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# Opioid Litigation: Can We Put a Price On Addiction?



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**Opioid Litigation: Can We Put a Price On Addiction?**

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The news this past year has been full of the many tribulations facing this country. Among these, the opioid epidemic has remained a reoccurring headline, as it continues to claim American lives every day. As you read this post, about 175 Americans will die today from drug overdoses.<sup>[2]</sup> We know the *problem* but do we know the *solution*? The legal system may offer some promise in finding the solution. Several state and local governments, including Ohio and Kentucky, have filed lawsuits against Purdue Pharma, Johnson & Johnson, and other drug manufacturers for their roles in fueling the opioid crisis.<sup>[3]</sup>

These lawsuits have become so numerous that “one district court was chosen to shepherd all the cases,”<sup>[4]</sup> into a nationwide multidistrict litigation. Multidistrict courts are specially created by federal law, in order to consolidate cases that raise similar or related claims against the same

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defendants.[5] Judge Daniel A. Polster of the Northern District of Ohio was chosen to oversee the hundreds of lawsuits, now known as the Opioid Multidistrict Litigation.[6] The complexity and magnitude of this litigation has forced Judge Polster to “assign three special masters to assist him.”[7] One of these special masters, David Cohen, called the litigation “one of the most, if not the most complex pieces that the federal court system has seen.”[8]

The intricacies of litigating lawsuits of this nature stem from the wide-range of complaints filed.[9] These lawsuits feature claims ranging from fraud to deceptive marketing of prescription opioids.[10] The complaints all strike a similar chord, mostly alleging that the companies “downplayed the serious risk of addiction, advocated that the signs of addiction can be treated with more opioids, and denied the risks of higher opioid dosages.”[11]

At first glance, these complaints resemble those made in the tobacco litigation of the 1990s.[12] As in the opioid litigation, the tobacco litigation’s plaintiffs alleged that the tobacco companies concealed and downplayed the risks associated with tobacco use.[13] Both of these litigation efforts were headed by states coming together to “hold a major American industry accountable for a serious public health crisis.”[14] While, the tobacco litigation resulted in a massive payout for the plaintiffs, only about 3% of the settlement was used for tobacco-use prevention programs.[15]

Using the tobacco litigation as a guide for the opioid litigation is a dangerous move, especially since lawyers are hungry for massive profits and state attorney generals are seeking their own political fame from the settlement. [16] With so many lives at stake, coupled with payouts estimated to reach over 12 billion dollars,[17] the country cannot afford to waste any more time or money on failed remedies.

With a test trial slated to begin in March of 2019, the circumstances seem prime for a settlement of all the cases.[18] Perhaps money is the answer to the opioid crisis with costs for the epidemic of addiction rising every day.[19] But for many, money will not solve their daily struggles with addiction. The truth of the matter is: addiction cannot be monetized. Despite the bleak reality of the opioid crisis, there are still signs of hope. Health clinics across the country open their doors to provide methadone to “people seeking to end their addictions.”[20] City workers conduct home visits offering help those who have recently overdosed.[21] There are small victories happening in every city in America affected by this crisis, perhaps the judicial system can give them something monumental to celebrate.

[1] Staff Editor, *Kentucky Law Journal*, Volume 107; J.D. Candidate, The University of Kentucky College of Law (2020); B.A., Ashland University

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[2] See Jerry Mitchell, *With 175 Americans dying a day, what are the solutions to the opioid epidemic?*, USA TODAY (Jan. 29, 2018, 10:29 A.M.), <https://www.usatoday.com/story/news/nation-now/2018/01/29/175-americans-dying-day-what-solutions-opioid-epidemic/1074336001/>.

[3] See *The Role Of Lawsuits In Addressing The Opioid Crisis*, NPR, (Aug. 18, 2018, 8:27 AM ET), <https://www.npr.org/2018/08/18/639822878/the-role-of-lawsuits-in-addressing-the-opioid-crisis>.

[4] Ryan J. Duplechin, *What is the Role of the Judiciary in Tackling the Opioid Epidemic?*, HARV. L. PETRIE-FLOM CTR. (June 15, 2018), <http://blogs.harvard.edu/billofhealth/2018/06/15/what-is-the-role-of-the-judiciary-in-tackling-the-opioid-epidemic/>.

[5] See 28 U.S.C. §1407 (West 2018).

[6] See *id.*

[7] Nora Freeman Engstrom & Michelle M. Mello, *Suing the Opioid Companies*, STAN. L. SCH. BLOG (Aug. 30, 2018), <https://law.stanford.edu/2018/08/30/q-and-a-with-mello-and-engstrom/>.

[8] Daniel Fisher, *Judge Sees Litigation As Only An 'Aid in Settlement Discussions' For Opioid Lawsuits*, FORBES (May 10, 2018, 11:54 A.M.), <https://www.forbes.com/sites/legalnewsline/2018/05/10/judge-sees-litigation-as-only-an-aid-in-settlement-discussions-for-opioid-lawsuits/#56e2be6e4b99>.

[9] *Id.*

[10] See Plaintiff's Complaint, *State of Ohio ex rel. Mike Dewine v. Purdue Pharma*, No. 17 CI 261(Ct. Com. Pl. 2017); Complaint, *State of West Virginia et al. v. McKesson Corporation*, No. 2:17-CV-03555 (S.D. W.Va. 2017).

[11] Ohio Complaint, *supra* note 9, at 2.

[12] See Engstrom & Mello, *supra* note 7.

[13] *Id.*

[14] *Id.*

[15] See Walter J. Jones & Gerard A. Silvestri, *The Master Settlement Agreement and Its Impact on Tobacco Use 10 Year Later*, NCBI (Mar. 2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3021365/>.

[16] See Abbe R. Gluck, Ashley Hall & Gregory Curfman, *Civil Litigation and the Opioid Epidemic: The Role of Courts in a National Health Crisis*, 46 J.L. MED. & ETHICS 193, 351–366 (2018).

[17] See also Andrew Harris, Jared Hopkins & Hannah Recht, *Justice for Opioid Communities Means Massive Payday for Their Lawyers*, BLOOMBERG (July 25, 2018), <https://www.bloomberg.com/graphics/2018-opioid-lawsuits/>.

[18] *Id.*

[19] See, e.g., Gluck et al., *supra* note 16, at 361.

[20] See Mitch Smith & Monica Davey, *With Overdoses on Rise, Cities and Counties Look for Someone to Blame*, N.Y. TIMES (Dec. 20, 2017), <https://www.nytimes.com/2017/12/20/us/opioid-cities-counties-lawsuits.html?action=click&module=RelatedCoverage&pgtype=Article&region=Footer>.

[21] *Id.*

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