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BakerHostetler Fights 'Indefensible' DQ In Opioid MDL

By **Emily Field**

Law360 (May 8, 2019, 9:45 PM EDT) -- BakerHostetler on Wednesday asked the Sixth Circuit to vacate an Ohio judge's decision to disqualify the firm from representing Endo Pharmaceuticals in two bellwether cases in the multidistrict opioid litigation, saying the decision will affect the entire MDL.

The firm said that U.S. District Judge Dan Polster didn't base his decision on any record evidence, instead of relying exclusively on an unsworn letter from the U.S. Department of Justice that consists "entirely of hearsay." The letter, requested by the judge, said that BakerHostetler partner Carole Rendon saw "nonpublic information" about the opioid crisis while she was serving at the U.S. attorney's office in Cleveland.

The firm said that the court departed "wholesale" from due process and that Endo has been deprived of its chosen counsel just months before the first bellwether trial in October.

"The consequences of the court's indefensible action threaten to ripple across the MDL in ways that cannot be undone on appeal following final judgment," the firm said.

Rendon also is co-liaison counsel for the manufacturers, and there have already been numerous disputes about what litigation activities do or don't run afoul of the court's order, the firm said.

In March, Judge Polster ruled that BakerHostetler couldn't represent Endo in the bellwether cases brought by the city of Cleveland and Cuyahoga County, finding that this nonpublic information "may go to the heart of plaintiffs' damages claims" and if used "could materially prejudice Cleveland and Cuyahoga County."

From mid-2016 to early 2017, Rendon served as the U.S. attorney for northern Ohio and led an opioid task force during her tenure. About 20 former U.S. attorneys sent a letter to Judge Polster arguing that disqualification could make lawyers leary of public service.

The DOJ's correspondence that local law enforcement shared nonpublic information with Rendon "in a spirit of confidence and trust" and "as a result of the cooperation among federal, state and local law enforcement agencies in combatting the opioid crisis."

According to the correspondence, the information related to "inadequate staffing levels, funding deficiencies, strategies, initiatives, operations and allocation of resources at the county and local levels for dealing with the opioid crisis."

The MDL involves more than 1,600 cases filed mostly by local governments. The cases allege that drugmakers fueled the opioid crisis — which claimed an estimated 47,000 lives in 2017 — by deceiving doctors about the addiction risks of narcotic painkillers, including oxycodone drug Opana ER, which Endo in 2017 agreed to stop selling.

"BakerHostetler and Ms. Rendon are unhappy that Judge Polster and the Department of Justice concluded there was a serious conflict warranting disqualification and continue to focus on minutiae and extraneous details," Hunter Shkolnik of Napoli Shkolnik PLLC, attorney for the government, told Law360 on Wednesday. "We are confident that the Sixth Circuit will appreciate the extent Judge Polster went to reach a sound decision."

Representatives for Endo didn't immediately respond to requests for comment on Wednesday.

The plaintiffs are represented in the disqualification matter by Mark Pifko of Baron & Budd PC, Peter H. Weinberger of Spangenberg Shibley & Liber LLP, Linda Singer of Motley Rice LLC, and Hunter Shkolnik of Napoli Shkolnik PLLC.

Endo Pharmaceuticals Inc. is represented in the disqualification matter by John D. Parker, Carole Rendon of BakerHostetler and by Jonathan L. Stern of Arnold & Porter.

The cases are *The County of Cuyahoga v. Purdue Pharma LP et al.*, case number 17-op-45004, *City of Cleveland v. AmerisourceBergen Drug Corp. et al.*, case number 18-op-45132, and *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 Jeff Overley. Editing by Jay Jackson Jr.

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