

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 21st 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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