

RESOLUTION

ROCK COUNTY BOARD OF SUPERVISORS

Supervisor Kevin Leavy
INITIATOR



7/10/2024
DATE SUBMITTED

SPONSOR

Authorizing Rock County to Enter Into the Settlement Agreement with The Kroger Co. and Agree to the Terms of Addendum Two to the MOU Allocating Settlement Proceeds

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

7
8 **WHEREAS**, on behalf of the County, the Law Firms filed a lawsuit against the Opioid Defendants;

9
10 **WHEREAS**, the Law Firms filed similar lawsuits on behalf of 66 other Wisconsin counties and all
11 Wisconsin cases were coordinated with thousands of other lawsuits filed against the same or
12 substantially similar parties as the Opioid Defendants in the Northern District of Ohio, captioned In re:
13 Opioid Litigation, MDL 2804 (the “Litigation”);

14
15 **WHEREAS**, four (4) additional Wisconsin counties (Milwaukee, Dane, Waukesha, and Walworth)
16 hired separate counsel and joined the Litigation;

17
18 **WHEREAS**, since the inception of the Litigation, the Law Firms have coordinated with counsel from
19 around the country (including counsel for Milwaukee, Dane, Waukesha, and Walworth Counties) to
20 prepare the County’s case for trial and engage in extensive settlement discussions with the Opioid
21 Defendants;

22
23 **WHEREAS**, the settlement discussions with The Kroger Co. (the “Settling Defendant”) resulted in a
24 tentative agreement as to settlement terms pending agreement from the County and other plaintiffs
25 involved in the Litigation;

26
27 **WHEREAS**, copies of the settlement agreement relating to the Settling Defendant (“Settlement
28 Agreement”) representing the terms of the tentative settlement agreement with the Settling Defendant
29 has been made available at [https://nationalopioidsettlement.com/wp-content/uploads/2024/05/Kroger-](https://nationalopioidsettlement.com/wp-content/uploads/2024/05/Kroger-Multistate-Settlement-Agreement-Circulated-to-States-March-25-2024.pdf)
30 [Multistate-Settlement-Agreement-Circulated-to-States-March-25-2024.pdf](https://nationalopioidsettlement.com/wp-content/uploads/2024/05/Kroger-Multistate-Settlement-Agreement-Circulated-to-States-March-25-2024.pdf);

31
32 **WHEREAS**, the Settlement Agreement provides, among other things, for the payment of certain sums
33 to Participating Subdivisions (as defined in the Settlement Agreement) upon the occurrence of certain
34 events detailed in the Settlement Agreement;

35
36 **WHEREAS**, the County is a Participating Subdivision in the Settlement Agreement and has the
37 opportunity to participate in the benefits associated with the Settlement Agreement provided the County
38 (a) approves the Settlement Agreement; (b) approves the Addendum Two to the Memorandum of
39 Understanding allocating proceeds from the Settlement Agreement (“MOU”) among the various
40 Wisconsin Participating Subdivisions, a copy of which is attached to this Resolution (“Addendum
41 Two”); and (c) the Legislature’s Joint Committee on Finance approves the terms of the Settlement
42 Agreement;

43
44 **WHEREAS**, pursuant to Section 12 of the State-Local MOU entered into between the Wisconsin

45 Participating Subdivisions and the Attorney General of the State of Wisconsin (“State-Local MOU”), the
46 Attorney General has provided notice that the terms of the State-Local MOU shall apply to the
47 Settlement Agreement and all proceeds of such Settlement Agreement;

48
49 **WHEREAS**, 2021 Wisconsin Act 57 created Section 165.12 of the Wisconsin Statutes relating to the
50 settlement of all or part of the Litigation;

51
52 **WHEREAS**, pursuant to Wis. Stat. § 165.12(2), the Legislature’s Joint Committee on Finance is
53 required to approve the Settlement Agreement;

54
55 **WHEREAS**, pursuant to Wis. Stat. § 165.12(2), the proceeds from any settlement of all or part of the
56 Litigation are distributed 70% to local governments in Wisconsin that are parties to the Litigation and
57 30% to the State;

58
59 **WHEREAS**, Wis. Stat. § 165.12(4)(b)2. provides the proceeds from the Settlement Agreement must be
60 deposited in a segregated account (the “Opioid Abatement Account”) and may be expended only for
61 approved uses for opioid abatement as provided in the Settlement Agreement;

62
63 **WHEREAS**, Wis. Stat. § 165.12(7) bars claims from any Wisconsin local government against the
64 Opioid Defendants filed after June 1, 2021;

65
66 **WHEREAS**, the definition of Participating Subdivisions in the Settlement Agreement recognizes a
67 statutory bar on claims such as that set forth in Wis. Stat. § 165.12(7) and, as a result, the only
68 Participating Subdivisions in Wisconsin are those counties and municipalities that were parties to the
69 Litigation (or otherwise actively litigating a claim against one, some, or all of the Opioid Defendants) as
70 of June 1, 2021;

71
72 **WHEREAS**, the Legislature’s Joint Committee on Finance is not statutorily authorized or required to
73 approve the allocation of proceeds of the Settlement Agreement among Wisconsin Participating
74 Subdivisions;

75
76 **WHEREAS**, the Wisconsin Participating Subdivisions previously negotiated and approved the
77 allocation of proceeds among themselves, which allocation is reflected in Exhibit A to the MOU, which
78 is an agreement between all of the entities identified in the Allocation MOU as to how the proceeds
79 payable to those entities under the Settlement Agreements will be allocated;

80
81 **WHEREAS**, the County and all other Wisconsin Participating Subdivisions agreed to and entered into
82 that certain Addendum to the MOU (“Addendum One”) that provided for allocation of settlement
83 proceeds from previous settlements with certain pharmacies and manufacturers according to the same
84 percentages as that provided in the MOU;

85
86 **WHEREAS**, the County has been informed as to the deadlines related to the effective dates of the
87 Settlement Agreement, the ramifications associated with the County’s refusal to enter into the
88 Settlement Agreement, the form of Addendum Two and an overview of the process for finalizing the
89 Settlement Agreements and such information, together with additional resources related to the
90 settlement can be found at <https://nationalopioidsettlement.com/kroger-co-settlement/>;

91
92 **WHEREAS**, the County, by this Resolution, shall deposit the proceeds of the Settlement Agreement
93 consistent with the terms of this Resolution and Wis. Stat. § 165.12(4)(b);

94
95 **WHEREAS**, pursuant to the County’s engagement agreement with the Law Firms, the County shall pay
96 up to an amount equal to 25% of the proceeds from successful resolution of all or part of the Litigation,
97 whether through settlement or otherwise, plus the Law Firms’ costs and disbursements, to the Law
98 Firms as compensation for the Law Firms’ efforts in the Litigation and any settlement;

99
100 **WHEREAS**, the Law Firms anticipate making application to the national fee fund established in the
101 Settlement Agreement seeking payment, in whole or part, of the fees, costs, and disbursements owed the
102 Law Firms pursuant to the engagement agreement with the County;

103
104 **WHEREAS**, it is anticipated the amount of any award from the fee fund established in the Settlement
105 Agreements will be insufficient to satisfy the County’s obligations under the engagement agreement
106 with the Law Firms;

107
108 **WHEREAS**, the County, by this Resolution, and pursuant to the authority granted the County in the
109 applicable Order emanating from the Litigation in relation to the Settlement Agreement and payment of
110 attorney fees, shall authorize and direct the escrow agent responsible for the receipt and distribution of

111 the proceeds from the Settlement Agreement to establish an account for the purpose of segregating funds
112 to pay the fees, costs, and disbursements of the Law Firms owed by the County (the "Attorney Fees
113 Account") in order to fund a local "backstop" for payment of the fees, costs, and disbursements of the
114 Law Firms;

115
116 **WHEREAS**, in no event shall payments to the Law Firms out of the Attorney Fees Account and the fee
117 fund established in the Settlement Agreement exceed an amount equal to 25% of the amounts allocated
118 to the County by virtue of the Addendum Two (Exhibit A to the MOU);

119
120 **WHEREAS**, the intent of this Resolution is to authorize the County to enter into the Settlement
121 Agreement, the Addendum Two, establish the County's Opioid Abatement Account, and establish the
122 Attorney Fees Account; and

123
124 **WHEREAS**, the County, by this Resolution, shall authorize the County's corporation counsel to finalize
125 and execute any other document or agreement necessary to effectuate the Settlement Agreement and the
126 other agreements referenced herein;

127
128 **NOW, THEREFORE, BE IT RESOLVED:** the Rock County Board of Supervisors on this 8th day of
129 August, 2024, hereby approves:

130
131 The execution of the Settlement Agreement and any and all documents ancillary thereto and authorizes
132 the County Administrator or designee to execute same.

- 133 1. The final negotiation and execution of Addendum Two in form substantially similar to that
134 presented with this Resolution and any and all documents ancillary thereto and authorizes the
135 County Administrator or designee to execute same upon finalization provided the percentage
136 share identified as allocated to the County is substantially similar to that identified in the
137 Addendum Two provided to the Board with this Resolution.
138 2. The execution by the County Administrator or designee of any additional documents or
139 agreements for the receipt and disbursement of the proceeds of the Settlement Agreement.

140
141 **BE IT FURTHER RESOLVED:** all proceeds from the Settlement Agreement not otherwise directed
142 to the Attorney Fees Account shall be deposited in the County's Opioid Abatement Account. The
143 Opioid Abatement Account shall be administered consistent with the terms of this Resolution, Wis. Stat.
144 § 165.12(4), and the Settlement Agreement.

145
146 **BE IT FURTHER RESOLVED:** the County hereby authorizes the establishment of an account
147 separate and distinct from any account containing funds allocated or allocable to the County which shall
148 be referred to by the County as the "Attorney Fees Account." An escrow agent shall deposit a sum
149 equal to up to, but in no event exceeding, an amount equal to 20% of the County's proceeds from the
150 Settlement Agreement into the Attorney Fees Account. If the payments to the County are not enough to
151 fully fund the Attorney Fees Account as provided herein because such payments are made over time, the
152 Attorney Fees Account shall be funded by placing up to, but in no event exceeding, an amount equal to
153 20% of the proceeds from the Settlement Agreement attributable to Local Governments (as that term is
154 defined in the MOU) into the Attorney Fees Account for each payment. Funds in the Attorney Fees
155 Account shall be utilized to pay the fees, costs, and disbursements owed to the Law Firms pursuant to
156 the engagement agreement between the County and the Law Firms provided, however, the Law Firms
157 shall receive no more than that to which they are entitled under their fee contract when considering the
158 amounts paid the Law Firms from the fee fund established in the Settlement Agreement and allocable to
159 the County. The Law Firms may make application for payment from the Attorney Fees Account at any
160 time and the County shall cooperate with the Law Firms in executing any documents necessary for the
161 escrow agent to make payments out of the Attorney Fees Account.

162
163 **BE IT FURTHER RESOLVED** that all actions heretofore taken by the Board of Supervisors and other
164 appropriate public officers and agents of the County with respect to the matters contemplated under this
165 Resolution are hereby ratified, confirmed and approved.

FISCAL NOTE:

The County will adhere to all fiscal requirements as outlined by the resolution, state statute, and the Settlement Agreement.

Kristin Vander Kooi
Finance Director

LEGAL NOTE:

The County Board is authorized to take this action pursuant to Wis. Stat. §§ 59.01, 59.51, 100.18(11)(b), and 165.12.

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 Leavy was absent.

