

Litigators of the Week: The Plaintiffs' Team Behind the Revamped \$26B Proposed Opioid Settlement

By [Ross Todd](#)
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It's not the finish line, but it's a step closer to it.

Attorneys general from several states and the plaintiffs' executive committee in the National Prescription Opiate Litigation MDL this week announced a \$26 billion proposed global settlements to resolve lawsuits against Johnson & Johnson and the **three largest opioid pharmaceutical distributors** AmerisourceBergen Drug Corp., McKesson Corp. and Cardinal Health Inc.

The announcement comes two years after many of the same plaintiffs negotiated a proposed deal to resolve the vast majority of more than 4,000 lawsuits bringing claims that the companies contributed to the nation's opioid crisis. For coming back to the table and getting the new deal inked, this week's Litigators of the Week are **Joe Rice** of **Motley Rice**, the lead negotiator for communities affected by the opioid crisis, his colleagues on the negotiating team **Elizabeth Cabraser** of **Lieff Cabraser Heimann & Bernstein**, **Paul Geller** of **Robbins Geller Rudman & Dowd**, **Chris Seeger** and **Jennifer Scullion** of **Seeger Weiss** and **Peter Mougey** of **Levin Papantonio**, as well as Rice's co-lead attorneys on the MDL plaintiffs' executive committee, **Jayne Conroy** of **Simmons Hanly Conroy** and **Paul Farrell Jr.** of **Farrell Law**. Rice answered the Litigation Daily's questions about the proposed deal on behalf of the group.

Litigation Daily: Who were your clients and what is at stake?



(clockwise, from top left) **Joe Rice** of **Motley Rice**, the lead negotiator for communities affected by the opioid crisis, his colleagues on the negotiating team **Elizabeth Cabraser** of **Lieff Cabraser Heimann & Bernstein**, **Paul Geller** of **Robbins Geller Rudman & Dowd**, **Chris Seeger** and **Jennifer Scullion** of **Seeger Weiss** and **Peter Mougey** of **Levin Papantonio**, as well as Rice's co-lead attorneys on the MDL plaintiffs' executive committee, **Jayne Conroy** of **Simmons Hanly Conroy** and **Paul Farrell Jr.** of **Farrell Law**.

Joe Rice: Judge Dan Polster of the U.S. District Court for the Northern District of Ohio appointed us lead plaintiff counsel for the National Prescription Opiate Litigation. While we represented our direct client communities, we were also responsible for advancing the interests of all litigating subdivisions. In other words, we are representing the over 3,000 cities, towns, and counties from across the country who are bringing lawsuits against opioid manufacturers, distributors, and pharmacy chains as part of the federal opioid litigation. This is the most complex litigation

in American history and is unique because it was led by communities that continue to battle the opioid crisis. The stakes couldn't be higher as the CDC estimates that we lost over 93,000 Americans to drug overdoses last year and the "economic burden" on the country is over \$78 billion per year.

Our clients have been on the front lines of the opioid epidemic and are the ones that have shouldered the cost to fund medical care, law enforcement, and family support services. The health and safety of our communities is at risk and they need help now.

Our duty for this litigation is to help these communities secure funds to power prevention, treatment and harm-reduction programs and help save individuals battling opioid addiction, support families and build back communities for a recovery process expected to last decades.

Who all was on your team and how have you divided up the work?

I was the lead negotiator supported by Elizabeth Cabraser, Paul Geller, Chris Seeger, Peter Mougey and Jennifer Scullion. This work was also done in coordination with Jayne Conroy and Paul Farrell Jr., who are my fellow co-lead attorneys of the Plaintiffs' Executive Committee.

Why does this version of the settlement have the plaintiffs' executive committee's full backing?

We are facing a nationwide problem caused, in our view, by the improper conduct of members of the opioid industry, which includes manufacturers, distributors and pharmacy chains. This ongoing public health crisis cries out for a global resolution immediately to support opioid abatement around the country.

The PEC supports the negotiated terms because it will ultimately ensure funds are directed across the United States to provide relief. The agreement includes a higher total amount than previously offered as well as increased upfront dollars for abatement programs in the first few years of settlement payments.

These terms also include injunctive relief that requires important changes to the Big Three and J&J's conduct

to better protect our nation's health and welfare. This reform package includes the creation of a groundbreaking clearinghouse through which the Big Three will be required to account not only for their own shipments, but also the shipments of the other distributors in order to detect, stop and report suspicious orders. In addition, J&J and all of its subsidiaries have agreed to a 10-year prohibition on the manufacture, sale and distribution of their opioid products.

Mr. Mougey said at a press conference Wednesday the previous proposal was "dead on arrival" at the start of this year. How did you get from where you were to the announcement that was made this week?

The team worked collaboratively for months to transform ideas into workable solutions that could lead to an agreement.

The tiered approach helped eliminate — or greatly reduce — the risk of future payment interruption that was a huge obstacle to parties coming to a consensus. The tiering system in the settlement framework incentivizes participation in the agreement from states and communities. The terms offer a higher total dollar amount for state and community opioid crisis abatement, which can be unlocked by the opt-in percentage and reduction of litigation risk for the defendants. It was this framework the negotiation team devised that aligned the goals of all parties involved to the point where it was possible to get to where we are today with the agreement.

Explain to me the "participation tiers" built into this settlement and how they provide more certainty about payment to your clients.

There are four tiers incorporated into the terms of the agreement. In short, the more states and subdivisions participate and opt-in to the settlement, the higher the total dollar amount available to them. The tiers impact the extent to which payments can be suspended or offset due to litigation.

We have identified a concrete number of states and levels of participation that trigger the interruption of payments and the offset penalty tied to the litigation

risk posed by communities that do not opt-in to the deal and could bring cases against the settling defendants at a later date.

The lower the risk of later litigating subdivisions, the lower the offsets cap is for settling parties. We want states and communities to opt-in to ensure they receive the maximum abatement fund amount possible. Following these tiers, we can help our clients calculate the exact amounts they will see.

How optimistic are you that there will be enough buy-in from the states and your clients for this settlement to make it to the finish line?

We are hopeful. The attorneys general indicated that they believe there will be over 40 states onboard, but this is subject to change.

We are now working vigorously to help educate our clients to understand the terms and the resources it could bring to their communities. We have an open dialogue directly with the many Attorneys general who have already voiced support for the deal. We are also in discussions with the thousands of municipal governments working together with their Attorneys General and state leaders to determine their support for this deal. We have noticed that there is total subdivision support in instances where they and the state have reached a pre-existing agreement on how funds will be allocated once received.

We are very optimistic we will see this deal approved after the significant investment of time and effort to ensure we have a framework in place to direct settlement dollars states and communities receive to proven programs that will effectively and efficiently mitigate the opioid crisis at a national, state, and local level.

If this settlement holds, what opioid litigation would your clients have still pending?

State and federal litigation continues against other companies in the opioid supply chains, including in current and upcoming trials. There are active state trials in California and New York. The Tennessee state-court

trial begins next week. New York reached an agreement with these defendants early this week and have been severed from that case but additional defendants remain. The federal bellwether with the City of Huntington and Cabell County, West Virginia, has closing statements next week.

We have many other named defendants we will be proceeding against as well as discovery of news parties that will be joined in due course.

What other opioid trials do you and your team have on the immediate horizon?

We simultaneously are in the midst of preparing to try additional federal cases against manufacturers and pharmacies in San Francisco in 2022 and against various pharmacy chains for their role in dispensing opioids in Ohio. The latter federal bellwether involves the Ohio counties of Lake and Trumbull counties against CVS, Walmart, Walgreens, and Rite Aid, which is set to begin on October 4, 2021.

What will you remember most about getting to this milestone in these cases?

The sheer volume of time, effort and resources to pursue these cases is unprecedented. This is one of the most complex legal actions in American history and that alone is memorable.

The plaintiffs have been leading the way to find novel solutions to hold those responsible for the opioid epidemic accountable while understanding the urgency to get resources into communities. This is one of our biggest steps forward in this process, but along the way, we have seen how important this litigation has been to add greater transparency and accountability to how this massive public health crisis emerged. Releasing the ARCOS data and seeing trials go forward has provided the public great insight into how the opioid industry's actions led to the opioid epidemic. With this settlement and the injunctive relief terms, we have the potential to improve public safety for the country.