

Menu

Search (/nationallawjournal/search/)

THE NATIONAL LAW JOURNAL (/nationallawjournal/) POWERED BY LAW.COM (/)

Sign In (https://store.law.com/Registration/Login.aspx?promoCode=NL&source=http://nationallawjournal/sites/nationallawjournal/2018/01/09/judge-orders-opioid-lawyers-1

plan/?kw=judge%20Orders%20Opioid%20Lawyers%20to%20Come%20Up%20With%20a%20Settl
SUBSCRIBE (HTTPS://STORE.LAW.COM/REGISTRATION/DEFAULT.ASPX?PR
/WWW.LAW.COM/NATIONALLAWJOURNAL/SITES/NATIONALLAWJOURNAL/2018/01/09/JL
TO
PLAN/?KW=JUDGE%20ORDERS%20OPIOID%20LAWYERS%20TO%20COME%20UP%20WITH%2

Publications (/publications) Law Topics (/topics) The Magazine (/nationallawjournal/current-issue/) Supreme Court Brief (/supremecourtbrief/)
Covers & Briefs (/covers-and-briefs/) Social Reports (/social-reports/) Cases (/cases/) Mass. (/massachusetts/)

Whether in the courtroom
or the boardroom.



COZEN
O'CONNOR

Judge Orders Opioid Lawyers to Come Up With a Settlement Plan

By **Amanda Bronstad** (/author/profile/Amanda Bronstad/) | UPDATED Jan 10, 2018 at 08:56 AM

f

in

✉

G+

(htt



U.S. District Judge Dan Polster of the Northern District of Ohio.

The federal judge overseeing about 200 opioid lawsuits ordered lawyers into private talks on Tuesday with one goal in mind: find a way to settle the cases, and quickly.

U.S. District Judge Dan Polster of the Northern District of Ohio told a packed Cleveland federal courtroom that he wanted to avoid protracted discovery fights and trials in the multidistrict litigation. His focus was to get the parties to come up with a way to resolve all the opioid litigation this year.

"My objective is to do something meaningful to abate this crisis, and to do it in 2018," Polster said.

"With all these smart

people and their clients, I'm confident we can do something to dramatically reduce the number of opioids that are being disseminated, manufactured and distributed."

After the hearing, Polster ordered plaintiffs lawyers into one courtroom, and defense counsel in another, to use for private conferences.

The Judicial Panel on Multidistrict Litigation last month **assigned** (<https://www.law.com/nationallawjournal/sites/nationallawjournal/2017/12/05/mdl-panel-orders-all-federal-opioid-cases-to-ohio/?back=law>) Polster, an appointee of President Bill Clinton, to oversee the federal cases. Polster has been on the bench in the Northern District of Ohio for 20 years.

►► Get updates on the opioid MDL and other mass tort litigation straight to your in-box with Critical Mass from Law.com. Learn more and **sign up here** (<https://www.law.com/static/briefings/>).

On Thursday, he **approved** (<https://www.law.com/nationallawjournal/sites/nationallawjournal/2018/01/04/judge-approves-expanded-opioid-mdl-leadership-team/?back=law>) a leadership team of 22 lawyers to spearhead lawsuits in federal court, most filed by cities and counties across the nation. The team reads like a "Who's Who" in mass torts and includes many of the same lawyers who obtained the \$246 billion settlement with Big Tobacco. In proposing the slate, plaintiffs lawyers included an organizational chart that showed various committees and working groups, overseen by a plaintiffs steering committee—all of which would require more attorneys to be appointed in leadership posts.

Polster acknowledged proposals from lawyers on both sides on how to structure the MDL. But he had different plans.

"I've given a lot of thought to what to do," he said. "All of the submissions focused on how a judge could manage this MDL and the 200 or more cases in sort of the traditional manner. I've appreciate[d] this. I've handled and managed two other MDLS and I'm familiar with many of the others handled around the country. But this is not a traditional MDL."

He said parties on both sides—opioid manufacturers and distributors, and the cities



Yes, get Chrome now

Trending Stories

- NY Lawmakers Ask Congress to Pass Marijuana Law Following Sessions Pot Reversal** (/newyorklawjournal/sites/newyorklawjournal/2018/01/04/ny-lawmakers-ask-congress-to-pass-marijuana-law-following-sessions-pot-reversal/) NEW YORK LAW JOURNAL (/NEWYORKLAWJOURNAL/)
- Greenberg Traurig, the G.O.A.T. of Law Firms?** (/americanlawyer/sites/americanlawyer/2018/01/05/greenberg-traurig-the-g-o-a-t-of-law-firms/) THE AMERICAN LAWYER (/AMERICANLAWYER/)
- Kirkland Raids Another Law Firm to Expand in Boston** (/americanlawyer/sites/americanlawyer/2018/01/08/kirkland-raids-another-law-firm-to-expand-in-boston/) THE AMERICAN LAWYER (/AMERICANLAWYER/)
- Brooklyn Assemblywoman Indicted for Allegedly Blinking City Council, FEMA** (/newyorklawjournal/sites/newyorklawjournal/2018/01/09/brooklyn-assemblywoman-indicted-allegedly-blinking-city-council-fema/) NEW YORK LAW JOURNAL (/NEWYORKLAWJOURNAL/)

and counties that are suing them—are responsible for the opioid health crisis.

"I did a little math," he said. "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 my humble opinion is everyone shares some of the responsibility, and no one has done enough to abate it."

He also questioned the appropriateness of having his courtroom be the venue for halting an epidemic.

"Ideally, this should be handled by the legislative and executive branches, our federal government and state government," he said. "They haven't seemed to have done a whole lot. So, it's here."

Polster said he isn't interested in "a whole lot of finger-pointing," discovery, trials or answers to "interesting legal questions." Should the lawyers fail to come up with a plan on how to reach an agreement, he would "turn everyone loose" to "tear each other upside down," then have a trial in 2019 in Ohio, he said.

"What that will accomplish, I don't know," he said. "But I'd rather not do that."

At the hearing, many lawyers insisted that reaching a settlement was their goal, but there were several challenges. Joe Rice of Motley Rice, one of three lead plaintiffs counsel, said a pharmaceutical sales database maintained by the Drug Enforcement Administration would help guide them. "It is a piece of information that would be extremely valuable to the court and all the parties," he said.

Another lead plaintiffs counsel, Paul Farrell, of West Virginia's Greene, Ketchum, Farrell, Bailey & Tweel, had sought that database as part of the city of Cincinnati's opioid case—a request that the U.S. Attorney's Office in Columbus objected to as overly broad and burdensome. The case was then transferred to Polster's courtroom.

Purdue Pharma attorney Mark Cheffo, a New York partner at Quinn Emanuel Urquhart & Sullivan, speaking on behalf of the manufacturers, said another issue was "making sure that the right folks are at the table, and many of them aren't in this room." Dozens of opioid lawsuits have been filed in state courts, including those by attorneys general.

Polster responded: "I can pick up the phone and call any state attorney general I want and invite him or them to be involved, and I'm sure they will," he said. "They've got the same interest."

And while he acknowledged he didn't "control the DEA or the FDA [Food and Drug Administration]," he said he could invite them to participate—though Polster, a former trial attorney in the U.S. Department of Justice's Antitrust Division, said he wasn't inclined to interfere with a DOJ investigation just to get the database.

Polster earlier had indicated he would bring in a special master, or special masters, into the case. But at Tuesday's hearing, he said he hadn't decided on whom. He said he had preliminary discussions with three people, including David Cohen, a special master in Cleveland, and Duke Law School professor Francis McGovern.

"What I'm interested in doing is not just moving money around," he said. "This is an ongoing crisis. What we've got to do is dramatically reduce the number of pills that are out there and make sure the pills 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. And that's happening right now."

[f SHARE ON FACEBOOK](#) [t SHARE ON TWITTER](#)

Amanda Bronstad

Amanda Bronstad is the ALM staff reporter covering class actions and mass torts nationwide. She is based in Los Angeles.



[\(/author/profile/Amanda Bronstad/\)](/author/profile/Amanda Bronstad/)

More from this author [\(/author/profile/Amanda Bronstad/\)](/author/profile/Amanda Bronstad/)

Dig Deeper

[Litigation \(/topics/litigation/\)](/topics/litigation/) [Legal Services \(/topics/legal-services/\)](/topics/legal-services/)

[Pharmaceuticals \(/topics/pharmaceuticals/\)](/topics/pharmaceuticals/)



Recommended Stories

[CONNECTICUT LAW TRIBUNE \(/CTLAWTRIBUNE/\)](#)

[18 Connecticut Municipalities Sue Big Pharma Over Opioid Crisis \(/ctlawtribune/sites/ctlawtribune/2018/01/09/18-connecticut-municipalities-sue-big-pharma-over-](#)

[Milberg Joins Forces With Mass Torts, Personal Injury Firm \(/americanlawyer/sites/americanlawyer/2018/01/08/milberg-joins-forces-with-mass-torts-personal-injury-firm/\)](#)

[THE AMERICAN LAWYER \(/AMERICANLAWYER/\)](#)

Featured Firms

Law Offices of Mark E. Salomone
2 OLIVER ST #608
BOSTON, MA 02109
857-444-6468 www.marksalomone.com

Gary Martin Hays & Associates P.C.