

\$260 million opioid settlement to fund treatment in Cuyahoga, Summit counties

Jane Kaufmann, Staff Reporter | October 25, 2019

A lead lawyer in a critical test case opioid lawsuit said the biggest winners in the \$260 million settlement will be the people of Cuyahoga and Summit counties.

Lead lawyer for Cuyahoga County Hunter J. Shkolnik, partner at Napoli Shkolnik of New York City, said the funds from the case will be used entirely for treatment.

“What’s significant is we have brought to Cuyahoga County and my co-counsel with respect to Summit County money now, significant money now, and also it set a benchmark for what counties should be receiving across the country,” he told the Cleveland Jewish News on Oct. 22 from his office.

The nation’s three biggest drug distributors and a major drugmaker agreed to an 11th-hour, \$260 million settlement Oct. 21 over the toll taken by opioids in the two counties, averting the first federal trial over the crisis.

The trial, involving Cuyahoga and Summit counties, was seen as a test case that could have gauged the strength of the opposing sides’ arguments and prodded the industry and its foes toward a nationwide resolution of nearly all lawsuits over opioids, the scourge blamed for 400,000 U.S. deaths in the past two decades.

The agreement was struck in the middle of the night, hours before a jury that was selected last week was scheduled to hear opening arguments in federal court in Cleveland before U.S. District Judge Dan Polster.

As soon as he was assigned the case, Polster pressed the plaintiffs and defendants to prepare for trial and to engage in settlement talks, which garnered him national attention.

Drug distributors AmerisourceBergen, Cardinal Health and McKesson will pay a combined \$215 million, Shkolnik said. Israeli-based drugmaker Teva will contribute \$20 million in cash and \$25 million worth of generic Suboxone, a drug used to treat opioid addiction.

Sheryl Hirsh of Lynhurst, whose daughter, Melissa Koppel, died of an overdose in 2013 at the age of 23, had a mixed reaction to the settlement.

“It seems like it’s certainly on the right path,” she told the CJN on Oct. 22. “I am anxious to see where the money goes. It definitely should go into treatment and recovery and into patients. This money should definitely go to the people that need it.

“The only thing I’m really not happy with and I keep seeing it everywhere is that none of these companies are taking any responsibility for it. So that’s one thing. And the other thing that I think is wrong is all of these companies are still being permitted to ship their drugs anywhere they want,” she said, adding that she hopes that drug manufacturers will be barred from sending their products to foreign countries.

“These drugs shouldn’t be sent out of this country because what all of these drug manufacturers are doing is opening up companies and manufacturing places in other countries, and as soon as they do that and distribute in other countries, the drugs are going to find their way back in again,” she said. “So

that's what scares me more than anything, is the amount of drugs they are now sending overseas to those markets and making a fortune off it."

Across the U.S., the pharmaceutical industry still faces more than 2,600 other lawsuits over the deadly disaster. Participants in those cases said the Ohio deal buys them time to try to work out a nationwide settlement of all claims.

It could also turn up the pressure to work out such a deal, because every partial settlement reached reduces the amount of money the companies have available to pay other plaintiffs.

The barrage of lawsuits was brought against drug manufacturers, suppliers and sellers by state and local governments, Native American tribes, hospitals and others.

The only defendant left in the trial that had been scheduled for Oct. 21 is the drugstore chain Walgreens. The new plan is for Walgreens and other pharmacies to go to trial within six months.

"They should have settled," Shkolnik said of Walgreens. "They're going to find out that was a very bad mistake and I'm sure their fellow pharmacy chains, like CVS and Rite Aid, are very unhappy because they're back in the courtroom here in Cuyahoga County with the bullseye on their backs."

The settlement enables both sides to avoid the risks and uncertainties involved in a trial: The counties immediately lock in money they can use to deal with the crisis, and the drug companies avoid a possible finding of wrongdoing and a huge jury verdict.

"There's no amount of money that's going to change the devastation and destruction that they've done to families not only all across our county but all across the country," said Travis Bornstein, who was preparing to testify in the

Cleveland trial. But he said the settlement should help provide services for people who are struggling.

Bornstein said his son, Tyler, became hooked on opioids as a teenager after receiving a prescription following surgery on his arm. He died of a heroin overdose five years later, in 2014.

Better funding for treatment programs might have helped his son, who was on a waiting list when he died, Bornstein said.

Cuyahoga County Executive Armond Budish, County Council President Dan Brady and County Prosecutor Michael C. O'Malley issued the following statement:

“Today, Cuyahoga County and Summit County reached an agreement to settle our lawsuit against AmerisourceBergen, McKesson, Cardinal Health and Teva Pharmaceuticals for \$260 million in cash and product, bringing the total to over \$326 million in opioid-related settlements to date.

“The impact of the opioid crisis on our communities has been devastating. Nationally, over the past few years, we have lost tens and tens of thousands of lives. Locally, we know the pain of losing fathers, mothers, children, neighbors and friends.

“While we cannot return loved ones who succumbed to this scourge to their families and communities, we can, and we must treat and save those thousands in our county who remain addicted and prevent the next person and family from experiencing the horrors of addiction.

“Our current systems are overwhelmed. With these funds we will save lives, get people back on track, and give families hope.

“Recently we released phase one of the opioid crisis mitigation plan which focused on prevention, treatment and education. Our plan is to build on this first phase and to create a national model – one that can lead the way in finally turning the tide on this epidemic.

“While we are pleased with today’s outcome, this is not the final result as the case remains pending against additional defendants. We will continue to seek compensation from the remaining defendants to hold them accountable for the widespread damage they have caused throughout our communities.”

Ohio in 2017 had the second-highest death rate from drug overdoses in the U.S., behind only West Virginia.

In a statement, the three major distributors said the settlement money should be used on such things as treatment, rehab and mental health services.

The settlement also means that the evidence prepared for the trial won’t be fully aired.

Lawyers for the counties were preparing to show the jury a 1900 first edition of “The Wonderful Wizard of Oz,” featuring the poppy fields that put Dorothy to sleep, and a 3,000-year-old Sumerian poppy jug to show that the world has long known the dangers of opioids.

Those suing the industry have accused it of aggressively marketing opioids while downplaying the risks of addiction and turning a blind eye toward suspiciously large shipments of the drugs. The industry has denied wrongdoing.

Industry CEOs and attorneys general from four states met Friday in Cleveland, where the offer on the table was a deal worth potentially \$48 billion in cash and addiction-treatment drugs to settle cases nationally.

Those attorney generals reiterated Oct. 21 that they have worked out a “framework” for a settlement. They said they hope other states and local governments sign on.

But the reception wasn’t promising. Ohio Attorney General Dave Yost called the idea “a pile of lumber,” not a framework. And Paul Hanly, one of the lead lawyers for the local governments, said the companies should be forced to pay more.

“There’s news today about a settlement that was reached today by four state attorneys general, a deal which we refused to accept or endorse it and that’s why we proceeded to getting ready to start trial yesterday,” said Shkolnik, referring to North Carolina, Texas, Pennsylvania and Tennessee. “That would have brought Cuyahoga County about (\$14 million) to maybe \$21 million over 18 years. ... It’s going to help the people of Cuyahoga County today, not drips of money that’s going to do nothing over 18 years,” he said, referring to the \$48 billion settlement offer. “And we’re still proceeding against a very large group of pharmacies – Walgreens, CVS, Rite Aid – in a trial that we hope to have start in the next six months, in the first quarter of this coming year which we hope will infuse even more money.”

Shkolnik said he is paid on contingency in this case.

“This is a contingency fee case, so we do get percentages,” he said. “That’s the way it works. They don’t have the resources generally speaking, I don’t mean just Cuyahoga County, cities and counties don’t have the resources to bring this type of litigation. It’s not in their usual space of litigation. They have to go outside. The risk to the county to hire outside by hour and pay the costs is too much for any individual county, so firms and the other ones in leadership roles here, we together have put in about 900,000 hours of work – we keep our time so we know. That’s why you’re hearing these billion dollar settlements. It takes

an army to take on the pharmaceutical industry the same way it did for lawyers who successfully took on tobacco.”

OxyContin maker Purdue Pharma, often cast as the biggest villain in the crisis, reached a tentative settlement last month that could be worth up to \$12 billion. But half the states and hundreds of local governments oppose it.

The Associated Press contributed to this report.

[ORIGINAL ARTICLE](#)