

March 6, 2018

VIA NYSCEF AND FAX

The Honorable Jerry Garguilo
Supreme Court of the State of New York
Suffolk County
John P. Cohalan, Jr. Courthouse
Part 48, Courtroom S-33
400 Carleton Avenue
Central Islip, New York 11722
Fax: 631-853-7542

Re: *In Re Opioid Litigation*, Index No. 400000/2017

Dear Justice Garguilo:

We write on behalf of the Manufacturer Defendants in response to Mr. Napoli's March 1 letter to the Court, which repeats the request he made during the February 28 hearing for "an expedited trial" and "an expedited discovery schedule."

The Manufacturer Defendants oppose that request because it is contrary to the orderly procedures the Court has set to guide how these cases should proceed and is otherwise premature.

As Your Honor set forth in the Court's January 12 and January 16 Orders and reiterated during last week's hearing, these cases involve complex and important issues that require a thoughtful and systematic approach. That approach has at least three initial facets:

- First, the Court has set a schedule for hearing Defendants' motion to stay the cases and motions to dismiss, beginning last week and continuing on March 19. Those motions may result in a stay or dismissal of the cases in whole or in part. They therefore likely will affect the scope of the issues that will remain to be resolved and the discussion of any schedule necessary to address those issues. They will likely also result in appeals of legal issues that are foundational to the cases and that the Court and/or parties may wish to have finally resolved before proceeding further.
- Second, the Court has scheduled a conference for confidential discussions of potential remedial measures to address opioid abuse without "posturing concerning responsibility and/or fault" and has spoken to Judge Polster about efforts toward a global resolution. Those discussions, too, may affect the need for trials and the schedule leading up to any such trials.

- Third, and finally, the Court has directed the parties to exchange proposed discovery requests and objections to enable the Court to assess whether discovery should proceed and, if so, the scope of such discovery. Both sides are likely to raise objections that will pose issues requiring briefing and resolution by the Court.

Until each of these facets of the Court's initial plan has been executed, it will be impossible for the Court and parties to address any remaining legal and factual issues, the discovery the parties will need to prepare any case for trial, and the time that any such discovery will realistically take.

Mr. Napoli's request for "an aggressive schedule" and "four bellwether trials this fall" does not acknowledge the Court's carefully considered approach and the need for greater clarity concerning the issues to be decided before discovery and trial schedules can be addressed. Mr. Napoli's citation to CPLR 3403(a)(1) is inapposite because it merely states that actions brought by political subdivisions are not subject to the rules applicable to other cases regarding trial preference; the rule says nothing about the schedule most appropriate or necessary for any given case.

As the Court has recognized, it would be "both premature and foolhardy to expect at this early stage to unravel all the facts and science to determine responsibility." 1/16/18 Order at 3. So too would be rushing to set a trial before this Court has addressed and resolved threshold issues of which claims, if any, should proceed.

We respectfully request that the Court deny Mr. Napoli's request.

Respectfully submitted,

/s/ Mark S. Cheffo

*Counsel for Defendants Purdue Pharma L.P.,
Purdue Pharma Inc., and The Purdue Frederick Company Inc.*

cc: Counsel of Record (via NYSCEF)