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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION **THIS DOCUMENT RELATES TO:** **ALL CASES**	MDL No. 2804 Case No. 1:17-md-2804 Judge Dan Aaron Polster

MOTION TO DISQUALIFY PURSUANT TO 28 U.S.C. § 455(a)

Pursuant to 28 U.S.C. § 455(a), and for the reasons set forth in the accompanying memorandum, the undersigned defendants move the Court to recuse itself from these MDL proceedings.

Dated: September 14, 2019

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
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IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION **THIS DOCUMENT RELATES TO:** **ALL CASES**	MDL No. 2804 Case No. 1:17-md-2804 Judge Dan Aaron Polster

MEMORANDUM IN SUPPORT OF
MOTION TO DISQUALIFY PURSUANT TO 28 U.S.C. § 455(a)

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INTRODUCTION

The Judicial Code provides that a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."[1] The duty is mandatory, and a judge must recuse himself, whether or not a motion to disqualify has been filed, whenever it is that he comes to that realization that his impartiality can reasonably be questioned. The test is objective and depends, not on the presence of ***actual*** prejudice or bias, but on the ***appearance*** of prejudice or bias—i.e., whether "a reasonable person knowing all the relevant facts [would] question the impartiality of the judge."[2] Here, reasonable people would do just that—and, indeed, have already done that. Two judges of the Sixth Circuit (on June 19, 2019) and the Ohio Attorney General (on August 30, 2019) have questioned, respectively, whether the Court's "unusual level of commitment" to a settlement has affected the Court's rulings, even its willingness to make rulings and conduct trials,[3] and whether the Court has "[t]urned a blind eye to the law because it believes doing so will result in a better or fairer result."[4]

Defendants do not bring this motion lightly. Taken as a whole and viewed objectively, the record clearly demonstrates that recusal is necessary. The record includes the Court's (1) judicial and extra-judicial statements evidencing a personal objective to do something meaningful to abate the opioid crisis, with the funding to be provided through Defendants' settlements; (2) numerous improper comments to the media and in public forums about the

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1 28 U.S.C. § 455(a).

2 *Reed v. Rhodes*, 179 F.3d 453, 467 (6th Cir. 1999).

3 *In re Nat'l Prescription Opiate Litig.*, 927 F.3d 919, 933 (6th Cir. 2019).

4 Petition for a Writ of Mandamus of State of Ohio, No. 19-3827, at 26 (6th Cir.) (internal citations omitted).

litigation; (3) apparent prejudgment of the merits and outcome of the litigation; and (4) singular focus on, and substantial involvement in, settlement discussions.

The role of a federal judge is to "administer justice without respect to persons" based on the evidence presented by the parties in the proceedings before the court.[5] Yet at the first hearing in this MDL proceeding—***before*** discovery had commenced, ***before*** any party had submitted evidence in any form, ***before*** the full array of parties even had an opportunity to address the Court—the Court took the bench and declared that the country is experiencing an ongoing "opioid crisis" in which "we're losing more than 50,000 of our citizens every year" and, according to the Court's own math, "150 Americans are going to die today, just today, while we're meeting." Next, the Court assigned fault for the "crisis" it had just described: "[E]veryone shares some of the responsibility, and no one has done enough to abate it." This condemnation was directed to "the manufacturers, the distributors, the pharmacies, the doctors, the federal government and state government, local governments, hospitals, third-party payors, and individuals." Finally, the Court announced a personal goal: "My objective is to do something meaningful to abate this crisis and to do it in 2018," where doing "something meaningful" [6] meant "dramatically reduc[ing] the number of opioids that are being disseminated, manufactured and distributed … and [assuring] that we get some amount of money to the government agencies for treatment"—money, needless to say, that would come from Defendants. Summing up, the Court emphatically declared: "So that's what I am interested in doing." And the Court made clear that its goal was not to accomplish these objectives by supervising

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5 *United States* v. *Whitman*, 209 F.3d 619, 625-26 (6th Cir. 2000).

6 ECF 58 at 4-5.

discovery, making legal rulings, and conducting trials—saying "we don't need a lot of briefs and we don't need trials … none of those are going to solve what we've got."[7]

"So that's what I want to accomplish," the Court concluded on January 9, 2018, at the first MDL hearing.[8] And now, with its August 26, 2019 ruling, the Court has put itself in position to do just that. With Plaintiffs seeking $8 billion in cash for so-called "abatement," the Court has determined that it, not a jury, has the discretion to decide how much money Defendants may pay to government agencies for medical treatment and other addiction-related services and initiatives, saying: "[T[he Court, exercising its equitable powers, has the discretion to craft a remedy that will require Defendants, if they are found liable, to pay the prospective costs that will allow Plaintiffs to abate the opioid crisis."[9]

The Court's declaration at the very start of this litigation (1) relied on extrajudicial information, (2) defined a personal mission, (3) disparaged the federal court's conventional role as irrelevant to the accomplishment of that mission, (4) described what it believed should be the components of a remedy, (5) prejudged the responsibility of all the Defendants for "the opioid crisis," and (6) foresaw the outcome of this process as "get[ing] some money to the government agencies for treatment." Troubling as that was, the Court, in unprecedented fashion, then continued to make such statements in media interviews and public appearances.

Under settled law, any one of these statements would be enough to cause a reasonable person to question a judge's impartiality. Even putting aside what was actually said, the law is clear that the very fact of giving multiple interviews and making multiple public appearances to

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7 *Id.* at 9.

8 *Id.* at 9.

9 ECF 2519 at 3.

talk about the litigation would be enough to cause a reasonable person to question a judge's impartiality. If, in addition, the judge (1) used these interviews and public appearances to say that the litigation affords a unique opportunity to "do something meaningful," (2) discussed disputed issues of fact, and (3) identified the necessary components of a settlement, including that (4) the Defendants would have to pay money for addiction treatment, a reasonable person certainly would question the judge's impartiality. All of these things are true here, and taken together, there can be no doubt that a reasonable person would question whether the Court can fairly and impartially conduct this MDL litigation.

One Court of Appeals' decision in particular makes clear that the Court is now obligated to recuse itself. In *United States v. Antar*, the Third Circuit reversed the criminal convictions of two defendants because the district judge failed to recuse himself *sua sponte*, pursuant to Section 455(a) where he had, at the sentencing hearing, declared a personal objective untethered to an adjudication based on an application of the law to the facts:

> ***My object in this case from day one has always been to get back to the public that which has been taken from it as a result of the fraudulent activities of this defendant and others***. We will work the best possible formula we can to be as fair as possible to the public. If we can get the 120 million back, we would have accomplished a great deal in this case.[10]

The Court explained that, in so stating, "the district judge, in stark, plain and unambiguous language, told the parties that his goal in the criminal case, from the beginning, was something other than what it should have been and, indeed, was improper." *Id.* at 576. The Court then said it was "difficult to imagine a starker example of when opinions formed during the course of

[10] 53 F.3d 568, 573-74 (3d Cir. 1995) (*Antar I*), *overruled in part on other grounds*, *Smith v. Berg*, 247 F.3d 532 (3d Cir. 2001) . All emphases in this memorandum are added unless otherwise indicated.

judicial proceedings display a high degree of antagonism against a criminal defendant."[11] But the court did offer a starker example:

> [W]e consider what the situation would have been ***if, instead of revealing his goal at the end of trial, the judge made the same statement <u>at the beginning of the trial</u>***. In that scenario, the judge would have said: "My goal in this case will be to get back to the public that which has been taken from it as a result of the fraudulent activities of this defendant and others." ***There would be very little question that such a statement would give rise to a duty to recuse***. The fortuitous fact that the judge made his goal clear at the end rather than at the beginning of trial is of no principled consequence.[12]

That is ***precisely*** what happened on January 9, 2018, when the Court declared its personal objective.

Those comments cannot be explained or excused as a dramatic flourish at the opening hearing, in a jammed courtroom, with an overflow audience of parties and press. The Court has since made similar judicial and extra-judicial statements. Objective observers have recently questioned the Court's impartiality in rulings, filings, and the press. Two weeks ago, it became clear that the Court intends to function as a factfinder as to the billions of dollars Plaintiffs seek in equitable relief. Just two days ago, the Court said in certifying an unprecedented settlement class that, in this litigation, "settlement is especially important as it would expedite relief to communities so they can better address this devastating national health crisis."[13] And only yesterday, the Court issued an order that will give each of the eight defendants in the Track 1

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11 *Id.*

12 *Id.* at 576.

13 ECF 2590 at 2.

trial a mere 12.5 hours to present its defense[14]—this in a bellwether case seeking a multi-billion of dollar judgment.

The upcoming Track 1 trial involves just two Plaintiffs and eight Defendants. Activity in the other 2000-plus cases has been stayed, with a moratorium on filings. The two Plaintiffs involved in Track 1 represent 0.1 percent of the MDL cases. Although a new phase in the MDL proceedings is opening, even Track 2 involves only two counties. Thus, the MDL proceedings as a whole are in their infancy.

Considering the complete record, Section 455(a) imposes a duty to recuse. The appearance of partiality, once it emerges, cannot be undone or forgotten. The time for recusal is now, before any trial and the opening of new tracks in the MDL proceedings.

THE MATERIAL FACTS

A. The Court's Judicial Statements

The first in-court hearing in this MDL proceeding took place on January 9, 2018. At that time, no discovery had been conducted in any of the transferred cases, and the parties had not filed any substantive motions or made evidentiary submissions of any kind. Without inviting comments from counsel, the Court thanked the parties for their submissions concerning "how a judge should manage this MDL," but stated his view that "this is not a traditional MDL."[15] The Court then described what it perceived as the problem, necessarily relying either on extrajudicial information, on Plaintiffs' allegations, or both:

> What's happening in our country with the opioid crisis is present and ongoing. I did a little math. Since we're losing more than

[14] ECF 2594.

[15] ECF 58 at 3-4.

> 50,000 of our citizens every year, about 150 Americans are going to die today, just today, while we're meeting.[16]
>
> I mean, I read recently that we've managed in the last two years, because of the opioid problem, to do what our country has not done in 50 years, which is to – for two consecutive years, reduce, lower the average life expectancy of Americans. And if we don't do something in 2018, we'll have accomplished it for three years in a row …. And this is 100 percent manmade. Now, I'm pretty ashamed that this has occurred while I've been around. So I think we all should be.[17]

The Court then assigned responsibility for the crisis:

> And in my humble opinion, ***everyone shares some of the responsibility, and no one has done enough to abate it***. That includes the manufacturers, the distributors, the pharmacies, the doctors, the federal government and state government, local governments, hospitals, third-party payors, and individuals. Just about everyone we've got on both sides of the equation in this case.[18]

The Court declared that its personal objective was "to do something meaningful to abate this crisis and to do it in 2018." And the Court told the assembled parties and their counsel what form that abatement should take:

> I'm confident that we can do something to ***dramatically reduce the number of opioids that are being disseminated, manufactured, and distributed***. … [and] make sure that the ***pills that are manufactured and distributed go to the right people*** and no one else …. and that we ***get some amount of money to the government agencies for treatment***. Because sadly, every day more and more people are being addicted, and they need treatment.[19]
>
> But the resolution I'm talking about is really – what I'm interested in doing is not just moving money around, because this is an ongoing crisis. What we've got to do is ***dramatically reduce the number of the pills that are out there and make sure that the pills***

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16 *Id.* at 4.

17 *Id.* at 13-14.

18 *Id.* at 4-5.

19 *Id.* at 5.

> ***that are out there are being used properly***. Because we all know that a whole lot of them have gone walking and with devastating results.
>
> So ***that's what I want to accomplish***. And then we'll deal with the money. ***We can deal with the money also and the treatment***.… [W]e need a whole lot -- some ***new systems in place, and we need some treatment***.[20]

The Court left no doubt that these were its avowed goals, declaring, "So that's what I am interested in doing."[21]

The Court recognized that achieving its stated objective was not the federal court's constitutional function: "The federal court is probably the least likely branch of government to try and tackle this, but candidly, the other branches of government, federal and state, have punted. So it's here."[22] Nonetheless, the Court made clear that fulfilling its policy objective was its first priority and that performing the customary judicial role would be secondary, if not a waste of time:

> I don't think anyone in the country is interested in a whole lot of finger-pointing at this point, and I'm not either. ***People aren't interested in depositions, and discovery, and trials***. ***People aren't interested in figuring out the answer to interesting legal questions*** like preemption and learned intermediary, or unravelling complicated conspiracy theories.[23]
>
> [***I***]***f I've got to do it in a traditional way***, and--I guess I'll have no choice. ***I'll admit failure*** and I'll say, All right. We've just got to plow through this.[24]

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[20] *Id*. at 9.

[21] *Id*. at 4.

[22] *Id*. at 4.

[23] *Id*.

[24] *Id*. at 5.

> We don't need -- ***we don't need a lot of briefs and we don't need trials***. They're not going to -- none of them are -- ***none of those are going to solve what we've got***.[25]

Since then, the Court's judicial and extrajudicial statements confirm that it has not deviated from these views. It has repeated them again and again, saying that conducting discovery, resolving legal issues, and trying cases would be a waste of time and money; that abating the opioid crisis is the Court's first priority and should be the parties' as well; and that all Defendants, regardless of their role in the supply chain and the particulars of their conduct (i.e., culpability), should pay money in settlement.

At the second MDL hearing, which addressed access to the ARCOS data, the Court again expressed its goal—"[h]opefully there will be no trials"[26]—and expressed its view that, where large numbers of opioid pills had been prescribed and supplied, liability is a given and the only question is the identity of the supplier—"[***e***]***veryone knows that was wrong***, it shouldn't have happened. ***That question is, whose pills***."[27] When the Court issued its discovery order permitting access to the ARCOS data, it again prejudged the question of causation, saying that "the vast oversupply of opioid drugs in the United States has caused a plague on its citizens and their local and State governments."[28] And the Court justified disclosure of the data, in part, because it could be used "for purposes of allocation of settlement funds."[29]

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[25] *Id*. at 9.

[26] ECF 156 at 42.

[27] *Id*. at 11.

[28] ECF 233 at 21.

[29] *Id*. at 15 n.8; *see also* ECF 397 at 2 (the ARCOS data "will prove essential in settlement discussions regarding apportionment of any obligation amongst defendants, and allocation of any settlement funds to plaintiffs.").

When the Court reluctantly authorized a litigation track, it imposed an unprecedentedly short schedule—nine months from the commencement of discovery until trial, in two cases, with four Plaintiffs and more than 20 Defendants, involving a number of opioid medications and alleged wrongful conduct over a 25-year period—with the transparent purpose of pressuring the parties to settle. And when the Court scheduled the trial, it allowed only seven weeks, although both Plaintiffs and Defendants had advised the Court that much more time was needed to present their cases.[30] This determination in 2019 came against the backdrop of the Court's statement in 2018 that litigation activity would be only a means to secure the settlement the Court envisioned: "We of course have a litigating track …. But I absolutely see it as an aid in settlement discussions. It's not a substitute or replacement …."[31] This approach served the Court's personal goal "to be the catalyst … to take some steps this year to turn the trajectory of this epidemic down rather than up, up, up."[32] Accordingly, the Court devoted its efforts to settling the litigation, delegating to the Magistrate Judge the resolution of Defendants' motions to dismiss, and to a Special Master the day-to-day supervision of discovery and the resolution of discovery disputes.

In August 2018, after only three months of discovery, the Court remained adamant that litigating would frustrate his personal objective to do something "meaningful" right away to ameliorate the crisis:

> I didn't want this litigating track. The defendants insisted they wanted to file all these motions. I said, All right. … [***A]ll this***

[30] ECF 1673.

[31] ECF 418 at 9.

[32] *Id*.

> ***discovery and depositions and whatever, and a trial, will accomplish zero***.[33]
>
> I don't want to be essentially encouraging the parties to spend all their efforts on this litigating track, because that … not only isn't going to solve anything, I think it's going to make resolution virtually impossible.[34]

At the time of those comments in August 2018, the Magistrate Judge had not yet issued Reports and Recommendations on the motions to dismiss, document discovery had not yet been completed, and depositions had not even commenced. Nevertheless, the Court expressed its view that "of course, we need to come up with some amount of money--it's not going to solve it or provide--we're not talking about all the money necessary for drug treatment, but some meaningful amount to help treat the people who are addicted so that they don't die."[35]

In November 2018, the Court held an off-the-record discovery hearing. In introductory remarks to a full courtroom, the Court said that it was the litigants, not he, who had wanted a litigation track and that he had favored, and still favored, focusing on settlement because opiate-plagued communities needed money to remedy the situation now. At the hearing's close, the Court again returned to the subject of settlement, saying that while legal culpability might not be sorted out for many years, the Defendants must consider their "moral responsibility" for the opioid crisis.[36]

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[33] ECF 854 at 24-25.

[34] *Id*. at 29.

[35] *Id*. at 25.

[36] On November 8, 2018, the Court heard argument and ruled on several disputed issues at an off-the-record status conference. *See* ECF 1108 (memorializing orders). Accordingly, in advance of the November 20 conference, several Defendants filed a motion to "request that all telephonic and in-person status and discovery conferences or hearings, including the upcoming November 20, 2018 status conference, be held on the record, with a court reporter present," citing 28 U.S.C. § 753(b) (3). ECF 1141 at 1. The Court denied the motion at the outset of the November 20 hearing, and no transcript is available.

As of August 2019, the Court's focus admittedly had not changed: "my attention and my time, candidly, is going to be on facilitating the settlement track."[37] And just this week, in its decision certifying an unprecedented "negotiation class" comprised of all cities and counties throughout the entire country, the Court clearly stated its overriding personal objective in these proceedings: "From the outset of this MDL, the Court has encouraged the parties to settle the case."[38] Settlement is "especially important," the Court said, because "it would expedite relief to communities so they can better address this devastating national health crisis." *Id.* Were there any doubt, these most recent statements confirm that the Court has conducted these proceedings in pursuit of its personal goal to have Defendants pay Plaintiffs as quickly as possible.

B. The Court's Extrajudicial Statements

The Court has granted at least seven interviews to the press about the litigation, participated in multiple seminars or panel discussions, spoken to state attorneys general at a closed session of their annual conference, had ex parte meetings with the United States and "representatives of several federal agencies,"[39] and made public comments on several other occasions. The Court even permitted one reporter to shadow him for a day while engaged in activities related to this proceeding. The reporting of these interviews and events reflects and suggests the following:

Where a transcript is not available, parties "may prepare a statement of the evidence or proceedings from the best available means, including the [parties'] recollection." Fed. R. App. P. 10(c).

37 ECF 1643 at 15. To date, the Court has not heard oral argument on any of the dozens of motions to dismiss, summary judgment motions, or *Daubert* motions.

38 ECF 2590 at 2.

39 ECF 418 at 3-4.

- ***The Court has expressed a strong personal conviction that his role is to strong-arm the parties into a settlement that will abate an ongoing opioid crisis, not just resolve the legal issues presented by the cases***. In an interview with Bloomberg News, the Court said, "The problem is urgent, life-threatening and ongoing. I took this step [summoning pharmaceutical executives, law enforcement, government officials, and lawyers to try to forge a settlement] because I thought it would be the most effective path."[40] Speaking to The New York Times reporter who shadowed him, the Court was quoted as saying: "The judicial branch typically doesn't fix social problems, which is why I'm somewhat uncomfortable doing this, [b]ut it seems the most human thing to do."[41] In a public interview for the Harvard Law School "HLS in the Community" series, available on YouTube,[42] the Court described success in the litigation as Defendants' taking significant steps to reduce the number of diverted pills, putting together resources to help the addicted, and turning the curve of addiction down. The Court acknowledged to the Harvard Law School audience that his comments at the January 9, 2018 hearing had "shocked" some observers, but said that "[i]t's on us to do something about it." Or as the

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[40] Ex. A, Feeley & J. Hopkins, *Opioid Crisis Point Man Is Cleveland Judge in Midst of Epidemic*, Bloomberg (Jan. 31, 2018).

[41] Ex. B, J. Hoffman, *Can This Judge Solve the Opioid Crisis?*, N.Y. Times (Mar. 5, 2018) (published on page 1 of the print copy on March 6, 2018). The New York Times reported a second interview in January 2019 in which the Court said that the litigation was more "complex and challenging" than he had first envisioned. The reporter commented that "[i]f the bellwether ends in a victory for plaintiffs," conservative judges on the Court of Appeals "would be unlikely to uphold all of Judge Polster's rulings on these untested legal questions" and that his "biggest stick that could drive defendants to the bargaining table is the bellwether trial, with its looming date." Ex. C, J. Hoffman, *Opioid Lawsuits Are Headed to Trial. Here's Why the Stakes Are Getting Uglier*, N.Y. Times (Jan. 30, 2019).

[42] "HLS in the Community | The National Opioid Litigation: The Role of Federal Judge as Problem Solver" available at https://www.youtube.com/watch?v=SjNGgswTo0c

Court put it in another interview, "This is my time to do something significant. I'm not going to take a pass. Usually people take a pass."[43] The Christian Science Monitor entitled its article, which included an interview with the Court, *An unprecedented effort to stem opioid crisis – and the judge behind it*, and began the article with this impression: "More people died from drug overdoses in Ohio in 2016 alone than were killed in the 9/11 terrorist attacks …. Now a federal judge in Cleveland sees an opportunity to do something about it, and he is seizing it with gusto." It quoted the Court as saying, "Ordinary people can do extraordinary things if they step up."[44] The Court told the Cleveland Jewish News that he had "requested that everyone try and work together to come up with some steps that we can take this year, in 2018, to begin to abate the crisis, because we are losing 50,000 people or more a year"[45] and had urged the parties "that at the same time they're fighting over the lawsuit, to see if they can take some steps to turn the trajectory of [addiction] and death down, rather than it going up, up, up"—an effort on his part, he told the paper, that arose from trying "to approach these cases through the lens of" his religious training and upbringing—"one should try to alleviate suffering."[46] The Court delivered the same message at a wellness seminar presented by KeyBank, where he reportedly "lamented" press reports that he would solve the opioid crisis and

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[43] Ex. D, D. McGraw, *Can Judge Dan Polster Get Big Pharma to Pony Up Billions for its Role in the Opioid Crisis*, The Cleveland Scene (March 14, 2018).

[44] Ex. E, C. Bryant, *An unprecedented effort to stem opioid crisis – and the judge behind it*, Christ. Sci. Mon. (May 9, 2018).

[45] Ex. F, A. Koehn, *National spotlight shines on Judge Polster again in opioid fight*, Cleveland Jewish News (Mar. 7, 2018).

[46] Ex. G, E. Carroll, *Civic Leadership Award: Judge Dan Aaron Polster*, Cleveland Jewish News (Nov. 16, 2018).

explained that his hope was "in 2018 that collectively we could do a few things to turn the [curve] down, not up, up and up."[47]

- ***The Court believes most persons have a family member or friend who has been personally affected by the opioid crisis, and that others believe the Court is one of them.*** Law360 reported that the Court told it, "I doubt there's anyone in Ohio who doesn't have a family member, a friend, a child of a friend or the parent of a friend who hasn't been somehow impacted."[48] And The New York Times reported that the Court had been personally touched by the opioid crisis, because a friend's daughter died from an overdose.[49]
- ***The Court has predetermined that Defendants must pay substantial sums in settlement.*** The Cleveland Jewish News, reporting in October 2018 on a panel discussion about the opioid crisis in which the Court participated, attributed to the Court the comment that it "would look for both financial and systemic, or behavioral, change on the part of Defendants in any settlement" and that "'[i]n any settlement, … there is a monetary component, and there will be a behavioral component.'" And the monetary component would be substantial: "'I've made it clear that all of the money is going to go to this

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47 Ex. H, E. Carroll, *Opioid panel seeks more answers to epidemic*, Cleveland Jewish News (Oct. 4, 2018). Defendants had the opportunity to, and in fact did, object in advance to the Court's participation in this panel discussion, titled "Defining the Epidemic—Human and Economic Costs," noting that the Court would be speaking publicly about the pending case and subject matter directly related to the plaintiffs' claims for damages." Ex. I, Email from Kaspar Stoffelmayr to Special Masters Cohen and McGovern (Sept. 19, 2018).

48 Ex. K, E. Field & J. Overley, *Meet The Judge Who's Steering The Epic Opioid MDL*, Law360 (Jan. 30, 2018).

49 Ex. B, J. Hoffman, *Can This Judge Solve the Opioid Crisis?*, N.Y. Times Mar. 5, 2018 (published on page 1 of the print copy on March 6, 2018).

crisis … [t]he big bucket is recovery.'"[50] The Court told the Associated Press that the resolution "has to be a global one."[51]

Apart from what the Court has said to interviewers and at public events, the fact of giving the interviews and participating in public discussions of the litigation have put the Court in a position where others have made it appear that the Court is aligned with Plaintiffs. A New York Times interviewer placed the Court's answers in a context in which the Court's rulings were contrasted with what a court of appeals "filled with conservative judges" would do.[52] At a panel discussion, the Court was asked to comment on a statement by one of Plaintiffs' experts that credited him with bringing "overwhelming" settlement pressure to bear on one of the Defendants.[53] A recording of that forum is available as a podcast, which provides commentary on the Court's remarks. The host who provided that commentary, Greg McNeil, has been listed by Plaintiffs as a possible witness about the personal impact of the opioid crisis. [54]

C. The Court's Heavy Involvement in Settlement and Subsequent Adjudication of the Merits

The Court has met in person with groups of Defendants to discuss settlement on more than a dozen occasions,[55] and has spoken with representatives of individual Defendants on

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[50] Ex. L, J. Kaufman, *Judaism provides direction for Polster in landmark opioid case*, Cleveland Jewish News (Oct. 5, 2018).

[51] Ex. M, AP, *Federal judge invites states to discuss opioid crisis* (Jan. 11, 2018).

[52] Ex. C, J. Hoffman, *Opioid Lawsuits Are Headed to Trial. Here's Why the Statkes Are Getting Uglier*, N.Y. Times (Jan. 30, 2019)

[53] *Ep. 210 - What You Don't Know About the Opioid Multidistrict Litigation in Cleveland, Ohio*, Cover 2 Podcast (Oct. 12, 2018), https://cover2.org/ep-210-what-you-dont-know-about-the-opioid-multidistrict-litigation-in-cleveland-ohio/

[54] Ex. N, Excerpt of Summit County and City of Akron, Ohio Plaintiff's Supplemental Responses and Objections (Mar. 4, 2019)

[55] In addition to meetings conducted by the Special Masters, and any meetings the Court has engaged in with Plaintiffs, the Court has met with various Defendants individually or

additional occasions. These meetings began on January 9, 2018, at the time of the first MDL hearing, and occurred as recently as last week. The Court's emissary for settlement, Special Master Francis McGovern, has met with one or more of the Defendants on a frequent basis, and discussed the subject with them by telephone on countless other occasions. We assume the Court and Special Master have communicated with Plaintiffs about settlement a comparable number of times. The Court also has met and discussed the subject of settlements with third parties, including state attorneys general.[56] In their exchanges with certain of the Defendants, the Court and Special Master have engaged in detailed discussions about settlement, including those Defendants' positions about settlement.

We understand that, apart from their meetings and conversations with the parties, the Court and Special Masters have met among themselves to strategize about settlement. At the direction and/or with the blessing of the Court, Special Master McGovern has retained consultants to consider how a global settlement might be achieved. Professor William Rubenstein of the Harvard Law School is one such consultant. He and Special Master McGovern have co-authored for publication in the Duke Law School Public Law & Legal Theory Research Series an article that proposes an unprecedented use of Rule 23 to certify a

collectively to discuss settlement on numerous occasions, including on at least the following dates: January 31 and August 23-24, 2018, and on February 13, April 23, May 1, May 21, June 18-19, July 16, August 28, and September 5, 2019.

[56] ECF 1732 at 8-9 ("I asked for their help at the beginning, and to a man and woman, each of them has pledged their assistance. And I've met with many of them, and I've met with many of their first assistants and their able colleagues in their offices, and they are working very hard because they recognize that no one can settle these cases without everyone's assistance."). At the National Association of Attorneys General symposium, the Court addressed a closed session of attorneys general. Defendants' representatives were not included.

"negotiating class."[57] The Court, acting through the Special Master, prompted Plaintiffs to file a motion to certify just such a class, in reliance on the arguments advanced by the Rubenstein and McGovern article, and dismissed the objections raised by Defendants and state attorneys general, saying, "We need novel solutions to a novel problem."[58] On September 11, 2019 the Court certified this class, noting that it was adopting a "novel" proposal that is a "new form of class action"[59] and asserting that this "creative" solution is necessary because a settlement "would expedite relief to communities so they can better address this devastating national health crisis."[60] The Court explained that it was certifying an unprecedented type of class in order to remove "an obstacle to settlement."[61]

THE CONTROLLING LEGAL STANDARD FOR DISQUALIFICATION

Section 455 of the Judicial Code provides:

> (a) Any justice, judge, or magistrate judge of the United States ***shall*** disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

28 U.S.C. § 455(a).[62] Violations of Canon 3A (6) may provide a basis for disqualification under § 455(a). *E.g.*, *United States* v. *Microsoft Corp.*, 253 F.3d 34, 114 (D.C. Cir. 2001); *In re Boston's Children First*, 244 F.3d 164, 168 (1st Cir. 2001). That Canon provides:

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57 Francis E. McGovern and William B. Rubenstein, The Negotiation Class: A Cooperative Approach To Class Actions Involving Large Stakeholders, Duke Law School Public Law & Legal Theory Series No. 2019-41 (Aug. 5, 2019).

58 ECF 1732 at 7.

59 ECF 2590 at 2-3, 8.

60 *Id*. at 2.

61 *Id.*

62 In most states and in the federal system, statutes and ethical rules provide additional assurances of impartiality. For instance, Canon 3C(1) of the Code of Conduct for U.S. Judges provides: "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which

> A judge should not make public comment on the merits of a matter pending or impending in any court…. The prohibition on public comment on the merits does not extend to public statements made in the course of the judge's official duties, to explanations of court procedures, or to scholarly presentations made for purposes of legal education.

Section 455(a) clearly warrants disqualification here. Avoiding even the appearance of judicial partiality is of paramount importance in our judicial system. "The very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 865 (1988). Congress enacted subsection 455(a) to "promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible," *id*. at 864-65, and in Section 455(a) "broaden[ed] and clarif[ied] the grounds for judicial disqualification.'" *Id.* at 849 (quoting 88 Stat. 1609). Avoiding the appearance of partiality is so important that it does not matter "whether or not the judge actually knew of facts creating an appearance of impropriety." *Id.* at 859-60.

Nor does it matter if the judge actually harbors bias or prejudice. Judicial disqualification is "evaluated on an objective basis, and so what matters is not the reality of bias or prejudice, but its ***appearance***." *Liteky* v. *United States*, 510 U.S. 540, 548 (1994); *see Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 883 (2009) ("the Due Process clause has been implemented by objective standards that do not require proof of actual bias"). Therefore, recusal is required "whenever 'impartiality might reasonably be questioned.'" *Id.* at 888 (quoting 28 U.S.C. § 455(a)). As the Sixth Circuit succinctly put it, the dispositive question is: "Would a reasonable person knowing

… (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding."

all the relevant facts question the impartiality of the judge?" *Reed v. Rhodes*, 179 F.3d 453, 467 (6th Cir. 1999).[63]

Courts have answered that question in the affirmative where a judge has an improper objective, apparently prejudges issues of liability and remedy, seeks out media attention and comments about the litigation in the press and other public fora, and, having been personally involved in efforts to broker a settlement, sets himself up as a factfinder at trial. As explained below, the answer to the question in this case also is "Yes."

ARGUMENT

I. The Court's Declared Objective of Abating the Opioid Crisis Creates A Reasonable Question About the Court's Impartiality

At the first hearing in this litigation—before the Court had heard any evidence or argument—the Court told the parties "what I want to accomplish" which was, he explained, "to do something meaningful to abate this crisis and to do it in 2018." The Court went on to say, in specific terms, how it wanted to see that stated "objective" accomplished: (1) "dramatically reduce the number of the pills that are out there," (2) make sure that the pills "go to the right people and no one else," and (3) "get some amount of money to the government agencies for treatment [b]ecause, sadly, every day more and more people are being addicted, and they need treatment."[64] In short, the Court declared from the start—before the parties had made any substantive submissions—"[s]o that's what I am interested in doing."[65]

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[63] *See also In re Aetna Cas. & Sur. Co.*, 919 F.2d 1136, 1143 (6th Cir. 1990) (en banc) ("Under § 455(a) a recusal is required when a reasonable person would harbor doubts about the judge's impartiality."); *Union Planters Bank v. L&J Development Company, Inc.*, 115 F.3d 378, 383 (6th Cir. 1997) (same)

[64] ECF 71 at 4-6, 9-10.

[65] *Id.* at 4. Section 455(a) does not require that the judge's stated views have an extrajudicial source. *Liteky*, 510 U.S. at 551-52 (an "'extrajudicial source' is [not] the only basis for establishing disqualifying bias or prejudice. It is the only *common* basis, but not the

The Court's statements have made clear that these objectives—to abate what the Court described as a pressing social crisis—are personal. These statements reflect, too, that the Court believes it has a responsibility to act outside the role of an Article III judge because the other two branches of government have abdicated their duties. The Court acknowledged that the crisis it described "should be handled by the legislative and executive branches, our federal and state governments," and the Court described its personal objectives in terms that expressly distinguished them from the judicial responsibilities of an Article III judge: "[W]e don't need a lot of briefs and we don't need trials. … [N]one of those are going to solve what we've got." Doing something meaningful to abate the crisis marked success; deciding legal issues and conducting trials, the Court said, marked failure. "[I]f I've got to do it in a traditional way, … I'll admit failure and … say ... [w]e've just got just got to plow through this."[66]

The Court's comments about what it personally wanted to accomplish necessarily create a question about the Court's impartiality—particularly where those goals involve prejudging questions of liability and relief. The Sixth Circuit has recognized the impropriety of declaring extrajudicial intentions. *United States* v. *Whitman*, 209 F.3d 619, 625-26 (6th Cir. 2000) (reassignment on remand required in part because judge announced his goal was to "educate[e] the bar" and "improve the practice of law" rather than to "'administer justice without respect to persons, and … faithfully and impartially discharge and perform all the duties incumbent upon [him] … under the Constitution and laws of the United States'" (quoting 28 U.S.C. § 453)). And six judges of the Third Circuit, in two opinions, held that a judge had a duty to recuse when it

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exclusive one, since it is not the *exclusive* reason a predisposition can be wrongful or inappropriate."). The Court's opening statements on January 9, 2018, clearly had an extrajudicial source, however, since they were made at the initial MDL hearing.

66 ECF 71 at 9-10.

announced—at sentencing at the end of the case—that its "object in this case from day one has always been to get back to the public that which was taken from it as a result of the fraudulent activities of this defendant and others." *Antar I*, 53 F.3d at 573-74. The Third Circuit held that these comments were improper because they indicated that the judge's goal in the criminal case was something other than, or in addition to, fairly trying the defendant's guilt or innocence—to "enforce a repatriation order and final judgment issued during a concurrent [SEC] civil proceeding and giv[ing] back the proceeds recovered to the public." *Id*. at 576; *Antar II*, 71 F.3d at 102 ("This indicates that the judge's purpose was at odds with his judicially mandated responsibility to provide a fair trial and impartial forum for the litigants before him."). The judge's statement about his goal unavoidably raised questions about his impartiality, the Third Circuit explained, because "[a]fter all, the best way to effectuate [his] goal would have been to ensure that the government got as free a road as possible towards a conviction, which then would give the judge the requisite leverage to order a large amount of restitution." *Antar I*, 53 F.3d at 576. Although the judge's stated goal of recovering monies for the investing public was laudable, it "created the appearance that he had allied himself with the SEC in the civil action," *Antar v. S.E.C.*, 71 F.3d 97 (3d Cir. 1995) (*Antar II*), *overruled in part on other grounds, Smith v. Berg*, 247 F.3d 532 (3d Cir. 2001), and also "'display[ed] a deep-seated favoritism or antagonism that would make fair judgment impossible," *id.* (quoting *Liteky*, 510 U.S. at 541).

Similarly, this Court's declared goal of "do[ing] something meaningful to abate this crisis" both (1) defined an objective that goes beyond the MDL judge's role of coordinating pretrial proceedings for the hundreds of transferred cases and trying bellwether cases and (2) aligned the Court with Plaintiffs, who allege nuisance and seek a broad abatement remedy—to be funded by Defendants—that would limit the number of pills distributed to the Track 1

jurisdictions, educate doctors so that the pills go to the right persons and no one else, and provide funds for addiction treatment and prevention. And, also as in *Antar*, the surest way to accomplish the Court's stated objective would be to impose tremendous discovery costs on Defendants, unreasonably accelerate the path to bellwether trials, deny certification of novel and dispositive legal issues to the Ohio Supreme Court and Sixth Circuit (lest they delay trials), and all along the way insistently press the Defendants to settle—just as the Court has done.

The Court's own repeated statements of its goal—both on and off the record and in public remarks—are sufficient to raise a question as to the Court's impartiality. *Antar I*, 53 F.3d at 577 ("a reasonable observer is entitled to take the judge at his word" and "we must be careful not to rewrite what the judge has said and render unreasonable the clearest and most obvious reading of the language"). It is not necessary to show that reasonable persons have, in fact, questioned the judge's impartiality, although here they have.

In June 2019, the Sixth Circuit vacated the Court's protective order, holding that it had abused its discretion in not releasing the ARCOS data to the media. Given that the Court had compelled DEA to disclose the data to Plaintiffs, the Sixth Circuit called the Court's characterization of the data as confidential vis-à-vis the media "bizarre." In attempting to account for this "about-face," the Sixth Circuit questioned whether this Court's desire to settle the litigation had affected its impartiality:

> The district court repeatedly expressed its desire that the underlying litigation settle before proceeding to trial. The court also warned the parties … that if the case went to trial, the ARCOS data would likely become public. (*See* R. 156, Page ID# 861 ("Nothing is going to be revealed to the media unless there's a trial. … Hopefully there will be no trials.").) ***These statements suggest that at least part of the reason for the district court's about-face on what interests Defendants and the DEA have in nondisclosure of the ARCOS data might have been a desire to use the threat of publicly disclosing the data as a bargaining chip***

> ***in settlement discussions. If this was the motivation for its holding, then the district court abused its discretion by considering an improper factor***. … And even if this was not part of the district court's motivation, it appears that the court abused its discretion by acting irrationally.[67]

In short, given this Court's openly-declared desire to settle the litigation and avoid trials, the Sixth Circuit concluded that it was confronted with the choice of explaining this Court's decision as irrational or as based on improper consideration of how the decision might influence achieving a settlement.

On August 30, the Ohio Attorney General filed a Petition for a Writ of Mandamus asking the Sixth Circuit to dismiss the bellwether Plaintiffs' claims for "societal harms" and to delay the bellwether trial because the MDL proceedings threaten the State's sovereign rights. Regarding the Court's efforts to settle the litigation, including by certifying a "negotiation class," the Attorney General said:

> The District Court's statement regarding the potential class certification again shows its willingness to brush aside the law to facilitate a settlement, just as it does here. "I'm not worried about the Supreme Court. The issue is what will I do." ***A court cannot turn a blind eye to the law because it believes doing so will result in a better or fairer result***.[68]

The doubts about the Court's impartiality expressed by the Sixth Circuit and the Ohio Attorney General are the most recent, and most striking, expressions of concern that the Court's focus on settlement has influenced its rulings, but they are not alone. The media and various commentators have made such observations as well:

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[67] *In re National Prescription Opiate Litig.*, 927 F.3d 919, 933 (6th Cir. 2019).

[68] Petition for a Writ of Mandamus of State of Ohio, No. 19-3827, at 26 (6th Cir.) (internal citations omitted).

- The New York Times reporter who shadowed the Court for a day quoted the Court's statement that "[t]he stakes in this case are incredibly high" and linked it with the reporter's observation that the daughter of the Court's friend died of an overdose.
- The Cleveland Scene called it "a pretty amazing thing" that the Court told the parties that "everyone's to blame" and "any settlement had to go beyond dollars and cents to address real, viable solutions to a problem that is decimating the American population." "That," the paper said, "was not a traffic cop speaking."
- One lawyer quoted in the same article described the Court's goal as "trying to balance settlement money with public policy changes."
- As recently as August 2019, Barron's quoted a law professor as observing, "Judge Polster has always from the outset had settlement on his mind. … We have seen indications from Judge Polster that his desire to settle this case is often more of a priority for him than some of the niceties you might normally see play out in ordinary one-off litigation that does not carry with it the same level of magnitude or burden."[69]
- Even more striking, a forthcoming article in the Georgia Law Review authored by another law professor studies this MDL proceeding in an article titled, "MDL and the Allure of Sidestepping Litigation," and remarks on the Court's "unusually aggressive pro-settlement stance from the start"; the Court's forthright statement of "his moral duty" to "reduce the flow of opioids into the wrong hands; and his "stunning statement" that "'we don't need a lot of briefs and we don't need trials.'" About that last statement the

[69] Ex. O, J. Nathan-Kazis, *A Court Hearing This Week Could Be a Step Toward a National Opioid Settlement*, Barron's (Aug. 4, 2019).

article comments acerbically, "What motions and trials accomplish, the lawyers in his courtroom might have thought, is adjudication of disputes on the merits."[70]

As *Antar I & II* instruct, the Court's declaration of a non-judicial, personal, and, therefore, improper goal mandates disqualification under Section 455(a). The Court's public comments about the nature and causes of the opioid crisis, *see supra* at 6-7—matters that very much are disputed issues of fact—and the Court's stated belief that all the Defendants share responsibility for the opioid crisis only add to a reasonable perception that the Court is partial. The Court's inclusion of local governments and non-parties in the list of responsible persons does not mitigate the effect of his statement. When the Court spoke of remedies that included dramatically reducing the number of pills being "disseminated, manufactured, and distributed," of "get[ting] some money to the government agencies for treatment," and of "a monetary component" to any settlement, it was speaking of remedies secured from the ***Defendants***.[71] A reasonable person could rightly question whether a judge who states outright that the Defendants "share responsibility" for the problem and suggests that a settlement will include behavioral/systemic changes as well as the payment of monies to Plaintiffs has prejudged defendants' liability.[72]

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[70] H. Erichson, *MDL and the Allure of Sidestepping Litigation*, Forthcoming, 53 Ga. L. Rev. __ (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3371209.

[71] Compare these facts with the judge's public statement *In re Boston's Children First*, 244 F.3d 164, 170 (1st Cir. 2001) (discussed *infra* at 28), that the pending case was "more complex" than a previous case. The First Circuit said: "Judge Gertner's comments can be understood as a reflection of language in her prior orders, i.e., that class certification could not yet issue because the standing questions were more difficult ("more complex") than those in *Mack*. Still, … the comments were sufficiently open to misinterpretation so as to create the appearance of partiality.…"

[72] These remarks are not different in kind from those made by the circuit court judge assigned to hear the Florida Attorney General's action against various opioid manufacturers and distributors. At the motion to dismiss hearing, before hearing argument, he said:

II. The Court's Public Comments and Appearances Create a Reasonable Question About the Court's Impartiality

The Court has elected to give multiple interviews about the litigation and to appear on a number of panels and discussions—occasions on which the Court has made factual assertions about disputed issues in the litigation and has said that his personal mission is to abate the crisis of opioid addiction, to do so by obtaining "behavioral" change as well as substantial monetary contributions, and to accomplish this quickly and without trials.

These activities appear to violate Canon 3A(6), which states that a "judge should not make public comment on the merits of a matter pending or impending in any court." While a judge may comment on his official duties and court procedures, the Court's statements to The New York Times, Bloomberg News, Law 360, the Christian Science Monitor, and the Cleveland Jewish News went beyond such textbook information, as did the Court's participation in various panel discussions. And, while a judge may make scholarly presentations for purpose of legal education, neither the Court's public interview for Harvard's "HLS in the Community" series nor the Court's half-hour overview of the litigation at the "Addicted: Opioids, Judge, & Jewish Wisdom" even purported to be scholarly presentations.

When a judge publicly comments on a case, the appearance of partiality arises not simply from the actual words spoken, but also from the very fact that the judge has elected to speak to

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> We do have a crisis on our hands. I mean it … is contained in the complaint about our community of Hudson of prescribing in one year 2.2 million pills. That doesn't surprise me, because if you had lived here, you would have seen the caravan of buses coming down from other states and getting prescriptions filled at an alarming rate and the State legislature was not handling it properly initially…. It was manufactured because I feel there was, insofar as the actions of these corporations, a concerted effort based on all the material that was provided to me.

The Florida Court of Appeals granted the writ to disqualify the circuit court judge. *See* Ex. P, Order, *Allergan Finance, LLC v. State of Florida*, No. 2D19-1834 (July 25, 2019)

the press about the case at all. In *United States v. Cooley*, 1 F.3d 985 (10th Cir. 1993), the Tenth Circuit held that § 455(a) required the disqualification of a judge who spoke to the press only once, appearing on "Nightline" to state firmly that he would enforce his injunction barring protesters from blocking access to abortion clinics. The Court of Appeals explained that:

> ***Two messages were conveyed by the judge's appearance on national television in the midst of these events***. One message consisted of the words actually spoken regarding the protesters' apparent plan to bar access to the clinics, and the judge's resolve to see his order prohibiting such actions enforced. ***The other was the judge's expressive conduct in deliberately making the choice to appear in such a forum at a sensitive time to deliver strong views on matters which were likely to be ongoing before him***.

Id. at 995. It was this combination that "unmistakenly conveyed an uncommon interest and degree of personal involvement in the subject matter." *Id.* The very fact of publicly commenting about the ongoing protests and his injunction—what the Court of Appeals called "his volunteer appearance on national television"—"was an unusual thing for a judge to do, and it unavoidably created the appearance that the judge had become an active participant in bringing law and order to bear on the protesters, rather than remaining as a detached adjudicator." *Id.*

Likewise, in *In re Boston's Children First*, 244 F.3d 164 (1st Cir. 2001), the First Circuit held that a judge's letter to the newspaper correcting inaccuracies about the procedural posture of the case, in conjunction with a follow-up interview in which the judge called the pending proceeding "more complex" than a previous case, required her recusal. *Id.* at 167. The Court of Appeals was dubious that the judge had commented on the merits of plaintiffs' motion for class certification, and it understood that her letter was in response to plaintiffs' counsel's "provocative attempts to influence public opinion" in a matter "of significant local concern." *Id.* at 168, 169. But, still, the Court of Appeals observed that "[j]udges are generally loathe to discuss pending proceedings with the media" and that "when a judge makes public comments to

the press regarding a pending case, he or she invites trouble …." *Id*. at169, 171. And the fact that the Boston school assignment program was a matter of significant public interest was a reason for the judge to have been "particularly cautious about commenting on pending litigation," because the public might consider the very fact of responding to express "an undue degree of interest in the case." *Id*. at 169-70. "In fact," the Court of Appeals reasoned, "the very rarity of such public statements, and the ease with which they may be avoided, make it more likely that a reasonable person will interpret such statements as evidence of bias." *Id*. at 170.

In *In re Reassignment of Cases*, 736 F.3d 118 (2d Cir. 2013), the judge gave three interviews, none of which even mentioned the litigation by name. But one article quoted her as saying about the government, "I know I'm not their favorite judge," and the reporter implied that the judge was aligned with the Plaintiffs. 736 F.3d 118, 127 (2d Cir. 2013), *vacated in part on other grounds*, 743 F.3d 362 (2d Cir. 2014). "While nothing prohibits a judge from giving an interview to the media, and while one who gives an interview cannot predict with certainty what the writer will say," the Second Circuit explained, "judges who affiliate themselves with news stories by participating in interviews run the risk that the resulting stories may contribute to the appearance of partiality." 736 F.3d at 127.

For these same reasons, this Court's public comments require recusal under §455(a). Indeed, the case for recusal is more compelling here. When The New York Times interviewed the Court for a second time in January 2019, the Court did not say that its rulings were pro-Plaintiff or pro-Defendant, but the reporter contrasted "Judge Polster's rulings on untested legal questions" with what a court of appeals "increasingly filled with conservative judges" would do,

suggesting that the Court was aligned with the Plaintiffs.[73] And when the Court appeared at the Siegal Lifelong Learning discussion, he was confronted with statements by one of Plaintiffs' experts and asked to comment.

The case for recusal is also more compelling here because the Court's comments were not limited to one television appearance (as in *Cooley*) or one letter-to-the-editor with a follow-up interview (as in *Boston's Children's First*), and they did not avoid mention of the litigation. Rather, the Court commented on the litigation in multiple interviews and public appearances over a period of months. Moreover, the comments were not limited to explanations of court procedures and enforcement of the judge's injunction (as in *Cooley*) or, the procedural posture of the class certification motion (as in *Boston's Children First*). The comments concerned disputed factual issues, what this Court personally wants to accomplish, and what Defendants must be prepared to do in settlement. The comments were not made about one case, but about the hundreds of cases in the MDL proceeding—cases that are not just of significant local concern, but of national media interest and public debate.

The Court's decision to grant a number of interviews and to make a number of public appearances, plus the fact that one interview involved the reporter's shadowing the Court, heighten the concern that a reasonable person would question the Court's impartiality. In *United States v. Microsoft*, 253 F.3d 34 (D.C. Cir. 2001), the district judge gave secret interviews to reporters for The New Yorker and The New York Times during the course of the trial and indisputably discussed the merits of the case—likely a unique set of facts. But there were two particular matters of concern to the D.C. Circuit that are also present here.

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[73] Ex. C, J. Hoffman, *Opioid Lawsuits Are Headed for Trial. Here's Why the Stakes Are Getting Uglier*, N.Y. Times (Jan. 30, 2019).

First, the Court of Appeals believed it safe to assume that interviews are conversations, not monologues. Because reporters may furnish information to the judge that reflects their personal views of the case, the *Microsoft* Court asked, "[w]hat did the reporters convey to the District Judge during their secret sessions?" *Id*. at 113. The same question may be asked about The New York Times reporter who shadowed the Court for a day. Indeed, we know the reporter solicited the Court's response to "disparaging comments" made by lawyers in the case that the Court was "arrogant" and "[u]nrealistically ambitious."[74]

Similarly, in the case of the Court's participation in the discussion sponsored by the Siegal Lifelong Learning Program, the Court was asked to comment on a public statement by one of Plaintiffs' experts (Dr. Anna Lembke)—a statement that credited the Court's "overwhelming" settlement pressure with bringing about Purdue's decision to halt marketing to doctors—and asked to comment. The mere fact that the Court was confronted with this "praise," even apart from the Court's choice to deflect rather than disclaim it, created a circumstance that appeared to align the Court with Plaintiffs. And it occurred only because the Court elected, as on so many other occasions, to discuss the litigation in public. The Court may or may not have known that the event was recorded. But this meant that, although the Court had previously declined to appear on a podcast hosted by one Greg McNeil, a Cleveland-area resident whose son died of a heroin overdose, Mr. McNeil was able to incorporate the recording in his podcast, accompanied by his commentary. In interrogatory answers, Plaintiffs identified Mr. McNeil as a witness on whom they may rely.

[74] Ex. B, J. Hoffman, *Can This Judge Solve the Opioid Crisis?*, N.Y. Times (Mar. 5, 2018) (published on page 1 of the print copy on March 6, 2018).

Second, the D.C. Circuit expressed concern about "[j]udges who covet publicity, or convey the appearance that they do," and recognized that "[m]embers of the public may reasonably question whether the District Judge's desire for press coverage influenced his judgments, indeed whether a publicity-seeking judge might consciously or subconsciously seek the publicity-maximizing outcome." *Id*. at 115. Members of the public may reasonably have the same question here, given (1) how many interviews the Court has given and how many public appearances it has made, and (2) the nature of a number of the Court's comments in those interviews, which reflect the Court's personal investment in ameliorating the larger social problem (*e.g.*, "[t]he judicial branch typically doesn't fix social problems, which is why I'm somewhat uncomfortable doing this[,][b]ut it seems the most human thing to do" and, regarding "turning the curve of addiction down," stating, "it's on us to do something about it" and"[t]his is my time to do something significant. I'm not going to take a pass. Usually people take a pass.").

For all of these reasons, the Court's interviews and public appearances constitute independent ground for disqualification under 28 U.S.C. § 455(a).

III. The Court's Significant Involvement in Attempting to Settle the Litigation Creates a Reasonable Question About the Court's Impartiality, Especially Since the Court Will Act As a Factfinder

From day one, the Court has been personally involved in efforts to settle the litigation. The Court has met repeatedly with the parties—individually and in industry groupings—as well as with interested third parties. The Court has invited proposals and made proposals of his own. On the Court's behalf, Special Master McGovern has had countless additional meetings and conversations to explore settlement, and himself has discussed details of settlement discussions with the media.[75] In short, settlement has been, and remains, the Court's focus—as both the

[75] Ex. Q, D. Fisher, *Judge Sees Litigation As Only An `Aid In Settlement Discussions' For Opioid Lawsuits*, Forbes (May 10, 2018) ("The parties have 'explored a variety of

Ohio Attorney General and a panel of the Sixth Circuit have observed—and it has actively participated in the settlement discussions. As the Court reminded the parties in May 2019, as they were about to file dispositive and *Daubert* motions, "[M]y attention and my time, candidly, is going to be on facilitating the settlement track."[76]

Setting aside the other indicia of partiality detailed above, and whether or not the Court's focus on settlement has been appropriate, the Court's deep and detailed involvement in settlement—personally and through the Special Master—precludes his being a factfinder. The law is clear that where a judge has engaged in settlement discussions, as this Court has done on many levels with parties and non-parties alike for more than a year, that judge cannot conduct a bench trial. In *Becker v. Tidewater, Inc.*, 405 F.3d 257, 260 (5th Cir. 2005), "the district judge appear[ed] to have mediated the settlement conference," and when the settlement negotiations failed, "was faced with the possibility of also becoming the trier of fact" in a non-jury, admiralty trial. "This role," the Court of Appeals held, "would have been inappropriate given his discrete knowledge of the parties' evaluation of their respective financial positions on settlement" and required recusal.[77] *See In re Royal Manor Management, Inc.*, 525 B.R. 338, 380-81 (6th Cir. 2015) (bankruptcy judge who encouraged settlement, but "did not mediate the dispute or engage in settlement discussions between the parties" was not required to recuse); *Tucker v. Calloway*

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compromises and have had what I consider to be in my experience very fruitful, very open, very cooperative discussions," said Francis McGovern, another special master. Plaintiffs and defendants are 'discussing prospective injunctive relief,' he said, to resolve some aspects of the opioid epidemic. Further negotiating meetings are scheduled later this month, June, July and August, and the July meeting will include representatives of the healthcare industry to discuss 'the opioid crisis in a non-litigation context.").

[76] ECF 1643 at 15.

[77] The *Becker* court affirmed the decision of the district court because the defendant failed to raise the issue of disqualification below.

County Bd. of Educ., 136 F.3d 495, 503 (6th Cir. 1998) (judge voluntarily recused because he had been involved in settlement discussions and could not conduct bench trial).[78]

Apart from that rule, one of Plaintiffs' four remaining claims in the Track 1 cases is a nuisance claim. Plaintiffs assert that they no longer seek damages, and the Court has held that, exercising its equitable powers, "[it] has the discretion to craft a remedy that will require Defendants, if they are found liable, to pay the prospective costs that will allow Plaintiffs to abate the opioid crisis." ECF 2519 at 3. To that end, it has held that Plaintiffs' abatement experts "provide context that the Court believes will be helpful in ultimately crafting an abatement remedy should it become necessary." And "[t]o the extent Defendants contend the Challenged Experts' assumptions and conclusions are wrong," the Court has said, "the appropriate place to challenge them is on cross-examination," where the Court may be the factfinder who assesses the credibility of the experts and determines what weight to give their testimony. In its September 4, 2019 ruling on Plaintiffs' summary judgment motion regarding their nuisance claims, the Court stressed that abatement is an equitable remedy, no matter what relief is sought under the "abatement" rubric.[79] A reasonable person would question whether a court that has repeatedly spoken to what it believes to be the scope of the problem and whose stated goal is to provide money to government agencies to resolve that problem as quickly as possible can do so impartially.[80]

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[78] *Cf. Colon-Cabrera v. Esso Standard Oil Co. (Puerto Rico), Inc.*, 723 F.3d 82 (1st Cir. 2013) (commending the district judge's desire to aid the settlement process, but noting "potential pitfalls," including that "[s]uch involvement could result in the judge obtaining information about the parties' respective positions that might unduly influence the judge's rulings in the case.").

[79] ECF 2572 at 4-5.

[80] "When the judge is the actual trier of fact, the need to preserve the appearance of impartiality is especially pronounced." *Alexander v. Primerica Holdings, Inc.*, 10 F.3d 155, 166 (3rd Cir. 1993); *see also Tucker ex rel. Tucker v. Calloway County Bd. of Educ.*, 136 F.3d 495, 503

Accordingly, the Court must recuse itself from determining what equitable relief is appropriate, should Plaintiffs prove their nuisance claim. The judge who determines the remedy, however, should be the same judge who heard the evidence of liability. Recusal for one necessitates recusal for both.

CONCLUSION

Both the Court's declaration of a personal objective to do something meaningful to abate the opioid crisis and its many public comments about the litigation in interviews and public appearances independently warrant disqualification pursuant to 28 U.S.C. § 455(a). The Court's deep involvement in settlement discussions requires its disqualification from any bench trial of equitable remedies. Together, these factors more than raise a reasonable question about the Court's impartiality. In cases like these of such national significance and of such magnitude for Plaintiffs and Defendants alike, any reasonable question about the Court's impartiality cannot be tolerated. Allowing such questions to exist would contravene Section 445's paramount purpose of preserving the public's perception of the integrity of the judicial system. Given the record, the Court should recuse itself from the entire MDL proceeding.

Dated: September 14, 2019 Respectfully submitted,

(6th Cir. 1998) (observing that trial judge recused himself because he had been involved in settlement discussions and matter would be a bench trial); *In re Royal Manor Mgmt.*, 525 B.R. 338 (Bankr. App. 6th Cir. 2015), aff'd 652 Fed. Appx. 330 (6th Cir. 2016) ("judge should recuse himself from being a fact finder when he mediated a settlement conference") (citing *Becker*, 405 F.3d at 260); *Chicago Ins. Co. v. Capwill*, 2010 U.S. Dist. LEXIS 68228 (N.D. Ohio July 8, 2010) (granting motion to disqualify after determining that case would be tried to the court).

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I, Geoffrey E. Hobart, hereby certify that the foregoing document was served via the Court's ECF system to all counsel of record.

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EXHIBIT A

Opioid Crisis Point Man Is Cleveland Judge in Midst of Epidemic

Published: Jan 31 2018 07:00:00

News Story

- Daniel Polster convenes talks with drugmakers, politicians
- 'Problem is urgent, life-threatening,' judge says in interview

By Jef Feeley and Jared S. Hopkins

(Bloomberg) --
A Cleveland judge says the U.S. government has punted on the nationwide opioid epidemic. So he's grabbing the ball and running with it.

U.S. District Judge Daniel Polster has summoned pharma executives, law enforcement, government officials and lawyers to his court on Wednesday as he tries to forge a deal that would address the crisis and resolve more than 200 lawsuits stemming from it.

It's a daring strategy even for a 20-year veteran judge who doesn't shy away from seemingly intractable conflicts. Polster has said he hopes to strike a deal this year to offset the billions of dollars in costs U.S. municipalities face in dealing with an epidemic that claims 150 American lives each day.

"It would be fantastic if he can put together a settlement that really addresses these issues in that short a period," said Jane Eggen, a law professor at Widener University in Delaware who teaches mass-tort law. It's an "ambitious way to start."

The rising body count and drain on public coffers spurred Polster to call the summit, putting on hold federal lawsuits against opioid makers including Purdue Pharma Inc., Johnson & Johnson and Endo International Plc and drug distributors McKesson Corp. and Cardinal Health Inc. and others.

"This is an unusual case," the 66-year-old Harvard Law School graduate said in an interview. "The problem is urgent, life-threatening and ongoing. I took this step because I thought it would be the most effective path."

Big Pharma's Tobacco Moment as Star Lawyers Push Opioid Suits

Polster doesn't hide from controversy. In February, he took a swipe at President Donald Trump for questioning the fairness of federal judges. A public office holder who makes such comments, he said, "calls into question his or her own legitimacy."

Two years ago, he helped mediate a deal on the heightened security zone outside the Republican convention

in Cleveland, cutting the planned 3.5 square miles in half and creating new spaces for protesters.

Polster pushed for months to reach a deal in a 1999 dispute between the siblings who owned the San Francisco 49ers football team, according to the Mercury News. Denise DeBartolo York sued to remove her brother Eddie, who countersued in Ohio. She got the team and he stepped away.

The former federal prosecutor is also something of an environmentalist. His wife Deborah Coleman encouraged him to start cycling in 2007 instead of driving, The Cleveland Jewish News reported. Polster organized a five-mile bike ride in 2010 that combined exercise, enjoyment of nature, and a "little Jewish learning," with Polster giving a lesson on the holiday of Shavuot, according to the article.

How the U.S. Opioid Crisis Spiraled Out of Control (Video)

For the opioid summit, Polster is asking staff for the Food and Drug Administration and the Drug Enforcement Administration for their views on how to better keep addictive painkillers out of abusers' hands. Half the meeting is slated for information gathering and the rest on settlement proposals.

"Judge Polster does not sit in an ivory tower, but in a courthouse in the middle of Cleveland, Ohio, an area devastated by the opioid epidemic, with no end in sight to the deaths and heartache," said Jayne Conroy, a lawyer representing cities and counties in the litigation. "He is committed, hard-working and experienced."

None of the companies would say which of their executives were going. McKesson spokeswoman Kristin Hunter Chasen said the company wanted to address a "complicated" public-health crisis. Johnson & Johnson's Janssen unit looks forward to being "part of the ongoing dialogue," spokeswoman Jessica Castles Smith said. Purdue Pharma, Endo and Cardinal Health declined to comment.

Ohio Attorney General Michael DeWine will brief Polster about his state's skyrocketing rate of opioid overdoses. County morgues are full and officials are stacking corpses in cold-storage trailers. DeWine, a Republican candidate for governor, has made the opioid crisis his signature issue.

The parties have been talking. Purdue Pharma officials floated trial balloons in November for a deal with state attorneys general that would cover all opioid makers, people familiar with the talks said.

Fruitless Talks

But Jim Boffetti, a New Hampshire assistant attorney general, said the talks with Purdue officials were fruitless. "I haven't gotten the least indication that they are willing to take responsibility," he said. "We're hoping the judge can change that attitude."

"Maybe if he can get the right people in the room and get those people thinking of what's doable, then something good will come out of it," said Elizabeth Burch, a University of Georgia law professor who teaches about complex litigation.

Anupam Jena, a Harvard Medical School health economist, estimates it would take $250 billion in annual funding to make a meaningful dent in the crisis, with funds for treatment, police departments and compensation for victims' families. That amount may be much more than the opioid makers and drug distributors are willing to pay.

Polster knows he's in an unusual position: a judge overseeing a massive lawsuit while trying to craft a 50-state

remedy to the epidemic.

“It’s not typical to have the judiciary involved” in such a way, he said in the interview. “We are not policy makers.” But as Polster has said, he sees it as his duty to tackle the “100 percent man-made” crisis.

“I’m not happy or unhappy” to be the point man on opioid litigation, he said. “Whether I’m happy doesn’t matter. We don’t pick our cases.”

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EXHIBIT B

The New York Times

Can This Judge Solve the Opioid Crisis?

By Jan Hoffman

March 5, 2018

CLEVELAND — Here are a few choice mutterings from the scrum of lawyers outside Courtroom 18B, about the federal judge who summoned them to a closed-door conference on hundreds of opioid lawsuits:

“Grandstander.”

“Pollyanna.”

“Over his head.”

And the chorus: “This is *not* how we do things!”

Judge Dan Aaron Polster of the Northern District of Ohio has perhaps the most daunting legal challenge in the country: resolving more than 400 federal lawsuits brought by cities, counties and Native American tribes against central figures in the national opioid tragedy, including makers of the prescription painkillers, companies that distribute them, and pharmacy chains that sell them. And he has made it clear that he will not be doing business as usual.

During the first hearing in the case, in early January, the judge informed lawyers that he intended to dispense with legal norms like discovery and would not preside over years of “unraveling complicated conspiracy theories.” Then he ordered them to prepare for settlement discussions immediately.

Not a settlement that would be “just moving money around,” he added, but one that would provide meaningful solutions to a national crisis — by the end of this year.

“I did a little math,” he said, alluding to the rising number of overdoses. “About 150 Americans are going to die today, just today, while we’re meeting.”

The transcript from that hearing has created a ruckus in legal circles. Adam S. Zimmerman, a professor at Loyola Law School in Los Angeles, has begun teaching it in his classes.

“We say we want judges to be umpires,” Mr. Zimmerman said. “But when there’s a large social problem at stake, judges can be umpires for only so long, before they decide it has to be solved.”

Lawyers on both sides would not speak on the record, noting that to criticize the judge presiding over their case would be professional suicide. But in private conversations, many were scathing, questioning his grasp of the issues and predicting that a stepped-up timetable was bound to collapse.

Can Judge Polster pull this off?

“These are bold things for a judge to say and it’s exciting and intriguing to follow,” said Abbe R. Gluck, a professor at Yale Law School who directs the Solomon Center for Health Policy and Law. “But to say that his goals are ambitious would be an enormous understatement.”

Legal Finger-Pointing

In December, a judicial panel gathered all the prescription opioid cases filed in federal court across the country and plopped them into Judge Polster’s lap. The consolidation of large numbers of similar cases is called a multidistrict litigation, or MDL; it’s usually done to enhance efficiency and reduce costs.

The panel cited several reasons for selecting Judge Polster. Ohio has been hard-hit by the crisis and is also centrally located to the defendants. And Judge Polster has MDL experience. He mediated settlements in some 700 cases involving a medical contrast dye.

This type of litigation is inherently unconventional, but the consolidated opioid lawsuits may be even more complex than most.

The Carl B. Stokes United States Court House in Cleveland, Ohio, where the nation's federal opioid lawsuits have been consolidated. Maddie McGarvey for The New York Times

Rather than just one kind of industry defendant, this litigation has several, each playing a different role — not only drug makers but also distributors and retailers. That makes the apportionment of liability even more contentious, with defendants blaming one another.

All the defendants say the drugs were approved by the Food and Drug Administration and prescribed by doctors.

Plaintiffs claim that manufacturers, like Purdue Pharma and Johnson & Johnson, aggressively marketed the pills for years, despite knowing about addictive properties; that distributors, like McKesson and Cardinal Health, shipped alarming quantities without reporting to the authorities; that pharmacy chains, like Walgreens and CVS Health, looked away while selling flag-raising amounts to individuals.

Adding weight to the plaintiffs' case, the Justice Department filed a so-called statement of interest in the litigation last week, to emphasize the government's "substantial costs and significant interest in addressing the opioid epidemic."

The theories under which parties are suing make for a legal cacophony: public nuisance laws; fraud, racketeering and corruption; violations of federal and state laws on controlled substances. With the judge pushing for settlement, legal experts worry that these arguments may not get full consideration.

"Courts are hard-wired for litigation," through which facts can come to light, said Elizabeth C. Burch, a law professor at the University of Georgia who writes about multidistrict litigation. "Here, there's a short-circuiting of that process. So how do you know if it's the right settlement if you don't have all the information in front of you?"

Judge Polster has reminded both sides that if they resist settling swiftly in favor of litigation, they could be setting themselves on a path toward unpredictable jury trials.

The night before the conference, many lawyers, expert witnesses and clients stayed in the same hotel. They gathered in rooms and the restaurant lounge, strategizing, trying to second-guess the judge. On occasion, their voices could be overheard, rising in exasperation.

Earlier that day, Judge Polster, 66, ate a hasty lunch of a hard-boiled egg and tangerine unpacked from sandwich baggies, having just returned to his chambers from tutoring reading to a third-grader at a school near the courthouse. He glanced at his wristwatch, its fraying band wrapped in duct tape.

Before his day was over, the judge, shadowed by a reporter, would oversee a half-dozen legal matters, help teach a class on mediation at Cleveland-Marshall College of Law, dine with the opioid litigation's special masters — court-appointed intermediaries who expedite negotiations — and then lug home a nearly foot-thick binder of materials to study.

Judge Polster, who is married to an arbitration lawyer, grew up in a middle-class Cleveland neighborhood that his parents fought to integrate. Their activism taught him "ordinary people can do extraordinary things if they don't take a pass." His Jewish faith has also shaped his outlook on justice and compassion, he said; he teaches a confirmation class about ethical decision-making.

After graduating from Harvard Law School, he began a lifelong career in public service, working for the Justice Department's Antitrust Division in Cleveland and then the United States attorney's office there, prosecuting economic crimes. In 1998, President Bill Clinton appointed him to the federal bench.

Judge Polster co-teaches a course at Cleveland-Marshall College of Law on mediation, which he uses regularly to resolve cases. Maddie McGarvey for The New York Times

The Most Human Thing

Like so many Ohioans, Judge Polster has been personally touched by the opioids crisis. A friend's daughter died from an overdose.

"The stakes, in this case, are incredibly high," he said. "Any thinking person should feel terrible about the situation we're in."

He was keenly aware that steering the process away from traditional litigation is unorthodox. "The judicial branch typically doesn't fix social problems, which is why I'm somewhat uncomfortable doing this," he said. "But it seems the most human thing to do."

Upon hearing of the disparaging comments from some lawyers, Judge Polster stared into deep space to retrieve his words before making eye contact, a habit that some find unnerving.

They called him arrogant? Unrealistically ambitious?

"I think that's a fair assessment," he said. "But I won't fault myself for attempting this."

He would not address specific issues in the opioid litigation. But he opened a window into his thinking, generally, about why he prefers rapid settlement rather than trying cases. He believes that when parties have gotten this far down the road in a lawsuit, they already have at least 80 percent of the information they need to negotiate; the longer litigation continues, he said he has found, the more entrenched each side can become.

Later that day, he told law students: "It's almost never productive to get the other side angry. They lash out and hurt you and themselves. I try to get the sides to think it through as a problem to solve, not a fight to be won or lost."

The following morning, a mash-up of small-town mayors, big-city lawyers, addiction doctors, pharmacy industry executives and a police chief trooped into Judge Polster's mahogany-lined federal courtroom, a crowd of nearly 170. Lawyers hoisted folding chairs for overflow seating.

Confusion was ubiquitous. Even the most optimistic admitted to low expectations, predicting that the day would amount to sword-rattling and throat-clearing.

The judge had ordered a closed-door session that morning with tiers of lead lawyers, their experts and clients, to educate him on the issues. Immediately after, he would begin settlement discussions.

To that end, he had also invited representatives from two groups of state attorneys general, neither in his official purview. One group of about 10, which included Mike DeWine from Ohio, had already filed lawsuits in their home state courts. Another group of 41 attorneys general, who are cooperating in their own prescription opioid investigation, have not yet filed.

But though the attorneys general are not parties in this litigation, legal experts say their input is essential to its success: The defendants will most likely insist on a settlement that would resolve most, if not all, the state lawsuits as well as the federal ones.

A street in Cleveland. Ohio is among the states hardest hit by the opioid onslaught.
Maddie McGarvey for The New York Times

After the morning session, Judge Polster summoned the attorneys general into the courthouse auditorium to air grievances. Other lawyers repaired to the cafeteria, waiting their turn.

Tides of earlier skepticism about Judge Polster began receding.

Some noted that he seemed pretty smart and asked some good results-driven questions.

“Classic Polster,” said Pete Weinberger, a Cleveland plaintiffs’ lawyer who has appeared before the judge in other cases, saying he seemed to listen intently and probe with pragmatism. “His questioning focused on reducing the number of pills in the chain of distribution.”

Plaintiffs’ lawyers and addiction specialists began floating trial balloon solutions, all the more remarkable given that, as one lawyer said, “we’re just at the beginning of the beginning.” Take the strongest doses off the market? Fund addiction treatment and public education?

The judge had also insisted that front-line victims, not just the lawyers, bear witness that day: A Camden County, N.J., police chief whose force was worn down by the opioid-related crimes. Steve Williams, the mayor of Huntington, W.Va., which was featured in an Oscar-nominated short documentary, “Heroin(e),” as the epicenter of the epidemic. One recent week, Huntington, with a population of 48,000, recorded 29 overdoses.

“I’m fighting drug dealers in white coats,” Mr. Williams said. “We need the resources to clean up this mess and make sure it never happens again.”

The day ended with Judge Polster issuing brisk orders for the next steps.

Leaving the courthouse, Mark S. Cheffo, who represents Purdue Pharma, the makers of OxyContin, tersely characterized the mood as “cautiously optimistic.”

Just 10 days later, Purdue announced it would no longer market OxyContin to prescribers. “This is a stunning about-face by Purdue, which has long contended that it has not influenced physician education with its drug reps,” said Dr. Anna Lembke, a Stanford addiction specialist who spoke at the Cleveland session. “I think the overwhelming pressure from Judge Polster, not to mention the court of public opinion, led to this radical reversal.”

Purdue issued a statement last week saying the company was “fully engaged in the process that Judge Polster has set in action to explore meaningful solutions” to the opioid crisis.

On Tuesday, delegations of all-star litigators and representatives of the attorneys general are to return to Courtroom 18B to begin negotiating “economic and noneconomic issues.”

With countless lives and billions of dollars at stake and both sides arguing their cases in the news media, the obstacles to resolution seem staggering.

Yet on numerous occasions, Allen L. Bohnert, a former law clerk, has watched Judge Polster take on the intractable.

“At the end of a long day where it looked like there wouldn’t be a settlement, he’d walk out with one,” said Mr. Bohnert, now an assistant federal public defender. “And he’d wink and say, ‘Sometimes it takes a federal judge.’”

A version of this article appears in print on March 6, 2018, on Page A1 of the New York edition with the headline: Judge Wants to Solve the Opioid Crisis, and Fast

EXHIBIT C

The New York Times

Opioid Lawsuits Are Headed to Trial. Here's Why the Stakes Are Getting Uglier.

The judge presiding over all the federal cases had hoped to settle them by now. But the behemoth litigation is only becoming more bloated, contentious and difficult to resolve.

By Jan Hoffman

Jan. 30, 2019

Uncontested: The devastation from prescription opioids has been deadly and inordinately expensive.

Contested: Who should foot the bill?

Just over a year ago, opioid lawsuits against makers and distributors of the painkillers were proliferating so rapidly that a judicial panel bundled all the federal cases under the stewardship of a single judge. On a January morning, Judge Dan Aaron Polster of the Northern District of Ohio made his opening remarks to lawyers for nearly 200 municipal governments gathered in his Cleveland courtroom. He wanted the national opioid crisis resolved with a meaningful settlement within a year, proclaiming, “We don’t need briefs and we don’t need trials.”

That year is up.

Far from being settled, the litigation has ballooned to 1,548 federal court cases, brought on behalf of cities and counties, 77 tribes, hospitals, union benefit funds, infants with neonatal abstinence syndrome and others — in total, millions of people. With a potential payday amounting to tens of billions of dollars, it has become one of the most complicated and gargantuan legal battles in American history.

With settlement talks sputtering, the judge has signed off on a parallel track involving, yes, briefs, focused on, yes, trial. He will preside over three consolidated Ohio lawsuits in what is known as a “bellwether,” or test case. The array of defendants include Purdue Pharma, Mallinckrodt PLC, CVS RX Services Inc. and Cardinal Health, Inc. That jury’s verdict could determine whether the parties will then negotiate in earnest or keep fighting.

The trial date has already been postponed twice. It is now scheduled for Oct. 21.

“I knew this would be complex and challenging,” Judge Polster said in an interview, “but it turned out to be far more so than I envisioned.”

To help sort through the complexity, here are some important developments and what they mean:

Stunning evidence from D.E.A. records

Manufacturers, distributors and pharmacies are supposed to track and report prescription opioids to the Drug Enforcement Administration and raise alarms when orders seem suspicious.

After considerable legal skirmishing, the D.E.A. complied with orders from Judge Polster and turned over more than 400 million lines of data. It’s a detailed history, from 2006 through 2014, showing how many opioids were made by each manufacturer, trucked by each distributor and sold in pharmacies across the country.

The plaintiffs have long said that the companies deliberately looked the other way at the improbable quantities. But the lawyers did not have the hard numbers in hand to bolster their claims.

Now they do.

For the time being, the judge will not release the data to the public. But a passage from a congressional report gives a sense of the granular information in the data: during 10 months in 2007, one distributor, McKesson, shipped three million prescription opioids to a single pharmacy in a West Virginia town with 400 residents.

The data has turned out to be a modest help to some of the defendant companies, too: because the D.E.A. reports show that certain medications were not sold in large quantities in some communities, companies that make and distribute them have been dropped from a few cases. In the Cuyahoga County, Ohio lawsuit, for example, the Kroger Company, which owns grocery stores that include pharmacies, was dropped because they turned out not to have a location in the area.

Going to trial is a win for plaintiffs

In a 39-page decision last month, Judge Polster shot down the drug industry's efforts to dismiss the Ohio trial. Instead, he gave the lawyers the go-ahead to test just about every legal theory the plaintiffs raised.

They include: that the companies conspired; committed fraud; were negligent; violated public nuisance laws — this last being a relatively recent, novel way for communities to redress health crises.

Of course, legal theory is one thing. Next comes the hard part: the plaintiffs will actually have to prove those allegations to a jury.

The companies demand personal medical records

Typically, patients who sue for medical malpractice or product liability must turn over their own medical records as proof. They forfeit conventional privacy rights.

Here, the overwhelming majority of plaintiffs are government entities, not individuals. They are seeking to be reimbursed for the accumulated costs of drug addiction and its collateral damage. The defendants want them to produce precise evidence showing how those costs are calculated, including the chain of events — for example, from a drug's development, to its delivery, to a pharmacy-filled prescription to, eventually, bills from hospitals and others.

That means the drug industry is asking for patients' records and for every prescription the plaintiffs deemed medically "suspicious." The plaintiffs are pushing back, saying that the depleted municipal budgets for health, social services and law enforcement paint a more telling picture.

But they are giving ground.

The plaintiffs have now turned over millions of coded insurance claims connected to opioids. The fight has moved to the scope and quantity of patients' medical records.

Meanwhile, the plaintiffs pursue their own paper chase

At the same time, plaintiffs are seeking the internal documents from the pharmaceutical industry pertaining to development, marketing and sales strategies.

They are also looking for documents showing what efforts the companies made to prevent their drugs from being illegally diverted. Years ago, some companies settled cases with promises to take such steps. The plaintiffs want to know whether they actually did so.

Defense lawyers say they have already handed over roughly 67 million documents.

Drugstores could be held responsible for black-market fentanyl

A knee-surgery patient goes home with opioids. His teenage son finds the pills in the bathroom medicine cabinet and starts down a jagged road that ends in heroin addiction.

Should the companies that made, distributed and sold the prescription painkillers be liable?

What if the son sold them to a friend who turned to street drugs and overdosed? Are the drug companies responsible then?

Multiply these examples by many years and generations of analogous scenarios. Now tabulate the accumulating drain on civic budgets for emergency responders; hospitals; incarceration; drug courts; rehab; mental health services; child welfare.

Whether the companies should have foreseen the growth of an illicit second market — including pills, heroin and fentanyl — is among the knotty questions being addressed.

Right now, Judge Polster, who is only ruling on the Ohio bellwether cases, says yes.

But to make matters even more twisty: if more bellwethers go to trial, the answers to these and numerous other questions may differ, depending on the jurisdiction.

Why drug companies could have an upper hand

Lawyers on both sides agree: This litigation presents a slew of novel legal issues.

If the bellwether ends in a victory for plaintiffs, appeals courts, increasingly filled with conservative judges, would be unlikely to uphold all of Judge Polster's rulings on these untested legal questions, much less a whopping, emotional jury award. Complexity favors the defense.

And in settlement negotiations, the long game is the defense's best friend: they can afford to drag this out. Typically, the longer it slogs on, the more the final tab gets driven down.

But don't count out the plaintiffs

According to Andrew S. Pollis, a litigation expert who teaches at Case Western Reserve Law School in Ohio, the plaintiffs have advantages, too.

"Judge Polster's unusual level of commitment to settlement" is potent, he said. The judge is still pushing for a relatively swift resolution, replete with directed funds to help remedy the crisis and establish prevention measures.

The judge's biggest stick that could drive defendants to the bargaining table is the bellwether trial, with its looming date. A trial could not only unleash far more money than a settlement would, but the companies' documents currently under seal would become glaringly public, telling a more complete story of the relationship of the defendants to the crisis.

And, to that point, Mr. Pollis added: Don't discount the leveraging power of public perception and pressure, which does bear down on the defense — "especially since the plaintiffs are, in effect, all of us."

But wait! There's more!

The defendants want a global settlement — a comprehensive agreement that will indemnify them against further lawsuits. The multidistrict litigation, with all the federal cases, is positioned for that goal.

But to achieve it, Judge Polster needs cooperation from state courts. There are about 332 other cases that have been filed in state courts. Coordinating data sharing between the state and federal cases is a feat unto itself. Indeed with Purdue documents from the federal litigation, Massachusetts has moved ahead with its own case; over Purdue's objections, the Massachusetts judge has made public far more than Judge Polster has.

So there's an ongoing baroque court dance between Judge Polster and the states. He cannot be perceived as a big-footer. The state judges must be seen as independent. And yet Judge Polster needs cooperation from the states to achieve that global settlement.

In a recent interview, Judge Polster repeatedly emphasized, "I don't control the state court judges or the attorneys general but I very much appreciate their participation. They are indispensable."

Eyes will be on the first trial in another state, scheduled to start before Judge Polster's: The State of Oklahoma v. Purdue Pharma, currently set for May 28.

Jan Hoffman is a health behaviors reporter for Science, covering law, opioids, doctor-patient communication and other topics. She previously wrote about young adolescence and family dynamics for Style and was the legal affairs correspondent for Metro. @JanHoffmanNYT

A version of this article appears in print on Feb. 1, 2019, Section A, Page 21 of the New York edition with the headline: Looking for Someone To Clean Opioid Mess

EXHIBIT D

Can Judge Dan Polster Get Big Pharma to Pony Up Billions for Its Role in the Opioid Crisis?

By Daniel McGraw

Listen now
23:48

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America will turn its drug-addicted eyes to Cleveland over the next year or two as the city becomes the capital of drug overdose law.

What has happened is pretty simple if we take the lawyering talk out of it. Cities, counties and states have gotten pissed off in recent years with skyrocketing prescription pain

medications made and is ensuing public health crisis, to take to overdose from prescribed and illegal opioids, which they've had to clean up, literally, figuratively and financially. That includes more crime, ambulances, processing dead bodies that pile up so quickly and in such great numbers that some county coroners have had to call in mobile trailers to accommodate the cadavers, more foster care, health care, and it goes on and on.

They asked the federal government for money to help, asked the FDA to restrict pain pills like OxyContin from being passed out like candy, asked the pharmaceutical companies to quit being so greedy, and even asked medical schools to teach their doctors not to prescribe so many.

No one listened. And the stats kept getting worse.

The country now averages 52,000 overdose deaths a year. That's six an hour. If you are keeping score for Ohio, about 13 will die today from an OD. In Cuyahoga County, about two a day. For further perspective, those 52,000 who died from opioid-related overdoses nationally in 2016 were more than the deaths from breast cancer (40,000), car crashes (38,000), suicides (32,000), and homicides (17,000) that year.

So they all sued. Well, most of them. Nearly 400 cities, counties, states and Native American tribes (at last count) have filed lawsuits against opioid pill manufacturers and the companies that distribute them to pharmacies alleging the companies up and down the supply chain willfully produced, marketed and shipped astounding quantities of what they knew to be highly addictive drugs.

Those lawsuits might be put to rest at 801 Superior Ave. on the 18th floor of the Carl B. Stokes Federal Courthouse.

In December 2017, the U.S court system brought all those cases together in what's known as a Multi-District Litigation (MDL). Basically, the process gathers a whole bunch of similar cases and streamlines them through one court after which they'd all share rulings — what documents the defendants need to provide, who must sit for depositions, rulings on various motions and evidence — and then the cases return to the state where they were initially filed for actual trial.

The judicial panel chose Cleveland, and federal Judge Dan Polster, for the MDL for a variety of reasons. Cleveland has been among the hardest hit areas of the country, for starters, and many of the cases filed come from neighboring states.

Kicking the cases back to trial is one option for how this can work. In reality, judges in MDL cases have all sorts of latitude and leeway, and some figure they can take the bull by the horns, tell the high-priced lawyers to go sit in a corner, and craft some master settlement for all the cases at once. That's what's happening in Cleveland with Polster, a Shaker Heights native and Clinton appointee, who has indicated he wants to be the kind of MDL judge who does more than play legal traffic cop. That much was clear from the start, and perhaps not surprising given Polster's reputation and advocacy for settlements in lieu of expensive and lengthy trials.

At the first meeting of the major players in his courtroom on Jan. 9, when Polster told them to immediately begin getting ready for settlement talks, he said a pretty amazing thing to the lawyers involved, indicating that everyone's to blame, and that any settlement had to go beyond dollars and cents to address real, viable solutions to a problem that is decimating the American population.

"This is not a traditional [case]," he said. "What's happening in our country with the opioid crisis is present and ongoing. I did a little math. Since we're losing more than 50,000 of our citizens every year, about 150 Americans are going to die today, just today, while we're meeting.

"And in my humble opinion, everyone shares some of the responsibility, and no one has done enough to abate it. That includes the manufacturers, the distributors, the pharmacies, the doctors, the federal government and state government, local governments, hospitals, third-party payers, and individuals. The federal court is probably the least likely branch of government to try and tackle this, but candidly, the other branches of government, federal and state, have punted. So it's here.

"So I don't think anyone in the country is interested in a whole lot of finger-pointing at this point, and I'm not either. Just dramatically reduce the quantity, and make sure that the pills that are manufactured and distributed go to the right people and no one else, and that there be an effective system in place to monitor the delivery and distribution. Because sadly, every day more and more people are being addicted, and they need treatment."

That was not a traffic-cop judge speaking. Indeed, he quickly drew criticisms from lawyers involved — The New York Times, while shadowing him for a day, overheard counsel calling him a "grandstander" and "Pollyanna" — and from the legal community at-large keenly following the proceedings. One Yale law professor remarked, "To say his goals are ambitious would be an enormous understatement."

Polster, 66, who the Times noted had a hasty lunch of a hard-boiled egg and a tangerine that day, had no qualms concurring with the sentiment. "I think that's a fair assessment," he told the paper. "But I won't fault myself for attempting this."

"This" is presiding over a case which represents the interests of the medical community, political policy, deaths that are hitting every age and gender and race in every state, big pharma power, and multi-billions of dollars that could be dispersed to little towns around the country.

And he might have to settle this by telling millions of Americans that they can't have as many pain pills as they used to, that pain is more of symptom and not a disease as some have pushed.

No one knows how this episode, in this epic journey, might turn out, but no judge in recent times has ever really tried to handle something this monstrous. This is a historic crisis, and it's happened on our collective watch.

"I read recently that we've managed in the last two years, because of the opioid problem, to do what our country has not done in 50 years, which is — for two consecutive years — to reduce, lower the average life expectancy of Americans," Polster said at the January hearing. "And if we don't do something in 2018, we'll have accomplished it for three years in a row, which we haven't done since the flu epidemic 100 years ago wiped out 10 percent of our population. And this is 100-percent manmade. Now, I'm pretty ashamed that this has occurred while I've been around. So I think we all should be."

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Michael Moffitt is a Harvard Law School professor specializing in negotiations, dispute resolution and mediation in civil cases like this. He's from Wadsworth and lived in Avon Lake some years ago while clerking for federal judge Ann Aldrich in Cleveland.

When asked how Polster might act in a case like this, he did what most do, throwing up his hands and declaring, "Who knows?" But Moffitt does see something different happening.

"For about a decade, I used to teach civil procedure: a required, introductory course for all first-year law students, aimed at helping them to understand the basic rules, concepts, and structures of modern litigation," Moffitt said. "Inevitably, at some point during the year, a student would raise her hand and ask, 'Can a federal district court judge ... ,' and I would cut her off, responding, 'Yes.' The class would laugh, and I would explain that it's hard to finish that question in a way that would make me wrong.

click to enlarge

Photo courtesy Northern District C

Federal judge Dan Polster

"I know that reading judicial tea leaves is something of a sport, both among academics and among members of the practicing bar. My admittedly uncomplicated, perhaps unsophisticated, inclination in this case would be to believe that Judge Polster means what he said on Jan. 9.

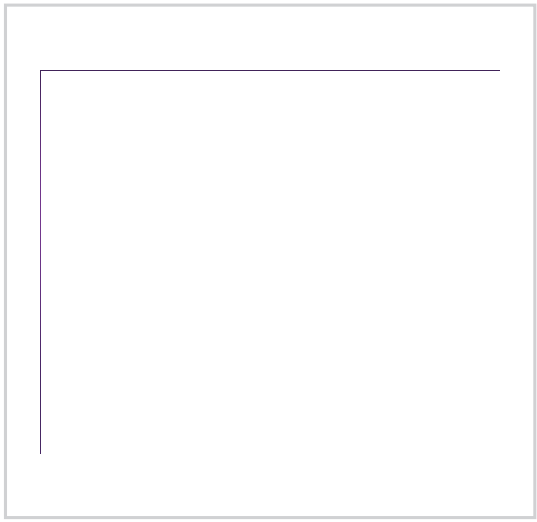
"The prominence of discretion, the opportunity for creative problem solving, and the lack of narrow constraints on the judge or on the parties are precisely what causes some to be nervous and some to be optimistic," Moffitt continued. "But regardless of one's initial reaction to the conversations that are beginning in Ohio, we should all be curious, because we are all likely to be affected by what emerges — or doesn't emerge."

Polster's background would lead many to believe he will be trying to run down a path few would try. A native and current resident of Shaker Heights, and a member of the Jewish congregation Shaarey Tikvah in Beachwood and Park Synagogue in Cleveland Heights and Pepper Pike, he often cites the Old Testament Deuteronomy passage, "Justice, justice, you shall pursue," as influencing how he manages his court.

He is keeping a low profile in this case, and has instructed the lawyers and politicians involved in this case not to divulge any settlement discussions to the media. He himself is abiding by those restrictions. But reading the tea leaves of his Cleveland upbringing, there's enough of a varied cultural and political mix to make "creative problem solving" a possibility for him.

He grew up in the Ludlow neighborhood in Cleveland in the 1950s, just off Shaker Square, and his parents helped form a neighborhood association that discouraged the "redlining" and

"blockbusting" that was segregating the neighborhood.



In a 2016 interview with The Federalist Lawyer about his parents' action, Polster said, "Ordinary people can do extraordinary, heroic things if they recognize the opportunity and realize, 'This is my time to do something significant, I'm not going to take a pass.' Usually people take a pass."

In grade school, his Little League baseball coach was Cleveland Indians' third baseman Al Rosen (whose son was on the team). Rosen, "The Hebrew Hammer" who tended the hot corner for the Indians for 10 years and won an Al MVP in 1953, tried to teach the sixth-grader how to hit a curveball. Polster couldn't figure the curve out, went home one day, threw his glove on the floor, and told his parents, "I guess I gotta be a lawyer."

He graduated from Shaker Heights High School in 1969, starring there as a cross-country runner, elected council member, and sports editor of the school newspaper, before heading to Harvard College and Law School. At age 66, he still runs often and is known to bicycle long distances throughout the east side of Cleveland. He's also been a volunteer reading instructor for the Cleveland Municipal School District and the Jewish Community Federation, and is known to keep a schedule packed from morning to night.

He was appointed as federal judge by former President Bill Clinton in 1998, but his first legal experience was not so liberal: One of his early jobs after law school was with the U.S. Department of Justice, a post he secured after he impressed his interviewer, future Supreme Court justice and conservative legal giant Antonin Scalia.

He has been married for more than 40 years to fellow Cleveland lawyer Deborah Coleman (she being an expert in antitrust, intellectual property and technology) and they have three adult kids. Those who know him say he is seen quite often at Browns, Cavs and Indians games.

He is known for two completely different news items in recent years. The first was his handling of the breakaway Amish sect case where the charges of shaving men's beards against their will was filed under the new hate crimes law. Polster sentenced the bishop of that sect, Samuel Mullet, to 15 years in jail (since reduced to 10 years).

Polster said his challenge was not allowing the oddness of an Amish hate crime case — along with the accused being a beard-cutter ironically named "Mullet" — to become a media spectacle. "I am very glad I had that case in my 15th year as a judge," he told The Federalist Lawyer. "I couldn't have handled it very well as a rookie judge."

His other recent appearance in the headlines came about a year ago. Polster spoke out against President Donald Trump after the president derided a judge who ruled Trump's Muslim travel ban unconstitutional. Trump called that judge a "so-called judge."

"This is serious business, because you start calling into question the legitimacy of someone, that undermines the whole system, all right?" Polster said at a private meeting in Bratenahl last February, as reported by Cleveland.com, to a small group that included suburban mayors, attorneys and city officials.

"I think to say it publicly, that's his right. But it calls into question, and some might even say forfeits, his or her own legitimacy. So I'll leave it at that. It's an important question, but that's how I feel ... I don't believe there's a single federal judge who would be intimidated by anybody. We took an oath to support and defend the Constitution and it means a lot. And I think that oath means even more today."

The power Polster has in this big case is not lost on the Cleveland legal community. There are already more than 200 lawyers listed in the filings, and the big companies are loading up on local Cleveland legal talent to help skew any possible settlement decision their way. "What can happen in [this case] is likely going to result in public policy changes on the federal and state levels," said Lee Fisher, dean and professor of law at Cleveland-Marshall College of Law.

And one lawyer said doing what Polster has taken on — trying to balance settlement money with public policy changes — will be very difficult to accomplish. But he says Polster might be capable of doing it better than most, in that he knows how to keep all sides in line.

"A lot of the plaintiffs in these cases — the local and state government agencies — will try to turn this into a punitive damages case to get their public government agencies some money to pay off their expenses from all these overdoses," said one Cleveland lawyer who has tried cases before Polster, but who didn't want his name used. "Think of it this way: How much does it take to punish a big pharmaceutical company that builds these costs into their business plan to survive the long haul? But how will the evidence work that the medical and pharmaceutical profession likely created a culture of pain pills that are addictive and don't do much for pain anyway.

"The defense might be that the maker of OxyContin gave America what it wanted, and the FDA and the doctors and the many researchers signed off on this," he said. "We are now a pill society. People are in pain. They get pills prescribed for their pain because they really want those pills. How do you blame the pill makers alone for all this? That's what Judge Polster has to deal with."

And that raises all sorts of legal questions. Some are comparing the Cleveland MDL opioid litigation to the Big Tobacco settlement of 1998. The cigarette companies agreed to pay about $206 billion to the states over the first 25 years. As Mississippi attorney general Mike Moore said back then, "[The] lawsuit is premised on a simple notion: You caused the health crisis; you pay for it."

Are there legal similarities between cigarette sales in a convenience store and an opioid prescription from a doctor?

"The public went against the cigarette companies back in the '90s because they were seen as the villains in all this, and that's probably why the settlement amount got so high," said Browne C. Lewis, director of the Center for Health Law and Policy at the CSU law school. "But I'm not sure the public will want to make the medical community villains in all this like they did tobacco. It's a very slippery slope. The pain component of this will be difficult to figure out. They will say their intentions were good in some respects, and they wanted to alleviate pain. And they will have all sorts of examples of people where they did alleviate the pain.

"So it might come down to the settlement being a change in public health care policy," Lewis said. "Like how we approve pharmaceutical medications and how we oversee prescriptions. How the money fits in will be the hard part to figure out."

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A few years ago, Lunenfeld, a retired surgeon and now in charge of residency programs at a large medical school, who goes by "Skeptical Scalpel" in his blog. "People are more acclimated to getting medication for anything now, and they expect it," Scalpel said. "Millennials have been overmedicated since they were born. They say they are depressed, and instead of figuring out why, we give them a prescription for Zoloft. ... It's all part of the pill medicalization of the entire country."

Over the years, demands on doctors have grown. They were now seeing three patients an hour and often had no time to figure out who needs what pain meds and for how many days or months. "What has happened is that we have created a culture where the pain medication is not only expected, it is demanded by the patients."

Parma mayor Tim DeGeeter sees things a little differently. In 2012, his Cleveland suburb, which is also the seventh largest city in Ohio, had no drug overdose deaths. By 2016, it had 20. And those are just the deaths, not the countless victims who overdosed and survived.

"The cities are at ground zero in dealing with this, " DeGeeter said. "In 2017, we had to provide overdose help to 136 males, and 64 females in Parma. The youngest was 19, the oldest was 63. These were people who were employed, unemployed, with college degrees, high school grads, it knows no boundaries or group that it settles in. And nothing is getting done in Washington on this.

"For me as mayor of a city suffering from this, I would be remiss if we did not file a lawsuit on this situation on behalf of our citizens who are paying for this in so many ways," he continued. "We aren't expecting a great windfall, but we are expecting a knock on our door with someone there to say we have settled this and we're here to help and we'll have less people dying in your city."

Who's knocking though, and who's cutting the check? That's another complicated question in an already complicated situation. Say someone was prescribed OxyContin and, over time, became addicted and overdoses. Who gets the blame?

Purdue Pharma, which makes OxyContin, is being sued for possibly lying to doctors about the addictive nature of the medicine. (In what many in the legal community say is an acquiescence to Polster, a gesture of sorts, Purdue last month announced it would cease marketing OxyContin to doctors.) Cardinal Health, a prescription distributor based in Dublin, Ohio, is said to be at fault as well, for dumping alarming amounts of painkillers around the country. And then there's CVS and Walgreens and all the other pharmacies that are alleged to have ignored red flags as they bottled billions of dollars of the medications.

The lawsuits argue that anyone who touched that pill before you ingested it, ground it up and shot it into your arm or snorted it could be said to be liable. The defendants, however, claim they were providing a legal, federally approved prescription. Whatever the individuals did, they did themselves.

The U.S. Drug Enforcement Agency keeps data on all prescriptions, who dispenses the meds to whom, what was dispensed and how much. The plaintiffs wanted about 10 years' worth of that data; the DEA said that would be a problem. The agency argued it would be "law enforcement sensitive," meaning the Feds feared illegal drug dealers could use the records to target users; but Polster ruled the DEA must turn it over, though the info won't be shared with the public.

If what we already know about the massive, mindboggling quantities of painkillers shipped to West Virginia is any indication, the numbers Polster looks at for the rest of the country are likely to poke holes in the defendants' case. A Pulitzer Prize-winning investigation from the West Virginia Gazette revealed wholesale pharmaceutical companies flooded Kermit, an old

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between 2007 and 2012, or about 30,000 pills for every resident.

In total, 780 million opioid pills were shipped to the state over that span, or 433 for every West Virginian.

Hard data is good, but it opens more questions. Not of who's to blame — it's clear by now the answer to that is everyone involved — but to what degree. How much of this was America's thirst for pharmaceuticals? How much was deceit on the part of Big Pharma? How much do we blame the medical community? How much was it a failure of those charged with overseeing public health?

***

Say Polster gets the sides to agree to a settlement. The first question, of course, is how much money will go to the plaintiffs. The second question is how they would be able to use it.

The major criticism of the 1998 $250 billion Big Tobacco settlement between the cigarette makers and 45 states was the fact that the settlement — payable over 25 years — gave no stipulations on how the states might spend that money. Many used a small portion of the funds for tobacco control and cessation programs, but most of the dough was typically used for other purposes, such as security for loans or simply for a state's general fund.

Ohio sold its future collections from the settlement for $5 billion in a bond sale (estimates say it could have collected more than three times that amount if it hadn't) and used the cash for a variety of things, including paying down debt, giving real estate tax breaks to seniors, funding construction of schools, and spending $20 million to make E-Checks free for all residents.

No states provided for direct payments from the settlement to individuals, to pay for medical costs resulting from tobacco use.

The national smoking rate has fallen to historic lows since that settlement, with just 15 percent of adults still smoking. But the gap between the number of less-educated rural smokers and the more-educated urban smokers is higher than ever: Researchers have found that America's lower class now smokes more and dies more from cigarettes than other Americans.

And again, that underscores the problems with these MDL opioid cases. Is a judge in Cleveland going to be able to rein in opioid addictions nationally, including in small towns in West Virginia? And if the opioid makers and distributors figure that a big multi-billion dollar settlement is just the cost of doing business, will the cities and counties that get big money use it to reduce addiction in the communities or to repair sidewalks and pave streets?

Oh, and the feds might want in on this as well. In November, Pres. Trump's Council of Economic Advisers estimated that the opioid drug epidemic cost the country $504 billion in 2015, in terms of lost lives, lost productivity, health care, treatment, criminal justice and other costs. If the cities, counties and states are getting theirs, one expert told me, the feds will want to drink from that trough too.

***

Purdue's announcement that it would end OxyContin marketing was a small but tangible sign things are heading in a productive direction. And lawyers remarked to various media following the first settlement conference in January that they were cautiously optimistic after their initial reticence in the face of Polster's bold direction.

"The parties report important and substantial progress in several forms, but also identified various barriers to a global resolution," the judge wrote in a filing after a March 6 meeting. To address some of those barriers, Polster said they agreed to use a "limited litigation track," which basically means a few of the lawsuits may go forward with discovery, motions and trials in what amounts to test balloons so each side can get a feel for how a judge and jury view their cases. He's asked for a plan to be submitted by March 16.

The next settlement conference is scheduled for May 10.

Hundreds more will die between then and now, and hundreds if not thousands more will die between May 10 and whenever a settlement might be reached. Maybe Polster really is overly ambitious in thinking he can wrangle a solution that will shrink those numbers one day, but it certainly won't hurt to try.

"The judicial branch typically doesn't fix social problems, which is why I'm somewhat uncomfortable doing this," he told the Times. "But it seems the most human thing to do."

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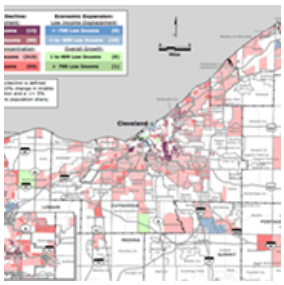

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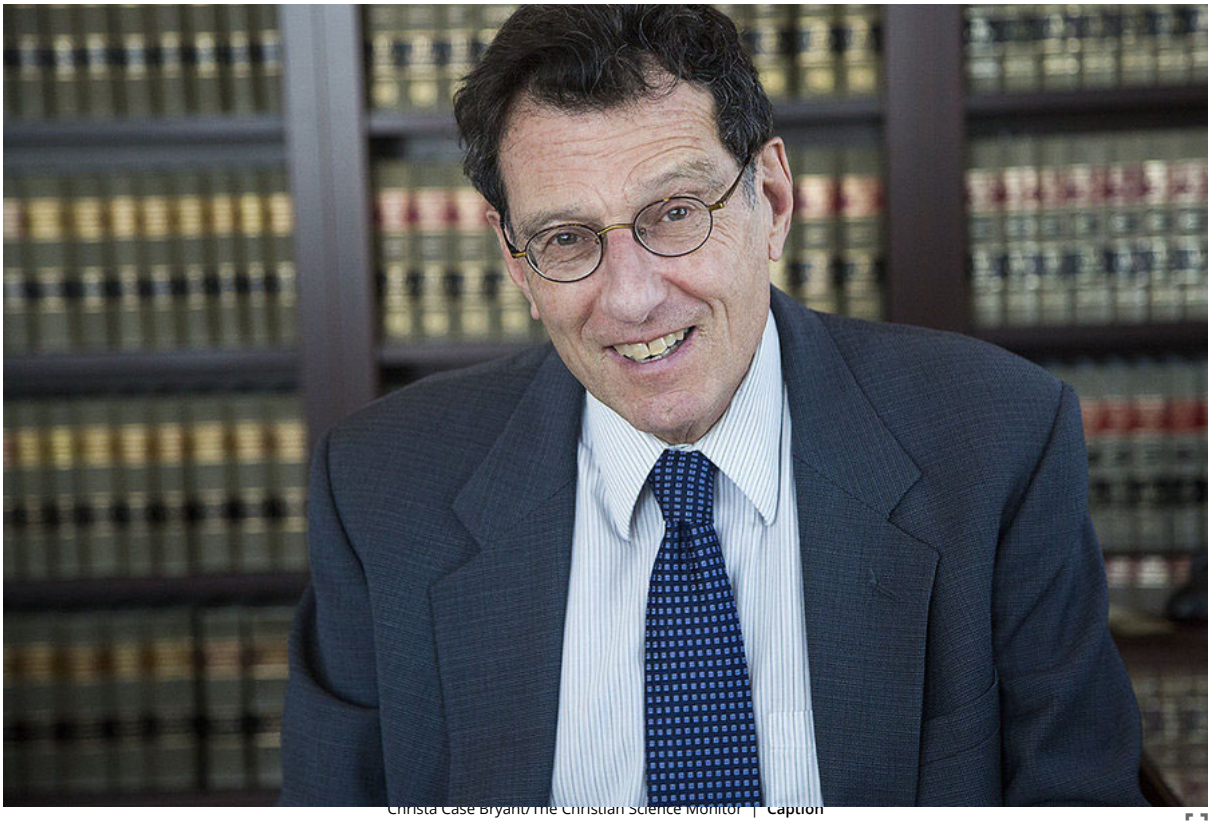
EXHIBIT E

The Christian Science Monitor

An unprecedented effort to stem opioid crisis – and the judge behind it

WHY WE WROTE THIS

Should courts be "a problem-solving institution," as the judge at the heart of the largest opioid litigation in the United States maintains? With a complex problem like the opioid epidemic, Judge Daniel Polster says, the danger is that waiting to come up with a perfect solution can become an excuse to do nothing.



Christa Case Bryant/The Christian Science Monitor | Caption

May 9, 2018

TWO WAYS TO READ THE STORY

QUICK READ **DEEP READ** (9 MIN.)

By **Christa Case Bryant**, Staff writer

Henry Gass, Staff writer

CLEVELAND AND SAN ANTONIO, TEXAS

More people died from drug overdoses in Ohio in 2016 alone than were killed in the 9/11 terrorist attacks. Last year, the opioid-driven trajectory continued, with Ohio seeing a nearly 40 percent increase in overdoses.

Now a federal judge in Cleveland sees an opportunity to do something about it, and he is seizing it with gusto.

“Ordinary people can do extraordinary things if they step up,” says Judge Daniel A. Polster in an interview in his 18th-floor Federal Court House office overlooking Cleveland. “It’s not a failure if you don’t succeed; it’s a failure if you don’t try.”

Judge Polster has found himself at the helm of an unprecedented legal battle over prescription opioids that pits hundreds of American communities against drug companies. He doesn’t see his role as referee in a judicial match between archenemies, but rather as a mediator. He views federal court as “a problem-solving institution” and is encouraging all sides to come together to stem the tide of addiction and overdoses, which have led to the deaths of more than 350,000 Americans and cost the country an estimated $1 trillion.

“The one thing that I think everyone can agree upon is no one wanted or intended millions to get addicted and no one wanted or intended 50,000 to 60,000 to die every year,” says the judge, who was appointed by former President Bill Clinton. “We all benefit if you can turn the trajectory down.”

On Thursday, the key players will reconvene for a settlement conference, which could indicate how much progress has been made.

Some 700 opioid lawsuits filed in federal courts across the country have been consolidated into one legal behemoth known as a multi-district litigation (MDL). This is one of the most complicated MDLs in the history of the legal tool, introduced more than 50 years ago by Congress.

The approach could save a great deal of money and time in litigating the opioid crisis, in which roughly 150 Americans are dying per day. But it does not satisfy everyone’s sense of justice. MDLs, which overwhelmingly favor settlements, lack the transparency and public accountability of a trial, for one, and there are ethical concerns over the small community of lawyers who work the cases. There are also questions over whether tackling complicated and far-reaching social issues should be left to elected representatives.

The judiciary, after all, is not designed to be a proactive institution. The limited accountability of federal judges, who are not elected but rather appointed for life, is supposed to be balanced by a narrow remit of enforcing existing laws, not crafting or revising policies.

"There's always a lingering question about: Is this a job for the courts to do, or is it something the legislature should be doing?" says Elizabeth Burch, a mass litigation expert at the University of Georgia Law School.

On the other hand, the courts have to deal with cases brought before them – sometimes because of gaps left by the legislative and executive branches.

"The court system, I would say, is the default system when Congress and the administrative agencies have failed to act," says Judge Jack B. Weinstein, a Lyndon Johnson appointee who has presided over some of the most high-profile MDLs in American legal history including one involving Agent Orange and Vietnam War veterans.

To make an MDL

MDLs have existed as a legal instrument since the 1960s, when an antitrust scandal in the American electrical industry saw more than 1,900 separate civil actions filed in federal courts.

That prompted Congress to pass a law creating the MDL process, which allows for similar lawsuits filed in federal courts nationwide to be brought together before a single judge. A special panel of seven federal judges who specialize in mass litigation meet bimonthly to decide which cases to consolidate, and then ask a federal judge whether he or she would be willing to take it on.

MDLs have become increasingly common since 2002, jumping from 16 percent of the federal courts' civil caseload to 39 percent. Notable MDLs include the Volkswagen emissions scandal, former football players suing the National Football League over brain injuries, and US military veterans citing health problems linked to the use of Agent Orange in Vietnam.

Polster, a Harvard-educated lawyer with 20 years' experience as a federal judge, was a natural pick for the opioids MDL. Not only has he presided over two other such cases in the past, but he's also located in one of the worst-hit areas of the nation. It's hit close to home for him, too; his friend's daughter died of an overdose.

"I don't think we could have a better judge in the opioid litigation than Judge Polster," says Jayne Conroy of Simmons Hanly Conroy, one of the plaintiff law firms leading the MDL. "He is so cognizant of the epidemic."

Every MDL is complex, but this one is particularly so. The plaintiffs range from individuals to whole towns, counties, and states. Defendants span the opioids supply chain, from major drug manufacturers like Purdue Pharma and drug distributors like McKesson, to drug retailers like CVS and Walgreens. Even individual doctors are defendants.

These plaintiffs are also making a variety of claims against the defendants, from falsely marketing drugs to

foisting excessive costs on jurisdictions for law enforcement and emergency services.

This complexity is likely to make settlements that much harder to achieve, which demands more of Polster – but also gives him more influence over the outcome of the case than normal.

“The court has no specific rules,” says Adam Zimmerman, an associate professor at Loyola Law School in Los Angeles. “It just has to kind of go on instinct of how to manage all these players with different interests in a settlement.”

Go to settle, or go to trial?

At the first settlement hearing for the opioids MDL, Polster came out swinging.

“My objective is to do something meaningful to abate this crisis, and to do it in 2018,” he said.

“You often don’t see judges talking so frankly and so early,” says Professor Zimmerman, who is now drawing on Polster’s comments from that hearing to teach his students. “I think there are good reasons to allow the litigation to play out a little bit before the parties really know how to talk settlements.”

While it is unusual for an MDL to judge to want to settle the litigation that quickly, that was not how MDLs were originally intended to go.

The MDL process was supposed to streamline only the pretrial phases before sending each case back to the court it had originally been filed in. Over the decades, however, it has become routine for cases sent to an MDL judge to never return. On average, more than 90 percent of cases in an MDL end in a settlement.

That has raised the question that MDL judges may be exceeding their authority by pressing for settlements. MDL judges tend to disagree. Judge Weinstein, the Johnson appointee, is one of the most prominent.

Talking with all the parties and examining all the evidence is a years-long process, and over the course of those years the judge becomes familiar not only with the details of the case but also with the people involved.

“If I’m the judge who has these cases, I should try to settle them,” says Weinstein, who serves in the Eastern District of New York.

Since Polster’s January hearing, he has walked back his demands for settlements this year. Last month he picked three Ohio-based cases to serve as bellwether trials: the city of Cleveland, the surrounding Cuyahoga County, and Summit County, home to Akron. That combined trial is set for March 2019.

Other plaintiffs in the MDL are anxious to get a trial, too.

Mayor Steve Williams of Huntington, W.Va., after hearing the drug distributors and manufacturers explain the flow of parties involved in the crisis, came away with a sense of resolve.

“In the midst of all that, there was not a single mention of those of us who are left to clean up their crap,” says Mayor Williams. He cited the strain on first responders and the economic toll the opioid crisis has taken on cities like Huntington, which is one of the hundreds of plaintiffs in the MDL and has estimated the crisis’s annual toll on the city at more than $100 million. “And that just said to me very clearly, that we have to have our day in court.”

Paul T. Farrell, Jr., one of the co-leads in the opioid MDL, whose coalition of law firms represents hundreds of the plaintiffs, says he is hopeful that the county surrounding Huntington will be included in a second round of bellwether trials announced in August.

But some are eschewing the MDL altogether. Oklahoma Attorney General Mike Hunter, who had secured the first trial date in the opioid crisis before Polster came along, wants Purdue Pharma and the other drugmakers named in the suit to be tried before a jury of Oklahomans. The lawsuit accuses drugmakers of deliberately misrepresenting the risk of addiction to dramatically increase sales of prescription opioids, causing “catastrophic” damage to the state.

“We intend to hold the companies accountable, and the recovery that our state needs to make from this epidemic needs to be expensed to the companies that caused the damage,” he said in a phone interview.

Thanks to an order from Polster, Mr. Farrell has obtained closely held records from the Drug Enforcement Agency's ARCOS database detailing every opioid pill transaction from 2006-14, tracing the chain of distribution from drug manufacturer to drug distributor to pharmacy for six states: Ohio, West Virginia, Michigan, Illinois, Alabama, and Florida. This week the judge expanded that order to include every state, says Farrell, who adds that the DEA is to comply by May 30.

Problem areas

Some mass litigation experts are concerned that attorneys in MDLs may not always have the best possible outcome for their client as their main objective.

Professor Burch has studied the appearance of “repeat players” in multidistrict litigation – where a small group of law firms representing plaintiffs and defendants often hold outsize influence over settlement negotiations. In every MDL a handful of attorneys are chosen to “lead” – act as coordinators for the hundreds of litigants. In analyzing 73 MDLs, she found that 50 attorneys occupied 30 percent of all plaintiff-side leadership positions, and that 16 percent of the law firms involved held nearly 54 percent of all leadership positions. On the defense side, repeat player firms held 82.3 percent of the available leadership roles.

Judges often appoint these attorneys to leadership positions because of their previous experience in MDLs, but that creates a snowballing effect whereby a small group of attorneys gain disproportionate experience – and thus disproportionate influence.

With the same groups of attorneys often working with each other on different MDLs, conflicts of interest could arise.

"If I am consistently part of a working group with the same attorneys on the defense side, that becomes my primary community of interest, so the clients become sort of secondary," says Burch.

But Habib Nasrullah, a partner at Wheeler Trigg O'Donnell LLP in Denver who has represented defendants in several MDLs, says having a small community of expert attorneys fosters a positive element of collaboration.

In the mass litigation context, this close relationship can help defense lawyers by keeping frivolous claims out of the MDL. The more sophisticated plaintiffs lawyers "want to get the money to the people who deserve it, [and] if we're going to pay money we only want to pay it to people who deserve it," says Mr. Nasrullah. And when it comes to dealing with the many claims that aren't frivolous, he adds, "there's almost a necessity to work together to create a structure for the settlement."

Burch also has some concerns about the long-term implications of these settlements, however.

The 1998 settlement between 46 states and four of America's biggest tobacco companies, for example, included substantive policy changes. Cartoons marketing cigarettes to children are now a thing of the past, but the protracted payments for damages means "states have been beholden to this stream of income … so now they have a stake in long-term viability of the tobacco industry."

"That's the worry," she adds. "What problems are we trying to solve today, and what problems could we be creating for tomorrow?"

Avoiding 'an excuse to do nothing'

Polster won't speak about the details of the national prescription opioid litigation, but says his general philosophy on mediation was sparked by observations his commercial litigator wife, Deborah Coleman, shared with him about the value of a judge sitting down with parties.

"A trial is a fairly crude, blunt-edged instrument," he says – good for moving money from one side to another, but not much else.

Polster, whose Jewish faith teaches *tikkun olam* – partnering with God to repair the world – says that while many disputes are framed in terms of money, it's often more about feelings. A mediator who is an empathetic listener can help parties air those feelings – and then move past them.

"I sometimes feel like a rabbi or priest or therapist," says the judge, recounting how clients have cried or yelled while discussing their case with him. It's a different sort of day in court, but often more cathartic, he says, than sitting through a trial, where the lawyers do most of the talking. And having a mediator hear them out often frees them to move forward, he says, rather than remaining "a prisoner of the past."

Nobody thinks MDLs are a perfect tool for solving mass litigation cases, let alone solving urgent social issues like the opioid crisis. But, says Polster, waiting to come up with a perfect solution to a complex problem is an excuse to do nothing.

"So if you have a complex problem, you say, 'Well, I think there are some steps that we can take to move forward,' " he says. "And then you try and take those steps.... That's what I think I've challenged people to do."

EXHIBIT F

Judge Dan Aaron Polster poses in his office Jan. 11 in Cleveland. Polster is overseeing a consolidated case involving lawsuits filed by communities around the country against drug makers and distributors.

AP Photo / Tony Dejak

Judge Dan Aaron Polster of the Northern District of Ohio is presiding over a case involving more than 400 federal lawsuits brought by communities around the country against drug companies and pharmacy chains for their role in perpetuating the opioid epidemic.

The case and Polster, a member of Congregation Shaarey Tikvah in Beachwood and Park Synagogue in Cleveland Heights and Pepper Pike, were covered March 6 in a front-page story in The New York Times. The story discussed Polster's urging of lawyers to efficiently settle the case in a way that will provide meaningful solutions to the crisis rather than focusing on a trial and "finger-pointing," and how that stance has caused an uproar in the legal community.

"I don't think anyone in the country is interested in a whole lot of finger-pointing at this point, and I'm not either," Polster said, according to a Jan. 9 legal transcript of the first hearing. "People aren't interested in depositions, and discovery and trials."

Polster told the Cleveland Jewish News that his view of the world through a Jewish lens – and the Jewish obligation to help others – has conditioned him to try to make an impact and affects how he goes about his work.

“I take our obligation of tikkun olam very seriously,” he said, adding that what he said at that first hearing best reflected how those intentions of helping others may apply to these lawsuits.

“I requested that everyone try and work together to come up with some steps that we can take this year, in 2018, to begin to abate the crisis, because we are losing 50,000 people or more a year,” he said.

The transcript read: “With all of these smart people here and their clients, I’m confident we can do something to dramatically reduce the number of opioids that are being disseminated, manufactured and distributed. Just dramatically reduce the quantity, and make sure that the pills that are manufactured and distributed go to the right people and no one else, and that there be an effective system in place to monitor the delivery and distribution, and if there’s a problem, to immediately address it and to make sure that those pills are prescribed only when there’s an appropriate diagnosis, and that we get some amount of money to the government agencies for treatment.”

The lawsuits allege that drugmakers used deceptive marketing to push the sale of opioids and targeted vulnerable populations, such as the elderly and veterans, despite knowing the drugs are addictive. They are also accused of negligent product oversight and ignoring suspicious, large orders of the drugs, according to the Associated Press.

On March 6, the city of Cleveland was added to the list of cities filing lawsuits against drug manufacturers and distributors, including other Ohio cities, the state and Cuyahoga County.

The city and county have been disproportionately affected by the opioid epidemic. According to

Dec. 31 2017, data projections from the Cuyahoga County Medical Examiner; 822 people died from drug overdoses in 2017. Of those deaths, 522 died from heroin, fentanyl or a combination. For context, the county saw 666 overdose deaths in 2016 and 370 drug deaths in 2015, according to the medical examiner.

By filing lawsuits, the city and county aim to acquire financial reparations for the costs the city has faced due to the epidemic.

Drugmakers targeted in the lawsuits include Allergan, Johnson & Johnson and Purdue Pharma and three large drug distribution companies, Amerisource Bergen, Cardinal Health and McKesson. Drug distributors and manufacturers named in the lawsuits have said they don't believe litigation is the answer but have pledged to help solve the crisis, the AP reported.

The Times article said Polster was chosen by a judicial panel to hear the case based on Ohio being hard hit by the crisis, its central location to defendants and his experience with multidistrict litigation, or consolidation of many similar cases.

Polster told the Cleveland Jewish News that the Times reporter, Jan Hoffman, shadowed him while he tutored a third-grader through the Jewish Federation of Cleveland's Public Education Initiative, among other legal engagements he had that day. He said she "got a pretty accurate picture of me, my strengths and weaknesses."

Most recently, the lawyers involved in the case and Polster met March 7 in a closed meeting. According to court documents, "the parties reported important and substantial progress on several fronts, but also identified barriers to a global resolution."

"Everyone is working hard," Polster said.

EXHIBIT G

https://www.clevelandjewishnews.com/differencemakers/2018_difference_makers/civic-leadership-award-judge-dan-aaron-polster/article_a979e470-e84b-11e8-9ec0-4766f70d793d.html

Civic Leadership Award: Judge Dan Aaron Polster

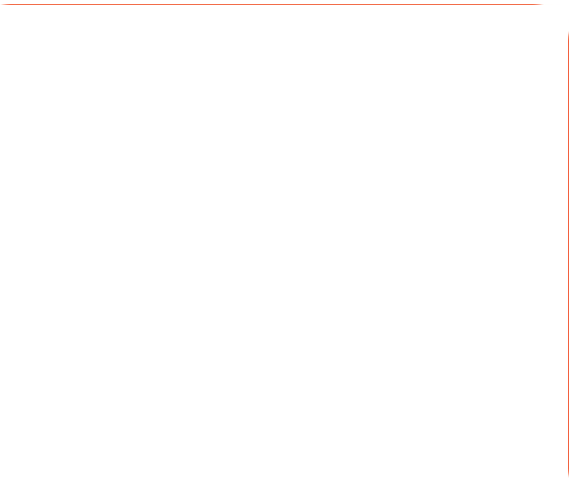
Nov 16, 2018

Joseph L. Pollack

Judge Dan Aaron Polster said from an early age that he learned ordinary people can do extraordinary things if they recognize the opportunity and don't let it pass them by.

Polster, a Shaker Heights resident and a member of Park Synagogue in Cleveland Heights and Pepper Pike and Congregation Shaarey Tikvah in Beachwood, makes time for volunteering in the community, serving on the boards of the Joseph and Florence Mandel Jewish Day School and the Siegal Lifelong Learning Program at Case Western Reserve University, but he notes that he also has "a pretty important day job" that he balances between volunteering and family commitments.

Polster's "important day job" is being a U.S. Judge for the Northern District of Ohio, a position he has held since 1998. In addition to his busy caseload, Polster is overseeing more than 1,300 federal lawsuits being brought by communities, including the city of Cleveland, against drug companies and pharmacy chains for their roles in perpetuating the opioid epidemic.



"I have an awesome responsibility," said Polster. "I took an oath to defend the Constitution of the United States. I feel it keenly every day. My goal is when I finally retire from this job – which I hope won't be for a long, long time – to pass on to my successor a legal system stronger than the one I inherited. If I do that, I think I'll have done a pretty good job."

He said the consolidated lawsuits are among the most challenging "constellation of cases" he's had in is 20 years as a judge.

"Typically, a lawsuit is about something unpleasant or unfortunate that happened in the past," he said. "A plaintiff alleging prior wrong doing by the defendant. These cases aren't so much about the past as the present and the future. I think there are very few people in Ohio that don't have someone impacted by the opioid crisis. There's so much addiction, suffering and death.

"To me, there's no way not to have that front and center and to urge

people – all the parties, public and private – that at the same time they're fighting over the lawsuit, to see if they can take some steps to turn the trajectory of addition and death down, rather than it going up, up, up. So, I think I tried to approach these cases through the lens of my Jewish training and upbringing, that one should try to alleviate suffering."

To help maintain the balance between his profession and his work in the community, he takes a big-picture view of everything.

"I look at my professional and community work together, not compartmentalized," he said. "One of the reasons that I enjoy the community work is because my job as a federal judge is a very lonely job. I enjoy the opportunity to be out in the community working with people. I also think it's good to see a federal judge is just an ordinary person with an extraordinary job. We're ordinary men and women, we just have extraordinary jobs and I think it's good for people to see that. Sometimes I get inspired from my day job and that helps my volunteering and sometimes it's the other way around."

He said in addition to being inspired by his parents to give back at an early age, he is also inspired by his wife of 42 years, attorney Deborah Coleman. He is also inspired by other residents of Cleveland and the work they do.

"Clevelanders are extraordinarily generous with their time and their money," Polster said. "My family goes back five generations in Cleveland. I inherited this and want to pass it on better than I got it."

He said the most rewarding aspect of his time giving back to the community are the friendships he's made with extraordinary men and women he's worked with.

"Plus, the satisfaction of seeing some very worthwhile institutions in our community grow and thrive," Polster added.

He advised young people looking to start giving back to start with something they're passionate about.

"Start with your passion and find an organization in your area that seems to want the kind of help you can give," he said. "Meet a lot of people, learn what they're doing, find out about a lot of organizations, learn about something you're really passionate about. And if you try something that just isn't a good fit, that's okay, because then you can try something else."

– *Ed Carroll*

A little bit more...

Age: 66

Residence: Shaker Heights

Spouse: Deborah Coleman

Synagogue: Park Synagogue and Congregation Shaarey Tikvah

Favorite athlete: Rocky Colavito

Most gratifying job: My current position as U.S. District Judge. I am entrusted with upholding the law and the Constitution of the United States; there is no higher responsibility or honor.

What advice would you give your 14-year-old self: Don't sweat the buck teeth, extra pounds, or social awkwardness.

Favorite vacation: Family trip to Israel to celebrate my becoming a judge.

What do you do in your spare time: Mowing the lawn/yard work; bicycle riding; reading.

EXHIBIT H

https://www.clevelandjewishnews.com/news/local_news/judaism-provides-direction-for-polster-in-landmark-opioid-case/article_3901b1bc-c8b8-11e8-b123-ffac8811ef9f.html

Judaism provides direction for Polster in landmark opioid case

JANE KAUFMAN | STAFF REPORTER
jkaufman@cjn.org Oct 5, 2018

Andrew S. Pollis, left, Case Western Reserve University law professor, and U.S. District Court Judge Dan Aaron Polster speak on the opioid crisis at a panel Oct. 4 at the Siegal Lifelong Learning Building in Beachwood. The panel was the second in a series called “Addication and the Opioid Crisis: Revelations of Recovery, Community Action and Our Legal System.”

CJN photo / Jane Kaufman

Judge Dan Aaron Polster of the U.S. District Court for the Northern District of Ohio cited tenets of Judaism as his reason for accepting a high-profile multi-district opioid legal case that has grown from 100 cases to nearly 1,300 in less than a year’s time.

“The first answer, half of that answer is sitting right in front of me, my exceptional mom, and also my late dad, Louis, the way I was raised,” Polster said Oct. 4 at a panel discussion, “Addiction and the Opioid Crisis: Revelations of Recovery, Community Action and the Legal System ” presented by Case Western Reserve University’s Laura & Alvin Siegal Lifelong Learning program.

He said he was taught “when you’re asked to do something hard and important, you should say, ‘Yes.’”

Polster, who grew up in the Ludlow neighborhood of Cleveland, credited his interest in sports, particularly baseball, and his Jewish upbringing for imbuing in him a sense of responsibility.

“It’s the Jewish thing to do,” said Polster, a member of Congregation Shaarey Tikvah in Beachwood and Park Synagogue in Cleveland Heights and Pepper Pike, where he teaches ninth grade Sunday school. “I was taught that if you have a chance to maybe help, even if it’s hard, you try to do it. And in our tradition, not succeeding isn’t failing, but not trying is failing.”

Polster has directed both plaintiffs and defendants to begin settlement discussions in the landmark opioid case. At the same time, he is moving forward with trials of three lawsuits in Ohio: the city of Cleveland, and Cuyahoga and Summit counties.

The other panelist, Andrew Pollis, a law professor at Case Western Reserve University in Cleveland, expressed reservations about the process of using a multi-district litigation in order to resolve the cases at hand.

“My concern about MDL is that it takes 1,300 voices, or however many there are, and puts all of that power in one person,” Pollis said.

Elinor Polster, center, mother of U.S. District Court Judge Dan Aaron Polster, attends a panel on the opioid crisis where he credited her with instilling Jewish values and a strong sense of responsibility.

CJN photo / Jane Kaufman

Polster responded, “The corollary is the only way our federal court system could handle this is through the MDL. This would completely overwhelm our courts if it wasn’t consolidated.”

He said he would look for both financial and systemic, or behavioral, change on the part of the defendants in any settlement.

“It can’t be solved by a lawsuit – or 1,300 lawsuits,” Polster said.

In June, Purdue Pharma, the manufacturer of Oxycontin, an opioid drug that has a high risk of addiction, and a defendant in the case, stopped marketing the drug and as a result, laid off its sales force.

“In any settlement, if there is a settlement, there is a monetary component, and there will be a behavioral component.”

Polster said money from any settlement would go toward treatment.

“I’ve made it clear that all of the money is going to go to this crisis,” he said. “The big bucket is recovery.”

The judge and law professor spoke in the second of a four-part series at Landmark Centre in Beachwood, which was attended by about 40 people.

“I do something on this case every day,” said Polster, who has other cases to handle simultaneously. “I’m committed to see it through, no matter where it goes.”

Sheryl Hirsh introduced and spearheaded the series. Her daughter, Melissa Koppel, died of a heroin overdose five years ago, after developing an addiction to prescription painkillers used to treat migraine headaches. Hirsh is assistant director of Case Western Reserve University’s Laura & Alvin Siegal Lifelong Learning program in Beachwood.

Kevin S. Adelstein, publisher and CEO of the Cleveland Jewish News and president of the Cleveland Jewish Publication Company, is moderating the series.

EXHIBIT I

McBride, Andrew

From: David R. Cohen <David@SpecialMaster.Law>
Sent: Wednesday, September 19, 2018 9:57 PM
To: Kaspar Stoffelmayr
Cc: Francis McGovern
Subject: RE: Conference

Thanks Kaspar. The Judge is there only to explain how MDLs work and how it came about that the federal Opioid cases are pending in front of him - nothing to do with the substance of the litigation. Also, I arranged for defense counsel to be present during the Judge's panel - Tera Coleman of Baker Hostetler, who works with Carole Rendon. (The Judge will leave after his panel - he is not attending the rest of the seminar - but Tera knows she is welcome to attend the entire Seminar.)

I will tell the Judge about Sergeant Baeppler, to ensure there is no communication about the case.

-David

==========
This email sent from:
David R. Cohen Co. LPA
24400 Chagrin Blvd., Suite 300
Cleveland, OH 44122
216-831-0001 tel
866-357-3535 fax
www.SpecialMaster.law

> -------- Original Message --------
> Subject: Conference
> From: Kaspar Stoffelmayr <kaspar.stoffelmayr@bartlit-beck.com>
> Date: Wed, September 19, 2018 4:18 pm
> To: "David@SpecialMaster.Law" <David@SpecialMaster.Law>
> Cc: Francis McGovern <mcgovern@law.duke.edu>
>
> Dear Special Master Cohen,
>
> In response to Special Master McGovern's inquiry yesterday, I am writing to let you know that several defendants have expressed concerns about Judge Polster's participation in the panel discussion on "Defining the Epidemic - Human and Economic Costs." It appears that Judge Polster would be speaking publicly about the pending case and subject matter directly related to the plaintiffs' claims for damages. Moreover, one of Judge Polster's co-panelists, Cleveland Police Sergeant Matthew Baeppler, works for one of the parties before the Court, plaintiff City of Cleveland, in a position directly related to its claims. In addition, he was originally identified by the plaintiffs as a document custodian in the Track I cases and is likely to be deposed in the litigation.
>
> Thanks.
>
> Kaspar
>
> **Kaspar Stoffelmayr | Bartlit Beck Herman Palenchar & Scott LLP**
> 54 West Hubbard Street, Suite 300, Chicago, IL 60654
> P: 312.494.4434 | M: 312.391.1721 | kaspar.stoffelmayr@bartlit-beck.com
>
>

EXHIBIT K

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Meet The Judge Who's Steering The Epic Opioid MDL

By **Emily Field and Jeff Overley**

Law360, New York (January 30, 2018, 6:56 PM EST) -- U.S. District Judge Dan Aaron Polster has a lofty goal for historic litigation over the opioid crisis — a fast and dramatic reduction of narcotic painkiller sales — that reflects his penchant for brokering salutary settlements that don't require years of drawn-out legal maneuvering.

Judge Polster, who's been on the federal bench in Ohio since 1998, is known for a hands-on approach aimed at rapidly resolving lawsuits, attorneys and former colleagues say. In this litigation, which alleges reckless opioid sales, Judge Polster's urgency stems from the severity of the opioid epidemic, which claimed 42,000 lives in 2016.

The Judicial Panel on Multidistrict Litigation has tasked Judge Polster with shepherding more than 250 lawsuits that augur a potential day of reckoning for the pharmaceutical industry. The JPML **cited his experience with huge cases,** as well as the opioid epidemic's impact on Ohio, where 3,500 residents died of opioid overdoses in 2016 — more than 8 percent of the national toll in a state with less than 4 percent of the U.S. population.

"I doubt there's anyone in Ohio who doesn't have a family member, a friend, a child of a friend or the parent of a friend who hasn't been somehow impacted," Judge Polster, a Cleveland native, told Law360.

According to the Centers for Disease Control and Prevention, the opioid epidemic caused average U.S. life expectancy to drop in 2015 and 2016 — the first back-to-back annual decline since the early 1960s. If the CDC finds that another decline occurred in 2017, it will be the longest streak since life expectancy dropped from 1916 through 1918, Judge Polster noted.

In the opioid MDL, part of Judge Polster's challenge is logistical. While MDLs are always large, they often feature a homogeneous pack

Judge Dan Aaron Polster

Career

» U.S. District Judge, Northern Ohio (1998-present)
» Assistant U.S. Attorney, Economic Crimes Division, Northern Ohio (1982-98)
» Trial Attorney, U.S. Department of

of plaintiffs targeting one corporation. By contrast, the opioid lawsuits have been filed by a diverse cast that includes local governments, hospitals, unions and Native American tribes. They are targeting numerous companies with different business models, including drugmakers, wholesale distributors and pharmacies.

Cathy Yanni, one of three special masters in the opioid MDL, told Law360 that Judge Polster will bring vim and vigor to the case. Yanni worked with Judge Polster — who rides his bike to court when weather permits — in a previous MDL involving medical contrast agents, and she suggested that he brought an Energizer Bunny-like devotion to the litigation.

Justice, Antitrust, Cleveland, Ohio (1976-82)

Notable Cases
» In Re: Gadolinium-based Contrast Agents Products Liability Litigation
» Federal Trade Commission v. Steris Corp.
» Unique Product Solutions Ltd. v. Hy-Grade Valve Inc.

Education
» Harvard Law School, J.D. (1976)
» Harvard College, A.B. (1972)

"I got texts, emails, phone calls every day of the week," Yanni told Law360.

At one point, Judge Polster took a vacation to the Galapagos Islands, which she thought would be a respite. Not so, it turned out.

"He was texting me from Ecuador, from the boat — he doesn't quit," Yanni said. "He's a man with endless energy."

Judge Polster readily concedes that the opioid MDL is "an incredibly complex case." It will be difficult enough to supervise the litigation, to say nothing of steering the litigation toward settlements that save lives.

"That's always one of the challenges of an [MDL], is how to structure it and how to manage it," the judge said.

He added that "some of the best lawyers in the country" are involved and that he is "always open to suggestions from the lawyers and the parties on how to manage the case."

Another challenge for Judge Polster is the sheer intractability of the opioid crisis. It remains to be seen whether Judge Polster — who **recently declared** that other branches of government "have punted" on the issue — can guide the litigants toward settlements that actually make a difference.

But there are signs that his ambitious goal of sharply reducing opioid prescriptions is in fact realistic. For example, the CDC last year reported that the amount of opioids prescribed in the U.S. dropped 18 percent from 2010 to 2015.

The first glimmers of whether quick settlements are possible in the opioid MDL may be seen at a closed-door hearing set for Wednesday in Judge Polster's courtroom. The full-day hearing will be devoted entirely to "preliminary settlement discussions," according to a court order.

Asked about the MDL's significance, Judge Polster said: "I consider it an incredible honor that my colleagues on the [JPML] felt that they could entrust these cases to me because of the complexity and the importance to our country. I can't envision a higher or more somber responsibility."

Before taking the bench, Judge Polster was a federal prosecutor focused on economic

crimes and antitrust enforcement. His former colleague Ann Rowland, who recently retired from the U.S. attorney's office in northern Ohio, said that Polster's wide-ranging community involvement — including years of tutoring a local youth — affords the judge a firsthand look at the crisis.

"He understands — on perhaps a visceral level — the impact of the opioid epidemic on the community," Rowland said.

I consider it an incredible honor that my colleagues felt that they could entrust these cases to me.

— Judge Dan Polster

The opioid lawsuits allege that drugmakers exaggerated painkiller benefits and downplayed their risks and that drug distributors turned a blind eye to suspicious orders that flooded communities with highly addictive pills. Damages related to health care and law enforcement could rival the $200 billion tobacco settlement of the late 1990s, **plaintiffs lawyers say**.

The explosive allegations and huge financial stakes provide all the ingredients for a chaotic, never-ending battle royal in the courtroom. But Judge Polster will likely be undaunted, said Patrick McLaughlin, who was the U.S. attorney for northern Ohio when Judge Polster was a prosecutor.

"Because of the numbers of litigants, it's a monster case," McLaughlin said. "But his approach to trying to resolve the case as early as possible is consistent [with his approach] since he first took the federal bench."

"He can be very aggressive with all the parties in seeing that they all work hard to achieve a resolution short of full-blown litigation," McLaughlin added.

During the past five years, Judge Polster dispensed with 165 product liability cases on his docket, while just one reached trial, court records show. The trial occurred in an MDL involving gadolinium-based contrast dyes used in medical procedures, and the JPML singled out that MDL in shipping the opioid litigation to Judge Polster.

The gadolinium case provided Judge Polster with "valuable insight into the management of complex, multidistrict litigation," and "we have no doubt that Judge Polster will steer this litigation on a prudent course," the JPML wrote.

He understands — on perhaps a visceral level — the impact of the opioid epidemic on the community.

— Ann Rowland
Former assistant U.S. attorney

Peter Burg of Burg Simpson Eldredge Hersh & Jardine PC, a plaintiffs lawyer in the gadolinium litigation, described the judge as "scholarly" in his legal analysis and "compassionate in terms of his desire ultimately to get to a result that will do some good."

"He was certainly participatory in trying to help the parties and their legal counsel get to a settlement resolution," Burg said. "I've been in MDLs where the judges have a very hands-off approach to the settlement dynamics — that was not Judge Polster."

Like the opioid MDL, the gadolinium MDL was complicated by the presence of multiple defendants — including GE Healthcare Inc., Bayer Healthcare Pharmaceuticals Inc. and Mallinckrodt PLC. Nonetheless, the vast majority of roughly 1,000 cases in the gadolinium MDL **were settled**, with only one case going to trial, resulting in **a $5 million verdict** for a patient and his wife.

But past performance is no guarantee of future results, Judge Polster said. The opioid MDL has hundreds of litigants with varied and competing interests, and the guy with the gavel can only do so much.

"I don't want [the litigation] to drag out for years and years. … But ultimately, it's not up to me," Judge Polster said. "I can't control what happens — control the lawyers or the parties. I can make suggestions. I can try and influence things. But I'm just one person."

--Editing by Christine Chun and Kelly Duncan.

EXHIBIT L

https://www.clevelandjewishnews.com/news/local_news/judaism-provides-direction-for-polster-in-landmark-opioid-case/article_3901b1bc-c8b8-11e8-b123-ffac8811ef9f.html

Judaism provides direction for Polster in landmark opioid case

JANE KAUFMAN | STAFF REPORTER
jkaufman@cjn.org Oct 5, 2018

Andrew S. Pollis, left, Case Western Reserve University law professor, and U.S. District Court Judge Dan Aaron Polster speak on the opioid crisis at a panel Oct. 4 at the Siegal Lifelong Learning Building in Beachwood. The panel was the second in a series called “Addication and the Opioid Crisis: Revelations of Recovery, Community Action and Our Legal System.”

CJN photo / Jane Kaufman

Judge Dan Aaron Polster of the U.S. District Court for the Northern District of Ohio cited tenets of Judaism as his reason for accepting a high-profile multi-district opioid legal case that has grown from 100 cases to nearly 1,300 in less than a year’s time.

“The first answer, half of that answer is sitting right in front of me, my exceptional mom, and also my late dad, Louis, the way I was raised,” Polster said Oct. 4 at a panel discussion, “Addiction and the Opioid Crisis: Revelations of Recovery, Community Action and the Legal System ” presented by Case Western Reserve University’s Laura & Alvin Siegal Lifelong Learning program.

He said he was taught “when you’re asked to do something hard and important, you should say, ‘Yes.’”

Polster, who grew up in the Ludlow neighborhood of Cleveland, credited his interest in sports, particularly baseball, and his Jewish upbringing for imbuing in him a sense of responsibility.

“It’s the Jewish thing to do,” said Polster, a member of Congregation Shaarey Tikvah in Beachwood and Park Synagogue in Cleveland Heights and Pepper Pike, where he teaches ninth grade Sunday school. “I was taught that if you have a chance to maybe help, even if it’s hard, you try to do it. And in our tradition, not succeeding isn’t failing, but not trying is failing.”

Polster has directed both plaintiffs and defendants to begin settlement discussions in the landmark opioid case. At the same time, he is moving forward with trials of three lawsuits in Ohio: the city of Cleveland, and Cuyahoga and Summit counties.

The other panelist, Andrew Pollis, a law professor at Case Western Reserve University in Cleveland, expressed reservations about the process of using a multi-district litigation in order to resolve the cases at hand.

“My concern about MDL is that it takes 1,300 voices, or however many there are, and puts all of that power in one person,” Pollis said.

Elinor Polster, center, mother of U.S. District Court Judge Dan Aaron Polster, attends a panel on the opioid crisis where he credited her with instilling Jewish values and a strong sense of responsibility.

CJN photo / Jane Kaufman

Polster responded, “The corollary is the only way our federal court system could handle this is through the MDL. This would completely overwhelm our courts if it wasn’t consolidated.”

He said he would look for both financial and systemic, or behavioral, change on the part of the defendants in any settlement.

“It can’t be solved by a lawsuit – or 1,300 lawsuits,” Polster said.

In June, Purdue Pharma, the manufacturer of Oxycontin, an opioid drug that has a high risk of addiction, and a defendant in the case, stopped marketing the drug and as a result, laid off its sales force.

“In any settlement, if there is a settlement, there is a monetary component, and there will be a behavioral component.”

Polster said money from any settlement would go toward treatment.

“I’ve made it clear that all of the money is going to go to this crisis,” he said. “The big bucket is recovery.”

The judge and law professor spoke in the second of a four-part series at Landmark Centre in Beachwood, which was attended by about 40 people.

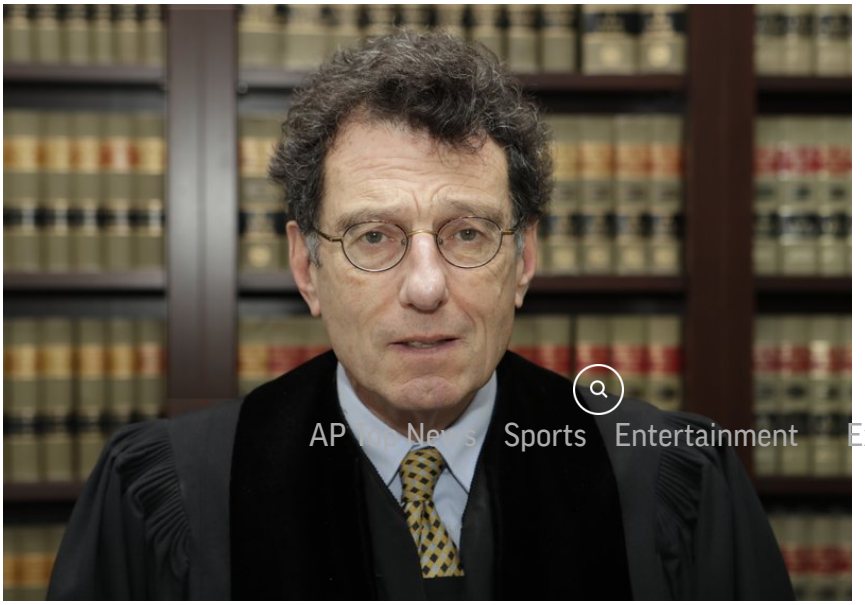
“I do something on this case every day,” said Polster, who has other cases to handle simultaneously. “I’m committed to see it through, no matter where it goes.”

Sheryl Hirsh introduced and spearheaded the series. Her daughter, Melissa Koppel, died of a heroin overdose five years ago, after developing an addiction to prescription painkillers used to treat migraine headaches. Hirsh is assistant director of Case Western Reserve University’s Laura & Alvin Siegal Lifelong Learning program in Beachwood.

Kevin S. Adelstein, publisher and CEO of the Cleveland Jewish News and president of the Cleveland Jewish Publication Company, is moderating the series.

EXHIBIT M

Federal judge invites states to discuss opioid crisis



By ANDREW WELSH-HUGGINS
Jan. 11, 2018

https://apn

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COLUMBUS, Ohio (AP) — A federal judge who's overseeing lawsuits from around the country against the pharmaceutical industry has invited state attorneys general to join discussions and provide input.

Judge Dan Polster in Cleveland is overseeing a consolidated case involving dozens of suits filed by communities against drugmakers and drug distributors.

Polster told The Associated Press Thursday he invited representatives this week from two groups of attorneys general to attend a hearing later this month.

One group, represented by Ohio Attorney General Mike DeWine, has filed its own lawsuits over fallout from the opioid epidemic.

A second, bigger group has joined a multistate investigation of the industry.

“It’s clear that any resolution has to be a global one and needs to include the states, and lawsuits that have been filed and lawsuits that are contemplated,” Polster told the AP.

The judge said in courtroom comments Tuesday he’d like some kind of action to resolve the lawsuits this year.

DeWine, a Republican candidate for governor, plans to focus his remarks to the judge on the impact of the epidemic on the state. He didn’t say whether Ohio would consider joining the cases before Polster.

The opioid epidemic has hit the state hard, with a record 4,050 overdose deaths in 2016, a number expected to climb again in 2017. Many of those deaths involve heroin or even deadlier synthetic opioids like fentanyl.

Increased reliance on naloxone, an antidote drug used to revive overdose victims, has strained the budgets of many communities. The state foster care system also says the number of children in custody because of their parents’ drug use is soaring.

“I would hope to be able to present to him what we see is going on in Ohio, where we think the damages have occurred and are continuing to occur,” DeWine said.

DeWine sued five drugmakers last year, accusing the companies of perpetrating the state’s addictions epidemic by intentionally

Twelve other states have filed similar lawsuits which are separate from those before Polster, which are generally lawsuits brought by cities or counties against drugmakers and drug distributors.

The other twelve states, according to DeWine's office, are: Alaska, Kentucky, Louisiana, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, Oklahoma, South Carolina and Washington state.

___

This story has been corrected to show Ohio reported record overdose deaths in 2016, not last year.

___

Andrew Welsh-Huggins can be reached on Twitter at https://twitter.com/awhcolumbus.

Former Renacci running mate backs DeWine for Ohio governor

Today

Former Renacci running mate backs Mike DeWine in governor's race

Today

Ohio Attorney General Mike DeWine joins opposition to undocumented-immigrant abortion lawsuit

Jan 12, 2018

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EXHIBIT N

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE NATIONAL PRESCRIPTION OPIATE LITIGATION This document relates to: *The County of Summit, Ohio, et al. v. Purdue Pharma L.P., et al.* Case No. 18-op-45090	MDL No. 2804 Case No. 17-md-2804 Judge Dan Aaron Polster

SUMMIT COUNTY AND CITY OF AKRON, OHIO PLAINTIFF'S SUPPLEMENTAL RESPONSES AND OBJECTIONS TO DISTRIBUTOR DEFENDANTS' INTERROGATORY NUMBERS 2, 3, 4, 8, 12, 14, 15, 16, 17, 23, 24, 27 & 29

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the Case Management Order in *In re National Prescription Opiate Litigation*, No. 1:17-cv-2804 (Dkt. No. 232), the County of Summit, Ohio and the City of Akron, Ohio (collectively "Plaintiff") hereby responds to Distributor Defendants'[1] Interrogatory Nos. 2, 3, 4, 8, 12, 14, 15, 16, 17, 23, 24, 27 & 29 (the "Interrogatories" and, each individually, an "Interrogatory"), as follows:

OBJECTIONS

The following objections apply to each Interrogatory. To the extent that certain specific objections are cited in response to an individual Interrogatory, those specific objections are provided because they are applicable to that specific Interrogatory and are not a waiver of the other objections applicable to information falling within the scope of such Interrogatory.

1. Plaintiff objects to each Interrogatory to the extent they are overly broad, vague, unduly burdensome, seek information that is not relevant to any party's claim or defense, or seek

[1] The Distributor Defendants are AmerisourceBergen Drug Corporation, Cardinal Health, Inc., and McKesson Corporation (collectively "Distributors").

to impose obligations or require actions beyond those required by the Rules of Civil Procedure, the ESI Protocol entered in this matter or the Local Rules of the United States District Court of the Northern District of Ohio.

2. Plaintiff objects to each Interrogatory to the extent they seek information restricted from dissemination pursuant to court order, statute, or regulation. Further, any response made by Plaintiff to the Interrogatories is not intended to waive, and does not constitute any waiver of, any objection to the admissibility, authenticity, competency or relevance of the information produced or identified.

3. These responses are made solely for the purpose of and in relation to this action. Each answer is given subject to all appropriate objections, which would require the exclusion at trial of any statement contained or document provided herein. All such objections and the grounds therefore are hereby reserved.

4. No admission of any nature whatsoever is to be implied or inferred in these responses. The fact that any of the Interrogatories herein may have been answered should not be taken as an admission or a concession of the existence of any facts set forth or assumed by the Interrogatories, or that such answer constitutes evidence of any fact thus set forth or assumed.

5. Plaintiff objects to each Interrogatory to the extent Plaintiff has not yet completed its investigation of the facts relating to this action and has not yet completed its preparation for trial. Accordingly, these responses are necessarily limited in nature, and reflect only that information known to Plaintiff at this time.

6. Plaintiff objects to each Interrogatory to the extent they purport to require Plaintiff to produce documents that are in the public domain or otherwise available to Distributors as easily from other sources as from Plaintiff.

7. Plaintiff objects to each Interrogatory to the extent they purport to state facts, assumptions, or characterizations that are disputed.

8. Plaintiff objects to each Interrogatory to the extent they seek information more appropriately obtained through other methods of discovery.

9. Plaintiff objects to each Interrogatory to the extent that they seek information that is proprietary or confidential or that is protected from discovery as attorney work product and attorney-client communication, information gathered or prepared in anticipation of litigation, the public interest privilege, law enforcement privilege, public official privilege, and/or by any other privilege or immunity from disclosure (collectively, "Privileged Information").

10. Plaintiff objects to each Interrogatory to the extent they seek confidential investigative, personal, or health information in Plaintiff's possession, custody, or control (collectively, "Confidential Information").

11. Whenever in the responses Plaintiff employs the phrase "subject to and without waiving all objections," Plaintiff is responding to the Interrogatory as it may be narrowed by its general and specific objections and without waiver of any objection.

12. Any response stating that Plaintiff will produce documents shall be deemed followed by the phrase "as are within Plaintiff's possession, custody, or control."

13. Plaintiff objects to each Interrogatory to the extent that they imply the existence of facts or circumstances that do not or did not exist, and to the extent that it states or assumes legal conclusions. In providing these objections and responses, Plaintiff does not admit the factual or legal premise of any Interrogatory.

14. Plaintiff objects to each Interrogatory to the extent they seek information that is not within Plaintiff's possession, custody, or control, seek documents that do not already exist, or

which purport to require a response by Plaintiff on behalf of an entity or individual other than Plaintiff.

15. Plaintiff reserves the right to supplement, revise, correct, or clarify its responses and objections in the event that additional information becomes available.

16. Plaintiff intends to complete its responses by the time agreed upon by the parties for the completion of discovery, or by the date ordered by the Court. Upon request by the requesting party, Plaintiff is willing to meet and confer regarding its responses to the Interrogatories. All final decisions regarding whether any information will be withheld pursuant to any objection shall be made, and notice thereof provided, before the completion of written discovery.

17. Plaintiff objects to the Distributors' instruction that: "Each Plaintiff must individually respond to each of these Interrogatories." No federal rule prevents Plaintiff from submitting collective answers to Distributors' collective Interrogatories. Where the responses and objections to these Interrogatories are the same for each Plaintiff, a collective response herein will in no way prejudice Defendants. In each instance where the answers are not the same for each Plaintiff, any differences have been set forth herein with particularity.

NON-WAIVER

1. Plaintiff's responses are made without waiving its right to object (on the grounds of relevancy, hearsay, materiality, competency or any other ground) to the use of its responses in any subsequent stage or proceeding in this action or any other action.

2. If Plaintiff, in response to any Interrogatory, inadvertently discloses information that is or could be the subject of the objections stated herein, such disclosure is not intended to be, nor is it deemed to be, a waiver of the objections with respect to such information disclosed.

3. Plaintiff's failure to object to a specific Interrogatory on a particular ground or grounds shall not be construed as a waiver of its rights to object on any additional grounds.

4. Plaintiff responds herein based upon information it has been reasonably able to gather at the time of making these responses. Plaintiff reserves its right to amend and/or to supplement its objections and responses to the Interrogatories, consistent with further investigation and discovery.

SPECIFIC RESPONSES AND OBJECTIONS

Interrogatory No. 2:

Identify each pharmacy within Your geographical boundaries that placed Suspicious Orders for Prescription Opioids for each year of the Timeframe.

Response:

Plaintiff repeats and reasserts their prior objections and adopt their prior responses to this Interrogatory. Plaintiff objects that this Interrogatory is unduly burdensome to the extent it requests Plaintiff to identify individual pharmacies not at issue in this case. Plaintiff further objects to this request to the extent it calls for information in the Distributors' possession or control, or just as available to Distributors from third-party sources as it may be available to Plaintiff, and places an undue burden on Plaintiff to gather. Nonetheless, Plaintiff has answered and amended this interrogatory previously on May 21, 2018 and June 20, 2015[2], and identified twenty-nine pharmacies:

[2] *See also* "Responses to the Amended and Clarified Discovery Ruling 12 Supplemental Interrogatory Issued to Plaintiffs" dated January 25, 2019 (Pharmacy Interrogatory No. 7 and Distributor Interrogatory No. 23); "Responses to Supplemental Interrogatory Issued in Discovery Ruling 12 to Plaintiffs" dated January 11, 2019 (Pharmacy Interrogatory No. 7 and Distributor Interrogatory No. 23); "Supplemental Amended Responses and Objections to the Manufacturer Defendants' First Set of Interrogatories, Submitted Pursuant to Discover Ruling No. 13" dated December 31, 2018 (Manufacturer Interrogatory No. 6); "Supplemental Objections and Responses to Manufacturer Defendants' Interrogatory Nos. 27/28" dated December 21, 2018; "Supplemental Responses and Objections to Distributor Defendants' Interrogatory Number 3 as Rewritten by Special Master David Cohen" dated December 21, 2018; "Fourth Amended Responses and Objections to Manufacturer Defendants' First Set of Interrogatories" dated

specifically identify each and every instance of opioid diversion or every responsive document. Plaintiff reserves the right to rely upon and introduce as evidence any and all deposition testimony and exhibits addressing this topic.

Interrogatory No. 12:

Identify every Person likely to have discoverable information related to Your claims, including, but not limited to, every Person upon whom You intend to rely in proving Your claims on summary judgment or at trial, and every Person likely to have discoverable information that supports or contradicts a position or claim that You have taken or intend to take in this action. For every Person named in response to this Interrogatory, state the subject matter of the information possessed by that Person.

Response:

Plaintiff incorporates all prior objections to this interrogatory. Subject to and without waiving all objections, Plaintiff provides the following persons likely to have discoverable information:

Name	**Title**	**Subject Matter**
Donna Skoda	Health Commissioner	Public Health
Rich Marountas	Chief Epidemiologist	Public Health
Jackie Pollard	Assistant Community Health Director	Public Health
Leanne Beavers	Director Clinical Health	Public Health
Angela Burgess	Fiscal Officer Public Health	Public Health/Finances
Dr. Doug Smith	Doctor, ADM Chief Clinical Officer, ADM	ADM
Jerry Craig	Executive Director, ADM	ADM
Kim Patton	ADM	ADM
Jen Peveich	ADM	ADM
Aimee Wade	ADM Assoc. Dir. of Clinical Services	ADM
Dr. Lisa Kohler	Chief Medical Examiner, Summit County	Medical Examiner
Dr. George Sterbenz	Chief Deputy Medical Examiner	Medical Examiner
Steve Perch	Chief Toxicologist, Medical Examiner's Office	Medical Examiner; Toxicology
Gary Guenther	Chief Investigator, Summit County Medical Examiner's Office	Medical Examiner

Name	Title	Subject Matter
Todd Barr	Deputy Medical Examiner	Medical Examiner
Denice DiNapoli	Senior Administrator, Medical Examiner's Office	Medical Examiner
Justin Benner	Forensic Investigator	Medical Examiner
Clarence Dorsey	Forensic Investigator	Medical Examiner
Lauren Fowler	Forensic Investigator	Medical Examiner
Jasmine Griffin	Forensic Investigator	Medical Examiner
Jason Grom	Forensic Investigator	Medical Examiner
Jenna Kolb	Forensic Investigator	Medical Examiner
Amy Schaefer	Supervisor, Forensic Investigators	Medical Examiner
Kelsie Stopak	Forensic Investigator	Medical Examiner
Robert Velten	Forensic Investigator	Medical Examiner
Michael McGill	Forensic Investigator	Medical Examiner
Darin Kearns	Deputy Executive Director of Finance and CFO, Summit County Children Services	Children Services
Julie Barnes	Executive Director, Summit County Children Services	Children Services
Amy Davidson	Deputy Executive Director of Social Services	Children Services
Tracey Mayfield	Department Director of Social Services Programs	Children Services
Sushila Moore	Director of Intake, Children Services	Children Services
Lori Baker-Stella	Deputy, DEA Drug Liaison Officer	Sheriff's Office
Bill Holland	Public Information Office, and Jail Commander, Sheriff's Office	Sheriff's Office
Scott Cottle	Lieutenant, Sheriff Detective Bureau	Sheriff's Office
Stacy Milkey	Administrative Assistant, Sheriff	Sheriff's Office
Carmen Ingram	Deputy, Sheriff Drug Unit	Sheriff's Office
Mike Walsh	Sergeant, Sheriff's Office	Sheriff's Office
Matt Paolino	Captain , Sheriff's Office	Law Enforcement
Brad Gessner	Criminal Division, Summit County's Prosecutor's Office	Courts
Getta Kutuchief	Education and Community Outreach Coordinator, Juvenile Court	Courts
Lisa DiSabato-Moore	Special Projects Administrator, Juvenile Court	Courts
Becky Ryba	Coordinator Family Reunification through Recovery Court, Juvenile Court	Courts
Kathryn VanHorn	Crossroads Supervisor, Juvenile Court	Courts
Howard Curtis	Chief Probation Officer, Juvenile Court	Courts
Joseph McAleese	Assistant Prosecutor	Courts
Jon Baumoel	Assistant Prosecutor	Courts
Brian Nelsen	Director of Finance and Budget	Executive/Finances
Greta Johnson	Asst. Chief of Staff for the Summit County Executive	Executive

Name	Title	Subject Matter
Lori Pesci	Deputy Director, Division of Public Safety	Executive
Chief Clarence Tucker	Chief of Fire Division	Fire/EMS
Deputy Chief Charles Twigg	Deputy Chief of Fire Division	Fire/EMS
District Chief Joseph Natko	District Chief / EMS Bureau Manager	Fire/EMS
Robert Ross	Formerly Deputy Mayor for Public Safety, Fire Chief	Fire/EMS
Cpt. Leon Henderson	Captain, Safety Communications	Fire/EMS
Cpt. Chris Karakis	Captain, EMS Bureau Manager	Fire/EMS
District Chief Jim Willoughby	District Chief, formerly Captain, EMS Bureau Manager	Fire/EMS
Lt. Joseph Shumaker	Lieutenant, Fire/EMS	Fire/EMS
Guy Randall	Fire/EMS medic, training	Fire/EMS
Dale Evans	Formerly Deputy Chief, EMS Bureau Manager	Fire/EMS
Gaiser, Les	Formerly Captain	Fire/EMS
Ed Hiltbrand	Chief of Fire Division	Fire/EMS
Albert Minnich	Fire/EMS Medic	Fire/EMS
Rich Vober	Deputy Chief	Fire/EMS
Patrick Leonard	Police, Narcotics / Diversion Unit	Law Enforcement
Chief Kenneth Ball	Police Chief, formerly Deputy Chief, Investigative Subdivision	Law Enforcement
Officer Michael Schmidt	Officer, Narcotics Unit, opioid heroin overdose death investigator	Law Enforcement
Cpt. Michael Shearer	Captain, Narcotics, SNUDS, Vice Subdivision	Law Enforcement
Deputy Chief Michael Caprez	Deputy Chief, Uniform Subdivision, formerly Deputy Chief, Communications Subdivision	Law Enforcement
Deputy Chief Jesse Leeser	Deputy Chief, Investigative Subdivision, formerly Captain, Technical Services Bureau	Law Enforcement
Lt. Rick Edwards	Police Information Officer	Law Enforcement
Charles Brown	Deputy Mayor for Public Safety, Assistant to the Mayor	Public Safety
Gert Wilms	Chief Prosecutor	Courts
Montrella Jackson	Court Administrator, Akron Municipal Court	Courts
Craig Morgan	Deputy Prosecutor	Courts
Jeff Sturmi	Deputy Chief Probation Officer	Courts
Tony Ingram	Chief Probation Officer	Probation
Teresa Albanese	Assistant to the Mayor for Education, Health, and Families	Executive

Name	Title	Subject Matter
Craig Gilbride	Formerly Deputy Mayor for Public Safety, Chief of Police	Executive
Lt. Sierjie Lash	Public Information Officer	Executive
Diane Miller-Dawson	Finance Director	Finance
Steve Fricker	Deputy Director of Finance	Finance

Name	Title	General description
Dr. William Reed	Doctor	Visited by drug reps: Nucynta, Purdue, Actiq, Opana, Kadian
Dr. William Lonsdorf	Doctor	Visited by Purdue, Opana, Nucynta,
Dr. Kendrick Bashor	Doctor	Visited by drug reps: Purdue
Dr. Michael Louwers	Doctor	Visited by drug reps: Purdue, Xtampza, Nucynta, Actiq/Fentora
Dr. Syed Ali	Doctor	Visited by drug reps: Purdue, Xtampza, Nucynta-Janssen/Depomed, Teva, Subsys, Endo, Cephalon, Xalgo, Kadian, Insys
Dr. Clayton Seiple	Doctor	Visited by drug reps: Purdue. Was a speaker for Endo, Depomed (Nucynta)
Bernie Rochford	Executive Vice President of Administrative Services and Business Relations, Oriana House	Treatment center for those suffering from OUD, knowledgeable on trends, prevalence and impact of opioids
Galen Sievert	Clinical Supervisor, Mature Services	Treatment center for those suffering from OUD, knowledgeable on trends, prevalence and impact of opioids
Laura Kidd	Behavioral Health Clinical Coordinator, AxessPointe Community Health Center at Arlington	Treatment center for those suffering from OUD, knowledgeable on trends, prevalence and impact of opioids
James Orlando	President of Summit Psychological Associates	Treatment center for those suffering from OUD, knowledgeable on trends, prevalence and impact of opioids
Brittney Becker	Doctor, Community Health Center	Treatment center for those suffering from OUD, knowledgeable on trends, prevalence and impact of opioids

Name	Title	General description
Michael M. Hughes	President, Summa Health System, Barberton Campus	Illnesses related to opioid use
Joseph P. Myers	Doctor, Vice President of Medical Affairs, Summa Barberton and Summa Wadsworth-Rittman Hospitals	Illnesses related to opioid use
Roslyn Greene	Family member	Personal loss
Charlene Maxen	Pediatric oncologist nurse, Akron Children's Hospital	Personal loss
Travis and Shelly Bornstein	Family member	Personal loss
Dr. Tony Lababidi	Doctor	Visited by drug reps: Purdue, Endo, Janssen
Dr. Laura Novak	Doctor	Visited by drug reps: Purdue
Dr. Adolph Harper	Doctor	Visited by drug reps
Reba McCray	Family member	Personal loss
Josh Vandergriff	Family member	Personal loss
Dr. Ann DiFrangia	Specializes in treatment of substance use disorders	Addiction
Aimee Wade	Family member	Personal loss
Dr. Nicole Labor	Family member	Personal loss & addiction
Greg McNeil	Family member	Personal loss
Romona Harrison	Former receptionist for Dr. Adolph Harper from 2010 through January 2012	Pill mills
Roxann Montgomery	Former sales representative with Purdue Pharma from 2008 to 2012	Sales
Dana Sporaa	Former sales consultant with Endo Pharmaceuticals from July 2006 to June 2013	Sales
Julie Yellin	Former sales consultant with Endo Pharmaceuticals from March 2006 to June 2013	Sales
Lisa McDougall	Former sales representative for Endo Pharmaceuticals from 2004 to 2010	Sales
Carol Panara	Former sales representative for Purdue Pharma from 2008 to January 2013	Sales
Kirk Klaazesz	Former sales supervisor for ParMed Pharmaceuticals from 2011 to 2014	Sales

Name	Title	General description
Gregory Bowman	Former sales specialist for Covidien and Mallinckrodt from 2010 to 2014	Sales
Richard Bradley Pate	Former pharmacy manager for Walgreens from 2009 to 2014	Diversion
David Schatz	Former sales representative for Purdue Pharma from 2000 to 2001	Sales
William Harris	Former sales representative for Cephalon and Teva from November 2005 to 2012	Sales
Marcia Smith-Anderson	Former pharmacy manager for Walgreens from 2000 to 2012	Diversion
Larry Hunley	Former distribution center manager for McKesson Corporation from 2004 to September 2011	Diversion
Ashley Bhalla	Former sales representative for Purdue Pharma from 2012 to 2018	Sales
Daniel Smith	Former contract sales representative for Mallinckrodt from 2014 to 2015	Sales
Betty Singleton	Former pharmacist with Rite Aid Corporation from January 2010 to October 2017	Industry conduct
Karen Chapman	Former inventory manager for McKesson Corporation from October 1983 to October 2014	Industry conduct
Gertrude Kass	Former sales representative for Purdue Pharma from January 2013 to May 2015	Sales
Russell Portenoy	Executive Director of the MJHS Institute for Innovation in Palliative Care and Chief Medical Officer of MJHS Hospice and Palliative Care	Industry conduct
Alston Hammons	Former pharmacist with CVS from 2006 to 2013	Industry conduct
Martha Davis	Former district manager for Purdue Pharma from 1991 to 2003	Industry conduct
Julie Fuller	Former account manager with AmerisourceBergen Corporation	Industry conduct

Name	Title	General description
	from December 2003 to January 2007	
James Shriner	Former regional sales director for Mallinckrodt from 2002 to 2008	Sales

Plaintiff also identifies all witnesses identified or deposed in this litigation as listed on Exhibit 12A. This list is not intended to be an exhaustive description of all persons with knowledge or all knowledge held by a particular individual or type of individual regarding issues involved in the case. By indicating the general subject matter(s) of discoverable information these individuals may possess, Plaintiff is in no way limiting its right to call other individuals (or entities) to testify concerning other subjects.

Plaintiff specifically reserves the right to rely on these and any other individuals for testimony in any trial or in a summary judgement motion in this action, and is not limited to the individuals listed herein. Plaintiff reserves its right to amend or supplement this response based on facts learned in expert discovery, third party discovery, or otherwise discoverable in this litigation prior to trial.

Interrogatory No. 14:

State the number of pills or other dosage units of Prescription Opioids that were diverted from legitimate medical purposes in Your geographic boundaries, and the number of pills or other dosage units of Prescription Opioids that were dispensed for other than legitimate medical purposes in Your geographic boundaries for each year during the Timeframe, and describe how each number was calculated.

Response:

EXHIBIT O

BARRON'S

HEALTH

A Court Hearing This Week Could Be a Step Toward a National Opioid Settlement

By Josh Nathan-Kazis Aug. 4, 2019 9:30 am ET

Oxycodone pain pills Photograph by John Moore/Getty Images

One big question has weighed on the stocks of pharmaceutical companies, generic drug manufacturers, and drug distributors alike since opioid lawsuits against these companies ballooned: How many billions?

How many billions of dollars, that is, could the companies that made, delivered, and sold prescription opioids end up paying to the thousands of states, cities, counties, and Native American tribes that seek to hold them responsible for the opioid crisis?

A hearing in a federal courthouse in Ohio early next week may offer important clues about how soon we could have an answer.

In the courtroom of Judge Dan Polster, lawyers representing cities and counties that brought opioid lawsuits will be asking the judge to let them try out a novel legal procedure that they say may make it possible to reach a settlement.

The details are enormously complex; the sort of thing that thrills only law professors. But investors should pay attention, because what comes out of the hearing will be key to understanding just how close the litigation is to a resolution.

Underlying the unusual proposal is the understanding that Polster, who has been placed in charge of the so-called multidistrict litigation, which groups together nearly 2,000 opioid lawsuits, wants to settle the case fast, given the magnitude of the health crisis.

"Judge Polster has always from the outset had settlement on his mind," said Andrew Pollis, a professor of law at Case Western University. "We have seen indications from Judge Polster that his desire to settle this case is often more of a priority for him than some of the niceties you might normally see play out in ordinary one-off litigation that does not carry with it the same level of magnitude or burden."

Progress toward a settlement could also help ease the pressure on the stocks of some of the defendants.

Shares of Teva Pharmaceutical Industries (ticker: TEVA) are down 66% over the past 12 months; Endo International (ENDP) is down 74%.

At the hearing, scheduled for Tuesday morning, the judge will hear arguments about a proposal meant to get around a sticky problem. While hundreds of cities and counties have already sued, tens of thousands more could still sue, which makes arriving at a settlement agreement hard.

"The defendants are facing not only the 2,000 lawsuits pending," said Abbe Gluck, a law professor at Yale University. "There are potentially thousands of more future lawsuits... If you're a defendant, you need to figure out, how am I going to settle and know that tomorrow I'm not going to wake up with the exact same, if not more, liability?"

In June, plaintiff's lawyers proposed the formation of what they called a "negotiation class," which would include all counties and municipalities in the U.S., whether or not they had brought an opioid lawsuit. A committee would negotiate with the defendants on behalf of the group. Unlike in a conventional class action, in this scenario the whole group would vote on whether to accept any proposed settlement.

Boosters say the proposal is a creative solution to a difficult problem. Critics say it isn't going to help. "It takes what already is a four-dimensional Rubik's cube of a problem and adds another layer of complexity," Pollis said.

Responses to the proposal from the parties in the suit been mixed. A group of defendants that includes drug distributors AmerisourceBergen (ABC) and McKesson (MCK) is against the proposal; drugmaker defendants, including Teva and Endo, filed a motion that neither supported nor opposed it.

The real opposition has come from a group that is not involved in the multidistrict litigation at all: state attorneys general, who have savaged the proposal in court filings. State attorneys general have brought their own opioid cases in state court. The attorneys general say the proposed class, which doesn't include them, is a challenge to their authority.

"For the state attorneys general, this is about more than just the opioid litigation," Gluck said. "This is a much bigger principle for them about who gets to negotiate on behalf of entities within the state."

In a letter on July 23, state attorneys general said that the negotiation class would make a resolution of the litigation harder, not easier to achieve. They argued that the novel nature of the procedure would lead to legal challenges, which would slow up any settlement. And they said that it would have the effect of encroaching on each state's sovereignty.

The lawyers proposing the class slapped back on July 30, noting that the attorneys general are "not even parties" to the multidistrict litigation.

At the hearing on Tuesday, Polster will hear arguments for and against the negotiation class. If he says no, the next step is a "bellwether" trial, scheduled for October, which will test arguments of the plaintiffs and defendants in the multidistrict litigation.

If he says yes, it will rekindle hopes of a settlement, and a near-term answer to the billion-dollar question.

Write to Josh Nathan-Kazis at josh.nathan-kazis@barrons.com

EXHIBIT P

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

July 25, 2019

CASE NO.: 2D19-1834
L.T. No.: 2018-CA-1438

ALLERGAN FINANCE, LLC, F/K/A ACTAVIS, INC., ET AL.	v.	STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, ET AL.
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Petitioner's petition for a writ prohibiting Judge Mansfield from presiding further in circuit court case number 2018-CA-1438 is granted as the petitioner's motion to disqualify the judge filed in the circuit court is deemed legally sufficient. Accordingly, the chief judge shall immediately appoint a successor judge pursuant to Florida Rule of Judicial Administration 2.215(b)(4). The stay imposed by this court's May 16, 2019, order to show cause is lifted.

SILBERMAN, VILLANTI, and SMITH, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

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Daniel Shapiro, Esq.
Gregory S. Slemp, Esq.
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Steven C. Pratico, Esq.
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Clerk

EXHIBIT Q

Judge Sees Litigation As Only An `Aid In Settlement Discussions' For Opioid Lawsuits

Legal Newsline Former Contributor
Policy
We cover issues that affect businesses in state and federal courts

POST WRITTEN BY

Daniel Fisher

I am a writer and communications consultant and former senior editor with Forbes magazine.

The Carl B. Stokes United States Court House in Cleveland, where federal lawsuits over the opioid epidemic have be consolidated. (Photo By Raymond Boyd/Getty Images)

The judge overseeing hundreds of lawsuits against the opioid industry that have been consolidated in federal court said some trials may occur but that litigation is "not a substitute or replacement" for his preferred goal of a comprehensive settlement.

In a public hearing Thursday before an overflow crowd in his Cleveland courtroom, U.S District Judge Dan Aaron Polster said he doesn't think traditional litigation is the mean for resolving the lawsuits by cities, counties, states and Native American tribes that hav been directed to his court for pretrial procedures. In an unusually blunt opening statement to the parties in January, Polster said "people aren't interested in deposition and discovery, and trials."

Judge Polster was forced to backtrack from that position after lawyers for plaintiffs and defendants failed to bridge key points of disagreement, including who will bear the mos financial liability for opioid-related costs and the fundamental legal question of whethe public nuisance law can be used to punish companies that sell a legal and heavily regulated product. Last month, he ordered a trio of bellwether trials to begin in 2019 to resolve some of those disputes.

In Thursday's hearing, Polster seemed slightly peeved as he discussed the "litigation track" that the parties are preparing for next year even as they engage in settlement discussions.

"It's necessary to do it, and we're doing it, but it's not a substitute or replacement in any way" for settlement, the judge said. "I still am resolved to be the catalyst to do somethi to take some steps this year to turn the trajectory of this epidemic down and not up, up up."

As the judge in charge of multidistrict litigation, Judge Polster theoretically only has authority over the coordination of pretrial activities, including document discovery and depositions. Once that work is done, the MDL judge is supposed to return lawsuits to th federal courts where they were filed. In practice, the vast majority of MDLs result in settlement without cases being remanded. Polster seems to have taken his role even further, by pushing the parties to settle before serious litigation begins.

That puzzles University of Georgia Law School Professor Elizabeth Chamblee Burch, who has written extensively about the MDL process.

She said one of the main reasons for litigation is to bring out facts bearing on the case, especially information the defendants would prefer to remain secret. But in the opioid litigation, Polster has sworn both sides to secrecy and many documents remain sealed, including the complaints.

"Litigation is supposed to generate information production," Burch said. "How can you hammer out a settlement if you don't have all the information you need? How can you know it's the right deal?"

The sprawling nature of the opioid litigation, with hundreds of plaintiffs and a still-expanding roster of defendants, has made it particularly challenging to contain within traditional legal procedures. Judge Polster has assigned three special masters to work with the parties and in Thursday's hearing one of them, David Cohen, called it "obviously one of the most, if not the most, complex pieces of litigation that the federal court system has seen."

In addition to their municipal clients, plaintiff lawyers are seeking class action status fo lawsuits over infants with an addiction-related syndrome and increased health insurance premiums. Opioid defendants also face parallel litigation in state courts. The proliferation of lawsuits will make it difficult to negotiate a settlement that protects the defendants against future liability, one of the crucial aspects of the 1998 master tobacco settlement that many observers see as the model for opioid litigation.

The parties have "explored a variety of compromises and have had what I consider to b in my experience very fruitful, very open, very cooperative discussions," said Francis McGovern, another special master.

Plaintiffs and defendants are "discussing prospective injunctive relief," he said, to resolve some aspects of the opioid epidemic. Further negotiating meetings are schedule later this month, June, July and August, and the July meeting will include representatives of the healthcare industry to discuss "the opioid crisis in a non-litigatio context."

There was no discussion of Judge Polster's recent order limiting the number of plaintif attorneys who can be paid from any litigation proceeds and requiring them to watch costs and fly coach. The judge also recently ordered plaintiff attorneys to inform him of any contracts they have with third-party litigation funders, to make sure they can't exercise any control over the litigation.

The judge said he won't make those agreements public, however, except under "extraordinary circumstances." This contrasts with defendant insurance coverage, whic under the Federal Rules of Civil Procedure must be disclosed at the onset of litigation s that plaintiffs can know the extent and limits of coverage.

Attorney Joe Rice, who is on the plaintiffs' executive committee, also complained that other plaintiff lawyers are pestering his committee for access to so-called ARCOS data, database compiled by the Drug Enforcement Administration tracking the path of every single opioid pill from manufacturing floor to pharmacy.

Both the plaintiff attorneys and Judge Polster fought hard to get the information from the government and see it as critical to determining liability and uncovering new defendants.

Plaintiff lawyers who aren't on the executive committee have been demanding the data so they can add defendants to their complaints before the statute of limitations runs ou Rice said. He asked the judge for another 35-40 days to analyze the information "and n have people bombarding us for data." The judge told Rice he doesn't need to respond t demands for the data.

In a January hearing, Judge Polster declared his intention "to do something meaningfu to abate this crisis and do it in 2018." That objective appears to be out of reach now, bu he reiterated in today's hearing his distaste for resolving the dispute over who caused the opioid epidemic in open court.

Judge Jack Weinstein in Brooklyn took a similar approach with Agent Orange litigatio in the early 1980s, Burch said, traveling the country to listen to veterans who claimed exposure to the chemical and driving the parties to settlement even in the absence of clear scientific evidence of harm.

The risk in reaching settlement early, without trials, Burch said, is “you’re settling with blinders on. You can’t see what’s at stake.”

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General Information

Court	United States District Court for the Northern District of Ohio; United States District Court for the Northern District of Ohio
Federal Nature of Suit	Personal Injury - Other[360]
Docket Number	1:17-md-02804-DAP