

# Opioid Update: Ohio Asks Sixth Circuit for Mandamus while U.S. Chamber Says Muni Suits by Plaintiffs' Firms Could Upend Civil Litigation



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As we covered in [July](#), the country has its eyes on an Ohio opioid MDL handling more than 2,000 lawsuits brought by more than 1,200 cities, counties, and tribes against drug manufacturers, distributors, and pharmacies.

[Ohio Attorney General Dave Yost](#) recently filed a [mandamus petition](#) at the Sixth Circuit Court of Appeals to enjoin District Judge Dan Polster from proceeding with the October 21<sup>st</sup> trial for Cuyahoga and Summit counties. The counties seek billions of dollars to cope with the opioid crisis' effects on their health care systems, law enforcement, and economies—in a bellwether case for the thousands of others pending across the country. According to Yost, the trial would “cripple the federal dual-sovereign structure of these United States,” by letting counties infringe on the state's power to prosecute claims on behalf of its citizens.

Thirteen other states and the [United States Chamber of Commerce](#) backed up Yost in

amicus briefs filed last week. The Chamber’s brief, filed by [OSU law professor](#) and [administrative-law guru](#) Chris Walker, described “the perils of affirmative municipal litigation.” (Which, as perceptive defense lawyers already know, looms on the horizon as a massive development in federal civil litigation.)

The Chamber contends that “these municipal lawsuits essentially duplicate the lawsuits the states themselves have already brought,” threatening to “significantly reduc[e] the funds available to compensate injured individuals” and “shif[t] substantial settlement funds away from the states and their residents and into the pockets of plaintiffs’ lawyers.” Litigating with 50 state AGs is one thing; trying to negotiate with thousands of municipalities would “mak[e] global settlements nearly impossible.”

But according to the counties—who have been litigating the case for over two years—this is an eleventh-hour power grab. Counsel for Cuyahoga County, Hunter Shkolnik, [said](#) the state attorneys general “are acting like pirates, coming in to take the spoils of the hard work we’ve done.”

To the chagrin of Yost and others, Judge Polster just [approved](#) a negotiation class that could consist of every city and county in the country. Moreover, Purdue Pharma, the maker of Oxycontin, proposed a \$12 billion (yes, [billion with a “b”](#)) settlement with about half of the states and local governments involved. Still, [Yost](#) doesn’t “think there’s a settlement . . . there is a proposal that’s been accepted by a majority of attorneys general, but there are quite a few significant states that have not joined at this point.” And [Pennsylvania Attorney General Josh Shapiro](#) thinks the tentative deal is a “slap in the face to everyone who has had to bury a loved one due to [Purdue Pharma].”

According to Shapiro, “this is far from over.” He may be right. Stay tuned.

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