

RESOLUTION**ROCK COUNTY BOARD OF SUPERVISORS**

Richard Greenlee, Rock County
Corporation Counsel
INITIATED BY



3/1/2023
DATE DRAFTED

Authorizing Rock County to Enter into Settlement Agreements with Teva Pharmaceutical Industries Ltd., Allergan Finance, LLC, Walgreen Co., Walmart, Inc., CVS Health Corporation and CVS Pharmacy, Inc., Agree to the Terms of the Addendum to the MOU Allocating Settlement Proceeds, and Authorize Entry Into the MOU with the Attorney General

WHEREAS, the County Board of Supervisors previously authorized the County to enter into an engagement agreement with von Briesen & Roper, s.c., Crueger Dickinson LLC and Simmons Hanly Conroy LLC (the "Law Firms") to pursue litigation against certain manufacturers, distributors, and retailers of opioid pharmaceuticals (the "Opioid Defendants") in an effort to hold the Opioid Defendants financially responsible for the County's expenditure of vast money and resources to combat the opioid epidemic;

WHEREAS, on behalf of the County, the Law Firms filed a lawsuit against the Opioid Defendants;

WHEREAS, the Law Firms filed similar lawsuits on behalf of 66 other Wisconsin counties and all Wisconsin cases were coordinated with thousands of other lawsuits filed against the same or substantially similar parties as the Opioid Defendants in the Northern District of Ohio, captioned *In re: Opioid Litigation*, MDL 2804 (the "Litigation");

WHEREAS, four (4) additional Wisconsin counties (Milwaukee, Dane, Waukesha, and Walworth) hired separate counsel and joined the Litigation;

WHEREAS, since the inception of the Litigation, the Law Firms have coordinated with counsel from around the country (including counsel for Milwaukee, Dane, Waukesha, and Walworth Counties) to prepare the County's case for trial and engage in extensive settlement discussions with the Opioid Defendants;

WHEREAS, the settlement discussions with Teva Pharmaceutical Industries Ltd., Allergan Finance, LLC, Walgreen Co., Walmart, Inc., CVS Health Corporation and CVS Pharmacy, Inc.. (the "Settling Defendants") resulted in a tentative agreement as to settlement terms pending agreement from the County and other plaintiffs involved in the Litigation;

WHEREAS, the Settlement Agreements provide, among other things, for the payment of certain sums to Participating Subdivisions (as defined in the Settlement Agreements) upon the occurrence of certain events detailed in the Settlement Agreements;

WHEREAS, the County is a Participating Subdivision in the Settlement Agreements and has the opportunity to participate in the benefits associated with the Settlement Agreement provided the County (a) approves the Settlement Agreements; (b) approves the Memorandum of Understanding allocating proceeds from the Settlement Agreements among the various Wisconsin Participating Subdivisions, a copy of which is attached to this Resolution (the "Allocation MOU"); (c) approves the Memorandum of Understanding with the Wisconsin Attorney General regarding allocation of settlement proceeds, a copy of which is attached to this Resolution (the "AG MOU"); and (d) the Legislature's Joint Committee on Finance approves the terms of the Settlement Agreements and the AG MOU;

WHEREAS, 2021 Wisconsin Act 57 created Section 165.12 of the Wisconsin Statutes relating to the settlement of all or part of the Litigation;

WHEREAS, pursuant to Wis. Stat. § 165.12(2), the Legislature's Joint Committee on Finance is required to approve the Settlement Agreements and the AG MOU;

WHEREAS, pursuant to Wis. Stat. § 165.12(2), the proceeds from any settlement of all or part of the Litigation are distributed 70% to local governments in Wisconsin that are parties to the Litigation and 30% to the State;

WHEREAS, Wis. Stat. § 165.12(4)(b)2. provides the proceeds from the Settlement Agreement must be deposited in a segregated account (the “Opioid Abatement Account”) and may be expended only for approved uses for opioid abatement as provided in the Settlement Agreements;

WHEREAS, Wis. Stat. § 165.12(7) bars claims from any Wisconsin local government against the Opioid Defendants filed after June 1, 2021;

WHEREAS, the definition of Participating Subdivisions in the Settlement Agreements recognizes a statutory bar on claims such as that set forth in Wis. Stat. § 165.12(7) and, as a result, the only Participating Subdivisions in Wisconsin are those counties and municipalities that were parties to the Litigation (or otherwise actively litigating a claim against one, some, or all of the Opioid Defendants) as of June 1, 2021;

WHEREAS, the Legislature’s Joint Committee on Finance is not statutorily authorized or required to approve the allocation of proceeds of the Settlement Agreements among Wisconsin Participating Subdivisions;

WHEREAS, the Law Firms have engaged in extensive discussions with counsel for all other Wisconsin Participating Subdivisions resulting in the proposed Allocation MOU, which is an agreement between all of the entities identified in the Allocation MOU as to how the proceeds payable to those entities under the Settlement Agreements will be allocated;

WHEREAS, the proposed Addendum to the MOU (“Addendum”) provided with this Resolution provides for allocation of settlement proceeds among the Wisconsin Participating Subdivisions according to the same percentages as that provided in the previously-approved MOU allocating the settlement proceeds of the settlements involving McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.;

WHEREAS, there is provided with this Resolution a summary of the essential terms of the Settlement Agreements, the deadlines related to the effective dates of the Settlement Agreements, the ramifications associated with the County’s refusal to enter into the Settlement Agreements, the form of the Addendum, the form of the AG MOU, and an overview of the process for finalizing the Settlement Agreements;

WHEREAS, the County, by this Resolution, shall deposit the proceeds of the Settlement Agreements consistent with the terms of this Resolution and Wis. Stat. § 165.12(4)(b);

WHEREAS, pursuant to the County’s engagement agreement with the Law Firms, the County shall pay up to an amount equal to 25% of the proceeds from successful resolution of all or part of the Litigation, whether through settlement or otherwise, plus the Law Firms’ costs and disbursements, to the Law Firms as compensation for the Law Firms’ efforts in the Litigation and any settlement;

WHEREAS, the Law Firms anticipate making application to the national fee fund established in the Settlement Agreements seeking payment, in whole or part, of the fees, costs, and disbursements owed the Law Firms pursuant to the engagement agreement with the County;

WHEREAS, it is anticipated the amount of any award from the fee fund established in the Settlement Agreements will be insufficient to satisfy the County’s obligations under the engagement agreement with the Law Firms;

WHEREAS, the County, by this Resolution, and pursuant to the authority granted the County in the applicable Order emanating from the Litigation in relation to the Settlement Agreements and payment of attorney fees, shall authorize and direct the escrow agent responsible for the receipt and distribution of the proceeds from the Settlement Agreements to establish an account for the purpose of segregating funds to pay the fees, costs, and disbursements of the Law Firms owed by the County (the “Attorney Fees Account”) in order to fund a local “backstop” for payment of the fees, costs, and disbursements of the Law Firms;

WHEREAS, in no event shall payments to the Law Firms out of the Attorney Fees Account and the fee

fund established in the Settlement Agreements exceed an amount equal to 25% of the amounts allocated to the County in the Addendum;

WHEREAS, the intent of this Resolution is to authorize the County to enter into the Settlement Agreements, the Addendum, and the AG MOU, establish the County's Opioid Abatement Account, and establish the Attorney Fees Account; and

WHEREAS, the County, by this Resolution, shall authorize the County's corporation counsel to finalize and execute any escrow agreement and other document or agreement necessary to effectuate the Settlement Agreements and the other agreements referenced herein;

NOW, THEREFORE, BE IT RESOLVED: the County Board of Supervisors hereby approves:

1. The execution of the Settlement Agreements and any and all documents ancillary thereto and authorizes the County Board Chair or designee to execute same.
2. The final negotiation and execution of the Addendum in form substantially similar to that presented with this Resolution and any and all documents ancillary thereto and authorizes the County Board Chair or designee to execute same upon finalization provided the percentage share identified as allocated to the County is substantially similar to that identified in the Addendum provided to the Board with this Resolution.
3. The final negotiation and execution of the AG MOU in form substantially similar to that presented with this Resolution and any and all documents ancillary thereto and authorizes the County Board Chair to execute same.
4. The execution by the County Board Chair or designee of any additional documents or agreements for the receipt and disbursement of the proceeds of the Settlement Agreements as referenced in the Addendum.

BE IT FURTHER RESOLVED: all proceeds from the Settlement Agreements not otherwise directed to the Attorney Fees Account shall be deposited in the County's Opioid Abatement Account. The Opioid Abatement Account shall be administered consistent with the terms of this Resolution, Wis. Stat. § 165.12(4), and the Settlement Agreements.

BE IT FURTHER RESOLVED: the County hereby authorizes the establishment of an account separate and distinct from any account containing funds allocated or allocable to the County which shall be referred to by the County as the "Attorney Fees Account." An escrow agent shall deposit a sum equal to up to, but in no event exceeding, an amount equal to 20% of the County's proceeds from the Settlement Agreements into the Attorney Fees Account. If the payments to the County are not enough to fully fund the Attorney Fees Account as provided herein because such payments are made over time, the Attorney Fees Account shall be funded by placing up to, but in no event exceeding, an amount equal to 20% of the proceeds from the Settlement Agreements attributable to Local Governments (as that term is defined in the Allocation MOU) into the Attorney Fees Account for each payment. Funds in the Attorney Fees Account shall be utilized to pay the fees, costs, and disbursements owed to the Law Firms pursuant to the engagement agreement between the County and the Law Firms provided, however, the Law Firms shall receive no more than that to which they are entitled under their fee contract when considering the amounts paid the Law Firms from the fee fund established in the Settlement Agreements and allocable to the County. The Law Firms may make application for payment from the Attorney Fees Account at any time and the County shall cooperate with the Law Firms in executing any documents necessary for the escrow agent to make payments out of the Attorney Fees Account.

BE IT FURTHER RESOLVED that all actions heretofore taken by the Board of Supervisors and other appropriate public officers and agents of the County with respect to the matters contemplated under this Resolution are hereby ratified, confirmed and approved.

FISCAL NOTE:

Once the settlement funds are allocated and received, budget amendment resolutions will be needed to appropriate the funds to approved activities.

Sherry Oja
Finance Director

LEGAL NOTE:

The County Board is authorized to take this action pursuant to Wis. Stat. §§ 59.01 & 59.51.

Richard Greenlee
Corporation Counsel

ADMINISTRATIVE NOTE:

Recommended.

Josh Smith
County Administrator

Committee Action

County Board Staff Committee

County Board Staff Committee recommended this resolution for approval by a unanimous voice vote.
Supervisor Towns was absent.