

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

IN RE: NATIONAL PRESCRIPTION)	MDL No. 2804
OPIATE LITIGATION)	
)	Case No. 17-md-02804
THIS DOCUMENT RELATES TO:)	
)	Judge Dan Aaron Polster
ALL CASES)	

Plaintiffs Baptist Hospital, Inc. and Jay Hospital, Inc.’s Response to “Plaintiffs” Motion to Approve Co-Leads, Co-Liasons, and Plaintiffs’ Executive Committee

J. Nixon Daniel of Beggs & Lane (Pensacola, Florida) and T. Roe Frazer II of Frazer PLC (Nashville, Tennessee) represent certain hospitals and healthcare providers, individually, in the prescription opioids litigation. Two of those Plaintiffs, Baptist Hospital, Inc., and Jay Hospital, Inc. (“Hospital Plaintiffs”), are now squarely in this MDL and submit this Response to “Plaintiffs” Motion to Approve Co-Leads, Co-Liasons, and Plaintiffs’ Executive Committee¹. The purpose of this Response is to request the Court to add at least one seat to the Plaintiffs’ Executive Committee for hospital cases in this MDL.

In accordance with the Court’s telephonic conference held on December 13, 2017, counsel for plaintiffs in this MDL met on December 18, 2017 in Cleveland, Ohio. The purpose of the meeting, as undersigned counsel understood, was to consider, review, discuss, and decide upon proposals for the leadership of the PSC in this MDL.

As a reminder to the Court, Mr. Daniel notified this Court of the need for separate tracks within this MDL for hospital cases. The Court seemed to agree with Mr. Nixon, responding, “I think you are right.” Transcript of Teleconference at p. 50. This is entirely appropriate, as this

¹Hospital Plaintiffs would like to notify the Court that the Amended Motion to Approve Co-Leads, Co-Liasons, and Plaintiffs’ Executive Committee inaccurately reflects that it was filed on behalf of Hospital Plaintiffs. Undersigned counsel has brought this error to Mr. Weinberger’s attention but, as of the time of this filing, has yet to receive a response.

MDL, at this very early stage, is heavily weighted with municipal and state government filed cases, whereas the hospitals and health care providers present claims distinct to them as plaintiffs. Moreover, hospitals and health care providers are not subject to a superior *parens patriae* (or similar) claims of the State Attorneys General cases or those of the Multi-State Coalition of States and Attorneys General. Even further, the JPML suggested at the hearing on establishing this MDL that separate MDLs might even be preferred for plaintiffs who are not State, county, or municipal governments, and that separate tracks might be warranted, too.

The attorneys who led the meeting presented themselves and other attorneys who likewise represented municipal governments and county governments as the entire slate for an Executive Committee, liaison counsel, and co-lead counsel. In a PowerPoint presentation, the names of all 15 attorneys on the Plaintiffs' Executive Committee, three liaison counsel, and three co-lead counsel were displayed as a complete slate, a total of 21 attorneys with some law firms with more than one representative. Significantly, to undersigned counsel's understanding, not a single attorney on the PowerPoint slate represents a filed hospital plaintiff in the MDL. "Plaintiffs" Motion to Approve Co-Leads, Co-Liaisons, and Plaintiffs' Executive Committee, filed just yesterday (and amended today), is consistent with the PowerPoint slate presented at the meeting.

Due to the different nature of the hospital claims and their respective damages, Hospital Plaintiffs respectfully request the Court to add at least one seat to the Plaintiffs' Executive Committee and designate that seat for attorneys who represent hospital plaintiffs. To fill the hospital seat, Hospital Plaintiffs hereby propose and nominate J. Nixon Daniel and/or T. Roe Frazer II. (CVs attached hereto as **Exhibit A**).

Hospital Plaintiffs believe that, as this MDL evolves from this very early stage, a significant number of additional hospital cases will be filed. Mr. Frazer's and Mr. Nixon's firms

have many of these clients that undersigned counsel anticipates filing soon. At this early stage of the MDL, undersigned counsel believes that Plaintiff Baptist Hospital, Inc. is the largest hospital with a filed case in this MDL and perhaps the entire opioids litigation.

Finally, Hospital Plaintiffs do not object to a single attorney on the proposed slate that was filed, but strongly believe that at least one more seat on the Executive Committee is warranted because of the reasons stated above.

Undoubtedly, Hospital Plaintiffs' concerns could, in part, be addressed by seats on the PSC (yet to be formed). Nonetheless, due to the role of the Executive Committee in this MDL as described by the presumptive co-leads and others, undersigned counsel believe that hospital plaintiffs need their own attorneys and independent representation for their unique claims on the Executive Committee.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs Baptist Hospital, Inc. and Jay Hospital, Inc. respectfully request the Court to add at least one seat to the proposed Plaintiffs' Executive Committee and appoint Mr. J. Nixon Daniel and/or T. Roe Frazer II to fill this seat.

Respectfully submitted,

/s/ T. Roe Frazer II

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of December 2017, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. Copies will be served upon counsel of record by, and may be obtained through, the Court's CM/ECF system.

/s/ T. Roe Frazer II

T. Roe Frazer II