



New MDL Needed For 'Opioid Babies,' Attys Say

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Law360 (September 20, 2018, 10:14 PM EDT) -- Attorneys for “opioid babies” whose mothers used prescription narcotics argued on Thursday for new multidistrict litigation focused on the infants, citing “grave concerns” that an existing MDL over the opioid crisis is woefully deficient.

In their bid for a new MDL, the attorneys directed veiled criticism at fellow plaintiffs’ attorneys and U.S. District Judge Dan Aaron Polster, who have rejected calls for a special litigation track in the current MDL for babies born with neonatal abstinence syndrome.

“Absent transfer to a separate MDL, the opioid-dependent infants’ unique interests will remain unprotected and these innocent young victims risk losing the opportunity to achieve a productive adulthood,” the attorneys wrote in a motion for the Judicial Panel on Multidistrict Litigation.

The attorneys added that they have “grave concerns that the due process rights of opioid-dependent infants are not being protected” in the current MDL.

In an interview with Law360 Thursday, Scott R. Bickford of Martzell Bickford & Centola, a lead attorney for the opioid babies, suggested that steps short of a special litigation track might be enough to ease his concerns and negate the need for a new MDL.

Specifically, if an attorney for the babies were given a seat on the plaintiffs’ executive committee and a formal role in settlement talks, that “would go a long way” and represent “a large step toward giving the babies a voice in the litigation,” Bickford said.

Thursday’s motion asked that opioid-baby cases in the current MDL be moved to a new MDL that would be created in either the Southern District of West Virginia or the Southern District of Illinois. The current MDL is playing out in the Northern District of Ohio.



The opioid babies' attorneys have asked Judge Polster **to reconsider** his rejection of a special litigation track for opioid babies. Their cases are a small fraction of the MDL's more than 1,000 cases, which have mostly been brought by local governments. In a separate JPML filing on Wednesday, the attorneys said that lead plaintiffs' lawyers in the MDL recently told them that an opioid-baby track remains unlikely.

Wednesday's filing also contained fresh criticism of the plaintiffs' executive committee, saying that it has "rebuffed all requests by the babies' counsel to participate in discovery, monitor its progress or review what has been produced."

The opioid babies "have been denied any voice or participation in the ongoing MDL," the filing said.

According to the [Centers for Disease Control](#) and Prevention, thousands of infants are born annually with neonatal abstinence syndrome, and rates have risen sharply in recent years. The condition can cause short-term withdrawal symptoms, such as seizures, and longer-term cognitive difficulties. Attorneys for the NAS babies want billions of dollars for long-term medical monitoring and treatment.

Drugmakers appear ill-disposed toward the idea of a new MDL. In a filing on Thursday, they urged the JPML to "refrain from second-guessing" Judge Polster and to disregard criticism of the plaintiffs' lead attorneys in the MDL.

"Efforts to embroil the [JPML] with the alleged friction between [opioid babies'] counsel and the MDL leadership should be rejected," the drugmakers wrote.

Lead plaintiffs' attorneys in the MDL could not immediately be reached for comment on Thursday.

The case is In re: National Prescription Opiate Litigation, case number 1:17-md-0[2804](#), in the U.S. District Court for the Northern District of Ohio.

--Editing by Adam LoBelia.