

## MCA Member Tackles the Opioid Epidemic

By Marc Rosenweig, MCA member



For nine years David R. Cohen toiled through unsatisfying marketing and sales jobs before a career switch eventually led to his dream job. Today, Americans impacted by the opioid epidemic are benefiting from his work.

“I wasn’t good at my job,” said Cohen of those early days. “I didn’t know what I was good at. I did well academically.”

At age 29, Cohen decided to try law school at Case Western Reserve. Eventually that led to 10 years working as a law clerk for three different judges.

“I was a career law clerk,” said Cohen. Then a judge encouraged him to go out on his own and use his skills by appointing him as Special Master in a case involving faulty hip replacements. That led to a career specialty that he’s enjoyed for nearly two decades. Eighteen different judges have appointed him as Special Master in more than 30 complex cases.

Since 2017, the Shaker Heights, Ohio native has served as Special Master for the National Opiate Prescription Litigation. It’s the most complex litigation of his career. More than 3,000 cases were transferred into the Multi-District Litigation (MDL) presided over by one judge. The settlements so far have reached at least \$50 billion.

“I’m really a judge’s helper,” said Cohen. “I’m hooked on helping judges with the most complex cases.”

He provides key information and makes recommendations to Federal Judge Dan Polster, who oversees the entire Opioid MDL. “It’s complicated. There are a huge number of plaintiffs and several hundred defendants.” He often meets with attorneys from both sides on the discovery of evidence and potential settlements.

Defendants cover a wide range of companies and individuals, including opioid manufacturers Purdue Pharma and Johnson & Johnson, opioid distributors like Cardinal Health, and opioid dispensers such as CVS, Walmart, and Walgreens. Some hospitals and smaller pharmacy benefit managers have also been sued.

“It’s like catching a whale,” said Cohen of the scope of the Opioid MDL. “You only catch a fish like this every six or eight years.”

Cohen emphasized the opioid settlement money must be spent to combat the opioid crisis. That's unlike the tobacco settlement many years ago where the money that went to the states was often spent on other initiatives.

Cohen says the MDL world allows him to work with some of the best attorneys. We spoke a few weeks before he was scheduled to moderate an MCA panel with four attorneys who represented plaintiffs and companies involved in the Opioid MDL.

"Attorneys who litigate inside the MDL know each other. They're certainly adversaries, but not enemies. They're friendly adversaries.

"These are the best," he added about the MCA panelists. One represented Purdue Pharma and the Sackler family that owned Purdue Pharma. The others represented Cardinal Health and various plaintiffs. "Three of them have part-time homes in Naples."

Cohen says approximately \$5 billion of the \$50 billion settlement has been awarded to plaintiffs' attorneys. He adds that most of these attorneys worked for free for five years while spending approximately \$100 million on the litigation.

Cohen watched the Hulu series *Dopesick* and read several books on the opioid crisis, including *Empire of Pain*.

"*Dopesick* is obviously a drama," said Cohen. "But there's a lot of truth to it. Companies are driven by profit. That's all most of them look at. They bent a lot of rules. That's important for the public to see.

"The press has an important role in reporting on this. The fourth estate keeps the other three honest," he added. "Plaintiffs' attorneys can serve a useful purpose by holding companies accountable."

As Special Master on a wide range of cases, Cohen has encountered some memorable characters. During his first case, he met well-known plaintiffs' attorney Dickie Scruggs. Scruggs was portrayed in the movie *The Insider* which dealt with the lawsuits against tobacco companies. Scruggs represented Mississippi in the litigation.

"As we were waiting to start a meeting, I asked him 'What are you doing this weekend?'" said Cohen. Scruggs replied, "I'm going scuba diving from my yacht with Russell Crowe and Bo Derek off Australia."

Scruggs later pled guilty to attempting to bribe two judges. He served six years in Federal prison. But Cohen says he works with many of the most talented legal minds as Special Master.

"I'm working with the best and smartest attorneys in the country," said Cohen. "I'm good at being neutral --- listening to both sides. I'm neutral like a judge."

Does he want to be a judge?

“A judge has to deal with hundreds of different cases a year. What I do is way better than being a judge.”