



MEMO

County Administrator

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TO: County Commissioners
FROM: Robert W. Wilson
DATE: November 10, 2021
SUBJECT: Opioid Litigation Update

On August 20, 2018, the Commission approved entering into a Retainer Agreement with the Robbins, Geller, Rudman & Dowd Law Firm to represent Cass County in Multidistrict Litigation (MDL) against pharmaceutical manufacturers and distributors of opioids. Since then, representatives of Robbins, Geller have provided updates to the Administration and State Attorney's Offices as the case proceeded.

Recently four of the ten MDL defendants agreed to a settlement. With this offer the defendants, opioid manufacturers and distributors, hope to settle all potential claims from local governments, not just those that are currently filed. As a result, the proposed settlement ties monetary distributions in a state to the percentages of municipalities and counties that agree to a coordinated settlement with the state's Attorney General.

The total settlement is \$26.1 billion. Three of the four defendants will pay over 18 years, one will pay over 10 years (The other six defendants are not involved). **Cities and counties have until January 2, 2022 to indicate if they will agree to a coordinated settlement with the Attorney General.**

If there is 100% participation, the state will get the full amount. If 70% of cities and counties agree to participate, the amount received will likely be about 50% of the allotted distribution. If there is 50% participation, the state likely receives approximately 25% of the allotted distribution – or less. The defendants determine the percentage of the allotment distributed if it is less than 100%.

The settlement has a default structure that directs 70% of the funds to be deposited into an Attorney General controlled abatement fund. Local governments, non-profits, and private providers could apply for grants from this fund. Another 15% would go to the state and the remaining 15% would go to municipalities and counties. All funds must be used for the prevention and reduction of opioid abuse. Attorney's General and local governments are free to set up another distribution method, but all would have to agree to the structure.

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I spoke with our contact at Robbins, Geller – Ms. Roxana Pierce on November 3rd to review the settlement proposal and Cass County's best options. I also reviewed the conversation with State's Attorney Burdick and provided him with the attached call notes.

Based on this conversation it is my recommendation the Commission consider entering into a Participation Agreement with the North Dakota Attorney General's Office for distribution of opioid settlement proceeds. Consideration of this item will be scheduled for the Commission meeting on November 15, 2021.

Motion: Authorize Chair to sign a Participation Agreement with the North Dakota Attorney General's Office for distribution of opioid settlement proceeds as approved by the State's Attorney.

Roxana Pierce Phone Call 1:00p.m. 11-03-21

- Key date is January 2, 2022. (This might be extended but can't count on that now.)
 - By that date states must identify what percentage of cities & counties will sign on to settlement agreement with the State Attorney General's office.
 - If there is 100% participation in allocation plan between state AG, counties & cities, full 100% of allotment is distributed.
 - If 70% participation between AG, counties & cities, likely 50% of allotment is distributed.
 - If 50% participation between AG, counties & cities, likely 0-25% of allotment is distributed.
- Cities & Counties need to develop distribution formula with state AG. AG has the mechanism to register cities/counties. If don't identify something else, default split is:
 - 70% abatement fund (cities & counties could apply for funds from.)
 - 15% to cities & counties
 - 15% to State
- Defendants know an allotted settlement amount per state.
 - \$26.1B total.
 - J&J distribute this over 10 years.
 - Other defendants distribute over 18 years.
 - RP – there is not a path for cities/counties to get a better deal from these four defendants.
- Total 10 defendants.
 - This settlement involves four.
 - Two others are in bankruptcy.
 - Additional four not involved.
- All funds need to be spent to combat opioid crisis.
 - Use data from plaintiffs facts sheet filled out at beginning of case.
 - Not intended to make up for the past
 - Intended to stop future deaths.
 - Individual questions can be run through judge.
- Most important do-outs.
 - 100% participation
 - Jury/court decision in California case this week that was very favorable to defendants. Should be motivation to accept this settlement.
 - Cass & Fargo need to reach out to other counties, cities, our associations & AG's office.
 - Follow-up with Roxana.