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New Pharmacy Bellwether Trial Set For 2021 In Opioid MDL

By **Adam Lidgett**

Law360 (April 30, 2020, 6:38 PM EDT) -- The Ohio federal judge overseeing multidistrict opioid litigation picked two cases Thursday for a bellwether trial in 2021 to test allegations that the nation's largest pharmacy chains fueled the opioid crisis by dispensing painkiller prescriptions they should have known weren't appropriate.

In a two-page order, U.S. District Judge Dan Aaron Polster designated cases from the Ohio counties of Lake and Trumbull as bellwethers, noting that those cases were recommended by the plaintiffs' executive committee in the sprawling MDL.

Pharmacy defendants — including CVS, Walgreens, Walmart and Rite-Aid — earlier this week **objected** to scheduling another bellwether trial, especially in northern Ohio, calling it unnecessary in light of other upcoming trials and extensive proceedings that have already occurred before Judge Polster in Cleveland.

But the judge on Thursday was unmoved by the opposition and told the parties to come up with a case management schedule that contemplates a four-week trial in May 2021. He also directed the plaintiffs in the two new bellwethers to make any amendments to their complaints by May 15.

"The court selected two counties to go forward, and now we'll start the discovery on the dispensing information for those two counties and look forward to the trial in May of 2021," Joe Rice of Motley Rice LLC, a top attorney for the MDL plaintiffs, told Law360 on Thursday.

Hunter Shkolnik of Napoli Shkolnik PLLC, counsel for the counties, said in a statement to Law360 on Thursday that they "are proud that they have been selected" and that they "look forward to this trial against the chain pharmacies that helped fuel it."

Judge Polster began looking for new bellwethers after the Sixth Circuit on April 15 struck dispensing allegations from a bellwether trial that's set for November in Cleveland, leaving only allegations of improper painkiller distribution. Other bellwether cases with pharmacy defendants in the MDL are heating up in Oklahoma and California federal courts.

Representatives of Rite Aid and Walgreens declined to comment to Law360, and representatives of the other pharmacies didn't immediately respond to requests for comment.

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 cases chosen as bellwethers are County of Lake, Ohio v. Purdue Pharma LP et al., case number 1:18-op-45032, and County of Trumbull, Ohio v. Purdue Pharma LP et al., case number 1:18-op-45079, in the U.S. District Court for the Northern District of Ohio.

--Additional reporting by Jeff Overley. Editing by Adam LoBelia.

