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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

37 AGs Assail Plaintiffs' Atty Fee Bid In Opioid MDL

By **Danielle Nichole Smith**

Law360 (February 24, 2020, 10:02 PM EST) -- A group of 37 attorneys general urged an Ohio federal judge Monday to reject a fee request from lead plaintiffs' attorneys in the opioid multidistrict litigation, saying it could irreparably disrupt progress made toward reaching a large national settlement.

In a letter, the attorneys general said a motion by the plaintiffs' executive committee asking for a so-called common benefit fund goes "well beyond what is necessary to ensure fair compensation for private counsel."

The committee's proposed fund would seemingly apply to some parts of settlements reached by attorneys general as well as to state court actions that are beyond the district court's jurisdiction, violating state sovereignty, according to the letter.

The letter also asserted that a proposed order establishing the fund would result in local governments paying more in attorney fees, even though common benefit funds are generally used to reallocate fees among attorneys in an MDL.

"Moreover, if entered, the proposed order will disrupt — perhaps irreparably so — the substantial progress that has been made to negotiate a large national settlement with several defendants," the attorneys general said.

The committee, which represents local governments in the sprawling MDL over the opioid epidemic, asked the court in January to create the common benefit fund.

Monday's letter further said the attorneys general were ready to work with the committee and the court to find a "reasonable and equitable way" for everyone who devoted time and resources to the litigation to be "fairly compensated."

But it must be "done in a way that is fair to all parties, does not risk disrupting a nationwide settlement, and does not divert vital resources from going to address the opioid crisis effectively," the attorneys general added.

Paul T. Farrell Jr., Paul J. Hanly Jr. and Joe Rice — the co-leads of the plaintiffs' executive committee — said in a joint statement Monday that many of the concerns expressed by the attorneys general stemmed from a "lack of understanding on how common benefit fees are paid."

"We will certainly address the valid concerns based on that misunderstanding," the attorneys said. "The letter invites discussion and we hope that can start this week."

The three attorneys added that the committee will be "open to the ideas to fairly address this issue" when the parties meet in Cleveland to talk about the next steps in negotiating with distributors implicated in the litigation.

Monday's letter represents the latest of several dust-ups between states and the MDL plaintiffs' attorneys. In perhaps the most notable clash, MDL attorneys have rejected an \$18 billion proposed settlement that four state attorneys general brokered last year with AmerisourceBergen Drug Corp., McKesson Corp. and Cardinal Health Inc. Recently, 20 states joined the MDL attorneys in

expressing opposition.

"Working together, we should be able to reach a full [and] fair resolution with the distributors that can become a global resolution, not only for the small number of supporters of the current proposal of \$1 billion a year for 18 years," the attorneys said Monday. "We want to work with the 20 states that have opposed the current proposal to address their concerns and the concerns expressed by the subdivisions we have heard from as well as the more than 2,600 litigating communities."

A spokesperson for Cardinal Health told Law360 in a statement Monday that company officials "continue to work toward a nationwide settlement that would bring substantial and immediate relief to communities impacted by the opioid epidemic."

Hunter Shkolnik of Napoli Shkolnik PLLC, a top plaintiffs' lawyer in the MDL, told Law360 in a statement Monday that the committee's proposed order "specifically exempted" the attorneys general from the "common benefit mandate."

"This letter doesn't surprise me in the least. The attorneys general have been riding the coattails of the MDL for the past two and a half years and have tried to cram a very bad settlement down the throats of the counties that have been dealing with the opioid epidemic," Shkolnik said. "Had the AGs read the proposed order, they would have seen that they are specifically exempted from the common benefit mandate and therefore really have no dog in this fight."

The letter was signed by the attorneys general of North Carolina, Alaska, Arkansas, Colorado, Idaho, Indiana, Kansas, Maine, Michigan, Mississippi, Nevada, New Jersey, New York, Oklahoma, Pennsylvania, Vermont, Wisconsin, Texas, Arizona, California, Hawaii, Illinois, Iowa, Louisiana, Maryland, Minnesota, Missouri, Nebraska, New Hampshire, New Mexico, North Dakota, Oregon, Tennessee, Virginia, the District of Columbia, Guam and the Northern Mariana Islands.

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.

--Additional reporting by Emily Field, Kevin Stawicki and Jeff Overley. Editing by Bruce Goldman.

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