

**ITEM #40**

**ADDITIONAL MATERIAL**

**Regular Meeting  
JANUARY 28, 2020**

**SUBMITTED AT THE REQUEST OF**

**OFFICE OF THE COUNTY ATTORNEY**

JANUARY 2020

# Broward County



OUTSIDE COUNSEL LITIGATION TEAM

**Robbins Geller  
Rudman & Dowd** LLP

**Lieff  
Cabraser  
Heimann &  
Bernstein**  
Attorneys at Law

**HPS** HALICZER  
PETTIS &  
SCHWAMM  
Attorneys At Law

**KO**  
KOPELOWITZ OSTROW  
FERGUSON WEISELBERG GILBERT

**MORGAN  
&  
MORGAN**



# OPIOIDS

## “One of the Most Complicated and Gargantuan Legal Battles in American History”\*

- 2,500+ cities and counties have sued in federal court, with more cases filed every day.
- Hundreds of additional cities and counties have sued in state courts across the country.
- 49 out of 50 states have filed an opioids-related lawsuit.
- Hundreds of other plaintiffs have also sued, including American Indian tribes, hospitals, third party payers, individuals, and NAS babies.

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### **December 5, 2017**

First set of government and other actions transferred to Judge Polster in the Northern District of Ohio.

\*Jan Hoffman, *Opioid Lawsuits Are Headed to Trial. Here's Why the Stakes Are Getting Uglier.*, The New York Times (Jan. 30, 2019), <https://www.nytimes.com/2019/01/30/health/opioid-lawsuits-settlement-trial.html>.

# BROWARD WAS SELECTED AS BELLWETHER “TEST” CASE



“The purpose of the MDL is to coordinate discovery, avoid a lot of duplication and expense, and **explore all possibilities for some global resolution** . . . . [W]ith cases . . . parceled out all over the country in individual state courts, that’s not possible.”

Judge Polster in his first teleconference, 12/13/2017

Early discussions between Judge Polster and lead plaintiff and defense attorneys led to the selection of six (later nine) cases – out of the 2,500+ cases filed – to test legal theories and injuries in different and disparately impacted political subdivisions, in order to drive this global resolution.

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***Broward County is one of those nine.***

- It is one out of five counties represented in the bellwethers.
- It is the only Florida political subdivision chosen.

# BROWARD'S LAWSUIT PARALLELS CT1 AND LAYS OUT A FRAMEWORK FOLLOWED BY NUMEROUS OTHERS

## CLAIMS ASSERTED

- Public Nuisance
- Violation of Federal and Florida RICO
- Negligence and Gross Negligence
- Unjust Enrichment
- Civil Conspiracy
- Fraud
- Violation of FDUTPA
- Violation of The Florida Corrupt Practices Act

Motions to dismiss (“MTD”) Broward’s complaint have been fully briefed as of July 2018.

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- 150 pages of total Broward-specific briefing
- 362 pages of incorporated briefing in the lead Summit County, Ohio, bellwether (“CT1”)
- In December 2018, Judge Polster upheld in large measure Magistrate Ruiz’s 102-page Report and Recommendation in the CT1 case, denying the MTDs on almost all counts, and upheld the RICO and common law public nuisance claims.
- Judge Polster indicated on November 19, 2019 that an order on the Broward MTDs is forthcoming.

# BROWARD IS AN ACTIVE CONTRIBUTOR TO GLOBAL SETTLEMENT DISCUSSIONS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION )  
OPIATE LITIGATION ) )  
CASE NO. 1:17-MD-2804 )  
JUDGE POLSTER )  
ORDER )

The Court earlier requested that various groups identify negotiating teams to discuss settlement. These groups asked and received permission to name more than six attorneys each. The Court now confirms the negotiating teams will be composed as set forth below, and these teams will work with the Special Masters and the Court to identify possible resolutions of economic and non-economic issues in this litigation. The Court reserves the right to modify the composition of these teams as discussions go forward, and these teams may appoint “support committees” to assist with negotiations as they see fit.

*Plaintiffs*  
Joe Rice  
Paul Hanly  
Elizabeth Cabraser  
Troy Rafferty

Paul Geller  
Chris Seeger  
Russell Budd

Attorneys representing Broward, Paul Geller and Elizabeth Cabraser, were selected by other lead plaintiffs’ attorneys and Judge Polster as two of seven plaintiffs’ counsel sitting on the settlement committee.

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### ***Broward is:***

- actively involved in multiple discussions with Special Masters about the direction and structure of potential settlements;
- part of many meetings with select groups of cities and counties, defendants, and state Attorneys General; and
- part of the only settlement discussion to occur thus far with Judge Polster – on the eve of the CT1 trial.



## BROWARD IS A NAMED REPRESENTATIVE IN THE LANDMARK NEGOTIATION CLASS

- The Negotiation Class was certified on September 11, 2019.
- This Class is the first of its kind and creates a powerful block to engage in real discussions with defendants, to protect the legal rights of cities and counties, and to prevent “Tobacco part deux.”
- ***Broward is one of the national class representatives***, along with cities and counties like Atlanta, Chicago, and San Francisco County, from 30 states taking on the responsibility of negotiating for and representing the potential settlement interests of the 35,000 cities and counties that make up the Class.
- Statistics from the Class notice report show overwhelming support by cities and counties throughout the country for the class concept: over 98% remained in the Class following the close of the opt out window.
- The Negotiation Class certification order is currently on Rule 23(f) appeal at the Sixth Circuit following opposition by the distributors and a very small group of cities/counties.

# CLASS MEMBERSHIP DOES NOT IMPEDE MEMBERS' INDIVIDUAL TRIALS

Case: 1:17-md-02804-DAP Doc #: 2591 Filed: 09/11/19 1 of 8. PageID #: 413570

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION	)	Case No. 1:17-md-2804 Case No. 18-op-45090
THIS DOCUMENT RELATES TO:	)	Judge Dan Aaron Polster
All Cases	)	<u>ORDER CERTIFYING</u> <u>NEGOTIATION CLASS AND</u> <u>APPROVING NOTICE</u>
and	)	
<i>The County of Summit, Ohio, et al., v.</i>	)	
<i>Purdue Pharma L.P. et al.,</i>	)	
Case No. 18-op-45090	)	

1. The Court held  
Renewed and Amended Moti  
Class. Doc. #: 1820.

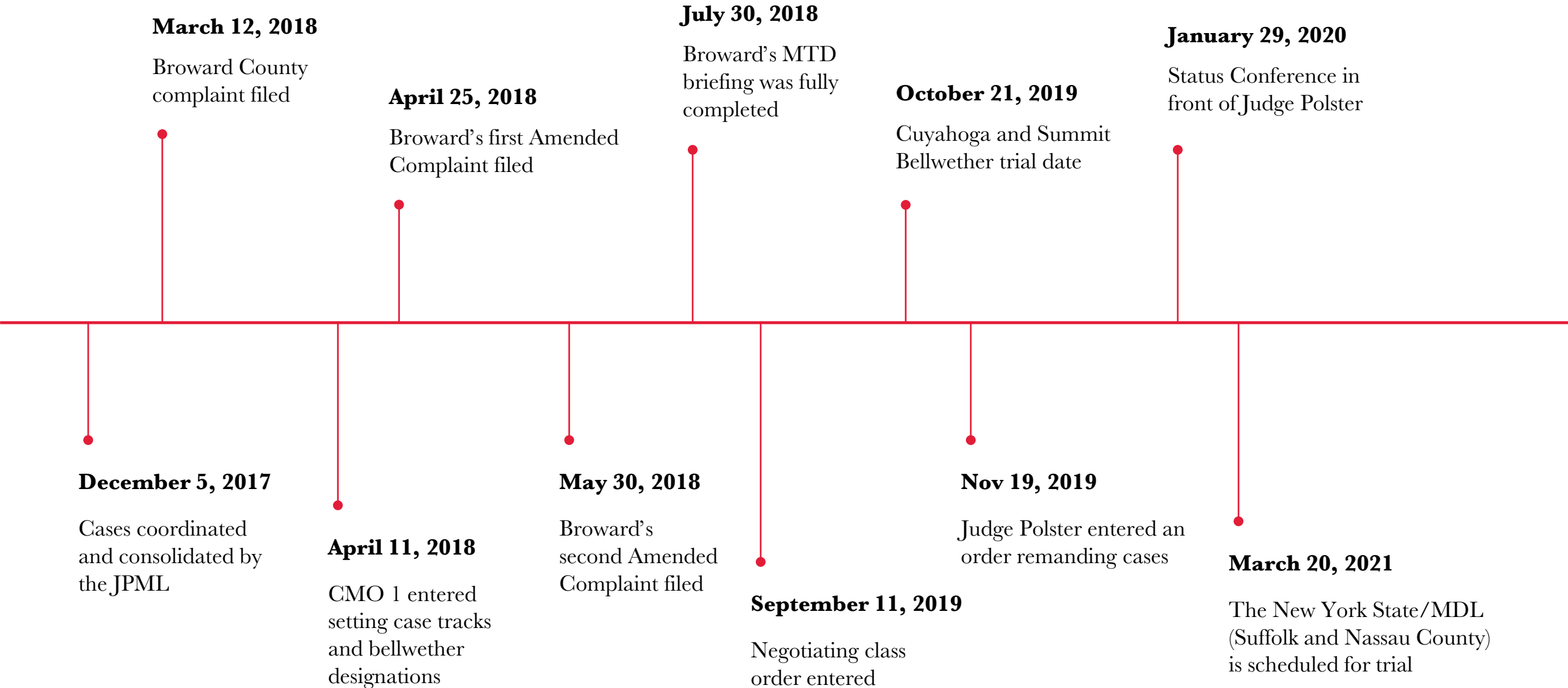
2. Upon review a  
connection with the proposed

3. This Court has  
that it is appropriate (a) to gr  
Notice Plan filed in Doc. #: 2  
to opt out; and (d) to thereafter confirm the membership of the Class u  
pursuant to Rule 23(c), giving all parties notice of the entities that are included in, and that are  
excluded from, the Class.

“[T]his Order is without prejudice to the ability of any Class member to proceed with the prosecution, trial, and/or settlement, in this or any court, of an individual claim . . . . This Order does not stay or impair any action or proceeding in any court, and Class members may retain their Class membership while proceeding with their own actions, including discovery, pretrial proceedings, and trials.”

4. The Class is defined as:





# PURDUE BANKRUPTCY AD HOC COMMITTEE

*In re: Purdue Pharma L.P.*, No. 7:19-BK-23649 (RDD) (S.D.N.Y. Bankruptcy Court)



**September 15, 2019:** Purdue filed for Chapter 11 Bankruptcy.

**September 27, 2019:** The Office of the United States Trustee for the Southern District of New York appointed an official unsecured creditors committee, sans governmental entities.

**December 2, 2019:** The bankruptcy court recognized the importance of governmental entities in this litigation and allowed an Ad Hoc Committee to be formed and recognized.

The Ad Hoc Committee is comprised of consenting states, non-consenting states, political subdivisions (cities/counties), the PEC, and one American Indian Tribe.

There are only six political subdivisions on the Ad Hoc Committee, ***including Broward.***

The Ad Hoc Committee has provided the Court with positions on, *inter alia*:

- emergency relief fund;
- due diligence regarding Purdue's and the Sacklers' finances, including retention of business advisory firm FTI Consulting, Inc. and investment banker Houlihan Lokey Capital, Inc., among others; and
- allocation.

# NOTABLE RESOLUTIONS TO DATE

## SUMMIT AND CUYAHOGA COUNTIES, OHIO

- Allergan settlement (September 2019): **\$5 million**
- Endo settlement (August 2019): **\$10 million**
- Mallinckrodt settlement (September 2019): **\$24 million** cash; **\$6 million** in generic drugs, including for addiction treatment
- Johnson & Johnson settlement (October 2019): **\$20.4 million**
- Teva settlement (October 2019): **\$20 million** cash; **\$25 million** in addiction treatment drugs
- Big 3 Distributors settlement (October 2019): **\$215 million**

## STATE OF OKLAHOMA

- Endo settlement (January 2020): **\$8.75 million**
- Purdue settlement (March 2019): **\$270 million**
- Teva settlement (June 2019): **\$85 million**
- Johnson & Johnson verdict (August 2019):
  - **\$572 million** original award;
  - reduced to **\$465 million**; and
  - J&J filed an appeal (December 2019)

# BIG 3 DISTRIBUTORS ANNOUNCE \$18 BILLION “SETTLEMENT” WITH FOUR ATTORNEYS GENERAL



Ben Winck

Oct. 16, 2019, 09:18 AM

## Opioid distributors soar after reportedly offering \$18 billion to settle a swath of drug crisis lawsuits (MCK, ABC, CAH)

Opioid distributors

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BUSINESS



## 3 Major Drug Distributors Reportedly Negotiating \$18B Opioid Settlement

October 15, 2019 | 9:06 PM ET

RICHARD GONZALES

Three major U.S. drug distributing companies are negotiating a multibillion-dollar settlement to end numerous lawsuits filed by state and local governments seeking compensation for costs associated with the opioid crisis.



HEALTH NEWS

Oct. 15, 2019 / 1:57 PM

## Three drug distributors in talks to settle opioid litigation for \$18 billion - WSJ

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WEDNESDAY, OCT 16 2019

## Opioid Drug Distributors In Talks With State AGs Over Potential \$18B Settlement As Massive Nationwide Trial Nears

THE WALL STREET JOURNAL.

By Sara Randazzo

Updated Oct. 15, 2019 6:58 pm ET

## Drug Distributors in Talks to Settle Opioid Litigation for \$18 Billion

McKesson, AmerisourceBergen, Cardinal Health discussing settlements with state, local governments

Sara Randazzo, *Drug Distributors in Talks to Settle Opioid Litigation for \$18 Billion*, *The Wall Street Journal* (Oct. 15, 2019)

## THE BIG 3'S SETTLEMENT OFFER – A FALSE “WIN”?



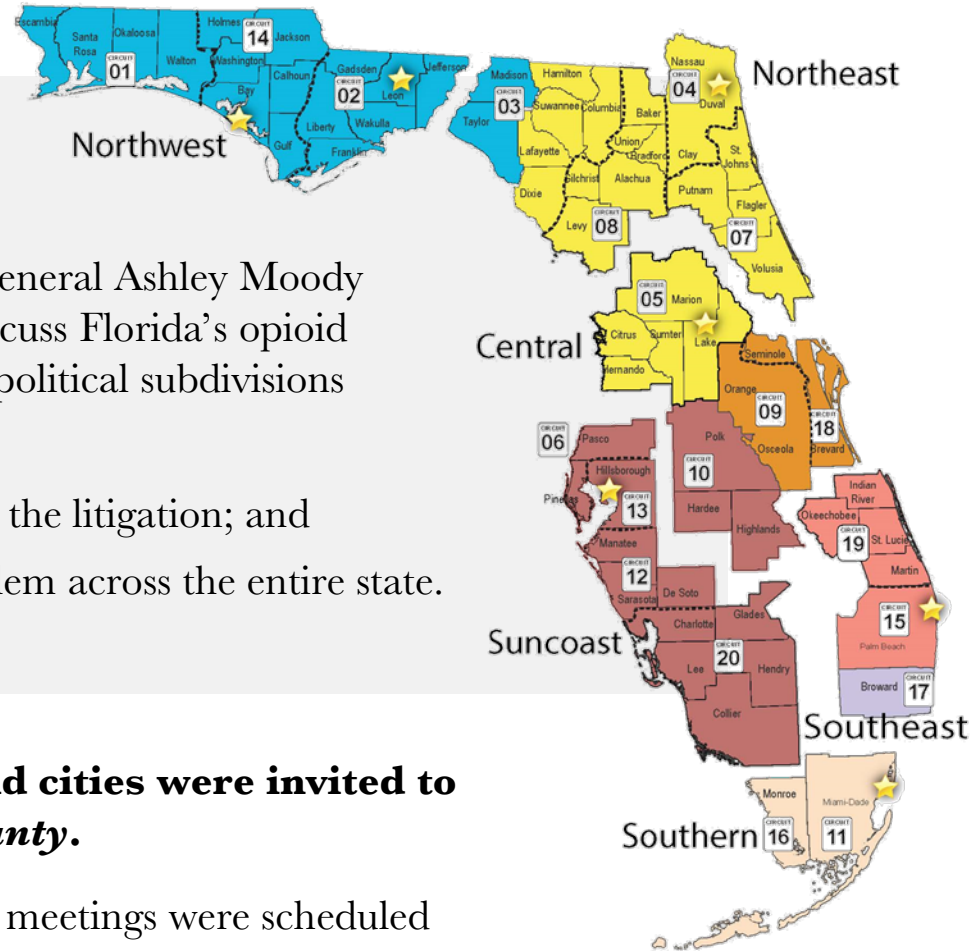
Rosie Ruiz did not run the whole Boston Marathon in 1980 and did not win anything. Although her win was initially hailed as the fastest female time in the race's history, it was stripped eight days later when the truth was revealed that she jumped onto the course a half-mile before the finish line.

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Similarly, the majority of Attorneys General did not litigate, but watched as counties and cities have pushed ahead for years. And they have not actually achieved a workable global settlement.

***We still have farther to run, and Broward is leading the pack.***

# FLORIDA ATTORNEY GENERAL SAYS THIS IS NOT TOBACCO 2.0



On November 7, 2019, Attorney General Ashley Moody held a meeting in Tallahassee to discuss Florida’s opioid epidemic and how the state and its political subdivisions should work together to:

- obtain the greatest recovery from the litigation; and
- use those funds to abate the problem across the entire state.

**A select number of counties and cities were invited to attend, including Broward County.**

As a result of that meeting, regional meetings were scheduled with all cities/counties for the week of January 6, 2020.

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**Broward’s meeting was on January 8, 2020.** County Commissioner Dr. Barbara Sharief and Deputy County Attorney Danielle French attended.

# WHAT'S NEXT FOR BROWARD AND THE MDL?

Following CT1A settlements on the eve of trial, Judge Polster has held several meetings with key counsel, including those representing Broward, to determine the shape and direction of the next phase of the MDL.

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## **Hub-and-Spoke approach:**

- Judge Polster will maintain control of the MDL and common or national discovery issues.
- CT1B (Summit County's case against the pharmacies) to remain in N.D. Ohio.
- Selective remand of four cases for trial:
  - City of Chicago, Illinois;
  - City of Huntington and Cabell County, West Virginia;
  - City and County of San Francisco, California; and
  - Cherokee Nation.

Chicago has been remanded, and the PEC recently requested immediate remand of the Huntington and Cabell County cases. The parties are currently briefing defendants' objections to the Cherokee Nation and San Francisco remands.

In his November 19, 2019 Suggestions of Remand, Judge Polster noted:

***Broward County, Florida v. Purdue Pharma L.P., case no. 18-OP-45332 (N.D. Ohio)***, is a case brought by a Florida governmental entity. The Court chose it as a “bellwether motion” case and will rule on pending motions to dismiss.

Judge Polster also indicated that he would rule on the pending motions to dismiss the bellwether hospital case brought by West Boca Medical Center, Inc. “and probably later suggest remand.”

We will have a better sense of the direction of Broward's case following those orders.



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