How the current MDL approach to the NAS baby problem mirrors problems related to the Big Tobacco Settlement

States Won't Just Misdirect Settlement Funds—They'll Lose Them All Together

In the wake of the late-'90s tobacco settlements, a dozen states and federal territories—including two states germane to the NAS babies suit, Ohio and West Virginia—demonstrated gross financial negligence by cutting disastrously risky deals with Wall Street to receive large portions of their decades-long settlement payouts in lump sums. These deals were backed by capital appreciation bonds, and states now owe creditors billions of dollars for these bonds in the coming decades, as soon as the mid-2020s. Some estimate states could default on as many as 80 percent of the bonds, a risk that has already manifested in credit problems for New Jersey and Puerto Rico.

Rather than default on these bonds, these states are opting to refinance them, pinning the price on the taxpayer. Adding insult to injury, much of the money from these lump sums was spent on state matters completely unrelated to tobacco-use prevention, education, or rehabilitation.

- <u>This means that the children of tobacco addicts were conceivably hit not one but three times</u>:
- First, when they were born with irreversible or substantial medical problems;
- Second, when the money intended to help them did not reach them;
- And third, when decades later states who took the money from the settlements not only squandered it, but lost it…

And the last hit only applies to the children whose health problems weren't so severe they could still earn an income… or reach the age at which they could do so.

This opioid MDL risks subjecting NAS babies to those same hits because it follows the example of the tobacco settlements in the structuring of the opioid settlement and trusts the states to control whatever limited funds are recovered.

ProPublica documented these abusesin 2014: https://www.propublica.org/article/how-wall-street-tobacco-deals-left-states-with-billions-in-toxic-debt

- ProPublica found that in 2014, of the tobacco settlement funds directed to the states of Ohio and West Virginia for that fiscal year, only 0.5% and 8.4% respectively were spent on smoking prevention efforts.
- Separately, Louisiana spent only 5.7% on smoking prevention efforts.
- As of 2014, Ohio, West Virginia, and Louisiana owed $5.52 billion, $911.1 million, and $659.7 million respectively for outstanding bond proceeds directly related to advances on the tobacco settlement…advance payments which are now coming due.
- In 2014, the New York Times estimated that collectively, states spent only 1.9% of tobacco settlement funds on tobacco prevention programs.