

## **Meet Judge Polster**

Judge Dan A. Polster was nominated by President Bill Clinton, and he has been an active judge on the 6th Circuit since August 1998. Judge Polster is a District Judge of the U.S. District Court for the Northern District of Ohio, and his courtroom is located at the Carl B. Stokes United States Court House in Cleveland, Ohio.

Judge Polster graduated *cum laude* from both Harvard undergraduate and Harvard Law School. Before becoming a judge, he worked as a trial attorney for the U.S. Department of Justice's Antitrust Division in Cleveland, Ohio. He then worked as an Assistant U.S. Attorney for the Economic Crimes Division for the Northern District of Ohio.

Over his 19 years as a judge, Judge Polster has seen many patent, trademark, copyright, and employment cases. The bulk of his current docket is products liability cases. Judge Polster was recently selected by the judicial panel to handle the multidistrict opioid litigation because Ohio has been hit particularly hard by the opioid crisis, and the state is centrally located for the defendants. Judge Polster's prior experience mediating settlements in around 700 cases regarding medical contrast dye also made him an attractive choice. Judge Polster has indicated an interest in similarly settling the opioid litigation, though he has also ordered a "litigation track" including some bellwether trials. Judge Polster has commented that he will take an untraditional approach to the opioid litigation, indicating a desire to reduce the number of opioids being manufactured and to monitor distribution, instead of just coming to a financial settlement.

## **The Current MDL "team"**

At Judge Polster's request, various groups involved in the opioid litigation have identified negotiation teams to discuss settlement options. These teams will work with the Special Masters and the Court to come up with potential resolutions for economic and non-economic issues. The individuals were selected by the Plaintiffs and the various Defendants, but no attorneys have been appointed with the purpose of representing hospital interests. The teams are subject to change and are allowed to appoint support committees to assist with discussions.

The Plaintiffs have named Joe Rice, Paul Hanly, Elizabeth Cabraser, Troy Rafferty, Paul Geller, Chris Seeger, and Russell Budd. Many of these attorneys have worked on similarly scaled cases, including class actions and cases regarding pharmaceuticals and asbestos, but none have been specifically selected to represent hospital interests or has significant experience representing hospitals.

Both Rice and Cabreser worked previously on the tobacco litigation settlement, which was upwards of 200 billion dollars. Rice's law firm represented 31 states involved in the tobacco litigation and helped negotiate the master settlement agreement. The law firm that Cabreser co-founded also helped to negotiate the tobacco settlement. In recent years, these settlements have been criticized as funneling massive amounts of monies to the states but with only a fraction going toward public health treatment and prevention.

The Manufacturer Defendants have named Sheila L. Birnbaum, Steven A. Reed, Charles C. Lifland, Jonathan L. Stern, Mark Filip, Brien T. O'Connor, and J. Matthew Donohue. Several of the Defendant's representatives have experience in multidistrict litigation and defending large companies in various litigation matters. One of their representatives, Filip, has previously served as a federal judge on the U.S. District Court for the Northern District of Illinois and as Deputy Attorney General of the United States.

The Distributor Defendants have named Enu Mainigi, Geoffrey Hobart, Jack Smith, and Robert Nicholas, all of whom also have extensive defense experience.

Most recently, in April, a negotiating team was been appointed for retail chain pharmacies. The five attorneys are Kaspar Stoffelmayr, Eric Delinsky, Ronda L. Harvey, Kelly A. Moore, and Tina Tabacchi.

The Insurers have not yet named representatives. The physician defendants have named Tyler G. Tarney as their liaison counsel.

The Attorneys General involved in the litigation are also involved in the settlement talks, and they fall into two sub-groups. Each group will have identified representatives regularly attend settlement discussions. The contact for the Multistate group is Jennifer E. Peacock, Office of the Tennessee State Attorney general, and the contact for the litigation group is Jeffrey Rupert, Office of the Washington State Attorney General.

**Key upcoming dates for the MDL:**

**January 25, 2019** – all 30(b)(6) and fact depositions shall be completed.

**February 8, 2019** – Plaintiffs shall serve expert reports and, for each expert, provide two proposed deposition dates between **February 18 and March 15, 2019**.

**March 26, 2019** – Defendants shall serve expert reports and, for each expert, provide two proposed deposition dates between **April 8 and May 3, 2019**.

**May 13, 2019, 4:00 p.m.** – Deadline for *Daubert* and dispositive motions.

**June 10, 2019, 4:00 p.m.** – Deadline for responses to *Daubert* and dispositive motions.

**July 1, 2019, 4:00 p.m.** – Deadline for replies in support of *Daubert* and dispositive motions.

**July 16, 2019** – Hearings on *Daubert* and dispositive motions, or as otherwise set by the Court, if necessary.

**August 22, 2019, 12:00 noon** – Final Pretrial Hearing.

**September 3, 2019** – Trial.

