

TUSCOLA COUNTY BOARD OF COMMISSIONERS

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At a regular meeting of the Board of Commissioners for the County of Tuscola, State of Michigan, on the 16th day of December, 2021 with the meeting called to order at 8:00 a.m.

Commissioners Present: *Thomas Young, Thomas Bardwell, Kim Vaughan,
Doug DuRussel, Dan Munshaw*

Commissioners Absent: *none*

The following resolution was offered by Commissioner *Munshaw*,
seconded by Commissioner *Vaughan*,

RESOLUTION NUMBER 2021-17

RESOLUTION AUTHORIZING ENTRY OF STATE LOCAL GOVERNMENT INTRASTATE AGREEMENT CONCERNING ALLOCATION OF SETTLEMENT PROCEEDS IN THE NATIONAL OPIOIDS LITIGATION

WHEREAS, the County of Tuscola filed a lawsuit in the United States District Court to address the public nuisance that is the Opioid Epidemic, which named, among other companies, the following four Defendants (“Settling Defendants”):

1. Janssen Pharmaceuticals, Inc. (a prescription opioids manufacturer);
2. Amerisource Bergen Corp. (a prescription opioids wholesaler distributor);
3. Cardinal Health, Inc. (a prescription opioids wholesaler distributor); and
4. McKesson Corporation (a prescription opioids wholesaler distributor)

AND WHEREAS, the lawsuit was subsequently transferred to the United States District Court in the Northern District of Ohio and centralized as part of *In re National Prescription Opiate Litigation*, MDL 2804; Case No. 1:17-md-2804, which is presided over by the Honorable Dan Aaron Polster, United State Federal District Court Judge;

AND WHEREAS, the Settling Defendants have negotiated proposed national settlement agreements (“Proposed Settlements”) with the State Attorneys General, and a Plaintiff Executive Committee-designated negotiating committee that represents approximately 4,000 local governments that have brought lawsuits similar to Tuscola County’s lawsuit;

AND WHEREAS, the Proposed Settlements contain a “default” allocation method where settlement funds that are allocated to a particular state to resolve the claims asserted by state and local governments within that state are allocated as follows:

- 15% of settlement proceeds paid under the Proposed Settlements are allocable to the State;
- 15% of the settlement proceeds are allocable to local governments; and
- 70% of the settlement proceeds are allocable to an opioid abatement fund;

AND WHEREAS, the Proposed Settlements enable the state and local governments within a State to negotiate alternative allocation methods to the “default” allocation method referenced above;

AND WHEREAS, Tuscola County desires to enter into an alternative allocation method which allocates settlement funds solely to:

1. Participating Local Governments who have elected to participate in the Proposed Settlements; and
2. the State of Michigan.

NOW THEREFORE, Tuscola County authorizes the County Controller/Administrator to execute a Michigan State-Subdivision Agreement For Allocation of Distributor Settlement Agreement and Janssen Settlement Agreement substantially similar to the proposed agreement attached to this resolution. Tuscola County also authorizes the County Controller/Administrator to execute a similar state-subdivision agreement to the extent that it provides a substantially similar allocation of settlement or bankruptcy proceeds obtained from opioids litigation with any other entity.

All other resolutions or parts of resolutions insofar as they conflict with this resolution are rescinded.

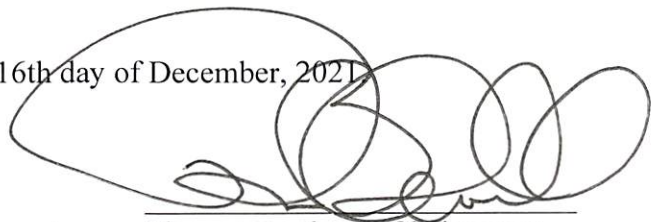
Ayes: Young, Vaughan, De Russel, Skrimshaw, Bardwell

Nays: none

Absent: none

Resolution declared approved dated this 16th day of December, 2021

Date: 12-16-21



Thomas Bardwell, Chairperson
Tuscola County Board of Commissioners

**MICHIGAN STATE-SUBDIVISION AGREEMENT FOR
ALLOCATION OF DISTRIBUTOR SETTLEMENT AGREEMENT
AND JANSSEN SETTLEMENT AGREEMENT**

The People of the State of Michigan and its communities have been harmed by misfeasance, nonfeasance, and malfeasance committed by certain entities within the pharmaceutical industry. The conduct of such Pharmaceutical Entities has caused, or contributed to the existence of, a public nuisance associated with the opioid public health epidemic.

The State, through its Attorney General, and Litigating Local Governments, through their elected representatives and counsel, are separately engaged in litigation seeking to hold the Pharmaceutical Entities accountable for the damage caused by their misfeasance, nonfeasance, and malfeasance by imposing the equitable remedy of nuisance abatement. The State and Litigating Local Governments litigated their claims in their proprietary, sovereign, and quasi-sovereign capacities.

To allocate monetary payments received from these Pharmaceutical Entities, the State and Litigating Local Governments agree to the following State-Subdivision Agreement:

I. Definitions

As used in this Agreement:

- A. "Administrative Fund" is 0.3% of the Local Government Share.
- B. "Actual Attorney Fees" are the aggregate contingent fees paid to a Local Litigating Attorney for work performed for a Litigating Local Government for the Settlements and associated litigation, based on a Litigating Local Government's Actual Total Recovery for Calculating Attorney Fees. This does not include any fee payments for common benefit work as defined by the Settlements.

- C. “Actual Total Recovery for Calculating Attorney Fees” is the aggregated monetary recovery that a Litigating Local Government receives, based on that Litigating Local Government’s Final Allocation Percentage and aggregate Local Government Share less the aggregate amounts for the Administrative Fund, Special Circumstance Fund plus the aggregate amount paid by the Litigating Local Government Attorney Fee Fund. For the avoidance of doubt, this may be expressed mathematically as Final Allocation Percentage x (Local Government Share – aggregate Administrative Fund – aggregate Special Circumstance Fund + aggregate paid by LLGAFF).
- D. “Agreement” is this State-Subdivision Agreement.
- E. “De minimis-share Local Government” is a Participating Local Government whose Final Allocation Percentage is less than .0023%.
- F. “Final Allocation Percentage” is a Participating Local Government’s Allocation Percentage as modified by the Litigation Adjustment. Attached as Exhibit A is an estimated projection of the Final Allocation Percentage for each Local Government, assuming that all Local Governments elect to participate in the Settlement.
- G. “Litigating Local Government Attorneys” are the law firms who were retained by the Litigating Local Governments.
- H. “Litigating Local Government Attorney Fee Fund” (“LLGAFF”) is an adjustable percentage of the Local Government Share set aside for Projected Attorney Fee installment payments.
- I. “Litigating Local Governments” are the entities located in the geographical boundaries of the State of Michigan that are listed in Exhibit C of the Settlements.

- J. “Litigation Adjustment” is the adjusted component distributed to Litigating Local Governments in recognition of the commitment of time, resources, and assumption of risk in litigation.
- K. “Local Government Share” is the portion of the Settlement Payments payable to Participating Local Governments pursuant to this Agreement.
- L. “Local Governments” are the entities located within the geographic boundaries of the State of Michigan and identified in Exhibit C or G of the Settlements.
- M. “National Contingency Fee Fund” is the Contingency Fee Fund established and defined by Exhibit R of the Settlements.
- N. “National Fund Administrator” is the Settlement Fund Administrator as defined by the Settlements.
- O. “Neutral Special Master” is an independent mediator selected by the State.
- P. “Opioid Remediation” is the term as defined by the Settlements.
- Q. “Participating Local Governments” are the Local Governments who have signed a Participation Agreement in the Settlements.
- R. “Parties” are the State and the Litigating Local Governments. The singular word “Party” shall mean either the State or Litigating Local Governments.
- S. “Pharmaceutical Entities” are the “Released Entities” as defined by the Settlements.

- T. “Preliminary Allocation Percentage” is the percentage listed for a Participating Local Government in Exhibit G of the Distributor Settlement Agreement.
- U. “Projected Attorney Fees” are the anticipated contingent fees paid to a Litigating Local Government Attorney for work performed for a Litigating Local Government for the Settlements and associated litigation, based on a Litigating Local Government’s Projected Total Recovery for Calculating Attorney Fees. This does not include any fee payments for common benefit work as defined by the Settlements.
- V. “Projected Total Recovery for Calculating Attorney Fees” is the aggregated monetary recovery that a Litigating Local Government is projected to receive based on that Litigating Local Government’s Final Allocation Percentage and aggregate Local Government Share less the aggregate amounts for the Administrative Fund and Special Circumstance Fund. For the avoidance of doubt, this may be expressed mathematically as Final Allocation Percentage x (Local Government Share – aggregate Administrative Fund – aggregate Special Circumstance Fund).
- W. “Settlements” are the Distributor Settlement Agreement and Janssen Settlement Agreement.
- X. “Settlement Payments” are scheduled monetary payments received through the Settlements.
- Y. “Special Circumstance Fund” is 5% of the Local Government Share.
- Z. “State” is the State of Michigan acting through its Attorney General or her designees.
- AA. “State Share” is the portion of the Settlement Payments payable to the State pursuant to this Agreement.

II. Terms

1. Participation in Settlements: The Parties agree that Litigating Local Governments, to participate in the Settlements, will execute a Participation Agreement.
2. Opioid Remediation: All Settlement Payments shall be utilized by Participating Local Governments and the State for Opioid Remediation, except as otherwise allowed by the Settlements. A minimum of 70% of Settlement Payments must be used solely for future Opioid Remediation.
3. Distribution: Settlement Payments are allocated as follows:
 - 50% of Settlement Payments to the Local Government Share
 - 50% of Settlement Payments to the State Share
4. Local Government Share Offset: Prior to Participating Local Governments receiving their Final Allocation Percentage of the Local Government Share, amounts will be deducted for the following funds:
 - Administrative Fund
 - Litigating Local Government Attorney Fee Fund
 - Special Circumstance Fund
5. Litigation Adjustment: The Parties recognize that the Litigating Local Governments expended time, resources, and assumed risk in the pursuit of litigation against the Pharmaceutical Entities. In recognition of this commitment and contribution to a Settlement, the Litigating Local Governments are entitled to a Litigation Adjustment of an additional percentage of their Preliminary Allocation Percentage, as follows:
 - 16% for Litigating Local Governments that served as a bellwether or filed suit in 2017

- 12% for Litigating Local Governments that filed suit in 2018
 - 8% for Litigating Local Governments that filed suit in 2019
6. Accelerated Participation Payments: Prior to the distribution of the State Share, the National Fund Administrator shall allocate the aggregate projected recovery for all De minimis-share Local Governments from the State Share to those De minimis-share Local Governments. This allocation shall be made in the first Settlement Payment. In subsequent Settlement Payments, the National Fund Administrator shall direct distributions of all De minimis-share Local Governments to the State Share.
 7. Non-Participant Reallocation: If a non-county Local Government does not participate in the Settlements, then that non-county Local Government's share shall revert to the county(ies) in which it is located. If a county Local Government does not participate in the Settlements, that county's share shall be reallocated to the Participating Local Governments.
 8. Attorney Costs: To the extent that Litigating Local Government Attorneys receive cost reimbursement from the National Contingency Fee Fund, then such reimbursed costs shall be deducted from any remaining entitlement to costs as provided under individual retention agreements.
 9. Attorney Fees:
 - a. Attorney fee payments are only paid in years where Settlement Payments received are greater than \$0.00.
 - b. Projected Attorney Fees shall be calculated as 15% of a Litigating Local Government's Projected Total Recovery for Calculating Attorney Fees. Projected Attorney Fees shall be paid in installments over the first seven Settlement Payments.

- c. Litigating Local Government Attorneys must apply to the National Contingency Fee Fund and seek the maximum allowable contribution to their fee. To the extent that a Litigating Local Government Attorney applies to the National Attorney Contingency Fee Fund and the National Attorney Contingency Fee Fund does not pay the Projected Attorney Fee installment payment, the LLGAFF shall pay the deficiency for that installment. If a Litigating Local Government Attorney does not apply to the National Attorney Contingency Fee Fund, the LLGAFF shall not pay any deficiency.
- d. Actual Attorney Fees shall be no greater than 15% of a Litigating Local Government's Actual Total Recovery for Calculating Attorney Fees.
- e. If a Litigating Local Government's Actual Total Recovery for Calculating Attorney Fees is less than the Projected Total Recovery for Calculating Attorney Fees, the Litigating Local Government Attorney shall return the amount received that is greater than 15% of the Litigating Local Government's Actual Total Recovery for Calculating Attorney Fees.

10. Special Circumstance Fund:

- a. Applications to receive additional funding for any local impact of the opioid epidemic that is not captured by a Local Government's Allocation Percentage may be submitted to the Neutral Special Master for consideration. The Neutral Special Master will decide the additional funding to be paid, if any, to all applicants on an application-by-application basis. Any additional funding allocated under this paragraph shall only be paid from the Special Circumstance Fund. Initial applications to the Special Circumstance Fund shall be made by March 30, 2022 and reviewed for allocation determination by the Neutral Special Master. The allocation decisions of the Neutral Special

Master shall be final and not appealable. Notwithstanding the foregoing, Local Governments may submit applications to revise the Special Circumstance Fund allocation determinations on March 29, 2030 to reflect changes in circumstances, and the Neutral Special Master may prospectively adjust the allocation of the Special Circumstance Fund at that time. Local Governments are limited to one application prior to March 30, 2022 and one subsequent application on March 29, 2030. Application to the Special Circumstance Fund may not be made with the express purpose of offsetting the Litigation Adjustment. The Neutral Special Master shall be paid solely from the Administrative Fund.

b. Attorney fees may be assessed on a Special Circumstance Fund allocation. To the extent that an attorney asserts a contingency fee interest upon a Special Circumstance fund allocation, that fee interest shall be capped at 15% of the fund allocation. Payment of attorney fees for a Special Circumstance fund allocation are the responsibility of the Participating Local Subdivision.

11. Allocation of Remaining Local Government Share: The remainder of the Local Government Share after offsets shall be distributed to Participating Local Governments in accordance with each Participating Local Government's Final Allocation Percentage.
12. Escrow Agent: An Escrow Agent shall be agreed upon by the State and a majority of the Litigating Local Governments to administer the distribution of the Local Government Share and all funds contained within it pursuant to this Agreement. The Escrow Agent shall be entitled to a reasonable fee for its services, which shall be paid solely from the Administrative Fund. Alternatively, the Parties may explore whether the Escrow Agent's role can be fulfilled by the Settlement Fund Administrator as that term is defined in the Settlements.

13. Reversion to Local Government Share:

- a. Any amounts remaining in the Administrative Fund shall remain in such fund until all anticipated administrative costs associated with implementation of this Agreement have been paid, after which any remaining funds may revert to the Local Government Share for distribution to Participating Local Governments in accordance with their Final Allocation Percentage.
- b. Any amounts remaining in the LLGAFF after paying the Projected Attorney Fee installment payment shall revert to the Local Government Share for distribution to Participating Local Governments in accordance with their Final Allocation Percentage. Any amount reverted to the Local Government Share shall be distributed no later than the next Settlement Payment.

III. Other Terms and Conditions

1. Governing Law and Venue: This Agreement will be governed by the laws of the State of Michigan. Any and all litigation arising under this Agreement, unless otherwise specified in this Agreement, will be instituted in a State court in Michigan
2. Modification: This Agreement may only be modified by a written amendment between the Parties. No promises or agreements made subsequent to the execution of this Agreement shall be binding unless reduced to writing and signed by the Parties.
3. Execution in Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute this Agreement.

4. Assignment: The rights granted in this Agreement may not be assigned or transferred by any Party without the prior written approval of all the Parties. No Party shall be permitted to delegate its responsibilities or obligations under this Agreement without the prior written approval of all the Parties.
5. Additional Documents: The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be reasonably necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.
6. Captions: The captions contained in this Agreement are for convenience only and shall in no way define, limit, extend, or describe the scope of this Agreement or any part of it.
7. Entire Agreement: This Agreement, including any attachments, embodies the entire agreement of the Parties. There are no other provisions, terms, conditions, or obligations. This Agreement supersedes all previous oral or written communications, representations, or agreements on this subject.
8. Construction: The Parties mutually acknowledge and represent that they have been fully advised by their respective legal counsel of their rights and responsibilities under this Agreement. The Parties state that they have read, know, and understand the contents of this Agreement. The Parties state that they have voluntarily executed this Agreement. This Agreement was drafted jointly by the Parties and shall not be construed for or against any Party.
9. Capacity to Execute Agreement: The Parties represent and warrant that the individuals signing this Agreement on their behalf are authorized and fully competent to do so.