



---

Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

---

## Inside The Opioid MDL's Big Closed-Door Hearing

By **Jeff Overley and Emily Field**

Law360 (February 1, 2018, 8:07 PM EST) -- Attorneys for local governments and drug companies traded divergent views of the opioid crisis this week at a closed-door hearing about settlement prospects in a colossal legal fight, sources told Law360.

The jousting occurred on Wednesday in Ohio federal court, where U.S. District Judge Dan Aaron Polster is presiding over multidistrict litigation targeting the nation's largest prescription opioid sellers. The all-day hearing was closed to the press and the public, but sources told Law360 that attorneys discussed ways to ease a deadly overdose epidemic and who's responsible for it.

It's been less than two months since the MDL **officially began**, and observers called Wednesday's preliminary settlement talks a remarkable step at such an early stage.

"I've been practicing law for a long time, involved in a lot of complex MDLs. This was an extraordinary and unusual gathering that was required by the judge," said Paul Geller of Robbins Geller Rudman & Dowd LLP, a member of the plaintiffs' executive committee. "I commend him. I think it was a very productive discussion and exchange of ideas and information."

Judge Polster is **seeking to avoid drawn-out litigation** and to broker settlements that bankroll addiction treatment and cut the number of opioids in circulation. Observers say it's possible the judge has good reason to think that drug companies will be receptive.

"I don't believe the judge would be going down this path if he had not received some positive vibes from the manufacturing and distributors' world and the pharmacies," Motley Rice LLC co-founder Joe Rice, co-lead counsel for the plaintiffs, said Thursday.

Most of the sources who spoke with Law360 represent plaintiffs, which include local governments, as well as unions and hospitals. Lead defense lawyers largely declined to comment or didn't respond to requests for comments.

Wednesday's hearing had roughly 150 attendees, two sources said. It included presentations for the plaintiffs by public health experts and Joseph Rannazzisi, a former U.S. Drug Enforcement Administration official who has advocated stronger enforcement against opioid sellers.

Judge Polster heard many ideas for reducing opioid abuse. They included better education of consumers and doctors, changes to drug labels, narrower indications for prescription painkillers and stronger tracking of suspicious prescribing, said Paul Hanly Jr. of Simmons Hanly Conroy LLC, co-lead counsel for the plaintiffs.

"But there were no specific [settlement] terms," Hanly said. "The defendants are nowhere near being willing to talk about that sort of thing at this juncture."

According to Rice, Judge Polster took a particular interest in comments from Dr. Anna Lembke, a Stanford University associate professor who specializes in treatment of prescription drug addiction and discussed marketing of prescription opioids.

"He was very taken by the presentation by Dr. Lembke," Rice said. "She described how doctors were historically relying on marketing information more so than labels, and how that has contributed

drastically to the problem.”

Hunter Shkolnik of Napoli Shkolnik PLLC, a member of the plaintiffs’ executive committee, said Judge Polster also appeared to be moved by a speaker — Armond Budish, the executive of Cuyahoga County, Ohio — who urged a reduction in opioid sales and more funding for addiction treatment.

“I think the judge took these types of statements to heart,” Shkolnik said.

Defense attorneys delivered separate presentations for manufacturers and distributors. They did not downplay the opioid epidemic’s severity, but they did argue that some blame rests with drug dealers and “pill mill” doctors who prescribe vast amounts of opioids for money, according to Hanly.

“It was essentially their attempt to set forth that they don’t think that they’re the only folks to blame, and there are lots of other factors that have resulted in the opioid epidemic,” Hanly said.

The defense team also pushed back against the consensus that prescription opioids bear much of the blame for a surge of deaths involving illicit narcotics, such as heroin.

“They reject the idea that the majority of heroin users started out with lawful prescriptions, which is kind of difficult to understand how you can reject that,” Hanly said.

According to a source who attended the hearing and requested anonymity, most of Wednesday’s presentations “did not get into parties’ claims or defenses in any detail” and were “intended to be educational for the judge.”

“There were certainly points of factual disagreement in the presentations, but the tone was very civil and professional,” the source said.

The MDL involves more than 250 lawsuits targeting various drugmakers, including OxyContin maker Purdue Pharma LP, as well as major distributors and pharmacy chains. Damages could reach into the hundreds of billions of dollars, according to plaintiffs lawyers.

Wednesday’s hearing also featured a handful of breakout sessions where Judge Polster met privately with various parties to hear their perspectives. In a session with plaintiffs’ attorneys, there was “discussion back and forth ... about different aspects of the solution and how that could be achieved,” Hanly said.

Another hearing focused on settlement prospects is expected to occur in March. Wednesday’s hearing didn’t shed much light on whether Judge Polster’s quest for quick resolution is realistic, sources said.

“I think clearly the judge has a goal in mind, and only time will tell if that’s able to be accomplished,” Geller said.

But it was apparent at Wednesday’s hearing that Judge Polster — who has called his oversight of the case a **“somber responsibility”** — deeply desires an outcome that saves lives.

“The judge is very, very committed to this case and is obviously spending many of his waking hours thinking about it,” Hanly said. “That was obvious from comments he made.”

--Editing by Orlando Lorenzo.