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## Opioid Funds Should Be Used For Mental Health, Judge Told

By **Emily Field**

Law360 (April 22, 2020, 5:12 PM EDT) -- Mental health advocates on Tuesday told the Ohio federal judge overseeing opioid multidistrict litigation that half of the settlement funds from the litigation should be used to form a foundation addressing mental illness.

The advocates, including the Kennedy Forum and the National Alliance on Mental Illness, said that multiple studies have linked opioid use with mental health disorders, which is why settlement funds from the MDL should be earmarked to make improvements in mental health care.

Those funds should be administered by an independent foundation with a board of directors that includes mental health experts and representatives for the states and local governments involved in the litigation, the advocates said in an amicus brief.

"The precedent for earmarking funds for systemic reforms is the tobacco master settlement agreement ... which emerged from the lawsuits brought against cigarette manufacturers by 46 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands," the advocates said.

That agreement earmarked \$1.7 billion from the settlement to fund The Truth Initiative, which has the mission of reducing tobacco use, according to the advocates.

However, states and territories received more than \$126 billion in unearmarked funds from that litigation between 1998 and July 2018, of which less than 1% was used for tobacco use prevention or cessation programs, the advocates said.

"On the whole, the funds were used in politically expedient ways, including making up for revenue shortfalls in jurisdictions' budgets," the advocates said. "Prevention and cessation programs received little support. Over time, fewer and fewer settlement funds were devoted to tobacco-related activities."

The advocates said that the court could supervise the foundation by appointing a special master.

"This litigation presents an historic opportunity to create a national program for mental health care system reform," the advocates said. "Better mental health care is a critical component in addressing opioid addiction and opioid-related deaths."

In October, the attorneys general for Texas, Pennsylvania, North Carolina and Tennessee unveiled a **proposed \$48 billion deal** with major drug companies to resolve opioid lawsuits.

OxyContin maker Purdue Pharma LP **filed for Chapter 11 protection** on Sept. 15. Shortly before filing, the company reached a tentative settlement with states in which about 2,000 suits would be dropped. The company's owners, the Sackler family, would also give up their stake in the company and turn at least \$3 billion over to the estate, and the company would become a public beneficiary trust owned by the plaintiffs with its profits going toward addressing the opioid crisis.

"We all understand there are many groups who believe with very [good] reason that they should receive the lion's share of any award, but it is important to recognize that the counties who have

primarily advanced this case must weigh many concerns so that limited resources are shared where the funds can do the most good," Hunter J. Shkolnik of Napoli Shkolnik PLLC, a top plaintiffs attorney in the MDL, told Law360 on Wednesday.

U.S. District Judge Dan Polster, who is overseeing the MDL, has also signed off on a novel negotiation class designed to seek global settlements with pharmaceutical companies and more than 30,000 local governments over the opioid crisis.

A representative for Purdue declined to comment on Wednesday. Representatives for the other parties didn't immediately respond to requests for comment on Wednesday.

"Unfortunately, there are numerous studies that show that having a mental health condition is associated with opioid use," David Lloyd of the Kennedy Forum told Law360 on Wednesday. "Therefore, more effectively preventing and treating mental health conditions is a critical step to addressing the underlying causes of the opioid epidemic."

The mental health advocates are represented by Ira A. Burnim of the Judge Bazelon Center for Mental Health Law.

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.

The Purdue bankruptcy case is In re: Purdue Pharma LP, case number 19-23649, in the U.S. Bankruptcy Court for the Southern District of New York.

--Additional reporting by Jeff Overley and Vince Sullivan. Editing by Jack Karp.

*Update: This article was updated to include comment from the Kennedy Forum.*