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## \$48B Opioid Deal Outcry May Presage Plaintiff Infighting

By **Emily Field and Jeff Overley**

Law360 (October 21, 2019, 10:00 PM EDT) -- A rapid outburst of opposition to a \$48 billion "settlement framework" in opioid-crisis litigation unveiled Monday by four state attorneys general may signal a shift to local governments and states fighting not only with drug companies but also with each other.

The backlash from plaintiffs lawyers in the opioid multidistrict litigation and at least one other state attorney general emerged immediately as the attorneys general of Texas, Tennessee, North Carolina and Pennsylvania announced a \$48 billion settlement framework with Cardinal Health Inc., McKesson Corp., AmerisourceBergen Corp., Teva Pharmaceuticals and Johnson & Johnson.

"It's the deal that we all rejected" on Friday, said Hunter Shkolnik of Napoli Shkolnik PLLC, referring to the early reaction when the framework's details **leaked last week**. "That deal is dead on arrival."

Ohio Attorney General David Yost also had strong words, saying the proposal "isn't a framework — it's a pile of lumber that's been dropped on the construction site."

Yost added that three of the four attorneys general haven't even sued the distributors and said that "they don't speak for Ohio."

The framework's **announcement Monday** came on the heels of a last-minute deal worth \$260 million by major drug companies on the morning that the first trial in the opioid MDL was set to start.

Under the terms of the proposed \$48 billion deal, Teva would pay \$23 billion in drug donations and \$250 million in cash over 10 years, J&J would pay \$4 billion over two or three years, and distributors would pay \$18 billion over 18 years, while adding another \$3 billion in distribution and monitoring services over 10 years.

Before the official announcement, lead plaintiffs attorneys in the MDL had criticized the \$4 billion that J&J was offering.

"We did not think it was an appropriate starting point for J&J, and definitely not an appropriate ending place," Joe Rice of Motley Rice LLC told Law360 on Monday.

In an interview late Monday, Shkolnik added that \$10 billion would be a more appropriate payment by J&J.

Richard Ausness, a product liability professor at the University of Kentucky College of Law, said he could see why the plaintiffs weren't impressed with the \$4 billion offer, given J&J's deep pockets.

J&J has **a reputation** of taking cases to trial instead of settling, but it was recently hit with a nine-figure judgment in Oklahoma's first-in-the-nation trial against a drugmaker over the opioid crisis. Subsequently, **the company settled** the MDL bellwether cases brought by Cuyahoga and Summit counties for \$20.4 million.

"Their thinking might have been influenced by that Oklahoma case, because they passed themselves

off as a family friendly kind of company ... [and] plaintiffs lawyers managed to successfully characterize them as drug kingpins," Ausness said. "Well, nobody wants to be a drug kingpin. That's terrible publicity."

Adam Zimmerman of Loyola Law School said it wasn't surprising that the attorneys general took the lead in announcing the deal, as the distributors have been actively negotiating with them as opposed to the cities.

"We need to wait and see whether the other state attorneys general will agree to it, as well as the cities," Zimmerman said. "That's when you'll know [whether] we're close to reaching an end game."

In their announcement, the four state attorneys general said that each state and its local governments will get a share of the \$22 billion in cash "based on a formula that is being finalized as more states sign on to the agreement."

Zimmerman questioned whether there was a deal also with the cities.

"If it's just an agreement with the state attorneys general, then I expect to see a lot of ongoing battles over what that means," Zimmerman said.

Much of the impetus for cities and counties suing in the MDL was lingering resentment about state general funds sucking up most of the cash from a landmark, quarter-trillion-dollar settlement struck two decades ago with the tobacco industry.

"If there's any overarching story to this entire litigation, it's the fact that so many cities felt the need to individually participate because they are so worried that they won't get funds they desperately need at ground level to fight the opioid crisis," Zimmerman said.

Monday's flare-up is far from the only discord to arise among plaintiffs in the sprawling opioid litigation.

In one prominent clash, Yost **tried unsuccessfully** to torpedo the opioid MDL's first bellwether trial, arguing that it infringed state authority. Yost's gambit garnered support from a dozen states.

Another dispute has surrounded a novel "negotiation class" that has been designed to seek nationwide settlements. The concept would organize the country's more than 30,000 local governments into one group to broker the terms of a deal, but which individual cities and counties can opt out of.

The Sixth Circuit is currently **reviewing challenges** to the class brought by half a dozen Ohio cities, as well as by drug distributors and pharmacies.

In addition, there's the Purdue Pharma LP bankruptcy case. As part of Purdue's settlement with 24 states, the company will be restructured as a public benefit trust from which OxyContin profits will be funneled to states and local governments. The company's owners, the Sackler family, will pay \$3 billion of their fortune.

But in another sign of a fracture among plaintiffs, 26 states have not signed on to the settlement, and the attorneys general for New York, Connecticut, Massachusetts, Pennsylvania and Colorado have all publicly criticized the deal.

"This is the most complicated litigation in the history of complex litigation," Zimmerman said. "So even though there has been a lot of momentum toward reaching a global deal, there are so many questions to work out in the back end about where the money is going, what does this mean for who can actually settle, [and] how do we bring all of these different state attorneys general aboard who have been split over the Purdue bankruptcy to agree to a global deal."

The MDL is In re: National Prescription Opiate Litigation, case number 1:17-md-02804, in the U.S. District Court for the Northern District of Ohio.

--Editing by Breda Lund.

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