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Opioid Judge Calls Proposed Settlement Group a 'Novel Approach.'

- **Judge wants input from state AGs, some defendants on idea**
- **Such classes are usually formed only after reaching deal**

A judge backed a push by U.S. cities and counties suing opioid makers such as Purdue Pharma LP and Johnson & Johnson to negotiate a settlement as a group but put off until August a final decision on the request.

U.S. District Judge Dan Polster, overseeing more than 1,900 lawsuits by U.S. municipalities, said Tuesday that the idea of creating a negotiating class of local governments to spur settlement talks was an innovative one. Normally, such classes are formed only after a tentative deal has been struck.

Reaching an accord in a case where cities and counties seek hundreds of billions of dollars from makers and distributors of opioid painkillers "may need a novel approach," the judge said at a hearing in Cleveland. He delayed his final ruling until Aug. 6 so he could hear comments about how the class should be structured.

But some state attorneys general, along with opioid distributors such as McKesson Corp. and Cardinal Health Inc., asked Polster to hold off on approving the class. They say that it's too early in the case to create such a group and that it could force some municipalities to join the litigation when they're not yet ready.

Setting up this type of class "constitutes a new and novel procedure that could result in a grave miscarriage of justice and do significant harm to the ability of states to protect their own people," Attorney General Ken Paxton of Texas said in a letter to Polster.

Kristin Hunter Chasen, a McKesson spokeswoman, didn't return a call seeking comment on whether the company opposes the creation of the class. Brandi Martin, a Cardinal Health spokeswoman, didn't have an immediate comment.

The governments, along with some Native American tribes, fault opioid makers and distributors for creating a national public-health crisis by illegally promoting and handing out the addictive painkillers despite multiple warning signs that they were being abused. The cases have been consolidated before Polster for pretrial information exchanges and test trials. The first two cases are set to be heard by juries in Cleveland in October.

Settlement talks involving the companies, states and local governments have been ongoing for more than two years, but they've snagged because opioid makers and distributors want to resolve all of their liability in one deal.

"Everyone agrees these cases can't be settled piecemeal," Polster told a packed courtroom. "The defendants won't settle without closure. There needs to be a vehicle to do that."

The proposed class would bring together the more than 24,000 U.S. municipalities –- the vast majority of which haven’t yet filed suit –- for negotiation purposes. The only way cities and counties can escape the class is to file a so-called opt-out notice.

Some of the companies involved the cases consolidated before Polster have already settled some state claims against them. Purdue Pharma LP agreed in March to pay $270 million to Oklahoma to pay for opioid treatment efforts.

Teva Pharmaceutical Industries Ltd. followed suit last month and agreed to pay $85 million to settle the state’s claims over its opioid painkillers. Attorney General Mike Hunter of Oklahoma is pressing ahead with a trial against J&J over its handling of the opium-based drugs.

The case is In Re National Prescription Opioid Litigation, 17-md-2804, U.S. District Court, Northern District of Ohio (Cleveland).

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By Jef Feeley

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