

SCHOOL DISTRICT OPIOID LITIGATION FACT SHEET

A growing number of public school districts around the country have filed and are preparing to file claims in the litigation pending against major pharmaceutical companies and related entities arising from damages suffered from the opioid epidemic that has ravaged the nation. A major focus of these claims is the increased expense of special education and supplementary education costs caused by the growing number of children born with disabilities as a result of maternal opioid use during pregnancy. The past two decades have borne witness to a precipitous rise in the number of babies born with Neonatal Abstinence Syndrome (“NAS”), the addiction and withdrawal complications that affect children with prenatal opioid exposure. Children born with NAS are significantly more likely to be diagnosed with disabilities for which they require special education services and other behavioral and academic supports. Experts estimate that public schools nationwide have incurred and will incur an increased cost in excess of 22 billion dollars for providing these necessary supports and services to children with prenatal opioid exposure.

The public school district in Chicago, Chicago Public Schools (“CPS”), filed a claim in the National Prescription Opiate Multi-District Litigation (“MDL”) on behalf of state and national classes of public schools to recover these and other damages last fall. Since then, the coalition of public school districts has expanded to include both large and small districts, from both urban and rural areas and from different parts of the country. These public school districts have filed or are preparing to file claims in the related Purdue Pharma bankruptcy proceedings. Public school districts secured an agreed order permitting them to participate in the ongoing mediation of the bankruptcy to advocate for the interests of public schools across the nation. This Fact Sheet provides further explanation of the claims of public schools, the progress of their litigation and the meaningful role additional school districts can play.

Opioid Manufacturers and Distributors Promoted These Drugs for Unintended Use, Flooding the Market and Leading to a Massive and Ongoing Addiction and Overdose Crisis

Prescription opioids have been shown to be extremely effective in addressing acute pain such as post-surgery or as part of end-of-life care for terminal cancer patients. They are, however, also highly addictive and therefore inappropriate for treatment of chronic pain. Patients build up a tolerance for opiates, and thus they become less effective over time, requiring increasing dosage in order to feel relief. Eventually after prolonged use, they stop working to treat pain altogether. Long before almost all patients reach that point, however, they have become addicted to these potent drugs. As those living in communities most affected by the opioid crisis are surely aware, opium derivatives and synthetics are almost perfectly addictive drugs, and it is extraordinarily difficult to end the addiction.

In the 1990s, pharmaceutical companies that manufacture and distribute prescription opioids began marketing the drugs specifically to be used by chronic pain patients. They did

so by knowingly making false claims about the lack of addictive properties of these pills. In doing so, these companies conspired with selected doctors, medical boards, and advocacy groups, all of whom they compensated to generate reports, materials for distribution to patients, and presentations that peddled false claims regarding the addictive properties of opioids and their appropriateness for the treatment of chronic pain. These lies—created and sponsored by the manufacturers—were also used by distributors’ sales representatives to convince doctors and pharmacists to aggressively order and prescribe opiates for chronic pain. Sales representatives routinely downplayed or even dismissed the risks of opioid addiction for chronic pain patients and compensated doctors who prescribed the drugs with rewards including lavish events, meals, and even cruises.

As a result of the combination of extremely potent and highly addictive drugs being aggressively and effectively marketed as safe “wonder drugs” for the treatment of chronic pain, opioids became the bestselling and most widely distributed drugs in history, and the results have been the disastrous opioid epidemic which has ravaged communities across the nation.

Nationwide, fatal overdoses from prescription opioids more than doubled between 2005 and 2016. More than 218,000 people have died in the United States between 1999 and 2017 from overdoses directly tied to prescription opioids. Relatedly, the United States has seen a steep increase in cases of NAS, the diagnosis for babies going through withdrawal following prenatal opioid exposure. Prenatal opioid exposure is linked with developmental delays and intellectual disabilities. In 2016, the rate of NAS diagnoses in the United States reached 7 cases per 1,000 births, which was more than double the rate only 8 years earlier of 2.2 cases per 1,000 births, and the number of undiagnosed cases likely drives the rate much higher. The healthcare cost of treating NAS has also skyrocketed from approximately \$61 million in 2003 to nearly \$316 million in 2012.

Many Public School Districts Have Not Filed Lawsuits, But They Have Also Suffered Acute Damages and Deserve Compensation

School districts should be compensated for any expenditures they have incurred – and more importantly, for those they will incur for many years to come – to address the impact of the opioid epidemic on their students, teachers and others. Public schools as a group comprise the nation’s largest public employer and perform the essential function of caring for and educating most American children. While school districts have suffered significant damages because of the opioid epidemic, school districts have only recently begun to file claims against the defendants.

Damages incurred by school districts fall into at least two major categories:

1. costs of providing special education and other services to children born with Neonatal Abstinence Syndrome (NAS) as a result of their mothers’ opioid use during pregnancy.
 - A high percentage of children with NAS suffer developmental delays and/or lifelong intellectual disabilities.

- Experts have estimated the increased costs to public schools of providing special education and other services to children with prenatal opioid exposure to exceed 22 billion dollars.
2. costs of providing healthcare, workers compensation and other services to employees who have used opioids for off-label purposes and/or become addicted to opioids.

School Districts Have Filed a Nationwide Class Action Suit But Need Help

Chicago Public Schools has filed a class action on behalf of public schools nationwide to recoup damages inflicted by the opioid epidemic that are unique to public schools. The action is pending in the MDL in the Northern District of Ohio before United States District Court Judge Dan A. Polster, where thousands of cases seeking to hold the pharmaceutical industry responsible for the opioid crisis are consolidated. The cities and counties that have filed claims in the MDL have proposed to form and Judge Polster has approved a “negotiation class,” for the purpose of negotiating a nationwide settlement.¹ The public schools aim to form a national class of public schools and, like the cities and counties, a negotiation class to negotiate a nationwide settlement for all public schools.

As in all negotiations, there is strength in numbers. A growing number of other school districts have decided to join the litigation as additional “class representatives,” including Miami-Dade County Public Schools and various school districts in Illinois and Kentucky. Class representatives are parties that put their names on the Complaint and participate more actively in the litigation than a regular class member. These school districts are hoping for more public school districts to join them.

These school districts have filed or are preparing to file proof of claim forms in the related bankruptcy proceedings of Purdue Pharma, one of the most culpable of the pharmaceutical companies. The school districts secured the opportunity to make a presentation to the mediators tasked with overseeing the allocation of bankruptcy funds among creditors. Following that presentation, the school districts’ counsel have continued to dedicate themselves to ensuring that school districts receive their due share of those funds, most recently by filing a motion to certify a nationwide class of public schools on behalf of representatives of the proposed class: Miami-Dade County Public Schools in Florida; Bullitt County School District, Hart County Schools, LaRue County Schools, Martin County Schools, and Owsley County School District in Kentucky; East Aurora School District 131, Thornton Township High School District 205, Thornton Fractional High School District 215, Joliet Township High School District 204 in Illinois; and Gallup-McKinley County School District and Eunice Public Schools in New Mexico. This motion for class certification is currently pending in the bankruptcy court.

A highly capable and experienced team of lawyers and law firms have come together to bring these claims on behalf of public schools. These law firms include:

¹ That ruling is currently being reviewed by the United States Court of Appeals for the Sixth Circuit.

- Hughes, Socol, Piers, Resnick & Dym (www.hsplegal.com), civil rights/public interest lawyers based in Chicago
- Mehri & Skalet (<https://findjustice.com/>), civil rights/public interest lawyers based in Washington, D.C.
- Terrell Hogan (www.terrellhogan.com), mass tort/MDL lawyers based in Florida
- Henrichsen Law Group (www.hslawyers.com), mass tort/MDL lawyers based in Florida, New York City and Washington, D.C.

Along with one of the nation's oldest education law firms, Himes, Petrarca, and Fester (<https://www.edlawyer.com>), located in Illinois, these firms will be asking the court to allow them to represent a national class of all public schools.

The law firms have the combination of public client, class action, multidistrict litigation and education law experience needed to successfully litigate this case on behalf of a nationwide class of public schools.

The law firms will advance all costs of the litigation and operate on a contingency fee basis, so ***school district clients will spend nothing out of pocket.*** Their only investment will be limited personnel time dedicated to working with lawyers and their experts to gather available data and information about how the opioid epidemic has affected the schools.

School Districts Are Facing a Fast Approaching Deadline of July 30, 2020

Additional school districts have until the July 30, 2020 claims deadline to get their claims on file in the Purdue bankruptcy. The Court extended the original June 30 deadline by 30 days given delays brought on by the COVID-19 pandemic but emphasized that it would grant no further extensions. The school districts' proof of claim forms filed in the Purdue bankruptcy rest almost entirely on publicly available data and expert analyses, and thus require minimal time investment by schools.