

Texas Judicial Panel Establishes MDL for Opioid Litigation

Recently, a unanimous opinion on behalf of the Texas Judicial Panel on Multidistrict Litigation (the “Panel”) created a multidistrict litigation (MDL) court for lawsuits filed by 18 Texas counties’ claiming they are each “damaged by the improper marketing and distribution of prescription opioid medications.” See **MDL No. 18-0358; In Re: Texas Opioid Litigation**.

All the plaintiff counties assert four main causes of action: public nuisance, negligence, fraud and unjust enrichment. Additional claims brought by some of the counties included Deceptive Trade Practices Act (DTPA) violations and civil conspiracy. The counties claim to be shouldering the brunt of an ever-growing opioid epidemic. They seek damages for the cost of providing medical care, treatment and counseling for individuals suffering from opioid-related diseases, in addition to ever increasing costs associated with criminal justice, law enforcement and public safety relating to this epidemic.

In response, 13 defendant companies involved in the manufacturing of products containing opioids, along with four defendants involved in their distribution, requested the transfer of these cases to a single multidistrict litigation court for pretrial matters. In the Panel’s opinion, Justice Brown noted that Texas Rule of Judicial Administration 13 authorizes the MDL panel to transfer related cases to a single pretrial judge if “transfer would be for the convenience of the parties and witnesses and would promote the just and efficient conduct of the cases.”

The Panel opined that each case implicates the US Food and Drug Administration’s regulatory approval and oversight of opioids, the defendants’ promotional activities, Plaintiffs’ ability to properly identify alleged improper opioid prescriptions and the abuse and impact of prescription opioids. The Panel further noted that the discovery in these cases will be complex, voluminous and overlapping. A single pretrial judge will be able to manage duplicate discovery, avoid inconsistent pretrial rulings and conserve the resources of all involved parties even if individual cases involve unique issues.

The Panel also noted that other states have set up similar MDL courts to address this new wave of opioid suits. In particular, the US Federal District Judge Dan Aaron Polster presides over the federal multidistrict litigation in Ohio, which includes more than 400 lawsuits brought by counties and cities against the companies that make, distribute and market opioids.

Subsequently, Judge David Peeples, a former justice of the 4th Court of Appeals and senior judge of the 224th Judicial District Court, was assigned to preside over this new MDL. The MDL’s responsibility of these cases and potential tag-along cases is generally considered a positive development for current and potential defendants in Texas opioid litigation, as it may substantially reduce the cost and extent of discovery for those involved in multiple opioid cases.

The attorneys at Litchfield Cavo LLP are actively involved in the opioid litigation in multiple jurisdictions and will continue to represent clients in this expanding area of litigation.

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