from the litigation will put the government and corporate plaintiffs first, and the children's financial needs for medical monitoring, health care, and other costs, second.

That seems a particular danger, the lawyers said, because they don't have representation on the Plaintiffs' Executive Committee, which runs the proceeding on the plaintiffs' side.

"Presently, the MDL is being prosecuted by government, hospitals, and third-party payors," the attorneys [said](#) in their filing to the U.S. Judicial Panel on Multidistrict Litigation.

Both the plaintiffs' leadership committee and manufacturer and distributor defendants have opposed carving out a separate path for the children's claims.

The plaintiffs'-side leaders argue governments incur large expenses to cover the opioid-addicted kids and therefore their interests will be accounted for in any resulting damages or settlements.

"Judge Polster decided not to create this separate track and we believe his decision was correct," the three co-lead counsels of the Plaintiffs' Executive Committee said Sept. 21 in a statement to Bloomberg Law.

Judge Dan Polster in the U.S. District Court for the Northern District of Ohio is in charge of the MDL.

"Opioid addiction has had a devastating impact on these babies, their moms and families without a doubt," the plaintiffs' leadership told Bloomberg Law. "The local and state governments incur large financial costs for treatment and care, which is in fact a significant issue in the MDL."

Manufacturer defendants include Oxycontin maker Purdue Pharma LP and Johnson & Johnson unit Janssen Pharmaceuticals Inc., maker of Duragesic fentanyl skin patches. Distributor defendants include Cardinal Health Inc., AmerisourceBergen Corp., and McKesson Corp.

The companies have acknowledged the massive opioid problem but rejected the argument that they should be held liable for it.

Purdue Pharma, Janssen, McKesson, Cardinal Health, and AmerisourceBergen weren't immediately available for comment.

However, the drugmakers and distributors have voiced their opposition to creating separate proceedings for the addicted-baby suits in motions to keep one case, *Doyle v. Actavis LLC*, in the consolidated litigation.

There is no dispute that the babies' claims arise from the alleged improper marketing of Food and Drug Administration-approved prescription opioid medications. This alone warrants keeping the suit in the MDL, the drugmakers [said](#).

## Tens of Thousands a Year

Tens of thousands of babies are born every year in the U.S. with neonatal abstinence syndrome (NAS), which causes severe withdrawal symptoms and lasting cognitive and development problems, the children's attorneys said.

NAS babies will need multiple types of therapy, as well as educational support and later assistance with job or vocational training, they argued. The children also are likely to face addiction in the future.

Eight proposed class suits are currently in the MDL. Three additional suits in federal court are tagged to become part of the consolidated litigation.

Six or seven more baby class actions are expected to be filed in the next month or so, Celeste Brustowicz of the Cooper Law Firm, LLC in New Orleans, said.

The children's attorneys seek separate proceedings in the Southern District of West Virginia or the Southern District of Illinois .

The MDL panel is scheduled to hear the issue at a Nov. 29 session.

Martzell, Bickford & Centola, Cooper Law Firm, and others represent the opioid baby plaintiffs.

Paul T. Farrell Jr. of Greene Ketchum, Farrell, Bailey & Tweel, LLP in Huntington, W.Va.; Paul J. Hanly, Jr. of Simmons Hanly Conroy LLC in New York; and Joseph F. Rice of Motley Rice LLC in Mt. Pleasant, S.C., are co-lead counsel for the plaintiffs.

Reed Smith LLP represents Amerisource Bergen Corp. Williams & Connolly LLP represents Cardinal Health. Steptoe & Johnson PLLC represents McKesson.

Dechert LLP represents Purdue Pharma. O'Melveny & Myers LLP represents Janssen.

The case is [In re Nat'l Prescription Opiate Litig.](#) , J.P.M.L., 2804, brief 9/20/18 .

(Updated with additional reporting throughout)

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