

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION) **CASE NO. 1:17-MD-2804**
OPIATE LITIGATION) **JUDGE POLSTER**
) **ORDER**
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)

I. Track Two.

In its first Case Management Order (“CMO-1”), the Court set case management deadlines for three “Track One” cases, all of which were brought by plaintiffs located in the Northern District of Ohio. *See* CMO-1 at 6 (docket no. 232); *see also* CMO-7 (docket no. 876) (amending Track One deadlines). The deadline for fact discovery in these Track One cases is January 25, 2019, at which time the parties will turn their focus to expert discovery. CMO-7 at 2. The Court also set briefing deadlines for numerous other cases, including one case where West Virginia law applies: *Cabell County Commission, West Virginia v. AmerisourceBergen Drug Corp.*, Case No. 17-OP-45053 (N.D. Ohio).

Fact discovery and motion practice in the three Track One cases to date has revealed that these cases include a large, but incomplete, fraction of the issues and parties relevant to the MDL. For example, the Track One cases do not include all of the retail pharmacy defendants named in the MDL; and the common law causes of action in Ohio are different than in other States. Accordingly, the Court concludes it is appropriate at this time to create a “Track Two,” to encompass additional parties and issues. Specifically, the Court chooses these two cases for Track Two: (1) the above-

cited *Cabell County* case; and (2) *City of Huntington, W.Va. v. Amerisource Bergen Drug Corp.*, Case No. 17-OP-45054 (N.D. Ohio).

The Court directs the parties to meet and confer and submit to Special Master Cohen, on or before January 15, 2019, proposed case management deadlines, *see* CMO-1 at ¶3.a-h, as well as any proposed amendments or modifications to the discovery process (*e.g.*, changes to the Deposition Protocol, docket no. 643). Fact discovery in Track Two cases shall not begin until after January 25, 2019. The case management proposal and any suggested discovery modifications should be agreed-to in as many respects as possible; Special Master Cohen will resolve any disputes and then enter a case management order.

II. Public Nuisance.

In order to better understand State-specific variations in law, the Court directs the parties to submit briefing addressing the viability of statutory and/or common law claims for public nuisance in each State and territory where any MDL plaintiff is located. Plaintiffs and Defendants shall each submit a single brief, of no more than 40 pages, on or before March 1, 2019; and shall each submit a single response brief of no more than 20 pages on or before April 5, 2019. These briefs may be accompanied by explanatory summary charts, if appropriate.

IT IS SO ORDERED.

/s/ Dan Aaron Polster

DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE

Dated: December 31, 2018