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# In the Opioid Litigation, Who Represents Addicted Babies?

By **Amanda Bronstad** (/author/profile/Amanda Bronstad/) | August 24, 2018 at 06:36 PM

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Lawyers attempting to negotiate a global settlement of lawsuits brought over the opioid epidemic aren't representing a key group: babies who have been born addicted to prescription painkillers.

That's according to plaintiffs lawyers who have filed class actions in nine states on behalf of infants, the latest of which was filed on Tuesday in New York. A coalition of nine law firms **filed court papers** (<https://images.law.com/contrib/content/uploads/documents/398/22002/Opioid-Babies-second-brief.pdf>) this week asking a federal judge in Ohio for permission to request a separate discovery and litigation track for the baby cases.

One of those lawyers, Scott Bickford, estimated that there could be more than 1 million babies diagnosed with "neonatal abstinence syndrome," which occurs when infants are born to mothers who used opioids. He said the lawsuits seek a trust of more than \$1 billion to help pay for medical monitoring of the children over the next few decades.

"There has been no large-scale attempt to find out what happens to these children, and there are thousands at this time, perhaps over 1 million through the school system and growing up," said Bickford, a

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Bickford & Centola in New Orleans. “Theoretically, these kids are born addicted and may stay addicts for life.”

Babies are the latest segment of the opioid epidemic to attempt to get a front-row seat in the legal case against manufacturers and distributors. More than 1,000 lawsuits have been coordinated in multidistrict litigation in Cleveland before U.S. District Judge Dan Polster of the Northern District of Ohio, who has allowed a **limited amount of discovery** (<https://www.law.com/nationallawjournal/2018/04/12/polster-sets-aggressive-discovery-schedule-as-first-opioid-trial-is-slated-for-march-2019/>) to go forward. The vast majority of plaintiffs are cities and counties seeking to recoup the costs of medical treatment and law enforcement, but Native American tribes, hospitals and others have elbowed into the case. New plaintiffs are emerging, such as class actions—including eight filed this week—filed on behalf of individuals alleging the opioid epidemic caused their **health insurance premiums** (<https://www.law.com/nationallawjournal/2018/05/02/new-wave-of-class-actions-blame-opioid-industry-for-rising-health-insurance-costs/?et=editorial&bu=Law&cn=20180822&src=EMC-Email&pt=Critical%20Mass>) to skyrocket.

At least 11 cases have been brought on behalf of babies, many of whom suffer from addiction and learning disabilities. Bickford said the cases are in states that have medical monitoring laws, which include New York and California. According to the **case filed in New York Supreme Court for Niagara County** (<https://images.law.com/contrib/content/uploads/documents/398/22002/Opioid-Babies-NY-complaint.pdf>), for instance, lifetime medical costs could include treatment of developmental, psychiatric, emotional or behavioral disorders associated with addiction.

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"The intent would be to construct a trust that would deliver financial assistance directly to the custodians of these children," he said. Custodians could include other family members, foster parents or birth parents who have kicked the habit, he said.

The defendants in all the baby cases include opioid manufacturers Purdue Pharma, Johnson & Johnson, Endo Health Solutions and Teva Pharmaceuticals, as well as distributors McKesson Corp., AmerisourceBergen Corp. and Cardinal Health Inc. The New York complaint also named Insys Therapeutics Inc.

Johnson & Johnson spokeswoman Wanda Moebius wrote in an email: "Our actions in the marketing and promotion of these medicines were appropriate and responsible. The labels for our prescription opioid pain medicines provide information about their risks and benefits, and the allegations made against our company are baseless and unsubstantiated. In fact, our medications have some of the lowest rates of abuse among this class of medications."

Endo spokeswoman Heather Zoumas Lubeski said, "We deny the allegations contained in these lawsuits and intend to vigorously defend the company."

Representatives of the other defendants either did not respond or declined to comment.

It's not the first time the coalition of law firms tried to get Polster to create a separate "baby track." On June 28, the judge denied an earlier request.

"We've asked the court to reconsider our motion for a separate baby track for babies with neonatal abstinence syndrome," Bickford said. "We don't think the present MDL and the people in it who essentially represent state and local governments really have the children's interests at heart."

The plaintiffs' executive committee in charge of the opioid MDL has refused to provide information about discovery and depositions, he said. His request described the discovery process as operating under a "cloak of secrecy" and included an attached email exchange in which executive committee member Jayne Conroy of Simmons Hanly Conroy called his request to monitor depositions "not necessary" and "burdensome."

Conroy said in a statement: "All our legal efforts are directed at the companies who caused the opioid epidemic. Any success will benefit all victims."

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